No. S227228

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

MICHAEL WILLIAMS, an 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.

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

APPELLANT'S REPLY BRIEF

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I. THE TRIAL COURT ABUSED ITS DISCRETION BY REQUIRING WILLIAMS TO SATISFY PRELIMINARY MERITS HURDLES BEFORE OBTAINING BASIC DISCOVERY

A. The Pleadings Control The Scope of Discovery

Marshalls has no direct response to Petitioner Michael Williams's primary argument that his interrogatory request is relevant to his allegations. Instead, in its Answer Brief ("Ans."), Marshalls leans heavily on the trial court's discretion to manage discovery. (Pp.11-12.) However, this Court has stated that "it is only under unusual circumstances that the courts restrict discovery of nonparty witnesses' residential contact information." (*Cty. of Los Angeles v. Los Angeles Cty. Employee Relations Com.* (2013) 56 Cal. 4th 905, 930 [quoting *Puerto v. Superior Court* (2008) 158 Cal.App.4th 1242, 1254].) Thus, that discretion does not permit a court to categorically deny discovery of information relevant to the plaintiff's alleged claims and remedies. (See *Alch v. Superior Court* (2008) 165 Cal.App.4th 1412, 1429-33 [finding abuse of discretion where denial of contact and other information prevented plaintiff from pursuing statistical analysis supporting his claims].) Marshalls fails to rebut Williams's demonstration that his discovery request is tethered to his allegations for penalties under the Labor Code Private Attorneys General Act ("PAGA") and is therefore relevant.

Williams alleges that Marshalls employs non-exempt hourly paid employees "in various locations throughout California," that Marshalls implemented "systematic, company-wide polic[ies]" that violate certain provisions of the California

Labor Code, and that one or more of these violations were committed against him and Marshalls's current or former employees, rendering them all "aggrieved employees."[1]

Through an interrogatory, Williams seeks the names and contact information of other employees in California so that he may contact them for further information that supports those statewide allegations, such as the allegation that Marshalls's meal and rest break policies implemented throughout California violate California law. (PA 252:9-28 [arguing Marshalls's meal and rest break policies are facially illegal under *Brinker Rest. v. Superior Court* (2012) 53 Cal.4th 1004].) Because this discovery is tethered to specific allegations in Williams's complaint, it is reasonably calculated to lead to admissible evidence. (Opng. Brf., pp.25-30.) However, the courts below disregarded Williams's statewide allegations and instead required that he demonstrate knowledge of actual violations committed against other employees. (See *Williams v. Superior Court* (2015) 236 Cal.App.4th 1151, 1157.) Notably, the Court of Appeal also mischaracterized Williams's allegations as having to do with violations that occurred "only [at] the Costa Mesa store." (*Ibid.*)

Unable to justify the rulings below, Marshalls instead points to case law that actually further demonstrates that the scope of discovery is dictated by the plaintiff's allegations. For instance, *Obregon v. Superior Court* (1998) 67 Cal.App.4th 424 was neither a class action nor a representative action, and the

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[1] (See Opening Brief on the Merits ["Opng. Brf."], pp.26-27, [citing the record].)

trial court never reached the merits of the discovery requests. (*Id.* at p.428.) In *Obregon*, the trial judge observed the attorneys, their credibility, and motivations in rendering a decision (Ans.,p.13), but this was in the context of determining "good faith" informal resolution efforts under former Code of Civil Procedure section 2030(l). (*Id.* at p.430.) That analysis is not relevant here.[2]

In *Deaile v. General Telephone Co. of California.* (1974) 40 Cal.App.3d 841, the plaintiff brought claims for defamation, intentional infliction of emotional distress, and wrongful discharge after she was forced to retire for lying about several work absences. The plaintiff's interrogatories sought the names and addresses of "each woman employee" and the status of her employment. (*Id.* at p.850.) The court sustained the defendants' objections to these interrogatories, as other female employees, whom the plaintiff did not seek to represent, were irrelevant to the plaintiff's individual defamation case and outside the scope of her allegations. (*Id.* at p.851.)

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[2] *Obregon* actually observes that "discovery statutes have generally been construed to uphold the right to discovery wherever reasonable and possible." (67 Cal.App.4th at p.434.) And *Obregon* is relevant only in that it reiterated that a "central precept" of the Civil Discovery Act is that discovery "be essentially self-executing." (*Id.* at p.434 [citations and quotation marks omitted].) Here, the decision below, by conditioning the production of routine employee contact information on the plaintiff's deposition testimony, would exacerbate discovery disputes with little guidance on what that plaintiff would need to prove in order to obtain such discovery. Given this uncertainty, court intervention is likely in nearly every PAGA case, thereby negating the self-executing nature of discovery.

Lastly, in *Ryan v. Superior Court* (1960) 186 Cal.App.2d 813, an individual plaintiff sued fellow publishers alleging unfair competition and seeking damages and to enjoin the publication of certain books that may be confused for plaintiff's books. (*Id.* at pp.815-16.) The plaintiff challenged various interrogatories the defendants propounded to her, including one that sought the "names and addresses of all persons who have been employed by plaintiff in the publication of all issues of plaintiff's publication." (*Id.* at p.818.) Because the plaintiff's employment practices were not at issue, the court found that such an interrogatory was not permitted. (*Id.*)

None of Marshalls's cases addresses the instant scenario—where discovery is sought from a defendant-employer whose allegedly widespread wage and hour practices *are* at issue, where current and former employees are thus "potential percipient witnesses" to these wage practices—as Williams's cited authorities do. (See, e.g., *Puerto*, 158 Cal.App.4th at p.1248 [describing interrogatory as concerning the "the plaintiff's right to investigate their claims to contact witnesses" in a wage and hour class action].)

B. The Preliminary Merits Hurdles Cause Prejudice And Are Not Required For Basic Discovery

Although the courts below denied over 99% of the discovery Williams requested, Marshalls disavows any prejudice to plaintiff. (Ans., pp.16-17) Instead, Marshalls exalts these decisions as holding that "a PAGA plaintiff has the burden to establish that he and other employees are indeed 'aggrieved,'

before the plaintiff earns the right to broad discovery." (*Id.*, p.59 [emphasis added].) Under the ruling below, a PAGA plaintiff must now *demonstrate*, at the *outset of the litigation,* that specific violations were committed against other aggrieved employees through evidentiary facts, *before* he can contact other employees.

Conditioning routine discovery, such as contact information of percipient witnesses, on proof of ultimate facts, would invert the discovery process—a deleterious consequence that courts seek to avoid. (See *W. Pico Furniture Co. v. Superior Court* (1961) 56 Cal.2d 407, 419 fn. 4 ["[T]he 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."].) The prejudice in denying such discovery is particularly acute in employment cases, where defendant-employers have exclusive access to nearly all the employee contact information and thus a tremendous litigation advantage. (See, e.g., *Crab Addison v. Superior Court* (2008) 169 Cal.App.4th 958, 968; *Puerto*, 158 Cal.App.4th at p.1256 ["The trial court imposed no order preventing [the defendant] from using the addresses and telephone numbers of these individuals in preparing its case, creating an inequitable situation in which one party has access to all, or nearly all potential witnesses."].) Permitting Williams's discovery request would merely help level the playing field, allowing both sides equal access to witnesses. (*Pioneer Elecs. (USA), Inc. v. Superior Court* (2007) 40 Cal.4th 360, 374 ["[Defendant] would possess a significant advantage if it could retain for its own exclusive use and benefit the contact information [sought]."].)

Indeed, the decision below, if widely adopted, would effectively bar a PAGA plaintiff from being able to prosecute civil penalties for violations against other aggrieved employees. After all, the PAGA plaintiff—often a low-wage worker—rarely will have procured policies or gathered evidence of practices outside of discovery. Interviewing employees at other locations may often be the only way to obtain knowledge of an employer's unlawful practices in those locations. (See *Belaire-West Landscape v. Superior Court* (2007) 149 Cal.App.4th 554, 562 [finding that "current and former employees are potential percipient witnesses to Belaire-West's employment and wage practices . . . ."); cf. *McLaughlin v. Ho Fat Seto* (9th Cir. 1988) 850 F.2d 586, 589 [finding wage violations through representative testimony].)

Marshalls's remaining arguments are equally baseless. The Court should disregard Marshalls's rote citation to standards of review from a decades-old case and inapplicable statutory provision. (See Ans., pp.16-17 [citing *L.A. v. Superior Court* (1961) 196 Cal.App.2d 743 and Civ. Proc. Code § 475].) Likewise, the court should disregard Marshalls's accusation that "the fault lies with [Williams]" with respect to prejudice. (Ans., p.17.) This is premised on Marshalls's fabricated claim that Williams refused to appear for deposition. In fact, after having to postpone his deposition for personal reasons, Williams remained available to be deposed, which is confirmed by his counsel repeatedly inviting Marshalls to propose dates for this deposition. (See Appellant's Motion For Judicial Notice, Exhibit 1 at p.1, ¶¶2-3 and Exhibit A therewith.) Instead, Marshalls declined to depose Williams and

moved to stay the proceedings. (*Id.* at ¶4 and Exhibit B.)

More importantly, Marshalls cites no authority supporting the trial court's novel requirement that a plaintiff must sit "for at least six productive hours of deposition" prior to seeking the discovery requested. (PA 230.) To the contrary, nothing in the *Pioneer* line of cases required that depositions be taken prior to allowing the requested discovery or that the merits of the claims be proven first.[3]

C. Marshalls Concedes That No Showing of Good Cause Is Required By Williams

Marshalls admits the Court of Appeal wrongly imposed a non-existent "good cause" requirement in considering a motion to compel further responses to interrogatories, which is governed by Code of Civil Procedure section 2030.300. (Ans., p.18 ["Appellant notes correctly that California Code of Civil Procedure section 2030.300 does not include a 'good cause' standard."].) Marshalls nonetheless tries to stitch together a "good cause" rule from fragments of Code of Civil Procedure 2019.020; *Columbia Broadcasting System v. Superior Court* (1968) 263 Cal.App.2d 12; and language in the trial court's order regarding the costs of discovery. (Ans., p.18.) This is untenable.

Code of Civil Procedure 2019.020 provides that "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." (Code Civ.Proc.

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[3] This also disposes of Marshalls's additional argument that Williams should have deposed Marshalls's person most knowledgeable prior to seeking the discovery at issue.

§ 2019.020(b).) As Williams is not seeking to change the sequence or timing of discovery, this provision is inapplicable.

And *Columbia Broadcasting* itself notes that Code of Civil Procedure section 2030 "does not require any showing of good cause for the serving and filing of interrogatories," as Marshalls begrudgingly acknowledges. (262 Cal.App.2d at p.18.) Indeed, *Columbia Broadcasting* actually supports reversal here, stating that "in deciding a motion under section 2030 the trial court must, of necessity, consider not only the stated objections to the interrogatories, but also the interrogatories themselves, as well as the pleadings, and the contentions of the interrogating party as to the purpose and validity of the interrogatories." (*Id.* at pp.18-19.) The Court of Appeal eschewed this guideline by failing to actually address the pleadings, mischaracterizing Williams's statewide allegations as being about one local store, and failing to address the stated purpose of the interrogatories, which is to contact fellow aggrieved employees who are percipient witnesses to Marshalls's day-to-day employment practices.

Lastly, Marshalls upends the good cause requirement, attempting to equate "good cause" with "common sense." (Ans., p.20.) This argument is illogical ("good cause" is not synonymous with merely stating a reason for the court's decision), but even if "common sense" were an appropriate basis for the limitations imposed, the trial court's reasoning does not withstand independent scrutiny. The trial court's decision was purportedly based on the "costs" that would be occasioned by such "massive" discovery. (PA 229.) However, the trial court never made any

findings regarding cost or the burden of producing Marshalls' employees' contact information, and Marshalls adduced no facts demonstrating burden or cost. (See *W. Pico Furniture*, 56 Cal.2d at p.417 [noting that an "objection based upon burden must be sustained by evidence showing the quantum of work required".) Moreover, such costs would be presumably minimal, as such data are stored in a computer, and can be retrieved almost instantly.

Further, in open court, Williams's counsel expressed his willingness to reduce or defray any such costs by receiving only an initial sampling of employee contact information, so long as such sampling was distributed geographically throughout Marshalls's locations. (See PA 241:27-244:28.) Yet the trial court rejected this approach without providing any rationale for doing so. Instead, the trial court imposed unprecedented burdens on Williams, forcing him to attest to ultimate facts under oath before he can obtain basic contact information of the very employees he is empowered to represent. This is a clear-cut case of abuse of discretion requiring reversal.

D. The Order Below Contravenes The Statutory Language And Legislative Purpose Of PAGA

1. The PAGA Statute Does Not Limit The Aggrieved Employee To Alleging Facts Only Within His Personal Knowledge

Under the Civil Discovery Act, a plaintiff is entitled to discovery "reasonably calculated to lead to admissible evidence" supporting his or her claims. As explained above, so long as the discovery request is tethered to the allegations in the pleadings, the request is within the scope of permissible discovery.

Marshalls does not suggest that Williams's interrogatory is

entirely unconnected to the allegations set forth in his complaint. Rather, Marshalls argues, and the courts below agreed, that "on information and belief" allegations are insufficient to qualify Williams to collect penalties for violations against other employees. (See Ans., pp.22-23; *Williams*, at p.1157.) Essentially denying the validity of Williams's factual allegations, Marshalls and the courts below have instead imposed a "personal knowledge" requirement for alleging violations against other employees.

The PAGA statutory language plainly does not contain a "personal knowledge" requirement. Section 2699 defines the PAGA action as one "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." (*Id.*, § 2699(a).) Aside from pleading administrative exhaustion pursuant to Section 2699.3 and that the plaintiff has experienced at least one Labor Code violation (Lab.Code § 2699(c)), Section 2699 does not prescribe any specific requirements in order to state a cause of action under PAGA. The statute does not, for instance, require that a plaintiff have specific knowledge of violations committed against other employees, as Marshalls would have it. (Ans., p.31.)

For statutes without a specific knowledge prong, "the complaint ordinarily is sufficient if it alleges ultimate rather than evidentiary facts." (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550,) And even "[l]ess particularity [in pleading] is required when it appears that defendant has superior knowledge of the

facts, so long as the pleading gives notice of the issues sufficient to enable preparation of a defense." (*Okun v. Superior Court* (1981) 29 Cal.3d 442, 458.) As set forth above, in an employment action, the employer has superior knowledge of the facts, including its policies and practices as implemented with respect to other employees. Thus, in this case, "information and belief" pleading is sufficient, and any requested discovery relevant to those pleadings should be produced.

2. PAGA Authorizes An Aggrieved Employee To Act As A Private Attorney General To Collect Civil Penalties Committed Against Other Employees

The decisions below, holding that a PAGA plaintiff must evince specific, personal knowledge of the violations against other employees at the outset of the case, cannot be squared with PAGA's statutory purpose. PAGA, like other statutes protecting employees or enacted for a public purpose, should be broadly interpreted to effectuate its purpose. (See *Iskanian v. CLS Transp. Los Angeles* (2014) 59 Cal.4th 348, 383 [finding a PAGA representative claim is unwaivable because the statute was enacted for a public purpose]; *Kirby v. Immoos Fire Protection* (2012) 53 Cal.4th 1244, 1250 [holding that statutes "governing conditions of employment are to be construed broadly in favor of protecting employees."].)

"A PAGA action is a statutory action in which the penalties available are measured by the number of Labor Code violations committed against the employer." (*Sakkab v. Luxottica Ret. N.A.* (9th Cir. 2015) 803 F.3d 425, 435.) "As the state's proxy, an employee-plaintiff may obtain civil penalties for violations

committed against absent employees [citation], just as the state could have if it brought an enforcement action directly." (*Id.*) This "right to act as a private attorney general to recover the full measure of penalties the state could recover" is the "central feature of the PAGA's private enforcement scheme." (*Id.* at p.439.) PAGA's purpose would be undermined if the employee-plaintiff were impeded from investigating violations committed against other employees during the discovery phase.

Avoiding *Iskanian* and *Sakkab*'s discussion of PAGA's purpose, Marshalls relies on a hodgepodge of disjointed reasoning to argue that PAGA should be construed narrowly. (Ans., p.22-28.) First, Marshalls conflates Section 2699.3—which requires "facts and theories" in the *LWDA notice*—with Section 2699, which contains no such requirement for the *pleading*.[4] As explained, once he has satisfied the administrative prerequisites under Section 2699.3, Williams may plead ultimate facts in his PAGA complaint. As Marshalls has not sought to attack the sufficiency of Williams's LWDA notice through a pleading motion or summary judgment, its invocation of "facts and theories" is a

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[4] Marshalls relies on a pair of outlier district court decisions, *Chie v. Reed Elsevier* (N.D.Cal. Sep. 2, 2012) 2011 U.S.Dist.Lexis 99153 and *Jeske v. Maxim Healthcare Svs.* (E.D.Cal. Jan. 10, 2012) 2012 U.S.Dist.Lexis 2963, that dismissed PAGA actions for failing to specifically "define" aggrieved employees. (Ans., pp.25-26.) Neither court had the benefit of *Sakkab* and *Iskanian*, and neither finds support for its reasoning in the PAGA statute. Nonetheless, Williams *does* specifically define aggrieved employees as those who were subject to certain specific policies that violate the Labor Code. (See Opng. Brf., pp.26-27.)

red herring.

Second, contrary to Marshall's suggestion (Ans., p.26), it does not follow from PAGA's express language authorizing courts to limit civil penalties under certain circumstances (Lab.Code §2699(e)(2)) that the statute also authorizes the court to impose pleading requirements or preliminary discovery hurdles not applicable to other types of actions. The omission of such language strongly suggests that the trial court has no such power.

Third, Marshalls contends that PAGA is a "quasi-penal" statute that must be strictly construed. (*Id.* at pp.27-28.) This is wrong, as the rule of strict construction does not apply to a statute like PAGA that "prescribes civil monetary penalties." (*Home Depot v. Superior Court* (2010) 191 Cal.App.4th 210, 224 [rejecting strict construction of PAGA as a purported "penal statute"].)

Finally, Marshalls's reliance on legislative history is misplaced. Marshalls observes that the 2004 Amendment requires the plaintiff to allege "facts and theories" in the LWDA notice. (Ans., p.25.) As noted, the legislature did not amend Section 2699 to require the plaintiff to allege specific "facts and theories" for initiating the PAGA suit, and Williams *did* allege facts and theories supporting his claims. (See Opng. Brf., pp.26-27.)

Marshalls also singles out language from the legislative history suggesting that the legislature wanted to avoid empowering a plaintiff lacking any injury to bring PAGA claims.

(Ans., pp.32-33.) But this concern was already addressed through Subsection 2699(a), which specifies that a PAGA plaintiff must allege that "one or more violations" were committed against him.

In fact, the legislature stated that PAGA is "intended to augment the enforcement abilities of the Labor Commissioner by creating an alternative "'private attorney general' system for labor law enforcement." (*Dunlap v. Superior Court* (2006) 142 Cal.App.4th 330, 337 [quoting Sen. Rules Com., Off. Of Sen. Floor Analyses, analysis of Sen. Bill No. 796 (2003-2004 Reg. Sess.)].) As explained in the opening brief, the PAGA plaintiff cannot act as a proxy of the LWDA to collect civil penalties without being afforded any of the tools necessary to accomplish that goal. To this point, Marshalls absurdly suggests that the PAGA plaintiff has *no power* to investigate Labor Code claims, but may only assess civil penalties. (Ans., p.29.)

To be sure, Williams is not requesting "super-discovery rights" or the equivalent of the Labor Commissioner's powers here. Rather, he is simply seeking contact information directly relevant to his allegations that Marshalls engaged in policies and practices throughout its California store locations that violate the Labor Code—discovery that is routinely granted to plaintiffs in ordinary civil cases and putative class actions.

E. Discovery For PAGA Claims Cannot Be Subject To Heightened Discovery Standards Not Applied To Class Claims

1. Marshalls Fails To Rebut the Application of *Pioneer* And Its Progeny To This Case

As Williams explained, the policies that undergird the wage

and hour cases following *Pioneer* where the same substantive Labor Code provisions were at issue—support production of aggrieved employees' contact information. (Opng. Brf., pp.17-20.)

Notably, in trying to distinguish the *Pioneer* line of cases, Marshalls fails to address any of these points. Nor does Marshalls offer any principled rationale as to why cases involving class actions would be inapplicable to PAGA actions, though plaintiffs frequently prosecute those claims in tandem, relying on evidence obtained in precertification discovery to prosecute PAGA claims. (See, e.g., *Zackaria v. Wal-Mart Stores* (C.D.Cal. Nov. 3, 2015, No. 12-1520-FMO) 2015 WL 6745714, *5 [permitting evidence to be submitted in PAGA trial which "is the same evidence that the Court already considered in denying class certification"].)

There are good reasons to consider discovery rights afforded putative class representatives as a baseline, if not a floor, in determining the rights of a PAGA plaintiff. Both PAGA actions and class actions seek aggregate relief, which is often the only way that employees can realistically pursue wage and hour claims. (See *Gentry v. Superior Court* (2007) 42 Cal.4th 443, 463-464.) Like class representatives, PAGA plaintiffs pursue aggregate relief on behalf of individuals who are not active participants to the action. (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 986.) Like most class representatives, PAGA plaintiffs generally prove up liability by identifying an unlawful policy or employment practice. (See, e.g., *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1204-09 [affirming PAGA civil

penalties awarded on the basis of unlawful policies that established liability for class claims].) And like most class representatives, PAGA plaintiffs are typically employees who have, at best, access to partial information, and without discovery, would have no viable way to obtain information as to how an employer's policy is implemented in other locations, as stated above.

To prevail in the PAGA action, a plaintiff may need to submit representative evidence, such as a survey or statistical sampling. (See *Alcantor v. Hobart Serv.* (C.D.Cal. Jan. 15, 2013, No. 11-1600-PSG) 2013 WL 156530, at **3-5 [allowing survey evidence that satisfied proof standards for class action cases to prove liability for PAGA penalties]; *Guigu Li v. A Perfect Day Franchise* (N.D.Cal. June 15, 2012, No. 10–01189–LHK) 2012 WL 2236752, *13 [accepting survey and statistical sampling for "class claims as well as PAGA penalties."].)

To conduct a proper survey, a PAGA plaintiff would need the aggrieved employees' contact information. Such information cannot be made contingent on the plaintiff proving, in the first instance, that such evidence will be admissible before the information can be obtained. (See *Alch*, 165 Cal.App.4th at pp.1429-31.) In *Alch*, the defendant, Writers Guild of America, resisted producing demographic information, writing qualifications, and health and disability records of its members in an age discrimination class action, arguing that plaintiff should "first prove that, if access is provided, they will be able to turn the massive amount of requested data into admissible evidence."

(*Id.* at p.1429.) Reversing the trial court, which accepted this rationale, *Alch* observed that such a position would force the plaintiff to "prove that the data they seek will prove their case before they may have access to the data." (*Ibid.*) *Alch* thus rejected a rule that conditions discovery of contact information on the plaintiff's demonstration of the admissibility of the evidence and compelled disclosure of information far more intrusive than the requests here.

Finally, because PAGA actions do not require commonality or predominance, courts leave open the possibility that the plaintiff may be able to collect civil penalties without requiring proof of policies or practices common to all employees. (See *Zackaria*, 2015 WL 6745714, *6; *Plaisted v. Dress Barn* (C.D.Cal. Sep. 20, 2012, No. 12-01679-ODW) 2015 WL 4356158, *2 ["[E]very PAGA action in some way requires some individualized assessment regarding whether a Labor Code violation has occurred."].) To demonstrate violations against other aggrieved employees without proving uniform policies, the plaintiff surely would need to interview other employees as to their personal experience regarding Labor Code violations—a process that would be impossible without employee contact information.

Thus, while the Court of Appeal invoked the principle that "discovery in a civil action under the PAGA [should] be subject to the same rules as discovery in civil actions generally" (*Williams*, at p.1158), it failed to actually apply that principle. Indeed, employees' common interest in enforcing labor laws led *Crab Addison* to conclude that employees would not want their contact

information "withheld 'from plaintiffs seeking relief for violations of employment laws in the workplace that they shared.'" (See *Crab Addison*, 169 Cal.App.4th at p.967 [citation omitted].) There is simply no good reason to exempt a PAGA plaintiff from obtaining information routinely provided to class plaintiffs.

2. The Unique Features of Class Actions Cited By Marshalls Are Irrelevant To Whether A PAGA Plaintiff Is Entitled To Aggrieved Employees' Contact Information

Instead of addressing Williams's points, Marshalls emphasizes the heightened protections afforded absent class members—protections that it contends are absent for aggrieved employees. (Ans., pp.36-42.) However, the "heightened responsibilities" identified by Marshalls—including the class action-specific requirement that both class representative and class counsel are adequate to represent absent class members, as well as their fiduciary duty to certified class members—has nothing to do with *Pioneer* and its progeny's rationale for granting contact information of class members and percipient witnesses.

First, the "heightened responsibilities" of class counsel and class representatives are triggered only upon class certification. Plaintiffs will have the burden of meeting the [adequacy] requirement "when plaintiffs seek to have the classes certified." (*Sharp v. Next Entm't, Inc.* (2008) 163 Cal App.4th 410, 433.) Likewise, prior to class certification , no "attorney-client relationship has yet arisen between [putative class counsel] and

the members of the putative class."[5] (See *Kullar v. Foot Locker Retail* (2011) 191 Cal.App.4th 1201, 1205.)

The *Pioneer* line of cases authorized contact information as part of *pre-certification* discovery, when neither plaintiff's counsel nor plaintiff had established their adequacy and before any attorney-client relationship had been formed with absent class members. (See, e.g., *Pioneer*, 40 Cal.4th at p.366 ["[W]e note that we are dealing with a proposed *precertification* notice to prospective class members." (Emphasis in original)].) In *Lee v. Dynamex* (2008) 166 Cal.App.4th 1325, 1336, the court reversed a pre-certification order denying discovery of contact information, finding that "in light of the trial court's discovery order precluding identification of potential class members before certification, we conclude that Lee was not provided with an adequate opportunity to meet his burden, and therefore, reverse the denial of the class certification motion with directions to permit discovery to proceed."

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[5] Marshalls states that class counsel owe fiduciary duty to putative class members at the outset of the case, citing the heightened standard for evaluating the fairness of a pre-certification settlement. (Ans., at p.39.) While there may be a duty for the putative class representative and counsel not to take positions adverse to the putative class, this does not confer special discovery privileges. In *Cashcall v. Superior Court* (2008) 159 Cal.App.4th 273, 294-95, for instance, the court granted pre-certification contact information for class members even though the original class representative lacked standing to sue. Thus, discovery was permitted even though the class representative was disqualified (i.e., had no fiduciary duty to the class). Indeed, none of the cases cited by Marshalls connected a plaintiff or counsel's fiduciary duty to absent class members to any broader discovery rights not conferred to non-class plaintiffs.

Second, none of the cases cited by Williams even discussed the class plaintiff and counsel's adequacy, fiduciary duty, or any other "heightened responsibilities" in authorizing disclosure of class member information.[6] To the contrary, as *Puerto* explained, "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." (158 Cal.App.4th at p.1250.) In the *Pioneer* line of cases, the countervailing factor in producing nonparty contact information is simply the need to protect nonparties' privacy interests, which these courts conclude must yield to the plaintiff's interest in obtaining discoverable information. (See Opng. Brf., pp.40-57.)

Relying on *Baumann v. Chase Inv. Servs.* (9th Cir. 2014) 747 F.3d 1117, 1124, Marshalls observes that the res judicata effect, along with a slew of other differences, distinguish PAGA

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[6] That PAGA lacks these so-called "heightened protections" for aggrieved employees inheres to PAGA's overall design. A judgment in a PAGA action operates to bind the plaintiff, the nonparty employee and the government "with respect to the recovery of civil penalties." (*Arias*, 46 Cal.4th at p.986.) However, because nonparties do not forgo their right to pursue individual claims for the underlying Labor Code violations (*ibid.*), counsel for a PAGA plaintiff owes no special obligations to other aggrieved employees. In contrast, a "judgment in a class action is res judicata as to claims of members of the class represented therein a judgment." (*Daar v. Yellow Cab* (1967) 67 Cal.2d 695, 704.) Thus, because absent class members' individual claims *are at stake* in a class action, counsel and class representatives must demonstrate that they are qualified and do not have conflicting interests with class members. (*Richmond v. Dart Industries* (1981) 29 Cal.3d 462, 470.)

actions from class actions. (Ans., pp.34-35.) But Marshalls fails to explain why any of these differences, such as a PAGA plaintiff not being required to satisfy class action requirements or PAGA's primary purpose being the vindication of the public interest, would cause the PAGA plaintiff to forfeit discovery rights routinely afforded the putative class representative.

The salient point is that both actions require the same types of proof for the plaintiff, and thus should authorize a similar scope on discovery, as discussed above. If anything, the differences between class and PAGA actions militate in favor of PAGA plaintiffs possessing broader discovery rights. After all, PAGA actions, which "directly enforce the state's interest in penalizing and deterring employers who violate California labor laws" (*Iskanian*, 59 Cal.4th at pp.387), are afforded heightened protections. For instance, the right to pursue representative PAGA claims cannot be extinguished by a prospective waiver even if the right to pursue a class action, which involves private claims for damages, may be. (*Id.* at pp.382-84.)

The logic of *Iskanian* would be upended if the PAGA plaintiffs' practical ability to pursue civil penalties on behalf of the state is thwarted by an onerous discovery rule that impedes the PAGA plaintiff from obtaining discovery routinely produced by defendants in putative class actions, pre-certification.

3. Williams's Requested Contact Information Was Not Overbroad By Comparison To The *Pioneer* Line of Cases

Marshalls also argues that the *Pioneer*-line of cases should be narrowly construed based on the scope of the discovery

requests in those cases. (Ans., pp.42-46.) This is another red herring, as those cases are not premised on the nuances of the discovery request. For instance, in the directly on-point *Crab Addison*, largely ignored by Marshalls, the dispute involved a broad discovery request for contact information of salaried restaurant workers at *all* of the defendant's restaurant locations in California. (169 Cal.App.4th at p.961.) And despite numerous employees seeking to restrict disclosure of their contact information, the court compelled their production. (*Id.* at p.962.)

Similarly, in *Lee v. Dynamex*, the court allowed discovery of contact information for drivers at all of the defendant delivery service's locations in California, despite the plaintiff having only worked at one La Mirada facility. (166 Cal.App.4th at p.1330.) The court found that the contact information deprived the plaintiff of the "means to develop evidence" supporting his case. (*Id.* at p.1338.)

And in *Belaire-West*, the court allowed discovery of "the names and contact information of all current and former Belaire-West employees." (149 Cal.App.4th at p.556.) Marshalls asserts that the information sought was for "landscaper[s]" (Ans., p.45), but *Belaire-West* never mentions the information sought was for only one position. The court itself discusses the interrogatories "requesting the names, last known addresses, and last known telephone numbers of all of people employed by Belaire-West in California since September 10, 2000." (159 Cal.App.4th at p.561.) Far from Marshalls's characterization of the discovery request as narrow in scope, the *Belaire-West* plaintiff's interrogatory request

actually covers *all* of the defendant's locations in California.

Finally, while *Pioneer* itself was a consumer case dealing with discovery of the contact information of complaining consumers, courts nonetheless have broadly applied *Pioneer* to labor and employment cases, finding the contact information discoverable without limiting *Pioneer* to any specific factual circumstance. None of these cases limited such discovery to only those plaintiffs who could first prove the alleged violations in a deposition.

II. THE COURT OF APPEAL'S ALTERNATIVE BASIS FOR AFFIRMING THE TRIAL COURT'S ORDER BASED ON THE EMPLOYEES' PRIVACY INTERESTS ALSO WAS AN ABUSE OF DISCRETION

A. Marshalls's Argument Regarding A *Belaire-West* Privacy Notice Is A Non-Sequitur

Marshalls argues that the trial court's order (and the Court of Appeal's opinion affirming that order) was "consistent with *Pioneer*'s reasoning," insofar as the trial court ordered contact information at the single Marshalls store at which Plaintiff worked to be produced subject to a "*Belaire-West Landscape* process." (PA 229.) This is irrelevant, and not disputed in this action. Indeed, Williams raised a *Belaire-West* privacy notice in his opening brief *only* to rebut the Court of Appeal's holding that the aggrieved employees' privacy interests at over 99% of Marshalls's stores outweighs Williams's right to compel production of their contact information, thereby justifying the denial of nearly all of the contact information Williams sought.[7]

[7] The trial court did not base its ruling to any extent on the non-party aggrieved employees' privacy rights but solely on its

(Opng. Brf., pp.55-57.)

In other words, Marshalls's confused argument regarding the privacy notice misinterprets Williams's point. Williams does not contend that the trial court or the Court of Appeal "ran afoul of *Pioneer*" by ordering the contact information of employees at a single store to have been produced subject to a privacy notice. (Ans., p.48.) Rather, his position is that the privacy right at issue is so minimal that, under this Court's precedents, no balancing of the interests is even required, and if one were conducted, it favors disclosure. (Opng. Brf., pp.44; 45; 50-51; 55.) However, even if the Court of Appeal had applied the correct legal analysis and had nonetheless determined that a protectable privacy was at play, a privacy notice would have ameliorated any such concern. (See *Pioneer*, 40 Cal.4th at p.371 [noting that "protective measures, safeguards, and other alternatives may minimize the privacy intrusion"].)

B. Applying The *Hill* Test, The Court of Appeal's Privacy Analysis Cannot Stand

The framework for evaluating invasion of privacy claims announced in *Hill v. National Collegiate Athletic Association* (1994) 7 Cal.4th 1 consists of three factors: (1) a "legally protected privacy interest;" (2) a reasonable expectation of privacy under the particular circumstances; and (3) conduct "sufficiently serious ... to constitute an *egregious breach* of the social norms underlying the privacy right." (*Id.* at pp.35-37 [emphasis added].) If all three factors are met, the court will balance the privacy

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perceived need to "manage and limit the costs of discovery." (PA 229.)

interest at stake against other competing interests, which include the interest of the requesting party, fairness to the litigants in conducting the litigation, and the consequences of granting or restricting access to the information. (See *Pioneer*, 40 Cal.4th at pp.370-71.)

1. The Employees Have a Reduced Expectation of Privacy Under The Circumstances Presented Here

Even assuming that the first prong of the *Hill* test were satisfied, the second prong of the *Hill* test is not satisfied because the employees have a reduced expectation of privacy under the circumstances presented.

Courts have held that, although employees would not expect "broad dissemination" of their contact information, that does not mean that employees would not want it disclosed to a plaintiff seeking relief on their behalf for violation of employment laws:

> Just as the dissatisfied Pioneer customers could be expected to want their information revealed to a class action plaintiff who might obtain relief for the allegedly defective DVD players [ ], so can former and current [ ] employees reasonably be expected to want their information disclosed to a class action plaintiff who may ultimately recover for them unpaid wages that they are owed.

(*Belaire-West*, 149 Cal.App.4th at p.561 [citation omitted].) California courts have routinely found that, despite the "substantial interest in the privacy of their home," current and former employees may "reasonably be supposed" to want their contact information shared with an aggregate litigation plaintiff seeking to vindicate the employees' legal interests. (*Puerto*, 158

Cal.App.4th at pp.1242, 1252, 1253.)

Marshalls ignores these authorities, focusing solely on inapposite cases involving sensitive information far beyond mere contact information. For instance, Marshalls relies on *Harding Lawson Associates v. Superior Court* (1992) 10 Cal.App.4th 7, 10 and *Board Of Trustees v. Superior Court* (1981) 119 Cal.App.3d 516, which dealt with confidential documents in third parties' personnel files and a university's personnel, tenure and promotion files for a defendant faculty member that had no direct relevance to the plaintiff's defamation action, respectively.[8] (Ans., p.53.) Numerous California courts dealing with mere employee contact information or other non-sensitive information have distinguished these cases based on the greater intrusiveness of the information sought and the concomitant differences in "reasonable expectations of privacy" entertained by the nonparties. (See *Puerto*, 158 Cal.App.4th at p.1251 [noting that in *Harding Lawson* "the existence of a legitimate privacy interest and the fact that a serious invasion of privacy would result from the release of the information involved were both so facially apparent that the court did not need to belabor them with drawn-out analysis"]; *Alch*, 165 Cal.App.4th at p.1433 [distinguishing both *Harding Lawson* and *Board of Trustees* due to absence of "sensitive information ordinarily found in personnel files"].)

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[8] *El Dorado Savings & Loan Assoc. v. Superior Court* (1987) 190 Cal.App.3d 342, also relied on by Marshalls, similarly involved confidential information in a non-party employee's personnel file, and is likewise inapposite.

2. There Would Be No Serious Invasion of Privacy Here

The third consideration under *Hill* asks whether disclosure would amount to a "serious invasion" of privacy. Marshalls skips this step, and moves on to its arguments regarding balancing of the interests. (Ans., pp.54-55.) However, unless the "serious invasion" question is answered in the affirmative, no balancing of interests need be conducted. (See, e.g., *Cty. of Los Angeles*, 56 Cal.4th at p.926 ["In general, the court should not proceed to balancing unless a satisfactory threshold showing is made."].)

Importantly, *Pioneer* reasoned that "disclosure [of contact information] involves no revelation of personal or business secrets, intimate activities, or similar private information, and threatens no undue intrusion into one's personal life, such as mass-marketing efforts or unsolicited sales pitches." (*Pioneer*, 40 Cal.4th at p.373.) The non-sensitive nature of the information, coupled with the opt-out privacy notice, led the *Pioneer* Court to conclude there had been no serious invasion of privacy. (*Ibid.*) In the context of aggregate wage and hour actions, California courts have come to the same conclusion, based on *Pioneer*'s reasoning. (See, e.g., *Puerto*, 158 Cal.App.4th at pp.1254-55 [employee contact information is "not particularly sensitive" and is "basic civil discovery"][9]; *Belaire-West*, 149 Cal.App.4th at p.562

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[9] *Puerto* also rejected the notion that the number of employees involved has any bearing on the privacy analysis. (158 Cal.App.4th at p.1255 [noting that "nothing is analytically different" between a hypothetical scenario with 10 employees at one "corner grocery store," and 2,600 employees at a number of store locations].)

[employee contact information is usually discoverable and with a privacy notice involves no "serious invasion" of privacy].)

Once again, Marshalls relies on authorities with far more invasive disclosures of information than the *Pioneer* line of authority. For instance, in *Planned Parenthood Golden Gate v. Superior Court* (2000) 83 Cal.App.4th 347 the compelled disclosure of names and addresses of abortion clinic workers involved "true danger" and a "vastly more serious privacy intrusion" than in a routine wage and hour case. (*Puerto*, 158 Cal.App.4th at pp.1254 & 1257 [distinguishing *Planned Parenthood*].) Likewise, in *Britt v. Superior Court* (1978) 20 Cal.3d 844, 857-62, the at-issue discovery sought "disclosure of information about individuals' activities, including with whom they associated, what meetings they attended, and what topics they discussed." (Cf., *City of Los Altos v. Barnes* (1992) 3 Cal.App.4th 1193, 1201 [distinguishing *Britt* based on its far greater intrusion into the subjects' private affairs than the ordinance at issue in that case].) *City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008 is even farther afield, involving a newspaper's request under the California Public Records Act for public disclosure of names and contact information of those who had made noise complaints about a local airport. (See *Puerto*, 158 Cal.App.4th at pp.1257-58 [distinguishing *City of San Jose*].)[10]

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[10] Marshalls also relies on a line of United States Supreme Court precedent that deals with the residential right to privacy providing a safeguard from especially offensive and invasive intrusions into the home not applicable here. (Ans., p. 52,[citing

3. Even If A Balancing Of Interests Were Appropriate, It Should Have Been Struck In Williams's Favor

No balancing of interests is necessary under the *Hill* test in this case because there is neither a "reasonable expectation of privacy" nor a "serious invasion of their privacy." However, if a balancing were conducted, it would tip in Williams's favor.

Again, *Pioneer* is instructive. It held that the relevant privacy interest is the possibility that the nonparties might not receive their opt-out privacy notice, thus losing their chance to object to disclosure. (40 Cal.4th at p.373.) In evaluating the plaintiff's interest, the Court noted that the absent class members would be percipient witnesses to the issues in the case, and their "identity and location" therefore is expressly discoverable under Code Civ. Proc. § 2017.010. (*Id.* at p.374.) The Court also stressed that "fairness" tipped in favor of disclosure, as otherwise the defendant would "possess a significant advantage" in the litigation if it could retain exclusive access to the putative class members. (*Ibid.*)

In performing the balancing of opposing interests under

Rowan v. United States Post Office Department (1970) 397 U.S. 728, 729-30 [upholding constitutionality of statute permitting persons to opt-out of receiving sexually explicit mail solicitations because "there is no right to communicate offensively with another"]; *Frisby v. Schultz* (1988) 487 U.S. 474, 486 [upholding ordinance prohibiting picketing around a specific residence, which was found to be "inherently and offensively" intrusive]; *Hill v. Colorado* (2000) 530 U.S. 703, 716 [upholding restrictions on contacts between abortion protesters and patients, noting the protection afforded to offensive messages does not always embrace offensive speech that is so intrusive that the unwilling audience cannot avoid it."]].)

Hill, the courts following *Pioneer* identified additional factors to consider. "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." (*Puerto*, 158 Cal.App.4th at p.1256 [citation omitted].) Here, that fundamental public policy would be even stronger, as a PAGA action is a law enforcement action brought primarily on behalf of the state to vindicate public rights, not an action brought to compensate employees. (*Iskanian*, 59 Cal.4th at pp.382-84.) Also, at stake is the "general public interest in 'facilitating the ascertainment of truth in connection with legal proceedings' and in obtaining just results in litigation." (*Puerto*, 158 Cal.App.4th at p.1256 [citation omitted].) And the unfairness of denying wage and hour plaintiffs access to the employees' contact information that is needed to prove its case also tilts in favor of disclosure. (See *Lee v. Dynamex*, 166 Cal.App.4th at p.1338 [holding that trial court abused discretion by denying plaintiff's motion to compel because it deprived him of the "means to develop evidence capable of supporting his motion for class certification"].)

The Court of Appeal did not apply the *Hill* test, although it purported to balance the "employee's right to be free of unwanted attention and perhaps fear of retaliation from an employer" with the "plaintiff's need for the discovery at this time [which] is practically nonexistent." (*Williams*, at p.1159.) The Court of Appeal's balancing therefore omitted any of the considerations

described above. The Court of Appeal did not consider the ameliorative effect of a privacy notice or of a protective order (see *Belaire-West*, 149 Cal.App.4th at p.562), the unfairness and litigation advantage of allowing Marshalls exclusive access to its employees' contact information, or the "ascertainment of truth in litigation" or "just results in litigation" factors, both of which tip in favor of disclosure. Perhaps most importantly, the Court of Appeal did not consider the "fundamental public policy underlying California's employment laws," or of the PAGA in particular. (*Alch*, 165 Cal.App.4th at p.1437 [holding that trial court erred by conducting the balancing under *Hill* without giving any consideration to the state's interest in preventing discrimination: "the omission of any reference to the nature of the public interest in this case is, we think, quite telling."]; cf. *Cty. of Los Angeles*, 56 Cal.4th at pp. 930-32 [holding that balancing of interests tipped in favor of disclosure of non-union employees' contact information to union, over objection of employees].)

The Court of Appeal's privacy rights determination should be reversed.

4. There Is No "Compelling Interest" Inquiry Under the *Hill* Test As Applied To Privacy Claims Of This Type

Marshalls also appears to argue that the "compelling interest" standard articulated in *Lantz v. Superior Court* (1994) 28 Cal.App.4th 1839, and applied by the Court of Appeal here, remains a proper consideration for a court applying *Hill* to a privacy claim. (Ans., p.54.) *Hill*, however, clarified that only certain "aspects of the state constitutional right to privacy—those

implicating obvious government action impacting freedom of expression and association—are accompanied by a 'compelling state interest' standard." (*Hill*, 7 Cal.4th at p.34.) Otherwise, if "the privacy interest is less central, or in bona fide dispute, general balancing tests are employed." (*Id.* at p.34 [citations omitted].)

Under *Hill*, the trial court must weigh countervailing interests presented by the defendant and the plaintiff's rebuttal to those countervailing interests in evaluating a claim for invasion of privacy. (*Id.* at p.40.) *Hill* did not mention the need for the propounding party to demonstrate a "compelling interest."

Likewise, when the Court in *Pioneer* adopted the *Hill* test in the context of class member contact information, it did not apply or mention the need for the proponent of disclosure to demonstrate a "compelling need" for contact information. And in cases like *Puerto*, *Belaire-West*, and *Lee* applying *Pioneer* in aggregate wage and hour actions, the plaintiffs were not required to demonstrate a "compelling need" for the information.

The Court should therefore clarify that the "compelling interest" standard articulated in *Lantz* is not applicable to the analysis of privacy claims of this type.

III. MARSHALLS'S CONSTITUTIONAL ARGUMENT, RAISED FOR THE FIRST TIME BEFORE THIS COURT, IS WAIVED, FORECLOSED BY *ISKANIAN*, AND OTHERWISE BASELESS

Marshalls also raises an argument that, if the trial court is found to have abused its discretion by erecting a set of preliminary merits hurdles before Williams can obtain the employees' contact information, PAGA is unconstitutional. (Ans.,

pp. 55-59.) Marshalls did not raise this argument in the trial court, the Court of Appeal, or in its Answer to the Petition for Review, despite the fact that Williams's arguments have been consistent throughout. This argument is therefore waived. (*See Flannery v. Prentice* (2001) 26 Cal.4th 572, 591 ["As a matter of policy, on petition for review, we normally do not consider any issue that could have been but was not timely raised in the briefs filed in the Court of Appeal."].)

Moreover, as Marshalls acknowledges, this Court recently rejected a separation of powers challenge to PAGA after full briefing. (Ans., p.56, fn.9 [citing *Iskanian*, 59 Cal.4th at pp.389-91].) In fact, *no court* of which Williams is aware has accepted any of the various constitutional challenges to PAGA that have been mounted. (See, e.g., *Kilby v. CVS Pharmacy Inc.* (S.D.Cal. May 31, 2012) 2012 WL 1969284, *2, fn.2 ["constitutional challenges to PAGA have been uniformly rejected."]; *Alcantar*, 2013 WL 146323, at *3 [rejecting due process challenge]; *Echavez v. Abercrombie & Fitch Co, Inc.* (C.D.Cal. Mar. 12, 2012) 2012 WL 2861348, at *5 [rejecting argument that PAGA unconstitutionally restricts the judiciary's ability to regulate the practice of law].)

Finally, Marshalls's argument simply lacks merit. The PAGA statute says nothing about the preliminary merits hurdles imposed here by the trial court. Williams's position here is simply that this Court should hold that, by imposing merits hurdles applicable to PAGA but inapplicable to other aggregate litigation (such as class actions), the trial court abused its discretion. If accepted, it would be the Judiciary—this Court—

finding that the trial court erred, not the Legislature "prevent[ing] a court from proceeding in accordance with its own view of the governing legal principles." (*Superior Court v. County of Mendocino* (1996) 13 Cal.4th 45, 65.) Under Marshalls's misguided approach, Code of Civil Procedure section 382 would be a separation of powers violation, as trial courts in class actions have been held to have abused their discretion by denying motions to compel production of putative class members' contact information, thus impinging on those trial courts' discretion in ordering civil litigation. (See, e.g., *Lee v. Dynamex*, 166 Cal.App.4th at p.1338.)

Marshalls's belated constitutional challenge to PAGA should therefore be rejected.

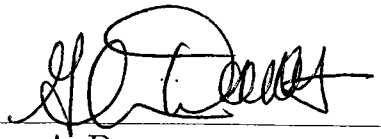
CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeal should be reversed.

Dated: April 6, 2016

Respectfully submitted,

Capstone Law APC

By: 

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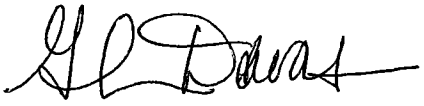
CERTIFICATE OF WORD COUNT

Counsel of record hereby certifies that, pursuant to the California Rules of Court, Rule 8.504(d)(1) and 8.490, the enclosed Appellant's Reply Brief was produced using 13-point Century Schoolbook type style and contains 8,326 words. In arriving at that number, counsel has used Microsoft Word's "Word Count" function.

Dated: April 6, 2016

Respectfully submitted,

Capstone Law APC

By: 

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STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1840 Century Park East, Suite 450, Los Angeles, California 90067.

On **April 6, 2015**, I served the document described as: **APPELLANT'S REPLY BRIEF** on the interested parties in this action by sending on the interested parties in this action by sending [ ] the original [or] [✓] a true copy thereof to interested parties as follows [or] as stated on the attached service list:

See attached service list.

[☒] **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

[☐] **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

[☐] **BY FAX:** I hereby certify that this document was served from Los Angeles, California, by facsimile delivery on the parties listed herein at their most recent fax number of record in this action.

[☐] **BY PERSONAL SERVICE:** I personally delivered the document, enclosed in a sealed envelope, by hand to the offices of the addressee(s) named herein.

[☒] **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

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

Executed this **April 6, 2016**, at Los Angeles, California.

Natalie Torbati
Type or Print Name

Signature

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Frederick Bennett Superior Court of Los Angeles County 111 North Hill Street, Room 546 Los Angeles, CA *via U.S. Mail*	**Superior Court of Los Angeles County: Respondent**
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