Supreme Court 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.

(California Court of Appeal Case Nos. G058397 [lead] & G058969, G059350 & G059681 [related])
(Orange County Superior Court, Case No. 30-2013-00692890)

APPLICATION OF BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER ROYALTY CARPET MILLS (CRC Rule 8.520(f))

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APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER ROYALTY CARPET MILLS

Board of Trustees of the California State University ("CSU") is a public entity and one of the largest employers in California. CSU respectfully applies for leave to file the accompanying proposed amicus curiae brief in support of petitioner Royalty Carpet Mills, Inc., now known as Royalty Carpet Mills, LLC pursuant to California Rules of Court, rule 8.520(f). CSU is familiar with the content of the parties' briefs and issues presented by this case, which are of vital importance to CSU and all employers in the State.

CSU is the nation's largest four-year public university. It is comprised of 23 campuses and eight off-campus centers, enrolls approximately 477,000 students, and employs nearly 56,000 faculty and staff. The 23 campuses span 800 miles from San Diego to Humboldt and differ in geography, size, subject matter expertise, budget, and administrative organization, amongst other variables. The campuses are unique, both in locale and subject matter expertise, with varying emphases, including farm and agriculture, maritime, life sciences, and teaching, among others. With over 1300 buildings—not including off-campus branches, laboratories, observatories, etc.—each campus is like a small city and operates similarly, with distinct governance, facility operations, police departments, and administrations to oversee students, faculty, and staff. CSU is governed by a 25-member Board of Trustees.

As both one of California's largest employers and as a public entity, CSU has a unique perspective on the evolution of how the Labor Code Private Attorney General Act of 2004, Labor Code, §§ 2698 *et seq*. ("PAGA") has been used by plaintiffs and plaintiffs' attorneys. In particular, CSU has faced a series of PAGA suits, not based on alleged wage and hour violations, but instead asserting violations of health and safety regulations. These health and safety PAGA suits, in particular, have highlighted and illustrated how quickly a PAGA case can mushroom into a litigation nightmare. Accordingly, CSU is uniquely positioned to provide this Court with some insights into how trial manageability looks in PAGA cases.

No party or counsel for any party in this case has authored any part of the proposed amicus brief. No person or entity other than CSU made a contribution intended to fund the preparation or submission of the proposed brief.

Dated: October 18, 2022 SHAW KOEPKE & SATTER LLP

By /s/ Jens B. Koepke
Attorneys for Amicus Curiae Board of Trustees of the California State University

TABLE OF CONTENTS

Page

TABLE OF CONTENTS (Continued)

Page

TABLE OF AUTHORITIES

Cases

PROPOSED AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER ROYALTY CARPET MILLS

INTRODUCTION

Amicus Curiae Board of Trustees of the California State University ("CSU") is a public entity and one of the largest state employers in California. CSU has been subjected to a number of unwieldy and far-ranging PAGA lawsuits for allegedly violating a random miscellany of health and safety regulations. Thus, CSU is uniquely positioned to provide this Court with insights into the increasingly important role that manageability plays in PAGA litigation.

CSU's PAGA Experience. CSU has faced several PAGA suits in the last few years that allege health and safety regulation violations. One such lawsuit easily and vividly illustrates the problem of PAGA trial manageability. In that suit, the PAGA claim alleged thousands of purported violations across 21 of the 23 CSU campuses based on 83 different statutory or regulatory provisions. Needless to say, that singular claim will literally take years to try.

PAGA Is Silent, But Inherent Court Management Authority Is Longstanding. Nothing in the PAGA statutory language either bars or directs trial courts to actively manage PAGA trials. However, there is long-standing California law that acknowledges a trial court's inherent authority to manage its litigation and trials by narrowing cases or, if necessary, striking them. Courts have recognized that such trial management is

particularly necessary in complex cases. Indeed, although this Court has never directly addressed trial management in PAGA cases, it has hinted that such management is necessary. And, of course, *Wesson* heeded that hint and expressly held that trial management should and does apply to PAGA cases.

Manageability Is Critical in PAGA Cases. Manageability is critical for several interconnected reasons. First, allowing one gargantuan PAGA case to monopolize a trial court's trial calendar for years blocks hundreds of other litigants from getting their day in court. Second, faced with such a massive PAGA case, trial courts may inadvertently or out of necessity adopt procedures which impermissibly restrict a defendant's substantive due process rights in defending against violations that may be quasi-criminal in nature. (*Cf. Duran v. U.S. Bank Nat'l Ass'n* (2014) 59 Cal.4th 1, 25, 34 ("*Duran*").) Third, taking away a trial court's authority to manage and strike, in whole or in part, a PAGA case would prevent a court from fashioning a more focused claim susceptible to a realistic and sensible trial plan.

***Wesson* vs. *Estrada*.** *Wesson* recognized (as did the previous non-PAGA common law) that giving trial courts a full chest of manageability tools (including striking a case) was critical to keeping PAGA trials from running amok. *Estrada* would needlessly hamstring a trial court's ability to engage in that critical trial management. Moreover, *Estrada* was based on the false premise that trial manageability is solely a class-action concept and that this Court has said all class-action concepts are inapplicable to PAGA (neither of which are true).

The evolution of PAGA is drifting toward large unwieldy suits involving thousands of alleged potential violations, which ensure massive potential attorney fees for plaintiffs' attorneys but will inevitably tie up a trial court for years. Allowing trial courts to use their inherent authority to actively manage such PAGA trials is critical for those courts to keep some control over these gargantuan cases.

ARGUMENT

I. MANAGEABILITY IS A GROWING PROBLEM IN PAGA CASES. TRIAL COURTS MUST HAVE THE AUTHORITY TO ENSURE THAT PAGA TRIALS ARE MANAGEABLE AND FAIR.

As one Court of Appeal explained, "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 v. Staples the Office Superstore, LLC* (2021) 68 Cal.App.5th 746, 766, emphasis added ("*Wesson*").)

A. CSU's Experience with Health and Safety PAGA Cases Bears Out This Manageability Problem.

CSU has faced four PAGA cases premised on alleged violations of health and safety regulations. In one ongoing case, plaintiff's PAGA notice alleged that CSU continuously violated over 83 separate statutory and regulatory provisions at 21 (out of 23) CSU campuses since 2017—totaling thousands of purported violations. Of course, each of the 23 CSU campuses is unique. And with over 1300 buildings across these campuses—not including off-campus branches, laboratories, observatories, etc.—each campus is like a small city and operates similarly, with distinct governance, facility operations, and administrations to oversee students, faculty, and staff.

Thus, each of the thousands of purported health and safety violations—involving different buildings, campuses and employees—is highly fact-dependent, requiring a separate mini-trial and subject to its own possible defenses. CSU estimates that it will take 25-30 trial days per campus to try these PAGA claims, meaning that the trial will easily last some two to three years. Such a gargantuan PAGA case is a trial management quagmire, which monopolizes one court's resources and limits the court's ability to resolve the hundreds of other cases on its docket.

B. PAGA Is Not and Should Not Be Some Special Exception to the Trial Courts' Well-Established Inherent Authority to Manage the Cases Before Them.

CSU's experience illustrates the real risk that certain PAGA cases are unmanageable, and must either be narrowed or stricken.

The Legislature put nothing in the PAGA statutory regime that expressly speaks to case manageability, neither barring nor empowering trial courts from actively managing a PAGA case and trial. (*Halbert's Lumber, Inc. v. Lucky Stores, Inc.* (1992) 6 Cal.App.4th 1233, 1238 [the first and most important rule of statutory interpretation is to examine the actual language (or lack thereof) of a statute].)

However, this Court has hinted that trial of PAGA cases must be manageable. In *Williams v. Superior Court* (2017) 3 Cal.5th 531, the court addressed a PAGA plaintiff's discovery rights. (*Id.* at pp. 537-538.) This Court explained that although all the requirements in class actions do not necessarily pertain to PAGA cases, that there were a lot of "similarities between these [representative] forms of action." (*Id.* at pp. 546-547.) One of these concepts already existing in class action law, this Court noted, was the need "to render trial of [a PAGA] action manageable." (*Id.* at p. 559.) Furthermore, in a class action case that *did* directly address trial manageability, this Court held a "trial management plan must permit the litigation of relevant affirmative defenses, even when these defenses turn on individual questions." (*Duran*, 59 Cal.4th at p. 25.)

Outside of PAGA, this Court and others have long acknowledged the inherent authority of trial courts to control and manage the cases before them, and to narrow or strike them if necessary. (*Bauguess v. Paine* (1978) 22 Cal.3d 626, 635-636, superseded by statute on other grounds as explained in *Olmstead v. Arthur J. Gallagher & Co.* (2004) 32 Cal.4th 804, 809; *Citizens*

Utilities Co. of Cal. v. Superior Ct. (1963) 59 Cal.2d 805, 812–813; *Cohn v. Corinthian Colleges, Inc.* (2008) 169 Cal.App.4th 523, 531 ["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"].) And *Wesson* recently held that that long-standing inherent management authority expressly applies to PAGA cases. (*Wesson*, 68 Cal.App.5th at pp. 765-767.)

Most importantly, given the legislative silence and the long tradition of inherent authority, it makes no sense for PAGA cases to somehow be a special exception—that PAGA cases are somehow untouchable and unmanageable by trial courts. Instead, as we have already shown, the often-complex nature of PAGA cases makes them ideal and necessary candidates for trial management. Construing the PAGA statute to somehow insulate PAGA cases from the salutary and discretionary monitoring by trial judges to ensure the manageability and fairness of trials makes no sense, invades judicial independence and is unsupported by any legislative history.

C. Manageability Is Not Solely a Class-Action Concern, and This Court Has Not Said that Every Class Action Concept is Inapt to PAGA.

The Court of Appeal's primary argument in *Estrada* was that this Court, in *Arias* and *Kim,* barred grafting class action requirements onto PAGA actions, and that manageability is a class-action requirement. (*Estrada v. Royalty Carpet Mills, Inc.* (2022) 76 Cal.App.5th 685, 711-712.) *Estrada* misreads both of

this Court's decisions. In *Kim*, the issue was: "Do employees lose standing to pursue a [PAGA] claim [] if they settle and dismiss their individual claims for Labor Code violations?" (*Kim v. Reins Int'l Ca., Inc.* (2020) 9 Cal.5th 73, 80 ("*Kim*").) Although *Kim* said that "a representative action under PAGA is not a class action," it *did not* consider the intersection between class actions and PAGA, and said nothing about the manageability of PAGA actions. (*Id.* at pp. 86-87.) And, as the *Wesson* court noted, although *Arias* did hold that PAGA plaintiffs do not need to "satisfy class action requirements," this Court *did not* address manageability at trial in *Arias*. (*Wesson*, 68 Cal.App.5th at p. 767, citing *Arias v. Superior Ct.* (2009) 46 Cal.4th 969, 975.)

As we have already shown, manageability is not solely a class-action concept—instead it arises in every case, particularly complex ones like PAGA. But, even if manageability is deemed to be a class-action concept, nothing in *Arias* or *Kim* bars importing that concept into PAGA claims.

II. EMBEDDED IN MANAGEABILITY ARE DUE PROCESS CONCERNS REGARDING HOW A PAGA CLAIM IS TRIED.

At its root, manageability is not just about whether a trial court has or should have the authority to manage. Instead, the core of manageability is fairness. In managing its caseload, trial courts must determine whether a particular case, as pled, can be fairly tried. Will it absorb too much of the court's resources (by taking many years to try), and thus prevent access to justice for so

many others? Are there so many disparate claims, each requiring a long mini-trial, that it becomes a quagmire for the factfinder? And can all the parties' due process rights still be ensured?

A. CSU's Experience Shows That a Defendant's Due Process Rights Can Easily Be Lost in Allowing an Unmanaged PAGA Case to Trial.

When PAGA claims include many different alleged violations, cover hundreds or thousands of employees, or cover many different employment locations, due process concerns are often sacrificed at the altar of having the plaintiff's case heard.

In one of CSU's health and safety PAGA cases, the plaintiff's proposed PAGA trial plan would mandate a first phase bellweather trial for only five of the 21 CSU campuses involved, prioritize evidence concerning health and safety violation liability, and compel a mediation thereafter before future phases of trial. Even such a one-sided bellweather trial could still last many months.

Moreover, by forcing CSU to try only a sample of the thousand alleged violations, such a trial plan limits the duration and scope of affirmative defenses asserted by CSU. Such a trial is unfair to PAGA defendants like CSU. (See *Sav-On Drug Stores, Inc. v. Superior Ct.* (2004) 34 Cal.4th 319, 330-31 [defendants have right to present affirmative defenses]; *Duran*, 59 Cal.4th at p. 25 ["trial management plan must permit the litigation of relevant affirmative defenses"].)

This need for fairness and due process to PAGA defendants must be safeguarded, especially since plaintiffs have the choice

and unfettered ability to narrow their PAGA notices and complaints to only the core violations that directly impacted the plaintiff, instead of using a broad scattershot approach.

Indeed, in CSU's case, the unfairness is also highlighted by the fact that Cal-OSHA did ultimately investigate many of the alleged health and safety violations, rejected most of them, issued some citations, and found many claimed violations too vague to even pursue.

Moreover, we cannot rely on specialized complex litigation courts (in the counties that actually have them) to wrestle with and handle these massive PAGA cases. In fact, in CSU's case the complex court declined to take the case, despite both sides (and the trial court) seeking its involvement.

As in *Wesson*, if PAGA plaintiffs—either because of the way they plead and litigate their case or due to their unwillingness to prepare a realistic trial plan—create a trial that is unmanageable, it is unfair to the courts, the defendants and other parties seeking to have their cases heard to allow the plaintiffs' unmanageable PAGA case to be tried as pled.

B. Instead of Broadening Enforcement of Wage and Hour Laws, PAGA Has Become a Vehicle for Plaintiffs' Attorneys to Generate Fees.

This Court has described the primary policy interest undergirding PAGA as "[t]o facilitate broader enforcement [of wage and hour rules], the Legislature enacted PAGA, authorizing 'aggrieved employees' to pursue civil penalties on the state's behalf." (*Kim*, 9 Cal.5th at p. 81; accord SB766, Assembly Labor

& Employment Committee Report (July 9, 2003), p. 2 [the "issue" confronted in the statute was "the appropriate role of employees in protecting their rights under the Labor Code when the government entity mandated to enforce the Labor Code is unable to do so adequately due to budgetary and staff constraints."].)

And no one disagrees with that policy interest. But CSU's experience has been that PAGA has now been hijacked by plaintiffs' attorneys as a vehicle to recover attorney fees, rather than as a tool to broaden enforcement of wage/hour laws. Indeed, none of the PAGA cases against CSU have even had anything to do with wage and hour rules and regulations; instead, they have been premised on vague health and safety violations, many of them dealing with record-keeping.

Thus, perversely, there is actually an incentive for PAGA plaintiffs to plead the broadest, most unmanageable case possible. Such a case will ensure a huge amount of discovery, pre-trial litigation battles, and a long, expensive trial, which will drive the potential attorney fees up stratospherically. That's not what the Legislature intended with PAGA.

C. Trial Courts Should Have the Full Management Tool Chest at Their Disposal.

Particularly given this built-in incentive in PAGA for fee-driven plaintiffs' attorneys to plead vast and vague PAGA cases, active litigation management is key to ensure plaintiffs get their day in court, but also ensure both the due process rights of defendants and a reasonable burden on the court's time and resources. That means trial courts need to have all the tools

necessary to corral a runaway PAGA case. Like with discovery sanctions, those trial management tools can vary from narrowing the scope of claims, limiting the amount of evidence or witnesses, and, if necessary, striking a PAGA claim (particularly with plaintiffs unwilling to narrow their claims like in *Wesson*). Striking a plaintiff's claim is not the only tool a trial court has, and should use, but it may sometimes become necessary. Unilaterally taking the ability to strike a PAGA claim away from trial courts undercuts that court's ability to balance the competing interests and get all parties to act reasonably.

CONCLUSION

Creative plaintiffs' attorneys are pushing PAGA far away from its original legislative purpose to widen the enforcement of wage and hour laws. Moreover, the prize of an eventual attorney fee award has created the perverse incentive for PAGA plaintiffs to plead and pursue broad and scattershot PAGA cases, since those will drive up the fees incurred. These massive PAGA cases monopolize the resources of the trial courts, blocks access to justice for all the other parties before that court, and often

jeopardize the due process rights of PAGA defendants. Active trial management (including striking a case if necessary) is an important and critical hedge against that creeping misuse and distortion of PAGA.

Dated: October 18, 2022 SHAW KOEPKE & SATTER LLP

By /s/ Jens B. Koepke
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CERTIFICATE OF WORD COUNT

I certify that the text of this brief, including footnotes, consists of 2,595 words as counted by the Microsoft Office Word word-processing program used to generate this brief.

Dated: October 18, 2022 SHAW KOEPKE & SATTER LLP

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/s/ Maria Nixon

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STATE OF CALIFORNIA
Supreme Court of California

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