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February 25, 2025

Via TrueFiling

Honorable Chief Justice Patricia Guerrero
and Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, California 94102

Re: Request for Depublication

Leeper v. Shipt, Inc. (2024) 107 Cal.App.5th 1001

Case No. S289305

Opinion Filed December 30, 2024

Second District Court of Appeal, Division 1, Case No. B339670

Dear Chief Justice and Associate Justices:

Pursuant to California Rules of Court, rule 8.1125, the undersigned respectfully requests that the Court depublish *Leeper v. Shipt, Inc.* (2024) 107 Cal.App.5th 1001 on the grounds that it irreconcilably conflicts with *Balderas v. Fresh Start Harvesting* (2024) 101 Cal.App.5th 533, departs from other precedent, and undermines the purposes of the California Private Attorneys General Act of 2004 (“PAGA”).¹

I. Statement of Interest.

I am the founder and principal of Matern Law Group, PC, a law firm that almost exclusively represents employees in individual, representative, class and collective actions in state and federal courts throughout California. I have served as counsel for employees in many reported class and representative action cases brought under the PAGA, including *Ibarra v. Chuy & Sons Labor, Inc.* (2024) 102 Cal.App.5th 874, *Lopez v. Aircraft Service International, Inc.* (9th Cir. 2024) 107 F.4th 1096; *Zuniga v. Alexandria Care Center, LLC* (2021) 67 Cal.App.5th 871; *ABM Industries Overtime Cases* (2017) 19 Cal.App.5th 277; *Julian v. Glenair, Inc.* (2017) 19 Cal.App.5th 277; *Tellez v. Rich Voss Trucking, Inc.* (2015) 240 Cal.App.4th 1052; *Franco v. Arakelian Enterprises, Inc.* (2012) 211 Cal.App.4th 314; *Franco v. Arakelian Enterprises, Inc.*

(2012) 211 Cal.App.4th 314; *Gutierrez v. California Commerce Club* (2010) 187 Cal.App.4th 969; and *Franco v. Athens Disposal Company, Inc.* (2009) 171 Cal.App.4th 1277. This Court granted our requests for depublication of the following opinions which we urged were incorrectly decided and would frustrate the laws and enforcement mechanisms meant to protect workers in this state: *Cacho v. Eurostar, Inc.*, S260295, *Starks v. Vortex Industries, Inc.*, S264854, *Salazar v. See's Candy Shops, Inc.*, S269268 and *Meza v. Pacific Bell Telephone Company*, S275581.

II. PAGA's Purposes and Impact.

PAGA authorizes employees to bring an action to recover civil penalties on behalf of the Labor and Workforce Development Agency ("LWDA") for Labor Code violations sustained by themselves and others. (Lab. Code, § 2699, subd. (a).) Specifically, PAGA provides that a civil penalty collectable by the LWDA "may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of the employee and other current or former employees" (Lab. Code, § 2699, subd. (a).)

"Because of 'underenforcement of many Labor Code provisions and 'a shortage of government resources to pursue enforcement,' the Legislature enacted PAGA 'to create new civil penalties for Labor Code violations and 'to allow aggrieved employees' to act as private attorneys general 'to recover [those] penalties.'" (*Balderas v. Fresh Start Harvesting, Inc.* (2024) 101 Cal.App.5th 533, 537, quoting *Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104, 1130, alteration in original.)

"PAGA is a remedial statute intended to protect employees from employer misconduct. Remedial statutes must be broadly interpreted to achieve the legislative goals." (*Id.*, citing *In re Dalia D.* (2023) 93 Cal.App.5th 953, 974.) "PAGA provisions must be interpreted broadly to protect employees." (*Id.*, citing *Adolph, supra*, 14 Cal.5th at p. 1122.)

The statutory goal is furthered by extending broad standing to aggrieved employees who do not depend on the viability or strength of a plaintiff's individual PAGA claim. The inability for an employee to pursue an individual PAGA claim does not prevent that employee from filing a representative PAGA action. California courts have consistently held that "[p]aring away the plaintiff's individual claims" for one reason or another "does not deprive the plaintiff of standing to pursue representative claims under PAGA."

(*Id.* at p. 538, quoting *Adolph, supra*, 14 Cal.5th at p. 1122, alteration in original, internal quotation marks omitted.)

III. The Leeper Decision.

Christina Leeper (“Leeper”) filed a lawsuit against her employer, Shipt, Inc. (“Shipt”) in a representative capacity “for injunctive and declaratory relief, civil penalties, and other relief under [PAGA].” (107 Cal.App.5th at pp. 1005-06, alterations in original.) The complaint alleged that “Shipt ‘misclassified [Leeper] and other similarly situated [w]orkers as independent contractors and, in so doing, has violated multiple provisions of the . . . Labor Code.” (*Id.* at p. 1006, alterations in original.) Leeper alleged that she was an “‘aggrieved employee’ under PAGA because she was ‘employed by Shipt during the applicable statutory period and suffered the Labor Code violations alleged [in the complaint].’” (*Id.*, alterations in original.)

Leeper brought her PAGA action “‘on a representative, non-individual basis,’ and ‘in [her] capacity as an aggrieved employee on behalf of the [s]tate and all similarly aggrieved individuals subjected to the [alleged] violations.’” (*Id.*, alterations in original.) “She sought ‘non-individual civil penalties’ and ‘non-individual injunctive and declaratory relief.’” (*Id.*) The complaint also stated that “‘[b]ecause [Leeper] alleges only non-individual PAGA claims on a representative basis, Shipt cannot compel them to arbitrat[ion].’” (*Id.*, alterations in original.)

Shipt filed a motion to compel arbitration “of the individual portion of Leeper’s PAGA action and, under the delegation clause, any disputes regarding the enforceability of the arbitration agreement. (*Id.*) In her opposition, Leeper argued she had not alleged any individual claims, and thus there was nothing to compel to arbitration.” (*Id.*) “The trial court denied the motion on the basis that ‘[the] action [was] solely a representative PAGA suit without any individual causes of action’ and ‘[a]s such, the [c]ourt [had] no individual cause of action it may compel to arbitration.’” (*Id.*) Shipt appealed the decision. (*Id.*)

The Court of Appeal reversed, holding that “statutory language unambiguously provides that any PAGA action includes an individual PAGA claim.” (*Id.* at p. 1008.) Quoting Labor Code section 2699, subdivision (a), the Court explained that the statute:

[D]escribes a PAGA claim as ‘a civil action brought by an aggrieved employee on behalf of the employee and other current or former employees.’ [footnote omitted] The unambiguous and ordinary meaning of the word ‘and’ is conjunctive, not disjunctive. Thus, the clause ‘on behalf of the employee *and* other current or former employees (citation omitted) means that the action described has *both* an individual claim component (plaintiff’s action on behalf of the plaintiff himself or herself) *and* a representative component (plaintiff’s action on behalf of other aggrieved employees).

(*Id.* at p. 1009, original emphasis.)

The Court recognized “that the existence of an individual PAGA claim in every PAGA action means this claim often may be separately compelled to arbitration where the FAA applies, which may trigger a stay of the litigation of the representative PAGA claim and even potentially affect the outcome of that litigation via issue preclusion.” (*Id.* at p. 1010, citing *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639, 642; Code Civ. Proc., § 1281.4; *Rocha v. U-Haul Co. of California* (2023) 88 Cal.App.5th 65, 69.) Nevertheless, the Court maintained that a representative-only PAGA action was impermissible. (*Leeper, supra*, 107 Cal.App.5th at p. 1012.)

IV. The Balderas Decision.

In *Balderas v. Fresh Start Harvesting* (2024) 101 Cal.App.5th 533 (“*Balderas*”), an employee filed a complaint against her employer for civil penalties under PAGA in a representative capacity only. (*Id.* at p. 537.) She did not include an individual PAGA claim. (*Id.*) On its own motion, the trial court struck Balderas’ pleading because “she had not filed an individual action seeking PAGA relief for herself, [therefore] she lacked standing to pursue a ‘non-individual’ or representative PAGA action on behalf of other employees.” (*Id.*)

The Court of Appeal reversed, reasoning that:

Balderas met the standing requirements. She alleged that she 1) was an ‘aggrieved’ employee of Fresh Start, and 2) was subject to one or more Fresh Start violations. ... Fresh Start claims more is required for standing than what Balderas alleged. But our Supreme Court rejected this claim in *Adolph*. The court declined “to impose additional requirements not found in the statute.” (citation omitted) “A narrower construction of PAGA standing would ‘thwart the Legislature’s clear intent to deputize employees to pursue sanctions on the state’s behalf.’”

(*Id.* at pp. 538-39, quoting and citing *Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104, 1120; *Johnson v. Maxim Healthcare Services, Inc.* (2021) 66 Cal.App.5th 924.)

The *Leeper* court explained its departure from *Balderas*:

Balderas is another standing case, the holding of which addresses only PAGA standing issues and thus relies only on section 2699, subdivision (c)(1)’s definition of “aggrieved employee.” *Balderas* did not have occasion to discuss, and did not discuss, and its holding does not address, whether a plaintiff may

carve out an individual PAGA claim from a PAGA action.

(107 Cal.App.5th at p. 1012.)

V. Leeper Should Be Depublished.

1. *Leeper* wrongly holds that plaintiffs may not carve out individual PAGA claims from representative PAGA actions.

First, *Leeper* departs from established precedent by stating that individual PAGA claims may not be separated from representative PAGA actions: “The unambiguous and ordinary meaning of the word ‘and’ is conjunctive, not disjunctive. Thus, the clause ‘on behalf of the employee *and* other current or former employees’ means the action described has *both* an individual claim component (‘plaintiff’s action on behalf of the plaintiff himself or herself) *and* a representative component. (plaintiff’s action on behalf of other aggrieved employees).” (107 Cal.App.5th at 1009.) *Leeper* therefore eliminates both individual-only PAGA claims (which pursue penalties for Labor Code violations experienced by the named plaintiff only) and representative-only PAGA claims (which pursue penalties for Labor Code violations only on behalf of other aggrieved employees).

Leeper clashes with the plain text of PAGA itself, which states: “If, at the time of the alleged violation, *the person employs one or more employees*, the civil penalty is as follows” (Lab. Code § 2699, subd. (f)(2).) This shows that the Legislature intended individual PAGA actions as a possibility—otherwise, this subsection would require at least two employees for an action to proceed.

In so holding, *Leeper* also contradicts *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639. There, the U.S. Supreme Court expressly authorized individual PAGA actions by severing the plaintiff’s individual PAGA action from their representative action. (*Id.* at p. 663.) The Court ordered the individual PAGA claim to arbitration, and the representative claim to be dismissed. (*Id.*) However, *Leeper* would require individual *and* representative claims in every PAGA action.

Moreover, in *Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104, this Court rejected *Leeper*’s statutory construction of Labor Code section 2699, subdivision (a). In that case, Uber argued that “any time an aggrieved employee has signed a predispute agreement to arbitrate individual claims, he or she would no longer be able to bring suit ‘on behalf of himself or herself and other current or former employees.’” (*Id.* at p. 1125.) This Court explained, “Not only is this interpretation at odds with the language and purpose of the statute, but it would also seriously impair the state’s ability to collect and distribute civil penalties under the provisions of the statute.” (*Id.*)

Leeper attempted to distinguish itself from *Adolph* by arguing that this Court “did not have occasion to consider whether the plaintiff could have, from the beginning of his lawsuit, alleged only a representative PAGA claim.” (107 Cal.App.5th at p. 1012.)

However, *Adolph* construed PAGA broadly, and held that aggrieved employees may pursue representative PAGA claims as long as they met Labor Code section 2699, subdivision (c)'s standing requirements, which do not require that both individual and representative claims be pleaded. (14 Cal.5th at p. 1125.) Furthermore, this Court stated that “Adolph would continue to have standing to litigate his nonindividual claims”—necessarily carving out his individual PAGA claim. (*Id.* at p. 1124.)

2. *Leeper* splits with *Balderas*.

Second, *Leeper* irreconcilably conflicts with *Balderas* (which was decided in the same appellate district, but a different division). *Balderas* held that “[t]he inability for an employee to pursue an individual PAGA claim does not prevent that employee from filing a representative PAGA action.” (101 Cal.App.5th at p. 537.) While *Leeper* requires individual *and* representative PAGA claims to be tied together, *Balderas* and *Viking River* both held that they may be separated. (*Id.*; 596 U.S. at p. 663.)

Leeper attempted to distinguish itself from *Balderas* by stating that case “did not have occasion to discuss, and did not discuss, and its holding does not address, whether a plaintiff may carve out an individual PAGA claim from a PAGA action.” (107 Cal.App.5th at p. 1012.) This is incorrect. *Balderas* explicitly recognized that individual PAGA claims may be separated from representative PAGA actions (citing *Adolph*); and that employees do not need to bring an individual PAGA claim to have representative PAGA standing—they only need to have alleged that they suffered a Labor Code violation. (101 Cal.App.5th at pp. 538-59, citing *Johnson v. Maxim Healthcare Services, Inc.* (2021) 66 Cal.App.5th 924, 930.) In other words, *Balderas* recognized that representative PAGA actions may stand alone.

3. *Leeper* undermines PAGA's purposes.

Third, *Leeper* undermines PAGA's purposes by limiting employees' ability to enforce the Labor Code. California courts have recognized PAGA's importance at length. (*Adolph*, 14 Cal.5th at p. 1130; *Kim v. Reins International California* (2020) 9 Cal.5th 73.) As the *Balderas* court observed, PAGA is a remedial statute which “must be broadly interpreted to achieve the legislative goals.” (101 Cal.App.5th at p. 537.) *Leeper* does the opposite—it creates a new, restrictive requirement that every PAGA action must include individual *and* representative claims. Because *Leeper* undermines PAGA's legislative goals, *Balderas*, not, *Leeper*, is the better reasoned decision.

MATERN LAW GROUP, PC

February 25, 2025
Page 7 of 7

VI. Conclusion

For the above reasons, we urge the Court to depublish *Leeper v. Shipt, Inc.* (2024) 107 Cal.App.5th 1001.

Respectfully submitted,

MATERN LAW GROUP, PC



Matthew J. Matern

CERTIFICATE OF SERVICE

I, Arinda Ocampo, declare as follows: I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and am not a party to this action. My business address is 2101 E. El Segundo Blvd, Suite 403, El Segundo, California 90245. My email is aocampo@maternlawgroup.com.

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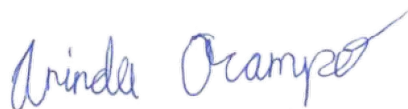
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Supreme Court of California

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Matern Law Group, PC

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