

**IN THE SUPREME COURT OF
CALIFORNIA**

LOS ANGELES UNIFIED)	
SCHOOL DISTRICT)	S269608
)	
Defendant and Petitioner,)	Ct.App. B307389
)	
v.)	L.A. Super. Ct.
)	No. BC659059
THE SUPERIOR COURT OF)	Hon. Shirley K. Watkins
LOS ANGELES COUNTY,)	
)	
Respondent,)	
)	
JANE DOE,)	
)	
Plaintiff and Real Party in)	
Interest)	
)	

**SUPPLEMENTAL BRIEF FOR THE
LOS ANGELES UNIFIED SCHOOL DISTRICT**

Calvin House (Bar No. 134902)
calvin.house@gphlawyers.com
Gutierrez, Preciado & House, LLP
3020 E. Colorado Blvd.
Pasadena, CA 91107
Tel: 626-449-2300 | Fax: 626-449-2330

Attorneys for Defendant and Petitioner
LOS ANGELES UNIFIED SCHOOL DISTRICT

Table of Contents

Table of Contents	2
Table of Authorities	3
Introduction.....	3
Argument.....	5
Conclusion	9
Certificate of Word Count.....	10

Table of Authorities

Cases

<i>Beeman v. Burling</i> (1990) 216 Cal.App.3d 1586.....	7
<i>Cook County v. United States ex rel. Chandler</i> (2003) 538 U.S. 119	8
<i>K.M. v. Grossmont Union High School Dist.</i> (2022) 84 Cal.App.5th 717	passim
<i>Kizer v. County of San Mateo</i> (1991) 53 Cal.3d 139.....	6, 7
<i>Los Angeles Unified School Dist. v. Superior Court</i> (2021) 64 Cal.App.5th 549	4
<i>PacifiCare Health Systems, Inc. v. Book</i> (2003) 538 U.S. 401	8
<i>People ex rel. Younger v. Superior Court of Alameda County</i> (1976) 16 Cal.3d 30.....	6
<i>X.M. v. Superior Court</i> (2021) 68 Cal.App.5th 1014	4

Statutes

Code Civ. Proc., § 340.1	7, 9
Gov. Code, § 818.....	4, 5, 6, 9

Rules

Cal. Rules of Court, rule 8.520.....	4, 10
--------------------------------------	-------

INTRODUCTION

Pursuant to California Rules of Court, rule 8.520(d), the Los Angeles Unified School District submits this supplemental brief to bring to the Court’s attention a decision that had not been published in time to be included in the District’s answer brief on the merits. In *K.M. v. Grossmont Union High School Dist.*,¹ Division One of the Fourth District Court of Appeal joined Division Two of that Court of Appeal² and Division Three of the Second District Court of Appeal³ in holding that Government Code section 818 bars application of AB 218’s treble damages provision to public entities. According to the *K.M.* court, treble damages under AB 218 “are primarily intended to punish, resemble punitive damages, and lack a compensatory purpose.”⁴

¹ (2022) 84 Cal.App.5th 717.

² See *X.M. v. Superior Court* (2021) 68 Cal.App.5th 1014, review granted and briefing deferred (Dec. 1, 2021).

³ See *Los Angeles Unified School Dist. v. Superior Court* (2021) 64 Cal.App.5th 549, review granted (Sept. 1, 2021).

⁴ *K.M.*, *supra*, 84 Cal.App.5th at p. 750.

ARGUMENT

In *K.M.*, the plaintiffs obtained a judgment against a school district based on a claim that the district’s employees were negligent in their supervision of a drama teacher who molested them. They sought a new trial based, in part, on the newly enacted treble damages provision of AB 218. In holding that they were not entitled to such relief, the Court of Appeal made the following points:

1. The text of the treble damages provision “reflects a primarily punitive purpose.” The damages available to a childhood sexual assault plaintiff “could include damages due to a plaintiff’s awareness that the assault resulted from a prior coverup.” Hence, treble damages are “by definition in addition to actual damages and beyond the equivalent of harm done.”⁵

2. The “only reasonable interpretation of ‘unless prohibited by another law’ is that it refers to laws that limit enhanced damages, like Government Code section 818.” Although the plaintiffs in that case questioned whether the phrase referred to section 818, “they [did] not offer an alternative explanation for what law or laws it does refer to.”⁶

3. References in some legislative history materials to a goal of compensating victims of sexual assaults that occurred because of coverups did not establish a compensatory purpose, because they “[did] not identify the injury for which

⁵ 84 Cal.App.5th at p. 743.

⁶ 84 Cal.App.5th at p. 744.

compensation is needed,” and because the same materials included language that “suggest[ed] a punitive motive.”⁷

4. Although an Assembly report stated that AB 218 was intended to apply to both public and private schools, that did not mean that all parts of it should be applied to public schools. “Indeed, the Legislative Counsel’s Digest in the enacted bill states the bill provides for ‘treble damages against certain defendants,’ and does not limit that qualification to defendants who engaged in prior coverups.”⁸

5. Although the plaintiffs argued that there was no basis for imposing a lesser standard on public schools, the Court of Appeal pointed out that “[c]ourts have long recognized there is little justification for imposing enhanced damages on public entities, including public schools.”⁹

6. The Court rejected the argument that section 818’s immunity extended only to damages whose purpose is simply and solely punitive. It explained that the language appeared in three decisions that involved civil penalties, which “entail different considerations than enhanced tort damages.”¹⁰ *Younger* involved civil penalties to be used for pollution abatement.¹¹ *Kizer* rested on this Court’s conclusion that

⁷ 84 Cal.App. 5th at p. 745.

⁸ *Ibid.*

⁹ 84 Cal.App.5th at pp. 745-746.

¹⁰ 84 Cal.App.5th at p. 747.

¹¹ *People ex rel. Younger v. Superior Court of Alameda County* (1976) 16 Cal.3d 30.

penalties assessed as part of a citation enforcement action fell outside the purview of the Tort Claims Act.¹² The *MTA* decision allowing a plaintiff to collect a civil penalty under Civil Code section 52, subdivision (b)(2) “noted ‘fundamental differences’ between civil penalties and punitive damages, including that penalties are mandatory and do not require the plaintiff suffer actual damages.”¹³ “As for the ‘simply and solely punitive’ phrasing, we view that as a way of applying the ‘primarily punitive’ requirement of Government Code section 818 in the civil penalties context—not a de facto elimination of the word ‘primarily.’”¹⁴

7. It distinguished the treble damages provision upheld in *Beeman v. Burling*¹⁵ as a remedy set by a legislative body. By contrast, section 340.1’s provision is permissive and applied by the fact finder, which is characteristic of punitive damages.¹⁶

8. It declined to follow the reasoning of two United States Supreme Court decisions, because they involved “complex

¹² *Kizer v. County of San Mateo* (1991) 53 Cal.3d 139.

¹³ 84 Cal.App.5th at p. 747.

¹⁴ 84 Cal.App.5th at p. 748.

¹⁵ (1990) 216 Cal.App.3d 1586.

¹⁶ 84 Cal.App.5th 717, 749.

federal laws that have no bearing on the California statutes before us.”¹⁷

¹⁷ *Ibid.*, referring to *PacifiCare Health Systems, Inc. v. Book* (2003) 538 U.S. 401 and *Cook County v. United States ex rel. Chandler* (2003) 538 U.S. 119.

CONCLUSION

The *K.M.* decision reaffirms that the treble damages provision in section 340.1 should not be applied to public schools, because it is “imposed primarily for the sake of punishment.” If that provision were applied to public schools, it would allow tort plaintiffs to recover not just the amount needed to compensate them for their injuries, but up to three times that amount to be awarded at the discretion of the factfinder.

Three separate divisions of the Court of Appeal have now concluded that Government Code section 818 bars imposing treble damages on public schools under section 340.1. This Court should come to the same conclusion and affirm the Court of Appeal’s decision in this case.

Calvin House
Gutierrez, Preciado & House, LLP

CERTIFICATE OF WORD COUNT

Counsel of Record hereby certifies that pursuant to Rule 8.520(c)(1) of the California Rules of Court, the enclosed Answer Brief on the Merits is produced using 13-point Roman type including footnotes and contains approximately 1,268 words, which is less than the total words permitted by the Rules of Court. Counsel relies on the word count of the computer program used to prepare this brief.

/s Calvin House
Calvin House
Gutierrez, Preciado & House, LLP

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **LOS ANGELES UNIFIED SCHOOL DISTRICT v. S.C. (JANE
DOE)**

Case Number: **S269608**

Lower Court Case Number: **B307389**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **calvin.house@gphlawyers.com**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
BRIEF	LAUSD Supplemental Brief

Service Recipients:

Person Served	Email Address	Type	Date / Time
Calvin House Gutierrez Preciado & House LLP 134902	calvin.house@gphlawyers.com	e-Serve	2/20/2023 3:49:26 PM
Jennifer Henning California State Association of Counties 193915	jhenning@counties.org	e-Serve	2/20/2023 3:49:26 PM
Marina Maynez Esner, Chang & Boyer	mmaynez@ecbappeal.com	e-Serve	2/20/2023 3:49:26 PM
Natalie Weatherford Taylor & Ring 278522	weatherford@tayloring.com	e-Serve	2/20/2023 3:49:26 PM
Ryan Miller Cummings McClorey Davis Acho & Associates, P.C. 256799	rmiller@cmda-law.com	e-Serve	2/20/2023 3:49:26 PM
Sheeny Bang Esner, Chang & Boyer	sbang@ecbappeal.com	e-Serve	2/20/2023 3:49:26 PM
Kelsey Wong Esner, Chang & Boyer	kwong@ecbappeal.com	e-Serve	2/20/2023 3:49:26 PM
Claudia Ramirez Gutierrez, Preciado & House, LLP	claudia.ramirez@gphlawyers.com	e-Serve	2/20/2023 3:49:26 PM
Jennifer Henning California State Association of Counties	jhenning@coconet.org	e-Serve	2/20/2023 3:49:26 PM
Kathleen Becket Esner, Chang & Boyer 334091	kbecket@ecbappeal.com	e-Serve	2/20/2023 3:49:26 PM
Daniel Modafferi Meyers Fozi & Dwork, LLP 035238	dmodafferi@meyersfozi.com	e-Serve	2/20/2023 3:49:26 PM

Holly Boyer Esner Chang & Boyer 221788	hboyer@ecbappeal.com	e-Serve	2/20/2023 3:49:26 PM
Frederick Bennett Superior Court of Los Angeles County 47455	fbennett@lacourt.org	e-Serve	2/20/2023 3:49:26 PM
Seth Gordon LEONE ALBERS & DUUS 099874	lleone@leonealberts.com	e-Serve	2/20/2023 3:49:26 PM
David Ring Taylor & Ring, LLP	ring@tayloring.com	e-Serve	2/20/2023 3:49:26 PM
Seth Gordon Leone & Alberts 262653	sgordon@leonealberts.com	e-Serve	2/20/2023 3:49:26 PM
Kevin Nguyen Esner, Chang & Boyer 322665	knguyen@ecbappeal.com	e-Serve	2/20/2023 3:49:26 PM
Alan Dell'ario Attorney at Law 60955	charles@dellario.org	e-Serve	2/20/2023 3:49:26 PM

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

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

2/20/2023

Date

/s/Calvin House

Signature

House, Calvin (134902)

Last Name, First Name (PNum)

Gutierrez, Preciado & House, LLP

Law Firm