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APPENDIX A

Court of Appeal, Second Appellate District,
Division Four - No. B301774

S279932

IN THE SUPREME COURT OF CALIFORNIA

En Banc

MILLION SEIFU et al., Plaintiffs and Respondents,

v.

LYFT, INC., Defendant and Appellant.

(Filed Sep. 13, 2023)

Review in the above-captioned matter, which was granted and held for *Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104, is hereby dismissed. (Cal. Rules of Court, rule 8.528(b)(1).)

GUERRERO
Chief Justice

CORRIGAN
Associate Justice

LIU
Associate Justice

KRUGER
Associate Justice

GROBAN
Associate Justice

JENKINS
Associate Justice

EVANS
Associate Justice

APPENDIX B

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

MILLION SEIFU et al., Plaintiffs and Respondents, v. LYFT, INC., Defendant and Appellant.	B301774 (Los Angeles County Super. Ct. No. BC712959) (Filed Mar. 30, 2023)

APPEAL from an order of the Superior Court of Los Angeles County, Susan Bryant-Deason, Judge. Affirmed in part, reversed in part with directions.

Horvitz & Levy, Andrea L. Russi, Peder Batalden, Felix Shafir; Keker, Van Nest & Peters, R. James Slaughter, Jo W. Golub, Erin E. Meyer and Morgan E. Sharma for Defendant and Appellant.

Lichten & Liss-Riordan, Shannon Liss-Riordan for Plaintiff and Respondent Million Seifu.

Respondent Million Seifu is a former driver for appellant Lyft, Inc. In 2018, he filed suit against Lyft under the Private Attorneys General Act of 2004 (PAGA)

(Lab. Code, § 2698 et seq.).[1] He alleged that Lyft misclassified him and other drivers as independent contractors rather than employees, thereby violating multiple provisions of the Labor Code. Lyft moved to compel arbitration based on the arbitration provision in the "Terms of Service" (TOS) that it required its drivers to accept in order to offer rides through Lyft's smartphone application.

The trial court denied the motion, finding the PAGA waiver in the arbitration provision unenforceable under then-controlling California law. Lyft appealed, and in June 2021 we affirmed the denial of Lyft's motion to compel arbitration.

Lyft petitioned the United States Supreme Court for a writ of certiorari. In June 2022, the Court granted Lyft's petition, vacated the judgment, and remanded the case for further consideration in light of *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. ___ [142 S.Ct. 1906, 213 L.Ed.2d 179] (*Viking River*). We recalled the remittitur, vacated our prior decision, and requested supplemental briefing from the parties on the application of *Viking River* to this case.

Seifu concedes that under *Viking River* his claim for civil penalties based on alleged Labor Code violations he *personally* suffered (his individual PAGA claim) is subject to arbitration. We agree, and therefore

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[1] All further statutory references are to the Labor Code unless otherwise indicated.

reverse the denial of that portion of Lyft's motion to compel arbitration.

The crux of the parties' dispute here is the fate of Seifu's remaining claims for civil penalties based on alleged Labor Code violations suffered by *other employees* (his non-individual PAGA claims). Lyft argues that Seifu lacks standing to litigate the non-individual claims once his individual claims are sent to arbitration, and the former claims therefore must be dismissed. Seifu counters that, as a matter of state law, he retains standing to pursue the non-individual PAGA claims in court.

We conclude that we are not bound by the analysis of PAGA standing set forth in *Viking River*. As Justice Sotomayor recognized in her concurring opinion, PAGA standing is a matter of state law that must be decided by California courts. Until we have guidance from the California Supreme Court, our review of PAGA and relevant state decisional authority leads us to conclude that a plaintiff is not stripped of standing to pursue non-individual PAGA claims simply because his or her individual PAGA claim is compelled to arbitration.

We therefore reverse in part and affirm in part the trial court's order denying Lyft's motion to compel arbitration. We remand the matter to the trial court with directions to: (1) enter an order compelling Seifu to arbitrate his individual PAGA claim; and (2) conduct further proceedings regarding Seifu's non-individual claims consistent with this opinion.

FACTUAL AND PROCEDURAL HISTORY

Lyft utilizes a smartphone application (app) that connects drivers with riders seeking transportation services. In order to use the Lyft technology platform and offer rides through the app, drivers must agree to the TOS, which states that it "contains provisions that govern how claims you and Lyft have against each other can be brought. . . . These provisions will, with limited exception, require you to submit claims you have against Lyft to binding and final arbitration on an individual basis, not as a plaintiff or class member in any class, group, representative action, or proceeding." (Capitalization omitted.)

The arbitration provision in the TOS provided, "You and Lyft mutually agree to waive our respective rights to resolution of disputes in a court of law by a judge or jury and agree to resolve any dispute by arbitration. . . . This agreement to arbitrate (Arbitration Agreement') is governed by the Federal Arbitration Act and survives after the Agreement terminates or your relationship with Lyft ends. . . . Except as expressly provided . . . [¶] . . . all disputes and claims between us . . . shall be exclusively resolved by binding arbitration solely between you and Lyft." (Capitalization omitted.) The agreement further stated, "This Arbitration Agreement is intended to require arbitration of every claim or dispute that can lawfully be arbitrated, except for those claims and disputes which by the terms of this Arbitration Agreement are expressly excluded from the requirement to arbitrate."

The arbitration provision also included a "Representative PAGA Waiver" stating, "Notwithstanding any other provision of this Agreement or the Arbitration Agreement, to the fullest extent permitted by law: (1) you and Lyft agree not to bring a representative action on behalf of others under the Private Attorneys General Act of 2004 (PAGA), California Labor Code § 2698 et seq., in any court or in arbitration, and (2) for any claim brought on a private attorney general basis, including under the California PAGA, both you and Lyft agree that any such dispute shall be resolved in arbitration on an individual basis only (i.e., to resolve whether you have personally been aggrieved or subject to any violations of law), and that such an action may not be used to resolve the claims or rights of other individuals in a single or collective proceeding (i.e., to resolve whether other individuals have been aggrieved or subject to any violations of law)."

Drivers who did not wish to be bound by the arbitration provision could opt out in the 30-day period following their acceptance of the TOS. Those who did not exercise this option during that period were bound by the arbitration provision.

Lyft updated the TOS periodically and required drivers to agree to the updated terms in order to continue offering rides through the Lyft platform. Seifu agreed to the updated TOS in July 2017 and April 2018; he did not opt out of the arbitration provision.

Seifu filed a complaint against Lyft in July 2018, alleging a single PAGA claim on behalf of the state of

California and other similarly situated individuals who worked as drivers for Lyft in California.[2] He alleged that Lyft willfully misclassified its drivers as independent contractors, resulting in numerous Labor Code violations. Seifu sought civil penalties under PAGA.

Lyft petitioned to compel arbitration of Seifu's PAGA claim and stay proceedings in the trial court pending arbitration, arguing that the PAGA waiver in the TOS was enforceable. Seifu opposed the petition to compel arbitration. He argued that the PAGA waiver was unenforceable under California law, relying on *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348 (*Iskanian*).

Applying *Iskanian*, the trial court found that the PAGA waiver was unenforceable and therefore denied Lyft's petition to compel arbitration. Lyft appealed.

In our prior opinion, a different panel of this court affirmed the trial court's decision. (*Seifu v. Lyft, Inc.* (June 1, 2021), B301774 [nonpub. opn.].) We concluded that pursuant to *Iskanian, supra*, 59 Cal.4th at pp. 383-384, "an employee's right to bring a PAGA action is unwaivable," and thus "where . . . an employment agreement compels the waiver of representative claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law."

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[2] Seifu later amended his complaint to add three other drivers as named plaintiffs, as well as additional claims. This appeal concerns only Seifu's PAGA claim, the thirteenth cause of action in the operative Third Amended Complaint.

In June 2022, the United States Supreme Court decided *Viking River*, abrogating *Iskanian* in part and holding that an employer could enforce an agreement calling for arbitration of individual PAGA claims. That same month, the United States Supreme Court granted Lyft's petition for writ of certiorari, vacated this court's judgment, and remanded the case for further consideration in light of *Viking River.* We recalled the remittitur issued September 13, 2021, vacated our prior opinion, and directed the parties to file supplemental briefs addressing the effect of *Viking River* on the issues presented in this appeal. Both parties timely filed supplemental briefs.

DISCUSSION

I. *Governing Law*

A. Standard of Review

Where, as here, the trial court's order denying a motion to compel arbitration "rests solely on a decision of law," we review that decision de novo. (*Robertson v. Health Net of California, Inc.* (2005) 132 Cal.App.4th 1419, 1425.)

B. PAGA and *Viking River*

"California's Labor Code contains a number of provisions designed to protect the health, safety, and compensation of workers. Employers who violate these statutes may be sued by employees for damages or *statutory* penalties. [Citations.]. . . . Several Labor

Code statutes provide for additional *civil* penalties, generally paid to the state unless otherwise provided. [Citation.] Before PAGA's enactment, only the state could sue for civil penalties." (*Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 80 (*Kim*), citing *Iskanian, supra*, 59 Cal.4th at p. 378.) The Legislature enacted PAGA to allow aggrieved employees to act as private attorneys general and recover civil penalties for Labor Code violations. (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 980-981 (*Arias*); *Villacres v. ABM Industries Inc.* (2010) 189 Cal.App.4th 562, 578 (*Villacres*).) The Legislature's declared purpose in enacting PAGA was "to supplement enforcement actions by public agencies, which lack adequate resources to bring all such actions themselves." (*Arias, supra*, 46 Cal.4th at p. 986.)

PAGA deputizes an "aggrieved" employee to bring a lawsuit "on behalf of himself or herself and other current or former employees" to recover civil penalties for Labor Code violations that would otherwise be assessed and collected by the state. (§ 2699, subd. (a); *Kim, supra*, 9 Cal.5th at p. 81.) An "aggrieved employee" for purposes of bringing a PAGA claim is defined under the statute as "any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed." (§ 2699, subd. (c); see also *Kim, supra*, 9 Cal.5th at p. 82.) Although an aggrieved employee is the named plaintiff in a PAGA action, an employee suing under PAGA "'does so as the proxy or agent of the state's labor law enforcement agencies.'" (*Kim, supra*, 9 Cal.5th

at p. 81, quoting *Arias, supra*, 46 Cal.4th at p. 986.) Thus, "[e]very PAGA claim is 'a dispute between an employer and the *state,*' [citations]" and "[r]elief under PAGA is designed primarily to benefit the general public, not the party bringing the action. [Citations.]" (*Kim, supra*, 9 Cal.5th at p. 81.)

In *Iskanian*, the California Supreme Court held that "an employee's right to bring a PAGA action is unwaivable." (*Iskanian, supra*, 59 Cal.4th at p. 383.) The court rejected the employer's argument that the arbitration agreement was enforceable because it allowed an individual PAGA claim, barring only "representative" (i.e., non-individual) PAGA claims, concluding that an agreement waiving an employee's right to bring representative PAGA claims was "contrary to public policy and unenforceable as a matter of state law." (*Id.* at p. 384.)

In June 2022, the Supreme Court decided *Viking River*, addressing the extent to which the Federal Arbitration Act (FAA) preempts the *Iskanian* rule barring PAGA waivers. The *Viking River* court explained that PAGA claims are "representative" in two ways: first, all PAGA claims are "representative" because a plaintiff brings a PAGA claim as an agent or proxy for the state. (*Viking River, supra*, 142 S.Ct. at p. 1916.) Second, some PAGA claims are "representative" because they are brought by employees to address violations suffered by other employees, as well as themselves. (*Ibid.*) In light of this distinction, the Supreme Court held that *Iskanian*'s "principal rule"

prohibiting "wholesale" waivers of all PAGA claims was not preempted by the FAA. (*Id.* at pp. 1925-1926.)

However, the "secondary rule" of *Iskanian*, prohibiting the separation of individual and non-individual PAGA claims, was preempted by the FAA. (*Id.* at p. 1925.) As the Court explained, *Iskanian*'s "prohibition on contractual division of PAGA actions into constituent claims 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,' [citation]." (*Id.* at p. 1923.) Accordingly, an arbitration agreement compelling individual claims to arbitration was enforceable as to the individual portion of a PAGA claim. (*Id.* at pp. 1924–1925 ["Viking was entitled to enforce the agreement insofar as it mandated arbitration of Moriana's individual PAGA claim."].)

The *Viking River* court then dismissed the plaintiff's non-individual PAGA claims, reasoning that "PAGA provides no mechanism to enable a court to adjudicate non-individual PAGA claims once an individual claim has been committed to a separate proceeding." (*Viking River, supra*, at p. 1925.) The Court continued, "When an employee's own dispute is pared away from a PAGA action, the employee is no different from a member of the general public, and PAGA does not allow such persons to maintain suit. See *Kim*, 9 Cal.5th at 90 (PAGA's standing requirement was meant to be a departure from the "general public" . . . standing originally allowed' under other California

statutes). As a result, [the plaintiff] lacks statutory standing to continue to maintain her non-individual claims in court, and the correct course is to dismiss her remaining claims." (*Ibid.*)

II. *Analysis*

A. Individual PAGA claim

In light of *Viking River*, we first assess the portion of Lyft's motion to compel arbitration of Seifu's individual PAGA claim. The PAGA waiver in the TOS contained two parts. First, the agreement waived the parties' right to bring PAGA claims "on behalf of others" in "any court or in arbitration." Second, the agreement required any individual PAGA claims to be resolved in arbitration. For the purposes of the current appeal, the parties do not dispute that the first clause, constituting a wholesale waiver of Seifu's right to bring non-individual PAGA claims in any forum, was unenforceable under *Iskanian.* (*Iskanian, supra*, 59 Cal.4th at p. 360 ["an arbitration agreement requiring an employee as a condition of employment to give up the right to bring representative PAGA actions in any forum is contrary to public policy"].) Nor do they dispute that *Viking River* left intact the portion of *Iskanian*'s rule "prevent[ing] parties from waiving representative standing to bring PAGA claims in a judicial or arbitral forum." (*Viking River, supra*, 142 S.Ct. at pp. 1916, 1924-1925, italics omitted.) As such, the first part of the PAGA waiver here is unenforceable under

Iskanian and cannot bar Seifu from bringing non-individual PAGA claims.

In addition, Seifu does not dispute that *Viking River* allows division of his PAGA claim into individual and non-individual claims. Under the second clause in the PAGA waiver, Seifu concedes that he must submit his individual PAGA claim to arbitration.

B. Non-individual PAGA claims

We now turn to the question of what becomes of Seifu's non-individual PAGA claims, as they are not subject to arbitration. Seifu contends that he maintains standing to pursue those claims in court. Lyft asserts that *Viking River* compels the dismissal of the non-individual claims. As we explain, we agree with Seifu.

As an initial matter, we note that we are not bound by the United States Supreme Court's interpretation of California law. (See *Nunez v. Nevell Group, Inc.* (2019) 35 Cal.App.5th 838, 847–848 ["Federal decisional authority does not bind the California Courts of Appeal on matters of state law."]; *Haynes v. EMC Mortg. Corp.* (2012) 205 Cal.App.4th 329, 335 [same]; *Howard Contracting, Inc. v. G.A. MacDonald Construction Co.* (1998) 71 Cal.App.4th 38, 52 ["[F]ederal decisional authority is neither binding nor controlling in matters involving state law"].) Indeed, in her concurrence in *Viking River*, Justice Sotomayor noted that she was joining in the Court's opinion with the understanding that "if this Court's understanding of state

law is wrong, California courts . . . will have the last word" regarding a plaintiff's standing under PAGA. (*Viking River, supra*, 142 S.Ct. at p. 1925 [Sotomayor, J., concurring].) As such, we are not required to follow the Court's interpretation of PAGA and its standing requirements in *Viking River*.[3]

We are not persuaded otherwise by Lyft's contention that the *Viking River* court's dismissal of the plaintiff's non-individual PAGA claims for lack of standing was part of a "federal rule of decision to implement its mandate that the FAA applies to PAGA claims when a valid arbitration agreement exists." Lyft's attempt to fold the Supreme Court's interpretation of standing requirements under PAGA, a state statute, into its federal preemption analysis is unavailing, particularly where the Court interpreted *Kim* and other California authority to reach its conclusion as to standing. By contrast, in *New York Times Co. v. Sullivan* (1964) 376 U.S. 254, the case relied upon by Lyft, the Court expressly announced a "federal rule" after finding that the standard of proof for libel under the relevant state law was constitutionally deficient. (*Id.*

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[3] The California Supreme Court has yet to decide the issue. The court recently granted review in *Adolph v. Uber Technologies, Inc.*, review granted July 20, 2022, S274671, to consider "[w]hether an aggrieved employee who has been compelled to arbitrate claims under [PAGA] that are 'premised on Labor Code violations actually sustained by' the aggrieved employee [citations] maintains statutory standing to pursue 'PAGA claims arising out of events involving other employees' [citation] in court or in any other forum the parties agree is suitable."

at pp. 279, 283.) Lyft has identified no such constitutional concerns here.

We therefore independently assess the standing requirements for Seifu to continue to pursue his non-individual PAGA claim in court. As discussed above, PAGA provides that civil penalties recoverable by the state for Labor Code violations "may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees." (§ 2699, subd. (a).) Our Supreme Court interpreted the plain language of PAGA to include "only two requirements for PAGA standing. The plaintiff must be an aggrieved employee, that is, someone 'who was employed by the alleged violator' and 'against whom one or more of the alleged violations was committed.' " (*Kim, supra*, 9 Cal.5th at pp. 83-84.) "Considering the remedial nature of legislation meant to protect employees, we construe PAGA's provisions broadly, in favor of this protection." (*Id.* at p. 83, citations omitted.)

In *Kim*, the plaintiff alleged claims for damages based on his employer's Labor Code violations, as well as a claim for civil penalties under PAGA. (*Kim, supra*, 9 Cal.5th at p. 82.) After the plaintiff settled his non-PAGA claims for individual relief, the defendant argued that the plaintiff lost standing to pursue the remaining PAGA claim because he had received redress for his own injuries and was therefore no longer "aggrieved" within the meaning of the statute. (*Id.* at p. 84.) The California Supreme Court rejected this argument, finding that "Kim became an aggrieved

employee, and had PAGA standing, when one or more Labor Code violations were committed against him. (See § 2699(c).) Settlement did not nullify these violations." (*Ibid.*)

The court continued, "An employee has PAGA standing if 'one or more of the alleged violations was committed' against him. (§ 2699(c).) This language indicates that PAGA standing is not inextricably linked to the plaintiff's own injury. Employees who were subjected to at least one unlawful practice have standing to serve as PAGA representatives even if they did not personally experience each and every alleged violation. (§ 2699(c).) This expansive approach to standing serves the state's interest in vigorous enforcement." (*Kim, supra*, 9 Cal.5th at p. 85, citing *Arias, supra*, 46 Cal.4th at pp. 980-981.)

We conclude that Seifu has satisfied the standing requirements under *Kim* to maintain his non-individual PAGA claims at this stage of the proceedings. Seifu's operative complaint alleged that he was employed by Lyft and that one or more of Lyft's alleged Labor Code violations was committed against him. He is therefore an "aggrieved" employee within the meaning of PAGA with standing to assert PAGA claims on behalf of himself and other employees. (See *Kim, supra*, 9 Cal.5th at pp. 84-85.)

Further, the requirement that Seifu resolve his individual PAGA claim in a different forum—arbitration—does not strip him of this standing. (See *Kim, supra*, 9 Cal.5th at p. 84; see also *Johnson v. Maxim*

Healthcare Services, Inc. (2021) 66 Cal.App.5th 924, 930 (*Johnson*) [the fact that the plaintiff's individual claim was time-barred did not "strip [the plaintiff] of her standing to pursue PAGA remedies"].) This interpretation is consistent with PAGA's remedial purpose, because revoking an employee's standing to pursue non-individual claims would "'severely curtail[] PAGA's availability to police Labor Code violations.'" (*Johnson, supra*, 66 Cal.App.5th at p. 930, quoting *Kim, supra*, 9 Cal.5th at pp. 86–87; see also *Viking River, supra*, 142 S.Ct. at p. 1919, fn. omitted ["An arbitration agreement thus does not alter or abridge substantive rights; it merely changes how those rights will be processed. And so we have said that "'"[b]y agreeing to arbitrate a statutory claim, a party does not forego the substantive rights afforded by the statute; it only submits to their resolution in an arbitral . . . forum."'"].)

We reject Lyft's contention that, even apart from statutory standing, PAGA requires that "the non-individual PAGA claims must be adjudicated together with individual PAGA claims, or not at all." The language of the statute contains no such requirement. "'"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."'" (*Kim, supra*, 9 Cal.5th at p. 85, quoting *Ennabe v. Manosa* (2014) 58 Cal.4th 697, 719.) Similarly, the cases Lyft cites simply reiterate the principle that a "plaintiff asserting a PAGA claim may not bring the claim simply on his or her own behalf but must

bring it as a representative action and include 'other current or former employees.'" (*Reyes v. Macy's, Inc.* (2011) 202 Cal.App.4th 1119, 1123; see also *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 756 ["an employee seeking to recover Labor Code penalties [under PAGA] cannot do so in a purely individual capacity; the employee must bring the action on behalf of himself or herself and others"].) Seifu satisfied this requirement when he alleged his PAGA claim on behalf of himself and other employees.

Lyft's reliance on *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725 (*Morehart*) is similarly unavailing. Lyft contends that sending the individual PAGA claim to arbitration "amounts to a form of severance that yields two distinct actions in two distinct fora," thereby ending Seifu's standing to represent non-individual PAGA claims in court. *Morehart* involved an analysis of whether a judgment was appealable when it did not resolve all of the plaintiff's causes of action, but the appellant nevertheless contended that the appealable claims had been severed from those still pending. (*Morehart, supra*, 7 Cal.4th at pp. 731-732.) *Morehart* did not assess or apply severance principles to issues of standing or arbitration of PAGA claims. (*Ibid.*)

Finally, Lyft contends that if Seifu's non-individual PAGA claims are not dismissed, they should be stayed pending the arbitration of the individual PAGA claims. Lyft urges us to direct the trial court to impose a stay pursuant to Code of Civil Procedure section 1281.4, which provides that where the court orders 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 the action or proceeding is pending "shall, upon motion of a party . . . , stay the action or proceeding until an arbitration is had in accordance with the order to arbitrate or until such earlier time as the court specifies."

Here, the trial court has not had the opportunity to rule on Lyft's stay request, because it denied Lyft's motion to compel arbitration outright. We therefore remand the matter for the trial court to determine in the first instance whether a stay of Seifu's non-individual PAGA claims would be appropriate under the circumstances.

DISPOSITION

The order denying Lyft's motion to compel arbitration is reversed in part and affirmed in part. The order is reversed as to Seifu's individual PAGA claim. The order is affirmed as to Seifu's non-individual PAGA claims. The matter is remanded with directions to the trial court to enter a new order requiring Seifu to arbitrate his individual PAGA claim and for further proceedings regarding Seifu's non-individual PAGA claims consistent with this opinion. The parties are to bear their own costs on appeal.

CERTIFIED FOR PUBLICATION

/s/ Collins
COLLINS, J.

We concur:

/s/ Currey

CURREY, ACTING, P.J.

/s/ Stone

STONE, J.*

* Judge of the Los Angeles County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

APPENDIX C
NOT TO BE PUBLISHED
IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

MILLION SEIFU, Plaintiff and Respondent, v. LYFT, INC., Defendant and Appellant.	B301774 (Los Angeles County Super. Ct. No. BC712959) (Filed Jun. 1, 2021)

APPEAL from an order of the Superior Court of Los Angeles County, Susan Bryant-Deason, Judge. Affirmed.

Horvitz & Levy, Andrea L. Russi, Peder Batalden, Felix Shafir; Keker, Van Nest & Peters, R. James Slaughter, Jo W. Golub, Erin E. Meyer and Morgan E. Sharma for Defendant and Appellant.

Lichten & Liss-Riordan, Shannon Liss-Riordan for Plaintiff and Respondent.

Plaintiff Million Seifu worked as a driver for Lyft, Inc. In 2018, he filed suit against Lyft under the Private Attorneys General Act of 2004 (PAGA) (Lab. Code, § 2698 et seq.).[1] He alleged that Lyft misclassified him and other drivers as independent contractors rather than employees, thereby violating multiple provisions of the Labor Code. Lyft moved to compel arbitration based on the arbitration provision in the "Terms of Service" (TOS) that it required drivers to accept in order to offer rides through Lyft's smartphone application.

The trial court denied the motion, rejecting Lyft's argument that the clause in the arbitration provision waiving Seifu's right to bring a representative PAGA claim was enforceable. Lyft makes the same argument on appeal. We agree with other California courts that have unanimously found such PAGA waivers unenforceable. We therefore affirm.

FACTUAL AND PROCEDURAL HISTORY

Lyft utilizes a smartphone application (app) that connects drivers with riders seeking transportation services. In order to use the Lyft technology platform and offer rides through the app, drivers must agree to the TOS, which states that it "contains provisions that govern how claims you and Lyft have against each other can be brought. . . . These provisions will, with limited exception, require you to submit claims you

[1] All further statutory references are to the Labor Code unless otherwise indicated.

have against Lyft to binding and final arbitration on an individual basis, not as a plaintiff or class member in any class, group, representative action, or proceeding." (Capitalization omitted.)

The arbitration provision in the TOS provided, "You and Lyft mutually agree to waive our respective rights to resolution of disputes in a court of law by a judge or jury and agree to resolve any dispute by arbitration. . . . This agreement to arbitrate ('Arbitration Agreement') is governed by the Federal Arbitration Act and survives after the Agreement terminates or your relationship with Lyft ends. . . . Except as expressly provided . . . [¶] . . . all disputes and claims between us . . . shall be exclusively resolved by binding arbitration solely between you and Lyft." (Capitalization omitted.) The agreement further stated, "This Arbitration Agreement is intended to require arbitration of every claim or dispute that can lawfully be arbitrated, except for those claims and disputes which by the terms of this Arbitration Agreement are expressly excluded from the requirement to arbitrate." (Capitalization omitted.)

The arbitration provision also included a "Representative PAGA Waiver" stating, "Notwithstanding any other provision of this Agreement or the Arbitration Agreement, to the fullest extent permitted by law: (1) you and Lyft agree not to bring a representative action on behalf of others under the Private Attorneys General Act of 2004 (PAGA), California Labor Code § 2698 et seq., in any court or in arbitration, and (2) for any claim brought on a private attorney general basis,

including under the California PAGA, both you and Lyft agree that any such dispute shall be resolved in arbitration on an individual basis only (i.e., to resolve whether you have personally been aggrieved or subject to any violations of law), and that such an action may not be used to resolve the claims or rights of other individuals in a single or collective proceeding (i.e., to resolve whether other individuals have been aggrieved or subject to any violations of law)."

Drivers who did not wish to be bound by the arbitration provision could opt out in the 30-day period following their acceptance of the TOS. Those who did not exercise this option in that time were bound by the arbitration provision.

Lyft updated the TOS periodically, and required drivers to agree to the updated terms in order to continue offering rides through the Lyft platform. Seifu agreed to the updated TOS in July 2017 and April 2018; he did not opt out of the arbitration provision.

Seifu filed a complaint against Lyft in July 2018, alleging a single PAGA claim on behalf of the state of California and other similarly situated individuals who worked as drivers for Lyft in California.[2] He alleged that Lyft willfully misclassified its drivers as independent contractors, resulting in numerous Labor

[2] Seifu later amended his complaint to add three other drivers as named plaintiffs, as well as additional claims. This appeal concerns only Seifu's PAGA claim, the thirteenth cause of action in the operative Third Amended Complaint.

Code violations. He sought civil penalties under PAGA, as well as injunctive relief.

Lyft petitioned to compel arbitration of Seifu's individual PAGA claim and stay proceedings in the trial court pending arbitration. Lyft asserted that the PAGA waiver in Seifu's arbitration agreement was enforceable under the recent United States Supreme Court opinion in *Epic Systems Corp. v. Lewis* (2018) ___ U.S. ___, 138 S.Ct. 1612 (*Epic*). Lyft acknowledged the prior holding in *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348 (*Iskanian*) that PAGA waivers were unenforceable, but argued that *Iskanian* was effectively overruled by *Epic*.[3]

Seifu opposed the petition to compel arbitration. He argued that *Iskanian* remained good law and therefore the PAGA waiver was unenforceable.

The court denied the petition to compel arbitration, finding that the PAGA waiver was unenforceable under *Iskanian*. Lyft timely appealed.

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[3] Lyft also argued that if the court found the PAGA waiver unenforceable, it should nevertheless compel Seifu's claim for "underpaid wages" under section 558 to arbitration, as that claim sought damages rather than penalties under PAGA. This issue was mooted when the California Supreme Court issued *ZB, N.A. v. Superior Court* (2019) 8 Cal. 5th 175, 198, holding that a plaintiff cannot seek "underpaid wages" under section 558 through a PAGA claim.

DISCUSSION

I. Standard of Review

Where, as here, the trial court's order denying a motion to compel arbitration "rests solely on a decision of law," we review that decision de novo. (*Robertson v. Health Net of California, Inc.* (2005) 132 Cal.App.4th 1419, 1425.)

II. Enforceability of PAGA Waiver

Lyft argues that *Epic*, *supra*, 138 S.Ct. 1612 abrogated "the *Iskanian* PAGA Rule prohibiting the enforcement of a representative-action waiver," and therefore the trial court erred in refusing to enforce the waiver in Seifu's arbitration agreement. We are not persuaded.

In *Iskanian*, *supra*, 59 Cal.4th 348, our Supreme Court held "that an employee's right to bring a PAGA action is unwaivable," and that "where . . . an employment agreement compels the waiver of representative claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law." (*Id*. at pp. 383-384.) The *Iskanian* court noted that the Legislature enacted PAGA to enhance the state's enforcement of labor laws by "allow[ing] aggrieved employees, acting as private attorneys general, to recover civil penalties for Labor Code violations, with the understanding that labor law enforcement agencies [are] to retain primacy over private enforcement efforts." (*Id*. at p. 379.) Thus, the governmental entity "is always the real party in interest" and a "PAGA representative action

is therefore a type of qui tam action." (*Id.* at p. 382.) As such, a PAGA action to recover civil penalties is "'fundamentally a law enforcement action designed to protect the public and not to benefit private parties.'" (*Id*. at p. 387.)

Epic, *supra*, 138 S.Ct. 1612 "was one of three cases consolidated by the United States Supreme Court that raised the issue of the FAA's preemptive effect over private employment arbitration agreements prohibiting class and collective actions. The Court considered whether the FAA was in conflict with other federal laws, including section 7 of the National Labor Relations Act (NLRA), which guarantees workers the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." (*Olson v. Lyft, Inc.* (2020) 56 Cal.App.5th 862, 868 (*Olson*), discussing *Epic*, *supra*, 138 S.Ct. at p. 1624.) "The Court found no such conflict, and refused to 'read a right to class actions into the NLRA' and rejected any NLRA exception to the FAA. ([*Epic*, *supra*, 138 S.Ct.] at p. 1619.) So, in each of the three consolidated cases, the Supreme Court upheld collective action waivers and compelled individualized arbitration." (*Olson*, *supra*, 56 Cal.App.5th at p. 869, citing *Epic*, *supra*, 138 S.Ct. at p. 1632.)

Numerous Courts of Appeal have rejected the contention that *Iskanian* is no longer good law in the wake of *Epic*. (See, e.g., *Contreras v. Superior Court of Los*

Angeles County (2021) 61 Cal.App.5th 461, 470-471; *Olson*, *supra*, 56 Cal.App.5th at pp. 872-873; *Provost v. YourMechanic* (2020), 55 Cal.App.5th 982, 997-998; *Collie v. The Icee Co*. (2020) 52 Cal.App.5th 477, 480; *Correia v. NB Baker Electric, Inc.* (2019) 32 Cal.App.5th 602, 620 (*Correia*).) "On federal questions, intermediate appellate courts in California must follow the decisions of the California Supreme Court, unless the United States Supreme Court has decided the same question differently." (*Correia*, *supra*, 32 Cal.App.5th at p. 619, citing *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) In *Correia*, Division One of the Fourth Appellate District explained: "*Iskanian* held that a ban on bringing PAGA actions in any forum violates public policy and that this rule is not preempted by the FAA because the claim is a governmental claim. [Citation.] *Epic* did not consider this issue and thus did not decide the *same* question differently. [Citation.] *Epic* addressed a different issue pertaining to the enforceability of an individualized arbitration requirement against challenges that such enforcement violated the [National Labor Relations Act]." (*Correia*, *supra*, 32 Cal.App.5th p. 619, italics in original.) Thus, "[b]ecause *Epic* did not overrule *Iskanian*'s holding, we remain bound by the California Supreme Court's decision." (*Id*. at p. 620.)

Agreeing with this conclusion, *Olson*, *supra*, 56 Cal.App.5th 862, rejected the same arguments Lyft raised here. Notably, Lyft argued, as it does here, that *Epic* "eroded *Iskanian's* private-public distinction,"

based on Lyft's characterization of *Murphy Oil*[4] as a "government enforcement action." The court in *Olson* concluded that Lyft's "position finds no support in either the text of *Epic* . . . or the claimed 'logic' of its reasoning: *Murphy Oil* did not involve the 'enforcement rights' of the NLRB," nor was the NLRB pursuing public claims. (*Olson*, *supra*, 56 Cal.App.5th at p. 873.) By contrast, "*Iskanian* noted that PAGA claims involve fundamentally public claims." (*Id*. at p. 873, citing *Iskanian*, *supra*, 59 Cal.4th at pp. 384–385; see also *ZB, N.A. v. Superior Court*, *supra*, 8 Cal.5th at p. 198 ["*Iskanian* established an important principle: employers cannot compel employees to waive their right to enforce the state's interests when the PAGA has empowered employees to do so."].)

In sum, we agree with the reasoning stated in *Olson*, *Correia*, and the other authorities cited above, and conclude that Lyft's argument regarding the PAGA waiver's enforceability is without merit.[5] We also join *Olson* in declining to reach Lyft's final argument that "the FAA should preempt the *Iskanian* PAGA rule even absent intervening precedent." (See *Olson*, *supra*, 56 Cal.App.5th at p. 874.) Lyft raises this argument in summary fashion, purporting to "preserve the point for Supreme Court review."

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[4] *Murphy Oil USA, Inc. v. N.L.R.B.* (5th Cir. 2015) 808 F.3d 1013 (*Murphy Oil*), was one of the three cases consolidated in *Epic*. (See *Epic*, *supra*, 138 S.Ct. at p. 1620.)

[5] We need not reach Seifu's alternative argument that Lyft drivers are exempt from coverage under the FAA pursuant to the transportation worker exemption. (9 U.S.C. § 1.)

DISPOSITION

The order denying the motion compel arbitration is affirmed. Seifu shall recover his costs on appeal.

NOT TO BE PUBLISHED
IN THE OFFICIAL REPORTS

/s/ Collins
COLLINS, **J**.

We concur:

/s/ J Willhite
WILLHITE, ACTING P.J.

/s/ Currey
CURREY, J.

APPENDIX D

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES
Civil Division
Central District, Stanley Mosk Courthouse,
Department 52

BC712959 October 23, 2019
MILLION SEIFU VS LYFT INC 8:30 AM

Judge: Honorable Susan Bryant-Deason	CSR: Tracy Dyrness, CSR # 12323
Judicial Assistant: Josefina Preciado Valdez	ERM: None
Courtroom Assistant: T. Isunza	Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Shannon Erika Liss-Riordan

For Defendant(s): Erin Elizabeth Meyer

NATURE OF PROCEEDINGS: Hearing on Motion – Other for Preliminary Approval of Class Action Settlement

Pursuant to Government Code sections 68086, 70044, and California Rules of Court, rule 2.956, Tracy Dyrness, CSR # 12323, certified shorthand reporter is appointed as an official Court reporter pro tempore in these proceedings, and is ordered to comply with the

terms of the Court Reporter Agreement. The Order is signed and filed this date.

The matter is called for hearing.

The Hearing on Defendant Lyft, Inc.' S Petition To Compel Individual Proceedings And Stay Proceedings Pending Arbitrations is held.

The court having read the papers and heard the arguments rules as follows:

As a preliminary matter, on October 9, 2019, the court received "Plaintiffs' Supplement in Support of Their Opposition to Defendant's Petition to Compel Individual Arbitrations and Stay Proceedings Pending Arbitration." This document was never filed. Plaintiffs are ordered to file this document within one court day of this ruling. Nevertheless, because Defendant Lyft, Inc. responds to this document, the court rules on the merits.

Plaintiffs' request for judicial notice as to Exhibits A and B is GRANTED pursuant to Evidence Code §452(d), but the court notes that other trial court rulings are not binding on this court.

This Petition to Compel Arbitration was filed on October 15, 2018 based on Plaintiffs Million Seifu and Stephen McFayden's First Amended Complaint. On February 5, 2019, the court stayed this Petition to Compel Arbitration pending the ruling in ZB, N.A. v. Superior Court (2019) 8 Cal.5th 175 ("Lawson").

On September 10, 2019, after this Petition to Compel Arbitration was stayed, the Second Amended Complaint was filed. On the same date, Plaintiffs filed a Motion for Preliminary Approval of Class Action Settlement ("Motion for Preliminary Approval"). The Motion for Preliminary Approval indicated that Plaintiff Million Seifu, who was a subject of this Petition to Compel Arbitration, is not part of the Settlement Class and intends to proceed on the PAGA cause of action on behalf of the state of California and all similarly situated aggrieved employees who are not part of the Settlement Class.

On September 12, 2019, the California Supreme Court issued its opinion in Lawson. The court therefore lifts the stay on this Petition to Compel Arbitration and rules as follows.

Since Plaintiff Stephen McFayden is settling all his claims, the court rules as to Plaintiff Million Seifu only on the thirteenth cause of action under PAGA asserted in the operative Third Amended Complaint.

Paragraph 17 of the Lyft Terms of Service expressly applies to Plaintiff Seifu's Private Attorneys General Act (PAGA) claim. Ayanbule Decl., ¶ 10, Ex. A. Seifu does not dispute that he accepted the Terms of Service before agreeing to offer rides as drivers for Lyft or that the terms cover the PAGA claim. Id., ¶¶ 12-15, Exs. B, C.

As a general proposition, Plaintiff Seifu's cause of action under PAGA is not subject to arbitration. "A PAGA claim lies outside the [Federal Arbitration Act]'s

coverage because it is not a dispute between an employer and an employee arising out of their contractual relationship. It is a dispute between an employer and the state." Iskanian v. CLS Transp. Los Angeles, LLC (2014) 59 Cal.4th 348, 386-87. The Ninth Circuit has found that the FAA does not preempt the rule set forth in Iskanian that "an agreement to waive representative PAGA claims would be unenforceable." Sakkab v. Luxottica Retail North America, Inc. (9th Cir. 2015) 803 F.3d 425, 431, 435-36.

Epic Systems Corp. v. Lewis (2018) 138 S.Ct. 1612 ("Epic Systems") does not address Iskanian's rationale for finding that an arbitration provision waiving PAGA actions is unenforceable because a PAGA representative action is a qui tam action, where the plaintiff asserts the claim as a proxy for the state's Labor and Workforce Development Agency. Iskanian, supra, 59 Cal.4th at p. 383. Because PAGA was established for a public reason, it cannot be waived by a private agreement. See ibid., citing Civ. Code §3513. All Epic Systems holds is that class claims under the federal Fair Labor Standards Act may be subject to arbitration if the employee signed an agreement requiring individualized arbitration. "Because Epic did not overrule Iskanian's holding, we remain bound by the California Supreme Court's decision." Correia v. NB Baker Electric, Inc. (2019) 32 Cal.App.5th 602, 620.

Defendant argues that if the Court finds that Epic Systems does not overrule PAGA, then the court should order Plaintiff's claims for unpaid wages under Labor Code §558 to arbitration. Based on the recent

California Supreme Court ruling in ZB, N.A. v. Superior Court (2019) 8 Cal. 5th 175 ("Lawson"), Plaintiff Seifu cannot seek unpaid wages under the PAGA cause of action. Id. at p. 182 ("[T]he civil penalties a plaintiff may seek under section 558 through the PAGA do not include the 'amount sufficient to recover underpaid wages.' . . . Because the amount for unpaid wages is not recoverable under the PAGA, and section 558 does not otherwise permit a private right of action, the trial court should have denied the motion [to compel arbitration]."). Plaintiff Seifu, however, can seek civil penalties under Labor Code §558 through the PAGA cause of action. Id. at p. 188 ("An aggrieved employee can make use of section 558's remedy only when she acts as the state's proxy — and that's a role she can play only through a PAGA action.").

Thus, to the extent that Plaintiff Million Seifu is seeking recovery for unpaid wages under Labor Code §558, as opposed to civil penalties, such claims are unavailable under PAGA. Because Plaintiff Million Seifu agrees not to seek unpaid wages under his sole PAGA cause of action, the Petition to Compel Arbitration is DENIED.

Defendant Lyft Inc. is ordered to file a responsive pleading to the Third Amended Complaint within 10 days of this ruling. The court reserves the issue of whether Plaintiff Seifu may seek "public injunctive relief" for a future motion on December 3, 2019.

Defendant is ordered to give notice.

The Hearing on Motion – Other for Preliminary Approval of Class Action Settlement is held.

The Court reads its tentative ruling in open court.

The court having read the papers and no written opposition being received rules as follows:

Pursuant to the stipulation of the parties, the court deems the Third Amended Complaint filed on October 11, 2019 the operative complaint.

The motion is GRANTED. The court preliminarily approves the class action settlement. The court sets a final approval hearing for 01/14/2020 at 8:30 a.m. in Department 52.

Prior to the final fairness hearing, Class Counsel must submit briefing and supporting declarations regarding a lodestar calculation of the attorneys' fees sought. The court must determine that the attorneys' fees sought are reasonably related to the work performed before any fees are awarded. See Garabedian v. Los Angeles Cellular Telephone Company (2004) 118 Cal. App. 4th 123, 128.

Additionally, consistent with Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 806-807, each Plaintiff must submit a declaration explaining why he or she should be compensated for the expense or risk incurred in conferring a benefit on other members of the class. The declaration must be specific enough in the form of quantification of time and effort expended on the litigation, and in the form of reasoned

explanation of financial or other risks incurred by each Plaintiff in order for this court to

conclude that an enhancement award was necessary to induce Plaintiffs to participate in this lawsuit.

The motion for final approval documents, along with supporting declarations, must be filed by January 3, 2020.

Defendant is to give notice.

APPENDIX E

Constitutional and Statutory Provisions Involved

U.S. Const. Art. VI, cl. 2.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

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9 U.S.C. § 2. Validity, irrevocability, and enforcement of agreements to arbitrate

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

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9 U.S.C. § 4. Failure to arbitrate under agreement; petition to United States court having jurisdiction for order to compel arbitration; notice and service thereof; hearing and determination

A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by the Federal Rules of Civil Procedure. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearing and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed. If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the party alleged to be in default, or if the matter in dispute is within admiralty jurisdiction, the court shall hear and

determine such issue. Where such an issue is raised, the party alleged to be in default may, except in cases of admiralty, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by the Federal Rules of Civil Procedure, or may specially call a jury for that purpose. If the jury find that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

Cal. Labor Code § 2699.

Actions brought by an aggrieved employee or on behalf of self or other current or former employees; authority; gap-filler penalties; attorneys fees; exclusion; distribution of recovered penalties

(a) Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an

aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

(b) For purposes of this part, "person" has the same meaning as defined in Section 18.

(c) For purposes of this part, "aggrieved employee" means any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.

(d) For purposes of this part, "cure" means that the employer abates each violation alleged by any aggrieved employee, the employer is in compliance with the underlying statutes as specified in the notice required by this part, and any aggrieved employee is made whole. A violation of paragraph (6) or (8) of subdivision (a) of Section 226 shall only be considered cured upon a showing that the employer has provided a fully compliant, itemized wage statement to each aggrieved employee for each pay period for the three-year period prior to the date of the written notice sent pursuant to paragraph (1) of subdivision (c) of Section 2699.3.

(e)(1) For purposes of this part, whenever the Labor and Workforce Development Agency, or any of its departments, divisions, commissions, boards, agencies, or employees, has discretion to assess a civil penalty, a court is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

(2) In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.

(f) For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows:

(1) If, at the time of the alleged violation, the person does not employ one or more employees, the civil penalty is five hundred dollars ($500).

(2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation.

(3) If the alleged violation is a failure to act by the Labor and Workplace Development Agency, or any of its departments, divisions, commissions, boards, agencies, or employees, there shall be no civil penalty.

(g)(1) Except as provided in paragraph (2), an aggrieved employee may recover the civil penalty described in subdivision (f) in a civil action pursuant to the procedures specified in Section 2699.3 filed on behalf of himself or herself and other current or former

employees against whom one or more of the alleged violations was committed. Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs, including any filing fee paid pursuant to subparagraph (B) of paragraph (1) of subdivision (a) or subparagraph (B) of paragraph (1) of subdivision (c) of Section 2699.3. Nothing in this part shall operate to limit an employee's right to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part.

(2) No action shall be brought under this part for any violation of a posting, notice, agency reporting, or filing requirement of this code, except where the filing or reporting requirement involves mandatory payroll or workplace injury reporting.

(h) No action may be brought under this section by an aggrieved employee if the agency or any of its departments, divisions, commissions, boards, agencies, or employees, on the same facts and theories, cites a person within the timeframes set forth in Section 2699.3 for a violation of the same section or sections of the Labor Code under which the aggrieved employee is attempting to recover a civil penalty on behalf of himself or herself or others or initiates a proceeding pursuant to Section 98.3.

(i) Except as provided in subdivision (j), civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor and Workforce Development Agency for enforcement of labor laws,

including the administration of this part, and for education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes; and 25 percent to the aggrieved employees.

(j) Civil penalties recovered under paragraph (1) of subdivision (f) shall be distributed to the Labor and Workforce Development Agency for enforcement of labor laws, including the administration of this part, and for education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes.

(k) Nothing contained in this part is intended to alter or otherwise affect the exclusive remedy provided by the workers' compensation provisions of this code for liability against an employer for the compensation for any injury to or death of an employee arising out of and in the course of employment.

(*l*)(1) For cases filed on or after July 1, 2016, the aggrieved employee or representative shall, within 10 days following commencement of a civil action pursuant to this part, provide the Labor and Workforce Development Agency with a file-stamped copy of the complaint that includes the case number assigned by the court.

(2) The superior court shall review and approve any settlement of any civil action filed pursuant to this part. The proposed settlement shall be submitted to

the agency at the same time that it is submitted to the court.

(3) A copy of the superior court's judgment in any civil action filed pursuant to this part and any other order in that action that either provides for or denies an award of civil penalties under this code shall be submitted to the agency within 10 days after entry of the judgment or order.

(4) Items required to be submitted to the Labor and Workforce Development Agency under this subdivision or to the Division of Occupational Safety and Health pursuant to paragraph (4) of subdivision (b) of Section 2699.3, shall be transmitted online through the same system established for the filing of notices and requests under subdivisions (a) and (c) of Section 2699.3.

(m) This section shall not apply to the recovery of administrative and civil penalties in connection with the workers' compensation law as contained in Division 1 (commencing with Section 50) and Division 4 (commencing with Section 3200), including, but not limited to, Sections 129.5 and 132a.

(n) The agency or any of its departments, divisions, commissions, boards, or agencies may promulgate regulations to implement the provisions of this part.