Case No. S279137

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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

vs.

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

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

ANSWER BRIEF ON THE MERITS

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INTRODUCTION

Defendant/Respondent ALAMEDA HEALTH SYSTEM is a public hospital authority which operates several hospitals in Northern California ("AHS"). AHS systematically underpays their employees by deducting time spent for meal periods when meal periods were not taken, as is shown by comparing employee time cards showing no clock out for meal periods with their corresponding wage statements which show ½ hour automatically deducted for meals.

This putative class action is brought by Plaintiffs/Appellants TAMELIN STONE ("STONE"), a medical assistant, and AMANDA KUNWAR ("KUNWAR"), a Licensed Vocational Nurse, on behalf of themselves and all others similarly situated for wage and hour violations under the California Labor Code. AHS demurred on the grounds that it is exempt from the Labor Code as a public entity.

Per statutory maxim, AHS is not a public entity with sovereign powers which would be infringed by application of the Labor Code provisions in issue. AHS was created as a hospital authority under special legislation without powers of governance. By its enabling statute, it has no elected board of directors, no powers of taxation, no powers of eminent domain, no assigned jurisdiction over which it governs, nor any other

powers required of a sovereign entity entitled to exemption from the Labor Code.

AHS expressly holds liability separate and apart from that of the County of Alameda. It is a purely administrative body, created to operate specific hospitals, not a governing body.

STONE and KUNWAR alleged causes of action on behalf of themselves and the putative class under the California Labor Code. Causes of action 1-7 of the operative First Amended Complaint ("FAC") are class action claims alleging Labor Code wage and hour violations and are the claims in issue on the appeal: FIRST CAUSE OF ACTION - Failure to Provide Off-Duty Meal Periods; SECOND CAUSE OF ACTION - Failure to Provide Off-Duty Rest Breaks; THIRD CAUSE OF ACTION - Failure to Keep Accurate Payroll Records; FOURTH CAUSE OF ACTION -Failure to Provide Accurate Itemized Wage Statement; FIFTH CAUSE OF ACTION - Unlawful Failure to Pay Wages; SIXTH CAUSE OF ACTION - Failure to Timely Pay Wages; SEVENTH CAUSE OF ACTION - Private Attorney General Act.

The Trial Court sustained demurrer as to each cause of action based on AHS's claim of sovereign immunity. The Court of Appeal overruled the Trial Court as to all causes of action save for the wage statement violations

stated in the fourth cause of action. The Court of Appeal also ruled that the demurrer was sustained as to the seventh cause of action under PAGA, but only for that statute's "default" penalties. Penalties which are already stated in the Labor Code were deemed recoverable under PAGA.

STATEMENT OF ISSUES

1. Are all public entities exempt from the obligations in the Labor Code 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?

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?

STATEMENT OF THE CASE

Under the modern maxim of sovereign immunity a statute which is silent as to whether a public entity is bound will not apply to a public employer unless no impairment of sovereign powers would result from

doing so, in the absence of legislative intent otherwise. (Hoyt v. Board of Civil Service Com'rs of City of Los Angeles (1942) 21 Cal.2d 366, 402; Wells v. One2One Learning Foundation (2006) 39 Ca1.4th 1164, 1192)

Sovereign immunity exists to protect the ruling sovereign from attacks on its ability to govern. AHS is an administrative body, not a governing body. It has no powers other than to administrate and oversee hospitals. AHS has no sovereign immunity.

Per its enabling statute, Health and Safety Code section 101850 (attach. "A"), AHS possesses none of the types of powers associated with exempt sovereigns and is expressly insulated from its enabling sovereign, the County of Alameda, financially, operationally and from liabilities.

There is no stated exemption nor express liability for non sovereign entities under the Labor Code provisions for meal and rest breaks, overtime, payroll reporting or prompt pay violations, nor is there indicia the Legislature intended an exemption. Under the sovereign powers maxim only those entities whose sovereign powers which would be infringed by application of the statute are exempt from those statutes and AHS does not qualify.

Public entities are bound by claims under the Private Attorney General Act, both for the default penalties created by the Act and for

penalties prescribed in the Labor Code which underpin a PAGA claim.

STANDARD OF REVIEW

A general demurrer is reviewed de novo to determine if the pleading alleges facts sufficient to state a cause of action. (McCall v. PacifiCare of Cal., Inc. (2001) 25 Cal.4th 412, 415)

The demurrer is treated as admitting all material facts properly pleaded, but does not admit the truth of contentions, deductions or conclusions of law." (Davis v. Fresno Unified School Dist. (2015) 237 Cal.App.4th 261, 274)

Appellate courts will examine the complaint's factual allegations to "determine de novo whether the complaint states facts sufficient to state a cause of action under any possible legal theory." (City of Dinuba v. County of Tulare (2007) 41 Cal.4th 859, 870)

Labor Code provisions are interpreted liberally to promote worker protections. (McLean v. State of California (2016) 1 Cal.5th 615, 622)

In ruling on a demurrer, where allegations are subject to different reasonable interpretations, court must draw inferences favorable to the plaintiff, not the defendant. (Perez v. Golden Empire Transit Dist. (2012) 209 Cal.App.4th 1228, 1238)

A claim for immunity against liability is an affirmative defense.

(Castro v. City of Thousand Oaks (2015) 239 Cal.App.4th 1451, 1453) The burden of proof of an affirmative defense is on the party claiming it. (Prince v. Kennedy (1906) 3 Cal.App. 404, 407)

LEGAL ARGUMENT

I

THERE IS NO GENERAL IMMUNITY FOR PUBLIC ENTITIES UNDER THE LABOR CODE

A. The Modern Sovereign Immunity Maxim Requires a Finding of Infringement of Sovereign Powers Before Immunity Will Apply

1. Hoyt v. Board of Civil Service Established the Modern Maxim Requiring Infringement of Sovereign Powers

The general rule of sovereign immunity can be traced back to 18th century treatises on English common law. Unless expressly named, the sovereign is not subject to Legislative decree if it tends to diminish his rights - "...the King is not bound by any act of parliament unless he be named therein by special and particular words. The most general words that can be devised (any person or persons, bodies politic or corporate, etc.) affect him not in the least, if they may tend to restrain or diminish any of his rights or interests." (Balthasar v. Pacific Elec. Ry. Co. (1921) 187 Cal. 302, 305, citing Blackstone's Commentaries, Book 1, p. 261.)

In Hoyt v. Board of Civil Service Com'rs of City of Los Angeles (1942) 21 Cal.2d 399 this Court emphasized focus on the effect of a given

statute on sovereign *powers*, clarifying that the rationale of the maxim was protection of the right to govern, rather than protecting a given entity.

Hoyt ruled that the word "person" in a statute describing liable entities would include a governmental entity only where it would not infringe sovereign powers, noting that a previous case, Bayshore San. Dist. v. San Mateo County (1941) 48 Cal.App.2d 337 had not fully analyzed the general rule of sovereign immunity. Bayshore had limited the doctrine to a rule that "the word 'person' should not be held to include any political subdivision of the state in the absence of an express indication that such was the legislative intent". (Hoyt, supra, at 402) Hoyt analyzed the doctrine to give effect to the rationale justifying sovereign immunity. The Court noted that the rule is founded on protection against infringement of sovereign governmental powers:

> "This general rule of statutory construction, which is supported by numerous cases, is founded upon the principle that statutory language should not be interpreted to apply to agencies of government, in the absence of a specific expression of legislative intent, where the result of such a construction would be to infringe sovereign governmental powers. See, Butterworth v. Boyd, 12 Cal.2d 140, 150, 82 P.2d 434, 126 A.L.R. 838; Balthasar v. Pacific Elec. Ry. Co., 187 Cal. 302, 305–308, 202 P. 37, 19 A.L.R. 452; Bayshore San. Dist. v. San Mateo County supra, 48 Cal.App.2d page 339, 119 P.2d 752, and cases cited therein; 23 Cal.Jur. 625 et seq" (Hoyt, ibid.)

The Court went on to hold that if there is no such impairment of

sovereign powers, no immunity applies:

> "Where, however, no impairment of sovereign powers would result, the reason underlying this rule of construction ceases to exist and the Legislature may properly be held to have intended that the statute apply to governmental bodies even though it used general statutory language only. See State of California v. Marin Mun. W. Dist., 17 Cal.2d 699, 704, 111 P.2d 651. For reasons set forth hereafter we think that the latter rule is the one which applies under the facts of the present case." (Hoyt, ibid.)

Hoyt ruled that the City of Los Angeles was not exempt from a declaratory relief statute which encompassed "persons". An action for declaratory relief does not, in itself, expand or create liability such that sovereign power is threatened. (Hoyt, supra, at 404-405)

Hoyt has been followed by the Courts since its publication in 1942. (In re Bevilacqua's Estate (1948) 31 Cal.2d 580, 584-85; Dropo v. City and County of San Francisco (1959) 167 Cal.App.2d 453, 460; Flournoy v. State (1962) 57 Cal.2d 497, 498; People v. Centr–O–Mart (1950) 34 Cal.2d 702, 703-704; State of California ex rel. Dept. of Employment v. General Insurance Company of America (1970)13 Cal.App.3d 853; City of Los Angeles v. City of San Fernando (1975) 14 Cal.3d 199, 276)

The Hoyt maxim applies to the Labor Code. (State Compensation Ins. Fund v. Workers' Comp. Appeals Bd. (1979) 88 Cal.App.3d 43, 56-57 - Per Hoyt maxim, Labor Code section 139.5 applied to public employers re obligations to provide vocational rehab benefits; Grier v. Alameda-Contra

Costa Transit Dist. (1976) 55 Cal.App.3d 325, 333, Labor Code section 2698, regarding wage deductions for coming late to work applied to defendant public entity)

2. Wells v One2One Affirmed Hoyt's Sovereign Powers Rule Where Statutes Are Ambiguous

In Wells v. One20ne Learning Foundation (2006) 39 Ca1.4th 1164, this Court noted the "traditional rule" regarding sovereign immunity - that in general public entities were deemed immune from statutory liability if not expressly named - but also noted the accepted modern interpretation requiring an infringement of sovereign powers under Hoyt. (Wells, supra, 1192) Wells held that a public school district was exempt from the California False Claims Act but that charter schools operating under that district were not. The charter schools held no sovereign powers and their liability did not accrue to the sovereign District, thus there was no infringement of sovereign powers. (Wells, 1201-1202)

Per Wells, the Courts must first inspect the statutory language itself, giving it its "usual and ordinary meanings, and construing them in context". If the language allows more than one reasonable construction, then the maxims of statutory construction are reviewed in addition to legislative history and public policy. (Wells, supra, at 1190)

Wells acknowledged the validity of the modern sovereign powers

doctrine, but found positive indicia of legislative intent to not bind the defendant School District there under the California False Claims Act because the Act's original legislation had included "as covered "persons," "district, county, city and county, city, the state, and any of the agencies and political subdivisions of these entities" but the final version of the bill omitted that reference. (Wells, at 1191) This was firm evidence of the intent of the legislature to not include those entities under the CFCA.

No such evidence exists under the Labor Code. Labor Code section 18 prescribes liability for "persons" and does not reference public entities one way or the other.

> ""Employer" means 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." (8 CCR sec. 11050(2)(H))
>
> ""Person" means any person, association, organization, partnership, business trust, limited liability company, or corporation." (Labor Code sec. 18)

There does not appear to be a report on the legislative history of Labor Code section 18, enacted in 1937, leaving the statute ambiguous and, per Wells, therefore subject to the sovereign powers analysis.

AHS bears closer resemblance to the liable charter schools in Wells than the exempt school district there. The sovereign County of Alameda is

by contract immune from liability incurred by AHS and has no operational responsibility for the Hospitals. (Health and Safety Code sections 101850(a)(1), (j), (k)(1), (k)(3), (l)(2)) AHS's liabilities therefore place no financial burden on the County. AHS is financially and operationally isolated from the sovereign County and holds no sovereign powers of its own. It is not exempt from the Labor Code.

Wells summarized the rule: "...absent contrary indicia of legislative intent, statutory "persons" are deemed to include governmental entities, both state and local, unless such inclusion would infringe the entities' exercise of their sovereign powers and duties." (Wells, supra, 1198)

Cases after Wells follow the sovereign powers infringement analysis as to Labor Code violations. (Guerrero v. Superior Court (2013) 213 Cal.App.4th 912; Johnson v. Arvin-Edison Water Storage Dist. (2009) 174 Cal.App.4th 729, 738; California Correctional Peace Officers' Assn. v. State of California (2010) 188 Cal.App.4th 646, fn 7; Alvarez v. City of Oxnard 2021 WL 9181880)

3. AHS Misapplies Wells v One2One

AHS's reading of Wells v. One2One Learning Foundation, supra, 39 Cal.4th 1164 overlooks the ultimate holding of that case. (Opening, 26-31) In Wells, this Court looked at two sets of defendants under the California

False Claims Act. The first defendant was a public school district, the second were charter schools and the operator of those schools. There was positive indicia of legislative intent to not include public entities under the CFCA. (Wells, at 1190-91, 1194-97) The public school district held sovereign powers and was held not liable therefore. The charter schools lacked sovereign powers and were insulated financially from the school district and were deemed non exempt.

Mayrhofer v Board of Education (1891) Ca. 110, 112, cited by AHS, and other cases adhering to the traditional rule of sovereign immunity prior to Hoyt failed to follow the sovereign immunity analysis to its full logical extent. AHS notes "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.)" (Opening Brief, 29-30) This vague nod to the Supreme Court's decision in Hoyt downplays its significance. Hoyt emphasized that infringement of sovereign powers is a necessary element which must be met before a public entity is immunized from a non specific statute.

AHS implies that Wells rejected the Hoyt analysis of infringement of sovereign powers and instead reverted to the traditional analysis which Hoyt had rejected, "an approach bearing much closer resemblance to the standard originally recognized in *Mayrhofer*". (Opening Brief, 30) But Wells does not at any juncture abandon the Hoyt analysis, it merely applied that analysis to two different sets of defendants, the Public School District, which held sovereign powers, and the Charter Schools, which did not. (Wells, supra, at 1201) Wells v One2One, supra, did not abrogate, diminish, or detract in any way from the fundamental rule in Hoyt.

4. Administrative Agencies and the California Attorney General Follow Hoyt's Rule on Sovereign Powers

Various administrative agencies, as well as the California Attorney General's Office also follow the rule established in Hoyt- "The crucial distinction in each of these cases is whether the particular legislation affects the fundamental purposes and functions of the governmental body. Immunity is granted if statutorily mandated activities are impaired" (63 Ops. Cal. Atty. Gen. 24 (Cal.A.G.), 1980 WL 96793, Opinion No. 79-911, at p. 3); "Where . . . no impairment of sovereign powers would result, the reason underlying this rule of construction ceases to exist and the Legislature may properly be held to have intended that the statute apply to governmental bodies even though it used general statutory language only"

(75 Ops. Cal. Atty. Gen. 98 (Cal.A.G.), 1992 WL 469712 , Opinion No. 91-811, at p. 2);

The California Fair Political Practices Committee provided a succinct and accurate synopsis of the rule:

> "In Hoyt, the Court indicated that there was no longer even a "rule of construction" with respect to the inclusion of governments in statutes using the word "person," unless the statute would infringe on the "sovereignty" of the governmental unit. Since the Hoyt decision the California courts have generally interpreted statutes applicable to "persons" on a case-by-case basis, taking into consideration the purposes of the statute and any other indicia of legislative intent...." (CA FPPC Op. 75-044 (Cal.Fair.Pol.Prac.Com.), 1 FPPC Op. 1, 1975 WL 37312, p. 3, MSJ, ex. "K")

The Hoyt sovereign powers maxim is well established.

5. A Sovereign Powers Analysis Must Apply to Labor Code Sections Which Are Silent as to Public Entity Liability

AHS claims that the inclusion of public entities in certain sections of the Labor Code means that they are exempt when other sections are silent. (Opening, p. 36)

This same argument can be made in favor of holding governmental entities liable within the Labor Code generally. Numerous Labor Code sections expressly exclude governmental entities. Labor Code sections 220(b) and 226(i) both expressly exclude certain public entities from coverage for waiting time penalties and payroll record keeping

requirements. Labor Code section 220(a) excludes the State of California from timing of payments in certain industries. Section 432.2(a) specifically exempts public entities from lie detector prohibitions. Under Labor Code section 1025 public employers are exempt from voluntary drug rehabilitation programs. If a general "default" exemption applied, these express exemptions would be unnecessary. (Johnson v. Arvin-Edison Water Storage Dist., supra, 174 Cal.App.4th 736-737)

Silence as to public entity liability does not mean an automatic finding of an exemption, as AHS suggests. Rather, the omission of express liability invokes the sovereign powers maxim. (Wells, supra, at 1190)

6. The Wage Orders Do Not Show Intent to Generally Exempt Public Entities

AHS claims that the history of the Wage Orders and the corresponding Labor Code provisions reveals "an additional indication that" these laws do "not include public entities". (Opening Brief , 40)

The citations provided by AHS in their opening brief merely provide a synopsis of the "traditional" sovereign immunity rule without the analysis of sovereign powers required in Hoyt. They do not indicate a general rule of exemption for public entities within the Labor Code.

IWC Order No 5-76 sec. 2(F), cited by AHS, defines a liable employer in the same manner as in current Wage Order 5-2001 which states

that liable "persons" are as defined in Labor Code section 18 (Wage Order 5-2001 section 2(H), MJN, ex. "J"). This in turn invokes the sovereign powers analysis above.

AHS notes that the Legislature enacted statutory meal period requirements and penalties in what became Labor Code sections 512 and 226.7, emphasizing the fact that the definition of "employer" there did not change from the IWC Wage Order definition. (Opening, 38-39) As noted by AHS, A.B. 60 did not define what a liable "employer" is. As such, the default definition reverts to Labor Code section 18's definition of a "person", and thereby inextricably leads to the sovereign powers analysis, per Wells.

AHS's references to the exclusion of governmental entities from coverage under the Wage Orders, (Opening Brief, 37-40) refer only to the traditional exemption for public entities without reference to the sovereign powers maxim. This only begs the question as to which public entities are immune. It does not state a blanket exemption which endures despite Hoyt.

Sovereign immunity is not provided to every public entity no matter how minimal its sovereign powers. The sovereign powers maxim provides a line at which a given entity is not exempt. AHS is a clear example of an entity which is outside the scope of protected sovereigns.

B. The Court of Appeal Correctly Followed The Sovereign Powers Rule

The ruling of the Court of Appeal here correctly followed the sovereign powers maxim. (Stone v. Alameda Health System (2023) 88 Cal.App.5th 84, 92-93)

The term "persons" as defined in Labor Code section 18, which defines liable entities under the Labor Code, is ambiguous as it applies to governmental entities - ""Person" means any person, association, organization, partnership, business trust, limited liability company, or corporation" (Labor Code section 18) Per Wells, this leads to an examination of legislative history and maxims of statutory construction as aids in determining intent. (Wells, at 1190)

Wells found such indicia of legislative intent where the initial drafts of the bills that became the California False Claims Act specifically named government entities as liable, but the final version did not. This Court held that although the statute's use of the word "persons" was ambiguous, this indicia of legislative intent overrode the application of the maxim of interpretation. (Wells, at 1191-1193) No such indicia appears here. There is nothing in the history of the legislation that became Labor Code section 18 which would indicate an intent to exclude government entities from coverage under the Labor Code generally.

The Court of Appeal, following Wells, applied the sovereign powers maxim and correctly held that AHS was not exempt, given its lack of sovereign powers. (Stone, supra, 92-93)

II

AHS IS EXPRESSLY A NON SOVEREIGN ENTITY

A. AHS Has None of the Attributes of a Sovereign Governing Entity Which Would Exempt it from the Labor Code

AHS was specifically legislated to be independent in all significant ways from the County of Alameda and to be without the powers associated with public entities which have been held exempt under the Labor Code. The Court in Division of Labor Law Enforcement v. El Camino Hosp. Dist. (1970) 8 Cal.App.3d Supp. 30, ruled that a Health District formed under Health and Safety code section 32000, et seq, is a "municipal corporation" under Labor Code section 220 and held immunity thereunder. As noted in Gateway Community Charters v. Spiess (2017) 9 Cal.App.5th 499, "the entity at issue in El Camino, a public hospital district, bore other characteristics reminiscent of a municipal corporation that are not present here and that were not expressly discussed in El Camino. (See Health & Saf. Code, sec. 32000 et seq. [powers, governance, and regulation of local health care or hospital districts].)..." (Gateway, at 505)

AHS was created under sec. 101850 with no such powers - AHS has

no elected governing board. (Health &Safety Code sec. 101850(c)) Health Districts have elected Boards which serve four year terms. (Health & Safety Code. sec. 32100.5; AHS has no power of eminent domain, (Health and Safety Code sec. 101850(q)) unlike Health Districts. (Health and Safety Code. sec 32121); AHS has no power to tax. (Legislative Analyst's Office - Overview of Health Care Districts, Presented to: Assembly Accountability and Administrative Review Committee, Hon. Roger Dickinson, Chair, p. 1, MJN ex. "G") Health Districts can tax directly for funds. (ibid.); AHS has no jurisdictional territory. Its authority is limited by written agreements with the County to operate County owned hospitals. (Alameda County Code 2.120.080, attach. "B") A Health District is accorded governing territory. (Health and Safety Code sec. 32001)

AHS is not a Health District with sovereign powers of governance, it is an administrative body.

B. The Enabling Statute Does Not Grant AHS Sovereign Immune Status

AHS claims that its enabling statute, Health and Safety Code section 101850, shows an intent to exempt it from liability under the Wage Orders. (Opening, 47)

AHS points to its inclusion on the Roster of Public Agencies as evidence of its immune public entity status (Opening, 47-48), however, the

Roster of Public Agencies is merely is a means to obtain information for filing claims. (Tubbs v. Southern California Rapid Transit Dist. (1967) 67 Cal.2d 671, 676) It does not grant immune status. To the contrary, a claimant querying the Roster is presumably filing under a statute for which the entity holds liability.

Also contrary to AHS's assertion, the fact that AHS employees may be subject to protection under the Government Claims Act has no bearing on liability because the Act does not cover Labor Code claims (Gov. Code sec. 905(c); Loehr v Ventura County Community College District (1983) 147 Cal.App.3d 1071) Further, the Government Claims Act specifically includes "public authorities" (Gov. Code sec 811.2) such as AHS, while Labor Code section 18 does not.

AHS notes that AHS staff is exempted from the incompatible activities law Government Code section 1125, et seq. (Opening, 48) That statute mandates that activity by public employees may not conflict with their official duties. (Gov. Code section 1126(a)) This only reinforces that AHS employees are not County employees, that their work is separate and apart from the County and that AHS is not accorded protections of the sovereign County.

AHS also states that it has "all the rights and duties set forth in state

law with respect to hospitals owned or operated by a county" (Opening, 50) This is an incomplete quote of the enabling statute, which states that "*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". (Health and Safety Code section 101850(m), emph. added)

The term "notwithstanding" overrides only those provisions of law that conflict with the cited statute. (Arias v. Superior Court (2009) 46 Cal.4th 969, 983) The numerous terms which create liability for AHS separate and apart from the County are not in conflict with sub (m) as regards sovereign immunity. Sub (m) does not expressly mention immunity and the rights and duties of a county owned or operated hospital "set forth in state law" do not necessarily include sovereign immunity. If the intent was to grant sovereign status, sub (m) would have directly stated so, or would have unqualifiedly awarded the rights and duties of "Counties" or "Health Districts formed under Health and Safety Code section 32000 et seq.", which are recognized immune entities. Instead, sub (m) requires a further analysis of "state law" as it applies to sovereign immunity.

III

MEAL AND REST BREAKS, OVERTIME AND RECORD KEEPING VIOLATIONS APPLY TO NON SOVEREIGN PUBLIC ENTITIES SUCH AS AHS

A. AHS Is Not Exempt from Labor Code Overtime Provisions

1. Claims for Overtime Violations May Be Brought as a PAGA Action Under Wage Order 5-2001 Section 20

AHS incorrectly argues that it is exempt from overtime claims under the Wage Orders. The Wage Orders specifically allow overtime claims to be brought by the Labor Commissioner. Those claims may thus also be brought by employees under PAGA.

AHS claims that "... the wage orders also generally exempt public entities from their substantive requirements except for those regarding minimum wages and meals and lodging", citing Wage Order section (1)(C) (Opening, 33) AHS also argues that "The IWC did not extend the sections governing overtime (section 3)... to government employees" when the IWC revised the Wage Orders in 2001, implying an exemption for overtime claims. (Opening, 39) This is patently incorrect. The Wage Orders expressly permit an action by the Labor Commissioner to pursue overtime violations under section 20(B) which is excluded from exemption under section 1(C).

Wage Order 5-2001 section 1(C) specifically excludes sections 1, 2, 4, 10, and 20 from exemption for "the State or any political subdivision

thereof, including any city, county, or special district". (Wage Order 5-2001, MJN ex. "J") Thus, those public entities are liable under section 20. Wage Order section 20(B) authorizes the Labor Commissioner to pursue the civil penalties stated in Labor Code section 1197.1 for overtime violations:

> "The Labor Commissioner may also issue citations pursuant to Labor Code § 1197.1 for non-payment of wages for overtime work in violation of this order. (Wage Order 5-2001, sec. 20 (B))
>
> "Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission, shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows:..." (Labor Code section 1197.1(a))

Given the Wage Order's express allowance for the Labor Commissioner to pursue Labor Code section 1197.1 civil penalties for overtime violations, private PAGA plaintiffs, acting as "deputies" of the Labor Commissioner's office, may also pursue those penalties. PAGA allows for private enforcement of any "civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees". (Labor Code section 2699(a), emph. added) The California Labor Commissioner's Office is a department of the Labor and Workforce Development Agency and may pursue PAGA violations. (ZB, N.A. v

Superior Court, supra, 8 Cal.5th 186)

The only reasonable reading of Wage Order section 20(B) in conjunction with section 1(C) is that the Labor Commissioner may prosecute public employers for overtime violations, but that private employees may not do so directly. However, under PAGA private employees may pursue overtime violations against public entities on behalf of the State. The reasoning behind this result appears to be that overtime claims pursued against public entities by the Labor Commissioner's office have a greater likelihood of eliminating company wide violations, as opposed to claims held by individuals.

2. AHS Is Not among the Narrowly Defined Public Entities Which Are Exempt Under Labor Code section 226.7(e)

Meal and rest break requirements in California are primarily set in Labor Code section 226.7 and 512 and in the IWC Wage Orders. Section 512 was enacted in 1999 and requires that an employer provide a 30 minute meal period of not less than 30 minutes for a 5 hour work period. In 2000, the Legislature enacted section 226.7, which added premium pay requirements for violations of the meal period statutes and wage orders. IWC Wage Order 5 section 12(A) mandates a rest period of ten minutes per four hours work or major fraction thereof.

The Legislative history of 226.7 shows no general intent to exempt

all public entities. The original intent of the legislation was that it apply to "any employer":

> "This bill makes *any employer that requires any employee to work during a meal or rest period* mandated by an order of the commission subject to a civil penalty of $50 per violation and liable to the employee for twice the employee's average hourly or piecework pay." (California Bill Analysis, Senate Floor, 1999-2000 Regular Session, Assembly Bill 2509. August 7, 2000, emph. added, MJN, ex. "D")

The text of Labor Code 226.7(b) states only that it covers "an employer":

> "*An employer* shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health" (Labor Code 226.7(b), emph. added)

In 2013, Legislative analysis of Senate Bill 435 concerning amendments to 226.7 noted an agreement between the opponents and the sponsor of the bill to provide an exemption for "specified exempt employees":

> "In addition, at the request of then-opponents of the bill, the author and the sponsor previously agreed to add language to the bill to provide an exemption for *specified exempt employees*. However, according to the sponsor, in the most recent set of amendments, this language was inadvertently deleted. Therefore, the author and the sponsor have agreed to add the language back to the bill, but due to legislative time constraints will take that amendment in the Assembly Appropriations Committee." (California Committee Report, California Senate Bill No. 435, California 2013-2014

Regular Session, 8/12/13, emph. added, MJN, ex "B")

Thus, in 2013, the Legislature added section 226.7(e) exempting from that section employees who are exempt from meal or rest periods by way of "other state laws", including the IWC Wage Orders:

> "This section shall not apply to an employee who is exempt from meal or rest or recovery period requirements pursuant to other state laws, including, but not limited to, a statute or regulation, standard, or order of the Industrial Welfare Commission." (2013 Cal. Legis. Serv. Ch. 719 (S.B. 435) (WEST), 10/10/13, MJN, ex. "A")

The exemption was clearly a compromise between the sponsor of the bill and the opponents of it. As a result of the compromise exemptions were added, but only for specific entities already exempt by law. The applicable Wage Order exemptions referenced in 226.7(e) are provided in Wage Order 5-2001[1] section 1(C), which exempts "the State or any political subdivision thereof, including any city, county, or special district" for all except sections 1, 2, 4, 10, and 20.

AHS is clearly not the State nor a "city, county, or special district". AHS is also not a "political subdivision" of the State. The term "political subdivision" is not defined in the Wage Order but other statutes generally define the term as requiring a geographical jurisdiction. The California

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[1]Wage Order 5 applies to employees in the "public housekeeping industry", which includes "hospitals". (Wage Order 5-2001 secs. 1, 2(P)(4))

False Claims Act defines the term as "any city, city and county, county, tax or assessment district, or other *legally authorized local government entity with jurisdictional boundaries*". (Wells v. One2One, supra 39 Cal.4th 1190, emph. added) Under the Voter Participation Rights Act a "political subdivision" is "a *geographic area of representation* created for the provision of government services, including, but not limited to, a city ..." (City of Redondo Beach v. Padilla (2020) 46 Cal.App.5th 902, 912, citing Elections Code sec. 14051, subd. (a)) AHS has no geographical jurisdiction.

The Labor Code defines a "political subdivision" for purposes of the prevailing wage laws as: "any county, city, district, public housing authority, or public agency of the state, and assessment or improvement districts." (Labor Code sec. 1721) AHS does not fall within any of those categories.

There is no general exemption for public entities under Labor Code section 226.7 and AHS is not among the narrow list of those who are exempt.

3. AHS is not Exempt Under Labor Code Section 510

Labor Code section 510 sets overtime requirements. It was enacted in reaction the IWC's eliminating Wage Order Overtime requirements in

five Wage Orders in 1998. (California Bill Analysis, Assembly Floor, 1999-2000 Regular Session, Assembly Bill 60, May 27, 1999, MJN, ex. "C")

Nothing in section 510's language expressly includes or exempts public entities and there does not appear to be any guidance in the direct legislative history of the statute on that issue. However, AHS is a "person" under Labor Code section 18, which defines liable employers under the Labor Code generally. As discussed, that term's ambiguity as to public entity liability requires analysis of the sovereign powers maxim per Wells, supra, at 1190. Under the maxim, public entities without sovereign powers, such as AHS, are liable under the Labor Code.

4. Labor Code Section 1194 Does Not Exempt Public Entities

Labor Code section 1194 provides a right of action for overtime violations. It broadly applies to "any employee":

> "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit." (Labor Code section 1194(a))

In Martinez v Combs (2010) 49 Cal.4th 35 this Court noted that the Legislature provided no express definition of the employment relationship

and that it intended the Wage Orders to define the employment relationship in actions under the statute:

> "An examination of section 1194 in its statutory and historical context shows unmistakably that the Legislature intended the IWC's wage orders to define the employment relationship in actions under the statute." (Martinez, supra, at 52-53)

Martinez noted the Legislature's deference to the Wage Orders and the IWC's quasi legislative function. (Martinez, supra, at 61, citing Industrial Welfare Com. v. Superior Court (1980) 27 Cal.3d 690, 702) Given the deference, a worker sues under the Wage Order when suing under section 1194. (Martinez, supra, at 64)

Martinez also noted the policy of liberally construing wage and hour statutes to promote worker protections. (Martinez, supra, at 61)

Labor Code section 1194(a) itself states only that "any employee" is covered by the statute. The Wage Orders, which must be deferred to per legislative intent, state that liable "persons" are as defined in Labor Code section 18 (Wage Order 5-2001 section 2(H)), but from within that category exempts "the State or any political subdivision thereof, including any city, county, or special district" for all but sections 1, 2, 4, 10 and 20.

As discussed above, AHS does not fall within the list of exempt entities and it is a liable "person" under section 18 under the sovereign powers analysis of Wells. Neither AHS nor any non sovereign public entity

holds liability under the overtime statutes or Wage Orders.

B. AHS Is Liable for Payroll Records Violations

Labor Code section 1174 mandates that "every person employing labor in this state" keep specified payroll records "showing the hours worked daily by and the wages paid to..." (Labor Code section 1174(d)) The statute provides no definition of "every person" and no direct legislative history on the issue was found.

The Wage Orders provide that payroll records violations apply to "every employer". (Wage Order 5-2001, section 7(A)) As discussed above, AHS does not fall within the exemptions to the Wage Orders stated in section 1(C) and is a liable "person" per Labor Code section 18, per the sovereign powers maxim. (Wells, supra, 1190)

Non sovereigns entities such AHS are not exempt from liability for payroll record violations.

C. AHS Holds Liability for Failure to Provide Accurate Itemized Wage Statements

In their Petition for Review, AHS repeatedly claims that the Court of Appeal's decision was inconsistent because it held AHS was exempt from accurate wage statement requirements under Labor Code section 226 for being a "governmental entity of some kind", but ruled against AHS's claim of sovereign immunity generally. (PFR, 12-13) This claim is repeated in

their legal arguments in the Opening Brief (Opening, 20, 24-25)

If the rulings were inconsistent as AHS alleges, the Court of Appeal should have ruled that AHS was not exempt from Labor Code section 226 because the express relevant language in that statute exempts only "other governmental entities", which AHS is not.

Labor Code section 226(a) sets the requirements for employee wage statements. As discussed above, IWC Wage Orders are generally given deference in analyzing corresponding Labor Code statutes. (Martinez, supra, at 64) However, the Wage Orders are not given deference when analyzing Labor Code section 226 because the Wage Orders have not kept pace with amendments to section 226. (Ward v. United Airlines, Inc. (2020) 9 Cal.5th 732, 744)

Labor Code section 226(i) states in relevant part that section 226 does not apply to "the state, to any city, county, city and county, district, or to any other governmental entity...". AHS falls into none of those categories. It is not exempt as an "other governmental entity" under section 226 for the same reasons it is not an "other municipal corporation" under section 220(b) - it has no governing powers. (Gateway, supra, at 505-506)

Black's Law Dictionary, 5th Ed. defines the term "government" as "the sovereign or supreme power in a state or nation. The machinery by

which the sovereign power in a state expresses its will and exercises its functions...". It is also defined as "...the act of exercising supreme political power or control." The term "political" is defined as "pertaining or relating to the policy or the administration of government, state or national. Pertaining to, or incidental to, the exercise of the functions vested in those charged with the conduct of government; relating to the management of affairs of state..."

A "governmental" entity is thus one which exercises the *functions of government* by way of "supreme political power or control".

The express terms of Labor Code 226(i), fairly read, were intended to extend only to those public entities which "govern" - to effectuate government functions via sovereign powers. There is nothing in the express language of the statute, nor in any external source nor maxim of statutory construction which reasonably supports any other interpretation. If the Legislature had intended to encompass all public agencies without qualification, it could have done so. The use of the term "governmental entity" specifically relates to sovereign characteristics and functions.

1. Legislative History Does Not Show an Intent to Exempt non Sovereign Entities from Section 226

Section 226 was amended in 2004 to require "any state, any city, county, city and county, district, or any other governmental entity" which

provides pay via a written instrument to include no more than the last four digits of an employee's social security number, in order to address concerns with identity theft. In assessing the fiscal effect of removing the exemption for public entities in this way, the Senate analysis only perceived an impact on "58 counties and approximately 965 cities and 3,400 special districts as well as the state itself". Although it did not expressly rule out liability for such, it did not contemplate exposure to any entity other than those recognized sovereigns. (California Bill Analysis, S.B. 1618 Sen., 5/20/2004, MJN, ex. "E")

This early analysis of the bill showed that the intent was to remove exemptions for the state, counties, cites and special districts. These, then, were the entities generally exempt under the prior version of the statute. The entities cited in the analysis are entities with powers of governance and the language of the amendment as finally drafted reflects this as well - "the state or a city, county, city and county, district, or other governmental entity" are subject to the amendment. (Labor Code section 226(i)):

2. AHS Is Not a Governmental Entity per Statutory Maxims of Interpretation

The question of what is an "other governmental entity" under Labor Code section 226(i) may be answered by using statutory maxims of interpretation, including that of *Noscitur a sociis* and *ejusdem generis* -

words are defined by the words surrounding them. (Gateway Community Charters v. Spiess, supra, 9 Cal.App.5th 504)

The use of the term "other" is inherently ambiguous and requires the use of interpretive maxims to aid in defining the phrase "other governmental entity". (Gateway, ibid.)

AHS claims the maxims of *noscitur a sociis* and *ejusdem generis* "cannot override positive indicia of legislative intent". (Opening, 63-64) But legislative intent is not revealed on the face of section 226 - the term "other governmental entities" is not defined. Ambiguity on the face of the statute requires analysis of outside sources including those maxims of statutory interpretation. (Gateway, supra, at 504)

Further, AHS's cites to DLSE opinions regarding municipal corporations are not given "significant deference" (Gateway, supra, at 503, fn 2) because in other opinions the Labor Commissioner expressly concluded that the Gateway defendant, with similar characteristics to AHS here, did not qualify as an "'other municipal corporation'" under section 220(b). (Gateway, supra, at 503)

Noscitur a sociis means that a word may be defined by its accompanying words and phrases. *Ejusdem generis* means that where general words follow specific words, or specific words follow general

words in a statutory enumeration, the general words are construed to embrace only things similar in nature to those enumerated by the specific words. (Gateway, supra, at 504) Thus, as used in Labor Code section 226(i), the term "other governmental entities" must have similar characteristics as "the state, to any city, county, city and county, district". As discussed, above, AHS has none of those characteristics. It is a purely administrative body without general powers of governance.

Per the common definitions of the term "other governmental entity" as expressly stated in Labor Code section 226, along with the Legislative history of the statute and maxims of interpretation all show that exempt "other governmental entities" was intended to mean those entities similar to a "city, county, city and county, district". Entities without those qualities, such as AHS, are outside the exemption and the Court of Appeal should have found AHS liable under section 226.

D. The Prompt Payment Statutes Apply to Non Sovereigns and AHS Is Not an Exempt "Other Municipal Corporation" under Labor Code Section 220(b)

1. AHS is Expressly Liable for Prompt Pay Violations Under Wage Order 5-2001, Section 4

Although, as discussed above, the Wage Orders exempt certain public entities from particular provisions, they expressly do not exempt any public entity from minimum wage or prompt payment claims.

Wage Order section 1(C) exempts listed public entities from liability for all but sections 1, 2, 4, 10, and 20. Section 4 governs minimum wage violations, which AHS acknowledges covers public entities. (Opening, 33)

Section 4 also governs the timing of payment of wages. Wage Order 5-2001 section 4(B) specifies - "Every employer shall pay to each employee, *on the established payday for the period involved*, not less than the applicable minimum wage for all hours worked in the payroll period..." (emph. added)

2. Conflict Between the Wage Orders and Labor Code Section 220(b) Should Be Resolved in Favor of Worker Protection

Although the Wage Orders expressly require public entities to timely pay wages, Labor Code section 220(b) exempts "any county, incorporated city, or town or other municipal corporation" from coverage under the prompt pay statutes. There is a conflict, then, between Wage Order section 4 and Labor Code section 220(b).

In Brinker Restaurant Corp. v. Superior Court (2012) 53 Cal.4th 1104, this Court examined the respective roles of the IWC and the Legislature in issuing mandates governing working conditions in California. Brinker noted that the Legislature established the IWC and delegated to it "the authority to investigate various industries and promulgate wage orders fixing for each industry minimum wages, maximum hours of work, and

conditions of labor." (Brinker at 1026)

The IWC had "broad statutory authority" and "in 1916 began issuing industry-and occupation wide wage orders specifying minimum requirements with respect to wages, hours, and working conditions" (Brinker, ibid.) The Court noted that "In addition, the Legislature has from time to time enacted statutes to regulate wages, hours, and working conditions directly. Consequently, wage and hour claims are today governed by two complementary and occasionally overlapping sources of authority: the provisions of the Labor Code, enacted by the Legislature, and a series of 18 wage orders, adopted by the IWC." (Brinker, ibid.)

When there is an overlap between the IWC Wage Orders and the Labor Code, there must be an attempt to harmonize the two (Brinker, at 1027) but statutory provisions are to be liberally construed in favor of worker protection. (Brinker, 1026-27) Further, Wage Orders must be given "independent effect separate and apart from any statutory enactments". (Brinker, at 1027) They must be given "extraordinary deference" in upholding their validity and in enforcing their specific terms. (Brinker, at 1027)

Labor Code section 220(b) states that "any county, incorporated city, or town or other municipal corporation" is exempt from the prompt pay

statutes. These exemptions are in direct conflict with Wage Order section 4(B), which expressly holds those entities liable. The "extraordinary deference" granted to the Wage Orders and the policy of favoring worker protection dictates that the Wage Order requirement of timely pay should prevail over section 220(b)'s exemptions.

Should this Court disagree, however, and hold that 220(b) exemptions apply generally over the Wage Order's requirements, the two laws can still be harmonized as to the specific term "other municipal corporation", in issue here.

The term "other municipal corporation" can be read in harmony if it includes only entities with sovereign characteristics similar to a "county, incorporated city or town" per section 220(b), as is discussed further, infra. If so, both laws agree that non sovereign "other municipal corporations" are liable. If, as AHS suggests, the term "other municipal corporation" includes non sovereigns then the two laws are in conflict because they would be liable under the Wage Order but exempt under Labor Code section 220(b).

This reading is the only way the statute and the Wage Order can be read in harmony - only sovereigns are exempt "other municipal corporations" under Labor Code section 220(b). Non sovereigns, such as AHS, are not exempt under either 220(b) or the Wage Order.

3. Morrison v Smith Did Not Broaden the Term "Municipal Corporation"

AHS claims that the term "municipal corporation" can be "more broadly construed to include "quasi-municipal corporations", citing Morrison v Smith Bros. (1930) 211 Cal.36, 41) and that "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". AHS then implies that this broader definition places AHS within the scope of exemption under Labor Code section 220(b). (Opening, 56-57)

In Morrison, the Supreme Court analyzed the sovereign status of a public utility district, which was then a new form of governmental entity, in determining its immunity for a wrongful death claim. Morrison held that the district was not a municipal corporation as the term was applied at the time, i.e., a city or a town, but that its powers of taxation, eminent domain, and a publicly elected board of directors put it in a classification it called a "quasi-municipal corporation", which was treated similarly as a municipal corporation for purposes of tort liability when it acted in a proprietary capacity. (Morrison v. Smith Bros. (1930) 211 Cal. 36, 38-40)

Morrison did not, as AHS suggests, expand the scope of the term "municipal corporation", it merely brought utility districts under that

umbrella when they possess certain sovereign powers. In that regard, Morrison merely amplifies the holdings of Gateway and Johnson v Arvin-Edison, supra, which held the same - an exempt "municipal corporation" possesses powers of taxation, eminent domain and exercise its powers via a publicly elected board of directors. (Morrison, at 38 -40) Morrison does not in any way broaden the term "municipal corporation" to include entities such as AHS, which has none of those listed powers.

4. Torres v Board of Commissioners Does not Broaden the Definition of an Exempt "Municipal Corporation"

AHS also cites Torres v. Board of Commrs. of Housing Auth. of Tulare County (1979) 89 Cal.App.3d 545, 549 for the proposition that the term "municipal corporation" is broader than the term "city". (Opening, 57)

Torres held that a housing authority created by Health and Safety Code section 34200 et seq. is an "other local public agency" or a "municipal corporation" or both, under the Brown Act. Health and Safety Code section 34200 et seq. provides similar powers as those required of municipal corporations under Labor Code 220(b)) per Gateway and Johnson v Arvin-Edison, supra, - powers to issue bonds (sec. 34350), eminent domain (sec. 34325) and jurisdictional authority (sec. 34208), among others.

Torres did not broaden the term "municipal corporation", it merely applied it to a different statute with the same characteristics.

AHS does not qualify as exempt under Labor Code section 220(b) either as a "municipal corporation" or a "quasi municipal corporation" because it does not possess the sovereign characteristics of either.

5. Labor Code Section 220.2 Does Not Expand the Term "Municipal Corporation"

AHS cites Labor Code section 220.2 for the proposition that a "municipal corporation" includes "any local governmental entity" other than the State because of the "dichotomy" presented by its use of the term "private employers". (Opening Brief, 57)

Section 220.2 merely allows public employers to make contributions to certain employee benefits in the same manner as private employers. The use of the term "private employers" is not intended to contrast them from "public" employers, as AHS states. Rather the term is used to *harmonize* the two types of entities, in that they are both permitted to fund benefits in the same manner. In this, the Legislature is saying that, for purposes of employee benefits contributions, public and private employers are the same, not different. At no point does section 220.2 interpret the term "municipal corporation" in any manner, let alone as suggested by AHS..

6. Hospital Authorities Are Not "Other Municipal Corporations" Under Labor Code section 220(b)

AHS claims that it is similar to Hospital Districts and other similar

entities which have been held "municipal corporations". (Opening, 64)

The cases cited by AHS all involved entities with specific governing powers, unlike AHS: El Camino Hosp. Dist., supra, 8 Cal.App.3d Supp. 36. - a Hospital District, created under Health and Safety Code sec. 32000, which grants the governing powers cited in Gateway, supra, and Johnson, supra; Johnson v Arvin Edison, supra, 174 Cal.App.4th at p. 741 - a Water District with sovereign powers; Kistler v. Redwoods Comm. College Dist. (1993) 15 Cal.App.4th 1326, 1337 - a Community College District, held to be a municipal corporation. These cases involve municipal districts, with specific governing powers which AHS expressly does not have.

7. Indigent Services under Welfare and Institutions Code Section 17000 Are Not a Core Governmental Function and the Obligation is Held by County Not AHS

AHS claims that it is charged with providing "cost-effective medical care as required of counties by Section 17000 of the Welfare and Institutions Code" and that this is a sovereign power which grants immunity. (Opening, 21-22, 64)

Even if section 17000 is a "sovereign power", it does not belong to AHS. AHS's enabling statute expressly keeps section 17000 obligations with the County, not AHS:

> "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." (Health and Safety Code section 101850(l)(1), emph. added)
>
> "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." (Health and Safety Code section 101850(l)(3))

Section 17000 obligations are the County's and AHS is merely an administrative body. (Health and Safety Code sections 101850(d), (r)) This is confirmed in the legislative history of the enabling statute - "AB 2374 relieves the County of its liabilities or obligations if the hospital authority assumes responsibility for the Medical Center, *but the county will not be relieved of its service obligations to indigent residents*." (California Bill Analysis, Senate Committee, 1995-1996 Regular Session, Assembly Bill 2374, June 26, 1996, emph. added, MJN ex. "H")

Just as the charter school defendants in Wells, supra, were not exempt sovereigns for not holding the governmental function of public education, AHS does not hold obligations under Welfare and Institutions Code section 17000.

Moreover, as the Court of Appeal noted here, Welfare and Institutions Code section 17000 is not a core governmental function which would entitle AHS to sovereign powers exemption. Section 17000 is not

within the exclusive domain of the government because obligations under that statute are shared with private parties - "Poverty alleviation in California is *not* a core government function that cannot be delegated to the private sector" (Community Action Agency of Butte County v. Superior Court of Butte County (2022)79 Cal.App.5th 221, 239, Ct's emph.)

8. Administrative Decisions Do Not Support AHS's claim of Being an Exempt "Other Municipal Corporation" Under Labor Code Section 220(b)

AHS claims that various administrative agency opinions support its claim of a general Labor Code public entity exemption (Opening, 40-42) and a specific exemption from waiting time penalties as an "other municipal corporation" under Labor Code section 220(b). (Opening, 60-62).

The administrative opinions AHS cites to largely refer to the traditional exemption for sovereign entities which was disapproved in Hoyt, supra. None found that all public entities are exempt under the Labor Code generally.

The Attorney General's opinion cited by AHS, 71 Ops.Cal.Atty.Gen. 39 (Opening, 41), found no conflict in working both for the IWC and the Personnel Commission of the Los Angeles County Superintendent of Schools. The AG's determination was founded on the sovereign powers analysis in Hoyt - that in the absence of express words to the contrary,

neither the state nor its subdivisions are included within the general words of a statute, but "only if their inclusion would result in an infringement upon sovereign governmental powers." (71 Ops.Cal.Atty.Gen. 39, at 3)

The DLSE opinion cited by AHS (DLSE Opn. Letter (January 10, 2003), 2003 WL 2485881, (Opening, 41) merely recites Wage Order sec. 1(C) in noting that exemptions stated there limit certain public entities to liability. As discussed above, this does not indicate a general exemption for all public entities. Section 1(C) limits the type of exempt employers and AHS is not among them.

Moreover, as noted in Gateway Community Charters v. Spiess, supra, the Labor Commissioner has "expressly concluded Gateway did not qualify as an "'other municipal corporation'" under section 220(b)" (Gateway, supra, at 503). The Gateway defendant charter schools, like the charter schools in Wells, were similar to AHS in their lack of sovereign powers. The Labor Commission's opinions cited in Gateway thus conflict with AHS's cites. Conflicting opinions by the Commissioner mean they are not given significant deference:

> "Though the position of the labor commissioner may be persuasive authority as to an issue within its purview where the labor commissioner takes a consistent stance as to that issue, where, as here, the labor commissioner has not taken a consistent position, as demonstrated by the cases presented by Gateway in exhibits 1 and 5 of its request for judicial notice, its interpretation is not entitled to

"'significant deference.' " (Gateway, supra, at 503, fn 2, citing Murphy v. Kenneth Cole Productions, Inc. (2007) 40 Cal.4th 1094, 1105, fn. 7)

9. Maxims of Statutory Construction Are Applicable and Define "Municipal Corporation" to Include only Entities with Sovereign Governing Powers

As discussed above, Gateway, supra, defined a "municipal corporation" by using statutory maxims of interpretation, including that of *Noscitur a sociis* and *ejusdem generis*. (Gateway Community Charters v. Spiess, supra, 9 Cal.App.5th 504) The Court found that given the terms "any county, incorporated city, or town", the following term "other municipal corporation" must have similar characteristics and ruled that the defendant there did not have same and was therefore not exempt under section Labor Code section 220(b)

Given the lack of evidence of legislative intent otherwise, the maxims dictate that a "municipal corporation" does not include non sovereigns such as AHS.

IV

PAGA APPLIES TO PUBLIC ENTITIES

A. Non Sovereign Entities Are Liable for Both Labor Code Prescribed Penalties under Section 2699(a) and PAGA Default Penalties under Labor Code Section 2699(f)

The Private Attorney General Act, Labor Code section 2698 et seq.

("PAGA"), was drafted to aid understaffed State Labor Departments by allowing aggrieved employees, acting as private attorneys general, to recover civil penalties for Labor Code violations otherwise reserved for collection by the State, including representative actions. (Iskanian v. CLS Transportation Los Angeles, LLC (2014) 59 Cal.4th 348, 379, abrogated on other grounds by Viking River Cruises, Inc. v. Moriana (2022) 142 S. Ct. 1906, 1924)

The PAGA statute identifies two different types of penalties which may be recovered by plaintiffs proceeding thereunder. Per Labor Code section 2699(a), a PAGA plaintiff may recover those civil penalties which are stated in the underlying Labor Code section which is the substantive basis for the action. Under section 2699(f), where no penalties otherwise exist for the Labor Code section being prosecuted, the plaintiff is entitled to default penalties.

Sargent v Board of Trustees of California State University (2021) 61 Cal.App.5th 658, 671-72 ruled that section 2699(a)'s provision for recovery of prescribed Labor Code civil penalties conspicuously did not refer to the defined term "persons" as liable entities. Therefore, section 2699(a) was not limited by the parameters of that term and any employer is bound. (Sargent, at 671)

Sargent then noted that the term "person" does appear in the default penalties section, section 2699(f). Thus, a "person", as that term is defined under Labor Code section 18, is also liable for PAGA's default penalties (Sargent, at 672) Sargent ruled that a "person" as defined in Labor Code section 18 does not include public entities because section 18 does not name them expressly. Sargent thus followed the "traditional" rule of sovereign immunity, granting exemption with no analysis of infringement of sovereign powers as is required by Hoyt - "A traditional rule of statutory construction is that, absent express words to the contrary, governmental agencies are not included within the general words of a statute." (Sargent, supra, at 672)

Citing Sargent, the Court of Appeal here ruled that AHS is liable for section 2699(a) penalties - those which are prescribed in the underlying Labor Code sections- but is not liable for the default penalties imposed by PAGA itself in section 2699(f) because AHS is generally a public entity and therefore not a "person". (Stone, supra, at 98)

1. The Court of Appeal Correctly Ruled that AHS is Liable for 2699(a) Labor Code Prescribed Penalties

Sargent, and the Court of Appeal here, both correctly held that any employer, whether or not a "person" under Labor Code section 18, holds liability under section 2699(a) for civil penalties which are prescribed in the

Labor Code sections underpinning the PAGA claim. As noted in Sargent, Labor Code section 2699(a) makes no mention of "persons" and so all employers are liable under that section.

AHS claims that PAGA should be read to encompass statutory "persons" under both subsections (a) and (f) because the term "persons" only appears in (f)(1) and (f)(2), which "set the amounts of" the violations and, without support, claims that the Legislature believed the limiting word "persons" was "sufficiently clear to go unstated in (f) itself". (Opening, 68) AHS then leaps further to conclude that the Legislature therefore must have intended to include the term "persons" in sub (a) as well.

AHS's reading violates the primary maxim of statutory interpretation - the express words of the statute are the first and primary source of its meaning. (Wells, supra, at 1190) Section 2699 defines the term "persons" in subsection (b). The term "persons" thereafter expressly appears in the section describing default penalties under subsection (f). It does not appear in sub (a) at all, which refers only to "employees". Sub (a) was not intended to be restricted to "persons".

AHS also claims that Sargent's analysis of the term "person" leads to an absurd result in Labor Code section 2699(h), which bars a private action if the LWDA has already filed against a "person". AHS claims that, under

Sargent, the presence of the term "person" in section (h) would mean that an employee is barred from bringing a PAGA action if the LWDA has already filed against a private employer, but not a public entity. (Opening, 70)

To the extent AHS claims that section 2699(h) is incongruous with the remainder of the statute, the Court looks at legislative intent. (Wells, supra, 1192)

By any reasonable interpretation, the intent of sub (h) was to restrict employees from pursuing violations by their employers, whoever they may be, if the LWDA has already filed. This is borne out in the Legislative History, which shows that sub (h) was intended to cover all "alleged violators" without limitation:

> "Authorizes aggrieved employees to sue to recover civil penalties under the Labor Code in an action brought on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. However, no private action may be maintained where the LWDA or any of its subdivisions initiates proceedings *against the alleged violator* on the same facts and theories and under the same section or sections of the Labor Code." (California Bill Analysis, S.B. 796 Sen., 9/02/2003, emph. added, MJN, ex. "I")

The legislative History makes clear that the intent was to bar private enforcement of PAGA where the LWDA has already filed against any "alleged violator".

Any "employer" is liable for preexisting Labor Code Penalties under PAGA, Labor Code Section 2699(a), including public entities. (Sargent, at 671) The Court of Appeal here correctly followed Sargent and ruled that AHS was liable for section 2699(a) penalties - those which are prescribed in the underlying Labor Code sections. (Stone, supra, at 97)

2. The Court of Appeal Incorrectly Exempted Public Entities from Default Penalties under Section 2699(f)

As shown, the Court of Appeal correctly ruled that because 2699(a) omits any reference to the limiting term "person" all entities are liable for prescribed Labor Code penalties. However, the Court erred in ruling that AHS is not liable for PAGA's default penalties under section 2699(f) for being a "public entity of some sort" and therefore not a "person" under PAGA, following Sargent.

Sargent, and the Court of Appeal here, failed to analyze the sovereign powers maxim recognized in Wells v One2One, supra, at 1192) Where public entity liability is not expressly stated and the statute instead generally applies to "persons" liability attaches unless sovereign powers are infringed. (Wells, supra, at 1198)

Sargent ruled that the absence of expressed public entity liability in Labor Code section 18 meant public entities are not "persons" thereunder, citing Wells' reference to the "traditional rule of statutory construction is

that, absent express words to the contrary, governmental agencies are not included within the general words of a statute." (Sargent, at 672) This ignores Wells' recognition of the modern, post Hoyt maxim, requiring infringement of sovereign powers before exemption will apply. (Wells, at 1193)

Sargent, and the Court of Appeal following Sargent here, did not take the analysis far enough. The lack of express liability for public entities will only exclude public entities if sovereign powers would be infringed, in the absence of legislative intent showing otherwise. (Wells, supra, 1198). As shown, AHS has no sovereign powers and is liable for both Labor Code prescribed penalties under section 2699(a) and default penalties under section 2699(f).

B. Legislative History Shows No Intent to Exclude Public Employers from PAGA Coverage

AHS claims that the legislative history of the PAGA statute shows that the intent was to only enforce the Labor Code as to the "underground economy", and that this inherently does not include public entities. (Opening, p.70-71) This argument was addressed by the Court in Sargent v. Board of Trustees, supra, which noted that the Senate Analysis of S.B. 796 specifically stated that the bill was intended to apply to "employers" without limitation:

> "Appellants also point to a Senate committee analysis explaining that the state was not collecting all potential penalties from "businesses" that make up the state's underground economy. (Sen. Judiciary Com., Analysis of Sen. Bill No. 796 (2003-2004 Reg. Sess.) as amended April 22, 2003, p. 2.) Appellants suggest that this comment means that the Legislature did not believe that state agencies were violating labor laws. But the same Senate analysis states broadly that the proposed legislation "would allow employees to sue their *employers*," with no limitation on whether the employer was public or private. (*Id.* at p. 1, italics added.)" (Sargent, supra, at 673)

As alleged, Plaintiffs are addressing exactly this type of activity. AHS was and is systematically stealing income from employees by deducting wages earned when employees worked through their statutory breaks, even where timecards show no breaks were taken.

AHS also claims that the Legislature intended to limit the scope of liability for PAGA similar to the California Unfair Competition Law, which does not apply to government entities, per Leider v. Lewis (2017) 2 Cal.5th 1121. (Opening, 71) Leider v. Lewis noted that the UCL was expressly not applicable to "municipal or other public corporations" under the Unfair Practices Act, which preceded the UCL. Therefore, it held the same limitations to the UCL. By contrast there is nothing in any prior law or in the legislative history of PAGA that indicates a similar delimiting of liable persons.

In sum, there is no "positive indicia of a contrary legislative intent" which would preclude application of the sovereign powers maxim, per

Wells, supra, 1193. The Court of Appeal here and in Sargent failed to fully analyze that maxim in reviewing liability under PAGA's section 2699(f) for PAGA "default" penalties. Non sovereign entities such as AHS are liable for default penalties under that section, in addition to the Labor Code prescribed penalties under 2699(a).

C. PAGA Is Not a Punitive Statute it Is an Incentivizing Statute and Does Not Conflict with Government Code Section 818

The Court of Appeal here correctly found that the PAGA statute was primarily an incentivizing statute, designed to empower employees to pursue Labor Code violations, rather than a punitive measure and therefore did not violate Government Code section 818. (Stone, supra, at 99)

PAGA was enacted to deputize aggrieved employees to aid in enforcement of the Labor Code, in the face of limited resources available to the State - "The purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private attorneys general to enforce the Labor Code." (Brown v Ralphs Grocery Co (2011) 197 Cal.App.4th 489, 501) The idea of "deputizing" employees to allow them to pursue penalties against their employers is necessarily based on a perspective of encouraging plaintiffs, not on punishing defendants.

The Legislative History of the PAGA statute demonstrates the intent behind the legislation. Senate analysis of SB 796 noted that "this bill would

propose to augment the LWDA's civil enforcement efforts by allowing employees to sue employers for civil penalties for labor law violations, and to collect attorneys' fees and a portion of the penalties upon prevailing in these actions, as specified." (California Bill Analysis, S.B. 796 Sen., 9/02/2003, MJN, ex. "I")

AHS cite to Wells v One2One, supra, is misplaced. (Opening, 73) Wells involved a treble damages provision under the California False Claims Act and noted that treble damages are, by their nature, punitive - "...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." (Wells, at 1196, fn 20) PAGA provides no such treble damages.

AHS also cites this Court's recent decision in Los Angeles Unified School District v Superior Court (2023) 14 Cal.5th 758 ("LAUSD") which held that Government Code section 818 could be violated even if damages are not solely punitive. Damages are barred as against public entities if they are imposed primarily for the sake of example or punishment such that they would *function* in essence as punitive damages. (LAUSD, supra, at 775-776) LAUSD held that the treble damages in Code of Civil Procedure

section 340.1 for minor sexual assault functioned as punitive damages even though they may not be "simply and solely" punitive. (LAUSD, at 777-779)

LAUSD also noted that under C.C.P. section 340.1(b)(1), treble damages are awarded "unless prohibited by another law", and took this to include the prohibition under Government Code section 818. (LAUSD, at 779)

Treble damages are not assessed in PAGA, nor do PAGA civil penalties resemble treble damages in their effect nor in their intent. As the Court of Appeal here noted, PAGA penalties are similar to those in the Unruh Civil Rights Act, Civil Code section 52, which the Court in Los Angeles County Metro. Transportation Auth. v. Superior Court (2004) 123 Cal.App.4th 261, 271, held were an "economic incentive" and "the means to retain counsel to pursue perpetrators under the statute" and not subject to the ban on punitive damages under Government Code section 818.

As this Court noted in Iskanian v. CLS Transportation Los Angeles, LLC, supra, 59 Cal.4th 379, PAGA was enacted to address two problems. The first was that many Labor Code provisions had no penalties attached, weakening deterrent effect. PAGA thus added Labor Code section 2699(f), creating default penalties. The second was the lack of sufficient State personnel to enforce the Labor Code. Thus, the PAGA statute deputized

aggrieved employees. (Iskanian, at 379)

PAGA penalties were set at a level "significant enough to deter violations". (Iskanian, at 379) PAGA penalties are fixed in amount accordingly. By contrast, the amount of punitive damages is assessed by the finder of fact based on the egregiousness of the misconduct. (Hannon Engineering Inc. v. Reim (1981) 126 Cal.App.3d 415, 431) This focus on the level and type of misconduct shows the difference between 'deterrence' and 'punishment'. A defendant must be guilty of "oppression, fraud or malice" to be assessed punitive damages. (Civil Code section 3294(a)) Even the treble damages reviewed in LAUSD required proof of "morally offensive behavior". (LAUSD, supra, at 780) No such state of mind is required for civil penalties under PAGA.

The primary intent behind PAGA penalties, beyond their function as incentives for private prosecution, is to deter violations, not to punish malicious conduct. They are not "imposed primarily for the sake of example and by way of punishing the defendant" nor do they "function, in essence, as punitive or exemplary damages" (LAUSD, supra, at 775-776)

PAGA penalties are not barred for being punitive damages under Government Code section 818.

D. The Net Effect of PAGA Compliance Is an Enhancement of Tax Revenues

AHS argues that applying PAGA to public entities would fail to "protect their tax funded revenues from legal judgments in amounts beyond those strictly necessary to recompense the injured party" (Opening, 77). This overlooks PAGA's legislative intent to enhance tax revenues by assuring the employees are properly paid and taxed - "... evidence received by the Senate Judiciary Committee indicated that the DIR was failing to effectively enforce labor law violations. Estimates of the size California's "underground economy" -- businesses operating outside the state's tax and licensing requirements -- ranged from 60 to 140 billion dollars a year, representing a tax loss to the state of three to six billion dollars annually." (California Bill Analysis, S.B. 796 Sen., 9/02/2003, MJN ex. "I")

Moreover, Labor Code civil and criminal penalties already apply to public entities under some sections. (Labor Code secs. 1103, 1106 - whistle blower violations; Labor Code sections 226(i), 226.3 - payroll record violations; Labor Code section 1197.1 - minimum wage violations) If the legislature held concern for tax revenues in the manner suggested by AHS, those pre PAGA civil penalties would not have been enacted.

The Court of Appeal in Sargent, supra, addressed this issue. There, defendant California State University apparently argued that the legislative intent was for PAGA to have no negative effect on the General Fund of the

State and therefore CSU was not meant to be liable thereunder. The Court noted that the net effect of PAGA would likely be an increase in revenues, when considering penalties received from all liable employers. (Sargent, at 673)

V.

NEW LEGISLATION MAKES PUBLIC HOSPITALS LIABLE AND REVIEW OF MEAL, REST PERIOD AND RELATED CLAIMS ARISING AFTER 1/1/23 IS MOOT

A. Labor Code Section 512.1 Creates Liability for Public Employers Operating Hospitals

On January 1, 2023, Labor Code section 512.1 went into effect[2], expressly creating liability for missed meal and rest breaks for public entity employers of health care workers. This moots any arguments that AHS is exempt as to claims arising after January 1, 2023.

There has been no settlement of any claim in this action, therefore all claims of putative class members who were denied meal and rest breaks after January 1, 2023 are viable and subject to section 512.1. As alleged, AHS' conduct is ongoing and consistently unlawful.

Labor Code section 512.1 essentially mirrors Labor Code section 512 in mandating meal and rest periods, but specifically applies to "the

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[2] AHS raises this issue in their opening brief, p. 42. fn 6

state, political subdivisions of the state, counties, municipalities, and the Regents of the University of California" (sec. 512.1(e)(2)) and covers employees who "provides direct patient care or supports direct patient care in a general acute care hospital, clinic, or public health setting" (sec. 512.1(e)(1).

Appellate courts will not address the merits of an appeal that have been rendered "moot". (Eye Dog Foundation v. State Board of Guide Dogs for the Blind (1967) 67 Cal.2d 536, 541) The amendment of a statute in question on appeal will moot the issue unless the amendment merely continues or reenacts the statute. (Alternatives for California Women, Inc. v. County of Contra Costa (1983) 145 Cal.App.3d 436, 444, abrogated on other grounds in Los Angeles Alliance For Survival v. City of Los Angeles (2000) 22 Cal.4th 352)

The issue of meal period and rest break violations for public hospital employers occurring after January 1, 2023 is mooted by the passage of 512.1.

B. Labor Code Sec. 512.1 Necessarily Invokes Derivative Liability For Related Labor Code Violations

The passage of Labor Code section 512.1 necessarily invokes related derivative liability for: Failure to Keep Accurate Payroll Records; Failure to Provide Accurate Itemized Wage Statement; Unlawful Failure to Pay

Wages and; Failure to Timely Pay Wages and PAGA violations as alleged in the 3rd, 4th, 5th, 6th and 7th Causes of Action of the First Amended Complaint, for claims arising after January 1, 2023, insofar as those claims are founded on missed meal and rest breaks under 512.1. (Naranjo v. Spectrum Security Services, Inc., supra, 13 Cal.5th 101 - failure to pay premium pay for missed breaks invokes derivative liability for wage statement and prompt pay statutes)

Once section 512.1 made public entity hospital employers liable for break violations attendant derivative liability for failure to pay premium wages necessarily follows. Unpaid wages due under section 512.1 are moneys owed under the Labor Code and all Labor Code sections governing the time of payment, payroll reporting and other attendant requirements are equally enforceable. There is nothing in section 512.1 which limits liability in any manner different from the general coverage provisions of Labor Code section 512. The statute was to provide the "same meal break and rest period enforceability that the private sector currently enjoys". (California Bill Analysis, Senate Floor, 2021-2022 Regular Session, Senate Bill 1334, August 25, 2022, MJN, ex. "F")

This Court's review should be limited to claims arising before January 1, 2023. Review is moot as to all claims which arose thereafter.

VI

CONCLUSION

There is no exemption from liability for meal and rest breaks, overtime, payroll record or prompt pay violations for non sovereign public entities. The statutes and Wage Orders governing those claims show no legislative intent to exempt all public entities no matter their sovereign powers. The sovereign powers maxim protects the powers of governance. None of the statutes in issue, nor their histories, express an intent to protect entities which are governmental in name only. There is no sound reason, in policy or per any reading of statutory intent, to permit an entity without sovereign governing powers to deprive workers of hard won wages.

The rising trend of understaffed hospitals has lead to a crisis of overwork by employees, including increasing instances of missed meal and rest breaks. The sponsors of the legislation which became Labor Code section 512.1 noted - "even before the pandemic, nurses typically took few breaks during shifts and often faced greater workloads because of insufficient staffing. Shift lengths have increased over the years, with shifts of 12 hours or longer becoming ubiquitous in some settings. The use of overtime has also increased and continues to rise. In a recent national survey, 33% of nurses reported working extra shifts or overtime and 15%

reported working on-call shifts within the past year…" (California Bill Analysis, Senate Floor, 2021-2022 Regular Session, Senate Bill 1334, August 25, 2022, MJN, ex. "F")

The subsequent passage of section 512.1 demonstrates legislative fealty to public policy protecting workers from wage theft and abuse. The only limitation on that policy, as regards public employers, is to preserve the powers of governance. Where no such powers appear, as here, there is no right of exemption from the laws.

Respectfully submitted.

DATED: 9/15/23

David Y. Imai, Esq.
Attorney for Plaintiffs/Appellants

CERTIFICATE OF COMPLIANCE

I hereby certify that Plaintiff/Appellants' Answer Brief On The Merits is drafted in 13-point proportional type and contains 13,626 words and conforms to California Rules of Court 8.204(b)(4), (c)(1). This was counted by WordPerfect X5, which was also the word processing software used to prepare this brief.

DATED: 5/1-13

David Y. Imai, Esq.
Attorney for Plaintiffs/Appellants

Attachment "A"

Health and Safety Code sec. 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: September 23, 2017
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 his or her 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 (Chapter 5 (commencing with Section 6250) of Division 7 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 (Chapter 5 (commencing with Section 6250) of Division 7 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.

(al) 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.)

Editors' Notes

Relevant Additional Resources

Additional Resources listed below contain your search terms.

HISTORICAL AND STATUTORY NOTES

Stats.2005, c. 22 (S.B.1108), made nonsubstantive changes to maintain the **code**.

Subordination of legislation by Stats.2005, c. 22 (S.B.1108), to other 2005 legislation, see Historical and Statutory Notes under Business and Professions **Code** § 1658.

For legislative findings and declarations and urgency effective provisions relating to Stats.2013, c. 311 (A.B.1008), see Historical and Statutory Notes under Government **Code** § 31552.4.

Section 1 of Stats.2014, c. 46 (S.B.1352), provides:

"SECTION 1. The Legislature finds and declares all of the following:

"(a) The Alameda County Medical Center has evolved to include additional facilities that have expanded services and the quality of care to the residents of the County of Alameda.

"(b) In order to better reflect the regional availability of services to the residents of the County of Alameda, the Alameda County Medical Center is doing business as the Alameda Health System and it is appropriate that the name change be reflected statutorily to ensure that there is no confusion in the administration of state programs.

"(c) The Alameda Health System is a major public health care provider and medical training institution recognized for its world class patient and family-centered system of care.

Attachment "B"

Alameda County Code section 2.120.080

(Ord. 98-56 § 1 (part))

2.120.050 Mission and purpose.

The Alameda County Medical Center is committed to maintaining and improving the health of all Alameda County residents, regardless of ability to pay.

The Alameda County Medical Center will provide comprehensive, high quality medical treatment, health promotion and health maintenance through an integrated system of hospitals, clinics, and health services staffed by individuals who are responsive to the diverse cultural needs of our community.

The Alameda County Medical Center, as a training institution, is committed to maintaining an environment that is supportive of a wide range of educational programs and activities.

Education, including continuing education, of medical students, residents, nursing and other staff, along with clinical research, are all essential components of our environment.

The purpose of the Alameda County Medical Center is to manage, administer and control the Alameda County Medical Center, a group of public hospitals and ambulatory care clinics, in a manner that assures accessible, cost effective, quality medical care.

(Ord. 98-56 § 1 (part))

2.120.060 Governing board composition.

The governing body of the hospital authority shall be known as the hospital authority's board of trustees. The membership of the board of trustees shall be as appointed by majority vote of the board of supervisors pursuant to ordinance. The composition of the board of trustees, the qualifications for membership, the manner of appointment and selection, and the manner of removal of members of the board of trustees shall be as set forth in the bylaws of the hospital authority.

(Ord. 98-56 § 1 (part))

2.120.070 Term of office.

A term as trustee shall be as set forth in the bylaws of the hospital authority.

(Ord. 98-56 § 1 (part))

2.120.080 Duties of hospital authority.

The hospital authority shall provide direction and oversight for the day-to-day operations of the Alameda County-owned hospitals and clinics as set forth in formal written agreements with the county of Alameda and as set forth in the bylaws to the extent such duties and responsibilities are consistent with said written agreements and the provisions of Section 101850.

(Ord. 98-56 § 1 (part))

2.120.090 Incremental transfer of powers.

A. The transfer of the governance, administration, operations and maintenance of the Alameda County Medical Center shall occur in an incremental manner through a series of coordinated phases. The intent of this

PROOF OF SERVICE

STONE, KUNWAR, all others similarly situated v. ALAMEDA HEALTH SYSTEM, A Public Hospital Authority
California Supreme Court Case No.S279137

I am employed in the County of Santa Cruz, California. I am over the age of 18 years and not a party to the within entitled action. My business address is 311 Bonita Drive, Aptos, California 95003. On September 15, 2023, I served the attached ***ANSWER BRIEF ON THE MERITS*** in the above-captioned matter to the following persons:

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this is executed on September 15, 2023, in Aptos, California.

David Imai

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

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

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: **davidimai@sbcglobal.net**

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

Title(s) of papers e-served:

Filing Type	Document Title
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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.

9/15/2023
Date

/s/David Imai

Signature

Imai, David (142822)

Last Name, First Name (PNum)

Law Office of David Y. Imai

Law Firm