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Supreme Court of California
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No. 21-16528

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ARMIDA RUELAS; DE'ANDRE EUGENE COX; BERT DAVIS; KATRISH JONES; JOSEPH MEBRAHTU; DAHRYL LAMONT REYNOLDS; MONICA MASON; LUIS NUNEZ-ROMERO; SCOTT ABBEY,

PLAINTIFFS-APPELLEES,

V.

COUNTY OF ALAMEDA; SHERIFF GREGORY J. AHERN; ARAMARK CORRECTIONAL SERVICES, LLC,

DEFENDANTS-APPELLANTS.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA
CASE NO. 4:19-CV-07637 (TIGAR, J.)

OPENING BRIEF OF DEFENDANT-APPELLANT ARAMARK CORRECTIONAL SERVICES, LLC

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Defendant-Appellant Aramark Correctional Services, LLC states that it is a wholly-owned subsidiary of Aramark Services, Inc., which is a wholly owned subsidiary of Aramark Intermediate HoldCo Corporation, which is a wholly owned subsidiary of Aramark, a publicly-traded company.

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INTRODUCTION

Plaintiffs, a putative class of inmates who allegedly performed kitchen work at the Santa Rita Jail pursuant to the County of Alameda's contract with Aramark Correctional Services, LLC ("Aramark"), sued the County, Sheriff Gregory Ahern, and Aramark (collectively, "Defendants"), asserting various labor-related claims under federal and state law. The District Court (Tigar, *J.*) denied in part Defendants' motions to dismiss Plaintiffs' claims for minimum and overtime wages under § 1194 of the California Labor Code. This interlocutory appeal from that decision concerns a single question: Do the minimum and overtime wage provisions of the California Labor Code apply to work performed by non-convicted inmates in county jails?

The answer is "no." For over sixty years, California law has provided that these Labor Code provisions do not apply to county inmates, including non-convicted inmates. Rather, California law delegates discretion to counties to decide whether, and to what extent, inmates may obtain compensation for work they perform in county jails. That delegation precludes—through clear statutory language—application of the Labor Code's minimum and overtime wage provisions.

The California Legislature enacted this specific and superseding delegation most plainly in Penal Code § 4019.3. That provision states that county boards of supervisors "may"—not "shall"—provide that county inmates receive a sum "not to exceed" two dollars for each eight hours of work performed. Cal. Penal Code

§ 4019.3. This language—which delegates sole discretion over county inmate compensation to county officials, does not require any compensation at all, and sets a maximum potential compensation rate that is well below the minimum and overtime wage rates in the Labor Code—is in unavoidable conflict with the Labor Code provisions invoked by Plaintiffs. And California law prescribes clear rules for how to resolve that conflict. Because Penal Code § 4019.3 "specific[ally]" addresses county inmate compensation—unlike the Labor Code, which is silent on that issue—and because § 4019.3 was enacted after the Labor Code, it therefore "supersede[s]" the Labor Code as applied to inmates working in the county jail. *Lopez v. Sony Elecs., Inc.*, 5 Cal. 5th 627, 634–35 (2018) (citation omitted).

While Penal Code § 4019.3 is enough on its own to preclude application of the Labor Code to Plaintiffs' claims, other provisions of the Penal Code, as well as the State Constitution, reaffirm the discretion afforded to the counties that own and operate jails. In particular, §§ 4325 and 4327 of the Penal Code recognize that county inmates may work and earn funds in county jails, but only if authorized by the county board of supervisors and only up to the statutory maximum rate set forth in § 4019.3. And that framework is consistent with the Prison Inmate Labor Initiative of 1990 ("Proposition 139"), a voter initiative that amended the State Constitution to authorize public-private state and county inmate work programs such as the one alleged to exist in this case. 1990 Cal. Legis. Serv. Prop. 139 (West), § 4

(amending Cal. Const. Art. XIV, § 5). As part of that authorization, the People enacted a new compensation statute for inmates who work in *state* prisons pursuant to public-private partnerships, *see id.* § 5 (enacting Penal Code § 2717.8), but conspicuously did not enact a new compensation statute for inmates who work in county jails pursuant to such partnerships, thus leaving in place § 4019.3's discretionary compensation scheme. Indeed, as to county jails, Proposition 139 simply provided that public-private work programs shall be operated in accordance with "rules and regulations prescribed by . . . local ordinances"—a provision that is consonant with § 4019.3, and which further confirms California's legislative policy of delegating discretion on matters of county jail operation, including inmate compensation, to county officials. *Id.* § 4.

Consistent with the California Penal Code and Constitution, there is no dispute that the Alameda Board of Supervisors exercised its discretion not to provide monetary compensation to inmates working at the Santa Rita Jail. Plaintiffs may disagree with that policy judgment, but the decision was within the Board of Supervisors' discretionary power to make.

The District Court's ruling to the contrary was erroneous. Although the District Court correctly held that the Labor Code does not govern work performed by *convicted* inmates in county jails, it nevertheless concluded that the Labor Code's minimum and overtime wage provisions apply to the Plaintiffs' putative sub-class

of *non-convicted* inmate workers. Notably, the District Court did not mention Penal Code § 4019.3 in reaching that conclusion, despite Aramark's arguments raising the statute. And the District Court did not persuasively explain why the Penal Code supersedes the Labor Code with respect to convicted inmates but not non-convicted inmates. Nor could it, since both groups constitute "prisoner[s] confined in or committed to" a county jail subject to Penal Code § 4019.3's discretionary wage regime. Rather, by holding that the Labor Code's minimum and overtime wage provisions apply, the District Court nullified the discretion that California law affords local officials—and in doing so, opened the door to substantial, state-wide cost increases for the counties that house and provide services for county inmates. The District Court's ruling should be reversed.

JURISDICTIONAL STATEMENT

The District Court has supplemental jurisdiction over Plaintiffs' California Labor Code claims for minimum and overtime wages pursuant to 28 U.S.C. § 1367. This Court has jurisdiction over the District Court's June 24, 2021 amended order denying Defendants' motions to dismiss such claims pursuant to 28 U.S.C. § 1292(b). *See Ruelas v. County of Alameda*, No. 21-80075 (9th Cir. Sept. 16, 2021), ECF No. 4.

STATEMENT OF ISSUE

The District Court certified, and this Court granted Defendants' petition for permission to appeal on, the following question as stated by the District Court:

Do non-convicted incarcerated individuals performing services in county jails for a for-profit company that sells goods produced by incarcerated individuals to third parties outside of the county 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?

STATEMENT REGARDING PRIMARY AUTHORITIES

Pursuant to Ninth Circuit Rule 28-2.7, pertinent constitutional provisions and statutes are set forth verbatim in an indexed addendum attached hereto.

STATEMENT OF THE CASE

A. Relevant Statutes and Constitutional Provisions

This appeal centers on two sets of California laws: provisions of the California Labor Code, which Plaintiffs rely upon to support their claims for minimum and overtime wages, and provisions of the California Penal Code and Constitution, which—unlike the Labor Code provisions—explicitly address whether, and to what extent, inmates who perform work in a county jail are entitled to monetary compensation.

1. *The California Labor Code*

When the California Legislature enacted the state's first comprehensive Labor Code in 1937, it included the civil cause of action asserted by Plaintiffs here. *See* The Labor Code, 1937 Cal. Stat. 185, 217 (codifying Labor Code § 1194); *see also Martinez v. Combs*, 49 Cal. 4th 35, 5 & n.18 (2010) (discussing history of § 1194 and its uncodified predecessor cause of action, enacted in 1913). At the time, Labor Code § 1194 authorized claims only by women and minors, and only to recover unpaid minimum wages. *See* 1937 Cal. Stat. 217. But the Legislature subsequently expanded § 1194 to authorize women and minors to recover overtime wages, *see* 1961 Cal. Stat. 1479; to authorize employees other than women and minors to recover minimum wages, *see* 1972 Cal. Stat. 2156; and, ultimately, to authorize any employee to recover minimum and overtime wages, *see* 1973 Cal. Stat. 2004–05. Section 1194 thus currently provides, in pertinent part, that "[n]otwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation." Cal. Labor Code § 1194(a).

The minimum and overtime wage standards covered by Labor Code § 1194's cause of action also have long historical roots. In 1916, the Industrial Welfare Commission ("IWC") began issuing industry- and occupation-wide "wage orders"

specifying minimum and overtime wage standards. *See Alvarado v. Dart Container Corp. of Cal.*, 4 Cal. 5th 542, 552–53 (2018); *Brinker Rest. Corp. v. Superior Ct.*, 53 Cal. 4th 1004, 1026 (2012); *see also* History of California Minimum Wage, Cal. Dep't of Indus. Rel., *https://www.dir.ca.gov/iwc/minimumwagehistory.htm* (last accessed Jan. 20, 2022). As the Legislature recognized when it enacted the Labor Code, the central purpose of these minimum wage standards was to "supply the necessary cost of proper living to, and maintain the health and welfare of," the employees subject to it. 1937 Cal. Stat. 185, 215 (codified at § 1182(a)); *see also Martinez*, 49 Cal. 4th at 54 (California Legislature's regulation of the minimum wage, as reflected in pre-1937 legislative history, was designed to ensure "necessary shelter, wholesome food, and sufficient clothing" (quotations and citation omitted)). Overtime standards, meanwhile, were intended to "spread employment by encouraging employers to avoid overtime work and thereby employ additional workers on a regular basis," as well as to compensate employees for the "burden of working longer hours." *Huntington Mem'l Hosp. v. Superior Ct.*, 131 Cal. App. 4th 893, 902 (2005) (quotations and citation omitted). Today, California's minimum and overtime wage rates are no longer set by wage order, but by statute—specifically, Labor Code § 510 (prescribing time-and-a-half and double time overtime rates), and Labor Code § 1182.12 (establishing minimum rates of $11 and $12 per hour in 2018 and 2019, respectively).

2. *The California Penal Code and Constitution*

In 1959, the California Legislature enacted the first statute that expressly addressed compensation for labor performed by inmates in county jails—the group that comprises Plaintiffs here. As originally enacted, Penal Code § 4019.3 stated that county "board[s] of supervisors *may* provide that each prisoner confined in or committed to a county jail shall be credited with a sum *not to exceed* fifty cents ($0.50) for each eight hours of work done by him in such jail." 1959 Cal. Stat. 3308 (emphasis added). As the County Supervisors Association of California ("CSAC")—which represents the county officials charged with administering § 4019.3—commented prior to the law's enactment, "[a]ll the bill does is permit boards of supervisors to credit county jail prisoners with fifty cents or less for each eight hours of work prisoners do 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) (attached as Exhibit A to Aramark's concurrently-filed Motion for Judicial Notice ("MJN")). The statute thus did not preclude the use of county inmate labor without "*any* compensation."[1] *Id.* (emphasis original).

[1] Boards of supervisors are municipal bodies charged with performing legislative functions and, in certain contexts, executive and quasi-judicial functions for a county. *See* Cal. Gov't Code §§ 25204, 25207; *see also Sacramento Newspaper Guild, Local 92 v. Sacramento Cty. Bd. of Supervisors*, 263 Cal. App. 2d 41, 47 (1968).

The original version of § 4019.3 is largely the same as the version in effect today, apart from an increase, in 1975, in the maximum discretionary compensation rate—from 50 cents per eight hours worked to two dollars per eight hours worked. 1975 Cal. Stat. 796–97. During its consideration of the amendment, the California Assembly Committee on Criminal Justice observed that payment under the statute is "permissive," and even asked whether it "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) (MJN, Ex. C). The Assembly Committee on Criminal Justice also questioned whether increasing the maximum discretionary compensation rate would mean that fewer counties "pay anything." *Id.* Ultimately, however, the Legislature amended the maximum rate without enacting any other substantive change. Thus, the statute now states that "[t]he 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." Cal. Penal Code § 4019.3.

In 1990, the People of California approved Proposition 139, a voter initiative that authorized public-private labor programs in state prisons and county jails for the first time. 1990 Cal. Legis. Serv. Prop. 139 (West), § 4 (amending Cal. Const. Art. XIV, § 5); 3-ER-574–75. As part of that authorization, Proposition 139 altered the existing compensation scheme for state prisoners (set forth in Penal Code § 2811)

by enacting a new section of the Penal Code governing compensation for state prisoners who perform work through a public-private labor program. *See* 1990 Cal. Legis. Serv. Prop. 139 (West), § 5 (enacting Penal Code § 2717.8). But Proposition 139 did not similarly enact any new provision to alter the existing compensation scheme for county inmates set forth in Penal Code § 4019.3. Rather, consistent with Penal Code § 4019.3, Proposition 139 provided that public-private labor programs in county jails "shall be operated and implemented . . . by rules and regulations prescribed by . . . local ordinances." *Id.* § 4 (codified at Cal. Const. Art. XIV, § 5).

Here, it is undisputed that the County of Alameda's Board of Supervisors has exercised its discretion not to enact a local ordinance pursuant to Penal Code § 4019.3 or Proposition 139 providing payment to county inmates.[2]

B. Factual Background

Because this appeal arises at the motion-to-dismiss stage, all plausible and well-pleaded factual allegations in the amended complaint are accepted as true for the limited purposes of this appeal. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Plaintiffs are current or former inmates of the Santa Rita Jail, which is owned by the County of Alameda and operated by Sheriff Gregory Ahern (together with the County, "County Defendants"). 2-ER-281, 283 (First Amended Complaint

[2] Plaintiffs argued below that the County's approval of its contract with Aramark was the "equivalent" of a local ordinance, Dist. Ct. Doc. No. 54 at 15, but the District Court correctly rejected that argument, 1-ER-18.

"FAC") ¶¶ 1, 14–15). In 2015, the 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 members of the Santa Rita Jail and the now-closed Glenn E. Dyer Detention Facility. 2-ER-193 (Aramark-County Food Services Contract ("FSC"), Ex. A-1 at 1), 284 (FAC ¶ 22); *see* 1-ER-17 (granting Plaintiffs' request to take judicial notice of the contract). Under the contract, Aramark provides meals to the County's inmates and jail staff, 2-ER-193, 197–202 (FSA, Ex. A-1 at 1, 5–10), and to "satellite facilities," which are jails located in other California counties, 2-ER-208 (FSA, Ex. A-2 at 1–2); 2-ER-281, 287 (FAC ¶¶ 1, 38); MJN, Ex. D (Satellite Facilities Food Service Letter of Understanding between the County and Aramark (dated Jan. 16, 2018 and signed Mar. 15, 2018) ("Letter of Understanding")).

Aramark provides the contracted-for food services using the industrial kitchen at the Santa Rita Jail. 2-ER-284 (FAC ¶ 23). As part of that operation, Plaintiffs prepare and package food and clean and sanitize the kitchen. 2-ER-284 (FAC ¶ 23). This enables Plaintiffs to "get out of their cells for some portion of the day, which is beneficial to their physical and mental health, and obtain additional food for their own enjoyment and nutrition," but Plaintiffs are not paid for working in the kitchen. 2-ER-284, 286 (FAC ¶¶ 23, 35). Aramark employees, in cooperation with Sheriffs' deputies, allegedly supervise inmates who perform kitchen work to

ensure that they comply with safety rules. 2-ER-284–85 (FAC ¶ 24). Aramark employees also allegedly supervise inmates' conduct (reporting any misconduct to Sheriffs' deputies) and the "quality and amount" of work performed. 2-ER-284–85 (FAC ¶ 24). In addition, Aramark allegedly determines how much work must be performed in a shift, how many inmates are needed for a shift, and how many shifts are required. 2-ER-285 (FAC ¶ 25).

C. Procedural Background

On November 20, 2019, Plaintiffs brought this action for damages and declaratory and injunctive relief on behalf of a putative class of inmates at the Santa Rita Jail, alleging violations of the California Labor Code and other state and federal laws. Dist. Ct. Doc. No. 1. Defendants moved to dismiss Plaintiffs' Labor Code § 1194 claims on the ground that the wage and overtime provisions of the Labor Code do not apply to county inmates. The District Court granted in part Defendants' motions to dismiss as to the Labor Code claims brought by convicted inmates, but denied the motion as to claims brought by non-convicted inmates. In particular, the District Court concluded that Proposition 139 does not entitle county inmates (unlike state inmates) to wages unless authorized by local ordinance, and similarly recognized that the Penal Code "presumes that the Labor Code does *not* apply to duly convicted prisoners unless specifically indicated." 2-ER-314–16, 318 (emphasis in original). The District Court, however, reasoned that the Thirteenth Amendment's

prohibition against involuntary servitude renders the Labor Code applicable to non-convicted inmates. *See* 2-ER-319 (concluding that, because non-convicted Plaintiffs "are protected by the Thirteenth Amendment's prohibition against involuntary servi[ce]," they are entitled to "Labor Code protections" with respect to wages).

On July 10, 2020, Plaintiffs filed an amended complaint, operative here, which reasserted claims for minimum and overtime wages under § 1194 of the Labor Code on behalf of non-convicted inmates working in the Santa Rita Jail. 2-ER-296 (FAC ¶¶ 94–101). Defendants again moved to dismiss these claims. 2-ER-240; Dist. Ct. Doc. No. 52. Specifically, Aramark argued that the Penal Code—including, in particular, § 4019.3—"delegates to the county boards the discretion to pay a rate of up to two dollars for each eight hours of work performed by anyone confined in or committed to a county jail," and thus "presumes that the Labor Code does not apply." Dist. Ct. Doc. No. 52 at 22 (cleaned up, emphasis omitted). Aramark further argued that, regardless of an inmate's conviction status, the Penal Code, together with Proposition 139, is "inconsistent with the Labor Code."[3] *Id.* (quotations and

[3] Defendants separately argued that Plaintiffs had not adequately alleged an employment relationship with Defendants for purposes of the Labor Code under the test set forth in *Martinez*, 49 Cal. 4th 35 (2010), but the District Court rejected that argument. 1-ER-25–28. While Defendants disagree with the District Court's application of the *Martinez* test at the pleadings stage, that application is not within the scope of the certified question on appeal.

citation omitted). The District Court, however, denied these motions in relevant part in an order issued February 9, 2021 and an amended order issued June 24, 2021.[4] Dist. Ct. Doc. No. 66 at 13–19; 1-ER-16–24; *see also* 1-ER-37 (June 24, 2021 Order Granting Motion for Leave to Bring an Interlocutory Appeal, stating that the Court was concurrently issuing an amended order on Defendants' motions to dismiss "to more thoroughly explain the Court's reasoning on the issue certified for interlocutory appeal").

In these rulings, the District Court eschewed its prior reliance on the Thirteenth Amendment, 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, reasoned 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 § 4019.3 in reaching that conclusion. The District Court also concluded that laws governing the compensation of *state* inmates suggest that the Labor Code applies to *county* inmates, despite previously recognizing that Proposition 139's provision relating to state inmates is inapposite. *Compare* 1-ER-

[4] With respect to Plaintiffs' Labor Code § 1194 overtime claims, the District Court denied Aramark's motion to dismiss but granted the County's motion because counties are exempt from the Labor Code's overtime requirements. 1-ER-26–27 (citing 8 Cal. Code Reg. §11010).

18–19, 22–23, *with* 2-ER-314–16. And despite recognizing that claims of unpaid labor were distinct from claims of forced labor, the District Court relied on a statute concerning compulsory labor to deny the motions to dismiss. 1-ER-22–23. Finally, the District Court held that Proposition 139 did not preclude Plaintiffs' claims because it was allegedly designed to prevent unpaid inmate labor from replacing the non-inmate workforce and did not speak in explicitly preclusive terms. 1-ER-18–19. The District Court's decision is the first ruling—state or federal—to apply Labor Code § 1194 to county jail inmates who perform work during incarceration.

Defendants jointly moved pursuant to 28 U.S.C. § 1292(b) for leave to appeal the District Court's ruling, and the District Court granted the motion. 1-ER-2–3, 37–43. In particular, the District Court concluded that "a reasonable jurist could adopt Aramark's position that . . . the Penal Code's preclusive effect on convicted individuals' assertions of claims under the Labor Code should also apply to non-convicted detainees." 1-ER-41. The District Court also recognized that resolution of the question presented could have "substantial public policy importance to the state as a whole." 1-ER-41 (quotations and citation omitted).

Defendants timely petitioned this Court for permission to appeal. *Ruelas*, No. 21-80075, ECF No. 1-3. On September 16, 2021, this Court granted the petition.

ECF No. 1. Defendants timely perfected the appeal.[5] *See* ECF No. 3; Fed. R. App. P. 5(d).

SUMMARY OF ARGUMENT

1. The District Court's ruling is incompatible with § 4019.3 of the California Penal Code—a statute that the District Court did not address—as well as other California laws. Whereas the Labor Code does not mention compensation for county inmate workers, Penal Code § 4019.3 explicitly provides that county boards of supervisors "*may*" authorize compensation for such inmates "*not to exceed*" two dollars per eight hours worked. Cal. Penal Code § 4019.3 (emphasis added). Penal Code § 4019.3 thus irreconcilably conflicts with the Labor Code's minimum and overtime wage provisions in three respects: (1) by permitting local officials not to set any compensation rate for county inmate workers; (2) by setting a *maximum* discretionary compensation rate that is well *below* the Labor Code's minimum wage rate; (3) and by providing that compensation standards may vary by county. In addition, Penal Code § 4019.3 applies to *all* inmates "confined in or committed to a county jail"—a phrase that encompasses not only convicted inmates, but also non-convicted inmates, as both the California Supreme Court and Attorney General have

[5] The District Court has not stayed proceedings pending this appeal. *See* 28 U.S.C. § 1292(b).

recognized. Because § 4019.3 conflicts with the Labor Code's minimum and overtime wage provisions as applied to non-convicted county inmates, is more "specific" than those provisions, and was enacted later than those provisions, it "supersede[s]" the application of such Labor Code provisions here. *Lopez*, 5 Cal. 5th at 634.

While § 4019.3 is enough on its own to preclude application of the Labor Code to Plaintiffs' claims, other California laws also support that outcome. In particular, §§ 4325 and 4327 of the Penal Code, like § 4019.3, also reflect that county jail inmates are not entitled to any compensation at all, let alone minimum and overtime wages under the Labor Code, in the absence of authorization by the county board of supervisors. *See, e.g.*, Cal. Penal Code § 4325 (recognizing that county inmate workers may "earn funds, *if approved by the board of supervisors* pursuant to Section 4019.3" (emphasis added)). And that understanding is consistent with the People of California's decision, as expressed in Proposition 139, to establish a new compensation scheme for state—but not county—inmates working in public-private labor programs, as well as the provision that county programs shall be operated pursuant to "rules and regulations prescribed by . . . local ordinances." Cal. Const. Art. XIV, § 5(a). All of these laws embody a clear legislative policy decision to grant county officials complete discretion over whether and to what extent to authorize wages for county inmate workers—a policy vitiated by the District Court's ruling.

2. The reasons advanced by the District Court in support of applying the Labor Code should be rejected. *First*, the District Court relied heavily on its mistaken view that the Penal Code does not address "employment and wages . . . for pretrial detainees in county jails," 1-ER-22—a conclusion that simply overlooked Penal Code § 4019.3, which explicitly applies to all prisoners confined in or committed to a county jail, as well as §§ 4325 and 4327. *Second*, the District Court asserted that differences between the compensation schemes for state and county inmates favor applying the Labor Code to the latter. *See* 1-ER-18–19, 22–23. But those differences, to the extent relevant at all, support the opposite result. *Third*, contrary to the District Court's ruling, *see* 1-ER-22, the fact that Penal Code § 4017 distinguishes between convicted and non-convicted inmates for purposes of who can be *required* to perform labor is irrelevant to the sole question on appeal: whether non-convicted county inmates who do perform labor are entitled to minimum and overtime wages under the Labor Code. *Fourth*, the District Court similarly conflated the issue of what type of county inmate labor can be required under California law with the distinct issue of what monetary compensation, if any, is owed for such labor when the District Court concluded that the work at issue here does not benefit the County for purposes of Penal Code § 4017—a conclusion that is incorrect in any event. *See* 1-ER-23. *Finally*, the mere fact that Proposition 139 does not explicitly state that it precludes application of the Labor Code, and includes provisions relating to the non-

inmate workforce, is irrelevant. *See* 1-ER-18–19. The clear effect of Proposition 139, particularly in combination with Penal Code § 4019.3 and other provisions, is to delegate discretion to county officials regarding the operation of public-private jail labor programs, including on issues of inmate compensation. The District Court's ruling improperly overrides that municipal discretion and should be reversed.

STANDARD OF REVIEW

An order denying a motion to dismiss for failure to state a claim is reviewed *de novo*. *See Olympic Forest Coal. v. Coast Seafoods Co.*, 884 F.3d 901, 905 (9th Cir. 2018). In reviewing such an order, this Court accepts all plausible, well-pleaded allegations in the complaint as true and construes them in the light most favorable to the claim. *See id.* In addition, because this appeal involves a question of state law, this Court applies state law as it "believe[s] the California Supreme Court would apply it." *Aceves v. Allstate Ins. Co.*, 68 F.3d 1160, 1163 (9th Cir. 1995) (quotations and citation omitted). Thus, as to the meaning of California statutes, California rules of statutory construction apply. *See In re Goldman*, 70 F.3d 1028, 1029 (9th Cir. 1995).

ARGUMENT

I. The California Penal Code and Constitution, Not the Labor Code, Govern Compensation for Work Done by Non-Convicted Inmates in County Jails.

Multiple provisions of the California Penal Code and Constitution—most directly, Penal Code § 4019.3—address whether and to what extent inmates in a county jail will be paid for work they perform while incarcerated. *See, e.g.*, Cal. Penal Code § 4019.3 (permitting county officials to authorize payment for prisoners "confined in or committed to a county jail" in a "sum not to exceed two dollars" per eight hours of work). These laws—which apply to both convicted and non-convicted inmates—irreconcilably conflict with the California Labor Code's minimum and overtime wage provisions. Under California law, that conflict can be resolved in only one way: penal laws that specifically govern in the context of county inmate labor, and which post-date the generally-applicable minimum and overtime wage provisions of the Labor Code, preclude application of the Labor Code to Plaintiffs' claims. This interpretation gives effect to both the Labor Code's minimum and overtime wage provisions in general and Penal Code § 4019.3 in the specific context it was intended to govern (*i.e.*, county jails), whereas the District Court's ruling renders the latter statute a nullity.

The District Court went astray at each step of the analysis. *First*, the District Court's ruling is incompatible with the plain text and purpose of Penal Code

§ 4019.3—a statute that the District Court did not mention, let alone analyze, in its amended order, despite the fact that Aramark raised this statute in its motion to dismiss the amended complaint. *See* Dist. Ct. Doc. No. 52 at 22 (quoting § 4019.3 and arguing that "[§] 4019.3 . . . [is] flatly inconsistent with the Labor Code" (citation omitted)); *see also, e.g.*, 2-ER-106 (counsel for Aramark arguing that "Section 4019.3 . . . is right on point"). *Second*, because the District Court overlooked § 4019.3, it also failed to consider how other provisions of the California Penal Code and Constitution interact with § 4019.3 to confirm that the Labor Code does not apply in the circumstances presented here. *Third*, the District Court failed to consider how applying the Labor Code's minimum and overtime wage provisions to Plaintiffs' claims would undermine the legitimate legislative policy decisions made by the California Legislature and People. The District Court's Order should be reversed.

A. The District Court's Ruling Conflicts with Penal Code § 4019.3.

Penal Code § 4019.3 (1) is inconsistent with the Labor Code's minimum and overtime wage provisions; (2) applies to *all* county inmates, including non-convicted inmates; and (3) precludes application of the Labor Code's conflicting minimum and overtime wage provisions to Plaintiffs' claims.

1. *Penal Code § 4019.3 Conflicts with the Labor Code.*

Despite § 4019.3's brevity, there are at least three irreconcilable conflicts between it and the Labor Code's minimum and overtime wage provisions.

First, unlike the Labor Code, § 4019.3 makes clear that inmates who work in a county jail are not entitled to any compensation at all—let alone compensation at the rate prescribed by the Labor Code—except as authorized by county boards of supervisors in their discretion. This follows from the statute's provision, in permissive language, that county boards of supervisors "*may*" provide for inmate compensation. Cal. Penal Code § 4019.3 (emphasis added); *see also, e.g.*, *Lonicki v. Sutter Health Cent.*, 43 Cal. 4th 201, 212 (2008) (recognizing that the statutory "term 'may' is permissive," such that "the plain language of the statute indicates" that the action in question is not "required" (citation omitted)).

Because the statutory text is clear on this point, this Court need not consider any other indicia of legislative intent. *See Smith v. LoanMe, Inc.*, 11 Cal. 5th 183, 190 (2021). But, to the extent this Court finds any ambiguity in the text, other aids of statutory construction merely confirm that inmates in county jails may, but are not entitled to, be paid for the work that they perform.

For example, the association that represents county supervisors provided its opinion, contemporaneous with the enactment of § 4019.3, that "[a]ll the bill does is *permit* boards of supervisors" to provide for inmate compensation—and that absent

such provision, county inmates were not entitled to "*any* compensation." MJN, Ex. A (first emphasis added). That opinion is significant: Under California statutory interpretation principles, "the contemporaneous and practical construction of a statute by those whose duty it is to carry it into effect, while not controlling, is always given great respect." *Amalgamated Transit Union, Loc. 276 v. San Joaquin Reg'l Transit Dist.*, 36 Cal. App. 5th 1, 9–10 (2019).

That opinion was also echoed fifteen years later by the California Assembly Committee on Criminal Justice in a bill digest prepared for a hearing regarding a proposed amendment to § 4019.3. MJN, Ex. C; *see also, e.g.*, *People v. Belton*, 23 Cal. 3d 516, 521 (1979) (considering a committee bill digest); *Southland Mech. Constructors Corp. v. Nixen*, 119 Cal. App. 3d 417, 428 (1981) (finding an Assembly committee's bill digest of "some significance" in determining legislative intent). Like the County Supervisors Association, the Committee noted that payment under § 4019.3 was "permissive," meaning that counties were not required to "pay anything." MJN, Ex. C; *see also id.*, Ex. B (Assembly Third Reading of Assembly Bill 1396 (as introduced Apr. 3, 1975) (1975–76 Reg. Sess.) (Assembly Floor Analysis materials)) (noting the Committee on Criminal Justice's concern). Although the Committee asked whether compensation "should . . . be mandatory," the Legislature ultimately increased the maximum compensation rate in § 4019.3 without other substantive changes. *Id.*, Ex. C. In other words, the Legislature considered—but did

not act on—the question whether to require some minimum compensation for county inmate workers.

Second, Section 4019.3 not only conflicts with the Labor Code by requiring no minimum compensation rate, it also conflicts with the Labor Code by setting a *maximum* potential compensation rate—two dollars per each eight hours worked—that is well *below* the Labor Code's minimum wage rate.[6] *Compare* Cal. Penal Code § 4019.3, *with* Cal. Labor Code § 1182.12 ($14 per hour as of January 1, 2022). It would make no sense for the Legislature to enact such a maximum potential compensation rate for work done by inmates in a county jail only to have the Labor Code's much higher minimum and overtime wage rates apply. *See Wasatch Prop. Mgmt. v. Degrate*, 35 Cal. 4th 1111, 1122 (2005) ("The court will apply common sense to the language at hand and interpret the statute to make it workable and reasonable . . . [and] to avoid an absurd result."); *People v. Centr-O-Mart*, 34 Cal. 2d 702, 704 (1950) ("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 Gen. Am. Transp. Corp. v. State Bd. of Equalization*, 193 Cal. App. 3d 1175, 1181 (1987)

[6] This maximum compensation rate, and the prior rate of fifty cents per eight hours worked that applied from the time of § 4019.3's enactment in 1959 until its amendment in 1975, have always been below the California minimum wage rate. *See* History of California Minimum Wage, Cal. Dep't of Indus. Rel., https://www.dir.ca.gov/iwc/minimumwagehistory.htm (last accessed Jan. 20, 2022).

(recognizing that "the Legislature presumably does not indulge in idle acts"). That is so regardless of whether a board of supervisors chooses to provide for compensation at the rate of two dollars per eight hours worked, no compensation at all, or some rate in between.

Third, § 4019.3 also conflicts with the Labor Code's minimum and overtime wage provisions by permitting each county to make its own decision, subject to the state-wide statutory maximum rate. Indeed, in its first dismissal order, the District Court recognized that, unlike the Labor Code, § 4019.3 delegates to counties issues of compensation for county inmate labor. 2-ER-317. And as a result, the District Court concluded that *convicted* county inmates are not entitled to minimum and overtime wages under the Labor Code. The District Court, however, then failed to address § 4019.3 with respect to non-convicted inmates or explain why it applies only to convicted inmates. There can be no such explanation: § 4019.3 applies to all county inmates, as discussed below.

2. *Penal Code § 4019.3 Applies to All County Inmates—Including Non-Convicted Inmates.*

Nothing in the text of § 4019.3, which establishes a discretionary compensation regime for "each prisoner confined in or committed to a county jail," makes any distinction between non-convicted and convicted inmates. Cal. Pen. Code § 4019.3. To the contrary, § 4019.3 encompasses *all* inmates housed in a county jail—a conclusion that is supported by the ordinary meaning of the statutory text, the California

Supreme Court's interpretation of an identically-worded clause in § 4019, other relevant language in §§ 4019 and 4019.3, and the Attorney General's longstanding interpretation of § 4019.3 itself.

Starting with the text: the ordinary meaning of each of the relevant terms in § 4019.3 (none of which is defined by statute or rule) encompasses all inmates, including those without convictions. In particular, "confined" means "imprison[ed] or restrain[ed]." *Confinement*, Black's Law Dictionary (11th ed. 2019). Similarly, "commitment" is "[t]he act of confining a person in a prison, mental health, or other institution." *Commitment*, Black's Law Dictionary (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 Dictionary (11th ed. 2019); *see also, e.g.*, *People v. White*, 177 Cal. App. 2d 383, 385 (1960) (reviewing dictionary definitions of "prisoner" and explaining that "the significance of the word 'prisoner' is not the manner of commitment, but rather the fact of judicial confinement"). Finally, the ordinary meaning of "jail" is generally synonymous with "prison"—but especially "a local government's detention center where persons *awaiting trial* or those convicted of misdemeanors are confined." *Jail*, Black's Law Dictionary (11th ed. 2019) (emphasis added). Indeed, multiple provisions of the Penal Code confirm that California county jails house non-convicted inmates. *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"); *id.* § 4005 ("[T]he sheriff shall receive, and keep in the county jail, any prisoner committed thereto by process or order issued under the authority of the United States.").

The ordinary meaning of § 4019.3's text is further supported by the California Supreme Court's interpretation of "confined in or committed to a county jail" in a neighboring provision, § 4019, which concerns good time credits. Cal. Penal Code § 4019(a)(1)–(3). Because § 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 Bus. Servs., Inc.*, 11 Cal. 5th 158, 175 (2021) (citation omitted). When interpreting § 4019, the Supreme Court recognized that "the term 'confinement' is defined as 'the state of being imprisoned or restrained.'" *People v. Dieck*, 46 Cal. 4th 934, 940 (2009) (quoting Black's Law Dictionary (8th ed. 2004)). The Court also concluded that "committed" "means a judicial officer's order sending a defendant to jail, prison, or other form of qualifying confinement." *Id.* (citing, *inter alia*, Black's Law Dictionary (8th ed. 2004), and Cal. Penal Code § 873 (providing that the defendant shall be "committed to the Sheriff of the County" for non-bailable offenses, *i.e.*, *before* trial)). While the California Supreme Court correctly explained that the phrases "confined in" and "committed to" thus have distinct meanings, *Dieck*, 46 Cal. 4th at 940–41 (quotations and citation omitted), the Court's interpretations of *both* phrases include non-convicted inmates. Accordingly,

non-convicted persons can clearly be "confined in or committed to a county jail." *See, e.g.*, *id.* at 938 n.2 (describing "presentence" conduct that triggers § 4019 good-time credits as including the "period of incarceration that occurs prior to . . . a judgment of imprisonment").

Other language in § 4019 also bears on the scope of § 4019.3. In particular, while § 4019 provides that good-time credit should be calculated so as to include pretrial periods of incarceration, § 4019 also generally precludes an inmate from reaping the benefits of such credit until the inmate is convicted and sentenced. *See* Cal. Penal Code § 4019(a)(1) (stating that the section applies to prisoners "confined in or committed to a county jail . . . *under a judgment of imprisonment*" (emphasis added)); § 4019(a)(2)–(7) (including similar qualifiers regarding sentencing or conviction); *see also King v. Los Angeles Cty. Sheriff*, No. 14-cv-4444 (AG) (VBK), 2015 WL 1097316, at *5 (C.D. Cal. Feb. 28, 2015) ("[T]he award of good time credits for detention after an arrest under P.C. § 4019 is only applicable where a defendant is eventually tried, convicted, and sentenced."). In contrast, § 4019.3 includes no language qualifying the phrase "confined in or committed to"—further demonstrating that § 4019.3 makes no distinction between convicted and non-convicted inmates. *See, e.g.*, *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal. 5th 257, 267 (2016) (considering the "absence of similar language" in otherwise like regulations

when interpreting their scope); *see also United States v. Vance Crooked Arm*, 788 F.3d 1065, 1075 (9th Cir. 2015) (similar).

In fact, the California Attorney General—whose "opinions are entitled to considerable weight," *Lexin v. Superior Ct.*, 47 Cal. 4th 1050, 1087 n.17 (2010)—relied, in part, on the absence of any of § 4019's qualifying language in § 4019.3 to conclude that § 4019.3 "applies to pre-sentence as well as post-sentence work time." Opinion No. CR 73-51, 57 Cal. Att'y Gen. Reports & Ops. 276, 283 (1974). That opinion is particularly persuasive here because the Legislature amended § 4019.3 only one year later and "left intact the language construed" by the Attorney General. *Cal. Ass'n of Psych. Providers v. Rank*, 51 Cal. 3d 1, 17 (1990) (explaining that the "Legislature is presumed to be cognizant of [the Attorney General's] construction of the statute," and applying such presumption to find persuasive an Attorney General's opinion that, like here, was issued one year before the Legislature considered amending the statute at issue (quotations and citation omitted)).

In short, the ordinary meaning of § 4019.3's text, the California Supreme Court's interpretation of materially-identical language in § 4019, other relevant language in § 4019, and the Attorney General's Opinion all point to one inescapable conclusion: "prisoner[s] confined in or committed to a county jail" include non-convicted inmates.

3. *Penal Code § 4019.3 Precludes Application of the Labor Code.*

Where California statutes irreconcilably conflict—as Penal Code § 4019.3 plainly does with the Labor Code's minimum and overtime wage provisions—California law provides clear rules for resolving the conflict. Those rules hold that "later enactments supersede earlier ones, and more specific provisions take precedence over more general ones."[7] *Lopez*, 5 Cal. 5th at 634 (quotations and citation omitted); *see also* Cal. Code Civ. Proc. § 1849 ("[W]hen a general and particular [statutory] provision are inconsistent, the latter is paramount to the former. So a particular intent will control a general one that is inconsistent with it."). Consistent with these rules, California law also disfavors resolving a potential conflict between statutes through a construction that would render one a "nullity." *Peltier v. McCloud River R.R. Co.*, 34 Cal. App. 4th 1809, 1822 (1995); *see also Gen. Am. Transp. Corp.*, 193 Cal. App. 3d at 1181 ("This court is bound to adopt any reasonable construction of conflicting statutes that gives effect to both, whenever possible, the reason being that the Legislature presumably does not indulge in idle acts.").

[7] In the event of a conflict between these rules, "the rule that specific provisions take precedence over more general ones trumps the rule that later-enacted statutes have precedence." *Lopez*, 5 Cal. 5th at 635 (cleaned up). But here, both the "specific governs general" rule and "later governs earlier" rule establish that § 4019.3 takes precedence over the Labor Code's minimum and overtime wage provisions.

Applying these rules here, Penal Code § 4019.3 precludes application of the Labor Code's minimum and overtime wage provisions to Plaintiffs' claims. The California Legislature enacted Penal Code § 4019.3 in 1959, more than four decades after the first minimum and overtime wage provisions were promulgated in California. *See Alvarado*, 4 Cal. 5th at 552–53; *Brinker*, 53 Cal. 4th at 1026. In addition, Section 4019.3 governs compensation in a context that is narrowly circumscribed—labor performed by inmates in a county jail—and thus far more specific than the general context governed by the minimum and overtime wage provisions of the Labor Code. *See, e.g.*, *Shoemaker v. Myers*, 52 Cal. 3d 1, 22 (1990) ("While it may appear that both statutes are applicable, [one of the statutes] was clearly the more specific statute, and therefore was controlling."); *People v. Tanner*, 24 Cal. 3d 514, 521 (1979) (similar, and also noting controlling statute's "later enactment"). Further, whereas Defendants' position gives effect to both the Labor Code's minimum wage provisions in general and Penal Code § 4019.3's discretionary wage regime in the specific context it was intended to govern, the District Court's ruling renders Penal Code § 4019.3 a "nullity" for non-convicted inmates. *See Peltier*, 34 Cal. App. 4th at 1822; *Gen. Am. Transp. Corp.*, 193 Cal. App. 3d at 1181.

Accordingly, Penal Code § 4019.3, which applies to both non-convicted and convicted inmates housed in a county jail, precludes application of the Labor Code

to Plaintiffs' claims for minimum and overtime wages. The District Court's ruling declining to dismiss such claims should therefore be reversed.

B. The Broader Legal Context Confirms that the Labor Code's Minimum and Overtime Wage Provisions Do Not Apply.

While § 4019.3 alone precludes application of the Labor Code, other provisions of California law—including provisions of both the Penal Code and State Constitution—bolster the conclusion that the Labor Code does not apply here.

The first such provision is Penal Code § 4325. Enacted in its current form in 2016, § 4325 authorizes the board of supervisors of specified counties to establish a Jail Industry Authority "within the county jail system" to develop various types of work programs for county inmates, among other related purposes. Cal. Penal Code § 4325. One such related purpose is "[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." *Id.* § 4325(b)(3) (emphasis added). The plain meaning of this provision—and in particular, the conditional phrase, "if approved by the board of supervisors pursuant to section 4019.3"—reflects the Legislature's judgment that inmates 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 questions concerning compensation for such inmates are delegated to boards of supervisors under

§ 4019.3.[8] *See, e.g.*, *Cmty. Bank of Arizona v. G.V.M. Tr.*, 366 F.3d 982, 985, 991 (9th Cir. 2004) (interpreting conditional term "if" in a state statute similarly).

In addition, Penal Code § 4327 provides that, upon the establishment of a Jail Industry Authority, the board of supervisors shall establish a Jail Industries Fund. Cal. Penal Code § 4327. As relevant here, this statute further provides that "*[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." *Id.* (emphases added); *see also* 1987 Cal. Stat. 4664 (including such language in the original version of § 4327, enacted in 1987). The plain meaning of the conditional term "*any* prisoner compensation," particularly in contrast to "*all* jail industry income," suggests that prisoner compensation is not required. *See, e.g.*, *Hawkins v. Haaland*, 991 F.3d 216, 231 (D.C. Cir. 2021) (interpreting similar usage of "any"). Thus, § 4327 is consistent with §§ 4019.3 and 4325, as all of these provisions reflect that county inmate workers are entitled to compensation only if authorized by the board of supervisors—not by the Labor Code's minimum and overtime wage provisions.

These Penal Code provisions are also in line with Proposition 139, which authorized public-private jail labor programs such as the one alleged to exist in this

[8] The County of Alameda is not itself authorized to establish a Jail Industry Authority under § 4325(a), but that does not alter the import of § 4325(b)(3), which simply reflects the Legislature's understanding of the Penal Code's discretionary wage scheme for county inmate workers—a scheme that applies throughout the State.

case. *See* 1990 Cal. Legis. Serv. Prop. 139 (West), § 4; *see* 2-ER-283–84 (FAC ¶¶ 18–22). In doing so, Proposition 139 changed the status quo for compensation of state inmates where such inmates perform work in public-private state prison labor programs, 1990 Cal. Legis. Serv. Prop. 139 (West), § 5 (enacting Penal Code § 2717.8), but maintained the status quo—*i.e.*, Penal Code § 4019.3's discretionary compensation scheme—for inmates who perform work in public-private county jail labor programs. Furthermore, Proposition 139's only section addressing the operation of county jails provides that public-private county jail labor programs shall be operated and implemented pursuant to "rules and regulations prescribed . . . by local ordinances." *Id.* § 4 (amending Cal. Const. Art. XIV, § 5). That provision is consistent with the delegation to boards of supervisors (which are tasked with passing local ordinances) in Penal Code § 4019.3, and is *in*consistent with the notion that the Labor Code's state-wide minimum and overtime wage provisions apply to county jail inmates. Thus, Proposition 139, particularly when read in light of Penal Code §§ 4019.3, 4325, and 4327, also militates against applying the Labor Code here.

C. Application of the Labor Code's Minimum and Overtime Wage Provisions Would Override Legislative Policy Choices Embodied in Applicable California Laws.

Because the statutory language and legislative history of Penal Code § 4019.3 and other applicable laws are clear, any public policy arguments advanced by Plaintiffs are properly addressed to the Legislature or Board of Supervisors, not this

Court. *See Skidgel v. California Unemployment Ins. Appeals Bd.*, 12 Cal. 5th 1, 26 (2021) ("Where the application of firmly established rules of statutory construction establish a statute's meaning, we may not rest our decision on the weighing and balancing of public policy considerations." (quotations and citation omitted)). Insofar as policy considerations are relevant, however, "it is the *Legislature's* policy that ultimately must control." *Id.* (emphasis original).

Here, the District Court's ruling undermines the Legislature's central policy behind Penal Code §§ 4019.3, 4325, 4327, as well as the People of California's policy goal when approving Proposition 139: that county officials may decide whether and to what extent to authorize compensation for county inmate workers. That legislative policy is reasonable. After all, it is county officials who are responsible for maintaining county jails, *see* Cal. Penal Code § 4000, housing and providing for the needs of prisoners in county jails, *see* Cal. Penal Code § 4015, and bearing the substantial costs of operating county jails (including the costs of compensating prisoners or contracting with private contractors, such as Aramark, to do so), *see* Cal. Gov't Code § 29602; *see also Cty. of Lassen v. State of California*, 4 Cal. App. 4th 1151, 1155–57 (1992) (discussing costs incurred by counties in operating county jails); 3-ER-350 (District Court recognizing the economic reality that Aramark's contract "reduc[es] the cost of incarceration" for the County). While the Legislature (and, through Proposition 139, the People) *could* have enacted a policy under which

boards of supervisors are required to provide for the compensation of county inmate workers, they chose not to do so. *Compare* Penal Code § 4019.3 (board of supervisors "*may*" provide for compensation), *with, e.g.*, *Simpson v. Hite*, 36 Cal. 2d 125, 129 (1950) ("The state Legislature has declared the legislative policy applicable here: that the board of supervisors *shall* provide suitable quarters for the municipal and superior courts." (emphasis added) (citing statute that uses the term "shall," not "may")); *see also, e.g.*, MJN, Ex. C (Assembly committee raised whether § 4019.3 should be amended to provide for mandatory compensation, but Legislature did not enact such amendment). The District Court's ruling thus disregards the Legislature's policy choice of delegation to local officials—with the inevitable result (unless reversed) of budgetary challenges for counties across the State.

The Legislature's choice is also understandable when considering that the policies underlying the Labor Code's minimum and overtime wage provisions are diminished in the context of inmate labor. As for the former, "[t]he purpose sought to be obtained by the fixing of minimum wages was to provide compensation adequate to supply the necessary cost of proper living and to maintain the health and welfare of the employees." *Jaime Zepeda Lab. Contracting, Inc. v. Dep't of Indus. Rels.*, 67 Cal. App. 5th 891, 915 n.35 (2021) (quotations and citation omitted); *see also Martinez*, 49 Cal. 4th at 54 (Legislature's original role in regulating the minimum wage was to ensure a wage that allowed for "necessary *shelter*, wholesome

food, and sufficient *clothing*" (quotations and citation omitted, emphasis added)); Cal. Labor Code § 1178.5 (tasking the Industrial Welfare Commission to create a wage board if necessary to recommend "a minimum wage adequate to supply the necessary cost of proper living to, and maintain the health and welfare of employees"). The health and welfare of inmates are of paramount concern to both County Defendants and Aramark; however, that fact does not implicate the policies of the State's minimum wage laws because county officials are required to provide for inmate health and welfare *regardless* of an inmate's ability to earn wages. *See* Cal. Penal Code § 4015. Likewise, as this Court recognized in the context of federal minimum wage standards—which are motivated by the same policies as California's standards, *see United Parcel Serv. Wage & Hour Cases*, 190 Cal. App. 4th 1001, 1009 (2010)—"ensuring a minimum standard of living for all workers . . . is simply inapplicable to prisoners for whom clothing, shelter, and food are provided by the prison," *Morgan v. MacDonald*, 41 F.3d 1291, 1292 (9th Cir. 1994) (quotations and citation omitted); *see also Martinez*, 49 Cal. 4th at 54. In addition, the inapplicability of the Labor Code's minimum wage provisions also renders its overtime provisions inapt, since employers who need not pay minimum wages are necessarily not as susceptible to the "financial pressure" of a time-and-a-half overtime rate. *See Gentry v. Superior Ct.*, 42 Cal. 4th 443, 456 (2007) ("One purpose of requiring payment of

overtime wages is to spread employment throughout the work force by putting financial pressure on the employer." (cleaned up)).

To be sure, the Legislature has acknowledged that inmate compensation can "[p]rovide restitution and compensation to the victims of crime" and "support inmates' families to the extent possible." 1990 Cal. Legis. Serv. Prop. 139 (West), § 2(b), (d). But the Legislature also recognized that inmate work programs can serve to "[r]eimburse . . . counties for a portion of the costs associated with [inmates'] incarceration," as well as other legitimate purposes that do not require inmate compensation—namely, "encourag[ing] and maintain[ing] safety in prison and jail operations," and allowing inmates to "[l]earn skills which may be used upon their return to free society." *Id.* at § 2(a), (c), (e). Critically, for county jails, the Legislature (through Penal Code § 4019.3) and People (through Proposition 139) chose to delegate to boards of supervisors the task of balancing these competing goals and deciding whether and how much compensation to authorize. The District Court's application of the Labor Code's wage provisions disregards that clear legislative policy decision—yet another reason why the District Court's ruling should be reversed.

II. The Reasons Advanced in Support of the Labor Code's Application Are Unpersuasive.

The District Court offered several reasons in support of applying the Labor Code to Plaintiffs' claims. None of these reasons withstands scrutiny.

First, the District Court reasoned that the Penal Code and Labor Code are not "mutually exclusive" because the Penal Code does not address "employment and wages . . . for pretrial detainees in county jails." 1-ER-22 (citing Cal. Penal Code § 4000, *et seq.*). But that conclusion simply overlooks Penal Code § 4019.3, which plainly addresses the topic of wages for all inmates housed in county jails, including non-convicted inmates. And the District Court's reasoning also bypasses Penal Code §§ 4325 and 4327, which further address the issue of compensation for work performed by county inmates. These Penal Code provisions make clear that (1) the payment of wages for county inmate labor is permissive, not mandatory, (2) the decision whether and how much to pay county inmate workers rests exclusively with the localities that own and operate county jails, and (3) such discretion is subject to the maximum potential compensation rate of two dollars per eight hours worked, which is less than the Labor Code's minimum wage rate. Because Penal Code § 4019.3 by itself (and in combination with §§ 4325 and 4327) is "mutually exclusive" of the Labor Code's minimum and overtime wage provisions, is more specific than those provisions, and was enacted later than those provisions, the Penal Code precludes application of the Labor Code here. *Supra* § I.A.3.

Second, the District Court pointed to certain provisions of California law that govern compensation for inmates working in *state* prisons. 1-ER-18–19, 22–23. The District Court stated that those provisions, which differ from the Penal Code

provisions applicable to county inmate workers, supersede the Labor Code. 1-ER-22. But the District Court then erroneously concluded that the differences between the Penal Code provisions applicable to state and non-convicted county inmates show that the Labor Code applies to the latter but not the former. *See* 1-ER-22–24. That analysis is backwards: if anything, the Penal Code provisions applicable to state inmate workers support *not* applying the Labor Code to county inmate workers as well.

In particular, the District Court cited Penal Code § 2811, which states that the general manager of the state-run Prison Industry Authority "*shall* adopt and maintain a compensation schedule for inmate employees"; that such a schedule "*shall be required* for [the] performance" of work; and that state inmate compensation shall not "exceed one-half the minimum wage provided in Section 1182 of the Labor Code, except as otherwise provided in this code." Cal. Penal Code § 2811 (emphases added). By explicitly addressing state inmate workers' compensation and referring to the Labor Code, this statute makes clear that the Labor Code's minimum and overtime wage provisions themselves do not apply to state inmate workers. This statutory language also demonstrates that the Legislature is well aware of how to require minimum compensation for inmates when it sees fit—something the Legislature chose not to do for county inmate workers in Penal Code §§ 4019.3, 4325, and 4327.

The District Court also cited Penal Code § 2717.8 (enacted by Proposition 139), which provides that compensation for state prisoners engaged in public-private work programs shall be comparable to the wages paid to non-inmate employees who perform similar work, subject to deductions that may not exceed 80 percent of gross wages. Cal. Penal Code § 2717.8; 1-ER-19, 22–23. This language merely shows that the drafters of Proposition 139—who were presumably aware of the existence of Penal Code § 4019.3—were also well aware of how to enact mandatory compensation schemes for inmates working in public-private work programs, and yet chose not to do so for those confined in or committed to county jails. *See People v. Hernandez*, 30 Cal. 4th 835, 866–67 (2003) (assuming that the electorate is aware of relevant existing law when it adopts legislation by initiative).

Moreover, the fact that the Legislature and People enacted different provisions for state and county inmates makes sense. Counties lack the resources available to the state, and the resources that they do have vary widely by county. *See, e.g.*, *In re Aline D.*, 14 Cal. 3d 557, 567 (1975) (noting the effect of "[b]udgetary limitations" that "vary[] from county to county" on juvenile rehabilitation facilities). In addition, state and county inmates differ in various respects, meaning that it is not at all unusual (or impermissible) for different laws to apply to these different sets of inmates. *See, e.g.*, *People v. Steele*, No. C088665, 2020 WL 4813212, at *4–6 (Cal. Ct. App. Aug. 19, 2020) (unpublished) (holding that "[t]he Legislature could have reasonably

concluded that these categories of inmates differ in their need for rehabilitation and opportunity to participate in work programs," and "had a legitimate purpose in motivating state prison inmates to participate in such programs . . . by allowing them to earn conduct credits for doing so").[9] Thus, the District Court erred by relying on the different compensation schemes for state and county inmate workers: such differences are reasonable and merely show that the Legislature intended to provide county officials with *more* discretion over inmate compensation than state officials—not to impose on county officials the Labor Code's minimum and overtime wage provisions.

Third, in distinguishing non-convicted county inmates from convicted county inmates, the District Court relied on Penal Code § 4017, which provides that all county inmates confined "under a final judgment of imprisonment rendered in a criminal action or proceeding . . . may be required" to perform certain types of labor. 1-ER-22–23; Cal. Penal Code § 4017. This provision in inapposite. Section 4017 distinguishes between non-convicted and convicted county inmates with respect to whom may be *required to perform work*. But the question presented on appeal is

[9] "Even though unpublished California Courts of Appeal decisions have no precedential value under California law, the Ninth Circuit is not precluded from considering such decisions as a possible reflection of California law." *Daniel v. Ford Motor Co.*, 806 F.3d 1217, 1223 n.3 (9th Cir. 2015) (quotations and citation omitted).

labor, the Proposition's drafters evidently balanced that purpose against other interests (including that of affording discretion to local county officials)—and chose to reflect that balance in Penal Code § 2717.8 and Cal. Const. Art. XIV, § 5(b), provisions that apply only to state prisons or in the context of non-inmate strikes, and which thus have no bearing on Plaintiffs' claims here.

As to the District Court's second conclusion, the fact that Proposition 139 does not expressly state that the Labor Code is inapplicable to non-convicted county inmates is irrelevant. Proposition 139 did not need to make any such statement, because Penal Code § 4019.3 already applied to non-convicted county inmates. *See* Cal. Penal Code § 4019.3; *see also* Cal. Penal Code § 4327 (providing for a source of compensation funds in conditional terms, *i.e.*, for "any" prisoner compensation, three years before Proposition 139's approval). Proposition 139 simply reaffirmed, in the new context of public-private agreements, the discretion that local officials already enjoyed on matters of county inmate labor. *See* Cal. Const. Art. XIV, § 5(a). The District Court's application of the Labor Code's minimum and overtime wage provisions to Plaintiffs' claims thus contravenes the text and purpose of both the Penal Code and Proposition 139.

Accordingly, the reasons proffered by the District Court and Plaintiffs for applying the minimum and overtime wage provisions of the Labor Code to work

performed by non-convicted county inmates are unpersuasive, and should be rejected.

CONCLUSION

For the foregoing reasons, this Court should reverse the District Court's decision and remand for entry of a judgment dismissing Plaintiffs' Labor Code claims.

Respectfully submitted,

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STATEMENT OF RELATED CASES

Pursuant to Ninth Circuit Rule 28-2.6, Defendant-Appellant Aramark Correctional Services, LLC states that it is unaware of any related cases currently pending in this Court.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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ADDENDUM OF PRIMARY AUTHORITIES PURSUANT TO CIRCUIT RULE 28-2.7

California Constitution

Art. XIV, § 5 ..... A-2

California Labor Code

§ 510 ..... A-3

§ 1182.12 ..... A-4

§ 1194 ..... A-10

California Penal Code

§ 4017 ..... A-11

§ 4019 ..... A-12

§ 4019.3 ..... A-15

§ 4325 ..... A-16

§ 4327 ..... A-17

California Ballot Initiatives

Prison Inmate Labor Initiative of 1990 ("Proposition 139") A-18

California Constitution

Article XIV, Section 5

(a) The Director of Corrections or any county Sheriff or other local government official charged with jail operations, may enter into contracts with public entities, nonprofit or for profit organizations, entities, or businesses for the purpose of conducting programs which use inmate labor. Such programs shall be operated and implemented pursuant to statutes enacted by or in accordance with the provisions of the Prison Inmate Labor Initiative of 1990, and by rules and regulations prescribed by the Director of Corrections and, for county jail programs, by local ordinances.

(b) No contract shall be executed with an employer that will initiate employment by inmates in the same job classification as non-inmate employees of the same employer who are on strike, as defined in Section 1132.6 of the Labor Code, as it reads on January 1, 1990, or who are subject to lockout, as defined in Section 1132.8 of the Labor Code, as it reads on January 1, 1990. Total daily hours worked by inmates employed in the same job classification as non-inmate employees of the same employer who are on strike, as defined in Section 1132.6 of the Labor Code, as it reads on January 1, 1990, or who are subject to lockout, as defined in Section 1132.8 of the Labor Code, as it reads on January 1, 1990, shall not exceed, for the duration of the strike, the average daily hours worked for the preceding six months, or if the program has been in operation for less than six months, the average for the period of operation.

(c) Nothing in this section shall be interpreted as creating a right of inmates to work.

California Labor Code

Section 510

(a) Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work. The requirements of this section do not apply to the payment of overtime compensation to an employee working pursuant to any of the following:

(1) An alternative workweek schedule adopted pursuant to Section 511.

(2) An alternative workweek schedule adopted pursuant to a collective bargaining agreement pursuant to Section 514.

(3) An alternative workweek schedule to which this chapter is inapplicable pursuant to Section 554.

(b) Time spent commuting to and from the first place at which an employee's presence is required by the employer shall not be considered to be a part of a day's work, when the employee commutes in a vehicle that is owned, leased, or subsidized by the employer and is used for the purpose of ridesharing, as defined in Section 522 of the Vehicle Code.

(c) This section does not affect, change, or limit an employer's liability under the workers' compensation law.

California Labor Code

Section 1182.12

(a) Notwithstanding any other provision of this part, on and after July 1, 2014, the minimum wage for all industries shall be not less than nine dollars ($9) per hour, and on and after January 1, 2016, the minimum wage for all industries shall be not less than ten dollars ($10) per hour.

(b) Notwithstanding subdivision (a), the minimum wage for all industries shall not be less than the amounts set forth in this subdivision, except when the scheduled increases in paragraphs (1) and (2) are temporarily suspended under subdivision (d).

(1) For any employer who employs 26 or more employees, the minimum wage shall be as follows:

(A) From January 1, 2017, to December 31, 2017, inclusive,-ten dollars and fifty cents ($10.50) per hour.

(B) From January 1, 2018, to December 31, 2018, inclusive,-eleven dollars ($11) per hour.

(C) From January 1, 2019, to December 31, 2019, inclusive,-twelve dollars ($12) per hour.

(D) From January 1, 2020, to December 31, 2020, inclusive,-thirteen dollars ($13) per hour.

(E) From January 1, 2021, to December 31, 2021, inclusive,-fourteen dollars ($14) per hour.

(F) From January 1, 2022, and until adjusted by subdivision (c)-fifteen dollars ($15) per hour.

(2) For any employer who employs 25 or fewer employees, the minimum wage shall be as follows:

(A) From January 1, 2018, to December 31, 2018, inclusive,-ten dollars and fifty cents ($10.50) per hour.

(B) From January 1, 2019, to December 31, 2019, inclusive,-eleven dollars ($11) per hour.

(C) From January 1, 2020, to December 31, 2020, inclusive,-twelve dollars ($12) per hour.

(D) From January 1, 2021, to December 31, 2021, inclusive,-thirteen dollars ($13) per hour.

(E) From January 1, 2022, to December 31, 2022, inclusive,-fourteen dollars ($14) per hour.

(F) From January 1, 2023, and until adjusted by subdivision (c)-fifteen dollars ($15) per hour.

(3) For purposes of this subdivision, "employer" means any person who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person. For purposes of this subdivision, "employer" includes the state, political subdivisions of the state, and municipalities.

(4) Employees who are treated as employed by a single qualified taxpayer under subdivision (h) of Section 23626 of the Revenue and Taxation Code, as it read on the effective date of this section, shall be considered employees of that taxpayer for purposes of this subdivision.

(c)

(1) Following the implementation of the minimum wage increase specified in subparagraph (F) of paragraph (2) of subdivision (b), on or before August 1 of that year, and on or before each August 1 thereafter, the Director of Finance shall calculate an adjusted minimum wage. The calculation shall increase the minimum wage by the lesser of 3.5 percent and the rate of change in the averages of the most recent July 1 to June 30, inclusive, period over the preceding July 1 to June 30, inclusive, period for the United States Bureau of Labor Statistics nonseasonally adjusted United States Consumer Price Index for Urban Wage Earners and Clerical Workers (U.S. CPI-W). The result shall be rounded to the nearest ten cents ($0.10). Each adjusted minimum wage increase calculated under this subdivision shall take effect on the following January 1.

(2) If the rate of change in the averages of the most recent July 1 to June 30, inclusive, period over the preceding July 1 to June 30, inclusive, period for the United States Bureau of Labor Statistics nonseasonally adjusted U.S. CPI-

W is negative, there shall be no increase or decrease in the minimum wage pursuant to this subdivision on the following January 1.

(3)

(A) Notwithstanding the implementation timing described in paragraph (1) of this subdivision, if the rate of change in the averages of the most recent July 1 to June 30, inclusive, period over the preceding July 1 to June 30, inclusive, period for the United States Bureau of Labor Statistics nonseasonally adjusted U.S. CPI-W exceeds 7 percent in the first year that the minimum wage specified in subparagraph (F) of paragraph (1) of subdivision (b) is implemented, the indexing provisions described in paragraph (1) of this subdivision shall be implemented immediately, such that the indexing will be effective on the following January 1.

(B) If the rate of change in the averages of the most recent July 1 to June 30, inclusive, period over the preceding July 1 to June 30, inclusive, period for the United States Bureau of Labor Statistics nonseasonally adjusted U.S. CPI-W exceeds 7 percent in the first year that the minimum wage specified in subparagraph (F) of paragraph (1) of subdivision (b) is implemented, notwithstanding any other law, for employers with 25 or fewer employees the minimum wage shall be set equal to the minimum wage for employers with 26 or more employees, effective on the following January 1, and the minimum wage increase specified in subparagraph (F) of paragraph (2) of subdivision (b) shall be considered to have been implemented for purposes of this subdivision.

(d)

(1) On or before July 28, 2017, and on or before every July 28 thereafter until the minimum wage is fifteen dollars ($15) per hour pursuant to paragraph (1) of subdivision (b), to ensure that economic conditions can support a minimum wage increase, the Director of Finance shall annually make a determination and certify to the Governor and the Legislature whether each of the following conditions is met:

(A) Total nonfarm employment for California, seasonally adjusted, decreased over the three-month period from April to June, inclusive, prior to the July 28 determination. This calculation shall compare

seasonally adjusted total nonfarm employment in June to seasonally adjusted total nonfarm employment in March, as reported by the Employment Development Department.

(B) Total nonfarm employment for California, seasonally adjusted, decreased over the six-month period from January to June, inclusive, prior to the July 28 determination. This calculation shall compare seasonally adjusted total nonfarm employment in June to seasonally adjusted total nonfarm employment in December, as reported by the Employment Development Department.

(C) Retail sales and use tax cash receipts from a 3.9375-percent tax rate for the July 1 to June 30, inclusive, period ending one month prior to the July 28 determination is less than retail sales and use tax cash receipts from a 3.9375-percent tax rate for the July 1 to June 30, inclusive, period ending 13 months prior to the July 28 determination. The calculation for the condition specified in this subparagraph shall be made as follows:

(i) The State Board of Equalization shall publish by the 10th of each month on its Internet Web site the total retail sales (sales before adjustments) for the prior month derived from their daily retail sales and use tax reports.

(ii) The State Board of Equalization shall publish by the 10th of each month on its Internet Web site the monthly factor required to convert the prior month's retail sales and use tax total from all tax rates to a retail sales and use tax total from a 3.9375-percent tax rate.

(iii) The Department of Finance shall multiply the monthly total from clause (i) by the monthly factor from clause (ii) for each month.

(iv) The Department of Finance shall sum the monthly totals calculated in clause (iii) to calculate the 12-month July 1 to June 30, inclusive, totals needed for the comparison in this subparagraph.

(2)

(A) On or before July 28, 2017, and on or before every July 28 thereafter until the minimum wage is fifteen dollars ($15) per hour pursuant to paragraph (1) of subdivision (b), to ensure that the state General Fund fiscal condition can support the next scheduled minimum wage increase, the Director of Finance shall annually make a determination and certify to the Governor and the Legislature whether the state General Fund would be in a deficit in the current fiscal year, or in either of the following two fiscal years.

(B) For purposes of this subdivision, deficit is defined as a negative balance in the Special Fund for Economic Uncertainties, as provided for in Section 16418 of the Government Code, that exceeds, in absolute value, 1 percent of total state General Fund revenue and transfers, based on the most recent Department of Finance estimates required by Section 12.5 of Article IV of the California Constitution. For purposes of this subdivision, the estimates shall include the assumption that only the minimum wage increases scheduled for the following calendar year pursuant to subdivision (b) will be implemented.

(3)

(A)

(i) If, for any year, the condition in either subparagraph (A) or (B) of paragraph (1) is met, and if the condition in subparagraph (C) of paragraph (1) is met, the Governor may, on or before August 1 of that year, notify the Legislature of an initial determination to temporarily suspend the minimum wage increases scheduled pursuant to subdivision (b) for the following year.

(ii) If the Director of Finance certifies under paragraph (2) that the state General Fund would be in a deficit in the current fiscal year, or in either of the following two fiscal years, the Governor may, on or before August 1 of that fiscal year, notify the Legislature of an initial determination to temporarily suspend the minimum wage increases scheduled pursuant to subdivision (b) for the following year.

(B) If the Governor provides notice to the Legislature pursuant to subparagraph (A), the Governor shall, on September 1 of any such year, make

a final determination whether to temporarily suspend the minimum wage increases scheduled pursuant to subdivision (b) for the following year. The determination to temporarily suspend the minimum wage increases scheduled pursuant to subdivision (b) for the following year shall be made by proclamation.

(C) The Governor may temporarily suspend scheduled minimum wage increases pursuant to clause (ii) of subparagraph (A) no more than two times.

(D) If the Governor makes a final determination to temporarily suspend the scheduled minimum wage increases pursuant to subdivision (b) for the following year, all dates specified in subdivision (b) that are subsequent to the September 1 final determination date shall be postponed by an additional year.

California Labor Code

Section 1194

(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

(b) The amendments made to this section by Chapter 825 of the Statutes of 1991 shall apply only to civil actions commenced on or after January 1, 1992.

California Penal Code

Section 4017

All persons confined in the county jail, industrial farm, road camp, or city jail under a final judgment of imprisonment rendered in a criminal action or proceeding and all persons confined in the county jail, industrial farm, road camp, or city jail as a condition of probation after suspension of imposition of a sentence or suspension of execution of sentence may be required by an order of the board of supervisors or city council to perform labor on the public works or ways in the county or city, respectively, and to engage in the prevention and suppression of forest, brush and grass fires upon lands within the county or city, respectively, or upon lands in adjacent counties where the suppression of fires would afford fire protection to lands within the county.

Whenever any such person so in custody shall suffer injuries or death while working in the prevention or suppression of forest, brush or grass fires he shall be considered to be an employee of the county or city, respectively, for the purposes of compensation under the provisions of the Labor Code regarding workmen's compensation and such work shall be performed under the direct supervision of a local, state or federal employee whose duties include fire prevention and suppression work. A regularly employed member of an organized fire department shall not be required to directly supervise more than 20 such persons so in custody.

As used in this section, "labor on the public works" includes clerical and menial labor in the county jail, industrial farm, camps maintained for the labor of such persons upon the ways in the county, or city jail.

California Penal Code

Section 4019

(a) This section applies in all of the following cases:

(1) When a prisoner is confined in or committed to a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp, including all days of custody from the date of arrest to the date when the sentence commences, under a judgment of imprisonment or of a fine and imprisonment until the fine is paid in a criminal action or proceeding.

(2) When a prisoner is confined in or committed to a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp as a condition of probation after suspension of imposition of a sentence or suspension of execution of sentence in a criminal action or proceeding.

(3) When a prisoner is confined in or committed to a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp for a definite period of time for contempt pursuant to a proceeding other than a criminal action or proceeding.

(4) When a prisoner is confined in a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp following arrest and prior to the imposition of sentence for a felony conviction.

(5) When a prisoner is confined in a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp as part of custodial sanction imposed following a violation of postrelease community supervision or parole.

(6) When a prisoner is confined in a county jail, industrial farm, or road camp or a city jail, industrial farm, or road camp as a result of a sentence imposed pursuant to subdivision (h) of Section 1170.

(7) When a prisoner participates in a program pursuant to Section 1203.016 or Section 4024.2. Except for prisoners who have already been deemed eligible to receive credits for participation in a program pursuant to Section 1203.016 prior to January 1, 2015, this paragraph shall apply prospectively.

(8) When a prisoner is confined in or committed to a state hospital or other mental health treatment facility, or to a county jail treatment facility, as

defined in Section 1369.1, in proceedings pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2.

(b) Subject to subdivision (d), for each four-day period in which a prisoner is confined in or committed to a facility as specified in this section, one day shall be deducted from the prisoner's period of confinement unless it appears by the record that the prisoner has refused to satisfactorily perform labor as assigned by the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(c) For each four-day period in which a prisoner is confined in or committed to a facility as specified in this section, one day shall be deducted from the prisoner's period of confinement unless it appears by the record that the prisoner has not satisfactorily complied with the reasonable rules and regulations established by the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(d) This section does not require the sheriff, chief of police, or superintendent of an industrial farm or road camp to assign labor to a prisoner if it appears from the record that the prisoner has refused to satisfactorily perform labor as assigned or that the prisoner has not satisfactorily complied with the reasonable rules and regulations of the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(e) A deduction shall not be made under this section unless the person is committed for a period of four days or longer.

(f) It is the intent of the Legislature that if all days are earned under this section, a term of four days will be deemed to have been served for every two days spent in actual custody.

(g) The changes in this section as enacted by the act[1] that added this subdivision shall apply to prisoners who are confined to a county jail, city jail, industrial farm, or road camp for a crime committed on or after the effective date of that act.

(h) The changes to this section enacted by the act[2] that added this subdivision shall apply prospectively and shall apply to prisoners who are confined to a county jail, city jail, industrial farm, or road camp for a crime committed on or after October 1, 2011. Any days earned by a prisoner prior to October 1, 2011, shall be calculated at the rate required by the prior law.

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[1] Stats. 2010, c. 426 (S.B. 76), eff. Sept. 28, 2010.

[2] Stats. 2011, c. 15 (A.B.109), eff. April 4, 2011, operative Oct. 1, 2011.

(i)

(1) This section shall not apply, and no credits may be earned, for periods of flash incarceration imposed pursuant to Section 3000.08 or 3454.

(2) Credits earned pursuant to this section for a period of flash incarceration pursuant to Section 1203.35 shall, if the person's probation or mandatory supervision is revoked, count towards the term to be served.

(j) This section shall remain in effect only until January 1, 2023, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2023, deletes or extends that date.

California Penal Code

Section 4019.3

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.

California Penal Code

Section 4325

(a) The board of supervisors of the Counties of Lake, Los Angeles, Madera, Sacramento, San Diego, San Joaquin, San Luis Obispo, Sonoma, Stanislaus, Tulare, Tuolumne, and Ventura may authorize, by ordinance or resolution, the sheriff or county director of corrections to create a Jail Industry Authority within the county jail system.

(b) The purpose of the Jail Industry Authority includes all of the following:

(1) To develop and operate industrial, agricultural, or service enterprises or programs employing prisoners in county correctional facilities under the jurisdiction of the sheriff or county director of corrections.

(2) To create and maintain working conditions within the enterprises or programs as similar as possible to those that prevail in private industry.

(3) To 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.

(4) To allow inmates who participate in the enterprise or program the opportunity to earn additional time credits allowed under Section 4019.1 or 4019.4, if authorized by the sheriff or county director of corrections.

(5) To operate a work program for inmates in county correctional facilities that will ultimately be self-supporting by generating sufficient funds from the sale of products and services to pay all the expenses of the program and that will provide goods and services that are or will be used by the county correctional facilities, thereby reducing the cost of its operation.

California Penal Code

Section 4327

Upon the establishment of the Jail Industry Program or Jail Industry Authority, the board of supervisors shall establish a Jail Industries Fund, which may be a revolving fund, for funding the operations of the program. All 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.

California Ballot Initiatives

Prison Inmate Labor Initiative of 1990 ("Proposition 139")

Section 1. This measure shall be known as the "Prison Inmate Labor Initiative of 1990."

Section 2. The people of the State of California find and declare that inmates who are confined in state prison or county jails should work as hard as the taxpayers who provide for their upkeep, and that those inmates may be required to perform work and services in order to do all of the following:

(a) Reimburse the State of California or counties for a portion of the costs associated with their incarceration.

(b) Provide restitution and compensation to the victims of crime.

(c) Encourage and maintain safety in prison and jail operations.

(d) Support their families to the extent possible.

(e) Learn skills which may be used upon their return to free society.

(f) Assist in their own rehabilitation in order to become responsible law-abiding citizens upon their release from state prison or local jail.

Section 3. Section 5 of Article XIV of the State Constitution is repealed.

~~SEC. 5. The labor of convicts shall not be let out by contract to any person, copartnership, company or corporation, and the Legislature shall, by law, provide for the working of convicts for the benefit of the state.~~

Section 4. Section 5 is added to Article XIV of the State Constitution to read:

SECTION 5. (a) The Director of Corrections or any county Sheriff or other local government official charged with jail operations, may enter into contracts with public entities, nonprofit or for profit organizations, entities, or businesses for the purpose of conducting programs which use inmate labor. Such programs shall be operated and implemented pursuant to statutes enacted by or in accordance with the

provisions of the Prison Inmate Labor Initiative of 1990, and by rules and regulations prescribed by the Director of Corrections and, for county jail programs, by local ordinances.

(b) No contract shall be executed with an employer that will initiate employment by inmates in the same job classification as non-inmate employees of the same employer who are on strike, as defined in Section 1132.6 of the Labor Code, as it reads on January 1, 1990, or who are subject to lockout, as defined in Section 1132.8 of the Labor Code, as it reads on January 1, 1990. Total daily hours worked by inmates employed in the same job classification as non-inmate employees of the same employer who are on strike, as defined in Section 1132.6 of the Labor Code, as it reads on January 1, 1990, or who are subject to lockout, as defined in Section 1132.8 of the Labor Code, as it reads on January 1, 1990, shall not exceed, for the duration of the strike, the average daily hours worked for the preceding six months, or if the program has been in operation for less than six months, the average for the period of operation.

Nothing in this section shall be interpreted as creating a right of inmates to work.

Section 5. Article 1.5 is added to Chapter 5 of Title 1 of Part 3 of the Penal Code to read:

Article 1.5.
Joint Venture Program

2717.1. Definitions.

(a) For the purposes of this section, joint venture program means a contract entered into between the Director of Corrections and any public entity, nonprofit or for profit entity, organization, or business for the purpose of employing inmate labor.

(b) Joint venture employer means any public entity, nonprofit or for profit entity, organization, or business which contracts with the Director of Corrections for the purpose of employing inmate labor.

2717.2. The Director of Corrections shall establish joint venture programs within state prison facilities to allow joint venture employers to employ inmates confined in the state prison system for the purpose of producing goods or services. While recognizing the constraints of operating within the prison system, such programs will be patterned after operations outside of prison so as to provide inmates with the skills and work habits necessary to become productive members of society upon their release from state prison.

2717.3. The Director of Corrections shall prescribe by rules and regulations provisions governing the operation and implementation of joint venture programs, which shall be in furtherance of the findings and declarations in the Prison Inmate Labor Initiative of 1990.

2717.4. There is hereby established within the Department of Corrections the Joint Venture Policy Advisory Board. The Joint Venture Policy Advisory Board shall consist of the Director of Corrections, who shall serve as chair, the Director of the Employment Development Department, and five members, to be appointed by the Governor, three of whom shall be public members, one of whom shall represent organized labor and one of whom shall represent industry. Five members shall constitute a quorum and a vote of the majority of the members in office shall be necessary for the transaction of the business of the board. Appointed members of the board shall be compensated at the rate of two hundred dollars ($200) for each day while on official business of the board and shall be reimbursed for necessary expenses. The initial terms of the members appointed by the Governor shall be for one year (one member), two years (two members), three years (one member), and four years (one member), as determined by the Governor. After the initial term, all members shall serve for four years.

(b) The board shall advise the Director of Corrections of policies that further the purposes of the Prison Inmate Labor Initiative of 1990 to be considered in the implementation of joint venture programs.

2717.5. In establishing joint venture contracts the Director of Corrections shall consider the impact on the working people of California and give priority consideration to inmate employment which will retain or reclaim jobs in California, support emerging California industries, or create jobs for a deficient labor market.

2717.6. (a) No contract shall be executed with a joint venture employer that will initiate employment by inmates in the same job classification as non-inmate employees of the same employer who are on strike, as defined in Section 1132.6 of the Labor Code, as it reads on January 1, 1990, or who are subject to lockout, as defined in Section 1132.8 of the Labor Code, as it reads on January 1, 1990.

(b) Total daily hours worked by inmates employed in the same job classification as non-inmate employees of the same joint venture employer who are on strike, as defined in Section 1132.6 of the Labor Code, as it reads on January 1, 1990, or who are subject to lockout, as defined in Section 1132.8 of the Labor Code, as it reads on January 1, 1990, shall not exceed, for the duration of the strike, the average daily hours worked for the preceding six months, or if the program has been in operation for less than six months, the average for the period of operation.

(c) The determination that a condition described in paragraph (b) above shall be made by the Director after notification by the union representing the workers on strike or subject to lockout. The limitation on work hours shall take effect 48 hours after receipt by the Director of written notice of the condition by the union.

2717.7. Notwithstanding Section 2812 of the Penal Code or any other provision of law which restricts the sale of inmate-provided services or inmate-manufactured goods, services performed and articles manufactured by joint venture programs may be sold to the public.

2717.8. The compensation of prisoners engaged in programs pursuant to contract between the Department of Corrections and joint venture employers for the purpose of conducting programs which use inmate labor shall be comparable to wages paid by the joint venture employer to non-inmate employees performing similar work for that employer. If the joint venture employer does not employ such non-inmate employees in similar work, compensation shall be comparable to wages paid for work of a similar nature in the locality in which the work is to be performed. Such wages shall be subject to deductions, as determined by the Director of Corrections, which shall not, in the aggregate, exceed 80 percent of gross wages and shall be limited to the following:

(1) Federal, state, and local taxes.

(2) Reasonable charges for room and board, which shall be remitted to the Director of Corrections.

(3) Any lawful restitution fine or contributions to any fund established by law to compensate the victims of crime of not more than 20 percent, but not less than 5 percent, of gross wages, which shall be remitted to the Director of Corrections for disbursement.

(4) Allocations for support of family pursuant to state statute, court order, or agreement by the prisoner.

Section 6. Section 14672.16 is added to the Government Code to read:

14672.16. (a) Notwithstanding Section 14670, the Director of General Services, with the consent of the Department of Corrections or the Department of the Youth Authority may let, in the best interest of the state, any real property located within the grounds of a facility of the Department of Corrections or the Department of the Youth Authority to a public or private entity for a period not to exceed 20 years for the purpose of conducting programs for the employment and training of prisoners or wards in institutions under the jurisdiction of the Department of Corrections or the Department of the Youth Authority.

(b) The lease may provide for the renewing of the lease for additional successive 10–year terms, but those additional terms shall not exceed three in number. Any lease of state property entered into pursuant to this section may be at less than market value when the Director of General Services determines it will serve a statewide public purpose.

Section 7. Section 17053.6 is added to the Revenue and Taxation Code to read:

17053.6. There shall be allowed as a credit against the "net tax" (as defined by Section 17039) an amount equal to 10 percent of the amount of wages paid to each prisoner who is employed in a joint venture program established pursuant to Article 1.5 of Chapter 5 of Title 1 of Part 3 of the Penal Code, through agreement with the Director of Corrections.

Section 8. Section 23624 is added to the Revenue and Taxation Code to read:

23624. There shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount equal to 10 percent of the amount of wages paid to each prisoner who is employed in a joint venture program established pursuant to Article 1.5 of Chapter 5 of Title 1 of Part 3 of the Penal Code, through agreement with the Director of Corrections.

Section 9. If any provision of this measure or the application thereof to any person or circumstances is held invalid or unconstitutional, that invalidity shall not effect other provisions or applications of the measure which can be given effect without the invalid provision or application, and to this end the provisions of this measure are severable.

Section 10. The statutory provisions contained in this measure may not be amended by the Legislature except to further its purposes by statute passed in each house by roll call vote entered in the journal, two thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.