CASE NO. 21-16528

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

ARMIDA RUELAS; DE'ANDRE EUGENE COX; BERT DAVIS; KATRISH JONES; JOSEPH MEBRAHTU; DAHRYL REYNOLDS; MONICA MASON; LOUIS NUNEZ-ROMERO; SCOTT ABBEY, AND ALL OTHERS SIMILARLY SITUATED

Plaintiffs and Appellees,

v.

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

Defendants and Appellants.

Appeal From The United States District Court,
Northern District of California, Case No. 4:19-cv-07637-JST,
Hon. Jon S. Tigar

COUNTY OF ALAMEDA AND SHERIFF GREGORY J. AHERN'S OPENING BRIEF

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CORPORATE DISCLOSURE STATEMENT

Appellant County of Alameda is a government organization existing under the laws of the State of California, and appellant Gregory J. Ahern is an individual, sued in his official capacity as the Sheriff of Alameda County. Accordingly, there are no disclosures required under Fed. R. App. P. 26.1.

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INTRODUCTION

California law permits its state prisons and county jails to develop inmate work programs in partnership with outside organizations. By working in those programs, inmates earn sentence credits and develop job skills. State inmates can also earn money, but up to 80% of the wages paid for their work are used to mitigate the costs of their incarceration, compensate crime victims, and support the inmates' families. In turn, the law makes no express provision for payment of wages to county inmates who participate in these work programs. Instead, it allows counties to decide whether and how much to pay the inmates in their jails. And even that authority is constrained by the California Penal Code which permits, but does not require, counties to authorize monetary compensation for county inmates not to exceed two dollars for eight hours of work.

Appellees purport to represent a class of persons who worked in one of these programs while awaiting trial in Alameda County's Santa Rita Jail. They have sued Alameda County, its sheriff Gregory J. Ahern, and its work-program partner Aramark Correctional Services, LLC. As relevant to this appeal, they claim they are entitled to

minimum wages under California's Labor Code for the work they performed.

They are wrong. The terms of inmate work are set by the Penal Code and, with respect to work programs like the one alleged in this case, by county ordinance. The Labor Code does not apply.

Consistently, the district court in this case recognized that the Labor Code provides no wage rights to inmates in state prisons or to convicted inmates in county jails. Nonetheless, it concluded that pre-trial detainees like Appellees were entitled to be paid minimum wages in the absence of a contrary local ordinance, and it denied Appellants' related motions to dismiss.

It erred. Neither the text nor the background of any relevant law grants county inmates a right to wages under the Labor Code or grants pre-trial detainees compensation rights that are different from convicted inmates of county jails. To the contrary, the Penal Code establishes the same compensation rights for all county inmates, regardless of conviction status. And, by limiting the amount of monetary compensation counties may authorize, it precludes application of the Labor Code's minimum wage, which would currently

require payment of wages some 56 times greater than the maximum wage the Penal Code permits.

This Court should reverse the district court's order and remand with instructions to dismiss Appellees' wage claims under the California Labor Code.

JURISDICTIONAL STATEMENT

In their operative complaint, Appellees claim that Appellants violated the U.S. Constitution and certain federal statutes. 2-ER-293–95. The district court has jurisdiction over those claims. 28 U.S.C. § 1331. Relying on the same factual allegations, Appellees also claim that Appellants violated various California laws. 2-ER-295–97. The district court has supplemental jurisdiction over those claims. 28 U.S.C. § 1367; *see also* 1-ER-7.

On June 24, 2021, the district court partially denied Appellants' motions to dismiss Appellees' operative complaint and granted their motion for interlocutory review. 1-ER-4–44. Appellants then timely petitioned this Court for permission to appeal on July 6, 2021, and the Court granted that permission on September 16, 2021. *See* Case No.

21-80075, Dkt. 1, 5.[1] Thereafter, Appellants perfected their appeal in the manner prescribed by Fed. R. App. P. 5(d). Dkt. 1–3. This Court thus has jurisdiction over this interlocutory appeal. *See* 28 U.S.C. § 1292(b); Fed. R. App. P. 5(d).

STATEMENT OF ISSUES

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

> Do non-convicted incarcerated individuals performing services in county jails for a for-profit company that sells goods produced by incarcerated individuals to third parties outside of the county have a claim for minimum wages and overtime under Section 1194 of the California Labor Code in the absence of any local ordinance prescribing or prohibiting the payment of wages for these individuals?

STATEMENT REGARDING PRIMARY AUTHORITY

Pursuant to 9th Circuit Rule 28-2.7, pertinent statutes are set forth verbatim in an indexed addendum attached hereto.

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[1] The petition for permission to appeal was filed under case number 21-80075. References to documents in the Court's related docket are therefore preceded by a reference to the case number.

STATEMENT OF THE CASE

A. California voters enact Proposition 139 to authorize state prisons and county jails to develop work programs in cooperation with private businesses.

In 1990, California voters approved a state-wide ballot initiative entitled Proposition 139. *See* Prison Inmate Labor - Tax Credit - Initiative Constitutional Amendment and Statute, 1990 Cal. Legis. Serv. Prop. 139 (West). As the related ballot materials explained, inmates in California jails and prisons were already working in various jobs, including manufacturing furniture for government offices and providing a range of services to support prison operations. 3-ER-503. Those work programs were designed "to reduce inmate idleness, minimize the cost of imprisonment, provide an incentive for good behavior, and provide job training." *Id.*

Before Proposition 139, however, the California Constitution prohibited implementing such programs in cooperation with any other organization. 3-ER-503. As a consequence, there were not enough job opportunities for the inmates who wanted them. *Id.* Proposition 139 sought to change that and to allow state prison and local jail officials to develop inmate-work programs in cooperation with private

organizations. *Id.* The express purposes of this initiative were (1) to reduce the financial burden of providing food, clothing, shelter, and medical care for incarcerated people; (2) establish a system for inmates to pay restitution to the victims of their crimes; and (3) provide job training to inmates in order to reduce recidivism. 3-ER-504.

Proposition 139's proponents also wanted to protect the rights of non-incarcerated workers. 3-ER-503–504. As a result, the initiative prohibited the use of inmates by private industry to replace striking workers during a labor dispute. *Id.*

Consistent with those aims, Proposition 139 amended the California Constitution, Penal, Government, and Revenue and Taxation Codes. 1990 Cal. Legis. Serv. Prop. 139 (West). By repealing and replacing Article 14, Section 5 of the California Constitution, Proposition 139 authorized the operators of state prisons to implement inmate-work programs through contracts with public, non-profit, and business organizations. *Id.* §§ 3, 4; Cal. Const. art. XIV, § 5(a). Proposition 139 also amended Part 3, Title 1 of the Penal Code to establish specific requirements for the payment of wages to inmates in state prisons and to provide for deductions to achieve the initiatives'

goals of cost recovery and restitution to victims. 3-ER-503; Cal. Penal Code §§ 2717.1-2717.9.

In contrast to the specific rules governing state-inmate work, Proposition 139 added no corresponding provisions for inmates in county jails. 3-ER-503. Instead, it provided for county work programs to be governed by local ordinances, which were relevantly "not required to contain any specific fiscal provisions." 3-ER-503; Cal. Const. art. XIV, § 5(a); see also 3-ER-503 (noting that "the measure does not specify the content of the local ordinances"). Consistently, it made no change to Title 4 of the California Penal Code, which governs the operation of county jails. 1990 Cal. Legis. Serv. Prop. 139 (West).

B. Appellees were previously incarcerated in Alameda County's Santa Rita Jail and, during their incarceration, worked preparing food.[2]

Appellees are individuals who were incarcerated in Santa Rita Jail, a county jail operated by the Alameda County Sheriff's

[2] This appeal arises from an order partially denying Appellants' motion to dismiss. Consistent with that procedural posture, this brief assumes the truth of well-pleaded, material allegations. *See, e.g., Carlin v. DairyAmerica, Inc.*, 705 F.3d 856, 866 (9th Cir. 2013); *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001) .

Department. 2-ER-282–284. During their respective incarcerations, Appellees participated in a work program, preparing and packaging food pursuant to a contract between the County and Aramark. 2-ER-284. Like other persons incarcerated at Santa Rita Jail, Appellees performed this work as part of a work program Alameda County and Aramark established through a Proposition 139 contract. 2-ER-283–285.

Under that contract, Aramark employees direct inmate work, and Alameda County Sheriff's Deputies provide security and decide which prisoners are eligible for the program. 2-ER-284–286. Participating inmates do not receive monetary compensation for their work, but do receive job training and earn credits to reduce any sentences imposed after trial. 2-ER-284, 286; *see also* Cal. Penal Code § 4019(a)(1). In addition, as Appellees themselves have alleged, they also earn the opportunity to spend more time outside of their cells each day, "which is beneficial to their physical and mental health," they "obtain additional food for their own enjoyment and nutrition," and earn access to special housing. 2-ER-285–286.

C. Appellees sue, claiming they are entitled to minimum wages for their work.

Appellees challenge the conditions of their participation in the work program on various statutory and constitutional grounds. 2-ER-293–297. As relevant to this appeal, they allege that Appellants have failed to pay minimum wages they contend are required by the California Labor Code.[3] 2-ER-296.

D. The District court correctly dismisses the claims of convicted inmates, but erroneously allows Appellees' claims to proceed based on their pre-trial status.

When they originally filed this action, Appellees purported to represent a class of convicted and pre-trial inmates. 2-ER-301. The district court dismissed the claims of convicted inmates. 2-ER-316–318. As it ruled, the Labor Code does not apply to convicted persons

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[3] Appellees also alleged violations of Labor Code provisions requiring the payment of wages within a certain period from separation and requiring payment of overtime. The district court dismissed those claims, finding Appellees were not entitled to relief under those provisions. 1-ER-24–25, 27–28. On the other hand, the district court allowed Appellees to proceed with their claims under the Trafficking Victims Protection Act, the Thirteenth and Fourteenth Amendments of the U.S. Constitution, Unlawful Competition Law, and Bane Act. 1-ER-16, 29–36; 2-ER-293–297. The parties are litigating those claims in the district court now.

incarcerated in county jails, except to the extent expressly provided by the relevant statutes. *Id.*

In contrast, however, the district court determined that pre-trial detainees could not be compelled to work under the Thirteenth Amendment to the U.S. Constitution. 2-ER-319. As a result, the court concluded that Appellees as pre-trial detainees could maintain minimum-wage claims under California's Labor Code to the same extent as non-incarcerated workers. *Id.*

Appellees then amended their complaint and now purport to represent a class of current and former inmates who performed work for Aramark while incarcerated at Santa Rita Jail, awaiting trial. 2-ER-289–290. Appellants again moved to dismiss on the ground that pre-trial detainees are not entitled to statutory minimum wages any more than convicted inmates. 2-ER-252–260. As they argued, the Labor Code does not apply by its own terms to any inmates, whether convicted or awaiting trial. *Id.* Moreover, the California Constitution and Penal Code expressly grant counties discretion to decide whether and how much to pay jail inmates, while also guaranteeing all working inmates non-monetary compensation in the form of sentence credits. *Id.*

(discussing Cal. Const. art. XIV, § 5; Cal. Penal Code. §§ 2717.8, 4000, 4011.11, 4018.5, 4019.3).

The district court again agreed with defendants that California's "Proposition 139," did not require payment of minimum wages to Appellees. 1-ER-16–19. It required compensation in specified amounts for inmates in state prisons. 1-ER-19 (discussing Cal. Const. art. XIV, § 5(b); Cal. Penal Code § 2717.8.) But "as to county jails . . . Proposition 139 left wages to be determined by local ordinance." 1-ER-23–24.

Despite this, the district court did not agree that these laws granted counties discretion to decide whether and how much to pay pre-trial detainees, as it had with respect to convicted jail inmates. *Compare* 1-ER-24, *with* 2-ER-315–318. Instead, it concluded that the Penal Code "does not give any guidance regarding the wages owed to non-convicted detainees," and the Labor Code accordingly governs in the absence of a relevant local ordinance. 1-ER-24.

E. Acknowledging that a reasonable jurist could adopt Appellants' reading of the relevant laws, the district court certifies its ruling for immediate review.

Appellants then sought permission for an immediate appeal from the district court's ruling on Appellees' minimum-wage claims. 1-ER-

37. The district court agreed that the Labor Code's applicability to pre-trial detainees was an issue of first impression that fit the standards for interlocutory review under 28 U.S.C. § 1292(b). Accordingly, it certified the issue for immediate appeal and simultaneously entered an amended order "to more thoroughly explain the Court's reasoning on the issue certified for interlocutory appeal." 1-ER-37. This Court then granted permission for the appeal in response to Appellants' timely petition. Dkt. 1, 2.

SUMMARY OF ARGUMENT

First, the district court correctly ruled that Appellees have no right to specific compensation under Proposition 139. 1-ER-16–19. That measure enacted specific requirements for payment of wages for work by state inmates, but expressly granted counties exclusive authority to set the terms of employment of county inmates "by local ordinances." Cal. Const. art. XIV, § 5(a). The measure's ballot materials and statutory context confirm this intent to grant counties discretion to decide whether and how much to pay their inmates. *See Legislature v. Eu*, 54 Cal. 3d 492, 504 (1991); *Mutual Life Ins. Co. v. City of Los Angeles*, 50 Cal. 3d 402, 409 (1990).

Voters understood that local ordinances would set the terms of participation in county work programs and that Proposition 139 did not require those ordinances to have any specific fiscal provisions. 3-ER-503. They also understood that county inmates would primarily receive non-monetary benefits for their work—sentence reductions and job training—while the primary financial benefits of the program would flow to jail operators. 3-ER-503–504; *see also* Cal. Penal Code § 4019.

Further, by choosing to enact specific wage requirements for state inmates and choosing not to enact similar requirements for county inmates, voters confirmed their intention not to require any wage for county inmates' participation in work programs. *Cornette v. Dep't of Transp.*, 26 Cal. 4th 63, 73–74 (2001); *Mutual Life*, 50 Cal. 3d at 410; *see also* 3-ER-503 (describing state inmates' opportunity to earn sentence credits and money, and only describing county inmates' opportunity to earn sentence credits).

This intent is also confirmed by voters' choice to grant counties exclusive authority to set wages for local work programs without amending the Penal Code, which permits but does not require counties to authorize wages for county inmates not to exceed two dollars for

eight hours of work. *See* Cal. Penal Code § 4019.3; *see also Cal. Cannabis Coal. v. City of Upland*, 3 Cal. 5th 924, 945 (2017) (holding that ballot initiatives should not be construed to repeal laws except when they do so expressly); *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization*, 22 Cal. 3d 208, 243–244 (1978) (holding that voters are presumed to know existing laws when they enact ballot initiatives).

Thus, county inmates are entitled only to the non-monetary benefits of participating in a county work program, in the absence of a local ordinance authorizing monetary compensation. As it relates to this case, the County has not enacted such an ordinance. 2-ER-280–299; 1-ER-17; 2-ER-317. As a result, under the foregoing principles, Appellees are not entitled to any monetary compensation for work they performed.

Second, the district court erred in ruling that Appellees are entitled to minimum wages under the Labor Code due to their status as pre-trial detainees and the absence of a contrary local ordinance. 1-ER-18–24.

Nothing in Proposition 139 imports Labor Code standards in the absence of a contrary local ordinance. To the contrary, the Labor Code applies to inmate work only when it does so expressly and only in narrow circumstances. *See* Cal. Lab. Code §§ 3370, 6304.2. And the voters who enacted Proposition 139 expressly intended to place no restriction on the terms counties could set for participation in their work programs. Cal. Const. art. XIV, § 5(a); 3-ER-503. Moreover, the exclusive wage-setting authority granted counties by Proposition 139 and the Penal Code, and the two-dollar maximum wage the Penal Code permits, are in direct conflict with the Labor Code's wage requirements. *See* Cal. Const. art. XIV, § 5(a); *compare also* Cal. Penal Code § 4019.3, *with* Cal. Lab. Code § 1182.12. Accordingly, the more-specific provisions of the Penal Code must govern. *See* Cal. Civ. Proc. Code § 1859.

The district court also erred in justifying application of the Labor Code based on Proposition 139's purposes to compensate state employees and to ensure that inmates are not used to replace non-incarcerated workers on strike. 1-ER-19–22. Proposition 139 achieved these aims through the enactment of specific provisions. Cal. Const.

art. XIV, § 5(b); Cal. Penal Code § 2717.8. It was neither necessary nor appropriate for the district court to import the Labor Code's wage guarantees to further these policy goals. *See Cornette*, 26 Cal. 4th at 73-74. In addition, the district court's discussion of Proposition 139's purposes is incomplete. The measure's primary purposes were to expand opportunities—and attendant sentence credits and job training—for inmates, while compensating the public for the financial consequences of crime. 3-ER-503. Requiring payment of minimum wages would undermine, rather than advance those goals.

The district court's application of the Labor Code also fails to recognize the critical differences between the prison-prisoner and employer-employee relationships. 1-ER-25–28. The unique relationship between prisons and prisoners precludes application of ordinary standards for evaluating employment status, even when the work prisoners perform bears some superficial resemblance to work performed by employees. *Hale v. Arizona*, 993 F.2d 1387, 1395 (9th Cir. 1993) (abrogated on unrelated grounds as described in *Walden v. Nevada*, 945 F.3d 1088, 1094 n.2 (9th Cir. 2019); *Matherly v. Andrews*, 859 F.3d 264, 278 (4th Cir. 2017). The same rule applies to pre-trial

detainees and to inmate work that generates profit. *Villarreal v. Woodham*, 113 F.3d 202, 207 (11th Cir. 1997); *Burleson v. California*, 83 F.3d 311 (9th Cir. 1996).

Nor is there any legal basis for the district court's conclusion that pre-trial detainees are entitled to compensation rights that convicted inmates are not. 1-ER-18–24. The relevant provisions of the California Constitution and Penal Code draw no distinction between county inmates based on their conviction status for purposes of defining the benefits of their work. Cal. Const. art. XIV, § 5(a); Cal. Penal Code §§ 4019(a)(1), (4), 4019.3; *accord* 3-ER-504. And, while the Thirteenth Amendment prohibits forced labor by pre-trial detainees, it does not guarantee any person a minimum wage. *See* 2-ER-318–319; *see also* 1-ER-24, n.6.

STANDARD OF REVIEW

This Court independently reviews the district court's order denying Appellants' motion to dismiss and should reverse if it finds Appellees failed to plead a cognizable legal theory. *See Pakootas v. Teck Cominco Metals, Ltd.*, 830 F.3d 975, 980 (9th Cir. 2016) (citing *Dunn v.*

Castro, 621 F.3d 1196, 1198 (9th Cir. 2010)); *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010).

Similarly, the correct construction of controlling statutes is a legal question that this Court considers de novo. *See Pakootas*, 830 F.3d at 980 (citing *Carson Harbor Vill., Ltd. v. Unocal Corp.*, 270 F.3d 863, 870 (9th Cir. 2001)). When interpreting a state statute, this Court follows that state's rules of statutory construction. *Turnacliff v. Westly*, 546 F.3d 1113, 1117 (9th Cir. 2008).

In California, the primary objective of statutory construction is to effectuate the intent of the legislature or, in the case of ballot initiatives, the intent of voters. Cal. Civ. Proc. Code § 1859; *In re Corrine W.*, 45 Cal. 4th 522, 529 (2009); *Legislature v. Eu*, 54 Cal. 3d 492, 504 (1991).

To that end, courts begin with the statute's plain language, "as the words the Legislature chose to enact are the most reliable indicator of its intent." *Corrine W.*, 45 Cal. 4th at 529; *Mutual Life Ins. Co. v. City of Los Angeles*, 50 Cal. 3d 402, 409 (1990) (applying the same approach when construing ballot initiatives). If a statute's words are "reasonably free from ambiguity and uncertainty," California courts determine

legislative intent solely from the words' ordinary meaning. *Bldg. Indus. Ass'n of S. Cal., Inc. v. City of Camarillo*, 41 Cal. 3d 810, 819 (1986); *see also People v. Valencia*, 3 Cal. 5th 347, 357 (2017) (holding California courts construe statutory terms consistent with their "plain and common sense" meaning).

A law's terms must also be read together so as to give effect to every part, with each clause helping to interpret the other. Cal. Civ. Proc. Code § 1858. And courts must accord significance to every word, phrase, and sentence in a statute, if possible, avoiding an interpretation that would reduce some terms to "surplusage." *Valencia,* 3 Cal. 5th at 357.

If text alone does not demonstrate legislative intent clearly, courts then turn to secondary indicia, including legislative history, context, and underlying policy goals. *Corrine W.*, 45 Cal. 4th at 529. For laws enacted by voters, the relevant legislative history includes the analysis and arguments contained in the official ballot pamphlet. *See Eu*, 54 Cal. 3d at 504. The statutory context, in turn, includes laws existing at the time of the measure's enactment, which voters are presumed to have understood. *Amador Valley Joint Union High Sch. Dist. v. State*

Bd. of Equalization, 22 Cal. 3d 208, 243–244 (1978). "Ultimately [courts] choose the construction that comports most closely with the apparent intent of the lawmakers, with a view to promoting rather than defeating the general purpose of the statute." *Allen v. Sully–Miller Contracting Co.*, 28 Cal. 4th 222, 227 (2002).

Courts, however, "may not rewrite a statute, either by inserting or omitting language, to make it conform to a presumed intent that is not expressed." *Cornette v. Dep't of Transp.*, 26 Cal. 4th 63, 73–74 (2001) (citing Cal. Civ. Proc. Code § 1858). And, where the legislature or voters have included a term or provision in one part of a law, the omission of that term or provision elsewhere in the law indicates intent to exclude. *See, e.g.*, *Cornette*, 26 Cal. 4th at 73; *Mutual Life*, 50 Cal. 3d at 410 (applying the same rule to construction of ballot initiatives); *accord* 58 Cal. Jur. 3d *Statutes* § 126 (2021); Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts, 93-100 (1st ed. 2012).

ARGUMENT

The district court erred when it ruled that pre-trial detainees are entitled to minimum wages for their participation in Proposition 139

work programs. Applicable laws neither require nor even permit the County to pay jail inmates the minimum wage established by the California Labor Code.

I. The district court correctly ruled that Proposition 139 does not establish a minimum wage to be paid to inmates at Santa Rita Jail.

A. The California Constitution and Penal Code grant counties exclusive authority to set monetary compensation for jail inmates, not to exceed two dollars per day.

Through Proposition 139, California voters enacted the legal framework that governs work by prison and jail inmates for outside organizations. 1990 Cal. Legis. Serv. Prop. 139 (West). As relevant here, Proposition 139 distinguished between state-prison inmates and those incarcerated in county jails. For state prisoners, Proposition 139 enacted specific, statutory requirements and authorized the Director of Corrections to set additional rules and regulations. *Id.*; Cal. Const. art. XIV, § 5(a). For county jails, however, Proposition 139 expressly left the terms of employment to be set "by local ordinances." *Id.* Thus, as the district court ruled in this case, Proposition 139 itself does not prescribe

any wage for county inmates participating in a work program. 1-ER-16–19.

This conclusion is clear from the plain language of the Constitution, obviating the need for consideration of secondary indicia of voter intent. *See Corrine W.*, 45 Cal. 4th at 529; *Mutual Life*, 50 Cal. 3d at 409. However, all relevant indicia confirm voter intent consistent with the constitutional and statutory language they enacted. *See Mutual Life*, 50 Cal. 3d at 409; *Eu*, 54 Cal. 3d at 504.

1. Proposition 139's ballot materials reflect voters' intent to allow county governments to determine whether and how much county inmates should be paid for participation in a work program.

Proposition 139's ballot materials repeatedly noted that terms of employment for county inmates would be set by "local ordinances" and advised voters that "the measure [did] not specify the content of the local ordinances," and that such ordinances were not "required to contain specific fiscal provisions." 3-ER-503. Voters thus understood and intended that counties would have discretion to set the financial terms of inmate participation in work programs established under Proposition 139. *See Eu*, 54 Cal. 3d at 504.

Moreover, Proposition 139 was designed to provide primarily non-monetary benefits to inmates, while conferring financial benefits primarily to carceral institutions and crime victims. As the ballot pamphlet explained, county inmates had the opportunity to earn sentence-reduction credits and to benefit from job training, which would help improve their life prospects upon release. 3-ER-503–504. This was consistent with existing law governing work by county inmates, which provided sentence reductions for all inmates who work, convicted inmates and pretrial detainees alike. Cal. Penal Code § 4019; *see also Amador Valley*, 22 Cal. 3d at 243–44 (holding voters are presumed to be aware of existing law when they enact ballot initiatives).

By contrast, no mention was made of county inmates having the opportunity to earn wages or otherwise to benefit financially from their work. 3-ER-502–505; *but see* 3-ER-504 (noting the opportunity that *state* inmates would have to earn money). Instead, the measure's financial benefits were expressly designed to help state and local governments offset the costs they incur providing for inmates and to provide funding for a victim's restitution fund. 3-ER-502–504.

The ballot materials thus confirm that county inmates participating in a work program are entitled to the non-monetary benefits conferred by state law, but are only entitled to wages to the extent required by a local ordinance.

2. By enacting specific wage requirements for state inmates, while omitting such requirements for county inmates, voters again demonstrated their intent to allow counties to decide whether and how much to pay county inmates.

Voters' intent not to require payment of any wage to county inmates is further confirmed by the specific wage requirements they enacted for inmates working in state prisons. 1990 Cal. Legis. Serv. Prop. 139 § 5 (West); Cal. Penal Code § 2717.8. Those provisions demonstrate voters' ability to require payment of wages when they intend to do so. Their choice not to enact such a requirement for county inmates should be construed as intentional and should be respected by courts. *See, e.g.*, *Cornette*, 26 Cal. 4th at 73; *Mutual Life*, 50 Cal. 3d at 410.

While this conclusion can be drawn from the contents of Proposition 139 and related rules of construction, the ballot materials confirm that the omission of wage provisions for county inmates was a

conscious choice. Those materials advised voters that *state* inmates who participate in work programs "earn 'credits' which reduce the amount of time they spend in prison" and that they would also have "an opportunity to earn money for use upon release from prison." 3-ER-503. In contrast, the pamphlet advised, "Inmates in local jails may receive similar *credits*," omitting any mention of money they might earn. *Id.* (emphasis added). Further, the ballot materials advised voters that the "local ordinances that would implement contracts for use of jail labor are not required to contain specific fiscal provisions." *Id.*

This demonstrates that voters understood that state and county inmates would receive different benefits for participating in work programs. State inmates would receive both sentence credits and money. County inmates would only receive sentence credits, unless otherwise specified by local ordinances.

3. Voters intended to maintain the Penal Code's limited authorization for county-inmate wages by granting counties exclusive authority to set wages.

The existing statutory context against which voters enacted Proposition 139 further demonstrates that voters did not intend for

county inmates to be paid any specific wage. Section 4019.3 of the Penal Code, which was enacted decades before Proposition 139, provides that counties "may" set inmate compensation in an amount not to exceed two dollars for each eight hours work performed. The voters who enacted Proposition 139 are presumed to have known of this statute. *Amador Valley*, 22 Cal. 3d at 243–44. Had they intended to make wages mandatory, or to allow compensation in excess of the two-dollar per shift maximum, they would have needed to amend or repeal Section 4019.3, and they would have had to do so expressly. *See Cal. Cannabis Coal. v. City of Upland*, 3 Cal. 5th 924, 945 (2017) (discussing the presumption that voters initiatives do not repeal statutes unless they do so expressly); *see also Woodbury v. Brown-Dempsey*, 108 Cal. App. 4th 421, 433 (2003) (holding "the word 'may' connotes a discretionary or permissive act").

The statutory context against which voters enacted Proposition 139 thus further confirms their intent not to require monetary compensation for county inmates except to the extent authorized by local ordinance and in an amount not to exceed two dollars per eight hours of work.

B. The County has not authorized monetary compensation for inmates at Santa Rita Jail.

The County has not enacted an ordinance prescribing compensation for inmates at Santa Rita Jail, as the district court acknowledged. *See* 2-ER-280–299; 1-ER-17; 2-ER-317. As a result, under the foregoing principles, Appellees are not entitled to any monetary compensation for their participation in the work program.

Attempting to avoid the legal consequence of this fact, Appellees have argued that the County's contract with Aramark is itself a local ordinance that requires payment of wages. *See* 1-ER-17–18. The district court correctly rejected this claim. *Id.*

First, a contract is not an ordinance. *Accord* 1-ER-18. Under California law—as goes almost without saying—a contract is an enforceable agreement between two or more individuals or organizations. *See, e.g.*, Cal. Civ. Code § 1549; *see also Holtzendorff v. Hous. Auth. of City of Los Angeles*, 250 Cal. App. 2d 596, 607 (1967) (holding public agency contracts are governed by the "ordinary law of contracts"). By contrast, county ordinances are a specific form of unilateral enactment, subject to a series of detailed procedural requirements. *See* Cal. Gov't Code §§ 25120–25132. Appellees have

made no effort to demonstrate that the County's contract with Aramark qualifies as an ordinance under California law, nor can they.

Second, the contractual obligation Appellees raise to support their wage claims—Aramark's agreement to comply with California's prevailing-wage statute—is inapposite. *See* 1-ER-17. Labor Code Sections 1770, *et seq.* require the payment of "prevailing wages" to employees working on "public works" projects. Cal. Lab. Code § 1771. Appellees' food preparation falls outside the scope of these statutes as a matter of law. Cal. Lab. Code § 1720(a); *see also Busker v. Wabtec Corp.*, 11 Cal. 5th 1147, 968–69 (2021) (discussing the limited scope of "public works" employment governed by California prevailing-wage laws). As a result, Appellees' work is not subject to Aramark's alleged contractual obligation.

Finally, Appellees have also suggested that Proposition 139 requires the County to adopt a local ordinance prescribing compensation as a prerequisite to implementing a work program. 1-ER-16–17. The district court correctly rejected that argument as well. 1-ER-18. As it explained, Proposition 139 does not mandate enactment of a local ordinance and speaks separately of the contracts it authorizes

and the local ordinances it permits counties to enact. 1-ER-18; *accord* 3-ER-503; *see also* Cal. Penal Code § 4019.3 (permitting but not requiring counties to authorize limited wages for inmates).

Even if Appellees were correct in this regard, however, California law establishes a remedy: a writ of mandate to compel the County to adopt an ordinance. *See* Cal. Civ. Proc. Code § 1085. There is no basis for Appellees to compel the County to adopt an ordinance with any specific terms. *See, e.g., Common Cause of Cal. v. Bd. of Supervisors of Los Angeles Cnty.*, 49 Cal. 3d 432, 442 (1989) (reflecting the settled rule that a writ of mandate may issue to compel a mandatory duty to act, but may not control the exercise of related discretion). And they cannot compel payment of wages that have not been authorized. Appellees' argument in this regard thus does not support their wage claim.

This should be the end of the inquiry. Until and unless the County decides otherwise, inmates who choose to participate in the work program are entitled only to the non-monetary benefits of participation, and Appellees are not entitled to recover minimum wages under the Labor Code. Indeed, from all this, the district court correctly

concluded that convicted inmates were not entitled to be paid wages. 2-ER-316–318.

II. The district court erred in ruling that California's Labor Code mandates payment of minimum wages to pre-trial detainees participating in a Proposition 139 work program.

Despite the foregoing, the district court concluded that different rules governed work by inmates detained in Santa Rita Jail while awaiting trial. 1-ER-18–24. The court perceived a gap in Proposition 139 with respect to the rules governing work-program participation by pre-trial detainees, and it chose to fill that perceived gap with California's Labor Code. 1-ER-24. It erred in both respects.

A. The Labor Code does not govern county inmates' participation in Proposition 139 work programs in the absence of a contrary local ordinance.

That district court erred in concluding that the Labor Code applies to pre-trial detainees in the absence of a contrary local ordinance. 1-ER-24. Its ruling in this regard is not supported by the text of Proposition 139, the Penal Code, or the Labor Code.

Nonetheless, the district court held that the Labor Code applies to pre-trial detainees in the absence of a local ordinance because neither

Proposition 139 nor the Penal Code *prohibits* its application. 1-ER-18. It also found that Proposition 139's policy goals were served by importing the Labor Code's wage requirements to work by pre-trial detainees. 1-ER-19–22. And, operating on the assumption that the Labor Code could apply to pre-trial detainees, it found that their participation in Santa Rita Jail's work program bore some of the indicia of an employment relationship under California law. 1-ER-25–28. Each of these conclusions was flawed.

1. The Labor Code's general wage requirements are incompatible with the more specifically applicable provisions of Proposition 139 and the Penal Code.

The district court erred first in concluding that the Labor Code applies to Appellees because Proposition 139 and the Penal Code do not prohibit its application.

As discussed, Proposition 139 created the legal framework for the kinds of work programs that gave rise to Appellees' suit, and in doing so it expressly granted counties the authority to set any compensation terms for county inmates' participation in those programs. Cal. Const. art. XIV, § 5(a). The voters who enacted Proposition 139 intended to

impose no specific requirements for the contents or fiscal provisions of such ordinances. 3-ER-503. And they granted that authority against a statutory background that allowed but did not require counties to set compensation for working inmates not to exceed two dollars per eight hours of work. Cal. Penal Code § 4019.3.

In contrast, California's Labor Code requires all employees to be paid a wage currently no less than $14 per hour, increasing to $15 per hour in 2022. Cal. Lab. Code §§ 510, 1182, 1182.12. These statutes cannot be applied to Appellees without contradicting the wage-setting authority Proposition 139 granted the County and the limitations the Penal Code places on that authority. Cal. Const. art. XIV, § 5(a); Cal. Penal Code § 4019.3.

Thus, contrary to the district court's order, Proposition 139 and the Penal Code are in direct conflict with the Labor Code as it respects monetary compensation for county inmates. 1-ER-18, 22. The County literally cannot authorize wages for Appellees that comply with both Penal Code Section 4019.3 and Labor Code Section 1182.12. Given that conflict, the more specific provisions of Proposition 139 and the Penal

Code must prevail against the more general requirements of the Labor Code. *See* Cal. Civ. Proc. Code § 1859.

The district court appears to have attempted to resolve this conflict by holding that the Labor Code applies to pre-trial detainees only if a county has not enacted a contrary local ordinance. 1-ER-24. Though not quite express, the court seems to have concluded that the Labor Code applies to county inmates as a background principle, and that only a local ordinance can displace its application. *Id.*; *see also* 1-ER-28 (finding that Proposition 139 does not *preclude* claims under the Labor Code). That conclusion was incorrect.

To the contrary, as even the district court earlier recognized, the Labor Code applies to inmates only when it does so expressly. 2-ER-317–318. There are only two Labor Code provisions that apply expressly to prisoners: Section 3370 gives state inmates the benefits of the Labor Code's workers' compensation rules. And Section 6304.2 establishes an employer/employee relationship between the Department of Corrections and state inmates "engaged in correctional industry, as defined by the Department of Corrections. . . ." Neither of these statutes would be necessary if the Labor Code applied to inmates by

default. *See Valencia,* 3 Cal. 5th at 357 (holding statutes should not be construed to render terms surplusage). And the Court should not interpret the Labor Code to apply generally and implicitly to inmates, when the Legislature has chosen to apply it only narrowly and expressly. *See Cornette*, 26 Cal. 4th at 73; *Mutual Life*, 50 Cal. 3d at 410.

Nonetheless, the district court distinguished between state and county inmates when considering the Labor Code's application. Though acknowledging that the Labor Code applies narrowly and expressly to state inmates, it found a more general and implied application for pre-trial detainees in county jails. 1-ER-22. It noted that various provisions of the Penal Code expressly set wages for state-inmate work that are different from those established by the Labor Code. *Id.* (citing Cal. Penal Code §§ 2811, 2717.8). But it found no similar rule for county inmates awaiting trial. *Id.* From this, the district court concluded that the Penal Code left room for the Labor Code to apply broadly to those inmates. *Id.*

But as discussed above, there *is* a provision of the Penal Code that permits and limits monetary compensation for working county inmates

in a manner similar to the Penal Code provision governing state inmates. *Compare* Cal. Penal Code § 4019.3, *with* Cal. Penal Code § 2811. The statutes are not identical, but they each establish exclusive wage-setting authority and limit the wages that may be paid to something less than the Labor Code would require. The Labor Code thus cannot be applied generally to county inmates any more than it can be applied to state inmates, and the district court's contrary decision is belied by its own reasoning.

2. The policy goals driving Proposition 139 do not justify applying the Labor Code to pre-trial detainees.

The district court also identified and focused on two animating policies for Proposition 139: (1) compensating state prisoners for their work and (2) ensuring that working inmates do not replace striking, non-incarcerated workers. 1-ER-18–19. From this, the district court concluded voters must have intended pre-trial detainees to "be paid for their labor." 1-ER-19 (citing Cal. Penal Code § 2717.8); 1-ER-23. To achieve a balance of interests, pre-trial detainees can't be forced to work without "wages." *Id.* It was wrong in several respects.

First, Proposition 139 advanced the two goals the district court identified through enactment of specific statutes, not by implicitly importing Labor Code requirements. To ensure that state prisoners were compensated, Proposition 139 added provisions to the Penal Code expressly requiring payment of wages to state prisoners participating in a work program, subject to significant deductions to fund Proposition 139's other policy goals. 1990 Cal. Legis. Serv. Prop. 139 § 5 (West); Cal. Penal Code § 2717.8. And to guard the interests of non-incarcerated workers during labor disputes, Proposition 139 enacted express prohibitions against use of inmate labor to replace striking workers. 1990 Cal. Legis. Serv. Prop. 139 § 4 (West); Cal. Const. art. XIV, § 5(b); *see also* 3-ER-504 (responding to concerns over use of inmate labor to replace non-incarcerated works by noting that "inmates may not be used as strikebreakers under this provision").

Voters thus designed Proposition 139's express terms to advance the policy goals they sought to achieve. There was accordingly no reason for the district court to add the Labor Code's wage requirements in service of those same policies. *See Cornette*, 26 Cal. 4th at 73-74 (citing Cal. Civ. Proc. Code, § 1858) ("A court may not rewrite a statute,

either by inserting or omitting language, to make it conform to a presumed intent that is not expressed.").

Second, the district court's discussion of policy is incomplete. While Proposition 139 did provide for compensation to state inmates and protections for non-incarcerated workers on strike, it was also designed to expand work opportunities in prisons and jails. 3-ER-503–504. As voters understood, inmates desired the sentence credits and job training that came from work. 3-ER-503. But before Proposition 139, there were not enough jobs within prisons and jails to meet the inmates' demand. *Id.* Proposition 139 sought to address that unmet need through cooperation with outside organizations. *Id.* Importation of the Labor Code's minimum wage requirements does nothing to advance that goal. To the contrary, having to pay minimum wages seems likely to discourage outside organizations from participating in work programs and would thus undermine Proposition 139's goals.

Even in purely financial terms, Proposition 139 sought primarily to mitigate the costs of incarceration, compensate victims, and provide support for inmates' families during incarceration. 3-ER-503–504. In the context of state inmates, these goals are achieved by the Penal

Code's express requirement that up to 80% of the wages paid by outside organizations be used not to compensate prisoners, but to reimburse the state for the costs of incarceration, fund victim restitution, provide for prisoners' family, and cover prisoner taxes. 1990 Cal. Legis. Serv. Prop. 139, § 5 (West); Cal. Penal Code § 2717.8; *see also* 3-ER-504 (emphasizing the costs public bears from both crime and incarceration and arguing that prisoners should work to help cover those costs).

In contrast, none of these aims are served by requiring companies like Aramark to pay inmates minimum wages under the Labor Code, subject to none of the Penal Code's deductions. Even more so, requiring the County to pay minimum wages to inmates, as Appellees have demanded, would *increase* the costs of incarceration in direct conflict with Proposition 139's goals. That cannot be a correct interpretation of the law.

Proposition 139 sought to achieve several different policy objectives. It did this through implementation of specific, express provisions that balanced a range of different interests. The district court erred by grafting the Labor Code's wage requirements onto the carefully balanced system the voters enacted.

3. Analogous laws confirm that the relationships between prisons and prisoners are fundamentally different from the relationships between employers and employees.

Having concluded that work by pre-trial detainees at Santa Rita Jail could be governed by the Labor Code in some circumstances, 1-ER-18, the district court then found Appellees had alleged an employment relationship with Appellants under the regulatory definitions governing ordinary employment relationships. 1-ER-25–28 (under *Martinez v. Combs*, 49 Cal. 4th 35 (2010)). But as this Court and courts throughout the country have concluded under analogous laws, the relationship between prison and prisoner is fundamentally different from that between employer and employee, notwithstanding some superficially common features.

As this Court has explained, the relationship between prison and prisoner "is penological, not pecuniary." *Hale v. Arizona*, 993 F.2d 1387, 1395 (9th Cir. 1993) (abrogated on unrelated grounds as described in *Walden v. Nevada*, 945 F.3d 1088, 1094 n.2 (9th Cir. 2019). Prison work programs serve primarily non-economic goals; they provide job-training and rehabilitation opportunities for inmates and improved discipline and behavioral incentives for carceral institutions. *Id.* at

1398; *Matherly v. Andrews*, 859 F.3d 264, 278 (4th Cir. 2017); *Villarreal v. Woodham*, 113 F.3d 202, 207 (11th Cir. 1997) (quoting *Danneskjold v. Hausrath*, 82 F.3d 37, 42–43 (2nd Cir. 1996)); *accord* 3-ER-503 (describing the expanded work and job-training opportunities for inmates and incentives for good behavior Proposition 139 would provide).

The other critical difference between prisoners and employees is that inmates' basic needs are all provided for by the institutions where they are detained. As courts have consistently explained, minimum wages exist to ensure a basic standard of living for all workers, but this concern is inapplicable to inmates who have their clothing, shelter, food, and medical care all provided. *Matherly*, 859 F.3d at 278; *Villareal*, 113 F.3d at 207; *Hale*, 993 F.2d at 1395–96.

The district court disregarded these cases, noting that they rested on the federal Fair Labor Standards Act's definition of employment, rather the definition applied under California law. 1-ER-22–23. But Appellants are not advocating for the application of the federal economic-reality test to the California Labor Code. Rather, the

relevance of those cases is their detailed consideration of the unique relationship between prison and prisoner.

Any standard that evaluates employment status without accounting for that unique relationship is inherently misplaced. The unpleasant reality of incarceration is that inmates are constantly under the guards' "control" in some sense. And they may at times be required to do small chores and tasks that could qualify as work for a non-incarcerated person. No one seriously contends that inmates are entitled to minimum wage for, as an example, cleaning up around the housing unit at a Sheriff deputy's request. Yet a blinkered application of California's employment test, like that utilized by the district court here, might lead to that result. *See Martinez*, 49 Cal. 4th at 70. That cannot be the law, as cases like *Hale* and *Villareal* help demonstrate.

The district court also distinguished *Hale* and *Villareal* on the grounds that the plaintiffs in those cases worked for the benefit of the jails, while Appellees' work purportedly benefits Aramark. 1-ER-23. This Court, however, considered and rejected a similar argument in *Burleson v. California*, 83 F.3d 311 (9th Cir. 1996). In that case, the plaintiffs performed work producing goods and services that were sold

for a profit outside the prison. *Id.* at 312. This Court held the plaintiffs were not employees, applying *Hale* and rejecting the plaintiffs' arguments that their profit-generating activities were relevant to their legal status. *Id.* at 314. The district court in this case accordingly erred by focusing on the economic benefits Appellees' work provides Aramark.

The unique relationship between prisons and prisoners precludes application of ordinary standards for evaluating employment status, and should preclude the default application of the Labor Code to any inmate.

B. The district court erred in finding Appellees are entitled to minimum wages based on their status as pre-trial detainees; the law makes no such distinction.

As discussed, the district court recognized that convicted county inmates participating in Proposition 139 work programs have no right to wages unless and to the extent authorized by local ordinance. 2-ER-316–318. Yet it allowed Appellees to proceed with their wage claims, finding that the Labor Code governs *their* claims in the absence of a contrary local ordinance. 1-ER-18–24. But there is no legal basis for the distinction the district court has drawn between convicted inmates and pre-trial detainees.

1. The relevant laws do not differentiate between convicted county inmates and pre-trial detainees.

The court's approach finds no support in the relevant statutory texts. Proposition 139 sets different rules for inmates in state prisons and those in county jails, but it does not differentiate between different types of county inmates. 1990 Cal. Legis. Serv. Prop. 139 (West); Cal. Const. art. XIV, § 5(a). Even the district court acknowledged that Proposition 139 did not mention pre-trial detainees. 1-ER-18. And, as discussed, Proposition 139 expressly delegated to counties the authority to determine whether and how much monetary compensation should be paid to county inmates, without qualification based on conviction status. Cal. Const. art. XIV, § 5(a).

The Penal Code's relevant text likewise draws no distinction between the rights of pre-trial detainees and convicted inmates. For example, Sections 4019–4019.2 expressly provides the same sentence-reduction credits for all county-jail inmates, including those incarcerated "under a judgment of imprisonment" and those incarcerated "following arrest and prior to the imposition of sentence. . . ." Cal. Penal Code § 4019(a)(1), (4). Section 4019.3

consistently authorizes and limits payment of wages to "each prisoner confined in or committed to a county jail," which includes not only convicted inmates, but pre-trial detainees. *See* Cal. Penal Code § 4000 (identifying the use of county jails "[f]or the detention of persons charged with crime and committed for trial"); accord Opinion No. CR 73-51, 57 Op. Cal. Att'y Gen. 276, 283 (1974) (determining that Section 4019.3 "applies to pre-sentence as well as post-sentence work time.").

As the district court noted, one section of the Penal Code does apply only to convicted inmates. 1-ER-22. But that provision, Section 4017, authorizes counties to require convicted inmates to work on public works and roads. It neither applies to Appellees' participation in a work program established under Proposition 139—as even the district court acknowledged, 1-ER-23—nor prescribes any form of compensation for the work it authorizes. Moreover, by expressly limiting its application to convicted inmates, it confirms that the legislature sets different rules for inmates based on conviction status expressly when it intends to do so. In contrast, Sections 4019 through 4019.3 define the benefits inmates earn from work in terms that apply equally regardless of conviction status, demonstrating that the Legislature did not intend

to grant pre-trial detainees greater benefits for working than those granted convicted inmates. *See, e.g.*, *Cornette*, 26 Cal. 4th at 73; *Mutual Life*, 50 Cal. 3d at 410.

The district court's analysis is similarly unsupported by secondary indicia of intent. Like the laws Proposition 139 enacted, the related ballot materials discussed two categories of inmates: those incarcerated in state prisons and those in county jails. 3-ER-504. The ballot materials drew no distinction based on conviction status, and thus neither did voters. *See Eu*, 54 Cal. 3d at 504. Moreover, as discussed, the statutory context into which voters enacted Proposition 139 provided equally for both non-monetary and monetary compensation for all types of county inmates, regardless of conviction status. By granting counties authority to set compensation terms under that statutory framework, voters must be understood to have intended to continue treating all county inmates equally. *See Amador Valley*, 22 Cal. 3d at 243–44.

Nor is the district court's ruling supported by its focus on Proposition 139's goals of ensuring compensation for state inmates and protecting non-incarcerated workers on strike. 1-ER-18–19. As

discussed in Section II.A.2, this discussion of voter intent is incomplete at best. Regardless, these policy aims provide no logical basis for treating pre-trial detainees differently from convicted county inmates. Such differential treatment of county inmates neither ensures compensation for state inmates nor mitigates job losses for striking workers.

Finally, case law interpreting the Fair Labor Standards Act confirms that pre-trial detainees should not be treated differently from convicted inmates when considering their entitlement to wages. *Villarreal*, 113 F.3d at 206-07. As the Eleventh Circuit explained, "pretrial detainees are in a custodial relationship like convicted prisoners." *Id.* "Correctional facilities provide pretrial detainees with their everyday needs such as food, shelter, and clothing." Thus, just like all incarcerated persons, the unique relationship between pre-trial detainees and jail operators makes ordinary employment definitions inapplicable. *Id.*

Here again, the district court distinguished *Villareal* on the grounds that the pre-trial detainees in that case were not producing goods for sale outside the jail. 1-ER-23. But, as discussed above, that is

not a relevant distinction. This Court has already concluded that the economic benefits generated by inmates' work does not change their legal status. *See Burleson*, 83 F.3d at 314.

2. The Thirteenth Amendment does not require payment of minimum wages to pre-trial detainees.

The district court also erred to the extent it distinguished pre-trial detainees' wage rights based on the Thirteenth Amendment's prohibition against forcing inmates to work while they await trial. *See* 2-ER-318–319; *see also* 1-ER-24, n.6 [declining to resolve whether the Thirteenth Amendment justified Appellees' wage claims]. The Thirteenth Amendment does not grant Appellees a right to the protections of California's Labor Code.

There is no dispute for purposes of this appeal that pre-trial detainees have a Thirteenth Amendment right to be free from forced labor that convicted inmates do not. *United States v. Kozminski*, 487 U.S. 931, 943 (1988); *McGarry v. Pallito*, 687 F.3d 505, 511 (2d Cir. 2012). Indeed, Appellees related constitutional claims that Appellants forced them to work—though disputed—are currently being litigated in the district court. *See* 1-ER-28–30.

But the Thirteenth Amendment does not grant Appellees any right to minimum wages under California's Labor Code. Research has not uncovered a single case holding that there is a constitutional right to wages of any amount, and the record below reveals none. The Thirteenth Amendment is simply not concerned with setting the terms of compensation; it is concerned only with "compulsory labor akin to African slavery. . . ." *Butler v. Perry*, 240 U.S. 328, 332 (1916).

Even assuming that a constitutional wage right were possible, it would fall to Congress to set that wage. *See* U.S. Const. amend. XIII, § 2 (delegating to Congress exclusive authority to effectuate the Thirteenth Amendment through legislation). Needless to say, Congress has not enacted a constitutional wage minimum. And the minimum wage it *has* prescribed does not apply to pre-trial detainees as a matter of law. *Villarreal*, 113 F.3d at 206.

The district court's order distinguishing the wage rights of pre-trial detainees thus finds no support in the Thirteenth Amendment.

CONCLUSION

Proposition 139's plain text, legislative history, and statutory context all confirm that Appellees were entitled only to non-monetary

compensation for work they performed under the County's contract with Aramark. They could have received wages only if authorized by County ordinance and in an amount no more than two dollars per eight-hours of work. The County has no such ordinance, and Appellees have no right to monetary compensation, as a result. The district court erred as a matter of law when it denied Appellants' motions to dismiss Appellees' claims under Labor Code § 1194. This Court should reverse with directions for the district court to grant Appellees' motion.

DATED: January 26, 2022 HANSON BRIDGETT LLP

By: /s/ Adam W. Hofmann
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STATEMENT OF RELATED CASES

County Appellants are not aware of any related cases pending before the Court.

DATED: January 26, 2022 HANSON BRIDGETT LLP

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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9th Cir. Case Number(s) 21-16528

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ADDENDUM OF PRIMARY AUTHORITIES
9th Cir. Rule 28-2.7

California Constitution

Article XIV, Section 5

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

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

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

California Labor Code

Section 1182

(a) After receipt of the wage board report and the public hearings on the proposed regulations, the commission may, upon its own motion, amend or rescind an existing order or promulgate a new order. However, with respect to proposed regulations based on recommendations supported by at least two-thirds of the members of the wage board, the commission shall adopt such proposed regulations, unless it finds there is no substantial evidence to support such recommendations.

(b) If at any time the federal minimum wage applicable to employees covered by the Fair Labor Standards Act of 1938, as amended, prior to February 1, 1967, is scheduled to exceed the minimum wage fixed by the commission, the provisions of Sections 1178 and 1178.5 pertaining to wage boards shall be waived and the commission shall, in a public meeting, adopt an order fixing a new minimum wage at the scheduled higher federal minimum wage. The effective date of such order shall be the same as the effective date of the federal minimum wage, and such order shall not become operative in the event the scheduled increase in the federal minimum wage does not become operative.

California Labor Code

Section 1182.12

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c)

(1) Following the implementation of the minimum wage increase specified in subparagraph (F) of paragraph (2) of subdivision (b), on or before August 1 of that year, and on or before each August 1 thereafter, the Director of Finance shall calculate an adjusted minimum wage. The calculation shall increase the minimum wage by the lesser of 3.5 percent and the rate of change in the averages of the most recent July 1 to June 30, inclusive, period over the preceding July 1 to June 30, inclusive, period for the United States Bureau of Labor Statistics nonseasonally adjusted United States Consumer Price Index for Urban Wage Earners and

Clerical Workers (U.S. CPI-W). The result shall be rounded to the nearest ten cents ($0.10). Each adjusted minimum wage increase calculated under this subdivision shall take effect on the following January 1.

(2) If the rate of change in the averages of the most recent July 1 to June 30, inclusive, period over the preceding July 1 to June 30, inclusive, period for the United States Bureau of Labor Statistics nonseasonally adjusted U.S. CPI-W is negative, there shall be no increase or decrease in the minimum wage pursuant to this subdivision on the following January 1.

(3)

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

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

(d)

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

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

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

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

(i) The State Board of Equalization shall publish by the 10th of each month on its Internet Web site the total retail sales (sales before adjustments) for the prior

month derived from their daily retail sales and use tax reports.

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

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

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

(2)

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

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

scheduled for the following calendar year pursuant to subdivision (b) will be implemented.

(3)

(A)

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

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

(B) If the Governor provides notice to the Legislature pursuant to subparagraph (A), the Governor shall, on September 1 of any such year, make a final determination whether to temporarily suspend the minimum wage increases scheduled pursuant to subdivision (b) for the following year. The determination to temporarily suspend the minimum wage increases scheduled pursuant to subdivision (b) for the following year shall be made by proclamation.

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

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

California Labor Code

Section 3370

(a) Each inmate of a state penal or correctional institution shall be entitled to the workers' compensation benefits provided by this division for injury arising out of and in the course of assigned employment and for the death of the inmate if the injury proximately causes death, subject to all of the following conditions:

(1) The inmate was not injured as the result of an assault in which the inmate was the initial aggressor, or as the result of the intentional act of the inmate injuring himself or herself.

(2) The inmate shall not be entitled to any temporary disability indemnity benefits while incarcerated in a state prison.

(3) No benefits shall be paid to an inmate while he or she is incarcerated. The period of benefit payment shall instead commence upon release from incarceration. If an inmate who has been released from incarceration, and has been receiving benefits under this section, is reincarcerated in a city or county jail, or state penal or correctional institution, the benefits shall cease immediately upon the inmate's reincarceration and shall not be paid for the duration of the reincarceration.

(4) This section shall not be construed to provide for the payment to an inmate, upon release from incarceration, of temporary disability benefits which were not paid due to the prohibition of paragraph (2).

(5) In determining temporary and permanent disability indemnity benefits for the inmate, the average weekly earnings shall be taken at not more than the minimum amount set forth in Section 4453.

(6) Where a dispute exists respecting an inmate's rights to the workers' compensation benefits provided herein, the inmate may file an application with the appeals board to resolve the dispute. The application may be filed at any time during the inmate's incarceration.

(7) After release or discharge from a correctional institution, the former inmate shall have one year in which to file an original application with the appeals board, unless the time of injury is such that it would allow more time under Section 5804 of the Labor Code.

(8) The percentage of disability to total disability shall be determined as for the occupation of a laborer of like age by applying the schedule for the determination of the percentages of permanent disabilities prepared and adopted by the administrative director.

(9) This division shall be the exclusive remedy against the state for injuries occurring while engaged in assigned work or work under contract. Nothing in this division shall affect any right or remedy of an injured inmate for injuries not compensated by this division.

(b) The Department of Corrections shall present to each inmate of a state penal or correctional institution, prior to his or her first assignment to work at the institution, a printed statement of his or her rights under this division, and a description of procedures to be followed in filing for benefits under this section. The statement shall be approved by the administrative director and be posted in a conspicuous place at each place where an inmate works.

(c) Notwithstanding any other provision of this division, the Department of Corrections shall have medical control over treatment provided an injured inmate while incarcerated in a state prison, except, that in serious cases, the inmate is entitled, upon request, to the services of a consulting physician.

(d) Paragraphs (2), (3), and (4) of subdivision (a) shall also be applicable to an inmate of a state penal or correctional institution who would otherwise be entitled to receive workers' compensation benefits based on an injury sustained prior to his or her incarceration. However, temporary and permanent disability benefits which, except for this subdivision, would otherwise be payable to an inmate during incarceration based on an injury sustained prior to incarceration shall

be paid to the dependents of the inmate. If the inmate has no dependents, the temporary disability benefits which, except for this subdivision, would otherwise be payable during the inmate's incarceration shall be paid to the State Treasury to the credit of the Uninsured Employers Fund, and the permanent disability benefits which would otherwise be payable during the inmate's incarceration shall be held in trust for the inmate by the Department of Corrections during the period of incarceration.

For purposes of this subdivision, "dependents" means the inmate's spouse or children, including an inmate's former spouse due to divorce and the inmate's children from that marriage.

(e) Notwithstanding any other provision of this division, an employee who is an inmate, as defined in subdivision (e) of Section 3351 who is eligible for vocational rehabilitation services as defined in Section 4635 shall only be eligible for direct placement services.

California Labor Code

Section 6304.2

Notwithstanding Section 6413, and except as provided in Sections 6304.3 and 6304.4, any state prisoner engaged in correctional industry, as defined by the Department of Corrections, shall be deemed to be an "employee," and the Department of Corrections shall be deemed to be an "employer," with regard to such prisoners for the purposes of this part.

California Penal Code

Section 2717.8

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

(1) Federal, state, and local taxes.

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

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

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

California Penal Code

Section 2811

Commencing July 1, 2005, the general manager shall adopt and maintain a compensation schedule for inmate employees. That compensation schedule shall be based on quantity and quality of work performed and shall be required for its performance, but in no event shall that compensation exceed one-half the minimum wage provided in Section 1182 of the Labor Code, except as otherwise provided in this code. This compensation shall be credited to the account of the inmate.

Inmate compensation shall be paid from the Prison Industries Revolving Fund.

California Penal Code

Section 4019

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

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

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

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

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

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

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

(7) When a prisoner participates in a program pursuant to Section 1203.016 or Section 4024.2. Except for prisoners who have already been deemed eligible to receive credits for participation in a

program pursuant to Section 1203.016 prior to January 1, 2015, this paragraph shall apply prospectively.

(8) When a prisoner is confined in or committed to a state hospital or other mental health treatment facility, or to a county jail treatment facility, as defined in Section 1369.1, in proceedings pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2.

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

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

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

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

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

(g) The changes in this section as enacted by the act1 that added this subdivision shall apply to prisoners who are confined to a county jail,

city jail, industrial farm, or road camp for a crime committed on or after the effective date of that act.

(h) The changes to this section enacted by the act2 that added this subdivision shall apply prospectively and shall apply to prisoners who are confined to a county jail, city jail, industrial farm, or road camp for a crime committed on or after October 1, 2011. Any days earned by a prisoner prior to October 1, 2011, shall be calculated at the rate required by the prior law.

(i)

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

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

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

California Penal Code

Section 4019.3

The board of supervisors may provide that each prisoner confined in or committed to a county jail shall be credited with a sum not to exceed two dollars ($2) for each eight hours of work done by him in such county jail.