COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

No. SJC-13485

DHANANJAY PATEL, SAFDAR HUSSAIN, VATSAL CHOKSHI, DHAVAL PATEL, NIRAL PATEL,
Plaintiffs–Appellants,

– v. –

7-ELEVEN, INC.,
Defendant–Third Party Plaintiff-Appellee,

MARY CADIGAN; ANDREW BROTHERS,
Defendants,

DPNEWTO1; DP TREMONT STREET INC.; DP MILK STREET INC.; DP JERSEY INC.,
Third Party Defendants.

ON A CERTIFIED QUESTION FROM THE
UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF *AMICUS CURIAE* OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF 7-ELEVEN, INC.

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March 11, 2024

CORPORATE DISCLOSURE STATEMENT

The Chamber of Commerce of the United States of America is a non-profit, tax-exempt organization incorporated in the District of Columbia. The Chamber has no parent corporation, and no publicly held company has 10% or greater ownership in the Chamber.

DATED: March 11, 2024

By: *Elaine J. Goldenberg*
Elaine J. Goldenberg

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CERTIFIED QUESTION PRESENTED

Do Plaintiffs "perform[] any service" for 7-Eleven, within the meaning of Mass. Gen. Laws ch. 149, § 148B, where, as here, they perform various contractual obligations under the Franchise Agreement and 7-Eleven receives a percentage of the franchise's gross profits?

INTEREST OF THE *AMICUS CURIAE*[1]

The Chamber of Commerce of the United States of America (the "Chamber") is the world's largest business federation. It 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. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community. Indeed, when the First Circuit previously certified a

[1] Pursuant to Massachusetts Rule of Appellate Procedure 17(c)(5), *amicus curiae* declares that (a) no party or party's counsel party authored this brief in whole or in part; (b) no party or party's counsel, or any other person or entity, other than the *amicus curiae*, its members, or its counsel, contributed money that was intended to fund the preparation or submission of this brief; and (c) neither *amicus curiae* nor its counsel has represented one of the parties to the present appeal in another proceeding involving similar issues, or was a party or represented a party in a proceeding or legal transaction that is at issue in the present appeal.

question in this case—whether the independent-contractor test applied to the franchise relationship—the Chamber filed an amicus brief. *See* Br. of Chamber of Commerce *et al.*, *Patel v. 7-Eleven, Inc.* (No. SJC-13166, Nov. 17, 2021) ("2021 Chamber Brief").

This case remains significant to the Chamber because it continues to implicate the viability of the franchise business model—and, potentially, many other business models used by entities whose interests the Chamber represents. If this Court answers "yes" to the certified question, many common business arrangements could be transformed into employment relationships, effectively rendering them illegal. That result would be greatly detrimental to businesses, the economy more generally, and the public.

INTRODUCTION

Pursuant to the Commonwealth's independent-contractor statute, an employment relationship can exist only when "an individual" is "performing any service" for a putative employer. Mass. Gen. Laws ch. 149, § 148B(a).[2] Under the plain text of the statute and this Court's precedents, that threshold requirement is met only where the putative employer is both the party receiving the services *and* the party paying for them. Plaintiffs in this case, who are a putative class of 7-

[2] Unless otherwise noted, all statutory references are to chapter 149 of the General Laws of Massachusetts.

Eleven franchisees seeking to be classified as employees rather than independent contractors, do not satisfy that test. 7-Eleven does not pay franchisees for the performance of any alleged obligations; only the franchisees' *customers* do.

Plaintiffs propose an alternative test, but it is incorrect. They appear to argue that an individual is "performing any service" for a putative employer within the meaning of the statute when he (1) carries out some contractual obligation that directly affects the putative employer's revenue, and (2) receives remuneration in return, even if the remuneration comes directly from customers and not from the putative employer. But that test finds no purchase in the text of the statute. Indeed, it makes a hash out of the statutory provisions governing employers, since an "employer" that does not directly pay "employees" can hardly withhold income taxes and pay timely wages, as all Massachusetts employers are required to do under Commonwealth law. In addition, this Court has already rejected the basic requirements of Plaintiffs' test—holding, for example, that whether an individual is "performing any service" under § 148B(a) does not turn on the existence of a contract or the effect of labor on revenues. *Depianti v. Jan-Pro Franchising Int'l, Inc.*, 465 Mass. 607, 624-25 & n.17 (2013).

Plaintiffs' approach also would have harmful practical effects on businesses and the public by disrupting or threatening scores of longstanding business models across the Commonwealth. Contractual arrangements that meet Plaintiffs'

proposed test—where an entity's revenue depends directly on an individual's work, but the individual gets paid by third parties—are extremely common across the economy, including for retail businesses, holders of intellectual property, and real-estate companies (among many others). But those arrangements have never been understood to create an employment relationship. If they did so, the arrangements would become much more economically burdensome and would threaten to expose newly minted "employers" to significant liability. And even the *threat* of suffering those consequences will cause significant economic damage.

ARGUMENT

I. The Independent-Contractor Law Contains A Threshold Requirement Under Which An Individual Can Be Deemed An Employee Only If The Individual Is "Performing Any Service" For A Putative Employer

The independent-contractor statute "establishes a standard to determine whether an individual" should "be deemed an employee or an independent contractor." *Sebago v. Bos. Cab Dispatch, Inc.*, 471 Mass. 321, 327 (2015).

Critically, the statute recognizes that only "an individual" who is "performing any service" for a putative employer can possibly be considered an employee. § 148B(a). If that threshold requirement is not met, then the individual in question is not an employee; rather, he or she is part of a business arrangement that involves "neither an independent contractor nor an employment relationship." *Depianti*, 465 Mass. at 624 n.17.

If the threshold requirement is satisfied, however, then an employer-employee relationship is "presumed," with the burden falling on "the purported employer" to "rebut the presumption." *Sebago*, 471 Mass. at 327. The purported employer can do so by showing, under a standard known as the "ABC" test, that (1) "the individual is free from control and direction in connection with the performance of the service, both under his contract for the performance of service and in fact"; (2) "the service is performed outside the usual course of the business of the employer"; and (3) "the individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed." Mass. Gen. Laws ch. 149, § 148B(a)(1)-(3). If the purported employer is unable to establish any one of those three things, then the individual must be classified as an employee. *See Sebago*, 471 Mass. at 327.

Classification of an individual as an employee places substantial obligations on the business or person considered to be the employer. Such classification "generally entitles an individual to, inter alia, timely payment of wages earned, and holiday and vacation payments due; a minimum wage; [and] overtime pay." *Patel v. 7-Eleven, Inc.*, 489 Mass. 356, 359 (2022) (citations omitted). It also generally requires employers to make "financial contributions to, inter alia, Social Security

and Medicare, unemployment insurance, and workers' compensation," as well as to withhold "income tax." *Id.* at 359 n.8.

II. The Threshold Requirement In The Independent-Contractor Statute Is Not Satisfied Here

This case centers on the statute's threshold requirement—specifically, the meaning of "performing any service." § 148B(a). Because that question "is one of statutory construction," this Court's "analysis begins with the principal source of insight into legislative intent—the plain language of the statute." *Patel*, 489 Mass. at 362 (internal quotation marks omitted). The text, however, must be construed "in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated." *Id.* at 362-63. Ultimately, "respect for the Legislature's considered judgment dictates that" the Court "interpret the statute to be sensible, rejecting unreasonable interpretations unless the clear meaning of the language requires such an interpretation." *Sebago*, 471 Mass. at 329; *see Patel*, 489 Mass. at 364 ("we must read the statute in a way to give it a sensible meaning" (citation omitted)).

Examining the statute in light of those principles, it is clear that an individual is "performing any service" for a putative employer only when an individual executes a task directly for his or her putative employer's benefit in exchange for payment directly from the putative employer for that task. Because,

at minimum, "7-Eleven does not pay the plaintiffs"—its franchisees—"for anything," *Patel v. 7-Eleven, Inc.*, 618 F. Supp. 3d 42, 48 (D. Mass. 2022), the statute's threshold requirement is not satisfied here.

A. The Statute Requires A Pay-for-Services Agreement Directly Between The Putative Employer And Putative Employee

The statute does not define the terms "performing" and "service." But in this context, the statute must be read to contemplate "an agreement of pay for services," where the putative employer is both "the party receiving the services" in question and the party paying for them. *Depianti*, 465 Mass. at 625 (Cordy, J., dissenting in part); *see Jinks v. Credico (USA) LLC*, 488 Mass. 691, 699 (2021) (citing favorably Justice Cordy's interpretation of § 148B(a)).

That conclusion follows naturally from the ordinary meaning of the statute's text. First, the putative employer must be the party receiving the services. To "perform" means "to do a job, task, or duty." *Perform*, Cambridge Dictionary, https://dictionary.cambridge.org/us/dictionary/english/perform; *see, e.g.*, *Perform*, Merriam-Webster, https://www.merriam-webster.com/dictionary/perform ("to carry out"). A "service" is "[l]abor performed in the interest or under the direction of others"; specifically, "the performance of some useful act or series of acts for the benefit of another." *Service*, Black's Law Dictionary (11th ed. 2019). As those definitions make clear, § 148B(a) requires that the putative employee carry out some task directly for the putative employer's benefit. *Jinks*, 488 Mass. at 696

("the entity for whom the individual *directly* performs services is ordinarily the individual's employer" (emphasis added)).

Second, the putative employer must be the party paying for the services that it receives. A "service" is well understood as something being provided in exchange "for a fee." *Service*, Black's Law Dictionary (11th ed. 2019); *see, e.g.*, *Service*, The Britannica Dictionary, https://www.britannica.com/dictionary/service (defining "service" as "work done for a business or organization," and giving examples that involve being paid in return). Indeed, without remuneration, even simple "favor[s]" would be "service[s]" within the meaning of the statute, *Patel v. 7-Eleven, Inc.*, 81 F.4th 73, 76 & n.3 (1st Cir. 2023), which is wholly inconsistent with a statute designed to regulate employment relations. And because, as noted, the statute contemplates that the putative employee carry out a task directly for the putative employer, "[t]he implication" is that the "remuneration" must "flow" directly in the opposite direction: "from the putative employer to the alleged employee." *Koza v. New Jersey Dep't of Lab.*, 704 A.2d 1310, 1312 (N.J. Super. Ct. App. Div. 1998).

Those principles are reinforced by the statute's singular references to "the individual" and "the employer." § 148B(a)(1)-(3). Notably, the statute makes no reference to any third parties who might *indirectly* benefit from a worker's labor or pay for it.

Those principles also are consistent with this Court's precedent. For example, in *Jinks v. Credico (USA) LLC*, 488 Mass. 691 (2021), the Court explained that if "company A contracts with company B for services, and company B enters into arrangements with third parties to perform the work it undertook under its contract with company A," only "company B would be" subject to § 148B(a). *Jinks*, 488 Mass. at 696-97. And those were the facts the Court had before it in that case. There, Credico (or company A) entered a contract with DFW (or company B) under which DFW would provide "face-to-face sales services" for Credico's clients. 488 Mass. at 693. DFW, in turn, "retained the services" of the individual plaintiffs "as salespersons to work on various marketing campaigns." *Id.* This Court rejected the notion that the plaintiffs were employees of Credico. Rather, the Court explained, DFW "was the direct employer of the plaintiffs"—regardless of the fact that Credico benefited economically from the plaintiffs' activities. *Id.*; *see id.* at 697-707. The plaintiffs directly provided services only to DFW, and only DFW paid for the services directly in return. *See id.* at 693.[3]

[3] *Jinks* discusses exceptions to that rule: "where the law of corporate disregard is applicable" (*i.e.*, corporate veil-piercing is appropriate) and "where an entity has" structured its operations to "'end run' around its wage law obligations." *Jinks*, 488 Mass. at 697. No such exception applies to the franchising arrangements at issue in this case, and plaintiffs here have not argued otherwise. *See, e.g.*, *Patterson v. Domino's Pizza, LLC*, 333 P.3d 723, 733 (Cal. 2014) (franchising "is a distribution method that has existed in this country in one form or another for over 150 years"); 2021 Chamber Br. 12-21 (explaining franchise model and discussing franchisor-franchisee relationship); *see also Sebago*, 471 Mass. at 330 (discussing cases of

B. Plaintiffs' Reading Of The Statute Is Incorrect

Plaintiffs argue that an individual is "performing any service" for a putative employer whenever the individual (1) carries out some "contractual obligation" that "directly" affects the putative employer's revenue, and (2) receives "some kind of remuneration" in return, even if "that remuneration comes directly from customers" and not from the putative employer. Op. Br. 3; *see, e.g.*, *id.* at 26; Reply Br. 4-5. That two-pronged test is impossible to square with the statute's text and purpose or with this Court's precedent. Moreover, this Court's adoption of Plaintiffs' test would have significant adverse effects, threatening to disrupt or destroy various longstanding business models across the Commonwealth and greatly harming businesses and the public at large.

1. Plaintiffs' Interpretation Is Contrary To The Statute's Text And Purpose And To This Court's Precedent

a. *Plaintiffs' prong 1.* The first prong of Plaintiffs' proposed test—that the individual must carry out some "contractual obligation" that "directly" affects the putative employer's revenue— is absent from and incompatible with § 148B(a).

That prong finds no support in the text of the statute. Nothing in that text, much less in the plain meaning of "perform" or "service," explicitly or implicitly

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where "defendants concoct[ed] an artificial leasing scheme to circumvent the wage laws").

says anything about a carrying out a contractual obligation or doing so in a way that it affects the putative employer's revenue. Plaintiffs are therefore effectively trying to rewrite the statutory text, which is not a permissible mode of statutory interpretation. *See, e.g.*, *Dinkins v. Massachusetts Parole Bd.*, 486 Mass. 605, 613 (2021) ("[W]e may not rewrite the ... statute to contain language the Legislature did not see fit to include." (quoting *Commonwealth v. Newberry*, 483 Mass. 186, 195 230 (2019)).

Indeed, this Court has already rejected Plaintiffs' approach. In *Depianti*, the Court held that whether § 148B(a)'s threshold is met does not turn on the existence of "a contract for service between the putative employer and putative employee." 465 Mass. at 624-25 & n.17. And in *Patel* and *Jinks*, the Court made clear that § 148B(a) cannot be "satisfied merely because a relationship between the parties benefits their mutual economic interests." *Patel*, 489 Mass. at 370; *see Jinks*, 488 Mass. at 696-97; *see also* p. 12, *supra* (discussing *Jinks*'s rejection of an interpretation of §148B(a) that would turn a company into a presumptive employer just because that company "derived an economic benefit" from "third-party workers").

Plaintiffs' efforts to escape from the force of that precedent are unavailing. Plaintiffs point to *Sebago*, in which this Court concluded that taxi drivers were presumptively employees of radio associations that provide dispatch services to

members and corporate clients. But there this Court determined that "revenue flowing to the radio association" through a corporate client "voucher program is directly dependent on the drivers' work of transporting passengers." 471 Mass. at 331. "In contrast," this Court held, the taxi drivers were *not* "performing services" for taxicab owners or taxicab garages, despite the fact that the garage's "revenues derive" from drivers' work and, "without the drivers' work, the owners' medallions and taxicabs would be worthless." *Id.* at 329-32.

Sebago thus confirms the principle set forth in this Court's decisions in *Patel* and *Jinks*: impact on revenue is neither necessary nor sufficient to find that an individual is "performing" a "service" within the meaning of § 148B(a). That principle is fatal to Plaintiffs' argument about how to apply the statute's threshold requirement.

b. *Plaintiffs' prong 2.* The second prong of Plaintiffs' proposed test—that the individual receives "some kind of remuneration," even if "that remuneration comes directly from customers" and not from the putative employer—is equally flawed. Plaintiffs correctly recognize that § 148B(a) presupposes remuneration be paid to a putative employee in exchange for labor. *See* pp. 10-11, *supra*. But Plaintiffs' view that the source of the remuneration is irrelevant collides with the statutory text, which contemplates that remuneration be paid by the putative employer.

That is clear from examining the purpose of § 148B—that is, the "mischief" the Legislature sought to remedy and the "main object" it sought to accomplish in passing that statute. *Patel*, 489 Mass. at 362. As this Court has explained, in adopting § 148B "the Legislature appeared most concerned with" the "'windfall' that employers enjoy from the misclassification of employees as independent contractors: the avoidance of holiday, vacation, and overtime pay; Social Security and Medicare contributions; unemployment insurance contributions; workers' compensation premiums; and income tax withholding obligations." *Somers v. Converged Access, Inc.*, 454 Mass. 582, 592 (2009); *see Patel*, 489 Mass. at 359-60 & n.8 (listing benefits of employment).

But if a putative employer does not pay the putative employee in the first place, then it is difficult to understand how the putative employer would secure any windfall or would even be able to provide those kinds of employment benefits. For example, a franchisor cannot withhold income taxes from a franchisee when the franchisor does not make payments from which such taxes can be deducted. Nor can a franchisor *timely* pay wages to a franchisee when the franchisor does not pay the franchisee any wages at all. *See* Mass. Gen. Laws ch. 149, § 148.

The Court "must read the statute in a way to give it a sensible meaning." *Patel*, 489 Mass. at 364 (citation omitted). Plaintiffs' reading gives the statute an unworkable meaning.

2. Plaintiffs' Interpretation Threatens To Wreak Havoc On Longstanding Business Models

Plaintiffs' interpretation of § 148B(a) also suffers from a fundamental practical problem: it would cause widespread harm by disrupting or casting uncertainty over all kinds of existing business relationships. There is no reason to think that, in enacting the statute, the Legislature intended to radically reshape the legal landscape in that way. *See Sebago*, 471 Mass. at 329-30.

This Court has been careful to avoid a broad interpretation of the statute's threshold requirement under which "companies spanning a vast array of industries" become "presumptive" employers, *Sebago*, 471 Mass. at 330—and for good reason. The ABC test is, by design, not always easy to satisfy. Being designated an employer creates enormous financial obligations. *See* pp. 8-9, *supra* (discussing employers' statutory obligations to (among other things) pay overtime, contribute to Social Security, and withhold income tax). In addition, employers are potentially subject to *criminal* liability for misclassification. *See* § 148B(d) (providing for "criminal" penalties).

This Court's decision in *Sebago* is illustrative of the caution this Court has exercised. The taxi drivers in that case "leased taxicabs and medallions from the medallion owners." *Sebago*, 471 Mass. at 325. This Court found it "unreasonable" to conclude that the taxi drivers, as lessees, were performing services for the lessors within the meaning of § 148B. *Id.* at 329-30. The Court

explained that such a conclusion would affect the many companies that "commonly elect to lease, rather than purchase, equipment that is necessary to their business operations," unreasonably rendering "*all* lessees . . . presumptive employees of their lessors." *Id.* (emphasis added); *see Depianti*, 465 Mass. at 624 n.17 (noting existence of "parties" that "have neither an independent contractor nor an employment relationship").

Accepting Plaintiffs' argument here would threaten just the kind of far-reaching disruption that the Court feared in *Sebago*—indeed, even worse disruption, because Plaintiffs' argument sweeps so broadly. Contractual arrangements where one person's revenue depends directly on another person's work but the person working gets paid by customers are ubiquitous, arising in many different industries and sectors of the Commonwealth's economy. Plaintiffs ask this Court to rule that each one of those arrangements constitutes a presumptive employment relationship.

Of course, the franchise context in which this case arises is the most salient example. Under plaintiffs' erroneous test, essentially all business-format franchisees in the Commonwealth would suddenly be presumed to be employees. But imposing the legal framework governing employer-employee relationships on the franchisor-franchisee relationship would entirely change a business model on

which franchisors and franchisees alike have long relied in making business decisions and investments. 2021 Chamber Br. 27-31.

The effects of this Court's adoption of plaintiffs' proposed test would certainly not be limited to the franchise context. The additional examples below are just the tip of the iceberg:

Real-estate arrangements, affecting all kinds of real-estate businesses and retail establishments. Under a "percentage lease" in commercial real estate, a tenant pays its landlord a discounted fixed rental fee, in addition to "a certain percentage of the tenant's gross sales," which the tenant makes from its ordinary business operating a store on the landlord's premises. Note, *The Percentage Lease—Its Functions and Drafting Problems*, 61 Harv. L. Rev. 317, 317-18 (1948). For example, in *Bronstein v. Board of Registration in Optometry*, 403 Mass. 621 (1988), this Court described a percentage lease in which an optometrist paid his landlord a percentage of revenue generated by his optometry practice. *Id.* at 624-25. "In leases of shopping center stores," percentage leases are "virtually universal. In other retail establishments [their] use is hardly less." *Id.*; *see* 61 Harv. L. Rev. at 317-18.

Consignment agreements, affecting art and antiques dealers and many other types of businesses. Consignment agreements operate similarly. Those contracts typically require one party to sell an item belonging to another party in exchange

for a percentage of the amount paid by the customer who ultimately purchases the item. In many industries, consignments "are *the* prevalent business arrangements." *Italian Designer Imp. Outlet, Inc. v. New York Cent. Mut. Fire Ins. Co.*, 26 Misc. 3d 631, 638 (N.Y. Sup. Ct. 2009) (emphasis added) (citing examples). Art, antiques, and jewelry dealers, for instance, often consign unique or valuable pieces to one another in hopes of reaching a broader market or capitalizing on each other's expertise.

Royalty and licensing agreements, affecting intellectual-property holders like publishers and photographers. Royalty and licensing agreements operate in a similar way. Under those agreements, content owners—usually holders of intellectual property—allow a manufacturer or other producer to use their content for commercial purposes. In exchange, the content owner is often "paid based on the number of units ultimately sold (or made, etc.), which is of course directly related to product revenues" obtained from third-party customers. *Lucent Techs., Inc. v. Gateway, Inc.*, 580 F.3d 1301, 1330 (Fed. Cir. 2009). For example, a photographer may license her photographs to a writer for use in a book, in exchange for a percentage of the amount that customers pay to purchase the book. Percentage-of-sale royalty agreements are extraordinarily common and have been in use for over a century. *See, e.g.*, *Thorn Wire Hedge Co. v. Washburn & Moen Mfg. Co.*, 159 U.S. 423, 426-27 (1895).

There are many other examples. In all events, retail lessors/lessees, consigners/consignees, licensors/licensees, and others similarly situated obviously "have neither an independent contractor nor an employment relationship." *Depianti*, 465 Mass. at 624 n.17; *see Sebago*, 471 Mass. at 329-30. But in Plaintiffs' world they would. A retail landlord would, for example, presumptively employ its tenant (and be subject to potential criminal prosecution) because the two share a contractual relationship, the tenant receives remuneration from its customers, and the landlord's "revenue is directly dependent on the [tenant's] work of running the stores, fluctuating based on how well each store performs from month-to-month." Op. Br. 21. The same would be true of in many other contexts as well. That is not a "sensible" interpretation of the Legislature's intent. *Sebago*, 471 Mass. at 329.

Plaintiffs dismiss those risks by falling back on the ABC test. "[A] ruling in Plaintiffs' favor," they say, "does not mean that" misclassification has occurred in any of those situations, because courts "will still be required to apply the three prongs of the ABC test." Op. Br. 44. But that is cold comfort. The putative employer's "failure to satisfy *any* prong" of the ABC test "will result in the individual's classification as an employee." *Sebago*, 471 Mass. at 327 (emphasis added). In many cases—such as a jeweler who consigns diamonds to another jeweler—the putative employer will fail to satisfy prong B of the ABC test,

because both individuals work in the same "course of the business." § 148B(a)(2); *see Athol Daily News v. Bd. of Rev. of Div. of Emp. & Training*, 439 Mass. 171, 178-79 (2003). And even where application of the ABC test is unclear, the analysis is so fact-intensive—so dependent "on a case-by-case" evaluation, *Patel*, 489 Mass. at 369 n.17—that the mere *risk* of civil and criminal prosecution for misclassification would create deep uncertainty for businesses and individuals who use (or wish to use) such longstanding business models.

C. Applying The Proper Test, Plaintiffs Do Not Perform Services For 7-Eleven

Under the proper understanding of the statute's threshold requirement, the Court must consider whether Plaintiffs carry out tasks directly for 7-Eleven's benefit and whether 7-Eleven directly pays Plaintiffs for those tasks in return. Unless both things are true, Plaintiffs are not 7-Eleven's employees—presumptively or otherwise. And both things are not true. "7-Eleven does not pay the franchisees for the performance of any alleged obligations." *Patel*, 618 F. Supp. 3d at 48; *see* Br. of Chamber of Commerce *et al.*, *Patel v. 7-Eleven, Inc.* (No. SJC-13166, Nov. 17, 2021) (providing extensive overview of franchise model and how it functions).

Plaintiffs try to make hay of the fact that store receipts go into an account maintained by 7-Eleven, from which Plaintiffs may take their draws. Reply Br. 4-5. But as 7-Eleven explains and the record reflects, the draw system exists solely

"to ensure that sufficient funds exist in the franchises' account to safeguard 7-Eleven's security interest in financing it provides." Resp. Br. 51. That system is not a mechanism for 7-Eleven to "'end run' around its wage law obligations." *Jinks*, 488 Mass. at 696-97; *see* pp. 12-13 n.3, *supra*.

Besides, even to the extent 7-Eleven "pays" Plaintiffs simply by maintaining the bank accounts, that "is not a wage-payment arrangement." *Patel v. 7-Eleven, Inc.*, 2019 WL 3554438, at *3 (N.D. Ill. Aug. 5, 2019). Plaintiffs' draws are not payments for work they provided *to 7-Eleven*. Rather, Plaintiffs' draws are directly on, and entirely attributable to, the "store's revenues," which is money "paid by [their] *customers*." *Id.* (emphasis in original). That is not enough to meet § 148B(a)'s threshold requirement.

CONCLUSION

The Court should answer "no" to the certified question and conclude that Plaintiffs do not perform any service for 7-Eleven within the meaning of the independent-contractor statute.

Dated: March 11, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Elaine J. Goldenberg, counsel for Amicus Curiae, certify pursuant to Rule 17(c)(9) of the Massachusetts Rules of Appellate Procedure, that this brief complies with the rules of court that pertain to the filing of briefs, including but not limited to Mass. R. App. P. 17 and 20. This brief contains 4,531 words, excluding the parts of the brief exempted by Mass. R. App. P. 20(a)(2)(D). The brief has been prepared in a proportionally spaced typeface, 14-point Times New Roman font, using Microsoft Word.

DATED: March 11, 2024

By: *Elaine J. Goldenberg*
Elaine J. Goldenberg

CERTIFICATE OF SERVICE

I, Elaine J. Goldenberg, counsel for Amicus Curiae, certify pursuant to Rule 13(d) of the Massachusetts Rules of Appellate Procedure that on March 11, 2024, a copy of this document was served on all counsel of record by electronic service through the eFileMA system:

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