Case No. S279137

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

TAMELIN STONE, AMANDA KUNWAR, on behalf of themselves and all others similarly situated
Plaintiffs/Appellants,

vs.

ALAMEDA HEALTH SYSTEM, a Public Hospital Authority;
Defendants/Respondents

On Petition from a Decision by the Court of Appeal,
First Appellate District, No. A164021

ANSWER TO PETITION FOR REVIEW

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I.

INTRODUCTION

The sovereign powers maxim is well established and is not in conflict in the case law. The Court of Appeal here closely followed the maxim in finding that Defendant/Respondent Alameda Health System ("AHS") was not an exempt sovereign. No case cited by AHS disputes the maxim and there is no conflict to review.

Instead, AHS seeks to obtain review by comparing *factually* dissimilar cases and claiming they are in "conflict". AHS compares cases analyzing public entities with recognized sovereign characteristics with those of non sovereigns. The difference between those cases is not in the law, it is in the facts of each case.

AHS strains hard to find a "conflict" in the law such that it argues hypothetical issues which present no actual controversy in this case and which, given the position argued by AHS, would subject them to *more* penalties than were found in the Opinion here.

AHS's attempt to create a "conflict" out of whole cloth is groundless and Petition should be denied.

II.

REVIEW SHOULD BE DENIED

Review should be denied because this case does not require the Court to settle an important question of law nor secure a uniformity of decision. (Cal. R. Ct. 8.500, subd. (b)(1)) AHS claims the Court of Appeal has created a conflict in the law with regards to the application of statutory sovereign immunity. In fact, the Court of Appeal merely followed existing case law, which it clearly cited and even noted it was bound by the precedents.

III.

THE COURT OF APPEAL FOLLOWED WELL ESTABLISHED LAW REGARDING SOVEREIGN IMMUNITY

A. The "Sovereign Powers Maxim" Is a Long Settled Rule of Statutory Construction Without Controversy

The Court of Appeal here followed well established maxims regarding statutory liability - if there is no express language otherwise, government agencies are excluded only if their inclusion would result in an infringement upon sovereign governmental powers. (Opinion at 6)

This Court has long followed the "sovereign powers maxim". (Hoyt v. Board of Civil Service Commrs. (1942) 21 Cal.2d 399, 402; City of Los Angeles v. City of San Fernando (1975) 14 Cal.3d 199, 276–277; Wells v. One20ne Learning Foundation (2006) 39 Ca1.4th 1164, 1192)

The Court of Appeal here adhered to precedent, following the three

step process stated in Johnson v. Arvin-Edison Water Storage Dist. (2009) 174 Cal.App.4th 729, 736, which itself followed this Court in Wells, supra, 39 Ca1.4th 1192. (Opinion at 7, citing Wells, supra, at p. 1192) The Court expressly stated its adherence to precedent:

> "Following *Johnson,* we conduct a three-part inquiry. First, we look for "express words" that include governmental agencies "within the general words of' the relevant statutes. *(Wells, supra,* 39 Ca1.4th at p. 1193.) If not, we look for "positive indicia" of a legislative intent to *exempt* such agencies from those statutes. *(Ibid.)* Then, if no such indicia appear, we ask whether applying the statutes to respondent "would result in an infringement upon sovereign governmental powers." *(Id.* at p. 1192.) Accordingly, because the statutes underlying the first, second, and third causes of action" do not expressly include governmental agencies, we proceed to the second part of the *Johnson* inquiry: asking whether there are "positive indicia" of legislative intent to exempt respondent." (Opinion, p. 7)

The maxim of statutory construction cited by the Court of Appeal here is well established. The Court did not part from the maxim's dictates and there is no conflict with other case law.

B. AHS Cites "Conflicting" Caselaw Which Contains Dissimilar Facts, Not Dissimilar Law

AHS claims Campbell v Regents of the University of California (2005) 35 Cal.4th 311 created a rule that "provisions of the Labor Code apply only to employees in the private sector unless they are specifically made applicable to public employees". (Petition , p. 26, citing Campbell, at

330) That quote was merely dicta from the legislative analysis of the bill that became Labor Code section 1106, which expanded the whistle blowing coverage under Labor Code 1102.5 to include public entities. The quote was not a "rule" stating that all public entities, no matter their sovereign status, are exempt from the Labor Code. Campbell does not address the sovereign powers maxim at all.

AHS attempts to paint an artificial "conflict" in the law by comparing cases with differing facts, not conflicting law:

- Johnson v Arvin Edison Water Storage, supra, 174 Cal.App.4th 729 - held that a water district performs an essential governmental function. (Johnson, at 741) AHS does not because alleviating poverty via Welfare and Institutions Code section 17000 is not a core government function per The Community Action Agency of Butte County v Superior Court (2022) 79 Cal.App.5th 221, 239. (Opinion, p. 9);

- California Correctional Peace Officers Ass'n v State of California (2010) 188 Cal.App.4th 646 - the State of California was not subject to meal period violations. Did not address the issue of whether the State of California was a sovereign, for obvious reasons;

- Allen v San Diego Convention Center Corporation Inc. (2022) 86 Cal. App.5th 589 - San Diego Convention Center Corporation was, as stated in

San Diego's municipal code, a part of the city and immune therefore (Allen, supra, at 583) By contrast, AHS is by its enabling statute specifically independent of the County of Alameda. (See Appellant's Supplemental Brief Regarding New Authority)

- Sheppard v. North Orange County Regional Occupational Program (2011) 191 Cal.App.4th 289 - held that the defendant was liable for minimum wage violations as is specifically stated in the IWC Wage Orders. It did not address whether the defendant was an immune sovereign.

AHS cites cases involving County owned hospitals for the proposition that they "conflict" with the Opinion here. (Community Memorial Hospital v. County of Ventura (1996) 50 Cal.App.4th 199) This completely ignores the basic premise - the hospital in question here is operated and owned by AHS, a non sovereign entity, not by the sovereign County. (Opinion, p. 7-8)

None of the cases cited by AHS find the sovereign powers maxim controversial nor attempt to divert from its basic precepts nor seek the Supreme Court's guidance on that issue. This case does not require the Court to settle an important question of law nor secure a uniformity of decision.

IV.

WAITING TIME VIOLATIONS ARE NOT CONFLICTED IN THE CASE LAW

AHS claims that Gateway Community Charters v. Spiess (2017) 9 Cal.App.5th 499 conflicts with previous cases interpreting exemptions from wage waiting time violations under Labor Code section 220(b) and that the Opinion here exacerbates this "split". (Petition, p. 33)

Again, the cases cited by AHS are completely consistent in their application of the law, they only differ in their facts. Johnson v Arvin Edison, supra, and Gateway both hold that an entity must have certain minimal characteristics to qualify as an exempt "other municipal corporation" under section 220(b). In Johnson the defendant water district possessed those characteristics and was exempt. (Johnson, at 741) In Gateway, the defendant school district did not and was not exempt. (Gateway, at 506-07) This is not a "split" in the law. It is an equal application of the law to different sets of facts.

The Court of Appeal here cited both cases, noting their similar holdings:

> "Respondent has none of the characteristics discussed in *Gateway* and lacks any powers analogous to the ones discussed in *Johnson.* In short, there is no reason to ascribe to respondent the status of a "municipal corporation" within the meaning of section 220, subdivision (b)." (Opinion, p. 11)

AHS also cites Div. Labor Law Enforcement v El Camino Hospital District (1970) 8 Cal.App.3d Supp 30 and Kistler v. Redwoods Community College Dist. (1993) 15 Cal.App.4th 1326 as examples of a "conflict" under section 220(b). These cases also apply the same undisputed law to different facts. El Camino dealt with a defendant Health *District*, created under Health and Safety Code sections 32000. Health Districts have sovereign powers which AHS, a Hospital *Authority* under Health and Safety Code 11850, does not. (See, Appellants' Opening Brief, p. 32) Nor did Kistler present conflicting law. As noted in Gateway, both the college district in Kistler and the Health District in El Camino possessed the same sovereign characteristics as those discussed in Johnson and Gateway. The holdings are fully in harmony:

> "Based on *El Camino* and *Kistler*, one might deduce, as Gateway and amicus curiae California Charter Schools Association (CCSA) appear to do, that the only showing that must be made to qualify as a quasi-municipal corporation or "other municipal corporation" for purposes of section 220(b), is that (1) the entity was created or authorized by the Legislature, and (2) it performs some kind of public or state work. We disagree with that deduction, however. ***The entity at issue in El Camino, a public hospital district, bore other characteristics reminiscent of a municipal corporation that are not present here and that were not expressly discussed in El Camino. (See Health & Saf. Code, § 32000 et seq. [powers, governance, and regulation of local health care or hospital districts].) The same is true of the community college district at issue in Kistler. These characteristics were described in some detail in Johnson v. Arvin-Edison Water***

> ***Storage Dist. (2009) 174 Cal.App.4th 729, 95 Cal.Rptr.3d 53 (Johnson)***, which considered whether a water storage district qualified as an "other municipal corporation" for purposes of section 220(b)." (Gateway, supra, at 505, emph. added)
>
> Gateway does not "split" with Johnson, Kistler or El Camino.

Gateway followed Johnson closely:

> "*Johnson* thus makes clear that while the performance of "an essential governmental function for a public purpose" is crucial to determining whether an entity is an "other municipal corporation," it is not the only factor to be considered. (*Johnson, supra*, 174 Cal.App.4th at p. 741, 95 Cal.Rptr.3d 53.) We must also consider, for example, whether the entity is governed by an elected board of directors; whether the entity has regulatory or police powers; whether it has the power to impose taxes, assessments, or tolls; whether it is subject to open meeting laws and public disclosure of records; and whether it may take property through eminent domain." (Gateway, supra, at 506)
>
> There is no "split" on this issue presented in Gateway nor here.

V.

THE COURT OF APPEAL FOLLOWED CLEAR PRECEDENT REGARDING PAGA

A. There is No Conflict Between Sargent v Board of Trustees and Wood v Kaiser Foundation and AHS Presents No Reviewable Actual Controversy

The Court of Appeal here ruled that Appellants are entitled to pursue PAGA claims as prescribed in Sargent v Board of Trustees of California State University (2021) 61 Cal.App.5th 658. (Opinion, p. 15) Per Sargent, where an underlying Labor Code section already provides for penalties, all

public entities are liable therefore. A public entity is not, however, liable for the "default" penalties provided in PAGA.

AHS claims Wood v. Kaiser Foundation Hospitals (2023) 88 Cal.App.5th 742 conflicts with Sargent and this Opinion. There is no conflict because Wood did not address the issue in Sargent or here. Wood held that the mandatory paid sick leave statute, Labor Code section 245 et seq, does not exclude a PAGA claim. Wood did not address the holding in Sargent or this case - that a public entity under PAGA is liable for penalties prescribed in the underlying Labor Code section, but not for default PAGA penalties.

AHS is actually improperly attempting to reverse Wood, not the Opinion in this case. AHS claims that the Court of Appeal here correctly found that a public entity is not a "person" under Labor Code section 18 and therefore not liable for default PAGA penalties, but that Wood incorrectly held otherwise. AHS is thus either arguing against its own interests by claiming that the Court of Appeal here should have mandated all penalties against it, PAGA default and Labor Code prescribed, or is attempting to overturn Wood without standing to do so.

The Court of Appeal's ruling here has not deprived AHS of any right or interest and AHS cannot appeal Wood. In either instance there is no

actual controversy and the issue is not subject to review. (Paul v Milk Depots (1964) 62 Cal.2d 128, 132)

B. There is No "Double Recovery" Under PAGA and No Reviewable Actual Controversy Since the LWDA is Not Prosecuting AHS

AHS claims that the Opinion here and Sargent have exposed them to a "double recovery", where private plaintiffs and the Labor and Workforce Development Agency ("LWDA") can simultaneously seek to recover penalties against it. This proposition is nonsensical and is not even in issue.

The LWDA holds the initial right to pursue violations under PAGA. If it chooses to do so, there is no private right of action. (Labor Code sec. 2699(h)) The Opinion here does not hold otherwise.

Moreover, the LWDA has not even sought to pursue an action in this case. AHS's "double recovery" claim is not in issue in this case and is not even a plausible hypothetical. The PAGA statute specifically states that private enforcement is an "alternative" to enforcement by the LWDA. This is clearly meant to allow one or the other, not both:

> "*Notwithstanding any other provision of law*, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, *may, as an alternative, be recovered through a civil action brought by an aggrieved employee* on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3." (Labor Code sec. 2699(a),

emph. added)

The legislative history of the PAGA statute shows the intent to allow private enforcement of a PAGA action only where the LWDA has not already done so:

> "This bill would allow aggrieved employees to bring civil actions to recover these penalties, if the agency or its departments, divisions, commissions, boards, agencies, or employees do not do so." (2003 Cal. Legis. Serv. Ch. 906 (S.B. 796) (WEST), see Knapp v. Ginsberg (2021) 67 Cal.App.5th 50, 532 - request for judicial notice of reports on legislative analysis unnecessary)

Nothing in the Opinion here states that AHS is subject to a "double recovery" under PAGA and the statute itself clearly prohibits that. Moreover, that question is not even in issue here. AHS presents, at most, an abstract proposition which is not an actual controversy. That proposition is not subject to review, even if it were correct in its hypothesis, which it is not. (Jefferson Street Ventures, LLC v. City of Indio (2015) 236 Cal.App.4th 1175, 1205)

C. PAGA Penalties Are Not Punitive Damages and No Case Holds Otherwise

As noted in the Opinion here, PAGA penalties are not primarily punitive in nature are not barred by Government Code section 818. AHS has cited no case holding otherwise. Los Angeles County Metropolitan Trans. Authority v Superior Court (2004) 123 Cal.App.4th 261

("LACMTA") did not address the issue of PAGA penalties. It only held that the Unruh Act's 25,000 dollar penalty were not punitive damages because they were not "primarily imposed for the sake of example and by way of punishing the defendant". (LACMTA, at 271)

Similarly, X.M. v Superior Court (2021) 68 Cal.App.5th 1014 and Los Angeles Unified School District v. Superior Court (2021) 64 Cal.App.5th 549 do not address PAGA penalties. The issue on review in both X.M. and Los Angeles Unified School District ("LAUSD"), is whether treble damages in a statute addressing minor sexual assault violates section 818 if applied to a School District. The Court in X.M. noted that all statutory treble damage provisions are punitive but are barred only if their primary purpose is to punish, rather than to incentivize plaintiffs. (X.M., supra at 1029-30)

The Court of Appeal here followed precedent interpreting similar statutory penalties in holding that the primary purpose of PAGA penalties is to encourage private parties to act "as the proxy or agent of the state's law enforcement agencies" (Opinion, at p. 16, citing Wesson v Staples the Office Superstore LLC (2021) 68 Cal.App.5th 746, 760) Nothing in any case cited by AHS holds or implies otherwise.

> "Like the Court of Appeal, we find nothing in the Tort Claims Act to suggest that section 818 was intended to apply to

> statutory civil penalties designed to ensure compliance with a detailed regulatory scheme, such as the penalties at issue in the present case, even though they may have a punitive effect." (Kizer v. County of San Mateo (1991) 53 Cal.3d 139, 146)

Regardless of how X.M. or LAUSD are decided, they would not bear on the issue of PAGA penalties. PAGA is not a treble damages statute, it is a civil penalties statute, which, per Kizer are designed to ensure compliance with the statute and not within section 818's bar.

VI.

THIS CASE IS NARROW IN ITS APPLICATION AND MERELY FOLLOWS ESTABLISHED LAW

The Court of Appeal's Opinion here has not changed the law, it only applied existing law to the facts of this case. Any entity without sovereign status would not be protected as a sovereign, either before or after this case was decided. Despite AHS's overreaching attempts there is no conflict in the law which requires review by this Court. The law in this area is clear, uncontroversial and was applied properly in this case.

Further, AHS petitions for review of issues which are not in controversy in this case. AHS is not in danger of a "double recovery" under PAGA as the LWDA is not prosecuting it. AHS is also either arguing that the Court of Appeal here should have expanded PAGA remedies against it or is petitioning to overturn Wood v. Kaiser Foundation Hospitals without

standing. These all lack an actual controversy which could be subject to review.

The law here is clear and unconflicted. Maxims regarding sovereign immunity have been followed by the Courts, including this Court, for decades. AHS strains to find a "conflict" in order to gain review, but there is no conflict in the law requiring review here. Petition for Review should be denied.

Respectfully submitted.

DATED: BY 

DAVID Y. IMAI, ESQ.
ATTORNEY FOR
PLAINTIFFS/APPELLANTS

CERTIFICATE OF COMPLIANCE

I hereby certify that Appellant's Opening Brief is drafted in 13-point proportional type and contains 3,032 words and conforms to California Rules of Court 8.204(b)(4), (c)(1). This was counted by WordPerfect X5, which was also the word processing software used to prepare this brief.

DATED: BY _____

DAVID Y. IMAI, ESQ.
ATTORNEY FOR
PLAINTIFFS/APPELLANTS

PROOF OF SERVICE

STONE, KUNWAR, all others similarly situated v. ALAMEDA HEALTH SYSTEM, A Public Hospital Authority

California Supreme Court Case No.S279137

I am employed in the County of Santa Cruz, California. I am over the age of 18 years and not a party to the within entitled action. My business address is 311 Bonita Drive, Aptos, California 95003.

On April 5, 2023, I served the attached ***ANSWER TO PETITION FOR REVIEW*** in the above-captioned matter to the following persons:

Geoff Spellberg, Ryan McGinley-Stempel Anastasia Bondarchuk Renne Public Law Group 350 Sansome Street, Suite 300 San Francisco, Calif. 94104 ***By Electronic Service*** gspellberg@publiclawgroup.com rmcginleystempel@publiclawgroup.com abondarchuk@publiclawgroup.com	First District Court of Appeal Division 5 350 McAllister Street San Francisco, CA 94102 ***By U.S. Mail***
Alameda County Superior Court René C. Davidson Courthouse Civil Division 1225 Fallon Street, Room 109 Oakland, California 94612 ***By U.S. Mail***	

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this is executed on April 5, 2023, in Aptos, California.

David Imai

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **STONE v. ALAMEDA HEALTH SYSTEM**
Case Number: **S279137**
Lower Court Case Number: **A164021**

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