Supreme Court No. S289305

IN THE SUPREME COURT OF THE

STATE OF CALIFORNIA

CHRISTINA LEEPER,

Plaintiff and Respondent,

v.

SHIPT, INC.; TARGET CORPORATION,

Defendants and Appellants.

After a Decision of the Court of Appeal of the State of California, Second Appellate District, Division One, Case No. B339670

APPLICATION FOR PERMISSION TO FILE *AMICI CURIAE* BRIEF IN SUPPORT OF DEFENDANTS AND APPELLANTS SHIPT, INC. AND TARGET CORPORATION

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Application for Permission to File *Amici Curiae* Brief

Pursuant to Rule 8.520(f) of the California Rules of Court, the Retail Litigation Center, Inc. (RLC), National Retail Federation (NRF), California Retailers Association (CRA), Chamber of Commerce of the United States of America (Chamber), California Chamber of Commerce (CalChamber), and National Federation of Independent Business (NFIB) respectfully seek permission to file the attached brief as *amici curiae* in support of Defendants and Respondents Shipt, Inc. and Target Corporation.

The Retail Litigation Center

The RLC is a 501(c)(6) nonprofit organization dedicated to offering courts insights from the retail industry on critical legal matters affecting its members. It aims to underscore the potential industry-wide implications of significant pending cases, such as this one. The RLC's members include many of the country's largest and most innovative retailers, across a breadth of retail verticals. The RLC's members employ millions of workers throughout the United States, provide goods and services to hundreds of millions of consumers, and account for more than a trillion dollars in annual sales. Nearly all of the RLC's retail members have stores in California.

The RLC is the only trade association solely dedicated to representing the retail industry in the courts. Since its founding in 2010, the RLC has participated as amicus in more than 250 judicial proceedings of importance to retailers. Precedential opinions, including from the U.S. Supreme Court, have drawn upon the RLC's amicus briefs. (See, e.g., *South Dakota v. Wayfair,*

Inc. (2018) 585 U.S. 162, 184; *Kirtsaeng v. John Wiley & Sons, Inc.* (2013) 568 U.S. 519, 542; *Chewy, Inc. v. U.S. Department of Labor* (11th Cir. 2023) 69 F.4th 773, 777–778.)

The National Retail Federation

NRF is the world's largest retail trade association, representing discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants, and internet retailers from the United States and more than 45 countries. NRF empowers the industry that powers the economy. Retailers represent the nation's largest private sector employer, contributing $5.3 trillion to the annual GDP and supporting more than one in four U.S. jobs—55 million working Americans. For over a century, NRF has been a voice for every retailer and every retail job, educating and communicating the powerful impact retail has on local communities and global economies. NRF regularly participates as amicus in cases raising significant legal issues for the retail community.

The California Retailers Association

CRA promotes, preserves, and enhances the retail industry in California. CRA is the only statewide trade association representing all segments of the retail industry, including general merchandise, department stores, mass merchandisers, online markets, restaurants, convenience stores, supermarkets and grocery stores, chain drug, and specialty retail such as auto, vision, jewelry, hardware, and home stores. CRA provides the voice to retail, which is vital to California's economy and diverse workforce, and creates jobs in every corner of the state. CRA represents a

quarter of the state's employment and $330 billion worth of gross domestic product each year.

The Chamber of Commerce of the United States of America

The Chamber is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community.

The California Chamber of Commerce

CalChamber is a non-profit business association with approximately 12,000 members, both individual and corporate, representing 25% of the state's private sector workforce and virtually every economic interest in the state of California. While CalChamber represents several of the largest corporations in California, 70% of its members have 100 or fewer employees. CalChamber acts on behalf of the business community to improve the state's economic and jobs climate by representing business on a broad range of legislative, regulatory, and legal issues. CalChamber regularly files amicus briefs on behalf of its members and key industries to emphasize the broad impact that court decisions may have on the California economy.

The National Federation of Independent Business

NFIB is the nation's leading small business association. NFIB represents members in Washington, D.C., and all 50 state capitals. Founded in 1943 as a nonprofit, nonpartisan organization, NFIB's mission is to promote and protect the rights of its members to own, operate, and grow their businesses. NFIB represents hundreds of thousands of member businesses nationwide, and its membership spans the spectrum of business operations, ranging from sole proprietor enterprises to firms with hundreds of employees. While there is no standard definition of a "small business," the typical NFIB member employs ten people and reports gross sales of about $500,000 a year. NFIB's membership reflects American small business. To fulfill its role as the voice for small business, NFIB frequently files amicus briefs in cases that will impact the small business community.

Amici's Interest in the Outcome of this Case

The RLC, NRF, CRA, Chamber, CalChamber, and NFIB have a substantial interest in the outcome of this case because their respective members and affiliates are frequent targets for claims under the Labor Code Private Attorneys General Act of 2004 (PAGA), and they have an interest in ensuring that PAGA is interpreted and applied in a fair and balanced way for both employers and employees, consistent with what the Legislature intended when it enacted and amended PAGA. The Court's decision in this matter will significantly impact amici's interests, and those of California employers generally, given the proliferation of "headless" PAGA actions as a mechanism to evade

arbitration and perpetrate shakedown PAGA lawsuits. Amici are uniquely situated to offer context for the Court and provide insight into the practical ramifications of permitting "headless" PAGA actions.

No party or counsel for a party has authored any part of the attached brief or made a monetary contribution intended to fund the preparation or submission of this brief.

Dated: January 7, 2026

Respectfully submitted,

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RETAIL LITIGATION CENTER, INC., NATIONAL RETAIL FEDERATION, CALIFORNIA RETAILERS ASSOCIATION, CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, CALIFORNIA CHAMBER OF COMMERCE, AND NATIONAL FEDERATION OF INDEPENDENT BUSINESS'S *AMICI CURIAE* BRIEF IN SUPPORT OF SHIPT, INC. AND TARGET CORPORATION

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

AMICI CURIAE BRIEF

I. INTRODUCTION

The overarching question in this case is whether a plaintiff's lawyers in a Labor Code Private Attorneys General Act (PAGA) action can evade their client's employment arbitration agreement by bringing a "headless" PAGA action, abandoning their client's individual PAGA claims so they can immediately pursue non-individual representative PAGA claims in court. The Retail Litigation Center, Inc. (RLC), National Retail Federation (NRF), California Retailers Association (CRA), Chamber of Commerce of the United States of America (Chamber), California Chamber of Commerce (CalChamber), and National Federation of Independent Business (NFIB) as *amici curiae*, submit this brief to offer their perspectives on why this Court should answer, unequivocally, "No."

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

A PAGA plaintiff who abandons her individual PAGA claims is not bringing a PAGA action "on behalf of"—or, as Leeper would have it, "for the benefit of"—herself. Just the opposite. She is forgoing all claims she could have brought "on behalf of" herself so she can pursue claims solely "on behalf of" and "for the benefit" of others (most notably, recovery of fees for her lawyers).

To allow a PAGA plaintiff to abandon her individual PAGA claim would contravene the plain language, legislative history, and statutory purpose of PAGA. It would incentivize and perpetuate the very abuse that the Legislature sought to prevent when enacting PAGA—abuse that has proven all too common in PAGA notices being filed by the thousands each year. Further, Leeper's 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). Leeper wants this Court to authorize a procedural loophole the PAGA statute does not allow, effectively nullifying *Viking River*, and returning to *Iskanian*.

This Court should affirm.

II. ARGUMENT

In *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639, 662 (*Viking River*), the U.S. Supreme Court abrogated this 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. This Court then 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 developments, some plaintiffs' attorneys began filing "headless" PAGA actions, jettisoning their clients' individual claims (including their individual PAGA claims) in an attempt to evade arbitration. 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 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 proceeding—are explanations of 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.[1] The legislative history and evolution of PAGA since its enactment reflect the Legislature's efforts and intent to prevent the statute from being used to proliferate abusive litigation.

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 (CRLA) Foundation. (See Sen. Judiciary 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.)[2] 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

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[1] Amici request that the Court take judicial notice of PAGA's legislative history for the version of PAGA applicable to Leeper's claims, including the Bill Analyses for Senate Bill No. 796 (2003–2004 Reg. Sess.) and Senate Bill No. 1809 (2003–2004 Reg. Sess.).

[2] 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, 318–319.) 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.)

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. 4–5.) 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 amended Apr. 22, 2003, p. 6 ["Sponsors say the bill has been drafted to avoid abuse of private actions"].)[3]

[3] 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].) 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].)

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.) In 2018 and 2021, the Legislature exempted certain unionized workers in the construction and janitorial industries from PAGA, at the request of labor unions due to "enormous pressure" PAGA puts "on employers to settle claims regardless of the validity of those claims." (AB 1654 (Chap. 529, Stats. 2018); SB 646 (Chap. 337, Stats. 2021); Assem. Comm. on Appropriations, Sen. Bill No. 646 (2021-2022 Reg. Sess.) Aug. 19, 2021, p. 1.) The recently-enacted PAGA reforms further 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, 944 (*Williams*).)

The Legislature erected various safeguards aimed at deterring abuse when it adopted and amended PAGA. Leeper effectively asks this Court to disregard over two decades of clear legislative intent to prevent abusive litigation like the "headless" PAGA actions Leeper asks this Court to authorize.

2. PAGA's plain language, legislative history, and statutory construction support that "headless" PAGA claims are improper.

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, [the Court] 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.'" (*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 v. Shipt, Inc.* (2024), 107 Cal.App.5th 1001, 1009 (*Leeper*), italics in original and citation omitted; accord *Williams*, *supra*, 110 Cal.App.5th 932, 942–943; but see *Balderas v. Fresh Start Harvesting, Inc.* (2024) 101 Cal.App.5th 533, 538; *Rodriguez v. Packers Sanitation Services LTD, LLC* (2025) 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; and see Answer Br., pp. 32–33.)

PAGA's legislative history confirms this plain-text 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."[4] 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, or alternatively, solely on behalf of others (as Leeper now attempts). But this was never what the

[4] (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 others~~ *and current or former employees*," italics added]; Sen. Bill No. 796 (2003–2004 Reg. Sess.) as amended May 12, 2003 ["on behalf of himself or herself and other current or former employees"].)

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; and see Answer Br., pp. 34–36.)[5]

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

[5] 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.)

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." (*Id.*, pp. 6–7) 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 *and* on behalf of others.

The Legislative history does not support Leeper's attempt to rewrite PAGA to replace "on behalf of" with "for the benefit of." Leeper argues that a PAGA plaintiff sues only as a representative of the State, and not also as a representative of nonparty alleged "aggrieved" employees. (See Opening Br., pp. 33-34.) But PAGA's plain language and legislative purpose demonstrate that "on behalf of" means as the agent or representative of the nonparty employees, with the PAGA plaintiff stepping into the LWDA's shoes and binding LWDA and all "aggrieved" employees by the outcome. (See Sen. Judiciary Committee, Apr. 29, 2003 Hearing on Sen. Bill No. 796 (2003–2004 Reg. Sess.), as amended Apr. 22, 2003, p. 6.) The Legislature intended a judgment in a PAGA action to have a *res judicata* preclusive effect as to the covered employees, so "an employer would not have to be concerned with future suits on the same issues by someone else." (*Ibid.*) This aligns with the settled principle that "[a] person who is not a party to an action but *who is represented by a party* is bound by and entitled to the benefits of a judgment as though he were a party." (Rest.2d Judgments, § 41 (italics added); and see *Arias*, 46 Cal.4th at p. 986, citing Rest.2d Judgments, § 41, subd. (1)(d) [nonparty employees are bound by the outcome of an action a PAGA plaintiff brings on their behalf, just as they would be if they had been represented in the action by the LWDA].)

Whatever the Court decides as to Leeper's pre-reform claims, "headless" PAGA claims are not permitted after the 2024 PAGA amendments. Leeper cites *Johnson v. Maxim*

Healthcare Services, Inc. (2021) 66 Cal.App.5th 924, 932 (*Johnson*), arguing that it suggests the Legislature intended to permit a time-barred plaintiff to bring a PAGA representative action solely on behalf of others. (See Reply Br., pp. 14–15, 17–19.) *Johnson* involved unique facts, where the named plaintiff had signed an employment agreement upon hire that she claimed contained illegal terms, was still a current employee bound by those terms, and alleged her employer persisted in requiring employees to sign agreements containing the challenged terms. (See *Johnson*, 66 Cal.4th at p. 932.) But whatever relevance (if any) *Johnson* had before the 2024 PAGA amendments, the Legislature abrogated *Johnson* in enacting the 2024 amendments by expressly stating that the PAGA plaintiff must have experienced every alleged Labor Code violation for which she is suing, within the applicable limitations period. (See Lab. Code, § 2699, subd. (c)(1).) Even if the Court concludes that *pre*-reform PAGA permits "headless" PAGA actions, it should find that *post*-reform PAGA does not.[6]

3. Headless PAGA actions will only further exacerbate the extent to which certain attorneys bring abusive PAGA actions primarily "for the benefit" of themselves.

In the two decades since PAGA's enactment, the abuses that opponents of the bill originally predicted have materialized. As the

[6] (See, e.g., *CRST Expedited, Inc. v. Superior Court* (2025) 112 Cal.App.5th 872, 897 ["[T]his opinion does not decide whether a headless PAGA action can be brought under the version of PAGA that has been in effect since July 1, 2024."].)

Second Appellate District recently observed, when the "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 money-making scheme.' (Assem. Floor Analysis, Assem. Bill No. 2288 (2023–2024 Reg. Sess.) June 27, 2024, p. 5.)" (*Williams*, *supra*, 110 Cal.App.5th at p. 944.)

Although SB 796's sponsors believed "the proposed civil penalties are relatively low" and that they had "craft[ed] a private right of action that would not be subject to such abuse" as was seen with pre-prop 64 UCL actions (see Part II.A.1, *ante*), abuse of PAGA is widespread. As many of amici's members have experienced firsthand, even for a small employer with few employees, potential exposure in a PAGA action escalates quickly, where many plaintiffs' attorneys value their cases by mechanically multiplying potential exposure on a per-employee, per-pay period, per-alleged violation basis, regardless of the merits of the claims.

The LWDA's records reflect that in 2025, over 9,300 PAGA notices were filed.[7] Around 20 firms filed more than half of these thousands of notices, with each firm filing over 100 notices, and the most prolific firms filing over five hundred PAGA notices in 2025 alone.[8] Many firms engage in targeted advertising through

[7] The LWDA maintains a searchable online database showing PAGA filings going back to September 6, 2016. (https://cadir.my.salesforce-sites.com/PagaSearch, last visited Jan. 6, 2026.)

[8] Twenty-three firms filed over 100 PAGA notices each in 2025, and these firms filed a combined total of more than 4,800

social media and other vehicles to solicit prospective plaintiffs, and there are even companies whose business is to execute paid campaigns to identify potential PAGA and class action plaintiffs for plaintiffs' firms. (See e.g., https://classactionplaintifffinder .com/how-to-find-paga-plaintiffs).

These lawyer-driven actions are not "for the benefit" of workers. As the LWDA reported to the California Department of Finance in its 2019 Budget Change Proposal, the LWDA's review of PAGA settlements "has revealed that the substantial majority of proposed settlement agreements proposed to superior courts and filed with the LWDA did not sufficiently protect the interest of workers and the state." (Budget Change Proposal, Department of Industrial Relations, PAGA Unit Staffing Alignment, FY 2019-2020, submitted to Legislature on May 10, 2019, p. 5.[9]) The LWDA reported that "[s]eventy-five percent of the 1,546 settlement agreements reviewed by the PAGA Unit in fiscal years 2016/17 and 2017/18 received a grade of fail or marginal pass, reflecting the

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PAGA notices in 2025. PAGA notice filings in prior years reflect similar trends, with thousands of notices and disproportionate numbers of notices filed by a small number of firms. (2024: 9,448 notices; 2023: 8,099 notices; 2022: 8,324 notices; 2021: 6,564 notices; 2020: 6,578 notices; 2019: 6,461 notices.) (https://cadir.my.salesforce-sites.com/PagaSearch, last visited Jan. 6, 2026.)

[9](https://web.archive.org/web/20220122215749/https://esd.dof.ca.gov/Documents/bcp/1920/FY1920_ORG7350_BCP3230.pdf, last visited Jan. 6, 2026)

failure of many private plaintiffs' attorney to fully protect the interests of the aggrieved employees and the state." (*Id.*, p. 6.)

Incentivized by recovery of their fees, many private attorneys have done exactly as opponents of the bill feared, "'act[ing] as vigilantes,'" "pursuing frivolous Labor Code violations on behalf of different employees," with "no disincentive to pursue meritless claims." (See Part II.A.1, *ante*.) Allowing "headless" PAGA claims by named plaintiffs with no personal stake in the action would only invite further abuse. (See Part II.B.2, *post*.)

B. A PAGA plaintiff who abandons her individual claims is not suing "on behalf of" herself.

1. 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*, 110 Cal.App.5th at p. 943.) Having PAGA plaintiffs with "skin in the game" also ensures that their interests align with those of the Labor Commissioner and the other alleged "aggrieved" employees whom they seek to represent.

In *Williams v. Alacrity Solutions Group, LLC*, the Second Appellate District observed that a critical component of PAGA is to require that an aggrieved employee "have skin in the game" by presenting a timely claim for personal harm. (*Id.*, at pp. 941, 943–944.) The statute of limitations for a PAGA action is tied specifically to the PAGA plaintiff's individual claims. (*Id.*, at p. 943.) 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*.)

Leeper emphasizes that PAGA is a *qui tam* statute, arguing that she should have the discretion to decide not to pursue her individual PAGA claims. (See Opening Br., pp. 60–62; Reply Br., p. 48; and see *Iskanian*, *supra*, 59 Cal.4th at p. 382.) But *qui tam* is short for the Latin phrase, "*qui tam pro domino rege quam pro se ipso in hac parte sequitur*," which means "who pursues this action on our Lord the King's behalf *as well as his own*." (See *People ex rel. Allstate Ins. Co. v. Weitzman* (2003) 107 Cal.App.4th 534, 538, quoting *Vermont Agency of Natural Resources v. United States ex rel. Stevens* (2001) 529 U.S. 765, 768, fn. 1.) And here, the Legislature decided that having a PAGA plaintiff with a personal stake in her action—as an "aggrieved" employee entitled to share in the recovery of civil penalties otherwise only recoverable by the state—is essential to avoiding abuse of the PAGA device. (See Parts II.A.1 & 2, *ante*.)

Leeper insists that, despite dropping her individual claims, she is still bringing PAGA representative claims "*on behalf of*" herself *and* other alleged aggrieved employees. (See Opening Br., pp. 44–53.) But Leeper's convoluted explanations for why

abandoning her individual claims still "benefits" her make no sense.

1. A PAGA plaintiff who abandons her individual claims does not, as Leeper asserts, necessarily "stand to benefit" by being able to use a final judgment in a PAGA action to support her individual claims in a separate action. (Cf. Opening Br. 46.) Even if she prevails, those abandoned individual claims may be time-barred by the point a final judgment is entered. More likely, they will have been released in exchange for a modest enhancement award in connection with a PAGA settlement (as is often the outcome in these cases). And certainly, the Legislature could not have intended for the court to determine whether such future legal claims may by viable in order to assess whether a PAGA action is in fact brought "on behalf" of the PAGA plaintiff.

2. Nor does a "headless" PAGA plaintiff stand to benefit through her entitlement to attorneys' fees, which are "for the benefit" of her lawyers who advised her to abandon her individual claims. (Cf., Opening Br., pp. 48-49.) In *Adolph*, the California Supreme Court "note[d] 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 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 "for the benefit" of 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].) As Leeper concedes, a PAGA plaintiff may even bear the burden of an attorneys' fee award against her, if her attorneys pursue a frivolous action on her behalf. (See Opening Br., p. 62.)

3. Leeper's argument that a "headless" PAGA plaintiff hypothetically stands to benefit from the "deterrent effect" of a judgment equates her so-called "benefit" with that of the general public. (Cf., Opening Br., p. 47.) PAGA's legislative history establishes that a PAGA plaintiff must have more of a stake in her case than this. (See Parts II.A.1 & 2, *ante*.)

4. Leeper's argument that a PAGA plaintiff in a "headless" PAGA action could still recover PAGA penalties from a "common fund" exposes "headless" PAGA actions as a fallacy. Leeper does not and cannot explain how she brings no "individual" claim in this case if she remains one of the "aggrieved" employees who shares in the recovery of any PAGA penalties awarded. (Cf., Opening Br., 49-51.) Leeper contends, in essence, that 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, yet somehow evade *Viking River* simply by saying 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. This Court should reject such absurd formalism.

5. Leeper's argument that she stands to benefit from injunctive relief is unpersuasive. As she concedes, she sought injunctive relief under the UCL, not under PAGA. (Opening Br., p. 51.) Post-reform, a PAGA plaintiff seeking injunctive relief for herself and other employees cannot claim to have forgone seeking relief on her individual PAGA claims.

In sum, Leeper cannot simultaneously have "skin in the game" as PAGA requires and still avoid *Viking River*. 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.

2. Allowing "headless" PAGA claims incentivizes plaintiffs' attorneys to pressure their clients to abandon individual claims.

PAGA may not be a "get rich quick scheme" for a named PAGA plaintiff (see fn. 3, *ante*), but it has become a moneymaking scheme for some plaintiffs' firms, who bring hundreds of copy-and-pasted PAGA actions that burden the courts and pressure

employers into settlements, even when the claims lack merit. (See Part II.A.3, *ante*.) Unlike the LWDA, which exercises prosecutorial discretion in deciding which actions to pursue, plaintiff-side attorneys have no incentive to exercise the same discretion. (See *Rose v. Hobby Lobby Stores, Inc.* (2025) 111 Cal.App.5th 162, 174–175.)

Instead, many plaintiff-side lawyers are incentivized to bring PAGA actions to collect a bounty, in the form of their attorney's fees arising from PAGA settlements. Allowing "headless" PAGA creates the further perverse incentive for plaintiffs' attorneys to pressure their clients to abandon all of their personal, individual claims, so the attorneys can pursue a groupwide claim (and recovery of their fees) "on behalf of" alleged "aggrieved" employees *other* than their clients.

Most PAGA actions settle before trial. The cost of litigation, with no available fee award for prevailing defendants, makes it difficult for employers—especially smaller employers—to litigate PAGA claims to a successful conclusion, even where they have strong defenses and the claims are unmeritorious. In a PAGA settlement, substantial amounts are allocated to attorney's fees, litigation costs, and administration expenses. The amount that ends up being "for the benefit" of the alleged aggrieved employees is disproportionately small. Simple math reveals that the "bounty" in PAGA cases is primarily "for the benefit" of the PAGA plaintiff's lawyers.

In a common fund PAGA settlement, the plaintiff's attorneys often request around 33% to 35% of the gross settlement sum in

attorneys' fees. This leaves around 65% to 67% of the settlement sum, which is further reduced by attorneys' litigation costs, settlement administration expenses, and sometimes (but not always) an enhancement or general release award for the named plaintiff. Whatever remains of the fund after these deductions is then divided between the state and the PAGA group. For pre-reform PAGA cases, that means less than 16.25% of the gross settlement sum is shared among all the alleged "aggrieved" employees combined. (Less than 65% of settlement sum remaining × 25% allocated to aggrieved employees < 16.25%.)

In a PAGA settlement, all the alleged "aggrieved" employees combined generally share an amount less than half of the amount of the fee award that goes to the PAGA plaintiff's attorneys. (See, e.g., *Montejo v. Team Nissan LLC* (Super. Ct. Ventura County, Feb. 28, 2025, Case No. 2023CUOE017853) 2025 WL 2941009, at *1–2 [$149,000 PAGA settlement; $66,448.04 to the attorneys ($52,150 in fees and $14,298.04 in costs); $18,388 allocated to alleged "aggrieved" employees]; *Daniel v. P.C.J.L., Inc.* (Super. Ct. Santa Barbara County, Apr. 29, 2025, Case No. 22CV02953) 2025 WL 1422478, at *3 [$227,500 PAGA settlement; $100,833.33 to the attorneys ($75,833.33 in fees and $25,000 in costs); $28,916.67 allocated to alleged "aggrieved" employees]; *Arzate v. Coastal Blooms Nursery, LLC* (Super. Ct. Santa Barbara County , Apr. 16, 2024, Case No. 22CV00778) 2024 WL 2819210, at *3 [$150,000 PAGA settlement; $68,253.31 to the attorneys ($50,000 in fees and $18,253.31 in costs); $16,999.17 allocated to alleged "aggrieved" employees]; *Hernandez v. MMR Group, Inc., et al.*

(Super. Ct. Riverside County, June 1, 2023, Case No. RIC2003857) 2023 WL 11956711, at *2 [$581,360 PAGA settlement; $202,307.12 to the attorneys ($190,000 in fees and $12,307.12 in costs); $93,550.72 allocated to alleged "aggrieved" employees]; *Smith v. Ten Five Sixty Foods, LLC* (Super. Ct. Riverside County, Apr. 4, 2023, Case No. RIC2001672) 2023 WL 3641487, at *2 [$115,000 PAGA settlement; $52,119.15 to the attorneys ($37,950 in fees and $14,169.15 in costs); $18,137.50 allocated to alleged "aggrieved" employees]; *Cruz Hernandez v. Laubacher Farms, Inc.* (Super. Ct. Ventura County, Oct. 3, 2024, Case No. 56-2022-00563217-CU-OE-VTA) 2024 WL 6882914, at *1 [$200,000 PAGA settlement; $80,226.19 to the attorneys ($66,666 in fees and $13,560.19 in costs); $21,335.95 allocated to alleged "aggrieved" employees]; *Gonzalez v. Aluminum Precision Products, Inc.* (Super. Ct. Ventura County, Feb. 24, 2023, Case No. 56-2022-00571822-CU-OE-VTA) 2023 WL 2482970, at *1–2 [$125,000 PAGA settlement; $44,166.67 to the attorneys ($41,666.67 in fees and $2,500 in costs); $18,203.33 allocated to alleged "aggrieved" employees, with an average of $26/employee for approximately 700 employees].)

Allowing "headless" PAGA claims will incentivize some plaintiffs' attorneys—particularly those who already abuse the PAGA device—to prioritize their potential attorney fee recovery over the individual claims of their clients. Most of these individuals did not seek legal representation for the purpose of being a PAGA plaintiff, let alone envision forfeiting all their individual claims to pursue a PAGA action.

C. "Headless" PAGA actions cannot contravene *Viking River*.

Adopting Leeper's argument would place PAGA jurisprudence on another collision course with federal precedent. Leeper's contentions boil down to an attempt to erase *Viking River* and return to *Iskanian*. All a PAGA plaintiff needs to do to escape *Viking River* and avoid arbitration, according to Leeper, is disclaim the individual PAGA claim that *Iskanian* previously held did not separately exist. This runs afoul of the FAA for the same reasons the U.S. Supreme Court already held in *Viking River*. (See Answer Br., pp. 61-66.) This Court should avoid any interpretation of PAGA that would lead to such a conflict with the FAA. (See *Hohenshelt v. Superior Court* (2025) 18 Cal.5th 310, 331.)

Despite conceding that the whole charade of "headless" PAGA claims is a tactic to evade arbitration, Leeper argues that allowing "headless" PAGA claims "may yet have no impact on arbitration whatsoever" because this Court is not specifically considering the question of whether every PAGA action necessarily includes an arbitrable dispute or controversy regarding whether the named PAGA plaintiff is individually "aggrieved." (See Opening Br., pp. 68-69.) Yet in the same breath, Leeper argues that "there is also reason to believe courts lack jurisdiction and authority to compel arbitration of nonjusticiable disputes untethered to any claims for relief"—ironically citing authority that says that where a plaintiff isn't seeking monetary recovery for herself, she "usually [does] not have a legally cognizable interest in the case's outcome." (See Opening Br., p. 69, fn. 7.)

Leeper cannot have it both ways. If she lacks a cognizable interest in her PAGA case, she fails to meet PAGA's requirements. (See Parts II.A.1 & 2, *ante*.) But if she *does* have a cognizable interest in the outcome of her case (as the PAGA statute requires), then there is an arbitrable dispute regarding her status as an "aggrieved" employee. She cannot avoid arbitration and U.S. Supreme Court precedent by purporting to abandon her individual PAGA claims.

III. CONCLUSION

"Headless" PAGA actions are at odds with the plain language, legislative history, and purpose of PAGA. Allowing "headless" PAGA actions would perpetuate the abuse of the PAGA device that the Legislature specifically drafted PAGA's language to deter, and would threaten to unwind *Viking River*, placing PAGA on another collision course with the FAA. This Court should not allow a PAGA plaintiff to skirt her contractual agreement to arbitrate by pleading only claims brought on behalf of others.

Dated: January 7, 2026

Respectfully submitted,
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CERTIFICATE OF COMPLIANCE

Pursuant to Rules 8.520(b)(1) and 8.204(c)(1) of the California Rules of Court, I hereby certify the text of this brief consists of 6,117 words, including footnotes, as counted by the Microsoft 365 word processing application used to generate this brief.

Dated: January 7, 2026

DAVIS WRIGHT TREMAINE LLP

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PROOF OF SERVICE

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.

On January 7, 2026, I caused to be served the following document(s):

APPLICATION FOR PERMISSION TO FILE *AMICI CURIAE* BRIEF IN SUPPORT OF DEFENDANTS AND APPELLANTS SHIPT, INC. AND TARGET CORPORATION

RETAIL LITIGATION CENTER, INC., NATIONAL RETAIL FEDERATION, CALIFORNIA RETAILERS ASSOCIATION, CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, CALIFORNIA CHAMBER OF COMMERCE, AND NATIONAL FEDERATION OF INDEPENDENT BUSINESS'S *AMICI CURIAE* BRIEF IN SUPPORT OF SHIPT, INC. AND TARGET CORPORATION

I caused the above document(s) to be served on the person(s) listed below by the following means and as indicated on the attached Service List:

☒ (***VIA TRUEFILING***) – On January 7, 2026, I consigned a true and correct electronic copy of said document(s) for service via True Filing pursuant to California Rules of Court, Rule 8.70.

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

Executed on January 7, 2026, at San Francisco, California.

Amanda Henderson
Print Name


Signature

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