Case No. S227228

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

Court of Appeal of the State of California
2nd Civil No. B259967
Superior Court of the State of California
County of Los Angeles
The Honorable William F. Highberger, Judge Presiding
Civil Case No. BC503806

ANSWER TO PETITION FOR REVIEW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

PAGE

CASES

TABLE OF AUTHORITIES
(CONTINUED)

PAGE

STATUTES

OTHER AUTHORITIES

I. INTRODUCTION

Petitioner Michael Williams ("Petitioner") seeks review of a Court of Appeal decision affirming the well-established principle that trial courts have broad discretion to manage discovery matters. Given that the Court of Appeal's decision reinforces a fundamental tenet of California civil procedure, and does not raise any important new question of law, review is unwarranted under California Rules of Court, Rule 8.500(b)(1).

It is true that relatively few cases to date have been brought exclusively under The Private Attorneys General Act of 2004 ("PAGA"). However, the Court of Appeal's decision here did not resolve any novel statutory issue peculiar to PAGA. Instead, the decision confirmed the unremarkable proposition that a litigant bringing a civil claim is governed in discovery by the California Code of Civil Procedure. The Court of Appeal simply held that the trial court has the power and authority to control proceedings before it, including phasing discovery as appropriate. Particular deference should be given to the trial court's control of discovery here, as this case remains in its infancy, with no depositions and little to no discovery taken. The Court of Appeal rightly concluded that the trial court exercised prudent discretion in staging discovery incrementally at this early stage of the litigation.

Petitioner's sweeping claim -- that the public policies of PAGA are implicated by this preliminary decision -- is unfounded. In fact, Petitioner has *not been denied* the employee contact information he seeks. Based on the Court of Appeal's opinion, Petitioner retains every right to pursue all of the employee contact information he desires. However, consistent with the requirements of the Code of Civil Procedure, he must first provide some minimum factual support for his claims. Only then should Respondent

Marshalls of CA, LLC ("Marshalls") be required to disclose employees' private information on a massive, statewide scale. Petitioner should not have free rein to engage in statewide discovery on the basis of speculative claims contained in an unverified complaint alone.

Finally, Petitioner has not begun to establish that there are reviewable conflicts in the case law. Specifically, the Court of Appeal decision does not conflict with *Pioneer* or *Hill*, but instead confirms the application of the *Pioneer/Belaire-West* process to discovery requests that implicate privacy. The decision also does not conflict with the basic relevancy and liberality standards of California Code of Civil Procedure section 2017.010, as those standards were fully analyzed and applied by the Court of Appeal in reaching its determination.

Accordingly, the petition identifies neither an unsettled issue of law nor a conflict in existing law. This case involves a limited and preliminary ruling on the scope of discovery. It does nothing more than affirm a well-established civil procedure principle. Review should be denied.

II. Statement Of The Case

The underlying complaint in this matter alleges claims based on the PAGA, Labor Code section 2698, *et seq.* Specifically, the complaint alleges that Marshalls failed to provide meal or rest breaks and to properly reimburse business expenses, pursuant to Labor Code sections 226.7, 512, 2800, and 2802. (Court of Appeal's Opinion ("Opn.") at 1154). The complaint further alleges derivative claims for failure to provide accurate wage statements and failure to pay wages under Labor Code sections 204 and 226(a). (*Id.*)

In December 2014, Marshalls contacted Petitioner to schedule his deposition. (PA201.)[1] The deposition was scheduled to occur in January 2015, but Petitioner requested a postponement. (*Id.*) Petitioner was thereafter medically unavailable to sit for his deposition for several months. (*Id.*) Indeed, to date, Petitioner still has not appeared for his deposition. The record contains nothing from Petitioner – no declaration, no exhibits, no testimony.

However, while Petitioner has refused to sit for his deposition, he nonetheless served his own discovery requests, including one for the names, employment information, addresses, and telephone numbers for more than 16,000 non-exempt employees of Marshalls at more than 100 stores across California. (PA054.) Marshalls objected to this request on various grounds, including that the request was beyond the scope of permissible discovery and overbroad. (PA059.) Marshalls further objected that the request violated the legitimate privacy interest of its employees, who are third parties to this action. (PA059-60.) Finally, Marshalls asserted that Petitioner did not have a right to the information until he established that he had some basis to believe that employees, including himself, are "aggrieved" within the meaning of the PAGA. (PA059.)

Petitioner subsequently filed a Motion to Compel Further Responses to Special Interrogatories, Set One, seeking Marshalls' production of all of the employee-related contact information sought. (PA027.) After briefing by both parties, and two hearings on the issue, on September 9, 2014, the

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[1] Petitioner's Appendix for the Petition for Writ of Mandate will be referenced pursuant to the Bates numbers provided by Petitioner (PA), and, where appropriate, paragraph or line numbers. Citation abbreviations for the hearing transcript contained in Petitioner's Exhibit 19 for the Petition for Writ of Mandate will be: [Bates number:line number(s).]

trial court granted in part Petitioner's Motion to Compel the contact and employment information of Marshalls employees. (PA229-30.) The trial court ordered discovery of the requested information for the Marshalls store where Petitioner worked (Costa Mesa) and denied statewide discovery of the requested information for thousands of Marshalls employees throughout California. (*Id.*) The trial court held that the order was without prejudice, providing that Petitioner could obtain additional discovery after making a minimal showing of violations occurring beyond the Costa Mesa store. (*Id.*)

On May 15, 2015, the Court of Appeal affirmed the trial court's ruling.

III. This Case Is Inappropriate For Supreme Court Review

A. The Opinion Evidences No Lack of Uniformity In The Law Or Unsettled Important Legal Issues.

The question on review is whether this Court's intervention is "necessary to secure uniformity of decision or to settle an important question of law." (CRC 8.500(b)(1)); *see also People v. Davis*, 147 C 346, 348 (1905)). Petitioner identifies no issues that meet these criteria for review.

1. The Court of Appeal Affirmed The Long-Standing Principle That Trial Courts Have Broad Discretion to Manage Discovery Matters.

The principle that trial courts have broad discretion to manage discovery matters is well-settled. *See* Cal. Code Civ. Pro. § 128(a)(3) (courts are empowered to provide for the orderly conduct of proceedings before them); Cal. Code Civ. Pro. § 128(a)(5) (courts control conduct of

any "any persons in any manner connected with a judicial proceeding before it, in every matter pertaining thereto"); *John B. v. Superior Court*, 38 Cal. 4th 1177, 1186 (2006) (trial court is vested with wide discretion to grant or deny discovery that may only be disturbed upon an abuse of discretion); *People v. DeSantis*, 2 Cal. 4th 1198, 1226 (1992) (same); *Lipton v. Superior Court*, 48 Cal. App. 4th 1599, 1612 (1996) (reviewing court should not substitute its opinion for that of the trial court when discovery ruling supported by the evidence); *Obregon v. Superior Court*, 67 Cal. 4th 424, 431 (1998) (even initial discovery requests can be "misused in an attempt to generate settlement leverage by creating burden, expense, embarrassment, distraction, etc. It is a judge's responsibility to control such abuse").

This Court has recognized that California trial courts have inherent powers, independent of statute, to control the conduct in their courtrooms, derived from two distinct sources: the courts' "equitable power derived from the historic power of equity courts" and "supervisory or administrative powers which all courts possess to enable them to carry out their duties." *Bauguess v. Paine*, 22 Cal.3d 626, 635 (1978). In support of this proposition, *Bauguess* cites *Bloniarz v. Roloson*, 70 Cal.2d 143, 147-148 (1969): "As distinguished from equity jurisdiction, every court of record has power requisite to its proper functioning as an independent constitutional department."

The trial court's broad discretion to control discovery matters should certainly be respected on the particular facts of this case. The parties had exchanged minimal discovery, and not a single deposition had been taken at the time of the court's order. Even more significant is the fact that there was no denial of discovery here, only a delay. In ruling on Petitioner's

Motion to Compel, the trial court stated that the statewide contact information may be ordered at a later date, subject to Petitioner making at least a minimal showing that such discovery is proper. (PA229-30.) In fact, the trial court specifically stated that the order was, "without prejudice to the plaintiff coming back for more." (PA257:3-4.)

Petitioner requests that this Court intervene at this preliminary stage of the case, and force statewide discovery immediately. Thus, Petitioner improperly invites this Court to provide an advisory opinion on a non-dispositive discovery order that is, by its terms, subject to further review and modification by the trial court as litigation proceeds. Petitioner offers no explanation as to why he has not at least tried to make the minimal showing requested by the trial court. If he had focused on that task, he might well have had much or all of the discovery he seeks by now. In short, Petitioner has established no legal or equitable basis for disturbing the order of the trial court.

2. *Iskanian* and *Arias* Do Not Confer "Super Discovery" Powers On PAGA Plaintiffs Or Divest Trial Courts Of Their Authority To Regulate The Cases Before Them.

Petitioner argues that *Iskanian v. CLS Trans. L.A., LLC*, 59 Cal. 4th 348 (2014) and *Arias v. Superior Court*, 46 Cal. 4th 969 (2009) entitle PAGA plaintiffs to "greater discovery rights than a class action Plaintiff" and to immediate access to statewide employee contact information based on the bare allegations of a PAGA complaint. (Petn. at 25-29.) Petitioner further argues that without this access, the public policies underlying PAGA are jeopardized. (*Id.*) Contrary to Petitioner's assertions, the *Iskanian* and *Arias* decisions do not confer "super discovery" rights on

PAGA plaintiffs, but instead simply hold that a PAGA plaintiff represents the same right and interest as the Labor Commissioner in obtaining penalties for violations of the Labor Code. (*See Arias,* 46 Cal. 4th at 986 ("[T]he employee plaintiff represents the same legal right and interest as state labor law enforcement agencies."); *Iskanian v. CLS Trans. L.A., LLC*, 59 Cal. 4th 348 (2014) (same)). Neither *Iskanian* nor *Arias* remotely support the novel proposition that PAGA divests the trial court of its authority to regulate the cases before it.

Petitioner correctly states that the Division of Labor Standards Enforcement ("DLSE") is given wide authority to enforce the Labor Code. The DLSE may conduct audits, issue subpoenas, investigate violations, and engage in various other duties under the power conferred by the Labor Code. (*See* Cal. Lab. Code §§ 61, 74, 90, 90.5, 92, 93, 1174, 1193.5, 1193.6, 1194.2, 1197.1.) PAGA gives private citizens the right to bring an action for Labor Code violations, but it does not confer upon them any of the Labor Commissioner's other powers. (*See* Cal. Lab. Code § 2698 *et seq.*). PAGA plaintiffs' deputized roles are limited by the discretion of the superior court to manage its cases, including any discovery disputes that may arise during litigation. (*Id.*) PAGA does not give plaintiffs the right to issue subpoenas, enter an employer's premises, audit wage records, request employee records from employers, or engage in any other action reserved for the labor commissioner. (*Id.*) PAGA simply provides aggrieved employees with the right to bring an action for penalties. (*Id.*)

When an employee elects to forgo the filing of an administrative claim before the DLSE, and instead chooses to file a lawsuit under PAGA, that employee voluntarily submits to the court's jurisdiction. Having made

that choice, the employee cannot complain when the court reasonably exercises its discretion to manage discovery.

Here, the trial court concluded that Petitioner had not yet justified the discovery of private employment and contact information for 16,000 employees across California in approximately 128 locations. In affirming this decision, the Court of Appeal did not create new law in the PAGA context, but simply followed the basic rules of civil procedure, holding that, "[d]iscovery in a civil action is governed by the Code of Civil Procedure ... discovery in a civil action brought under the PAGA [is] subject to the same rules as discovery in civil actions generally." (Opn. at 1157-58.)

Further, contrary to Petitioner's assertions, the Court of Appeal has not provided Petitioner with "only a fraction of the discovery sought." (Petn. at 26.) To the contrary, both the trial court and the Court of Appeal deferred any decision on the discoverability of statewide information until Petitioner can present at least some evidence of legal violations by Marshalls. (PA229-30.) Again, the trial court made clear that its decision was without prejudice to Petitioner seeking additional employee contact information as the litigation progresses. (*Id.*)

3. Petitioner Mischaracterizes The Court Of Appeal's Opinion In A Vain Attempt To Create A Reviewable Conflict.

In requesting review, Petitioner takes language out of context and contorts the Court of Appeal's opinion in an effort to create the appearance of conflicts that simply do not exist.[2] The Court of Appeal's decision does

[2] Petitioner's argument that the Court of Appeal "engrafts a [class action] commonality requirement onto PAGA actions" is based entirely on taking language in the opinion out of context. (Petn. at 20-21.) In line with the principle that trial courts have broad discretion over discovery matters, the

not conflict with *Pioneer Electronics (USA), Inc. v. Superior Court*, 40 Cal.4th 360 (2007), *Hill v. National Collegiate Athletic Association*, 7 Cal.4th 1 (1994), California Code of Civil Procedure Section 2017.010, or any other statute or decision of this Court or the lower appellate courts.

a. No Reviewable Conflict Exists Based On *Pioneer* or *Hill*.

The Court of Appeal's opinion does not part with *Pioneer*, and in fact required that the parties participate in a *Belaire-West* notice process that is consistent with *Pioneer's* reasoning.[3] (*See Pioneer Electronics (USA), Inc. v. Superior Court*, 40 Cal.4th 360 (2007); *Belaire-West Landscape, Inc. v. Superior Court*, 149 Cal.App.4th 554, 556 (2007).) Contrary to Petitioner's arguments, the Court of Appeal has not denied production of current and former employees' contact information, as the trial court granted Petitioner's motion to compel the contact information of all non-exempt employees who worked at Petitioner's store in Costa Mesa from March 22, 2012 to the present. (PA229-230.) The Court of Appeal

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Court of Appeal noted that, "The trial court could reasonably conclude that the second task will be to establish Marshalls'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." (Opn. at 1159). Petitioner omits the words "The trial court could reasonably conclude that..." and in doing so implies inaccurately that the Court of Appeal requires that this "second task" occur in every case. (Opn. at 1159; Petn. at 20-1.)

[3] While Marshalls accepts this ruling, it respectfully disagrees that a *Belaire-West* process is necessary. As Marshalls noted in its Return to Petition for Writ of Mandate, "*Belaire-West* notices are inapplicable to the instant action, where no class will be certified and where the third parties have no right to opt-out of the action." (*See* Return to Petition for Writ of Mandate, pp. 25-26.) Marshalls argued that "... other Marshalls employees are third parties to this action, are not represented by Plaintiffs' counsel, and may never have any potential recovery here." (*Id.*)

affirmed this order. The result is that Marshalls must produce the list of Costa Mesa employees, following the notice process required by *Pioneer/Belaire-West*. Thus, there is no "direct split of authority" created here, as the trial court and the Court of Appeal followed the very *Pioneer/Belaire-West* process that Petitioner suggests.

Petitioner's attempt to create a conflict with *Hill* and *Lantz* is similarly misguided. (*See Hill v. National Collegiate Athletic Association*, 7 Cal.4th 1 (1994); *Lantz v. Superior Court*, 28 Cal.App.4th 1839 (1994).) Both cases recognize that private parties (as opposed to government agencies) have privacy interests, and that their constitutional rights to privacy must be balanced against disclosure. (*Hill*, 7 Cal. 4th at 34-35, 38; *Lantz*, 28 Cal. App. 4th at 1853-55.) Here, the Court of Appeal properly struck that balance, given that the 16,000 Marshalls employees have a legitimate expectation of privacy in their personal contact information, and that Petitioner has shown no evidence of a practice or policy that impacted these 16,000 employees. (Opn. at 1158-59.) Again, the *Hill* and *Pioneer* tests are directly cited by and incorporated into the *Belaire-West* process implemented in this case by the trial court and affirmed by the Court of Appeal. (*See Belaire-West Landscape, Inc.* 149 Cal.App.4th at 558-561.) *Belaire-West* also recognized that "[t]he contact information for Belaire-West's current and former employees deserves privacy protection... 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 (such as the Internal Revenue Service, the Social Security Administration, etc.) or to benefits providers such as insurance companies." (*Id.* at 561.) All of the relevant

case law – *Hill, Lantz, Pioneer* and *Belaire-West* – require a balancing of interests. And that is precisely what the Court of Appeal did here.

b. No Reviewable Conflict Exists Based On The California Code Of Civil Procedure.

Petitioner states inaccurately that "the Court of Appeal failed to apply the broad, liberal principles of the discovery statute" and instead improperly adopted a "good cause" standard requiring that PAGA plaintiffs "must preliminary [*sic*] prove the merits of their case." (Petn. at 15.) In fact, the Court of Appeal specifically began its analysis by citing the applicable Section 2017.010 and 2017.020 standards, including that the "rules are applied liberally in favor of discovery." (Opn. at 1155.) Section 2017.010 provides that matters are subject to discovery, "if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." (*Id.* (*citing* Cal. Civ. Proc. Code § 2017.010.)) However, it is well-established that, "[t]he burden rests upon the party seeking the discovery to provide *evidence* from which the court may determine these conditions are met." (*See Calcor Space Facility, Inc. v. Superior Court*, 53 Cal.App.4th 216, 223 (1997) ("*Calcor*") (emphasis in original); *Obregon v. Superior Court*, 67 Cal.App.4th 424 (1998) ("When discovery requests are grossly overbroad on their face, and hence do not appear reasonably related to a legitimate discovery need, a reasonable inference can be drawn of an intent to harass and improperly burden...[a] trial judge's perceptions on such matters, inherently factual in nature at least in part, must not be lightly disturbed.")

Petitioner conveniently fails to mention the Court of Appeals' reliance on *Calcor*. (*Id.*) The *Calcor* court concluded that, unlike Section 2031 (governing inspection demands), then-current Section 2020, providing

for the non-party discovery at issue, contained no "good cause" requirement. (*Id.* at 224.) "[H]owever, since both sections are part of a single statutory scheme, and since it is unlikely the Legislature intended to place greater burdens on a nonparty than on a party to the litigation, we read a similar [good cause] requirement into the latter section." (*Id.*) Because the thousands of Marshalls employees for whom Petitioner seeks contact information are non-parties, the *Calcor* ruling is directly applicable.

Moreover, the Court of Appeal did not create a new "good cause" requirement, but instead followed the long-standing principle that a party cannot use discovery to engage in a fishing expedition. Rather, the party seeking discovery must provide some minimal facts to suggest that the evidence sought has relevance to the claims in the complaint. The Court of Appeal did not fashion any "new rules" or "new hurdles," but instead simply applied *Calcor* to the facts of this case.

B. The Unique Facts In This Early Stage Case Counsel Against Review.

As the Court of Appeal noted, "[a]t this nascent stage of petitioner's PAGA action there has as yet been no discovery – petitioner has not even sat for his own deposition. The litigation therefore consists solely of the allegations in his complaint." (Opn. at 1156-57.) The trial court has made an initial ruling that, "[b]ecause the discovery sought is massive – the names of all current and former non-exempt employees who worked at 129 stores throughout California subject to a *Belaire-West Landscape* process – the Court does believe it needs to manage and limit the costs of discovery." (PA229.) The trial court did not close the door on additional discovery of employee names; in fact, the trial court left that door wide open for Petitioner. However, rather than move forward with discovery, including

appearing for his own deposition, Petitioner has instead filed this petition for review. If nothing else, the petition is clearly premature. Given the preliminary procedural posture of this case, and the open invitation for Petitioner to renew his motion later, there is simply no need for this Court to intervene now.

IV. CONCLUSION

As demonstrated above, Petitioner fails to demonstrate a conflict in the law or an important unsettled question warranting review. As such, Marshalls respectfully requests the Court deny Petitioner's Petition for Review.

Dated: July 15, 2015

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By: _____
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CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, Rules 8.204(c) and 8.486(a)(6), I certify that the forgoing ANSWER TO PETITION FOR REVIEW is proportionally spaced, has a typeface of 13 points, is double-line spaced, and that the word court is 3,493 words, exclusive of the tables and contents and authorities, according to the word count function of the computer program used to prepare it.

Executed this 15th day of July, 2015, at San Francisco, California.

ROBERT G. HULTENG

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PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 650 California Street, 20th Floor, San Francisco, California 94108-2693. On July 15, 2015, I served the within document(s):

MARSHALL'S OF CA, LLC'S ANSWER TO PETITION FOR REVIEW

VIA ELECTRONIC MAIL: Based on a court order or an agreement of the parties to accept electronic service, I caused the document(s) to be sent to the persons at the electronic service addresses listed as follows:

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(*as to Capstone Law and Van Vleck Turner & Zaller LLP*)

☒ By depositing a true copy of the same enclosed in a sealed envelope, with delivery fees provided for, in an overnight delivery service pick up box or office designated for overnight delivery, and addressed as set forth below. (*as to Los Angeles Superior Court and Court of Appeals)*

☐ by placing a true copy of the document(s) listed above for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at San Francisco, California addressed as set forth below.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing and for shipping via overnight delivery service. Under that practice it would be deposited with the U.S. Postal Service or if an overnight delivery service shipment, deposited in an overnight delivery service pick-up box or office on the same day with postage or fees thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 15, 2015, at San Francisco, California.

Nicole Gostnell

SERVICE LIST

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