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 REPLY BRIEF

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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INTRODUCTION

Plaintiffs' Answer Brief on the Merits (the "AB") is long on hyperbole. According to it, failing to hold that the Private Attorneys General Act of 2004 ("PAGA") deprives courts of their inherent authority to manage cases by striking or limiting unmanageable claims is – according to Plaintiffs – a "violation of the PAGA statute," an "improper, unconstitutional exercise of a court's powers," and would "obliterate" and "destroy" PAGA. AB at 1, 16. However, the brief is short on support for these sweeping assertions -- because there is none.

Nothing in Labor Code §§2698, *et seq.*, suggests, much less explicitly states, that it deprives courts of their inherent power to manage cases by striking or limiting claims. A court's retention and use of this judicial power, far from being improper, ensures that the rights of litigants are not violated by a plaintiff's overbroad, unrealistic pleading. A court's active management of its cases is not unconstitutional – rather, a legislature purporting to strip courts of their ability to protect the due process rights of parties and prevent a case from overwhelming the judicial system would be a separation of powers violation, and thus unconstitutional. Thankfully, in passing PAGA, the California legislature did not purport to micromanage the judiciary by forcing it to try unmanageable cases.

Plaintiffs' novel interpretation of PAGA puts the plaintiffs' bar over the judiciary: essentially, "if a plaintiff has pled it, the court must try it" – even if the complaint is facially overbroad, unwieldy, confusing, and unmanageable.[1] In order to preserve the independence of the judiciary, protect the due process rights of parties (particularly employer defendants), prevent PAGA claims from

[1] As one amicus curiae has put it, "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 (filed 6/1/22), p. 2.

dominating the court's time, preserve judicial resources from exhaustion, and prevent PAGA from becoming a tool of injustice, this Court should hold that in PAGA cases, as in every case, courts retain their inherent power to actively manage litigation, including by striking or limiting claims that they determine cannot be tried as pled without either overwhelming the court or violating the defendant's due process rights.[2]

LEGAL DISCUSSION

I. PLAINTIFFS' LENGTHY DISCUSSION OF THE HISTORY AND PURPOSE OF PAGA DOES NOT SUPPORT THEIR ARGUMENT.

Plaintiffs claim that Royalty "ignores" PAGA, and then spend nine pages painstakingly discussing the history, enactment, and supposed purposes of the statute. AB at 16-24. None of this discussion is helpful or pertinent to the sole question under consideration.

A. PAGA's "Purposes" Do Not Operate to Force Courts to Try Claims in the Form Asserted By Plaintiffs (And Only That Form).

Plaintiffs' long discussion of PAGA's enactment, its statutory purpose, and how PAGA was enacted to supplement the supposedly thin-stretched Labor

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[2] Royalty strenuously disagrees with much of Plaintiffs' so-called "Factual Summary." AB at 9-13. In particular, Royalty disputes Plaintiffs' assertion that "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." *Id.* at 10. This has been a favorite refrain of Plaintiffs throughout this litigation, but one which is utterly unsupported by the evidence. To the contrary, the trial court (sitting as finder of fact) found no policy other than the facially-lawful policy in its handbook. 2 AA 293. However, such factual disputes are irrelevant to the sole issue accepted by this Court in granting review – namely, whether trial courts have inherent authority to ensure that claims under PAGA will be manageable at trial, and to strike or narrow such claims if they cannot be managed.

Workforce Development Agency ("LWDA") – *see* AB at 16-24 – does not address, much less defeat, the inherent powers of a court to manage litigation up to and including by striking or limiting claims that cannot be fairly or efficiently tried.

No one disputes that PAGA was enacted by the legislature in order to permit private individuals to "enforce the Labor Code as representatives of the [LWDA]." *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 383, 327 P.3d 129, 173 Cal.Rptr.3d 289, *abrogated on other grounds by Viking River Cruises, Inc. v. Moriana* (2022) 142 S.Ct. 1906, 213 L.Ed.2d 179. This, standing alone, does not mean that the courts charged with adjudicating such enforcement are deprived of their historic tools for managing litigation. Similarly, the fact that PAGA may not have been enacted with the purpose of "promoting convenience and judicial economy" (AB at 24) – which, again, no one disputes – does not mean that such considerations evaporate. Finally, the fact that PAGA was enacted for the purpose of better enforcement of the Labor Code is not inconsistent with judicial solicitude for fairness, efficiency, and manageability.

On all of these points, the Court of Appeal's opinion in *Wesson v. Staples The Office Superstore, LLC* (2021) 68 Cal.App.5th 746, 283 Cal.Rptr.3d 846 is spot-on. Merely because PAGA actions are not class actions does not mean that both may not present similar pitfalls. *Id.* at 767. In fact, they do. *Id.* Merely because PAGA provides *some* procedural safeguards does not mean that courts cannot impose others. *Id.* at 768 ("This provision includes no instruction relevant to the management of ongoing PAGA litigation and reveals no legislative intent that would preclude a court's exercise of its authority in this area."). The fact that *Wesson* involved a misclassification claim rather than a denial of meal periods and rest breaks claim (as here) does not make it inapplicable. *Cf.* AB at 30-31. In both *Wesson* and this case, the plaintiff's claim implicated the defendant's right to assert an affirmative defense – there, the employees' performance of exempt tasks;

here, the employees' choice to take meals late – that would require testimony from hundreds of individuals.

In conclusion, PAGA's legislative history, enactment, purposes, and structure simply do not stand for the radical proposition that Plaintiffs ascribe to it – namely, that PAGA, and only PAGA (among hundreds of common-law and statutory claims), operates to force courts to try claims in the form asserted by the plaintiff, and *only* that form.

B. The Only Language Actually In PAGA That Plaintiffs Cite As Support for Their Argument Does Not Do So.

Apart from general appeals to PAGA's "purposes," there is only one place in the Answer Brief in which Plaintiffs cite to the language of PAGA itself for their argument that the statute severely curtails (indeed, abolishes) a court's inherent power to strike or limit unmanageable claims.

Plaintiffs claim that "the specific statutory language of Labor Code section 2699(a) . . . precludes the very outcome sought by Royalty." AB at 17. However, that subsection simply states as follows:

> Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

Cal. Labor Code §2699(a).

This language merely authorizes a civil action. It does not address how that civil action is to be litigated, or deprive courts of their inherent authority. *Wesson*, 68 Cal.App.5th at 768 (rejecting plaintiff's argument that Labor Code §2699.3's enumeration of certain procedural hurdles for a PAGA action operated to forbid courts from imposing others).

The greater the scope and force of an assertion, the greater is the burden on the one advancing it to provide support. However, Plaintiffs can point to no language in PAGA itself that supports their argument that "[a]ll 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." AB at 27. Accordingly, this claim should be rejected.

C. Plaintiffs Have Not Overcome the Judiciary's Inherent Right to Control Its Own Operations and Proceedings.

Indeed, it is somewhat strange that both Plaintiffs and the *Estrada* court come at this issue from the initial standpoint that PAGA controls what a court can or cannot do, and we should be looking to the statute to determine whether it "allows" courts to strike or limit claims. *See* AB at 17 ("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.").

Royalty submits that this is a flawed initial approach. The legislature and the judiciary are separate and co-equal. Cal. Const., Art. III, §3 ("The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution."). The legislature can enact statutes, but it cannot determine how courts choose to adjudicate them. How the judicial function is exercised is the exclusive province of the judiciary. *Merco Construction Engineers, Inc. v. Municipal Court* (1978) 21 Cal.3d 724, 731–732, 147 Cal.Rptr. 631, 581 P.2d 636 (admission to the bar is a function of the judicial power, and the legislature cannot by statute prescribe who may or may not be admitted).

The mere fact that PAGA itself provides authorization for private civil suits to remedy Labor Code violations, and expressly requires some procedural hurdles, this creates only a "floor"; it does not create a "ceiling." The judiciary, as a separate branch of government, has broad independent power. *Stephen Slesinger,*

Inc. v. Walt Disney Co. (2007) 155 Cal.App.4th 736, 758, 66 Cal.Rptr.3d 268 ("This inherent power includes 'fundamental inherent equity, supervisory, and administrative powers, as well as inherent power to control litigation.'"), *quoting Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 967, 67 Cal.Rptr.2d 16, 941 P.2d 1203; *Cohn v. Corinthian Colleges, Inc.* (2008) 169 Cal.App.4th 523, 531, 86 Cal.Rptr.3d 401 ("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") (internal citations and quotations omitted).

No legislative enactment can preclude a court from imposing additional requirements in areas that are solely judicial. "In other words, the courts in the exercise of their inherent power may demand more than the legislature has required." *In re Lavine* (1935) 2 Cal.2d 324, 328, 41 P.2d 161. The legislature can no more force the courts to try and decide unmanageable cases than it could deprive courts of the power of judicial review. Thankfully, again, there is no reason to believe that the legislative, in enacting PAGA, has even attempted to do so.

II. INTERPRETING PAGA NOT TO DEPRIVE COURTS OF THEIR INHERENT POWER TO MANAGE LITIGATION IS NECESSARY TO PROTECT IMPORTANT RIGHTS AND WILL NOT "DESTROY" THE STATUTE.

A. The Due Process Issues Entailed by PAGA Claims Are Not Fictional As Plaintiffs Think.

When it comes to the potential for plaintiff-controlled PAGA claims to threaten the due process rights of defendants, Plaintiffs' position is "move along, nothing to see here." AB at 17 ("Royalty never really explains how such a due process deprivation would actually occur.") To the contrary, Royalty (and the amici curiae) have clearly laid out real-life due process problems connected with PAGA actions. *See* Opening Brief at 18-20.

Simply put, defendants have a due process right to present affirmative defenses. *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 33, 325 P.3d 916, 172 Cal.Rptr.3d 371 ("[A]ny trial must allow for the litigation of 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. If the plaintiff chooses to bring a representative action, then the defendant is entitled to litigate its affirmative defense as to the class "*in some way*, even if that entails individualized evidence." *Wesson*, 68 Cal.App.5th at 774 (emphasis in original), *citing Duran*, 59 Cal.4th at 34. A trial court may not "significantly impair[ ]" the defendant's ability to present a defense. *Duran*, 59 Cal.4th at 33. If the affirmative defense cannot "be fairly litigated through common proof," then striking the plaintiff's claim may be the only way to prevent violation of the defendant's due process rights. *Wesson*, 68 Cal.App.5th at 775.

Plaintiffs have no meaningful response to this, other than denial. AB at 17. This Court has already cautioned that ignoring the individualized issues presented by affirmative defenses is improper. *Duran*, 59 Cal.4th at 33 ("With no sensitivity to variability in the class, the court forced the case through trial with a flawed statistical plan that did not manage but instead ignored individual issues."). Merely because a claim implicating such issues is pled under PAGA instead of being pled as a class action does not make them disappear. Forbidding courts from striking or limiting PAGA claims will put them on a course toward either depriving defendants of their due process rights, or having to hold civil trials lasting months, in which hundreds of witnesses are called.[3]

[3] Indeed, Plaintiffs here seem un-averse to this, suggesting in several places on appeal that it would have been appropriate for the trial court to allow every Royalty at the Dyer/Derian locations to testify. *See* Appellants' Opening Brief (filed 12/23/2020 in the Court of Appeal) at 64 (complaining that the trial court did not permit examination of all 215 employees at the Dyer/Derian locations). Obviously, this is the very definition of unmanageability.

B. Merely Permitting Courts to Strike or Limit PAGA Claims Will Not "Destroy" the Statute.

In language almost identical to the plaintiff's in *Wesson*, Plaintiffs repeat several times that recognizing and preserving a court's inherent power to strike or limit unmanageable claims even when pled under PAGA will "destroy" the statute.[4] AB at 16, 17, 34. Again, this hyperbole does not stand up to reality.

While it is true that some PAGA claims will be stricken or limited, "ensuring the manageability of claims is not tantamount to discarding them on an employer's mere objection." *Wesson*, 68 Cal.App.5th at 768. "[M]any PAGA actions will raise no substantial manageability concerns, because of the number of employees involved, the nature of contested issues, or other factors." *Id.* at 769. A substantial number may be efficiently litigated after limitation – for example, by the court requiring greater "focus" to the claim. (Employer's Group Amicus Letter in Support of Petition for Review (filed 6/1/22), p. 2.)

CONCLUSION

Giving private actors the power of the State is always a step fraught with dangers – of improper incentivization, of misalignment of goals, of overreach, and of abuse. Our nation, and particularly our judiciary, has recognized this time and again – for example, with respect to "company towns"[5] and private prisons. These dangers exist with PAGA, particularly in light of its non-reciprocal attorney's fees provision, which dangles a reward for plaintiffs' attorneys to plead aggressive claims (with no corresponding downside in the form of attorney's fees to the successful employer defendant). *See* Labor Code §2699(g)(1). Removing the court's inherent power to weed out unmanageable claims will create situations in

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[4] "Third, Wesson asserts that assessing PAGA actions for manageability would 'obliterate' their purpose." *Wesson*, 68 Cal.App.5th at 768.

[5] *See*, *e.g.*, *Marsh v. Alabama* (1946) 326 U.S. 501, 66 S.Ct. 276, 90 L.Ed. 265 (1946) (holding that First Amendment right to free speech applied within privately-owned town).

which defendants' due process rights are violated and the judiciary becomes the adjunct of the plaintiffs' bar.

For the foregoing reasons, nothing in the Plaintiffs' Answer Brief changes the fact that 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: September 26, 2022

Respectfully submitted,

BAKER & HOSTETLER LLP

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

Attorneys for Petitioner
ROYALTY CARPET MILLS, LLC

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(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 2,722 words, excluding the tables, this certificate, any signature block, and any attachments permitted under Rule 8.504(e)(1).

Dated: September 26, 2022

/s/Daniel F. Lula
Daniel F. Lula

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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)
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Daniel F. Lula

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Steven Katz Constangy, Brooks, Smith & Prophete LLP 139078	skatz@constangy.com	e-Serve	9/26/2022 11:25:47 PM
Daniel Lula Baker & Hostetler LLP 227295	dlula@bakerlaw.com	e-Serve	9/26/2022 11:25:47 PM
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