Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically RECEIVED on 9/6/2022 at 5:26:28 PM

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 9/6/2022 by Tayuan Ma, Deputy Clerk

IN THE

SUPREME COURT OF CALIFORNIA

========================

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*.**

========================

JORGE LUIS ESTRADA, ET AL.'S, ANSWER BRIEF ON THE MERITS

========================

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

========================

Rudy Ginez, Jr., SBN 84978
GINEZ, STEINMETZ & ASSOC.
926 N. Flower St.
Santa Ana, CA 92703
Email: Ginez@sbcglobal.net
Tel: (714) 541-2251
Fax: (714) 541-5807

Clifton E. Smith, SBN 134062
CE SMITH LAW FIRM
1117 Village Drive
Oceanside, CA 92057
Email: cesmithesq@cox.net
Tel: (760) 754-5472
Fax: (760) 754-5473

Attorneys for Plaintiffs, Appellants, and Cross-Respondents

TABLE OF CONTENTS

STATEMENT OF ISSUES 7

INTRODUCTION AND SUMMARY OF ARGUMENT 7

STATEMENT OF CASE 9

A. Factual Summary 9

1. The parties. 9

2. Royalty's de facto policy of providing late first meal periods and failing to provide second meal periods to Dyer and Derian employees. 10

a. First meal period violations. 11

b. Second meal period violations. 11

c. Royalty's expert concurred with Plaintiffs' expert regarding the high percentage of "presumed" meal period violations. 11

d. Meal period exceptions were not investigated. 12

e. Royalty never paid a premium for any meal period violation to any Dyer or Derian employee. 13

B. Procedural Summary 13

1. The complaints. 13

2. Royalty's answer to the third amended complaint. 14

3. Class certification. 14

4. Trial. 14

5. Rulings and judgment. 14

6. Relevant portions of the Court of Appeal's opinion. 16

LEGAL DISCUSSION 16

A. ROYALTY'S OPENING BRIEF IGNORES THE PAGA AS CONTRARY TO ITS THEME THAT THE COURT HAS THE INHERENT POWER TO DESTROY A PAGA ACTION IN THE NAME OF ADMINISTRATIVE CONVENIENCE. 16

B. THE ENACTMENT OF THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004. 18

C. STATUTORY PURPOSE OF PAGA. 22

D. PAGA SEEKS TO AUGMENT THE EFFORTS OF THE LWDA TO ACHIEVE MAXIMUM COMPLIANCE WITH THE STATE'S LABOR LAWS, NOT PROMOTE CONVENIENCE AND JUDICIAL ECONOMY. 24

E. MANAGEMENT REQUIREMENTS ATTENDANT TO CLASS ACTIONS HAVE LIMITED APPLICATION TO PAGA ACTIONS THAT DO NOT EXHIBIT THE PROCEDURAL CHARACTERISTICS OF CLASS ACTIONS. 25

F. ANY ATTEMPT TO NARROW, STRIKE OR COMPLETELY ELIMINATE A PAGA CLAIM IS EXPRESSLY PROHIBITED BY THE PAGA STATUTE AND IS CONTRARY TO PAGA'S EXPRESSED GOALS. 26

G. WESSON IS FACTUALLY DISTINGISHED FROM ESTRADA, IS CONTRARY TO THE LAW, AND MUST BE REVERSED. 30

H. THE TRIAL COURT STILL RETAINS THE AUTHORITY TO MANAGE THE ACTION EVEN THOUGH IT IS PROHIBITED FROM STRIKING, NARROWING, OR DISMISSING A PAGA CLAIM. 32

I. THE ESTRADA PAGA CLAIMS ARE PREDICATED ON CLASS-BASED MEAL PERIOD VIOLATIONS ALREADY ESTABLISHED THROUGH TIME-CARD EVIDENCE FOR THE ENTIRE CLASS, FOR WHICH A PRESUMPTION OF LIABILITY ARISES. THIS PRESUMPTION OF LIABILITY APPLIES EQUALLY TO THE PAGA CLAIMS. 35

CONCLUSION 39

CERTIFICATE OF WORD COUNT 40

PROOF OF SERVICE 41

TABLE OF AUTHORITIES

Federal Cases

Hamilton v. Wal-Mart Stores (2022)

39 F.4th 575 .... 21, 25, 26, 29

Viking River Cruises, Inc. v. Moriana (2022)

142 S. Ct. 1906 .... 21, 22

Zackaria v. Wal-Mart Stores, Inc. (2015)

142 F.Supp.3d. 958–959 .... 8, 35

State Cases

Arias v. Superior Court (2009)

46 Cal.4th 969 .... passim

Donohoe v. AMN Services, LLC

(2021) 11 Cal 5th 58 .... 16, 36, 37, 38

Duran v. U.S. Bank National Assn. (2014)

59 Cal.4th 1 8

Estrada v. Royalty Carpet Mills, Inc. (2022)

76 Cal. App. 5th 685 .... passim

Iskanian v. CLS Transportation Los Angeles, LLC (2014)

59 Cal.4th 348 .... 8, 22, 24

Kim v. Reins International California, Inc. (2020)

9 Cal.5th 73 .... 22, 23

LaFace v. Ralphs Grocery Co. (2022) 75 Cal.App.5th 388 .... 8, 23

Reyes v. Macy's, Inc. (2011)

202 Cal.App.4th 1119 22

Wesson v. Staples the Office Superstore (2021)

68 Cal. App. 5th 746 .... 30, 31, 32, 35

Williams v. Superior Court (2017)

3 Cal.5th 531 .... 9, 24

Statutes

Labor Code § 2698 19

Labor Code § 2699 .... 20, 27

Labor Code § 2699 (a) 7, 19, 20, 32

Labor Code § 2699 (i) 20

Labor Code § 2699.3 .... 19, 20

Labor Code § 2699.3 (a) 20

Labor Code § 2699.3 (a) (2) 20

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

Answer: No. A Court's attempt to manage claims under the Private Attorneys General Act ("PAGA") does not include striking or narrowing claims. PAGA is required to be enforced "… notwithstanding any other provision of the law …" (Labor Code § 2699 (a).) Striking or narrowing PAGA claims is contrary to the statutory language and goals of PAGA and would undermine the remedial purpose of the PAGA.

Disposing of any portion of a PAGA claim under the guise of manageability constitutes a violation of the PAGA statute and is an improper, unconstitutional exercise of a court's powers. Imposing such a requirement, found nowhere in the PAGA itself and apparently not imposed upon the government, would obliterate the purpose of representative PAGA actions. (*Estrada v. Royalty Carpet Mills, Inc.* (2022) 76 Cal. App. 5th 685, 710 (*Estrada*).)

The California Supreme Court has held that, in a PAGA action, plaintiffs need not meet class action certification requirements. (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 975 (*Arias*).) Federal district courts

have noted that dismissal of a claim based on manageability is rooted in class action procedure. (*Zackaria v. Wal-Mart Stores, Inc.* (2015) 142 F.Supp.3d. 958–959 (*Zakaria*).) Lack of manageability is a basis to decertify a class action. (*Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th 1, 29–30) However, dismissing PAGA claims as unmanageable is contrary to both the PAGA, and expressly contrary to the California Supreme Court's prior holdings.

A PAGA action is an administrative enforcement action where the plaintiff acts "as the proxy or agent of the Labor Workforce Development Agency (LWDA) recovering civil penalties that otherwise would be recovered by the LWDA. (*Arias* at p. 986) At its core, PAGA is a law enforcement mechanism that allows the state, or its proxies, to collect penalties for labor law violations from offending employers, such as Royalty Carpet Mills, Inc. (Royalty).

When a private litigant initiates a PAGA action, acting as a proxy for the state, the private litigant is "…still subject to the same legal rights and interests as the state." (*LaFace v. Ralphs Grocery Co.* (2022) 75 Cal.App.5th 388, 401 (*LaFace*).) "[A] PAGA litigant's status as 'the proxy or agent' of the state [citation] is not merely semantic; it reflects a PAGA litigant's substantive role in enforcing our labor laws on behalf of state law enforcement agencies." (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 388) "PAGA was intended to advance the state's

public policy of affording employees workplaces free of Labor Code violations, notwithstanding the inability of state agencies to monitor every employer or industry (Citations.) By expanding the universe of those who might enforce the law, and the sanctions violators might be subject to, the Legislature sought to remediate present violations and deter future ones." see *Williams v. Superior Court* (2017) 3 Cal.5th 531, 546 (*Williams*).)

STATEMENT OF CASE

For a review of the PAGA issue, relevant portions of the case history are included below.

A. Factual Summary

1. The parties.

Defendant, Royalty Carpet Mills, LLC (formerly known as Royalty Carpet Mills, Inc., (Royalty).) operated carpet manufacturing facilities at various locations in California until June 14, 2017, when it ceased operations. Two facilities were located in Orange County on Dyer Road in Santa Ana (Dyer) and on Derian Avenue in Irvine (Derian). Another facility was located in Tulare County in Porterville (Porterville). [*Estrada*, at p. 698.]

All Plaintiffs worked as full-time, hourly employees at one of these facilities. [7 AA:1717] [1]Jorge Luis Estrada (Estrada) worked as a dye

[1] Plaintiffs and class representatives, Rigoberto Moreno, Cipriano Perez, Salvador Avila, Martha Lara Leon, and Cindy Cleaver, and named

weigher at the Derian facility for about 3 1/2 years. [1 RT 108, 122] Paulina Nava Medina (Nava) worked as a mender and creeler at the Dyer facilities for about 15 years [1 RT 223-224] Jose A. Garcia (J. Garcia) worked as a mechanic at both the Derian and Dyer facilities for about 13 1/2 [1 RT 291] Martin Garcia (M. Garcia) worked as a forklift driver and machine operator at the Derian facility for about 15 years. [1 RT 260-261] [2]

2. Royalty's de facto policy of providing late first meal periods and failing to provide second meal periods to Dyer and Derian employees.

For years, Royalty had a de facto policy of failing to provide timely first meal periods and failing to provide second meals to employees who worked at its Dyer and Derian facilities. The class members working at these facilities were captive, factory employees whose supervisors controlled the timing of the meal periods, not the employees.

Time records showed these employees were taking late first meal periods (after the 5th hour of work) 69% to 70% of the time. [5 AA 1059-1060, 5 RT 817:6-23, 819:3-9] The class members working at these Orange

---

plaintiffs, Maria Suarez and Arlette Ramos, worked at the Porterville facility. However, the claims of the Porterville class are not relevant to the issues under review by the California Supreme Court.

[2] "AA" refers to Appellants' Appendix and "RT" refers to the Reporter's Transcript and citations to both are in the following format "Vol. AA/RT Page, and Line Numbers, if necessary.

County, CA. facilities were captive, factory employees whose supervisors controlled the timing of the meal periods, not the employees.

a. First meal period violations.

Plaintiff's expert, Kenneth Creal, CPA, (Creal) testified that based on his analysis of Royalty's timekeeping records, Dyer/Derian employees were taking late first meal periods (after the fifth hour of work) 69% to 70% of the time. [5 AA 1059-1060, 5 RT 817:6-23, 819:3-9] Creal further testified that once litigation commenced in December 2013, late first meal period violation rates dropped to 11% at the Dyer facility and to 7% at the Derian facility. [5 AA 1059-1060, 5 RT 817:24-818:20, 820:9-15]

b. Second meal period violations.

Creal's analysis of the time records also showed that when employees were working more than 10 hours in a workday, second meal periods were not recorded 98% of the time at the Dyer facility and 99.6% of the time at the Derian facility. [5 AA 1060, 5 RT 822:3-823:12, 824:21-825:24, 5 RT 825:26-827:10, 6 RT 11139:15-1140:3, 1170:8-1171:23].

c. Royalty's expert concurred with Plaintiffs' expert regarding the high percentage of "presumed" meal period violations.

Royalty's expert, Robert Crandall (Crandall), testified that he reviewed timekeeping data for hourly employees working at Royalty's Dyer, Derian, and Porterville facilities, and in particular, for the Dyer and Derian facilities from December 2009, through November 13, 2013. [6 RT:11-19] Crandall testified that his calculations for late first meal periods,

and no second meal periods recorded were very similar to Creal's calculations. In response to the trial court's question "… if he (Creal) says 69 percent was late, what do you say?" Crandall testified, "On weighted average perspective, 65.7 percent at Dyer and 64.5 percent at Derian. [6 RT 1189-16-20] Crandall testified that he was not disputing Creal's percentages and that his (numbers) are a little lower and Creal's are a little higher. [6 RT 1191:3-8] Crandall also admitted that when the time records showed Dyer and Derian employees worked shifts greater than 10 hours, second meal breaks were not recorded 97 to 98 percent of the time. [6 RT 1170:8-1171:23] In doing his analysis, Crandall never asked Royalty if they had any type of written reports to explain why the [meal period] exceptions occurred. [6 RT 1195:26-1196:12, 1197:13-17]

d. Meal period exceptions were not investigated.

Royalty's HR Manager, Nora Gomez, admitted that Royalty never investigated meal period violations at its Orange County facilities during the class period, nor is there a record of any investigation. There was no system in place to alert Royalty to a meal period exception to trigger such an investigation, despite Royalty's use of an automated payroll system. [2 AA 328:7-330:16, 4 RT 720:16-722:14] Gomez testified she never provided exception reports showing missing, incomplete, or late meal periods, to the executive staff. [4 RT 720:16-725:1] Gomez did not know any procedure for payment of premium pay. [4 RT 724:21-24]

e. Royalty never paid a premium for any meal period violation to any Dyer or Derian employee.

Royalty stipulated that it never paid premium payments for meal periods to Plaintiffs or class members during the class period. [8 AA 1850:14-17]

B. Procedural Summary

1. The complaints.

The initial complaint. On December 13, 2013, Estrada filed a complaint against his Royalty alleging meal and rest period violations, penalties for inaccurate wage statements, and waiting time penalties. He also alleged UCL and PAGA claims based on these labor code violations. All claims were asserted individually except for the PAGA claim. [1 AA 63, *Estrada*, at p. 698.]

The SAC. On October 22, 2014, Estrada filed a second amended complaint (SAC) to add class action allegations and add Nava as a class representative. The SAC retained the PAGA claim and realleged Estrada's individual claims as class claims. [1 AA 76, *Estrada*, at p. 698.]

The TAC. On November 17, 2016, Estrada and Nava filed the operative third amended complaint (TAC) that added a declaratory relief cause of action and 11 new plaintiffs, including several who worked at Porterville. In all, TAC alleged seven class claims and one representative PAGA claim: (1) meal period violations; (2) rest periods violations; (3) penalties for inaccurate wage statements; (4) waiting time penalties; (5)

penalties under Labor Code section 558; (6) PAGA penalties; (7) UCL violations; and (8) declaratory relief; [1 AA 106-154, *Estrada*, at p. 699.]

2. Royalty's answer to the third amended complaint.

Royalty filed its Answer to the TAC on February 1, 2017. It asserts a general denial and twenty affirmative defenses. The fifth affirmative defense alleges waiver of meal breaks "All causes of action in the TAC are barred, in whole or in party, because Plaintiffs and/or the putative class members/alleged aggrieved employees waived their entitlement to meal periods …" The thirteenth affirmative defense alleges that "Each purported cause of action in the TAC is barred to the extent it seeks to recover penalties on behalf of individuals who are not "aggrieved employees." [1 AA 204, 206, 208.]

3. Class certification.

The case was certified, in part, as a class action on February 23, 2018. [7 AA 1718-1727, *Estrada*, at p. 700-701.]

4. Trial.

The action was tried over ten days in a bench trial before Judge Sherman beginning in November 2018, and resuming in April, May, and July 2019. [*Estrada*, at p. 701.]

5. Rulings and judgment.

On August 2, 2019, the court issued its written statement of decision. [10 AA 2412] and entered an order decertifying the first meal period and second meal period subclasses at the Dyer and Derian facilities, and also

dismissing the PAGA claims for all aggrieved Dyer and Derian employees who were not named plaintiffs. [10 AA 2416-2421, 2415:15-21] The judgment was entered on January 16, 2020. [10 AA 2453-2465]

Nevertheless, the trial court entered judgment for plaintiffs Estrada, and M. Garcia who worked at the Derian facility, and for Nava and J. Garcia who worked at the Dyer facility on the first cause of action for failure to provide lawful first and second meal periods, and on the seventh cause of action for unlawful business practices. They were awarded damages in the amount of $4,212.38, $9,311.49, $9,690.28, and $17,114.12, respectively [10 AA 2457:1-1460:19].

Plaintiffs Estrada, Nava, M. Garcia, and J. Garcia also prevailed on the sixth cause of action for PAGA penalties, and they were awarded penalties in the amounts of $7,300, $300, $10,100, and $10,100, respectively, of which 75% of said amounts or a total of $20,850 must be paid to the California Labor Workforce Development Agency (LWDA). [10 AA 2457:1-2460:19] This award was subsequently vacated on appeal. [*Estrada* at p. 731.]

The judgment awarded Plaintiffs prejudgment interest at the rate of 7% per annum. [10 AA 2456:8-10, 2457:10-12, 2458:9-11, 2459:4-7, 2460:1-3]

6. Relevant portions of the Court of Appeal's opinion.

The Court of Appeal reversed the trial court's order decertifying the Dyer/Derian meal period subclass claim and remanded it so that the claims may be retried in light of the *Donohoe v. AMN Services, LLC* (2021) 11 Cal.5th 58, *(Donohoe)* presumption to determine whether class liability is appropriate. [*Estrada*, at pp. 719, 726-727.]

The Court of Appeal also reversed the trial court's order dismissing the Dyer/Derian PAGA meal period claim due to unmanageability and remanded the claim for a new trial. [*Estrada*, at pp. 709, 714, 731.]

The Court of Appeal also reversed the portion of the judgment awarding individual PAGA penalties to plaintiffs Estrada, Nava, J. Garcia, and M. Garcia because of its holding that the trial court improperly dismissed their representative PAGA claims as unmanageable. [*Estrada*, at p. 731.]

LEGAL DISCUSSION

A. ROYALTY'S OPENING BRIEF IGNORES THE PAGA AS CONTRARY TO ITS THEME THAT THE COURT HAS THE INHERENT POWER TO DESTROY A PAGA ACTION IN THE NAME OF ADMINISTRATIVE CONVENIENCE.

Royalty dedicates its entire brief to the argument that the trial court has inherent authority to manage all litigation before it, which includes the untenable proposition that this authority also gives the trial court the right

to destroy a PAGA claim for administrative convenience, whenever it deems it necessary.

To make this quantum leap in logic, Royalty chooses to ignore the entire history and purpose of the PAGA as a law enforcement action, because to acknowledge, much less analyze the same, runs counter to its narrative. At best, there is a cursory discussion of the PAGA in Section III of Royalty's Opening Brief. Given the question to be decided, Royalty's seeming indifference, if not disdain for the PAGA itself is shocking.

In effect, Royalty is asking the California Supreme Court to overreach and engage in a legislative exercise to override the specific statutory language of Labor Code section 2699(a), which precludes the very outcome sought by Royalty. If Royalty does not like the law, they can seek a legislative remedy. A judicial remedy that provides for the destruction of a PAGA claim is not currently authorized by the PAGA statute.

Royalty denigrates the PAGA, making the unfounded assertion that to uphold the statutory purpose of PAGA would turn trials of PAGA claims into a "circus," allegedly depriving employer-defendants of their due process right to put on an affirmative defense. (Royalty's Opening Brief, p. 7). Of course, Royalty never really explains how such a due process deprivation would actually occur. As otherwise noted herein, the PAGA allows the trial court to manage the presentation of evidence as it normally

would, including managing witnesses to be called by both sides, to give both sides notice and an opportunity to be heard.

Incredibly, instead of a direct analysis of PAGA as a unique form of law enforcement action subject to private enforcement, Royalty instead chooses to make a general argument that manageability can't be ignored simply because the action is not a class action (Royalty's opening brief, pp. 16-17).

To illustrate its point, Royalty offers a nonsensical, if not pointless, hypothetical describing why it would be improper to join a construction defect claim against a homebuilder, with a breach of contract claim against a housekeeping service, with a negligence claim against a gardener, with a personal injury claim against a driver, with a government tort claim against the county arising from a recent election. (Royalty's Opening Brief, p. 16).

Royalty knows that the PAGA does not allow for the joinder of these claims. However, if the employees of the entities described in this pointless hypothetical have wage-related claims recognized by the Labor Code then, in fact, those employees could seek penalties on behalf of the State to deter their employers who violate the law, such as Royalty.

B. THE ENACTMENT OF THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004.

"In September 2003, the Legislature enacted the Labor Code Private Attorneys General Act of 2004 (Lab. Code, § 2698 et seq.;

Stats. 2003, ch. 906, § 2, eff. Jan. 1, 2004). The Legislature declared that adequate financing of labor law enforcement was necessary to achieve maximum compliance with state labor laws, that staffing levels for labor law enforcement agencies had declined and were unlikely to keep pace with the future growth of the labor market, and that it was therefore in the public interest to allow aggrieved employees, acting as private attorneys general, to recover civil penalties for Labor Code violations, with the understanding that labor law enforcement agencies were…to retain primacy over private enforcement efforts." (*Arias*, at p. 980).

For nearly two decades, since the enactment of PAGA in 2003, employees may now recover civil penalties for Labor Code violations by acting in place of the Labor Commissioner, pursuant to the PAGA (Labor Code §§ 2698 *et seq*.) and, specifically, pursuant to Labor Code §§ 2699 (a) and 2699.3.

Under this legislation, an "aggrieved employee" may bring a civil action personally and on behalf of other current or former employees to recover civil penalties for Labor Code violations. (Lab. Code, § 2699, subd. (a).) Of the civil penalties recovered, 75 percent goes to the Labor and Workforce Development Agency, leaving the remaining 25 percent for the "aggrieved employees." (Lab. Code, § 2699, subd. (i).) pursuant to the procedures specified in Section 2699.3." Cal. Lab. Code § 2699 (a), (*Arias*, at pp. 980-981.)

"Section 2699.3, in turn, requires the employee to give written notice of the alleged Labor Code violation to both the employer and the Labor and Workforce Development Agency. Cal. Lab. Code § 2699.3 (a). The agency then has a right of first refusal over the claim. Cal. Lab. Code § 2699.3 (a) (2). If the agency declines to investigate the claim, does not respond to the aggrieved employee's notice within 65 days, or does not issue a citation within 120 days of announcing its decision to investigate the claim, the aggrieved employee may commence an action for civil penalties. *Id.* If the aggrieved employee's action is successful, 75 percent of the funds recovered go to the Labor and Workforce Development Agency "for enforcement of labor laws" or "education of employers and employees about their rights and responsibilities," and 25 percent of the recovered funds go to the "aggrieved employees," *id.* § 2699 (i), meaning the plaintiff and all employees affected by the Labor Code violation. (Citations omitted.)" *Hamilton v. Wal-Mart Stores* (2022) 39 F.4th 575, 582-583 (*Hamilton*).

The United States Supreme Court noted the distinction between class actions and PAGA actions in California:

> Like class actions, "…PAGA actions also permit the adjudication of multiple claims in a single suit, but their structure is entirely different. A class-action plaintiff can raise a multitude of claims because he or she represents a multitude of absent individuals; a PAGA plaintiff, by contrast, represents a single principal, the

> LWDA, that has a multitude of claims. As a result of this structural difference, PAGA suits exhibit virtually none of the procedural characteristics of class actions. The plaintiff does not represent a class of injured individuals, so there is no need for certification. PAGA judgments are binding only with respect to the State's claims, and are not binding…on nonparty employees as to any individually held claims. (*Arias* at p. 986) This obviates the need to consider adequacy of representation, numerosity, commonality, or typicality. And although the statute gives other affected employees a future interest in the penalties awarded in an action, that interest does not make those employees "parties" in any of the senses in which absent class members are, (Citations omitted.) or give those employees anything more than an inchoate interest in litigation proceeds. (Citation omitted.)

(*Viking River Cruises, Inc. v. Moriana* (2022) 142 S. Ct. 1906, 1920-1921 (*Viking River Cruises*).

The United States Supreme Court observed that the State retains control of a PAGA action, with PAGA plaintiffs being merely agents of the State.

> California precedent strongly suggests that the State retains inherent authority to manage PAGA actions. There is no other obvious way to understand California precedent's description of the State as the "real party in interest." See generally 1A Cal. Jur. 3d Actions §31 (real-party-in-interest status is based on ownership and control over the cause of action). And a theory of total assignment appears inconsistent with the fact that employees have no assignable interest in a PAGA claim. (Citation omitted.) The employee's "ability to file PAGA claims on behalf of the state does

> not convert the state's interest into their own or render them real parties in interest." (Citation omitted.) For purposes of this opinion, we assume that PAGA plaintiffs are agents.

(*Viking River Cruises*, at p. 1926, fn. 2)

There is no individual component to a PAGA action because "`*every* PAGA action ... is a representative action on behalf of the state.'" (*Iskanian, supra,* 59 Cal.4th at p. 387.) Plaintiffs may bring a PAGA claim *only* as the state's designated proxy, suing on behalf of *all* affected employees. (See *Arias, supra,* 46 Cal.4th at p. 986; *Reyes v. Macy's, Inc.* (2011) 202 Cal.App.4th 1119, 1123-1124.) (*Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 86-87 (*Kim*).)

C. STATUTORY PURPOSE OF PAGA.

A PAGA action to recover civil penalties "is fundamentally a law enforcement action designed to protect the public and not to benefit private parties" (*Arias* at p. 986). Accordingly, the Court's general, inherent authority to manage the actions before it is superseded by the unique nature and statutory mandate of a PAGA action.

> PAGA claims are different from conventional civil suits. The Legislature's sole purpose in enacting PAGA was "to augment the limited enforcement capability of the [LWDA] by empowering employees to enforce the Labor Code as representatives of the Agency." (*Iskanian, supra,* 59 Cal.4th at p. 383; see *id.* at pp. 388-389.) Accordingly, a PAGA claim is an enforcement action between the LWDA and the employer, with the PAGA plaintiff acting on behalf of the government. (*Iskanian,* at pp. 382-384.) The state can deputize

> anyone it likes to pursue its claim, including a plaintiff who has suffered no actual injury. (See *id.* at p. 382.) Moreover, civil penalties recovered on the state's behalf are intended to "remediate present violations and deter future ones," *not* to redress employees' injuries. (*Williams, supra,* 3 Cal.5th at p. 546; see *Iskanian,* at p. 381; *Brown, supra,* 197 Cal.App.4th at p. 501.)

(*Kim*, at p. 86.)

Relief under PAGA is designed primarily to benefit the general public, not the party bringing the action." (*Kim, supra,* 9 Cal.5th at p. 81, citations omitted, original italics.) A PAGA action is therefore a type of qui tam action, except that a portion of the penalty recovered goes to all employees affected by the Labor Code violation. The state agency on whose behalf the suit is prosecuted always remains the real party in interest. (*Ibid.*) Because PAGA plaintiffs act as proxies for the state's labor law enforcement agencies, they represent "`*the same legal right and interest*'" as those agencies: the "`recovery of civil penalties that otherwise would have been assessed and collected by the [LWDA].'" (*Id.* at p. 380, italics added.) (*LaFace v. Ralphs Grocery Co.* (2022) 75 Cal.App.5th 388, 396-397.)

The Legislature enacted PAGA to remedy systemic underenforcement of many worker protections. PAGA was intended to advance the state's public policy of affording employees workplaces free of Labor Code violations, notwithstanding the inability of state agencies to

monitor every employer or industry. (*Iskanian v. CLS Transportation Los Angeles, LLC, supra,* 59 Cal.4th at p. 379; *Arias v. Superior Court* (2009) 46 Cal.4th 969, 980-981.) By expanding the universe of those who might enforce the law, and the sanctions violators might be subject to, the Legislature sought to remediate present violations and deter future ones. (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 545-546 (*Williams*.)

The *Estrada* court on pages 710-712 of its opinion reviewed and relied on the above authorities in holding that a court cannot dismiss a PAGA claim based on manageability.

D. PAGA SEEKS TO AUGMENT THE EFFORTS OF THE LWDA TO ACHIEVE MAXIMUM COMPLIANCE WITH THE STATE'S LABOR LAWS, NOT PROMOTE CONVENIENCE AND JUDICIAL ECONOMY.

"PAGA empowers aggrieved employees to enforce California labor laws, thereby preventing a recurrence of the "systemic underenforcement of many worker protections" that occurred before the passage of the statute." (*Hamilton*, at p. 589*, citing Williams*, at p. 545.)

"…[T]he statute's provisions are directed not at promoting convenience and judicial economy, but at augmenting the limited enforcement capabilities of the Labor and Workforce Development Agency, (Citation omitted.) and 'achiev[ing] maximum compliance with state labor laws…" (*Hamilton*, at p. 589, *citing Arias*, at p. 980.)

E. MANAGEMENT REQUIREMENTS ATTENDANT TO CLASS ACTIONS HAVE LIMITED APPLICATION TO PAGA ACTIONS THAT DO NOT EXHIBIT THE PROCEDURAL CHARACTERISTICS OF CLASS ACTIONS.

Manageability requirements attendant to class actions have limited application to PAGA actions. Unlike class actions, PAGA actions do not invoke issues related to adequacy of representation, numerosity, commonality or typicality, nor is there a requirement to certify such actions under state law. Unlike a class action, the PAGA Plaintiff represents a single entity, the Labor Workforce Development Agency, with a multitude of claims. PAGA judgments are not binding on non-party employees as to any individually held claim. At most, affected employees have no more than an inchoate, future interest in the penalties which might be paid in any PAGA proceeding. (*Hamilton,* p. 583*,* citing *Viking River Cruises,* p. 1920.)

Under state law, PAGA penalties are not damages. "Indeed, the California Supreme Court has repeatedly differentiated between damages, either common law or statutory, which compensate for injuries, and PAGA civil penalties, which serve the distinct function of deterring and punishing violations of the Labor Code. (*Hamilton*, at p. 590, *citing* Arias, at pp. 985-87.)

And, under the PAGA's statutory scheme for assessing penalties, hurdles that might otherwise exist for damage calculations under a class

action simply do not exist in determining PAGA penalties for Labor Code violations.

Instead, under PAGA's penalty provisions, it is a rather simple multiplication problem. In *Hamilton,* the court noted that "[u]nder PAGA, information regarding civil penalties would not be uniquely in the possession of the plaintiff. To the contrary, once a PAGA plaintiff discloses her theory of the case, all the information required to calculate PAGA penalties – e.g., the number of employees affected, the number of pay periods at issue, and the fixed penalty that attaches for proven (*sic*) each violation … would be in the hands of the employer. (*Hamilton,* at p. 591.)

For all of the foregoing reasons, attempting to narrow, strike or dismiss a PAGA claim based on a manageability requirement not found in the PAGA, is completely inconsistent with PAGA's purpose and statutory scheme. The requirement cannot be imposed in PAGA actions under the guise of a court's inherent powers. The same would constitute an unconstitutional exercise and overreach of the Court's inherent powers. There is absolutely no statutory authority in support of such a requirement.

F. ANY ATTEMPT TO NARROW, STRIKE OR COMPLETELY ELIMINATE A PAGA CLAIM IS EXPRESSLY PROHIBITED BY THE PAGA STATUTE AND IS CONTRARY TO PAGA'S EXPRESSED GOALS.

As previously considered by this Court in the *Arias* case, the language of the PAGA statute expressly precludes any court's attempt to

narrow, strike or eliminate PAGA claims in the name of manageability. Subdivision (a) of *Labor Code § 2699* states that **"[n]otwithstanding any other provision of law"** an aggrieved employee may bring a representative action against the employer for civil penalties based on violations of Labor Code provisions that expressly provide for a civil penalty. [emphasis added].

All judicial efforts to narrow, strike or dismiss a PAGA claim, are contrary to the express provisions of this law enforcement statute and cannot be reconciled. The same is expressly prohibited by PAGA, as noted by the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969, quoted in relevant part:

> Defendants read the Court of Appeal's decision as holding that class action requirements do not apply to actions under Labor Code section 2699, subdivision (a) *only because* class action requirements are "provisions of law" and subdivision (a) says that it applies regardless of, or notwithstanding, "any other provision of law." Defendants then argue that because Labor Code section 2699, subdivision (g) does not contain subdivision (a)'s "[n]otwithstanding any other provision of law" language, it follows that actions under that subdivision must comply with class action requirements. According to defendants, to conclude that subdivision (g) actions must satisfy class action requirements but subdivision (a) actions need not is "absurd" and therefore the Court of Appeal's statutory construction must be wrong. We disagree.

(Arias, at p. 982.)

> Defendants also argue that if the "[n]otwithstanding any other provision of law" language in Labor Code section 2699, subdivision (a) exempts representative actions brought under the Labor Code Private Attorneys General Act of 2004 from class action requirements, it must also exempt those actions from all other provisions of law, including statutes of limitation and pleading requirements set forth in the Code of Civil Procedure. Not so. "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, 13 746, 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*, at p. 983.)

As previously determined by this Court in *Arias,* PAGA precludes and survives any attempt to narrow or eliminate a PAGA claim as expressly contrary to the PAGA statute.

Imposing a manageability requirement that attempts to narrow, restrict or eliminate a PAGA claim is also contrary to PAGA's statutory goals for two separate and distinct reasons:

1. The Court seeks to restrict or eliminate PAGA claims as to private litigants who act in place of the State when the State is not subjected to the same requirements when bringing a PAGA action in its own name. The same occurred in this case, and,

2. Imposing management constraints in the name of judicial convenience, which operate to gut or eliminate PAGA claims completely ignores the overriding purpose of the PAGA statute as a law enforcement mechanism. This would be “outcome determinative, leading to the dismissal of many PAGA cases, which would in turn "interfere with PAGA's express design as a law enforcement mechanism." (*Hamilton*, at p. 589, *citing Estrada*, at p. 712)

The Fourth District Court of Appeal in *Estrada* considered this case as a clear example of the irreparable harm that will likely occur if a court is given the authority to narrow, strike or dismiss PAGA claims in clear contravention of the PAGA statutes.

The trial court in *Estrada* artificially and capriciously imposed its own manageability requirement where none otherwise existed under the PAGA, to dispose of the PAGA action entirely for the court’s convenience. It had with no actual legal basis to do so. The PAGA claims were predicated on time card evidence of class-wide first and second meal period violations with no payment of premium pay. The trial court still dismissed the PAGA claims. There could not be a clearer example of an abuse of judicial discretion than the trial court’s decision to dismiss the PAGA claims in *Estrada.*

> Seeking civil penalties on behalf of aggrieved employees may make plaintiff's case difficult to prove and may require evidence regarding a significant

> number of individual employees. But PAGA actions are unlike class actions; they are 'distinct in purpose and function from a purely procedural rule,' [citation] … the purpose of PAGA is not 'to allow a collection of individual plaintiffs to sue the same defendant in one consolidated action for the sake of convenience and efficiency.' [Citation.] In short, the imposition of a manageability requirement—which finds its genesis in [class action procedure]—makes little sense in this context." (*Zackaria v. Wal-Mart Stores, Inc.* (C.D.Cal. 2015) 142 F.Supp.3d 949, 959 (*Zackaria*).)

(*Estrada*, at p. 711.)

Attempting to impose a freestanding manageability requirement upon a PAGA action simply to dispose of it entirely, as the trial court did in the *Estrada* case becomes the most extreme example of judicial overreach resulting in reversible error.

G. WESSON IS FACTUALLY DISTINGISHED FROM ESTRADA, IS CONTRARY TO THE LAW, AND MUST BE REVERSED.

In support of Royalty's argument that the trial courts have the authority to strike, narrow or dismiss PAGA claims, in contravention of both the *Arias* and the *Estrada* decisions, Royalty mistakenly cites *Wesson v. Staples the Office Superstore* (2021) 68 Cal. App. 5th 746, (*Wesson*) as authority for its untenable proposition.

First, the manageability issue in the *Wesson* case arose from the alleged misclassification of Staples store general managers as salaried, exempt employees. Misclassification of a non-exempt employee requires a

more in-depth analysis of individual issues that might overwhelm and prevent satisfaction of class requirements pertaining to commonality and numerosity. That fact scenario is a world apart from the evidence adduced in *Estrada,* which went to trial to remedy class-wide, meal period violations and collect PAGA penalties for non-exempt, hourly paid, minimum-wage, factory employees whose non-exempt status was never in dispute.

Furthermore, the *Wesson* Court's assertion that it had the authority to dismiss a PAGA action, claiming that its decision is consistent with both statutory construction and the *Arias* decision is wrong. The *Wesson* Court's decision is wrong because the statutory language of Labor Code § 2699 (a), expressly prevents a court from narrowing or striking PAGA claims or, in this instance, dismissing them entirely.

The *Wesson* court ignores that portion of the Supreme Court's holding in *Arias*, wherein the California Supreme Court discussed the preclusive effect of Labor Code § 2699 (a) as a barrier to narrowing, striking or dismissing a PAGA claim entirely, as contrary to the PAGA statute, which exists "notwithstanding" any other law (*Arias* at p. 982.) This same analysis cannot be found in the *Wesson* case. The Supreme Court's analysis of this issue in *Arias* is a legally sufficient basis to overturn the decision in *Wesson*.

As a matter of statutory construction, Labor Code § 2699 (a) prevents the narrowing, striking, or outright dismissal of PAGA claims,

notwithstanding the court's general statutory authority to manage those actions that come before it. The preclusive effect of Labor Code § 2699 (a) is not diminished in any way by the fact that Plaintiffs, as private litigants, act on behalf of the LWDA. The decision in *Estrada i*s a correct, legal interpretation of the PAGA statute and must be upheld. The *Wesson* decision ignores the specific statutory language of PAGA and, as a result, it's reasoning is flawed and subject to reversal, consistent with the decision in *Estrada*.

H. THE TRIAL COURT STILL RETAINS THE AUTHORITY TO MANAGE THE ACTION EVEN THOUGH IT IS PROHIBITED FROM STRIKING, NARROWING, OR DISMISSING A PAGA CLAIM.

In this case, the trial court failed to acknowledge the distinct nature of PAGA as a law enforcement action separate and distinct from a class action. The trial court dismissed the PAGA meal period claims of the Dyer and Derian employees immediately after decertification of the meal period claims of the Dyer/Derian subclass. The trial court's decision to dismiss the PAGA claims emphasized its erroneous view that class-based claims and PAGA claims were one and the same.

"As to the first cause of action for meal period violations, the court issued an order decertifying the Dyer/Derian meal period subclass. The court found there were too many individualized issues to support class treatment. That order likewise dismissed the portion of the PAGA claim

(sixth cause of action) based on meal period violations at Dyer and Derian because the individualized issues made it unmanageable.” (*Estrada,* at p. 702.)

“The trial court's order decertifying the Dyer/Derian meal break subclass also dismissed “[t]he meal break-related claims that Plaintiffs bring for the Dyer and Derian locations under [PAGA] … because, for the various reasons noted [in the decertification order], there are numerous individualized issues that render Plaintiffs' PAGA meal break claims unmanageable.” Since we conclude a court cannot dismiss a PAGA claim based on manageability, we reverse this portion of the order and remand for further proceedings in light of this opinion.” *Estrada* at pp. 709-710.

The *Estrada* court highlights the trial court’s belief that it had eliminated PAGA claims by first decertifying the Dyer/Derian class claims. Then the trial court made the disingenuous claim that there were no group of aggrieved employees for whom PAGA claims could be asserted.

> The court’s statement of decision provides “[t]he 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.” This failure to find Labor Code violations, however, was tied to the court's decision to dismiss the PAGA claim as unmanageable. The court explained in its oral ruling that it was awarding PAGA penalties to individual plaintiffs because “there [was] no group of [aggrieved] employees” due to its decision to decertify the class.

(*Estrada*, at p. 731, fn. 7.)

This erroneous decision that Plaintiffs' PAGA claims were "unmanageable" was predicated on the Court's equally erroneous decision to treat PAGA claims and class claims as identical.

As stated previously, the two actions are separate and distinct. Determination of the manageability of class actions will never serve as the basis to strike, narrow, or dismiss a PAGA claim. As a law enforcement action, a PAGA claim is separate and distinct in every way from a class claim. In short, the Court's authority to manage a PAGA action does not include the power to destroy a PAGA action.

However, despite PAGA's unique status as a law enforcement action and, despite the statutory language of the PAGA which precludes the elimination of such claims, the trial court is not powerless to manage the entire Estrada action, including the PAGA claims.

In fact, the Court of Appeal in *Estrada*, noted the difficulty that PAGA plaintiffs, in general, may have proving purported violations, despite having the statutory authority to pursue such an action:

> At trial, plaintiff may prove that defendant violated the California Labor Code with respect to the employees it describes as 'aggrieved employees,' some of the employees, or he may not prove any violations at all. But the fact that proving his claim may be difficult or even somewhat burdensome for himself and for

> defendant does not mean that he cannot bring it at all." (*Zackaria, supra*, 142 F.Supp.3d at p. 959.)

(*Estrada*, at p. 713.)

After holding that a court cannot dismiss a PAGA claim based on manageability, the Estrada court explained the importance of effective management of such claims.

> This approach may also encourage plaintiffs' counsel to be prudent in their approach to PAGA claims and to ensure they can efficiently prove alleged violations to unrepresented employees. We encourage counsel to work with the trial courts during trial planning to define a workable group or groups of aggrieved employees for which violations can more easily be shown. If PAGA plaintiffs are unable to do so, they risk being awarded a paltry sum of penalties, if any. … If a plaintiff alleges widespread violations of the Labor Code by an employer in a PAGA action but cannot prove them in an efficient manner, it does not seem unreasonable for the punishment assessed to be minimal.

(*Estrada*, at p. 713.)

I. THE ESTRADA PAGA CLAIMS ARE PREDICATED ON CLASS-BASED MEAL PERIOD VIOLATIONS ALREADY ESTABLISHED THROUGH TIME-CARD EVIDENCE FOR THE ENTIRE CLASS, FOR WHICH A PRESUMPTION OF LIABILITY ARISES. THIS PRESUMPTION OF LIABILITY APPLIES EQUALLY TO THE PAGA CLAIMS.

This case is easily distinguishable from the *Wesson* case which sought PAGA penalties predicated on alleged misclassification of Staples store managers as exempt employees. *Estrada* is not a misclassification case. In *Estrada*, the PAGA claims arose from the same meal period

violations suffered by the Dyer/Derian class, established through time-card evidence introduced at trial. Additionally, the parties also stipulated that Royalty did not pay meal period premium payments to any class members during the class period. [8 AA 1850:16-17] If time records show…. delayed meal periods with no indication" that premium pay was provided, then a rebuttable presumption arises that the employee was not provided a compliant meal period. (*Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58 (*Donohue*).) That same presumption of liability is applicable to Plaintiffs' PAGA claims as well.

The Court of Appeal in *Estrada* summarized the facts upon which class-based liability exists:

> Faced with Royalty's written policies, plaintiffs' theory of liability at trial centered around informal policy. They argued supervisors at Royalty controlled meal period decisions and scheduled late first meal periods and failed to provide second meal periods. In particular, plaintiffs claimed violations occurred based on an informal policy requiring employees to finish their work or be relieved by another employee prior to taking meal breaks. They supported their theory with evidence of violation rates derived from timekeeping records. Prior to the filing of this lawsuit in December 2013, there were late first meal violation rates of 69 and 70 percent at Dyer and Derian, respectively. After this lawsuit was filed, these violation rates dropped to 11 percent at Dyer and 7 percent at Derian. Plaintiffs assert this sudden drop is evidence of employer control. As for second meal periods, they were unrecorded 98 percent of the time at Dyer and 99.6 percent of the time at Derian.

> These rates remained the same after this lawsuit was filed.

(*Estrada*, at p.722.)

The Court of Appeal in *Estrada* also discussed the transformative nature of the *Donohue* case which mandated reversal of the trial court's decision to decertify the Dyer/Derian class.

> After the trial court entered judgment in this case, our Supreme Court decided *Donohue*, which discussed the use of timekeeping records in wage and hour class actions. It held that "[i]f time records show missed, short, or delayed meal periods with no indication" that premium pay was provided, then a rebuttable presumption arises that the employee was not provided a compliant meal period. (*Donohue, supra*, 11 Cal.5th at p. 77; see *id.* at p. 74.) "The presumption derives from an employer's duty to maintain accurate records of meal periods." (*Id.* at p. 76.) "'To place the burden elsewhere would offer an employer an incentive to avoid its recording duty and a potential windfall from the failure to record meal periods.' [Citation.]

(*Estrada*, at p. 722.)

Importantly, the court's opinion in *Estrada* also cited that portion of the *Donohue* decision which described the evidence that employers must now produce to rebut the presumption of class-wide liability:

> Employers can rebut the presumption by presenting evidence that employees … had in fact been provided compliant meal periods during which they chose to work. 'Representative testimony, surveys, and statistical analysis,' along with other types of evidence,

> ‘are available as tools to render manageable determinations of the extent of liability.’”

(*Estrada*, at p. 722, *citing Donohue*, at p. 77.)

At trial, while the PAGA action was still in place, Royalty had every opportunity to call witnesses as an exercise of its due process rights. Royalty did so without any objection predicated on due process. Royalty even summarized in its Opening Brief its limited evidence of individual damages testimony upon which the trial court’s subsequent, erroneous order to decertify occurred. (Royalty’s Opening Brief, at pp. 9-10)

The burden remains with Royalty to provide class-based evidence to rebut the presumption of liability as to the class-based claims and also as to the PAGA claims, which is increasingly unlikely nearly six years after Royalty closed its operations entirely.

///

///

CONCLUSION

The history and language of the PAGA statute makes clear that a trial court's management of actions does not include the power to narrow, strike or, as in this case, dismiss a PAGA claim. Accordingly, Plaintiffs respectfully request that the Court of Appeal's judgment be affirmed. For the same reason, Plaintiffs respectfully request that the holding in Wesson - that trial courts have the inherent authority to strike, narrow, or dismiss PAGA claims based on lack of manageability - be overturned.

Respectfully submitted,

GINEZ, STEINMETZ & ASSOCIATES

Dated: 9/6/2022

/s/ Rudy Ginez, Jr.
Rudy Ginez, Jr., Attorney for all Plaintiffs/Appellants

CE SMITH LAW FIRM

Dated: 9/6/2022

/s/ Clifton E. Smith.
Clifton E. Smith, Attorney for all Plaintiffs/Appellants

CERTIFICATE OF WORD COUNT

Counsel for Plaintiffs certifies under Rule 8.204 (b) and 8.504 (d)(1) of the California Rules of Court that the foregoing Answer Brief on the Merits is produced using 13-point Roman type, including footnotes, and consists of 7,391 words, excluding the tables, this certificate, any signature block, and any attachments permitted under Rule 504 (e). Counsel relies on the word count of the Microsoft word processing program used to prepare this Brief.

Dated: 9/6/2022

/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 September 6, 2022, I served a copy of the foregoing documents described as **JORGE LUIS ESTRADA, ET AL.'S, ANSWER BRIEF ON THE MERITS** on the interested parties as follows:

[XX] BY ELECTRONIC SERVICE: On September 6, 2022, by electronic transmission to the parties and/or their attorney(s) of record stated in the attached service list to its/their known email address(es). The document(s) was/were transmitted by electronic transmission. The transmission was reported as complete and without error.

Daniel F. Lula	Email: dlula@bakerlaw.com
Joseph S. Persoff	Email: jpersoff@bakerlaw.com
Vartan S. Madoyan, Esq.	Email: vmadoyan@bakerlaw.com
Office Of The Attorney General	Email: slapp@jud.ca.gov

Clerk of the Court of Appeal
Fourth Appellate District, Division Three
601 W. Santa Ana Blvd.
Santa Ana, CA 92701
(Electronic filing of this brief constitutes service of the petition on the clerk/executive officer of the Court of Appeal)

[XX] BY U.S. MAIL: I deposited the sealed envelope with the U.S. Postal Service, with postage fully prepaid addressed to the person(s) listed as follows:

Office of the District Attorney, Orange County
401 Civic Center Drive West
Santa Ana, CA 92701

Clerk of the Superior Court
Orange County Superior Court, Civil Complex Center
Hon. Randal J. Sherman, Dept. CX105
751 W. Santa Ana Blvd.
Santa Ana, CA 92701

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail in Santa Ana, California.

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

Dated: 9/6/2022 *~~/s/ Rudy Ginez, Jr.~~*
Rudy Ginez

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 9/6/2022 by Tayuan Ma, Deputy Clerk

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**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **ginez@sbcglobal.net**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
BRIEF	Estrada et al. Answer Brief on the Merits

Service Recipients:

Person Served	Email Address	Type	Date / Time
Vartan Madoyan Baker & Hostetler, LLP 279015	vmadoyan@bakerlaw.com	e-Serve	9/6/2022 5:26:28 PM
Rudy Ginez Ginez, Steinmetz & Associates 084978	ginez@sbcglobal.net	e-Serve	9/6/2022 5:26:28 PM
Daniel Lula Baker & Hostetler LLP 227295	dlula@bakerlaw.com	e-Serve	9/6/2022 5:26:28 PM
Clifton Smith CE Smith Law Firm	cesmithesq@cox.net	e-Serve	9/6/2022 5:26:28 PM
Office of the Attorney General	slapp@jud.ca.gov	e-Serve	9/6/2022 5:26:28 PM
Joseph S. Persoff 307986	jpersoff@bakerlaw.com	e-Serve	9/6/2022 5:26:28 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

9/6/2022
Date

/s/Rudy Ginez
Signature

Ginez, Rudy (084978)
Last Name, First Name (PNum)

Ginez, Steinmetz & Associates
Law Firm