

S269608

**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**

**APPLICATION TO FILE AMICUS BRIEF AND AMICUS ON BEHALF OF
THE RESPONDENT**

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APPLICATION TO FILE AMICUS BRIEF

Pursuant to Rule 29.1(f) of the California Rules of Court, Amicus, the Hesperia Unified School District, respectfully requests leave to file the attached brief of Amicus curiae in support of all respondents. This application is timely made pursuant to California Rules of Court, Rule 8.882.

INTEREST OF AMICUS CURIA

The Hesperia Unified School District is a California School District and public entity. The simple legal issue presented in this matter is whether the California Civil Procedure Code § 340.1 permits treble damages against public institutions such as Amicus, when an aspiring plaintiff alleges a coverup of prior incidents of sexual abuse, the discovery of which might have prevented a subsequent sexual assault. The foregoing issue is to be resolved vis-à-vis California Government Code § 818 which grants immunity to public entities from damages granted primarily to punish the defendant. Amicus will be directly affected by this Court's ruling in this direction, since the Hesperia Unified School District (also "the District") occupies the very same position and is legally susceptible to the same arguments being advanced by Jane Doe (also the "Petitioner") in this case.

Amicus was embroiled in a case featuring the very same issues lately, and the Court of Appeals ruled in its favor, holding that the treble damages at issue are indeed impermissible punitive damages from which the Amicus – as a public entity – is shielded by statute. The appellate court’s order was issued on September 16, 2021 and designated as the following: (*X.M. v. Superior Ct.* (2021) 68 Cal.App.5th 1014.) (Also “X.M.”) The plaintiff in X.M. has sought review with this Court and seeks to defer the matter pending a ruling in this case. A ruling that treble damages may be assessed against public entities in this case will directly affect any litigation in which a plaintiff seeks treble damages against Amicus. For these reasons, Amicus has a substantial interest in the outcome of this proceeding.

BRIEF OF AMICUS CURIAE

INTRODUCTION¹

While Jane Doe (also “the Petitioner”) delves deeply into the facts of her case in her brief, the issues to be considered by this Court here are quite simply legal ones and need not be so shrouded. Amicus does not intend to trivialize the odious evils of sex abuse, but facts necessarily vary from case to case, from the relatively clinical to the especially lurid. For example, in Amicus’ own case,² Amicus presented evidence that there was in fact no coverup,³ that it did contact law enforcement which investigated the alleged prior sexual misconduct at the pertinent times and that the investigation did not culminate in Amicus’ employee getting criminally charged. In the instant case, Amicus adopts the facts as laid out by the Court of Appeals. At issue is whether the Petitioner may seek treble damages under California Civil Procedure Code § 340.1 (also “§ 340.1”) in light of the existence of California Government Code § 818 (also “§ 818”) which was

¹ The Amicus Brief cites to case law and statutes in the argument section for all of its contentions, but omits same in the introductory section which is meant as a summary of arguments to come.

² (*X.M. v. Superior Ct.* (2021) 68 Cal.App.5th 1014.)

³ Amicus in fact requested that the trial court take judicial notice that the plaintiff’s counsel in its own case knew that the prior alleged sexual misconduct had been investigated. The trial court declined to do so.

specifically designed by the California Legislature to immunize public entities from the imposition of such punitive damages. Distilled to its fundamentals, the issue to be considered is whether the treble damages featured in § 340.1 are punitive in nature.

The Petitioner presents a tortured interpretation of § 818. Compensatory damages are available to aspiring plaintiffs to presumably make them whole in the first instance, and there are extremely limited circumstances – which are not in play here – under which it might be said that treble damages are not inherently punitive. The foregoing is precisely the case because a plaintiff, as a predicate, must have already been awarded compensatory damages before treble damages might then be considered and implemented discretionarily by the factfinder. Both of the foregoing statutes must be harmonized, or one must render the other nugatory. The clarion clear exemption of public entities by statute from such punitive damages should not be lightly set aside, nor was there any indication considering the legislative notes that public entities have now come within the ambit of punitive damages which the treble damages represent. Los Angeles Unified School District (also “the Respondent”) was eminently justified in its

reliance upon § 818 in moving to strike the Petitioner's claim of treble damages.

The Legislature's concerns in exempting public entities from punitive damages is well documented.⁴ It has been noted by this Court in precedents that the goals of deterrence and punishment are defanged and inapplicable when the defendant is a public entity. Such punitive damages redound to the taxpayers' detriment, as a public entity is necessarily an inanimate, corporeal body funded by the citizens, which itself is incapable of malicious acts divorced from the acts of its employees. Trebling the damages, particularly in light of the fact that sexual abuse cases are resolved – whether by settlement or by trial – for astronomical figures would cripple the budgets of public entities and divert much needed funds away from their intended use. The Legislature is presumed to be aware of preexisting statutes, even as it passes new ones. The apparent proliferation of sex abuse cases – as unfortunate as it is – does not abate these economic concerns.

If the Legislature intended to make the application of treble damages absolute in every circumstance, it was certainly within the ambit of its powers to do so. Instead, the Legislature deliberately and

⁴ As discussed in greater detail in the body of this brief.

explicitly made treble damages applicable solely where tolerated by preceding statutes. Since preceding statutes include one which expressly exempts public entities from punitive damages, the treble damages at issue here should remain inapplicable to public entities such as the Respondent and Amicus. The Petitioner's position would render the Legislature's clear direction that treble damages only be available where permissible by law meaningless. It is not to be lightly assumed that the Legislature's preoccupation with forestalling instances of the sex abuse of minors relegated its economic concerns as it relates to public entities to a secondary posture. The Legislature has not said as much, and indeed if public entities are drained of the resources that they require to function, aspiring plaintiffs would find no forum within which to initiate litigation.

The fatal flaw that tinges all of the Petitioner's arguments is that the fundamental goal of compensatory damages is to make a plaintiff whole. It follows then, that anything above and beyond compensatory damages does not inure towards making the plaintiff whole; such damages must serve other purposes. In her brief, the Petitioner continuously conflates statutory penalties which are typically a flat fee imposed by the Legislature on defendants who defy certain rules, with

punitive damages or treble damages. There is a wide gulf between statutory penalties and treble damages; they are entirely divergent creatures. There is no statute shielding public entities from statutory penalties, after all what the Legislature giveth, it might yet choose to take away. This is to be contrasted with punitive damages which the Legislature rather pointedly chose to immunize public entities from.

The Petitioner's frequent contention that treble damages would serve the alternate function of compensating plaintiffs for "the hardship, pain and grief in coming forward and initiating a lawsuit" is both incredible and legally untenable.⁵ Compensatory damages include an award to a plaintiff for all of the harm – physical and emotional, economic and noneconomic – that flow from when the sexual abuse began, and encompass past, present and future damages considerations. The Petitioner's suggestion, that the hardship of enduring the initiation of litigation – which is extremely limited in duration – requires *tripling* compensatory damages *which consider the entire span of the plaintiff's life from the moment the sexual abuse began* seems fairly absurd viewed in this light. Moreover, the time during which the litigation flourishes is not exempted from consideration when compensatory

⁵ Petitioner's Brief, p. 11.

damages are being considered. Rather, the duration of the litigation is an integral part of the calculations to be made when considering damages.

ARGUMENT

I. California Government Code § 818 Immunizes Public Entities from Punitive Damages

“When a statute recognizes a cause of action for a violation of a right, all forms of relief granted to civil litigants generally, including appropriate punitive damages, are available *unless a contrary legislative intent appears.*” *Turnbull & Turnbull v. ARA Transportation, Inc.* (1990) 219 Cal.App.3d 811, 826.) Such a contrary intent may be found in the Government Tort Act, which bestows sovereign immunity upon the State of California, save for specific exceptions as carved out by statute. Legislative intent as expressed in § 818 could not be more explicit. The statute simply states in pertinent part that “[n]otwithstanding 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.*” § 818 (emphasis added). California Civil Code § 3294 specifically excludes breach of obligations not

predicated upon contracts, leaving tort claims as § 818's principal target. As this Court explained:

Government Code section 818 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. This section was added to the code upon the recommendation of the California Law Revision Commission, which commented: '*Public entities should not be liable for punitive or exemplary damages*' (Recommendation Relating to Sovereign Immunity, 4 Cal.Law Revision Com. Rep. (Jan.1963) p. 817.) Damages 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.* (1976) 16 Cal.3d 30, 35-36.) (internal citations omitted).

"Government Code section 818 in context means that a plaintiff who alleges injury caused by a public entity may be entitled to actual damages for that injury, but not punitive damages." (*Marron v. Superior Ct.*, (2003) 108 Cal.App.4th 1049, 1059.) (internal citations omitted). Punitive damages and compensatory damages are imposed by courts for different reasons. The Court of Appeals was correct in adhering to statutory language which plainly states that if damages are imposed "primarily" for the sake of making an example of a defendant, or for punishment, then the defendant public entity is not susceptible to

punitive damages. As this Court has held, “public entities shall not be liable for punitive or exemplary damages. *Such damages are imposed to punish a defendant for oppression, fraud or malice. They are inappropriate where a public entity is involved, since they would fall upon the innocent taxpayers.*” (*State Dep't of Corr. v. Workmen's Comp. App. Bd.* (1971) 5 Cal.3d 885.)

The Petitioner contends that “[d]espite 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.”⁶ To arrive at the foregoing conclusion, the Petitioner blithely ignores the fact that the Legislature expressed strong concerns that the taxpayers not be burdened by punitive damages leveled against public entities. The Petitioner equally ignores the fact that treble damages or punitive damages are not leveled against defendants so that plaintiffs might be “more fully compensated”⁷. Treble damages or punitive damages have no connection to a given plaintiff; rather they are assessed against a given defendant for

⁶ Petitioner’s Brief, p. 19.

⁷ Petitioner’s Brief, p. 8.

punishment or deterrence. The Legislature was entirely capable of declaring that treble damages are mandatory in every instance, but it declined to do so. Instead, the Legislature made treble damages available only so long as their availability comports with existing law.

The Petitioner's contention that "[i]n the context of childhood sexual abuse, the Legislature has long repudiated the notion that a victim of childhood sexual abuse be treated differently simply because the molester worked for a public rather than a private entity – yet that is the result under the Court's interpretation"⁸ is unsound. Plaintiffs are always free to initiate litigation against the molester and even the public entity that he or she worked for. Treble damages are discretionary by the factfinder. A victim is not being treated differently merely because damages to which he or she is not entitled in the first place are withheld. The goal of punitive damages is not to compensate the victim. It is for deterrence purposes, and to punish the offending entity. That such damages have the effect of increasing the amounts awarded to a victim is merely incidental; the same goal would be accomplished if the damages were to be donated to the Red Cross, for example.

⁸ *Id.* at p. 12.

The Petitioner cites a number of cases which are wholly inapposite to the facts as they exist here. She cites (*Kizer v. Cty. of San Mateo* (1991) 53 Cal.3d 139, 147.), as modified (Mar. 28, 1991) for the proposition that “Government Code Section 818 was not intended to proscribe all punitive sanctions.”⁹ Notably, this Court was considering statutory civil penalties imposed by the Legislature as opposed to treble damages imposed by a factfinder in that case. Hence, this Court held that “. . . 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.” *Kizer*, 53 Cal.3d at 148. (Emphasis added). Civil penalties are a far cry from treble damages; the former are mandatory statutory impositions whereas the latter are discretionary by the factfinder.

Additionally, *Kizer* involved civil penalties under the Long-Term Care, Health, Safety, and Security Act of 1973 (Health & Saf. Code, § 1417 et seq.), a statute establishing health and safety standards for care facilities to protect and prevent injury to patients. *Kizer*, 53 Cal.3d at p. 146. This Court in *Kizer* concluded section 818 was

⁹ Petitioner’s Brief, p. 19

inapplicable because actions brought under the Long-Term Care, Health, Safety, and Security Act are not tort actions and therefore are *not* governed by the Tort Claims Act or section 818. *Kizer*, 53 Cal.3d at pp. 145-146, 150. That is a completely different analysis than applying section 818's application to the damages described in Code of Civil Procedure § 340.1.

As has been held by this Court:

Appellant correctly points out that *the judge or jury, as the case may be, has the authority to decide whether and what amount of punitive damages should be awarded. In contrast, statutory damages are set by a legislative body; while the factfinder must still determine whether such damages are to be awarded, if they are granted the amount is fixed by statute.* Statutory damages may either take the form of penalties, which impose damages in an arbitrary sum, regardless of actual damages suffered or, as in the instant case, may provide for the doubling or trebling of the actual damages as determined by the judge or jury (*Beeman v. Burling* (1990) 216 Cal.App.3d 1586, 1597-98.) citing (6 Witkin, Summary of California Law, Torts, (9th ed. 1987) §§ 1332–1333, at pp. 790–791 (internal citations omitted).

Similarly, Petitioner cites this Court's opinion in *People ex rel. Younger v. Superior Ct.*, 16 Cal.3d 30, 544 P.2d 1322 (1976) which held thus: “[a]s we explained in *Younger*, damages which are punitive in nature, but are 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 Government Code Section 818.”¹⁰ Petitioner’s reliance on *Younger*, is equally misplaced. The Petitioner fails to grasp that this Court was distinguishing between statutory civil penalties which may in fact have a compensatory aim, and treble damages which do not, as applied to section 818. As this Court has held, summarizing *Younger* in a subsequent case:

Younger involved a discharge of oil into the Oakland Estuary from privately owned oil storage tanks located on property owned by the Port of Oakland, a public entity. At an administrative hearing, it was determined that both the port and the private property owner were responsible for the discharge. *The state brought an action against both responsible parties for civil penalties under Water Code section 13350, subdivision (a).* The port brought a motion for judgment on the pleadings on the basis of section 818, and the trial court granted the motion. *We vacated the judgment on the pleadings because we found that the statutory penalties imposed were not punitive damages within the meaning of section 818.*

In *Younger, supra*, 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 under the Water Code. *We did not need to address this question since we determined that the civil penalties were not punitive damages within the meaning of Government Code section 818. In essence, the Younger analysis presumed that section 818 was applicable and concluded that even if the Tort Claims Act applied, the port was liable for the civil penalties. Kizer, 53 Cal.3d at 144, 806 P.2d at 1356 (internal citations omitted).*

¹⁰ *Id.*

Younger is to be contrasted with the instant case, where the issue is treble damages as opposed to statutory penalties. Statutory or civil penalties may have a compensatory objective. Civil penalties may be imposed to encourage affected parties who may not be otherwise motivated because damages may be nominal in value to nevertheless initiate litigation. No such incentive is needed in sexual assault cases which settle for a large amount of damages, usually in the millions of dollars range.¹¹ Treble damages, barring very narrow exceptions not

¹¹See e.g. *Jane Doe I, Jane Doe II and Jane Doe III v. Roe School District, Roe Teacher I and Roe Teacher II*, 2009 WL 6059616 which settled for a total amount of \$6 million; See also, *Doe Minor vs. Los Angeles Unified School District*, 25 Trials Digest 2d 65 (1996), which settled for \$1,216,000; see *J.D., Pro Ami v. Alhambra United School District*, JVR No. 1609130057 (2016), which settled for \$1,750,000. See *Confidential v. Orange Center Elementary School District*, 31 Trials Digest 19th 23 (2016), which settled for \$3,400,000. See *M.G., Pro Ami v. Alhambra Unified School District*, JVR No. 1609230019 (2014), which settled for \$3,950,000. See *K.M., Pro Ami v. Grossmont Union High School District*, JVR No. 1904080012 (2019), which settled for \$735,000. See *A.N.P. v. Fosgett; Murietta Valley Unified School District; Mooney*, JVR No. 1905160054 ((2018), which settled for \$1,488,600. See *Jane CJD Doe, et. al.; John FRR Doe, et. al. v. Los Angeles Unified School District; Ronnie Lee Roman; Jaime Jimenez*, 18 N.W.P.I. Lit. Rpts. 302 (2019) which settled for a \$22 million. See *S.W., Pro Ami v. Westerly School of Long Beach; Durzo*, JVR No. 1807130052 (2018) which settled for \$25,300,000. *Pro Ami v. Alhambra Union High School District*, JVR No. 1512180025 (2015) which settled for \$1,900,000. *J.C. v. Visalia Unified School District*, 20 Trials Digest 18th 3 (2014), which settled for \$5 million; See *Confidential v. Moraga School District*, 30 Trials Digest 17th 30 (2014), which settled for \$14 million. See *Confidential v. Pajaro Valley Unified School District*, 16 Trials Digest 17th 24 (2014), which settled for \$3 million. See also, *E.H. vs. Chino Valley Unified School District*, 29 Trials Digest 16th 19 (2012), which settled for \$5,590,000. (All sources were derived from “California Jury Verdicts” on Westlaw).

applicable here, are punitive in nature and have no compensatory aim. Hence the Petitioner's contention that "[t]he Court of Appeal here set aside this Court's 'simply' and 'solely' language and held that so long as the *primary* purpose of the remedy is punitive, Section 818 applies to shield the public entity of liability" is untenable, where it relies on *Younger* and *Kizer, supra*.¹² There is not a single one of the cases cited by the Petitioner for the foregoing proposition which did not feature a statutory civil penalty, as opposed to damages to be awarded by the factfinder beyond compensatory damages.

The Petitioner's brief was entirely devoid of a single California case in which treble damages was deemed not to be punitive in nature. She does cite to a federal case which is not analogous to our facts, and which is not even of persuasive value. Nevertheless, even a cursory review of the case shows that it is entirely inapplicable to the issues here. In *Molzof v. United States*, 502 U.S. 301 (1992), the plaintiff filed suit on behalf of her husband who died eventually from oxygen deprivation after employees of the Veterans' Administration hospital were concededly negligent. The plaintiff sought award of damages for

¹² (*San Francisco Civ. Serv. Assn. v. Superior Ct.* (1976) 16 Cal.3d 46.) as cited by the Petitioner similarly suffers the same deficiency; that case involved a statutory civil penalty.

future medical expenses and her husband's loss of life which was denied by the trial court and affirmed by the Seventh Circuit Court on the grounds that such an award would be "punitive in its effect." *Id.* at 304.

The U.S. Supreme Court overruled, agreeing with the plaintiff's definition of punitive damages. As the court framed it "Petitioner argues that § 2674 must be interpreted so as to permit awards against the United States of those state-law damages which are intended by state law to act as compensation for injuries sustained as a result of the tort, and to preclude awards of damages which are intended to act as punishment for egregious conduct." *Molzof*, 502 U.S. at 305. Hence, the *Molzof* plaintiff was actually seeking compensatory damages when her claims are considered, regardless of what they were labeled. Contrary to the Petitioner's contentions, *Molzof* has no application here. Section 340.1 contemplates all conceivable manner of compensatory damages due to a victim of sexual assault, including future damages. Treble damages here are purely in excess of compensatory damages.

The Petitioner's brief is riddled with cases that simply have no connection with the concerns here, and which do not illumine the issue

of whether treble damages as used in the statute may be considered punitive damages. (*Kelly v. Yee* (1989) 213 Cal.App.3d 336.), for example involved civil penalties, which again, cannot be analogized to the treble damages at issue here. And there can be no serious contention that the damages at issue in sexual abuse cases are so de minimis that minors would not come forward with viable cases, when damages in such cases contemplate all conceivable damages, including those to be accrued in the future. Similarly, *Ortega v. Pajaro Valley Unified Sch. Dist.* (1998) 64 Cal.App.4th 1023.), has nothing to offer in this case. It is unclear why the Legislature would seek to compensate plaintiffs for hardship, pain and grief for initiating a lawsuit through a provision for treble damages, if such are not permissible to begin with. *MacCharles v. Bilson* (1986) 186 Cal.App.3d 954.) likewise does not illumine any issues in this case.

II. The Treble Damages Set Forth in the Section 340.1 is Primarily Punitive

Because – by design – treble damages are triple the amount of actual damages, they are generally considered to be inherently punitive. “In more than 30 instances, the Legislature has provided for double or treble damages as a punishment for wrongful acts.” (*Lane v. Hughes Aircraft Co.* (2000) 22 Cal.4th 405, 425.) as modified (May 10, 2000)

(concurring opinion, J. Brown). It has been held time and again that treble damages are nearly always “punitive in nature.” *Scholes v. Lambirth Trucking Co.* (2020) 8 Cal.5th 1094, 1103; *Lacagnina v. Comprehend Systems, Inc.* (2018) 25 Cal.App.5th 955, 972, as modified (Aug. 14, 2018); *Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal.4th 381, 394; *Lane v. Hughes Aircraft Co.* (2000) 22 Cal.4th 1152A, 419, as modified (May 10, 2000); *Troensegaard v. Silvercrest Industries, Inc.* (1985) 175 Cal.App.3d 218, 226; *Circle Oaks Sales Co. v. Smith* (1971) 16 Cal.App.3d 682, 684–685.

Here, Government Code § 340.1 provides that “(b)(1) In an action described in subdivision (a), *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.*” Plainly, Code of Civil Procedure § 340.1 cannot at once be both compensatory and punitive as the Petitioner contends; a legal absurdity which would mean that the rationale for both types of damages are at cross-purposes. The Petitioner’s brief admits that her intent is to seek a double recovery where she states: “but also aim to more fully compensate the victim . .

.’¹³ A fully compensated victim cannot be “more fully compensated.” The Petitioner’s position is all the more untenable, because where two sources of damages have the same purpose, such is impermissible by law. As this Court has ruled, “[W]here the social objectives pursued by two categories of damages sought in one cause of action are the same, an award for both would create a double recovery.” *Los Angeles Cty. Metro. Transportation Auth.*,¹²³ Cal.App.4th at 268. Hence, the Petitioner is not allowed by law to seek compensatory damages, and thereafter seek further compensatory damages, but this time via treble damages. In the case of punitive damages, such damages are imposed for their deterrence potential, as well as to punish the tortfeasor. *Id.* As has been previously held:

Compensatory damages “are intended to redress the concrete loss that the plaintiff has suffered by reason of the defendant's wrongful conduct. *In contrast, punitive damages operate as private fines intended to punish the defendant and to deter future wrongdoing.* 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. Punitive damages are not compensation for loss or injury. *Marron*, 108 Cal.App.4th at 1059.

¹³ Petitioner’s Brief, p. 8.

Once a plaintiff has been “compensated” for his damages, it goes to reason that any extra damages paid to the plaintiff – regardless of whether they are labeled punitive, exemplary or treble damages – are not compensatory in nature, the Plaintiff having already been made whole. “Punitive damages must bear a reasonable relationship and be proportionate to the actual harm suffered by the plaintiff (i.e., compensatory damages). *Marron v. Superior Ct.*, 108 Cal.App.4th 1049, 1059–60, 134 Cal.Rptr. 2d 358, 365 (2003). “*Punitive damages are by definition in addition to actual damages and beyond the equivalent of harm done.*” *Marron*, 108 Cal.App.4th 1062, 134 Cal.Rptr. 2d 367–68. Tripling the damages does not involve a careful calculation of what it might take to make a plaintiff whole, that goal having already been accomplished. Rather, tripling the compensatory damages is an arbitrary act that bears no rational relation to making a plaintiff whole. This characteristic makes treble damages almost always an avenue for punishing a defendant. This Court once found distinguishing punitive damages from compensatory damages, the essence of simplicity. As this Court held at the time:

There is no problem, in general, in distinguishing between compensatory damages and punitive damages. This court has stated that the latter are assessed to punish a defendant, whereas the purpose of compensatory damages is to

compensate a plaintiff for his losses. *By definition, punitive damages are in addition to actual damages and they exceed just compensation. State Dep't, 5 Cal.3d at 888 citing (Rest., Contracts, s 342, com. a, at p. 561).*

This Court was correct at the time it made the ruling above. Punitive damages are quite simply damages over and above what it would take to make a Plaintiff whole, and the conclusion appears inescapable in this case that the treble damages are punitive. There is this major consideration: *A minor who is sexually abused when there was no cover up is no less injured than one who was sexually abused as a result of a cover up.* Nevertheless, the minor who was abused in the absence of a cover up has no access to treble damages. This feature establishes that the treble damages here are punitive in nature, because access to it is determined by the egregiousness of the defendant's conduct, and not by the needs of the plaintiff. Framed this way, the Petitioner's contention that the treble damages is "more compensation" for a plaintiff fades away. A plaintiff who was abused when there was a cover up needs no less incentive in pressing forward with a lawsuit than one who was abused when there was not a cover up.

Finally, although the statute did not say as much – akin to here – this Court found that the treble damages provision in the Unruh Civil Rights Act which is applicable to willful discrimination "reveals a

desire to punish intentional and morally offensive conduct.” *Harris v. Cap. Growth Invs. XIV* (1991) 52 Cal.3d 1142, 1172. *See also, X.M. v. Superior Ct.* (2021) 68 Cal.App.5th 1014, 1024.

III. The Legislative History of the Sexual Abuse Statute Does Not Support the Petitioner

The Petitioner relies heavily on the legislative history of Code of Civil Procedure § 340.1 in concluding that the Legislature meant for its treble damages provision to apply to public entities such as the Respondent and Amicus because they are not intended to be punitive damages. Although Amicus contends that the statute is crystal clear, such that delving into the legislative history is impermissible, even examining them reveals that the notes cut against the Petitioner’s position. As the bill states:

The bill also exposes those who cover up the sexual abuse of children to additional punishment. In addition to extending the statute of limitations for childhood sexual assault, reviving old claims, and removing the protections of the GTCA from local public entities, this bill allows a victim of childhood sexual assault to recover treble damages against a defendant if the victim's assault was the result of a cover-up by the defendant of a prior sexual assault of a minor. For example, if the defendant moved a perpetrator to another location without notifying authorities or gave the defendant a positive job recommendation without disclosing the sexual assault accusations, and the victim was assaulted as a result, the victim could recover treble damages. (Emphasis added.) (Assem. Com. on Judiciary, Analysis of Assem. Bill No. 218 (2019-2020 Reg.

Sess.) as introduced January 16, 2019, attached as Exhibit 8 to PE.)

Hence, by the very language of the legislative notes, the statute was intended as additional punishment to defendants who cover up sex abuse. The Petitioner posits that there are other purposes in the legislature's passing of Code of Civil Procedure section 340.1, such that it is not solely punitive, including: (1) deterring bad conduct; and (2) compensating the victim. All punitive damage awards are intended to deter the complained-of conduct. See *Nickerson v. Stonebridge Life Ins. Co.* (2016) 5 Cal.App.5th 1, 20; *Soto v. BorgWarner Morse TEC Inc.* (2015) 239 Cal.App.4th 165, 191, as modified (Aug. 20, 2015); *Century Surety Co. v. Polisso* (2006) 139 Cal.App.4th 922, 946–947, as modified on denial of reh'g (June 16, 2006); *Bardis v. Oates* (2004) 119 Cal.App.4th 1, 25. Indeed, “raising the costs” is what provides the deterrent effect. The argument that deterring conduct is not punitive cannot withstand scrutiny.

The Petitioner cites to the legislative history's comments in support of the argument that it is intended to apply to public entities, and schools in particular. But the Petition fails to indicate which parts of section 340.1 are intended to apply to schools and which are not. The

legislative notes clearly indicate which portions of the statute apply to public entities. In pertinent it reads:

To address this loophole for childhood sexual abuse claims against public entities, SB 640 (Simitian, Ch. 383, Stats. of 2008) was enacted into law. It added an explicit exception to the claims presentation requirements to Section 905 of the Act for “[c]laims made pursuant to Section 340.1 of the Code of Civil Procedure for the recovery of damages suffered as a result of childhood sexual abuse.” (Gov. Code § 905(m).) Section 905(m) applied to claims arising out of conduct occurring on or after January 1, 2009.

This bill modifies the statute of limitations for these claims in various ways and provides another revival period for bringing expired claims. (Emphasis added.) (Sen. Rules Com., Analysis of Assem. Bill No. 218 (2019-2020 Reg. Sess.) as amended August 30, 2019, attached as Exhibit 5 to PE.)

The application, as set forth in the Senate Committee analysis does not state that the treble damages applies to public entities; rather it states that the statute of limitations is being extended as against public entities. The legislative history also distinguishes the statute of limitations applicable to public entities as opposed to the entirety of the bill, including the treble damages provision:

...Despite the lifetime of damage that this abuse causes its victims, the state's statute of limitations restricts how long actions can be brought to recover for damages caused by childhood sexual abuse. In an effort to allow more victims of childhood sexual assault to be compensated for their injuries and, to help prevent future assaults by raising the

costs for this abuse, this bill extends the civil statute of limitations for childhood sexual assault by 14 years, revives old claims for three years, *and eliminates existing limitations for claims against public institutions*. This bill applies equally to abuse occurring at public and private schools and applies to all local public entities. Lastly, the bill allows a victim of childhood sexual abuse to recover treble damages against a defendant if the sexual assault is the result of a cover-up by the defendant of a prior sexual assault of a minor. (Emphasis added.) (Assem. Floor Analysis, Analysis of Assem. Bill. No. 218 (2019-2020 Reg. Sess.) as amended August 30, 2019, attached as Exhibit 1 to PE.)

The statement that the bill applies equally to abuse occurring at public and private schools and all public entities is a reference to the preceding sentence about statutes of limitations, and not about compensation. Further, the treble damages component is a new idea in the paragraph, beginning with the word “Lastly.” In fact, all the references that could be found in the legislative analysis referring to public entities had to do with the statute of limitations, and not damages.

Additionally, AB 218 was amended by its author, Assembly member Lorena Gonzalez, on August 30, 2019, to add the discretionary “up to” language and to add “unless it is prohibited by another law.” (Assem. B. 218, 2019-2020 Reg. Sess. (Cal.2019), PE, p. 177.) The amendment came after the Senate Committee on Appropriations

reported that the fiscal impact of AB 218, as written, could include “potentially-major out-year costs to local school districts to the extent ... the districts are liable for treble damages.” (Sen. Comm. Appropriations AB 218 (Mar. 25, 2019, PE, p. 179.) The legislative history for AB 218 never states that § 340.1’s treble damages provision should apply to public entities generally, or public school districts specifically. Therefore, Petitioner’s arguments regarding the application of the treble damages provision to public school districts are fatally flawed.

IV. The Two Statutes Are in Harmony

There is no conflict between Government Code § 818 and Code of civil Procedure § 340.1. The former states that: (b)(1) In an action described in subdivision (a), 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*. By contrast, § 818 states that: “[n]otwithstanding *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.*” § 818 (emphasis

added). Hence § 340.1 expressly contemplates that there would be circumstances where treble damages would not be availing because it is forbidden by law, exactly as § 818 does.

In her brief, the Petitioner ignores the rather unambiguous language of the statutes, and flits to the legislative history of § 340.1.¹⁴ But “[w]hen [statutory] words are clear and unambiguous, there is no need for statutory construction *or resort to other indicia of legislative intent, such as legislative history.*” *Quarterman v. Kefauver* (1997) 55 Cal.App.4th 1366, 1371. Statutes are crafted with great precision and deliberation, as legislator notes are not. The Petitioner’s attempts to delve into legislative history is impermissible, in light of the unambiguous meaning of the statute, and Assembly member Gonzalez’s opinions must fade into the background.¹⁵ The initial step in interpreting a statute is ascertaining legislative intent, which is done by construing the statutory language, according the words with their everyday, commonsense meaning. *Id.* As has been held by the Court of Appeals, citing this Court:

We must assume that the Legislature has in mind existing laws when it enacts a statute. We must also interpret a statute in context, examining other legislation on the same

¹⁴ The Petitioner’s Brief, p. 32.

¹⁵ Petitioner’s Brief, p. 33

or similar subjects, to ascertain the Legislature's probable intent. Therefore, we may attempt to gain insight into the intended meaning of a phrase or expression by examining use of the same or similar language in other statutes. Statutory language which seems clear when considered in isolation may in fact be ambiguous or uncertain when considered in context. *Quarterman*, 55 Cal.App.4th at 1371. (internal citations omitted).

Hence, it is to be assumed that the Legislature was aware of § 818 when it amended the statute regarding the sexual abuse of minors to add a treble damages component. The Petitioner's position that "Government Code Section 818 is not mentioned anywhere in the statute" is a legally untenable one, as the Legislature is charged with awareness of all the statutes which are already in existence; they need not be mentioned.¹⁶ Treble damages do not occupy an amorphous, undefinable category beyond compensatory, exemplary or punitive damages, and since a factfinder assesses the Plaintiff's damages both intended and unintended; past, present and future, the conclusion that the treble damages here are punitive in nature seems incontrovertible. The Petitioner cites *Los Angeles Cty. Metro. Transportation Auth. v. Superior Ct.* (2004) 123 Cal.App.4th 261, 266–67, but in doing so, the Petitioner is once again conflating a civil penalty specifically ordered

¹⁶*Id.* at p. 35

by the Legislature with treble damages which are assessed at the discretion of the factfinder. One prominent difference between a civil penalties and treble damages is the discretionary aspect.

Civil penalties are mandatorily assessed upon violation of the statutory provision considered, whereas treble damages are discretionary by the factfinder, for the very reason that treble damages hinge upon the egregiousness of the defendant's actions. Throughout her brief, the Petitioner constantly conflates treble damages with civil penalties,¹⁷ where both are simply incomparable and are completely separate remedies. The Legislature may, at its option choose to impose civil penalties, and choose not to exempt public entities from them. "There are distinctions to be drawn between punitive damages and civil penalties; the latter often do more than just punish, and they are not awarded on the same basis as pure punitive damages." (*Los Angeles County Metropolitan Transp. Authority v. Superior Court* (2004) 123 Cal.App.4th 261.)

In all instances that might be reasonably contemplated, civil penalties comprise comparatively paltry amounts, when compared to

¹⁷ The Petitioner's attempts to analogize to (*Lozada v. City & Cty. of San Francisco* (2006), 145 Cal.App.4th 1139.) fails for this reason. *See* Petitioner's Brief, pp. 26-27.

the amount of total damages that would arise if compensatory damages are tripled. As the court expressed in *Los Angeles Cty. Metro.*

Transportation Auth., supra:

In the Unruh Act, the Legislature expressly provided that a successful plaintiff was entitled to recover (1) his or her actual damages; (2) exemplary damages to be determined by the jury (or the court sitting without a jury); (3) a civil penalty of \$25,000 to be awarded for a denial of the right specified in section 51.7; (4) attorney's fees as may be determined by the court.

The first thing that one notices about these statutory provisions is that the Legislature has authorized both an award of punitive damages and an award of a civil penalty. Plainly, the Legislature regarded these as separate remedies. Further, the civil penalty is to be awarded to the successful plaintiff in the sum of \$25,000. The statute leaves the court (or jury) with no discretionary choice, contrary to the other three bases of recovery. (internal citations omitted).

The Petitioner claims that “[a]gainst this backdrop of alarming facts concerning the prevalence of sexual abuse and institutional cover ups, as well as the hurdles victims face in coming forward, 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.”¹⁸ The Petitioner then describes a scenario in which a teacher “creepily

¹⁸ Petitioner’s Brief, p. 39.

made cat noises” in a student’s ear, “pulled on [the student’s] belt loops” and “touch[ed] [the student’s] hair.”¹⁹ The Petitioner envisions issues in the ether that do not exist. To be clear, sex abuse is a crime, and there is no sliding scale which features behavior which is not actionable with a progression towards behavior which is actionable.

Sex abuse is actionable the minute it occurs – criminally and civilly – no matter how great or small the act. Statutory rape laws were created precisely because minors are not likely to report sexual molestation; it is incumbent upon the entity where it occurred to do so. In some instances, minors are traumatized and do not disclose their ordeal, in other instances they engage willingly although they are unable to legally consent because of their age, and still in other instances they do not report because they are not aware that the acts are considered criminal. The primary aim of the newly revamped statute was to extend the statute of limitations to allow minors to bring cases years after the incidents complained of had transpired. It is the entities which are doing the covering up which are most likely to know of the cover ups, not the minors.

¹⁹ *Id.* at pp. 39-40.

Hence the Petitioner's position – that the treble damages was included in the statute in order to have students come forward – seems far-fetched. The onus lies heavily upon the entities within which the coverup is transpiring to divulge, or face punitive damages once exposed. The treble damages then, is to deter such entities from engaging in such cover ups. And as public entities funded by the taxpayers, public entities such as school districts should be exempt. Moreover, sexually abused children when there was no cover up involved need no less of an encouragement to press forward with their claims, and yet under the Petitioner's scenario, they would not be entitled to treble damages.

CONCLUSION

In the instant case, the Petitioner seeks damages that go beyond what it would take to make her whole. Compensatory damages are by definition, designed to make the Plaintiff as complete as an award of damages can. Treble damages then – which are necessarily far in excess of the goal of compensation – are punitive in nature as applied to this case. The Legislature has expressed a preoccupation with ensuring that taxpayers do not foot the bill for wayward employees at public entities, and that funds designated for specified purposes should find their way

to their targets. The two statutes – one of which exempts public entities from exposure to punitive damages, and the other of which imposes treble damages on entities engaged in covering up sexual abuse of minors – can only be harmonized by affirming the Court of Appeal’s order.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief has been prepared using proportionately 14-point Times New Roman typeface. According to the "Word Count" feature in Microsoft Word for Windows software, this brief contains 7410 words. I declare under penalty of perjury that this Certificate of Compliance is true and correct and that this declaration was executed on March 1, 2022.

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PROOF OF SERVICE
LOS ANGELES UNIFIED SCHOOL DISTRICT V. SUPERIOR
COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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Ryan D. Miller, Declarant

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

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Supreme Court of California

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