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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

RACHEL SWANN,

Plaintiff and Respondent,

v.

SPECIALTY'S CAFE AND BAKERY,

Defendant and Appellant.

A134911

(San Francisco County  
Super. Ct. No. CGC-11-514748)

BY THE COURT:<sup>1</sup>

Rachel Swann filed a class action against her former employer, Specialty's Café & Bakery, Inc. (Specialty's), alleging claims for unpaid overtime and failure to provide meal breaks and rest periods. Specialty's filed a motion to compel arbitration, which the trial court denied, concluding that Specialty's failed to demonstrate an agreement to arbitrate and, moreover, that whatever agreement did exist was unconscionable. Specialty's appealed.

By letter of December 19, 2012, we notified counsel for Specialty's "that the court, acting on its own motion, is considering the imposition of sanctions on appellant and/or its counsel for taking a frivolous appeal or appealing solely to cause delay. (See Cal. Rules of Court, rule 8.276(a)(1); *In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 654; *In re Marriage of Schnabel* (1994) 30 Cal.App.4th 747, 753.)" We allowed letter briefs from the parties on the issue, which were received.

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<sup>1</sup> Before Kline, P.J., Haerle, J., and Richman, J.

The matter came on for argument on February 20, 2013, at which the issue of sanctions was addressed, along with the substance of the appeal. At the conclusion of the hearing we requested declarations from counsel on the issue of sanctions, which have also been received. Meanwhile, on March 15, Specialty's also filed a request to dismiss the appeal, and then by letter of April 11, 2013, counsel advised the court that the case had settled. We ordered counsel to appear and they did, on May 1, 2013. We deny sanctions and dismiss the appeal.

Dated: \_\_\_\_\_