S271721

IN THE SUPREME COURT OF CALIFORNIA

TINA TURRIETA,
Plaintiff and Respondent,

v.

LYFT, INC.,
Defendant and Respondent.

MILLION SEIFU et al.
Movants and Appellants.

AFTER A DECISION BY THE COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION FOUR
CASE NO. B304701

ANSWER TO PETITION FOR REVIEW

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INTRODUCTION
WHY REVIEW SHOULD BE DENIED

More than two years ago, defendant and respondent Lyft, Inc., accepted a mediator's proposal and agreed to settle claims asserted under the Private Attorneys General Act (PAGA). Once final, the settlement will result in millions of dollars in PAGA payments to the state's Labor and Workforce Development Agency (LWDA) and to drivers who use the Lyft platform. The LWDA did not object to the settlement, and the trial court approved it, finding it to be fair, adequate, and reasonable.

Still, a pair of nonparty objectors have managed to hold up payment of the settlement. The objectors are plaintiffs in other PAGA actions who assert claims that overlap with those settled here. Although the trial court heard and rejected the objectors' arguments on the merits, it also concluded that the objectors lack a sufficient interest to intervene or to move to vacate the judgment. The Court of Appeal affirmed, relying on this Court's longstanding instruction that PAGA claims belong to the state, not the individual plaintiffs who act as procedural conduits for the state's claims. And though the LWDA belatedly weighed in by filing an amicus brief on appeal, the Court of Appeal held that the agency could not assert arguments the objectors failed to preserve in the trial court for appellate review.

One of the objectors, appellant Brandon Olson, has now asked this Court to grant review. None of the issues in Olson's petition warrant this Court's intervention. Olson claims tension

between the Court of Appeal's decision and another recent decision, but no such tension exists. Together, the two decisions establish that a nonparty objector lacks standing to challenge the judgment, but if the objector becomes a party of record—which was not the case here—he or she may appeal the judgment.

Olson also asks this court to decide issues about the prefiling notice period for PAGA claims and the standard for PAGA settlement approval. The Court of Appeal held that Olson forfeited the first issue, and it had no occasion to address the second because Olson lacks standing. These issues do not merit review in any event. Olson identifies no pertinent split of authority on these issues that warrant this Court's involvement.

Finally, there are alternative grounds for affirmance that underscore why this case is not a suitable candidate for review. Even if Olson theoretically had a right to intervene or had standing to challenge the judgment, the ultimate result would remain unchanged.

STATEMENT OF THE CASE

A. Tina Turrieta files and settles a PAGA action against Lyft.

Plaintiff and respondent Tina Turrieta filed this PAGA action in July 2018. (Typed opn. 4.) Turrieta's complaint alleged claims arising from alleged misclassification of Lyft drivers. (*Ibid.*)

In September 2019, Turrieta and Lyft attended a mediation with " 'noted mediator' Antonio Piazza." (Typed opn. 6.) The day ended without a settlement. (*Ibid.*) The mediator later issued a

mediator's proposal, which the parties accepted. (*Ibid.*) The proposed settlement required Lyft to pay $15 million. (Typed opn. 4–5.) This was roughly twice as much as a 2018 PAGA settlement involving Lyft's competitor, Uber. (See typed opn. 5–6; 1 AA 37, 50–51; 3 AA 651.) Along with millions in payments to drivers, the proposed settlement called for Lyft to pay more than $3 million in penalties to the LWDA, one of the largest such payments ever for a PAGA settlement. (See typed opn. 5, 8; RT 38; RA 79–80, 85.)

On December 9, 2019, Turrieta moved for approval of the settlement, with the motion noticed for hearing on January 2, 2020. (Typed opn. 5.) As required by statute, Turrieta gave timely notice of the settlement to the LWDA. (*Ibid.*)

B. Nonparties Brandon Olson and Million Seifu make an unsuccessful effort to intervene. The trial court finds the settlement is fair and reasonable.

The LWDA did not respond or object to the proposed settlement in the trial court. (Typed opn. 5 & fn. 5.)

Olson, a nonparty who had separately filed a PAGA action alleging similar misclassification-related claims, moved to intervene in Turrieta's action to object to the settlement. (Typed opn. 2–3, 6–7.) Although Olson had been aware of Turrieta's action for months and had even filed an unsuccessful petition to coordinate Turrieta's action with his own, Olson did not move to intervene until December 24, 2019, a few days before the settlement approval hearing. (See typed opn. 4, 6.) Because the hearing on Olson's motion to intervene was set for April 2020, he

filed an ex parte application to continue the settlement approval hearing until after the hearing on his intervention motion. (Typed opn. 7.) The court denied the ex parte application on December 26, 2019. (*Ibid.*)

On December 31, the court day before the settlement approval hearing, another objector, Million Seifu, also moved to intervene and filed an objection to the settlement. (Typed opn. 3–4, 7.)

The trial court held the settlement approval hearing as scheduled on January 2, 2020. (Typed opn. 8.) The court permitted counsel for Olson and Seifu to make appearances and argue their objections to the settlement. (Typed opn. 8–9.)

The trial court ruled that the nonparty objectors lacked standing to object to the settlement because the real party in interest is the state. (Typed opn. 9–10.) On the merits, the trial court found that the settlement was " 'fair, adequate, and reasonable in light of the time period that is encompassed by it and the amount that will eventually be paid to the State of California and to the hundreds of thousands of Lyft drivers.' " (Typed opn. 10.) The court rejected the objectors' claims that the settlement resulted from gamesmanship or a so-called "reverse auction," finding that an agreement had only been reached after the initial mediation failed and the parties' " 'very experienced mediator' " offered a mediator's proposal. (Typed opn. 8, 10–11 [" 'The Settlement was the product of informed and arm's-length negotiations among competent counsel and the record is sufficiently developed to have enabled Plaintiff and Defendant to

adequately evaluate and consider their respective positions,' " and the settlement will provide " 'substantial payment for the State of California' " and the PAGA settlement group members].)

The trial court vacated all other hearing dates and entered judgment. (Typed opn. 11.)

C. Olson and Seifu unsuccessfully move to vacate the judgment.

Olson and Seifu both filed motions in Turrieta's action, styled as motions to vacate the judgment under Code of Civil Procedure section 663 (section 663). (Typed opn. 11–12.) The motions raised objections much like those Olson and Seifu had raised in their prejudgment objections and had argued at the settlement approval hearing. (Typed opn. 7–8, 11.) The trial court held a hearing on the motions to vacate the judgment, and again gave the objectors a chance to argue their positions. (Typed opn. 12, 20, fn. 13; RT 301–318.) The court maintained its finding that the settlement " 'is in the best interest of the workers and in the best interest of the state of California.' " (Typed opn. 12.) The court also concluded that Olson and Seifu lacked standing to object to the settlement or to bring a motion to set aside the judgment. (*Ibid.*) Olson and Seifu appealed. (*Ibid.*)

D. The Court of Appeal affirms.

The Court of Appeal unanimously affirmed the trial court's judgment. (Typed opn. 3.) The Court of Appeal understood the appeal to present two threshold questions: (1) whether Olson and Seifu, as nonparties, had standing to move to vacate the

judgment under section 663 and to challenge the judgment on appeal; and (2) whether the trial court properly denied Olson's and Seifu's motions to intervene. (See typed opn. 15–16.)

On the first issue, the Court of Appeal held that "due to the unique nature of PAGA, in which the state is the real party in interest, appellants had no personal interest in *Turrieta* and therefore are not 'aggrieved parties' who may appeal from the judgment." (Typed opn. 16.) Because they are nonparties, the court observed, Olson and Seifu could gain standing to challenge the judgment on appeal only if they had standing to file a motion under section 663, which requires that they qualify as "aggrieved" by the judgment. (Typed opn. 16–17.) Relying on this Court's decision in *Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993 (*Amalgamated*), the Court of Appeal explained that because a PAGA claim is brought on behalf of the state, the mere fact that Olson and Seifu may have been plaintiffs in other actions raising overlapping PAGA claims did not give them a personal interest in Turrieta's action. (Typed opn. 19.) And relying on this Court's recent decision in *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 86 (*Kim*), the Court of Appeal explained that Olson and Seifu lack a pecuniary interest in the civil penalties at issue in Turrieta's action because the " 'civil penalties recovered on the state's behalf are intended to "remediate present violations and deter future ones," not to redress employees' injuries.' " (Typed opn. 19–20, citation omitted.)

As to the second issue, the Court of Appeal held that the trial court did not err in denying Olson and Seifu leave to intervene. (Typed opn. 16.) As a threshold issue, the Court of Appeal explained that both mandatory and permissive intervention under Code of Civil Procedure section 387 require the filing of a " 'timely application.' " (Typed opn. 26, quoting Code Civ. Proc., § 387, subd. (d)(1), (2).) The Court of Appeal observed that "the trial court noted that Seifu's motion to intervene was filed on the eve of the settlement approval hearing," and that Olson had long been aware of the *Turrieta* action before seeking to intervene, but held that it need not reach the timeliness issue because even if the motions were timely, Olson and Seifu "failed to establish a right to intervention." (Typed opn. 26–27.)

As the Court of Appeal explained, "appellants' position as PAGA plaintiffs in different PAGA actions does not create a direct interest in *Turrieta*, in which they are not real parties in interest." (Typed opn. 27.) Again relying on this Court's precedent, the Court of Appeal reasoned: "As with standing, appellants have no personal interest in the PAGA claims and any individual rights they have would not be precluded under the PAGA settlement. (*Amalgamated*, *supra*, 46 Cal.4th at p. 1003; *Arias* [*v. Superior Court* (2009) 46 Cal.4th 969, 986 (*Arias*)].) Thus, the trial court did not err in denying appellants' motions to intervene." (Typed opn. 27.)

Olson petitioned for review.

LEGAL ARGUMENT

I. Review is not warranted to address whether a nonparty like Olson lacks standing to challenge a settlement in a different PAGA plaintiff's action.

A. There is no conflict in the law that justifies review.

Olson contends that *Uribe v. Crown Building Maintenance Co.* (2021) 70 Cal.App.5th 986 (*Uribe*) creates a split of authority with *Turrieta* that merits this Court's review. (PFR 9–12, 24–28.) Olson is wrong.

In the first place, Olson appears to frame this argument as a question of fact. Olson asserts that the Court of Appeal's "decision *mischaracterizes* Olson's attempt to intervene at the trial court," works "a patent *reimagining of the record*," and "elides an *essential fact* that the Court of Appeal has kept hidden from view." (PFR 24–25, emphasis added.) But Olson forfeited any challenge to purported factual misstatements or omissions in the Court of Appeal decision because he failed to petition for rehearing. (See Cal. Rules of Court, rule 8.500(c)(2) ["as a policy matter the Supreme Court normally will accept the Court of Appeal opinion's statement of the issues and facts unless the party has called the Court of Appeal's attention to any alleged omission or misstatement of an issue or fact in a petition for rehearing"]; *Hernandez v. Hillsides, Inc.* (2009) 47 Cal.4th 272, 283, fn. 3 [applying this rule].) Since Olson's argument purports to rest on a factual challenge and no such challenge has been preserved, review is not warranted.

In any event, there is no conflict in the law justifying review because *Uribe* and *Turrieta* are consistent. As discussed above, *Turrieta* decided two related issues: (1) whether nonparties have standing to move to vacate a judgment approving a PAGA settlement and to appeal the denial of that motion, just because they are plaintiffs in other pending PAGA actions raising overlapping claims; and (2) whether the trial court properly denied the objectors' motions to intervene. (Typed opn. 15–16.) *Uribe* did not address either issue.

In *Uribe*, a plaintiff named Isabel Garibay successfully intervened in plaintiff Josue Uribe's action so that she could oppose Uribe's settlement, which encompassed class and PAGA claims that overlapped with Garibay's. (*Uribe*, *supra*, 70 Cal.App.5th at p. 989.) Because Garibay became a party to Uribe's action, the issue on appeal was whether an acknowledged *intervenor* had standing to directly appeal the judgment approving the settlement. (See *id.* at pp. 990, 996–998, 1001–1002.) *Uribe* held that "[u]nder these circumstances, Garibay has standing to appeal because, *having intervened* and yet unable to opt out of the other parties' settlement of Uribe's PAGA claim, Garibay's PAGA cause of action *in this same lawsuit* was resolved against her by the trial court's entry of judgment on its final approval of the settlement." (*Id.* at p. 1001, emphasis added.) Thus, *Uribe* addressed an issue—whether a named party to an action had standing to directly appeal the judgment in the same action—that was not raised in *Turrieta*.

Here, by contrast, the Court of Appeal addressed whether nonparties—who have *not* successfully intervened—have standing to challenge a settlement by filing a section 663 motion to vacate the judgment and then appealing the denial of that motion. (Typed opn. 15–16.) As the *Uribe* court explained, "*Turrieta* is distinguishable because the trial court [in *Uribe*] granted Garibay's motion for leave to file a complaint in intervention," meaning that Garibay was a named party with standing to appeal. (*Uribe*, *supra*, 70 Cal.App.5th at p. 1002.) Because the scenarios in *Uribe* and *Turrieta* are materially different, their divergent outcomes reflect that underlying difference, rather than any conflict in the law.

This unremarkable distinction is rooted in longstanding California law. By intervening, Garibay became a party and could—and did—directly appeal the judgment. (*Uribe*, *supra*, 70 Cal.App.5th at p. 999.)[1] This is consistent with decades of precedent establishing that intervenors obtain all the rights of a party, including the right to appeal from the judgment. (E.g., *Corridan v. Rose, Zurich General Acc. & Liability Ins. Co., Intervenor* (1955) 137 Cal.App.2d 524, 528, citing *People v. Perris Irrigation District* (1901) 132 Cal. 289, 290–291.) But as a nonparty, Olson did something different: he sought to collaterally attack the judgment through an appeal from the denial of his motion to vacate the judgment under section 663. (See 3 AA

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[1] Garibay also moved to vacate the judgment, but the trial court never ruled on that motion. (*Uribe*, *supra*, 70 Cal.App.5th at p. 999.)

711.) Unlike Garibay, Olson could not directly appeal the judgment, and his notice of appeal did not purport to do so. (See *ibid.*) This too is consistent with longstanding California law, which permits one who has moved to vacate the judgment under section 663 to appeal only from the denial of that motion rather than from the judgment itself—and even then only if the person seeking vacatur is a "party aggrieved" within the meaning of section 663. (See, e.g., *California Delta Farms v. Chinese American Farms* (1927) 201 Cal. 201, 202–204; see also *Eck v. City of Los Angeles* (2019) 41 Cal.App.5th 141, 146–148 [because objector failed to appeal the denial of her motion to vacate the judgment, she lacked standing to directly challenge the judgment].)

Further, as *Uribe* explained, the second issue in *Turrieta*—whether the trial court properly denied leave to intervene—was not a question presented in *Uribe* because no one raised it on appeal. (*Uribe*, *supra*, 70 Cal.App.5th at p. 1002 ["neither [the defendant] nor Uribe appealed the court's decision to maintain [the objector] in the action, which we therefore must presume was correct"] & fn. 4 ["[the defendant] does not contend the trial court erred in permitting [the objector's] intervention or in declining to remove her"].) In fact, the *Uribe* court expressly declined to reach "any unstated or oblique suggestion of error . . . related to the trial court's intervention rulings," because "the record is not fully developed in these areas." (*Id.* at p. 1002, fn. 4.)

Olson criticizes *Uribe*, charging that it "adopts (and thus compounds) the same circular reasoning of the *Turrieta* court." (PFR 27; see PFR 28 [faulting *Uribe* for not resolving "the question about whose interest [the intervenor there was] pursuing as the 'aggrieved party' "].) What Olson does not do, however, is show that similarly situated PAGA litigants will face dissimilar outcomes depending on whether trial courts follow *Uribe* or *Turrieta*. Olson apparently believes *both* decisions are insufficiently reasoned, but even if he were correct, that would not establish that review is "necessary to secure uniformity of decision." (Cal. Rules of Court, rule 8.500(b)(1).)

In sum, *Uribe* and *Turrieta* are consistent. No conflict of authority merits review.

B. The Court of Appeal's opinion correctly applies this Court's precedent and the text of PAGA.

The Court of Appeal was correct to conclude that Olson lacks a sufficient interest in Turrieta's action to give him standing to challenge the judgment or a right to intervene. (Typed opn. 19–20, 27.) A plaintiff suing under PAGA "does so as the proxy or agent of the state's labor law enforcement agencies." (*Arias*, *supra*, 46 Cal.4th at p. 980.) Thus, a PAGA claim "is not a dispute between an employer and an employee arising out of their contractual relationship. It is a dispute between an employer and the *state*, which alleges directly or through its agents—either the [LWDA] or aggrieved employees—that the employer has violated the Labor Code." (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 386–387

(*Iskanian*); see *Kim*, *supra*, 9 Cal.5th at p. 81 ["A PAGA claim is legally and conceptually different from an employee's own suit for damages and statutory penalties"].)

In *Amalgamated*, this Court considered a question closely related to the one here. There, the issue was whether a labor union had standing to bring a PAGA claim as the assignee of aggrieved employees who alleged they had been injured by their employer's Labor Code violations. (*Amalgamated*, *supra*, 46 Cal.4th at pp. 1001, 1003.) This Court held that "[t]he answer is 'no.' " (*Id.* at p. 998.) As the Court explained, PAGA "does not create property rights or any other substantive rights. Nor does it impose any legal obligations. It is simply a procedural statute allowing an aggrieved employee to recover civil penalties—for Labor Code violations—that otherwise would be sought by state labor law enforcement agencies. As we have held in the past, the right to recover a statutory penalty may not be assigned." (*Id.* at p. 1003.) Thus, this Court held, an aggrieved employee cannot assign his or PAGA claim "because the employee does not own an assignable interest." (*Ibid.*)

The trial court and the Court of Appeal correctly perceived that *Amalgamated* is dispositive here. (See typed opn. 9, 19; 2 AA 498.) And as the Court of Appeal recognized, this Court's decisions in *Kim* and *Arias* bolster the conclusion that Olson lacks a cognizable interest in this settlement. (See typed opn. 18, 19–20.) As these cases demonstrate, Olson cannot "claim a pecuniary interest in the penalties at issue, as the 'civil penalties recovered on the state's behalf are intended to "remediate present

violations and deter future ones," not to redress employees' injuries.' " (Typed opn. 19–20, italics omitted by typed opn., quoting *Kim*, *supra*, 9 Cal.5th at p. 86; see typed opn. 19, citing *Arias*, *supra*, 46 Cal.4th at p. 986; *Arias*, at p. 986 ["an action to recover civil penalties 'is fundamentally a law enforcement action designed to protect the public and not to benefit private parties' "].) Consequently, preventing a particular plaintiff from invoking PAGA on the state's behalf has no effect on the property rights of the state, which remains entitled to recover civil penalties for any Labor Code violations.[2]

The Court of Appeal's decision also follows from this Court's instruction in *Iskanian* that PAGA's "sole purpose is to vindicate the [LDWA]'s interest in enforcing the Labor Code." (*Iskanian*, *supra*, 59 Cal.4th at pp. 388–389.) According to *Iskanian*, "[t]he government entity on whose behalf the plaintiff files suit is always the real party in interest in the suit." (*Id.* at p. 382; see *id.* at p. 387 [in a PAGA action, "the state is the real party in interest"].) Under *Iskanian*, PAGA does not exist to vindicate the personal rights of individual plaintiffs, much less

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[2] This is borne out by the fact California's Attorney General and Labor Commissioner have sued Lyft based on the assertion that Lyft misclassified drivers as independent contractors in violation of California law. (See, e.g., *People v. Uber Technologies, Inc.* (2020) 56 Cal.App.5th 266, 281; Complaint, *Garcia-Brower v. Lyft, Inc.* (Super. Ct. Alameda County, Aug. 5, 2020, No. RG20070283) 2020 WL 7670071.)

individual plaintiffs who are not even parties to the action being settled.[3]

The logical implication of these authorities is that, under this Court's precedent, Olson has no direct or pecuniary interest in Turrieta's settlement on behalf of the state. Thus, the Court of Appeal was compelled to hold, as it did, that "[b]ecause it is the state's rights, and not [the objectors'], that are affected by a parallel PAGA settlement, [the objectors] are not aggrieved parties with standing to seek to vacate the judgment or appeal." (Typed opn. 19.) The Court of Appeal correctly held, therefore, that Olson was not a "party aggrieved" by the judgment and thus lacked standing to object to the settlement or appeal. (Typed opn. 19–20.)

The Court of Appeal's conclusion is also faithful to the text of PAGA. In the Court of Appeal, Olson relied heavily on "policy arguments" (typed opn. 23, fn. 15), such as that if nonparties lack standing to object to another plaintiff's PAGA settlement in a different action, that would "insulat[e]" PAGA settlement approval orders from objections (typed opn. 20). However, as the Court of Appeal correctly explained, "[t]he policy issues

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[3] Indeed, if Olson were correct that an individual plaintiff has a personal interest in a PAGA claim sufficient to support intervention and standing in another plaintiff's action, such an interest would presumably be subject to contractual waiver. This proposition is wholly at odds with *Iskanian*, which insisted that representative PAGA claims cannot be waived by the contractual arbitration agreement of the named PAGA plaintiff precisely because, in this Court's view, such PAGA claims are brought on behalf of the state itself. (*Iskanian*, *supra*, 59 Cal.4th at pp. 388–389.)

appellants raise are best addressed to the Legislature." (Typed opn. 23, fn. 15; see *Kim*, *supra*, 9 Cal.5th at p. 90, fn. 6 [observing in another PAGA setting that "[w]here, as here, the statutory language, purpose, and context all point to the same interpretation, policy arguments that the statute should have been written differently are more appropriately addressed to the Legislature"].)

In construing PAGA, this Court is " ' "careful not to add requirements to those already supplied by the Legislature." ' " (*Kim*, *supra*, 9 Cal.5th at p. 85.) Labor Code section 2699, subdivision (*l*)(2), requires that if the parties settle a PAGA claim, the plaintiff must submit the proposed settlement to the LWDA and the trial court. This submission gives the LWDA notice and an opportunity to be heard on whether the settlement is adequate. (See typed opn. 20.) The trial court must then review the settlement (Lab. Code, § 2699, subd. (*l*)(2)) and ensure it "is fair to those affected" (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549). PAGA does *not* mandate that notice be sent to anyone who may have overlapping PAGA claims (pending or not), nor does it envision that nonparties may object to a proposed settlement in another plaintiff's case—which is unsurprising given this Court's view that the state is always the sole real party in interest in a PAGA action. (*Kim*, at p. 81, citing *Iskanian*, *supra*, 59 Cal.4th at p. 382.) The Court of Appeal was correct to observe it could not insert steps in the settlement approval process the Legislature omitted from the statute.

II. There is no reason to review a forfeited, case-specific question about whether Turrieta satisfied a notice procedure for some of her claims.

Olson also contends that review should be granted to decide whether Turrieta satisfied a prefiling notice period for all the claims in the settlement. (PFR 28–33.) The Court of Appeal properly declined to decide this issue on the merits because Olson and the LWDA asserted it too late (typed opn. 20–21, fn. 14), and Olson cites no authority for his mistaken assertion that it would be proper for this Court to review this forfeited argument.

Olson complains that this argument was "swept aside by the Court of Appeal" (PFR 28), but he fails to acknowledge *why* that happened. The Court of Appeal held that Olson forfeited this notice argument because he raised it "only in a single paragraph at the very end of his reply in support of his motion to vacate." (Typed opn. 21, fn. 14.) As a result, the court concluded, "we would not consider [the issue], even if [the objectors] had standing to raise it." (*Ibid.*) Olson did not petition for rehearing to challenge the factual basis for the Court of Appeal's holding that he forfeited the argument, and in any event, the court's forfeiture decision was correct—the argument was raised too late.

In his petition, Olson quotes extensively from an amicus brief the LWDA submitted in the Court of Appeal. Yet Olson neglects to mention why the Court of Appeal rejected the LWDA's contentions on this point: the agency's argument "should have been addressed to the trial court below," but the agency asserted objections "only belatedly and in its limited role as amicus on appeal." (Typed opn. 21, fn. 14.) The trial court reasonably found

that the LWDA's decision not to oppose the settlement as part of the settlement approval proceedings supported a finding that the settlement was appropriate. (See typed opn. 10.) The Court of Appeal, in turn, correctly found that the notice arguments the LWDA sought to raise in its amicus brief were forfeited. (Typed opn. 21, fn. 14.) Granting review to address aspects of the notice issue raised only on appeal, and raised only by amicus, would upend deeply rooted principles of appellate procedure.

Even if the notice issue had been preserved and squarely addressed in the Court of Appeal, it would not warrant review. Turrieta explained at length in the Court of Appeal the many reasons why this notice argument lacks merit. (Turrieta's Brief in Opposition to Olson Appeal 44–48; Turrieta's Response to Amicus Curiae Brief 20–39.) Delving into the many facets of this case-specific, forfeited issue would be a poor use of this Court's resources, particularly because Olson identifies no relevant conflict among published decisions.

III. There is no need for this Court to opine on which standard governs the approval of PAGA settlements.

Olson suggests this Court should grant review to address the standard that trial courts apply in considering whether to approve a PAGA settlement. (PFR 33–37.) Given its holdings on standing and intervention, the Court of Appeal had no occasion to reach this issue. There is no reason for this Court to address it in the first instance.

There is no conflict among published California decisions on this issue, and Olson does not claim there is one. He asserts

that "trial courts have struggled with what standard to apply" (PFR 37), but offers no explanation supporting that assertion. He fails to show any conflict in the law that would produce divergent results depending on what standard a trial court applies.

IV. This case is a poor vehicle to review any issue because there are alternative grounds for affirmance beyond those decided in the Court of Appeal.

A. Olson's attempt to intervene was untimely.

The trial court's implicit denial of Olson's motion to intervene was justified on the independent ground that the motion was untimely, which makes any issue about intervention unsuitable for this Court's review. The Court of Appeal noted the parties' dispute about timeliness, but declined to resolve it. (Typed opn. 27.) If the Court of Appeal were to reach this issue on remand from this Court, it would likely affirm the denial of Olson's motion as untimely.[4]

Timeliness is "one of the prerequisites for granting an application to intervene." (*Northern Cal. Psychiatric Society v. City of Berkeley* (1986) 178 Cal.App.3d 90, 109.) "Timeliness [of intervention] is measured from the 'date the proposed interveners knew or should have known their interests in the litigation were

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[4] Indeed, it is doubtful whether Olson even appealed the denial of intervention. Olson's notice of appeal specified that he was appealing "[a]n order *after* judgment," and in particular, the denial of his motion to vacate the judgment. (3 AA 711, emphasis added.) The notice of appeal did not state that Olson sought to challenge the *pre*-judgment denial of intervention. (*Ibid.*) Still, the Court of Appeal liberally construed Olson's notice of appeal to encompass such a challenge. (Typed opn. 24–25.)

not being adequately represented.' " (*Lofton v. Wells Fargo Home Mortgage* (2018) 27 Cal.App.5th 1001, 1013.) Olson filed his intervention motion on December 24, 2019, only a few days before the January 2, 2020, settlement approval hearing. (Typed opn. 5–6.)

Olson's motion was noticed for hearing on April 2, 2020, prompting him to file an ex parte application to continue the settlement approval hearing until after his motion to intervene could be heard. (Typed opn. 7.) The trial court later explained in a minute order that it had denied that ex parte application " 'after finding that there were no exigent circumstances warranting relief.' " (Typed opn. 7, fn. 6.) But Olson failed to obtain a reporter's transcript of the ex parte hearing, so there is no record of what was discussed. (*Ibid.*) The Court of Appeal observed that "it is not apparent from the record that the court made a finding of untimeliness as a basis to deny intervention" (typed opn. 27), but no express finding was needed. It was Olson's burden as appellant to procure a record demonstrating reversible error, and he failed to do so.

Substantial evidence supports the trial court's implied finding that Olson's motion to intervene was untimely. Turrieta moved for approval of the proposed settlement on December 9, 2019, and that motion and supporting materials were publicly filed. (Typed opn. 5; see 1 AA 27–280.) Olson filed nothing until more than two weeks later, on Christmas Eve. (Typed opn. 6.) Olson tried to justify his belated intervention attempt by claiming that he did not learn of the settlement until December

20, 2019. (*Ibid.*) As the Court of Appeal recognized, however, Turrieta had no duty to notify Olson of the proposed settlement. (Typed opn. 22–23, fn. 15.) Olson should have known there might be developments in the *Turrieta* action that would affect the PAGA action he was pursuing. Indeed, Olson had been aware of Turrieta's action since at least April 2019—seven months earlier—when Olson petitioned to coordinate several actions against Lyft, including Turrieta's. (See typed opn. 4.)

B. The trial court already allowed Olson to be heard but rejected his objections on the merits.

Review is also unsuitable because, even though the trial court implicitly denied Olson's intervention motion, the court still considered Olson's briefing and gave his counsel an opportunity to argue at the settlement approval hearing. (Typed opn. 8 ["Counsel for appellants appeared at the hearing and the court allowed them to argue"]; see typed opn. 20, fn. 13.) Olson's counsel presented argument at some length, as did Seifu's counsel, and counsel for both Turrieta and Lyft responded, with questioning by the court. (See typed opn. 8–9; RT 6–43.)

Having heard this argument, the trial court rejected Olson's arguments on the merits in a reasoned decision. (Typed opn. 9–11; see 2 AA 481–499.) The court found that the settlement was " 'fair, adequate, and reasonable in light of the time period that is encompassed by it and the amount that will eventually be paid to the State of California and to the hundreds of thousands of Lyft drivers.' The court noted it had considered another settlement approved in January 2018 for $7.75 million

for a 'period three times as long.' " (Typed opn. 10; see 2 AA 498–499.) Furthermore, the court rejected the argument that the settlement stemmed from a reverse auction. (Typed opn. 10; see 2 AA 499.) The court explained: " 'In this regard, the court notes that after the parties engaged in mediation before a very experienced mediator, they were still not able to arrive at a resolution. Instead, they ultimately accepted the mediator's proposal.' " (*Ibid.* [disagreeing with the assertion " 'that Lyft engaged in gamesmanship' "]; see 2 AA 485 [finding that "[t]here was no collusion in connection with the Settlement"].)

This is not a case in which a trial court turned a blind eye to meritorious objections. Instead, the court heard Olson's objections and decided they lacked merit. As a result, if this Court were to grant review and ultimately remand this case for further proceedings in which Olson is permitted to formally intervene, the trial court would likely approve the settlement again, and the Court of Appeal would likely affirm given the substantial supporting evidence already discussed in the Court of Appeal's opinion.

C. Olson's motion to vacate the judgment was procedurally improper.

Even if Olson had standing to file a section 663 motion, his motion was procedurally improper. It thus provides no valid basis to collaterally attack the settlement on appeal, which underscores why review is not warranted here.

A section 663 motion cannot be used to challenge the court's factual findings. (See, e.g., *Dahlberg v. Girsch* (1910) 157

Cal. 324, 327 ["The court cannot on such a motion in any way change any finding of fact"]; *Knapp v. City of Newport Beach* (1960) 186 Cal.App.2d 669, 682; *Jones v. Clover* (1937) 24 Cal.App.2d 210, 211–212.) Here, however, the main thrust of Olson's section 663 motion was to challenge the trial court's factual finding that the settlement was fair and reasonable. (Typed opn. 6–8, 10 fn. 7, 11.) For example, Olson argued in his motion—and repeats in his petition—that the settlement should not have been approved because it was purportedly the result of a reverse auction. (Typed opn. 7; PFR 14–17.) But as already noted, the trial court heard argument and considered evidence on that issue before entry of judgment and rejected the reverse auction allegation, expressly finding that Lyft did *not* engage in gamesmanship or collusion. (Typed opn. 10; 2 AA 485, 499.)

To the extent that Olson's section 663 motion sought to relitigate the facts, the trial court was compelled to deny the motion, and the Court of Appeal thus could not have reversed on that basis. Were this Court to grant review and eventually remand, the trial court would be compelled by statute to once again to deny Olson's section 663 motion, with the result remaining unchanged.

CONCLUSION

For the reasons explained above, this court should deny the petition for review.

November 29, 2021

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CERTIFICATE OF WORD COUNT
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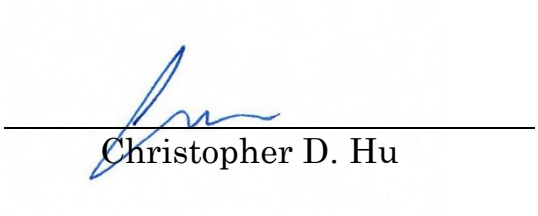

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Turrieta v. Lyft
Case No. S271721

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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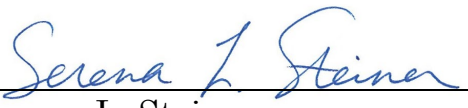

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Clerk of the Court Hon. Dennis J. Landin, Dept. 51 Los Angeles Superior Court 111 North Hill Street Los Angeles, CA 90012 (213) 633-0351	Trial Judge • Case No. BC714153 ***Via U.S. Mail***

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
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STATE OF CALIFORNIA
Supreme Court of California

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STATE OF CALIFORNIA
Supreme Court of California

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Case Number: **S271721**
Lower Court Case Number: **B304701**

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Date

/s/Christopher Hu

Signature

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