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

On Review From The Court Of Appeal for the Fourth
Appellate District, Division Three
(Appeals Nos. G058397 [lead] & G058969; G059350 & G059681
[related])

After an Appeal From the Superior Court for the State of California,
County of Orange, Case Number 30-2013-00692890
Hon. Randall J. Sherman, Department CX105, Trial Judge

APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF AND AMICI BRIEF OF CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, CALIFORNIA CHAMBER OF COMMERCE, NATIONAL RETAIL FEDERATION, AND RETAIL LITIGATION CENTER, INC. IN SUPPORT OF DEFENDANT-APPELLANT

MUNGER, TOLLES & OLSON LLP
Malcolm A. Heinicke (SBN 194174)
malcolm.heinicke@mto.com
560 Mission Street,
Twenty-Seventh Floor
San Francisco, California 94105-2907
Telephone: (415) 512-4000
Facsimile: (415) 512-4077

MUNGER, TOLLES & OLSON LLP
Katherine M. Forster (SBN 217609)
Minkee Sohn (SBN 342705)
350 South Grand Avenue,
Fiftieth Floor
Los Angeles, California 90071-3426
Telephone: (213) 683-9100
Facsimile: (213) 687-3702

Attorneys for Amici Curiae
Chamber of Commerce of the United States of America, California Chamber of Commerce, National Retail Federation, and Retail Litigation Center Inc.

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Under California Rules of Court, rule 8.520(f), the Chamber of Commerce of the United States of America ("Chamber"), California Chamber of Commerce ("CalChamber"), National Retail Federation (NRF), and Retail Litigation Center, Inc., respectfully request permission to file the attached amici curiae brief in support of defendant-appellant Royalty Carpet Mills, Inc.[1]

The Chamber is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases that raise issues of concern to the nation's business community.

CalChamber is a non-profit business association with over 13,000 members, both individual and corporate, representing virtually every economic interest in the State of California. While CalChamber represents several of the largest corporations in California, 75 percent of its members have 100 or fewer employees. CalChamber acts on behalf of the business community to improve the State's economic and jobs climate by

[1] No party or counsel for a party in the pending case authored the attached brief in whole or in part or made a monetary contribution intended to fund the preparation or submission of the proposed brief. No person or entity other than the amici, their members, or their counsel made a monetary contribution intended to fund the preparation or submissions of the attached brief. (See Cal. Rules of Court, rule 8.520(f)(4).)

representing business on a broad range of legislative, regulatory, and legal issues.

Established in 1911, NRF is the world's largest retail trade association. Retail is by far the largest private-sector employer in the United States. It supports one in four U.S. jobs—approximately 52 million American workers—and contributes $3.9 trillion to annual GDP. NRF regularly files amicus curiae briefs in cases that raise issues of substantial importance to the retail industry.

The Retail Litigation Center, Inc. is the only trade association dedicated to providing the perspective of the country's leading retailers in the courts. Since its founding in 2010, the Retail Litigation Center has participated as an amicus in nearly 200 cases of importance to retailers. Its member retailers employ millions of workers throughout the United States, provide goods and services to hundreds of millions of consumers, and account for more than a trillion dollars in annual sales.

Amici submit this brief to assist this Court in understanding the broader perspective of employers on the issues presented. The question that this Court has accepted for review here is not specific to this case—the answer reached here could affect every action under the California Labor Code Private Attorneys General Act ("PAGA"). As such, the outcome of this proceeding has the potential to impact all businesses that have employees in California. Such businesses have an interest in seeking to compensate their employees properly and to set valid employment policies without incurring undue settlement pressure from being forced to litigate unmanageable representative actions. Amici, as organizations devoted to advancing the interests of the businesses, employees, and customers that

they serve, are well positioned to address the importance of well-grounded rules in the application of PAGA.

DATED: October 26, 2022 MUNGER, TOLLES & OLSON LLP

By: /s/ *Malcolm A. Heinicke*
MALCOLM A. HEINICKE
Attorney for Amici

AMICI CURIAE BRIEF

I. INTRODUCTION AND SUMMARY OF ARGUMENT

The question for which review was granted is: "Do trial courts have inherent authority to ensure that claims under the Private Attorneys General Act (Lab. Code, § 2698 et seq.) ["PAGA"] will be manageable at trial, and to strike or narrow such claims if they cannot be managed?" (*Estrada v. Royalty Carpet Mills* (2022) 511 P.3d 191.) The answer is yes. Indeed, Amici respectfully submit that the question essentially answers itself: after all, a negative answer to the question would mean that trial courts must attempt to hold trials that "cannot be managed." This result is as unworkable as it sounds and would not only burden already strained trial courts throughout California, but would jeopardize the due process rights of defendants and, relatedly, impose unjust settlement pressure on them. Neither California law nor the precedent of this Court permit such a result.

At the outset, Amici respectfully submit that Defendant has already addressed in detail the significant and longstanding law that vests trial courts with general discretion to manage all cases before them and ensure efficient trial proceedings. Accordingly, Amici focus this brief on two additional and important principles that confirm the availability of such discretion in PAGA actions: (1) California courts have long held that trial courts can strike or narrow representative allegations in a non-class representative action; and (2) trial courts must not be forced to hold trials they cannot manage, a result that the Court of Appeal's decision below here

would effectively require. For these reasons, and those given by the Defendant, this Court should embrace the detailed and thoughtful holding in *Wesson v. Staples The Office Superstore, LLC* (2021) 68 Cal.App.5th 746, and reject the Court of Appeal's holding below in *Estrada v. Royalty Carpet Mills, Inc.* (2022) 76 Cal.App.5th 685.

First, California precedent has long held that trial courts have discretion to strike or narrow unmanageable representative claims, even when they are pursued on a non-class basis. In California, there are two types of representative claims: class representative claims and non-class representative claims. (*Arias v. Super. Ct.* (2009) 46 Cal.4th 969, 977, fn. 2.) The latter are permitted under PAGA, just as they previously were permitted under the Unfair Competition Law ("UCL"). (See *id.* at p. 981 [noting the "similar language" in the pre-Proposition 64 version of the UCL that "permitted a representative action that was not brought as a class action"].) And, in that UCL context, California courts have long recognized that trial courts have discretion to strike or narrow unmanageable claims. (See, e.g., *Kraus v. Trinity Management Services* (2000) 23 Cal.4th 116, 138 (*Kraus*), superseded by statute as noted in *Arias*, *supra*, 46 Cal.4th at pp. 982-983; *South Bay Chevrolet v. General Motors Acceptance Corp*. (1999) 72 Cal.App.4th 861, 891 (*South Bay Chevrolet*).)

This precedent was well established when the Legislature enacted PAGA, and the Legislature provided no indication that it was seeking to overturn this precedent. (*In re W.B.* (2012) 55 Cal.4th 30, 57 [noting that

existing precedent remains applicable unless the Legislature "signal[s] an intent to supersede [it]"]; see also *Busee v. United PanAm Fin. Corp.* (2014) 222 Cal.App.4th 1028, 1038 [quoting *In re W.B.* and holding that if the Legislature had in fact sought to undo existing judicial precedent, "one would have expected evidence of such 'intent to feature prominently in the legislative history.'"].)

The fact that a PAGA plaintiff is a proxy of the state is irrelevant to this question. While the Labor Commissioner's office certainly has discretion to choose the scope of the claims it *investigates*, the executive branch does not have discretion to usurp the power of the judicial branch and force trials of claims that trial courts cannot manage. As *Wesson* stated, the plaintiff in that case "cite[d] no authority, and we are aware of none, privileging the state above other civil litigants and exempting it from the courts' inherent authority to manage the proceedings to ensure fair and efficient administration of justice." (*Wesson*, *supra*, 68 Cal.App.5th at p. 769 & fn. 15 [specifically distinguishing the government's discretion "to *investigate* Labor Code violations" from the "court's authority to ensure manageability of a trial.", emphasis added].)

Indeed, support for the holding in *Wesson* is not just found in ample UCL precedent but also in post-*Arias* precedent from this Court. Specifically, when rejecting the notion that trial courts could restrict certain types of early *discovery* based solely on a PAGA plaintiff's failure to show he or she was challenging a common policy, this Court suggested that trial courts could foreclose a subsequent *trial* if the plaintiff did not establish

that the claim was otherwise "manageable." (*Williams v. Super. Ct.* (2017) 3 Cal.5th 531, 559 ["This is not to say uniform policies play no role in PAGA cases; proof of a uniform policy is one way a plaintiff might seek to render trial of the action manageable."].) After all, if there were no manageability requirement applicable to PAGA cases, then there would be no reason for a plaintiff to take steps "to render trial of the action manageable." *Wesson* explained how this statement in *Williams* supported its conclusion. (*Wesson*, *supra*, 68 Cal.App.5th at p. 766.) The Court of Appeal below here tellingly ignored it.

Second, the Court of Appeal effectively concedes that its holding will lead to situations where trial courts will have to handle claims that are unmanageable. For example, the court acknowledges that "in cases with individualized circumstances and vast numbers of alleged aggrieved employees, PAGA plaintiffs may have difficulty proving purported violations suffered by other employees," and so it might be most efficient to have "the pool of alleged aggrieved employees…narrowed or divided to effectively prove the alleged violations at trial." (*Estrada*, *supra*, 76 Cal.App.5th at p. 713, 714; see also *id.* at 713, fn. 8 [suggesting potentially "narrowing alleged violations to employees at a single location or department."].) In other words, the court acknowledges that narrowing the group of employees at issue may lead to more efficient trial proceedings, but then it denies trial courts the discretion to do just that.

Indeed, one need look no further than *Wesson* and *Estrada* to see examples of oft presented claims for employee misclassification and meal

period violations, claims which are susceptible to manageability issues, especially when many employees in different settings are at issue. This is because these sorts of claims can turn on individually fact-specific defenses related to the time a specific employee spends on various duties or the reason a specific employee did not record some meal periods. (*Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal.4th 1, 27 [noting that an evaluation of an exemption defense in a misclassification case "has the obvious potential to generate individual issues because the primary considerations are how and where the employee actually spends his or her workday"]; *Lampe v. Queen of the Valley Medical Center* (2018) 19 Cal.App.5th 832, 850 [stating that in light of this Court's *Brinker* standard, meal period claims often require individualized defenses concerning "the reasons any particular employee might not take a meal period."].) Forcing defendants to litigate unwieldy claims is not only inefficient, but it can also deny them the due process right to present employee-specific defenses.

In an effort to try to address this, the Court of Appeal "encourage[s]" the parties to work with the trial court and "discuss" whether the scope of employees at issue should be limited. (*Estrada, supra,* 76 Cal.App.5th at pp. 713-714.) But, what happens when the parties are unable to reach an agreement following such discussion? Leaving plaintiffs with effectively unfettered discretion to pursue unmanageable claims will burden trial courts with the need to try such unwieldy claims, create undue and unfair settlement pressure on defendants, and potentially infringe on the due process rights of defendants seeking to present their defenses. After all,

plaintiffs and their counsel may have little incentive to narrow unmanageable claims when maintaining them provides greater settlement leverage. This result is not only inefficient, but unjust and contrary to California precedent.

For these reasons, Amici respectfully request that this Court answer the pending question in the affirmative, endorse the holding set forth in *Wesson*, and confirm that trial courts have the discretion to strike or narrow PAGA claims that they otherwise "cannot manage."

II. ARGUMENT

A. California Precedent Confirms That Trial Courts Have Discretion to Ensure the Manageability of Non-Class Representative Claims

1. California Courts Have Long Held that Trial Courts Can Strike or Narrow Representative Allegations in Non-Class Representative Actions, And PAGA Did Not Override This Precedent

PAGA "authorizes a representative action" seeking civil penalties for Labor Code violations. (*Arias, supra,* 46 Cal.4th at p. 986.) Here, the Court of Appeal below reasoned that because PAGA plaintiffs need not satisfy all of the class certification requirements, and because there is a manageability requirement "rooted in class action procedure[,]… requiring that PAGA claims be manageable would graft a crucial element of class certification onto PAGA claims, undercutting [this Court's] prior holdings," *i.e.*, *Arias.* (*Estrada*, *supra*, 76 Cal.App.5th at pp. 711-712.) But, this

analysis rests on the erroneous premise that manageability is *only* a requirement for class actions. That is not the case.

While *Arias* did indeed hold that PAGA plaintiffs need not pursue their claims as fully certified class actions, this Court never suggested that trial courts overseeing PAGA claims were barred from using any case management tools akin to requirements applicable to class actions. Specifically, *Arias* confirmed that California courts have long recognized "two forms of representative actions: those that are brought as class actions and those that are not." (*Arias*, *supra,* 46 Cal.4th at p. 977, fn. 2.) While *Arias* held that PAGA plaintiffs need not bring their claims as class actions, it recognized that the alternative is for plaintiffs to bring their claims as non-class representative actions. And California appellate courts, including those referenced by *Arias* itself, have held that trial courts can strike or narrow non-class representative claims when they would otherwise be unmanageable. In other words, when this Court held that PAGA actions need not proceed as certified class actions and can instead proceed as the second form of representative actions, *i.e.,* non-representative class actions, it did not hold that trial courts are powerless to ensure such cases are manageable.

To the contrary, when this Court held in *Arias* that PAGA permits non-class representative actions, it analogized to claims under the Unfair Competition Law ("UCL"), which before the passage of Proposition 64,

"authoriz[ed] representative actions that were not class actions."[2] (See *Arias*, *supra*, 46 Cal.4th at p. 982 [citing *Kraus, supra,* 23 Cal.4th at p. 126, fn. 10] [addressing the effect of 2004 UCL amendment through Prop. 64 imposing class certification requirements on subsequent UCL claims].) This Court specifically noted the "similar language" in the pre-Prop 64 version of the UCL that "permitted a representative action that was not brought as a class action" (*Id*. at p. 981.) In other words, when finding that a PAGA plaintiff need not satisfy all of the class certification requirements in Civil Procedure Code section 382, *Arias* held that PAGA plaintiffs could instead pursue a non-class "representative action" for civil penalties in the same manner that UCL plaintiffs formerly did so. (See *id*. at p. 982 [citing *Kraus*].) And the UCL precedent on which this Court relied itself recognized that, in the context of non-class representative claims, a trial court has the discretion "to decline to entertain the action as a representative action." (*Kraus, supra,* 23 Cal.4th at p. 138.)

Consistent with this statement in *Kraus*, California precedent has long established that in cases asserting claims on a non-class, representative basis, the trial court is vested with the discretion to deny representative status at any time prior to trial. In *South Bay Chevrolet*, for example, the trial court held that the plaintiff could not pursue a "private attorney general" claim under the UCL on a non-class, representative basis because of "the need for 'mini-trials'" to evaluate the merits of the claims. Thus,

[2] As a result of the passage of Prop 64, UCL actions must now proceed as class actions.

"the representative action plaintiff s[ought] to bring [t]here [wa]s not appropriate and could not be efficiently tried." (72 Cal.App.4th at p. 891.) The Court of Appeal affirmed the trial court's ruling that the claims "were not sufficiently uniform to allow representative treatment." (*Id.* at p. 897.)

Other courts have affirmed similar exercises of trial court discretion to preclude unmanageable representative actions. (See *Bronco Wine v. Frank A. Logoluso Farms* (1989) 214 Cal.App.3d 699, 720-721 [reversing denial of pre-trial motion to strike general public allegations for abuse of discretion in UCL case where individualized defenses would render representative action unmanageable]; *Wilner v. Sunset Life Ins. Co.* (2000) 78 Cal.App.4th 952, 968-969 [where UCL claims turn on individualized characteristics, a motion to strike the representative allegations is the proper procedural vehicle to address the issue].)

Wesson relied on this line of precedent, and on *South Bay Chevrolet* specifically. The trial court in *Wesson* found support for its exercise of manageability discretion "in the courts' imposition of judicially crafted manageability requirements in the context of class actions ***and*** representative Unfair Competition Law (UCL) claims." (*Wesson*, *supra*, 68 Cal.App.5th at p. 759, emphasis added.) The Court of Appeal in *Wesson* agreed with this analysis as follows:

> Although the statutory provision that authorized representative UCL suits [at issue in *South Bay Chevrolet*] included no manageability requirement (see former Bus. & Prof. Code, § 17204), the court concluded that the plaintiff's representative action "'could not be efficiently tried'" and was therefore "'not appropriate' " (*South Bay Chevrolet*, at

> 891, 85 Cal.Rptr.2d 301.) The Court of Appeal affirmed, holding that the trial court had "acted within its discretion" because the evidence was "not sufficiently uniform to allow representative treatment ...." (*Id.* at 897, 85 Cal.Rptr.2d 301.)

(*Id.* at pp. 764-765.)

The Court of Appeal in *Wesson* further explained that in *South Bay Chevrolet, "*the trial court and the Court of Appeal relied on neither uniquely equitable considerations, nor special characteristics of restitutionary relief, nor the due process rights of non-parties." (*Wesson, supra,* 68 Cal.App.5th at p. 765, fn. 13.) Instead, as *Wesson* further explained, the courts in *South Bay Chevrolet* "cited the need for efficient trial of the claims [citation omitted], a matter firmly within the courts' generally applicable inherent authority." (*Id.* [citing *Weiss v. People ex rel. Dept. of Transportation* (2020) 9 Cal.5th 840, 863; *Cohn v. Corinthian Colleges, Inc.* (2008) 169 Cal.App.4th 523, 531].)

Neither the Court of Appeal below in this case nor the Plaintiffs' Answering Brief to this Court addresses the discussion of *Kraus* in *Arias* or the Court of Appeal's precedent in *South Bay Chevrolet*. This absence is particularly stark given that *Wesson* invoked this precedent. In any event, both at the time PAGA was adopted in 2004 and then later when this Court issued *Arias,* California courts had already long held that trial courts in non-class representative actions have discretion to impose manageability requirements, and Plaintiffs here provide no argument to counter this precedent.

As this Court has held, the "Legislature is presumed to know about existing case law when it enacts or amends a statute." (*In re W.B., supra,* 55 Cal.4th at p. 57 [noting that such precedent remains applicable unless the Legislature "signal[s] an intent to supersede [it]"]; see also *Busee v. United PanAm Fin. Corp.* (2014) 222 Cal.App.4th 1028, 1038 [quoting *In re W.B.* and holding that if the Legislature had in fact sought to undo existing judicial precedent, "one would have expected evidence of such 'intent to feature prominently in the legislative history.'"].)

Here, of course, nothing in the legislative history of PAGA suggests that the Legislature intended to curtail longstanding general trial court discretion to strike or narrow claims they cannot manage.

Indeed, this Court has already apparently recognized as much. When rejecting the notion that trial courts could restrict early *discovery* based on the plaintiff's failure to show a common policy at issue, this Court remarked that "[t]his is not to say uniform policies play no role in PAGA cases; proof of a uniform policy is one way a plaintiff might seek to render trial of the action manageable." (*Williams, supra*, 3 Cal.5th at p. 559.) That analysis plainly implies that a manageability requirement exists and requires a plaintiff to take steps "to render trial of the action manageable." *Wesson* explained how this statement in *Williams* supported its conclusion. (*Wesson, supra,* 68 Cal.App.5th at p. 766.) Once again, the Court of Appeal in this case ignored the issue and did not address this statement in *Williams*.

In sum, to confirm the validity of *Wesson* here, this Court need only apply existing and longstanding precedent.

2. A PAGA Plaintiff's Status as the Proxy for the State Does Not Preclude Trial Court Discretion to Narrow/Dismiss Unmanageable Claims

The Court of Appeal below stated that allowing trial courts the discretion to narrow or dismiss unmanageable PAGA claims would interfere with the "law enforcement" goals of the statute because "[t]he LWDA is not subject to a manageability requirement when it *investigates* Labor Code violations and assesses fines internally." (*Estrada, supra,* 76 Cal.App.5th at p. 712, emphasis added [citing *Zackaria v. Wal-Mart Stores, Inc.* (C.D. Cal. 2015) 142 F.Supp.3d 949, 958-959 and *LaFace v. Ralphs Grocery Co.* (2022) 75 Cal.App.5th 388, 401].) This is the wrong comparator: the statement does not address situations in which the government or its proxy *litigates* a claim in court. As *Wesson* stated when rejecting this argument, the plaintiff "cites no authority, and we are aware of none, privileging the state above other civil litigants and exempting it from the courts' inherent authority to manage the proceedings to ensure fair and efficient administration of justice." (*Wesson*, *supra,* 66 Cal.App.5th at p. 769 & fn. 15 [specifically distinguishing the government's discretion "to *investigate* Labor Code violations" from the "courts' authority to ensure manageability of a trial.", emphasis added].)

The precedent on which the Court of Appeal below relied does not support its conclusion. *Zackaria* is a federal trial court order that simply

assumed, without citation, that a manageability requirement is "apparently not imposed upon the government" when it litigates civil enforcement claims. (*Zackaria*, *supra,* 142 F.Supp.3d at p. 959.) But, the court did not explain why its assumption was "apparent[]."

LaFace is an appellate decision that addressed the right to a jury in a PAGA case, not the manageability requirement. *LaFace* explained that there is no right to a jury in a PAGA case because "where the LWDA has discretion to assess a civil penalty, the courts [as opposed to juries] are to exercise the *same discretion*, subject to *the same limitations and conditions* as the LWDA." (*LaFace*, *supra*, 75 Cal.App.5th at p. 401.) And, in the very next sentence *LaFace* stated: "In short, for many PAGA actions the statute directs the courts to exercise the same discretion as would the Labor Commissioner, a task for which a jury seems unsuited." (*Ibid*.) Thus, to the extent *LaFace* has any bearing on the manageability issue in question here, it supports the notion that a trial court can exercise discretion with respect to the scope and nature of the claim, just as the Labor Commissioner would when deciding the scope of the claim it seeks to pursue.

Moreover, *South Bay Chevrolet* and the other UCL precedent discussed above support the notion that trial courts can enforce manageability requirements even if the claims at issue serve law enforcement purposes. After all, the UCL has long provided that either district attorneys or private persons could bring civil actions under the statute. (See Bus. & Prof. Code, § 17204.) California courts have made

clear that UCL actions brought by prosecutors "are fundamentally law enforcement actions brought to protect the public." (*People v. First Federal Credit Corp.* (2002) 104 Cal.App.4th 721, 732.) Nevertheless, as set forth above, California courts have held that trial courts can (and, indeed, should) impose manageability requirements in the context of non-class representative claims under the UCL.

3. PAGA's Express Language Does Not Preclude Trial Court Discretion On Procedural Issues Such As Manageability

Instead of addressing the wall of precedent contrary to their position, Plaintiffs invoke an argument on which the Court of Appeal below did not rely. Specifically, Plaintiffs argue that because Labor Code § 2699(a) states "'[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 the Labor Code…," it is the case that "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." (Answering Brief at 27.) Not surprisingly, this Court has already rejected this sweeping argument.

In *Arias*, this Court squarely found that this "notwithstanding" clause does not preclude trial courts from enforcing procedural limitations, "including statutes of limitation and pleading requirements" set forth in California law. (See *Arias*, *supra*, 46 Cal.4th at p. 983.) Yet, the enforcement of such provisions can very clearly manifest themselves in

judicial rulings that "narrow, strike or dismiss" PAGA claims. In other words, the "notwithstanding" clause does not amount to a silent repeal of the various procedural and case management requirements generally applicable in civil court or those specifically applicable to non-class representative actions.

B. The Court of Appeal Decision Concedes that PAGA Claims Can Present Manageability Issues But Fails to Provide Trial Courts a Meaningful Way to Redress Them

Not only does the Court of Appeal opinion below fail to address the precedent that precludes its holding as a matter of law, but it also fails to address adequately the practical consequences of its holding. The Court of Appeal recognized that PAGA cases can present meaningful manageability issues. For example, it stated that "in cases with individualized circumstances and vast numbers of alleged aggrieved employees, PAGA plaintiffs may have difficulty proving violations suffered by other employees." (*Estrada, supra,* 76 Cal.App.5th at p. 713.) The court suggested that in such situations, it might be most efficient to have "the pool of alleged aggrieved employees…narrowed or divided to effectively prove the alleged violations at trial." (*Id*. at p. 714.) And, the opinion encouraged efforts "to define a workable group or groups of aggrieved employees for which violations can more easily be shown," such as, "[f]or example, narrowing alleged violations to employees at a single location or department." (*Id*. at p. 713 & fn. 8.)

But because the opinion denies trial courts the discretion to narrow or strike unmanageable claims, these approaches ring hollow. The Court of Appeal encourages "the parties and [the] court to discuss" and "encourage[s] counsel to work with the trial courts during trial planning" to define groups of employees whose claims can be tried easily and manageably. (*Id.* at pp. 713-714.) Of course, the entire reason we have courts is that sometimes people, and especially litigants, cannot reach agreement through discussion, no matter how strongly encouraged, and so a neutral decision-maker with experience has to decide the best and most just path forward. And, this, of course, is precisely why trial judges are vested with inherent discretion to manage their cases and why California appellate courts have, in *South Bay Chevrolet* and the similar precedent laid out above, recognized the discretion of trial courts to impose manageability requirements on non-class representative actions.

The Court of Appeal suggested that its 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." (*Id*. at p. 713) In other words, the Court of Appeal seems to be suggesting that plaintiffs will voluntarily choose to narrow a broad set of claims for fear that they may recover only on a smaller subset. This wishful thinking is simply not grounded in reality. Large, unmanageable claims present significant leverage in settlement discussions, and plaintiffs' attorneys have incentive to exploit such leverage against defendants who may want to avoid the expensive process of going

to trial on unmanageable claims. (Cf. *Jones v. Lodge at Torrey Pines Partnership* (2008) 42 Cal.4th 1158, 1166 [holding that one of the policy reasons not to impose personal liability of individual supervisors for retaliation claims is to avoid the *in terrorem* settlement pressure that such a rule would impose and the associated risk of "enhancing a plaintiff's possibility of extracting a settlement on a basis other than the merits."].)

Even in those situations in which employers do not bend to this unfair settlement pressure, trial courts will still be left in the situation in which they have to oversee a trial they "cannot manage" simply because the plaintiffs and their counsel could not be persuaded through "discuss[ion]" to pursue a manageable trial plan. That would affect the trial courts' ability to administer justice to persons in many other cases, along with the willingness of judges to serve in these important roles.

Perhaps the Court of Appeal believed that trial courts would essentially threaten plaintiffs into narrowing their claims by intimating that the unmanageable claims will be denied after trial. But if that is so, this approach is not only convoluted and imprecise, it is also highly inefficient. If a trial court determines that a claim is unmanageable, it should not be forced to try it, only to reject it later. The more efficient course is to confirm the validity of *Wesson* and allow trial courts the discretion to narrow or strike facially unmanageable claims prior to trial.

In addition to the undue settlement pressure and massive waste of judicial resources that would result from the Court of Appeal's approach, it also raises serious due process concerns for defendants. For example, if

trial courts deal with manageability issues by "limit[ing] witness testimony and other forms of evidence," (*Estrada, supra,* 76 Cal.App.5th at 713.), they may deprive defendants of their opportunity to present a fulsome defense.

As *Wesson* and the Defendant here aptly explain, this Court's precedent makes clear that "any trial must allow for the litigation of affirmative defenses." (*Duran*, *supra*, 59 Cal.4th at p. 33; *Sav-On Drug Stores, Inc. v. Super. Ct.* (2004) 34 Cal.4th 319, 330-331.) One need look no further than to the facts of this case and *Wesson* to see the pernicious results of forbidding trial courts from exercising their discretion to shape PAGA cases into manageable trials. This is because two of the most commonly asserted PAGA clams, i.e., claims regarding misclassification and meal/rest period violations, often turn on fact-specific defenses relating to overtime exemptions and the reasons employees did not record meal periods. (*Duran, supra,* 59 Cal.4th at p. 27 [noting that an evaluation of an exemption defense "has the obvious potential to generate individual issues because the primary considerations are how and where the employee actually spends his or her workday"]; *Lampe*, *supra*, 19 Cal.App.5th at p. 850 [in light of this Court's *Brinker* standard, meal period claims often require individualized defenses concerning "the reasons any particular employee might not take a meal period."].) Consistent with basic due process, this Court's statements in *Duran* and *Sav-On* preclude categorical rules that deny defendants the ability to defend claims against them.

III. CONCLUSION

For the reasons set forth above, the categorical holding set forth by the Court of Appeal is not only inconsistent with California precedent (including the precedent of this Court) and unsupported by the text and the history of PAGA, but it would also lead to significant inefficiency, impose undue settlement pressure, and deny defendants their due process rights. On the other hand, the more flexible approach in *Wesson* will allow trial courts to shape PAGA claims into a manageable form for trial when necessary. In other words, the *Wesson* approach will not force trial courts to hold trials of claims that they "cannot manage." Of course, this approach does not require trial courts to narrow or strike PAGA claims, nor does it mean that trial courts cannot work with parties to craft mutually agreeable trial plans before doing so. Instead, it provides the trial court with the discretion to shape claims to be manageable when necessary and only if the parties are unable to do so on their own through discussion.

For these reasons, Amici respectfully request that this Court reverse the holding of the Court of Appeal below and endorse the approach set forth in *Wesson*.

DATED: October 26, 2022 MUNGER, TOLLES & OLSON LLP

By: /s/ *Malcolm A. Heinicke*
MALCOLM A. HEINICKE
Attorney for Amici

CERTIFICATE OF WORD COUNT

I certify pursuant to Rule 8.204, subd. (c)(1) of the California Rules of Court that this brief consists of approximately 4729 words as counted by the software program used to generate it, exclusive of materials not required to be counted under Cal. R. Ct. rule 8.520, subd. (c)(3).

DATED: October 26, 2022 MUNGER, TOLLES & OLSON LLP

By: /s/ *Malcolm A. Heinicke*
MALCOLM A. HEINICKE
Attorney for Amici