S271721

IN THE SUPREME COURT OF THE STATE 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 For the
Second Appellate District, Division Four
Case Number B304701

BRIEF OF THE AMICI CURIAE EMPLOYERS GROUP AND THE CALIFORNIA EMPLOYMENT LAW COUNCIL IN SUPPORT OF RESPONDENTS TURRIETA AND LYFT, INC.

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AMICI CURIAE BRIEF

Employers Group and The California Employment Law Council ("CELC") hereby submit this brief as *amici curiae*, pursuant to California Rules of Court, Rule 8.520 (f) in support of respondents Tina Turrieta and Lyft, Inc.

The Labor Code Private Attorneys General Act, Cal. Lab. Code sec. 2698 et. seq. ("PAGA") was enacted to assist the State of California's efforts to achieve employer compliance with California's multi-faceted and highly complex employment regulations. This case demonstrates the tension inherent in PAGA, namely the enabling of private pecuniary interests purporting to advance a legislative or policy goal. Instead of acting as a vehicle to improve labor standards compliance, PAGA has become a battleground where self-interested employees and their advocates compete for large settlements from employers. The conflict is apparent: two private individuals, each represented by counsel, claim to represent the State's interest. Yet one of the proxies for the State challenges a judgment entered in the name of the State and after approval by a Superior Court Judge.

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The Court of Appeal was correct; there is no right for a second PAGA plaintiff to intervene before the judgment or to challenge the judgment on the basis the judgment violates PAGA. The trial court approved the settlement after considering and rejecting Appellant's arguments (*Turrieta v. Lyft, Inc.* (2021) 69 Cal.App.5th 955, 965-66), and the Court of Appeal's judgment should be affirmed.

Because both PAGA "proxies" represent the State, a second, self-interested proxy has no right to intervene and certainly no right to challenge a judgment obtained by the very party they both represent—the State of California.

I. INTEREST OF THE AMICI

CELC is a voluntary, non-profit organization that promotes the common interests of employers and the general public in fostering the development in California of reasonable, equitable, and progressive rules of employment law. CELC's membership includes approximately 70 private sector employers in the State of California who collectively employ well in excess of a half million Californians.

Employers Group is the nation's oldest and largest human resources management organization for employers. It represents

nearly 3,000 California employers of all sizes in a wide range of industries, which collectively employ nearly three million employees. As part of its mission, Employers Group maintains an advocacy group designed to represent employer interests in government and agency policy decisions and in the courts. Employers Group seeks to enhance the predictability and fairness of employment relationships.

Both organizations have repeatedly been granted leave to appear as amici in important employment cases.[1]

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[1] (See, e.g., *Viking River Cruises, Inc. v. Moriana* (2022) __ U.S. __ [142 S.Ct. 1906]; *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58; *Kim v. Reins Internat. Cal., Inc.* (2020) 9 Cal.5th 73; *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858; *Vazquez v. Jan-Pro Franchising Internat., Inc.* (2021) 10 Cal.5th 944; *Oman v. Delta Air Lines, Inc.* (2020) 9 Cal.5th 762; *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038; *Voris v. Lampert* (2019) 7 Cal.5th 1141; *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175; *Troester v. Starbucks Corp.* (2018) 5 Cal.5th 829; *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903; *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542; *Mendoza v. Nordstrom, Inc.* (2017) 2 Cal.5th 1074; *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257; *Johnmohammadi v. Bloomingdale's, Inc.* (9th Cir. 2014) 755 F.3d 1072; *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, abrogated by *Viking River Cruises, Inc. v. Moriana* (2022) __ U.S.__ [142 S.Ct. 1906]; *Duran v. US. Bank Nat. Assn.*, (2014) 59 Cal.4th 1; *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203; *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004; *Harris v. Superior Court* (2011) 53 Cal.4th 170; *Jones v. Lodge at Torrey Pines Partnership* (2008) 42 Cal.4th 1158; *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094; among others.)

II. SUMMARY OF ARGUMENT

A competing PAGA proxy may, as here, submit an objection to a proposed settlement; but there is no basis in the statute, or otherwise, to recognize a right to intervene prior to judgment or to challenge the judgment.

If Appellant's arguments were correct, there could be 5, 10, 20, or more PAGA proxies with overlapping claims, each with the right to seek to derail a court-approved settlement entered into in good faith by one of the proxies and the employer/defendant. As amici's members can attest, multiple, competing PAGA proxies have become commonplace. Resolving PAGA cases would then be an unending process. Apart from the egregious waste of judicial (and private) resources, such a result would defeat, not serve, PAGA's goal of achieving employer compliance.

Appellant's argument also distorts PAGA's purpose. The goal of PAGA, as the California Labor and Workforce Development Agency ("LWDA") itself has stated, is not to maximize penalties or to compensate employees for wage violations. Its purpose is to deter employer violations. Focusing on the amount of a proposed PAGA settlement, without

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considering the totality of factors and the statutory purpose, misses the goal.

Nor is there an epidemic of court-approved but substandard PAGA settlements, as suggested by Appellant. As will be demonstrated below, there already exist multiple, effective mechanisms to ensure PAGA settlements are consistent with its purpose, starting with the requirement in Cal. Labor Code sec. 2699, subd. (l)(2), that the LWDA receive written notification of any proposed PAGA settlement at the time the settlement is submitted for court approval.

III. THE REALITY OF PAGA LITIGATION

Numerous memers of these *amici* are now or have been in the same situation as Lyft in this case. The employer receives multiple PAGA letters from private counsel, often a variation of a form letter, alleging a litany of violations of the Labor Code. The LWDA declines to assume responsibility for the claim: by default, under Labor Code sec. 2699.3, each one of the employees or former employees submitting the letter may pursue a lawsuit. In some cases, the actual monetary harm to the employees in question is modest (if any at all). But the claims for penalties under PAGA can (and do) mount astronomically. PAGA letters

typically demand multiple penalties for the same violation, multiplied by hundreds or thousands of allegedly aggrieved employees. In virtually every PAGA case, numerous violations are alleged – not infrequently eight to ten or more separate alleged violations, purportedly affecting hundreds or thousands of employees, over numerous pay periods, with each alleged violation attended by multiple claims for civil penalties. And, of course, there is always a claim for attorneys' fees and costs.

On receipt of a PAGA letter(s), any employer will investigate the alleged violations and cure prospectively any that exist. But PAGA lacks any effective cure mechanism for most common alleged violations, so the litigation proceeds, even if the alleged violations do not.

Almost no PAGA case ever goes to trial. Only the most intrepid or foolhardy employer dares to do so. Whether any violation(s) occurred is established only in very rare cases. Even if the employer were to prevail entirely at trial, there is no meaningful likelihood of recovering its legal fees (which will be well into the six or even seven figures). And in many cases, as here, the employer is faced with multiple, overlapping PAGA claims, in different courts, filed by different attorneys (each with

the desire to claim a hefty fee) and without any reliable mechanism to litigate the multiple claims in a single proceeding. So when, as here, the employer settles and obtains a judgment, after mediation before an experienced mediator, with the exchange of substantial amounts of data, and extensive arms-length negotiations, a competing attorney seeks to overturn the resulting judgment.

IV. PAGA'S PURPOSE IS DETERRENCE, NOT MAXIMUM RECOVERY OF PENALTIES

The bill enacting PAGA states that its purpose is "to ensure an effective disincentive for employers to engage in unlawful and competitive business practices." (Brief for the DLSE as Amicus Curiae, p. 26, *Turrieta v. Lyft, Inc.*, *supra*, 69 Cal.App.5th 955.) PAGA's basic purpose is not the recovery of wages due or imposition of a maximum penalty. The Labor Code is replete with provisions, including statutory penalties, prejudgment interest, and attorneys' fees, to insure prompt and complete payment of wages. "PAGA was enacted with a goal of imposing civil penalties for Labor Code violations 'significant enough to deter violations'" (Brief for the DLSE as Amicus Curiae, p. 25, *Turrieta v. Lyft, Inc.*, *supra*, 69 Cal.App.5th 955.)

Appellant's arguments would do nothing to advance PAGA's goal of employer deterrence. Those arguments, if adopted, would add uncertainty, delay and expense into the morass of PAGA litigation. The arguments assume that the judges of the Superior Courts are routinely misled by both plaintiff and defense counsel, and erroneously approve collusive settlements. Appellant would create a second (or third or fourth) round of settlement negotiations in many PAGA cases.

Because maximizing recovery, either to the State or the employees, is not PAGA's goal, attacking the total settlement amount focuses on the wrong goal.[2]

There are a myriad of circumstances bearing on the deterrent effect of penalties: the employer may be a non-profit entity; it may have very limited financial resources; it may have no history of labor violations; it may be agreeing to substantial amounts for alleged unpaid wages, penalties and interest; it may have cured some or all of the violations; the claims often are

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[2] Appellant's focus on the alleged inadequate amount of the settlement at issue underscores again the basic tension in PAGA: a private attorney prosecuting a PAGA action invariably seeks a fee based on a percentage of the gross settlement amount. But PAGA's purpose is not to maximize the total amount of penalties recoverable.

disputed and/or of doubtful merit legally or factually; there may be only limited if any wage loss; etc.

The Legislature amended PAGA in 2015/2016 to require written notice to the LWDA of any proposed PAGA settlement at the time the settlement is submitted to the court. (Sen. Bill No. 836 (2015-2016 Reg. Sess.) § 189; Lab. Code, § 2699, subd. (l)(2).)[3] In so doing, the Legislature did *not* require notice to a duplicative PAGA proxy, nor did it authorize a duplicative PAGA proxy to intervene or object to the settlement. That statutory language alone should resolve the case. However, in addition to the mandatory review and approval by a Superior Court Judge, multiple other vehicles exist (*see* Section VI, *infra*) to reduce the possibility of a collusive or substandard settlement. Creating a non-statutory right to intervene or to object to the settlement, when the Legislature has already designated the party to do so

[3] The LWDA must also receive, within 10 days of the filing of a PAGA action, a file stamped copy of the Complaint including the case number. And LWDA must also receive, within 10 days after entry, a copy of any judgment or order that provides for or denies the award of PAGA penalties. Here, LWDA, through its sub-agency the Division of Labor Standards Enforcement ("DLSE"), filed an amicus brief in the Court of Appeal, but neither the LWDA nor the DLSE filed comments in the Superior Court to object to the proposed settlement. (*Turrieta*, *supra*, 69 Cal.App.5th at p. 973 n.14.)

(i.e. the LWDA) ignores the statutory purpose of deterrence, the statutory language and the other preventive measures already available.

V. PAGA PROXIES ACT ON BEHALF OF THE STATE AND HAVE NO INDIVIDUAL INTEREST

The only party plaintiff in an action under PAGA is the State of California. A PAGA action is always a dispute between the State of California and an employer, not between an employee and the employer. (*Iskanian v. CLS Transportation Los Angeles, LCC* (2014) 59 Cal.4th 348, 386.) An "aggrieved employee" who initiates a PAGA claim after first exhausting the pre-filing requirement with the LWDA "may bring a PAGA claim only as the State's designated proxy." (*Kim v. Reins Internat. Cal., Inc* (2020) 9 Cal.5th 73, 81, 87.) This Court has also held, recognizing that the real party in interest in a PAGA action is the State of California, that non-party employees are bound in a PAGA judgment as to claims for civil penalties under the Labor Code, where a different aggrieved employee brought an unsuccessful PAGA action. (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 986.)

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"An employee suing under PAGA 'does so as the proxy or agent of the state's labor law enforcement agencies.'" (*Kim*, *supra*, 9 Cal.5th at p. 81 (quoting *Arias*, *supra*, 46 Cal.4th at p. 986).) This Court's precedents makes it clear beyond doubt: a PAGA claim is "legally and conceptually different from an employee's own suit for damages and statutory penalties." (*Ibid.*) Even the Appellant acknowledges that *both* he and the plaintiff/respondent, represent "the State's interests." (OBOM 31.)

Because a PAGA proxy is a proxy for the State, he or she enjoys no right that the State does not have—and that includes any right to object to a judgment the State has agreed to (via some other proxy). Because there is only one party who owns the claim (the State of California), once the rights of that party have been adjudicated in a judgment, the same party (in the guise of a PAGA proxy) cannot object or move to vacate a resulting judgment.

The Court of Appeal here properly held that a different PAGA proxy, purportedly holding the same interest, has no standing to move to vacate the judgment or for permissive or mandatory intervention. (*Turrieta v. Lyft, Inc.*, *supra*, 69

Cal.App.5th 955, 970.) As the Court of Appeal correctly held, the interest of the disappointed PAGA proxy "cannot supersede the same interest held by [the settling proxy] in her own PAGA case." (*Id.* at p. 977.)

The trial court in this case specifically found that the proposed settlement "complies with the policy goals of the PAGA." (*Turrieta v. Lyft*, *supra*, 69 Cal.App.5th at p. 966.) The trial court considered but rejected Appellant's objections. (*Ibid.* at p. 965 ["Counsel for appellants appeared at the [settlement] hearing and the court allowed them to argue."].) It is highly ironic that Appellant now wants to negate those goals, in this and potentially thousands of subsequent PAGA cases, by allowing the State itself, in the guise of a second proxy, to intervene or object to a court-approved settlement in which its own labor agency never elected to participate, despite having notice of the settlement and the right to timely object. (*Ibid.*)[4]

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[4] The State has argued that it can intervene in a PAGA case at any time, and a Court of Appeal panel agrees. (See *Cal. Business & Industrial Alliance v. Becerra* (Cal. Ct. App., June 30, 2022, No. G059561) WL 2353367 at p. 6-8.) If so, why would mandatory intervention, by competing, self-interested private parties and their counsel, be necessary to achieve PAGA's goals? Appellants provide no answer.

If Appellant were correct, there could be 50 PAGA proxies holding the same claims, each having the right to intervene or challenge the judgment in the actions of 49 other cases. Putting aside the fact that no such right appears in the statute, the interest of the State would thereby never be finally adjudicated. And the result could be unending PAGA claims, each seeking to leverage a greater judgment from the settling employer.

VI. THE "REVERSE AUCTION" ARGUMENT IGNORES THE NUMEROUS SAFEGUARDS THAT PREVENT COLLUSIVE SETTLEMENTS

The real motivation behind the Appellant's effort to intervene and challenge the settlement is his belief (or more properly, that of his counsel) that the amount of the settlement was inadequate. (See, e.g., OBOM 9, 12-15, 19, 49, 51.) First, Appellant fails to explain why his belief (or more likely that of his counsel) should prevail over the judgment of the trial court. The trial judge heard and considered the Appellant's objections to the settlement at the settlement hearing, and nevertheless approved the settlement, rejecting Appellant's assertion that "Lyft engaged in gamesmanship such that plaintiffs in other cases (as well as the State) could be shortchanged." (*Turrieta v. Lyft, Inc., supra,*

69 Cal.App.5th at p. 966. [The trial judge found settlement "is in all respects fair, reasonable and adequate and complies with the policy goals of PAGA. There was no collusion in connection with the [s]ettlement."].)

Appellant's principal and actual "interest" is not the enforcement of the state labor laws or the policy of PAGA: the trial court already found the settlement in question satisfies that interest. (*Turrieta v. Lyft, Inc.*, *supra*, 69 Cal.App.5th at p. 965-66.) It is instead Appellant's unsupported claim that every PAGA settlement will be a "race to the bottom," and that there will be countless "reverse auctions" whereby the settling defendant picks the least effective lawyer with whom to settle, thereby shortchanging the affected employees and the State.

To the contrary, there was, according to the trial court, no such reverse auction here: the court found that the settlement was "in the best interest of the workers and in the best interest of the State of California," and was not the product of collusion. (*Turrieta v. Lyft, Inc.*, *supra*, 69 Cal.App.5th at p. 966-67.). Nor does the Opening Brief, or the record below, provide any evidence that reverse auctions actually occur with any frequency.

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In fact, settling PAGA cases, as the members of amici know all too well, involves an extensive process, each step of which provides safeguards to prevent unfair, collusive settlements. The Legislature itself acknowledged this by adding the provision to PAGA in 2015/2016 that the LWDA receive written notice of any proposed settlement at the time the proposed settlement is submitted to the court for approval. (Lab. Code, § 2699, subd. (l)(2).) But there are multiple additional protections, in law and in practice, against collusive settlements.

First, as was the case here, most PAGA settlements are reached after mediation before an experienced, knowledgeable mediator, virtually all of whom have settled multiple PAGA claims in the past. In practice, all successful PAGA mediators are well aware of the requirement for court approval. Mediators typically require extensive, pre-mediation disclosure of relevant personnel, payroll and other records, as was the case here. (*Turrieta v. Lyft, Inc.*, *supra*, 69 Cal.App.5th at p. 964, 966.) Mediators have no interest in having their settlements rejected by a Superior Court judge.

Second, in addition to the requirement for notification to the LWDA, counsel are required to give notice of "related cases"

pursuant to California Rule of Court 3.300. That Rule requires counsel to give written notice, within 15 days of counsel becoming aware of a "related case," on file in "any state or federal court in California," including the case name(s), number(s) and filing date(s). (Cal. Rules of Court, rule 3.300(b)-(e).) Counsel for an employer being sued in multiple, overlapping PAGA claims routinely give such notice.

Third, the California Rules of Court permit parties facing multiple, related claims to file a motion for consolidation under California Rule of Court 3.350 or for coordination under Rules 3.500 and 3.501 (depending on whether the cases are "complex"). In this case, counsel for a PAGA proxy did file a petition for coordination of five actions against Lyft pending in San Francisco and Los Angeles Counties, although that petition was denied without prejudice. (*Turrieta v. Lyft, Inc.*, *supra*, 69 Cal.App.5th at p. 962.)

Fourth, many PAGA claims are often joined with class action claims under the California Labor Code or California Industrial Welfare Commission Wage Orders. By so doing, counsel for the plaintiff employee/proxy can seek to recover not only the civil penalties under PAGA, but often allegedly

substantial unpaid wages and even greater statutory penalties under the Labor Code. Where such a hybrid claim is certified on a preliminary basis, California law and due process requires that all members of any certified class be given notice. (Cal. Rules of Court, rule 3.766.) This provides another mechanism by which "absent" PAGA proxies and their counsel will learn of an overlapping PAGA claim.

Fifth, the Superior Courts of this State are hardly unaware of the tsunami of PAGA litigation. Superior Courts throughout California have adopted rules ensuring that PAGA settlements achieve PAGA's goals, the primary goal being not compensation for employees, but employer deterrence. See, for example:

- Los Angeles County Superior Court Template PAGA Settlement Agreement drafted by the Ad Hoc Wage and Hour Committee ("The Parties, PAGA Counsel and Defense Counsel, represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.") ([Model] PAGA Settlement Agreement (June 2022) at p. 3 <https://www.lacourt.org/forms/pdf/LACIV298.pdf> [as of July 5, 2022].)

- San Bernardino Superior Court Guidelines for Complex Litigation (requiring disclosure of "[w]hether there is related litigation pending in state or federal court.") (Super. Ct. San Bernardino County, Guidelines for the Complex Litigation Program (May 2, 2022) at p. 4

<GuidelinesForTheComplexLitigationProgram.pdf (sb-court.org)> [as of July 10,2022].)

- Riverside County Superior Court Guidelines for Complex Litigation (requiring "declarations both from the plaintiff's attorney and from the defendant's attorney that state (a) whether the attorney is aware of any class, representative or other collective action in any other court in this or any other jurisdiction that asserts claims similar to those asserted in this action and, if so, (b) the name and case number of any such case . . . and the procedural status of the case.") (Super. Ct. Riverside County, Guidelines for Complex Litigation in Riverside Superior Court (June 12, 2017) at p. 29 <CIVIL HINTS (ca.gov)> [as of July 10, 2022].)

- July 1, 2022 Tentative Rulings by Judge Sanders of Orange County Superior Court (requiring parties to "[i]nform the court by declaration whether there is any class or other representative action in any court that asserts claims similar to those alleged in the action being settled. If any such actions are known to exist, state the name and case number of any such case and the procedural status of that case.") (Sanders, Tentative Rulings (July 1, 2022) <https://www.occourts.org/tentativerulings/gsandersrulings.htm> [as of July 5, 2022].)

- Los Angeles Superior Court, Complex Civil Department Checklist for Preliminary Approval of Class Action Settlement ("Class cases which include a PAGA claim should have a separate release for the PAGA claim tied to the facts alleged in the notice given to the LWDA.") (Super. Ct. Los Angeles County, Complex Civil Dept. Checklist for Preliminary Approval of Class Action Settlement, at p. 4.)

Judges who preside over PAGA actions—who often sit in "complex" departments of the Superior Courts, with a full

calendar of PAGA actions—already are or will require similar pre-settlement disclosure of related or overlapping cases

And, of course, the LWDA itself receives notice of the proposed settlement. The LWDA has the authority to comment or object to the settlement, and has done so. (See Dept. of Industrial Relations, Budget Change Proposal, FY 2019-2020 <FY1920_ORG7350_BCP3230.pdf (ca.gov)> [as of July 8, 2022] [stating that the LWDA has filed comments to proposed settlement agreements].)

VII. CREATING NON-EXISTENT RIGHTS TO INTERVENE OR CHALLENGE A PAGA JUDGMENT WOULD DEFEAT, NOT SERVE, PAGA'S PURPOSE

Appellant's proposed "solution," to a problem that he has not documented, would make the situation far worse. The current system is unreasonably expensive, and incentivizes the filing of weak or even meritless cases. Given the multiple (and increasing) mechanisms to scrutinize PAGA settlements, adding further delay and expenses defeats PAGA's purpose.

There is a reason PAGA cases almost never go to trial: the statute, the underlying substantive law, and the realities of PAGA litigation make trial far too expensive for all but the

largest employers, and highly risky for all employers. Many of *amici*'s members have been sued in multiple PAGA cases, often simultaneously. Many cases involve disputed or unsettled rules or principles under the Labor Code and the myriad of "underground regulations" issued over decades by the State Labor Commissioner.[5] Each case typically alleges numerous alleged violations (sometimes the same violations that were alleged, cured, and settled in an earlier PAGA matter). Often, the cases are based on highly technical alleged violations yielding little if any potential wage loss.

Even a "simple" PAGA case is far too expensive in most cases to defend. For a small or even mid-sized employer, the only realistic solution is a settlement. Defense costs alone are easily into six or even seven figures in virtually any PAGA case.

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[5] The Industrial Welfare Commission ("IWC"), which has statutory authority per Labor Code §§ 1173 and 1185 to issue wage and hour regulations in the form of its 18 Wage Orders, was defunded by the Legislature in 2004. The IWC has never subsequently been funded and therefore has been unable for almost twenty years to issue regulations in disputed or uncertain areas of compliance. This Court has repeatedly held that the DLSE's informal opinion letters, its Enforcement Manual and other pronouncements, do not comply with the Administrative Procedures Act and therefore have no binding effect. (See *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 571, 576; *Alvarado v. Dart Container Corp. of Cal.* (2018) 4 Cal.5th 542, 555, 559-61.)

Commercially available employment practice insurance policies almost always exclude coverage for wage and hour claims (for those employers who can afford such insurance). Courts have held individual officers and small business owners personally liable for PAGA penalties. (Lab. Code, § 558.1, subd. (a)-(b); see also *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 824.)

An entire industry has arisen for the mediation and settlement of PAGA claims. As described above, multiple Superior Courts have identified and addressed the phenomenon of overlapping PAGA claims with standard case management orders, form settlement agreements, or simply inquiry at the trial setting and/or settlement stage to identify other related or overlapping cases.

Further, most PAGA actions are either filed as "hybrid" actions, including class-wide claims under the Labor Code and IWC Wage Orders, or morph at the settlement stage into hybrid actions. An employer sued in a "PAGA only" action (i.e., an action containing no Labor Code or Wage Order claims) will almost always want to explore settlement of any underlying Labor Code claims as well. Otherwise the employer has settled the PAGA penalties claim, leaving unresolved the potentially

greater Labor Code/Wage Order claims for alleged wage loss and additional penalties (including the draconian "waiting time" penalty under Labor Code section 203 as to each former employee). As a result, at the mediation/settlement stage, most "PAGA only" claims are expanded to include class-wide Labor Code/Wage Order claims on which the PAGA penalty claims are based. This ensures formal notice to all settlement class members (and their counsel). Adding additional amounts for Labor Code claims also reduces the percentage of the total settlement attributable to the PAGA penalties. Because the Labor Code/Wage Order claims are generally larger *by far* than the PAGA claims, the amount attributable to the PAGA claims is usually a fraction of the total. This practice, which is commonplace, does not mean the State is being shortchanged: the non-PAGA amounts, after deducting class counsel's legal fees and costs of administration, are provided to settling class members for wage losses, and the Superior Courts are charged with ensuring that the allocation between Labor Code/Wage Order claims and PAGA claims is reasonable.

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VIII. CONCLUSION

The Superior Court considered objections from Appellant and found the settlement was "fair and adequate," that it complied "with the policy goals of PAGA," and there was "no collusion in connection with the settlement." (*Turrieta, supra,* 69 Cal.App.5th at p. 966.)

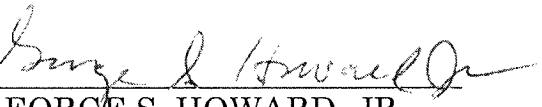
Neither the statute itself nor its purpose supports a right by a second PAGA proxy to intervene in the action or to attack a judgment entered after approval of the settlement by a Superior Court judge.

The judgment by the Court of Appeal should be affirmed.

DATED: July 11, 2022

Respectfully submitted,

PAUL, PLEVIN, SULLIVAN & CONNAUGHTON LLP

By: 

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CERTIFICATE OF COMPLIANCE PURSUANT TO CALIFORNIA RULES OF COURT RULE 8.204I(1)

Pursuant to California Rules of Court Rule 8.204(c)(1) I certify that according to Microsoft word the attached brief is proportionally spaced, has a typeface of 13 points and contains 4,628 words.

Dated: July 11, 2022

PAUL, PLEVIN, SULLIVAN & CONNAUGHTON LLP

By: 

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PROOF OF SERVICE

Turrieta v. Lyft, Inc.
S271721

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Diego, State of California. My business address is 101 West Broadway, Ninth Floor, San Diego, CA 92101-8285.

On July 11, 2022, I served true copies of the following document(s) described as **BRIEF OF THE AMICI CURIAE EMPLOYERS GROUP AND THE CALIFORNIA EMPLOYMENT LAW COUNCIL IN SUPPORT OF RESPONDENTS TURRIETA AND LYFT, INC.** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY ELECTRONIC SERVICE: I electronically filed the document(s) with the Clerk of the Court by using the TrueFiling system. Participants in the case who are registered users will be served by the TrueFiling system. Participants in the case who are not registered users will be served by mail or by other means permitted by the court rules.

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

Executed on July 11, 2022, at San Diego, California.

Amy R. Arnold

SERVICE LIST
Turrieta v. Lyft, Inc.
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