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Via Federal Express

Chief Counsel
Division of Labor Standards Enforcement
P.O. Box 420603
San Francisco, CA 94142

Re: Written Comments -- Meal and Rest Period Public Forum

Dear Labor Commissioner:

I am writing to add to the record of the DLSE's public forum process (Sacramento on August 2, 2007, and Northridge on August 9, 2007) on Meal and Rest Periods.

I am an attorney and a member of the State Bar of California. I have represented California employees since 1981. Our firm has represented working Californians since 1972, primarily through class action enforcement of state and federal employment laws. Although we are a private law firm, we work in the public interest in enforcing wage and hour statutes, anti-discrimination laws, and disability rights. We have authored many amicus curiae ("friend of the court") briefs, including briefs submitted to the California Supreme Court on major employment and class action cases like *Cortez v. Purolator* (2000) 23 Cal.4th 163, *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, and *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319. I have written extensively on wage/hour law enforcement (see list of publications and cases, attached as Exhibit A).

Like many workers' advocates, I am concerned about your decision to hold public hearings on the state's meal and rest period laws and regulations. The goal of these hearings has been ill-defined from the outset. Moreover, the DLSE has no authority to alter the laws on meal and rest periods as defined by the Legislature. Nor is it consistent with the DLSE's purpose to explore ways to dilute regulatory protections for California's workers as to important meal and rest period rules. As the California Supreme Court recently reiterated, the premium wages established for missed meal and rest periods are the only compensation available for workers who are denied these timely breaks. *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094.

California's workers need relief from overwork and it is your duty to protect California's workers, not to serve the interests of the employer community. Overwork and extended work shifts threaten the health and safety of California's workers. Anderson, *Overwork Robs Workers' Health: Interpreting OSHA's General Duty Clause To Prohibit Long Work Hours* (2004), 7 N.Y. Cty. L. Rev. 85, 85-86; U.S. Dept. of Health & Human Servs., *Overtime and Extended Work Shifts: Recent Findings on Illnesses, Injuries, and Health Behaviors* (April 2004)

at p. 27, available at <<http://www.cdc.gov.niosh/docs/2004-143/pdfs/2004-143.pdf>> (as of Aug. 29, 2007; Schwartz, *Always on the Job, Employees Pay with Health*, Sept. 5, 2004; N.Y. Times, Eight Hour Day Restoration and Workplace Fairness Act of 1999, at <www.dir.ca.gov/IWC/ab60.html> as of Aug. 29, 2007.

As an employee rights attorney, I find that the current rules governing meals and rest periods are fair and clear. They provide a remedy when employers force workers to work long shifts without a break. We have obtained court approved class action settlements requiring remedial payments to workers denied timely meal/rest breaks. In one case, against a sophisticated chain retailer, we obtained \$3.8 million for assistant managers forced to work without timely meal periods. In another case, we obtained significant relief for truck drivers denied timely meal periods. In many cases, we find that meal/rest period rules are ignored by employers who are also violating other work rules, as in our overtime pay class actions. There is already a substantial environment of employer lawlessness in regard to meal periods, something which the DLSE should be combating and not abetting with public hearings.

The current rules in this regard provide bright line tests. Any movement toward fuzzier (more “flexible”) rules will only make it more difficult for the stakeholders to understand the rules. It would inevitably lead to more employer misconduct and hamper employees and the DLSE in any effort to enforce these rights. The current state agency enforcement apparatus is already woefully understaffed for the purpose of enforcing compliance with these labor standards. It would be criminal to weaken the law and make enforcement more difficult than it is already for these overworked and underfunded public servants and their allies in the private bar.

This is not an opportune time for the DLSE to engage in yet another misguided attempt at “regulatory” activity. The state’s courts have already been vigilant in policing the DLSE to make sure that there is no improper attempt at imposing regulations which are either procedurally defective or beyond the scope of the agency’s mission. *Tidewater v. Bradshaw* (1996) 14 Cal.4th 557; *see also, Corrales v. Bradstreet* (2007) 153 Cal.App.4th 33.

In sum, the DLSE is well advised to leave well enough alone as to this area of the law. The DLSE has suffered enough loss of reputation and respect due to its misguided regulatory and precedent opinion writing in this area already. The DLSE should hasten to get back to its mission of protecting California’s workers.

Very truly yours,

David Borgen

DB/gb