S274927

IN THE
SUPREME COURT OF CALIFORNIA

COUNTY OF SANTA CLARA,
Petitioner,

v.

THE SUPERIOR COURT OF SANTA CLARA,
Respondent,

DOCTORS MEDICAL CENTER OF MODESTO, et al.,
Real Parties in Interest.

After a Decision by the Court of Appeal,
Sixth Appellate District Case No. H048486

[PROPOSED] AMICUS CURIAE BRIEF

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I. INTRODUCTION

In enacting the Government Claims Act, the Legislature explicitly intended to abolish "all common law and judicially declared forms of liability" and limit governmental liability solely to the "carefully described" parameters of enacted statutes. (Recommendation Relating to Sovereign Immunity (Jan. 1963) 4 Cal. Law Revision Com. Rep. (1963) pp. 814, 838; *Miklosy v. Regents of University of California* (2008) 44 Cal.4th 876, 899 (*Miklosy*).) With that in mind, the Court's determination of the issue in this case, though raised in the limited context of emergency medical care, has the potential for far greater impact insofar as it challenges the Government Claims Act's underlying sovereign immunity principles and questions the governing interpretation of Government Code Section 815.[1] As explained by the Law Revision Commission, the expressly stated limits of the Government Claims Act "would have little meaning if liability could be imposed beyond the area defined in these statutes." (Recommendation Relating to Sovereign Immunity (Jan. 1963) 4 Cal. Law Revision Com. Rep. (1963) p. 818.) This unequivocal legislative intent is embodied in the plain language in the Government Claims Act, which strictly defines the

[1] Future statutory references are to the California Government Code unless otherwise stated.

boundaries of governmental liability within enacted statutes. (See Gov. Code, § 815).

Real Parties in Interest Doctors Medical Center of Modesto, Inc. and Doctors Hospital of Manteca, Inc. ("Real Parties") invite the Court to revisit common law liability for public entities by reinterpreting Section 815 in a manner that contravenes the plain language and clear intent of the statute. Real Parties also present a test case for circumventing the Government Claims Act by alleging claims purportedly based in statute but actually based in common law. Further, Real Parties support their arguments with an appeal for equitable treatment of private and public entities, which undermines both the purpose and sovereign immunity principles of the Government Claims Act.

Thus, at its heart, this case is not about whether Real Parties are entitled to reimbursement for emergency services under the circumstances. Rather, the case calls upon this Court to determine how the Government Claims Act should be interpreted and whether a litigant may circumvent sovereign immunity with a common law claim founded on equitable principles.

When viewed in light of the Government Claims Act's plain language, history, and purpose, the answer to the question posed in this case must be yes: A public entity is immune under the Government Claims Act (Gov. Code, § 810 et seq.) because a common law, noncontract claim

seeking money or damages is barred under Section 815. Real Parties should not be permitted to expand governmental liability beyond its express statutory limits by reclassifying a common law claim or supplanting plain statutory language with judicially declared rules.

II. ARGUMENT

A. HISTORICAL BACKGROUND OF THE GOVERNMENT CLAIMS ACT

In resolving the question of whether a public entity is immune under the Government Claims Act from an action seeking reimbursement for emergency medical under the Knox-Keene Act, it is important to understand how the Government Claims Act developed, its intended purposes, and the weighed considerations behind its governing statutory language.

1. The concept of absolute sovereign immunity is part of California's historic common law.

Since our State's founding, government entities have provided necessary services to the people they govern, a unique and vulnerable position that the Legislature determined warrants a higher level of protection against legal claims than that accorded to private entities. (Recommendation Relating to Sovereign Immunity (Jan. 1963) 4 Cal. Law Revision Com. Rep. (1963).) The unique nature of the government's relationship with the public is evident in the types of services it provides, ranging from the power to prosecute and incarcerate violators of the law, to

building and maintaining thousands of miles of streets, sidewalks, and highways, to, more particularly, protecting public health and safety, providing medical care to indigent residents, preventing communicable disease, and providing for the protection of abused and neglected children and elders. Historically, the practical necessity of exercising such government functions led to creation of the doctrine of sovereign immunity, which originates from the legal fiction that the king can do no wrong. (See *People v. Superior Court* (1947) 29 Cal.2d 754, 756.) This doctrine was generally accepted in California's common law. (*Ibid.*) The general rule was that neither the State nor its political subdivisions could be sued without their consent. (*Whittaker v. County of Tuolumne* (1892) 96 Cal. 100, 101.) As such, government entities in California were generally immune from liability for acts undertaken in a governmental capacity. (*Elson v. Public Utilities Commission* (1975) 51 Cal.App.3d 577, 582 (*Elson*).)

By the early 1960s, the common law doctrine of sovereign immunity in California had been "riddled with exceptions and inconsistencies." (*Elson*, *supra*, 51 Cal.App.3d at p. 583.) In 1961, the California Supreme Court essentially abolished common law sovereign immunity in *Muskopf v. Corning Hospital District* (1961) 55 Cal.2d 211 (*Muskopf*), and *Lipman v. Brisbane Elementary School District* (1961) 55 Cal.2d 224 (*Lipman*). The basic rule established by the Court in *Muskopf* and *Lipman* was that

government officials could be held liable for their negligent performance of ministerial duties, but were entitled to immunity for discretionary decisions. (*Muskopf*, *supra*, 55 Cal.2d at p. 220; *Lipman*, *supra*, 55 Cal.2d at p. 229.)

In response to these landmark decisions, the Legislature enacted a moratorium suspending the effects of *Muskopf* and *Lipman* (Stats. 1961 ch. 1404 § 1), and appointed a Law Revision Commission to thoroughly study the issue of governmental immunity and make policy recommendations. With few exceptions, the Legislature generally adopted the Law Revision Commission's comments. (*Quigley v. Garden Valley Fire Protection Dist.* (2019) 7 Cal.5th 798, 804.) Therefore, the work of the Law Revision Commission became, in essence, the first version of the Government Claims Act, which was enacted in 1963. (Stats. 1963 ch. 1681 § 1.)

2. The Government Claims Act strikes a careful balance between competing policy considerations.

The Law Revision Commission's sovereign immunity study undertook a detailed analysis of the policy considerations both in support of and against the concept of sovereign immunity. (See generally Recommendation Relating to Sovereign Immunity (Jan. 1963) 4 Cal. Law Revision Com. Rep. (1963).) Supporting sovereign immunity is the separation of powers doctrine—the notion that the judiciary should not second-guess the decisions and judgments of governmental agencies. (See, e.g., *Johnson v. State of Calif.* (1968) 69 Cal.2d 782, 794 (*Johnson*); *Nunn*

v. State of Calif. (1984) 35 Cal.3d 616, 622.) Similarly, it is well established that in discharging their duties, public employees should be permitted to exercise their judgment without fear of liability or the burden of a trial. (*Johnson*, *supra*, 69 Cal.2d at p. 790.)

In its 569-page report to the Legislature in 1963, the Law Revision Commission summarized the importance of a comprehensive scheme for determining liability as follows:

> The need for order and predictability is great for efficient and foresighted planning of governmental activities and their fiscal ramifications becomes extremely difficult if not impossible when the threat of possibly immense but unascertainable tort obligations hangs like a dark cloud on the horizon. Moreover, it would seem entirely likely that the danger of tort liability may, in certain areas of public responsibility, so seriously burden the public entity as to actually interfere with the prosecution of programs deemed essential to the public welfare. A comprehensive legislative solution, formulated on a sound theoretical foundation and modified to meet the exigencies of practical public administration of the powers vested in government, appears to be the only acceptable alternative.

(A Study Relating to Sovereign Immunity (Jan. 1963) 5 Cal. Law Revision Com. Rep. (1963) p. 268.)[2]

In support of eliminating sovereign immunity is the idea of fairness. As the California Supreme Court noted in *Lipman*, it is "unjust in some circumstances to require an individual injured by official wrongdoing to

[2] This publication is available on the California Law Revision Commission's website at: http://www.clrc.ca.gov/pub/Printed-Reports/Pub050.pdf (last accessed on Mar. 3, 2023).

bear the burden of his loss, rather than distribute it throughout the community." (*Lipman*, *supra*, 55 Cal.2d at p. 230.) The Legislature similarly considered arguments that the application of governmental immunity could seem harsh and unfair, especially when persons are denied all relief from injury. (Recommendation Relating to Sovereign Immunity (Jan. 1963) 4 Cal. Law Revision Com. Rep. (1963) p. 816.)

The Government Claims Act is the Legislature's attempt at reconciling these two competing policy considerations. In striking the balance between these objectives, the Act has both substantive and procedural elements. Substantively, the statute abolished all common law based on the doctrine of absolute sovereign immunity. (*Miklosy*, *supra*, 44 Cal.4th at p. 899.) In its place, all government liability must now be based on statute. (*Ibid.*; *Eastburn v. Regional Fire Protection Authority* (2003) 31 Cal.4th 1175, 1183 (*Eastburn*).) The Government Claims Act's intent was "not to expand the rights of plaintiffs in suits against governmental entities" but rather "to confine potential governmental liability to rigidly delineated circumstances." (*Metcalf v. County of San Joaquin* (2008) 42 Cal.4th 1121, 1129 (*Metcalf*); *DiCampli-Mintz v. County of Santa Clara* (2012) 55 Cal.4th 983, 991 (*DiCampli-Mintz*).) The general rule in California since 1963, therefore, is that public entities generally are granted sovereign immunity, and where there is to be governmental liability, it is limited to exceptions specifically set forth by statute. (*Wright v. State of Calif.* (2004)

122 Cal.App.4th 659.) Those exceptions include direct liability for a breach of mandatory duty to perform a non-discretionary act and derivative liability for certain employee negligence. (Gov. Code, §§ 815.2, 815.6.)

But in addition to these more substantive provisions, the Government Claims Act adopted certain procedural requirements and other limitations as part of striking the balance between the competing policy concerns. In other words, the Legislature determined that it would allow government liability only under specified conditions, including compliance with certain procedural safeguards and specific limits on the types of monetary recovery allowed.

In sum, "the general rule is that the governmental immunity will override a liability created by a statute outside of the [Government] Claims Act." (*Gates v. Superior Court* (1995) 32 Cal.App.4th 481, 510; see *Caldwell v. Montoya* (1995) 10 Cal.4th 972, 980 (*Caldwell*) ["The Act governs all public entities and their employees and all noncontractual bases of compensable damage or injury that might be actionable between private persons."].) The "very purpose" of the Government Claims Act, "is to afford categories of immunity where, but for its provisions, public agencies or employees would otherwise be liable under general principles of law." (*Caldwell*, *supra*, 10 Cal.4th at p. 985.)

B. REAL PARTIES' TEST CASE PAVES THE WAY TO CIRCUMVENT THE GOVERNMENT CLAIMS ACT'S PROHIBITION AGAINST COMMON LAW CLAIMS AND JUDICIALLY DECLARED FORMS OF LIABILITY

Real Parties' lawsuit is a test case for claims that are purportedly based in statute but actually based in common law. Real Parties' hybrid claims do not withstand legal scrutiny. By selectively switching between statutory and common law analysis to support the same quantum meruit claims, Real Parties reveal an underlying effort to avoid the clear application of governmental immunity under the Government Claims Act. Real Parties cannot reclassify their claims on an ad hoc basis in order to expand governmental liability. Such reclassification of claims circumvents the Government Claims Act and revives the abolishment of common law claims and judicially declared forms of liability.

Upon closer examination, Real Parties' claims fail in two respects: (1) as common law claims that do not meet Sections 816 and 815.6 criteria for a statutory claim against a public entity, and (2) as quantum meruit claims against a public entity because they are prohibited by law and public policy.

1. Real Parties' claims fail to meet the threshold for establishing liability under Section 815 and apply an incorrect standard for liability under Section 815.6.

Real Parties fail to meet their legal burden for establishing a private right of action against a public entity as "otherwise provided by statute"

under Section 815(a). (Answer Brief (AB) 52–58.) This Court has explained that Section 815(a) requires "direct tort liability of public entities [to] be based on a specific statute declaring them to be liable, or at least creating some specific duty of care"; it cannot be based simply on a general liability statute. (*Eastburn*, *supra*, 31 Cal.4th at p. 1183; see *Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112.) To otherwise permit liability would impermissibly erode public entity immunity. (*Eastburn*, *supra*, 31 Cal.4th at p.1183.) This strict standard falls directly in line with the Government Claims Act's intent "not to expand the rights of plaintiffs in suits against governmental entities" but rather "to confine potential governmental liability to rigidly delineated circumstances." (*Metcalf*, *supra*, 42 Cal.4th at p. 1129; *DiCampli-Mintz*, *supra*, 55 Cal.4th at p. 991.)

As further detailed by Petitioner, the Knox-Keene Act did not create a private right of action against public entities because nothing in the express language or history of the statute specifically imposed liability on a public entity or created a specific duty of care. (AB 52–58.) Real Parties acknowledge as much when stating they "do not purport to allege a private right of action under the Knox-Keene Act." (Reply Brief (RB) 30.) Indeed, Real Parties cannot cite a single case relying solely on the Knox-Keene Act as a statutory remedy for emergency services reimbursement. (See Opening Brief (OB) 20.) Real Parties instead plead "a breach of implied-in-law contract," as their sole cause of action—a common law claim otherwise

known as "quantum meruit."[3] (RB 8, 13.) To be sure, quantum meruit has only ever been recognized as a common law remedy associated with Knox-Keene Act emergency services reimbursement from *private* health care service plans. (See AB 57–58.)

Despite Real Parties' concession that the Knox-Keene Act does not create a statutory private right of action, they fail to acknowledge the consequence that their claims are subject to governmental immunity under Section 815. Rather, Real Parties ask the Court to consider alternative arguments relating to Section 815.6 liability and a writ of mandate claim that never was pleaded. (RB 27–31.) In so doing, Real Parties cloud the issues by misapplying governing legal standards for public entity liability under Section 815.6.

Real Parties conflate the legal standard for the *affirmative defense* of "discretionary" acts *immunity* under Section 820.2 with the governing legal standard for determining *liability* for "mandatory acts" under Section 815.6. (RB 34–36.) Real Parties rely on a statement in *Creason*, in which this Court noted that case law addressing Section 820.2 immunity for "discretionary" acts is instructive for purposes of determining whether Section 815.6 "mandatory acts" liability should be imposed. (RB 34–36,

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[3] The terms implied-in-law contract, quasi-contract, and quantum meruit, refer to the same equitable, common law remedy. (*See Weitzenkorn v. Lesser* (1953) 40 Cal.2d 778, 794 (*Weitzenkorn)*; *Federal Deposit Ins. Corp. v. Dintino* (2008) 167 Cal.App.4th 333, 346 (*Dintino*).)

citing *Creason v. Department of Health Services* (1998) 18 Cal.4th 623 (*Creason*).) However, *Creason* qualified that statement by explaining, "*immunity* from suit is a separate issue" from liability and that "the question of possible statutory liability for breach of a mandatory duty ordinarily should precede the question of statutory immunity." (*Id.* at p. 633, emphasis original.) *Creason* thus stands for the proposition that if a public entity is likely to succeed on the affirmative defense of "discretionary" act immunity, then the government likely cannot be sued based on Section 815.6 "mandatory acts" liability. (*Ibid.*)

Contrary to Real Parties' suggestion, *Creason* neither holds nor implies that if a government action qualifies as a "street level" decision for purposes of Section 820.2 immunity, as opposed to "quasi-legislative policy-making," then the action is not "discretionary" for purposes of Section 815.6 liability. (RB 35–36.) Rather, *Creason* and subsequent decisions from this Court establish that even if a government action is not "quasi-legislative," it still may qualify as discretionary under Section 815.6 if it constitutes a reasoned decision that requires the exercise or application of judgment and expertise. (*State Dept. of State Hospitals v. Superior Court* (2015) 61 Cal.4th 339, 349 ("[I]n cases not involving a public entity's '"quasi-legislative policy-making"' [citation], the inquiry should focus on whether the entity must 'render a considered decision' [citation], one requiring its expertise and judgment [citations]." [citation] *Creason* is

illustrative.); see AB 58–62 [identifying and applying correct legal standards to show that Real Parties have failed to establish a breach of a mandatory duty under Section 815.6].)

2. Real Parties' common law claims are fundamentally at odds with the Government Claims Act.

Once Real Parties' professed statutory basis for their claims falls aside, what remains are common law quantum meruit claims. However, such claims are fundamentally at odds with the Government Claims Act.

Section 815 categorically abolished all common law or judicially declared forms of liability against public entities. (See Gov. Code, § 815; *Miklosy*, *supra*, 44 Cal.4th at p. 899; *Guzman v. County of Monterey* (2009) 46 Cal.4th 887, 897.) Thus, absent some constitutional requirement not present here, a public entity is immune from a common law claim. (*Tuthill v. City of San Buenaventura* (2014) 223 Cal.App.4th 1081, 1088 (*Tuthill*), *quoting Cochran v. Herzog Engraving Co.* (1984) 155 Cal.App.3d 405, 409.) Furthermore, courts have specifically barred quantum meruit claims against public entities as a matter of law because common law claims are prohibited under the Government Claims Act. (*Sheppard v. North Orange County Regional Occupational Program* (2010) 191 Cal.App.4th 289, 314 (*Sheppard*) (Citing Section 815 and Law Revision Commission discussion, "[t]he trial court properly sustained the demurrer to the quantum meruit claim because such a claim cannot be asserted against a public entity."); see

Lundeen Coatings Corp. v. Department of Water & Power (1991) 232 Cal.App.3d 816, 834–35 [Affirming lower court decision that "an action for quantum meruit may not be maintained against the government as a matter of law."].) Therefore, permitting Real Parties to proceed with a common law claim for quantum meruit would completely undermine the Government Claims Act and governing law.

C. REAL PARTIES INVITE THE COURT TO EXPAND GOVERNMENTAL LIABILITY BEYOND STATUTORY LIMITS BY ESTABLISHING A JUDICIALLY DECLARED "TORTS" ONLY RULE, WHICH CONTRADICTS THE PLAIN LANGUAGE AND CLEAR INTENT OF THE GOVERNMENT CLAIMS ACT

In enacting the Government Claims Act, the Legislature explicitly intended to abolish "all common law and judicially declared forms of liability" and solely limit governmental liability to the "carefully described" parameters of enacted statutes. (Recommendation Relating to Sovereign Immunity (Jan. 1963) 4 Cal. Law Revision Com. Rep. (1963) pp.814, 838; *Miklosy*, *supra*, 44 Cal.4th at p. 899.) Nonetheless, Real Parties invite this Court to expand governmental liability through a judicially declared rule.

Specifically, Real Parties propose to supplant the plain statutory language of Section 815 with a judicially declared "torts" only rule, limiting governmental immunity exclusively to common law "torts" and thereby excluding claims that otherwise meet Section 815's statutory requirements. (OB 22–29; RB 10–15.) Under this new "torts" only rule,

Real Parties argue their *noncontract* claims fall outside of Section 815 immunity because they purportedly do not sound in tort. (OB 22–29; RB 10–15; *Weitzenkorn*, *supra*, 40 Cal.2d at p. 794 [A "so-called 'contract implied in law' in reality is not a contract."].) Not so.

Such an oversimplified "torts" only rule would expand governmental liability beyond its express statutory limits by permitting government liability for common law, noncontract claims seeking money or damages. (See Gov. Code, §§ 814, 815.) Additionally, application of the rule advanced by Real Parties creates an absurd result because it permits quantum meruit claims against a public entity in violation of public entity contract law.

1. **Real Parties' rule has not been squarely addressed by prior courts.**

Real Parties' proposed "torts" only rule does not square with precedent. "[I]t is axiomatic that cases are not authority for propositions not considered." (*Sonic-Calabasas A, Inc. v. Moreno* (2013) 57 Cal.4th 1109, 1160, quoting *People v. Alvarez* (2002) 27 Cal.4th 1161, 1176.) And none of the authority Real Parties cite squarely considered or held that Section 815 immunity applies exclusively to "torts," thereby foreclosing the Government Claims Act's application to a noncontract claim that did not fall within a specific definition of "torts." (AB 47–49.) Indeed, the majority of cases Real Parties rely on stand for the general proposition that

common law tort liability against public entities is not permitted and liability must be based in statute under the Government Claims Act. (See OB 23–26; RB 11–13.)[4]

Real Parties point to *Kizer v. County of San Mateo* (1991) 53 Cal.3d 139, *as modified (Mar. 28, 1991)(Kizer)*, as the definitive holding that the Government Claims Act applies to "torts" only, even though the issue was discussed in dicta in a footnote. (RB 12–13.) *Kizer* actually held that Section 818, which generally prohibits punitive damages against a public entity, does not prevent the State from imposing statutory civil penalties on applicable facilities under Health and Safety Code sections 1417 et seq. (*Kizer*, *supra*, 53 Cal.3d at pp. 140, 151.) In analyzing whether Section 818 applied to statutory civil penalties, the Court in *Kizer* made brief, footnote mention of the Government Claim Act's application to torts. Specifically, the Court noted the Law Revision Commission's intentional avoidance of the word "tort" in Section 815 to prevent imposition of liability through reclassification of an injury and the recognition that the practical effect was

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[4] Although Real Parties advocate for a specific statutory interpretation, their analysis at times discounts the statute's plain language or legislative history and instead favors case law that does not squarely address the issue. (See e.g., RB 11, 14, fn. 1.) However, adherence to the principles of statutory construction is necessary for statutory interpretation. (See *Even Zohar Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC* (2015) 61 Cal.4th 830, 837–38; *Miklosy*, *supra*, 44 Cal.4th at p. 888.) This is particularly true when interpreting the language of the Government Claims Act because the statutory scheme itself derived from case law "riddled with exceptions and inconsistencies." (*Elson*, *supra*, 51 Cal.App.3d at p. 583.)

to eliminate liability arising from torts. The Court explained that "[c]learly, the emphasis of the Tort Claims Act is on *torts*." (*Id.* at p. 145, fn. 4, emphasis in original.) While the Government Claims Act undoubtedly has an emphasis on torts, the Court's statement in dicta does not mean the Government Claims Act is exclusively applicable to "torts." Nor does it reflect a decision by this Court that a claim satisfying the requirements of Section 815 should fall outside the scope of immunity when recast to sound in something other than "tort." The law is clear: the Government Claims Act "governs all public entities and their employees and all noncontractual bases of compensable damage or injury that might be actionable between private persons." (*Caldwell*, *supra*, 10 Cal.4th at p. 980; see Gov. Code, §§ 814, 815.)

2. Real Parties' rule creates the absurd result of allowing quantum meruit claims against a public entity in violation of public entity contract law.

Real Parties contend that application of their "torts" only rule permits quantum meruit claims to stand against a public entity. (OB 22–29; RB 13–15.) However, permitting quantum meruit claims against a public entity is an absurd result when viewed in the context of public entity contract law because a contract cannot be implied when it would violate statutory restrictions on a public entity's contracting authority.

Where a public entity's legal authority to enter into a contract is restricted by statute, and an implied contract would disregard those

restrictions, courts have consistently denied claims against public entities based on quantum meruit, implied-in-law, or quasi-contract theory. (See, e.g., *Reams v. Cooley* (1915) 171 Cal. 150, 153–57; *Fairview Valley Fire, Inc. v. Dept.* (2015) 233 Cal.App.4th 1262, 1271; S*heppard, supra,* 191 Cal.App.4th at p. 314; *P&D Consultants, Inc. v. City of Carlsbad* (2010) 190 Cal.App.4th 1332, 1340–41; *Katsura v. City of San Buenaventura* (2007) 155 Cal.App.4th 104, 110 (*Katsura*); *Authority for California Cities Excess Liability v. City of Los Altos* (2006) 136 Cal.App.4th 1207, 1212; *Janis v. California State Lottery Com.* (1998) 68 Cal.App.4th 824, 830; *Los Angeles Equestrian Center, Inc. v. City of Los Angeles* (1993) 17 Cal.App.4th 432, 449.)

Many of these decisions describe this well-established legal principle in terms of public policy, explaining that implied-in-law theories are based on quantum meruit or restitution considerations, which are outweighed by the need to protect and limit a public entity's contractual obligations. Nevertheless, the underlying tenet of these decisions is that "[t]he law never implies an agreement against its own restrictions and prohibitions, or [expressed differently], 'the law never implies an obligation to do that which it forbids the party to agree to do.'" (*Katsura, supra,* 155 Cal.App.4th. at p. 110.)[5]

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[5] In concluding that Real Parties failed to state a claim for breach of an implied-in-fact contract, the Court of Appeal determined that public entity

Therefore, in addition to contravening the Government Claims Act, a "torts" only rule would imply a contract through quantum meruit in violation of a public entity's own contracting restrictions and governing law. Real Parties' rule would enable public service providers—and litigants generally—to circumvent a legally insurmountable hurdle.

D. REAL PARTIES' POLICY ARGUMENTS APPEAL TO THIS COURT'S EQUITABLE TREATMENT OF PRIVATE AND PUBLIC ENTITIES, DISREGARDING SOVEREIGN IMMUNITY PRINCIPLES AND THE PURPOSE OF THE GOVERNMENT CLAIMS ACT

Real Parties invite the Court to disregard legislative intent and the Government Claims Act's plain language by presenting a parade of horribles couched as policy arguments favoring a denial of immunity here. Those arguments are based primarily on Real Parties' interpretation of fairness and equity, ultimately asking the Court to treat "*all* health care service plans—public and private—alike" under the law. (OB 38–43, emphasis in original.) However, the "[g]overnment cannot merely be made liable as private persons are, for public entities are fundamentally different from private persons." (Recommendation Relating to Sovereign Immunity

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contract law prohibited the County's employees from entering into a contract on behalf of the County because the subject employees lacked contracting authority under the County's codified contracting restrictions. (*County of Santa Clara v. Superior Court* (2022) 77 Cal.App.5th 1018, 1034–35.) Thus, the Court confirmed that the law forbids the County's employees from entering into an agreement with Real Parties as alleged in this case. Notably, Real Parties do not challenge this determination.

(Jan. 1963) 4 Cal. Law Revision Com. Rep. (1963) p. 810.) Indeed, setting aside immunity to establish equity between public and private entities undermines the "very purpose" of the Government Claims Act, which "is to afford categories of immunity where, but for its provisions, public agencies or employees would otherwise be liable under general principles of law." (*Caldwell*, *supra*, 10 Cal.4th at p. 985.)

Real Parties' policy arguments recast the same types of concerns that the Legislature considered when crafting the Government Claims Act. As discussed above, when drafting the Government Claims Act the Legislature considered arguments that the application of governmental immunity could seem harsh and unfair, especially when persons are denied all relief from injury. (Recommendation Relating to Sovereign Immunity (Jan. 1963) 4 Cal. Law Revision Com. Rep. (1963) p. 816.) Indeed, the landmark cases prompting enactment of the Government Claims Act challenged the application of governmental immunity and highlighted how such immunity could lead to "unjust" results. (*Muskopf*, *supra*, 55 Cal.2d at p. 213; *Lipman*, *supra*, 55 Cal.2d at p. 230.) However, in weighing competing interests, the Legislature struck a balance in favor of governmental immunity, "except as otherwise provided by statute." (See Gov. Code, § 815).

In keeping with the Act's plain language, a court cannot "graft an equitable exception onto the Government Claims Act" even if the

application of immunity would "offend" a "strong public policy," because doing so impermissibly nullifies Section 815. (*Tuthill, supra,* 223 Cal.App.4th at pp. 1088–89.) Therefore, even if there was some merit to Real Parties' speculative policy arguments and seemingly inflated list of hardships to the emergency medical delivery system, such arguments should have no bearing on the Court's analysis here.

E. THERE ARE SIGNIFICANT PRACTICAL RAMIFICATIONS TO CIRCUMVENTING THE GOVERNMENT CLAIMS ACT TO PERMIT A COMMON LAW QUANTUM MERUIT CLAIM AGAINST A PUBLIC ENTITY

Though framed in the context of emergency medical care, the issues before this Court—whether a public entity is immune under the Government Claims Act and how the Government Claims Act should be interpreted—have far-reaching impacts that should be considered.

As explained by this Court in *Eastburn,* immunity will be largely eroded unless plaintiffs meet a strict standard for establishing statutory public entity liability in accordance with Section 815. (*Eastburn*, *supra*, 31 Cal.4th at p. 1183.) However, Real Parties' hybrid claims can survive only through a judicial exception to the express requirements of Section 815. Real Parties admittedly do not plead a private right of action under the Knox-Keene Act, and instead plead quantum meruit claims that reference the Knox-Keene Act as a basis for an equitable argument. (See RB 8, 13, 30.) Allowing a party to effectively plead a common law claim sets a

dangerous precedent because it allows future litigants to experiment with similar claims that are statutory in name only, "in the hope that an existing immunity will be curtailed or that liability will be extended beyond previously established limits." (Recommendation Relating to Sovereign Immunity (Jan. 1963) 4 Cal. Law Revision Com. Rep. (1963) p. 809.).

Moreover, should the Court adopt Real Parties' "torts" only rule and conclude quantum meruit claims are excluded from a "torts" definition, future litigants could routinely circumvent governmental immunity by reclassifying their claim as one in quantum meruit. However, as discussed, an oversimplified "torts" only rule contravenes the plain language and intent of the Government Claims Act. It also would deny immunity to government entities when faced with noncontract claims seeking money or damages that otherwise meet the requirements of the Section 815. Furthermore, such a rule would create the absurd result of implying a contract with a public entity in violation of public entity contract law. It is not speculation that under such a rule government immunity would become so "riddled with exceptions and inconsistencies"; rather, it would be history repeating itself. (*Elson*, *supra*, 51 Cal.App.3d at pp. 582–83; see *Muskopf*, *supra*, 55 Cal.2d at p. 216.)

In enacting the Government Claims Act, the Legislature understood that if "further study in future years" necessitates additional liability, "such liability may then be imposed *by the Legislature* within carefully drafted

limits." (Recommendation Relating to Sovereign Immunity (Jan. 1963) 4 Cal. Law Revision Com. Rep. (1963) pp. 809–12, emphasis added.) Certainly, the Legislature has the authority to subject public entities to causes of action for reimbursement of emergency medical care. However if the Legislature elects to do so, it must directly and expressly state that intent statutorily in accordance with Section 815. Its intent cannot be inferred from a piecemeal application of the Knox-Keene Act and common law claims applicable only to *private* entities.

III. CONCLUSION

For all of these reasons, Amicus Curiae respectfully requests that this Court affirm the Court of Appeal and find in favor of Petitioner County of Santa Clara.

Dated: March 3, 2023

Respectfully submitted,

/s/
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CERTIFICATION OF COMPLIANCE WITH CALIFORNIA RULES OF COURT, RULE 8.204(c)(1)

I hereby certify that this brief has been prepared using proportionately double-spaced 13-point Times New Roman typeface. According to the word count feature in my Microsoft Word software, this brief contains 5,212 words.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 3rd day of March, 2023 in Sacramento, California.

Dated: March 3, 2023

Respectfully submitted,

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