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November 12, 2015

The Honorable Tani Cantil-Sakauye, Chief
Justice, and Associate Justices of the
Supreme Court of California
350 McAllister St.
San Francisco, CA 94102

Re: *In Re: Acknowledgment Cases* (2015) 239 Cal.App.4th 1498
Court of Appeal Case No. E058460
Amicus Letter from the League of California Cities and California State Association of Counties Supporting Petition for Review

Dear Chief Justice Cantil-Sakauye and Associate Justices of the California Supreme Court:

Amici curiae the League of California Cities (the "League") and the California State Association of Counties ("CSAC") (collectively, "Amici") respectfully request this Court grant review of the Court of Appeal's decision in *In Re: Acknowledgment Cases,* 239 Cal.App.4th 1498 to settle important questions of law and secure uniformity of decision.

I. Introduction.

Review in this case is necessary and appropriate to secure uniformity of decision and to settle important questions of law. The Court of Appeal's decision below creates confusion and uncertainty for employers, both public and private, because it incorrectly interprets the California Labor Code, administrative enforcement interpretations of the California Labor Code and established case law. It also causes confusion by applying statutory language that does not contain specific language applying it to public employers, to a public employer, in direct contravention of case law on the matter. It also impermissibly infringes on the City of Los Angeles' constitutional home rule powers, mandating the grant of review.

The City of Los Angeles ("City") requires its new police recruits to undergo training at the Los Angeles Police Department ("LAPD") Academy as part of the process for becoming a LAPD officer. To redress a rising problem of attrition among new officers resulting in a loss of the City's financial investment in training its recruits, the City adopted an ordinance requiring officers to agree to repay the City a portion of the training costs if the officer leaves the City's employ within five years of receiving the training and accepts a position with another law enforcement agency within one year. However, the Court of Appeal's decision in this case prevents the City of Los Angeles from enforcing its reimbursement agreements with its officers and recouping the public funds expended by the City.

The Court of Appeal based its decision on a flawed interpretation of Labor Code section 2802. The appellate court's statutory interpretation at issue here is contrary to the language of the code section. The appellate court's decision also conflicts with existing case law and with the interpretation given section 2802 by the regulatory agency charged with its enforcement. Review is necessary, therefore, to resolve these conflicts in the law on an issue of statewide importance to public employers and to secure uniformity of decision regarding the interpretation and application of section 2802.

The Court of Appeal's decision that Labor Code section 2802 bars the City from obtaining reimbursement for the cost of training a new LAPD recruit at the Academy if that recruit leaves employment within five years of the training misinterprets the statute. Section 2802 requires employers to reimburse employees for all "expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties." To find that section 2802 prohibits an employer from obtaining reimbursement for training costs which are not a consequence of the discharge of duties but are antecedent to them stretches the language of the code section to the breaking point. This interpretation of section 2802 also conflicts with the First District Court of Appeal's decision in *City of Oakland v. Hassey* (2008) 163 Cal.App.4th 1477, which allowed an almost identical training cost recovery program. Finally, the decision conflicts with the interpretation of the statute by the Department of Labor Standards Enforcement ("DLSE"), the administrative agency responsible for enforcing the code section. Thus, the Court of Appeal's decision creates a conflict in the law warranting review by this Court.

Review also should be granted because the Court of Appeal erroneously concluded section 2802 is applicable to a public entity, namely the City of Los Angeles, despite the fact section 2802 contains no language specifically applying it to public

entities. The Court of Appeal's decision, therefore, conflicts with such decision as *Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, *California Correctional Peace Officers' Association* (2010) 168 Cal.App.4th 646, and *Johnson v. Arvin-Edison Water Storage Dist.* (2009) 174 Cal.App.4th 729, all of which hold that a general statute found in the Labor Code is not applicable to a public employer unless there is specific language in the code section expressly making it applicable.

Finally, review should be granted because the Court of Appeal's application of Labor Code section 2802 to the City violates the City's constitutionally protected home rule powers and rights. Under the doctrine of charter city and county home rule, as provided for by the California Constitution and relevant case law, management of the City's police force, including specifics of the training of the police force, is considered a municipal affair, rather than a statewide concern. Managing employee compensation is also considered a municipal affair. Therefore, given the City of Los Angeles' status as a charter city, the issue is subject to the City's constitutionally provided home rule powers. The Court of Appeal's decision effectively concludes section 2802 trumps these home rule powers, which is a constitutionally untenable conclusion. This further warrants review by this Court.

The issue of whether public employers can seek reimbursement for the training new recruits are required to undertake prior to any discharge of their duties raises a vital question for public employers throughout California, especially for city and county police and sheriff departments. Public employers require definitive guidance on the interpretation and application of California Labor Code section 2802. Accordingly, Amici League of California Cities and California State Association of Counties request this Court grant review of the Court of Appeal's decision in *In Re: Acknowledgment Cases* (2015) 239 Cal.App.4th 1498 to bring clarity to this important issue of law and secure uniformity of decision for employers, both public and private, throughout California.

II. Amici's Interest.

The League of California Cities is an association of 474 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League 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 those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

The California State Association of Counties (CSAC) is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California, and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this is a matter with the potential to affect all California counties.

III. Standard for Granting Petition for Review.

California Rules of Court, Rule 8.500, subdivision (b), sets forth the bases for review by this Court of a Court of Appeal decision. Among other grounds, review is appropriate and authorized by Rule 8.500 when such review is necessary to secure uniformity of decision or to settle an important question of law.

Review of the Court of Appeal's decision here is necessary to settle an important issue of law and to secure uniformity of decision. The decision establishes an interpretation of Labor Code section 2802 that is contrary to the language of the code section and administrative interpretations of the statute. Furthermore, the Court of Appeal's decision conflicts with other appellate decisions relating to the same issues present here. This statutory interpretation will affect public employers throughout the state adversely by imposing a new statutory obligation on them that was not intended by the Legislature and that conflicts, in the case of charter cities and counties, with their sovereign rights of home rule. On this basis, therefore, review should be granted.

IV. This Court Should Grant Review To Resolve The Important Issue of Whether Labor Code Section 2802 Allows An Employer To Seek Reimbursement for Mandatory Training Costs.

This Court should grant review to correct the Court of Appeal's erroneous interpretation and application of Labor Code section 2802 and to resolve conflicts between the decision in this case and existing case law interpreting section 2802, as well as the current regulatory enforcement position regarding that code section.

A. Review Should Be Granted As The Court of Appeal's Decision Incorrectly Interprets And Applies The California Labor Code, Including Section 2802.

The City of Los Angeles requires new LAPD recruits to attend its police academy in order to receive training as a condition precedent to that recruit discharging the full law enforcement duties of a police officer. Section 4.1700 of the Los Angeles City Administrative Code provides that if a police officer who attends the academy voluntarily leaves his or her employment with the City of Los Angeles within five years of receipt of the training and is employed by another law enforcement agency within one year, the police officer agrees to pay back a portion of the training costs. The Court of Appeal held this agreement was barred by California Labor Code section 2802. The Court of Appeal reached this conclusion despite finding an inherent ambiguity in the statute in terms of its applicability to the recovery of training costs. Nonetheless, the Court of Appeal determined the City was required to bear the cost of training, without the ability to seek reimbursement from an employee leaving the City's employ, because the City-required training conducted at its academy was in excess of the statutorily-mandated minimum training for peace officers as established by the California Peace Officer Standards and Training ("POST").

Review in this case should be granted to address and correct the Court of Appeal's fundamental misinterpretation of the plain language of section 2802 and its misapplication of the provisions of section 2802 to the case at hand. Section 2802 states,

> An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the direction, believed them to be unlawful.

The Court of Appeal erred in interpreting section 2802 to apply to training costs incurred not in the discharge of duties but as an antecedent thereto. The training at issue is a condition precedent to employment as an LAPD officer. The flaw in the Court of Appeal's reasoning is that because training at the LAPD Academy was in excess of the POST certification requirements it somehow falls into a different category than normal training costs which the Court of Appeal acknowledged do not fall within the ambit of

section 2802. California employers are entitled to establish the minimum training, education and licensure requirements an employee must meet to be qualified to hold a position. (*Hulings v. State Dep't of Health Care Servs.* (2008) 159 Cal.App.4th 1114, 1124.) The costs an applicant incurs to meet these minimum training and educational requirements prior to employment are *not* "expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties" which would be subject to section 2802. This is consistent with the current DLSE enforcement posture that costs incurred in training to meet minimum requirements for employment are not the responsibility of the employer, a standard cited with approval by the Court of Appeal in its decision. (DLSE Enforcement Manual Section 29.2.3.4.),

As such, the Court of Appeal's decision on this issue is in error as it applies section 2802 to require the City to indemnify recruits for training and education costs even before those recruits have fulfilled the City's requirements for the discharge of his or her duties as an LAPD officer. The Court of Appeal incorrectly focuses on whether or not the City of Los Angeles' required police academy training exceeds the standards required by POST. This factor is irrelevant to the applicability of section 2802. The question is whether the training costs at issue necessarily were incurred in the discharge of employment duties. They were not. Rather, they were incurred as a necessar y condition precedent to the discharge of those duties and, therefore, section 2802 is inapplicable.

Accordingly, this Court's review is necessary to correct the Court of Appeal's erroneous interpretation and application of section 2802. The Court of Appeal's incorrect interpretation of section 2802 runs the significant risk of imposing on employers the obligation to bear the costs of pre-employment training and education to meet the minimum standards for employment any time an employer decides to invest in a promising applicant by deciding to cover the costs of that applicant's pre-employment training and education. Such a decision would have the effect of discouraging employers from investing in recruits to ready them to discharge their duties. Thus, review is warranted here to correct the Court of Appeal's misinterpretation of section 2802.

B. Review Must Be Granted To Resolve The Direct Conflict Between The Court of Appeal's Holding Here And The Decision in *City of Oakland v. Hassey* (2008) 163 Cal.App.4th 1477.

Review also should be granted in this case because the Court of Appeal's decision conflicts with the First District Court of Appeal's holding in *City of Oakland v. Hassey* (2008) 163 Cal.App.4th 1477. While *City of Oakland v. Hassey* did not interpret section

2802 directly, it held an employer could seek reimbursement for training of police officers if the police officers left the department prior to completing five years of service, in a direct parallel to the factual situation at hand.

In *Hassey,* the City of Oakland owned and operated the Oakland Policy Academy, which the City of Oakland required all police officer recruits to attend prior to employment. The City of Oakland, to "encourage police officers to stay with the department longer," entered into a memorandum of understanding "authorizing the City to require those who went through training at its academy to reimburse the city for training costs if the person left the police department before completing five years of service." (*City of Oakland v. Hassey, supra,* 163 Cal.App. at 1483.) The *Hassey* court upheld the reimbursement requirement and held the City could pass along the training costs as long as the reimbursement did not cut into minimum wage.

The *Hassey* decision is consistent with the language of Labor Code section 224 which provides,

> The provisions of Sections 221, 222 and 223 shall in no way make it unlawful for an employer to withhold or divert any portion of an employee's wages when the employer is required or empowered so to do by state or federal law or when a deduction is expressly authorized in writing by the employee to cover insurance premiums, hospital or medical dues, or other deductions not amounting to a rebate or deduction from the standard wage arrived at by collective bargaining or pursuant to wage agreement or statute, or when a deduction to cover health and welfare or pension plan contributions is expressly authorized by a collective bargaining or wage agreement.

Section 224 has been interpreted as permitting tuition reimbursement agreements similar to the one at issue in *Hassey* and the one at issue here because such an agreement expressly authorizes a deduction not amounting to an impermissible rebate. (*Cf City of Oakland v. Hassey, supra,* 163 Cal.App.4th at 1483.) The *Hassey* court also held the reimbursement was valid under other sections of the Labor Code, including sections 221, 222, 223 and 432.5, as well as Civil Code sections 1667 and 1668. Therefore, since at least 2008, cities have been proceeding under the *Hassey* decision that allows them to seek reimbursement for police academy training costs. The Court of Appeal's holding directly conflicts with *City of Oakland v. Hassey,* without specifically overruling it. This conflict will cause confusion and uncertainty for cities and for other entities looking to

somehow apply these conflicting cases as precedent. Therefore, this Court should grant review to resolve this conflict and provide a clear direction to public employers.

C. This Court Should Grant Review As The Court Of Appeal's Decision Is Inconsistent With The DLSE's Current Regulatory Enforcement Position.

Finally, the Court of Appeal's analysis of section 2802 conflicts with the current enforcement practices of the DLSE. The DLSE enforcement manual states that "[c]osts which are incurred in training leading to licensure pursuant to a statute (real estate, etc.) are not, usually, the responsibility of the employer." (Section 29.2.3.4.) As the training provided by the City of Los Angeles police academy is analogous to the police academy training provided by POST and necessary prior to employment as a LAPD police officer, this training falls within the DLSE enforcement manual section above. As the Court noted, the DLSE also deals with the subject in an opinion letter, which states,

> There is generally no requirement that an employer pay for training leading to licensure or the cost of licensure for an employee. While the license may be a requirement for the employment, it is not the type of cost encompassed by Labor Code section 2802. The most important aspect of licensure is that it is required by the state or locality as a result of public policy. It is the employee who must be licensed and unless there is a specific statute which requires the employer to assume part of the cost, the cost of licensing must be borne by the employee. There may be situations, however, where licensure is not actually required by statute or ordinance but the employer requires either the training or the licensing (or both) simply as a requirement of employment. In that case, the provisions of Labor Code section 2802 would require the employer to reimburse the cost.

The Court of Appeal mistakenly concluded the training at issue here does not fall within the type addressed by the DLSE in its Enforcement Manual and the above-quoted opinion letter – both of which are cited in the Court of Appeal's opinion. In this case, attending the LAPD Academy is a mandatory training requirement that must be completed before recruits can begin to discharge duties as an LAPD officer. The City of

Los Angeles, as a charter city, has as their public policy that potential recruits must attend the City of Los Angeles police academy in order to become a LAPD officer, as a result of its judgment that potential LAPD police recruits require the type of training provided by the LAPD Academy before being hired. As a charter city this stems from the City of Los Angeles' home rule authority (see section VI, *supra*) to enact its own public policy on matters regarding the governance of municipal affairs, including regulation of the police force and employee compensation. This training is not optional, required during employment, or solely for the employer's benefit. As such, this type of training is not included under 2802 under either current DLSE practices or a reasonable interpretation of 2802.

V. This Court Should Grant Review To Secure Uniformity of Decision As To When California Labor Code Sections Apply to Public Employers. [1]

Review is further warranted here because the Court of Appeal's decision mistakenly applies section 2802 to the City in the absence of any specific language in the code section making it expressly applicable to public employers. Thus, the decision conflicts with current California case law that holds such a code section inapplicable to public employers. (*See, inter alia, Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164; *California Correctional Peace Officers' Association* (2010) 168 Cal.App.4th 646; *Johnson v. Arvin-Edison* (2009) 174 Cal.App.4th 729; *see also In re Work Uniform Cases* (2005) 133 Cal.App.4th 328.)

Specifically, in *Wells v. One2One Learning Foundations, supra* 39 Cal.4th at 1192, this Court held "absent express words to the contrary, governmental agencies are not included within the general words of a statute." This was echoed in *Johnson v. Arvin-Edison Water Storage Dist, supra,* 174 Cal.App.4th at 733 which holds, "...unless Labor Code provisions are specifically made applicable to public employers, they only apply to employers in the private sector." A review of section 2802 demonstrates there is no language within section 2802 specifically applying it to public employers. Therefore, an untenable conflict exists between the decision in this case and existing California case law that must be resolved by this Court to provide clarity to public entities about which statutes actually apply to them and govern their employment relationships. If this case is

[1] Amici recognize that certain arguments in this letter were not raised in full or at all at the Court of Appeal. However, Amici urge this Court to exercise its discretion to consider these arguments in light of the need to secure uniformity of decision, to resolve conflicts of law, and to address matters of statewide importance to public employers.

allowed to remain unreviewed, cities and counties will have unnecessary confusion about their legal requirements and what statutes apply.

VI. This Court Should Grant Review To Clarify The Extent Of A Charter Entity's Home Rule Authority.

Finally, this Court should grant review to resolve the inherent conflict between the Court of Appeal's decision and the home rule powers of a charter city such as the City of Los Angeles. The Court of Appeal's decision fails to consider the constitutional provisions of home rule for a charter city and whether or not a charter city has the authority to make rules or ordinances that differ from, or conflict with, general state law. Because the City's Administrative Code section in question, specifically the provision covering reimbursement for police training, is a municipal affair within the City's home rule authority, the City of Los Angeles is not subject to section 2802, even as incorrectly interpreted and applied by the Court of Appeal in its decision.

California Constitution Article XI, ¶ 3, subd (a), authorizes a city to adopt a charter and thus become a charter city that has the right to adopt and enforce ordinances regarding municipal affairs that may conflict with general state law. Section 5 of Article XI allows charter cities to "make and enforce all ordinance and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their specific charter and in respect to other matters they shall be subject to general law." The four core categories normally the subject of municipal affairs under the constitution include "the constitution, regulation and government of the city police force." (*Id.*) While the state controls matters of statewide concern, the charter city has control over "municipal affairs." (*Johnson v. Bradley* (1992) 4 Cal.4th 389; *California Fed. Savings & Loan Assn v. City of Los Angeles* (1991) 54 Cal.3d 1, 17.) Based on these authorities, Los Angeles Ordinance 4.1700 falls squarely within the City's home rule authority and thereby supersedes any obligation imposed on it by Labor Code section 2802.

The determination of whether a "home rule" ordinance takes precedence over a general law involves the application of a four-part test. First, the Court must determine whether the city or county ordinance regulates an activity that can be characterized as a municipal affair. (*California Fed. Savings & Loan v. City of Los Angeles, supra,* 54 Cal.3d at 16.) If so, the Court must determine whether an actual conflict exists between state law and the charter city, or county, measure. (*Id.*, at 25.) Third, the court must determine whether the state statute's focus (in this case section 2802) is actually one of

statewide concern. (*California Fed. Savings & Loan v. City of Los Angeles, supra,* 54 Cal.3d at 17; *Johnson* v. *Bradley, supra,* 54 Cal.3d at 399) Fourth, if the Court establishes a matter of statewide concern exists, the Court must then determine whether the statewide regulation is both reasonably related to the resolution of that concern and narrowly tailored to limit incursion into legitimate municipal interests. (*Johnson, supra,* 54 Cal.3d at 404.) As a full briefing on the merits will show, Los Angeles Administrative Code section 4.1700 falls squarely within the City's home rule authority. First, regulation of the police force is enumerated specifically in the constitutionally protected categories of municipal affairs. Second, if the Court of Appeal interprets section 2802 as barring the practices in section 4.1700 of the City of Los Angeles Administrative Code, then a conflict exists. Conversely, if section 2802 does not bar the reimbursement provisions of section 4.1700, no conflict exists and, therefore, no home rule analysis is needed as both statute and ordinance can coexist. Third, section 2802 is not of actual statewide concern, as interpreted, as it deals with employer-specific practices that can, and should, be legislated locally. Per *In re Work Uniform Cases* (2005) 133 Cal.App.4th 328, 342, "The issue of public employee wages and terms of compensation are indisputably matters of local concern, as our Supreme Court has repeatedly stated." Therefore, the issue falls within the City's home rule authority and section 2802 is inapplicable.

The City of Los Angeles' powers, as a charter city, to exercise its "home rule" and municipal authority involve fundamental constitutional and legal issues this Court should resolve by granting review in this case. As such, this Court should grant review to analyze and determine the extent of the City of Los Angeles' home rule powers

VII. Conclusion.

This Court should grant review to bring clarity to important issues of law and to secure uniformity of decision. This case presents several issues of importance to public employers throughout the state, and specifically to charter cities and counties. Furthermore, this decision raises several disputes of law that need to be finally settled. The Court of Appeal's decision conflicts with the language of section 2802, the *Hassey* decision, and current DLSE enforcement guidelines. Additionally, the Court of Appeal's decision conflicts with the current body of California case law that states a Labor Code statute does not apply to public entities without specific language so applying it. Furthermore, the Court of Appeal's application of section 2802 impermissibly infringes on the ability of the City, and other charter cities and counties, to assert their home rule authority and govern their own municipal affairs.

Based on the above, the League of California Cities and the California State Association of Counties request the Court grant review of this case. Review in this case is necessary to assure protection of municipal authority and to provide clarify and uniformity of decision to avoid prejudicing cities, counties, and other public employers throughout the state of California.

Very truly yours,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Professional Corporation

MEREDITH PACKER GAREY

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PROOF OF SERVICE

In re: Acknowledgment Cases
Supreme Court Case No.: S229931

STATE OF CALIFORNIA, COUNTY OF SACRAMENTO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Sacramento, State of California. My business address is 400 Capitol Mall, 27th Floor, Sacramento, CA 95814.

On November 12, 2015, I served true copies of the following document(s) described as **AMICUS LETTER FROM THE LEAGUE OF CALIFORNIA CITIES AND CALIFORNIA STATE ASSOCIATION OF COUNTIES SUPPORTING PETITION FOR REVIEW** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Kronick, Moskovitz, Tiedemann & Girard for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Sacramento, California.

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

Executed on November 12, 2015, at Sacramento, California.

May Marlowe

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