

**No. S261247**

**SUPREME COURT OF CALIFORNIA**

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**LYNN GRANDE,**

*Plaintiff-Respondent,*

**vs.**

**EISENHOWER MEDICAL CENTER,**

*Defendant-Petitioner*

**FLEXCARE, LLC**

*Intervener and Appellant.*

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On Review from the Court of Appeal for the  
Fourth Appellate District, Division Two  
Appeal Nos. E068730 and E068751

After an Appeal from the Superior Court of Riverside County  
Honorable Sharon J. Waters  
Case Number RIC1514281

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**APPLICATION OF CALIFORNIA HOSPITAL ASSOCIATION FOR  
LEAVE TO FILE *AMICUS CURIAE* BRIEF; BRIEF OF *AMICUS  
CURIAE* IN SUPPORT OF PETITIONER  
EISENHOWER MEDICAL CENTER**

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**APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF**

TO THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE  
CALIFORNIA SUPREME COURT:

Pursuant to Rule 8.520(f)(1) of the California Rules of Court,  
California Hospital Association respectfully applies for leave to file an  
amicus curiae brief in support of the position of Defendant-Petitioner  
Eisenhower Medical Center. The proposed brief is attached.

**I. STATEMENT OF INTEREST**

Amicus California Hospital Association (“CHA”) represents the  
interests of hospitals, health systems and other healthcare providers in  
California. CHA includes nearly 500 hospital and health system members.  
CHA’s mission is to improve healthcare quality, access and coverage, and  
create a regulatory environment that supports high-quality, cost-effective  
healthcare services.

Consistent with that mission, CHA consults on issues that affect the  
healthcare industry and advocates on behalf of hospitals, health systems,  
and other healthcare providers. As a result, CHA is uniquely able to assess  
both the impact and implications of the legal issues presented in  
employment cases that impact the healthcare industry. CHA regularly  
participates as amicus curiae in significant California appellate cases,  
including *Gerard v. Orange Coast Mem'l Med. Ctr.*, 6 Cal. 5th 443 (2018),

which (like the present case) have a substantial practical impact on the interests of CHA members and their employees.

No party's counsel has authored this brief, either in whole or in part; nor has any party or party's counsel contributed money intended to fund the preparation or submission of this brief. Likewise, no person other than the amici curiae, their members, or counsel have contributed money intended to fund the preparation or submission of this brief. Cal. R. Ct. 8.520(f)(4).

## **II. PROPOSED AMICUS CURIAE BRIEF**

This Court must decide whether a class of workers may bring a wage-hour class action against a staffing company, settle that lawsuit with a stipulated judgment that releases the staffing company's agents, and then bring a second class action alleging the same wage and hour violations against the staffing company's client.

Due to its familiarity with the staffing practices of CHA members and the healthcare industry more generally, CHA is uniquely equipped to assess the impact and implications of the issue presented here. Virtually all hospitals in California use or have used temporary employment agencies to fill staffing vacancies, especially during the current COVID-19 pandemic.

The proposed amicus curiae brief will assist the Court in deciding this matter by explaining the prevalence— and benefits—of the closely-integrated relationship between staffing agencies, health care providers, and workers in California. Among the many benefits of this tripartite

relationship is the close cooperation between staffing agencies and hospitals, which helps to ensure that workers are paid timely and accurately. For example, staffing agencies often depend on hospitals to provide information (like time records) that the agencies need to fulfill their wage-hour obligations to their employees. Without this information, employees supplied by staffing agencies to hospitals likely would not be paid correctly or timely.

As CHA's proposed amicus curiae brief also explains, the practical reality of these integrated staffing relationships must inform this Court's decision as to whether a healthcare worker can sue her employer (the staffing agency) for its pay practices, extract a settlement (with a broad release), then sue the putative joint employer (the hospital) for those very same pay practices, which necessarily involve the very same work and wage payments.

Were the Court to permit this type of successive litigation, it could threaten the structure and stability of the established healthcare industry staffing model, with no foreseeable upside. A clear rule prohibiting such duplicative litigation, on the other hand, would encourage the efficient and final resolution of wage-hour disputes among all parties to the tripartite staffing relationship.

Dated: December 21, 2020

Respectfully Submitted,

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/s/ Kiran Seldon

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Counsel for *Amicus Curiae*  
California Hospital Association

No. S261247

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## I. Introduction

In *Castillo v. Glenair, Inc.*, 23 Cal.App.5th 262 (2018), the Court of Appeal held that an employee cannot sue her staffing agency employer for alleged failures to pay wages, settle that suit, and then sue the staffing agency client for the very same violations. *Grande v. Eisenhower Medical Center*, 44 Cal.App.5th 1147, 1161-62 (2020) held the opposite.

In their merits briefing, Eisenhower and Flexcare persuasively explain why *Castillo* represents the correct application of California law. California Hospital Association (“CHA”) writes separately to address why *Castillo*’s clear rule against successive litigation makes practical and public policy sense based on the nature of temporary staffing in the healthcare industry.

First, CHA describes the reasons for—and myriad benefits of—the temporary staffing model in the healthcare sector. *See* Part II(A). Next, CHA explains that, due to the unique structure of temporary staffing, hospitals and staffing agencies must work together in order for temporary workers to be accurately and timely paid. *See* Part II(B).

Finally, CHA explains why the *Castillo* rule against serial litigation appropriately recognizes the reality of this interdependent relationship between staffing agencies and hospitals when it comes to wage-hour compliance, while *Grande* does not. *See* Part II(C).

## **II. Permitting Serial Litigation Against Staffing Agencies And Hospitals Would Undermine The Established Healthcare Staffing Model**

### **A. The Benefits Of Temporary Staffing In The Healthcare Industry**

Staffing arrangements of the type at issue in this case are very common. The staffing industry employs approximately 16 million Americans annually, including around 3 million people in California. *See* American Staffing Association Fact Sheet.<sup>1</sup> According to recent data, temporary/contract staffing contributed about \$38.4 billion to the California economy, twelve percent of which was from the healthcare sector. *Id.*

The healthcare sector is fast-growing. A U.S. Bureau of Labor Statistics report, published in October 2017, projected that the healthcare sector will have the fastest employment growth among various industries, growing by nearly 4 million jobs (to more than 23 million total jobs nationwide) by 2026. *See* American Staffing Association, *Staffing Success* magazine, p. 3 (March-April 2018).<sup>2</sup>

Temporary workers play a vital role in the healthcare industry. Staffing agencies place workers at healthcare facilities, and the arrangement benefits hospitals, staffing agencies, and healthcare workers alike.

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<sup>1</sup> Available at [https://d2m21dzi54s7kp.cloudfront.net/wp-content/uploads/2020/05/ASA-2020StateFactSheets\\_CA.pdf](https://d2m21dzi54s7kp.cloudfront.net/wp-content/uploads/2020/05/ASA-2020StateFactSheets_CA.pdf)

<sup>2</sup> Available at <https://d2m21dzi54s7kp.cloudfront.net/wp-content/uploads/2018/05/staffing-success-ma18-employment-in-2026.pdf>

**a. Benefits to hospitals and staffing agencies.** Virtually all hospitals in California use staffing agencies to fill vacancies for a number of reasons.

*First*, the patient census at hospitals routinely fluctuates. When the patient census increases, hospitals must rely on staffing agencies to supply healthcare workers to assist with patient care needs. *See e.g.* L. Bernstein, *Some places were short on nurses before the virus. The pandemic is making it much worse*, Washington Post (Nov. 16, 2020) (“[s]taffing in U.S. hospitals, particularly among nurses, has reflected a patchwork of local shortages in recent years, with a ready reserve of traveling and per-diem personnel deployed in response to sudden demand”).<sup>3</sup> Other times, hospitals need supplemental staff due to absences or sickness within their permanent staff.

In California, the need to secure a pipeline of temporary nurses is particularly acute because the state mandates nurse-to-patient staffing ratios. *See* 22 Cal. Code Regs. §70217. Staffing agencies allow hospitals to quickly and efficiently meet their state-mandated patient care obligations

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<sup>3</sup> Article available at [www.washingtonpost.com/health/some-places-were-short-on-nurses-before-the-virus-the-pandemic-is-making-it-much-worse/2020/11/16/8d3755a0-25c4-11eb-a688-5298ad5d580a\\_story.html](https://www.washingtonpost.com/health/some-places-were-short-on-nurses-before-the-virus-the-pandemic-is-making-it-much-worse/2020/11/16/8d3755a0-25c4-11eb-a688-5298ad5d580a_story.html); *see also* Hawryluk and Bichell, *Need a COVID-19 Nurse? That’ll Be \$8,000 a Week*, Kaiser Health News (Nov. 24, 2020) (“Hospitals have long relied on traveling nurses to fill gaps in staffing”), available at [www.khn.org/news/highly-paid-traveling-nurses-fill-staffing-shortages-during-covid-pandemic/](https://www.khn.org/news/highly-paid-traveling-nurses-fill-staffing-shortages-during-covid-pandemic/).

despite fluctuating demand—whether it be a per diem nurse assigned to work a shift because of a last-minute sick call, or a traveler nurse needed for a 13-week assignment during a high census period.

Without staffing agencies, hospitals would be required to maintain reserve capacity in its permanent staff in order to protect against unexpected fluctuations in admissions or other staffing shortages. Hospitals then would be forced to pay for unneeded hours of work (and corresponding employee benefits) in periods with low patient census, unnecessarily driving up healthcare costs.

Maintaining reserve capacity also would, because of the ongoing nursing shortage, be impossible with respect to nursing positions.<sup>4</sup> Thus, in the absence of temporary staffing through agencies, the only other alternative would be for hospitals to turn patients away. Instead, the established healthcare model in California integrates temporary staff provided by staffing agencies with hospitals' own permanent staff to meet fluctuating patient care needs.

*Second*, the benefits—and stakes—of the hospital-staffing agency relationship have been heightened during the current COVID-19 pandemic. As has been widely reported, staffing agencies have been deploying

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<sup>4</sup> *The States With The Largest Nursing Shortages*, Registerednursing.org (discussing ongoing nursing shortage and forecasting that, by 2030, “California is expected to be short the most registered nurses (45,500)” among all states). Available at <https://www.registerednursing.org/largest-nursing-shortages>.

temporary nurses to viral “hot spots” to assist hospitals with rising patient counts, and the demand for nursing staff continues to rise nationwide during the winter surge in COVID-19 cases:

-- Deruy, *\$6,000 a Week: Demand For Nurses Amid COVID Surge Has Hospitals Bracing For Staffing Shortages*, The Mercury News (Nov. 25, 2020) (“traveling nurse companies are seeing a record number of job openings—and skyrocketing pay rates—as hospitals scramble to staff up to meet the need brought on by soaring COVID-hospitalization rates.”)<sup>5</sup>;

-- L. Bernstein, *Some places were short on nurses before the virus. The pandemic is making it much worse*, Washington Post (Nov. 16, 2020) (noting “record demand for travel nurses, who take out-of-town assignments on short-term contracts of 13 weeks or less at elevated wages”)<sup>6</sup>;

-- Salles, *Covid travel nurse’s six months on the road across the US*, BBC News (Dec. 9, 2020) (“demand for travel nurses in the US has skyrocketed due to the pandemic, from 8,000 openings in January to 32,000 in December” and “[t]hey’ve played a crucial role in places overwhelmed

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<sup>5</sup> Available at [www.mercurynews.com/2020/11/25/6000-a-week-demand-for-nurses-amid-covid-surge-has-hospitals-bracing-for-staffing-shortages/](http://www.mercurynews.com/2020/11/25/6000-a-week-demand-for-nurses-amid-covid-surge-has-hospitals-bracing-for-staffing-shortages/).

<sup>6</sup> Available at: [www.washingtonpost.com/health/some-places-were-short-on-nurses-before-the-virus-the-pandemic-is-making-it-much-worse/2020/11/16/8d3755a0-25c4-11eb-a688-5298ad5d580a\\_story.html](http://www.washingtonpost.com/health/some-places-were-short-on-nurses-before-the-virus-the-pandemic-is-making-it-much-worse/2020/11/16/8d3755a0-25c4-11eb-a688-5298ad5d580a_story.html)

with Covid patients.”).<sup>7</sup>

-- Gutierrez, *California health officials scramble to staff medical facilities amid COVID-19 surge*, Los Angeles Times (Dec. 15 2020) (noting Governor Newsom “said the state needs to hire 3,000 temporary contracted medical workers to meet increasing demands,” and that state has “contracted with two staffing agencies to hire temporary workers” and is “looking overseas” for staffing help).<sup>8</sup>

The ability of hospitals and staffing agencies to work together to place nursing staff in high-need areas has been essential to the continuity of patient care during the pandemic, especially when permanent medical staff have themselves contracted the virus and needed to take time off. Impelli, *Hospitals in 25 U.S. States Face Staffing Shortages Amid Surging COVID Cases, Study Shows*, Newsweek (Nov. 25, 2020) (noting “[s]taff shortages” due to “doctors and nurses contracting the novel virus while working, and are forced to stay home from work and quarantine”)<sup>9</sup>; Ganja and Mejia, *Hospitals Brace For Holiday COVID Surge Fearing Staff Shortages and*

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<sup>7</sup> Available at <https://www.bbc.com/news/av/world-us-canada-55193795>.

<sup>8</sup> Available at <https://www.latimes.com/california/story/2020-12-15/california-health-officials-scramble-covid-19-surge-locations-staffing>

<sup>9</sup> Available at <https://www.newsweek.com/hospitals-25-us-states-face-staffing-shortages-amid-surging-covid-cases-study-shows-1550315>

*Burnout*, Los Angeles Times (Nov. 11, 2020)<sup>10</sup>; Caiola, *California Hospitals Applying Early Lessons As They Brace For A COVID-19 Surge*, Capital Public Radio (Nov. 20, 2020) (“Hospitals typically rely on traveling nursing agencies that can assign workers to fill the gaps when employees get sick”).<sup>11</sup>

In short, the flexibility and responsiveness of temporary staffing has been critical for hospitals during the COVID-19 pandemic.

*Third*, the hospital-staffing agency arrangement is mutually beneficial from an administrative standpoint. Staffing agencies will source and screen healthcare professionals in their pool, ensuring that potential candidates have proper licensure, credentialing, training, and health screening. Hospitals thus can draw from a pool of pre-screened, qualified candidates who can be on-boarded quickly.

In addition, working with a staffing agency streamlines the recruiting, interviewing, and placement process for hospitals, which can reduce the time and resources hospitals spend searching for candidates. And with placements often being short-term (as plaintiff Grande’s own short tenure at Eisenhower illustrates), hospitals would have a far more

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<sup>10</sup> Available at [www.latimes.com/california/story/2020-11-22/hospitals-brace-for-holiday-covid-surge-fearing-staff-shortages-and-burnout](http://www.latimes.com/california/story/2020-11-22/hospitals-brace-for-holiday-covid-surge-fearing-staff-shortages-and-burnout).

<sup>11</sup> Available at [www.capradio.org/articles/2020/11/20/california-hospitals-applying-early-lessons-as-they-brace-for-a-covid-19-surge/](http://www.capradio.org/articles/2020/11/20/california-hospitals-applying-early-lessons-as-they-brace-for-a-covid-19-surge/)



difficult time sourcing candidates for short assignments without a staffing agency pool to draw from.

The staffing agency, as the employer of the assigned healthcare professional, also is responsible for paying the employee's wages; providing any benefits for which the employee is eligible; and maintaining employment-related insurance and records. The hospital, in turn, pays the staffing agency a higher rate per hour to compensate for the risks and responsibilities the staffing agency has taken on. In this way, the temporary staffing model in the healthcare industry permits hospitals and staffing agencies to work collaboratively to ensure the uninterrupted delivery of patient care. (Further, as explained in Part B below, for this beneficial arrangement to function smoothly, hospitals and staffing agencies generally assume defined roles when it comes to the pay and supervision of temporary healthcare workers).

***b. Benefits to healthcare workers.*** The temporary staffing model permits staffing agency employees to take advantage of flexible, short-term, and often lucrative assignments. Indeed, high demand for temporary nurses during the pandemic has allowed staffing agency nurses to command high wages. See Hawryluk and Bichell, *Need a COVID-19 Nurse? That'll Be \$8,000 a Week*, Kaiser Health News (Nov. 24, 2020); Goldhill, *Hospitals In Half The States Facing Massive Staffing Shortages*, Stat News (Nov. 19,

2020).<sup>12</sup> Some assignments, moreover, provide opportunities for travel to hospitals outside the healthcare worker's home city.

At the same time, as employees of the staffing agency, temporary healthcare workers are afforded all of the protections of state and federal employment and tax laws, including California's wage-hour laws. And because the staffing agency remains the employer over the course of different short-term assignments, healthcare workers are able to apply the hours worked across those assignments for purposes of overtime, leave protections, and benefits.

For example, suppose a registered nurse worked at Hospital A for two 8-hour shifts, at Hospital B for two 8-hour shifts, and at Hospital C for two 8-hour shifts in one week. Had the nurse been separately employed by each hospital, none would owe her overtime for the shifts worked. But with the staffing agency as her steady employer, the 48 hours worked at the three hospitals would be aggregated so that the nurse would be paid eight hours at the overtime rate of time-and-one half.

The aggregation of those 48 hours of work also would benefit the nurse in another way. Depending on how many hours the nurse worked through the staffing agency, the aggregated hours might qualify her for FMLA, California Paid Sick Leave, and other hours-based protections and

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<sup>12</sup> Available at [www.statnews.com/2020/11/19/covid19-hospitals-in-half-the-states-facing-massive-staffing-shortage/](http://www.statnews.com/2020/11/19/covid19-hospitals-in-half-the-states-facing-massive-staffing-shortage/)

benefits available to employees. Without the aggregation, the nurse likely would not work enough hours for any of the three hospitals to qualify for these benefits and protections.

In short, the temporary staffing model connects healthcare professionals with a wider array of work opportunities than permanent staffing, while also providing temporary workers with all of the protections of California's employment laws.

**B. Staffing Agencies Must Rely On Hospitals In Order To Fulfill Their Wage-Hour Responsibilities To Agency Employees**

A practical reality of the temporary staffing model is that it requires the combined efforts of the staffing agency and the hospital, each acting within its sphere of responsibility.

Hospitals retain control over the clinical environment and are ultimately responsible for patient care. It follows, therefore, that hospitals generally assume the role of scheduling and assigning work to temporary staffing employees, and approving overtime.

Staffing agencies, as the employers of temporary workers, assume all responsibility for compliance with wage-hour laws. *See e.g.* 4 AA 1093, ¶ 5.2 (Contract noting that Flexcare “has, retains, and will continue to bear sole, exclusive and total legal responsibility as the employer” of nurses assigned to Eisenhower, including the responsibility to ensure full compliance with federal and state wage and hour requirements.) Agencies

thus are in charge of, among other things, issuing timely and accurate paychecks and processing payroll for their employees.

With respect to the payment of wages, however, staffing agencies usually must rely on hospitals for information regarding the hours worked because staffing agencies often do not place managers on-site. It is common, for example, for temporary employees to use the hospital's timekeeping system to track their hours worked and to record their meal breaks. Then, temporary employees, either directly or through a hospital manager, transmit those time and break records to the staffing agency, which issues the paychecks. Were a hospital to refuse to provide time records and meal break data, staffing agencies would not be in a position to accurately and timely pay their employees.<sup>13</sup>

The interconnected obligations of hospitals and staffing agencies typically are embodied in their contractual arrangements. Most contracts, like Flexcare's agreement with Eisenhower, provide that the staffing agency is the employer and assumes all employment responsibilities. *See*

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<sup>13</sup> The legislature also has recognized the interdependence of staffing agencies and their clients when it comes to the payment of wages. Labor Code section 2810.3, enacted in 2015, provides that a "client employer" shall share with a "labor contractor" "all civil legal responsibility and civil liability for all workers supplied by that labor contractor" with respect to the "payment of wages." Cal. Lab. Code § 2810.3(b). While not applicable to Grande's suit, the statute reflects the state of California's view that staffing agencies and clients both have a role in the performance of a single legal duty (payment of wages). Permitting workers to divide and conquer with respect to that singular legal duty, as *Grande* permits, is inconsistent with Section 2810.3.

*e.g.* 4 AA 1093, ¶ 5.2. Further, staffing agency-hospital contracts generally obligate the staffing agency, as the actual employer, to indemnify the hospital for any employment-related claims asserted by temporary workers. *See e.g.* 4 AA 1093, ¶ 5.3.

At the same time, such contracts generally acknowledge that shift assignments and assessments of the temporary worker's job performance are within the hospital's sole discretion, as these matters impact patient care. 4 AA 1093, ¶¶ 4.1-4.2. Separately, staffing agencies and their employees typically enter into their own contracts, which reflect that the staffing agency is responsible for paying their employees, but that time records must be reviewed and approved by the on-site supervisor at the client hospital. *See e.g.* 5 AA 1226-27 (Grande's agreement with Flexcare).

In short, the practical reality is that staffing agencies and hospitals must work in tandem to ensure that staffing agencies can fulfill their wage-hour responsibilities to their employees.

**C. *Castillo's* Clear Rule Against Successive Litigation Comports With The Reality Of The Temporary Staffing Model And Makes Public Policy Sense**

*Castillo* prohibits temporary workers from settling with a staffing agency then suing a hospital for claims based on the same wage-hour obligations, while *Grande* allows such serial litigation. *Castillo* is the better rule for multiple reasons.

*First, Castillo* reflects the reality of how temporary staffing is structured in the healthcare sector. *Castillo* recognizes that the temporary staffing model creates “interdependent obligations” with respect to wage-hour matters, 23 Cal.App.5th at 280—that is, hospitals and staffing agencies each have a role to play in ensuring that temporary workers are timely and accurately paid. *See* Parts A and B, above.

*Grande*, on the other hand, ignores that reality, concluding that Flexcare and Eisenhower “operated independently” with respect to temporary nurses. *Grande*, 44 Cal.App.5th at 1161-62. *Grande* thus loses sight of why hospitals perform timekeeping and break monitoring for temporary workers in the first place—so that staffing agencies can pay their employees correctly and timely. With that structure in mind, *Castillo*’s rule that workers cannot sue hospitals for duplicative wage-hour claims after reaching a global settlement with their staffing agencies on those very same claims makes eminent sense.

*Castillo*’s rule against successive litigation has particular force here: plaintiff Grande sued Eisenhower on the theory that it was her joint employer, along with Flexcare. Her claims against Eisenhower are based on the same alleged wage-hour violations as, and are indistinguishable from, her earlier claims against Flexcare. Grande’s suit, therefore, *depends on* Eisenhower and Flexcare having interdependent wage-hour obligations with respect to her tenure at Eisenhower. At the same time, she wants the

Court to ignore the reality of that relationship when it comes to applying principles of agency and privity.<sup>14</sup> Grande cannot have it both ways, as *Castillo* correctly recognizes.

*Second*, Grande's endorsement of serial litigation threatens to disrupt the settled relationship between hospitals and staffing agencies. As explained, in order to efficiently integrate temporary workers into hospitals in response to fluctuating patient care needs, the roles of hospitals and staffing agencies are well-established and predictable. Staffing agencies assume the responsibility of sourcing and paying temporary workers, and agree to indemnify their hospital clients for any employment-related claims. In exchange, hospitals pay staffing agencies an agreed-upon contract rate for their services.

*Grande* injects uncertainty and risk into the system. By opening the door to successive litigation against hospital clients, *Grande* leaves staffing agencies on the hook to indemnify those clients—despite having already reached a global settlement with the suing employee. The uncertainty of

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<sup>14</sup> To be clear, alleged joint employers will not always be agents or in privity with one another. If, for example, a temporary worker was sexually harassed by a hospital's on-site manager and the staffing agency did not have reason to know about it, the staffing agency and hospital would not have the same relationship to the ensuing sex harassment lawsuit. An early settlement with the staffing agency in that case would not necessarily preclude successive litigation against the hospital. But where a suit implicates the interdependent wage-hour obligations of a staffing agency and client, *Castillo* defines the proper scope and effect of the settlement agreement.

this result could discourage settlements between workers and staffing agencies, and also strain relations between hospitals and staffing agencies by making the temporary staffing model more expensive, uncertain, and contentious. *Castillo*'s rule, in contrast, averts potential indemnification battles, leaving intact existing arrangements between staffing agencies and hospitals that benefit the healthcare sector at large.

*Third, Castillo*'s rule discourages serial litigation. Temporary workers considering wage-hour class actions would be encouraged to name staffing agencies and hospitals in the same suit, thereby promoting efficient and final resolution of disputes, rather than undertaking drawn out, years-long litigation of the type that has unfolded in this case. *Castillo*, 23 Cal.App.5th at 287 (“two fundamental policy considerations—promotion of judicial economy and protection of litigants from unnecessary litigation—are furthered by” rule against successive litigation).

Relatedly, the clear rule articulated in *Castillo* eliminates the risk of double recovery—that is, an initial recovery against the staffing company, followed by a second lawsuit against the hospital. That is because, under the *Castillo* rule, a temporary worker would know that her wage-hour claims must be fully and finally resolved in a single suit. *Castillo*, 23 Cal.App.5th at 286-87 (if plaintiffs were permitted to pursue second lawsuit, they would “undermine the finality of the bargained-for and court-approved [first] settlement, waste judicial resources, and potentially obtain



a double recovery on their already-settled claims.”)

*Fourth*, the virtue of *Castillo*’s rule is to remove uncertainty as to the scope and effect of a settlement between staffing agencies and their employees. Should employees wish to engage in inefficient, successive litigation against staffing agency clients, the onus should be on employees to carve out clients from a settlement agreement—thus eliminating the confusing, contentious situation presented here.<sup>15</sup> *Villacres v. ABM Industries, Inc.*, 189 Cal.App.4th 562, 588-89 (2010) (“If parties intend to leave some things open and unsettled, their intent so to do should be made manifest.”)

### **III. Conclusion**

The California Hospital Association joins in the request of Defendant-Petitioner Eisenhower Medical Center and Intervener-Appellant Flexcare, LLC that this Court vacate the judgment in this matter.

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<sup>15</sup> The alternative, requiring settling parties to identify and name each and every released client in a settlement agreement, often is not straightforward or practical. For example, a large putative class of temporary workers suing a staffing agency may have, between them, worked at a large number of different clients during the class period.

Dated: December 21, 2020

Respectfully Submitted,

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**CERTIFICATE OF WORD COUNT**

**(Cal. Rules of Court, Rule 8.204(c))**

The text of this Brief consists of 3,260 words as counted by the Microsoft Word processing program used to generate the Brief.

Dated: December 21, 2020

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**PROOF OF SERVICE**

STATE OF CALIFORNIA        )  
  )        SS  
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I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 2029 Century Park East, Suite 3500, Los Angeles, California 90067-3021. On December 21, 2020, I served the within document(s):


**APPLICATION OF CALIFORNIA HOSPITAL ASSOCIATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF; BRIEF OF AMICUS CURIAE IN SUPPORT OF PETITIONER EISENHOWER MEDICAL CENTER**

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Case No. S261247

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