

S234969

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

DOUGLAS TROESTER,

Plaintiff and Appellant,

v.

STARBUCKS CORPORATION,

Defendant and Respondent.

SUPREME COURT
FILED

APR 09 2018

Jorge Navarrete Clerk

Deputy

ON A CERTIFIED QUESTION FROM THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT
CASE No. 14-55530

RESPONDENT'S SUPPLEMENTAL BRIEF
PURSUANT TO RULE 8.520(d)

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Respondent Starbucks Corporation files this supplemental brief pursuant to Rule 8.520(d) of the California Rules of Court to bring the Court's attention to a recent decision, *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, which further explains the persuasive value of the DLSE's enforcement positions, including the DLSE Enforcement Policies & Interpretations Manual. *Alvarado* is appropriately raised in a supplemental brief because it was issued on March 5, 2018, after Starbucks filed its Answer Brief on the Merits. (Cal. Rules Court, rule 8.520(d) ["A party may file a supplemental brief limited to new authorities . . . or other matters that were not available in time to be included in a party's brief on the merits."].)

In *Alvarado*, as in this case, the DLSE Manual contained an enforcement policy that spoke directly to the question on appeal. (*Alvarado, supra*, 4 Cal.5th at p. 534 [noting that "the question at issue here is expressly resolved . . . by the DLSE's enforcement policy"]; see Appellant's Opening Br. at pp. 33-35 [discussing DLSE Enforcement Policies & Interpretations Manual § 47.2.1]; Respondent's Br. at pp. 26-28 [same].) This Court rejected Appellant's position that the DLSE Manual "should be disregarded" (Appellant's Opening Br. at p. 34), explaining that although the DLSE Manual is a "'void' regulation[]," "'void' . . . does not necessarily mean wrong," and "the interpretation embodied in that policy may still be valid." (*Alvarado, supra*, 4 Cal.5th at pp. 535, 538 [citing *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 577].) Thus, there is nothing "improper" about the DLSE's enforcement position. (Compare Appellant's Opening Br. at p. 33 [characterizing the DLSE position as "an improper 'underground regulation'"].)

Moreover, this Court may be guided by the DLSE's expert judgment. As this Court explained in *Alvarado*, "we may take into consideration the DLSE's expertise and special competence, as well as the

fact that the DLSE Manual is a formal compilation that evidences considerable deliberation at the highest policymaking level of the agency.” (*Alvarado, supra*, 4 Cal.5th at p. 538.) With due consideration for that “expertise and special competence,” the Court may “adopt the DLSE’s interpretation as [its] own” if the Court is “persuaded that it is correct.” (*Ibid.*).

The *Alvarado* decision represents just the latest affirmation that this Court may be persuaded by DLSE guidance. (Respondent’s Br. at p. 26 [citing *Augustus v. ABM Security Serv., Inc.* (2016) 2 Cal.5th 257, 267 and *Brinker v. Superior Court* (2012) 53 Cal.4th 1004, 1029, fn. 11].) As it has before, the Court should consider the DLSE’s “expertise and special competence” in this case. (*Alvarado, supra*, 4 Cal.5th at p. 538.)

Respectfully submitted,

Dated: April 6, 2018

**AKIN GUMP STRAUSS HAUER &
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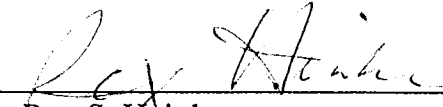
CERTIFICATE OF COMPLIANCE

[Cal. Rules of Court, Rule 8.520(d)]

This brief consists of 440 words as counted by the Microsoft Word version 2010 word processing program used to generate the brief.

Dated: April 6, 2018

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 1999 Avenue of the Stars, Suite 600, Los Angeles, California 90067. On April 6, 2018, I served the foregoing document described as: **RESPONDENT'S SUPPLEMENTAL BRIEF PURSUANT TO RULE 8.520(d)** on the interested parties below, using the following means:

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BY UNITED STATES MAIL I enclosed the document in a sealed envelope or package addressed to the respective addresses of the parties stated above and placed the envelopes for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid at Los Angeles, California.

(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 6, 2018, at Los Angeles, California.

Serena L. Steiner
[Print Name of Person Executing Proof]


[Signature]