

No. 12-55644

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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JOSEPH BAUMANN, an individual,  
*Plaintiff-Appellant,*

v.

CHASE INVESTMENT SERVICES CORP., ET AL.,  
*Defendants-Appellees.*

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On Appeal from the United States District Court  
for the Central District of California  
Case No. 2:11-cv-06667-GHK-FMO

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**MOTION OF *AMICUS CURIAE* CALIFORNIA EMPLOYMENT LAW  
COUNCIL, CHAMBER OF COMMERCE OF THE UNITED STATES OF  
AMERICA, AND EMPLOYERS GROUP FOR LEAVE TO FILE  
ATTACHED BRIEF IN SUPPORT OF PETITION FOR  
REHEARING *EN BANC***

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## **I. INTRODUCTION**

Pursuant to Rule 29 of the Rules of Appellate Procedure, the California Employment Law Council (“CELC”), the Chamber of Commerce of the United States of America (“Chamber”), and Employers Group (“Employers Group”) respectfully move for leave to file an *amicus curiae* brief in support of the Petition for Rehearing *En Banc* filed by Defendants/Appellees Chase Investment Services Corp., et al. (“Chase”). The proposed brief is lodged concurrently with this Motion. Prior to filing this Motion, *Amici* obtained the consent of both parties to file an *amicus curiae* brief in support of rehearing *en banc*.

CELC, Chamber, and Employers Group (“*Amici*”) are familiar with the facts of this case, and with the issues presented. CELC and Chamber submitted an *amicus curiae* brief on the merits. *See* DktEntry 23. *Amici* believe that the Court would benefit from the additional argument, as summarized below.

## **II. INTEREST OF AMICI CURIAE**

CELC is a voluntary, nonprofit organization that promotes the common interests of employers and the general public in fostering the development in California of reasonable, equitable, and progressive rules of employment law. CELC’s membership includes approximately 50 private-sector employers in the State of California, who collectively employ well in excess of a half-million Californians. As is the case for almost every major California employer, our

members are regularly sued under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), California Labor Code section 2698, *et seq.* These cases generally involve very large amounts of money, far in excess of the “at issue” amounts necessary for removal.

CELC has been granted leave as *amicus curiae* to orally argue and/or file briefs in many of California’s leading employment cases, including *Foley v. Interactive Data Corp.*, 47 Cal. 3d 654 (1988); *Cassista v. Community Foods, Inc.*, 5 Cal. 4th 1050 (1993); *Turner v. Anheuser-Busch, Inc.*, 7 Cal. 4th 1238 (1994); *Cotran v. Rollins Hudig Hall Int’l, Inc.*, 17 Cal. 4th 93 (1998); *White v. Ultramar, Inc.*, 21 Cal. 4th 563 (1999); *Asmus v. Pacific Bell*, 23 Cal. 4th 1 (2000); *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000); *Armendariz v. Foundation Health Psychcare Services, Inc.*, 24 Cal. 4th 83 (2000); *Guz v. Bechtel National, Inc.*, 24 Cal. 4th 317 (2000); *Richards v. CH2M Hill, Inc.*, 26 Cal. 4th 798 (2001); and *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004 (2012).

CELC also has participated in significant employment-law decisions of this Court and the United States Supreme Court, including *Bins v. Exxon Co. U.S.A.*, 220 F.3d 1042 (9th Cir. 2000); *Asmus v. Pacific Bell*, 159 F.3d 422 (9th Cir. 1998); *Duffield v. Robertson Stephens & Co.*, 144 F.3d 1182 (9th Cir. 1998); *Lapine Tech. Corp. v. Kyocera Corp.*, 130 F.3d 884 (9th Cir. 1997); *Vizcaino v.*

*Microsoft Corp.*, 120 F.3d 1006 (9th Cir. 1997); *Miller v. Fairchild Industries, Inc.*, 885 F.2d 498 (9th Cir. 1989); *Sorosky v. Burroughs Corp.*, 826 F.2d 794 (9th Cir. 1987); and *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541 (2011).

Chamber is the world's largest business federation. It represents 300,000 direct members and indirectly represents an underlying membership of more than three million businesses and professional organizations of every size, in every industry sector, and from every geographic region of the country. A principal function of Chamber is to represent the interests of its members by filing amicus briefs in cases involving issues of vital concern to the nation's business community.

Chamber has filed *amicus curiae* briefs in several California employment cases including *Brown v. Ralphs Grocery Company*, 197 Cal. App. 4th 489 (2011), *California Grocers Ass'n v. City of Los Angeles*, 52 Cal. 4th 177 (2011), and *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004 (2012), and in PAGA cases including *Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court*, 46 Cal. 4th 993 (2009) and *Arias v. Superior Court of San Joaquin*, 46 Cal. 4th 969 (2009).

Additionally, the Chamber has participated in employment-law decisions of this Court and the United States Supreme Court, including *California v. Safeway, Inc.*, 2011 WL 2684942 (9th Cir. 2011), *Campbell v.*

*PricewaterhouseCoopers LLP*, 642 F.3d 820 (9th Cir. 2011), *In re Wells Fargo Home Mortgage Overtime Pay Litig.*, 571 F.3d 953 (9th Cir. 2009), *Sepulveda v. Wal-Mart Stores, Inc.*, 275 F. App'x 672. (9th Cir. 2008), *Christopher v. SmithKline Beecham Corp.*, 132 S. Ct. 2156 (2012), and *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541 (2011).

Employers Group is the nation's oldest and largest human resources management organization for employers. It represents nearly 3,800 California employers of all sizes and every industry, which collectively employ nearly 3,000,000 employees. Employers Group has a vital interest in seeking clarification and guidance from this Court for the benefit of its employer members and the millions of individuals they employ. As part of this effort, Employers Group seeks to enhance the predictability and fairness of the laws and decisions regulating employment relationships.

Because of its collective experience in employment matters, including its appearance as *amicus curiae* in state and federal forums over many decades, Employers Group is uniquely able to assess both the impact and implications of the legal issues presented in employment cases such as this one. Employers Group has been involved as *amicus* in many significant employment cases, including:

*Campbell v. PricewaterhouseCoopers*, 642 F.3d 820 (9th Cir. 2011); *Dukes v. Wal-Mart Stores, Inc.*, 603 F.3d 571 (9th Cir. 2010); *Reid v. Google Inc.*, 50 Cal.

4th 512 (2010); *McCarther v. Pacific Telesis Group*, 48 Cal. 4th 104 (2010); *Chavez v. City of Los Angeles*, 47 Cal. 4th 970 (2010); *Hernandez v. Hillside, Inc.*, 47 Cal. 4th 272 (2009); *Arias v. Superior Court*, 46 Cal. 4th 969 (2009); *Amalgamated Transit Union v. Superior Court*, 46 Cal. 4th 993 (2009); *Edwards v. Arthur Andersen LLP*, 44 Cal. 4th 937 (2008); *Gentry v. Superior Court*, 42 Cal. 4th 443 (2007).

*Amici* respectfully seek to submit their views here because of the importance of this case to employers. The practical effect of the opinion is that PAGA cases brought against out-of-state corporations in California state courts for significant amounts of money are never, as a matter of law, removable. This is directly contrary to the interests of our members. The panel's decision will deny to Chase (and other non-California-based employers in similar high-value PAGA cases) the federal jurisdiction expressly intended by Congress in creating diversity jurisdiction. Members of all three *amici* organizations recognize the critical importance of providing diverse employers with recourse to the federal courts in high-value cases (including PAGA), and of maintaining employers' access to federal jurisdiction, in general.

*Amici* do not repeat the arguments presented in the Petition for Rehearing, but instead seek leave to add a perspective that they believe will be valuable to the court in evaluating PAGA claims: Because PAGA provides that 75

percent of all penalties awarded by a court must be paid to the State, the operative question for purposes of removal is whether the State's interest in that 75 percent share of the total penalties sought by plaintiff Baumann exceeds the \$75,000 amount in controversy required for removal under the ordinary diversity jurisdiction statute.

### III. CONCLUSION

For these reasons, CELC, Chamber, and Employer's Group respectfully request that leave to file their *amicus curiae* brief be granted.

DATED: April 21, 2014

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

**Case No. 12-55644**

I hereby certify that on April 21, 2014, I have caused the foregoing to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

DATED: April 21, 2014

Respectfully submitted,

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