No. S227228

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

MICHAEL WILLIAMS, and individual,
Plaintiff and Appellant,

v.

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
Defendant and Respondent.

MARSHALLS OF CA, LLC,
Real Party in Interest.

Court of Appeal, Second Appellate District,
Division One, Case B259967
Superior Court, County of Los Angeles,
Case No. BC503806
The Honorable William F. Highberger, Judge Presiding

APPLICATION FOR LEAVE TO FILE AND BRIEF OF AMICUS CURIAE CALIFORNA EMPLOYMENT LAWYERS ASSOCIATION IN SUPPORT OF PLAINTIFF-APPELLANT MICHAEL WILLIAMS

COHELAN KHOURY & SINGER
Michael D. Singer (SBN 115301)
605 C Street Suite 200
San Diego, CA 92101
Tel. 619-595-3001
Fax 619-595-3000

Attorneys for Amicus Curiae
California Employment Lawyers Association

No. S227228

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

MICHAEL WILLIAMS, and individual,
Plaintiff and Appellant,

v.

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
Defendant and Respondent.

MARSHALLS OF CA, LLC,
Real Party in Interest.

Court of Appeal, Second Appellate District,
Division One, Case B259967
Superior Court, County of Los Angeles,
Case No. BC503806
The Honorable William F. Highberger, Judge Presiding

APPLICATION FOR LEAVE TO FILE AND BRIEF OF AMICUS CURIAE CALIFORNA EMPLOYMENT LAWYERS ASSOCIATION IN SUPPORT OF PLAINTIFF-APPELLANT MICHAEL WILLIAMS

COHELAN KHOURY & SINGER
Michael D. Singer (SBN 115301)
605 C Street Suite 200
San Diego, CA 92101
Tel. 619-595-3001
Fax 619-595-3000

Attorneys for Amicus Curiae
California Employment Lawyers Association

APPLICATION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE CALIFORNIA EMPLOYMENT LAWYERS ASSOCIATION

Pursuant to California Rule of Court 8.520(f), the California Employment Lawyers Association ("CELA") respectfully requests leave to file the attached amicus curiae brief in support of Plaintiff and Appellant Michael Williams ("Williams"). CELA affirms that no party or counsel for a party to this appeal authored any part of this amicus brief. *See* Cal. Rule of Court 8.520(f)(4). No person other than amicus curiae, its members, and its counsel made any monetary contribution to the preparation or submission of this brief.

CELA is an organization of California attorneys whose members primarily represent employees in a wide range of employment cases, including representative actions under the Private Attorney General Act of 2004, Cal. Lab. Code § 2689, *et seq.* ("PAGA"). CELA has a substantial interest in protecting the statutory and common law rights of California workers, ensuring the vindication of the public policies embodied in California employment laws, and preserving the State of California's ability to police entities who would exploit California's labor markets through the PAGA. CELA has taken a leading role in advancing and protecting the rights of California workers by, among other things, submitting amicus briefs and letters on issues affecting these rights, including Supreme Court

amicus briefs in *Iskanian v. CLS Transp. Los Angeles,* (2014) 59 Cal. 4th 348, and *Brinker Restaurant Corp. v. Superior Court,* (2012) 53 Cal. 4th 1004.

CELA's proposed amicus brief will assist the Court by offering a comprehensive discussion on the historical purpose and contemporary development of the PAGA, and by explaining how these objectives, working in tandem with ordinary privacy and discovery principles, require statewide access to the employees of an employer alleged to systematically violate California labor law.

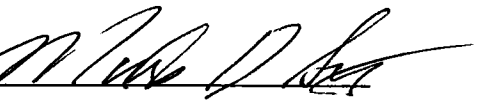
Amici agrees with the full range of arguments asserted by Williams, including his analysis of the Appellate Court's misconstruction of Williams' pleadings.[1] We limit the analysis in this brief, however, to the genesis of the lower court's error: A fundamentally flawed understanding of the PAGA, California privacy law, and ordinary discovery principles, culminating in a decision that undermines the State's ability to regulate employment practices in California.

---

[1] The Court of Appeal incorrectly stated that Williams' complaint alleged "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." *Williams v. Superior Court,* formerly reported at 236 Cal.App.4th 1151, 1157 (2015). The Court overlooked Williams' extensive allegations concerning his statewide challenge to Marshall's employment practices. *See* Williams' Compl. at ¶¶ 19, 29, 42, 47, 54.

Dated: May 6, 2016

Respectfully submitted,

By: 

COHELAN KHOURY & SINGER
Michael D. Singer

Counsel for Amicus Curiae,
California Employment
Lawyers Association

No. S227228

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

MICHAEL WILLIAMS, and individual,
Plaintiff and Appellant,

v.

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
Defendant and Respondent.

MARSHALLS OF CA, LLC,
Real Party in Interest.

Court of Appeal, Second Appellate District,
Division One, Case B259967
Superior Court, County of Los Angeles,
Case No. BC503806
The Honorable William F. Highberger, Judge Presiding

BRIEF OF AMICUS CURIAE CALIFORNA EMPLOYMENT LAWYERS ASSOCIATION IN SUPPORT OF PLAINTIFF-APPELLANT MICHAEL WILLIAMS

COHELAN KHOURY & SINGER
Michael D. Singer (SBN 115301)
605 C Street Suite 200
San Diego, CA 92101
Tel: 619-595-3001
Fax 619-595-3000

Attorneys for Amicus Curiae
California Employment Lawyers Association

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATE CASES

FEDERAL CASES

STATUTES AND RULES

OTHER AUTHORITIES

I. INTRODUCTION

This case is not an ordinary dispute between private parties. It is a constructive enforcement action by the State of California against Marshalls of California, LLC ("Marshalls"), and this appeal concerns the informational access to which employees deputized as agents of the State are entitled when investigating their claims under the Private Attorneys General Act ("PAGA"). It is irrelevant that this enforcement action was brought by a private individual. This Court has made clear that when an employee brings an enforcement action under PAGA, he does so as the proxy of the State's labor law enforcement agencies, and the employee represents the same legal right and interest as those agencies. When the State of California alleges an employer is violating California's labor laws on a statewide basis, there is no dispute the State is entitled to the contact information of percipient witness on a statewide basis. It logically follows that PAGA litigants are similarly entitled to this information.

Marshalls and the Court of Appeal, however, maintain this case has nothing to do with the State of California. Rather, they submit that this enforcement action is nothing more than an individual plaintiff asserting individual claims, and the trial court retained the discretion to refuse discovery into the claims of other California employees under novel standards that are untethered from law and logic, and do not apply in any other form of civil litigation. In the end, the Court of Appeal's discovery

ruling disregarded the purpose of PAGA enforcement actions, building instead, error by error, a misguided edifice of its own creation.

First, and most importantly, the Court of Appeal's decision relies upon a fundamental misunderstanding of PAGA. After failing to so much as acknowledge this Court's leading decisions on the nature and purpose of PAGA enforcement actions, the Court of Appeal determined that a PAGA claim only places the claims of a representative litigant at issue, and that investigating the challenged practice with respect to other current and former employees is within the ordinary discretion of a trial court. (*See Williams, supra,* 236 Cal.App.4th at 1156.) The Court was mistaken. Both the plain language of PAGA, as well as this Court's unambiguous position on the nature and purpose of PAGA enforcement actions, confirm that when an employee asserts a PAGA claim, the employer's conduct towards other current and former employees is immediately placed at issue.

Second, the Court of Appeal's decision is contrary to established discovery principles. The Court held that in order to compel responses to interrogatories requesting statewide contact information of current and former employees (i.e., percipient witnesses), a discovery proponent is required to demonstrate "good cause" beyond the allegations of the complaint. (*See Williams, supra,* 236 Cal.App.4th at 1156-1157.) In PAGA actions, the Court concluded that this "good cause" was met only where the PAGA litigant demonstrated, with evidence, both that his rights under the

California Labor Code were violated, and also that the challenged conduct was ongoing statewide. (*Ibid.*)

Every aspect of this discovery analysis is incorrect as a matter of law. Indeed, even Marshalls concedes there is no such "good cause" requirement for interrogatories. (Marshalls' Ans. Br. at pp. 18, 19.) Under ordinary discovery principles, a response to an interrogatory should be compelled so long as the requested information is legally relevant, i.e., relevant to the subject matter of the action or reasonably calculated to reveal admissible evidence. There is no dispute that Marshalls' employees, statewide, potentially possess information relevant to this enforcement action.

But even if this Court decided, for the first time in any form of civil litigation, that grafting a good cause requirement to interrogatories was appropriate in PAGA actions, the Court of Appeal's novel standard for good cause cannot stand. As to the first requirement – that a PAGA plaintiff substantiate the merits of his own claims – there is no legal basis to require any party, be it single or representative plaintiff, let alone an agent of a state law enforcement agency, to prove the merits of certain claims at issue before permitting discovery into other claims at issue. To the contrary, courts may not even consider the merits of a litigant's claim when determining whether to allow discovery.

Even more problematic, the Court of Appeal's second requirement – that the PAGA representative provide evidence of a statewide practice – is untenably circular. Statewide discovery requests are specifically intended to determine the existence and extent of a challenged employment practice beyond an individual's personal experiences. But by requiring a PAGA relator to provide evidence of statewide practices before permitting statewide discovery – evidence that can be obtained only from statewide discovery – the Court of Appeal undermined the collective nature of PAGA enforcement actions, and indeed the entire purpose of the PAGA, at the outset. This approach cannot be the law.

Third, the Court's analysis of California's privacy law was also incorrect as a matter of law. The Court applied the constitutional right of privacy balancing test from *Lantz v. Superior Court* (1994) 28 Cal.App.4th 1839, 1853–1854, 34 Cal.Rptr.2d 358 (concerning "serious" invasions of privacy for which the individual had a reasonable expectation of privacy, and requiring a "compelling need" for the discovery), while ignoring the unbroken line of authority rejecting *Lantz's* approach to non-sensitive contact information in representative litigation, and applying this Court's decision in *Pioneer Electronics (USA), Inc. v. Sup. Ct* (2007) 40 Cal. 4th 360, 372-73 (holding that these percipient witnesses have a reduced privacy expectation in their contact information, and that this contact information is "generally discoverable.")

But perhaps more importantly, the Court's privacy analysis skipped a critical analytical step. Before any balancing can take place, it must first be determined that current and former employees have a reasonable expectation that their contact information would not be shared with the discovery proponent. While this Court has previously determined that individuals who voluntarily provide their contact information may reasonably expect that information would not be shared with a private litigant, such an analysis does not apply to PAGA enforcement actions. Employees do not have a reasonable expectation that the contact information they provide to their employer would be shielded from agents of the government responsible for defending their statutory rights. Indeed, employees fully expect their contact information will be shared with agents of the government for any number of reasons, be it tax, social security, unemployment, and indeed, government-sponsored enforcement actions.

In summary, the Court of Appeal's decision demonstrates a fundamental misunderstanding of PAGA, ordinary discovery principles, and basic privacy law. The discovery standard it invoked, if affirmed, poses a serious threat to the State's ability to enforce the California Labor Code. CELA respectfully requests this Court reverse the decision.

///

///

///

II. ARGUMENT

A. The Legislative Objectives of PAGA Cannot be Accomplished Without the Ability to Conduct a Statewide Investigation

1. The Nature and Purpose of PAGA Litigation and the Need for Discovery Rules Respecting General PAGA Principles

In 2004, California faced a budget shortfall that led to understaffing in the Labor and Workforce Development Agency and insufficient resources to enforce the Labor Code. (*See Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal. 4th 348, 378-39.) To address these problems and ensure more vigorous enforcement of labor and employment laws, the California Legislature passed PAGA. (*Id.*) PAGA allows an aggrieved employee to bring a lawsuit seeking civil penalties arising out of violations of the California Labor Code that could otherwise only be assessed and collected by California's Labor and Workforce Development Agency. (Cal. Lab.Code § 2699(a).) The employee plaintiff may bring the action only after giving written notice to both the employer and the Labor and Workforce Development Agency (Lab.Code, § 2699.3, subd. (a)(1)), and 75 percent of any civil penalties recovered must be distributed to the Labor and Workforce Development Agency (*id.* at § 2699, subd. (i).)

In essence, PAGA "deputizes" employees by allowing them to pursue the same civil monetary penalties that, absent PAGA, would only

be available to state law enforcement agents. (*See Franco v. Athens Disposal Co., Inc.* (2009) 171 Cal.App.4th 1277, 1300.) A PAGA claim does not concern the vindication of individual rights; it "is fundamentally a law enforcement action that substitutes for an action brought by the government itself." (*Iskanian, supra,* 59 Cal.4th at 394) (A PAGA action to recover civil penalties 'is fundamentally a law enforcement action designed to protect the public and not to benefit private parties....") "An employee plaintiff suing ... under the [PAGA] does so as the proxy or agent of the state's labor law enforcement agencies." (*Id.* at 381, quoting *Arias v. Superior Court* (2009) 46 Cal.4th 969, 985.) "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 Labor Workforce Development Agency." (*Id.*) "A PAGA representative action is therefore a type of *qui tam* action." (*Id.*)

Because an aggrieved employee's action under PAGA functions as a substitute for an action brought by the government itself, a judgment in that action binds the State of California, as well as nonparty aggrieved employees. (*See Arias, supra,* 46 Cal. 4th at 986.) "Simply put, a PAGA claim ... is not a dispute between an employer and an employee.... It is a dispute between an employer and the state, which alleges directly or through its agents-either the [state Labor and Workforce Development]

Agency or aggrieved employees-that the employer has violated the Labor Code." (*Iskanian, supra,* 59 Cal. 4th at 386-87.)

Though presented with issues of first impression concerning the allowable scope of discovery in a PAGA proceeding, the Court of Appeal did not address this Court's leading authorities on the nature and purpose of PAGA claims: *Arias v. Superior Court*, (2009) 46 Cal.4th 969; and more recently, *Iskanian v. CLS Transp. Los Angeles, LLC* , (2014) 59 Cal.4th 348. This likely helps to explain why its decision rests on several foundational errors concerning PAGA enforcement actions. Two of these foundational errors merit a brief discussion.

a. PAGA Actions Always Exist in a Representative Capacity

First, the Court found that a PAGA enforcement action initially concerns an aggrieved employees' "own, local claims," and that it was "eminently reasonable" for the trial court to initially limit discovery to the representative's individual circumstances. (*Williams, supra,* 236 Cal.App.4th at 1157.) Based on this presumption, the Court found that trial courts possess the discretion to "later broaden[] the inquiry to discover whether" the challenged conduct affects employees on a statewide basis. (*Id.*) The Court was mistaken.

The plain language of the PAGA makes clear that PAGA actions do not exist in an individual or "local" capacity; rather, they can *only* be

brought in a representative capacity. Section 2699(a) states that:

> Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself **and** other current or former employees pursuant to the procedures specified in Section 2699.3.

(Cal. Lab. Code. 2699(a) (emphasis added).)

"In construing any statute ... [courts] first examine the words themselves because the statutory language is generally the most reliable indicator of legislative intent. The words of the statute should be given their ordinary and usual meaning and should be construed in their statutory context." (*Whalry v. SonyComputer Entertainment America, Inc.*, (2004) 121 Cal. App. 4th 479, 484-485 (internal citations and quotations omitted).) "In construing the plain meaning of a statute, the ordinary usage of 'and' is to condition one of two conjoined requirements by the other, thereby causally linking them." (*Kobzoff v. Los Angeles County Harbor/UCLA Medical Center* (1998) 19 Cal. 4th 851, 861.)

Here, the Legislature's use of the word "and" plainly shows it intended courts to construe in the conjunctive the two separate requirements for bringing or maintaining a PAGA claim. In other words, PAGA enforcement proceedings do not exist in an individual or "local" capacity. Rather, PAGA cases are *always* brought in a representative capacity.

California courts are in universal agreement on this point.[2]

That PAGA proceedings may not be limited to individual or "local" claims is a natural consequence of PAGA's objectives. Were courts able to unilaterally limit the scope of PAGA proceedings to a single litigant, or a single store, PAGA litigants would be prevented from pursuing the type of penalties "contemplated under the PAGA to punish and deter employer practices that violate the rights of numerous employees under the Labor Code." (*Iskanian, supra,* 59 Cal.4th at 384.) Simply, Williams' PAGA action does not concern the rights of one employee, nor the rights of a few isolated employees; it is a dispute between Marshalls and the State of California concerning *all* potentially aggrieved employees. (*Iskanian, supra,* 59 Cal.4th at 386-7) ("Simply put, a PAGA claim ... is not a dispute between an employer and an employee.... It is a dispute between an employer and the State...") Accordingly, the Court of Appeal's decision to

---

[2] *See, e.g., Rope v. Auto–Chlor System of Washington, Inc.* (2013) 220 Cal.App.4th 635, 651, fn. 7 ("[s]uits brought under PAGA must be representative actions"]; *Reyes v. Macy's, Inc.* (2011) 202 Cal.App.4th 1119, 1123–1124 ("[a] plaintiff asserting a PAGA claim may not bring the claim simply on his or her own behalf but must bring it as a representative action and include 'other current or former employees'"); *Machado v. M.A.T. & Sons Landscape, Inc.* (E.D.Cal. 2009) 2009 U.S.Dist. Lexis 63414, *6, 2009 WL 2230788, *2 (using the "common acceptation" of the word "and," held that the claim must be brought on behalf of other employees); *Urbino v. Orkin Services of California Inc.* (C.D.Cal. 2011) 882 F.Supp.2d 1152, 1161, affirmed, ___F.3d___ (9th Cir. 201__) ("The PAGA statute does not enable a single aggrieved employee to litigate his or her claims, but requires an aggrieved employee 'on behalf of herself or himself and other current or former employees' to enforce violations of the Labor Code by their employers.").

limit a PAGA litigant's investigation and trial preparation to "localized" or "individual" claims is incorrect as a matter of law. PAGA does not recognize the existence of individual or "localized" claims.

b. Allegations, Alone, Define the Scope of PAGA Enforcement Actions

The Court of Appeal's next foundational error was its finding that allegations, alone, cannot define the scope of a PAGA enforcement proceeding. (*See Williams, supra,* 236 Cal.App.4th at 1156-1157) ("The litigation therefore consists solely of the allegations in his complaint....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.")

This finding cannot be squared with the plain language of PAGA. PAGA states that an action may be brought "by an *aggrieved employee* on behalf of himself or herself and other current or former *employees*." (Cal. Lab. Code. 2699(a) (emphasis added).) The term "aggrieved employees," in turn, is defined as "any person who was employed by the *alleged* violator and against whom one or more of the *alleged* violations was committed." (Cal. Lab. Code 2699(c) (emphasis added).) Thus, under the plain language of PAGA, allegations alone suffice to define the scope of PAGA enforcement proceedings.

While the Court of Appeal required personal knowledge of statewide practices before allowing Williams to explore the State's claims on a statewide basis, nothing in PAGA's statutory language requires personal knowledge of statewide practices. Absent such an unusual mandate, a "complaint ordinarily is sufficient if it alleges ultimate rather than evidentiary facts." (*Doe v. City of Los Angeles* (2007) 42 Cal. 4th 531, 550.) As a general rule, a "[p]laintiff may allege on information and belief any matters that are not within his personal knowledge, if he has information leading him to believe that the allegations are true." (Id.) (citing, *Pridonoff v. Balokovich* (1951) 36 Cal.2d 788, 792.) Ordinary discovery rules, in turn, not only authorize discovery for any issue "presented by the pleadings," but indeed, inquiry is permitted into any matter relevant to "the subject matter of the litigation," which "is a much broader concept than relevancy to the precise issues presented by the pleadings." (*Norton v. Superior Court* (1994) 24 Cal. App. 4th 1750, 1760); *see also, John B. v. Sup. Ct.* (2006) 38 Cal.4th 1177, 1187.)

Practical considerations also mandate that the scope of PAGA actions be defined by the pleadings. It would be incongruous to suggest, on the one hand, that a statewide PAGA enforcement proceeding can be limited to "localized" claims, yet on the other hand, have the same statewide proceeding bind all aggrieved employees in the State of California, as well as the State of California itself. (*See Arias, supra,* 46

Cal. 4th at 986) (PAGA proceedings bind every employee who could have brought a PAGA action, as well as the State of California.)

In summary, the plain language and unique features of PAGA, as well as ordinary pleading and discovery rules, dictate that a PAGA representative's allegations define the scope of claims at issue for purposes of discovery. Accordingly, when PAGA plaintiffs allege statewide policies and practices, they must be permitted to investigate those claims on a statewide basis. Here, the Court of Appeal incorrectly held that Williams alleged "only that at the Costa Mesa store, he and perhaps other employees at that store were subjected to violations of the Labor Code," *Williams, supra,* 236 Cal. App. 4th at 1157. The record shows Williams plainly alleged the existence of statewide practices resulting in statewide labor code violations. (*See* PA 14-17, ¶¶ 19, 29, 42, 47, 54.) The trial court did not possess the discretion to limit Williams' PAGA enforcement proceedings to an amorphously defined "localized" paradigm, and this Court should reverse the Court of Appeal's decision for this reason alone.

2. PAGA's Fundamental Purpose Would be Thwarted if PAGA Litigants Could Not Investigate the State of California's Claims on a Statewide Basis

PAGA's fundamental purpose cannot be fulfilled if PAGA litigants are precluded from investigating and enforcing all of the State's potential claims. When PAGA was first enacted,

> [t]he Legislature declared that adequate financing of labor law enforcement was necessary to achieve maximum compliance with state labor laws, that staffing levels for labor law enforcement agencies had declined and were unlikely to keep pace with the future growth of the labor market, and that it was therefore in the public interest to allow aggrieved employees, acting as private attorneys general, to recover civil penalties for Labor Code violations...

(*Arias,* 46 Cal.4th at p. 980.) Thus, PAGA actions are necessary to ensure adequate labor law enforcement in the State of California.

These objectives cannot be accomplished if trial courts could prevent PAGA litigants from exploring the statewide range of potential violations. As one Court of Appeal has observed, PAGA penalties are designed "to punish and deter employer practices that violate the rights of numerous employees under the Labor Code." (*Brown v. Ralphs Grocery Co.* (2011) 197 Cal.App.4th 489, 502.) These punitive and deterrent objectives cannot be accomplished without the potential exposure that attends a statewide inquiry.

Indeed, this Court has made clear that "a prohibition of representative claims frustrates the PAGA's objectives." (*Iskanian,* 59 Cal.4th at 384.) Whether this representative component is frustrated through a contractual agreement prohibiting participation in aggregate proceedings (as was the case in *Iskanian*), or by a trial court's refusal to permit inquiry into the potential claims of other employees, the result is the same: the representative component of a PAGA action is compromised.

Just as private parties may not foreclose this representative component through private agreement, trial courts may not undermine this fundamental purpose by preventing a PAGA litigant from investigating the claims of other employees. This is a straightforward consequence of PAGA's purpose of promoting the enforcement of California's labor laws, emphasizing a deterrent effect from such enforcement efforts.

As a practical matter, accepting the Court of Appeal's "localized" approach to PAGA litigation would do much more than frustrate PAGA's fundamental objectives – it would leave State enforcement efforts worse off than if PAGA had not been enacted. The result of any PAGA action binds not just the State of California, but it also binds every current and former employee who could have served as a PAGA representative. (*See Arias, supra,* 46 Cal.4th at 986) Thus, if PAGA litigants were denied the opportunity to investigate the breadth of the State's claims just as the State would, even those PAGA plaintiffs who prevail on the merits of their "localized" claims would ultimately waive the State's right to pursue penalties – indeed, the vast majority of potential penalties – for those very same practices occurring throughout the State.

While State enforcement agencies may lack the resources to pursue all employers violating California's labor laws, the State is able to seek the full range of potential penalties available for those employers they pursue, thereby maximizing the State's ability to deter employer wrongdoing. But

if the State can be precluded from statewide enforcement of California's Labor Law simply because a PAGA action only enforced a representative litigant's "localized" claims, the State's enforcement efforts would be hobbled to a greater extent than if PAGA never existed. This cannot be the Legislature's intended result.

Without discussing any of this Court's PAGA–related authority, the Court of Appeal concluded that a PAGA relator is not entitled to the same discovery as a state enforcement agency, "[b]ecause nothing in PAGA suggests a private plaintiff standing in as a proxy for the DLSE is entitled to the same access." (*Williams, supra,* 236 Cal.App.4th at 1157.) But the Court was mistaken.

The California Labor Code provides state labor law enforcement agencies with full authority to investigate its claims on a statewide basis, including requiring the production of witness contact information, without any express limitation. (*See* Cal. Lab. Code 90, 92, 93.) But perhaps more importantly, this authority expressly extends to *agents* of these enforcement agencies. (*See* Cal. Lab. Code 90) ("The Labor Commissioner, *his deputies and agents*, shall have free access to all places of labor"); (Cal. Lab. Code 92) ("The Labor Commissioner, *his deputies and agents*, may issue subpoenas to compel the attendance of witnesses and parties and the production of books, papers and records; administer oaths; examine witnesses under oath; take the verification, acknowledgment, or proof of

written instruments; and take depositions and affidavits for the purpose of carrying out the provisions of this code and all laws which the division is to enforce"); (Cal. Lab. Code 93) ("Obedience to subpoenas issued by the Labor Commissioner, *or his deputies or agents* shall be enforced by the courts.") (emphasis added.)

Discussed above, PAGA litigants do not represent themselves– they represent State of California, and it is the State of California's claims at issue. (*Iskanian, supra,* 59 Cal. 4th at 387.) Williams is the proxy and agent of the State, and he "represents the same legal right and interest as state labor law enforcement agencies." (*Id.* at 394.) Marshalls does not dispute the State of California would be entitled to contact information of Marshalls' current and former retail employees on a statewide basis.[3] It

[3] Marshalls argues that "[i]n an action brought by the Labor Commissioner, the agency must: (1) have facts that suggest a *prima facie* case can be prosecuted; (2) know and name for the employer all claimants who provided sufficient facts to make a *prima facie* case; and, (3) when more than one claim is joined together – including the claims of more than one aggrieved employee – provide the employer with written information regarding the claim," citing Cal. Lab. Code § 98.3 (Marshalls' Ans. Br. at pp. 29-30.) Section 98.3 says nothing of the sort. In fact, Section 98.3 provides that "[t]he Labor Commissioner may prosecute all actions for the collection of wages, penalties, and demands of persons who in the judgment of the Labor Commissioner are financially unable to employee counsel and the Labor Commissioner believes have claims which are valid and enforceable." See Cal. Lab. Code 98.3. CELA is unaware of any Labor Code provision imposing the standard suggested by Marshalls. Regardless, such a standard is plainly met here. Williams' Complaint does much more than merely "suggest a *prima facie* case." When Williams' allegations are accepted as true – as they must at the pleadings stage – Williams' Complaint states a *prima facie* case. Likewise, Williams' Complaint

necessarily follows that Williams – an "agent" or "deputy" of the State – is entitled to this information.

Neither the California Labor Code generally, nor PAGA specifically, restrict the breadth of the State's informational access in any way. Neither the California Labor Code generally, nor PAGA specifically, imposes any limitations or hurdles to investigating all the potential penalties the State may be entitled to collect. The Legislature cannot be presumed to have, on the one hand, placed employees "in the shoes" of enforcement agencies, and conferred upon employees the "same legal right and interest as state labor law enforcement agencies," while at the same time, precluded the employee from investigating the vast majority of the State's claims. As Marshalls put it, "[t]he Legislature 'does not, one might say, hide elephants in mouseholes.'" (Marshalls' Ans. Br., at p. 23) (quoting *Jones v. Lodge at Torrey Pines Partn.* (2008) 42 Cal. 4th 1158, 1171).

3. Marshalls' Comparative Arguments Between PAGA Enforcement Actions and Class Actions are Misguided

Marshalls dedicates a significant portion of its Answer Brief to a discussion of the features of a class action, and how those features are distinct from a PAGA enforcement proceeding. (Marshalls' Ans. Br., at pp. 33-42.) Marshalls relies on these differences to argue that while class

---

provides the name for the claimant providing the facts underlying the Complaint (Williams himself).

representatives should be entitled to statewide contact information of putative class members, PAGA plaintiffs should not be granted statewide access to current and former employees. (*Id.*)

CELA agrees there are fundamental differences between class actions and PAGA enforcement proceedings. This Court has made clear that PAGA enforcement proceedings and class actions are entirely separate and distinct legal actions. (*See Arias, supra,* 46 Cal. 4th at 975, 986-87.) Indeed, as the Ninth Circuit has remarked, PAGA actions and class actions are "in the end ... more dissimilar than alike." (*Baumann v. Chase Inv. Servs. Corp.* (9th Cir 2014) 747 F.3d 1117, 1124.)

What Marshalls fails to do, however, is explain how these differences suggest statewide discovery should be denied in representative PAGA proceedings, when the same discovery is permitted in representative class actions. Marshalls highlights the fact that, in class actions, attorneys are subject to heightened ethical standards, and that class representatives and counsel have fiduciary duties to putative class members. Marshalls then summarily concludes that, based on these differences, "it makes perfect sense for a class representative in a putative class action to have broader discovery rights than a PAGA litigant." (Marshalls' Ans. Br., at p. 40.) But this leap in logic does not explain, as an analytical matter, why the propriety of providing contact information of percipient witnesses

somehow turns on whether a representative litigant and her attorney owe a particular brand of fiduciary duty to an unnamed employee.

The unique procedural requirements of class actions, as well as the related fiduciary duties, have nothing to do with an entitlement to discovery. Instead, these unique requirements exist to ensure the due process rights of absent employees are protected. (*See* William Rubenstein, Alba Conte & Herbert B. Newberg, Newberg on Class Actions § 1.03 (4th ed. and Supp. 2010) (notice and adequacy of representation are touchstones of due process in class actions).) As Marshalls correctly notes, "[s]ignificantly, unlike class action procedures, the PAGA 'does not create property rights....'" (Marshalls' Ans. Br., at p. 40.) PAGA claims do not belong to absent employees; they belong to the State of California. Thus, PAGA enforcement actions do not implicate the due process concerns of absent employees. (*see Arias, supra,* 46 Cal. 4th at 984-87) (explaining why the PAGA does not implicate the due process rights of absent employees).

Without the due process concerns that attend class action proceedings, including the related fiduciary duties, the various procedural hurdles that exist solely to protect these due process rights are irrelevant. As a practical matter, Marshalls' comparative arguments between class actions and PAGA proceedings appear to do little more than conflate the due process concerns that attend class actions with the privacy concerns that may attach to any third party's contact information. But these privacy

concerns – concerns that are easily addressed by a protective order – do not in any way counsel in favor of a wholesale ban on statewide discovery of percipient witness contact information.

Indeed, nothing in the unique features of a class action suggests class representatives should be entitled to greater informational access than PAGA plaintiffs. To the contrary, the important distinctions between PAGA enforcement actions and class actions confirm that PAGA relators should be afforded equal if not greater access to witness information than class representatives – particularly at the early stages of proceedings. For example, in class actions, pre-certification, class representatives do not represent the claims of any absent individual – they merely propose to do so. Yet, even though pre-certification class representatives represent only their own claims, they are nevertheless entitled to classwide discovery of contact information, limited only by an opt-out notice. (*See Belaire-West Landscape, Inc. v. Superior Court* (2007) 149 Cal. App. 3d 516.)

In PAGA actions, on the other hand, representative plaintiffs do not merely *propose* to represent the interest of others – they *in fact* represent the interest of the State of California, and their actions will bind not only the State of California, but every other current or former employee who suffered the alleged labor violations. In this sense, PAGA plaintiffs are positioned in a manner more akin to *post-certification* class representatives, when the representative litigant *in fact* represents an interest that exceeds

his own. Simply, it is illogical to suggest that statewide contact information is warranted in representative proceedings where the representative party merely proposes to represent the interest of others, but is not warranted where the representative party *in fact* represents the interest of others.

Finally, and as a practical matter, Marshalls' comparative arguments highlight a third foundational error committed by the Court of Appeal. By requiring Williams both to prove his individual claims and to affirmatively demonstrate the challenged practices are ongoing in other locations, the Court of Appeal effectively required Williams to demonstrate most of the community of interest requirements necessary to certify a class action – namely, adequacy, typicality, and commonality – without the benefit of "class" discovery. But it is well established that the hurdles imposed by class litigation simply are inapplicable to PAGA enforcement actions. (*See Arias, supra,* 46 Cal. 4th at 975, 986-87.)

B. The Court of Appeal's Decision Reflects a Misunderstanding of Ordinary Discovery Principles, Particularly when Applied to PAGA Enforcement Proceedings

The primary basis for the decision below was rooted in what the Court believed to be ordinary discovery principles. (*Williams, supra,* 236 Cal.App.4th at 1157.) Ultimately, the Court concluded that "discovery in a civil action brought under the PAGA [should] be subject to the same rules of discovery in civil actions generally." (*Id.* at .)

The Court then proceeded to impose heightened discovery burdens on PAGA litigants that do not exist in any other form of civil ligation – be it representative or single-plaintiff actions, let alone constructive State enforcement actions. Without citing any authority, the Court held that in order to compel responses to interrogatories requesting statewide contact information of current and former employees (i.e., percipient witnesses), a discovery proponent is required to demonstrate "good cause." (*Williams, supra,* 236 Cal.App.4th at 1157.) In PAGA enforcement actions, the Court concluded that this "good cause" was established only where the PAGA plaintiff demonstrated, with evidence, both that his rights under the California Labor Code were violated, and also that the challenged conduct was ongoing statewide. (*Ibid.*)

For all the reasons discussed in Williams' principal briefing, and as elaborated below, every aspect of this discovery analysis is incorrect as a matter of law.

1. The Good Cause Standard Does Not Apply to Interrogatories

A "good cause" standard does not apply to motions to compel interrogatory responses in any litigation context. (*See* CCP 2030.300.) In imposing this good cause standard, the Court of Appeal relied upon California Code of Civil Procedure Section 2031.030, which governs motions to make demands for the inspection, copying, testing, or sampling

of things. (*Williams, supra,* 236 Cal.App.4th at 1157.) But this Court has long rejected attempts to graft Section 2031.030's good cause standard to Section 2030.300. (*See Coy v. Superior Court* (1962) 58 Cal. 2d 210, 220) ("The statute does not require any showing of good cause for serving and filing interrogatories. Thus, the burden of showing good cause, which the authorities mention in regard to motions for inspections and some other discovery procedures, does not exist in the case of interrogatories. It would be anomalous to hold that the mere interposing of an objection creates a burden where none existed before.") Even Marshalls admits this aspect of the Court's order was erroneous. (*See* Marshalls' Ans. Br. at p. 18) ("Appellant notes correctly that California Code of Civil Procedure section 2030.300 does not include a 'good cause standard"); (*See also, id.* at p. 19, fn. 4) ("Admittedly, the precise wording used by the Court of Appeal is not supported by California Code of Civil Procedure section 2030.210 *et seq.,* as the statute does not use the words 'good cause'").

It is axiomatic that the Code of Civil Procedure "allows interrogatories as a matter of right unless the opponent can state a valid objection thereto." (*See West Pico furniture Co. v. Superior Court* (1961) 56 Cal.2d. 407, 414, fn. 2, citing *Greyhound Corp. v, Superior Court,* (1961) 56 Cal.2d 355.) The only limitation on interrogatory requests requires they either be relevant to the subject matter of the action or

reasonably calculated to reveal admissible evidence. (*See John B. v. Sup. Ct.* (2006) 38 Cal.4th 1177, 1187.)

Interrogatories seeking contact information of current and former employees in an enforcement action alleging labor code violations on a statewide basis plainly are reasonably calculated to reveal admissible evidence. Marshalls does not argue otherwise. Instead, Marshalls argues that imposing such a good cause standard was appropriate, because "the California Code of Civil Procedure also specifically empowers trial courts, on motion and for 'good cause' shown, to 'establish the sequence and timing of discovery for the convenience of the parties and witnesses and in the interests of justice." (*See* Marshalls' Ans. Br. at p. 18, citing Code Civ. Proc. 2019.020.)

Marshalls is mistaken for at least two reasons. First, Section 2019.020 does not in any way allow a trial court to graft a "good cause" requirement to any form of discovery, nor does this Section even concern the propriety of discovery generally. Read in its entirety, Section 2019.020 provides that:

> (a) Except as otherwise provided by a rule of the Judicial Council, a local court rule, or a local uniform written policy, the methods of discovery may be used in any sequence, and the fact that a party is conducting discovery, whether by deposition or another method, shall not operate to delay the discovery of any other party.
>
> (b) Notwithstanding subdivision (a), on motion and for good cause shown, the court may establish the sequence and

> timing of discovery for the convenience of parties and witnesses and in the interests of justice.

This provision has nothing to do with the propriety of discovery generally, nor does it in any way purport to create a good cause requirement for all discovery. Rather, this provision does nothing more than authorize the trial court to control the timing and sequence of discovery that otherwise *will* take place.

Second, even assuming Section 2019.020 could be interpreted to disallow broad categories of discovery, Marshalls inverts the burden of demonstrating the required good cause. While a discovery proponent must show good cause when seeking to inspect documents or things, it is the party *resisting* discovery that bears the burden of demonstrating the good cause required by Section 2019.020. (*See GT, Inc. v. Superior Court* (1984) 151 Cal.App.3d 748, 754.)

Thus, to the extent Section 2019.020 is relevant at all, Williams is not required to provide good cause that the information is needed; instead, Marshalls must provide good cause for withholding the discovery. And while the Court of Appeal did not even mention Section 2019.020, it is clear it placed the burden of demonstrating good cause to obtain the discovery on Williams. Accordingly, Marshalls' "harmless error" argument revolving around Section 2019.020 should be disregarded.

Contact information for current and former employees is clearly relevant to the subject matter of the litigation. Plaintiff's PAGA claim is an enforcement action on behalf of the State of California that challenges Marshall's employment practices with respect to all current and former employees within the relevant statutory period. As current and former Marshalls' employees, these individuals are percipient witnesses to the challenged employment practices. But more importantly, penalties that the State and Williams are entitled to pursue are directly tied to the employment experiences of each and every Marshalls' employee in the State of California. Under ordinary discovery standards – standards the Court of Appeal professed to apply, but failed to do – this information must be produced.

2. The Court of Appeal's Requirement that Williams Prove His Individual Claims Before Seeking Contact Information is Contrary to the Plain Language of PAGA and Ordinary Discovery Principles

The first prong of the Court of Appeal's novel good cause standard requires Williams to provide evidence in support of his own "local" claims before he would be entitled to statewide contact information. (*Williams, supra,* 236 Cal. App.4th at 1157.) The Court went even further, approving the trial court's holding that "Marshalls might resist further discovery by making a showing that plaintiff's claims have no factual merit...." (*Id.* at .) Neither the Court of Appeal nor Marshalls cites any authority to support

this departure from ordinary discovery principles.

There is no legal basis to require any party – not an individual or representative plaintiff, let alone an agent of a state law enforcement agency – to prove the merits of some claims at issue before permitting discovery into other claims at issue. To the contrary, it is a rudimentary litigation principle that a party is permitted discovery into any matter relevant to the subject matter any claim at issue before the merits of those claims are determined. (*See West Pico, supra,* 56 Cal. 2d at p. 419 fn. 4; *Pacific Tel. & Tel. Co. v. Sup. Ct.* (1970) 2 Cal.3d 161, 174.) No statute or case authority suggests this bedrock discovery principle may be disturbed by such premature merits inquiries.

Whether trial courts may consider the merits of an underlying claim when evaluating a motion to compel discovery does not appear to have been expressly ruled upon in California. Neither the trial court, the Court of Appeal, Marshalls, nor Williams cited any cases directly on point, and CELA has not located any controlling authority on this issue. But this is not surprising. While it should go without saying (and up to this point, it apparently has), ordinary discovery principles do not permit trial courts to consider the merits of an underlying claim in deciding whether discovery would be permitted, and these principles certainly do not allow trial courts to require a claim be substantiated on the merits before permitting discovery. Indeed, in the federal system, federal district courts across the

nation agree that the courts may "not consider the underlying merits of Plaintiff's claim in evaluating a motion to compel." (*Guthrey v. California Dept. of Corrections and Rehabilitation,* 2012 WL 2499938 at fn. 1 (E.D. Cal. 2012)); (*See also, e.g., Angel v. North Coast Couriers, Inc.*, 2012 WL 380285, at *3 (N.D.Cal. 2012) ("Defendants believe that the case against Mr. Khalaf is patently frivolous, but have cited no authority that such a belief would preclude otherwise appropriate discovery ..."); *Stafford v. Jewelers Mut. Ins. Co.,* 2012 WL 6568325 (S.D. Ohio 2012) ("A court does not consider the underlying merits of a plaintiff's claims in evaluating a motion to compel.").)

The Civil Discovery Act provides litigants with the right to broad discovery. "The statutory provisions must be liberally construed in favor of discovery and the courts must not extend the statutory limitations upon discovery beyond the limits expressed by the Legislature." (*Irvington–Moore, Inc. v. Superior Court* (1993) 14 Cal.App.4th 733, 738–739, 18 Cal.Rptr.2d 49.) Importantly, civil discovery is intended to operate with a minimum of judicial intervention. Indeed, "it is a 'central precept' of the Civil Discovery Act ... that discovery 'be essentially self-executing[.]" (*Obregon v. Superior Court* (1998) 67 Cal.App.4th 424, 434, quoting *Townsend v. Superior Court* (1998) 61 Cal.App.4th 1431, 1434.)

By allowing the merits of an underlying claim to enter into the discovery calculus, the Trial Court and Court of Appeal clearly

"extend[ed] the statutory limitations upon discovery beyond the limits expressed by the Legislature." (*Irvington–Moore, Inc., supra,* 14 Cal.App.4th at 738–739.) In so doing, both courts exceeded their authority.

Yet, it is the practical ramifications of the Court of Appeal's decision that is far more troubling. By requiring an inquiry into the merits of an underlying claim before permitting discovery, the Court of Appeal has invited a cottage industry of discovery litigation that would dwarf the discovery disputes already saturating the dockets of California courts. It does not take much imagination to predict that employers would resist discovery as a matter of course, simply proclaiming the underlying merits of a claim to be frivolous, thereby requiring overburdened courts to prematurely evaluate the merits of a claim each and every time an employer does not wish to comply with its discovery obligations. Such an outcome would be completely contrary to the "central precept" of the Civil Discovery Act; namely, "that discovery be essentially self-executing," and operate with a minimum of judicial intervention. (*See Obregon, supra,* 67 Cal.App.4th at 434.)

3. The Court of Appeal's Requirement that Williams Affirmatively Demonstrate the Challenged Employment Practices In Fact are Occurring on a Statewide Basis Before Obtaining Statewide Discovery is Circular and Untenable

The second prong of the Court of Appeal's novel good cause standard requires Williams to provide evidence or otherwise demonstrate

personal knowledge that the challenged employment practices are ongoing statewide. *Williams, supra,* 236 Cal. App.4th at 1157. Again, neither the Court of Appeal nor Marshalls cites a single authority for this proposition.

The legal and logical errors that attend this second requirement are legion. Like the Court of Appeal's first requirement, this second requirement is a limitation on discovery that far exceeds the limits expressed by the Legislature. (*See Irvington–Moore, Inc., supra,* 14 Cal.App.4th at 738–739.) And as explained above, a personal knowledge requirement cannot be read into a statute. (*See supra,* Section II.A.1.ii.)

Legal errors aside, this second requirement is logically circular and completely impracticable. Statewide discovery requests are specifically intended to determine the existence and extent of a particular employment practice beyond a single litigant's personal experiences. But by requiring a PAGA litigant to provide evidence of statewide practices before permitting statewide discovery – evidence that can be obtained only from statewide discovery – the Court of Appeal effectively neutralizes the representative component of a PAGA action at the outset. Such a pragmatically defective approach does not apply in any other form of representative litigation, nor can it apply to PAGA enforcement proceedings.

For example, in *West Pico Furniture Co. of Los Angeles v. Superior Court,* 56 Cal.2d 407, 416 (1961), the defendant resisted interrogatories requesting the contact information of employees, arguing that the

information was irrelevant because the plaintiff did not possess sufficient facts to show that these individuals possessed relevant information. (*Id.* at 416.) Rejecting this argument, the Court of Appeal explained that "[f]rom a list of the names of Pacific's employees who handled the transactions, together with some indication of dates and duties, petitioner will be placed in a position so that it can select one or more such employees for the purpose of taking depositions.... But as a necessary corollary it must follow that such a party must not be prevented from first seeking (through an otherwise proper vehicle of discovery) sufficient information to enable him to take depositions."); (*see also, id.* at fn. 4 ("The fact that a triable issue has not yet been determined cannot bar the disclosure of information sought for the very purpose of trying that issue.")

These same principles must apply in PAGA enforcement actions. PAGA plaintiffs cannot be expected to present evidence of statewide practices without any opportunity to conduct a statewide investigation. This is particularly true when considering the detrimental consequences a "localized" PAGA paradigm would have on the State's overall enforcement efforts. (*See Supra,* Section II.A.2.)

C. In PAGA Actions, California Privacy Law Does Not Preclude the Production of Employee Contact Information

PAGA representatives must be entitled to the contact information of current and former employees in the same manner as State enforcement

agencies. This outcome is supported by the plain language of California's Labor Code, *see supra,* Section II.A.2. at p. p. 16-17 (bestowing the Commissioner's investigatory powers on his "deputies or agents"), as well as the purpose of PAGA enforcement actions generally. (*See supra,* Section II.A.2. at pp. 14-16.)

On a more fundamental level, this outcome is rooted in basic principles of California's privacy law. As this Court explained in *Pioneer,* "the right of privacy protects the individual's *reasonable expectation* of privacy against a serious invasion." (*Pioneer Electronics (USA), Inc., v. Superior Court* (2007) 40 Cal. 4th 360 (emphasis added).) Employees, however, do not have an expectation that the contact information they provide their employer will be shielded from agents of the government responsible for enforcing their statutory rights – here, an individual deputized by State of California through PAGA to enforce California's employment laws. Indeed, the Court of Appeal in *Belaire-West* expressly recognized that absent employees reasonably expect this information would be provided to government agencies for such purposes. (*See Belaire-West,* 149 Cal.App.4th at 561 ("It is most probable that the employees gave their address and telephone number to their employer with the expectation that it would not be divulged externally *except as required to governmental agencies...*") (emphasis added).) Even Marshalls admits that employees do not have a reasonable expectation that their contact information will be

shielded from the government. (*See* Marshalls' Ans. Br. at p. 53 ("courts routinely recognize that employees ... have a reasonable expectation that the private information given to their employer will remain confidential and will not be disseminated *except as required to government agencies and benefit providers.*") (emphasis added.)

Two important propositions can be taken from this Court's decision in *Pioneer*: (1) Contact information of individuals who voluntarily provided that information to a business is not "particularly sensitive," *Pioneer Electronics (USA), supra,* 40 Cal. 4th at 372; (2) This information is "generally discoverable." *Id.* at 373. These two propositions apply with equal force to PAGA enforcement actions. Contact information voluntarily provided to an employer is not particularly sensitive, and it is generally discoverable. Neither the Court of Appeal nor Marshalls provides any reason that these two propositions should not apply equally to class actions and PAGA enforcement proceedings.

A third proposition of *Pioneer* – that consumers may (or may not) have a reasonable expectation that their contact information would be shielded from private litigants, *id.* at 372 – however, does not apply to PAGA enforcement actions. Unlike class actions, PAGA plaintiffs are not simply private litigants; they are "agents," "proxies," and "deputies" of the State of California. The question, then, is this: Do employees have a reasonable expectation that the contact information they provide to their

employer would not be shared with agents of the government responsible for protecting their rights? The answer is no.

Employee contact information is routinely shared with agents of the government for a variety of reasons, be it tax, social security, unemployment, and indeed, government-sponsored enforcement actions. Employees surely are aware their contact information is shared with agents of the government, for any number of reasons, and nothing suggests this indefinite list of reasons would not include agents of the government deputized by the State of California to protect their statutory rights. Thus, because employees have no reasonable expectation that their contact information would be shielded from such agents of the government, Williams is entitled to statewide contact information of current and former employees.

Regardless, even if this Court finds that employees reasonably expect their contact information would be shielded from agents of the government responsible for enforcing their statutory rights, this Court's decision in *Pioneer* requires PAGA litigants be provided with statewide contact information for current and former employees, subject only to an opt-out notice.[4]

---

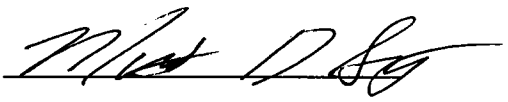
[4] Williams correctly argues that the Court of Appeal's analysis of California privacy law was incorrect as a matter of law, because the Court applied the constitutional right of privacy balancing test from *Lantz v. Superior Court* (1994) 28 Cal.App.4th 1839, 1853–1854(concerning

III. CONCLUSION

Based on the foregoing, CELA respectfully requests this Court reverse the decision of the Court of Appeal.

Dated: May 6, 2016

Respectfully submitted,

By: 

COHELAN KHOURY & SINGER
Michael D. Singer

Counsel for Amicus Curiae, California Employment Lawyers Association

---

"serious" invasions of privacy for which the individual had a reasonable expectation of privacy, and requiring a "compelling need" for the discovery), while ignoring the unbroken line of authority rejecting *Lantz's* approach to non-sensitive contact information in representative litigation, and applying this Court's decision in *Pioneer Electronics (USA), Inc. v. Sup. Ct* (2007) 40 Cal.4th 360, 372-73 (holding that these percipient witnesses have a reduced privacy expectation in contact information).

CERTIFICATE OF WORD COUNT

I, the undersigned, hereby certify that pursuant to Cal. Rules of Court, rule 8.204(c)(1), the attached Amicus Curai Brief has been produced using 13-point Roman type including footnotes and contains 8304 words, which is less than the total words permitted by the referenced rule. In making this certification, I rely on the word count function of the word-processing software (Microsoft Word) used to prepare this brief.

Dated: May 6, 2016

Respectfully submitted,

By: _____

COHELAN KHOURY & SINGER
Michael D. Singer

Counsel for Amicus Curiae, California Employment Lawyers Association

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 21650 Oxnard Street, Suite 140, Woodland Hills, CA, 91367.

On May 9, 2016, I served the foregoing document described as **APPLICATION FOR LEAVE TO FILE AND BRIEF OF AMICUS CURIAE, CALIFORNA EMPLOYMENT LAWYERS ASSOCIATION, IN SUPPORT OF PLAINTIFF-APPELLANT MICHAEL WILLIAMS** on all interested parties in said action as follows:

SEE ATTACHED SERVICE LIST

[X] (VIA US MAIL) I caused such envelope(s) to be deposited in the mail at Agoura Hills, California with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[X] (VIA FEDERAL EXPRESS) I caused to have served such document(s) by depositing them at the Federal Express office in Westltake Village, California, for priority overnight next day delivery.

[ ] (VIA PERSONAL SERVICE) I caused such envelope(s) to be delivered by hand to the offices of the addressees.

[X] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 9, 2016, at Woodland Hills, California.

Marc Shapiro

Williams v. Superior Court
California Supreme Court Case No. S227228

California Supreme Court 350 McAllister Street San Francisco, CA 943102	Original and 13 copies Via Federal Express
Jennifer Grock, Esq. Brian Van Vleck, Esq. VAN VLECK TURNER & ZALLER 6310 San Vicente Blvd., Suite 430 Los Angeles, CA 90048	Attorneys for Plaintiff Albert Ebo One copy, via U.S. Mail
Glenn A. Danas, esq. Robert Drexler, Esq. Liana Carter, Esq. Stan Karas, Esq. Ryan Wu, Esq. CAPSTONE LAW APC 1840 Century Park East, Suite 450 Los Angeles, CA 90067	Attorneys for Plaintiff and Appellant Michael Williams One copy, via U.S. Mail
Robert G. Hulteng, Esq. LITTLER MENDELSON, P.C. 650 California Street, 20th Floor San Francisco, C A 94108-2693	Attorneys for Real Party In Interest Marshalls of CA, LLC One copy, via U.S. Mail
Amy Todd-Gher, Esq. Kyle W. Nageotte, Esq. LITTLER MENDELSON, P.C. 501 W. Broadway, Suite 900 San Diego, CA 92101	Attorneys for Real Party In Interest Marshalls of CA, LLC One copy, via U.S. Mail
California Court of Appeal Second Appellate District, Div. 7 Ronald Reagan State Building 300 S. Spring Street Los Angeles, CA 90013	Court of Appeal Case No. B259967 One copy, via U.S. Mail

Clerk Los Angeles County Superior Court 111 N. Hill Street Los Angeles, CA 90012	Civil Case No. BC503806 One copy, via U.S. Mail
Hon. William F. Highberger Los Angeles County Superior Court Central Civil West Courthouse 600 S. Commonwealth Avenue Los Angeles, CA 90005	Civil Case No. BC503806 One copy, via U.S. Mail
Attorney General Appellate Coordinator Office of the Attorney General Consumer Law Section 300 S. Spring Street Los Angeles, CA 90013-1230	One copy, via U.S. Mail
District Attorney's Office County of Los Angeles 320 W. Temple Street, # 540 Los Angeles, CA 90012	One copy, via U.S. Mail