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**United States District Court**  
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LISA GARVEY, individually and on  
behalf of others similarly situated,

No. C 11-02575 WHA

Plaintiff,

v.

**ORDER REQUESTING  
AMICUS BRIEFS FROM  
CALIFORNIA AGENCIES**

KMART CORPORATION,

Defendant.

In connection with a bench trial now underway, the California Labor Commissioner and the Secretary of the California Labor & Workforce Development Agency are invited to file amicus briefs explaining their views of the meaning of IWC Wage Order 7-2001 Section 14, which reads:

Seats

(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

1 Of particular interest to the Court are the following questions in the general context of a cashier  
2 (checkout service employee) working at a discount retail-store checkout counter:

- 3 (1) Does the word “seats” include lean stools, benches, stools,  
4 lumbar bars, or furniture without backs?
- 5 (2) If the physical nature of the work requires standing for some  
6 tasks and permits (but does not require) sitting for other tasks, and  
7 both types of tasks are intermixed, such that a degree of repetitive  
8 rising from and returning to a seat would be involved, does “the  
9 nature of the work reasonably permit the use of seats”?
- 10 (3) If the physical nature of the work could reasonably be done  
11 while seated but the employer has a policy of requiring cashiers to  
12 remain standing so as to show respect to customers and to leave a  
13 favorable impression to the public, then does the “nature of the  
14 work” reasonably permit seating?
- 15 (4) To what extent should judges and administrators accord  
16 deference to business judgments of employers that the nature of  
17 the work does or does not reasonably permit the use of seats?
- 18 (5) When the nature of the work reasonably could be done while  
19 seated in a modified stall, but the actual, existing stall  
20 configuration cannot accommodate a seat, does the wage order  
21 require an employer to reconfigure to a different configuration,  
22 including as needed a larger footprint for the stall?

23 If amici believe they will be unable to submit a brief within 21 calendar days, please advise the  
24 Court when the brief would be submitted and, within reason, the Court will wait, keeping in  
25 mind that the sooner the better, given the need of the judge to remember the details of the  
26 evidence. A prompt answer to this timing question will be appreciated. The Court does not  
27 anticipate any need for amici to review the trial evidence or to indicate any ruling on the merits  
28 of the pending trial but rather the Court believes the questions above can be answered by amici  
as matters of law explaining the scope of their wage order. Any submissions by the parties to  
amici on these questions would have to be submitted to amici (and the Court) within seven  
calendar days from the date hereof.

The Clerk shall immediately serve a copy of this order on the respondents invitee amici.

**IT IS SO ORDERED.**

Dated: November 16, 2012.

  
WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE