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April 17, 2017

Via Messenger

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

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CLERK SUPREME COURT

Re: Amici Curiae Letter in Support of Petition for Review in *Macy's West Stores, Inc., dba Macy's, and Macy's, Inc. v. Superior Court of California for the County of San Bernardino*, California Supreme Court Case No. S240613

Dear Chief Justice Cantil-Sakauye and Associate Justices:

Pursuant to California Rules of Court, Rule 8.500(g), amici curiae The California Retailers Association, The Retail Litigation Center, Inc. and The Retail Industry Leaders Association respectfully submit this letter in support of the Petition for Review filed by Macy's in *Macy's West Stores v. Superior Court*, Case No. S240613.

Interest of Amici

The California Retailers Association is the only statewide trade association representing all segments of the retail industry, including general merchandise, department stores, mass merchandisers, restaurants, convenience stores, supermarkets and grocery stores, chain drug stores and specialty retail such as auto, vision, jewelry, hardware and home stores. CRA members operate over 418,840 California retail establishments with yearly sales of over \$330 billion and employing over three million Californians.

The Retail Litigation Center, Inc. is a public policy organization representing national and regional retailers in the United States. Its members include many of the country's largest and most innovative retailers, employing millions of people throughout the United States and accounting for tens of billions of dollars in annual sales. The RLC seeks to provide courts with retail industry perspectives on important legal issues and to highlight the industry-wide consequences of significant pending cases.

The Retail Industry Leaders Association is the trade association of the world's largest and most innovative retail companies. RILA members include more than 200 retailers, products manufacturers and service suppliers, collectively accounting for more than \$1.5 trillion in annual sales, millions of American jobs and more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

Chief Justice Tani G. Cantil-Sakauye and Associate Justices

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Why Review Should Be Granted

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 review, 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 and costs for thousands of California employers, *Amici* respectfully urge the Court to grant Macy's Petition for Review and either transfer the case back to the Court of Appeal for decision on the merits or itself resolve these important issues now.

Respectfully submitted,



James S. Brown
Sedgwick LLP

JSB/KCJ

Chief Justice Tani G. Cantil-Sakauye and Associate Justices

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PROOF OF SERVICE

I, Jon Arneson, declare as follows:

I am employed in the County of San Francisco, State of California, I am over the age of eighteen years and am not a party to this action; my business address is 333 Bush Street, 30th Floor, San Francisco, CA 94104, in said County and State. On April 17, 2017, I served the following document(s):

Amici Curiae Letter in Support of Petition for Review in Macy's West Stores, Inc., dba Macy's, and Macy's, Inc. v. Superior Court of California for the County of San Bernardino, California Supreme Court Case No. S240613

on the parties stated below, by the following means of service:

BY MAIL: I placed a true copy in a sealed envelope addressed as indicated below, on the above-mentioned date. I am familiar with the 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, I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I am a resident of or employed in the county where the mailing occurred. The envelope or package was placed in the mail at San Francisco, California.

Clerk of the Superior Court
Superior Court of California
County of San Bernardino
San Bernardino District — Civil Division
247 West Third Street
San Bernardino, CA 92415-0210

Case No. C1VD51516007

Clerk of California Court of Appeal
Fourth Appellate District, Division Two
3389 Twelfth Street
Riverside, CA 92501

Case No. E067711

Clerk of the Supreme Court
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

Filed via messenger
Original and 8 copies

Chief Justice Tani G. Cantil-Sakauye and Associate Justices

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Macy's, Inc. v. Superior Court of California for the County of San Bernardino, California Supreme
Court Case No. S240613

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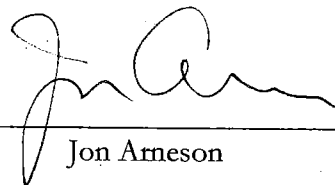
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I am employed in the office of James S. Brown, a member of the bar of this court, and that the foregoing document(s) was(were) printed on recycled paper.

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

Executed on April 17, 2017.



Jon Arneson