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May 7, 2021

Presiding Justice Lui, and Justices Ashmann-Gerst and Hoffstadt  
California Court of Appeal, Second District, Division 2  
300 S. Spring Street, Los Angeles, CA 90013

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Re: Request for Publication of B300778  
*Salazar v. See's Candy Shops* (April 26, 2021, Div. 2)

Honorable Justices,

The Association of Southern California Defense Counsel respectfully requests that this Court certify for publication its April 26, 22-page opinion in *Salazar v. See's Candy Shops, Inc.*

**Statement of Interest.** The Association is a preeminent regional organization of over a thousand California lawyers, specializing in defending civil actions. The Association is dedicated to promoting the administration of justice, educating the public about the legal system, and enhancing the standards of civil litigation practice. The Association is also actively engaged in assisting courts by appearing as amicus curiae, or filing publication requests, in cases involving issues of significance to its members. The Association has no connection to any of the parties and independently evaluated and voted to seek publication without influence by the lawyers or law firms involved.

**Summary of the case.** In *Salazar* the plaintiff-employee sought to certify a class of employees to pursue alleged meal-break violations against employer-See's. The trial court denied class certification for two reasons: lack of commonality (i.e., individual issues would predominate) and lack of managability (i.e., Plaintiff failed to provide a trial plan offering a viable method for adjudicating classwide liability). This Court affirmed the denial of class certification on those grounds.

**Reasons for publication.** Class action lawsuits alleging Labor Code violations are extremely common. But published opinions exploring the specific reasons why class certification was denied in this case are rare. The scenario in *Salazar*, in terms of how See's operated, is common or readily analogous to many other employers. This Court's substantial evidence analysis, particularly what reasonable inferences could properly be drawn from the statistical and anecdotal evidence presented, would be useful precedent in a variety of contexts beyond meal-break claims.



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Of particular note, this is one of the first cases to analyze the Supreme Court’s recent *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

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Furthermore, this Court’s managability discussion will help guide counsel, both plaintiff and defense, about what is needed for a viable trial plan, as opposed to merely a “vague promise” that a plan could be derived (Opn. at p. 20).

*Salazar* had been watched in the legal press before this Court’s opinion (e.g., [Judge Sour on Class Bid in See’s Candies Break Suit](#) (Law360, July 15, 2019)) and coverage has only intensified (e.g., [See’s Candies Gets Calif. Appeals Win in Meal Breaks Suit](#) (Law360, April 27, 2021); [Class Certification Still Defeated Although Common Evidence of Non-Compliance](#) (JDSupra, May 3, 2021)).

In sum, this Court’s opinion satisfies the criteria for publication by applying existing rules to a new set of facts, capable of repetition in similar and analogous situations. The opinion addresses legal issues of public interest and would make a significant contribution to the legal literature. *Salazar* would be valuable as citable precedent and so the Association urges its publication.

Respectfully submitted,  
Manatt, Phelps & Phillips, LLP  
*s/ Benjamin G. Shatz*

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cc: Proof of Service via TrueFiling