Lieff Cabraser Heimann & Bernstein, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
t 415.956.1000
f 415.956.1008

April 26, 2012

Jahan C. Sagafi
Partner
jsagafi@lchb.com

The Honorable Tani Cantil-Sakauye, Chief Justice, and Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

Re: Letter of NELP Supporting Review (Cal. Rules of Court, rule 8.500(g))
*Duran v U.S. Bank National Ass'n* (2012) 203 Cal. App. 4th 212
Supreme Court Case No. S200923
A125557 & A126827 Court of Appeal, First Appellate Dist., Division One

Dear Honorable Justices:

*Amicus curiae* the National Employment Law Project ("NELP"), through the undersigned counsel, urges the Court to review the Court of Appeal's decision in *Duran v. U.S. Bank National Ass'n* (2012) 203 Cal. App. 4th 212 (S.Ct. Case No. S200923) to correct the inconsistencies that decision creates with longstanding California Supreme Court precedent. Because the parties and other *amici* have ably described those inconsistencies and the importance of the legal issues in dispute, Cal. R. Ct. 8500(b)(1), NELP writes with the narrow goal of shedding light on one aspect of the importance of the issues implicated by the *Duran* opinion. Specifically, NELP seeks to (1) summarize the California's legislature's strong, longstanding public policy designed to protect workers' interests, (2) noting that employer violations of wage standards are widespread, and (3) describing the importance of the class action mechanism in light of the shortcomings of government and individual case-by-case enforcement.

In *Duran*, the Court of Appeal departed from well-settled California jurisprudence regarding the standards for class certification and the availability of representative testimony to demonstrate liability. This decision threatens to significantly undermine California employees' ability to seek redress through the class action mechanism. Because the viability of class actions is a critical component of enforcement of California substantive law, such a departure from California jurisprudence, were it to become the law, could become a strong shield in the hands of employers that wish to avoid accountability for possible legal violations. Because this is an issue of immense importance to hourly and salaried employees throughout California and the nation, NELP urges the Court to accept review of that decision.

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## Introduction

*Amicus curiae* NELP is dedicated to securing enforcement of labor standards laws in California and other states , so as to promote economic opportunity and fair pay for workers. NELP is a non-profit law and policy organization with 40 years of experience advocating for the employment and labor rights of the nation's workers. NELP has litigated and participated as *amicus curiae* in numerous cases addressing the rights of workers under California, other state, and federal laws. With five offices nationwide, including one in California, NELP provides assistance to worker advocates from the private bar, public interest bar, labor unions, and community organizations. NELP works to ensure that labor standards

are enforced for all workers and to bolster the economic security of working families. NELP has consistently advocated for workers to receive the basic workplace protections guaranteed in our nation's labor and employment laws, and to promote broad access to coverage under these laws to carry out the laws' remedial purpose. Access to the class action mechanism is especially important for workers whose cases are individually worth too little for individual lawsuits, and whose fears of unmitigated retaliation are real.

NELP writes to shed light on the public policy imperatives recognized by the California legislature and this Court that support the viability of employment class actions where workers challenge widespread violations of California law in California state courts. In NELP's experience assisting countless workers in California, class actions under Cal. Civ. Proc. Section 382 are critical to ensuring that California's well-established policies protecting workers are enforced. Individual workers often face the same violations as their co-workers, making classwide treatment an appropriate means of efficiently resolving multiple claims. Furthermore, employees are often ignorant of their rights, afraid to exercise those rights for fear of retaliation or impairment of employment opportunities, and unable to secure individual counsel in light of the massive costs of litigation. Classwide resolution of claims on the merits is a vital procedural tool that lessens the possibility that workers will receive no remedy for widespread violations.

## Argument

### I. The California Legislature Has Expressed A Clear Policy Preference For Fair Pay Practices For Employees.

#### A. California Has Expressed A Strong Preference For The Protection Of Workers' Rights To Fair Pay.

The right to recover unpaid wages is extremely important to workers, their families, and society as a whole. This clear policy has been embraced by the California legislature, and our courts have repeatedly affirmed that the wage and hour laws must be enforced broadly to effectuate their remedial purposes. *See, e.g., Gentry v. Superior Court*, 42 Cal. 4th 443, 456 (2007) ("California courts have long recognized [that] wage and hours laws concern not only the health and welfare of the workers themselves, but also the public health and general welfare."); *Industrial Welfare Commission v. Superior Court*, 27 Cal. 3d 690, 702 (1980) (the statutory provisions governing "wages, hours and working conditions ... are to be liberally construed with an eye to promoting such protection").

#### B. Overtime Laws Exist Both To Spread Employment And To Limit Work Hours.

Overtime pay laws have two primary goals: to increase employment by incentivizing employers to hire enough workers, and to improve workers' quality of life by encouraging employers to limit their work weeks, when feasible, to forty hours. *Huntington Memorial Hosp. v. Super. Ct.*, 131 Cal. App. 4th 893, 902 (Cal. Ct. App. 2005). By requiring

payment of 150% of the regular wage for overtime hours worked, overtime laws apply financial pressure on employers to reduce the overtime hours of individual workers and to instead hire more workers. *See Overnight Motor Transp. Co. v. Missel*, 316 U.S. 572, 578 (1942) ("In a period of widespread unemployment and small profits, the economy inherent in avoiding extra pay was expected to have an appreciable effect in the distribution of available work.") (superseded by statute on other grounds); Ron L. Hetrick, *Analyzing the Recent Upward Surge in Overtime Hours*, 123 Monthly Lab. Rev. 30, 32 (2000). Furthermore, enforcement of violations of overtime laws is important to prevent violators from gaining an unfair economic edge over competitors who comply with the law.

### C. Overtime Laws Also Protect The Public Health And The Economy.

In addition to protecting "the health and welfare of the workers themselves," overtime laws also protect "the public health and general welfare." *California Grape and Tree Fruit League v. Indus. Welfare Com.*, 268 Cal. App. 2d 692, 703 (Cal. Ct. App. 1969). Coworkers and bystanders may be harmed, as excessive overtime is linked with increased stress, depression, fatigue, repetitive motion injuries, other work-related injuries, illness, and mortality. *See* Eight Hour Day Restoration and Workplace Flexibility Act of 1999, 1999 ch. 134, § 2(d); U.S. Dep't of Health & Human Servs., Overtime and Extended Work Shifts: Recent Findings on Illnesses, Injuries and Health Behaviors 27 (2004), available at www.cdc.gov/niosh/docs/2004-143/pdfs/2004-143.pdf; Juliet B. Schor, *Worktime in Contemporary Context: Amending the Fair Labor Standards Act*, 70 Chi.-Kent L.R. 157, 161 (1994); Lonnie Golden & Helene Jorgensen, *Time after Time: Mandatory Overtime in the U.S. Economy* 3 (Econ. Pol. Inst., Briefing Paper No. 120, 2002), available at http://www.epi.org/publication/briefingpapers_bp120.[1] In addition, family life suffers when either or both parents are regularly kept away from home for an extended period of time. *See* Eight-Hour-Day Restoration and Workplace Flexibility Act of 1999, 1999 ch. 134, § 2(e); A.B. 60, 1999 Cal. Leg., Reg. Sess. 3rd Reading (May 27, 1999).

Overtime violations also impose significant economic costs on society. *Phillips v. Gemini Moving Specialists*, 63 Cal. App. 4th 563, 574 (Cal. Ct. App. 1998) ("[C]ourts have recognized that wages are highly significant to . . . society in general which will be burdened with supporting [an individual who] is denied his or her wages."). Not only do the workers and their families suffer when they are deprived of wages earned and due to them, but vendors, landlords, and creditors suffer when they are not paid by these workers. *See* National Employment Law Project, Just Pay: Improving Wage and Hour Enforcement at the United States Department of Labor 5, 7 (2010), available at http://nelp.3cdn.net/b18eeae36c980c3971_y9m6ibw47.pdf; Annette Bernhardt, *et al.*, Broken Laws, Unprotected Worker: Violations of Employment and Labor Laws in America's Cities (2009), available at nelp.3cdn.net/1797b93dd1ccdf9e7d_sdm6bc50n.pdf. Governments also lose out on billions of dollars in payroll and tax revenues. *See, e.g.*, Fiscal Policy Institute, New York State Workers Compensation: How Big is the Coverage Shortfall? 8-13 (2007), available at

[1] All websites cited herein were last visited April 26, 2012.

http://www.faircontracting.org/PDFs/prevailing_wage/FPI_WorkersCompShortfall_WithAddendum.pdf.

## II. Widespread Noncompliance With Wage And Hour Laws Makes Strong Enforcement Procedures Essential.

Unfortunately, violations of these wage and hour laws are widespread and systemic.

For example, a recent survey of workers in Los Angeles showed that, 79.2% of those who had worked over forty hours the preceding week experienced some kind of overtime pay violation, and 29.7% of all respondents were paid less than the minimum wage the preceding week. Ruth Milkman, Ana Luz González, & Victor Narro, "Wage Theft and Workplace Violations in Los Angeles," pp. 17-18 (Institute for Research on Labor and Employment, University of California, Los Angeles, 2010), available at http://www.irle.ucla.edu/publications/pdf/LAwagetheft.pdf. *See also* NELP, Winning Wage Justice: A Summary of Research on Wage and Hour Violations in the United States (January 2012), available at http://www.nelp.org/page/-/Justice/2012/WinningWageJusticeSummaryofResearchonWageTheft.pdf?nocdn=1?nocdn=1. (listing dozens of studies and surveys demonstrating widespread wage and hour violations throughout the country, including California grape workers, Southern California day laborers, Los Angeles and San Francisco garment workers, Los Angeles and San Francisco restaurant workers, California domestic care workers, Los Angeles taxi drivers, etc.).

Furthermore, 9-18% of workers report overtime pay violations in response to Census Bureau surveys. David Weil & Amanda Pyles, *Why Complain? Complaints, Compliance, and the Problem of Enforcement in the U.S. Workplace*, 27 Comp. Lab. L. & Pol'y J. 67, 73-74, 77 (2005) (for every complaint, there were 130 employees with overtime violations); Bernhardt *et al.*, Broken Laws, *supra*, 2-4, 8-9, 20-23, 26-27, 30-37 (high prevalence of wage and hour violations in several major cities); Scott Martelle, Confronting the Gloves-Off Economy: America's Broken Labor Standards and How to Fix Them 3 (Annette Bernhardt, *et al.* eds., 2009) (noting high rates of violations in particular industries in several major cities and nationally); Siobhán McGrath, Brennan Center for Justice, A Survey of Literature Estimating the Prevalence of Employment and Labor Law Violation in the U.S. (2005), available at http://nelp.3cdn.net/1ef1df52e6d5b7cf33_s8m6br9zf.pdf.

## III. Private Class Actions Are Necessary To Effectuate The Purposes Of California's Overtime Laws.

Class actions are a critical part of wage and hour enforcement because government agencies are unable to address most violations, and individual actions are rare and inadequate.

### A. Government Enforcement Alone Is Insufficient.

Government enforcement constitutes an inadequate check on these violations both because agencies address only a tiny percentage of violations and because government action often fails to pursue full remedies. For example, state agencies are woefully under-resourced and under attack when attempting to enforce labor standards. See Jacob Meyer & Robert Greenleaf, Enforcement of State Wage and Hour Laws: A Survey of State Regulators (Columbia Law School, April 2011), available at http://www.law.columbia.edu/null?&exclusive=filemgr.download&file_id=551819&rtcontentdisposition=filename%3DWage%20and%20Hour%20Report%20FINAL.pdf; Zach Schiller & Sarah DeCarlo, Investigating Wage Theft: A Survey of the States (Policy Matters Ohio, November 2010), available at http://www.policymattersohio.org/wp-content/uploads/2011/10/InvestigatingWageTheft20101.pdf.

Not only are worker protection laws substantially underenforced, but the enforcement gap is worsening. For example, by 2000, staffing for California's Division of Labor Standards Enforcement ("DLSE") had slipped to an all-time low of 27 staff members per million California workers. Ong & Rickles, *supra*, at 48; *Reynolds v. Bement*, 36 Cal. 4th 1075, 1094 (2005) (Moreno, J., concurring) (recognizing "diminished public resources for the enforcement of the state's labor laws"). Even though a growing number of non-profits and stakeholders, including *amicus*, identify and report non-compliance to the DLSE, "DLSE's staffing levels are still not adequate to address the overwhelming caseload." Ong & Rickles, *supra*, at 143-44. Indeed, data for 2001-02 show that of 99,896 complaints received over two years, only 15% resulted in recovery. *Id.* at 56. *See* State of California Department of Industrial Relations, *2009 Annual Report on the Effectiveness of Bureau of Field Enforcement* (2009), available at www.dir.ca.gov/dlse/BOFE-2009.pdf (DLSE issued 103 overtime citations, collecting $309,688 in penalties).

Likewise, federal government agencies have far too few resources to prosecute more than a sliver of the employment violations that occur. *See* U.S. Gov't Accountability Office, Report to the Committee on Education and Labor, "Wage and Hour Division Needs Improved Investigative Processes And Ability To Suspend Statute Of Limitations To Protect Workers Against Wage Theft" (June 2009) ("Our work clearly shows that Labor has left thousands of actual victims of wage theft who sought federal government assistance with nowhere to turn."); NELP, Just Pay, *supra*, at 15; Bernhardt et al., Broken Laws, *supra*, at 52. As at the state level, the growing resource problem exists at the federal level too. Over its 70-year history, the U.S. Department of Labor's Wage and Hour Division's shrinking staff has brought fewer and fewer enforcement actions, even as the workforce has grown. Kim Bobo, Wage Theft in America 121 (2009) (during 1941-2007, investigator staff shrank 58% and investigations decreased 49%, while the covered workforce increased 739%).

Furthermore, even when agencies pursue employee claims, they may lack the political support or resources to pursue claims zealously. Government agencies rarely seek the full extent of damages afforded by the law and largely pursue individual monetary remedies

instead of seeking industry-wide or injunctive relief. *See* NELP, Just Pay, *supra*, at 9-10. For example, investigators at the Wage and Hour division are instructed not to include the 100% liquidated damages mandated by the federal Fair Labor Standards Act ("FLSA") in their negotiations with employers and to seek backpay for just two years of the potential three-year FLSA statute of limitations period. *See id.* at 10. As a result, governmental enforcement efforts can be narrow and piecemeal.

### B. Individual Plaintiff Actions Are Insufficient.

Due to the inadequacy of government enforcement, private enforcement is indispensable. But individual worker actions cannot be relied upon to redress classwide or systemic violations. Many obstacles prevent workers from attempting to individually redress overtime violations – such as lack of legal knowledge, fear of reprisal, and the small value of claims relative to the costs and risks of litigation. Thus, if an employer violates the rights of 100 employees, it may face individual lawsuits from a handful, but only a class action has the capacity to address the violations suffered by all 100 employees. A limitation on class actions is perhaps the best refuge for such an employer.

#### 1. Employees Are Often Unaware Of Their Legal Rights Or How To Exercise Them.

As an initial matter, "employees may not sue because they are unaware that their legal rights have been violated." *Gentry*, 165 P.3d at 565-67; *c.f. Muhammad v. County Bank of Rehoboth Beach, Del.*, 912 A.2d 88, 100 (Del. 2006) ("[W]ithout the availability of a class-action mechanism, many consumer-fraud victims may never realize that they may have been wronged."); *Leyva v. Buley*, 125 F.R.D. 512, 518 (E.D. Wash. 1989).

Some are misinformed by their employers, who suggest that the law does not protect them or that they are exempt from the law's overtime and minimum wage protections. *Misra v. Decision One Mortg. Co., LLC*, 673 F. Supp. 2d 987, 991 (C.D. Cal. 2008) (defendants misrepresented that employees were exempt and not entitled to overtime pay); *Gentry*, 165 P.3d at 461 ("The likelihood of employee unawareness is even greater when, as alleged in the present case, the employer does not simply fail to pay overtime but affirmatively tells its employees that they are not eligible for overtime."). In misclassification cases like this one, employees are likely to defer to their employer's classification, believing that being classified as exempt means they must be exempt.

#### 2. Individual Litigation Is Expensive And Time-Consuming.

Another significant hurdle to bringing an individual lawsuit is that litigation of employment disputes is extremely expensive and time-consuming – so much so that the burdens quickly make the effort uneconomical. Educating and monitoring counsel, participating in discovery, sitting for deposition, and attending mediation and/or trial impose significant burdens: out-of-pocket costs, time off from work, and the opportunity cost of time

that could be spent earning money otherwise. *See* Catherine K. Ruckelshaus, *Labor's Wage War*, 35 Fordham Urb. L.J. 373, 386 (2008) (discussing factors, including the typically small size of each individual worker's claim, that contribute to workers' lack of access to the courts); *Bell v. Farmers Ins. Exch.*, 9 Cal. Rptr. 3d 544, 570 (Cal. Ct. App. 2004) (noting that the costs of litigation may involve travel expenses and time off from work to pursue the case, and the value of any ultimate recovery may be further reduced by legal expenses); SB 5240, *supra* (noting that the average wage claim received by Washington's enforcement agency is $200-$400); *Kling v. Exxon*, 703 P.2d 1021, 1023 (Or. 1985) ("[E]mployees as a class are at an economic disadvantage in seeking legal redress for their claims. Furthermore, few attorneys would be motivated to pursue employees' wage claims on a contingent-fee basis in view of the relatively small amount of most such claims."); *Phillips Petroleum Corp. v. Shutts*, 472 U.S. 797, 812-13 (1985) (advantage of opt-out class actions is that each individual "plaintiff's claim may be so small[] . . . that he would not file suit individually, nor would he affirmatively request inclusion in the class if such a request were required").

Separately, the risk of having to pay attorneys' fees and/or costs in unsuccessful litigation -- even if only perceived -- is a significant additional deterrent to employees seeking to pursue their rights. *Rogers v. RGIS, LLP*, 213 P.3d 583 (Or. 2009), *modified and adhered to on reconsideration*, 222 P.3d 710 (awarding $180,000 in attorneys' fees to employer that prevailed in minimum wage and overtime claims brought by employee).

Even if it is economically rational for an employee to pursue individual litigation, she may have difficulty finding an attorney to represent her. Individual litigation may be prohibitively expensive for counsel. The potential availability of attorneys' fees to a prevailing plaintiff is not an adequate substitute for the class action in the case of small individual recovery. *Discover Bank v. Superior Court*, 36 Cal. 4th 148, 162 (2005); *Earley v. Super. Ct.*, 79 Cal. App. 4th 1420, 1435 (Cal. Ct. App. 2000) (noting that fees and costs could dwarf potential overtime recoveries of individual plaintiffs). *See also Ting v. AT&T*, 182 F. Supp. 2d 902, 918 (N.D. Cal. 2002), *aff'd*, 319 F.3d 1126 (9th Cir. 2003) ("Put simply, the potential reward would be insufficient to motivate private counsel to assume the risks of prosecuting the case just for an individual on a contingency basis.") *Ansoumana v. Gristede's Operating Corp.*, 201 F.R.D. 81, 85-86 (S.D.N.Y. 2001) (individual suits, as an alternative to class litigation, may not be feasible, based on class members' lack of financial resources and disincentives for attorneys).

At the same time, defendants derive a significant advantage from litigating against employees individually. When employees bring similar claims in separate litigation, defendants can leverage their institutional knowledge in repeat scenarios, while the employee plaintiffs fight alone. Because defendants face the possibility of repeat litigation from similar employees in the future, they can justify aggressive approaches and outsized budgets to defeat claims, including costly discovery and motion practice, which individual plaintiffs cannot match.

### 3. Fear Of Retaliation Is A Powerful Deterrent To Individual Litigation.

Especially in difficult economic times, fear of reprisal is a significant impediment preventing employees from pursuing individual claims against their employers.[2] Current employees may suffer retaliation by being demoted, passed up for promotion, harassed, given lower compensation, or given unfavorable assignments.[3] Former employees fear blacklisting, unfairly negative references, retaliation by subsequent employers, and denial of job opportunities because potential employers ask whether they have sued a past employer.[4] *See, e.g., Mori-Noriega v. Antonio's Rest., Inc.*, 923 F.2d 839 (1st Cir. 1990) (plaintiff's subsequent employer fired him in retaliation for his exercise of wage and hour rights against former employer); *Aguilar v. Baine Service Sys., Inc.*, 538 F. Supp. 581, 584 (S.D.N.Y. 1982) (recognizing harm caused by retaliation). Employees are well aware that employers, "by virtue of the employment relationship, may exercise intense leverage. Not only can the employer fire the employee, but job assignments can be switched, hours can be adjusted, wage and salary increases can be held up, and other more subtle forms of influence exerted." *Nat'l Labor Relations Bd. v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 240 (1978).

In short, "fear of economic retaliation might often operate to induce aggrieved employees quietly to accept substandard conditions." *Mitchell v. Robert DeMario Jewelry, Inc.*, 361 U.S. 288, 292 (1960).

### 4. Individual Litigation Is An Ineffective Deterrent To Unlawful Conduct.

Even several individual wage actions against a company are unlikely to induce it to cease illegal practices. From the defendant's perspective, even six-figure judgments and large legal bills are substantially cheaper than full legal compliance. Furthermore, as arbitration becomes more prevalent, exposure, litigation costs, and publicity decrease, further easing incentives for companies to comply with the law. Jean R. Sternlight, *As Mandatory Binding Arbitration Meets the Class Action, Will the Class Action Survive?*, 42 Wm. & Mary L. Rev. 1, 1-

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[2] *See* Weil & Pyles, *Why Complain?, supra*, at 83 (studies suggest that "despite explicit retaliation protections under various labor laws, being fired is widely perceived to be a consequence of exercising certain workplace rights").

[3] *See, e.g.*, Bernhardt et al., Broken Laws, *supra*, at 3 (43% of low-wage workers complaining about workplace standards were retaliated against, by being fired, suspended, or threatened with cuts in hours or pay).

[4] Employees' fears of employer retaliation and blacklisting are, unfortunately, well-grounded. In one survey of 1,100 California human resources professionals, over 75% admitted that they would not give equal consideration to job applicants who had litigated valid complaints against previous employers. *The Litigation Stigma: Lawsuits Come Back to Haunt*, 70:2 HR Focus, 19 (1993). And 87% confessed prejudice against applicants currently involved in litigation against a previous employer. *Id.*

16 & n.2, 10, & 13-17 (2000) (potential defendants know that because many claims are not viable if brought individually, plaintiffs will often drop or fail to initiate claims once it is clear that class relief is unavailable); Myriam Gilles, *Opting Out of Liability: The Forthcoming, Near-Total Demise of the Modern Class Action*, 104 Mich. L. Rev. 373, 396 & n.121-123, n.419 (2005) (recognizing that some "aggressive employers ... have already used collective action waivers to avoid classwide exposure in the employment context").

These problems, inherent in individual litigation, are lessened or eliminated in class litigation. The class mechanism allows absent class members to leverage the class representatives' investment of time and energy while incurring minimal costs. Such an approach significantly relieves the pressure on any one class member. Moreover, when the claims are pooled, it becomes economically feasible for attorneys to offer representation on a contingency basis – a necessity for all but the most wealthy individuals.

### C. Class Actions Are Preferred.

The aforementioned factors render class actions necessary to effectuate the important remedial purposes of wage and hour laws. California has embraced class actions because they are often the only way of achieving more than "random and fragmentary" enforcement and ensuring that employers are not effectively immunized from meaningful liability for violations. *See, e.g.*, *Sav-On*, 34 Cal. 4th at 340 (class action treatment is favored in wage and hour cases because it "provides small claimants with a method of obtaining redress for claims which would otherwise be too small to warrant individual litigation"). As this Court has explained:

> A company which wrongfully exacts a dollar from each of millions of customers will reap a handsome profit; the class action is often the only effective way to halt and redress such exploitation. The problems which arise in the management of a class action involving numerous small claims do not justify a judicial policy that would permit the defendant to retain the benefits of its wrongful conduct and to continue that conduct with impunity.
>
> *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 446 (2000).[5]

[5] Analogously, in the FLSA itself, Congress "has stated its policy" that workers "should have the opportunity to proceed collectively" to enforce federal wage protections. *Hoffmann-La Roche, Inc. v. Sperling*, 493 U.S. 165, 170 (1989) (representative litigation allows "the pooling of resources," which benefits plaintiffs and the judicial system); *cf. Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 617 (1997) ("A class action solves this problem [of small recoveries] by aggregating the relatively paltry potential recoveries into something worth someone's (usually an attorney's) labor.") (internal citations omitted).

**Conclusion**

For the foregoing reasons, NELP respectfully requests that the Court accept Respondents' petition for review of the Court of Appeal's decision.

Very truly yours,

Jahan C. Sagafi

JCS/wp

**PROOF OF SERVICE**

I am a citizen of the United States and employed by Lieff Cabraser Heimann & Bernstein, LLP in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 275 Battery Street, 29th Floor, San Francisco, California 94111.

I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. That practice is to deposit mail with the United States Post Office from this office address on the same date as this Proof of Service.

On April 26, 2012, I caused to be served the within document entitled: **Letter Brief to the Honorable Tani Cantil-Sakauye, Chief Justice, and Associates Justices**, by placing true and correct copies of same, enclosed in sealed envelopes with postage pre-paid thereon, and deposited with the United States Post Office, addressed as follows:

Edward J. Wynne
Wynne Law Firm
100 Drakes Landing Rd., Ste. 275
Greenbrae, CA 94904

Ellen Lake
Law Offices of Ellen Lake
4230 Lakeshore Ave.
Oakland, CA 94610

Timothy Freudenberger
Alison Tsao
Kent Sprinkle
Carothers, DiSante & Freudenberger
601 Montgomery St., Ste. 350
San Francisco, CA 94111-2603

Court of Appeal (1 st District, Div. I)
1st District Court of Appeal
350 McAllister Street
San Francisco, CA 94102

Alameda Superior Court
(Hon. Robert Freedman)
1221 Oak Street, Dept. 20
Oakland, CA 94612

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and was executed on Thursday, April 26, 2012, at San Francisco, California.

_____
Miriam Gordon