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22 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
23 **FOR THE COUNTY OF ORANGE**

24 CALIFORNIA BUSINESS & INDUSTRIAL
25 ALLIANCE, an association representing
26 California-based employers,

27 Plaintiff,

28 v.

XAVIER BECERRA, in his official capacity
as the Attorney General of the State of
California,

Defendant.

Case No.:

**COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF**

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1 process protections embodied in class action procedural rules do not apply; trial courts are
2 divested of discretion to manage certain discovery issues; “fishing expeditions” are expressly
3 authorized, allowing discovery into claims and theories about which a litigant has no personal
4 knowledge; limited liability structures and/or a person’s relationship to an employer is
5 meaningless for the purposes of imposing liability for PAGA penalties.

6 4. The above, plus the complete lack of oversight by the legislative, executive, and
7 judicial branches of the California State government, has allowed PAGA to become a tool of
8 extortion and abuse by the Plaintiffs’ Bar, who exploit the special standing of their PAGA
9 plaintiff clients to avoid arbitration, threaten business-crushing lawsuits, and extract billions of
10 dollars in settlements, their one-third of which comes right off the top.

11 5. Each day that PAGA continues to empower greedy and unscrupulous plaintiffs’
12 attorneys to shake down California employers, the fundamental right of employers to the
13 “continued operation of an established, lawful business” is imperiled. *Santa Clara*, 50 Cal. 4th
14 at 53.

15 6. COMES NOW CABIA to challenge the constitutionality of PAGA not only as
16 written, but also as applied to its members and other California employers.

17 **THE PARTIES**

18 7. Plaintiff is an association that was incorporated in Washington, D.C., which
19 principally represents the interests of small and mid-sized businesses in California, a number of
20 which have been sued under PAGA.

21 8. Many of Plaintiff’s members have suffered damages as a result of the existence
22 of PAGA, in the form of legal fees to defend against PAGA actions, settlement payments to
23 resolve PAGA lawsuits, or judgments or orders to pay PAGA penalties from California courts.

24 9. CABIA was formed for the general purpose of promoting the interests of small
25 and mid-sized business through a mix of public education, lobbying, and grassroots organizing,
26 and the specific purpose of accomplishing the repeal or reform of PAGA.

27 10. CABIA is willing and capable to represent the interests of its members in this
28 lawsuit, whose individual participation is not required in order for this Court to evaluate and to

1 adjudicate the constitutional challenges asserted against PAGA herein.

2 11. Defendant Attorney General Xavier Becerra is sued in this action in his official
3 capacity as a representative of the State of California charged with the enforcement of PAGA.

4 JURISDICTION AND VENUE

5 12. This Court has original jurisdiction in this matter under Article VI, Section 10, of
6 the California Constitution. This Court also has jurisdiction under California Code of Civil
7 Procedure Sections 410.10, 525, 526, 526a, 1060, 1062, and 1085.

8 13. Venue in this Court is proper under California Code of Civil Procedure
9 Sections 393, 395, and 401. Some or all of Plaintiff's members reside, do business, and/or have
10 suffered an injury in this county.

11 14. Declaratory relief is authorized by California Code of Civil Procedure
12 Sections 1060 and 1062.

13 15. Injunctive relief is authorized by California Code of Civil Procedure
14 Sections 525, 526, and 526a.

15 STATEMENT OF FACTS

16 I. THE STATUTORY AND CONSTITUTIONAL FRAMEWORK

17 A. Federal and State Prohibitions on Excessive Fines and Unusual Punishment

18 16. The Eighth Amendment to the U.S. Constitution provides:

19 "Excessive bail shall not be required, nor excessive fines imposed, nor
20 cruel and unusual punishments inflicted."

21 U.S. Const., amend. VIII.

22 17. The United States Supreme Court has held that the Excessive Fines Clause
23 applies to the states. *See Hall v. Florida*, 134 S. Ct. 1986, 1992 (2014).

24 18. The Excessive Fines Clause, as interpreted by the United States Supreme Court,
25 "limits the government's power to extract payments, whether in cash or in kind, 'as punishment
26 for some offense.'? *R.L. Austin v. United States*, 509 U.S. 602, 609–10 (1993) ("*Austin*").

27 19. "The notion of punishment, as we commonly understand it, cuts across the
28 division between the civil and the criminal law." *Id.* at 610.

1 20. “The touchstone of the constitutional inquiry under the Excessive Fines Clause is
2 the principle of proportionality: the amount of the forfeiture must bear some relationship to the
3 gravity of the offense that it is designed to punish.” *United States v. Bajakajian*, 524 US 321,
4 334 (1998) (citing *Austin*, 509 U.S. at 622–23).

5 21. The California Supreme Court, as well as the U.S. Court of Appeals for the
6 Ninth Circuit, have held that these prohibitions apply with equal force to the California State
7 government. *See People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.*, 37 Cal. 4th 707 (2005)
8 (“*R.J. Reynolds*”) (“[T]he Due Process Clause of the Fourteenth Amendment to the Federal
9 Constitution . . . makes the Eighth Amendment’s prohibition against excessive fines and cruel
10 and unusual punishments applicable to the States.”); *accord Wright v. Riveland*, 219 F.3d 905,
11 916 (9th Cir. 2000) (analyzing whether state fine was excessive under the Eighth Amendment).

12 22. Moreover, the California Constitution contains similar protections to those
13 embodied in the Eighth Amendment. Article I, Section 17, prohibits “cruel or unusual
14 punishment” and “excessive fines”; article I, Section 7, prohibits the taking of property “without
15 due process of law.” *R.J. Reynolds*, 37 Cal. 4th at 728.

16 **B. Due Process**

17 23. The Fifth Amendment to the U.S. Constitution provides, in relevant part, that:
18 “No person shall . . . be deprived of life, liberty, or property, without due process of law;
19 nor shall private property be taken for public use, without just compensation.”
20 U.S. Const., amend. V.

21 24. Likewise, the Due Process Clause of the 14th Amendment to the United States
22 Constitution provides that “[n]o state shall . . . deprive any person of life, liberty, or property,
23 without due process of law . . .” *Id.*, amend. XIV.

24 25. The California Constitution also separately prohibits a person from being
25 “deprived of life, liberty, or property without due process of law[.]” Cal. Const. art. I, Section
26 7.

27 26. This due process guarantee has been interpreted to have both procedural and
28 substantive components, the latter which protects fundamental rights that are so “implicit in the

1 concept of ordered liberty” that “neither liberty nor justice would exist if they were sacrificed.”
2 *Palko v. Conn.*, 302 U.S. 319, 325 (1937). These fundamental rights include those guaranteed
3 by the Bill of Rights, as well as certain liberty and privacy interests implicitly protected by the
4 Due Process Clause. *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997). Substantive due
5 process also protects against government conduct that “shocks the conscience,” even where the
6 conduct does not implicate any specific fundamental right. *See United States v. Salerno*, 481
7 U.S. 739, 746 (1987).

8 **C. Separation of Powers**

9 27. Pursuant to the California Constitution, the legislative power of the State is
10 vested in the California Legislature, save the reserved powers of initiative and referendum. *See*
11 Cal. Const. art. IV, Section 1. The supreme executive power of the State is vested in the
12 Governor. *See Id.*, art. V, Section 1. And “[t]he judicial power of this State is vested in the
13 Supreme Court, courts of appeal, and superior courts, all of which are courts of record.” *Id.*, art.
14 VI, Section 1. The California Constitution expressly provides for the separation of these
15 government powers. *Id.*, art. III, Section 3 (hereafter, “Separation of Powers Doctrine”). The
16 California Supreme Court has articulated the “classic understanding of the separation of powers
17 doctrine—that the legislative power is the power to enact statutes, the executive power is the
18 power to execute or enforce statutes, and the judicial power is the power to interpret statutes and
19 to determine their constitutionality.” *Lockyer v. City and County of San Francisco*, 33 Cal. 4th
20 1055, 1068 (2004).

21 28. Under the Separation of Powers Doctrine, the Legislature cannot exercise any
22 core judicial functions. *See Pryor v. Downey*, 40 Cal. 388, 403 (1875) (“The Legislature of
23 California cannot exercise any judicial function, and no person in this State can be deprived of
24 life, liberty or property without due process of law.”). And the California Supreme Court will
25 hold unconstitutional legislation that violates the Separation of Powers Doctrine. *See In re*
26 *Application of Lavine*, 2 Cal. 2d 324, 328 (1935); *Merco Constr. Eng’rs, Inc. v. Mun. Court*, 21
27 Cal. 3d 724, 731 (1984).

28 29. The California Supreme Court has set forth “the basic test for assessing whether

1 the Legislature has overstepped its oversight authority: “[The] legislature may put reasonable
2 restrictions upon constitutional functions of the courts provided they do not defeat or materially
3 impair the exercise of those functions.” *Conway v. State Bar*, 47 Cal. 3d 1107, 1128 (1989).
4 And “[w]here a statute creates a special liability upon the part of employers and grants power to
5 an agency of government to determine when liability exists and to render a judgment in favor of
6 the employee against the employer, the power exercised constitutes basic judicial power within
7 the meaning of the Constitution.” *Laisne v. Cal. State Bd. of Optometry*, 19 Cal. 2d 831, 864
8 (1942).

9 **D. Equal Protection**

10 30. The 14th Amendment to the United States Constitution provides that “[n]o state
11 shall . . . deny to any person within its jurisdiction the equal protection of the laws . . .” U.S.
12 Const., amend. XIV.

13 31. Similarly, the California Constitution guarantees all persons “equal protection of
14 the laws[.]” Cal. Const. art. I, Section 7.

15 **E. The California Labor Code**

16 32. The California Labor Code, California Code of Regulations, and the Industrial
17 Welfare Commission Orders (collectively, the “California Labor Laws”) govern the rights and
18 obligations of employers, employees, and other “persons,” as that term is defined in Labor Code
19 Section 18, with respect to employment and/or the provision of labor by and between parties in
20 the State of California. The California Labor Laws are composed of myriad rules, standards,
21 and obligations, which touch nearly every aspect of the employment relationship, including, but
22 not limited to, working hours, payment of minimum wages and overtime, the provision of meal
23 and rest breaks, the temperature of workplace bathrooms, what information that must appear on
24 a paystub, the place of payment of wages, the timing of payment during employment, the timing
25 of payment after employment, mandatory paid sick leave, State-approved workplace posters, the
26 nature of gratuities, use of credit reports, what records must be kept and for how long, and a
27 multitude of other matters.

28 33. Many of the California Labor Laws are unclear, cumbersome, counterintuitive,

1 impossible to follow, or all of the foregoing.

2 34. For example, to comply with California law with respect to meal periods,
3 employers must navigate and harmonize a combination of Labor Code Sections, California
4 Code of Regulations provisions, Industrial Welfare Commission Orders, and California judicial
5 opinions. More specifically, Labor Code Section 512(a) sets forth a portion of most employers'
6 obligations with respect to meal periods:

7 An employer shall not employ an employee for a work period of more than
8 five hours per day without providing the employee with a meal period of
9 not less than 30 minutes, except that if the total work period per day of the
10 employee is no more than six hours, the meal period may be waived by
11 mutual consent of both the employer and employee. An employer shall not
12 employ an employee for a work period of more than 10 hours per day
13 without providing the employee with a second meal period of not less than
14 30 minutes, except that if the total hours worked is no more than 12 hours,
15 the second meal period may be waived by mutual consent of the employer
16 and the employee only if the first meal period was not waived.

17 Additional obligations (and exceptions to the rule) are set forth in the Industrial Welfare
18 Commission orders, many of which contain the following or similar language:

19 (A) No employer shall employ any person for a work period of more than
20 five (5) hours without a meal period of not less than 30 minutes, except that
21 when a work period of not more than six (6) hours will complete the day's
22 work the meal period may be waived by mutual consent of the employer
23 and the employee. Unless the employee is relieved of all duty during a 30
24 minute meal period, the meal period shall be considered an "on duty" meal
25 period and counted as time worked. An "on duty" meal period shall be
26 permitted only when the nature of the work prevents an employee from
27 being relieved of all duty and when by written agreement between the
28 parties an on-the-job paid meal period is agreed to. The written agreement

1 shall state that the employee may, in writing, revoke the agreement at any
2 time.

3 *See, e.g., I.W.C. Wage Order 4-2001, Section 11, (A)-(B) ("Wage Order 4").* As pleaded in
4 further detail below, attempting to comply with just the timing rules of a meal period is difficult
5 enough. But even a dozen years after the codification of an employer's meal period obligation
6 in Labor Code Section 512, there was still ambiguity over what it meant to "provide" meal
7 periods under California law. This ambiguity, which for many California employers carried the
8 prospect of business-crushing lawsuits, was not settled law until the California Supreme Court
9 "explained" the obligation in 2012:

10 The employer satisfies this obligation if it relieves its employees of all duty,
11 relinquishes control over their activities and permits them a reasonable
12 opportunity to take an uninterrupted 30-minute break, and does not impede
13 or discourage them from doing so. . . .

14 Bona fide relief from duty and relinquishing of control satisfies the
15 employer's obligations. . . .

16 *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1040-41 (2012).

17 35. The penalty for not complying with the meal period rules is set forth in the Labor
18 Code Section 226.7, which provides in relevant part:

19 If an employer fails to provide an employee a meal or rest or recovery period
20 in accordance with a[n] . . . order of the Industrial Welfare Commission . . .
21 the employer shall pay at the employee's regular rate of compensation for
22 each workday that the meal or recovery period is not provided.

23 36. As demonstrated by the hundreds of meal period class and/or representative
24 actions filed each year, there is no policy, practice, or combination thereof that can achieve full
25 and irrefutable compliance with California meal period rules.

26 a. This is so because full compliance would require that an employer have perfect
27 foresight regarding how long each shift for each employee would last, which is
28 impracticable.

- 1 b. It would also require that an employer be able to read the minds of all its non-
2 exempt employees, specifically whether they felt as if they had a “reasonable
3 opportunity” to take a meal period, which is preposterous.
- 4 c. It would also require that an employer anticipate and prevent every possible
5 circumstance, event, or contingency that might lead to an interrupted meal break,
6 which is hopeless.

7 37. And even if an employer could accomplish all of the foregoing, it would be still
8 impossible to create, to preserve, and to present sufficient evidence of its compliance with the
9 rules to dissuade self-interest employees (current or former) and their attorneys from filing suit.

10 38. California rest period rules, which share many of the characteristics that make
11 meal period compliance unattainable, are virtually impossible to comply in the wake of the
12 California Supreme Court’s decision in *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257
13 (2016) (“*Augustus*”). In *Augustus*, the Supreme Court inferred that employers’ responsibilities
14 were “the same for meal and rest periods[,]” even though the language in Wage Order 4 that
15 expressly requires employees to be “relieved of all duty” during meal periods has no corollary
16 in the rules relating to rest periods. *Id.* at 265. Applying that rule to the facts of the case, the
17 Court went onto hold that merely requiring an employee to carry a communication device, even
18 if never used, was tantamount to an “on-duty” rest period and thus violated the employer’s
19 obligation under the Labor Code. *Id.* at 273. As highlighted by the dissent in *Augustus*, this was
20 a “marked departure from the approach we have taken in prior cases concerning whether on-call
21 time counts as work, and in sharp contrast to the DLSE’s views about what constitutes a duty-
22 free break,” and there was “no reason to believe that the bare requirement to carry a radio,
23 phone, or pager necessarily prevents employees from taking brief walks, making phone calls, or
24 otherwise using their rest breaks for their own purposes, and certainly there is no evidence in
25 this record to that effect.” *Id.* at 276. What *Augustus* means for employers is that virtually every
26 employee in California who carries a cell phone or pager can allege a cognizable claim for non-
27 compliant rest breaks. And, again, there is no policy, practice, or combination thereof that can
28 achieve full and irrefutable compliance with the rules as written and applied by the courts.

1 39. As another example, Labor Code Section 201(a) provides that “[i]f an employer
2 discharges an employee, the wages earned and unpaid at the time of discharge are due and
3 payable immediately.” Pursuant to Labor Code Section 203(a), “[i]f an employer willfully fails
4 to pay, without abatement or reduction, in accordance with Sections 201 . . . the wages of the
5 employee shall continue as a penalty . . . until paid or until an action therefore is commenced;
6 but the wages shall not continue for more than 30 days” (“Section 203”). Though the plain
7 language of Section 203 suggests that it punishes volitional and/or intentional conduct of
8 employers (*i.e.*, “willfully fails to pay”), that turns out not to be the case. Rather, this is how the
9 Department of Industrial Relations (“DIR”) defines the concept of “willful” within the meaning
10 of Section 203:

11 Assessment of the waiting time penalty does not require that the employer
12 intended the action or anything blameworthy, but rather that the employer
13 knows what he is doing, that the action occurred and is within the
14 employer’s control, and that the employer fails to perform a required act.

15 See Department of Industrial Relations, Waiting time penalty, available at <
16 https://www.dir.ca.gov/dlse/faq_waitingtimepenalty.htm > (last accessed Nov. 21, 2018). And
17 this standard has been reinforced by California Courts of Appeal:

18 In civil cases the word “willful” as ordinarily used in courts of law, does not
19 necessarily imply anything blameable, or any malice or wrong toward the
20 other party, or perverseness or moral delinquency, but merely that the thing
21 done or omitted to be done, was done or omitted intentionally. It amounts
22 to nothing more than this: That the person knows what he is doing, intends
23 to do what he is doing, and is a free agent.

24 See *Nishiki v. Danko Meredith, P.C.*, 25 Cal. App. 5th 883, 891 (2018) (quoting *Davis v.*
25 *Morris*, 37 Cal. App. 2d 269, 274 (1940)).

26 Thus, under California law, the assessment of waiting time penalties has nothing to do
27 with innocence or guilt. In this State, *mens rea* is all but irrelevant; and the well-meaning and
28 blameless employer can be punished exactly the same as the ill-intended and guilty employer.

1 And the penalty is the same regardless of whether the employer failed to pay the separating
2 employee one cent, one dollar, one hundred dollars, or one million dollars because the penalty is
3 based on the average daily pay. In the vast majority of circumstances, the amount of
4 underpayment is minuscule, and more often than not the product of a mistake, which means the
5 penalty assessed exceeds any harm suffered by the separating employee. Below is a chart
6 detailing the maximum waiting time penalties that can be assessed against an employer who
7 fails to pay a separating employee one dollar, or a million dollars—again, it makes no
8 difference in California:

Hourly Rate	Average Hours Worked	Max Waiting Time Penalties
\$11.00 per hour	8	\$2,640
\$13.50 per hour	8	\$3,240
\$15.00 per hour	8	\$3,600
\$25.00 per hour	8	\$6,000
\$35.00 per hour	8	\$8,400
\$45.00 per hour	8	\$10,800

17 40. A common allegation made in support of a claim for Section 203 penalties is that
18 employees were not paid for work they did not record in the timekeeping system (i.e., “off-the-
19 clock” work). In California, an employer is liable for such “unpaid” wages (and derivative 203
20 Penalties) if an employee can show that the employer “knew or should have known off-the-
21 clock work was occurring.” *Brinker*, 53 Cal. 4th at 1051. And the difficulty of combating such
22 claims has greatly increased in the wake of the Supreme Court’s decision in *Troester v.*
23 *Starbucks Corp.*, 5 Cal. 5th 829, 848 (2018), which all but eliminated the “*de minimis*” defense,
24 and, at a minimum, made almost all claims of off-the-clock work cognizable under California
25 law.

26 41. California wage statement laws present their own unique challenges for
27 employers. Labor Code Section 226(a) requires employers to furnish paystubs that contain up to
28 nine different pieces of information. These required items of information are: gross wages

1 earned by the employee, total hours worked by the employee, all applicable hourly rates during
2 the pay period, all deductions taken from the employee's wages, the net wages the employee
3 earned, the pay period that the wage statement reflects, including the start and end date, the
4 employee's name and ID number (which can be the last four digits of the Social Security
5 number (SSN)), the name and address of the legal employer, and if the employee earns a piece
6 rate, then the number of piece-rate units earned and the applicable piece rate.

7 42. In order to prevail on a Labor Code 226(a) claim, an employee must be able to
8 show that (1) a violation of the statutory provision setting forth criteria for wage statements,
9 (2) the violation was knowing and intentional, and (3) the employee suffered an injury as a
10 result of the violation. *See Cleveland v. Groceryworks.com, LLC*, 200 F. Supp. 3d 924, 957
11 (N.D. Cal. 2016). Though not a "strict liability" statute, the Labor Code deems an employee to
12 suffer injury if the employee cannot readily ascertain certain information from the wage
13 statement (*e.g.*, the amount of gross or net wages), even if the employee suffers no financial
14 injury as a result of the error.

15 43. As a result, Labor Code Section 226(a) has spawned countless lawsuits alleging
16 hyper-technical violations that have required employers to incur significant legal expenses in
17 their defense as well as large settlements and damage awards in numerous cases. The absurd
18 theories put forward by the Plaintiffs' Bar in pursuit of wage statement penalties include:
19 neglecting to total all the hours worked, even though the wage statement lists all the various
20 types of hours individually; accidentally showing net wages as "zero" where an employee gets
21 direct deposit; leaving off either the start or end date of the pay period; not showing the number
22 of hours worked at each applicable rate; recording an incomplete employer name (*e.g.*, "Acme"
23 instead of "Acme, Inc."); recording an incomplete employer address; failing to provide an
24 employee ID number, or reporting a full nine-digit SSN instead of a four-digit SSN.

25 44. The penalty for violating the wage statement rules are "the greater of all actual
26 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
27 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to
28 exceed an aggregate penalty of four thousand dollars (\$4,000)," and reasonable attorneys' fees.

1 See Cal. Lab. Code 226(e)(1).

2 45. The Labor Code also contains numerous one-way fee-shifting provisions in favor
3 of employees who sue to enforce its provisions. *See, e.g.*, Cal. Lab. Code 1194(a).

4 46. In sum, the California Labor Laws contain a daunting and confusing web of
5 obligations for employers, robust and generous remedies for employees, and a framework that
6 encourages enforcement through private litigant access to the courts.

7 **F. The Labor Code Private Attorneys General Act**

8 **1. History of the Law**

9 47. In the early 2000's, the California State Assembly and Employment Committee
10 held hearings about the effectiveness and efficiency of the enforcement of wage and hour laws
11 by the State Department of Industrial Relations ("DIR"). SB 796, Analysis of S. R. Comm., at
12 3 (May 21, 2003). The Senate Rules Committee reported the Legislature appropriated over \$42
13 million dollars to the State Labor Commission for the enforcement of over 300 laws, and that
14 that the DIR's authorized staffed numbered over 460, which made it the largest State labor law
15 enforcement organization in the country. *Id.* Notwithstanding, the California Legislature put
16 forward SB 796 (hereafter "PAGA Bill") to "augment the LWDA's civil enforcement efforts by
17 allowing employees to sue employees for civil penalties." *Id.* at 4. The Legislative Digest of the
18 PAGA Bill described it as follows:

19 Under existing law, the Labor and Workforce Development Agency and its
20 departments, divisions, commissions, boards, agencies, or employees may
21 assess and collect penalties for violations of the Labor Code. . . .

22 This bill would allow aggrieved employees to bring civil actions to recover
23 these penalties, if the agency or its departments, divisions, commissions,
24 boards, agencies, or employees do not do so. The penalties collected in these
25 actions would be distributed 50% to the General Fund, 25% to the agency
26 for education, to be available for expenditure upon appropriation by the
27 Legislature, and 25% to the aggrieved employee, except that if the person
28 does not employ one or more persons, the penalties would be distributed

1 50% to the General Fund and 50% to the agency. In addition, the aggrieved
2 employee would be authorized to recover attorney's fees and costs and, in
3 some cases, penalties. For any violation of the code for which no civil
4 penalty is otherwise established, the bill would establish a civil penalty, but
5 no penalty is established for any failure to act by the Labor and Workplace
6 Development Agency, or any of its departments, divisions, commissions,
7 boards, agencies, or employees.

8 48. The report of the Assembly Committee on Judiciary ("Judiciary Committee")
9 cited the following justifications for the PAGA Bill:

10 [M]any Labor Code provisions are unenforced because they are punishable
11 only as criminal misdemeanors, with no civil penalty or other sanction
12 attached. Since district attorneys tend to direct their resources to violent
13 crimes and other public priorities, supporters argue, Labor Code violations
14 rarely result in criminal investigations and prosecutions.

15 SB 796, Assembly Comm. On Jud. Analysis, at 3-4 (June 26, 2003). The foregoing was
16 reiterated by another Assembly Committee as the "Purpose" of the PAGA Bill. *See* SB 796,
17 Assembly Comm. On Appropriations, at 1 (Aug. 20, 2003). Notably, the Judiciary Committee
18 conceded that "[g]enerally, civil penalties are recoverable only by prosecutors, not by private
19 litigants, and the moneys are paid directly to the government." SB 796, Assembly Comm. On
20 Jud. Analysis, at 5 (June 26, 2003). Seeking to justify this departure from legal norms, the
21 Judiciary Committee then went onto say that "recovery of civil penalties by private litigants
22 does have precedent in law." *Id.* at 5. The "precedent" the Assembly Comments cited in support
23 of this deviation from the norm was that "the Unruh Civil Rights Act allows the victim of a hate
24 crime to bring an action for a civil penalty of \$25,000 against the perpetrator of the crime." *Id.*
25 The relevant portion of the Unruh Civil Rights Act to which the Legislature was referring
26 provides, in relevant part:

27 If a person or persons . . . ***interferes by threat, intimidation, or coercion, or***
28 ***attempts to interfere by threat, intimidation, or coercion,*** with the exercise or

1 enjoyment by any individual or individuals of rights secured by the Constitution or
2 laws of the United States, or of the rights secured by the Constitution or laws of this
3 state, the Attorney General . . . may bring a civil action for injunctive and other
4 appropriate equitable relief in the name of the people of the State of California. . . .
5 Cal. Civ. Code § 52.1(a) (emphasis added).

6 49. The PAGA Bill was supported exclusively by labor union and applicant attorney
7 special interest groups, including, but not limited to, The California Labor Federation, AFL-CIO
8 (co-source), the California Rural Legal Assistance Foundation (co-source), California
9 Applicants Attorneys Association, California Teamsters, and Hotel Employees, Restaurant
10 Employees International Union. SB 796, S. Floor Analysis, at 5 (May 21, 2003). Those in
11 opposition included, but were not limited to, the California Chamber of Commerce, the Civil
12 Justice Association of California, and the Orange County Business Council. *Id.* Opponents
13 raised salient and prescient objections to the PAGA Bill, namely:

- 14 a. That “[a]llowing such ‘bounty hunter’ provisions will increase costs to
15 businesses of all sizes, and add thousands of new cases to California’s already
16 over-burdened civil court system.” SB 796, Assembly Comm. On Lab. & Emp.,
17 at 7 (July 9, 2003).
- 18 b. That “a private enforcement statute in the hands of unscrupulous lawyers is a
19 recipe for disaster.” *Id.*
- 20 c. And that “there is no requirement for the employee to exhaust the administrative
21 procedure or even file with the Labor Commissioner” SB 796, Analysis of
22 S. Comm. on Lab. & Indus. Relations, at 6 (Apr. 9, 2003).

23 50. In response to these concerns, and more, the Assembly Committee on Labor
24 Employment proffered the following:

25 The sponsors are mindful of the recent, well-publicized allegations of
26 private plaintiffs [sic] abuse of the UCL, and have attempted to craft a
27 private right of action that will not be subject to such abuse, pointing to
28 amendments taken in the Senate to clarify the bill’s intended scope. First,

1 unlike the UCL, this bill would not open up private actions to persons who
2 suffered no harm from the alleged wrongful act. Instead, private suits for
3 Labor Code violations could only be brought by an “aggrieved employee”
4 - an employee of the alleged violator against whom the alleged violation
5 was committed.

6 ...

7 Second, a private action under this bill would be brought by the employee
8 “on behalf of himself or herself and other current or former employees”—
9 that is, fellow employees also harmed by the alleged violation - instead of
10 “on behalf of the general public,” as private suits are brought under the
11 UCL.

12 ...

13 Third, the proposed civil penalties are relatively low.

14 SB 796, Assembly Comm. On Lab. & Emp., at 7 (July 9, 2003).

15 51. On September 11, 2003, the PAGA Bill was passed by the State Assembly by a
16 margin of just one vote above the bare minimum for passage a regular bill, 42. The following
17 day, September 12, 2003, the State Senate passed the PAGA Bill by the bare minimum number
18 of votes necessary for a regular bill, 21. The PAGA Bill was approved by Governor Gray Davis
19 on October 12, 2003, just five days after the California electorate voted to recall him from office
20 on October 7, 2003. As a result, the first iteration of the PAGA took effect on January 1, 2004.

21 52. Less than two months after PAGA took effect, on February 20, 2004, SB 1809
22 was introduced, which according to the Senate Rules Committee Digest was intended to
23 “significantly amend[] ‘The Labor Code Private Attorneys General Act of 2004’ [citation] by
24 enacting specified procedural and administrative requirements that must be met prior to
25 bringing a private action to recover civil penalties for Labor Code violations.” SB 1809,
26 Analysis of Sen. R. Comm., at 1-2 (July 28, 2004).

27 53. SB 1809 became law in July 2004, but because of its status as an emergency
28 measure, it had retroactive application dating back to January 1, 2004. The PAGA Bill, SB

1 1809, as well as series of amendments to PAGA in 2016 provide the modern framework for the
2 unconstitutional delegation of State authority that plagues *most* California employers, including
3 Plaintiff's members, today.

4 2. **The California Legislature Recently Exempted Just One Industry**
5 **Group from PAGA - Construction**

6 54. On September 19, 2018, Governor Jerry Brown signed AB 1654 ("AB 1654"),
7 adding Section 2699.6 to the California Labor Code ("Section 2699.6"). The effect of Section
8 2699.6 is to exempt employees in the construction industry who are subject to a collective
9 bargaining agreement (with certain other components) from the entirety of PAGA. One of the
10 other components, ironically, is the existence of a "binding arbitration procedure." *See* Cal. Lab.
11 Code 2699.6(a).

12 55. The justifications put forward by the proponents of the bill include:

- 13 a. "[AB 1654] is needed to protect construction industry employer from
14 frivolous lawsuits brought under PAGA." AB 1654, Analysis of S. J.
15 Comm., at 7 (June 18, 2018).
- 16 b. "While well intended to protect aggrieved employees, [PAGA] is a
17 complex legal process that has led to the unintended consequence of
18 significant legal abuse. The threat of extended litigation on behalf of an
19 entire class of workers provides enormous pressure on employers to settle
20 claims regardless of the validity of those claims" AB 1654, Analysis
21 of S. Comm. on Indus. Rel., at 4 (June 18, 2018).
- 22 c. "Attorneys representing workers sue employers for Labor Code
23 violations by limiting their complaints to those arising under PAGA.
24 These 'stand-alone PAGA suits' allow those attorneys to represent all
25 employees potentially affected by the alleged Labor Code violations and
26 to conduct wide-ranging discovery allowed when prosecuting civil claims
27 in court." *Id.*
- 28

- 1 d. "PAGA was a well-intended law that gives workers the power to fight
2 unscrupulous employers directly through the court system when the
3 Labor Commissioner lacks the resources to enforce but it has, in many
4 cases, become another form of litigation abuse by unscrupulous lawyers .
5 . . ." AB 1654, Analysis of S. Rules Comm., at 4 (Aug. 24, 2018).
- 6 e. "PAGA, in effect, encourages class action type lawsuits over minor
7 employment issues because once a PAGA lawsuit has been filed, the
8 employee (or class) plaintiff is suing on behalf of the state and the issues
9 involved are no longer subject to arbitration." AB 1654, Analysis of
10 Assembly Comm. On Lab. & Emp., at 2 (Aug. 24, 2018).

11 56. On information and belief, the justifications asserted by the proponents of AB
12 1654 are equally applicable to Plaintiff's members and California employers generally. More
13 specifically, Plaintiff's members, and California employers generally, are similarly subject to
14 "frivolous lawsuits," "legal abuse," "enormous pressure ... to settle claims regardless of the
15 validity of those claims," "wide ranging discovery," "unscrupulous [plaintiffs'] lawyers," and
16 "lawsuits over minor employment issues."

17 57. On information and belief, there is no rational basis for the Legislature
18 exempting the construction industry alone from the unfair, unconstitutional, and business-
19 crushing impacted of PAGA.

20 **3. The Basic PAGA Framework**

21 58. PAGA "deputizes" each and every current and former "aggrieved employee" in
22 California to sue to recover civil penalties on behalf of the State. Cal. Lab. Code §2699(a). To
23 prevail, the aggrieved employee need only show that a violation occurred, not that he or she was
24 actually harmed by the violation. *See* Cal. Lab. Code § 2699(a); *see also Raines v. Coastal Pac.*
25 *Food Distribs., Inc.*, 23 Cal. App. 5th 667 (2018) ("the trial court incorrectly found an employee
26 must suffer an injury in order to bring a PAGA claim") ("*Raines*"); *Lopez v. Friant & Assoc.*, 15
27 Cal. App. 5th 773, 778 (2017). The statutory timeframe for filing a PAGA claim is one year.

28 59. PAGA has three categories of violations, each with its own penalty and

1 administrative exhaustion scheme, as pleaded in further detail below:

2 (a) **Category One: Violations of Labor Code Provisions**
3 **Specifically Listed in Labor Code Section 2699.5**

4 60. This first category includes violations of those Labor Code sections identified in
5 Section 2699.5. There are over 150 different violations listed, including Section 203 (waiting
6 time penalties), Section 226.7 (meal and rest break premiums), Section 1198 (which includes
7 any “conditions prohibited by the wage order”), and certain violations of Section 226 (wage
8 statement penalties). Before commencing a Category One claim, an employee must satisfy
9 certain notice requirements. A PAGA lawsuit can be dismissed outright if the notice is deficient,
10 but this rarely occurs due to low standard for sufficiency applied by California courts. The
11 employee is required to give written notice describing the “specific provisions . . . alleged to
12 have been violated, including the facts and theories to support the alleged violation” to the
13 LWDA via its website (along with a \$75 filing fee) and on the employer via certified mail. If
14 the LWDA declines to investigate, or otherwise fails to respond to the employee, within 65 days
15 of the postmark date of the notice, then the employee can proceed to file a civil lawsuit seeking
16 PAGA penalties.

17 (b) **Category Two: Health and Safety Violations (Labor Code**
18 **Sections 6300 *et seq.*)**

19 61. The second category is for health and safety violations predicated on any section
20 of Labor Code sections 6300 *et seq.* (other than those listed in Section 2699.5). In addition to
21 sending notice to LWDA and employer, an employee bringing a health and safety-based PAGA
22 claim must also send notice to the Division of Occupational Safety and Health, which is then
23 required to investigate the claim. If the Division issues a citation, the employee is precluded
24 from commencing a civil action under PAGA. In the alternative, if the Division does not issue a
25 citation then the aggrieved employee may appeal to the Superior Court for an order directing the
26 Division to issue a citation.

27 (c) **Category Three: All Other Labor Code Violations**

28 62. The third category is for Labor Code violations other than those covered by the

1 first two categories. Some common violations include wage statements that fail to provide
2 inclusive dates of a pay period or the legal employer's name and address, as required by Labor
3 Code Section 226.

4 63. The notice requirement is the same as Category One claims but an employer can
5 "cure" the violation within 33 days of the PAGA notice. An employer sends notice to LWDA
6 and the employee describing the actions taken to cure the violation. The employee can respond
7 to the LWDA, as to why those actions did not actually cure the violation, and the LWDA has 17
8 days to review the actions taken and make a determination on whether the employer did, in fact,
9 cure the violations.

10 64. There are limitations on the number of times an employer can avail itself of the
11 cure provision. If the LWDA determines that the employer did not cure the violations, or
12 otherwise fails to provide a timely response, then the employee can proceed with the civil
13 lawsuit. But even if the LWDA determines the violations have been cured then an employee can
14 appeal the agency's determination by filing an action with the Superior Court.

15 (d) **The PAGA Penalty Framework**

16 65. Where the Labor Code does not specifically provide for a civil penalty, PAGA
17 creates one. These "default penalties" are assessed against employers in the amount of \$100 per
18 employee per pay period for an initial Labor Code violation, and \$200 per employee per pay
19 period for each subsequent violation. *See* Cal. Lab. Code § 2699(f)(2). These penalties can be
20 collected for each employee for each pay period the employee worked within the statutory
21 period (one year). Civil penalties recovered under the PAGA statute (*i.e.*, California Labor Code
22 Section 2698 *et seq.*) do not include unpaid wages or individualized damages, and damages are
23 split between the California government and the aggrieved employees. *See, e.g., Thurman v.*
24 *Bayshore Transp. Mgmt. Inc.*, 203 Cal. App. 4th 1112 (2012). The split is 75% to the State and
25 25% to aggrieved employees. Cal. Lab. Code § 2699(i). PAGA also provides for an award of
26 the employee's attorney fees and costs incurred in litigation. *See* Cal. Lab. Code § 2699(g).
27 Because only a fraction of PAGA cases are litigated through verdict, however, counsel for
28 PAGA plaintiffs are almost always compensated by court-approval of their lofty contingency

1 fees (e.g., one third), based on the gross recovery and/or settlement amount.

2 66. PAGA has also been interpreted by some California courts and agencies to allow
3 employees to recover unpaid wages, liquidated damages, waiting time penalties, as well as civil
4 penalties provided for under other statutes that, historically, could only be enforced by the
5 State—e.g., California Labor Code Sections 558, 1197.1.

6 67. Where a civil penalty is already enumerated for a Labor Code violation,
7 California Courts have held that the enumerated penalty (which is normally much higher)
8 displaces the default penalty. *See, e.g., Raines*, 23 Cal. App. 5th at 680 (holding that civil
9 penalty for wage statement set forth in 226.3 in the amount of \$250 per employee per initial
10 violation and \$1000 per employee for each subsequent violation applied over penalty set forth
11 in 2699(f)(2)).

12 (e) **The Limited Court and Agency Involvement In Settlement,**
13 **Court Orders, and Judgments**

14 68. Court approval is required by statute for settlement of PAGA claims. *See* Cal.
15 Lab. Code § 2699(l). However, judicial oversight in PAGA claims is strikingly different from
16 the oversight for class actions. In PAGA actions, the Court is not required to exercise anywhere
17 near the same level of scrutiny required in a class action. *Arias v Superior Court*, 46 Cal. 4th
18 969 (2009) (holding that PAGA actions are not subject to class action requirements).

19 69. For example, PAGA approval requires none of the various findings required by
20 Rule 23 of the Federal Rules of Civil Procedure, Civil Procedure Section 382, and/or
21 corresponding case law.

22 70. Indeed, the language of the statute suggests an extremely limited inquiry. The
23 PAGA statute does not even require the Court to review the entire settlement, but only “any
24 penalties sought as a part of a proposed settlement agreement[.]” *See* Cal. Lab. Code § 2699(l).
25 Any proposed settlement must be provided to LWDA at the same time that it is submitted to the
26 court. Similarly, judgments and orders regarding PAGA penalties must be provided to LWDA.
27 In neither case, however, is the LWDA required to take any action or even review the proposed
28 settlement agreement, judgments, or orders.

1 **4. PAGA's Lack of Judicial and/or Administrative Oversight**

2 71. As outlined above, the State exercises virtually no control over any aspect of
3 PAGA litigation. Rather, the sole manner in which the government plays any role in controlling
4 a PAGA case is through the pre-filing notice requirements imposed by California Labor Code
5 Section 2699.3. But that notice provision merely requires the potential PAGA litigant to mail a
6 notice to the LWDA and the Employer of the intention to bring PAGA claims, to provide a
7 bare-bones description of the facts and Labor Code sections the employee intends to sue under,
8 and then to wait until the LWDA either decides to investigate (which occurs less than 1% of the
9 time) or does nothing, which is almost always the case.

10 72. On information and belief, the LWDA does not receive, loses, and/or fails to
11 review the vast majority of notices addressed to its attention by aggrieved employees and/or
12 their attorneys. Indeed, the LWDA website all but admits as much:

13 The PAGA statute does not require parties to prove affirmatively that
14 documents were received by LWDA. The statute only requires proof that
15 items were mailed or submitted in the required manner.

16 *See* Labor Workforce Development Agency, Private Attorneys General Act (PAGA), available
17 at <https://www.labor.ca.gov/Private_Attorneys_General_Act.htm> (last accessed Nov. 21,
18 2018).

19 73. If the LWDA declines to investigate the alleged violations or fails to respond
20 within the time allotted under PAGA, which, again is the outcome 99% of the time, that single,
21 pre-litigation event constitutes the only connection the government will ever have to the PAGA
22 action filed thereafter, other than the LWDA's potential receipt of settlement agreements,
23 judicial verdicts and/or order, and its share of recovered penalties.

24 74. Indeed, PAGA does not provide for any means by which the government can
25 later intervene to ensure neutrality or that the public's interests are being met.

26 75. To that end, PAGA provides no means by which the government can monitor the
27 litigation or later step in to oversee negotiations or ensure that the government's interests are
28 adequately represented and/or compensated in settlement agreements or litigation (except in the

1 limited circumstances of certain health and safety violations for which the Division of
2 Occupational Safety and Health is entitled to “comment” on the proposed settlement, and the
3 court must give those comments “appropriate weight”).

4 76. Consequently, subject only to the limited oversight by the trial court of a final
5 settlement agreement (Cal. Lab. Code § 2699(l)), the “aggrieved employee” and his or her
6 private attorney prosecuting a PAGA action alone decide whether to settle PAGA claims that
7 the LWDA declines to pursue itself, and on what terms. Such “aggrieved employees” and, more
8 precisely, their private attorneys who stand to recover significant attorneys’ fees enjoy carte
9 blanche authority to prosecute the PAGA action, guided only by their personal needs and
10 interests. The government has no say in whether or how a PAGA action will be brought, the
11 facts or theories on which the claim will be based, what discovery will be conducted, what
12 motions will be filed and how defense motions will be opposed, whether the case will be settled,
13 or the terms of any settlement.

14 **5. PAGA Plaintiffs’ Proxy Role Vests Them With Unconstitutional**
15 **Power In the Courts**

16 77. On June 23, 2014, the California Supreme Court issued its decision in *Iskanian v.*
17 *CLS Transportation Los Angeles, LLC*, holding that an express class action waiver in an
18 employment arbitration agreement is unenforceable with respect to PAGA claims under
19 California law. *Id.* at 59 Cal. 4th 348, 391 (“*Iskanian*”). The California Supreme Court reasoned
20 that an arbitration agreement precluding representative PAGA claims is invalid as a matter of
21 California public policy and that that public policy to enforce wage-and-hour laws on behalf of
22 the State is not preempted by the FAA (since the dispute was not between two contracting
23 private parties, but between the State and an employer). *Id.* at 388-89.

24 78. The Court also clarified an important open-ended question about who receives
25 the PAGA civil penalties that are recovered through the action. Specifically, the California
26 Supreme Court made clear that the penalties are distributed to all aggrieved employees (unlike a
27 typical *qui tam* action where the bounty hunter keeps all of the money that does not go to the
28 State), unequivocally stating that “a portion of the penalty goes not only to the citizen bringing

1 the suit but to all employees affected by the Labor Code violation.” *Id.* at 382.

2 79. Lastly, the California Supreme Court found that PAGA does not violate
3 constitutional separation of powers on the basis that a PAGA action is a type of *qui tam*
4 action—because it conforms to three traditional criteria: (1) that the statute exacts a penalty;
5 (2) that part of the penalty be paid to the informer; and (3) that, in some way, the informer be
6 authorized to bring suit to recover the penalty. *Id.* at 382. To the Court, there was only one
7 distinction between PAGA and the classic *qui tam* action, “that a portion of the penalty goes not
8 only to the citizen bringing the suit but to all employees affected by the Labor Code violation.”
9 *Id.* But this, the Court reasoned, does not change the fact that the “government entity on whose
10 behalf the plaintiff files suit is always the real party in interest in the suit.” *Id.*

11 80. As alleged in further detail below, however, the private contingency-fee
12 attorneys who file and pursue PAGA claims make no effort to further the interests of the State
13 in litigation, and actively work against the interests of the State in private mediations. In
14 practice, private contingency-fee attorneys exploit the holding of *Iskanian* to persuade
15 employers with binding arbitration agreements (with class action waivers) to participate in
16 private mediation. Once at mediation, PAGA penalties rarely receive any serious consideration.
17 Rather, the parties usually arrive at a sum that will resolve the underlying statutory claims on a
18 class-wide basis and the private contingency-fee attorney usually suggests a very small
19 allocation of that total to PAGA – so as to maximize his or her fees.

20 81. On June 29, 2009, the Supreme Court of California issued its decision in *Arias v.*
21 *Superior Court*, holding that representative PAGA claims are not subject to California’s class-
22 action requirements because PAGA’s purpose is as a law enforcement action on behalf of the
23 State. 46 Cal. 4th 969 (2009). More specifically, the Court reasoned:

24 When a government agency is authorized to bring an action on behalf of an
25 individual or in the public interest, and a private person lacks an
26 independent legal right to bring the action, a person who is not a party but
27 who is represented by the agency is bound by the judgment as though the
28 person were a party. [Citation]. Accordingly, with respect to the recovery

1 of civil penalties, nonparty employees as well as the government are bound
2 by the judgment in an action brought under the act, and therefore
3 defendants' due process concerns are to that extent unfounded.

4 *Id.* at 986.

5 82. On July 13, 2017, the California Supreme Court issued its decision in *Williams v.*
6 *Superior Court*, holding that an employee need not provide any proof of his or her allegations
7 before being presumptively entitled to State-wide contact information in discovery. 3 Cal. 3d
8 531 (2017) ("*Williams*"). Specifically, the Court reasoned:

9 PAGA's standing provision similarly contains no evidence of a legislative
10 intent to impose a heightened preliminary proof requirement. Suit may be
11 brought by any "aggrieved employee" [citation]; in turn, an "aggrieved
12 employee" is defined as "any person who was employed by the alleged
13 violator and against whom one or more of the alleged violations was
14 committed" [citation]. If the Legislature intended to demand more than
15 mere allegations as a condition to the filing of suit or preliminary discovery,
16 it could have specified as much. That it did not implies no such heightened
17 requirement was intended.

18 *Id.* at 546. The *Williams* Court also blessed the PAGA plaintiffs' ability to embark on fishing
19 expeditions:

20 The Legislature was aware that establishing a broad right to discovery might
21 permit parties lacking any valid cause of action to engage in "fishing
22 expedition[s]," to a defendant's inevitable annoyance. [citation]. It granted
23 such a right anyway, comfortable in the conclusion that "[m]utual
24 knowledge of all the relevant facts gathered by both parties is essential to
25 proper litigation."

26 *Id.* at 551.

27 83. On March 23, 2018, the California Court of Appeal issued its decision in *Huff v.*
28 *Securitas Security Services USA, Inc.*, 23 Cal. App. 5th 745 (2018) ("*Huff*"), holding that PAGA

1 allows an employee who suffers just one Labor Code violation to seek PAGA penalties for any
2 and all other violations committed by that employer against any other employee. In so holding,
3 the Court of Appeal disregarded legislative history that demonstrated the California
4 Legislature's intent to limit a PAGA plaintiff's ability to pursue penalties only for the same type
5 of Labor Code violations he or she is alleged to have suffered. *Id.* at 755-56. Among the bases
6 for this holding was the court's determination that: "Given the goal of achieving maximum
7 compliance with State labor laws, it would make little sense to prevent a PAGA plaintiff (who
8 is simply a proxy for State enforcement authorities) from seeking penalties for all the violations
9 an employer committed." *Id.* at 757. The practical impact of the *Huff* decision is that an
10 employee who alleges to have been aggrieved in one isolated way by an employer is vested with
11 the power of the State to audit a business for all potential violations.

12 84. On September 29, 2018, the California Court of Appeal issued its decision in
13 *Atempa v. Pedrazzani*, which held that any person who is in fact responsible for overtime and/or
14 minimum wage violations may be held personally liable for civil penalties, and that these
15 penalties can be recovered through PAGA, regardless of whether the person was the employer
16 or whether the employer is a limited liability entity. 27 Cal. App. 5th 809 (2018). The Court of
17 Appeal reasoned:

18 [T]he Legislature has decided that both the employer and any "other person"
19 who causes a violation of the overtime pay or minimum wage laws are
20 subject to specified civil penalties. [citation]. Neither of these statutes
21 mentions the business structure of the employer, the benefits or protections
22 of the corporate form, or any potential reason or basis for disregarding the
23 corporate form. To the contrary, as we explain, the business structure of the
24 employer is irrelevant; if there is evidence and a finding that a party other
25 than the employer "violates, or causes to be violated" the overtime laws (§
26 558(a)) or "pays or causes to be paid to any employee" less than minimum
27 wage (§ 1197.1(a)), then that party is liable for certain civil penalties
28 regardless of the identity or business structure of the employer.

1 6. Contrary to the Conclusion of the California Supreme Court in
2 Iskanian, PAGA is Unconstitutional On Its Face.

3 85. In *Iskanian*, the California Supreme Court incorrectly labeled a “PAGA
4 representative action . . . a type of *qui tam* action,” and found that a PAGA action could not be
5 waived because the State—and not the named plaintiff—is the real party in interest. The
6 analogy is incorrect. A *qui tam* action differs significantly from a PAGA action.

7 86. Unlike *qui tam* actions arising under the False Claims Act, the State of California
8 plays almost no role in a PAGA action. Under PAGA, the LWDA has a limited opportunity to
9 investigate or intervene in an aggrieved employee’s claims. In most cases, LWDA has 65 days
10 to determine whether to investigate and, if it does investigate, 120 additional days to complete
11 the investigation and determine whether to issue a citation. On information and belief, LWDA
12 rarely investigates such claims. A March 25, 2016 report from the Legislative Analyst’s
13 Office (“March 2016 Report”) stated:

14 The LWDA . . . has been able to devote only minimal staff and resources—
15 specifically, one position at DLSE beginning in 2014—to perform a high-level
16 review of PAGA notices and determine which claims to investigate. **In 2014, less**
17 **than half of PAGA notices were reviewed, and LWDA estimates that less than**
18 **1 percent of PAGA notices have been reviewed or investigated since PAGA**
19 **was implemented.** When a PAGA notice is investigated, LWDA reports that it has
20 difficulty completing the investigation within the timeframes outlined in PAGA.

21 When an investigation is not completed, or not completed on time, the PAGA claim
22 is automatically authorized to proceed.”

23 See Legislative Analyst’s Office, *The 2016-17 Budget: Labor Code Private Attorneys General*
24 *Act Resources*, Budget and Policy Post (Mar. 25, 2016), available at
25 <<https://lao.ca.gov/publications/report/3403>> (last accessed Nov. 27, 2018) (emphasis added).

26 The March 2016 Report also noted that:

27 [T]he intent of PAGA is that LWDA have the opportunity to review PAGA notices
28 and at least in some cases conduct its own investigation prior to the PAGA claim

1 proceeding. Given the minimal resources currently devoted to the review and
2 investigation of PAGA notices, we do not believe LWDA is currently able to fulfill
3 the role intended for it in the PAGA legislation.”

4 *Id.*

5 87. In contrast to the lack of State governmental involvement in PAGA actions, the
6 State maintains substantial control in *qui tam* actions. The Attorney General has 60 days in
7 which to intervene and proceed with an action, and may seek numerous extensions of time in
8 which to do so. Cal. Gov’t Code §§ 12652(c)(4)-(5). While the State is investigating a claim,
9 which is first filed under seal, the *qui tam* plaintiff cannot serve the complaint, litigate, or
10 negotiate a settlement. *See* Cal. Gov’t Code § 12652. If the State declines to intervene, it can
11 intervene at a later time and assume substantial control over the litigation. *See* Cal. Gov’t Code
12 §§ 12652(f), (i). Moreover, the standards for filing bringing a claim under the False Claims Act,
13 and the information provided to the State, are materially greater than what is required under
14 PAGA. Until July 2016, PAGA only required that minimal notice be provided to the LWDA.
15 An aggrieved employee was not required to provide a copy of a proposed complaint, settlement
16 agreement, or even report whether the matter has settled. In fact, the March 25, 2016 report
17 from the Legislative Analyst’s Office recommended changes to PAGA to require “more detail
18 in the initial PAGA notice and that a copy of the PAGA complaint and any settlement be
19 provided to LWDA,” and stated that doing so would be “a reasonable extension of LWDA’s
20 oversight of the PAGA process[.]” *Id.*

- 21 a. In contrast, the False Claims Act requires a complaint be filed, under seal, with a
22 copy served on the Attorney General. Furthermore, the *qui tam* Plaintiff is required
23 to furnish to the Attorney General a written disclosure of “substantially all material
24 evidence and information the person possesses.” Cal. Gov’t Code § 12652(c)(3).
- 25 b. Actions arising under the False Claims Act can also only be dismissed with approval
26 from a court **and** the State Attorney General, “taking into account the best interests
27 of the parties involved and the public purpose of the statute.” Cal. Gov’t Code
28 § 12652(c)(1). No claim arising under the False Claim Act may be released by a

1 private person, except as part of a court-approved settlement. *Id.* (emphasis added).

2 88. PAGA contains no comparable judicial oversight. On information and belief,
3 settlements of Labor Code claims enforced under PAGA frequently involve very little or no
4 allocation of PAGA penalties. There is no judicial oversight unless PAGA penalties are
5 allocated. On information and belief, PAGA claims are used to wrestle greater settlements from
6 private claims and produce very little for the State, despite the fact that PAGA requires that the
7 LWDA receive 75 percent of any civil penalties collected. The above referenced March 2016
8 Report stated:

9 [N]ot all settlements include civil penalties. In fact, LWDA reports that in 2014-15
10 it received just under 600 payments for PAGA claims that resulted in civil penalties.
11 This number is low relative to the amount of PAGA notices LWDA receives each
12 year (roughly 10 percent of notices received in 2014), implying that the final
13 disposition of a large portion of PAGA claims, and likely many settlements, do not
14 involve civil penalties.

15 *Id.* The March 2016 Report also states that the amount of PAGA notices filed with the LWDA
16 in 2014 exceeded 6,300 and the amount of PAGA penalties deposited in the Labor and
17 Workforce Development Fund in 2014 was \$8,400,000. *Id.* On information and belief, the issue
18 identified in the 2016 Legislative Analyst's Office report—a large portion of PAGA claims
19 settling without allocating civil penalties—continues to this day.

20 7. **PAGA is Unconstitutional As-Applied.**

21 89. In *Iskanian*, our Supreme Court declared that PAGA did not violate the
22 Separation of Powers Doctrine. 59 Cal. 4th at 391. The Court decided the question over the over
23 the objection of the party *Iskanian*, who argued that “this issue was not raised in CLS’s answer
24 to the petition for review and is not properly before [the Court].” *Id.* at 389. The Court grounded
25 its authority to address the unraised issue in a California Rule of Court which provides, in
26 relevant part, that the Supreme Court may “decide an issue that is neither raised nor fairly
27 included in the petition or answer if the case presents the issue and the court has given the
28 parties reasonable notice and opportunity to brief and argue it.” *Id.* (citing Cal. R. Ct.

1 8.516(b)(1)-(2)). The Court expressly invoked the “reasonable opportunity to brief the issue”
2 portion of the rule, which, at a minimum, is a tacit admission that the Court had an incomplete
3 record before it, at least for the purposes of determining whether PAGA is unconstitutional as
4 applied to CLS in that case.

5 The following allegations, made on information and belief, will allow this court to
6 develop a sufficient factual record for this Court, the Court of Appeal, our Supreme Court,
7 and/or the United States Supreme Court to determine whether PAGA is unconstitutional as
8 applied to Plaintiff’s members and other California employers.

9 (a) **PAGA’s Penalty Scheme Is Unconstitutional As Applied.**

10 90. As alleged, *supra*, where the Labor Code does not provide for a civil penalty,
11 PAGA exacts a penalty of \$100 per employee, per pay period, for initial violations, and \$200
12 per employee, per pay period, for subsequent violations. And though still an open question in
13 the law, the weight of authority suggests that PAGA penalties may be “stacked” or
14 “aggregated” for multiple PAGA violations in the same pay period. *See, e.g., Schiller v. David’s*
15 *Bridal, Inc.*, 2010 U.S. Dist. LEXIS 81128, *18 (E.D. Cal. July 14, 2010) (“Plaintiff cites no
16 authority establishing that PAGA penalties could not be awarded for every cause of action
17 under which they are alleged.”; “the Court concludes that Defendant may aggregate all alleged
18 PAGA penalties asserted as to each cause of action for purposes of establishing the amount in
19 controversy.”); *see also Pulera v. F & B, Inc.*, 2008 U.S. Dist. LEXIS 72659, at * 2-3 (E.D. Cal.
20 Aug. 19, 2008) (aggregating 25% of all PAGA penalties alleged when making amount in
21 controversy determination); *Smith v. Brinker Intern, Inc.*, 2010 U.S. Dist. LEXIS 54110, (N.D.
22 Cal. May 5, 2010).

23 91. Under this framework, the allegation by a single employee that an employer has
24 unknowingly underpaid him or her by just a few dollars could provide the basis for millions of
25 dollars in PAGA penalties, even for a small employer, and regardless of the employer’s
26 innocent intent or mistake. What follows is an example of how such an allegation (which on
27 information and belief are similar to the allegations that have been pleaded against Plaintiff’s
28 members) could lead to such an absurd and unconstitutional result.

92. Employee alleges (without any proof) that for the past year, he has worked 2 minutes of “off-the-clock” overtime each pay period attending to miscellaneous tasks related to opening or closing Employer’s place of business—without ever telling Employer—and that Employer has not paid him for this time. Under the *Starbucks* decision, discussed *supra*, the employee has a cognizable claim of failure to pay minimum wages and overtime. Employer has 30 employees and weekly pay periods. Employee’s hourly rate of pay is \$11.00 per hour, which means the approximate amount of unpaid minimum wages is: \$19.07 (2 minutes x 52 pay periods = 104 minutes; 104 minutes / 60 minutes = 1.73 hours; 1.73 hours x \$11.00 = \$19.07), and the approximate amount of unpaid overtime wages are: \$9.54 (\$19.07 x 0.5 = \$ 9.54). So the total approximate amount of wages Employer failed to pay Employee, unknowingly, is \$28.61.

93. Below is a breakdown of the maximum penalties that Employee could threaten against the Employer under PAGA.

Type of Violation	Statute	Penalties Per Employee
Non-Payment of Minimum Wages	1197.1	<ul style="list-style-type: none">Unpaid Wages: \$19.07Penalties: \$12,850
Non-Payment of Overtime	558	<ul style="list-style-type: none">Unpaid Wages: \$9.54Penalties: \$5150
Failure to Provide Accurate Wage Statements	226.3	<ul style="list-style-type: none">Penalties: \$51,250
Failure to Maintain Accurate Payroll Records	1174.5	<ul style="list-style-type: none">Penalties: \$500
Total Exposure For Employee	N/A	\$69,508.61
Workforce Exposure (for 30 employee business)	N/A	\$2,085,258.30

94. Through PAGA, Employee has authority to seek a maximum of \$69,508.61 civil penalties and personal damages for the alleged failure of Employer to pay Employee: \$28.61, which is **2,430 times the alleged actual damages**. And Employee is further empowered to threaten Employer (through extrapolation) with **over \$2 million dollars in penalties and damages** for its 30-person workforce. This does not even account for penalties that could be

1 assessed for separated employees, which would increase the exposure by \$3,640 per separated
2 employee. *See* Cal. Lab. Code § 1197.1(a)(1)-(2) (making available the recovery of Cal. Lab.
3 Code 203).

4 95. Plaintiff is aware that PAGA provides the trial court the discretion to “award a
5 lesser amount than the maximum civil penalty amount specified by this part if, based on the
6 facts and circumstances of the particular case, to do otherwise would result in an award that is
7 unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code § 2699(e)(2) (“Section
8 (e)(2)”). Indeed, state and federal courts alike have relied almost exclusively on this provision
9 in holding that PAGA is constitutional.

10 96. However, the California Court of Appeal has made clear that PAGA penalties
11 “are mandatory, not discretionary” and that the considerations in Section (e)(2) may only be
12 exercised to reduce penalties, not for “exercising discretion in general with regard to the amount
13 of penalties, because the amount is fixed by statute.” *Amaral v. Cintas Corp. No. 2*, 163 Cal.
14 App. 4th 1157, 1213 (2008). In the context of our example, this means that the amount of civil
15 penalties and damages to which Employee is entitled under PAGA is set at \$69,508.61, which
16 (by extrapolation) means that Employee can threaten this small 30-person Employer with a
17 lawsuit with exposure that exceeds \$2,000,000. And only if Employer is willing and able to
18 incur the costs and expenses necessary to litigate Employee’s PAGA case through verdict—
19 which could cost hundreds of thousands of dollars—does the Court have any discretion to
20 reduce the mandatory **2,430 multiple of the alleged actual damages** provided for under PAGA.

21 97. Thus, under PAGA, employers must endure years of cost-prohibitive litigation,
22 under the constant threat of bankrupting liability, and proceed all the way to trial on the hope
23 that a judge just might exercise an undefined “discretion” to reduce the mandatory penalties
24 provided for under the statute. Such a framework is not a fair, reasonable, appropriate, or
25 constitutional state of affairs, and its inequitable results “shock the conscience.”

26 (b) **PAGA’s Lack of Government Oversight Is Unconstitutional**
27 **As-Applied.**

28 98. On information and belief, CABIA alleges that the Plaintiffs’ Bar—specifically

1 those that focus on wage/hour actions—have exploited the Legislature’s unfettered delegation
2 of power through PAGA to enrich themselves at the expense of the State of California, the
3 “aggrieved employees” they purported to represent, and the ethical standards for attorney
4 conduct.

5 99. On information and belief, the Plaintiffs’ Bar routinely exploits the fact that the
6 Supreme Court has ruled that PAGA claims are non-arbitrable to avoid the effect of arbitration
7 agreements, particularly those with class action waivers.

8 100. More specifically, and on information and belief, the typical tactic employed by
9 the Plaintiffs’ Bar is to file a class action lawsuit and add non-arbitrable PAGA claims, not to
10 vindicate the interest of the State, or to fulfill the express purpose of PAGA of enhancing
11 employer compliance with California Labor Laws, but rather to coerce employers to agree to
12 early-stage mediation.

13 101. During the vast majority of these mediations, the Plaintiffs’ Bar engages in
14 practices made possible by PAGA which, as applied to Plaintiff’s members and other California
15 employers, are unconstitutional under State and federal law, including, but not limited to:

- 16 a. Not requiring the “aggrieved employee” to attend the mediation;
- 17 b. Not consulting with the “aggrieved employee” or the State before agreeing to a
18 settlement of PAGA claims;
- 19 c. After using PAGA to avoid arbitration (and the effect of a class waiver),
20 attempting to settle for the value of Labor Code violations and allocate only a
21 very small portion of the settlement to PAGA, thereby minimizing the share of
22 the recovery that goes to the State;
- 23 d. Threatening to pursue the life savings, homes, college tuition funds, and other
24 personal property as a means to intimidate and coerce those connected with an
25 employer-business to pay large settlements, very little of which is normally
26 allocated to PAGA in the end.

27 102. PAGA litigation also lacks any appreciable oversight and/or coordination with
28 the legislative, executive, and/or judicial branches of government, which results in the

1 unconstitutional application of PAGA to Plaintiff's members and California employers
2 generally, including, but not limited to:

- 3 a. Not requiring the LWDA to review any number or percentage of PAGA notices;
- 4 b. Not requiring the LWDA to investigate any number of PAGA notices;
- 5 c. Not monitoring or auditing the Plaintiffs' Bar's use of PAGA (e.g., the number
6 of notices filed by firms);
- 7 d. Not requiring a representative of LWDA to be present at mediations, court
8 hearings, or trials involving PAGA claims;
- 9 e. Not requiring the LWDA to review settlement agreements, court orders, or court
10 judgments that are based on or relate to PAGA claims;
- 11 f. Permitting the LWDA to understaff the LWDA's PAGA unit, lose PAGA
12 notices, and maintain inadequate records of PAGA notices, fees collected,
13 lawsuits, settlements, judgment, and orders;
- 14 g. Failing to establish and enforce ethical guidelines for attorneys who are
15 representing the State's proxies, the aggrieved employees; and
- 16 h. Failing to vet or screen the attorneys who are representing the State's proxies, the
17 aggrieved employees.

18 103. The Legislature's unfettered grant of authority to the Plaintiffs' Bar to exercise
19 State power through PAGA, without any oversight or coordination, has resulted in an
20 oppressive regime of opportunism that threatens "the continued operation of an established,
21 lawful business" in this State, which the Supreme Court has held is subject to heightened
22 protections. *See County of Santa Clara, supra*, 50 Cal. 4th at 53. This unconstitutional grant of
23 State power has been aggressively exploited by dozens of law firms. According to State records,
24 which are incomplete, well over 100 firms have sent 50 or more PAGA Notices to the LWDA
25 since it the law was enacted, and the 30 most aggressive PAGA plaintiffs' firms (by number of
26 PAGA Notices) appear in the chart below:

No.	Law Firm	PAGA Notices
1	Law Offices of Ramin R. Younessi	753
2	Kingsley & Kingsley	599

3	Lawyers for Workplace Fairness	542
4	Gaines & Gaines	514
5	Initiative Legal Group APC	501
6	Capstone Law APC	440
7	Blumenthal Nordrehaug Bhowmik De Blouw LLP	433
8	Lavi & Ebrahimian LLP	431
9	Crosner Legal P.C.	424
10	Matern Law Group	382
11	Fitzpatrick & Swanston	377
12	Harris & Ruble	369
13	Lawyers for Justice	352
14	JML Law	348
15	Mayall Hurley P.C.	333
16	Law Offices of Stephen Glick	318
17	Mahoney Law Group	300
18	JAMES HAWKINS APLC	291
19	United Employees Law Group, PC	286
20	Diversity Law Group	285
21	Kesluk Silverstein & Jacob	278
22	Aegis Law Firm	258
23	Setareh Law Group	234
24	David Yeremian & Associates, Inc.	227
25	Haines Law Group	227
26	Spivak Law	210
27	Rastegar Law Group	204
28	Law Offices of Gregory A. Douglas	193
29	Shimoda Law Corp	192
30	The Nourmand Law Firm	182

104. The Legislature's unfettered grant of authority to the Plaintiffs' Bar to exercise State power through PAGA, without any oversight or coordination, has resulted in *the Plaintiffs' Bar targeting charities, non-profits, and other employers who provide valuable and charitable services to California residents, including, but not limited to children's hospitals, AIDS centers, senior living centers, ambulance companies, sustainable energy companies, foster homes*, and more; a non-exhaustive list of such employers who have been targeted by the Plaintiffs' Bar via the Legislature's unfettered and unconstitutional delegation of State power through PAGA include:

1	Employer Name	Law Firm
2	Paramount Meadows Nursing Center LP; Paramount Meadows Nursing Center LLC	Aegis Law Firm
3	Kindercare Education LLC; Kindercare Learning Centers LLC	Baltodano & Baltodano LLP
4	Sober Living By The Sea, Inc.	Bibiyan Law Group, P.C.
5	Carriage Funeral Holdings, Inc.	Blumenthal Nordrehaug Bhowmik De Blouw LLP
6	Kaiser Foundation Hospitals	Blumenthal Nordrehaug Bhowmik De Blouw LLP
7	Navajo Express, Inc.	Blumenthal Nordrehaug Bhowmik De Blouw LLP
8	Pride Transport Inc.	Blumenthal Nordrehaug Bhowmik De Blouw LLP
9	AIDS Healthcare Foundation	Blumenthal Nordrehaug Bhowmik De Blouw LLP
10	El Camino Hospital	Blumenthal Nordrehaug Bhowmik De Blouw LLP
11	Methodist Hospital of Sacramento	Bohm Law Group, Inc.
12	Center for Interventional Spine; Integrated Pain Management Medical Group, et al	Bohm Law Group, Inc.
13	United Ambulance Services, Inc.	Bohm Law Group, Inc.
14	Providence Saint John's Health Center	Bradley Grombacher LLP
15	Center for Elders' Independence	Bradley Grombacher LLP
16	Victor Valley Union High School District	California School Employees Association
17	Lifecare Solutions, Inc.	Capstone Law APC
18	Healing Care Hospice, Inc./Shahrouz Golshani	Chesler McCaffrey LLP
19	Valley Presbyterian Hospital	Cohelan Khoury & Singer
20	Max Laufer, Inc. d/b/a MaxCare Ambulance	Cohelan Khoury & Singer
21	BHC Sierra Vista Hospital, Inc.	Crosner Legal P.C.
22	Fairwinds-West Hills, A Leisure Care Community, et al.	David Yeremian & Associates, Inc.
23	24-7 Caregivers Registry, Inc dba Advantage Plus Caregivers	David Yeremian & Associates, Inc.
24	Mental Health America of Los Angeles	Diana Gevorkian Law Firm
25	Earthbound Farm, LLC	Diversity Law Group
26	Planned Parenthood Mar Monte, Inc.	Diversity Law Group
27	Adventist Health/Reedley Community Hospital	Diversity Law Group
28	The Salvation Army	Diversity Law Group
	Samaritan LLC	Diversity Law Group
	Regional Medical Center of San Jose	Diversity Law Group
	Grand Terrace Health Care, Inc.	Diversity Law Group

1	Carmichael Care, Inc.	Diversity Law Group
2	Watsonville Community Hospital	Diversity Law Group
3	San Jose Foothill Family Community	Diversity Law Group
4	Mama Petrillo's-Temple City, Incorporated	Employee Justice Legal Group, LLP
5	Fresno Community Hospital And Medical Center	Employee Law Group
6	Westlake Wellbeing Properties LLC	Ferguson Case Orr Paterson LLP
7	John Muir Health & John Muir Behavioral Health	Gaines & Gaines
8	Front Porch Communities and Services	Gaines & Gaines
9	Encore Education Corporation	Gaines & Gaines
10	The Endoscopy Center of Santa Maria, Inc.	Gaines & Gaines
11	Sutter Central Valley Hospitals	Gaines & Gaines
12	Valley Children's Medical Group	Gaines & Gaines
13	Silver Crown Home Care, LLC	Gaines & Gaines
14	Childrens Hospital Los Angeles Medical Group, Inc.	Gartenberg Gelfand Hayton LLP
15	Youth Policy Institute Charter Schools, Monsignor Oscar Romero Charter School...	Genie Harrison Law Firm
16	Life Alert Emergency Response, Inc.	Geragos & Geragos, APC
17	Rehabilitation Center of Santa Monica Holding Company GP, LLC	GrahamHollis APC
18	First Alarm	GrahamHollis APC
19	Progressus Therapy, LLC & other employers	Gurnee Mason & Forestiere
20	Soquel Union Elementary School District	Habbu & Park
21	California Friends Home dba Quaker Gardens	Haines Law Group
22	Evergreen Hospice Care, Inc.	Haines Law Group
23	Life Care Centers of America, Inc.	Haines Law Group
24	Big League Dreams USC, LLC	Haines Law Group
25	Chhatrala Hospitality Group, LLC dba Howard Johnson Hotel Circle	Hasbini Law Firm
26	Central Coast Community Health Care, Inc.; Central Coast VNA, VNA Community Serv	Humphrey & Rist, LLP
27	California Rehabilitation Institute, LLC (and other Defendant in the notice)	J.B. Twomey Law
28	San Diego Humane Society and S.P.C.A.	Jackson Law, APC
	Seasons Hospice & Palliative Care of California-San Bernardino, LLC	Jafari Law Group
	Eureka Rehabilitation & Wellness Center, LP.	Janssen Malloy LLP
	EFR Environmental Services, Inc.	JUSTICE LAW CORPORATION
	Central Coast Home Health, Inc.	JUSTICE LAW CORPORATION
	Universal Hospital Services, Inc.	JUSTICE LAW CORPORATION
	Covanta Long Beach Renewable Energy Corp.	Kokozian Law Firm, APC

1	Central City Community Health Center	Kokozian Law Firm, APC
2	CHLB, LLC dba College Medical Center	Kokozian Law Firm, APC
3	St. John's Well Child and Family Center, Inc.	Lavi & Ebrahimian LLP
4	City of Hope National Medical Center	Lavi & Ebrahimian LLP
5	North Hills Healthcare & Wellness Centre, LP	Lavi & Ebrahimian LLP
6	Assistalife Family Assisted Care, LLC;	
7	Assistalife Family Assisted Care et al.	Law Office of Alfredo Nava Jr.
8	Greater Los Angeles Agency on Deafness, Inc.	Law Office of Alfredo Nava Jr.
9	Family Housing and Adult Resources, Inc.	Law Office of Allan A. Villanueva
10	Brookdale Senior Living, Inc., and others-see	
11	PAGA Notice	Law Offices of C. Joe Sayas, Jr.
12	CHA Hollywood Medical Center, L.P.; CHA	
13	Health Systems, Inc.	Law Offices of C. Joe Sayas, Jr.
14	National Student Aid Care/CSADVO, LLC	Law Offices of Carlin & Buchsbaum
15	New Life Treatment Center	Law Offices of Carlin & Buchsbaum
16	J&L Day Care Centers, J&L Day Cares, VOICE	Law Offices of Carlin & Buchsbaum
17	Redwood Memorial Hospital of Fortuna	Law Offices of Choi & Associates
18	Silverado Senior Living Management, Inc.	Law Offices of Choi & Associates
19	Regional Medical Center of San Jose	Law Offices of Kevin T. Barnes
20	Antelope Valley Hospital Foundation	Law Offices of Kevin T. Barnes
21	Social Vocational Services, Inc.	Law Offices of Kirk D. Hanson
22	Ambuserve, Inc; Shoreline Ambulance, LLC;	
23	Shoreline Ambulance Company, LLC; M.	
24	Harris	Law Offices of Morris Nazarian
25	We Are Family Center	Law Offices of Ramin R. Younessi
26	Dr. Sandhu Animal Hospital, Inc.	Law Offices of Stephen Glick
27	BHC Sierra Vista Hospital (Sierra Vista	
28	Hospital); UHS of Delaware; UHS SUB III	Law Offices of Traci M. Hinden
29	Greenfield Care Center of Fullerton, LLC	Law Offices of Zorik Mooradian
30	Mercy Services Corp; Mercy Housing, Inc.;	
31	Mercy Housing Management Group, Inc.	Lawyers for Justice
32	St. John's Well Child and Family Center, Inc.	Lawyers for Justice
33	Always There Homecare	Lidman Law APC
34	Covenant Care California dba Covenant Care La	
35	Jolla LLC	Light & Miller, LLP
36	Senior Lifestyle Holding Company, LLC dba	
37	Sunflower Gardens	Mahoney Law Group
38	Edgewater Skilled Nursing Center	Mahoney Law Group
39	California Rehabilitation Institute, LLC	Matern Law Group
40	South Pasadena Care Center, LLC	Matern Law Group
41	Valley Oak Residential Treatment Program Inc	Mayall Hurley P.C.
42	Brookdale Senior Living, Inc.	Mayall Hurley P.C.
43	Gage Medical Clinic, Inc.	Messrelian Law Inc.

Central Calif Found. for Health dba Delano Reg'l Med. Ctr; Delano Health Assocs.	Moss Bollinger LLP
Greenfield Care Center of Gardena, Inc.	Moss Bollinger LLP
Pacific Coast Tree Experts	Moss Bollinger LLP
New School for Child Development	Otkupman Law Firm
Southern Monterey County Memorial Hospital dba George L. Mee Memorial Hospital	Polaris Law Group LLP
Green Messenger, Inc.	Scott Cole & Associates
St. Jude Medical, Inc.; Bolt Staffing Service, Inc.	Setareh Law Group
American Addiction Centers, Inc.	Setareh Law Group
Karma, Inc. DBA Manteca Care & Rehabilitation Center, et al.	Shimoda Law Corp
Sierra Forever Families, Robert Herne	Shimoda Law Corp
Mom365, Inc.	Shimoda Law Corp
Freda's Residential Care Facility for the Elderly, Inc.; Freda and Zoilo Robles	The Law Office of Nina Baumler
Sheridan Assisted Living, Inc.	Verum Law Group, APC
Desert Valley Hospital, Inc.	Wagner & Pelayes, LLP
Sustainable Energy Outreach, LLC.	Wilshire Law Firm, PLC
A1 Solar Power, Inc./American Pro Energy/Renewable Energy Center, LLC.	Wilshire Law Firm, PLC

105. On information and belief, the above employers, and those like them, are the types of entities that the State of California would not be interested in prosecuting or driving into bankruptcy through PAGA litigation. At a minimum, these entities are deserving of a balanced and neutral approach (the type of approach required by a State attorney, not a private attorney) to ensure a "just" result for the public.

106. The Legislature's unfettered and unconstitutional delegation of State power to the Plaintiffs' Bar, without any oversight or coordination, has allowed the Plaintiffs' Bar to enrich themselves at the expense of the State and the alleged aggrieved for whom they are supposed to advocate.

107. For example, in *Viceral v. Mistras Group, Inc.*, case number 15-cv-02198-EMC, a federal judge of the Northern District approved a \$6,000,000 settlement, of which only \$20,000 was allocated to the PAGA claim, even though it was valued at \$12,900,000. The plaintiffs' attorneys were awarded \$2,000,000 in fees (double the lodestar estimate) and

1 \$46,000 in costs.

2 108. In *Price v. Uber Technologies Inc.*, case number BC55451, a Los Angeles
3 Superior Court judge approved a \$7,750,000 settlement, even though the estimated liability was
4 over \$1,000,000,000. The plaintiffs' attorneys were awarded \$2,325,000, whereas the average
5 Uber Driver was awarded just over one dollar (\$1.08).

6 109. In *John Doe v. Google Inc.*, case number CGC-16-556034, a San Francisco
7 Superior Court judge approved a \$1,000,000 settlement, of which the attorneys were awarded
8 \$330,000 (which tripled their hourly rate), and each aggrieved employee received just fifteen
9 and one-half dollars (\$15.50).

10 CAUSES OF ACTION

11 FIRST CAUSE OF ACTION

12 (Violation of California Separation of Powers Doctrine)

13 110. Plaintiff realleges and incorporates by reference Paragraphs 1-109 of this
14 Complaint as though each were set forth herein in full.

15 111. This action presents an actual case or controversy between Plaintiff and
16 Defendant concerning the constitutionality and enforceability of PAGA.

17 112. Plaintiff reasonably believes Defendant will continue to enforce PAGA against
18 Plaintiff's members and other California employers.

19 113. The California Constitution provides for the separation of the legislative,
20 executive, and judicial powers of the State government. Under the classic understanding of the
21 Separation of Powers Doctrine, the legislative power is the power to enact statutes, the
22 executive power is the power to execute or enforce statutes, and the judicial power is the power
23 to interpret statutes and to determine their constitutionality. Among the limitations imposed by
24 the Separation of Powers Doctrine is that the Legislature can neither exercise any core judicial
25 function nor place restrictions on the Judiciary that materially impair or defeat the exercise of
26 the Judiciary's functions. Similarly, the Legislature cannot exercise any core executive
27 functions, and correlatively, the Executive may not abdicate the exercise of its function.

28 114. As pleaded more fully above, the Private Attorneys General Act violates the

1 California Separation of Powers Doctrine, on its face and/or as practiced because, *inter alia*:
2 PAGA does not provide the judiciary sufficient oversight of the judicial functions it has
3 unconstitutionally delegated to private citizens and their counsel; PAGA vests private citizens in
4 their proxy role with the same unique and powerful status as would be enjoyed by the Executive
5 without requiring any coordination or oversight by the Executive to ensure such persons are
6 acting on behalf of the interests of the State and commonsense principles of equity and justice;
7 and PAGA vests private citizens with the power to initiate, steer, litigate, and resolve lawsuits
8 on behalf of the executive without providing meaningful coordination or oversight by the
9 Executive to ensure such persons are acting on behalf of the interests of the State and
10 commonsense principles of equity and justice.

11 115. This Court has the power to issue declaratory relief under Code of Civil
12 Procedure Sections 1060 and 1062. A judicial declaration is necessary and appropriate
13 regarding the proper interpretation of the California Constitutional provision and the legality of
14 the Private Attorneys General Act thereunder, and regarding the respective rights and
15 obligations of Plaintiff and Defendants thereunder. A judicial determination is necessary and
16 proper at this time and under these circumstances in order to determine whether Defendant may
17 continue to enforce the provisions of the Private Attorneys General Act.

18 116. This Court has the power to issue injunctive relief under Code of Civil Procedure
19 Sections 525, 526, and 526a. Plaintiff seeks a temporary restraining order and a preliminary and
20 temporary injunction to compel Defendant, and those public officers and employees acting by
21 and through their authority, to immediately set aside any and all actions taken to continue to
22 implement or enforce the provisions of the Private Attorneys General Act, pending the hearing
23 on the merits of Plaintiff's claims to avoid irreparable harm to Plaintiff and its members.

24 117. Plaintiff has no plain, speedy, and adequate remedy at law, in the absence of this
25 Court's injunction, Defendants will continue to implement and enforce the provisions of the
26 Private Attorneys General Act in violation of Section 3, of Article 3 of the California
27 Constitution, Section 17, Article 1, of the California Constitution, and the Eighth and
28 Fourteenth Amendment to the United States Constitution. No amount of monetary damages or

1 other legal remedy can adequately compensate Plaintiff, and its members, for the irreparable
2 harm that it, its members, and California employers generally, would suffer from the violations
3 of law described herein.

4 **SECOND CAUSE OF ACTION**

5 (Violation of the United States Constitution's Fourteenth Amendment
6 Procedural Due Process Protections)

7 118. Plaintiff realleges and incorporates by reference Paragraphs 1-109 of this
8 Complaint as though each were set forth herein in full.

9 119. This action presents an actual case or controversy between Plaintiff and
10 Defendant concerning the constitutionality and enforceability of PAGA.

11 120. Plaintiff reasonably believes Defendant will continue to enforce PAGA against
12 Plaintiff's members and other California employers.

13 121. The Due Process Clause of the Fourteenth Amendment prohibits the states from
14 depriving any person of life, liberty, or process, without due process of law. This due process
15 guarantee has both procedural and substantive components.

16 122. As pleaded more fully above, the Private Attorneys General Act violates the
17 Fourteenth Amendment's procedural due process guarantee, on its face and/or as practiced, in
18 part, because? PAGA imposes and/or results in the imposition of criminal or quasi-criminal
19 liability without the protections of the grand jury and indictment process; PAGA imposes or
20 results in the imposition of criminal or quasi-criminal liability without requiring the heightened
21 burden of proof required such as "beyond or reasonable doubt" or "clear and convincing
22 evidence"; PAGA imposes and/or results in the imposition of criminal or quasi-criminal liability
23 without requiring proof of a sufficiently culpable *mens rea*; PAGA imposes or results in the
24 criminal or quasi-criminal liability in the absence of a neutral prosecutor; and PAGA provides
25 for the taking of property in the absence of a fair, neutral, decision maker.

26 123. This Court has the power to issue declaratory relief under Code of Civil
27 Procedure Sections 1060 and 1062. A judicial declaration is necessary and appropriate
28 regarding the proper interpretation of the United States Constitutional protections and the

1 legality of the Private Attorneys General Act thereunder, and regarding the respective rights and
2 obligations of Plaintiff and Defendants thereunder. A judicial determination is necessary and
3 proper at this time and under these circumstances in order to determine whether Defendant may
4 continue to enforce the provisions of the Private Attorneys General Act.

5 124. This Court has the power to issue injunctive relief under Code of Civil Procedure
6 Sections 525, 526, and 526a. Plaintiff seeks a temporary restraining order and a preliminary and
7 temporary injunction to compel Defendant, and those public officers and employees acting by
8 and through their authority, to immediately set aside any and all actions taken to continue to
9 implement or enforce the provisions of the Private Attorneys General Act, pending the hearing
10 on the merits of Plaintiff's claims to avoid irreparable harm to Plaintiff and its members.

11 125. Plaintiff has no plain, speedy, and adequate remedy at law, in the absence of this
12 Court's injunction, Defendants will continue to implement and enforce the provisions of the
13 Private Attorneys General Act in violation of Section 3, of Article 3 of the California
14 Constitution, Section 17, Article 1, of the California Constitution, and the Eighth and
15 Fourteenth Amendment to the United States Constitution. No amount of monetary damages or
16 other legal remedy can adequately compensate Plaintiff, and its members, for the irreparable
17 harm that it, its members, and California employers generally, would suffer from the violations
18 of law described herein.

19 **THIRD CAUSE OF ACTION**

20 (Violation of the United States Constitution's Fourteenth Amendment
21 Substantive Due Process Protections)

22 126. Plaintiff realleges and incorporates by reference Paragraphs 1-109 of this
23 Complaint as though each were set forth herein in full.

24 127. This action presents an actual case or controversy between Plaintiff and
25 Defendant concerning the constitutionality and enforceability of PAGA.

26 128. Plaintiff reasonably believes Defendant will continue to enforce PAGA against
27 Plaintiff's members and other California employers.

28 129. The Due Process Clause of the Fourteenth Amendment prohibits the states from

1 depriving any person of life, liberty, or process, without due process of law. This due process
2 guarantee has both procedural and substantive components.

3 130. As pleaded more fully above, the Private Attorneys General Act violates the
4 Fourteenth Amendment's substantive due process guarantee, on its face and/or as practiced, in
5 part, because PAGA imposes or results in penalties, fines, and/or extorted settlement sums
6 disconnected from, and/or grossly disproportionate to, any harm or wrongdoing committed, to
7 the extent that it "shocks the conscience."

8 131. This Court has the power to issue declaratory relief under Code of Civil
9 Procedure Sections 1060 and 1062. A judicial declaration is necessary and appropriate
10 regarding the proper interpretation of the United States Constitutional protections and the
11 legality of the Private Attorneys General Act thereunder, and regarding the respective rights and
12 obligations of Plaintiff and Defendants thereunder. A judicial determination is necessary and
13 proper at this time and under these circumstances in order to determine whether Defendant may
14 continue to enforce the provisions of the Private Attorneys General Act.

15 132. This Court has the power to issue injunctive relief under Code of Civil Procedure
16 Sections 525, 526, and 526a. Plaintiff seeks a temporary restraining order and a preliminary and
17 temporary injunction to compel Defendant, and those public officers and employees acting by
18 and through their authority, to immediately set aside any and all actions taken to continue to
19 implement or enforce the provisions of the Private Attorneys General Act, pending the hearing
20 on the merits of Plaintiff's claims to avoid irreparable harm to Plaintiff and its members.

21 133. Plaintiff has no plain, speedy, and adequate remedy at law, in the absence of this
22 Court's injunction, Defendants will continue to implement and enforce the provisions of the
23 Private Attorneys General Act in violation of Section 3, of Article 3 of the California
24 Constitution, Section 17, Article 1, of the California Constitution, and the Eighth and
25 Fourteenth Amendment to the United States Constitution. No amount of monetary damages or
26 other legal remedy can adequately compensate Plaintiff, and its members, for the irreparable
27 harm that it, its members, and California employers generally, would suffer from the violations
28 of law described herein.

1 **FOURTH CAUSE OF ACTION**

2 (Violation of California Constitutional Procedural Due Process Protections)

3 134. Plaintiff realleges and incorporates by reference Paragraphs 1-109 of this
4 Complaint as though each were set forth herein in full.

5 135. This action presents an actual case or controversy between Plaintiff and
6 Defendant concerning the constitutionality and enforceability of PAGA.

7 136. Plaintiff reasonably believes Defendant will continue to enforce PAGA against
8 Plaintiff's members and other California employers.

9 137. The California Constitution prohibits the State government from depriving any
10 person of life, liberty, or process, without due process of law. This due process guarantee has
11 both procedural and substantive components.

12 138. As pleaded more fully above, the Private Attorneys General Act violates the
13 procedural due process guarantee of the California Constitution, on its face and/or as practiced,
14 in part, because? PAGA imposes and/or results in the imposition of criminal or quasi-criminal
15 liability without the protections of the grand jury and indictment process; PAGA imposes or
16 results in the imposition of criminal or quasi-criminal liability without requiring the heightened
17 burden of proof required such as "beyond or reasonable doubt" or "clear and convincing
18 evidence"; PAGA imposes and/or results in the imposition of criminal or quasi-criminal liability
19 without requiring proof of a sufficiently culpable *mens rea*; PAGA imposes or results in the
20 criminal or quasi-criminal liability in the absence of a neutral prosecutor; and PAGA provides
21 for the taking of property in the absence of a fair, neutral, decision maker.

22 139. This Court has the power to issue declaratory relief under Code of Civil
23 Procedure Sections 1060 and 1062. A judicial declaration is necessary and appropriate
24 regarding the proper interpretation of the California Constitutional protections and the legality
25 of the Private Attorneys General Act thereunder, and regarding the respective rights and
26 obligations of Plaintiff and Defendants thereunder. A judicial determination is necessary and
27 proper at this time and under these circumstances in order to determine whether Defendant may
28 continue to enforce the provisions of the Private Attorneys General Act.

140. This Court has the power to issue injunctive relief under Code of Civil Procedure Sections 525, 526, and 526a. Plaintiff seeks a temporary restraining order and a preliminary and temporary injunction to compel Defendant, and those public officers and employees acting by and through their authority, to immediately set aside any and all actions taken to continue to implement or enforce the provisions of the Private Attorneys General Act, pending the hearing on the merits of Plaintiff's claims to avoid irreparable harm to Plaintiff and its members.

141. Plaintiff has no plain, speedy, and adequate remedy at law, in the absence of this Court's injunction, Defendants will continue to implement and enforce the provisions of the Private Attorneys General Act in violation of Section 3, of Article 3 of the California Constitution, Section 17, Article 1, of the California Constitution, and the Eighth and Fourteenth Amendment to the United States Constitution. No amount of monetary damages or other legal remedy can adequately compensate Plaintiff, and its members, for the irreparable harm that it, its members, and California employers generally, would suffer from the violations of law described herein.

FIFTH CAUSE OF ACTION

(Violation of California Constitutional Substantive Due Process Protections)

142. Plaintiff realleges and incorporates by reference Paragraphs 1-109 of this Complaint as though each were set forth herein in full.

143. This action presents an actual case or controversy between Plaintiff and Defendant concerning the constitutionality and enforceability of PAGA.

144. Plaintiff reasonably believes Defendant will continue to enforce PAGA against Plaintiff's members and other California employers.

145. The California Constitution prohibits the State government from depriving any person of life, liberty, or process, without due process of law. This due process guarantee has both procedural and substantive components.

146. As pleaded more fully above, the Private Attorneys General Act violates the substantive due process guarantee of the California Constitution, on its face and/or as practiced, in part, because PAGA imposes or results in penalties, fines, and/or extorted settlement sums

1 disconnected from, and/or grossly disproportionate to, any harm or wrongdoing committed, to
2 the extent that it “shocks the conscience.”

3 147. This Court has the power to issue declaratory relief under Code of Civil
4 Procedure Sections 1060 and 1062. A judicial declaration is necessary and appropriate
5 regarding the proper interpretation of the California Constitutional protections and the legality
6 of the Private Attorneys General Act thereunder, and regarding the respective rights and
7 obligations of Plaintiff and Defendants thereunder. A judicial determination is necessary and
8 proper at this time and under these circumstances in order to determine whether Defendant may
9 continue to enforce the provisions of the Private Attorneys General Act.

10 148. This Court has the power to issue injunctive relief under Code of Civil Procedure
11 Sections 525, 526, and 526a. Plaintiff seeks a temporary restraining order and a preliminary and
12 temporary injunction to compel Defendant, and those public officers and employees acting by
13 and through their authority, to immediately set aside any and all actions taken to continue to
14 implement or enforce the provisions of the Private Attorneys General Act, pending the hearing
15 on the merits of Plaintiff’s claims to avoid irreparable harm to Plaintiff and its members.

16 149. Plaintiff has no plain, speedy, and adequate remedy at law, in the absence of this
17 Court’s injunction, Defendants will continue to implement and enforce the provisions of the
18 Private Attorneys General Act in violation of Section 3, of Article 3 of the California
19 Constitution, Section 17, Article 1, of the California Constitution, and the Eighth and
20 Fourteenth Amendment to the United States Constitution. No amount of monetary damages or
21 other legal remedy can adequately compensate Plaintiff, and its members, for the irreparable
22 harm that it, its members, and California employers generally, would suffer from the violations
23 of law described herein.

24 **SIXTH CAUSE OF ACTION**

25 (Violation of the United States Constitution’s Eighth Amendment
26 Excessive Fines and Unusual Punishment Protections)

27 150. Plaintiff realleges and incorporates by reference Paragraphs 1-109 of this
28 Complaint as though each were set forth herein in full.

1 151. This action presents an actual case or controversy between Plaintiff and
2 Defendant concerning the constitutionality and enforceability of PAGA.

3 152. Plaintiff reasonably believes Defendant will continue to enforce PAGA against
4 Plaintiff's members and other California employers.

5 153. The Eighth Amendment to the United States Constitution prohibits the federal
6 government from extracting payments, fines, or penalties that are not proportional and/or that
7 do not bear some relationship to the gravity of the offense a law is designed to punish. These
8 protections apply to the government of the State of California.

9 154. As pleaded more fully above, the Private Attorneys General Act violates the
10 Eighth Amendment prohibition on excessive fines and unusual punishment because the PAGA
11 penalty framework is not proportional and/or does not bear any conceivable relationship to the
12 gravity of the offenses that PAGA is designed to punish.

13 155. This Court has the power to issue declaratory relief under Code of Civil
14 Procedure Sections 1060 and 1062. A judicial declaration is necessary and appropriate
15 regarding the proper interpretation of the United States Constitutional protections provision and
16 the legality of the Private Attorneys General Act thereunder, and regarding the respective rights
17 and obligations of Plaintiff and Defendants thereunder. A judicial determination is necessary
18 and proper at this time and under these circumstances in order to determine whether Defendant
19 may continue to enforce the provisions of the Private Attorneys General Act.

20 156. This Court has the power to issue injunctive relief under Code of Civil Procedure
21 Sections 525, 526, and 526a. Plaintiff seeks a temporary restraining order and a preliminary and
22 temporary injunction to compel Defendant, and those public officers and employees acting by
23 and through their authority, to immediately set aside any and all actions taken to continue to
24 implement or enforce the provisions of the Private Attorneys General Act, pending the hearing
25 on the merits of Plaintiff's claims to avoid irreparable harm to Plaintiff and its members.

26 157. Plaintiff has no plain, speedy, and adequate remedy at law, in the absence of this
27 Court's injunction, Defendants will continue to implement and enforce the provisions of the
28 Private Attorneys General Act in violation of Section 3, of Article 3 of the California

1 Constitution, Section 17, Article 1, of the California Constitution, and the Eighth and
2 Fourteenth Amendment to the United States Constitution. No amount of monetary damages or
3 other legal remedy can adequately compensate Plaintiff, and its members, for the irreparable
4 harm that it, its members, and California employers generally, would suffer from the violations
5 of law described herein.

6 **SEVENTH CAUSE OF ACTION**

7 (Violation of California Constitution's Excessive Fines and Unusual Punishment Protections)

8 158. Plaintiff realleges and incorporates by reference Paragraphs 1-109 of this
9 Complaint as though each were set forth herein in full.

10 159. This action presents an actual case or controversy between Plaintiff and
11 Defendant concerning the constitutionality and enforceability of PAGA.

12 160. Plaintiff reasonably believes Defendant will continue to enforce PAGA against
13 Plaintiff's members and other California employers.

14 161. The California Constitution prohibits the State government from extracting
15 payments, fines, or penalties that are not proportional and/or that do not bear some relationship
16 to the gravity of the offense a law is designed to punish.

17 162. As pleaded more fully above, the Private Attorneys General Act violates the this
18 California Constitutional prohibition on excessive fines and unusual punishment because the
19 PAGA penalty framework is not proportional and/or does not bear any conceivable relationship
20 to the gravity of the offenses that PAGA is designed to punish.

21 163. This Court has the power to issue declaratory relief under Code of Civil
22 Procedure Sections 1060 and 1062. A judicial declaration is necessary and appropriate
23 regarding the proper interpretation of the California Constitutional protections and the legality
24 of the Private Attorneys General Act thereunder, and regarding the respective rights and
25 obligations of Plaintiff and Defendants thereunder. A judicial determination is necessary and
26 proper at this time and under these circumstances in order to determine whether Defendant may
27 continue to enforce the provisions of the Private Attorneys General Act.

28 164. This Court has the power to issue injunctive relief under Code of Civil Procedure

1 Sections 525, 526, and 526a. Plaintiff seeks a temporary restraining order and a preliminary and
2 temporary injunction to compel Defendant, and those public officers and employees acting by
3 and through their authority, to immediately set aside any and all actions taken to continue to
4 implement or enforce the provisions of the Private Attorneys General Act, pending the hearing
5 on the merits of Plaintiff's claims to avoid irreparable harm to Plaintiff and its members.

6 165. Plaintiff has no plain, speedy, and adequate remedy at law, in the absence of this
7 Court's injunction, Defendants will continue to implement and enforce the provisions of the
8 Private Attorneys General Act in violation of Section 3, of Article 3 of the California
9 Constitution, Section 17, Article 1, of the California Constitution, and the Eighth and
10 Fourteenth Amendment to the United States Constitution. No amount of monetary damages or
11 other legal remedy can adequately compensate Plaintiff, and its members, for the irreparable
12 harm that it, its members, and California employers generally, would suffer from the violations
13 of law described herein.

14 **EIGHTH CAUSE OF ACTION**

15 (Violation of the United States Constitution's Fourteenth Amendment
16 Equal Protection of the Laws Guarantee)

17 166. Plaintiff realleges and incorporates by reference Paragraphs 1-109 of this
18 Complaint as though each were set forth herein in full.

19 167. This action presents an actual case or controversy between Plaintiff and
20 Defendant concerning the constitutionality and enforceability of PAGA.

21 168. Plaintiff reasonably believes Defendant will continue to enforce PAGA against
22 Plaintiff's members and other California employers.

23 169. The Fourteenth Amendment to the United States Constitution prohibits the
24 federal government from denying any person equal protection of the laws. These protections
25 apply to the government of the State of California.

26 170. As pleaded more fully above, the Private Attorneys General Act violates the
27 Fourteenth Amendment guarantee of equal protection because the California Legislature
28 recently, and without any rational basis, exempted the construction industry from the impact of

1 PAGA via the passage of AB 1654, now codified in California Labor Code Section 2699.6. In
2 so doing, the California Legislature has unconstitutionally denied Plaintiff's members, and
3 California employers not subject to the exemption, the equal protection of California law.

4 171. This Court has the power to issue declaratory relief under Code of Civil
5 Procedure Sections 1060 and 1062. A judicial declaration is necessary and appropriate
6 regarding the proper interpretation of the United States Constitutional protections provision and
7 the legality of the Private Attorneys General Act thereunder, and regarding the respective rights
8 and obligations of Plaintiff and Defendants thereunder. A judicial determination is necessary
9 and proper at this time and under these circumstances in order to determine whether Defendant
10 may continue to enforce the provisions of the Private Attorneys General Act.

11 172. This Court has the power to issue injunctive relief under Code of Civil Procedure
12 Sections 525, 526, and 526a. Plaintiff seeks a temporary restraining order and a preliminary and
13 temporary injunction to compel Defendant, and those public officers and employees acting by
14 and through their authority, to immediately set aside any and all actions taken to continue to
15 implement or enforce the provisions of the Private Attorneys General Act, pending the hearing
16 on the merits of Plaintiff's claims to avoid irreparable harm to Plaintiff and its members.

17 173. Plaintiff has no plain, speedy, and adequate remedy at law, in the absence of this
18 Court's injunction, Defendants will continue to implement and enforce the provisions of the
19 Private Attorneys General Act in violation of Section 3, of Article 3 of the California
20 Constitution, Section 17, Article 1, of the California Constitution, and the Eighth and
21 Fourteenth Amendment to the United States Constitution. No amount of monetary damages or
22 other legal remedy can adequately compensate Plaintiff, and its members, for the irreparable
23 harm that it, its members, and California employers generally, would suffer from the violations
24 of law described herein.

25 **NINTH CAUSE OF ACTION**

26 (Violation of California Constitution's Equal Protection Clause)

27 174. Plaintiff realleges and incorporates by reference Paragraphs 1-109 of this
28 Complaint as though each were set forth herein in full.

1 175. This action presents an actual case or controversy between Plaintiff and
2 Defendant concerning the constitutionality and enforceability of PAGA.

3 176. Plaintiff reasonably believes Defendant will continue to enforce PAGA against
4 Plaintiff's members and other California employers.

5 177. The California Constitution prohibits the State government from denying any
6 person equal protection of the laws.

7 178. As pleaded more fully above, the Private Attorneys General Act violates the
8 California Constitution's guarantee of equal protection because the California Legislature
9 recently, and without any rational basis, exempted the construction industry from the impact of
10 PAGA via the passage of AB 1654, now codified in California Labor Code Section 2699.6. In
11 so doing, the California Legislature has unconstitutionally denied Plaintiff's members, and
12 California employers not subject to the exemption, the equal protection of California law.

13 179. This Court has the power to issue declaratory relief under Code of Civil
14 Procedure Sections 1060 and 1062. A judicial declaration is necessary and appropriate
15 regarding the proper interpretation of the California Constitutional protections and the legality
16 of the Private Attorneys General Act thereunder, and regarding the respective rights and
17 obligations of Plaintiff and Defendants thereunder. A judicial determination is necessary and
18 proper at this time and under these circumstances in order to determine whether Defendant may
19 continue to enforce the provisions of the Private Attorneys General Act.

20 180. This Court has the power to issue injunctive relief under Code of Civil Procedure
21 Sections 525, 526, and 526a. Plaintiff seeks a temporary restraining order and a preliminary and
22 temporary injunction to compel Defendant, and those public officers and employees acting by
23 and through their authority, to immediately set aside any and all actions taken to continue to
24 implement or enforce the provisions of the Private Attorneys General Act, pending the hearing
25 on the merits of Plaintiff's claims to avoid irreparable harm to Plaintiff and its members.

26 181. Plaintiff has no plain, speedy, and adequate remedy at law, in the absence of this
27 Court's injunction, Defendants will continue to implement and enforce the provisions of the
28 Private Attorneys General Act in violation of Section 3, of Article 3 of the California

1 Constitution, Section 17, Article 1, of the California Constitution, and the Eighth and
2 Fourteenth Amendment to the United States Constitution. No amount of monetary damages or
3 other legal remedy can adequately compensate Plaintiff, and its members, for the irreparable
4 harm that it, its members, and California employers generally, would suffer from the violations
5 of law described herein.

6 **PRAYER FOR RELIEF**

7 1. On the First through Ninth Causes of Action, a temporary restraining order and
8 preliminary and permanent injunctions enjoining Defendant from implementing or enforcing the
9 Private Attorneys General Act, or any of its unconstitutional provisions.

10 2. On the First through Ninth Causes of Action, that this Court issue its judgment
11 declaring that the Private Attorneys General Act is, in whole or in part, unconstitutional and
12 unenforceable because it violates Section 3, Article III, and/or Section 17, Article I, of the
13 California Constitution, and/or the Eighth and/or Fourteenth Amendment of the United States
14 Constitution.

15 3. On the First through Ninth Causes of Action, that this Court enter orders
16 reforming the Private Attorneys General Act to the extent mandated by constitutional concerns
17 and permitted by law.


18 4. On each and every Cause of Action, that this Court grant Plaintiff its costs,
19 including out-of-pocket expenses and reasonable attorneys' fees; and

20 5. On each and every Cause of Action, that this Court grant such other, different or
21 further, relief as this Court may deem just and proper.

22 DATED: November 27, 2018

EPSTEIN, BECKER & GREEN, P.C.

23
24 By:


Richard J. Frey
Robert H. Pepple
David M. Prager
Paul DeCamp

25
26
27 Attorneys for Plaintiff
28 California Business & Industrial Alliance