



May 16, 2013

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Honorable Tani Cantil-Sakauye, Chief Justice
and the Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102-4797

Re: *Guerrero v. Superior Court (Weber)*, Case No. S210134
(First District Court of Appeal No. A133202)
Letter of Amicus Curiae In Support of Petition For Review (Cal. Rules
of Court, rule 8.500(g)(1))

To the Chief Justice and the Associate Justices of the California Supreme Court:

The California State Association of Counties (CSAC), the County Welfare Directors of California (CWDA), and the California Association for Public Authorities of IHSS (CAPA) respectfully submit this letter in support of Petition for Review filed by the real parties of interest, Jo Weber and Michael Humphrey in this very important case involving wage liability for In-Home Support Services (IHSS) providers. As detailed in this letter, the Court of Appeal's opinion, which finds that counties and IHSS public authorities are joint employers with the recipient of IHSS services for wage and hour purposes manifestly misunderstands the essential components of the IHSS program and the limited role played by counties and public authorities. As such, CSAC, CWDA and CAPA respectfully urge this Court to grant the petition for review.

I. The Applicants' Interest

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 case involves a matter affecting all counties.

CWDA is a nonprofit association representing the human service directors from each of California's 58 counties. The Association's mission is to promote a

human services system that encourages self-sufficiency of families and communities, and protects vulnerable children and adults from abuse and neglect.

CAPA is a non-profit association comprised of the In-Home Supportive Services Public Authorities in California created to provide proactive leadership to improve the IHSS program in California. There are 56 Public Authority IHSS agencies throughout California's 58 counties.

II. Review Should be Granted to Ensure The Essential Components of the IHSS Program Remain in Tact.

The IHSS program was adopted in 1973 to “maintain a state system of a broad range of social services, including rehabilitation services, to assist aged, blind or disabled persons . . . attain or retain the capabilities of maintaining or achieving self-care, economic independence, personal well-being, rehabilitation or a sound family life.” (Welf. & Inst. Code, § 12250.) Recipients of services are given the ability to hire and fire their own caregivers rather than accept whatever caregiver a medical agency might send out. (Welf. & Inst. Code, § 12301.6.) This “consumer” or “social” model for delivering services fosters a sense of independence and control in recipients, which should not be underestimated. In fact, a key feature of IHSS as compared to other elderly or disabled assistance programs, such as Home Health (Health & Saf. Code, § 1725 et seq.), or Adult Day Health Care (Health & Saf. Code, § 1570 et seq.) and its successor program Community-Based Adult Services (Welf. & Inst. Code, § 14186 et seq.), is the use of the social model, where care providers are non-medical personnel and recipients control the functions and activities provided.

Notably, through the various changes that have been made to the IHSS program since 1973, including those that created public authorities for collective bargaining, the recipient's right to self-direction over providers as never been altered. To the contrary, the law has consistently been clear that “[r]ecipients of in-home supportive services shall retain the right to choose the individuals that provide their care and to recruit, select, train, reject, or change any provider under the contract mode or to hire, fire, train, and supervise any provider under any other mode of service.” (Stats. 1999, ch. 90, § 6 (AB 1982)[adding Section 12302.25, subd. (a) to the Welfare and Institutions Code]; Welf. & Instit. Code, § 12301.6, subd. (c)(2)(B)[“Recipients shall retain the right to hire, fire, and supervise the work of any in-home supportive services personnel providing services for them.”].)

By assuming that counties and public authorities somehow share these responsibilities, the Court of Appeal's opinion disregards this fundamental aspect of the

IHSS program. This Court should grant review to make clear that recipient control is an essential aspect of the IHSS program, and such control precludes finding that counties and public authorities are employers for wage and hour purposes under the relevant law.

III. Review Should be Granted to Impose Liability for Behavior that is Beyond the Authority of Counties and Public Authorities to Control.

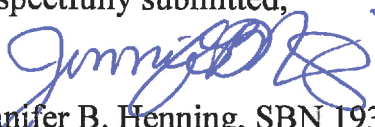
The IHSS program is an entitlement program in which the level of benefit is determined by a formula created by the State, and the care providers are selected and supervised directly by the recipient of the services. While counties and IHSS public authorities play an important administrative function in the delivery of IHSS services, the lower court's opinion treating them as the employer for purposes of wage and hour laws is a significant expansion of their burdens under the IHSS program, and comes at a time when budget cuts, lawsuits challenging IHSS service reductions, and other economic pressures already make the program and extremely difficult one to manage within existing budgets.

As the petition for review makes plain, counties and public authorities cannot prevent an individual from accruing overtime. Such overtime can be worked in perfectly legitimate ways and well within the regulations of the IHSS program. Yet the opinion below imposes overtime liability on counties and public authorities using the erroneous assumption that Counties and public authorities have the ability to prevent providers from working overtime. They simply do not. As a result, the opinion imposes liability on counties and public authorities for activities they are powerless to prevent. This result certainly cannot be the intent of the law, and warrants this Court's review.

III. Conclusion

For the foregoing reasons, and for the all of the reasons stated in the Petition for Review, CSAC, CWDA and CAPA respectfully urge this Court to grant the Petition for Review in this case.

Respectfully submitted,


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Counsel for California State Association of Counties,
County Welfare Directors Association, and
California Association for Public Authorities of IHSS

Proof of Service Attached

Proof of Service by Mail
Guerrero v. Superior Court (Weber)
Case No. S210134

I, Dovie Andrew, declare:

That I am, and was at the time of the service of the papers herein referred to, over the age of eighteen years, and not a party to the within action; and I am employed in the County of Sacramento, California, within which county the subject mailing occurred. My business address is 1100 K Street, Suite 101, Sacramento, California, 95814. I served the within **LETTER IN SUPPORT OF PETITION FOR REVIEW** by placing a copy thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

Proof of Service List

Party	Attorney
Guerrero, Adelina Tapia : Petitioner	William G. Hoerger California Rural Legal Assistance 631 Howard Street - Suite 300 San Francisco, CA 94105 Robert J. Lotero CA Rural Legal Assistance 725 Farmers Ln #10 Building B Santa Rosa, CA 95405-6743
The Superior Court of Sonoma County : Respondent	Sonoma County Superior Court Hall of Justice, #106J 600 Administration Drive Santa Rosa, CA 95403-2818
Weber, Jo; Humphrey, Michael: Real Parties in Interest	Bruce D. Goldstein Joshua A. Myers Office of County Counsel 575 Administration Drive #105A Santa Rosa, CA 95403
National Employment Law Project : Amicus curiae for petitioner	Eunice Hyunhye Cho Nat'l Employment Law Project 405 14th Street, Suite 1400 Oakland, CA 94612

Court of Appeal	Clerk of the Court First Appellate District, Division Two 350 McAllister Street San Francisco, CA 94102-3600

and by placing the envelopes for collection and mailing following our ordinary business practice 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 prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on 5/10/2013, at Sacramento, California.

Dovie Andrew

DOVIE ANDREW