No. S271721

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

The State of California, *ex rel.* TINA TURRIETA,
Plaintiff and Respondent,

v.

LYFT, INC.,
Defendant and Respondent.

MILLION SEIFU et al.,
Interveners and Appellants.

On Review from a Decision by the Court of Appeal,
Second Appellate District, Division Four, Case No. B304701;
Superior Court of the County of Los Angeles,
Case No. BC714153, The Honorable Dennis J. Landin

CORRECTED APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF INTERVENER AND APPELLANT; AMICUS CURIAE BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATE STATUTES

OTHER AUTHORITIES

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

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The ability of a plaintiff in a representative action filed under the Private Attorneys General Act (Lab. Code § 2698, et seq.) ("PAGA") to intervene in a related action that purports to settle the claims that plaintiff has brought on behalf of the state – or to object to, or move to vacate, a judgment is such an action – is a vital, but largely unexamined body of PAGA case law.

Amicus curiae, the Labor Commissioner of the State of California, seeks to assist the Court in resolving this case by presenting the views of the Division of Labor Standards Enforcement ("DLSE") and the California Labor and Workforce Development Agency ("LWDA"), and discussing

points not addressed in the parties' briefs. The Labor Commissioner is the chief of the DLSE, a division within the LWDA.[1] The DLSE is entrusted with enforcing the wage-and-hour provisions of the Labor Code. (Lab. Code § 95.) The LWDA is charged with the implementation of PAGA (Lab. Code §§ 2698, *et seq*.), and has delegated to the DLSE administration of PAGA insofar as it involves violations of statutes within the DLSE's jurisdiction.

The LWDA is the real party in interest in any PAGA case, including this one. (*Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 81.) Seventy-five percent of the civil penalties collected in a PAGA action go to the LWDA, while twenty-five percent go to the aggrieved employees. (Lab. Code § 2699(i).) In addition, the LWDA is bound by the release of PAGA claims in any court-approved settlement. (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 986.) Therefore, the LWDA has a direct and immediate interest in this action, both in the collection of civil penalties resulting from Labor Code violations and enforcement of the Labor Code. Finally, the LWDA has an interest in the administration of PAGA, including ensuring that settlements advance the purposes of the law. The LWDA has significant concerns that its enforcement interests and the

[1] The LWDA is a cabinet-level agency. (Gov't Code § 12800.) It includes the Department of Industrial Relations ("DIR") (Lab. Code § 50), which includes the DLSE. (Lab. Code § 79). The Labor Commissioner is the chief of the DLSE. (Lab. Code §§ 79, 82.)

purposes of PAGA are not served by the precedent created by the Court of Appeal's decision in this case. For these reasons, the Labor Commissioner respectfully requests leave to file the accompanying brief.

No party or party's counsel authored this brief in whole or in part or made a monetary contribution intended to fund the preparation or submission of the brief. Other than the amicus curiae, her employees, or her counsel, no person or entity made a monetary contribution intended to fund the preparation or submission of the brief.

Respectfully submitted,

Dated: July 12, 2022

DIVISION OF LABOR STANDARDS ENFORCEMENT
Department of Industrial Relations
State of California

Michael L. Smith
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BRIEF OF AMICUS CURIAE IN SUPPORT OF INTERVENER AND APPELLANT

I. Introduction

As the state agency tasked with administering PAGA on behalf of the Labor and Workforce Development Agency ("LWDA"), the Division of Labor Standards Enforcement ("DLSE") submits this amicus brief in support of Intervener and Appellant Brandon Olson to urge reversal of the Court of Appeal below.

The Legislature enacted the Labor Code Private Attorneys General Act (Lab. Code § 2698, *et seq*.) (PAGA) in part because of the LWDA's limited enforcement resources. Under this Court's precedent, aggrieved employees who comply with PAGA's notice, waiting period, and filing requirements – like Appellant Olson here – are deputized to represent "the same legal right and interest" as the LWDA. (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 985–986.) The LWDA's legal right and interest includes the ability to challenge deficient or improper settlements of PAGA claims. In light of PAGA's goal of enhancing the State's enforcement efforts through private attorneys general, the interests of the State and the purposes of PAGA are best served by allowing intervention, formal objections, and motions to vacate judgments by deputized employees who seek to raise shortcomings of another plaintiff's settlement of parallel PAGA claims.

This case illustrates the importance of allowing PAGA plaintiffs to challenge deficient settlement of overlapping claims in a parallel PAGA action. Without Appellant Olson's advocacy, the deficiencies in the settlement here – including that Turrieta attributed zero value to her late-added rest break and minimum wage claims, and that the parties failed to account for *Dynamex* in valuing the claims or to properly analyze the large-scale discount from the potential value of the settled claims – would likely never have come to the attention of the LWDA or the courts. Preventing adversely impacted PAGA plaintiffs from challenging settlement of overlapping claims exacerbates the problem of "reverse auction" settlements, in which a law-breaking employer can obtain a release by settling with the lowest-bidding PAGA plaintiff, i.e., that plaintiff willing to accept the smallest amount. Not only does this practice shortchange LWDA (which is entitled to 75% of the civil penalty recovered), but it also fails adequately to deter unlawful conduct, as the Legislature intended.

This Court should hold that PAGA plaintiffs whose claims will be precluded by overlapping settlements are deputized to represent LWDA's interests and thus are "aggrieved" for purposes of standing to move to vacate or appeal from judgments, and have a direct and immediate interest that will be impaired by such settlements for purposes of permissive intervention.

II. PAGA's Purpose Is To Remediate And Deter Violations Of The Labor Code In Light Of The State's Limited Enforcement Capabilities

The Labor Code is designed to protect the health, safety, and compensation of workers. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1026-1027.) It is state policy to "vigorously enforce minimum labor standards." (Lab. Code § 90.5.)

Before the passage of PAGA, only the State could bring a claim for Labor Code civil penalties. (See Sen. Bill. No. 796 (2003-2004 Reg. Sess.) § 1(b-d).) However, the Legislature found that "despite the [Department of Industrial Relations]'s status as the single largest state labor law enforcement organization in the United States, it was failing to achieve effective enforcement of California's labor laws." (*California Business & Industrial Alliance v. Becerra* (June 30, 2022, G059561) __ Cal.App.5th __ at *6.[2]) So, in enacting PAGA, "the Legislature declared that adequate financing of labor law enforcement was necessary to achieve maximum compliance with state labor laws, that staffing levels for labor law enforcement agencies had declined and were unlikely to keep pace with the future growth of the labor market, and that it was therefore in the public interest to allow aggrieved employees, acting as private attorneys general, to recover civil penalties for Labor Code violations, with the understanding

[2] https://www.courts.ca.gov/opinions/documents/G059561.PDF

that labor law enforcement agencies were to retain primacy over private enforcement efforts." (*Arias*, *supra*, 46 Cal.4th at p. 980, citing Stats. 2003, ch. 906, § 1.)

A PAGA action is "fundamentally a law enforcement action designed to protect the public and not to benefit private parties.'" (*Arias, supra*, 46 Cal.4th at p. 986.)

PAGA's "sole purpose" is therefore "to vindicate the [LWDA's] interest in enforcing the Labor Code." (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 388–389, abrogated on other grounds by *Viking River Cruises, Inc. v. Moriana* (U.S., June 15, 2022, No. 20-1573) 2022 WL 2135491.) Specifically, that interest is "in penalizing and deterring employers who violate California's labor laws." (*Id*. at p. 387; *Arias*, *supra*, 46 Cal.4th at pp. 980–981.) The Legislature's goal was to impose civil penalties for Labor Code violations "significant enough to deter violations" (*Iskanian, supra,* 59 Cal.4th at p. 379, see *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 86 ["civil penalties recovered on the state's behalf are intended to 'remediate present violations and deter future ones.'"])

The Legislature enacted PAGA to augment the limited enforcement capability of the LWDA by empowering employees to bring actions to enforce California's labor laws. (*Iskanian, supra,* 59 Cal.4th at p. 383; accord *Arias*, *supra*, 46 Cal.4th at p. 986; see also Stats. 2003, ch. 906, § 1.)

By deputizing aggrieved employees, the Legislature intended to incentivize private actors to enforce the law in a growing labor market that could not be effectively monitored by public employees. (*Dunlap v. Superior Court* (2006) 142 Cal. App. 4th 330, 337.) Deputizing employees in PAGA cases "enhance[s] the state's ability to use [its] scarce resources by enlisting willing citizens in the task of civil enforcement." (*Iskanian*, 59 Cal. 4th at 390.)

III. Courts Review PAGA Settlements For Fairness, Considering PAGA's Goals Of Remediation And Deterrence

PAGA requires trial courts to "review and approve any settlement of any civil action filed pursuant to" PAGA. (Lab. Code § 2699(l)(2).) Settling parties must simultaneously submit the proposed settlement to the LWDA. (*Id*.) These notice requirements, and court oversight of PAGA settlements, are "safeguards" to protect the public interest. (See *Kim*, *supra*, 9 Cal.5th at p. 88.)

PAGA does not identify standards or criteria for a court's approval of settlements, but SB 796, the bill enacting PAGA, indicates that its purpose is "to ensure an effective disincentive for employers to engage in unlawful and anticompetitive business practices." (Sen. Bill. No. 796 (2003-2004 Reg. Sess.) § 1(a).) Thus, this Court has held that courts reviewing PAGA settlements must "ensur[e] that any negotiated resolution is fair to those affected." (*Williams v. Superior Court* (2017) 3 Cal.5th 531,

549.) Considerations of remediation and deterrence should be paramount. (See *Kim, supra*, 9 Cal.5th at p. 86, quoting *Williams, supra*, 3 Cal.5th at p. 546.)

In *O'Connor v. Uber Technologies, Inc.* (2016) 201 F.Supp.3d 1110, 1134, a federal court aptly described the duty to protect those affected by a PAGA settlement:

> where plaintiffs bring a PAGA representative claim, they take on a special responsibility to their fellow aggrieved workers who are effectively bound by any judgment. [citation] […] Such a plaintiff also owes responsibility to the public at large [.] … This duty imposed upon the PAGA representative is especially significant given that PAGA does not require class action procedures, such as notice and opt-out rights.

(Id.) This special responsibility derives from the fact that "a judgment in [a PAGA] action binds all those, including nonparty aggrieved employees, who would be bound by a judgment in an action brought by the government." (*Id.,* citing *Arias*, *supra*, 46 Cal. 4th at p. 986.) Accordingly, "[i]n review and approval of a proposed settlement under section 2699, subd. (l)(2), a trial court thus must scrutinize whether, in resolving the action, a PAGA plaintiff has adequately represented the state's interests, and hence the public interest." (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 89.)

As discussed below, allowing non-settling PAGA plaintiffs to challenge proposed settlements, either by intervention as part of the approval process, or by challenging the ensuing judgments, furthers, and is

often essential to ensuring, the fairness of a PAGA settlement to the LWDA and the public.

IV. Mechanisms To Protect Absent Parties From Adverse Litigation Results Should Be Available To Both LWDA And Aggrieved Employees

Although court oversight of PAGA settlements protects the LWDA and the public, it is not the only safeguard for the State's interests in the settlement context. Like any other civil action, where a PAGA action imperils the interests or rights of a non-party, the Code of Civil Procedure provides that non-parties can seek to intervene in the action to protect their interests, or can challenge a judgment that impairs those interests.

Specifically, Code of Civil Procedure section 387 provides that non-parties may intervene in cases where the existing parties are not adequately representing their interests, or where they have an interest in the outcome of the litigation. Intervention exists to promote fairness to non-parties who may be affected by the judgment and to obviate delay and multiplicity of actions. (See *Lindelli v. Town of San Anselmo* (2006) 139 Cal.App.4th 1499, 1504.)

Likewise, Code of Civil Procedure section 663 provides that aggrieved non-parties can move to set aside judgments. (*County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 736-737 [unincorporated association litigating on behalf nonparty welfare recipients was "aggrieved" by judgment regarding provision of benefits].) One is "aggrieved" when a

judgment has an "immediate, pecuniary and substantial effect" on the party's interests or rights. (*Id.*) This procedure allows the court to set aside an erroneous judgment, saving the time and expense of an appeal. (See *Simac Design, Inc. v. Alciati* (1979) 92 Cal.App.3d 146, 153.)

Both of these procedures are available to the LWDA with respect to deficient PAGA settlements, and should be equally available to employees the Legislature has deputized to enforce the law on its behalf.

A. The LWDA May Seek To Intervene In PAGA Cases, Including Those Where The Parties Seek Approval Of Deficient PAGA Settlements

The LWDA may seek to intervene in a PAGA action because, as the real party in interest in a PAGA suit, it "will either gain or lose by the direct legal operation and effect of the judgment." (See *Lindelli*, *supra*, 139 Cal.App.4th at p. 1505.) Courts have noted the importance of the State's ability to intervene in the settlement process independent from PAGA's specific provisions. As one Court of Appeal described it:

> Plaintiff points out that, unlike the federal False Claims Act, PAGA does not contain an express provision authorizing the executive to intervene in the action. But California law independently requires courts to permit intervention in an action by any person who "claims an interest relating to the property or transaction that is the subject of the action and that person is so situated that the disposition of the action may impair or impede that person's ability to protect that interest, unless that person's interest is adequately represented by one or more of the existing parties" (Code Civ. Proc., § 387, subd. (d)(1)(B)) and allows intervention at the discretion of the trial court by any person who "has an interest in the matter in litigation, or in the success of either of the parties, or an interest

> against both." (*Id*., subd. (d)(2).) In the event of an abusive or improper settlement of a PAGA claim (in which a plaintiff might improperly characterize the bulk of the settlement as damages, payable solely to the plaintiff, while minimizing civil penalties owed in part to the state), California law plainly permits the Attorney General to intervene to protect the state's interest in recovering its share of the civil penalties and oppose judicial approval of the settlement. Indeed, that is the obvious purpose of the provisions of PAGA requiring timely notice to be given to the executive upon submission of a proposed settlement to the court for approval.

(*California Business & Industrial Alliance*, *supra*, __ Cal.App.5th at p. *15; see also *Echavez v. Abercrombie and Fitch Co., Inc.* (C.D. Cal., Mar 12, 2012) 2012 WL 2861348 at *6 ["Indeed, the judiciary retains a great deal of oversight and control over the conduct of PAGA litigation, by exercising the power to permit LWDA to intervene in the Action pursuant to California Code of Civil Procedure section 387."]) The LWDA represents the State's interest in meaningful enforcement of statutes that protect workers. Therefore, the LWDA may seek intervention in a PAGA action where the existing parties – namely, an employee it deputized to pursue civil penalties and their employer – are not adequately protecting its interests, including in the settlement context.

B. Allowing Intervention By Aggrieved Employees Under PAGA Serves The Same Purpose As PAGA Overall: Augmenting Limited State Enforcement Resources

As detailed above, PAGA was enacted to augment limited state resources for the enforcement of California worker protections. As part of its reliance on the assistance of aggrieved workers to support the detection

and enforcement of Labor Code violations through PAGA actions, the LWDA must also be able to rely on aggrieved workers to protect workers from deficient settlements. Although the LWDA has intervened to challenge deficient PAGA settlements,[3] its resources are inadequate to fully review the large volume of PAGA cases filed. In 2021, private plaintiffs lodged 6,542 notices of alleged violations pursuant to PAGA (about 545 per month). During the same period, plaintiffs submitted 2,978 notices of proposed settlements of PAGA claims (about 245 per month). The LWDA cannot identify every deficient settlement, let alone litigate challenges to these settlements, whether by informal "comment," intervention, or attacking ensuing judgments.[4]

For over a decade, this Court has held that each employee proceeding on the LWDA's behalf represents "the same legal right and interest as [the LWDA], in a proceeding that is designed to protect the public, not to benefit private parties." (*Arias*, *supra*, 46 Cal.4th at pp. 985–986; see *Iskanian, supra*, 59 Cal.4th at p. 388 ["[A] PAGA litigant's status as 'the proxy or agent' of the state [citation] is not merely semantic; it

[3] Two recent examples include *McCracken v. Riot Games, Inc.*, No. 18STCV03957 (L.A. Super. Ct. 2020) and *Tabola v. Uber Techs., Inc.*, No. CGC-16-550992 (S.F. Super. Ct. 2021).

[4] As a corollary, in contrast to the finding of the court below, the LWDA's silence with respect to any given settlement is often a result of its limited resources, and should not be viewed as a tacit approval of that settlement. (*Cf. Turrieta v. Lyft, Inc*. (2021) 69 Cal.App.5th 955, 973, fn. 14)

reflects a PAGA litigant's substantive role in enforcing our labor laws on behalf of state law enforcement agencies"].) This basic premise should inform the Court's analysis of a PAGA plaintiff's ability to contest a proposed settlement of overlapping claims.

The State has a clear interest in preventing deficient PAGA settlements: it seeks to ensure adequate penalties for Labor Code violations and is bound by ensuing judgments based on settlements, even where those settlements pay only a fraction of potential penalties. Non-settling PAGA plaintiffs share these interests. As one court stated: "an aggrieved employee who asserts a PAGA claim for wage violations is stepping into the shoes of the Labor Commissioner and seeking to "vindicat[e] one *and only one* 'particular injury'—namely, the injury to the public that the 'state labor law enforcement agencies' were created to safeguard." (*Mejia v. Merchants Building Maintenance, LLC* (2019) 38 Cal.App.5th 723, 737–738, disapproved on other grounds by *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175.) PAGA plaintiffs are empowered to bind the State and other aggrieved employees to settlement, but the court of appeal's holding forecloses the corresponding right of dissenting PAGA plaintiffs, who equally stand in the State's shoes, to raise concerns that the settlement is not in the public's best interest. This undermines PAGA's intent of promoting vigorous enforcement of labor protections. (See *Williams*, *supra*,

3 Cal.5th at p. 548 ["Hurdles that impede the effective prosecution of representative PAGA actions undermine the Legislature's objectives."])

The issue of overlapping actions arises because PAGA "permits the state to act through more than one employee with respect to a PAGA claim against a particular employer." (*Julian v. Glenair, Inc.* (2017) 17 Cal.App.5th 853, 873.) In that situation, each PAGA plaintiff has the equal duty to ensure any settlement advances the public's interests and effectuates the purposes of PAGA. As the court in *Moniz* observed, "[w]here two PAGA actions involve overlapping PAGA claims and a settlement of one is purportedly unfair, it follows that the PAGA representative in the separate action may seek to become a party to the settling action and appeal the fairness of the settlement as part of his or her role as an effective advocate for the state." (*Moniz*, *supra*, 72 Cal. App. 5th at p. 73.) Thus, under Code of Civil Procedure section 387, a deputized employee's representation of the public's interests under PAGA is a personal "interest" in the outcome of an overlapping PAGA action. Similarly, a preclusive judgment in an overlapping action aggrieves a non-settling plaintiff under section 663 because they can no longer represent the public's interest in maximizing recovery of civil penalties owed and deterring unlawful conduct.

In contrast, a rule that PAGA plaintiffs have no interest in a parallel case undermines their ability to advance the public's interest, by creating an automatic bar to seeking intervention. The court below relied on

Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court (2009) 46 Cal.4th 993 for the proposition that "appellants' ability to file PAGA claims on behalf of the state does not convert the state's interest into their own or render them real parties in interest" for purposes of standing to challenge a settlement. (*Turrieta*, *supra*, 69 Cal.App.5th at p. 972, citing to *Amalgamated, supra*, at p. 1003.) But *Amalgamated* does not compel this conclusion. In *Amalgamated*, this Court held that a PAGA claim is not transferrable from an aggrieved employee who meets PAGA's procedural requirements to a union because a "right to recover a statutory penalty may not be assigned." (*Amalgamated, supra,* 46 Cal.4th at p. 1003.) That aggrieved employees cannot assign their ability to act as agents for the State does not mean they have no "qualifying interest" for purposes of intervention: the question of *who* may bring a PAGA claim and the nature of the authority vested in a PAGA plaintiff are separate, unrelated issues. Indeed, each deputized employee shares the same legal right and interest as the State, as *Amalgamated* itself recognized. (See *Amalgamated, supra*, 46 Cal.4th at p. 1003, citing *Arias*, *supra*, 46 Cal.4th at pp. 985–986.) *Amalgamated* therefore supports, not undermines, a right of intervention for non-settling plaintiffs.

This Court should clarify that its longstanding rule that PAGA plaintiffs share the same legal interest as the LWDA applies in the context

of intervening in, or otherwise challenging settlements of overlapping PAGA claims.

i. Allowing PAGA Proxies To Intervene To Challenge Settlements Will Advance The Legislature's Stated Purposes Behind The Law

"[T]he lack of government resources to enforce the Labor Code led to a legislative choice to deputize and incentivize employees uniquely positioned to detect and prosecute such violations through the PAGA." (*Iskanian, supra,* 59 Cal.4th at p. 390.) Given PAGA's purpose of augmenting Labor Code enforcement (Sen. Bill. No. 796 (2003-2004 Reg. Sess.) § 1(c)), intervening PAGA plaintiffs who have complied with the notice and filing requirements of PAGA and litigated the claims being settled are uniquely positioned to further PAGA's goal of labor law enforcement by ensuring settlements are fair to the LWDA and California's workers.

Attorneys litigating PAGA claims may have interviewed witnesses, conducted discovery, worked with experts and prepared for eventual trial, among other actions. These activities provide knowledge of the strengths, pitfalls, and other issues in parallel actions. With such knowledge, non-settling plaintiffs can play a beneficial role in identifying problematic terms in a proposed settlement that may not otherwise be obvious – such as the extent, duration and seriousness of violations and the strength and valuation of claims. They are thus uniquely situated to further PAGA's goal of

adequate settlements by alerting the courts on the LWDA's behalf to shortcomings in other plaintiffs' settlements. Indeed, non-settling PAGA plaintiffs are often in a better position than the LWDA to inform the trial court of matters that could weigh against settlement approval.

This action demonstrates the value in hearing from objecting plaintiffs. Absent the parallel plaintiffs' advocacy, the deficiencies in the settlement here – including that Turrieta failed to follow PAGA's pre-filing notice requirements for many of the claims she proposed to settle, that Turrieta attributed zero value to her late-added rest break and minimum wage claims that only Olson was authorized to bring, and that the parties failed to account for *Dynamex* in valuing the claims or to properly analyze the large-scale discount from the potential value of the settled claims – would likely never have come to the attention of the LWDA or the courts.

As a government agency without the resources to identify each deficient PAGA settlement, much less brief and litigate each such settlement, the LWDA would have little recourse against improper and inadequate settlements if intervention and appeals of deputized, non-settling plaintiffs are rejected. The LWDA relies on non-settling PAGA plaintiffs to bring PAGA settlement defects to its attention and to the courts, and to otherwise protect its interests from inadequate or overbroad settlements. Recognition of non-settling PAGA plaintiffs as representatives

of the State would leverage the LWDA's limited resources and promote settlements that encourage compliance and deter future violations.

In contrast, prohibiting intervention by non-settling PAGA plaintiffs who hold the same interest on behalf of the State as a settling plaintiff undermines PAGA's goals of encouraging compliance and deterring future violations. It deprives the court of relevant knowledge and informed analysis gained during litigation. Intervention in such circumstances furthers fairness and protection of the interests of others who may be affected by the judgment – namely the LWDA, California workers, and the public as a whole.

Finally, this Court's recognition of a PAGA plaintiff's interest in an overlapping settlement and ensuing judgment would provide courts with a clear procedural basis for considering oppositions to PAGA settlements, rather than merely allowing for undefined and procedurally uncertain "comments" or "objections." (Cf. *Turrieta*, *supra*, 69 Cal.App.5th at p. 973 [noting "the LWDA may provide the trial court with comments"] and *id*. at n. 13 ["the trial court did allow appellants to submit objections, and to present argument at two hearings[.]"]) As intervention exists to avoid delay, multiplicity of actions, and to promote fairness to all persons affected by a judgment (see *Lindelli*, *supra*, 139 Cal.App.4th at p. 1504), providing a clear procedural basis would advance the purposes of Code of Civil Procedure section 387 as well as PAGA. Courts may limit the scope of

intervention to discussing the settlement (See *Carlsbad Police Officers Ass'n v. City of Carlsbad* (2020) 49 Cal.App.5th 135, 152 [Courts may impose reasonable conditions on permissive intervention.]) Or, by allowing a broader scope of intervention, a court could bring all parties together, increasing judicial economy.

ii. Intervention Is Proper Where, As Here, the Parties Seek to Settle Claims That Only A Non-Settling Plaintiff Is Authorized to Pursue

The ability of a PAGA plaintiff to challenge a settlement is particularly crucial where the proposed settlement releases PAGA claims that only the non-settling plaintiff has been authorized to bring. Labor Code section 2699.3 requires employees to notify the LWDA of the specific violations alleged and the facts and theories supporting each claim they seek to bring. (Lab. Code § 2699.3(a)(1)(A).) If the LWDA does not investigate, issue a citation, or file suit, or does not respond to the notice within 65 days, the employee may sue. (Lab. Code § 2699.3(a)(2).) The notice and review process in section 2699.3 is an integral component of PAGA's statutory scheme, as the LWDA depends on proper notice to decide "whether to allocate scarce resources to an investigation." (*Williams*, *supra*, 3 Cal.5th at p. 546.)

Section 2699.3 is also the mechanism by which the LWDA authorizes an aggrieved employee to bring a claim on its behalf. That is, section 2699.3 confers on aggrieved employees the authority to pursue civil

penalties based on the "facts and theories" presented in a notice to the LWDA, which the Agency declines to pursue itself. (Lab. Code §§ 2699.3(a)(1)(A), (a)(2)(A).) Thus, before meeting PAGA's notice requirements, "employees do not know which alleged violations—if any—they are authorized to assert in the action. … [U]ntil the employee meets those requirements, the state—through LWDA—retains control of the right underlying the employee's PAGA claim." (*Julian*, *supra*, 17 Cal.App.5th at p. 870.)[5]

When an settlement is only "overlapping" because the settling parties seek to release claims that the LWDA has not authorized the settling plaintiff to prosecute, a non-settling PAGA plaintiff who has the LWDA's permission to bring that claim is not "superseding" the settling plaintiff's authority (compare *Turrieta*, *supra*, 69 Cal.App.5th at p. 977), but is preserving the authority the LWDA delegated to the non-settling plaintiff alone. Fairness to the non-settling plaintiff who complied with the law, and to the LWDA, which is charged with administration of PAGA consistent with the purposes of the law, dictate that the non-settling plaintiff's perspective be heard regarding such a settlement. Compliance with

[5] The LWDA recognizes that the Court did not grant review on the question of an aggrieved employee's authority to act on LWDA's behalf before the employee complies with section 2699.3's requirements and the specified period passes (or the LWDA acts), and raises this issue only because it is relevant to the need to permit intervention by duly deputized employees.

PAGA's pre-filing notice and review procedures furthers LWDA's interest in compliance and deterrence. Permitting the LWDA's claims to be settled by the employer's chosen bargaining partner without following the required procedures does not.

Compliance with PAGA's notice requirements often corresponds to the plaintiffs' relative interest in and knowledge of the value of the claims. A plaintiff who has not properly noticed particular claims is less likely to have spent time investigating the claims and to understand their value, and may seek to settle the claims to ensure that she, and not another plaintiff, obtains a settlement. Here, Turrieta added PAGA claims at the time of settlement, including claims for failure to provide meal and rest breaks or pay minimum wage,[6] but inexplicably attributed no value to these late-added claims.[7] (See 1 AA 083 ¶ 36.) Olson, by contrast, was authorized to bring these claims, which were eliminated by Turrieta's settlement.

This was not a situation involving two equally authorized, competing representatives of the State's interests. Turrieta's settlement undermines both the State's interests in the claims themselves and in

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[6] *Turrieta, supra,* 69 Cal.App.5th at p. 963.

[7] The courts below noted that Turrieta notified the LWDA of these overlapping claims on December 9, 2019. (*Id*.) The same day, she filed a motion for approval of the settlement, with a hearing date of January 2, 2020. (*Id*) The trial court heard the motion and entered its order that day. (Id. at p. 966.) In short, the courts below approved a settlement of PAGA claims by Turrieta that, by operation of PAGA itself, Turrieta was not authorized to bring at the time the trial court entered judgment.

overseeing the enforcement of PAGA. Olson should have been allowed to intervene to inform the Court as to the scope and nature of the respective PAGA notices, the claims each notice authorized each party to bring, and the values of those claims in comparison to the proposed settlement amount.

Allowing intervention by non-settling PAGA plaintiffs will encourage litigants to follow PAGA's required procedures. Conversely, preventing such intervention will discourage litigants and attorneys from investing the time and resources to fulfill PAGA's procedures, as they risk another employee obtaining a judgment that will simply erase their claims. As this case demonstrates, the danger that settling parties will ignore PAGA's jurisdictional requirements, and race to achieve settlements, even if inadequate, is real.

V. Conclusion

LWDA respectfully urges the Court to recognize, in line with its existing precedent, that PAGA plaintiffs represent the same interest and right as the LWDA in the context of seeking to intervene or otherwise challenge a settlement of PAGA claims, and that the court of appeals abused its discretion in denying intervention.[8]

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[8] See *Callahan v. Brookdale Senior Living Cmties* (9th Cir. June 29, 2022) __ F.3d __ at *17 < https://cdn.ca9.uscourts.gov/datastore/opinions/2022/06/29/20-55603.pdf >

Respectfully submitted,

Dated: July 12, 2022

DIVISION OF LABOR STANDARDS ENFORCEMENT
Department of Industrial Relations
State of California

Michael L. Smith
Attorney for Amicus Curiae

("the argument that [settling plaintiff] was not properly deputized to pursue certain claims may be relevant to whether the district court abused its discretion in approving the [PAGA] settlement").

CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.504(d)(1) of the California Rules of Court, Counsel of Record hereby certifies that the enclosed brief of Amicus Curiae is produced using 13-point Roman type and contains approximately 6,549, including footnotes. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

Dated: July 12, 2022

DIVISION OF LABOR STANDARDS ENFORCEMENT
Department of Industrial Relations
State of California

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DECLARATION OF SERVICE

Tina Turrieta v. Lyft, Inc., et al.
Los Angeles County Superior Court Case No.: BC714153
Second District Court of Appeal Case No.: B304701
Supreme Court of California No. S271721

I, Kenneth D. Lustenberger, do hereby declare that I am employed in the county of San Francisco, over 18 years of age, not a party to the within action, and that I am employed at and my business address is 455 Golden Gate Avenue, 9th Floor, San Francisco, California, 94102.

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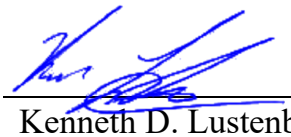

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STATE OF CALIFORNIA
Supreme Court of California

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7/12/2022

Date

/s/Ken Lustenberger

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