The Honorable Tani Cantil-Sakauye, Chief Justice,
and Honorable Associate Justices
Supreme Court of the State of California
350 McAllister Street
San Francisco, CA 94102-3600

Re: Wallace v. County of Stanislaus, S233495
(Court of Appeal Case No. F068068)
Letter in Support of Petition for Review (Rule 8.500(g))

Dear Chief Justice Cantil-Sakauye and Honorable Associates Justices:

On behalf of the California State Association of Counties (“CSAC”), the League of California Cities (“League”), and the California Special Districts Association (“CSDA”), we request that the Supreme Court grant Defendant County of Stanislaus’ Petition for Review in the above-named case.

I. Interests of Amici

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 potential to affect all California counties.

The League 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, which is comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that are of statewide—or nationwide—significance. The Committee has identified this case as being of such significance.
CSDA is a California non-profit corporation consisting of in excess of 1,000 special district members throughout California. These special districts provide a wide variety of public services to both suburban and rural communities, including water supply, treatment and distribution; sewage collection and treatment; fire suppression and emergency medical services; recreation and parks; security and police protection; solid waste collection, transfer, recycling and disposal; library; cemetery; mosquito and vector control; road construction and maintenance; pest control and animal control services; and harbor and port services. CSDA monitors litigation of concern to its members and identifies those cases that are of statewide significance. CSDA has identified this case as being of such significance.

The attorneys representing amici are familiar with the issues involved and have reviewed the County of Stanislaus’ Petition for Review. Amici support the County of Stanislaus’ Petition for Review and do not restate those reasons herein. Rather, Amici explain how the Court of Appeal’s opinion changes the California Fair Employment and Housing Act (“FEHA”), and how such change would severely impact an employer’s ability to carry out its obligations under FEHA.

This case presents an issue of great importance to local public agencies in California because it conflicts with the statutory language of FEHA, the Legislature’s intent in creating such protections for employees, and the corresponding regulations set forth by the Department of Fair Employment and Housing (“DFEH”).

II. Reasons To Grant Review

This case presents the question of whether the FEHA imposes strict liability on employers for good-faith reliance on medical information provided by or through the employee during the reasonable accommodation process in disability discrimination cases. This Court should grant review because the Court of Appeal’s opinion (“Opinion”) would effectively eliminate an employee’s obligation to interact in good faith and severely impair an employer’s ability to exercise its discretion in determining what constitutes a reasonable accommodation.

A. The Court of Appeal’s Opinion Improperly Shifts to the Employer the Costs and Risks of Reasonable Mistakes Made in Good Faith During the Interactive Process, Effectively Imposing Strict Liability on Employers in Contravention of the Plain Language of FEHA

In its Opinion, the Court of Appeal effectively and mistakenly imposes strict liability on employers who participate in the interactive process necessary to reasonably accommodate individuals who are disabled or whom the employer believes are disabled, contrary to the plain language of the statute and its implementing regulations.
Government Code section 12940 specifically permits employers to engage in what may otherwise be deemed an adverse action against a disabled employee, provided that employee is unable to perform the essential functions of his or her job, with or without reasonable accommodation. California Code of Regulations, title 2, section 11069 ("Section 11069"), which sets forth the obligations of both the employer and the employee to participate in a good faith, interactive process when evidence shows that an employee is unable to perform the essential functions of his or her job, demonstrate that the legislature did not intend to impose strict liability on employers for mistakes made during the accommodation process.

Section 11069 specifically permits an employer to reasonably rely on medical information provided to the employer by a medical professional. (Cal. Code Regs., tit. 2, § 11069, subd. (6).) FEHA regulations also obligate the "employee to cooperate in good faith with the employer...by providing reasonable medical documentation where the disability or the need for accommodation is not obvious." (Cal. Code Regs., tit. 2, § 11069, subd. (d), emphasis added.) If the employee provides insufficient documentation that does not specify the existence of the disability or explain the need for reasonable accommodation, the employer must explain why the documentation is insufficient and allow the employee an opportunity to provide supplemental information from the employee’s health care provider. (Cal. Code Regs., tit. 2, § 11069, subd. (d)(5)(C).) If, after a reasonable period of time, the employee fails to provide supplemental information, the employer may require an employee to go to an appropriate health care provider of the employer’s choice. (Cal. Code Regs., tit. 2, § 11069, subd. (d)(5)(C)(1).) However, even if the documentation is insufficient, the employer must provide the employee a reasonable accommodation to the extent that the accommodation is supported by the medical documentation provided. (Cal. Code Regs., tit. 2, § 11069, subd. (d)(5)(C)(6).)

The Opinion imposes liability on an employer for relying on information about an employee’s medical condition, and shifts the burden and consequence of the above-described interactive process to the employer. This holding reduces the obligations of employees to participate in the interactive process in good faith. If the Opinion stands, an employee can challenge an employer’s attempt to reasonably accommodate the employee’s injuries by merely disagreeing with or failing to provide the medical information provided by his or her health care professional necessary to determine whether reasonable accommodations can be provided—a result which clearly contradicts the express requirements of Section 11069.

Moreover, rather than allowing an employer to rely on the expertise of competent medical professionals or the employee’s preferred health care provider, this decision has the practical effect of requiring employers to employ or seek further review to ensure the correctness of the medical information on which it is relying. Even then, if a jury determines the medical information provided was not correct, under this new rule, an employer is still liable. This added obligation would cause public employers to incur incalculable costs above and beyond what the law requires or the Legislature intended.
B. Employers are Placed in an Untenable Position Where They Cannot Reasonably Rely on Medical Diagnoses

The interactive process established in Section 11069 is designed to bring an employer and an employee together to communicate openly and to determine whether a reasonable, mutually satisfactory accommodation is possible to meet the needs of both parties. (Geflo v. Lockheed Martin (2006) 140 Cal.App.4th 34, citing Prilliman v. United Air Lines, Inc. (1997) 53 Cal.App.4th 935, 950 [62 Cal. Rptr. 2d 142] [Noting that a reasonable accommodation envisions a cooperative exchange of information “between employer and employee where each seeks and shares information to achieve the best match between the employee’s capabilities and available positions’”].) In developing reasonable accommodations for their employees, employers regularly rely on medical diagnoses. Requiring an employer to second guess a medical diagnosis based on information from the employee produces an illogical result. Human resource professionals are not normally equipped with the medical expertise necessary to evaluate the correctness of medical information. As such, employers must be protected when they reasonably rely upon medical reports from presumably qualified experts that are based on examinations of, and information provided by, the employee. Otherwise, employers face putting employees and the public at risk.

Under the Opinion, in situations where the employee disagrees with or contradicts the medical restrictions that medical professionals provide to the employer, employers are unable to reasonably rely on the medical diagnosis proffered by presumably qualified experts. The Opinion ultimately encourages employers to return employees to work in spite of medical restrictions that indicate the employee is incapable of safely performing required job duties, regardless of the risk such action imposes on the employees’ safety or the safety of others.

C. Imposing Strict Liability on Employers for Reasonable Mistakes Made in Good Faith During the Interactive Process Does Not Further Legitimate Public Policy Objectives and is Inappropriate in this Context

The purpose of imposing strict liability is to ensure that the costs of injuries resulting from abnormally dangerous behavior are borne by responsible parties rather than by injured persons who are powerless to protect themselves against such injuries. (See, e.g., Vaerst v. Tannman (1990) 222 Cal.App.3d 1535 [describing the public policy objectives furthered by imposing strict liability in the products liability context].) While strict liability is intended to place the costs of injuries on responsible parties, the Opinion places the costs of a “defective diagnosis” on the employer, who has no control over an employee’s medical diagnosis, rather than on the employee or employee’s health care provider, who influences and controls the medical diagnosis. Under the Opinion, an employer would be held strictly liable for injuries resulting from a defective diagnosis even where the defective diagnosis resulted from misinformation that the employee provided to his or her health care provider—a result that contravenes existing strict liability analysis under other FEHA provisions. (See State Department of Health Services v. Superior Court (2003) 31 Cal.4th 1026, 1042 [“[S]trict liability is not absolute liability in the sense that it precludes all defenses.”].)
D. The Opinion Causes Confusion for the Employer in Handling Disability Claims and Requests for Accommodations

The Opinion does not provide clarity to employers going forward—employers are now faced with questions as to what recourse is available when an employee provides them with information that is not consistent with the employee’s provided medical documentation. The Opinion itself lacks clarity in the rule it develops for establishing disability discrimination by failing to address critical language contained within FEHA and its implementing regulations. This is further evidenced by the concurrence of Justice Poochigian, who wrote separately to address what he found to be a crucial issue not clearly explained in the Opinion. Justice Poochigian notes that absent clarity of the legal standard for establishing disability discrimination, “the reach of FEHA could extend beyond the Legislature’s intent.” [*Opinion*, at 138 (Poochigian, J., concurring).]

While we disagree with both tests fostered by the Opinion and the concurrence of Justice Poochigian, such discord between the two opinions further demonstrates the need for Supreme Court review. In a footnote to his concurrence, Justice Poochigian highlights the impractical result of the court’s interpretation of FEHA by explaining how the new rule leaves an employer entirely at the mercy of a jury. [*See Opinion*, at 138, note 2 (Poochigian, J., concurring).]

The Opinion and the concurrence discourage employers from taking reasonable employment action even if the employer, based on medical information provided to it, reasonably believes that returning the employee to work would pose a danger to the employee or others, with or without an accommodation. The Opinion renders employers subject to liability should a jury with no knowledge of the employer’s business operations later determine the belief was mistaken, regardless of whether that belief was reasonable and based on medical evidence.

It is apparent from the language of FEHA and its implementing regulations that the Legislature intended to obligate joint participation by the employer and the employee in the interactive process. The proposed tests for establishing disability discrimination in both the Opinion and the concurrence improperly shift the burden of determining the accuracy of medical information to the employer, who has no influence or control over the medical provider. This shift expands the protections of FEHA beyond the Legislature’s intent and contradicts established case law. The end result removes from the employer the ability to make day-to-day decisions regarding the safety of its employees and providing reasonable accommodations, and places it in the hands of the courts.

As a result, the Opinion creates unintended and unanticipated consequences for employees, and incalculable costs for employers.
III. Conclusion

The Court of Appeal’s opinion in this case not only conflicts with the plain language of the statute, but creates a strict liability standard that was not contemplated by the Legislature and leaves public employers with no ability to adequately protect themselves against FEHA liability in disability discrimination cases. Where the employer relies on medical information in good faith, and imposes otherwise lawful restrictions based on that information, there should be no liability under FEHA. Rather, as explained fully in the County of Stanislaus’ Petition for Review, Plaintiff should be required to show discriminatory intent or animus on the part of the employer in order to maintain a disability discrimination claim.

For the foregoing reasons, Amici respectfully request that the Court grant the Petition for Review.

Very truly yours,
KATHLEEN BALES-LANGE
Tulare County Counsel

By
Stephanie R. Smittle
Deputy County Counsel

CC: Service list on all counsel

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PROOF OF SERVICE

STATE OF CALIFORNIA

) ss.

COUNTY OF TULARE

I am employed in the County of Tulare, State of California. I am over the age of eighteen (18) years and not a party to this action; and, my business address is 2900 West Burrel Avenue, Visalia, CA 93291.

On this date, I served the following documents: Amicus Curiae Letter on the parties to this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Stephen M. Murphy Morin Isaac Jacob
Law Offices of Stephen M. Murphy Liebert Cassidy Whitmore
353 Sacramento Street, Suite 114 135 Main Street, 7th Floor
San Francisco, CA San Francisco, CA
Attorneys for Plaintiff Attorneys for Respondent
Via U.S. Mail Via U.S. Mail

[BY MAIL] I am "readily familiar" with The County of Tulare’s practice of collection and processing correspondence by mailing. Under that practice, mail is deposited with the U.S. Postal Service on the same day with postage fully prepaid at Visalia, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[ ] (BY FEDERAL EXPRESS OR UPS NEXT DAY SERVICE) I caused such envelope to be delivered to Federal Express or UPS with a fully prepaid airbill/invoice for next business day delivery to the addressee(s).

Executed on May 4, 2016, at Visalia, CA.

Sharon Castellini