S269608

S_____

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

LOS ANGELES UNIFIED SCHOOL DISTRICT,
Defendant and Petitioner,

v.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES,
Respondent,

JANE DOE,
Plaintiff and Real Party in Interest.

AFTER A DECISION BY THE CALIFORNIA COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIVISION 3, CASE NO. B307389
HON. SHIRLEY K. WATKINS, TRIAL JUDGE
LOS ANGELES COUNTY SUPERIOR COURT, CASE NO. BC659059

PETITION FOR REVIEW

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ISSUE PRESENTED

Recently enacted Code of Civil Procedure section 340.1(b) permits an award of up to treble damages where a child has been sexually abused as a result of a cover-up by an institution charged with caring for the child. The issue presented here is whether this provision, which was not only intended to deter such abhorrent conduct, but also to encourage victims to come forward in the hopes of unraveling the systemic institutional failures plaguing this State and thereby protect future children from abuse, is *simply and solely punitive* so that it cannot apply against a public entity under Government Code section 818?

INTRODUCTION AND WHY REVIEW SHOULD BE GRANTED

In light of recent revelations exposing child sexual abuse cover-ups by schools, churches, and other youth organizations, the California Legislature passed Assembly Bill (AB) 218, which significantly amended Code of Civil Procedure section 340.1 governing actions for childhood sexual abuse. The bill, which became effective January 1, 2020, greatly expanded the statute of limitations for victims of childhood sexual abuse and revived previously time-barred claims. Significant to this Petition, AB 218 also enabled victims to recover treble damages where their abuse was a result of an institutional cover-up of prior sexual assaults. The issue presented here concerns whether these treble damages may be sought against a public entity that engages in a prohibited cover-up.

Despite the fact that (1) the Legislature clearly indicated that the purpose of the treble damages were not solely punitive (2) public school districts such as the District here constitute a sizable percentage of caregivers where children are victimized by cover-ups and (3) there is absolutely nothing in the text, history or purpose of the Amendment even hinting that the Legislature intended to *exempt* public entities from the

reach of treble damages, the Court of Appeal here concluded that treble damages could not be pursued against public entities. The Court based this conclusion on Government Code section 818 which precludes application of laws to public entities that have as their sole purpose punishment. As explained in this Petition, the Court erred. The subject Amendment is *not* simply and solely intended to punish defendants and, equally as important, exempting public entities from its reach will subvert the Legislature's intent to end the disturbing pattern of institutional cover-ups.

Review by this Court is imperative to restore the Legislature's objectives intended to address the recurrent and horrific problem of institutions covering-up prior sexual abuse of children. The facts here present a paradigmatical example of why the Legislature enacted the treble damages Amendment.

During her freshman year at Pearl Magnet High School, when Plaintiff Jane Doe was just *fourteen-years-old*, Daniel Garcia, a special education paraprofessional assigned to assist a special needs student at the school and an employee of the Los Angeles Unified School District ("the District") began to take an interest in her. (Exh. 1 to Writ Petition, at 7.) During the beginning of the 2014-2015 school year, Garcia began grooming Plaintiff for sexual abuse and by November he had engaged in sexual activity with her. (Id. at 8.) The sexual abuse continued throughout the school year and ended in September 2015, when Garcia was transferred out of Pearl Magnet High School. After Plaintiff bravely reported the sexual abuse to her mother, Garcia was arrested in May 2016 and admitted to the abuse. (Id. at 8-9.)

Tragically, and as alleged by Plaintiff, the District *knew* Garcia was a threat to female students and yet engaged in a concerted effort to hide evidence relating to his sexual abuse of minors. (Id. at 7-9.) Prior to the sexual abuse of Plaintiff, the District was aware that Garcia had set his

sights on another female student and that he was apparently "dating" the student. (Id.) In response to learning this information, the District did not terminate Garcia but instead *transferred* Garcia to Pearl Magnet High School, where he met and eventually abused Plaintiff. (Id.) The District went so far as to create "a false and misleading iStar Incident Report related to Garcia's sexual abuse" of the prior student to cover up what it knew about the abuse and to protect itself from having the information go public. (Id.) As a result of this cover-up, Plaintiff was sexually assaulted by Garcia. (Id.)

While the allegations here reveal the very type of cover-up for which treble damages may be awarded, the Court of Appeal held otherwise. According to the Court, because recovery of up to treble damages necessarily results in a victim recovering damages *beyond actual compensation*, such damages are by definition "punitive" and thus barred by Government Code section 818 when asserted against a public entity. The Court's analysis is mistaken.

Pursuant to Government Code section 818, a public entity is immune from liability for punitive damages. While Section 818 precludes imposition of punitive damages against public entities, it was not intended to proscribe *all* damages with a punitive component; rather, damages which are punitive in nature but also aim to more fully compensate the victim or encourage victims to bring civil actions or otherwise achieve a non-punitive public policy objective are *not* solely punitive and thus fall outside of the ambit of Government Code section 818. (*People ex rel. Younger v. Superior Court* (1976) 16 Cal.3d 30, 35-36; *Kizer v. County of San Mateo* (1991) 53 Cal.3d 139, 146; *Los Angeles County Metropolitan Transp. Authority v. Superior Court* (2004) 123 Cal.App.4th 261, 275.) The immunity afforded to public entities under section 818 is therefore *"**narrow***, extending only to damages whose purpose is ***simply*** and ***solely***

punitive or exemplary." (*Los Angeles County Metro.,* 123 Cal.App.4th at p. 275, citing *Kizer, supra,* 53 Cal.3d at p. 146 and *People ex rel. Younger,* 16 Cal.3d at pp. 35-36.)

Thus, a public entity cannot escape civil penalties or damages provisions with a punitive aspect where such remedies serve some non-punitive function and are thus not *solely* punitive. The Legislative history of AB 218 confirms that the Bill's provision for recovery of treble damages where a cover-up has been established is *not* simply or solely punitive, but rather seeks to more fully compensate victims of institutional cover-ups and encourages victims to come forward and report such systemic abuse.

In concluding otherwise, the Court here employed a misguided analysis constrained by the notion that "[c]ompensation is the essential condition." (Slip Opn. 11.) According to the Court, because recovery of treble damages would result in damages *beyond actual compensatory damages*, treble damages are necessarily punitive in nature. The Court's analysis is predicated on the mistaken assumption that the only damages recoverable under the Government Claim Act are *compensatory damages*. However, a victim who has suffered injury at the hands of a public entity may absolutely recover a category of damages that is beyond actual damages, *but not* punitive damages. Statutory penalties, as well as damage enhancements, have long been recognized as viable against public entities.

Despite the court's sweeping proposition that statutory civil penalties or damage enhancements that result in recovery beyond actual damages are per se punitive damages when alleged against a public entity, nothing in the plain language of the statutes at issue nor this Court's prior interpretations of Section 818 support such a finding. Government Code section 818 *does not* state that a public entity shall be liable only for compensatory damages, but rather states that a public entity is not liable "for damages awarded under Section 3294 of the Civil Code or other

damages imposed primarily for the sake of example and by way of punishing the defendant." (Gov. Code, § 818.) Thus, a category of damages that is beyond compensatory, but not entirely punitive, does not fall within the narrow immunity afforded by Section 818.

Perhaps most troubling with the Court's opinion is the disregard of the Legislature's intent. "Our primary task 'in interpreting a statute is to determine the Legislature's intent, *giving effect* to the law's purpose. [Citation.]." (*California Bldg. Indus. Ass'n v. State Water Res. Control Bd.* (2018) 4 Cal.5th 1032, 1041.) The Court here offered short shrift as to whether the Legislature actually *intended* Government Code section 818 to apply to shield public entities from the reach of treble damages for engaging in a cover-up of sexual abuse as prescribed by Code of Civil Procedure section 340.1(b). Although the Legislature *not once* mentioned punitive damages in the legislative history of AB 218, nor mentioned Government Code section 818, nor included any indication in the plain language of the statute that treble damages are akin to punitive damages, the Court held that the Legislature *impliedly* intended to shield public entities from the reach of the newly created treble damages provision by envisioning such damages to be entirely punitive.

Rejecting statements in legislative committee reports expressly stating that the treble damages provision "is clearly needed *both* ***to compensate victims*** who never should have been victims – and would not have been if past sexual assault had been properly brought to light – *and also as an effective deterrent* against individuals and entities who have chosen to protect the perpetrators of sexual assault over the victims," as untethered to any non-punitive purpose (Slip Opn. 16), the Court further rejected the notion that a civil penalty or damages enhancement in a tort action can fall outside of the reach of Section 818 where it is motivated by a non-punitive public policy objective, such as encouraging victims to

come bring civil actions. (Slip Opn. 20-21.) "Even if we agreed with plaintiff that the treble damages provision might incentivize victims to file claims for childhood sexual assault, **this supposed public policy objective *does not remove the enhanced damages provision* from section 818's purview**." (Slip Opn. 28 (emphasis added).) Again, the Court's analysis rests on the flawed premise that a victim can recover only his or her actual compensatory damages under the Government Claims Act.

In an analysis of statutory construction, the intent of the legislature cannot be disregarded. Deference to the very spirit and purpose of the law must guide the statutory analysis as it is the role of the courts to effectuate the law as intended by the Legislature. The Legislature's enactment of the treble damages provision was designed not simply or solely to punish a defendant who has engaged in a cover-up of childhood sexual abuse, but also to more fully compensate victims of institutional cover-ups and to encourage victims to come forward and report such systemic abuse. Incentivizing victims to come forward helps unravel an institution's efforts to cover-up and hide evidence of prior sexual assaults or inappropriate behavior. It is precisely this intention of ending system wide institutional cover-ups of child sexual abuse and protecting against future children from being abused that the treble damages provision was designed to achieve.

In light of the non-punitive objectives that lie at the heart of the treble damages provision, Government Code section 818 does not apply to cloak a public entity defendant with immunity from such damages. The Court's opinion otherwise, insulating public entity defendants from treble damages – which have proven to be a repeated offender of institutional cover-ups –constitutes a devasting blow to the efforts of the Legislature. In the context of childhood sexual abuse, the Legislature has long repudiated the notion that a victim damaged by sexual abuse be *treated differently*

simply because the molester worked for a public rather than a private entity – yet that is precisely the result under the Court's interpretation.

Review is necessary to correct this grave error. There is no justification in the plain language of the statute nor its extensive Legislative history to exempt a public entity from the imperative societal goals the treble damages provision was designed to achieve. This is without doubt an important question of law meriting this Court's attention. (Cal. Rules of Court, rule 8.500 (b)(1).)

STATEMENT OF FACTS AND PROCEDURAL POSTURE

The facts in this petition are primarily derived from the Court's opinion (Slip Opinion) which in turn are taken from the operative complaint (Exhibit 1 to Writ Petition, at 4-20), as is appropriate where the court has by way of a writ petition ordered the trial court to enter an order granting the District's motion to strike the treble damages request. (See *Aubry v. Tri-City Hospital Dist*. (1992) 2 Cal.4th 962, 966-967.)

A. The Sexual Abuse of Plaintiff and the Alleged Cover-Up of Prior Sexual Abuse by the District.

During the 2014-2015 school year, Plaintiff was just fourteen-years-old and a freshman at a high school within the District. (Slip Opn. 2-3.) At the start of the school year, Daniel Garcia, a special education paraprofessional assigned to assist a special needs student at the school and an employee of the District began to take an interest in her and began grooming Plaintiff for sexual abuse. (Slip Opn. 3.) By November he had engaged in sexual activity with Plaintiff. (Slip Opn. 4.) Plaintiff did not disclose the abuse to her parents until March 2016. (Slip Opn. 4.) Upon learning of the abuse, Plaintiff's parents immediately reported it to law

enforcement and in May 2016, Garcia was arrested and charged with criminal offenses stemming from the abuse. (Slip Opn. 4.)

As alleged, prior to the sexual abuse of Plaintiff, the District *knew* Garcia was a threat to female students and yet engaged in a concerted effort to hide evidence relating to his sexual abuse of minors. (Slip Opn. 3-4.)

During the prior school year, in or around February 2014, the District learned that Garcia was involved in a "boyfriend-girlfriend relationship" with a female student, H. M., and that the "relationship" began while Garcia was employed by the District. (Slip Opn. 4.) In response to learning this information, the District did not terminate Garcia. Instead, the District *transferred* Garcia to a different LAUSD high school, where he met and eventually abused Plaintiff. (Id.) The District then created a false incident report related to Garcia's sexual abuse of H. M. As alleged, this was all done by the District in an effort to cover-up Garcia's prior sexual assault of minor female students within the District. (Id.)

Even during Garcia's time at Plaintiff's high school while he was abusing her, the District was aware and actively sought to conceal evidence that Garcia was acting sexually inappropriate with other female students. (Slip Opn. 3-4.) One student even complained to the administration that Garcia had inappropriately touched her – and yet the District did nothing. (Id.) Indeed, Garcia was allowed to remain an employee of the District during the entire 2014-2015 school year. (Id.) As alleged by Plaintiff, it was precisely because the District covered up such inappropriate conduct and failed to take appropriate actions against Garcia, that Garcia was able to continue his grooming conduct directed at Plaintiff, and able to repeatedly sexually abuse her. (Slip Opn., pp. 2-4.)

The allegations concerning the District's mishandling of the prior complaints of inappropriate sexual conduct against Garcia fostered the very environment upon which Garcia could sexually exploit and abuse Plaintiff.

B. Plaintiff's Civil Action and The Trial Court's Order Denying the District's Motion to Strike.

In April 2017, Plaintiff commenced this action the District and Garcia. (Slip Opn. 1, 4) Plaintiff's operative complaint alleged causes of action against the District for negligent hiring, supervision, and retention of an unfit employee; breach of mandatory duty to report suspected child abuse; negligent failure to warn, train, or educate; and negligent supervision of a minor. (Slip Opn. 4.) Pursuant to Code of Civil Procedure section 340.1(b), and in light of her detailed allegations of a cover-up of sexual abuse, Plaintiff included a prayer for treble damages. (Slip Opn. 2, 4.)

The District filed a motion to strike the request for treble damages on the ground they were an improper request for punitive damages and thus precluded by Government Code section 818. (Slip Opn. 2, 5.) Plaintiff opposed the motion and explained that the immunity afforded to public entities under Section 818 extends only to damages whose purpose is *simply and solely punitive* and, here, treble damages is *not* simply and solely punitive, but rather seeks to more fully compensate victims of institutional cover-ups and encourage victims to come forward in the hopes of unraveling an institution's efforts to cover-up and hide evidence of prior sexual assaults. (Slip Opn. 5; Exh. 5, at 70-79.)

The trial court denied the District's motion. (Slip Opn. 2.) The court explained that the "narrow" immunity of Section 818 applies only to damages whose purpose is simply and solely punitive, and here, "[a]s drafted and put into effect on January 1, 2020, *CCP §340.l makes no reference to punitive damages.*" (Slip Opn. 5; Exh. 11, at 205.) The court noted "the statute's legislative history makes no reference to treble damages being a punishment" and rather, "[t]he legislative intent for treble damages was to compensate the victim." (Id.)

C. The Court of Appeal Grants the District's Petition for Writ of Mandate and in a Published Opinion Concludes that Government Code Section 818 Immunizes the District From Treble Damages.

After its motion to strike was denied, the District filed a petition for writ of mandate. (Slip Opn., pp. 1, 6.) After issuing an order to show cause, the Court granted the District's petition and directed the trial court to enter an order granting the District's motion to strike the treble damages request. (Slip Opn. 6, 30.)

In its May 21, 2021 published opinion, the Court held that the District is "immune from these enhanced damages under section 818." (Slip Opn. 29.) Focusing on damages as being either compensatory or punitive, the Court began by noting that under general tort principles a child victim of sexual abuse *may already recover* for the "added psychological trauma" suffered by a victim who learns that the sexual abused they endured was the result of a cover-up by an institution charged with their care. (Slip Opn. 2-3.) From there, the Court reasoned that because recovery of treble damages would result in damages *beyond actual compensatory damages*, treble damages are necessarily punitive in nature. (Slip Opn. 6-19.)

> Compensation is the essential condition. Tort damages that have a compensatory function, although also having a punitive aspect, are not "imposed primarily for the sake of example and by way of punishing the defendant" (Gov. Code, § 818), and a public entity is liable under the Tort Claims Act for the injuries those damages serve to compensate. (*Kizer*, at pp. 145–147; *Younger, supra,* 16 Cal.3d at pp. 35–36; *State Dept. of Corrections, supra*, 5 Cal.3d at pp. 890–891; *Helfend, supra,* 2 Cal.3d at p. 16.)

(Slip Opn. 11.)

The Court further rejected the notion that a civil penalty or damages enhancement in a tort action can fall outside of the reach of Section 818 where it is motivated by a non-punitive public policy objective, such as encouraging victims to come bring civil actions. (Slip Opn., pp. 20-21.) According to the court, it is only where civil penalties are sought outside of a tort action for damages that Section 818 does not apply. "In a tort action, as we have discussed, the essential condition that separates primarily punitive damages, for which a public entity maintains sovereign immunity under section 818, and normal tort damages having a punitive component, for which a public entity waives such immunity, is that the latter class of damages serves a *compensatory function*. Absent a compensatory function, punitive damages are just that—simply and solely punitive— under section 818." (Slip Opn. 21 (emphasis in original).)

Plaintiff did not file a Petition for Rehearing.

ARGUMENT

I.

REVIEW IS NECESSARY TO ADDRESS THIS CRITICAL ISSUE OF FIRST IMPRESSION AND RESTORE THE LEGISLATURE'S INTENT TO IMPOSE TREBLE DAMAGES AGAINST INSTITUTIONAL DEFENDANTS, *BOTH PRIVATE AND PUBLIC,* WHO HAVE ENGAGED IN A COVER-UP OF SEXUAL ABUSE

This Court reviews appellate decisions "when necessary … to settle an important question of law." (Cal. Rules of Court, rule 8.500(b)(1).) The Legislature's recent effort to combat the systemic problem of institutional sexual abuse cover-ups and the damage flowing therefrom on children is unquestionably of the utmost importance and worthy of review.

As repeatedly recognized by the Legislature throughout the enactment of Assembly Bill 218, which passed with *unanimous* bipartisan support: "Childhood sexual abuse continues to ruin children's lives and continues to shock the nation because, unfortunately, perpetrators continue to abuse, often with impunity, and *sometimes with the help of third parties who either choose not to get involved or actively cover-up the abuse*." (Exh. 5, at 74; Exh. 6, at 93-94, 130, 134, 138 (emphasis added).) In response to the "pervasive problem" of institutional cover-ups of child sexual abuse, spanning "schools to sports leagues" and resulting in "continuing victimization and the sexual assault of additional children," the Legislature amended Code of Civil Procedure section 340.1, governing actions for childhood sexual abuse, to include recovery of treble damages where a victim can demonstrate that his or her abuse was the result of a cover-up. (Code Civ. Proc. § 340.1(b); Exh. 5, at 74-75; Exh. 6, at 94, 131, 135, 141.)

As noted by the Court, the legislative history reveals that the treble damages provision is "'clearly needed *both to compensate victims who*

never should have been victims- and would not have been if past sexual assault had been properly brought to light- and also as an effective deterrent against individuals and entities who have chosen to protect the perpetrators of sexual assault over the victims.' (Assem. Floor Analysis, Analysis of Assem. Bill No. 218 (2019-2020 Reg. Sess.) as amended Aug. 30, 2019, p. 2, italics added.)" (Slip Opn. 5, 13 (emphasis added).)

Further, and as highlighted by Plaintiff below and recognized in the opinion, the treble damages provision advances a non-punitive "public policy objective." (Slip Opn. 20-21.)

> She maintains the provision's focus on cover ups reflects a legislative imperative to bring past childhood sexual abuse to light, and she argues the availability of treble damages advances this objective by offering victims an incentive to come forward to "end the pattern of abuse." Specifically, plaintiff contends treble damages are needed to "encourage those victims who experienced inappropriate encounters with sexual predators that may not have in-and-of themselves been egregious sexual abuse to come forward in a civil action." In those cases, she argues, "inappropriate conduct by a teacher may not give rise to substantial damage awards," but if damages are "enhanced up to three times the actual damages, a victim may be more likely to come forward which may help unravel an institution's efforts to cover[ ]up and hide evidence of prior sexual assaults or inappropriate behavior."

(Id.) Thus, in addition to the compensatory element for the indescribable damage suffered by a child who learns that the very entity charged with caring for him or her not only knew that the abuser had a propensity for sexual abuse, but also actively covered-up evidence of such prior abuse, an award of treble *damages encourages victims to come forward to end the pattern of abuse*, thereby protecting other children in the community from future abuse.

Despite the Legislature's intention to use treble damages as a tool to breakdown institutional cover-ups of childhood sexual abuse plaguing this

Country for far too long, the Court here found that public entities are *exempt* from the reach of treble damages. According to the Court, while a private entity may be liable where a victim demonstrates that he or she was sexually assaulted as the result of a cover-up, no such damages may be imposed against a public entity. The published opinion concludes that the statutory provision permitting damages to be trebled is an improper request for *punitive damages* and thus precluded by Government Code section 818. The court's analysis is mistaken and review by this Court is imperative.

II.

THE NARROW IMMUNITY PROVIDED TO PUBLIC ENTITIES UNDER GOVERNMENT CODE SECTION 818 DOES NOT SHIELD THE DISTRICT FROM TREBLE DAMAGES FOR ENGAGING IN A COVER-UP OF SEXUAL ABUSE

"Government Code section 818 was *not intended* to proscribe all punitive sanctions." (*Kizer v. County of San Mateo* (1991) 53 Cal.3d 142, 146.) As explained in *Los Angeles Cty. Metro.*, and citing California Supreme Court cases in support: "As the above discussed cases make clear, the immunity afforded to public entities under section 818 is *narrow*, extending only to damages whose purpose is simply and solely punitive or exemplary." (*Los Angeles Cty. Metro*., 123 Cal.App.4th at pp. 275–76.) This Court emphasized in *People ex rel. Younger* that even where a liability is "undoubtedly punitive in nature and indeed is conceded to be so by plaintiff … the critical question is whether it ***is simply, that is solely, punitive***." (*People ex rel. Younger,* 16 Cal.3d at 37, fn. 4, 38-39.)

While implicit in every civil penalty or enhanced damages is an intent to punish the defendant, "[l]imiting government immunity to damages that are 'primarily' punitive reflects the reality that a single damages category may *serve multiple remedial purposes*." (*Los Angeles*

Cty. Metro., 123 Cal.App.4th at p. 272.) That is precisely the situation here in light of the compensatory and non-punitive objectives for which the treble damages provision are designed to achieve.

Neither the United States Supreme Court, nor the California appellate courts, have adopted a bright line rule holding that treble damages, or even civil penalties, constitute "punitive damages." Contrary to the Court's analysis, a plaintiff may recover a category of damages that is beyond actual damages, *but not* punitive damages. In other words, damages that provide a victim more than actual damages suffered are not *per se* punitive damages. The analysis is not so black and white. (See *Molzof v. United States* (1992) 502 U.S. 301, 301 [simply because a statute permits recovery of damages *beyond* actual damages, does not alone render such statutory damages - *punitive damages*].)

In *Molzof,* a wife brought an action on behalf of her deceased husband for damages under the Federal Tort Claims Act (FTCA) for injuries suffered to her late husband as a result of the negligence of federal employees. The district court refused to award damages for future medical expenses and for loss of enjoyment of life. The Court of Appeals affirmed, ruling that damages of the latter two types were barred by the FTCA's prohibition on "punitive damages." (*Id*. at p. 304.) Reversing the appellate court's finding, the U.S. Supreme Court explained that simply because the claimed damages may be above and beyond ordinary notions of compensation, does not mean that such damages are "punitive damages" and thus prohibited by the statute. (*Id*. at pp. 306-309.)

> The Government's interpretation of § 2674 appears to be premised on the assumption that the statute provides that the United States "shall be liable only for compensatory damages." But the first clause of § 2674, the provision we are interpreting, *does not say that*. What it clearly states is that the United States "shall not be liable ... ***for punitive damages***." **The difference is important.** The statutory

> language suggests that to the extent a plaintiff may be entitled to damages that are not legally considered "punitive damages," but which are for some reason *above and beyond ordinary notions of compensation*, the United States is liable "in the same manner and to the same extent as a private individual." ***These damages in the "gray" zone are not by definition "punitive damages" barred under the Act***.

(*Molzof*, at p. 308 (emphasis added).) The same is true here.

Government Code section 818 does not state that a public entity shall be liable *only for compensatory damages*, but rather states that a public entity is *not* liable "for damages awarded under Section 3294 of the Civil Code or other damages imposed primarily for the sake of example and by way of punishing the defendant." (Gov. Code, § 818.) Thus, a category of damages that is beyond compensatory, but not entirely punitive, does not fall within the narrow immunity afforded by Section 818.

Indeed, that was precisely the result in *Los Angeles County Metro.*[1] At issue there was whether a bus passenger's action against a county transportation authority and bus driver – where the bus driver made a series of taunting, derogatory and homophobic remarks to the passenger and then severely attacked and beat the passenger – could seek civil penalties under the Ralph Civil Rights Act (Civ. Code § 51.7 and 52(b)) against the county transportation authority. (*Los Angeles Cty. Metro, supra,* 123 Cal.App.4th at pp. 264-265.) The MTA argued that the $25,000 civil penalty for each offense alleged, in addition to actual damages, was punitive in nature and thus precluded by Government Code section 818. (*Id*. at pp. 265-266.) The plaintiff argued that the civil penalty served more than to simply punish the

[1] Notably, while the Court of Appeal here was critical of its earlier decision in *Los Angeles County Metro,* the Court did not find it was wrongly decided. Indeed, the court noted that "[f]or a number of independent reasons, the LACMTA court correctly concluded section 818 did not preclude imposition of the penalty; …" (Slip Opn. 24-25.)

defendant and was intended to and did serve other public policy purposes. (*Id*.) The trial court agreed and denied the MTA's motion to strike. After issuing an order to show cause following MTA's Petition for Writ of Mandate, the Court held that the statutory penalty was not *solely* punitive and thus not barred by Section 818. (*Id*. at pp. 270-276.)

An earlier panel of the same appellate division concluded that the county defendant could be liable for penalties under Civil Code 52(b)(2) because the legislative history revealed "at least two important nonpunitive purposes. The first is simply to provide increased compensation to the plaintiff. The second purpose, and perhaps the more important one, is to encourage private parties to seek redress through the civil justice system by making it more economically attractive for them to sue." (*Los Angeles Cty. Metro, supra,* 123 Cal.App.4th at pp. 270-271.) The Court explained:

> "… *it is clear that the current version of section 52, subdivision (b)(2),* ***is part of a larger body of law designed to further a clear legislative intent to have the civil rights laws taken seriously and be vigorously enforced by encouraging private parties to litigate such claims***. Acceptance of MTA's argument that section 818 grants it immunity in this area *would defeat this important component* of the anti-hate crime legislation."

(*Id*. at p. 271 [emphasis added].) The same is true here.

Los Angeles County Metro undermines the Court's analysis here as in that case the statutory cause of action asserted by the plaintiff permitted recovery of a civil penalty *in addition* to actual damages. Notably, Section 52(b) provided that where a defendant has violated Civil Code 51.7, he is "liable for each and every offense ***for the actual damages suffered*** by any person denied that right *and*, ***in addition***, the following: …(2) A civil penalty of twenty-five thousand dollars ($25,000) …" (Civ. Code, § 52(b) [emphasis added].) In finding that the penalty was not simply and solely punitive and thus barred by Government Code section 818, the Court noted

that the $25,000 civil penalty "helps to ensure that plaintiffs receive ample compensation, *irrespective of their actual damages*." (*Los Angeles County Metro., supra,* 123 Cal.App.4th at p. 271.) "Most civil penalties are necessarily punitive to some extent in that they aim to deter misconduct and may lead to recoveries *in excess of an otherwise available measure of compensation*." (*Id*. at p. 272.)

Thus, even though a victim could recover actual damages and a $25,000 penalty, which would necessarily result in an award *beyond* actual damages, the penalty was not entirely punitive and thus not barred by Section 818. (See also *Beeman v. Burling* (1990) 216 Cal.App.3d 1586, 1597 [San Francisco municipal ordinance that trebled actual damages was not entirely punitive but served other important purpose of encouraging access to the courts; "while both exemplary damages and statutory damages serve to motivate compliance with the law and punish wrongdoers, **they are distinct legal concepts**" and as such not all civil penalties are solely punitive]; *Kelly v. Yee* (1989) 213 Cal.App.3d 336, 341-342 [same]; *LeVine v. Weis* (2001) 90 Cal.App.4th 201, 209 [because award of statutory double backpay under Gov. Code, § 12653 "serves to more fully compensate the employee for the incalculable risk he takes when he threatens to disclose or discloses his employer's false claim," it is not punitive damages under Gov. Code, § 818], disapproved on other grounds by *Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164 [finding school districts were not "persons" who were subject to suit under FCA]; *Hill v. Superior Court* (2016) 244 Cal.App.4th 1281, 1287 ["statutory damages awarded as a penalty are 'distinguished' from punitive damages. And recovery of both is 'permitted.'"][2].)

[2] In *Hill*, the plaintiffs, co-executors of their mother's estate, brought an action against their step-father seeking to recover property belonging to the estate as well as *double damages* pursuant to Probate Code section 859.

Numerous courts have recognized that Section 818 does not apply to immunize public entities from the imposition of civil penalties where the purpose of the penalty is not solely punitive. (See *State Dep't of Corrections v. WCAB*, (1971) 5 Cal.3d 885, 886-891 [statutory penalty that an employee who suffers an industrial injury may recover damages increased by one-half if the injury resulted from the employer's willful misconduct was intended to provide more nearly full compensatory damages when the employer is guilty of aggravated misconduct and thus not barred as against public entity]; *Marron v. Superior Court* (2003) 108 Cal.App.4th 1049, 1062 [enhanced civil penalties for dependent elder abuse may be alleged against public entity]; see also *Kelly v. Yee* (1989) 213 Cal.App.3d 336, 341-342 [the provision for treble damages serves the distinct non-punitive objective of encouraging tenants to bring actions].)

The court's analysis here ignores that a tort action against a public entity, falling within the rubric of the Government Claims Act, may include recovery of actual damages, as well as statutory damages that are different in kind or otherwise beyond actual damages but not punitive damages.

For instance, in *Lozada v. City and County of San Francisco* (2006) 145 Cal.App.4th 1139, a police officer sued San Francisco, seeking actual damages and civil penalties for alleged violations of the Public Safety

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Following the step-father's death during the pendency of the action, the successor in interest argued that the double damages were "punitive" and could not be recovered against him pursuant to CCP section 377.42 which bars recovery against a successor of damages pursuant to Civil Code section 3294 or other punitive or exemplary damages. (*Hill*, 244 Cal.App.4th at pp. 1284-1285.) The trial court agreed and the Court of Appeal reversed. (*Id*. at p. 1286.) The Court held "double damages under section 859 are *not* punitive 'damages recoverable under section 3294 of the Civil Code.'" (*Id*. at p. 1287.) The Court explained that a statutory penalty, even one that necessarily results in doubling the actual damages, is not per se punitive. (*Id*.)

Officers' Procedural Bill of Rights Act (POBRA). The subject of the appeal was whether the trial court erred by dismissing the plaintiff's POBRA claims for failure to file a claim pursuant to the Government Claims Act. (*Ibid*.) Relevant here, the plaintiff argued that his POBRA claims were *not* "for money or damages" within the meaning of the Government Claims Act and thus he was not required to file a prelawsuit claim. (*Id.* at p. 1147.) The plaintiff argued the civil penalties imposed under POBRA were not damages because they were not compensatory in nature, and instead, operated to deter violations of POBRA by providing economic incentives to challenge wrongful conduct. (*Id.* at p. 1161.)

The Court disagreed. The Court began by explaining that an action for money damages under the Government Claims Act includes all actions where the plaintiff is seeking monetary relief, regardless of whether the action was founded in tort, contract, or some other theory. (*Id.* at 1152.) The Court then reasoned that civil penalties under POBRA were within well-established understandings of the term "damages" since damages refer to compensation in money recovered by a party for loss or detriment suffered through the acts of another. (*Id.* at p. 1161.) The Court held:

> Moreover, *insofar as the civil penalty provides compensation* ***beyond actual injury suffered*** by the inured public safety officer where the public entity employer acted with the requisite malicious intent, **the civil penalty, *if not clearly compensation for "damages,"* is a claim for "money" within sections 905 and 945.5 of the Government Claims Act**. The claim presentation requirement of the Government Claims Act does not apply solely to claims for compensatory "damages," but to "all claims for money" (§ 905), as well.

(*Lozada, supra*, 145 Cal.App.4th at p. 1162.) The Court thus concluded that because penalties and damages were "money" or "damages" within the

meaning of the Government Claims Act, the plaintiff was required to file a prelawsuit claim and the failure to do so barred his action. (*Id.* at p. 1163.)[3]

Lozada highlights the error in the Court's reasoning here as not only could the plaintiff seek penalties in addition to actual damages but was required to assert such penalties in a prelawsuit claim *under the Act*. The civil penalties at issue, which were beyond actual damages, were subject to the very prefiling requirements of the Government Claims Act.

Notably, nowhere does the Government Claims Act limit the term damages to "actual compensatory damages." Indeed, and as highlighted in *Lozada*, Civil Code section 3281 provides: "Every person who suffers detriment from the unlawful act or omission of another, may recover from the person in fault a compensation therefore in money, which is called damages." (Civ. Code § 3281; *Lozada, supra*, 145 Cal.App.4th at p. 1161-1162.) Citing this Court's holding in *AIU Ins. Co. v. Superior Court* (1990) 51 Cal.3d 807, the Court in *Lozada* explained that the term "damages" is relatively broad and requires only that there be "'compensation,' in 'money,' 'recovered' by a party for 'loss' or detriment' it has suffered through the acts of another.'" (*Lozada*, at p. 1161-1162.) The Court noted that "'damages' generically includes restitutive and punitive measures" in

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[3] Other tort action involving the POBRA likewise recognize the availability of civil penalties, in addition to actual damages, against public entity employers. (See *Riverside Sheriffs' Assn. v. County of Riverside* (2009) 173 Cal.App.4th 1410, 1425-1426 [plaintiff could pursue her damages following termination along with a $25,000 civil penalty against the County and attorney's fees under the POBRA]; *Davis v. County of Fresno* (2018) 22 Cal.App.5th 1122, 1125, 1138-1140 [same]; see also *Hawkins v. City of Los Angeles* (2019) 40 Cal.App.5th 384, 387, 392, [former employees alleged they were fired for whistleblowing and sought civil penalties under the Private Attorney General Act; after jury found in their favor and awarded them damages, the trial court added on a $20,000 civil penalty and judgment affirmed on appeal].)

addition to "'compensatory damages.'" (*Id*., *citing AIU*, 51 Cal.3d at p. 826, fn.11.)

Thus, Court's focus here on compensation as the "essential condition" is mistaken. The analysis before the Court is *not* whether treble damages are compensatory, *but whether they are solely and simply punitive*.

A. The Court's Reliance on *Kizer* is Misguided.

In reaching the conclusion that a public entity is liable under the Government Claims Act for only actual damages for the injury suffered, and thus any civil penalty or damage enhancement that provides the plaintiff with damages beyond compensatory damages is per se punitive, the Court heavily relied on a select few statements from this Court's decision in *Kizer*. However, and as now explained, *Kizer* provides no support of the Court's mistaken analysis.

Kizer concerned an action brought by the State Department of Health Services against a county owned health care facility pursuant to the Long-Term Care, Health, Safety and Security Act ("the Act"). (*Kizer*, 53 Cal.3d at p. 141.) The issue before the Court was whether Government Code section 818 prevented the state from imposing statutory penalties under the Act. The Court held that Section 818 does not immunize the county from the reach of civil penalties. (*Id.* at pp. 146-150.)

This Court began its discussion by noting that the Government Claims Act "in general, and Government Code section 818 in particular, are not applicable in this case." (*Kizer*, at p. 144.) "Like the Court of Appeal, we find nothing in the Tort Claims Act to suggest that Government Code section 818 was intended to apply to statutory civil penalties designed to ensure compliance with a detailed regulatory scheme, such as the penalties at issue in the present case, even though they may have a punitive effect." (*Id*. at p. 146.) The Court poignantly noted: "**The Department's citation**

enforcement action *lies outside the perimeters of a tort action* and therefore does not readily lend itself to a liability analysis based on tort principles." (*Id*. (emphasis added).)

In its discussion of *why* the Department's enforcement action lies outside of the Government Claims Act, and thus outside of Section 818, the Court noted that a tort action seeks compensatory damages for an *injury* suffered – unlike a statutory enforcement scheme seeking civil penalties at issue before the Court. (*Id*. at p. 145.) The Court's discussion was therefore in the context of explaining why the Government Claims Act did not apply *at all*. The Court of Appeal here mistakenly interprets the discussion as defining the scope of available remedies – concluding that the Government Claims Act permits only recovery of actual compensatory damages and thus anything beyond compensatory is punitive and thus barred by Section 818. (See Slip Opn. 6-7, 11, 21, 23-24, 28-29.)

In this tort action, Plaintiff is not arguing, nor has she argued, that treble damages under Code of Civil Procedure section 340.1 *lies outside of the Government Claims Act*. Instead, Plaintiff has consistently argued that in light of the non-punitive objectives designed to be achieved by the treble damages provision, such damages are not simply and solely punitive and thus are not cloaked with the "narrow" immunity provided for Section 818. As emphasized by this Court in *People ex rel. Younger,* even where a liability is "undoubtedly punitive in nature and indeed is conceded to be so by plaintiff … the critical question is whether it ***is simply, that is solely, punitive***." (*People ex rel. Younger,* 16 Cal.3d at 37, fn. 4, 38-39.)

This Court's further observations in *Kizer* concerning the absurdity of immunizing public entity defendants from the reach of civil penalties designed to protect California's vulnerable aging population are indeed apropos of the analysis here. After finding that the Government Claims Act had no application to the enforcement action, the Court went on to note:

"*Furthermore, we find noting in the statutory scheme that suggests that state and other government health facilities should be treated differently than private facilities*." (*Id*. at p. 148 (emphasis added).) The Court highlighted that the "focus of the Act's statutory scheme is *preventative*." (*Id*.) This Court thoughtfully explained:

> We agree with the Court of Appeal that, "[g]iven the ***unquestionable importance of this legislative purpose*** [assuring a uniform standard of quality health care], **we perceive no significant public policy reason to exempt a state licensed health-care facility from liability for penalties under the Act simply because it is operated by a public rather than a private entity, *even though it is the taxpayer who ultimately bears the burden when such penalties are imposed on a publicly owned facility.*** The citation and penalty provisions of the Act serve to *encourage compliance* with state mandated standards for patient care and to deter conduct which may endanger the well-being of patients. City councils and county boards of supervisors are as likely as private entities to heed the threat of monetary sanctions and make certain that their facilities are operated in compliance with the law. While it is true that all facilities, including those which are publicly owned, may be subject to the loss of license for repeated violations, that draconian sanction should not be the only real tool available to the Department to foster regulatory compliance by a publicly operated facility."

(*Kizer*, *supra,* 53 Cal.3d at pp. 150–51 (emphasis added).)[4]

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[4] Notably, even in *Kizer* the Court recognized that the Act permitted civil actions for damages and civil penalties by patients. (*Kizer*, at p. 143, 149-150.) This Court recently examined such civil penalties sought in a civil action brought by a patient in *Jarman v. HCR ManorCare, Inc.* (2020) 10 Cal.5th 375. There, this Court noted that the private action permitting actual damages, civil penalties and even enhanced damages are one of several alternative enforcement mechanisms designed by the Legislature to protect nursing home patients. (See *Jarman*, at pp. 390-392.) Under this Court's analysis here, while a county owned facility could not seek refuge under Section 818 under *Kizer*, the same county owned facility *would be shieled* from civil penalties under the Act if asserted by a patient in a civil

Similarly here, to insulate public entities from the reach of treble damages would frustrate the entire purpose of the provision – which is designed not simply to punish bad conduct but to protect *our most vulnerable* from sexual abuse. Such a finding would essentially conclude that the public policy of protecting taxpayers from enhanced damages *outweighs* the public policy of protecting children from institutional sexual abuse caused by cover-ups. Under no analysis does such a justification make sense.

B. Review is Necessary as The Court's Opinion Fails to Employ a Statutory Construction Analysis Guided by the Intent of the Legislature.

Despite noting that the "rules of statutory construction require that we ascertain the intent of the enacting legislative body so we may adopt the construction that best effectuates the law's purpose," the Court here failed to heed such an analysis. (Slip Opn. 14.) Not only did the Court set aside statements in legislative reports clarifying the Legislature's intention to use treble damages to both compensate victims and deter future misconduct, but the Court admittedly ignored the non-punitive and non-compensatory public policy objectives at the heart of the treble damages provision. (See Slip Opn., 16, 28 ["Even if we agreed with plaintiff that the treble damages provision might incentivize victims to file claims for childhood sexual assault, **this supposed public policy objective *does not remove the enhanced damages provision* from section 818's purview**."].) According to the Court's statutory construction analysis, the Legislature *impliedly* intended to shield public entities from the reach of the newly created treble

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action (such as the facts in *Jarman*). This makes no sense. There is no justification to immunize the same defendant from civil penalties under the same Act in one civil action but not in another.

damages provision by envisioning such damages to be entirely punitive and thus barred by Section 818. This is *not* what the Legislature intended.

The Legislature's intention in providing victims treble damages in cases where the abuse could have been avoided years prior reflects a non-punitive purpose – providing victims the "path" to come forward and more fully recover for indescribable harm suffered. (See Exh. 6, at 94, 131, 135, 141-142, 148.) Providing up to three times the actual damages would also encourage those victims who experienced inappropriate encounters with sexual predators that may not have in-and-of-themselves been egregious sexual abuse to come forward in a civil action. Thus, not only are treble damages compensatory for victims, but they encourage reporting and the breakdown of institutional cover-ups. These non-punitive public policy objectives remove them from the narrow immunity under Section 818.

Turning to the plain language first, subsection (b) does not expressly provide for punitive damages. Rather, it permits recovery of up to treble damages. Subsection (b) also does not require proof oppression, fraud or actual malice or otherwise reference or mention Civil Code section 3294. Recovery of treble damages is likewise untethered to the financial wealth of the defendant. Beyond this, Government Code section 818 is not mentioned *anywhere* in the statute. Nor is there any provision in the statute prohibiting recovery of treble damages against public entity defendants.

The legislative history also does not support the Court's implied finding that the Legislature intended treble damages to be solely punitive. Nowhere in the analyses did the Legislature even mention punitive damages, or any intention of protecting public entities from treble damages. In fact, throughout the Legislative history of AB 218, the Legislature made clear that **"[t]he bill applies *equally* to abuse occurring at public and private schools and applies to all local public entities**." (Exh. 6, at 94 (emphasis added), 131, 135, 140-141.) The very notion that a public school

could escape such damages is belied by the fact that the Author of AB 218 specifically referenced recent cover-ups at *public schools*. (Exh. 6, at 144.)

Carefully balancing concerns from institutional defendants arguing the treble damages provision should be removed since the costs associated with such clams could "be astronomical and could prevent the impacted entities from being able to support their main work," the Legislature explained: "Obviously, *the flip side* of the burden of the cost of these claims on schools, churches, and athletic programs that protected sexual abusers of children *is the lifetime damage done to those children*." (Id. at 146-148.)

The societal goal of protecting children from sexual abuse, especially sexual abuse that could have been prevented had an institution not covered-up prior sexual abuse evidence, is at the forefront of AB 218. As recognized by this Court, Section 340.1 is "a remedial statute that the Legislature intended to be construed *broadly* to effectuate the intent that illuminates section 340.1 as a whole; *to expand the ability of victims of childhood sexual abuse to hold to account individuals and entities responsible for their injuries.*" (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 536; see also *Quarry v. Doe I* (2012) 53 Cal.4th 945, 1003-1004.) Because treble damages serve non-punitive objectives they do not fall within the narrow contours of Section 818.

CONCLUSION

A decision of first impression that insulates public entity defendants from the reach of treble damages, designed by the Legislature to combat the pervasive problem of institutions covering-up instances of childhood sexual abuse, undoubtedly presents "an important question of law" deserving of this Court's attention and review. Plaintiff requests review be granted.

Dated: June 30, 2021

TAYLOR & RING, LLP

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s/ Holly N. Boyer
Holly N. Boyer

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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

LOS ANGELES UNIFIED SCHOOL DISTRICT, Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; JANE DOE, Real Party in Interest.	B307389 Los Angeles County Super. Ct. No. BC659059

ORIGINAL PROCEEDINGS in mandate. Shirley K. Watkins, Judge. Petition granted.

Gutierrez, Preciado & House, Calvin House and Arthur C. Preciado for Petitioner.

No appearance for Respondent.

Taylor & Ring, David M. Ring, Natalie L. Weatherford; Esner, Chang & Boyer and Holly N. Boyer for Real Party in Interest.

The Zalkin Law Firm and Devin M. Storey for National Center for the Victims of Crime as Amicus Curiae on behalf of Real Party in Interest.

Code of Civil Procedure section 340.1 (section 340.1) authorizes an award of "up to treble damages" in a tort action for childhood sexual assault where the assault occurred "as the result of a cover up." (Code Civ. Proc., § 340.1, subd. (b)(1).) Government Code section 818 (section 818) exempts a public entity from an award of damages "imposed primarily for the sake of example and by way of punishing the defendant." In this writ proceeding we must determine whether section 818 precludes an award of treble damages under section 340.1 against a public entity.

Plaintiff Jane Doe sued the Los Angeles Unified School District (LAUSD) alleging an LAUSD employee sexually assaulted her when she was 14 years old. She alleged the assault resulted from LAUSD's cover up of the employee's sexual assault of another student and requested an award of treble damages under section 340.1. The trial court denied LAUSD's motion to strike the damages request, reasoning the imposition of treble damages under section 340.1 serves not to punish those who cover up childhood sexual assaults, but to compensate victims. We conclude the court erred.

Childhood sexual assault inflicts grave harm on its vulnerable victims—harm that is undoubtedly amplified in some cases when a victim learns the assault resulted from a deliberate cover up by the individuals and institutions charged with the victim's care. But noneconomic damages under general tort principles already provide compensation for this added

psychological trauma, and neither plaintiff nor the statute's legislative history identifies any other possible compensatory function for the treble damages provision in section 340.1. Moreover, while section 340.1 generally serves to ensure perpetrators of sexual assault are held accountable for the harm they inflict on their vulnerable victims, the statute's text unambiguously demonstrates the treble damages provision's purpose is to deter future cover ups by punishing past ones in a tort action. Because treble damages under section 340.1 are primarily exemplary and punitive, a public entity like LAUSD maintains sovereign immunity from liability for such damages under section 818. We therefore grant LAUSD's petition for a writ of mandate and direct the trial court to enter an order striking the treble damages request.

FACTS AND PROCEDURAL BACKGROUND

We draw the facts from the operative first amended complaint and assume the truth of all properly alleged facts. (See *Cryolife, Inc. v. Superior Court* (2003) 110 Cal.App.4th 1145, 1157.)

LAUSD is a public education agency operating a number of schools in Los Angeles County, including the high school plaintiff attended. Plaintiff was 14 years old when she began her freshman year. Defendant Daniel Garcia was an aide in two of plaintiff's classes.

During the first semester of plaintiff's freshman year, Garcia began giving her special attention and acting physically affectionate towards her at school. During the same period, Garcia targeted other female students, one of whom complained to the school administration that Garcia inappropriately touched

her. Despite this report, the school did not terminate Garcia's employment.

In November 2014, Garcia's "grooming and manipulation" culminated in his sexual abuse of plaintiff. Due to Garcia's threats and coercion, plaintiff did not disclose the abuse to her parents until March 2016. Plaintiff's parents immediately reported the abuse to law enforcement. In May 2016, Garcia was arrested and charged with criminal offenses stemming from the abuse.

Before the incident in November 2014, LAUSD allegedly engaged in a cover up of Garcia's sexual abuse of another female LAUSD student. In February 2014, LAUSD learned Garcia was involved in a " 'boyfriend-girlfriend relationship' " with a female student, H.M., at a different LAUSD school. After learning of the relationship, LAUSD did not terminate Garcia, but instead transferred him to plaintiff's high school, where he met and eventually abused plaintiff. LAUSD also created a false report that H.M. and Garcia " 'dated' *before* Garcia's employment" with LAUSD. Contrary to the report, H.M. testified under oath that she told the school district she met Garcia through his employment at her high school and they " 'dated' *while Garcia was employed*" at the school.

In April 2017, plaintiff sued LAUSD and Garcia. Her operative complaint asserted causes of action against LAUSD for negligent hiring, supervision, and retention of an unfit employee; breach of mandatory duty to report suspected child abuse; negligent failure to warn, train, or educate; and negligent supervision of a minor. She sought an award of economic and noneconomic damages against all defendants and an award of treble damages under section 340.1 against LAUSD.

LAUSD moved to strike the request for treble damages. It argued the "discretionary award of treble damages" under section 340.1 is "punitive" and, therefore, prohibited against a public entity under section 818.

Plaintiff opposed the motion. She argued the treble damages provision's purpose was not "merely punitive" because it also served a compensatory function. In support, plaintiff asked the court to take judicial notice of several Assembly Floor Analyses of the enacting legislation that included the following statement attributed to the bill's author:

> "AB 218 would also confront the pervasive problem of cover ups in institutions, from schools to sports league[s], which result in continuing victimization and the sexual assault of additional children. The bill would allow for recovery of up to treble damages from the defendant who covered up sexual assault. This reform is clearly needed both to compensate victims who never should have been victims- and would not have been if past sexual assault had been properly brought to light- and also as an effective deterrent against individuals and entities who have chosen to protect the perpetrators of sexual assault over the victims."

The trial court denied the motion to strike. It granted the request for judicial notice and found the analyses demonstrated a "legislative intent . . . *to compensate the victim*." Because the treble damages provision had a compensatory function, the court ruled immunity under section 818 was not available to LAUSD.

LAUSD filed this petition for writ of mandate. We issued an order to show cause.

DISCUSSION

1. *The Government Tort Claims Act and Sovereign Immunity from Punitive Damages under Section 818*

The Government Tort Claims Act (Gov. Code, § 810 et seq.; hereafter Tort Claims Act) specifies the cases in which a public entity is liable for injuries arising out of its acts or omissions, or those of its employees. (See, e.g., Gov. Code, §§ 815, 815.2, 815.4, 815.6, 818.2, 818.4, 818.6, 818.7, 818.8; *Kizer v. County of San Mateo* (1991) 53 Cal.3d 139, 145 (*Kizer*).) Under the Tort Claims Act, sovereign immunity remains the rule in California, and governmental liability is limited to exceptions specifically set forth in statute. (*Colome v. State Athletic Com*. (1996) 47 Cal.App.4th 1444, 1454–1455; *Elson v. Public Utilities Commission* (1975) 51 Cal.App.3d 577, 584–585.)

Section 818, one of the statutes enacted as part of the Tort Claims Act, provides: "Notwithstanding any other provision of law, a public entity is not liable for damages awarded under Section 3294 of the Civil Code or other damages imposed primarily for the sake of example and by way of punishing the defendant."[1] Read in the context of the Tort Claims Act, section 818 means "a plaintiff who alleges injury caused by

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[1] Civil Code section 3294, subdivision (a) provides: "In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant."

a public entity may be entitled to *actual damages for that injury*, but not punitive damages." (*Kizer, supra,* 53 Cal.3d at p. 145, italics added.) Section 818 "was intended to limit the state's waiver of sovereign immunity and, therefore, to limit its exposure to liability for *actual compensatory damages* in tort cases." (*Kizer,* at p. 146, italics added.)

Punitive damages and compensatory damages serve different purposes. (*Marron v. Superior Court* (2003) 108 Cal.App.4th 1049, 1059 (*Marron*), citing *Cooper Industries, Inc. v. Leatherman Tool Group, Inc*. (2001) 532 U.S. 424, 432.) Compensatory damages "are intended to redress the concrete loss that the plaintiff has suffered by reason of the defendant's wrongful conduct." (*Cooper Industries,* at p. 432.) In contrast, punitive damages "operate as 'private fines' intended to punish the defendant and to deter future wrongdoing." (*Ibid*.) In determining compensatory damages, "[a] jury's assessment of the extent of a plaintiff's injury is essentially a factual determination, whereas its imposition of punitive damages is an expression of its moral condemnation." (*Ibid*.; *Marron,* at p. 1059.) Punitive damages are not compensation for loss or injury. (*Marron,* at p. 1059.)

"[S]ection 818 of the Government Code, in referring to 'damages imposed primarily for the sake of example and by way of punishing the defendant' contemplates . . . punitive damages [that] are designed to punish the defendant rather than to compensate the plaintiff. Punitive damages are by definition in addition to actual damages and beyond the equivalent of harm done." (*State Dept. of Corrections v. Workmen's Comp. App. Bd.*

(1971) 5 Cal.3d 885, 891 (*State Dept. of Corrections*); *Marron,* at p. 1060.) In contrast, "[d]amages which are punitive in nature, but not 'simply' or solely punitive *in that* they fulfill 'legitimate and fully justified *compensatory functions*,' have been held *not* to be punitive damages within the meaning of section 818 of the Government Code." (*People ex rel. Younger v. Superior Ct., Alameda Cty.* (1976) 16 Cal.3d 30, 35–36 (*Younger*), first and second italics added; see *Helfend v. Southern California Rapid Transit Dist.* (1970) 2 Cal.3d 1, 13, 14–16 (*Helfend*); *State Dept. of Corrections,* at p. 891.)

Helfend and *State Dept. of Corrections* are instructive. In *Helfend*, our Supreme Court considered whether the collateral source rule produced "punitive" damage awards that could not be imposed against a governmental entity under section 818.[2] (*Helfend, supra,* 2 Cal.3d at pp. 8–10.) Although the rule has a punitive aspect, in that it requires a tortfeasor to pay damages for an injury that an independent source has already compensated, the *Helfend* court held enforcement of the rule against a public entity nonetheless serves a compensatory function permitted under section 818. This is so, the court reasoned, because a collateral source, like insurance, is "a form of investment, the benefits of which become payable without respect to any other possible source of funds." (*Helfend*, at p. 10.)

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[2] The collateral source rule holds that "if an injured party receives some compensation for his injuries from a source wholly independent of the tortfeasor, such payment should not be deducted from the damages which the plaintiff would otherwise collect from the tortfeasor." (*Helfend, supra,* 2 Cal.3d at p. 6.)

Thus, enforcing the collateral source rule does not have the effect of paying a plaintiff compensation *greater than* that to which he is entitled for his investment. On the contrary, were a public entity tortfeasor permitted "to mitigate damages with payments from [a] plaintiff's insurance, [the] plaintiff would be in a position *inferior* to that of having bought no insurance, because his payment of premiums would have earned no benefit." (*Ibid.*, italics added.)

In *State Dept. of Corrections*, our Supreme Court held Labor Code section 4553, which requires the amount of recoverable workers' compensation to be increased one-half where the employer's serious and willful misconduct causes an employee's injury, does not impose punitive damages under section 818. (*State Dept. of Corrections, supra,* 5 Cal.3d at p. 891.) While the statute has a punitive aspect, in that it requires the employer "to pay a higher amount of compensation by reason of his serious and wilful misconduct," the court nonetheless reasoned it was designed not "to penalize an employer," but "to provide more nearly full compensation to an injured employee." (*Id.* at pp. 889–890.) As our high court explained, the workers' compensation act's " 'ordinary schedule of compensation' " is " 'not considered to be full and complete compensation for the injuries received,' " because the " 'risk of actual injuries' " under the system is " 'shared by employer and employee.' " (*Id.* at p. 889.) As such, the Legislature rationally deemed it " 'just if the injury was caused by willful misconduct of the employer [that] he should be made to pay a greater proportion of the burden,' " and, in that sense, " 'the additional

allowance is really for additional compensation . . . , and not for exemplary damages.' " (*Ibid.*; *E. Clemens Horst Co. v. Industrial Accident Commission* (1920) 184 Cal. 180, 193.) Because the statute has the effect of "more fully compensating the plaintiff for an industrial injury rather than penalizing the employer," the court held imposition of the increased award against a public entity does not violate section 818. (*State Dept. of Corrections,* at p. 891.)

This distinction between damages that are primarily punitive and those that also serve a compensatory function has "a fair and substantial relation" to the object of the Tort Claims Act and to promotion of "a number of legitimate state interests." (*Stanley v. City and County of San Francisco* (1975) 48 Cal.App.3d 575, 581.) "This is in part because punitive damages, unlike compensatory damages, are not recoverable as a matter of right." (*McAllister v. South Coast Air Quality Etc. Dist.* (1986) 183 Cal.App.3d 653, 659–660 (*McAllister*), citing *Finney v. Lockhart* (1950) 35 Cal.2d 161, 163 and *Brewer v. Second Baptist Church* (1948) 32 Cal.2d 791, 800.) "The basic justification for a punitive award is to punish the offender and to deter others from committing similar wrongs." (*McAllister,* at p. 660.) But this " 'deterrence element . . . adds little justification for [an exemplary damages] award against a [public entity]. In the first place it is to be assumed that the municipal officials will do their duty and if discipline of a wrongdoing employee is indicated, appropriate measures will be taken without a punitive award. [¶] Further, a huge award against [a public entity] would not necessarily deter other employees who generally would be

unlikely to be able to pay a judgment assessed against them personally.' " (*Ibid.*) On the contrary, " '[s]ince punishment is the objective, the people who would bear the burden of the award—the citizens—are the self-same group who are expected to benefit from the public example which the punishment makes of the wrongdoer.' " (*Ibid.*)

Thus, the Tort Claims Act draws a rational distinction by maintaining sovereign immunity from punitive damages that are "awarded to punish the defendant and to deter [outrageous] conduct in the future," while waiving immunity for normal tort damages that are "awarded for the purpose of compensating the plaintiff for injury suffered, i.e., restoring the plaintiff as nearly as possible to his or her former position." (*Kizer, supra,* 53 Cal.3d at pp. 146–147; *McAllister, supra,* 183 Cal.App.3d at pp. 659–661 [section 818 does not violate constitutional equal protection clause].) "Punitive or exemplary damages 'are not intended to compensate the injured party, but rather to punish the tortfeasor whose wrongful action was intentional or malicious.' " (*Kizer,* at p. 147.) Compensation is the essential condition. Tort damages that have a compensatory function, although also having a punitive aspect, are not "imposed primarily for the sake of example and by way of punishing the defendant" (Gov. Code, § 818), and a public entity is liable under the Tort Claims Act for the injuries those damages serve to compensate. (*Kizer,* at pp. 145–147; *Younger, supra,* 16 Cal.3d at pp. 35–36; *State Dept. of Corrections, supra,* 5 Cal.3d at pp. 890–891; *Helfend, supra,* 2 Cal.3d at p. 16.)

2. *Treble Damages under Section 340.1 Are Imposed to Punish and Deter Cover Ups, Not to Compensate a Plaintiff for Additional Injuries Suffered as a Result of a Cover Up*

Section 340.1 principally governs the period within which a plaintiff must bring a tort claim to recover damages suffered due to childhood sexual assault. (*Quarry v. Doe I* (2012) 53 Cal.4th 945, 952, 979.) In 2019, the Legislature amended the statute to extend the limitations period and, as relevant to this proceeding, to provide for the recovery of up to treble damages when a defendant's cover up of a minor's sexual assault has resulted in the subsequent sexual assault of the plaintiff. (Assem. Bill No. 218 (2019-2020 Reg. Sess.) § 1.)

Section 340.1, subdivision (b)(1) provides: "In an action [for recovery of damages suffered as a result of childhood sexual assault], a person who is sexually assaulted and proves it was as the result of a cover up may recover up to treble damages against a defendant who is found to have covered up the sexual assault of a minor, unless prohibited by another law." Because punitive damages are, by definition, "in addition to actual damages," the imposition of up to treble a plaintiff's actual damages under the statute plainly has a punitive component. (*State Dept. of Corrections, supra,* 5 Cal.3d at p. 888; Civ. Code, § 3294, subd. (a); see also *Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal.4th 381, 394 (*Imperial Merchant*) ["Treble damages are punitive in nature."]; *Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1172 [Unruh Civil Rights Act damages provision "allowing for an exemplary award of up to treble the

actual damages suffered with a stated minimum amount reveals a desire to punish intentional and morally offensive conduct."].) However, the critical question under section 818 is whether these damages are *primarily* punitive—that is, whether they are "simply and solely punitive" in that they do not "fulfill legitimate compensatory functions." (*Younger, supra,* 16 Cal.3d at p. 39; *Kizer, supra,* 53 Cal.3d at p. 145.)

Plaintiff maintains the legislative history of Assembly Bill No. 218 (A.B. 218)—the legislation that added treble damages to section 340.1—establishes the provision's compensatory purpose. Specifically, she relies upon a statement attributed to the bill's author in the final Assembly Floor Analysis of the legislation before it became law. The statement explains the "recovery of up to treble damages from the defendant who covered up sexual assault" is "clearly needed *both to compensate victims* who never should have been victims- and would not have been if past sexual assault had been properly brought to light- and also as an *effective deterrent* against individuals and entities who have chosen to protect the perpetrators of sexual assault over the victims." (Assem. Floor Analysis, Analysis of Assem. Bill No. 218 (2019-2020 Reg. Sess.) as amended Aug. 30, 2019, p. 2, italics added.) While the same statement shows up in several other Assembly Floor Analyses for A.B. 218, it appears to be the only reference to compensation related to treble damages in all the legislative history materials the parties have offered.[3]

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[3] We granted LAUSD's request for judicial notice of the legislative history materials presented to the trial court, and deferred ruling on three subsequent requests for judicial notice

Established rules of statutory construction require that we ascertain the intent of the enacting legislative body so we may adopt the construction that best effectuates the law's purpose. (*Hassan v. Mercy American River Hospital* (2003) 31 Cal.4th 709, 715.) We first examine the words of the statute themselves because the statutory language is generally the most reliable indicator of legislative intent. (*Ibid.*) If the language is clear on its face, we generally " 'do not inquire what the legislature meant; we ask only what the statute means.' " (*J.A. Jones Construction Co. v. Superior Court* (1994) 27 Cal.App.4th 1568, 1575 (*J.A. Jones*); see also Code Civ. Proc., § 1858 ["In the construction of a statute or instrument, the office of the Judge is simply to ascertain and declare what is in terms or in substance

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filed by LAUSD, plaintiff, and amicus curiae National Center for the Victims of Crime. We grant LAUSD's request to take judicial notice of the bill history for A.B. 218 as a record of official acts of the Legislature. (Evid. Code, § 452, subd. (c).) We also grant plaintiff's request as to the Fact Sheet prepared by the office of the bill's author, but we deny the request with respect to the news articles. (See *Carter v. California Dept. of Veterans Affairs* (2006) 38 Cal.4th 914, 928 [taking judicial notice of bill author's Fact Sheet].) The news articles cannot be used to establish the truth of the matter asserted and they do not provide additional information relevant to a material issue in this case. (See *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 544, fn. 4.) For the same reasons, we deny the amicus's request to take judicial notice of several journal articles discussing the psychological impact of childhood sexual abuse. We also deny plaintiff's request to take judicial notice of a letter to members of the Senate voicing opposition to A.B. 218 unless amended. (See *In re Marriage of Pendleton & Fireman* (2000) 24 Cal.4th 39, 47, fn. 6; *McDowell v. Watson* (1997) 59 Cal.App.4th 1155, 1161, fn. 3.)

contained therein, not to insert what has been omitted, or to omit what has been inserted . . . ."].)

Ambiguity is a different matter. When confronted with ambiguous statutory text, it may be appropriate to look to extrinsic sources, such as legislative history, for evidence of the Legislature's intent. (*J.A. Jones, supra,* 27 Cal.App.4th at p. 1576; see also Code Civ. Proc., § 1859 ["In the construction of a statute the intention of the Legislature . . . is to be pursued, *if possible* . . . ." (Italics added.)].) But even then, we are mindful that "reading the tea leaves of legislative history is often no easy matter." (*J.A. Jones,* at p. 1578.) Assuming there is such a thing as "meaningful collective intent, courts can get it wrong when what they have before them is a motley collection of authors' statements, committee reports, internal memoranda and lobbyist letters." (*Ibid.*) Related to this problem is the reality, on the one hand, that "legislators are often 'blissfully unaware of the existence' of the issue with which the court must grapple," and, on the other, that "ambiguity may be the deliberate outcome of the legislative process." (*Ibid.*)[4] In view of these considerations,

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[4] As the *J.A. Jones* court noted, judicial use of legislative history has come under formidable criticisms, including that "[l]egislative history has become contaminated by documents which are more aimed at influencing the *judiciary* after the bill is passed than explaining to the rest of the *legislature* what the bill is about before it is passed." (*J.A. Jones, supra,* 27 Cal.App.4th at p. 1577; see Eskridge, *The New Textualism* (1990) 37 UCLA L.Rev. 621, 643–644 [describing recurring skepticism about "the reliability of traditional linchpins of statutory interpretation, such as committee reports and sponsor's statements," as "specific explanations in those sources may well

"the wisest course is to rely on legislative history only when that history itself is unambiguous." (*Id*. at pp. 1578–1579, citing *Milligan v. City of Laguna Beach* (1983) 34 Cal.3d 829, 831 [legislative " 'purpose' " controlled where it had been stated in " 'unmistakable terms' "].)

A solitary statement repeated in some legislative analyses that treble damages are necessary to compensate victims of a cover up does not unambiguously demonstrate the Legislature in fact added the provision to section 340.1 for that purpose. Critically, the statement does not identify what injury these treble damages are needed to compensate. It refers only to "victims who never should have been victims," implying that the bill's author had the predicate sexual assault itself in mind—not some added injury resulting from the cover up that requires an added award of treble the plaintiff's actual damages. Moreover, the moral condemnation voiced in the statement—its invocation of "victims who *never should have been* victims" and "individuals and entities who have chosen to protect the perpetrators of sexual assault over the victims"—while plainly warranted, indicates the bill's author may have had a primarily punitive motivation for imposing treble damages in response to

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be strategic, rather than sincere, expressions of the statute's meaning"].) More fundamentally, critics have observed that "the idea that the diverse membership of a democratically elected legislature can ever have one collective 'intent' on anything is a myth; if there is ambiguity it is because the legislature either could not agree on clearer language or because it made the deliberate choice to be ambiguous—in effect, the only 'intent' is to pass the matter on to the courts." (*J.A. Jones,* at p. 1577.)

patently heinous conduct. Whether this was indeed the author's motivation is beside the point. The fact that this solitary statement is open to such inferences is enough for us to decline to embrace it as an unambiguous expression of the Legislature's intent. (See *J.A. Jones, supra,* 27 Cal.App.4th at pp. 1578–1579.)

In her return, plaintiff attempts to answer one of the questions left open by the proffered legislative history. She maintains the treble damages provision is needed, not for the sexual abuse itself, but to compensate for "the *additional harm* caused [to] a victim of sexual abuse who learns that the abuse was entirely avoidable by an entity defendant." (Italics added.) Elsewhere in her return plaintiff similarly contends the treble damages provision has a "compensatory element for the indescribable and unquantifiable damage suffered by a child who learns that the very entity charged with caring for him or her not only knew that the abuser had a propensity for sexual abuse, but also actively covered[ ]up evidence of such prior abuse."

It will no doubt be the case in some horrific instances that the victim of a childhood sexual assault will suffer additional psychological trauma upon learning those charged with his or her care and protection in effect facilitated the assault by aiding its perpetrator in a deliberate cover up of past sexual abuse. However, while the manifestations of this trauma may be largely subjective, damages to compensate for it are by no means unquantifiable, nor are they unavailable to the victim under normal tort damages principles.

"The general rule of damages in tort is that the injured party may recover for *all detriment* caused whether it could

have been anticipated or not. [Citations.] In accordance with the general rule, it is settled in this state that *mental suffering* constitutes an aggravation of damages when it naturally ensues from the act complained of, and in this connection mental suffering includes nervousness, grief, anxiety, worry, shock, humiliation and indignity as well as physical pain." (*Crisci v. Security Insurance Co. of New Haven, Conn.* (1967) 66 Cal.2d 425, 433, italics added.) Admittedly, terms like "fright, nervousness, grief, anxiety, worry, mortification, shock, humiliation, indignity, embarrassment, apprehension, terror or ordeal . . . refer to subjective states, representing a detriment which can be translated into monetary loss only with great difficulty. [Citations.] But the detriment, nevertheless, is a genuine one that requires compensation [citations], and the issue generally must be resolved by the 'impartial conscience and judgment of jurors who may be expected to act reasonably, intelligently and in harmony with the evidence.' " (*Capelouto v. Kaiser Foundation Hospitals* (1972) 7 Cal.3d 889, 892–893.)

Consistent with these principles, the standard jury instruction for tort damages tells jurors they must award a plaintiff, upon proof of the defendant's liability, full "compensation" in the form of monetary " 'damages' " for "*each item of harm* that was caused by [the defendant's] wrongful conduct." (CACI No. 3900, italics added.) This includes an award of noneconomic damages for all past and future physical pain, *mental suffering*, loss of enjoyment of life, disfigurement, physical impairment, inconvenience, *grief*, *anxiety*, *humiliation*, and *emotional distress.* (CACI No. 3905A.)

Plaintiff does not identify any injury from a childhood sexual assault or cover up for which normal tort damages fail to provide full compensation. Nor does the legislative history she presents. And we are unable to discern any uncompensated injury or unfulfilled right to compensation ourselves.[5] (Cf. *State Dept. of Corrections, supra,* 5 Cal.3d at pp. 889–891; *Helfend, supra,* 2 Cal.3d at p. 10.) On the contrary, the treble damages imposed under section 340.1 are, by definition, in addition to a plaintiff's actual damages, and the statute necessarily awards the plaintiff, upon proof of a cover up, damages "beyond the equivalent of harm done." (*State Dept. of Corrections,* at p. 891;

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[5] Amicus curiae National Center for the Victims of Crime suggests the treble damages provision works to compensate a victim more fully in cases when a school district's cover up results in sexual assault by "[a]llowing the finder of fact to use a damages multiplier to redistribute the collectability of the damages award from the judgment-proof former teacher to the morally culpable employer." The premise for the argument is amicus's assertion that jurors are likely to allocate a greater portion of the fault for childhood sexual abuse to the school employee who committed the abuse than to the institutional defendant that perpetrated a cover up. Suffice it to say, there is no evidence in the record to support this assertion. Moreover, as our Supreme Court recently reaffirmed that "California principles of comparative fault have never required or authorized the reduction of an intentional tortfeasor's liability based on the acts of others," amicus's concern that a victim could be denied the full share of compensation attributable to the injury caused by an institution's intentional cover up is unfounded. (*B.B. v. County of Los Angeles* (2020) 10 Cal.5th 1, 24 [holding Civil Code section 1431.2, subdivision (a) does not require reduction of an intentional tortfeasor's liability for noneconomic damages].)

Imperial Merchant, supra, 47 Cal.4th at p. 394 ["Treble damages are punitive in nature [citation] and punitive damages generally inure only to the person damaged."].) Because the treble damages provision under section 340.1 plainly is designed to punish those who cover up childhood sexual abuse and thereby to deter future cover ups, rather than to compensate victims, the imposition of these damages is primarily punitive under section 818. (*State Dept. of Corrections,* at p. 891.)

3. *The Tort Claims Act Governs Plaintiff's Tort Claims Against LAUSD; Authorities Concerning Civil Penalties Imposed to Enforce a Regulatory Scheme Are Inapposite*

Even absent a compensatory function, plaintiff argues section 340.1's treble damages provision is nevertheless beyond the purview of section 818 because it advances a nonpunitive "public policy objective." She maintains the provision's focus on cover ups reflects a legislative imperative to bring past childhood sexual abuse to light, and she argues the availability of treble damages advances this objective by offering victims an incentive to come forward to "end the pattern of abuse." Specifically, plaintiff contends treble damages are needed to "encourage those victims who experienced inappropriate encounters with sexual predators that may not have in-and-of themselves been egregious sexual abuse to come forward in a civil action." In those cases, she argues, "inappropriate conduct by a teacher may not give rise to substantial damage awards," but if damages are "enhanced up to three times the actual damages, a victim may be more likely to come forward which may help unravel an institution's

efforts to cover[ ]up and hide evidence of prior sexual assaults or inappropriate behavior."

Plaintiff's argument rests on a misapprehension of controlling Supreme Court authority. As we will explain, our high court has held section 818 does not apply to *civil penalties* that have the primary purpose of securing obedience to statutes and regulations imposed to assure important public policy objectives because those penalties lie outside the perimeters of a *tort action* and therefore are not subject to the Tort Claims Act. However, the court has not recognized a similar exception for exemplary *damages* that may be imposed in a statutorily created tort action like the one plaintiff has brought under section 340.1. In a tort action, as we have discussed, the essential condition that separates primarily punitive damages, for which a public entity maintains sovereign immunity under section 818, and normal tort damages having a punitive component, for which a public entity waives such immunity, is that the latter class of damages serves a *compensatory function*. Absent a compensatory function, punitive damages are just that—simply and solely punitive—under section 818.

In *Kizer*, our Supreme Court directly addressed whether "the Tort Claims Act in general, and Government Code section 818 in particular," are applicable to "statutory civil penalties imposed" under "a detailed regulatory scheme." (*Kizer, supra,* 53 Cal.3d at pp. 144–146.) The writ proceeding arose from a suit filed by the State Department of Health Services (Department) against the County of San Mateo's Department of Health Services (County) to assess civil penalties under the Long-Term

Care, Health, Safety, and Security Act of 1973. (*Kizer*, at pp. 141, 143–144.) The Department had licensed the County to operate a long-term health care facility that violated patient care regulations resulting in a patient's death. (*Id.* at pp. 141–144.) The County demurred, arguing the penalties were punitive or exemplary damages and section 818 forbids the imposition of such damages against a public entity. (*Kizer*, at p. 144.) The trial court sustained the demurrer and the appellate court affirmed, concluding the statutory penalty scheme did "not have a compensatory function" and, therefore, the high court's prior holding in *Younger* dictated that the penalties were punitive under section 818. (*Kizer,* at p. 144; cf. *Younger, supra,* 16 Cal.3d at p. 39 ["civil penalties imposed pursuant to [a statute] are not simply and solely punitive in nature [if they] fulfill legitimate compensatory functions and are not punitive damages within the meaning of Government Code section 818"].) The Supreme Court reversed.

Our Supreme Court held "the Tort Claims Act in general, and Government Code section 818 in particular, are not applicable" to civil penalties like those at issue in *Kizer*. (*Kizer, supra,* 53 Cal.3d at p. 144.) Addressing its prior holding in *Younger*, the high court explained that, in *Younger*, "it was not necessary to the resolution of the case to address the question of whether the Tort Claims Act was applicable to the civil penalties imposed" there, because those "penalties were compensatory as well as punitive" and, as such "they were not punitive damages

within the meaning of Government Code section 818."[6] (*Kizer,* at pp. 144–145.) "Unlike *Younger*," the *Kizer* court emphasized, "the present case specifically raises the question of whether the Tort Claims Act applies to the statutory civil penalties imposed by the Department." (*Id*. at p. 145.) In answering that question, the court "conclude[d] that nothing in the Tort Claims Act suggests that Government Code section 818 was intended to apply to statutory civil penalties such as the penalties at issue here." (*Ibid*.)

"The Tort Claims Act," the *Kizer* court emphasized, "specifies the cases in which a public entity is liable for *injuries* arising out of its acts or omissions, or those of its employees." (*Kizer, supra,* 53 Cal.3d at p. 145.) "The Tort Claims Act defines 'injury' as 'death, injury to a person, damage to or loss of property, or any other injury that a person may suffer to his person, reputation, character, feelings or estate, of such nature

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[6] *Younger* considered whether section 818 permitted civil penalties under the Water Code to be enforced against the Port of Oakland, a public entity, for an oil spill. (*Younger, supra,* 16 Cal.3d at pp. 34–39.) Although the penalty was admittedly punitive in that it sought to deter oil spills, the *Younger* court concluded the money collected was "not simply and solely punitive in nature" because it also served to "compensate the people of this state" for the unquantifiable damage to public waters and wildlife and to defray some of the costs of cleaning up waste and abating further damages. (*Id.* at pp. 37–39.) As the *Kizer* court explained, "[i]n essence, the *Younger* analysis presumed that Government Code section 818 was applicable and concluded that even if the Tort Claims Act applied, the port was liable for the civil penalties." (*Kizer, supra,* 53 Cal.3d at p. 144.)

that it would be actionable if inflicted by a private person.' " (*Ibid.*, quoting Gov. Code, § 810.8.) Thus, the *Kizer* court explained, "Government Code section 818 in context means that, under the Tort Claims Act, a plaintiff who alleges *injury caused by a public entity* may be entitled to actual damages for that injury, but not punitive damages." (*Kizer,* at p. 145, italics added.) Consistent with that interpretation, our Supreme Court observed there was "*nothing* in the Tort Claims Act to suggest that Government Code section 818 was intended to apply to statutory *civil penalties* designed to ensure compliance with a detailed regulatory scheme, . . . even though they may have a punitive effect." (*Id*. at p. 146, italics added.) "The Department's citation enforcement action," the *Kizer* court held, "lies *outside the perimeters of a tort action* and therefore does not readily lend itself to a liability analysis based on tort principles." (*Ibid.*, italics added.)

Admittedly, this court's past analysis of *Kizer* in *Los Angeles County Metropolitan Transportation Authority v. Superior Court* (2004) 123 Cal.App.4th 261 (*LACMTA*) failed to appreciate this critical distinction between tort claims, which are subject to the Tort Claims Act and section 818, and civil penalty claims, which lie outside the purview of those laws. In *LACMTA*, a different panel of this court considered whether section 818 exempts a public entity from liability for the $25,000 civil penalty authorized under the Unruh Civil Rights Act for the denial of certain specified rights. (*LACMTA,* at pp. 266–267; Civ. Code, § 52, subd. (b)(2).) For a number of independent reasons, the *LACMTA* court correctly concluded section 818 did not preclude

imposition of the penalty; however, as relevant here, one of those reasons was that the civil penalty served a "nonpunitive" purpose "to encourage private parties to seek redress through the civil justice system by making it more economically attractive for them to sue."[7] (*LACMTA,* at pp. 271–272.) The *LACMTA* court based this holding on *Kizer*, which the court read as creating an *exception* to section 818 when a civil penalty's "primary purpose [is] 'to secure obedience to statutes and regulations imposed to assure important public policy objectives.' " (*LACMTA,* at p. 274,

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[7] The *LACMTA* court also concluded section 818 did not preclude imposition of the civil penalties because (1) the Unruh Act "separately provid[ed] for exemplary damages *and* [the] civil penalty, [so] the Legislature obviously intended for the two categories of relief to be distinct from one another"; and (2) the penalty served to provide a "minimum compensatory recovery even in those cases where the plaintiff can show little or *no actual damages*." (*LACMTA, supra,* 123 Cal.App.4th at pp. 267, 271, second italics added.) The former reason was plainly correct and consistent with the *Kizer* court's holding that civil penalties are beyond the purview of the Tort Claims Act and section 818. (*Kizer, supra,* 53 Cal.3d at pp. 145–146.) The latter reason is more dubious in view of our Supreme Court's clear pronouncement that damages are punitive under section 818 when they are "in addition to actual damages and beyond the equivalent of harm done." (*State Dept. of Corrections, supra,* 5 Cal.3d at p. 891 & fn. 2, citing Rest., Contracts, § 342, com. a, p. 561 ["All damages are in some degree punitive and preventive; but they are not so called unless they exceed just compensation measured by the harm suffered."].)

quoting *Kizer, supra,* 53 Cal.3d at pp. 147–148.) This analysis misread *Kizer*.[8]

As discussed, the Supreme Court in *Kizer* held section 818 *does not apply* to civil penalties because those penalties are designed to provide a mechanism for enforcing a regulatory scheme, not to redress *tort* "injury" within the meaning of the Tort Claims Act. (*Kizer, supra,* 53 Cal.3d at pp. 145–146.) Indeed, the passage quoted in *LACMTA* was part of the *Kizer* court's broader discussion of the differences between statutory civil penalties and *tort damages* that the court catalogued to emphasize this point. The paragraph that precedes the discussion in *Kizer* makes clear that it was not the vindication of important public policy objectives that removed the civil penalties

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[8] The *LACMTA* court also opined that the "critical reason the penalties were sustained by the *Kizer* court, despite their punitive aspect, was that they served a *compensatory* function." (*LACMTA, supra,* 123 Cal.App.4th at p. 274.) This too admittedly misreads *Kizer*. As the Supreme Court made clear, the critical distinction between the civil penalties in *Kizer* and those the high court previously addressed in *Younger* was that the "Water Code penalties [in *Younger*] were compensatory as well as punitive," while the statutory penalty scheme in *Kizer* did "not have a compensatory function." (*Kizer, supra,* 53 Cal.3d at pp. 144–145.) Thus, it was "not necessary" in *Younger* "to address the question of whether the Tort Claims Act was applicable to the civil penalties imposed under the Water Code." (*Kizer,* at p. 144.) But "[u]nlike *Younger*," because the civil penalties in *Kizer* did not have a compensatory function, the case "specifically raise[d] the question of whether the Tort Claims Act applies to the statutory civil penalties imposed by the Department." (*Id*. at p. 145.)

from section 818's purview; rather, it was the fact that those sanctions were not predicated on a tort injury:

> "In our view, Government Code section 818 was not intended to proscribe all punitive sanctions. Instead, the section was intended to limit the state's waiver of sovereign immunity and, therefore, to limit its exposure to liability for actual compensatory damages *in tort cases*. The Tort Claims Act must be read against the background of *general tort law*. [Citation.] Against that background, *the Tort Claims Act does not apply to the type of sanction that the Legislature has imposed in this case to enforce the Act's regulatory scheme*. Under the Long-Term Care, Health, Safety, and Security Act of 1973, the essential prerequisite to liability is a violation of some minimum health or safety standard rather than '*injury*' or '*damage*.' Consequently, we do not believe that the Legislature intended the immunity created by Government Code section 818 to apply to statutory civil penalties expressly designed to enforce minimum health and safety standards."

(*Kizer,* at p. 146, italics added, fn. omitted; see also *Burden v. County of Santa Clara* (2000) 81 Cal.App.4th 244, 252–253 [recognizing *Kizer* is inapplicable because "Labor Code section 970 creates a statutory tort cause of action"].)

Even if we agreed with plaintiff that the treble damages provision might incentivize victims to file claims for childhood sexual assault, this supposed public policy objective does not remove the enhanced damages provision from section 818's purview. Treble damages under section 340.1 are available only in "an action for recovery of damages suffered as a result of childhood sexual assault" (Code Civ. Proc., § 340.1, subds. (a) & (b)(1))—in other words, in a *tort action for damages* subject to the Tort Claims Act and section 818. (*Kizer, supra,* 53 Cal.3d at pp. 145–146.) Unlike the civil penalties at issue in *Kizer*, to obtain treble damages under section 340.1, plaintiff must prove she suffered actual harm. (Cf. *Kizer,* at p. 147 ["Civil penalties under the Act, unlike damages, require no showing of actual harm per se."].) Unlike civil penalties, treble damages under section 340.1 require the defendant to have engaged in willful misconduct by deliberately covering up past childhood sexual abuse. (Cf. *Kizer,* at p. 147 ["The civil penalties under the Act can be imposed for negligent conduct and it is not necessary . . . [to] prove that a health facility's actions in violating specific health and safety regulations are malicious, wilful, or even intentional."].) And, critically, while civil damages are mandatory upon proof of a violation, "*up to* treble damages" under section 340.1 are imposed at the discretion of the fact finder upon proof that childhood sexual abuse resulted from the defendant's cover up. (Code Civ. Proc., § 340.1, subd. (b)(1), italics added; *Kizer,* at p. 148, citing *Beeman v. Burling* (1990) 216 Cal.App.3d 1586, 1598 ["Thus, while both exemplary damages and statutory damages serve to motivate compliance

with the law and punish wrongdoers, they are distinct legal concepts, one of which is entrusted to the factfinder, the other to the Legislature."]; see also *Marron, supra,* 108 Cal.App.4th at p. 1059 [a jury's " 'imposition of punitive damages is an expression of its moral condemnation' "].)

As our Supreme Court's authorities uniformly teach: "Government Code section 818 in context means that, under the Tort Claims Act, a plaintiff who alleges injury caused by a public entity may be entitled to actual damages for that injury, but not punitive damages." (*Kizer, supra,* 53 Cal.3d at p. 145.) In referring to " 'damages imposed primarily for the sake of example and by way of punishing the defendant,' " section 818 "contemplates . . . punitive damages [that] are designed to punish the defendant rather than to compensate the plaintiff." (*State Dept. of Corrections, supra,* 5 Cal.3d at p. 891.) All punitive awards serve a public policy objective by deterring future misconduct; however, it is only when those damages also "fulfill 'legitimate and fully justified *compensatory functions*' " that they are to be regarded as "not 'simply' or solely punitive" under section 818. (*Younger, supra,* 16 Cal.3d at pp. 35–36, italics added.) The treble damages provision in section 340.1 does not have a compensatory function; its primary purpose is to punish past childhood sexual abuse cover ups to deter future ones. While this is a worthy public policy objective, it is not one for which the state has waived sovereign immunity under the Tort Claims Act. (See *Kizer,* at pp. 145–146.) A public entity like LAUSD is immune from these enhanced damages under section 818.

DISPOSITION

The writ is granted. The trial court is directed to enter an order granting LAUSD's motion to strike the treble damages request and related allegations of the complaint. LAUSD is entitled to its costs, if any.

CERTIFIED FOR PUBLICATION

EGERTON, J.

We concur:

EDMON, P. J.

SALTER, J.*

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* Judge of the Orange County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 234 East Colorado Boulevard, Suite 975, Pasadena, CA 91101.

On the date set forth below, I served the foregoing document(s) described as follows: **PETITION FOR REVIEW**, on the interested parties in this action by placing ___ the original/ X a true copy thereof enclosed in a sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

☒ BY ELECTRONIC SERVICE VIA TRUEFILING Based on a court order, I caused the above-entitled document(s) to be served through TrueFiling at https://www.truefiling.com addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the TrueFiling Filing Receipt Page/Confirmation will be filed, deposited, or maintained with the original document(s) in this office.

☒ STATE I declare under penalty of perjury that the foregoing is true and correct.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on June 30, 2021 at Honolulu, Hawaii.

s/ Kelsey Wong
Kelsey Wong

SERVICE LIST

Los Angeles Unified School District v. The Superior Court of Los Angeles County

(S_____ | B307389 | BC659059)

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California Court of Appeal
SECOND APPELLATE DISTRICT, DIVISION 3
Ronald Reagan State Building
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2nd Floor, North Tower
Los Angeles, CA 90013

Appellate Court (Unbound Brief Via Mail Only)

Hon. Shirley K. Watkins
LOS ANGELES COUNTY SUPERIOR COURT
Van Nuys Courthouse East, Dept. T
6230 Sylmar Avenue
Van Nuys, CA 91401

Trial Court (Unbound Brief Via Mail Only)

STATE OF CALIFORNIA
Supreme Court of California

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Supreme Court of California

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Case Number: **TEMP-Q2ZHP4PJ**
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Date

/s/Kelsey Wong

Signature

Boyer, Holly N. (221788)

Last Name, First Name (PNum)

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