S271721

No. _____

FILED WITH PERMISSION

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

TINA TURRIETA,
Plaintiff,

v.

LYFT, INC.,
Defendant.

After 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

PETITION FOR REVIEW BY PROPOSED INTERVENOR BRANDON OLSON

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ISSUES PRESENTED

1. The Private Attorneys General Act, Lab. Code § 2698, et seq. ("PAGA") permits private litigants to bring claims on behalf of the State of California's Labor and Workforce Development Agency ("LWDA"). This Court has recognized that the "Legislature's purpose in enacting the PAGA was to augment the limited enforcement capability of the [LWDA] by empowering employees to enforce the Labor Code." (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 383.) When a plaintiff deputized by the LWDA brings a PAGA action on behalf of the State, does that plaintiff have the "requisite immediate, pecuniary, and substantial interest" to intervene in or object to a related action, or to vacate a judgment that purports to settle the claims that plaintiff has brought on behalf of the State?

2. Before filing a private enforcement action under PAGA, an employee must provide the LWDA and the employer with notice of the specific Labor Code violations alleged and facts and theories to support the claims and then wait 65 days. (Lab. Code § 2699.3(a).) Does a plaintiff lack the authority to prosecute and settle PAGA claims on behalf of the State before satisfying the notice requirements set forth in Labor Code section 2699.3(a)? Relatedly, does a trial court lack jurisdiction to approve a settlement that releases the State's claims for which the plaintiff has not exhausted these notice requirements?

3. This Court has confirmed that PAGA's provisions require trial courts to "review and approve any settlement of any civil action filed" pursuant to PAGA and that this duty must "ensur[e] that any negotiated resolution is fair to those affected." (*Williams v. Super. Ct.* (2017) 3 Cal.5th 531, 549.) Does that duty require trial courts to determine independently whether the proposed settlement is fair, adequate, and reasonable, and that it advances the public purposes of PAGA?

REASONS REVIEW SHOULD BE GRANTED

This petition should be granted to secure uniformity of decision in the appellate courts and to settle important questions of law involving the prosecution of PAGA claims, and the duties of courts when multiple, parallel PAGA actions threaten to thwart PAGA's essential purpose of augmenting LWDA enforcement.

Petitioner and proposed Intervenor Brandon Olson is a duly deputized agent of the LWDA litigating claims against Defendant Lyft, Inc. ("Lyft"). When the PAGA claims in his case were settled in this action by Plaintiff Turrieta, Olson objected, attempted to intervene, and ultimately moved to set aside the judgment approving a settlement that involved a more than 99.5% discount of the value of the PAGA penalties at issue. In spite of his status as a deputy of the LWDA, the Second District Court of Appeal held that Olson was not an "aggrieved party" and lacked the necessary "personal interest in the settlement of another PAGA claim" to

have standing to disturb the trial court's approval. (*Turrieta v. Lyft, Inc.* (2021) 69 Cal.App.5th 955, 284 Cal.Rptr.3d 767, Op. at 18 ("*Turrieta* Op.").)

Just hours later, the Fourth District Court of Appeal held precisely the opposite in *Uribe v. Crown Bldg. Maint. Co.*, No. G057836, ---Cal.Rptr.3d---, 2021 WL 4962724, at *2 (Cal. Ct. App. Sept. 30, 2021), *as modified on denial of reh'g* (Oct. 26, 2021) ("*Uribe*"). There, the Court of Appeal held that one duly deputized plaintiff had standing to challenge the PAGA settlement of a different deputized plaintiff because the former had "the requisite 'immediate, pecuniary, and substantial' interest in preserving and advancing her PAGA cause of action in her lawsuit, which would be extinguished by res judicata if the judgment" were approved. (*Id.*)

One could hardly script a more obvious contradiction in the collective understanding of the Court of Appeal about the rights of a PAGA plaintiff deputized by the LWDA. This reason alone warrants this Court's review.

The Court of Appeal below recognized that Olson had standing (1) to prosecute the State's claims and even (2) to settle the State's claims. But it wrongly held that Olson somehow *lost* standing to seek to vacate the trial court's judgment on behalf of the State. (*Turrieta* Op. at 19 ["Appellants were deputized under PAGA to prosecute their employer's Labor Code violations on

behalf of the state; they fail to point to any authority allowing them to act on the state's behalf for all purposes. Because it is the state's rights, and not appellants', that are affected by a parallel PAGA settlement, appellants are not aggrieved parties with standing to seek to vacate the judgment or appeal."].)[1] In other words, the appellate court concluded that, upon the entry of judgment by the trial court, Olson's interest in the case was transformed from that of agent of the State to an "individual claim" that stripped him of standing. (*Turrieta* Op. at 23 ["Here, appellants have no individual claims that would be affected by the settlement and are therefore not 'aggrieved' for the purposes of standing to move to vacate or appeal from that judgment."].)

This rationale was also the basis of the Court of Appeal's erroneous holding that Olson did not have "a direct and immediate interest in the settlement, which would establish [his] entitlement to mandatory or permissive intervention." (*Turrieta* Op. at 27.) According to the Court of Appeal, the trial court's "implicit denial" of Olson's motion to intervene was justified "for the same reason they could not establish they were 'aggrieved' for the purposes of

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[1] The decision below did not address Olson's argument that the settlement approved by the Court violated this Court's decision in *ZB, N.A. v. Super. Ct.* (2019) 8 Cal.5th 175, 196 ("*ZB*") because it allocated $5 million to unpaid wages. (Turrieta Op. at 11.) By allocating $5 million as wages rather than penalties payable to the State pursuant to Labor Code § 2699(i), the settlement implicates an obvious immediate, substantial, pecuniary interest of the State.

standing." (*Ibid.* ["As we explained in our discussion of standing above, appellants' 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. Appellants' 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. As with standing, appellants have no personal interest in the PAGA claims and any individual rights they have would not be precluded under the PAGA settlement."].)

The Court of Appeal's decision both conflicts with *Uribe* and, if left standing, risks repeated application of an entirely erroneous standard. The standard articulated by the court wrongly places the burden on plaintiffs, duly deputized by the LWDA to act on behalf of the State, to prove that they *continue* to be duly deputized during the pendency of parallel litigation. The Court of Appeal's conclusion that Olson may not act "on the State's behalf for all purposes" is a truism – Olson does not suggest he has assumed the sweep of the LWDA's entire authority. But there is no basis – not in the text of the PAGA statute, nor found in any decision of this Court – to conclude that Olson's authority to act on behalf of the State *ceases* at this stage of the litigation. In addition, the Court of Appeal offers no basis to conclude why Olson's efforts to assert *the State's interest* in a parallel action – morphed into the "personal interest" of a litigant pursuing "individual claims." (*Turrieta* Op.

at pp. 16, 23.) Nor does the Court of Appeal cite any authority or any part of the record justifying these conclusions.

Taken to its logical conclusion, the Court of Appeal's decision is extreme because it effectively eliminates the authority of a duly deputized plaintiff to be heard at the trial court, and immunizes from appellate review any PAGA settlement once approved by a trial court. The Court of Appeal dismisses such concerns by claiming that "the LWDA may provide the trial court with comments on or objections to a proposed settlement, and has done so in the past." (*Turrieta* Op. at 20.) But the Court of Appeal cites just one case where this happened, *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1113, and in that case the LWDA's input was requested *by the district court*. The Court of Appeal's impractical "solution" thus ignores what this Court has repeatedly recognized about the LWDA's limited resources, and sets a dangerous precedent of eliminating appellate review of even patently unfair, unreasonable, and inadequate settlements, as here. It is also why the decision is in conflict with *Uribe*, which was decided the same day as *Turrieta* and came to the opposite conclusion.

This petition raises two additional issues that warrant this Court's immediate attention. The Court of Appeal acknowledged that before filing a private enforcement action, an employee must provide the LWDA and the employer with notice "of the specific

Labor Code violations alleged and facts and theories to support the claims" (*Turrieta* Op. at 14) and then wait 65 days. (Lab. Code § 2699.3(a)(2)(A).) It is undisputed that Turrieta failed to do so; her complaint alleges six causes of action, and her settlement, filed on December 9, 2019, summarily adds four additional causes of action to her complaint (for at least nine additional Labor Code violations), including for meal break violations, rest break violations, record keeping violations, minimum wage violations, and pre-hire notice violations. (1 AA 501-12.)

This jurisdictional infirmity was ignored by the trial court and swept aside by the Court of Appeal. Instead, Turrieta's settlement expanded the sweep of her action to release valuable, new, and uninvestigated claims for which she had never provided notice – and then achieved a *judgment* on those claims just 28 days later. There is no authority for a plaintiff deputized by the LWDA to resolve unnoticed claims without first exhausting the notice requirements of PAGA, nor of a court to ignore this jurisdictional prerequisite.

The LWDA raised these jurisdictional objections in its *amicus* brief to the Court of Appeal. The appellate court dismissed them out of hand, concluding that the LWDA's arguments "should have been addressed to the trial court below." (*Turrieta* Op. at p. 20 fn. 14.) But this conclusion is at odds with the statutory language of PAGA and this Court's numerous observations about

the very purpose of PAGA. This Court has consistently recognized that PAGA was enacted precisely because the LWDA lacks sufficient resources to pursue the claims on its own. (*ZB*, 8 Cal.5th at 184 ["The Legislature enacted the PAGA in 2003 after deciding that lagging labor law enforcement resources made additional private enforcement necessary "'to achieve maximum compliance with state labor laws.'"], citing *Iskanian*, *supra*, 59 Cal.4th at 379, quoting *Arias v. Super. Ct.* (2009) 46 Cal.4th 969, 980.)

Thus, the LWDA's ability to intervene in the manner contemplated by the Court of Appeal ignores that "scarce resources" create real limitations on the LWDA, which gave rise to PAGA in the first instance. (*See Williams*, *supra*, 3 Cal.5th at 545-46.) Moreover, even if the LWDA were able to intervene after it became aware of the proposed settlement, the trial court foreclosed such an outcome by entering judgment just 28 days after settlement notice was provided to the LWDA – including for nine new Labor Code violations. This was well short of the 65-day statutory notice window under Labor Code section 2699.3(a)(2)(A).

Finally, because the Court of Appeal erroneously affirmed the orders denying intervention and the motion to vacate the judgment, it erroneously failed to review the trial court's approval of a patently unfair, unreasonable, and inadequate settlement that bears all the hallmarks of "plaintiff shopping" by Lyft.

This Court has confirmed that PAGA's provisions require trial courts to "review and approve any settlement of any civil action filed" (*ibid.*) pursuant to PAGA and that this duty must "ensur[e] that any negotiated resolution is fair to those affected." (*Williams, supra*, 3 Cal.5th at p. 549). The Court also has explained that the "civil penalties recovered on the state's behalf are intended to 'remediate present violations and deter future ones,' *not* to redress employees' injuries." (*Kim v. Reins Int'l Cal., Inc.* (2020) 9 Cal.5th 73, 86, quoting *Williams*, 3 Cal.5th at p. 546.) Here, the settlement fails to do either, a fact the trial court patently failed to analyze.

Indeed, the LWDA, as *amicus* below, urged reversal of the trial court's order on the grounds that the settlement was unfair and unreasonable, was based on errors of fact and law, and failed to advance PAGA's essential public purpose. Petitioner and the LWDA both established that the trial court erroneously adopted Turrieta's misstatements of the applicable law governing the Lyft drivers' misclassification claims, and used those misstatements to justify a discount that, by Turrieta's own concession, exceeds 99.5%.

These circumstances demonstrate a breakdown in the adversarial process that are a feature of "plaintiff shopping" or "reverse auctions." Traditionally a concern in the class action arena, plaintiff shopping by defendants has proliferated in the

context of PAGA where multiple plaintiffs have been deputized and the matters are not coordinated. "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 [in] the hope that the district court will approve a weak settlement that will preclude other claims against the defendant.' [Citation.] It has an odor of mendacity about it." (*Negrete v. Allianz Life Ins. Co. of N. Am.* (9th Cir. 2008) 523 F.3d 1091, 1099.) When multiple plaintiffs sue the same defendant, the proverbial race to the courthouse is turned on its head. The rush is not to be first to the starting line, but first to the finish line; not to file so that litigation may commence, but to settle because there is room on the medal stand only for one. Left unchecked, these uncoordinated individual "races" distort the adversarial process and undermine the public purpose of PAGA. Whether this is labeled as "plaintiff shopping" or a "reverse auction," the result has been predictable: contradictory jurisprudence, unjustifiable settlement discounts, and inconsistently applied statutory procedures.

Here, the trial court ignored the many indicia of a reverse auction, and the Court of Appeal failed to undertake any independent consideration of the facts. This Court's review is necessary to establish a standard for the analysis of PAGA settlements that requires trial courts to analyze independently the fairness of the settlement and the strength of the claims. The

record demonstrates that the trial court was not provided with sufficient factual support for the settlement reached, and did not conduct any independent analysis of its fairness or adequacy. Indeed, the trial court did not respond to or engage the objections raised by Olson about the patent misstatements of the law advanced by Turrieta, and neither did the Court of Appeal. Instead, the trial court merely "signed the proposed order submitted by Turrieta" (*Turrieta* Op. at 20) and the Court of Appeal did not disturb that order.

The decision below evidences clear error in the interpretation of critical Labor Code protections established by PAGA, and creates dangerous precedents that are in conflict with other decisions of the Court of Appeal. The decision highlights the need for review and guidance by this Court. Petitioner requests, therefore, that this Court accept review and resolve these questions of vital importance.

STATEMENT OF FACTS AND PROCEDURE

I. Olson Was Deputized By The LWDA To Prosecute PAGA Penalties Against Lyft.

On May 24, 2018, Petitioner Olson provided notice to the State of California and Lyft, Inc. of violations of the Labor Code experienced by him and all other aggrieved employees (California Lyft drivers during the relevant period). His complaint, *Olson v.*

Lyft, Inc., was filed in the Superior Court San Francisco County on May 25, 2018, and the PAGA claims were added to his first amended complaint on August 16, 2018. The complaint asserts that Lyft misclassified drivers as independent contractors and failed to abide by the employment law protections set forth under the Labor Code and applicable Wage Orders. Olson alleges, *inter alia*, that Lyft failed to pay minimum wages, overtime premiums, and business expense reimbursements, resulting in penalties for Labor Code violations recoverable under PAGA.

Two other PAGA actions were filed in the Los Angeles Superior Court against Lyft. The *Turrieta* action was filed on July 13, 2018, and asserts six causes of action. *Olson* and *Turrieta* both allege that Lyft's misclassification scheme violated California law, as established by this Court's decision in *Dynamex Ops. W. v. Super. Ct.* (2018) 4 Cal.5th 903 (*Dynamex*). The *Dynamex* decision clarified long-standing California law and adopted a substantially simpler, three-part "ABC test" to determine employee status. (*Dynamex*, 4 Cal.5th at 916.)

Olson was aware that multiple PAGA actions against Lyft created a need for coordination. On April 16, 2019, Olson filed a petition to coordinate his case with *Turrieta* and three others asserting similar claims: *Talbot v. Lyft, Inc.*, Superior Court, County of San Francisco, Case No. CGC-18-566392 (class action); *LaBorde v. Lyft, Inc.*, Superior Court, County of Los Angeles, Case

No. BC707667 (class action); and *Seifu v. Lyft, Inc.*, Superior Court, County of Los Angeles, Case No. BC712959 (PAGA action). (*Ibid.*) All parties opposed coordination. (1 AA 439.)[2]

Olson's petition was denied on June 27, 2019. (1 AA 438.) As Olson correctly predicted, the failure to coordinate these cases would create the conditions for a "reverse auction," whereby each plaintiff's counsel in the overlapping cases would suffer from pressure to settle all the cases at a steep discount. Lyft then employed a strategy to play the different plaintiffs' counsel against each other in order to drive down the overall settlement value, to the detriment of the State and the aggrieved employees.

Lyft scheduled separate, serial mediations in each case, to which competing plaintiffs' counsel were not invited. First, on June 12, 2019, Lyft mediated with Seifu's counsel (who also represented Talbot); no settlement was reached. Seifu and Talbot are represented by Lichten & Liss-Riordan PC, which has experience litigating "gig economy" cases and challenging independent contractor misclassification in California and elsewhere. Next, on August 27, 2019, Lyft mediated with Olson's counsel; no settlement was reached. Olson is represented by Outten & Golden LLP, one of the preeminent employment rights firms in the country, and Olivier Schreiber & Chao LLP, another highly

[2] Citations are to the respective volumes of the Appellant's Appendix ("AA"), on file at the Court of Appeal.

experienced firm with a strong reputation as a top-flight firm representing workers in California. Finally, on September 10, 2019, while the *Turrieta* case was stayed, Lyft mediated with Turrieta's counsel (who also represented Laborde); those parties agreed to the settlement at issue here, purporting to wipe out all the claims in the other PAGA cases. Turrieta and Laborde are represented by the Graves Firm.

On September 18, 2019, the Governor signed Assembly Bill 5, which codified aspects of the *Dynamex* decision in the Labor Code. (*See* Lab. Code § 2775.) The bill unequivocally strengthened the aggrieved employees' misclassification claims against Lyft.

II. Turrieta Settles PAGA Claims Against Lyft While Her Case Is Stayed And Expands The Claims To Include Those Not Asserted In Her Complaint.

Turrieta and Lyft executed a settlement agreement on December 4, 2019, while the *Turrieta* case was stayed. The settlement seeks to resolve the claims of hundreds of thousands of Lyft drivers – called "PAGA Settlement Group Members" – for $15,000,000. The settlement also purports to extinguish not only the State's claims being pursued by Olson that Turrieta never asserted, but also *all* Labor Code violations that could have been pursued by the State. (*See* LWDA Br. at 12, 16-17.)

On December 9, 2019, Turrieta moved for approval of the settlement. Turrieta scheduled the settlement approval hearing for January 2, 2020. Neither she nor Lyft notified counsel for Olson

or Seifu of the settlement approval hearing. Olson learned of the proposed Settlement on December 20, 2019. On December 24, 2019, Olson filed a Motion to Intervene and Objections to the proposed *Turrieta* Settlement. (1 AA 281.) A hearing on the Motion was set for April 23, 2020. (*Ibid.*) On December 26, 2019, Olson appeared *ex parte* seeking a continuance of the January 2 hearing. The trial court denied Olson's ex parte application. (3 AA 722.)

Olson objected to numerous aspects of the *Turrieta* settlement. Turrieta concedes that the PAGA claims her settlement releases are worth between $7,535,686,650 and $28,256,617,007, not counting minimum wage violations. (1 AA 83 ¶ 36.) This more than 99.5% discount is earmarked as $5,000,000 for attorneys' fees, $48,087.34 for litigation costs, $500,000 for settlement administration costs, $14,000 for a service award to Turrieta, and $150,000 for a reserve fund. (1 AA 48-50.) This allocation leaves just $9,287,912.66 for the LWDA and Drivers. (1 AA 49.)

The remaining $9,287,912.66 is allocated as follows: $5,000,000 as a Section 558 wage payment to Drivers, $3,215,934.50 to the LWDA (representing 75% of the remaining funds), and $1,071,978.17 to Drivers (representing the other 25% of the remaining funds). (*Ibid.*) Turrieta estimates this will result in an average payment to Drivers of just $12 per aggrieved employee. (1 AA 50.) In reality, because the settlement allows for

the inclusion of an additional 65,000 drivers without additional payment, the per-driver recovery could be as low as $4.11 per aggrieved employee. (*See* 1 AA 107 [¶ Y].)

The settlement provides Turrieta's counsel $5,000,000 in fees. Turrieta's counsel stated that administering the settlement would require an estimated 3,000 staff hours, 667 associate attorney hours, and 80 partner hours, in spite of the fact that the settlement allocates $500,000 to pay for a Settlement Administrator, KCC. (1 AA 85 [¶ 49].) As a PAGA settlement, there is no notice to aggrieved employees nor affirmative claims process.

Counsel for Turrieta, Lyft, Olson, and Seifu appeared at the hearing on Turrieta's Motion for Approval of the Settlement on January 2, 2020. The trial court granted the Motion and approved the Settlement the same day. (2 AA 498-99.) Twenty-eight days after providing notice to the LWDA of the settlement, on January 6, 2020, the trial court entered Judgment. (2 AA 515.)

On January 14, 2020, Olson timely filed a Notice of Intention and Motion to Set Aside the Judgment under Civ. Proc. Code section 663. (3 AA 522.) The trial court heard Olson's motion on February 28, 2020, and denied it the same day. (3 AA 709.)

III. The Court Of Appeal Affirms The Trial Court's Erroneous Approval of the Settlement And The Erroneous Denial Of The Motion To Intervene.

Olson appealed the judgment on the grounds that the trial court erred in approving the settlement, and also appealed the

trial court's denial of his motion to intervene. The appellate court affirmed the judgment and the order denying intervention.

Despite recognizing Olson's status as a duly deputized PAGA plaintiff, the court found that Olson did not have "standing" to bring a motion to vacate the judgment in the trial court, or to appeal the judgment. The appellate court correctly noted that a nonparty who is aggrieved by a judgment "may become a party of record and obtain the right to appeal by moving to vacate the judgment pursuant to Code of Civil Procedure section 663." (*Turrieta* Op. at 17.) But the court found Olson was not "aggrieved" because his claim was on behalf of the State, and he therefore did not have a "personal interest in the settlement of another PAGA claim." (*Id.* at 18.)

As to Olson's right to intervene, the Court of Appeal relied on the same reasoning, finding that "appellants' 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." (*Id.* at 27.) The decision is, at best, summary. The Court of Appeal offered no analysis of Olson's effort to intervene or the interest he asserted beyond its conclusion that he "cannot meet the threshold showing that [he] had a direct and immediate interest in the settlement, which would establish [his] entitlement to mandatory or permissive intervention." (*Ibid.*)

ARGUMENT

I. This Court Should Accept Review To Resolve Inconsistent Holdings From The Court Of Appeal And To Establish That Deputized PAGA Plaintiffs Have An Unequivocal Interest In Parallel PAGA Actions That Involve Overlapping Claims.

The decision below creates uncertainty about a deputized plaintiff's rights to pursue the State's interest in PAGA litigation. This Court should resolve once and for all the scope of a deputized Plaintiff's right to prosecute and resolve claims brought on behalf of the State in a PAGA action, and in particular how those rights are affected by the prosecution of parallel PAGA actions involving overlapping claims.

The Second District's opinion restricts the rights of deputized plaintiffs in ways that are unsupported by PAGA's statutory language and any prior decision of this Court. Further, the appellate court's decision invites mischief by encouraging a race to the bottom: defendants facing multiple PAGA lawsuits will simply put the case out to bid – and courts will reward the PAGA plaintiffs willing to resolve the case for the *lowest* value.

The Court of Appeal's conclusions are erroneous and inconsistent with the reasoning of *Uribe*. As a practical matter, the decision mischaracterizes Olson's attempt to intervene at the trial court, and his subsequent efforts to vacate the judgment and pursue an appeal, as "personal" and "individual." (*Turrieta* Op. at

16, 23.) The Court of Appeal correctly observes that Olson's "ability to file PAGA claims on behalf of the state does not convert the state's interest into their own or render them real parties in interest." (*Turrieta* Op. at 19.) But it refuses to acknowledge that Olson's actions were undertaken *as an agent of the real party in interest – i.e.*, the State. Instead, it merely concludes that Olson, though duly deputized, "fail[s] to point to any authority allowing [him] to act on the state's behalf for all purposes." (*Ibid.*) And with this, the Court of Appeal's circular reasoning reaches its terminus at its genesis: Olson lacks standing to act on behalf of the State because he is not acting on behalf of the State because he has no standing to act on behalf of the State.

This is a patent reimagining of the record and it elides an essential fact that the Court of Appeal has kept hidden from view. How and when did Olson become something *other* than an agent of the State? The Court of Appeal acknowledges that Olson and Turrieta were duly deputized; both had the power to prosecute the claims for which they gave notice. The Court of Appeal also implicitly concedes that both parties had the power to reach a settlement on behalf of the State. In either scenario, both Turrieta and Olson would have been acting in their capacity as an agent of the State. However, at some point, on these facts, Olson was stripped of his authority to act on behalf of the State, and the interests Olson advanced were no longer those of the State. The

Court of Appeal does not identify how this occurred, or why, but instead imposes upon Olson the burden to "point to any authority allowing [him] to act on the state's behalf for all purposes," including intervention and to vacate the judgment. (*Turrieta* Op. at 19.) In fact, Olson has, at all times, acted on behalf of the State. It is that very interest that Olson represented 65 days after he provided notice to the LWDA, at the time he sought to intervene in *Turrieta*, when he attempted to object to the settlement, when he moved to vacate the judgment, and on appeal.

Furthermore, the decision below cannot be squared with the Fourth District's decision in *Uribe*, "which coincidentally was filed the same day as" *Turrieta. Uribe v. Crown Bldg. Maint. Co.*, No. G057836, 2021 WL 4962724, at *8 fn. 3 (Cal. Ct. App. Sept. 30, 2021), *as modified on denial of reh'g* (Oct. 26, 2021). *Uribe* involved the settlement of a hybrid class action and PAGA representative action settlement, and the appeal from the trial court's entry of judgment approving same. (*Id.* at *1.) As explained by the Fourth District, Josua Uribe originally filed an individual action against the defendant, but he reached a class and PAGA settlement that purported to extinguish the claims of an absent class member, Isabel Garibay, who was pursuing a separate class and PAGA action pending in another court. (*Ibid.*) After Uribe moved for preliminary approval of the settlement, Garibay successfully intervened in *Uribe* in order "to oppose the settlement." (*Ibid.*)

The *Uribe* court held that "Garibay has standing to appeal because, having intervened and yet unable to opt out of the other parties' settlement of Uribe's PAGA claim, Garibay's PAGA cause of action in this same lawsuit was resolved against her by the trial court's entry of judgment on its final approval of the settlement. She is therefore a party 'aggrieved' by the judgment." (*Id.* at *10.)

Uribe was originally unpublished, and the Fourth District was not aware of the Second District's decision in *Turrieta*. Following a motion for rehearing, however, the *Uribe* court was made aware of the *Turrieta* decision and attempted to distinguish it. As described by the *Uribe* court, its holding is distinguishable because Garibay successfully intervened in *Uribe*, which gave Garibay standing to appeal as an "aggrieved" party. (*Ibid.*)

Despite the Fourth District's efforts, *Uribe* is not readily distinguishable because it adopts (and thus compounds) the same circular reasoning of the *Turrieta* court. According to the *Uribe* court, the dispositive fact of Garibay's standing was her status as a party in the *Uribe* case (having successfully intervened *after* approval was sought). (*Ibid.*) However, the court does not explain why Garibay's interest as a PAGA representative plaintiff, was not "personal" or "individual" in the same way the *Turrieta* court found Olson's to be. In fact, because Garibay was acting as an absent class member in her individual capacity, her interest was decidedly "personal" and "individual." Furthermore, the *Uribe*

court did not explain why Garibay did not lack, in the first instance, a "direct interest" in the PAGA claims pending in *Uribe*, which the *Turrieta* court found Olson lacking. Garibay's status as a party in *Uribe* does not do this work because it does not resolve the question about whose interest she is pursuing as the "aggrieved party" – her interest? The Class's interest? Or the State's? While the *Uribe* court ultimately reached the proper conclusion about Garibay's standing, its reasoning remains irreconcilable from that of the *Turrieta* court.

These inconsistencies cannot be squared, and require resolution by this Court.

II. A Trial Court Lacks Jurisdiction To Approve The Settlement of PAGA Claims That Have Not Been Exhausted Through The Statutory Notice Procedure Of Labor Code Section 2699(a)(2)(B).

The decision below requires this Court's intervention for another reason: Plaintiff Turrieta did not have standing to resolve the nine different Labor Code violations she added to the First Amended Complaint she filed just four days before obtaining judgment. The jurisdictional violations evident on this uncontested record alone warrant review by this Court. However, these arguments – many raised in the LWDA's *amicus* brief and raised at the trial court by Olson, were swept aside by the Court of Appeal. As explained thoroughly by the LWDA, PAGA establishes an exhaustion requirement for any private plaintiff who wishes to

bring a civil action against their employer. This Court has explained:

> As a condition of suit, an aggrieved employee acting on behalf of the state and other current or former employees must provide notice to the employer and the responsible state agency of the specific provisions of alleged to have been violated, including the facts and theories to support the alleged violation." (Lab. Code, § 2699.3, subd. (a)(1)(A); *see id.*, subd. (c)(1)(A).) If the agency elects not to investigate, or investigates without issuing a citation, the employee may then bring a PAGA action. (*Id.*, subd. (a)(2).)

(*Williams, supra,* 3 Cal.5th at p. 545 [emphasis added].)

As the LWDA's *amicus* brief notes, "Compliance with section 2699.3(a)'s administrative procedures is mandatory, and 'failure to plead compliance as to the [PAGA] causes of action … is fatal to those claims.'" (LWDA Br. at 14-15, citing *Caliber Bodyworks, Inc. v. Super. Ct. (Herrera)* (2005) 134 Cal.App.4th 365, 381-382, disapproved on another ground in *ZB, supra*, 8 Cal.5th at p. 196 fn. 8.)

The uncontested record sets out the jurisdictional timeline. Turrieta provided notice of its settlement with Lyft on December 9, 2019. (1 AA 251.) The settlement radically expands the violations of the Labor Code that were originally identified by

Turrieta in her notice to the LWDA and sweeps in claims never litigated or asserted by Turrieta. These include four new "causes of action" (involving different rights)[3] and references nine new Labor Code sections, including, *inter alia*, violations for missed meal breaks, missed rest breaks, and minimum wage violations.

Just 28 days after filing its amended notice with the LWDA (1 AA 251), the trial court approved the settlement and entered judgment on January 6, 2020. The settlement thus plainly violates the pre-filing notice requirements of Labor Code section 2699.3(a)(2). Having failed to exhaust the administrative requirements of PAGA, Turrieta thus had no authority to prosecute such claims – let alone settle them – and the trial court had no authority to approve the settlement.

As the LWDA observed at the Court of Appeal:

> The Superior Court here approved a settlement that extinguished every possible Labor Code civil penalty claim the LWDA could bring against Lyft, despite Turrieta never having authority from the LWDA to bring the vast majority those claims, and without any analysis as to the evidence and circumstances justifying a release covering the *entire* Labor Code.

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[3] For example, Turrieta's First Amended Complaint includes as its Seventh Cause of Action a claim for "Failure to Provide Breaks," which includes violations of both meal and rest breaks. (*See* 1 AA 260.)

> The Superior Court here failed to accomplish the most basic purpose of settlement review: independently ensuring that the interests of absent parties who will be bound by the settlement are protected.

(LWDA Br. at 28.)

The liberties taken by the trial court in approving the settlement of valuable claims that were never part of Turrieta's notice to the LWDA create the potential for an immediate harm in the litigation and settlement of PAGA claims. As explained by the LWDA in the court below, the trial court's conduct violates fundamental jurisdictional principles set forth by this Court in *Quigley v. Garden Valley Fire Protection Dist*. (2019) 7 Cal.5th 798:

> Here we are concerned with jurisdiction in what we typically refer to as its "fundamental sense": specifically, the power of the court over the subject matter of the case. [Citation.] A lack of fundamental jurisdiction is the entire absence of power to hear or determine the case. [Citation.] Because it concerns the basic power of a court to act, the parties to a case cannot confer fundamental jurisdiction upon a court by waiver, estoppel, consent, or forfeiture. [Citation.] Defects in fundamental jurisdiction therefore may be raised at any point in a proceeding, including for the

> first time on appeal, or, for that matter, in the context of a collateral attack on a final judgment. [Citation.]

(*Id.* at 807.)

In short, the trial court lacked jurisdiction to consider Turrieta's settlement with Lyft because the Legislature has expressly limited the conditions under which jurisdiction may be established:

> No PAGA claim can be brought before a court absent compliance with PAGA's pre-filing requirements, including notice to LWDA and a 65-day waiting period. (See Lab. Code § 2699.3(a) [permitting a civil action "only after" pre-filing requirements are met]; § 2699.3(a)(1)(A), (a)(2)(A).)
>
> …Prior to the passage of PAGA, the State alone had the right to bring a claim for Labor Code civil penalties. (*See* Sen. Bill. No. 796 (2003-2004 Reg. Sess.) § 1(b-d).) Even under PAGA, "[p]laintiffs may bring a PAGA claim *only* as the state's designated proxy." (*Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 87 (emphasis in original).) "[B]efore meeting the statutory requirements for commencing a PAGA action, employees do not know which alleged violations—if any—they are authorized to assert in the action. … [U]ntil the employee meets

> those requirements, the state—through LWDA—retains control of the right underlying the employee's PAGA claim." (*Julian v. Glenair, Inc.* (2017) 17 Cal.App.5th 853, 870.) Thus, absent compliance with PAGA's pre-filing requirements, there is no "subject matter of the case" – a PAGA action between the plaintiff and defendant – because actions for civil penalties lie only with the State. (*See Quigley, supra*, at p. 808.) In turn, the Superior Court here had no jurisdiction to enter an order releasing PAGA claims that had not come into existence.

(LWDA Br. at 19.)

The LWDA identifies significant, immediate, and important jurisdictional questions of law raised by the errors made by the trial court and affirmed by the Court of Appeal. These errors are fundamental to the operation of the LWDA and the public purpose of PAGA as expressed by the Legislature. Review should be granted to resolve these issues.

III. Trial Courts Charged With "Review And Approval" Of PAGA Settlements Must Independently Determine Whether The Proposed Settlement Is Fair, Reasonable, And Adequate, And That It Is Consistent With The Purpose Of PAGA.

Finally, this Court should grant review to clearly articulate the standards lower courts must apply in reviewing and approving PAGA settlements.

Labor Code section 2699(*l*) requires that all PAGA settlements be reviewed and approved by the trial court. This provision of PAGA has evolved to reflect the legislative priority of ensuring that PAGA settlements are consistent with the statute's public purpose. In its original form, Labor Code section 2699(*l*) required courts to "review and approve any penalties sought as part of a proposed settlement agreement" of PAGA claims. (*See* Lab. Code § 2699(*l*) (2004).) In 2016, subdivision (*l*) was amended to state that the court shall "review and approve any settlement filed pursuant to this part." (Lab. Code § 2699(*l*) (2016).) This clarification made express that trial courts were responsible for reviewing proposed *settlements*.

This Court has never had occasion to explicate the proper standard for trial courts charged with reviewing and approving PAGA settlements. It should do so now. In *Williams*, this Court stated that "any negotiated resolution is fair to those affected" (*Williams*, *supra*, 3 Cal.5th at p. 549), but did not set forth the specific factors trial courts must consider when making such an assessment.

Into this gap, the LWDA has offered its own guidance. In *amicus* briefs filed in a federal action five years ago, and again in

the court below, the LWDA has advanced a settlement review standard that underscores the need to advance the public purpose of PAGA, which is consistent with Olson's position here. (*See* LWDA Amicus Br. at 26 ["[T]he touchstone for the adequacy of the settlement must always be the purposes and policies underlying California's labor laws, and PAGA as a proxy for a state action."].) This is also consistent with the LWDA's long-held view about PAGA settlements. (*See O'Connor*, *supra*, 201 F. Supp. 3d at p. 1133 ["It is thus important that when a PAGA claim is settled, the relief provided for under the PAGA be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public and, in the context of a class action, the court evaluate whether the settlement meets the standards of being 'fundamentally fair, reasonable, and adequate' with reference to the public policies underlying the PAGA."], quoting LWDA Resp.)

Petitioner urges a standard that is analogous to the standard for review proposed class action settlements articulated by the Court of Appeal in *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128 ("*Kullar*"). While not identical, the class action standard of fairness – intended in part to protect the interests of absent class members – is consistent with the public purposes of PAGA. When properly applied, this standard requires trial courts reviewing PAGA settlements to consider "the strength of [the] plaintiffs' case, the risk, expense, complexity and likely

duration of further litigation, . . . the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the experience and views of counsel." (*Kullar*, 168 Cal.App.4th at p. 128, quoting *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) In weighing these factors, courts should bear in mind PAGA's overarching purpose to "remediate present violations and deter future ones." (*See Williams*, *supra*, 3 Cal.5th at p. 546.)

Federal district courts have applied this standard to PAGA settlement approval. (*See*, *e.g.*, *Moreno v. Beacon Roofing Supply, Inc.* (S.D. Cal. Mar. 9, 2020, No. 19 Civ. 185) 2020 WL 1139672, at *7 [applying "'a Rule 23-like standard' asking whether the settlement of the PAGA claims is 'fundamentally fair, reasonable, and adequate"'], quoting *Haralson v. U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383 F.Supp.3d 959, 972; *Smith v. H.F.D. No. 55, Inc.* (E.D. Cal. Apr. 20, 2018, No. 15 Civ. 1293) 2018 WL 1899912, at *2 [same]; *Rincon v. W. Coast Tomato Growers, LLC* (S.D. Cal. Feb. 12, 2018, No. 13 Civ. 2473) 2018 WL 828104, at *2 [same]; *Ramirez v. Benito Valley Farms, LLC* (N.D. Cal. Aug. 25, 2017, No. 16 Civ. 4708) 2017 WL 3670794 at *3 [same]; *Gutilla v. Aerotek, Inc.* (E.D. Cal. Mar. 22, 2017, No. 15 Civ. 191, 2017) WL 2729864, at *3 & n.4 [same].)

This is also the standard applied in *qui tam* settlements reached under the False Claims Act. In that arena, it is the trial

court's duty to ensure this standard is met. (*See U.S. ex rel. Killingsworth v. Northrop Corp.* (9th Cir. 1994) 25 F.3d 715, 724 ["We construe the Act as authorizing the district court to bar a *qui tam* plaintiff and defendant from artificially structuring a settlement to deny the government its proper share of the settlement proceeds."].) This standard applies equally to the government settling such claims. (*See* 31 U.S.C. § 3730(c)(2)(B) ["The Government may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances."].) Given that this Court has held that "[a] PAGA representative action is therefore a type of *qui tam* action" (*Iskanian,* 59 Cal.4th at p. 382), the standard should be adopted by State courts.

State appellate courts, including this Court, however, have never expressly adopted such a standard. The lack of clarity has led to inconsistent application of Labor Code § 2699(*l*) as trial courts have struggled with what standard to apply, what information is required, and what analysis must be undertaken.

This Court should grant review in order to clarify the proper standard to be applied by lower courts charged with reviewing and approving PAGA settlements.

IV. The Court Of Appeal's Decision Below Failed To Consider Valid Substantive Objections To The *Turrieta* Settlement That Require Review.

The lack of direction for lower courts reviewing proposed PAGA settlements is exacerbated in cases, as here, where multiple plaintiffs have been deputized by the LWDA to prosecute overlapping claims against the same defendant. When that happens, a trial court assumes an additional obligation to consider whether there is evidence of a settlement achieved due to a "reverse auction." While a *Kullar*-type standard of review could address many of these issues, lower courts should ensure that the fairness of any proposed compromise of the State's claims has not been sacrificed by the self-interest of the settling plaintiff and plaintiff's counsel.

This is precisely what happened here. The Court of Appeal adopted without consideration the trial court's conclusions about the fairness of a settlement that is profoundly flawed, unfair, inadequate, and unreasonable. The settlement delivers an average of $4 to each Lyft Driver, but $5 million to counsel and $14,000 to Plaintiff Turrieta. Turrieta has attempted to characterize Olson's challenge to the settlement as sour grapes. Notably, however, Turrieta has defended the settlement not by arguing its merits, but by comparing it to other settlements approved with deep discounts.

Rather than proving the reasonableness of the settlement, such analogies only underscore the need for guidance from this Court about the appropriate standards for considering PAGA settlements. The "amount offered" in the settlement is completely out of line with the "the strength of [the] plaintiff's case" as well as the "risk . . . of further litigation." (*See Kullar*, *supra*, 168 Cal.App.4th at p. 128.) As a result, the settlement does not effectuate PAGA's purposes and does nothing to deter future violations. (*See Williams*, *supra*, 3 Cal.5th at p. 546.) One case relied upon by Turrieta and the trial court involves Lyft's January 2018 PAGA settlement, which was based on the more fact-specific test for misclassification in *S.G. Borello & Sons, Inc. v. Dept. of Industrial Relations* (1989) 48 Cal.3d 341.

Furthermore, the trial court's lack of scrutiny regarding the settlement amount, and the Court of Appeal's affirmance of that judgment, was facilitated by its denial of Olson's motion to intervene. Turrieta's counsel self-serving declaration justifies the discounts through vague claims about the uncertainty of the applicable legal standard and the risk of legislative action exempting Lyft from the ABC Test, but none of these would survive *Kullar*-type scrutiny.

For example, the record demonstrates that the order and judgment approving the settlement is based on the erroneous finding that "the claims in this case would likely be considered

under pre-*Dynamex* law" despite clear guidance from the Court of Appeal at the time of its consideration of the settlement that the *Dynamex* decision applies retroactively. (*See Gonzales v. San Gabriel Transit, Inc.* (2019) 40 Cal.App.5th 1131, 1156 (*Gonzales*) ["[T]here is no reason to conclude that *Dynamex* departs from the usual rule of retroactive application."].) This Court has since affirmed that conclusion in *Vazquez v. Jan-Pro Franchising Int'l, Inc.* (2021) 10 Cal. 5th 944, 952.

Other patent errors were ignored by the Court of Appeal. Specifically, the Settlement provides for $5,000,000 in payments to drivers under Labor Code section 558, subd. (a)(3) despite this Court's clear ruling – prior to the execution of the settlement – that such payments are not recoverable in PAGA actions. (*ZB*, *supra*, 8 Cal.5th at p. 182.) In the trial court, Turrieta defended this unlawful provision of the settlement on grounds that "this agreement was reached at the mediation prior to this Court's decision in *ZB, N.A.*, but neither the trial court nor the Court of Appeal considered this infirmity or cited any authority supporting the proposition that parties may contravene this Court's holding.

The inadequacy of the settlement, which the court below refused to consider and the trial court both relied on clear errors of law and abused its discretion to approve, is properly the subject of this Court's review.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court grant the Petition for Review, 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 to vacate the judgment.

Dated: November 9, 2021

Respectfully submitted,

/s/ Christian Schreiber
Christian Schreiber
Attorney for Plaintiff and Petitioner BRANDON OLSON

CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.204(c) of the California Rules of Court, I hereby certify that this petition contains 7,843 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: November 9, 2021

Respectfully submitted,

/s/ Christian Schreiber
Christian Schreiber
Attorney for Plaintiff and Petitioner BRANDON OLSON

PROOF OF SERVICE

I am employed in the County of San Francisco, State of California. I am over the age of 18 years and not a party to the within action; my business address is Olivier Schreiber & Chao LLP, 201 Filbert Street, Suite 201, San Francisco, CA 94133. On November 9, 2021, I served the following document(s):

PETITION FOR REVIEW

on the interested parties in this action by placing a true copy thereof enclosed in an envelope addressed to each as follows:

Hon. Dennis J. Landin
Stanley Mosk Courthouse
111 N. Hill Street
Los Angeles, CA 90012

[X] BY MAIL: I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service. I know that the correspondence is deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelope was sealed and, with postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices, in the United States mail at San Francisco, California.

I declare under penalty of perjury under the laws of California that the above is true and correct. I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on November 9, 2021 at San Francisco, California.

/s/ Ernie Eastham
Ernie Eastham

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

TINA TURRIETA, Plaintiff and Respondent, v. LYFT, INC., Defendant and Respondent; MILLION SEIFU, et al. Intervenors and Appellants.	B304701 (Los Angeles County Super. Ct. No. BC714153)

APPEAL from a judgment of the Superior Court of Los Angeles County, Dennis J. Landin, Judge. Affirmed.

Lichten & Liss-Riordan, Shannon E. Liss-Riordan, Anne Kramer for Appellant Million Seifu.

Outten & Golden, Jahan C. Sagafi, Laura Iris Mattes and Adam Koshkin; Olivier Schreiber & Chao, Monique Olivier, Christian Schreiber and Rachel Bien for Appellant Brandon Olson.

Michael L. Smith as Amicus Curiae on behalf of Appellants.

The Graves Firm, Allen Graves and Jacqueline Treu for Plaintiff and Respondent.

Horvitz & Levy, Christopher D. Hu, Peder K. Batalden, and Felix Shafir; Keker, Van Nest & Peters, R. James Slaughter, Erin E. Meyer, Ian Kanig and Morgan E. Sharma for Defendant and Respondent.

Appellants Brandon Olson and Million Seifu and respondent Tina Turrieta worked as drivers for a rideshare company, respondent Lyft, Inc. In 2018, Olson, Seifu, and Turrieta each filed separate representative actions against Lyft under the Private Attorneys General Act of 2004 (PAGA) (Lab. Code, § 2698 et seq.),[1] alleging that Lyft misclassified its California drivers as independent contractors rather than employees, thereby violating multiple provisions of the Labor Code. Following a mediation in 2019, Turrieta and Lyft reached a settlement.

After Turrieta moved for court approval of the settlement, appellants sought to intervene in the matter and object to the settlement. Appellants argued that Lyft had engaged in a "reverse auction" by settling with Turrieta for an unreasonably low amount, and that the settlement contained other provisions that were unlawful and inconsistent with PAGA's purpose. The trial court rejected appellants' requests to intervene, finding that appellants lacked standing. The court found the settlement to be fair and adequate, and approved it. The court also denied the subsequent motions by appellants to vacate the judgment under

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[1] All further statutory references are to the Labor Code unless otherwise indicated.

Code of Civil Procedure section 663.

On appeal, appellants contend the trial court erred in approving the settlement, and in denying their motions to intervene and to vacate the judgment. Respondents argue that, as nonparties, appellants lack standing to seek any relief in this case, and further, that the settlement was proper. We agree with respondents and the trial court that appellants' status as PAGA plaintiffs in separate actions does not confer standing to move to vacate the judgment or challenge the judgment on appeal. Moreover, while appellants may appeal from the court's implicit order denying them intervention, we find no error in that denial. We therefore affirm.

FACTUAL AND PROCEDURAL HISTORY

I. *Initiation of PAGA Lawsuits by Drivers*

Olson, Seifu, and Turrieta each worked as drivers for Lyft. As alleged by Turrieta, Lyft is a transportation company that employs drivers to transport customers by automobile. Lyft uses a cell phone application to connect its drivers with riders seeking transportation. During the relevant period, Lyft "maintained a uniform policy of classifying all Drivers as independent contractors rather than employees."

On May 24, 2018, Olson filed his lawsuit, *Olson v. Lyft, Inc.* (Super. Ct. San Francisco County, No. CGC-18-566788) (*Olson*), alleging PAGA claims on behalf of the State of California and other similarly situated individuals who worked as drivers for Lyft in California. He alleged that Lyft willfully misclassified its drivers as independent contractors resulting in numerous Labor Code violations, and sought recovery of civil penalties under PAGA. Seifu filed his lawsuit on July 5, 2018, captioned *Seifu v. Lyft, Inc.* (Super. Ct. Los Angeles County, No. BC712959) *(Seifu),*

also alleging PAGA claims based on driver misclassification.[2] Turrieta filed the instant case on July 13, 2018 *(Turrieta)*. Turrieta's complaint alleged six claims under PAGA for willful misclassification, failure to pay overtime wages, failure to timely pay wages, failure to pay wages upon termination, failure to provide accurate itemized paystubs, and failure to reimburse business expenses.

In April 2019, Olson filed a petition to coordinate five actions against Lyft pending in San Francisco and Los Angeles Superior Courts, including *Olson*, *Seifu*, and *Turrieta*. Lyft opposed the petition, as did Seifu and several other plaintiffs. The *Olson* court denied the petition without prejudice, noting that four of the five cases were currently stayed—*Seifu* and *Olson* pending resolution of appeals and *Turrieta* pending resolution of *Seifu*.[3]

II. *Settlement in* Turrieta

In September 2019, Turrieta and Lyft reached a settlement of her case following a mediation. Turrieta and Lyft signed the settlement agreement on December 4, 2019. The proposed settlement covered all individuals who provided at least one ride as a driver on Lyft's platform from April 30, 2017 to December 31, 2019. Lyft estimated the group to include a maximum of 565,000 individuals. The settlement required Lyft to pay $15 million in total, including a $14,000 enhancement payment to

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[2] During oral argument, counsel for Seifu and Olson clarified that Olson added his PAGA claims to his existing complaint in July 2018, after Seifu had filed his PAGA complaint. Thus, Seifu was the first of these three plaintiffs to file the PAGA claims at issue here.

[3] We granted Olson's request for judicial notice of the petition and court's order regarding coordination in *Olson*.

Turrieta, $5,048,087.34 in attorney fees and costs to Turrieta's counsel, $6,071,978.17 to be paid to PAGA group members,[4] and $3,215,934.50 in penalties paid to the state. Turrieta estimated that group members would receive an average payment of $12.

Under the settlement, the parties agreed to file a first amended complaint in *Turrieta* that "covers all PAGA claims that could have been brought against Lyft" for the relevant time period, so that those claims would be released by the settlement. In the proposed first amended complaint, Turrieta alleged four additional claims for failure to provide breaks, failure to store records, failure to pay minimum wage, and failure to provide hiring notice. The settlement expressly exempted from release any claims for damages (as opposed to penalties) and direct claims by group members other than Turrieta. On December 9, 2019, Turrieta gave notice of the settlement to the state through the California Labor and Workforce Development Agency (LWDA), including a copy of the settlement agreement and the proposed first amended complaint. The LWDA did not respond.[5]

On December 9, 2019, Turrieta filed a motion for approval of the settlement, with a hearing date of January 2, 2020. She argued that the court should approve the settlement, as it was

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[4] The amount allocated to PAGA group members represents a $5 million payment for "underpaid wages" pursuant to section 558, subdivision (a)(3), and the balance of over $1 million as 25 percent of the recovered penalties paid to employees pursuant to section 2699, subdivision (i).

[5] Although the LWDA did not respond or object to the proposed settlement below, it did file a brief, through the Division of Labor Standards Enforcement, as amicus curiae on appeal, urging us to reverse the trial court's order approving the settlement. Turrieta filed a response to the amicus brief.

"almost twice the amount of a similar settlement in the rideshare industry that was approved in 2018," citing *Price v. Uber Technologies, Inc.* (Super. Ct. Los Angeles County, 2018, No. BC554512). Turrieta stated that she and Lyft engaged in "extensive informal pre-mediation discovery," including provision by Lyft of the number of pay periods at issue, the number of unique drivers on Lyft's platform each week during the liability period, and detailed data for a sample of 10,000 drivers. Based on that data, Turrieta's counsel "completed an extensive and detailed calculation of the value of the claims in the case" and estimated the maximum liability to be over $30 billion.

Turrieta acknowledged that the Supreme Court's recent decision in *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903 (*Dynamex*) established a new test that "poses a higher hurdle for employers" to prove that a worker was an independent contractor rather than an employee. However, she argued that "the uncertainty as to retroactivity of this ruling, as well as disputes as to which claims were subject to *Dynamex*, rendered the impact of *Dynamex* uncertain." Turrieta also informed the court that the parties had attended a full day of mediation in September 2019 with "noted mediator" Antonio Piazza, but were unable to reach an agreement. However, the mediator later "made a settlement proposal representing his own independent valuation of the case, which the parties accepted."

III. *Motions by Olson and Seifu and Approval of Settlement*

On December 24, 2019, Olson filed a motion to intervene in *Turrieta* and raised objections to the settlement. He stated that he had not been notified by Turrieta's counsel of the proposed settlement and only learned of it on December 20, 2019. Olson argued that he was entitled to intervene as a matter of right

under Code of Civil Procedure section 387, subdivision (d)(1) because he "(1) claims an interest in the property or transaction that is the subject of the litigation; (2) is so situated that the disposition of the action may impair or impede his ability to protect that interest; and (3) will not be adequately represented by the existing party." Alternatively, Olson sought permissive intervention under Code of Civil Procedure section 387, subdivision (d)(2). Olson objected to the proposed settlement as unfair, unreasonable, and inadequate in light of the purposes of PAGA, arguing, among other reasons, that the amount of the penalties paid to the state was "grossly inadequate" given the strength of the claims. In addition, Olson asserted the settlement was secured through a reverse auction, it was obtained by "deliberately excluding" Olson and his counsel from the negotiation, and it included an unjustified amount in attorney fees.

Because the hearing on Olson's motion was set for April 2020, he also filed an ex parte application to continue the January 2020 settlement approval hearing until after his motion to intervene could be heard. The court denied the application on December 26, 2019.[6]

On December 31, 2019, Seifu also filed a motion for leave to intervene in *Turrieta* and an objection to the proposed settlement. Like Olson, he sought to intervene as a matter of right, arguing that he had an interest in the action as a member

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[6] There is no transcript in the record from the hearing on the ex parte application. In its subsequent order on January 2, 2020 approving the settlement, the court stated that it had denied the application "after finding that there were no exigent circumstances warranting relief."

of the PAGA settlement group and as the PAGA representative with the "first-filed" action. He also asked the court to postpone the settlement approval hearing and argued that the settlement was not fair, adequate, or reasonable.

The court held the settlement approval hearing in *Turrieta* on January 2, 2020. Counsel for Turrieta argued that appellants lacked standing to intervene or object to the settlement because "this case belongs exclusively to the State." He also contended that the settlement would be "one of the largest payments" ever received by the state, "so they of course have not objected, they would like to be paid." Lyft's counsel agreed with Turrieta's position.

Counsel for appellants appeared at the hearing and the court allowed them to argue. Seifu's counsel argued that Seifu's case was "the first-filed case" and Lyft had engaged in a reverse auction by settling with Turrieta after it failed to reach an agreement with Seifu. She also argued that Seifu had moved for an injunction in his case, which was stayed pending Lyft's appeal, but that Lyft was attempting to avoid the effect of potential injunctive relief by settling a "copycat" case for monetary penalties. She argued in the alternative that Seifu should be allowed to opt out of the *Turrieta* settlement, so that "he can continue his pursuit of his injunction claim." Olson's counsel contended that the small amount of the settlement compared to the amount of possible liability "does not represent any kind of deterrent or punitive result for a company such as Lyft which is currently employing hundreds of thousands of workers in California and has billions of dollars in revenue each year." He also argued that other drivers should have standing to intervene and appeal as they would in class actions.

In response to Seifu's arguments, counsel for Lyft contended that injunctive relief was not available under PAGA, and that there was no such motion pending because *Seifu* was stayed. In addition, even if injunctive relief was permitted, the settlement would not preclude injunctive relief. He also disputed the suggestion of gamesmanship in the settlement.

Turrieta's counsel disputed appellants' assertion of standing, arguing that if the court allowed notice to or intervention by another PAGA plaintiff, "you'd be undoing a basic structural element of PAGA" that was distinct from class action procedure. He also reiterated that the amount of the settlement was reasonable compared to past settlements, and rejected the suggestion that the state did not review the proposed settlement, considering it was "their biggest recovery of the year." He emphasized that the settlement was made at arm's length, and was proposed by an experienced, neutral mediator. At the conclusion of the hearing, the court took the matter under submission.

The court issued an order later that day, January 2, 2020. The court overruled Seifu's objection to the settlement, finding that "[a]part from the fact that it was filed on the eve of the hearing, the Court does not believe that he (like Olson) has standing to be heard on this matter." The court held that the real party in interest was the state, citing *Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993 (*Amalgamated*). The court also denied Seifu's request to "opt out" of the settlement, finding he had no legal basis to do so, and was not precluded by the settlement from pursuing a preliminary injunction.

The court further 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." The court noted it had considered another settlement approved in January 2018 for $7.75 million for a "period three times as long." The court also found that "although it is possible that monetary penalties could be up to $100 billion,[7] given that the claims in this case would likely be considered under pre-*Dynamex* law, it is also possible that the penalties could be zero dollars." The court rejected appellants' assertion that "Lyft engaged in gamesmanship such that plaintiffs in other cases (as well as the State) could be shortchanged. In this regard, the court notes that after the parties engaged in mediation before a very experienced mediator, they were still not able to arrive at a resolution. Instead, they ultimately accepted the mediator's proposal." In addition, the court concluded that it would "not assume that the State of California [h]as not read and seriously considered the proposed settlement. As mentioned above, it is the real party in interest and by not filing an opposition to the settlement, the Court assumes that it agrees that the settlement is appropriate."

The court signed the proposed order submitted by Turrieta, approving the settlement agreement and finding the settlement

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[7] Turrieta subsequently filed a request for clarification, noting that the record supported a value of "over $10 billion." During the settlement approval hearing, Seifu's counsel argued that the maximum liability totaled over $2 billion, while Olson's counsel estimated it at over $12 billion. Ultimately, this factual dispute is irrelevant to resolution of this appeal.

"is in all respects fair, reasonable and adequate, and complies with the policy goals of the PAGA. There was no collusion in connection with the Settlement. 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." The court further found that the settlement agreement was "reasonable as it provides substantial payment for the State of California and will provide the PAGA Settlement Group Members with substantial recovery from a non-reversionary common fund." The court retained jurisdiction to enforce the settlement agreement, vacated all other hearing dates, and ordered the matter dismissed with prejudice. The court entered judgment on January 6, 2020.

On January 14, 2020, Olson filed a motion to vacate the *Turrieta* judgment pursuant to Code of Civil Procedure section 663. He again argued that the court erred in approving the settlement for several reasons, including: (1) the provision paying $5 million to drivers as underpaid wages pursuant to section 558 was barred by the recent Supreme Court decision in *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175; (2) the amount paid in penalties to the state was unreasonable given the strength of the claims, which the court erroneously found would not be considered under *Dynamex*; (3) the court "ignored the undisputed facts suggesting that Lyft reverse-auctioned the State's claims"; and (4) the court erred in finding that Olson lacked standing to intervene. Seifu also moved to vacate the judgment on January 21, 2020.[8] Lyft and Turrieta both opposed the motions.

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[8] Seifu's motion to vacate the judgment, supporting documents, and reply are not included in the record on appeal.

The court held a hearing on the motions to vacate the judgment on February 28, 2020. Following argument by counsel for appellants and respondents, the court reiterated its finding that the settlement "is in the best interest of the workers and in the best interest of the state of California." Then, the court found that appellants did not have standing to object to the settlement or to bring a motion to set aside the judgment. The court subsequently issued a minute order denying the motions. Olson and Seifu timely appealed.

Respondents moved to dismiss the appeals, arguing that appellants lacked standing. We issued an order summarily denying the motions to dismiss without prejudice to the parties raising the issue again in their briefing.[9] The parties submitted their briefs and appellate record. After full consideration of the record and relevant legal authorities, we conclude that appellants lack standing to appeal the judgment. Although they have standing to appeal the trial court's implicit denial of their motions to intervene, we find no error and therefore affirm.

After filing his opening brief, he moved to augment the record with these documents and then requested that we take judicial notice of them. We denied both requests.

[9] A summary denial of a motion to dismiss an appeal does not "preclude later full consideration of the issue, accompanied by a written opinion, following review of the entire record. . . ." (*Kowis v. Howard* (1992) 3 Cal.4th 888, 900, overruling the contrary holding in *Pigeon Point Ranch, Inc. v. Perot* (1963) 59 Cal.2d 227, 230–231; accord, *Dakota Payphone, LLC v. Alcaraz* (2011) 192 Cal.App.4th 493, 509, fn. 6 [reversing prior order and dismissing appeal upon "review of a complete record and further analysis of the law"].)

DISCUSSION

I. *PAGA Overview*

"California's Labor Code contains a number of provisions designed to protect the health, safety, and compensation of workers. Employers who violate these statutes may be sued by employees for damages or *statutory* penalties. [Citations.] Statutory penalties, including double or treble damages, provide recovery to the plaintiff beyond actual losses incurred. [Citation.] Several Labor Code statutes provide for additional *civil* penalties, generally paid to the state unless otherwise provided. [Citation.] Before PAGA's enactment, only the state could sue for civil penalties." (*Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 80 (*Kim*), citing *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 378 (*Iskanian*).) The Legislature enacted PAGA in 2003 to allow aggrieved employees to act as private attorneys general and recover civil penalties for Labor Code violations. (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 980-981 (*Arias*); *Villacres v. ABM Industries Inc.* (2010) 189 Cal.App.4th 562, 578.) The Legislature's declared purpose in enacting PAGA was "to supplement enforcement actions by public agencies, which lack adequate resources to bring all such actions themselves." (*Arias, supra*, 46 Cal.4th at p. 986.)

PAGA deputizes "aggrieved" employees to bring a representative lawsuit on behalf of the state to enforce labor laws. (*Kim, supra*, 9 Cal.5th at p. 81; *Iskanian, supra,* 59 Cal.4th at p. 386.) An "aggrieved employee" for purposes of bringing a PAGA claim is defined under the statute as "any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed." (§ 2699, subd. (c); see

also *Kim, supra*, 9 Cal.5th at p. 82.) Although an aggrieved employee is the named plaintiff in a PAGA action, PAGA disputes are between the state and the employer, not between the employee and the employer. (*Iskanian, supra*, 59 Cal.4th at p. 386; *Arias, supra*, 46 Cal.4th at p. 986 [plaintiff represents same legal rights and interests as state labor law enforcement agencies].) Thus, an employee suing under PAGA "does so as the proxy or agent of the state's labor law enforcement agencies. . . . In a lawsuit brought under the act, the employee plaintiff represents the same legal right and interest as state labor law enforcement agencies—namely, recovery of civil penalties that otherwise would have been assessed and collected by the [LWDA]." (*Arias, supra,* 46 Cal.4th at p. 986; accord, *Iskanian, supra,* 59 Cal.4th at p. 380.)

Before filing a PAGA lawsuit, an employee must provide written notice to the LWDA and the employer of the specific Labor Code violations alleged and facts and theories to support the claims. (§ 2699.3, subd. (a)(1)(A).) "If the [LWDA] elects not to investigate, or investigates without issuing a citation, the employee may then bring a PAGA action." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 545 (*Williams*); see § 2699.3, subd. (a)(2)(A); *Julian v. Glenair, Inc.* (2017) 17 Cal.App.5th 853, 866 (*Julian*).) The notice requirement allows the relevant state agency to decide "whether to allocate scarce resources to an investigation." (*Williams, supra*, 3 Cal.5th at p. 546.) The LWDA receives 75 percent of the civil penalties recovered in an action brought by an aggrieved employee; the remaining 25 percent of the penalties is distributed to the "aggrieved employees." (§ 2699, subd. (i); *Arias, supra*, 46 Cal.4th at pp. 980-981.)

Overlapping PAGA actions may be brought by different employees who allege the same violations and use the same theories. (*Julian, supra,* 17 Cal.App.5th at pp. 866-867.) However, because an employee who brings an action under PAGA does so as the "proxy or agent" of the state, a judgment in an employee's action under PAGA "binds all those, including nonparty aggrieved employees, who would be bound by a judgment in an action brought by the government." (*Arias, supra*, 46 Cal.4th at p. 986.) As our Supreme Court has explained, when an employee plaintiff prevails in a PAGA action, "[n]onparty employees may then, by invoking collateral estoppel, use the judgment against the employer to obtain remedies other than civil penalties for the same Labor Code violation[s]." (*Id*. at p. 987.) "If the employer had prevailed, however, the nonparty employees, because they were not given notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to remedies other than civil penalties." (*Ibid*.; see also *Williams, supra*, 3 Cal.5th at p. 547, fn. 4 [employees "do not own a personal claim for PAGA civil penalties"].)

If the parties settle a PAGA claim, section 2699, subdivision (l)(2) requires the plaintiff employee to simultaneously submit the proposed settlement to the LWDA and the court, and further requires that the court "review and approve" the settlement. As such, the court must "ensur[e] that any negotiated resolution is fair to those affected." (*Williams, supra*, 3 Cal.5th at p. 549.)

II. *Analysis*

This appeal presents overlapping challenges to two separate orders. First, appellants seek to appeal from the judgment on the ground that the trial court should not have

approved the settlement. They contend that they have standing to do so because they moved to vacate the judgment under Code of Civil Procedure section 663. Respondents counter that appellants, as nonparties, lacked standing to move to vacate the judgment and therefore cannot use those motions as a basis for appeal. We agree with respondents and the trial court 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.

Second, appellants challenge the trial court's denial of their motions to intervene in *Turrieta*. Again, they argue that they had a personal interest in the *Turrieta* proceedings and proposed settlement because they were deputized to prosecute PAGA claims on behalf of the state. Respondents assert that this issue is outside the scope of the appeal and, additionally, that appellants are not entitled to intervene. Although we agree with appellants that they may raise this issue on appeal, we conclude that the trial court did not err in denying them intervention.

A. *Motion to vacate judgment*

Respondents contend that appellants lacked standing below to bring a motion to set aside the judgment pursuant to Code of Civil Procedure section 663, and lack standing to appeal from the judgment for the same reasons. We agree.

Code of Civil Procedure section 902 allows "'[a]ny party aggrieved'" to appeal from a judgment. Thus, "[t]he test is twofold—one must be both a party of record to the action *and* aggrieved to have standing to appeal." (*Shaw v. Hughes Aircraft Co.* (2000) 83 Cal.App.4th 1336, 1342; see also *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 263

(*Hernandez*).) However, a nonparty that is aggrieved by a judgment or order may become a party of record and obtain the right to appeal by moving to vacate the judgment pursuant to Code of Civil Procedure section 663. (*Hernandez, supra*, 4 Cal.5th at p. 267, citing *Eggert v. Pac. States S. & L. Co.* (1942) 20 Cal.2d 199, 201; *County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 736, 738 (*Carleson*) [one who is legally "aggrieved" by judgment may become "party of record" with the right to appeal by moving to vacate judgment for "incorrect legal conclusion" or "erroneous judgment upon the facts"].) Similarly, pursuant to Code of Civil Procedure section 663, a "party aggrieved" may move for a judgment "to be set aside and vacated . . . and another and different judgment entered, . . . materially affecting the substantial rights of the party and entitling the party to a different judgment." Thus, in order for appellants to have standing to bring a motion to vacate the judgment or to appeal from that judgment, they must have been "aggrieved" by the judgment.

A party is aggrieved "only if its 'rights or interests are injuriously affected by the judgment.'" (*Sabi v. Sterling* (2010) 183 Cal.App.4th 916, 947, quoting *Carleson, supra*, 5 Cal.3d at p. 737.) The aggrieved party's interest "must be immediate, pecuniary, and substantial and not nominal or a remote consequence of the judgment." (*Carleson, supra*, 5 Cal.3d at p. 737; see also *Howard Contracting, Inc. v. G.A. MacDonald Construction Co., Inc.* (1998) 71 Cal.App.4th 38, 58.)[10]

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[10] We note that whether someone is an "aggrieved employee" as defined by section 2699, subdivision (c) and thus able to bring a lawsuit under PAGA is a distinct inquiry from whether a nonparty may become an aggrieved *party* because of a

Appellants contend they are "aggrieved" parties because of their status as designated proxies for the state. Olson argues that the settlement has an "'immediate, pecuniary, and substantial' effect on the State (and Olson as the State's proxy): it extinguishes the claims Olson was deputized to pursue for less than pennies on the dollar." Similarly, Seifu contends that he has "an interest in representing the State's interest" in "achieving the maximum recovery possible for Lyft's misdeeds," and deterring future violations.

We are not persuaded that appellants' role as PAGA plaintiffs confers upon them a personal interest in the settlement of another PAGA claim. As our Supreme Court recently explained: "A PAGA claim is legally and conceptually different from an employee's own suit for damages and statutory penalties. 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.) As such, "[e]very PAGA claim is 'a dispute between an employer and the state.' [Citations.] . . . . Relief under PAGA is designed primarily to benefit the general public, not the party bringing the action." (*Ibid.*; see also *Iskanian, supra*, 59 Cal.4th at p. 386; *Arias*, *supra*, 46 Cal.4th at p. 986.) "'A PAGA representative action is therefore a type of qui tam action,'" and the "government entity on whose behalf the plaintiff files suit is always the real party in interest." (*Ibid.*, quoting *Iskanian, supra*, 59 Cal.4th at p. 382.)[11]

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personal interest in a different lawsuit and thereby obtain standing to challenge the judgment. None of the parties here have claimed otherwise.

[11] As such, Seifu's contention that he "supplanted the State

In *Amalgamated, supra,* 46 Cal.4th at p. 1003, the court rejected an attempt by a labor union to bring a PAGA claim as the assignee of the employees who had suffered injury. The court reasoned that the claim could not be assigned because PAGA "does not create property rights or any other substantive rights. Nor does it impose any legal obligations. It is simply a procedural statute allowing an aggrieved employee to recover civil penalties—for Labor Code violations—that otherwise would be sought by state labor law enforcement agencies." (*Ibid.*) Thus, the court held that an aggrieved employee could not assign a PAGA claim for "statutory penalties because the employee does not own an assignable interest." (*Ibid.*)

Consequently, appellants' ability to file PAGA claims on behalf of the state does not convert the state's interest into their own or render them real parties in interest. (*Amalgamated*, *supra*, 46 Cal.4th at p. 1003; *Arias, supra*, 46 Cal.4th at p. 986.) Appellants were deputized under PAGA to prosecute their employer's Labor Code violations on behalf of the state; they fail to point to any authority allowing them to act on the state's behalf for all purposes. Because it is the state's rights, and not appellants', that are affected by a parallel PAGA settlement, appellants are not aggrieved parties with standing to seek to vacate the judgment or appeal.[12] Nor can appellants claim a pecuniary interest in the penalties at issue, as the "civil penalties recovered on the state's behalf are intended to 'remediate present

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as the real party in interest" is meritless.

[12] To the extent Seifu additionally contends that his purported status as the "first-filed" PAGA plaintiff creates a personal interest in the settlement of a later-filed PAGA action, he cites no authority supporting that contention.

violations and deter future ones,' not to redress employees' injuries." (*Kim, supra*, 9 Cal.5th 73, 86, quoting *Williams, supra*, 3 Cal.5th at p. 546; see also *Iskanian, supra*, at p. 381.)

We disagree with Olson's prediction that denying him status as an aggrieved party will "have the dangerous effect of insulating all PAGA settlement approval orders from objection at the trial court level and subsequent appellate review," allowing a plaintiff to "settle PAGA claims on patently unreasonable terms." PAGA expressly requires notice of a proposed settlement to both the LWDA and the trial court, and directs the court to review the settlement prior to approval. (§ 2699, subd. (l)(2); see also *Williams, supra*, 3 Cal.5th at p. 549 [court must "ensur[e] that any negotiated resolution is fair to those affected"].) These procedures were followed here.[13] Moreover, as evidenced by several of the cases cited by appellants, the LWDA may provide the trial court with comments on or objections to a proposed settlement, and has done so in the past. (See *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1113 [noting that the court "invited and considered the comments" of the LWDA before rejecting the proposed settlement of class and PAGA claims].) Here, the LWDA did not raise objections to the settlement until it submitted an amicus brief on appeal, but that does not invalidate the protections provided by PAGA's notice and review requirements.[14]

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[13] We also note that, while it did not allow appellants to intervene, the trial court did allow appellants to submit objections, and to present argument at two hearings, and it addressed those objections (albeit briefly) in its order approving the settlement.

[14] The LWDA raises several objections to the settlement in

Appellants also argue that they are aggrieved as nonparty employees who would be bound by the judgment. But the settlement of Turrieta's PAGA claims is only binding with respect to the state's assertion of the same PAGA claims and recovery of the same civil penalties—not any personal claims appellants may have against Lyft. (See *Julian, supra*, 17 Cal.App.5th at p. 867 ["under the doctrine of collateral estoppel, a [PAGA] judgment . . . binds the government, as well as all aggrieved nonparty employees potentially entitled to assert a PAGA action"].) As the *Williams* court explained: "absent employees do not own a personal claim for PAGA civil penalties (see *Amalgamated*[,

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its amicus brief; in particular, it contends that the settlement released claims (newly added to the FAC) that Turrieta was not deputized to pursue because she never gave the requisite 65-day notice to the state under section 2699.3, subdivision (a). This argument should have been addressed to the trial court below. If the LWDA had asserted its objections before the trial court (or at a minimum, requested more time to consider the proposal), it could have provided the court with potentially useful information in considering the fairness of the settlement. Instead, it did so only belatedly and in its limited role as amicus on appeal. Moreover, regardless of the standing issue, neither appellant timely raised the argument that adding causes of action in the FAC required a new notice to the state—Seifu did not raise it at all and Olson did so only in a single paragraph at the very end of his reply in support of his motion to vacate. This issue is therefore forfeited and we would not consider it, even if appellants had standing to raise it. (See *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 783 ["points raised in a reply brief for the first time will not be considered unless good cause is shown for the failure to present them before"]; *Balboa Ins. Co. v. Aguirre* (1983) 149 Cal.App.3d 1002, 1010.)

supra,] 46 Cal.4th [at p.] 1003), and whatever personal claims the absent employees might have for relief are not at stake (*Iskanian* [ ], *supra*, 59 Cal.4th at p. 381 ["The civil penalties recovered on behalf of the state under the PAGA are distinct from the statutory damages to which employees may be entitled in their individual capacities"])." (*Williams*, *supra*, 3 Cal.5th at p. 547, fn. 4; see also *Sakkab v. Luxottica Retail North America, Inc.* (9th Cir. 2015) 803 F.3d 425, 436.) Thus, the settlement forecloses only the *state's* ability to seek the same civil penalties; it does not bar any claims owned by appellants and therefore does not injure their personal interests.

The unique nature of a PAGA claim is further underscored by the distinction between a PAGA claim and a class action. "In a class action, the 'representative plaintiff still possesses only a single claim for relief—the plaintiff's own,'" and the class action is used as a procedural device to aggregate numerous individual claims. (*Kim, supra*, 9 Cal.5th at pp. 86-87, quoting *Watkins v. Wachovia Corp*. (2009) 172 Cal.App.4th 1576, 1589.) "'But a representative action under PAGA is not a class action.' [Citation.] There is no individual component to a PAGA action because 'every PAGA action . . . is a representative action on behalf of the state.'" (*Ibid*., quoting *Iskanian, supra*, 59 Cal.4th at p. 387.) As a result, unlike a class action, PAGA has no notice requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA action. (See *Sakkab v. Luxottica Retail North America, Inc., supra,* 803 F.3d at p. 436; see also *Arias, supra*, 46 Cal.4th at p. 987 ["the nonparty employees, because they were not given notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as

to remedies other than civil penalties"].)[15] Here, appellants have no individual claims that would be affected by the settlement and are therefore not "aggrieved" for the purposes of standing to move to vacate or appeal from that judgment.

B. *Motion to intervene*

1. *Scope of appeal*

We next turn to appellants' challenge to the court's denial of their motions for intervention pursuant to Code of Civil Procedure section 387. As an initial matter, respondents contend that appellants have not properly raised this issue on appeal because the trial court never denied the motions and appellants did not appeal from any such denial.

From the record before us, it appears that the court did not issue an order specifically denying appellants' motions to intervene. However, Olson argues that the court effectively denied his motion when it vacated the scheduled hearing and denied his motion to vacate the judgment.[16] We find that the record supports the conclusion that the trial court denied appellants' motions for intervention.[17] In its January 2, 2020

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[15] Although appellants complained to the trial court and on appeal that they were not notified of the settlement, they cite no authority entitling them to such notice. Similarly, appellants devoted much of their briefing and most of their time during oral argument on appeal to policy arguments (despite the panel's inquiries on the standing issue). The policy issues appellants raise are best addressed to the Legislature.

[16] Despite its length, Seifu's reply brief is largely silent as to respondents' challenges to intervention. In his opening brief, he commingles the discussion regarding the motion to vacate and intervention.

[17] Respondents do not dispute that an order denying

order, the court addressed the issues raised by the parties regarding intervention, expressly finding that Seifu and Olson did not have standing to be heard, because the state was the real party in interest. The court also vacated the scheduled hearing on the motions to intervene. As such, the trial court's January 2, 2020 order effectively denied appellants' motions for intervention.

Respondents also contend that appellants appealed only from the denial of their motions to vacate, not from any order denying intervention. "[I]t is and has been the law of this state that notices of appeal are to be liberally construed so as to protect the right of appeal if it is reasonably clear what appellant was trying to appeal from, and where the respondent could not possibly have been misled or prejudiced." (*Etheridge v. Reins Internat. California, Inc.* (2009) 172 Cal.App.4th 908, 913, quoting *Luz v. Lopes* (1960) 55 Cal.2d 54, 59; Cal. Rules of Court, rule 8.100(a)(2).) In Seifu's notice of appeal, he expressly appealed from both the January 2 and February 28, 2020 orders. Olson's notice of appeal lists only the February 28, 2020 order denying the motion to vacate; however, in his description of the issues to be raised on appeal, he included the court's refusal to hear his motion to intervene. Moreover, all the parties addressed the issue of intervention in their briefs on appeal. As such, we

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intervention would be appealable. (See *Carleson, supra*, 5 Cal.3d at p. 736 ["[O]ne who is denied the right to intervene in an action ordinarily may not appeal from a judgment subsequently entered in the case. [Citations.] Instead, he may appeal from the order denying intervention."]; see also *Hodge v. Kirkpatrick Development, Inc.* (2005) 130 Cal.App.4th 540, 547 (*Hodge*) [an order denying a motion to intervene is appealable "because it finally and adversely determines the moving party's right to proceed in the action"].)

construe appellants' notices of appeal as taken from both the order denying their motions to vacate the judgment and the implicit order denying intervention.

2. *Code of Civil Procedure section 387*

Code of Civil Procedure section 387 allows either mandatory or permissive intervention. A nonparty has a right to mandatory intervention where "[t]he person seeking intervention claims an interest relating to the property or transaction that is the subject of the action and that person is so situated that the disposition of the action may impair or impede that person's ability to protect that interest, unless that person's interest is adequately represented by one or more of the existing parties." (Code Civ. Proc., § 387, subd. (d)(1).) Thus, "the threshold question is whether the person seeking intervention has 'an interest relating to the *property or transaction* which is the subject of the action.'" (*Siena Court Homeowners Assn. v. Green Valley Corp.* (2008) 164 Cal.App.4th 1416, 1423, quotation omitted; *Mylan Laboratories, Inc. v. Soon–Shiong* (1999) 76 Cal.App.4th 71, 78 (*Mylan*).)

Permissive or discretionary intervention under Code of Civil Procedure section 387, subdivision (d)(2) also requires a showing that "the nonparty has a direct and immediate interest in the action," among other criteria. (*Reliance Insurance Co. v. Superior Court* (2000) 84 Cal.App.4th 383, 386.) "The requirement of a direct and immediate interest means that the interest must be of such a direct and immediate nature that the moving party "'will either gain or lose by the direct legal operation and effect of the judgment.'"" (*City and County of San Francisco v. State of California* (2005) 128 Cal.App.4th 1030, 1036.) "Conversely, '[a]n interest is . . . insufficient for

intervention when the action in which intervention is sought does not directly affect it although the results of the action may indirectly benefit or harm its owner.'" (*Ibid*.)

3. *Standard of review*

The parties dispute the appropriate standard of review. Several appellate courts have implicitly applied the de novo standard of review to an order denying mandatory intervention. (See, e.g., *Hodge, supra*, 130 Cal.App.4th at pp. 548–550; *Mylan, supra*, 76 Cal.App.4th at pp. 78–80.) Turrieta, on the other hand, argues that the applicable standard is abuse of discretion, citing *Reliance Insurance Co. v. Superior Court, supra,* 84 Cal.App.4th at p. 386. We conclude that the denial of mandatory intervention was proper under either standard. We review the denial of permissive intervention for an abuse of discretion. (See *id*. at p. 386; *Truck Ins. Exchange v. Superior Court* (1997) 60 Cal.App.4th 342, 345.)

4. *Denial of Intervention*

Appellants contend the trial court should have granted their motions based on either mandatory or permissive intervention. Both mandatory and permissive intervention require a motion to intervene to be made "upon timely application." (Code Civ. Proc. § 387, subds. (d)(1), (2).) Respondents argue that neither appellant's motion was timely, as they knew about the *Turrieta* action for many months but did not seek to intervene, even after the court in *Olson* denied Olson's motion to coordinate the cases. Appellants counter that timeliness is measured from the date the intervenors "knew or should have known their interests were not being adequately represented." (*Lofton v. Wells Fargo Home Mortgage, Inc.* (2018) 27 Cal.App.5th 1001, 1013.) According to appellants, they had no

reason to believe their interests were not being protected by Turrieta as another proxy until they became aware of the terms of the settlement.

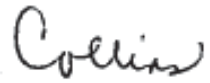
Although the trial court noted that Seifu's motion to intervene was filed on the eve of the settlement approval hearing, it is not apparent from the record that the court made a finding of untimeliness as a basis to deny intervention. We need not resolve this issue. Even if we found that appellants' motions were timely, we nevertheless would conclude that they failed to establish a right to intervention.

Appellants cannot meet the threshold showing that they had a direct and immediate interest in the settlement, which would establish their entitlement to mandatory or permissive intervention. Appellants' claim that they had a qualifying interest fails for the same reason they could not establish they were "aggrieved" for the purposes of standing. As we explained in our discussion of standing above, appellants' 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. Appellants' 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. As with standing, appellants have no personal interest in the PAGA claims and any individual rights they have would not be precluded under the PAGA settlement. (*Amalgamated*, *supra*, 46 Cal.4th at p. 1003; *Arias, supra*, 46 Cal.4th at p. 986.) Thus, the trial court did not err in denying appellants' motions to intervene.

DISPOSITION

The judgment is affirmed. Respondents are awarded their costs on appeal.

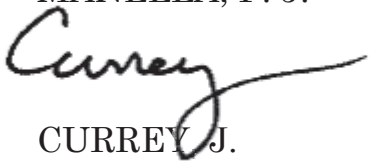
CERTIFIED FOR PUBLICATION



COLLINS, J.

We concur:

MANELLA, P. J.



CURREY, J.

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **Tina Turrieta v. Lyft, Inc.**
Case Number: **TEMP-M24X8D75**
Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.

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Title(s) of papers e-served:

Filing Type	Document Title
ISI_CASE_INIT_FORM_DT	Case Initiation Form
PETITION FOR REVIEW (FEE PREVIOUSLY PAID)	2021.11.09 Petition for Review

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This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

11/10/2021

Date

/s/Christian Schreiber

Signature

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