No. S271721

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

TINA TURRIETA,
Plaintiff,

v.

LYFT, INC.,
Defendant.

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

PETITIONER BRANDON OLSON'S OPENING BRIEF ON THE MERITS

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STATEMENT OF THE ISSUE

Does a plaintiff in a representative action filed under the Private Attorneys General Act, Labor Code section 2698, *et seq*. ("PAGA"), have the right to intervene, or object to, or move to vacate, a judgment in a related action that purports to settle the claims that plaintiff has brought on behalf of the State?

INTRODUCTION

> [*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 v. Adecco USA, Inc*. (2022) 72 Cal.App.5th 56, 73 (*Moniz*).)

This case presents the question of the scope of a duly deputized plaintiff's right to prosecute and resolve claims brought on behalf of the State in a PAGA action, and how those rights are affected by the prosecution of parallel actions involving overlapping claims.

Petitioner and proposed Intervenor Brandon Olson is a duly deputized agent of the State of California, litigating claims under the PAGA against Defendant Lyft, Inc. ("Lyft"). When the PAGA claims in his case were settled in this action by Plaintiff Tina Turrieta, Olson objected, attempted to intervene, and ultimately moved to set aside the judgment approving a settlement that involved a more than 99.5% discount of the value of the PAGA penalties at issue. Although no one disputes that Olson is authorized to prosecute the PAGA claims that Turrieta

and Lyft purport to fully and finally resolve by settlement, the trial court concluded Olson did not have standing to object to the settlement, to intervene, or to move to vacate the judgment entered after the settlement was approved. The Second District Court of Appeal agreed, and also held that Olson was not an "aggrieved party" with standing to appeal the judgment. (*Turrieta v. Lyft, Inc.* (2021) 69 Cal.App.5th 955, 970–74 (*Turrieta*).)

The Court of Appeal's opinion cannot stand. ***First***, a PAGA plaintiff discharging his responsibility as the State's proxy may intervene when it is necessary to protect the State's interest in an overlapping action. Olson has a right to intervene in this action under the standards for either mandatory or permissive intervention, because the State has a sufficient material interest in the claims Turrieta pursues and proposes to extinguish by a settlement and corresponding judgment.

Second, that same interest unquestionably gives Olson, as the State's deputy for claims covered by a judgment, the right to move to vacate that judgment where it purports to fully and finally extinguish those claims. The State, with Olson acting as its agent, is a party aggrieved by the judgment who may seek to vacate the judgment and appeal any denial thereof.

Third, it follows that a trial court considering a potential settlement of Labor Code claims that another PAGA plaintiff has been deputized to prosecute, must consider objections raised by the State, through its proxy, to the proposed settlement of claims in a parallel action.

These standards are neither controversial nor complicated. Indeed, the Court of Appeal recognized the State's interest and the power of its deputized plaintiffs. It understood that Olson had standing to prosecute the State's claims and even to settle those claims. But then it veered sharply off course, holding that Olson somehow *lost* standing to seek to vacate the trial court's judgment on behalf of the State. In other words, the appellate court concluded that, by virtue of attempting to enter this action to defend the State's interests, Olson's interest in the case was transformed from that of agent of the State to an "individual claim" that stripped him of standing. (*Turrieta*, *supra*, 69 Cal.App.5th at p. 974.)

This rationale was also the basis of the Court of Appeal's erroneous holding that Olson did not have "a direct and immediate interest in the settlement, which would establish [his] entitlement to mandatory or permissive intervention." (*Turrieta*, *supra*, 69 Cal.App.5th at p. 977.) According to the court, the trial court's "implicit denial" of Olson's motion to intervene was justified "for the same reason [he] could not establish [he was] 'aggrieved' for the purposes of standing." (*Ibid.*)

The Court of Appeal's decision conflicts sharply with two opinions issued shortly thereafter—both of which recognize that a PAGA plaintiff has a direct, immediate, and pecuniary interest in a parallel proceeding with overlapping claims. (See *Moniz*, *supra*, 72 Cal.App.5th at p. 73, and *Uribe v. Crown Bldg. Maint. Co.* (2021) 70 Cal.App.5th 986, 990–91 (*Uribe*), as modified on denial of reh'g (Oct. 26, 2021). In *Uribe*, the Fourth District Court of

Appeal held that a duly deputized plaintiff had standing to challenge the PAGA settlement of a different deputized plaintiff because the former had "the requisite 'immediate, pecuniary, and substantial' interest in preserving and advancing her PAGA cause of action in her lawsuit, which would be extinguished by res judicata if the judgment" were approved. (*Uribe*, *supra*, 70 Cal.App.5th at pp. 990–91.) The First District Court of Appeal's opinion in *Moniz* held the same, and explicitly disapproved of the decision of the Court of Appeal here.

The decision here risks repeated application of an entirely erroneous standard that only confuses the role of the PAGA plaintiff. The Court of Appeal offers no basis to conclude why Olson's efforts to assert *the State's interest* in a parallel action—morphed into the "personal interests" of a litigant pursuing "individual claims." (*Turrieta*, *supra*, 69 Cal.App.5th at p. 974.) Nor does the Court of Appeal cite any authority or any part of the record justifying these conclusions. What the court demands instead is that the State—not its proxy—appear at the trial court at or before the time of settlement if it wants to be heard.

This "solution" is as impractical as it unwarranted by PAGA's own terms. The State has deputized Olson with the authority to offer precisely that perspective. And it ignores what this Court has repeatedly recognized about the limited resources of the state agency, the Labor & Workforce Development Agency ("LWDA"), which gave rise to PAGA in the first instance. Left to stand, the Court of Appeal's decision would establish a dangerous precedent of eliminating review of even patently unfair,

unreasonable, and inadequate settlements, like the one at issue here, by denying the State its right to protect its interests.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

I. Olson Was Deputized by the LWDA to Prosecute PAGA Claims and Seek Civil Penalties on Behalf of the State Against Lyft.

On May 24, 2018, in compliance with the statutory requirements, Olson provided notice to the LWDA and to Lyft of violations of the Labor Code experienced by him and all other aggrieved employees (California Lyft drivers during the relevant period). Specifically, Olson asserted that Lyft had been misclassifying drivers as independent contractors in violation of the California "ABC test" for employment status established by this Court in *Dynamex Ops. W. v. Super. Ct.* (2018) 4 Cal.5th 903 (*Dynamex*). (2 AA 311-312.)[1] Olson alleged that as a result of this misclassification, Lyft was failing to pay minimum wages, overtime premiums, and business expenses as required by the Labor Code and applicable Wage Orders of the Department of Industrial Relations ("Wage Orders"). (*Id.*) On May 24, 2018, Olson filed a Complaint, *Olson v. Lyft, Inc.* (the "*Olson* Action"), in the San Francisco Superior Court alleging class action claims under the Labor Code. (2 AA 307.) On August 16, 2018, after the statutory 65-day waiting period expired, Olson filed a First Amended Complaint adding PAGA claims for the wage violations identified in his notice to the LWDA and to Lyft.

[1] Record citations are to the respective volumes of Appellant Olson's Appendix ("AA"), on file at the Court of Appeal.

On July 13, 2018, Turrieta filed the instant action against Lyft in the Los Angeles Superior Court. Like the *Olson* Action, this action alleged that Lyft has been misclassifying drivers as independent contractors. The Complaint sought to recover civil penalties "for each Labor Code violation described herein." (1 AA 14.) The Complaint states that Turrieta "gave notice to the Labor and Workforce Development Agency and the employer of the specific provisions of the Labor Code alleged to be violated in this Complaint." (1 AA 14.) The Complaint seeks penalties for violations of just five Labor Code statutes, including Labor Code sections 203 (waiting time penalties); 204 (failure to timely pay wages); 226(a) (wage statement violations); 226.8 (willful misclassification); 2802 (failure to reimburse expenses); and "Paragraph 3 of the applicable Wage Order" for failure to pay overtime wages. (1 AA 16.) Turrieta did not assert minimum wage violations, meal period violations, or rest period violations. (*Id*.)

In April 2019, concerned about the risk of inconsistent judgments and the potential for Lyft to settle the State's claims in all actions with the lowest bidder, Olson filed a petition to coordinate his action with this action and three others asserting misclassification claims: *Talbot v. Lyft, Inc.*, Superior Court, County of San Francisco, Case No. CGC-18-566392 (class action); *LaBorde v. Lyft, Inc*., Superior Court, County of Los Angeles, Case No. BC707667 (class action); and *Seifu v. Lyft, Inc.*, Superior Court, County of Los Angeles, Case No. BC712959 (PAGA action). Lyft and the plaintiffs in all other actions opposed

coordination. (2 AA 438.) The trial court denied Olson's petition on June 27, 2019, reasoning that because *Olson* and *Talbot* were on appeal[2] and *Seifu* and this action were stayed, coordination was not warranted. (2 AA 440-441.)[3]

As Olson correctly predicted, the failure to coordinate these cases created the conditions for a "reverse auction," whereby each plaintiff's counsel in the overlapping cases would suffer from pressure to settle *all* the cases at a steep discount. Lyft employed a strategy to play the different plaintiffs' counsel against each other in order to drive down the overall settlement value, to the detriment of the State. Lyft scheduled separate, serial mediations in each case, to which competing plaintiffs' counsel were not invited. First, on June 12, 2019, Lyft mediated with Seifu's counsel (who also represented Talbot); no settlement was reached. Next, on August 27, 2019, Lyft mediated with Olson's counsel; no settlement was reached. Finally, on September 10, 2019, while the *Turrieta* case was stayed, Lyft mediated with Turrieta's counsel (who also represented Laborde); those parties agreed to the settlement at issue here, purporting to wipe out all the claims in the other PAGA cases. (1 AA 108, 105-119.)

On September 18, 2019, the Governor signed Assembly Bill 5, which codified aspects of the *Dynamex* decision in the Labor

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[2] Lyft appealed its unsuccessful motion to compel Olson's PAGA claims to arbitration, and the trial court's decision was affirmed in October 2020. *Olson v. Lyft, Inc.* (2020) 56 Cal.App.5th 862.
[3] This action had been stayed in March 2019 by the trial court upon Lyft's request pending resolution of the *Seifu* action as the earlier filed action. (2 AA 441.)

Code. (See Lab. Code § 2775.) The bill unequivocally strengthened the aggrieved employees' misclassification claims against Lyft.

II. Turrieta Settles PAGA Claims Against Lyft While Her Case Is Stayed and Expands Her Action to Include PAGA Claims She Had Not Exhausted with the LWDA.

Turrieta and Lyft executed a settlement agreement on December 4, 2019, while this action was stayed and nearly three months after AB 5 was signed. (1 AA 105-119.) The settlement purported to resolve the PAGA claims of the State and over 500,000 Lyft drivers for $15 million—claims that Turrieta and Lyft concede were conservatively valued at over $10 *billion*. (1 AA 80-83; 1 AA 107.) The settlement included an allocation of $5 million to drivers as underpaid wages pursuant to Labor Code section 558, a payment to the State of approximately $3.2 million, and over $5 million in attorneys' fees and costs. (1 AA 105-119 ¶ III(C)(vi)(i).)

Another key term of the settlement required Turrieta to file a First Amended Complaint that "covers *all* PAGA claims that could have been brought against Lyft," in order for Lyft to obtain a release of those claims. (1 AA 108.) The claims released in the settlement thus included (1) claims that were not originally asserted in this action (and were expressly disclaimed) but which had been asserted in the *Olson* Action; and (2) claims about which Turrieta failed to provide the statutorily required notice to the LWDA. (*Id.*; compare 1 AA 11 and 1 AA 251.) Turrieta's original complaint alleges six causes of action and states that

notice was provided only for "the specific provisions of the Labor Code alleged to be violated in this Complaint." (1 AA 11.) Her settlement, signed on December 4, 2019, purports to release, on behalf of the State, all PAGA claims under all provisions of the Labor Code that could have been asserted by the State or by any aggrieved employee. (1 AA 105-119 ¶¶ I(S), I(V), V.) That release covers claims that Olson was specifically deputized to prosecute on behalf of the State, including claims for Lyft's violations of minimum wage, meal period, and rest period obligations. (1 AA 107, 114.)

On December 9, 2019, aware of her statutory obligation to provide notice to the LWDA of any alleged PAGA violations by an employer prior to commencing suit, Turrieta provided notice to the LWDA via its online portal, attaching a draft First Amended Complaint that "identifies additional specific provisions of the Labor Code alleged to have been violated." (1 AA 251.) Rather than wait the statutorily required 65 days, however, Turrieta submitted the First Amended Complaint the same day, along with her motion for approval of the settlement. (1 AA 27-29, 268-280.) Turrieta set the approval hearing for January 2, 2020. (1 AA 27.) Neither Turrieta nor Lyft notified counsel for Olson or Seifu of the settlement, the motion for approval, or the approval hearing. Olson learned of the settlement on December 20, 2019. On December 23, 2019, Turrieta's counsel informed Olson's counsel that he had kept the settlement confidential at Lyft's request. (2 AA 308.)

III. Olson Moves to Intervene and, After the Trial Court Approves the Settlement, to Vacate the Judgment.

On December 24, 2019, Olson filed a Motion to Intervene and Objections to the *Turrieta* settlement. In his motion, Olson notified the court that he had just learned of the settlement four days prior, and argued that he was entitled to intervene as a matter of right under Code of Civil Procedure section 387(d)(1), or alternatively should be granted permissive intervention under section 387(d)(2). (1 AA 281-284.)

Olson's proposed Complaint in Intervention contained the same PAGA claims he had been deputized by the LWDA to assert and was asserting in his parallel action. Olson sought penalties related to Lyft's: (1) willful misclassification (Labor Code section 226.8); (2) failure to reimburse Lyft Drivers for their expenses (Labor Code section 2802); (3) failure to pay overtime (Labor Code sections 510, 1194, 1198, and Wage Order 9); (4) failure to pay minimum wage (Labor Code sections 1182.12, 1194, 1194.2, 1197, 1197.1, 1199, and Wage Order 9); (5) failure to provide itemized wage statements (Labor Code section 226(a)); (6) failure to provide meal periods (Labor Code section 512) and rest breaks (Labor Code section 226.7 and Wage Order 9); and (7) failure to keep accurate payroll records (Labor Code section 1174). (2 AA 310-321.)

Because the court set Olson's hearing date on his motion to intervene for April 2020, Olson filed an *ex parte* application to continue the January 2, 2020 settlement approval hearing until the motion to intervene could be heard. (2 AA 360.) The trial

court denied Olson's application, stating that it did not believe Olson had standing to be heard on the appropriateness of the settlement, and there were no exigent circumstances warranting relief. (2 AA 498.)

Olson's motion to intervene also raised several specific objections to numerous aspects of the settlement, including the fact that the proposed $15 million to resolve the claims of the State and more than 500,000 aggrieved employees represented a more than 99.5% discount on the value of the released PAGA claims, which Turrietta conceded are worth at least $10 billion. (See 1 AA 295-300.)

Counsel for Turrieta, Lyft, Olson, and Seifu appeared at the hearing on Turrieta's Motion for Approval of the Settlement on January 2, 2020. Olson and Seifu argued their objections to the settlement. (3 AA 665-673.) Counsel for Turrieta argued that Olson and Seifu lacked standing to intervene or object because the case "belongs exclusively to the State." (3 AA 666:26.)

The trial court approved the Settlement the same day. (2 AA 498-499; 3 AA 569.) In its order, the court stated that it believed Olson and Seifu did not have standing to be heard because the "real party in interest is the State of California," citing *Amalgamated Transit Union, Local 1756, AFL-CIO v. Super. Ct.* (2009) 46 Cal.4th 993. (2 AA 498.) The court explicitly overruled Seifu's objections to the settlement, but did not address Olson's objections. (2 AA 499.) The court also stated that it "will not assume that the State of California [has] not read and seriously considered the proposed settlement….it is the real party

in interest and by not filing an opposition to the settlement, the Court assumes that it agrees that the settlement is appropriate." (*Id.*)

The court entered judgment on January 6, 2020. (2 AA 516.) On January 14, 2020, Olson timely filed a motion to vacate the judgment pursuant to Code of Civil Procedure section 663. (3 AA 536-554.) He argued that the trial court erred in approving the settlement because (1) the provision allocating $5 million as underpaid wages pursuant to Labor Code section 558 was barred by this Court's decision in *ZB, N.A. v. Super. Ct.* (2019) 8 Cal.5th 175 (*ZB, N.A.*); (2) the court erred in finding the claims would not be resolved under the ABC test in *Dynamex*, and, as a result, undervalued the claims and unreasonably found the settlement amount to be adequate; (3) the court ignored the undisputed facts suggesting that Lyft reverse-auctioned the State's claims; and (4) the court erred in finding that Olson lacked standing to intervene. (3 AA 536-554.) Both Lyft and Turrieta opposed the motion. (3 AA 636, 675.)

The trial court heard Olson's motion on February 28, 2020. At the hearing, the trial court stated "[t]o the extent that my previous order didn't reflect that I found that Mr. Seifu and Mr. Olson do not have standing to object, I want to make it clear that my view is they do not have standing to object to this settlement [and] are not parties that would have standing to bring a motion to set aside the judgment [under section 663]." (2/28/20 RT at 317:5-15.) In a minute order filed the same day, the court denied Olson's motion. (3 AA 709.) The court also

vacated the April 7, 2020 hearing on Olson's motion to intervene, and never ruled on the motion. (*Id.*)

IV. The Court of Appeal Affirms the Trial Court's Erroneous Orders and Judgment.

Olson timely appealed, challenging the trial court's denial of his motion to intervene, the denial of his motion to vacate the judgment, and the judgment following approval of the settlement. Seifu also appealed and filed briefs on the same issues. In a published decision, the Court of Appeal affirmed the judgment and the orders denying intervention and vacation of the judgment. (*Turrieta*, *supra*, 69 Cal.App.5th at p. 977.)

The appellate court first addressed Olson's motion to vacate the judgment and his appeal of the denial of that motion. The court recognized that a nonparty who is "aggrieved" by a judgment may move to vacate the judgment pursuant to Code of Civil Procedure section 663, and may appeal from any order denying that motion pursuant to Code of Civil Procedure section 902. (*Turrieta*, 69 Cal.App.5th at pp. 970–71, citing *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 267 (*Hernandez*).) The court also recognized Olson's status as a plaintiff duly deputized by the State to prosecute the same claims on behalf of the State that Plaintiff Turrieta settled in this action. (*Id.* at pp. 962, 971–72.)

The court concluded, however, that Olson was not "aggrieved" for the purposes of "standing" to move to vacate or appeal from the judgment because he does not have "a personal interest in the settlement of another PAGA claim." (*Id.* at p. 971,

974.) Accepting that Olson serves as a proxy for the State, the court nevertheless determined this status does not allow Olson "to act on the state's behalf for all purposes. Because it is the state's rights, and not appellants', that are affected by a parallel PAGA settlement, appellants are not aggrieved parties with standing to seek to vacate the judgment or appeal." (*Id.* at p. 972.) The court rejected Olson's argument that, as the State's proxy, he is aggrieved because the settlement (and consequential judgment) extinguishes the claims (for less than pennies on the dollar) he was deputized to pursue on behalf of the State. (*Id.* at p. 971.) Instead, the court stated that "the settlement of Turrieta's PAGA claims is only binding with respect to the state's assertion of the same PAGA claims and recovery of the same civil penalties—not any personal claims appellants may have against Lyft.…Thus, the settlement forecloses only the *state's* ability to seek the same civil penalties; it does not bar any claims owned by appellants and therefore does not injure their personal interests." (*Id.* at pp. 973–74, emphasis in original.)

Olson also argued the court's refusal to consider the objections of a deputized plaintiff—with claims in a parallel proceeding that would be extinguished by the settlement—would insulate PAGA settlements from meritorious objections. But the appellate court dismissed that concern, noting that PAGA

requires notice to the LWDA and approval by the trial court and both requirements were met here. (*Id.* at pp. 972–73.)[4]

As to Olson's right to intervene, after concluding that Olson had the right to and did timely appeal the trial court's denial of the motion to intervene,[5] the Court of Appeal affirmed the trial court's determinations. (*Id.* at p. 976.) The court first noted that both mandatory and permissive intervention require a motion to intervene to be made "upon timely application," *id.* at pp. 975–76, citing Code Civ. Proc. § 387, subds. (d)(1),(2), but declined to address Turrieta's timeliness arguments, concluding that even if the motions were timely, denial of intervention was proper because Olson "cannot meet the threshold showing that [he] had a direct and immediate interest in the settlement." (*Id.* at 977.) To support this conclusion, the appellate court relied upon the same reasoning it found Olson was not "aggrieved" for purposes of his motion to vacate the judgment. The court held that Olson

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[4] On May 27, 2021, the LWDA filed an amicus brief in the court below, urging reversal of the trial court's order on the grounds that the settlement was unfair and unreasonable, was based on errors of fact and law, and failed to advance PAGA's essential public purpose. (See generally LWDA Amicus Br.) The Court of Appeal found that the State's expression of interest in the settlement came too late. (*Turrieta*, 69 Cal.App.5th at p. 973 n.14.)

[5] The trial court did not issue an order specifically denying Olson's motion to intervene. Instead, when it denied Olson's motion to vacate the judgment, it also vacated the scheduled hearing on the motion to intervene, effectively denying Olson's motion. (3 AA 709.) The appellate court thus rejected Turrieta's and Lyft's argument that Olson had not appealed any order denying intervention. (*Turrieta*, 69 Cal.App.5th at pp. 974–75.)

did not have a direct interest in this action, and that his "interest in pursuing enforcement of PAGA claims on behalf of the state cannot supersede the same interest held by Turrieta in her own PAGA case." (*Ibid.*) Citing this Court's decisions in *Amalgamated* and *Arias*, the court concluded that Olson had "no personal interest in the PAGA claims" and thus no right to intervene. (*Ibid.*)

STANDARD OF REVIEW

The Court of Appeal's interpretation of the statutes at issue are reviewed de novo. (*ZB, N.A.*, *supra*, 8 Cal.5th at p. 189.) Statutes such as PAGA, which govern employment conditions and have remedial purposes, are liberally construed "to favor the protection of employees." (*Ibid.*) Denial of intervention as of right is reviewed de novo. (See *Redevelopment Agency v. Commission on State Mandates* (1996) 43 Cal.App.4th 1188, 1198; *Hodge v. Kirkpatrick Dev., Inc.* (2005) 130 Cal.App.4th 540, 551–55). Permissive intervention is reviewed for an abuse of discretion (see *Edwards v. Heartland Payment Sys., Inc.* (2018) 29 Cal.App.5th 725, 736 *(Edwards)*), subject to the usual caveat that where "it appears the trial court's decision was based on improper criteria or rests on erroneous legal assumptions, these are questions of law warranting [an appellate court's] independent review." (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 46, 60.)

ARGUMENT

I. Deputized PAGA Plaintiffs Have a Right to Intervene in an Action with Overlapping Claims, and a Right to Move to Vacate a Settlement and Judgment Purporting to Extinguish Those Claims.

The Court of Appeal addressed Olson's challenges to two separate orders: the trial court's denial of his motion to vacate the judgment following settlement under Code of Civil Procedure section 663, and the trial court's denial of his motion to intervene under Code of Civil Procedure 387. The appellate court's error in refusing to reverse both orders stems from the same flawed reasoning: that Olson's interests could only be "personal" and "individual" and, as a result, he lacks the right to represent the State, which is the real party in interest, in this action. (*Turrieta*, *supra*, 69 Cal.App.5th at p. 974.) The court's conclusion that a deputized plaintiff cannot represent the State's interests in a parallel proceeding with overlapping claims is illogical, inconsistent with the PAGA statute and this Court's precedent, and in conflict with the better reasoned decisions by its sister courts in *Moniz*, *supra*, 72 Cal.App.5th 56, and *Uribe*, *supra*, 70 Cal.App.5th 986. The decision must be reversed.

A. PAGA Was Enacted to Fill a Significant Void in Public Enforcement Actions Against Employers Violating California Wage Laws.

The California Legislature enacted PAGA to expand the State's limited capacity to vindicate public rights and protect workers under the Labor Code. The PAGA statute does so, as this Court has recognized, by permitting an employee plaintiff to

pursue the State's rights "as the proxy or agent of the state's labor law enforcement agencies." (*Arias v. Superior Ct.* (2009) 46 Cal.4th 969, 986 (*Arias*).) The Legislature "enacted the PAGA in 2003 after deciding that lagging labor law enforcement resources made additional private enforcement necessary 'to achieve maximum compliance with state labor laws.'" (*ZB, N.A. v. Super. Ct.*, 8 Cal.5th at p. 184, citing *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 379 (*Iskanian*), quoting *Arias*, *supra*, 46 Cal.4th at p. 980.)

To that end, the statute permits deputized private citizens to prosecute civil actions against employers engaged in violations of the Labor Code. (See *Iskanian*, *supra*, 59 Cal.4th at p. 383; accord *Arias*, *supra*, 46 Cal.4th at p. 986; see also Stats. 2003, ch. 906, § 1.) PAGA's purpose is to impose civil penalties significant enough to remediate present violations, deter future ones, and to be prosecuted in enough civil actions by deputized citizens to make that deterrence meaningful. (*Kim v. Reins Internat. Cal., Inc.* (2020) 9 Cal.5th 73, 86 (*Kim*), citing *Williams v. Super. Ct.* (2017) 3 Cal.5th 531, 546 (*Williams*); *Iskanian*, *supra*, 59 Cal.4th at p. 379).

To accomplish its goals, PAGA establishes a procedure which permits private individuals, after notice to the LWDA and a 65-day waiting period, to prosecute civil actions against employers and recover civil penalties on behalf of the State. (Lab. Code § 2699.3(a).) The notice must include "the specific provisions of [the Labor] Code alleged to have been violated, including the facts and theories to support the alleged violation." (Lab. Code

§ 2699.3, subd. (a)(1)(A).) It must consist of more than just bare allegations paraphrasing statutory violations. (See *Brown v. Ralph's Grocery Co.* (2018) 28 Cal.App.5th 824, 837.) The notice must "allow the LWDA 'to intelligently assess the seriousness of the alleged violations' and give the employer enough information 'to determine what policies or practices are being complained of so as to know whether to fold or fight.'" (*Ibid.*, quoting *Alcantar v. Hobart Service* (9th Cir. 2015) 800 F.3d 1047, 1057.)

This exhaustion requirement is mandatory. As this Court has recognized, it is "a condition of suit" required to allow the LWDA to determine whether to dedicate its limited resources to investigate the alleged violations specified in the employee's notice, or to permit the employee to be deputized and proceed with the civil action.[6] (*Williams*, *supra*, 3 Cal.5th at pp. 545–46; see Lab. Code § 2699.3(a)(2)(A); see also *Archila v. KFC U.S. Properties, Inc.* (9th Cir. 2011) 420 Fed.App'x 667, 669 (unpublished) [finding an employee's PAGA claims could not proceed because the contents of his notice letter to the LWDA "merely lists several California Labor Code provisions" allegedly violated and fails to contain "any factual allegations whatsoever"]; *Alcantar v. Hobart Serv.* (C.D. Cal. Jan. 22, 2013) 2013 WL 228501 [conclusory allegations that employer failed "to provide off-duty meal periods" did not adequately set forth "facts and theories" in support of a meal break claim].)

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[6] The Division of Labor Standards Enforcement ("DLSE") in fact performs this function on behalf of the LWDA, but the statute and case law refer to the LWDA and so too does this brief.

If the LWDA declines to investigate, the private litigant is thus duly deputized to prosecute those claims about which it provided timely and adequate notice, and permitted the waiting period to lapse. (See Lab. Code § 2699(l)(1).) No civil action may be brought until the litigant has complied with these pre-filing requirements. (See Lab. Code § 2699.3(a); § 2699.3(a)(1)(A), (a)(2)(A).) This procedure ensures adherence to the Legislature's stated intent that the State "retain primacy over private enforcement efforts." (*Arias*, *supra*, 46 Cal.4th at p. 980.)

PAGA also requires courts to "review and approve any settlement of any civil action filed pursuant to [PAGA]," and parties to submit any settlement to the LWDA at the same time it is submitted to the court. (Lab. Code § 2699, subd (l)(2).) Although the statute does not contain specific criteria for approval, this Court has stated that trial courts must "ensur[e] that any negotiated resolution is fair to those affected." (*Williams*, *supra*, 3 Cal.5th at p. 549; see *Moniz*, *supra*, 72 Cal.App.5th at pp. 126–27 [holding that the appropriate standard for a PAGA settlement is whether it is "fair, reasonable, and adequate" and advances the purposes of the Labor Code].)

Although a representative action, a PAGA action is not subject to class action requirements and, therefore, does not provide a vehicle for individual aggrieved employees to opt out of the action. Instead, 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." (*Arias*, *supra*, 46 Cal.4th at p. 986.)

B. A Right to Intervene or to Vacate Requires an Immediate and Substantial Interest Impacted by the Subject Action or Judgment.

Code of Civil Procedure section 663 permits a "party aggrieved" to move to vacate a judgment "materially affecting the substantial rights of the party and entitling the party to a different judgment." (Code Civ. Proc. § 663.) A trial court is obligated to grant such a motion where the judgment is legally erroneous or not consistent with or supported by the facts. (*Ibid.*) As this Court has recognized, a nonparty to an action "who is legally 'aggrieved' by a judgment may become a party of record and obtain a right to appeal by moving to vacate the judgment" pursuant to section 663. (*Cty. of Alameda v. Carleson* (1971) 5 Cal.3d 730, 736; *Hernandez*, *supra*, 4 Cal.5th at p. 267.) Code of Civil Procedure section 902 provides that "any party aggrieved" may appeal from an adverse judgment. (Code Civ. Proc. § 902.)

Similarly, nonparties can seek to intervene in an action that materially affects their interests pursuant to Code of Civil Procedure section 387. If proposed intervenors "seek permissive intervention under section 387, subdivision (a), they must show they have an interest in the litigation. For intervention as a matter of right under section 387, subdivision (b), intervenors must show [their] interests are not adequately represented by the existing parties." (*Hernandez*, *supra*, 4 Cal.5th at p. 267.)[7]

[7] The court below separately—and properly—held that Olson had standing to challenge the order denying intervention. (*Turrieta*, *supra*, 69 Cal.App.5th at pp. 974–75.)

Whether one has an "interest" in the subject of the action for purposes of intervention hews closely in the case law to whether one is "aggrieved" by a judgment for purposes of a motion to vacate (and appeal of the denial thereof). In either case, the injured party seeking to be heard must show that he has an immediate and substantial interest in the subject of the action or the judgment. (See, e.g., *In re K.C.* (2011) 52 Cal.4th 231, 236 ("An aggrieved person, for this purpose, is one whose rights or interests are injuriously affected by the decision in an immediate and substantial way, and not as a nominal or remote consequence of the decision."); *Knight v. Alefosio* (1984) 158 Cal.App.3d 716, 721 (intervenor must show that his interest is "of such direct or immediate character, that [he] will either gain or lose by the direct legal operation and effect of the judgment").

C. The State, Through Olson, Has an Immediate and Substantial Right in Its Claims That Turrieta Purports to Settle and Extinguish.

The Court of Appeal recognized that Olson was deputized to prosecute the PAGA claims in his action on behalf of the State, and that his claims overlapped with Turrieta's. (*Turrieta*, *supra*, 69 Cal.App.5th at p. 972.) But the court determined Olson was stripped of his authority to act on behalf of the State, and the interests he advanced were no longer those of the State, once he arrived on the scene in this case. Not so.

Olson has, at all times, acted on behalf of the State. It is the State's interest he represented when he filed his PAGA action after exhausting with the LWDA, and he represented that same interest when he sought to coordinate the various PAGA actions,

when he attempted to intervene in this action, when he attempted to object to the settlement, when he moved to vacate the judgment, and when he appealed the trial court's erroneous orders and judgment. That is, Olson is an aggrieved employee, but he is not *just* an aggrieved employee; he is the State's representative, deputized by the LWDA, to prosecute the same PAGA claims at issue in this case on behalf of the State. That Turrieta *also* represents the State's interests (on certain claims) is of no moment—her status does not eliminate or supplant Olson's. Indeed, as this Court has recognized, PAGA allows multiple concurrent lawsuits by aggrieved employees until one comes to final judgment. (See *Arias*, *supra*, 46 Cal.4th at pp. 984–87.)

The Court of Appeal observed that Olson's "ability to file PAGA claims on behalf of the state does not convert the state's interest into [his] own or render [him a] real part[y] in interest." (*Turrieta*, *supra*, 69 Cal.App.5th at p.972.) But then the court failed to acknowledge that Olson's actions were undertaken as an *agent* of the real party in interest—*i.e.*, the State. Instead, it concluded that Olson, though duly deputized, has no "personal" interest in this action, and "fail[s] to point to any authority allowing [him] to act on the state's behalf for all purposes." (*Id.* At pp. 971-72) Not only did Olson never argue as much, that reasoning reveals the Court's error: at what point did Olson become something *other* than an agent of the State?

The standard articulated by the court wrongly places the burden on plaintiffs, duly deputized by the LWDA to act on

behalf of the State, to prove that they *continue* to be duly deputized in the context of parallel litigation. The Court of Appeal's conclusion that Olson may not act "on the State's behalf for all purposes" is a truism—Olson does not suggest he has assumed the sweep of the LWDA's entire authority. But there is no basis—not in the text of the PAGA statute, nor found in any decision of this Court—to conclude that Olson's authority to act on behalf of the State *ceases* when another PAGA plaintiff purports to settle and extinguish the State's claims. Indeed, that is when the State, acting through Olson, has the most significant interest.

In reaching its erroneous conclusion, the Court of Appeal cited to this Court's opinion in *Amalgamated Transit Union, Local 1756, AFL-CIO v. Super. Ct.* (2009) 46 Cal.4th 993. But the holding there supports the outcome sought here: the right to prosecute a PAGA action on behalf of the State vests in the individual or individuals who are aggrieved employees and who provided notice to the LWDA of claims which the LWDA thereafter declined to prosecute. (46 Cal.4th at p. 1003.) As this Court stated in concluding PAGA claims cannot be assigned to labor unions, "the aggrieved employee acts as the proxy or agent of state labor law enforcement agencies, representing the same legal right and interest as those agencies, in a proceeding that is designed to protect the public, not to benefit private parties." (*Ibid.*)

The Court of Appeal should have, but failed to, looked to this Court's decisions in *Arias*, *Iskanian*, and *ZB, N.A.* as the

controlling authority. The court's articulation of Olson's interests as "personal" directly conflicts with the reasoning, if not the explicit holdings, of those cases. In *Arias*, the Court addressed whether a PAGA action could proceed without class certification without violating due process. (*Arias*, *supra*, 46 Cal.4th at p. 985.) The Court rejected the defendants' argument that without class certification, a defendant could be subjected to lawsuits by multiple plaintiffs raising the same claim, none of whom would be bound by a prior judgment in the defendant's favor because they were not parties to the prior lawsuit. (*Id.*) This Court explained the legal characteristics of a PAGA action that made this concern unfounded:

> An employee plaintiff suing ... under the [PAGA], does so as the proxy or agent of the state's labor law enforcement agencies.... In a lawsuit brought under the act, the employee plaintiff represents the same legal right and interest as state labor law enforcement agencies—namely, recovery of civil penalties that otherwise would have been assessed and collected by the Labor Workforce Development Agency.

(*Id.* at p. 986.) Noting that a PAGA plaintiff may bring an action only after giving written notice to both the employer and the LWDA, this Court reasoned: "Because collateral estoppel applies not only against a party to the prior action in which the issue was determined, but also against those for whom the party acted as an agent or proxy [citations] a judgment in an employee's action under the act binds not only that employee but also the state labor law enforcement agencies." (*Ibid.*)

In *Iskanian*, this Court addressed whether an employer could lawfully require an employee to waive her right to bring a PAGA action. The Court reiterated that a PAGA action is a representative one on behalf of the State, in which the plaintiff operates as the State's agent, and is a type of citizen public enforcement action akin to a qui tam action. (*Iskanian*, *supra*, 59 Cal.4th at 380–82.) Because a PAGA action is, fundamentally, a public enforcement action, this Court concluded that its waiver in an employment agreement is contrary to public policy and unenforceable as a matter of law. (*Id.* at p. 384.) And in *ZB*, *N.A.*, in concluding that a PAGA claim does not include unpaid wages under Labor Code section 558, this Court again stressed that a plaintiff acts as "the state's proxy" in prosecuting a PAGA action. (*ZB, N.A.*, *supra*, 8 Cal.5th at p. 188.)

The parallels this Court has noted to the qui tam context are particularly apt here. Like the federal False Claims Act ("FCA"), PAGA "effectively assigns the government's claims" to a plaintiff after the government declines to prosecute. (*U.S. ex rel. Kelly v. Boeing Co.* (9th Cir. 1993) 9 F.3d 743, 748 (*Kelly*); see also *Vermont Agency of Natural Resources v. United States ex rel. Stevens* (2000) 529 U.S. 765, 773 (*Stevens*) [FCA "can reasonably be regarded as effecting a partial assignment of the Government's damages claim."]; Cal. Gov. Code, § 12652(c) [outlining procedures for a qui tam plaintiff under California law].) And like a qui tam plaintiff, the PAGA plaintiff then "effectively stands in the shoes of the government." (*Kelly*, *supra*, 9 F.3d at p. 748 [holding that a qui tam plaintiff satisfies Article

III standing because "the government clearly is capable of establishing injury-in-fact, causation, and redressability"].) In this way, like the FCA, PAGA's provisions "operate as an enforceable unilateral contract. The terms and conditions of the contract are accepted by the relator upon filing suit." (*Ibid*.; see *In re Marriage of Biddle* (1997) 52 Cal.App.4th 396, 399 [If the government declines to prosecute a FCA case, "[t]he qui tam plaintiff is the only person charged with responsibility to act in the circumstances," and "the plaintiff becomes the de facto assignee of the government's cause of action pursuant to a statutory 'enforceable unilateral contract.'"].)[8]

Taken to its logical conclusion, the Court of Appeal's decision is extreme because it effectively eliminates the authority of a duly deputized plaintiff to be heard at the trial court, and immunizes from appellate review any PAGA settlement once approved by a trial court. The Court of Appeal dismisses such concerns by claiming that "the LWDA may provide the trial court with comments on or objections to a proposed settlement, and has done so in the past." (*Turrieta*, *supra*, 69 Cal.App.5th at p. 973.) But the Court of Appeal cites just one case where this happened,

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[8] (See also *Kelly*, *supra*, 9 F.3d at p. 749 ["In addition, qui tam plaintiffs have the requisite personal stake in the outcome of the case to ensure that the issues are presented sharply and that more than 'the vindication of the value interests of concerned bystanders' is at issue. [Citation.] This personal stake derives from the following three factors: (1) the qui tam plaintiff must fund the prosecution of the FCA suit; (2) the qui tam plaintiff receives a sizable bounty if he prevails in the action; and (3) the qui tam plaintiff may be liable for costs if the suit is frivolous."]

O'Connor v. Uber Technologies, Inc. (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1113, and in that case the LWDA's input *was expressly solicited by the district court*.

This Court's reasoning in *Arias*, *Iskanian*, and *ZB, N.A.* exposes the Court of Appeal's error. As a deputized PAGA plaintiff, Olson represents the State's interests in the claims he prosecutes. That interest necessarily extends to how those claims are resolved in a parallel PAGA action, by which the State will be bound by any judgment. Two recent Court of Appeal decisions agree.

D. *Moniz* and *Uribe* Correctly Concluded a PAGA Plaintiff Like Olson Has a Right to Challenge the Settlement in a Related Action that Purports to Extinguish Claims.

Two appellate courts issued opinions on the heels of the Court of Appeal's decision in this case. Both opinions recognize that a deputized PAGA plaintiff represents the State's immediate and substantial interests in related actions with overlapping claims. The First District Court of Appeal's decision in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56 (*Moniz*), is directly on point. There, the court considered a challenge by a proposed intervenor, Paola Correa, who, like Olson, was a deputized PAGA plaintiff in a related case, to a settlement purporting to release her PAGA claims. The court found that Correa was an "aggrieved party" with a right to move to vacate the judgment and to appeal the denial thereof, explicitly disagreeing with the Court of Appeal here:

> While the *Turrieta* appellants [i.e., Olson] indisputably did not own a personal claim for PAGA civil penalties [citation], *Turrieta* appears to have discounted their role as designated proxies of the state. The *Turrieta* appellants, like Correa, were deputized under PAGA to prosecute their employer's Labor Code violations on behalf of the state. Accepting the premise that PAGA allows concurrent PAGA suits as Turrieta did [citation], where 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, emphasis added.)[9]

The Fourth District Court of Appeal's decision in *Uribe v. Crown Bldg. Maint. Co.* (2021) 70 Cal.App.5th 986, as modified on denial of reh'g (Oct. 26, 2021) (*Uribe*), also supports the reasoned conclusion that a deputized PAGA plaintiff with parallel claims has an immediate and substantial interest in a settlement that purports to extinguish those claims. In *Uribe*, Isabel Garibay, a plaintiff with a parallel PAGA and proposed class action, challenged Uribe's class and PAGA settlement and subsequent judgment. The trial court had permitted Garibay to

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[9] In *Moniz*, the trial court had denied a motion by Correa to intervene and the appellate court, in an earlier unpublished disposition (*Moniz I*), affirmed. As the appellate court subsequently stated, in affirming that denial, "we assumed without deciding that [Correa] had an interest sufficient for intervention. There is thus no tension between *Moniz I* and our conclusion here that Correa is sufficiently aggrieved to challenge the judgment approving the settlement." (*Moniz*, *supra*, 72 Cal.App.5th at 73 n.10.)

intervene and challenge Uribe's settlement that purported to release both Garibay's individual claims and the State's PAGA claims she had been deputized to pursue. (*Id.* at p. 1001.) After Garibay moved to deny approval of the settlement, the trial court directed the parties to provide more information regarding the settlement terms, and required modifications to the settlement, including a narrowed release. (*Id.* at pp. 996-97.) The court then granted preliminary approval of the settlement, over Garibay's objection. (*Id.* at p. 997.) Garibay subsequently moved to vacate the final approval order, and defendant moved to dismiss Garibay's complaint in intervention, arguing she had lost standing by opting out of the class settlement. The trial court ruled on neither motion and entered judgment based on the settlement, and Garibay appealed. (*Id.* at pp. 998–99.)

Rejecting arguments that Garibay did not have standing to appeal and challenge the settlement because she was not "aggrieved," the appellate court concluded that she did and she was because her complaint in intervention asserted a PAGA claim (the same as the PAGA claim asserted in her parallel action), which Uribe's settlement purported to extinguish. In so holding, the court noted that a plaintiff "cannot opt out of a [PAGA] settlement and thereafter pursue civil penalties for the same violations again on behalf of the LWDA," and so Uribe's settlement "strips [Garibay] of a legal claim or cause of action." (*Id.* at p. 1001, citations and quotations omitted.) This is, of course, consistent with this Court's conclusion in *Arias* that a judgment in a PAGA action "is binding not only on the named

employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding." (*Arias*, *supra*, 46 Cal.4th at p. 985.)

Although the *Uribe* Court attempted to distinguish its holding from the decision by the Court of Appeal here by pointing to Garibay's status as an intervenor, (see *id.* at p. 1002), that distinction is not dispositive to the court's ultimate conclusion.[10] Like Olson, Garibay had to be an "aggrieved party" for purposes of appeal. (See Code Civ. Proc. § 902.) The source of that aggrievement, ultimately, is the same: the fact that the PAGA claims they pursued on behalf of the State would be extinguished by the settlements they challenged. The *Uribe* Court's conclusion Garibay was "aggrieved" flowed not from her complaint in intervention per se, but from the fact that she, like Olson, pursued PAGA claims that were snuffed out by another PAGA plaintiff's settlement. (*Uribe,* 70 Cal.App.5th at p. 1001.) Indeed, this is evident from *Uribe*'s ultimate holding: the court agreed that the State's interests, as represented by Garibay, were injured by permitting Uribe to settle claims that had not been exhausted in LWDA proceedings. (*Id.* at pp. 1001, 1005.)

Olson is "aggrieved" for the same reasons as Garibay in *Uribe* and Correa in *Moniz*: Turrieta's settlement purports to wipe out the PAGA claims Olson is pursuing as the State's proxy. As part of his "role as an effective advocate for the state," Olson is

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[10] The initial decision in *Uribe* was issued on the same day as the opinion below. Upon rehearing, the *Uribe* Court modified its decision and briefly addressed the opinion at issue here. (*Id.* at 1000 n.3.)

an aggrieved party seeking to represent the substantial and material State interest impacted by this action. (*Moniz*, *supra*, 72 Cal.App.5th at p. 73.)[11]

Indeed, as in *Uribe*, the State's interests here are particularly strong because Turrieta has settled claims she was never deputized to pursue—a fact undisputed on this record.Turrieta provided notice to the LWDA *after* she purported to settle and release those very claims, and on the same day she submitted her First Amended Complaint containing those claims. (See 1 AA 105-119 ¶¶ I(S), I(V), V.) Turrieta is therefore not authorized to prosecute those claims as the State's proxy. (See *Williams*, *supra*, 3 Cal.5th at p. 545; *Uribe*, 70 Cal.App.5th at p. 1005; *Julian v. Glenair, Inc.* (2017) 17 Cal.App.5th 853, 870 ["[B]efore meeting the statutory requirements for commencing a PAGA action, employees do not know which alleged violations—if any—they are authorized to assert in the action;" otherwise "the state—through LWDA—retains control of the right underlying the employee's PAGA claim."]; see also *Ovieda v. Sodexo Operations, LLC*, (C.D. Cal. July 3, 2013) No. CV 12-1750, 2013 WL 3887873, at *5 ["allowing an amended notice to be submitted

[11] (See also *Est. of Goulet* (1995) 10 Cal.4th 1074, 1080, 1081–82 [concluding that a trustee is an "aggrieved party" who may appeal an order impacting the trust even though it did not impact the trustee personally because "[s]imilar to a personal representative, the trustee owes fiduciary duties which require him to defend the trust against unwarranted diminution until it is distributed to the beneficiaries" and, therefore, to say he is not "aggrieved" "would be to deny him the performance of a plain duty devolving upon him")

after the civil action has already been filed defeats the very purpose of the exhaustion requirement, which is to give the LWDA the opportunity to make an informed decision about whether to pursue the matter itself"].)[12]

The State, as represented by Olson as its proxy, has a substantial and immediate interest in the claims Turrieta purports to settle. Olson is therefore an "aggrieved party" with the right to intervene and to move to vacate the judgment below, in order to challenge Turrieta's settlement as unfair, inadequate, and unreasonable. (*Williams*, *supra*, 3 Cal.5th at p. 549 [PAGA settlement must be "fair to those affected"]; *Moniz*, *supra*, 72 Cal.App.5th at pp. 126–27 [trial courts should review PAGA settlements to determine if they are fair, adequate, and reasonable and in service of PAGA's purpose.].)

II. Olson Met the Other Requirements for Permissive and Mandatory Intervention.

The Court of Appeal halted its analysis of Olson's right to intervene after erroneously concluding that he did not meet the "threshold showing" of a "direct and immediate interest in the

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[12] This presents a separate, but related, concern. As this Court explained in *Arias*, a judgment in an action brought by a duly deputized PAGA plaintiff "binds not only that employee but also the state labor law enforcement agencies." (*Arias*, *supra*, 46 Cal.4th at p. 986.) If Turrieta was not deputized to bring those claims, collateral estoppel would not apply. And Lyft may have knowingly risked a separate judgment in a parallel proceeding because it agreed to settlement terms that, on their face, appear to violate PAGA's statutory requirement that Turrieta give 65-day advance notice of any claims she intends to pursue on the State's behalf prior to commencing suit.

settlement." (*Turrieta*, *supra*, 69 Cal.App.5th at p. 977.) Because, as demonstrated above, Olson did have such an interest, and because the other requirements of intervention were met, the Court of Appeal erred in affirming the trial court's determination that Olson was not entitled to intervention.

A. Olson Timely Moved to Intervene.

Although the appellate court determined it was unnecessary to resolve the issue, Olson's motion for intervention was unquestionably timely. Timeliness is measured not from the commencement of the litigation, but instead from "the date the proposed interveners knew or should have known their interests in the litigation were not being adequately represented." (*Lofton v. Wells Fargo Home Mortgage* (2018) 27 Cal.App.5th 1001, 1013; see *Ziani Homeowners Assn. v. Brookfield Ziani LLC* (2015) 243 Cal.App.4th 274, 281 [timeliness measured by when movant should have been aware his interests would no longer be adequately protected by the parties].) A change of circumstances long after the commencement of litigation can delineate the starting point for determining timeliness of a motion to intervene. (See *Smith v. Los Angeles Unified School Dist.* (9th Cir. 2016) 830 F.3d 843, 854 [allowing a party to intervene more than a decade after commencement of the litigation because of a "change in circumstances"].) Intervention is also timely when a motion to intervene precedes a ruling on the merits of the issue targeted by the intervenor. (See *Bustop v. Super. Ct.* (1977) 69 Cal.App.3d 66, 72 (*Bustop*).)

Olson filed his motion to intervene on December 24, 2019, just four days after learning of Turrieta's settlement. (1 AA 281.) Indeed, the record discloses that Turrieta and Lyft reached a settlement months earlier and agreed to actively conceal it from Olson's counsel. (2 AA 308 ¶ 12.) Olson thus learned the State's interest in the claims he was prosecuting on its behalf was "not being adequately represented" the day he learned of the settlement. (See *Lofton*, *supra*, 27 Cal.App.5th at p. 1013.) Further, Olson sought intervention before the trial court ruled on Turrieta's motion for settlement approval, which was the subject of, and trigger for, his intervention. (See *Bustop*, *supra*, 69 Cal.App.3d at p. 72.) The announcement of a settlement with Lyft that wiped out the State's claims prosecuted by Olson was a "change in circumstances" that triggered the right to intervene.

Olson's motion was timely.

B. The Trial Court Abused Its Discretion in Denying Permissive Intervention.

Permissive intervention, governed by Code of Civil Procedure section 387, subd. (d)(2), grants the trial court "discretion to permit a nonparty to intervene where the following factors are met: (1) the proper procedures have been followed; (2) the nonparty has a direct and immediate interest in the action; (3) the intervention will not enlarge the issues in the litigation; and (4) the reasons for the intervention outweigh any opposition by the parties presently in the action." (*Edwards*, *supra*, 29 Cal.App.5th at p. 736.) For purposes of intervention, "interest" is defined broadly. An intervenor "need neither claim a pecuniary

interest nor a specific legal or equitable interest in the subject matter of the litigation," and section 387 "should be liberally construed in favor of intervention." (*Simpson Redwood Co. v. State of California* (1987) 196 Cal.App.3d 1192, 1200.)

As articulated above, Olson followed the proper procedures when he filed his motion to intervene. Olson also demonstrated his "direct and immediate interest in the action."

In addition, nothing in the record suggests that intervention will improperly enlarge the issues in the litigation. Turrieta's First Amended Complaint, filed after she had settled, contains all of Olson's overlapping claims. (Compare 2 AA 311-21, with 2 AA 501-13.) Additionally, the primary purpose of Olson's intervention is to oppose the settlement, not to add new issues or otherwise expand the litigation.

Finally, Olson's interest in participating in this action outweighs the parties' interests in completing the settlement approval process without intervention. "The permissive intervention statute balances the interests of others who will be affected by the judgment against the interests of the original parties in pursuing their litigation unburdened by others." (*City and County of San Francisco v. State of California* (2005) 128 Cal.App.4th 1030, 1036.) Here, as described above, the settlement is woefully inadequate and, as *Moniz* recognizes, Olson has an interest, in his role as an effective advocate for the State, of ensuring the fairness of the settlement. (*Moniz*, *supra*, 72 Cal.App.5th at p. 73.) Olson's ability to provide useful information to the Court in evaluating the adequacy of the

Settlement outweighs the parties' interest in litigating unbothered. Indeed, the parties' interest "in pursuing their litigation unburdened by others" is particularly weak where Olson represents the State's interests *on the very same claims* that Turrieta and Lyft purport to resolve.

On this point, *Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 531–32, review denied (Dec. 29, 2021), is instructive. There, three competing cases had overlapping class and PAGA claims. As was the case here, the defendant employer essentially put their liability out to bid by separately negotiating the overlapping claims in the three cases, and they settled Plaintiff Amaro's case. The plaintiffs in the two other cases moved to intervene. The trial court granted the motion and permitted "extensive briefing" from the parties and the intervenors on whether the settlement should be approved. As a result, the trial court denied preliminary approval, resulting in a renegotiated settlement that included a 26.4% [$462,500] increase in the overall settlement value (with the amount allocated to attorneys' fees and costs remaining the same) and a 500% increase [from 40K to 240K] in the amount allocated to the PAGA penalties. (*Id.* at pp. 531–33.) *Amaro* stands as a model for effective intervention in cases with overlapping PAGA claims. The intervenors did not excessively enlarge the case, provided the trial court with important information and, as a result of their efforts, the State's interests were well represented as is evidenced by the substantial increase in the overall PAGA settlement.

As in *Amaro*, Olson's interests in protecting the State's interests in its claims outweighs Turrieta's interest in settling and releasing those claims.

The Court of Appeal abused its discretion in denying Olson leave to intervene to represent the State's interests in this action.

C. Olson Was Entitled to Intervene as of Right Because Turrieta's Settlement Impaired His Ability to Protect the State's Interests, Which Were Not Adequately Represented.

In addition to demonstrating an "interest in the property or transaction that is the subject of the litigation,"—a factor demonstrated above in Olson's favor—a plaintiff seeking mandatory intervention must establish that he is "so situated that the disposition of the action may impair or impede that person's ability to protect that interest" and his interests will not be adequately represented by the existing party. (Civ. Proc. Code § 387, subd. (d)(1).) The Court of Appeal erred in refusing to find Olson had a right to intervene.

Turrieta's settlement purports to extinguish all the State's PAGA claims against Lyft that Olson was deputized to prosecute and more. There can be no doubt Olson is so situated that the "disposition of the action may impair or impede [his] ability to protect that interest." (See Civ. Proc. Code § 387, subd. (d)(1).) Olson's interest as the State's proxy is harmed by "the direct legal operation and effect of the judgment." (See *Knight v. Alefosio* (1984) 158 Cal.App.3d 716, 721.)

In addition, the State's interests (pursued by Olson as its proxy) are not adequately represented by the parties here

because the settlement contains several terms that are unfair and that Olson flagged for the trial court. (*Williams*, *supra*, 3 Cal.5th at p. 549 [PAGA settlement must be "fair to those affected"]; see *Moniz*, *supra*, 72 Cal.App.5th at pp. 126–27 [holding trial courts must independently determine whether a PAGA settlement is fair and reasonable and consistent with "PAGA's purpose to protect the public interest"].)

First, as explained above, Turrieta failed to give the LWDA the required 65-days' notice of all Labor Code violations she purported to settle and release on the State's behalf. (See Lab. Code § 2699.3(a) [permitting a civil action "only after" pre-filing requirements are met]; § 2699.3(a)(1)(A), (a)(2)(A); *Caliber Bodyworks, Inc. v. Super. Ct.* (2005) 134 Cal.App.4th 365, 381–82, disapproved on another ground in *ZB, N.A.*, *supra*, 8 Cal.5th at p. 196 fn. 8; see LWDA Amicus Br. at pp. 14–15.) Olson, on the other hand, was duly deputized to prosecute those claims on behalf of the State.

Indeed, we know the State's interests are not adequately represented because the LWDA said so. In an amicus brief filed in the appellate court, the LWDA stated: "The Superior Court here approved a settlement that extinguished every possible Labor Code civil penalty claim the LWDA could bring against Lyft, despite Turrieta ***never having authority from the LWDA to bring the vast majority those claims***, and without any analysis as to the evidence and circumstances justifying a release covering the *entire* Labor Code." (LWDA Amicus Br. at p. 28, first emphasis added.)

Turrieta's radical expansion of her PAGA action without notice required under the statute—and *after* she inked a settlement with Lyft that purports to release those expanded claims and all other possible claims that could be asserted under the Labor Code—is damning evidence of her inadequacy to represent the State's interests. (See, e.g., *Hodge v. Kirkpatrick Development, Inc.* (2005) 130 Cal.App.4th 540, 555 [an intervenor's interests are not adequately represented where the existing party has an incentive to advance its interests at the expense of the protecting the intervenor's rights]; see also *County of San Bernardino v. Harsh Cal. Corp.* (1959) 52 Cal.2d. 341, 345 ["The interest of the United States in sustaining its fiscal policy by securing an adjudication of the validity and correct interpretation of its statute is fully sufficient to support its intervention whether or not the judgment will directly and immediately affect its pecuniary interests."]; *Plaza Hollister Ltd. P'ship v. County of San Benito* (1999) 72 Cal.App.4th 1, 17–18 [County Assessor's intervention was warranted to protect its interest in faithful enforcement of the tax system].)

Second, the State's interests are not adequately represented by the parties because they included a term in the settlement of the PAGA claims that is explicitly unlawful under this Court's jurisprudence and that operates to the detriment of the LWDA. Specifically, the settlement violated the rule announced in *ZB, N.A.*, *supra*, 8 Cal.5th 175, that a PAGA action is strictly one for civil penalties and cannot include recovery for unpaid wages. (*Id.* at p. 196.) As this Court has explained, the

"civil penalties recovered on the state's behalf are intended to 'remediate present violations and deter future ones,' *not* to redress employees' injuries." (*Kim*, *supra*, 9 Cal.5th 73, 86, quoting *Williams*, *supra*, 3 Cal.5th at p. 546.) By allocating $5 million as wages rather than penalties payable to the State pursuant to Labor Code section 2699(i), the settlement implicates an obvious immediate, substantial, pecuniary interest of the State that is not being represented by the settlement terms. (See *Moniz*, *supra*, 72 Cal.App.5th at p. 87 [reversing approval of PAGA settlement that allocates civil penalties more significantly to one group without a basis for doing so because it "does not seem to have been justified below and may be contrary to PAGA's purposes"].)

Third, the amount is unreasonably low in exchange for the breadth of the release in light of the actual risks of litigating the action. The parties agree that the value of the claims released exceeds $10 billion, and perhaps as much as $30 billion, yet all claims were resolved for $15 million, which represents a discount of over 99.5% for a company with billions of dollars in annual revenue. (See 1 AA 82-83; 1 AA 111.) Further, there is no evidence to suggest that the action would not have been successful on the merits. In fact, the trial court's conclusion that "the claims in this case would likely be considered under pre-*Dynamex* law" creating the possibility that the recovery would be $0 (see 2 AA 499), was directly contrary to the facts and to

established law.[13] Additionally, the trial court's passing statement ignored the raft of published cases indicating that *Dynamex* applied to existing cases and would apply here. (See, e.g., *Gonzales v. San Gabriel Transit, Inc.* (2019) 40 Cal.App.5th 1131, 1156 ["[T]here is no reason to conclude that *Dynamex* departs from the usual rule of retroactive application."]; *Garcia v. Border Transp. Grp., LLC* (2018) 28 Cal.App.5th 558, 572 fn.12 [recognizing, in dicta, that there is every indication that *Dynamex* applies retroactively]; *Valadez v. CSX Intermodal Terminals, Inc.* (N.D. Cal. Mar. 15, 2019) No. 15 Civ. 5433, 2019 WL 1975460, at *5 [the defendant did "not show[] that compelling reasons require a departure from the general rule" that court order apply retroactively]; *Henry v. Cent. Freight Lines* (E.D. Cal. June 13, 2019) No. 16 Civ. 280, 2019 WL 2465330, at *6.) And courts applying *Dynamex* to driver claims against Lyft and its competitors have resoundingly found that employee status—and thus Lyft's liability for various Labor Code claims—is readily established. (See, e.g., *People v. Uber Techs., Inc.* (2020) 56 Cal.App.5th 266, 301, as mod. on den. of reh'g (Nov. 20, 2020) [finding Lyft's task in carrying its burden under Part B "daunting" and collecting cases]; *Rogers v. Lyft, Inc.* (N.D. Cal. 2020) 452 F.Supp.3d 904, 911 [determining that Part B "is

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[13] The settlement covers the period from April 30, 2017, through December 31, 2019 (32 months and one day). (2 AA 485 ¶ 3.) *Dynamex* was decided on April 30, 2018. (*Dynamex*, *supra*, 4 Cal.5th at p. 903.) So of the 32 months of liability covered by the settlement, 20 months postdate *Dynamex*, to which *Dynamex* unquestionably applies.

obviously met here: Lyft drivers provide services that are squarely within the usual course of the company's business, and Lyft's argument to the contrary is frivolous"]; see also *Cotter v. Lyft, Inc.* (N.D. Cal. 2016) 176 F.Supp.3d 930, 944 ["[I]f the jury reached a similar conclusion about Lyft drivers [that they are employees], the consequences for Lyft would be enormous."].)[14] Turrieta's inadequacy on this point is underscored by the minimal discovery and motion practice that occurred prior to settlement, no doubt due in part to the fact that the case was stayed. (See 3 AA 716-45.) All indications show that the State has a high likelihood of prevailing on its claims against Lyft.

Turrieta's pursuit of PAGA claims she had not exhausted and the nearly 100% discount of the value of those claims she negotiated, discounted even further due to an allocation that violates the law, demonstrate that she does not adequately represent the State's interests. The settlement is not "fair to those affected," and does not effectuate PAGA's purposes. (*Williams*, *supra*, 3 Cal.5th at p. 549; see *Moniz*, *supra*, 72 Cal.App.5th at pp. 126–27.)

Finally, as is evident, the court's error in denying intervention on the basis that Olson could not represent the State's interests was injurious to the State. The lack of scrutiny of the settlement terms was facilitated by the court's view that it is Turrieta, and *only* Turrieta, who may represent the State's

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[14] While some of these decisions postdate the trial court's consideration of this settlement, they demonstrate the strength of the claims that were at issue.

interests. This left only Turrieta and Lyft's self-serving characterizations of the settlement to consider. (See, e.g., 1 AA 82-84; see *Amaro, supra,* 69 Cal.App.5th, at pp. 531-32 [reversing trial court's approval of settlement based on intervenor's appeal regarding overly broad release, and after trial court had initially denied settlement approval based on intervenor's objections].)

III. The PAGA Statute Contemplates the State's Right to Object to Proposed Settlements in PAGA Actions.

The trial court concluded that Olson did not have "standing" to object, and the Court of Appeal affirmed that ruling. (*Turrieta*, *supra,* 69 Cal.App.5th at pp. 972—73.) This, too, was error.

PAGA's provisions create a right for the State and its proxy to appear and object to any settlement purporting to settle the State's claims. PAGA requires PAGA plaintiffs to file PAGA notices, complaints, settlements, certain orders, and judgments with the LWDA. (See Lab. Code §§ 2699(l)(1)-(3), 2699.3(a)(1), (b)(1), (c)(1).) PAGA requires not only notice from a putative PAGA plaintiff to the LWDA before commencing suit, but also notice to the LWDA upon any settlement of that suit. (*Ibid.*) This is because the LWDA's role in supervising the conduct of its agents is ongoing. (See *Arias*, *supra*, 46 Cal.4th at p. 980 [PAGA's procedures ensure adherence to the Legislature's stated intent that the State "retain primacy over private enforcement efforts."].)

Additionally, the PAGA statute was amended in 2016 to require court approval of all PAGA settlements. (Lab. Code §

2699.3(b)(4).) What purpose would it serve to direct notice to the LWDA of any settlement if the LWDA, or its agent, was not permitted to weigh in before any such settlement was approved?[15]

When construing PAGA, this Court has confirmed that courts must look to its purpose. (*Williams*, *supra*, 3 Cal.5th at 546.) "PAGA was intended to advance the state's public policy of affording employees workplaces free of Labor Code violations, notwithstanding the inability of state agencies to monitor every employer or industry." (*Ibid.*) Acknowledging the State's, and its proxy's, right to object is consistent with the statute's aim, and recognizes PAGA as a vehicle to enforce public rights and deter future violations. Indeed, one of the reasons this Court has permitted broad discovery in PAGA actions is to mitigate the risk the risk that aggrieved employees "will be bound by a judgment they had no awareness of and no opportunity to contribute to or oppose." (*Id.* at p. 548.)

Recognizing a right to object is also consistent with the State's ability to deputize multiple individuals, which suggests

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[15] See, e.g., Andrew Elmore, *The State Qui Tam to Enforce Employment Law* (2020) 69 DePaul L. Rev. 357, 407 ("Constraining qui tam claims via agency oversight is necessary …to reduce the risk of private enforcer misuse.") "Particularly in instances in which qui tam claimants act purely as representatives of the state…, the [LWDA] seems well positioned to determine whether the proposed resolution of the qui tam claim sufficiently advances state interests." (*Id.* at p. 410.) The LWDA's input also protects the other aggrieved employees and it "reduces the risk of court error in determining whether qui tam claims advance the public interest…." (*Id.* at pp. 359, 410.)

that the Legislature intended for the type of checks and balances that multiple deputies would provide in the settlement process. In other words, for the same reason that PAGA was enacted— a shortage of State personnel employed in an enforcement capacity— the possibility of additional deputies provides a check against unfair settlements that the LWDA does not have the capacity to review.

As with any settlement requiring court approval, as soon as a PAGA settlement is reached, the parties are no longer adverse. (See, e.g., 5 Newberg on Class Actions § 13.20 (5th ed.).) Courts approving PAGA settlements must, therefore, guard against the risk that the parties to the settlement may be inclined to promote a settlement that is otherwise advantageous to them, but ultimately inconsistent with the purposes of PAGA, or even inconsistent with the record in the case. The LWDA, or its proxy, can provide a court evaluating a settlement with valuable information that provides a lens through which the court may see the settlement terms in sharper relief. (See e.g., *id.* § 13.21 [noting that objections "fill an informational void by providing independent and fresh perspectives on the proposed settlement to the court"]; cf. *Moniz*, *supra*, 72 Cal.App.5th at p. 79 [accepting concession that "PAGA does not contain an express statutory mechanism for aggrieved employees pursuing representative actions to object to a separate PAGA settlement," but finding that a trial court has the "inherent power to hear and consider such objections," and "we perceive no reason why the trial court should not hear Correa's objections on remand"].)

The right for the State or its proxy to be heard on the terms of any proposed settlement that extinguishes the State's claims helps ensure that the court's required review of the settlement is meaningful, informed and fair to those affected. (*Williams, supra,* 3 Cal.5th at 548-49.)

IV. The Court of Appeal's Standard Would Frustrate the Purposes of PAGA, Waste Resources, and Insulate Employers Who Seek to Settle the State's Claims with the Lowest Bidders.

The "basic objective" of California's general labor protections is to "enable [workers] to provide at least minimally for themselves and their families and to accord them a modicum of dignity and self-respect." (*Dynamex*, *supra*, 4 Cal.5th at p. 952.) These laws are to be "liberally construed in a manner that serves [their] remedial purposes." (*Id*. at p. 953.) But the labor laws protect more than just workers: they also exist "for the benefit of those law-abiding businesses that comply with the obligations imposed by the wage orders, ensuring that such responsible companies are not hurt by unfair competition from competitor businesses that utilize substandard employment practices." (*Id.* at p. 952.) With an eye towards these objectives, the Legislature enacted PAGA is "to supplement enforcement actions by public agencies, which lack adequate resources to bring all such actions themselves." (*Arias*, *supra*, 46 Cal.4th at p. 986.)

By vesting this public interest in a proxy, the State and law-abiding businesses can reasonably expect that the responsibility of prosecuting Labor Code claims will be carried out thoroughly and consistently with the PAGA's statutory aims.

This includes, when necessary, a duty of candor to a trial court at the moment it is considering the fairness of settlement of overlapping PAGA claims. Stripping a PAGA plaintiff of his ability to represent these interests at such a critical juncture of related PAGA litigation would be antithetical to the purpose of the statute. The State has an abiding interest in ensuring that the dual labor policy of protecting workers and avoiding unfair competition is effectuated. Olson has been deputized to this end.

Olson's interest is not necessarily greater than that of another duly deputized PAGA plaintiff with the same claims, but it is not lesser than, either. Understanding the risks associated with multiple cases pursuing the same claims on behalf of the State, Olson did the right thing: he sought to coordinate the actions so that each State representative, and Lyft, would have accountability, or at least transparency, of litigating the PAGA claims.[16] When that effort was denied, and he discovered that Turrieta and Lyft had entered into a secret settlement without notice to the LWDA, he immediately sought to intervene. At every turn, he represented the State's interests in advocating for a fair, reasonable and adequate settlement of its claims.

Moniz and *Uribe* recognized the right, and the value, of such oversight. As a result of Correa's involvement in *Moniz*, the amount of the settlement increased by more than 25%, and the State's allocation alone was increased by $200,000. (*Amaro, supra,* 69 Cal.App.5th at pp. 531–32.) As a result of Garibay's

[16] Coordination would also have allowed the trial judge to manage any litigation and settlement efforts in a transparent fashion.

involvement in *Uribe*, the appellate court agreed that Uribe had not properly exhausted his remedies with the LWDA and had no authority to settle one of the State's claims. (*Uribe*, *supra*, 70 Cal.App.5th at p. 1005.)

The decision here, left to stand, invites mischief by encouraging a race to the bottom: defendants facing multiple PAGA lawsuits will simply put the case out to bid—and courts will reward the PAGA plaintiffs willing to resolve the case for the *lowest* value. Deputized plaintiffs who have overlapping claims—and potentially valuable insight into the fairness of a proposed settlement—would be silenced, without recourse to advance the State's interest. As the Ninth Circuit described this practice: "A reverse auction is said to occur when 'the defendant in a series of class actions picks the most ineffectual class lawyers to negotiate a settlement with the hope that the district court will approve a weak settlement that will preclude other claims against the defendant.' [Citation.] It has an odor of mendacity about it." (*Negrete v. Allianz Life Ins. Co. of North America* (9th Cir. 2008) 523 F.3d 1091, 1099.)

The Court of Appeal was dismissive of Olson's concerns, pointing to PAGA's own provisions that require, for example, notice to the LWDA when a settlement involving its claims are reached. (*Turrieta*, *supra*, 69 Cal.App.5th pp. 972–73.) But notice is not a panacea for a beleaguered state agency that simply does not have the capacity to quickly respond to settlements brokered in secret and then hastily pushed through the approval process.

Because the Court of Appeal erroneously affirmed the orders denying intervention and the motion to vacate the judgment, it erroneously failed to review the trial court's approval of a patently unfair, unreasonable, and inadequate settlement that bears all the hallmarks of "plaintiff shopping" by Lyft. This conclusion is at odds with the statutory language of PAGA and this Court's numerous observations about the very purpose of PAGA.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court reverse the judgment and the order of the trial court and appellate court, and direct those courts to enter an order granting Petitioner's motion to intervene and granting Petitioner's motion to vacate the judgment.

Dated: February 4, 2022

Respectfully submitted,

/s/ Monique Olivier
Monique Olivier
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Attorneys for Petitioner
State of California *ex rel.*
Brandon Olson

CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.204(c)(1) of the California Rules of Court, I hereby certify that this petition contains 13,038 words, including footnotes. In making this certification, I have relied on the word count of the computer program used to prepare the brief. The brief also otherwise complies with the California Rules of Court in its format.

Dated: February 4, 2022

Respectfully submitted,

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I am employed in the County of San Francisco, 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 & Chao LLP, 201 Filbert Street, Suite 201, San Francisco, CA 94133. On February 4, 2022, I served the following document(s):

PETITION FOR REVIEW

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Sacramento, CA 95814

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Executed on February 4, 2022 at San Francisco, California.

/s/ Raika Kim
Raika Kim

STATE OF CALIFORNIA
Supreme Court of California

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/s/Monique Olivier

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