Case 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 Case No. BC714153

RESPONDENT TINA TURRIETA'S ANSWER TO BRANDON OLSON'S OPENING BRIEF ON THE MERITS

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I. INTRODUCTION

Bestowing PAGA litigants with the right to intervene, object, move to set aside judgments, and ultimately to appeal settlements in overlapping PAGA cases would be inconsistent with both the text of the law and its legislative history. It would also undo the careful work of the legislature in assigning the job of settlement review to a neutral agency and court instead of competing litigants fighting over attorney fees.

The statute makes no mention of PAGA litigants in related cases having any role in the settlement process. On the contrary, there is a detailed description of the settlement process, and PAGA litigants in overlapping cases do not even receive notice.

Prior to 2016, the only review of PAGA settlements was a requirement that trial courts review "any penalties sought" in order to protect employers from excessive penalty awards. Motion for Judicial Notice ("MJN") Exh. 2 at p. 4. There was no review in terms of the merit of the settlement and no requirement for notice to anyone outside the lawsuit. In 2016, the legislature amended the PAGA to provide that the Labor and Workforce Development Agency ("LWDA") would receive notice of all PAGA settlements, and that the settlements themselves (not just any penalty award) would be reviewed by the presiding court.

The legislative history shows that all work related to PAGA settlements is assigned to the LWDA. Even when the legislature

focused on the settlement approval process by broadening it and including a notice requirement, it limited notice to the LWDA, and provided no role for private PAGA litigants in related cases. Indeed, the legislature did the opposite. Instead of relying on Private Attorney General resources to review settlements, it established a PAGA unit within the LWDA and provided $1.5 million in annual funding to allow the agency to do its job of reviewing and responding to settlement notices. MJN Exh. 3 p. 5.

The LWDA was an agency sponsor of the 2016 bill and it promised legislators that the bill made only "modest changes" to the law. MJN Exh. 3 p. 2. According to the LWDA, the purpose of the bill was to provide "greater agency and court oversight." *Id.* p. 1. The LWDA promised that "it is not the intent of this bill to curtail or make it harder to pursue PAGA litigation." *Id.* p. 2.

Importing a class-action style individual objection process into PAGA would be a substantial change, not a modest one. It would replace the promised "agency and court oversight" with conflicts between individual litigants. Such a melee would make it much harder to pursue PAGA litigation. The instant case shows how exercise of these rights by competing litigants can derail litigation and resolution for years.

When it drafted and amended the PAGA, the legislature was balancing two important interests. The first is the interest of the State and the public in prompt and final resolution of PAGA

claims. In *Hernandez v. Restoration Hardware, Inc.*, 4 Cal. 5th 260, 272 (2018), this Court described the damage done when rent-seeking objectors delay resolution and increase costs.

The counterpoint to the challenge of rent-seeking objectors is the important need for PAGA settlements to be subject to a neutral evaluation ensuring settlements are fair to the State and do not present any self-dealing by litigants.

The 2016 PAGA amendment addresses the competing concerns through a division of labor. Employees are authorized to pursue law enforcement through civil litigation. Once there is a settlement, the job of neutral evaluation is taken over by the court and the LWDA. This presents a powerful solution to a difficult problem. The PAGA incentivizes Private Attorneys General to litigate vigorously by providing for an award of attorney fees to successful litigants. Once there is a settlement, however, the incentives change and attorneys begin competing for fees from the settlement. That incentive encourages litigants to file objections that are only withdrawn if the counsel representing the objector is provided a portion of attorney fees.

Under the rule adopted by the legislature, the efforts of litigants are efficiently aligned with the applicable incentives. The resources of individual litigants and law firms are added to the pool of the State's efforts to enforce critical employment laws by proceeding with litigation. The problem of rent-seeking

objectors is controlled by a review and approval system wherein the settlement is presented not to competing litigants who would be subject to perverse incentives, but to the State through the LWDA and to the trial court overseeing the litigation.

Petitioner asks this Court to rewrite the statute. The plain language of the statute provides no process for litigants in overlapping PAGA actions to even receive notice of settlements, let alone object, intervene, or appeal. Petitioner would have this Court establish a brand-new rule with no support in the text.

Olson describes every PAGA litigant as "the State's proxy," and argues that every PAGA litigant has a right to intervene in every other PAGA action against the same defendant "because the State has a sufficient material interest in the claims." But the state is already the real party in interest in each PAGA action – represented by the existing PAGA litigant. How can the State intervene through a second proxy in its own case?

Even if the State could somehow manifest itself through multiple aspects in the same litigation, there is no indication that it has authorized anyone to attempt such a feat. Agency is limited by the authorization of the principal. Not every interest or power of the State is transferred to the individual employee who serves as a Private Attorney General. Instead, we must look to the statute and determine which parts of the government's job the PAGA litigant has been specifically authorized to perform.

Nothing in the statute suggests that intervention, objection, or appeal of a settlement in related cases is among the functions assigned to a PAGA plaintiff. Labor Code §2699(a) provides only that a civil penalty may be recovered by an employee who brings a civil action. If the statute gave no hint as to how settlements are to be handled, Olson might argue that such agency could be imputed from the authorized effort to collect penalties. But the PAGA *does* provide instructions on how settlements are to be handled. Labor Code §2699(l)(2) provides a detailed description of the process for review and approval of PAGA settlements. It does not provide any role for litigants in overlapping PAGA actions.

Olson complains that the Court of Appeal erred because it agreed that Olson had standing to prosecute the State's claims, but "somehow lost standing to seek to vacate the trial court's judgment on behalf of the state." Opening Brief on the Merits ("OBM") p. 11. This is incorrect. Olson never "lost" anything. Rather, the State never deputized Olson for the job of evaluating, objecting to, or appealing settlements in other cases. The PAGA assigns that job to the LWDA and the court.

Olson's argument fails because he seeks a right to perform acts that are outside the scope of the work assigned to a PAGA litigant. It also fails because Olson seeks a right to litigate against opponents that are outside the scope of those designated

by the PAGA. On its face, the PAGA allows a Private Attorney General to litigate against her employer. There is nothing in the text of the statue that allows a Private Attorney General to litigate against other PAGA litigants. The plain language of the statute shows an intent to create a law enforcement mechanism, not to create a cage match over attorney fees.

Besides being unsupported by the language of the statute, Olson's argument also fails conceptually. Where the State has deputized multiple employees to bring PAGA actions against the same employer, Olson argues that each such individual has a right to intervene, and standing to object as a proxy of the State. But how can the State maintain conflicting positions through multiple proxies? Olson's model would create a sort of discordant Greek chorus loudly proclaiming conflicting positions all purportedly on behalf of the same real party in interest.

The rule Olson seeks is also unnecessary. The PAGA requires that notice of all settlements be given to the State, through the LWDA. The State can and does comment on proposed settlements by simply filing comments within the applicable time period. Olson argues that the LWDA is somehow "beleaguered" due to a lack of funding, but the legislature has assigned the work of reviewing settlements to the LWDA and funded it to do so. Complaints about the level of that funding present a political issue, not a judicial one.

To the extent a specific case presents a need to coordinate related PAGA actions, there is already a system for that as well. Cal. Code Civ. Proc. §404. Indeed, Olson unsuccessfully attempted to have the instant case coordinated months before seeking intervention. And despite the pendency of the instant appeal, Olson has now filed a second request to coordinate the instant case with his later-filed action. MJN Exh. 4.

In addition to coordination, courts also have the inherent power to hear and consider objections without formally granting intervention or coordination. That is exactly what happened here. Although Olson lacked standing, the trial court exercised its discretion to consider each of Olson's objections. Such discretion again strikes an appropriate balance: allowing the trial court to consider input from all sources that it finds useful without imposing fee-driven appeals on every settlement.

This Court should accept the system described in the plain language of the statute and the legislative history. Finding a "right" to intervene, object, or move to set aside a judgment for every PAGA litigant would strip courts of discretion that they have long enjoyed and create an irresistible economic incentive for objection and appeal of every PAGA settlement no matter how worthy the recovery. The legislature's decision to assign the job of reviewing settlements to neutral parties is not only the controlling law, it is wise and should not be disturbed.

II. STATEMENT OF FACTS

Respondent Tina Turrieta gave notice to the LWDA of her claims in the instant case on May 8, 2018. 1 AA 79 ¶9. Weeks later, on May 24, 2018, Petitioner Olson gave notice to the LWDA of a largely duplicative set of claims against the same Defendant. OBM p. 13. Respondent filed her case on July 13, 2018. *Id.* at 14. A month later, on August 16, 2018, Petitioner Olson amended an existing class action lawsuit to include PAGA claims that largely duplicated Turrieta's claims. *Id.* at 13.

In April of 2019, Olson sought to coordinate his last-filed action with *Turrieta* and other earlier-filed cases. OBM p. 14. The presiding court denied Olson's petition. *Id.* at 15. Olson chose not to seek any review of the order denying coordination. 2 AA 437. For the next six months, Olson did nothing to involve himself with *Turrieta*. 3 AA 658 ¶2.

Meanwhile, the parties in *Turrieta* engaged in extensive motion practice. 1 AA 79 ¶¶11-14. Ultimately, Turrieta and Lyft attended a mediation with noted mediator Antonio Piazza. 1 AA 81 ¶26. When the parties were unable to agree, the mediator made an independent proposal based on his own valuation of the case, which the parties accepted. 1 AA 81 ¶27.

Recovering $15 million for a liability period of just 32 months, the *Turrieta* settlement dramatically outperformed any prior similar PAGA settlement. The value of the *Turrieta*

settlement is 15 times higher than the approved PAGA recovery in a similar case regarding California rideshare drivers, and is nearly twice as much as the prior largest-ever PAGA recovery for a rideshare driver misclassification case.

In *Cotter v. Lyft, Inc.*, 176 F. Supp. 3d 930 (N.D. Cal. 2016), a federal court approved Lyft paying $1 million in PAGA penalties for a period substantially longer than the 32 months at issue in *Turrieta*. *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1033 (N.D. Cal. 2016); *Cotter*, 176 F. Supp. 3d at 934 (release period 2012-2016).

In seeking approval, Turrieta drew the trial court's attention to another recent settlement involving the exact same causes of action against Uber, the only rideshare company exceeding Lyft's California presence: *Price v. Uber*, No. BC554512 (L.A. Super. Ct.). 1 AA 37:21-24, 3 AA 651:10-28, 1 RA 66, 1 RA 72-76. The *Price* settlement was approved in January 2018 – less than 21 months before the instant settlement. *Price* settled for $7.75 million, just over half of the $15 million recovered here. The much larger recovery in the instant matter came despite the fact that the *Price* case was more valuable. *Price* presented a maximum potential liability of $121 billion. *See* 1 RA 72-76, Order Granting Joint Motion for Approval of PAGA Settlement in *Price v. Uber*, Case No. BC554512. 1 RA 6. The estimated maximum value in this case was approximately $30 billion. 1 AA

81 ¶30, 1 AA 82 ¶¶31-37. The instant settlement recovers almost twice as much for claims that have a maximum value of just 25% of those in *Price*. That is an eightfold premium.

Looking at the PAGA recovery as a percentage of maximum possible penalties, the *Turrieta* settlement is consistent with the outcomes achieved by plaintiffs who went to trial. For example, in *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 517 (2018), the Court of Appeal upheld a 99.98% reduction from the maximum possible PAGA penalties. Olson complains that the *Turrieta* settlement presents "more than a 99.5% discount." OBM p. 19. But the *Turrieta* settlement outperforms *Carrington* by more than double as a percentage of maximum penalties.

On December 9, 2019, Turrieta filed for approval of settlement. 1 AA 27. At the time of the filing, Turrieta provided notice of the settlement to the LWDA as required by Labor Code §2699(l)(2). 1 AA 81 ¶29, 1 AA 123. The LWDA did not respond or object to the settlement before the trial court.[1] 3 AA 658 ¶6.

On December 24, 2019, despite his own case being stayed, Olson objected to the *Turrieta* settlement and moved to intervene. 2 AA 282. Olson noticed his motion for intervention for April 23, 2020, well after the approval hearing. *Id*. In his opening

[1] On May 27, 2021, more than 17 months after receiving notice of the settlement, the LWDA made its first comment on the settlement by filing an amicus brief. 1 AA 81 ¶29, 1 AA 123.

brief Olson incorrectly states that "the court set Olson's hearing date on his motion to intervene for April 2020." OBM p. 18. There was no order setting the hearing date on the motion.

Olson also applied *ex parte* to delay hearing on approval of the settlement until after the hearing on intervention. 2 AA 360. The trial court refused. Olson states that the denial was because "there were no exigent circumstances warranting relief." OBM p. 19. That is almost correct. Olson's *ex parte* failed because he had known about *Turrieta* for at least nine months and chosen not to take any action to intervene until the settlement presented the possibility of an attorney fee award. 3 AA 659 ¶7.

On January 2, 2020, the trial court evaluated the settlement and permitted Olson's counsel to argue. Reporter's Transcript ("RT") at 13:7-17:15; 303:6-28; Court of Appeal Opinion ("Opinion") at 10-11, 20 n.13. As Olson describes it, "Olson and Seifu argued their objections to the settlement." OBM p. 19. Olson also states that "the court explicitly overruled Seifu's objections to the settlement but did not address Olson's objections." *Id*. This is inaccurate. Olson provided written objections, and the trial court reviewed those objections. 2 AA 282. The record also shows, and Olson admits, that he again argued his objections to the court at the hearing. OBM p. 19, 1 RT 13:2-17:23.

Having considered and rejected Olson's objections, the trial court approved the settlement as "fair, adequate and reasonable in light of the time period that is encompassed by it and the amount that will eventually [be] paid to the State of California and to the hundreds of thousands of Lyft drivers." 2 AA 499; Opinion at 10-11. The trial court also found that, contrary to Olson's claim of a "reverse auction," "The Settlement was the product of informed and arm's-length negotiations among competent counsel." 2 AA 485. The trial court also entered a finding that "There was no collusion in connection with the Settlement." *Id.*

Olson next filed a motion to set aside the judgment. At the February 28, 2020 hearing on this motion, the trial court again considered and rejected each of Olson's arguments on the merits. For example, after hearing argument from Olson's attorney Mr. Sagafi, the trial court stated the following:

> THE COURT: All right. Thank you. Mr. Sagafi made reference to numerous PAGA settlements that may not be in the best interest of the workers, but to reiterate, in my view this particular settlement is in the best interest of the workers and in the best interest of the state of California. 2 RT 316:27-317:4.

Olson appealed. After filing his appeal and before the matter came on for hearing before the court below, Olson offered to withdraw his objection and appeal in exchange for a share of the attorney fees from the settlement. MJN Exh. 5. Although they engaged in multiple phone conferences to discuss the transaction, the parties were unable to agree on a price for Olson to withdraw his objection, and this appeal proceeded. *Id.*

The Court of Appeal held that Olson had standing to appeal denial of intervention, and that the trial court was within the bounds of its discretion to deny intervention. Opinion at 27. The Court of Appeal also held that Olson, having been denied intervention, lacked standing to move to vacate the trial court's judgment or to appeal the judgment. Opinion at 12, 19.

During the time that this appeal has been pending, Olson has continued his efforts to influence the case at the trial court level. On February 28, 2022, Olson filed a request to have the instant matter added to a coordinated proceeding involving cases against both defendant Lyft and another rideshare company, Uber. MJN Exh. 4. Turrieta has filed an opposition to the proposed coordination. At the time of this briefing, Olson's request is pending before the San Francisco County Superior Court. *Id.*

III. STANDARD OF REVIEW

This Court has asked: "Does a plaintiff in a representative action filed under the Private Attorneys General Act (Labor Code §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?" These strictly legal questions are reviewed de novo.

However, much of Olson's arguments are aimed at the trial court's factual findings on the merits of intervention, as well as the settlement. *See, e.g.,* OBM p. 24. These arguments are outside the scope of the instant appeal and must be disregarded.

To the extent any of these issues touch on this Court's analysis, review is for abuse of discretion. *Reliance Ins. Co. v. Superior Court*, 84 Cal. App. 4th 383, 386 (2000) (denial of intervention is reviewed for abuse of discretion); *City and County of San Francisco v. State of California*, 128 Cal. App. 4th 1030, 1037 (2005) (same); *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996) (trial court's findings on merit of settlement reviewed for "clear abuse of discretion").

These standards are relevant to the strictly legal questions in one way: California trusts her trial courts with broad discretion with regard to settlements. Providing PAGA litigants with a mandatory right to intervene, object, or appeal is inconsistent with that tradition of trusting trial court judgment.

IV. THE PAGA BESTOWS NO RIGHTS FOR PAGA LITIGANTS TO ACT IN OVERLAPPING CASES

The scope of activity authorized by the PAGA is narrow. "The act authorizes a representative action only for the purpose of seeking statutory penalties for Labor Code violations." *Arias v. Superior Court*, 46 Cal.4th 969, 986 (2009). Olson would re-write this Court's holding in *Arias* to authorize a wide range of actions including intervening, objecting to settlements in other cases, and delaying settlements through appeal.

Such a change is unwarranted. This Court has never held that the PAGA deputizes a private litigant as an agent of the State for all purposes. We know, for example, that a PAGA litigant cannot issue citations or conduct administrative proceedings – even though the State can do both of those things. *See*, *e.g.*, Labor Code §1197.1.

So why should a PAGA litigant have a right to delay or derail settlements in other cases? The controlling statute contains no hint of any such rights and actually excludes PAGA litigants from the process of settlement review. The legislative history shows no intent to bestow these rights on PAGA litigants, instead providing that work be done by the LWDA. The cases considering the issue overwhelmingly weigh against any such rights. Looking more deeply into the policies and broader legislative context of the PAGA shows why no such rights exist.

A. The Plain Language of the PAGA Bestows No Rights for PAGA Litigants in Act in Overlapping Cases

"Where the words of the statute are clear, we may not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history." *Kim v. Reins International California, Inc.*, 9 Cal. 5th 73, 85 (2020).

In this case, Labor Code §2699(a) defines the rights bestowed upon a PAGA litigant. It states that Labor Code civil penalties may "be recovered through a civil action brought by an aggrieved employee." That is it. No other rights are listed.

Olson argues that he "was deputized to prosecute the PAGA claims," and that the Court of Appeal erroneously found that "Olson was stripped of his authority to act on behalf of the State." OBM p. 30. This language obscures the actual text of the statute. The plain language of the statute provides a limited authorization for employees to bring an action to recover civil penalties. Olson mourns the loss of authority that he never had.

The language of Section 2699(a) is enough, by itself, to defeat Olson's argument. But the legislature has given us more. The PAGA explicitly describes the procedure for settlement approval. "The superior court shall review and approve any settlement of any civil action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court." Labor Code §2699(l)(2).

Our courts recognize that this language provides no role for any employee other than the PAGA who brought the case being settled. *Arias*, 46 Cal. 4th at 987 (employees who are not a party are "not given notice of the action or afforded any opportunity to be heard"); *accord* *Sakkab v. Luxottica Retail N. Am., Inc.*, 803 F.3d 425, 436 (9th Cir. 2015) ("PAGA has no notice requirements for unnamed aggrieved employees"); *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1122 (9th Cir. 2014) ("Unlike Rule 23(c)(2), PAGA has no notice requirements for unnamed aggrieved employees . . ."); *see also*, *Canela v. Costco Wholesale Corp.*, 971 F.3d 845, 851 (9th Cir. 2020).

If it was the intent of the legislature to deputize PAGA litigants to intervene, object, or move to set aside judgments in response to a settlement in a related case, would not the legislature have provided for these litigants to at least receive notice of such settlements?

If it was the intent of the legislature to deputize PAGA litigants to intervention behalf of the State, would not the legislature have included the same language authorizing State intervention that it used in California *qui tam* statutes?

If it was the intent of the legislature to deputize PAGA litigants to move to set aside judgments in other cases, would not it have written a single word regarding the role of PAGA litigants in related cases against the same employer?

In order to do what Olson asks, this Court would need to rewrite Labor Code §2699(l)(2) to require, as in class actions, courts consider objections by other PAGA litigants. The rewritten law would need to provide a right to be heard even absent coordination or intervention. And to give this new rule effect, this Court would need to add a requirement that notice be provided to any other PAGA litigants with claims against the same employer. How else could they make use of the new judicially-created right to object?

This Court has historically shied away from this kind of statutory redrafting. "[I]n construing statutory provisions a court may not rewrite the statute to conform to an assumed intention which does not appear from its language." *California Teachers Assn. v. Governing Bd. of Rialto Unified School Dist.*, 14 Cal. 4th 627, 650 (1997). "Courts may not rewrite a statute, either by inserting or omitting language, to make it conform to a presumed intent that is not expressed." *Jarman v. HCR ManorCare, Inc.*, 10 Cal. 5th 375, 392 (2020). "A court may not, under the guise of construction, rewrite the law or give the words an effect different from the plain and direct import of the terms used . . . we must assume that the Legislature knew how to create an exception if it wished to do so." *DiCampli-Mintz v. County of Santa Clara*, 55 Cal. 4th 983, 992 (2012).

B. The Legislative History Suggests No Rights for PAGA Litigants in Overlapping Cases

When the PAGA became law, it did not provide for any notice or court review of settlements. In 2004, California employers, led by the California Chamber of Commerce, pushed through SB 1809, a change in the PAGA aimed at protecting employers on several fronts. MJN Exhs. 1-2. Those changes included giving courts the discretion to reduce penalty awards and a requirement that trial courts review "any penalties sought as part of a proposed settlement" in order to protect employers form excessive penalty awards. MJN Exh. 2 at p. 4.

In 2016, the legislature passed SB 836, requiring, for the first time, that the presiding court review and approve the settlement itself and that the LWDA receive notice of settlements.

According to Olson, SB836 represented a wholesale importation of class action settlement procedures into the PAGA by deputizing every PAGA litigant with the right to intervene, object, move to set aside a judgment, and ultimately appeal any settlement. But the LWDA, as the administrative sponsor of the bill, did not think it was so dramatic a change: "this bill makes modest changes to the PAGA statute." MJN Exh. 3 at p. 2.

The LWDA explained SB 836 would "make procedural and structural reforms to the Labor Code Private Attorneys General

Act (PAGA) to provide for greater agency and court oversight of PAGA claims and litigation." There is no mention of bestowing *any* rights on individual PAGA litigants. The only purpose was to increase "agency and court oversight." MJN Exh. 3 at p. 1.

The LWDA went on: "it is not the intent of this bill to curtail or make it harder to pursue PAGA litigation." MJN Exh. 3 at p. 2. This directly contradicts Petitioner's argument. Creating a world where every PAGA litigant has a right to intervene, object, move to set aside judgments, and ultimately appeal any settlement in any case making similar claims against the same employer would make it dramatically harder to pursue PAGA litigation. The need to manage multiple intervenors, objectors, and appeals is the definition of "harder." The creation of a "hold out" economy where just one employee out of thousands can create years of delay in appellate litigation (as seen in this case) is the quintessence of "harder." The LWDA specifically promised legislators that the bill would do no such thing. *Id.*

As described by its sponsor, SB 836 was not aimed at bestowing any new rights on Private Attorneys General. The bill, including its requirement for court review of settlements and notice to the LWDA, was aimed at providing information for the LWDA to review. MJN Exh. 3 at p. 2.

The legislature's intent was backed up by funding. At the same time that it gave the LWDA the job of reviewing

settlements, the legislature also authorized a budget of $1.5 million for the LWDA to establish a dedicated PAGA unit to perform that work. MJN Exh. 3 at p 5.

The fact that the legislature created a specific PAGA unit and funded that unit, at the same time it assigned the LWDA the job of reviewing settlements, shows a clear intent that the work required by Labor Code §2699(l)(2) be performed by the State and not private PAGA litigants.

C. Case Law Bestows No Rights Upon PAGA Litigants in Overlapping Cases

None of the cases to examine this issue have addressed the legislative history that so clearly precludes the adoption of any new rights for individual PAGA litigants. Nonetheless, those authorities overwhelmingly reject the argument advanced by Petitioner, and support the conclusion that there is no right for a PAGA litigant to intervene, object, or move to set aside a judgment in an overlapping action.

The earliest case to address this issue was *Callahan v. Brookdale Senior Living Cmtys.*, 2020 U.S. Dist. LEXIS 153378 (C.D. Cal. May 20, 2020). In *Callahan*, employees of a senior living facility brought and settled PAGA claims against their employer. *Id.* at 2-3. Plaintiffs in two separate PAGA actions that brought overlapping claims against the same employer sought intervention, which the court denied. The *Callahan* court

explained that the proposed intervenors, at best, represented the same interest as the PAGA litigant already before the court. The court saw no value in having multiple voices representing the same real party in interest. *Id.* at 15-16.

In *Chalian v. CVS Pharmacy, Inc.*, 2020 U.S. Dist. LEXIS 163427, at 3 (C.D. Cal. July 30, 2020), employees of a large drugstore chain brought and settled PAGA claims for wage and hour violations. *Id.* at 3. A second set of plaintiffs who had also brought a PAGA action alleging the same claims against the same defendants sought intervention and objected to the settlement. *Id.* at 4. The court denied intervention, reasoning that PAGA litigants do not have a significant protectable interest in the claims being settled by an overlapping action. "Here, the *Hyams* Plaintiffs do not have a significant protectible interest in the PAGA claims because an aggrieved employee can pursue those claims only as a proxy for the state." *Id.* at 7, *citing to Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009).

Chalian is notable because it uses the exact same language that Olson advances here, but reaches the opposite conclusion. The *Chalian* court agreed that a PAGA representative serves as a "proxy" for the State, but correctly concluded that being a proxy is not the same thing as sharing identity, and nothing about PAGA imports to the proxy the same standing as the principal. *Chalian*, 2020 U.S. Dist. LEXIS 163427 at 7.

In *Uribe v. Crown Building Maintenance Co.*, 70 Cal. App. 5th 986 (2021), a plaintiff who successfully intervened in a case involving both PAGA and class claims sought to appeal approval of a settlement in the case to which she was a party. *Id.* at 996. When proponents of the settlement questioned the intervenor's standing to appeal, the *Uribe* court concluded that a litigant who had successfully intervened in a case with PAGA and class claims was a party, and had standing to appeal a judgment. *Id.* at 1002.

The *Uribe* court took pains to harmonize with the decision below in this case, quoting the *Turrieta* holding that PAGA "does not require a trial court to grant mandatory or permissive intervention." *Id* at 1005. *Uribe* explains that, although PAGA does not mandate intervention, a successful intervenor would have standing, where someone like Olson would not: "*Turrieta* is distinguishable because the trial court here granted Garibay's motion for leave to file a complaint in intervention." *Id.*

In *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56 (2021), another court confirmed that the PAGA does not provide any right to attack a settlement in an overlapping PAGA action. *Id.* at 79. *Moniz* was one of two PAGA actions against a staffing company that brought overlapping claims with regard to purportedly unlawful provisions in an employment agreement. The other action was brought by an employee named Correa. The parties in *Moniz* reached a settlement that would also extinguish

claims in the *Correa* action. *Id.* at 67. Correa filed objections, but the trial court refused to hear oral argument from Correa because there was no statutory basis for her to object. *Id.* at 68.

The Court of Appeal upheld the trial court's decision: "PAGA does not provide that aggrieved employees must be heard on the approval of PAGA settlements . . . we will not read a requirement into a statute that does not appear therein." *Moniz*, 72 Cal. App. 5th at 79.

The parties in *Moniz* neglected to brief the question of whether the objector in that case was "aggrieved" for purposes of appellate standing. *Moniz*, 72 Cal. App. 5th at 72. Although it lacked any briefing on the topic, the *Moniz* court nonetheless opined: "Although respondents do not argue in their briefing that Correa lacks standing to appeal because she is not "aggrieved" by the judgment confirming the settlement, we address this issue because a party must be aggrieved to appeal." *Id.*

The *Moniz* court looked specifically at *Turrieta*, and began with the obvious point that no PAGA litigant has any kind of interest in a PAGA action: "the *Turrieta* appellants indisputably did not own a personal claim for PAGA civil penalties (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 547, fn. 4)." *Moniz*, 72 Cal. App. 5th at 73.

Nonetheless, the *Moniz* court took issue with the instant case: "*Turrieta* appears to have discounted their role as designated proxies of the state." *Moniz*, 72 Cal. App. 5th at 73. Critically, the *Moniz* opinion never examines the scope of activities that a PAGA litigant is authorized to perform and offers no mention of the legislative history. Because *Moniz* did not benefit from briefing on this issue and because its holding is contrary to the language and history of the statute, the conclusion reached by the Court of Appeal in this case below presents the better reasoned conclusion.

After *Moniz,* two federal court opinions have addressed this issue. Both of them reject the reasoning in *Moniz* and embrace the conclusion of the Court of Appeal in the instant case.

In *Feltzs v. Cox Communs. Cal.*, 2022 U.S. Dist. LEXIS 25626 (Jan. 21, 2022), a cable technician brought an action against his employer for multiple Labor Code violations, including PAGA claims. *Id.* at 2. A second technician, who also had a pending PAGA action against Cox, objected to the settlement and sought to intervene. *Id.* at 4-5. The court denied intervention, holding the would-be intervenor "has not established that he has shown a protectable interest to allow for intervention." *Id.* at 11.

The would-be intervenor in *Feltzs* made the same argument that Olson makes here – that he had "a significant protectable interest in bringing overlapping PAGA claims." *Feltzs*, 2022 U.S. Dist. LEXIS 25626 at 11. The *Feltzs* court reviewed the appellate rulings in *Turrieta*, *Uribe*, and *Moniz* (*Id.* at 13-15), and concluded "The Court agrees with the rationale of the *Turrieta* court that a plaintiff in a parallel PAGA action lacks a protectable interest to support intervention in the settlement of a separate PAGA action with overlapping claims. *See* 69 Cal. App. 5th at 977. Given the California Supreme Court's body of precedent regarding PAGA, the Court is persuaded that this accurately reflects what the California Supreme Court will likely hold on review." *Id.* at 18. The *Feltz* court identified multiple reasons for adopting the *Turrieta* holding:

PAGA claims belong to the State. "The California Supreme Court has repeatedly held that the relevant interest in a PAGA action belongs to the state, not the individual." *Feltzs*, 2022 U.S. Dist. LEXIS 25626 at 16; *citing to* *Kim*, 9 Cal. 5th at 81; *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348, 386 (2014); and *Arias*, 46 Cal. 4th at 986.

PAGA releases do not affect rights of individual employees. "In addition to emphasizing that 'absent employees do not own a personal claim for PAGA civil penalties,' *Williams*, 3 Cal. 5th at 547 n.4, the California Supreme Court has

consistently held that the resolution of the state's claims in a PAGA representative action does not affect any individual claims." *Feltzs*, 2022 U.S. Dist. LEXIS 25626 at 17*; citing to Kim*, 9 Cal. 5th at 81 ("the civil penalties a PAGA plaintiff may recover on the state's behalf are distinct from the statutory damages or penalties that may be available to employees suing for individual violations").

Existing law provides adequate safeguards. "Under PAGA, the LWDA has several opportunities to protect the state's interests. Plaintiffs must provide notice of the alleged violations to the LWDA at least sixty days prior to commencing a civil action . . . Plaintiffs also must provide notice of the lawsuit when it is filed, and notice of the settlement at the time it is submitted to the court for approval." *Feltzs*, 2022 U.S. Dist. LEXIS 25626 at 16-17 (internal citation omitted). "There is also the additional safeguard that the settlement must submitted to the court for approval, see id. §2699(l)(2), which requires evaluation of the PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." *Id.* at 17; *citing to Moniz*, 72 Cal. App. 5th at 77.

Multiple PAGA litigants do not assist the approval process. The *Feltzs* court noted the basic logical problem with Olson's position that every PAGA litigant must be considered the voice of the State. "In light of the multiple opportunities for the LWDA to protect the state's interest, there is no rationale for treating Gil's action as superior to Feltzs', or for assuming that Gil's view of the settlement is more indicative of the state's interest." *Feltzs*, 2022 U.S. Dist. LEXIS 25626 at 17.

In light of the foregoing, the *Feltzs* court concluded: "The Court agrees with the rationale of the *Turrieta* court that a plaintiff in a parallel PAGA action lacks a protectable interest to support intervention in the settlement of a separate PAGA action with overlapping claims. See 69 Cal. App. 5th at 977. Given the California Supreme Court's body of precedent regarding PAGA, the Court is persuaded that this accurately reflects what the California Supreme Court will likely hold on review." *Feltzs*, 2022 U.S. Dist. LEXIS 25626 at 18.

The most recent opinion on this topic comes from the Ninth Circuit. In *Saucillo v. Peck*, 25 F. 4th 1118 (9th Cir. Feb. 11, 2022), employees of a transportation company brought and settled a lawsuit including PAGA claims. Another of the defendant's employees who had also brought a PAGA action, objected and appealed the trial court's order approving the settlement. *Id.* at 5. The Ninth Circuit dismissed the appeal for

lack of standing. "We hold that Peck may not appeal the PAGA settlement because he is not a party to the underlying PAGA action, and so we dismiss his appeal." *Id.*

In reaching its conclusion, the *Saucillo* court rejected the argument that Olson makes here. "Finally, Peck argues that his separately filed PAGA action gives him standing to object and to appeal in Saucillo's and Rudsell's case. But maintaining a parallel action does not change the fact that Peck is not a party to the PAGA lawsuit brought by Saucillo and Rudsell." *Saucillo*, 25 F. 4th 1118 at 19; *citing to Kim*, 9 Cal. 5th at 86 ("a PAGA claim is an enforcement action between the LWDA and the employer, with the PAGA plaintiff acting on behalf of the government").

The *Saucillo* court also rejected the individual standing arguments that Olson raised below but has largely abandoned here. "Peck argues that he may appeal because he may be entitled to some part of the PAGA award as an aggrieved employee. This argument also fails. The fact that Peck may ultimately receive a portion of the PAGA settlement does not make him a party to the lawsuit." *Saucillo*, 25 F. 4th 1118 at 16. "Moreover, a PAGA action has "no individual component . . .The aggrieved employees' 25% portion of the PAGA proceeds "is not restitution for wrongs done to members of the class" but is instead "an incentive to perform a service to the state." *Id.* at 17; citing *Kim*, 459 P.3d at 1131; and *Canela*, 971 F.3d at 852.

D. The Public Interest Weighs Against PAGA Litigants Contesting Settlements in Overlapping Cases

The practical effect of each right this Court asks the parties to brief is the ability of a single litigant to delay a settlement by filing an appeal. The problem, as it so often does, stems from money. The PAGA provides for an award of attorney fees where counsel are successful in recovering penalties for the State. Labor Code §2699(g)(1). Once there is a settlement, however, the fee award becomes an incentive for attorneys seeking a portion of the award. Counsel seeking a portion of the fee award file an objection and then an appeal. With years of delay on the horizon, the rent-seeking attorney then offers to dismiss the appeal in exchange for a share of the attorney fees.

In *Hernandez v. Restoration Hardware, Inc.*, 4 Cal. 5th 260, 272 (2018), this Court described the problem: "meritless objections 'can disrupt settlements by requiring class counsel to expend resources fighting appeals, and, more importantly, delaying the point at which settlements become final.' These same objectors who appear and object to proceedings in different class actions - also known as 'professional objectors' - are thought to harm the class members whose interests they claim to protect." *Id.*

Other courts have identified this problem as well. "In some circumstances objectors may use an appeal as a means of leveraging compensation for themselves or their counsel. The detriment to class members can be substantial." *Vaughn v. Am. Honda Motor Co.*, 507 F.3d 295, 300 (5th Cir. 2007).

In *Hernandez,* this Court pointed to a law review article by Professor Brian Fitzpatrick that examined the problem in some depth. "Not only does the appeal delay final resolution of the settlement, but, more importantly for the blackmail problem, it also delays the point at which class counsel can receive their fee awards, which are contingent upon the settlement. As class counsel are eager to receive these fees, they are willing to pay objectors out of their own pockets to drop the appeals. This, it is thought, has led class members to file wholly frivolous objections and appeals for no other reason than to induce these side payments from class counsel." Brian T. Fitzpatrick, *The End of Objector Blackmail?*, 62 Vand. L. Rev. 1623, 1624.

This case is typical of the "professional objector" hazard identified in *Hernandez.* Olson's counsel in this case, Jahan Sagafi, is experienced in representing PAGA objectors. The same counsel, for example, represented the objectors in *Moniz*, 72 Cal. App. 5th 56. Olson's counsel also represented an unsuccessful PAGA objector in *Harvey v. Morgan Stanley Smith Barney LLC*, 2020 U.S. Dist. LEXIS 37580 (N.D. Cal. Mar. 3, 2020).

After filing his appeal in this case, Olson's counsel engaged in multiple phone conferences with Turrieta's counsel in which the parties bargained about the amount of attorney fees that would need to be allocated to Olson's counsel in order for Olson to withdraw the appeal. MJN Exh. 5. This appeal is only pending because the parties could not agree on the price to be paid to Olson's counsel in order to drop the appeal. *Id.*

This does not mean that all objections are meritless, but it does mean that the broader statutory context presents a need to balance the careful review of settlements with the economic incentives that drive individual PAGA litigants. In litigation, the interests of the litigant, counsel, and State are all aligned: "All stand to gain from proving as convincingly as possible as many Labor Code violations as the evidence will sustain, thereby maximizing the recovery for aggrieved employees as well as any potential attorney fee award." *Williams*, 3 Cal. 5th at 549. Once there is a settlement, that alignment ends. With settlement pending, PAGA attorneys are incentivized to object and demand attorney fees as the price for withdrawing an appeal.

In the case of the PAGA, the legislature avoided this problem by drafting Labor Code §2699(l)(2) to require that the LWDA, and not litigants with conflicting incentives, review each settlement. The legislature's choice serves the public interest and should not be disturbed.

E. The PAGA Provides Multiple Safeguards to Ensure Fair Settlements

Olson argues that all PAGA litigants must be deputized to review settlements to ensure that they are fair. But the law actually provides a robust system to do that already.

Notice to the LWDA. Labor Code §2699(l)(2) provides that the real party in interest, the State (via the LWDA), receives notice of every settlement. Courts have noted that this process empowers the State to directly protect its own interests. *See, e.g., Feltzs*, 2022 U.S. Dist. LEXIS 25626 at 17.

The record shows that the State has provided extensive commentary on PAGA settlements where it had concerns. *See, e.g.*, *O'Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110, 1131-1134 (N.D. Cal. 2016); *Tabola v. Uber Techs., Inc.*[2] Similarly, in *Moniz*, "The LWDA filed comments and objections to the settlement. . .On October 16, 2019, the court held a settlement approval hearing. The LWDA appeared and argued." *Moniz*, 72 Cal. App. 5th at 67.

Coordination. A PAGA litigant action can bring a petition for coordination of different cases involving similar claims. Cal. Code Civ. Proc. §404. In this case, Olson sought coordination, but the court denied Olson's petition. Opinion at 18-19; Petition at 4.

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[2] Exhibit 6 to Motion for Judicial Notice filed by Olson on December 17, 2020 in *Turrieta v. Lyft*, Court of Appeal Case No. B304701; January 25, 2021 Order granting judicial notice.

Olson chose not to challenge that denial, but on February 28, 2022, he brought another motion seeking to coordinate the instant case. By these actions, Olson shows that the door for coordination is always open, and there is no need to bestow a set of rights that would bypass the coordination procedures and effectively allow PAGA litigants to force themselves into other cases.

Informal Consideration of Objections. A trial court may also consider the objections of a non-party without granting formal intervention. *See also* *Coalition for Fair Rent v. Abdelnour*, 107 Cal. App. 3d 97, 115-116 (1980) (trial courts are authorized to permit participation by would-be intervenors without formally granting intervention). Here below, the trial court refused to hear an untimely application to intervene, but considered and rejected every one of Olson's arguments. RT at 13:7-17:15; 303:6-28; Opinion at 10-11, 20 n.13; 3 AA 665-673.

Allowing these decisions to be made by judges who are familiar with the facts of each case is strongly consistent with our existing jurisprudence on settlements. "[G]reat weight is accorded the trial judge's views. The trial judge is exposed to the litigants, and their strategies, positions and proofs. . .Simply stated, he is on the firing line and can evaluate the action accordingly." *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1145 (2000).

F. Agency Theory Bestows No Rights Upon PAGA Litigants in Overlapping Cases

Olson argues that, because Section 2699 authorizes him to file an action to recover civil penalties, he is an agent of the State and thereby has standing in every instance for which the State would have standing with regard to the same claims. But that is not how agency works. In *Meadow v. Superior Court of Los Angeles County*, 59 Cal. 2d 610 (1963), for instance, the court held that an attorney had no right to intervene in his client's action in order to secure payment of attorney fees belonging to the client. *Id.* at 612. There was no dispute that the attorney was acting as an agent for the client and, the *Meadow* attorney even had a contractual right to payment of the fees. *Id.* But agency is different from identity, and even where an agent stands to benefit from proceedings, he or she may act on behalf of the principal only as authorized. *Id.* at 615-616. *See also Bandy v. Mt. Diablo Unified Sch. Dist*, 56 Cal. App. 3d 230, 234-235 (1976).

Olson attempts to draw an analogy to the interest conveyed upon a *qui tam* relator. This argument is misguided. Although this Court has previously described PAGA as a "type of *qui tam* action," the *qui tam* form of action is ancient and varied. Indeed, this Court noted that the form existed "dating back to colonial times." The cases on which Olson relies all point to modern *qui tam* statutes that provide "the *qui tam* plaintiff receives a sizable

bounty if he prevails in the action." OBM p. 35 citing *United States ex rel. Kelly v. Boeing Co.*, 9 F.3d 743, 749 (1993). But the PAGA lacks this element. The PAGA litigant receives no bounty and has no interest at all in the money he seeks to recover. *Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court*, 46 Cal. 4th 993, 1003 (2009).

The more deeply one reads Petitioner's *qui tam* argument, the more strongly it counsels rejection of Petitioner's position. For instance, in *Kelly*, the court observes that a "qui tam plaintiff is only assigned *part* of the government's claim . . . consistent with the rule than an assignment may be limited in its effect." *Kelly*, 9 F.3d at 748 (emphasis supplied).

Kelly also highlighted the stark difference between a *qui tam* relator and "independent counsel" specifically appointed by the Department of Justice to prosecute matters on behalf of the government. *Kelly*, 9 F.3d at 751-752. An independent counsel appointed under 28 U.S.C. §594 is imbued with "full power and independent authority" of the agency. *Id.* at 752. A *qui tam* relator, by contrast, is authorized to perform a narrow set of statutorily prescribed functions. *Id.* at 752-753. Olson's arguments might apply to an independent counsel, but they do not apply to the limited scope of a PAGA litigant.

Olson contends that participation in PAGA litigation by non-parties is necessary because there is a potential for "private

enforcer misuse" under the PAGA. OBM p. 53, n. 15, *citing to* Andrew Elmore, *The State Qui Tam to Enforce Employment Law*, 69 DePaul L. Rev. 357 (2020). But the article to which Olson cites does not suggest that the solution to "private enforcer misuse" is to permit additional "private enforcers" to derail settlements. Rather, the study suggests that the "[m]ost important" safeguard in aligning private enforcement and public agency interests in *qui tam* enforcement "is the right by state agencies to intervene in qui tam claims in cases of private enforcer misuse." *Id.* at 360-361. Elmore notes that that is exactly what occurs under the PAGA. "Like standard agency actions, LWDA evaluates . . . PAGA settlements [and has] raised concerns about settlement proposals." *Id.* at 401.

Olson would address the risk of PAGA litigants being improperly incentivized to settle quickly by forcing them to battle other PAGA litigants who are improperly incentivized to object to every settlement. Olson's solution is a bad idea. The Elmore article notes that "qui tam statutes must be cautions in extending class action procedures [to PAGA claims] . . . Extending full due process rights to these nonparties by statute may convert qui tam into class claims." Elmore, *The State Qui Tam to Enforce Employment Law* at 361. Such a result would undo a decade of this Court's jurisprudence, beginning with *Arias*, distinguishing the PAGA from class actions.

G. Petitioner's Position Is Inconsistent with Existing PAGA Jurisprudence

Existing PAGA jurisprudence is based on the fact that non-party employees like Olson do not have a right to notice or opportunity to be heard on a settlement in another case. For example, in assessing the scope of res judicata associated with a PAGA judgment, this Court has held that "nonparty employees, because they were not given notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to remedies other than civil penalties." *Arias v. Superior Court*, 46 Cal. 4th 969, 987 (2009). As a result, "unlike class action judgments that preclude all claims the class could have brought under traditional res judicata principles, employees retain all rights to pursue or recover other remedies available under state or federal law." *Canela v. Costco Wholesale Corp.*, 965 F.3d 694, 696 (9th Cir. 2020).

Bestowing a right to intervene or object upon a PAGA litigant would blur the distinction between PAGA and class action process. If litigants like Olson have a right to appear and be heard with regard to settlements in overlapping actions, how can this Court continue to distinguish a PAGA litigant from a class member for purposes of res judicata?

H. Petitioner Has Not Established the State's Right to Act in PAGA Cases

Olson claims that he has standing to participate in Turrieta's case because the State has an interest in PAGA claims and Petitioner is a proxy of the State. But Olson never attempts to establish that the State itself has the right to perform any of the actions that Petitioner claims as a proxy. The LWDA clearly has an ability to comment on PAGA settlements pending before trial courts, but that is different from having a right to formally intervene, object, or move to set aside a judgment.

There are reasons to conclude that the State, and therefore its PAGA proxies, does not have any of the rights that Olson would claim for himself. If this is true, PAGA litigants are limited, at most, to doing what the LWDA does now: providing nonbinding input to the trial court. *See*, *e.g.*, *O'Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110, 1131-1134 (N.D. Cal. 2016).

The PAGA provides that the State may take up a claim within 60 days of being provided notice. Labor Code §2699.3(a)(2)(A). Following this period, the employee may file his or her PAGA action, and the PAGA provides no mechanism by which the LWDA may act to formally involve itself in the action. This stands in direct contrast to California's False Claims Act ("FCA") (governing state *qui tam* actions), which provides a

procedure for intervention by the State *even after* the State initially declines to prosecute the claims during the initial notice period. Cal. Gov. Code §12652(f)(2)(A).

Because the legislature has contemplated State intervention in other *qui tam* contexts, this Court must conclude it intended to omit such an intervention procedure from the PAGA. "We assume the legislature understood what it was saying and intended what it said in the absence of compelling countervailing considerations." *Poway Unified School Dist. v. Chow*, 39 Cal. App. 4th 1478, 1483 (1995).

Labor Code §2699(l)(2) provides a mechanism for the LWDA to receive notice and comment on PAGA settlements. But there is no reason to believe that this permits intervention, formal objections, or motions to set aside a judgment.

Olson may argue that the State has a pecuniary interest that could supply standing at least to intervene or move to set aside a judgment. But the PAGA is a law-enforcement action. *Kim*, 9 Cal. 5th 73 at 86. The penalties available under the PAGA are not anyone's property, because they are "not restitution for wrongs." *Saucillo*, 25 F. 4th 1118 at 17. Instead, they are fines that exist to "to punish the wrongdoer and to deter future misconduct." *Kim*, 9 Cal. 5th 73 at 86. As such, there is no entity with a direct interest in PAGA as property. Instead, PAGA is a statutory mechanism and the rights of entities are controlled by

the language of the statute. Looking at that language, and comparing it with California's *qui tam* law, the only rights of the State, once a PAGA action is properly filed, is to receive notice of settlements and comment on them. There is no entity with the kind of interest that would create a "right" to intervene object or move to set aside a judgment in a PAGA action.

This leaves Olson with a dilemma. If the State has a right to intervene, object, or move to set aside judgment, there is no need for a proxy to effect these actions as the State receives notice of settlements and can act on its own behalf. Alternatively, if the State has no power beyond the nonbinding commentary it has traditionally provided for PAGA settlements, there is no way for a private PAGA litigant to do more.

V. THE PAGA DOES NOT CONFER A RIGHT TO INTERVENE IN OVERLAPPING ACTIONS

This issue begins with a basic question. Intervention is for non-parties. How can a PAGA litigant intervene on behalf of the State when the State is already the real party in interest represented by the existing PAGA litigant? Even if Olson answered this question (he has not), there are still multiple reasons that there cannot be a right to intervene:

A. Notice to the State Precludes Proxy Intervention

In order to intervene, any litigant must establish that the existing parties had failed to protect his or her interest. *Siena Court Homeowners Assn. v. Green Valley Corp.*, 164 Cal. App. 4th 1416, 1423 (2008); Cal. Code of Civ. Proc. §387(b). In this case, the only interest belongs to the State. *Iskanian*, 59 Cal. 4th at 386. The PAGA requires that the State receive notice of any settlement. Labor Code §2699(l)(2). So how can a PAGA litigant argue the State's interests are not adequately protected when the State itself has notice and opportunity to be heard?

Olson argues that the LWDA is underfunded to perform its function under Labor Code §2699(l)(2). But the legislature's balancing of priorities and funding is not within the remit of this Court. "[E]xclude[d] from judicial review [are] those controversies which revolve around policy choices and value determinations constitutionally committed for resolution to the legislative and executive branches." *Schabarum v. California Legislature*, 60 Cal. App. 4th 1205, 1213 (1998) (internal citations omitted).

In this case, the legislature has even provided funding. "The Budget Change Proposal that this proposal accompanies establishes a small PAGA unit within the LWDA to perform the oversight work contemplated by this bill." MJN Exh. 3 at p. 2. The State's PAGA unit runs on about $1.5 million per year. MJN Exh. 3 p. 5. The instant settlement would provide more

than double that amount to the State. For Petitioner to argue that the State lacks the funding to review settlements, while simultaneously obstructing a payment that would dramatically increase the State's funding to do exactly that, is ironic at best.

Olson asks rhetorically "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?" Olson's position ignores the fact that the LWDA *does* receive notice and *can* appear to offer commentary. Labor Code §2699(l)(2). There is no role for a proxy.

B. The PAGA Does Not Convey Any Unconditional Right to Intervene

The only law that addresses an absolute right to intervene is Cal. Code of Civ. Proc. §387(d)(1)(A). That provision provides for intervention where "a provision of law confers an unconditional right to intervene." The PAGA provides no such provision.

Intervention under the other provisions of Section 387 requires the moving party to establish multiple factors including that her application is timely, and that her interest is not adequately represented. In weighing these factors, "a trial court has broad discretion in determining whether to permit intervention." *City of Malibu v. California Coastal Com.*, 128 Cal. App. 4th 897, 902 (2005).

C. A PAGA Litigant Does Not Have a Direct and Immediate Interest Supporting Intervention

Although the question articulated by this Court refers specifically to a "right" to intervene, Respondent believes that this Court may intend the parties to address the narrower question of whether a PAGA litigant under these circumstances has the kind of "direct and immediate interest" that is a necessary (but not sufficient) element of both mandatory and permissive intervention. *See*, *e.g.*, *Siena Court Homeowners Assn. v. Green Valley Corp.*, 164 Cal. App. 4th 1416, 1423 (2008).

Here again, the answer is no. The PAGA bestows no interest at all on any employee. *Amalgamated Transit*, 46 Cal. 4th at 1003. This Court has reiterated that basic rule "[A]bsent employees do not own a personal claim for PAGA civil penalties . . . whatever personal claims the absent employees might have for relief are not at stake." *Williams v. Superior Court*, 3 Cal. 5th 531, 547 n.4 (2017). Olson argues that he possesses the same direct and immediate interest as the State. But there is no statute to suggest that he does. Labor Code §2699(l)(2) provides strong evidence that the State has not authorized any PAGA litigant to participate with regard to any settlement but her own. Legislative history supports this conclusion. MJN Exh. 3.

Olson cites *Knight v. Alefosio*, 158 Cal. App. 3d 716, 721 (1984) for the proposition that Olson's interest as the State's proxy "is harmed by the direct legal operation and effect of the judgment." OBM p. 46. Incorrect. The *Knight* court actually upheld denial of intervention for an insurer that wanted to claim a subrogation interest. *Id.* at 723.

VI. THE PAGA DOES NOT CONFER A RIGHT TO OBJECT TO SETTLEMENTS IN OVERLAPPING ACTIONS

Even *Moniz*, on which Petitioner relies extensively, could identify no reason that PAGA litigants might have a right to object to a settlement in a related action that purports to settle overlapping claims. The plain language of Labor Code §2699(l)(2) and the fact that language omits any reference to other PAGA litigants is dispositive. *Moniz*, 72 Cal. App. 5th 56, 79; *citing to Scottsdale Indemnity Co. v. National Continental Ins. Co.*, 229 Cal. App. 4th 1166, 1172 (2014) (in construing statutes, courts generally will not add words to the statutory language). Put simply, there is no way to find a right for overlapping PAGA litigants to object when the law does not even provide for them to receive notice of settlements.

The textual analysis in *Moniz* is informative beyond the question of objection. Olson asks this Court to infer from the

PAGA a legislative intent to bestow the power to intervene and seek to overturn judgments in related PAGA actions. But how can we make such an inference once we conclude that the plain language of the statute does not even allow a PAGA representative from a related action to object? By what logic would the law deny Olson the right to object, but grant him the power to derail proceedings for years by appealing a judgment?

Moniz is not alone. In *Harvey v. Morgan Stanley*, 2020 U.S. Dist. LEXIS 37580, Olson's counsel represented another PAGA objector who followed the exact same pattern: seeking intervention in a related action, filing objections, and ultimately appealing a PAGA settlement. *Id.* at 32-33. The *Harvey* objector used the exact same language that Olson uses here to justify her objection. "Chen submits objections to the PAGA-portion of this settlement in her representative proxy capacity on behalf of the State of California." Having denied intervention, the *Harvey* court also found no standing to object. *Id.* The *Harvey* court began by explaining that "under applicable case law, PAGA aggrieved employees have no ability to exclude themselves or object to the Settlement." *Id.* at 32.

Harvey considered the objector's argument that a PAGA litigant could have standing as a "proxy" for the state and further considered the argument that standing to object to be derived from the claim that the objector would suffer prejudice as an

agent of the State. *Id.* The *Harvey* court then did the exact same thing the trial court did in this case: after holding that there was no standing to object, the court exercised its discretion to nonetheless consider and overrule each of the objector's arguments. *Id.* at 33-34.

VII. THE PAGA DOES NOT CONFER A RIGHT TO MOVE TO SET ASIDE JUDGMENTS IN OVERLAPPING ACTIONS

A. PAGA Litigants Lack the Required Interest

The same lack of an immediate and substantial pecuniary interest that precludes intervention also precludes standing to bring a motion to vacate. Olson cites *Hernandez*, 4 Cal. 5th at 267 to claim that he became a party by moving to vacate under Cal. Code of Civ. Proc. §663, but only "one who is *legally 'aggrieved'* by a judgment may become a party of record . . . by moving to vacate the judgment." *County of Alameda v. Carleson*, 5 Cal. 3d 730, 736-737 (1971) (emphasis supplied). "A party is aggrieved only if its rights or interests are injuriously affected by the judgment." *Sabi v. Sterling*, 183 Cal. App. 4th 916, 947 (2010). The interest "must be immediate, pecuniary, and substantial and not nominal or a remote consequence of the judgment." *Carleson*, 5 Cal. 3d at 737 (1971). "Injurious effect *on another party* is insufficient." *Conservatorship of Gregory D.*, 214 Cal. App. 4th 62, 67 (2013).

The rule described in *Gregory* is especially relevant here. Olson argues that he maintains a kind of "agent" or "proxy" relationship with the State. The principal of an agent or proxy is still a third party, and the law is explicit that injurious effect *on another party* is insufficient. *Gregory D.*, 214 Cal. App. 4th at 67.

Olson's claim that he can be injured as a proxy runs afoul of the structure of the PAGA. As one federal court explained, "Unnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim. There is no indication that the unnamed plaintiffs can contest a settlement, if any, reached between the parties." *Ochoa-Hernandez v. CJADERS Foods, Inc.*, 2010 U.S. Dist. LEXIS 32774 at 13 (N.D. Cal. Apr. 2, 2010). Even if one finds that Section 2699(a) creates a proxy relationship for the purpose of initiating a civil action to recover penalties, the plain language of Section 2699(l)(2) prohibits a conclusion that proxy extends to challenging settlements in other cases.

B. Section 663 Cannot Bestow Standing in This Context

Olson's argument on this point fails because he was not aggrieved by the underlying judgment. However, Olson's reliance on *Hernandez*, 4 Cal. 5th at 267 to claim that he became a party by moving to vacate under Cal. Code of Civ. Proc. §663 presents another issue. Olson reads *Hernandez* as allowing a litigant to attain standing to appeal by filing any motion under Section 663,

even if that motion does not meet any requirements of Section 663 or seek any relief permitted by statute. Olson is incorrect.

The issue arises because of two limitations on the statute. First, under Section 663, a court cannot reconsider any of the underlying factual findings. "[O]n a motion under sections 663 and 663a of the Code of Civil Procedure no facts can be considered except those which are embraced in the findings of the court." *Westervelt v. McCullough* 68 Cal. App. 198, 210 (1924). *See also*, *Simmons v. Dryer*, 216 Cal. App. 2d 733, 739 (1963).

Second, Section 663 may not be used to continue litigation. A judgment "may, upon motion of the party aggrieved, be set aside and vacated . . . **and another and different judgment entered.**" Cal. Code of Civ. Proc. §663. "[T]he only order within the power of the court is one setting aside the judgment and directing **as part of the same order** the entry of another judgment." *Estate of Kerr*, 127 Cal. App. 2d 521, 527-528 (1954) (emphasis supplied); *citing to Dolan v. Superior Court*, 47 Cal. App. 235, 236 (1920). "The statute does not contemplate merely the setting aside of the judgment, as does a motion for new trial or a motion for relief from default under C.C.P. 473. It expressly provides for *vacating the judgment and entering of another judgment*. Hence, an order of vacation, without directing entry of

a new judgment, is void." *Ramirez v. Moran*, 201 Cal. App. 3d 431, 435 (1988); *see also, 20th Century Ins. Co. v. Superior Court*, 90 Cal. App. 4th 1247, 1260 (2001).

But the only relief Olson sought was forbidden under Section 663. First, Olson asked that the court reconsider factual finding that the settlement was "fair, adequate and reasonable." 3 AA 545-549. Second, Olson asked that the court "vacate the judgment and enter a different judgment or order denying approval of the Settlement." 3 AA 534:16-18. But there can be no judgment denying settlement approval; judgment must end litigation. Cal. Code of Civ. Proc. §577. Olson sought an order continuing litigation.

The fact that Olson did not seek any relief that was permitted under Section 663 should mean that he cannot gain standing to appeal by virtue of that motion. A motion to vacate the judgment "cannot be considered as one made under [Section 663], as no other different judgment was substituted, nor was a request made [therefor]." *Bell v. American States Water Service Co.*, 10 Cal. App. 2d 604, 606 (1935).

In *Hernandez*, this Court was addressing a class member who already had a clear pecuniary interest. *Hernandez*, 4 Cal. 5th at 264-265. PAGA claims are different as the PAGA litigant has no personal interest. Holding that such a litigant can gain standing to appeal simply by filing a motion with a reference to

"Section 663" in its caption when that motion seeks no relief permissible under that statute is unsustainable.

Respondent submits that this Court should clarify its holding in *Hernandez* to specify that, where a party is aggrieved (Olson was not), a valid motion seeking relief permitted under Section 663 is required to establish standing to appeal.

VIII. PETITIONER'S ATTACKS ON THE TRIAL COURT'S FACTUAL FINDINGS FAIL

Petitioner devotes substantial briefing to issues for which this Court has not granted review.

A. Notice of Settlement

Olson complains because the settlement included an amended complaint setting forth claims arising from the same alleged misclassification of drivers, but which had not been described as separate causes of action. Respondent gave notice of the amended complaint to the LWDA at the same time she filed and gave notice of her request for settlement approval. 1 AA 81 ¶29, 1 AA 123. According to Olson, Turrieta should have waited 65 days after notice of the new complaint. OBM p. 40, 57.

Olson waived this argument because he did not raise it until his final reply before the trial court. Opinion, p. 20 n. 14 ("This issue is therefore forfeited"). Olson never explains why he raises an argument that the Court of Appeal held he had forfeited

when this Court did not grant review of that ruling. Trial courts do not consider arguments not pled in the moving papers. *St. Mary v. Superior Court*, 223 Cal. App. 4th 762, 783 (2014). Because it was not properly presented below, the argument is new on appeal and cannot be considered. *Roger H. Proulx & Co. v. Crest-Liners, Inc.*, 98 Cal. App. 4th 182, 204 (2002). *See also, Brandwein v. Butler*, 218 Cal. App. 4th 1485, 1519 (2013).

Olson's argument also fails on the facts. The only order at issue in this appeal is denial of the motion to set aside judgment. 3 AA 711, 2 CT 483. That ruling came on February 28, 2020 – 81 days after Turrieta provided notice of the settlement, including the amendments to the complaint associated with the settlement. 1 AA 81 ¶29, 1 AA 121-123, 1 AA 90 ¶78, 1 AA 251-266.

The amended complaint was not necessary for settlement approval. "Taken together, the statutory scheme of the Private Attorneys General Act of 2004 (PAGA), Labor Code, § 2698 et seq., and the principles of preclusion allow, or authorize, a PAGA plaintiff to bind the state to a judgment through litigation that could extinguish PAGA claims that were not specifically listed in the PAGA notice where those claims involve the same primary right litigated." *Moniz*, 72 Cal. App. 5th at 83.

Olson also applies the wrong part of the statute. Labor Code §2699.3 provides that "a civil action . . . shall commence only after the following requirements have been met." In this

case, Respondent was not commencing a new action; she was amending an existing action as part of a settlement. Notice of settlements is governed by Section 2699(l)(2), and Respondent followed that process.

Even if there were a defect (there was not), it was cured, as more than 65 elapsed after notice to the LWDA before judgment became final. 3 AA 711. *See* *Garnett v. ADT, LLC*, 139 F. Supp. 3d 1121, 1127 (E.D. Cal. 2015); *Harris v. Vector Mktg*, 2010 U.S. Dist. LEXIS 5659, 7-8 (N.D. Cal. Jan. 5, 2010); *Hoang v. Vinh Phat Supermarket*, 2013 U.S. Dist. LEXIS 114475, 18-19 (E.D. Cal. Aug. 13, 2013).

B. Section 558 Allocation

Olson contends that the allocation of Labor Code §558 payments to aggrieved employees is contrary to *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175 (2019). But the parties accepted the mediator's proposal (including this allocation) on September 10, 2019, before the ruling in *ZB* issued September 12, 2019. 3 AA 650:10-13; 3 AA 658 ¶4. The law does not require parties to rewrite an agreement under the circumstances. *Leroy Land Dev. v. Tahoe Regional Planning Agency*, 939 F.2d 696, 698 (9th Cir. 1991); *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 595 (3d Cir. 2010).

Moreover, the settlement does not conflict with *ZB*. That case held that "only the Labor Commissioner [can] issue a citation that includes both a civil penalty and the same unpaid wages . . ." *ZB*, 8 Cal. 5th at 188. But no citation issued here. This is a voluntary agreement to resolve disputed claims. The settlement is limited to PAGA and does not waive any wage claims. **N**othing in *ZB* or any other authority forbids an agreement whereby an employer agrees to make payments beyond the statutory minimums to effect a settlement.

C. Value of Claims

Olson makes inaccurate statements regarding the value of the settled claims. For example, Olson he alleges that the September 18, 2019 enrollment of Assembly Bill 5, which codified aspects of the *Dynamex* decision, "unequivocally strengthens the aggrieved employees' misclassification claims against Lyft." OBM p. 16. Olson's statement is false because the settlement in this case only runs through December 31, 2019, and AB 5 did not become effective until January 1, 2020. The settlement at issue here was thus limited to the period before *Dynamex*, and the interregnum between *Dynamex* and the effective date for AB 5. During this limited period of time, multiple elements of the *Dynamex* rule, including retroactive application and application to claims outside the wage order, were uncertain.

D. Intervention

Even if Olson had a direct and immediate interest (he does not), intervention would fail. "On appeal, a judgment of the trial court is presumed to be correct . . . if a judgment is correct on any theory, the appellate court will affirm it regardless of the trial court's reasoning." *Cahill v. San Diego Gas & Electric Co.*, 194 Cal. App. 4th 939, 956 (2011). Here, the bases to deny intervention are manifold.

1. Olson's Request for Intervention was Untimely

Both permissive and mandatory intervention require an application be timely. "Timeliness is . . . one of the prerequisites for granting an application to intervene." *N. Cal. Psychiatric Soc'y v. City of Berkeley*, 178 Cal. App. 3d 90, 109 (1986). *See* Cal. Code of Civ. Proc. §387(d)(1)-(2). The trial court found that Olson was dilatory because he was aware of the instant case for many months without seeking intervention. 3 AA 657 ¶7. Olson's motion to intervene was filed more than 16 months after the *Turrieta* action began, more than eight months after Olson demonstrably knew of Turrieta's lawsuit, and six months after denial of his petition for coordination. 2 AA 282, 3 AA 658 ¶2.

"Timeliness [of intervention] is measured 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 Mortg., Inc.*, 27 Cal. App. 5th 1001, 1013 (2018). Olson argues that he only became aware that the State's interests were "not being adequately represented the day he learned of the settlement." OBM p. 43. But that is not true. The knowledge Olson had when he requested coordination is sufficient to start the clock running "[P]erfect knowledge of the particulars of the pending litigation is not essential to start the clock running; knowledge of a measurable risk to one's rights is enough." *R & G Mortgage Corp. v. Federal Home Loan Mortgage*, 584 F.3d 1, 8 (1st Cir. 2009); *see also Banco Popular de P.R. v. Greenblatt*, 964 F.2d 1227, 1231 (1st Cir. 1992) ("the law contemplates that a party must move to protect its interest no later than when it gains some actual knowledge that a measurable risk exists"). *See also, Noya v. A.W. Coulter Trucking*, 143 Cal. App. 4th 838, 842 (2006).

Olson cites to *Ziani Homeowners Assn. v. Brookfield Ziani LLC*, 243 Cal. App. 4th 274, 281(2015). But the cases embraced by *Ziani* include the rule that Respondent describes above:

> [An] intervener must act as soon as he knows or has reason to know that interests **might be adversely affected** by outcome of litigation. *Ziani*, 243 Cal. App. 4th at 281, *citing to California Dept. of Toxic Substances v. Commercial Realty*, 309 F.3d 1113, 1120 (9th Cir. 2002).

> [T]imeliness [is] determined from the time interveners **learn interest might be impaired**—not when suit filed or even when they learned of its existence. *Ziani*, 243 Cal. App. 4th at 281 *citing to Reich v. ABC/York-Estes Corp.* 64 F.3d 316, 321 (7th Cir. 1995).

Olson's next citation to *Smith v. L.A. Unified Sch. Dist.*, 830 F.3d 843, 854 (9th Cir. 2016) is error. In *Smith,* parents of children receiving special education services sought intervention in a long-standing litigation when the parties changed a consent decree ("Renegotiated Outcome 7") resulting in closure of a number of special education centers. *Id.* at 848-853. The parents moved for intervention promptly after learning of the closures. *Id.* at 851-852. The *Smith* court permitted intervention, but stated "Our holding that Renegotiated Outcome 7 constituted a "change in circumstances" is confined to the specific facts of this case." *Id.* at 856. Olson's citation to *Smith* without disclosing that *Smith* limited its opinion to the facts of that case is incorrect.

Olson's last citation on this point is another error. *Bustop v. Superior Court*, 69 Cal. App. 3d 66 (1977) involved intervention by a group of white parents who opposed a plan to desegregate schools by busing students. *Id.* at 68. The case dealt with intervention, but the language of Section 387 was different at the time of the *Bustop* ruling. The law at that time held that

intervention was allowed: "At any time before trial." *Bustop*, 69 Cal. App. 3d at 69. That is different from the modern statute which only permits intervention "upon timely application."

2. Existing Representation was Adequate

The trial court found the settlement to which Turrieta agreed "in all respects fair, reasonable and adequate, and complies with the policy goals of the PAGA." 2 AA 485, 499. The adequacy of the settlement, as the final resolution of the case, means that Turrieta's representation of the State's interest was, by definition, adequate.

Olson repeats the arguments that he made about the content and value of the settlement to the trial court. OBM p. 47-52. But the record shows that the trial court already considered and rejected each of Olson's arguments. 1 RT at 13:7-17:15; 2 RT 303:6-28, 316:27-317:4.; Opinion at 10-11, 20 n.13. This Court has not accepted review with regard to any of the trial court's factual findings.

Olson next points to an amicus brief that the LWDA filed in the appellate proceedings. OBM p. 47. But that brief was never before the trial court. The LWDA made no effort to comment prior to its amicus brief, which was filed 18 months after Respondent gave notice of the settlement and 16 months after the trial court approved the settlement. *See* May 27, 2021 Application to File Amicus Curiae Brief by LWDA; 1 AA 81 ¶29, 1 AA 123, 2 AA 481.The agency's position on the underlying

merits of the settlement cannot be considered in any appeal because it was never before the trial court. *People v. Hannon*, 5 Cal. App. 5th 94, 104 (2016) (refusing to consider evidence proffered by amicus curiae because "an appeal reviews the correctness of a judgment as of the time of its rendition, upon a record of matters which were before the trial court for its consideration.")

IX. CONCLUSION

Petitioner's position would create at best a Janus and at worst a Hydra of PAGA litigants raising conflicting positions all purportedly on behalf of the State. The conflict is driven not by the merit of settlements, but by the ability of any one litigant to impose years of delay by objecting and appealing any PAGA settlement. Giving individual litigants the right to impose these costs and then expecting that they will not use them for personal gain is unrealistic. Such rent-seeking is an economic consequence of any system in which a single actor can derail a collective proceeding.

But the PAGA never contemplated any of this. The statute authorizes employees to file civil actions against employers. It never authorizes any kind of conflict between PAGA litigants, and it never contemplates any involvement of a PAGA litigant in approval proceedings for a settlement in a separate case. The

statute excludes litigants in related PAGA actions from even receiving notice of settlements.

Olson claims that he is imbued with rights as a proxy of the State, but he never answers the question: a proxy to do what? The law, legislative history, and public policy all show that the State has taken this job of reviewing and commenting on settlements for itself. There is no delegation to private litigants.

Olson also fails to address the basic procedural basis for his position. Intervention and motions under Section 663 are exclusively available to non-parties. But the State was already the real party in interest in this case. If Olson is a proxy for the State and the State is already the real party in interest, how can Olson intervene or seek to set aside a judgment?

Olson's position would also diminish the ability of trial courts to manage these cases. Under the existing law, a trial court may decide, as the trial court did here, to allow argument and consider objections without formally allowing intervention. Courts also may also exercise judgment in ruling on coordination. Olson would strip all of this away and impose a top-down set of "rights" for PAGA litigants that denies trial courts their traditional authority to manage the litigation over which they preside. Such a change would be inconsistent with the language of the statute, the legislative history and the legislature's careful balancing of the competing public interests in this arena.

DATED: April 20, 2022

Respectfully submitted,

THE GRAVES FIRM

By: */s/ Allen Graves*

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CERTIFICATE OF WORD COUNT
CALIFORNIA RULES OF COURT,
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DATED: April 20, 2022

Respectfully submitted,
THE GRAVES FIRM

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PROOF OF SERVICE

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COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18, and not a party to the within action. My business address is 122 N. Baldwin Ave., Main Floor, Sierra Madre, CA 91024.

On April 20, 2022, I served the following document(s) described as:

RESPONDENT TINA TURRIETA'S ANSWER TO BRANDON OLSON'S PETITION FOR REVIEW

on the interested parties by transmitting a true and correct copy thereof addressed as follows:

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct and was executed on April 20, 2022, at Sierra Madre, California.

Justine Gray	*/s/Justine Gray*
Type or Print Name	Signature

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

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

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

4/20/2022

Date

/s/Allen Graves

Signature

Graves, Allen (204580)

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