

**COPY**

Case No. S241812

**IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA**

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BRETT VORIS,

*Plaintiff and Appellant,*

v.

GREG LAMPERT

*Defendant and Respondent.*

**SUPREME COURT  
FILED**

MAR 20 2018

Jorge Navarrete Clerk

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Deputy

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After a Decision by the Court of Appeal, Second Appellate District,  
Division Three, Case No. B265747

Appeal from the Superior Court for the County of Los Angeles, Case No.  
BC408562, The Honorable Michael L. Stern Presiding

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**APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF  
IN SUPPORT OF PLAINTIFF AND APPELLANT**

**[PROPOSED] BRIEF OF AMICI CURIAE  
ASIAN AMERICANS ADVANCING JUSTICE – LOS ANGELES,  
BET TZEDEK, LOS ANGELES ALLIANCE FOR A NEW  
ECONOMY, THE WAGE JUSTICE CENTER**

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**TO THE HONORABLE TANI G. CANTIL-SAKAUYE, CHIEF  
JUSTICE OF THE CALIFORNIA SUPREME COURT**

Pursuant to California Rule of Court 8.520(f), proposed *amici curiae* Asian Americans Advancing Justice – Los Angeles, Bet Tzedek, Los Angeles Alliance for a New Economy, and Wage Justice Center (collectively, “*Amici*”) respectfully request leave to file the accompanying brief in support of Plaintiff/Petitioner Brett Voris. This brief is timely filed within thirty days of the filing of the reply brief. No party or counsel for any party, other than counsel for *Amici*, have authored or funded the preparation of the proposed brief in whole or in part.

**STATEMENTS OF INTEREST**

*Amici* are non-profit legal services and public policy organizations dedicated to representing low-wage and other workers who have fallen prey to the intractable problem of wage theft and have struggled to recover unpaid wages in civil and administrative actions. The outcome of this case has the potential to impact the epidemic of wage theft *Amici* fight against.

**Asian Americans Advancing Justice – Los Angeles** (“Advancing Justice-LA”) is the nation’s largest legal services and civil rights organization devoted to the needs of Asian American, Native Hawaiian, and Pacific Islander (NHPI) communities. Advancing Justice-LA’s mission is to advocate for civil rights, provide legal services and education, and build coalitions to positively influence and impact Asian American and NHPI communities and to create a more equitable and harmonious society. Advancing Justice-LA focuses on serving the most vulnerable members of Asian American and NHPI communities, including those immigrant workers who are low-income, limited English proficient and rely on California Labor Commissioner's administrative adjudicative process to

recover unpaid wages. Since 1994, Advancing Justice-LA's Impact Litigation Unit has served thousands of minority low-wage workers to recover unpaid wages against unscrupulous employers, thus have a strong interest in ensuring that wage theft judgments are paid in full.

**Bet Tzedek**—Hebrew for the “House of Justice”—was established in 1974 and provides free legal services to Los Angeles County residents. Bet Tzedek's Employment Rights Project assists low-wage workers through a combination of individual representation before the Labor Commissioner, litigation, legislative advocacy, and community education. Bet Tzedek has taken a leading role in advocating for the rights of workers in California, including by submitting amicus briefs and letters on such issues of broad importance to California employees as those presented in the instant case.

**Los Angeles Alliance for a New Economy** (“LAANE”) is a nationally recognized advocacy organization dedicated to building a new economy for all. Combining research, public policy, and strategic organizing of broad alliances, LAANE promotes a new economic approach based on good jobs, thriving communities, and a healthy environment. LAANE currently litigates on the misclassification of port truck drivers as independent contractors in the Los Angeles—Long Beach port complex, the largest in the nation. This industry is rife with unscrupulous employers and individuals whose misconduct extends beyond the failure to pay wages. LAANE therefore has a strong interest in this case.

**Wage Justice Center** (“WJC”) is a non-profit public interest law firm that works to combat wage theft and achieve economic justice for all workers, with a focus on California's working poor. Our organization assists and represents low-income workers seeking to obtain and enforce

unpaid wage judgments. We pursue lawbreaking employers through the litigation process and into judgment enforcement. We specialize in obtaining and enforcing judgments by using wage and hour statutes as well as various laws concerning debtor-creditor relations, including judgment enforcement laws, bankruptcy law, post-judgment fraudulent transfer actions, and corporate misappropriations actions. WJC has a strong interest in this case because it is likely to impact workers' ability to collect the wages they are owed. A decision favorable to the Appellant would provide a much needed remedy that could hold accountable individuals who misuse the law to evade paying workers despite existing remedies.

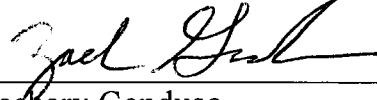
#### **BASIS FOR ADDITIONAL BRIEFING**

*Amici* request leave to file the attached brief to propose a different analytical framework than those contemplated by Petitioner and Respondent. *Amici*'s framework properly addresses the question of whether conversion of unpaid wages is a valid cause of action and demonstrates why conversion of unpaid wages is an appropriate remedy for the vast problem of wage theft and judgment evasion facing workers in California. *Amici*, as legal-services practitioners and policy experts who work closely with low-wage workers, including as representatives in civil and administrative proceedings for wage theft violations, are uniquely situated to appreciate the impact that conversion of wages is likely to have on the vast pool of low-wage workers in California who face this problem today.

*Amici* respectfully urge the Court to permit the filing of the proposed brief, to reverse the decision below, and to remand for a determination on the merits.

Dated: March 5, 2018

Respectfully submitted,



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**Other Authorities**

Cooper and Kroeger, Economic Policy Institute, Employers steal billions from worker’s paychecks each year (May 10, 2017) < <a href="https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year-survey-data-show-millions-of-workers-are-paid-less-than-the-minimum-wage-at-significant-cost-to-taxpayers-and-state-economies/">https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year-survey-data-show-millions-of-workers-are-paid-less-than-the-minimum-wage-at-significant-cost-to-taxpayers-and-state-economies/</a> > [as of December 1, 2017] .....	15
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Legislative Analyst’s Office, California, California’s New Minimum Wage: Who are California’s Low-Wage Workers (Dec. 6, 2016), < <a href="http://www.lao.ca.gov/LAOEconTax/Article/Detail/223">http://www.lao.ca.gov/LAOEconTax/Article/Detail/223</a> > [as of November 21, 2017] .....	15
Milkman et al., Wage Theft and Workplace Violations in Los Angeles: The Failure of Employment and Labor Law for Low-Wage Workers (2010) < <a href="http://ccacla-laborcenter.electricembers.net/wp-content/uploads/downloads/2014/04/LAwagetheft.pdf">http://ccacla-laborcenter.electricembers.net/wp-content/uploads/downloads/2014/04/LAwagetheft.pdf</a> > [as of Dec. 1, 2017]. .....	15
National Employment Law Project & UCLA Labor Center, Cho et al., Hollow Victories: The Crisis in Collecting Unpaid Wages for California’s Workers (2013) < <a href="http://ccacla-laborcenter.electricembers.net/wp-content/uploads/downloads/2014/04/HollowVictories.pdf">http://ccacla-laborcenter.electricembers.net/wp-content/uploads/downloads/2014/04/HollowVictories.pdf</a> > [as of Dec. 1, 2017] .....	16

## INTRODUCTION

*Amici curiae* Wage Justice Center, Asian Americans Advancing Justice- Los Angeles, Bet Tzedek, and Los Angeles Alliance for a New Economy submit this brief addressing the following issues:

Is conversion of earned but unpaid wages a valid cause of action?

Even if not a valid cause of action in every context, is conversion of earned but unpaid wages a valid cause of action by a former employee plaintiff against an individual defendant who was a managing officer and controlling principal of the closely held corporate former employers?

For acts beyond a failure to unpaid wages, the answer to both questions is **YES**. In so answering, *Amici* focus on a factual context that has been particularly problematic for low-wage workers seeking to enforce their rights, and propose a different analytical approach from the Parties and the Court of Appeal.

*Amici* identify two potential bases for an action of conversion:

- (1) Whether an employer's failure to pay wages, in violation of a wage and hour laws, constitutes a *per se* conversion of unpaid wages; and
- (2) Whether a separate act(s) beyond the failure to pay wages, by individuals or entities who may or may not be "employers," constitute conversion of unpaid wages.

*Amici* limit their argument to the second (2) basis for conversion. Thus, this brief focuses on acts by individuals or corporate entities that frustrate or render impossible the collection of earned but unpaid wages. Some of these acts already sound in tort when committed against businesses, such as misappropriation or fraudulent transfer. Others remain uncovered or without determination by the Courts, such as when someone physically moves the employer's location without notifying the employee-creditor in order to avoid judgment enforcement. Whether familiar or not, these acts are

generally outside the purview of both wage and hour statutes and contractual agreements.

Tort law, including conversion, already provides remedies for many of these acts, but courts have yet to apply it to an employee's right to unpaid wages. Defendant requests denial of this cause of action altogether, essentially asking this Court to carve out an exception to traditional tort remedies where unpaid wages are involved. This Court should reject such a radical request. Instead, this Court should recognize conversion of unpaid wages, and either establish how the existing principles of tort law will properly determine what acts constitute conversion and what acts do not, or leave it to future courts to determine its proper scope and application.

*Amici* contend that this Court should ask whether a cause of action for conversion is appropriate in the wage context. A recent court provided a framework for this analysis, asking whether conversion can be "adapted" to the context at hand and "will not displace other, more suitable law." (*Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 124.) *Amici* reject Defendant's and the Court of Appeal's reliance on the analytical framework in *Moore v. Regents of the University of California* (1990) 51 Cal.3d 120. *Moore* asks, in essence, whether an "extension" of conversion to an item not recognized as property is "necessary," or "better left to the legislature." (*Id.* at 142.) This Court need not reach such a lofty standard to recognize conversion of unpaid wages.

Two distinctions support application of *Fremont*. Recognizing conversion of unpaid wages in no way "extends" tort duties to an entirely new context such as genetic research. Nor does it "extend" property rights to something previously not understood as property, such as excised human cells. Instead, conversion of unpaid wages provides a previously unused

cause of action for workers against persons who interfere with or outright deny their efforts to collect earned but unpaid wages. *Fremont*, not *Moore*, provides this Court with the correct analysis to determine if adapting conversion law to earned but unpaid wages is proper.

The two-fold analysis in *Fremont* dictates recognition of conversion of unpaid wages. First, existing case law on the conversion of property rights to compensation for work or services performed can be “adapted” to unpaid wages. Second, this adaptation to unpaid wages does not “displace” existing statutory schemes, since none completely occupies the field of wage judgment enforcement and a cause of action in conversion would complement, not render superfluous, the existing statutory structure by addressing some of its glaring loopholes. To supplement this analysis, the dual policies of protecting a worker’s right to unpaid wages and tort law’s goal of vindicating social policy easily outweigh any concerns with a slippery slope or a theoretical expansion of tort duties into the workplace. Based on these factors, this Court should recognize the conversion of unpaid wages.

Furthermore, the analytical framework in *Moore* only supports this conclusion. Voris has adequately pled a cause of action for conversion of unpaid wages, since there is no dispute that unpaid wages are vested property rights. So existing law supports Voris’ cause of action. Therefore, an appropriate application of *Moore* demands consideration of whether *denial* of this pre-existing property right and tort duty serves public policy while not disturbing the existing remedial scheme. It fails in both regards. Therefore, this Court should reject Defendant’s request to approve this “quasi-legislative enterprise.” (*Lazar v. Sup. Ct.* (1996) 12 Cal.4th 631, 644.)

Ruling for Mr. Voris in this case furthers the fundamental public policy of ensuring timely payment of earned wages for an untold number of low-wage workers currently facing systemic wage theft and judgment evasion who are not adequately protected by existing remedies. Adapting the law of conversion to unpaid wages provides a crucial remedy that goes after the persons most responsible for preventing a worker's collection of unpaid wages, without unfairly prejudicing good-faith employers or imposing significant administrative burdens.

### **ARGUMENT**

#### **I. RECOGNIZING CONVERSION OF UNPAID WAGES IS AN ADAPTATION, NOT AN EXTENSION, OF THE LAW OF CONVERSION**

Building on the Parties' extensive briefing on the history and developing application of conversion, one addition may provide useful guidance for this Court. (See OBOM 37-41.) This Court's groundbreaking decision in *Payne v. Elliot* (1880) recognized conversion of intangible property for the first time. (See *Payne*, 54 Cal.339, 340-42 [recognizing stock as intangible property subject to conversion].). Ensuing cases have adapted *Payne*'s initial recognition of intangible property to new contexts, often arguing by analogy, but without an established analytic framework.

In 2007, the court in *Fremont Indemnity Co. v. Fremont General Corp.* provided one:

In some circumstances, newer economic torts have developed that may better take into account the nature and uses of intangible property, the interests at stake, and the appropriate measure of damages. On the other hand, if the law of conversion can be adapted to particular types of intangible property and will not displace other, more suitable law, it may be appropriate to do so. (148 Cal.App.4<sup>th</sup> at 124.)

*Fremont* offers two factors: (1) whether the law of conversion can be “adapted” to a particular type of intangible property, and (2) whether it “displaces” other, more suitable law. Conversion of unpaid wages “may be appropriate” in light of these two factors.

Other cases adapting intangible property to new contexts have generally examined the first step in this framework, analogizing the intangible property in the cases at hand with similar types in preexisting case law. (See OBOM p. 38-41 [citing *Welco Elecs., Inc. v. Mora* (2014) 223 Cal.App.4th 202, 213 (checks and customer lists); *Fremont Indemnity Co., supra*, 148 Cal.App.4th at 124-25 (net operating losses); *Sanowicz v. Bacal* (2015) 234 Cal.App.4th 1027 (real estate sales commissions)].)

In some cases, courts considered the second factor. (See *Thrifty-Tel, Inc. v. Bezenek* (1996) 46 Cal.App.4th 1559, 1566 [“However, it is not necessary to resolve the question [of conversion] because the evidence supports the verdict on a trespass theory”]; *Fischer v. Machado* (1996) 50 Cal.App.4th 1069, 1074-75 [concluding that neither federal nor state laws preempted or precluded a conversion remedy, or were rendered superfluous by it]; *Angelica Textile Servs., Inc. v. Park* (2013) 220 Cal.App.4th 495, 506 [recognizing prior precedent stating that state trade secrets laws displaced common law claims, including conversion, unless the conversion was not based on the existence of a trade secret]; *Welco Elecs., Inc., supra*, 223 Cal.App.4th at 215-16 [“As what was found to have occurred here was a theft, the tort of conversion was an appropriate cause of action.”].)

Ignoring the *Fremont* framework, Defendants and the court below rely on *Moore v. Regents of the University of California* (1990) 51 Cal.3d.120. The issues in *Moore* were far removed from the framework of adapting to new forms of intangible property contemplated in *Payne* and its

progeny. In part because no authority existed to support Moore's ownership of his excised human cells, and because imposing tort duties on the medical research that used his cells implicates "policy concerns far removed from the traditional, two-party ownership disputes in which the law of conversion arose," the California Supreme Court in *Moore* applied a two-part test. (*Moore*, 51 Cal.3d at 136.) First, the Court examined whether existing law provided Moore with a cause of action in conversion, concluding that it did not. (*Id.* at 136-142 [finding that Moore did not retain ownership over his excised cells].) Second, finding that a conversion cause of action would be an "extension" of tort into a new context, the Court denied extension for three reasons: (1) balancing policy considerations counseled against extension; (2) legislative resolution was a better solution; and (3) conversion was not necessary to protect Moore's rights. (*Id.* at 142.)

Voris' cause of action falls into the *Fremont* analytic framework. The question before this Court is whether to adapt existing notions of conversion of intangible property to unpaid wages. Unlike in *Moore*, where the court had resolve ambiguity as to whether property rights existed in excised human cells, there is no dispute that "[e]arned but unpaid salary or wages are vested property rights." (*Loehr v. Ventura County Community College Dist.* (1983) 147 Cal. App. 3d 1071, 1080; *see also Pineda v. Bank of Am., N.A.* (2010) 50 Cal.4th 1389, 1402 ["The vested interest in unpaid wages, on the other hand, arises out of *the employees'* action, i.e., their labor. Until awarded by a relevant body, employees have no comparable vested interest in section 203 penalties."].)

Furthermore, this state has typically recognized conversion where specific funds held for the benefit of others are misappropriated, commingled, or misapplied. (*See PCO, Inc. v. Christensen* (2007) 150

Cal.App.5<sup>th</sup> 384, 393 [citing, among other cases, *Haigler v. Donnelly* (1941) 18 Cal.2d 674, 681; *Fischer, supra*, 50 Cal.App.4<sup>th</sup> at 1072-74)].) Unlike for the researchers in *Moore*, tortfeasors in the unpaid wages context already have duties arising in tort. The only “extension” contemplated here is of an employee’s right to seek conversion remedies against that tortfeasor—the person or entity who through wrongful act frustrates his collection of unpaid wages.

A case adapting conversion to credit card information distinguished *Moore* for similar reasons:

*Moore* is not applicable here. That case concerned the alleged conversion of human cells by their use in medical research, which involved complex policy decisions, a far cry from the misappropriation and unauthorized use of a credit card and its information, which does not involve any such complex policy decisions. (*Welco*, 223 Cal.App.4<sup>th</sup> at 215.)

In conclusion, Voris’ conversion cause of action more properly fits within the evolution of intangible property subject to conversion that originated over 100 years ago with *Payne*. *Fremont* presents a sensible framework for when to adapt *Payne* to new contexts. Accordingly, this Court should apply the analysis in *Fremont*.

## **II. UNDER FREMONT, THIS COURT SHOULD ADAPT THE LAW OF CONVERSION TO UNPAID WAGES**

The framework in *Fremont* considers at least two factors: (1) whether the law of conversion can be “adapted” to a particular type of intangible property, and (2) whether it “displaces” other, more suitable law. Although not necessary, *Amici* also urge this Court to balance policy considerations in order to more comprehensively determine if conversion is appropriate here.

### **a. Conversion Law Can Adapt to Unpaid Wages**

Voris’ conversion claim for earned but unpaid wages, although new, fits within the existing common law in at least three ways. First, courts



already recognize conversion of unpaid wages, albeit in the form of a settlement check. (*See Dep't. of Indus. Rel'ns v. UI Video Stores, Inc.* (1997) 55 Cal.App.4th 1084, 1096-96). Defendant even concedes this point:

Because the parties had already resolved the dispute over the unpaid wages by executing a settlement agreement [citation], the employer's failure to turn over the proceeds naturally gave rise to a conversion claim. That omission – the failure to turn over pre-allocated sums owed based on an otherwise final resolution of a claim – would have triggered conversion liability, whether the underlying claim was for wages, defamation, patent infringement, etc. ABOM 18.

Because unpaid wages become vested as they are earned, the difference between a settlement check for unpaid wages and the unpaid wages themselves is irrelevant. (*See Pineda*, 50 Cal.4th at 1402 [“The vested interest in unpaid wages, on the other hand, arises out of *the employees'* action, i.e., their labor.”].)

Second, to support this conclusion, conversion has adapted to other forms of compensation or income for work or services performed. (*See Lu v. Hawaiian Gardens, Inc.* (2010) 50 Cal.4th 592, 604 [gratuities under Labor Code § 351]; *Sanowicz v. Bacal* (2015) 234 Cal.App.4th 1027, 1042 [real estate commissions earned by referral]; *Payne*, 54 Cal. at 340-42 [stocks].) Since tips, commissions, and stocks can be considered “compensation” for work performed by employees, unpaid wages should also be subject to actions in conversion, by analogy. Like the court in *Fremont, Amici* “see no sound basis in reason to allow recovery in tort for one but not the other.” (148 Cal.App.4th at 125.)

Third, courts have found conversion by the tortfeasor through a third party.

That the taking was something that affected plaintiff's rights with a third party does not mean that there has not been a conversion of intangible property. As noted, there can be a conversion of intangible rights represented by special instruments such as a bank checkbook, insurance policy, or stock certificate (see Rest.2d Torts, § 242, coms.

a-e. nn. 473-475). all of which involve a taking by the defendant of the plaintiff's property rights exercised through a third party. (*Welco Elecs., Inc.* 223 Cal.App.4th at 212 [holding that conversion of specific sums of money through a credit card constituted conversion].)

Thus, a tortfeasor should be liable for wrongful acts through a third-party employer that deprive it of the ability to pay the employee's wages.

Existing conversion law can and should adapt to the wage context. It is particularly appropriate where employers withhold unpaid wages during pendency of disputes over those wages, and tortfeasors swoop in and convert those wages before the worker can collect. In these contexts, it is also worth noting that there is no requirement that the third party have segregated the specific sum of unpaid wages in a separate instrument or account from other corporate assets. (*Fischer, supra*, 50 Cal.App.4th at 1073 [involving sale proceeds from consigned farm products that were commingled with the general account]; see also *Weiss v. Marcus* (1975) 51 Cal.App.3d 590, 599 [settlement proceeds].

**b. Conversion of Unpaid Wages Does Not Displace, and Is Not Precluded By, the Preexisting Remedial Framework**

Turning to the second *Fremont* factor, conversion of unpaid wages does not “displace” more suitable, existing law. In fact, there is no body of law that is “more suitable” than conversion to hold individuals or entities liable for separate acts beyond a failure to pay wages that interfere with a worker's ability to collect.

i. There Is No Body of Law More Suitable to This Context Than Conversion of Wages

Wage and hour laws such as the Labor Code and the Industrial Welfare Commission Wage Orders exist to impose mandatory duties on employers. Workers have recourse to these laws to show an employer's

liability for failure to pay certain wages. These laws do not stray beyond an employer-employee context.

Workers have only a patchwork of remedies available in response to actions taken by an employer or third party during the pendency of a wage dispute or in a post-judgment setting. Remedies are particularly scarce and ineffective when actions by third parties interfere with workers' ability to collect unpaid wages. Fraudulent transfer actions, claims in bankruptcy, and traditional collection tools such as liens and asset assignments provide remedies for workers against employer-debtors and, on occasion, transferees or others who benefit from a fraudulent transfer. Workers can also assert alter ego liability against another person or entity, but only under the theory that the person or entity was so intertwined with the employer that they are one and the same. Joint employer theory similarly expands the definition of "employer." Labor Code 558.1 allows some individuals to be held liable but only for underlying wage and hour violations, and then only by acting on behalf of the employer.

However, none of the available remedies contemplate separate acts by persons outside the employer-debtor context. Acts by these persons that deprive employers of funds to pay wages, or otherwise render collection impossible, remain outside the purview of the remedial scheme. Thus, where these acts deprive a worker of unpaid wages and otherwise constitute a cause of action for conversion, the existing patchwork remedial scheme does not provide a remedy. Therefore, there is no body of law that is "more suitable" than a conversion cause of action in this context.

ii. Conversion will Not Displace The Existing Remedial Scheme

A conversion cause of action will not displace the existing remedial framework. As discussed above, it would not render existing remedies superfluous since it provides a cause of action against individuals who are otherwise out of reach. On the other hand, none of the available bodies of law, or the patchwork remedial scheme as a whole, preempts or otherwise precludes a worker from a conversion cause of action for a separate act.

Wage and hour laws, including contract law, recognize separate causes of action that meet its underlying objectives. In recognizing that tort law is designed to vindicate social policy, this Court has noted an “extra measure of blameworthiness inhering in fraud.” (*Lazar, supra*, 12 Cal.4<sup>th</sup> at 646 [distinguishing *Foley v. Interactive Data Corp* (1988), 47 Cal.3d 645, 693].) Since fraud cases are not concerned with “the need for ‘predictability about the cost of contractual relationships,’ fraud plaintiffs may recover ‘out-of-pocket’ damages in addition to benefit-of-the-bargain damages.” (*Ibid.*) That reasoning, applied to distinguish *Foley*, is even stronger here: the question before the Court now is whether to recognize conversion in cases where individuals who may or may not be considered employers engage in a separate wrongful act beyond simple failure to pay wages. Much like the fraudulent inducement arising independently of the wrongful termination in *Lazar*, an act of conversion as contemplated here would be separate from the contractual violation of failing to pay wages. It assumes an “extra measure of blameworthiness.” (*Ibid.*)

Defendant’s reliance in *Foley* for the proposition that conversion would “tortify” a fundamentally contractual claim is misplaced. This Court has already limited the application of *Foley* in an even smaller context. (*See Ibid.* [declining to recognize a “*Foley* doctrine” stating or implying that

employers who terminate employees do or should enjoy broad special immunities from tort liability].) Instead of adopting blanket rules about the separation of contract and tort, this Court has acknowledged the ability to distinguish and acknowledge both within the same case.

Nor can Defendants argue that a finding of conversion would “displace” alter ego liability. Since alter ego liability is concerned with whether “a corporation’s acts and obligations can be legally recognized as those of a particular person,” what is attributed to an alter ego is the failure to pay wages in this context. (*Associated Vendors, Inc. v. Oakland Meat Co.* (1962) 210 Cal.App.2d 825, 837.) Conversion, as explained above, can apply to a separate act, including by non-employers, beyond the failure to pay wages. Such a separate act may also support a finding of alter ego liability, but alter ego remains an equitable remedy extending what it means to be an “employer”, while conversion is a tortious cause of action that applies to acts beyond the employer-employee context. One does not displace the other. Similar reasoning applies to joint-employer liability or application of Labor Code § 558.1.

Similarly, tort remedies coexist with the state Uniform Fraudulent Transfer Act. (*See Macedo v. Bosio* (2001) 86 Cal.App.4th 1044, 1051 [“The UFTA is not the exclusive remedy by which fraudulent conveyances and transfers” may be attacked; they “may also be attacked by, as it were, a common law action”].) More importantly, the UFTA grants rights to creditors against debtors and, on occasion, transferees. Conversion of unpaid wages may apply to a person who is neither debtor or transferee but who nonetheless effects a fraudulent transfer of a worker’s unpaid wages.

In bankruptcy, debtors are entitled to an automatic stay from actions by creditors upon filing. (11 USC 362(a)(1); *Assoc. of St. Croix Condo.*

*Owners v. St. Croix Hotel Corp.*, 682 F.2d 446, 448 (3d Cir. 1982).) However, as *Amici* explain below, the tortfeasors in conversion of unpaid wages are often not the debtors in a bankruptcy action. Workers such as Voris seek recourse to conversion when persons like Lampert remove enough funds, including unpaid wages, from the nonpaying employer to drive it into bankruptcy. PropPoint or Sportfolio's bankruptcies do not automatically stay an action for conversion against Lampert, nor should they.

Moreover, per the Supreme Court of the United States, debt from conversion is sometimes subject to the 11 U.S.C. 523 exemption from discharge in bankruptcy:

There is no doubt that an act of conversion, if willful and malicious, is an injury to property within the scope of the exception. Such a case was *McIntyre v. Kavanaugh*, 242 U.S. 138, 37 S.Ct. 38, 61 L.Ed. 205, where the wrong was unexcused and wanton. But a willful and malicious injury does not follow as of course from every act of conversion, without reference to the circumstances. There may be a conversion which is innocent or technical, an unauthorized assumption of dominion without willfulness or malice. (*Davis v. Aetna Acceptance Co.* (1934) 293 U.S. 328.)

Therefore, under certain circumstances, conversion of unpaid wages even against employer-debtors may survive the automatic stay generally applied in bankruptcy.

In conclusion, the existing remedial scheme consisting of the laws of wage and hour, fraudulent transfer, and bankruptcy does not preclude conversion of unpaid wages. Since tortfeasors in this context may not be employers or debtors, conversion is particularly appropriate. It does not displace existing comprehensive law, but reaches beyond the employer-employee relationship, to supplement what is thus far only a patchwork.

**c. Conversion of Unpaid Wages is Particularly Appropriate to Combat Wage Theft**

Policy considerations only further demonstrate why conversion of unpaid wages is an appropriate remedy. Supplementing the remedial scheme would help many low-income workers who are unable to recover unpaid wages under the existing framework due to judgment evasion tactics of third parties. Conversion furthers the social policy of protecting a worker's right to wages, only punishes tortfeasors who have escaped the existing remedial regime while innocent employees remain indemnified, benefits good-faith employers and the economy as a whole, and will not overburden the courts.

*i.*     The Sheer Scale of Wage Theft and Judgment Evasion in California Demands Tort Protections as a Supplemental Remedy

Combatting wage theft through vigorous enforcement of minimum labor standards is the public policy of the courts and legislature<sup>1</sup> of the State of California. (*Smith v. Superior Court* (2006) 39 Cal.4th 77, 82 [“The public policy in favor of full and prompt payment of an employee’s earned wages is fundamental and well established”]; *In Re Trombley* (1948) 31 Cal 2d. 801, 809 [“It has long been recognized that... because of the economic position of the average worker and, in particular, his dependence on wages for the necessities of life for himself and his family, it is essential to the public welfare that he receive his pay when it is due”].)

Despite this deeply-ingrained and important policy, widespread wage violations remain a pervasive and intractable problem in California.

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<sup>1</sup> See e.g., Labor Code § 90.5 [“It is the policy of this state to vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions or for employer that have no secured the payment of compensation, and to protect employers who comply with the law from those who attempt to gain a competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

Unscrupulous employers frequently illegally slash labor costs through wage violations, profiting at the expense of the subsistence of their employees,<sup>2</sup> depriving the state of tax revenue<sup>3</sup>, and forcing whole industries into a perverse race to the bottom.<sup>4</sup> Low-wage workers, who make up approximately thirty percent of California's workforce,<sup>5</sup> bear the brunt of the assault on fair pay. Between 2013 and 2015, an average of 590,000 California low-wage workers faced minimum wage violations each year, losing on average 24 percent of their check per week, with collective losses totaling almost two billion dollars.<sup>6</sup> Of 1,815 LA County workers surveyed about a single work week in 2008, almost 30 percent were paid less than minimum wage, 15.5 percent had not properly been paid overtime, 12.5 percent worked for more hours than they were paid, and 69.8 percent experienced meal break violations.<sup>7</sup>

The epidemic of wage theft in California starts with widespread violations of the Labor Code, but it is exacerbated by widespread judgment

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<sup>2</sup> Eastern Research Group Inc. for the US Department of Labor, *The Social and Economic Effects of Wage Violations: Estimates for California and New York* (Dec. 2014) p. 48, <<https://www.dol.gov/asp/evaluation/completed-studies/WageViolationsReportDecember2014.pdf>> [as of November 28, 2017]. In 2010, this study found that 41,000 California families were forced into poverty by minimum wage violations.

<sup>3</sup> *Id* at p. 52. In 2010, California lost 14 million dollars and the federal government lost 241 million dollars due to minimum wage violations in the state.

<sup>4</sup> See Julie A. Su, Labor Commissioner, *A Report on the State of the Division of Labor Standards Enforcement* (May 3, 2013), p. 7 <[http://www.dir.ca.gov/dlse/Publications/DLSE\\_Report2013.pdf](http://www.dir.ca.gov/dlse/Publications/DLSE_Report2013.pdf)> [as of December 1, 2017]

<sup>5</sup> Legislative Analyst's Office, California, *California's New Minimum Wage: Who are California's Low-Wage Workers* (Dec. 6, 2016), <<http://www.lao.ca.gov/LAOEconTax/Article/Detail/223>> [as of November 21, 2017]

<sup>6</sup> Cooper and Kroeger, Economic Policy Institute, *Employers steal billions from worker's paychecks each year*, 9, 10, Table 1 (May 10, 2017) <<https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year-survey-data-show-millions-of-workers-are-paid-less-than-the-minimum-wage-at-significant-cost-to-taxpayers-and-state-economies/>> [as of December 1, 2017]

<sup>7</sup> Milkman et al., *Wage Theft and Workplace Violations in Los Angeles: The Failure of Employment and Labor Law for Low-Wage Workers* (2010), p. 18, Table 2 <[http://ccacla-laborcenter.electricembers.net/wp-content/uploads/downloads/2014/04/LA\\_wagetheft.pdf](http://ccacla-laborcenter.electricembers.net/wp-content/uploads/downloads/2014/04/LA_wagetheft.pdf)> [as of Dec. 1, 2017]



evasion. Of the 18,683 workers who prevailed in their wage theft claims before the Division of Labor Standards Enforcement and had final judgments entered by a court between 2008 and 2011, only 3,084 workers or 17 percent were able to recover any money.<sup>8</sup> Almost a quarter of a billion dollars, representing 85 percent of all judgments, remained unpaid during that time.<sup>9</sup> For many of California's low-wage workers struggling to survive, wage and hour protections functionally do not exist.

Owners of corporate employers are typically responsible for separate acts beyond failing to pay employees. Such individuals frequently flout the law and evade judgment by hiding behind corporate entities to avoid personal liability and then discarding those entities when they incur corporate liability. Indeed, in 60 percent of cases where a worker obtains a judgment for unpaid wages, the corporate employer is cancelled, dissolved, or otherwise non-active, i.e. abandoned by their owners.<sup>10</sup> Abandonment of corporate entities occurs on average within months of entry of judgment.<sup>11</sup>

Also, most judgment debtors are small corporations,<sup>12</sup> controlled by a few principals. When a small corporate employer incurs liability for labor violations, its controlling principals can easily transfer assets away from it, reorganizing as a new business under another shell corporation, or cashing

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<sup>8</sup> National Employment Law Project & UCLA Labor Center, Cho et al., *Hollow Victories: The Crisis in Collecting Unpaid Wages for California's Workers* (2013), pp. 13-14 < <http://ccacla-laborcenter.electricembers.net/wp-content/uploads/downloads/2014/04/HollowVictories.pdf> > [as of Dec. 1, 2017].

<sup>9</sup> *Id.* at p. 14.

<sup>10</sup> National Employment Law Project & UCLA Labor Center, *supra* note 8 at 11.

<sup>11</sup> National Employment Law Project & UCLA Labor Center, *supra* note 8 at 11.

<sup>12</sup> Labor Commissioner, *supra* note 4 at p. 38.

out. This leaves the worker with a worthless paper judgment.<sup>13</sup> Bad actors within closely held corporations make frequent use of this tactic.<sup>14</sup>

Public interest organizations, *Amici* among them, have attempted to disrupt the widespread pattern of wage theft and judgment evasion in California. Using existing legal tools such as alter ego liability, liability for owners, directors, officers, and managing agents under Labor Code § 558.1, and individual liability for the tort of fraudulent transfer, organizations have achieved some success by going after the individuals responsible for the acts which interfere with the worker's ability to collect earned wages, rather than easily discarded corporate shells. Still unscrupulous individuals have frequently frustrated *Amici's* efforts, successfully parrying existing legal tools by hiding behind corporations and continuing to engage in wage theft with impunity.

Take for example the wanton wage theft and judgment evasion of Mr. G., an off-the-books owner of a corporation that employed H.T., a low-wage worker and client of one of our organizations.

H.T. worked as a registered nurse for three years at a community-based mental health facility. She eventually quit because she was not paid overtime, her wage payments were delayed by several weeks, and she wasn't paid at all for five months. Mr. G was the founder of the facility. He has incorporated three entities since 2002 and has used these corporate shells to avoid paying his employees. When H.T. was employed there, Mr. G was not at the facility day to day, nor was he named as the owner on paper, but everyone knew that he was the owner. When H.T. complained of unpaid

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<sup>13</sup> *Id.* at p. 37.

<sup>14</sup> *Id.* at p. 38. The Labor Commissioner notes in her report that, "[t]oo often, workers win judgments only to find that the employer has gone out of business, fraudulently transferred assets, and erected shell corporations to avoid paying what is owed."

wages, Mr. G. personally guaranteed that he would pay all the wages upon receiving funds so long as she remained “loyal to him.” Since 2006, 16 former employees of the facility have brought wage claims, all of which were adjudicated by the Labor Commissioner, resulting in judgments totaling more than \$300,000. H.T. is still waiting for her day in court, while Mr. G. is rumored to operate yet another healthcare facility in Long Beach under another corporate shell enabling him to commit offenses against new victims.

In another example, M.A. worked as a truck driver. He prevailed in a Labor Commissioner claim, only to find that J.T., a mid-level manager, had spent years dispatching the company’s best work to his own truck drivers, double-charging the company for the work, then eventually stealing multiple trucks and major accounts from the company to start his own. This caused M.A.’s employer to file bankruptcy, without satisfying a cent of his judgment.

These examples represent the problems low-wage workers face when trying to collect unpaid wages. Individual wrongdoers frequently exploit corporate law in similar ways—setting up shell corporations to avoid individual liability and shifting assets between them when one incurs corporate liability—to engage in wage theft with impunity. The studies above and *Amici’s* repeated difficulties holding individual bad actors accountable belie the appellate court’s assertion that existing remedies do the job well enough. They weigh heavily in favor of a new tool to combat the root of the problem by going directly after individuals responsible for frustrating the collection of unpaid wages.

ii. Recognition of Conversion of Unpaid Wages Would Further Public Policy by Punishing Tortfeasors Who To This Point Have Escaped the Remedial Scheme

Policy considerations support recognizing conversion of unpaid wages. Far from weighing against recognition of the tort, the potential for individual liability and punitive damages against individuals responsible for separate acts beyond the failure to pay wages is an important tool for holding accountable intentional bad actors working to hinder collection of wages, many of whom are outside the scope of existing remedies which focus on creditor-debtors. As noted by Justice Lavin in his partial dissent, liability for punitive damages is imposed only on the individuals who have committed a wrong with “malice, oppression, or fraud.” (*Voris v. Lampert* (Cal. Ct. App., May 22, 2014, No. B234116) at dissent, p .3. [J. Lavin, concurring in part and dissenting in part].)

In the workplace, punitive damages would impose upon only those individuals who intentionally or with conscious disregard of an employee’s right to be paid frustrate his ability to collect wages. (*Ibid.*; See also Labor Code § 3294(c)(1) [defining “Malice” as “conduct... intended... to cause injury... or despicable conduct... with a willful and conscious disregard...”].) Punitive damages should be imposed on such intentional wrongdoers, including unscrupulous employees and controlling principals like those in the examples above. It is a necessary disincentive to behavior which it is the public policy of the State of California to oppose.

On the other hand, concerns over imposing tort duties and potential liability on innocent employees in the workplace is unfounded. Those employees acting in obedience to illegal directions of an employer without knowledge that they are illegal can seek indemnification under Labor Code § 2082. Thus, individual liability and punitive damages under the cause of

action of conversion will primarily impact employees acting outside the scope of employment, employees who carry out policies they know to be illegal, and controlling principals in charge of illegal acts beyond mere failure to pay.

iii. Enforcing Conversion Against Bottom-Of-The-Barrel Employers Will Benefit Good-Faith Employers and the Economy as a Whole

Far from potentially stymying business activity and hurting the economy as Respondent suggests, the tort of conversion of wages would very likely benefit legitimate businesses and boost the economy. It would do so by discouraging wage theft by the worst actors, thereby preventing legitimate businesses from being undercut by their unscrupulous counterparts, ensuring the state is not deprived of tax revenue, and giving low-wage and other workers the ability to participate in the consumer economy with the wages they earned. As stated above, it is just and necessary to hold all wage thieves individually liable for their actions and impose punitive damages to those who act with malice.

iv. Conversion of Unpaid Wages Will Not Overburden the Courts

On the other hand, the appellate court and the Respondent put far too much weight on and exaggerate the likely administrative burdens of recognizing the tort. Given the crisis of wage theft and judgment evasion in California, it hardly seems a bad thing that the tort of conversion could lead more victims to come to court to win back their stolen wages. *Amici* anticipate that availability of the tort of conversion as an additional cause of action may lead to an increase in cases filed in court. *Amici* also anticipate eventual deterrence of certain forms of behavior that the courts come to recognize as conversion of unpaid wages.

However, *Amici* also know from years of practice and experience that it is unlikely to result in an overwhelming surge of new litigation. The vast majority of wage theft victims who seek a legal remedy will continue to rely on administrative proceedings which are designed to be speedier, informal, and more affordable than civil litigation. (*See Sonic-Calabasas A, Inc. v. Moreno* (2013) 57 Cal.4th 1109, 1128.) Many, if not most wage theft victims seek legal remedies without the assistance of counsel. When workers are able to obtain representation in wage and hour cases, it is often with pro bono practitioners at public interest organizations. For unrepresented workers and pro bono practitioners with a high volume of cases and a limited budget, the speedier, more informal, and, most importantly, more affordable administrative proceeding will continue to be the most viable option in all but a small minority of cases.

Moreover, insolvency is often an employer's main defense. While employers may run unprofitable businesses, workers should have recourse to separate causes of action for foul play that goes beyond nonpayment of wages. And the possibility of satisfying judgment through a tortfeasor may serve to more quickly resolve wage disputes, instead of wading through separate judgment enforcement actions or bankruptcy stays that already clog the courts.

Thus, the Court does not face a complex policy decision with pros outweighed by significant cons. Instead, it has the opportunity to recognize a much-needed tool to combat the crisis of wage theft. Against this opportunity weigh only misplaced fairness concerns, superficial pro-business arguments, and de minimis administrative burdens. In such a circumstance, even *Moore* would dictate extension of the law of conversion.

v. The tort law of other states supports a cause of action for conversion of wages under California law

Petitioner has already noted that at least six states already recognize conversion as a tort remedy for unpaid wages, while a small number of states have expressly rejected a wage conversion claim. (ABOM 36-37). An important distinction can be drawn between the treatment of wages under California law and under the law of many of the states which have rejected a wage conversion claim. Likewise, an important distinction can be found between the basis for conversion *Amici* propose here and the facts which led other states to reject a wage conversion claim.

California treats earned but unpaid wages as vested property rights. Of the states that have rejected a wage conversion claim, Alabama, Kansas, and Missouri treat wages a mere debt. Furthermore, cases from these states considered whether a mere withholding of wages under disputed circumstances constituted conversion. (*Lewis v. Fowler* (Ala. 1985) 479 So. 2d 725 [Under Alabama law, withholding of money from a paycheck for alleged debt did not give rise to an action for conversion, but at most created a relationship of debtor or creditor]; *Temmen v. Kent-Brown Chevrolet Co.* (1980) 605 P.2d 95, 100-101 [In a Kansas case concerning withholding of money from paycheck for alleged debt earned wages were treated as “mere debt”]; *Rehbein v. St. Louis Sw. Ry. Co.*, 740 S.W.2d 181, 183 (Mo. Ct. App. 1987) [In a Missouri case, in which an employer withheld money from wages for an alleged debt, earned wages were classified as “general debt”].) These cases may be relevant to whether conversion in California arises from a *per se* violation of wage and hour statutes; they are not relevant to whether a separate act gives rise to conversion.

### III. EVEN IF THIS COURT APPLIES MOORE, THIS COURT SHOULD RECOGNIZE CONVERSION OF UNPAID WAGES

Even though inapposite, the principles Defendant appeals to in *Moore* and *Foley* actually support recognition of conversion of unpaid wages. They do so because it is Defendant, not Plaintiff, who is making a radical request: for the court to carve out an exception to well-settled law.

Here, Defendant and the court below incorrectly see conversion in this context as an “extension.” A more appropriate description of the question before this Court is whether employers or non-employers are immunized from tort liability for acts beyond the mere failure to pay wages that otherwise constitute conversion. Since Voris can and has pled sufficient facts to state a conversion cause of action, Defendant is essentially asking this Court “to *constrict* traditional tort remedies.” (*Lazar*, 12 Cal.4th at 647.) It should not, for the three main rationales employed in *Moore*. (See 51 Cal.3d at 142 [balancing policy considerations, deferring to the legislature for a change in existing law, and not finding extension of conversion to nonexistent property right “not necessary”].)

First, as discussed above, the policy considerations heavily balance in favor of protecting the payment of wages. See *Supra*, Section II.B.3.

Second, to carve out a previously non-existent exception of tort duties and liabilities where unpaid wages are involved, the Legislature is a better option than courts to reform the law.

Third, innocent employees are protected by Labor Code § 2802, so a far more expansive, blanket denial of conversion of unpaid wages is



unnecessary. On the other hand, recognition is necessary to protect workers from acts that the existing remedial scheme cannot or does not adequately address.

Outside of an inapposite reference to *Foley* for the oversold proposition that courts do not combine tort and contract remedies, Defendant provides no other authority to support its radical request.

### CONCLUSION

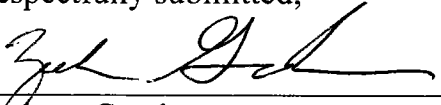
*Amici* encourage this Court to recognize conversion of unpaid wages. This is not a radical step: the tortious behavior exists, is already recognized for other kinds of intangible property, and substantially interferes with a worker's right to unpaid wages. Courts can handle concerns with displacing existing law or creating tort duties where they should not be on a case-by-case basis applying existing principles of conversion law. *Amici* urge this as the more sensible approach.

On the other hand, categorical denial of conversion in this context is unnecessarily severe, shutting out this conversation altogether. More importantly, it would invite further tortious behavior in this context.

For this reason, *Amici* propose recognition of conversion of unpaid wages. *Fremont* instructs us to do so. *Moore*, though inapposite, supports the same conclusion.

Dated: March 5, 2018

Respectfully submitted,

  
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Zachary Genduso  
Jay Shin  
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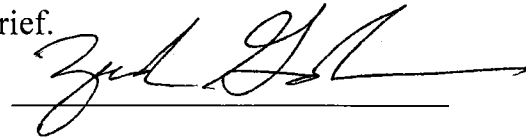
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**CERTIFICATE OF WORD COUNT**

(Cal. Rules of Court, rule 8.2024(c)(1))

I, the undersigned counsel, certify that this brief consists of 7,259 words, exclusive of those portions of the brief specified in California Rules of Court, rule 8.204(c)(3), relying on the word count of the Microsoft computer program used to prepare this brief.

Dated: March 5, 2018



Zachary Genduso

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*Attorneys for Amici Curiae*

**PROOF OF SERVICE VIA U.S. MAIL**

I am employed in the County of Los Angeles. I am over the age of eighteen years and not a party to the within entitled action. My business address is 3250 Wilshire Blvd., 13<sup>th</sup> Floor, Los Angeles, CA 90010.

On March 5, 2018, I served the following document, described as:

**APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF  
IN SUPPORT OF PLAINTIFF AND APPELLANT**

**[PROPOSED] BRIEF OF *AMICI CURIAE*  
ASIAN AMERICANS ADVANCING JUSTICE – LOS ANGELES,  
BET TZEDEK, LOS ANGELES ALLIANCE FOR A NEW  
ECONOMY, THE WAGE JUSTICE CENTER.**

by U.S. Mail. I Served said document on the interested parties by depositing a true copy thereof with the U.S. Postal Service with the postage fully pre-paid, addressed to the addresses set forth below:

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

