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October 15, 2019

Chief Justice Tani G. Cantil-Sakauye
and Associates Justices
Supreme Court of California
350 McAllister Street, Room 1295
San Francisco, California 94102-4797

Re: ***Gerardo Vazquez et al. v. Jan-Pro Franchising International, Inc.***
United States Court of Appeals for the Ninth Circuit Case No. 17-16096
Order Certifying Question to the California Supreme Court filed
September 24, 2019 - Supreme Court Case No. S258191

Dear Chief Justice Cantil-Sakauye and Associates Justices:

The Chamber of Commerce of the United States of America (U.S. Chamber) respectfully submits this amicus curiae letter in support of the Ninth Circuit's certification request.[1] The U.S. Chamber urges this Court to accept the certified question and hold that its opinion in *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903 (*Dynamex*) applies only on a prospective basis.

As the Ninth Circuit's certification request emphasizes, the "question of *Dynamex*'s retroactive application has potentially broad ramifications for those who have been doing business in California." If the decision applies retroactively, it could result in substantial liability for "economic sectors that rely more heavily on independent contractors." (*Vazquez v. Jan-Pro Franchising International, Inc.* (9th Cir. Sept. 24, 2019, No. 17-16096) ___ F.3d ___ [2019 WL 4648399, at p. *3] (*Vazquez*).) This vital question turns primarily on whether *Dynamex* announced a clearly different legal test for differentiating between independent contractors and employees than the standard governing this inquiry prior to *Dynamex*—an issue which has divided the lower courts.

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[1] No party or party's counsel authored this letter in whole or in part or made a monetary contribution intended to fund the preparation or submission of this letter. No person other than amicus curiae, its members, or its counsel made a monetary contribution to fund the preparation or submission of this letter.

California courts have disagreed whether *Dynamex* "merely clarified and streamlined" existing California law (*Gonzales v. San Gabriel Transit, Inc.* (Oct. 8, 2019, B282377) ___ Cal.App.5th ___ [2019 WL 4942213, at p. *11 & fn. 13] (*Gonzales*)), or whether it "changed the appropriate standard for determining whether [an individual is] an employee entitled to wage order protection, or an independent contractor who [is] not" (*Garcia v. Border Transportation Group, LLC* (2018) 28 Cal.App.5th 558, 572 (*Garcia*)). The Labor Commissioner has taken the position that *Dynamex* represented a dramatic change in California law: as the Commissioner's office informed the California Court of Appeal in another appellate proceeding shortly after the *Dynamex* decision was issued, *Dynamex*'s holding was "unexpected" and "*dramatically changed the law concerning employment status*." (Application for Extension of Time to File Brief, *Su v. Stephen S. Wise Temple* (May 24, 2018, B275426), at p. 2, emphasis added (Application for Extension of Time).)[2]

The growing division over the critical issue of whether *Dynamex* adopted a new test highlights the need for this Court to grant the Ninth Circuit's certification request and decide *Dynamex*'s retroactivity. *Dynamex* constituted a sharp, unexpected break from prior law, and its retroactive application threatens to have far-ranging effects on numerous California employers, who reasonably and justifiably relied on the prior, far different state of the law and could otherwise be exposed to substantial liability for the past actions they took in good faith compliance with long-standing California law predating the opinion.

Interest of Amici Curiae

The U.S. Chamber is the world's largest federation of business, trade, and professional organizations, representing approximately 300,000 direct members and indirectly representing the interests of more than three million businesses and corporations of every size. In particular, the U.S. Chamber has many members located in California and others who conduct substantial business in the State and have a significant interest in the sound and equitable development of California employment law.

The U.S. Chamber and its members have a significant interest in courts' interpretation of laws that implicate the distinction between employees and independent contractors. A number of the U.S. Chamber's members hire independent

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[2] For the Court's convenience, a true and correct copy of the application that the Labor Commissioner's office filed in *Su v. Stephen S. Wise Temple* is attached at the end of this letter.

contractors. If *Dynamex*'s test for distinguishing between independent contractors and employees applies retroactively, it could create crushing liability for thousands of employers who had no notice that such a test could become the law of the state and would threaten to violate employers' due process rights.

This Court should grant the Ninth Circuit's certification request and hold that *Dynamex* does not apply retroactively.

A. The ABC test for distinguishing between employees and independent contractors had never been the law in California until this Court decided *Dynamex*.

For decades before *Dynamex*, California courts had looked to what this Court had previously described as the common law test embodied by *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341 (*Borello*) to determine the employee or independent contractor status of workers. (See *Dynamex*, *supra*, 4 Cal.5th at pp. 927-928, 934; *Ayala v. Antelope Valley Newspapers, Inc.* (2014) 59 Cal.4th 522, 530-531 (*Ayala*).)

In *Martinez v. Combs* (2010) 49 Cal.4th 35 (*Martinez*), this Court held that, in determining which of several possible employers were subject to suit by employees for unpaid minimum wages, the persons who may be liable as joint employers should be determined under the definitions of "employ" and "employer" set by the Industrial Welfare Commission (IWC) in wage orders dating back nearly a century. *Martinez* explained that the wage orders "embodied three alternative definitions of 'employ': '(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.' " (*Dynamex*, *supra*, 4 Cal.5th at p. 943.) The third of those definitions represented *Borello*'s standard. (*Ibid.*) But until it decided *Dynamex*, this Court had left for another day the question whether only *Borello*'s test governed the determination of whether a worker is an employee or independent contractor, or whether the wage orders' alternative standards applied too. (See *Ayala*, *supra*, 59 Cal.4th at pp. 530-531.)

Dynamex concluded that, in addition to *Borello*'s test, at least one other alternative test—"the suffer or permit to work standard"—"properly applies to the question whether a worker should be considered an employee or, instead, an independent contractor," and decided that this alternative standard requires employers to establish each of the three requirements set by Massachusetts's version

of the so-called " 'ABC' test." (*Dynamex*, *supra*, 4 Cal.5th at pp. 916-917, 943-944, 956-957 & fn. 23.)

B. The ABC test was adopted via legislative or regulatory action in other jurisdictions, but, before *Dynamex*, California's Legislature had never embraced this test and the regulatory agencies charged with promulgating and enforcing California wage orders had never referred to it. Rather, California businesses long complied with a different test that this Court previously endorsed.

ABC tests trace their roots to unemployment compensation laws. (See, e.g., *F. A. S. Intern., Inc. v. Reilly* (Conn. 1980) 427 A.2d 392, 394-395); *Carpet Remnant Warehouse, Inc. v. Dept. of Labor* (N.J. 1991) 593 A.2d 1177, 1184 (*Carpet Remnant*). The federal government's enactment of the Social Security Act in 1935 spurred state legislation defining who qualified as an employee for purposes of unemployment compensation. (See *Carpet Remnant*, at p. 1183.)

One aspect of these laws that varied greatly from state to state was each state's view of who qualified as an employee for unemployment compensation purposes. (See *Carpet Remnant*, *supra*, 593 A.2d at p. 1183.) To address this issue, some states codified variations of the ABC test as their statutory definition of "employment." (See, e.g., *ibid.*; Asia, *Employment Relation: Common-Law Concept and Legislative Definition* (1945) 55 Yale L.J. 76, 83-85 (hereafter *Employment Relation*).)

New Jersey was one of the earliest states to adopt the ABC test, which was codified by statute in New Jersey's Unemployment Compensation Law in the 1930s. (See *Hargrove v. Sleepy's, LLC* (N.J. 2015) 106 A.3d 449, 456 (*Hargrove*); *Carpet Remnant*, *supra*, 593 A.2d at p. 1184.) Vermont has utilized the ABC test since 1947 (see *Vermont Securities v. Vermont Unemploy. Comp. Com'n* (Vt. 1954) 104 A.2d 915, 917 [applying the ABC test set forth in V.S. 1947, § 5343, subd. VI.(b), now codified as Vt. Stat. Ann., tit. 21, § 1301, subd. (6)(B)]; *State v. Stevens* (Vt. 1951) 77 A.2d 844, 847), while Massachusetts and Connecticut have used the ABC test since 1971 (Mass. Gen. Laws, ch. 151A, § 2 [ABC test adopted by session law at 1971 Mass. Acts 832]; *Standard Oil v. Adm'r, Unemployment Compen.* (Conn. 2016) 134 A.3d 581, 606).

The ABC test is embodied in many unemployment compensation statutes that remain in effect today. (E.g., N.J. Stat. Ann. § 43:21-19, subd. (i)(6); Md. Code Ann., Lab. & Empl., § 3-903, subd. (c)(1); Del. Code Ann., tit. 19, §§ 3501, subd. (a)(7), 3503, subd. (c); Neb. Rev. Stat. Ann., § 48-604, subd. (5); Vt. Stat. Ann., tit. 21, § 1301, subd. (6)(B); Conn. Gen. Stat. Ann., § 31-222, subd. (a)(1)(B)(ii); Deknatel &

Hoff-Downing, *ABC on the Books and in the Courts: An Analysis of Recent Independent Contractor and Misclassification Statutes* (2015) 18 U.Pa. J.L. & Soc. Change 53, 67 (hereafter *ABC on the Books*) [examining state statutes codifying ABC test].) But even in states where the ABC test was codified by formal legislation, these ABC tests differed from state to state. (See *Employment Relation*, *supra*, 55 Yale L.J. at pp. 83-84 & fns. 24-32.)

As this Court has noted, several states, such as Massachusetts and New Jersey, have extended application of the ABC test beyond the unemployment insurance context and apply the test "more generally in determining the employee or independent contractor question with respect to a variety of employee-protective labor statutes." (*Dynamex*, *supra*, 4 Cal.5th at p. 956, fn. 23.) This approach is based on the specific statutory and regulatory schemes that exist in such states. (See *Hargrove*, *supra*, 106 A.3d at p. 456; *Carpet Remnant*, *supra*, 593 A.2d at p. 1184; Mass. Gen. Laws, ch. 151A, § 2.)

For example, the Massachusetts Legislature codified the ABC test as the basis for determining whether workers are employees for purposes of Massachusetts's wage-and-hour laws. (Mass. Gen. Laws, ch. 149, § 148B.)

A similar result was achieved in New Jersey via regulatory action. After the New Jersey Legislature codified the ABC test as the statutory methodology for determining whether workers were employees for purposes of unemployment compensation, the New Jersey Department of Labor (the agency charged with implementing and enforcing that state's labor laws) implemented a regulation adopting this statutory ABC test for use in determining whether individuals were employees under New Jersey's wage-and-hour laws. (See N.J. Admin. Code, § 12:56-16.1; *Hargrove*, *supra*, 106 A.3d at pp. 456-459, 465.) The New Jersey Supreme Court subsequently declined to second-guess the state agency's regulatory decision, concluding it owed deference to the agency. (See *Hargrove*, at pp. 456, 463-464.)

There was no comparable legislative or regulatory support in California for the ABC test until the California Legislature's post-*Dynamex* statutory codification of the ABC test. Unlike other states, California had not previously adopted a statutory ABC test (see Spandorf, *Who's the Boss? Franchisors Must Be Able to Demonstrate the Separate and Distinct Businesses That They and Their Franchises Operate* (Mar. 2011) 34 L.A. Law. 18, 21), much less enacted the specific version of the ABC test passed by Massachusetts's Legislature, which requires that employers satisfy all

three requirements comprising Massachusetts's ABC test (see *Awuah v. Coverall North America, Inc.* (D.Mass. 2010) 707 F.Supp.2d 80, 82-84).[3]

Instead of following an ABC test, California courts had always "applied the *Borello* standard in distinguishing employees from independent contractors in many contexts, including in cases arising under California's wage orders." (*Dynamex*, *supra*, 4 Cal.5th at p. 945.) Indeed, as this Court has emphasized, until this Court issued its 2010 decision in *Martinez*, "no California decision had discussed the wage orders' suffer or permit to work language"—i.e., the very standard this Court has now equated to the ABC test—"in *any* context." (*Id.* at p. 946, emphasis added.) Likewise, the Division of Labor Standards Enforcement (DLSE)—the agency charged with enforcing California labor laws—indicated nearly two decades ago that the *Borello* test, with its emphasis on the right to control test and its balancing of other relevant factors, governs in California. (See Cal. Dept. of Industrial Relations, DLSE Opn. Letter No. 2000.05.17-1 (May 17, 2000) pp. 2, 8 [https://www.dir.ca.gov/dlse/opinions/2000-05-17-1.pdf] (hereafter DLSE Opn. Letter No. 2000.05.17-1) [as of Oct. 15, 2019].)

The *Borello* standard differs sharply from ABC tests, including the Massachusetts version of the ABC test adopted by this Court. Under that ABC test, workers can be classified as independent contractors only if employers demonstrate that the workers meet all three of the test's requirements. (*Dynamex*, *supra*, 4 Cal.5th at pp. 956-957.) By contrast, although those requirements are each included as *factors* under *Borello*'s standard, the individual factors comprising *Borello*'s test " '*cannot* be applied mechanically as separate tests,' " but " 'are intertwined and their weight depends often on particular combinations' " (*Borello*, *supra*, 48 Cal.3d at pp. 350-351, 354-355, emphasis added; see DLSE Opn. Letter No. 2000.05.17-1, *supra*, p. 2 [*Borello*'s factors "are not separate individual tests; but

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[3] Under Massachusetts's version of the ABC test, which was adopted by this Court, workers may be "classified as independent contractors only if the hiring business demonstrates that the worker in question satisfies *each* of three conditions: (a) that the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of the work and in fact; *and* (b) that the worker performs work that is outside the usual course of the hiring entity's business; *and* (c) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed." (*Dynamex*, *supra*, 5 Cal.5th at p. 955-956; accord, *id.* at pp. 956-958.)

rather, are interrelated with their weight dependent upon the particular combination of factors"]).

C. Retroactive application of this Court's new ABC test would completely undermine the reasonable actions of businesses taken in reliance on the former test because there was no legislative, administrative, or judicial indication that the ABC test would ever be adopted in California.

In California, businesses entered into independent contractor arrangements under *Borello* in reliance on the decades of settled jurisprudence and administrative practice on this issue (see *Lawson v. Grubhub, Inc.* (Nov. 28, 2018, No. 15-cv-05128-JSC) 2018 WL 6190316, at pp. *4-*5 (Lawson) [nonpub. opn.]), never expecting this Court would import an ABC test that has governed for decades in some states but had at that time never before been embraced by the California Legislature, IWC, DLSE, or California courts. (See Kay, *Retroactivity and Prospectivity of Judgments in American Law* (2014) 62 Am. J. Comp. L. Supp. 37, 41 [courts view some areas of the law "as especially likely to induce such reliance"—"these are fields where individuals may have actually paid attention to existing rules of law, perhaps even consulted legal advisers, before engaging in a given transaction"].)

Had the ABC test been adopted in California by legislative or regulatory action before *Dynamex*, as has been done in other states where it governs (and which it was in California after the *Dynamex* decision), the statute or regulation, like most, would likely have applied only prospectively. (See *City of San Jose v. International Assn. of Firefighters, Local 230* (2009) 178 Cal.App.4th 408, 419-420 (*San Jose*) [" 'New statutes are presumed to operate only prospectively absent some clear indication that the Legislature intended otherwise' "]; *California State Auto. Assn. Inter-Ins. Bureau v. Garamendi* (1992) 6 Cal.App.4th 1409, 1422 ["A legislative grant of power to develop new [regulatory] rules is by definition the power to create rules having prospective application"].)

By contrast, judicial decisions can apply retrospectively under certain circumstances. (See *Grafton Partners v. Superior Court* (2005) 36 Cal.4th 944, 967.) But this Court has explained that it will apply its opinions only prospectively "when [they] alter[ ] a settled rule upon which parties justifiably relied," such as "when a decision constitutes a ' "clear break" ' with decisions of *this* [C]ourt or with practices [the Court] ha[s] sanctioned by implication." (*Ibid.*) "Particular considerations relevant to the retroactivity determination include the reasonableness of the parties' reliance on the former rule, the nature of the change as substantive or procedural,

retroactivity's effect on the administration of justice, and the purposes to be served by the new rule." (*Woods v. Young* (1991) 53 Cal.3d 315, 330 (*Woods*).)

The resolution of whether a judicial decision articulating a new legal standard applies retroactively "turns primarily upon the extent of the public reliance upon the former rule and the ability of the litigants to foresee the coming change in the law." (*Schlauch v. Hartford Accident & Indemnity Co.* (1983) 146 Cal.App.3d 926, 933-934.) The retroactivity question "has been answered consistently and categorically when a new rule is 'a clear break with the past.' " (*People v. Hicks* (1983) 147 Cal.App.3d 424, 427.) "In such cases the court 'almost invariably has gone on to find such a newly minted principle nonretroactive.' " (*Ibid.*; see *People v. Carrera* (1989) 49 Cal.3d 291, 327-328 [declining to abandon the historic clear-break exception to retroactive application of a new decision].)

This Court's decision in *Dynamex* was a clear break from existing law. As one court aptly explained, "*Dynamex* upset a settled legal principle. Prior to *Dynamex*, the California and federal courts nearly unanimously applied *Borello* to decide whether a California worker has been misclassified as an independent contractor." (*Lawson*, *supra*, 2018 WL 6190316, at p. *4.) Before *Dynamex*, businesses operating in California had no reason whatsoever to expect that the ABC test governed in California. (See *id.* at p. *5 ["[T]here was nothing unsettled about whether the ABC test applied to the misclassification inquiry prior to *Dynamex*. It did not."].)

Retroactive application of *Dynamex* is especially problematic because this Court gave no notice that it planned to adopt Massachusetts's version of the ABC test. In December 2017, the Court in *Dynamex* asked for supplemental briefing to address whether the suffer or permit to work standard embodies a "test similar to the 'ABC' test that the New Jersey Supreme Court" applied in *Hargrove*. (Order filed Dec. 28, 2017 requesting Supp. Briefing, Dynamex Operations West, Inc. v. Superior Court (Jan. 18, 2018, S222732) 2018 WL 8060522, at p. *1.) But Massachusetts's ABC test is distinctly different from New Jersey's ABC test. Under the Massachusetts test adopted by *Dynamex*, a hiring entity may satisfy part B of the test only if it establishes that the worker performs work that "is outside the usual course of the business of the hiring entity." (*Dynamex, supra*, 4 Cal.5th at p. 956 & fn. 23.) By contrast, pursuant to New Jersey's test, a hiring entity may satisfy part B by establishing *either* that the work is "outside the usual course of the business for which such service is performed, *or that such service is performed outside of all the places of business of the enterprise for which such service is performed*." (*Hargrove*, *supra*, 106 A.3d at p. 458, emphases added.) This is a significant difference that can result in more workers being classified as employees under Massachusetts's test.

(See *ABC on the Books*, *supra*, 18 U.Pa. J.L. & Soc. Change at pp. 69-70.) No business in California had any reason to anticipate that this Court might adopt Massachusetts's version of the ABC test.

" '[C]onsiderations of fairness and public policy preclude full retroactivity' " of the Court's new rule (*Moradi-Shalal v. Fireman's Fund Ins. Companies* (1988) 46 Cal.3d 287, 305; See *Woods*, *supra*, 53 Cal.3d at p. 319), as California businesses lacked fair notice that they could face millions of dollars in liability when they relied on the settled *Borello* standard used by courts and the DLSE for distinguishing between employees and independent contractors.

D. At a minimum, this Court should grant the Ninth Circuit's certification request here because of the intolerable uncertainty over *Dynamex*'s retroactive application stemming from the split of authority over whether *Dynamex* announced a new test for distinguishing between employees and independent contractors.

The lower courts disagree whether *Dynamex* created a new test for distinguishing between employees and independent contractors in California. One published California Court of Appeal opinion recently held that *Dynamex* applies retroactively because it "merely clarified and streamlined" existing California law. (*Gonzales*, *supra*, ___ Cal.App.5th ___ [2019 WL 4942213, at p. *11 & fn. 13].) That decision conflicts with the published opinion of another California Court of Appeal, which found that " '*Dynamex* changed the appropriate standard for determining whether [an individual is] an employee entitled to wage order protection, or an independent contractor who [is] not.' " (*Id.* at p. *11, fn. 13, quoting *Garcia*, *supra*, 26 Cal.App.5th at p. 572.)

The *Gonzales* court's view that *Dynamex* "merely clarified and streamlined" existing California law (*Gonzales*, *supra*, Cal.App.5th ___ [2019 WL 4942213, at p. *11, fn. 13]) is also at odds with the views of the Ninth Circuit, both in this case and others. As the Ninth Circuit explained in its certification order here, "*Dynamex* enunciated anew a test for analyzing whether a worker is an employee under California wage orders." (*Vazquez*, *supra*, P.3d ___ [2019 WL 4648399, at p. *3]; accord, *Lasater v. DirectTV, LLC* 772 F.Appx. 582, 584 [*Dynamex* "adopted a new test for distinguishing employees from independent contractors under California wage orders"]; *Lawson*, *supra*, 2018 WL 6190316, at pp. *4-*5.)

The *Gonzales* court's view is also at odds with the views of the Labor Commissioner: As an assistant chief counsel from the Labor Commissioner's office

informed the Court of Appeal in another appellate proceeding shortly after *Dynamex* was decided, the *Dynamex* opinion was "unexpected" and "*dramatically changed the law concerning employment status*." (Application for Extension of Time, *supra*, at p. 2, emphasis added.) This Court should accept the Ninth Circuit's certification request here to resolve that split of authority.

The Legislature's recent enactment of Assembly Bill (AB) 5 (Stats. 2019, ch. 296) in no way vitiates the need for this Court to decide *Dynamex*'s retroactivity. AB 5 states that it is intended to " 'codify the decision of the California Supreme Court in *Dynamex* . . . .' " (*Gonzales*, *supra*, ___Cal.App.5th___ [2019 WL 4942213, at p. *1, fn. 4].) But "[n]ew statutes are presumed to operate only prospectively absent some clear indication that the Legislature intended otherwise" (*San Jose*, *supra*, 178 Cal.App.4th at pp. 419-420). Here, the Legislature's statement of retroactivity in AB 5 is best read to mean that the legislation is retroactive to the *Dynamex* decision, not that imposing a completely new test for distinguishing between employees and independent contractors can possibly be retroactive to apply to lawsuits challenging conduct before any employer would have had any notice of this new rule.

Conclusion

This court should accept the certified question from the Ninth Circuit and hold that *Dynamex* should not be retroactively applied.

Very truly yours,

HORVITZ & LEVY LLP
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FELIX SHAFIR
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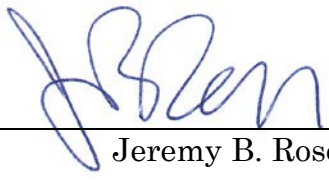
By: 
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Attorneys for Amicus Curiae
THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA

Application for Extension of Time to File Brief
***Su v. Stephen S. Wise Temple* (May 24, 2018, B275426)**

TO BE FILED IN THE COURT OF APPEAL

APP-006

COURT OF APPEAL Second APPELLATE DISTRICT, DIVISION Three	COURT OF APPEAL CASE NUMBER: B275426
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: 136273 NAME: David Balter FIRM NAME: Division of Labor Standards Enforcement STREET ADDRESS: 455 Golden Gate Ave., 9th Floor CITY: San Francisco STATE: CA ZIP CODE: 94102 TELEPHONE NO.: 415-703-4863 FAX NO.: 415-703-4807 E-MAIL ADDRESS: dbalter@dir.ca.gov ATTORNEY FOR (name): Julie Su, State Labor Commissioner	SUPERIOR COURT CASE NUMBER: BC520278
APPELLANT: Julie Su RESPONDENT: Stephen S. Wise Temple	
APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF (CIVIL CASE)	

Notice: Please read Judicial Council form APP-001 before completing this form.

1. I *(name):* David M. Balter request that the time to file *(check one):*
   - [ ] appellant's opening brief (AOB)
   - [ ] respondent's brief (RB)
   - [ ] combined respondent's brief (RB) and appellant's opening brief (AOB) (see rule 8.216)
   - [ ] combined appellant's reply brief (ARB) and respondent's brief (RB) (see rule 8.216)
   - [x] appellant's reply brief (ARB)

   now due on *(date):* June 1, 2018 be extended to *(date):* June 29, 2018

2. I [x] have [ ] have not received a rule 8.220 notice.

3. I have received:
   - [ ] no previous extensions to file this brief.
   - [x] the following previous extensions:

   (number of extensions): 1 extensions by stipulation totaling *(total number of days):* 60

   (number of extensions): extensions from the court totaling *(total number of days):*

   Did the court mark any previous extension "no further?" [ ] Yes [x] No

4. I am unable to file a stipulation to an extension because
   - [ ] the other party is unwilling to stipulate to an extension.
   - [x] other reason *(please specify):*

   The parties have already stipulated to a 60 day extension.

5. The last brief filed by any party was: [ ] AOB [x] RB [ ] RB and AOB [ ] ARB and RB

   filed on *(date):* March 13, 2018

6. The record in this case is:

	Volumes (#)	Pages (#)	Date filed
Appendix/Clerk's Transcript:	5	1247	October 2, 2017
Reporter's Transcript:	1	17	Jun 14, 2017
Augmentation/Other:			

7. [ ] The trial court has ordered the proceedings in this case stayed until this appeal is decided.

APPELLANT: / RESPONDENT:	Julie Su / Stephen S. Wise Temple	COURT OF APPEAL CASE NUMBER: B275426

8. The reasons that I need an extension to file this brief are stated
   - [x] below
   - [ ] on a separate declaration. You may use *Attached Declaration (Court of Appeal)* (form APP-031) for this purpose.

   (Please specify; see Cal. Rules of Court, rule 8.63, for factors used in determining whether to grant extensions):
   I, David Balter, declare,
   I serve as an Assistant Chief Counsel for the Labor Commissioner. Since April 30, 2018, I have unexpectedly been engaged in developing policy responses to the Ca. Supreme Court decision in Dynamex which has dramatically changed the law concerning employment status. Additionally in April I was required to unexpectedly devote a large amount of time to supervision and writing in the Oto v. Kho case before the Ca. Supreme Court which concerns arbitration of wage claims. These unexpected occurrences have delayed work on the brief as well as deliberation with attorneys in other offices which is necessary to completion of the reply brief.

   In this case the Labor Commissioner for the State of California sues the Stephen S. Wise Temple for violations of the California Labor Code and Order 4-2001 of the Industrial Welfare Commission. Appellant asserts that statutory rights of respondent's preschool teachers were violated. Respondent contends that those teachers are "ministers" under the law and that the State's labor laws afford them no protection. Thus this case presents difficult issues concerning application of the First Amendment to the religious rights of respondent and their employees. Because of the Church/State issues presented by the case, additional deliberation within the State executive branch, including counsel, is crucial because the positions taken concern a broader range of issues than cases which simply present questions regarding labor law enforcement.

   An additional four weeks (28 days) is necessary to obtain the input and approval of other offices within the state.

   Respondent has indicated that it does not oppose this request.

9. For attorneys filing application on behalf of client, I certify that I have delivered a copy of this application to my client (Cal. Rules of Court, rule 8.60).

10. A proof of service of this application on all other parties is attached (see Cal. Rules of Court, rule 8.50). You may use *Proof of Service (Court of Appeal)* (form APP-009) or *Proof of Electronic Service (Court of Appeal)* (form APP-009E) for this purpose.

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

Date: May 24, 2018

David M. Balter
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

Order on Application is [ ] below [ ] on a separate document

ORDER

EXTENSION OF TIME IS:

[ ] Granted to *(date)*: _____

[ ] Denied

Date: _____

▶ _____
(SIGNATURE OF PRESIDING JUSTICE)

PROOF OF SERVICE (Court of Appeal)

[x] **Mail** [ ] **Personal Service**

Notice: This form may be used to provide proof that a document has been served in a proceeding in the Court of Appeal. Please read *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) before completing this form. Do not use this form for proof of electronic service. See form APP-009E.

Case Name: Julie Su v. Stephen S. Wise Temple

Court of Appeal Case Number: B275426

Superior Court Case Number: BC520278

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**
2. My [ ] residence [x] business address is *(specify)*:
   455 Golden Gate Avenue, 9th Floor, San Francisco, California, 94102
3. I mailed or personally delivered a copy of the following document as indicated below *(fill in the name of the document you mailed or delivered and complete either a or b)*:
   APPLICATION FOR EXTENSION OF TIME TO FILE BRIEF

   a. [x] **Mail.** I mailed a copy of the document identified above as follows:

      (1) I enclosed a copy of the document identified above in an envelope or envelopes **and**

      (a) [x] **deposited** the sealed envelope(s) with the U.S. Postal Service, with the postage fully prepaid.

      (b) [ ] **placed** the envelope(s) for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope(s) with postage fully prepaid.

      (2) Date mailed: May 24, 2018

      (3) The envelope was or envelopes were addressed as follows:

      (a) Person served:

      (i) Name: Michael C. Blacher, Esq.; David A. Urban, Esq.; Hengameh S. Safaei, Esq.

      (ii) Address:
      Liebert Cassidy Whitmore
      6033 W. Century Blvd., 5th Floor
      Los Angeles, CA 90045

      (b) Person served:

      (i) Name: Jeremy B. Rosen, Esq.; Felix Shafir, Esq.; Joshua C. McDaniel, Esq.

      (ii) Address:
      Horvitz & Levy LLP
      3601 West Olive Avenue, 8th Floor
      Burbank, CA 91505

      (c) Person served:

      (i) Name:

      (ii) Address:

      [ ] Additional persons served are listed on the attached page *(write "APP-009, Item 3a" at the top of the page).*

      (4) I am a resident of or employed in the county where the mailing occurred. The document was mailed from (city and state): San Francisco, California

Case Name: Julie Su v. Stephen S. Wise Temple	Court of Appeal Case Number: B275426
	Superior Court Case Number: BC520278

3. b. ☐ **Personal delivery.** I personally delivered a copy of the document identified above as follows:

(1) Person served:
- (a) Name:
- (b) Address where delivered:
- (c) Date delivered:
- (d) Time delivered:

(2) Person served:
- (a) Name:
- (b) Address where delivered:
- (c) Date delivered:
- (d) Time delivered:

(3) Person served:
- (a) Name:
- (b) Address where delivered:
- (c) Date delivered:
- (d) Time delivered:

☐ Names and addresses of additional persons served and delivery dates and times are listed on the attached page *(write "APP-009, Item 3b" at the top of the page)*.

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

Date: May 24, 2018

Joanne M. LeDuc
(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)

(SIGNATURE OF PERSON COMPLETING THIS FORM)

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 3601 West Olive Avenue, 8th Floor, Burbank, CA 91505-4681.

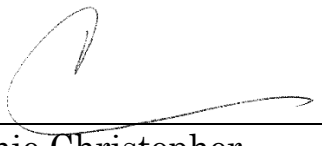
On October 15, 2019, I served true copies of the following document(s) described as AMICUS CURIAE LETTER IN SUPPORT OF THE NINTH CIRCUIT'S CERTIFICATION REQUEST on the interested parties in this action as follows:

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 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 15, 2019, at Burbank, California.



Connie Christopher

SERVICE LIST

Vazquez v. Jan-Pro Franchising International
Supreme Court Case No.: S258191
Ninth Circuit Case No.: 17-16096

Shannon Liss Riordan Lichten & Liss-Riordan, P.C. 729 Boylston Street, Suite 2000 Boston, MA 02116	Attorneys for Plaintiffs and Appellants Gerardo Vazquez, Gloria Roman, Juan Aguilar
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Case No. 17-16096