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Via Electronic Filing

Honorable Tani Gorre Cantil-Sakauye, Chief Justice of California
Honorable Associate Justices of the Supreme Court of California
Supreme Court of California
Earl Warren Building
350 McAllister Street
San Francisco, CA 94102-4797

Re: *Ruelas v. County of Alameda et al.*, No. S277120 – Certification Request from the United States Court of Appeals for the Ninth Circuit

Dear Chief Justice Cantil-Sakauye and Associate Justices:

We represent Defendant-Appellant Aramark Correctional Services, LLC ("Aramark"), in the above-captioned matter. Pursuant to rule 8.548(e)(1) of the California Rules of Court, we respectfully submit this letter in opposition to the request of the United States Court of Appeals for the Ninth Circuit to answer the following question of California law:

> Do non-convicted incarcerated individuals performing services in county jails for a for-profit company to supply meals within the county jails and related custody facilities have a claim for minimum wages and overtime under Section 1194 of the California Labor Code in the absence of any local ordinance prescribing or prohibiting the payment of wages for these individuals?

(Order Certifying Question to the Supreme Court of California, *Ruelas v. County of Alameda et al.* (9th Cir. Nov. 1, 2022), No. 21-16528, ECF No. 69 at 4 ("Certification Order").)

I. SUMMARY OF ARGUMENT

In opposing the Ninth Circuit's request, we do not dispute that this Court has discretion under rule 8.548(a) to accept certification as a threshold matter. Resolution of the certified question would "determine the outcome" of the pending Ninth Circuit appeal, and there is "no controlling precedent" squarely on point. (Cal. Rules of Court, rule 8.548(a).) Nevertheless, certification is unnecessary because the relevant statutes and this Court's case law provide sufficient guidance for the Ninth Circuit to answer the certified question. This Court has often exercised its discretion to deny requests for certification where the issue presented is

straightforward and the pertinent California legal principles are sufficiently clear, notwithstanding the Circuit's request for certification. (See, e.g., *Fantasyland Video, Inc. v. County of San Diego* (Cal. Sept. 25, 2007, No. S155408) 2007 Cal. LEXIS 10551, at *1 [order denying request to decide certified question on ground that pertinent "California law is clear"]; see generally Cal. Rules of Court, rule 8.548(f)(1) [this Court may consider "whether resolution of the question is *necessary* to secure uniformity of decision or to settle an important question of law, and any other factor the court deems appropriate" (italics added)].) This Court should follow that course here and decline certification because well-established principles of statutory construction provide a clear answer to the certified question.

Under those interpretive principles, Penal Code section 4019.3—rather than the Labor Code's minimum and overtime wage provisions—governs work performed by Plaintiffs in the Santa Rita Jail. The Legislature enacted Penal Code section 4019.3 in 1959 for the purpose of allowing persons incarcerated in county jails to be paid for the work they perform in such jails. Section 4019.3 would not have been necessary if the general minimum and overtime wage regulations already applied in that setting.[1] Rather than extend those minimum and overtime wage regulations to inmates in county jails, the Legislature enacted section 4019.3, a different compensation scheme specifically tailored to the county jail context. That framework, unlike the Labor Code, vests counties with discretion to decide whether to pay inmates, while also limiting the amount that can be paid: "The board of supervisors *may* provide that each prisoner confined in or committed to a county jail shall be credited with a sum *not to exceed two dollars ($2) for each eight hours of work* done by him in such county jail." (Pen. Code, § 4019.3, italics added.) Section 4019.3 thus established a discretionary scheme that permits (but does not require) each county to authorize payment to incarcerated individuals who perform work in a county jail, subject to a maximum rate that is well below the Labor Code's minimum wage.[2]

Although Plaintiffs argue that the Labor Code's minimum and overtime wage provisions apply to incarcerated individuals who perform kitchen services in a county jail, that argument contravenes established principles of statutory construction enunciated and applied by this Court.

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[1] California's general minimum wage and overtime standards were originally established by wage orders of the Industrial Welfare Commission ("IWC") beginning in 1916. (See *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 552–553; *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1026.) The standards are now codified at Labor Code sections 510 (overtime) and 1182.12 (minimum wage), which operate in tandem with applicable wage orders. (See Lab. Code, § 1197; Cal. Code Regs., tit. 8, § 11000; *Martinez v. Combs* (2010) 49 Cal.4th 35, 55 & n. 22.) A cause of action for violations of these general minimum wage and overtime standards has existed since at least 1913 (see *Martinez v. Combs*, *supra*, 49 Cal.4th at p. 52 & n. 18), and was codified at Labor Code section 1194 as part of the Labor Code of 1937 (1937 Cal. Stat. 185, 217).

[2] The maximum discretionary compensation rate prescribed in the original version of section 4019.3 was fifty cents per each eight hours of work. (1959 Cal. Stat. 3308.) That rate was increased to the current maximum discretionary rate of two dollars per eight hours of work in 1975. (1975 Cal. Stat. 796–797.) The maximum discretionary compensation rate has always been below the general minimum wage rate. (See State of Cal. Dep't of Indus. Rels., History of California Minimum Wage, https://www.dir.ca.gov/iwc/minimumwagehistory.htm, last visited Nov. 20, 2022.)

For example, under Plaintiffs' view, enactment of the separate compensation scheme set forth in Penal Code section 4019.3 would have been an idle and superfluous act—a result this Court avoids when interpreting statutes. (See *Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal.4th 381, 390 (hereafter *Imperial Merchant Services*) ["We do not presume that the Legislature performs idle acts, nor do we construe statutory provisions so as to render them superfluous." (citation omitted)].) In other words, there would have been no reason for the Legislature to authorize compensation for county jail inmates if (as Plaintiffs assert) California's general minimum and overtime wage provisions already applied.

Further, even assuming that those general provisions did apply to county inmates' work before 1959 (they did not), the more-specific and later-enacted compensation scheme set forth in section 4019.3 would supersede earlier, general provisions governing minimum and overtime wages. (See *Lopez v. Sony Electronics, Inc.* (2018) 5 Cal.5th 627, 634 (hereafter *Lopez*) [stating the "well established" rule that "specific provisions take precedence over more general ones" and "later enactments supersede earlier ones"].) Indeed, this Court has applied that principle in the employment context to hold that a general IWC order governing wages and compensable work hours did not apply in light of a different and more specific compensation scheme. (See *Stoetzl v. Department of Human Resources* (2019) 7 Cal.5th 718, 748–749 (hereafter *Stoetzl*) [concluding that the "IWC's action . . . must be viewed as being taken subject to [the California Department of Human Resource's] more specific authority, and the latter must prevail to the extent of a conflict."].) That interpretive principle applies with particular force where, as here, the two frameworks provide mutually exclusive compensation requirements: The *maximum* compensation rate available under section 4019.3 is well below the *minimum* compensation rate required by the Labor Code. The Ninth Circuit can readily apply these canons of construction to the statutes at issue, without resort to certification.

Section 4019.3's context and history confirm the foregoing analysis. Neighboring provisions in the Penal Code reinforce the conclusion that counties have discretion to determine whether an inmate will be compensated for work performed in a county jail—and that section 4019.3 governs that issue. (See, e.g., Pen. Code, § 4325(b)(3) [allowing county jail inmates to "earn funds, if approved by the board of supervisors pursuant to Section 4019.3"].) Similarly, the legislative history of section 4019.3 documents the Legislature's belief that county jail inmates were not entitled to "any compensation" prior to enactment of section 4019.3; that "any payment is permissive" under that provision; and that the Legislature considered—but declined—to make payment mandatory when amending section 4019.3 in 1975. (See post, citing legislative history sources, at pp. 6–7.) This additional guidance further diminishes any need for this Court's review.

The District Court agreed that the Labor Code's minimum and overtime wage provisions do not apply to convicted county jail inmates, but ruled that those provisions apply to non-convicted inmates (such as persons bound over for trial). The court based that conclusion on a view that the Penal Code does not address "employment and wages . . . for pretrial detainees confined in county jails." (1-Excerpts of Record ("ER")-22.) Notwithstanding that Aramark invoked Penal Code section 4019.3, the District Court did not mention that provision or analyze its effect in holding that the Labor Code applies to Plaintiffs. There is nothing in section 4019.3, however, that distinguishes incarcerated individuals based on conviction status, and indeed, this Court has interpreted identical language in a neighboring provision (Penal Code § 4019) as

encompassing non-convicted individuals. (See *People v. Dieck* (2009) 46 Cal.4th 934, 940.) It is thus no surprise that the California Attorney General—whose interpretations are "entitled to considerable weight" (*Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1087, n. 17)—has concluded that section 4019.3 "applies to pre-sentence as well as post-sentence work" by county jail inmates (57 Ops.Cal.Atty.Gen 276, 283 (1974)). Thus, the District Court bypassed the most relevant and on-point provision of the Penal Code, and in doing so reached a decision at odds with this Court's decisions in *Imperial Merchant Services*, *Lopez*, *Stoetzl*, *Dieck*, and *Lexin*.

Last, the Ninth Circuit's certification request also cites to other statutory and constitutional provisions, including the Prison Inmate Labor Initiative of 1990 ("Proposition 139") cited in Plaintiffs' Complaint. (See Certification Order at 8–9.) The interpretation of these other provisions of California law, however, is also clear. These provisions uniformly support the conclusion that Penal Code section 4019.3's discretionary compensation scheme—not the Labor Code's general minimum and overtime wage laws—applies here. Indeed, the Legislature has expressly made parts of the Labor Code applicable to inmate workers in a few narrow contexts only, demonstrating that the Legislature knows how to take that step when it wants to do so. The absence of a statute making the Labor Code's minimum and overtime wage provisions applicable to county jail inmates thus speaks volumes. In sum, given the clear application of section 4019.3, certification is unnecessary and would serve only to drain this Court's resources and further prolong resolution of this case.

For these reasons, and those set out below, we respectfully submit that this Court should decline to take up the certified question.

II. BACKGROUND AND OVERVIEW

A. Factual Background

Plaintiffs are individuals who are or were incarcerated at the Santa Rita Jail, which is owned by the County of Alameda and operated by co-defendant Sheriff Gregory Ahern. (2-Excerpts of Record ("ER")-281, 283.) In 2015, the Alameda County Board of Supervisors awarded a contract to Aramark to provide food services (i.e., the "purchase, maintenance and control of food and supplies," among related services) to the inmate population and staff of the Santa Rita Jail. (2-ER-193, 284.) Under the contract, Aramark provides meals to the County's inmates and jail staff (2-ER-193, 197–202), and to "satellite facilities," which are jails located in other California counties (2-ER-208, 281, 287; 9th Cir. No. 21-16528, ECF No. 18 [Aramark Mot. for Judicial Notice], Ex. D [Satellite Food Services Letter of Understanding between the County and Aramark]).[3]

Aramark provides the contracted-for food services using the Santa Rita Jail's industrial kitchen, located within the jail. (2-ER-284.) As part of that operation, Plaintiffs prepare and package food and clean and sanitize the kitchen. (2-ER-284.) This program enables Plaintiffs to

[3] The Ninth Circuit granted Aramark's motion for judicial notice of the Letter of Understanding between the County and Aramark, and both parties' motions for judicial notice of various legislative history materials, which are cited below. (9th Cir. No. 21-16528, ECF Nos. 18, 40, 65.)

earn sentence-reduction credits (see Pen. Code, § 4019), obtain valuable job training, and "get out of their cells for some portion of the day, which is beneficial to their physical and mental health" (2-ER-284, 286.) However, Plaintiffs are not paid for working in the kitchen. (2-ER-284, 286.) Aramark employees, in cooperation with sheriffs' deputies at the jail, allegedly supervise inmates who perform the kitchen work. (2-ER-284–88.)

B. Procedural Background

In November 2019, Plaintiffs brought this action for damages and declaratory and injunctive relief on behalf of a putative class of individuals incarcerated at the Santa Rita Jail, alleging violations of the California Labor Code and other state and federal laws. The District Court granted Defendants' motions to dismiss Plaintiffs' Labor Code claims on behalf of convicted inmates, correctly reasoning that the Penal Code "presumes that the Labor Code does *not* apply to duly convicted prisoners unless specifically indicated." (2-ER-318, original italics.) The District Court, however, denied Defendants' motions as to non-convicted inmates, citing the Thirteenth Amendment's prohibition against involuntary servitude. (2-ER-319.) Plaintiffs then filed an amended complaint, reasserting claims for minimum and overtime wages on behalf of non-convicted inmates. (2-ER-296.) Defendants again moved to dismiss these claims, arguing that Penal Code section 4019.3 governs compensation for incarcerated individuals in county jails, regardless of an incarcerated individual's conviction status. The District Court denied these motions in relevant part in an order issued February 9, 2021 and an amended order issued June 24, 2021.

In its amended order, the District Court eschewed its prior reliance on the Thirteenth Amendment, correctly recognizing that "claims of unpaid labor are distinct from claims of forced labor." (1-ER-30; see also 1-ER-24, n. 6.) The District Court, however, concluded that the Penal Code and Labor Code are still not "mutually exclusive" because the Penal Code does not address "employment and wages . . . for pretrial detainees confined in county jails." (1-ER-22, quotations and citation omitted.) The District Court did not address Penal Code section 4019.3 in reaching that conclusion. Defendants jointly moved pursuant to 28 U.S.C. § 1292(b) for leave to appeal, and the District Court granted the motion, concluding that "a reasonable jurist could adopt Aramark's position that . . . the Penal Code's preclusive effect on convicted individuals' assertion of claims under the Labor Code should also apply to non-convicted detainees." (1-ER-41.)

C. Proceedings in the Ninth Circuit

Following the District Court's grant of leave to file an interlocutory appeal, the Ninth Circuit granted Defendants' petition for permission to appeal. During the course of briefing the appeal, neither party requested that the issue be certified to this Court. Nevertheless, on November 1, 2022, following oral argument, the Ninth Circuit certified the question set forth above.[4]

[4] While briefing in the Ninth Circuit progressed, the parties continued to litigate the issue of class certification in the District Court. Following the Ninth Circuit's certification order, however, the District Court stayed those proceedings, pending the resolution of the proceedings in this Court.

III. ARGUMENT

A. Certification Is Unnecessary Because This Court's Precedent and Principles of Statutory Construction Provide Sufficient Guidance to Answer the Certified Question.

Application of general principles of statutory construction to the Penal and Labor Code statutes at issue, particularly in light of this Court's precedents, is sufficiently straightforward to render certification unnecessary.

The first such principle is the canon against superfluity—specifically, this Court does "not presume that the Legislature performs idle acts, nor do[es] [it] construe statutory provisions so as to render them superfluous." (*Imperial Merchant Services, supra*, 47 Cal.4th at p. 390.) The Ninth Circuit is well-equipped to apply that canon here, having done so frequently in prior cases without resort to certification. (See, e.g., *Gonzales v. CarMax Auto Superstores, LLC* (9th Cir. 2016) 840 F.3d 644, 651–652; *Edgerly v. City and County of San Francisco* (9th Cir. 2013) 713 F.3d 976, 984.) Applying the anti-superfluity canon here would preclude Plaintiffs' minimum and overtime wage claims. Under Plaintiffs' view that the Labor Code's minimum and overtime wage provisions apply to the work they performed in the Santa Rita Jail, the Legislature's enactment of Penal Code section 4019.3 would serve no purpose. There would be no point in the Legislature enacting a discretionary compensation scheme that permits county boards of supervisors to authorize a modest amount of compensation for county jail inmates, if those inmates were *already* entitled to much larger wages mandated by general minimum and overtime regulations.

The Ninth Circuit may also look to the legislative history of section 4019.3 to confirm that California's general minimum and overtime wage provisions do not, and never did, apply to work performed by individuals incarcerated in a county jail. (See, e.g., *Hughes v. Pair* (2009) 46 Cal.4th 1035, 1046 [courts may "look to legislative history to confirm [their] plain-meaning construction of statutory language"].) Before the Legislature enacted section 4019.3, county inmates could earn a small wage—still less than the minimum wage—if they performed certain work outside the physical confines of a county jail. (See 1953 Cal. Stat. 742 [adopting Penal Code section 4125, which allowed county inmates to earn up to 50 cents per eight hours of work performed on an "industrial farm or industrial road camp"]; 9th Cir. No. 21-16528, ECF No. 40 at 6 [Analysis of Senate Bill 1394 (June 10, 1959)].) Six years later, the Legislature enacted Penal Code section 4019.3 to allow boards of supervisors to likewise pay a small wage to inmates who performed work "in" the county jails themselves—including, specifically, "in *the jail kitchens*, laundry or various maintenance assignments." (9th Cir. No. 21-16528, ECF No. 40 at 6, italics added.) As the County Supervisors Association of California ("CSAC")—which represents the county officials charged with administering section 4019.3—commented before the law's enactment, "[a]ll the bill does is permit boards of supervisors to credit county jail prisoners" for work performed "in county jails." (Letter from CSAC Gen. Counsel and Manager William MacDougall to Gov. Edmund Brown Re: Senate Bill 1394 (June 18, 1959) [Governor's Chaptered Bill File] [9th Cir. No. 21-16528, ECF No. 18, Ex. A].) The statute thus did not require counties to provide "*any* compensation." (*Id.*, original italics.)

When the Legislature amended section 4019.3 in 1975 to increase the maximum discretionary compensation rate from 50 cents per eight hours of work to the current rate of two dollars per eight hours of work, the Assembly Committee on Criminal Justice observed that compensation under the statute is "permissive" and posed the question whether compensation "should . . . be mandatory." (Assembly Bill 1396 Bill Digest, Assembly Comm. on Criminal Justice [prepared for Hearing on May 28, 1975] [Senate Committee on Judiciary materials] [9th Cir. No. No. 21-16528, ECF No. 18, Ex. C].) Ultimately, however, the Legislature amended the maximum rate without making compensation mandatory for work performed by county jail inmates. (See 1975 Cal. Stat. 796–797.)

The legislative history thus uniformly supports what is evident from the text of Penal Code section 4019.3: that the Legislature never intended the general minimum and overtime wage provisions to apply to incarcerated individuals who perform work in a county jail. Rather, at the time of section 4019.3's enactment, the Legislature understood that such individuals were not entitled to compensation, and thus, through section 4019.3, granted county boards of supervisors discretion to authorize modest payments for work performed in jail. To hold that the Labor Code's minimum and overtime wage provisions apply to county jail inmates would be to disregard that central purpose of section 4019.3 and render its enactment superfluous, in violation of well-established canons of statutory construction. (See *Imperial Merchant Services*, *supra*, 47 Cal.4th at p. 390; *People v. Centr-O-Mart* (1950) 34 Cal.2d 702, 704 ["Words of a statute must be given such interpretation as will promote rather than defeat the general purpose and policy of the law."]; see also *People v. Superior Ct. (Zamudio)* (2000) 23 Cal.4th 183, 199 ["[W]e must assume that, when enacting [a statute], the Legislature was aware of existing related laws and intended to maintain a consistent body of rules." (citation omitted)].)

Other interpretive principles, including those governing conflicts among statutes, also apply in a manner that is sufficiently clear to render certification unnecessary. Those principles provide that, "[w]hen possible, courts seek to harmonize inconsistent statutes, construing them together to give effect to all of their provisions." *Lopez, supra*, 5 Cal.5th at p. 634. Here, the most logical way to harmonize California's minimum and overtime wage standards with section 4019.3's discretionary compensation scheme is to conclude, as the Legislature itself apparently did, that section 4019.3 applies to work performed by inmates in county jails, whereas the Labor Code governs in other circumstances not specifically addressed in the Penal Code.

In any event, even assuming for the sake of argument that, before enactment of section 4019.3 in 1959, the existing minimum and overtime wage regulations had applied to inmates who perform work in a county jail, those regulations would be superseded by section 4019.3's conflicting compensation scheme. In particular, section 4019.3 conflicts with the Labor Code's minimum and overtime wage standards in at least three respects: (1) it permits local officials not to set any minimum compensation rate for county inmates; (2) it sets a maximum discretionary compensation rate that is well below the Labor Code's minimum wage rate; (3) and it provides that compensation standards may vary by county. Once again, this Court's precedent provides clear rules for how to resolve that conflict: Because section 4019.3 is more "specific" than the Labor Code's minimum and overtime wage provisions, and was enacted after those provisions, it "supersede[s]" the application of those provisions here. (*Lopez*, *supra*, 5 Cal.5th at p. 634.)

This Court has applied that principle to hold that a general IWC wage order was superseded by a more specific compensation scheme—a precedent that applies with equal force here regarding the interaction between Penal Code § 4019.3 and the Labor Code's minimum and overtime wage provisions. (See *Stoetzl*, *supra*, 7 Cal.5th at p. 748–749.) In *Stoetzl*, this Court recognized that "the IWC was authorized to adopt general background rules governing employee wages and hours," but the California Department of Human Resources "was the recipient of a more specific delegation, to establish salary ranges for state workers and to adopt, as appropriate, FLSA overtime standards for such workers." (*Id.* at 749.) This Court concluded that, regardless of which compensation scheme came first, the more specific compensation scheme superseded the IWC's general regulations where the two conflicted. (*Ibid.*; see also *id.* at 748–749, citing *People v. Gilbert* (1969) 1 Cal.3d 475, 479 ["Where the general statute standing alone would include the same matter as the special act, and thus conflict with it, the special act will be considered as an exception to the general statute *whether it was passed before or after such general enactment.*" (cleaned up)].) In light of *Stoetzl* and other precedents applying this Court's well-established interpretive principles in similar circumstances, there is no need for certification here.

To the extent Plaintiffs argue that the Labor Code's minimum and overtime wage provisions could still apply in the absence of a county ordinance governing compensation, that construction is at odds with the plain text of Penal Code section 4019.3. There is nothing in the statute's text or legislative history to suggest that a board of supervisors *must* enact an ordinance setting inmate compensation at zero dollars if it wishes not to authorize compensation. To the contrary, section 4019.3 speaks purely in discretionary terms when it states that a "board of supervisors *may* provide" for compensation up to two dollars per eight hours of work. (Pen. Code, § 4019.3, italics added.) Moreover, it would make no sense for the Legislature to set up a system in which the Labor Code's general minimum and overtime wage provisions applied in the absence of an ordinance, but then, where an ordinance exists, require the county to limit compensation to a rate well below the minimum wage. (See *Wasatch Property Management v. Degrate* (2005) 35 Cal.4th 1111, 1122 ["The court will apply common sense to the language at hand and interpret the statute . . . to avoid an absurd result."].) The far more logical conclusion—and one the Ninth Circuit can readily reach on its own—is that section 4019.3 governs compensation for incarcerated individuals who perform work in a county jail and vests that decision in the discretion of local governments with responsibility for allocating how public money is to be spent.[5]

Nor is there any support for Plaintiffs' suggestion that section 4019.3 does not apply when inmates work in a program administered in part by a private contractor. As is clear from the statutory text, section 4019.3 does not focus on the identity of the employer or supervisor, but

[5] The Legislative policy embodied in this delegation to county officials is reasonable. County governments are responsible for maintaining county jails (see Pen. Code, § 4000) and providing for the needs of the inmates they house (see *id.*, § 4015). Alameda County discharges those obligations in part by contracting with Aramark to provide meals to inmates and staff at the Santa Rita Jail, and the allegations in this case involve inmate work in that meal-preparation program. The County's operating costs would undoubtedly increase if inmate work performed in the Santa Rita Jail kitchen were subject to the Labor Code's minimum and overtime wage provisions. (See 3-ER-350 [District Court recognizing the economic reality that Aramark's contract "reduc[es] the cost of incarceration" for the County].)

rather on *who* performs the work ("prisoner[s] confined in or committed to a county jail") and *where* the work is performed ("in such county jail"). There is no dispute that Plaintiffs are (or at the relevant time were) "prisoner[s] confined in or committed to a county jail," and that they allegedly performed work "in such county jail." Nothing more is required for section 4019.3 to apply here.

Finally, Plaintiffs also miss the mark in asserting that Labor Code section 1194 "controls as a statute of general applicability that must be liberally construed to protect workers." (Certification Order at 8, quotation marks omitted.) As noted above, the fact that the Labor Code's minimum and overtime wage provisions are generally applicable, whereas Penal Code section 4019.3 specifically applies to Plaintiffs' allegations, cuts *against* Plaintiffs' argument that the Labor Code takes precedence. (See *J.M. v. Huntington Beach Union High School Dist.* (2017) 2 Cal.5th 648, 654 [giving effect to a statutory provision that "directly addresse[d] [plaintiff's] circumstances" and noting that "[t]he Legislature would not have created a specific but *superfluous* provision" (original italics)]; *California Teachers Assn. v. Governing Bd. of Rialto Unified Sch. Dist.* (1997) 14 Cal.4th 627, 649 (hereafter *California Teachers Assn.*) ["broad" statutory provisions "do not control over the more specific section . . . which expressly governs" in the circumstances at issue]; see also, e.g., *Lopez*, *supra*, 5 Cal.5th at p. 634 [specific legislation controls over conflicting general provision]; *Stoetzl*, *supra*, 7 Cal.5th at pp. 748–749 [same].) As for the liberal construction afforded to the Labor Code's minimum and overtime wage provisions, this Court's precedents emphasize that the liberal-construction canon cannot overcome clear statutory language of the sort present in section 4019.3. (See *Wheeler v. Board of Administration* (1979) 25 Cal.3d 600, 605 ["[The] rule of liberal construction . . . should not blindly be followed so as to eradicate the clear language and purpose of the statute"]; see also *California Teachers Assn*, *supra*, 14 Cal.4th at p. 649 [broad statutory provisions did not control over specific legislative provisions, notwithstanding argument that the broad provisions were to be "liberally construed"]; *Ruiz v. Industrial Acc. Commission* (1955) 45 Cal.2d 409, 413 ["It is true . . . that all provisions of the workmen's compensation law should be liberally construed to effect the law's beneficent purposes . . . but that does not mean that the Legislature's intent as expressed in the statute can be ignored."].)

In short, because California law already provides enough guidance on how to construe Penal Code section 4019.3 and the Labor Code's minimum and overtime wage provisions, certification is unnecessary.

B. Certification Is Unnecessary Because California Law Is Clear Regarding the Question Whether County Inmate Compensation Depends on Conviction Status.

The Ninth Circuit's Certification Order, tracking the District Court's ruling, notes the argument that application of the Labor Code's minimum and overtime wage provisions turns on whether a county jail inmate has been convicted. This Court has provided sufficient guidance, however, for the Ninth Circuit to consider on its own whether there is any justification for that distinction. The plain text of section 4019.3, this Court's precedent interpreting identical language in a neighboring provision (Penal Code section 4019), and the Attorney General's interpretation

uniformly support the conclusion that section 4019.3 applies to *all* inmates who perform work in a county jail, regardless of conviction status.

Starting with the text: the ordinary meaning of each of the relevant terms in section 4019.3 encompasses all incarcerated individuals, including those who are not convicted. In particular, "confined" simply means "imprison[ed] or restrain[ed]." (Confinement, Black's Law Dict. (11th ed. 2019).) Similarly, "commitment" is "[t]he act of confining a person in a prison, mental hospital, or other institution[.]" (Commitment, Black's Law Dict. (11th ed. 2019).) A "prisoner" is "[s]omeone who is being confined in prison[,]" a group that encompasses non-convicted inmates. (Prisoner, Black's Law Dict. (11th ed. 2019).) Moreover, Penal Code section 4019.3 specifically applies to prisoners in a county "jail" (i.e., not a state penitentiary)—and one of the core purposes of California county jails is to house non-convicted individuals. (See, e.g., Cal. Penal Code, § 4000 [county jails are to be used for, among other things, "the detention of persons charged with crime and committed for trial"]; see also *id.*, § 4005 ["[T]he sheriff shall . . . keep in the county jail[] any prisoner committed thereto by process or order issued under the authority of the United States[.]"].) There is nothing in the text of section 4019.3 to suggest that its terms apply only to convicted individuals who are confined in or committed to a county jail.

The ordinary meaning of section 4019.3's text is further supported by this Court's interpretation of "confined in or committed to a county jail" in a neighboring provision, Penal Code section 4019, which concerns good time credits. (Pen. Code, § 4019(a)(1)–(3).) Because sections 4019 and 4019.3 "deal[] with the same subject matter," the identically-worded clauses in these provisions "should be accorded the same interpretation." (*Kaanaana v. Barrett Business Services, Inc.* (2021) 11 Cal.5th 158, 175, citation omitted.) When interpreting section 4019, this Court recognized that "the term 'confinement' is defined as 'the state of being imprisoned or restrained.'" (*People v. Dieck*, *supra*, 46 Cal.4th at p. 940, quoting Black's Law Dictionary (8th ed. 2004).) This Court also concluded that "committed" "means a judicial officer's order sending a defendant to jail, prison, or other form of qualifying confinement." (*Ibid.*) While this Court explained that the phrases "confined in" and "committed to" thus have distinct meanings (*id.* at 940–941, quotations and citation omitted), this Court's interpretations of both phrases included non-convicted inmates. Indeed, this Court specifically noted that "presentence" conduct that triggers section 4019 good time credits includes the "period of incarceration that occurs prior to . . . a judgment of imprisonment[.]" (*Id.* at 938, n. 2.) Accordingly, non-convicted individuals who are incarcerated in a county jail are "confined in or committed to a county jail" under section 4019.3.

Consistent with the foregoing, the California Attorney General—whose "opinions are entitled to considerable weight" (*Lexin v. Superior Court*, *supra*, 47 Cal.4th at p. 1087, n. 17)—has concluded that section 4019.3 "applies to pre-sentence as well as post-sentence work time." (57 Ops.Cal.Atty.Gen, *supra*, at p. 283.) That opinion is especially persuasive here because the Legislature amended section 4019.3 only one year later and "left intact the language construed" by the Attorney General. (*California Assn of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 17 [explaining that the "Legislature is presumed to be cognizant of [the Attorney General's] construction of the statute," and applying that presumption to find persuasive an Attorney General's opinion that, like here, was issued one year before the Legislature amended the statute at issue (quotations and citation omitted)].) In short, the plain meaning of section 4019.3's text,

this Court's interpretation of materially-identical language in section 4019, and the Attorney General's opinion all point to the same conclusion: "prisoner[s] confined in or committed to a county jail" include non-convicted individuals.

Because California law provides sufficient guidance concerning whether the certified question turns on an incarcerated individual's conviction status, there is no need for certification.

C. Other California Laws Do Not Make the Answer to the Certified Question Unclear Such that Certification Is Necessary—to the Contrary, Such Laws Make the Answer Even Clearer.

The Certification Order suggests that this Court's review is warranted in part because the certified question implicates various provisions of California law beyond Labor Code section 1194 and Penal Code section 4019.3. (See Certification Order at 8–9.) None of these provisions, however, alters the straightforward analysis above. To the contrary, other statutes simply *reinforce* that the Labor Code's minimum and overtime wage provisions do not apply to incarcerated persons who perform work in a county jail.

For example, both sections 4325 and 4327 of the Penal Code (see Certification Order at 9) support a conclusion that section 4019.3 governs here.

Section 4325 authorizes boards of supervisors of certain counties to establish a Jail Industry Authority for various purposes, including "[t]o ensure prisoners have the opportunity to work productively and earn funds, *if approved by the board of supervisors pursuant to Section 4019.3*, and to acquire or improve effective work habits and occupational skills." (Pen. Code, § 4325(b)(3), italics added.) The plain meaning of this statute (which was enacted in its current form in 2016)—and in particular, the conditional phrase, "if approved by the board of supervisors pursuant to section 4019.3"—reflects the Legislature's judgment that incarcerated individuals who perform work in a county jail are not necessarily entitled to earn funds at all, let alone minimum and overtime wages under the Labor Code, and that decisions concerning compensation for county jail inmates are delegated to boards of supervisors under section 4019.3.

Section 4327 similarly states that, upon the establishment of a Jail Industry Authority, "*[a]ll* jail industry income shall be deposited in, and *any* prisoner compensation shall be paid to the account of the prisoner from, the Jail Industries Fund." (Pen. Code, § 4327, italics added.) The plain meaning of the conditional term "*any* prisoner compensation," particularly in contrast to "*all* jail industry income," further confirms that compensation for county jail inmates is discretionary, not mandatory. (See, e.g., *Hawkins v. Haaland* (D.C. Cir. 2021) 991 F.3d 216, 231 [interpreting similar usage of "any"].)

Likewise, Labor Code sections 3370 and 6304.2 and Penal Code section 4017 (see Certification Order at 9) buttress the view that the Labor Code's minimum and overtime wage provisions do not apply here. Labor Code section 3370 and Penal Code section 4017 provide that the Labor Code's workers' compensation provisions shall apply under certain circumstances to individuals who are incarcerated in state prisons and county jails, respectively. Labor Code section 6304.2, meanwhile, states that an employer-employee relationship shall exist—in certain

circumstances and subject to exceptions—between state inmates and the Department of Corrections "for the purposes of" the Labor Code provisions governing occupational health and safety. These statutes support Defendants' position, because they show that the Legislature is well aware of how to make the Labor Code's provisions applicable to incarcerated individuals. The Legislature has taken that step in narrow and well-defined circumstances, subject to carefully crafted exceptions. Each of these statutes would have been superfluous if the Labor Code already applied generally to incarcerated individuals, as Plaintiffs assert. That the Legislature enacted these statutes, but did not similarly enact statutes applying the Labor Code's minimum and overtime wage provisions to county jail inmates, confirms that those wage provisions do not apply here. This Court has drawn a similar inference in a variety of situations, and the Ninth Circuit is well equipped to apply these precedents here. (See, e.g., *Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 735 ["The Legislature clearly knows how to create an exemption from the anti-SLAPP statute when it wishes to do so. It has not done so for malicious prosecution claims."]; *People v. Sargent* (1999) 19 Cal.4th 1206, 1220 ["[W]hen the Legislature chooses to create a reasonable person standard, it knows how to do so."]; *T & O Mobile Homes, Inc. v. United California Bank* (1985) 40 Cal.3d 441, 455 ["It is apparent that, when the Legislature wants to discourage reliance by buyers on a certification system, it knows how to say so."].)[6]

In issuing the Certification Order, the Ninth Circuit also cited Plaintiffs' reliance on article XIV, section 5 of the California Constitution ("section 5"), which was enacted in its current form by Proposition 139. (See Certification Order at 8.) Proposition 139 amended section 5 to permit public-private work programs in state prisons and county jails. For programs in county jails, such as the one alleged here, Proposition 139 provided that "[s]uch programs shall be operated and implemented . . . by local ordinances." (Cal. Const., art. XIV, § 5(a).) Plaintiffs have argued that where there is a no local ordinance governing a public-private work program under section 5, the governing law for purposes of inmate compensation should be the Labor Code, rather than the Penal Code. But there is nothing in section 5 that supports that argument, and indeed, other provisions of Proposition 139 point to the opposite conclusion.

The People approved Proposition 139 in 1990 against the backdrop of the existing laws that governed state and county inmate compensation. (See *People v. Hernandez* (2003) 30 Cal.4th 835, 866–867 [assuming that the electorate is aware of relevant existing law when it adopts legislation by initiative].) As described above, at the time of Proposition 139's approval—and dating back to 1959—the law that governed compensation for inmates who performed work in a county jail was Penal Code section 4019.3. Proposition 139 did not amend section 4019.3's discretionary compensation scheme, and indeed did not mention county inmate compensation at all. Rather, consistent with section 4019.3, Proposition 139 (through its amendment to section 5)

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[6] Relatedly, there would be no principled way to limit a ruling that the Labor Code's minimum and overtime wage provisions apply to incarcerated persons notwithstanding the absence of any express provision in the Labor Code. The Labor Code provides a range of other benefits for employees, such as paid family leave (Lab. Code, § 12945.2) and paid sick leave (*id.*, § 245), but it would make no sense to apply those benefits in a custodial setting. The absurd and potentially disruptive consequences that could flow from Plaintiffs' argument are yet another reason why the answer to the certified question is sufficiently clear that this Court need not take up the issue. (See *People v. Bullard* (2020) 9 Cal.5th 94, 106 ["[W]e must . . . choose a reasonable interpretation that avoids absurd consequences that could not possibly have been intended."].)

provided that public-private work programs shall be governed by local ordinances in general. Proposition 139 did not require county boards of supervisors to enact an ordinance specifically governing the issue of inmate compensation (the only issue presented in this appeal), let alone suggest that, in the absence of such an ordinance, the Labor Code's minimum and overtime wage provisions, rather than Penal Code § 4019.3, would apply by default.

Proposition 139's different treatment of state and county inmate labor is also instructive. Proposition 139 revised the compensation scheme for state inmates by adopting Penal Code § 2717.8. (Compare Pen. Code, § 2811 [mandating compensation of not more than "one-half the minimum wage" for work performed by state inmates in general] with *id.*, § 2717.8 [mandating compensation comparable to the wages paid to non-inmate employees for Proposition 139 work, subject to deductions of up to 80 percent for restitution, "room and board," and other charges].) Section 2717.8 demonstrates that the drafters of Proposition 139 were well aware of how to alter the compensation scheme for inmate labor. Yet in contrast to its approach to state inmates, Proposition 139 conspicuously did *not* include any similar provision amending the existing framework permitting local governments to decide whether to compensate inmates who perform work in county jails. Instead, Proposition 139 left the pre-existing scheme enacted by Penal Code section 4019.3 in place. Moreover, the substantial deductions Proposition 139 prescribed for work performed by *state* inmates (i.e., a deduction of up to 80 percent off of prevailing wages) undermines any suggestion that Proposition 139 *sub silentio* granted *county* inmates a right to the much higher minimum wages and overtime mandated by the Labor Code's general provisions.

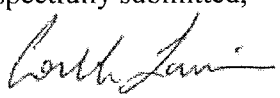
Under Plaintiffs' view of the law, then, individuals incarcerated in county jails would earn far *more* than individuals incarcerated in state prisons—even though California counties lack the resources available to the State. The drafters of Proposition 139 did not intend the bizarre consequences inherent in Plaintiffs' claim that the Labor Code applies here. In short, all that Proposition 139 demonstrates is that the drafters of the initiative were aware of how to alter the existing compensation schemes for inmate labor, but chose to keep in place Penal Code section 4019.3's discretionary compensation scheme for work performed in county jails.

Because none of the laws cited in the Certification Order undercut the otherwise clear guidance on how to construe the relevant California statutes, certification is unnecessary.

IV. CONCLUSION

Aramark respectfully requests that this Court decline to take up the question set out in the Certification Order.

Respectfully submitted,



Cortlin Lannin

cc: (via mail) Molly C. Dwyer, Clerk of Court, U.S. of Court Appeals for the Ninth Circuit
(via TrueFiling and e-mail) All counsel of record

CERTIFICATE 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 1999 Avenue of the Stars, Los Angeles, CA 90067. On November 21, 2022, I caused to be served true copies of the foregoing Letter In Opposition to Certification Request of the United States Court of Appeals for the Ninth Circuit in this action on the interested parties as follows:

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Executed on November 21, 2022, at Los Angeles, CA.

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11/21/2022
Date

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Lannin, Cortlin (266488)

Last Name, First Name (PNum)

Covington & Burling LLP

Law Firm