S227228

No. _____

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

MICHAEL WILLIAMS, an individual,
Petitioner,
v.

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES,
Respondent.

MARSHALLS OF CA, LLC,
Real Party in Interest.

AFTER DECISION BY THE COURT OF APPEAL,
SECOND APPELLATE DISTRICT, DIVISION ONE
CASE B259967

FROM THE SUPERIOR COURT,
COUNTY OF LOS ANGELES,
CASE NO. BC503806, ASSIGNED FOR ALL
PURPOSES TO JUDGE WILLIAM F. HIGHBERGER,
DEPARTMENT 322

PETITION FOR REVIEW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATE CASES

FEDERAL CASES

STATE STATUTES

ISSUES PRESENTED FOR REVIEW

1. In a representative Private Attorneys General Act of 2004 ("PAGA") action, is the plaintiff who represents other "aggrieved employees" throughout California under Labor Code section 2699(a) entitled to basic discovery of the names and contact information of those other "aggrieved employees, " when contact information for potential percipient witnesses is routinely and properly held discoverable under California case law and the California Civil Discovery Act ("Discovery Act"), including in class actions and other aggregate litigation?

2. Is the proper test for evaluating claims of invasion of privacy under the California Constitution the analytical framework set forth in *Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1 and applied in *Pioneer Electronics (USA), Inc. v. Superior Court* (2007) 40 Cal.4th 360, in which a court determines whether a claimant has a protectable privacy interest and, if so, balances that privacy interest against competing or countervailing interests, or the test articulated in *Lantz v. Superior Court* (1994) 28 Cal.App.4th 1839 and applied by the Court of Appeal below, which requires the party seeking discovery to demonstrate a "compelling need" that is "so strong as to outweigh the privacy right"?

3. May California courts restrict or preclude discovery of nonparty aggrieved employees' contact information despite the fact that this contact information is critical to prosecuting a PAGA case on behalf of similarly aggrieved employees; PAGA is a primary method for ensuring compliance with California's Labor Code; and the California labor law enforcement agencies in whose place the PAGA plaintiff litigates would be entitled to such information?

INTRODUCTION

The scope of discovery afforded PAGA plaintiffs raises an important question of law and one that must be reconciled with the competing rulings

of other appellate courts that, contrary to the Court of Appeal below, have found that employees pursuing aggregate litigation, including class actions, are entitled to non-intrusive contact information for similarly situated employees who are potential percipient witnesses to the wage and hour violations at issue. The Court of Appeal ignored and departed sharply from this clear line of authority[1] when it denied nearly all of the discovery sought by Petitioner Michael Williams, who had moved to compel production of the identities and contact information of Real Party in Interest Marshalls of CA, LLC's ("Marshalls") current and former employees throughout California in order to prosecute his PAGA action alleging wage and hour violations based on statewide policies and practices. Yet there is no basis to afford a PAGA plaintiff any less discovery than a plaintiff in a putative class action. Williams is simply seeking basic contact information relevant to investigating his PAGA action and discoverable under the Discovery Act, under which "relevance" is the standard for discoverable information.

Williams' operative complaint alleges statewide Labor Code violations based on systematic, company-wide policies for meal and rest breaks.[2] In particular, Williams contends that Marshalls maintains facially unlawful meal break and rest break policies that apply equally to non-exempt employees in all of its California stores.[3] Yet the Court of Appeal granted *less than one percent* of the employee contact information Williams sought, limiting Williams to the contact information for employees at just one store location out of Marshalls' 129 locations statewide. The court based its ruling on two grounds. First, it found that discovery of the contact

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[1] This line of authority begins with *Pioneer* and is followed by *Puerto v. Superior Court* (2008) 158 Cal.App.4th 1242; *Crab Addison, Inc. v. Superior Court* (2008) 169 Cal.App.4th 958; and *Belaire-West Landscape Inc. v. Superior Court* (2007) 149 Cal.App.4th 554.

[2] (Petitioner's Appendix ["PA"] 14 [¶42]; PA 15 [¶47].)

[3] (PA 252:13-28.)

information was premature due to a lack of "good cause." Second, the court determined that employee privacy interests outweigh the need for disclosure at this time. The court found that, before being allowed access to Marshalls' other employees, Williams would be required to (i) establish that he personally suffered Labor Code violations during a deposition; (ii) demonstrate personal knowledge of Marshalls' wage and hour practices at other stores rather than just a good faith basis for his belief that Marshalls' corporate break policy was implemented statewide; and (iii) establish that Marshalls' employment practices are in fact uniform throughout the state. By imposing these hurdles, the Court of Appeal's ruling undermines the policies furthered by this Court's ruling in *Pioneer* and numerous Court of Appeal decisions that followed *Pioneer*, which permit discovery of employees' names and contact information without imposing such threshold burdens to effective investigation. By imposing these hurdles, the Court of Appeal also undermined the "very broad"[4] nature of discovery under the Discovery Act, central to which has been the identification of potential witnesses.

As an initial matter, neither the applicable provisions of the Discovery Act nor the case law requires any additional "good cause" for Williams' discovery request, as the provision relied upon by the Court of Appeal applies only to inspection demands not at issue here. However, even if a good cause requirement applied here, there are multiple bases upon which it would be satisfied. One basis is the asymmetry of information and unfair litigation advantage that would result from allowing employers to maintain exclusive and unfettered access to employees who are potential percipient witnesses. Additionally, good cause exists based on the collateral estoppel effect that this PAGA action would have as against

[4] (*Tien v. Super. Ct.* (2006) 139 Cal.App.4th 528, 535.)

the non-party aggrieved employees Williams represents, yet cannot contact. Indeed, this Court in *Pioneer* and the courts of appeal in numerous cases following *Pioneer* have found potential percipient witnesses' contact information to be proper subjects of discovery under CCP §2017.010 and the unfairness that would result from allowing the employer exclusive access to these employees were sufficient to compel production of this contact information. The Court of Appeal thus misapplied any applicable "good cause" standard to preclude disclosure of relevant information at the outset of a PAGA case.

Moreover, by requiring Williams to demonstrate that Marshalls' employment practices are uniform throughout its California stores, the Court of Appeal has essentially engrafted a class action "commonality" requirement onto all representative PAGA actions, despite this Court's ruling in *Arias v. Super. Ct.* (2009) 46 Cal.4th 969 that a PAGA action need not satisfy class certification standards. Thus, the Court of Appeal's decision merits review to determine whether the principles underlying *Pioneer* and the numerous cases following *Pioneer* routinely allowing statewide discovery of potential percipient witness contact information apply to PAGA actions.

Plenary review is also necessary to settle the direct split of authority engendered by the Court of Appeal's reliance on the "compelling need" test from *Lantz v. Superior Court* (1994) 28 Cal.App.4th 1839, rather than the *Hill* test adopted by this Court in *Pioneer* and subsequently applied by numerous other courts of appeal, under which a court determines whether a privacy claimant has a protectable privacy interest and if so, balances such privacy rights against competing or countervailing interests. This Court in *Hill* rejected the requirement of a "compelling need" or "compelling interest" for scenarios like the present case where relatively nonsensitive information such as basic contact information is all that is at issue. By

applying the heightened *Lantz* test to non-sensitive, basic employee contact information, the Court of Appeal has created a stark divide among the California courts.

Finally, plenary review is necessary to prevent a ruling that, if not corrected, will effectively undermine PAGA's critical role in enforcing labor laws. PAGA serves as one of the "primary mechanisms for enforcing the Labor Code," *Iskanian v. CLS Transportation Los Angeles LLC* (2014) 59 Cal.4th 348, 383, by allowing an aggrieved employee acting as a private attorney general to collect civil penalties from employers who violate the Labor Code, with seventy-five percent of the penalty going to the Labor and Workforce Development Agency ("LWDA") for enforcement of labor law and education. PAGA created a private right of action to collect civil penalties that would be significant enough to deter violations at a time when there was a shortage of government resources to pursue enforcement. This powerful private enforcement tool—the importance of which has been reaffirmed in two significant opinions by this Court—cannot be rendered toothless by the Court of Appeal's imposition of restrictions on a PAGA plaintiff's right to conduct civil discovery that are greater than those imposed on a class action plaintiff bringing a wage and hour suit for private damages.

The Court of Appeal's decision also cannot be reconciled with the broad powers of the California labor law enforcement agencies in whose stead the PAGA plaintiff litigates. If a PAGA action is truly to function "as a substitute for an action brought by the government itself," and a PAGA plaintiff "represents the same legal right and interest as state labor law enforcement agencies," as this Court states, a PAGA plaintiff must be permitted discovery of the routine employee contact information that would be the essential focus of any state agency investigation. (*Iskanian*, 59 Cal.4th at pp.380, 381; *id.* at p.388 [noting that a PAGA plaintiff's role as

proxy for the state is "not merely semantic" and must serve a "substantive" function.].)

Given the purpose of PAGA, the public rights involved, and the interest of the state, PAGA plaintiffs should be entitled to even *greater* discovery rights than class action plaintiffs. The Court of Appeal's decision below provides this Court with a critical opportunity to review whether a ruling severely restricting a PAGA plaintiff's discovery rights runs counter to the broad investigatory powers of the state labor law agency in whose shoes the PAGA plaintiff stands.

STATEMENT OF THE CASE

Williams was employed as a non-exempt, hourly-paid employee from approximately 2012 to 2013 at Marshalls' Costa Mesa, California location. (PA 9 [¶18].) Williams filed this action on March 22, 2013, and filed the operative Second Amended Complaint ("SAC") on November 19, 2013, alleging one cause of action under PAGA. (See generally PA 6-19.) This PAGA claim is for civil penalties for violations of Labor Code sections 226.7 and 512(a) for the failure to provide Williams and other aggrieved employees with meal or rest periods or compensation in lieu thereof; section 226(a) for failure to provide accurate wage statements to Williams and other aggrieved employees; sections 2800 and 2802 for failure to reimburse Williams and other aggrieved employees for all necessary business-related expenses; and section 204 for failure to pay all earned wages owed to Williams and other aggrieved employees during employment. (PA 12 [¶36].)

The SAC alleged statewide Labor Code violations based on systematic, company-wide policies. (See, e.g., PA 14 [¶42] ["Defendants implemented a systematic, company-wide policy to erase and/or withdraw meal period premiums from the time and/or payroll records when Plaintiff and aggrieved employees' records reflected that they did not receive compliant meal periods."]; PA 15 [¶47] ["Defendants did not schedule sufficient employees to handle the volume of customer transactions and . . . there were times that Plaintiff and aggrieved employees had to continue working without a rest period," yet "Defendants implemented a systematic, company-wide policy to not pay rest period premiums"]; PA 17 [¶54] [Marshalls had "policy and practice" of not reimbursing employees regarding necessary business-related expenses, such as for travel to banks to obtain cash, change or deliver bank deposits].)

During discovery, Williams sought production of the names and

contact information of Marshalls' non-exempt California employees who had worked since March 22, 2012, which is one year prior to the filing of this action to correspond to PAGA's one-year statute of limitations. (PA 54.) Williams served his Special Interrogatories, Set One, on Marshalls on February 5, 2014. (PA 53-54.) Specifically, Special Interrogatory No. 1 asks for the following information:

> Set forth the first, middle and last name, employee identification number, each position held, the dates each position was held, the dates of employment, last known address, and all known telephone numbers of each and every person who is or was employed by Defendant Marshalls of CA, LLC in California as a non-exempt employee at any time since March 22, 2012.

(*Id.*)

Marshalls' response to Special Interrogatory No. 1 consisted solely of objections. (PA 59-60.) As a result, Williams met and conferred with Marshalls and offered to address any privacy concerns with a "*Belaire-West* notice," which is a privacy notice procedure commonly used in class action cases allowing employees the option to opt out of having their contact information produced. (PA 64.) Marshalls rejected this solution and thereafter continued to refuse to produce the requested employee contact information. (PA 67.)

Thereafter, Williams filed a motion to compel Marshalls' response to this interrogatory (see generally PA 27-43), which Marshalls opposed. (See generally PA 94-112.) At the motion hearing on September 9, 2014, the trial court adopted its tentative ruling granting in part Williams' Motion to Compel, compelling Marshalls to produce contact information for its employees only at its Costa Mesa store and not the other 128 California stores. (PA 229; PA 234.) It ordered this discovery was subject to a *Belaire-West* notice process, with the costs to be shared by the parties

equally. (PA 229.) It also held that Williams could only renew his motion to seek any additional employees' names and contact information after he was deposed "for at least six productive hours" and that Marshalls could refer to this deposition testimony in its opposition if Marshalls believes the deposition "shows the claims presented herein have no factual merit" whether the challenged corporate policy was uniformly applied throughout the state or not. (PA 230.)

The trial court requested that the Court of Appeal review the matter and address the scope of discovery in a PAGA action, finding it is the "legitimate subject of an early writ." (PA 257:10.) The court certified the question under California Code of Civil Procedure Section 166.1 as presenting a controlling question of law concerning which there are substantial grounds for difference of opinion. (PA 257.)

Williams filed a petition for writ of mandate on November 10, 2014. A hearing was held on April 22, 2015, and a published opinion issued on May 15, 2015, denying the petition for writ of mandate. First, the Court of Appeal ruled that discovery of Marshalls' employee contact information statewide was premature, as Williams had failed to establish "good cause" under Code Civ. Proc., § 2031.310, subd. (b)(1). (*Williams v. Super. Ct. (Marshalls of CA, LLC)* (2015) 236 Cal.App.4th 1151, 1157.) The court held that Williams failed to "evince knowledge of the practices of Marshalls at other stores" or demonstrate that Marshalls has a uniform statewide policy, and thus failed to establish good cause for the contact information for Marshalls' California employees. The court also found that "[n]othing in the PAGA suggests a private petitioner standing in as a proxy for the DLSE is entitled to the same access," as the DLSE, and thus rejected the argument that PAGA's purpose authorized the discovery sought. (*Id.* at p.1157.) Second, the court held that Williams had failed to demonstrate a "compelling need [that is] so strong as to outweigh the [employees']

privacy right" under the California Constitution, applying the test articulated in *Lantz v. Superior Court* (1994) 28 Cal.App.4th 1839. (*Id.* at pp.1158-1159.) Indeed, the court found that Williams' "need for the discovery at this time is practically nonexistent." (*Id* at p.1159.)

Despite the fact that the court stated "discovery in a civil action brought under the PAGA be subject to the same rules as discovery in civil actions generally," the court did not cite, much less analyze, *Pioneer*, *Puerto*, *Belaire-West*, or *Crab Addison.* (*Id.* at p.1158.) Instead, the court concluded by finding that, before he is entitled to seek any additional employee names or contact information, Williams must establish that he was subjected to Labor Code violations and sit for a deposition, as well as establish Marshalls' employment practices are uniform throughout the company. (*Id.* at p.1159.) On this basis, the writ petition was denied. No rehearing petition was filed.

ARGUMENT

I. THE COURT OF APPEAL RULING RESTRICTING DISCOVERY FOR PAGA PLAINTIFFS REQUIRES REVIEW BECAUSE IT CONTRAVENES CALIFORNIA AUTHORITY FINDING ROUTINE CONTACT INFORMATION OF POTENTIAL PERCIPIENT WITNESSES TO BE DISCOVERABLE

A. The Court Of Appeal Failed To Apply This Court's *Pioneer* Decision And Its Progeny, Which Establish That Potential Witnesses' Basic Contact Information Is Relevant And Falls Within The Proper Scope Of Discovery In Aggregate Litigation

Williams sought and obtained authorization from the LWDA to seek civil penalties on behalf of Marshalls' current and former employees throughout California. [PA 8 [¶8].)] Williams' operative complaint reflects that breadth, including allegations of systematic, companywide

policies and practices. (See PA 14 [¶42], 15 [¶47], 17 [¶54].)[5] To obtain additional evidence necessary to meet its burden of proving these companywide allegations, Williams sought in discovery the names and contact information of non-exempt employees who worked at Marshalls' locations in California during the applicable time period, as they are potential percipient witnesses to the wage and hour violations alleged in the operative SAC. ([*Id*].) Moreover, all of Marshall's California non-exempt employees, not just the employees in the same store where Williams worked, are potential aggrieved employees. Indeed, as soon as Williams received authorization from the LWDA to sue for PAGA penalties on their behalf, Williams began representing these aggrieved current and former employees. (*Iskanian*, 59 Cal.4th at pp.379-381.) These potential aggrieved employees' contact information is directly relevant, as it may be or lead to admissible evidence regarding Marshall's implementation of its challenged corporate policies at its stores throughout California in a manner that deprived similarly situated "aggrieved" non-exempt employees of their Labor Code rights. In the context of aggregate litigation, California appellate authority clearly establishes the plaintiff's right to discover the names and contact information of these potential percipient witnesses without the limitation imposed on Williams (and future PAGA plaintiffs) by the Court of Appeal. The Court of Appeal ruling to the contrary is inconsistent with this line of cases.

Despite extensive briefing on the issue and discussion at oral argument, the Court of Appeal failed even to mention *Pioneer* or any of the numerous appellate court opinions that follow it. *Pioneer* held that contact

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[5] In particular, Williams contends that the policies Marshalls has are facially illegal and thus all non-exempt employees across all stores would be subject to such policies. (PA 252:13-28 [Counsel for Williams: "The rest break and meal break policies are facially illegal, in that they do not comply with *Brinker*."]

information of non-parties is generally discoverable in aggregate litigation so that the plaintiff may contact others who may assist in prosecuting the case. (See *Pioneer*, 40 Cal.4th 360, 373.) In *Pioneer*, the plaintiffs in a consumer-rights class action sought the names and contact information for all complaining customers who had purchased the same allegedly defective DVD player and sought copies of any consumer complaints concerning the DVD players. (*Pioneer*, 40 Cal.4th at p.364.) Finding that "many of Pioneer's complaining customers would be *percipient witnesses* to relevant defects in the DVD players," this Court held that this information was discoverable subject to an opt-out notice. (*Id.* at p.374 [emphasis in original].) The Court noted that litigants in aggregate litigation would be placed at an unfair advantage without such discovery, but if allowed "to contact those customers and learn of their experiences" could improve their chances of succeeding in litigation "thus perhaps ultimately benefiting some, if not all, those customers." (*Id.* at p.374.) The Court also noted that "Pioneer would possess a significant advantage if it could retain for its own exclusive use and benefit the contact information of those customers who complained regarding its product." (*Ibid.*)

California appellate courts have applied *Pioneer* in the context of wage and hour class actions numerous times, in every instance reaffirming the plaintiff's right to discovery of current and former employees' contact information. For example, in *Puerto*, the petitioners sued their former employer, a grocery store, alleging wage and hour violations and by interrogatory sought to discover the names and contact information of non-party employee witnesses. (*Puerto*, 158 Cal.App.4th at p.1245-1246.) The plaintiffs filed a motion to compel further responses after the defendant provided only employee names but no contact information. (*Id.* at p.1247.) The Court of Appeal found such routine contact information was discoverable, as "[t]his is basic civil discovery" and "petitioners need to

talk to the witnesses." (*Id.* at p.1254.) In fact, the court noted that "it is only under unusual circumstances that the courts restrict discovery of nonparty witnesses' residential contact information." (*Id.*) This is because "our discovery system is founded on the understanding that parties use discovery to obtain names and contact information for possible witnesses as *the starting point* for further investigations." (*Id.* at p.1249-1250 [emphasis added].)

In *Crab Addison*, the plaintiff in a wage-and-hour class action filed a motion to compel further responses to his special interrogatories requesting the names and contact information for all persons who were employed in a salaried position in any of the defendant's restaurants in the State of California during the applicable time periods. (*Crab Addison*, 169 Cal.App.4th at p.961.) The Court of Appeal held that the requested names and contact information of *all* employees in California were discoverable, denying a petition for writ of mandate challenging such disclosure. (*Id.* at pp.975, 966 ["The disclosure of the names and addresses of potential witnesses is a routine and essential part of pretrial discovery." [citations omitted].)

Similarly in *Belaire-West*, another wage-and-hour class action, the Court of Appeal denied a writ petition challenging a trial court order granting a motion to compel production of the names and contact information for *all* current and former employees subject to an opt-out notice. (*Belaire-West*, 149 Cal.App.4th at p.565.) The court found that "current and former employees are potential percipient witnesses to [the defendant employer's] employment and wage practices, and as such their identities and locations are properly discoverable." (*Id.* at p.562.) These cases all stand in stark contrast to the reasoning of the Court of Appeal below, in which the court held that seeking potential percipient witnesses' contact information was using discovery to "wage litigation rather than

facilitate it." (*Williams*, 236 Cal.App.4th at p.1157.)

Moreover, the principles of *Pioneer* and subsequent cases should apply with at least as much force to a PAGA action as to a class action. The *Pioneer* line of cases established non-party employees' contact information as being within the proper scope of discovery *pre-certification*, and thus discoverable irrespective of whether a class was ever certified or whether a fiduciary relationship ever formed. (See, e.g., *Pioneer*, 40 Cal.4th at pp.363, 366; *Belaire-West*, 149 Cal.App.4th at p.556.) If anything, the fact that a PAGA action is brought solely in the public interest would militate in favor of *greater* discovery rights in a PAGA action than in a class action seeking only money damages. Indeed, in the cases cited above, the courts invoked public policy in allowing the requested discovery of the names and contact information of other employees in California. (See, e.g., *Puerto*, 158 Cal.App.4th at p.1256 ["As a starting point, the fundamental public policy underlying California's employment laws is implicated here, suggesting that the balance of opposing interests tips toward permitting access to relevant information necessary to pursue the litigation."]; *Belaire-West*, 149 Cal.App.4th at p.562 [same].)

In any event, by departing so sharply from the *Pioneer* line of authority, the Court of Appeal's decision below has created a direct split of authority with regard to discovery in aggregate wage and hour litigation. This Court should grant review to resolve whether these principles enunciated in other aggregate employment litigation apply equally to PAGA actions.

B. The Court of Appeal's Ruling Contravenes The Discovery Act And Adds A "Good Cause" Merits Hurdle That Will Frustrate Prosecution Of PAGA Actions Statewide

Underlying the *Pioneer* line of decisions discussed above were the

liberal policies embodied in the Discovery Act,[6] which make "relevance" the sole standard for discoverable information and specifically make discoverable the identity and contact information of persons retaining knowledge of discoverable matters. (Code Civ. Proc., § 2017.010 ["Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter."].) Section 2017.010 "provides a broad right to discover any relevant information that is not privileged, including the identity and location of witnesses." (*Crab Addison*, 169 Cal.App.4th at p.965-966; see *Puerto*, 158 Cal.App.4th at p.1249 [the discovery statutes "are to be construed broadly in favor of disclosure, so as to uphold the right to discovery whenever possible."].)

The Court of Appeal failed to apply the broad, liberal principles of the discovery statute and instead engrafted a "good cause" inquiry to discovery of routine contact information and found that PAGA plaintiffs must preliminary prove the merits of their case before receiving basic witness contact information. Relying on Code of Civil Procedure section 2031.310 (b)(1), the Court of Appeal ruled that a party seeking discovery must show "good cause justifying the discovery sought," *id.* [quoting Code Civ. Proc., § 2031.310], and found that the vast majority of discovery requested by Williams, including contact information statewide, was premature due to a lack of "good cause."[7] (*Williams*, 236 Cal.App.4th at p.1156.)

As an initial matter, the "good cause" requirement relied upon by the

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[6] Code of Civil Procedure section 2017.010 provides that "any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action . . . if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence."

[7] The other ground for denying the requested discovery was based on the Court of Appeal's assessment of employee privacy interests, which will be discussed, *infra*, in Section II.

Court of Appeal does not even apply to this case. Indeed, Williams moved to compel under Code of Civil Procedure section 2030.300 (not section 2031.310), which governs motions for orders compelling further response regarding written interrogatories and *does not* have an explicit good cause requirement. (PA 28.) Section 2031.310, which contains an explicit good cause requirement and was cited by the Court of Appeal, is *not applicable* here as it governs motions for orders compelling further response to inspection demands. (Code Civ. Proc., § 2031.310 ["The motion shall set forth specific facts showing good cause justifying the discovery sought by the demand."].) Likewise, the authority the Court of Appeal cited for this proposition dealt with a demand for inspection of documents and its holding is not relevant here. (See *Calcor Space Facility, Inc. v. Super. Ct.* (1997) 53 Cal.App.4th 216, 218 ["We hold a subpoena under Code of Civil Procedure section 2020, subdivision (d) . . . must describe the documents to be produced with reasonable particularity."].)

Moreover, no prior opinion of this Court or any published intermediate court authority has engrafted a heightened "good cause" requirement onto the general relevance standard invoked by courts to authorize discovery of basic non-party employee contact information. (See *Pioneer*, 40 Cal.4th at p.374 [citing section 2017.010 and finding that "[o]ur discovery statute recognizes that 'the identity and location of persons having [discoverable] knowledge' are proper subjects of civil discovery"]; *Crab Addison*, 169 Cal.App.4th at pp.965-966 ["We begin our discussion of the case with Code of Civil Procedure section 2017.010, which provides a broad right to discover any relevant information that is not privileged, including the identity and location of witnesses"].) The Court of Appeal's new requirement contravenes the liberal principles of the Discovery Act and *Pioneer*, and creates a conflict with the *Puerto* line of appellate cases above that never mention section 2031.310 and a "good cause"

requirement.

A good cause requirement simply does not apply to the at-issue discovery, and even if it does, Williams' amply demonstrated "good cause" under prior California precedent. One basis is the unfairness of allowing the employer exclusive access to potential percipient witnesses. With exclusive and unfettered access to its own employees, at all locations, Marshalls likely will interview employees from these locations in its *own* investigation of Williams' allegations. However, as California cases have instructed for discovery purposes, "both sides should be permitted to investigate the case fully." (*Atari, Inc. v. Super. Ct.* (1985) 166 Cal. App.3d 867, 871.) Indeed, the "expansive scope of discovery" is a deliberate attempt to "take the 'game' element out of trial preparation" and "do away 'with the sporting theory of litigation—namely surprise at trial.'" (*Puerto*, 158 Cal.App.4th at p.1249 [citations omitted].) One key legislative purpose of the discovery statutes is "to educate the parties concerning their claims and defenses so as to encourage settlements and to expedite and facilitate trial." (*Emerson Electric Co. v. Super. Ct.* (1997) 16 Cal.4th 1101, 1107.) The Court of Appeal's decision runs counter to these precedents, forcing PAGA plaintiffs to operate without knowing the extent of the employer's Labor Code violations, while presumably the employer is fully aware of these facts.

A second basis for furnishing "good cause" is the collateral estoppel effect the PAGA action will have on the non-party aggrieved employees who are represented by a PAGA plaintiff. (See *Iskanian*, 59 Cal.4th at p.381 ["Because an aggrieved employee's action under the [PAGA] functions as a substitute for an action brought by the government itself, a judgment in that action binds all those, including nonparty aggrieved employees, who would be bound by a judgment in an action brought by the government."].) The fact that any judgment obtained by Williams will bind

the non-party aggrieved employees provides "good cause" for allowing a PAGA plaintiff access to these employees in case they want to assist in the suit. The Court of Appeal failed to consider this alternative "good cause" basis.

Additionally, a third basis for good cause is the operative complaint, which contains good faith allegations of statewide Labor Code violations. (See, e.g., PA 14 [¶42], 15 [¶47], 17 [¶54].) In *Crab Addison*, the plaintiff alleged that the defendants "engage[d] in a uniform policy and systematic scheme of wage abuse against their salary paid employees in California." (*Crab Addison*, 169 Cal.App.4th at p.961.) This was sufficient for the court to grant discovery of the requested statewide contact information. Indeed, the *Crab-Addison* approach of permitting discovery based on good faith allegations of statewide practices and policies in the complaint, if adopted by this Court, would provide clear guidance to lower courts and would be fair to all parties.

Instead, the Court of Appeal's ruling erects unfairly burdensome hurdles for PAGA plaintiffs to overcome before obtaining basic contact information discovery. For example, the Court of Appeal finds that Williams must "evince knowledge of the practices of Marshalls at other stores." (*Id.* at p.4.) The Court of Appeal's "knowledge" requirement is presumably something more than simply pleading on a good faith basis, as Williams' operative complaint was replete with allegations regarding Marshalls' policies and practices throughout its California locations. (See, e.g., PA 14 [¶42], 15 [¶47], 17 [¶54].) Assuming the Court of Appeal is requiring a PAGA plaintiff to allege specific facts at the outset of the case, this inverts the normal civil litigation process, forcing a PAGA plaintiff already to possess facts about the employer's policies and practices before being given the tools to begin his investigation. This holding cannot be reconciled with the other California decisions, holding that "our discovery

system is founded on the understanding that parties use discovery to obtain names and contact information for possible witnesses as the *starting point* for further investigations." (*Puerto*, 158 Cal.App.4th at p.1250 [emphasis added].) Such circular reasoning defies logic and the Court of Appeal cites absolutely no authority for such a proposition.

The Court of Appeal also found that Williams must first demonstrate the merits of his Labor Code claim in order to obtain the requested statewide discovery. This includes him sitting for six hours of deposition, even before his counsel has conducted preliminary discovery or has been able to undertake a meaningful investigation into the overall impacts of Marshalls' challenged workplace policy. (*Williams*, 236 Cal.App.4th at p.1158 ["His first task will be to establish he was himself subjected to violations of the Labor Code. As he has not yet sat for deposition, this task remains unfulfilled."") Yet the Court of Appeal never explains how forcing a PAGA plaintiff to prove his own claims at the outset of the case bears any logical connection to the relevance of the identities of possible percipient witnesses in other locations. Moreover, if an employer were entitled to depose a plaintiff before discovery could be taken, aggregate wage and hour actions would be further jeopardized, as cases would begin with the plaintiff's deposition, and then likely follow immediately with an offer to settle in the plaintiff's personal capacity, thereby ending the suit.

Review is warranted to guide California courts in assessing the scope of discovery in PAGA actions and whether discovery of routine contact information available to plaintiffs in other aggregate litigation is similarly available to PAGA plaintiffs upon a showing of relevance as provided by Code of Civil Procedure section 2017.010, rather than any additional good cause or merits-based heightened standards.

C. The Court Of Appeal's Decision Engrafts A Commonality Requirement Onto PAGA Actions That Is Inconsistent With This Court's Decision In *Arias*

The Court of Appeal concludes its ruling by not only requiring Williams to sit down for a deposition in order to obtain the requested discovery, but his "second task will be to establish Marshall's employment practices are uniform throughout the company, which might be accomplished by reference to a policy manual or perhaps deposition of a corporate officer." (*Williams*, 236 Cal.App.4th at p.1158.) This is akin to a commonality requirement, requiring PAGA plaintiffs to demonstrate common issues based on a uniformly applied employment practice. However, such a requirement is reserved solely for plaintiffs in class actions, as PAGA actions are not subject to any class certification requirements. (See *Arias*, 46 Cal. 4th at p.984 [holding that class action requirements do not apply to representative claims under the PAGA].) Therefore, any rationale for limiting discovery based on class action concepts (such as lack of commonality or uniformly applied policies, lack of typicality, etc.) is completely inapplicable to Williams' PAGA claim. Indeed, the only limitation on such discovery is relevance.[8]

Further, PAGA itself requires no type of showing that Williams is typical of other aggrieved employees or that his grievances are common or the result of uniform policies applied to other aggrieved employees such that they all suffered the same violations. The statute defines "aggrieved employee" as "any person who was employed by the alleged violator and

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[8] Even the *Puerto* line of class action cases does not require plaintiffs to show commonality prior to obtaining basic contact information of percipient witnesses. As discussed earlier, California case law allows for discovery at the precertification stage, prior to proving class elements. (See, e.g., *Atari, Inc. v. Super. Ct.* (1985) 166 Cal.App.3d 867, 869-70 [finding that elements of class certification are reserved for judicial determination *after* a plaintiff's class certification motion].)

against whom ***one or more*** of the alleged violations was committed." (Cal. Lab. Code, § 2699(c) (emphasis added). A PAGA-plaintiff "need not be an aggrieved employee for all alleged PAGA violations in that section 2699(c) uses the phrase 'against whom one or more of the alleged violations was committed.'" (*Jeske v. Maxim Healthcare Servs., Inc.*, (E.D. Cal. Jan. 10, 2012, No. CVF11-1838 LJO JLT) 2012 U.S. Dist. LEXIS 2963, *37.). Thus, PAGA permits an aggrieved employee against whom an employer committed even a single Labor Code violation (as enumerated in section 2699.5) to recover civil penalties for other violations of the Labor Code committed against other aggrieved employees, regardless of whether the same violations were committed against him or her personally. (*Id.*)

As a result, the Court of Appeal decision is inconsistent with *Arias* in imposing a commonality requirement that never applies to PAGA claims and does not comport with the PAGA statute's plain language, which does not require the PAGA plaintiff to have suffered the same violations as other aggrieved employees. Review is necessary for uniformity of decision and to settle whether PAGA plaintiffs must now specifically demonstrate, after taking depositions or inspections of policy manuals as suggested by the Court of Appeal, employment practices that are uniform throughout a company prior to obtaining simple contact information of other potential aggrieved employees.

II. THE COURT OF APPEAL'S RULING REQUIRES REVIEW BECAUSE IT APPLIED THE *LANTZ* TEST TO EVALUATE THE NON-PARTY AGGRIEVED EMPLOYEES PRIVACY RIGHTS RATHER THE *HILL* TEST, ADOPTED BY THIS COURT IN *PIONEER* AND APPLIED NUMEROUS TIMES SINCE, CREATING A DIRECT SPLIT OF AUTHORITY

In addition to the Court of Appeal's finding that there was no "good cause" for the requested discovery the court deemed "premature," the other basis cited by the Court of Appeal to deny Williams the requested

discovery was privacy grounds. The Court of Appeal found that "[e]ven if Marshalls' employees' identifying information was reasonably calculated to lead to admissible evidence, their right to privacy under the California Constitution would outweigh plaintiff's need for the information at this time." (*Williams*, 236 Cal.App.4th at p.1158.) The Court of Appeal based its decision on *Lantz*, which found that the party seeking discovery must show a "compelling need" for discovery. (*Lantz*, 28 Cal.App.4th at p.1853-1854.) The court in *Lantz* found that "when the constitutional right of privacy is involved, the party seeking discovery of private matter must do more than satisfy the section 2017[.010] standard. The party seeking discovery must demonstrate a compelling need for discovery, and that compelling need must be so strong as to outweigh the privacy right when these two competing interests are carefully balanced." (*Id.* at pp.1853-1854.) Applying the *Lantz* test to discovery of contact information directly conflicts with the test in *Hill* and followed by *Pioneer* and its progeny, which does not include a heightened "compelling need" standard.

In assessing the discovery order at issue in *Pioneer*, this Court applied the framework set forth in *Hill* for evaluating invasion of privacy claims under California's right to privacy provision, Article I, section 1 of the California Constitution. First under *Hill*, a privacy claimant must possess a "legally protected privacy interest." (*Hill*, 7 Cal.4th at p.35.) Second, the claimant must possess a reasonable expectation of privacy under the particular circumstances, which includes the "customs, practices, and physical setting surrounding particular activities." (*Id.* at p.36.) Third, the invasion of privacy must be "serious" in scope, nature, and actual or potential impact constituting an "egregious" breach of social norms because a trivial invasion provides no cause of action. (*Id.* at p.37.) If this criteria for an invasion of a privacy interest is met, the interest then must be measured in a "balancing test" against other competing or countervailing

interests. (*Id.*) The *Pioneer* court found that there was no serious invasion of privacy with disclosure of the contact information, as "such disclosure involves no revelation of personal or business secrets, intimate activities, or similar private information, and threatens no undue intrusion into one's personal life." (*Pioneer*, 40 Cal.4th at pp.372-372.) Finding that when there is no serious invasion of privacy no balancing of opposing interests is required, the court nonetheless performed the balancing test in *Hill* to examine the respective interests involved and concluded that there was no breach of privacy and the contact information was discoverable. (*Id.* at pp.373-374.)

Instead of using the *Hill* balancing test, the Court of Appeal here found that Williams must demonstrate a compelling need for the information, and under the *Lantz* test, where this compelling need must be so strong as to outweigh the privacy right at issue, the court determined that "Marshalls' employees' privacy interests outweigh plaintiff's need to discover their identity at this time." (*Williams*, 236 Cal.App.4th at p.1158.) However, this ruling conflicts with *Puerto*, where the court rejected the compelling need standard advocated by the defendant employer, instead stating that "we apply the *Pioneer* and *Hill* privacy framework here to petitioner's request for contact information for identified witnesses." (*Puerto*, 158 Cal.App.4th at p.1252.) The court found no serious invasion of privacy with this "relatively nonsensitive [contact] information," and under a balancing test found that the contact information was discoverable without the opt-in notice procedure ordered by the trial court that had required affirmative consent to disclosure of contact information, unlike an opt-out procedure. (*Id.* at p.1259.)

Similarly in *Belaire-West*, the court applied the *Pioneer* and *Hill* privacy analysis to find discovery of employee contact information with an opt-out notice was sufficient to satisfy any privacy concerns, as

"[d]isclosure of the contact information with an opt-out notice would not appear to unduly compromise either informational privacy or autonomy privacy in light of the opportunity to object to the disclosure." (*Belaire-West*, 149 Cal.App.4th at p.562; see also *Crab Addison*, 169 Cal.App.4th at p.969 [applying the holding of *Puerto* and finding that "[d]isclosure of witnesses' identities involves no greater invasion of privacy or revelation of personal information than the disclosure of their addresses and telephone numbers."].) The Court of Appeal in *Crab Addison* found that any violation of the fellow employees' right to privacy did not outweigh the plaintiff employees' right to discovery. (169 Cal.App.4th at p.975.) Contrary to the Court of Appeal decision here, these cases conclude that discovery of contact information is not unduly intrusive, and any minimal issues with respect to privacy can be completely alleviated with an opt-out notice.

Although the *Hill* test supports Williams' right to percipient witness contact information, the Court of Appeal ignored it. Instead, it relied on authority addressing far more sensitive information than the at-issue contact information. For example, in *Lantz* at issue were a plaintiff's medical records detailing particular surgeries she had. (*Lantz*, 28 Cal.App.4th at p.1847.) In *Planned Parenthood Golden Gate v. Super. Ct.* (2000) 83 Cal.App.4th 347, discovery included the identities and personal information of individuals associated with abortion providers. The court in that case found that the information about staff and volunteers at Planned Parenthood involved "unique and very real threats not just to their privacy, but to their safety and well-being if personal information about them is disclosed." (*Planned Parenthood*, 83 Cal.App.4th at p.361.) In following *Hill*, the *Puerto* court distinguishes *Planned Parenthood* on this point, finding that it involved the "unusual circumstance of true danger." (*Puerto*, 158 Cal.App.4th at p.1254.)

As such, the Court of Appeal ruling applying the *Lantz* compelling needs test to percipient witness information creates a direct split of authority with *Pioneer* and the *Puerto* line of cases that apply the *Hill* balancing test to analogous situations. Yet as this Court stated, "a constitutional standard that carefully weighs the pertinent interests at stake in an ordered fashion is preferable to one dominated by the vague and ambiguous adjective 'compelling.'" (*Hill*, 7 Cal.4th at p.57.) Review is necessary to settle what is the proper test to be applied to the privacy interests involved with the contact information at issue here.

III. THE COURT OF APPEAL'S RULING CONFLICTS WITH *ISKANIAN* AND *ARIAS* BECAUSE IT UNDERMINES THE PUBLIC POLICIES PAGA WAS ENACTED TO PROTECT AND EFFECTIVELY NULLIFIES THIS COURT'S DECISIONS INTENDING PAGA TO BE A POWERFUL LAW ENFORCEMENT TOOL

A. The Court Of Appeal's Ruling Is Contrary To PAGA's Regulatory Purpose As Expressed In *Iskanian* and *Arias*

PAGA actions are necessary to ensure adequate labor law enforcement in a time of diminished public budgets. (*Arias*, 46 Cal.4th at p.980. Prior to PAGA, only the Labor Commissioner could bring an enforcement action under the Labor Code for civil penalties. However, that system suffered from two significant problems that PAGA was enacted to overcome. (*Iskanian*, 59 Cal.4th at p.378.) First, although some Labor Code provisions allowed for civil enforcement actions, many others were enforceable only as criminal misdemeanors, with no civil penalty. Because criminal prosecutors' resources are generally directed towards violent and property crimes, Labor Code violations rarely led to criminal prosecutions. Second, even where the Labor Commissioner *could* sue for civil penalties, the state did not have the resources and staffing sufficient to adequately enforce the Labor Code and deter violations. (*Id.* at p.379.)

To address this budget crisis and remedy the woeful understaffing of

California's labor law enforcement agencies, the Legislature enacted PAGA, which authorizes aggrieved employees to bring enforcement actions acting as private attorneys general—as agents or proxies of the state. (*Iskanian*, 59 Cal.4th at pp.379-80.) The Legislature recognized that it is "in the public interest to allow aggrieved employees, acting as private attorneys general, to recover civil penalties for Labor Code violations."" (*Id.* at p.379.) To serve this purpose, PAGA introduced "civil penalties for Labor Code violations 'significant enough to deter violations.'" (Id.) While prosecuted by an aggrieved employee, a PAGA action is actually a dispute between an employer and the state of California. (*Id.* at pp.386-87.).)

After Williams was authorized to seek PAGA penalties by satisfying the administrative prerequisites, he began representing other aggrieved employees' interests in collecting civil penalties for Labor Code violations. (*Iskanian*, 59 Cal.4th at pp.379-381.) The Court of Appeal's ruling therefore interferes with Williams' right to pursue these PAGA penalties, as receiving only a fraction of the discovery sought means recovering a mere fraction of what the civil penalties may be. In effect, the opinion below cheats the state out of maximizing scarce resources. As *Iskanian* and *Arias* make clear, in creating a vehicle for private enforcement of Labor Code violations, the Legislature recognized that employee plaintiffs represent the state labor law enforcement agencies' interests, "namely, recovery of civil penalties that otherwise would have been assessed and collected by the [LWDA]." (*Id.* at p. 380 [quoting *Arias*, 46 Cal.4th at p.986].) It would make no sense for the Legislature to simultaneously handicap such enforcement by placing the restrictions on discovery as did the Court of Appeal below. Indeed, employers are liable for certain penalty amounts for *each* aggrieved employee. (*Brown v. Ralphs Grocery Co.* (2011) 197 Cal.App.4th 489, 501.) Reduced penalties "will not result in the penalties

contemplated under the PAGA to punish and deter employer practices that violate the rights of numerous employees under the Labor Code." (*Brown*, 197 Cal.App.4th at p.502.)

As discussed above, in the class action context this discovery was readily available to plaintiffs to aid in prosecuting their actions and identifying putative class members statewide. If anything, given the interests of the state, the public rights involved and the purpose of PAGA, a PAGA action should entitle a PAGA plaintiff to greater discovery rights than a class action Plaintiff. PAGA plaintiffs must be able to identify and connect with the nonparty aggrieved employees on whose behalf they seek civil penalties. Without such discovery rights, the purpose of PAGA as set forth in *Iskanian* and *Arias* will be severely undermined. The decision below provides this Court with a critical opportunity to set the scope of discovery in PAGA actions given the statute's public purpose to augment enforcement of this state's labor laws.

B. The Court of Appeal's Ruling Cannot Be Reconciled With The Broad Powers Of The California Labor Law Enforcement Agencies In Whose Place The PAGA Plaintiff Litigates

As the California Supreme Court recently held, a PAGA action "functions as a substitute for an action brought by the government itself" and is "fundamentally a law enforcement action designed to protect the public and not to benefit private parties." (*Iskanian*, 59 Cal.4th at p.381 [citing *Arias*, 46 Cal.4th at pp.969, 986].) The PAGA plaintiff stands in the position of the state's labor law enforcement agencies, serving as their substitute as "the employee plaintiff represents the same legal right and interest as state labor law enforcement agencies." (*Id.* at p.380.)

These labor law enforcement agencies possess plenary power to investigate and prosecute Labor Code violations, including the DSLE, which is the main entity for public enforcement of California's wage and

hour laws and for which courts have noted is wide authority to enforce the Labor Code's wage and hour provisions. (See *Milan v. Restaurant Enterprises Group, Inc.* (1993) 14 Cal.App.4th 477, 486-487 [noting that the DLSE's investigation power is plenary and "is more analogous to the power of a grand jury . . . [where it] can investigate 'merely on suspicion that the law is being violated, or even just because it wants assurance that it is not.'"] [citations omitted]; see also *Craib v. Bulmash* (1989) 49 Cal.3d 475, 479, 483 [upholding the broad, plenary power of the DLSE to investigate labor law violations and require production of time and wage records as well as the names and contact information for employees in a matter concerning alleged wage-order violations].)

The opinion below undermines PAGA and its purpose, while exaggerating the information that Williams seeks: "[T]he PAGA states only that a private individual may bring a 'civil action' to enforce labor laws, not that the individual may access 'all places of labor' or demand unlimited information upon pain of criminal conviction." (*Williams*, 236 Cal.App.4th at p.1158.) Williams is not seeking an all-access pass to an employer's premises or trying to garner PAGA plaintiffs some type of power to assess criminal convictions. What's at stake is mere contact information for potential percipient witnesses, the starting point for basic investigations in litigation. (See *Puerto*, 158 Cal.App.4th at pp.1249-1250.) The PAGA plaintiff should be entitled to the same basic contact information that would be the backbone of any state agency investigation prosecuting Labor Code violations. This is because the California Supreme Court has made clear that a PAGA plaintiff's status as the proxy or agent of the state is "not merely semantic." (*Iskanian*, 59 Cal.4th at p.388.) Instead, it "reflects a PAGA litigant's substantive role enforcing our labor laws on behalf of state law enforcement agencies." (*Ibid.*) Therefore, the prosecution of alleged Labor Code violations under PAGA cannot be

inhibited by a limited discovery ruling that wipes out the chance to contact the majority of other potentially aggrieved employees and thus any chance to serve a substantive function in addressing those violations. If a court can limit the right to basic discovery such as contact information that the state would readily obtain without any upfront showing of violations or merits of the case, then the aggrieved employee's action is not truly a "substitute" for the government itself. (*Id.* at p.381.)

The Court of Appeal's ruling dramatically restricting a PAGA plaintiff's right to basic discovery merits review, as it cannot be reconciled with the broad investigatory powers of the labor agency in whose place the PAGA plaintiff litigates his action.

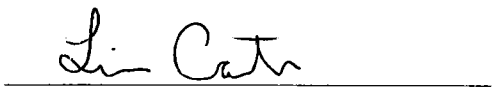
CONCLUSION

For the foregoing reasons, Williams respectfully requests that this Court grant plenary review of the Court of Appeal's decision.

Dated: June 24, 2015

Respectfully submitted,

Capstone Law APC

By: 

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CERTIFICATE OF WORD COUNT

Counsel of record hereby certifies that, pursuant to the California Rules of Court, Rule 8.504(d)(1) and 8.490, the enclosed Petition for Review was produced using 13-point Times New Roman type style and contains 8,388 words. In arriving at that number, counsel has used Microsoft Word's "Word Count" function.

Dated: June 24, 2015

Respectfully submitted,

Capstone Law APC

By: _____

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Attorneys for Petitioner
MICHAEL WILLIAMS

EXHIBIT A

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

MICHAEL WILLIAMS,

Petitioner,

v.

SUPERIOR COURT OF LOS ANGELES COUNTY,

Respondent;

MARSHALLS OF CA, LLC,

Real Party in Interest.

B259967

(Los Angeles County
Super. Ct. No. BC503806)

Petition for extraordinary writ. William F. Highberger, Judge. Petition is denied.

Capstone Law, Glenn A. Danas, Robert Drexler, Stan Karas, Liana Carter for Petitioner.

No appearance for Respondent.

Littler Mendelson, Robert G. Hulteng, Joshua J. Cliffe, Emily E. O'Connor, Scott D. Helsinger for Real Party in Interest.

Background

Beginning in January 2012, plaintiff Michael Williams was an employee at a retail store operated by Marshalls of CA (Marshalls) in Costa Mesa, California. On March 22, 2013, after a little more than one year of employment, he brought a representative action against Marshalls under the Labor Code Private Attorneys General Act of 2004 (PAGA) (Lab. Code, §§ 2698-2699.5), alleging Marshalls failed to provide its employees with meal and rest breaks or premium pay in lieu thereof (Lab. Code, §§ 226.7 & 512),[1] to provide accurate wage statements (§ 226, subd. (a)), to reimburse employees for necessary business-related expenses (§§ 2800 & 2802), and to pay all earned wages during employment (§ 204).

On February 5, 2014, plaintiff served special interrogatories seeking production of the names and contact information of all nonexempt Marshalls employees in California who had worked for the company beginning on March 22, 2012. Marshalls objected to the discovery on the ground it was irrelevant, overbroad, unduly burdensome, and implicated the privacy rights of its employees. Plaintiff met and conferred with Marshalls, offering to address its privacy concerns with a "*Belaire-West* notice,"[2] but Marshalls rejected the offer.

Plaintiff moved to compel the discovery, arguing the contact information was routinely discoverable in representative employee actions and vital to the prosecution of his PAGA claims. The trial court granted plaintiff's motion in part, compelling Marshalls to produce contact information for the employees only at its Costa Mesa store and denying production of the contact information of employees at Marshalls other 128 stores statewide. The court ordered that plaintiff could renew his motion to compel the remaining information after he had been deposed "for at least six productive hours." The court also ruled that in opposition to any such motion, Marshalls could attempt to show plaintiff's substantive claims had no factual merit.

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[1] Undesignated statutory references will be to the Labor Code.

[2] *Belaire-West Landscape, Inc. v. Superior Court* (2007) 149 Cal.App.4th 554.

In these writ proceedings, plaintiff seeks a writ of mandate compelling the superior court to vacate its discovery order and enter a new order granting plaintiff's motion to compel production a list of all nonexempt employees who worked for Marshalls beginning on March 22, 2012.

Discussion

1. Standard of Review

The standard for determining the scope of discovery is set forth in Code of Civil Procedure section 2017.010, which provides that "[u]nless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. . . . Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter . . . ." However, "[t]he court shall limit the scope of discovery if it determines that the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence." (Code Civ. Proc., § 2017.020, subd. (a).)

"For discovery purposes, information is relevant if it 'might reasonably assist a party in *evaluating* the case, *preparing* for trial, or *facilitating* settlement.' [Citation.] Admissibility is *not* the test and information, unless privileged, is discoverable if it might reasonably *lead* to admissible evidence. [Citation.] The phrase 'reasonably calculated to lead to the discovery of admissible evidence' makes it clear that the scope of discovery extends to *any information* that reasonably might lead to other evidence that would be admissible at trial. 'Thus, the scope of permissible discovery is one of *reason, logic and common sense*.' [Citation.] These rules are applied liberally in favor of discovery." (*Lipton v. Superior Court* (1996) 48 Cal.App.4th 1599, 1611-1612.)

Management of discovery lies within the sound discretion of the trial court. A discovery order is therefore reviewed under the abuse of discretion standard. (*Krinsky v. Doe 6* (2008) 159 Cal.App.4th 1154, 1161.) "Where there is a basis for the trial court's

ruling and it is supported by the evidence, a reviewing court will not substitute its opinion for that of the trial court. [Citation.] The trial court's determination will be set aside only when it has been demonstrated that there was 'no legal justification' for the order granting or denying the discovery in question." (*Lipton v. Superior Court*, *supra*, 48 Cal.App.4th at p. 1612.)

Novel, important discovery issues may be reviewed by prerogative writ. (See *Pacific Tel. & Tel. Co. v. Superior Court* (1970) 2 Cal.3d 161, 169.)

2. Discovery of Marshalls' Employees' Contact Information Statewide is Premature

"Although the scope of civil discovery is broad, it is not limitless." (*Calcor Space Facility, Inc. v. Superior Court* (1997) 53 Cal.App.4th 216, 223.) Discovery devices must "be used as tools to facilitate litigation rather than as weapons to wage litigation." (*Id.* at p. 221.) A party seeking to compel discovery must therefore "set forth specific facts showing good cause justifying the discovery sought . . . ." (Code Civ. Proc., § 2031.310, subd. (b)(1); see *Calcor Space Facility, Inc. v. Superior Court*, *supra*, 53 at p. 223.) To establish good cause, a discovery proponent must identify a disputed fact that is of consequence in the action and explain how the discovery sought will tend in reason to prove or disprove that fact or lead to other evidence that will tend to prove or disprove the fact.

Plaintiff argues immediate discovery of the contact information of Marshalls' employees statewide is clearly germane to and necessary for progress in his PAGA action. We disagree.

At this nascent stage of plaintiff's PAGA action there has as yet been no discovery—plaintiff has not even sat for his own deposition. The litigation therefore consists solely of the allegations in his complaint. But plaintiff alleges therein only that at the Costa Mesa store, he and perhaps other employees at that store were subjected to violations of the Labor Code. Nowhere does he evince any knowledge of the practices of Marshalls at other stores, nor any fact that would lead a reasonable person to believe he knows whether Marshalls has a uniform statewide policy. That being the case, it was

eminently reasonable for the trial judge to proceed with discovery in an incremental fashion, first requiring that plaintiff provide some support for his own, local claims and then perhaps later broadening the inquiry to discover whether some reason exists to suspect Marshalls' local practices extend statewide.

Further, a trial court must consider the costs of any discovery and take reasonable steps to promote efficiency and economy. Statewide discovery that includes the mailing of *Belaire-West* notices and tabulation of responses is costly. By staging discovery incrementally, the trial court delayed the incursion of potentially unnecessary costs until it becomes clear they are warranted.

Plaintiff's proposed procedure, which contemplates jumping into extensive statewide discovery based only on the bare allegations of one local individual having no knowledge of the defendant's statewide practices would be a classic use of discovery tools to wage litigation rather than facilitate it. We conclude bare allegations unsupported by any reason to believe a defendant's conduct extends statewide furnishes no good cause for statewide discovery.

Plaintiff argues that in a PAGA action such as this, he stands in as a proxy for the Division of Labor Standards Enforcement (DLSE), and should thus be entitled to all discovery to which that agency would be entitled, including "free access to all places of labor" (§ 90). We disagree.

It is true that pursuant to section 90, "The Labor Commissioner, his deputies and agents, shall have free access to all places of labor. Any person, or agent or officer thereof, who refuses admission to the Labor Commissioner or his deputy or agent or who, upon request, willfully neglects or refuses to furnish them any statistics or information, pertaining to their lawful duties, which are in his possession or under his control, is guilty of a misdemeanor, punishable by a fine of not more than one thousand dollars ($1,000)." But nothing in the PAGA suggests a private plaintiff standing in as a proxy for the DLSE is entitled to the same access. On the contrary, the PAGA states only that a private individual may bring a "civil action" to enforce labor laws, not that the individual may access "all places of labor" or demand unlimited information upon pain of criminal

conviction. Discovery in a civil action is governed by the Code of Civil Procedure. We think it prudent that absent any express direction from the Legislature to the contrary, discovery in a civil action brought under the PAGA be subject to the same rules as discovery in civil actions generally.

Plaintiff also argues the trial court's order that at some future date Marshalls might resist further discovery by making a showing that plaintiff's claims have no factual merit constitutes an added burden on discovery not contemplated by the Code of Civil Procedure. We disagree. We read the court's order as paraphrasing the common requirement that discovery not be ordered absent a showing of good cause.

3. Employee Privacy Interests Outweigh Plaintiff's Need for Disclosure at This Time

Even if Marshalls' employees' identifying information was reasonably calculated to lead to admissible evidence, their right to privacy under the California Constitution would outweigh plaintiff's need for the information at this time.[3]

The California Constitution provides that all individuals have a right of privacy. (Cal. Const., art. I, § 1.) This express right is broader than the implied federal right to privacy. (*American Academy of Pediatrics v. Lungren* (1997) 16 Cal.4th 307, 326.) The California privacy right "limits what courts can compel through civil discovery." (*Rancho Publications v. Superior Court, supra,* 68 Cal.App.4th at pp. 1547-1548.) "[W]hen the constitutional right of privacy is involved, the party seeking discovery of private matter must do more than satisfy the section 2017[.010] standard. The party seeking discovery must demonstrate a compelling need for discovery, and that compelling need must be so strong as to outweigh the privacy right when these two competing interests are carefully balanced." (*Lantz v. Superior Court* (1994) 28 Cal.App.4th 1839, 1853-1854; see *Planned Parenthood Golden Gate v. Superior Court*

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[3] Marshalls possesses standing to assert its employees' constitutional rights. (See *Rancho Publications v. Superior Court* (1999) 68 Cal.App.4th 1538, 1541 [a nonparty to civil litigation may assert the constitutionally protected right of another to remain unknown].)

(2000) 83 Cal.App.4th 347, 367 [courts must balance the privacy interests of the person subject to discovery against the litigant's need for discovery].) A discovery proponent may demonstrate compelling need by establishing the discovery sought is directly relevant and essential to the fair resolution of the underlying lawsuit. (*Planned Parenthood Golden Gate v. Superior Court, supra*, 83 Cal.App.4th at p. 367; *Johnson v. Superior Court* (2000) 80 Cal.App.4th 1050, 1071.)

Applying this balancing test we conclude Marshalls' employees' privacy interests outweigh plaintiff's need to discover their identity at this time. Those interests begin with the employees' right to be free from unwanted attention and perhaps fear of retaliation from an employer. On the other hand, plaintiff's need for the discovery at this time is practically nonexistent. His first task will be to establish he was himself subjected to violations of the Labor Code. As he has not yet sat for deposition, this task remains unfulfilled. The trial court could reasonably conclude that the second task will be to establish Marshalls' employment practices are uniform throughout the company, which might be accomplished by reference to a policy manual or perhaps deposition of a corporate officer. The trial court could reasonably conclude that only then will plaintiff be able to set forth facts justifying statewide discovery.

The courts will not lightly bestow statewide discovery power to a litigant who has only a parochial claim. Here, the trial court's measured approach to discovery was reasonable. Therefore, plaintiff's petition is denied.

Disposition

The petition for writ of mandate is denied. Marshalls is to recover its costs on the original proceeding.

CERTIFIED FOR PUBLICATION

CHANEY, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.