S271721

IN THE SUPREME COURT OF CALIFORNIA

TINA TURRIETA,
Plaintiff and Respondent,

v.

LYFT, INC.,
Defendant and Respondent.

MILLION SEIFU et al.
Movants and Appellants.

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

ANSWER BRIEF ON THE MERITS

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ANSWER BRIEF ON THE MERITS

INTRODUCTION

This Court has held that actions under the Private Attorneys General Act (PAGA) belong to the State of California, which deputizes individuals as proxies to pursue the state's claims. Lyft, Inc. agreed to settle this PAGA action for a sum far larger than any prior settlement of its kind. The settlement yields millions of dollars for the state. Lyft reached its settlement with Tina Turrieta, the state's proxy, by accepting a mediator's proposal during arm's-length negotiations. The trial court approved the settlement after reviewing numerous objections, and the Court of Appeal affirmed.

Petitioner Brandon Olson continues to challenge the settlement, delaying the distribution of settlement funds. Olson is a deputized proxy for the state, just like Turrieta. Olson filed a PAGA action against Lyft, just like Turrieta. And Olson asserted claims that overlap with Turrieta's claims. Olson and Turrieta are indistinguishable for present purposes. Under this Court's precedent, each serves simply as a proxy for the state in litigating the state's claims.

Recognizing the identity of interests between Turrieta, Olson, and the state, the Court of Appeal held that Olson lacked a sufficient interest to intervene or to vacate the judgment that Turrieta obtained as the state's proxy. That decision was correct under this Court's decisions, which explain that the state is the real party in interest in a PAGA action. Proxies litigating on the state's behalf lack a personal interest in the claims. They also

lack authority to disrupt a settlement by invoking the state's interest, an interest that the existing PAGA plaintiff in the action already represents. This Court should affirm.

Olson's procedural arguments are meritless. He had no right to object to Lyft's settlement. The Legislature crafted a process for PAGA settlement approval that omits objections from other proxies pursuing overlapping actions. Olson also lacks a right to intervene on behalf of the state under Code of Civil Procedure section 387. The statute permits nonparties to intervene, but Olson represents the state, and the state is already a party through its proxy, Turrieta. No provision in PAGA furnishes independent authority for intervention, unlike other statutory schemes we discuss below. And even if Olson could theoretically have intervened, his effort here was untimely.

For similar reasons, Olson cannot move to vacate the judgment on the state's behalf. Nonparties can sometimes become parties by filing a motion to vacate the judgment. But that maneuver serves no purpose here because (as explained) the state is already the real party in interest. In any event, the state is not aggrieved by a judgment that its own proxy, Turrieta, obtained based on a settlement she negotiated for the state. Even if the state were aggrieved (which it is not), Olson lacks authority to challenge the judgment on the state's behalf.

The ultimate fairness of the settlement, and Olson's objections to it, are beyond the question this Court specified for review. But the trial court heard and read Olson's objections and properly rejected them. In this Court, Olson claims the

settlement resulted from an improper "reverse auction," but the trial court considered that argument and found it baseless. And more broadly, the trial court fulfilled its statutory duty to review the settlement before approving it. Thus, even if Olson were to prevail on one or more of the procedural issues before this Court, it will not change the ultimate outcome because there are multiple alternative grounds for affirmance.

This Court should affirm the Court of Appeal's decision.

STATEMENT OF THE CASE

A. Tina Turrieta sues Lyft under the Private Attorneys General Act.

In May 2018, Turrieta sent a letter and draft complaint to the Labor and Workforce Development Agency (LWDA) alleging that Lyft was violating the Labor Code. (1 AA 79.) The agency failed to respond within the statutory waiting period, so Turrieta filed this PAGA action in July 2018. (1 AA 11; see Lab. Code, § 2699.3, subd. (a)(2)(A).) Turrieta's complaint alleged that drivers using the Lyft platform (which matches willing drivers with interested passengers) were being misclassified as independent contractors. (1 AA 12.)

Around the same time, Olson and another plaintiff, Million Seifu, asserted PAGA claims against Lyft based on the same misclassification theory. (2 AA 307, 471; see OBOM 13.) Counsel for Olson, Seifu, and Turrieta also asserted putative class claims against Lyft on behalf of other named plaintiffs. (See 2 AA 303, 433–434, 438–439; RT 20–21.) In addition, Olson's attorneys filed thousands of individual arbitration demands against Lyft.

(Mulvaney, *They've Got Next: Labor & Employment Fresh Face Laura Iris Mattes*, Bloomberg Law (Sept. 22, 2020) <https://news.bloomberglaw.com/daily-labor-report/theyve-got-next-labor-employment-fresh-face-laura-iris-mattes> [as of Apr. 4, 2022].)

Almost a year later, Olson petitioned for coordination of the *Olson*, *Seifu*, and *Turrieta* PAGA actions, as well as putative class actions asserting related misclassification claims. (2 AA 307, 437–440.) The trial court denied Olson's coordination petition in June 2019. (2 AA 437.) Although such a ruling may be challenged through a petition for writ of mandate (*Doe v. Google, Inc.* (2020) 54 Cal.App.5th 948, 970), Olson did not seek writ review. And despite Olson's professed "interest in the [*Turrieta*] case" (2 AA 308), he did not attempt to intervene in *Turrieta* at that time.

Meanwhile, Lyft sought to resolve some of the pending claims. In June 2019, while Olson's coordination petition was pending, Lyft mediated with Shannon Liss-Riordan, counsel for Seifu. That mediation led to the settlement of certain class and PAGA claims Liss-Riordan was pursuing on behalf of drivers *other than* Seifu. (2 AA 438–439; RT 20–21; see 1 AA 107, 110.) Lyft's mediation with Liss-Riordan did not address the PAGA claims at issue here. (See RT 21.)

In August 2019, Lyft mediated with attorneys representing Olson. (3 AA 556.) The record does not reveal the specific topic of that mediation. Olson's counsel have implied that the mediation concerned the same PAGA claims that Lyft later

settled with Turrieta (3 AA 550–551; OBOM 15), but Lyft's counsel have disputed that characterization, explaining that they could not say more due to the mediation privilege (RT 306).

B. Lyft accepts a mediator's proposal and settles with Turrieta.

In September 2019, counsel for Turrieta and Lyft attended a mediation with Antonio Piazza, a leading employment law mediator. (2 AA 393; RT 41.) Before the mediation, the parties engaged in extensive informal discovery; among other things, Turrieta's counsel analyzed data that Lyft provided for an anonymized sample of 10,000 drivers. (1 AA 80–81.)

Piazza led the parties in a full-day mediation, which ended without a settlement. (1 AA 81.) Piazza then made an independent mediator's proposal based on his own valuation of the case. (2 AA 393.) Turrieta and Lyft each "begrudgingly" accepted this proposal. (RT 41.)

The proposed settlement required Lyft to pay $15 million. (1 AA 107.) This was roughly twice as much as a then-recent PAGA settlement involving Lyft's competitor, Uber, that covered a longer time period. (1 AA 37, 50–51; 3 AA 651.) Along with millions in payments to drivers, the proposed settlement called for Lyft to pay more than $3 million in PAGA penalties to the LWDA—at the time, one of the largest such payments ever for a

PAGA settlement. (1 AA 49; see RT 38; RA 79–80, 85.)[1] The settlement did not resolve any class action claims.

At the time of the settlement, this area of the law was in flux. Most notably, there were open questions about how the "ABC" test articulated in *Dynamex Operations W., Inc. v. Superior Court* (2018) 4 Cal.5th 903 (*Dynamex*) might apply to the PAGA claims at issue. The settlement covered April 30, 2017 to December 31, 2019, and thus included one year before the *Dynamex* decision. (1 AA 105; see RT 23.) This Court had yet to decide whether *Dynamex* applies retroactively, and that "question [was] unsettled." (*Vazquez v. Jan-Pro Franchising International, Inc.* (9th Cir. 2019) 939 F.3d 1045, 1049.) This Court agreed to resolve that unsettled question in November 2019, after Turrieta and Lyft agreed to the settlement terms but before they finalized their agreement.[2]

Turrieta also faced risk for the post-*Dynamex* portion of the settlement. As of late 2019, no plaintiff had prevailed on the merits against Lyft based on the theory that drivers are employees under the "ABC" test. (See RT 23–26.) And even if

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[1] In recent years, PAGA settlements have averaged only about $100,000 in penalties. (CABIA Foundation, California Private Attorneys General Act of 2004: Outcomes and Recommendations (2021) table 1, p. 8 <https://cabiafoundation.org/app/uploads/2021/11/CABIA_PAGA-Report-2021.pdf> [as of Apr. 4, 2022].)

[2] This Court eventually decided the *Dynamex* retroactivity issue in January 2021, more than a year after the trial court approved this settlement. (See *Vazquez v. Jan-Pro Franchising International, Inc.* (2021) 10 Cal.5th 944, 948.)

Turrieta were to prevail at trial, the trial court would have had broad discretion to reduce the PAGA penalties awarded. (1 AA 84; Lab. Code, § 2699, subd. (e)(2).)

Shortly after Lyft and Turrieta accepted the mediator's proposal, the Governor signed Assembly Bill No. 5, which codified aspects of *Dynamex*. (See OBOM 15–16.) The new law went into effect on January 1, 2020. The *Turrieta* settlement, however, covered only the period *before* Assembly Bill No. 5 went into effect. (1 AA 105.)[3]

On December 9, 2019, Turrieta moved for approval of the settlement, with the hearing set for January 2, 2020. (1 AA 28.) The same day she filed the motion, Turrieta sent the LWDA copies of the settlement agreement, the approval motion, and related filings. (1 AA 81, 121–122.)

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

The LWDA did not object or respond to the proposed settlement in the trial court. (See 2 AA 499.)

Olson moved to intervene in Turrieta's action on December 24, 2019, just a few days before the settlement approval hearing.

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[3] California's Attorney General and Labor Commissioner have sued Lyft based on the assertion that Lyft misclassified drivers as independent contractors in the period after Assembly Bill No. 5 went into effect. (See, e.g., *People v. Uber Technologies, Inc.* (2020) 56 Cal.App.5th 266, 281; Complaint, *Garcia-Brower v. Lyft, Inc.* (Super. Ct. Alameda County, Aug. 5, 2020, No. RG20070283) 2020 WL 7670071.)

(2 AA 282–285.) Olson's motion included various objections to the proposed settlement. (2 AA 296–304.)

Because the hearing on Olson's motion to intervene was set for April 2020, he filed an ex parte application to continue the upcoming settlement approval hearing. (2 AA 360.) The court denied Olson's ex parte application on December 26, 2019. (See 2 AA 498; 3 AA 682, 722.) Olson did not obtain a reporter's transcript of the ex parte hearing. (*Turrieta v. Lyft, Inc.* (2021) 69 Cal.App.5th 955, 964, fn. 6 (*Turrieta*).)

On December 31, 2019, the court day before the settlement approval hearing, Seifu also moved to intervene and filed an objection to the settlement. (2 AA 444, 460.)

The trial court held the settlement approval hearing as scheduled on January 2, 2020. The court allowed counsel for Olson and Seifu to make appearances and argue their objections to the settlement. (RT 1–17, 42–43.)

The trial court ruled that Olson and Seifu lacked standing to object to the settlement because the state was the real party in interest. (2 AA 498.) On the merits, the trial court found that the settlement was "fair, adequate and reasonable in light of the time period that is encompassed by it and the amount that will eventually [be] paid to the State of California and to the hundreds of thousands of Lyft drivers." (2 AA 498–499.) The court also noted that the state, as real party in interest, had received a copy of the proposed settlement and had not opposed it. (2 AA 499.)

The court rejected the objectors' claims that the settlement resulted from gamesmanship or a so-called "reverse auction," finding that an agreement had only been reached after the initial mediation failed and the parties' "very experienced mediator" offered a mediator's proposal. (2 AA 499; see 2 AA 485–486 ["The Settlement was the product of informed and arm's-length negotiations among competent counsel and the record is sufficiently developed to have enabled Plaintiff and Defendant to adequately evaluate and consider their respective positions," and the settlement will provide "substantial payment for the State of California" and the PAGA settlement group members].)

The trial court approved the settlement and entered judgment. (2 AA 499, 516–518.)

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

Olson and Seifu next filed motions to vacate the judgment under Code of Civil Procedure section 663 (section 663). (3 AA 522, 536; see 3 AA 684.) The motions raised objections much like those Olson and Seifu had raised in their prejudgment objections and had argued at the settlement approval hearing. (See 3 AA 536–554.)[4]

[4] Seifu failed to include his motion and related filings in the appellate record. (*Turrieta*, *supra*, 69 Cal.App.5th at p. 967, fn. 8.) The record includes Lyft's opposition to the section 663 motions, which noted Seifu's arguments. (3 AA 688–690.)

The trial court held a hearing on the motions and again gave the objectors a chance to argue their positions. (RT 301–303, 311–316.)

The court reaffirmed its finding that the settlement "is in the best interest of the workers and in the best interest of the state of California." (RT 317.) The court also concluded that Olson and Seifu lack standing to bring a motion to vacate the judgment and reiterated that they lack standing to object to the settlement. (*Ibid.*) The court denied the motions to vacate the judgment and advanced and vacated the hearing date on Olson's motion to intervene. (3 AA 709.)

E. The Court of Appeal affirms.

The Court of Appeal unanimously affirmed. (*Turrieta*, *supra*, 69 Cal.App.5th at p. 977.) The Court of Appeal understood the appeal to present two threshold questions: (1) whether Olson and Seifu had standing to move to vacate the judgment under section 663 and to challenge the judgment on appeal; and (2) whether the trial court properly denied Olson's and Seifu's motions to intervene. (*Id.* at p. 970.)

On the first issue, the Court of Appeal held that "due to the unique nature of PAGA, in which the state is the real party in interest, appellants had no personal interest in *Turrieta* and therefore are not 'aggrieved parties' who may appeal from the judgment." (*Turrieta*, *supra*, 69 Cal.App.5th at p. 970.) Olson and Seifu could gain standing to challenge the judgment on appeal only if they had standing to file a motion under section 663, which requires that they qualify as "aggrieved" by the

judgment. (*Id.* at pp. 970–971.) The Court of Appeal explained that because a PAGA claim is brought on behalf of the state, the fact that Olson and Seifu may have been plaintiffs in related PAGA actions did not give them a personal interest in Turrieta's action. (*Id.* at p. 972.)

The Court of Appeal recognized that PAGA plaintiffs like Olson and Seifu are "deputized under PAGA to prosecute their employer's Labor Code violations on behalf of the state," but explained that they lack authority "to act on the state's behalf for all purposes," such as by challenging a judgment in a different action. (*Turrieta*, *supra*, 69 Cal.App.5th at p. 972.) The Court of Appeal also rejected Olson and Seifu's public policy arguments about a purported lack of oversight for PAGA settlements, observing that any such settlement requires court approval and that the LWDA receives notice of proposed PAGA settlements. (*Id.* at pp. 972–973.)

As to the second issue, the Court of Appeal held that the trial court did not err in denying Olson and Seifu leave to intervene. (*Turrieta*, *supra*, 69 Cal.App.5th at p. 977.) As a threshold issue, the Court of Appeal explained that intervention requires the filing of a " 'timely application.' " (*Id.* at p. 976, quoting Code Civ. Proc., § 387, subd. (d)(1), (2).) The Court of Appeal held that it need not reach the timeliness issue, though, because even if the motions were timely, Olson and Seifu "failed to establish a right to intervention." (*Id.* at p. 977.)

As the Court of Appeal explained, Olson and Seifu's "position as PAGA plaintiffs in different PAGA actions does not

create a direct interest in *Turrieta*, in which they are not real parties in interest." (*Turrieta*, *supra*, 69 Cal.App.5th at p. 977.) Moreover, Olson and Seifu's "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," in which Turrieta was already serving as the state's proxy. (*Ibid.*)

Olson sought review on several issues.[5] This Court granted review and limited briefing to the following issue: "Does a plaintiff in a representative action filed under the Private Attorneys General Act (Lab. 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?"

LEGAL ARGUMENT

I. Under PAGA, Olson had no right to object to the proposed settlement.

A. The statute omits any right for a PAGA plaintiff to object to a settlement in another PAGA action.

In granting review, this Court directed the parties to address whether a PAGA plaintiff in one action has the right to object to a proposed settlement in another PAGA plaintiff's action. PAGA's plain language establishes that the answer to this question is no.

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[5] This Court denied Seifu's application to file an untimely petition for review.

Olson contends that PAGA "create[s] a right for the State *and its proxy* to appear and object to any settlement purporting to settle the State's claims." (OBOM 52, emphasis added.) But the plain language of PAGA's settlement provision says no such thing. Instead, the provision states that "The superior court shall review and approve any settlement of any civil action filed pursuant to this part," and that "The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court." (Lab. Code, § 2699, subd. (*l*)(2).) Nothing in this provision authorizes PAGA plaintiffs from different actions to object to proposed PAGA settlements.

This Court has consistently refused to insert into PAGA requirements that the Legislature omitted. In *Williams v. Superior Court* (2017) 3 Cal.5th 531, 545 (*Williams*), the employer argued that PAGA implicitly requires a plaintiff to provide "some modicum of substantial proof before proceeding with discovery." This Court disagreed, explaining that "[t]he text does not support this view" and that the Legislature's failure to include such a requirement in the statute "implies no such heightened requirement was intended." (*Id.* at pp. 545–546.) Likewise, in *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 85 (*Kim*), this Court rejected the employer's argument that a plaintiff loses PAGA standing if he settles his individual damages claims. As this Court explained, "If the Legislature intended to limit PAGA standing [in this fashion], it could have worded the statute accordingly." (*Ibid.*)

The same interpretive approach should apply here. "The 'cardinal rule' of statutory construction [is] that courts must not add statutory language not included therein." (*Delta Stewardship Council Cases* (2020) 48 Cal.App.5th 1014, 1067.) The Legislature created a process for PAGA settlement approval but did not include a right for other PAGA plaintiffs to object. That omission is conspicuous given what PAGA *does* require. It states that "[t]he proposed settlement shall be submitted to the agency"—that is, to the LWDA—but says nothing about giving notice to anyone else. (Lab. Code, § 2699, subd. (*l*)(2).)

As the Court of Appeal correctly concluded, because only the LWDA must receive notice of the proposed settlement, only the agency may have a right to object under PAGA. (See *Turrieta*, *supra*, 69 Cal.App.5th at p. 973 [since PAGA mandates such notice, "the LWDA may provide the trial court with comments on or objections to a proposed settlement, and has done so in the past"].) Although Olson dismisses the role of LWDA oversight (OBOM 35–36, 57), the state has explained that receiving notice of PAGA settlements "provides the LWDA with the opportunity to comment on or object to PAGA settlements as appropriate" (Brief for California as Amicus Curiae in Support of Respondent, *Viking River Cruises, Inc. v. Moriana* (U.S., Mar. 9, 2022, No. 20-1573) 2022 WL 768660, at pp. *10–*11 (*Viking River Cruises*)).[6] Despite receiving notice of the settlement here, the

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[6] Olson mentions one example of LWDA commentary on a proposed PAGA settlement, and he brought two others to the attention of the lower courts. (See OBOM 35–36 [discussing

agency made no attempt to object or otherwise comment in the trial court.

As Olson concedes, notice and the right to object are related concepts. (See OBOM 53.) The statute does not require that PAGA plaintiffs with overlapping actions—or any other aggrieved employees—be given notice of the proposed settlement. (See *Arias v. Superior Court* (2009) 46 Cal.4th 969, 987 (*Arias*); *Sakkab v. Luxottica Retail North America, Inc.* (9th Cir. 2015) 803 F.3d 425, 436.) This Court should give meaning to that legislative choice. Because the statute does not require notice to other PAGA plaintiffs, the Legislature could not have intended to give those plaintiffs a right to object.

A comparison to class actions is instructive. Class members must be given notice of a proposed settlement, and among other features, the notice " ' "must fairly apprise the class members . . . of the options open to the dissenting class members." ' " (*Cho v. Seagate Technology Holdings, Inc.* (2009) 177 Cal.App.4th 734, 746.) In addition to requiring the right to opt out, the notice must explain "procedures for class members to

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LWDA's filing in *O'Connor v. Uber Technologies, Inc.* (N.D.Cal. 2016) 201 F.Supp.3d 1110, 1113 (*O'Connor*)]; 2 AA 324, 327–337 [excerpts from agency's amicus brief in *Price v. Uber Technologies, Inc.* (Super. Ct. L.A. County, No. BC554512)]; Olson AOB 37 [discussing and seeking judicial notice of agency's briefing in *Tabola v. Uber Technologies, Inc.* (Super. Ct. S.F. County, No. CGC-16-550992)].) Of course, the agency weighs in on non-rideshare cases as well. (See *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 65, 67–68 (*Moniz*) [discussing LWDA's trial court involvement in settlement concerning temporary staffing firm].)

follow in filing written objections to [the proposed settlement] and in arranging to appear at the settlement hearing and state any objections to the proposed settlement." (Cal. Rules of Court, rule 3.769(f).) This requirement is rooted in due process. Class members' personal claims are at stake, so they have a due process right to be informed "of their options of opting out or objecting." (*In re Vitamin Cases* (2003) 107 Cal.App.4th 820, 829.) Thus, for class claims, notice protects class members' rights to object or opt out, rights stemming from due process.

There are no such due process concerns for PAGA claims, though. PAGA provides for recovery of penalties belonging to the state, not compensatory damages belonging to workers. (*Arias*, *supra*, 46 Cal.4th at p. 986.) In other words, "absent employees do not own a personal claim for PAGA civil penalties." (*Williams*, *supra*, 3 Cal.5th at p. 547, fn. 4 [fiduciary duties for class counsel are "necessary in the class action context to protect absent employees' due process rights," but no such duties exist in PAGA actions because "no similar due process concerns arise under PAGA"].) Thus, as Olson concedes, aggrieved employees have no right to opt out of a PAGA settlement. (OBOM 28; see *Uribe v. Crown Building Maintenance Co.* (2021) 70 Cal.App.5th 986, 1001 (*Uribe*).) And, as discussed, there is no requirement that notice of the settlement be sent to anyone other than the LWDA and the trial court. Because there is no notice requirement for other aggrieved employees, no right to opt out, and no underlying due process right, it is implausible that the Legislature somehow created an implicit—and incongruous—right to object.

Rather than confront PAGA's text, Olson invokes the statute's overall purpose. (OBOM 53.) General statements of purpose, though, cannot "override the express limits the Legislature has placed in the statutory text; rather, the purpose is advanced only to the extent and in the manner the statutory text has specified." (*Miklosy v. Regents of University of California* (2008) 44 Cal.4th 876, 897, superseded by statute on another ground as stated in *Taswell v. Regents of University of California* (2018) 23 Cal.App.5th 343, 358.) Olson cites *Williams*, *supra*, 3 Cal.5th at pages 546 and 548 for PAGA's statutory purpose. (OBOM 53.) But there, this Court held that PAGA's plain language *and* statutory purpose both supported affording broad representative discovery for PAGA claims. (See *Williams*, at pp. 544–546.) By contrast, PAGA's plain language does not require a trial court to hear objections by other PAGA plaintiffs acting as proxies of the state. Rewriting PAGA to add such a requirement would disregard the statute's plain text.

B. Olson's policy arguments are misguided.

Olson's remaining contentions are essentially policy arguments about how Olson believes the statute *should* be drafted. (See OBOM 53–55.) But as the Court of Appeal observed, these "policy issues . . . are best addressed to the Legislature." (*Turrieta*, *supra*, 69 Cal.App.5th at p. 974, fn. 15.) "That lawmaking branch of government, 'which can study the various policy and factual questions and decide what rules are best for society,' " is the proper forum for Olson's policy concerns.

(*Skidgel v. California Unemployment Ins. Appeals Bd.* (2021) 12 Cal.5th 1, 26.)

In any event, the Legislature has created a system that works as intended. The statute already requires trial courts to review PAGA settlements before they can be approved. (Lab. Code, § 2699, subd. (*l*)(2).) Trial judges have long been entrusted to serve as gatekeepers in scrutinizing settlements, whether or not there will be an adversarial presentation. (E.g., Code Civ. Proc., §§ 372 [compromise of minor's claim], 877.6 [good faith of joint tortfeasor's settlement]; Cal. Rules of Court, rule 3.769(g) ["Before final approval [of a class action settlement], the court must conduct an inquiry into the fairness of the proposed settlement"].) Reviewing and approving PAGA settlements is just the latest example.

Trial judges have multiple tools for guarding the gate. They can ask the parties for more information and disclosures. They can hold hearings and require sworn testimony. They can appoint neutral experts to aid their analysis. (Evid. Code, § 730.) They can ask the LWDA for comments. (E.g., *O'Connor*, *supra*, 201 F.Supp.3d at p. 1113.) And ultimately they can (and should) withhold approval if a settlement appears unfair or unreasonable. Trial judges can be trusted to sniff out bad deals, even when no objectors are involved. (E.g., *S.E.C. v. Bank of America Corp.* (S.D.N.Y. 2009) 653 F.Supp.2d 507, 509.)

There is nothing unusual about trial court scrutiny in PAGA cases. Trial courts already assert significant oversight in PAGA actions, and not just at the settlement approval stage.

(See *LaFace v. Ralphs Grocery Company* (2022) 75 Cal.App.5th 388, 398 [trial court has broad discretion to determine the appropriate amount of PAGA penalties, and the factors it considers "are equitable in nature"]; compare *Estrada v. Royalty Carpet Mills, Inc.* (Mar. 23, 2022, G058397, G058969) 76 Cal.App.5th 685, __ [2022 WL 855568, at p. *12] [although trial courts may not strike PAGA claims as unmanageable, they have discretion to "limit witness testimony and other forms of evidence"] with *Wesson v. Staples the Office Superstore, LLC* (2021) 68 Cal.App.5th 746, 769 [trial court has inherent "power to ensure the manageability of PAGA claims at trial," including by striking unmanageable PAGA claims].)

Finally, PAGA already allows for some outside input on proposed settlements. As noted, because PAGA requires that the LWDA be notified of such developments, the LWDA has weighed in on proposed PAGA settlements in trial courts, even when the trial courts did not solicit the agency's views. (*Moniz*, *supra*, 72 Cal.App.5th at pp. 67–68.) As for PAGA plaintiffs, "PAGA does not provide that aggrieved employees *must* be heard on the approval of PAGA settlements" (*id.* at p. 79, emphasis added), but trial courts have at times exercised discretion to allow objectors to be heard, as the trial court allowed here and as other courts have contemplated (RT 6–17, 42–43; see *Moniz*, at p. 79). The crucial point is that the decision to consider objections belongs the trial court, as part of its statutory duty to review the settlement and its inherent discretionary authority. PAGA does not give plaintiffs like Olson a unilateral right to object.

However, that the trial court considered Olson's objections here means Olson cannot show prejudicial error even if this Court decides Olson had a right to object. This alone suffices to show that the judgment cannot be reversed. (See, e.g., *F.P. v. Monier* (2017) 3 Cal.5th 1099, 1108 ["article VI, section 13 [of the California Constitution] generally 'prohibits a reviewing court from setting aside a judgment due to trial court error unless it finds the error prejudicial' "].)

II. Olson had no right to intervene.

A. A PAGA plaintiff has no personal interest in PAGA claims and therefore has no right to intervene on this basis. Indeed, Olson disavows a right to intervene on this ground.

When arguing intervention in the lower courts, Olson claimed an interest as the state's proxy but also asserted that he had a right to intervene because "*he* has an interest in the litigation that is impaired by the settlement" (ARB 53, emphasis added), since he supposedly had "a direct pecuniary interest in the outcome of the litigation" (AOB 43; see 2 AA 295 [similar claim in Olson's trial court motion to intervene]).

Now, however, Olson disclaims any " 'personal' interest in this action." (OBOM 31.) Olson's concession is correct. This Court has held that an aggrieved employee lacks any personal interest in PAGA claims asserted on the state's behalf. Instead, according to this Court, a PAGA claim "is a dispute between an employer and the *state*," with the named plaintiff suing as a " 'proxy' " of " 'the state's labor law enforcement agencies,' " and the "government entity on whose behalf the plaintiff files suit is

always the real party in interest." (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 380, 382, 386–387 (*Iskanian*).) This Court has therefore determined that "absent employees do not own a personal claim for PAGA civil penalties," and "whatever personal claims the absent employees might have for relief are not at stake." (*Williams*, *supra*, 3 Cal.5th at p. 547, fn. 4; see *Kim*, *supra*, 9 Cal.5th at p. 81 ["A PAGA claim is legally and conceptually different from an employee's own suit for damages and statutory penalties"]; *Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993, 1003 [aggrieved employee lacks assignable property interest in PAGA claim]; *Arias*, *supra*, 46 Cal.4th at p. 986 [employee suing under PAGA "does so as the proxy or agent of the state's labor law enforcement agencies"].) When the Court of Appeal held that Olson has "no personal interest in the PAGA claims" (*Turrieta*, *supra*, 69 Cal.App.5th at p. 977), it was following this precedent.

B. A PAGA plaintiff cannot intervene to represent the state's interest.

Olson has now pivoted to assert a right to intervene *solely* as the state's proxy. (OBOM 31–32.) But proxy status cannot support intervention. Olson discusses *Arias*, *Iskanian*, and *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175, 188 (OBOM 32–34), but none of those decisions address intervention by PAGA plaintiffs like Olson. They make the general observation that a PAGA plaintiff is the state's proxy but do not suggest that a PAGA plaintiff may intervene in a *different* action another state

proxy is already litigating. "As [this Court] ha[s] repeatedly observed, ' "cases are not authority for propositions not considered." ' " (*B.B. v. County of Los Angeles* (2020) 10 Cal.5th 1, 11.)

Under Olson's intervention theory, his interest derives entirely from the state's interest. But if Olson effectively *is* the state for this purpose, then so is Turrieta. Olson concedes that "Turrieta *also* represents the State's interests." (OBOM 31.)

That illustrates the central flaw in Olson's intervention argument: the state cannot intervene through Olson because the state is already a party to the action through Turrieta. This Court has held that, in a PAGA action, "The 'government entity on whose behalf the plaintiff files suit is always the real party in interest,' " and this Court has therefore determined that a PAGA plaintiff "may bring a PAGA claim *only* as the state's designated proxy." (*Kim*, *supra*, 9 Cal.5th at pp. 81, 87.) Consequently, California courts have repeatedly insisted that the state "is the owner of the [PAGA] claim and the real party in interest" (*Rosales v. Uber Technologies, Inc.* (2021) 63 Cal.App.5th 937, 945) and that a PAGA action "belongs solely to the state" (*Provost v. YourMechanic, Inc.* (2020) 55 Cal.App.5th 982, 988). The Court of Appeal was therefore correct to hold that Olson's "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." (*Turrieta*, *supra*, 69 Cal.App.5th at p. 977.)

Under Code of Civil Procedure section 387, intervention is limited to a "nonparty." Intervention under that statute is a

procedure by which a nonparty "*becomes a party* to an action or proceeding between other persons." (Code Civ. Proc., § 387, subd. (b), emphasis added.) Olson identifies no authority allowing an existing party to intervene in the same action under section 387. When the state has already delegated one proxy to litigate the case, there is neither good reason nor statutory authority for *another* proxy to intervene as the same party. It is not enough that Olson thinks he would represent the state more effectively than Turrieta. If Olson's theory were correct, one deputy attorney general could intervene on the state's behalf in a criminal appeal because he or she disagrees with how another deputy attorney general is handling the case.

Olson's intervention theory is flawed for another reason. He claims seemingly limitless authority to "represent[ ] the State's interests in the claims he prosecutes," including "how those claims are resolved in a parallel PAGA action." (OBOM 36.) On the contrary, his authority to act on the state's behalf has been circumscribed by the Legislature. For example, he lacks standing to directly appeal on the state's behalf *without* moving to intervene. (*Saucillo v. Peck* (9th Cir. 2022) 25 F.4th 1118, 1128 [objector who never sought to intervene lacked standing to appeal directly from judgment on PAGA settlement].) And, as discussed, he had no statutory right to file objections to the proposed settlement. (*Ante*, part I.) Accordingly, he had no right to intervene in this action to do the same thing he lacks authority to do under PAGA—object to the settlement.

The point is not that Olson "*lost* standing" or had the nature of his interest "transformed." (OBOM 11.) Olson's proxy authority never included the right to intervene in other PAGA actions, just as it never included the right to directly appeal the judgment on the state's behalf or the right to file objections. A PAGA plaintiff like Olson derives his authority to act as the state's proxy solely from a statutory delegation: if an aggrieved employee follows certain statutory procedures, he or she "may commence a civil action pursuant to [Labor Code] [s]ection 2699." (Lab. Code, § 2699.3, subd. (a)(2)(A).) That statutory delegation of authority is obviously limited to that proxy's "action." Nothing in this statutory scheme suggests that "commenc[ing]" a PAGA action includes intervening in a *different* PAGA action. Indeed, PAGA includes no provisions authorizing intervention by the *state*. (See *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668, 677 ["once California elects not to issue a citation [after receiving a PAGA notice], the State has no authority under PAGA to intervene in a case brought by an aggrieved employee"].) It would be bizarre to construe PAGA to permit a proxy to intervene on the state's behalf when the state itself may not intervene.[7]

Olson draws an analogy to federal and state qui tam statutes because this Court has deemed PAGA claims to be a type of qui tam claim. (OBOM 34–35.) But far from supporting his

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[7] By contrast, PAGA's settlement provision expressly requires that the LWDA be notified of proposed PAGA settlements. This might allow the LWDA to object to or otherwise comment on such proposed settlements without intervening. (See *ante*, part I.)

position, the qui tam laws he cites—the federal False Claims Act (FCA) and its state counterpart, California's False Claims Act (CFCA)—confirm that Olson cannot intervene here.[8]

In qui tam lawsuits, the person who sues in the name of the government is known as a relator. In the FCA and CFCA, Congress and California's Legislature, respectively, included statutory provisions expressly authorizing governmental intervention after a relator commences a qui tam lawsuit. (31 U.S.C. § 3730(c)(3); Gov. Code, § 12652, subd. (a)(3).) PAGA includes no such provision.

" 'It is a settled rule of statutory construction that where a statute, with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject is significant to show that a different legislative intent existed with reference to the different statutes.' " (*In re Jennings* (2004) 34 Cal.4th 254, 273.) This rule should apply

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[8] In *Viking River Cruises*, the United States Supreme Court is currently being called on to decide whether PAGA representative-action waivers in arbitration agreements must be enforced under the Federal Arbitration Act (FAA) notwithstanding any qui tam label affixed to PAGA claims by this Court. (See generally Brief for Petitioner, *Viking River Cruises* (U.S., Jan. 31, 2022, No. 20-1573) 2022 WL 327146.) Lyft has likewise filed a cert. petition on that same subject in *Lyft, Inc. v. Seifu* (U.S. No. 21-742). But however the United States Supreme Court resolves those cases, it will have no bearing on this distinct appeal, which does not arise in the context of the FAA or the enforcement of arbitration provisions. However the high court chooses to treat PAGA claims under the FAA, *this* Court has held that a PAGA action is " 'a type of qui tam action' " for purposes of *California* law outside the FAA context. (*Kim*, *supra*, 9 Cal.5th at p. 81.)

with full force here given that Olson argues PAGA is a qui tam statute similar to the FCA and CFCA. (OBOM 34–35.) "Because the wording of these statutes shows the Legislature if it wishes knows how to express its intent that [the government be permitted to intervene in qui tam suits brought on its behalf by a relator], the absence of such a requirement in [PAGA] indicates it intended no such [authorization]." (*Jennings*, at p. 273; accord, *Department of Housing & Urban Development v. Rucker* (2002) 535 U.S. 125, 132 [122 S.Ct. 1230, 152 L.Ed.2d 258].)

C. The Court of Appeal decisions on which Olson relies are not to the contrary because they never decided whether a PAGA plaintiff can intervene in another plaintiff's PAGA action.

Olson relies on *Moniz*, *supra*, 72 Cal.App.5th 56 and *Uribe*, *supra*, 70 Cal.App.5th 986. (OBOM 36–41.) Neither decision holds that a PAGA plaintiff may intervene in another proxy's action just because he is a proxy in his own case. Those inapposite cases provide no guidance on this issue.

In *Moniz*, a PAGA plaintiff pursuing an overlapping action moved to intervene, and the trial court denied the motion. (*Moniz*, *supra*, 72 Cal.App.5th at p. 66.) In an unpublished decision, the appellate court "affirmed the denial of [the objector's] motion to intervene," but "in so doing . . . assumed *without deciding* that she had an interest sufficient for intervention." (*Id.* at p. 73, fn. 10, emphasis added [recounting court's prior decision].) In addressing a later appeal that was the subject of its published decision, *Moniz* again did not decide the intervention issue. Instead, it analyzed whether the objector had

standing to move to vacate the judgment and then challenge the judgment on appeal—a separate issue we discuss below. (*Id.* at pp. 71–73; see part III, *post*.) Thus, when *Moniz* comments that a PAGA plaintiff "may seek to become a party to the settling action," it is referring to "becom[ing] a party . . . [citation] . . . by filing an appealable motion to set aside and vacate the judgment," not to intervention. (*Moniz*, at pp. 71, 73.)

Likewise, *Uribe* did not address whether intervention was proper. There, the trial court allowed an objector to intervene to challenge a settlement resolving class and PAGA claims, but no party argued on appeal that intervention should have been denied or that the objector lost the right to remain a party once she opted out of the class portion of the settlement. (*Uribe*, *supra*, 70 Cal.App.5th at p. 1002 & fn. 4.) As a result, the appellate court declined to reach "any unstated or oblique suggestion of error . . . related to the trial court's intervention rulings." (*Id.* at p. 1002, fn. 4.)

D. No other circumstances permit Olson's intervention here.

There may be other cases involving PAGA claims in which a trial court could exercise its discretion to permit intervention based on circumstances different than those here.

In some cases, the would-be intervenor has a personal interest in the settlement apart from his role as a proxy of the state. For example, parties sometimes settle PAGA claims alongside class claims in a so-called "hybrid" settlement. When that happens, a plaintiff pursuing both class claims and PAGA

claims in a different action might seek to intervene to challenge the hybrid settlement. (See *Uribe*, *supra*, 70 Cal.App.5th at p. 989; *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 529, 531 (*Amaro*).) In such a case, a trial court might exercise its discretion to allow intervention given the proposed intervenor's personal interest in the individual claims he or she is asserting on a classwide basis. This may be especially warranted where the settlement of those claims is deeply intertwined with the PAGA portion of the settlement—as when there is a dispute about the percentage of the overall settlement allocated to PAGA penalties. This theory of intervention would turn on the plaintiff's personal interest in his or her individual and class claims rather than on any personal interest in the PAGA claims or the state's interest in recovering PAGA penalties.

Moreover, there may be other, case-specific grounds for intervention, as when one PAGA plaintiff seeks to substitute for another plaintiff who makes clear that he or she no longer wishes to pursue the litigation regardless of any settlement. In such a case, a trial court might allow substitution so that the state's interest does not go wholly unrepresented. (See *Hutcheson v. Superior Court* (2022) 74 Cal.App.5th 932, 937 & fn. 2 [noting that trial court allowed intervention for this purpose, though the propriety of intervention was not disputed on writ review].)

This Court need not address those significantly different case-specific scenarios in which intervention may be proper because those circumstances are not at issue here and Olson has

no valid ground for intervention under the facts of this case. This is a PAGA-only settlement, and Turrieta continues to represent the state's interest.

E. In any event, substantial evidence supports the trial court's implied finding that Olson's intervention attempt was untimely.

Even if Olson's role as the state's proxy could theoretically support intervention (it cannot), that would not establish that the trial court *had* to allow Olson to intervene. The right to intervene " 'is purely statutory, and by no means absolute.' " (*Muller v. Robinson* (1959) 174 Cal.App.2d 511, 515.) As this Court has long recognized, the propriety of intervention "is best determined by a consideration of the facts of [each] case." (*Isaacs v. Jones* (1898) 121 Cal. 257, 261.) An appellate court reviews the denial of intervention for abuse of discretion (*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 51 (*Chavez*)), and Olson fails to show that the trial court abused its discretion here.

We address one independent ground for affirmance: Olson's failure to timely seek intervention. "[W]hether permissive or as a matter of right, a party's proposed intervention must be timely." (*Lofton v. Wells Fargo Home Mortgage* (2018) 27 Cal.App.5th 1001, 1012; see Code Civ. Proc., § 387, subd. (d)(1), (2) [intervention may be permitted "upon timely application"].) Timeliness is "one of the prerequisites for granting an application to intervene," so untimeliness is an independent ground to deny intervention. (*Northern Cal. Psychiatric Society v. City of Berkeley* (1986) 178 Cal.App.3d 90, 109.)

The Court of Appeal declined to reach the timeliness issue because it held Olson had no interest that could support intervention. (*Turrieta*, *supra*, 69 Cal.App.5th at p. 977.) But if this Court elects to address the issue, untimeliness is an independent basis to affirm the denial of intervention. Both Lyft and Turrieta argued in the trial court that Olson's intervention attempt was untimely. (2 AA 370–372, 389.) The trial court did not expressly find that Olson's intervention attempt was untimely, but such a finding must be implied on appeal. (See *Fair v. Bakhtiari* (2011) 195 Cal.App.4th 1135, 1148 [in reviewing trial court's discretionary denial of a motion, appellate court "will imply findings in favor of the court's denial"]; *Stephen Slesinger, Inc. v. Walt Disney Co.* (2007) 155 Cal.App.4th 736, 765–766 [applying this rule to an implied finding of untimeliness].)

In applying the abuse of discretion standard, "The trial court's findings of fact are reviewed for substantial evidence." (*Haraguchi v. Superior Court* (2008) 43 Cal.4th 706, 711.) Thus, the question on appeal is whether substantial evidence supports the trial court's implicit finding that Olson's motion was untimely. It does. Turrieta moved for approval of the proposed settlement on December 9, 2019. (1 AA 27–28.) Olson had been aware of Turrieta's action since at least April 2019—seven months earlier—when Olson petitioned to coordinate several actions, including Turrieta's. (See 2 AA 307.) Notably, Olson claimed that failure to coordinate these cases would work "to the detriment of absent . . . aggrieved employees" because Lyft could

settle with one plaintiff without consulting the others. (2 AA 308.)

Thus, Olson should have known no later than June 2019, when the coordination petition was denied, that (under his view of PAGA) he might need to seek intervention. (See 2 AA 437; *Ziani Homeowners Assn. v. Brookfield Ziani LLC* (2015) 243 Cal.App.4th 274, 281 [timeliness determined based " ' "on the date the person attempting to intervene should have been aware his interest[s] would no longer be protected adequately by the parties" ' "].) Olson concedes that he had an ongoing "interest in the [*Turrieta*] case." (2 AA 308.) Yet he did not seek intervention until December 24, 2019—more than two weeks after Turrieta moved for approval of the settlement, well past the deadline to oppose the approval motion, and just a few court days before the January 2, 2020, approval hearing. (2 AA 305, 371–372, 389.) Given this record, the trial court could have reasonably found that Olson's attempt to intervene was untimely.

Contrary to Olson's suggestion, *Bustop v. Superior Court* (1977) 69 Cal.App.3d 66, 72 does not establish that an intervention attempt is automatically timely so long as it is filed before the event the intervenor seeks to prevent. (See OBOM 42.) That is not the law, at least under the current version of Code of Civil Procedure section 387. For instance, in *Chavez*, *supra*, 162 Cal.App.4th at pages 49 and 51, the Court of Appeal held that an objector's request to intervene to challenge a class action settlement was untimely under the circumstances of that case

even though it was filed roughly six weeks before the settlement approval hearing.

III. Olson had no right to move to vacate the judgment.

A. California law permits certain *nonparties* to move to vacate a judgment, but Olson cannot move to vacate here because the state is already party to this action.

Olson's opening brief presents the right to intervene as intertwined with the right to move to vacate the judgment. (OBOM 29–30.) In one respect, Olson is correct about the relationship between moving to intervene and to vacate. Olson cannot move to vacate for the same reason he cannot intervene: the state is already a party to this action through Turrieta. But there are additional reasons vacatur is unavailable in this situation, as we explain.

"A person who initially is a nonparty but is aggrieved by a judgment or order may become a party of record and obtain a right to appeal by moving to vacate the judgment or order pursuant to section 663." (*Marsh v. Mountain Zephyr, Inc.* (1996) 43 Cal.App.4th 289, 295.) "A motion to vacate in the trial court provides a means by which such a nonparty may become a party to the litigation with a right of appeal without the need to formally intervene in the action" under Code of Civil Procedure section 387. (*Henry M. Lee Law Corp. v. Superior Court* (2012) 204 Cal.App.4th 1375, 1382.) In other words, vacatur is available solely to a person "who initially is a nonparty." (*Marsh*, at p. 295.)

Olson cannot satisfy this standard. He bases his standing to seek vacatur under section 663 solely on his status as a proxy for the state under PAGA. (See OBOM 29, 41.) But as explained earlier, under this Court's precedent, the state was already a party to the case—indeed, the sole party asserting the PAGA action here—when Olson sought to derail the settlement. As with his motion to intervene, which likewise permits intervention solely by nonparties, this alone should suffice to bar Olson from succeeding on a motion to vacate.

B. Olson had no right to move to vacate the judgment because he is not legally aggrieved by this judgment, either personally or as the state's proxy.

In addition, Olson would have to show he is "legally 'aggrieved' by [the] judgment" to vacate the judgment under section 663, which requires that his "rights or interests are injuriously affected by the judgment." (*County of Alameda v. Carlson* (1971) 5 Cal.3d 730, 736–737.) Thus, to establish standing, Olson would have to show that he is personally aggrieved by the judgment. Alternatively, he would have to show that the state is aggrieved by the judgment, and if so, that he has standing to assert the state's interest. Olson's argument fails on all three points.

First, Olson is not personally aggrieved by the judgment. As already discussed, he disclaims any personal interest in these PAGA claims, and correctly so. (See *ante*, part II.A.) This Court has long recognized that unnamed *class members* may move to vacate a judgment (*Hernandez v. Restoration Hardware, Inc.*

(2018) 4 Cal.5th 260, 267–268 (*Hernandez*)), but class members are aggrieved because they have a personal stake in the claims being compromised (see *Williams*, *supra*, 3 Cal.5th at p. 547, fn. 4 [unnamed class members have a personal interest in class action claims]). As explained earlier, this Court has held that "employees do not own a personal claim for PAGA civil penalties," and "whatever personal claims the absent employees might have for relief are not at stake" in PAGA actions. (*Ibid.*) Thus, as the Court of Appeal correctly concluded here, Olson—unlike those objecting to the settlement of class claims—has "no individual claims that would be affected by the [PAGA] settlement and [is] therefore not 'aggrieved' for the purposes of standing to move to vacate or appeal from that judgment." (*Turrieta*, *supra*, 69 Cal.App.5th at p. 974.)

Second, the state is not aggrieved by this judgment. Turrieta gave the LWDA notice of the proposed settlement, and the agency never suggested in the trial court that it had concerns about the terms. (See 1 AA 81, 121–122; 2 AA 499; *Turrieta*, *supra*, 69 Cal.App.5th at p. 963 & fn. 5.) Once the trial court approved the settlement and entered judgment, the state's PAGA claims were voluntarily resolved. As with all PAGA judgments, this judgment is binding on the state. (See *Iskanian*, *supra*, 59 Cal.4th at p. 387 ["any judgment in a PAGA action is binding on the government"]; *Arias*, *supra*, 46 Cal.4th at p. 986 ["Because an aggrieved employee's action under [PAGA] functions as a substitute for an action brought by the government itself, a judgment in that action binds all those . . . who would be bound

by a judgment in an action brought by the government" and therefore "the government [is] bound by the judgment in an action brought under the act"].)

Because the state failed to comment on the proposed settlement in the trial court despite receiving notice of the terms, Olson cannot explain how the trial court abused its discretion when it decided the state is not aggrieved by a judgment that one of its proxies sought and obtained on its behalf. Olson's own proffered authority supports this conclusion: in *Moniz*, *supra*, 72 Cal.App.5th at page 81, the Court of Appeal held that the objector lacked standing to appeal an issue on which the state did not object in the trial court. As the Court of Appeal explained, the ruling "was favorable to the state" and the LWDA "did not take issue with this ruling." (*Ibid.*)[9]

An analogy to appellate standing is instructive. As Olson recognizes, standing to move to vacate a judgment overlaps with standing to appeal a judgment. (See OBOM 30.) Both require that one be aggrieved by the judgment. Under that rule,

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[9] Because the LWDA took no action in the trial court here, this Court need not decide whether or under what circumstances the LWDA could move to vacate or otherwise challenge a PAGA judgment in the trial court. Although the state belatedly complained about the settlement in an amicus brief on appeal (*Turrieta*, *supra*, 69 Cal.App.5th at p. 973, fn. 14), Olson cannot show the trial court abused its discretion based on complaints that long postdate the trial court's denial of his motion to vacate under section 663. (See, e.g., *Reese v. Wal-Mart Stores, Inc.* (1999) 73 Cal.App.4th 1225, 1237 ["it would be eminently unfair to assess a trial court's exercise of discretion based on matters not before it at the time of decision"].)

however, a party generally cannot appeal from a judgment entered by the party's own agreement. (See *In re Marriage of Hinman* (1992) 6 Cal.App.4th 711, 716 ["A party who participates in or consents to a judgment . . . is precluded from attacking it collaterally, absent exceptional circumstances," even if the judgment "otherwise would be beyond the court's authority"]; *Papadakis v. Zelis* (1991) 230 Cal.App.3d 1385, 1387 ["It is settled that a party cannot appeal from a judgment to which he has stipulated, as part of a settlement"].) The state's proxy cannot challenge a judgment that does not aggrieve the state.[10]

Third, even if the state were aggrieved by the judgment (it is not), Olson lacks authority to challenge it on the state's behalf. As with the purported rights to object and to intervene, nothing in PAGA authorizes PAGA plaintiffs to challenge judgments in other plaintiffs' PAGA actions just because they represent the state's interests in a related action. This Court should decline to add statutory provisions missing from PAGA's plain text. (See *ante*, part I.)

Indeed, such a right would conflict with how standing typically works. Olson emphasizes that he is acting as an "agent of the State" (OBOM 9), but that agency analogy undermines his claim to standing. For example, "attorneys are agents of their

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[10] Thus, this scenario is unlike *Estate of Goulet* (1995) 10 Cal.4th 1074, 1081–1083 (see OBOM 40, fn. 11), in which this Court recognized that a trustee had standing to appeal an order that might have "substantially diminish[ed] the funds" in the trust. The state, through Turrieta, sought the judgment here, and the LWDA did nothing in the trial court to suggest it disagreed.

client" (*Rosenaur v. Scherer* (2001) 88 Cal.App.4th 260, 283), but representing a party with standing does not confer standing on the attorney. Thus, the right to challenge an adverse judgment belongs to the losing party, not the party's attorney, even if attorney's fees are at stake. (*In re Marriage of Tushinsky* (1988) 203 Cal.App.3d 136, 141–143.) Nor is it enough to have some indirect connection to a party with standing. (See *Pacific Merchant Shipping Assn. v. Board of Pilot Commissioners etc.* (2015) 242 Cal.App.4th 1043, 1062 & fn. 10 [one state entity lacked standing to appeal fee order entered against another state entity].) Alternatively, to the extent that Olson claims he *is* the state, he cannot usurp Turrieta, the state proxy who sought this judgment on the state's behalf. And he cannot supplant the LWDA, which took no action in the trial court to suggest the state disagreed with the judgment.

C. The Court of Appeal decisions on which Olson relies do not support his expansive theory of vacatur.

Olson again relies on *Uribe*, *supra*, 70 Cal.App.5th 986, and *Moniz*, *supra*, 72 Cal.App.5th 56, but *Moniz* and *Uribe* got this issue wrong, and are both distinguishable in any event.

Moniz adopts the theory Olson espouses here: the Court of Appeal held that the objector had standing to challenge the judgment "as part of his or her role as an effective advocate for the state." (*Moniz*, *supra*, 72 Cal.App.5th at p. 73.) Thus, the court's holding turned on its conclusion that the objector

"*represents* interests that are sufficiently aggrieved," namely the state's interests. (*Ibid.*, emphasis added.)

Moniz is unpersuasive for two reasons. First, it is distinguishable. There, the LWDA opposed the settlement in the trial court, including by appearing and arguing at the settlement approval hearing. (*Moniz*, *supra*, 72 Cal.App.5th at pp. 67–68.) Thus, unlike here, the state was arguably aggrieved by the aspects of the *Moniz* settlement to which it objected. As noted, *Moniz* held that the objector lacked standing to appeal an issue on which the state had *not* objected. (*Id.* at p. 81.) Second, in holding that a PAGA plaintiff may move to vacate the judgment on the state's behalf, *Moniz* was incorrect for the reasons explained above. The state was already a party to the action; the objector was not legally aggrieved by the judgment; and even if the state were aggrieved, the objector lacked standing to challenge the judgment on the state's behalf. *Moniz* offers no substantive basis for concluding otherwise. *Moniz* fails to explain why it necessarily "follows" that serving as the state's proxy in one capacity gives a PAGA plaintiff standing to challenge the judgment in another action. (*Id.* at p. 73; see *Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 519 [prior decisions addressing issue were not instructive where they "contain[ed] little reasoning or analysis" and "appear simply to 'take a side' "].)

Uribe decided that Isabel Garibay, the objector in that case, was aggrieved because "Garibay's PAGA cause of action in this same lawsuit was resolved *against her*" and stood to have "her

own PAGA cause of action . . . precluded." (*Uribe*, *supra*, 70 Cal.App.5th at pp. 1001–1002, emphasis added.) *Uribe*'s analysis was thus rooted in the notion that Garibay was aggrieved because she had a personal interest affected by the judgment. *Uribe*'s rationale was legally incorrect, since aggrieved employees have no personal interest in PAGA claims under this Court's precedent. (See *ante*, part II.A.) Moreover, *Uribe*'s rationale cannot in any event afford Olson the right to move to vacate the judgment in this case because Olson disavows any personal interest in these PAGA claims. (See OBOM 31.)

IV. Olson's challenges to the settlement lack merit.

Olson's various objections to the merits of the settlement are beyond the scope of this Court's review since this Court's order granting review limited the issue presented to the distinct nonmerits issue of whether PAGA plaintiffs have the procedural right to object to a PAGA settlement or to move for intervention or vacatur. If this Court considers Olson's merits arguments, however, they show why the judgment should be affirmed even if Olson had standing to challenge the settlement in some fashion. Turrieta and Lyft addressed these issues at length in the Court of Appeal. (E.g., Lyft RB 10–16 [discussing procedural limitations on relitigating factual disputes through a section 663 motion].) We discuss two salient examples that Olson heavily focuses on: reverse auctions and prefiling notice.

Olson alleges here, as he did in the lower courts, that this settlement stemmed from an improper reverse auction. " '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 in the hope that the district court will approve a weak settlement that will preclude other claims against the defendant." ' " (*Amaro*, *supra*, 69 Cal.App.5th at p. 544.) In his opening brief, Olson suggests that he "correctly predicted" that Lyft might try to "settle . . . with the lowest bidder," and asserts that "Lyft employed a strategy to play the different plaintiffs' counsel against each other in order to drive down the overall settlement value." (OBOM 14–16; see OBOM 45.) Olson claims more generally that the Court of Appeal's holding will "invite[ ] mischief by encouraging a race to the bottom," with defendants "simply put[ting] the case out to bid." (OBOM 57.)

As the record here reveals, Olson's reverse auction allegations are unfounded. Olson and Seifu accused Lyft of engaging in a reverse auction, but the trial court found that allegation to be groundless and thus rejected the claim "that Lyft engaged in gamesmanship." (2 AA 499; see 2 AA 485 [finding that "There was no collusion in connection with the Settlement"].) Indeed, substantial evidence supports the trial court's implied finding that Lyft's mediations with counsel for Seifu and Olson focused on *other* claims, not these PAGA claims. Seifu's counsel and Olson's counsel were both pursuing various claims against Lyft aside from the PAGA claims at issue here. (See 2 AA 303, 433–434, 438–439; RT 21.) Thus, the mere fact that Lyft mediated with those attorneys does not mean Lyft was negotiating with them the same PAGA claims it later settled with Turrieta. (See RT 20–22 [Lyft's counsel explained that Lyft

negotiated different claims with Seifu's counsel Liss-Riordan in June 2019, and "We haven't discussed other PAGA claims with Ms. Liss-Riordan"], 306 [counsel for Lyft disputed assertions by Olson's counsel about the topic of their August 2019 mediation].)

Any time a defendant settles one of several overlapping actions, a nonsettling plaintiff can claim that the defendant engaged in a reverse auction—or its variant, "plaintiff shopping." (See OBOM 58.) Here, as in other cases, meritless reverse auction allegations can delay final approval and payment of a settlement, including through a time-consuming appeal. (See (*Amaro*, *supra*, 69 Cal.App.5th at p. 544 [in a case involving both class and PAGA claims, substantial evidence supported "the [trial] court's finding the settlement was not the product of a collusive reverse auction"]; *In re Hyundai and Kia Fuel Economy Litigation* (9th Cir. 2019) 926 F.3d 539, 569 [objectors "have 'floated out the specter of a reverse auction, but brought forth no facts to give that eidolon more substance' "]; *Negrete v. Allianz Life Ins. Co. of North America* (9th Cir. 2008) 523 F.3d 1091, 1099 [addressing reverse auction allegations and finding "no evidence of underhanded activity in this case"].)

PAGA's streamlined settlement approval process helps avoid this problem. As this Court has recognized in the class action context, settlement objections present an opportunity for disruption and delay unrelated to the merits of a settlement. (See *Hernandez*, *supra*, 4 Cal.5th at pp. 272–273 [noting that meritless objections from "professional objectors" "can disrupt settlements by requiring class counsel to expend resources

fighting appeals, and, more importantly, delaying the point at which settlements become final"].) Restricting objector interference in the PAGA settlement context allows for prompt payment of PAGA penalties to the state by preventing those payments from being held up by meritless objections.

In any event, no matter *how* a defendant reaches a settlement, the ultimate criterion for approval is whether the trial court, after review of the settlement, finds its terms to be substantively fair. (*Williams*, *supra*, 3 Cal.5th at p. 549.) That is exactly what the trial court did here: it reviewed the settlement and found it "to be fair, adequate and reasonable." (2 AA 499.)

Another example underscores why Olson's objections to the settlement lack merit. Olson claims that Turrieta failed to give sufficient prefiling notice to the LWDA for some claims in the settlement. (OBOM 17, 41, fn. 12, 47.) The Court of Appeal correctly held that Olson forfeited this notice argument because he raised it "only in a single paragraph at the very end of his reply in support of his motion to vacate." (*Turrieta*, *supra*, 69 Cal.App.5th at p. 973, fn. 14.) As a result, the court concluded, "we would not consider [the issue], even if [Olson] had standing to raise it." (*Ibid.*) Olson did not petition for rehearing to challenge the factual basis for the Court of Appeal's holding that he forfeited the argument, and he cannot resurrect his forfeited assertion in this Court. (See Cal. Rules of Court, rule 8.500(c)(2) ["as a policy matter the Supreme Court normally will accept the Court of Appeal opinion's statement of the issues and facts unless the party has called the Court of Appeal's attention to any alleged

omission or misstatement of an issue or fact in a petition for rehearing"].)

Even if Olson had not forfeited this prefiling notice argument, it would be no basis to undo the settlement. In the Court of Appeal, Turrieta explained several reasons why this argument lacks merit, and she is likely to address those reasons again in this Court. We add another. In *Moniz*, *supra*, 72 Cal.App.5th at pages 82 to 84, the Court of Appeal rejected a prefiling notice argument much like the one Olson raises here. *Moniz* held that a PAGA settlement may release claims not listed in the plaintiff's LWDA notice because "PAGA's statutory scheme 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." (*Id.* at p. 83.) All of Turrieta's claims, like all of Olson's, stemmed from the same underlying theory that drivers using the Lyft platform should have been classified as employees rather than independent contractors. (See 1 AA 253, 255–256; 2 AA 311.)

CONCLUSION

For all these reasons, the Court of Appeal's decision should be affirmed.

April 20, 2022

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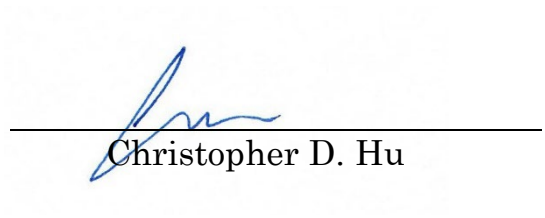

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Case No. S271721

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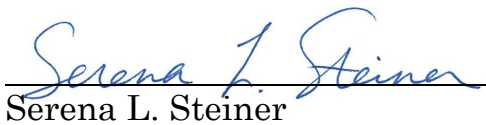

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Supreme Court of California

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