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September 29, 2014

Hon. Tani Gorre Cantil-Sakauye, Chief Justice
Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

RECEIVED

SEP 29 2014

Re: Letter in Support of Petition for Review
Galen v. Redfin Corp., No. S220936
First Appellate District, Division One, No. A138642
Alameda County Superior Court, No. RG13663672

CLERK SUPREME COURT

Dear Chief Justice Cantil-Sakauye and Associate Justices:

Pursuant to California Rule of Court 8.500(g), we write in support of the Petition for Review of the Court of Appeal's decision in *Galen v. Redfin Corp.*, 227 Cal. App. 4th 1525 (July 21, 2014). In particular, we write to address the chilling effect that the decision—if allowed to stand—will have on the ability of California's low-wage workers to vindicate critical statutory rights. For the reasons expressed here, as well as those set forth in the Petition for Review, we respectfully ask that review be granted.

A. Statement of Interest

Amici are nonprofit organizations that engage in civil rights, employment, and consumer litigation and advocacy, including litigation challenging unfair practices that affect low-income Californians.

The **Impact Fund** is a nonprofit foundation that provides funding, training, and co-counsel to public interest litigators in California and across the country. The Impact Fund receives funding from the California State Bar Legal Services Trust Fund as a Support Center for legal services projects in California. The Impact Fund has served as lead counsel, co-counsel, or amicus curiae in a number of major civil rights actions, including cases challenging employment discrimination, wage and hour violations, lack of access for those with disabilities, and violations of fair housing laws.

Public Counsel is the largest not-for-profit law firm of its kind in the nation. It is the public interest arm of the Los Angeles County and Beverly Hills Bar Associations and is also the Southern California affiliate of the Lawyers' Committee for Civil Rights Under Law. Established in 1970, Public Counsel is dedicated to advancing equal justice under law by delivering free legal and social services to indigent and underrepresented children, adults and families throughout Los Angeles County. In 2013, Public Counsel assisted more than 30,000

people with direct legal services and assisted hundreds of thousands more through filing impact lawsuits, influencing policy, and sponsoring legislation.

B. If Allowed to Stand, the Court of Appeal's Decision Will Empower Employers to Discourage the Vindication of Statutory Rights by Imposing Fees and Costs on Arbitration That Would Not Be Charged in Court

In *Armendariz v. Found. Health Psychcare Servs., Inc.*, 24 Cal. 4th 83, 100-111 (2000), this Court unambiguously held that an “arbitration agreement or arbitration process cannot generally require the employee to bear any type of expense that the employee would not be required to bear if he or she were free to bring the action in court.” The reason for the rule is clear. It ensures “that employees bringing [statutory] claims will not be deterred by costs greater than the usual costs incurred during litigation, costs that are essentially imposed on an employee by the employer.” *Id.*

Despite the directive of *Armendariz* and its progeny, the Court of Appeal in *Galen* improperly upheld an employer-mandated arbitration agreement that imposed substantial costs and expenses that would not be required in court. *See* 227 Cal. App. 4th at 1541-544. The agreement included: (1) a fee-shifting provision requiring the plaintiff to pay the defendant’s attorneys’ fees and costs, as well as arbitration costs, in the event of a loss, and (2) a forum selection clause requiring the plaintiff to pay to travel from California to Washington for the arbitration hearing. *Id.*

This result cannot stand. California follows a policy of vigorous enforcement of minimum labor standards, both to ensure that employees do not work under unlawful conditions, and to protect law-abiding employers from unscrupulous competitors. *See, e.g.*, Cal. Labor Code § 90.5(a); *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 340 (2004). Despite this policy, violations of minimum labor standards remain commonplace in California, especially in low-wage industries. Common violations include failure to pay overtime and minimum wages, willful or negligent employee misclassification, failure to allow meal and rest breaks, and requiring unpaid “off-the-clock” work.¹ In a time when mandatory arbitration of employment disputes is rapidly becoming the rule rather than the exception, the rationale of *Armendariz* is more important than ever. The Court of Appeal’s decision allows—and even encourages—employers to unfairly condition a worker’s right to vindicate critical statutory rights in arbitration on his or her agreement to pay enormous and prohibitive costs that would not exist in court.

¹ For example, a 2008 survey of 1,815 workers in Los Angeles County revealed that nearly 30 percent of the workers sampled were paid less than minimum wage in the week preceding the survey, 16.4 percent were not paid the required daily overtime rate, and 69.8 percent experienced a meal break violation. *See generally Ruth Milkman et al., Wage Theft and Workplace Violations in Los Angeles: The Failure of Employment and Labor Law for Low-Wage Workers* 18 (2010).

The potential chilling effect is not hard to imagine. Under the sort of arbitration agreement approved by the Court of Appeal, an unsuccessful plaintiff could easily be saddled with tens or even hundreds of thousands of dollars in fees, costs, and expenses, including:

- Arbitration filing/administrative fees and expenses;
- The arbitrator's fees, costs, and travel expenses;
- Defense attorneys' fees, costs, and travel expenses;
- Defense expert fees, costs, and travel expenses; and
- The plaintiff's own travel expenses and lost wages from missed work.

The risk of incurring these costs is enough to deter even the most courageous would-be plaintiffs. This is especially true for low-wage workers, whose claims do not involve huge sums of money (i.e. thousands of dollars, not tens or hundreds of thousands). Faced with the possibility of personal liability for fees and costs, the majority of these workers will choose to forgo their rights entirely. And enforcing these agreements similarly ties the hands of workers' rights lawyers. Indeed, an attorney considering the potential case of a low-wage worker would be hard-pressed to recommend moving forward with litigation, knowing that a loss could very well lead to financial ruin for their client.

In light of the direct, troubling conflict between the Court of Appeal's decision in *Galen* and the long-standing rule announced by this Court in *Armendariz*, we respectfully request that the Petition for Review be granted.

Sincerely,



Robert L. Schug

Impact Fund
Public Counsel

PROOF OF SERVICE

I am employed in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within entitled action. My business address is 125 University Avenue, Suite 102, Berkeley, CA 94710.

I declare that on the date hereof I served a copy of

**LETTER IN SUPPORT OF PETITION FOR REVIEW, GALEN V.
REDFIN CORP., NO. S220936**

ON THE PARTIES LISTED IN THE ATTACHED SERVICE LIST

- BY U.S. MAIL: 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 Berkeley, California addressed as set forth below.

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

Executed at Berkeley, California on September 29, 2014.

Natalie Newton

Printed Name

Natalie

Signature

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