Supreme Court No. S224611

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

CHRISTOPHER MENDOZA, an individual, on behalf of himself and all other persons similarly situated
Plaintiff-Appellant-Petitioner

MEAGAN GORDON
Plaintiff-Intervenor-Petitioner

v.

NORDSTROM, INC., a Washington Corporation authorized to do business in the State of California
Defendant-Appellee-Respondent

After a Request by the Ninth Circuit Court of Appeals
Case Nos. 12-57130 consolidated with 12-57144

PLAINTIFF-APPELLANT-PETITIONER'S REPLY BRIEF

ANDRÉ E. JARDINI (Bar No. 71335)
aej@kpclegal.com
K.L. MYLES (Bar No. 243272)
klm@kpclegal.com
KNAPP, PETERSEN & CLARKE
500 North Brand Boulevard, 20th Floor
Glendale, California 91203-1904
Telephone: (818) 547-5000
Facsimile: (818) 547-5329

Attorneys for Plaintiff-Appellant-Petitioner
CHRISTOPHER MENDOZA, an individual, on behalf of himself and all other persons similarly situated

Supreme Court No. S224611

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

CHRISTOPHER MENDOZA, an individual, on behalf of himself and all other persons similarly situated
Plaintiff-Appellant-Petitioner

MEAGAN GORDON
Plaintiff-Intervenor-Petitioner

v.

NORDSTROM, INC., a Washington Corporation authorized to do business in the State of California
Defendant-Appellee-Respondent

After a Request by the Ninth Circuit Court of Appeals
Case Nos. 12-57130 consolidated with 12-57144

PLAINTIFF-APPELLANT-PETITIONER'S REPLY BRIEF

ANDRÉ E. JARDINI (Bar No. 71335)
aej@kpclegal.com
K.L. MYLES (Bar No. 243272)
klm@kpclegal.com
KNAPP, PETERSEN & CLARKE
500 North Brand Boulevard, 20th Floor
Glendale, California 91203-1904
Telephone: (818) 547-5000
Facsimile: (818) 547-5329

Attorneys for Plaintiff-Appellant-Petitioner
CHRISTOPHER MENDOZA, an individual, on behalf of himself and all other persons similarly situated

TABLE OF CONTENTS

Page

TABLE OF CONTENTS (cont.)

TABLE OF CONTENTS (cont.)

TABLE OF CONTENTS (cont.)

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES (cont.)

STATUTES

TABLE OF AUTHORITIES (cont.)

Page(s)

MISCELLANEOUS

Supreme Court No. S224611

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

CHRISTOPHER MENDOZA, an individual, on behalf of himself and all other persons similarly situated
Plaintiff-Appellant-Petitioner

MEAGAN GORDON
Plaintiff-Intervenor-Petitioner

v.

NORDSTROM, INC., a Washington Corporation authorized to do business in the State of California
Defendant-Appellee-Respondent

After a Request by the Ninth Circuit Court of Appeals
Case Nos. 12-57130 consolidated with 12-57144

PLAINTIFF-APPELLANT-PETITIONER'S REPLY BRIEF

Plaintiff-Appellant-Petitioner, CHRISTOPHER MENDOZA ("Plaintiff-Appellant-Petitioner" or "Mendoza") files this reply brief concerning questions posed by the Ninth Circuit Court of Appeals.

I.

INTRODUCTION

Pursuant to the California Labor Code,[1] employees in California have the right to one day of rest in every seven consecutive days. Part-time employees are not entitled to one day of rest. The right to a day of rest cannot be waived. The Day of Rest statutes[2] serve the stated public good of affording full-time employees a day away from work to rest and recuperate, which benefits worker health, safety, well-being.

II.

ARGUMENT

A. The Labor Code Mandates That Workers Receive One Day Of Rest In Every Seven Consecutive Days.

1. Labor Code Sections 551 and 552 Are Plain, Clear And Should Be Applied As Written; It Is Improper To Graft The Word "Workweek" Onto Sections 551 And 552, As Urged By Nordstrom

As this Court has recognized, "[w]hen the language of a statute is clear, we need go no further." (*Nolan v. City of Anaheim* (2004) 33 Cal.4th

---

[1] All cites herein to the "Labor Code" or "Section" reference the California Labor Code.

[2] All references herein to the "Day of Rest statutes" refer to California Labor Code Sections 551 and 552.

335, 340.) The language in California Labor Code Sections 551 and 552 is clear:

> California Labor Code section 551 titled "One Day's Rest In Seven:"
>
> "Every person employed in any occupation of labor is entitled to one day's rest therefrom in seven."
>
> California Labor Code section 552 titled "Maximum consecutive working days:"
>
> "No employer of labor shall cause his employees to work more than six days in seven."

Section 551 and 552's language is not ambiguous. Its plain meaning prohibits employers from causing employees to work seven consecutive days – specifically, more than six days without a day off. The statutory language provides no indication that compliance is properly measured by anything other than the number of consecutive days an employer causes an employee to work. Employees are entitled to receive one day of rest in seven consecutive days.

Nordstrom's workweek argument contravenes the language and the spirit of Sections 551 and 552. Nordstrom seeks to graft the word "workweek" onto the Day of Rest statutes. Having admitted the obvious,

namely, ". . . Sections 551 and 552 do not specifically refer to the workweek. . ." (Respondent Nordstrom Inc.'s Answering Brief ("AB") p. 47) Nordstrom urges this Court to interpret Sections 551 and 552 as though these statutes include the word "workweek." Such an interpretation would result in a dramatic transformation of the application of the Day of Rest statutes from mandating one day of rest in seven to one day of rest in twelve. Nordstrom thus the Court to rewrite the law in a fashion that would gut the statute at issue of its sole and primary purpose. (See *County of Santa Clara v. Perry* (1998) 18 Cal.4th 435, 446 [". . . we have no power to rewrite the statute to make it conform to a presumed intention that is not expressed"].)

Sections 551 and 552 evidence no intent that the day of rest should be applied during an employer defined "workweek." "When interpreting statutory language, we may neither insert language which has been omitted nor ignore language which has been inserted." (*People v. National Auto. and Cas. Ins. Co.* (2002) 98 Cal.App.4th 277, 282.)

2. In Light of The Plain And Clear Language In Sections 551 And 552, It Is Inappropriate To Look Beyond The Language Of The Statutes

Nordstrom urges the review of "extrinsic aids" in support of its position that a "workweek" measuring period applies to the Day of Rest statutes. The express objective of statutory interpretation by a court is to

ascertain and effectuate the legislative intent of the statute. (*Kimmel v. Goland* (1990) 51 Cal.3d 202, 208.) This Court has held that "[a]lthough we may properly rely on extrinsic aids, we should first turn to the words of the statute to determine the intent of the Legislature." (*Burden v. Snowden* (1992) 2 Cal.4th 556, 562, as modified (May 28, 1992).) "[I]f the statutory language permits more than one *reasonable* interpretation, courts *may* consider various extrinsic aids . . ." (*Torres v. Parkhouse Tire Service, Inc.* (2001) 26 Cal.4th 995, 1003.) (Emphasis added.) The statutory language in Sections 551 and 552 does not permit more than a single reasonable interpretation. These statutes must be applied on a consecutive basis to afford each employee one day of rest in every seven days, the purpose of the statutes as evidenced by the language used.

In contrast, the workweek interpretation asserted by Nordstrom would result in an employee potentially receiving one day of rest in *twelve* days, contravening both the language and intent of the statutes. Such an interpretation cannot be deemed "reasonable." Accordingly, the extrinsic aids relied upon by Nordstrom, including an examination of the statutory scheme in which the Day of Rest statutes appear, the legislative history, the contemporaneous administrative construction and the historical circumstances behind the statutes' enactment are unnecessarily in light of the plain language.

a. To The Extent That the Court Wishes To Consider The Extrinsic Aids Argued By Nordstrom, Those Aids Do Not Defeat Or Contravene The Plain Language Of The Day Of Rest Statutes

(1) Simply Because Other Statutes Use the Measurement Of A Workweek Does Not Mean That The Workweek Measurement Should Be Imposed On Sections 551 And 552

The purposeful exclusion of the word "week" or "workweek" in Sections 551 and 552 is significant. The fact that other statues expressly utilize the language and concept of the "work week" does not imply that that "workweek" should be inserted into the language of Sections 551 and 552. In fact, the opposite is true. It has long been acknowledged that ". . . if a statute on a particular subject omits a particular provision, inclusion of that provision in another related statute indicates an intent the provision is not applicable to the statute from which it was omitted." (*In re Marquis D.* (1995) 38 Cal.App.4th 1813.)

Sections 556, the part-time employee exception, references and incorporates the word "week" in establishing the part-time employee exception to the Day of Rest statutes, while Sections 551 and 552 do not. It would be inappropriate to import defined terms from the one section into another, especially here where doing so would alter the plain and clear

wording that exists in Sections 551 and 552. Section 556 uses a fixed workweek to delineate whether an employee works enough hours in a specified period of time to trigger the right to a day of rest. Nothing in the part-time employee exception prevents the Day of Rest statutes from being applied on a consecutive basis. Section 556 and Sections 551 and 552 can be read and applied harmoniously.

Similarly, other statutes, such as Section 510, incorporate the word "workweek." To the extent that the Legislature determined that overtime and make-up hours should be addressed in the context of a "workweek," does not dictate that the day of rest must also be applied on a workweek basis. Under Section 510, an employer may permit employees to work more than six consecutive days where a valid exception to the Day of Rest statutes is triggered and, for those instances, overtime compensation is to be paid as applicable. While it is a misdemeanor under Section 553 for an employer to permit an employee to work more than six consecutive days, an employer is free to lawfully permit an employee to work more than six consecutive days where a valid, legitimate exception exists and the employee is properly compensated under Section 510. Nordstrom's attempt to insert ambiguity and an absent, defined term into Sections 551 and 552 fails.

(2) Nothing In The Legislative History Demands That The Court Rewrite The Day Of Rest Statutes To Mandate That Employees Are To Receive One Day Of Rest Per Employer Defined "Workweek"

The Day of Rest statutes have long been a part of the fabric of the California Labor Code, though rarely litigated or considered by the courts. As set forth above, in light of the plain, clear statutory language, it is unnecessary to delve into the legislative history of the Day of Rest statutes to divine their meaning or application.

Nonetheless, even a cursory review of the legislative history demonstrates that the Legislature had ample time and opportunity revise to Sections 551 and 552 to include "workweek" language in Sections 551 and 552, but the Legislature declined to do so.[3] Accordingly, the plain language of the statute must prevail over a labored interpretation of these statutes based on snippets from a hundred years of legislative history.

---

[3] For instance, the 1999 enactment of Assembly Bill 60 ("AB 60") provided such opportunity when these statutes, and others, were addressed by the Legislature.

(3) The Mercantile Wage Orders Cannot Interfere With the Clear Language of the Labor Code

Nordstrom's argument that the that the language of the California Industrial Welfare Commission ("IWC") Wage Orders supports the notion that California employees are only entitled to one day of rest in every workweek is unavailing. Nothing in the current form of Wage Order No. 7, the applicable wage order to the case at bar, undercuts the statutory mandate that employees receive one day of rest in seven consecutive days. Instead, the appearance of the word "workweek" in conjunction with discussion of the day of rest in the Wage Orders, current and historical, stems from the acknowledgement that there are exceptions to the one day's rest in seven rule.

The Wage Order No. 7 addresses compensation for circumstances where the employee is lawfully working more than six consecutive days, such as an employee performing work related to the protection of life, engaged in the movement of trains or related to agriculture pursuant to Section 554 or a part-time employee pursuant to Section 556. When triggered by an employee legally working more than six consecutive days pursuant to a valid exception, a seventh day premium pay would be appropriate. The thrust of the Wage Order language is to specify the

amounts of compensation that should be paid where a valid exception exists.[4]

Furthermore, to the extent that the Court finds that the Wage Order is directly at odds with the plain meaning of the Day of Rest statutes, the Labor Code controls. (See *First Industrial Loan Co. v. Daugherty* (1945) 26 Cal.2d 545, 550.)

(4) The Clear Language and Purpose of the Statutes Contradicts Nordstrom's Claims That One Day of Rest in Twelve Benefits Employees More Than One Day of Rest in Seven

Nordstrom is arguing for an interpretation of the Day of Rest statutes that contradicts the plain language of these statutes and, in doing so, is claiming these arguments are being asserted for the good of its employees. (AB, pp. 35-38) That assertion is disingenuous. Mendoza seeks acknowledgment that the Day of Rest statutes mandate one day of rest in every seven consecutive days. Nordstrom seeks to reformulate the statutes

---

[4] Nordstrom also cites to the 1999 DLSE Memorandum, claiming the DLSE "implicitly condoned scheduling employees to work more than six consecutive days on a rolling basis." (AB: 31). The section of the DLSE manual cited by Nordstrom opens by stating "We have received many inquiries concerning the provision for seventh day premium pay." (Nordstrom RJN, Ex. 44, page 2). It is apparent that the schedule the DLSE "condoned" relates to a question about when to pay a seventh day premium pay, not when to provide an employee with a day of rest.

to provide one day of rest in every twelve days.[5] Mendoza's formulation is clearly the more beneficial to the average employee. No new employee proudly exclaims to his or her friends "and the best thing about my new job is I never get any days off!"

The Court might well be suspicious of an employer, being sued for Labor Code violations, claiming that the employer's interpretation of the Labor Code is aligned and in tune with the true wishes of its employees. Here, it is plainly not.

In conclusion, it is apparent that Nordstrom is lobbying to change the law, not to interpret the law. To the extent that Nordstrom disagrees with these laws, as drafted, that is an issue for the Legislature. A reviewing court's task is to apply the text of the statute, not to seek to improve upon the text of the statute. (*E.P.A. v. EME Homer City Generation, L.P.* (2014) 134 S.Ct. 1584, 1588.)

---

[5] At trial, it was conceded that Nordstrom's workweek interpretation would permit Nordstrom's employees to work up to 12 consecutive days. (Excerpts of Record ("ER") ER01130:16 – ER01131:5.)

B. Under Labor Code Section 556, Only Truly Part-Time Employees Are Not Entitled To One Day Of Rest In Seven Consecutive Days.

1. If An Employee Is A Full Time Employee Working More Than 30 Hours A Week Or More Than Six Hours In Any One Day, The Employee Is Entitled To A Day Of Rest

a. Section 556 Is an Ambiguous Statute as Written; However, its Purpose to Exclude From a Day of Rest Only Truly Part-Time Employees is Clear

The goal of statutory interpretation is to determine to the intent of the Legislature. (*People v. Gardeley* (1996) 14 Cal.4th 605, 621.) If the statute is clear and unambiguous, the Court will give effect to the plain meaning of the statute. (*Kimmel v. Goland* (1990) 51 Cal.3d 202, 208–209; *accord, California Fed. Savings & Loan Assn. v. City of Los Angeles* (1995) 11 Cal.4th 342, 349.) Unlike Sections 551 and 552, Section 556 is ambiguous. Mendoza disagrees with Nordstrom's assertions that the "plain meaning" of Section 556 is readily apparent.

Both parties recognize that Section 556 contains a double negative, which results in the two "nots" canceling each other out. Both parties have sought to interpret Section 556 by stating the statute in the affirmative. Nordstrom previously stated the statute in the affirmative as follows:

"Sections 551 and 552 shall apply to an employer or employee when the total hours of employment exceed 30 hours in the week **and** six hours on **each** day thereof."

(ER01886:16-18) (emphasis added).

In their most recent briefing, Nordstrom claims that *Mendoza* is improperly trying to substitute "and" for "or" and upbraids Mendoza for arguing that "any one" should be read as "each." (AB: 39-43). The ambiguity in Section 556 is obvious from Nordstrom's struggles at consistency in interpreting the language of the statute.

b. Section 556 Should Not Be Interpreted To Permit An Absurd Result

Courts "may consider the likely effects of a proposed interpretation of a statute because '[w]here uncertainty exists consideration should be given to the consequences that will flow from a particular interpretation.'" (*Klein,* 50 Cal.4th at p. 77.) (Internal citations omitted.) "When the statutory language is ambiguous, a court may consider the consequences of each possible construction and will reasonably infer that the enacting legislative body intended an interpretation producing practical and workable results rather than one producing mischief or absurdity." (*Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554; *Burns v. Mass Bonding & Ins. Co.* (1944) 62 Cal.App.2d 962, 971-972 ["it is the duty of the courts, within the framework of the statutes passed by the

Legislature, to interpret the statutes so as to make them workable and reasonable"].) The courts ". . . must give the statute a reasonable interpretation, avoiding, if possible, a literal interpretation which will lead to an absurd result. (*Verreos v. City and County of San Francisco* (1976) 63 Cal.App.3d 86, 96 [133 Cal.Rptr. 649].)" (*Scottsdale Ins. Co. v. State Farm Mut. Auto. Ins. Co.* (2005) 130 Cal.App.4th 890, 898-99, as modified on denial of reh'g (July 26, 2005).)

(1) The Language of Section 556 Does Not Mandate a Day of Rest for Workers Who Work Fewer Than 30 hours in a Week or Work Six or Fewer Hours Every Day

Nordstrom wishes to focus the Court's attention on its version of a literal interpretation based on definitional language.[6] In its analysis, Nordstrom misses the crux of the grammatical issue with the statutory language – the double negative. If the statute is read as written, with its double negative intact, Mendoza believes that the "or" must be seen as disjunctive. If the

---

[6] It is of note that Nordstrom submitted documents for this Court to review that were not previously submitted to the trial court nor are they part of the excerpts of record in this case. (August 31, 2015, Declaration of Dawn Fonseca In Support of Respondent Nordstrom, Inc.'s Motion to Request Judicial Notice ("RJN"), ¶ 11). That Nordstrom must resort to newly culled definitional extrinsic aids to buttress their statutory interpretation of Section 556 at this late point is further evidence that Nordstrom is still struggling with how to explain the supposedly "plain" language of this statute.

statute is stripped of its double negative to be phrased in the affirmative, the "or" becomes conjunctive. The double negative has a similar impact on the meaning of the phrase "on any day of that week." For example, the negative declaration "I do not want you to do X or Y," when phrased in the affirmative becomes "I want you to refrain from doing X and Y."

The "double negative" declaration "I do not want you to refrain from doing X or Y" however is ambiguous. It can be translated as either "I want you to do X and Y" or "I want you to do X or Y." Nothing about the original construction guides which of these two possible formations is correct. This is the logical flaw in Section 556.

However, the statute becomes clear when its plain purpose is understood. The purpose of the statute is obviously to exempt part-time employees from the Day of Rest stricture because truly part-time employees do not need a day of rest.

(2) The Application Of Section 556 Underscores That The Most Reasonable Interpretation of the Statutes Is to Withhold a Day of Rest Only For Workers Who Work Fewer Than 30 hours in a Week Or Work Six Or Fewer Hours Every Day

Nordstrom's urged interpretation, when applied, is unreasonable, yields absurd results and would cause widespread mischief. Defining

individual words in the language of Section 556 is not as illuminating as trying to apply the statute to real world employee work schedules. Under Nordstrom's interpretation, the following work schedule - where a single day in each week is six hours or under - would be both legal and sanctioned under the Day of Rest statutes, resulting in an employee working weeks, if not months on end, without being given a true day of rest. An extreme example[7] would be:

SUN	MON	TUE	WED	THUR	FRI	SAT	TOTAL
1 18 hours	**2** 18 hours	**3** 18 hours	**4** 18 hours	**5** 18 hours	**6** 18 hours	**7** 5.9 hours	113.9 hours
8 18 hours	**9** 18 hours	**10** 18 hours	**11** 18 hours	**12** 18 hours	**13** 18 hours	**14** 5.9 hours	113.9 hours
15 18 hours	**16** 18 hours	**17** 18 hours	**18** 18 hours	**19** 18 hours	**20** 18 hours	**21** 5.9 hours	113.9 hours
22 18 hours	**23** 18 hours	**24** 18 hours	**25** 18 hours	**26** 18 hours	**27** 18 hours	**28** 5.9 hours	113.9 hours
29 18 hours	**30** 18 hours	**31** 18 hours	**1** 18 hours	**2** 18 hours	**3** 18 hours	**4** 5.9 hours	113.9 hours

[7] Nordstrom's interpretation of Section 556 would also allow an employee to work the following, less extreme schedule for week or months on end without ever receiving a day of rest:

Sun	Mon	Tues	Wed	Thurs	Fri	Sat	Total Hours
8 hrs	8 hrs	8 hrs	8 hrs	8 hrs	3 hrs	8 hrs	51 hrs

Nordstrom argues that employees who have worked six or fewer hours on any one day have received sufficient rest and thus may be required to work seven consecutive days. (AB: 40). Nordstrom's interpretation of the Day of Rest statutes results in the employee not being provided an actual day of rest free from work, but merely being provided a day working six or fewer hours as a substitute for a Day of Rest. The Legislature did not enact these laws to give employees one day of six hours or fewer of work in every seven days; it intended to give employee one day entirely free from work in seven. Considering the above schedule, Nordstrom argues that working six hours or fewer in a day constitutes a day of rest and that the employee should be sufficiently rested to continue working consecutive days.

Mendoza's interpretation, on the other hand, is reasonable. Only truly part-time employees, those who work fewer than 30 hours in a week or fewer than six hours or fewer every day, are exempt from the required day of rest. This interpretation is in line with the Legislature's intent to provide employees with a day free from work in every seven days and avoids the absurd result of Nordstrom's interpretation. Under Mendoza's interpretation, an employee is part-time if the total number of hours that employee worked in a week was less than 30 hours, **or** if every day of the days the employee worked in that week was six hours or fewer. Conversely, an employee who worked more than six consecutive days would fall under the exception in Section 556 only if that employee worked

fewer than thirty hours in one week or worked six or fewer hours every day during the week.

Nordstrom counters this by citing to the example of an employee working the following schedule and wrongly claims that the employee would be entitled to a day of rest on the seventh day under Mendoza's interpretation. (AB: 46)

Sun	Mon	Tues	Wed	Thurs	Fri	Sat	Total Hours
1 hr	1 hr	1 hr	1 hrs	1 hrs	6.1 hrs	0 hrs	11.1 hrs

An employee working this schedule has obviously not worked more than 30 hours in the week. This employee, therefore, is plainly not entitled to a day or rest. This is a silly example.

Under Nordstrom's interpretation of Section 556, an employer simply could avoid triggering the day of rest requirement in the above schedule by having the employee work a few minutes fewer on Friday. Employers control employees. (*Martinez v. Combs* (2010) 49 Cal.4th 35, 71, reh'g denied (June 30, 2010), as modified (June 9, 2010).) Furthermore, an employer who would have an employee work a schedule such as the one above – having the employee disrupt an entire day, arrange childcare, put on a uniform, commute and arrive timely at work for a single work hour on five consecutive days – is an employer who appears unable to

manage its business appropriately and is taking gross advantage of the control it has over its employees.

Under Mendoza's interpretation, the following schedules would not trigger a day of rest:

Sun	Mon	Tues	Wed	Thurs	Fri	Sat	Total Hours
4.27 hrs	4.27 hrs	4.27 hrs	4.27 hrs	4.27 hrs	4.27 hrs	4.27 hrs	29.9 hrs

Sun	Mon	Tues	Wed	Thurs	Fri	Sat	Total Hours
8 hrs	1 hr	2 hrs	3hrs	3 hrs	11 hrs	1.9 hrs	29.9 hrs

Sun	Mon	Tues	Wed	Thurs	Fri	Sat	Total Hours
1 hr	1 hr	1 hr	1hr	8 hrs	8 hrs	8 hrs	28 hrs

The above schedules are part-time schedules. Section 556 is intended to prevent a mandate that part-time workers receive a day of rest, as a part-time employee's workload is lighter and it is not necessary to provide them with a full day's rest every seven days to recuperate.

As discussed in 3 Witkin, Summary (10th ed. 2005) Agency, section 361, p. 456 (ER00923-ER00926) and a broad and varied selection of other sources (ER00937) (ER00971) (ER00941-ER00942) (ER00945) (ER00948) (ER00951-ER00953) (ER00965), Section 556 is intended to exempt part-time employees from the day of rest statutes, not provide a

massive loophole to allow unscrupulous employers to exploit their employees without running afoul of the Day of Rest statutes.

Nordstrom's interpretation of the Day of Rest statutes - as applied to hypothetical employee schedules invented by counsel and the historical schedules of Nordstrom's employees - is unreasonable and yields absurd results. Plainly, the legislative intent in drafting Section 556 was not to dismantle the Day of Rest statutes codified in Sections 551 and 552. Only truly part time employees should be exempted from the required day of rest.

C. The Right To One Day of Rest In Seven Consecutive Days Cannot Be Waived By the Worker

While this lawsuit presents novel questions about a relatively untested portion of the California Labor Code, the issues to be decided are far reaching. If Nordstrom prevails on its "cause" argument, this case will become the cornerstone for the proposition that, post-*Brinker*,[8] any section of the Labor Code can be waived, so long as the employee "volunteers" to do so. The impact and implications of upholding such a ruling would be widespread and disastrous, eroding the teaching of *Murphy v. Kenneth Cole Prods., Inc.* (2007) 40 Cal.4th 1094, 1103, which found that statutes governing wages, hours and working conditions should be liberally construed for the protection and benefit of the employees.

[8] *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1027.

Recognizing the radical impact the District Court's decision would have in labor litigation and understanding that the District Court's reasoning would represent a wholesale change in the way statutes governing wages, hours and working conditions were interpreted, Nordstrom has now reframed its waiver arguments.[9]

In an effort to disguise the centrality of the waiver issue, Nordstrom attempts to distance itself from the District Court's holding that employees were permitted to waive their right to a day of rest. The District Court mistakenly found that the day of rest could be waived:

> Nordstrom does, however, permit employees to waive their days off and choose to work for more than six consecutive days. (ER00679:7-8.) (emphasis added)
>
> . . . .
>
> So long as the employer does not force an employee to work more than six consecutive days, an employee is

[9] This is in stark contrast to Nordstrom's long advocated position that the right to a day of rest can be waived. On the eve of trial, Nordstrom was arguing "Even though Sections 551 and 552 have no language affirmatively providing for waiver, once the day of rest is made available, the employee can choose to waive their right." (Nordstrom's Supplemental Excerpts of Record ("SER") SER00315:14-16.) The Pre-Trial Conference Order memorializes Nordstrom's position. (ER01807.) The district court acknowledged as much, stating that "Nordstrom's defense depends, in part, on whether an employee may choose to waive his or her right to a day of rest, and work additional days, without triggering a statutory violation by the employer." (ER00685:24-26.)

free to waive his or her day of rest. (ER00686:4-5)

(emphasis added)

Mendoza argued and continues to argue that the day of rest cannot be waived by an employee. The District Court sided with Nordstrom, finding that the day of rest could be waived by the employee. Nordstrom now seeks to reframe the waiver question, arguing that an employer's only obligation is to avoid "requiring" or "forcing" an employee to work more than six consecutive days. However couched, it is plain that the Day of Rest right cannot be waived.

1. An Employer Cannot Permit an Employee to work a Seventh Consecutive Day

a. The PAGA Must Be Enforceable

The Labor and Workforce Development Agency (LWDA) is California's labor law enforcement agency authorized to assess and collect civil penalties for specified violations of the Labor Code committed by an employer; however, the LWDA's resources are substantially limited and it became apparent that they are unable to fully police California employers' compliance with the Labor Code. The Private Attorney General Act of 2004 (the "PAGA") was enacted with a stated goal of improving enforcement of existing Labor Code obligations. (See Labor Code § 2698.) A PAGA action is an enforcement action intended to foster enforcement of the Labor Code and to address violations of the Labor Code that would

otherwise be disregarded due to the State's lack of resources. As this Court has previously observed, a PAGA action "'is fundamentally a law enforcement action designed to protect the public and not to benefit private parties' (*People v. Pacific Land Research Co.* (1977) 20 Cal.3d 10, 17)." (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 381.) This Court has recognized that in a PAGA action, "the governmental entity . . . is always the real party in interest." (*Id.* at p. 382.) Accordingly, an action under the PAGA does not stem from the employee/employer relationship, but rather arises as an enforcement action designed to protect the public that happens to be asserted by an aggrieved member of the public. The PAGA permits, as an alternative to LWDA prosecution, an aggrieved employee to initiate a private civil action on behalf of himself and other current or former employees if the LWDA does not do so.

An interpretation of the Day of Rest statutes that includes a waiver provision or a voluntariness standard will render the Day of Rest statutes unenforceable. Under the analysis devised by Nordstrom, it is difficult to imagine how the LWDA would ever identify that an employer was systematically violating the Day of Rest statutes. In that there is no private right of action to enforce the Day of Rest statutes, the Legislature cannot have intended Labor Code sections to be unenforceable for the agency charged with enforcing the Labor Code. Under Nordstrom's interpretation, each potential violation must be examined to determine if the employee

chose to work a seventh day. No representative action would be permitted because it would be argued that individual facts must be assessed by the LWDA as to each potential violation.

b. Defining Section 552's "Cause" As "Require" Makes the Day of Rest Statutes All But Unenforceable

The Day of Rest statutes say that an employee "is entitled to" a day of rest and that an employer shall not "cause" an employee to work more than six consecutive days. Nordstrom interprets "cause" as "require," which it defines as "to force, coerce, or pressure an employee to work over six consecutive days." (AB: 47). If the goal of the PAGA is enforcement of the Labor Code, it follows that the statutes which fall under the PAGA must be enforceable. Reading "cause" as "require" would erode any type of bright line enforcement, leaving the employer with unlimited reign to argue that each and every employee volunteered to work the seventh (or more) consecutive day. Nordstrom's position on the Day of Rest statutes would render the statutes unenforceable, as Nordstrom's theories would require an individual analysis of each time an employee worked more than six consecutive days to determine if the employee was "required" or to work the seventh consecutive day.

The PAGA should be permitted to be used to address companies with non-compliant policies, not merely individual incidents. Here,

available employment records, records readily available in every case, show clearly the violations, which occurred regularly and frequently, 26,002 times. Under Nordstrom's theory, if an individual worked more than seven consecutive days and wished to bring a PAGA action to enforce compliance of the Labor Code and require the employer to pay penalties for failing to comply, an investigation would have to be launched into the individualized circumstances why the employee worked the seventh day, which would devolve into a credibility determination with the employer claiming that the employee was not "forced" to work the seventh day and the employee scrambling to prove the opposite. At stake would be a trifling penalty of $100, of which $75 would be paid to the LWDA. (See Labor Code § 2699(f)(2).) Under these circumstances there is no deterrent which prevents a company like Nordstrom from continuing to overwork its employees.

If an employee files a PAGA action to seek to bring a company with a problematic day of rest policy into compliance, the exercise will be futile. If a company has no day of rest policy, has a non-compliant day of rest policy or has a workforce that has no idea about their entitlement to a day of rest rights, the company will still have the opportunity to defend itself by requiring an individual investigation into each time an employee worked more than six days to determine whether the employee was "forced" or coerced to do so.

Ironically, the more violations of the day of rest policy, the more the process favors defendants, as voluminous individual investigations will make the matter increasingly more difficult to adjudicate. Nordstrom, understanding this dynamic, has argued that in a Day of Rest PAGA action, the "Court would need to individually analyze the circumstances surrounding each alleged violation . . ." which would result in the case not being manageable as a representative the PAGA action. (SER 0078.) Under Nordstrom's theory, no PAGA action on the Day of Rest statutes would be manageable. If there is no remedy, the law becomes meaningless.

Furthermore, under Nordstrom's theory, it is patently unclear what – if anything – would constitute evidence that an employee was "forced" or "coerced" to give up their right to one day of rest in seven. According to Nordstrom, the following do not constitute an employee being "forced" or "coerced":

- The employer's standardized performance report includes a category called "Work scheduled shifts." To receive an "exceeds expectations" rating for this category, the employee must work more than his scheduled shifts. (ER01478:15-ER01479:2.) [10]

[10] Mendoza worked more than his scheduled shifts in the hopes of receiving high marks on his performance report. (ER01311:4-9, 16-19, ER01287:10-19.) Mendoza did, in fact, receive improved marks on his performance report and was rewarded with a promotion. (ER01336: 3-10, ER00893-ER00915, ER00013:39, ER01478:15-ER01479:2, ER01287:21-25,

- The employer scheduled employees to work more than six consecutive days. (For example, ER00517-ER00518, ER00521-ER00522, ER00525-ER00526, ER00551, ER00576, ER00584, ER00586, ER00591.)
- The employer has an "expectation" that employees will be scheduled to permit two rest days in an employer-defined workweek, an expectation that is argued to be compliant with the Day of Rest statutes, as it counts days of rest based on an employer defined workweek, not consecutive days.[11]
- The employer does not inform employees of their statutory right to be entitled one day of rest in seven consecutive days.[12]

If conditioning an above average performance review on working seven consecutive days is not coercive, if scheduling employees to work more than seven consecutive is not coercive, if failing to apprise an employee of

---

ER01288: 1-9, 14-21.)

[11] This "expectation" is neither a formal policy (ER01047:6-13), nor is this expectation actually followed by Nordstrom, in light of Nordstrom scheduling employees to work more than six consecutive days.

[12] Nordstrom states that it provided notice of right to one day of rest in seven by "posting the wage order, which explains California's rest day laws." (AB: 75.) The wage order does not "explain" the day of rest laws, but confines itself to a discussion of various exceptions to the Day of Rest statutes. Furthermore, in that Nordstrom's "expectation" contradicts the statute, to the extent that the employee is aware of the statute and Nordstrom's "expectation," the only result will be hopeless confusion on the part of the employee. Finally, there is no evidence that Mendoza ever knew that he was statutorily entitled to one day of rest in every seven days.

their right to one day of rest in seven consecutive days is not coercive, it is hard to imagine what circumstances could constitute an employer coercing an employee to work a sixth consecutive day. Nordstrom is notably silent as to what behavior on the part of the employer it believes would constitute "forcing" or "coercing" an employee to work more than six consecutive days. Mendoza could imagine an employer arguing that no conduct short of the threat of termination for not working scheduled days at their desk, station or perfume counter would be considered "force" or "coercion."

c. Mendoza's Interpretation That "Cause" Means "Permit" Is a More Natural Reading That Allows For Enforcement and Promotes the Aims of the Day of Rest Statutes

Reading "cause" in Section 552 as to "force," "coerce," "demand," "pressure," "schedule," "solicit," "suggest," "encourage," " reward," "incentivize" or "permit" fits the purpose and spirit of the statute, allows for the Day of Rest statutes to be enforced and is in tune with the realities of the workplace. The statute is designed to give workers one rest day in seven. The public policy behind such a rest day is compelling. In the face of such a statute, no employer is going to formalize or publicize a policy that states that an employee must work more than six consecutive days or be penalized or terminated. To the extent that employers want employees to work more than six consecutive days, the pressure, solicitation or

incentivization will likely be more subtle, though nonetheless coercive. The best way to ensure compliance with the Day of Rest statutes and allow for their enforcement is to prevent an employee from being able to waive this right in the first place, preventing the employee from being vulnerable in the first place. Such is no doubt true as to other important work place rights, such as minimum wage and overtime pay.

d. No Employee Can Work Without the Employer Giving the Employee Permission To Work, Making It Reasonable For An Employer To Prevent Employees Working More Than Six Consecutive Days

An employee is under the control of an employer when the employee is "suffered or permitted" to work. (Wage Order No. 7 (2)(D).) "Control" is a key element in the employer-employee relationship. (*Martinez v. Combs* (2010) 49 Cal.4th 35, 71, reh'g denied (June 30, 2010), as modified (June 9, 2010).) As the employer, Nordstrom is in control of how its employees work and when its employees work, which effectively "causes" an employee to work (or not work) any particular shift. Nordstrom has admitted as much. Mendoza's manager testified that, at all times relevant to this lawsuit, the ultimate authority for an employee working a shift lies with the manager, not with the employee. (ER01286:13-19) (ER01292:2-9) (ER01301:21-25) (ER01029:1-12, 19-21) (ER1030:1-17) (ER01489:14-22)

Managers set schedules, not employees. (ER01115:4-9.) Nordstrom managers are coached and trained to manage employee schedules and to review employee time sheets, especially with an eye toward containing overtime costs. (ER01047:16-19.) (ER01115:6 – ER01117:2.)[13] Unlike "policing" for employees taking meal breaks, employers have and exert the control necessary to permit an employee to work a seventh consecutive day or prevent an employee from working seven consecutive days. Employers can and should be charged with the responsibility of managing their employees to avoid a seventh consecutive day of work.

2. Public Policy Demands That Employers Should Not Permit An Employee to Work a Seventh Consecutive Day

California employees need protection from the insidious creep of overwork.[14] Californians, and Americans in general, are working longer and harder than ever before. The public policy of the state is to afford workers proper rest, so workers are not worked to death or do not work

---

[13] Nordstrom's Senior HR Compliance Strategy and Project Manager, also acknowledged that employees do not set their own schedules, stating, "[i]t would be very difficult to run a business if each and every employee actually could write their own schedule." (ER02834:25 – ER02835:2.)

[14] Nordstrom accuses Mendoza of urging a "paternalistic" interpretation of the Labor Code. The Labor Code is designed to protect employees. (AB: FN 94.) "[I]n light of the remedial nature of the legislative enactments authorizing the regulation of wages, hours and working conditions for the protection and benefit of employees, the statutory provisions are to be liberally construed with an eye to promoting such protection...." (*Industrial Welfare Com. v. Superior Court* (1980) 27 Cal.3d 690, 702.)

themselves to death. In considering the applicability of overtime laws, this Court found: "Furthermore, the overtime laws serve important public policy goals, such as protecting the health and safety of workers and the general public, protecting employees in a relatively weak bargaining position from the evils associated with overwork, and expanding the job market by giving employers an economic incentive to spread employment throughout the workforce. (*Gentry v. Superior Court* (2007) 42 Cal.4th 443, 456 [64 Cal.Rptr.3d 773, 165 P.3d 556].) The Legislature has considered these purposes sufficiently important to make the right to overtime compensation unwaivable (Lab. Code, § 1194) and the failure to pay overtime a crime (*Id.* § 1199; see *Gentry*, at p. 456, 64 Cal.Rptr.3d 773, 165 P.3d 556)." (*Sullivan v. Oracle Corp.* (2011) 51 Cal.4th 1191, 1198.)

It bears repeating that, "'[a] party may waive a statutory right where its public benefit is merely incidental to its primary purpose, but a waiver is unenforceable where it would seriously compromise any public purpose that the statute was intended to serve.'" (*Azteca Constr., Inc. v. ADR Consulting, Inc.* (2004) 121 Cal.App.4th 1156, 1166.) (Internal quotations and alterations omitted.) Both the PAGA and the Day of Rest statutes, enforceable through the PAGA, serve a public purpose and the public good. The statutory right to one day of rest in seven cannot be waived.

The Day of Rest laws similarly serve important public policy goals. Protecting the health and safety of workers and the general public,

protecting employees in a relatively weak bargaining position from the evils associated with overwork, and expanding the job market by giving employers an economic incentive to spread employment throughout the workforce fit squarely with goals explicitly stated by the Legislature. The Legislature considered these purposes sufficiently important to make it a crime for the employee to work more than six consecutive days. See Section 553.

There is no indication that the Legislature ever considered the possibility that Day of Rest statutes could be waived. Exceptions to the Day of Rest statutes are limited and specifically identified. See Section 554. To the extent that Nordstrom invented the concept of waiving the right to a Day of Rest, it should be firmly discarded as against public policy.

If Nordstrom is taken at its word, Nordstrom is not a particularly grim place of employment, but Nordstrom is not the only employer in the State of California. There are likely many California employees who toil in difficult, uncomfortable and, most likely, illegal circumstances. The California Labor Code does not only apply to baristas and sales associates at the perfume counter, but also to more vulnerable employees whose ability to enjoy one day of rest in every seven days is entirely dependent on the survival, application and threat of enforcement of the Day of Rest statutes. For employers whose edict is overwork and abuse, the Day of Rest

statutes and the ability to prosecute lawsuits enforcing these statutes may provide the only opportunity some workers ever have to secure a regular day of rest or fight back if a day of rest is denied. In the hands of an unscrupulous employer, any employee who works a seventh consecutive day (or an eighth, or a ninth) will be deemed to have "volunteered" to have done so, no matter what the circumstances appear.

Even if a worker has a more enlightened employer, there is the very real danger that employees will work themselves to the point of collapse. Nordstrom states that employees will work more than six consecutive days to "make more money" and "guarantee eligibility for benefits." (AB: page 2) Mendoza agrees. If money and benefits were of no concern, it is doubtful whether any employee would persist in working 20, 40 or 53 days in a row without a day of rest. (ER02785-ER02787) Nordstrom cannot have it both ways – it cannot claim to be a champion of employee welfare while creating an employment environment that sees employees "volunteering" to work 53 straight days in an effort to make a sufficient amount of money to live. In an expensive state fighting economic challenges there is a grave likelihood that workers will "choose" to work and work and work, unless there are clear, bright line rules which afford them a day of rest free from being permitted to work more.

Nordstrom has not admitted the obvious fact that it benefits as a result of employees "volunteering" to work more than six consecutive days

in an effort to earn a suitable income and precious benefits. These "hidden" employer advantages include hiring fewer employees and not suffering the additional costs and benefits associated with hiring more employees. The Labor Code exists to protect employees from employers who think that it is suitable, appropriate and legal to have an employee "volunteering" to work 53 straight days.

3. Nordstrom's Argument That Waiver of the Day of Rest Statutes Benefits Employees By Offering Flexibility Is Deceptive

Nordstrom claims that employees will be harmed if they are not permitted to waive their day of rest, denying employees "[w]orkplace flexibility, freedom of choice and economic and personal opportunity." (AB: 66).[15] Nordstrom claims it "feels strongly about the welfare of its employees" (AB: 1) and believes providing "employees the flexibility to voluntarily forgo their day of rest" (AB 2) "is in keeping with the employee protections. . ." (AB 2). Nordstrom's interest in employee well-being and protections have resulted in employee 6841746 working the following schedule:

[15] To paraphrase Virgil, beware of Greeks making flexibility arguments.

EMPLOYEE 6841746 09/03/2010 to 10/21/10						
Sunday	**Monday**	**Tuesday**	**Wednesday**	**Thursday**	**Friday**	**Saturday**
				Off	Work	Work
Work	Work	Work	Work	Work	Work	Work
Work	Work	Work	Work	Work	Work	Work
Work	Work	Work	Work	Work	Work	Work
Work	Work	Work	Work	Work	Work	Work
Work	Work	Work	Work	Work	Work	Work
Work	Work	Work	Work	Work	Work	Work
Work	Work	Work	Work	Off	Work	Work
Work	Work	Work	Work	Work	Work	Work
Work	Work	Work	Work	Work	Work	Work
Work	Work	Work	Work	Work	Work	Work
Work	Off					

In The 2002 Update of The DLSE Enforcement Policies and Interpretations Manual Section 43.4 (ER03431), the Legislature made findings that "Numerous studies have linked long work hours to increased rates of accident and injury" and "Family life suffers when either or both parents are kept away from home for an extended period of time on a daily basis." (ER03431.) The Eight-Hour-Day Restoration and Workplace Flexibility Act of 1999 was intended as ". . . a fundamental protection for working people." (ER03431.) It is challenging to imagine how, in light of

the health, safety and home life concerns acknowledged by a Legislature concerned with overwork by employees that the Act could be read as supporting a working person working the schedule above.

D. Nordstrom Should Be Held Responsible For All Past Day of Rest Violations

The Labor Code sections at issue are neither new nor groundbreaking. The derivation of Sections 551, 552 and 553 is given as 1893, 122 years ago, and these provisions have been the law of California in their present formulation since 1937. Nordstrom had plenty of forewarning of the illegality and consequences of its conduct. Intentionally ignoring the plain meaning of the Day of Rest statutes cannot constitute grounds for failing to comply with these statutes.

In support of its argument that the Day of Rest statutes should only apply prospectively, Nordstrom relies upon *Claxton v. Waters* (2004) 34 Cal.4th 367. In *Claxton*, the Court's holding admittedly changed previously existing, and clearly articulated, law on the admissibility of extrinsic evidence to show that a pre-printed workers' compensation release form included causes of action outside the workers' compensation system. The previous law had been set forth in three published decisions, including a California Supreme Court decision. It was acknowledged that many parties had "demonstrably relied upon" the preexisting law in settling cases and executing such releases. (*Id.* p. 379.) The *Claxton* court was thus obliged

to determine whether the holding should be applied only prospectively, while recognizing that as a general rule judicial decisions are to be given retroactive effect. The court acknowledged a narrow exception when a judicial decision *changes a settled rule* on which the parties below have relied. The considerations relevant to the retroactivity determination include the reasonableness of the parties' reliance on the former rule, the nature of the change as substantive or procedural, retroactivity's effect on the administration of justice, and the purposes to be served by the new rule. In *Claxton*, the court concluded the holding should apply only prospectively as to all others, but would certainly apply as to the parties to the very matter at bar. Therefore, even if this Court were to follow *Claxton*, it would afford Nordstrom no relief.

Nonetheless, *Claxton* is obviously inapplicable. Here, there was no well settled rule, derived from a body of previous published decisions of the courts of appeal and Supreme Court, that mandated Nordstrom's purported interpretation. Nordstrom fails to prove that it relied on Wage Order No. 7 or the Wage and Hour Manual, nor does a reading of either even support Nordstrom's position. Nonetheless, a Wage Order and a publication cannot trump unambiguous provisions of a statute. This situation is a far cry from a party's reliance on three published decisions, directly on point, by two courts of appeal and the state Supreme Court, that clearly mandate the erroneous interpretation. Nor does Nordstrom submit

any evidence that any other party may have relied upon this non-existent body of law.

III.

CONCLUSION

The Court is respectfully requested to make the following findings:

1. The Day of Rest statutes apply to days of work exceeding six consecutive days, and are not confined to any "workweek."

2. The exception to the Day of Rest statutes for part-time employees under section 556 requires an employee work less than 30 hours a week or six or fewer hours in each workday.

3. The Day of Rest statutes cannot be waived by employees and an employer must have a compliant policy as to the Day of Rest protections for employees to avoid violation of the Day of Rest statutes.

Dated: October 21, 2015

Respectfully submitted,

KNAPP, PETERSEN & CLARKE

By: _____

André E. Jardini
K.L. Myles
Attorneys for Plaintiff-Appellant-Petitioner
CHRISTOPHER MENDOZA, an individual, on behalf of himself and all other persons similarly situated

CERTIFICATE OF WORD COUNT

Pursuant to California Rules of Court, Rule 8.204(d), the attached Plaintiff-Appellant-Petitioner's Reply Brief contains 8,324 words.

Dated: October 21, 2015

Respectfully submitted,

KNAPP, PETERSEN & CLARKE

By: _____

André E. Jardini
K.L. Myles
Attorneys for Plaintiff-Appellant-Petitioner
CHRISTOPHER MENDOZA, an individual, on behalf of himself and all other persons similarly situated

PROOF OF SERVICE
MENDOZA V. NORDSTROM
California Supreme Court Case No.: S224611
USDC Case No.: SACV 10-00109 CJC (MLGx)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and am not a party to the within action. My business address is 550 North Brand Boulevard, Suite 1500, Glendale, California 91203-1922. On October 21, 2015, I caused the foregoing document(s) described as PLAINTIFF-APPELLANT-PETITIONER'S REPLY BRIEF to be served on the interested parties in this action as follows:

By placing a true copy thereof enclosed in a sealed envelope(s) addressed as stated on the attached mailing list.

[X] **BY MAIL:** I sealed and placed such envelope for collection and mailing to be deposited in the mail on the same day in the ordinary course of business at Glendale, California. The envelope was mailed with postage thereon fully prepaid. I am readily familiar with this firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business.

[X] **BY UPS:** I caused such envelope to be placed for collection and delivery on this date in accordance with standard UPS delivery procedures.

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

Executed on October 21, 2015, at Glendale, California.

Mindy Menahen
(Type or print name)

Mindy Menahen
(Signature)

SERVICE LIST
MENDOZA V. NORDSTROM
California Supreme Court Case No.: S224611
USDC Case No.: SACV 10-00109 CJC (MLGx)

Julie A. Dunne, Esq. Dawn S. Fonseca, Esq. Joshua D. Levine, Esq. LITTLER MENDELSON 501 W. Broadway, Suite 900 San Diego, CA 92101-3577 TEL: (619) 232-0441 FAX: (619) 232-4302 (Via U.S. Mail)	Attorneys for Defendant, NORDSTROM, INC.
Michael G. Leggieri, Esq. LITTLER MENDELSON, P.C. 500 Capitol Mall Suite 2000 Sacramento, CA 95814 TEL: (916) 830-7244 FAX: 916-561-0828 (Via U.S. Mail)	Co-Counsel Attorneys for Defendant, NORDSTROM, INC.
R. Craig Clark, Esq. James M. Treglio, Esq.. Clark & Treglio 205 W Date Street San Diego, CA 92101 Telephone: (619) 239-1321 Facsimile: (619) 239-5888 (Via U.S. Mail)	Co-Counsel Attorneys for Plaintiff-Intervenor - Petitioner MEAGAN GORDON
The Honorable Susan P. Graber, Circuit Judge United States Court of Appeals for the Ninth Circuit 100 S.W. Third Avenue Portland, OR 97204' (Via U.S. Mail)	
The Honorable Ronald M. Gould, Circuit Judge U.S. Court of Appeals 1010 Fifth Avenue Seattle, WA 98104 (Via U.S. Mail)	
The Honorable Consuelo M. Callahan, Circuit Judge United States Court of Appeals for the Ninth Circuit 501 I Street Sacramento, CA 95814 (Via U.S. Mail)	

SERVICE LIST
MENDOZA V. NORDSTROM
California Supreme Court Case No.: S224611
USDC Case No.: SACV 10-00109 CJC (MLGx)

The Honorable Cormac J. Carney
United States District Court
411 West Fourth Street
#1053
Courtroom 9
Santa Ana, CA 92701-4516
(Via U.S. Mail)

California Supreme Court
350 McAllister Street
San Francisco, CA 94102
(Via UPS Overnight Mail)