

Case No. S258966

IN THE SUPREME COURT OF CALIFORNIA

GUSTAVO NARANJO

Plaintiff and Respondent,

v.

SPECTRUM SECURITY SERVICES, INC.

Defendant and Appellant.

After Decision by the 2nd District Court of Appeals,
Case No. B256232

REQUEST FOR JUDICIAL NOTICE

DIVISION OF LABOR STANDARDS ENFORCEMENT
State of California, Department of Industrial Relations

By: CASEY RAYMOND, SBN: 303644
320 W. 4th Street, Suite 600
Los Angeles, California 90013
Telephone: (213) 576-7730
Facsimile: (213) 897-2877
Email: craymond@dir.ca.gov

Attorney for Amicus Curiae, DIVISION OF LABOR STANDARDS
ENFORCEMENT through its Chief, LILIA GARCÍA-BROWER, LABOR
COMMISSIONER FOR THE STATE OF CALIFORNIA

The DEPARTMENT OF INDUSTRIAL RELATIONS, DIVISION OF LABOR STANDARDS AND ENFORCEMENT, hereby respectfully requests the court to take judicial notice under Evidence Code § 452(c) of the following document attached as Exhibit 1:

1. State of California Department of Industrial Relations Industrial Welfare Commission Public Meeting May 5, 2000, available at <https://www.dir.ca.gov/iwc/PUBMTG05052000.pdf>

Date: August 10, 2020

Respectfully submitted,

Casey L. Raymond,

Attorney for the Labor Commissioner's Office

Exhibit 1

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
INDUSTRIAL WELFARE COMMISSION

Public Meeting

May 5, 2000

Van Nuys State Office Building
6150 Van Nuys Boulevard - Auditorium
Van Nuys, California

GOLDEN STATE REPORTING
P.O. BOX 5848
Monterey, CA 93944-0848
(831) 663-8851

P A R T I C I P A N T S

--o0o--

Industrial Welfare Commission

BILL DOMBROWSKI, Chair

BARRY BROAD

LESLEE COLEMAN

Staff

ANDREW R. BARON, Executive Officer

MARGUERITE C. STRICKLIN, Legal Counsel

MICHAEL MORENO, Principal Analyst

I N D E X

--o0o--

	<u>Page</u>
Proceedings	5
Skiing Industry - Public Testimony:	6
BOB ROBERTS, California Ski Industry Association	6
KEVIN JOHNSTON, Dodge Ridge	10
GLENN KREIS, Mammoth Mountain	11
BRIAN COCHRANE, Snow Summit	13
DON WOLCOTT, Snow Summit	16
TIM BROADHAM, Mammoth Mountain	19
PAM MITCHELL, Mammoth Mountain	28
TOM RANKIN, California Labor Federation	34
MARCIE BERMAN, California Employment Lawyers Association	36
Meal Periods - Public Testimony:	41
MELISSA PATACK, Motion Picture Association of America, California Group	41
MARCIE BERMAN, California Employment Lawyers Association	52
TOM RANKIN, California Labor Federation	58
PAM MITCHELL, Mammoth Mountain	60
JULIANNE BROYLES, California Chamber of Commerce	62

MILES LOCKER, Chief Counsel, Division of Labor Standards Enforcement	67
Executive, Administrative and Professional Exemption	70
Licensed Pharmacists	71
Adjournment	72
Certification of Transcriber	73

1 meeting's going at that time.

2 The first item on the agenda is the ski
3 industry. And we don't really have that many speakers.

4 I guess we'll bring up two panels: first, Bob
5 Roberts, Glenn Kreis, Kevin Johnston, Brian Cochrane, Don
6 Wolcott, and Tim Badheim (sic).

7 Just grab the seats.

8 For the court recorder's -- to facilitate him,
9 could you please identify yourself first, just to make
10 sure we get it on the record for the transcripts?

11 Mr. Roberts, do you want to start it?

12 MR. ROBERTS: Yes. Good morning, chairman,
13 commissioners, the staff. I am Bob Roberts, the
14 executive director of the California Ski Industry
15 Association. And with me today I have a number of
16 gentlemen from our industry. And I'll let them introduce
17 themselves as we do it. I just want to make a couple of
18 brief overview remarks.

19 I did include in my letter to you the fact that
20 we are a very small and unique industry. We operate
21 principally in rural areas and exclusively above 6,000
22 feet, so that we do operate in a very different
23 environment.

24 Our weather conditions are our lives, and we are

1 very, very dependent upon snow, windows of too much snow,
2 too little snow. We also have conditions -- a lot of our
3 resorts have snow-making, but those are even, as you will
4 hear, conditioned upon weather and temperature.

5 One of our real concerns is that we are an
6 industry that, frankly, is very small and is very
7 economically difficult to comprehend. We have -- year in
8 and year out, we do, in California, somewhere between 5.7
9 and 7.4 million skier visits, depending upon how many --
10 how the snow flies, quite honestly.

11 And this year is a very good example. Last year
12 was a record year. We did 7.4 million visitors. 80
13 percent of our visitors come from California. They come,
14 they drive. If they see the weather -- if they know the
15 weather's going to be favorable, they come up. If the
16 weather's not good, they don't come up. And this year
17 was absolutely the reverse. We had a very, very poor
18 start. We lost Christmas, for all practical purposes,
19 and we lost the first part of January, as you'll hear.
20 And that had a tremendous impact because we can't, in any
21 large way, count on a destination business the way that
22 Colorado does. We're trying to build it, but our market
23 is Californians. And if Californians have other things
24 to do or the weather isn't right, they don't come. So we

1 have a -- we are conditioned by weather very
2 dramatically.

3 The economics are fairly simple. We average
4 about \$300 million a year in sales. That's the average,
5 year in and year out, good years and bad. Our labor
6 portion of that is roughly a third, or a million (sic)
7 dollars is our annual payroll.

8 The statistics that the National Ski Areas
9 Association and a number of research associations have
10 put out indicate that our profitability here in
11 California averages between 3 and 5 percent of sales,
12 depending upon the winter. Some winters it's worse, some
13 winters it's a little better. But 3 to 5 percent is our
14 norm. So, it's a very low-margin business. You have to
15 love it to be in it.

16 If we were to have to conform to all of the
17 conditions in AB 60, we estimate that we'd have at least
18 about a 15 percent increase. Well, if we've got \$300
19 million in sales and we've got 5 percent, which is about
20 \$15 million, as an industry-wide profitability, a 15
21 percent increase of \$100 million of payroll basically
22 takes out the profitability for the industry.

23 And we have operated, since we -- as an
24 industry, since the beginning, under first the federal

1 Fair Labor Standards Act, and then legislation that was
2 passed during the Brown administration which exempted us
3 from the daily overtime requirements and allowed us to
4 continue with the 56-hour week. And this has been, not
5 only for our industry, but our industry nationally.
6 Colorado did put in a minimum wage and they put hours
7 within their minimum wage laws -- and they are our most
8 direct competitors -- but they too, their legislature,
9 suspended them from the overtime requirements, because we
10 really have to make snow while the snow flies, or move it
11 or manage it. And we are very tied to these weather
12 patterns.

13 What we had asked for and proposed in our
14 discussions was to move from a 56-hour week to a 48-hour
15 week. We feel that that's fair. And certainly, in
16 today's labor climate, that's a reality. We are in a --
17 we have a very hot, as we all know, economy in the state,
18 and it's very competitive. So, we are prepared to move
19 back.

20 In further discussions, however, with both staff
21 and counsel, it appears that what we would like to do, as
22 I proposed in the letter, to have a 48-hour year-round,
23 simply doesn't work because of the nuances and the legal
24 nuances that were pointed out to us of the federal Fair

1 Labor Standards. There's a difference between resorts
2 that are on federal land and that are on private land,
3 and different standards apply. And so, we are -- we are
4 asking, and we are going to give you a follow-up letter,
5 asking you to take those legal considerations into
6 account, and we would like to see a 48-hour week in the
7 winter and a 40-hour week in the summer.

8 The summer -- it's important, however, to note
9 that the summer for us has traditionally been four 10's.
10 It's a lifestyle issue. People want to go camping,
11 fishing, get into the back country. So, we would like to
12 have four 10's.

13 The law provides that you can do all of these
14 things if you have a vote. And therein lies, really, one
15 of the hardest parts we have. We have 16,000 employees
16 in our industry. 14,500 of them are seasonal. And of
17 those, about half are gone. They come within a period of
18 time, and some don't even last a season in some resorts.
19 So, we end up with a tremendously seasonal, volatile
20 turnover at our seasonal level. And for our core year-
21 round people, they would be somewhat at the mercy -- and
22 then there's the question of when do you have the vote.
23 A year like this, when many of the resorts didn't get
24 started until even into January, it becomes a very

1 difficult thing for us to comprehend. And in many ways,
2 we feel it's unfair to the year-round employees, the
3 hourly year-round employees, as well.

4 So, with me today, I have, as I say, a number of
5 individuals from the resorts in different walks, and I
6 think I'd just like to let -- let's start with Kevin
7 here, because -- from Dodge Ridge -- because they are, I
8 think, emblematic of the kind of year we've had.

9 MR. JOHNSTON: I'm Kevin. I'm the lift
10 maintenance manager for Dodge Ridge, in charge of the --
11 keeping the lifts -- getting the lifts fired up in the
12 mornings and making sure that they're safe and staying
13 all day. And it's part of my job. It's about a 10-hour
14 day during the winter months. We probably work six,
15 seven days a week. You know, it's our busy season. And
16 I know a lot of us kind of count on that extra money.
17 That's kind of like -- that's our little window to make -
18 - make the extra cash to get through the summer and stuff
19 like that, so we do put a lot of hours in.

20 This year my ski area had a bad year. We opened
21 the 27th. We don't have snow-making. We opened the 27th
22 of January and closed April 9th. So, we're -- you know,
23 this year, we're -- we're down about half from what our
24 annual profit is, this year.

1 So, just speaking with Bob, I mean, that 56-hour
2 deal and all that overtime does make a big dent in the
3 profits, especially for a small area like ours.

4 MR. ROBERTS: Okay. Glenn, do you want to --

5 MR. KREIS: Yeah. My name is Glenn Kreis, with
6 Mammoth Mountain. I'm staff supervisor on cats group.
7 I've worked for Mammoth Mountain for 28 years -- 28
8 seasons, not all year round.

9 And I went through this before the 56-hour law
10 and when we had no overtime at all. I mean, you could
11 work all the hours you wanted, when I was at the low end,
12 beginning. I started out as a lift operator, worked on
13 ski patrol, I was a fry cook, and I've been 18 years
14 working snow cats.

15 And in my experience, the low-end employee got
16 hurt at 40 hours, especially the people that were in
17 services like cafeteria, ticket sales, hotel
18 reservations. They did not get 40 hours. You went home.
19 You got maybe 38 hours a week. And it really hurt, when
20 you're at the bottom end of the pay scale. They want
21 those extra hours, and it really, really tore them up.

22 My job, it doesn't really affect. I'm at the
23 top end of my pay scale. It doesn't bother me at all,
24 where I'm at. And in my department, we will get the

1 overtime because of the snow factor. I mean, we have a
2 mountain open, and we have to groom it all.

3 But in my experience, that's what happened. We
4 -- it just -- I was a bottom-end kid working in the ski
5 industry, and we wanted -- I went there working 100 hours
6 every two weeks. All of a sudden, I'm working 78. And
7 rents were \$250 a month for a two-bedroom place, and the
8 salary was \$3.00 an hour, and it just killed you. Now
9 the salary's at \$8.00 an hour, and a one-bedroom
10 apartment like I live in is \$550 a month. These kids get
11 buried. They just get nailed. And they stack them six,
12 seven, eight in apartments now, even with what they're
13 making. And they need those hours.

14 And granted, a lot of them don't want it. They
15 want to go snowboarding and skiing.

16 But that's just a fact of what happened, you
17 know. It went to 40 hours, they cut our hours. Then it
18 went to the 56 law, and we got that extra 10 hours we
19 could work. And that's what's happened in our industry
20 back in the '70's. And I remember it well.

21 So, I -- that's just my opinion of it. I like
22 time and a half over 40, but I know what happens on the
23 bottom end with those kids. So, that's all I have to
24 say.

1 MR. COCHRANE: My name's Brian Cochrane. I'm
2 assistant snow-making supervisor at Snow Summit.

3 Just to reiterate what Mr. Roberts said, we're
4 kind of at the mercy of the weather. It isn't -- you
5 know, it's up and down each season, fluctuates.

6 Like Glenn, myself, I've been in the business
7 for quite a few years. And as assistant supervisor, I'm
8 going to get the hours anyway. A typical snow-making
9 shift usually lasts minimum of 10 hours, if not more.
10 And when the weather's cold, we're racking up the hours.
11 And when it's not, they usually find something else for
12 us to do, parking lots. Myself, I go to lift maintenance
13 or the cat crew, grooming. But if, you know, this deal
14 where, if they're going to cut back our hours because of
15 the overtime, then they're probably not going to find
16 work for us in the -- in other departments because, you
17 know, they have only so much that they can spend.

18 It's -- most California ski businesses aren't
19 usually owned by a big corporation or something, you
20 know, like -- like Vail or US Ski, US. It's mostly the
21 area you work at, like Snow Summit is just Snow Summit.
22 You don't have a corporation that we can dig into for
23 extra funds or something.

24 But if -- if they have to go back home, say,

1 after 8 hours and they want to cut back on the overtime -
2 - typically, we have two shift changes if we're making
3 snow around the clock, usually five at night till five in
4 the morning or vice versa -- if it has to go to like
5 three or four shift changes, it would be, personnel-wise,
6 a logistical nightmare, because the guy's 8 hours are up,
7 "Okay, you have to go home," and his replacement's not
8 there. It's just, you know, too bad. Then your -- the
9 size of your crew is going to fluctuate, and you'd kind
10 of like to keep it even so we can stay on top of things.

11 Snow-making, especially in a year like this
12 year, we're very dependent on it, geographically
13 speaking. And the estimated cost is like \$2,000 to
14 \$3,000 an hour to make snow. That's equipment rentals,
15 diesel fuel, and salaries and so forth.

16 So, the business we're in, we're kind of like
17 farmers and such now, agriculture. We're at the mercy of
18 the weather. Some years are better than others.

19 MR. ROBERTS: Don, do you want to --

20 COMMISSIONER BROAD: Can I ask you a couple
21 questions?

22 MR. COCHRANE: Yeah, sure.

23 COMMISSIONER BROAD: And I'm going to have some
24 more questions specifically for you, sir.

1 Tell me about the wage rates where you work for
2 the various occupations.

3 MR. COCHRANE: I would -- say like what would be
4 the entry wage for a brand-new snow-maker?

5 COMMISSIONER BROAD: Yeah.

6 MR. COCHRANE: \$7.50 to \$8.00 an hour is usually
7 what we start them off at.

8 COMMISSIONER BROAD: And to what?

9 MR. COCHRANE: Myself, right now, I'm up to
10 \$12.25. The ceiling in my position is \$14.00 an hour.

11 COMMISSIONER BROAD: Do you get any benefits?

12 MR. COCHRANE: As far as insurance or anything?

13 COMMISSIONER BROAD: Yeah.

14 MR. COCHRANE: No. I'm, right now, just
15 seasonal.

16 COMMISSIONER BROAD: So nobody gets health
17 insurance?

18 MR. COCHRANE: No, sir. Oh, we do have -- we do
19 have an accident insurance, you know, like if you're out
20 free skiing on your own or something. It'll -- it'll
21 cover emergency costs and such like that. We do have a
22 package for that.

23 COMMISSIONER BROAD: And do you get anything
24 like vacations, paid vacation or holidays off?

1 MR. COCHRANE: No, sir. I'm on -- still on
2 seasonal status. Those people that do get those benefits
3 would be like Don, which is classified as a full-time,
4 year-round regular.

5 COMMISSIONER BROAD: So that's the -- maybe the
6 2,000 out of the 16,000?

7 MR. COCHRANE: Yeah.

8 COMMISSIONER BROAD: Now, so what about like
9 someone who's a fry cook? Do they get -- are they
10 minimum wage employees?

11 MR. COCHRANE: I'm sure that they start them off
12 at something more than minimum wage. I really couldn't
13 tell you about, you know, the pay scale for other
14 departments.

15 COMMISSIONER BROAD: Well, okay. Well, I'll ask
16 somebody else.

17 Okay. I'm done.

18 MR. ROBERTS: Don?

19 MR. WOLCOTT: I'm Don Wolcott. I'm in charge of
20 the snow cats at Snow Summit.

21 I really can't add a whole lot to what Brian has
22 mentioned, except like we're at the mercy of the weather.
23 We had a bad season this year.

24 Usually, in my department, I can bring in three

1 seasonals to help with the snow cats. These three are --
2 they're locals who live in the valley. This year I could
3 only bring in one. And for twelve snow cats, trying to
4 keep them going constantly, it was a little overwhelming,
5 us putting in 10-, 12-hour days six days a week.
6 Sometimes I've worked two weeks straight.

7 I really -- that's just kind of the impact the
8 weather has on us. We can't afford to bring these people
9 in. And they want us to do more. Usually I can keep one
10 or two, even during the summer. And this year, they're -
11 - they're gone.

12 COMMISSIONER BROAD: Well, how is it that you've
13 determined that you can't afford to bring those people
14 on?

15 MR. WOLCOTT: That's just the way it comes down
16 with the budget. In fact, our budget disappeared when we
17 went through a December without any storms. We had a
18 budget, and the next thing you know, we didn't have a
19 budget. We were trying to -- we couldn't buy any parts
20 for the snow cats. We couldn't afford the extra labor.

21 I'm not upstairs. I don't know who makes these
22 decisions, but I just know that we didn't have a budget.
23 I couldn't afford these parts, I couldn't do this, I
24 couldn't do that, I couldn't bring these people in that I

1 was hoping to bring in. And that's the bottom line. It
2 was a bad year.

3 MR. ROBERTS: Okay. Glenn, did you want to add
4 something to that or --

5 MR. KREIS: What -- what you were saying on the
6 snow cat, these things aren't cheap machines. They're a
7 quarter-million-dollar machines. Parts -- we have Piston
8 Bullys -- they're from Germany -- Piston Bullys. Fuel
9 caps are \$20, just for a fuel cap, plastic, shipped over
10 from -- and this is how we groom. We've got Bombardiers
11 -- they're in Canada -- and we've got Piston Bullys and
12 Leitners and Pernoths. They're from Europe, and they are
13 not cheap machines. The only other thing -- I think
14 Tucker's still in business in Oregon, but that's mainly a
15 transport vehicle, not a grooming machine.

16 And so, no budget, no parts. And they're
17 hydraulic nightmares. I mean they are --

18 MR. WOLCOTT: They're all hydraulics.

19 MR. KREIS: -- very expensive to drive. So,
20 it's expensive to keep each machine running.

21 We have a fleet -- I don't know any more -- are
22 on-line groomers are -- we have twelve, we've got four or
23 five to the snowboard park, we've got transfer -- we
24 probably have forty machines there, sitting around.

1 MR. WOLCOTT: Yeah. We were putting them down.
2 I mean, no parts, just -- they were just red-tagged for
3 the season. And towards the end, we lost two cats.

4 MR. ROBERTS: Tim, do you want to --

5 MR. BROADHAM: My name's Tim Broadham. I work
6 at Mammoth in the personnel function.

7 I came to the industry five years ago from a
8 retail background, distribution background, here in
9 southern California. And I'd never heard of exemptions
10 from the overtime law prior to coming to the ski
11 industry. I worked in retail warehouses, where we
12 routinely sent people home at seven and a half hours or
13 39-hour weeks and things like that, because we just
14 couldn't afford to pay time and a half or double time for
15 people to stay on the clock.

16 And now that I'm in the ski industry -- I
17 started out as a lift operator and worked as a snow
18 maker, worked in our bicycle park building bike trails
19 and such in the summer. And I'm very aware of how, in my
20 first couple seasons, the management was very alert to
21 the budget these guys are talking about, because it's a -
22 - it's a pretty thin-margin business, and a lot thinner
23 than other businesses that I've been in, anyway. And I
24 wasn't aware of that my first couple years.

1 And in the past couple seasons, I've been
2 working in the personnel function for Mammoth, and I'm
3 very aware of the issues associated with seasonal
4 workforce. It's difficult to recruit, at Mammoth, for
5 instance, 1,800 seasonal people every year we bring in.
6 And to be able to go through the kind of season that we
7 just went through, where we basically didn't open the
8 resort for 45 days to the extent that we normally would,
9 we have to take some pretty drastic measures to keep
10 people around.

11 As an example, we had about 410 people in
12 employee housing this year because housing's an issue in
13 mountain communities. It's a major -- major issue. We
14 served employee dinners for 44 nights straight, all
15 through December and January, for free for employees, and
16 we served almost 19,000 dinners for our employees, just
17 to have them stay on, because they were getting limited
18 hours. There just weren't -- if the revenues aren't
19 there, the guests aren't coming. Los Angeles, San Diego,
20 Santa Barbara people look at the weather report, and if
21 there's no snow at Mammoth, they don't drive five hours,
22 six hours, seven hours to Mammoth to go skiing because
23 there isn't any skiing. They don't come to town. There
24 isn't any business in the town, so all of our employees

1 don't work. And as a result, they're still having to
2 incur costs for housing and kind of hanging in there
3 hoping that -- that, you know, the snow will come any day
4 and they're going to be able to get to work and -- and
5 have the experience they came -- came to our resort to
6 have.

7 So, we did some pretty drastic things, like the
8 employee dinners that I was mentioning, as an example.
9 And we just think -- at least, there are a number of us
10 who've talked about this in terms of the budget
11 management -- that -- that overtime at 40 hours could be
12 a really significant change for our resort, similar to
13 what Glenn was talking about. And I don't have the
14 experience he did, you know, ten years ago. But I'm
15 pretty convinced that the management of Mammoth will --
16 will see 40 hours as a limiting factor, and they will
17 send people home at 40 hours as opposed to paying time
18 and a half, because the budgets just aren't there. And
19 labor is a huge piece of our -- of our operation.

20 MR. ROBERTS: Okay. I'd just like to say one
21 last thing, sort of globally. We -- we are -- for many -
22 - most of these communities, Mount Shasta, all the way
23 down through Lake Tahoe, Mammoth, Sonora, Big Bear Lake,
24 Wrightwood, we're kind of the economic engines for these

1 communities. And so, it's a struggle. It's a -- it's a
2 very challenging business. I think all of us are in this
3 because of the lifestyle. We got into it because we like
4 the -- we like the industry, we like the people.

5 No one's getting filthy rich. Wall Street's
6 turned its back. For one company that went public at 18
7 is now between \$1.50 and \$2.00 a share. And so, you get
8 some idea that over the last two years, while the rest of
9 the world has taken off, the good old ski industry has
10 kind of languished.

11 So, for us, it's an economic issue, and we're
12 trying to find that balance and make it right. And
13 that's why what we are proposing at the 48-hour and the
14 40 in the
15 -- in the summer, we think, is both a fair and a correct
16 approach.

17 COMMISSIONER BROAD: Mr. Roberts, you mentioned
18 that you had \$300 million in sales. Is that including
19 year-round activities or just seasonal?

20 MR. ROBERTS: No, that's -- that's year-round,
21 from the ski resort, because some of them have a few
22 small ancillary activities. But that doesn't -- most of
23 the resorts don't own their own hotels or -- they have
24 restaurants in the lodges, but it varies from place to

1 place. But it's primarily the operations from the
2 running of the resort, not real estate or other kinds of
3 things.

4 COMMISSIONER BROAD: Okay. Well, let me ask you
5 this question. Let's get into some of these issues here.
6 We have lots of seasonal industries in California, like
7 canneries, that have shorter seasons than you, that are
8 dependent on the weather and on crops and agriculture in
9 a way equally as dependent as you are, where we pay daily
10 overtime and have always paid daily overtime. And they
11 are the major employers in the communities in which they
12 operate in the Central Valley. And those employees
13 depend on that overtime to get them through the rest of
14 the year. And it's understood that that's what's
15 important about overtime, particularly for those seasonal
16 industries.

17 What's so different about the ski industry?

18 MR. ROBERTS: Well, for one thing, in most of
19 those industries you've mentioned, commissioner, they
20 don't have the public showing up at nine o'clock in the
21 morning. One of the great concerns that we have is
22 safely preparing our mountains so that when people show
23 up -- it may have stormed all night or for three days or
24 whatever -- we have to -- we have a -- we have a

1 tremendous safety requirement to make our facilities safe
2 for the public.

3 If I'm a farmer, I don't have -- unless I've got
4 people coming in to pick -- pick and buy my crops, I
5 don't have to deal with the public every morning on an
6 ongoing basis. And that's one of the big differences in
7 our industry, is the fact that we have to be ready for
8 the public on a daily basis. And most people in weather-
9 driven industries, they're kind of removed from the final
10 consumer a step or two.

11 COMMISSIONER BROAD: This Commission has
12 received, I would say, an unprecedented amount of
13 communication from just regular old employees in your
14 industry, and the Legislature received a lot of letters.
15 And these were not these canned letters generated by some
16 group or other; these were heartfelt personal letters
17 sent by hundreds of people in your industry, saying --
18 begging us to cover -- to cover employees under the daily
19 overtime rule, that conditions are oppressive, that
20 employees are made to work at or near minimum wage, under
21 \$7, \$8, \$9 an hour, whatever, to work weeks at a time
22 straight for 10, 12, 14 hours, sometimes without breaks
23 and meal periods, which you're not exempted from -- so
24 I'd like to have you address that question. And

1 probably, we've received more mail of that sort, where
2 it's clear that it was not orchestrated and that people
3 very much felt this than in any other of the mounds of
4 communication we've received since AB 60.

5 Do you have any comments on that?

6 MR. ROBERTS: Well, having not seen any of the
7 record, it's hard for me to react specifically to that,
8 but the conditions are unique.

9 And again, part of it is, with this tremendous
10 body of seasonal work -- and are these coming from
11 seasonal temporary workers, the seasonal people, or are
12 these coming from the year-round? There's a real
13 difference, I believe, between these two different
14 elements. But they're all necessary to work together to
15 make it work.

16 And we have, right now, the employment in our
17 industry, not just in California, but everywhere -- it's
18 almost globalized -- the fact that we have probably this
19 year about 1,000 young people coming in under these J-1
20 visas and working for 90 days, for the experience, for
21 the language, or whatever. And so, we have this
22 tremendous turnover within the resorts.

23 And so, I think there might be one -- it's hard
24 for me to react specifically without kind of generically

1 knowing where they are coming from, commissioner.

2 COMMISSIONER BROAD: Well, tell me about breaks.

3 Gentlemen, do you get breaks?

4 COMMISSIONER DOMBROWSKI: Give your names.

5 MR. WOLCOTT: Don Wolcott, Snow Summit. We get
6 two 15-minute breaks a day.

7 COMMISSIONER BROAD: Two 50-minute breaks?

8 MR. WOLCOTT: 15-minute breaks.

9 COMMISSIONER BROAD: 15-minute breaks?

10 MR. WOLCOTT: Yes. And we get a 30-minute lunch
11 period.

12 COMMISSIONER BROAD: In a 10-hour day, a 12-hour
13 day?

14 MR. WOLCOTT: This is just a regular 8-hour day.
15 You get more breaks. It depends on if we're working
16 really hard, we get more breaks. We get longer lunches
17 if we're working longer periods of time. I mean, there's
18 no one there cracking the whip. It's -- it's -- all my
19 employees, including myself, are happy where we are, in
20 our part of Snow Summit, in the shop. It's -- really,
21 it's a nice place to work. We get breaks. We get plenty
22 of time. There's no pressure, except other than getting
23 the machines running, obviously.

24 But we -- we take our breaks. I have never

1 heard of a complaint.

2 COMMISSIONER BROAD: Do the rest of you want to
3 comment?

4 MR. JOHNSTON: Kevin Johnston, Dodge Ridge. We
5 get breaks on a regular basis, one, you know, 15-minute
6 break in the morning and afternoon, and lunch. The only
7 time we wouldn't get a break, say, if a lift was down and
8 you had 200 or 300 people hanging out on a lift and it
9 was snowing. And, you know, our priority is to get that
10 lift going. So, that would be the only case where we --
11 you know, we might work through our break period, for the
12 safety of the public.

13 COMMISSIONER BROAD: Okay. Let me ask this
14 question about the safety of the public and hours. You
15 folks are operating some pretty heavy equipment. I have
16 a concern with this, again, since -- especially given
17 some of the correspondence we received -- people
18 operating heavy equipment that the public's dependent on
19 getting very tired, working very long hours. I'm
20 concerned that fatigue could compromise safety.

21 We received letters from people on the ski
22 patrol, who, obviously, have a very significant safety
23 function, who seem to be working very long hours at
24 straight time.

1 And I'm wondering what your thoughts are about
2 whether you, for example, would think if some of these
3 hours were reduced. Let's assume that you didn't lose
4 any compensation, but that some of these hours were
5 reduced. It might make you less tired, more alert on the
6 job.

7 MR. JOHNSTON: Well, in a way, I think it -- of
8 course, it might, but since, in our area, there's me and
9 one other person, actually, that knows all the little
10 things that goes on the lifts, the little idiosyncrasies,
11 it's kind of -- you know, one of us has to be there, no
12 matter what, because there's nobody else. And you can't
13 just train somebody overnight to know all these little
14 things on the lift.

15 So, you know, there's times when you do have to
16 put a lot of hours in, and maybe you're not -- you're not
17 as sharp as you would be if you had less hours. But in
18 the long run, it's better that you're there than not
19 there. You'd best have someone there that knows -- knows
20 what's going on.

21 COMMISSIONER BROAD: Okay. Thank you.

22 COMMISSIONER DOMBROWSKI: No questions?

23 Thank you.

24 MR. ROBERTS: Thank you.

1 COMMISSIONER DOMBROWSKI: Pam Mitchell.

2 AUDIENCE MEMBER: (Not using microphone) She'll
3 be right back.

4 COMMISSIONER DOMBROWSKI: Marcie Berman, and Tom
5 Rankin.

6 Is there anybody else who wanted to talk about
7 the ski industry?

8 COMMISSIONER DOMBROWSKI: You've got to identify
9 yourself for the recorder.

10 MS. MITCHELL: I'm Pam Mitchell. I'm a Mammoth
11 Mountain seasonal ski area employee, and I'm also an
12 employee of Von's in Mammoth Lakes -- that's my second
13 job
14 -- although I'm temporarily on disability because of an
15 injury at Von's, not at the ski area.

16 And I'm here today because of my concerns about
17 California Mammoth ski resort exemptions which allow them
18 to work us 56 hours a week before they pay overtime. And
19 I feel that this is a very unjust exemption, a very
20 unjust law.

21 I hope you've all had a chance to read these.
22 These are letters from employees stating how they feel
23 about this exemption and how it's affected them over the
24 last twenty years and how it's impacted them directly.

1 And I think one of the important things, in reading all
2 these letters from these employees, is to realize that
3 these are individuals. These are people who've lived and
4 worked in Mammoth Lakes for ten, twenty, thirty years,
5 and these people have made a career out of the ski
6 industry, whether they are on cat crews, ski patrol, ski
7 instructing, housekeeping individuals, people in the
8 restaurants and bars, people working in the summer
9 activities that go on. But these are people who live and
10 work in Mammoth Lakes on a year-round basis. These
11 letters are representative of over 200 people that I've
12 spoken with directly and personally and on a regular
13 basis. They're representative of last year and this
14 year.

15 They're -- the seasonality, the snow falling and
16 the snow not falling, does affect our business. But the
17 conditions remain the same every year in Mammoth. Last
18 year the complaints about working long hours many days in
19 a row without being paid overtime was the exact same
20 thing last year. And last year we had snow at a
21 reasonable time. It does fluctuate.

22 The overtime, whether -- we work overtime
23 whenever we work. And we're not asking for something
24 special when we're not working. What we're asking for is

1 overtime when we do work these long hours. If there's no
2 snow, we're not asking for anything. If there's no work,
3 we're not asking for anything. We're asking that we be
4 treated the same as the rest of the California employees,
5 and that when we work these long hours and many days in a
6 row, that we are compensated for our efforts.

7 At one time, maybe the perspective was, back
8 when this exemption came in -- I don't know why it came
9 in -- but twenty years ago when this exemption came in,
10 maybe the perspective was that we were all a bunch of ski
11 bums, a bunch of ski kids, or we were just college
12 students out on a break, you know, having a fling for the
13 winter. But I'm asking you to look at what the situation
14 is now and how, over these years, how this exemption has
15 affected us economically and socially.

16 It's always been difficult to make a living, at
17 least in Mammoth Lakes. I don't know about the other ski
18 resorts. We're isolated. There's not a lot of employers
19 to choose from. And our jobs are real important to us.
20 People involved in this type of work do love what they're
21 doing. There are many, many dedicated employees. They
22 love the mountains and the skiing and braving the
23 elements. And they have been very willing to do with
24 very little in order to work at the ski area and in order

1 to keep this lifestyle going.

2 It's been -- in the last couple years, Mammoth
3 Mountain ski area has formed some type of -- they've
4 combined in some way with InterWest, which is a major ski
5 developer in the country. And as a result of that, the
6 rents and property values have gone up so drastically.
7 And where we were having a hard time making it before,
8 we're having -- we're not surviving there now. Many of
9 us, if we -- depending -- this overtime could make a
10 difference for us in how we're able to maintain.

11 I think it's important for us employees for you
12 to realize that these are careers. There are seasonal
13 people who come in every season. I don't know the exact
14 number, but my estimate is that there's 800 -- minimally
15 800, to 1,000 people who work at the ski resort year
16 after year and live in the town of Mammoth Lakes.

17 The ski industry is a booming business. The ski
18 industry is a booming business all over the country and
19 in other countries. Since the merger with InterWest and
20 looking at the development of resorts, it's a growing,
21 huge business, and it employs -- can't even imagine how
22 many people it employs, people who are dependent on that.
23 And our employees, some of these employees, have been
24 here ten, twenty, thirty years, have come to depend on

1 Mammoth Mountain ski area for their living. There is --
2 there are not other places to go if you are not making
3 wages there. You don't just leave your job, you have to
4 leave your town and the community that you've been living
5 in. It's real small and isolated.

6 Things are going up at an incredible rate. It's
7 just appalling, on how much the rents are going up and
8 how everything is rising. Our wages haven't risen, and
9 we have not been receiving overtime. It's created a very
10 low-income group of people for a large part of our
11 population.

12 Our permanent population is approximately 5,000
13 people a year, and it goes up in the winter. And, of
14 course, I guess, on a weekend it goes up to 30,000, the
15 temporary people that come in. And when business is
16 booming and we have this income and these people come in,
17 we're just asking that we be paid overtime for these long
18 hours.

19 I think that -- to finish up -- and what we're
20 asking is that we be treated like the rest of California
21 employees and be paid overtime and be rewarded for when
22 we do put in long hours.

23 And I think, last, I want to point out -- I
24 mean, maybe this is a known, but we work without a

1 contract. We have no contract. And in our employee
2 manual, it states, of course, that we're -- you know,
3 we're at-will, we can be terminated at any time, with or
4 without reason. But -- and maybe this is in all
5 contracts, but I want to point it out to you, that in our
6 employee manual, that it states that the company reserves
7 full discretion to modify, add, or delete any provisions
8 and policies of this manual, at any time, without notice,
9 and that we are always living on -- on an edge, partly
10 because of weather, but this is not all due to weather.
11 This is due to other things besides this weather.

12 And probably you may be hearing from more
13 people. It's a very courageous thing for people to stand
14 up or write letters because for years we have been
15 threatened with having our hours cut, for various
16 reasons. And this is just one -- one of those reasons.

17 COMMISSIONER BROAD: Excuse me. I think you can
18 rest assured that anybody who communicates to this
19 Commission and is retaliated against will be protected.
20 And I'm sure that the industry will never do a thing like
21 that.

22 MS. MITCHELL: Thank you.

23 COMMISSIONER DOMBROWSKI: I have a question.
24 What is -- in your correspondence, one of the articles

1 has you listed of the "Mammoth employees organization."
2 What is that?

3 MS. MITCHELL: I started a Mammoth employee
4 organization a couple years ago and was having a really
5 hard time making it in Mammoth, making a financial living
6 in Mammoth. I have a couple children I'm raising there.
7 No matter how many hours I worked, it didn't seem like I
8 was making a living.

9 And in talking and listening with other people,
10 I realized that I wasn't unique, that this was -- this
11 was what was going on with all employees. And through
12 that and through discussions, we decided -- a few people
13 decided to try to get some kind of organization started
14 and going so that we might be able to do something to
15 change our conditions there, because, if we don't, a lot
16 of us aren't going to be living there any more.

17 COMMISSIONER DOMBROWSKI: How many people are in
18 this organization?

19 MS. MITCHELL: A little over 200.

20 MR. RANKIN: Tom Rankin, California Labor
21 Federation.

22 As you look at this issue, I think the most
23 important thing to remember is the Legislature's words
24 that they put in the statute regarding their intent. And

1 they are very clear that they think an 8-hour day is a
2 basic labor right in California. And I would submit that
3 a much better case has to be made for keeping any kind of
4 exception for the ski industry than was made.

5 It's very clear that the employees in the
6 industry want daily overtime. They need it to make ends
7 meet. And they feel very strongly that they shouldn't
8 have different conditions from other workers. What's the
9 difference between a housekeeper who works in a ski lodge
10 and a housekeeper who works in a hotel, in terms of their
11 duties? A cook? A store clerk? It's simply not just,
12 for those folks.

13 The wages are low in this industry. Overtime is
14 not going to break the industry.

15 There are safety problems with people working
16 long hours, and some of these letters talk to that.

17 There are tremendous -- if these letters are
18 correct, from the employees -- there are a tremendous
19 number of wage and hour law violations. And in many
20 cases, people weren't even being paid overtime when they
21 worked over 56 hours a week. They were put off the
22 clock.

23 Other industries are able to plan for overtime
24 that are seasonal industries. My understanding is that

1 most of the overtime actually in this industry occurs
2 around Christmas break. That's certainly foreseeable
3 every year, and that can be planned for. Agriculture, as
4 was mentioned, is an industry that's dependent on the
5 weather and has seasonal fluctuations. They've lived
6 with overtime for years.

7 In terms of another point -- and this actually
8 differentiates this industry from agriculture --
9 agriculture, there's always been sort of a state policy
10 that agriculture has been taken care of, subsidized, and
11 the idea is that people need inexpensive food. This
12 industry is a luxury, and most of the people who take
13 part in the activities are affluent people. If there's a
14 real problem, I am sure that lift tickets could go up a
15 buck, or whatever, to pay for the overtime.

16 And finally, our neighboring state, one of the
17 few other states that has daily overtime, Nevada, which
18 has a ski industry, does not make any exemption for the
19 ski industry. They pay overtime after 8 hours a day.

20 One other point in terms of the comment on the
21 10-hour, the vote. Certainly regulations can be crafted
22 here
23 -- they will have to be in the construction industry --
24 to deal with the nature of employment and when the vote

1 takes place and who gets to vote. So, I don't see that
2 as a major problem that this industry would have, if the
3 employees indeed are put in the same position as all
4 other employees, in terms of being able to vote for
5 different alternative workweeks under 10 hours a day, 10
6 or under. They should -- election procedures should be
7 able to be worked out to deal with that.

8 Thank you.

9 MS. BERMAN: My name is Marcie Berman, and I'm
10 here as a representative of the California Employment
11 Lawyers Association, which is an organization of about
12 250 attorneys in California that represent employees in
13 various types of employment matters, including wage and
14 hour disputes.

15 I would like to just say that CELA supports
16 providing the same level of overtime protection to these
17 employees as to other employees covered under the law
18 after AB 60. I didn't hear anything from the industry
19 that convinced me that there's a distinction there that
20 would justify giving these employees less protection.
21 And I would agree with what the other two witnesses said.

22 A couple other things I -- additional things I
23 wanted to say are that it's my understanding, from
24 talking to employees in this industry, that the employers

1 don't retain them on a fixed schedule week in and week
2 out, regardless of the workload, but instead, that they
3 call people in only when they're needed. And therefore,
4 they don't have any down side risk for their payroll
5 overhead. And it seems to me that they want to have
6 their cake and eat it here. They want to maintain the
7 situation where they have no down side risk, but then,
8 when it's busy and they're bringing in money, they don't
9 want to have to then pay people overtime during those
10 periods. That doesn't make any sense to me.

11 The other thing I wanted to point out is that
12 the industry may be seasonal in the respect that there's
13 only snow during part of the year, but it's been my
14 experience that at least some of the ski resorts are
15 fully functioning and very active, with a lot of people
16 there paying them money, during the summer months. For
17 example, Squaw Valley is a, you know, Four Season resort.
18 North -- what's it called?

19 COMMISSIONER DOMBROWSKI: Northstar?

20 MS. BERMAN: Northstar is filled with hundreds
21 of people during the summer. They have big tennis
22 programs, swimming pools, mountain biking. Homewood has
23 a laser tag program operating all summer, so that it's
24 got its lifts going all day.

1 So I think it's a bit of a misnomer to treat it
2 as a seasonal industry, even though there may be
3 different activities going on throughout the year.

4 That's all.

5 COMMISSIONER BROAD: I'd actually like to ask
6 Mr. Roberts a question about that, if you could come back
7 up.

8 MR. ROBERTS: Sure.

9 COMMISSIONER BROAD: How many ski resorts are
10 there in the state?

11 MR. ROBERTS: Yes. I'm Bob Roberts. There are
12 38 resorts, alpine and cross-country, because they all
13 have very similar kinds. But they're primarily downhill,
14 or alpine, as we would say in ski resorts.

15 COMMISSIONER BROAD: And breaking out between
16 alpine and cross-country, how many?

17 MR. ROBERTS: We have -- cross-country is a
18 little -- I mean, a year like this year, a cross-country
19 resort may not function at all. It may change ownership.
20 So, we have essentially 10 of those resorts are cross-
21 country, and the other 18 -- the other 28 are downhill.

22 COMMISSIONER BROAD: Of those 28, because I
23 assume that's what we'd be talking about --

24 MR. ROBERTS: Um-hmm.

1 COMMISSIONER BROAD: -- how many are open all
2 year round in some form?

3 MR. ROBERTS: In some form, probably 14 or 15.

4 COMMISSIONER BROAD: And of the ones that are
5 closed, how many months of the year are they closed?

6 MR. ROBERTS: They are generally -- and, again,
7 a normal season is between four and five months. Five
8 months is what we really aim for. Mid-November through
9 April would be -- would be a normal operating season.
10 And an operating -- again, like Dodge Ridge this year
11 opened in late January and closed in either late March or
12 early April. So, it's a very skewed thing.

13 Of our larger resorts, the larger resorts,
14 clearly, because they carry larger year-round staffs, try
15 and engage in some kind of summer activity to justify the
16 overhead. They've got -- they've got a much larger
17 overhead. So -- but to my records and my understanding,
18 all of those would still qualify as seasonal recreational
19 businesses under the Fair Labor Standards, which means
20 that in a six-month period, no more -- you earn no more
21 than a third of your income in that six-month period, so
22 that two-thirds of your income or your revenues are done
23 during your, quote, winter season or your busy season.

24 COMMISSIONER BROAD: Okay. Now, let me ask

1 this, because I'm not a skier, so I really -- I've been
2 to some of these places, but not for very long. Anyway -
3 -

4 (Laughter)

5 MR. ROBERTS: We could certainly help you out
6 there.

7 COMMISSIONER BROAD: If you get me on skis --

8 COMMISSIONER DOMBROWSKI: Not if it costs more
9 than ten dollars.

10 (Laughter)

11 COMMISSIONER BROAD: Anyway, of these 38, I
12 assume a number of them have no hotel facilities or
13 anything like that.

14 MR. ROBERTS: Absolutely.

15 COMMISSIONER BROAD: Right?

16 MR. ROBERTS: Correct.

17 COMMISSIONER BROAD: So they're a little bit
18 more -- almost like outdoor recreation, camping, you
19 know, that sort of environment, rather than a destination
20 resort.

21 MR. ROBERTS: Yes, that's true. In fact, I
22 think our critics in the environmental community consider
23 them industrial-grade recreation centers, for some of our
24 --

1 COMMISSIONER BROAD: Well, they're not here.

2 MR. ROBERTS: Yes.

3 COMMISSIONER DOMBROWSKI: Oh, you don't know!

4 COMMISSIONER BROAD: Well, at least they'll be
5 here next time.

6 MR. ROBERTS: Yeah.

7 (Laughter)

8 MR. ROBERTS: No, it varies. For example,
9 resorts up in this -- in southern California here
10 traditionally do not have hotels. They are -- they have
11 a day market. People drive up for the day. A lot of our
12 resorts are day market -- Dodge Ridge, Boreal -- are day
13 resorts, where people simply come for the day.

14 COMMISSIONER BROAD: Thank you.

15 MR. ROBERTS: Okay.

16 COMMISSIONER DOMBROWSKI: Any other speakers on
17 the ski industry?

18 Okay.

19 (Pause)

20 COMMISSIONER DOMBROWSKI: I'm sorry. We'll go
21 on to the next issue, with the meal periods break.

22 Make sure you identify yourself.

23 MS. PATAK: Sure. Chairman Dombrowski and
24 members of the IWC, my name is Melissa Patak, on behalf

1 of the Motion Picture Association of America, California
2 Group, and our member companies, which include the Walt
3 Disney Company, 20th Century Fox, MGM, Paramount
4 Pictures, Sony Pictures Entertainment, Universal Studios,
5 Warner Brothers, and CBS. I'm accompanied today by Carol
6 Lombardini, senior vice president of the Alliance of
7 Motion Picture and Television Producers, our sister trade
8 association to the MPAA. And Carol handles collective
9 bargaining for our member companies.

10 First of all, thank you very much for convening
11 this public meeting to address the issue of meal periods,
12 among other subjects, under AB 60 and the new interim
13 wage order. We appreciate the opportunity to bring to
14 your attention an unusual result, a requirement that
15 motion picture employers provide two distinct meal
16 periods for employees, caused by the application of the
17 new law. And we welcome the chance to request that you
18 take appropriate action to remedy this situation.

19 Let me first speak to the issue of your
20 authority to remedy the double meal periods now required.
21 AB 60 itself recognizes your authority to take
22 appropriate action in this situation. Section 516 of the
23 Labor Code, which was Section 10 of the bill, states
24 that, quote,

1 "Notwithstanding any other provision of
2 law, the Industrial Welfare Commission may adopt
3 or amend working conditions -- work condition
4 orders with respect to break periods, meal
5 periods, and days of rest for any workers in
6 California, consistent with the health and
7 safety of those workers."

8 The Legislature clearly authorized the IWC to
9 have the final say on appropriate working conditions, so
10 long as the IWC's orders are consistent with the health
11 and safety of California employees. Our request to you
12 falls within the parameters of Section 516.

13 I will briefly outline the problem. Under
14 Section 11 of Wage Order 12-80 -- that's the wage order
15 that affects our industry, which has been in effect since
16 1979 -- all motion picture employees are entitled to a
17 meal period after six hours of work. In addition, our
18 collective bargaining contracts, which number thirty and
19 cover over 200,000 employees, also provide for a meal
20 period after six hours of work. Because Section 11 of
21 the wage order applies to all employees within our
22 industry, regardless of whether they are covered by a
23 collective bargaining contract, motion picture employers
24 are able to provide a uniform and consistent meal period

1 to all employees on a production.

2 Section 512 of the Labor Code, which was Section
3 6 of the bill, of AB 60, now requires a meal period after
4 five hours of work. However, Labor Code Section 514
5 provides for an exemption from the meal period
6 requirement, as well as other provisions of the law, for
7 employees covered by a qualifying collective bargaining
8 agreement. Your interim wage order tracks the statute by
9 requiring a meal period after five hours, Section 9 of
10 the interim wage order, and provides for an exemption for
11 those covered by a qualified collective bargaining
12 contract, Section 7 of your wage order.

13 This new provision in the law requires motion
14 picture employers to provide two different meal periods
15 where employees covered by a collective bargaining
16 contract are working side by side with employees not
17 under a contract's provisions. And let me, if I can,
18 illustrate how this situation arises.

19 If the motion picture calls for a large assembly
20 of actors to fill an auditorium or a stadium, the
21 production will, pursuant to an applicable -- the
22 relevant and applicable collective bargaining contracts,
23 hire extras, that is, people unaffiliated with the union
24 and not covered by a collective bargaining agreement. In

1 these circumstances, the employer must provide a meal
2 period after five hours for these extras, and an
3 additional meal period for the rest of the crew covered
4 by the contract after six hours. This dual meal period
5 disrupts the production schedule, adding delay and
6 accompanying cost increases.

7 The production may not be able to continue with
8 part of the crew stopped for a lunch break. The dual
9 meal period may effectively shut down a production for a
10 part of the working day. In addition, the requirement of
11 a second meal period will arise sooner for those
12 employees entitled to a meal period after five hours,
13 further delaying the production schedule.

14 Moreover, motion picture companies provide lunch
15 at no cost to employees by hiring a catering company.
16 Clearly, the requirement of a dual meal period will add
17 to the cost of catering, creating further expense to
18 movies made in California.

19 Our request to you is for uniformity,
20 consistency, and the ability to adhere to our collective
21 bargaining contracts, all of which we had prior to the
22 enactment of AB 60 and the implementing wage order.

23 We believe you have the authority under Labor
24 Code Section 516 to amend the interim wage order and

1 affirm Section 11 of our existing wage order, 12-80.
2 This would enable motion picture employers to provide a
3 single meal period after six hours, an industry practice
4 and standard for more than twenty years.

5 AB 60 was intended for the purpose of restoring
6 daily overtime for California employees. In the motion
7 picture industry, we never ended the practice of daily
8 overtime in 1998 when the IWC repealed the daily overtime
9 requirement. And so, therefore, AB 60 really was never
10 aimed at our industry. However, the collateral provision
11 on meal periods contained in AB 60 is a hardship on the
12 motion picture employers by increasing costs of
13 production and causing disruption to production
14 schedules.

15 In the last year, there's been much attention to
16 the issue of runaway production, which refers to
17 productions moving out of California to other states and
18 countries which now aggressively compete for this
19 business. There are several bills pending in the
20 Legislature to address ways California can stay
21 competitive, and Governor Davis is considering programs
22 to combat runaway production. We would urge the IWC to
23 help keep California film-friendly by correcting this
24 anomaly in the overtime law and affirm a single meal

1 period after six hours, consistent with Wage Order 12-80
2 and our industry collective bargaining contracts.

3 Thank you, and Carol and I would be happy to
4 answer any questions you might have.

5 COMMISSIONER BROAD: Thank you. I have -- I've
6 had a number of discussions with Jim Neff over this
7 because I have, for many years, dealt with
8 representatives in Sacramento, because I represent the
9 Teamsters, who have a jurisdiction in the movie industry,
10 and we talk a lot.

11 And I'm not as convinced as you are that we can
12 change the statutory requirement. However, I do believe
13 that in this unique situation, that your industry might
14 consider applying for the exemption that the Division can
15 give in Section 17 of the wage order.

16 MS. PATACK: Of our existing wage order?

17 COMMISSIONER BROAD: Of your existing wage
18 order. And it's in all the wage orders, and no one is
19 suggesting it be removed, which -- if I can read it to
20 you, it says,

21 "If, in the opinion of the Division after due
22 investigation, it is found that the enforcement
23 of any provision contained in Section 7,
24 reference 11, 'Meal Periods'; 12, 'Rest Periods'

1 -- "

2 -- et cetera --

3 " -- would not materially affect the welfare or
4 comfort of employees or would work an undue
5 hardship on the employees, exemption may be made
6 at the discretion of the Division."

7 It seems to me that your case is a prime candidate
8 for that sort of situation. One, you're --it's an
9 hour's difference. It's based on the unique
10 situation in which you are following a collective
11 bargaining agreement, which you are bound to follow,
12 and which spills over into employees not covered by
13 collective bargaining. You are paying for the meal
14 period. As I understand it, in my experience,
15 limited experience, to actually be in one movie --
16 it's available --

17 COMMISSIONER DOMBROWSKI: I won't even ask!

18 (Laughter)

19 COMMISSIONER BROAD: I could show it to
20 you. It's a very bad movie.

21 (Laughter)

22 COMMISSIONER COLEMAN: That wasn't your
23 fault.

24 COMMISSIONER BROAD: Anyway, it's available

1 on video. My wife and I are Amish people at a
2 wedding, for one second in the movie.

3 Anyway --

4 COMMISSIONER DOMBROWSKI: But we digress.
5 All right. All right.

6 COMMISSIONER BROAD: That could come up
7 before my confirmation.

8 (Laughter)

9 COMMISSIONER BROAD: Anyway --

10 COMMISSIONER DOMBROWSKI: Okay.

11 COMMISSIONER BROAD: But I think that
12 you're a prime candidate for that, and it might
13 solve the problem rather expeditiously, rather than
14 raising what might be a legal problem for the
15 Commission, taking a statutory requirement saying
16 that meals happen after five hours, and changing it
17 to six hours, and possibly creating a challenge.

18 And I -- my sense -- and I talked to Jim
19 Neff about this -- is I would encourage you to
20 pursue that.

21 MS. PATACK: So, that would be a letter to
22 --

23 COMMISSIONER BROAD: To the Division of
24 Labor -- the Labor Commissioner.

1 MS. PATAK: -- to the Labor Commissioner.

2 COMMISSIONER BROAD: Under Section 17.

3 MS. PATAK: Yeah, I had -- right. I know.

4 I read that, and I just wasn't sure. It seemed to
5 me that it might be over a particular violation. I
6 didn't know if you would do it on a policy basis or
7 sort of an across-the-board basis. But if --

8 COMMISSIONER BROAD: Well, I don't think
9 it's -- I don't -- I mean, Mr. Locker is here, and
10 you can talk to him about it, you know, how the
11 application -- my understanding is that it's not
12 intended after a violation has occurred, but for --

13 MS. PATAK: Okay.

14 COMMISSIONER BROAD: -- specifically for
15 the type of situation you're talking about, an
16 employer comes in -- where there's something unique
17 here. And we're not talking about getting rid of
18 this, we're just -- we have some unique
19 circumstance, and you want to kind of do it this
20 way, and that it would not materially harm the
21 employees in any way or deny them any benefit. And
22 that's clearly what you're suggesting here. It's an
23 hour's difference between an existing -- the
24 statutory meal period and the meal period you're

1 providing.

2 MS. PATACK: Okay.

3 COMMISSIONER BROAD: And so, I would
4 encourage you to do that. I don't know how the rest
5 of the Commission feels, but that would be my
6 reaction.

7 MS. PATACK: Thank you.

8 COMMISSIONER COLEMAN: I was just going to
9 see if our legal counsel had a comment on that.

10 MS. STRICKLIN: I'm not sure about that
11 particular provision of the wage order. I was just
12 wondering about your concern under 516, why it could
13 not be done that way. What do you foresee as the
14 legal challenge?

15 COMMISSIONER BROAD: Well, I think the bill
16 establishes a pretty clear standard.

17 MS. STRICKLIN: 516 of the Labor Code --

18 COMMISSIONER DOMBROWSKI: My understanding
19 is there's a law the Industrial Welfare Commission
20 may adopt and then working condition orders with
21 respect to break periods, meal periods, and days of
22 rest for any workers in California consistent with
23 the health and welfare.

24 COMMISSIONER BROAD: Well, my -- I think if

1 you read the two sections together, I'm not sure
2 that that's suggesting that you can diminish the
3 statutory standard. That would suggest that we
4 could eliminate all meal periods if we decided it
5 was in the health and welfare of employees, or
6 breaks, when you have a statutory requirement that
7 there must be a meal period.

8 And so, I think you have to read those two
9 sections together. I think, read together, it's
10 suggesting that California could increase its
11 protections for workers, but couldn't go beneath the
12 statutory standard set forth in the Labor Code.
13 Otherwise, that section would have no meaning
14 whatsoever.

15 And it is the more specific section, rather
16 than the more general section, and would have to be
17 given some meaning and judicial interpretation.

18 That would be my argument for why I think
19 it would not -- would not necessarily be the most
20 prudent course, from a legal perspective.

21 MS. PATACK: Okay. I understand that
22 there's -- you don't take any decisional --

23 COMMISSIONER DOMBROWSKI: Right.

24 MS. STRICKLIN: No.

1 MS. PATAK: -- action today.

2 COMMISSIONER DOMBROWSKI: What Commissioner
3 Broad is suggesting doesn't preempt anything else we
4 could do. So, it's -- I think it's in your interest
5 to pursue that as well as --

6 MS. PATAK: Wait for a decision from you.
7 Okay.

8 Thank you very much.

9 COMMISSIONER COLEMAN: Thank you.

10 COMMISSIONER DOMBROWSKI: Thank you.

11 Marcie Berman.

12 MS. BERMAN: My name is Marcie Berman, as I
13 said before, and I'm here once again representing
14 the California Employment Lawyers Association on the
15 issue of rest periods and meal periods.

16 In general, I would like to advocate that
17 the IWC seriously consider requiring break periods
18 longer than the ones that have been in the wage
19 orders to date. I have a copy of Wage Order 4, from
20 1998, and it requires rest periods at the rate of
21 every ten minutes net rest time for four hours or a
22 major fraction thereof, and also says that insofar
23 as practicable, shall be in the middle of each work
24 period.

1 And I wanted to make a point about certain
2 types of employees in particular who I think need
3 longer breaks than the net ten minutes that's
4 specified here every four hours. One type are
5 employees who are working in safety-sensitive jobs
6 where their concentration may be affected by working
7 continuously without breaks. And especially since
8 the on-site construction industries are henceforth
9 going to be covered by the wage orders, I can
10 envision that there would be real serious safety
11 hazards with ironworkers, you know, standing up
12 there without having any kind of breaks, or even
13 just a ten-minute break in four hours doesn't seem
14 like a lot to me.

15 The second type of workers that we're
16 particular concerned about are workers whose jobs
17 entail repetitive movements, including factory
18 workers, food processing workers, and all variety of
19 office workers who are working at the ubiquitous
20 computer terminals. I think we're all familiar with
21 the news that's been very widely disseminated in the
22 past ten years about repetitive stress injuries.
23 These injuries are permanent. Once they occur,
24 they're permanent, there's nothing you can do about

1 them. You can certainly do a lot to prevent them,
2 but once they're that, that human being's body is
3 ruined. And I've met factory workers who are
4 grandmothers in their fifties and can never lift
5 their grandchildren because of these injuries that
6 they've got. So it's a serious matter.

7 I brought some news articles from some very
8 prominent, well respected newspapers, and I'll leave
9 a copy with the Commission, talking about this
10 problem and including recommendations from medical
11 experts that people who are involved in these
12 repetitive type of jobs have breaks of fifteen
13 minutes every few hours. In some of these articles,
14 they talk about having a five-minute break every
15 hour or two.

16 So, I think it's incumbent upon the IWC to
17 seriously consider increasing the rest periods that
18 you require of employees -- of employers.

19 The other issue I wanted to point out is
20 this word "net" that's in Section 12 of the wage
21 orders. I did some legislative regulatory history
22 research and, unfortunately, forgot to bring what I
23 found. But what I found were some minutes or
24 findings from a past IWC, where there had been labor

1 proposals to increase the rest period to twenty
2 minutes based on their concerns that by the time
3 somebody actually gets out the door, in order to be
4 able to get some fresh air or walk around and
5 stretch, they may use up their whole ten minutes.
6 You know, in an office building, just waiting for
7 the elevator to go up and down before you can get
8 outside may take ten minutes, or in a factory, just
9 getting out or taking off your gear.

10 So the concern was that the time period
11 needed to be longer. And what the IWC did was to
12 say, "Well, we'll call this a 'net' ten minutes,"
13 "net" implicitly to mean that -- it means, by the
14 time you're outside of your workplace, you get the
15 ten minutes. So maybe something the IWC could do is
16 to, you know, work with that language. I don't
17 think anybody knows what that means. It's certainly
18 not clear on its face. You might want to -- excuse
19 me.

20 MS. STRICKLIN: What order are you
21 referring to? Is it 4?

22 MS. BERMAN: Right now I'm talking about in
23 general, but I've got in front of me Wage Order 4-
24 98.

1 MS. STRICKLIN: And so, it's 12? Is it
2 Section 12?

3 MS. BERMAN: Yeah, Section 12, yes.

4 MS. STRICKLIN: Okay.

5 MS. BERMAN: So you might want to think
6 about defining that word more specifically so people
7 know what it means, and also definitely increasing
8 the time period.

9 Also, what it says in this Section 12 is --
10 "insofar as practicable, shall be in the middle of
11 each work period" sort of implies to me that the
12 employer only needs to allow the person one break
13 somewhere in the middle of the period. And from
14 what I'm reading from these various health experts,
15 it may be better for these people with repetitive
16 injuries to have several breaks. And I wouldn't
17 want employers to think that they can restrict
18 employees and only allow one break when, in fact,
19 several breaks may be better.

20 I think this is something that helps
21 everybody. Obviously, it's better for employers if
22 employees are productive. And some of these studies
23 show that if you give people breaks and let them
24 just stretch and exercise, that they will be more

1 productive. And obviously, injuries hurt everybody,
2 although they hurt most the people who are injured,
3 obviously.

4 The only other point I want to make about
5 the rest periods is that I believe that employers
6 don't necessarily take this very seriously. And
7 it's been my experience that it's sort of routinely
8 ignored. And I don't know what the enforcement is
9 like at the Labor Commissioner, but I would expect
10 that it's a problem because there's no sanction,
11 there's no disincentive to employers to ignore it.
12 So, that's something that you might want to take
13 into account.

14 I don't know what the scope of your
15 authority is to do something about that, but maybe
16 one thing that you could do is to penalize an
17 employer who doesn't require these rest periods by
18 having to pay the employees, you know, double time
19 or some increased amount of hourly rate for those
20 rest periods that they don't get.

21 With respect to the meal periods, the half-
22 hour meal periods, the only thing that I wanted to
23 say about that is that there's language in this Wage
24 Order 4-98, Section 11(A), that says that an on-duty

1 meal period shall be permitted only when the nature
2 of the work prevents an employee from being relieved
3 from all duty, and when by written agreement between
4 the parties.

5 That seems to me to be a pretty loose
6 standard and could be an exception that swallows the
7 rule. I bet a lot of employers who are busy feel
8 that circumstances justify requiring the employee to
9 skip their lunch. But that's -- that doesn't seem
10 to me to be the right balance to end up with. And I
11 would recommend that you -- that you establish some
12 higher threshold for that type of arrangement.

13 (Fire alarm sounds)

14 COMMISSIONER DOMBROWSKI: There we go,
15 eleven o'clock.

16 MS. BERMAN: Oh. Let me just -- I just
17 wanted to finish by putting on the record three
18 newspaper articles. I have a January 23rd, 1997,
19 article from the *Chicago Tribune*; a February 28th,
20 1996, article from the *New York Times*; and a June
21 9th, 1999, article from the *Sacramento Bee*.

22 MR. RANKIN: Tom Rankin, California Labor
23 Federation.

24 Ms. Berman has basically covered our

1 concerns. Just a couple other comments maybe.

2 In terms of meal periods and breaks, we
3 might need to look at things sort of order by order,
4 because there are particular situations. The farm
5 workers have expressed problems, not necessarily
6 with the length of breaks, but with the availability
7 of hand-washing facilities, because oftentimes they
8 eat a breakfast, a meal, at their first break. And
9 if they don't have nearby hand-washing facilities,
10 given the fact that they are often working in dirty
11 conditions and sometimes pesticides are around, it
12 makes it very difficult to do what they need to do
13 within a break, period.

14 I think also that it's important that you
15 look at maybe defining a break period more
16 explicitly so it's clear, you know, that a worker's
17 not just getting ten minutes to sit at the desk, or
18 fifteen minutes. And a lot of union contracts, by
19 the way, have longer rest periods than the IWC
20 orders; I think probably most of them do. I think
21 it's important to consider lengthening, and also, in
22 certain cases where there's work involving
23 repetitive stress, as Ms. Berman stated, to consider
24 perhaps more -- shorter, spread out break periods,

1 because I think the evidence that break periods are
2 necessary in those jobs to prevent repetitive stress
3 injuries is pretty convincing.

4 Finally, I think the biggest problem we
5 have had with meal periods and break periods is the
6 problem of enforcement. And I know that your
7 abilities here are limited. There's no good remedy.
8 But I think you could create a remedy in terms of
9 your -- within your authority by looking at, as I
10 think Ms. Berman suggested, double pay or time and a
11 half pay for -- in cases where these meal periods
12 are violated.

13 And finally, I would like to -- although we
14 do have a bill in the Legislature, which maybe you
15 want to take a look at, actually, which would deal
16 with the problem of the lack of penalties for these
17 periods -- and that's AB 2509, by Darrell Steinberg.

18 Finally, Pam Mitchell would like to say a
19 couple more words in terms of what the real
20 situation is with break periods in her industry,
21 where she works, at least.

22 MS. MITCHELL: Hi. Again, I'm Pam
23 Mitchell, Mammoth Mountain ski area employee.

24 And in my industry, and from some of my

1 employees, cat crew employees have reported to me
2 that they -- when they're rearranging snow, they
3 drive cats -- do their whole shift with no breaks.
4 Frequently they are eating their lunches while
5 they're driving these cat machines. And by the way,
6 these are \$7.50-an-hour employees driving \$250-
7 million cats, that when, every time it snows, they
8 minimally work two to four hours overtime and
9 without breaks.

10 On our ski patrol, ski patrol doesn't take
11 breaks. They take lunches at usually designated
12 times, of course, if there's not some type of
13 emergency going on. Ski patrol can sometimes start
14 at 4:30 in the morning because they have to blast
15 and prepare the slopes prior to the lifts opening
16 up. And they don't
17 -- they don't have breaks. They also have to wear
18 their uniforms and be in the cafeteria and be on
19 duty during the lunch period to be available in case
20 there's any type of emergency.

21 Our ski instructors have very erratic
22 breaks. Frequently after a lesson, especially if
23 they're working with children, they end up
24 babysitting and taking care of the children for

1 fifteen minutes, half an hour, forty-five minutes,
2 once they're through with a lesson. And they don't
3 have breaks.

4 And our lift maintenance operators, many of
5 them do not have restroom facilities at the tops of
6 lifts. And they don't have breaks. They literally
7 pee behind a tree, between -- between tourists. The
8 ones that do have restroom facilities -- we just
9 received a memo which I'm sorry I don't have a copy
10 -- that hantavirus is a thing that we're aware of up
11 in the mountains where I live, and that their --
12 their lift facilities, their restroom facilities,
13 have been so dirty -- not -- not dirt dirty, but
14 from not being cleaned for so many years, that
15 there's been memos issued on warnings on hantavirus,
16 where the lift operators themselves are going to be
17 cleaning them out in order to get them ready.

18 Ski patrol is not allowed to use many of
19 the lift operators' restroom facilities, who do have
20 restroom facilities, because they fill up too
21 quickly
22 -- quote, "they fill up too quickly," and we don't
23 have the facilities to go pump them out.

24 And in my industry, the breaks are erratic.

1 In the cafeteria at Canyon Lodge, which is where I
2 was, many of the employees who were working worked
3 straight through without breaks, or the breaks are
4 erratic. And in working with these long hours and
5 the erratic break times, it causes immense
6 tiredness.

7 Thank you for your time.

8 COMMISSIONER DOMBROWSKI: Juli Broyles.

9 MS. BROYLES: Hi. I believe it's still
10 good morning, Mr. Chairman, members of the
11 Industrial Welfare Commission. I'm Julianne
12 Broyles, from the California Chamber of Commerce.

13 First of all, I'd like, if it's possible,
14 have distributed to the Commission an article that
15 was published on April 13th -- that's the High
16 Desert paper -- talking about how the rules put out
17 by the Industrial Welfare Commission have
18 specifically cost, in this one community's instance,
19 800 jobs from coming to that High Desert town,
20 specifically because of the Industrial Welfare
21 Commission rules and the state law changing to such
22 an extent 8-hour overtime applications in the State
23 of California.

24 And I knew that Mr. Broad has asked on a

1 number of occasions for additional information.
2 We're starting to put together quite a book, but
3 this one was particularly telling that they had lost
4 a very specific -- most companies will not come
5 forward and say, "Well, it was just the overtime
6 rules," but many employers have come to the
7 California Chamber and said that they are either
8 considering moving or will not be moving here to the
9 State of California. And we have been documenting
10 that for an overall submission to the Industrial
11 Welfare Commission.

12 One large food processor down in Fresno
13 County literally has promised us that they're doing
14 the same thing, that they're moving to Texas, taking
15 their entire processing facility away and the 1,200
16 jobs that that particular facility has in the Fresno
17 area.

18 One of the items I did also want to address
19 today, and it's really more in response to some of
20 the comments that were made on the meal breaks and
21 rest break period, it's interesting to have issues
22 that are more appropriate for the Cal OSHA Standards
23 Board here than to have here in this Commission's
24 purview, particularly the issue of repetitive motion

1 industries. On this issue, I've had a lot of
2 experience. I chair a very large employer coalition
3 on cumulative injuries, on repetitive motion
4 injuries and ergonomics, and spent several weeks
5 last month in Washington, D.C., testifying on this
6 issue to fed OSHA on ergonomics and the need for
7 breaks and that issue. But it is not appropriate
8 for it to be addressed by this Commission. There is
9 another statutory body appointed by the Governor to
10 deal with this issue, and it is not appropriate for
11 this Commission to take it on.

12 And so, for those reasons, I do want to
13 make sure that you know that we have very strong
14 problems with that even being brought up here as an
15 issue for you to take up.

16 Do you have any questions?

17 We did submit substantial comments, both in
18 January and in March, regarding a number of issues
19 that were on the table today, including the
20 managerial issue and the meal break issue. And if
21 we can answer any questions on those now, we'd be
22 happy to.

23 COMMISSIONER BROAD: Yeah, I have a
24 question. And I've read the article, and I'm glad

1 to know that they're getting a casino, so --

2 MS. BROYLES: It's such a -- it's so good
3 to know.

4 COMMISSIONER BROAD: They have a casino,
5 because, you know, the gamblers won't go to Texas.

6 MS. BROYLES: No, they won't go to Texas.
7 But it's only 300 jobs in place of 800. So, it's
8 really not the -- not the type of revenue source in
9 the sense, you know, from the business community.
10 It is both good news and bad news when you have the
11 casinos come in, because until some of the compacts
12 are completed, there are legitimate issues on both
13 the employee side and the employer side in terms of
14 competitiveness, fair wages, how workers'
15 compensation is handled, and how OSHA is handled.

16 So, certainly, we find ourselves on the
17 same side on that issue.

18 COMMISSIONER BROAD: Let me ask you this
19 question about breaks.

20 MS. BROYLES: Sure.

21 COMMISSIONER BROAD: Marcie Berman and Tom
22 Rankin mentioned this. The breaks are ten minutes
23 net rest time. Obviously, that means you have sort
24 of travel time to the break. It's sort of included

1 in that. And -- but I'm not sure -- and I'd
2 actually like Miles to come up here in a minute.

3 COMMISSIONER DOMBROWSKI: No, I won't put
4 Miles in a position of having to --

5 COMMISSIONER BROAD: No, no. I want to ask
6 him about enforcement questions anyway.

7 But here's my question. Are you guys
8 averse to, say, changing this thing from ten minutes
9 to fifteen minutes, but maybe clarifying what this
10 "net" thing means. And I don't know; it may be
11 observed and breached, or not observed at all.

12 MS. BROYLES: At this point, I would
13 probably have to see what was proposed. And
14 certainly, we'll be more than willing to discuss it,
15 but I cannot give any indication that we agree to a
16 change where you're adding the time on, to an
17 overall fifteen-minute -- as you were pointing out -
18 - an undefined term of "net" -- away from the place
19 of work. In some cases, that would be totally
20 unrealistic because you're walking 15 feet out to go
21 outside the door to be away from it, versus someone
22 who might be in a different type of job.

23 COMMISSIONER BROAD: So, is it your sense
24 that -- just -- and obviously, I don't know what the

1 answer is, at all, but I have the impression that in
2 lots of workplaces in California, really the
3 standard is two fifteen-minute breaks in an 8-hour
4 period, not two ten-minute breaks.

5 MS. BROYLES: The standard that I'm aware
6 of is two ten-minute breaks. But normally, if -- it
7 depends, again, on the culture in that workplace,
8 almost always. There are some employers that have
9 one fifteen-minute break in the morning and a ten-
10 minute break in the afternoon, depending on customer
11 flow. There are some that have a number of five-
12 minute breaks, two five-minute breaks every hour, if
13 they are doing a different type of issue. But
14 again, it's what fits that company's culture, what
15 that employer feels free to do with the
16 productivity.

17 Sometimes, you know, you have the
18 differences between lunch hours. You have people
19 that have half-hour lunch hours, you have people who
20 have hour lunch hours. And the employers that
21 supply the one-hour lunch hour feel that that gives
22 the -- does not then constitute a need to extend a
23 ten-minute break in the morning and in the afternoon
24 in any way.

1 So, I mean, you have a lot of different
2 factors that come in there.

3 COMMISSIONER DOMBROWSKI: Okay. Does
4 anyone else want to speak about the meal periods?

5 COMMISSIONER BROAD: I'd just like to ask
6 Miles some questions about enforcement in this
7 area.

8 COMMISSIONER DOMBROWSKI: If Miles is
9 comfortable with it. I don't want to put him on the
10 spot.

11 COMMISSIONER BROAD: Miles, don't answer
12 any question that you feel uncomfortable with.

13 MR. LOCKER: Thank you. Okay. Thank you.

14 COMMISSIONER BROAD: This issue was raised
15 about what is the remedy when an employer doesn't
16 give workers meal periods of rest breaks. I'd just
17 like to ask you what enforcement issues there are in
18 this
19 area.

20 MR. LOCKER: It's -- yeah, I do feel
21 comfortable answering that one because it's an issue
22 that's come up quite a bit with us.

23 And the problem is, although the law or the
24 IWC orders are quite clear in terms of the right

1 that workers would have to a meal period or rest
2 periods, as a practical matter, the only means that
3 we would have for enforcing either of those would be
4 -- and once we do an investigation and determine
5 that workers are not being given the proper meal
6 period or rest period -- we could then go to court.
7 We could file an action for injunctive relief and
8 get a court order ordering an employer to provide
9 the workers with -- the employees with the
10 appropriate meal and rest periods.

11 In all honesty, I have to tell you that as
12 a basic enforcement matter, that presents a huge
13 difficulty. It's simply a situation where -- I
14 think, truthfully, unless we were doing a civil
15 action involving other matters, in terms of
16 compensation or so, minimum wages, overtime, and the
17 like, then if we are aware there's a problem with
18 meal periods and rest periods, we would put that
19 into that civil action. But to expend the kind of
20 resources, the staff time and the attorney time,
21 court time, to actually file a civil action for
22 injunctive relief to enforce this right, we -- you
23 know, that's something that we just don't have the
24 staffing to be able to do that. It's not a good way

1 to enforce something. It's a problem.

2 COMMISSIONER BROAD: Now, I was surprised
3 to learn -- and I'd like you to confirm this -- that
4 there is no Fair Labor Standards Act enforcement in
5 this area, there's nothing in the Fair Labor
6 Standards Act governing breaks or meal periods.

7 MR. LOCKER: That's my understanding, that
8 under the FLSA there are no requirements as to meal
9 periods or rest periods.

10 COMMISSIONER BROAD: So, we have a
11 situation, then, where this may be a statute that,
12 when it's breached, there's no real effective remedy
13 or regulation when it's breached. There's no
14 effective remedy.

15 MR. LOCKER: The remedy, as I say, would be
16 -- it's an expensive thing to bring about that
17 remedy. And then, of course, the remedy, if we were
18 to get the injunctive relief, the remedy would be
19 basically a court order telling the employer, "You
20 can't do this ever again." It's prospective.

21 COMMISSIONER BROAD: Well, I guess what we
22 could do -- I'm not asking you to comment on this --
23 but as a general comment to my fellow commissioners,
24 I guess what we could do is require the payment of

1 premium pay for the time that was not given, or
2 require that any employer that doesn't give rest
3 periods or a meal period in accordance with our
4 rules would have to, say, pay the employee one hour
5 at their regular rate of pay, in addition to all
6 hours worked on that day, or something so that there
7 would be an economic disincentive to violate the
8 rule, and that it would be more self-enforced.

9 MR. LOCKER: That's -- you know, I mean, I
10 -- I don't want to comment much on that, other than
11 to say that given our -- given our limited
12 enforcement, we like self-enforcement. We do like
13 self-enforcement.

14 (Laughter)

15 MR. LOCKER: We do like.

16 COMMISSIONER DOMBROWSKI: All right.

17 It's the end of the day.

18 The next item on the agenda is the duties
19 which meet the test for an exemption for executive,
20 administrative and professional employees.

21 Laura Ho.

22 MS. HO: Yeah. I don't have anything to
23 present. I just wanted to respond to if there are
24 any other --

1 COMMISSIONER DOMBROWSKI: Does anyone else
2 want to talk about it?

3 (No response)

4 COMMISSIONER DOMBROWSKI: This is going to
5 be a first.

6 AUDIENCE MEMBER: (Not using microphone)
7 We're waiting for the next meeting.

8 COMMISSIONER DOMBROWSKI: Okay. The next
9 item is the licensed pharmacists. Again, the only
10 person I have is Laura Ho.

11 MS. HO: Again, I have the same --

12 COMMISSIONER DOMBROWSKI: Okay.

13 Anyone have any other business they want to
14 bring before the Commission?

15 (No response)

16 COMMISSIONER DOMBROWSKI: Do I have a
17 motion to adjourn?

18 COMMISSIONER BROAD: So moved.

19 COMMISSIONER DOMBROWSKI: Second?

20 COMMISSIONER COLEMAN: Second.

21 COMMISSIONER DOMBROWSKI: All in favor, say
22 "aye."

23 (Chorus of "ayes")

24 (Thereupon, at 11:45 a.m., the public meeting

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

was adjourned.)

--o0o--

CERTIFICATE OF TRANSCRIBER

GOLDEN STATE REPORTING
P. O. BOX 5848
Monterey, CA 93944-0848
(831) 663-8851

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

--o0o--

I, Cynthia M. Judy, a duly designated transcriber, do hereby declare and certify under penalty of perjury under the laws of the State of California that I transcribed the two tapes recorded at the Public Meeting of the Industrial Welfare Commission, held on May 5, 2000, in Van Nuys, California, and that the foregoing pages constitute a true, accurate, and complete transcription of the aforementioned tapes, to the best of my ability.

Dated: May 12, 2000

CYNTHIA M. JUDY, Transcriber

1

2

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **NARANJO v. SPECTRUM SECURITY SERVICES**

Case Number: **S258966**

Lower Court Case Number: **B256232**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **LLara@dir.ca.gov**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
REQUEST FOR JUDICIAL NOTICE	20200810 DLSE Amicus Brief_RJN

Service Recipients:

Person Served	Email Address	Type	Date / Time
Casey Raymond State of California Dept. of Industrial Relations	craymond@dir.ca.gov	e-Serve	8/10/2020 8:04:21 PM
Dave Carothers Carothers DiSante Freudenberger, LLP 125536	dcarothers@cdflaborlaw.com	e-Serve	8/10/2020 8:04:21 PM
Robin Largent Carothers DiSante & Freudenberger LLP 197595	rlargent@cdflaborlaw.com	e-Serve	8/10/2020 8:04:21 PM
Jason Marsili Rosen Marsili Rapp LLP	jmarsili@posner-rosen.com	e-Serve	8/10/2020 8:04:21 PM
Ryan Wu Capstone Law APC 222323	ryan.wu@capstonelawyers.com	e-Serve	8/10/2020 8:04:21 PM
Sharon Siron Carothers DiSante & Freudenberger LLP	ssiron@cdflaborlaw.com	e-Serve	8/10/2020 8:04:21 PM
Casey Raymond CA Labor Commissioner-DLSE 303644	LLara@dir.ca.gov	e-Serve	8/10/2020 8:04:21 PM
Jason Marsili Rosen Marsili Rapp LLP 233980	jmarsili@rmrllp.com	e-Serve	8/10/2020 8:04:21 PM
Maria Olmos Capstone Law APC	Maria.Olmos@capstonelawyers.com	e-Serve	8/10/2020 8:04:21 PM
Janice James Carothers DiSante & Freudenberger LLP	jjames@cdflaborlaw.com	e-Serve	8/10/2020 8:04:21 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

8/10/2020

Date

/s/Casey Raymond

Signature

Raymond, Casey (303644)

Last Name, First Name (PNum)

CA Labor Commissioner-DLSE

Law Firm