CASE NO. S275431

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

George Huerta, *Plaintiff and Petitioner,*

vs.

CSI Electrical Contractors, Inc., *Defendant and Respondent.*

On Certified Questions from the United States Court of Appeals for the Ninth Circuit
No. 21-16201

PLAINTIFF AND PETIIONER GEORGE HUERTA'S ANSWERING BRIEF TO BRIEFS OF AMICI CURIAE

PETER R. DION-KINDEM (95267)
PETER R. DION-KINDEM, P.C.
2945 Townsgate Road, Suite 200
Westlake Village, CA 91361
Telephone: (818) 883-4900
Email: peter@dion-kindemlaw.com

LONNIE C. BLANCHARD III (93530)
THE BLANCHARD LAW GROUP, APC
177 East Colorado Boulevard, # 200
Pasadena, California 91105
Telephone: (213) 599-8255
Email: lonnieblanchard@gmail.com

Attorneys for Plaintiff and Petitioner George Huerta

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I. INTRODUCTION

This case involves a motion for summary judgment based on the specific facts of this case. Amici's attempt to misdirect this Court's attention from the specific issues before the Court with their parade of horribles hypotheticals that are based on factual scenarios completely distinct from the specific facts of this case should be ignored. Amici's arguments are also based on unfounded circular reasoning and consist solely of self-serving conclusions unsupported by any controlling authority that ignore this Court's binding precedential rulings. This Court should therefore reject Amici's arguments

II. THE BRIEF OF AMICI EMPLOYERS GROUP AND CALIFORNIA EMPLOYMENT LAW COUNCIL IGNORES MANY OF THE ISSUES BEFORE THE COURT AND PROFFERS ARGUMENTS UNSUPPORTED BY ANY CONTROLLING AUTHORITY.

A. Amici ignore many of the issues before this Court.

1. Amici ignore the Paragraph 5(A) claim before the Court.

Paragraph 5(A) of Wage Order 16 provides: "(A) All employer-mandated travel that occurs after the first location where the employee's presence is required by the employer shall be compensated at the employee's regular rate of pay or, if applicable, the premium rate that may be required by the provisions of Labor Code Section 510 and Section 3, Hours and Days of Work, above."

Amici do not dispute that the evidence in the record demonstrates that the "first location where the employee's presence is required by [CSI]" was the Security Gate to the site. Amici also do not dispute that CSI thereafter required its workers to travel between the Security Gate and their daily work locations on the Site to work and were therefore entitled to compensation for such travel time pursuant to Paragraph 5(A) of Wage Order

16. As Huerta discussed in his Opening and Reply Briefs, such time is clearly compensable under the specific facts of this case. Amici do not dispute that the district court therefore erred in finding that such time was not compensable under Paragraph 5(A).

Moreover, Amici do not dispute that, at a minimum, whether the Security Gate was the first location where CSI's workers' presence was required is an issue of fact and that the district court's summary judgment must therefore be reversed for that reason alone.

2. Amici ignore the "suffered or permitted to work" issue before the Court.

In their Brief, Amici ignore the issue of whether the time spent by CSI's workers engaging in the required activities involved in traveling to, waiting for, and undergoing CSI's mandatory exit security process from the Site constitute "work" under the "suffer or permit to work" prong of the "hours worked" definition of Wage Order 16.

Amici do not dispute that such activities required exertion and effort and meet the plain dictionary definition of "work," nor do Amici dispute that the United States Supreme Court has held that such mandated travel on the employer's premises constitutes "work." (*See Tennessee Coal, Iron & R. Co. v. Muscoda Local No. 123* (1944) 321 U.S. 590, 598 [64 S.Ct. 698, 703, 88 L.Ed. 949]; *Jewell Ridge Coal Corp. v. Local No. 6167, United Mine Workers of America* (1945) 325 U.S. 161, 165 [65 S.Ct. 1063, 1066, 89 L.Ed. 1534] (travel on employer's mine is "work" and compensable).)

While Amici refer to the federal Portal-to-Portal Act, this Court has recognized that such Act is irrelevant to the interpretation of workers' rights under California law. In

contrast to the Portal-to-Portal Act, which expressly and specifically exempts travel time as compensable activity under the FLSA, "[t]he California Labor Code and IWC wage orders do not contain an express exemption for travel time." (*Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 590 [94 Cal.Rptr.2d 3, 995 P.2d 139], *as modified (May 10, 2000)*.) Because there is no convincing evidence that the IWC intended to adopt the federal standard for determining whether time spent traveling is compensable under California law, this Court has "decline[d] to import any federal standard, which expressly eliminates substantial protections to workers, by implication." (*Id.* at 592.) Consequently, because the federal statutory scheme "differs substantially from the state scheme," this Court has stated that the federal statutory scheme "should be given no deference." (*Id*. at 588.)

B. Amici's argument that the mandatory travel time engaged in by CSI's workers on the Site while confined to the Site by virtue of the mandatory exit security process is based on the circular, faulty, and manufactured premise that such time is "commute" time.

The Cambridge dictionary defines "commute" as "to make the same trip regularly between work and home." In this case, the workers' "work" is clearly the Site, and once workers enter the Site through the Security Gate they are at work.

Huerta is not seeking compensation for the time it takes CSI's workers to travel from their homes to the Security Gate of the Site. But once they reach the Security Gate and enter the Site, they are at work and subject to CSI's rules and regulations and confined to the Site and not allowed to leave without exiting the Site through the mandatory exit security process. Thus, once they enter the Site, their commutes have ended and they are at work. The time on the Site is therefore not part of their "commute." Moreover, because

they are confined to the Site and must wait in line and undergo the exit security process to leave the Site, they are under CSI's control.

Amici offer no controlling legal authority for their *ipse dixit* contention that all time spent by an employee traveling on an employer's premises while being confined to the premises and waiting in line to exit by virtue of an exit security process is "commute" time and therefore non-compensable. Moreover, Amici offer no controlling authority for their claim that time spent by workers engaged in employer-mandated travel on an employer's premises is part of the workers' "commute."

In *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575 [94 Cal.Rptr.2d 3, 11, 995 P.2d 139, 147], *as modified (May 10, 2000)*, this Court held that the employer-required travel ***outside*** of the work site from a designated point to the location where the workers worked was ***not*** an "ordinary commute." (*Id*. at 587.) Here, the travel CSI required of its workers occurred ***on*** the Site, to which the workers are confined and during which they were subject to CSI's control, and is not an "ordinary commute."

Amici's argument that CSI's workers' travel on the Site is part of their "commute" is also contrary to the rationale underlying this Court's holding in *Frlekin*. If Amici's argument had been applied in *Frlekin*, then the time spent by Apple's workers waiting for and traveling through the security process to exit the premises would be part of the workers' "commute" because they had to do so to get home and would therefore be non-compensable. This Court held, however, that because Apple confined the workers to the work site and did not allow them to leave without undergoing the exit security process, the

time spent waiting for and undergoing the exit security process was compensable. Amici do not even attempt to meaningfully distinguish this Court's holding in *Frlekin* from the facts of this case.[1] Instead, they just self-servingly label the Security Time as "commute" time.

While Amici attempt to distinguish between employers with large work sites with mandatory exit security processes and employers with small work sites with mandatory exit security processes, there is no logical or public policy rationale to do so. In both cases, the employer has chosen to control the employees by confining them to the work site and restraining them from leaving without traveling to, waiting for, and undergoing a mandatory exit security procedure. In both cases, the employer can implement time-keeping procedures by which workers clock in when entering the secured premises and clock out when exiting the secured premises. That employers may not wish to pay for the time they confine their workers to their work sites does not convert such time to "commute" time or mean that such time is not time that the workers are under the employers' control and therefore entitled to compensation for the Security Time.

[1] Amici's "rules of the road" discussion is a red herring that does not alter the ineluctable conclusion that CSI's workers were controlled after entering the Site through the Security Gate because they were confined to the Site and were not permitted to leave unless and until they underwent the mandatory exit security process – all for the benefit of the employer.

Amici's argument that the "hours worked" definition of the Wage Order "was adopted to exclude non-working[2] commute time on an employer's premises" (Brief at 29) is unsupported by any controlling case law. Contrary to Amici's contention, Huerta is not asking this Court to "hold that workers are entitled to compensation virtually any time they enter their employer's premises." (Brief at 13.) Huerta's arguments are based only on the specific facts of this case and this Court's precedential holdings.

Amici argue that Huerta is proposing a "new" theory of liability, but there is nothing "new" about Huerta's theory of liability. Under this Court's holding in *Frlekin*, when an employer confines its workers to the workplace, causes them to wait in line, and does not allow them to leave unless and until they undergo a mandatory exit security process, the employee is under the employer's control and entitled to compensation for the time spent waiting for and undergoing such security process.

Finally, the Court should disregard Amici's parade of horribles as to how its ruling on the specific facts of this case may apply in other hypothetical contexts that are vastly different from the facts of this case. The specific facts of this case demonstrate that the district court erred in granting CSI's summary judgment. At a minimum, there is a triable issue of fact whether CSI controlled its workers after they entered the Site through the Security Gate and traveled between the Security Gate and their daily work areas and then

[2] Amici do not meaningful dispute that mandatory activities required by an employer constitute "work" under the "suffered or permitted to work" definition of "hours worked."

waited for and underwent the exit security process. Accordingly, the summary judgment should be reversed.

C. Amici offer no authority for the well-established rule that where an employer confines its workers to the work site during meal periods, such time is time the employee is under the employer's control and therefore compensable.

Amici do not dispute that workers have the nonwaivable right to be paid for all "hours worked" and that a CBA cannot eviscerate such right. The Supreme Court has held that "a unionized employee cannot be deprived of the full protections afforded by state law simply by virtue of the fact that her union has entered into a CBA." (*Burnside v. Kiewit Pacific Corp.* (9th Cir. 2007) 491 F.3d 1053, 1069.)

Amici also do not dispute that this Court cited *Bono Enterprises, Inc. v. Bradshaw* (1995) 32 Cal.App.4th 968 [38 Cal.Rptr.2d 549] *disapproved of on other grounds by Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557 [59 Cal.Rptr.2d 186, 927 P.2d 296] to support its conclusion that Apple's confinement of its employees to its stores and not allowing them to leave unless they waited for and underwent an exit security process demonstrated Apple's control and mandated compensation for Apple's workers for such time. (*Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038, 1047 [258 Cal.Rptr.3d 392, 399, 457 P.3d 526, 531–532].)

Rather, Amici argue that even where an employer indisputably confines an employee to the work site during his meal period (thereby controlling the employee), the employer is absolved from having to pay for such hours worked because the employee could not have left the premises in any event. Amici cites no authority for such proposition.

If the Legislature desires to make this the law, it can certainly do so. This Court should not create new law, but follow its own controlling precedents.

III. THE LOS ANGELES COUNTY CHAPTER, NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION OFFERS NO COGENT REBUTTAL TO HUERTA'S ARGUMENTS.

A. Union workers' right to be paid for all hours worked cannot be waived by a union under a CBA.

It is true that Labor Code Sections 512(e) and (f) expressly exclude California's meal period requirements to workers subject to Wage Order 16 who are covered by a valid collective bargaining agreement that meets the requirements set forth in section 512(e)(2). But the NECA ignores the fact that this case is not about meal period obligations, but about construction workers' nonwaivable right to be paid for all hours worked, including hours worked during meal periods during which they are subject to the employer's control.

Contrary to NECA's contention, Wage Order 16, Section 10(E) does not provide an "exemption" to the right to be paid for all hours worked during meal periods, but merely provides that certain Wage Order provisions as to meal periods do not apply to union workers under certain conditions:

> (E) Collective Bargaining Agreements. Subsections (A), (B), and (D) of Section 10, Meal Periods, ***shall not apply*** to any employee covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of the workers, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those workers of not less than 30 percent more than the state minimum wage. (Emphasis added.)

The fact that certain Wage Order meal period rights do not apply to union workers working under qualifying CBAs does not mean that union workers are not entitled to be

paid for all hours worked, including hours worked during meal periods, and NECA cites no controlling authority that so holds. NECA's argument that "Section 10(E) modifies the definition of 'all hours worked' to exclude CBA meal periods encompassed by the exemption" (Brief at 9) is simply wrong. Section 10(E) does not provide a new definition of "hours worked" for union workers but simply provides that certain meal period protections do not apply.

B. Huerta's hours worked claim is based on California law, not on the provisions of any CBA, and is therefore not preempted.

1. Huerta's unpaid hours worked claim is based on California law, not on any CBA.

Huerta's state law claim for unpaid hours worked is not based on any CBA but on state law. Because Huerta's hours worked claim is based on California law and not based on any CBA, NECA has not established the first prong of the proper pre-emption analysis.

2. Huerta's unpaid hours worked claim does not require an "interpretation" of a CBA.

NECA contends, with no supporting facts, that Huerta's "entitlement to wages is 'substantially dependent on an analysis of the collective bargaining agreement.'" (Brief at 10.) NECA offers no analysis to support such baseless conclusion, however. In fact, Huerta's unpaid hours worked claim does not require an "interpretation" of any CBA. (*Burnside v. Kiewit Pacific Corp.* (9th Cir. 2007) 491 F.3d 1053, 1071; *Garcia v. Statewide Traffic Safety and Signs, Inc.* (C.D. Cal., Nov. 26, 2018, No. SACV1801668JVSJDEX) 2018 WL 6242866, at *5.) NECA cites no provision in the applicable CBA that must be "interpreted" for Huerta to establish that he was not paid for all hours worked. The mere

fact that a CBA may refer to meal periods has nothing to do with whether Huerta and the class members are entitled to compensation for all hours worked during their meal periods because they were controlled during their meal periods by being confined to their work areas on the Site.

C. NECA does not meaningfully distinguish this Court's holding in *Frlekin*.

NECA contends that "Petitioner and the other workers at his jobsite were subject to vastly less employer control during their time waiting to 'badge out' and pass through the security gate" than those of the employees in *Frlekin*. (Brief at 13.) This baseless conclusion is unsupported by any facts. In both this case and in *Frlekin*, the workers were confined to the premises while waiting in line and undergoing the exit security process. In both this case and in *Frlekin*, the wait to undergo the exit security process was caused by the employers' mandatory exit security process. NECA does not dispute that CSI's workers were required to wait on the Site for substantial time. (4-ER-889-890; ¶ 62.)

This Court in *Morillion* noted that the dictionary definition of "control" means any period where an employer " 'directs, commands, or restrains' an employee. [Citation.]" (*Morillion*, 22 Cal. 4th at 583.) Here, CSI directed and commanded its workers to badge in at the Security Gate, to travel on the Access Road to the parking lots and to travel on the Access Road back to the Security Gate and wait for and undergo the exit security process. CSI also restrained its workers from leaving the Site unless and until they traveled to, waited for, and underwent the exit security process. Thus, CSI's workers were under CSI's control during this time.

Moreover, here, as in *Frlekin*, CSI's workers were required to stop at some form of security station (the Security Gate), and, while waiting in line to undergo the exit security process, were subject to the rules and regulations of the Site. If there had been no mandatory exit security process, then workers would not have to spend their time to wait and undergo such process. There is no evidence that CSI's workers would have had to wait in a line to exit the Site if there had been no Security Gate at which they had to stop and undergo the exit security process. Just as in *Frlekin*, CSI's mandated exit security process caused the workers' waiting time. Just as in *Frlekin*, the wait time of CSI's workers is compensable. (*See also Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575 [94 Cal.Rptr.2d 3, 11, 995 P.2d 139, 147], *as modified (May 10, 2000)* (time spent waiting caused by the employer's policy was compensable: "we find that plaintiffs' compulsory travel time, which includes the time they spent waiting for Royal's buses to begin transporting them, was compensable.").)

In arguing that Huerta and CSI's other workers were not controlled when confined to the Site and required to wait for and undergo the mandatory exit security process, NECA completely ignores the rationale underlying this Court's decision in *Frlekin*. NECA focuses ***only*** on the time of the actual badge-scanning step of the exit security process in an attempt to assert what is essentially a legally untenable *de minimis* argument that this Court rejected in *Troester v. Starbucks Corp*. (2018) 5 Cal.5th 829 [235 Cal.Rptr.3d 820, 421 P.3d 1114], *as modified on denial of reh'g (Aug. 29, 2018*). In doing so, however, NECA ignores the undisputed fact that CSI, by requiring its workers to undergo this exit security process,

confined its workers to the secured Site and prevented them from leaving the Site without making them first wait for up to 30 minutes or more before undergoing the mandatory exit security process. (4-ER-889-890; ¶ 62.)

Here, after Huerta and CSI's workers entered the Site through the Security Gate, they were confined to the Site, just as Apple's workers in *Frlekin* were confined to the Apple stores and the farm workers in *Morillion* were confined to the employer's buses. Just as the Apple workers in *Frlekin* were required to wait to undergo the exit security process and exit the stores and the farm workers in *Morillion* were required to wait to ride on the employer's buses, CSI's workers were required to wait for and undergo the mandatory security exit process that could last up to 30 minutes or more (which CSI does not dispute) before they were allowed to leave the Site. Just as Apple's workers in *Frlekin* and the farm workers in *Morillion* were entitled to be paid for the time they were under their employer's control, CSI's workers are entitled to be paid for the time they were confined to the Site while waiting for and undergoing the mandatory security exit process.

D. The Exit Security Time constitutes "hours worked" under the "suffered or permitted to work" prong of the "hours worked" definition in Wage Order 16.

NECA does not dispute that the activities that CSI required of its workers to travel to their daily work locations on the Site to the Security Gate, wait in line for up to 30 minutes or more, move in the line to the Security Gate, stop, and undergo the mandatory exit security process separately or altogether meet the plain definition of "work" because such activities are activities "in which one exerts strength or faculties to do or perform

something." (*Merriam-Webster's Collegiate Dictionary* (11th ed.) and encompass "exertion to attain an end, especially as controlled by and for the benefit of an employer; labor." (*Black's Law Dictionary* (10th ed. 2014).) (RB 35.)

NECA also does not and cannot dispute that, while the FLSA does not define "work," under federal law, the general rule is that an employee must be "paid for all time spent in 'physical or mental exertion, whether burdensome or not, controlled and required by the employer, and pursued necessarily and primarily for the benefit of the employer or his business.' " (29 C.F.R. § 785.7 (2005) (quoting *Tennessee Coal, Iron & R. Co. v. Muscoda Local No. 123* (1944) 321 U.S. 590, 598 [64 S.Ct. 698, 703, 88 L.Ed. 949]). Thus, under federal law, an employee's travel on the employer's premises is "work." (*Id*., *Jewell Ridge Coal Corp. v. Local No. 6167, United Mine Workers of America* (1945) 325 U.S. 161, 165 [65 S.Ct. 1063, 1066, 89 L.Ed. 1534] (same); *Anderson v. Mt. Clemens Pottery Co.* (1946) 328 U.S. 680, 690–691 [66 S.Ct. 1187, 1194, 90 L.Ed. 1515].)[3]

NECA, as did CSI, improperly attempts to graft an additional element onto the "suffer or permit to work" wage order test by claiming that, for an activity to constitute "work," the employer must "recognize" the activity as work. (Brief at 16-17.) NECA's attempt to do this necessarily fails. First, there is no language in the Wage Order's "suffer or permit" test that provides that, for an activity to constitute work, such activity must be

[3] The fact that the subsequently enacted federal Portal-to-Portal Act classifies certain activities occurring both prior to and after the regular workday as noncompensable under federal law does not mean that such activities do not constitute compensable "work" under California law. (*Frlekin* at 1051.)

"recognized by the employer to be work." Had this been the IWC's intention, it easily could have drafted the definition to include such condition. It did not, however, define or qualify "work" in such way.

Moreover, adding words to the express language contained in a statute or regulation "amounts to improper judicial legislation." (*See, e.g., Morillion, supra*, 22 Cal.4th at 585.)[4]

Grafting an "employer recognition as work" element onto the "suffer or permit to work" test is not only unsupported by the Wage Order's text, but even if such an objective test were adopted by the Court, the application of such test would create an issue of fact here that would defeat summary judgment. Using the dictionary definition of "work" and the United States Supreme Court's recognition that travel on an employer's premises constitutes "work," a jury in this case could easily find that CSI's requirement that its workers drive from their daily work site, wait in line for up to 30 minutes or more, stop, and submit to a mandatory exit security process before being allowed to leave the Site was "work." (*See, e.g., Troester* at 835-836 (walking coworkers to their cars or waiting for their

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[4] While NECA refers to *Hernandez v. Pacific Bell Telephone Co.* (2018) 29 Cal.App.5th 131, 142 [239 Cal.Rptr.3d 852, 860, 29 Cal.App.5th 131, 142], that case involved a claim by workers who participated in an optional and voluntary Home Dispatch Program who alleged that their commute drive time between their home and the customer was "work." Addressing plaintiffs' "suffer or permit to work" theory, the court, relied solely on the non-binding opinion of a federal district court in *Taylor v. Cox Communications California, LLC* (C.D. Cal. 2017) 283 F.Supp.3d 881, *aff'd* (9th Cir. 2019) 776 Fed.Appx. 544. (*Id*. at 142.) In *Taylor*, however, the district court had created out of whole cloth the "employer recognition as work" element to the "suffer or permit to work" test. While the district court in *Taylor* purported to rely on *Morillion*, nowhere in *Morillion* did this Court hold that, to constitute "work" under the "suffer or permit to work" test, the activity must be "recognized" by the employer as "work."

rides to arrive in compliance with employer's policy assumed to be work).) Thus, at a minimum, whether the workers' activities in this case constitute work is an issue of fact.

E. Paragraph 5(A) does not require that the first location be a place of "first reporting."

Regarding Huerta's Paragraph 5(A) claim, NECA grafts the non-existent requirement that workers must "report at" the first location where their presence is required before Paragraph 5(A) applies. (Brief at 17-18: "The security gate was not a place of first reporting."; "[workers] were not *required* to report to the security gate at a specific time to take the next step of mandated, exclusive travel."; ". . . the security gate is not a first place of reporting".)

Not only is that contention unsupported by the record, Paragraph 5(A) does not require that "the first location where the employee's presence is required" is or must be a location where the employee "first reports" -- whatever that means. Moreover, based on the record below, there was an issue of fact whether the Security Gate was the first location where the workers' presence was required by CSI that precluded summary judgment.

IV. THE ARGUMENTS OF AMICI CONSTRUCTION EMPLOYERS' ASSOCIATION AND SOUTHERN CALIFORNIA ASSOCIATION OF SCAFFOLD CONTRACTORS ARE MERITLESS.

Amici do not meaningfully distinguish the facts of this case from those in *Frlekin*. Moreover, while Amici contend that "this case is a poor vehicle for expanding the *Frlekin* rule to security check processes that occur at the perimeters of remote worksites," (Brief at 11), Huerta is not seeking to "expand" this Court's ruling in *Frlekin* but merely to apply it to the facts in this case. The fact that this security process occurred at a Security Gate to a

"remote" construction Site does not mean the principles enunciated by this Court in *Frlekin* should not be applied to this case. Moreover, because this case involves specific facts and involves review of a motion for summary judgment based on such specific facts, Amici's parade of horribles references to the experiences of other workers is simply irrelevant to the resolution of the issues in this case.

Amici completely ignore the fact that wherever an employer chooses to implement a mandatory exit security process and confines its workers to the workplace unless and until they wait for and undergo such process, the employer has controlled its workers for its own purposes, not for the benefit of the workers. There is nothing unfair about requiring employers to compensate their workers for such time.

Contrary to Amici's argument, time waiting for a mandatory exit security process is compensable under this Court's holding in *Frlekin*. Indeed, Amici acknowledge that "In *Frlekin*, each worker was individually halted and prevented from leaving Apple's premises until they waited for and underwent the security check." (Brief at 15.) This is exactly the case here. Each worker was required to stop at the Security Gate and was prevented from leaving the Site until they waited for and underwent the exit security check.

Amici's claim that "Here, the line leading to the exit formed as a result of a mass exodus of workers leaving at the same time" (Brief at 15) is unsupported by any citation to the record. There is no evidence that, "but for" the Security Gate and the exit security process, any waiting line would have formed to exit the Site. In fact, the record establishes that the wait was caused by the mandatory exit security process. (Opening Brief at 20; 4-

ER-889-90; ¶¶ 62-63; 4-ER-903; ¶¶ 54-55; 5-ER-932-33; ¶¶ 55-56; 4-ER-917-18; ¶¶ 60-61.)

Amici do not dispute that the physical exertion required by CSI of its workers in traveling to, waiting for, and/or undergoing the mandatory exit security process falls within the dictionary definition of "work." For the reasons discussed above, there is no rationale reason why such objective test should be tethered to what a "reasonable manager" would objectively recognize as "work." Moreover, while Amici contends that the activities CSI required of its workers to travel to, wait for, and undergo the exit security process would not "be recognized as work by a manager on a construction site or by anyone else for that matter" (Brief at 17), this is merely a conclusion.

Juries are often tasked with determining factual issues regarding whether certain conduct meets certain legal standards based on legal instructions. There is no reason why a jury should not be allowed to determine in this case whether the activities of CSI's workers required by CSI constituted "work" under the "suffer or permit to work" definition. A jury can certainly be instructed what constitutes "work" using an appropriate definition of the term and then determine as a matter of fact whether CSI's mandated activities constitute work.

At a minimum, this is an issue of fact for the jury, and the district court therefore erred in granting summary judgment on the issue. (*See Oliver v. Konica Minolta Business Solutions U.S.A., Inc.* (2020) 51 Cal.App.5th 1, 29 [264 Cal.Rptr.3d 248, 268, 51 Cal.App.5th 1, 29] (plaintiffs raised a genuine dispute of fact as to whether Hobart's service

technicians were suffered or permitted to work during their commute time from their home to their first job site, and from their last job site home); *Alcantar v. Hobart Service* (C.D. Cal., Apr. 14, 2017, No. EDCV111600PSGSPX) 2017 WL 11634052, at *7 (district court denied summary judgment on the issue of whether service technicians were suffered or permitted to work during their commute time from their home to their first job site, and from their last job site home, finding a genuine dispute of fact.).)

The baseless nature of Amici's other arguments are discussed in this Brief in the Sections above related to the other Amici.

V. CONCLUSION

The Exit Security Time is compensable because the workers were "controlled" during such time and/or such time was time the workers were "suffered or permitted to work." At a minimum, issues of fact existed which preclude partial summary judgment.

The Drive Time and Exit Security Time are compensable under paragraph 5(A) of Wage Order 16 because it is undisputed that the Security Gate was the first location where the workers' presence was required and CSI required its workers to travel between the Security Gate and the daily work areas on the Site to work. The Drive Time that occurred on the Site after the workers passed through the Security Gate was also compensable because such workers were under CSI's control after entering the Site and while traveling between the Security Gate and the daily work areas on the Site. Such Drive Time was also time the workers were "suffered or permitted to work." At a minimum, issues of fact existed which preclude partial summary judgment.

The Meal Period time is compensable as hours worked under California law because CSI controlled the workers by confining them to their daily work locations during their meal periods. The fact that the workers worked under a collective bargaining agreement does not eviscerate their nonwaivable right to be paid for all hours worked.

This Court should therefore vacate the orders granting CSI's motions for summary judgment and remand the case to the district court.

Dated: January 5, 2023

/s Peter R. Dion-Kindem

PETER R. DION-KINDEM
PETER R. DION-KINDEM, P.C.

LONNIE C. BLANCHARD III
BLANCHARD LAW GROUP, APC

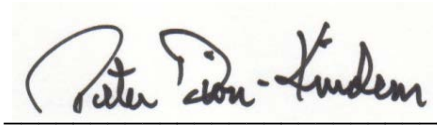
Attorneys for Plaintiff and Petitioner George Huerta

CERTIFICATE RE NUMBER OF WORDS OF BRIEF

I certify pursuant to Rule 8.204(c)(1) of the California Rules of Court that **PETITIONER GEORGE HUERTA'S OPENING BRIEF ON THE MERITS** contains 5,306 words, including footnotes. I rely on the word count of the Word computer program used to prepare this brief.

Dated: January 5, 2023

Respectfully submitted,



PETER R. DION-KINDEM
PETER R. DION-KINDEM, P.C.
THE DION-KINDEM LAW FIRM

Attorneys for Plaintiff and Petitioner George Huerta

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I am over the age of 18 and not a party to the within action. My business address is 2945 Townsgate Road, Suite 200, Westlake Village, CA 91361. On January 5, 2023, I served the following document(s) described as:

PLAINTIFF AND PETIIONER GEORGE HUERTA'S ANSWERING BRIEF TO BRIEFS OF AMICI CURIAE

on interested parties in this action as follows:

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Ford & Harrison LLP
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Los Angeles, CA 90071
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United States District Court for the
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San Jose Courthouse, Ctrm 3 – 5th Flr
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Steven D. Atkinson
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Kieran D. Hartley
Atkinson, Andelson, Loya, Ruud & Romo
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Sarah E. Lucas
Simpson, Garrity, Innes & Jacuzzi P.C.
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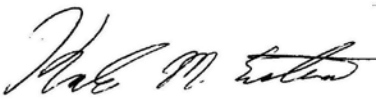

KALE M. EATON

STATE OF CALIFORNIA
Supreme Court of California

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STATE OF CALIFORNIA
Supreme Court of California

Case Name: **HUERTA v. CSI ELECTRICAL CONTRACTORS (FIRST SOLAR)**
Case Number: **S275431**
Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.

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Elizabeth Mendoza Ogletree Deakins 278418	elizabeth.mendoza@ogletree.com	e-Serve	1/5/2023 2:37:07 PM
Emily Simpson Simpson, Garrity, Innes & Jacuzzi	emily@sgijlaw.com	e-Serve	1/5/2023 2:37:07 PM
Peter Dion-Kindem Peter R. Dion-Kindem, P.C.	kale@dion-kindemlaw.com	e-Serve	1/5/2023 2:37:07 PM
Ronald Novotny ATKINSON, ANDELSON, LOYA, RUUD & ROMO	rnovotny@hillfarrer.com	e-Serve	1/5/2023 2:37:07 PM
Peter Dion-Kindem PETER R. DION-KINDEM 95267	peter@dion-kindemlaw.com	e-Serve	1/5/2023 2:37:07 PM
Min Kyung Kim Ford Harrison LLP	mkim@fordharrison.com	e-Serve	1/5/2023 2:37:07 PM
Daniel Chammas	dchammas@fordharrison.com	e-	1/5/2023

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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.

1/5/2023

Date

/s/Kale Eaton

Signature

Eaton, Kale (95267)

Last Name, First Name (PNum)

Peter R. Dion-Kindem, P.C.

Law Firm