

Case No. S222732

IN THE SUPREME COURT OF CALIFORNIA

DYNAMEX OPERATIONS WEST, INC.,
Petitioner,

vs.

THE SUPERIOR COURT OF LOS ANGELES COUNTY,
Respondent,

CHARLES LEE et al.,
Real Parties in Interest.

ON REVIEW FROM A DECISION BY THE COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIVISION SEVEN, CASE NO. B249546

LOS ANGELES COUNTY SUPERIOR COURT, CASE NO. BC 332016
MICHAEL L. STERN, JUDGE

**PETITIONER DYNAMEX OPERATIONS WEST, INC.'S
NOTICE OF ERRATA**

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**SUPREME COURT
FILED**

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LEE v. DYNAMEX

Petitioner DYNAMEX OPERATIONS WEST, INC. has learned that one page was inadvertently omitted from paper copies of the Reply Brief filed on November 4, 2015 (although all pages were included in the electronically-filed version). Petitioner therefore submits this Errata Notice, together with the missing page (page 20). Copies of the Errata Notice are also being served on all parties.

Respectfully submitted,

DATED: November 10, 2015 LITTLER MENDELSON, P.C.

By: Robert G. Hulteng
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Attorneys for Defendant and Petitioner
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DATED: November 10, 2015 SHEPPARD MULLIN RICHTER &
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By: Ellen Bronchetti /s/
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of the expense reimbursement requirement imposed by the Wage Orders. On that point, the *Estrada* Court reviewed the DLSE's interpretation of Wage Order No. 9, as well as this Court's opinion in *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 581, and concluded two things. First, "in the phrase 'hand tools and equipment', the word 'hand' is an adjective which modifies both the word 'tools' and the word 'equipment.'" (*Estrada, supra*, 154 Cal.App.4th at pp. 24-25.) And second, consistent with the Labor Commissioner's opinion, "an automobile is not the type of equipment contemplated in the IWC Orders." (*Id.*) Accordingly, as the *Estrada* Court concluded, the requirement to reimburse employees for employee-provided vehicles arises solely under Labor Code section 2802 and not under subsection 9 of Wage Order No. 9.

Given the *Estrada* Court's holding, Plaintiffs' contention—that their reimbursement claim arises under both Labor Code section 2802 and Wage Order No. 9—is clearly erroneous. Consequently, so is Plaintiff's contention that their claims can be resolved exclusively by application of the "Wage Order test." Since the "critical expenses" for which Plaintiffs seek reimbursement are their "automobile expenses," the "critical" component of their reimbursement claim must be evaluated under the *Borello* standard, since it arises solely from the Labor Code.

While singularly unhelpful to Plaintiffs, this argument does illustrate a useful point here. Plaintiffs' tortured argument is one of many that courts and agencies would face if this Court were to adopt the two-test approach. An individual must be either an independent contractor or an employee under existing California law (specifically, under Labor Code Section 3357). The two-test approach yields a hybrid status that has no statutory basis, and is entirely unworkable.

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 650 California Street, Fl. 20, San Francisco, CA 94108, I served the within document(s):

- **PETITIONER DYNAMEX OPERATIONS WEST, INC.'S NOTICE OF ERRATA**

- by facsimile transmission at or about _____ on that date. This document was transmitted by using a facsimile machine that complies with California Rules of Court Rule 2003(3), telephone number 925.946.9809. The transmission was reported as complete and without error. A copy of the transmission report, properly issued by the transmitting machine, is attached. The names and facsimile numbers of the person(s) served are as set forth below.
- by placing a true copy of the document(s) listed above for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at Walnut Creek, California addressed as set forth below.
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- by personal service I caused such envelope to be delivered to First Legal Support Services for delivery to the person(s) at the address(es) set forth below.

- Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses on the attached service list on the dates and at the times stated thereon. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. The electronic notification address of the person making the service is _____@littler.com.

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Court of Appeal Case No.
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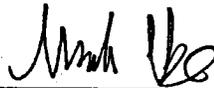
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I am readily familiar with the firm's practice of collection and processing correspondence for mailing and for shipping via overnight delivery service. Under that practice it would be deposited with the U.S. Postal Service or if an overnight delivery service shipment, deposited in an overnight delivery service pick-up box or office on the same day with postage or fees thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on November 10, 2015, at San Francisco, California.



Nicole Gostnell

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