

June 13, 2013

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Chief Justice Tani Gorre Cantil-Sakauye
and Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4783

Re: *Gonzalez v. Downtown LA Motors, LP*,
No. S210681

Dear Chief Justice Cantil-Sakauye and Associate Justices:

On behalf of the Chamber of Commerce of the United States of America, we write to urge this Court to grant the pending petition for review in the above-referenced wage and hour case. *Gonzalez* fundamentally misapprehends the purpose and structure of piece-rate compensation and, as a result, interprets "all hours worked" in a manner that eviscerates the piece-rate system.

U.S. Chamber's interest in *Gonzalez*

The Chamber is the world's largest business federation, directly representing 300,000 members and, indirectly, more than three million businesses and professional organizations of every size, in every industry, and from every region of the country. The Chamber represents the interests of thousands of California businesses, including businesses that use piece-rate compensation systems.

Because the Chamber and its members have a significant interest in the administration of civil justice in California's courts, the Chamber routinely advocates the interests of the business community by filing *amicus curiae* briefs in cases involving issues of substantial concern to American business. In that role, the Chamber has appeared many times before this Court and other courts throughout the country.

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Review should be granted.

Piece-rate compensation, long used in California and throughout the country, benefits employers, employees and customers. Employers know their labor costs for a particular project, and can set prices based on that knowledge. Customers know they will be charged a fixed amount, not one that varies depending on the speed of the person assigned to do the task. Employees know exactly how much they will be paid per task, and can increase their earnings by becoming more efficient. Because piece-work employees (such as mechanics) will not be engaged in a piece-work task every minute they are at work, most piece-work employers assign work to be done between tasks. To ensure that piece-workers are fairly paid, Downtown L.A. Motors (DTLA) requires its employees to record all working time — and those employees are paid the higher of an hourly wage (typically the minimum wage) or the employee's piece rate earnings. DTLA's mechanics earn considerably more than the minimum wage.

Until *Gonzalez*, no California court ever attempted to graft an hourly rate system onto a piece-rate compensation system. Until now, apparently everyone understood these systems are horses of different colors. As DTLA's petition for review demonstrates, everyone else was right. *Gonzalez* was wrongly decided, and this Court should grant review to explain that the case relied on by *Gonzalez* — *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314 — applies to hourly workers, not piece-rate employees.

Gonzalez's reliance on *Armenta, supra*, 135 Cal.App.4th 314, demonstrates the Court of Appeal's misunderstanding of the differences between compensation systems. *Armenta* held that, in an *hourly* pay system, an employer cannot omit payment for certain elements of work on the theory that, on average, the employees earn at least the minimum wage for all hours worked. (*Id.* at p. 324.) Because the employees in *Gonzalez* were paid on a piece-rate system, there is no basis in law or logic for applying the rule *Armenta* laid down for hourly employees. (*Id.* at p. 319.)

The fact that DTLA and other employers using piece-rate based systems require employees to do other tasks when they are on the job but not handling a piece-work project does not transform these employees into hourly workers. As the record demonstrates, DTLA's formula results in compensation to its technicians that vastly exceeds the minimum hourly wage multiplied by the total hours worked. The notion that DTLA's employees are entitled to additional sums under the minimum wage law

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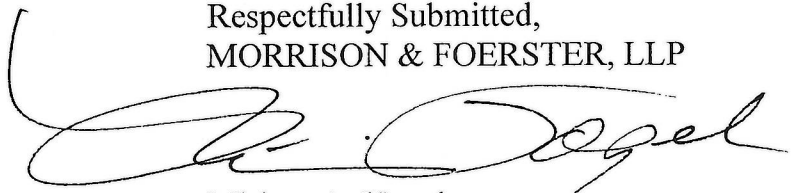
was an argument created for this case, not a rule of law in this State. The piece-rate system is not broken and there is nothing in need of fixing.

The implementation of piece-rate compensation systems is an issue of broad and continuing importance to a wide variety of businesses in California, particularly the automobile and garment industries, carpet layers, telephone technicians, and various factory workers. The needs of employers, employees, and customers are all best served by rules that are well-defined and easily understood. The Court of Appeal's decision substantially disrupts the compensation structures of many California businesses and thus invites massive litigation.

Without this Court's intervention, *Gonzalez* will be binding on California's trial courts. In addition, many employers would feel compelled to graft hourly-rate rules onto piece-work and other non-hourly systems to avoid the potential of lawsuits seeking still further extensions of *Gonzalez*. For these reasons, *Gonzalez* jeopardizes piece-rate compensation plans throughout California and provides fuel for the widely held belief that California is inhospitable to business. And at the end of the day, we are concerned that the bench and bar will view *Gonzalez* as an invitation to extend hourly wage rules to apply to all non-hourly wage systems including sales commission wage systems.

For the foregoing reasons, the Chamber urges the Court to grant DTLA's petition for review.

Respectfully Submitted,
MORRISON & FOERSTER, LLP

A handwritten signature in black ink, appearing to read "Miriam A. Vogel", written over a large, light-colored bracket-like shape.

Miriam A. Vogel

cc: Per attached proof of service

PROOF OF SERVICE BY MAIL
(Code Civ. Proc. secs. 1013(a), 2015.5)

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 707 Wilshire Boulevard, Suite 6000, Los Angeles, California 90017-3543; I am not a party to the within cause; I am over the age of eighteen years.

I further declare that on the date hereof I served a copy of

**AMICUS LETTER ON BEHALF OF THE CHAMBER OF
COMMERCE OF THE UNITED STATES OF AMERICA**

BY U.S. MAIL [Code Civ. Proc sec. 1013(a)] on the following by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and mailing at Morrison & Foerster LLP, 707 Wilshire Boulevard, Suite 6000, Los Angeles, California 90017-3543, in accordance with Morrison & Foerster's ordinary business practices; or

Please see attached Service List

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

Executed at Los Angeles, California, June 13, 2013.

C. Bibeau
(typed)


(signature)

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California Supreme Court Case No. S210681

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