CASE NO. S274340

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

JORGE LUIS ESTRADA, *et al.*,
Plaintiffs and Appellants,

vs.

ROYALTY CARPET MILLS, INC.,
now known as **ROYALTY CARPET MILLS, LLC,**
Defendant and Appellant.

PETITIONER ROYALTY CARPET MILLS, LLC'S OPENING BRIEF ON THE MERITS

Court of Appeal, Fourth Appellate District, Division Three
(Appeal Nos. G058397 [lead] & G058969; G059350 & G059681 [related])

Orange County Superior Court (Case No. 30-2013-00692890)
The Hon. Randall J. Sherman, Department CX105, Trial Judge

Joseph L. Chairez, SBN 98698
Daniel F. Lula, SBN 227295
BAKER & HOSTETLER LLP
600 Anton Boulevard
Suite 900
Costa Mesa, CA 92626
Tel: (714) 754-6600
Fax: (714) 754-6611
Email: jchairez@bakerlaw.com
dlula@bakerlaw.com

David B. Rivkin, Jr, *of counsel*
Andrew M. Grossman, *of counsel*
BAKER & HOSTETLER LLP
1050 Connecticut Avenue, NW
Suite 1100
Washington, DC 20036
Tel: (202) 861-1500
Fax: (202) 861-1783
Email: drivkin@bakerlaw.com
agrossman@bakerlaw.com

Attorneys for Defendant and Appellant
ROYALTY CARPET MILLS, INC.,
now known as **ROYALTY CARPET MILLS, LLC**

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STATEMENT OF ISSUES

Do trial courts have inherent authority to ensure that claims under the Private Attorneys General Act (Cal. Labor Code §§2698, *et seq.*) will be manageable at trial, and to strike or narrow such claims if they cannot be managed?

INTRODUCTION AND SUMMARY OF ARGUMENT

The answer is "yes." Trial courts possess the inherent authority – and, indeed, the responsibility – to ensure that *all* proceedings before them, including claims under the Private Attorneys General Act, Cal. Labor Code §§2698, *et seq.* ("PAGA"), are manageable, and to strike or limit such claims if they are unmanageable.

The court below held that PAGA deprives trial courts of this inherent authority, and in so doing, rejected the Second Appellate District's holding to the contrary in *Wesson v. Staples the Office Superstore, LLC* (2021) 68 Cal.App.5th 746, 283 Cal.Rptr.3d 846. The court's opinion rests on two premises: (1) that manageability is a "class action requirement" and that "PAGA claims have no manageability requirement" (Opinion, pp. 3, 19); and (2) that limitation or "dismissal of a claim based on manageability is rooted in class action procedure" (*id.*, p. 22). Because this Court has previously held that PAGA actions are not subject to all of the same requirements as class actions – *Arias v. Superior Court* (2009) 46 Cal.4th 969, 981, 209 P.3d 923, 95 Cal.Rptr.3d 588 – the Court of Appeal held that trial courts may not preclude PAGA claims they believe are unmanageable. The opinion below is incorrect because its premises are false.

First, the ability of a court to control litigation – including the power to strike or limit claims – is not some special "class action power" conferred by California Code of Civil Procedure §382 or caselaw, but rather an inherent power of the court in every case. In order to preserve judicial resources, prevent trials from becoming excessively complex and time-consuming, and – most of all – to protect the due process rights of the parties (especially defendants), every trial

court may, and in fact must, ensure the manageability of the claims before it. If the court determines that traditional tools such as limiting the number of witnesses, accepting statistically-valid samples, using charts or summaries of voluminous documents, and so forth, will not succeed in making the trial manageable or will deprive the parties of due process, the court may strike or limit the problematic claim – be it PAGA or otherwise.

Second, manageability is not a unique "class action requirement," but rather a requirement in *every* case. Every legal claim carries with it the potential for unmanageability at trial, either due to the number of witnesses or documents needed for the plaintiff to meet its burden, or for the defendant to prove an asserted and applicable affirmative defense. This concern obviously increases dramatically in representative or collective actions. Simply because a proceeding is not a class action does not mean manageability issues evaporate, and non-class-actions – including PAGA cases – are not exempted from the obligation to be manageable at trial. In fact, as *Wesson* noted, PAGA cases can produce even greater manageability problems than class actions.

Further, allowing the opinion below to stand would lead to absurd results. Trial courts, quite literally, would be forced to try unmanageable cases simply because a plaintiff has chosen to plead them under PAGA. The Court of Appeal's response to this is internally inconsistent and insufficient at addressing the problem. Recognizing that some PAGA claims *can* present manageability problems (thus conceding that manageability is not limited to class actions), the opinion instructs trial courts to "limit witness testimony and other forms of evidence." (Opinion, p. 24.) While it is true that such limitations can sometimes make claims manageable, there are situations in which these tools would either fail to do so, or would make plaintiff's case manageable at the expense of defendant's due process rights. There are some situations in which no amount of judicial "massaging" will make the claims manageable – and, simply put, some claims are just unmanageable as collective or representative actions. The court below does

not honestly acknowledge this, and the result of its opinion will be that *any* PAGA claim, however poorly asserted and structured, and however broad in its implications, will need to be tried. As more fully explained below, this effectively puts the plaintiffs' bar in the driver's seat of an already-problematic area of litigation in California.

Lastly, and most troubling, as alluded to above, the Opinion's holding threatens to deprive PAGA defendants of important due process rights. Defendants have a right to assert affirmative defenses in representative actions. Courts have recognized that an affirmative defense may require testimony from many individuals – potentially dozens or hundreds – and this fact alone may render a case unmanageable. In such situations, courts have correctly held that striking the plaintiff's claim is the only fair option. The court below would have the trial court proceed regardless of this problem, resulting in one of two outcomes – either the trial court allows the defendant to call hundreds of witnesses, making the judicial process into a circus, or the trial court precludes such testimony, depriving the defendant of its due process right to put on an affirmative defense.

For these reasons, the Court of Appeal's opinion is wrong and should be reversed, and the order of the Superior Court striking Plaintiffs' PAGA claim should be reinstated.

STATEMENT OF FACTS

A. Royalty Carpet Mills' California Operations.

Defendant Royalty Carpet Mills, LLC (formerly known as Royalty Carpet Mills, Inc.) ("Royalty") manufactured carpet at a number of facilities in California. (8 AA 1850; 3 RT 568-569.)[1] Of those facilities, as relevant to this action, one was in Porterville, California ("Porterville") and two others were in Orange County ("Dyer" and "Derian"). (8 AA 1850.)

[1] "AA" refers to the Appellants' Appendix and "RT" refers to the Reporter's Transcript, and citations to both in the format "Vol. AA/RT Page." If necessary, line numbers are provided after the page number.

The non-exempt employees at these three facilities performed a number of roles in the carpet manufacturing process. These roles include dye weigher, mender, creeler, forklift driver, machine operator, maintenance, label maker, mechanic, and sweeper. (1 RT 108, 223-224, 261, 262, 293; 2 RT 328; 3 RT 565; 6 RT 1257.) All told, non-exempt employees in California had 74 different job titles across 67 different departments. (Exh. 583.4, pp. 2-3; 6 RT 1141.)

Royalty ceased business operations at those three facilities on June 14, 2017. (8 AA 1850.)

B. <u>The Evolution of Plaintiffs' Lawsuit Against Royalty.</u>

On December 13, 2013, Jorge Estrada – who worked as a dye weigher at Derian – filed a complaint against Royalty alleging claims for (1) meal period violations; (2) rest period violations; (3) waiting time penalties; (4) wage statement penalties; (5) unlawful business practices; and (6) PAGA penalties. (1 AA 63; 1 RT 108.) Estrada did not allege any class action claims at this time, although the PAGA claim was, of course, representative. (1 AA 63-75.)

After amending his complaint once, Estrada filed a Second Amended Complaint ("SAC") on October 22, 2014. (1 AA 76, 10 AA 2481.) The SAC added Paulina Nava Medina – a mender and a creeler at Dyer – as a plaintiff, and for the first time, alleged class claims. (1 RT 223-224, 1 AA 76.)[2]

Plaintiffs filed a Third Amended Complaint ("TAC") on November 17, 2016, which added new named plaintiffs, and additional allegations regarding Royalty's Porterville location. (1 AA 106-07, 113-116.) The TAC retained the PAGA claim and remained the operative complaint throughout trial. In its answer

[2] In 2016, Royalty entered into individual settlements with 232 putative class members at the Dyer, Derian, and Porterville facilities. (8 AA 1850-51.) Royalty provided class members settlement agreements and cover letters in both English and Spanish, and paid a total of over $300,000 to these individuals. (Id.) 156 putative class members from the three facilities chose not to enter into the settlement agreements, making the proportion who settled approximately 60%. (Id.)

to the TAC, Royalty pled several affirmative defenses that encompassed employees' voluntary choice to take late meal periods or forego them entirely. (1 AA 206 [Fifth Affirmative Defense – Waiver of Meal Periods and/or Rest Periods], 208 [Thirteenth Affirmative Defense – Not "Aggrieved Employees"].)

On February 23, 2018, the trial court (Dunning, J.) granted Plaintiffs' class certification motion in part. (7 AA 1722-27.) Ultimately, the court certified a Porterville class related to the legality of the on-premises meal period policy at that location, and a Dyer/Derian class related to missed meal periods at those two locations. (7 AA 1725-1726.)

C. The Evidence As to Dyer/Derian Employee Meal Periods.

Royalty's meal period policy at the Dyer and Derian locations was facially lawful, stating that "Your supervisor will schedule your meal period approximately between the 3rd and 5th hour of work." (2 AA 293; *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1041, 273 P.3d 513, 139 Cal.Rptr.3d 315 (2012) [meal period must be provided before the end of the fifth hour of work].)

Despite this lawful policy, the time records indicated that a number of employees at Dyer and Derian took their meal periods late, or missed them. Plaintiffs' theory of the case was that each and every one of these late or missed meal periods was due to the employee having to wait to be "relieved" before taking their break. (10 AA 2418-2419.)

However, substantial evidence at trial showed no common practice of employees needing to be "relieved," but rather a *lack* of common reasons (or even any reason at all) for the vast majority of the late or missed meal periods.

> THE COURT: All right. So my notes indicate that Mr. Estrada was a dye weigher at Derian . . . Supervisor said he had to wait regarding lunch. Every one or two weeks that happened. So let's look at Exhibit 74. Mr. Estrada. Total shifts greater than six hours, 624. Late meal break violations, 278 . . . So that is greater than 40 percent which is more than two times in a five-day work week. So if the supervisor said he had to wait every one or two weeks, that's

> roughly 10 to 20 percent of the time . . . **that suggests that the other percentage, 30-ish, was his own choice.**
>
> (7 RT 955 [emphasis added].)
>
> THE COURT: Ms. Nava, she was a mender and a creeler. Had to be told when to go to lunch. First she said she had to be relieved to take a meal break. Then she said she didn't take a meal break after working five hours in a day. **Then she said the opposite, that she did get meal breaks like three times a week. So she changed her testimony on a dime.**
>
> (7 RT 956 [emphasis added].)
>
> THE COURT: Jose Garcia. Mechanic. Supervisor scheduled break. Supervisor did not tell him when to take meal break. Took meal break after five hours. Not his decision; supervisor's. **So that sounds like changing his testimony relatively quickly.**
>
> (7 RT 956-957 [emphasis added].)
>
> THE COURT: Juan Ortiz Lopez, Derian and Dyer. Forklift driver, sweeper driver, creeler. Could take his meal periods within five hours. Manager would tell him he couldn't take lunch yet until after some work done. **My notes say he gave three different answers in a row on this topic regarding how often. He just seemed to agree with whatever the question was.**

(7 RT 958 [emphasis added].) Also, supervisor Octavio Molina Chavez testified a large number of employees worked in jobs that did not need to be relieved prior to taking a meal period, further undercutting Plaintiffs' asserted classwide theory of liability. (7 RT 1401-1402.) Further, the fact that late meal periods continued even after Royalty made – in the words of the finder of fact – "drastic changes" to ensure lawful breaks, also indicated a significant amount of employee choice to take them late. (7 RT 1403; *see also* 10 AA 2418-2419.)

STATEMENT OF THE CASE

The action was tried over ten days without a jury before the Honorable Randall J. Sherman beginning on November 19, 2018, continued, and then resumed on April 15-17, 22-24, 29-30, and May 1, 2019. (9 AA 2222-2234.)

After Plaintiffs rested on the liability phase of their claims, Royalty moved to decertify the classes and for judgment pursuant to Code of Civil Procedure §631.8. (5 RT 880.) The trial court found that Plaintiffs' PAGA claim arising out of the on-premises meal period policy at Porterville failed due to a lack of administrative exhaustion. (5 RT 979-980.) Plaintiffs conceded this point. (5 RT 968 ["I believe that the PAGA notice is defective with respect to Porterville."].) Plaintiffs did not challenge this ruling on appeal, and it is therefore not at issue.

Additional testimony then followed. (9 AA 2243, 2253-2254; 6 RT 1208-1258.) On May 7, 2019, the court issued its decision from the bench, reiterating some of its prior rulings, including dismissal of the Porterville PAGA claim. (7 RT 1401.) The court also decertified the Dyer/Derian meal period class, finding that witness testimony showed varying reasons why employees took a late meal period, including employee choice, and that "[t]his choice issue compels the conclusion that the different data for different departments does matter, and that the work needs issue depends on the employee's department, and that the answer is different for different departments, which cuts against class treatment." (7 RT 1401-1402.) For the same reasons, the court struck Plaintiffs' representative PAGA claim as to the Dyer/Derian employees. "PAGA on Dyer and Derian [sic]. The court's decertif[ied] the class, so there is no group of employees, although some individual plaintiffs have shown PAGA violations . . ." (7 RT 1403-1404.)

In its August 2, 2019 decertification order, the trial court fleshed out its reasoning with respect to dismissing dismissed Plaintiffs' representative PAGA claim for Dyer/Derian employees:

> The meal break-related claims that Plaintiffs bring for the Dyer and Derian locations under the California Private Attorneys' General Act ("PAGA"), are also dismissed because, for the various reasons noted above, there are numerous individualized issues that render Plaintiffs' PAGA meal break claims unmanageable. The PAGA related meal break claim, along with Plaintiffs' PAGA-related rest break claims, were dismissed during trial pursuant to a Motion for Judgment under California Code of Civil Procedure Section 631.8.

> The dismissal of these claims will be included in the Court's forthcoming Statement of Decision.

(10 AA 2420, n. 4.)[3]

The court entered judgment on January 16, 2020. (10 AA 2453-2462.) Plaintiffs appealed from the judgment on March 6, 2020. (10 AA 2466-2468.) Royalty cross-appealed from the judgment on March 26, 2020. (10 AA 2469.) The Court of Appeal issued its opinion on March 23, 2022.

STATEMENT OF APPEALABILITY

This appeal is from a decision of the Court of Appeal in Case Nos. G058397 and G058969, which "reverse[d] the trial court's order decertifying the Dyer/Derian meal period subclasses and dismissing the portion of the Dyer/Derian PAGA claim based on meal period violations." (Opinion, p. 48.)

LEGAL DISCUSSION

I. THE OPINION IS WRONG BECAUSE IT INCORRECTLY CONFLATES INHERENT TRIAL COURT POWERS AND GENERAL LITIGATION REQUIREMENTS WITH SPECIAL CLASS ACTION PROCEDURES.

A. All Courts Have Broad Inherent Powers to Control Litigation, Including by Striking or Limiting Claims – Class, PAGA, or Otherwise.

The Court of Appeal's fundamental error is its belief that a trial court's striking or limiting of claims is a special "class action power." Therefore, the court's reasoning runs, since class action rules do not apply to PAGA claims

[3] In its Statement of Decision, also issued August 2, 2019, the trial court stated that "[t]he court awarded PAGA penalties for the Dyer and Derian plaintiffs. The court did not award PAGA penalties for Dyer and Derian employees who were not named plaintiffs because plaintiffs failed to show Labor Code violations as to them. For example, even if those employees took late meal periods, that could have been the employee's choice, rather than the employer's mandate." (10 AA 2415:15-19.)

(according to the court below[4]), a trial court has no ability to strike or limit such claims if it deems them unmanageable. The court below is mistaken.

California vests its trial courts with broad inherent powers to manage their dockets and the litigation before them. These powers come from the courts' "equitable power derived from the historic power of equity courts" and "supervisory or administrative powers which all courts possess to enable them to carry out their duties." *Bauguess v. Paine* (1978) 22 Cal.3d 626, 635, 150 Cal.Rptr. 461, 586 P.2d 942 (citations omitted). These powers "exist[] apart from express statutory authority." *Id.; see also Asbestos Claims Facility v. Berry & Berry* (1990) 219 Cal.App.3d 9, 19, 267 Cal.Rptr. 896 ("[A]ll courts have inherent supervisory or administrative powers which enable them to carry out their duties, and which exist apart from any statutory authority."), *overruled on another point in Kowis v. Howard* (1992) 3 Cal.4th 888, 896.

The powers of a trial court to ensure fairness, orderly proceedings, and avoid unfair prejudice are so broad as to defy enumeration. *See Venice Canals Resident Home Owners Assn. v. Superior Court* (1977) 72 Cal.App.3d 675, 680, 140 Cal.Rptr. 361 (requiring posting of a stay bond to protect the rights of innocent third parties; "Similar inherent power has been recognized as available to

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[4] Royalty does not agree with the Court of Appeal's apparent belief that this Court's opinions in *Arias* and *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 459 P.3d 1123, 259 Cal.Rptr.3d 769 stand for the proposition that PAGA actions are exempt from *all* class certification requirements. (Opinion, pp. 3, 22.) Just because PAGA suits "are not class actions" (*id.*, p. 22) – a statement with which no-one can disagree – does not mean that they are exempt from all requirements that class actions are subject to, merely that PAGA plaintiffs need not strictly satisfy *all* the *same* requirements that are needed for class certification. There are good reasons why both class actions and PAGA suits can and should be subject to overlapping requirements – such as the need for an "aggrieved" group of individuals who have suffered actual injury, manageability, and so forth. *See Wesson*, *supra*, 68 Cal.App.5th at 767 ("*Arias* stands for the proposition that PAGA claims need not qualify as class actions. *Arias* did not hold that any consideration relevant to class action certification is necessarily irrelevant in the context of PAGA.").

the court to prevent unfair results, although the relevant statute itself contains no provision for such limitation."); *Peat, Marwick, Mitchell & Co. v. Superior Court* (1988) 200 Cal.App.3d 272, 245 Cal.Rptr. 873 ("The court's inherent power to curb abuses and promote fair process extends to the preclusion of evidence. Even without such abuses the trial court enjoys 'broad authority of the judge over the admission and exclusion of evidence.'"), *quoting* 3 Witkin, Cal. Evidence (3d ed. 1986) Introduction of Evidence at Trial, §1707. Courts are empowered even to create new procedural rules. "It is beyond dispute that 'Courts have inherent power . . . to adopt any suitable method of practice, both in ordinary actions and special proceedings, if the procedure is not specified by statute or by rules adopted by the Judicial Council.'" *Citizens Utilities Co. v. Superior Court* (1963) 59 Cal.2d 805, 812–813, 31 Cal.Rptr. 316, 382 P.2d 356 (citation and footnote omitted); *see also Adamson v. Superior Court* (1980) 113 Cal.App.3d 505, 509, 169 Cal.Rptr. 866 ("Courts are not powerless to formulate rules of procedure where justice demands it."), *citing Addison v. State of California* (1978) 21 Cal.3d 313, 318–319, 146 Cal.Rptr. 224, 578 P.2d 941.)

The Legislature recognized the authority of courts to manage their proceedings and to adopt suitable methods of practice, making no intimation that such management is limited to class actions. *See* Code of Civil Procedure §§128, 187. In fact, the Judicial Council standards for complex litigation – note, "complex," not "class actions" – state that "In complex litigation, judicial management should begin early and be applied continuously and actively, based on knowledge of the circumstances of each case." Standards of Judicial Administration, Standard 3.10(a) ("Judicial management").[5]

Against such a well-developed backdrop, it is clear that all trial courts have the inherent power to strike or limit claims in *any* case, for manageability or any

[5] https://www.courts.ca.gov/cms/rules/index.cfm?title=standards&linkid=standard3_10

other well-founded concern regarding fairness, due process, limitation of resource-consumption, time expenditure, or the like. The Court of Appeal's belief that striking or limiting claims is somehow only a "class action tool" or "class action procedure" (*see* Opinion, p. 22 ["dismissal of a claim based on manageability is rooted in class action procedure"]) is incorrect. Whether allowing a court to dismiss PAGA claims for unmanageability would "import" a class action "requirement" into PAGA is the wrong framing. The proper framing is to ask whether a trial court is *deprived* of its inherent power to strike or limit claims *merely* because the plaintiff has pled a PAGA claim. The answer to that is "no."

The Court of Appeal's holding that "a trial court cannot dismiss a PAGA claim based on manageability" (Opinion, p. 19) is incorrect. *Wesson* is absolutely right "that courts possess the power to ensure the manageability of PAGA claims at trial, including the power to strike claims, if necessary . . ." *Wesson*, *supra*, 68 Cal.App.5th at 769-770. The opinion below should be reversed.

B. Manageability Is Not Solely a "Class Action Requirement."

The Court of Appeal's second error is its mistaken belief that manageability of litigation is somehow a "class action requirement": "Allowing dismissal of unmanageable PAGA claims would effectively graft a class action requirement onto PAGA claims . . ." (Opinion, p. 3.) "'[A] manageability requirement—which finds its genesis in [class action procedure]—makes little sense in this context.'" (Opinion, p. 21, *quoting Zackaria v. Wal-Mart Stores, Inc.* (C.D. Cal. 2015) 142 F.Supp.3d 949, 959-960). Because this Court has previously held that PAGA actions need not meet all of the same requirements as class actions, the lower court here summarily dispensed with the idea that PAGA claims must be manageable. (Opinion, pp. 22-23, *citing Arias*, *supra*, 46 Cal.4th at 975.)

Manageability, however, is not solely a requirement in class actions – it is a requirement in *every* action. Indeed, how could it be otherwise? The Court and litigants will look in vain for any California judicial opinion which says only certain claims must be manageable, and a court is nonetheless forced to try those

which are not. Manageability concerns increase with large and/or complex cases, and California courts have repeatedly stated that "judges must be permitted to bring management power to bear upon massive and complex litigation to prevent it from monopolizing the services of the court to the exclusion of other litigants." *Cohn v. Corinthian Colleges, Inc.* (2008) 169 Cal.App.4th 523, 531, 86 Cal.Rptr.3d 401, *quoting First State Insurance Co. v. Superior Court* (2000) 79 Cal.App.4th 324, 334, 94 Cal.Rptr.2d 104.

The court below appears to believe that only class actions can be unmanageable – although it seems to backtrack from this position when it hypothesizes that trial courts could limit witness testimony or use other unidentified procedural devices on PAGA claims that "involve hundreds or thousands of alleged aggrieved employees, each with unique factual circumstances." (Opinion, p. 24 [tacitly acknowledging that PAGA claims as pled may be unmanageable].) To the extent the belief that manageability is only a class action concern continues, however, a hypothetical demolishes the idea. Imagine a single plaintiff who joins in one action the following:

- A claim against his homebuilder for construction defects.
- A breach of contract claim against his housekeeping service.
- A negligence claim against his gardener for killing the plaintiff's prized gardenias.
- A personal injury claim against a driver for a motor vehicle accident.
- A claim against the county for improper conduct of a recent election in the plaintiff's jurisdiction.

Assume further that the Superior Court has subject-matter jurisdiction over all of the claims, each defendant is subject to personal jurisdiction in California, venue is proper, and all claims survive demurrer and summary judgment. Facially, there is no bar to the plaintiff's joinder in one suit of multiple defendants and claims. But is the trial court required to proceed with this obviously unmanageable case, and empanel twelve citizens to attempt to decide it, *simply*

because the case is not a class action? Of course not. Any trial court would insist that the plaintiff bring these claims as separate actions or not at all. If the plaintiff refused, the court would likely, *sua sponte*, dismiss certain claims and defendants without prejudice. The same would be true even if there were a single defendant, but the plaintiff sought to plead multiple claims against him or her based on completely different occurrences (*e.g.*, breach of contract for delivery of peaches in 2020, negligence in auto repair in 2021, and defamation due to statements at a homeowners association meeting in 2022, for example).

These simple examples, common sense, and multiple statements by courts illustrate that manageability is not some unique "class action requirement," but a requirement for all litigation at all times, including PAGA actions. *Williams v. Superior Court* (2017) 3 Cal.5th 531, 559, 398 P.3d 69, 220 Cal.Rptr.3d 472 (a PAGA plaintiff's ability to offer evidence of uniform policies "is one way a plaintiff might seek to render the trial of the action manageable"); *South Bay Chevrolet v. General Motors Acceptance Corp.* (1999) 72 Cal.App.4th 861, 869, 85 Cal.Rptr.2d 301 (affirming post-trial dismissal of plaintiff's pre-2004 Unfair Competition Law representative claim, despite the statute having no express manageability requirement, because: (i) plaintiff offered no evidence that the dealerships were similarly situated; (ii) minitrials would be necessary with respect to each dealership; and (iii) the action "could not be efficiently tried"). While class, collective, and representative actions all undoubtedly present the manageability issue more frequently and sharply, manageability is not a requirement solely of those sorts of actions.

The *Wesson* court is correct that PAGA claims must be manageable. *Wesson*, *supra*, 68 Cal.App.5th at 769. Trial courts are not required to try unmanageable cases, and one wonders how a valid judgment could be issued if this were not so. The Court of Appeal's holding that PAGA claims "have no manageability requirement" (Opinion, pp. 19, 23) is wrong and should be reversed.

II. ALLOWING THE COURT OF APPEAL'S FLAWED OPINION TO STAND WOULD DAMAGE BOTH THE JUDICIAL SYSTEM AND VIOLATE THE DUE PROCESS RIGHTS OF PAGA DEFENDANTS.

The Court of Appeal's opinion halfheartedly acknowledges the problem of manageability but then does little to solve it. (Opinion, p. 24.) Allowing the opinion to stand will force trial courts to try unmanageable PAGA actions, with the greatest likelihood being that defendants will lose due process rights.

A. PAGA Claims Present Serious Judicial Challenges.

The opinion fails to appreciate what numerous courts and the two *amici* here have noticed: PAGA claims can actually present *greater* manageability challenges than straight-up class actions.

> Indeed, PAGA claims may well present more significant manageability concerns than those involved in class actions. By its terms, PAGA includes no general requirement similar to the requirement in the class action context, that the plaintiff establish a well-defined community of interest, encompassing a showing that common questions predominate over individual ones . . . Thus, a PAGA claim can cover disparate groups of employees and involve different kinds of violations raising distinct questions.

Wesson, *supra*, 68 Cal.App.5th at 766. This is not a hypothetical fear, but rather PAGA's proven track record since its enactment in 2002.

> Many members of Employers Group have been sued in PAGA claims that lack little if any focus. Such claims typically allege a smorgasbord of purported Labor Code violations, often claiming multiple types of penalties for each such violation. Such claims frequently involve employees who work in different facilities, under different supervisors, in different job classifications, having different salary structures, and over different periods of time.

(Employer's Group Amicus Letter in Support of Petition for Review (6/1/22), p. 2.) Such "scattershot" PAGA cases, which are not based on the legality of a companywide policy or an employer practice common to all allegedly-aggrieved employees, invariably implicate the specter of numerous witnesses and mini-trials.

> The issue of the manageability of PAGA claims arises frequently. Consider the following typical example. A drug store chain has hundreds of locations statewide. Each location has a store manager. One of those individual store managers brings a PAGA claim asserting that the classification of store managers as exempt violates the Labor Code, requiring the imposition of penalties under PAGA. The PAGA plaintiff asserts that store managers do not perform exempt duties more than 50% of the time and thus are misclassified. To determine whether the Labor Code was violated in each instance, the trial court would have to take testimony from hundreds of current and former store managers. Such a trial would consume an inordinate amount of court time, to the exclusion of other litigants. A trial court must have the ability to make a determination whether it should allow the claim to proceed.

(CELC Amicus Letter in Support of Petition for Review, p. 4.)

The upshot of the opinion below will be that such PAGA claims will have to proceed, with the only directive from the Court of Appeal being to "limit witness testimony and other forms of evidence." (Opinion, p. 24.)

B. The Opinion Threatens Defendants' Fundamental Due Process Rights.

Defendants, including employers in class or representative actions, have an absolute right to present affirmative defenses. *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 330-31, 96 P.3d 194, 17 Cal.Rptr.3d 906 ("Unquestionably, as the Court of Appeal observed, defendant is entitled to defend against plaintiffs' complaint by attempting to demonstrate wide variations in the types of stores and, consequently, in the types of activities and amounts of time per workweek the [employees] in those stores spent on different types of activities."). "[A]ny trial must allow for the litigation of affirmative defenses[.]" *Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th 1, 33, 325 P.3d 916, 172 Cal.Rptr.3d 371.

As this Court has emphasized, this right cannot be taken away by procedural devices such as class actions. "We have long observed that the class action procedural device may not be used to abridge a party's substantive rights."

Duran, *supra*, 59 Cal.4th at 34; *see also City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 462, 525 P.2d 701, 115 Cal.Rptr. 797 ("Class actions are provided only as a means to enforce substantive law. Altering the substantive law to accommodate procedure would be to confuse the means with the ends—to sacrifice the goal for the going."). There is no reason to believe that a PAGA claim is not subject to the same strictures.

In the situation described in the CELC *amicus* letter, or at Royalty, where determining whether employees' late or missed meal periods were violations of the Labor Code will require testimony from each one, the Court of Appeal's only response is "limit witness testimony and other forms of evidence." (Opinion, p. 24.) This will deprive the PAGA defendant of any meaningful ability to present the affirmative defense that the employee group whom the plaintiff is representing (or many individuals within it) are not "aggrieved" within the meaning of the statute. This directly violates *Duran*. For this reason, class actions are generally not permitted to proceed in the face of such affirmative defenses. *See Duran*, 59 Cal.4th at 30-31 ("Unless an employer's uniform policy or consistent practice violates wage and hour laws [citation omitted], California courts have been reluctant to certify class actions alleging misclassification."). Since the issue is the same in a PAGA setting, there is no reason that the holding and directions of *Duran* do not apply equally there.

In conclusion, the Court of Appeal's opinion is a recipe for defendant employers to be denied their due process rights in PAGA actions. For this reason, as well, it should be reversed and *Wesson*'s reasoning adopted as the law of California.

III. THE COURT OF APPEAL'S RELIANCE ON HYPOTHETICAL LABOR WORKFORCE DEVELOPMENT AGENCY PROCEEDINGS IS MISPLACED AND OVERLOOKS THE ROLE OF THE PLAINTIFFS' BAR.

The Court of Appeal makes much of the fact that a PAGA action puts the plaintiff in the shoes of the Labor Workforce Development Agency ("LWDA"). "[U]nlike a typical civil action, PAGA claims are effectively administrative enforcement actions." (Opinion, p. 23.) "'PAGA is a civil action only in the sense that its designated forum is the trial courts. PAGA plaintiffs are still mere proxies for the state, bringing what would otherwise be an administrative regulatory enforcement action on its behalf.'" (*Id.*, *quoting LaFace v. Ralphs Grocery Company* (2022) 75 Cal.App.5th 388, 290 Cal.Rptr.3d 447.) From this, the court below deduces that no manageability requirement can be imposed on PAGA actions. (Opinion, p. 24.) This is incorrect.

First, there is no reason to believe that a manageability requirement does not also inhere in an LWDA enforcement action. As *Wesson* noted, there is no authority exempting the LWDA "from the courts' inherent authority to manage the proceedings and ensure fair and efficient administration of justice." *Wesson*, *supra*, 68 Cal.App.5th at 769. As that court wisely stated, "[w]hile we think it unlikely that the state, in exercising its prosecutorial discretion, would choose to bring an unmanageable action requiring individualized determinations as to hundreds or thousands of differently situated employees, requiring years of trial court time, we see no reason the court would not be authorized to intervene should that occur."

Second, the opinion below overlooks the very different incentives that exist in privately-brought PAGA actions as compared to LWDA enforcement actions. In the latter, a state agency with "scarce resources [for] an investigation" and very little upside to itself must decide whether to bring an enforcement action, and if so, what its scope should be. *Williams*, *supra*, 3 Cal.5th at 546. There is no

advantage to the State in bringing a far-ranging, unfocused, unwieldy enforcement action, or one that would trigger an affirmative defense (*e.g.*, of employee choice) necessitating the individual testimony of dozens or hundreds of employees. "An action by the government will be subjected to multiple layers of supervision and prosecutorial discretion. The government, with no profit motive, has no interest in wasting limited resources to litigate unmanageable claims involving thousands of employees, each with individualized circumstances that determine whether liability exists." (CELC Amicus Letter, p. 4.)

On the other hand, PAGA provides for a *mandatory* award of attorney's fees to a successful plaintiff. Labor Code §2699(g)(1) ("Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs, including any filing fee[.]"). This one-way[6] fee provision highly incentivizes the plaintiffs' bar to file as large and as complex a PAGA action as possible in the hope of either prevailing at trial and obtaining a massive fee award, or forcing a settlement that includes such fees. "An individual's PAGA claim, in other words, is guided only by potential profit from settlement – the larger and more complex the case, the better, regardless of whether the claims are manageable for trial." (CELC Amicus Brief, p. 4.) *See also Munoz v. Chipotle Mexican Grill, Inc.* (2015) 238 Cal.App.4th 291, 311, 189 Cal.Rptr.3d 134 ("Given the potential for recovery of significant civil penalties if the PAGA claims are successful, as well as attorney fees and costs, plaintiffs have ample financial incentive to pursue the remaining representative claims under the PAGA . . .").

For this reason, the Court of Appeal's comparison of a PAGA action to an LWDA enforcement action is highly flawed. Allowing the opinion to stand, and stripping trial courts of their inherent authority to strike or limit unmanageable

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[6] A PAGA plaintiff and his or her lawyers face no downside risk for bringing an unsuccessful claim, as the employer cannot recover its attorney's fees and costs incurred, even if the employer prevails.

claims, will further put the plaintiffs' bar in the driver's seat of an area of already-problematic litigation in California.

CONCLUSION

For the foregoing reasons, the opinion of the Court of Appeal should be reversed, and the holding of *Wesson* -- that PAGA actions are subject to a manageability requirement and that trial courts have the inherent power to strike or limit unmanageable claims -- should be adopted.

Dated: August 5, 2022

Respectfully submitted,
BAKER & HOSTETLER LLP

By: */s/Daniel F. Lula*
JOSEPH L. CHAIREZ
DANIEL F. LULA

Attorneys for Petitioner
ROYALTY CARPET MILLS, LLC

CERTIFICATE OF WORD COUNT

(Cal. R. Ct. 8.504(d)(1))

The undersigned counsel of record for Petitioner ROYALTY CARPET MILLS, INC., now known as ROYALTY CARPET MILLS, LLC, hereby certifies pursuant to Rules 8.204(c)(1) and 8.504(d)(1) of the California Rules of Court that the foregoing brief was produced using 13-point Roman type, including footnotes, and according to the Microsoft Word program used to prepare the brief, consists of 6,031 words, excluding the tables, this certificate, any signature block, and any attachments permitted under Rule 8.504(e)(1).

Dated: August 5, 2022

/s/Daniel F. Lula
Daniel F. Lula

PROOF OF SERVICE

(Cal. R. Ct. 8.25(a)(1), 8.500(f)(1))

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On August 5, 2022, I served the foregoing PETITIONER ROYALTY CARPET MILLS, LLC'S OPENING BRIEF ON THE MERITS on the following persons as indicated below:

Rudolfo Ginez, Jr. Ginez Steinmetz & Associates 926 N. Flower St. Santa Ana, CA 92703-2308 Email: ginez@sbcglobal.net Clifton E. Smith, Esq. CE Smith Law Firm 1117 Village Dr. Oceanside, CA 92057 Email: cesmithesq@cox.net	Attorneys for Respondents, Plaintiffs, Appellants, and Cross-Respondents Jorge Luis Estrada, Paulina Nava Medina, Jose A. Garcia, Martin Garcia, Rigoberto Moreno, Cipriano Perez, Martha Lara Leon, and Cindy Cleaver
Clerk of Court California Court of Appeal Fourth Appellate District Division Three 601 W. Santa Ana Blvd. Santa Ana, CA 92701	Cal. R. Ct. 8.500(f)(1)
Clerk of Court Superior Court of California County of Orange 700 Civic Center Drive West Santa Ana, CA 92701	Cal. R. Ct. 8.500(f)(1)
Clerk to the Hon. Randall Sherman Superior Court of California Dept. CX105 751 W. Santa Ana Blvd. Santa Ana, CA 92701	Cal. R. Ct. 8.500(f)(1)

Office of the Attorney General 1300 "I" Street Sacramento, CA 95814-2919	Cal. R. Ct. 8.500(f)(2)
Office of the District Attorney 401 Civic Center Drive West Santa Ana, CA 92701	Cal. R. Ct. 8.500(f)(2)

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: August 5, 2022

/s/Daniel F. Lula
Daniel F. Lula

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **ESTRADA v. ROYALTY CARPET MILLS**
Case Number: **S274340**
Lower Court Case Number: **G058397**

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Rudy Ginez Ginez, Steinmetz & Associates 084978	ginez@sbcglobal.net	e-Serve	8/8/2022 10:02:22 AM
Steven Katz Constangy, Brooks, Smith & Prophete LLP 139078	skatz@constangy.com	e-Serve	8/8/2022 10:02:22 AM
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8/8/2022
Date

/s/Daniel Lula

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Lula, Daniel (227295)

Last Name, First Name (PNum)

Baker Hostetler LLP

Law Firm