

No. 18-35791

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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**KATHERINE MOUSSOURIS, et al.,**  
*Plaintiffs-Appellants,*

v.

**MICROSOFT CORPORATION,**  
*Defendant-Appellee.*

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APPEAL FROM THE U.S. DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
JAMES L. ROBERT, DISTRICT JUDGE • CASE No. 2:15-CV-01483-JLR

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**AMICI CURIAE BRIEF OF IMPACT FUND, EQUAL RIGHTS ADVOCATES,  
AND 33 OTHER ORGANIZATIONS IN SUPPORT OF  
PLAINTIFFS-APPELLANTS' APPEAL OF CLASS CERTIFICATION ORDER**

**Filed with Consent of All Parties**

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**ADDITIONAL AMICI**

- A Better Balance
- Alianza Nacional de Campesinas
- American Civil Liberties Union
- American Association of University Women
- Anti-Defamation League
- Asian Americans Advancing Justice – Asian Law Caucus
- Asian American Legal Defense and Education Fund
- California Women Lawyers
- California Women’s Law Center
- Disability Rights Education & Defense Fund
- Equal Justice Society
- Equal Pay Today
- Gender Justice
- International Action Network for Gender Equity & Law
- Latino Justice PRLDEF
- Legal Aid at Work
- Legal Momentum
- Legal Voice
- Muslim Advocates
- National Asian Pacific American Women’s Forum
- National Center for Law and Economic Justice
- National Center for Lesbian Rights
- National Council of Jewish Women
- National Employment Law Project
- National Women’s Law Center
- Public Advocates, Inc.
- Public Counsel
- Queen’s Bench Bar Association of the San Francisco Bay Area
- Southwest Women’s Law Center
- Washington Lawyers’ Committee for Civil Rights and Urban Affairs
- Women Employed
- Women’s Law Project
- 9to5

## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Rules 26.1 and 29(a)(4)(A) of the Federal Rules of Appellate Procedure, the following Amici represent that they each have no parent corporations and they each have no publicly held companies that hold 10% or more of its stock:

- A Better Balance
- Alianza Nacional de Campesinas
- American Civil Liberties Union
- American Association of University Women
- Anti-Defamation League
- Asian Americans Advancing Justice – Asian Law Caucus
- Asian American Legal Defense and Education Fund
- California Women Lawyers
- California Women’s Law Center
- Disability Rights Education & Defense Fund
- Equal Justice Society
- Equal Pay Today
- Gender Justice
- International Action Network for Gender Equity & Law
- Latino Justice PRLDEF
- Legal Aid at Work
- Legal Momentum
- Legal Voice
- Muslim Advocates
- National Asian Pacific American Women’s Forum
- National Center for Law and Economic Justice
- National Center for Lesbian Rights
- National Council of Jewish Women
- National Employment Law Project
- National Women’s Law Center
- Public Advocates, Inc.
- Public Counsel
- Queen’s Bench Bar Association of the San Francisco Bay Area

- Southwest Women’s Law Center
- Washington Lawyers’ Committee for Civil Rights and Urban Affairs
- Women Employed
- Women’s Law Project
- 9to5

February 6, 2019

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**Impact Fund, Equal Rights Advocates,  
and 33 Additional Organizations**

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## **INTEREST OF AMICI<sup>1</sup>**

Amici organizations, described in the Appendix, are each committed to ensuring civil rights and workplace equality.

## **SUMMARY OF ARGUMENT**

Appellants have ably explained why this Court should reverse and remand the district court's order denying class certification. Amici write separately to highlight one specific legal error in the order that warrants this Court's scrutiny.

By applying a mechanical, mathematical standard to evaluate the anecdotal evidence, the district court erroneously ignored substantial evidence illustrating the kind of biased decision-making challenged in the suit. In conjunction with statistical and other evidence explaining the challenged pay and promotion policies, appellants submitted eleven declarations from female employees and evidence of hundreds of internal complaints of gender bias. As the Supreme Court has explained, anecdotal evidence like this can persuasively bring "the cold numbers

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<sup>1</sup> No party's counsel authored this brief in whole or in part. No counsel or party contributed money to fund its preparation or submission. No person other than *amici* and their counsel contributed money for its preparation or submission. All parties have consented to the filing of this brief.

convincingly to life” in a Title VII action. *Int’l Bhd. of Teamsters v. United States*, 431 U.S. 324, 339 (1977) (“*Teamsters*”). These narratives illustrate how the policies work.

The district court ignored the purpose for which the anecdotal evidence was offered and instead treated it as a species of statistical evidence, *counting* the declarations rather than analyzing whether they corroborated the existence of common questions in light of the totality of the evidence. It faulted appellants for failing to submit a sufficient number of declarations, proportionate to the size of the class, corresponding to specific job categories, and representative of every state in which Microsoft operated. The lower court erected an arbitrary numerical threshold for anecdotal evidence in Title VII class actions that is not supported by Rule 23(a) or case law, including the Supreme Court’s decision in *Wal-Mart Stores v. Dukes*, 564 U.S. 338, 358 n.9 (2011).

The district court’s artificial legal standard for anecdotal evidence is particularly pernicious in the context of systemic gender discrimination litigation like this case. In a workplace where pay and promotions depend on the subjective goodwill of supervisors, female employees who have spent years carefully building their careers and

professional reputations will be wary of publicly supporting litigation against their employer. Women may also be reluctant to accuse their managers of sexism where the biased judgments that have inhibited their advancement are subtle or undocumented. This reticence will be particularly acute in industries like tech, where women have traditionally been underrepresented. Mandating a minimum number of litigation declarations with specific geographic and departmental distribution, while at the same time ignoring hundreds of formal complaints of gender bias, frustrates the vindication of anti-discrimination laws and permits barriers to women's advancement to remain firmly in place. While this case focuses on gender discrimination, the erroneous treatment of anecdotal evidence will also adversely affect all people seeking certification of classes challenging other systemic discrimination including race, national origin, disability, and other protected groups.

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## ARGUMENT

### **I. The District Court Should Have Evaluated Appellants' Anecdotal Evidence to Determine Whether It Brought the "Cold Numbers" of Microsoft's Discriminatory Practices to Life.**

In support of class certification, appellants offered eleven declarations to bolster statistical and other evidence about the challenged policies. In its decision, the district court entirely discounted this anecdotal evidence in its analysis of commonality under Rule 23(a)(2). It did not analyze whether the substance of the declarations corroborated other evidence proffered about the challenged pay and promotion policies. Instead, the court merely counted the declarations and calculated the ratio of declarations to putative class members ("1 for every 959 class members"), which it compared to what it believed to be the acceptable *Teamsters* ratio ("1 for every 8 class members"). Order of Jul. 6, 2018 (ECF No. 508) ("Order") at 56-58.<sup>2</sup> The court also found that the declarations did not represent every state, Stock Level, and job within the class. While acknowledging that the anecdotes provided "examples of serious misconduct," the district court ruled that they are "simply not

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<sup>2</sup> When the named plaintiffs' declarations were included, the ratio was "1 for every 785 class members." Order at 57 n.22.

enough to demonstrate that Microsoft operated under a general policy of discrimination towards over 8,600 female employees across 41 states holding thousands of unique positions.” *Id.* at 57-58. This analysis is legally flawed.

Nothing in the language of Rule 23(a)(2) supports the district court’s imposition of a numerical floor or a representativeness requirement for anecdotal declarations in civil rights class actions. The Supreme Court has cautioned that district courts are not free to impose requirements for class certification for particular categories of cases beyond the express requirements of Rule 23 as the district court did here. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 399 (2010) (“Rule 23 provides a one-size-fits-all formula for deciding the class-action question.”).

The district court’s analysis is also plainly at odds with Supreme Court precedent. In the seminal *Teamsters v. United States*, the U.S. Supreme Court first articulated the standard for proving systemic pattern-or-practice claims of discrimination under Title VII. The Court held that discriminatory intent may be inferred from a showing that discrimination is “the [employer’s] standard operating procedure—the

regular rather than the unusual practice.” *Teamsters*, 431 U.S. at 336. Importantly, the Court concluded that that showing may be made based upon statistics alone. *Id.* at 339-40.

The Court then explained that anecdotal accounts from workers about their personal experiences could “bolster[]” those statistics and bring “the cold numbers convincingly to life.” *Id.* at 338-39. While the Court noted that the plaintiff had offered “40 specific instances” of discrimination, there was no discussion of the number of witnesses who testified to these instances (i.e., whether some witnesses testified to multiple instances or 40 to just one instance each) or how the number of “instances” compared to the total number of affected minority workers. *Id.* In other words, the Court did not treat anecdotal evidence as another form of statistical proof or establish any arithmetic benchmark. Indeed, because statistics alone could prove liability, the anecdotal proof was not necessary at all.

That point was further underscored by the Supreme Court in *Wal-Mart Stores v. Dukes*, which addressed the standards for certification of a Title VII class action. In evaluating whether the evidence supported commonality, the Court observed that, “A discrimination claimant is free

to supply as few anecdotes as he wishes.” *Wal-Mart*, 564 U.S. at 358 n.9. The Court dismissed the dissent’s suggestion that the opinion had created a rule that anecdotal accounts must be “proportionate to the size of the class” as “not quite accurate.” *Id.* Instead, the Court highlighted the unique nature of the *Wal-Mart* facts in which there were “literally millions of employment decisions” at issue that could not be explained by a “few anecdotes.” *Id.*

This language in *Wal-Mart* is a far cry from establishing a mandatory benchmark for anecdotal evidence. Indeed, if the *Wal-Mart* Court had intended to hold that the ratio of anecdotes to class members in *Teamsters* (1 to 8) was a required minimum benchmark both at the liability and class certification stages of a systemic discrimination case, the result would have been an arbitrary cap on the size of discrimination class cases and a free pass for large employers to engage in widespread discrimination. Indeed, using the *Teamsters* ratio, the plaintiffs in *Wal-Mart* would have had to collect 187,500 declarations, spread across 3,400 stores and 50 states. The Court plainly did not intend to set a numerical bar, which would eviscerate the efficiency of class litigation. The high

court's observations regarding the anecdotal declarations in *Wal-Mart* were explicitly tied to the unusual nature of that case. *Id.*

Consistent with this Supreme Court precedent, this Court has recognized that anecdotal declarations serve as qualitative illustrations of how challenged policies or practices are implemented, not a form of statistically representative proof. In *Parsons v. Ryan*, 289 F.R.D 513 (D. Ariz. 2013), *aff'd* 754 F.3d 657 (9th Cir. 2014), the district court certified a class of 33,000 inmates housed in Arizona's ten state prison complexes, who challenged seventeen practices related to medical, dental, and mental health care as well as isolation units and submitted *fourteen* anecdotal declarations in support. 289 F.R.D. at 515, 517, 525. This Court affirmed and rejected the state's argument that the commonality evidence only established "isolated" incidents. 754 F.3d at 684 n.28, 690. This Court observed that the declarations were submitted not as individual claims, but as "evidence of the defendants' unlawful policies and practices, and as examples of the serious harm to which all inmates in ADC custody are allegedly exposed." *Id.* at 672. Notably, neither court conducted a comparison of the number of declarations to class members,

nor was there any analysis of whether the accounts represented inmates from every facility or each challenged practice.

Courts in this Circuit and elsewhere have concluded that anecdotal evidence supports a finding of commonality in civil rights class actions after *Wal-Mart* without computing the ratio of declarations to class members. Instead, these courts analyzed the substance of the testimony to determine if it supported a commonality finding. *See, e.g., Menocal v. GEO Grp., Inc.*, 882 F.3d 905, 910-11 (10th Cir. 2018), *aff'g* 320 F.R.D. 258 (D. Colo. 2017) (eight anecdotal declarations supported class of 50,000 immigrant detainees certified to challenge work requirements); *Chen-Oster v. Goldman, Sachs & Co.*, 325 F.R.D 55, 62 (S.D.N.Y. 2018) (class of up to 2,300 women challenging discretionary pay and promotion systems certified); *Ellis v. Costco Wholesale Corp.*, 285 F.R.D. 492, 517-18 (N.D. Cal. 2012) (in challenge to discretionary promotion practices, court relied on employee declarations submitted by both parties in addition to expert and party admissions to find commonality satisfied).

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**II. The District Court Erred by Failing to Consider the Substance of Appellants' Declarations and Instead Applying an Arbitrary Formula.**

**A. The Declarations Supporting Class Certification Provide Ample Anecdotal Evidence of Systemic Discrimination by Microsoft.**

Had the district court analyzed the appellants' declarations, it would have recognized that they persuasively illustrate how Microsoft's policies facilitated gender bias, animating the "cold numbers." Eleven women who are current or former employees at three different Microsoft offices in Georgia, Massachusetts, and Washington declared that they had been subject to discriminatory practices in compensation and promotions, a workplace culture that was hostile to women. When they spoke up, the Human Resources department reacted with indifference or antagonism, and retaliated against some of the women. *See* Appellants' Excerpts of Record ("ER") at 235-66 (hereinafter cited as "ER235"). Their service with Microsoft ranged from a few to twenty-one years each, and they represented five different departments: Cloud & Enterprise, Engineering, I/T Operations, Office Products, Tech & Resource, and Windows & Devices. *See id.*

Their personal experiences bring Microsoft's discriminatory practices "convincingly to life," *Teamsters*, 431 U.S. at 339, and provide strong evidence to bolster the specific discriminatory practices that appellants allege—namely, biased pay, promotions, and evaluations policies, and a hostile work environment. Together with the statistical evidence presented, they show commonality among class members' claims.

Seven of the eleven women declared that Microsoft compensated them less than their male counterparts for similar work. Amy Alberts testified that after the team that she led merged with another team, she was selected for a leadership position over a male coworker, but even though they "held the same title and [she] was more qualified," she was assigned to a lower compensation pay level. ER265 ¶ 5. Despite a later promotion, Alberts "still received lower compensation than this man who did not get the management responsibility" that was given to her. *Id.* Other women reported similar experiences. *See* Appellants' Br. at 13-15 & nn. 6-7.

Also, eight women declared that Microsoft discriminatorily promoted men over them or other female employees. For example, Debra

Dove stated that Microsoft passed over her and other women for promotions that they likely deserved. ER258-59 ¶¶ 5, 7. A male coworker was promoted to become her manager, despite his never having performed that role and her experience as a manager on another product team. *Id.* ¶ 6. Katherine Moussouris similarly was passed over for promotions, even though she had been “responsible for groundbreaking efforts in the security industry” and her manager told her that the “scope and quality of [her] work” merited a promotion. ER253 ¶¶ 4-5. Promotion decisions favoring men were common practice at Microsoft, as Suzanne Sowinska attested: “When I become manager and participated in the promotion and compensation decision-making process, I noticed that women were disadvantaged compared to men with no greater qualifications.” ER244 ¶ 5.

Eight women also declared that Microsoft fostered a “good ol’ boys club” culture that rendered a “hostile and unsafe working environment” for female employees. Mary Smith testified that she felt “objectified and excluded” in a workplace that tolerated misogynist remarks and men-only social activities. ER247 ¶ 7. When a male coworker threatened to kill Smith, her manager was dismissive and the HR department failed to

follow up after she complained. ER247-48 ¶¶ 8-10. Similarly, Jenifer Underwood reported that she was “marginalized, excluded, denied resources, and treated differently” as a woman, including being denied opportunities to conduct trainings outside of work that were “common practice” for positions like hers, even though male coworkers were permitted to do them. ER241-42 ¶¶ 6-8. According to Sowinska, as a manager herself, female coworkers and other managers confided in her their experiences of being sexually harassed, undervalued, and denied promotions. ER244 ¶ 7.

Confronted with these discriminatory practices at work, the women almost unanimously testified that Microsoft’s Human Resources Department offered no recourse and sometimes responded to their complaints with hostility. After Moussouris complained to Human Resources about repeated sexual harassment by her director, he was “merely reassigned” and “subsequently promoted,” and the department failed to investigate her claims of retaliation after he and another male manager took adverse actions against her. ER254 ¶ 7. Smith recounted similar conduct. After she complained to Human Resources about the assault threat, they did not conduct an investigation and she was

“assigned responsibilities outside of [her] normal scope of work.” ER248 ¶¶ 9-10. Such experiences were common among female employees at Microsoft, and they evidence a widespread practice of gender discrimination at the company.

**B. The Declarations Should Have Been Considered Holistically, Not Mechanically Counted.**

The district court also committed several errors by applying an inappropriate mechanical formula to the declarations. The court refused to credit the declarations because they did not represent every state in which Microsoft operates (“only 5 of the 41 states”). Order at 57. This mechanical computation ignored that 90% of the class members’ work was performed in Washington State, and 72% at the Redmond headquarters. Farber Expert Rebuttal Report, ER514. Moreover, there was no evidence that the relevant policies differed by state. *Cf. Wal-Mart*, 564 U.S. at 359-60 (class subjected to “variety of regional policies that all differed”). Where, as here, the same company-wide policies control pay and promotion for all class members uniformly, declarations for each state and job position are unnecessary to establish commonality.

The district court's erroneous dismissal of the anecdotal evidence was exacerbated by its refusal to assign any weight to the 238 internal complaints of gender bias. The court dismissed them in a single sentence because plaintiffs failed to provide "evidence regarding whether that number is unusual for a company like Microsoft with hundreds of thousands of employees." Order at 60. Again, this observation suggests that the weight to be assigned to this evidence was nothing more than a mathematical equation, i.e., how Microsoft's ratio of complaints to employees compared to that of a company with a comparable number of employees. That simplistic calculus ignores the substance and quality of the complaints and implies that, so long as all large companies have roughly equal numbers of female employees complaining about gender discrimination, their concerns have no legal significance. Like the declarations, the internal complaints illustrate a workplace culture in which women were devalued.

For example, in one internal investigation, two female employees reported that one or more male coworkers groped them and made several unwelcome and inappropriate comments at work-related functions. Shaver Decl. Ex. 1.2, No. 15-cv-01483 (Dkt. No. 391-1), at 248-50. An

internal investigator determined that the claims amounted to sexual harassment in violation of Microsoft's policy, *id.* at 250, yet upon further review, the Employee Relations Investigation Team disagreed and found no violations, *id.* at 245-47. Likewise, other female employees individually raised harassment complaints about a different male coworker, but the investigators found no policy violation. Shaver Decl. Ex. 1.5, No. 15-cv-01483 (Dkt. No. 391-4), at 172-74. Appellants provided the district court with extensive details about complaints like these and a collection of full investigative files that evince a degrading culture toward women and corroborate other evidence offered in support of commonality. *See* Appellants' Br. at 13-14 & n.5.

The district court's analytical errors are compounded by yet another more fundamental error: the court evaluated plaintiffs' anecdotal evidence standing on its own, rather than as one component of the totality of the circumstantial evidence to establish commonality. *See* Order at 56 ("Plaintiffs' anecdotal evidence also do not constitute the necessary 'substantial proof.>"). With circumstantial evidence of discriminatory intent, "[a]ny individual piece of evidence can seem innocuous when viewed alone, but gains an entirely different meaning

when considered in context.” *N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 233 (4th Cir. 2016). Concluding that a district court erred in finding that two election laws were not enacted with racially discriminatory intent, the *McCrory* court explained that the “error resulted from the court’s consideration of each piece of evidence in a vacuum, rather than engaging in the totality of the circumstances analysis . . . .” *Id.* Here, the district court made precisely this error—evaluating the anecdotal evidence in isolation. This misstep, combined with the court’s counting rather than weighing of anecdotal declarations of gender discrimination, warrants reversal.

### **III. The District Court’s Erroneous Analysis of Anecdotal Evidence Will Imperil Efforts to Combat Systemic Gender Discrimination.**

Erecting an arbitrary evidentiary hurdle for cases challenging systemic gender discrimination is particularly troubling given that female employees are often reluctant to complain about or to their superiors. Working women who have invested years building their education, experience, and professional qualifications will be understandably reticent to jeopardize their hard-earned achievements. Legal protections against retaliation will do little to assuage this fear in

a workplace like Microsoft's, where female employees can find themselves sidelined by a supervisor's determination that they are not a good "fit" or lack commitment. Studies have repeatedly confirmed that many women are reluctant to report workplace harassment, including within the tech industry.<sup>3</sup> Former employees may face an additional barrier if they signed a severance agreement in connection with their departure, which restricts their ability to provide evidence in litigation and effectively silences them.<sup>4</sup>

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<sup>3</sup> Sheelah Kolhatkar, *The Tech Industry's Gender-Discrimination Problem*, *The New Yorker* (November 20, 2017), <https://www.newyorker.com/magazine/2017/11/20/the-tech-industrys-gender-discrimination-problem> ("Almost forty per cent [of women working in tech surveyed in 2015] said that they didn't report [unwanted advances] because they feared retaliation."); Testimony of Mindy Bergman, *Workplace Harassment: Examining the Scope of the Problem and Potential Solutions*, Meeting of the E.E.O.C. Select Task Force on the Study of Harassment in the Workplace (June 15, 2015), [https://www.eeoc.gov/eeoc/task\\_force/harassment/testimony\\_bergman.cfm](https://www.eeoc.gov/eeoc/task_force/harassment/testimony_bergman.cfm) ("It is actually unreasonable for employees to report harassment to their companies because minimization and retaliation were together about as common as remedies. . . [R]eporting is a gamble that is not worth taking. . .").

<sup>4</sup> Ramit Mizrahi, *Sexual Harassment Law After #MeToo: Looking to California as a Model*, 128 *Yale L.J. Forum* 121, 134 (2018) ("[N]ondisclosure agreements not only protect an accused harasser from public censure in one instance but also undermine the likelihood that future cases of harassment will succeed. . . . While some of this information may eventually be uncovered when litigation is underway,



## APPENDIX OF AMICI

The **Impact Fund** is a non-profit legal foundation that provides strategic leadership and support for impact litigation to achieve economic and social justice. It provides funding, offers innovative training and support, and serves as counsel for impact litigation across the country. The Impact Fund has served as counsel in a number of major civil rights cases, including cases challenging employment discrimination, lack of access for those with disabilities, and violations of fair housing laws. Through its work, the Impact Fund seeks to use and support impact litigation to achieve social justice for all communities.

**Equal Rights Advocates (ERA)** is a national non-profit civil rights organization dedicated to protecting and expanding economic and educational access and opportunities for women and girls. Since its founding in 1974, ERA has litigated numerous class action and civil rights cases challenging gender discrimination at work and in school, including *Dukes v. Wal-Mart Stores, Inc.* Through litigation and other advocacy efforts, ERA has helped to secure workplace protections and conferred significant benefits on large groups of women and girls. ERA

has participated as amicus curiae in scores of cases involving the interpretation and application of Title VII of the Civil Rights Act, Rule 23 of the Federal Rules of Civil Procedure, and other legal rules and laws affecting workers' rights and access to justice.

**A Better Balance** is a national non-profit legal advocacy organization based in New York, NY and Nashville, TN founded with the goal of ensuring that workers can meet the conflicting demands of their jobs and family needs, and that women and mothers can earn the fair and equal wages they deserve, without compromising their health or safety. Through legislative advocacy, litigation, research, and public education, A Better Balance has advanced many pioneering solutions on the federal, state, and local levels designed to combat gender-based discrimination and level the playing field for women and families.

**Alianza Nacional de Campesinas (Alianza de Campesinas)** is the first national farmworker women's organization in the United States. It was founded in 2011 by current and former farmworker women, as well as women who hail from farmworker families to unify the farmworker women's struggle, elevate farmworker women's leadership and by advancing farmworker women's policy priorities through a national

movement. Alianza aims to create broader visibility and advocate for changes that ensure farmworker women's human rights. It is also dedicated to securing social, environmental, economic and gender justice for farmworker women, including ending wage theft and closing the pay gap.

The **American Civil Liberties Union (ACLU)** is a nationwide, nonprofit, nonpartisan organization with more than 1.75 million members dedicated to the principles of liberty and equality embodied in the Constitution and our nation's civil rights laws. The ACLU, through its Women's Rights Project, has long been a leader in legal advocacy aimed at ensuring women's full equality and ending discrimination against women in the workplace, including sexual harassment, pregnancy and caregiver discrimination, and discrimination against women in male dominated fields.

**American Association of University Women (AAUW)** was founded in 1881 by like-minded women who had challenged society's conventions by earning college degrees. Since then it has worked to increase women's access to higher education and equal employment opportunities. Today, AAUW has more than 170,000 members and

supporters, 1,000 branches, and 800 college and university partners nationwide. In adherence with its member-adopted Public Policy Priorities, AAUW supports equitable access and advancement in employment, pay equity, as well as vigorous enforcement of employment discrimination statutes including the ability to bring class actions to challenge systemic discrimination.

The **Anti-Defamation League (ADL)** was founded a hundred years ago, in 1913, to combat anti-Semitism and other forms of discrimination, and to secure justice and fair treatment for all. Today, ADL is one of the world's leading civil rights organizations. As part of its commitment to protecting the civil rights of all persons, ADL has filed amicus briefs in numerous cases urging the unconstitutionality or illegality of discriminatory practices, laws and policy.

**Asian Americans Advancing Justice—Asian Law Caucus (ALC)** was founded in 1972 with a mission to promote, advance, and represent the legal and civil rights of Asian and Pacific Islanders, with a particular focus on low-income members of those communities.

ALC is part of a national affiliation of Asian American civil rights groups, with offices in Los Angeles, Chicago, Washington DC, and

Atlanta. ALC's advocacy includes direct services and class-action litigation for low-wage immigrant workers on a range of workplace issues, including race, national origin, and gender discrimination.

**The Asian American Legal Defense and Education Fund (AALDEF)**, founded in 1974, is a national organization that protects and promotes the civil rights of Asian Americans. By combining litigation, advocacy, education, and organizing, AALDEF works with Asian American communities across the country to secure human rights for all. AALDEF's litigation includes class action claims of discrimination in employment and voting and non-payment of minimum wage and overtime pay.

**California Women Lawyers (CWL)** is a non-profit organization that was chartered in 1974. CWL is the only statewide bar association for women in California and maintains a primary focus on advancing women in the legal profession. Since its founding, CWL has worked to improve the administration of justice, to better the position of women in society, to eliminate all inequities based on gender, and to provide an organization for collective action and expression related to those purposes.

The **California Women's Law Center (CWLC)** is a statewide, nonprofit law and policy center whose mission is to break down barriers and advance the potential of women and girls through transformative litigation, policy advocacy and education. CWLC's issue priorities include gender discrimination, economic justice, violence against women, and women's health. For 30 years, CWLC has placed an emphasis on eliminating all forms of gender discrimination, including discrimination and harassment against women in the workplace, and CWLC remains dedicated to end practices contributing to the gender wage gap.

The **Disability Rights Education & Defense Fund (DREDF)**, based in Berkeley, California, is a national nonprofit law and policy center dedicated to advancing and protecting the civil rights of people with disabilities. Founded in 1979, DREDF remains board- and staff-led by people with disabilities and parents of children with disabilities. As part of its mission, DREDF works to ensure that people with disabilities have the legal protections, including broad legal remedies, necessary to vindicate their right to be free from discrimination.

The **Equal Justice Society (EJS)** is transforming the nation's consciousness on race through law, social science, and the arts. A national legal organization focused on restoring constitutional safeguards against discrimination, EJS's goal is to help achieve a society where race is no longer a barrier to opportunity.

**Equal Pay Today**, a project of the Tides Center, is an innovative collaboration of women's legal and workers' rights organizations working at the local, state and federal level to close the gender wage gap and engage new and diverse constituencies in the fight for equal pay. We have members in nearly every region of the country.

Understanding that many factors contribute to the gender wage gap, we focus on combating pay discrimination, pay secrecy, occupational segregation, pregnancy and caregiver discrimination, wage theft and an inadequate minimum wage.

**Gender Justice** is a nonprofit legal and policy advocacy organization based in the Midwest that is committed to the eradication of gender barriers through impact litigation, policy advocacy, and education. As part of its litigation program, Gender Justice represents individuals and provides legal advocacy as amicus curiae in cases

involving issues of gender discrimination. Gender Justice has an interest in ensuring that class action is a possible means of challenging widespread and pervasive gender inequity.

**International Action Network for Gender Equity & Law (IANGEL)** is an international network of lawyers dedicated to advancing gender equality and protecting the human and civil rights of women and girls, through peaceful legal means. IANGEL advances its mission by connecting lawyers, law firms, and legal associations willing to donate their advocacy, skills, and energy to the organizations and individuals working on these issues nationally and around the world.

**LatinoJustice PRLDEF** champions an equitable society by using the power of the law together with advocacy and education. Since being founded in 1972 as the Puerto Rican Legal Defense and Education Fund, LatinoJustice has advocated for and defended the constitutional rights and the equal protection of all Latinos and Latinas under the law, and has engaged in and supported law reform civil rights litigation across the country to combat discriminatory policies.

**Legal Aid at Work (LAAW)** (formerly the Legal Aid Society—Employment Law Center), founded in 1916, is a public interest legal

organization that advances justice and economic opportunity for low-income people and their families at work, in school, and in the community. Since 1970, Legal Aid has represented low-wage clients in cases involving a broad range of employment-related issues, including class actions and sex discrimination cases. LAAW's interest in preserving the protections afforded employees by this country's antidiscrimination laws is longstanding.

**Legal Momentum, *the Women's Legal Defense and Education Fund***, is a leading national non-profit civil rights organization that for nearly 50 years has used the power of the law to define and defend the rights of girls and women. Legal Momentum has worked for decades to ensure that all employees are treated fairly in the workplace, regardless of their gender or sexual orientation. Legal Momentum has litigated cutting-edge gender-based employment discrimination cases, including *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998), and has participated as amicus curiae on leading cases in this area, including *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998).

**Legal Voice** is a nonprofit public interest organization in the Pacific Northwest that works to advance the legal rights of women and girls through litigation, legislation, and public education on legal rights. Since its founding in 1978 as the Northwest Women's Law Center, Legal Voice has been at the forefront of efforts to combat sex discrimination in the workplace, in schools, and in public accommodations. In addition, Legal Voice has worked to advance women's economic security by supporting policies that help women in the workplace.

**Muslim Advocates** is a national legal advocacy and educational organization that works on the frontlines of civil rights to guarantee freedom and justice for Americans of all faiths. Muslim Advocates advances these objectives through litigation, including class actions, and through other legal advocacy, policy engagement, and civic education. Muslim Advocates also serves as a legal resource for the American Muslim community, promoting the full and meaningful participation of Muslims in American public life. The evidentiary issues at stake in this case directly relate to Muslim Advocates' work fighting for civil rights protections for American Muslim communities.

**The National Asian Pacific American Women’s Forum**

**(NAPAWF)** is the only national, multi-issue Asian American and Pacific Islander (AAPI) women’s organization in the country.

NAPAWF’s mission is to build the collective power of all AAPI women and girls to gain full agency over our lives, our families, and our communities. NAPAWF’s work is centered in a reproductive justice framework that acknowledges the diversity within our community and ensures that different aspects of our identity – such as ethnicity, immigration status, education, sexual orientation, gender identity, and access to health – are considered in tandem when addressing our social, economic, and health needs.

**The National Center for Law and Economic Justice**

**(NCLEJ)** has decades of experience in securing and maintaining legal protections for those members of our society adversely impacted by income inequality. The NCLEJ has litigated in federal courts nationwide to secure rights under civil rights statutes, frequently litigating class actions through Federal Rule of Civil Procedure 23. Through litigation, policy analysis, and support for grassroots organizing, NCLEJ seeks to improve the economic security of low-

income families, individuals, and communities across the nation, with a particular focus on preserving due process of law.

The **National Center for Lesbian Rights (NCLR)** is a national nonprofit legal organization dedicated to protecting and advancing the civil rights of lesbian, gay, bisexual, transgender, and queer people and their families through litigation, public policy advocacy, and public education. Since its founding in 1977, NCLR has played a leading role in securing fair and equal treatment for LGBTQ people and their families in cases across the country involving constitutional and civil rights. NCLR has a particular interest in promoting equal opportunity for LGBTQ people in the workplace through legislation, policy, and litigation, and represents LGBTQ people in employment and other cases in courts throughout the country.

The **National Council of Jewish Women (NCJW)** is a grassroots organization of 90,000 volunteers and advocates who turn progressive ideals into action. Inspired by Jewish values, NCJW strives for social justice by improving the quality of life for women, children, and families and by safeguarding individual rights and freedoms. NCJW's Resolutions state that NCJW resolves to work for “Employment laws, policies, and

practices that provide equal pay and benefits for work of comparable worth and equal opportunities for advancement.”

The **National Employment Law Project (NELP)** is a nonprofit organization with 50 years of experience advocating for the employment and labor rights of low wage and unemployed workers. NELP seeks to ensure that all employees receive the full protection of labor and employment laws. NELP prioritizes workplace equity and ensuring that workers are not discriminated against due to their race, sex, sexual orientation or other status. NELP has litigated and participated as *amicus curiae* in numerous cases in circuit and state courts and the U.S. Supreme Court.

The **National Women’s Law Center (NWLC)** is a nonprofit legal advocacy organization dedicated to the advancement and protection of women’s legal rights and the rights of all people to be free from sex discrimination. Since its founding in 1972, NWLC has focused on issues of key importance to women and girls, including economic security, employment, education, and health, with special attention to the needs of low-income women and those who face multiple and intersecting forms of discrimination. NWLC has participated as counsel

or amicus curiae in a range of cases before the Supreme Court and the federal Courts of Appeals to secure equal treatment and opportunity in all aspects of society through enforcement of the Constitution and laws prohibiting discrimination.

**Public Advocates, Inc.** is a non-profit, public interest law firm and one of the oldest public interest law firms in the nation. Public Advocates uses diverse litigation and non-litigative strategies to handle exclusively policy and impact cases to challenge the persistent, underlying causes and effects of poverty and discrimination. Its work currently focuses on achieving equality in education, housing, and transportation; in the past the organization has addressed systemic harms in employment, prisons, consumer rights, welfare benefits and health care among other issue areas.

**Public Counsel** is the nation's largest public interest law firm specializing in delivering *pro bono* legal services to low-income communities. In 2017, Public Counsel staff and pro bono partners served more than 18,000 clients and conducted impact litigation on behalf of over 12 million people. The mission of our Women and Girls' Rights projects is to advance equality and economic opportunity for

women workers and their families, through direct services and policy advocacy. Our attorneys represent women in employment rights litigation, focusing on issues such as discrimination, harassment, pay equity, leave issues and wage theft.

**Queen's Bench Bar Association of the San Francisco Bay Area** is a nonprofit voluntary membership organization made up of judges, lawyers, and law students in the San Francisco Bay Area. Established in 1921, Queen's Bench is one of the oldest women's bar associations in the country. Queen's Bench seeks to advance the interests of women in law and society, and to serve the professional needs of women lawyers, judges, and law students. Queen's Bench has a strong and demonstrated interest in the preservation of the Constitutional right to equal protection of the laws.

The **Southwest Women's Law Center** is a non-profit policy and advocacy Law Center founded in 2005 with a focus on advancing economic opportunities for women and girls in the state of New Mexico. We work to ensure that women have equal access to programs and opportunities to help ensure they can adequately care for their families. Foremost in our work is ensuring that women are the recipients of fair

and equal pay. The Southwest Women's Law Center has been a strong advocate for fair pay for women in the workplace for many years.

**The Washington Lawyers' Committee for Civil Rights and Urban Affairs** provides legal services to address discrimination and endeavors to create legal, economic, and social equity on a broad range of issues. The Committee is engaged in class action litigation that addresses, among other issues, discrimination in employment, public accommodations and housing.

**Women Employed's** mission is to improve the economic status of women and remove barriers to economic equity. Since 1973, the organization has assisted thousands of working women with problems of discrimination and harassment, monitored the performance of equal opportunity enforcement agencies, and developed specific, detailed proposals for improving enforcement efforts, particularly on the systemic level. Women Employed strongly believes that sexual harassment is one of the main barriers to achieving equal opportunity and economic equity for women in the workplace and that class actions are an indispensable tool for eradicating illegal, company-wide employment discrimination.

The **Women's Law Project (WLP)** is a nonprofit public interest law firm with offices in Philadelphia and Pittsburgh, Pennsylvania. The WLP's mission is to create a more just and equitable society by advancing the rights and status of women throughout their lives. To meet these goals, the WLP engages in high impact litigation, policy advocacy, public education, and individual counseling. Founded in 1974, the WLP has a long and effective track record on a wide range of legal issues related to women's health, legal, and economic status.

**9to5, National Association of Working Women**, is a non-profit organization with the mission to build a movement to achieve economic justice, by engaging directly affected women to improve working conditions. 9to5 members have been on the front lines, working for economic security for all women—particularly women of color—for the past 45 years. 9to5 has worked for and won major national policies including the 1978 Pregnancy Discrimination Act, the Civil Rights Act of 1991, the Family Medical Leave Act, and the Lilly Ledbetter Fair Pay Act.

**CERTIFICATE OF COMPLIANCE**

**9th Cir. Case Number(s):** 18-35791

I am the attorney or self-represented party.

**This brief contains 6462 words**, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

I certify that this brief (*select only one*):

complies with the word limit of Cir. R. 32-1.

is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.

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is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.

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**Signature** s/Jocelyn D. Larkin  
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**CERTIFICATE OF SERVICE**

**9th Cir. Case Number(s):** 18-35791

I hereby certify that I electronically filed the foregoing/attached document(s) on this date with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the Appellate Electronic Filing system.

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Amici Curiae Brief of Impact Fund, Equal Rights Advocates, and 33 Other Organizations in Support of Plaintiffs-Appellants' Appeal of Class Certification Order

**Signature** s/Jocelyn D. Larkin  
(*use "s/[typed name]" to sign electronically-filed documents*)

**Date** 2/6/2019