No. S258191

IN THE SUPREME COURT OF CALIFORNIA

GERARDO VAZQUEZ, GLORIA ROMAN, and JUAN AGUILAR, on behalf of themselves and all other similarly situated,

Petitioners,

vs.

JAN-PRO FRANCHISING INTERNATIONAL, INC.,

Respondent.

On Certification from the United States Court of Appeals for the Ninth Circuit

No. 17-16096

Hon. Ronald M. Gould, Hon. Marsha S. Berzon, and Hon. Frederick Block

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APPLICATION OF TAXICAB PARATRANSIT ASSOCIATION OF CALIFORNIA FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF RESPONDENT JAN-PRO FRANCHISING INTERNATIONAL, INC.

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APPLICATION FOR LEAVE TO FILE AMICUS CURIAE IN SUPPORT OF DEFENDANT-APPELLEE

TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE OF THE SUPREME COURT OF CALIFORNIA:

Pursuant to Rule 8.520 of the California Rule of Court, the Taxicab Paratransit Association of California ("TPAC") respectfully requests leave to file the accompanying amicus curiae brief in support of Respondent Jan-Pro Franchising International, Inc.

STATEMENT OF INTEREST OF AMICI CURIAE

Amicus curiae TPAC has represented the California taxicab industry as its only trade association for more than fifty years. TPAC is a non-profit trade association for the private for-hire passenger transportation industry with a state-wide membership of transportation-for-hire and affiliated companies. TPAC is also closely associated with The Transportation Alliance (formerly the Taxicab, Limousine & Paratransit Association), whose membership spans the globe, including taxicab companies, executive sedan and limousine services, airport shuttle fleets, and non-emergency medical transportation companies. Since its founding in 1968, TPAC's principal mission has been to collect, interpret, and disseminate important industry information to its members and to the public. Over its history, TPAC has been able to provide support and guidance to its members in times of challenge such as the rise of transportation network companies including Uber and Lyft. TPAC has previously participated as *amicus curiae* before California courts and state agencies regarding matters involving issued affecting the taxicab industry. See, *e.g.*, *Yellow Cab of Sacramento v. Yellow Cab of Elk Grove, Inc.* (9th Cir. 2005) 419 F.3d 925; *In re Rainbow Cab,*

Inc., Case No. 35-62022-473 (Cal. Labor Commissioner, DLSE, 2006).

In this case, TPAC urges this Court, on behalf of its members as well as the general public, to avoid the unwarranted, irreparable harm which would result from the retroactive application of the "ABC" test announced by this Court's decision in *Dynamex Ops. West, Inc. v. Superior Court* (2018) 4 Cal.5th 903 ("*Dynamex*"). It is this great concern which prompts TPAC to submit this brief for the consideration of this Court.

THE ACCOMPANYING BRIEF WILL ASSIST THE COURT IN DECIDING THIS MATTER

Amicus is uniquely familiar with the structure of taxicab and paratransit companies and can aid this Court in understanding the industry and the impact their decision would have on thousands of businesses, families, individuals, and citizens across the state. The taxicab and paratransit industry is not a monolith. It has organically developed various systems and business structures over many years to address the safety and service concerns and political expediencies of each of the various local environments in which its members operate. This brief also provides context for the ways in which action has historically been taken by the taxicab and paratransit industry to address changes in the law through statutory enactments, state agency directions and judicial decisions. However, neither this industry nor any other can address fundamental changes in the judicial approach to its business models *in the past*.

Consideration of the impact of the *Dynamex* ABC test will profoundly impact the taxicab and paratransit industry, as will the legislative aftermath (including the adoption of Labor Code section 2750.3 and other statutes intended to partially codify the ABC test and/or "carve out" certain

industries, while preserving the prior common law test[1] in other applications.) This brief aims to assist the Court by explaining the ways in which the various current systems using independent contractors have flourished in the taxicab and paratransit industry and how a decree that the "ABC" test must apply retroactively would *unfairly* imperil the businesses and livelihoods of people working in or otherwise associated with the taxicab and paratransit industry.

DATE: August 14, 2020

Respectfully submitted,

Marron Lawyers, APC

By: /s/ Steven Rice
Attorney for Taxicab Paratransit Association of California

[1] See, *S. G. Borello & Sons, Inc. v. Dept. of Industrial Relations* (1989) 48 Cal.3d 341 ("*Borello*") [Westlaw notes 441 citing references to *Borello* in California state and federal courts as of August 13, 2020].

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AMICUS BRIEF OF TAXICAB PARATRANSIT ASSOCIATION OF CALIFORNIA ("TPAC")

The Taxicab Paratransit Association of California ("TPAC") respectfully submits this brief as *amicus curiae* supporting the argument made in the Answering Brief by Respondent Jan-Pro Franchising International, Inc. ("Respondent" or "Jan-Pro") which urges this Court to order that the "ABC test" announced in its decision in *Dynamex Ops. West, Inc. v. Superior Court* (2018) 4 Cal.5th 903 ("*Dynamex*") be applied only *prospectively*.

TPAC also addresses the unfair hardship that retroactive application would inflict on the law-abiding small to medium sized businesses (and individual independent drivers) if the "ABC" test is erroneously applied retroactively.

I. INTRODUCTION AND SUMMARY OF ARGUMENT

The issue of independent contractor status has been litigated frequently over the years. When changes in law or agency findings have occurred in this area, TPAC and its members have always made great efforts to comply as quickly as practicable. However, this Court's adoption of the *Dynamex* "ABC" test, derived from a statute enacted by the Massachusetts legislature, to replace the long-standing, multifactor common-law test explained in *S. G. Borello & Sons, Inc. v. Dept. of Indust. Relations* (1989) 48 Cal.3d 341, 349-354 ("*Borello*") was not a change which TPAC (nor likely any organization within the state) anticipated.

TPAC is now once again tasked to provide guidance to its members to assist them in adapting to this fundamental change in law. However, neither TPAC nor its members can turn back the clock, to change *retroactively* the historic business models that were built upon a then-well-

established foundation of principles and applications of laws existing prior to the April 30, 2018 decision in *Dynamex*. Law-abiding companies built their business models after considering the clear intent of statutes such as Government Code section 53075.5 [requiring local jurisdictions to adopt detailed regulations for the taxicab industry, while expressly preserving the established model of a taxicab company with "self-employed independent drivers"], as well as the published guidance provided by state agencies charged with enforcing state laws and regulations relating to worker classification, such as the taxicab industry-specific Information Sheet publicly provided by the Employment Development Department ("EDD").[2]

In this brief, *amicus* TPAC urges that this Court consider the unfairness of a conclusion that the actions of a multitude of businesses and individuals within California's taxicab and paratransit industry may have been rendered illegal through a retroactive application of the fundamentally transformative ABC test – a test which did not exist *at all* in California's thoroughly developed bode of worker classification law until announced by this Court in the *Dynamex* decision. TPAC also wishes to highlight additional legal principles favoring only forward-looking application of changes affecting the judiciary's approach to foundational, well-established legal principles adopted into agency regulations and into publications which state agencies provide to businesses (businesses which are *expected* to rely upon the publications to guide their actions). TPAC also invites this Court to consider the policies and analysis applied in closely analogous circumstances

[2] The EDD Taxicab Industry Information Sheet is attached as Exhibit "A" hereto. Found at https://edd.ca.gov/pdf_pub_ctr/de231tc.pdf (last accessed August 13, 2020); Exhibit "A" also includes the earlier version of this Information Sheet, issued in July 2003. The EDD Information Sheet index is available at https://edd.ca.gov/pdf_pub_ctr/de203.pdf (last accessed August 13, 2020), showing many similar sheets for other industries.

involving governmental estoppel. Finally, TPAC urges that any decision by this Court use language which is appropriately tailored very narrowly to the specific issues addressed in *Dynamex* in any decision applying the ABC test, to limit unrestricted and automatic application of the judicially announced test in other contexts and in the face of arguments and facts not presented for the court's consideration in that case.[3]

II. ARGUMENT AND LEGAL ANALYSIS

A. Retroactivity is Applied in Civil Cases with Due Consideration for Principles of Reasonable Reliance on Prior Law.

Generally, "statutes operate only prospectively while judicial decisions operate retrospectively." *United States v. Security Industrial Bank* (1982) 459 U.S. 70, 79. However, this Court has recognized exceptions to retroactive application of judicial decisions, when "considerations of fairness and public policy preclude full retroactivity. [Citation.] For example, where a ... statute has received a given construction by a court of last resort, and contracts have been made or property rights acquired in accordance with the prior decision, neither will the contracts be invalidated nor will vested rights be impaired by applying the new rule retroactively. [Citation.]" *Moradi-Shalal v. Fireman's Fund Ins. Companies* (1988) 46 Cal.3d 288, 305 (citing *Peterson v. Superior Court* (1982) 31 Cal.3d 147, 151-152, fn. omitted.).

This Court has looked to the "hardships" imposed on parties by full retroactivity, permitting an exception to retroactivity when the circumstances of a case draw it apart from the usual run of cases. See *Newman v. Emerson Radio Corp.* (1989) 48 Cal.3d 973, 981, 983. This Court has also looked

[3] This Court was asked by the Ninth Circuit only "to answer the following question: Does [*Dynamex*] apply retroactively?" *Vazquez, et al. v. Jan-Pro Franch. Int'l* (9th Cir. 2019) 939 F.3d 1045. This Court has denied Respondent's request to expand the issues presented.

to the reasonableness of the parties' reliance on the former rule, the nature of the change as substantive or procedural, the effect on the administration of justice, and the purposes to be served by the new rule. *Williams & Fickett v. County of Fresno* (2017) 2 Cal.5th 1258, 1282 (citing *Claxton v. Waters* (2004) 34 Cal.4th 367, 378-79).

B. Because the Independent Contractor Driver is the Paradigm in the Diverse Business Models Within California's Taxicab and Paratransit Industry, Nearly All Taxicab Companies May Face Unfair, *Ex Post Facto* Legal Attacks Based on Applying the ABC Test to Relationships Formed Before that Test Existed in California.

Taxicabs provide demand-response transportation ordered by the passenger either for immediate service or advance reservation, as well as on a non-prearranged basis such as walk-up business at taxicab stands and venues, or by street-hail. The taxicab industry remains the only significant on-demand, point-to-point transportation method that accepts cash. This often makes it the only such transportation available for those without bank accounts, others who do not carry credit cards, and individuals who do not have (or wish to use) a smart phone to pay for their transportation. In addition, because California taxicab regulations nearly always require drivers to undergo fingerprint background checks, taxicabs remain a vital link for passengers who feel safer knowing that their driver has been more heavily screened.

In part because of the screening they require, cities across the State use taxi companies to provide vital, subsidized transportation to seniors and the disabled. Transit agencies use taxicabs to supplement disabled access transportation programs required by the Americans with Disabilities Act, saving them tens of millions of dollars per year as they access large numbers of vehicles on a trip-by-trip basis. School districts and parents of school children also use taxicabs to provide vital transportation, particularly for

students with special needs for whom transportation in larger vehicles is problematic.

For at least the last four decades, this transportation has been provided by self-employed, independent contractor drivers, who set their own hours, develop their own clientele, and, in many cases, own their companies and their vehicles. In California, there is no "usual" taxicab company, but taxicab companies generally fall into one of the following business models: medallion or permit ownership, cooperatives or associations, driver-owner model, or the centrally-owned fleet. These models are described briefly, below. No one doubts that this Court's retroactive application of the ABC test in *Dynamex* will greatly affect the litigation environment for any taxicab company operating under any of these models, regardless of whether the company had been carefully complying with the law regarding proper "classification" of taxicab operators in all respects, according to existing caselaw and regulations, official guidance provided by the most relevant state agencies,[4] and the detailed regulatory requirements of the local authorities required by the legislature to control taxicab operations within their jurisdictions.[5]

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[4] See, *infra*, at pp. 12-14; particularly re Calif. Code of Regs., Tit. 22, § 4304-1, and the EDD "Taxicab Industry" Information Sheet (DE 231TC) (see Exhibit "A," attached, see fn. 2, *ante*).

[5] The Legislature requires local authorities to adopt detailed taxicab regulations covering numerous, specific issues, as a matter of public safety and protection. See, *e.g.*, Government Code § 53075.5. Accordingly, cities, counties and airport authorities have adopted or incorporated detailed requirements for taxicab operation, appearance, pricing, and safety as well as oversight of their operations. See, *e.g.*, San Francisco Municipal Transportation Agency ("SFMTA") Regulations, Article 1100 ("Regulation of Motor Vehicles for Hire"), found at http://library.amlegal.com/nxt/gateway.dll/California/transportation/divisionii/article1100regulationofmotorvehiclesforh?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca; Los Angeles Department of Transportation, Taxicab Rules and

Significantly, the development of these models has not been driven primarily by economic factors, but by intricate interrelations between servicing the community in compliance with the often *detailed regulatory requirements* issued by the taxicab authorities in the city or county of operation, the *guidance from state regulatory agencies*, the long line of cases interpreting the common law standards relevant to employee/independent contract classification (most significantly *Borello*, *supra*, and the numerous cases citing to its multi-factor test), and the providing services to the taxicab drivers that meet their needs.

1. Medallions and Individual Permit Ownership

San Francisco is the only city in California with a formal medallion structure. Medallions are city-issued individual taxicab vehicle operating rights. In 1978, following the bankruptcy of Yellow Cab of San Francisco, Proposition K was approved by voters. Proposition K required, *inter alia*, that medallions could only be issued to natural persons and the holder of the medallion was required to personally engage as a taxi driver at least 780 hours per year. San Francisco taxi medallions can be bought and sold, but the holders must comply with the legal requirements. The industry business model has been fine-tuned over the years to adhere and adapt to judicial precedent in order to maintain the independent status of drivers in the industry.

Some cities, including San Diego, regulate taxicabs by selling individual permits to drivers. These permits may also be sold by the individual permit holders. With both medallions and individually owned permits, the owner of the permit also owns the vehicle. The owner can take his or her permit and vehicle and affiliate with the company of their choice,

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Regulations, found at https://ladot.lacity.org/sites/default/files/2020-03/taxicab-rule-book-updated-april-2017.pdf.

or they can form their own company, subject to local regulation. Accordingly, these drivers are inherently independent and have built their livelihoods on the understanding that they are not subject to the whims of a boss or disjointed company board.

2. Cooperatives and Associations

In and around the City of Los Angeles, the dominant ownership model in the taxi industry is the Cooperative or Association. (Corporations Code § 12200 *et seq.*). Whether a cooperative or association, each share of stock in the organization functions as the individual vehicle operating right, thereby granting the owner the right to operate one vehicle under the cooperative's or association's trade dress. However, because the "permits" are also shares of stock, the owner/driver also has voting governance in the organization through the election of members of the board of directors. These are organizations that are driver-controlled from the ground up, and the only fees charged by the organization are those that cover the expenses of the overall operation. The system of cooperatives and associations allows driver/owners to exercise autonomy over their individual driving and to have power to participate in the governance of the whole organization.

3. Driver-Owner and Centrally-Owned Fleet

The driver-owner and centrally-owned fleet models involve owned organizations that take independent contractor drivers into their company. In some of these organizations, the driver brings a car and converts it into a taxicab. In others, the drivers simply lease vehicles that are fitted with all legally required equipment from the licensed taxicab company. Such drivers (usually with their own transportable, locally-issued taxicab driver licenses) freely move from one company to another as suits their needs.

Moreover, in nearly all such systems, the drivers keep all money paid by passengers, and the company only is paid a flat-rate amount for the lease

of the taxicab, which is for a fixed period. In nearly all these systems, the driver has complete discretion to accept, reject or even acknowledge radio-dispatched calls and can pick up passengers in any manner approved in the locality in which the driver is operating. The driver is fully responsible for his/her own profit-making strategies.

C. Governmental Regulation of Taxicab Driver Classification, the EDD "Taxicab Industry Information Sheet," and the Taxicab Industry's Reliance on Established California Law.

The California Employment Development Department ("EDD") is part of the State Labor and Workforce Development Agency ("LWDA"). (Unemp. Ins. Code, § 301). The EDD and its sister agency, the Division of Labor Standards Enforcement ("DLSE," which includes the office of the state Labor Commissioner), operate within the authority of the Secretary of Labor and Workforce Development.[6] The LWDA, through its sub-agencies the EDD and the DLSE, enforces state laws designed to benefit and protect employees. (*See* Lab. Code §§ 79, 95; Unemp. Ins. Code §§ 301, 306; *Gattuso v. Harte–Hanks Shoppers, Inc*. (2007) 42 Cal.4th 554, 563, [DLSE "is the state agency authorized to enforce California's labor laws."]; *Air Couriers Int'l v. EDD* (2007) 150 Cal.App.4th 923, 931-932 [describing similar role of EDD].

To this end, the EDD developed an official "Information Sheet," covering the "Taxicab Industry" currently titled Form DE 231TC Rev. 6 (9-17. Its stated purpose is "to provide guidance to the taxicab industry on properly classifying workers for employment tax purposes" ("EDD Info Sheet," attached hereto as Exhibit "A," see fn. 2, *ante*). It enumerates factors used to determine whether an individual is an employee, specifically

[6] See LWDA website: "About the Labor and Workforce Development Agency" (https://www.labor.ca.gov/about/).

detailing factors relevant to the former most important element, the right to control. The EDD Info Sheet also refers the taxicab industry to California Code of Regulations Title 22, Section 4304-1, for a further description of applicable factors. The EDD Info Sheet details sixteen factors from *Santa Cruz Transportation Inc. v. Unemp. Ins. Appeals Bd.* (1991) 235 Cal.App.3d 1363 ("*Santa Cruz*") [applying *Borello* factors to taxicab industry], for the "taxicab industry" to consider in classifying associated taxicab drivers.[7]

TPAC and their member businesses reasonably relied on the EDD regulations when creating and revising their business models. The EDD Info Sheet is an affirmative statement by the State of California, published for the sole purpose of providing reliable authority to a taxicab company in classification decisions relating to independent contractor drivers. After the EDD Info Sheet was released (originally in 1991), California's entire taxicab industry was retooled in reliance on its guidance. For example, a significant factor indicating that a driver was an employee was the behavior of dispatchers and their ability to direct, control, and punish drivers who acted according to their own free will. *Santa Cruz*, *supra*, 235 Cal.App.3d at 1373. Accordingly, the taxicab industry adopted computerized dispatch systems that nearly eliminated dispatchers. Under the new systems, drivers actively request trips, can choose the trip they want to serve, and can reject trips offered, all without the knowledge or intervention of the dispatcher. These computerized dispatch systems were built without a mechanism for drivers to track their hours, track their breaks, or schedule their time, as these were factors identified in the EDD Info Sheet as indicia of employment. Taxicab

[7] Exhibit "A" includes the preceding version of the same Information Sheet, issued in July 2003, also detailing the factors listed in *Santa Cruz*. The EDD's practice of providing direct guidance to the taxicab industry is *long-standing*.

companies also largely moved away from commission or revenue-share models, switching to flat-rate lease models favoring driver independence.

The implementation of new systems and changes following the guidance of the state and the details of the EDD Info Sheet represent the investment of tens of millions of dollars by TPAC member businesses. More importantly, thousands of working families in California have built their own business in the taxicab industry in reliance on the EDD Info Sheet. At no point was any type of "ABC" test provided to or discussed with TPAC or its member businesses. The entire universe of understanding for that of independent contractor taxicab drivers was contained within the California state law and the EDD Info Sheet.

D. The Changes in Misclassification Law in Reaction to the *Dynamex* Decision are Profound and Continuing

The first legislation (popularly identified as "AB 5")[8] adopted to address the immediate aftermath of *Dynamex* to address the upheaval created by the decision, was a major and complex project. While it included the ABC test as part of new Labor Code Section 2750.3(a), the bulk of AB 5 listed and described various categories of "special" *exceptions* to the new test, and reaffirmation of the *Borello* standard in most such cases. Excluded, via subdivisions (b) through (h), were various "occupations," certain contracts for "professional services," specified "bona fide business-to-business contracting relationships," etc.

News reports reflect the "landmark" status of AB 5's partial "codification" of the *Dynamex* "ABC test," and its exceptions, as well as the continuing legislative and initiative efforts to address the fallout from the

[8] Assembly Bill No. 5 (2018-2019 Regular Session; Calif. 2019), found at https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB5.

sudden announcement of the new ABC test – a process which is continuing unabated to this day.[9]

E. This Court Should Consider Private Industry's Reasonable and Intended Reliance on Governmental Regulations and Legal Interpretations of the Employment Development Department; Adherence to Regulations and Agency Guidance Should not be a "Trap for the Vigilant"

As noted above, the EDD Info Sheet makes it clear that the use of independent contractor drivers is permissible in the operation of a taxicab company regardless of the business model, so long as the *Santa Cruz* factors and state regulations do not indicate an employer-employee relationship. So, too, do the provisions of Government Code § 53075.5. And, so do the state regulations referenced in the EDD Info Sheet.

A retroactive implementation of the "ABC" test would render nearly thirty years of guidance provided by the EDD illegitimate. While many businesses in California have been vigilant in following the guidance of the

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[9] See, *e.g.*, https://news.bloomberglaw.com/daily-labor-report/california-assembly-moves-to-loosen-gig-worker-law-for-some (Update June 15, 2020, 3:14 PM; accessed August 12, 2020) ["California is one step closer to changing its landmark worker classification law to exempt a number of professions, such as freelance journalists, musicians, and photographers. [¶] The Assembly voted unanimously … to advance two bills, A.B. 1850 and A.B. 2257, to the Senate. A.B. 1850 passed 73-0 and A.B. 2257 passed 70-0. The upper chamber has until Aug. 31 to send the bills [to the Governor] for his signature."]; Eli Rosenberg, "Can California Rein in Tech's Gig Platforms?" (Washington Post, Jan. 14, 2020) [AB 5 "represents a *cataclysmic shift* for workers who depend on apps to get gigs"] at https://www.washingtonpost.com/business/2020/01/14/can-california-reign-techs-gig-platforms-primer-bold-state-law-that-will-try/ [https://perma.cc/7J2S-VUS7] (emphasis added); H. Wiley, "California's New Labor Law is a Work in Progress, etc.," (Sac. Bee, Feb. 24, 2020) at https://www.sacbee.com/news/politics-government/capitol-alert/article240264901.html ["The California Legislature is considering nearly three dozen bills to clean up or repeal the landmark gig economy law [AB 5] signed by Gov. Gavin Newsom just months ago."].

EDD and statutory authority some of this same conduct may result in determination under the new "ABC" test that drivers have been "misclassified" and are "employees" rather than independent contractors. Therefore, TPAC asks that the public's deference to the contemporaneous guidance of the EDD, and to the caselaw and regulations cited by the agency, be acknowledged. Applying the *Dynamex* "ABC" test only *prospectively* will minimize the unfair hardship and irreparable damage resulting to companies that have built their business models in scrupulous adherence to the law as provided by the state agencies most directly involved in addressing worker classification issues.

Significantly, in analogous circumstances administrative agencies are generally accorded substantial deference *by the courts*, regarding the agencies' interpretation of the law central to their purposes. Such agency interpretations are generally entitled to a presumption of correctness. "An agency interpretation of the meaning and legal effect of a statute is entitled to consideration and respect by the courts." *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7; see *Chevron U.S.A. Inc. v. Natural Resources Defense Council* (1984) 467 U.S. 837, 844 ["We have long recognized that considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer, and the principle of deference to be administrative interpretations has been consistently followed by this Court whenever decision as to the meaning or reach of a statute has involved reconciling conflicting policies…." (citations omitted)]. The rationale for deference is strongest when the challenged action by the agency results from agency rulemaking, or where the agency interprets one of its own regulations. *See New Cingular Wireless PCS, LLC v. Public Utilities Comm.* (2016) 246 Cal.App.4th 784, 807 (citing *Pacific Gas and*

Electric Co. v. Public Utilities Comm. (2015) 237 Cal.App.4th 812, 838-840).

While the new "ABC" test significantly changes the legal landscape going forward, companies should not be punished for showing the same reliance and "deference" to the EDD's published guidance and to the regulations applicable to the state's labor agencies (*e.g.*, Calif. Code of Regs., Tit. 22, § 4304-1).

III. CONCLUSION

For the foregoing reasons, *amicus* urges the California Supreme Court to find that the "ABC" test cannot fairly be applied retroactively.

In *Dynamex*, this court substantially departed from existing common law precedent, with the stated purpose of creating a new way to fulfill the purpose of state wage regulations.[10] Instead of applying the existing common law test that had developed historically to address worker classification issues, this court sought to fix a perceived problem with the tests themselves.[11] The thoroughly restructured replacement of the previously ubiquitous *Borello* test cannot be treated as standard "evolution" of common law. When a legal sea-change is suddenly applied to structures founded on decades of caselaw reaffirming and refining prior law (and to legislation, rule-making and agency guidance developed therefrom), basic principles of fairness require that those changes not be applied to create legal liabilities, *ex post facto*, to the business structures built in good faith to provide opportunities, whether for independent taxicab operators or otherwise.

Finally, in light of the myriad business models within the taxicab and paratransit industry, and the many more business models in other industries,

[10] See *Dynamex* 4 Cal.5th at 916.

[11] See *Dynamex*, 4 Cal.5th at 954–967.

as to which their specific industries and regulatory environments were not considered, and not at issue, in the *Dynamex* litigation, any response to the Ninth Circuit adopting a retroactive application should – in the interests of fairness and due process – be narrowly focused on the specifics of that case and the issues addressed therein.

DATE: August 14, 2020

Respectfully submitted,

Marron Lawyers, APC

By: /s/ Steven Rice
Attorney for Taxicab Paratransit Association of California

PROOF OF SERVICE BY MAIL OR E-MAIL

I declare that I am employed with Marron Lawyers, whose address is 5000 E. Spring St., Suite 580, Long Beach, California 90815; 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:

APPLICATION OF TAXICAB PARATRANSIT ASSOCIATION OF CALIFORNIA FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF RESPONDENT JAN-PRO FRANCHISING INTERNATIONAL, INC.

by placing a true copy thereof in a sealed envelope with postage fully prepaid and addressed as shown below and depositing the envelope in a United States Postal Service mailbox in Los Angeles County or by e-mail as indicated below:

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed at Long Beach, California, this 14th day of August 2020.

Chris Retama

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **VAZQUEZ v. JAN-PRO FRANCHISING INTERNATIONAL**
Case Number: **S258191**
Lower Court Case Number:

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

8/17/2020

Date

/s/Steven Rice

Signature

Rice, Steven (109659)

Last Name, First Name (PNum)

Marron Lawyers

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