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May 7, 2012

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Hon. Tani Gorre Cantil-Sakauye, Chief Justice
and
Associate Justices
California Supreme Court
350 Mc Allister Street
San Francisco, CA 94102-4797

Re: Duran v. U.S. Bank National Association, No. S200923
Amicus Letter in Support of Petition for Review

Dear Chief Justice and Associate Justices:

This letter is an amicus letter under Rule 8.500 (g) in support of the petition for review in this case.

This letter is on behalf of our client, the California Labor Federation, AFL-CIO.

INTEREST OF AMICUS

The California Labor Federation, AFL-CIO, is the California state body chartered by the American Federation of Labor-Congress of Industrial Organizations ("AFL-CIO"). The Federation is a federation of affiliated labor organizations which represent in excess of two million workers in the State of California. This amicus is interested in the issues presented. It is interested because it has been the sponsor of many of the bills that upon adoption now constitute the wage and hour laws of the State. It has also been a leading participant in the regulatory processes that have in past years produced the IWC Wage Orders. The very enforcement of these laws, however, often depend upon the class action mechanism.

REASONS FOR GRANTING REVIEW

The Court is asked to grant review to secure uniformity of decision or to settle an important question of law, CRC, Rule 8.500 (b).

The Federation believes the issues are well-defined by the petitioners. The Federation commends to the Court's attention the assurances of U.S. Bank that the Opinion is not as sweeping

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as the petitioners contend (Answer to Pet., pp. 1-2) and the assertion of the petitioners that courts around the state are seeing a sea change as a result of the Opinion. (Petition, pp. 4-5.) Review would allow this Court to provide important and needed guidance. The Federation will limit this amicus letter to one issue, the failure of the Court of Appeal to remand to the trial court to see if the trial court could find any other basis for managing a class action in light of the guidance furnished by the Court of Appeal.

The trial court's management plan produced a 43.3% margin of error. The Court of Appeal decertifies the class and arguably remands for no other purpose than to determine the meal and rest break claims of two named plaintiffs. Slip Op. p.74. The Opinion, however, also expressly disclaims whether some workable trial plan could have been devised ("At this juncture, we need not speculate as to whether a workable trial plan could have been devised to account for these individual inquiries", Slip Op. p.73). The Opinion then says this is because "it is doubtful that such a plan could be successfully implemented." Ibid.

Whether some other plan can be successfully implemented should be the responsibility of the trial court. This amicus believes that remand should always be the rule absent extraordinary circumstances. If the Court of Appeal is correct in its skepticism, that should be proven out on remand to a trial court. The role of the trial court in making initial class determinations, and again on remand, is central to the handling of class actions in this state. See Washington Mutual Bank v. Superior Court (2001) 24 Cal. 4th 906, 928. The trial court put enormous energy and time into this case, as the Opinion reflects. As the Opinion also reflects, the trial court was trying to fulfill the command that trial courts "think outside the box" and be "innovative". Slip Op. p.40, quoting Sav-On Drug Stores Inc. v. Superior Court (2004) 34 Cal. 4th 319, 339. The rules for class certification do not change just because the action raises claims under the wage and hour laws of the State. But those who are entitled to the benefit of those police power minimum labor standards are uniquely dependent on the proper application of those rules by the courts. They are dependent because they are workers who do not know of their rights; or if they know of their rights, the amount in question in their minds at least will not move them to seek an attorney to enforce their rights; and if they seek an attorney, they will often not find one willing to take an individual case. It is not an exaggeration to say that the very enforcement of California's minimum labor standards are often dependent upon the class action. Certainly the Division of Labor Standards Enforcement (Labor Commissioner) lacks the resources to handle even the individual claims filed with it. See generally, "Wage Claims Get Uneven Treatment, Records Show," Daily Journal, March 23, 2012, pp.1 and 3.

The Opinion is no doubt correct when it says, "... the California Supreme Court has in fact challenged the trial courts to develop pragmatic procedural devices to simplify the potentially complex litigation while at the same time protecting the rights of all the parties." (Slip Op.p.40, emphasis in original, internal quotation marks omitted.) But it is the "trial courts" that have been so challenged. Having found one class management plan to be erroneous hardly qualifies an

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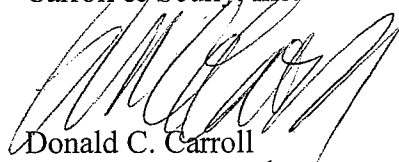
appellate court to say that under no circumstances could an alternative not be found by a trial court. Due respect for the importance of class actions under the law of this State should require remand to a trial court. This Court has just done so in Brinker Restaurant Corp. v. Superior Court (2012), S166350.

The Court is asked to grant the petition for review.

Thank you.

Very truly yours,

Law Offices of
Carroll & Scully, Inc.



Donald C. Carroll
SB. 034569

DCC:kes
ope-3-afl-cio

cc: Mr. Art Pulaski

CERTIFICATE OF SERVICE
(C.C.P. Section 1013A and 2015.5)

I, Karen Scannell, declare that I am a citizen of the United States, over 18 years of age, and not a party to the within action. My business address is 300 Montgomery Street, Suite 735, San Francisco, California 94104.

Upon this day, I served the following document(s):

Amicus Letter in Support of Petition for Review
Duran v. U.S. Bank National Association, California Supreme
Court, Case No. S200923

- (A) By First Class Mail: I am readily familiar with the practice of the Law Offices of Carroll & Scully, Inc. for the collection and processing of correspondence for mailing with the United States Postal Service. I deposited each such envelope, with first class postage thereon fully prepared, in a recognized place of deposit of the U.S. Mail in San Francisco, California, for collection and mailing to the office of the addressee on the date shown herein.
- (B) By Personal Service: I personally delivered the above document(s) to the office of the addressee on the date shown herein.
- (C) By Messenger Service: I am readily familiar with the practice of the Law Offices of Carroll & Scully, Inc. for messenger delivery, and I delivered each such envelope to a courier employed by SILVER BULLET EXPRESS COURIER, with whom we have a direct billing account, who personally delivered each such envelope to the office of the address on the date last written below.
- (D) By Overnight/Mail Courier: By placing a true copy thereof enclosed in a sealed envelope(s), addressed as above, and placing each for collection by overnight mail service or overnight courier service. I am readily familiar with my firm's business practice of collection and processing of correspondence for overnight mail or overnight courier service, and any correspondence placed for collection for overnight delivery would, in the ordinary course of business, be delivered to an authorized courier or driver business, be delivered to an authorized courier or driver authorized by the overnight mail carrier to receive documents, with delivery fees paid or

provided for, that same day, for delivery on the following business day.

- (E) By Facsimile: I served such document(s) via facsimile electronic equipment transmission (fax) on the parties in this action, pursuant to oral and/or written agreement between such parties regarding service by facsimile by transmitting a true copy to the following facsimile numbers:

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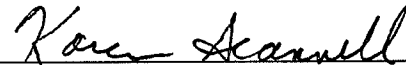
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Attorney General

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 7, 2012 at San Francisco, California.

A handwritten signature in cursive script, reading "Karen Scannell", written over a horizontal line.

Karen Scannell