

No. E067711

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT, DIVISION TWO

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MACY'S WEST STORES, INC., DBA MACY'S, AND MACY'S, INC.,

*Petitioners,*

v.

SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF  
SAN BERNARDINO,

*Respondent,*

AMBER GARCIA

*Real Party in Interest.*

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Petition for Writ of Mandate from the Superior Court of  
San Bernardino County  
Case No. CIVDS1516007  
Honorable Donna Gunnell Garza, Judge

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*AMICI CURIAE* BRIEF OF CALIFORNIA RETAILERS  
ASSOCIATION, RETAIL LITIGATION CENTER, INC. AND  
RETAIL INDUSTRY LEADERS ASSOCIATION IN SUPPORT  
OF PETITIONERS

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**AMICI CURIAE BRIEF OF CALIFORNIA RETAILERS  
ASSOCIATION, RETAIL LITIGATION CENTER, INC. AND  
RETAIL INDUSTRY LEADERS ASSOCIATION IN SUPPORT  
OF PETITIONERS**

The California Retailers Association, Retail Litigation Center, Inc. and Retail Industry Leaders Association respectfully submit this brief as *amici curiae* in support of the Petition for Writ of Mandate filed by Macy's. The issues presented in the petition are exceptionally important to businesses in California and warrant this Court's interlocutory review.

**ARGUMENT**

*Amici* broadly represent interests of retail businesses with very substantial membership in California, collectively employing hundreds of thousands of individuals within the state. *Amici's* members include numerous businesses whose employees are paid on commission. Many use advance commission programs similar to that used by Macy's, in which an employee receives an advance payment for commission sales at or near the time of the sale, and prior to the latest date on which the sale might be reversed. The commission is not actually earned until after the product return period has expired. The advanced payment for commission sales is identified on the wage statement at the time that it is

advanced. In the event of a charge back for a product return, such charge back is debited against future advanced commissions, though only the future advanced commissions are identified on the wage statement.

California courts have repeatedly encouraged the use of advance commission programs, recognizing that they substantially benefit employees. (*E.g., DeLeon v. Verizon Wireless, LLC* (2012) 207 Cal. App. 4th 800.) The superior court's ruling creates significant uncertainty about how *Amici's* members can continue to offer their employees such mutually beneficial programs while meeting their reporting obligations. *Amici's* members invest substantial time and effort in fully complying with their reporting obligations. Absent this Court's intervention by writ of mandate, they will likely be faced with the need to review their reporting practices without any real guidance from the courts as to what is required of them. This process will impose substantial additional costs on *Amici's* members and, if employers are required to report commission payments long after receipt, may well end up making employees' wage statements less clear, not more so. Likewise, the uncertainties presented by the threat of possible costly litigation

under the Private Attorneys General Act (PAGA) could result in many employers discontinuing the use of otherwise acceptable commission pay arrangements.

### CONCLUSION

The issues presented by Macy's petition are of the greatest importance to *Amici's* members and will require appellate court review eventually. The relevant facts are fully developed, and the issues presented are ones of law, so nothing is to be gained by postponing review until entry of final judgment below. Because the trial court's decision creates substantial uncertainty for thousands of California employers, *Amici* respectfully urge the Court to grant Macy's petition and reverse the trial court's order.

DATED: February 17, 2017 SEDGWICK LLP

By: /s/ James S. Brown  
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**CERTIFICATION OF WORD COUNT**

Pursuant to Rule 8.204(c)(1), California Rules of Court, the undersigned hereby certifies that this *Amici Curiae* Brief in Support of Petitioners contains 603 words, excluding the tables and this certificate, according to the word count generated by the computer program used to produce this document.

Dated: February 17, 2017      SEDGWICK LLP

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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is 333 Bush Street, 30th Floor, San Francisco, CA 94104-2834.

On February 17, 2017, I served true copies of the following document(s) described as

*AMICI CURIAE* BRIEF OF CALIFORNIA RETAILERS ASSOCIATION, RETAIL LITIGATION CENTER, Inc. AND RETAIL INDUSTRY LEADERS ASSOCIATION IN SUPPORT OF PETITIONERS

on the interested parties in this action as follows:

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Hon. Donna Gunnell Garza  
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Trial Judge: CIVDS1516007

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

Executed on February 17, 2017, at San Francisco, California.

A handwritten signature in black ink, appearing to read "Jon Arneson", is written above a horizontal line.

Jon Arneson