SUPREME COURT OF NEW JERSEY
DOCKET NO.: 089632

SERGIO LOPEZ, Plaintiff-Petitioner, vs. MARMIC L.L.C., and MIKE RUANE, individually, Defendants-Respondents.	On Appeal From Judgment of: SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO: A-002391-22 Sat Below: Hon. Lisa A. Firko, J.A.D. Hon. Christine M. Vanek, J.A.D.

BRIEF OF *AMICUS CURIAE* NEW JERSEY ASSOCIATION FOR JUSTICE IN SUPPORT OF PLAINTIFF-PETITIONER

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PRELIMINARY STATEMENT

Amicus Curiae, the New Jersey Association for Justice ("NJAJ"), through its undersigned counsel, hereby submits this brief in support of the Petitioner/Plaintiff on the two questions certified by this Court for review of the Appellate Division's *per curiam* Opinion and Order below, as follows:

1. Is an individual's immigration status relevant to whether an employer owes wages under the New Jersey Wage and Hour Law ("WHL") and the New Jersey Wage and Payment Law ("WPL"); and
2. Is a barter arrangement legally distinct from an employer-employee relationship under New Jersey law?

While these precise questions present issues of first impression for the Court, NJAJ respectfully submits that the Appellate Division's *per curiam* Opinion and Order are inconsistent with (1) the Legislature's broad definition of "employee" in the WHL and WPL which this Court's precedent liberally interprets as remedial to encompass the broadest swath of workers in New Jersey; and (2) the conversely narrow exceptions to otherwise unwaivable statutory rights prohibiting bartering or other private agreement in *lieu* of compensable hourly wages.

The Appellate Division's *per curiam* Opinion and Order threaten to undermine these most fundamental of workers' rights protected under New

Jersey law – to be paid at least the statutory minimum wages required for their labor when such wages are due and owing. The Appellate Division's Opinion excludes workers who perform compensable, hourly work from the statutory protections of the WHL and WPL if such workers are immigrants or otherwise unable to provide accurate social security numbers.

Such an exclusion is unsupported by the definitions and other statutory language of the WHL and WPL and also runs counter to the principles in both analogous New Jersey appellate precedent and federal precedent analyzing similar issues under federal law. Not only does this exclusion directly stamp out statutory protection for this particularly vulnerable class of workers, but it also undermines the collective protection of minimum wages for all New Jersey workers by allowing employers who choose to continue using undocumented workers for their labor needs, knowing that such workers will have no ability to access the deterrent remedies under the statutes.

NJAJ urges the Court to reverse the Orders below and uphold the remedial application of the WHL and WPL regardless of a worker's immigrant status, as well as uphold the narrow application of exceptions carved out for bartering and private agreements in *lieu* of otherwise required hourly wages.

LEGAL ARGUMENT

I. STANDARD OF REVIEW

The threshold issues on certification are questions of law and, NJAJ submits, ones of statutory interpretation: Is a worker's immigration status relevant to whether an employer owes wages under the WHL and WPL, and is a barter arrangement legally distinct from an employer-employee relationship under New Jersey law? The Court's review of the Appellate Division's legal conclusions is *de novo*, with no deference given to either the Appellate Division's interpretation or that of the Trial Court. *See D'Agostino v. Maldonado*, 216 N.J. 168, 182, 78 A.3d 527 (2013) (citing *Manalapan Realty, L.P. v. Twp. Comm. of Manalapan*, 140 N.J. 366, 378, 658 A.2d 1230 (1995)).

In appellate review of questions requiring statutory interpretation, the *D'Agostino* court explained:

> "Our task in statutory interpretation is to determine and effectuate the Legislature's intent." We review the Legislature's language in light of "related provisions so as to give sense to the legislation as a whole." We read the Legislature's words "in accordance with their ordinary meaning, unless the Legislature has used technical terms, or terms of art, which are construed 'in accordance with those meanings.'"

D'Agostino, 216 N.J. at 182 (internal citations omitted).

The Trial Court's factual determinations are entitled to deference on appeal and may not be disturbed by the reviewing court unless "they are so

manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice[,]'" *Id.* (quoting *Seidman v. Clifton Sav. Bank, S.L.A.*, 205 N.J. 150, 169, 14 A.3d 36 (2011)). However, the Trial Court's factual determinations here are immaterial if the Court, as urged herein, finds that immigration status is irrelevant to determining liability under the statutes.

Without considering such status, Petitioner's claims revert, as they should, to a determination of whether Petitioner was paid at least the minimum statutory hourly wages requires for his labor, and whether the barter arrangement described by the Trial Court is one permitted within the narrow exceptions to such hourly wage requirements under the statutes and applicable regulations.

II. THE APPELLATE DIVISION'S OPINION ERRONEOUSLY EXCLUDES WORKERS FROM THE BROAD STATUTORY PROTECTIONS OF THE WHL AND WPL BASED ON IMMIGRATION STATUS.

A. Remedial Legislative Intent, Broad Definitions and Liberal Interpretation of the WHL and WPL

The WHL and WPL, like the Fair Labor Standards Act, address "the most fundamental terms of the employment relationship." *Hargrove v. Sleepy's, LLC*, 220 N.J. 289, 313 (2015). New Jersey passed the WHL "to establish a minimum wage level for workers in order to safeguard their health, efficiency, and general well-being and to protect them as well as their

employers from the effects of serious and unfair competition resulting from wage levels detrimental to their health, efficiency and well-being." N.J.S.A. 34:11-56a. The implementing regulations and appellate precedent require New Jersey employers to pay employees covered by the statute "for all hours worked" to effectuate the statute's purpose: To "protect employees from unfair wages and excessive hours." *In re Raymour & Flanigan Furniture*, 405 N.J. Super. 367, 376 (App. Div. 2009) (quoting N.J.A.C. 12:56-5.1; *Keeley v. Loomis Fargo & Co.*, 183 F.3d 257, 259 (3d Cir. 1999), *cert. denied*, 528 U.S. 1138 (2000)).

"Although the [WPL] does not include a legislative statement of intent, its enactment leads to the conclusion that the statute was designed to protect employees' wages and to guarantee receipt of the fruits of their labor. Generally, unless expressly provided by the [WPL], employers may not divert or withhold any portion of an employee's wages." *Rosen v. Smith Barney, Inc.,* 393 N.J. Super. 578, 585 (App. Div. 2007). New Jersey's wage laws, including the WHL and WPL, are socially remedial legislation that "have been liberally construed in order to fulfill their 'humanitarian and remedial' purposes." *Kas Oriental Rugs, Inc.*, 407 N.J. Super. 538, 429 (App. Div. 2009) (citing *Yellow Cab Co. v. State*, 126 N.J. Super. 81, 86 (App. Div 1973)).

The WHL and WPL both define "Employee" and "Employer" broadly in the

statutory text, as follows:

TERM	WHL	WPL
"Employ(ee)"	"to suffer or to permit to work" ("Employ") "any individual employed by an employer" ("Employee")	"any person suffered or permitted to work by an employer, except that independent contractors and subcontractors shall not be considered employees."
"Employer"	"any individual, partnership, association, corporation, and the State and any county, municipality, or school district in the State, or any agency, authority, department, bureau, or instrumentality thereof, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee.	"any individual, partnership, association, joint stock company, trust, corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, employing any person in this State."

N.J.S.A. 34:11-56a1(f)-(h) (WHL definitions); N.J.S.A. 34:11-4.1(a)-(b) (WPL definitions).

New Jersey precedent requires liberal interpretation of the WHL's *protections* because of the "Legislature's remedial purpose" in enacting the law, while the *exemptions* under the NJWHL must be "construed narrowly." *Marx v. Friendly Ice Cream Corp.*, 380 N.J. Super. 302, 310 (App. Div. 2005). This liberal protection and remedial treatment of employees' wage rights is justified by New Jersey's specific purpose in enacting the law, as authorized by and synonymous with the FLSA, to provide broad protection of employees' wage

rights. *See id.*; *see also Lawrence v. City of Philadelphia, Pa.*, 527 F.3d 299, 310 (3d Cir. 2008) ("FLSA exemption should be construed narrowly, that is, against the employer" who "must prove that the employee and/or employer come '*plainly and unmistakably*' within the exemption's terms") (citing *Arnold v. Ben Kanowsky, Inc.*, 361 U.S. 388, 392 (1960)).

As explained by the United States Supreme Court in *Barrentine v. Arkansas-Best Freight Sys.*, an employer and employee cannot privately bargain or contract away statutory entitlement to minimum wages or required overtime, because such private arrangements would "nullify" the legislature's express purpose in establishing minimum wage laws:

> This Court's decisions interpreting the FLSA have frequently emphasized the nonwaivable nature of an individual employee's right to a minimum wage and to overtime pay under the Act. Thus, we have held that FLSA rights cannot be abridged by contract or otherwise waived because this would "nullify the purposes" of the statute and thwart the legislative policies it was designed to effectuate.

450 U.S. 728, 740 (1981).

The WPL requires employers to pay all wages earned, due and owing to employees on regular paydays designated in advance, and without any deductions outside of those specifically authorized by the statute. N.J.S.A. 34:11-4.2. Both the WHL and WPL create a private right of action for aggrieved employees which provide not only "the full amount of any wages due" but also

liquidated damages equal to up to "200 percent of the wages lost or ... due," and further provide for reasonable attorney's fees and costs. N.J.S.A. 34:11-56a25 (WHL); N.J.S.A. 34:11-4.10(c) (WPL).

Reaffirming and strengthening the remedial nature of these laws, the New Jersey Legislature passed the Wage Theft Act in 2019 to "assist[] workers aggrieved by certain violations of laws regarding the payment of wages by strengthening enforcement procedures, remedies and a variety of criminal, civil and administrative sanctions against the violators." *Sponsor's Statement to S. 1790*, 17 (L. 2019, c. 212). In expanding the statute of limitations for claims under the WPL to six (6) years, matching the length permitted for claims under the WHL, the Legislature further expressed the protective intent of New Jersey's wage laws as follows:

> The bill further enhances enforcement procedures and remedies by extending certain remedies currently available to workers who are victims of violations of the State's minimum wage law to workers who are victims of violations of the State's wage payment laws. Specifically, the bill extends the remedies provided to employees by the minimum wage law in cases of employer retaliation to cover employer retaliation under the wage payment law, and provides the same opportunity for workers aggrieved by violations of the wage payment law to bring a civil action as workers are provided for violations of the minimum wage law.

Id. at 18-19.

B. The Appellate Division's Opinion Establishes a Judicially Created Exception for Immigrant Workers in the Definition of "Employee" Not Found In the Statutes or Regulations.

While the Appellate Division's Opinion concluded that the "employee" versus "independent contractor" analysis is inapplicable here, the Opinion ignores the plain text of the statutory definitions of the WHL and WPL. Both statutes expansively define "employee" as an individual whom an employer "suffers or permits to work." N.J.S.A. 34:11-56a1(f)-(h) (WHL definitions); N.J.S.A. 34:11-4.1(a)-(b) (WPL definitions).

The sole limitation on this broad definition provided under either statute is the express exception in the WPL "that independent contractors and subcontractors shall not be considered employees." N.J.S.A. 34:11-4.1(b). To the extent the independent contractor exception is inapplicable to a determination of whether Petitioner, or any other worker, is an "employee" under the wage laws, nothing in the statutory definitions provides for any other exception to the inclusion of such workers within the definition of "employees" to whom the employers owe all applicable wage rights thereunder.

In addition, the implementing regulations for the WHL provide no exclusion of workers based on immigration status, and instead, exclude only "volunteers," "patients" and those "trainees" whose training program meets several criteria under the regulation. N.J.A.C. 12:56-1.1(c), 12:56-2.1.

The Appellate Division's Opinion would carve out a judicially created exception to the protections of the WHL and WPL to those who "suffer" or are "permit[ted] to work" by employers in New Jersey where the Legislature provided none. In doing so, this new judicial carve-out would leave workers whom employers continue to use to fill its labor needs without the protections of the statutes, would undermine the deterrent nature of the liquidated damages remedies in the statutes and would leave such workers without the readily available access to competent legal counsel who are able to take on such matters because of the fee-shifting remedies for prevailing plaintiffs.

III. A "BARTER ARRANGEMENT" CANNOT REPLACE AN EMPLOYEE'S WAGE RIGHTS OTHER THAN AS EXPRESSLY PERMITTED UNDER THE WHL AND ITS REGULATIONS

An employer and employee cannot privately bargain or contract away statutory entitlement to minimum wages or required overtime, because such private arrangements would "nullify" the legislature's express purpose in establishing minimum wage laws. *Barrentine*, 450 U.S. at 740 (FLSA rights may not be waived by agreement to allow employer to subvert the minimum wage laws); *Brooklyn Sav. Bank v. O'Neil*, 324 U.S. 697, 707 (1945) ("No one can doubt but that to allow waiver of statutory wages by agreement would nullify the purposes of the Act. We are of the opinion that the same policy considerations which forbid waiver of basic minimum and overtime wages

under the Act also prohibit waiver of the employee's right to liquidated damages.").

As the United States Supreme Court recognized in *Brooklyn Sav. Bank* over eighty (80) years ago regarding the unwaivable nature of FLSA rights to minimum wages:

> The legislative history of the Fair Labor Standards Act shows an intent on the part of Congress to protect certain groups of the population from sub-standard wages and excessive hours which endangered the national health and well-being and the free flow of goods in interstate commerce. The statute was a recognition of the fact that due to the unequal bargaining power as between employer and employee, certain segments of the population required federal compulsory legislation to prevent private contracts on their part which endangered national health and efficiency and as a result the free movement of goods in interstate commerce. To accomplish this purpose standards of minimum wages and maximum hours were provided.

324 U.S. at 706-707.

New Jersey passed the WHL "to establish a minimum wage level for workers in order to safeguard their health, efficiency, and general well-being and to protect them as well as their employers from the effects of serious and unfair competition resulting from wage levels detrimental to their health, efficiency and well-being." N.J.S.A. 34:11-56a. The WHL requires that employers pay employees "for all hours worked" pursuant to these statutory requirements. N.J.A.C. 12:56-5.1; *Rosen*, 393 N.J. Super. at 585 ("Generally,

unless expressly provided by the [WPL], employers may not divert or withhold any portion of an employee's wages.").

The WHL and its implementing regulations, however, do provide an expressly circumscribed form of "barter" without supplanting the statutory right to minimum wages. The WHL defines "wages" as "any moneys due an employee from an employer for services rendered or made available by the employee to the employer as a result of their employment relationship including commissions, bonus and piecework compensation and **including the fair value of any food or lodgings supplied by an employer to an employee** . . . ." N.J.S.A. 34:11-56a1(d) (emphasis added).

The implementing regulations further prescribe how such meal and lodging credits may be applied to make up some of the minimum wages due from an employer to an employee under the WHL, as follows:

- "Meals and lodging shall be considered applicable toward the minimum wage unless the employee elects not to receive such meals and lodging." N.J.A.C. 12:56-14.8.
- "'Fair value' means not more than the actual cost to the employer of the food or lodging supplied by an employer and does not include a profit to the employer nor to any affiliated business or person." N.J.A.C. 12:56-8.1.

Accordingly, the type of "barter arrangement" described by the Trial Court and Appellate Division in this matter is already something contemplated by the WHL and its regulations. But not as a legally distinct concept from that of statutory minimum wages due to an hourly employee under the WHL, and rather, only within the express types of credits available to constitute part of wages under the statute. Outside the bounds of those permissible credits, any "barter arrangement" would run afoul of the express intent of the WHL, to establish wage minimum standards for worker in New Jersey.

Here, neither the Appellate Division nor the Trial Court appeared to test the factual findings regarding the evidence of Petitioner's free rent and utilities as "lodging" making up part of Petitioner's wages from June 2015 to December 2018. While the Appellate Division cites the letter from Respondent Ruane stating that Petitioner was given an apartment "valued at $900" and which letter calculated the value of utilities as totaling $250 per month, the Opinion does not appear to make findings regarding the "fair value" (as opposed to arguably fair "market" value) of such lodging to ensure that Respondent was not making a "profit" on such amounts, but rather, was only counting the actual cost to Respondent for providing such lodging as a credit toward any wages due.

To the extent that any "barter arrangement" should be considered in a WHL claim, NJAJ respectfully urges the Court with this second certified question, again,

to adhere to the text of the WHL and its regulations, which already provide express language governing the very type of barter arrangement that appears to have been in evidence in this matter. Beyond the limits placed around such lodging or other allowable wage credits under the WHL, NJAJ respectfully urges the Court to reject the incursion of any employer's attempt to substitute a private barter in *lieu* of statutory minimum wages for employees in New Jersey.

CONCLUSION

We thank the Court for permitting NJAJ to appear in this matter and we respectfully ask the Court to consider the points discussed above when rendering its decision.

Dated: April 22, 2025

Respectfully submitted,

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