Case No. S279137

IN THE SUPREME COURT OF CALIFORNIA

TAMELIN STONE, et al.,

Plaintiffs and Appellants,

v.

ALAMEDA HEALTH SYSTEM,

Defendant and Respondent.

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

OPENING BRIEF ON THE MERITS

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OPENING BRIEF ON THE MERITS
STATEMENT OF THE ISSUES

1. Are all public entities exempt from the obligations in the Labor Code and wage orders regarding meal and rest breaks, overtime, and payroll records, or only those public entities that satisfy the "hallmarks of sovereignty" standard adopted by the Court of Appeal in this case?

2. Does the exemption from the prompt payment statutes in Labor Code section 220, subdivision (b), for "employees directly employed by any county, incorporated city, or town or other municipal corporation" include all public entities that exercise governmental functions, or only those with a publicly elected board, a geographical boundary, the power to forcefully raise funds or acquire property, and the power to regulate or police?

3. Do the civil penalties available under the Private Attorneys General Act of 2004, codified at Labor Code section 2698 et seq., apply to public entities given the lack of any reference to public entities in that statute and rule that public entities are "not liable for … damages imposed primarily for the sake of example and by way of punishing the defendant" (Gov. Code, § 818)?

INTRODUCTION

In 1996, the Legislature passed a law specifically empowering the County of Alameda (the "County") "to create a hospital authority" "strictly and exclusively dedicated to the management, administration, and control" of the Alameda County Medical Center "in a manner that ensures appropriate, quality, and cost-effective medical care as required by counties" under the Welfare and Institutions Code. (Health & Saf. Code, § 101850, subds. (a)(1), (d).) Pursuant to this legislation, the County created the Alameda Health System ("AHS") as a "separate public agency" to "fulfill [the County's] commitment to the medically indigent, special needs, and general populations" of the County. (*Id.*, subd. (a)(1); see also Attachment A.)

When the Legislature allowed for the creation of AHS, it made clear that AHS is a "government entity" (Health & Saf. Code, § 101850, subd. (j))—subject to the Meyers-Milias-Brown Act, the Ralph M. Brown Act, the Public Records Act, the County Employees Retirement Law of 1937, and the Government Claims Act—with "all the rights and duties set forth in state law with respect to hospitals owned or operated by a county." (*Id.*, subd. (m).) AHS's enabling statute likewise underscores the County's intrinsic involvement in AHS's governance and finances. (*Id.*, subds. (c), (e), (*l*)(1), (*o*), (ak), (am)(3).)

Based on AHS's enabling statute and public entity status, the trial court had no trouble finding it exempt from the various wage and hour obligations at issue in this case. The Court of

Appeal, however, disagreed. Despite acknowledging that AHS "is a 'governmental entity' of some kind" and a "public entity of some sort" (typed opn. at pp. 12, 15), the Court of Appeal concluded that most of the wage and hour laws applied to AHS.

The Court of Appeal's judgment rests on several critical errors and should be reversed. To begin with, the decision overlooks critical aspects of the language, structure, and history of the relevant wage and hour laws revealing positive indicia of legislative intent to exclude all public entities from their reach. It also breaks with longstanding judicial and administrative understandings (which had come to the Legislature's attention by the time it enacted AHS's enabling statute) that "'provisions of the Labor Code apply only to employees in the private sector unless they are specifically made applicable to public employees.'" (*Campbell v. Regents of University of California* (2005) 35 Cal.4th 311, 330, quoting Sen. Com. on Indus. Relations, Analysis of Assem. Bill No. 3486 (1991-1992 Reg. Sess.); 71 Ops.Cal.Atty.Gen. 39, *5 (1988).)

But that's not all. The decision below suffers from several other flaws stemming from its fixation on AHS's perceived lack of "sovereignty." (Typed opn. at p. 1.) The Court of Appeal erred in even addressing the "sovereign powers doctrine," which is "simply a maxim of statutory construction" that "cannot override positive indicia of a contrary legislative intent" gleaned from a statute's language, structure, and history. (*Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1193.) The court then

misapplied the doctrine, focusing on AHS's lack of certain "sovereign governmental powers" (typed opn. at pp. 9-10) instead of asking whether applying the wage and hour laws to AHS (which is indisputably a governmental entity) would "significantly impede [its] fiscal ability to carry out [its] core public mission[]" (*Wells*, *supra*, at p. 1193) or "affect [its] governmental purposes and functions" (*Johnson v. Arvin-Edison Water Storage Dist.* (2009) 174 Cal.App.4th 729, 738).

Finally, the Court of Appeal compounded these errors by concluding that public entities like AHS may be subject to penalties under the Private Attorneys General Act of 2004 ("PAGA") even though that law does not specifically apply to public entities. This erroneous interpretation of PAGA could lead to double recoveries against public entities (but not private employers) and raises grave concerns given Government Code section 818's prohibition on damages primarily designed to punish.

Because each of the claims the Court of Appeal permitted to proceed rests in one way or another on these mistakes of law, its judgment should be reversed, and the trial court's dismissal order reinstated.

STATEMENT OF THE CASE

A. AHS's Creation, Mission, And Status As A "Government Entity."

Until the late 1990s, the County satisfied its obligations under the Welfare and Institutions Code to provide healthcare to

the indigent through its operation of the Alameda County Medical Center. (See Welf. & Inst. Code, § 17000.) Eventually, however, the Board of Supervisors "determined that the creation of an independent hospital authority strictly and exclusively dedicated to the management, administration, and control of the medical center" was "the best way to fulfill its commitment to the medically indigent, special needs, and general populations of Alameda County." (Health & Saf. Code, § 101850, subd. (a)(1).) Accomplishing this goal required "the adoption of a special act" by the Legislature so that the County could "create a hospital authority" dedicated to that mission. (*Id.*, subd. (a)(1), (d).)

The Legislature granted that authority in 1996, when it enacted Health and Safety Code section 101850. That statute unequivocally declares that AHS is a public entity. (Health & Saf. Code, § 101850, subd. (a)(2)(C) ["'Hospital authority' means the separate *public agency* established by the Board of Supervisors"], emphasis added.) Numerous other subdivisions in that section clearly identify AHS as a public agency. (See *id.*, subd. (g) ["public agency"]; *id.*, subd. (j) ["government entity"]; *id.*, subd. (s) ["district"]; *id.*, subd. (u) ["public agency"]; *id.*, subd. (w)(3) ["public entities and public employees"]; *id.*, subd. (ag) ["public agency"].)

The members of AHS's governing board—which is generally subject to the open meeting requirements of the Ralph M. Brown Act (see Health & Saf. Code, § 101850, subds. (ae)(1-3), (af))—are appointed and can be removed by the County's Board of

Supervisors and are protected under the Government Claims Act. (*Id.*, subds. (c), (t), citing Gov. Code, § 820.9.)

AHS's employees are likewise "public employees" under the Government Claims Act, (Health & Saf. Code, § 101850, subd. (w)(3)), "eligible to participate in the County Employees Retirement System…" (*id.*, subd. (s)), and protected by the collective bargaining requirements of the Meyers-Milias-Brown Act (*id.*, subd. (u)), which are meant to "promote full communication between public employers and their employees…." (Gov. Code, § 3500, subd. (a).)

With limited exceptions, AHS's records are subject to the Public Records Act. (Health & Saf. Code, § 101850, subd. (ad)(3).) AHS is also "subject to state and federal taxation laws that are applicable to counties generally" and enjoys "all the rights and duties set forth in state law with respect to hospitals owned or operated by a county." (*Id.*, subds. (z) & (m).)

B. The Trial Court Dismisses Plaintiffs' Wage And Hour Claims Based On AHS's Public Entity Status.

Plaintiffs Stone and Kunwar worked for AHS as a medical assistant and licensed vocational nurse, respectively. (Typed opn. at p. 3.) Their amended complaint asserted seven representative claims based on allegations that they were not fully compensated for missing meal and rest periods: (1) failure to provide off-duty meal periods (Lab. Code, §§ 512, 226.7; IWC

Wage Order 5, Cal. Code Regs., tit. 8, § 11050);[1] (2) failure to provide off-duty rest breaks (§ 226.7; Wage Order); (3) failure to keep accurate payroll records (§§ 1174, 1174.5, 1175; Wage Order); (4) failure to provide accurate itemized wage statements (§§ 226, 226.3); (5) failure to pay wages (§§ 204, 222, 223, 225.5, 218.6, 218.5, 510, 1194, 1194.2, and 1198); (6) failure to timely pay wages (§§ 204, 210, 222, 223, 225.5, 218.6, 218.5); and (7) PAGA (§ 2698 et seq.). (Typed opn. at pp. 3-4.)[2]

AHS demurred on the grounds that these claims were not cognizable because of AHS's status as a public entity. (1AA71-72, 74-75, 1AA86-94.) The superior court agreed and sustained AHS's demurrer without leave to amend, explaining that "AHS is a statutorily created public agency whose employees are public employees and that has the same rights and duties as a county-owned hospital." (4AA316-317.)

C. The Court of Appeal Reverses Based On AHS's Lack Of "Sovereignty."

Plaintiffs appealed the dismissal of their representative claims under the "death knell" doctrine. (Typed opn. at pp. 4-5.) Despite recognizing AHS's status as "public entity of some sort" and a "'governmental entity' of some kind" exempt from the wage statement law (§ 226(i)), the Court of Appeal reversed as to the

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[1] Unless otherwise noted, statutory references are to the Labor Code, and wage order references are to Wage Order 5.

[2] Plaintiffs also asserted non-class claims under the Fair Employment and Housing Act. (1AA47-51.) Those claims, which are still pending, are not at issue here.

remaining wage and hour claims because AHS lacks certain "hallmarks of sovereignty" (typed opn. at p. 1), such as a governing board elected by the public and the power to tax, seize property, regulate, or police. (Typed opn. at pp. 1-2, 9-10, 12, 15.) The Court of Appeal also allowed Plaintiffs' derivative PAGA claim to proceed "because PAGA penalties are not punitive damages." (Typed opn. at p. 16.)

On May 17, 2023, this Court granted review.

STANDARD OF REVIEW

"A demurrer is properly sustained when '[t]he pleading does not state facts sufficient to constitute a cause of action.'" (*Roy Allan Slurry Seal, Inc. v. American Asphalt South, Inc.* (2017) 2 Cal.5th 505, 512.) "On appeal, a resulting judgment of dismissal is reviewed independently." (*Ibid.*) This Court "accept[s] as true all the material allegations of the complaint," but "do[es] not assume the truth of contentions, deductions or conclusions of law." (*Ibid.* [quotation marks omitted].)

Determining the meaning and applicability of a statute "entails the resolution of a pure question of law," which "is examined de novo." (*People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 432.)

LEGAL ARGUMENT

I. This Court's Decision In *Wells* Provides The Framework For Analyzing Whether The Legislature Intended To Expose Public Entities To Statutory Liability.

"Except as otherwise provided by statute … [a] public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person." (Gov. Code, § 815, subd. (a).) "'In the absence of a constitutional requirement, public entities may be held liable only if a statute … is found declaring them liable.'" (*Hoff v. Vacaville Unified School Dist.* (1998) 19 Cal.4th 925, 932.)

This Court's decision in *Wells* provides the framework for determining whether the Legislature intended to "expose a public entity to a particular statutory liability"—including the wage and hour laws at issue here. (*Wells*, *supra*, 39 Cal.4th at pp. 1190, 1196.)

A. Courts Must First Look To A Statute's "Language, Structure, and History" To Determine Whether It Applies To Governmental Entities.

In *Wells*, this Court explained how courts must first evaluate a statute's "language, structure, and history" to determine whether it permits a cause of action against governmental entities. (*Wells*, *supra*, 39 Cal.4th at pp. 1190-1193.) Applying that framework, this Court concluded that "public entities—including public school districts—are not

'persons' subject to suit under the" state False Claims Act. (*Id.* at pp. 1193, 1199, fn. 21.)

Looking first to the statute's plain language, the *Wells* Court noted that the False Claims Act "defines covered 'persons' to 'include any natural person, corporation, firm, association, organization, partnership, limited liability company, business, or trust.'" (*Wells*, *supra*, 39 Cal.4th at p. 1190 [quoting Gov. Code, § 12650, subd. (b)(5)].) Critically, "the statutory list of 'persons' contains no words or phrases most commonly used to signify public school districts, or, for that matter, any other public entities or governmental agencies." (*Ibid.*; accord, *Brennon B. v. Superior Court* (2022) 13 Cal.5th 662, 677-678 [same conclusion regarding "business establishments" under the Unruh Act].)

At the same time, the Court explained, the false claims "statute makes very specific reference to governmental entities in other contexts," such as in identifying the "'state or [a] political subdivision'" as the object of a false claim presented by a "'person'" and in identifying various types of governmental entities in the definition of "political subdivision." (*Wells*, *supra*, 39 Cal.4th at p. 1190, quoting Gov. Code, § 12651, subd. (a), (b).)

Second, this Court turned to the broader structure of the Government Code—as well as other codes—to focus on the Legislature's "conceptual separation of 'person' from governmental entities." (*Wells*, *supra*, 39 Cal.4th at pp. 1190-1191; accord, *Brennon B.*, *supra*, 13 Cal.5th at p. 678 & fn. 5 ["the Legislature is capable of bringing government entities within the

scope of specific legislation when it intends to do so"].) For example, under the Fair Employment and Housing Act, the Legislature has defined "person" in a way that does not expressly include public entities while defining "employer" to expressly include "the state or any political or civil subdivision of the state, and cities." (*Wells*, *supra*, at pp. 1190-1191, citing Gov. Code, §§ 12925 & 12926; see also *id.* at p. 1191, fn. 14 [similarly comparing the Labor Code's general definition of "person" and specific definition of "employer" under the workers' compensation law].)

Third, this Court looked to the history of the state false claims statute, explaining that an earlier draft of the bill included "district, county, city and county, city, the state, and any of the agencies and political subdivisions of these entities" in the definition of "persons," but this language was ultimately removed. (*Wells*, *supra*, 39 Cal.4th at pp. 1191-1192.)

Together, this "language, structure, and history" provided sufficient indicia to conclude that the Legislature did not intend, by mere implication, to include public entities among the "persons" subject to suit under the false claims statute. (*Wells*, *supra*, 39 Cal.4th at p. 1193.)

B. *Wells* Clarified The Applicability And Scope Of The "'Sovereign Powers' Principle" As An Interpretive Aid.

As *Wells* illustrates, when a statute's "language, structure, and history" reveal a legislative intent not to expose public entities to liability, courts need not (and should not) consider

statutory maxims—including the maxim concerned with infringing "sovereign powers." (*Wells*, *supra*, 39 Cal.4th at p. 1193.)

The origins of the "sovereign powers" principle can be traced back to the late 1800s, when this Court endorsed Justice Story's exhortation that "'the general words of a statute ought not to include the government, or affect its rights, unless that construction be clear and indisputable upon the text of the act.'" (*Mayrhofer v. Board of Education* (1891) 89 Cal. 110, 112, quoting *United States v. Hoar* (C.C.D. Mass. 1821) 2 Mason 311, 314.)

The *Mayrhofer* Court recognized that while this "rule of statutory construction" flows in part from the presumption that the Legislature did not intend by general words to "trench upon … sovereign rights," it also flows from similar presumptions that courts should not conclude (without clear language) that the Legislature meant to "injuriously affect [government's] capacity to perform its functions" as a "mere instrumentality for public service" or "establish a right of action against it." (89 Cal. at pp. 112, 113-114.)

Courts "repeatedly affirmed" (*Miles v. Ryan* (1916) 172 Cal. 205, 207) this rule in the ensuing years, both before and after the Legislature's adoption of the Labor Code in 1937. (See *Butterworth v. Boyd* (1938) 12 Cal.2d 140, 150.) Starting in the 1940s, some courts collapsed the *Mayrhofer* standard into what became known as the "'sovereign powers' principle"—"i.e., that government agencies are excluded from the operation of general

statutory provisions 'only if their inclusion would result in an infringement upon sovereign governmental powers.'" (*Wells*, *supra*, 39 Cal.4th at p. 1192.)

But in *Wells*, this Court clarified this "more recent exception" in terms of both its applicability and its scope. First, this Court explained that "the 'sovereign powers' principle … cannot override positive indicia of a contrary legislative intent" to exclude governmental agencies from the reach of a statute. (*Wells*, *supra*, 39 Cal.4th at p. 1193.)

Second, this Court rejected the lower court's "analysis of the 'sovereign power' question," which held that "school districts have no 'sovereign' power or right to submit false claims against the public treasury." (*Wells*, *supra*, 39 Cal.4th at pp. 1192-1193.) This Court disagreed and endorsed an approach bearing much closer resemblance to the standard originally recognized in *Mayrhofer*. Specifically, the Court explained that "in light of the stringent revenue, appropriations, and budget restraints under which all California governmental entities operate, exposing them to the draconian liabilities of the [state False Claims Act] would significantly impede their fiscal ability to carry out their core public missions." (*Id.* at p. 1193.) As a result, this Court concluded, the Legislature could not have intended "by mere implication, to expose … public entit[ies] to [this] particular statutory liability." (*Id.* at p. 1196.)

* * *

In sum, determining whether a statute applies to governmental entities starts with the statute's "language, structure, and history." (*Wells*, *supra*, 39 Cal.4th at p. 1193.) The "'sovereign powers' principle" does not apply unless there is "unclear legislative intent." (*Ibid.*) And even then, the question is whether exposing governmental entities to liability would "interfere significantly with government agencies' fiscal ability to carry out their public missions." (*Id.* at pp. 1193-1196.) As set forth more fully below, applying this framework here shows that public entities—including public hospital authorities—are not subject to the various wage and hour laws at issue.

II. The Meal And Rest Break, Payroll Records, And Overtime Obligations In The Labor Code And Wage Orders Do Not Apply To AHS.

Plaintiffs' first, second, third, and fifth causes of action stem from the following statutory and quasi-legislative sources:

- Meal and Rest Breaks (§§ 512 & 226.7; Wage Order §§ 11 & 12);
- Payroll Records (§§ 1174, 1174.5; Wage Order § 7); and
- Overtime (§§ 510, 1194, 1194.2, 1198; Wage Order § 3).

(1AA 51-53, 55.)

When the "language, structure, and history" (*Wells*, *supra*, 39 Cal.4th at p. 1193) of these provisions are read together[3] against the backdrop that "governmental agencies are not included within the general words of statute" (*id.* at p. 1192), it becomes apparent that they were not intended to apply to public hospital authorities (or any other public entities).

A. The Language And Structure Of The Wage And Hour Laws Indicate That They Were Not Intended To Apply To Public Entities.

By their own terms, the statutes and wage order provisions governing Plaintiffs' overtime, meal and rest break, and payroll records claims place certain obligations on "employers" (§§ 510, subd. (a), 512, subd. (a), 1198) and "persons" (§§ 1174, 1174.5). In certain circumstances, these laws create certain rights and causes of action for "employees" (§§ 1194, 1194.2) "without specifying who is liable." (*Martinez v. Combs* (2010) 49 Cal.4th 35, 49.)

These statutes do not themselves specifically define "employer," and "[t]he Labor Code provides no generally applicable definition of the term." (*McLean v. State of California* (2016) 1 Cal.5th 615, 627.) Nor do they define the term "employee."

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[3] (*Gerard v. Orange Coast Memorial Medical Center* (2018) 6 Cal.5th 443, 448 ["'To the extent a wage order and a statute overlap, we will seek to harmonize them….'"].)

1. The Wage Orders, To Which Courts Have Historically Granted Deference, Define Employer To Exclude Public Entities.

The wage orders, however, define both "employer" and "employee" by reference to the term "person" as that word is defined in the Labor Code. The wage orders define an "'[e]mployer'" to "mean[] *any person as defined in Section 18 of the Labor Code*, 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." (E.g., Wage Order, § (2)(H) [emphasis added]; see also Wage Order, § 2(F) [defining "'[e]mployee'" to "mean[] any person employed by *an employer*" (emphasis added)].) Section 18, in turn, does not include public entities in its defined list of "person[s]": "any person, association, organization, partnership, business trust, limited liability company, or corporation." (§ 18; see also *Wells*, 39 Cal.4th at p. 1191, fn. 14.)

At the same time, the wage orders also generally exempt public entities from their substantive requirements except for those regarding minimum wages and meals and lodging: "Except as provided in Sections 1 [Applicability], 2 [Definitions], 4 [Minimum Wages], 10 [Meals and Lodging], and 20 [Penalties], the provisions of this order shall not apply to any employees directly employed by the State or any political subdivision thereof, including any city, county, or special district." (Wage Order, § (1)(C).)

Together, the IWC's definition of "employer" and express exclusion of public entities from the overtime, meal and rest break, and payroll obligations embodies a statutory interpretation that the agency has consistently maintained for decades. (See *Martinez*, *supra*, 49 Cal.4th at pp. 48, fn. 9, 59, 67 [noting that the IWC has used the same language "since 1947 to define 'employer'"]; AHS's Mot. for Jud. Notice ("MJN"), Ex. C, §§ 1(C), 2(F); Wage Order § 1(C); 71 Ops.Cal.Atty.Gen. 39 (1988) ["The orders of I.W.C. have never been applied to or enforced against public employees"].)

Where, as here, the Legislature has not defined "employer" in a manner that conflicts with the IWC's express exemption of public entities from the relevant wage order obligations, the IWC's "definitions of the employment relationship" are entitled to deference. (*Martinez*, *supra*, 49 Cal.4th at pp. 51-52, 60-62; see also *Ramirez v. Yosemite Water Co., Inc.* (1999) 20 Cal.4th 785, 801 [deferring to the IWC's 20-year-old definition of "outside salesperson"].)

As a result, whether public entities are "employers" under the Labor Code generally turns on whether public entities are "persons"—similar to the question that this Court confronted in *Wells* under the state false claims statute and other courts have dealt with under the Unfair Competition Law ("UCL") and the Unruh Act. (See *Leider v. Lewis* (2017) 2 Cal.5th 1121, 1032, fn. 9 ["Governmental entities … are not subject to suit under the unfair competition law"]; *Brennon B.*, *supra*, 13 Cal.5th at p. 678

["business establishments" under Unruh Act]; MJN, Ex. D-2 at p. 5, Sen. Com. on Labor and Indus. Relations, Analysis of Sen. Bill 796 (2003-2004 Reg. Sess.) as amended Mar. 26, 2003 [explaining that "[t]he term 'person' is used throughout the Labor Code, often interchangeably with the term 'employer'"].)

2. The Legislature Has Specifically Stated When "Person" Or "Employer" Includes Public Entities.

The Labor Code's definition for "person" (§ 18) is similar to, but even narrower than, the false claims statute, which uses the more expansive term "includes" rather than "means." (See *Wells*, *supra*, 39 Cal.4th at p. 1190 [citing Gov. Code, § 12650, subd. (b)(5)]; see also *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 622, fn. 6 [noting the distinction between "including" and the "more restrictive language" of "means"].) In both cases, however, "the statutory list of 'persons' contains no words or phrases most commonly used to signify … public entities or governmental agencies." (*Wells*, *supra*, at p. 1190; accord, *DiCesare v. Charlotte-Mecklenburg Hospital Authority* (N.C. 2020) 852 S.E.2d 146, 160 [concluding that public hospital authority is not a "person" under similar definition].)

Elsewhere in the Labor Code, the Legislature has made "very specific reference to governmental entities" in a way that (1) reveals a "conceptual separation of 'persons' from governmental entities" and (2) shows that the Legislature knows how to expressly deviate from the IWC's definition of "employer" (and in turn, the Labor Code's definition of "person") when it

intends to apply Labor Code obligations to governmental entities. (See *Wells*, *supra*, 39 Cal.4th at pp. 1190-1191 & fn. 14; accord, *Brennon B.*, *supra*, 13 Cal.5th at p. 678 & fn. 5.) This provides "an additional indication" that the Labor Code's "definition of 'person'" and generic use of the term "employer" "does not include public entities." (See *Wells*, at p. 1191 & fn. 14.)

For instance, the workers' compensation law—which was enacted in the same legislation as section 18 (see Stats.1937, ch. 90, pp. 186, 266 [§§ 18, 3300])—defines "employer" to include both "person[s]" and, "additionally and separately," various public entities. (§ 3300, subds. (a), (b), (c)); *Wells*, *supra*, 39 Cal.4th at p. 1191, fn. 14; see *Brennon B.*, *supra*, 13 Cal.5th at p. 678 [explaining that the specific enumeration of public entities in one context but not another "'weighs heavily against a conclusion' that the coverage provisions should be understood as identical," "especially … where … the statutes' coverage provisions were drafted by the very same Legislature during the same legislative session"].)

Likewise, the statute governing scheduled minimum wage increases (which is in the same chapter as the wage and hour laws), defines "employer" for purposes of a specific subdivision to "mean[] any *person* who directly or indirectly … employs or exercises control over the wages, hours, or working conditions of any person" and "*includes the state, political subdivisions of the state, and municipalities*." (§ 1182.12, subd. (b)(3) [emphasis added]; see also, e.g., §§ 233 & 245.5, subd. (b) ["employer" for

purposes of sick leave and paid sick days "includes the state, political subdivisions of the state, and municipalities"]; § 555 ["Sections 550, 551, 552 and 554 of this chapter are applicable to cities which are cities and counties and to the officers and employees thereof"]; § 1106 [defining "employee" under whistleblower retaliation law to include "any individual employed by" public agencies].)

In sum, the language of these wage and hour obligations—particularly when viewed in the context of the broader structure of the Labor Code and Wage Order—"weighs heavily against a conclusion that the Legislature intended to" apply them to public entities. (See *Wells*, *supra*, 39 Cal.4th at p. 1190.)

B. Historical Context Supports Excluding Public Entities From These Laws.

The history of the overtime, meal and rest break, and payroll records obligations in the Labor Code and Wage Order provides further support for excluding all public entities (including public hospital authorities) from their reach.

The Legislature established the IWC in 1913 to formulate industry- and occupation-wide wage orders specifying minimum requirements with respect to wages, hours, and working conditions. (See *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1026; *Martinez*, *supra*, 49 Cal.4th at pp. 54-57.)

For years, nearly all of the wage orders (including Wage Order 5) did not apply to government employees at all, providing

that "[t]he provisions of this Order shall not apply to employees directly employed by the State or any county, incorporated city or town or other municipal corporation…." (E.g., MJN, Ex. C, Order No. 5-76, § 1(C); *Morales v. 22nd Dist. Agricultural Assn.* (2016) 1 Cal.App.5th 504, 540.) When the IWC adopted this language in 1976, it explained that the language "reflects the Attorney General's advice that the IWC may not issue regulations covering employees of the state and its subdivisions without explicit legislative authorization." (MJN, Ex. C, Order No. 5-76, Statement as to the Basis, § 1.)

In 1998, the IWC eliminated the overtime provisions in the wage orders. (Stats.1999, ch. 134 (A.B. 60), § 2, subd. (f); *Johnson*, *supra*, 174 Cal.App.4th at p. 735.) The Legislature responded by enacting Assembly Bill 60. (See Stats.1999, ch. 134, § 2, subd. (g).) Among other things, this legislation "repudiated the IWC's actions in adopting a series of wage orders that had eliminated daily overtime" by restoring the eight-hour workday in Labor Code section 510 and "for the first time set out statutory meal period requirements" in Labor Code section 512. (*Brinker*, *supra*, 53 Cal.4th at p. 1045; *Johnson*, *supra*, at p. 735.) Later in the 1999-2000 Regular Session, the Legislature enacted section 226.7, which entitles employees to premium pay for missed meal and rest breaks. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1106-1107; *Brinker*, *supra*, at p. 1018.)

Notably, in making these changes, the Legislature did not alter the IWC's definition of "employer" or the preexisting

exemption for public entities. (See Stats.1999, ch. 134.) The legislation made clear that "[e]xcept as otherwise provided in this division, the commission may … retain … an exemption from provisions regulating hours of work that was contained in a valid wage order in effect in 1997." (§ 515, subd. (b); Stats.1999, ch. 134, § 9; see also *California Correctional Peace Officers v. State of California (CCPOA)* (2010) 188 Cal.App.4th 646, 655 ["public employees were exempt from all but two of the wage orders in effect in 1997"]; MJN, Ex. E, IWC public hearing transcript (Nov. 8, 1999) at p. 15 ["I don't think there's anything in the bill, for example, that intended to overturn the exemption of … public employees"]; Ex. H, IWC public hearing transcript (Dec. 15, 1999) pp. 161-162 ["AB 60 allows those exemptions to remain in place"]; *id.* at p. 158 [same].)

In 2001, the IWC revised the wage orders to expressly make certain enumerated sections applicable to government employees. In particular, the IWC extended the provisions regarding "Definitions," "Minimum Wage," "Meals and Lodging," and "Penalties" to government employees. (See *Stoetzl v. Department of Human Resources* (2019) 7 Cal.5th 718, 748.) At the same time, however, the IWC generally did *not* extend the sections governing overtime (section 3), records (section 7), meal periods (section 11), and rest periods (section 12) to government employees. (Wage Order, § (1)(C); see also *Stoetzl*, *supra*, at p. 732; compare Wage Order 9, § 1(B) [extending meal and rest

periods to certain government employees who operate commercial vehicles]; § 512.5.)

In sum, the history of the public entity exemption in the wage orders and the Legislature's enactment of corresponding Labor Code provisions reveals "an additional indication that" these laws do "not include public entities." (See *Wells*, *supra*, 39 Cal.4th at p. 1191.)

C. Longstanding Contemporaneous Administrative Constructions Support Excluding Public Entities From These Laws.

Since the codification of the Labor Code in 1937, the Attorney General[4] has consistently concluded that "provisions of the Labor Code extending to public employment do so expressly." (71 Ops.Cal.Atty.Gen. 39 (1988); see also 1 Ops.Cal.Atty.Gen. 607 (1943) [§ 226, itemized statement of deductions]; 5 Ops.Cal.Atty.Gen. 122 (1945) [employment of minors]; 9 Ops.Cal.Atty.Gen. 275 (1947) [length of work day]; 63 Ops.Cal.Atty.Gen. 616 (1980) [maximum hours].)

Likewise, state agencies charged with interpreting and enforcing these laws have taken a similar view that all public entities are excluded from them unless a statute expressly

[4] "The Attorney General's opinion, although not binding, is entitled to considerable weight…. Absent controlling authority, it is persuasive because we presume that the Legislature was cognizant of the Attorney General's construction … and would have taken corrective action if it disagreed with that construction." (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 104.)

provides otherwise. For example, before extending the minimum wage laws to public entities in 2001, the "I.W.C. [was] concerned solely with employees in the private sector" and its orders had "never been applied to or enforced against public employees [sic]." (71 Ops.Cal.Atty.Gen. 39, *3, *5 (1988) [discussing IWC's "contemporaneous administrative interpretation"].)

After the IWC extended the minimum wage obligations to public entities, the DLSE viewed the remaining provisions of the wage orders as broadly inapplicable to all public entities. In response to a staffing agency's inquiry about the applicability of the wage orders to individuals "who are placed for temporary employment *with various city, county, and other public employers*," the DLSE explained that "the bulk of the wage order provisions would not apply" if "the workers are employed directly by the public entity." (MJN, Ex. F, Dept. of Industrial Relations, DLSE Opn. Letter (Jan. 10, 2003), available at 2003 WL 24858881, at *1 [emphasis added].)[5]

The Legislature is presumed to be aware of these administrative constructions. (See *Burden v. Snowden* (1992) 2 Cal.4th 556, 564; *California State Emp. Ass'n v. Trustees of Cal. State Colleges* (1965) 237 Cal.App.2d 530, 546.) But the Court need not rely on that presumption here, as the Legislature has expressly recognized the rule upon which these interpretations rest. In 1992, when the Legislature enacted section 1106 to

[5] (*Kilby v. CVS Pharmacy, Inc.* (2016) 63 Cal.4th 1, 13, 20 ["we generally consider DLSE opinion letters with respect"].)

ensure that public entities are subject to the whistleblower retaliation obligations set forth in section 1102.5 and related statutes, the Senate Committee on Industrial Relations explained: "'These provisions are silent as to their applicability to public employees. Generally, however, provisions of the Labor Code apply only to employees in the private sector unless they are specifically made applicable to public employees.'" (*Campbell*, *supra*, 35 Cal.4th at p. 330, quoting Sen. Com. on Indus. Relations, Analysis of Assem. Bill No. 3486 (1991-1992 Reg. Sess.); see also *Stoetzl*, *supra*, 7 Cal.5th at p. 752; *CCPOA*, *supra*, 188 Cal.App.4th at p. 653; *Johnson*, *supra*, 174 Cal.App.4th at p. 736.)

Indeed, where the Legislature has wished to impose certain wage and hour requirements on public entities in the health care sector, it has done so explicitly by defining "employer" accordingly, recognizing that it was departing from the general rule that the "California Labor Code regulates private employment unless a provision explicitly states that it applies to public sector employment." (MJN, Ex. J at p. 4 [Sen. Rules Com., Off. of Sen. Floor Analyses, Analysis of Sen. Bill 1334 (2021-2022 Reg. Sess.), as amended Aug. 25, 2022]; see also § 512.1, subd. (e)(2)).[6]

[6] This law does not govern the allegations in this case, which predate the statute's effective date. (See Stats.2022, c. 845 (S.B. 1334), § 2; *McClung v. Employment Development Dep't* (2004) 34 Cal.4th 467, 475 ["strong presumption against retroactivity"].)

D. AHS's Enabling Statute Reveals Further "Positive Indicia" That It Is Exempt.

When the Legislature in 1996 authorized the creation of AHS as a separate governmental entity to discharge the County's obligations to provide medical care for the indigent, the Legislature could have deviated from the rule that "'provisions of the Labor Code apply only to employees in the private sector unless they are specifically made applicable to public employees'" (*Campbell*, *supra*, 35 Cal.4th at p. 330). But it did nothing of the sort.

On the contrary, AHS's enabling statute reveals further positive indicia that the Legislature meant for it to be treated like any other public entity—indeed, like any other county operated hospital. (See Health & Saf. Code, § 101850.) Among other things, the statute stresses AHS's status as a government entity (*id.*, subds. (a)(2)(C), (g), (j), (u), (ag)), its entitlement to the same rights and duties under state law as a county operated hospital (*id.*, subd. (m)), and that it should not be deemed a "person" under the Cartwright Act, which does not apply to public agencies (see *id.*, subd. (ab); Bus. & Prof. Code, § 16702 [defining "person" similarly to the Labor Code]; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 323 ["political subdivisions … are outside the scope of the act"]).

With respect to employment in particular, AHS's enabling statute reveals the Legislature's intent that AHS employees are government employees, with collective bargaining rights under

the Meyers-Milias-Brown Act (see Health & Saf. Code, § 101850, subd. (u)), protections under the Government Claims Act (*id.*, subd. (w)(3)), and participation in the County Employees' Retirement Law of 1937 (*id.*, subd. (s)).

AHS's close ties to the County further support treating AHS like any other public entity under the Labor Code and wage orders. For example, the County's elected Board of Supervisors retains substantial authority over AHS. The Board can adopt and modify the bylaws for AHS's administration of the medical center, terminate the hospital authority upon certain findings, and require reports from the authority, among other things. (Health & Saf. Code, § 101850, subds. (e), (ak), (am)(3).)

The County also is intrinsically involved in AHS finances. The County's Annual Comprehensive Financial Report (CAFR) includes a section titled "Alameda Health System Discretely Presented Component Unit." (MJN, Ex. B at pp. 92-95 [CAFR June 30, 2021, pp. 92-95].) The CAFR explains how the County retains the responsibility for indigent care under the Welfare and Institutions Code, for which it provides substantial funding (see Health & Saf. Code § 101850, subd (l)(1)); that the County still owns many hospital buildings which it leases to AHS for $1 per year (*id*, subd (*o*)); that under Measure A, the County charges additional sales tax, 75% of which goes to support AHS's mission; that the County supplies AHS with funds to support its working capital needs; and that the County tracks AHS's accounts receivable and payable. (See MJN, Ex. B at pp. 92-95.)

All told, the foregoing provides strong "positive indicia" that AHS should be treated just like any other public entity in terms of the applicability of provisions of the Labor Code and wage orders.

E. The Court Of Appeal Erred In Treating AHS Differently Than Other Public Entities.

The Court of Appeal concluded that AHS should be treated differently from other public entities under the wage and hour laws because (1) it perceived no "'positive indicia of a contrary legislative intent'" to exempt AHS under the Wage Order, Labor Code, and AHS's enabling statute; and (2) applying the wage and hour laws to AHS would not "implicate any sovereign governmental powers." (Typed opn. at pp. 8-10, quoting *Wells*, *supra*, 39 Cal.4th at p. 1193.) The Court of Appeal was mistaken in both respects.

1. The Court of Appeal Construed The Wage Order And AHS's Enabling Statute Too Narrowly.

In the Court of Appeal's view, the "Wage Order's express exemptions … are not indicia of the Legislature's intent to exempt [AHS] from liability under the Wage Order" since AHS is not a special district and its "employees are not employed *directly* by the state or the county; they are employed by 'a hospital authority' created by the county under authorization from the state." (Typed opn. at p. 8.) This construction not only overlooks the Wage Order's plain language and history, but it also deviates

from how the Legislature has referred to AHS's employees and used the phrase "political subdivision" in other contexts.

a. The Wage Order Exemption Extends To All Public Entities.

The Wage Order does not expressly limit the availability of the public entity exemption to cities, counties, and special districts. On the contrary, the exemption extends to the employees of "*any* political subdivision" of the state, "*including* any city, county, or special district." (Wage Order § (1)(C) [emphasis added].) As this Court has recognized in the context of the wage orders, "'includes' is generally a term of enlargement." (*Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 582.)

Moreover, the exemption in the wage orders for public entities has always been understood to apply to *all governmental entities*, not just certain types of public agencies. The public entity exemption was added to the wage orders in 1976 to "reflect[] the Attorney General's advice that the IWC may not issue regulations covering employees of the state and its subdivisions without explicit legislative authorization," a principle not limited to cities, counties, or any other subset of the public entities in the state. (MJN, Ex. C, Statement as to the Basis for Order No. 5-76, § 1.)

When the IWC explained in 2001 that it was extending the minimum wage provisions to "public employees," it did not distinguish among types of "[e]mployers of … public employees." (MJN, Ex. G at p. 3 [Statement as to the Basis for Order MW-

2001, § 1]; see also MJN, Ex. H at pp. 158, 161-162 [IWC public hearing transcript (Dec. 15, 1999)].)

This is consistent with the broad way in which the Legislature has defined "political subdivision" in the Labor Code and the Labor Commissioner's own interpretation that their office "does not have jurisdiction over claims for meal and rest period premiums against government entities, such as the Alameda Health System." (MJN, Ex. I at p. 9 [citing Wage Order exemption]; see also § 1721 [defining "political subdivision" as "any county, city, district, public housing authority, or public agency of the state, and assessment or improvement districts"].)

b. AHS's Enabling Statute Demonstrates That The Wage Order's Public Entity Exemption Applies To AHS.

In the Court of Appeal's view, AHS's "enabling statute actively *discourages*" identifying it "with the state (or one of its political subdivisions)" because subdivision (j) provides that it is not "an agency, division, or department of the county." (Typed opn. at pp. 8-9, citing Health & Saf. Code, § 101850, subd. (j).) To the contrary, subdivision (j) actively *encourages* viewing AHS as a "political subdivision" entitled to the public entity exemption in the wage orders.

Subdivision (j) stresses the distinction between AHS and the county for purposes of filing with the Secretary of State "the statement required by Section 53051 of the Government Code" so that AHS can be included in the "Roster of Public Agencies"—a

prerequisite for public entities other than "the state or a county, city and county, or city" (Gov. Code, § 53050) to ensure protection under the Government Claims Act. (See *Wilson v. San Francisco Redevelopment Agency* (1977) 19 Cal.3d 555, 558; see also MJN, Ex. A [AHS's submissions to Secretary of State].) And public agencies are defined under that law to "mean[] a district, *public authority, public agency, and any other political subdivision* or public corporation in the state." (Gov. Code, § 53050 [emphasis added].)

Elsewhere in AHS's enabling statute, the Legislature referred to AHS's employees in a manner that supports applying the wage order exemption. AHS's employees are "public employees" (Health & Saf. Code, § 101850, subds. (w)(3) & (t)) under the Government Claims Act, which itself defines "public employees" as "employees of a public entity," including any "*public authority, public agency, and any other political subdivision* or public corporation in the State." (Gov. Code, §§ 811.2, 811.4 [emphasis added].) In addition, the Legislature expressly exempted AHS staff from the incompatible activities law (see Gov. Code, § 1125 et seq.) based on "employment or affiliation with the county" (see Health & Saf. Code, § 101850, subd. (ac)). This indicates that the Legislature viewed AHS as a "local agency"—that is, "a county, city, city and county, *political subdivision, district, or municipal corporation*" (Gov. Code, § 1125 [emphasis added])—that would otherwise be subject to the incompatible activities law.

The foregoing illustrates that the Court of Appeal erred in reaching the "'sovereign powers' principle" here because, as this Court has explained, it "cannot override positive indicia of a contrary legislative intent." (*Wells*, *supra*, 39 Cal.4th at p. 1193.)

2. The "'Sovereign Powers' Principle" Does Not Support Treating Public Hospital Authorities Differently From Other Public Entities.

Even if the "'sovereign powers' principle" did apply here, which it does not, the Court of Appeal erred in its understanding and application of that principle.

First, the court failed to account for the fact that AHS has sovereign governmental powers and functions as a public hospital authority. All "'public entities—from traditional bodies like counties and cities *to more recent innovations like public authorities and public corporations*—have one thing in common: *Each is vested with some degree of sovereignty*.'" (*Los Angeles Leadership Academy, Inc. v. Prang* (2020) 46 Cal.App.5th 270, 281.)

Courts have long recognized that "county hospitals … exercis[e] governmental functions" (*Talley v. Northern San Diego County Hospital Dist.* (1953) 41 Cal.2d 33, 39),[7] "that guarding the public health is within the County's sovereign powers," (*Community Memorial Hospital v. County of Ventura* (1996) 50 Cal.App.4th 199, 209), and that "the operation of a public

[7] Overruled on other grounds in *Muskopf v. Corning Hospital Dist.* (1961) 55 Cal.2d 211, 213.

hospital … is simply a means of implementing that power" (*ibid.*). When the Legislature authorized the creation of AHS in 1996, it incorporated this body of law, making clear that AHS was to have "all the rights and duties set forth in state law with respect to hospitals owned or operated by a county." (Health & Saf. Code, § 101850, subd. (m); see *DiCesare*, *supra*, 852 S.E.2d at p. 161 [holding that the state "'delegate[d] portions of its sovereignty … for certain well-defined public purposes'" to a similar public hospital authority].)

Second, by fixating on whether AHS bears certain specific "hallmarks of sovereignty" (typed opn. at pp. 1, 9-10, 11), the Court of Appeal applied the wrong test. Courts applying the sovereign powers principle have not dwelled on the specific attributes of a government agency's powers and instead focused on whether applying a particular law to a public agency would interfere with the agency's governmental purposes and functions. (See *Wells*, *supra*, 39 Cal.4th at p. 1195 ["would interfere significantly with government agencies' fiscal ability to carry out their public missions"]; *Johnson*, *supra*, 174 Cal.App.4th at p. 738 ["affects the entity's governmental purposes and functions"]; *Wells Fargo Bank v. Town of Woodside* (1983) 33 Cal.3d 379, 388, fn. 9 ["would definitely impair the probate court's exercise of its statutory authority"].)

For example, in *Wells*, this Court concluded that subjecting public-school districts to liability under the false claims statute would interfere with their ability to "carry out the state's

constitutionally mandated duty to provide a system of public education," particularly "in light of the stringent revenue, appropriations, and budget restraints under which all California governmental entities operate." (*Wells*, *supra*, 39 Cal.4th at pp. 1193, 1195.)

In the context of the Labor Code and related wage order obligations, the Attorney General has explained that "'[i]t is manifest that the relationship between a public employer and its employees affects the fundamental purposes and functions of the governmental body'" since "'governments perform their functions through their officers and employees.'" (71 Ops.Cal.Atty.Gen. 39, 43 (1988); accord, *Johnson*, *supra*, 174 Cal.App.4th at pp. 738-739 [water storage district "can only perform its purposes and functions through its employees"].)

Unsurprisingly, therefore, apart from the decision below, there are "no cases which have held public agencies bound by a general statute which regulates the employment relationship." (63 Ops.Cal.Atty.Gen. 24, *3 (1980).) On the contrary, a long line of authorities has concluded that various laws of general applicability do not apply to public employees. (See, e.g., 63 Ops.Cal.Atty.Gen. 24, *3 (1980) ["we have, on a number of occasions, construed such statutes as not applicable to public jurisdictions" (citing opinions regarding wage statements, employment of minors, and length of the work day)]; 63 Ops.Cal.Atty.Gen. 616, *4 (1980) [concluding that Labor Code section 1391's maximum hours restrictions "would affect and

impair [state agency's] statutorily authorized duties"]; *Adams v. City of Modesto* (1960) 53 Cal.2d 833, 835 ["in the absence of statutory provision a public employe[e] is not entitled to compensation for overtime worked"].)

Here, applying a statute that implicates the intersection of public employment and public health to a public hospital authority like AHS that is statutorily charged with carrying out the County's obligations to provide medical care for the indigent raises particularly grave concerns under the sovereign powers doctrine. (See Health & Saf. Code, § 101850, subd. (a)(1); *Community Memorial Hospital*, *supra*, 50 Cal.App.4th at pp. 208, 210 ["a statute that restricts the County in the operation of its public hospital infringes on its sovereign powers"]; see also *California Medical Ass'n, Inc. v. Regents of University of California* (2000) 79 Cal.App.4th 542, 548 [statutory ban against corporate practice of medicine "would infringe upon the [UC's] operation of its medical center as a teaching and research facility—its core governmental function, its *raison d'être*"].)[8]

* * *

[8] The Court of Appeal relied on *Community Action Agency of Butte County v. Superior Court* (2022) 79 Cal.App.5th 221 ("*CAA*"), to conclude that providing aid to the poor is not a core governmental function. (See typed opn. at p. 9.) But that case involved whether a nongovernmental entity (a nonprofit community action group) was subject to the Public Records Act. (*CAA*, *supra*, at pp. 237-238.) It did not involve public employment or the sovereign powers doctrine, let alone a public hospital authority with the duty to provide medical care to the indigent. (See *id.* at p. 239.)

In sum, the Court of Appeal erred in reaching the sovereign powers principle given the positive indicia of legislative intent to exclude all governmental entities (including public hospital authorities like AHS) from the overtime, meal and rest period, and payroll records laws. Regardless, applying these laws to AHS would violate the sovereign powers principle because it would unduly interfere with AHS's statutory purposes and functions. Accordingly, the Court of Appeal's judgment should be reversed with respect to Plaintiffs' claims stemming from these obligations.[9]

III. Public Hospital Authorities Are Exempt From The Labor Code's Prompt Payment Statutes.

Plaintiffs' fifth and sixth causes of action are largely premised on the theory that AHS failed to timely pay Plaintiffs the full amount of money they were owed for missed meal and rest breaks and overtime in violation of what this Court has referred to as "[t]he prompt payment provisions of the Labor

[9] This does not leave government employees entirely without protections since they enjoy various rights under those provisions of the Labor Code that expressly include them (e.g., § 233, 1106, 1182.12), collective bargaining agreements (see, e.g., Health & Safety Code, § 101850, subd. (u); Gov. Code, § 3500), as well as the Fair Labor Standards Act (29 U.S.C. § 201 et seq.) and its implementing regulations.

Code." (*McLean*, *supra*, 1 Cal.5th at p. 619; 1AA 55-56, ¶¶ 74-79 [fifth claim]; 1AA 57-58, ¶ 87 [sixth claim].)[10]

Set forth in sections 200 to 211 and 215 to 219, these provisions "impose certain timing requirements on the payment of final wages to employees who are discharged (Lab. Code, § 201 (section 201)) and to those who quit their employment (§ 202)." (*McLean*, *supra*, 1 Cal.5th at p. 619.) They also provide for "waiting-time penalties" when employers willfully fail to make payments as required under the statutes. (*Id.*; see also §§ 203, 204, 210.) As this Court has recognized, however, these provisions "do not cover" "persons employed by counties, incorporated cities, and other political subdivisions of the State." (*Id.* at p. 629 [citing § 220, subd. (b)].)

The text, structure, and history of these statutes—as well as longstanding administrative constructions—demonstrate that they are concerned with private employment and do not apply to any local public entities, including public hospital authorities.

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[10] Plaintiffs also cite sections 222, 223, and 225.5 in their complaint. (See 1AA 55, 57.) But section 225.5 subjects only "person[s]" who violate sections 222 and 223 to civil penalties. Moreover, as this Court has recognized, it is "not at all clear that there is a private right of action for violation of Labor Code sections 222 and 223" or that these provisions apply to governmental entities. (*Stoetzl*, *supra*, 7 Cal.5th at p. 752.) In any event, Plaintiffs fail to allege the factual predicate to state a claim under sections 222 and 223 since they do not mention a "wage agreement" or "secret deductions or 'kick-backs'" in their operative complaint. (See *ibid.*)

A. The Text, Structure, And History Of The Prompt Payment Statutes Demonstrates That The Legislature Intended To Exempt All Local Public Entities.

Section 220—which is entitled "Public employees"—provides in part:

> Sections 200 to 211, inclusive, and Sections 215 to 219, inclusive, do not apply to the payment of wages of employees *directly employed by any county*, incorporated city, or town *or other municipal corporation*. All other employments are subject to these provisions.

(§ 220, subd. (b) [emphasis added].)

The Labor Code does not define the term "municipal corporation." As this Court has recognized, the term can have either a strict or more expansive meaning depending on context. Under the stricter understanding of the term, "incorporated cities and towns" are "usually referred to as municipal corporations." (*Morrison v. Smith Bros.* (1930) 211 Cal. 36, 39, 41 [describing such entities as "municipal corporation[s] proper"]; *Division of Labor Law Enforcement v. El Camino Hospital Dist.* (1970) 8 Cal.App.3d Supp. 30, 33-36 [noting circumstances under which the phrase is used "in its strict sense"].)

But the term can also be more broadly construed to include "quasi-municipal corporations." (*Morrison*, *supra*, 211 Cal. at p. 41 [noting it was "well settled" that "the term 'municipal corporation' … was intended to include quasi-municipal

corporations" such as municipal utility districts]; *Cook v. Port of Portland* (Or. 1891) 27 P. 263, 264 [explaining that "'when applied to corporations, the words 'political,' 'municipal,' and 'public' are used interchangeably'" and included the Port of Portland]; *In re Bonds of Orosi Public Utility Dist.* (1925) 196 Cal. 43, 56 [citing *Cook* with approval].)

1. The Prompt Payment Statutes' Language And Structure Show That The Legislature Intended "Other Municipal Corporation" To Be Read Broadly.

"'Whenever it appears that the Legislature so intended, the terms 'municipality' and 'municipal corporation' will be construed to include a county or other quasi-municipal corporation.'" (*Clements v. T.R. Bechtel Co.* (1954) 43 Cal.2d 227, 234; see also *Johnson*, *supra*, 174 Cal.App.4th at pp. 740-741; *Siler v. Industrial Acc. Commission* (1957) 150 Cal.App.2d 157, 162 ["the term 'municipal' as commonly used, is appropriately applied to all corporations exercising governmental functions"].)

Where the term appears in a list alongside the phrase city or town, it necessarily takes on a broader scope. (See *In re Madera Irrigation District* (1891) 92 Cal. 296, 319 ["In each of these sections provision is made with reference to the government or officers of 'county, city, town, or other public or municipal corporation,' thus clearly indicating that there may be municipal corporations other than those of a town or city"].)

In this case, because section 220(b) expressly exempts incorporated cities and towns before exempting "other municipal

corporations," it indicates that the Legislature meant to employ the more expansive meaning of "municipal corporation." (See *El Camino*, *supra*, 8 Cal.App.3d Supp. at p. 36 ["the term 'other municipal corporation,' as used in Labor Code section 220, means public corporations or quasi-municipal corporations" (quotation marks omitted)]; *McLean*, *supra*, 1 Cal.5th at p. 629 [equating "other municipal corporation" with "other political subdivisions of the State"]; cf. *Torres v. Board of Commissioners* (1979) 89 Cal.App.3d 545, 549 ["The term 'municipal corporation' is broader than the term 'city,' particularly when the term 'city' already appears in the applicable statute"].)

Elsewhere in the Labor Code, the Legislature has used the phrase "other municipal corporation" alongside cities and towns to refer more broadly to *any* local governmental entity. Take, for example, section 220.2 (which appears next to section 220 and shares "Public employees" as part of its title). That statute uses a similar framework to list "other municipal corporations" separately from "incorporated city or town." In doing so, the statute expressly draws a dichotomy with "private employers," suggesting that the list of public entities (just as in section 220(b)) is meant to be an exhaustive list of public entities other than the state. (See § 220.2 [providing that certain fringe benefit contributions for employees of various public entities "may be made … *on the same basis as made by private employers*" (emphasis added)]; Stats. 1959, ch. 2051, § 1, p. 4746 ["An act … relating to contributions *by state and local governments* to

employee pension plans" (emphasis added)]; see also § 1960 [prohibiting "the State [or] any county, political subdivision, incorporated city, town, [or] any other municipal corporation" from interfering with the right of firefighters to join a labor organization].)

2. Section 220's Historical Background And Subsequent Revisions Supports A Broad Reading Of "Other Municipal Corporation."

The history of section 220 likewise supports a broad reading of "other municipal corporation" because it was enacted as part of a law focused on private employment. The Legislature first enacted the language that currently appears in Labor Code section 220 in 1911. (Stats. 1911, ch. 663, § § 3, 4, pp. 1268-1269.) The substantive provisions of that law—requiring immediate payment on discharge and any other wages paid within 15 days (see *id.*, §§ 1, 2)—applied only to "[a]ny person, firm or corporation." (See *id.*, §§ 2, 3, pp. 1268-1269.) The law made clear that "[n]one of the provisions of this act shall apply to any county, city and county, incorporated city or town, or other municipal corporation." (*Id.*, § 4, p. 1269.)

After the 1911 act was held to violate a state constitutional provision prohibiting imprisonment for debt in a civil action, the Legislature repealed the law, and in 1919, adopted similar provisions as part of "'*[a]n act to regulate the payment of wages* or compensation for labor or service *in private employments*....'" (*Smith v. Superior Court* (2006) 39 Cal.4th 77, 87, fn. 4, quoting

Legis. Counsel's Dig., Stats. 1919, ch. 202, p. 294 [emphasis added]; see also *In re Sears* (1934) 137 Cal.App. 308, 309 ["act regulating the payment of wages by private employers"].)

In 1937, when the Legislature adopted the Labor Code, the prompt payment statutes and the public entity exemptions were codified at sections 200 to 220. (Stats. 1937, ch. 90, p. 197.) Thus, "[a]s originally enacted, the prompt payment provisions applied only to private employers." (*McLean*, *supra*, 1 Cal.5th at p. 619 & fn. 1.)

Sixty-three years later, the Legislature removed state employees from some exemptions based upon a concern that state employees who get paid monthly were being adversely impacted by the failure to pay timely wages. (Stats. 2000, ch. 885 (AB 2410), § 1, p. 6524; see also *McLean*, *supra*, 1 Cal.5th at p. 619.) The Legislature did not, however, alter the language exempting local agencies; it simply moved that language to subdivision (b) so that the prompt payment provisions "continue to exempt" those public entities. (*McLean*, at p. 619, quoting § 220, subd. (b).)

In sum, the historical background and subsequent revisions to the prompt payment statutes illustrates that the exemption for "other municipal corporation[s]" in section 220 was meant to apply broadly to all local public entities.

B. Longstanding Contemporaneous Administrative Constructions Support Construing "Other Municipal Corporation" Broadly.

The IWC, the Attorney General, and the DLSE have also consistently interpreted the phrase "other municipal corporation" broadly when referring to exemptions for government employees from wage and hour obligations.

As discussed in more detail above (*supra* at Part II.B; MJN, Ex. G), the IWC exempted public entities in most industries from all wage order obligations until 2001, when it extended the sections regarding definitions, minimum wage, meals and lodging, and penalties to public entities. Prior to 2001, this exemption used similar language to section 220(b): "'employees directly employed by … any county, incorporated city or town or other municipal corporation.'" (*Morales*, *supra*, 1 Cal.App.5th at p. 540 [quoting wage order 10-1989]; see also MJN, Ex. C, Order 5-76, § 1(C).)

Although the current wage order employs slightly different language—"the State or any political subdivision thereof, including any city, county, or special district"—it is clear that the IWC still meant for this exemption to apply to *all* public employees covered by a given wage order, regardless of which type of public agency they work for. (See *Morales*, *supra*, 1 Cal.App.5th at p. 542 ["since 1989, [IWC] wage orders have continuously exempted public employees"]; *Morillion*, *supra*, 22 Cal.4th at p. 581 [noting that the wage orders "'exclud[e] public

employees'"]; MJN, Ex. H, IWC public hearing transcript (Dec. 15, 1999) at pp. 161-162 [discussing the "exemption" for "public employees"]; *id.* at p. 158 [same].)

As the Attorney General has explained when discussing the older version of the wage orders that used the same language as section 220—"other municipal corporation"—"[t]he orders of I.W.C. have never been applied to or enforced against public employees. On the contrary, order number MW-80 presently in effect, expressly exempts public employees." (71 Ops.Cal.Atty.Gen. 39 (1988).)

The DLSE shared a similarly broad interpretation of the wage order containing the "other municipal corporation" language. In an opinion letter, it explained that "[p]rior to January 1, 2001, IWC Order 9, which regulates wages, hours and working conditions in the transportation industry, did not apply to *any public employees*." (Dept. of Industrial Relations, DLSE Opn. Letter, 2002 WL 33776606, at *1 (Jan. 29, 2002) [emphasis added].)

Unsurprisingly, therefore, the Labor Commissioner—the chief of the DLSE—has consistently interpreted the prompt payment statutes *to exempt AHS in particular*: "This office does not have jurisdiction over waiting time penalties claims against government entities, such as the Alameda Health System." (MJN, Ex. I at pp. 1-5, 7-9, 11-12, 15 [citing § 220, subds. (a)-(b)]; see also *Styne v. Stevens* (2001) 26 Cal.4th 44, 53 & fn. 4 [deferring to Labor Commissioner's consistent interpretation of

"statute he is charged with enforcing"]; *Smith*, *supra*, 39 Cal.4th at p. 90, fn. 7 [agreeing with consistent interpretation of prompt payment statutes].)

C. The Court Of Appeal Erred In Relying On The *Ejusdem Generis* Canon Of Construction.

The Court of Appeal embraced a much narrower definition of "other municipal corporation" adopted by the Third District in *Gateway Community Charters v. Spiess* (2017) 9 Cal.App.5th 499, asking whether AHS has an elected board of directors and the powers to seize property, tax, regulate, and police. (Typed opn. at p. 11.) This holding places undue emphasis on the *ejusdem generis* canon of construction, which "provides that 'when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same class as those listed.'" (*Wishnev v. The Northwestern Mutual Life Ins. Co.* (2019) 8 Cal.5th 199, 213.)

As this Court has recognized, however, "'[*e*]*jusdem generis* is only an aid in getting the meaning and does not warrant confining the operations of a statute within narrower limits than were intended.'" (*Wishnev*, *supra*, 8 Cal.5th at p. 214; see also *Moore v. California State Bd. of Accountancy* (1992) 2 Cal.4th 999, 1012-1013.)

In *Wishnev*, *supra*, 8 Cal.5th 199, this Court considered the meaning of the phrase "other compensation" in a usury law prohibiting lenders from receiving more than 10 percent annual interest "by charging any fee, bonus, commission, discount or

other compensation." (*Id.* at pp. 206-209.) The plaintiff argued "that 'other compensation' must be interpreted narrowly to mean only items similar to the specific terms that precede the general term." (*Id.* at pp. 213-214.) This Court rejected this "claimed distinction" because the plaintiff's "narrow reading fail[ed] to honor the enactors' intent in 1934." (*Id.* at p. 214 [quotation marks omitted]; see also *Moore*, *supra*, 2 Cal.4th at pp. 1017-1018 [same result where narrow reading conflicted with longstanding judicial and administrative constructions].)

Here, as set forth above, the text, structure, and history of the prompt payment statutes shows that the Legislature did not intend to exclude certain types of public entities from the "Public employees" exemption when it enacted the underlying laws in 1911, 1919, or 1937. Nor did it intend to exclude AHS from this exemption when it enacted AHS's enabling legislation in 1996. At that time, administrative and judicial constructions of the phrase "other municipal corporation" uniformly supported a broad reading of that phrase, in the contexts of both the prompt payment statutes and the IWC's wage orders. (See *supra* at Parts II.E.1.a, III.B.)[11] The Court of Appeal's reliance on *ejusdem generis*—which amounts to a thinly veiled repackaging of its distortion of the "sovereign powers' principle"—cannot "override

[11] No court had embraced the strict interpretation of the phrase "other municipal corporation" in section 220 until the *Gateway* decision in 2017.

positive indicia of a contrary legislative intent." (*Wells*, *supra*, 39 Cal.4th at p. 1193.)

D. Public Hospital Authorities Fall Within The Broad Definition Of "Other Municipal Corporation."

It cannot be reasonably disputed that public hospital authorities like AHS satisfy the broad definition of a "municipal corporation" that encompasses quasi-municipal corporations—that is, "public agenc[ies] created or authorized by the legislature to aid the state in, or take charge of, some public or state work, other than community government, for the general welfare." (1 McQuillin, The Law of Municipal Corporations § 2:17 (3d ed. June 2023 Update); *El Camino*, *supra*, 8 Cal.App.3d Supp. at pp. 33-36 [holding that hospital district was a "municipal corporation"]; *Johnson*, *supra*, 174 Cal.App.4th at p. 741 [water storage district]; *Kistler v. Redwoods Community College Dist.* (1993) 15 Cal.App.4th 1326, 1337 [community college district]; cf. *Torres*, *supra*, 89 Cal.App.3d at pp. 549-550 [housing authority].)

The Legislature charged AHS with the "mission" of managing, administering, and controlling "the group of public hospitals, clinics, and programs that comprise the [County] medical center, in a manner that ensures appropriate, quality, and cost-effective medical care as required of counties by Section 17000 of the Welfare and Institutions Code, and, to the extent feasible, other populations, including special populations in the County of Alameda." (Health & Saf. Code, § 101850, subd. (d).) AHS is undisputedly a "government entity" with "public

employees" that has "all the rights and duties set forth in state law with respect to hospitals owned or operated by a county." (*Id.*, subds. (j), (w)(3), (m).) Because AHS is a public agency authorized by the Legislature to take charge of certain public work for the general welfare, it is an "other municipal corporation" under section 220(b).[12]

* * *

Accordingly, the Court of Appeal's judgment should be reversed with respect to Plaintiffs' fifth and sixth causes of action.[13]

IV. PAGA's Civil Penalties Do Not Apply To Public Entities.

PAGA permits aggrieved employees to stand in the shoes of the state Labor and Workforce Development Agency ("LWDA") to collect civil penalties for Labor Code violations, with such penalties shared between the affected employees, the LWDA, and the state's general fund. (See §§ 2698-2699.8.) The Court of

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[12] By contrast, even under a broader construction of "other municipal corporation," a "nonprofit public benefit corporation that operates charter schools" would not qualify because it is not a government entity. (*Gateway*, *supra*, 9 Cal.App.5th at p. 502.)

[13] The Court of Appeal did not reach Plaintiffs' contention they had "alleged a minimum wage violation" under the Wage Order. (Typed opn. at p. 11, fn. 8.) For good reason. A cursory review of the operative pleading reveals that this claim is premised on meal and rest break, overtime, and payroll records obligations that do not apply to AHS. (See 1AA55-57.) Accordingly, this Court need not reach the third issue because Plaintiffs' PAGA claim derives from underlying obligations that do not apply to public entities.

Appeal correctly held that AHS is not a "person" subject to PAGA's default penalties where an underlying statute does not itself provide for civil penalties. (Typed opn. at pp. 13-15.) It erred, however, in concluding that public entities can otherwise face penalties under PAGA where the underlying Labor Code provisions allow for penalties.

Nothing in the text of the statute expressly authorizes penalties against public entities. As discussed above, this Court has long recognized a default rule that, absent indicia of contrary legislative intent, statutes governing employment do not apply to public entities. PAGA is no exception to that rule.

A. PAGA's Text And Structure Do Not Encompass Public Entities.

1. Public Entities Are Not "Persons" Subject To PAGA's Default Penalties.

Subdivision (f) of section 2699 sets default penalties based on the number of workers a "person" who violates the labor laws employs. Subdivision (b) incorporates section 18's definition of "person."[14] As discussed above, that definition does not encompass public entities. (See also *Sargent v. Board of Trustees of California State University* (2021) 61 Cal.App.5th 658, 672.)

The Legislature's decision to incorporate section 18's definition of "person" was no idle act. Earlier versions of the bill initially lacked a definition of "person." (See MJN, Ex. D-1 [as

[14] Although subdivision (b) defines the term "person" "[f]or purposes of this part," the term appears only in section 2699. All references to subdivisions in this discussion refer to section 2699.

amended Mar. 26, 2003].) The first published bill analysis placed quotation marks around "person" in summarizing the default penalties provision, went on to discuss the usual definition and interpretation of the term "person" in the Labor Code, and suggested that the author might wish to add a definition of the term to this legislation. (MJN, Ex. D-2 at pp. 2, 5.) In response, the bill was amended to reference the definition in section 18. (MJN, Ex. D-3 [as amended Apr. 22, 2003].)

Giving meaning to the Legislature's express incorporation of section 18's definition, subdivision (f)'s default penalties cannot apply to government entities, because the statute's only methods of calculating those penalties apply solely to private-sector "persons."

2. Other PAGA Penalties Apply No More Broadly.

While the Court of Appeal correctly excluded public entities from PAGA's default penalties, it erred in stopping there. The Court of Appeal went on to hold that public entities are still subject to PAGA penalties where the underlying Labor Code previsions themselves provide for penalties. (Typed opn. at p. 15.) However, as discussed further below, the structure and history of PAGA show that the Legislature assumed the *entire statute* would apply only to "persons" within the meaning of section 18. No legislative history suggests intent to apply other penalties to a broader scope of employers than the "persons" subject to default penalties under subdivision (f).

The language and structure of subdivision (f) are unnatural if intended to create a narrow exception, and are better understood as reflecting an assumption that the statute's scope is limited to "persons." That subdivision "establishe[s] a civil penalty for a violation of these provisions." (§ 2699, subd. (f).) Other than carving out provisions "for which a civil penalty is specifically provided," it does not expressly limit its remedy to a subset of such violations. Had the Legislature intended to draw the distinction embraced by the Court of Appeal, it could have stated explicitly that subdivision (f) applies only to violations by "persons."

Instead, subdivision (f) references the term "person" only in its subparts (1) and (2), which set the *amounts* of those violations based on how many employees the violating "person" employs—taking as implied that the only violations for which civil penalties could be pursued are violations by "persons," consistent with the longstanding rule that employment statutes generally do not regulate public entities.

Since the Legislature believed that limitation was sufficiently clear to go unstated in subdivision (f) itself, instead using the term only in subparts setting penalty values, the same limitation applies to PAGA as a whole, including actions under subdivision (a) for penalties set by other statutes. "[W]e presume the Legislature intended such usage to have consistent meaning throughout the same statute." (*People v. Blackburn* (2015) 61 Cal.4th 1113, 1126.)

PAGA explicitly uses the term "person" in only two contexts besides subdivisions (b) and (f). One is subdivision (c), which defines an "aggrieved employee" as a "person" who meets certain criteria, shedding no light on the scope of potential defendants.

The last instance is subdivision (h), which prevents double penalties by prohibiting private enforcement "if the [LWDA], on the same facts and theories, cites a *person* … for a violation of the same section or sections of the Labor Code." (§ 2699, subd. (h) [emphasis added].) That drives home the Legislature's understanding that *all* PAGA penalties apply only to "persons," because there is no reason to think the Legislature intended to leave public entities uniquely subject to duplicative liability. (E.g., *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1151-1152 [construing the UCL as not authorizing duplicative liability based on "risk of unfairness" and due process concerns].)

As stated repeatedly in legislative analysis, subdivision (h) was intended to ensure "that no private action may be brought when the LWDA or any of its subdivisions initiates proceedings to collect penalties on the same facts and under the same code provisions." (MJN, Ex. D-4 at p. 8; see also Ex. D-5 at p. 3; Ex. D-7 at pp. 1, 8; Ex. D-8 at p. 1; Ex. D-9 at p. 2; Ex. D-10 at p. 2; Ex. D-11 at p. 3.) In the sponsors' view, "there is no prospect of public and private prosecution for the same violation." (MJN, Ex. D-6 at p. 6.)

Plaintiffs agree that it would be "nonsensical" for PAGA to authorize double recovery only against public entities. (Answer to PFR at 15.) But that absurd result flows necessarily from the defined term "person" in subdivision (h) if PAGA applies to public entities as Plaintiffs contend. The better reading is that the Legislature did not contemplate that public entities would be subject to double liability, because the Legislature intended that only "persons" within the meaning of section 18 could face PAGA penalties at all.

B. PAGA's Broader Legislative History Reflects No Intent To Regulate Public Employment.

The Legislature enacted PAGA in 2003 based on concerns about inadequate staffing at state labor law enforcement agencies. (Stats.2003, ch. 906 (S.B. 796), § 1, subd. (c).) The law's stated intent is to enforce "state labor laws in the *underground economy*" and to deter "unlawful and anticompetitive *business* practices" (*id.* § 1, subd. (a) [emphasis added]), not to regulate public sector employment. (See *Brennon B.*, *supra*, 13 Cal.5th at pp. 679-681 [legislative history of the Unruh Act demonstrated that "the Legislature enacted a law directed at entities operating as private businesses"].)

Legislative analysis described the "underground economy" as "businesses operating outside the state's tax and licensing requirements," and noted particular concern for "serious and ongoing wage violations by [Los Angeles] garment industry employers." (MJN, Ex. D-4 at pp. 2, 4; see also Ex. D-5 at pp. 4,

6; Ex. D-7 at p. 3; Ex. D-9 at p. 3; Ex. D-11 at p. 4.) In the bill sponsors' view, "the LWDA simply [did] not have the resources to pursue all of the labor violations occurring in the garment industry, agriculture, and other *industries*." (MJN, Ex. D-8 at p. 2 [emphasis added].) Counterarguments centered on "cost to business." (MJN, Ex. D-6 at pp. 7-8; see Ex. D-7 at pp. 5-7.) No analysis of the pending legislation suggested that it would or should apply to public entities.

The Legislature recognized that employees acting as private attorneys general had sometimes obtained relief against "businesses" or "compan[ies]" under the UCL. (E.g., MJN, Ex. D-2 at pp. 3-4.) Based on the UCL's definition of "person" (Bus. & Prof. Code § 17201), which is similar to section 18 of the Labor Code, courts have uniformly held that "[g]overnmental entities … are not subject to suit under the unfair competition law." (*Leider*, *supra*, 2 Cal.5th at p. 1132, fn. 9.) Legislative analysis noted that PAGA would differ from the UCL by allowing individuals to "seek remedy of a labor law violation solely because they have been aggrieved by that violation," and by allocating "a percentage share of penalties to go directly to the aggrieved worker." (MJN, Ex. D-2 at p. 4; see also Ex. D-4 at pp. 5-6; Ex. D-6 at pp. 5-6; Ex. D-7 at pp. 6-7.) There is no indication that the Legislature believed PAGA would expand the scope of potential defendants beyond the private entities subject to suit under the UCL.

The *Sargent* court—which the Court of Appeal followed here—disregarded the Legislature's focus on "'businesses' that

make up the state's underground economy" because legislative analysis also discussed claims against "employers," which that court construed as encompassing public entities. (61 Cal.App.5th at pp. 673–674.) In the first published analysis of the bill, however, staff comments explained that the term "employer" is typically construed more *narrowly* than "person" in the Labor Code. (MJN, Ex. D-2 at p. 5.) Use of the term "employer" does not suggest intent to deviate from the usual rule that labor statutes do not govern public entities—particularly in light of how that term has been defined by the IWC in the wage orders. (See *supra* at Part II.A-C.)

The Assembly Appropriations Committee assessed PAGA's only fiscal effect as "potential increased penalty revenue to the [general fund] and to LWDA." (MJN, Ex. D-9 at p. 2; Ex. D-10 at p. 2; Ex. D-11 at p. 5.) The omission of any potential defense costs or penalties assessed against state employers reflects the Legislature's view that public entities are not subject to penalties under PAGA.

As far as AHS is aware, the Legislature never specifically addressed in its deliberations leading to PAGA's enactment whether penalties would apply to public entities. This silence cannot be read as reflecting anything more than an intent to impose penalties solely on private employers, particularly in light of the Legislature's concern with punishing widespread violations by unregulated businesses and its understanding that Labor Code provisions "apply only to employees in the private sector

unless they are specifically made applicable to public employees,'" (*Campbell*, *supra*, 35 Cal.4th at p. 330 [quoting 1992 analysis of different bill].)

C. Penalizing Public Entities Would Undermine PAGA's Purpose And Conflict With Government Code Section 818.

PAGA's intended purpose of raising sorely needed enforcement revenue while punishing and deterring Labor Code violations provides further support for excluding public entities from its punitive reach.

The first provision of the bill is a legislative finding that "[a]dequate financing of essential labor law enforcement functions is necessary to achieve maximum compliance with state labor laws in the underground economy" and deter "unlawful and anticompetitive business practices." (Stats.2003, ch. 906 (S.B. 796), § 1, subd. (a).) Legislative analysis repeatedly emphasized "the state[']s severe budgetary shortfall" at the time as contributing to inadequate enforcement. (E.g., MJN, Ex. D-2 at p. 6; Ex. D-11 at p. 6.)

In *Wells*, *supra*, this Court recognized that "the Legislature did not intend to subject financially constrained school districts—*or any agency of state or local government*—to the treble-damages-plus-penalties provisions of the [state False Claims Act]," particularly given that statute's "'ultimate purpose … to protect the public fisc.'" (39 Cal.4th at pp. 1196-1197 [emphasis added].)

PAGA is "a type of qui tam" statute like the False Claims Act. (See *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 81.) It serves a similar purpose in that the Legislature saw private labor enforcement not only as a substitute for the LWDA's inadequate funding, but also a means to raise funds and offset that deficit. (See § 2699(i) [allocating 75% of PAGA penalties to the LWDA for enforcement].) Given that the "Legislature is aware of the stringent revenue, budget, and appropriations limitations affecting all agencies of government," the Court "cannot lightly presume an intent to force such entities" to pay penalties beyond what might be needed to "make whole" any employees affected by Labor Code violations, particularly in a statute directly motivated by budgetary shortfalls. (See *Wells*, *supra*, 39 Cal.4th at p. 1195.)

Similar considerations motivate section 818 of the Government Code, which immunizes public entities from all "damages imposed primarily for the sake of example and by way of punishing the defendant," including but not limited to exemplary damages under Civil Code section 3294.

As this Court recently explained: section 818 codifies a longstanding common law rule that public entities generally are not liable for punitive damages—"'private fines' intended to punish" and "deter"—which would serve only to "further drain the public fisc, create a liability that will be borne not by the immediate wrongdoers but by taxpayers, and may not effectively achieve the goals of retribution and deterrence." (*Los Angeles*

Unified School District v. Superior Court (2023) 14 Cal.5th 758, 308 Cal.Rptr.3d 822, 829 (*LAUSD*).)

To avoid any conflict with section 818, the decision below relied on an earlier decision distinguishing privately enforced civil penalties from punitive or exemplary damages subject to that law. (See *Los Angeles County Metropolitan Transportation Authority v. Superior Court* (2004) 123 Cal.App.4th 261 (*LACMTA*) [considering Civil Code § 52(b)(2)].) That decision rested on a line of authority holding that "the immunity afforded to public entities under section 818 is narrow, *extending only to damages whose purpose is simply and solely punitive or exemplary*." (*Id.* at p. 275 [original emphasis]; see *Kizer v. County of San Mateo* (1991) 53 Cal.3d 139, 145 [addressing Health & Saf. Code § 1417].)

However, this Court recently overruled the *Kizer* test on which *LACMTA* and the decision below rested, holding instead that a damages provision need not be *solely* punitive to implicate section 818, which "also captures other kinds of damages when they function, in essence, as awards of punitive or exemplary damages." (*LAUSD*, *supra*, 14 Cal.5th 758, 308 Cal.Rptr.3d at pp. 827, 833-834 [treble damages barred by section 818].) In so doing, this Court distinguished *LACMTA* without addressing whether that decision was correctly decided. (*Id.* at p. 845.)

LACMTA is also distinguishable here. Unlike the Unruh Act at issue in that case, PAGA does not include a separate provision for exemplary damages beyond its civil penalties. (See

LAUSD, *supra*, 14 Cal.5th 758, 308 Cal.Rptr.3d at p. 845 [distinguishing *LACMTA* on that basis].) And unlike the "compelling indications that that legislators regarded [the penalties at issue there] as having an important nonpunitive function" (see *ibid.*), PAGA's legislative history focuses on the goal of deterring violations (e.g., MJN, Ex. D-4 at pp. 2, 4-6), which is a core function of punitive damages.

Ultimately, though, *LACMTA*'s and *Kizer*'s exclusion of civil penalties from the scope of section 818 is misguided, at least in the context of private enforcement. "'Civil penalties, like punitive damages, are intended to punish the wrongdoer and to deter future misconduct.'" (*Kim*, *supra*, 9 Cal.5th at p. 86.) *Kizer*'s distinction between "deterrent" and "preventative" penalties (53 Cal.3d at pp. 147–148) is untenable if extended to private claims, as is *LACMTA*'s premise that a penalty can provide "compensation, even though there are little or no actual damages sustained" (123 Cal.App.4th at p. 276).[15]

PAGA's civil penalties were intended to "be significant enough to deter violations" (MJN, Ex. D-4 at p. 5), because sponsors were concerned that existing remedies under the UCL were "not a sufficient deterrent to labor violations." (MJN, Ex. D-4 at pp. 5-6.) Thus, as courts have recognized, including in the decision below, the "purpose of the PAGA is not to recover

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[15] In *LAUSD*, this Court held that compensation beyond any actual harm is not "compensatory" in the sense that term is used to distinguish from punitive damages. (14 Cal.5th 758, 308 Cal.Rptr.3d at pp. 841-842.)

damages or restitution," but instead "to enforce the Labor Code" by imposing "penalties … to punish and deter" violations. (*Brown v. Ralphs Grocery Co.* (2011) 197 Cal.App.4th 489, 501-502 [considering issues of arbitration]; see typed opn. at p. 14; *Sargent*, *supra*, 61 Cal.App.5th at p. 669.)

The Court of Appeal here suggested that PAGA penalties serve purposes distinct from punitive damages because they "provide an 'economic incentive' and 'the means to retain counsel to pursue perpetrators under the statute.'" (Typed opn. at p. 16, quoting *LACMTA*, *supra*, 123 Cal.App.4th at p. 271.) The "means to retain counsel" argument, however, overlooks PAGA's separately guaranteed award of attorneys' fees and costs to successful plaintiffs. (§ 2699, subd. (g)(1).) The "economic incentive" justification leaves unstated why such an incentive is desirable. Additional lawsuits are not an end in themselves—they serve the Legislature's expressed interests only to the extent that they "punish and deter" violations of the Labor Code, or in other words, to the extent they impose effectively punitive damages. (See *Brown*, *supra*, 197 Cal.App.4th at pp. 501-502.)

This Court need not find that PAGA conflicts with section 818. The same policy considerations that undergird section 818 counsel against extending PAGA's punitive and deterrent system of privately enforced civil penalties to public entities. As this Court explained in construing the false claims statute, "the purpose behind the statutory ban on punitive damages against public entities—to protect their tax-funded revenues from legal

judgments in amounts beyond those strictly necessary to recompense the injured party—applies equally here [as] an additional indication that the Legislature did not intend [to impose penalties] on public entities." (See *Wells*, *supra*, 39 Cal.4th at p. 1196, fn. 20.) In the absence of evidence that the Legislature sought to impose PAGA penalties on taxpayers for any Labor Code violation by their government, this Court should hold that public entities fall outside the scope of the statute.

* * *

Only one reading of PAGA is consistent with the statute's text, purpose, and history: public entities are not subject to civil penalties enforced under this law. The Court of Appeal erred in allowing Plaintiffs' PAGA claim to proceed against AHS.

CONCLUSION

For the foregoing reasons, the Court of Appeal's judgment should be reversed, and the trial court's order sustaining AHS's demurrer without leave to amend should be reinstated.

Respectfully submitted,

Dated: July 17, 2023 RENNE PUBLIC LAW GROUP

By: _____
RYAN P. McGINLEY-STEMPEL

Attorneys for Defendant and Respondent ALAMEDA HEALTH SYSTEM

CERTIFICATION OF WORD COUNT

(California Rules of Court, Rule 8.520(c)(1))

The foregoing brief contains **13,977** words (including footnotes, but excluding the cover page, table of contents, table of authorities, statement of the issues, certificate of service, and this certificate of word count), as counted by the Microsoft Word processing program used to generate the brief.

Dated: July 17, 2023 RENNE PUBLIC LAW GROUP

By: 

Ryan P. McGinley Stempel

Attorneys for Defendant and Respondent ALAMEDA HEALTH SYSTEM

ATTACHMENT A

HEALTH & SAFETY CODE
SECTION 101850

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Annotated California Codes
Health and Safety Code (Refs & Annos)
Division 101. Administration of Public Health (Refs & Annos)
Part 4. Special Health Authorities (Refs & Annos)
Chapter 5. Alameda Health System Hospital Authority (Refs & Annos)

West's Ann.Cal.Health & Safety Code § 101850

§ 101850. Establishment; definitions; powers and duties; board; relationship with county; status under other laws; legislative findings and declarations

Effective: January 1, 2023
Currentness

The Legislature finds and declares the following:

(a)(1) Due to the challenges facing the Alameda Health System arising from changes in the public and private health industries, the Alameda County Board of Supervisors has determined that a transfer of governance of the Alameda Health System to an independent governing body, a hospital authority, is needed to improve the efficiency, effectiveness, and economy of the community health services provided at the medical center. The board of supervisors has further determined that the creation of an independent hospital authority strictly and exclusively dedicated to the management, administration, and control of the medical center, in a manner consistent with the county's obligations under Section 17000 of the Welfare and Institutions Code, is the best way to fulfill its commitment to the medically indigent, special needs, and general populations of Alameda County. To accomplish this, it is necessary that the board of supervisors be given authority to create a hospital authority. Because there is no general law under which this authority could be formed, the adoption of a special act and the formation of a special authority is required.

(2) The following definitions apply for purposes of this section:

(A) “The county” means the County of Alameda.

(B) “Governing board” means the governing body of the hospital authority.

(C) “Hospital authority” means the separate public agency established by the Board of Supervisors of Alameda County to manage, administer, and control the Alameda Health System.

(D) “Medical center” means the Alameda Health System, which was formerly known as the Alameda County Medical Center.

(b) The board of supervisors of the county may, by ordinance, establish a hospital authority separate and apart from the county for the purpose of effecting a transfer of the management, administration, and control of the medical center in accordance with Section 14000.2 of the Welfare and Institutions Code. A hospital authority established pursuant to this chapter shall be strictly and exclusively dedicated to the management, administration, and control of the medical center within parameters set forth in this chapter, and in the ordinance, bylaws, and contracts adopted by the board of supervisors that shall not be in conflict with this chapter, Section 1442.5 of this code, or Section 17000 of the Welfare and Institutions Code.

(c) A hospital authority established pursuant to this chapter shall be governed by a board that is appointed, both initially and continually, by the Board of Supervisors of the County of Alameda. This hospital authority governing board shall reflect both the expertise necessary to maximize the quality and scope of care at the medical center in a fiscally responsible manner and the diverse interest that the medical center serves. The enabling ordinance shall specify the membership of the hospital authority governing board, the qualifications for individual members, the manner of appointment, selection, or removal of governing board members, their terms of office, and all other matters that the board of supervisors deems necessary or convenient for the conduct of the hospital authority's activities.

(d) The mission of the hospital authority shall be the management, administration, and other control, as determined by the board of supervisors, of the group of public hospitals, clinics, and programs that comprise the medical center, in a manner that ensures appropriate, quality, and cost-effective medical care as required of counties by Section 17000 of the Welfare and Institutions Code, and, to the extent feasible, other populations, including special populations in the County of Alameda.

(e) The board of supervisors shall adopt bylaws for the medical center that set forth those matters related to the operation of the medical center by the hospital authority that the board of supervisors deems necessary and appropriate. The bylaws shall become operative upon approval by a majority vote of the board of supervisors. Changes or amendments to the bylaws shall be by majority vote of the board of supervisors.

(f) The hospital authority created and appointed pursuant to this section is a duly constituted governing body within the meaning of Section 1250 of this code and Section 70035 of Title 22 of the California Code of Regulations as currently written or subsequently amended.

(g) Unless otherwise provided by the board of supervisors by way of resolution, the hospital authority may, or the board of supervisors may on behalf of the hospital authority, apply as a public agency for one or more licenses for the provision of health care pursuant to statutes and regulations governing licensing as currently written or subsequently amended.

(h) In the event of a change of license ownership, the governing body of the hospital authority shall comply with the obligations of governing bodies of general acute care hospitals generally, as set forth in Section 70701 of Title 22 of the California Code of Regulations, as currently written or subsequently amended, as well as the terms and conditions of the license. The hospital authority is the responsible party with respect to compliance with these obligations, terms, and conditions.

(i)(1) A transfer by the county to the hospital authority of the administration, management, and control of the medical center, whether or not the transfer includes the surrendering by the county of the existing general acute care hospital license and corresponding application for a change of ownership of the license, does not affect the eligibility of the county, or in the case of a change of license ownership, the hospital authority, to do any of the following:

(A) Participate in, and receive allocations pursuant to, the California Healthcare for the Indigents Program (CHIP).

(B) Receive appropriations from the Medi-Cal Inpatient Payment Adjustment Fund without relieving the county of its obligation to make intergovernmental transfer payments related to the Medi-Cal Inpatient Payment Adjustment Fund pursuant to Section 14163 of the Welfare and Institutions Code.

(C) Receive Medi-Cal capital supplements pursuant to Section 14085.5 of the Welfare and Institutions Code.

(D) Receive any other funds that would otherwise be available to a county hospital.

(2) A transfer described in paragraph (1) does not otherwise disqualify the county, or in the case of a change in license ownership, the hospital authority, from participating in any of the following:

(A) Other funding sources either specific to county hospitals or county ambulatory care clinics or for which there are special provisions specific to county hospitals or to county ambulatory care clinics.

(B) Funding programs in which the county, on behalf of the medical center and the Alameda County Health Care Services Agency, had participated prior to the creation of the hospital authority, or would otherwise be qualified to participate in had the hospital authority not been created, and administration, management, and control not been transferred by the county to the hospital authority, pursuant to this chapter.

(j) A hospital authority created pursuant to this chapter shall be a legal entity separate and apart from the county and shall file the statement required by Section 53051 of the Government Code. The hospital authority shall be a government entity separate and apart from the county, and shall not be considered to be an agency, division, or department of the county. The hospital authority shall not be governed by, nor be subject to, the charter of the county and shall not be subject to policies or operational rules of the county, including, but not limited to, those relating to personnel and procurement.

(k)(1) A contract executed by and between the county and the hospital authority shall provide that liabilities or obligations of the hospital authority with respect to its activities pursuant to the contract shall be the liabilities or obligations of the hospital authority, and shall not become the liabilities or obligations of the county.

(2) Liabilities or obligations of the hospital authority with respect to the liquidation or disposition of the hospital authority's assets upon termination of the hospital authority shall not become the liabilities or obligations of the county.

(3) An obligation of the hospital authority, statutory, contractual, or otherwise, shall be the obligation solely of the hospital authority and shall not be the obligation of the county or the state.

(*l*)(1) Notwithstanding any other provision of this section, a transfer of the administration, management, or assets of the medical center, whether or not accompanied by a change in licensing, does not relieve the county of the ultimate responsibility for indigent care pursuant to Section 17000 of the Welfare and Institutions Code or any obligation pursuant to Section 1442.5 of this code.

(2) A contract executed by and between the county and the hospital authority shall provide for the indemnification of the county by the hospital authority for liabilities as specifically set forth in the contract, except that the contract shall include a provision that the county shall remain liable for its own negligent acts.

(3) Indemnification by the hospital authority shall not be construed as divesting the county from its ultimate responsibility for compliance with Section 17000 of the Welfare and Institutions Code.

(m) Notwithstanding the provisions of this section relating to the obligations and liabilities of the hospital authority, a transfer of control or ownership of the medical center shall confer onto the hospital authority all the rights and duties set forth in state law with respect to hospitals owned or operated by a county.

(n)(1) A transfer of the maintenance, operation, and management or ownership of the medical center to the hospital authority shall comply with the provisions of Section 14000.2 of the Welfare and Institutions Code.

(2) A transfer of maintenance, operation, and management or ownership to the hospital authority may be made with or without the payment of a purchase price by the hospital authority and upon the terms and conditions on which the parties mutually agree, which shall include those found necessary by the board of supervisors to ensure that the transfer will constitute an ongoing material benefit to the county and its residents.

(3) A transfer of the maintenance, operation, and management to the hospital authority shall not be construed as empowering the hospital authority to transfer any ownership interest of the county in the medical center except as otherwise approved by the board of supervisors.

(*o*) The board of supervisors shall retain control over the use of the medical center physical plant and facilities except as otherwise specifically provided for in lawful agreements entered into by the board of supervisors. A lease agreement or other agreement between the county and the hospital authority shall provide that county premises shall not be sublet without the approval of the board of supervisors.

(p) The statutory authority of a board of supervisors to prescribe rules that authorize a county hospital to integrate its services with those of other hospitals into a system of community service that offers free choice of hospitals to those requiring hospital care, as set forth in Section 14000.2 of the Welfare and Institutions Code, shall apply to the hospital authority upon a transfer of maintenance, operation, and management or ownership of the medical center by the county to the hospital authority.

(q) The hospital authority may acquire and possess real or personal property and may dispose of real or personal property other than that owned by the county, as may be necessary for the performance of its functions. The hospital authority may sue or be sued, to employ personnel, and to contract for services required to meet its obligations. Before January 1, 2024, the hospital authority shall not enter into a contract with any other person or entity, including, but not limited to, a subsidiary or other entity established by the authority, to replace services being provided by physicians and surgeons who are employed by the hospital authority and in a recognized collective bargaining unit, with services provided by that other person or entity without clear and convincing evidence that the needed medical care can only be delivered cost effectively by that other person or entity. Prior to entering into a contract for any of those services, the authority shall negotiate with the representative of the recognized

collective bargaining unit of its physician and surgeon employees over the decision to privatize and, if unable to resolve any dispute through negotiations, shall submit the matter to final binding arbitration.

(r) An agreement between the county and the hospital authority shall provide that all existing services provided by the medical center shall continue to be provided to the county through the medical center subject to the policy of the county and consistent with the county's obligations under Section 17000 of the Welfare and Institutions Code.

(s) A hospital authority to which the maintenance, operation, and management or ownership of the medical center is transferred shall be a "district" within the meaning set forth in the County Employees Retirement Law of 1937 (Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code). Employees of a hospital authority are eligible to participate in the County Employees Retirement System to the extent permitted by law, except as described in Section 101851.

(t) Members of the governing board of the hospital authority shall not be vicariously liable for injuries caused by the act or omission of the hospital authority to the extent that protection applies to members of governing boards of local public entities generally under Section 820.9 of the Government Code.

(u) The hospital authority shall be a public agency subject to the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code).

(v) Any transfer of functions from county employee classifications to a hospital authority established pursuant to this section shall result in the recognition by the hospital authority of the employee organization that represented the classifications performing those functions at the time of the transfer.

(w)(1) In exercising its powers to employ personnel, as set forth in subdivision (p), the hospital authority shall implement, and the board of supervisors shall adopt, a personnel transition plan. The personnel transition plan shall require all of the following:

(A) Ongoing communications to employees and recognized employee organizations regarding the impact of the transition on existing medical center employees and employee classifications.

(B) Meeting and conferring on all of the following issues:

(i) The timeframe for which the transfer of personnel shall occur. The timeframe shall be subject to modification by the board of supervisors as appropriate, but in no event shall it exceed one year from the effective date of transfer of governance from the board of supervisors to the hospital authority.

(ii) A specified period of time during which employees of the county impacted by the transfer of governance may elect to be appointed to vacant positions with the Alameda County Health Care Services Agency for which they have tenure.

(iii) A specified period of time during which employees of the county impacted by the transfer of governance may elect to be considered for reinstatement into positions with the county for which they are qualified and eligible.

(iv) Compensation for vacation leave and compensatory leave accrued while employed with the county in a manner that grants affected employees the option of either transferring balances or receiving compensation to the degree permitted employees laid off from service with the county.

(v) A transfer of sick leave accrued while employed with the county to hospital authority employment.

(vi) The recognition by the hospital authority of service with the county in determining the rate at which vacation accrues.

(vii) The possible preservation of seniority, pensions, health benefits, and other applicable accrued benefits of employees of the county impacted by the transfer of governance.

(2) This subdivision shall not be construed as prohibiting the hospital authority from determining the number of employees, the number of full-time equivalent positions, the job descriptions, and the nature and extent of classified employment positions.

(3) Employees of the hospital authority are public employees for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code relating to claims and actions against public entities and public employees.

(x) The hospital authority created pursuant to this section shall be bound by the terms of the memorandum of understanding executed by and between the county and health care and management employee organizations that is in effect as of the date this legislation becomes operative in the county. Upon the expiration of the memorandum of understanding, the hospital authority has sole authority to negotiate subsequent memorandums of understanding with appropriate employee organizations. Subsequent memorandums of understanding shall be approved by the hospital authority.

(y) The hospital authority created pursuant to this section may borrow from the county and the county may lend the hospital authority funds or issue revenue anticipation notes to obtain those funds necessary to operate the medical center and otherwise provide medical services.

(z) The hospital authority is subject to state and federal taxation laws that are applicable to counties generally.

(aa) The hospital authority, the county, or both, may engage in marketing, advertising, and promotion of the medical and health care services made available to the community at the medical center.

(ab) The hospital authority is not a “person” subject to suit under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code).

(ac) Notwithstanding Article 4.7 (commencing with Section 1125) of Chapter 1 of Division 4 of Title 1 of the Government Code related to incompatible activities, a member of the hospital authority administrative staff shall not be considered to be engaged in activities inconsistent and incompatible with the staff member's duties as a result of employment or affiliation with the county.

(ad)(1) The hospital authority may use a computerized management information system in connection with the administration of the medical center.

(2) Information maintained in the management information system or in other filing and records maintenance systems that is confidential and protected by law shall not be disclosed except as provided by law.

(3) The records of the hospital authority, whether paper records, records maintained in the management information system, or records in any other form, that relate to trade secrets or to payment rates or the determination thereof, or that relate to contract negotiations with providers of health care, shall not be subject to disclosure pursuant to the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code). The transmission of the records, or the information contained therein in an alternative form, to the board of supervisors does not constitute a waiver of exemption from disclosure, and the records and information, once transmitted, shall be subject to this same exemption. The information, if compelled pursuant to an order of a court of competent jurisdiction or administrative body in a manner permitted by law, shall be limited to in-camera review, which, at the discretion of the court, may include the parties to the proceeding, and shall not be made a part of the court file unless sealed.

(ae)(1) Notwithstanding any other law, the governing board may order that a meeting held solely for the purpose of discussion or taking action on hospital authority trade secrets, as defined in subdivision (d) of Section 3426.1 of the Civil Code, shall be held in closed session. The requirements of making a public report of actions taken in closed session and the vote or abstention of every member present may be limited to a brief general description devoid of the information constituting the trade secret.

(2) The governing board may delete the portion or portions containing trade secrets from any documents that were finally approved in the closed session that are provided to persons who have made the timely or standing request.

(3) This section shall not be construed as preventing the governing board from meeting in closed session as otherwise provided by law.

(af) Open sessions of the hospital authority constitute official proceedings authorized by law within the meaning of Section 47 of the Civil Code. The privileges set forth in that section with respect to official proceedings apply to open sessions of the hospital authority.

(ag) The hospital authority is a public agency for purposes of eligibility with respect to grants and other funding and loan guarantee programs. Contributions to the hospital authority are tax deductible to the extent permitted by state and federal law. Nonproprietary income of the hospital authority is exempt from state income taxation.

(ah) Contracts by and between the hospital authority and the state and contracts by and between the hospital authority and providers of health care, goods, or services may be let on a nonbid basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(ai)(1) Provisions of the Evidence Code, the Government Code, including the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code), the Civil Code, the Business and Professions Code, and other applicable law pertaining to the confidentiality of peer review activities of peer review bodies apply to the peer

review activities of the hospital authority. Peer review proceedings constitute an official proceeding authorized by law within the meaning of Section 47 of the Civil Code and those privileges set forth in that section with respect to official proceedings shall apply to peer review proceedings of the hospital authority. If the hospital authority is required by law or contractual obligation to submit to the state or federal government peer review information or information relevant to the credentialing of a participating provider, that submission does not constitute a waiver of confidentiality. The laws pertaining to the confidentiality of peer review activities shall be together construed as extending, to the extent permitted by law, the maximum degree of protection of confidentiality.

(2) Notwithstanding any other law, Section 1461 applies to hearings on the reports of hospital medical audit or quality assurance committees.

(aj) The hospital authority shall carry general liability insurance to the extent sufficient to cover its activities.

(ak) In the event the board of supervisors determines that the hospital authority should no longer function for the purposes set forth in this chapter, the board of supervisors may, by ordinance, terminate the activities of the hospital authority and expire the hospital authority as an entity.

(a*l*) A hospital authority that is created pursuant to this section, but does not obtain the administration, management, and control of the medical center or has those duties and responsibilities revoked by the board of supervisors, shall not be empowered with the powers enumerated in this section.

(am)(1) The county shall establish baseline data reporting requirements for the medical center consistent with the Medically Indigent Care Reporting System (MICRS) program established pursuant to Section 16910 of the Welfare and Institutions Code and shall collect that data for at least one year prior to the final transfer of the medical center to the hospital authority established pursuant to this chapter. The baseline data shall include, but not be limited to, all of the following:

(A) Inpatient days by facility by quarter.

(B) Outpatient visits by facility by quarter.

(C) Emergency room visits by facility by quarter.

(D) Number of unduplicated users receiving services within the medical center.

(2) Upon transfer of the medical center, the county shall establish baseline data reporting requirements for each of the medical center inpatient facilities consistent with data reporting requirements of the Office of Statewide Health Planning and Development, including, but not limited to, monthly average daily census by facility for all of the following:

(A) Acute care, excluding newborns.

(B) Newborns.

(C) Skilled nursing facility, in a distinct part.

(3) From the date of transfer of the medical center to the hospital authority, the hospital authority shall provide the county with quarterly reports specified in paragraphs (1) and (2) and any other data required by the county. The county, in consultation with health care consumer groups, shall develop other data requirements that shall include, at a minimum, reasonable measurements of the changes in medical care for the indigent population of Alameda County that result from the transfer of the administration, management, and control of the medical center from the county to the hospital authority.

(an) A hospital authority established pursuant to this section shall comply with the requirements of Sections 53260 and 53261 of the Government Code.

Credits

(Added by Stats.1996, c. 816 (A.B.2374), § 1. Amended by Stats.2004, c. 58 (A.B.2630), § 1; Stats.2005, c. 22 (S.B.1108), § 132; Stats.2013, c. 311 (A.B.1008), § 3, eff. Sept. 13, 2013; Stats.2014, c. 46 (S.B.1352), § 3, eff. Jan. 1, 2015; Stats.2014, c. 585 (A.B.334), § 2, eff. Sept. 26, 2014, operative Jan. 1, 2015; Stats.2015, c. 303 (A.B.731), § 332, eff. Jan. 1, 2016; Stats.2017, c. 263 (A.B.1538), § 1, eff. Sept. 23, 2017; Stats.2021, c. 615 (A.B.474), § 270, eff. Jan. 1, 2022, operative Jan. 1, 2023.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

2021 Amendment

Section 101850 is amended to reflect nonsubstantive recodification of the California Public Records Act ("CPRA"). See California Public Records Act Clean-Up, 46 Cal. L. Revision Comm'n Reports 207 (2019). By updating the reference to the CPRA, the amendment also eliminates an erroneous reference to "Chapter 5" (as opposed to "Chapter 3.5").

The section is also amended to eliminate gendered pronouns. [46 Cal.L.Rev.Comm. Reports 563 (2019)].

Notes of Decisions (2)

West's Ann. Cal. Health & Safety Code § 101850, CA HLTH & S § 101850
Current with Ch. 1 of 2023-24 1st Ex.Sess, and urgency legislation through Ch. 41 of 2023 Reg.Sess. Some statute sections may be more current, see credits for details.

End of Document

PROOF OF SERVICE

Case Name: *Stone et al. v. Alameda Health System*
Case No.: S279137

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

On July 17, 2023, I served the following document: **OPENING BRIEF ON THE MERITS** on the party below ***via TrueFiling***:

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

Attorneys for Appellants
Tamara Stone, et al.

On July 17, 2023, I also served the **OPENING BRIEF ON THE MERITS** on the parties below ***via U.S. Mail***:

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

Court of Appeal

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

Judge of the Superior Court of Alameda County

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

Bobette T. Bramer

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

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

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **rmcginleystempel@publiclawgroup.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
BRIEF	Defendant and Respondent Alameda Health System's Opening Brief on the Merits
MOTION	Respondent's Motion for Judicial Notice; Memorandum of Points and Authorities; Declaration of Ryan P. McGinley-Stempel; [Proposed]Order

Service Recipients:

Person Served	Email Address	Type	Date / Time
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This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

7/17/2023

Date

/s/Ryan McGinley-Stempel

Signature

McGinley-Stempel, Ryan (296182)

Last Name, First Name (PNum)

Renne Public Law Group

Law Firm