

No. A162343

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION ONE

WESTERN GROWERS ASSOCIATION, *et al.*,
Plaintiffs/Petitioners and Appellants,

v.

CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD, *et al.*,
Defendants/Respondents and Respondents.

Appeal from the Superior Court for the County of San Francisco
Case No. CPF21517344
Honorable Ethan P. Schulman

**BRIEF OF AMICI CURIAE IMPACT FUND, CALIFORNIA
RURAL LEGAL ASSISTANCE, INC., AND 18 ADDITIONAL
CALIFORNIA LEGAL SERVICES ORGANIZATIONS IN
SUPPORT OF DEFENDANTS/RESPONDENTS AND
AFFIRMANCE**

Lindsay Nako (SBN 239090)
Counsel of Record
David S. Nahmias (SBN 324097)
Andrea A. Núñez (PL-504291)
IMPACT FUND
2080 Addison Street, Suite 5
Berkeley, CA 94704
Tel: (510) 845-3473
lnako@impactfund.org
dnahmias@impactfund.org
anunez@impactfund.org

Counsel for proposed amici curiae

ADDITIONAL AMICI CURIAE

- Asian Americans Advancing Justice | Los Angeles
- Bet Tzedek
- Centro Legal de la Raza
- California Rural Legal Assistance Foundation
- Disability Rights California
- Disability Rights Education & Defense Fund
- Labor & Employment Committee of the National Lawyers Guild
- Lawyers' Committee for Civil Rights of the San Francisco Bay Area
- Legal Aid at Work
- Legal Aid of Marin
- Legal Services of Northern California
- National Employment Law Project
- Occupational Safety & Health Law Project
- Public Counsel
- Public Interest Law Project
- San Diego Volunteer Lawyer Program
- Western Center on Law & Poverty
- Worksafe, Inc.

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Pursuant to California Rule of Court 8.208, Impact Fund, counsel for proposed Amici Curiae, certify that they are not aware of any interested entities or persons to list in this Certificate.

Dated: June 17, 2021

/s/ Lindsay Nako
Lindsay Nako
IMPACT FUND

TABLE OF CONTENTS

ADDITIONAL AMICI CURIAE..... 2

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS ... 3

TABLE OF CONTENTS..... 4

TABLE OF AUTHORITIES 5

INTERESTS OF AMICI 10

INTRODUCTION 10

ARGUMENT 12

I. The Board Relied on Substantial Evidence to Declare an
Emergency Warranting Immediate Action..... 12

 A. The Standards Board Correctly Found that COVID-19
 Is a Threat to Human Life. 14

 B. The Board Relied on Evidence of Significant COVID-19
 Transmission in the Workplace. 17

 C. The Finding of Emergency Followed Other State and
 Public Health Efforts to Contain the Ongoing COVID-19
 Emergency. 19

II. The Emergency Temporary Standards Were Necessary to
Protect the Health of Vulnerable Workers and Grounded in
Evidence from the Public Health Community..... 21

III. The Standards Are Necessary to Fulfill the Division’s
Mandate to Protect Those Workers Most Vulnerable to
COVID-19. 29

CONCLUSION..... 34

CERTIFICATE OF COMPLIANCE..... 35

PROOF OF SERVICE 36

TABLE OF AUTHORITIES

Statutes

Gov. Code, § 8558, subd. (b)	20
Gov. Code, § 11342.545.....	13
Gov. Code, § 11346.1, subd. (b)(2).....	13
Lab. Code, § 6300.....	29
Lab. Code, § 6306, subd. (a).....	29
Lab. Code, § 6307.....	29
Lab. Code, § 6308, subd. (c).....	29

Regulations

Cal. Code Regs., tit. 1, § 50, subd. (b)(3)(B).....	21
Cal. Code Regs., tit. 8, § 3205, subd. (b)	22
Cal. Code Regs., tit. 8, § 3205, subd. (c)(2)(E)	24
Cal. Code Regs., tit. 8, § 3205, subd. (c)(3)(B)(4).....	26
Cal. Code Regs., tit. 8, § 3205, subd. (c)(5)(E)	22
Cal. Code Regs., tit. 8, § 3205, subd. (c)(6)	23
Cal. Code Regs., tit. 8, § 3205, subd. (c)(7)	23
Cal. Code Regs., tit. 8, § 3205, subd. (c)(8)	24
Cal. Code Regs., tit. 8, § 3205, subd. (c)(10)	27
Cal. Code Regs., tit. 8, § 3205.1.....	26
Cal. Code Regs., tit. 8, § 3205.2.....	26
Cal. Code Regs., tit. 8, § 3205.2, subd. (e)(1).....	24
Cal. Code Regs., tit. 8, § 3205.3.....	32
Cal. Code Regs., tit. 8, § 3205.3, subd. (c).....	28
Cal. Code Regs., tit. 8, § 3205.3, subd. (d)	28
Cal. Code Regs., tit. 8, § 3205.3, subd. (e)	28

Cal. Code Regs., tit. 8, § 3205.3, subd. (h)	28
Cal. Code Regs., tit. 8, § 3205.4.....	32
Cal. Code Regs., tit. 8, § 3205.4, subd. (c).....	28
Cal. Code Regs., tit. 8, § 3205.4, subd. (e)	28
Cal. Code Regs., tit. 8, § 3205.4, subd. (f)	20
Cal. Code Regs., tit. 8, § 5199, subd. (a)	24

Other Authorities

Advancing Justice—Asian Law Caucus & U.C. Berkeley Labor & Occupational Health Program, <i>Few Options, Many Risks: Low-Wage Asian and Latinx Workers in the COVID-19 Pandemic</i> (Apr. 2021) < https://tinyurl.com/sukdwt6m >	33
Am. Conference of Governmental Industrial Hygienists, <i>White Paper on Ventilation for Industrial Settings during the COVID-19 Pandemic</i> (Aug. 2020)	18, 24
Am. Industrial Hygiene Assn., <i>Reducing the Risk of COVID-19 Using Engineering Controls</i> (Aug. 28, 2020) < https://tinyurl.com/yyr8bmmd >.....	24
Arons et al., <i>Presymptomatic SARS-CoV-2 Infections and Transmission in a Skilled Nursing Facility</i> , <i>New England J. of Medicine</i> (2020) < https://tinyurl.com/4jpf8yja >.....	18
Bade et al., <i>Always Essential, Perpetually Disposable: California Farmworkers and the COVID-19 Pandemic</i> (2021) < https://tinyurl.com/6drvajuv >.....	32
Botts et al., <i>COVID-19 Rips through California Motel Rooms of Guest Workers Who Pick Nation’s Produce</i> (Aug. 17, 2020) <i>The Californian</i> < https://tinyurl.com/y32hwdmb >	31
Burton, <i>Air Handling in the Era of Corona Virus: Roles Ventilation Can Play in the Control of COVID-19 Transmission in Non-Medical-Care Facilities</i> (May 13, 2020) < https://tinyurl.com/y39bpvrq >	23
Cal. Dept. of Public Health, COVID-19, <i>California COVID-19 By the Numbers</i> < https://tinyurl.com/y3vrq2x > (as of Oct. 15, 2020).....	16
Cal. Dept. of Public Health, COVID-19, <i>California COVID-19 By the Numbers</i> < https://tinyurl.com/y66ssy8n > (as of Nov. 19, 2020).....	21

Cal. Dept. of Public Health, <i>Guidance For the Use of Face Coverings</i> (June 18, 2020) < https://tinyurl.com/4e8694s5 >	23
Cal. Dept. of Public Health, <i>Responding to COVID-19 in the Workplace</i> (Sept. 18, 2020) < https://tinyurl.com/ybo4sxfe >	19
Cal. Dept. of Public Health, Statewide Public Health Officer Order (Aug. 28, 2020) < https://tinyurl.com/y99u2zp7 >	20
Cal. Future of Work Commission, <i>Future of Work in California: A New Social Compact for Work and Workers</i> (Mar. 2021) < https://tinyurl.com/zx78jaza >	33
CDC, <i>Agriculture Workers and Employers</i> (June 11, 2020) < https://tinyurl.com/y6r2cjsx2 >	28, 31
CDC, <i>Cleaning and Disinfection for Non-emergency Transport Vehicles</i> (Apr. 14, 2020) < https://tinyurl.com/yxu3oktq >	28, 30, 32
CDC, <i>Considerations for Restaurants and Bars</i> (Oct. 29, 2020) < https://tinyurl.com/yxpkjtrc >	23, 30
CDC, <i>COVID-19 Considerations for Cleaner Air Shelters and Cleaner Air Spaces to Protect the Public from Wildfire Smoke</i> (May 1, 2020) < https://tinyurl.com/y3rqplp5 >	30
CDC, <i>COVID-19 Employer Information for Office Buildings</i> (Oct. 29, 2020) < https://tinyurl.com/y3pljdw >	19, 23
CDC, <i>COVID-19 Guidance for Shared or Congregate Housing</i> (Aug. 22, 2020) < https://tinyurl.com/y4xzrjp7 >	28
CDC, <i>Employer Information for Heat Stress Prevention during the COVID-19 Pandemic</i> (Aug. 26, 2020) < https://tinyurl.com/yydt85jp >	30
CDC, <i>How COVID-19 Spreads</i> (Oct. 28, 2020) < https://tinyurl.com/y2tx6ztg >	passim
CDC, <i>Interim Guidance for Rapid Antigen Testing for SARS-CoV-2</i> (Sept. 4, 2020) < https://tinyurl.com/y2mqpg36 >	25
CDC, <i>Living in Shared Housing</i> (Oct. 28, 2020) < https://tinyurl.com/y5mb55xk >	28, 32
CDC, Press Release, <i>CDC Calls on Americans to Wear Masks to Prevent COVID-19 Spread</i> (July 14, 2020) < https://tinyurl.com/ydhbd65f >	23
CDC, <i>Protecting Yourself When Using Transportation</i> (Oct. 21, 2020) < https://tinyurl.com/yy4gpqn5 >	30, 32

CDC, <i>When to Quarantine</i> (Sept. 10, 2020) < https://tinyurl.com/yxwzsgjj >.....	26
Dept. of Industrial Relations, <i>Emergency Regulation on Protection from Wildfire Smoke</i> (July 29 2019) < https://tinyurl.com/3akxcmda >.....	13
EPA, <i>Ventilation and Coronavirus (COVID-19)</i> (July 16, 2020) < https://tinyurl.com/yxf9b9f9 >	23
European Centre for Disease Prevention & Control, <i>Heating, ventilation and air-conditioning systems in the context of COVID-19</i> (June 22, 2020) < https://tinyurl.com/y8fsb6ue >.....	23
European Centre for Disease Prevention & Control, <i>Transmission of COVID-19</i> (Aug. 10, 2020) < https://tinyurl.com/y6pewo6p >	passim
Gunther et al., <i>Investigation of a superspreading event preceding the largest meat processing plant-related SARS-Coronavirus 2 outbreak in Germany</i> , (July 17, 2020) < https://tinyurl.com/tbsms362 >.....	17
Huang et al., <i>The Fast-Food Industry and COVID-19 in Los Angeles</i> (Mar. 2021) UCLA Lab. Center < https://tinyurl.com/nuyuatjf >	32
Liu et al., <i>Aerodynamic analysis of SARS-CoV-2 in two Wuhan hospitals</i> (2020) 587 Nature 557 < https://tinyurl.com/472tbpsd >	18
Morawska and Milton, <i>It Is Time to Address Airborne Transmission of Coronavirus Disease 2019 (COVID-19)</i> (July 6, 2020) 71 Clinical Infectious Diseases 2311 < https://tinyurl.com/y3x6kan6 >	22
Orozco & Padilla, <i>Hidden Threat: California COVID-19 Surges and Worker Distress</i> (July 2020) U.C. Merced < https://tinyurl.com/kt5da3j2 >	32
Newsom, Exec. Order N-71-20 (June 30, 2020) < https://tinyurl.com/y24ubp5n >	19
Newsom, Proclamation of a State of Emergency (March 4, 2020) < https://tinyurl.com/t2hljfn >	20
Nishiura et al., <i>Closed Environments Facilitate Secondary Transmission of Coronavirus Disease 2019 (COVID-19)</i> (Apr. 16, 2020) < https://tinyurl.com/y2daar7v >.....	23
OSHA, <i>Additional Considerations for Workers Who Reside in Communal Living Arrangements</i> < https://tinyurl.com/jbb6ntjk >.....	28

Parker, Div. of Occupational Safety & Health, Dept. of Industrial Relations, <i>Evaluation of Petition 583 to Adopt an Emergency Regulation to Protect Workers from COVID-19, and a Permanent Regulation to Protect Workers from Infectious Diseases</i> (July 30, 2020) < https://tinyurl.com/y2arokls >.....	14
Rode, <i>Farmworker Housing Coronavirus Outbreak: 188 Test Positive for COVID-19</i> (July 4, 2020) Ventura County Star < https://tinyurl.com/y33uvmdu >	31
Setti et al., <i>Airborne Transmission Route of COVID-19: Why 2 Meters/6 Feet of Inter-Personal Distance Could Not Be Enough</i> , (Apr. 23, 2020) 17 Internat. J. Environmental Research & Pub. Health 1 < https://tinyurl.com/yxqs2vpk >	23
Wei et al., CDC, <i>Presymptomatic Transmission of SARS-CoV-2—Singapore, January 23–March 16, 2020</i> 69 (2020) Morbidity and Mortality Weekly Report < https://tinyurl.com/4mu9jk2b >	16
Wiersinga et al., <i>Pathophysiology, Transmission, Diagnosis, and Treatment of Coronavirus Disease 2019 (COVID-19): A Review</i> (July 10, 2020) 324 JAMA 782 < https://tinyurl.com/yxaud5ll >	14, 15
World Health Organization, <i>What We Know About Long-Term Effects of COVID-19</i> (September 9, 2020) < https://tinyurl.com/5c5d66ws >.....	14, 15, 16
Zhang et al., <i>Identifying airborne transmission as the dominant route for the spread of COVID-19</i> (June 30, 2020) < https://tinyurl.com/ybtktrjp >	15

INTERESTS OF AMICI

Proposed amici Impact Fund, California Rural Legal Assistance, Inc., and 18 other California legal services organizations are all non-profit organizations, including many qualified legal services projects, that serve low-wage workers across California. These workers staff sectors that benefit from the California Occupational Safety and Health Standards Board's Emergency Temporary Standards, including the agricultural, service, retail, and transportation industries. Amici provide a critical perspective to the Court regarding the importance of the Standards to preserving the health and safety of these essential front-line workers amid the COVID-19 pandemic. Statements of proposed amici are provided in the accompanying application.

INTRODUCTION

Last November, as the unparalleled COVID-19 pandemic continued to escalate and portended a "third wave" of infections, hospitalizations, and deaths, the Standards Board adopted critical COVID-19 measures to protect our state's workers. By that time, the scientific and public health community largely agreed that workplaces provided optimal environments for the

transmission of the novel coronavirus, and that basic protective measures were not enough to mitigate the spread. After analyzing a thorough administrative record, the Standards Board issued a Finding of Emergency and established practical, evidence-based, and enforceable Emergency Temporary Standards to protect California’s workers against COVID-19. The trial court correctly rejected Appellants’ challenge to these standards amid the continuing public health crisis facing California. This Court should do the same.

Amici submit this brief to detail the “robust factual record” that buttressed the Standards Board’s Finding of Emergency. (See Respondents’ Br. (RB) at 43.) The record is replete with technical and empirical studies, reports, and other documents from public health officials, epidemiologists, and occupational safety specialists elaborating on the health effects of COVID-19 and its particular dangers in the workplace.¹ The Board satisfied its burden to provide specific facts demonstrating that the COVID-19 pandemic presented an emergency to the health and

¹ Documents cited by the Standards Board in its Finding of Emergency are identified by their full citation as well as their placement in the Administrative Record (A.R.).

safety of California’s workers. Appellants commit the same error they did below and “do not squarely address any of this evidence.” (App. 2, AA1466 (trial court order).)

In addition, the factual record before the Board demonstrated the necessity of the Standards to prevent further COVID-19 outbreaks in workplaces. The evidence shows that the Standards are grounded in well-recognized workplace protections to limit the spread of the virus. By issuing the Standards, the Board fulfilled its statutory mandate to protect all of California’s workers. As the pandemic and its effects endure—with the most vulnerable essential workers, low-income families, and communities of color still bearing the brunt—this Court should not overrule California’s attempts to craft appropriate and evidence-based measures to address them.

ARGUMENT

I. The Board Relied on Substantial Evidence to Declare an Emergency Warranting Immediate Action.

The Standards Board accurately found that the COVID-19 pandemic constituted an emergency calling for “immediate action to avoid serious harm to the public peace, health, safety, or

general welfare.” (Gov. Code, § 11342.545.) As the trial court observed, the Board supported its Finding of Emergency with “literally dozens of citations” to a comprehensive body of evidence. (App. 2, AA1466; see Gov. Code, § 11346.1, subd. (b)(2).) That evidence included “scientific studies concerning the transmission of COVID-19, guidance from multiple federal and state agencies . . . and studies or reports regarding investigations of the spread of COVID-19 at certain work-related areas throughout the State.” (App. 2, AA1466.)²

² Appellants argue that the Finding of Emergency failed to describe specific facts demonstrating the existence of an “occupational’ safety and health emergency” that was due to employers’ failure to prevent COVID-19 outbreaks in the workplace. (Appellants’ Opening Br. (AOB) at pp. 44-45; see also *id.* at p. 66.) Not true. As described in Section I.B, *infra*, the Standards Board documented significant evidence of the unprecedented public health threat COVID-19 posed, particularly in workplace settings. Also, the Division of Occupational Health and Safety is broadly charged with ensuring safe and healthy working conditions for all California workers, without limitation to threats uniquely arising in the workplace. (See section III, *infra*.) Previous emergency regulations proposed and enforced by the Division illustrate the breadth of the emergency provision. (See, e.g., Dept. of Industrial Relations, *Emergency Regulation on Protection from Wildfire Smoke* (July 29, 2019) <<https://tinyurl.com/3akxcmda>>.)

A. The Standards Board Correctly Found that COVID-19 Is a Threat to Human Life.

The COVID-19 pandemic is a “genuine emergency in any intelligible sense of the word.” (App. 2, AA1463.) According to documents on which the Standards Board relied in its Finding of Emergency, approximately 10-15 percent of cases progress to severe disease, and about 5 percent of infected people become critically ill.³ In otherwise healthy patients, the virus causes difficulty breathing, pneumonia, and in some cases, organ failure and death.⁴ Approximately 5 percent of those infected and 20 percent of those hospitalized experience severe symptoms necessitating intensive care.⁵ Approximately 15 percent to 20

³ World Health Organization, *What We Know About Long-Term Effects of COVID-19* (September 9, 2020) “COVID-19 disease severity and lingering symptoms,” p. 8 <<https://tinyurl.com/5c5d66ws>> (A.R. Tab 1K33).

⁴ Parker, Div. of Occupational Safety & Health, Dept. of Industrial Relations, *Evaluation of Petition 583 to Adopt an Emergency Regulation to Protect Workers from COVID-19, and a Permanent Regulation to Protect Workers from Infectious Diseases* (July 30, 2020) p. 5 <<https://tinyurl.com/y2arokls>> (A.R. Tab 1K6), citing Stokes et al., CDC, *Coronavirus Disease 2019 Case Surveillance — United States, January 22–May 30, 2020*, Morbidity & Mortality Weekly Report (June 19, 2020) <<https://tinyurl.com/yc4c6kll>>.

⁵ Wiersinga et al., *Pathophysiology, Transmission, Diagnosis, and Treatment of Coronavirus Disease 2019 (COVID-19): A Review*,

percent of those admitted to the hospital die from COVID-19, and that number rises up to 40 percent among patients admitted to the ICU.⁶ Those who survive a COVID-19 infection may face lingering or recurring symptoms for weeks or months following their initial recovery.⁷ Health experts expect that the virus will increase the risk of long-term health problems.⁸

Part of the overwhelming challenge identified by the Finding of Emergency is how quickly and easily the virus spreads. “[T]he virus spreads *any place* where persons gather and come into contact with one another” (App. 2, AA1467 [trial court order], emphasis in original), including between people who are within six feet of each other.⁹ Under certain conditions,

“Abstract” (July 10, 2020) 324 JAMA 782
<<https://tinyurl.com/yxaud5ll>> (A.R. Tab 1K32).

⁶ *Id.* at “Prognosis” (A.R. Tab 1K32).

⁷ World Health Organization, *supra*, at pp. 8-9 (A.R. Tab 1K33).

⁸ *Id.* at pp. 10-12 (A.R. Tab 1K33), citing CDC, *Symptom Duration and Risk Factors for Delayed Return to Usual Health Among Outpatients with COVID-19 in a Multistate Health Care Systems Network – United States, March-June 2020* (July 31, 2020) <<https://tinyurl.com/yybp7mgu>> (finding that among symptomatic adults aged 18 to 34 otherwise in good health, 20 percent reported prolonged symptoms of COVID-19).

⁹ CDC, *How COVID-19 Spreads* (Oct. 28, 2020) <<https://tinyurl.com/y2tx6ztg>> (as of November 6, 2020) (A.R. Tab IK62); Zhang et al., *Identifying airborne transmission as the*

namely in enclosed spaces with inadequate ventilation, people with COVID-19 have seemingly infected others who are more than six feet away.¹⁰ Prevention is further complicated by asymptomatic transmission—a person can be infected and infectious without showing any symptoms of the virus.¹¹

By fall 2020, when the Board issued the Standards, the United States topped the lists of countries with the highest cumulative number of cases and deaths.¹² On October 15, 2020, the California Department of Public Health reported 855,072 confirmed COVID-19 cases in the state, including 16,639 fatalities and 2,239 confirmed COVID-19 hospitalizations.¹³

dominant route for the spread of COVID-19 (June 30, 2020) p. 14858 <<https://tinyurl.com/ybtktrjp>> (A.R. Tab 1K18).

¹⁰ CDC, *How COVID-19 Spreads*, *supra*, at “COVID-19 can sometimes be spread by airborne transmission.” (A.R. Tab IK62).

¹¹ See, e.g., *id.* at “How COVID-19 Spreads” (A.R. Tab IK62); European Centre for Disease Prevention & Control, *Transmission of COVID-19* (Aug. 10, 2020) at “Role of asymptomatic and pre-symptomatic individuals” <<https://tinyurl.com/y6pewo6p>> (as of Oct. 14, 2020) (A.R. Tab IK8); Wei et al., CDC, *Presymptomatic Transmission of SARS-CoV-2—Singapore, January 23–March 16, 2020* 69 (Apr. 10, 2020) *Morbidity and Mortality Weekly Report* 411, 415 <<https://tinyurl.com/4mu9jk2b>> (A.R. Tab 1K9).

¹² World Health Organization, *supra*, at p. 3 (A.R. Tab 1K33).

¹³ Cal. Dept. of Public Health, COVID-19, *California COVID-19 By the Numbers* <<https://tinyurl.com/y3vrbq2x>> (as of Oct. 15, 2020) (A.R. Tab 1K7).

B. The Board Relied on Evidence of Significant COVID-19 Transmission in the Workplace.

As the trial court found and the well-developed record before the Standards Board demonstrated, “There is no blinking the obvious reality that places of employment where employees come into contact present a risk of transmission of the virus.” (App. 2, AA1468; see also RB at pp. 27-28.) COVID-19 outbreaks have been regularly documented at workplaces, “where employees often spend eight hours a day or more in close proximity to one another.” (App 2, AA1468.) As the pandemic spread across the globe, outbreaks of COVID-19 were observed in several occupational settings, including “slaughterhouses, meat processing plants, mines, and building sites.”¹⁴ European public health officials determined that “transport workers (taxi and bus drivers), sales people, postal/package delivery workers and domestic cleaners” faced risk of infection due to their “exposure to

¹⁴ See, e.g., European Centre for Disease Prevention & Control, *Transmission of COVID-19, supra*, at “Occupational settings” (A.R. Tab 1K8); Gunther et al., *Investigation of a superspreading event preceding the largest meat processing plant-related SARS-Coronavirus 2 outbreak in Germany*, (July 17, 2020) p. 3 <<https://tinyurl.com/tbsms362>> (A.R. Tab 1K20.)

multiple clients.”¹⁵ Also, researchers reported elevated levels of transmission among staff members; one early study of a hospital in Wuhan, China, found that “medical staff had higher concentrations of [COVID-19 virus] aerosols compared with patient areas in both hospitals.”¹⁶

Numerous factors contribute to workplace outbreaks. Places of employment may require groups of workers to gather in confined indoor spaces; their facilities may make social distancing difficult, and/or the workplaces implemented inadequate infection control and hygiene standards.¹⁷ Another contributing factor is “presenteeism”: continuing to report to

¹⁵ European Centre for Disease Prevention & Control, *Transmission of COVID-19, supra*, at “Occupational settings” (A.R. Tab 1K8).

¹⁶ Liu et al., *Aerodynamic analysis of SARS-CoV-2 in two Wuhan hospitals* (2020) 582 *Nature* 557, 559 <<https://tinyurl.com/472tbpsd>> (A.R. Tab 1K17); see also Arons et al., *Presymptomatic SARS-CoV-2 Infections and Transmission in a Skilled Nursing Facility*, *New England J. of Medicine* (2020) p. 2088 <<https://tinyurl.com/4jpf8yja>> (A.R. Tab 1K24) (referring to staff transmission in nursing facility).

¹⁷ European Centre for Disease Prevention & Control, *Transmission of COVID-19, supra*, at “Occupational settings” (A.R. Tab 1K8); see Am. Conference of Governmental Industrial Hygienists, *White Paper on Ventilation for Industrial Settings during the COVID-19 Pandemic* (Aug. 2020) pp. 3-4 (A.R. Tab 1K25.)

work despite being symptomatic for a disease. Workers who fear losing their jobs or who cannot reduce their working hours may continue commuting and working, even when they or one of their family members exhibit COVID-19 symptoms.¹⁸ Because of the particular risk of transmission in employment settings, public health officials recommended implementing specific prevention measures in workplaces.¹⁹

C. The Finding of Emergency Followed Other State and Public Health Efforts to Contain the Ongoing COVID-19 Emergency.

When the Board issued its Finding of Emergency in November 2020, state officials and leading public health organizations continued to confirm that the pandemic posed a statewide emergency. The Finding of Emergency documented that Governor Newsom first proclaimed a State of Emergency on

¹⁸ European Centre for Disease Prevention & Control, *Transmission of COVID-19, supra*, at “Occupational settings” (A.R. Tab 1K8).

¹⁹ See, e.g., CDC, *COVID-19 Employer Information for Office Buildings* (Oct. 29, 2020) <<https://tinyurl.com/y3pljdw>> (as of Nov. 6, 2020) (A.R. Tab 1K64); Cal. Dept. of Public Health, *Responding to COVID-19 in the Workplace* (Sept. 18, 2020) <<https://tinyurl.com/ybo4sxfe>> (A.R. Tab 1K54).

March 4, 2020.²⁰ At that moment, the pandemic was its “initial, relatively modest wave” (App. 2, AA1464) but threatening global catastrophe. The Governor’s Proclamation stated that the then-present conditions met the standard of a “State of Emergency” under Government Code § 8558, subdivision (b): “existence of conditions of disaster or of extreme peril to the safety of persons and property within the state.”

Multiple state and local officials continued to issue orders as the emergency conditions escalated. The Finding of Emergency cited an August 28, 2020, statewide public health order that observed, “[c]ommunity spread of infection remains a significant concern across the state.”²¹ Also, the federal Centers for Disease Control and Prevention (CDC) and the state Department of Public Health published recommendations for workplace practices to slow the spread of COVID-19.²²

²⁰ Newsom, Proclamation of a State of Emergency (March 4, 2020) <<https://tinyurl.com/t2hljfn>> (A.R. Tab 1K1). Governor Newsom subsequently renewed provisions of the State of Emergency. Newsom, Exec. Order N-71-20 (June 30, 2020) <<https://tinyurl.com/y24ubp5n>> (A.R. Tab 1K52).

²¹ Cal. Dept. of Public Health, Statewide Public Health Officer Order (Aug. 28, 2020) p. 1 <<https://tinyurl.com/y99u2zp7>> (A.R. Tab 1K46).

²² See footnote 19, *supra*.

Nonetheless, the number of COVID-19 infections and deaths in California continued to climb relentlessly. When the Standards Board issued its Finding of Emergency in November 2020, the COVID-19 pandemic had entered “its most deadly phase” (App. 2, AA1464).²³ The “indisputable data” (App. 2, AA1463) before the Board evidenced that workers faced a situation demanding emergency rulemaking and specific, enforceable workplace protections.

II. The Emergency Temporary Standards Were Necessary to Protect the Health of Vulnerable Workers and Grounded in Evidence from the Public Health Community.

The Standards Board issued entirely appropriate regulations to address the serious harm that the pandemic presented to the health and safety of California’s workers. (See Cal. Code Regs., tit. 1, § 50, subd. (b)(3)(B).) Despite Appellants’ continued protestations that the Standards are “based on prohibited speculation and unsubstantiated conclusions” (AOB at p. 48), the Board adopted credible recommendations intended to

²³ See Cal. Dept. of Public Health, COVID-19, *California COVID-19 By the Numbers* <<https://tinyurl.com/y66ssy8n>> (as of Nov. 19, 2020).

slow the proliferation of COVID-19 in workplace settings, as documented throughout the Finding of Emergency. Any argument that they are speculative and not rooted in substantial evidence is, in the words of the trial court, “fatuous.” (App. 2, AA1467.)

The Standards adopted by the Board reflected the overwhelming scientific consensus and “obvious facts” (App. 2, AA1468) that found that the most likely method of contracting COVID-19 was via airborne aerosol transmission within six feet of an infected person.²⁴ (See, e.g., Cal. Code Regs., tit. 8, § 3205, subd. (b) [defining “COVID-19 exposure” and “COVID-19 hazard” in terms of “being within six feet of a COVID-19 case”].)²⁵ They also followed the scientific determination that transmission was particularly acute in indoor spaces, including office buildings, bars, and restaurants, and can occur at distances greater than six

²⁴ See, e.g., Morawska and Milton, *It Is Time to Address Airborne Transmission of Coronavirus Disease 2019 (COVID-19)* (July 6, 2020) 71 *Clinical Infectious Diseases* 2311 <<https://tinyurl.com/y3x6kan6>> (A.R. Tab 1K21); CDC, *How COVID-19 Spreads*, *supra* (A.R. Tab 1K62).

²⁵ All further regulatory references are to title 8 of the California Code of Regulations unless otherwise indicated.

feet under these conditions.²⁶ (See, e.g., § 3205, subd. (c)(5)(E).)

The Standards required employers to establish a written COVID-19 Prevention Program that followed accepted and recommended measures to prevent and mitigate transmission, such as wearing face coverings and encouraging physical distancing.²⁷ (See, e.g., § 3205, subds. (c)(6)-(7).) The required COVID-19 Prevention

²⁶ See, e.g., EPA, *Ventilation and Coronavirus (COVID-19)* (July 16, 2020) <<https://tinyurl.com/yxf9b9f9>> (as of Nov. 6, 2020) (A.R. Tab 1K63); CDC, *COVID-19 Employer Information for Office Buildings, supra*, at “Engineering controls: Isolate workers from the hazard” (A.R. Tab 1K64); CDC, *Considerations for Restaurants and Bars* (Oct. 29, 2020) <<https://tinyurl.com/yxpkjtrc>> (as of Nov. 6, 2020) (A.R. Tab 1K38); European Centre for Disease Prevention & Control, *Heating, ventilation and air-conditioning systems in the context of COVID-19* (June 22, 2020) pp. 1-2 <<https://tinyurl.com/y8fsb6ue>> (A.R. Tab 1K29); Burton, *Air Handling in the Era of Corona Virus: Roles Ventilation Can Play in the Control of COVID-19 Transmission in Non-Medical-Care Facilities* (May 13, 2020) <<https://tinyurl.com/y39bpvrq>> (A.R. Tab 1K27); Setti et al., *Airborne Transmission Route of COVID-19: Why 2 Meters/6 Feet of Inter-Personal Distance Could Not Be Enough* (Apr. 23, 2020) 17 *Internat. J. Environmental Research & Pub. Health* 1, 4 <<https://tinyurl.com/yxqs2vpk>> (A.R. Tab 1K12); Nishiura et al., *Closed Environments Facilitate Secondary Transmission of Coronavirus Disease 2019 (COVID-19)* (Apr. 16, 2020) <<https://tinyurl.com/y2daar7v>> (A.R. Tab 1K37).

²⁷ See CDC, *How COVID-19 Spreads, supra* (A.R. Tab 1K62); Cal. Dept. of Public Health, *Guidance For the Use of Face Coverings* (June 18, 2020) <<https://tinyurl.com/4e8694s5>> (A.R. Tab 1K45); CDC, Press Release, *CDC Calls on Americans to Wear Masks to Prevent COVID-19 Spread* (July 14, 2020) <<https://tinyurl.com/ydhbd65f>> (A.R. Tab 1K66).

Program also followed recommendations to improve ventilation systems for indoor spaces.²⁸ (See, e.g., § 3205, subds., (c)(2)(E), (c)(8); see also, e.g., § 3205.2, subd. (e)(1) [mandating changes to employers’ air filtration systems in the event of a major outbreak].)

The Standards addressed a concern that COVID-19 affects all workplaces, yet the Division’s preexisting regulations addressing aerosol transmissible diseases—like COVID-19—were “limited” to a narrow subset of workplaces. (A.R. Tab 3E at ¶ 12.) Those workplaces included the healthcare industry; facilities working with hazardous materials; certain police, public health, and social services facilities; and certain medical laboratories. (§ 5199, subd. (a).) Given the widespread transmission of COVID-19 without limitation, the Standards Board was entirely justified in adopting new standards to apply in all employment settings.

The studies contained in the Finding of Emergency demonstrate that the Standards were well-founded on the public

²⁸ See, e.g., Am. Conference of Governmental Industrial Hygienists, *White Paper on Ventilation for Industrial Settings during the COVID-19 Pandemic*, *supra*, at p. 15 (A.R. Tab 1K25); Am. Industrial Hygiene Assn., *Reducing the Risk of COVID-19 Using Engineering Controls* (Aug. 28, 2020) pp. 3-6 <<https://tinyurl.com/yyr8bmmd>> (A.R. Tab 1K26).

health consensus at the time of their promulgation and were not “controversial.” (See AOB at p. 26.) For example, the Standards’ testing and exclusion requirements as the Board adopted them are grounded in documented findings and scientifically sound tools for identifying and isolating COVID-positive employees to prevent workplace outbreaks. Pre-symptomatic and asymptomatic transmission was widely reported, with especially elevated transmission rates when “working in confined indoor spaces.”²⁹ The CDC said that diagnostic and screening testing helped identify infection in asymptomatic persons, including in workplace settings.³⁰

Following CDC recommendations, the Standards Board explained that providing no-cost testing to employees exposed to COVID-19 would “encourage these employees to get tested,” “to not report to work following a COVID-19 exposure,” and “prevent

²⁹ European Centre for Disease Prevention & Control, *Transmission of COVID-19, supra*, at “Role of asymptomatic and pre-symptomatic individuals,” “Transmission risks in different settings” (A.R. Tab 1K8).

³⁰ CDC, *Interim Guidance for Rapid Antigen Testing for SARS-CoV-2* (Sept. 4, 2020) at “Definitions of Diagnostic, Screening, and Surveillance Testing for SARS-CoV-2” <<https://tinyurl.com/y2mqpg36>> (as of Oct. 15, 2020) (A.R. Tab 1K36).

the spread of COVID-19 in the workplace[.]” (A.R. Tab 3E at p. 13; see § 3205, subd. (c)(3)(B)(4); § 3205.2.) The Emergency Temporary Standards imposed more stringent testing requirements only as multiple cases were detected. (§ 3205.1 [three or more cases identified within a 14-day period]; § 3205.2 [twenty or more cases identified within a 30-day period].)

Also, the exclusion (i.e., quarantine) requirements for COVID-positive employees were based on the widely accepted understanding that contagious individuals needed to be isolated away from communal spaces to avoid spreading the virus. The CDC recommended that infected or exposed individuals should self-isolate at home and away from others.³¹ Yet the regular demands of a job often conflict with public health recommendations. As described above, “presenteeism” (“reporting to work despite being symptomatic for a disease”) was a “possible factor[] contributing to clusters and outbreaks in

³¹ See, e.g., CDC, *How COVID-19 Spreads*, *supra*, at “Protect Yourself and Others” (A.R. Tab 1K62); CDC, *When to Quarantine* (Sept. 10, 2020) <<https://tinyurl.com/47d8kdmk>> (as of Oct. 27, 2020) (A.R. Tab 1K11).

occupational settings.”³²

To discourage contagious employees from returning to the workplace, the Standards Board adopted appropriate exclusion standards to limit transmission and eliminate incentives for presenteeism. (A.R. Tab 3E at pp. 19-20; see § 3205, subd. (c)(10) [setting standards for exclusion].) Employers had to continue to pay an excluded employee’s earnings and maintain their seniority and all other workplace rights and benefits, as if they remained on the job. (A.R. Tab 3E at p. 19; see § 3205, subd. (c)(10).) Continued pay and benefits for excluded employees eliminates the financial incentives to return to work while contagious. These requirements were not “novel”: “[the Division] for decades has enforced similar regulations requiring employers to maintain employees’ earnings, seniority, rights, and benefits if they are removed from work due to exposure to lead, other toxic substances, or an airborne infectious disease.” (App. 2, AA1474 (trial court order).)

³² European Centre for Disease Prevention & Control, *Transmission of COVID-19, supra*, at “Occupational settings” (A.R. Tab 1K8).

In addition, the Board implemented specific protocols for physical distancing, face coverings, cleaning, ventilation, and isolation of COVID-positive workers in employer-provided housing and transportation—communal spaces that research recognized as high-risk for COVID-19 transmission and were particularly relevant for agricultural workers. (A.R. Tab 3E at pp. 27-37; see § 3205.3, subds. (c), (d), (e), (h); § 3205.4 subds. (c), (e), (f).) The Standards adhered to CDC and U.S. Department of Labor recommendations to address the heightened risk of infection that farmworkers face due to close, prolonged contact with coworkers in shared housing and transportation.³³

The Board implemented Emergency Temporary Standards, including those provisions specifically targeted by Appellants, that were grounded in substantial evidence from the scientific and public health community about COVID-19.

³³ CDC, CDC, *Agriculture Workers and Employers* (June 11, 2020) <<https://tinyurl.com/y6r2cjsx2>> (A.R. Tab 1K61). See also OSHA, *Additional Considerations for Workers Who Reside in Communal Living Arrangements* <<https://tinyurl.com/jbb6ntjk>> (as of Nov. 6, 2020) (A.R. Tab 1K59); CDC, *COVID-19 Guidance for Shared or Congregate Housing* (Aug. 22, 2020) <<https://tinyurl.com/y4xjrjp7>> (as of Nov. 6, 2020) (A.R. Tab 1K60); CDC, *Cleaning and Disinfection for Non-emergency Transport Vehicles* (Apr. 14, 2020) <<https://tinyurl.com/yxu3oktq>> (as of Oct. 15, 2020) (A.R. Tab 1K40); CDC, *Living in Shared Housing* (Oct. 28, 2020) <<https://tinyurl.com/y5mb55xk>> (as of Nov. 6, 2020) (A.R. Tab 1K71).

III. The Standards Are Necessary to Fulfill the Division's Mandate to Protect Those Workers Most Vulnerable to COVID-19.

The Division of Occupational Safety and Health and the Standards Board acted well within their authority in proposing and adopting the Emergency Temporary Standards to address the health and safety threat COVID-19 posed to *all* California workers. The Division is charged with “authorizing the enforcement of effective standards” and “assisting and encouraging employers to maintain safe and healthful working conditions” for all working Californians. (Lab. Code, § 6300. See also Lab. Code, § 6307; RB at 53-55.) The Division has “the power, jurisdiction, and supervision over every employment and place of employment” in California, and it may enforce laws protecting the “life, safety, and health of every employee.” (Lab. Code, § 6307.) The Division may require employers to undertake any act “which the protection of the life and safety of the employees in employments and places of employment reasonably demands.” (Lab. Code, § 6308, subd. (c).) Protecting the safety of workers means providing “freedom from danger to the life, safety, or health of employees as the nature of the employment reasonably permits.” (Lab. Code, § 6306, subd. (a).)

The Standards Board considered the health and safety of vulnerable low-wage workers, especially in the agricultural industry, in adopting the Emergency Temporary Standards. It looked to existing public health guidance protecting transportation workers,³⁴ restaurant workers,³⁵ and people with greater risk to the effects of heat exposure and wildfires.³⁶ The Standards Board expressed concern over the “overrepresentation of migrant temporary farmworkers testing positive for COVID-19 in California compared to workers in any other industry.”³⁷ The Finding of Emergency cited a CDC report that agricultural

³⁴ CDC, *Protecting Yourself When Using Transportation* (Oct. 21, 2020) <<https://tinyurl.com/yy4gpqn5>> (as of Nov. 6, 2020) (A.R. Tab 1K67); CDC, *Cleaning and Disinfection for Non-emergency Transport Vehicles*, *supra* (A.R. Tab 1K40); see also European Centre for Disease Prevention & Control, *Transmission of COVID-19*, *supra*, at “Occupational settings” (A.R. Tab 1K8) (stating “transport workers” probably face notable risk of exposure).

³⁵ CDC, *Considerations for Restaurants and Bars*, *supra* (A.R. Tab 1K38).

³⁶ CDC, *Employer Information for Heat Stress Prevention during the COVID-19 Pandemic* (Aug. 26, 2020) <<https://tinyurl.com/yydt85jp>> (as of Nov. 6, 2020) (A.R. Tab 1K70); CDC, *COVID-19 Considerations for Cleaner Air Shelters and Cleaner Air Spaces to Protect the Public from Wildfire Smoke* (May 1, 2020) <<https://tinyurl.com/y3rqplp5>> (as of Nov. 6, 2020) (A. R. Tab 1K68).

³⁷ A.R. Tab 3E at ¶ 6.

workers face special risk of COVID-19 exposure due to crowded working and living conditions and close and prolonged contact with coworkers.³⁸ The Finding of Emergency also identified media reports of multiple virus outbreaks. It cited a month-long investigation by CalMatters and *The Salinas Californian* that uncovered reports of six outbreaks among workers at seven agricultural guest worker employers in California, resulting in more than 350 COVID-19 infections.³⁹ A separate investigation identified 188 farmworkers who worked at various work sites throughout Ventura County, shared communal housing, and tested positive for COVID-19 over the summer.⁴⁰ Recognizing the unique risks farmworkers face, the Standards Board adopted protections for workers who live in employer-sponsored housing or use employer-sponsored transportation to address the elevated

³⁸ A.R. Tab 3E at ¶ 6, fn. 13; pp. 28-30, fns. 19-20, 22; p. 30, fn. 27; pp. 33-34, fns. 28-30, 32, citing CDC, *Agriculture Workers and Employers*, *supra* (A.R. Tab 1K61).

³⁹ Botts et al., *COVID-19 Rips through California Motel Rooms of Guest Workers Who Pick Nation's Produce* (Aug. 17, 2020) *The Californian* <<https://tinyurl.com/y32hwdmb>> (A.R. Tab 1K56).

⁴⁰ Rode, *Farmworker Housing Coronavirus Outbreak: 188 Test Positive for COVID-19* (July 3, 2020) *Ventura County Star* <<https://tinyurl.com/y33uvmdu>> (A.R. Tab 1K57).

risk of exposure in those places. (See §§ 3205.3; 3205.4.)⁴¹

The Standards are an important step toward mitigating the health, income, and racial inequities caused by the COVID-19 pandemic. Publicly available evidence illustrates that low-wage workers in the agricultural, service, retail, and transportation industries have disproportionately suffered the detrimental effects of the pandemic and faced heightened risk of contracting the virus.⁴² An estimated 53 percent of low-wage workers in

⁴¹ On employer-sponsored housing, see CDC, *Living in Shared Housing*, *supra* (A.R. Tab 1K71); CDC, *COVID-19 Guidance for Shared or Congregate*, *supra* (A.R. Tab 1K60). On employer-sponsored transportation, see CDC, *Protecting Yourself When Using Transportation*, *supra* (A.R. Tab 1K67); CDC, *Cleaning and Disinfection for Non-emergency Transport Vehicles*, *supra* (A.R. Tab 40).

⁴² See, e.g., Huang et al., *The Fast-Food Industry and COVID-19 in Los Angeles* (Mar. 2021) UCLA Lab. Center., p. 9 <<https://tinyurl.com/nuyuatjf>> (reporting elevated rates of COVID transmission in the fast-food industry, noting that “[c]ooks have the highest increased mortality rate of any occupation during the pandemic, and mortality among Latinx workers in food and agriculture is 59% higher than prepandemic rates”); Bade et al., *Always Essential, Perpetually Disposable: California Farmworkers and the COVID-19 Pandemic* (2021) <<https://tinyurl.com/6drvajuv>> (outlining conditions faced by farmworkers, including uneven workplace protections, lack of benefits, overcrowded housing, and barriers to healthcare); Orozco & Padilla, *Hidden Threat: California COVID-19 Surges and Worker Distress* (July 2020) U.C. Merced <<https://tinyurl.com/kt5da3j2>> (finding a strong relationship between low-wage work—including agricultural work, food

California are employed in these “essential occupations.”⁴³

Workers of color, ethnic minorities, and immigrants are overrepresented in essential occupations and face higher risk of exposure to COVID-19.⁴⁴ One recent study found that lower-wage workers had greater difficulty practicing physical distancing at their worksites than higher-wage workers, and they were far less likely to receive face coverings or personal protective equipment.⁴⁵ The trial court also considered evidence of reports that the Board received from local health departments “of hundreds of COVID-19 outbreaks . . . resulting in thousands of cases in retail trade and agriculture and food manufacturing workplaces.” (App. 2, AA1468.) This data reaffirms the need for enhanced, enforceable workplace rules to forestall further harm to workers.

services, transportation, and other essential roles—and COVID-19 positive test rates).

⁴³ Cal. Future of Work Commission, *Future of Work in California: A New Social Compact for Work and Workers* (Mar. 2021) p. 34 <<https://tinyurl.com/zx78jaza>>.

⁴⁴ *Ibid.*

⁴⁵ Advancing Justice—Asian Law Caucus & U.C. Berkeley Labor & Occupational Health Program, *Few Options, Many Risks: Low-Wage Asian and Latinx Workers in the COVID-19 Pandemic* (Apr. 2021) pp. 11-13 <<https://tinyurl.com/sukdwt6m>>.

The Emergency Temporary Standards provide basic health and safety protections for all California workers, including the vulnerable workers at heightened risk during the COVID-19 pandemic. As the trial court ruled, the Standards Board thoroughly reviewed the evidence from the public health and scientific community before it. Based on its conclusion, Board appropriately exercised its emergency rulemaking power to protect the health and safety of California workers. That decision should not be disturbed.

CONCLUSION

For the foregoing reasons, the order of the Superior Court should be affirmed.

Dated: June 17, 2021 Respectfully submitted,

Lindsay Nako (SBN 239090)
David S. Nahmias (SBN 324097)
Andrea A. Núñez (PL-504291)
IMPACT FUND
2080 Addison Street, Suite 5
Berkeley, CA 94704-1693
Tel: (510) 845-3473
Fax: (510) 845-3654
lnako@impactfund.org
dnahmias@impactfund.org
anunez@impactfund.org
Counsel for proposed amici curiae

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this brief is proportionally spaced, uses a font size of 13-point and contains 4,771 words, pursuant to the word count feature of the computer program used to prepare this brief, exclusive of matters that may be omitted under California Rules of Court 8.204(c)(3).

Dated: June 17, 2021

Respectfully submitted,

/s/ Lindsay Nako

Lindsay Nako

IMPACT FUND

PROOF OF SERVICE

Western Growers Association, et al. v. California Occupational Safety and Health Standards Board, et al.

No. A162343

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Alameda, State of California. My business address is 2080 Addison St., Suite 5, Berkeley, CA 94704.

On June 17, 2021, I served the following document(s):

APPLICATION FOR LEAVE TO FILE BRIEF AND PROPOSED BRIEF OF AMICI CURIAE IMPACT FUND, CALIFORNIA RURAL LEGAL ASSISTANCE, INC., AND 18 ADDITIONAL CALIFORNIA LEGAL SERVICES ORGANIZATIONS IN SUPPORT OF DEFENDANTS/RESPONDENTS AND AFFIRMANCE

On the interested parties in this action addressed as follows:

SEE ATTACHED SERVICE LIST

BY ELECTRONIC TRANSMISSION: I submitted the document(s) using the court authorized e-filing service at TrueFiling.com. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

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

Executed on June 17, 2021 at Berkeley, California.

/s/ David S. Nahmias
David S. Nahmias
IMPACT FUND

SERVICE LIST

David Abba Schwarz Sheppard, Mullin, Richter & Hampton LLP 1901 Avenue of the Stars, Suite 1600 Los Angeles, CA 90067 dschwarz@sheppardmullin.com	Attorneys for Plaintiffs/Petitioners and Appellants
William H. Downer James Edward Stanley California Department of Justice 1300 I Street Sacramento, CA 95814 william.downer@doj.ca.gov james.stanley@doj.ca.gov James Zahradka California Department of Justice 1515 Clay Street, Suite 2000 Oakland, CA 94612 james.zahradka@doj.ca.gov	Attorneys for Defendants/Respondents and Respondents
Hon. Ethan P. Schulman Dept. 302 Superior Court of San Francisco 400 McAllister Street San Francisco, CA 94102	