

Civil No. F089004
Consolidated with Civil No. F089171

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

TRICIA GALARSA,

Plaintiff and Respondent,

v.

DOLGEN CALIFORNIA, LLC,

Defendant and Appellant.

Appeal from the Superior Court of the State of California, County of Kern,
Honorable Thomas S. Clark, Case No. BCV-19-102504

**RETAIL LITIGATION CENTER, INC., CALIFORNIA RETAIL
ASSOCIATION, AND CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA'S AMICI CURIAE BRIEF IN
SUPPORT OF DOLGEN CALIFORNIA, LLC**

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AMICI CURIAE BRIEF

I. INTRODUCTION

This appeal raises important questions that will shape how Labor Code Private Attorneys General Act (PAGA) lawsuits are litigated.¹ The overarching question is whether a plaintiff’s lawyer can evade their client’s employment arbitration agreement by bringing a “headless” PAGA action, abandoning their client’s individual (Type A) PAGA claims so they can immediately pursue non-individual representative (Type O) PAGA claims in court. The Retail Litigation Center, Inc. (RLC), the California Retail Association (CRA), and the Chamber of Commerce of the United States of America (Chamber) as *amici curiae*, submit this brief to emphasize three key points that show the answer to this question is, unequivocally, “No.”

First, both PAGA’s plain language and its underlying legislative purpose establish that PAGA does not permit plaintiffs to bring “headless” PAGA actions. The legislative history reveals that the Legislature deliberately built safeguards into PAGA in its effort to protect against frivolous, opportunistic lawsuits like those that plagued pre-Proposition 64 Unfair Competition Law (UCL) actions. As part of these protections, the Legislature determined it is critically important—and therefore required—to have a named plaintiff who has a personal stake in her case. Specifically, a

¹ The California Supreme Court is poised to ultimately decide portions of these questions. In *Leeper v. Shipt, Inc.* (2024) 109 Cal.App.5th 69, the Supreme Court, on its own motion, granted review to resolve: (1) whether every PAGA action necessarily includes both individual and non-individual PAGA claims, regardless of whether the complaint specifically alleges individual claims, and (2) whether a plaintiff can choose to bring only a non-individual PAGA action. (See *Leeper v. Shipt, Inc.*, review granted Apr. 16, 2025, S289305; and see *Rodriguez v. Packers Sanitation Services LTD., LLC*, (2025) 109 Cal.App.5th 69, review granted May 14, 2025, S290182, holding for lead case.)

PAGA plaintiff must be “aggrieved,” and she must bring the action on behalf of both herself *and* other alleged aggrieved employees.

Second, regardless of whether the Court finds that a PAGA plaintiff can abandon her individual (Type A) PAGA claims to pursue non-individual representative (Type O) PAGA claims, a PAGA action always requires the plaintiff to establish she is “aggrieved,” which is an arbitrable dispute. Respondent’s contrary position—which she openly admits is a litigation tactic to avoid individual arbitration—puts PAGA on a collision course with U.S. Supreme Court precedent on the Federal Arbitration Act (FAA).

Third, non-individual representative (Type O) PAGA claims must be stayed pending arbitration of the individual dispute over a PAGA plaintiff’s “aggrieved” status. Requiring a defendant employer to concurrently arbitrate a PAGA plaintiff’s “aggrieved” status while litigating the Type O PAGA claims in court would create intractable risks of inconsistent rulings and would be tantamount to forcing the defendant to forgo arbitration entirely, running afoul of federal precedent.

This Court should reverse.

II. ARGUMENT

In *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639, 662 (*Viking River*), the U.S. Supreme Court abrogated the California Supreme Court’s decision in *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348 (*Iskanian*), to the extent *Iskanian* concluded that a PAGA action cannot be divided into an (arbitrable) individual PAGA claim and a (non-arbitrable) non-individual representative PAGA claim. Then, the California Supreme Court held in *Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104, 1114 (*Adolph*), that when an individual PAGA claim is compelled to arbitration, the non-individual representative PAGA claim survives dismissal. In response to these case developments, some attorneys began filing “headless” PAGA actions, jettisoning all of their clients’

individual claims (including their individual PAGA claims) in an attempt to evade arbitration. (See RB 13.) This is not allowed.

A. PAGA does not permit plaintiffs to bring “headless” PAGA actions.

1. The Legislature deliberately included safeguards in PAGA to prevent private attorney and plaintiff abuse.

The Legislature enacted PAGA in 2003 to address the underfunding of the State’s labor law enforcement functions and state enforcement agencies’ perceived inability to adequately enforce the Labor Code. (See *Arias v. Superior Court* (2009) 46 Cal.4th 969, 980 (*Arias*); *Iskanian, supra*, 59 Cal.4th at pp. 378–379; *Adolph, supra*, 14 Cal.5th at p. 1116; *Turrieta v. Lyft, Inc.* (2024) 16 Cal.5th 664, 681.) The PAGA jurisprudence that has developed over the more than two decades since PAGA’s enactment explains PAGA’s purpose and goals in detail. (See *ibid.*, and see *Williams v. Superior Court* (2017) 3 Cal.5th 531, 545; *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 80–81 (*Kim*).) Largely absent from the jurisprudence, but relevant to this appeal, are discussions explaining how the Legislature, in enacting PAGA, aimed to strike a balance between enforcing Labor Code compliance to protect employees, and preventing the proliferation of frivolous, opportunistic litigation that burdens employers and the courts.²

PAGA began as Senate Bill No. 796 (SB 796), introduced by Senator Joseph L. Dunn at the request of the California Labor Federation, AFL-CIO, and the California Rural Legal Assistance Foundation. (See Sen. Judiciary

² The RLC, the CRA, and the Chamber request that the Court take judicial notice of PAGA’s legislative history for the version of PAGA applicable to Respondent’s claims, including the Bill Analyses for Senate Bill No. 796 (2003–2004 Reg. Sess.), Senate Bill No. 1809 (2003–2004 Reg. Sess.), and Assembly Bill No. 1506 (2015–2016 Reg. Sess.).

Committee, Apr. 29, 2003 Hearing on Sen. Bill No. 796 (2003–2004 Reg. Sess.), as amended Apr. 22, 2003.) In considering PAGA, the Legislature was “[m]indful of the recent, well-publicized allegations of private plaintiff abuse of the UCL[.]” (Assem. Comm. on the Judiciary, June 26, 2003 Hearing on Sen. Bill No. 796 (2003–2004 Reg. Sess.), as amended May 12, 2003, p. 4.)³ Opponents of the bill warned that it would “encourage private attorneys ‘to act as vigilantes,’” “pursuing frivolous Labor Code violations on behalf of different employees,” with “no disincentive to pursue meritless claims.” (Assem. Comm. on the Judiciary, June 26, 2003 Hearing on Sen. Bill No. 796 (2003–2004 Reg. Sess.), as amended May 12, 2003, pp. 5–6.) They, too, likened the danger of the bill “to the recent abuse of the UCL[.]” (*Id.*, p. 5.)

To allay these concerns, the bill’s sponsors “state[d] that they ha[d] attempted to craft a private right of action that will not be subject to such abuse,” including by requiring that a private action could only be brought by a plaintiff with standing. (*Id.*, p. 4.) The bill’s sponsors also stated their belief “that because the proposed civil penalties are relatively low and nearly all of the penalty recovery would be divided between the LWDA and the General Fund, the addition of civil penalties would discourage any potential plaintiff from bringing suit over minor violations in order to collect a ‘bounty’ in civil penalties.” (*Ibid.*; and see Sen. Judiciary Committee, Apr. 29, 2003 Hearing on Sen. Bill No. 796 (2003–2004 Reg. Sess.), as

³ Before Proposition 64, the UCL allowed private suits for alleged unfair competition to be brought “on behalf of the general public.” (*Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 319–320.) Attorneys abused the UCL by filing “‘frivolous lawsuits as a means of generating attorney’s fees without creating a corresponding public benefit.’” (*Id.* at pp. 342–343 (dis. opn. of Chin, J.)) Post-Proposition 64, UCL claims must be brought as class actions, subject to Code of Civil Procedure section 382’s procedural safeguards. (*Arias, supra*, 46 Cal.4th at pp. 977–980.)

amended Apr. 22, 2003, p. 6 [“Sponsors say the bill has been drafted to avoid abuse of private actions”].)⁴

PAGA’s legislative history shows that the Legislature erected various safeguards aimed at deterring abuse when it adopted PAGA.⁵ As explained

⁴ PAGA’s legislative history contains myriad examples of critics (including the Labor and Workforce Development Agency, the Department of Industrial Relations, and the Department of Finance) warning of potential abuses of PAGA, and SB 796’s author and sponsors explaining how safeguards were implemented to protect against abuse. (See Governor’s File on SB 796 [Enrolled Bill Memorandum to Governor [1219–1220; PE19–PE20].) In a letter from Senator Dunn asking then-Governor Gray Davis to sign the bill, the Senator represented that “SB 796 has been drafted to protect against the types of problems that have surfaced around [Business & Professions Code section] 17200,” emphasized the bill’s standing requirements, and claimed that the bill “is hardly a get rich quick scheme.” (Governor’s File on SB 796 [Sept. 16, 2003 Letter from Senator Joseph L. Dunn to Governor Gray Davis [1237–1238; PE37–38]].)

⁵ The Legislature has continued to amend PAGA in subsequent years, and in doing so has further sought to curtail unintended abuses. In 2004, the Legislature significantly amended PAGA by enacting specific procedural and administrative requirements a plaintiff must meet before bringing a PAGA action; eliminating penalties for certain posting, notice, and filing requirements; expanding judicial review of PAGA settlements; and confirming that courts have discretion to reduce penalties. (See Sen. Floor Analysis, Sen. Bill No. 1809 (2003–2004 Reg. Sess.) July 27, 2004, pp. 6–7; Assem. Floor Analysis, Sen. Bill No. 1809 (2003–2004 Reg. Sess.) July 27, 2004, p. 8.) The Legislature amended PAGA again in 2015, in response to concerns that employers were being sued for very minor or technical violations of itemized wage statement requirements, thereby forcing large settlements even where employees were not misled, confused, or injured. (See Sen. Comm. on Lab. & Indust. Relations Analysis, Assem. Bill No. 1506 (2015–2016 Reg. Sess.) June 24, 2015, pp. 4–5.) The recently-enacted PAGA reforms seek to address the continued abuse of PAGA by certain plaintiff-side attorneys. (See *Williams v. Alacrity Solutions Group, LLC* (2025) 110 Cal.App.5th 932, 331 Cal.Rptr.3d 877, 886 (*Williams*) [“When our Legislature recently amended PAGA, it did so in response to the observation that PAGA’s goal of ‘bolster[ing] labor law enforcement’ had been ‘manipulated over its 20-year history by certain trial attorneys as a

below, one of the key safeguards the Legislature implemented was to require that a named PAGA plaintiff have a personal stake in the action she brings.

2. The plain language and legislative history of PAGA support that the word “and” used in Section 2699, subdivisions (a) and (k)(1) is conjunctive.

PAGA’s plain language states that a PAGA plaintiff must bring a PAGA lawsuit on behalf of himself or herself *and* other current or former employees. PAGA’s legislative history reveals that the Legislature’s choice of the conjunctive “and” (instead of “or”) was deliberate. Further, PAGA’s legislative history confirms that the Legislature made this choice to prevent fee-seeking and opportunistic litigation by ensuring that only employees who have a personal stake can proceed with a PAGA action. “The Legislature clearly delineated PAGA’s standing requirements, and ‘where the words of the statute are clear, we may not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history.’” (See *Adolph*, *supra*, 14 Cal.5th at pp. 1126–1127 [quoting *Kim*, *supra*, 9 Cal.5th 73, 85, internal quotation marks omitted].)

PAGA’s plain language says that a PAGA plaintiff must sue for herself *and* other employees. “The unambiguous and ordinary meaning of the word ‘and’ is conjunctive, not disjunctive. Thus, the clause [in PAGA] ‘on behalf of the employee *and* other current or former employees’ means that the action described has *both* an individual claim component (the plaintiff’s action on behalf of the plaintiff himself or herself) *and* a representative component (plaintiff’s action on behalf of other aggrieved employees.” (*Leeper*, *supra*, 107 Cal.App.5th at 1009; *Williams*, *supra*, 10 Cal.App.5th 932, 331 Cal.Rptr.3d at p. 885, italics in original; but see

money-making scheme.’ (Assem. Floor Analysis, Assem. Bill No. 2288 (2023–2024 Reg. Sess.) June 27, 2024, p. 5.)”].)

Balderas v. Fresh Start Harvesting, Inc. (2024) 101 Cal.App.5th 533, 538; *Rodriguez, supra*, 109 Cal.App.5th 69, at pp. 77–81 & fn. 5.) Holding otherwise would be “contrary to fundamental tenets of statutory construction[.]” (*Leeper, supra*, 107 Cal.App.5th at pp. 1009–1010.)

PAGA’s legislative history also supports this interpretation. Initially and in its early amendments, SB 796 authorized an employee to maintain a civil action “on behalf of himself or herself *or* others.”⁶ These early drafts of SB 796 could have been interpreted to allow a PAGA plaintiff to bring a PAGA action solely on behalf of herself (Type A-only claims), or alternatively, solely on behalf of others (Type O-only claims), as Respondent now attempts. But this was never what the Legislature intended. (See *Leeper, supra*, 107 Cal.App.5th at p. 1010.) The Legislature corrected PAGA’s language to eliminate this potential loophole and clarify that plaintiffs who had no stake in the civil action could not represent others. Under the amended version of the bill and as enacted, Labor Code section 2699, subdivision (a) authorized a civil action “on behalf of [the plaintiff] *and* other current or former employees.” (Sen. Bill No. 796 (2003–2004 Reg. Sess.) as amended July 2, 2003, italics added; Lab. Code, § 2699, subd. (a), italics added.)⁷

⁶ (See Sen. Bill No. 796 (2003–2004 Reg. Sess.) as introduced Feb. 21, 2003, italics added; and see Sen. Bill No. 796 (2003–2004 Reg. Sess.) as amended Mar. 26, 2003; Sen. Bill No. 796 (2003–2004 Reg. Sess.) as amended Apr. 22, 2003; Sen. Bill No. 796 (2003–2004 Reg. Sess.) as amended May 1, 2003 [“on behalf of himself or herself *or* other current or former employees,” italics added]; Sen. Bill No. 796 (2003–2004 Reg. Sess.) as amended May 12, 2003 [same].)

⁷ Senator Dunn proposed this amendment and various other revisions “[i]n order to clarify the intent of the bill and correct drafting errors.” (Assem. Comm. on the Judiciary, June 26, 2003 Hearing on Sen. Bill No. 796 (2003–2004 Reg. Sess.), as amended May 12, 2003, pp. 5-6.)

From the outset, the Legislature attempted to insulate PAGA from the abuses that pervaded the UCL, including by imposing specific standing requirements. The Legislature amended the bill several times to address criticism about how the bill would “invite frivolous suits or impose excessive penalties.” (See Sen. Judiciary Committee, Apr. 29, 2003 Hearing on Sen. Bill No. 796 (2003–2004 Reg. Sess.), as amended Apr. 22, 2003, p. 7; and see Assem. Comm. on the Judiciary, June 26, 2003 Hearing on Sen. Bill No. 796 (2003–2004 Reg. Sess.), as amended May 12, 2003, p. 4 [“Only Persons Who Have Actually Been Harmed May Bring An Action to Enforce The Civil Penalties”].) For example, the Legislature revised language originally saying a PAGA plaintiff could sue “on behalf of himself or herself or *others*” to ensure PAGA actions could not be brought on behalf of the general public. (Sen. Judiciary Committee, Apr. 29, 2003 Hearing on Sen. Bill No. 796 (2003–2004 Reg. Sess.), as amended Apr. 22, 2003, p. 6, italics added.) The amended language clarified that the “others” on whose behalf a PAGA plaintiff could sue must be “current or former employees.” (*Ibid.*) The Legislature intended this amendment “[t]o allay opponents’ concerns that res judicata issues may arise *if all known potential plaintiffs are not included in the private action[.]*” (*Id.*, p. 7, italics added.) As this change reveals, notwithstanding the Legislature’s use of the disjunctive “or” at this time (which it corrected in a subsequent amendment), the Legislature intended from the early stages of the bill to require the claims of “all known potential plaintiffs”—including the named plaintiff—to be included in a PAGA action. (*Ibid.*)

In response to continuing criticism that “a private enforcement statute in the hands of unscrupulous lawyers is a recipe for disaster,” SB 796’s author and sponsors continued to emphasize how PAGA actions must be brought by the employee ““on behalf of himself or herself and other current or former employees’ – that is, fellow employees also harmed by the

violation – instead of ‘on behalf of the general public,’ as private suits are brought under the UCL.” (Assem. Comm. on Labor & Employment, July 9, 2003 Hearing on Sen. Bill No. 796 (2003–2004 Reg. Sess.), as amended July 2, 2003, p. 5.) PAGA’s statutory evolution and purpose demonstrate the Legislature’s intent that a PAGA plaintiff must bring a PAGA action *both* on behalf of herself (Type A claims), *and* on behalf of others (Type O claims).

3. A PAGA plaintiff in a “headless” PAGA action has no “skin in the game.”

In a “headless” PAGA action, the named plaintiff has no “proverbial ‘skin in the game,’” which would thwart the Legislature’s intent. (See *Williams, supra*, 10 Cal.App.5th 932, 331 Cal.Rptr.3d at p. 886 [“PAGA’s requirements that PAGA plaintiffs have standing as ‘aggrieved employees’ and satisfy the statute of limitations evince the Legislature’s intent that the private individual pursuing a PAGA claim have some proverbial ‘skin in the game’ at the time the lawsuit is filed. [Citations.]”].)

In *Williams v. Alacrity Solutions Group, LLC*, the Second Appellate District noted that the Legislature designed PAGA to bolster workplace protections by ensuring timely enforcement of Labor Code violations. (See *Williams, supra*, 110 Cal.App.5th 932, 331 Cal.Rptr.3d at p. 883.) The *Williams* court observed that a critical component of the statute is to the require an aggrieved employee “have skin in the game” by presenting a timely claim for personal harm. (*Id.*, at pp. 884, 886.) The statute of limitations for a PAGA action is tied specifically to the PAGA plaintiff’s individual claims. (*Id.*, at p. 886.) Without a timely individual claim, a PAGA plaintiff lacks the personal stake necessary for PAGA standing. (*Ibid.*) And, the *Williams* court warned, allowing for “headless” PAGA actions would enable the rise of a class of “professional PAGA plaintiffs” with “no skin in the game except being enticed by the prospect of a share of the civil penalties, and would enable the rise of a stable of lawyers enticed

by the prospect of statutory attorney fees.” (*Ibid.*) This directly contravenes the Legislature’s intent in enacting PAGA. (See Parts II.A.1 & 2, *ante.*)

In *Adolph*, the California Supreme Court “note[s] that a PAGA plaintiff compelled to arbitrate individual claims may have a personal stake in the litigation of non-individual claims,” explaining that “because PAGA has a provision for recovery of attorney’s fees and costs,” a PAGA plaintiff may be able to “secure representation by enticing attorneys to take cases they might not have if limited to recovering fees and costs for individual claims alone.” (*Adolph, supra*, 14 Cal.5th at p. 1127.) But a PAGA plaintiff who has been enticed to abandon her own individual claims so her lawyers can pursue PAGA penalties on behalf of others—and statutory attorney’s fees on behalf of themselves—no longer has any personal stake in the litigation. Instead of securing the benefit of counsel to represent her in pursuing her individual claims, she has been convinced to forfeit her individual claims entirely, solely to benefit other current and former employees—and her lawyers. What is more, the PAGA plaintiff must bear the burden of litigation and may bear the risk of an adverse outcome if the defendant prevails. (See Code Civ. Proc., §§ 1032, 1034 [awarding litigation costs to prevailing parties].)⁸

Respondent insists that, despite dropping her Type A claims, she is still bringing Type O claims “on behalf of” herself *and* other alleged aggrieved employees. (See RB 33–36.) Respondent contends she can bring the exact same PAGA lawsuit she otherwise would have brought, prove all the exact same elements of that claim (including her own individual standing as an “aggrieved” employee), and even get a share of the PAGA penalties,

⁸ This situation seems like a law school ethics exam question, and yet it is playing out in the courts without much attention to professional responsibility considerations.

yet somehow evade *Viking River* simply by saying that the total penalties she seeks to recover are on behalf of one fewer alleged “aggrieved” employee (i.e., her) than she could have otherwise sought. (See RB 34.) Respondent’s argument exposes her position as a fallacy. She cannot simultaneously have “skin in the game” as PAGA requires, and still avoid *Viking River*. She is stuck between a rock and a hard place.

A “headless” PAGA action renders the named Plaintiff a mere figurehead for the attorney representing her, with no personal stake in the action. A PAGA plaintiff must do more than merely lend her name to an action so her lawyers can satisfy what they view as a procedural technicality. The Court should reverse.

B. PAGA standing requires a plaintiff to establish personal aggrievement, which is an arbitrable dispute.

1. A plaintiff’s abandonment of her right to seek individual PAGA penalties does not eliminate the dispute over whether she is “aggrieved” under PAGA.

Whether or not PAGA claims must include Type A claims, the parties agree that Respondent must be an “aggrieved employee” to prosecute her Type O claims. (See AOB 18; RB 25; ARB 8.) A plaintiff’s purported abandonment of her right to seek individual PAGA penalties does not eliminate the dispute over whether she is “aggrieved” for purposes of PAGA standing. Whether a PAGA plaintiff is “aggrieved” is an inherently personal dispute that should be compelled to arbitration when the plaintiff’s arbitration agreement so requires, as fully discussed in Appellant’s opening and reply briefs. (See AOB 18–25; ARB 8–19.) Even if the Court were to find that a PAGA claim is viable without Type A claims (it is not), the Court should still reverse the trial court’s denial of Appellant’s motion to compel arbitration.

**2. Respondent Galarsa is trying to re-litigate
Viking River.**

Having dropped her Type A claims, Respondent tries to characterize the dispute as one that belongs to the State, such that—she claims—it is non-arbitrable. (See RB 51–53.) But this argument contravenes the U.S. Supreme Court’s decision in *Viking River*, and adopting her argument would place PAGA jurisprudence again at odds with federal precedent. The Supreme Court has already expressly rejected the argument that “a PAGA action ‘is not a dispute between an employer and an employee arising out of their contractual relationship,’” but “‘a dispute between an employer and the state,’” holding that “[a]lthough the terms of [9 U.S.C.] § 2 limit the FAA’s enforcement mandate to agreements to arbitrate controversies that ‘arise out of’ the parties’ contractual relationship, disputes resolved in PAGA actions satisfy this requirement.” (See *Viking River, supra*, 596 U.S. at p. 652, fn. 4.)

As explained in *Adolph*, “an anti-splitting rule ‘unduly circumscribes the freedom of parties to determine “the issues subject to arbitration” and “the rules by which they will arbitrate,” [citation], and does so in a way that violates the fundamental principle that “arbitration is a matter of consent.”’” (*Adolph, supra*, 14 Cal.5th at p. 1118 [quoting *Viking River, supra*, 596 U.S. at p. 659].) As the U.S. Supreme Court held in *Viking River* and the California Supreme Court acknowledged in *Adolph*, “[r]equiring parties to adjudicate a PAGA action entirely in one proceeding . . . ‘compels parties to either go along with an arbitration in which the range of issues under consideration is determined by coercion rather than consent, or else forgo arbitration altogether. Either way, the parties are coerced into giving up a right they enjoy under the FAA.’” (*Adolph, supra*, 14 Cal.5th at pp. 1118–1119 [quoting *Viking River, supra*, 596 U.S. at pp. 660–661].) Thus, *Adolph* held, “*Viking River* requires enforcement of agreements to arbitrate a PAGA

plaintiff's individual claims if the agreement is covered by the FAA.” (*Adolph, supra*, 14 Cal.5th at p. 1119.)

Refusing to compel arbitration of “headless” PAGA claims would be impermissible for the same reasons the U.S. Supreme Court held that an “anti-splitting” rule violates the FAA. Where a PAGA plaintiff has an arbitration agreement that shows on its face that she agreed to arbitrate the issue, dispute, or controversy of whether she suffered a Labor Code violation and is “aggrieved” for purposes of PAGA standing, she must be held to her agreement. To hold otherwise violates federal precedent. (See *Viking River, supra*, 596 U.S. at p. 660; and see *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 344 [“The ‘principal purpose’ of the FAA is to ‘ensur[e] that private arbitration agreements are enforced according to their terms.’” (citation omitted)].) *Viking River* requires enforcement of agreements to arbitrate the parties’ dispute over a PAGA plaintiff’s individual status as an “aggrieved” employee, if the agreement is covered by the FAA.

C. Non-individual PAGA representative (Type O) claims must be stayed pending resolution of the individual dispute over the PAGA plaintiff’s aggrieved status.

If the Court declines to direct the trial court to sustain Appellant’s demurrer and dismiss the action, the Court should direct the trial court to stay proceedings on the Type O claims pending the outcome of the arbitration on Respondent’s aggrieved status.

A stay is mandatory under the FAA. (See 9 U.S.C., § 3 [if any issue pending in court is referable to arbitration, the court “shall . . . stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement”]; *Smith v. Spizzirri* (2024) 601 U.S. 472, 475–478 [holding that when a federal court finds that a dispute is subject to arbitration and a party requests a stay pending arbitration, the FAA compels the court to stay the proceeding].) So too under California procedural law. (See Code Civ.

Proc., § 1281.4 [“If a court of competent jurisdiction, . . . has ordered arbitration of a controversy which is an issue involved in an action or proceeding pending before a court of this State, the court in which such action or proceeding is pending shall, upon motion of a party to such action or proceeding, stay the action or proceeding”]; *Leeper, supra*, 107 Cal.App.5th at p. 1013 [holding that Code Civ. Proc., § 1281.4 requires a stay of non-individual PAGA representative claims after an individual PAGA claim is compelled to arbitration].)

In *Adolph*, the Supreme Court saw no risk of potential conflicting rulings in a PAGA action where the named plaintiff’s individual (Type A) PAGA claims are compelled to arbitration, precisely because the non-individual representative (Type O) PAGA claims could be stayed. (See *Adolph, supra*, 14 Cal.5th at pp. 1123–1124.) Respondent recognizes the risk of conflicting rulings exists absent a stay, but argues that this means she should not be held to her arbitration agreement. (See RB 60–62.) She is wrong. Requiring a defendant employer in a PAGA action to simultaneously arbitrate the named PAGA plaintiff’s “aggrieved” status while litigating the same issue in court would be tantamount to forcing the defendant to “forgo arbitration altogether.” (See *Viking River, supra*, 596 U.S. at pp. 660–661.) This is not allowed. The Type O claims must be stayed pending the PAGA plaintiff’s individual arbitration.

III. CONCLUSION

The trial court should be reversed, with directions to sustain Appellant’s demurrer and dismiss the action. “Headless” PAGA actions are at odds with the plain language, legislative history, and purpose of PAGA. This Court should not allow Plaintiff to skirt her contractual agreement to arbitrate by pleading Type O-only claims. Alternatively, even if the Court decides Respondent may proceed with a “headless” PAGA action, it should reverse with directions to grant Defendant’s motion to compel arbitration and

stay the non-individual PAGA representative claim, as the trial court's ruling contravenes precedent.

Dated: June 3, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The text of this brief consists of 4,546 words, including footnotes, as counted by the Microsoft 365 word processing application used to generate this brief.

Dated: June 3, 2025

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I am employed in the City and County of San Francisco, State of California, in the office of a member of the bar of this court, at whose direction the service was made. I am over the age of eighteen (18) years, and not a party to or interested in the within-entitled action. I am an employee of DAVIS WRIGHT TREMAINE LLP, and my business address is 50 California Street, 23rd Floor, San Francisco, California 94111.

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