S245607

In The

Supreme Court of California

GEORGE MELENDEZ, et al.,
Plaintiffs and Petitioner,

v.

SAN FRANCISCO BASEBALL ASSOCIATES, LLC
Defendant and Respondent.

AFTER A DECISION BY THE COURT OF APPEAL
FIRST APPELLATE DISTRICT
CASE NO. A149482

APPLICATION OF LOS ANGELES DODGERS LLC AND OTHER CALIFORNIA SPORTS ORGANIZATIONS TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF IN SUPPORT OF SAN FRANCISCO BASEBALL ASSOCIATES, LLC

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APPLICATION OF LOS ANGELES DODGERS LLC AND OTHER CALIFORNIA SPORTS ORGANIZATIONS FOR PERMISSION TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF SAN FRANCISCO BASEBALL ASSOCIATES, LLC

To the Chief Justice and Associate Justices:

The Los Angeles Dodgers LLC[1], Athletics Investment Group LLC, Padres L.P., and San Jose Arena Management, LLC, through their attorneys, respectfully request leave to file the accompanying brief as amicus curiae in support of San Francisco Baseball Associates, LLC.

The Dodgers are a professional baseball team based in Los Angeles, California. The Dodgers play home games at Dodger Stadium. The Dodgers employ non-exempt employees to staff these games and a host of other events (e.g., concerts, festivals, marathons and fun runs, an annual Fan Fest event, stadium tours, etc.) held at Dodger Stadium. These employees work subject to collective bargaining agreements ("CBAs"), which contain extensive provisions governing the nature of an employee's employment.

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[1] In the appeal for this matter, the San Francisco Giants Baseball Club LLC are being represented by Sheppard, Mullin, Richter & Hampton LLP attorneys Nancy Pritikin, Babak Yousefzadeh, Brian Fong, Karin Vogel, and Bob Stumpf ("Pritikin team"). The Dodgers are being represented by a separate team at Sheppard, Mullin, Richter & Hampton LLP, including Richard J. Simmons, Jason W. Kearnaghan, Daniel J. McQueen, and Ryan J. Krueger ("Simmons team"). The Simmons team is the Dodgers' regular outside counsel on employment matters and currently represents the Dodgers in a similar pending matter. For that reason, the Simmons team has been the primary drafter of the sports organizations' amicus brief, with input from the other organizations. The Pritikin team has not authored the amicus brief, in whole or in part, and the Simmons team has not authored the merits briefing for the Giants, in whole or in part. Thus, while all counsel are affiliated with the same law firm, there was no crossover in the representation of the Giants and the amici.

Pursuant to the CBAs, and consistent with Labor Code section 204, the Dodgers pay their employees weekly.

The San Diego Padres are a professional baseball team based in San Diego, California. San Jose Arena Management, LLC operates the SAP Center in San Jose, California. The Oakland Athletics are a professional baseball team based in Oakland, California. These organizations either play home sporting events at their respective stadiums and arenas, or operate such arenas. Further, their stadiums and arenas are used year-round for a host of other events. These organizations employ workers subject to CBAs, which include provisions that govern the nature of their employee's employment, including provisions that employees may only be terminated for "just cause," and provisions dealing with seniority rights. Pursuant to the CBAs, and consistent with Labor Code section 204, these organizations pay their employees pursuant to a standard (weekly, biweekly or semimonthly) payroll cycle.

These sports organizations have a substantial interest in the outcome of this case because they work with their employees, through different unions, to negotiate CBAs which govern the nature of the employees' employment. These agreements contemplate continuous employment from season to season, event to event, and year to year, and recognize that not every day in the year will be a day of work. The concept and reality of continuous employment goes hand-in-hand with the increase in each employee's seniority, which plays a pivotal role in multiple areas, including employee benefits, job preferences, and securing other matters governed by the CBAs. These organizations pay their employees pursuant to a regular payroll cycle set forth by the CBAs. Petitioner,

George Melendez, seeks to undercut these negotiated agreements and the ability of all parties to define the terms and conditions of their employment through the collective bargaining process, by replacing that process with an unworkable system based on an overbroad view of what constitutes a "discharge" for purposes of Labor Code sections 201 to 203.

Further, on May 12, 2017, one of the Dodgers' current employees filed a lawsuit mirroring Petitioner's argument in Melendez, contending that the Dodgers "discharged" her and other hourly employees immediately following the last home game of each baseball season, but did not pay them until the next regular payday as called for by the applicable CBA. Thus, the Court's decision in the Melendez matter will likely have a direct impact on ongoing, analogous litigation.

These organizations are deeply concerned by the position taken by Petitioner and its implications for the sports industry, industries that work with the sports industry, or industries where work is similarly scheduled. This brief is offered to assist the Court in understanding how California sports organizations operate and how they employ their workforces.

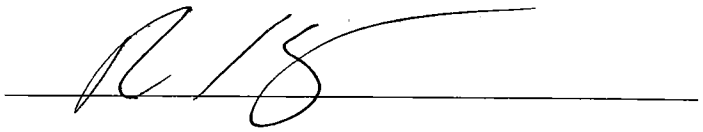
The sports organizations also explain why this Court should reject Petitioner's over-expansive view of the term "discharge" in Labor Code sections 201 to 203, and why construing gaps between games, events, or seasons as "discharges" would cause severe harm to the state's sports industry, the fans it serves, and the thousands of workers it employs—as well as the numerous businesses that work with the industry or at their venues.

Further, these sports organizations emphasize the importance of allowing the organizations and employees, through their unions, to negotiate the terms and conditions of employment.

For the foregoing reasons, the application should be granted and the accompanying amicus curiae brief filed.

Dated: October 24, 2018

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By 

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AMICUS CURIAE BRIEF

I. INTRODUCTION

The issue presented in this case is whether resolving Petitioner's statutory wage claim under Labor Code section 201 requires the interpretation of a collective bargaining agreement ("CBA") and is, therefore, preempted by section 301 of the Labor Management Relations Act ("LMRA"). In an attempt to avoid any need to interpret the CBA that sets forth the terms and conditions of his employment, Petitioner proposes an overbroad definition of what it means to "discharge" an employee and asserts that the actual, contractual terms of his employment are wholly irrelevant in determining when and if he was ever terminated. Petitioner argues the CBA governing his employment does not need to be interpreted because an employee who is "laid off" is necessarily "discharged" and should be paid final wages immediately, and that employees are "laid off," as a matter of law, *whenever* there are any "breaks in service" or a "completion of specified assignments" regardless of the provisions of a CBA that address the realities of the employment relationship and the impact of continuous service on seniority, job security, and benefits. Petitioner's arguments are not well taken for several reasons.

First, Petitioner's overbroad and unsupported definition of "discharge" is inconsistent with both the ordinary meaning of the term, and the nature of employment in California sports organizations. As detailed below, it is obvious that unionized employees who regularly work for sports organizations that operate year-round are not terminated dozens of time a year, or at all. Rather, as their CBAs specify, they are continuously employed from year to year and from season to season, and cannot be

terminated except for "just cause" – as that term is defined by their CBAs – and unless and until the disciplinary processes outlined in their CBAs are followed.

Second, as made clear by this Court in Smith v. Superior Court (L'Oreal), 39 Cal.4th 77 (2006), one must look to the contractual terms "for which the employee was hired" to determine whether the employee was discharged. Here, the contractual terms and conditions of employment are set forth in CBAs. These agreements contain an assortment of provisions making clear that employees are not terminated or laid off at the conclusion of events, homestands, or seasons. Such provisions play a pivotal role in connection with numerous matters of importance to employees, such as the continuous nature of employment, the accrual of seniority, benefits, and job security, among others. These provisions must necessarily be analyzed and interpreted to determine when and if an employee is terminated and, thus, owed final compensation immediately under Labor Code section 201.

Third, public policy supports the Giants' position in this matter. Petitioner's "discharge" theory would create an unworkable system that would inflict great harm on a variety of sports and entertainment organizations, their employees, and the unions, in addition to potentially every other employer in California which is connected with the industry or utilizes similar scheduling practices.

Accordingly, Petitioner's position should be rejected by the Court.

A. Relevant Facts Concerning California Sports Organizations

The Los Angeles Dodgers, Oakland Athletics, San Diego Padres, and San Jose Arena Management, LLC, work with their employees, through different unions, to

negotiate CBAs that contain an assortment of provisions governing the nature of an employee's employment. The Court's potential ruling on the meaning of the term "discharge," and the ability of employers and employees to bargain collectively regarding the terms and conditions of employment could greatly impact the sports industry in California. In this section, the professional sports organizations set forth some background facts about how these organizations operate that are relevant to the Court's decision.

1. Los Angeles Dodgers LLC

The Los Angeles Dodgers are a professional baseball team based in Los Angeles, California. The Dodgers play home games at Dodger Stadium. The regular baseball season begins in late March to early April and typically ends in October. In the regular season, teams usually play 81 home games and 81 away games. Pairs of teams play a series of games on several consecutive days in the same ballpark. These series usually feature three or four games, which are collectively referred to as a "homestand."

Following the regular season, ten teams advance to the playoffs and play a series of games until the final two teams play each other in the World Series. The playoffs typically conclude in late October or early November. However, nothing about the playoff schedule is predictable or certain because it depends upon how well the Dodgers do in each game and how well the other teams in question also perform. Thus, there is no way to schedule with any certainty the date of the last game of the playoff season or the time at which the last playoff game will end.

The Dodgers employ non-exempt employees to staff these games and a host of other events held at Dodger Stadium both during the baseball season and the "off-season," including concerts, festivals, marathons and other races, charity events, an annual Fan Fest event, and stadium tours. For example, in recent years, Dodger Stadium has hosted the LA Marathon, the Color Run, the College Baseball Classic, charity galas, and concerts by Beyoncé, Billy Joel, Guns N' Roses, and Luke Bryan, among others. These events regularly occur both during the baseball season and during the baseball "off-season." An usher who works a concert on a Sunday could work a Dodgers game on Monday. Currently, the Dodgers employ over 600 unionized employees.

The Dodgers' employees work subject to one of three CBAs between the Dodgers and the Service Employees International Union ("SEIU"). Each CBA is the product of years of negotiations between the Dodgers and the union on behalf of its members. These CBAs contain extensive provisions governing the nature of an employee's employment.

For example, the CBAs address wages and benefits; probationary status; eligibility for pay increases based on the number of events worked before, during, and after the end of a baseball season; seniority; and job classification (which is based on the number of hours worked throughout a year and *not* just during the baseball season); as well as drug-screening provisions and the holiday schedule (which provides for holiday-related benefits for holidays occurring throughout the year and *not* merely during the baseball season). The CBAs also set forth a grievance process whereby all "disputes and

grievances arising under the terms of this Agreement and/or involving the interpretation or application of this Agreement" are subject to mandatory arbitration.

Notably, all three of the Dodgers CBAs contain an express provision regarding "Discharge and Discipline" of employees, which provides that termination of employment may *only* occur for "just cause" following an employee's probationary period, and *only* after the implementation of an established progressive discipline policy. No CBA provision states that a covered employee's contractual right to continued employment ends with, for example, the end of a homestand or after the final home game of the baseball season. To the contrary, seniority continues to accrue, and eligibility for pay and benefits continues following each game within the baseball season, as well as after the last home game of the season.

The Dodgers do not consider their employees to be terminated, laid off, or otherwise discharged between games, events, or baseball seasons. Employees are scheduled to work on a monthly basis, and fully understand that they remain employed between work days. The majority of union employees who do not submit a monthly availability sheet indicating a need for a particular day off are considered "available" to work at any game or event throughout the year and are automatically scheduled for events for the given month. Work schedules are posted on a monthly basis so that employees are aware of when they will be working (and not working) well in advance.

The workweek for the Dodgers' non-exempt employees begins on Monday and ends on Sunday. Pursuant to the CBAs, and consistent with Labor Code section 204, the Dodgers pay their employees weekly on the following Friday.

Employees who are terminated for just cause under the terms of the CBA are paid immediately upon discharge consistent with Labor Code section 201. The Dodgers have not laid off any union employees in the last ten-plus years.

2. Other Professional Sports Organizations

The practices noted above in connection with the Dodgers are similar to those carried out by other sports organizations in California. For example, in summary:

a. Padres L.P.

The San Diego Padres are a professional baseball team based in San Diego, California. The Padres play home games at Petco Park, which opened in 2004. Petco Park operates year-round, hosting 81 home baseball games for the Padres during the regular season and about *200 non-baseball events each year*, including concerts, music festivals, corporate receptions, proms, and Monster Truck events. The Padres employ hundreds of employees that work pursuant to a CBA negotiated between the Padres and SEIU. These employees work both Padres games and other events. In fact, pursuant to the CBA, employees must commit to making themselves available to work a minimum of 75% of all baseball events and 75% of all ticketed non-baseball events that use a majority of the ballpark. The CBA provides that seniority is established from the date of hire, and that assignment of available work hours is primarily based on seniority. The Padres do not consider its employees to be terminated at the conclusion of games, events or seasons. Rather, consistent with the CBA, union employees may only be terminated for "just cause." Therefore, the Padres pay their employees on a semimonthly basis. Employees who are terminated for just cause under the terms of the CBA are paid immediately upon

discharge consistent with Labor Code section 201. The Padres have not laid off any union employees in the last ten-plus years.

b. San Jose Arena Management, LLC

San Jose Arena Management, LLC operates the SAP Center, which serves as the home arena for two professional hockey teams – the San Jose Sharks and San Jose Barracuda. The SAP Center is used year-round for events including Sharks and Barracuda home games, and other events including concerts, Disney on Ice, USA Gymnastics trials, USA Figure Skating, football media days, speaker series, and Monster Truck events. San Jose Arena Management employs approximately 300 to 400 union employees, who are represented by one of three different unions and three different CBAs. San Jose Arena Management does not consider its employees to be terminated at the conclusion of games, events or seasons. Rather, consistent with the CBAs, union employees who work events may only be terminated for "just cause." The CBAs provide that union employees accrue seniority based on their start date, and explicitly define when and under what circumstances seniority can be broken—a mere hiatus in events worked is not such a circumstance. Employees who are terminated for just cause under the terms of the CBA are paid immediately upon discharge consistent with Labor Code section 201. Otherwise, San Jose Arena Management pays its employees on a semimonthly basis. San Jose Arena Management has not laid off any union employees in the last ten-plus years.

c. Athletics Investment Group LLC

The Oakland Athletics are a professional baseball team based in Oakland, California. The Athletics have played their home games at the Oakland-Alameda County Coliseum, often referred to as the Oakland Coliseum, since 1968. The Oakland Coliseum operates year-round for events including Athletics games, Oakland Raiders football games, concerts, Monster Truck shows, Motocross racing, soccer exhibitions, and other events. The Athletics currently employ over 1,000 union members. There are five different unions and eight different CBAs that control the employment at the Coliseum. Three of the CBAs are directly with the Athletics and five of the CBAs are with third parties that contract with the Athletics for event services. The Athletics do not consider their employees to be terminated at the conclusion of games, events or seasons. Rather, event day staff maintain their status and seniority, and are assumed to work the next event. None of the CBAs define termination as occurring other than for "just cause." If not terminated, the employees retain all of their seniority rights to select the events they want to work as future events arise. It would violate the CBAs if the Athletics considered the employees terminated and eliminated their seniority rights. The Athletics pay their employees on a semimonthly payroll cycle. The Athletics have not laid off any union employees in the last ten-plus years.

B. Petitioner And Other Unionized Employees Are Not "Discharged" Between Events

Pursuant to Labor Code section 201, "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

Petitioner claims that, as a matter of law, employees who have any "breaks in service" or who "complete specified assignments" are automatically laid off, and that employees who are laid off are automatically discharged. (Opening Brief, p. 15-16; 28-32.) Therefore, Petitioner claims that he was terminated at the end of *each* homestand or event, or at the end of the baseball season. (Opening Brief, p. 10.)

However, as described by the Giants, this contention misrepresents the actual employment relationship under which Petitioner has worked for the Giants consistently since 2005, and under which he has worked in *every* pay period during the last year and a half leading up to filing the lawsuit. (Answer Brief, p. 12-13.) Petitioner's continuous employment is unsurprising given that AT&T Park is a multi-purpose venue that is staffed 24 hours each day, seven days per week and hosts a variety of events year-round. (Answer Brief, p. 12.)

Like the Giants, the Dodgers and other sports organizations similarly retain their unionized employees for long terms to staff their stadiums year-round. These individuals are not simply independent contractors, people working one-off concerts or events, or hair models working a one-day show, like the employees described in Smith. Rather, these long-term employees are a part of the organizations—responsible for looking after other people's safety and creating memorable experiences. These employees understand that they remain employed and will return to the workplace following the days in which they are not working.

For example, the Dodgers have employees who have worked games and other events for several decades. These employees were there for, and a part of, some of the

greatest moments in baseball history, including World Series games, the 1980 All-Star Game, no-hitters, and Kirk Gibson's walk-off home run during the 1988 World Series. The Dodgers' benefit from these long-term employees, as the employees bring institutional knowledge and relationships with fans that heighten the experience of guests. The employees benefit from this long-term employment, as they can depend on steady employment year after year, season after season, and homestand after homestand, that may *only* be ended by the Dodgers for "just cause" as that term is defined by the CBAs.

Petitioner seeks to analogize working for the Giants to working for a factory that is shutting down or to work that is performed on a seasonal farm. However, working at a professional sports stadium is plainly distinguishable given the year-round use of these venues. For instance, in addition to working home games, the Dodgers' unionized employees work a host of other non-baseball events that take place before, during, and after the sports season. As indicated above, Dodger Stadium is used for a wide variety of non-baseball activities throughout the calendar year, including during the baseball "off-season." Employees who staff Dodgers games also staff these other events. For example, in March 2017 alone, Dodger Stadium hosted stadium tours, the Color Race, the LA Marathon Kids Run, the LA Marathon 5K, the LA Marathon, and the Susan G. Komen Race for the Cure. All of these events occurred during the baseball "off-season," and all of them were staffed by union employees.

As another example, the Padres' unionized employees work both baseball games and non-baseball events at Petco Park. These non-baseball events occur both in the baseball "off-season" and during the season. For example, during the baseball season,

the Padres recently played six consecutive home games from September 14-19, 2018, followed by an Eagles/Zac Brown Band/Doobie Brothers concert on September 22, 2018, and a Journey/Def Leppard concert the following day. These games and events were all staffed by union employees.

Because these employees regularly work games and events year-round, they do not turn in their uniforms, reapply, or get retrained between every homestand, game, or other event. Rather, these employees understand that they are still employed, and continue to inform the organizations of their availability.

Pursuant to Petitioner's theory, an employee who works *every* home game and event at a stadium would nonetheless be "discharged" dozens of time every year, despite being scheduled to work further games and events in the future, including events occurring in the *same* pay period. The following illustration demonstrates the absurdity of this position: The Dodgers played home games at Dodger Stadium from Monday, July 2, 2018 to Wednesday, July 4, 2018. Later in this same pay period, Dodger Stadium hosted a Dead & Company concert on Saturday, July 7, 2018. As noted above, Dodgers employees submit availability sheets indicating which days they want off. Under Petitioner's theory, an employee who took days off from work from July 4 to 6, 2018, for the July 4 holiday, but who worked the games on Monday July 2 and Tuesday July 3, as well as the concert on Saturday July 7, would be deemed to have been terminated following the Tuesday game despite knowing that he or she would be working the concert on Saturday. Such a theory is inconsistent with the law, common sense, and an ordinary understanding of what it means to discharge an employee.

Indeed, under Petitioner's theory, employees could choose not to schedule themselves for certain days, thereby creating "breaks in service" whereby employees would essentially be resigning or laying themselves off. This could create a perverse incentive for employees to not schedule themselves to work certain days to either immediately be paid all wages in the middle of a pay period or collect waiting time penalties, despite knowing that they will be working again in the following pay period based on the rights provided to them in the CBAs.

Petitioner also suggests that employees are terminated at the conclusion of the final home game of the season, a theory that is also alleged in the pending lawsuit against the Dodgers. This theory is just as absurd as the notion that any gap in employment is a discharge because these are year-round venues, and the CBAs clearly contemplate year-round employment. It is impossible to know when the last home game of a season will take place or what time it will end. For example, in 2017, the Dodgers played the Houston Astros in the World Series, which is a best of seven series. The first two games were to be played in Los Angeles, the third, fourth, and fifth in Houston, and the sixth and seventh in Los Angeles. After the teams split the first two games it was impossible to know whether the Dodgers would return to Los Angeles to play any games. If all three games in Houston were won by the same team, there would have been no additional home games played in Los Angeles. As such, under Petitioner's theory, the Dodgers possibly would have retroactively "discharged" their employees following the second game of the series (and, thus, final paychecks would have needed to be prepared and distributed immediately that same night), but would have no way to know that was the

case until after the fifth game of the series ended in Houston. Such a system is illogical and clearly not what the Legislature intended when enacting California's final pay laws.

C. Determining Whether An Employee Was "Discharged" Requires An Interpretation Of The Applicable CBAs

As described above, the crux of Petitioner's case rests on the notion that employees are laid off as a result of the mere passage of time between periods when an hourly employee works or the end of an assignment. As highlighted in the Giants' brief, this Court, in Smith v. Superior Court (L'Oreal), 39 Cal.4th 77 (2006), defined termination under Labor Code section 201 by linking contractual discharge to the contractual terms "for which the employee was hired." (Answering Brief, p. 29.) Here, the question of whether employees cease employment because of gaps between work periods necessarily depends on the terms of the employment, which requires an interpretation of the applicable CBAs.

As explained by the Giants, the CBA that Petitioner negotiated through his union, and under which he received workplace protection and benefits, contains a variety of provisions reflecting the parties' intent as to the ongoing nature of the employment relationship. (Answering Brief, p. 13-14.) This practice is consistent with other sports organizations. For example, non-exempt employees of the Dodgers, work subject to three different CBAs. These CBAs contain extensive provisions governing all aspects of the employees' employment. As noted, the Dodgers cannot terminate their union employees simply because the last game of a homestand or season has been played, but rather must establish "just cause" for any termination. Two of the Dodgers' current

CBAs expressly state that "[e]mployees shall be deemed to be employed continuously and without interruption until their employment is terminated either by the Employer or the employee pursuant to the termination provisions of [the] Agreement," and that "the conclusion of an Event or series of Events (whether it is a single game or concert, or a series of games in a homestand, or the end of the baseball season) does not constitute a layoff, discharge, termination, or any other type of break in service." The CBAs include several other provisions that make clear that employees are not terminated between games, events, or seasons, including:

- "New Hire" is defined as "any person who has not worked *any* Events at Dodger Stadium prior to being hired."
- Employees receive a lower rate of pay until they have worked at least 40 Events, without regard for homestands or seasons.
- The first 60 Events that an employee works are "probationary," and thereafter the employee begins to accrue seniority and enjoy the full protection of the agreement, without regard for homestands or seasons.
- Employees are classified based on the number of hours worked in a year, with specific reference to the "52 week period."
- Following the probationary period, seniority is established from the date of hire, irrespective of the number of games or events worked.
- When distributing available work hours, the Dodgers are required to consider seniority whenever possible.
- The Dodgers must take into account length of service with respect to layoffs, promotions, and transfers.
- Retired employees receive free tickets for life based on the number of years that they worked for the Dodgers (e.g., 5-9 years: 4 games; 10-14 years: 5 games; 15 and above: 6 games).

- Employees are entitled to a "sabbatical holiday" on their 5th, 10th, 15th, 20th, 25th, 30th, and 35th anniversary year of employment.
- Bonuses are paid in January (i.e., during the baseball "off-season").

These provisions highlight the significance that seniority plays in the contracts negotiated between the Dodgers and their employees, where an employee's length of service entitles the employee to the full protections of the CBA, higher rates of pay, desired work schedules, free tickets for life, and holiday pay. Such reliance on seniority, along with the provision expressly stating continued employment, confirms that the applicable CBAs provide for the continued employment of all union employees, from season to season, event to event, and year to year, recognizing that not every day will be a day of work.

D. Adopting The Petitioner's Position Would Inflict Great Harm On California Sports Organizations, Their Employees, And The Unions

Public policy firmly supports the construction of the statute adopted by the Court of Appeal below. Under Petitioner's theory, CBAs, and the terms and conditions of employment negotiated between an employer and its employees, are absolutely irrelevant to the determination of whether employees are terminated as a result of the end of an assignment or the mere passage of time between periods of work. The implications of such a position on collective bargaining rights would be startling.

For example, pursuant to the Dodgers' CBAs, employees do not gain the protections of the CBA or begin to accrue seniority until after working 60 events. However, under Petitioner's theory, employees would *never* meet this threshold as they would be repeatedly terminated as a result of gaps in their work schedules. Therefore,

employees would lose out on perhaps the single most important term in the CBA for union members—the right to only be discharged for "just cause." Further, the loss of seniority rights would result in a loss of the benefits that come with such rights, including higher pay, priority in scheduling, and distribution of work hours. Employees would also lose out on other contractually negotiated benefits, including holiday pay, bonuses, participation in and employer contributions to pension funds, and free tickets. Moreover, employers would be required to pay employees all vested vacation pay dozens of time each year. As a result, employees would be unable to accrue any significant vacation time in violation of their CBAs. Further, under Petitioner's theory, employees discharged after every event or homestand would be required to re-apply and be re-hired, which can be expensive, time-consuming, and intrusive. For example, employees may have to be re-drug tested or have new background checks run on them after each "discharge."

Under Petitioner's theory, employees would regularly lose these benefits and protections, or never gain them in the first place, as a result of gaps between work days. The important rights and benefits within the negotiated agreements that are placed at risk under Petitioner's theory, further confirm that the parties to these CBAs contemplated continued employment.

The sports organizations would similarly be greatly harmed by Petitioner's position.[2] First, the sports organizations benefit by having consistent and reliable

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[2] While this brief comes from a variety of professional California-based sports organizations, the implications of this issue would clearly impact countless other sports and entertainment-related organizations and their employees, including college sports teams, dozens of minor league teams for baseball, basketball, hockey, and soccer,

employees who are familiar with the policies, procedures, and history of the organizations. Such employees are critical to the success of the organizations, and to the safety and enjoyment of the fans who attend the games and events. Second, as with nearly all CBAs, the CBAs negotiated between the sports organizations and unions provide that employees cannot be terminated absent "just cause." If the sports organizations were deemed to have terminated these employees after every homestand, event or season, they would inevitably face hundreds of wrongful termination or breach of contract claims in arbitration, as well as Unfair Labor Practices charges before the National Labor Relations Board.

Further, if employees are terminated after every homestand, event or season, the sports organizations would need to try to devise a way to pay their employees final pay after every single game or event. For example, if an employee decided to only work the first day of the pay period and is subsequently "discharged" because she works no additional days during that homestand, the team would need to pay her final pay on the first day of the pay period. Given the hundreds of employees that the sports organizations employ, this circumstance would likely occur every single day.

No payroll system is set up to pay employees on a routine basis outside of the regular pay schedule that is common to all similarly-situated employees. Payments made outside of the regular pay cycle must be handled on an exception basis, often requiring

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stadium operators, in-stadium concessionaires, entertainment venues, and other non-professional sports organizations. Adopting Petitioner's overbroad definition of "discharge" would likewise cause great harm and disruption to employees and employers in other industries where intermittent scheduling is necessary.

manual operations, and necessarily entailing higher transaction costs. The administrative complexity and cost of immediately paying hundreds of employees on their own individualized pay schedules are not readily calculable. If workers had to be paid at the end of every assignment, sports organizations would effectively have to convert their payment period to a daily basis – literally mirroring every employee's individual schedule – to account for the fact that employees may work only one game or event in a week. The sports organizations would need to hire legions of payroll clerks to process hundreds of checks for employees on the weekend and late in the evening (when these types of games and events typically conclude). Presumably, the sports organizations would also need to pay these employees for waiting around for their paychecks, and would also need to pay the many payroll clerks immediately after all other employees were paid. This same cycle would repeat over and over again.

Notably, from a practical perspective, the sports organizations could not prepare the checks in advance because they would not know how long each employee would work on any specific night. Baseball games are played without the use of a clock. As a result, the duration of the games, and how long employees will work, can vary significantly.[3] Similarly, the length of concerts, football games, and other events held at a stadium or facility can vary considerably. As such, late at night and on the weekends, the sports organizations would need to simultaneously capture the amount of time

[3] During the 2018 baseball season, games at Dodger Stadium ranged from 2 hours and 17 minutes to 5 hours and 15 minutes. In 1981, the Pawtucket Red Sox, a minor league affiliate of the Boston Red Sox, played an eight hour, twenty-five minute game that lasted 32 innings. Other games are rained out before the game begins, or mid-game, adding further unpredictability.

hundreds of employees worked, make an assortment of calculations including regular rate calculations, payout of accrued vacations and bonuses, and payment of meal and rest period premiums, and then prepare checks and wage statements consistent with these calculations. It simply would not be possible to do this.

Additionally, among other things, sports organizations would also have to modify their software programs, which are currently configured to withhold taxes under IRS tax tables on a weekly, biweekly or semimonthly basis. Because the tax tables assume that the wages paid are for a full work week, two-week or semi-monthly pay period, employees whose assignments end short of a week would be "under-withheld," subjecting them to potential additional taxes and penalties. To avoid that result, sports organizations would have to modify their software programs to assume daily pay – a costly customization.

Adopting Petitioner's view would also require many sports organizations, and other companies with analogous scheduling realities, to eliminate direct deposit of paychecks. Sports organizations, including the Dodgers, Athletics, Padres, and San Jose Arena Management, offer employees the popular option of direct deposit. Employees benefit from this practice by not having to collect the paycheck and take it to the bank to deposit themselves. Companies that directly deposit payments are required to pre-fund those payments by as many as two days in advance of the payment. Thus, a daily pay system would render such direct deposits impossible, forcing sports organizations to drop this useful employee benefit.

E. Adopting The Petitioner's Position Could Negatively Impact Every Industry

Finally, adopting Petitioner's overbroad and unsupported definition of "discharge" would have massive implications not just in the sports field, but in every industry where employees work irregular schedules. As noted above, Petitioner alleges that employees are necessarily discharged following temporary breaks in service, and there is no need to interpret agreements between an employer and its employees, because such provisions are irrelevant to the issue of discharge. Indeed, Petitioner goes so far as to (erroneously) state that, even if they wanted to, employers and employees cannot "contract around" the protections of the Labor Code.[4] Under this theory, regardless of whether an employer and its employees desire a long-term employment relationship and the benefits that correspond with such a relationship, including critically important stability and seniority rights, there would be nothing that the employer and its employees could include in a CBA to confirm that type of relationship. Any attempt at defining a longer term duration would be deemed an attempt to "contract around" the Labor Code and thus invalid. The natural consequence of this position is that employers and employees could never contract for long-term employment, and such contracts would be meaningless to determine whether and when an employee is terminated—since terminations would occur

[4] This argument is a mischaracterization, as no one is taking the position that employers can or should "contract around" Labor Code section 201. In fact, as described above, these sports organizations all pay discharged employees immediately consistent with this section. The actual position taken by these sports organizations is that an employer and employee have the right to set the terms and conditions of employment, including the duration of employment, which is a matter of contract. Such terms and conditions are directly linked to whether an employee is discharged and is owed final pay in accordance with Labor Code section 201.

"by operation of law" after the passing of time between scheduled assignments. Such a position is antithetical to the notion of collective bargaining generally, and CBAs, specifically, since both are expressly designed to create such long-term relationships; and would negatively impact all employers and employees seeking to create such a relationship.

Furthermore, the impact of Petitioner's proposed definition of discharge would likely extend beyond the collective bargaining context. In fact, under the logical extreme presented by Petitioner's theory, employees who work standard Monday to Friday jobs would be discharged every Friday because they completed a period of service (the work week) followed by a "break in service" (the weekend). Teachers would be terminated at the end of each school year because they have the summer off, even if they chose to teach some summer classes part-time. Employees hired for weekend jobs would be terminated after every Sunday worked. An employee who was hired to work Monday and Tuesday of every other week for a year would be deemed "discharged" on Tuesday 26 times per year, despite being scheduled to return to continuous employment. Regardless of how dictionaries defined the term "layoff" in the 1960s and 1980s, it is common sense that in these types of situations, employees are simply not being terminated.

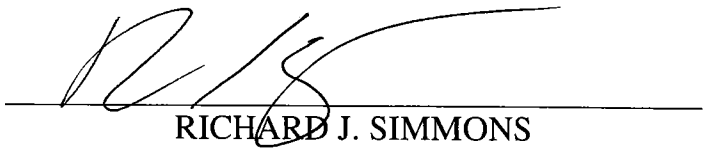
II. CONCLUSION

For all of these reasons, the Dodgers, Athletics, Padres, and San Jose Arena Management, concur with the Giants Answering Brief that the Court of Appeal should be affirmed, because Petitioner's proposed definition of "discharge" is overbroad, and determining whether Petitioner was discharged between events requires an interpretation

of the CBA that set forth the terms and conditions of his employment. Further, adopting Petitioner's position would have dire consequences on the sports industry as a whole.

Dated: October 24, 2018

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By 

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CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, Rule 8.504(d)(1))

The text of this petition consists of 7,106 words, including all footnotes, as counted by the computer program used to generate this petition.

Dated: October 24, 2018

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By _____

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PROOF OF SERVICE

I am employed in Los Angeles, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 333 So. Hope Street, 43rd Floor, Los Angeles, CA 90071. I am readily family with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service.

On October 24, 2018, I enclosed said document(s) in an envelope or package provided by FedEx and addressed to the persons at the addresses listed in the Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of FedEx or delivered such document(s) to a courier or driver authorized by FedEx to receive documents.:

APPLICATION OF LOS ANGELES DODGERS LLC AND OTHER CALIFORNIA SPORTS ORGANIZATIONS TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF IN SUPPORT OF SAN FRANCISCO BASEBALL ASSOCIATES, LLC

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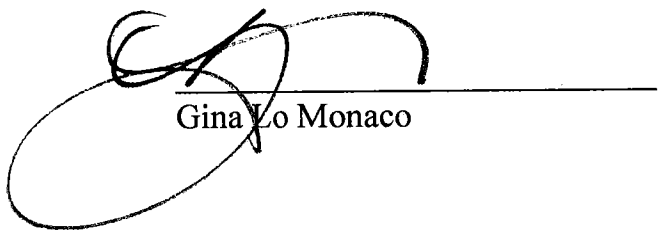
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 24, 2018, at Los Angeles, California.



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