S279137

Case No. _____

IN THE SUPREME COURT OF CALIFORNIA

TAMELIN STONE, et al.,

Plaintiffs and Appellants,

v.

ALAMEDA HEALTH SYSTEM,

Defendant and Respondent.

No Fee (Gov. Code, § 6103)
After a Decision by the Court of Appeal,
First Appellate District, Division Five
Case No. A164021

PETITION FOR REVIEW

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PETITION FOR REVIEW

ISSUES PRESENTED

1. Are all public entities exempt from the obligations in the Labor Code and wage orders regarding meal and rest breaks, overtime, and payroll records, or only those public entities that satisfy the "hallmarks of sovereignty" standard adopted by the Court of Appeal in this case?

2. Does the exemption from the prompt payment statutes in Labor Code section 220, subdivision (b), for "employees directly employed by any county, incorporated city, or town or other municipal corporation" include all public entities that exercise governmental functions, or only those with a publicly elected board, a geographical boundary, the power to forcefully raise funds or acquire property, and the power to regulate or police?

3. Do the civil penalties available under the Private Attorneys General Act of 2004, codified at Labor Code section 2698 et seq., apply to public entities given the lack of any reference to public entities in that statute and rule that public entities are "not liable for … damages imposed primarily for the sake of example and by way of punishing the defendant" (Gov. Code, § 818)?

INTRODUCTION: WHY REVIEW SHOULD BE GRANTED

The decision by the Court of Appeal in this case breaks with a long line of cases holding that public entities are not subject to certain Labor Code and wage order obligations because the Legislature did not make these rules specifically applicable to public entities. In doing so, the Court of Appeal has created multiple conflicts with other published opinions and potential liability and confusion for numerous public entities regarding their legal obligations. Resolving this conflict is critical to Defendant/Respondent Alameda Health System ("AHS") and countless other public employers in the state.

The County of Alameda created AHS as an independent public hospital authority pursuant to state law to discharge the County's obligations under section 17000 of the Welfare and Institutions Code and to "fulfill its commitment to the medically indigent, special needs, and general populations of" the County. (Health & Saf. Code, § 101850, subd. (a)(1).) AHS's enabling statute makes clear that it is a "government entity" (*id.*, subd. (j))—subject to the Meyers-Milias-Brown Act, the Ralph M. Brown Act, the Public Records Act, the County Employees Retirement Law of 1937, and the Government Claims Act—with "all the rights and duties set forth in state law with respect to hospitals owned or operated by a county." (*Id.*, subd. (m).)

The decision below acknowledges that "there is no reason to doubt that" AHS "is a 'governmental entity' of some kind" and a "public entity of some sort," rendering it exempt from the Labor

Code provisions regarding wage statements and default penalties under the Private Attorneys General Act of 2004 ("PAGA"). (Typed opn. at pp. 12, 15.) Yet because AHS lacks certain "hallmarks of sovereignty" (typed opn. at p. 1), such as a governing board elected by the public and the power to tax, seize property, regulate, or police, the Court of Appeal concluded that AHS does not qualify for certain wage and hour exemptions previously thought to apply to all public employers. For the following reasons, review is "necessary to secure uniformity of decision" and "to settle important questions of law." (Cal. Rules of Court, rule 8.500(b)(1).)

Issue One. The Court of Appeal's published decision creates a split of authority with numerous other published decisions holding that wage and hour obligations regarding meal and rest breaks, payroll records, and overtime do not apply to public entities, based on the Legislature's own recognition that "'provisions of the Labor Code apply only to employees in the private sector unless they are specifically made applicable the public employees.'" (*Johnson v. Arvin-Edison Water Storage Dist.* (2009) 174 Cal.App.4th 729, 736 [quoting Senate Committee on Industrial Relations and *Campbell v. Regents of University of California* (2005) 35 Cal.4th 311, 330]; accord, e.g., *California Correctional Peace Officers' Assn. v. State of California* (2010) 188 Cal.App.4th 646, 651-656 & fn. 7 (*CCPOA*); *Allen v. San Diego Convention Center Corporation, Inc.* (2022) 86 Cal.App.5th 589, 598.)

Most of these cases have reached this conclusion without even addressing the "sovereign powers" doctrine—a separate principle of statutory construction providing that "'governmental agencies are excluded from the general provisions of a statute only if their inclusion would result in an infringement upon sovereign powers.'" (*Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1192.) Other cases have addressed the doctrine but recognized its limited relevance for the Labor Code because, "in the context of wage and hour provisions, the Legislature expressly refers to public entities when it intends them to be included." (*Johnson*, *supra*, 174 Cal.App.4th at p. 736.) Indeed, as this Court has explained in concluding that public entities are not subject to the False Claims Act, "[w]hile the 'sovereign powers' principle can help resolve an unclear legislative intent, it cannot override positive indicia of a contrary legislative intent"—such as expressly referring to public entities in other provisions of the same code. (*Wells*, at p. 1193.)

The Court of Appeal purported to follow the foregoing line of authority, but in fact its decision creates multifaceted conflicts requiring this Court's resolution. First, despite acknowledging that AHS is a "public entity of some sort," (typed opn. at p. 15), the Court of Appeal found no "positive indicia" of legislative intent to exempt AHS from the wage and hour provisions. This approach—which fixates on the type rather than the fact of public entity involvement—flies in the face of the principles adopted in the foregoing cases, creating a conflict that needs resolution. In doing so, the Court of Appeal adopted an unduly

narrow construction of the public employer exemption in the wage orders that also conflicts with another published decision. (Compare typed opn. at pp. 8-9 with *Sheppard v. North Orange County Regional Occupational Program* (2010) 191 Cal.App.4th 289, 301 [a regional occupational program created pursuant to state law is a political subdivision under wage orders].) Consequently, the court unnecessarily reached the "sovereign powers" issue, which is not relevant under the case law that holds that Labor Code provisions apply only to employees in the private sector unless they are specifically made applicable to public employees.

Second, the Court of Appeal created a conflict in its application of the "sovereign powers" doctrine. In particular, the court's conclusion that applying the wage and hour laws would not intrude on AHS's sovereign powers conflicts with decisions recognizing that "a statute infringes upon a public entity's sovereign powers if the statute affects the entity's governmental purposes and functions," (*Johnson*, *supra*, 174 Cal.App.4th at p. 738), "'the relationship between a public employer and its employees affects the fundamental purposes and functions of the governmental body,'" (*id.* at pp. 738-739), and, most specifically, "restrict[ing] [a] County in the operation of its public hospital infringes on its sovereign powers." (*Community Memorial Hospital v. County of Ventura* (1996) 50 Cal.App.4th 199, 208, 210.)

Issue Two. The decision below has also deepened a preexisting split of authority as to what types of public entities

are exempt from the Labor Code's prompt payment statutes. The Legislature has exempted "employees directly employed by any county, incorporated city, or town or other municipal corporation" from certain prompt payment obligations. (See Lab. Code, § 220, subd. (b).) One line of published cases has construed "other municipal corporation" broadly to include entities that "perform an essential governmental function." (*Johnson*, *supra*, 174 Cal.App.4th at p. 741 [water storage district]; accord, *Division of Labor Law Enforcement v. El Camino Hosp. Dist.* (1970) 8 Cal.App.3d Supp. 30 (*El Camino*) [hospital district]; *Kistler v. Redwoods Community College Dist.* (1993) 15 Cal.App.4th 1326 [community college district].)

Another line of cases—including the decision below—has concluded that an entity must have the following "multiple crucial characteristics" to qualify as a "municipal corporation": the power of eminent domain; possession of a geographical jurisdiction and the power to impose taxes and fees upon those who live in it; independent regulatory or police powers; and a board of directors elected by the public. (Typed opn. at p. 11, citing *Gateway Community Charters v. Spiess* (2017) 9 Cal.App.5th 499, 506.) These cases have relied too heavily on the *ejusdem generis* canon of statutory construction and ignored contrary statutory context and legislative history.

Issue Three. The Court of Appeal's PAGA holding also warrants review for multiple reasons. First, it highlights a split of authority over whether public entities are "persons" under Labor Code section 18 (which PAGA and a host of Labor Code

provisions incorporate by reference). (Compare typed opn. at pp. 14-15 [public entities are not "persons" under section 18] with *Wood v. Kaiser Family Foundation* (Feb. 24, 2023) --- Cal.App.5th ---, 2023 WL 2198664, at *10 ["nothing in section 18 expressly excludes government entities"].) Second, its erroneous interpretation of PAGA could lead to double recoveries against public (but not private) employers and raises grave concerns given Government Code section 818's prohibition on damages primarily designed to punish—the scope of which this Court is already considering in a different context. (See *Los Angeles Unified School Dist. v. Superior Court* (2021) 64 Cal.App.5th 549, 562-567 & fn. 6 (*LAUSD*), review granted (S269608).)

Statewide Importance. The Court of Appeal's erroneous decision carries significant implications for hundreds of public agencies ranging from joint powers authorities to dependent special districts. Many of these public entities perform essential governmental functions but lack the "hallmarks of sovereignty" that the court found determinative here. The Court of Appeal's decision, particularly when read in tandem with its interpretation of PAGA, could impose staggering new and unanticipated liabilities on hundreds of public employers. Left unreviewed, the decision threatens to sow confusion for public employers and lower courts across the state, upsetting longstanding interpretations of state law based on the Legislature's and this Court's pronouncements. This Court should grant review.

STATEMENT OF THE CASE

A. AHS's creation, mission, and status as a "government entity."

Until the late 1990s, the County of Alameda (the "County") satisfied its obligations under the Welfare and Institutions Code to provide healthcare to the indigent through its operation of the Alameda County Medical Center. (See Welf. & Inst. Code, § 17000.) Eventually, however, the Board of Supervisors "determined that the creation of an independent hospital authority strictly and exclusively dedicated to the management, administration, and control of the medical center" was "the best way to fulfill its commitment to the medically indigent, special needs, and general populations of Alameda County." (Health & Saf. Code, § 101850, subd. (a)(1).) Accomplishing these goals, however, required "the adoption of a special act" by the Legislature so that the County could "create a hospital authority." (*Ibid.*)

The Legislature granted that authority in 1996, when it enacted Health and Safety Code section 101850. That statute charges AHS with the "mission" of managing, administering, and controlling "the group of public hospitals, clinics, and programs that comprise the medical center, in a manner that ensures appropriate, quality, and cost-effective medical care as required of counties by Section 17000 of the Welfare and Institutions Code." (Health & Saf. Code, § 101850, subd. (d).)

The statute also specifically and unequivocally declares that AHS is a public entity. (Health & Saf. Code, § 101850, subd.

(a)(2)(C) ["'Hospital authority' means the *separate public agency* established by the Board of Supervisors"], emphasis added; *id.*, subd. (g) ["public agency"]; *id.*, subd. (j) ["government entity"]; *id.*, subd. (s) ["district"]; *id.*, subd. (u) ["public agency"]; *id.*, subd. (w)(3); *id.*, subd. (ag) ["public agency"].)

The members of AHS's governing board—which is subject to the open meeting requirements of the Ralph M. Brown Act with certain exceptions (see Health & Saf. Code, § 101850, subd. (ae)(1-3), (af))—are appointed and can be removed by the County's Board of Supervisors and are protected under the Government Claims Act. (*Id.*, subd. (c), (t), citing Gov. Code, § 820.9.)

The County's board retains substantial authority over AHS. The board has the authority to adopt and modify the bylaws for AHS's administration of the medical center, to terminate the hospital authority upon certain findings, and to require reports from the authority, among other things. (*Id.*, subd. (e), (ak), (am)(3).)

The County also is intrinsically involved in AHS finances. The County's Annual Comprehensive Financial Report (CAFR) includes a section titled "Alameda Health System Discretely Presented Component Unit." (CAFR June 21, 2021, pp. 92-98.) The CAFR explains how the County retains the responsibility for indigent care under section 17000 of the Welfare and Institutions Code, for which it provides substantial funding (see Health & Saf. Code § 101850, subd (l)(1)); that the County still owns many hospital buildings which it leases to AHS for $1 per year (*id*, subd

(o)); that under Measure A, the County charges additional sales tax, 75% of which goes to support AHS's mission; that the County supplies AHS with funds to support its working capital needs, and that the County tracks AHS's accounts receivable and payable.

The AHS board members are also subject to the "laws of the state of California as they pertain to conflicts of interest" for public officials, including the Political Reform Act, Government Code section 1090, common law conflicts of interest, and (with limited exceptions) the incompatible activities prohibitions of Government Code section 1125. (*Id.*, § 101850, subd. (ac); Appellants' MJN, Ex. C at p. 5 [§ 2.120.120].)

AHS's employees are likewise "public employees" under the Government Claims Act. (Health & Saf. Code, § 101850, subd. (w)(3), citing Gov. Code, § 810 et seq.) AHS's employees "are eligible to participate in the County Employees Retirement System to the extent permitted by law…." (*Id.*, subd. (s).) And AHS is subject to the collective bargaining requirements of the Meyers-Milias-Brown Act (*id.*, subd. (u)), which are meant to "promote full communication between public employers and their employees…." (Gov. Code, § 3500, subd. (a).)

With limited exceptions, AHS's records are subject to the Public Records Act. (Health & Saf. Code, § 101850, subd. (ad)(3).) AHS is also "subject to the state and federal taxation laws that are applicable to counties generally" and enjoys "all the rights and duties set forth in state law with respect to hospitals owned or operated by a county." (*Id.*, subds. (z) & (m).)

B. The trial court sustains AHS's demurrer to Plaintiffs' wage and hour claims based on AHS's public entity status.

Plaintiffs Stone and Kunwar worked for AHS as a medical assistant and licensed vocational nurse, respectively. (Typed opn. at p. 3.) Their amended complaint asserted seven claims on behalf of themselves and others based on allegations that they were not fully compensated for missing meal and rest periods: (1) failure to provide off-duty meal periods (Lab. Code, §§ 512, 226.7; IWC Wage Order 5, Cal. Code Regs., tit. 8, § 11050);[1] (2) failure to provide off-duty rest breaks (§ 226.7; Wage Order); (3) failure to keep accurate payroll records (§§ 1174, 1174.5, 1175; Wage Order); (4) failure to provide accurate itemized wage statements (§§ 226, 226.3); (5) unlawful failure to pay wages (§§ 204, 222, 223, 225.5, 218.6, 218.5, 510, 1194, 1194.2, and 1198); (6) failure to timely pay wages (§§ 204, 210, 222, 223, 225.5, 218.6, 218.5); and (7) PAGA (§ 2698 et seq.). (Typed opn. at pp. 3-4.)[2]

AHS demurred on the grounds that Plaintiffs' wage and hour claims were not cognizable because of AHS's status as a public entity. (1AA71-72, 74-75, 1AA86-94.) The superior court agreed and sustained AHS's demurrer without leave to amend,

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[1] Unless otherwise noted, all statutory references are to the Labor Code, and all wage order references are to Wage Order 5.

[2] Plaintiffs also asserted non-class claims under the Fair Employment and Housing Act. (1AA47-51.) Those claims, which are still pending, are not at issue here.

explaining that "AHS is a statutorily created public agency whose employees are public employees and that has the same rights and duties as a county-owned hospital." (4AA316-317.) The superior court also sustained the demurrer to Plaintiffs' derivative PAGA claim on the grounds that AHS is not a "person" under the Labor Code and imposing PAGA penalties against AHS would violate Government Code section 818's bar on "damages imposed primarily for the sake of example and by way of punishing the defendant." (See 4AA316-317.)[3]

Plaintiffs appealed, arguing that AHS should not be exempt from the Labor Code and Wage Order despite its status as a public entity because it lacks certain "sovereign" characteristics.

C. In a published opinion, the Court of Appeal holds that AHS—and countless other public entities by implication—is subject to various wage and hour obligations and derivative PAGA penalties that do not expressly apply to public entities.

On February 3, 2023, the Court of Appeal issued a published opinion reversing as to all but one of Plaintiffs' claims because AHS "conspicuously lacks many of the hallmarks of

[3] The trial court also struck Plaintiffs' punitive damages allegations. (1RA 30 ["Plaintiffs apparently concede that as a public entity, AHS is not subject to punitive damages"].)

sovereignty" required to exempt it from the Labor Code and Wage Order. (Typed opn. at pp. 1-2.)[4]

Overtime, Meal & Rest Break, and Payroll Records Claims. The Court of Appeal concluded that AHS was not exempt from the meal and rest break, overtime, and payroll records obligations in the Wage Order and Labor Code. (Typed opn. at pp. 6-10.) The court acknowledged the rule that "absent express words to the contrary, governmental agencies are not included within the general words of a statute," that the statutes giving rise to these claims did not expressly reference public entities, and that AHS "is a public entity of some sort." (Typed. opn. at pp. 6-7 & fn. 6, 15.) The court nevertheless concluded these claims could proceed absent specific legislative intent to exempt AHS because that "would not infringe upon any sovereign governmental powers." (Typed opn. at pp. 7-10.)

Prompt Payment Claims. The Court of Appeal concluded that AHS was also not exempt from Plaintiffs' prompt payment claims despite the exemption set forth for "count[ies]" and "other municipal corporation[s]" in section 220, subdivision (b). (See typed opn. at pp. 10-11.) In the court's view, AHS was not a "municipal corporation" because it lacks the power of eminent

[4] In so doing, the Court of Appeal agreed with Plaintiffs that it had appellate jurisdiction under the "death knell" doctrine. (Typed opn. at pp. 4-5.) AHS does not challenge that ruling here.

domain, to tax, independent regulatory or police powers, and a board of directors elected by the public. (Typed opn. at p. 11.)[5]

Wage Statement Claim. In stark tension with its preceding holdings, the Court of Appeal concluded that AHS *was* exempt from Plaintiffs' wage statement claim because "there is no reason to doubt that [AHS] is a 'governmental entity' of some kind." (Typed opn. at p. 12, quoting § 226, subd. (i).) As the court explained, AHS "was established by the government of Alameda County, an act which required special authorization from the state Legislature," and "bears 'all the rights and duties set forth in state law with respect to hospitals owned or operated by a county.'" (*Ibid.*, quoting Health & Saf. Code, § 101850, subd. (m).)

PAGA Claim. The Court of Appeal concluded that portions of Plaintiffs' PAGA claim could proceed. The court agreed with the trial court that AHS "is a public entity of some sort and therefore is not a 'person' for purposes of PAGA." (Typed opn. at pp. 14-15.) But the court held that PAGA's "person" requirement … does *not* apply to those statutory violations 'for which a civil penalty is specifically provided.'" (Typed opn. at p. 15.) And because the court had previously concluded that AHS could be held liable under two statutes that provide for civil penalties (§§ 210 & 225.5), the court concluded that "a PAGA

[5] As a result, the Court of Appeal did not reach Plaintiffs' contention that they "alleged a minimum wage violation, which 'expressly appl[ies] to public entities.'" (Typed opn. at p. 11, fn. 8.)

claim would lie for at least two of the statutory violations alleged in the first amended complaint." (Typed opn. at p. 15.) In doing so, the Court of Appeal concluded that allowing PAGA penalties against public entities like AHS does not violate Government Code section 818. (Typed opn. at p. 16.)

On February 6, 2023, the court modified its opinion, which changed the appellate judgment. (See Exh. A.)

LEGAL ARGUMENT

I. This Court should grant review to address the applicability of the overtime, meal and rest break, and payroll records obligations in the Labor Code and wage orders to public employers.

A. The Court of Appeal's published decision creates a conflict with a long line of decisions which hold that public employers in general are exempt from the Labor Code.

In *Wells*, *supra*, 39 Cal.4th 1164, this Court held that the California False Claims Act does not apply to "school districts—or any agency of state or local government"—because "such entities are not 'persons' subject to suit under the statute." (*Id.* at pp. 1196-1197.) In reaching that conclusion, this Court disapproved of appellate decisions which had held otherwise based on "the 'rule that governmental agencies are excluded from the general provisions of a statute only if their inclusion would result in an infringement upon sovereign powers.'" (*Id.* at p. 1192.) This Court disagreed, explaining, the "'sovereign powers' principle" is "simply a maxim of statutory construction"

that "cannot override positive indicia of a contrary legislative intent." (*Id.* at p. 1193.)

In the context of the Labor Code, courts (including this Court) have found such positive indicia of a contrary legislative intent, recognizing the Legislature's own understanding that "'provisions of the Labor Code apply only to employees in the private sector unless they are specifically made applicable to public employees.'" (*Campbell*, *supra*, 35 Cal.4th at p. 330, quoting Sen. Com. on Industrial Relations, Analysis of Assem. Bill No. 3486 (1991-1992 Reg. Sess.) as amended April 21, 2001 [2002], p. 2]; see also *Stoetzl v. Department of Human Resources* (2019) 7 Cal.5th 718, 752 [quoting *Campbell*]; *Johnson*, *supra*, 174 Cal.App.4th at p. 736-739 ["The Legislature has acknowledged that this rule applies to the Labor Code"].)

1. Courts are now divided over whether to apply the "sovereign powers" doctrine to Labor Code provisions that do not refer to public entities.

Until the decision below, courts have consistently followed the rule articulated in *Campbell*, regularly concluding that public entities are not subject to the Labor Code's obligations regarding overtime (§§ 510, 1194) and meal and rest periods (§§ 512, 226.7)—neither of which expressly applies to public entities—regardless of the "sovereign powers principle." (See, e.g., *Johnson*, *supra*, 174 Cal.App.4th at pp. 736-739; *CCPOA*, *supra*, 188 Cal.App.4th at pp. 651-656 & fn. 7; *Allen*, *supra*, 86 Cal.App.5th at p. 598.)

In *Johnson*, *supra*, 174 Cal.App.4th 729, the Fifth District concluded that a water storage district, "as a public entity," was exempt from the overtime and meal break statutes (§§ 510, 512) because of the rule of construction announced in *Campbell* and the express reference to public entities in another provision in the same chapter of the Labor Code (§ 555). (*Id.* at pp. 736-738.) The court rejected the plaintiffs' reliance on the "sovereign powers" doctrine because "the indicia of legislative intent lead to the conclusion that the District, as a public entity, is exempt from sections 510 and 512."[6]

In *CCPOA*, the First District, relying on *Campbell* and *Johnson*, held that the meal period requirements of section 512 and corresponding premium wage requirements of section 226.7 "do not apply to public employees." (188 Cal.App.4th at p. 649; see also *id.* at pp. 649, 651-654.) Because of this rule, the *CCPOA* court explained that "we need not consider" whether "application of section 512 to public employees would infringe on the State's sovereign powers." (*Id.* at p. 656, fn. 7.)

Finally, in *Allen*, *supra*, 86 Cal.App.5th 589, the Fourth District, relying on *Campbell* and *Johnson*, explained that

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[6] In an alternative holding, *Johnson* did explain how, "[i]n any event," applying the wage and hour laws to the water storage district would "affect [its] power to accomplish its purposes and thus would infringe upon its sovereign powers." (*Johnson*, *supra*, 174 Cal.App.4th at pp. 738-739.) But this was not necessary to the court's conclusion that "[s]ince sections 510 and 512 do not expressly apply to public entities, they are not applicable here." (*Id.* at p. 733.)

"governmental actors enjoy protection from liability under the Labor Code unless a statute specifically brings a public employer within its ambit." (*Id.* at p. 597; see also *id.* at p. 598, fn. 3 [citing *Johnson* & *CCPOA* and agreeing that "the Labor Code provisions . . . do not apply to public entities"].) Applying that rule without addressing the "sovereign powers" doctrine, the court concluded that the San Diego Convention Center Corporation was exempt because it is "a public entity." (*Id.* at pp. 600-601.)

The Court of Appeal's decision in this case creates a gaping conflict with the foregoing authority. The decision acknowledged that the public entities in *CCPOA* and *Johnson* had been "found … to be outside the ambit of the sovereign powers doctrine" and that the "'public entity' status" of the convention center corporation in *Allen* "rendered several Labor Code provisions inapplicable." (Typed opn. at pp. 8 & 10, fn. 7.) But rather than expressly disagree with the reasoning in those decisions, the Court of Appeal purported to distinguish them as involving agencies of the state (*CCPOA* and *Johnson*) and the City of San Diego (*Allen*). (Typed opn. at pp. 8 & 10, fn. 7.)

However, neither *CCPOA* nor *Johnson* placed any emphasis on the fact that the public entities involved were state agencies—as opposed to local or any other type of public entities. Instead, the question was whether certain Labor Code provisions apply to public entities as a category. As one court explained, "there is nothing in … *Johnson* indicating that public employees' exemption from section 510, subdivision (a) overtime compensation applies solely when the employees are performing

work that furthers the sovereign purposes of the state." (*Morales v. 22nd District Agricultural Association* (2018) 25 Cal.App.5th 85, 96-97 & fn. 19.) And while *Allen* did emphasize the convention center corporation's relationship with the City of San Diego, it did so only to determine the threshold issue of whether the convention center corporation was a "public entity." The Court of Appeal, in footnote 7, attempted to distinguish the Convention Center as an "agency" of the City, whereas AHS operates as an entity independent of the County. But that analysis ignores the extensive control by the County over AHS governance and finances. (See Statement of the Case, Section A.)

2. Courts are now divided over how to apply the "sovereign powers" doctrine in the context of public hospitals and public employment.

Review is likewise warranted to resolve *how* the "sovereign powers" doctrine applies to public entities. The Court of Appeal concluded that applying the wage and hour laws to AHS would not "implicate any sovereign governmental powers" (Typed opn. at p. 9), even though AHS has "all the rights and duties set forth in state law with respect to hospitals owned or operated by a county." (Health & Saf. Code, § 101850, subd. (m).) In reaching this conclusion, the Court of Appeal relied on a decision holding that a nonprofit community action group working to address poverty in Butte County was not subject to the Public Records Act because "'[p]overty alleviation' under Welfare and Institutions Code section 17000 'is *not* a core government

function that cannot be delegated to the private sector.'" (Typed opn. at p. 9, quoting and altering *Community Action Agency of Butte County v. Superior Court* (2022) 79 Cal.App.5th 221, 239.)

The Court of Appeal's conclusion conflicts with *Community Memorial Hospital*, *supra*, 50 Cal.App.4th 199, which held that a "County has a legitimate interest in providing medical care to the indigent," "[p]roviding such care is 'within the purposes for which governments are established,'" and "a statute that restricts the County in the operation of its public hospital infringes on its sovereign powers." (*Id.* at pp. 208, 210; see also *Talley v. Northern San Diego County Hospital Dist.* (1953) 41 Cal.2d 33, 39 ["county hospitals are exercising governmental functions …."], overruled on other grounds in *Muskopf v. Corning Hospital Dist.* (1961) 55 Cal.2d 211, 213; see also *California Medical Ass'n, Inc. v. Regents of University of California* (2000) 79 Cal.App.4th 542, 548 [statutory ban against corporate practice of medicine "would infringe upon the [UC's] operation of its medical center as a teaching and research facility—its core governmental function, its *raison d'être*"].)

The Court of Appeal's decision even conflicts with the sovereignty analysis that the *Johnson* court offered as an alternative basis for its conclusion that the water storage district was exempt from the overtime and meal break requirements. (See *Johnson*, *supra*, 174 Cal.App.4th at pp. 737-738; *supra* at fn. 6.) There, the court explained that "the District is also exempt under the 'sovereign powers' maxim" because "'the relationship between a public employer and its employees affects

the fundamental purposes and functions of the governmental body.'" (*Id.* at pp. 738-739, quoting 71 Ops.Cal.Atty.Gen. 39, 43 (1988).)

Here, just like the water storage district in *Johnson* had the power to "[e]mploy and appoint such agents, officers, and employees as may be required, and prescribe their duties," (Wat. Code, § 43152, subd. (c)), AHS has the power "to employ personnel" and "contract for services required to meet its obligations." (Health & Saf. Code, § 101850, subd. (q).) In both instances, applying the wage and hour laws to these public entities "affects [their] governmental purposes and functions" since a public employer "can only perform its purposes and functions through its employees." (*Johnson*, *supra*, 174 Cal.App.4th at p. 738.) The Court of Appeal's decision to the contrary places it even further at odds with *Johnson* and warrants review.

B. The Court of Appeal's published decision creates a conflict as to what types of public employers are exempt from certain wage order obligations.

The Court of Appeal applied the "sovereign powers doctrine" in part because of its overly restrictive reading of the exemption for public employers in the Wage Order. (See typed opn. at pp. 8-9.) That exemption reads: "[e]xcept as provided in Sections 1 ['Applicability of Order'], 2 ['Definitions'], 4 ['Minimum Wages'], 10 ['Meals and Lodging'], and 20 ['Penalties'], the provisions of this order shall not apply to *any employees directly*

employed by the State or any political subdivision thereof, including any city, county, or special district." (Cal. Code Regs., tit. 8, § 11050(1)(C) [emphasis added].) In the Court of Appeal's view, AHS is not entitled to this exemption because it is not a special district and its "employees are not employed *directly* by the state or the county; they are employed by 'a hospital authority' created by the county under authorization from the state." (Typed opn. at p. 8 [emphasis in original].)

This conclusion is at odds with *Sheppard*, *supra*, 191 Cal.App.4th 289. In *Sheppard*, the Court of Appeal held that the minimum wage obligations in Wage Order 4[7] applied to "employees directly employed by the state or any political subdivision of the state." (*Id.* at p. 301.) In doing so, the Court of Appeal concluded that the plaintiff—who worked for a "regional occupational program established by one or more public school districts under Education Code section 52301"—"was directly employed by a political subdivision of the state" under the wage orders. (*Id.* at p. 301.) This broad construction of "political subdivision"—which would presumably include a public hospital authority created pursuant to state law by a county—cannot be squared with the unduly narrow construction applied here.

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[7] Wage Order 4 contains the same language regarding public entities as Wage Order 5. (See Cal. Code Regs., tit. 8, §§ 11040(1)(B).) Most (but not all) of the wage orders contain identical language. (See *Guerrero v. Superior Court* (2013) 213 Cal.App.4th 912, 954 & fn. 29.)

The Court of Appeal's construction of "political subdivision" creates a conflict in the law and is fundamentally wrong. As one court has recognized, "[t]he use of the word 'including' makes clear that the listing of 'any city, county, or special district' is not exhaustive of what may constitute a political subdivision." (*Gomez v. Regents of University of California* (2021) 63 Cal.App.5th 386, 398-399, 403; see also Lab. Code, § 1721 [defining "political subdivision" as "any county, city, district, public housing authority, or public agency of the state, and assessment or improvement districts"]; Gov. Code, §§ 811.2, 811.4 [defining public employees as employees of any "*public authority, public agency, and any other political subdivision* or public corporation in the State" (emphasis added)]; see also Health & Saf. Code, §§ 101850, subd. (w)(3) & (t) [explaining that AHS employees are "public employees" under Gov. Code, § 810 et seq.].)

II. This Court should grant review to decide the standard for determining what types of public employers are exempt from the Labor Code's prompt payment statutes.

A. Courts have been divided over the meaning of "other municipal corporation" since 2017.

Sections 200 to 211 and 215 to 219 contain what this Court has referred to as "[t]he prompt payment provisions of the Labor Code." (*McLean v. State of California* (2016) 1 Cal.5th 615, 619.) These provisions "impose certain timing requirements on the payment of final wages to employees who are discharged (Lab. Code, § 201 (section 201)) and to those who quit their

employment (§ 202)." (*Ibid.*) They also provide for "waiting-time penalties" when employers willfully fail to make payments as required under the statutes. (*Id.*; see also §§ 203, 204, 210.)

"As originally enacted, the prompt payment provisions applied only to private employers." (*McLean*, *supra*, 1 Cal.5th at p. 619 & fn. 1 [citing Stats. 1937, ch. 90, § 220, p. 200].) In 2000, the Legislature subdivided section 220 and "amended the Labor Code to extend these provisions to 'employees directly employed by the State of California.'" (*Id.* at p. 619 [quoting Stats. 2000, ch. 885, § 1, p. 6524].) The Legislature did not alter the language exempting local agencies; it simply moved that language to subdivision (b) so that the prompt payment "provisions continue to exempt 'employees directly employed by any county, incorporated city, or town or other municipal corporation." (*Ibid.*, quoting § 220, subd. (b).)

From 1970 to 2017, courts consistently read the exemption for local public agencies in subdivision (b) broadly, including to apply to hospital districts. In *El Camino*, *supra*, 8 Cal.App.3d Supp. 30, the appellate division of the Santa Clara County superior court surveyed the usage of the phrase "municipal corporation" in other contexts and the legislative history for section 220 and concluded that "'[t]he only reasonable interpretation of this section is that the Legislature … intended that the additional term 'or other municipal corporation' should refer to municipal corporations in the commonly accepted sense—namely, public corporations or quasi-municipal corporations.'" (*Id.* at p. 35.) Applying that standard, the court held that a

hospital district was a "municipal corporation" exempt from the prompt payment statutes. (*Id.* at p. 36.)

In *Kistler*, *supra*, 15 Cal.App.4th 1326, the First District followed *El Camino*, concluding that the plaintiffs could not recover attorney's fees under section 218.5 against a community college district that allegedly deprived them of accrued vacation pay because the district was "a 'municipal corporation' for purposes of the Labor Code." (*Id.* at p. 1337, citing *El Camino*, *supra*, 8 Cal.App.3d Supp 30.)

In *Johnson*, the Fifth District likewise followed *El Camino*, refusing to construe the term "narrowly and strictly" as "contrary" to case law. (*Johnson*, *supra*, 174 Cal.App.4th at p. 740.) The *Johnson* court explained that the term "refers to 'municipal corporations in the commonly accepted sense—namely, public corporations or quasi-municipal corporations.'" (*Id.* at pp. 740-741, quoting *El Camino*, *supra*, 8 Cal.App.3d Supp. at p. 35.) "In other words, the term applies to a corporation exercising a governmental function." (*Id.* at pp. 740-741 & fn. 5 ["essential government function"].)

In 2017, however, the Third District parted ways with the foregoing line of cases, concluding that a public entity must have "multiple crucial characteristics" beyond performing an essential governmental function to qualify as an "other municipal corporation" under section 220(b): "the power to acquire property through eminent domain"; possession of a geographical jurisdiction and the power to "impose taxes and fees upon those who live within" it; "independent regulatory or police powers";

and a "board of directors … elected by the public." (*Gateway*, *supra*, 9 Cal.App.5th at p. 506.) Applying that standard, *Gateway* held that a nonprofit public benefit corporation operating charter schools was not a municipal corporation. (*Id.* at pp. 502, 508-509.)

In the *Gateway* court's view, it was consistent with *Johnson* because these "characteristics were described in some detail" in that case. (*Gateway*, *supra*, 9 Cal.App.5th at p. 506, citing *Johnson*, *supra*, 174 Cal.App.4th at p. 741.) But *Johnson*—which rejected the narrow reading of the term endorsed by *Gateway*—did not state that these characteristics were *required* to demonstrate that a public entity is a "corporation exercising a governmental function." (*Johnson*, at p. 741, citing *El Camino*, *supra*, 8 Cal.App.3d Supp. at p. 35.)

By a similar token, the *Gateway* court purported to harmonize its decision with *El Camino* and *Kistler* on the grounds that the public entities in those cases "bore other characteristics of a municipal corporation." (*Gateway*, 9 Cal.App.5th at p. 505.) But as *Gateway* itself acknowledged, these characteristics "were not expressly discussed" in either *El Camino* or *Kistler*. (*Ibid.*; see also *El Camino*, *supra*, 8 Cal.App.3d Supp. at p. 35; *Kistler*, *supra*, 15 Cal.App.4th at p. 1337.) *Gateway*'s feeble effort to find support for its restrictive reading of "municipal corporation" in *El Camino* and *Kistler* ignores the breadth of the interpretations endorsed in those cases and runs afoul of this Court's "repeated[]" exhortation that "'cases

are not authority for propositions not considered.'" (*B.B. v. County of Los Angeles* (2020) 10 Cal.5th 1, 11.)

B. The Court of Appeal's erroneous decision aggravates this conflict in the law.

The Court of Appeal deepened this conflict, following *Gateway* and concluding that AHS was not a municipal corporation because it "has none of the characteristics discussed in *Gateway* and lacks any powers analogous to the ones discussed in *Johnson*." (Typed opn. at p. 11.) In doing so, the Court of Appeal completely ignored *El Camino* and *Kistler*.

The problem with *Gateway*—and by extension, the decision below—is that it rests on an unduly broad reliance on the *ejusdem generis* canon of statutory construction at the expense of the legislative history and context examined in *El Camino*. (See *Gateway*, *supra*, 9 Cal.App.5th at pp. 504-505, 508, fn. 4.) And, as courts have recognized, "*[e]jusdem generis*, with its emphasis on abstract semantical suppositions, may do more to obscure than disclose the intended scope of the clause." (*O'Grady v. Superior Court* (2006) 139 Cal.App.4th 1423, 1462

Because the decision below deepens the conflict over the meaning of "municipal corporation" and further entrenches the *Gateway* court's incorrect reading of that phrase, this Court's review is warranted.

III. Review is warranted to determine the applicability of PAGA penalties to public entities.

A. This Court should clarify that Labor Code section 18's definition of "person" does not include public entities.

Two courts in the First District—including the Court of Appeal here—have now held (correctly) that PAGA's default penalties are not available against public entities since such entities "'do[] not fit the definition of person'" under PAGA, which incorporates Labor Code section 18's definition of "person" by reference. (Typed opn. at pp. 14-15, quoting *Sargent v. Board of Trustees of California State Univ.* (2021) 61 Cal.App.5th 658, 672.)

However, the Fourth District has recently rejected this interpretation of Labor Code section 18 as it pertains to the use of "person" in section 248.5, explaining that "nothing in section 18 expressly excludes government entities." (*Wood*, *supra*, --- Cal.App.5th ---, 2023 WL 2198664, at *10.) In doing so, the Fourth District placed undue emphasis on the "sovereign powers" doctrine—just as the Court of Appeal did here with respect to the Labor Code provisions regarding overtime, meal and rest breaks, and payroll records (but perplexingly not the definition of "person" under the Labor Code). (See *id.* at pp. *10-11; compare with typed opn. at pp. 6-10; see also *supra* at pp. 26-29.)

B. The Court of Appeal's holding regarding non-default penalties misreads PAGA in a manner that punishes public entities and implicates an issue currently pending in this Court.

Although the Court of Appeal correctly concluded that public entities like AHS are not "persons" subject to PAGA's default penalties, it further entrenched an erroneous interpretation that still exposes public agencies to excessively punitive PAGA claims premised on statutes that provide for civil penalties.

Two published decisions—including the decision below—have now both concluded that PAGA penalties are still available against public entities accused of violating statutes "'for which a civil penalty is specifically provided.'" (Typed opn. at p. 15, quoting § 2699, subd. (f); accord, *Sargent*, *supra*, 61 Cal.App.5th at p. 671 [same conclusion for California State University].) This misguided approach warrants review because it exposes public (but not private) employers to double recoveries and violates Government Code section 818's prohibition on "damages … imposed primarily for the sake of example and by way of punishing the defendant." (Gov. Code, § 818.).

PAGA provides that "[n]o action may be brought under" the statute if the State "on the same facts and theories, cites a *person* within the timeframes set forth in Section 2699.3 for a violation of the same section or sections of the Labor Code." (§ 2699, subd. (h) [emphasis added].) Accordingly, under the Court of Appeal's erroneous construction, private employers (which are "persons")

enjoy protection from double recoveries, but public employers (which are not "persons") do not.

As an initial matter, this construction runs afoul of the principle that courts "must presume the Legislature intended" not "to create an impermissible double recovery." (*Los Angeles County Metropolitan Transportation Authority v. Superior Court* (2004) 123 Cal.App.4th 261, 268 (*LACMTA*).) It also conflicts with this Court's directive to consider the "purpose behind the statutory ban on punitive damages against public entities" when determining whether the Legislature "intend[ed], without expressly saying so, to apply" certain laws to public entities. (*Wells*, *supra*, 39 Cal.4th at p. 1196, fn. 20 [concluding that the False Claims Act does not apply to public entities].)

Government Code section 818's purpose—to protect public entities' "tax-funded revenues from legal judgments in amounts beyond those strictly necessary to recompense the injured party" (*Wells*, *supra*, 39 Cal.4th at p. 1196, fn. 20)—is squarely implicated here. Yet the Court of Appeal concluded that the statute "presents no obstacle" because "PAGA penalties are not punitive damages" and the "'primary purpose'" of PAGA penalties is to "'secure obedience to statutes and regulations imposed to assure important public policy objectives.'" (Typed opn. at p. 16, quoting *Kizer v. County of San Mateo* (1991) 53 Cal.3d 139, 147-148 and citing *LACMTA*, *supra*, 123 Cal.App.4th at p. 271.)

The Court of Appeal's conclusion ignores the double recovery implications of its PAGA construction and runs counter to this Court's own explanation that "[r]epresentative actions

under PAGA … directly enforce *the state's* interest in *penalizing and deterring employers who violate California's labor laws*." (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 387 [emphasis added]; *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 86 ["'Civil penalties, like punitive damages, are intended to punish the wrongdoer and to deter future misconduct"'].)

What is more, the Court of Appeal's reliance on *LACMTA* and *Kizer* also implicates ongoing confusion on the scope of Government Code section 818—an issue presently before this Court. (Compare *LACTMA*, *supra*, 123 Cal.App.4th at p. 272-274 ["a number of courts have concluded that to be condemned as punitive, a penalty, generally speaking, must *simply* and *solely* serve that purpose"], with *X.M. v. Superior Court* (2021) 68 Cal.App.5th 1014, 1030-1031, fn. 4, review granted (S271478) ["the proper inquiry is the provision's 'primary' purpose"], and *LAUSD*, *supra*, 64 Cal.App.5th at pp. 555-556, 562-567 & fn. 6, review granted (S269608).)

IV. Review is needed to settle these questions of statewide importance.

This Court should intervene to secure uniformity of decision and settle the important questions of law in this case. (Cal. Rules of Court, rule 8.500(b)(1).) Unless this Court intervenes, trial courts will be forced to choose between the competing approaches highlighted above, producing inconsistent outcomes. (See *Auto Equity Sales, Inc. v. Superior Court of Santa Clara County* (1962) 57 Cal.2d 450, 456.)

In the meantime, hundreds of public agencies across the state will be left in legal limbo regarding their wage and hour obligations. The state is filled with public agencies that, much like AHS, were created pursuant to state law to assist with carrying out specific public purposes—such as the provision of police and fire protection, water, healthcare, recreation, groundwater management, road construction, habitat conservation, airport expansion, redevelopment, regional transportation, insurance coverage, education, and employee benefits services. These agencies range from joint powers authorities ("JPAs") to public corporations, to public authorities, to special districts. (See, e.g., Gov. Code, § 6500 et seq. [allowing public agencies to create joint powers authorities]; Health & Saf. Code, § 34200 et seq. [allowing for the creation of public housing authorities]; Gov. Code, § 56044 [defining independent special districts]; *id.*, § 56032.5 [defining dependent special districts].)[8]

For decades, these myriad public agencies—which like AHS are generally subject to public sector collective bargaining requirements (see, e.g., Gov. Code, § 3501, subd. (d) [defining "public employee"]), open meeting requirements (*id.*, § 54951 [defining "local agency" under the Ralph M. Brown Act]), open

[8] According to the Controller's Office, as of January 2019, there were 1,382 joint powers authorities, 1,908 independent special districts, and 1,868 dependent special districts (including AHS) in the state. (See California State Controller's Office <https://bythenumbers.sco.ca.gov/Special-Districts/Special-Districts-Listing/fv6y-3v29> [as of Mar. 16, 2023] [visualizing by district type].)

records requirements (*id.*, § 7920.510 [defining "local agency" under the Public Records Act]), and the protections of the Government Claims Act (*id.*, § 811.2 [defining "public entity"])—have assumed that they are not subject to wage and hour obligations that the Legislature declined to expressly apply to public employers.

Yet many of these public entities lack the "hallmarks of sovereignty" that the Court of Appeal found critical here. (Typed opn. at pp. 1, 9-10, 11.) Some are created for limited specific purposes and do not have certain powers like eminent domain. (See, e.g., Food & Agr. Code, § 6062 [cotton pest abatement districts]; *id.*, § 8551 [citrus pest control districts].) Others, like JPAs, depend on the "common power specified in the agreement" by the public entities that created them. (Gov. Code, §§ 6508, 6509 [setting forth baseline powers of JPAs and delimiting the scope of authority based on the powers of the contracting agencies]; see also Sen. Local Gov. Com., Governments Working Together: A Citizen's Guide to Joint Powers Agreements (2007) p. 6 ["Each joint powers agreement is unique"].)[9]

Many public agencies have governing boards that are not elected, but rather, appointed by the public entities that created them. (See, e.g., Health & Saf. Code, § 34246 [public housing authorities]; Food & Agr. Code, § 8401 et seq. [citrus pest control districts]; Health & Safety Code, § 2000 et seq. [mosquito

[9] Available at https://sgf.senate.ca.gov/sites/sgf.senate.ca.gov/files/GWTFinalversion2.pdf.

abatement and vector control districts]; *id.*, § 9000 et seq. [public cemetery districts]; Gov. Code, § 56032.5 [dependent special districts]; see also A Citizen's Guide to Joint Powers Agreements, *supra*, at p. 21 ["A JPA's governance structure depends on what the member agencies agreed to"].)

Are these public agencies now suddenly subject to wage and hour laws because they were created for limited purposes without certain powers and/or because their boards are comprised of appointees from other public entities? The Court of Appeal's published opinion suggests "maybe so" under the guise of "sovereignty."

The decision below fails to account for its truly breathtaking consequences. Under the Court of Appeal's decision, hundreds of public entities could be subject to civil penalties under PAGA for violating statutes that they reasonably assumed did not apply to them. (See typed opn. at p. 15 [noting that AHS could still be liable for PAGA penalties even though it is not a "person" because sections 210 and 225.5 both provide for penalties].)

Take, for example, the statutes requiring prompt payment and premium pay for missed breaks. (See §§ 220, subd. (b), 226, subd. (e).) Section 210 provides for penalties for each initial ($100 per employee) and subsequent failure ($200 per employee per violation) to provide full wages due (including missed break premiums) in semi-monthly payments under section 204. (§§ 210, 204.) These numbers may seem small in a vacuum. But when aggregated across numerous employees and pay periods

over lengthy periods of time, "'the potential civil penalties for violations can be staggering and often greatly outweigh any actual damages.'" (Goodman, *The Private Attorney General Act: How to Manage the Unmanageable* (2016) 56 Santa Clara L. Rev. 413, 415; see also Clopton, *Procedural Retrenchment and the States* (2018) 106 Cal. L. Rev. 411, 451.)

This case provides an ideal vehicle to decide the issues presented. The case was decided on the pleadings and implicates pure questions of law. As a result, this case cleanly presents this Court with a chance to clarify the correct approach and bring order to an area of the law that is now in disarray.

CONCLUSION

This Court should grant the petition for review.

Respectfully submitted,

Dated: March 20, 2023 RENNE PUBLIC LAW GROUP

By: _____
RYAN P. McGINLEY-STEMPEL

Attorneys for Defendant and Respondent ALAMEDA HEALTH SYSTEM

CERTIFICATION OF WORD COUNT

(California Rules of Court, Rule 8.504(d)(1))

The foregoing brief contains 8,253 words (including footnotes, but excluding the table of contents, table of authorities, certificate of service, and this certificate of word count), as counted by the Microsoft Word processing program used to generate the brief.

Dated: March 20, 2023 RENNE PUBLIC LAW GROUP

By: _____
Ryan P. McGinley Stempel

Attorneys for Defendant and Respondent ALAMEDA HEALTH SYSTEM

ATTACHMENT A

ORDER MODIFYING OPINION DATED FEBRUARY 6, 2023 AND UNMODIFIED OPINION

Filed 2/6/23 (unmodified opinion attached)

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

TAMELIN STONE et al., Plaintiffs and Appellants, v. ALAMEDA HEALTH SYSTEM, Defendant and Respondent.	A164021 (Alameda County Super Ct. No. RG21092734) **ORDER MODIFYING OPINION [CHANGE IN JUDGMENT]**

THE COURT:

It is ordered that the published opinion filed on February 3, 2023, be modified as follows:

1. After the last sentence in the last full paragraph on page 16, under the "Disposition" section beginning with "On remand, the trial court shall enter a new order overruling the demurrer as to the first, second, third, fifth, sixth, and seventh causes of action in the first amended complaint," the following should be added:

Costs on appeal are awarded to appellants. (Cal. Rules of Court, rule 8.278(a)(3).)

This modification changes the judgment.

Date: 02/06/2023 Jackson, P. J. P. J.

Tamelin Stone et al. v. Alameda Health System

(A164021)

Trial Court: Alameda County

Trial Judge: Hon. Noël Wise

Attorneys:
Law Offices of David Y. Imai and David Y. Imai for Plaintiffs and Appellants.

Renne Public Law Group, Ryan P. McGinley-Stempel, Geoffrey Spellberg, and Anastasia Bondarchuk for Defendant and Respondent.

Filed 2/3/23 (unmodified opinion)

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

TAMELIN STONE et al., Plaintiffs and Appellants, v. ALAMEDA HEALTH SYSTEM, Defendant and Respondent.	A164021 (Alameda County Super Ct. No. RG21092734)

In this appeal from an order sustaining a demurrer without leave to amend, we are called upon to decide whether seven claims for violations of the Labor Code[1] lie against respondent Alameda Health System. In answering that call, we address the following issues: (1) whether the "sovereign powers" doctrine renders respondent liable for certain Labor Code violations, notwithstanding the general rule of statutory construction exempting government agencies from such liability; (2) whether respondent is an exempt "municipal corporation" under section 220, subdivision (b); (3) whether respondent is an exempt "governmental entity" under section 226, subdivision (i); and (4) whether respondent can be sued under the Private Attorneys General Act (PAGA, § 2698 et seq.).

Observing that respondent conspicuously lacks many of the hallmarks of sovereignty, we hold that the sovereign powers doctrine applies. For

[1] All subsequent references to statute are to the Labor Code, unless otherwise noted.

similar reasons, we are guided by precedent to conclude that respondent is not a "municipal corporation." (§ 220, subd. (b).) However, in the absence of such precedent, we do not exclude respondent from the category of "governmental entit[ies]." (§ 226, subd. (i).) Finally, we hold that there are at least some Labor Code violations for which a PAGA suit against respondent may proceed.

In their first amended complaint against respondent Alameda Health System, appellants Tamelin Stone and Amanda Kunwar alleged seven class action claims related to wages and hours, and six individual claims for race and sex discrimination.[2] When respondent demurred, the trial court sustained the demurrer as to all seven class action claims. With respect to the first six, the trial court reasoned that respondent was a "statutorily created public agency" beyond the reach of the Labor Code[3] sections and Industrial Welfare Commission (IWC) Wage Order invoked in the complaint. As to the seventh, a PAGA claim (PAGA, § 2698 et seq.), the trial court held that such an action would not lie because respondent is not a "person" within the meaning of section 18, there was no underlying statutory violation from which the PAGA claim could derive, and respondent's "public agency" status exempted it from paying punitive damages.

We disagree with that reasoning and therefore reverse the order as to the first, second, third, fifth, sixth, and seventh causes of action. For the reasons given below, we affirm the order sustaining the demurrer as to appellant's fourth claim.

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[2] The individual claims are not at issue in this appeal.

I. BACKGROUND

In response to "the challenges facing the Alameda County Medical Center arising from changes in the public and private health industries," the Legislature in 1997 enacted Health and Safety Code section 101850, authorizing the Alameda County Board of Supervisors "to create a hospital authority." (Health & Saf. Code, § 101850,[4] subd. (a)(1).) In turn, the Board of Supervisors created respondent hospital authority to govern the various hospital facilities formerly known as the Alameda County Medical Center.[5] In so doing, the board deemed respondent "a public agency for purposes of eligibility with respect to grants and other funding and loan guarantee programs pursuant to" the enabling statute.

Appellants Stone and Kunwar worked for respondent as a medical assistant and a licensed vocational nurse, respectively. Their first amended complaint alleged that respondent "automatically deducted ½ hour from each workday" as if to account for a meal period, when in fact, employees "were not allowed or discouraged from clocking out for meal periods." This alleged

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[4] Below, we refer to this section as respondent's "enabling statute."

[5] We grant appellant and respondent's respective unopposed requests for judicial notice under Evidence Code sections 451, subdivision (a), and 452, subdivisions (c) and (h). (Rules of Court, rule 8.252, subd. (a).) Of particular note among appellant's exhibits are Chapter 2.120 of the Alameda County Code (establishing respondent), the Legislative Analyst's Office's "Overview of Health Care Districts" as established under section 32000 et seq., and a bill analysis prepared in anticipation of the Assembly vote for the enabling statute. This analysis notes that the creation of respondent might give Alameda County new "options . . . includ[ing] contracting out for selected services, reduced emphasis on the use of civil service county employees, and the ability to make quasi-independent business decisions." Respondent's exhibits are its filings with the Secretary of State, which conform to Government Code section 53051's requirements for "the governing body of each public agency."

conduct formed the basis of seven class action claims: (1) failure to provide off-duty meal periods (§§ 226.7, 512; IWC Wage Order 5 (Wage Order)); (2) failure to provide off-duty rest breaks (§ 226.7, Wage Order); (3) failure to keep accurate payroll records (§§ 1174, 1174.5, 1175; Cal. Code Regs., tit. 8, § 11050); (4) failure to provide accurate itemized wage statements (§§ 226, 226.3); (5) unlawful failure to pay wages (§§ 204, 222, 223, 225.5, 218.6, 218.5, 510, 1194, 1194.2, and 1198); (6) failure to timely pay wages (§§ 204, 210, 222, 223, 225.5, 218.6, 218.5); and (7) PAGA (§ 2698 et seq.).

Respondent demurred, arguing that the first six claims were "not authorized against public entities under any of the cited Labor Code sections." As to the seventh claim, respondent contended that it was not a "person" capable of being sued under PAGA, that the "PAGA claim [was] derivative of" the first six unauthorized claims, and that Government Code section 818 exempted respondent from liability. Crediting respondent's arguments, the trial court ultimately sustained the demurrer as to all seven class action Labor Code claims, leaving intact only a few of the complaint's individual race and sex discrimination claims.

This appeal followed.

II. DISCUSSION

A. Appealability

Under the "death knell" doctrine, "an order is appealable when 'it effectively terminates the entire action as to [a] class, in legal effect being "tantamount to a dismissal of the action as to all members of the class other than plaintiff." ' " (*Williams v. Impax Laboratories, Inc.* (2019) 41 Cal.App.5th 1060, 1066.) Here, although appellants' individual claims for race and sex discrimination survive, the trial court's order sustaining respondent's demurrer as to all seven class action claims under the Labor

Code terminated the action as to all members of the class, rendering the order directly appealable.

In support of its argument against applying the death knell doctrine, respondent cites *Young v. RemX, Inc.* (2016) 2 Cal.App.5th 630, *Munoz v. Chipotle Mexican Grill, Inc.* (2015) 238 Cal.App.4th 291, and *Haro v. City of Rosemead* (2009) 174 Cal.App.4th 1067, all of which are distinguishable. In those cases, specific causes of action that appeared in the complaint as class action claims survived to be litigated as individual claims. Here, no cause of action that was pleaded as a class action claim remains in any form. Thus, if appellants had "fail[ed] to appeal from" this order sustaining the demurrer to their Labor Code claims, they would have "los[t] forever the right to attack it." (*Stephen v. Enterprise Rent-A-Car* (1991) 235 Cal.App.3d 806, 811.)

In sum, the death knell doctrine applies.

B. Merits

1. *Standard of Review*

"In determining whether plaintiffs properly stated a claim for relief, our standard of review is clear: ' "We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed." [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.] And when it is sustained without leave to amend, we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such

reasonable possibility is squarely on the plaintiff.' " (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126, quoting *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

" 'We apply the usual rules of statutory interpretation to the Labor Code, beginning with and focusing on the text as the best indicator of legislative purpose. [Citation.] " [I]n light of the remedial nature of the legislative enactments authorizing the regulation of wages, hours and working conditions for the protection and benefit of employees, the statutory provisions are to be liberally construed with an eye to promoting such protection." ' " (*McLean v. State of California* (2016) 1 Cal.5th 615, 622, quoting *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1026–1027.)

2. *First, Second, and Third Causes of Action*

Appellants argue that the court erred by sustaining the demurrer as to the first, second, and third causes of action because respondent is not a sovereign governmental entity falling within an exception to "the general rule of statutory construction [whereby] governmental agencies are not liable unless [that is] expressly stated." We agree.

"[T]raditionally, 'absent express words to the contrary, governmental agencies are not included within the general words of a statute.' " (*Johnson v. Arvin-Edison Water Storage Dist.* (2009) 174 Cal.App.4th 729, 736 (*Johnson*), quoting *Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1192 (*Wells*).) "However, under the 'sovereign powers' maxim, government agencies are excluded only if their inclusion would result in an infringement upon sovereign governmental powers." (*Johnson*, at p. 738.) " ' " 'Where . . . no impairment of sovereign powers would result, the reason underlying this rule of construction ceases to exist and the Legislature may

properly be held to have intended that the statute apply to governmental bodies even though it used general statutory language. . . .' " ' " (*Ibid.*, quoting *Regents of University of California v. Superior Court* (1976) 17 Cal.3d 533, 536.) "Nevertheless, '[w]hile the "sovereign powers" principle can help resolve an unclear legislative intent, it cannot override positive indicia of a contrary legislative intent.' " (*Ibid.*, quoting *Wells*, *supra*, 39 Cal.4th at p. 1192.)

Following *Johnson*, we conduct a three-part inquiry. First, we look for "express words" that include governmental agencies "within the general words of" the relevant statutes. (*Wells*, *supra*, 39 Cal.4th at p. 1193.) If not, we look for "positive indicia" of a legislative intent to *exempt* such agencies from those statutes. (*Ibid.*) Then, if no such indicia appear, we ask whether applying the statutes to respondent "would result in an infringement upon sovereign governmental powers." (*Id.* at p. 1192.) Accordingly, because the statutes underlying the first, second, and third causes of action[6] do not expressly include governmental agencies, we proceed to the second part of the *Johnson* inquiry: asking whether there are "positive indicia" of legislative intent to exempt respondent.

a. Positive Indicia of Contrary Legislative Intent

Respondent discerns such indicia in subdivisions (a)(2)(C) and (m) of the enabling statute: The former defines "[h]ospital authority" as a "public agency," and the latter provides that "a transfer of control or ownership of the medical center shall confer onto the hospital authority all the rights and

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[6] Those statutes are sections 226.7 (mandated meal, rest, or recovery periods), 512 (meal periods), 1174 (record-keeping duties of employers), 1174.5 (failure to maintain records), and 1175 (misdemeanor status of certain section 1174 violations). The Wage Order is codified in the California Code of Regulations, title 8, section 11050, and similarly lacks any explicit, categorical application to government agencies.

duties set forth in state law with respect to hospitals owned or operated by a county."

However, subdivision (j) of the enabling statute designates respondent as "a government entity separate and apart from the county, . . . not [to] be considered to be an agency, division, or department of the county." (Health & Saf. Code, § 101850, subd. (j).) This stands in stark contrast to agencies found in previous cases to be outside the ambit of the sovereign powers doctrine. For example, the respondent water storage district in *Johnson*, *supra*, 174 Cal.App.4th at page 733, was " 'a public agency *of the state of California*.' " (Italics added.) The same is true for the California Department of Corrections and Rehabilitation—another *state* agency. (*California Correctional Peace Officers' Assn. v. State of California* (2010) 188 Cal.App.4th 646.) Here, far from identifying respondent with the state (or one of its political subdivisions), respondent's enabling statute actively *discourages* such an identification. For that reason, we find in the portions of the enabling statute cited by respondent no "positive indicia of a contrary legislative intent." (*Wells*, *supra*, 39 Cal.4th at p. 1193.)

As for the Wage Order, it provides an exemption for "employees directly employed by the State or any political subdivision thereof, including any city, county, or special district." (Cal. Code of Regs., tit. 8, § 11050, subd. (1)(C).) But respondent's employees are not employed *directly* by the state or the county; they are employed by "a hospital authority" created by the county under authorization from the state. (Health & Saf. Code, § 101850, subd. (a)(1).) Nor is respondent a special district like the "health care district[s]" authorized by Health and Safety Code sections 32000 et seq. Indeed, respondent's enabling statute distinguishes respondent from these districts by observing "that there is no general law under which [respondent]

authority could be formed." (Health & Saf. Code, § 101850, subd. (a)(1).) In short, the Wage Order's express exemptions, mentioned above, are not indicia of the Legislature's intent to exempt respondent from liability under the Wage Order.

Thus, because there are no "positive indicia of a contrary legislative intent" in either the statutes or the Wage Order, we turn to the task of applying the sovereign powers doctrine to respondent. (*Wells*, *supra*, 39 Cal.4th at p. 1193.)

b. Infringement Upon Sovereign Governmental Powers

Finally, there is the matter of whether any "infringement of sovereign governmental powers" would result from subjecting respondent to the Wage Order or sections 226.7, 512, 1174, 1174.5, or 1175. (*Wells*, *supra*, 39 Cal.4th at p. 1192.) Citing its enabling statute, respondent argues that doing so would infringe upon the county's ability to "fulfill its commitment to the medically indigent, special needs, and general populations of Alameda County," "in a manner consistent with the county's obligations under Section 17000 of the Welfare and Institutions Code." (Health & Saf. Code, § 101850, subd. (a)(1).) The latter law requires counties to "relieve and support all incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions." (Welf. & Inst. Code, § 17000.)

As our colleagues in the Third District recently observed, however, "[p]overty alleviation" under Welfare and Institutions Code section 17000 "is *not* a core government function that cannot be delegated to the private sector." (*The Community Action Agency of Butte County. v. Superior Court* (2022) 79 Cal.App.5th 221, 239.) Although Welfare and Institutions Code

section 17000 refers to "state hospitals" as well, it presupposes that much poverty will be alleviated by a variety of *non-governmental* actors—relatives, friends, and private institutions—before any remaining poverty is to be addressed by the county. Respondent has failed to draw any principled distinction between powers wielded by itself, on one hand, and those that might be wielded by a private institution to whom the county has delegated its function of poverty alleviation, on the other. It has therefore failed to implicate any sovereign governmental powers.

In sum, subjecting respondent to liability for the first, second, and third causes of action would not infringe upon any sovereign governmental powers. Thus, the trial court erred by finding that respondent was not included within the statutes underlying those causes of action and in sustaining the demurrer as to those claims. [7]

3. *The Fifth and Sixth Causes of Action*

Appellants argue that the trial court erred in sustaining the demurrer as to their fifth and sixth causes of action because respondent is not an

[7] Our conclusion in this respect is not disturbed by the Fourth District's recent decision in *Allen v. San Diego Convention Center Corp., Inc.* (2022) 86 Cal.App.5th 589 (*Allen*), holding that the respondent convention center's "public entity" status rendered several Labor Code provisions inapplicable. In *Allen*, the respondent was "defined by the City of San Diego's municipal code as part of the city" and was "an agent of the City of San Diego." (*Id.* at p. 600.) Here, as we have already noted, respondent's enabling statute provides that respondent "shall be a government entity separate and apart from the county, and shall not be considered to be an agency . . . of the county." (Health & Saf. Code, § 101850, subd. (j).) Similarly, under Chapter 2.120.030 of the Alameda County Code, respondent is "not to be an agent of the county except where specifically provided."

exempt "municipal corporation" for the purposes of section 204 (requiring that employers timely pay wages semimonthly). We agree.

Section 220, subdivision (b), provides that section 204 does "not apply to the payment of wages of employees directly employed by any county, incorporated city, or town or other municipal corporation." Because it is beyond dispute that respondent is not a county, incorporated city, or town, we turn to the question of whether it is a "municipal corporation" in the relevant sense.

In *Gateway Community Charters v. Spiess* (2017) 9 Cal.App.5th 499, 506, the Third District set forth "multiple crucial characteristics that are common to municipal and quasi-municipal corporations." These include "the power to acquire property through eminent domain," possession of a geographical jurisdiction and the power to "impose taxes and fees upon those who live within" it, "independent regulatory or police powers," and a "board of directors . . . elected by the public." (*Ibid.*) The respondent water storage district in *Johnson*, *supra*, 174 Cal.App.4th at page 741, qualified as a municipal corporation in part because its "powers include[d] setting tolls and charges for the use of water, issuing bonds, and acquiring property through eminent domain." Respondent has none of the characteristics discussed in *Gateway* and lacks any powers analogous to the ones discussed in *Johnson*. In short, there is no reason to ascribe to respondent the status of a "municipal corporation" within the meaning of section 220, subdivision (b).

In sum, the trial court erred in sustaining the demurrer as to the fifth and sixth causes of action.[8]

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[8] Because we reverse the order as to the fifth cause of action on these grounds, we do not reach appellant's contention that this claim alleged a minimum wage violation, which "expressly appl[ies] to public entities."

4. *Fourth Cause of Action*

Appellants argue that the trial court erred in sustaining the demurrer as to the fourth cause of action because respondent is not an "other governmental entity" within the meaning of section 226. We disagree.

Section 226, subdivision (a), requires employers to provide employees with "an accurate itemized statement in writing showing" the employee's wages and hours worked, along with other information. Subdivision (i) exempts from this requirement "the state, . . . any city, county, city and county, district, and "any other governmental entity." (§ 226.)

" 'Under settled canons of statutory construction, in construing a statute we ascertain the Legislature's intent in order to effectuate the law's purpose. [Citation.] We must look to the statute's words and give them "their usual and ordinary meaning." [Citation.] "The statute's plain meaning controls the court's interpretation unless its words are ambiguous." [Citations.]' " (*Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 527.)

The plain meaning of "other governmental entity" is expansive: An entity is anything "that has a real existence," while "governmental" means "[o]f or relating to (a) government." (Oxford English Dict. (2d ed. 1989).) Here, there is little doubt as to respondent's existence. As for its relationship to the government, respondent was established by the government of Alameda County, an act which required special authorization from the state Legislature. (Health & Saf. Code, § 101850.) It also bears "all the rights and duties set forth in state law with respect to hospitals owned or operated by a county." (*Id.*, subd. (m).) Consequently, while we have held that respondent is not a sovereign governmental agency or a "municipal corporation" under section 220, there is no reason to doubt that it is a "governmental entity" of some kind.

Appellants urge us to read the term "other governmental entity" to "include only sovereign governing entities," but cites no authority that would justify this departure from applying the broader plain meaning. As appellants acknowledge, *Gateway*, *supra*, 9 Cal.App.5th at page 502, was concerned with the meaning of "other municipal corporation" under section 220, not "other governmental entity" under section 204. Because the plain meaning of "other governmental agency" is more capacious than that of "other municipal corporation," we decline appellants' invitation to conflate the two.

In sum, the demurrer was properly sustained as to the fourth cause of action.

5. *Seventh Cause of Action (PAGA)*

Respondent's demurrer as to the PAGA claim was sustained by the trial court on three grounds: (1) "PAGA applies to claims against a 'person'," a category from which section 18 excludes respondent; (2) "a PAGA claim is derivative of the underlying statutory violation," but respondent's "public agency" status exempts it from the relevant statutes; and (3) "as a public agency," respondent is "not liable for damages imposed by way of punishing the defendant, such as PAGA civil penalties. (See Government Code, § 818.)" As we have already shown, the trial court's order is mistaken as to the second ground because respondent's public agency status does not shield it from liability for at least five of the statutory violations alleged in the first amended complaint. Therefore, only the trial court's first and third grounds remain to be addressed below.

a. Section 18

"In 2003, citing inadequate funding for enforcement of labor laws, the Legislature enacted PAGA to 'authorize[ ] an employee to bring an action for

civil penalties on behalf of the state against his or her employer for Labor Code violations committed against the employee and fellow employees, with most of the proceeds of that litigation going to the state.' (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 360 [abrogated on another ground by *Viking River Cruises, Inc. v. Moriana* (2022) 142 S. Ct. 1906, 1924].) The statute was intended ' "to punish and deter employer practices that violate the rights of numerous employees under the Labor Code." ' . . . ([*Iskanian,* at p. 360, 173 Cal.Rptr.3d 289, 327 P.3d 129].)" (*Wesson v. Staples the Office Superstore, LLC* (2021) 68 Cal.App.5th 746, 759–760.)

To that end, "[f]or all provisions of [the Labor Code] *except those for which a civil penalty is specifically provided*," section 2699, subdivision (f), establishes "a civil penalty for a violation of these provisions, as follows: [¶] (1) If, at the time of the alleged violation, the person does not employ one or more employees, the civil penalty is five hundred dollars ($500). [¶] (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation. [¶] (3) If the alleged violation is a failure to act by the Labor and Workplace Development Agency, or any of its departments, divisions, commissions, boards, agencies, or employees, there shall be no civil penalty." (§ 2699, subd. (f), italics added.) "For purposes of this part, 'person' has the same meaning as defined in Section 18." (*Id*., subd. (b).)

Under section 18, a "person" is "any person, association, organization, partnership, business trust, limited liability company, or corporation." Where a defendant is a "public entity," it "does not fit this definition of

person." (*Sargent v. Board of Trustees of California State Univ.* (2021) 61 Cal.App.5th 658, 672.) Here, as discussed above, respondent is a public entity of some sort and therefore is not a "person" for purposes of PAGA. However, PAGA's "person" requirement is limited to statutory violations subject to the default penalties set forth above in section 2699, subdivision (f); it does *not* apply to those statutory violations "for which a civil penalty is specifically provided."

Here, a civil penalty is specifically provided for by at least two of the statutes underlying appellants' class action claims. Section 210, subdivision (a)(1), for example prescribes "[f]or any initial violation," a civil penalty of "one hundred dollars ($100) for each failure to pay each employee." Section 225.5, subdivision (a), is nearly identical in this respect, establishing "[f]or any initial violation" a $100 civil penalty "for each failure to pay each employee." Notwithstanding section 18, then, a PAGA claim would lie for at least two of the statutory violations alleged in the first amended complaint.[9] For that reason, section 18 provides no ground for sustaining the demurrer as to the seventh cause of action.

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[9] Appellant asserts in passing that a third such statute is section 1194.2. That law allows for the recovery of liquidated damages "[i]n any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute." (§ 1194.2, subd. (a).) And indeed, those liquidated damages "are in effect a penalty equal to the amount of unpaid minimum wages." (*Martinez v. Combs* (2010) 49 Cal.4th 35, 48, fn. 8.) But appellant has not attempted to show that this penalty is a "*civil* penalty" within the meaning of section 2699, subdivision (f). (Italics added.) In any event, the fact that PAGA claims would lie for violations of sections 210 and 225.5 is dispositive, so we do not reach the question of whether "liquidated damages" under section 1194.2 are a "civil penalty" under section 2699, subdivision (f).

b. Government Code Section 818

Finally, there is the trial court's citation of Government Code section 818, which provides that "a public entity is not liable for . . . damages imposed primarily for the sake of example and by way of punishing the defendant." As appellant rightly notes, however, PAGA penalties are not punitive damages. Like the Civil Code section 52 penalties found not to be punitive damages in *Los Angeles County Metro. Transportation Auth. v. Superior Court* (2004) 123 Cal.App.4th 261, 271, PAGA penalties provide an "economic incentive" and "the means to retain counsel to pursue perpetrators under the statute." More generally, the "primary purpose" of civil penalties "is to secure obedience to statutes and regulations imposed to assure important public policy objectives." (*Kizer v. County of San Mateo* (1991) 53 Cal.3d 139, 147–148.) A meritorious PAGA claim serves precisely the same purpose because the "PAGA plaintiff acts 'as the proxy or agent of the state's labor law enforcement agencies.' " (*Wesson v. Staples the Office Superstore, LLC*, *supra*, 68 Cal.App.5th at page 760, quoting *Arias v. Superior Court* (2009) 46 Cal.4th 969, 986.)

Consequently, because PAGA penalties are not punitive damages, section 818 presents no obstacle to appellants' seventh class action claim.

III. DISPOSITION

We affirm the order as to the fourth cause of action and reverse it as to the first, second, third, fifth, sixth, and seventh. On remand, the trial court shall enter a new order overruling the demurrer as to the first, second, third, fifth, sixth, and seventh causes of action in the first amended complaint.

_____
Wiseman, J.*

We concur:

_____
Jackson, P.J.

_____
Burns, J.

Stone v. Alameda Health System (A164021)

* Retired Associate Justice of the Court of Appeal, Fifth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Tamelin Stone et al. v. Alameda Health System

(A164021)

Trial Court: Alameda County

Trial Judge: Hon. Noel Wise

Attorneys:

Law Offices of David Y. Imai and David Y. Imai for Plaintiffs and Appellants.

Renne Public Law Group, Ryan P. McGinley-Stempel, Geoffrey Spellberg and Anastasia Bondarchuk for Defendant and Respondent.

ATTACHMENT B

HEALTH & SAFETY CODE
SECTION 101850

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Annotated California Codes
Health and Safety Code (Refs & Annos)
Division 101. Administration of Public Health (Refs & Annos)
Part 4. Special Health Authorities (Refs & Annos)
Chapter 5. Alameda Health System Hospital Authority (Refs & Annos)

West's Ann.Cal.Health & Safety Code § 101850

§ 101850. Establishment; definitions; powers and duties; board; relationship with county; status under other laws; legislative findings and declarations

Effective: January 1, 2023
Currentness

The Legislature finds and declares the following:

(a)(1) Due to the challenges facing the Alameda Health System arising from changes in the public and private health industries, the Alameda County Board of Supervisors has determined that a transfer of governance of the Alameda Health System to an independent governing body, a hospital authority, is needed to improve the efficiency, effectiveness, and economy of the community health services provided at the medical center. The board of supervisors has further determined that the creation of an independent hospital authority strictly and exclusively dedicated to the management, administration, and control of the medical center, in a manner consistent with the county's obligations under Section 17000 of the Welfare and Institutions Code, is the best way to fulfill its commitment to the medically indigent, special needs, and general populations of Alameda County. To accomplish this, it is necessary that the board of supervisors be given authority to create a hospital authority. Because there is no general law under which this authority could be formed, the adoption of a special act and the formation of a special authority is required.

(2) The following definitions apply for purposes of this section:

(A) “The county” means the County of Alameda.

(B) “Governing board” means the governing body of the hospital authority.

(C) “Hospital authority” means the separate public agency established by the Board of Supervisors of Alameda County to manage, administer, and control the Alameda Health System.

(D) “Medical center” means the Alameda Health System, which was formerly known as the Alameda County Medical Center.

(b) The board of supervisors of the county may, by ordinance, establish a hospital authority separate and apart from the county for the purpose of effecting a transfer of the management, administration, and control of the medical center in accordance with Section 14000.2 of the Welfare and Institutions Code. A hospital authority established pursuant to this chapter shall be strictly and exclusively dedicated to the management, administration, and control of the medical center within parameters set forth in this chapter, and in the ordinance, bylaws, and contracts adopted by the board of supervisors that shall not be in conflict with this chapter, Section 1442.5 of this code, or Section 17000 of the Welfare and Institutions Code.

(c) A hospital authority established pursuant to this chapter shall be governed by a board that is appointed, both initially and continually, by the Board of Supervisors of the County of Alameda. This hospital authority governing board shall reflect both the expertise necessary to maximize the quality and scope of care at the medical center in a fiscally responsible manner and the diverse interest that the medical center serves. The enabling ordinance shall specify the membership of the hospital authority governing board, the qualifications for individual members, the manner of appointment, selection, or removal of governing board members, their terms of office, and all other matters that the board of supervisors deems necessary or convenient for the conduct of the hospital authority's activities.

(d) The mission of the hospital authority shall be the management, administration, and other control, as determined by the board of supervisors, of the group of public hospitals, clinics, and programs that comprise the medical center, in a manner that ensures appropriate, quality, and cost-effective medical care as required of counties by Section 17000 of the Welfare and Institutions Code, and, to the extent feasible, other populations, including special populations in the County of Alameda.

(e) The board of supervisors shall adopt bylaws for the medical center that set forth those matters related to the operation of the medical center by the hospital authority that the board of supervisors deems necessary and appropriate. The bylaws shall become operative upon approval by a majority vote of the board of supervisors. Changes or amendments to the bylaws shall be by majority vote of the board of supervisors.

(f) The hospital authority created and appointed pursuant to this section is a duly constituted governing body within the meaning of Section 1250 of this code and Section 70035 of Title 22 of the California Code of Regulations as currently written or subsequently amended.

(g) Unless otherwise provided by the board of supervisors by way of resolution, the hospital authority may, or the board of supervisors may on behalf of the hospital authority, apply as a public agency for one or more licenses for the provision of health care pursuant to statutes and regulations governing licensing as currently written or subsequently amended.

(h) In the event of a change of license ownership, the governing body of the hospital authority shall comply with the obligations of governing bodies of general acute care hospitals generally, as set forth in Section 70701 of Title 22 of the California Code of Regulations, as currently written or subsequently amended, as well as the terms and conditions of the license. The hospital authority is the responsible party with respect to compliance with these obligations, terms, and conditions.

(i)(1) A transfer by the county to the hospital authority of the administration, management, and control of the medical center, whether or not the transfer includes the surrendering by the county of the existing general acute care hospital license and corresponding application for a change of ownership of the license, does not affect the eligibility of the county, or in the case of a change of license ownership, the hospital authority, to do any of the following:

(A) Participate in, and receive allocations pursuant to, the California Healthcare for the Indigents Program (CHIP).

(B) Receive appropriations from the Medi-Cal Inpatient Payment Adjustment Fund without relieving the county of its obligation to make intergovernmental transfer payments related to the Medi-Cal Inpatient Payment Adjustment Fund pursuant to Section 14163 of the Welfare and Institutions Code.

(C) Receive Medi-Cal capital supplements pursuant to Section 14085.5 of the Welfare and Institutions Code.

(D) Receive any other funds that would otherwise be available to a county hospital.

(2) A transfer described in paragraph (1) does not otherwise disqualify the county, or in the case of a change in license ownership, the hospital authority, from participating in any of the following:

(A) Other funding sources either specific to county hospitals or county ambulatory care clinics or for which there are special provisions specific to county hospitals or to county ambulatory care clinics.

(B) Funding programs in which the county, on behalf of the medical center and the Alameda County Health Care Services Agency, had participated prior to the creation of the hospital authority, or would otherwise be qualified to participate in had the hospital authority not been created, and administration, management, and control not been transferred by the county to the hospital authority, pursuant to this chapter.

(j) A hospital authority created pursuant to this chapter shall be a legal entity separate and apart from the county and shall file the statement required by Section 53051 of the Government Code. The hospital authority shall be a government entity separate and apart from the county, and shall not be considered to be an agency, division, or department of the county. The hospital authority shall not be governed by, nor be subject to, the charter of the county and shall not be subject to policies or operational rules of the county, including, but not limited to, those relating to personnel and procurement.

(k)(1) A contract executed by and between the county and the hospital authority shall provide that liabilities or obligations of the hospital authority with respect to its activities pursuant to the contract shall be the liabilities or obligations of the hospital authority, and shall not become the liabilities or obligations of the county.

(2) Liabilities or obligations of the hospital authority with respect to the liquidation or disposition of the hospital authority's assets upon termination of the hospital authority shall not become the liabilities or obligations of the county.

(3) An obligation of the hospital authority, statutory, contractual, or otherwise, shall be the obligation solely of the hospital authority and shall not be the obligation of the county or the state.

(*l*)(1) Notwithstanding any other provision of this section, a transfer of the administration, management, or assets of the medical center, whether or not accompanied by a change in licensing, does not relieve the county of the ultimate responsibility for indigent care pursuant to Section 17000 of the Welfare and Institutions Code or any obligation pursuant to Section 1442.5 of this code.

(2) A contract executed by and between the county and the hospital authority shall provide for the indemnification of the county by the hospital authority for liabilities as specifically set forth in the contract, except that the contract shall include a provision that the county shall remain liable for its own negligent acts.

(3) Indemnification by the hospital authority shall not be construed as divesting the county from its ultimate responsibility for compliance with Section 17000 of the Welfare and Institutions Code.

(m) Notwithstanding the provisions of this section relating to the obligations and liabilities of the hospital authority, a transfer of control or ownership of the medical center shall confer onto the hospital authority all the rights and duties set forth in state law with respect to hospitals owned or operated by a county.

(n)(1) A transfer of the maintenance, operation, and management or ownership of the medical center to the hospital authority shall comply with the provisions of Section 14000.2 of the Welfare and Institutions Code.

(2) A transfer of maintenance, operation, and management or ownership to the hospital authority may be made with or without the payment of a purchase price by the hospital authority and upon the terms and conditions on which the parties mutually agree, which shall include those found necessary by the board of supervisors to ensure that the transfer will constitute an ongoing material benefit to the county and its residents.

(3) A transfer of the maintenance, operation, and management to the hospital authority shall not be construed as empowering the hospital authority to transfer any ownership interest of the county in the medical center except as otherwise approved by the board of supervisors.

(*o*) The board of supervisors shall retain control over the use of the medical center physical plant and facilities except as otherwise specifically provided for in lawful agreements entered into by the board of supervisors. A lease agreement or other agreement between the county and the hospital authority shall provide that county premises shall not be sublet without the approval of the board of supervisors.

(p) The statutory authority of a board of supervisors to prescribe rules that authorize a county hospital to integrate its services with those of other hospitals into a system of community service that offers free choice of hospitals to those requiring hospital care, as set forth in Section 14000.2 of the Welfare and Institutions Code, shall apply to the hospital authority upon a transfer of maintenance, operation, and management or ownership of the medical center by the county to the hospital authority.

(q) The hospital authority may acquire and possess real or personal property and may dispose of real or personal property other than that owned by the county, as may be necessary for the performance of its functions. The hospital authority may sue or be sued, to employ personnel, and to contract for services required to meet its obligations. Before January 1, 2024, the hospital authority shall not enter into a contract with any other person or entity, including, but not limited to, a subsidiary or other entity established by the authority, to replace services being provided by physicians and surgeons who are employed by the hospital authority and in a recognized collective bargaining unit, with services provided by that other person or entity without clear and convincing evidence that the needed medical care can only be delivered cost effectively by that other person or entity. Prior to entering into a contract for any of those services, the authority shall negotiate with the representative of the recognized

collective bargaining unit of its physician and surgeon employees over the decision to privatize and, if unable to resolve any dispute through negotiations, shall submit the matter to final binding arbitration.

(r) An agreement between the county and the hospital authority shall provide that all existing services provided by the medical center shall continue to be provided to the county through the medical center subject to the policy of the county and consistent with the county's obligations under Section 17000 of the Welfare and Institutions Code.

(s) A hospital authority to which the maintenance, operation, and management or ownership of the medical center is transferred shall be a "district" within the meaning set forth in the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code). Employees of a hospital authority are eligible to participate in the County Employees Retirement System to the extent permitted by law, except as described in Section 101851.

(t) Members of the governing board of the hospital authority shall not be vicariously liable for injuries caused by the act or omission of the hospital authority to the extent that protection applies to members of governing boards of local public entities generally under Section 820.9 of the Government Code.

(u) The hospital authority shall be a public agency subject to the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code).

(v) Any transfer of functions from county employee classifications to a hospital authority established pursuant to this section shall result in the recognition by the hospital authority of the employee organization that represented the classifications performing those functions at the time of the transfer.

(w)(1) In exercising its powers to employ personnel, as set forth in subdivision (p), the hospital authority shall implement, and the board of supervisors shall adopt, a personnel transition plan. The personnel transition plan shall require all of the following:

(A) Ongoing communications to employees and recognized employee organizations regarding the impact of the transition on existing medical center employees and employee classifications.

(B) Meeting and conferring on all of the following issues:

(i) The timeframe for which the transfer of personnel shall occur. The timeframe shall be subject to modification by the board of supervisors as appropriate, but in no event shall it exceed one year from the effective date of transfer of governance from the board of supervisors to the hospital authority.

(ii) A specified period of time during which employees of the county impacted by the transfer of governance may elect to be appointed to vacant positions with the Alameda County Health Care Services Agency for which they have tenure.

(iii) A specified period of time during which employees of the county impacted by the transfer of governance may elect to be considered for reinstatement into positions with the county for which they are qualified and eligible.

(iv) Compensation for vacation leave and compensatory leave accrued while employed with the county in a manner that grants affected employees the option of either transferring balances or receiving compensation to the degree permitted employees laid off from service with the county.

(v) A transfer of sick leave accrued while employed with the county to hospital authority employment.

(vi) The recognition by the hospital authority of service with the county in determining the rate at which vacation accrues.

(vii) The possible preservation of seniority, pensions, health benefits, and other applicable accrued benefits of employees of the county impacted by the transfer of governance.

(2) This subdivision shall not be construed as prohibiting the hospital authority from determining the number of employees, the number of full-time equivalent positions, the job descriptions, and the nature and extent of classified employment positions.

(3) Employees of the hospital authority are public employees for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code relating to claims and actions against public entities and public employees.

(x) The hospital authority created pursuant to this section shall be bound by the terms of the memorandum of understanding executed by and between the county and health care and management employee organizations that is in effect as of the date this legislation becomes operative in the county. Upon the expiration of the memorandum of understanding, the hospital authority has sole authority to negotiate subsequent memorandums of understanding with appropriate employee organizations. Subsequent memorandums of understanding shall be approved by the hospital authority.

(y) The hospital authority created pursuant to this section may borrow from the county and the county may lend the hospital authority funds or issue revenue anticipation notes to obtain those funds necessary to operate the medical center and otherwise provide medical services.

(z) The hospital authority is subject to state and federal taxation laws that are applicable to counties generally.

(aa) The hospital authority, the county, or both, may engage in marketing, advertising, and promotion of the medical and health care services made available to the community at the medical center.

(ab) The hospital authority is not a “person” subject to suit under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code).

(ac) Notwithstanding Article 4.7 (commencing with Section 1125) of Chapter 1 of Division 4 of Title 1 of the Government Code related to incompatible activities, a member of the hospital authority administrative staff shall not be considered to be engaged in activities inconsistent and incompatible with the staff member's duties as a result of employment or affiliation with the county.

(ad)(1) The hospital authority may use a computerized management information system in connection with the administration of the medical center.

(2) Information maintained in the management information system or in other filing and records maintenance systems that is confidential and protected by law shall not be disclosed except as provided by law.

(3) The records of the hospital authority, whether paper records, records maintained in the management information system, or records in any other form, that relate to trade secrets or to payment rates or the determination thereof, or that relate to contract negotiations with providers of health care, shall not be subject to disclosure pursuant to the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code). The transmission of the records, or the information contained therein in an alternative form, to the board of supervisors does not constitute a waiver of exemption from disclosure, and the records and information, once transmitted, shall be subject to this same exemption. The information, if compelled pursuant to an order of a court of competent jurisdiction or administrative body in a manner permitted by law, shall be limited to in-camera review, which, at the discretion of the court, may include the parties to the proceeding, and shall not be made a part of the court file unless sealed.

(ae)(1) Notwithstanding any other law, the governing board may order that a meeting held solely for the purpose of discussion or taking action on hospital authority trade secrets, as defined in subdivision (d) of Section 3426.1 of the Civil Code, shall be held in closed session. The requirements of making a public report of actions taken in closed session and the vote or abstention of every member present may be limited to a brief general description devoid of the information constituting the trade secret.

(2) The governing board may delete the portion or portions containing trade secrets from any documents that were finally approved in the closed session that are provided to persons who have made the timely or standing request.

(3) This section shall not be construed as preventing the governing board from meeting in closed session as otherwise provided by law.

(af) Open sessions of the hospital authority constitute official proceedings authorized by law within the meaning of Section 47 of the Civil Code. The privileges set forth in that section with respect to official proceedings apply to open sessions of the hospital authority.

(ag) The hospital authority is a public agency for purposes of eligibility with respect to grants and other funding and loan guarantee programs. Contributions to the hospital authority are tax deductible to the extent permitted by state and federal law. Nonproprietary income of the hospital authority is exempt from state income taxation.

(ah) Contracts by and between the hospital authority and the state and contracts by and between the hospital authority and providers of health care, goods, or services may be let on a nonbid basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(ai)(1) Provisions of the Evidence Code, the Government Code, including the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code), the Civil Code, the Business and Professions Code, and other applicable law pertaining to the confidentiality of peer review activities of peer review bodies apply to the peer

review activities of the hospital authority. Peer review proceedings constitute an official proceeding authorized by law within the meaning of Section 47 of the Civil Code and those privileges set forth in that section with respect to official proceedings shall apply to peer review proceedings of the hospital authority. If the hospital authority is required by law or contractual obligation to submit to the state or federal government peer review information or information relevant to the credentialing of a participating provider, that submission does not constitute a waiver of confidentiality. The laws pertaining to the confidentiality of peer review activities shall be together construed as extending, to the extent permitted by law, the maximum degree of protection of confidentiality.

(2) Notwithstanding any other law, Section 1461 applies to hearings on the reports of hospital medical audit or quality assurance committees.

(aj) The hospital authority shall carry general liability insurance to the extent sufficient to cover its activities.

(ak) In the event the board of supervisors determines that the hospital authority should no longer function for the purposes set forth in this chapter, the board of supervisors may, by ordinance, terminate the activities of the hospital authority and expire the hospital authority as an entity.

(a*l*) A hospital authority that is created pursuant to this section, but does not obtain the administration, management, and control of the medical center or has those duties and responsibilities revoked by the board of supervisors, shall not be empowered with the powers enumerated in this section.

(am)(1) The county shall establish baseline data reporting requirements for the medical center consistent with the Medically Indigent Care Reporting System (MICRS) program established pursuant to Section 16910 of the Welfare and Institutions Code and shall collect that data for at least one year prior to the final transfer of the medical center to the hospital authority established pursuant to this chapter. The baseline data shall include, but not be limited to, all of the following:

(A) Inpatient days by facility by quarter.

(B) Outpatient visits by facility by quarter.

(C) Emergency room visits by facility by quarter.

(D) Number of unduplicated users receiving services within the medical center.

(2) Upon transfer of the medical center, the county shall establish baseline data reporting requirements for each of the medical center inpatient facilities consistent with data reporting requirements of the Office of Statewide Health Planning and Development, including, but not limited to, monthly average daily census by facility for all of the following:

(A) Acute care, excluding newborns.

(B) Newborns.

(C) Skilled nursing facility, in a distinct part.

(3) From the date of transfer of the medical center to the hospital authority, the hospital authority shall provide the county with quarterly reports specified in paragraphs (1) and (2) and any other data required by the county. The county, in consultation with health care consumer groups, shall develop other data requirements that shall include, at a minimum, reasonable measurements of the changes in medical care for the indigent population of Alameda County that result from the transfer of the administration, management, and control of the medical center from the county to the hospital authority.

(an) A hospital authority established pursuant to this section shall comply with the requirements of Sections 53260 and 53261 of the Government Code.

Credits

(Added by Stats.1996, c. 816 (A.B.2374), § 1. Amended by Stats.2004, c. 58 (A.B.2630), § 1; Stats.2005, c. 22 (S.B.1108), § 132; Stats.2013, c. 311 (A.B.1008), § 3, eff. Sept. 13, 2013; Stats.2014, c. 46 (S.B.1352), § 3, eff. Jan. 1, 2015; Stats.2014, c. 585 (A.B.334), § 2, eff. Sept. 26, 2014, operative Jan. 1, 2015; Stats.2015, c. 303 (A.B.731), § 332, eff. Jan. 1, 2016; Stats.2017, c. 263 (A.B.1538), § 1, eff. Sept. 23, 2017; Stats.2021, c. 615 (A.B.474), § 270, eff. Jan. 1, 2022, operative Jan. 1, 2023.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

2021 Amendment

Section 101850 is amended to reflect nonsubstantive recodification of the California Public Records Act ("CPRA"). See California Public Records Act Clean-Up, 46 Cal. L. Revision Comm'n Reports 207 (2019). By updating the reference to the CPRA, the amendment also eliminates an erroneous reference to "Chapter 5" (as opposed to "Chapter 3.5").

The section is also amended to eliminate gendered pronouns. [46 Cal.L.Rev.Comm. Reports 563 (2019)].

West's Ann. Cal. Health & Safety Code § 101850, CA HLTH & S § 101850
Current with all laws through Ch. 997 of 2022 Reg.Sess.

End of Document

PROOF OF SERVICE

Case Name: *Stone et al. v. Alameda Health System*
Case No.: S_____ (Court of Appeal Case No. A164021)

I am not a party to the within action, am over 18 years of age. My business address is 350 Sansome Street, Suite 300, San Francisco, California 94104.

On March 20, 2023, I served the following document: **PETITION FOR REVIEW** on the party below ***via TrueFiling***:

David Y. Imai
Law Offices of David Y. Imai
311 Bonita Drive
Aptos, CA 95003
davidimai@sbcglobal.net

Attorneys for Appellants
Tamelin Stone, et al.

On March 20, 2023, I also served the **PETITION FOR REVIEW** on the parties below ***via U.S. Mail***:

First District Court of Appeal
Division 5
350 McAllister Street
San Francisco, CA 94102

Court of Appeal

Hon. Noël Wise
Alameda County Superior Court
1221 Oak Street, Floor 3
Oakland, CA 94612

Judge of the Superior Court of Alameda County

I declare, under penalty of perjury that the foregoing is true and correct. Executed on March 20, 2023, at San Francisco, California.

Bobette T. Bramer

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **Tamelin Stone, et al. v. Alameda Health System**
Case Number: **TEMP-Z5KBDC7J**
Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **rmcginleystempel@publiclawgroup.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
ISI_CASE_INIT_FORM_DT	Case Initiation Form
PETITION FOR REVIEW	Petition for Review

Service Recipients:

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This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

3/20/2023
Date

/s/Bobette Tolmer
Signature

McGinley-Stempel, Ryan (296182)
Last Name, First Name (PNum)

Renne Public Law Group

Law Firm