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Supreme Court of California
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Case No. S279137

IN THE
SUPREME COURT OF CALIFORNIA

TAMELIN STONE, et al.,

Plaintiffs and Appellants,

v.

ALAMEDA HEALTH SYSTEM,

Defendant and Respondent.

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

REPLY BRIEF ON THE MERITS

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REPLY BRIEF ON THE MERITS

INTRODUCTION

Interpretive canons can be valuable tools for gleaning legislative intent. But ultimately, they are just that—tools. They do not carry their own independent force of law, and they cannot be employed to undermine the Legislature's words and actions, as manifested in statutory text, structure, and legislative history. This case provides a good example of the limits of interpretive canons. Although the "sovereign powers" maxim of construction has garnered the most attention in the parties' briefing and argument, perhaps the more pernicious canon in this case is *ejusdem generis*. (See OBOM 62 ["'when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same class as those listed'"].)

Plaintiffs' argument (which the Court of Appeal endorsed below) essentially, and erroneously, collapses multiple distinct legal frameworks into rote assessment of whether an entity has specific attributes of cities or counties like an independently elected board and the powers to tax, regulate, police, and seize property. Plaintiffs wrongly treat that as the touchstone of the "sovereign powers" maxim and would apply basically the same test to the definition of "other municipal corporation" in the prompt payment statutes, improperly relying on the *ejusdem generis* canon to contradict statutory language, legislative

history, and precedent. (Compare OBOM 62-64 with ABOM 14-15, 32, 53, 59.)

The problem with this approach is two-fold. First, it ignores this Court's directive that courts resort to the "sovereign powers" maxim only when there are no "positive indicia" of legislative intent to exclude public agencies from a general statute's reach. (*Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1193.)

Second, it erroneously takes the same fixation on specific powers that drove the Court of Appeal's incorrect *ejusdem generis* analysis in the narrow context of section 220(b) and imposes that misguided test on *all* general Labor Code provisions that do not mention public entities. This approach contradicts precedent, which holds that the sovereign powers canon should focus on whether a statute "significantly impede[s]" a public entity's "fiscal ability to carry out their core public missions" "in light of the stringent revenue, appropriations, and budget restraints under which all California governmental entities operate." (*Wells*, *supra*, 39 Cal.4th at p. 1193.)

The plain language, structure, and history of the relevant wage and hour provisions reveal that they were not intended to apply to any public entities. Furthermore, applying these laws to public hospital authorities like Alameda Health System ("AHS") would significantly impede their fiscal ability to carry out their core public missions, thereby impeding California counties' duty to provide medical care for the indigent.

The Court of Appeal's judgment should be reversed.

LEGAL ARGUMENT

I. Just as in *Wells*, Applying the Sovereign Powers Maxim Is Unnecessary.

Plaintiffs do not dispute that their claims rely on alleged violations of Labor Code and Wage Order provisions regarding meal and rest breaks, overtime, and payroll records. (See OBOM 65, fn. 13; ABOM 14, 17, 48, 73-74.) Nor do they dispute that these underlying claims fail if AHS is not a "person" under the Labor Code. (See ABOM 35-43, 61; cf. OBOM 31-53.) Rather, Plaintiffs claim that the definition of "person" is ambiguous and that applying these obligations to public hospital authorities would not infringe any sovereign powers. Not so.

A. Positive Indicia of Legislative Intent Reveals the Term "Person" in Labor Code Section 18 Does Not Include Public Entities.

In *Wells*, this Court concluded that the term "person" in the California False Claims Act ("CFCA") categorically excluded public entities because the CFCA's definition of "person" did not contain any "words or phrases most commonly used to signify … public entities or governmental agencies"; the CFCA made "very specific reference to governmental entities in other contexts"; other statutes in the Government Code and Labor Code showed a "conceptual separation of 'persons' from governmental entities"; and earlier drafts of the CFCA had included (but subsequently deleted) public entities from the defined list of covered "persons." (*Wells*, *supra*, 39 Cal.4th at pp. 1190-1193 & fn. 14.)

Based on text, structure, and history "alone," this Court was "persuaded that governmental entities, including the [school] district defendants in this case, may not be sued under the [CFCA]." (*Id.* at p. 1193.) Notably, this Court did not distinguish between different types of public entities and held that public entities as a class are not "persons" under the statute. (See *ibid*; see also *id.* at p. 1199 [asking whether Legislature intended "to include or exclude California government entities"].) This Court rejected the plaintiffs' invitation to use the sovereign powers maxim to "override" "positive indicia of a contrary legislative intent" to exclude public entities from the CFCA's reach. (*Id.* at pp. 1192-1193.)

This case warrants the same conclusion. As with the CFCA, the Labor Code's definition of "person" (§ 18)[1] does not contain any words or phrases commonly used to signify public entities. (See *Wells*, *supra*, 39 Cal.4th at p. 1191, fn. 14.) The Labor Code makes explicit reference to governmental entities in other provisions and uses conceptually distinct language to refer to "persons" and government entities (e.g., § 3300), indicating that the Legislature did not intend to "include public [entities] as 'persons' exposed to … liability" under general wage and hour provisions. (*Wells*, at pp. 1190-1191 & fn. 14; see also *Brennon B. v. Superior Court* (2022) 13 Cal.5th 662, 678 & fn. 5.) Indeed,

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[1] Unless otherwise noted, all statutory references are to the Labor Code and all Wage Order references are to Wage Order No. 5.

when the Legislature has intended to include public agencies within the reach of the phrase "person" in the Labor Code, it has expressly done so. (See, e.g., § 3210 ["person" for purposes of workers' compensation law includes "public, quasi public, or private corporation[s]"]; *Wells*, at p. 1191, fn. 14 [noting similar pattern in Water Code].)

As in *Wells*, such positive indicia of legislative intent foreclose reliance on the sovereign powers canon.

Plaintiffs argue that unlike in *Wells*, where the deletion of public entities from the definition of "persons" in a prior version of the bill provided "firm evidence of the intent" to exclude public entities, "[n]o such evidence exists under the Labor Code." (ABOM 23.) But just as in *Wells*, context proves the Legislature never intended section 18 to include public entities. The workers' compensation law, which was enacted in the same legislation as section 18, defines "person" more broadly to specifically include public and quasi-public corporations: "'Person' includes an individual, firm, voluntary association, or a *public, quasi public*, or private *corporation*." (§ 3210 [emphasis added]; see also Stats.1937, ch. 90, pp. 186, 266.) The workers' compensation law also defines "employer" to include both "person[s]" and, "additionally and separately" (*Wells*, *supra*, 39 Cal.4th at p. 1191, fn. 14), various other public entities. (See § 3300.) As this Court recently noted, the specific enumeration of public entities in one context but not another "'weighs heavily against a conclusion' that the coverage provisions should be understood as identical," especially where "the statutes' coverage provisions were drafted

by the very same Legislature during the same legislative session." (*Brennon B.*, *supra*, 13 Cal.5th at p. 678; see also Stats.1937, chs. 352, 683 & 778, pp. 763, 1936-1937, 2223 [defining "person" to include public entities].)

Plaintiffs also claim that "[i]f a general 'default' exemption applied … express exemptions would be unnecessary" in places such as Labor Code section 220. (ABOM 28.) But as one Court of Appeal explained in rejecting the same argument, "[t]hese specific exemptions cannot, by implication, be read as making chapter 1 generally applicable to public entities. Such an interpretation would violate the maxim that [w]hen the Legislature has employed a term or phrase in one place and excluded it in another, it should not be implied where excluded." (*California Correctional Peace Officers' Assn. v. State of California* (2010) 188 Cal.App.4th 646, 654 [quotation marks omitted].)

Plaintiffs also disregard the Legislature's repeated recognition that "'provisions of the Labor Code apply only to employees in the private sector unless they are specifically made applicable to public employees.'" (*Campbell v. Regents of University of California* (2005) 35 Cal.4th 311, 330 [quoting legislative analysis]; see also *Johnson v. Arvin-Edison Water Storage Dist.* (2009) 174 Cal.App.4th 729, 736 ["The Legislature's iteration of this rule is an indication that the Legislature follows it."].)

Finally, Plaintiffs argue that the wage and hour laws should be liberally construed to apply to public entities. (ABOM

18, 42, 50.) But because "the purpose of the liberal construction rule is to effectuate legislative intent," it should not be used to "'extend coverage to those for whom it obviously was not intended.'" (*Skidgel v. California Unemployment Ins. Appeals Bd.* (2021) 12 Cal.5th 1, 23-24 [cleaned up]; cf. *Brennon B.*, *supra*, 13 Cal.5th at pp. 677-678.) Here, positive indicia of legislative intent reveal that the Legislature deliberately excluded public entities from its definition of "person."

B. The Wage Order's Exemption for Public Employers Confirms the Legislature's Intent to Exclude Public Entities from the Wage and Hour Laws at Issue Here.

The Wage Order—which incorporates section 18's definition of "person" in defining "employers"—does not apply to public entities unless specifically provided. It did not apply to government employees at all until 2001. (See OBOM 37-39.) In amending the Wage Order, the IWC extended only certain provisions regarding "Definitions," "Minimum Wage," "Meals and Lodging," and "Penalties" to public entities while retaining the preexisting exemption for all other obligations, including those governing overtime (section 3), records (section 7), meal periods (section 11), and rest periods (section 12). (OBOM 39; *Stoetzl v. Department of Human Resources* (2019) 7 Cal.5th 718, 732, 748.)

Plaintiffs argue that the exclusion of governmental entities from the wage orders "refer[s] only to the traditional exemption for public entities without reference to the sovereign powers maxim." (ABOM 29.) Plaintiffs provide no support for that

assertion. Nor do they meaningfully contend with the legislative history of the wage orders, which shows that: (1) since their inception, they were not intended to regulate public employers; and (2) per the 2001 amendments, public employers are only subject to the wage orders where expressly specified. (OBOM 46-47.)

Plaintiffs also argue that AHS is not a "political subdivision" under the Wage Order because it "has no geographical jurisdiction." (ABOM 40.) This is wrong as a matter of law and fact. As this Court has recognized, "'states have 'extraordinarily wide latitude … in creating various types of political subdivisions and conferring authority upon them.'" (*California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, 255.) The Legislature views public hospital authorities as political subdivisions. (See Health & Saf. Code, § 101852, subd. (b)(5) [forming "a new political subdivision, a public hospital authority," modeled after AHS].) Moreover, as AHS's name and enabling statute indicate, AHS operates within the geographical boundaries of Alameda County and functions as its county hospital. (See *id.*, subd. (m).)

Perhaps recognizing this argument's futility, Plaintiffs contend that AHS and other public entities are liable for overtime violations under section 20(B) of the Wage Order. (ABOM 36.) That section permits the Labor Commissioner to "issue citations pursuant to Labor Code § 1197.1 for non-payment of wages for overtime work *in violation of this order*." (Wage Order, § 20(B) [emphasis added].) By section 20's own terms, its penalties are

only available against public employers for violations of substantive provisions that apply to public employers—that is, the obligations regarding minimum wages (*id.*, § 4) and meals and lodging (*id.*, § 10), enforceable through section 20(A). Section 20(B) does not apply because any failure by public entities to pay overtime rates is not "in violation of" the Wage Order, given that section 3 does not apply to them. (*See id.*, § 1(C).) This procedural mechanism for enforcing underlying substantive rights cannot reasonably be read as a cryptic end-run around the public employer exemption from overtime obligations. (See *Mendoza v. Fonseca McElroy Grinding Co., Inc.* (2021) 11 Cal.5th 1118, 1135 ["'The Legislature, 'does not, one might say, hide elephants in mouseholes'"'].)

II. Plaintiffs Cannot Evade *Wells*.

Plaintiffs advance several arguments recasting or distinguishing *Wells*. None is persuasive. Plaintiffs first recast *Wells* to erroneously argue that the sovereign powers maxim applies whenever a statute is facially silent as to public entities. Next, they distort the maxim beyond recognition by fixating on whether AHS bears specific "hallmarks of sovereignty" and drawing false parallels between AHS and non-governmental entities. These meritless arguments, if credited, could subject numerous public agencies tasked with performing critical public functions to unanticipated liabilities, as well as burden the lower courts with difficult-to-administer standards.

A. Plaintiffs' Reliance on *Hoyt* Is Misplaced.

Plaintiffs point to *Hoyt v. Board of Civil Service Commrs.* (1942) 21 Cal.2d 399, which they contend "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." (ABOM 25.) This characterization contradicts *Wells*' directive to look past a non-specific statute for "positive indicia" of legislative intent to exclude public entities.

Plaintiffs likewise claim that *Wells* "merely applied [*Hoyt*'s] analysis to two different sets of defendants"—a "public school district" that "held sovereign powers" and "charter schools" that "lacked sovereign powers and were insulated financially from the school district." (ABOM 25-26.) For several reasons, Plaintiffs misread *Hoyt* and *Wells*—neither of which indicates that the wage and hour obligations at issue here apply to public entities.

First, *Hoyt* addressed whether declaratory relief is available against municipal corporations and political subdivisions *in the absence* of an expression of legislative intent. (*Hoyt*, *supra*, 21 Cal.2d at p. 402; see also *id.* at p. 410 (conc. opn. of Traynor, J.).) By a similar token, none of the cases that Plaintiffs characterize as applying the "*Hoyt* maxim" endorsed liability against public entities in the face of positive indicia of a contrary legislative intent. (See ABOM 21-22 [citing cases].) Here, by contrast, there are ample positive indicia of legislative intent to exclude public entities from the reach of the wage and hour laws at issue.

Second, the declaratory relief statute in *Hoyt* had "received since its enactment in 1921" a "practical construction" that had "sanctioned the use of declaratory judgment procedure where political subdivisions of the state were involved." (*Hoyt*, *supra*, 21 Cal.2d at p. 402.) In this Court's view, "[t]he practice thus established [was] entitled to consideration and should not be overturned unless clearly unsupportable." (*Ibid*.)

Here, by contrast, the Legislature and this Court have regularly recognized that "'provisions of the Labor Code apply only to employees in the private sector unless they are specifically made applicable to public employees.'" (*Supra* at p. 16.)

Third, contrary to Plaintiffs' assertions, *Hoyt* did not consider whether the public entity defendants bore specific indicia of sovereignty. Instead, *Hoyt* asked whether applying the declaratory judgment procedure would "extend the jurisdiction of the courts or … broaden the liability which may be imposed upon governmental bodies." (*Hoyt*, *supra*, 21 Cal.2d at p. 403.) Because it was a "procedural statute[]" that did not "impose liability of any kind upon the city," the Court concluded that clarifying public entities' preexisting obligations using the declaratory judgment procedure would not "constitute[] an impairment of governmental sovereignty." (*Id*. at pp. 403-405.)[2]

[2] Most of the cases following *Hoyt* in which courts interpreted general statutory language to apply to public entities dealt with similar procedural issues or did not impose additional liabilities. (See ABOM 21.)

This is entirely consistent with *Wells*, which asks whether a specific statutory interpretation "would significantly impede [governmental entities'] fiscal ability to carry out their core public missions." (*Wells*, *supra*, 39 Cal.4th at p. 1193; see also *id.* at pp. 1193-1197 [applying test to public school districts without examining specific powers].)

The opinions of the Attorney General and other administrative agencies that rely on *Hoyt* do not support Plaintiffs' argument. (See ABOM 26-27.) For one, those opinions pre-date this Court's decision in *Wells*, which held that the sovereign powers principle is simply a maxim of construction to be employed absent positive indicia of legislative intent to exempt public entities. For another, those authorities do not support Plaintiffs' conception of the sovereign powers maxim as scrutinizing a public entity's general powers to determine if it is "sovereign" enough. Instead, one Attorney General opinion that Plaintiffs quote makes clear that the sovereign powers doctrine turns on whether the legislation "'affects the fundamental purposes and functions of the governmental body'" and "'impair[s]'" that entity's "'statutorily mandated activities.'" (ABOM 26, quoting 63 Ops.Cal.Atty.Gen. 24 (1980).)

For the foregoing reasons, Plaintiffs' interpretation of *Hoyt* is both incorrect and inconsistent with *Wells*. To the extent that *Hoyt* can be read as deviating from *Wells*, *Hoyt* should be deemed overruled and the cases following it disapproved. (See *Ex parte Lane* (1962) 58 Cal.2d 99, 105.)

B. Plaintiffs Misunderstand the Sovereign Powers Maxim.

Plaintiffs repeatedly conflate sovereign immunity with the sovereign powers maxim. (See ABOM 18-22.) But unlike the various immunities from liability that are available as affirmative defenses under the Government Claims Act, the sovereign powers maxim is a rule of construction that informs whether a specific statute applies to a public entity in the first instance. (See *Wells*, *supra*, 39 Cal.4th at p. 1199 & fn. 21.) In any event, there can be no reasonable dispute that AHS is a public entity protected by the Government Claims Act and "'vested with some degree of sovereignty.'" (OBOM 47-49 [emphasis omitted].)

Nevertheless, Plaintiffs argue that AHS is subject to the wage and hour provisions because it is not "sovereign" enough and lacks the full complement of governmental powers. Rather than point to any cases holding that this is how the sovereign powers maxim operates, they rely on a case (*Gateway Community Charters v. Spiess* (2017) 9 Cal.App.5th 499) that erroneously applied the *ejusdem generis* rule of construction to determine the meaning of "municipal corporation" in a specific provision of the Labor Code. (ABOM 31-32; OBOM 53-65.)

This Court's precedent makes clear that the sovereign powers maxim looks to the impact of a statute on an entity's governmental functions, not to the metes and bounds of that entity's powers. The key inquiry under *Wells* is whether exposing "governmental entities" to liability under a particular statute

"would significantly impede their … ability to carry out their core public missions," not whether those entities possess certain indicia of sovereignty. (*Wells*, *supra*, 39 Cal.4th at p. 1193; see *State ex rel. Harris v. PricewaterhouseCoopers, LLP* (2006) 39 Cal.4th 1220, 1237 [discussing *Wells*]; OBOM 50-52.)

Apart from the Court of Appeal's decision below, every California court to apply *Wells*' sovereignty framework to public employers has asked whether the statute would interfere with their "governmental purposes and functions." (See, e.g., *Johnson*, *supra*, 174 Cal.App.4th at p. 738 [water storage district "can only perform its purposes and functions through its employees"]; cf. *Wood v. Kaiser Foundation Hospitals* (2023) 88 Cal.App.5th 742, 762 ["we are not dealing with a statute that imposes liability or some other negative consequence on a government entity"].)[3]

Applying the wage and hour laws at issue here to public hospital authorities like AHS—which may "employ personnel[] and … contract for services required to meet its obligations" of ensuring "appropriate, quality, and cost-effective medical care as required of counties" under the Welfare and Institutions Code

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[3] In both *Guerrero v. Superior Court* (2013) 213 Cal.App.4th 912 and *Sheppard v. North Orange County Regional Occupational Program* (2010) 191 Cal.App.4th 289, the courts had no need to apply the sovereign powers maxim since there were positive indicia of legislative intent to apply the specific wage and hour obligations at issue to public entities. (See *Guerrero*, at p. 955 [noting contrast between wage order 15, which has no general exemption for public employers, and other wage orders]; *Sheppard*, at pp. 300-301 [wage order exception for minimum wages].)

(Health & Saf. Code, § 101850, subds. (q), (d), (m))—necessarily impinges on AHS's ability to carry out its core public mission since "'the relationship between a public employer and its employees affects the fundamental purposes and functions of the governmental body.'" (*Johnson*, *supra*, 174 Cal.App.4th at p. 738; *Krug v. Board of Trustees of California State University* (2023) 94 Cal.App.5th 1158, 1168 [reimbursement statute does not apply because "CSU was granted broad powers to obtain the equipment it needs to function"]; 63 Ops.Cal.Atty.Gen. 616 (1980) [maximum hours restrictions "would affect and impair" statutory duties].)

C. Public Hospital Authorities Do Not Resemble Private Charter Schools.

Plaintiffs claim that AHS "bears closer resemblance to the liable charter schools in *Wells* than the exempt school district" because (1) the "school district held sovereign powers"; (2) the obligation to provide medical care for the indigent under Welfare and Institutions Code section 17000 et seq. ultimately rests with the County; and (3) "AHS is financially and operationally isolated from the sovereign County." (ABOM 23-25, 55-56.) Plaintiffs' effort to analogize public hospital authorities to private charter schools overlooks critical aspects of *Wells* and ignores indisputable facts about AHS.

In *Wells*, this Court recognized that it was ultimately the "state's plenary power and duty … to provide the free public education mandated by the Constitution." (*Wells*, *supra*, 39 Cal.4th at p. 1193.) The Legislature "chose[] to implement this 'fundamental' guarantee through local school districts with a

considerable degree of local autonomy, but it is well settled that the state retains plenary power over public education." (*Id.* at p. 1195.) "School districts must use the limited funds at their disposal to carry out the state's constitutionally mandated duty to provide a system of public education." (*Ibid.*)

In considering whether applying the CFCA to school districts would intrude on sovereign powers, the Court therefore looked to the "*state's* sovereign educational function" and concluded that exposing school districts to liability under the CFCA "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." (*Id.* at pp. 1193, 1204 [emphasis added].)

By contrast, this Court explained that applying the CFCA to the charter schools would have no impact on the state's sovereign educational function because as non-profit "corporations," charter schools "are covered by the plain terms of the statute and … compete with the traditional public schools for students and funding." (*Wells*, *supra*, 39 Cal.4th at p. 1204; see also *id.* at p. 1201 ["There can be little doubt the CFCA applies generally to nongovernmental entities that contract with state and local governments to provide services on their behalf"].)

AHS is much more like the school districts than the charter schools in *Wells*. Unlike the charter schools, AHS is not a "corporation" covered within the plain terms of the definition of "person." The Legislature has unequivocally deemed AHS a

"government entity"[4] that exhibits characteristics typical of public entities. (OBOM 19, 22-23, 44.) Moreover, the County is deeply involved in AHS's governance and finances. (See, e.g., OBOM 44; Health & Saf. Code, § 101850, subds. (c), (e), (l)(1), (o), (ak), (am)(3).)

In stark contrast, charter schools are nonprofit public benefit corporations—not public entities. (Ed. Code, § 47604, subd. (a); *Los Angeles Leadership Academy, Inc. v. Prang* (2020) 46 Cal.App.5th 270, 281 [public benefit corporations are not public entities].) Courts have refused to provide them with the benefits enjoyed by public entities, such as exemption from taxation. (See *Prang*, at p. 281.) Notably, when the Legislature authorized AHS's creation, it expressly provided that AHS was to have the same tax exemptions as a county. (Health & Saf. Code, § 101850, subd. (z).) And while AHS has "all the rights and duties" of a county hospital (*id.*, subd. (m)), "charter schools and their operators are 'exempt from the laws governing school districts.'" (*Wells*, *supra*, 39 Cal.4th at p. 1201, quoting Ed. Code, § 47610.)

Moreover, unlike the charter schools in *Wells*, AHS does not compete with any county-owned or operated hospital for patients and funding. Rather, for all intents and purposes—and similar to school districts with respect to education in *Wells*—AHS functions as *the county hospital* in Alameda County. (See Health

[4] (Health & Saf. Code, § 101850, subd. (j); see also *id.*, subds. (a)(2)(C), (g), (u), & (ag) ["public agency"]; *id.*, subd. (s) ["district"]; *id.*, subd. (w)(3) ["public entities and public employees"].)

& Saf. Code, § 101850, subd. (m).) Much like the state has a duty to provide education (as discussed in *Wells*), the County has a duty to provide medical care to the indigent under the Welfare and Institutions Code.[5] Just because the County has the ultimate duty to provide medical care to the indigent does not mean that applying the wage and hour laws at issue to AHS would have *no* impact on sovereign powers. The County created AHS to effectuate its duty under the Welfare and Institutions Code, much like the school districts in *Wells* were created to fulfill the State's duty to provide education. As in *Wells*, subjecting AHS to the wage and hour laws would impede its ability to effectuate this core public function. (See also *infra* at § IV.D [providing public health to indigent is core governmental function].)

As the foregoing illustrates, AHS is much more like the public school districts in *Wells* than the charter schools.

D. Plaintiffs' Rule Would Impose New Liabilities on Numerous Public Entities and Needlessly Burden the Lower Courts.

The practical consequences of Plaintiffs' misguided interpretation of the sovereign powers doctrine also counsel against its adoption. (See *Wells*, *supra*, 39 Cal.4th at p. 1190 ["we may also consider the consequences of a particular interpretation,

[5] A prior version of AHS's enabling statute stated that AHS was not an "instrumentality" of the County, but the Legislature deleted that word when it added language about effectuating the County's duties under the Welfare and Institutions Code. (See Supp. MJN, Ex. C, at p. 6.)

including its impact on public policy"].) The state is filled with public agencies that, much like AHS, were created pursuant to state law to assist with carrying out specific public purposes. (See PFR 42-43 [discussing JPAs, public corporations, public authorities, and dependent and independent special districts].) For decades, these public agencies have operated under the assumption that general provisions of the Labor Code do not apply to them. (See *Campbell*, *supra*, 35 Cal.4th at p. 330.) In Plaintiffs' view, however, the applicability of the Labor Code to these public agencies turns on whether they have certain powers as opposed to the fact that they have been entrusted by other public agencies to perform critical public functions.

This approach exalts form over substance. Why should public hospital authorities be treated differently from health districts or the counties that create them—for the purpose of effectuating the latter's public duties—simply because they lack the authority to tax, seize land, or carry out other "hallmarks of sovereignty" that are not germane to their public missions? As this Court put it in a different context more than a century ago, "there would be a manifest impropriety in requiring that the organization of a levee district or an irrigation district should be conducted in the same manner as the organization of a corporation for the management of a public park, or the control of the school department." (*In re Madera Irrigation Dist.* (1891) 92 Cal. 296, 317-318.)

What's more, Plaintiffs' proposed rule will require trial courts to engage in a fact-intensive inquiry—often at the

pleadings stage—to determine whether a specific public agency is subject to the wage and hour laws. (See *Royals v. Lu* (2022) 81 Cal.App.5th 328, 352 [rejecting "novel, two-level standard of proof" that would not be "practically administrable"].) If that inquiry cannot be resolved on the pleadings, many public agencies would waste taxpayer dollars defending through summary judgment against claims under laws that do not, as a threshold matter, even apply to them.

III. AHS's Enabling Statute Makes Clear That It Functions as the County Hospital.

Plaintiffs' focus on AHS's specific powers glosses over the Legislature's conferral of "all the rights and duties set forth in state law with respect to hospitals owned or operated by a county." (Health & Saf., § 101850, subd. (m).) Both before and after AHS's enabling legislation, the Legislature, the courts, and administrative agencies have consistently determined that counties are not subject to a variety of wage and hour obligations. (See, e.g., § 220, subd. (b) [prompt payment]; Wage Order, § 1(C) [meal and rest periods, payroll records, and overtime]; MJN, Ex. C, Order No. 5-76, § 1(C) [all wage order obligations]; § 515, subd. (b) [permitting IWC to retain exemptions]; § 226.7, subd. (e) [premium pay for missed meal, rest, or recovery periods]; *Curcini v. County of Alameda* (2008) 164 Cal.App.4th 629, 643, 645 [overtime; meal and rest periods].)

Plaintiffs assert that this language does not "expressly mention immunity," does "not necessarily include sovereign immunity," and would have "unqualifiedly awarded the rights

and duties of 'Counties'" or "Health Districts" if the Legislature intended that AHS be exempt from wage and hour laws. (ABOM 34.) But this argument—which again mistakes sovereign immunity for the sovereign powers maxim—overlooks that the same year that the Legislature adopted this language and authorized AHS's creation,[6] the Court of Appeal held that "a statute that restricts the County in the operation of its public hospital infringes on its sovereign powers." (*Community Memorial Hospital v. County of Ventura* (1996) 50 Cal.App.4th 199, 210.) "This infringement stemmed from the … determination that one responsibility of government is the protection of public health, and the operation of a public hospital was a proper means by which sovereign power is exercised …." (*People for Ethical Treatment of Animals, Inc. v. California Milk Producers Advisory Bd.* (2005) 125 Cal.App.4th 871, 881.)

Here, since AHS functions as the county hospital in Alameda County (Health & Saf. Code, § 101850, subd. (m)), exposing AHS to liability and restricting its operations by imposing wage and hour controls limiting employee availability necessarily infringes on the ability of AHS and the County to protect the public health in Alameda County. (See §§ II.C & IV.D; OBOM 51-52, citing 63 Ops.Cal.Atty.Gen. 616 (1980).)

Finally, Plaintiffs argue that the first clause of subdivision (m)—"notwithstanding the provisions of this section relating to

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[6] See *Tafoya v. Hastings College* (1987) 191 Cal.App.3d 437, 447 (courts "assume that in passing a statute, the Legislature acted with full knowledge of the state of the law at that time").

the obligations and liabilities of the hospital authority"—somehow cabins the breadth of the second clause because the two "are not in conflict … as regards sovereign immunity." (ABOM 34.) But the "[t]he ordinary meaning of the word 'notwithstanding' is 'in spite of.'" (*California Taxpayers Action Network v. Taber Construction, Inc.* (2017) 12 Cal.App.5th 115, 130.) The language in subdivision (m)'s second clause is best read as stating that despite the various ways in which the County and AHS may bear distinct obligations and liabilities, AHS should nevertheless be treated just as if it were a county-owned hospital. Because Plaintiffs cannot meaningfully dispute that county hospitals are not subject to general wage and hour provisions and are exempt from the prompt payment statutes, their claims necessarily fail.

IV. Public Hospital Authorities Are Exempt from the Labor Code's Prompt Payment Obligations.

A. "Other Municipal Corporation" Should Be Read Broadly.

Plaintiffs have little answer for the fact that the prompt payment statutes were meant to regulate "'private employments,'" that in common usage the phrase "municipal corporation" took on a broad meaning by the early 1900s when used alongside phrases like "city or town," and that the dichotomy with "private employers" in section 220.2 reveals that "municipal corporations" were meant to capture all public employers other than the state. (OBOM 56-62.)

Plaintiffs ignore many of the authorities in AHS's brief (OBOM 56-59) bearing on the applicability of the prompt payment statutes to public employers (e.g., *McLean v. State of California* (2016) 1 Cal.5th 615 and *Smith v. Superior Court* (2006) 39 Cal.4th 77) and the breadth of the term "municipal corporation" (e.g., *In re Madera Irrigation Dist.*, *supra*, 92 Cal. 296). They also fail to address this Court's recent rejection of *ejusdem generis* in *Wishnev*. (OBOM 62-64.)

Rather, Plaintiffs assert that two of AHS's cited cases—*Morrison v. Smith Bros.* (1930) 211 Cal. 36, and *Torres v. Board of Commissioners* (1979) 89 Cal.App.3d 545—do not "expand the scope of the term 'municipal corporation'" since they dealt with public entities (a utility district and a housing authority, respectively) that possess "certain sovereign powers." (ABOM 52-54.) But neither case mentioned the words "sovereign" or "sovereignty." *Morrison* shows that a wide variety of public agencies could be deemed municipal corporations in the years before the Labor Code's codification.[7] *Torres* explained in the context of the Brown Act that "municipal corporation" "is not restricted to its technical sense of a 'city'" when "the term 'city' already appears in the applicable statute." (*Torres*, at pp. 549-550.) In doing so, *Torres* relied on two Labor Code cases holding

[7] "'It is common knowledge that in popular usage the term "municipal corporation" is understood as applying to all departments of state organization exercising public functions, and the same general use of the term is common in judicial decisions and with law text-writers.'" (*Clements v. T.R. Bechtel Co.* (1954) 43 Cal.2d 227, 234.)

that "the term 'municipal' as commonly used, is appropriately applied to all corporations exercising governmental functions." (*Siler v. Industrial Accident Com.* (1957) 150 Cal.App.2d 157, 162; *Division of Labor Law Enforcement v. El Camino Hospital Dist.* (1970) 8 Cal.App.3d Supp. 30, 34.)

Plaintiffs also try to distinguish these Labor Code cases as involving "entities with specific governing powers, unlike AHS." (ABOM 55.) But most of these cases did not even consider the powers of the public agencies at issue. Instead, they asked whether the agency exercised governmental functions. As this Court has explained in instructing that "other public or municipal corporation" should be read broadly, "[i]t is not necessary that such public corporation should be vested with all governmental powers, but the legislature may clothe it with such as, in its judgment are proper to be exercised within and for the benefit of such district." (*In re Madera Irrigation Dist.*, *supra*, 92 Cal. at p. 318.) *Gateway* is the only case that found an interrogation of an entity's powers to be determinative, and that case—which did not even involve a public agency—relied on *ejusdem generis* at the expense of the statute's text, structure, and history.

B. Plaintiffs Offer No Principled Reason to Depart from the Labor Commissioner's Interpretation of Section 220(b).

Likewise, Plaintiffs argue that this Court should not defer to the Labor Commissioner's conclusion that AHS is exempt from the prompt payment statutes as a "municipal corporation" on the

grounds that the Commissioner's "opinions cited in *Gateway* … conflict with AHS's cites." (ABOM 58.) But as discussed above, charter schools (which are not public agencies) are significantly different from public hospital authorities. (*Supra* at § II.C.) And in *Gateway*, unlike here, the Commissioner had rejected the charter school's arguments that it was a "municipal corporation" but concluded in other contexts that charter schools qualified for that exemption. (Compare Respondent's Br., 2016 WL 1390607, at *46-47 with Reply Br., 2016 WL 2653934, at *15-16.)

C. Plaintiffs' Perceived Conflict Between the Wage Order and Section 220(b) Is Illusory.

Plaintiffs contend that section 4 of the Wage Order includes a "conflict[ing]" prompt payment obligation for public entities that either prevails over the section 220(b) exemptions or should be "harmonized" to "include[] only entities with sovereign characteristics similar to a 'county, incorporated city or town.'" (ABOM 48-49, 51.)

This, too, is wrong. The Wage Order requires public employers to pay "the applicable *minimum wage* for all hours worked in the payroll period," but not premiums for overtime or missed meal and rest breaks, on the "established payday for the period involved." (Wage Order, § 4(B) [emphasis added].) That section does not purport to impose a prompt payment obligation or a waiting time penalty with respect to other substantive payment obligations from which public entities are exempt (such as overtime or missed meal and rest breaks). (See *Collins v. Overnite Transp. Co.* (2003) 105 Cal.App.4th 171, 179-180 ["It

should not be inferred that the Legislature intended to repeal the exemption without an express declaration of intent."].)

D. Providing Public Healthcare to the Medically Indigent Is a Core Governmental Function.

This Court has long recognized that "county hospitals are exercising governmental functions" and that "the health and general welfare of the citizens of a county may be promoted by the availability of a county hospital regardless of the ability to pay." (*Talley v. Northern San Diego County Hospital Dist.* (1953) 41 Cal.2d 33, 39-40, overruled in part on other grounds in *Muskopf v. Corning Hospital Dist.* (1961) 55 Cal.2d 211.) "Medical, hospital, and public health activities of public entities have traditionally been regarded as 'governmental' in nature…." (4 Cal. Law Revision Com. Rep. (1963) p. 829.)

Undeterred, Plaintiffs argue that providing medical care to the indigent is not a core governmental function under *Community Action Agency of Butte County v. Superior Court* (2022) 79 Cal.App.5th 221 ("*CAA*"). (ABOM 56-57.) But that case considered "whether a private entity should be treated as the functional equivalent of a governmental agency" under the Public Records Act and concluded only that "[p]overty alleviation" generally was not a core governmental function. (*CAA*, *supra*, at pp. 238-239; OBOM 52, fn. 8.) It did not suggest that providing medical care is not a core governmental function. Indeed, in reaching its conclusion, the court relied on an opinion from the Washington Supreme Court, which expressly recognized that "providing mental health care for uninsured—covering gaps in

the commercial health care market—is traditionally a public sector function." (*Fortgang v. Woodland Park Zoo* (Wash. 2017) 387 P.3d 690, 699, fn. 8; see also *Brown v. Crandall* (2011) 198 Cal.App.4th 1, 14 ["the public has a strong interest in the provision of such care to indigent persons"].)

V. PAGA Does Not Apply to Public Entities.

The Legislature enacted PAGA to improve Labor Code enforcement in the non-taxpaying, largely unregulated "underground economy," including "'in the garment industry, agriculture, and other *industries*.'" (OBOM 70-71, quoting MJN, Ex. D-8 at p. 2 [emphasis added].) It does not apply to public entities.

Plaintiffs do not dispute that if section 18's definition of "person" excludes public entities like AHS, then AHS is not subject to PAGA's default penalties under subdivision (f) of section 2699. Plaintiffs argue only that AHS is a "person" within the meaning of section 18. (ABOM 64-65.) As discussed above, AHS is not such a "person," whether or not the Court reaches a "sovereign powers" analysis. The Court of Appeal correctly found subdivision (f) inapplicable.

The Court of Appeal erred, however, in allowing Plaintiffs to pursue civil penalties set by other Labor Code provisions under PAGA's subdivision (a).

A. PAGA's Text and Structure Reflect Its Limitation to "Persons."

The ways section 2699 uses the word "person" show the Legislature intended the entire statute to apply only to "persons."

Subdivision (f) is not written as an exception to any broader public-sector liability under other subdivisions, but instead creates civil penalties for violating "all provisions of this code" that do not provide their own. The only methods of *calculating* those penalties in subparts (1) and (2) depend on the defendant being a "person," indicating the statute only applies to "persons."

According to Plaintiffs, acknowledging such intent in section 2699 as a whole somehow contradicts its "express words." (ABOM 62.) No "express words" in subdivision (a) or elsewhere in section 2699 address public entities, and that silence reflects the longstanding recognition that "'provisions of the Labor Code apply only to employees in the private sector unless they are specifically made applicable to public employees.'" (*Campbell*, *supra*, 35 Cal.4th at p. 330; see also OBOM 40-42.)

What contradicts the statute's express terms is Plaintiffs' position on double liability. The parties agree that subdivision (h) was not intended to allow private suits against anyone cited by the Labor Commissioner for the same violation. But to reach that result if public entities are otherwise subject to the statute, Plaintiffs contend that courts must ignore subdivision (h)'s use of the defined term "person"—one of only four instances of that term in section 2699 besides its definition—to effectuate legislative intent. (ABOM 63.) Otherwise, if public entities were subject to PAGA liability and "person" were held to its statutory definition, subdivision (h) would leave public entities uniquely exposed to subsequent suits.

B. PAGA's Legislative History Reflects Intent to Regulate Private Employment.

PAGA was intended to extend Labor Code enforcement to illicit "business practices" in the "underground economy." (Stats.2003, ch. 906 (S.B. 796), § 1, subd. (a).) Public entities like AHS are not "businesses operating outside the state's tax and licensing requirements," like the agricultural and garment industry employers that motivated PAGA's enactment. (See MJN, Ex. D-4 at pp. 2, 4.) Such statements of purpose are "positive indicia of … legislative intent" to regulate the private sector, not public entities. (See *Wells*, *supra*, 39 Cal.4th at p. 1193.)

AHS's opening brief notes that when legislative analysts discussed how PAGA would supplement existing remedies under the UCL, they did not suggest PAGA would extend beyond the UCL's limitation to the private sector. (OBOM 71.) Plaintiffs respond only by confirming the UCL's exclusion of public entities, without addressing legislative staff's apparent understanding that PAGA did not differ in that respect. (ABOM 66.)

Plaintiffs also rest on the term "employer" in PAGA's legislative history as suggesting broader application than "person" would otherwise encompass (ABOM 64-66), neglecting that same history's acknowledgment that the term "employer" is usually construed more *narrowly* than "person" in the Labor Code (OBOM 72). Plaintiffs identify no legislative history contemplating penalties against public entities.

C. Penalizing Public Entities Would Conflict with Law and Policy.

State law prohibits exemplary and punitive damages against public entities (Gov't Code § 818) since such penalties would fall on taxpayers rather than wrongdoers and likely not "achieve the goals of retribution and deterrence." (*Los Angeles Unified School Dist. v. Superior Court* (2023) 14 Cal.5th 758, 770 ("*LAUSD*").) This Court recognizes a broader presumption against exposing public funds to "legal judgments in amounts beyond those strictly necessary to recompense the injured party." (See *Wells*, *supra*, 39 Cal.4th at p. 1196, fn. 20.) Plaintiffs do not argue that PAGA penalties are compensatory.

Civil penalties are "unquestionably intended as a deterrent against future misconduct and … constitute a severe punitive exaction." (*People v. Superior Court (Kaufman)* (1974) 12 Cal.3d 421, 431.) PAGA's legislative history noted that certain "violations are *punishable* by [preexisting] civil penalties." (MJN, Ex. D-6 at p. 4 [emphasis added].)

Plaintiffs strangely cite *Brown v. Ralphs Grocery Co.* (2011) 197 Cal.App.4th 489 as suggesting PAGA's penalties are not punitive (ABOM 67)—disregarding that very case's explanation that "penalties [are] contemplated under the PAGA to punish and deter." (*Brown*, at p. 502.) They also ignore this Court's acknowledgement that PAGA's penalties, "'like punitive damages, are intended to punish the wrongdoer.'" (*Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 86.)

Instead, Plaintiffs argue PAGA's penalties are meant to incentivize lawsuits and deter violations. (ABOM 70.) But "deterrence" is a hallmark of punitive damages, which "may not effectively" function against public entities (*LAUSD*, *supra*, 14 Cal.5th at p. 770), and Plaintiffs offer no rationale for incentivizing PAGA claims *except* deterrence.

Plaintiffs contend that because PAGA's net effect as applied to *all* employers increases state revenue, the Court should disregard costs to public entities that might be sued. (ABOM 71-72.) Enforcing PAGA claims against private employers undoubtedly benefits state coffers, but such enforcement is not in dispute (and will not be affected by the Court's decision). Allowing PAGA claims against public entities would have the opposite effect, diminishing public funds by diverting penalties to private plaintiffs. Plaintiffs' contentions regarding countervailing effects of enforcement in the private sector would apply equally to the False Claims Act, contradicting this Court's holding in *Wells*, *supra*, 39 Cal.4th at pages 1196-1197. The Legislature's intent to raise funds through enforcement in the private sector does not imply intent to deplete public funds through enforcement against public entities.

Plaintiffs inaccurately assert that three other Labor Code penalties apply to public entities. (ABOM 71.) Section 226.3 sets penalties for violating subdivision (a) of section 226, but the only subdivision of section 226 that applies to public entities is (i), not (a). (See *infra* at § VI.) Section 1103 sets criminal penalties for

"individuals" and "corporations" that violate whistleblower laws.[8] Section 1197.1 imposes penalties on "persons" who fail to pay required wages. AHS has found no decision applying any of those penalties to public entities.

Even if certain other penalties applied, that would not suggest the Legislature intended public entities to face PAGA's sweeping, privately enforced penalties for *any* Labor Code violation, in a remarkable break from its usual reticence to govern public entities through non-compensatory deterrent penalties. (See *LAUSD*, *supra*, 14 Cal.5th at 770.) PAGA, like most penalty statutes and most of the Labor Code, is best understood as excluding public entities.

VI. The Wage Statement Claim Is Not Fairly Presented and Likewise Fails.

Plaintiffs argue that AHS is subject to the wage statement law (§ 226) because it is not a "governmental entity" under subdivision (i) of that statute. (ABOM 44-45.) Because Plaintiffs did not raise this issue in response to AHS's petition for review, this Court need not address it. (See Cal. Rules of Court, rule 8.516; *Scottsdale Ins. Co. v. MV Transportation* (2005) 36 Cal.4th 643, 654, fn. 2.)

In any event, the argument is baseless. Despite its other faults, the decision below correctly held that AHS is a "governmental entity" under section 226 since the Legislature

[8] Section 1106 defines "employee" as encompassing public employees for the purpose of several statutes, but section 1103 neither appears in that list nor includes the word "employee."

expressly referred to AHS as a "government entity" in its enabling statute. (Health & Saf. Code, § 101850, subd. (j); typed opn. at pp. 8, 12.) In addition to honoring how the Legislature characterized AHS when authorizing its creation, this conclusion coincides with the plain language and history of section 226 itself.

The statute uses broad language, exempting the state, cities, counties, cities and counties, districts, and "*any* other governmental entity" from all wage statement requirements except for those meant to safeguard employee social security numbers. (See § 226, subd. (i) [emphasis added].) This language was added in 1984 when the statute was amended to add total hours worked to the list of items that must be included on wage statements. (See Stats.1984, ch. 486, § 1, p. 1990.)

Since the statute's enactment in 1943, it was always understood not to apply to public employers. (See OBOM 40 [citing AG opinions].) The 1984 amendment did not alter this understanding, as the Legislative Counsel's Digest recognized that "[e]xisting law requires every *private* employer" to provide itemized wage statements. (Supp. MJN, Ex. A-1 at pp. 167-168 [emphasis added].) The legislative history for the 1984 amendment reveals that the language exempting government agencies was added out of an abundance of caution because the bill was "intended to apply only to private sector employment." (Supp. MJN, Ex. A-2; *id.*, Ex. A-3 at p. 1.)

Plaintiffs cite a 2004 amendment that required public agencies to safeguard employees' social security numbers, pointing to a Senate analysis of fiscal impact on counties, cities,

special districts, and the state itself, which did not specifically address public hospital authorities. (ABOM 45-46.) But that overlooks the fact that AHS is referred to by the State Controller's office as a "special district"[9] and would render the words "any other governmental entity" surplusage since the statute already uses the term "district" among the list of exempt entities. It also ignores language in bill analyses broadly stating that "state and local government entities are exempt from this requirement." (Supp. MJN, Ex. B, at p. 1.)

Plaintiffs' reliance on the *ejusdem generis* and *noscitur a sociis* canons fares no better because it contravenes the Legislature's express words in AHS's enabling statute ("government entity"), its stated intent in considering the 1984 amendment to section 226 (only "private employers"), and subdivision (i)'s expansive language.

VII. Whether Plaintiffs' Allegations Support a Claim Under Labor Code Section 512.1 Should Be Left for the Trial Court in the First Instance.

Plaintiffs do not meaningfully dispute that section 512.1 shows that the Legislature knows how to define "employer" to "specifically" include public agencies like AHS when it wants to do so. (ABOM 72-73.) Nor do they dispute that this new statute applies only prospectively to claims arising after its effective date of January 1, 2023. (OBOM 42, fn. 6.)

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[9] (See generally https://bythenumbers.sco.ca.gov/Special-Districts/Special-Districts-Listing/fv6y-3v29.)

Instead, Plaintiffs assert that "[t]his Court's review should be limited to claims arising before January 1, 2023" because section 512.1 "moots any arguments that AHS is exempt as to claims arising after" that date. (ABOM 72, 74.) AHS agrees that this Court need not resolve the viability of meal and rest period claims against public hospital authorities under section 512.1, but not for the reasons Plaintiffs have articulated.

First, the operative complaint does not assert any relevant claims after January 1, 2023. On the contrary, it uniformly discusses AHS's alleged failure to provide breaks in the past tense. (1AA44-47, 51-58, 65.) That makes sense since Plaintiff Stone no longer worked for AHS when this action was filed. (1AA61.) The only allegations of "ongoing and consistently unlawful" conduct with impacts in the future (ABOM 72) involve Plaintiffs' FEHA claims for "discriminatory policies and practices and related, recurring discriminatory acts," which are stayed. (1AA51, 63-64, 66.)

Second, even if Plaintiffs' allegations could support claims after section 512.1's effective date, the statute "does not apply to an employee directly employed by an employer who is covered by a valid collective bargaining agreement that provides for meal and rest periods" and provides adequate monetary remedies for missed meal and rest periods. (§ 512.1, subd. (d).) The record is not adequately developed to resolve this issue. "Considerations of judicial economy make it appropriate to leave [this] question[] to the lower courts in the first instance." (*Boghos v. Certain*

Underwriters at Lloyd's of London (2005) 36 Cal.4th 495, 509; accord *People v. Contreras* (2018) 4 Cal.5th 349, 374.)

CONCLUSION

The Court of Appeal's judgment should be reversed.

Respectfully submitted,

Dated: Nov. 6, 2023 RENNE PUBLIC LAW GROUP

By:

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CERTIFICATION OF WORD COUNT

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

The foregoing brief contains 8,397 words (including footnotes, but excluding the table of contents, table of authorities, certificate of service, and this certificate of word count), as counted by the Microsoft Word processing program used to generate the brief.

Dated: November 6, 2023 RENNE PUBLIC LAW GROUP

By:
Ryan P. McGinley Stempel

Attorneys for Defendant and Respondent ALAMEDA HEALTH SYSTEM

PROOF OF SERVICE

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

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

On November 6, 2023, I served the following document: **REPLY BRIEF ON THE MERITS** on the party below ***via TrueFiling***:

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Attorneys for Appellants Tamara Stone, et al.

On November 6, 2023, I also served the **REPLY BRIEF ON THE MERITS** on the parties below ***via U.S. Mail***:

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

Court of Appeal

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

Judge of the Superior Court of Alameda County

I declare, under penalty of perjury that the foregoing is true and correct. Executed on November 6, 2023, at San Francisco, California.

Bobette T. Bramer

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 11/6/2023 by Tao Zhang, Deputy Clerk

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.

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Date

/s/Ryan McGinley-Stempel

Signature

McGinley-Stempel, Ryan (296182)

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