



October 20, 2011

Presiding Justice Judith McConnell
and Honorable Associate Justices
California Court of Appeal
Fourth Appellate District, Division One
750 B Street, Suite 300
San Diego, California 92101

Re: *See's Candy Shops, Inc., Petitioner v. The Superior Court of San Diego
County, Respondent (Pamela Silva, Real Party in Interest)*
San Diego Superior Court Case No. 37-2009-00100692-CU-OE-CTL
Court of Appeal Case No. D060710

Amicus Letter in Support of Petition for Writ of Mandate

Dear Presiding Justice McConnell and Associate Justices:

The California Chamber of Commerce ("CalChamber") respectfully requests permission to file this amicus curie letter in support of See's Petition for Writ of Mandate.

CalChamber is non-profit business association with over 14,000 members, both individual and corporate, representing virtually every economic interest in the state of California. For over 100 years, CalChamber has been the voice of California business. While CalChamber represents several of the largest corporations in California, seventy-five percent of its members have 100 or fewer employees. CalChamber acts on behalf of the business community to improve the state's economic and jobs climate by representing business on a broad range of legislative, regulatory and legal issues. CalChamber often advocates before the courts by filing *amicus curiae* briefs in cases involving issues of paramount concern to the business community. The issue presented in the above-captioned case is but one example.

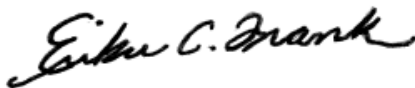
We have reviewed the Petition for Writ of Mandate recently filed by See's Candy Shops, Inc., which requests this Court to review a trial court decision finding that the practice of rounding employee time entries to the nearest six minutes violates California law. We urge the Court to grant See's petition in order to clarify whether or not employers can continue to round time entries in reliance on the Department of Labor's regulation (29 C.F.R. § 785.48(b)) and the California Labor Commissioner's enforcement policy (DLSE Manual §§ 47.1 and 47.2) which follows the DOL regulation.

One of the main functions of CalChamber is to assist our members in complying with California employment laws. We regularly receive inquiries from our members concerning the rounding of time entries, and because of these inquiries, we are aware that this is a matter of widespread concern to California employers. For many years, employers have relied on the position of the DOL and DLSE that rounding is a lawful practice. To our knowledge, the California Labor Code does not prohibit rounding, and no California appellate decision has held that rounding is illegal. Until recently, employers have had no reason to suspect that a practice approved for many decades by state and federal enforcement agencies might be unlawful.

We are aware that some class actions already have been filed in California by plaintiffs alleging that rounding is illegal and seeking damages and penalties under the Private Attorneys General Act (“PAGA”). We are concerned that the trial court decision in the *See’s* case may lead to the filing of many more class actions attacking rounding practices that employers have believed were completely lawful. Many employers will feel they have no choice but to stop their practice of rounding time to avoid the risk of class litigation, which often leads to large settlements due to the costs of defending these cases.

In our view, the filing of class actions alleging novel legal theories and designed to result in large settlements is bad for the California economy and encourages business to leave the state. We feel that an appellate court decision clarifying whether rounding is legal will be very helpful to California employers. Uncertainty regarding a practice such as rounding, which appears to be widespread, is not healthy for either employers or employees. As the legality of rounding will ultimately have to be decided by the appellate courts, CalChamber believes it would be much better for this issue to be resolved now so California businesses will have certainty regarding this important timekeeping issue. This is why we—on behalf of our many members throughout California—encourage this Court to grant *See’s* Petition for Writ of Mandate.

Sincerely,



Erika Frank
Vice President, General Counsel

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