Case No. S222732

IN THE SUPREME COURT OF CALIFORNIA

DYNAMEX OPERATIONS WEST, INC.
Defendant-Petitioner,

v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY
Respondent,

CHARLES LEE, *et al.*
Plaintiffs-Real Parties in Interest.

On Review from a Decision by the Court of Appeal,
Second Appellate District, Division Seven, Case No. B249546

Superior Court of Los Angeles County, Case No. BC332016
Hon. Michael L. Stern

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND PROPOSED AMICUS CURIAE BRIEF OF SERVICE EMPLOYEES INTERNATIONAL UNION, UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, AND INTERNATIONAL BROTHERHOOD OF TEAMSTERS IN SUPPORT OF PLAINTIFFS-REAL PARTIES IN INTEREST

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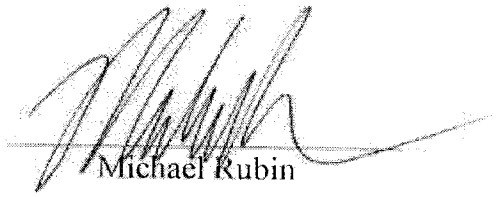
CERTIFICATE OF INTERESTED ENTITITES OR PERSONS

Pursuant to Rule of Court 8.208, I hereby certify that no entity or person has an ownership interest of 10 percent or more in amici Service Employees International Union, United Food and Commercial Workers International Union, or International Brotherhood of Teamsters. I further certify that I am aware of no person or entity, not already made known to the Justices by the parties or other amici curiae, having a financial or other interest in the outcome of the proceedings that the Justices should consider in determining whether to disqualify themselves, as defined in Rule 8.208(e)(2).

Dated: December 7, 2015 By: 

Michael Rubin

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Constitutions, Statutes, Rules, and Regulations

Other Authorities

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

Pursuant to Rule 8.520(f) of the California Rules of Court, the Services Employees International Union ("SEIU"), the United Food and Commercial Workers International Union ("UFCW"), and the International Brotherhood of Teamsters ("IBT"), apply for leave to file the attached amicus curiae brief in support of plaintiffs-real parties in interest.

Interest of the Amici Curiae

SEIU is one of the largest labor organizations in the world, representing two million working men and women, including 700,000 workers in California. As set forth in SEIU's Constitution, an essential part of SEIU's mission is to act as an "advocacy organization for working people."

UFCW represents more than 1.3 million workers, primarily in the retail, meatpacking, food processing, and poultry industries in the United States and Canada. Pursuant to its Constitution, UFCW acts "to advance and safeguard the full employment, economic security, and social welfare of its members and of workers generally."

IBT represents the interests of 1.4 million members in the United States and Canada, including workers in numerous occupations in the private and public sector. The IBT's Constitution includes among its objectives "to advance the rights of workers, farmers, and consumers, and the security and welfare of all the people by political, educational, and other community activity."

Many of the workers represented by SEIU, UFCW, and IBT, as well as their family members, are employed in California in low-wage occupations such as janitors, security guards, health care workers, retail workers, meatpackers, freight drivers, and warehouse workers. In these occupations, the California Labor Code and the Industrial Welfare Commission ("IWC") Wage Orders provide crucial protections that

improve the quality of their working lives, ensure they are paid a decent wage for their work, and prevent them from being forced to work under unlawful, unsafe, and otherwise adverse working conditions. This case presents important questions concerning the application of the Labor Code and the IWC's Wage Orders to workers who contend they are "employees" but have been misclassified as "independent contractors." SEIU, UFCW, and IBT have a strong interest in ensuring that the protections of the Labor Code and the Wage Orders are properly applied to all employment relationships in California workplaces, and are not eroded through businesses' misclassification or implementation of novel workforce structures.[1]

Reasons Why the Proposed Amicus Brief Will Assist the Court

Plaintiffs-Real Parties in Interest's Answer Brief demonstrates why the trial court's class certification ruling was proper, regardless of which test is used to determine whether plaintiff workers are "employees" or "independent contractors" under the applicable provisions of the IWC Wage Orders and California Labor Code. The proposed amicus brief, rather than focusing on the appropriateness of class certification, will instead address the broader and ultimately more significant question raised by this case: how to determine a worker's proper classification under those provisions, based on an analysis of the statutory and regulatory language and this Court's precedents construing the terms "employ," "employer," and "employee." By placing the immediate issues in this broader legal

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[1] No party or counsel for a party authored the proposed amicus curiae brief in whole or in part or made a monetary contribution intended to fund the preparation of the brief. No person or entity made a monetary contribution intended to fund the preparation or submission of the proposed amicus curiae brief, other than the amici curiae, their members, or their counsel in the pending appeal.

context, amici seek to assist the Court in evaluating the potential implications of its decision for workers throughout California.

The proposed amicus brief is attached.

Conclusion

For the foregoing reasons, this Court should grant the application for leave to file the proposed amicus curiae brief of SEIU, UFCW, and IBT.

Dated: December 7, 2015

By: Respectfully submitted,

Michael Rubin

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INTRODUCTION

This case provides the Court an opportunity to decide which tests the California courts should use to determine whether workers claiming to be "employees" but classified as "independent contractors" are entitled to the legal protections of the Industrial Welfare Commission ("IWC") Wage Orders and the California Labor Code. The Court's ruling will affect workers throughout California by determining who is entitled to such fundamental workplace protections as the right to a minimum wage and overtime, the right to be reimbursed for reasonable business expenses, and the right to be provided meal periods and rest breaks.

The question of which particular working relationships constitute "employment" for purposes of the Wage Orders and the Labor Code "is ultimately one of legislative intent." *See Martinez v. Combs* (2010) 49 Cal.4th 35, 51. As this Court has repeatedly held, the Wage Orders and the Labor Code serve broad remedial purposes, "authorizing the regulation of wages, hours, and working conditions for the protection and benefit of employees." *Indus. Welfare Comm'n v. Super. Ct.* (1980) 27 Cal.3d 690, 702. In light of those important remedial purposes, those provisions "are to be liberally construed with an eye to promoting [worker] protection." *Id.*

The Court of Appeal properly concluded that the Wage Orders' three alternative tests for identifying an "employment relationship," which this Court acknowledged and applied in *Martinez*, must be used to determine whether particular working relationships (including those at issue in this case) involve "employment" subject to and protected by the Wage Orders. Dynamex's contrary argument – that the "common law" test should be used for resolving all independent contractor-employee classification disputes – ignores the plain language of the Wage Orders. Moreover, adopting Dynamex's position would require this Court to overrule *Martinez* itself, which emphasized that the purpose of the IWC's broad definition of

employment was to extend the Wage Orders' substantive protections to "irregular working arrangements that f[a]ll outside the common law," and that limiting the Wage Orders' reach to common law employment relationships "would substantially impair the [IWC's] authority and the effectiveness of its Wage Orders." *Martinez*, 49 Cal.4th at 65.

There is no statutory or policy justification for creating a new set of rules for determining whether, or which, provisions of the Wage Orders and Labor Code govern the workplace relationships between a business and the workers it labels and treats as independent contractors. To the contrary, as new workplace structures complicate many workers' relationships with the businesses that profit from their labor, it becomes increasingly important to apply the Wage Orders' broad definition of employment – a definition that has withstood the test of time – to *all* such relationships, no matter what label the affected business has placed on them.

The three tests for determining employee status, which this Court addressed at length in *Martinez*, are based on and incorporate the specific language of the Wage Orders. Although the definitions set forth in the Wage Orders are not expressly repeated in the Labor Code provisions that parallel or expand upon the Wage Orders' protections, the tests described by *Martinez* represent the IWC's best considered judgment about how to define employment in a manner that will effectively promote the worker-protective purposes underlying *all* minimum standards for wages, hours, and working conditions. Moreover, many of the Labor Code provisions setting such standards are so deeply intertwined with the Wage Orders' comparable provisions that it would undermine the IWC's purposes to apply different tests for determining employee status under the Wage Orders and under the Labor Code.

For these reasons, the three tests for determining employee status under the Wage Orders, as described in *Martinez* and later cases, should

apply to all claims arising under Labor Code provisions that establish minimum standards relating to wages, hours, and working conditions.

ARGUMENT

Dynamex's petition presents a basic but critical question about the meaning and scope of the Wage Order and Labor Code provisions establishing minimum standards for workers' wages, hours, and working conditions: How should courts determine which workers are "employees" entitled to the rights and protections guaranteed by those statutory provisions and which workers are "independent contractors" who have no such rights and must fend for themselves in negotiating wages, hours, and working conditions without such guaranteed protections?

The trial court certified a class of delivery drivers who alleged that petitioner Dynamex Operations West, Inc. had misclassified them as "independent contractors" and had deprived them of various rights guaranteed to employees under the IWC Wage Orders and Labor Code.[2]

Dynamex sought interlocutory appellate review of the trial court's class certification ruling on the ground that if the drivers' status were adjudicated under the "right to control" test of *S.G. Borello & Sons, Inc. v. Dep't of Indus. Relations* (1989) 48 Cal.3d 341, rather than the three tests of employment status under *Martinez*, adjudication would require individualized inquiries precluding class certification. The Court of Appeal concluded that the trial court properly applied *Martinez* to claims that are

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[2] The specific provisions at issue include Wage Order No. 9-2001, Cal. Code Reg. tit. 8, §11090, which governs the transportation industry and entitles workers to overtime and reimbursement of certain business expenses; Labor Code §1194, requiring the payment of wages required by the Wage Orders, *see Martinez*, 49 Cal.4th at 56-57; and Labor Code §2802, which requires reimbursement of a broader range of business expenses than Wage Order No. 9-2001.

within the scope of the applicable Wage Order, but that it should apply the *Borello* test, as interpreted by this Court in *Ayala v. Antelope Valley Newspapers, Inc.* (2014) 59 Cal.4th 522, to any reimbursement claims under Labor Code §2802 that do not have specific, corresponding Wage Order counterparts. *Dynamex Operations West, Inc. v. Super. Ct.* (Ct. App. 2014) 179 Cal.Rptr.3d 69, 78-82.

This Court must determine whether claims to enforce the Wage Orders' protections brought by workers classified as "independent contractors" should be evaluated using the IWC's definitions of "employ," "employer," and "employee," as the Court of Appeal held, or whether, as Dynamex urges, special definitions should apply in such misclassification cases. If this Court finds that plaintiffs have asserted claims for reimbursement that are not encompassed by Wage Order No. 9-2001, *but see* Answer Br. at 58, the Court must also decide whether the Legislature intended different rules to apply to Labor Code and Wage Order claims when the Labor Code provides greater workplace protection for wages, hours, or other working conditions than any counterpart provision in the Wage Orders.

I. This Dispute Involves Questions of Statutory Interpretation that Should Be Resolved by Applying the Plain Language of the Wage Orders and the Labor Code and Well-Established Principles of Statutory Construction

Dynamex's briefs suggest that resolution of this case depends upon the relative merits and drawbacks of applying the different tests of employment discussed in *Borello* and *Martinez* to disputes involving worker misclassification. But as both of those decisions recognized, determining which tests the courts should use to evaluate whether a particular relationship between a worker and a business amounts to "employment" for purposes of California's statutory labor protections is a matter of statutory interpretation governed by well-established principles of

statutory construction. *See Martinez*, 49 Cal.4th at 51; *Borello*, 48 Cal.3d at 351.[3]

First, the "fundamental task" when construing any California statute "is to ascertain the intent of the lawmakers so as to effectuate [its] purpose." *Martinez*, 49 Cal.4th at 51 (quotation omitted). The Wage Order and Labor Code provisions at issue share a common purpose: To protect employees from adverse working conditions and to guarantee certain minimum workplace protections that the IWC and the Legislature have declared essential as a matter of California public policy. As *Martinez* explained, the Legislature's creation of the IWC in 1913 was part of "a wave of minimum wage legislation that swept the nation in the second decade of the 20th century . . . . motivated by widespread public recognition of the low wages, long hours, and poor working conditions under which women and children often labored." *Id.* at 53. To address those problems, the Legislature delegated to the IWC "broad authority to regulate the hours, wages and labor conditions of women and minors" – authority that has since been expanded to encompass *all* California workers, regardless of sex or age. *Id.* at 54-55. "[I]n fulfilling its broad statutory mandate," the IWC exercises "quasi-legislative" authority that "necessarily and properly requires the commission's exercise of a considerable degree of policy-making judgment and discretion." *Indus. Welfare Comm'n*, 27 Cal.3d at 702; *see also* Cal. Const. art. XIV §1 (Legislature may delegate "legislative, executive, and judicial powers" to IWC). "To ensure the IWC's Wage Orders would be obeyed, the

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[3] "[T]he same rules of construction and interpretation which apply to statutes govern the construction and interpretation of rules and regulations of administrative agencies." *Cal. Drive-In Rest. Ass'n v. Clark* (1943) 22 Cal. 2d 287, 292.

Legislature included criminal, administrative and civil enforcement provisions in the original 1913 act. . . . [, m]ore robust versions of [which] appear in today's Labor Code." *Martinez*, 49 Cal.4th at 56. The IWC issued its first Wage Order in 1916, and eighteen Wage Orders, including the Wage Order whose provisions are at issue in this appeal, are now in effect. *Id.* at 57.[4]

In light of the broad remedial purposes served by the provisions of the Labor Code and the Wage Orders at issue, those provisions must be construed broadly "with an eye to promoting [worker] protection." *Martinez*, 49 Cal.4th at 61; *see also Mendiola v. CPS Sec. Sols., Inc.* (2015) 60 Cal.4th 833, 840 ("Wage and hour laws are to be construed so as to promote employee protection.") (quotation omitted); *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 592 (same); *Ramirez v. Yosemite Water Co.* (1999) 20 Cal.4th 785, 794-95 (same); *Indus. Welfare Comm'n*, 27 Cal.3d at 702 (same). Any ambiguous language in the Wage Orders should be construed in favor of protecting workers, *see, e.g.*, *Mendiola*, 60 Cal.4th at 840, while exceptions to coverage must be construed narrowly, *see, e.g.*, *Ramirez*, 20 Cal.4th at 794-95.

Second, cases applying different laws in different contexts (such as tort cases seeking to impose vicarious liability for injuries inflicted on third parties) provide little meaningful guidance in determining the proper construction of remedial, worker-protective statutes like the Wage Orders and Labor Code. *Martinez*, 49 Cal.4th at 50 (distinguishing discussions of employment in prior decisions that "concerned statutory schemes other than the wage laws"); *see also Laeng v. Workmen's Comp. Appeals Bd.* (1972) 6

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[4] As *Martinez* noted, all 16 industry-specific wage orders contain the same definitions of "employ," "employee," and "employer" at issue here. 49 Cal.4th at 59.

Cal.3d 771, 777 ("[A]n 'employment' relationship sufficient to bring the [Workers' Compensation Act] into play cannot be determined simply from technical contractual or common law conceptions of employment but must instead be resolved by reference to the history and fundamental purposes underlying the [act].").

In *Borello*, this Court considered the distinction between employees and independent contractors for purposes of the Workers' Compensation Act. The Court emphasized that the common law distinction provided only minimal guidance for interpreting the Workers' Compensation Act because that distinction had been developed "to limit one's vicarious liability for the misconduct of a person rendering service to him," rather than to protect workers from industrial injuries. 48 Cal.3d at 350, 352. Given that Act's very different history and purpose, this Court concluded that in that statutory context "the concept of 'employment' . . . is not inherently limited by common law principles," and instructed the lower courts to consider all "logically pertinent" factors, including not only state common law principles and the Restatement (Second) of Agency, but also the factors used by federal courts to determine employment status under the federal Fair Labor Standards Act ("FLSA"). *Id.* at 350-51, 354-55.[5]

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[5] It is not quite accurate to describe the *Borello* standard as the "common law" test of employment status, because the Court in *Borello*: relied upon the specific purposes and language of the Workers' Compensation Act, expressly declined to base its standard solely upon the common law definition of employment, and instructed lower courts to consider the FLSA factors in addition to the Restatement factors. Although the *Borello* standard was based in part on the common law "right to control" test, it also reflects the unique language, history, and purpose of the Workers' Compensation Act. It is therefore more accurate to characterize the *Borello* test as a statute-specific right-to-control test.

As this Court has recognized, it is particularly inappropriate to rely exclusively upon the traditional common law standard for determining employment status in the context of the Wage Orders and Labor Code. *Martinez*, 49 Cal.4th at 65. The traditional common law definition of employment was developed to limit one contracting party's vicarious liability for the acts of the other, as in *Patterson v. Domino's Pizza, LLC* (2014) 60 Cal.4th 474, a case involving a franchisor's liability for the tortious misconduct of a franchisee's employee. Yet the very purpose of the Wage Order and Labor Code provisions regulating wages, hours, and working conditions is to *invalidate* workplace contracts that the IWC and Legislature declared contrary to public policy, such as contracts requiring an employee to work for less than the minimum wage or not be paid all wages when due. *Cf. Secretary of Labor v. Lauritzen* (7th Cir. 1987) 835 F.2d 1529, 1544-45 (Easterbrook, J., concurring) (explaining that "[t]he reasons for blocking vicarious liability at a particular point have nothing to do with the functions of the FLSA," in part because "[t]he FLSA is designed to defeat rather than implement contractual arrangements"). Legal principles that were developed to protect and reinforce contractual agreements by limiting vicarious liability have little value in determining the proper interpretation of employee-protective statutes that establish certain minimum labor standards that businesses must satisfy regardless of any contrary contractual agreements.

II. Under the Plain Language of the Wage Orders and this Court's Decision in *Martinez*, the Same Definition of Employment Should Apply to All Wage Order Claims

In *Martinez*, this Court held that the Wage Orders establish three separate tests for identifying employment relationships subject to the Wage Orders' protections:

> To employ . . . under the IWC's definition, has three alternative definitions. 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.

49 Cal.4th at 64 (emphasis in original). *Martinez* derived these three tests for defining "employ" from the plain language of the Wage Orders, and concluded that the IWC's definition of the employment relationship was entitled to judicial deference. *Id.* at 57-61.

Dynamex asserts that the Court should either limit the Wage Orders' definitions and this Court's holding in *Martinez* to the "joint employer" context, or establish a special Wage Order definition of employment that applies only to independent contractor misclassification claims. But the language of the Wage Orders, logic, and public policy all dictate that those same three tests should apply whenever a dispute arises concerning whether a particular worker is employed by a particular business for the purpose of the Wage Orders, including when that business contends that the worker is an independent contractor and not its employee.

A. The IWC Wage Orders Define Employment

Because the language of the Wage Orders provides the best evidence of the IWC's intent, this Court's analysis must begin with the Wage Orders' words, "assigning them their usual and ordinary meanings, and construing them in context." *Martinez*, 49 Cal.4th at 51 (quotation omitted). As "legislative regulations," *Mendiola*, 60 Cal.4th at 838, the requirements of the Wage Orders "have the dignity of statutes," *Ramirez*, 20 Cal.4th at 799, and judicial review should be limited to determining "whether the [IWC's] action is arbitrary or entirely lacking in evidentiary support or whether the [IWC] has violated the procedure required by law." *Indus. Welfare Comm'n*, 27 Cal.3d at 702.

Dynamex argues that, for purposes of the Wage Orders, "employee" should be defined using the *Borello* "common law" right-to-control test only. *See* Opening Br. at 9-12. But the Wage Orders define "employee" as "any person employed by an employer" and thus incorporate the Orders' detailed definitions of "employ" and "employer": "Employ" means "to engage, suffer, or permit to work," while "employer" means "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 any person." These definitions of "employ" and "employer" were the specific focus of this Court's analysis in *Martinez*, which relied upon those definitions to conclude that an "employment relationship" exists for purposes of the Wage Orders wherever a business exercises control over the wages, hours, or working conditions of a person, or suffers or permits that person to work, or engages the person to work. *Martinez*, 49 Cal.4th at 57-60, 64.

Under the plain language of the Wage Orders, *Martinez*'s three tests for determining the existence of an "employment relationship" must be used to resolve disputes over whether a particular worker (or group of workers) is employed by a particular employer. That definition should be the same whether the worker asserts that s/he is an employee rather than an independent contractor or that s/he is an employee of multiple entities. In either instance the question is the same: Does an employment relationship exist between the parties? Nothing in the Wage Orders' language suggests that a separate, preliminary analysis of an individual's employment status under the "right to control" test (or any other test) is required to determine whether the individual is employed for purposes of the Wage Orders.[6]

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[6] Dynamex argues that in *Martinez* the Court applied the common law to determine whether one defendant in that case – a strawberry farmer (continued . . .)

B. *Martinez* Applied the Wage Orders' Definition of the "Employment Relationship"

Nor does anything in *Martinez* limit the Court's analysis to the joint employer context (which should not be surprising given that a joint employer is just an "employer" in circumstances where there may be more than one employer). Instead, the Court considered the employment relationship generally, without distinguishing among the various ways in which parties might dispute the existence of such a relationship. *See, e.g.*, *id.* at 51 (question presented was how to "define *the employment relationship*") (emphasis added); *id.* at 57 (considering "[h]ow the IWC [h]as [d]efined the [e]mployment [r]elationship"). The Court explained, for example, that the "suffer or permit" standard was intended to apply "even when no common law employment relationship existed," and was intended to encompass "irregular working arrangements the proprietor of a business might otherwise disavow with impunity." *Id.* at 58; *see also id.* ("suffer or permit" standard does not require "a common law master and servant relationship"). Indeed, while the Court noted that the suffer-or-permit standard had been applied in circumstances that might now be characterized as joint employment, *see, e.g.*, *id.* (discussing imposition of liability on manufacturer to "boy hired by his father to oil machinery"), *Martinez* also

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(. . . continued)

who employed 180 agricultural workers, including plaintiffs – was employed by another defendant – a produce merchant through whom the farmer sold strawberries. 49 Cal.4th at 42, 73. But in making that determination, the Court did not consider whether the first defendant had any rights under the Wage Orders as against the second defendant, only whether the second defendant was vicariously liable for the actions of the first – a question of agency properly resolved by applying the traditional common law test of employment. In determining whether *plaintiffs*' employment was covered by the Wage Orders, the Court properly applied the Orders' three alternative tests of employment.

explained that the same suffer-or-permit standard prevented businesses from escaping liability by arguing that plaintiff "was not employed to do the work which caused the injury, but that he did it of his own choice and at his own risk" – in other words, by arguing that plaintiff was an independent contractor. *Id.*

In short, nothing in the language of the Wage Orders or *Martinez* limits the employment relationships governed by the Wage Orders to those that satisfy the common law "right-to-control" test for distinguishing between independent contractors and employees. If a business has retained a worker under circumstances that establish an employment relationship under *Martinez*, that worker is an employee for purposes of the Wage Orders, and should be entitled to the rights and protections established thereby.

C. This Court Should Reject Dynamex's Request that *Martinez* Be Overruled or Narrowed

Martinez thus resolves the first question presented in this appeal – whether the Wage Orders' three tests for determining the existence of an employment relationship should be used to determine whether a worker is an employee rather than an independent contractor when considering claims arising under the Wage Orders. Dynamex's argument that *Borello*'s right-to-control test alone should apply in those circumstances is effectively a plea to overrule or drastically narrow *Martinez*. There is no reason for this Court to do either.

Courts must accord the Wage Orders "extraordinary deference" "both in upholding their validity and in enforcing their specific terms." *Martinez*, 49 Cal.4th at 61, 65. Dynamex's argument, however, would "render the commission's definitions effectively meaningless." *Id.* at 65. As this Court stated in *Martinez*, to refuse to enforce the Wage Orders' plain language by applying only the common law right-to-control test

would prevent the IWC from achieving its statutorily assigned purposes, contrary to the Legislature's intent in creating the IWC and the California voters' intent in authorizing the delegation of legislative, executive, and judicial powers to the IWC. *Id.* Doing so would "endanger the commission's ability to achieve its statutory purposes" and "substantially impair the commission's authority and the effectiveness of its Wage Orders." *Id.* at 65.

There is no merit to Dynamex's ahistorical suggestion that the IWC decades ago exceeded the scope of its statutory or constitutional authority by regulating working relationships involving individuals who might not have been deemed "employees" at common law. Opening Br. at 34-41. As the Court emphasized in *Martinez*, the IWC "has the power to adopt rules to make the minimum wage effective by preventing evasion and subterfuge," and this Court has "repeatedly upheld the commission's exercise of this authority." *Martinez*, 49 Cal.4th at 65 (quotation and alteration omitted). When the Legislature created the IWC in 1913 and charged it with improving the working conditions to which many women and children in the workforce were subjected, it was widely understood that the IWC's actions would only be effective if they applied to both traditional common law employment and to "irregular working arrangements that fell outside the common law." *Id.* at 65; *see also id.* at 57-58 (discussing courts' application of "suffer-or-permit" standard prior to creation of IWC and issuance of first Wage Order).

The first Wage Order issued by the IWC in 1916 included language specifically designed to reach such "irregular working arrangements." *See id.* at 57-58. That language has carried through into the current Wage Orders. Although the statutory and constitutional provisions relating to the IWC's authority have been modified many times since 1916, neither the Legislature nor the people of California have ever sought to limit the reach

of the IWC's authority over such "irregular working arrangements." *See id.* at 55 (describing 1973 amendments expanding scope of IWC's authority). It makes no sense to revisit the IWC's longstanding regulatory decisions now, years after those decisions were made and after decades of judicial enforcement and opportunities for the Legislature to change the law. *See Sara M. v. Super. Ct.* (2005) 36 Cal.4th 998, 1015 ("Because the Legislature has specifically directed the [agency] to promulgate these rules, we can presume it was aware of the administrative interpretation, which makes its acquiescence all the more significant.").

Ultimately, the reason Dynamex asks this Court to apply some variant of the common law test of employment is because it prefers that outcome as a policy matter. According to Dynamex, the *Martinez* tests should not apply when evaluating a claim that a worker who has been labeled an independent contractor is in fact an employee under the Wage Orders because: 1) that standard differs from the standard that purportedly applies to other Labor Code claims; 2) the "suffer-or-permit" test sweeps too broadly; and/or 3) the right-to-control test is supposedly more fact-intensive and more flexible. None of these arguments, even if true, justifies ignoring the Wage Orders' plain language, which requires the *Martinez* tests to be applied to all "irregular" workforce arrangements, including those involving alleged independent contractors.

The IWC's carefully considered decisions cannot be rejected on the basis of mere policy disputes. As this Court recently reiterated, courts cannot "superimpose [their] own policy judgment upon [the IWC] in the absence of an arbitrary decision." *Mendiola*, 60 Cal.4th at 847-48 (quotation omitted) (second alteration in original); *see also Martinez*, 49 Cal.4th at 61 ("[Judicial] review of the commission's Wage Orders is properly circumscribed.") (quotation omitted). Because the three tests of employment under the Wage Orders reflect the IWC's considered and

consistent judgment about how to achieve its intended goals, *id.* at 57-60, the IWC's determination is entitled to "extraordinary" deference.

In any event, Dynamex's critique of the IWC's policy decisions is meritless. Dynamex complains that if the Wage Order tests must be used to determine which workers are "employees," employers may have to treat some workers as employees for some purposes but not others. But absent some indication that the Legislature *intended* different definitions to apply, there is no logical reason why the same definitions should not apply to *all* Labor Code claims involving minimum workplace standards for wages, hours, and working conditions. *See infra* Section III.

Further, it is already the case that California employers must account for different definitions of "employee" under different statutes, including federal statutes such as Title VII, the FLSA, and the NLRA. Indeed, this Court in *Martinez* explained that one of the purposes of the IWC's broad definition of "employer" was "to distinguish state wage law from its federal analogue, the FLSA," and to "provide employees with greater protection than federal law affords." 49 Cal.4th at 60; *see id.* at 68 ("Courts must give the IWC's Wage Orders independent effect in order to protect the commission's delegated authority to enforce the state's wage laws and, as appropriate, *to provide greater protection to workers than federal law affords*.") (emphasis added). Similarly, this Court recognized in *Mendiola* that although "[f]ederal regulations provide a level of employee protection that a state may not derogate. . . . California is free to offer greater protection," and it reiterated that courts should not presume that the IWC Wage Orders incorporate federal standards absent explicit language to that effect. 60 Cal.4th at 843.

Dynamex also asserts that the IWC's three tests could not be used to analyze disputes over misclassification because one of those tests, suffer-or-permit, would effectively eliminate independent contractors in

California. But Dynamex's contention that workers can never be independent contractors under a suffer-or-permit standard is plainly mistaken, as decades of case law under the FLSA and many other federal and state suffer-or-permit statutes make clear.

For the past 80 years, the FLSA has provided that "'[e]mploy' includes to suffer or permit to work." 29 U.S.C. §203(g). That test has never been construed as prohibiting independent contractor relationships; instead, federal courts consider a number of factors to determine whether purported independent contractors are employees under the FLSA. *See, e.g., Real v. Driscoll Strawberry Associates, Inc.* (9th Cir. 1979) 603 F.2d 748, 754 (to distinguish employees from independent contractors, courts should consider right to control manner of work, worker's opportunity for profit or loss depending upon managerial skill, worker's investment in equipment or materials or employment of helpers, skill required to perform service, permanence of working relationship, and whether service performed is integral to business); *see also* Administrator's Interpretation No. 2015-1 ("Dep't of Labor Guidance") (U.S. Department of Labor guidance regarding application of "suffer or permit" standard to workers classified as independent contractors).[7] Through that multifactor analysis, the federal courts determine whether particular workers "'as a matter of economic reality are dependent upon the business to which they render service.'" *Real*, 603 F.2d at 754 (quoting *Bartels v. Birmingham* (1947) 332 U.S. 126, 130) (emphasis omitted); *see also* Dep't of Labor Guidance, at 4 (independent contractors are "workers with economic independence

[7] Available at http://www.dol.gov/whd/workers/misclassification/AI-2015_1.pdf. As noted above, *Borello* held that these FLSA factors are "logically pertinent" to determining whether a worker is an employee or independent contractor "for purposes of workers' compensation law." 48 Cal.3d at 354-55 (citing *Real*, 603 F.2d at 754).

who are operating a business of their own," while employees are "workers who are economically dependent on the employer").

To be sure, this Court held in *Martinez* that the Wage Orders do not entirely adopt the FLSA standard or its multifactor analysis. 49 Cal.4th at 66-68. Nonetheless, the federal courts' application of the FLSA's suffer-or-permit standard demonstrates that the comparable language in the Wage Orders need not invalidate all independent contractor relationships. Instead, that standard (which developed in the child labor context for the purpose of reaching "irregular working arrangements," well before the enactment of the FLSA, *see Martinez*, 49 Cal.4th at 65-66), extends liability only to working relationships in which workers are economically dependent upon the business, *Real*, 603 F.2d at 754, and in which that business, through reasonable diligence, can prevent the unlawful work. *See, e.g.*, *Martinez*, 49 Cal.4th at 70 (basis of liability under the suffer-or-permit standard "is the [proprietor's] failure to perform the duty of seeing to it that the prohibited condition does not exist") (quotation omitted).[8]

Had the IWC intended its suffer-or-permit standard to eliminate all independent contractor relationships in California, "one would expect the commission to have announced it in the plainest terms after vigorous debate." *Martinez*, 49 Cal.4th at 70. Obviously, the IWC did not do so.

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[8] While some early cases applying the suffer-or-permit standard failed to distinguish between suffering or permitting work generally and suffering or permitting *unlawful* work, *see, e.g.*, *Curtis & Gartside Co. v. Pigg* (1913) 39 Okla. 31, 134 P. 1125, 1129 (suffer or permit standard "means that [proprietor] shall not employ by contract, nor shall he permit by acquiescence, nor suffer by a failure to hinder"), those decisions involved work that was inherently unlawful (like employing children in prohibited industries), meaning there was no distinction between the work and the legal violation. Those decisions also acknowledged that determining whether the proprietor "fully discharged his duty toward the [purported employee]" depended upon the facts of each case, *id.*

Dynamex's challenge to the potential scope of the suffer-or-permit standard masks the actual purpose of its argument: to persuade the Court not to apply *any* of the three Wage Order/*Martinez* tests by mischaracterizing the scope of one of those tests. While it is plain for the reasons stated above that Dynamex's doomsday arguments *are* a mischaracterization, ultimately this Court need not determine the precise contours of the suffer-or-permit standard in this proceeding. Dynamex's argument is that the trial court erred by applying the Wage Orders' three tests, rather than the *Borello* right-to-control test alone. Dynamex has thereby waived any contention that the trial court misconstrued any one of the *Martinez* tests in certifying plaintiff drivers' claims.

For these reasons, and to be consistent with *Martinez* and the plain language of the Wage Orders, this Court should hold that the definitions of employment provided by the Wage Orders apply to Wage Order claims arising from the alleged misclassification of employees as independent contractors, and should defer ruling on the precise meaning and scope of the Wage Orders' suffer-or-permit standard until a future case that squarely presents that issue.[9]

Finally, Dynamex argues that its characterization of the *Borello* test is preferable because it permits "a factually-intensive and individualized

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[9] Dynamex asserts that the "control over wages, hours, and working conditions" test of employment sweeps too broadly, Opening Br. at 20-21, but its argument is premised on the contention that an individual "exercises control" over wages, hours, and working conditions if he or she merely has "some say" regarding those matters, as where a homeowner affects the hours worked by a plumber by asking the plumber to arrive after 8 a.m. or as soon as possible, *id.* at 21. As with Dynamex's portrayal of the suffer-or-permit test, the control over wages, hours, and working conditions test need not be applied in the manner Dynamex proposes. *See, e.g.*, *Martinez*, 49 Cal.4th at 75-77 (defendants' actions in directing plaintiffs to correct mistake at worksite did not constitute "control" over working conditions).

assessment of service relations" and is thus more "flexible" – i.e. less likely to result in a finding of employment status, particularly on a classwide basis – than the *Martinez* tests. Opening Br. at 16. Dynamex's argument ignores the Wage Orders' remedial, worker-protective purposes. As this Court emphasized in *Martinez*, those purposes are best served by applying a broad definition of employment that reaches "irregular working arrangements the proprietor of a business might otherwise disavow with impunity." 49 Cal.4th at 58; *see also id.* at 59 (given IWC's delegated authority over wages, hours, and working conditions, "[f]or the IWC to adopt a definition of 'employer' that brings within its regulatory jurisdiction an entity that controls any one of these aspects of the employment relationship makes eminently good sense").

Applying the Wage Orders' broad definition of the employment relationship is even more important now than when that definition was first adopted. As Dynamex admits, "emerging business relationships" are currently "test[ing] the traditional notions of employment." Opening Br. at 15-16. These business relationships include not only the widespread classification of workers as independent contractors, but also the growing use of the franchise model and labor services contractors. *See, e.g., Carrillo v. Schneider Logistics Trans-Loading and Distribution, Inc.* (C.D. Jan. 14, 2014) No. 2:11-cv-8557-CAS (DTBx), 2014 WL 183965, at *1-*2 (describing Walmart's practice of contracting with separate company to operate its warehouses, which then subcontracts with labor services contractors to obtain workers to load and unload merchandise). These "emerging" business models have complicated and fractured the relationships among many workers and the businesses that are built around, depend upon, and profit from their labor. *See* David Weil, *The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done To Improve It* (Harvard 2014). In this context – just as in the

factories where children were working at the time of the IWC's creation – applying a narrower definition of employment than the IWC's would undermine the Wage Orders' minimum standards for wages, hours, and working conditions and exclude a significant portion of the workforce from those protections, without any legal or policy justification.

III. The Labor Code Should Be Interpreted To Encompass the Same Employment Relationships Covered by the Wage Orders

The Wage Order definitions do not by their terms apply to claims to enforce rights not encompassed by those Wage Orders. Nonetheless, those same definitions should govern all Labor Code claims based on provisions establishing statutory minimum standards for wages, hours, or working conditions – including plaintiffs' claims under §2802 to the extent they extend beyond plaintiffs' Wage Order reimbursement claims – because the Wage Orders reflect the considered judgment of an expert agency regarding how the employment relationship should be defined to best effectuate the public policy goals served by such provisions, and because there is no reason to conclude that the Legislature intended similar claims arising under the Wage Orders and the Labor Code to be subject to different standards.

The Labor Code does not itself provide definitions of "employer," "employee," or "employment" for purposes of its provisions establishing minimum standards for wages, hours, and working conditions. *See, e.g.*, *Estrada v. FedEx Ground Package System, Inc.* (2007) 154 Cal.App.4th 1, 10 ("[T]he Labor Code does not expressly define 'employee' for purposes of section 2802[.]"); *Reynolds v. Bement* (2005) 36 Cal.4th 1075, 1092 (Moreno, J., concurring) (acknowledging "lacuna in the Labor Code"), *abrogated by Martinez*, 49 Cal.4th 35. Instead, the Legislature left it to the courts to determine which working relationships constitute "employment" covered by those fundamental protections.

Any definition of employment that applies to claims arising under those Labor Code provisions must take into account the unique history and purposes of the applicable provisions. *Borello*, 48 Cal.3d at 351; *see also Martinez*, 49 Cal.4th at 52 (examining Labor Code §1194 "in its statutory and historical context"). In *Borello*, this Court found it appropriate, given the particular statutory context of that case, to apply a variant of the common law "right-of-control" test that gave additional weight to other factors, including those used to determine employment status under the FLSA. 48 Cal.3d at 350-55. But while the Workers' Compensation Act and the Labor Code provisions at issue here share the same general remedial purpose (such that their reach is "not inherently limited by common law principles," *id.* at 351), the two statutes differ in important ways. In the context of workers' compensation, for example, no agency or commission has been delegated broad legislative, executive, and judicial authority comparable to the IWC's authority; the IWC is, in many respects, *sui generis*. In addition, the Workers' Compensation Act specifically exempts independent contractors from coverage, *see id.* at 349, while there is no such express exemption from the Labor Code's minimum standards. Thus, any such exemption is at most implicit and linked to the definition of "employees" protected by the statutory provisions.

For these reasons, the *Borello* right-to-control test alone is not the appropriate test for adjudicating claims arising under Labor Code §2802 or other Labor Code provisions establishing statutory minimum standards for wages, hours, and working conditions. The better approach, which is more consistent with the intent and purposes underlying those Labor Code provisions, would be to apply the three definitions recognized in *Martinez* to all claims under Labor Code provisions that establish minimum standards for wages, hours, and working conditions.

The IWC exercised legislatively delegated investigatory and policy-making powers (which were broader than the California courts' power to construe and apply the common law) in determining which working relationships must be characterized as employment to ensure full enforcement of its minimum workplace standards. *See Martinez*, 49 Cal.4th at 54-55. Because the expert administrative body charged with enforcing many of the Labor Code's most important provisions regarding wages, hours, and working conditions has already determined what definitions most effectively promote the purposes of those provisions, there is no reason for this Court to look elsewhere or to substitute its own judgment in deciding what definition of employment best reflects the "history and fundamental purposes" of other comparable provisions of the Labor Code. *Borello*, 48 Cal.3d at 351 (quotation omitted).

Applying the Wage Orders' definition of "employment" is also fully consistent with the Legislature's intent. There can be no doubt the Legislature approves of the application of the IWC's definitions as a general matter. The IWC's current definition of employment has been included in the Wage Orders since 1947. The suffer-or-permit standard has been part of the Wage Orders since 1916. During that time, the California Legislature has enacted or modified most of the substantive provisions of the Labor Code governing wages, hours, and working conditions, including §2802, and has significantly broadened the scope of the IWC's delegated authority. *See, e.g.*, *Martinez*, 49 Cal.4th at 60-61 (describing 1973 amendments broadening IWC's delegated authority); Stats. 2000, ch. 990 (amending §2802). This Court can therefore presume that the Legislature was aware of the IWC's definition of employment and recognized that it provides appropriate guidance in deciding which employment relationships should be subject to statutory protections relating to wages, hours, and working conditions. *See, e.g.*, *Sara M.*, 36 Cal.4th at 1015.

Moreover, there is no reason to conclude that the Legislature intended any *different* definition of the employment relationship to apply to closely related claims arising under the Labor Code and the Wage Orders (such as claims seeking reimbursement for uniform maintenance costs under a Wage Order and for other necessary expenditures under §2802), as the Court would have to find before it could conclude that only the *Borello* right-to-control test should apply to Labor Code misclassification claims. The far more reasonable conclusion is that the Legislature intended the same standard, established by the expert agency created for the specific purpose of improving wages, hours, and working conditions, to apply to both sets of claims.[10]

The Legislature's recent enactment of Labor Code §226.8 is instructive in this regard. Section 226.8 makes it unlawful "for any person or employer to engage in . . . [w]illful misclassification of an individual as an independent contractor." The statute defines willful misclassification as "avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor." Labor Code §226.8(i)(4). Three aspects of Section 226.8 provide particularly useful guidance. First, the statute does not define the terms "misclassification" and "misclassifying." Instead, it assumes that courts will look elsewhere in the Labor Code (or Wage Orders) to determine whether a worker has been misclassified, before determining whether that misclassification was willful for purposes of §226.8. Second, the statutory language demonstrates the Legislature's understanding that a worker is either misclassified under the Labor Code or not. Nothing in §226.8 suggests that an employer can

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[10] As the example of reimbursement for business expenditures makes clear, in many cases the requirements of the Wage Orders are intertwined or overlap with the minimum standards established by the Labor Code.

escape liability for statutory penalties if it misclassifies employees under one provision of the Labor Code but not another. Thus, while the Court of Appeal in this case distinguished plaintiffs' "misclassification" under Labor Code §1194 and the Wage Orders from their "misclassification" under Labor Code §2802, the absence of any such distinction under §226.8 demonstrates the Legislature's understanding that such distinctions are inappropriate: "Willful" misclassification is a stand-alone violation that is unlawful no matter what form of "employee status" the defendant sought to "avoid." Third, §226.8 was enacted in 2011, *after* this Court issued its decision in *Martinez*. At the time the Legislature enacted §226.8, it was undoubtedly aware of the definition of the employment relationship that this Court used in *Martinez* and intended that definition to apply in all cases seeking relief under §226.8.

For these reasons as well, this Court should defer to the IWC's considered judgment and expertise, implement the Legislature's recognition that the same definition of employment should apply to comparable provisions of the Labor Code governing wages, hours, and working conditions, and hold that the IWC's definition of the employment relationship applies to all claims arising under such Labor Code provisions.[11]

IV. This Court Should Eliminate Any Confusion Surrounding Application of *Martinez*'s "Common Law" Test of Employment

Finally, this case presents the Court an opportunity to eliminate confusion among courts applying the Wage Orders' definition of employment by reaffirming that the "common law" test of employment,

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[11] For provisions of the Labor Code that include their own separate statutory definitions of the relevant terms, such as the Workers' Compensation Act, *see* Labor Code §§3351, 3353, those particular definitions, rather than the IWC's definitions, would apply.

when applied as one of the IWC's three tests of employment, must reflect the particular remedial and worker-protective purposes of the Labor Code, which Dynamex itself recognizes. Opening Br. at 3 ("A paramount consideration in evaluating claimed independent contractor status . . . must be the remedial purposes served by California's employment-related statutes.").

Last year, this Court reiterated the core aspects of an employee-protective common law "right-to-control" test in *Ayala*, 59 Cal.4th 522. *Ayala* explained that the "principal test" of employment under that standard is "whether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired." *Id.* at 531 (quotation omitted). "Perhaps the strongest evidence of the right to control is whether the hirer can discharge the worker without cause." *Id.* The Court emphasized that the test should not be applied narrowly. Even if "a certain amount of freedom of action is inherent in the nature of the work," the right-to-control test is satisfied if the hirer "retains all *necessary* control over its operations." *Id.* (quotations omitted) (emphasis in original). The purported employer's right to control need not be direct and immediate; it may instead be indirect and even "very attenuated," as the Restatement (Second) of Agency (upon which *Ayala* relied) explains. Rest. 2d Agency §220(1) cmt. d.[12]

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[12] While the right to control the work "is the foremost consideration" under the right-to-control test, *Ayala* explained that courts should also consider a "range of secondary indicia drawn from the Second and Third Restatements of Agency that may in a given case evince an employment relationship," such as "whether the one performing services is engaged in a distinct occupation or business," "the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the principal or by a specialist without supervision," "the length of time for which the services are to be performed," and "whether or not the work is a (continued . . .)

Just as important, an employer's obligations to its workers under the Labor Code should not be limited by the traditional common law test for determining whether a master-servant relationship exists. As explained already, the common law distinction between employees and independent contractors was initially developed to determine when a master-servant relationship exists for purposes of vicarious liability. *Borello*, 48 Cal.3d at 352 ("[T]he common law tests were developed to define an employer's liability for injuries caused *by* his employee[.]") (emphasis in original); *Lauritzen*, 835 F.2d at 1544 (Easterbrook, J., concurring). The purpose of that analysis was not to ensure that remedial statutory requirements were fully implemented, but to ensure that one party would not be held vicariously liable for the tortious acts of another unless the first party could reasonably be held responsible for the second's conduct. *Id.* ("independent contractor doctrine" is "a branch of tort law, designed to identify who is answerable for a wrong (and therefore, indirectly, to determine who must take care to prevent injuries)"). Given the materially different purposes served by the common law's master-servant distinction and the implied statutory distinction between employees and independent contractors under the Labor Code, it is not appropriate to decide Labor Code claims based on a standard whose purpose is to determine when a master is responsible for the wrongful actions its servants.

Nonetheless, because the right-to-control standard is often referred to as the "common law" test of employment (including by Dynamex in this case and in this Court's discussion of the third prong of the IWC's definition in *Martinez*), some courts have failed to give proper weight to the

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(. . . continued)
part of the regular business of the principal." 59 Cal.4th at 532 (citation omitted).

distinct statutory contexts. For example, several courts have mistakenly relied upon this Court's decision in *Patterson v. Domino's Pizza, LLC* (2014) 60 Cal.4th 474, when applying the Wage Orders' three tests of employment.[13] As this Court made clear in *Borello*, though, cases that apply traditional common law principles to determine whether one party should be vicariously liable for the acts of another (as *Patterson* did) are of little value in assessing that party's obligations under remedial, worker-protective legislation. Rather than applying such decisions directly to determine employment status under the Labor Code, any application of the right-to-control test in that statutory context must account for the unique history and purposes of the Wage Orders and the Labor Code.

From *Borello* to the present, this Court has recognized that the factors that must be considered in determining employment status differ based on context, and that any such determination must account for the statutory rights at issue rather than applying a monolithic "common law" test. To ensure the lower courts faithfully apply these principles, this Court should reiterate that the right-to-control test, when applied as one of the Wage Orders' three tests for finding employment, must be applied "with particular reference to the history and fundamental purposes of the statute" at issue, *Borello*, 48 Cal.3d at 351 (quotation omitted), and that cases involving different statutory schemes – especially those applying the

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[13] *See, e.g., Ochoa v. McDonald's Corp.* (N.D. Cal. Sept. 25, 2015) _ F.Supp.3d _, Case No. 3:14-cv-02098-JD, 2015 WL 5654853, at *4, *7 (relying upon *Patterson* in applying "common law" test); *Vann v. Massage Envy Franchising LLC* (S.D. Cal. Jan. 6, 2015) Case No. 13–CV–2221–BEN (WVG), 2015 WL 74139 (relying upon *Patterson* in applying all three tests); *see also Andrade v. Arby's Restaurant Group, Inc.* (N.D. Cal. Nov. 3, 2015) Case No. 15-cv-03175 NC, 2015 WL 6689475 (citing *Patterson* as establishing a unique rule regarding franchisor liability under all California laws).

traditional and narrow common law test for discerning master-servant relationships – offer little relevant guidance.

CONCLUSION

For the foregoing reasons, this Court should hold that the IWC's definition of employment applies to all claims arising under the Wage Orders, including those premised on the alleged misclassification of employees and independent contractors, and that the same definition applies to claims arising under the Labor Code's other provisions establishing minimum standards for wages, hours, and working conditions.

Dated: December 7, 2015

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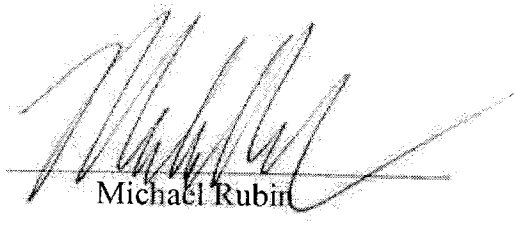
CERTIFICATE OF WORD COUNT

I hereby certify pursuant to Rule 8.204(c)(1) of the California Rules of Court that the attached PROPOSED AMICUS CURIAE BRIEF OF SERVICE EMPLOYEES INTERNATIONAL UNION, UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, AND INTERNATIONAL BROTHERHOOD OF TEAMSTERS IN SUPPORT OF PLAINTIFFS-REAL PARTIES IN INTEREST is proportionally spaced, has a typeface of 13 points or more, and contains 8,176 words, excluding the cover, the tables, the signature block, and this certificate. Counsel relies on the word count of the word-processing program used to prepare this brief.

DATED: December 7, 2015

By: 
Michael Rubin

PROOF OF SERVICE

CASE: *Dynamex v. Superior Court*

CASE NO: Supreme Court Case No. S222732

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to the within action; my business address is 177 Post Street, Suite 300, San Francisco, California 94108. On December 7, 2015, I served the following documents:

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND PROPOSED AMICUS CURIAE BRIEF OF SERVICE EMPLOYEES INTERNATIONAL UNION, UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, AND INTERNATIONAL BROTHERHOOD OF TEAMSTERS IN SUPPORT OF PLAINTIFFS-REAL PARTIES IN INTEREST

on the parties, through their attorneys of record, by placing true copies thereof in sealed envelopes addressed as shown below for service as designated below:

A. By U.S. First Class Mail: I am readily familiar with the practice of Altshuler Berzon LLP for the collection and processing of correspondence for mailing with the United States Postal Service. I placed each such envelope, with first-class postage thereon fully prepaid, to be deposited in a recognized place of deposit of the U.S. Mail in San Francisco, California, for collection and mailing to the office of the addressee on the date shown herein.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed December 7, 2015, at San Francisco, California.

Kristina Sinclair