No. S271721

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

TINA TURRIETA,
Plaintiff,

v.

LYFT, INC.,
Defendant.

On Review from a Decision by the Court of Appeal
Second Appellate District, Division Four, Case No. B304701;
Superior Court of the County of Los Angeles,
Case No. BC714153, The Honorable Dennis J. Landin

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INTRODUCTION

The answering briefs of Plaintiff Turrieta and Defendant Lyft, Inc. unsurprisingly speak with one, flawed voice. In so doing, they confirm the need for this Court to hold that a plaintiff – deputized to prosecute an action under the Private Attorneys General Act, Labor Code section 2698 *et seq*. ("PAGA"), on behalf of the State – has a right to intervene in, object to, and move to vacate a judgment in a related action that purports to settle the claims that plaintiff has brought on behalf of the State.

The rights to intervene and to set aside a trial court's judgment are well-established, and are governed by the Code of Civil Procedure. But Lyft and Turrieta would have this Court read those rights out of the Code altogether when they apply to a representative PAGA plaintiff like Olson. That is, Lyft and Turrieta take the remarkable position that Olson cannot avail himself of the civil procedures available to all civil litigants by virtue of the fact that he is prosecuting an action on behalf of the State under PAGA. No reasonable reading of the Labor Code and the Code of Civil Procedure gives way to such a conclusion.

PAGA does not remove or supplant the regular rules governing intervention or the standards to set aside an erroneous order or judgment. Olson's status as a PAGA representative of the State simply informs – and confirms – Olson's interests that justify his participation. Instead, the correct construction, which this Court should endorse, is that a PAGA representative like Olson has a right to seek participation in a lawsuit with overlapping claims under the Code of Civil Procedure.

Consequently, Olson has a right to participate in this case because he demonstrated below that the State has an immediate and substantial right in its claims that are being settled and released by Turrieta for an uncontested .05% of their value.

Lyft and Turrieta urge this Court to find that a PAGA representative is a horse with blinders, capable only of proceeding in his own case. To draw this conclusion this Court would have to conclude that Olson, on the State's behalf, is unable to offer any insight or perspective about the compromise of millions of dollars in State penalties for Lyft's systematic violation of worker protections. Such a reading of California law is antithetical to the legislative purpose of wage laws, and to PAGA in particular. This Court has recognized that PAGA was passed explicitly to shore up "lagging labor law enforcement resources" by permitting private enforcement, which the Legislature determined was "necessary 'to achieve maximum compliance with state labor laws.'" (*ZB, N.A. v. Super. Ct.* (2019) 8 Cal.5th 175, 184 *(ZB, N.A.*), citing *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 379 (*Iskanian*), quoting *Arias v. Super. Ct.* (2009) 46 Cal.4th 969, 980 (*Arias*).) And the Court has confirmed time and again that the provisions must be liberally construed in favor of broad protection of workers. (*ZB, N.A., supra*, 8 Cal.5th at p. 189.)

Each argument Lyft and Turrieta make asks this Court to turn away from the legislative aims of PAGA and construe the statute to foreclose a PAGA plaintiff's rights to protect the claims he has been deputized to prosecute. They also attempt to cast

Olson and his counsel as interlopers intending to disrupt the orderly course of litigation for their personal gain. But what the facts instead demonstrate is that Olson and his counsel have been diligently prosecuting overlapping claims against Lyft for years and have made every effort to coordinate the multiple enforcement actions to achieve the maximum benefit for workers. (OBM at pp. 13–21.) Turrieta, instead, handed Lyft a win by agreeing to wipe out the State's claims on behalf of more than 500,000 Lyft drivers, valued at over $10 billion, for a mere $15 million, facts neither Lyft nor Turrieta contest. (See 1 AA 295–300.)

In the end, Lyft and Turrieta ask this Court to endorse a procedure that permits hasty, secret settlements to be quickly approved by busy trial courts without any input or participation from obvious stakeholders, and to insulate those settlements from any appellate review. Olson, on the other hand, asks this Court to confirm that, consistent with the Labor Code and longstanding civil procedure, deputized PAGA plaintiffs have a right to represent the interests of the State in the claims that have been authorized to pursue.

ARGUMENT

I. As a Deputized PAGA Plaintiff, Olson Has a Right to Object, Intervene, and Move to Vacate the Judgment in this Action.

A. Both Lyft and Turrieta Acknowledge the State May Object to a PAGA Settlement.

Both Lyft and Turrieta acknowledge that the State, through the LWDA, may appear in the trial court to contest a proposed PAGA settlement, but resist the logical conclusion that Olson, as the State's proxy, may also be heard. Their arguments to the contrary do not persuade.

Lyft recognizes that PAGA "allows for some outside input on proposed settlements," acknowledging that PAGA's notice requirement to the LWDA permits the State to object to the settlement. (Lyft Br. ("LB") at pp. 23, 28.) For her part, Turrieta concedes that courts "have the inherent power to hear and consider objections without formally granting intervention[.]" (Turrieta Br. ("TB") at p. 18.)

Both Turrieta and Lyft contend, however, that PAGA would have to explicitly require notice to other PAGA plaintiffs in parallel litigation in order to create such a right in Olson. But this approach suggests that Olson would need a *personal* interest in this action (which Lyft and Turrieta otherwise disclaim), rather than, as he has maintained all along, an interest as a representative of the State. If he is the State's proxy as a deputized PAGA plaintiff, which is what this Court has repeatedly recognized, then notice to the *State* suffices.

Lyft turns to this Court's decisions in *Williams v. Superior Court* (2017) 3 Cal.5th 531 (*Williams*), and *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73 (*Kim*), to argue that the Court has "consistently refused to insert into PAGA requirements that the Legislature omitted." (LB at p. 22.) But both of those examples are cases in which the Court construed

PAGA broadly, not formalistically, consistent with its legislative purpose "to remedy systemic underenforcement of many worker protections." (*Williams, supra*, 3 Cal.5th at p. 545.) In *Kim*, the Court found that a PAGA plaintiff has standing even if he settles his individual claims; in *Williams*, the Court found that a PAGA plaintiff need not meet a heightened standard for discovery. (*Id.* at p. 546 [to insert a heightened standard "would undercut the clear legislative purposes the act was designed to serve"].) Neither holding supports Lyft's view that Olson, acting on the State's behalf, cannot object to the settlement of the claims he was deputized to pursue. In fact, this Court in *Williams* explained that its holding to permit broad discovery of contact information was rooted in not wanting to "enhance the risk [] employees will be bound by a judgment they had no awareness of and no opportunity to contribute to or oppose." (*Id.* at p. 548.) Thus, both cases demonstrate how this Court has harmonized the public purposes of the PAGA statute with the practical application of its statutory language.

Olson suggests the same approach here. Olson is not asking this Court to add requirements to PAGA, only to construe the statute, as it must, in light of its legislative purpose to "advance the state's public policy of affording employees workplaces free of Labor Code violations, notwithstanding the inability of state agencies to monitor every employer or industry." (*Id.* at p. 546.) This purpose "would be ill-served" by failing to recognize a duly deputized PAGA plaintiff's right to object to the settlement of claims he is pursuing on behalf of the State. (See

ibid.) This common sense reading of the statute is not the calamity that Lyft or Turrieta portend, and it does not signal any powers vested in Olson beyond what PAGA *actually* contemplates and this Court has consistently recognized. Because Olson is deputized to pursue certain claims, and those same claims are purportedly being resolved by Turrieta and Lyft, it follows that Olson's proxy extends to objecting to the settlement of those claims. Indeed, Code of Civil Procedure section 187 provides support. That section provides that when jurisdiction of a matter is conferred on a court by statute, the court should adopt a suitable mode of proceeding that "appears most conformable to the spirit of the Code." (Code Civ. Proc. § 187.)

Turrieta and Lyft both selectively invoke class action procedures to argue that PAGA does not permit Olson to object because notice is not required to be given to aggrieved employees, as it is to absent class members (in certain class actions). (LB at pp. 24–26; TB at p. 49.) But this is merely a convenient strawman. Olson is not *only* an aggrieved employee; he has been imbued with the authority to act on behalf of the State. Like Turrieta, he may weigh in, as the State's representative, when the claims he has been authorized to prosecute are at risk. It is that interpretation of PAGA's provisions that is faithful to its purpose.

Lyft insists that trial judges must be "trusted to sniff out bad deals, even when no objectors are involved." (LB at p. 27.) That is a particularly troublesome approach when viewed in context – we know, for example, that in *this* case, the State

believes the settlement is a bad deal because both Olson, as its proxy, and the LWDA have raised specific, factual objections to Turrieta's representations and the trial court's conclusions. (See LWDA Amicus Brief, submitted below.) But the State's objections have not been considered, and the rule Lyft advances closes the door to any appellate review when a trial court fails to "sniff out" the "bad deal." Further, the goal of permitting the State's objections is to fill the informational void by providing independent perspectives on the value of the settlement, and to provide important information to assist the court in assessing fairness. That goal is satisfied when the State's proxy, who is litigating the *same claims*, is permitted to be heard. Under the scheme championed by Lyft, not only would egregious trial court errors be immunized from review, efforts to prevent such errors from occurring in the first instance would be foreclosed.

Further, Turrieta argues that the *only* way a PAGA settlement can be challenged is by the LWDA, in the trial court, after notice of the settlement has been given. (TB at pp. 12–13.) This goes far too far. As Olson explains below, he, like other civil litigants, has the rights afforded to him to move to intervene or to set aside a judgment. But Turrieta's crabbed reading of PAGA displays another, extra-textual flaw: *requiring* the LWDA or its representative to wait until notice of a settlement to raise concerns is an unreasonable reading of the statutory language and intent. Lyft's position is even more extreme; it denies that the State has *any* right to intervene, ever. (LB at p. 33.) Neither position is tenable. When the Legislature passed PAGA, it well

knew that it was doing so to broaden the State's enforcement capacity to prosecute violations of worker protections, specifically because of the LWDA's limited capacity. Reading the statute, as Turrieta urges, to allow the State, whether through the LWDA or through a duly appointed representative, to appear only between notice and approval of a settlement, particularly in a case like this one where only 28 days over the winter holidays elapsed between notice and judgment, is contrary to the text of PAGA and the legislative intent animating it.

Finally, the suggestion by Lyft and Turrieta that Olson's objections *were* heard and considered in the trial court is belied by the record. Although Olson's counsel was permitted to speak at the hearing on settlement approval, there is nothing in the record to suggest that the trial court considered Olson's objections. Instead, the record demonstrates that the trial court denied Olson's application to continue the settlement approval hearing date (so his motion to intervene could be heard) on the basis that Olson lacked standing, and then approved the settlement on the same day as the hearing, never ruling on Olson's objections or his motion to intervene. (2 AA 498–499.) Then, when ruling on Olson's subsequent motion to vacate the judgment, the trial court stated that it wanted to "make it clear" that Olson did "not have standing to object" or to bring a motion to set aside the judgment. (2/28/20 RT at 317:5–15.) The trial court did not consider or address Olson's objections.

B. A Deputized PAGA Plaintiff's Right to Intervene and to Move to Vacate Is Governed by the Code of Civil Procedure, Not the Labor Code, and Is Not Foreclosed by PAGA.

Both Lyft and Turrieta argue that Olson, as the State's proxy, is foreclosed, by PAGA's own provisions or lack thereof, from seeking to intervene or set aside the judgment. Not so.

1. The Absence of Express Authorization in PAGA Does Not Foreclose Intervention or Setting Aside a Judgment.

What is perhaps most conspicuous about Lyft's and Turrieta's briefs is the failure to recognize that the principal argument they advance (see TB at p. 50; LB at p. 26) – that any right to intervene or to vacate must exist within the PAGA statute itself – completely ignores California's well-established civil procedures permitting certain aggrieved persons a seat at the table of an ongoing lawsuit. That is, they argue that this Court must read into PAGA an *exclusion* from traditional civil procedure rules. But the Legislature did not write an exception into PAGA for the common civil procedures and remedies available to civil litigants. And, as Turrieta acknowledges, 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* (2012) 55 Cal.4th 983, 992 (*DiCampli-Mintz*).) Rank speculation about why certain provisions are not in PAGA's text says nothing about what rights a deputized plaintiff in fact has.

First, Turrieta argues that PAGA provides "limited authorization for employees to bring an action to recover civil

penalties." (TB at p. 27.) That is true, but it does not lead where Turrieta would like this Court to go. Turrieta would have this Court ignore California civil procedure altogether and instead find that because PAGA does not include a specifically articulated right to intervene, it does not exist. Nonsense. Cases are legion recognizing an aggrieved party's right to intervene if that party is able to meet the qualifications for intervention under the civil procedure statutes. (See, e.g., *Crestwood Behavioral Health, Inc. v. Lacy* (2021) 70 Cal.App.5th 560, 572–74 (*Crestwood Behavioral Health*); *Simpson Redwood Co. v. State of California* (1987) 196 Cal.App.3d 1192, 1200.) Indeed, this Court's discussion in *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal. 5th 260 (*Hernandez*) is particularly instructive. There, the Court embraced the provisions in the Code of Civil Procedure, not the rules governing class actions, as the path for an absent class member to participate in a lawsuit. (*Id.* at pp. 266–68.)

Misreading this Court's guidance, Turrieta argues that a deputized plaintiff's rights are "narrow" and limited only to the prosecution of PAGA claims once deputized, not to the protection of those claims in parallel actions. But the authority upon which Turrieta relies simply loops back to discussions about unnamed aggrieved employees, not a plaintiff like Olson duly deputized and prosecuting overlapping claims. (See TB at p. 28, citing *Sakkab v. Luxottica Retail N. Am., Inc.* (9th Cir. 2015) 803 F.3d 425, 436 ["PAGA has no notice requirements for unnamed aggrieved employees . . . ."]; *Baumann v. Chase Inv. Servs. Corp.*

(9th Cir. 2014) 747 F.3d 1117, 1122 ["PAGA has no notice requirements for unnamed aggrieved employees . . . ."].) Again, this authority does not elucidate the rights of a deputized PAGA plaintiff. Turrieta and Lyft would have this Court construe PAGA narrowly and find that Olson's *only* right is to proceed apace with his own PAGA action, no matter how, when or why the claims he has been deputized to pursue may otherwise be compromised. This is antithetical to PAGA's aims.

Second, notwithstanding their position that the statute can only include what is express, Turrieta and Lyft claim that Olson asks this Court to "infer" a legislative intent to permit the right to intervene or set aside judgments. (See, e.g., TB at p. 56.) Not so. That right already exists in well-established California civil procedure. And Olson is not seeking to leapfrog over *those* requirements, only to be permitted to show his direct and immediate interest in this litigation, as the State's proxy, as the Courts of Appeal did in both *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56 (*Moniz*) and *Uribe v. Crown Bldg. Maint. Co.* (2021) 70 Cal.App.5th 986, 990–91 (*Uribe*).

Third, neither Lyft nor Turrieta advances any persuasive reason why *Moniz* and *Uribe* do not correctly address the issue. Lyft attempts to argue that those cases are "inapposite" and "provide no guidance" as to Olson's right to intervene. (LB at p. 35.) But to so argue is to deliberately ignore the reasoning in those decisions. Lyft acknowledges that *Moniz* found a deputized PAGA plaintiff had the right to move to vacate the judgment, but ignores that a nearly identical standard – whether the plaintiff

had a direct and immediate interest in the litigation – applies to both intervention and vacatur. (*Id.* at pp. 35–36.) Lyft also ignores the actual holding of *Moniz*, namely that a PAGA representative in a separate action with overlapping claims is "sufficiently aggrieved," consistent with "an interest sufficient for intervention," and "may seek to become ***a party to the settling action***…as part of his or her role as an effective advocate for the state." (*Moniz, supra*, 72 Cal.App.5th at p. 73 & n.10, emphasis added.)

Similarly, Lyft notes that the *Uribe* court declined to reach "any unstated or oblique suggestion of error…related to the trial court's intervention rulings." (LB at p. 36, quoting *Uribe, supra,* 70 Cal.App.5th at p. 1102 & n.4.) But this holding actually helps Olson: the trial court *granted* intervention, and the appellate court affirmed the intervening PAGA plaintiff's right, *consistent* with her right to intervene, to also move to set aside the judgment. (*Uribe, supra*, 70 Cal.App.5th at p. 1001.)

Turrieta cites a handful of federal cases for support, but those cases do not move the needle in Turrieta's direction. In *Saucillo v. Peck* (9th Cir. 2022) 25 F.4th 1118 (*Saucillo*), the Ninth Circuit disallowed a non-party with a parallel PAGA action to appeal the settlement of a class and PAGA action. Critically, the Ninth Circuit noted that the appellant "did not move to intervene in the cases before us. See Fed. R. Civ. P. 24. Consequently, ***we do not address*** whether he could have been permitted to intervene, raise objections to the PAGA settlement,

and then pursue those objections on appeal." (*Saucillo, supra*, 25 F.4th at p. 1128, emphasis added.) *Saucillo* is inapposite.

In *Feltzs v. Cox Commc'ns Cal., LLC* (C.D. Cal. Jan. 21, 2022) No. SACV192002JVSJDEX, 2022 WL 401807 (*Feltzs*), the federal district court, considering intervention under federal and not California law, noted the holdings of *Moniz*, *Uribe*, and the decision below in this case, and opted to follow the decision below, concluding that the intervening plaintiff did "not have a protectable interest at stake" because the LWDA has "multiple opportunities…to protect the state's interest." (*Id.* at *6.) For reasons elsewhere stated in Olson's opening brief and herein, the LWDA's "opportunities" do not supplant Olson's right to intervene. Nor is the district court correct that permitting intervention would be to treat the intervenor's PAGA claims as "superior;" instead, it is permitting a more complete consideration of the State's claims. Indeed, the district court, after denying intervention, invited the proposed intervenor to submit an amicus brief, noting that he "may be in a position to provide a unique perspective that can help the Court…regarding the adequacy of the PAGA settlement." (*Id.* at *8.)

In *Harvey v. Morgan Stanley Smith Barney LLC* (N.D. Cal. Mar. 3, 2020) No. 18-CV-02835-WHO, 2020 WL 1031801, the district court thoroughly considered the objections raised by proposed intervenors, applied the standard of review to the settlement that proposed intervenors had proposed, and awarded the proposed intervenors a portion of the attorneys' fees because "they have provided a significant benefit to the general public or

a large class of persons." (*Id.* at *11, 20.) *Harvey* does not support Turrieta's interpretation.

Turrieta also cites to *Callahan v. Brookdale Senior Living Communities, Inc.* (C.D. Cal. May 20, 2020) No. 218CV10726VAPSSX, 2020 WL 4904653, at *4, but in that case the district court, considering intervention under federal law, did not address intervention as of right at all, and denied permissive intervention because it found on that record that intervention "would not contribute to the factual development of issues in the case." (*Id.* at *5.) It is not persuasive. Nor is *Chalian v. CVS Pharmacy, Inc* (C.D. Cal. July 30, 2020) No. CV1608979ABAGRX, 2020 WL 5266462, at *3, in which the district court only considered whether the PAGA plaintiffs there had a personal protectable interest – not whether they could represent the State's interests as intervenors – and also found that their intervention would "expand the scope of this case exponentially." (*Ibid.*) None of the federal cases upon which Turrieta relies aids her cause.

Finally, Turrieta and Lyft both seize upon this Court's statements (and Olson's consequential reliance thereon), that PAGA bears resemblance to qui tam proceedings because the PAGA plaintiff also represents the interests of the state. (See, e.g., LB at pp. 33–35; TB at pp. 46–48.; *Iskanian, supra,* 59 Cal.4th at pp. 380–82 [PAGA is a type of public enforcement action similar to a qui tam action].) They argue that because the California False Claims Act statute ("FCA") contains a provision to permit the State to intervene, the absence of such a provision

in PAGA means that intervention is prohibited. But the FCA's provisions in fact support Olson's argument.

Lyft directs the Court to Government Code section 12652(a)(3). (See LB at p. 34.) That provision provides that, after the Attorney General commences a civil action under the FCA, the "prosecuting authority" has "the right to intervene within 60 days after receipt of the complaint," and thereafter may intervene "upon a showing that all of the requirements of Section 387 of the Code of Civil Procedure have been met." (Gov. Code § 12652(a)(3).) Turrieta directs the Court to a different provision, Government Code section 12652(f)(2)(A). (TB at p. 51.) That section provides that the state may intervene in a private qui tam action in which the state had initially declined to proceed if it demonstrates that the state's interests are "not being adequately represented by the qui tam plaintiff," i.e., if it meets the requirements for mandatory intervention under Code of Civil Procedure section 387. (Gov. Code § 12652(f)(2)(A).) In another section, the FCA provides that the state, via the Attorney General, may intervene as a right within 60 days after receiving a complaint from a private qui tam plaintiff and, thereafter, may intervene "upon a showing that all of the requirements of Section 387 of the Code of Civil Procedure have been met." (Gov. Code § 12652(c)(8)(E).)

Read as a whole, it becomes clear that this statutory language is thus intended simply to distinguish when the state has a right to intervene *without* otherwise meeting the requirements of Section 387. It functions, in fact, like the pre-

filing notice requirement under PAGA, which similarly permits the state to investigate the violations within the first 65 days of receiving notice. (See Lab. Code § 2699.3(a)(2)(B).) After the expiration of that time period, just as with the time periods set forth under the FCA, intervention is governed by Code of Civil Procedure section 387.

2. PAGA's Provision of Notice to the LWDA and Court Review of Settlements Does Not Preclude Intervention.

Having failed to persuade that the absence of explicit language in PAGA that already exists elsewhere in California law precludes Olson's participation in this action, both Lyft and Turrieta then turn to Labor Code section 2699(l)(2), arguing that it – and only it – dictates the conduct of a duly deputized PAGA plaintiff. But that statutory provision is too slender a reed to support the weight Turrieta and Lyft place upon it.

Section 2699(l)(2) provides simply that the trial court "shall review and approve any settlement of any civil action filed pursuant to [PAGA]. The proposed settlement shall be submitted to the [LWDA] at the same time that it is submitted to the court." (Lab. Code § 2699(l)(2).) Turrieta and Lyft would have this Court read Section 2699(l)(2) as restricting both the LWDA's and Olson's right to seek intervention. In other words, the text of PAGA "implicitly" prohibits intervention because it does not explicitly provide for it.

But nothing in this section proscribes a deputized PAGA plaintiff litigating the same claims in a parallel proceeding. Nor

does it restrict the LWDA's ability to otherwise seek participation in the action. The section merely sets forth a procedure (1) for the LWDA to receive notice of a proposed settlement; and (2) for the trial court to approve the settlement. Whether the LWDA or Olson have a right to intervene or set aside the judgment is governed by existing civil procedures under the Code of Civil Procedure. There is nothing in the language of Section 2699(l)(2) supporting the conclusion that it operates as a complete bar to participation as an intervenor or aggrieved party, according to the standards set forth in California civil procedure. As Turrieta acknowledges, "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." (*DiCampli-Mintz, supra*, 55 Cal.4th at p. 992, internal quotations omitted)

This type of statutory construction is the pseudotextualist's sophistry: where a statute is silent, it can mean either what it says, or does not say. Here, Lyft and Turrieta bounce back and forth between an interpretation of Section 2699(l)(2) that is stripped of context to their shared ends. For example, the fact that Section 2699(l)(2) provides for notice to the LWDA, and not to all aggrieved employees, is not indicative of an (extra-textual) intent to *deny* intervention to a duly deputized PAGA plaintiff with parallel claims that are threatened, where such intervention is otherwise appropriate. Turrieta and Lyft defend their decision to provide just 28 days' notice to the LWDA, though the statute offers no such textual support for a shorter notice period for amendments, or provides that the notice of a settlement triggers

a lawful time period "until the judgment [becomes] final." (TB at p. 64.)

In the same vein, notice to the LWDA and not to a deputized plaintiff like Olson does not, contrary to Turrieta's (extra-textual) contention, affirmatively strip Olson of his status as the State's proxy. Were that the case, this Court would not have recognized that duly deputized plaintiffs may pursue the State's rights "as the proxy or agent of the state's labor law enforcement agencies." (*Arias*, *supra*, 46 Cal.4th at p. 986), and that such enforcement is "necessary 'to achieve maximum compliance with state labor laws." (*ZB, N.A.*, *supra*, 8 Cal.5th at p. 184, citing *Iskanian*, *supra*, 59 Cal.4th at p. 379, quoting *Arias*, *supra*, 46 Cal.4th at p. 980.) Indeed, this Court in *Arias* remarked that a PAGA plaintiff "represents the same legal rights and interest as state labor law enforcement agencies." (*Arias*, *supra*, 46 Cal.4th at p. 986.)

Turrieta insists that Olson's read of PAGA will deeply disrupt the orderly settlement of PAGA disputes. But Turrieta's cries of disruption ring hollow, because Olson has never argued that *any* aggrieved employee has a right to intervene or object. Instead, the reasonable reading of PAGA that is true to its language and its legislative purpose is that the State and its deputies have a right to seek intervention in a parallel proceeding with overlapping claims, and if that parallel proceeding threatens those claims, they will be able to demonstrate an immediate and substantial interest that is not adequately protected that requires their formal participation in

the action. (See, e.g., *Knight v. Alefosio* (1984) 158 Cal.App.3d 716, 721 [intervenor must show that his interest is "of such direct or immediate character, that [he] will either gain or lose by the direct legal operation and effect of the judgment"]; *Moniz, supra,* 72 Cal.App.5th at p. 73 [PAGA representative in separate action may seek to become a party "as part of his or her role as an effective advocate for the state"].)

C. As a Deputized Plaintiff, Olson Demonstrated His Right to Intervene to Protect the State's Interest.

Lyft and Turrieta spend the vast majority of their briefs resisting the application of Section 387 to Olson because, when confronted with it, it is clear that Olson has a right to intervene.

As an initial matter, Lyft and Turrieta argue for an abuse of discretion standard. (See TB at p. 54.) The denial of intervention as of right should be reviewed de novo. (See, e.g., *Hodge v. Kirkpatrick Development, Inc.* (2005) 130 Cal.App.4th 540, 548–50; *Mylan Laboratories Inc. v. Soon-Shiong* (1999) 76 Cal.App.4th 71, 78–80.) Further, mandatory intervention should be liberally construed in favor of intervention. (*Crestwood Behavioral Health, supra,* 70 Cal.App.5th at p. 572.)

In any event, here, the trial court simply found that Olson lacked "standing" and never applied Section 387 – that erroneous conclusion of law is reviewed de novo. (See 2 AA 498; *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 46, 60; *ZB, N.A., supra,* 8 Cal.5th at p. 189.)

1. The State, Through Olson, Has an Immediate and Substantial Right in the Claims that Turrieta Purports to Settle and Extinguish.

Lyft and Turrieta both spill copious ink arguing that Olson has no personal interest sufficient to justify intervention. As Olson made clear in his Opening Brief, he does not advance that argument. (See, e.g., OBM at p. 36, 41.)

As Olson's brief details, however, the State, through Olson, *does* have an immediate and substantial right in the claims that Turrieta purports to settle and is not adequately protecting. (OBM pp. 36–41.) As in *Uribe*, the State's interests here are particularly strong because Turrieta has settled claims she was never deputized to pursue—a fact undisputed on this record—and is therefore not authorized to prosecute as the State's proxy. (*Uribe, supra,* 70 Cal.App.5th at pp. 1005–06; see 1 AA 105-119 ¶¶ I(S), I(V), V.) Neither Turrieta nor Lyft has a persuasive response.

First, Turrieta and Lyft repeatedly cite cases for the proposition that absent aggrieved employees do not have a direct interest in the litigation. (E.g., TB at p. 48.) This argument is a strawman – Olson is not an "absent" employee, and he does not claim a personal interest. He is duly deputized by the State to prosecute claims that overlap with Turrieta's claims, and thus "represents the same legal right and interest as state labor law enforcement agencies." (*Arias, supra,* 46 Cal.4th at p. 986.)

Second, Lyft argues the state cannot intervene through Olson because "the state is already a party to the action through

Turrieta." (LB at p. 31.) According to Lyft, Olson's intervention would be like one deputy attorney general disagreeing with another deputy attorney general about how he has handled a case and seeking to intervene on the state's behalf in a criminal appeal. But Lyft's hypothetical ignores the fact that PAGA authorizes *multiple* proxies, and so it easily follows that those proxies may, at some point, have differing views on how to proceed.

Intervention permits all proxies who want to be heard on the same claims an opportunity to do so. The State's decision not to intervene after receiving notice of the settlement should not deprive Olson, whom the State had duly deputized to prosecute the claims, of his ability to do so. (TB at p. 52.) Olson's position – that PAGA invests authority in overlapping hands – the State *and* its proxies – furthers the Legislature's intent that PAGA's provisions be construed "broadly, in favor of . . . protection." (*Kim*, *supra*, 9 Cal.5th at p. 83.) "Hurdles that impede the effective prosecution of representative PAGA actions undermine the Legislature's objectives." (*Id.* at p. 87, quoting *Williams*, *supra*, 3 Cal.5th at p. 548.)

Lyft's insistence that Section 387 only applies to "nonparties" elevates form over substance: a review of Section 387's use of "nonparty" makes plain that the term is used to distinguish a proposed intervenor from a "defendant," "cross-defendant," "plaintiff," and "cross-plaintiff," and to explain the procedure to move to become a "party" to the action. (Code Civ. Proc. § 387.) And of course, even though Olson is representing

the real party in interest in this action, he is not yet a "party" to it as the State's proxy as that term is intended.

Third, Lyft nonsensically argues that if there is no statutory right to object under PAGA, and if there is no standing to appeal without moving to intervene, a PAGA representative such as Olson has no right to intervene. (LB at p. 32.) But the sensible conclusion is the one actually supported by the statutes: as the State's proxy, Olson has a right under PAGA to object, and a right under Section 387 to intervene (or under Section 663 to move to vacate), and a right to appeal the denial of intervention or the motion to vacate under Section 902.

Fourth, Turrieta raises that the State could have "a pecuniary interest that could supply standing at least to intervene or move to set aside a judgment" (TB at p. 51), but then rejects that interest out of hand, claiming that PAGA penalties "are not anyone's property" because they exist "to punish the wrongdoer." Not only is that a non sequitur, it ignores Turrieta's own acknowledgment of PAGA as a "law-enforcement action." (*Ibid.*) It is hard to imagine a more direct and substantial interest of the State than enforcing the laws that exist to protect its citizens.

It is also clear from the record that the State's interest is not being adequately represented by Turrieta, who unlawfully apportioned half of the $10 million in penalties recovered to aggrieved employees, rather than to the State, contrary to Labor Code section 2699(i) and this Court's decision in *ZB, N.A.*, and compromised the claims at a 99.5% discount. Turrieta's

contention that the "mediator's proposal" somehow prevented her from lawfully allocating the penalties between the State and aggrieved employees, is simply not credible. Turrieta's arguments concerning *Dynamex*'s retroactively similarly miss the point. (TB at p. 65.) There is no dispute that *most* of the liability period covered by the settlement (20 out of 32 months) post-date *Dynamex* and thus *Dynamex*'s ABC test undoubtedly applied.

2. Olson Timely Moved to Intervene.

Aware of their poor odds at refuting Olson's substantial and immediate interest as the State's representative in this action, Lyft and Turrieta try to avoid consideration of the issue altogether by arguing that Olson's motion to intervene was untimely in any event. Olson's motion was timely.

When mandatory intervention "is sought, because 'the would-be intervenor may be seriously harmed if intervention is denied, courts should be reluctant to dismiss such a request for intervention as untimely, even though they might deny the request if the intervention were merely permissive.'" (*Lopez-Aguilar v. Marion County Sheriff's Dept.* (7th Cir. 2019) 924 F.3d 375, 388–89, internal quotations omitted; see *Benjamin v. Dept. of Pub. Welfare of Pa.* (3d Cir. 2012) 701 F.3d 938, 949 (*Benjamin*) ["There is a general reluctance to dispose of a motion to intervene as of right on untimeliness grounds because the would-be intervenor actually may be seriously harmed if not allowed to intervene."]; *Crestwood Behavioral Health, supra*, 70 Cal.App.5th at p. 574 [quoting *Benjamin* and finding Labor Commissioner's motion to intervene timely when filed 100 days after learning of

that defendant sought to stay DLSE proceedings].) As Olson's opening brief demonstrates, there is no doubt that the State, which is on record as stating that Turrieta "never ha[d] authority from the LWDA to bring the vast majority of those claims," would be seriously harmed by not being permitted to intervene. (OBM at pp. 47–52.)

Further, even though Lyft acknowledges that the trial court never ruled on the timeliness of Olson's motion to intervene, it contends that "such a finding must be implied on appeal." (LB at p. 39.) There is no support for this utterly unfounded conclusion. Lyft argues that "substantial evidence supports the trial court's implicit finding that Olson's motion was untimely." (*Ibid.*) But the trial court repeatedly found that Olson *lacked standing*, so it plainly never reached the question of timeliness.[1]

Finally, the evidence in the record easily supports a finding that Olson's motion was timely: he filed it *four days* after learning of Turrieta's settlement, and after Turrieta and Lyft actively concealed it from him. (1 AA 281; 2 AA 308; OBM at pp. 16–19.) Further, Turrieta's case was stayed at the time she filed her motion for settlement approval. (2 AA 441; OBM p. 15.) Olson's motion was timely. (See, e.g., *Callahan v. Brookdale Senior Living Communities, Inc.* (C.D. Cal. May 20, 2020) No. 2:18-cv-10726-VAP-SSx, 2020 WL 4904653, at *4 [finding

[1] Turrieta claims that the trial court "found that Olson was dilatory," but the cite is to Turrieta's counsel's declaration. No finding was made.

motions for intervention timely where they were filed between one week and one month after the parties filed a motion for approval of a PAGA settlement]; *Feltzs, supra*, 2022 WL 401807, at *4 [facts suggest motion was timely where PAGA representative alleged he was not invited to participate in mediation, was not informed of full scope of settlement, and filed motion within weeks of motion to approve settlement].)

The trial court erred as a matter of law in concluding Olson did not have a right to intervene. Given the undisputed facts that Olson is acting as the State's representative and that Turrieta purported to settle the State's claims for a fraction of their value, the trial court also abused its discretion in not permitting Olson to intervene. (See *Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 531–32 [granting intervention by PAGA representatives with overlapping claims and ultimately modifying settlement terms in favor of the State].)

D. As a Deputized Plaintiff, Olson Demonstrated His Right to Move to Vacate the Judgment to Protect the State's Interest.

The arguments advanced by Lyft and Turrieta that Olson has no right to seek to set aside the judgment fail largely for the same reasons as articulated above. Olson, as the State's representative, is a "party aggrieved" for the same reasons he has an immediate and substantial interest in the settlement that purports to resolve the State's claims for .05% of their value, and without statutory notice to the State. (See Code Civ. Proc. § 663;

OBM at pp. 29–36, 39–41.) Their other contentions likewise have no merit.

Lyft acknowledges that Olson meets the standard to move to vacate the judgment if he demonstrates that the State is aggrieved by the judgment and he has standing to assert the State's interest. (LB at p. 42.) Lyft contends, however, that the State is not aggrieved, because Turrieta gave the LWDA notice, and it did not appear at the trial court's hearing, 28 days after the notice was uploaded, to contest the settlement. This fails on both the facts and the law. Turrieta never provided statutory notice to the LWDA of the claims she purported to resolve, as the LWDA stated to the court below. (See LWDA Amicus Br.; 2 AA 393; 3 AA 501.) And the State *did* appear to contest the settlement – it did so through Olson.

Further, Lyft's argument that this Court cannot consider the LWDA's statements in the appellate court below (LB at p. 44, n. 9) proves the necessity of Olson's involvement in the first place: at the trial court Olson raised the very concerns that the LWDA subsequently raised at the Court of Appeal. (Compare 1 AA 282–84 to LWDA Amicus Br. at pp. 15–36.) By recognizing Olson's right to represent the State's interest in surfacing several significant objections to a purported PAGA settlement, this Court would be construing PAGA consistent with its central purpose: to assist the public agency by deputizing private citizens to protect the interests of workers, and "to achieve maximum compliance with state labor laws." (*ZB, N.A., supra*, 8 Cal.5th at p. 184, citations omitted.)

Lyft then pivots to another formalistic argument that is makeweight, contending that the State cannot move to vacate a judgment because it is already a party, through Turrieta, and a party "generally cannot appeal from a judgment entered by the party's own agreement." (LB at pp. 44–45.) Not only does PAGA permit multiple proxies to represent the State's interest, Lyft's position is also inconsistent with civil procedure: on its face, section 663 permits "a party aggrieved" from a judgment to move to vacate it. (Code Civ. Proc. § 663; see, e.g., *Hernandez, supra*, 4 Cal.5th at p. 267; *Uribe, supra*, 70 Cal.App.5th at pp. 998–1001.)

Lyft persists, claiming that even if the State is aggrieved, Olson lacks the authority to challenge the settlement, because PAGA would have to specifically authorize and delegate this right to Olson. (LB at p. 45.) This narrow reading of PAGA, and to the exclusion of traditional civil procedure rules, is unsupported. Lyft's cases (LB at pp. 45–46) are inapposite. PAGA provides Olson and other deputized aggrieved employees the right to seek civil penalties on the State's behalf against Lyft, unlike the situation of a lawyer representing a client where the law only affords the client (not the lawyer) the right to seek attorneys' fees. (See *In re Marriage of Tushinsky* (1988) 203 Cal.App.3d 136, 142.)

Turrieta tries to do Lyft one better by way of formalism, offering the tortured argument that Section 663 cannot be used to vacate the judgment because that statutory provision is limited to vacating the judgment and substituting a different judgment. (TB at pp. 59–60.) However, this Court has recognized that a

non-party employee may use a Section 663 motion to vacate a judgment approving a class action settlement to which the employee objects. (See *Hernandez, supra*, 4 Cal.5th at pp. 272–73.) Likewise, in *Moniz*, both the LWDA and the non-party PAGA representative moved under Section 663 to vacate the judgment approving the PAGA settlement, which the trial court granted, and which resulted in additional proceedings concerning the fairness and legality of the settlement. (See *Moniz, supra*, 72 Cal.App.5th at pp. 67–68, 71.) The Court of Appeal found that the non-party PAGA representative had standing to appeal from the denial of her Section 663 motion. (*Id.* at p. 71.) Section 663 serves the purpose for which Olson seeks to employ it. (See, e.g., *Machado v. Myers* (2019) 39 Cal.App.5th 779, 799 (*Machado*).)[2]

In any event, when Olson moved in the trial court, he did so under Section 663 as well as for a new settlement hearing under Code of Civil Procedure sections 657, 659, and 1008(b), the statutes governing modification of decisions, motions for new trials, and motions for reconsideration. (See 3 AA 522, 532–34,

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[2] As the Court of Appeal held in *Machado*:

> Section 663 "is designed to enable speedy rectification of a judgment rendered upon erroneous application of the law to facts which have been found by the court or jury or which are otherwise uncontroverted." [Citation.] A section 663 motion is properly "made whenever the trial judge draws an incorrect legal conclusion or renders an erroneous judgment upon the facts found by it to exist." [Citation.]

(*Machado, supra*, 39 Cal.App.5th at p. 799.)

536.) Further, as Olson argued in the trial court, Code of Civil Procedure section 187 provides that when jurisdiction of a matter is conferred on a court by statute, the court should adopt a suitable mode of proceeding that "appears most conformable to the spirit of the Code." That provision gives the lie to Turrieta's argument that Olson has no remedy to set aside the judgment of the trial court.

Finally, Lyft argues that even if Olson is aggrieved as the State's proxy, he cannot "usurp" Turrieta's role in the litigation. (LB at p. 46.) Lyft's choice of language is telling: Olson is not trying to "usurp" Turrieta; he is, as another of the State's deputies, raising objections to a settlement that is unfair to the State. As PAGA authorizes multiple proxies to prosecute PAGA claims, there is no legal support for the position that such authority cannot extend to representing the State's interests in a parallel proceeding with overlapping claims.

II. The Public Interest Is Served by Recognizing a PAGA Plaintiff's Right to Object, Intervene, and Move to Vacate a PAGA Judgment that Threatens the State's Interest.

This Court must also consider the public interest served by the interpretation of PAGA and the Code of Civil Procedure advanced by Olson. Lyft and Turrieta dispute how, or even whether, public policy should factor into this Court's analysis. But their scattershot arguments underscore the inconsistent ways in which courts have managed PAGA litigation and assessed the adequacy of PAGA settlements.

Lyft discounts Olson's reliance on this Court's PAGA jurisprudence as "essentially policy arguments about how Olson believes the statute *should* be drafted." (LB at p. 26.) But it is Lyft's interpretation of the trial court's role in the application of PAGA that is fanciful. For example, Lyft contends that "the Legislature created a system that works as intended" and identifies the various tools trial courts purportedly have at their discretion to serve as "gatekeepers in scrutinizing settlements." (LB at p. 27.) Yet Lyft's enumeration of those "tools for guarding the gate" (*ibid.*) only amplifies how these tools remain merely theoretical without practical guidance from appellate courts about when and how to apply them. Prior to the Court of Appeal's decision in *Moniz*, for example, trial courts did not apply a common standard in reviewing proposed PAGA settlements, or even ensure that settlements were consistent with the purposes of PAGA.

Lyft still denies that PAGA settlements ought to be subject to any standard beyond its vague description of "trial court scrutiny." (LB at p. 27.) Lyft otherwise privileges PAGA's purported "streamlined settlement process" (*id.* at p. 50) aimed at "restricting objector interference" and encouraging "prompt payment" (*id.* at p. 51) over a systematic and standard review, with sufficient input to fairly evaluate the settlement. According to Lyft, trial judges can "ask the parties for more information and disclosures;" "require sworn testimony;" or "ask the LWDA for comments." (*Id.* at 27.) Lyft could have added a host of other inherent powers vested in trial courts to the list, though its

length would not diminish the fact that the trial court here did none of these things. It neither engaged the LWDA, nor recognized that the LWDA is, by definition, admittedly too overburdened to weigh in upon the hundreds of PAGA settlements presented to it each year. The trial court affirmatively denied consideration of "more information" and "sworn testimony" and refused to "hold hearings" on Olson's motions. It barely questioned counsel for Lyft or Turrieta about the secret settlement or the timing of the approval process. The trial court did not question the propriety of a nearly-100-percent discount on the claims, assess the risk of those claims on the merits, or function in a "gatekeeping" role, but instead misstated the applicable law, accepted Turrieta's counsel's misrepresentations without inquiry, and failed to scrutinize the details of the deal.

In this light, Lyft's self-serving insistence on trial court "discretion" belies its implicit acknowledgement that these tools are intended to ensure a *public* benefit. Who is a trial court benefitting when it "gatekeeps" and "sniffs out…bad deals" if not the public? Lyft acknowledges that a trial court *could* act as a bulwark against collusion (as it must, for example, in the class action context). But it cannot follow that a court might be charged with such a duty *some* of the time. Indeed, if, as Lyft suggests, trial courts "can sniff out bad deals…." (*id.* at p. 27), they must at least be set upon the trail. The trial court did nothing here to track the scent.

While Lyft ostensibly disclaims any consideration of the public policy animating the PAGA statute, its partner, Turrieta, leans into the proposition. Turrieta asserts that this Court must consider the "practical effect" of allowing "PAGA litigants" to scrutinize settlements. (TB at p. 41.) Yet according to Turrieta, the "public interest" is not in preventing reverse auctions that prejudice the State by cheapening its efforts to ensure compliance with the laws and its collection of penalties, but in "disrupting" settlements—and fee awards. (*Id.* at 42.)[3] In this respect, Turrieta turns PAGA on its head. A trial court's watchful gaze, as Turrieta would have it, is squinting and narrow: PAGA's public purposes are all about settlement, regardless of their quality, and not law enforcement and worker protection. As set forth above, this Court has never construed PAGA in such a manner. The statute was enacted to meet the public's unmet need, and it must be construed, as ever, consistent with that public purpose.

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[3] To this end, Turrieta engages in a prolonged *ad hominem* attack about Olson's counsel and the scourge of "professional objectors." Turrieta's scurrilous claims about purported "bargaining" conversations (TB at p. 43) are improper and false. The mischaracterization and selective disclosure of the parties' discussions are at best irrelevant, and at worst violative of evidentiary privileges. (See Opposition to Motion for Judicial Notice.) Olson disputes Turrieta's characterization of the content of the parties' communications, Olson's motives, and the implication that Olson's counsel is a "professional objector."

CONCLUSION

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

Dated: June 9, 2022

Respectfully submitted,

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

CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.204(c) of the California Rules of Court, I hereby certify that this petition contains 8,387 words, including footnotes. In making this certification, I have relied on the word count of the computer program used to prepare the brief. The brief also otherwise complies with the California Rules of Court in its format.

Dated: June 9, 2022

Respectfully submitted,

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/s/ Raika Kim
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STATE OF CALIFORNIA
Supreme Court of California

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