

# SUPREME COURT COPY

No. S222314

IN THE SUPREME COURT OF THE  
STATE OF CALIFORNIA

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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.*

---

Petition for Review of a Decision of the Court of Appeal,  
Fourth Appellate District, Division 3, No. 0047661

---

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

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**SUPPLEMENTAL BRIEF ON THE MERITS**

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*Quesada v. Herb Thyme Farms, Inc.*  
(2015) 62 Cal.4th 298 ..... 1,4,5,6

Pursuant to California Rules of Court 8.520(d), Real Parties in Interest, the People of the State of California, (the “People”), hereby supplement their Opening and Reply Brief on the Merits to address authorities that were not available or included in the initial briefing on the merits, but which the People submit are also relevant to the preemption issues set for oral argument on November 7, 2017 in the above-captioned matter. Such authorities include the following recent decisions of this Court: *Friends of Eel River v. North Coast Railroad Authority* (2017) 3 Cal.5th 677; *People v. Rinehart* (2016) 1 Cal.5th 652; *Quesada v. Herb Thyme Farms, Inc.* (2015) 62 Cal.4th 298; *In re Cipro Cases I & II* (2015) 61 Cal.4th 116; and *People v. Pac Anchor Transportation, Inc.* (2014) 59 Cal.4th 772.

**A. Presumptions Protect Against Federal Preemption Of The State’s Sovereign Powers Under The UCL And FAL**

Generally speaking, these recent authorities confirm the applicable standards and presumptions that guide the Court’s analysis of preemption in this case. (See Opening Brief at pp.24-26.) In *Friends of the Eel River* decision, this Court elaborated further on the sovereign powers of the state and the presumption against preemption, explaining:

There is a presumption that protects against undue federal incursions into the internal, sovereign concerns of the states. The United States Supreme Court expressed the rule in *Gregory v. Ashcroft* (1991) 501 U.S. 452, 111 S.Ct. 2395, 115 L.Ed.2d 410 (*Gregory*) and *Nixon v. Missouri Municipal League* (2004) 541 U.S. 125, 124 S.Ct. 1555,

158 L.Ed.2d 291 (*Nixon*). That case law posits a *presumption that Congress would not alter the balance between state and federal powers without doing so in unmistakably clear language*. (*Nixon, supra*, 541 U.S. at pp. 140-141, 124 S.Ct. 1555; *Gregory, supra*, 501 U.S. at pp. 459-461, 111 S.Ct. 2395; *Sheriff v. Gillie* (2016) 578 U.S. ---- [136 S.Ct. 1594, 1602] 194 L.Ed.2d 625 (*Gillie*); *City of Los Angeles v. County of Kern* (2014) 59 Cal.4th 618, 631, 174 Cal.Rptr.3d 67, 328 P.3d 56 [“Principles of federalism dictate a distinct approach to the construction of statutes impinging on state sovereignty, one designed to ensure courts do not assume an incursion where none was intended”].)

(*Friends of Eel River, supra*, 3 Cal.5th at p.705 [emphasis added].) This Court held that the court of appeal in *Friends of the Eel River* erred in its preemption analysis, in the same way the Fourth District did here, because it “declined to invoke any presumptions concerning the scope of [the federal Act’s] preemption.” (*Id.* at p.720.)

This Court also specifically cautioned on the limits of federal preemption in areas concerning the “state’s regulatory police powers” and the state’s “ability to achieve self-governance through the medium normally and constitutionally available to states – the adoption of state law of general application” like the UCL or FAL. (*Friends of Eel River, supra*, 3 Cal.5th at pp.720-734; *see also Rinehart, supra*, 1 Cal.5th at pp.657, 672-674 [holding no federal preemption of a regulation under the state’s police powers where nothing in the state regulation “implicates or interferes with any of the purposes and objectives” of the federal law in question]; *People v. Pac Anchor Transportation, Inc., supra*, 59 Cal.4th at p.786 [holding that “California labor and insurance laws and regulations of general

applicability are not preempted as applied under the [Federal Aviation Administrative Authorization Act], even if they form the basis of the People’s UCL action” because Congress did not express any intent to preempt “generally applicable employment laws” in that act].)

“Even as to powers that are exclusively federal,” this Court confirmed, “it does not follow that any and all state regulations touching on [that power] are preempted.” (*Friends of Eel River, supra*, 3 Cal.5th at p.720 [quoting *In re Jose C.* (2009) 45 Cal.4th 534].) Under “the appropriate presumptions,” therefore, it is error, as Solus argues, to “suggest that just because Congress has *power* to assert preemptive control over an area of commerce, [that] the existence of such power means that it necessarily *has* preempted control even as to areas of traditional state sovereignty.” (*Friends of Eel River, supra*, 3 Cal.5th at. at p.733; *see also Rinehart, supra*, 1 Cal.5th at p.657 [rejecting federal preemption of state’s police power when the federal law “did not go further and guarantee ... a right ... immunized from exercises of the states’ police powers”].)

Importantly here, this Court recognized that “the state’s interest in self-governance extends to designating a system of enforcement.” (*Friends of Eel River, supra*, 3 Cal.5th at p.731; *see* Opening Brief at pp.36-38 [arguing there is no federal intent to prescribe the manner of California’s enforcement of its workplace safety, UCL, FAL, or other, laws under the federal OSHA Act].) Without express language establishing a clear

Congressional intent to immunize employers from particular state enforcement actions, there is no reason to “believe Congress intended to displace the exercise of a state’s ordinary power of self-governance when the state does not propose to act in contravention of the dictates of the [federal law]” in question. (*Friends of Eel River, supra*, at p.729.)

**B. *Quesada v. Herb Thyme Farms, Inc.***

In *Quesada*, this Court held a private right of action under the FAL and UCL challenging the false labeling of organic foods was not preempted by the federal Organic Foods Act. Like the federal Occupational Safety and Health Act (the “OSHA Act”), the Organic Foods Act “contemplates a cooperative state-federal enforcement regime” based on a set of universal “minimum, not absolute” standards. (*Quesada, supra*, 62 Cal.4th at p.307.) As is true under the OSHA Act, there is no “language of exclusivity ... governing sanctions,” in the Organic Foods Act, but rather, “[o]n the subject of state consumer-deception laws of general application, the text of the Organic Foods Act offers only silence.” (*Id.* at p.310.) Thus, this Court held:

As a matter of express preemption, we have no reason to conclude Congress intended its federal remedies as not only a floor—ensuring that, whatever else state law might provide for, some teeth would back up the new federal regulation of organic labeling—but also a ceiling, with states prohibited from continuing to augment these limited remedies.

(*Id.* at p.310.)

This Court further rejected the argument, similar to that of Petitioner's here, that the federal approval requirement over a state's regulatory plan under the Organic Foods Act expressed an intent to preempt state actions designed to enforce the approved laws. (*Id.* at pp.311-312.) Herb Thyme attempted to analogize the Organic Foods Act to the federal OSHA Act in support of this argument. This Court found the analogy unpersuasive and distinguished the two acts. (*Quesada, supra*, 62 Cal.4th at pp.311-312.) On this point, however, this Court acknowledged that, like the federal OSHA Act, "under the Organic Foods Act: laws of general applicability ... are not expressly preempted." (*Quesada, supra*, 62 Cal.4th at p.312 [explaining: "even under the Occupational Safety and Health Act, 'state laws of general applicability ... that do not conflict with OSHA standards and that regulate conduct of workers and nonworkers alike would generally not be pre-empted.'" (*quoting Gade v. National Solid Wastes Management Assn.* (1992) 505 U.S. 88, 107)].)

In *Quesada*, this Court also rejected the idea that the challenged private enforcement actions under the UCL and FAL were impliedly in conflict with federal law, or in any way created an obstacle to the enforcement of the federal Organic Foods Act. To the contrary, the Court held: "permitting state consumer fraud actions would advance, not impair" the goals and objectives of the federal law to protect consumers from fraud. (*Id.* at p.317 [noting "the prosecution of such fraud, whether by public



prosecutors where resources and state laws permit, or through civil suits by individuals or groups of consumers, can only serve to deter mislabeling and enhance consumer confidence”].)

Like the federal OSHA Act, the Organic Foods Act is not intended to “federalize the entire area” and “instead, it ‘contemplates a significant role for the States and, in fact, envisions a partnership between the States and the Federal Government’ in fulfilling the act’s purposes.” (*Id.* at p.318 [quoting 65 Fed.Reg. 80682 (Dec. 21, 2000)]; *see also* Opening Brief at pp.24-42.) Similar to the federal OSHA Act, the “enforcement framework established by the [Organic Foods Act] does not use the language of exclusivity” in enforcement that could lead to an “inference that Congress intended the preemption of state remedies.” (*Id.* at p.321.) As such, like the Court held in *Quesada* with respect to the Organic Foods Act, the federal OSHA Act “cannot be interpreted under the guise of obstacle preemption as shielding from suit the precise misconduct Congress sought to eradicate.” (*Id.* at p.321; *see also In re Cipro Cases I & II, supra*, 61 Cal.4th at pp.160-162 [applying the “presumption against preemption” and holding state antitrust and UCL claims not preempted because the state laws at issue were “fully compatible with federal law”].)

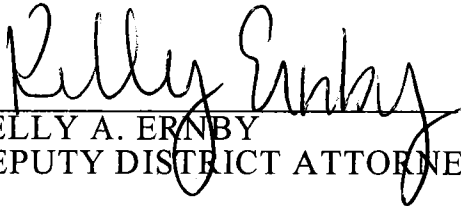
**C. Conclusion**

Based on the foregoing authorities, all prior briefing in this action, and all argument to be presented at the oral argument in this matter, the People submit that the Opinion should be reversed and Respondent Court's Order overruling Defendants' demurrer to the third and fourth causes of action in the complaint in this case should be affirmed.

Dated this 27th day of October, 2017.

Respectfully submitted,

TONY RACKAUCKAS, DISTRICT  
ATTORNEY COUNTY OF ORANGE,  
STATE OF CALIFORNIA

BY:   
KELLY A. ERNBY  
DEPUTY DISTRICT ATTORNEY

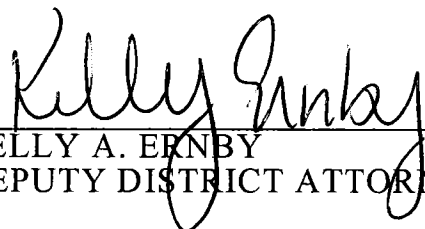
**CERTIFICATE OF WORD COUNT**  
[California Rules of Court, Rules 8.520(d)]

The text of this Opening Brief on the Merits (excluding tables and caption pages) consists of 1,570 words as counted by the word-processing program used to generate this brief.

Dated this 27th day of October, 2017.

Respectfully submitted,

TONY RACKAUCKAS, DISTRICT  
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BY:   
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**PROOF OF SERVICE BY MAIL**

I, Christina Lajos, am employed in the Office of the District Attorney for the County of Orange, State of California. I am over the age of eighteen years and I am not a party to the within action. My business address is 401 Civic Center Drive West, Santa Ana, California 92701.

On October 27, 2017, I served a copy of the following document(s):

**SUPPLEMENTAL BRIEF ON THE MERITS**

by placing a true copy of each document in a sealed envelope and placing such envelope, in the United States Postal Service mail at Santa Ana, California, that same day, in the ordinary course of business, postage thereon fully prepaid, addressed as follows:

Appellate Coordinator Office of the Attorney General California Department of Justice 300 S. Spring Street Los Angeles, CA 90013-1230 TEL: (213) 897-2000	The Honorable Kim G. Dunning Orange County Superior Court Civil Complex Center 751 West Santa Ana Blvd., Dept. CX104 Santa Ana, CA 92701 TEL: (657) 622-5304
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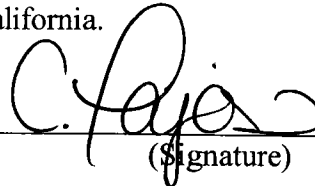
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5  
6 I declare under penalty of perjury under the laws of the State of California that the  
7 forgoing is true and correct.

8 Executed on October 27, 2017, at Santa Ana, California.

9 Christina Lajos  
10 (Type or print name)

  
11 (Signature)



1 **PROOF OF SERVICE BY EMAIL**

2 I, Christina Lajos, am employed in the Office of the District Attorney for the County of  
3 Orange, State of California. I am over the age of eighteen years and I am not a party to the  
4 within action. My business address is 401 Civic Center Drive West, Santa Ana, California  
5 92701.

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7 **SUPPLEMENTAL BRIEF ON THE MERITS**

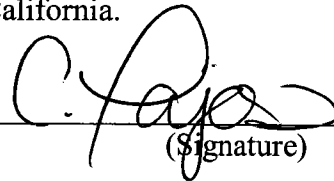
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9 person(s) listed below:

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18 *TRANSMISSION CORPORATION; and EMERSON ELECTRIC CO.*

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

21 Executed on October 27, 2017, at Santa Ana, California.

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27  
28  
\_\_\_\_\_  
29 Christina Lajos  
30 (Type or print name)

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31   
32 (Signature)