IN THE SUPREME COURT OF CALIFORNIA

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

ANSWER TO PETITION FOR REVIEW

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INTRODUCTION

The petition for review mischaracterizes this case as a clash between the policy of compensating and protecting victims of childhood sexual abuse that motivated the enactment of AB 218 and the policy of protecting public entities from punitive damages embodied in Government Code section 818. It is not. Because AB 218 only authorizes an award of treble damages "unless prohibited by another law," the Legislature must have recognized that the treble damages provision would not apply to all defendants. The other provisions of AB 218 that have no such limitation (most notably the lifting of the statute of limitations for the next three years) are more than adequate to carry out that statute's compensatory purpose.

The Court of Appeal's decision is a straightforward application of Government Code section 818's bar to awarding "damages imposed primarily for the sake of example and by way of punishing the defendant" against public entities. This is something that the Courts of Appeal do frequently based on this Court's decisions interpreting section 818 and explaining what makes damages punitive. Those decisions state (1) that punitive damages are by definition in addition to actual damages and beyond the equivalent of harm done,[1] (2) that punitive damages are awarded at the discretion of the fact

[1] *State Dept. of Corrections v. Workers' Compensation Appeals Bd.* (1971) 5 Cal.3d 885, 891.

finder,[2] and (3) that treble damages have a punitive aspect.[3] The treble damages available under AB 218 qualify as punitive under that guidance.

AB 218 is relatively new. There have not been any decisions that reached a conclusion contrary to that of the Court of Appeal in this case. Should conflicting interpretations emerge in the future, the Court may grant review to secure uniformity of decision at that time. There is no urgency to do so right now.

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[2] *Kizer v. County of San Mateo* (1991) 53 Cal.3d 139, 147.

[3] *Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1196, fn. 20; *Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1172; *Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal.4th 381, 394.

LEGAL PRINCIPLES

Government Code section 818

Government Code section 818 provides that "a public entity is not liable for damages . . . imposed primarily for the sake of example and by way of punishing the defendant." The provision was enacted as part of the original Tort Claims Act on recommendation of the California Law Revision Commission. The Commission explained that "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."[4] "[T]he section was intended . . . to limit [the state's] exposure to liability for actual compensatory damages in tort cases"[5] and "to protect [public entities'] tax-funded revenues from legal judgments in amounts beyond those strictly necessary to recompense the injured party."[6]

In rejecting a constitutional challenge to the provision, the Court of Appeal quoted the following explanation of the policy basis for such a rule from the Florida Supreme Court:

> Since punishment is the objective, the people who would bear the burden of the award—the citizens—are the self-same group who are expected

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[4] *Salinas v. Souza & McCue Constr. Co.* (1967) 66 Cal.2d 217, 228, fn. 1, quoting 4 Cal. Law Revision Com. Rep. (1963) Recommendation Relating to Sovereign Immunity, p. 817. See also *State Department of Corrections*, *supra*, 5 Cal.3d at pp. 887-888.

[5] *Kizer*, *supra*, 53 Cal.3d at p. 146 (emphasis supplied).

[6] *Wells*, *supra*, 39 Cal.4th at p. 1196, fn. 20.

> to benefit from the public example which the punishment makes of the wrongdoer.
>
> . . .
>
> The deterrence element likewise adds little justification for this type of award against a municipality. In the first place it is to be assumed that the municipal officials will do their duty and if discipline of a wrongdoing employee is indicated, appropriate measures will be taken without a punitive award.
>
> Further, a huge award against the [public entity] would not necessarily deter other employees who generally would be unlikely to be able to pay a judgment assessed against them personally.[7]

Although the petition for review repeatedly asserts that section 818 only bars damages that are "simply and solely" punitive, the reach of the statute is not so narrow. That language does not appear in the statute, which bans damages imposed "primarily" for the sake of example and punishment. Further, this Court has stated that section 818 bars application to public entities of statutory remedies that are only "partially penal."[8]

The "simply and solely "language first appeared in the *Younger* case, where this Court said: "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

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[7] *McAllister v. South Coast Air Quality Mgmt. Dist.* (1986) 183 Cal.App.3d 653, 660, quoting *Fisher v. City of Miami* (Fla. 1965) 172 So.2d 455, 457.

[8] *DuBois v. Workers' Comp. Appeals Bd.* (1993) 5 Cal.4th 382, 398.

the meaning of section 818 of the Government Code."[9] It was repeated without further analysis in the *San Francisco Civil Service Association* and *Kizer* cases.[10] However, neither of the decisions cited by the *Younger* court to support its statement used that language.

In *Helfend v. Southern California Rapid Transit District*,[11] the Court determined that "the collateral source rule is not simply punitive in nature," and explained that section 818 did not apply, because it would enable a defendant "to avoid payment of full compensation for the injury inflicted." The decision does not contain the word "solely." In *State Department of Corrections v. Workers' Compensation Appeals Board*,[12] the Court held that the increased benefits available under Labor Code section 4553 for serious and willful misconduct could be recovered against a public entity. Section 818 did not apply, because "an ordinary award of benefits does not fully compensate an employee for his injuries and other detriment and that the purpose of the additional allowance was to provide more nearly full compensation in those cases in which the employer was guilty of aggravated misconduct."[13] The decision does not contain the word "solely."

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[9] *People ex rel. Younger v. Superior Court of Alameda County* (1976) 16 Cal.3d 30, 35-36.

[10] See *San Francisco Civil Service Assn. v. Superior Court* (1976) 16 Cal.3d 46; *Kizer*, *supra*, 53 Cal.3d at p. 145.

[11] (1970) 2 Cal.3d 1, 10, 14.

[12] 5 Cal.3d at p. 891.

[13] *Id.* at p. 889.

Younger itself involved the application of section 818 to statutory penalties assessed for an oil spill. The Court determined that they were not barred by section 818 because they were intended to provide compensation to the State for the harm done by an oil spill, and because the law provided for the penalties collected to be paid into a fund for cleaning up the water.[14] Since the case concerned penalties and not damages, and the statute clearly had a non-punitive purpose, there was no need for the Court to state that section 818 only applied to damages that were solely punitive. Hence, that characterization of section 818 was not necessary to the decision and should not control the application of section 818 to other remedies.[15] That is further demonstrated by this Court's *DuBois* decision, where it declined to apply a remedy that was only "partially penal" to a public entity.[16]

AB 218

AB 218, enacted in 2019 and effective January 1, 2020, was a response to continuing concern about childhood sexual abuse, and the restrictions on recovery by victims imposed by the statute of limitations:

> Childhood sexual abuse continues to ruin children [sic] lives and continues to shock the nation

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[14] *Younger*, *supra*, 16 Cal.3d at pp. 38-39.

[15] *City of San Diego v. Bd. of Trustees of California State Univ.* (2015) 61 Cal.4th 945, 958-959 (the statement of a principle not necessary to the decision is dictum that need not be followed).

[16] 5 Cal.4th at p. 398.

> because, unfortunately, perpetrators continue to abuse, often with impunity, and sometimes with the help of third parties who either choose not to get involved or actively cover-up the abuse. Whether the abuse occurred through gymnastics, swimming, school, or a religious institution, too many children have been victims of abuse and their lives have been forever impacted by that abuse. 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.

[Exhibit 6 to Writ Petition, pp. 93-94]

When AB 218 was introduced, it did not limit the defendants against whom treble damages could be awarded. The Assembly Judiciary Committee staff analysis characterized the provision as "expos[ing] those who cover up the sexual abuse of children to additional punishment." [Exhibit 6 to Writ Petition, p. 146] Following opposition from several education agencies on August 13, 2019 [Exhibit 8 to Writ Petition, pp. 185-187], the bill was amended on August 30, 2019, to add the phrase "unless otherwise prohibited by another law." [Exhibit 3 to Writ Petition, pp. 43-44] The petition for review has not identified any law other than section 818 that would bar imposition of treble damages.

Therefore, it can be inferred that the Legislature did not intend to authorize awards of treble damages against public entities.

Even if the Legislature had not provided that clue to its intent, courts would still be bound by the principle that "absent express words to the contrary, governmental agencies are not included within the general words of a statute."[17] Consistent with that principle, AB 218 and earlier enactments dealing with civil claims for childhood sexual abuse have expressly addressed the effect of those enactments on statutory restrictions on public entity liability. AB 218 amended Government Code section 905 to expressly expand the claims exempted from the claim filing requirement. In 2018, SB 1053 expressly exempted childhood sexual abuse claims from procedural hurdles enacted by local public entities under the Government Claims Act (see Government Code section 935, subdivision (f)). In 2008, SB 640 expressly provided that childhood sexual abuse claims were not subject to the 6-month claim filing requirement of the Government Claims Act (see Government Code section 905, subdivision (m)).

[17] *Wells*, *supra*, 39 Cal.4th at p. 1196, fn. 20.

CONCLUSION

This Court's role is to "secure harmony and uniformity in the decisions [of the appellate courts], their conformity to the settled rules and principles of law, a uniform rule of decision throughout the state, a correct and uniform construction of the constitution, statutes, and charters, and, in some instances, a final decision by the court of last resort of some doubtful or disputed question of law."[18]

The Court of Appeal's decision in this case does not implicate any of those aspects of the Court's role. The decision applied settled principles to reach a fair result. Victims of childhood sexual abuse may recover full compensation for their damages from culpable public entities no matter when the abuse occurred, thus fulfilling the main purpose of AB 218. But, public entities are protected from jury verdicts "beyond those strictly necessary to recompense the injured party,"[19] as required by section 818.

The Court should deny the petition for review.

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[18] *People v. Davis* (1905) 147 Cal. 346, 348; Cal. Rules of Court, rule 8.500(b).

[19] *Wells*, *supra*, 39 Cal.4th at p. 1219.

CERTIFICATE OF WORD COUNT

Counsel of Record hereby certifies that pursuant to Rule 8.204(c)(1) or 8.360(b)(1) of the California Rules of Court, the enclosed Answer to Petition for Review is produced using 13-point Roman type including footnotes and contains approximately 2,366 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
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PROOF OF SERVICE (California Supreme Court)

Re: *Los Angeles Unified School District v. Superior Court (Jane Doe)*
Case No. S269608

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

I declare that I am employed in the County of Los Angeles, State of California; I am over the age of 18 years and not a party to the within action; my business address is 3020 East Colorado Boulevard, Pasadena, California 91107.

On July 20, 2021, I served the Answer to Petition for Review on the following party by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

Clerk of the Los Angeles Superior Court
(for Hon. Shirley K. Watkins)
6230 Sylmar Avenue
Van Nuys, CA 91401

X BY MAIL - I placed such envelope for deposit in the U.S. Mail for service by the United States Postal Service, with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at Pasadena, California. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed July 20, 2021, at Pasadena, California.

/Claudia Ramirez
Claudia Ramirez

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**

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7/20/2021

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/s/Calvin House

Signature

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