NO. S222314

IN THE SUPREME COURT OF CALIFORNIA

SOLUS INDUSTRIAL INNOVATIONS, LLC; EMERSON POWER TRANSMISSION CORPORATION; and EMERSON ELECTRIC CO.,
Petitioners,

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF ORANGE,
Respondent,

THE PEOPLE OF THE STATE OF CALIFORNIA
Real Parties in Interest

After a Decision by the Court of Appeal,
Fourth Appellate District, Division 3, Case No. 0047661

Superior Court, County of Orange,
Case No. 30-2012-00581868-CU-MC-CXC
The Honorable Kim G. Dunning

AMICUS CURIAE BRIEF OF NATIONAL ASSOCIATION OF MANUFACTURERS IN SUPPORT OF PETITIONERS

Phil Goldberg (*pro hac* pending)
Cary Silverman (*pro hac* pending)
SHOOK, HARDY & BACON L.L.P.
1155 F Street, NW, Suite 200
Washington, DC 20004
Tel: (202) 639-5621
Fax: (202) 783-4211
pgoldberg@shb.com

Patrick Gregory (#206121)
(COUNSEL OF RECORD)
SHOOK, HARDY & BACON L.L.P
One Montgomery Tower, Suite 2700
San Francisco, CA 94104
Tel: (415) 544-1900
Fax: (415) 391-0281
pregory@shb.com

Attorneys for *Amicus Curiae*

(Additional counsel listed on next page)

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(COUNSEL OF RECORD)
SHOOK, HARDY & BACON L.L.P
One Montgomery Tower, Suite 2700
San Francisco, CA 94104
Tel: (415) 544-1900
Fax: (415) 391-0281
pregory@shb.com

Attorneys for *Amicus Curiae*

(Additional counsel listed on next page)

Of Counsel

Linda E. Kelly
Patrick N. Forrest
MANUFACTURERS' CENTER FOR LEGAL ACTION
733 10th Street, Suite 700
Washington, D.C. 20001
(202) 637-3000

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ISSUE PRESENTED

Does the federal Occupational Safety and Health Act (OSH Act) preempt a district attorney's enforcement action under the Unfair Competition Law (UCL) when the action seeks civil penalties inconsistent with, and in addition to, those included in the California's State Plan for workplace safety regulation and enforcement that the U.S. Secretary of Labor has approved pursuant to the OSH Act?

STATEMENT OF INTEREST

The National Association of Manufacturers ("NAM") is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states, including 1,051 members in California. NAM has a substantial interest in ensuring that California's civil justice system is fair, follows traditional principles of law, and promotes sound public policy. Manufacturing employs over 12 million men and women, contributes more than $2.1 trillion to the U.S. economy annually, has the largest economic impact of any major sector and accounts for two-thirds of private-sector research and development. NAM's mission is to enhance the competitiveness of manufacturers and improve American living standards by shaping a legislative and regulatory environment conducive to U.S. economic growth. As explained in this brief, if the County is permitted to use the UCL to enforce workplace safety standards, it will create significant additional liability exposure for many of NAM's

members and destroy the predictability and uniformity of the state's Occupational Safety and Health (OSH) regulatory system.

STATEMENT OF THE CASE

NAM adopts the Statement of the Case by Petitioner Solus Industrial Innovations, et al. to the extent relevant to arguments in this *amicus* brief.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Federal law subjects employers and employees to one set of workplace safety regulations. This law requires uniform, deliberate, and predictable health and safety requirements. States may regulate and enforce workplace safety, but only pursuant to a federally-approved plan that avoids duplicative and counterproductive regulation. California has such a State Plan. The California Division of Occupational Safety and Health (Cal/OSHA), with approval of federal OSHA, has designed a civil penalty structure to promote fair and consistent enforcement, encourage employers to adopt safety programs, and provide incentives for companies to quickly and voluntarily address violations. The district attorney's use of a separate California law, the UCL, to circumvent Cal/OSHA and increase civil penalties against a manufacturer on top of those already imposed by Cal/OSHA violates this lawful balance.[1]

[1] The County also alleges violations of California's False Advertising Law (FAL), Cal. Bus. & Prof. Code § 17508, based on the same alleged
(Footnote continued on next page)

As the Court of Appeals for the Fourth Appellate District correctly held, the federal OSH Act expressly preempts this action. Neither federal law nor California's State Plan authorizes state or local officials to seek civil penalties for workplace safety violations outside the approved regulatory structure. The UCL has never been incorporated into the enforcement regime of the State Plan. As the Fourth District fully appreciated, the UCL, with its broad standard for a violation and its own civil penalty structure, is inconsistent with the State Plan and an inappropriate tool for enforcing workplace safety violations. When applied in the manner sought by the district attorney, the UCL can result in penalties exponentially higher than the State Plan authorizes. *See Solus Indus. Innovations, LLC v. Super. Ct.* (2014) 229 Cal. App. 4th 1291, 1307.

If this Court were to allow such an end-run around Cal/OSHA's approved Plan, counties, not Fed/OSHA or Cal/OSHA, would become the primary enforcer of federal and state workplace safety laws. UCL-based penalties could dwarf Cal/OSHA's enforcement actions. Local officials also could haphazardly seek these penalties based on their or their constituents' outrage following an injury, rather than, as Cal/OSHA considers, factors such as the seriousness and gravity of the violation,

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violations of workplace safety laws. The FAL allegations are subject to the same preemption analysis as the County's UCL allegations.

whether it was willful or repeated, whether the injury occurred despite the adoption of strong safety programs, and whether the employer had a positive history of maintaining a safe workplace.

The UCL's inconsistent and unpredictable enforcement mechanisms, accompanied by duplicative and potentially excessive civil penalties, are precisely what the OSH Act precludes. If not preempted by federal law, such actions would further strain the manufacturing industry that is so vital to California's economy by exposing businesses that locate jobs in the Golden State to liability beyond that permitted under federal workplace safety laws or other state plans. NAM urges the Court to affirm the decision below and ensure that enforcement of workplace safety standards in California remains uniform, appropriate, and approved by federal law.

ARGUMENT

I. THE COUNTY'S LAWSUIT IS PREEMPTED BY FEDERAL LAW, WHICH DETERMINES THE REGULATIONS AND ENFORCEMENT METHODS FOR WORKPLACE SAFETY STANDARDS IN CALIFORNIA

A. The OSH Act Preempts State Regulatory and Enforcement Regimes for Workplace Safety Violations

Prior to the enactment of the federal OSH Act in 1970, states and their subdivisions set the standards for worker safety. As a result, the enforcement of workplace safety laws varied widely from incident to incident and community to community. *See* Rep. Lloyd Meeds, *A Legislative History of OSHA*, (1974) 9 Gonz. L. Rev. 327, 331. Congress

enacted the OSH Act to "subject employers and employees to only one set of regulations." *Gade v. Nat'l Wastes Mgmt. Ass'n*, (1992) 505 U.S. 88, 99 (plurality op.). As the Supreme Court explained, the OSH Act ensures that workplace safety regulations and enforcement methods are uniform, deliberate, and predictable, which specifically includes "avoiding duplicative, and possibly counterproductive," local regulatory and enforcement regimes such as the one at bar. *Id.*

In order to federally control workplace safety standards, Congress invoked its constitutional authority to expressly preempt all non-federal obligations on any occupational safety or health issue where OSHA has already promulgated a standard.[2] *See* 29 U.S.C. § 667(a). Section 18(a) of the OSH Act provides that states and their subdivisions, which include counties, may regulate or enforce an occupational safety or health issue only when there is no federal standard in effect. *See* 29 U.S.C. § 667(a).

The preemptive effect of the OSH Act is well-settled law. Federal courts have made clear that the "scope of preemption in each area in which a federal standard has been promulgated is complete. All state regulations relating to the 'issue' of a federal standard are preempted even if they do not conflict with the federal scheme." *Indus. Truck Ass'n, Inc. v. Henry*,

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[2] *See* U.S. Const. art. VI, cl. 2 (the laws of the United States "shall be the supreme Law of the Land"); *see also Wash. Mut. Bank, FA v. Super. Ct.*, (2002) 95 Cal. App. 4th 606, 612.

(9th Cir. 1997) 125 F.3d 1305, 1310. In this regard, the OSH Act seizes the field of workplace safety and health standards, preempting state laws that attempt to separately regulate or enforce those standards. To be clear, "[i]t is not enough to say that the ultimate goal of both federal and state law is the same. A state law also is pre-empted if it interferes with the methods by which the federal statute was designed to reach th[at] goal." *Gade*, 505 U.S. at 103 (citations omitted).

As a result, the OSH ACT preempts this lawsuit. The County may not use the UCL to enforce workplace safety standards promulgated under the authority of the OSH Act. The instant case involves such standards, and this action interferes with the federally approved methods for enforcing those standards in California.

B. States Can Impose Regulatory and Enforcement Regimes Only Under a Federally-Approved State Plan

The only exception under which the UCL could be used to enforce the alleged workplace safety violation here is if Fed/OSHA pre-approved the UCL's use for this purpose, which Fed/OSHA has not. *See Gade*, 505 U.S. at 101 ("States are not permitted to assume an enforcement role" without approval). Under the OSH Act, Congress provided that a state can manage its own safety and health regimes by securing Fed/OSHA's pre-approval of a detailed State Plan. *See* 29 U.S.C. § 667(b), (f); *Gade*, 505 U.S. at 101. The State Plan must specify both the workplace standards

"and their enforcement," which is the issue here. 29 U.S.C. § 667(b). As the lower court properly observed, "it necessarily follows that a state has no authority to enact and enforce laws governing workplace safety which fall outside of that approved plan." *Solus Indus. Innovations, LLC v. Super. Ct.* (2014) 229 Cal. App. 4th 1291, 1306; *see also Cal. Lab. Fed'n v. Occupational Safety & Health Standards Bd.*, (1990) 221 Cal. App. 3d 1547, 1552.

California is one of twenty-two states with a federally approved State Plan to enforce its workplace safety laws. The U.S. Secretary of Labor first approved California's State Plan in 1973 and certified it in 1977. The Plan provides detailed responsibilities for who may bring an enforcement action. The California Legislature named the Department of Industrial Relations (DIR) and Cal/OSHA as the bodies in charge of administering and enforcing the State plan. Cal. Lab. Code §§ 6302, 6307. The federal regulation approving the Plan further stated that "[t]he authority of any agency, department, division, bureau or any other political subdivision other than the Division of Occupational Safety and Health to assist in the administration or enforcement of any occupational safety or health standard, order, or rule . . . shall be contained in a written agreement with the Department of Industrial Relations or an agency authorized by the department to enter into such agreement." 29 C.F.R. § 1952.174(b).

Counties are not identified in the State Plan, and NAM is not aware of any pre-approved written agreement giving the County authority to levy civil fines for workplace safety violations.[3] Further, California's pre-approved State Plan does not incorporate the UCL, which was not in force when California adopted its State plan, or the UCL's predecessor statute, former section 3370.1, as sources of enforcement for workplace safety violations. Thus, when Fed/OSHA approved California's State Plan, neither the state nor the federal agency provided the County with authority to bring a UCL action. *See Kelly v. USS-Posco Indus.*, (9th Cir. 2003) 101 Fed. App'x 182, 184 ("17200 is not part of California's approved occupational health and safety plan."). Thus, even though California has a State Plan for OSH enforcement, federal law still preempts the County's attempt to enforce workplace safety standards through the UCL.

California also has not amended its State Plan to include the County or UCL in its enforcement regime, despite many opportunities to do so. Under the OSH Act and its regulations, Congress provided an open, uniform, and written approval process for approving changes to a State Plan. *See* 29 C.F.R. § 1953.3(b). The proposed change and documents

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[3] By contrast, Labor Code Section 6315(g) provides that Cal/OSHA's Bureau of Investigations forwards results of its internal investigations to the district attorney for the purposes of considering whether to pursue criminal charges, which the County has done here. *See People v. Faulkinbury*, (Super. Ct. Orange Cnty., 2012) No. 12-CF-0698, *unreported.*

supporting the changes are to be made available at the federal and state locations (specified at 29 C.F.R. § 1952.171 across California) in hard copy form, and the proposal is subject to a notice and comment review period to assure that the governed community has an opportunity to be heard. *Id.* § 1953.3(c). California's State Plan, including its enforcement regime, has been modified multiple times in accordance with this process.

For example, Cal/OSHA is currently going through this process to bring its State Plan into conformity with federal changes to the industry classification system. *See* 13-Z Cal. Regulatory Notice Reg. 484 (Mar. 27, 2015). As part of the approval process, Cal/OSHA has provided fiscal and economic cost estimates (*id.* at 487-88), economic impact analysis (*id.* at 488), and cost impacts on businesses of its proposal (*id.* at 488-89). In addition, Cal/OSHA made the rulemaking file available for public inspection and provided a contact person for businesses impacted by the change. *Id.* at 489. It then opened a written comment period between March 27 and May 11 and held a public hearing on May 11, 2015. *See id.* at 484-85. Cal/OSHA also noted that if it makes changes to the proposal as a result of this process, the full text "will be made available for public comment 15 days prior to their adoption." *Id.* at 489-90. None of these processes have been followed to authorize the action here.

The importance of this process was clearly demonstrated when citizens petitioned to add Proposition 65's warning requirements to the

OSH State Plan. *See Cal. Lab. Fed'n v. Cal. Occupational Safety & Health Standards Bd.*, (1990) 221 Cal. App. 3d 1547, 1550. In that case, as here, the claim was that Proposition 65 was a statute of general applicability because it required warning to all individuals in the state, but the court said it "cannot accept the premise that Proposition 65 is not a state law governing occupational safety and health ... simply because it also applies outside the workplace and exempts certain employers from its requirements." *Id.* at 1557. Therefore, the court ordered that Prop. 65 warning regulations must be adopted and incorporated into the state Cal/OSHA plan and submitted to the Secretary of Labor for approval. *See id.* at 1559 (citing 29 U.S.C. § 667). Through the Secretary's process of considering the State Plan amendments, more than 200 comments were filed by citizens and employers on Proposition 65's impact on workplace safety. 62 Fed. Reg. 31,159, 31,162 (June 6, 1997). Upon reflection of these comments, the Secretary approved a plan that actually *limited* the scope of private enforcement in the workplace under Proposition 65. *Id.*

Had California moved to incorporate the UCL into its workplace safety enforcement regime, Cal/OSHA would have had to follow a similar

process by which affected employees and employers could comment.[4] The statute, the case law, and the record of prior administrative amendments clearly demonstrate that workplace safety regulations and enforcement methods benefit from public debate and comment. Neither courts nor federal or State agencies can subvert this statutorily required process now in favor of the instant action. *See Gade*, 505 U.S. at 103–04 ("If a State wishes to regulate an issue of worker safety for which a federal standard is in effect, its only option is to obtain the prior approval of the Secretary of Labor."). Unless or until the Department of Labor gives its pre-approval, this action remains preempted.

II. THE UNFAIR COMPETITION LAW IS INCONSISTENT WITH CALIFORNIA'S APPROVED PENALTY STRUCTURE FOR WORKPLACE SAFETY VIOLATIONS

As referenced above, the reason Congress expressly preempted state law and required specific prior-OSHA approval of any state plan is to assure that OSHA and a state, including California, can carefully craft a regulatory regime that establishes uniform health and safety requirements in the workplace. *See Gade*, 505 U.S. at 99 (observing Congress's intent to "avoid[] duplicative, and possibly counterproductive, regulation"). To this

[4] In an unpublished ruling, the U.S. Court of Appeals for the Ninth Circuit found that a claim for unfair business practices brought under the UCL related to OSHA training standards was preempted because the UCL is not in California's State Plan for enforcing workplace safety standards. *See Kelly v. USS-Posco Indus.*, (9th Cir. 2003) 101 Fed. App'x 182, 184.

end, Fed/OSHA and Cal/OSHA have developed a highly detailed and prescriptive menu through which fines are to be assessed. *See* 29 C.F.R. § 1952.170(c). This process is discussed in detail below. The UCL, in direct contrast, provides none of these processes.

A. California's Enforcement Process Is Highly Prescriptive And Represents Public Balancing of Regulation and Enforcement To Protect Both Workers and the Economy

Following the accident at the defendant's manufacturing facility at issue in this case, Cal/OSHA investigated the matter as it is charged to do under California's Labor Code. Cal. Lab. Code §§ 6302, 6307. The enforcement methods for such an incident are specified by California law and approved by Fed/OSHA as part of the State Plan. Cal. Lab. Code §§ 6317–19; 29 C.F.R. 1952.170(a). As a result of its investigation, Cal/OSHA cited the defendant with five "serious" violations and one "willful" violation and imposed civil penalties as set forth in the statute. Cal. Lab. Code §§ 6428–29.

Indeed, California's pre-approved State Plan establishes a well-developed framework for how Cal/OSHA is to assess such civil penalties, including the maximum per violation amounts and factors that may or may not be considered to determine a penalty within the permissible range. As a baseline, the Labor Code sets a civil penalty of up to $7,000 for each violation that does not qualify as a "serious violation." Cal. Lab. Code § 6427; *see also id.* § 6432 (specifying conditions giving rise to a rebuttable

presumption of a "serious violation"). Each serious violation is subject to a maximum $25,000 civil penalty. *Id.* § 6428. A willful or repeated violation opens the door to a civil penalty of up to $70,000 per violation. *Id.* § 6429. Employers that fail to timely address a violation are subject to up to $15,000 per day in fines until the violation is abated. *Id.* § 6430(a).

The Labor Code further instructs regulators to consider specific factors when reaching the precise amount of a penalty, including the size of the employer, the gravity of the violation, the good faith of the employer, and whether the employer has a history of violations. *See* Cal. Lab. Code § 6319(c). When an employer has engaged in a "serious, willful, or repeated violation," California law requires the Division to impose the maximum penalty unless the violator is a small business. *See id.* § 6319(c). When that is not the case, the Labor Code defines and quantifies a multitude of factors that essentially create a matrix for arriving at a fine so that the penalty is appropriate and consistent for those circumstances.

For instance, when determining the "gravity of the violation," the Division must consider the severity, extent, and likelihood of the injury. *Id.* § 335(a). The severity of the violation is ranked as "low," "medium," or "high," based on extent of injury likely to result from the violation. *Id.* § 335(a)(1). Businesses are then classified by size based on established ranges of the number of employees. *Id.* § 335(b). An employer's good faith is ranked "good" (effective), "fair" (average), or "poor" (no effective

safety program). *Id.* § 335(c). An employer's history of previous violations is similarly ranked good, fair, or poor. *Id.* § 335(d).

In the event of a serious violation, the Division begins the calculation with the base amount of $18,000. *Id.* § 336(c). That penalty is adjusted up or down based on the other factors. For example, the penalty is adjusted up 25% when the injury is severe. *Id.* The result of this process is an "adjusted penalty" based on specific circumstances at issue, which the Division can multiply by two, four, or ten, if it is the business's first, second, or third repeated violation, respectively. *Id.* § 336(g). Further, the Division's published Policy and Procedure Manual provides guidance on when each instance of noncompliance is considered to be a separate violation. *See* Cal/OSHA, Policy and Procedure Manual, P&P C-10 (last revised Aug. 1, 1994), *at* https://www.dir.ca.gov/DOSHPol/P&PC-10A.htm. Cal/OSHA's goal in assessing these fines is not merely punitive, but to provide an incentive to employers to prevent workplace safety and health hazards and to voluntarily correct such violative conditions. *See id.*

Thus, the mechanism that swung into action after the manufacturing accident at issue in this case was legislatively enacted and federally approved. Penalties were carefully calculated to ensure fair and consistent enforcement, encourage the Defendant to adopt strong safety programs, and facilitate the quick remediation of the alleged violations.

B. UCL Enforcement Stands in Direct Contrast to the Highly Deliberative, Open and Prescriptive Methods the State Plan Sets Forth for Enforcing Workplace Safety Standards

The County's attempt to use the UCL here undermines the precision with which California regulators, with federal approval, have established civil penalty levels for workplace safety violations. Rather than being a centralized, carefully balanced tool for encouraging compliance and addressing workplace safety violations, the UCL's intended use is to penalize anti-competitive practices and deceptive advertising. For these reasons, it does not provide an appropriate or effective means for addressing workplace safety violations.

As the lower court fully appreciated, the penalty structure in the UCL is completely inconsistent with the State Plan. The UCL authorizes government officials to seek a civil penalty of up to $2,500 per violation. *See id.* § 17206(b). While this may appear to be less than the maximum penalty authorized by the Labor Code for both general and serious workplace safety violations ($7,000 and $25,000 respectively), the multipliers are calculated differently, leading to millions of dollars of potential liability exposure. As the lower court explained, a fine of $2,500 per day per employee that the defendant was allegedly out of compliance could be multiplied to create "a potential penalty in excess of $1 million per employee, for each cause of action." *Solus Indus. Innovations,* 229 Cal.

App. 4th at 1306. This liability exposure would dwarf the civil fine structure approved in the State Plan.

In addition, the UCL provides considerably more discretion than is permitted in the Labor Code when evaluating the appropriate size of a civil penalty. *See id.* The factors for assessing the amount of a civil penalty under the UCL vary significantly from the Labor Code and are non-exclusive. *See id.* § 17206(b). Therefore, each of California's 58 district attorneys, all of whom are empowered to bring civil penalty actions under the UCL, could take distinct approaches to pursuing penalties.[5] Finally, there may be an incentive to bring high-dollar UCL actions, as half of the penalty collected is retained by the county or city that brings the action. *See id.* § 17206(c).

If the County is allowed to pursue the action in this case, therefore, the frequency of county actions, amount of penalties sought, and the UCL's application to workplace safety would undoubtedly increase and vary significantly from official to official and case to case. Given Cal/OSHA's existing penalties in this case, additional UCL penalties would be

[5] The UCL extends this authority to the Attorney General, county counsel, city attorneys, and prosecutors. *See* Cal. Bus. & Prof. Code § 17206(a).

duplicative.[6] Should Cal/OSHA not fine a company or reduce a company's fine after carefully balancing the need to maximize workplace safety, counties would be permitted to second-guess Cal/OSHA.

Regardless of whether one disagrees with the amount of the Cal/OSHA fine, the potential for such decentralized, wide-ranging penalties is precisely the reason Congress preempted state and local enforcement of workplace safety violations as part of the OSH Act. This Court should not ignore the express intent of Congress to preempt such actions.

III. THE COURT SHOULD REQUIRE PRE-APPROVAL UNDER THE STATE PLAN BEFORE ANY COUNTY CAN PURSUE A UCL CLAIM FOR WORKPLACE SAFETY VIOLATIONS

If California seeks to include the UCL as part of its enforcement regime, it must do so through the State Plan approval process. Through this process, Congress has assured that Fed/OSHA, state authorities, workers, employers, and other interested stakeholders can weigh the multitude of factors implicated by follow-on UCL county claims. While NAM and its members certainly may not agree with every decision that has resulted from such a process, it assures that the focus is on workplace safety before an incident occurs. After such an incident, particularly when deaths are

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[6] Penalties under the UCL would be in addition to those assessed under the Labor Code. *See* Nancy King, *Portioning Punishment: Constitutional Limits on Successive and Excessive Penalties*, (1995) 144 U. Pa. L. Rev. 101 (observing an increasing in "overlapping civil, administrative, and
(Footnote continued on next page)

involved, the fine sought can be driven by political or public pressure to maximize a penalty. Such a penalty may implicate a multitude of concerns, all of which should be considered before such actions are permitted.[7]

In particular, the State should be able to consider the significant impact on California jobs of allowing such pile-on actions; comparable claims are not permitted elsewhere. *See, e.g.,* 29 U.S.C. § 666 (setting maximum federal civil penalties at $7,000, and up to $70,000 for a willful violation, which apply in the 28 states without an OSHA-approved State Plan). Manufacturing is vital to California's economy, particularly in the inland portions of the state. Statewide, manufacturers account for more than 10% of the total economic output and employ approximately 8% of the workforce. *See* Nat'l Ass'n of Mfrs., California Manufacturing Facts (2014), *at* http://www.nam.org/Data-and-Reports/State-Manufacturing-Data/2014-State-Manufacturing-Data/Manufacturing-Facts--California/.

[even] criminal sanctions for the same misconduct, as well as a steady rise in the severity of those sanctions" in many areas of the law).

[7] *See, e.g.*, David Lieber, *Eighth Amendment – The Excessive Fine Clause*, (1994) 84 J. Crim. L. & Criminology 805; Browning-Ferris Indus. v. Kelco Disposal, Inc., (1989) 492 U.S. 257, 300-01 (O'Connor, J., concurring) (stating courts should give "substantial deference" to the legislature in determining appropriate levels of civil fines); Courtney M. Malveaux, *OSHA Enforcement of the "As Effective As" Standard for State Plans: Serving Process or People?*, (2011) 46 U. Rich. L. Rev. 323, 337 (noting increased penalties for violations can lead to an increase in litigation and divert funds from workplace safety compliance programs).

The State must be allowed to consider whether the competitive disadvantage of allowing follow-on UCL actions is worth the risk of manufacturers leaving, or not opting to move to, California.

California's manufacturing base already has been under heavy pressure from the state's regulatory and civil liability systems. *See* Chris Kirkham, *Manufacturing Slower to Grow in California than Elsewhere in U.S.*, L.A. Times, Jan. 19, 2015, http://touch.latimes.com/#section/-1/article/p2p-82576854/ (noting that "regional cost equations" for locating manufacturing facilities do not favor California); *see also* U.S. Chamber Inst. for Legal Reform, Lawsuit Climate (2012), *at* http://www.instituteforlegalreform.com/states (ranking California 47th for lawsuit fairness among the states).

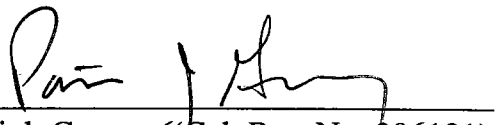
From 2001 to 2015, California lost 600,000 manufacturing jobs, which represents one-third of the state's manufacturing jobs. *See* Bureau of Labor Statistics, Economy at a Glance – California, *at* http://www.bls.gov/eag/eag.ca.htm. "Virtually all manufacturing industries lost jobs [since 1990], and some lost more than half of their employment in the ten years since 2002 alone." Inst. for Applied Economics, L.A. Cnty. Econ. Dev. Corp., California's Manufacturing Industries: Employment and Competiveness in the 21st Century, 3 (June 2014), *at* http://laedc.org/wp-content/uploads/2014/07/California_Manufacturing_2014.pdf.

The ailing manufacturing base and loss of jobs hurts the working class, and contributes to high poverty and income inequality in the state. *See, e.g.*, Kirkham, *supra* ("As manufacturing jobs disappear, workers without advanced degrees are far more likely to move down the pay scale into service industries such as retail and hospitality."). As Dorothy Rothrock, president of the California Manufacturers & Technology Association, has candidly stated, "[u]nless you are forced to be in California for some reason, increasingly it's hard to find reasons that you have to be here." Chris Kirkham, *Manufacturing Slower to Grow in California than Elsewhere in U.S.*, L.A. Times, Jan. 19, 2015. We urge the Court to not give manufacturers another reason to leave or avoid California.

CONCLUSION

For these reasons, the Court should uphold the Court of Appeal's ruling and find that the OSH Act preempts the County's UCL action.

Respectfully submitted,



Patrick Gregory (Cal. Bar. No. 206121)
(COUNSEL OF RECORD)
SHOOK, HARDY & BACON L.L.P
One Montgomery Tower, Suite 2700
San Francisco, CA 94104
Tel: (415) 544-1900
Fax: (415) 391-0281
pgregory@shb.com

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1155 F Street, NW, Suite 200
Washington, DC 20004
Tel: (202) 639-5621
Fax: (202) 783-4211
pgoldberg@shb.com

Of Counsel

Linda E. Kelly
Patrick N. Forrest
MANUFACTURERS' CENTER FOR LEGAL ACTION
733 10th Street, Suite 700
Washington, D.C. 20001
(202) 637-3000

Dated: May 28, 2015

CERTIFICATE OF COMPLIANCE

I, Patrick Gregory, an attorney duly admitted to practice before all courts of the State of California and a member of Shook, Hardy & Bacon L.L.P., counsel of record for *amicus curiae*, certify that the foregoing complies with the requirements of Rules 8.520 and 8.204 of the California Rules of Court in that it was prepared in proportionally spaced type in Times Roman 13-point font, double spaced, and contains less than 14,000 words as measured using the word count function of "Word 2000."

Patrick Gregory (Cal. Bar. No. 206121)
(COUNSEL OF RECORD)
SHOOK, HARDY & BACON L.L.P
One Montgomery Tower, Suite 2700
San Francisco, CA 94104
Tel: (415) 544-1900
Fax: (415) 391-0281
pgregory@shb.com

Dated: May 28, 2015

PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF SAN FRANCISCO)

I, Patrick Gregory, declare as follows:

I am a California resident over the age of 18 and not a party to this action. I filed an original and copy of the foregoing by hand delivery with:

Clerk, Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

I also served a copy on the following by placing true and correct copies in sealed envelopes sent by U.S. Mail first-class mail, postage pre-paid, to:

Kelly A. Roosevelt
DEPUTY DISTRICT ATTORNEY
COUNTY OF ORANGE
P.O. Box 808
Santa Ana, CA 92702
Counsel for Petitioner, People of the State of California

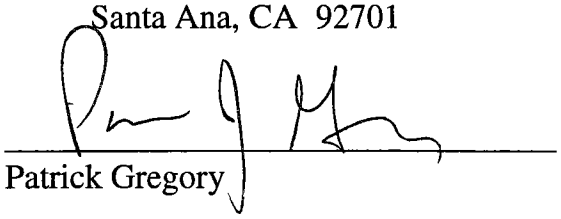
Appellate Coordinator
OFFICE OF THE ATTORNEY GENERAL
300 South Spring Street
Los Angeles, CA 90013-1230

CALIFORNIA COURT OF APPEAL
Fourth Appellate District
Division Three
601 West Santa Ana Boulevard
Santa Ana, CA 92701

Brian A. Sun
Frederick D. Friedman
JONES DAY
555 South Flower Street, 50th Floor
Los Angeles, CA 90071-2300
Counsel for Defendants-Respondents

Patrick D. McVey
RIDDELL WILLIAMS P.S.
1001 Fourth Avenue, Suite 4500
Seattle, WA 98154-1192
Counsel for Defendants-Respondents

Hon. Kim G. Dunning
SUPERIOR COURT OF CALIFORNIA
County of Orange
751 West Santa Ana Boulevard
Department CS104
Santa Ana, CA 92701



Patrick Gregory

Dated: May 28, 2015