

**CASE No. 20-55981**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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ANTHONY AYALA, individually and on behalf of all others  
similarly situated,

*Plaintiff and Appellant,*

v.

U.S. XPRESS ENTERPRISES, INC. and U.S. XPRESS, INC.,

*Defendants and Appellees.*

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Appeal From The United States District Court,  
Central District of California, Case No. 5:16-CV-00137-GW, Hon.  
George H. Wu

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**BRIEF OF THE CHAMBER OF COMMERCE OF THE  
UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN  
SUPPORT OF DEFENDANTS-APPELLEES AND  
AFFIRMANCE**

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## **CORPORATE DISCLOSURE STATEMENT**

The Chamber of Commerce of the United States of America (“Chamber”) states that it is a non-profit, tax-exempt organization incorporated in the District of Columbia. The Chamber has no parent corporation, and no publicly held corporation owns ten percent or more of its stock.

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## INTEREST OF *AMICUS CURIAE*<sup>1</sup>

The Chamber of Commerce of the United States of America (“Chamber”) is the world’s largest business federation. The Chamber represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. One of the Chamber’s responsibilities is to represent the interests of its members in matters before the courts, Congress, and the Executive Branch. To that end, the Chamber regularly files *amicus curiae* briefs in cases that raise issues of concern to the nation’s business community, including issues related to the legal framework governing employee compensation.

Members of the Chamber regularly rely on piece-rate compensation in their contractual relationships with their employees. The Chamber therefore has a strong interest in the proper interpretation of Section 226.2 of the California Labor Code, which sets forth requirements regarding piece-rate compensation. The district court correctly interpreted that provision to give primacy to the right of an employer and an employee to agree on a definition of the “piece” that forms the

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<sup>1</sup> No counsel for a party authored this brief in whole or in part, and no person other than *amicus curiae*, its members, or its counsel contributed money that was intended to fund the preparation or submission of this brief. *See* Fed. R. App. P. 29(a)(4)(E). All parties consented to the filing of this brief.

basis of such compensation. A more restrictive interpretation would seriously harm businesses that use a piece-rate compensation system to pay employees working in California.

## **INTRODUCTION**

Piece-rate compensation, which pays workers for each unit of output, is used in California and throughout the country in various industries, including transportation, agriculture, and manufacturing. In suitable work settings, piece-rate compensation in which the “piece” being compensated is clearly defined has great advantages for both employers and employees. Such a compensation system boosts production, offers employees significantly greater earnings potential than hourly pay, and encourages employee retention. Indeed, many workers prefer it to any other compensation system.

Plaintiff-appellant’s interpretation of Section 226.2 of the California Labor Code threatens to deprive employers and employees alike of those substantial benefits. According to plaintiff-appellant, employers and employees may not contractually determine what constitutes the “piece”—the unit of output—for which an employee receives compensation. Rather, in plaintiff-appellant’s view, employers are restricted by the specific mathematical formulas used to create their piece-rate policies and must compensate employees separately for any activity that does not directly correspond to such a formula. That serious intrusion on

employers' freedom to shape their compensation policies would likely cause many employers in California to abandon piece-rate compensation entirely.

As defendants-appellees' brief explains, plaintiff-appellant's interpretation of Section 226.2 is also wrong as a matter of law, particularly in light of the California Supreme Court's recent decision in *Oman v. Delta Air Lines, Inc.*, 9 Cal. 5th 762 (2020). *Amicus* submits this brief to alert the Court to the serious policy concerns raised by plaintiff-appellant's incorrect interpretation.

## **ARGUMENT**

### **I. Piece-Rate Compensation Benefits Employers And Employees**

A. California law specifically authorizes an employer to pay a worker on a "piece-rate basis"—that is, "based upon an ascertainable figure . . . for completing a particular task or making a particular piece of goods." Cal. Div. of Labor Standards Enforcement, *Enforcement Policies and Interpretations Manual* § 2.5.1, at 2-2 (Aug. 2019) ("DLSE Manual"); *see* Cal. Lab. Code § 200(a) ("Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation."); Cal. Wage Order No. 9, § 4(B) (compensation may be "measured by time, piece, commission, or otherwise"); *see also* 29 C.F.R. § 776.5 (federal regulation noting that employees can "be paid on a piecework basis or on a salary, commission, or other basis").

Under a piece-rate compensation system, the more pieces the worker completes—for example, the more cargo loads he transports, or the more garments he sews, or the more vegetables he picks—the more money he earns. *See* DLSE Manual § 2.5.2, at 2-2. Section 226.2 of the California Labor Code provides that employees must be separately compensated for time unrelated to the piece: “[e]mployees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.” Cal. Lab. Code § 226.2(a)(1).

Many industries operating in California use piece-rate compensation. *See* John Christopher Matthes, *An Imperfect System: Piece Rate Employment and the Impact on California’s Central Valley Agricultural Industry*, 27 San Joaquin Agric. L. Rev. 67, 69, 72 (2017-2018) (explaining that “[p]iece rate employment is widespread and touches and concerns many industries” and discussing use of piece-rate compensation in California agricultural sector); Gregorio Billikopf, University of California, *Designing an Effective Piece Rate* (Jan. 30, 2008) (“*Designing an Effective Piece Rate*”) (noting that “piece rate is still utilized widely”)<sup>2</sup>; DLSE Manual § 2.5.2, at 2-2 (providing examples of workers compensated based on piece rate). Although not suitable for every workplace, piece-rate compensation works particularly well—and is thus especially

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<sup>2</sup> Available at <https://nature.berkeley.edu/ucce50/ag-labor/7research/7calag06.htm>.

common—in industries in which workers perform a limited range of tasks and workers’ output is easy for an employer to observe and measure.

Such industries include transportation, as in this case. *See* Matthes, *supra*, at 69. They also include the agricultural industry, *see id.*; Geraldine Warner, *Making Piece Rate Work*, Good Fruit Grower (Dec. 1, 2006)<sup>3</sup>; the construction industry, *see* Kim Slowey, *Does Paying a Piece Rate Lead to Greater Productivity*, Construction Dive (Feb. 13, 2018)<sup>4</sup>; the manufacturing industry, particularly the garment sector, *see* Robert A. Hart, IZA World of Labor, *The Rise and Fall of Piecework 2* (Apr. 2016)<sup>5</sup>; the beauty-salon industry, Fred Jones, Professional Beauty Federation of California, *2018 Was the Year of Dramatic Change* (Jan. 8, 2019)<sup>6</sup>; and the automobile-repair industry, *see* Universal Technical Institute, *Hourly Rate vs. Flat Rate: How Auto Mechanics are Paid* (Oct. 12, 2020)<sup>7</sup>; Peter Passell, *EARNING IT; Paid by the Widget, and Proud*, New York Times (June 16, 1996).<sup>8</sup>

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<sup>3</sup> Available at <https://www.goodfruit.com/making-piece-rate-work/>.

<sup>4</sup> Available at <https://www.constructiondive.com/news/does-paying-a-piece-rate-lead-to-greater-productivity/515982/>.

<sup>5</sup> Available at <https://wol.iza.org/uploads/articles/254/pdfs/rise-and-fall-of-piecework.pdf?v=1>.

<sup>6</sup> Available at <https://www.beautyfederation.org/hot-topics/2019/2018-was-the-year-of-dramatic-change>.

<sup>7</sup> Available at <https://www.uti.edu/blog/automotive/hourly-rate-vs-flat-rate-how-auto-mechanics-are-paid>.

<sup>8</sup> Available at <https://www.nytimes.com/1996/06/16/business/earning-it-paid-by-the-widget-and-proud.html>. Firm statistics on the number of workers in California

B. The key to a successful piece-rate compensation system is a well-defined piece. *See* Slowey, *supra* (noting that an effective piece-rate pay system requires a “well-defined scope of work” (citation and alterations omitted)); Warner, *supra* (piece-rate work functions well when the piece is “well defined”). When an employer and its employees agree in advance on the specific unit of output for which an employee will be compensated, workers can easily decide whether the offered rate is worth their work (compared to other employers’ units and rates) and how long they would like the employment relationship to continue. *See generally* *Designing an Effective Piece Rate, supra*.

In this case, after examining the employee handbook and plaintiff-appellant’s deposition testimony, the district court concluded, based on the undisputed facts, that there had been a meeting of the minds on the particular “piece” that would form the basis for compensation of U.S. Xpress drivers: the completed delivery of a load of cargo. *See* ER-12 & n.7, ER-15 n.8. That discrete

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who are paid on a piece-rate basis do not appear to be available. But the secondary literature suggests that up to 20% of workers in certain industries, and up to 5% of the total workforce, may be compensated in that fashion. *See, e.g.,* Jeffrey Schildkraut, U.S. Bureau of Labor Statistics, *NCS Reviews the Effectiveness of Variable Pay Collection*, at 5, Table 1 (2003), available at <https://www.bls.gov/opub/mlr/cwc/ncs-reviews-the-effectiveness-of-variable-pay-collection.pdf>; Edward Lazear, *Performance Pay and Productivity*, 90 *Am. Econ. Rev.* 1346, 1359, Table 7 (2000) (providing a range of percentages for workers paid by piece in various industries as of 1990, based on national longitudinal survey of youth).

piece has a clear beginning and end. It also has a clear demarcation from other types of tasks a driver might be asked to undertake.<sup>9</sup>

C. A piece-rate compensation system with a contractually agreed, well-defined piece has many empirically proven benefits for employers operating in California. Those benefits support California’s economy—the world’s fifth largest, *see Forbes, Best States for Business 2019 (California)*<sup>10</sup>—as well as the economies of other jurisdictions in which those employers also operate.

First, payment on the basis of a well-designed piece-rate boosts worker productivity by rewarding effort. One study involving workers picking fruit, which examined 142 workers over a period of 108 days, demonstrated that a “move to piece rate pay” caused “the average productivity of workers” to “rise[] by about 58%” and the “number of high performers” among the group of workers to increase markedly. Kathryn Shaw, *Insider Econometrics: A Roadmap with Stops Along the Way*, 16 *Labour Econ.* 607, 609 (2009) (citing Oriana Bandiera *et al.*, *Social Preferences and the Response to Incentives: Evidence from Personnel Data*, 120 *Q.J. Econ.* 917 (2005)). Another study involving 3,000 auto-glass installers

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<sup>9</sup> No California statute or regulation sets requirements for how an employer defines the pertinent task or good. Likewise, there are no requirements regarding the formula employers may use to calculate pay for a piece, although employers must pay workers at least the applicable minimum wage for the time spent working. *See* Cal. Lab. Code § 1194(a).

<sup>10</sup> Available at <https://www.forbes.com/places/ca/?sh=11fc17713fef>.

demonstrated that over an 18-month “transition to piecework from traditional wage-and-benefits compensation, the hourly output” of the installers “rose 41 percent.” Passell, *supra*. In contrast, “[w]hen paid by the hour, the fastest crew worker performs at the same speed of the slowest one.” *Designing an Effective Piece Rate, supra*; see also, e.g., Anne C. Gielen *et al.*, *How Performance Related Pay Affects Productivity and Employment*, 23 J. Popul. Econ. 291, 293-94 (2010); Bruce Shearer, *Piece Rates, Fixed Wages and Incentives: Evidence from a Field Experiment*, 71 Rev. Econ. Stud. 513, 532 (2004).

Second, efficient piece-rate compensation allows employers to attract and retain more productive workers. Workers who “prefer[] remuneration directly for individual productive effort and performance” naturally “tend to be more productive workers.” Hart, *supra*, at 2-3, 9; see Warner, *supra* (“[I]ncentive-based pay tends to attract hard workers who want to make more money, rather than the slower workers who make more when they’re paid by the hour.”); Passell, *supra* (noting sharp decrease in absenteeism in factory that moved to piece-rate payment). They are drawn to workplaces in which they are rewarded on the basis of how much effort they expend, and are more likely to stay there even when other job opportunities arise. See Lazear, *supra*, at 1359 (“[M]ore able workers, who shunned the firm under hourly wages, are attracted by piece rates. . . . Tenure effects on productivity are found to be large.”). That advantage allows employers

to be more competitive and to better handle industry labor shortages. *See, e.g.,* Hart, *supra*, at 9 (explaining that piece-rate payment “offers the potential of building up and retaining an able and committed workforce, an especially valuable asset when competing with larger organizations in competitive labor markets”); *Designing an Effective Piece Rate, supra* (explaining that farms that use an efficient piece-rate system experience growth in productivity and “are likely to have a waiting list of excellent people who wish to work for them,” to “have little to worry when talk of labor shortages are raised,” and to “be at a competitive advantage over . . . neighbors here or across the ocean”).

Third, a piece-rate system with a clearly defined “piece” gives employers a greater ability to predict labor costs. For instance, in the farming context, under a piece-rate compensation method “the price of harvest can roughly be determined by the available units of harvestable produce. Therefore, a farmer can project more precisely how much produce will cost to harvest.” Matthes, *supra*, at 67. The same goes for cargo loads to be transported or garments to be manufactured.

All of those advantages of well-defined piece-rate systems improve businesses’ performance. For instance, studies demonstrate “a strong[] and positive association between piece-rate pay and the level of demand for the firm’s product,” Hart, *supra*, at 3-4, as well as increased customer satisfaction with service-industry businesses, *see, e.g.,* Passell, *supra* (insurance company that hired

auto-glass repair company to repair insurance claimants' vehicles found that after implementation of "the performance pay system" the percentage of claimants "who pronounced themselves 'very satisfied'" with the repair moved from the mid-80s to the mid-90s). In the end, such effects result in greater profitability and economic stability. *See* Passell, *supra* (explaining that auto-glass repair company added "more than half" of the gain in output "to its bottom line," and giving examples of other corporations that have experienced increased profitability and success with use of a piece-rate system of pay).

D. Contrary to the views of plaintiff-appellant's *amici*, a well-designed piece-rate compensation system also benefits workers in many ways. Indeed, a number of surveys have shown that many employees in industries in which piece-rate pay is suitable prefer that system of pay to any other. *See, e.g.,* Warner, *supra* ("In interviews . . . conducted with workers at Yakima Valley Orchards, 61 percent preferred piece rate over hourly pay.").

First, under an efficient piece-rate pay system workers can earn more—potentially many times the applicable minimum wage. For example, a worker paid \$15.00 per hour faces an earning cap: regardless of hourly productivity, the worker will earn \$15.00 for one hour of work. But if that worker receives \$0.10 per piece, and the worker can produce up to 300 pieces in an hour, that worker now may earn up to \$30.00 for that same hour of work.

Empirical studies across different industries confirm that advantage. For instance, a survey of data from over 100,000 employees working at 500 companies making footwear and clothing found that workers paid on a piece-rate basis earned nearly 14% higher hourly pay. *See* Eric Seiler, *Piece Rate vs. Time Rate: The Effect of Incentives on Earnings*, 66 *Rev. Econ. & Stat.* 363, 375 (1984) (controlling for individual worker characteristics and differences between the companies). Similarly, auto-glass installers who adopted piece-rate compensation saw an approximately 10% increase in wages. *See* Lazear, *supra*, at 1347, 1357, 1360; *see also* Passell, *supra* (giving example of glass installer who “earned \$7.50 an hour” under a standard wage system “and could expect to peak at about \$12 once he mastered the craft,” but who earned an average of \$20 an hour under a piece-rate system). And agricultural workers have experienced the same effects: they can “make three times the minimum wage and more,” and “[a]t one farm operation a crew worker earned almost eight times the minimum wage.” *Designing an Effective Piece Rate, supra*; *see* Matthes, *supra*, at 68 (explaining that “[a] laborer in agriculture would have a very realistic shot at earning what amounts to several times the minimum wage in a piece rate setting compared to the traditional approach of minimum wage paid on an hourly basis”).

Second, because payment in a piece-rate system depends on an objective measure of work, it improves gender equity in pay. One study of German workers

found (after controlling for other factors) that a 17% gender-wage gap existed when employees were paid by the hour, but that the gap decreased to 9% when employees were paid by the piece. *See* Uwe Jirjahn & Gesine Stephan, *Gender, Piece Rates and Wages: Evidence from Matched Employer-Employee Data*, 28 Cambridge J. Econ. 683, 696 (2004). Other economists have reached similar conclusions. *See, e.g.*, Maria Stanfors *et al.*, *Gender, Productivity, and the Nature of Work and Pay: Evidence from the Late Nineteenth-Century Tobacco Industry*, 67 Econ. Hist. Rev. 48, 49, 62-63 (2014).

Third, and relatedly, many workers who are paid under a well-designed piece-rate system report greater satisfaction with their job and earnings. That is likely because such workers have greater control over the pace and timing of their work and their specific work conditions. *See* Colin Green & John S. Heywood, *Does Performance Pay Increase Job Satisfaction?*, 75 *Economica* 710, 724 (2008); John S. Heywood & Xiangdong Wei, *Piece-Rate Payment Schemes and the Employment of Women: The Case of Hong Kong* 8 (Ctr. for Pub. Pol’y Stud., Working Paper No. 37, 1996).

While admitting that a piece-rate compensation system can be “fair,” plaintiff-appellant’s *amici* hypothesize that employers will systematically deprive workers of its benefits by adding extraneous tasks to the compensated “piece” after the work has already begun. *See* Br. of Legal Aid at Work *et al.* (“Amicus Br.”) 7.

That did not occur in this case, and those amici offer no basis for believing that such actions are widespread.<sup>11</sup> That is not surprising given that any such actions by an employer would undercut the benefits that the employer would otherwise gain from a piece-rate compensation system, such as increased retention of productive workers. To be sure, workers do not have the same bargaining power as employers, *see* Amicus Br. 8, but workers paid by the piece can find new jobs if their pay and working conditions are not as promised—just like workers who are paid an hourly wage.<sup>12</sup>

E. In short, piece-rate compensation is a critical tool for employers and therefore a critical part of the economy. Under the right conditions, paying

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<sup>11</sup> Those *amici*'s brief cites very few sources on this point. The primary source on which it relies—consisting of a survey of certain agricultural workers—makes clear that many workers prefer piece-rate work and sets forth a number of advantages associated with such work. *See* Gregory Encina Billikopf, *Crew Workers Split Between Hourly and Piece-Rate Pay*, Cal. Agric. (Nov.-Dec. 1996) (cited in Amicus Br. 7, 11-12), available at <https://perma.cc/2DKU-4Y69>. *Amici*'s brief elides part of the name of the author of that article, but that author (*see* <https://nature.berkeley.edu/ucce50/ag-labor/7bielikov.htm>) has stated, in a later summary of his research, that well-designed piece-rate pay for agricultural workers has meaningful benefits on both sides of the employment relationship. *See* *Designing an Effective Piece Rate*, *supra*.

<sup>12</sup> For instance, the transportation industry is facing a shortage of drivers. *See, e.g.*, Cristina Commendatore, *Driver Issues Top ATRI's List for 2020*, FleetOwner (Oct. 28, 2020), available at <https://www.fleetowner.com/fleet-management/article/21146110/driver-issues-top-atris-list-for-2020>; Thomas Black, *U.S. Truck Driver Shortage Is On Course to Double in a Decade*, Bloomberg (July 24, 2019), available at <https://www.bloomberg.com/news/articles/2019-07-24/u-s-truck-driver-shortage-is-on-course-to-double-in-a-decade>.

workers by the piece is, as economists have often observed, the optimal compensation scheme—one with “the potential to greatly benefit both employer and employee in the long run.” *Designing an Effective Piece Rate, supra; see also, e.g., Lazear, supra, at 1359-60; Edward P. Lazear & Kathryn L. Shaw, Personnel Economics: The Economist’s View of Human Resources, 21 J. of Econ. Perspectives 91, 97-100 (Fall 2007); Harry J. Paarsch & Bruce Shearer, Piece Rates, Fixed Wages and Incentive Effects: Statistical Evidence from Payroll Records, 41 Int’l Econ. Rev. 59, 59-63, 86 (2000); Seiler, supra, at 375.*

## **II. Plaintiff’s Interpretation Would Harm Employers And Employees By Discouraging Employers From Using Piece-Rate Compensation**

The district court’s interpretation of Section 226.2, under which the employer may define the compensated “piece,” preserves the benefits of an efficient piece-rate compensation system for employers and workers. The district court explained that “employees and employers” should have “room to reach an agreement defining the scope of a piece-rate system.” ER-14. Employers and employees have natural incentives to agree on a piece scope that is efficient for the business and generates increased productivity, while still ensuring that workers are satisfied with their employment. Employers also have strong incentives to choose a discrete set of work with an objectively measurable output, so that they can be certain about productivity and labor costs.

In contrast, the interpretation of Section 226.2 proposed by plaintiff-appellant and his *amici* threatens to discourage the use of efficient piece-rate compensation, thereby depriving employers and employees of its substantial benefits. U.S. Xpress uses the “approximate delivery distance” based on the number of miles in a mileage guide as a way of determining compensation for a well-defined piece: a driver’s total trip to deliver a load of cargo, including the various tasks involved in making that delivery. ER-29; *see* ER-7 n.4 (piece includes pre-trip and post-trip inspections, fueling, and wait time); *see also* ER-12. U.S. Xpress does not purport to pay drivers by the mile; it uses the length of the trip in the mileage guide only as a metric in its compensation formula, and drivers’ pay—which they know in advance of completing any particular trip—does not vary based on the number of miles they actually drive. *See* ER-12, ER-15 n.8. If that is impermissible under California law, as plaintiff-appellant argues, then all employers would be constrained by the specific mathematical formulas used to create their piece-rate policies and therefore would be required to separately compensate employees for any activity without a *direct* correspondence to a compensation formula.

Such a constraint on employers’ contractual freedom to craft their compensation policies would likely eliminate piece-rate compensation as a viable option for many employers in California. If the same defined piece, such as

delivery of a load of cargo, can take a different amount of effort depending on the circumstances, then an employer must come up with some formula to determine how the piece should be compensated. Plaintiff-appellant’s statutory interpretation treats any unit used in the formula as the relevant piece—here, for instance, it converts the miles used in U.S. Xpress’s formula into individual pieces, and treats all tasks other than driving those miles as uncompensated time. *See* Plaintiff-Appellant’s Br. 18-28. Under that approach, it would become difficult or impossible to identify a fair proxy, other than time spent, for ascertaining the amount of effort involved in carrying out a task like delivery of cargo (or laying of carpet, or repair of broken machinery). Moreover, any piece-rate pay system would carry substantial litigation risk. No matter how clearly an employer defines the compensated piece, and no matter how clearly workers have agreed with that definition, the employer would be exposed to burdensome litigation and, potentially, significant liability based on the contention that all along the true “piece” was something other than what everyone understood it to be. Such litigation exposure drains resources away from business operations and makes it far more difficult for business to succeed, especially in difficult economic conditions. *See generally* Ralph K. Winter, *Paying Lawyers, Empowering Prosecutors, and Protecting Managers: Raising the Cost of Capital in America*, 42 Duke L.J. 945, 948 (1993) (“Unnecessary civil . . . liability diminishes the

return to, and increases the cost of, capital.”), *cited in Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 189 (1994). Under those circumstances, many employers would abandon piece-rate compensation for their California employees.

The problem is particularly acute given that employers in various other States are free to contract with their employees regarding the definition of, and compensation formula for, the pertinent “piece.” Multi-state employers may be particularly reluctant to implement different piece definitions, and therefore different compensation plans, for similar workers depending on the geographic locus of the work. Adopting plaintiff-appellant’s approach could thus encourage employers who value piece-based compensation to cease operating in California altogether. *Cf. AHMC Healthcare, Inc. v. Superior Court*, 24 Cal. App. 5th 1014, 1023 n.9 (2018) (“To construe the requirements of California’s wage laws in a manner inconsistent with federal law, ‘would preclude California employers from adopting and maintaining . . . practices that are available to employers throughout the rest of the United States.’”) (citation omitted); *see Ward v. United Airlines, Inc.*, 9 Cal. 5th 732, 760 (2020) (setting forth principles governing when Section 226 applies to workers who perform work in California).

Plaintiff-appellant’s interpretation also could spur affected businesses to replace existing piece-rate pay systems with “hybrid” compensation schemes under

which a worker is paid by a combination of methods, such as by the hour *and* by the piece. *See Designing an Effective Piece Rate, supra*; Matthes, *supra*, at 87-88. That, too, could reduce the benefits of piece-rate compensation for both employers and their workers. In a hybrid system, “the fastest and most efficient workers are paid less per employee effort,” Matthes, *supra*, at 88; indeed, workers tend to be rewarded “in an inverse order to their performance level,” *Designing an Effective Piece Rate, supra*. For businesses that had previously preferred a purely piece-rate compensation system, a hybrid system offers weaker incentives for productivity and less opportunity for motivated workers to earn wages commensurate with their effort.

### CONCLUSION

The judgment of the District Court should be affirmed.

DATED: February 3, 2021

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