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IN THE SUPREME COURT OF CALIFORNIA

JOHN CASTAÑEDA,
Plaintiff and Appellant,

v.

THE ENSIGN GROUP, INC., et al.,
Defendants and Respondents.

AFTER A DECISION BY THE COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION SIX
CASE NO. B249119

PETITION FOR REVIEW

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ISSUE PRESENTED

Whether a *parent* corporation can be held liable as the employer of a *subsidiary's* employee based on a corporate ownership structure, absent any showing of alter ego status or other evidence that the parent pervasively controlled the employee's activities that are the subject of the parties' dispute.

The Court of Appeal's affirmative answer to this question is squarely at odds with the principles articulated by this Court in *Patterson v. Domino's Pizza, LLC* (2014) 60 Cal.4th 474 (*Patterson*), which was decided after the Court of Appeal's initial opinion in this case, and which was not cited by the Court of Appeal in its final opinion as modified after *Patterson* was decided.

INTRODUCTION
WHY REVIEW SHOULD BE GRANTED

The Court of Appeal opinion opens with these two sentences: "A corporation with no employees owns a corporation with employees. If the corporation with no employees exercises some control over the corporation with employees, it also may be the employer of the employees of the corporation it owns." (Typed opn. 1.)

With that introduction, and the rationale that follows in the opinion, the Court of Appeal has created a new legal standard that is inconsistent with decisions of this Court, and has introduced confusion into the law of parent-subsidiary relationships, holding that a trier of fact can infer *from indirect ownership alone* that a parent company employs its subsidiaries' employees. (Typed opn. 4 ["*Ensign owns Cabrillo.* It purchased it in 2009 and it owns all of its stock. A trier of fact could infer this evidence refutes Ensign's claims of lack of control and responsibility." (original emphasis)].) No prior court has gone this far in holding that, as long as "some" control (beyond mere ownership) of a lawfully formed independent subsidiary company is demonstrated, an indirectly affiliated holding company effectively merges with the subsidiary for purposes of responsibility over the subsidiary's employees. This is true, according to the Court of Appeal, even if the subsidiary hires, trains, and supervises its employees, is fully capitalized, and otherwise maintains all indicia of a separate existence, and even if the claimed elements of "control" by the parent company have little

or nothing to do with the conduct of the employee that gives rise to the lawsuit.

The opinion threatens the continuing vitality of the presumption of respect for the corporate form. Thousands of corporations across California are affected by the Court of Appeal's novel departure from well-established tenets of corporate law, and they now face an unpredictable new landscape of exposure to potentially massive liability for labor law claims by their subsidiaries' employees, and for vicarious liability based on tortious conduct by their subsidiaries' employees. If, as a result of this opinion, companies must fundamentally reorganize their corporate structures or move out of California to prevent disruption of their business organization and activities, our state will face serious adverse economic consequences.

The Court of Appeal's troubling opinion arose out of a wage-and-hour case brought by John Castañeda, a former nursing assistant at Cabrillo Rehabilitation and Care Center (Cabrillo). Rather than sue Cabrillo (which was indisputably his employer), Castañeda sued The Ensign Group, Inc., which is the remote parent of Cabrillo. Finding that The Ensign Group did not control Castañeda's wages, hours, or working conditions at Cabrillo, and that The Ensign Group therefore could not be deemed an additional employer of Castañeda, the trial court entered summary judgment.

The Court of Appeal reversed in a breathtakingly broad opinion that threatens to seriously undermine the foundational principles of respect for the corporate form which have long governed every corporation doing business in this state. While

holding that an employment relationship can arise from the fact of a parent exercising "some control over the [subsidiary] corporation with employees" (typed opn. 1), the Court of Appeal provided no explanation or test for what amounts to "some" control by the parent or when exactly the parent "may" be deemed the employer of its subsidiary's employees. This vague and unbounded new doctrine is directly at odds with the well-established and widely accepted principle that a parent corporation is not liable as the employer of its subsidiary's employees absent facts demonstrating alter ego status. In rendering its opinion, the Court of Appeal apparently concluded that The Ensign Group exercised indirect control over some of Cabrillo's operations, without regard to whether there was any connection between those functions and Castañeda's specific job duties, wages, hours, or working conditions.

The Court of Appeal's published opinion is already making waves and capturing the attention of the legal community. (See, e.g., Pearl, *Castaneda v. The Ensign Group: Parent Corporation May Be Employer of Wholly Owned Subsidiary's Employees* (Sept. 17, 2014) The California Employment Law Blog <http://goo.gl/jpmN3K> [as of Oct. 21, 2014]; Jhaveri-Weeks, *Important New Joint Employer Decision: Corporate Parents Responsible for Employment Violations by Wholly-Owned, Controlled Subsidiaries* (Sept. 17, 2014) Bryan Schwartz Law <http://goo.gl/xDTqq2> [as of Oct. 21, 2014].) The Court of Appeal's opinion threatens to usher in a new wave of wage-and-hour litigation by employees against the parent companies of their actual employers. (See *UPDATED: In A Published Opinion CA Court of*

Appeal Issues Favorable Decision Benefiting California Nursing Assistants: Baltodano & Baltodano LLP Lawsuit to Move Forward in SLO County Court (Sept. 15, 2014) Baltodano & Baltodano LLP <http://goo.gl/xT9b4o> [as of Oct. 21, 2014] ["Baltodano & Baltodano LLP and several California plaintiff-side law firms recommended publication because of the impact the decision will have on similar wage and hour lawsuits"].)

Corporations (as everyone else) require and deserve clear rules governing and alerting them to when and under what circumstances they can be deemed the employer of someone else's employees. By upending the longstanding and widely accepted principle of respect for the corporate form under California law, and effectively eviscerating the alter ego doctrine, the Court of Appeal's opinion has instead created widespread confusion and inconsistency among state court opinions that will be detrimental to California businesses and the economy as a whole. This Court should grant review to restore predictability and clarity to this area of the law.

STATEMENT OF THE CASE

In this wage-and-hour case asserting wrongdoing with respect to employees' pay rates, the Court of Appeal framed the legal question as one concerning a parent company's relationship with a subsidiary's employees. The connection between defendant The Ensign Group and Cabrillo is not as simple as parent-subsidiary, however, and a clear understanding of the undisputed facts concerning who did—and did not—have a role in dictating plaintiff

John Castañeda's wages and work hours is important when evaluating the Court of Appeal's conclusion that The Ensign Group may be deemed to have been Castañeda's employer for purposes of this action.

A. The Ensign Group is a holding company that has an indirect ownership interest in nursing centers such as Cabrillo, and that also owns a service company that contracts to provide administrative support and consulting services to centers such as Cabrillo.

The Ensign Group is a holding company with no employees, and is the corporate parent of a number of subsidiaries; one such subsidiary, Ensign Facility Services, Inc. (EFS),[1] *contracts* with a third company (Cabrillo) that in turn hired Castañeda as an employee. The relationships among The Ensign Group and its affiliated entities can be summarized as noted in the chart below, in which solid lines indicate an ownership interest, and dotted lines indicate a contractual relationship. (See 1 AA 118 [¶ 2]; 3 AA 612:1-4, 614:17-617:18, 624:16-627:22.)

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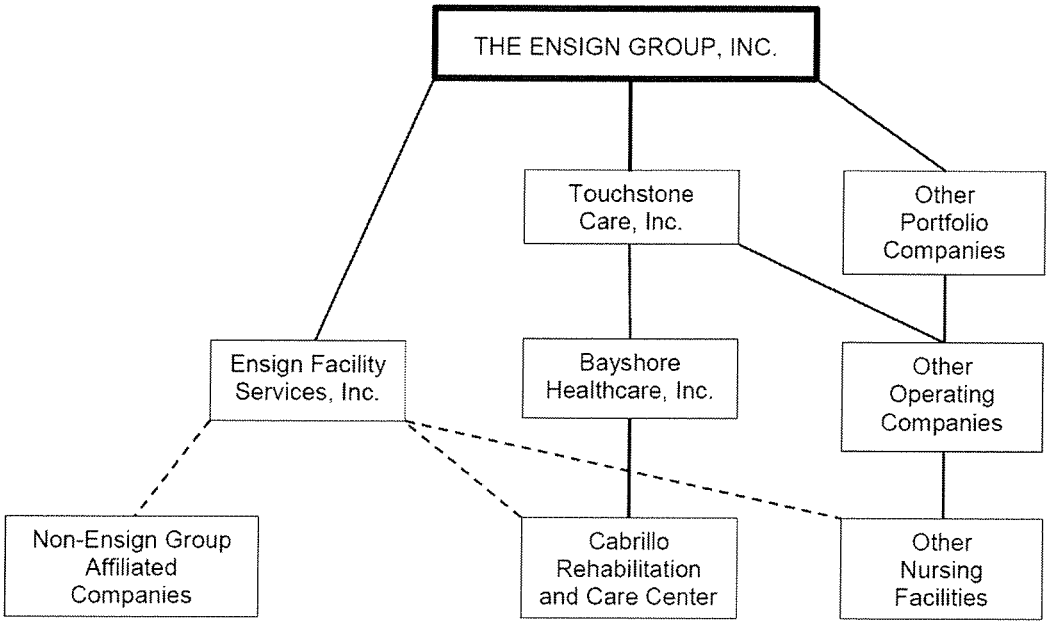
[1] Ensign Facility Services, Inc. has been renamed Ensign Services, Inc. (3 AA 618:16-24.) For ease of reference, this brief will continue to refer to it as "Ensign Facility Services" or "EFS."



As noted on the chart, one of The Ensign Group's subsidiaries is EFS, but it has been established that EFS has no employment relationship with plaintiff.[2] (3 AA 614:17-24, 618:3-11; typed opn. 1, fn. 1.) EFS contracts with skilled nursing facilities like Cabrillo to offer information technology, human resources, payroll processing, accounting, legal and risk management, and technical compliance services on a consultancy basis. (1 AA 90 [¶ 7], 95-110, 112 [¶ 4];

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[2] The EFS-Cabrillo agreement specified that EFS is an independent contractor, not an employer of Cabrillo's employees, and that EFS would exercise no control or direction over the method by which Cabrillo operates. (1 AA 100 [§ 11.1], 105 [preamble]; see also 1 AA 90 [¶¶ 9-10], 112-113 [¶¶ 4-5], 115-116 [¶¶ 4, 6], 122 [¶ 5].) The agreement also provided that EFS has "no responsibility for hiring, discipline or separation of [Cabrillo] employees, which responsibility shall be an [*sic*] remain the sole province of [Cabrillo]" (1 AA 106 [§ 2.C]) and that "[Cabrillo] shall be solely responsible for . . . hiring, supervising and evaluating its administrator and other employees, and . . . overseeing the day-to-day conduct of its business and related activities" (1 AA 109 [§ 1]).

3 AA 627:24-628:24.) EFS also provides these services to centers that have no affiliation with The Ensign Group, charging a monthly fee to its customers. (3 AA 636:1-19; see 1 AA 90 [¶ 7], 95-110, 112 [¶ 4], 115-116 [¶ 4].)

The Ensign Group had no control over whether and how Cabrillo chose to negotiate with EFS or to seek consulting services from EFS in relation to Cabrillo's operation—Cabrillo's Administrator and department heads were free to choose whether, when, and how to use EFS's services. (1 AA 90 [¶¶ 8-10], 95-96, 99-100, 105-110, 112-113 [¶ 5], 115-116 [¶¶ 4, 6]; 3 AA 685:2-21.)

As reflected in the chart above, The Ensign Group also has an indirect ownership interest in Cabrillo. The Ensign Group owns several portfolio companies (like Touchstone Care, Inc.), which are regionally-based holding companies that in turn own operating subsidiaries (like Bayshore Healthcare, Inc.), each of which operates a different skilled nursing center. (3 AA 615:24-617:14, 624:16-22.)

The chief executive of Cabrillo is its Administrator, who supervises and is ultimately responsible for all operations and day-to-day activities of Cabrillo. (1 AA 89 [¶¶ 1, 4-5], 112-113 [¶¶ 2, 5].) The Administrator is solely responsible for setting Cabrillo's operating budget, overseeing the various departments of the facility, and managing Cabrillo's employees, including establishing the pay rate for all Cabrillo employees. (1 AA 89 [¶¶ 4-5], 112-113 [¶¶ 2, 5].) And it was Cabrillo staff who interviewed and hired Castañeda and determined his work schedule. (1 AA 89 [¶ 5], 121-122 [¶ 4], 122 [¶ 6], 138:9-140:21, 144:23-145:3, 187:25-190:4, 270-271.)

The Ensign Group has no role in the human resources function at Cabrillo; it is undisputed that The Ensign Group does not make any decisions regarding the hiring, training, supervising, disciplining, or firing of any Cabrillo employees. (1 AA 90-91 [¶ 11], 112-113 [¶ 5], 118 [¶¶ 4, 7, 9-10], 122 [¶ 5].) The Ensign Group does not determine any pay rates, hours, duties, or assignments of Cabrillo employees. (1 AA 90-91 [¶ 11], 112-113 [¶ 5], 118 [¶ 8].) The Ensign Group is not listed on Cabrillo employees' paychecks and does not pay any Cabrillo employee's salary. (1 AA 90 [¶ 10], 118 [¶ 5], 193:14-194:16, 273-289.)

There is no evidence that The Ensign Group, EFS, or Cabrillo are undercapitalized, failed to follow corporate formalities in their formation or operation, or are anything but fully functional companies in their own right. (8 AA 2020 [trial court found no support for any alter ego claim, a finding Castañeda did not challenge on appeal].)

The Court of Appeal nonetheless conflated the activities of The Ensign Group and EFS, treating one the same as the other. The undisputed evidence showed that activities the Court of Appeal attributed to The Ensign Group were not, in fact, undertaken by The Ensign Group at all.[3]

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[3] The Ensign Group's petition for rehearing pointed out this problem. The Court of Appeal said Cabrillo employees "had to 'follow' Ensign's 'core values' and use 'Ensign forms and templates *in the course of doing their jobs.*' " (Typed opn. 6, original emphasis; but see 1 AA 106-107, 109 [forms and templates were created and made available to Cabrillo by EFS, *not* The Ensign Group]; 3 AA 629:7-10 [Cabrillo had sole discretion to decide whether/when to use

(continued...)

Key elements of plaintiff's evidence highlighted by the Court of Appeal indicated, even on the face of the appellate opinion, that EFS, *not* The Ensign Group, participated (as Cabrillo paid it to do) in Cabrillo operations.[4]

(...continued)
EFS-provided forms and templates].) The Court of Appeal said "Ensign" installed a time clock system to track Cabrillo employees' hours. (Typed opn. 6; but see 1 AA 90 [¶ 10], 105, 109, 112 [¶ 4], 115-116 [¶¶ 4-6] [EFS, *not* The Ensign Group, installed time clock system at Cabrillo's behest].) The Court of Appeal said Cabrillo made its employees watch training videos produced by "Ensign." (Typed opn. 6; but see 1 AA 90 [¶¶ 7-9], 106-107, 109, 112 [¶ 4], 121-122 [¶¶ 3-5]; 3 AA 637:14-638:23, 642:10-25, 662:6-23, 702:6-22 [Cabrillo management used training videos provided by EFS, *not* The Ensign Group, to train Cabrillo employees].) The Court of Appeal said "Ensign" provided computer software to Cabrillo to track clinical documentation, bill for services rendered, and improve operations. (Typed opn. 6; but see 1 AA 109, 112 [¶ 4]; 3 AA 629:7-10 [software was provided by EFS, *not* The Ensign Group, at Cabrillo's request pursuant to the EFS-Cabrillo contract].) The Court of Appeal said "Ensign" provided dietary, medical records, and housekeeping consultants to advise Cabrillo on how it possibly could improve its operations. (Typed opn. 6; but see 1 AA 106-107 [EFS, *not* The Ensign Group, provided these resources to Cabrillo at Cabrillo's request and pursuant to its contract].) The Court of Appeal said "Ensign's" handbook and SEC 10-K filings referred to various training and benefits programs that were provided to employees of its nursing home subsidiaries like Cabrillo. (Typed opn. 6-7; but see 3 AA 659:12-16; 4 AA 957-958 [these training and benefits programs are provided by EFS, *not* The Ensign Group].)

[4] For example, Cabrillo employees' benefits were handled through EFS's (*not* The Ensign Group's) "Ensign Benefits Call Center" and "Ensign HR e-Center." (Typed opn. 8; see 1 AA 106; 2 AA 368-369, 381, 385, 387, 391, 396-397, 418 [Ensign Benefits Call Center and Ensign HR e-Center were provided by EFS, *not* The Ensign Group, as part of its contract with Cabrillo].) Complaints about Cabrillo employees involved the pertinent Cabrillo department head
(continued...)

The limited evidence pertaining specifically to any involvement by The Ensign Group in Cabrillo's operations was as follows: The Ensign Group CEO visited Cabrillo once (typed opn. 6); two signs posted inside the Cabrillo facility included the name "Ensign Group" (typed opn. 8); and some Cabrillo employees had e-mail addresses ending in "@ensigngroup.net" (typed opn. 8 [also noting that one Cabrillo department head's computer showed an "Ensign" logo on the screen when he logged on]). Certain Cabrillo employees (including Castañeda) said they "believed" they were employed by Cabrillo *and* "Ensign." (Typed opn. 7.)

(...continued)
notifying EFS (*not* The Ensign Group) via an "Ensign complaint form" sent to the "Ensign 'HR Department,' " which investigated the matter and consulted with Cabrillo management regarding resolution options. (Typed opn. 8-9; see 1 AA 89 [¶ 5], 90 [¶ 9], 106, 109, 112-113 [¶ 5], 122-123 [¶ 9] [HR consulting was one of the services EFS, *not* The Ensign Group, provided to Cabrillo pursuant to its contract, but EFS had no authority to hire, discipline, or fire Cabrillo employees].) And Cabrillo employees received paychecks with EFS's (but *not* The Ensign Group's) name on them. (Typed opn. 7-8; see 1 AA 90 [¶ 10], 115-116 [¶¶ 4, 6]; 3 AA 556:4-11, 558:1-559:3, 661:8-662:3, 701:6-24, 830:3-831:11 [EFS, *not* The Ensign Group, provided payroll processing services to Cabrillo pursuant to contract, but Cabrillo paid its own employees out of its own payroll account].)

B. Cabrillo hired Castañeda as a nursing assistant, trained and supervised him, dictated his wages and working hours, and then fired him for poor performance.

Cabrillo hired plaintiff John Castañeda to work as a nursing assistant at its skilled nursing center. (1 AA 89 [¶ 2]; see 3 AA 624:16-22.) Castañeda received and read Cabrillo's employee handbook, which explained Cabrillo's affiliation with The Ensign Group, EFS and Touchstone Care, Inc., making clear that only Cabrillo was employing Castañeda. (1 AA 166-172, 182, 214, 218 [Cabrillo handbook: "While we are affiliated with and receive support from these companies, you are not employed by any other entity. The employer-employee relationship exists between you and us alone."].)

Cabrillo trained Castañeda, determined and controlled his work schedule and pay rate, paid his wages, and provided him with documentation about Cabrillo's wage-and-hour procedures to which he was subject. (1 AA 90-91 [¶¶ 6, 10-11], 121-122, 141-142, 144, 151-152, 163, 187-188, 213, 270-271.) Castañeda picked up his paycheck at Cabrillo, and his pay stubs listed his employer as Bayshore Healthcare, Inc. (d/b/a Cabrillo), not The Ensign Group. (1 AA 90 [¶ 10], 116 [¶ 7], 193:14-194:16, 197:1-15, 273-289.)

Of particular relevance to the claims here, Cabrillo also controlled and supervised Castañeda's meal periods and time clocking compliance. (1 AA 115 [¶ 3], 116 [¶ 5].) The employee handbook contained a detailed description of Cabrillo's policies and

procedures governing employee meal and rest periods, overtime, pay periods, and pay days. (1 AA 174:23-175:22, 221-222.) Castañeda was told by another certified nursing assistant at Cabrillo when to take his meal period during each shift, and the handbook instructed Castañeda to speak to a supervisor at Cabrillo or to Cabrillo's Administrator if he had any problems with his meal periods. (1 AA 164:15-165:8, 174:23-175:22, 221.) Cabrillo's Director of Human Resources monitored, oversaw, and maintained Castañeda's time clocking and payroll records, and also maintained Cabrillo's personnel records. (1 AA 115 [¶ 3], 116 [¶ 5]; see 1 AA 90 [¶ 10].)

Not long after Castañeda started work, Cabrillo management counseled Castañeda about problems with his job performance, including his provision of unsatisfactory resident care. (1 AA 122 [¶ 8], 125, 127, 161:6-24, 199:22-200:19.) Cabrillo staff documented problems with Castañeda's performance, including insubordination, failure to properly feed and hydrate residents, sitting down or remaining in residents' rooms without doing any work, and sleeping during his shift. (1 AA 122-123 [¶ 9], 127; see also 1 AA 112-113 [¶ 5], 118 [¶¶ 6-10], 122-123 [¶¶ 7-9] [neither The Ensign Group nor EFS managed or evaluated Castañeda's performance at Cabrillo; this was done only by Cabrillo's employees].)

As a result of all of these issues, Cabrillo management decided to terminate Castañeda's employment. (1 AA 122-123 [¶ 9]; see also 1 AA 127-128, 199:22-200:9, 201:4-21.) Cabrillo's Director of Nursing made the decision to terminate Castañeda's employment at Cabrillo; no one from The Ensign Group or EFS was involved in

that decision, nor does either company have any authority to make such a decision on Cabrillo's behalf. (1 AA 112 [¶ 3], 112-113 [¶ 5], 121 [¶ 3], 122 [¶ 5], 122-123 [¶ 9].) Castañeda admitted that Cabrillo's Director of Nursing alone made the decision to fire him. (1 AA 198:20-199:8.)

C. This action filed by Castañeda is a putative class action against The Ensign Group asserting various wage-and-hour claims. The trial court granted summary judgment for The Ensign Group on the ground it did not employ Castañeda; the Court of Appeal reversed.

Castañeda filed a putative class action against The Ensign Group, claiming it was his employer, and asserting wage-and-hour claims based on allegations that he was not paid minimum and overtime wages, was denied meal breaks, was not given itemized wage statements, and was not promptly paid his wages at termination for his work as a nursing assistant at Cabrillo. (1 AA 26-50.)

The trial court granted summary judgment in favor of The Ensign Group on the ground that, under this Court's opinion in *Martinez v. Combs* (2010) 49 Cal.4th 35 (*Martinez*), Cabrillo—and not The Ensign Group—was Castañeda's only employer. (8 AA 2013-2025.)

On Castañeda's appeal, the Court of Appeal reversed, holding that triable issues of fact existed regarding whether The Ensign

Group, in addition to Cabrillo, was Castañeda's employer. (Typed opn. 1.) As noted above, the Court of Appeal recited various ways in which EFS was allegedly involved in certain aspects of Cabrillo's operation, and referred to evidence that witnesses said "Ensign" (without specifying whether they meant The Ensign Group or Ensign Facility Services) had been involved in certain aspects of Cabrillo employees' working conditions.

Given the undisputed lack of evidence of control over Castañeda's wages and work hours, the Court of Appeal's opinion put dispositive emphasis on the fact that The Ensign Group indirectly owned Cabrillo, concluding that, "[i]f the corporation with no employees exercises some control over the corporation with employees, it also may be the employer of the employees of the corporation it owns." (Typed opn. 1.) The court went on to state that, from The Ensign Group's indirect ownership of Cabrillo's stock, "[a] trier of fact could infer this evidence refutes Ensign's claims of lack of control and responsibility." (Typed opn. 4.) The court further noted that there was some overlap among directors and officers of The Ensign Group, EFS, and Cabrillo. (Typed opn. 4-5.)

LEGAL ARGUMENT

I. THE COURT OF APPEAL'S OPINION CREATES CONFUSION REGARDING THE CONTINUED VIABILITY OF THE LEGAL PRINCIPLE OF RESPECT FOR THE CORPORATE FORM, NECESSITATING THIS COURT'S REVIEW.

A. There is a heavy presumption in California of respect for the corporate form. Overcoming this presumption is reserved for rare situations, none of which exist in this case.

To fully appreciate the confusion caused by the Court of Appeal's opinion, it is necessary to review the longstanding and widespread acceptance of the principle of respect for the corporate form. Perhaps the single most important attribute of a corporation is its separate existence and legal personality, as distinct from its shareholders, subsidiaries, parent companies, directors, officers, and employees. (9 Witkin, Summary of Cal. Law (10th ed. 2005) Corporations, § 1, p. 775; 1 Marsh's Cal. Corporation Law (4th ed. 2014) § 6.01, p. 6-3; 1 Fletcher Cyclopedia of the Law of Corporations (2006) § 14, pp. 32-34, § 25, pp. 47-59, § 26, pp. 64-67.)

The Legislature has devoted the entire Corporations Code to laws governing the proper formation and function of corporations, and courts have recognized that the separate legal identity of a company that complies with those rules should be respected. In

particular, one of the principal *and legitimate* purposes for establishing subsidiary corporations is to limit the parent company's liability in relation to activities undertaken by separate but affiliated companies. (Friedman et al., Cal. Practice Guide: Corporations (The Rutter Group 2014) ¶ 2:52.7, pp. 2-33 to 2-34 ["It is well recognized that '[t]he law permits the incorporation of businesses for the very purpose of isolating liabilities among separate entities'—i.e., parent and subsidiary corporations"]; 1 Fletcher Cyclopedia of the Law of Corporations (2014-2015 cum. supp.) § 41, p. 48, fn. omitted ["Organizing a corporation for the purpose of avoiding personal liability . . . does not alone justify piercing the corporate veil. Indeed, a corporation may be formed for the sole purpose of avoiding personal liability."].)

The law's heavy presumption that a parent company is not liable for the acts of a subsidiary (even a wholly-owned subsidiary) can be overcome only by showing under the alter ego doctrine that the two are, for all practical purposes, one and the same. (1 Fletcher Cyclopedia of the Law of Corporations (2006) § 26, pp. 64-67, § 43, pp. 285-320; 1 Marsh's Cal. Corporation Law, *supra*, § 6.02, pp. 6-6.1 to 6-12; 9 Witkin, Summary of Cal. Law, *supra*, § 10, p. 787; Friedman et al., Cal. Practice Guide: Corporations, *supra*, ¶ 2:51.1, pp. 2-28 to 2-29.) An alter ego finding is a drastic remedy that is sparingly used (*Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 539 (*Sonora Diamond*)), and courts have consequently erected high hurdles that a plaintiff must surmount in order to make the necessary showing (see *Mesler v. Bragg Management Co.* (1985) 39 Cal.3d 290, 301 ["the corporate

form will be disregarded only in narrowly defined circumstances and only when the ends of justice so require"]).

"In practice, courts regard the alter ego doctrine as a *drastic remedy* and disregard the corporate form only *reluctantly* and *cautiously*. This is because alter ego liability is fundamentally at odds with the general rule that a de jure corporation is a legal entity *separate* from its owners [citation]; and the law specifically *permits* owners to incorporate a business for the *very purpose* of shielding them from its liabilities." (Friedman et al., Cal. Practice Guide: Corporations, *supra*, ¶ 2:51.1, p. 2-28, original emphasis; see also 1 Fletcher Cyclopedia of the Law of Corporations, *supra*, § 41.10, pp. 138-139, fn. omitted ["Courts generally apply the alter ego rule with great caution and reluctance. In fact, many courts require exceptional circumstances before disregarding the corporate form."].)

In order to show that a parent company is the alter ego of its subsidiary, a plaintiff bears the burden of demonstrating that there is such a unity of interest and ownership between the parent and subsidiary that the separate personalities of each entity no longer exist, and that an inequitable or unjust result would follow if the separate corporate forms of the parent and subsidiary are honored. (*Sonora Diamond*, *supra*, 83 Cal.App.4th at p. 538.)

Direction and oversight by a parent company is "normal and expected from the status of ownership;" and the law also "comprehends such common characteristics as interlocking directors and officers, consolidated reporting, and shared professional services. [Citations.] The relationship of owner to owned

contemplates a close financial connection between parent and subsidiary and a certain degree of direction and management exercised by the former over the latter"—*without* that connection warranting disregard for the corporate form. (*Sonora Diamond, supra*, 83 Cal.App.4th at pp. 540-541; see also *Associated Vendors, Inc. v. Oakland Meat Co.* (1962) 210 Cal.App.2d 825, 837; 9 Witkin, Summary of Cal. Law, *supra*, § 10, p. 787; 1 Fletcher Cyclopedia of the Law of Corporations, *supra*, § 41.10, pp. 124-150.) To disregard the corporate form, such that the parent company steps into the shoes of the subsidiary for some purposes, "the parent must be shown to have moved beyond the establishment of general policy and direction for the subsidiary and in effect taken over performance of the subsidiary's *day-to-day* operations in carrying out that policy." (*Sonora Diamond*, at p. 542.)

Moreover, ownership by the parent company of all of the shares of the subsidiary corporation is insufficient to overcome the presumption of corporate separateness and establish alter ego status. (9 Witkin, Summary of Cal. Law, *supra*, §§ 10, 15, pp. 787, 793; Friedman et al., Cal. Practice Guide: Corporations, *supra*, ¶ 2:52.7, pp. 2-33 to 2-34; 1 Marsh's Cal. Corporation Law, *supra*, § 6.02, pp. 6-6.1 to 6-12; 1 Fletcher Cyclopedia of the Law of Corporations, *supra*, § 43, pp. 285-320.) Nor is the fact that the parent company and the subsidiary share common directors and officers enough to warrant disregard of the corporate form. (Friedman et al., Cal. Practice Guide: Corporations, *supra*, ¶ 2:52.7, pp. 2-33 to 2-34; 1 Fletcher Cyclopedia of the Law of Corporations, *supra*, § 43, pp. 285-320.) Indeed, a parent company's monitoring of

its subsidiary's performance, supervising the subsidiary's budget, setting general policies and procedures for the subsidiary, sharing directors, officers, and employees with the subsidiary, issuing consolidated financial and annual reports with the subsidiary, and providing financial support to the subsidiary are *insufficient* to support disregard of the parent's separate corporate existence. (*Sonora Diamond, supra,* 83 Cal.App.4th at pp. 546-552.)

B. The presumption of respect for the corporate form has been applied in a variety of contexts, including in cases evaluating employer-employee status.

The heavy presumption of respect for the corporate form and the stringent test for alter ego status have been applied for a long time and in a wide variety of situations under California law. As early as the 1920's, this Court recognized that "the mere circumstance that all the capital stock of a corporation is owned or controlled by one or more persons, does not, and should not, destroy its separate existence; were it otherwise, few private corporations could preserve their distinct identity, which would mean the complete destruction of the primary object of their organization." (*Erkenbrecher v. Grant* (1921) 187 Cal. 7, 11 [holding plaintiff and the corporation he owned were not alter egos for purposes of applying statute of limitations in debt collection action]; see also *Cleaning & P. Co. v. Hollywood L. Service* (1932) 217 Cal. 124, 129 [in action alleging defendant subsidiary corporation breached a contract because of actions taken by its parent corporation, this

Court held, "the rule is well settled in this state that the mere fact one or two individuals or corporations own all of the stock of another corporation is not of itself sufficient to cause the courts to disregard the corporate entity of the last corporation and to treat it as the *alter ego* of the individual or corporation that owns its stock"].)

California courts have applied the presumption to hold that a parent corporation was not subject to personal jurisdiction in California despite the in-state activities of its separately incorporated subsidiary. "[N]either *ownership nor control* of a subsidiary corporation by a foreign parent corporation, without more, subjects the parent to the jurisdiction of the state where the subsidiary does business." (*Sonora Diamond, supra,* 83 Cal.App.4th at pp. 540-541, emphasis added; see also *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 1091-1097 [agreeing with *Sonora Diamond* and holding no personal jurisdiction over parent based on subsidiary's in-state activities because plaintiff failed to show alter ego or agency].)

The United States Supreme Court earlier this year applied similar reasoning to reject an attempt to equate a parent company with its subsidiary for the purpose of exercising jurisdiction. (*Daimler AG v. Bauman* (2014) 571 U.S. ___ [134 S.Ct. 746, 759-760 & fn. 15, 187 L.Ed.2d 624] [United States Supreme Court criticizing Ninth Circuit's use of a more relaxed test for degree of control out-of-state parent must exercise over in-state subsidiary to disregard parent's corporate form and assert personal jurisdiction

over it]; *Young v. Daimler AG* (2014) 228 Cal.App.4th 855, 863 [echoing this criticism].)

The United States Supreme Court has recognized these principles even in the context of government actions seeking compensation for cleanup of pollution sites under the federal Comprehensive Environmental Response, Cleanup, and Liability Act (CERCLA). The Court held in *U.S. v. Bestfoods* (1998) 524 U.S. 51 [48 S.Ct. 1876, 141 L.Ed.2d 43], "It is a general principle of corporate law deeply 'ingrained in our economic and legal systems' that a parent corporation . . . is not liable for the acts of its subsidiaries. [Citations.] Thus it is hornbook law that 'the exercise of the "control" which stock ownership gives to the stockholders . . . will not create liability beyond the assets of the subsidiary. That "control" includes the election of directors, the making of by-laws . . . and the doing of all other acts incident to the legal status of stockholders. Nor will a duplication of some or all of the directors or executive officers be fatal.' " (*Id.* at pp. 61-62.) The Court concluded that a parent corporation cannot be liable under CERCLA for its subsidiary's acts contributing to pollution. (*Id.* at pp. 61-70.)

The very same principles apply in the context of evaluating a non-hiring parent company's employment relationship (or lack thereof) with an individual employee. In *Laird v. Capital Cities/ABC, Inc.* (1998) 68 Cal.App.4th 727 (*Laird*), the Court of Appeal held that a parent company was not liable to its subsidiary's employee on the employee's employment discrimination and wrongful termination claims. The court explained that an employee who asserts that a parent corporation and its subsidiary constitute

a single employer "has a heavy burden to meet under both California and federal law. Corporate entities are presumed to have separate existences, and the corporate form will be disregarded only when the ends of justice require this result. [Citations.] *In particular, there is a strong presumption that a parent company is not the employer of its subsidiary's employees.*" (*Id.* at p. 737, emphasis added.)

The *Laird* court concluded that the parent company was, as a matter of law, not the plaintiff's employer because it did not exercise day-to-day control over the plaintiff's job duties, and because the parent company did not exercise any greater degree of control over its subsidiary than that normally present in parent-subsidiary relationships. (*Laird, supra*, 68 Cal.App.4th at pp. 738-740; see also *id.* at p. 742 [concluding parent was not alter ego of subsidiary].) *The fact that the parent wholly owned the subsidiary was not sufficient to create a triable issue of fact that it was the employer of the subsidiary's employees.* (*Id.* at p. 740; see also *Waste Management, Inc. v. Superior Court* (2004) 119 Cal.App.4th 105, 110-112 [parent not liable for injury to subsidiary's employee because, as a matter of law, subsidiary's alleged safety violations that caused injury cannot be attributed to parent company merely because it owns the subsidiary, controls its budget, and sets general policies for it to follow].)

Just recently, this Court again recognized and reaffirmed the vital importance of respecting the corporate form and limiting the liability that accompanies employer status to those who *directly control and supervise* the day-to-day wages, hours, and working

conditions of the employee. In *Patterson, supra*, 60 Cal.4th 474, this Court addressed whether a franchisor can be held liable as the employer of its franchisee's employee for acts of harassment against the employee by another employee. (*Id.* at pp. 477-478.) The same appellate panel that rendered the decision in this case similarly found an employment relationship existed in *Patterson*. This Court reversed, emphasizing that "[t]he contract-based operational division that otherwise exists between the franchisor and the franchisee would be violated by holding the franchisor accountable for misdeeds committed by employees who are under the direct supervision of the franchisee, and over whom the franchisor has *no contractual or operational control*." (*Id.* at p. 478, emphasis added.) Thus, the "imposition and enforcement of a uniform marketing and operational plan" cannot in itself transform the franchisor into an employer of the franchisee's employees. (*Ibid.*) In so holding, this Court acknowledged the importance of the "contemporary realities" of the modern business world, including how corporations choose to organize themselves to maximize efficiency and minimize liability. (*Ibid.*)

This long line of cases has now been drawn into question by the Court of Appeal's stark departure from the well-established principle of respect for the corporate form.

C. By disregarding the established legal principle of respect for the corporate form under California law, the Court of Appeal's opinion creates confusion and the potential for vastly expanded tort liability for corporations legitimately doing business in this state.

As demonstrated above, longstanding precedent applies the well-recognized principle of respect for the corporate form, rather than casting aside corporate separateness to impose liability on parent companies for their subsidiaries' actions. In completely disregarding this doctrine, the Court of Appeal in this case has created uncertainty and confusion for corporations in this state; these same corporations require and deserve clear rules governing the consequences of their organizational choices, and not the judicial uncertainty and lack of clarity created by the Court of Appeal. This Court's review is needed to answer the question posed by the Court of Appeal's opinion regarding whether the presumption of respect for the corporate form remains intact in this state.

The opening paragraph of the Court of Appeal's opinion demonstrates its disregard for the corporate form and alter ego principles, as well as the uncertainty that it erects in their stead. The court's opinion begins: "A corporation with no employees owns a corporation with employees. If the corporation with no employees exercises *some* control over the corporation with employees, it also may be the employer of the employees of the corporation it owns." (Typed opn. 1, emphasis added.) The court provided no guidance regarding how much control is "some" control, simply stating that,

"Here Ensign has more than a contractual relationship with Cabrillo. *Ensign owns Cabrillo.* It purchased it in 2009 and it owns all of its stock. A trier of fact could infer this evidence refutes Ensign's claims of lack of control and responsibility." (Typed opn. 4.) The Court of Appeal thus held—contrary to decades of authority in this state—that a parent company's ownership of a subsidiary's stock can alone be sufficient to allow a trier of fact to conclude the parent company is the employer of the subsidiary's employees.

In further support of its holding that The Ensign Group was Castañeda's employer, the Court of Appeal pointed to The Ensign Group's ownership of EFS, which provided services under contract to Cabrillo, and its ownership of portfolio companies like Touchstone Care, Inc., which owned Cabrillo. (Typed opn. 4-5.) The court also noted that The Ensign Group, EFS, Touchstone, and Cabrillo shared some directors and officers. (*Ibid.*) This analysis likewise conflicts with the cases discussed above, which hold that mere ownership of subsidiaries or interlocking (even completely interlocking) directors and officers are *insufficient* to pierce the parent's corporate veil.

This Court's recent opinion in *Patterson* also heightens the need for this Court's review. A comparison of the factors the Court of Appeal relied on here with the factual showing of control by the franchisor over the franchisee's operations in *Patterson* leaves businesses in this state in a sea of confusion regarding what degree of control will subject a parent corporation to liability. In *Patterson*, this Court ruled that the franchisor could not be liable as the

plaintiff's employer because it had not "retained or assumed a general right of control over factors such as hiring, direction, supervision, discipline, discharge, and relevant day-to-day aspects of the workplace behavior of the franchisee's employees." (*Patterson*, *supra*, 60 Cal.4th at pp. 497-498.) This Court so ruled despite the plaintiff's showing that the franchisor exercised extensive control over the franchisee's operations, including:

- a computer training program covering "pizza making, store operations, safety and security, and driving instructions" (*Patterson, supra*, 60 Cal.4th at p. 482);

- a computer system that the franchisor could access "in order to track certain sales, such as those involving product promotions and repeat customers" and which "also contained employee information that franchisees could use to prepare work schedules and payroll documents" (*Patterson, supra*, 60 Cal.4th at p. 482, fn. 2);

- a franchise handbook (*Patterson, supra*, 60 Cal.4th at p. 482);

- a Manager's Reference Guide requiring franchisee employees: (1) to be trained under programs provided or approved by the franchisor; (2) to submit time cards and reports; (3) to satisfy minimum wage and experience standards to serve as delivery drivers; (4) to wear the franchisor's uniforms; (5) to adhere to detailed clothing and accessory guidelines; (6) to meet certain grooming and hygiene standards; and (7) to refrain from consuming alcohol or illicit drugs, and to limit tobacco use, while working or on store premises (*Patterson, supra*, 60 Cal.4th at p. 484);

- visits and inspections by the franchisor's area managers through which they would "coach franchisees and employees on problems" they "saw with pizza making, food safety,

product packaging, store cleanliness, employee hygiene, customer orders, consumer complaints, and delivery procedures" (*Patterson, supra*, 60 Cal.4th at p. 486; see *id.* at p. 486, fn. 9); and

- "advice" from the franchisor's area managers that franchisees fire employees whose substandard performance endangered the franchisor's brand or the franchise, including the area manager in *Patterson* telling the franchisee that " 'You've got [to] get rid of' " the employee who sexually harassed the plaintiff (*Patterson, supra*, 60 Cal.4th at p. 485).

The degree of control the franchisor exercised over the franchisee's operations in *Patterson* is very similar in all material respects to the degree of control over general policies and procedures that the Court of Appeal said The Ensign Group (in reality, EFS) exercised over Cabrillo's operations. (See typed opn. 4-9.) However, in *Patterson*, this Court held this degree of control *insufficient* to hold the franchisor liable as the employer of the franchisee's employees, while the Court of Appeal here held it sufficed to show The Ensign Group was Castañeda's employer.

The only material difference between the two cases is one of ownership: while Domino's Pizza did not own the franchisee in *Patterson*, here The Ensign Group (indirectly) owns Cabrillo. This reinforces the point that the dispositive issue for the Court of Appeal in analyzing the employer status issue was that The Ensign Group was the parent corporation that indirectly owned the corporation that employed Castañeda.

The confusion created by the Court of Appeal's opinion sets up an important question of statewide public policy that this Court

needs to resolve. How is a corporation in California to coherently manage its affairs in light of the Court of Appeal's vague and unhelpful, but nonetheless deeply troubling, statements? Corporations in this state have relied for the better part of a century on the well-established presumption of respect for the corporate form and the concomitant protection against liability for parent companies for the acts of their subsidiaries (absent facts establishing alter ego status). The corporate parent-subsidiary relationship has accordingly become widely accepted in California and across the nation as a means of distributing and limiting liability within a corporate family. Every major corporation in America relies on the fundamental principle of respect for the corporate form to arrange its corporate structure and manage its affairs. The Court of Appeal's opinion here holds, in direct contravention of this longstanding legal principle, that mere ownership by a parent of a subsidiary—combined with some unspecified quantum of control, which may amount to no more than the degree of control normally exercised by parents over subsidiaries—suffices to hold the parent liable for the subsidiary's actions.

If this holding is allowed to stand, it will enable plaintiffs in employment cases to fasten liability on a vastly larger array of defendants than was previously the case (and beyond what the law allows), with unpredictable consequences. Where employees were previously limited to suing the company that actually hired, supervised, set their wages/hours/working conditions, disciplined, and fired them, they will now be able to sue remote parent

companies which have no role in or responsibility for controlling their day-to-day job duties. The result may well be an acceleration of the already alarming exodus of corporations from California, which would exacerbate the current dire unemployment situation in this state.

Lest any doubt remain regarding the consequences of the Court of Appeal's opinion, this Court need only review the plaintiff's request for publication—which was joined by four other law firms that represent plaintiffs in employment cases—to know that plaintiff's-side employment lawyers will capitalize on the Court of Appeal's opinion and attempt to eviscerate the presumption of respect for the corporate form in employment cases by pursuing parent corporations for their subsidiaries' employment actions. (See 8/26/2014 Req. for Publ.) The letter explains that "there is no published case law applying *Martinez* to parent-subsidiary relationships," observes that "[i]t was plainly important to [the Court of Appeal] that '*Ensign owns Cabrillo*,' " and concludes that "[t]he decision therefore stands as an important precedent in determining how *Martinez* applies to parent-subsidiary relationships and what kinds of facts may create a triable issue for a jury." (8/26/2014 Req. for Publ. 2.) The word is spreading that the Court of Appeal's opinion may allow plaintiffs in a wide variety of employment cases to cut through the corporate form to hold parents liable for their subsidiaries' actions without a showing of alter ego status or similar unity of interest which have long been legitimately required to pierce the parent's corporate veil.

II. IN THE ALTERNATIVE, THIS COURT SHOULD GRANT REVIEW AND TRANSFER THE CASE BACK TO THE COURT OF APPEAL FOR RECONSIDERATION IN LIGHT OF *PATTERSON.*

This Court's recent opinion in *Patterson* changed the landscape regarding when a company that did not hire, pay, supervise, or fire the plaintiff can be held liable as the plaintiff's employer. The opinion in this case does nothing to account for the holding in *Patterson*, and indeed leaves litigants and lower courts with mixed messages. As explained above, the facts of *Patterson* and the facts of this case—especially with respect to the degree of control the defendant in each case exercised over the plaintiff's employer—are materially similar, except that the defendant in *Patterson* (Domino's Pizza) had a franchise relationship, while the defendant here (The Ensign Group) had an indirect corporate ownership relationship with the entity that actually employed the plaintiff.

While the Court of Appeal here issued its first, unpublished opinion before *Patterson* was decided, it granted rehearing and issued its second, published opinion several weeks after this Court issued its opinion in *Patterson*. The Ensign Group brought *Patterson* to the Court of Appeal's attention via a supplemental letter in opposition to a request for publication (see 9/2/2014 Suppl. Ltr. in Supp. of Opp. to Req. for Publ.), but the Court of Appeal did not mention *Patterson* in its opinion following rehearing.

Accordingly, this Court should grant review and transfer this case back to the Court of Appeal with instructions to reconsider the case in light of *Patterson* and the presumption of respect for the corporate form. (See Cal. Rules of Court, rule 8.500(b)(4).)

CONCLUSION

For the reasons explained above, this Court should grant Ensign's petition for review.

October 27, 2014

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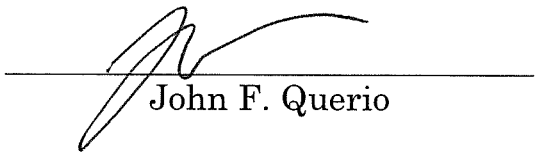
CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, rule 8.504(d)(1).)

The text of this petition consists of 7,565 words as counted by the Microsoft Word version 2010 word processing program used to generate the petition.

Dated: October 27, 2014



John F. Querio

8/7/2014

OPINION

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

JOHN CASTANEDA,

Plaintiff and Appellant,

v.

THE ENSIGN GROUP, INC. et al.,

Defendants and Respondents.

2d Civil No. B249119
(Super. Ct. No. C110466)
(San Luis Obispo County)

Plaintiff John Castaneda appealed a summary judgment in favor of defendants The Ensign Group, Inc. (Ensign) and Ensign Facility Services, Inc. (EFS) on his class action lawsuit seeking damages for nonpayment of minimum and overtime wages. In his opening brief, Castaneda now seeks reversal of the summary judgment in favor of Ensign. He no longer challenges the judgment in favor of EFS. We conclude the trial court erred by granting summary judgment for Ensign. There are triable issues of fact about whether Ensign was Castaneda's employer. We reverse.

FACTS

Castaneda filed a class action complaint on behalf of himself and other certified nursing assistants against Ensign for "unpaid minimum and overtime wages." He alleged Ensign was the alter ego of the Cabrillo Rehabilitation and Care Center (Cabrillo), a nursing facility, where he worked, and its "corporate veil should be pierced." He claimed Ensign was his employer.

Ensign filed a motion for summary judgment. It said, "Castaneda's allegations against Ensign are misplaced because Ensign was not his employer. Rather than sue Cabrillo, the company that hired him, paid him, set his daily schedule . . . , [he] has sued Ensign and [EFS] [fn. omitted], neither of which was his employer as a matter of law. [¶] . . . Ensign is a holding company that has no employees and is not engaged in the direction, management or control of Cabrillo or its employees." It said Cabrillo was an independent company with "a traditional management structure."

In discovery, Ensign admitted that it owned Cabrillo. It purchased it in 2009 and it owns all of its stock.

In opposition to summary judgment, Castaneda submitted declarations and discovery responses. He claimed they show Ensign was properly classified as an employer because: 1) of its ownership and control over Cabrillo, and 2) it controlled the training, supervision, work requirements, working conditions, and employee benefits for the employees who worked there. Castaneda testified that when he began work at Cabrillo he was advised that he was hired by "Cabrillo Care and Ensign . . . ."

DISCUSSION

A Triable Issue of Fact

Castaneda contends there were triable issues of fact regarding whether Ensign was his employer, and consequently the judgment must be reversed. We agree.

"'We review a summary judgment motion de novo to determine whether there is a triable issue as to any material fact . . . .'" (*Suarez v. Pacific Northstar Mechanical, Inc.* (2009) 180 Cal.App.4th 430, 436.) "'We are not bound by the trial court's stated reasons or rationales.'" (*Ibid.*) """In practical effect, we assume the role of a trial court . . . ."" (*Ibid.*) "'Summary judgment is a drastic remedy to be used sparingly, and any doubts about the propriety of summary judgment must be resolved in favor of the opposing party.'" (*Ibid.*)

California law specifies the elements necessary to define an employer. "To employ" has "three alternative definitions." (*Martinez v. Combs* (2010) 49 Cal.4th 35, 64.) "It means: (a) to exercise control over the wages, hours or working conditions, *or*

(b) to suffer or permit to work, *or* (c) to engage, thereby creating a common law employment relationship." (*Ibid.*)

The definition of an employer is broad. The first category includes """any person . . . who directly *or indirectly, or through an agent or any other person*, employs *or exercises control* over the wages, hours, or working conditions of [an employee]."'" (*Guerrero v. Superior Court* (2013) 213 Cal.App.4th 912, 947, italics added.) Our Supreme Court said this about the second category: "A proprietor who knows that persons are working in his or her business without having been formally hired, or while being paid less than the minimum wage, clearly suffers or permits that work *by failing to prevent it, while having the power to do so*." (*Martinez v. Combs*, *supra*, 49 Cal.4th at p. 69, italics added.)

Ensign contends its evidence shows that Cabrillo was Castaneda's employer and the trial court correctly ruled Ensign was not. But the issue is not whether Ensign can cite evidence supporting its position, it is whether Castaneda has shown triable issues of fact.

An entity that controls the business enterprise may be an employer even if it did not "directly hire, fire or supervise" the employees. (*Guerrero v. Superior Court*, *supra*, 213 Cal.App.4th at p. 950.) Multiple entities may be employers where they "control different aspects of the employment relationship." (*Martinez v. Combs*, *supra*, 49 Cal.4th at p. 76.) "This occurs, for example, when one entity (such as a temporary employment agency) hires and pays a worker, and another entity supervises the work." (*Ibid.*) "Supervision of the work, in the specific sense of exercising control over how services are performed, is properly viewed as one of the 'working conditions' . . . ." (*Ibid.*) "[C]ontrol over how services are performed is an important, perhaps even the principal, test for the existence of an employment relationship." (*Ibid.*)

Ensign contends *Martinez* required the trial court to find Cabrillo is the only employer. We disagree. In *Martinez*, agricultural employees sued two agricultural purchasing companies that had contracts with their employer--a supplier of agricultural crops. The contracts involved marketing the crops the employees picked. The

employees claimed the purchasing companies were their employers because they benefited from the contracts and exerted financial influence on the supplier. Our Supreme Court said the defendants "benefited in the sense that any purchaser of commodities benefits, however indirectly, from the labor of the supplier's employees." (*Martinez v. Combs*, *supra*, 49 Cal.4th at pp. 69-70.) But they were not employers because: 1) the "*undisputed facts* . . . show that [the supplier] *alone* controlled plaintiffs' wages, hours and working conditions" (*id.* at p. 71, italics added); 2) there was no evidence the purchasing companies offered employment to the workers (*id.* at p. 74); 3) the workers did not view the defendants to be supervisors (*id.* at p. 76); 4) the defendants lacked the power to "direct" the "work" of the supplier's employees (*id.* at p. 77); and 5) they lacked the authority to prevent the supplier from paying inadequate wages. The companies in *Martinez* had marketing contracts with each other.

Here Ensign has more than a contractual relationship with Cabrillo. *Ensign owns Cabrillo*. It purchased it in 2009 and it owns all of its stock. A trier of fact could infer this evidence challenged Ensign's claims of lack of control or responsibility. In *Martinez*, the defendants did not own the supplier's business. Had they owned it, a different basis of liability for unpaid wages would exist. "'The basis of liability is *the owner's failure* to perform the duty of seeing to it that the prohibited condition does not exist.'" (*Martinez v. Combs*, *supra*, 49 Cal.4th at p. 70, italics added.)

Ensign claims Cabrillo was an independent operation with its own employees. But Castaneda introduced evidence showing, in addition to ownership, Ensign had exercised control over Cabrillo's operations and the employees. Such evidence is relevant in deciding who is an employer. (*Martinez v. Combs*, *supra*, 49 Cal.4th at p. 71; *S.G. Borello & Sons Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 356; *Guerreo v. Superior Court*, *supra*, 213 Cal.App.4th at pp. 947, 950.)

Castaneda's evidence showed Ensign's structural and management control over Cabrillo. Ensign owns Cabrillo and other "cluster" or "portfolio" companies that are involved in Cabrillo's operations. Ensign is the sole shareholder of "cluster" companies EFS and Touchstone Care, Inc. (Touchstone). Ensign, Touchstone, EFS and Cabrillo

share the same corporate address in the same suite in Mission Viejo, California. EFS "issues the paychecks" for employees at Cabrillo. A staff person at Ensign's "corporate office" recruits employees that Robert Hambly, the Cabrillo rehabilitation services director, needs to hire. The Cabrillo administrator is supervised by the Touchstone president. Hambly reports to the Touchstone rehabilitation services director. Touchstone is owned by Ensign. Hambly received his employment orientation training at Ensign.

Castaneda presented evidence showing that Ensign had acknowledged its centralized control over its cluster companies. On its Securities and Exchange Commission 10-k form, Ensign said it uses a "service center approach" with its local service providers. "Our Service Center . . . acts as a resource and provides centralized information technology, *human resources*, *accounting*, *payroll*, legal, risk management, educational and other key services, so that local facility leaders can focus on delivering top-quality care . . . ." (Italics added.)

Castaneda also presented evidence showing a seamless flow of corporate officers between Ensign and its clusters. Beverly Wittekind, the Cabrillo secretary, was also the Ensign general counsel and vice president, the EFS attorney and treasurer, and the Touchstone secretary. Gregory Stapley was the EFS president, a Touchstone director, and was formerly the Ensign general counsel and secretary. Soon Burnam, the Cabrillo treasurer, was an EFS employee. Matt Huefner, the Touchstone president, is also the Cabrillo president. By contrast, the supplier in *Martinez* was not subject to such interwoven structural control or centralized outside management.

There is a written agreement between Cabrillo and Ensign that indicates members of the facility staff are Cabrillo's "own" employees. Castaneda contends the agreement is a sham to avoid Ensign's employer obligations. He presented evidence that it was signed by an EFS representative and an EFS employee. He states EFS "was thus present on both sides of the transaction. [T]here is no evidence . . . that any of the provisions of Cabrillo's contract were specifically negotiated between the parties to account for Cabrillo's particular needs and desires." "The parties' use of a label to describe their relationship does not control and will be ignored where the evidence of

their actual conduct establishes a different relationship exists." (*Futrell v. Payday California, Inc.* (2010) 190 Cal.App.4th 1419, 1434; *S.G. Borello & Sons. Inc. v. Department of Industrial Relations*, *supra*, 48 Cal.3d at p. 356 [corporation could not rely on a contract designating it as a nonemployer where it owned the land and exercised "pervasive control over" the business operations].) There are triable issues of fact as to whether the contract here reflects Ensign's actual role in the employment relationship.

Castaneda cites evidence showing Ensign supervised and controlled the employees' job functions. Control "over how services are performed" is a strong factor showing an employment relationship. (*Martinez v. Combs*, *supra*, 49 Cal.4th at p. 76.) When Ensign took over Cabrillo, it required the employees to "follow" Ensign's "core values," and required them to use "Ensign forms and templates *in the course of doing their jobs*." (Italics added.) (*Estrada v. Fedex Ground Package System, Inc.* (2007) 154 Cal.App.4th 1, 12 [evidence that a company required workers to use its forms is one factor supporting a finding that it is an employer].) Ensign instructed the employees that "they *were expected to increase their patient census* and to generate greater revenues." (Italics added.) It replaced the "existing computer modems at Cabrillo" and the time clocks. It installed a new "E-time" clock system that it required all employees to use. Ensign required employees to use a "fingerprint or thumbprint" to "clock in and clock out." (*Martinez v. Combs*, *supra*, 49 Cal.4th at p. 74 [exercising control over the workers' hours is evidence showing an employer relationship].)

A Cabrillo "department head" said, "The Ensign Group provides policy and training videos at Cabrillo *that I must show* to newly-hired employees." (Italics added.) He said that Ensign instituted a new "computer software system used for clinical documentation, billing the government, and improving operational deficiencies," and that the Ensign CEO came to Cabrillo to "evaluate our information technology, management, and delivery of care systems . . . ." Another declarant said, "Ensign also sent dietary, housekeeping and medical records consultants to Cabrillo to advise departments *on how to perform their duties*." (Italics added.)

In its motion for summary judgment, Ensign said it had "no employees." But in a brochure Ensign distributed, it said one of its "core values" was to "reward and support *our employees* who treat this facility as if they owned it" (italics added); and that if they "maximized profits," the Cabrillo facility would receive "cash bonuses to be used for building renovation," new equipment, and the facility would have "Ensign flags" to display. Ensign's employee handbook gave notice to employees at Cabrillo that there was an "employee emergency fund" for employees who experienced "economic hardship." In Ensign's Securities and Exchange Commission 10-k form, it said it provided training to the employees on "Medicaid and Medicare billing requirements, updates on new regulations or legislation, emerging healthcare service alternatives and other relevant clinical, business and industry specific coursework."

In *Martinez*, the court noted that the employees' declarations indicated that they believed the supplier was their employer, not the purchasing entities. By contrast, at his deposition, Castaneda testified that when he began his employment he was advised he was hired by "Cabrillo Care and [Ensign] . . . ." He said, "I've got check stubs from Cabrillo and Ensign." He testified the person who processed the payroll worked for "Cabrillo . . . and Ensign." Ensign challenges this evidence, but we do not decide credibility on a summary judgment review. We only determine whether there is a triable issue of fact. Evidence that an employee believes there is "an employer-employee relationship" is a relevant factor. (*Estrada v. Fedex Ground Package System, Inc.*, *supra*, 154 Cal.App.4th at p. 10.)

Castaneda was not the only Cabrillo worker who believed Ensign was the employer. In her declaration, Marilyn Leveque, the nursing supervisor at Cabrillo, said when Ensign took over in 2009, she was required "*to be re-hired by Ensign.*" (Italics added.) She said, "Ensign policies [were] explained to me, including procedures for clocking in and out each work day. I was provided and instructed to sign an Ensign handbook." She was informed she "was *now an employee of Ensign.*" (Italics added.) In his deposition, Hambly, the Cabrillo rehabilitation services director, testified that when he was hired he believed Ensign was his employer.

There is additional evidence from which a trier of fact could reasonably infer that Castaneda and others who worked at Cabrillo were Ensign employees. Employees do not receive paychecks from Cabrillo. Ensign admitted the checks are "from 'Ensign Facility Services, Inc.'" Signs posted at the facility state "Ensign Group." One is located where labor codes and laws are posted, the other is at the employee time clock area. Employees were given an "e-mail address of . . . @ensigngroup.net." A Cabrillo "department head" said that when he "logged onto [his] computer at Cabrillo, the Ensign logo appeared on the screen." (*Estrada v. Fedex Ground Package System, Inc.*, *supra*, 154 Cal.App.4th at p. 12 [evidence that a company required workers to use its logo is one factor supporting a finding that it is an employer].)

Another declarant said, "Ensign made sweeping changes in the way the facility was run." Mary Spaeder, the Ensign vice president of rehabilitation, "recruited and interviewed employees who worked at Cabrillo." She also "set the rate of pay for employees." (*Martinez v. Combs*, *supra*, 49 Cal.4th at p. 74 [exercising control over wages is a factor showing an entity is an employer].)

Castaneda presented evidence showing that traditional employee benefits, including medical, dental, vision and 401(k) savings plans were not the responsibility of Cabrillo. Instead, employees had to use the "Ensign Benefits Call Center" and the "Ensign H R e-Center." (*Tieberg v. Unemployment Ins. App. Bd.* (1970) 2 Cal.3d 943, 952 [fact that a company takes responsibility for the workers' pension plans is one factor in support of a finding that it is an employer].) Ensign admitted that "[t]he Cabrillo facility does not contribute towards the 401(k) retirement plan for employees who work at Cabrillo." Ensign also admitted that: 1) Castaneda's worker's compensation claims case documents designated "The Ensign Group, Inc. as his employer," and 2) Ensign paid his workplace injury expenses. The Cabrillo "Human Resources & Accounts Payable Director . . . [did] not know whether Cabrillo has a payroll account."

Castaneda presented evidence that Ensign handled issues of employee discipline at Cabrillo. In her declaration, Cynthia Deibert, the Cabrillo social services director, said when she made a complaint about another employee it was not submitted to

Cabrillo. Instead, she was required to fill out an "Ensign complaint form" and send it to the Ensign "HR Department." A trier of fact could reasonably infer the assumption of responsibility for employee discipline is the type of authority used by an employer. There are triable issues of fact.

The parties raise the issue of whether the integrated enterprise test developed by the federal courts applies to California employment cases. But because we rely exclusively on California case law, we need not decide this issue.

The judgment is reversed. Costs on appeal are awarded in favor of appellant.

NOT TO BE PUBLISHED.

GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Dodie A. Harman, Judge

Superior Court County of San Luis Obispo

Ehlert Appeals, Allison L. Ehlert; Baltodano & Baltodano LLP, Hernaldo J. Baltodano, Erica Flores Baltodano for Plaintiff and Appellant.

Horvitz & Levy LLP, Lisa Perrochet, John F. Querio; Ogletree, Deakins, Nash, Smoak & Stewart, P.C., Dawn T. Collins for Defendants and Respondents.

9/3/2014

ORDER GRANTING REHEARING

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

JOHN CASTANEDA, INDIVIDUALLY AND FOR THE CLASS,

Plaintiff and Appellant,

v.

THE ENSIGN GROUP, INC., ET AL.,

Defendants and Respondents.

No. B249119

(Super Ct. No. CV110466)
San Luis Obispo County

ORDER

The Court, on its own motion, grants rehearing.

9/15/2014

OPINION FOLLOWING REHEARING

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

JOHN CASTANEDA,

Plaintiff and Appellant,

v.

THE ENSIGN GROUP, INC. et al.,

Defendants and Respondents.

2d Civil No. B249119
(Super. Ct. No. C110466)
(San Luis Obispo County)

OPINION FOLLOWING REHEARING

A corporation with no employees owns a corporation with employees. If the corporation with no employees exercises some control over the corporation with employees, it also may be the employer of the employees of the corporation it owns.

Plaintiff John Castaneda appeals a summary judgment in favor of defendant The Ensign Group, Inc. (Ensign) in his class action lawsuit. He seeks damages for nonpayment of minimum and overtime wages.[1] We conclude there are triable issues of fact whether Ensign was Castaneda's employer. We reverse.

FACTS

Castaneda filed a class action complaint on behalf of himself and other certified nursing assistants against Ensign for "unpaid minimum and overtime wages." He alleges Ensign is the alter ego of the Cabrillo Rehabilitation and Care Center (Cabrillo), a nursing facility, where he worked, and its "corporate veil should be pierced." He claims Ensign was his employer.

[1] The trial court also granted summary judgment in favor of defendant Ensign Facility Services, Inc. (EFS). Castaneda does not appeal that judgment.

In its summary judgment motion, Ensign stated, "Rather than sue Cabrillo, the company that hired him, paid him, set his daily schedule . . . , [Castaneda] has sued Ensign and [EFS] . . . , neither of which was his employer as a matter of law. [¶] . . . Ensign is a holding company that has no employees and is not engaged in the direction, management or control of Cabrillo or its employees." (Fn. omitted.) It said Cabrillo was an independent company with "a traditional management structure."

In discovery, Ensign admitted that it owned Cabrillo. It purchased it in 2009 and owns all of its stock.

In opposition to summary judgment, Castaneda submitted declarations and discovery responses. He claims they show Ensign was properly classified as an employer because: 1) it owns and controls Cabrillo, and 2) it controls the training, supervision, work requirements, working conditions, and employee benefits for the employees who work there. Castaneda testified that when he began work at Cabrillo he was advised that he was hired by "Cabrillo Care and Ensign . . . ."

DISCUSSION

A Triable Issue of Fact

"'We review a summary judgment motion de novo to determine whether there is a triable issue as to any material fact . . . .'" (*Suarez v. Pacific Northstar Mechanical, Inc.* (2009) 180 Cal.App.4th 430, 436.) "'We are not bound by the trial court's stated reasons or rationales.'" (*Ibid.*) """In practical effect, we assume the role of a trial court . . . ."'" (*Ibid.*) "'Summary judgment is a drastic remedy to be used sparingly, and any doubts about the propriety of summary judgment must be resolved in favor of the opposing party.'" (*Ibid.*)

California law specifies the elements necessary to define an employer. "To employ" has "three alternative definitions." (*Martinez v. Combs* (2010) 49 Cal.4th 35, 64.) "It means: (a) to exercise control over the wages, hours or working conditions, *or* (b) to suffer or permit to work, *or* (c) to engage, thereby creating a common law employment relationship." (*Ibid.*)

The broad definition of an employer includes """any person . . . who directly *or indirectly, or through an agent or any other person*, employs *or exercises control* over the wages, hours, or working conditions of [an employee]."""" (*Guerrero v. Superior Court* (2013) 213 Cal.App.4th 912, 947, italics added.) Our Supreme Court said it also includes "[a] proprietor who knows that persons are working in his or her business without having been formally hired, or while being paid less than the minimum wage, clearly suffers or permits that work *by failing to prevent it, while having the power to do so*." (*Martinez v. Combs*, *supra*, 49 Cal.4th at p. 69, italics added.)

An entity that controls the business enterprise may be an employer even if it did not "directly hire, fire or supervise" the employees. (*Guerrero v. Superior Court*, *supra*, 213 Cal.App.4th at p. 950.) Multiple entities may be employers where they "control different aspects of the employment relationship." (*Martinez v. Combs*, *supra*, 49 Cal.4th at p. 76.) "This occurs, for example, when one entity (such as a temporary employment agency) hires and pays a worker, and another entity supervises the work." (*Ibid.*) "Supervision of the work, in the specific sense of exercising control over how services are performed, is properly viewed as one of the 'working conditions' . . . ." (*Ibid.*) "[C]ontrol over how services are performed is an important, perhaps even the principal, test for the existence of an employment relationship." (*Ibid.*)

Ensign contends *Martinez* required the trial court to find Cabrillo is the only employer. We disagree. In *Martinez*, agricultural employees sued two agricultural purchasing companies that had contracts with their employer--a supplier of agricultural crops. The contracts involved marketing the crops the employees picked. The employees claimed the purchasing companies were their employers because they benefited from the contracts and exerted financial influence on the supplier. Our Supreme Court said the defendants "benefited in the sense that any purchaser of commodities benefits, however indirectly, from the labor of the supplier's employees." (*Martinez v. Combs*, *supra*, 49 Cal.4th at pp. 69-70.) But they were not employers because: 1) the "*undisputed facts* . . . show that [the supplier] *alone* controlled plaintiffs'

wages, hours and working conditions" (*id.* at p. 71, italics added); 2) there was no evidence the purchasing companies offered employment to the workers (*id.* at p. 74); 3) the workers did not view the defendants to be supervisors (*id.* at p. 76); 4) the defendants lacked the power to "direct" the "work" of the supplier's employees (*id.* at p. 77); and 5) defendants lacked the authority to prevent the supplier from paying inadequate wages.

Here Ensign has more than a contractual relationship with Cabrillo. *Ensign owns Cabrillo.* It purchased it in 2009 and it owns all of its stock. A trier of fact could infer this evidence refutes Ensign's claims of lack of control and responsibility. In *Martinez*, the defendants did not own the supplier's business. Had they owned it, a different basis of liability for unpaid wages would exist. "'The basis of liability is *the owner's failure* to perform the duty of seeing to it that the prohibited condition does not exist.'" (*Martinez v. Combs*, *supra*, 49 Cal.4th at p. 70, italics added.)

Ensign claims Cabrillo is an independent operation with its own employees. But Castaneda introduced evidence showing, in addition to ownership, Ensign had exercised control over Cabrillo's operations and the employees. Such evidence is relevant in deciding who is an employer. (*Martinez v. Combs*, *supra*, 49 Cal.4th at p. 71; *S.G. Borello & Sons Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 356; *Guerreo v. Superior Court*, *supra*, 213 Cal.App.4th at pp. 947, 950.)

Castaneda's evidence showed Ensign's structural and management control over Cabrillo. Ensign owns Cabrillo and other "cluster" or "portfolio" companies that are involved in Cabrillo's operations. Ensign is the sole shareholder of "cluster" companies EFS and Touchstone Care, Inc. (Touchstone). Ensign, Touchstone, EFS and Cabrillo share the same corporate address in the same suite in Mission Viejo, California. EFS "issues the paychecks" for employees at Cabrillo. A staff person at Ensign's "corporate office" recruits employees that Robert Hambly, the Cabrillo rehabilitation services director, needs to hire. The Cabrillo administrator is supervised by the Touchstone

president. Hambly reports to the Touchstone rehabilitation services director. Touchstone is owned by Ensign. Hambly received his employment orientation training at Ensign.

Castaneda presented evidence showing that Ensign acknowledged its centralized control over its cluster companies. On its Securities and Exchange Commission 10-k form, Ensign said it uses a "service center approach" with its local service providers. "Our Service Center . . . acts as a resource and provides centralized information technology, *human resources*, *accounting*, *payroll*, legal, risk management, educational and other key services, so that local facility leaders can focus on delivering top-quality care . . . ." (Italics added.)

Castaneda also presented evidence showing a seamless flow of corporate officers between Ensign and its clusters. Beverly Wittekind, the Cabrillo secretary, was also the Ensign general counsel and vice president, the EFS attorney and treasurer, and the Touchstone secretary. Gregory Stapley was the EFS president, a Touchstone director, and was formerly the Ensign general counsel and secretary. Soon Burnam, the Cabrillo treasurer, was an EFS employee. Matt Huefner, the Touchstone president, is also the Cabrillo president. By contrast, the supplier in *Martinez* was not subject to such interwoven structural control and management.

There is a written agreement between Cabrillo and EFS that indicates members of the facility staff are Cabrillo's "own" employees. Castaneda contends the agreement is a sham to avoid Ensign's employer obligations. He presented evidence that it was signed by an EFS representative and an EFS employee. He states EFS "was thus present on both sides of the transaction. [T]here is no evidence . . . that any of the provisions of Cabrillo's contract were specifically negotiated between the parties to account for Cabrillo's particular needs and desires." "The parties' use of a label to describe their relationship does not control and will be ignored where the evidence of their actual conduct establishes a different relationship exists." (*Futrell v. Payday California, Inc.* (2010) 190 Cal.App.4th 1419, 1434; *S.G. Borello & Sons. Inc. v. Department of Industrial Relations*, *supra*, 48 Cal.3d at p. 356 [corporation could not rely

on a contract designating it as a nonemployer where it owned the land and exercised "pervasive control over" the business operations].) There are triable issues of fact concerning Ensign's role in the employment relationship.

Castaneda cites evidence showing Ensign supervised and controlled the employees' job functions. Control "over how services are performed" is a "principal" test showing an employment relationship. (*Martinez v. Combs*, *supra*, 49 Cal.4th at p. 76.) Employees at Cabrillo had to "follow" Ensign's "core values" and use "Ensign forms and templates *in the course of doing their jobs*." (Italics added.) (*Estrada v. Fedex Ground Package System, Inc.* (2007) 154 Cal.App.4th 1, 12 [evidence that a company required workers to use its forms is one factor supporting a finding that it is an employer].) Ensign instructed the employees that "they *were expected to increase their patient census* and to generate greater revenues." (Italics added.) It replaced the "existing computer modems at Cabrillo" and the time clocks. It installed a new "E-time" clock system that it required all employees to use. Ensign required employees to use a "fingerprint or thumbprint" to "clock in and clock out." (*Martinez v. Combs*, *supra*, 49 Cal.4th at p. 74 [exercising control over the workers' hours is evidence showing an employer relationship].)

A Cabrillo "department head" said, "The Ensign Group provides policy and training videos at Cabrillo *that I must show* to newly-hired employees." (Italics added.) He said that Ensign instituted a new "computer software system used for clinical documentation, billing the government, and improving operational deficiencies," and that the Ensign CEO came to Cabrillo to "evaluate our information technology, management, and delivery of care systems . . . ." Another declarant said, "Ensign also sent dietary, housekeeping and medical records consultants to Cabrillo to advise departments *on how to perform their duties*." (Italics added.)

In its summary judgment motion, Ensign said it had "no employees." But in a brochure Ensign distributed, it said one of its "core values" was to "reward and support *our employees* who treat this facility as if they owned it" (italics added); and that

if they "maximized profits," the Cabrillo facility would receive "cash bonuses to be used for building renovation," new equipment, and the facility would have "Ensign flags" to display. Ensign's employee handbook gave notice to employees at Cabrillo that there was an "employee emergency fund" for employees who experienced "economic hardship." In Ensign's Securities and Exchange Commission 10-k form, it said it provided training to the employees on "Medicaid and Medicare billing requirements, updates on new regulations or legislation, emerging healthcare service alternatives and other relevant clinical, business and industry specific coursework."

In *Martinez*, the court noted that the employees' declarations showed that they believed the supplier was their employer, not the purchasing entities. By contrast, at his deposition, Castaneda testified that when he began his employment he was advised he was hired by "Cabrillo Care and [Ensign] . . . ." He said, "I've got check stubs from Cabrillo and Ensign." He testified the person who processed the payroll worked for "Cabrillo . . . and Ensign." Ensign challenges this evidence, but we do not decide credibility on a summary judgment review. We only determine whether there is a triable issue of fact. Evidence that an employee believes there is "an employer-employee relationship" is a relevant factor. (*Estrada v. Fedex Ground Package System, Inc.*, *supra*, 154 Cal.App.4th at p. 10.)

Marilyn Leveque, the nursing supervisor at Cabrillo, declared when Ensign took over in 2009, she was required "*to be re-hired by Ensign.*" (Italics added.) She said, "Ensign policies [were] explained to me, including procedures for clocking in and out each work day. I was provided and instructed to sign an Ensign handbook." She was informed she "was *now an employee of Ensign.*" (Italics added.) In his deposition, Hambly, the Cabrillo rehabilitation services director, testified that when he was hired he believed Ensign was his employer.

There is additional evidence from which a trier of fact could reasonably infer that Castaneda and others who worked at Cabrillo were Ensign employees. Employees do not receive paychecks from Cabrillo. Ensign admitted the checks are

"from 'Ensign Facility Services, Inc.'" Signs posted at the facility state "Ensign Group." One is located where labor codes and laws are posted, the other is at the employee time clock area. Employees were given an "e-mail address of . . . @ensigngroup.net." A Cabrillo "department head" said that when he "logged onto [his] computer at Cabrillo, the Ensign logo appeared on the screen." (*Estrada v. Fedex Ground Package System, Inc.*, *supra*, 154 Cal.App.4th at p. 12 [evidence that a company required workers to use its logo is one factor supporting a finding that it is an employer].)

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Castaneda presented evidence that Ensign handled issues of employee discipline at Cabrillo. In her declaration, Cynthia Deibert, the Cabrillo social services director, said when she made a complaint about another employee it was not submitted to Cabrillo. Instead, she was required to fill out an "Ensign complaint form" and send it to

the Ensign "HR Department." A trier of fact could reasonably infer the assumption of responsibility for employee discipline is the type of authority used by an employer.

The parties raise the issue whether the integrated enterprise test developed by the federal courts applies to California employment cases. But because we rely exclusively on California case law, we need not decide this issue.

The judgment is reversed. Costs on appeal are awarded in favor of appellant.

CERTIFIED FOR PUBLICATION.

GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Dodie A. Harman, Judge

Superior Court County of San Luis Obispo

Ehlert Appeals, Allison L. Ehlert; Baltodano & Baltodano LLP, Hernaldo J. Baltodano, Erica Flores Baltodano for Plaintiff and Appellant.

Horvitz & Levy LLP, Lisa Perrochet, John F. Querio; Ogletree, Deakins, Nash, Smoak & Stewart, P.C., Dawn T. Collins for Defendants and Respondents.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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 Los Angeles, State of California. My business address is 15760 Ventura Boulevard, 18th Floor, Encino, California 91436-3000.

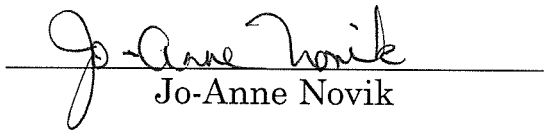
On October 27, 2014, I served true copies of the following document(s) described as **PETITION FOR REVIEW** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Horvitz & Levy LLP's practice for collecting and processing correspondence for mailing. On the same day that the 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 fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 27, 2014, at Encino, California.



Jo-Anne Novik

SERVICE LIST

Castaneda v. The Ensign Group, Inc.
Court of Appeal Case No. B249119
Supreme Court Case No. S_____

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Judge Dodie A. Harman San Luis Obispo Superior Court Courthouse Annex, Dept. 3 1035 Palm Street, Room 385 San Luis Obispo, CA 93408	Trial Judge [Case No. C110466]
Clerk of the Court Second Appellate Dist. Div. Six Court of Appeal Court Place 200 East Santa Clara Street Ventura, CA 93001	Court of Appeal Case No. B249119