

No. S271721

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

TINA TURRIETA,
Plaintiff and Respondent,

v.

LYFT, INC.,
Defendant and Respondent.

BRANDON OLSON,
Petitioner.

After 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

**PETITIONER BRANDON OLSON'S OPPOSITION TO
RESPONDENT TINA TURRIETA'S THIRD AND FOURTH
MOTION FOR JUDICIAL NOTICE**

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INTRODUCTION

Petitioner Brandon Olson respectfully opposes Respondent Tina Turrieta's Third and Fourth Motions for Judicial Notice ("Motions"). Turrieta continues to attempt to place irrelevant information before this Court in an effort to prop up her unsupportable arguments in support of the decision below. The Court should decline to take judicial notice of the documents.

ARGUMENT

A reviewing court may take judicial notice of certain relevant material. (See Cal. Rules of Court, Rule 8.252; Cal. Evid. Code section 452; Cal. Evid. Code section 459, sub. (a); see *Mangini v. R. J. Reynolds Tobacco Co.* (1994) 7 Cal. 4th 1057, 1063, overruled on other grounds by *In re Tobacco Cases II* (2007) 41 Cal. 4th 1257.) Turrieta's Motions seek judicial notice of (1) a publication from the UCLA Labor Center; and (2) documents related to Petitioner's resolution of his individual wage claims. None of these documents will assist the Court in resolving the questions upon which the Court granted review.

I. The UCLA Publication Is Not Judicially Noticeable.

Turrieta submits the UCLA publication as "evidence" of PAGA payments made to the LWDA and "the LWDA's resources to review PAGA settlements." She claims the UCLA publication is relevant and is judicially noticeable as "facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of

reasonably indisputable accuracy.” (Cal. Evid. Code, section 452, sub. (h).) None of these contentions is true.

First, the UCLA publication (which was issued in February 2020, long before briefing in the appellate court or this Court) is an academic report on certain data involving PAGA litigation. It is not relevant to the question of whether Olson has standing to intervene in, object to, or move to vacate a judgment in a parallel PAGA action. (See *Mangini, supra*, 7 Cal. 4th at p. 1063, citation omitted, emphasis in original (“only *relevant* material may be noticed [J]udicial notice, since it is a substitute for proof, is always confined to those matters which are relevant to the issue at hand.”).)

Second, the UCLA publication plainly does not constitute “facts and propositions that are not reasonably subject to dispute.” (Cal. Evid. Code, section 452, sub. (h).) Its analysis of data, and its opinions and conclusions drawn from that data, is more likely exactly the type of document that is *reasonably subject to dispute*.

Third, even if the UCLA publication could be construed as subject to judicial notice under section 452(h), Turrieta attempts to use it to suggest the LWDA has unlimited resources to review PAGA settlements. But that conclusion is false, as at least two sources confirm. As the Division of Labor Standards Enforcement (“DLSE”) stated in its Amicus Brief filed in this case:

... 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, 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.

(Corrected DLSE Amicus Br. at pp. 17-18; see also p. 23 (“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.”).)

In addition, funds from PAGA settlements and judgments payable to the LWDA have, in fact, *not* gone to support the LWDA’s work but have, instead, been “loaned” to the state’s General Fund. (See, e.g., 2024-25 California Governor’s Budget, Secretary for Labor and Workforce Development Agency Fund Condition Statements at <https://ebudget.ca.gov/2024-25/pdf/GovernorsBudget/0010/0559FCS.pdf>, last accessed on May 4, 2024.) As noted in a recent budget document, “In 2020-21, a loan of \$107 million from the LWDF was made to the General Fund, scheduled to be repaid in 2024-25,” which the Governor’s current budget proposes “to be postponed from 2024-25 to 2027-28.” (See <https://abgt.assembly.ca.gov/system/files/2024-02/sub-5-february-27-agenda.pdf> [Report of Assembly Budget Subcommittee No. 5, Feb. 27, 2024, at p. 6.]

Turrieta’s characterization of the LWDA as an agency with vast resources to participate in and oversee the very cases the PAGA statute deputizes private attorneys general to prosecute is without support, and the “facts” it seeks to pull from the UCLA publication do not constitute “facts and propositions that are not reasonably subject to dispute” as the law requires. ((Cal. Evid. Code, section 452, sub. (h).)

The Court should decline to take judicial notice of the UCLA publication.

II. The Documents Relating to Olson’s Individual Settlement Are Not Judicially Noticeable.

Turrieta also seeks judicial notice of documents relating to Olson’s settlement of his individual PAGA and Labor Code

claims. Turrieta urges these materials are relevant to “whether [Olson] remains a PAGA litigant in an overlapping case after his settlement.” (Turrieta’s Third Motion at p. 4.)

This Court, however, has repeatedly rejected the argument that a PAGA plaintiff must have a financial stake in the outcome of the case in order to continue to prosecute it. As the Court recently confirmed in *Adolph v. Uber Techs., Inc.* (2023) 14 Cal. 5th 1104, 1126, “it is plaintiff’s status as an aggrieved employee, not the redressability of any injury the plaintiff may have suffered, that determines the availability of PAGA standing.” In *Adolph*, Uber argued that a plaintiff whose individual PAGA claim had been compelled to arbitration lost standing to prosecute the PAGA claim as a private attorney general on behalf of the aggrieved employees. This Court explained:

An “aggrieved employee” under PAGA is not merely a member of the general public; an “aggrieved employee” is an individual who worked for the alleged violator and personally sustained at least one Labor Code violation. (§ 2699, subd. (c); see *Kim*, at p. 90, 259 Cal.Rptr.3d 769, 459 P.3d 1123, quoting Sen. Com. on Judiciary, Analysis of Sen. Bill No. 796 (2003–2004 Reg. Sess.) as amended Apr. 22, 2003, p. 7.) An employee who has met these requirements upon bringing a PAGA action does not lose standing to litigate non-individual claims by virtue of being compelled to arbitrate individual claims. ***This is true***

even if the employee obtains redress for individual claims in arbitration.

(*Adolph, supra*, 14 Cal. 5th at p. 1127 (emphasis supplied); see *Kim v. Reins Int'l California, Inc.* (2020) 9 Cal. 5th 73, 84 (“Reins contends Kim is no longer an ‘aggrieved employee’ because he accepted compensation for his injury. The logic here is illusive. The Legislature defined PAGA standing in terms of violations, not injury. Kim became an aggrieved employee, and had PAGA standing, when one or more Labor Code violations were committed against him. (See § 2699(c).) Settlement did not nullify these violations.”).)

And, as the Court of Appeal recently noted in *Accurso v. In-N-Out Burgers* (2023) 94 Cal.App.5th 1128, 1144, a PAGA plaintiff need not have “a pecuniary or property interest in potential recovery to warrant intervention.” It necessarily follows that a settlement of an individual PAGA claim would therefore not foreclose standing to intervene.

Finally, the resolution of Olson’s individual claims, including his individual PAGA claim, expressly does not alter his standing to represent the state’s interests on behalf of the aggrieved employees. (See Summary of Settlement Terms, Turrieta Third Motion, Ex. B [pp. 24-25 of PDF] (Olson’s settlement explicitly does not release his representative PAGA claim, does not include any claim for attorneys’ fees and costs based on that claim, and does not waive any rights he has with respect to that claim.)

For all these reasons, the resolution of Olson's individual PAGA claim is irrelevant to the inquiry before this Court.

The Court should decline to take judicial notice of these documents.

Dated: May 4, 2024

Respectfully submitted,

/s/ Monique Olivier

Monique Olivier

Christian Schreiber

Rachel Bien

Attorneys for Petitioner

State of California *ex rel.* Brandon

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PROOF OF SERVICE

I am employed in the County of Alameda, State of California. I am over the age of 18 years and not a party to the within action; my business address is Olivier & Schreiber LLP, 475 14th Street, Suite 250, Oakland, CA 94612. On May 4, 2024, I served the following document(s):

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Executed on May 4, 2024 at St. Helena, California.

/s/Monique Olivier

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **TURRIETA v. LYFT (SEIFU)**

Case Number: **S271721**

Lower Court Case Number: **B304701**

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Date

/s/Monique Olivier

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