IN THE SUPREME COURT OF CALIFORNIA

LOS ANGELES UNIFIED SCHOOL DISTRICT Defendant and Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent, JANE DOE, Plaintiff and Real Party in Interest	S269608 Ct.App. B307389 L.A. Super. Ct. No. BC659059 Hon. Shirley K. Watkins

ANSWER BRIEF ON THE MERITS

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INTRODUCTION

Since the Government Claims Act was enacted in 1963, public entities in California have been protected from damage awards that exceed the amount necessary to compensate the injured party for the harm suffered.[1] That protection is found in Government Code section 818, which bars awarding "damages imposed primarily for the sake of example and by way of punishing the defendant." Because California courts have long considered awards of multiples of actual damages to be primarily punitive,[2] AB 218's treble damages provision should be subject to the bar of section 818.

In deciding whether the Los Angeles Unified School District (LAUSD) is subject to treble damages in this case, the Court should consider "the stringent revenue, appropriations, and budget restraints under which all California governmental entities operate . . .. In the particular case of public school districts, such exposure [to 'draconian' statutory liability] would interfere with the state's plenary power and duty, exercised at the local level by the individual districts, to provide the free public education mandated by the Constitution."[3]

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[1] Originally enacted as the Tort Claims Act, it was renamed the Government Claims Act in 2012. See Stats. 2012, ch. 759, § 5.

[2] See pages 11 and following below.

[3] *Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1193 (*Wells*).

Cash-strapped school districts are already called upon to pay substantial compensatory damage awards in childhood sexual assault cases, with verdicts typically exceeding $1 million per plaintiff.[4] Adding treble damages to such compensatory damages can only be considered punitive.[5] That is why AB 218 was amended during the legislative process to make the treble damages inapplicable if prohibited by another law, while imposing no such limitations on its other provisions.

Declining to authorize treble damage awards against school districts will not impair AB 218's principal goal of assuring compensation for victims of past abuse. The bill's revival period for barred claims and extended statute of limitations (both of which apply to claims against school districts) assure that victims who have not come forward earlier will have another chance to seek justice.

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[4] See the verdicts cited in footnote 70 below at page 33.

[5] The Assembly Judiciary Committee staff analysis that preceded the Committee's hearing on the bill explained that current law "has failed to provide an effective deterrent on entities with a duty of care to children from sweeping sexual assault under the rug and engaging in coverups." It characterized the treble damages provision as "expos[ing] those who cover up the sexual abuse of children to *additional punishment*." [Exhibit 6 to Writ Petition, pp. 144-146; see also pp. 94, 131, 135, 141 (stating that the treble damages remedy was intended "as an effective deterrent" and to compensate victims).]

ARGUMENT

The issue before the Court is whether Government Code section 818, which bars awarding damages that are primarily punitive against government defendants, precludes recovery under Code of Civil Procedure section 340.1, subdivision (b), which permits an award of up to treble damages after a child is sexually abused because of a cover up. The Court reviews such issues de novo to determine the meaning of the statutes.[6]

I. The Government Claims Act protects public entities from treble damage awards.

Section 818 was enacted as part of the original Tort Claims Act on recommendation of the California Law Revision Commission. The Commission explained that damages imposed to punish a defendant "are inappropriate where a public entity is involved, since they would fall upon the innocent taxpayers."[7] "[T]he section was intended . . . to limit [the state's] exposure to liability for actual compensatory damages in tort cases"[8] and "to protect [public entities'] tax-

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[6] *Leider v. Lewis* (2017) 2 Cal.5th 1121, 1127.

[7] *Salinas v. Souza & McCue Constr. Co.* (1967) 66 Cal.2d 217, 228, fn. 1, quoting 4 Cal. Law Revision Com. Rep. (1963) Recommendation Relating to Sovereign Immunity, p. 817. See also *State Department of Corrections v. Workers' Comp. Appeals Bd.* (1971) 5 Cal.3d 885, 887-888 (*State Department)*; *City of Sanger v. Superior Court* (1992) 8 Cal.App.4th 444, 450; *McAllister v. South Coast Air Quality Management Dist.* (1986) 183 Cal.App.3d 653, 660.

[8] *Kizer v. County of San Mateo* (1991) 53 Cal.3d 139, 146 (*Kizer*).

funded revenues from legal judgments in amounts beyond those strictly necessary to recompense the injured party."[9]

This Court has explained that the sort of damages barred by section 818 are in addition to actual damages and beyond the equivalent of harm done,[10] and are awarded at the discretion of the factfinder.[11] AB 218's treble damages provision has those characteristics. It authorizes an award "up to" three times the actual damages, leaving the amount to be awarded up to the factfinder.

This Court has already recognized that the purpose of the ban on punitive damages is to protect a public entity's tax revenues from exemplary awards. In deciding that school districts could not be sued under the California False Claims Act, the Court took note of that Act's treble damages provision, and explained that "the purpose behind the statutory ban on punitive damages against public entities [section 818]—to protect their tax-funded revenues from legal judgments in amounts beyond those strictly necessary to recompense the injured party—applies equally here."[12]

This Court has also said that adding treble damages to a compensatory damages award should be considered punitive in other contexts. For example, in *Harris v. Capital Growth*

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[9] *Wells*, *supra*, 39 Cal.4th at p. 1196, fn. 20.

[10] *State Department*, *supra*, 5 Cal.3d at p. 891.

[11] *Kizer*, *supra*, 53 Cal.3d at p. 147.

[12] *Wells*, *supra*, 39 Cal.4th at p. 1196, fn. 20.

Investors XIV,[13] the Court characterized Civil Code section 52's treble damages provision as "an exemplary award . . . [that] reveals a desire to punish intentional and morally offensive conduct." Several federal district courts in California have relied on that statement to hold that section 818 bars treble damage awards under section 52 against public entities.[14] In 2000, Justice Brown noted in a concurring opinion that "[i]n more than 30 instances, the Legislature has provided for double or treble damages as a punishment for wrongful acts."[15] More recently, this Court stated in *Imperial Merchant Services, Inc. v. Hunt*[16] that the treble damages authorized by Civil Code section 1719 "are punitive in nature."

Just last year, the Court stated that enhanced damages remedy in Civil Code section 3346 was intended "to deter the wrongful breach of property lines for the sake of cutting or other direct forms of injury to another's trees, and to encourage

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[13] (1991) 52 Cal.3d 1142, 1172.

[14] *Melendez v. City of Mountain View* (N.D.Cal. Nov. 17, 2021) 2021 U.S.Dist.LEXIS 222323; *Archibald v. County of San Bernardino* (C.D.Cal. May 10, 2018) 2018 U.S.Dist.LEXIS 79449; *W.V. v. Whittier Union High Sch. Dist.* (C.D.Cal. Oct. 20, 2016) 2016 U.S.Dist.LEXIS 196240; *Jefferson v. City of Fremont* (N.D.Cal. Apr. 30, 2012) 2012 U.S.Dist.LEXIS 60141; *M.J. v. Clovis Unified Sch. Dist.* (E.D.Cal. Mar. 28, 2007) 2007 U.S.Dist.LEXIS 28761; *Doran v. Embassy Suites Hotel* (N.D.Cal. Aug. 20, 2002) 2002 U.S.Dist.LEXIS 16116; *Botosan v. Fitzhugh* (S.D.Cal. 1998) 13 F.Supp.2d 1047, 1052.

[15] *Lane v. Hughes Aircraft Co.* (2000) 22 Cal.4th 405, 425.

[16] (2009) 47 Cal.4th 381, 394.

property owners to take appropriate steps to determine where the lines fall. … What's more, *double damages for mistaken trespasses stand out, as the Legislature typically reserves enhanced damages for deterring willful conduct*."[17]

The Courts of Appeal have similarly recognized the punitive nature of treble damages in a variety of contexts:

> *Fassberg Construction Co. v. Housing Authority of City of Los Angeles*[18] held that, because treble damages under the California False Claims Act were "punitive in nature," the plaintiff could not recover both those damages and punitive damages.
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> *Troensegaard v. Silvercrest Industries*[19] held that a plaintiff could not recover both treble damages under Civil Code section 1794 and punitive damages under section 3294, because the treble damages themselves were "punitive in nature."
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> *Marshall v. Brown*[20] held that treble damages for misrepresentation about a former employee under Labor Code section 1054 have a "punitive purpose."

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[17] *Scholes v. Lambirth Trucking Co.* (2020) 8 Cal.5th 1094, 1112 (emphasis added.).

[18] (2007) 152 Cal.App.4th 720, 759-760. Accord, *Grupp v. DHL Express (USA), Inc.* (2015) 240 Cal.App.4th 420, 433 ("the [CFCA] is punitive in nature because it prescribes treble damages and statutory penalties").

[19] (1985) 175 Cal.App.3d 218, 226-227.

[20] (1983) 141 Cal.App.3d 408, 419.

Circle Oaks Sales Co. v. Smith[21] held that a treble damages award under Business & Professions Code section 10146 was "punitive in nature, imposed as punishment against the defendant, rather than compensation to the plaintiff."

Swall v. Anderson[22] held that a treble damages award under Code of Civil Procedure section 733 for cutting or carrying away timber "must be treated as penal and punitive."

Plaintiff's reliance on the United States Supreme Court's decision in *Molzof v. United States* decision to argue that the treble damages provision should not be considered punitive is misplaced.[23] Although this Court sometimes views federal authorities as persuasive on issues of California law, differences in statutory language diminish the weight of such precedents.[24] *Molzof* interpreted the statutory prohibition on awards of "punitive damages" against the United States under the Federal Tort Claims Act.[25] Congress's invocation of that legal term of art with a widely accepted common-law meaning

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[21] (1971) 16 Cal.App.3d 682, 684-685.

[22] (1943) 60 Cal.App.2d 825, 828.

[23] *Molzof v. United States* (1992) 502 U.S. 301 (*Molzof*).

[24] *Commodore Home Systems, Inc. v. Superior Court* (1982) 32 Cal.3d 211, 217 (differences between federal and state law "diminish the weight of the federal precedents"). Accord, *State Dept. of Health Services v. Superior Court* (2003) 31 Cal.4th 1026, 1040.

[25] See 28 U.S.C. § 2674.

required the Court to look to "traditional common-law principles" to determine the scope of the prohibition. Those principles looked to "the enormity of [the tortfeasor's] offence rather than the measure of compensation to the plaintiff."[26] In the Supreme Court's view, that left a "gray area" of damages that were not legally considered punitive damages, "but which are for some reason above and beyond ordinary notions of compensation," which a plaintiff could recover against the United States.[27]

By contrast, section 818 prohibits *all* damages that are imposed "primarily for the sake of example and by way of punishing the defendant," not just damages that were considered punitive damages at common law. Further, this Court has made clear that section 818 was intended to limit [public entities'] "exposure to liability for *actual compensatory damages* in tort cases,"[28] and not just to bar those damages recognized as punitive at common law.

Even if the Court were inclined to look to *Molzof* for guidance in interpreting section 818, the decision does not support awarding treble damages against the LAUSD. *Molzof* was concerned with damages for a decedent's medical expenses and loss of enjoyment of life. There is little question that such damages are intended as compensation for personal injury, and

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[26] *Molzof*, *supra*, 502 U.S. at p. 306.

[27] 502 U.S. at p. 308.

[28] *Kizer*, *supra*, 53 Cal.3d at p. 146 (emphasis supplied).

that they would be recoverable against a public entity in California.[29] By contrast, a "multiplication of damages" remedy based on aggravating circumstances has been held barred as punitive under the *Molzof* standard.[30]

In other cases more like this one, the United States Supreme Court has recognized the punitive nature of treble damages. For example, it has said that "[t]he very idea of treble damages reveals an intent to punish past, and to deter future, unlawful conduct, not to ameliorate the liability of wrongdoers."[31] In deciding that a state was not subject to suit under the False Claims Act, the Court noted that the treble damages remedy was inconsistent with an intent to subject states to suit, because it was "essentially punitive in nature."[32] In concluding that punitive damages were taxable, the Court

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[29] See *Pearl v. City of Los Angeles* (2019) 36 Cal.App.5th 475, 492 (approving damage award that included loss of enjoyment of life) and *Acosta v. Southern California Rapid Transit Dist.* (1970) 2 Cal.3d 19, 25-26 (affirming judgment in personal injury case that included medical expenses that had been paid for by insurance).

[30] *Beller v. United States* (D.N.M. 2003) 296 F.Supp.2d 1277, 1279.

[31] *Texas Indus., Inc. v. Radcliff Materials* (1981) 451 U.S. 630, 639 (determining that there is no right to contribution under the Clayton Act).

[32] *Vermont Agency of Natural Res. v. United States ex rel. Stevens* (2000) 529 U.S. 765, 784-785.

included the "punitive two-thirds portion of a treble-damage antitrust recovery."[33]

In sum, neither California nor federal precedent supports the argument that Plaintiff may recover treble damages against the LAUSD.

II. The Government Claims Act protection is not limited to awards that are simply and solely punitive.

Although Plaintiff claims that section 818 bars only damages that are simply and solely punitive, the scope of the statute is not so narrow. That phrase does not appear in the statute, which specifically bars damages imposed "primarily" for the sake of example and punishment.

The "simply and solely" phrase derives from *People ex rel. Younger v. Superior Court* , which involved the application of section 818 to statutory penalties assessed by a government agency for an oil spill.[34] *Younger* determined that the plaintiffs were not barred by section 818 in seeking the statutory penalties, because the additional damages were intended to provide compensation to the State for the harm done by an oil spill, and because the law provided that the penalties collected be paid into a fund for cleaning up the water.

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[33] *Comm'r v. Glenshaw Glass Co.* (1955) 348 U.S. 426, 427.

[34] *People ex rel. Younger v. Superior Court of Alameda County* (1976) 16 Cal.3d 30, 38-39 (*Younger*).

Because *Younger* concerned penalties and not damages, and the statute clearly had a non-punitive purpose, there was no need to hold that section 818 applied only to damages that were simply and solely punitive. Therefore, that phrase should not determine the result in subsequent cases.[35] That *Younger*'s limiting phrase does not correctly define the reach of section 818 is further demonstrated by the Court's subsequent application of section 818 to bar a remedy that was only "partially penal."[36]

There is no support in this Court's decisions for Plaintiff's related argument that the protection of section 818 is "narrow." Although that term appears in *Los Angeles County Metropolitan Transportation Authority v. Superior Court*,[37] the authorities on which that case purported to base its characterization do not say that:

> The *Kizer* case did not say that section 818's reach was narrow, but that it "was intended to limit the state's waiver of sovereign immunity and, therefore, to limit its

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[35] *City of San Diego v. Bd. of Trustees of California State Univ.* (2015) 61 Cal.4th 945, 958-959 (the statement of a principle not necessary to the decision is dictum that need not be followed).

[36] *DuBois v. Workers' Comp. Appeals Bd.* (1993) 5 Cal.4th 382, 398.

[37] See *Los Angeles County Metropolitan Transportation Authority v. Superior Court* (2004) 123 Cal.App.4th 261, 275 (*MTA*).

exposure to liability for actual compensatory damages in tort cases."[38]

The *Younger* case did not say that section 818's reach was narrow, but that it did not bar remedies that "fulfill legitimate compensatory functions."[39]

The *San Francisco Civil Service Commission* case did not say that section 818's reach was narrow, but that the statutory remedy at issue there "fulfills the same compensatory functions as the liability imposed by [the statute that *Younger* had held not to be primarily punitive]."[40]

The *State Department of Corrections* case did not say that section 818's reach was narrow, but that the increased award at issue there was not designed "primarily to punish the defendant rather than to more adequately compensate the plaintiff"."[41]

The *Helfend* case did not say that section 818's reach was narrow, but that the collateral source rule served "several legitimate and fully justified compensatory functions."[42]

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[38] *Kizer*, *supra*, 53 Cal.3d at p. 146.

[39] *Younger*, *supra*, 16 Cal.3d at p. 39.

[40] *San Francisco Civil Service Assn. v. Superior Court* (1976) 16 Cal.3d 46, 51.

[41] *State Department*, *supra*, 5 Cal.3d at pp. 890-891.

[42] *Helfend v. Southern California Rapid Transit Dist.* (1970) 2 Cal.3d 1, 13.

The proper inquiry for determining whether section 818 applies was recently discussed in the *X.M. v. Superior Court* case:

> We recognize that in *Younger* our Supreme Court upheld the oil spill penalty on the ground the penalty was not "solely" punitive (that is, it also served a "legitimate compensatory function[]") (*Younger*, *supra*, 16 Cal.3d at p. 37.) But it makes sense, in that context, to ask whether the penalty served any compensatory function because actual damages are not available in civil enforcement actions under the Water Code. But where, as here, the focus is an increased damage provision in a tort action where compensatory damages are available, we think the proper inquiry is the provision's "primary" purpose.[43]

The Court of Appeal in the present case likewise looked to the "primary purpose" of the treble damages provision to determine whether it was barred by section 818.[44]

As explained below in Section IV, starting at page 26, the primary purpose of AB 218's treble damages provision is to punish those who cover up sex abuse by authorizing damages in addition to compensatory damages at the discretion of the factfinder.

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[43] *X.M. v. Superior Court* (2021) 68 Cal.App.5th 1014, 1031, review granted and briefing deferred (Dec. 1, 2021).

[44] *Los Angeles Unified School Dist. v. Superior Court* (2021) 64 Cal.App.5th 549, 567, review granted (Sept. 1, 2021).

III. The decisions cited by Plaintiff that have declined to apply the Government Claims Act protection are distinguishable from this one.

A. Some cases were concerned with remedies that were not imposed primarily for punishment.

Because section 818 bars damage awards that serve "primarily" as punishment, damages that assure adequate compensation are outside its scope. That explains the result in several decisions that Plaintiff cites.

For example, in *State Department*, *supra*, this Court allowed an additional award against a public entity under Labor Code section 4553 for the employer's serious and willful misconduct. Section 818 did not apply, because "an ordinary award of benefits does not fully compensate an employee for his injuries and other detriment and that the purpose of the additional allowance was to provide more nearly full compensation in those cases in which the employer was guilty of aggravated misconduct."[45] In an earlier case, the Court had explained that awards under the Workers Compensation Act were not intended to provide full compensation, but only "to take a part of the burden imposed by the injury from the injured employee, and transfer that part to the employer to be ultimately borne by the community in general as an addition to the cost of production."[46]

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[45] *State Department*, *supra*, 5 Cal.3d at p. 889.

[46] *E. Clemens Horst Co. v. Industrial Accident Com.* (1920) 184 Cal. 180, 193.

Marron v. Superior Court[47] held that a decedent's survivor could recover damages for the decedent's pain and suffering in an action under the Elder Abuse and Dependent Adult Civil Protection Act. Although Code of Civil Procedure section 377.34 would ordinarily bar such an award, the Act provided that section 377.34 did not apply to elder abuse claims. That exemption from section 377.34's bar was not primarily for the sake of punishment, because awarding pain and suffering damages that section 377.34 would otherwise preclude were measured by the decedent's actual loss. Hence, it was part of the compensation for "all the detriment proximately caused" by the defendant that a plaintiff is presumptively entitled to recover under Civil Code section 3333. The United States Supreme Court used a similar analysis to uphold the award of loss of enjoyment of life damages in *Molzof*, *supra*.

B. Other cases on which Plaintiff relies were concerned with fines and statutory penalties that are outside the scope of the Government Claims Act protection.

This Court's *Kizer* decision held that fines and statutory penalties imposed on a county health care facility for health and safety violations were not subject to the bar of section 818. That provision was intended "to limit the state's waiver of sovereign immunity and, therefore, to limit its exposure to

[47] (2003) 108 Cal.App.4th 1049, 1061-1063.

liability for actual compensatory damages in tort cases."[48] "The Department's citation enforcement action lies outside the perimeters of a tort action and therefore does not readily lend itself to a liability analysis based on tort principles."[49]

Kizer explained that the penalties it considered to be outside the reach of section 818 differed from damages, because (1) civil penalties are mandatory once liability is established, whereas treble damages are awarded at the factfinder's discretion, (2) civil penalties do not require proof of actual damage, but a treble damages award does, and (3) civil penalties go to the enforcing entity, whereas treble damages are awarded to the private plaintiff.[50]

MTA, *supra*, concluded that the $25,000 civil penalty in Civil Code section 52, subdivision (b)(2) for violations of the Unruh Act was not barred by section 818. Although a citation to *Kizer*'s determination that penalties are outside the parameters of the Government Claims Act should have sufficed to support that result, the *MTA* Court went on to erroneously opine that *Kizer* determined that the penalties were not barred because they had a compensatory element and were intended to obtain compliance.[51]

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[48] *Id.* at p. 146.

[49] *Ibid.*

[50] *Id.* at pp. 145-147.

[51] See *MTA*, *supra*, 123 Cal.App.4th at p. 274 ("the critical reason the penalties were sustained by the *Kizer* court, despite their punitive aspect, was that they served a

Kizer did not say any such thing. It described the question before it as "whether the Tort Claims Act applies to the statutory civil penalties" and concluded that "nothing in the Tort Claims Act suggests that Government Code section 818 was intended to apply to statutory civil penalties such as the penalties at issue here."[52]

In any event, the $25,000 penalty challenged in the *MTA* case differs from the treble damages under consideration here. *MTA* imposed the penalty based on proof of a violation instead of being subject to the factfinder's discretion based on the severity of the defendant's conduct. It did not depend on proof of actual damage.

Plaintiff also relies on *Lozada v. City and County of San Francisco*, which mentioned the civil penalties available under the California Public Safety Officers' Procedural Bill of Rights Act (POBRA), but had nothing to do with the application of section 818.[53] The issue in *Lozada* was whether the plaintiff's POBRA claims were subject to the claim presentation requirement of the Government Claims Act. In holding that they were, the Court of Appeal noted that "'all claims for money or damages against local public entities' must be

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compensatory function, and their primary purpose was 'to secure obedience to statutes and regulations imposed to assure important public policy objectives'").

[52] *Kizer*, *supra*, 53 Cal.3d at p. 145.

[53] *Lozada v. City and County of San Francisco* (2006) 145 Cal.App.4th 1139, 1150-1151, citing to Gov. Code, § 905.

presented in accordance with the claim presentation statutes." Because a claim for a civil penalty not to exceed $25,000 was a claim for money, the aggrieved police officer was required to present a claim as a prerequisite to filing a lawsuit.

IV. AB 218 did not lift the prohibition on treble damage awards against public entities.

AB 218 arose out of continuing concern about childhood sexual abuse. It aimed "to allow more victims of childhood sexual assault to be compensated for their injuries and, to help prevent future assaults by raising the costs for this abuse." [Exhibit 6 to Writ Petition, pp. 93-94] Nothing in the legislative history suggests that the Legislature intended to eliminate the protection of section 818 to accomplish those purposes.

A. The treble damages provision does not supersede the Government Claims Act protection against damages imposed primarily as punishment, because it does not expressly include public entities.

Although Plaintiff claims that the Legislature could not have intended to exempt public entities from treble damages, the failure to expressly include public entities in that provision shows exactly the opposite. One of the rules of statutory construction is that, "absent express words to the contrary, governmental agencies are not included within the general

words of a statute."[54] That principle is also expressed in the Government Claims Act, which provides: "Except as otherwise provided by statute: (a) A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person."[55] In order to apply to a public entity, the provision must include words or phrases "most commonly used to signify … public entities or governmental agencies."[56]

AB 218's treble damages provision authorizes a person to recover "up to treble damages" against a "defendant" who covered up the sexual assault of a minor.[57] "Defendant" is defined in Code of Civil Procedure section 308 as the adverse party to a plaintiff in a civil action. Because neither the treble damages provision nor the definition of "defendant" contains any words or phrases used to signify public entities, the provision should not apply to the LAUSD.

When the Legislature wished to modify restrictions on public entity liability in sexual abuse cases, it has done so expressly. AB 218 itself amended Government Code section 905 to expressly expand the claims exempted from the claim

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[54] *Wells*, *supra*, 39 Cal.4th at p. 1192. See also *In re Estate of Miller* (1936) 5 Cal.2d 588, 597; *Johnson v. Arvin-Edison Water Storage Dist.* (2009) 174 Cal.App.4th 729, 736.

[55] Gov. Code, § 815.

[56] *Sargent v. Board of Trustees of California State University* (2021) 61 Cal.App.5th 658, 672, quoting *Wells*, *supra*, 39 Cal.4th at p. 1190.

[57] Code Civ. Proc., § 340.1, subd. (b)(1).

filing requirement to include claims that arose before January 1, 2009. In 2018, SB 1053 expressly exempted childhood sexual abuse claims from procedural hurdles enacted by local public entities under the Government Claims Act, pursuant to what is now Government Code section 935, subdivision (f). In 2008, SB 640 expressly exempted childhood sexual abuse claims from the six-month claim filing requirement of the Government Claims Act, pursuant to what is now Government Code section 905, subdivision (m).

Ruling that public entities are not subject to treble damages under AB 218 would also be consistent with the concerns that led the Court to decide school districts were not subject to suit under the California False Claims Act:

> [W]e cannot lightly presume an intent to force such entities not only to make whole the fellow agencies they defrauded, but also to pay huge additional amounts, often into the pockets of outside parties. Such a diversion of limited taxpayer funds would interfere significantly with government agencies' fiscal ability to carry out their public missions.[58]

To appreciate the consequences of awarding treble damages against a school district, the Court should consider the following statistics reported by the California Department of Education. For fiscal year 2019-20, the midrange teacher salary in California ranged from $70,720 for small districts to

[58] *Wells*, *supra*, 39 Cal.4th at pp. 1195-1196.

$78,461 for large districts.[59] The average per pupil expenditure was $16,881.[60] Jury awards in childhood sexual abuse cases typically exceed $1 million per plaintiff.[61] An award of $3 million on top of that against a school district would translate into thirty-eight teacher salaries, or expenditures for 178 pupils.

That section 818 supersedes any general statutory provision is also shown by inclusion of the phrase "notwithstanding any other provision of law" to introduce it. That "is a 'very comprehensive phrase[] [that] signals a broad application overriding all other code sections unless it is specifically modified by use of a term applying it only to a particular code section or phrase.'"[62] AB 218 does not specifically modify section 818.

This Court's statement in *Doe v. City of Los Angeles* case that the Legislature intended section 340.1 "to be construed broadly" does not support a contrary conclusion.[63] That case was concerned with section 340.1's extended statute of

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[59] Source: California Department of Education, www.cde.ca.gov/fg/fr/sa/cefavgsalaries.asp, full web page reproduced in Attachment 1 hereto.

[60] Source: California Department of Education, www.cde.ca.gov/fg/fr/eb/yr20ltr0929.asp, full web page reproduced in Attachment 2 hereto.

[61] See jury verdict reports collected below in footnote 70, at page 30.

[62] *Visalia Unified School Dist. v. Superior Court* (2019) 43 Cal.App.5th 563, 569.

[63] *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 536.

limitations. The Court identified the Legislature's intent in that regard as "to expand the ability of victims of childhood sexual abuse to hold to account individuals and entities responsible for their injuries."[64] Earlier legislation had made clear that public entities were subject to the same statute of limitations for childhood sexual abuse as private entities.[65] *Doe* correctly acknowledged the remedial nature of section 340.1, but that statutory purpose does not include levying punitive damages against a public entity. Barring such an award would not limit the ability of childhood sexual abuse victims to hold responsible parties accountable.

B. The legislative history also shows that the addition of the phrase "unless prohibited by another law" to AB 218 was intended to acknowledge the protection that public entities have from treble damages.

Contrary to Plaintiff's claim that there is no justification in the plain language of Section 818 to exempt public entities from punitive damages, there is ample legislative support for that precise interpretation.

When AB 218 was introduced, it did not limit the defendants against whom treble damages could be awarded. When it was under consideration in the Senate Committee on Appropriations, committee staff took note of that in providing the following comment about the bill's fiscal impact in

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[64] *Id.*, at p. 536.

[65] See Stats. 2008, ch. 383, codified at Gov. Code, § 905, subd. (m).

connection with a hearing on August 12, 2019: "Unknown, potentially-major out-year costs to local school districts to the extent litigation is successfully brought outside the current statute of limitations and/or the *districts are liable for treble damages*." [Exhibit 3 to Writ Petition, pp. 49-50]

On August 13, 2019, several education agencies wrote to the Chair of the Senate Appropriations Committee, requesting that the treble damages provision be removed because it could add billions of dollars to the cost of settling claims. [Exhibit 8 to Writ Petition, pp. 185-187] The bill was amended on August 30, 2019, to add the phrase "unless prohibited by another law." [Exhibit 3 to Writ Petition, pp. 43-44] The Senate Appropriations Committee staff then issued an analysis addendum, which revised the fiscal impact to state: "Unknown, potentially-major out-year costs to local entities and school districts to the extent litigation is successfully brought outside the current statute of limitations and/or the entities are liable for damages. If payouts are large enough, this measure could lead to cost pressures to the state to stabilize a local jurisdiction or district." [Exhibit 3 to Writ Petition, p. 52] The addendum omitted the previous reference to the added burden that treble damages would impose.

The "unless prohibited by another law" language AB 218 added to section 340.1, subdivision (b)(1) would be superfluous unless it was meant to refer to the bar of section 818, because there is no other law that would prohibit an award of treble damages under section 340.1 subdivision (b)(1). The rules of

statutory interpretation require the Court to avoid a construction that makes a statutory term "surplusage or meaningless."[66] The only way to make the deliberate phrase "unless prohibited by another law" meaningful is to interpret it as barring imposition of treble damages under section 340.1, subdivision (b)(1) on public entities. Plaintiff's brief does not identify any law other than section 818 that would bar imposition of treble damages.

Although Plaintiff cites some references in the legislative history documents to a compensatory purpose in addition to the punitive one, those statements do not avoid the bar of section 818. Although the various authors' comments and evidence generated during the legislative process may provide some insight into the Legislature's intent, the Court should be wary of relying too heavily on such material.

> "It is that [statutory] language which has been lobbied for, lobbied against, studied, proposed, drafted, restudied, redrafted, voted on in committee, amended, reamended, analyzed, reanalyzed, voted on by two houses of the Legislature, sent to a conference committee, and, after perhaps more lobbying, debate and analysis, finally signed 'into law' by the Governor. The same care and scrutiny does not befall the committee reports, caucus analyses, authors' statements,

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[66] *In re Jerry R.* (1994) 29 Cal.App.4th 1432, 1437. See also *Wells*, *supra*, 39 Cal.4th at p. 1207.

> legislative counsel digests and other documents which make up a statute's 'legislative history.'"[67]

As the Court of Appeal rightly explained in the decision under review:

> A solitary statement repeated in some legislative analyses that treble damages are necessary to compensate victims of a coverup does not unambiguously demonstrate the Legislature in fact added the provision to section 340.1 for that purpose. Critically, the statement does not identify what injury these treble damages are needed to compensate. It refers only to "victims who never should have been victims," implying that the bill's author had the predicate sexual assault itself in mind—not some added injury resulting from the coverup that requires an added award of treble the plaintiff's actual damages. Moreover, the moral condemnation voiced in the statement—its invocation of "victims who never should have been victims" and "individuals and entities who have chosen to protect the perpetrators of sexual assault over the victims"—while plainly warranted, indicates the bill's author may have had a primarily punitive motivation for imposing treble damages in response to patently heinous conduct.[68]

The addition of "unless prohibited by another law" combined with the fact that AB 218 imposes up to three times actual damages shows that the remedy is subject to the bar of section 818.

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[67] *Wasatch Property Management v. Degrate* (2005) 35 Cal.4th 1111, 1117-1118, quoting *Halbert's Lumber, Inc. v. Lucky Stores, Inc.* (1992) 6 Cal.App.4th 1233, 1238.

[68] 64 Cal.App.5th 549, 560.

C. Treble damages are not needed to provide full compensation.

Treble damages authorized by AB 218 are to be awarded in addition to actual damages. Such an award is not needed to assure that victims of sexual abuse receive adequate compensation. Reflecting established law, the standard jury instructions for tort damages tell jurors that they must award a plaintiff full compensation for all his or her injuries.[69]

That these legal principles are sufficient to assure adequate compensation for victims of child sexual abuse is shown in the verdict reports. Juries typically award prevailing victims more than $1 million each.[70]

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[69] *North American Chemical Co. v. Superior Court* (1997) 59 Cal.App.4th 764, 786 ("Tort damages are awarded to compensate a plaintiff for all of the damages suffered as a legal result of the defendant's wrongful conduct"). See also Civ. Code, § 3333 (the measure of damages for a tort case is "is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not"); CACI 3900, 3905A.

[70] V.I. v. Moorpark Unified Sch. Dist. (12/4/2019) 2020 Jury Verdicts LEXIS 253772 ($2 million award to one plaintiff); Jane Doe v. Elk Grove Unified Sch. Dist. (3/13/2019) 2019 Jury Verdicts LEXIS 12107 ($1.2 million verdict to three plaintiffs); Jane BM Doe v. El Monte Union High Sch. Dist. (3/7/2019) 2019 Jury Verdicts LEXIS 12534 ($5 million verdict to one plaintiff); James Doe v. San Diego Unified Sch. Dist. (8/8/2018) 2018 Jury Verdicts LEXIS 21253 ($2.1 million verdict to one plaintiff); Stephen W. v. Westerly School of Long Beach (6/6/2018) 2018 Jury Verdicts LEXIS 17852 ($25.3 million verdict to one plaintiff); Jane Doe v. Hacienda La Puente Unified Sch. Dist. (12/14/2017) 2017 Jury Verdicts LEXIS 15686 ($2.8 million verdict to one plaintiff); A.M. v.

Plaintiff attempts to mitigate the clear punitive nature of the treble damages award by contending that it is simply another aspect of the compensatory damages she suffered due to the alleged cover up of evidence of prior abuse. General tort damages, however, already allow Plaintiff to recover compensation for that damage. Indeed, the additional damages Plaintiff seeks for her emotional trauma, embarrassment, and difficulty reporting the abuse are adequately awarded as compensatory damages. As the Court of Appeal observed,

> It will no doubt be the case in some horrific instances that the victim of a childhood sexual assault will suffer additional psychological trauma upon learning those charged with his or her care and protection in effect facilitated the assault by aiding its perpetrator in a deliberate coverup of past sexual abuse. However, while the manifestations of this trauma may be largely subjective, damages to compensate for it are by no means unquantifiable, nor are they unavailable to the victim under normal tort damages principles.[71]

Pomona Unified Sch. Dist. (5/10/2016) 2016 Jury Verdicts LEXIS 5087 ($8.05 million verdict to one plaintiff); Jane Doe v. Kern High Sch. Dist. (5/28/2014) 2014 Jury Verdicts LEXIS 5489 ($1.5 million verdict to one plaintiff); Emily H. v. Chino Valley Unified School District (6/25/2013) 2013 Jury Verdicts LEXIS 7156 ($5.6 million verdict to one plaintiff); Walter Doe v. Los Angeles Unified School District (12/21/2012) 2012 Jury Verdicts LEXIS 19036 ($23 million verdict to one plaintiff); Jane Doe 1 v. Sacramento City Unified Sch. Dist. (3/20/2012) 2012 Jury Verdicts LEXIS 3286 ($4 million verdict to two plaintiffs); *M. W. v. Panama Buena Vista Union School Dist.* (2003) 110 Cal.App.4th 508, 516 ($2.4 verdict to one plaintiff).

[71] 64 Cal.App.5th at p. 561.

D. There is no basis for allowing plaintiffs to recover treble damages to compensate for unrecoverable litigation stress damages.

Plaintiff speculates that the Legislature meant the treble damages remedy to provide a way for plaintiffs to recover otherwise unavailable "litigation stress" damages. There is nothing in the legislative history to suggest such an intent, and Plaintiff has not provided any convincing evidence or authority that the alleged bar to recovery of such damages has resulted in less than full compensation.

In the *Ortega v. Pajaro Valley United School District* decision that Plaintiff cites,[72] the jury awarded the plaintiff $1.5 million in emotional distress damages, part of which was for being subjected to a defamation lawsuit by the teacher who had molested her. Citing the litigation privilege of Civil Code section 47, subdivision (b), and cases applying the privilege, the school district argued that the plaintiff should not be able to recover for stress related to litigation. The *Ortega* court agreed with the "principles" in those authorities, but ruled it was appropriate for the plaintiff to recover for damages associated with having been subjected to the defamation lawsuit and the unjustified blame directed toward her.

In *Maccharles v. Bilson*,[73] the Court of Appeal affirmed the sustaining of a demurrer to two causes of action that

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[72] *Ortega v. Pajaro Valley Unified School Dist.* (1998) 64 Cal.App.4th 1023, 1060-1061.

[73] (1986) 186 Cal.App.3d 954.

sought damages for having to litigate the validity of one of the defendant's affirmative defenses. The decision explained that "a plaintiff may not, in the very same action, assert independent causes of action against the defendant and defendant's attorneys for asserting false defenses to plaintiff's main claim."[74] Nothing in that decision would foreclose the present Plaintiff from recovering full compensation for the damage she has suffered because of the abuse to which she was subjected.

E. Treble damages are not needed to ensure enforcement of childhood sexual assault laws.

Although Plaintiff claims that AB 218's treble damages remedy was intended to encourage victims to come forward and help protect future children from abuse, there is nothing in the legislative history to support that reasoning. The references to victims coming forward to report their abuse relate to the relaxation of the statute of limitations to allow victims to raise claims now that they may have been unaware of or afraid to assert earlier. This passage from the Senate Rules Committee analysis of AB 218 is illustrative:

> This bill modifies the statute of limitations for childhood sexual abuse claims in various ways and provides another revival period for bringing expired claims. As argued by the author, there has been a dramatic shift in cultural sensitivities around sexual abuse and a more accepting societal climate for victims. Rather than fearing stigma, victims of past abuse are more likely to be willing

[74] *Id.* at p. 957.

> to come forward now with claims. There are complex psychological effects that result from being victimized in this way. In addition, the systematic incidence of childhood sexual assault in numerous institutions in this country and the cover-ups that accompanied them arguably make both a revival period and an extended statute of limitations warranted. This bill provides another chance for victims, who are currently barred from pursing claims based solely on the passage of time, to seek justice.

[Exhibit 2 to Writ Petition, p. 102 (emphasis supplied)]

Plaintiff also relies on *Kelly v. Yee*,[75] which did not involve the application of section 818. That was a wrongful eviction action against a private landlord. The landlord argued that treble damages were punitive and should have required proof by clear and convincing evidence of oppression, fraud, or malice, as required by Civil Code section 3294. The court rejected the argument.

> The ordinance as a whole relies heavily on tenant initiative for enforcement. Since evictions cannot be easily monitored by a city bureaucracy, the remedies for illegal evictions will be triggered principally by tenant action. However, lawsuits over wrongful evictions are likely to involve small amounts of money that may not justify the costs of litigation—especially in the case of suits brought by the very type of tenant the ordinance is especially intended to protect: "senior citizens, persons on fixed incomes and low and moderate income households." [Citation omitted] If civil remedies in aid of these tenants are to be meaningful, they must provide sufficient financial

[75] (1989) 213 Cal.App.3d 336, 341-342.

> incentive to justify bringing suit. The award of treble damages very clearly serves such a purpose.

Those concerns are not present in this case. Here, the Court of Appeal correctly understood that AB 218 was intended to provide a timely extension of the statute of limitations period for sexual assault victims. In no way does that extended limitations period undermine the LAUSD's immunity from punitive damages under section 818.

CONCLUSION

This Court has recognized that the purpose of section 818's protection against damage awards imposed primarily for the sake of punishment is to protect tax revenues "from legal judgments in amounts beyond those strictly necessary to recompense the injured party."[76] Here, Plaintiff seeks to recover not just the amount needed to compensate her for her injuries, but up to three times that amount to be awarded at the discretion of the factfinder.

Because such an award can only be considered punitive, the Court should affirm the Court of Appeal's decision to order that claim stricken. Doing so will not interfere with AB 218's principal goal of assuring compensation for victims of past abuse, by giving them another chance to seek justice in the form of damages sufficient to compensate them for all the injury they have suffered.

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[76] *Wells*, *supra*, 39 Cal.4th at p. 1196, fn. 20.

CERTIFICATE OF WORD COUNT

Counsel of Record hereby certifies that pursuant to Rule 8.520(c)(1) of the California Rules of Court, the enclosed Answer Brief on the Merits is produced using 13-point Roman type including footnotes and contains approximately 8,300 words, which is less than the total words permitted by the Rules of Court. Counsel relies on the word count of the computer program used to prepare this brief.

/s Calvin House
Calvin House
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STATE OF CALIFORNIA
Supreme Court of California

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Supreme Court of California

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