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FILED
LOS ANGELES SUPERIOR COURT
DEC 21 2006
JOHN A. CLARKE, CLERK
J. Eggleston
BY: J. EGGLESTON, DEPUTY

APPELLATE DIVISION OF THE SUPERIOR COURT
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

GEORGE SARKA, M.D.,) No. BV 026058
Plaintiff and Appellant,) West Los Angeles Trial Court
v.) No. 04T01682
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA,) MEMORANDUM JUDGMENT
Defendant and Respondent.)

This cause having been submitted for decision, and fully considered, judgment is ordered as follows:

The judgment is reversed. Appellant to recover costs on appeal.

Proceedings Below

Plaintiff and appellant, George Sarka, M.D. ("plaintiff"), appeals a judgment entered in favor of defendant and respondent, The Regents of the University of California ("defendant"), after the trial court sustained defendant's demurrer without leave to amend.¹

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¹The court will detail the proceedings necessary to resolve the issue raised on appeal.

1 On August 20, 2004, plaintiff filed a Complaint for Waiting Time Penalties
2 Pursuant to Labor Code² section 203³ against defendant. According to the complaint,
3 plaintiff is a physician who was employed by defendant for nearly 14 years. On or
4 about August 23, 2002, plaintiff was terminated from his employment. On that date,
5 defendant owed plaintiff compensation in the amount of \$6,072.01. Such compensation
6 was not paid to defendant until September 12, 2002. Plaintiff alleged that defendant
7 willfully failed to pay the compensation due and owing to plaintiff on the date of his
8 termination, in violation of section 203. Plaintiff sought to recover damages, costs, and
9 attorney's fees.

10 On November 17, 2004, defendant filed a demurrer to plaintiff's complaint on the
11 grounds that defendant is immune from suit, because section 203 does not apply to it by
12 virtue of the California Constitution, article IX, section 9. Plaintiff filed an opposition to
13 the demurrer and defendant filed a reply in support of its demurrer.

14 At the January 4, 2005 hearing on the demurrer, the trial court sustained the
15 demurrer without leave to amend and ordered the case dismissed pursuant to Code of
16 Civil Procedure section 430.10, subdivisions (e) and (f).⁴ On August 19, 2005, the trial
17 court entered judgment in favor of defendant.

18 This timely appeal followed.

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21 ²All further statutory references are to the Labor Code unless otherwise indicated.

22 ³Section 203 states in pertinent part as follows: "If an employer willfully fails to pay . . . any
23 wages of an employee who is discharged or who quits, the wages of the employee shall continue as
24 a penalty from the due date thereof at the same rate until paid or until an action therefor is
commenced; but the wages shall not continue for more than 30 days. . . ."

25 ⁴Code of Civil Procedure section 430.10, subdivisions (e) and (f), states as follows: "The
26 party against whom a complaint or cross-complaint has been filed may object, by demurrer or
27 answer as provided in Section 430.30, to the pleading on any one or more of the following grounds:
28 [¶] . . . [¶] (e) The pleading does not state facts sufficient to constitute a cause of action. [¶] (f) The
pleading is uncertain. As used in this subdivision, 'uncertain' includes ambiguous and
unintelligible."

1 Clearly, article IX, section 9 grants broad powers to the Regents and limits the
2 Legislature's power to regulate the Regents. (*San Francisco Labor Council v. The*
3 *Regents of the University of California* (1980) 26 Cal.3d 785, 788.) While courts have
4 "recognized the broad powers conferred upon the regents as well as the university's
5 general immunity from legislative regulation" the Regents are subject to three areas of
6 legislative regulation: (1) appropriations regarding salaries; (2) general police power
7 regulations governing private persons and corporations; and (3) matters of statewide
8 concern not involving internal university affairs. (*Id.* at p. 789.)

9 One such area of legislative regulation which is applicable to the present case are
10 the general police power regulations that govern private persons and corporations. The
11 Legislature's police power constitutes the power to govern individual rights for the
12 general welfare. (8 Witkin, Summary of Cal. Law (10th ed. 2005) Constitutional Law,
13 §§ 976, 978, pp. 538-540, and cases cited therein.) In *Smith v. Superior Court* (2006) 39
14 Cal.4th 77, the California Supreme Court opined that the prompt payment of wages
15 upon the discharge of an employee is a fundamental public policy and indispensable to
16 the public welfare. The court in *Smith* stated as follows:

17 The public policy in favor of full and prompt payment of an
18 employee's earned wages is fundamental and well established: . . .
19 California has long regarded the timely payment of employee wage
20 claims as indispensable to the public welfare . . . **We recently**
21 **identified sections 201 and 203 as implementing this**
22 **fundamental public policy regarding prompt wage payment.**
23 [Citation.] (*Smith v. Superior Court, supra*, 39 Cal.4th at p. 82,
24 emphasis added.)

22 Thus, section 203, which implements fundamental public policy that is "indispensable to
23 the public welfare," is within the Legislature's general police power. (*Smith v. Superior*
24 *Court, supra*, 39 Cal.4th at p. 82; see *Manford v. Singh* (1919) 40 Cal.App. 700, 702.)

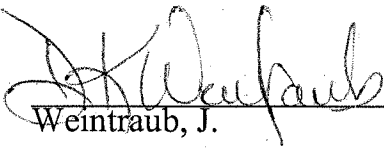
25 Our analysis requires us to next examine whether such regulation is applicable to
26 private persons and corporations. Accordingly, we turn to section 220, which provides
27 exemptions for certain entities from compliance with section 203. Section 220, as
28 amended in 2000, states in relevant part as follows: "(b) Sections 200 to 211,


1 inclusive . . . do not apply to the payment of wages of employees directly employed by
2 any county, incorporated city, or town or other municipal corporation. All other
3 employments are subject to these provisions." An examination of section 220,
4 subdivision (b), reveals that only counties, incorporated cities, towns, and other
5 municipal corporations are exempt from complying with section 203; and therefore,
6 section 203 is applicable to private persons and corporations. As such, section 203 falls
7 within the Legislature's police power regulations generally applicable to private persons
8 and corporations for which the Regents are not immune from suit.

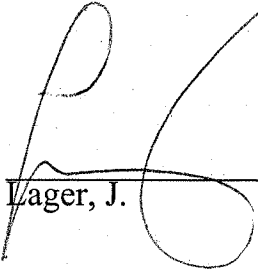
9 For the foregoing reason, the trial court erred in sustaining the demurrer. The
10 judgment is reversed.⁵ Appellant to recover costs on appeal.

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We concur.


Weintraub, J.


P. McKay, P.J.


Lager, J.

23 ⁵Defendant's argument that plaintiff is collaterally estopped from bringing this action was
24 not addressed or argued before the trial court and we decline to address the issue at this time.
25 Defendant's request for judicial notice, filed concurrently with the respondent's brief, included the
26 following documents: the "Labor Commission Notice of Claim (re: Waiting Time Penalty Per Labor
27 Code Section 203) and Conference" in the case of *George Sarka v. UCLA Student Health Service*,
28 State Case Number 06-68818 FD, two documents entitled "Labor Commission Notice - Investigation
Completed" in the case of *George Sarka v. UCLA Student Health Service*, State Case Number 06-
68818 FD, and one document entitled "Labor Commission Notice - Investigation Completed" in the
case of *Robert Hennig v. University of California, Los Angeles*, State Case Number 06-73073 FD.
Defendant's request for judicial notice, having been duly considered, is denied.