Case No. S279137

IN THE SUPREME COURT OF CALIFORNIA

TAMELIN STONE, et al.,

Plaintiffs and Appellants,

v.

ALAMEDA HEALTH SYSTEM,

Defendant and Respondent.

No Fee (Gov. Code, § 6103)
After a Decision by the Court of Appeal,
First Appellate District, Division Five
Case No. A164021

REPLY TO ANSWER TO PETITION FOR REVIEW

*RYAN P. McGINLEY-STEMPEL (SBN 296182)
rmcginleystempel@publiclawgroup.com
ARTHUR A. HARTINGER (SBN 121521)
ahartinger@publiclawgroup.com
GEOFFREY SPELLBERG (SBN 121079)
gspellberg@publiclawgroup.com
RENNE PUBLIC LAW GROUP
350 Sansome Street, Suite 300
San Francisco, California 94104
Telephone:(415) 848-7200
Facsimile: (415) 848-7230

Attorneys for Defendant and Respondent
ALAMEDA HEALTH SYSTEM

TABLE OF CONTENTS

Page

INTRODUCTION 5

LEGAL ARGUMENT 7

I. The Court of Appeal's decision breaks with a long line of authority holding that public entities are not subject to certain Labor Code and wage order obligations. 7

II. There is a preexisting split of authority regarding which types of public entities are exempt from the Labor Code's prompt payment provisions. 10

III. Review is warranted to determine the applicability of PAGA to public entities. 12

A. There is a split of authority as to whether public entities constitute "persons" under Labor Code section 18. 12

B. The Court of Appeal's interpretation of PAGA could lead to double recoveries against public employers. 13

C. The Court of Appeal's interpretation of PAGA runs afoul of Government Code section 818's prohibition on damages primarily designed to punish. 15

CONCLUSION 16

CERTIFICATION OF WORD COUNT 18

PROOF OF SERVICE 19

TABLE OF AUTHORITIES

Page(s)

Cases

Allen v. San Diego Convention Center Corp., Inc.
(2022) 86 Cal.App.5th 589 ..... 7, 8

California Correctional Peace Officers' Assn. v. State of California
(2010) 188 Cal.App.4th 646 ..... 7, 8

Campbell v. Regents of the University of California
(2005) 35 Cal.4th 311 ..... 8, 9

Community Memorial Hospital v. County of Ventura
(1996) 50 Cal.App.4th 199 9

Division of Labor Law Enforcement v. El Camino Hosp. Dist.
(1970) 8 Cal.App.3d Supp. 30 ..... 11, 12

Gateway Community Charters v. Spiess
(2017) 9 Cal.App.5th 499 ..... 10, 11, 12

Iskanian v. CLS Transportation Los Angeles, LLC
(2014) 59 Cal.4th 348 16

Johnson v. Arvin-Edison Water Storage Dist.
(2009) 174 Cal.App.4th 729 ..... 7, 8, 10, 11

Kim v. Reins International California, Inc.
(2020) 9 Cal.5th 73 16

Kistler v. Redwoods Community College Dist.
(1993) 15 Cal.App.4th 1326 ..... 11, 12

Los Angeles Leadership Academy, Inc. v. Prang
(2020) 46 Cal.App.5th 270 9

Los Angeles Unified School District v. Superior Court
(2021) 64 Cal.App.5th 549 16

TABLE OF AUTHORITIES: (continued) **Page(s)**

Sargent v. Board of Trustees of California State Univ.
(2021) 61 Cal.App.5th 658 ..... 12, 13

Siler v. Industrial Accident Commission
(1957) 150 Cal.App.2d 157 11

Wells v. One2One Learning Foundation
(2006) 39 Cal.4th 1164 ..... 7, 13, 16

Wood v. Kaiser Foundation Hospitals
(2023) 88 Cal.App.5th 742 ..... 12, 13

X.M. v Superior Court
(2021) 68 Cal.App.5th 1014 16

Statutes

California Government Code
§ 818 ..... *passim*

California Health & Safety Code
§ 101850(m) 5, 9

California Labor Code
§ 2698 13
§ 2699 14
§ 2699(a) 15
§ 2699(f) 14
§ 2699(g)(1) 15
§ 2699(h) 14

REPLY TO ANSWER TO PETITION FOR REVIEW

INTRODUCTION

The Court of Appeal's decision in this case breaks with a long line of authority holding that public entities are not subject to certain Labor Code and wage order obligations unless specifically made applicable. In reaching this conclusion, the Court of Appeal created multiple conflicts with other published opinions and exposes Alameda Health System ("AHS") and numerous other public entities to significant and unprecedented liability.

Prior to this decision, most of the cases holding that public entities are not liable for wage and hour obligations regarding meal and rest breaks, payroll records, and overtime did not rely on the sovereign powers doctrine in reaching these conclusions. Nevertheless, the Court of Appeal erroneously applied the doctrine to conclude that AHS—as a public entity vested with "all the rights and duties set forth in state law with respect to hospitals owned or operated by a county"—is subject to certain Labor Code and wage order obligations. (Health & Saf. Code, § 101850, subd. (m).) The Court of Appeal's decision is in direct conflict with published precedent. Review is needed to clarify whether *all* public entities are exempt from the obligations in the Labor Code and wage orders or only those public entities that satisfy the traditional "hallmarks of sovereignty." (Typed opn. at p. 1.)

The Court of Appeal's decision also exacerbates a conflict of law regarding how to interpret "other municipal corporation" under the Labor Code's prompt payment provisions—a term that, prior to 2017, was deemed to include hospital districts and other local public agencies. Plaintiffs attempt to reconcile this split of authority by distinguishing the conflicting decisions on their facts. However, Plaintiffs fail to reconcile the differing legal frameworks for determining what constitutes a "municipal corporation" under the prompt payment provisions. The conflict of law on this issue likewise merits this Court's review.

Finally, review is needed to determine the applicability of PAGA to public entities. Although the Court of Appeal correctly concluded that AHS is not a "person" under Labor Code section 18, its construction of PAGA exposes public agencies to excessive damages by potentially permitting double recovery. The risk of double recovery against public employers, taken with the underlying intent of PAGA penalties to penalize wrongdoers, violates Government Code section 818's prohibition on damages designed to punish.

The Court of Appeal's erroneous decision carries wide-ranging consequences for hundreds of public agencies across the State. This Court should grant review.

LEGAL ARGUMENT

I. The Court of Appeal's decision breaks with a long line of authority holding that public entities are not subject to certain Labor Code and wage order obligations.

Although Plaintiffs attempt to cabin the present dispute to the sovereign powers doctrine, the split of authority here concerns whether public entities are subject to certain Labor Code and wage order obligations. Indeed, most of the cases holding that wage and hour obligations regarding meal and rest breaks, payroll records, and overtime do not apply to public entities have reached this conclusion *without even addressing the sovereign powers doctrine*.[1] (See, e.g., *Johnson v. Arvin-Edison Water Storage Dist*. (2009) 174 Cal.App.4th 729, 738 [public entity exempt from certain provisions of the Labor Code, independent of the "sovereign powers" maxim]; *California Correctional Peace Officers' Assn. v. State of California* (2010) 188 Cal.App.4th 646, 651-656 & fn. 7 [sovereign powers doctrine not considered in holding that subject wage and hour statutes do not apply to public employees]; *Allen v. San Diego Convention Center Corp., Inc*. (2022) 86 Cal.App.5th 589, 600 [public entity not

[1] In *Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1193, this Court noted that while the sovereign powers doctrine can help resolve unclear legislative intent, it cannot override positive indicia of a contrary legislative intent—in this case, express references to public entities in other parts of the code.

subject to Labor Code provisions because such provisions "contain no express inclusion of public entities"].)

Notwithstanding the foregoing line of authority, the Court of Appeal unnecessarily applied the sovereign powers doctrine to conclude that public entities *are* subject to certain Labor Code and wage order obligations. In doing so, it reached a conclusion that flatly contradicts prior case law holding that public entities are not subject to certain Labor Code and wage order obligations unless "specifically made applicable."[2] (*Johnson*, 174 Cal.App.4th at p. 744.) The Court of Appeal's departure from this well-established principle creates a conflict of law warranting review by this Court. Plaintiffs' assertion that AHS is attempting to "paint an artificial 'conflict' in the law" is simply untrue. (Opp. at p. 9.)

Furthermore, Plaintiffs' contention that AHS cites case law with "dissimilar facts, not dissimilar law" mischaracterizes AHS's position. (Opp. at p. 8.) AHS never claimed that *Johnson*, *CCPOA*, and *Allen* were legally dissimilar with respect to the rule articulated in *Campbell*. On the contrary, it noted in its Petition that "*[u]ntil the decision below*, courts have *consistently* followed

---

[2] Although Plaintiffs claim that AHS relies on dicta from *Campbell v. Regents of the University of California* (2005) 35 Cal.4th 311 in asserting that "provisions of the Labor Code apply only to employees in the private sector unless they are specifically made applicable to public employees," numerous Courts of Appeal have cited *Campbell* for that same proposition. (See, e.g., *CCPOA*, 188 Cal.App.4th at p. 653; *Allen v. San Diego Convention Center Corp., Inc.* (2022) 86 Cal.App.5th 589, 597; *Johnson*, 174 Cal.App.4th at p. 736.)

the rule articulated in *Campbell*, regularly concluding that public entities are not subject to the Labor Code . . ." (Pet. at p. 26 [emphasis added].) The Court of Appeal's decision creates a "divide[] over whether to apply the 'sovereign powers' doctrine to Labor Code provisions that do not refer to public entities." (*Ibid.*)

Likewise, Plaintiffs' assertion that the opinion does not conflict with existing authority regarding whether and how to apply the sovereign powers doctrine because the hospital is "operated and owned by AHS, a non-sovereign entity, not by the sovereign county" is false. (Opp. at p. 10.) Plaintiffs entirely ignore the fact that AHS has "all the rights and duties set forth in state law with respect to hospitals owned or operated by a county." ((Health & Saf. Code, § 101850, subd. (m).) They also ignore *Community Memorial Hospital v. County of Ventura* (1996) 50 Cal.App.4th 199, which unambiguously states that a "[c]ounty has a legitimate interest in providing medical care to the indigent," "[p]roviding such care is 'within the purposes for which governments are established,'" and "a statute that restricts the County in the operation of its public hospital infringes on its sovereign powers." (*Id.* at pp. 208, 210.) As one court has recognized in a different context, "[i]n every instance, the entities listed as public entities—from traditional bodies like counties and cities to more recent innovations like public authorities and public corporations—have one thing in common: Each is vested with some degree of sovereignty." (*Los Angeles Leadership Academy, Inc. v. Prang* (2020) 46 Cal.App.5th 270, 281.)

In applying the sovereign powers doctrine here, the Court of Appeal created ambiguity regarding when and how the sovereign powers doctrine should be applied in the context of public entities. Clarification from the Court is needed on whether *all* public entities are exempt from the obligations in the Labor Code and wage orders or only those public entities that satisfy the traditional "hallmarks of sovereignty." (Typed opn. at p. 1.)

II. There is a preexisting split of authority regarding which types of public entities are exempt from the Labor Code's prompt payment provisions.

As explained in the Petition, there is a split of authority as to what constitutes a "municipal corporation" under the Labor Code's prompt payment provisions. (See Pet., section II.A.) Plaintiffs' assertion that "the cases cited by AHS are completely consistent in their application of the law" but "only differ in their facts" is, once again, false. (Opp. at p. 11.) Plaintiffs claim that because "an entity must have certain minimal characteristics to qualify as an exempt 'other municipal corporation'" under both *Johnson* and *Gateway*, there is no "'split' in the law." (Opp. at p. 11.) Of course an entity must have certain minimal characteristics to qualify as an exempt "other municipal corporation." That is not in dispute, and that is not the split of authority. The split of authority pertains to *how* courts interpret the meaning of "other municipal corporation" with respect to the prompt payment provisions of the Labor Code. Plaintiffs'

attempt to mischaracterize the split of authority on this issue should be rejected.

As explained in the Petition, until 2017, courts consistently read the exemption for local public agencies broadly, including to apply to hospital districts. (See, e.g., *Division of Labor Law Enforcement v. El Camino Hosp. Dist.* (1970) 8 Cal.App.3d Supp. 30, 35 ["[t]he only reasonable interpretation of this section is that the Legislature … intended that the additional term 'or other municipal corporation' should refer to municipal corporations in the commonly accepted sense—namely, public corporations or quasi-municipal corporations"[3]]; *Kistler v. Redwoods Community College Dist.* (1993) 15 Cal.App.4th 1326, 1337 [citing *El Camino* in interpreting "municipal corporation" for purposes of the Labor Code]; *Johnson*, 174 Cal.App.4th at p. 740 [citing and relying on *El Camino*'s interpretation of "municipal corporation"; rejecting "narrow[] and strict[]" interpretation]; *Siler v. Industrial Accident Commission* (1957) 150 Cal.App.2d 157, 163-164 [interpreting "municipal corporation" broadly in another Labor Code provision].)

The Third District parted ways with this well-established authority in *Gateway*, imposing a new framework for determining what constitutes a "municipal corporation." (*Gateway*

[3] In holding that "municipal corporation" includes "quasi-municipal corporations," *Camino* also noted that "quasi-municipal corporations are public agencies created or authorized by the Legislature to aid the state in some form of public or state work, other than community government." (8 Cal. App.3d Supp at p. 33 [citation omitted].)

Community Charters v. Spiess (2017) 9 Cal.App.5th 499.) Instead of interpreting "municipal corporation" as "public corporations or quasi-municipal corporations," or corporations that exercise an essential government function, the court held that a public entity must have "multiple crucial characteristics," such as "the power to acquire property through eminent domain"; possession of a geographical jurisdiction and the power to "impose taxes and fees upon those who live within" it; "independent regulatory or police powers"; and a "board of directors … elected by the public." (*Id.* at p. 506.)

Plaintiffs attempt to reconcile this clear split of authority by distinguishing the foregoing cases on their facts. But they do not—because they cannot—harmonize the differing frameworks for determining what constitutes a "municipal corporation" under the prompt payment provisions. The Court of Appeal's opinion only deepens this conflict in the law by completely ignoring the interpretation of "municipal corporation" espoused in *El Camino* and *Kistler*. This Court's review is needed to clarify the meaning of "municipal corporation" for purposes of the Labor Code's prompt payment provisions.

III. Review is warranted to determine the applicability of PAGA to public entities.

A. There is a split of authority as to whether public entities constitute "persons" under Labor Code section 18.

As evidenced by the *Wood* and *Sargent* decisions, there is a split of authority as to whether public entities constitute

"persons" under Labor Code section 18. In *Sargent v. Board of Trustees of California State Univ.* (2021) 61 Cal.App.5th 658, 673 the court held that public entities are not subject to PAGA's default penalties because they are not "persons" within the meaning of PAGA, relying on the "holding and rationale of *Wells*." (*Ibid.*) The court in *Wood v. Kaiser Foundation Hospitals* (2023) 88 Cal.App.5th 742 disagreed, expressly rejecting the interpretation of "person" espoused in *Wells*. (*Id.* at p. 760 [acknowledging this Court's holding in *Wells* that the "definition of person does not include public actors" but stating "we understand [Section 18 of] the statute differently"].) In direct conflict with *Sargent*, the court rejected the argument that Labor Code section 18 defines "person" in a way that excludes public entities. (*Id.* at p. 761.)

AHS is not "improperly attempting" to appeal *Wood*, as Plaintiffs contend. (Opp. at p. 14.) Rather, AHS is highlighting the split of authority regarding what constitutes a "person" under section 18 of the Labor Code. That *Wood* failed to "address the holding in *Sargent* or this case" has no bearing on whether the cases are conflicting. (Opp. at p. 14.)

B. The Court of Appeal's interpretation of PAGA could lead to double recoveries against public employers.

As stated in the Petition, PAGA allows aggrieved employees to bring representative actions on behalf of current or former employees for civil penalties based on Labor Code violations. (See § 2698 et seq.) It establishes default penalties

against "persons" based on the number of employees they employ. (§ 2699, subd. (f).)

Section 2699(h) provides some protection for "persons," providing that "no action may be brought under this section by an aggrieved employee if the agency … on the same facts and theories, cites a *person* … for a violation of the same section or sections of the Labor Code." (*Id.*, subd. (h) [emphasis added].)

The Court of Appeal correctly interpreted "persons" as excluding public entities (under Labor Code section 18) but adopted an interpretation of PAGA that exposes public agencies to excessively punitive PAGA claims.

The Court, along with two published decisions, held that PAGA's "person" requirement "is limited to statutory violations subject to the default penalties set forth in section 2699, subdivision (f), but does not apply to statutory violations "for which a civil penalty is specifically provided." (Typed opn. at p. 15.)

This approach potentially exposes public agencies, but not private employers (who are "persons"), to double recovery from employee and Labor and Workforce Development Agency ("LWDA") actions. Its interpretation means that, under section 2699(h), an aggrieved employee is not precluded from bringing a cause of action against a public entity under section 2699 simply because the LWDA has already cited that entity for a violation on the same facts and theories.

Plaintiffs fail to meaningfully engage with this argument, let alone refute it. Instead, Plaintiffs' response essentially boils

down to the following: the potential for double recovery is an "[im]plausible hypothetical" because the LWDA "has not even sought to pursue an action in this case." (Opp. at p. 15.) However, whether the LWDA has pursued an action *in this case* has no bearing on whether the Court of Appeal's decision impermissibly exposes public entities to double recovery under PAGA.

The prospect of double recovery against public employers is not some implausible hypothetical, as Plaintiffs contend. Although Labor Code section 2699(a) provides that a private civil action *may* be brought as an alternative to enforcement by the LWDA, it does not *bar* dual actions. (Labor Code § 2699, subd. (a).) And indeed, subsection (g)(1) clearly states that "[n]othing in this part shall operate to limit an employee's right to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part." (Labor Code, § 2699, subd. (g)(1).)

C. The Court of Appeal's interpretation of PAGA runs afoul of Government Code section 818's prohibition on damages primarily designed to punish.

Government Code section 818 prohibits "damages… imposed primarily for the sake of example and by way of punishing the defendant." (Gov. Code, § 818.)

The risk of double recovery against public employers is excessively punitive, in violation of Government Code section 818. This is particularly true, given the intent underlying PAGA penalties, which is to "enforce the state's interest in penalizing

and deterring employers who violate California's labor laws." (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 387. See also *Kim v. Reins International California*, Inc. (2020) 9 Cal.5th 73, 86 ["'Civil penalties, like punitive damages, are intended to punish the wrongdoer and to deter future misconduct"'].) The Court of Appeal's construction of PAGA to allow for double recoveries flies in the face of this Court's directive to consider the "purpose behind the statutory ban on punitive damages against public entities" when determining whether the Legislature "intend[ed], without expressly saying so, to apply" certain laws to public entities. (*Wells*, *supra*, 39 Cal.4th at p. 1196, fn. 20.) Such an interpretation raises grave concerns with respect to Government Code section 818's prohibition on damages primarily designed to punish.[4]

CONCLUSION

This Court should grant the Petition for Review. Review is necessary to secure uniformity of decision and settle important questions of law. Although AHS lacks certain hallmarks of sovereignty, AHS is a government entity and should qualify for

[4] Although *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 involve civil penalties, they bear on the question of what constitutes a punitive penalty under Government Code section 818. The Court's ultimate decision in those cases may shed light on the applicable standard in this case.

certain wage and hour exemptions previously thought to apply to all public employers.

Respectfully submitted,

Dated: April 17, 2023 RENNE PUBLIC LAW GROUP

By: 
RYAN P. McGINLEY-STEMPEL

Attorneys for Defendant and Respondent ALAMEDA HEALTH SYSTEM

CERTIFICATION OF WORD COUNT

(California Rules of Court, Rule 8.504(d)(1))

The foregoing brief contains 2,827 words (including footnotes, but excluding the table of contents, table of authorities, certificate of service, and this certificate of word count), as counted by the Microsoft Word processing program used to generate the brief.

Dated: April 17, 2023 RENNE PUBLIC LAW GROUP

By: _____
Ryan P. McGinley Stempel

Attorneys for Defendant and Respondent ALAMEDA HEALTH SYSTEM

PROOF OF SERVICE

Case Name: *Stone et al. v. Alameda Health System*
Case No.: S279137 (Court of Appeal Case No. A164021)

I am not a party to the within action, am over 18 years of age. My business address is 350 Sansome Street, Suite 300, San Francisco, California 94104.

On April 17, 2023, I served the following document: **REPLY TO ANSWER TO PETITION FOR REVIEW** on the party below ***via TrueFiling***:

David Y. Imai
Law Offices of David Y. Imai
311 Bonita Drive
Aptos, CA 95003
davidimai@sbcglobal.net

Attorneys for Appellants Tamara Stone, et al.

First District Court of Appeal
Division 5
350 McAllister Street
San Francisco, CA 94102

Court of Appeal

On April 17, 2023, I also served the **REPLY TO ANSWER TO PETITION FOR REVIEW** on the parties below ***via U.S. Mail***:

Hon. Noël Wise
Alameda County Superior Court
1221 Oak Street, Floor 3
Oakland, CA 94612

Judge of the Superior Court of Alameda County

I declare, under penalty of perjury, that the foregoing is true and correct. Executed on April 17, 2023, at San Francisco, California.

Bobette T. Bramer

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**

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: **rmcginleystempel@publiclawgroup.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
REPLY TO ANSWER TO PETITION FOR REVIEW	Alameda Health System's Reply to Answer to Petition for Review

Service Recipients:

Person Served	Email Address	Type	Date / Time
David Imai Law Offices of David Y. Imai 142822	davidimai@sbcglobal.net	e-Serve	4/17/2023 5:34:00 PM
Bobette Tolmer Renne Public Law Group	btolmer@publiclawgroup.com	e-Serve	4/17/2023 5:34:00 PM
Arthur Hartinger Renne Public Law Group 121521	ahartinger@publiclawgroup.com	e-Serve	4/17/2023 5:34:00 PM
Ryan Mcginley-Stempel Renne Public Law Group 296182	rmcginleystempel@publiclawgroup.com	e-Serve	4/17/2023 5:34:00 PM
Linda M. Ross 133874	lross@publiclawgroup.com	e-Serve	4/17/2023 5:34:00 PM
Abigail West 324456	awest@publiclawgroup.com	e-Serve	4/17/2023 5:34:00 PM
RPLG Docket	rplg-docket@publiclawgroup.com	e-Serve	4/17/2023 5:34:00 PM
Geoffrey Spellberg 121079	gspellberg@publiclawgroup.com	e-Serve	4/17/2023 5:34:00 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.

4/17/2023

Date

/s/Bobette Tolmer

Signature

McGinley-Stempel, Ryan (296182)

Last Name, First Name (PNum)

Renne Public Law Group

Law Firm