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March 7, 2023

Via TrueFiling

Chief Justice Patricia Guerrero
Honorable Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

Re: *California-American Water Company, Monterey County Water Resources Agency v. Marina Coast Water District*, Case No. S278511
Amicus Curiae Letter of League of California Cities in Support of Petition for Review

Dear Chief Justice Guerrero and Associate Justices:

Pursuant to Rule 8.500(g) of the California Rules of Court, the League of California Cities ("Cal Cities") submits this letter as amicus curiae in support of the Marina Coast Water District's petition for review in *California-American Water Company, Monterey County Water Resources Agency v. Marina Coast Water District*, No. S278511. The published Court of Appeal opinion in that case erodes the defenses available to public entities under the Government Claims Act, by holding that public entities can be held to have impliedly waived claim presentation requirements, even where the plaintiff cannot show that it detrimentally relied on the supposed implied waiver. This outcome undermines public entities' sovereign immunity, which is at the heart of the Claims Act. Given the enormous number of public entities in California that rely on the Claims Act, whether the Opinion's rule is correct is an important question of law for this Court's review.

Statement of Interest

Cal Cities is an association of 478 California cities dedicated to protecting local control to provide for the public health, safety, and welfare of their residents, and to enhancing the quality of life for all Californians. Cal Cities is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the State. The

Committee monitors litigation of concern to municipalities, and identifies cases that have statewide or nationwide significance. The Committee has identified this case as having such significance. In particular, Cal Cities has a strong interest in maintaining Government Claims Act protections because the Claims Act is the system through which its constituent cities receive notice of, and evaluate, potential claims against municipal entities and officers.

The Government Claims Act Protects Sovereign Immunity By Limiting The Circumstances In Which Public Entities Can Face Tort Liability

The Government Claims Act "restores sovereign immunity in California," "confin[ing] potential governmental liability to rigidly delineated circumstances." (*Williams v. Horvath* (1976) 16 Cal.3d 834, 838; *DiCampli-Mintz v. County of Santa Clara* (2012) 55 Cal.4th 983, 991.)

The Claims Act's rigid limitations on governmental liability include a requirement that any plaintiff seeking to sue a public entity for money or damages must first present a timely written claim to the entity. (Gov. Code, § 945.4.) A governmental tort claim must state the date, place, and circumstances giving rise to the asserted claim, and describe the injury or damage. (*Id.*, § 910.)

This Court has recognized the important public policies underlying the claims presentation requirement, including affording public entities an opportunity to (1) remedy conditions that could cause similar harm to others, (2) investigate while evidence is still available, and (3) assess claims early for possible settlement and for budgetary planning. (E.g*., DiCampli-Mintz, supra,* 55 Cal.4th at p. 991; *City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 738.) "'[I]t is well-settled that claims statutes must be satisfied even in [the] face of the public entity's actual knowledge of the circumstances surrounding the claim.'" (*City of Stockton, supra,* 42 Cal.4th at p. 738.)

The Published Opinion Allows Plaintiffs To Assert That A Public Entity Impliedly Waived Claims Act Protections, Even Where The Plaintiff Did Not Detrimentally Rely On The Supposed Waiver

The Claims Act claim presentation requirements are at the heart of the issue presented by Marina's Petition for Review.

The underlying litigation stems from a dispute among the Monterey County Water Resources Agency, California-American Water Company ("Cal-Am"), and the Marina Coast Water District ("Marina"), over a water supply project. Marina is a public agency entitled to the protections of the Claims Act.

As relevant to the issue presented in Marina's Petition for Review (and Marina's depublication request), Cal-Am presented a Claims Act claim to Marina, contending that Marina was responsible for causing the water supply project to fail. Cal-Am later sued Marina for, among other things, negligence, intentional and negligent interference with prospective economic advantage, and vicarious liability.

Marina asserted a Claims Act defense, arguing that the tort causes of action were barred because the content of Cal-Am's Claims Act claim was deficient. Cal-Am opposed the defense, arguing that Marina impliedly waived its right to require Claims Act compliance by (1) entering into an agreement with an alternative dispute resolution procedure that superseded the Claims Act, and (2) Marina's counsel's actions and statements.

Marina sought summary judgment/summary adjudication, in part on the ground that a plaintiff asserting implied waiver of Claims Act requirements must establish that it detrimentally relied on the supposed waiver, and that Cal-Am could not make that showing because it *submitted* a timely Claims Act claim (albeit a substantively deficient one).

The trial court granted Marina's motion. The Court of Appeal reversed. It held that implied waiver does not require any showing of detrimental reliance, but rather turns solely on whether the waiving party's conduct was """so inconsistent with an intent to enforce the right as to induce a reasonable belief that such right has been relinquished.""" (Opinion 21-22.) The Opinion also found triable issues of fact on express waiver and on "the applicability of alternatives to the Claims Act." (Opinion 24-35.) Only the implied waiver holding is at issue in Marina's Petition for Review and depublication request.

Why Review Should Be Granted

Sovereign immunity is the default rule in California. (*Williams, supra,* 16 Cal.3d at p. 838.) Specifically, public entities are immune from liability "[e]xcept as otherwise provided by statute . . . ." (Gov. Code, § 815.) As discussed above, the Claims Act prohibits suing a public entity for damages without first presenting a timely, sufficient claim. (*Id.*, § 945.4.)

The Opinion does not identify any statute providing that a public entity can impliedly waive its right to this statutory limitation on suits for damages. Nor does it cite any prior decision analyzing whether implied waiver should be available in this context, and in what circumstances. Instead, it summarily concludes that a plaintiff can invoke the implied waiver doctrine against a public entity, even where the plaintiff did not detrimentally rely on the supposed waiver.

The upshot of the Opinion is that a public entity can be foreclosed from asserting a Claims Act defense because some conduct of the entity's agent could be interpreted as impliedly waiving the Claims Act requirements, *even where the supposed waiver is not the reason that the plaintiff failed to comply with the Claims Act.* For example, a public entity could be found to have given up its right to assert a defense that the plaintiff missed the Claims Act presentation deadline, even though the reason the plaintiff missed the deadline has nothing to do with any perception that the entity had impliedly waived the claims presentation requirement. Or, as on the facts here, an entity could be found to have given up its right to assert that a claim is substantively deficient, even though the plaintiff's having presented the claim in the first place indicates that the plaintiff understood that the entity may well *not* have intended to waive its right to enforce the Claims Act requirements. Instead, implied waiver is something that a plaintiff can latch onto after the fact, as a "gotcha" once the public entity asserts a Claims Act defense.

The Court should grant review to consider whether this regime squares with the Claims Act. Regardless of whether implied waiver requires a showing of detrimental reliance in other contexts, sovereign immunity and the other public policies underlying the Claims Act implicate unique considerations. If public entities can lose their statutory right to require Claims Act compliance based on implied waivers—i.e., with no explicit statement or decision by the entity's board—such waivers should be narrowly cabined to situations where the implied waiver is the *reason* that the plaintiff did not comply with the Claims Act.

Cal-Am's answer to the Petition for Review does not persuasively refute this point. Cal-Am asserts that sovereign immunity applies only to *substantive* immunity from liability, not to the right to receive notice under the Claims Act. (Answer 17-19.) But it cites no authority supporting that distinction. And indeed, Cal-Am's claim does not withstand scrutiny.

Sovereign immunity is codified in Government Code section 815, which broadly 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." The Claims Act "otherwise provide[s] by statute" a

condition for liability: "[N]o suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented in accordance with [specified statutes] until a written claim therefore has been presented to the public entity and has been acted upon by the board, or has been deemed to have been rejected by the board . . . ." (Gov. Code, § 945.4; see also *V.C. v. Los Angeles Unified School Dist.* (2006) 139 Cal.App.4th 499, 507 [Claims Act '"prescribes the manner in which public entities may be sued"'].) This is a component of sovereign immunity: Section 815's default ban on public entity liability for injuries means that an entity *cannot be liable* absent compliance with Claims Act procedures, unless a statute provides otherwise. No statute provides for implied waivers.

A detrimental reliance requirement is particularly important in the implied waiver context, where—in the Opinion's view—an entity's agents or employees can be deemed to have impliedly waived Claims Act requirements by their conduct. Among the Claims Act's purposes are to allow entities to (a) budget, (b) settle claims early, without the cost of litigation, and (c) gather evidence while it is still fresh. An entity that receives a claim that is plainly untimely or substantively deficient, should be able to budget, assess settlement, and decide on a scope of investigation and discovery, on a presumption that the plaintiff's failure to comply with the Claims Act requirements will provide a defense if the plaintiff brings a lawsuit based on the claim. Under the Opinion, however, public entities can do no such thing. There will always be the possibility that a plaintiff who has asserted a non-compliant claim will later assert that some conduct by some entity employee or agent can be construed as impliedly waiving the entity's rights, even though the plaintiff did not rely on the waiver, and instead acted as if it thought that the Claims Act requirements applied (but failed to satisfy them).

The possibility of a surprise, after-the-fact assertion of implied waiver by some employee or agent will require entities to approach late or deficient claims, and ensuing lawsuits, as if there is no Claims Act defense at all. This will confound budgeting, stymie efforts to assess the settlement value of a claim, and require entities to conduct extensive evidence-gathering even in situations where, historically, they could have concluded that the failure to comply with Claims Act requirements meant that a lawsuit would be dead on arrival.[1] And, because of the massive number of public entities in California, this

[1] A later section of the Opinion characterizes Marina as having considered Claims Act defects a "non-issue" because Marina litigated the tort causes of action for several years before raising its Claims Act defense. (Opinion 34.) But that fact should not drive the analysis, because the Opinion states its implied waiver rule so broadly that it would excuse a plaintiff from proving detrimental reliance even where the entity raised a Claims Act defense immediately upon being served with a complaint.

regime would have sweeping consequences. Cal Cities urges the Court to grant review to settle the important question of whether this is the correct legal rule.

Sincerely,

/s/ Alana Rotter
Alana Rotter

AHR:maa

cc: See Proof of Service

PROOF OF SERVICE

I am employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to the within action. My business address is 6420 Wilshire Boulevard, Suite 1100, Los Angeles, California 90048.

On March 7, 2023, I served the foregoing document(s) described as: **AMICUS CURAIE LETTER OF LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF PETITION FOR REVIEW** on the interested party(ies) in this action, addressed as follows:

SEE ATTACHED SERVICE LIST

I electronically filed the document(s) with the Clerk of the Court by using the TrueFiling system. Participants in the case who are registered TrueFiling users will be served by the TrueFiling system.

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

Executed March 7, 2023 at Los Angeles, California.

/s/ Maureen Allen
Maureen Allen

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