S274340

IN THE
SUPREME COURT OF CALIFORNIA

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JORGE LUIS ESTRADA, et al, individually and as class representatives of employees similarly situated,

Plaintiffs, Appellants, and Cross-Respondents

vs.

ROYALTY CARPET MILLS, INC., now known as ROYALTY CARPET MILLS, LLC.,

Defendant, Respondent, and Cross-Appellant.

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JORGE LUIS ESTRADA, ET AL.'S, CONSOLIDATED ANSWER BRIEF TO MULTIPLE AMICUS CURIAE BRIEFS

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After a decision by the Court of Appeal, Fourth Appellate District,
Division Four, Case Nos. G058397, G058969
Orange County Superior Court, Case No. 30-2013-00692890
Hon. Randall J. Sherman, Trial Judge

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INTRODUCTION

The question for which review is granted: "Do trial courts have inherent authority to ensure that claims under the Private Attorneys General Act of 2004 (Lab. Code § 2698 et seq.) ["PAGA"] will be manageable at trial, and to strike or narrow such claims if they cannot be managed?" Unequivocally, pursuant to statutory construction and legislative intent, the answer is *NO*.

Amici for the appellant-defendant, Royalty Carpet Mills, LLC, ("Royalty") want this Court to ignore clear, legislative intent so that a PAGA action can be dismissed as if it were a class action. The end objective is to eliminate PAGA actions one courtroom at a time and eventually, as a viable theory altogether. The proposed means to achieve this result is to impose a class-action manageability requirement on the PAGA statute so it can be dismissed on procedural grounds at or before trial. A manageability requirement does not appear in the language o the PAGA statute. Any such manageability requirement would have to be added by the Legislature.

As a predicate for this extraordinary request, amici counsel highlight unfavorable outcomes to employers in PAGA litigation. The Employers Group goes so far as to even refer to it as a form of *"extortion."* Considering that PAGA is a law enforcement action, that is quite an assertion on the part of Amicus counsel. They seek the destruction of the PAGA statute via the

imposition of class action manageability requirements, under the alleged umbrella of the trial court's inherent judicial authority.

Amici dedicates the majority of their briefs to an extended discussion of the trial court's inherent authority to manage and eliminate actions before it. All of this argument provides no guidance at all and completely misses the central issue of PAGA's statutory construction and legislative intent.

Plaintiffs' position is not to challenge the trial court's inherent judicial authority to manage actions before it but to instead highlight and distinguish the legislative intent as expressed in the PAGA statute itself. Plaintiffs rely on the California Supreme Court's prior analysis in *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 98 (*Arias*) which discusses the legislative intent as expressed in the PAGA statute.

The PAGA statute precludes the imposition of a class-action style management requirement that might result in the dismissal of a PAGA action on purely procedural grounds. As previously stated by this Court in *Arias*, such a result is contrary to the PAGA statute and must be rejected. (*Arias, supra*, 46 Cal.4th at 981.)

I. AMICI BRIEFS

A. Chamber of Commerce of the United States of America, California Chamber of Commerce, National Retail Federation, and Retail Litigation Center Inc.

The Chamber of Commerce of the United States of America, California Chamber of Commerce, National Retail Federation, and Retail Litigation

Center, Inc. in their brief, assert that the California Supreme Court in *Arias* never suggested that trial courts overseeing PAGA claims were barred from using any case management tools akin to requirements applicable to class actions. Not so. This Court in *Arias* specifically discussed the preclusive effect of the language of the PAGA statutes as it relates to the attempted imposition of class action management requirements. Specifically, Labor Code § 2699(a) explicitly precludes the use of class action case management tools that would have the effect to narrow or dismiss a PAGA claim. (Section II, *infra*).

B. The Board of Trustees for the California State University.

In its brief, the Board of Trustees for the California State University ("Board of Trustees") describes its struggles with numerous health and safety violations at its various campuses, and the PAGA claims that followed, referring to all of it as a "trial management quagmire." (Board of Trustees' Brief at p. 10.) Yet, the Board of Trustees appears to be describing just another form of complex litigation, which is hardly a novel concept. It then suggests judicial persecution as an institution - as if that is even possible in a health and safety case. Supposedly its "…due process concerns are often *sacrificed at the altar* of having the plaintiff's case heard…." (italics added)

Yet, even as they express their due process concerns, the Board of Trustees simultaneously describe a trial management plan that apparently will be utilized to direct the PAGA litigation and protect those rights,

described as follows: "In one of CSU's health and safety PAGA cases, the plaintiff's proposed PAGA trial plan would mandate a first phase bellwether trial for only five of the 21 CSU campuses involved, prioritize evidence concerning health and safety violation liability, and compel a mediation thereafter before future phases of the trial. Even such a one-sided bellwether trial could still last many months." (Board of Trustees' Brief at p. 14.) In other words, the Board of Trustees highlights the trial court's ability to manage the case before it to ensure that the rights of all parties are protected. And, no attempt to narrow or dismiss a PAGA claim is needed to achieve that result.

Finally, in support of their position, the Board of Trustees generally relies on the trial court's inherent authority to manage the cases before it, without considering the specific, statutory construction of PAGA which precludes attempts to narrow or dismiss a PAGA claim at trial.

C. Employers Group and California Employment Law Counsel.

The Employers Group and the California Employment Law Counsel in their brief dare to boldly assert that PAGA litigation, enacted to ensure enforcement of the Labor Code's provisions, has instead become a form of *"extortion."* (Employers Group Brief at p. 14.) Said another way, they even seek to demonstrate their legal eloquence by accusing PAGA litigants of using the statute to "leverage in terrorem settlements." The Employers Group also ignores the statutory language of the PAGA; goes beyond the scope of

the "question," to then discuss all the other ways a trial court may manage a PAGA action short of narrowing or dismissing a PAGA claim even before trial, using its inherent authority to do so.

What the Chamber of Commerce, Board of Trustees, Employers Groups, California Employment Law Counsel, and Royalty seek from this Court is a *legislative solution* to a statute that defies their efforts to eliminate it, because the PAGA statute precludes application of class action requirements, specifically as it relates to manageability. However, these parties should request such a solution from the Legislature and not this Court.

II. PAGA'S STATUTORY LANGUAGE PRECLUDES DISMISSAL OF A PAGA ACTION, ON PROCEDURAL GROUNDS, DUE TO QUESTIONS CONCERNING ITS MANAGEABILITY. IT IS CONTRARY TO AND THEREFORE INAPPLICABLE TO THE PAGA STATUTE.

Even the *Wesson* Court *(Wesson v. Staples the Office Superstore, LLC* (2021) 68 Cal. App. 5th 746) ignored the California Supreme Court's analysis in *Arias.* As stated by the Court in the *Arias* case, the legislative intent, as expressed in the language of the PAGA statute, expressly precludes the imposition of a class action manageability requirement that would allow for the dismissal of a PAGA action on procedural grounds. Subdivision (a) of Labor Code § 2699 states that *"[n]otwithstanding any other provision of law"* an aggrieved employee may bring a PAGA action, on behalf of the

State, against an employer for civil penalties based on violations of Labor Code provisions that expressly provide for a civil penalty. (Italics added).

This language constitutes an affirmative expression of legislative intent to preclude the application of class action requirements. (*Arias* at p. 982, (commenting on Labor Code § 2699(a) and its effect upon imposition of manageability requirements).) The California Supreme Court has made it clear that the legislature intended this section of the PAGA statute to control despite other laws to the contrary, as an express exception.

> "The statutory phrase `notwithstanding any other provision of law' has been called a `"term of art"' [citation] that declares the legislative intent to override all *contrary* law." (*Klajic v. Castaic Lake Water Agency* (2004) 121 Cal.App.4th 5, 13, italics added.) Thus, by virtue of subdivision (a)'s "notwithstanding" clause, only those provisions of law that conflict with the act's provisions—not, as defendants contend, every provision of law—are inapplicable to actions brought under the act.

(*Arias, supra.,* 46 Cal.4th at p. 983.)

The case of *Klajic v. Castaic Lake Water Agency* (2004) 121 Cal.App.4th 5, 13-14, (*Klajic*) which was favorably cited by *Arias* also states

> The statutory phrase "notwithstanding any other law" has been called a "`term of art"' (People v. Franklin (1997) 57 Cal.App.4th 68, 73-74) that declares the legislative intent to override all contrary law. (People v. Tillman (1999) 73 Cal.App.4th 771, 784-

> 785, and cases cited therein.) By use of this term, the Legislature expresses its intent "`to have the specific statute control despite the existence of other law which might otherwise govern.' [Citation.]" (People v. Franklin, supra, at p. 74; People v. Tillman, supra, at p. 785; see Macedo v. Bosio (2001) 86 Cal.App.4th 1044, 1050-1051, fn. 4; In re Marriage of Cutler (2000) 79 Cal.App.4th 460, 475, ["notwithstanding any other provision of law" "signals a broad application overriding all other code sections"].)

In *Klajic*, the judgment of the trial court was reversed because the trial court ignored the "notwithstanding" clause of the applicable statutes. (*Klajic*, *supra* 121 Cal.App.4th 13-16.)

Of course, whether the PAGA should be rewritten for any reason is purely a legislative exercise. Perhaps the interests of Amici would be better served if they pressed their case before the Legislature instead of the courts. Here the words of the statute are clear as the current statement of legislative intent.

Application of class action management requirements arising under Code of Civil Procedure § 382, which could result in dismissal on purely procedural grounds, is contrary to the PAGA statute and cannot be utilized as a management device by any trial court to destroy a PAGA action. A failure to adhere to the legislative intent expressed in PAGA will and already has produced the very result that the legislature sought to avoid – summary dismissal of a PAGA action on purely procedural grounds.

In this case, the *Estrada* court arbitrarily destroyed Plaintiffs' PAGA claims under the pretext of manageability, erroneously and conveniently concluding that its decision to decertify the Orange County meal period subclass also automatically eliminated the PAGA action. This erroneous, self-serving, judicial destruction of a PAGA claim is contrary to and prohibited by the PAGA statute.

This Court has and should continue to apply the rules of statutory construction to uphold PAGA's purpose, notwithstanding any law to the contrary.

> "The primary goal of statutory construction is to determine the Legislature's intent to effectuate the purpose of the law. (*DuBois v. Workers' Comp. Appeals Bd*. (1993) 5 Cal. 4th 382, 387.) To do so, a court looks first to the words of the statute. (*Ibid*.) If the words are clear, the statute is enforced according to its terms. (*Id*. at pp. 387-388.) A court considers the provision in the context of the entire statute and the purpose of the statutory scheme of which it is part." (*Id*. at p. 388.)

(*Rosas v. Dishong* (1998) 67 Cal. App.4th 815, 816.)

The words of Labor Code § 2699(a) are clear as is the legislative purpose. The legislature's intent was to exempt PAGA actions from class action requirements embodied in Code of Civil Procedure § 382, and specifically, to exempt the PAGA from dismissal due to questions concerning its manageability as an action in general.

III. THE LEGISLATURE'S INTENT TO EXEMPT PAGA FROM DISMISSAL, WHERE DISMISSAL IS CONTRARY TO THE PAGA STATUTE, EXEMPLIFIES PAGA'S UNIQUE STATUS AS A LAW ENFORCEMENT ACTION

PAGA's exemption from class action manageability requirements reflects its unique nature as a law enforcement mechanism for the State of California. A PAGA claim is legally and conceptually different from an employee's own suit for damages and statutory penalties." (*Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 81 (*Kim*).)

Every PAGA action is "a dispute between an employer and the state.'" (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 74, quoting *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 386, (*Iskanian*) overruled on other grounds in *Viking River Cruises, Inc. v. Moriana* (2022) 140 S.Ct. 1906, 1924.

In a PAGA action, "the employee plaintiff represents the same legal right and interest as state labor law enforcement agencies—namely, recovery of civil penalties that otherwise would have been assessed and collected by [LWDA]." (*Arias, supra*, 46 Cal.4th at p. 986.) Civil penalties a PAGA plaintiff may recover on the state's behalf, therefore are distinct from the statutory damages or penalties that may be available to employees who sue in a civil action.

"An action under PAGA '"is fundamentally a law enforcement action"' and relief is "'designed to protect the public and not to benefit private

parties.'" [Citation.] 'A PAGA representative action is therefore a type of qui tam action,' conforming to all 'traditional criteria, except that a portion of the penalty goes not only to the citizen bringing the suit but to all employees affected by the Labor Code violation.' [Citation.] *The* '*government entity on whose behalf the plaintiff files suit is always the real party in interest*.'" (*Moniz, supra*, 72 Cal.App.5th at p. 74, italics added.)

IV. THE EMPLOYERS GROUP AND CALIFORNIA EMPLOYMENT LAW COUNSEL PROVIDE FALSE EQUIVALENTS AS A BASIS FOR ITS ASSERTION THAT THE COURTS HAVE EXPRESS AUTHORITY TO DISMISS OR NARROW PAGA ACTIONS.

The Amicus Brief of the Employers Group and California Employment Law Counsel is replete with references to ways in which trial courts may dismiss or narrow civil actions short of trial, including PAGA actions, utilizing existing procedural devices to do so. (Employers Group Brief, at pp. 20-21, footnote 4.) These examples include the dismissal of a PAGA claim at the pleading stage based on the plaintiff's failure to state a cause of action, sustaining a demurrer because the plaintiff lacked standing, or sustaining a demurrer without leave to amend because the plaintiff failed to exhaust PAGA's administrative remedies, or the grant of summary judgment in an outright dismissal of a PAGA action. *Id.*

And what all these false equivalents provided by Amicus counsel have in common is that each of them is consistent with, authorized by, and not contrary to the PAGA.

For example, the PAGA statute provides a detailed description of the administrative prerequisites that the plaintiff must satisfy before commencing PAGA litigation. California Labor Code § 2699.3(a). Therefore, a court's dismissal of a PAGA action for failure to satisfy PAGA's administrative prerequisites *is entirely consistent with, not contrary to the PAGA*.

Logically, dismissing a PAGA claim at the pleading stage because the plaintiff failed to state a cause of action or because the plaintiff lacked standing is not itself contrary to the PAGA either. These are examples where no PAGA claim is ever stated and therefore no PAGA protection is ever invoked.

Summary judgment, either in favor or against a PAGA litigant is yet another false equivalent offered by the Employers Group. With a summary judgment, the trial court has considered the evidence both in support of and against the substantive PAGA claim(s) and, having concluded that there is no triable issue of material fact, decides the case as a matter of law. This means that, regardless of the outcome in favor of either plaintiffs or defendants, the PAGA litigants and defendants have all had their day in court, their substantive claims and evidence have been considered, and a final judgment has been rendered. There is no risk of dismissal here for purely procedural reasons. Again, the entry of summary judgment is entirely consistent with, and not contrary to the PAGA statute.

A trial court's decision to dismiss a civil action for delay or failure to prosecute the action under Code of Civil Procedure § 583.110 *et. seq.*, is also not contrary to the express purpose of the PAGA statute. Where a plaintiff abandons the claim and/or fails to prosecute the claim, the PAGA statute offers no greater protection than any other claim.

As to Code of Civil Procedure § 187 and 581 or any other similar code sections, Amici miss the mark entirely. The question is not whether the trial court may manage a PAGA action before it. Management of a PAGA action, per se, is not explicitly contrary to the express purposes of the PAGA statute, nor are the trial court's attempts to manage such actions short of dismissal. However, the dismissal of a PAGA action by adding a manageability requirement to the PAGA, which appears nowhere in the statute itself, is explicitly contrary to and prohibited by the PAGA statute.

Accordingly, arguing ad infinitum about the trial court's inherent authority to manage and dispose of actions before it doesn't open the door to the dismissal of a PAGA action, no matter how much amici hope to make it so.

V. GRAFTING A CLASS ACTION MANAGEABILITY REQUIREMENT TO THE PAGA STATUTE IS EXPRESSLY CONTRARY TO THE STATUTE AND IS THEREFORE PRECLUDED

Grafting a class-action manageability requirement to PAGA statute, not otherwise contemplated by the legislature, is contrary to the PAGA and

therefore inapplicable to PAGA. The 4th District Court of Appeals in *Estrada* answered this question decisively.

> Based on our reading of pertinent Supreme Court authority, chiefly *Arias v. Superior Court* (2009) 46 Cal.App.4th 969 and *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, we find a court cannot strike a PAGA claim based on manageability. These cases have made clear that PAGA claims are unlike conventional civil suits and, in particular, are not class actions. Allowing dismissal of unmanageable PAGA claims would effectively graft a class action requirement onto PAGA claims, undermining a core principle of these authorities. It would also interfere with PAGA's purpose as a law enforcement mechanism by placing an extra hurdle on PAGA plaintiffs that is not placed on the state. That said, courts are not powerless when facing unwieldy PAGA claims. Courts may still, where appropriate and within reason, limit the amount of evidence PAGA plaintiffs may introduce at trial to prove alleged violations to other unrepresented employees. If plaintiffs are unable to show widespread violations in an efficient and reasonable manner, that will just reduce the amount of penalties awarded rather than lead to dismissal.

(*Estrada v. Royalty Carpet Mills, Inc.* (2022) 76 Cal.App.5th 685, 697.)

> Due to their differences, our Supreme Court has held that PAGA plaintiffs need not meet class action certification requirements when pursuing PAGA penalties. (*Arias v. Superior Court, supra*, 46 Cal.4th at p. 975; see *Kim v. Reins International California, Inc.*, *supra*, 9 Cal.5th at pp. 86–87.) As district courts have noted, though, dismissal of a claim based on manageability is rooted in class action procedure. (*Zackaria v. Wal-Mart Stores, Inc.* (2015)

> 142 F.Supp.3d at pp. 958, -959.) Indeed manageability is a key requirement for class certification. (*Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th 1, 28–29.) Accordingly, requiring that PAGA claims be manageable would graft a crucial element of class certification onto PAGA claims, undercutting our Supreme Court's prior holdings.

(*Estrada, supra.*,76 Cal.App. 5th 685, 711-712).

What is contrary to and therefore precluded by the PAGA statute is a judicial determination that class action management requirements can be artificially imposed upon a PAGA claim, to either narrow it or dismiss it. *(See Arias, Klajic, supra).* Analogous to this principle and also precluded by PAGA, is a trial court's attempt to dismiss a PAGA action by a blind reliance on the court's general, inherent authority to manage all actions before it, whether or not class action principles are expressly invoked, relying on general principles such as those arising under Code of Civil Procedure §§ 187, 581 or similar code sections cited by Amicus counsel. Such a result is not authorized by, nor is it consistent with the PAGA statute.

CONCLUSION

The California Supreme Court will likely decide the future of this law with this monumental decision. It must select a path for the Courts to decide such actions, which in turn will guide the State, private litigants who seek penalties on behalf of the State for employees protected by PAGA, as well as all employers that are subject to this unique, law enforcement action. The Court is left to a procedural determination that will likely determine if PAGA

survives. The preferred path is to adhere to the legislative intent as expressed in, if not mandated by, the PAGA statute.

Plaintiffs maintain that imposing a class action, manageability requirement, or any other similar requirement which results in dismissal or narrowing of a PAGA action at trial is contrary to the legislative intent as expressed in the PAGA statute itself and has already been rejected by the Legislature. A Court does not have the inherent authority to either dismiss or even narrow a PAGA action at trial, where the same is expressly contrary to and therefore inapplicable to the PAGA statute. It is important to uphold the principles of statutory construction by again recognizing and affirming the Legislature's intent to protect PAGA from destruction through narrowing or dismissal of claims due to artificially imposed requirements that appear nowhere in the statute itself.

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For the foregoing reasons, the opinion of the Court of Appeal in *Estrada* should be affirmed, and the holding in *Wesson* – that PAGA actions are subject to a manageability requirement and that trial courts have the inherent authority to strike or narrow PAGA claims they deemed are unmanageable – should be overturned.

Respectfully submitted,

GINEZ, STEINMETZ & ASSOCIATES

Dated: 11/30/2022

/s/ RudyGinez, Jr.
Rudy Ginez, Jr., Attorney for Plaintiffs, Appellants, and Cross-Respondents

CE SMITH LAW FIRM

Dated: 11/30/2022

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CERTIFICATE OF WORD COUNT

Pursuant to Rule 8.520 (c) of the California Rules of Court, counsel Jorge Luis Estrada, et al., hereby certifies that the enclosed consolidated answer brief to multiple amicus curiae briefs contains 3560 words, exclusive of items not required to be counted. Counsel relies on the word count of the computer program used to prepare this brief.

Dated: 11/30/2022

/s/ *Rudy Ginez, Jr.*
Rudy Ginez, Jr.

PROOF OF SERVICE

I am employed in Orange County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 926 N. Flower Street, Santa Ana, California.

On November 30, 2022, I served a copy of the foregoing documents described as **JORGE LUIS ESTRADA, ET AL.'S, ANSWER BRIEF TO MULTIPLE AMICUS CURIAE BRIEFS** on the interested parties as follows:

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Supreme Court of California

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