

No. S244751

IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA

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KURT STOETZL, *et al.*

*Plaintiffs, Appellants and Petitioners,*

v.

STATE OF CALIFORNIA, *et al.*

*Defendants and Respondents.*

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On Review From The Court of Appeal for the First Appellate District,  
Division Four, No. A142832

After an Appeal From the Superior Court for the State of California,  
County of San Francisco, Case No. CJC11004661, Hon. John E. Munter

Coordination Proceeding Special Title: CALIFORNIA CORRECTIONAL  
EMPLOYEES WAGE AND HOUR CASES

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**SECOND SUPPLEMENTAL BRIEF OF PLAINTIFFS/PETITIONERS**

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SUPREME COURT  
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## I.

### INTRODUCTION

Plaintiffs (comprising Petitioners on their own Petition, as well as Respondents to Defendants' Petition) file this Second Supplemental Brief in compliance with Rule 8.520(d) to call this Court's attention to new authority not available in time to be included in Plaintiffs' previous merits or supplemental briefing.<sup>1</sup>

This Court's March 4, 2019, decision in *Cal Fire Local 2881 v. California Public Employees' Retirement System* (S239958) ("*Cal Fire*") flatly discredits the State's repeated refrain that California law does not recognize a contractual right for these public employees to receive their full wages, including overtime pay where appropriate, for compensable hours they have actually worked. This right is the basis for the claims by both the Represented and Unrepresented Employees for breach of contract.

## II.

### **CAL FIRE CONFIRMS THAT BOTH PLAINTIFFS HAVE A VESTED CONTRACTUAL RIGHT TO THEIR EARNED WAGES, ENTITLING THEM TO PURSUE THEIR BREACH OF CONTRACT CLAIMS**

Relying on an already robust body of law, including *Madera Police Officers Ass'n v. City of Madera* (1984) 36 Cal.3d 403, and *White v. Davis*

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<sup>1</sup> Plaintiffs' final brief on the merits was their Reply Brief, filed on June 29, 2018. On December 19, 2018, Plaintiffs filed a Supplemental Brief pursuant to Rule 8.520(d) noting new authority.

(2003) 30 Cal.4th 528, Plaintiffs have consistently argued they have a vested contractual right to “payment of salary that has been earned” (*White, supra*, 30 Cal.4th at 570-571) and should therefore be permitted to move forward with their breach of contract claims in Phase II. (See Pl. Op. Br. at pp. 54-62, Pl. Ans. Br. at pp. 31-38, Pl. Rep. Br. at pp. 25-28.) The State has just as consistently argued that Plaintiffs may not pursue their breach of contract claims because California law does not recognize any legal basis for Plaintiffs’ claims. (See State Op. Br. at pp. 47-51, State Ans. Br. at pp. 49-54; see, e.g., State Rep. Br. at p. 24 [“There is no evidence in the record establishing that CalHR’s regulations or the Pay Scales Manual, the alleged sources of Appellants’ putative contract rights evince an intent to create such rights as opposed to creating policy”].)

Flatly rejecting the State’s argument in this case, this Court in *Cal Fire* explained: “[w]e have consistently recognized that elements of public employee compensation other than pension benefits also may be entitled to” contract clause protections. (Slip Op. at p. 29.) As illustration, the Court expressly cited *White, supra*, for the proposition that “state employees are constitutionally entitled to receive compensation for work they have performed.” (Slip Op. at p. 29.)

These observations followed the Court’s extended discussion in *Cal Fire* of its earlier decision concerning vested pension benefits in *Retired Employees Assn. of Orange County v. County of Orange* (2011) 52

Cal.4th 1171, a decision the State insists undermined *Madera* and, by extension, *White*, thus eliminating any basis for Plaintiffs' breach of contract claims here. (See, e.g., State Op. Br. at p. 49.) As *Cal Fire* makes plain, however, the State is and has always been incorrect. (See Pl. Ans. Br. at pp. 32-35, Pl. Rep. Br. at pp. 25-27.)

Assuming Plaintiffs are able to prove at trial that they performed pre- and post-work activity for which they should have been paid their full wages, and that they were not so paid, *Cal Fire* confirms that they have a contractual right to recover those wages.

### III. CONCLUSION

For the reasons stated above, Plaintiffs urge this Court to consider *Cal Fire Local 2881 v. California Public Employees' Retirement System* (S239958), which fully supports Plaintiffs' right to pursue their breach of contract claims.

DATED: March 22, 2019

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By: 

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**CERTIFICATE OF COMPLIANCE PURSUANT TO CALIFORNIA  
RULES OF COURT RULE 8.520(d)(2)**

Pursuant to California Rules of Court Rule 8.520(d)(2), I certify that according to Microsoft Word the attached brief is proportionally spaced, has a typeface of 13 points and contains 594 words.

DATED: March 22, 2019

MESSING ADAM & JASMINE, LLP

By: 

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Monique Alonso

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**PROOF OF SERVICE**

*Stoetzl, et al. v. State of California, Dept. of Human Resources, et al.*  
Case No. S244751

**STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is 235 Montgomery St., Suite 828, San Francisco, CA 94104.

On March 22, 2019, I served true copies of the following document(s) described as **SUPPLEMENTAL BRIEF OF PLAINTIFFS/PETITIONERS** on the interested parties in this action as follows:

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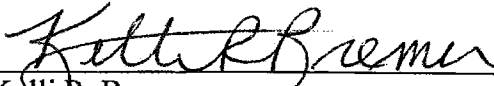
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on March 22, 2019 at San Francisco, California.

  
Kelli R. Bremer