No. 20-1573

In the Supreme Court of the United States

VIKING RIVER CRUISES, INC.,

Petitioner,

v.

ANGIE MORIANA,

Respondent.

ON WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEAL,
SECOND APPELLATE DISTRICT, DIVISION THREE

BRIEF FOR CALIFORNIA AS AMICUS CURIAE IN SUPPORT OF RESPONDENT

ROB BONTA
Attorney General of California
MICHAEL J. MONGAN
Solicitor General
JANILL L. RICHARDS*
Principal Deputy Solicitor General
NICOLE WELINDT
Associate Deputy Solicitor General

STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550
(510) 879-1300
Janill.Richards@doj.ca.gov
**Counsel of Record*

March 9, 2022

QUESTION PRESENTED

Whether California's "*Iskanian* rule," which prohibits pre-dispute agreements purporting to waive an employee's right to bring a claim in any forum under the state Labor Code Private Attorneys General Act (PAGA), is preempted by the Federal Arbitration Act.

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INTERESTS OF AMICUS CURIAE

This case addresses whether the Federal Arbitration Act preempts a generally applicable non-waiver rule designed to protect the operation of California's Labor Code Private Attorneys General Act of 2004 (PAGA), Cal. Lab. Code §§ 2698-2699.8. In the State's experience, PAGA is an important law enforcement tool enacted to address serious and widespread violations of the California Labor Code. The State accordingly has a powerful interest in the outcome of this case.

It is state policy to "vigorously enforce minimum labor standards." Cal. Lab. Code § 90.5. Such enforcement "ensure[s] employees are not required or permitted to work under substandard unlawful conditions," "secure[s] the payment of compensation," and "protect[s] employers who comply with the law from those who attempt to gain a competitive advantage" by noncompliance. *Id.* For nearly two decades, PAGA has augmented the State's limited enforcement resources by deputizing affected employees to pursue civil penalties for labor law violations as proxy for the State. PAGA notices and claims inform and supplement the enforcement efforts of the California Labor and Workforce Development Agency (LWDA) and its components.[1] PAGA is an integral part of the State's Labor Code enforcement scheme. It plays a particularly important role in ensuring the fair and legal treatment of some of the State's most vulnerable workers, including those in the agricultural, garment, and front-line service industries.

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[1] *See generally About the Labor and Workforce Development Agency*, LWDA, https://www.labor.ca.gov/about/ (last visited Mar. 8, 2022).

The unduly expansive approach to FAA preemption advocated by petitioner here is not only legally incorrect, but would also substantially interfere with the State's traditional authority to regulate the conduct of business entities and adopt effective enforcement strategies in order to protect the health and welfare of its workers.

INTRODUCTION AND SUMMARY OF ARGUMENT

The California Legislature enacted the Labor Code Private Attorneys General Act of 2004 (PAGA) to address widespread violations of the State's Labor Code and a serious shortage of state resources for enforcement. In appropriate circumstances, PAGA authorizes an "aggrieved" employee to bring a claim as proxy for the State to recover civil penalties for Labor Code violations committed against that employee and other past and current employees. Cal. Lab. Code § 2699.[2] That action is a state law enforcement action, with the State retaining seventy-five percent of penalties recovered and aggrieved employees receiving the remainder. *Id.* § 2699(i).

Applying longstanding, general principles, state precedent holds that a pre-dispute agreement requiring an employee "to give up the right to bring representative PAGA actions *in any forum* is contrary to public policy." *Iskanian v. CLS Transp. L.A., LLC*, 59 Cal. 4th 348, 360 (2014) (emphasis added); *see also id.*

[2] An "'aggrieved employee' means any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed." *Id.* § 2699(c).

at 383-384; *Sakkab v. Luxottica Retail N. Am., Inc.*, 803 F.3d 425, 434 (9th Cir. 2015).[3]

The California Supreme Court, the Ninth Circuit, and respondent have persuasively explained why the FAA does not preempt the *Iskanian* rule. *See Iskanian*, 59 Cal. 4th at 384-388; *Sakkab*, 803 F.3d at 431-440; Resp. Br. 13-49. As the California Supreme Court noted, a PAGA claim "is a dispute between an employer and the *state*." *Iskanian*, 59 Cal. 4th at 386; *see also ZB, N.A. v. Superior Ct.,* 8 Cal. 5th 175, 181-182 (2019) (employees' claims seeking compensation for unpaid wages are outside the scope of PAGA). And as the Ninth Circuit observed, "[t]he FAA was not intended to preclude states from authorizing qui tam actions to enforce state law." *Sakkab*, 803 F.3d at 439-440. While the FAA provides that agreements to settle a controversy by arbitration are "valid, irrevocable, and enforceable," 9 U.S.C. § 2, it "says nothing about agreements to strip contracting parties of the right to pursue state public-policy claims in all forums." Resp. Br. 11. To the contrary: "The statute's structure and context . . . underscore that the FAA promotes arbitration as an alternative forum" but do not suggest that Congress intended the law to operate as "a mechanism for forfeiture of rights." *Id.*; *see id.* at 15-21.

Rather than repeating those arguments here, the State submits this focused amicus brief to describe in detail PAGA's origins, the Act's structure, and the special state law enforcement purposes it serves. As discussed below, PAGA was not born out of any "hostility"

[3] *See also* Cal. Civ. Code § 1668 (1872) (contracts that purport to "exempt anyone from responsibility for . . . violation of law . . . are against the policy of the law"); *id.* § 3513 (1872) ("a law established for a public reason cannot be contravened by a private agreement").

toward or "disfavor[]" of arbitration. *See AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339, 341 (2011). PAGA is not (as petitioner suggests) a "redirection" or "maneuver" to avoid the holdings of *Concepcion* and *Epic Systems Corp. v. Lewis*, 138 S. Ct. 1612 (2018), that class-action and collective-action claims are fundamentally incompatible with arbitration. Pet. Br. 3, 43; *see also id*. at 45. Indeed, the Act predates those authorities. Correctly understood, PAGA is a legitimate exercise of the State's traditional police powers, designed to facilitate the enforcement of labor laws in circumstances where resources for direct enforcement are limited.

PAGA enlists those closest to Labor Code violations—the employees themselves—as private attorneys general acting in the State's stead to identify, pursue, and resolve disputes through civil penalty actions. The Act helps uncover violations that otherwise are unlikely to come to light. Its detailed notice requirements ensure that the relevant state enforcement agency, the LWDA, has the opportunity to pursue the alleged violations as it deems appropriate, and as resources allow. In other circumstances, PAGA actions pursued by employees supplement the State's direct enforcement mechanisms. And civil penalties paid by labor-law violators help to fund the LWDA's oversight, education, and enforcement work.

Petitioner's preemption arguments are not only legally incorrect, they would substantially interfere with California's ability to employ this traditional *qui tam* enforcement mechanism, harming workers and law abiding employers, as well as allowing those who violate the law to benefit from the resulting under-enforcement of the State's worker protection laws.

ARGUMENT

I. THE CALIFORNIA LABOR CODE PRIVATE ATTORNEYS GENERAL ACT SERVES IMPORTANT LAW ENFORCEMENT PURPOSES

A. PAGA's Origins and Operation

The California Legislature enacted PAGA in 2003. S.B. 796, 2003-2004 Reg. Sess. (Cal. 2003); *see also Arias v. Superior Ct.*, 46 Cal. 4th 969, 980 (2009).[4] The Act was a response to the serious and widespread violations of California labor laws and the problem of significant under-enforcement of those laws that existed at that time, as documented in the Act's legislative history. *See* Cal. Assembly Comm. on Lab. & Emp., *Report on Senate Bill 796*, at 3 (July 8, 2003) (Assembly Comm. on Lab. & Emp. Report).

At the time, the State's enforcement agencies were "responsible for protecting the legal rights of over 17 million California workers and regulating almost 800,000 private establishments, in addition to all the public sector workplaces in the state." Assembly Comm. on Lab. & Emp. Report, *supra*, at 3. But "the resources available to the labor enforcement divisions remain[ed] below the levels of the mid-1980s." *Id.* at 4. "[B]etween 1980 and 2000 California's workforce grew 48 percent," but the relevant agency budgets and staffing failed to keep pace—in some cases actually decreasing over that time period. *Id.*[5] Contemporaneous "[e]stimates of the size of California's

[4] All bill history and analyses for Senate Bill 796 are available at https://tinyurl.com/2ka6zhbs.

[5] *See also* Letter from Joseph L. Dunn, Sen. & Author of Senate Bill 796, Cal. State Senate, to Gray Davis, Governor, Cal. (Sept.

'underground economy'—businesses operating outside the state's tax and licensing requirements—ranged from 60 to 140 billion dollars a year, representing a tax loss to the state of three to six billion dollars annually." Assembly Comm. on Lab. & Emp. Report, *supra*, at 3.

Enforcement tools were limited. Only the LWDA's component departments had authority to assess and collect civil penalties for violations of the Labor Code, and civil penalties were not available for all types of violations. Assembly Comm. on Lab. & Emp. Report, *supra*, at 2. Civil penalties were not available even for some serious violations, for example, the failure to provide drinking water to farmworkers. *See* Dunn Letter, *supra*, at 1. And while local prosecutors could bring misdemeanor charges for some Labor Code violations, "[s]ince district attorneys tend[ed] to direct their resources to violent crimes and other public priorities, Labor Code violations rarely result[ed] in criminal investigations and prosecutions." Assembly Comm. on Lab. & Emp. Report, *supra*, at 2, 4.

Consequently, some of California's most vulnerable workers suffered serious and ongoing labor law violations. For example, "a U.S. Department of Labor study of the garment industry in Los Angeles, which [then] employ[ed] over 100,000 workers, estimated the

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16, 2003) (Dunn Letter) ("Despite increases made by your administration to staff for state labor law enforcement, there are only 14 more enforcement staff positions now than there were 15 years ago—while there are three million more workers. Unfortunately, further gains are unlikely because enforcement staff are being cut as a result of the budget crisis."). The letter is located at the California State Archives in the Governor's chaptered bill file for Senate Bill 796.

existence of over 33,000 serious and ongoing wage violations by the city's garment industry employers." Assembly Comm. on Lab. & Emp. Report, *supra*, at 3. As the same study noted, the relevant state agency "was issuing fewer than 100 wage citations per year for all industries throughout the state." *Id.* Advocates for agricultural and other workers also noted "the resurgence of violations of Labor Code prohibitions against the 'company store.'" Cal. Senate Comm. on Lab. & Indus. Rels., *Report on Senate Bill 796*, at 6 (Apr. 8, 2003) (Senate Comm. on Lab. & Indus. Rels. Report). "This [type of violation] occurs either when the employee is required to cash his check at a store owned by his employer and the employer charges a fee, or where the employer coerces the employee to purchase goods at that store." *Id.* Although such violations were misdemeanors, no civil penalty was available at the time, and "[a]dvocates [were] unaware of any misdemeanor prosecution having been undertaken in relation to these code sections." *Id.*

In PAGA, the Legislature devised a two-pronged approach to address these enforcement shortcomings. *Iskanian v. CLS Transp. L.A., LLC*, 59 Cal. 4th 348, 379 (2014). First, it ensured that civil penalties were available across the board in an amount adequate to deter violations. *Id.* Second, it authorized "aggrieved employees, acting as private attorneys general, to recover civil penalties for Labor Code violations, with the understanding that labor law enforcement agencies were to retain primacy over private enforcement efforts." *Arias*, 46 Cal. 4th at 980. The Legislature chose "to deputize and incentivize employees" because they are "uniquely positioned to detect and prosecute such violations." *Iskanian*, 59 Cal. 4th at 390. As a Senate committee acknowledged of PAGA, "[a]rguably, in a perfect world, there would be no need for the

right to act as [a private attorney general], yet the fact remains that due to continuing budgetary and staffing constraints, full, appropriate and adequate Labor Code enforcement is unrealizable if done solely by the Agency." Senate Comm. on Lab. & Indus. Rels. Report, *supra*, at 4.[6]

Sensitive to concerns about private enforcement, the Legislature, initially and in subsequent amendments, built in a number of features limiting the scope of PAGA actions, ensuring government oversight, and reducing the risk of abuse. *See generally* Cal. Senate Rules Comm., *Report on Senate Bill 1809*, at 1-5 (July 29, 2004).[7]

Not all state labor law violations are subject to PAGA. The Act excludes workers' compensation violations, Cal. Lab. Code § 2699(m), and, in addition, violations involving "a posting, notice, agency reporting, or filing requirement of [the Labor Code], except where the filing or reporting requirement involves mandatory payroll or workplace injury reporting," *id.* § 2699(g)(2).

Further, only an "aggrieved employee" may file a PAGA action, in which the employee may pursue civil

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[6] The bill's author, Senator Dunn, was even more blunt in his letter to the Governor. He noted that "[w]e likely agree that government is best suited to enforce these laws," but he added that "none of us can say with certainty that there will be more money in the budget for enforcement any time soon." Dunn Letter, *supra*, at 2. "Given that reality," he continued, "do we tell injured workers that they have to wait 10 years until we have a better budget situation before they can expect their employer to follow the law? I hope not." *Id.*

[7] *Available at* https://tinyurl.com/2p8xxy96.

penalties for covered violations committed against that employee and other similarly affected current or former employees. Cal. Lab. Code § 2699(a). Mindful of "allegations of private plaintiff abuse of the" California Unfair Competition Law, PAGA's private right of action does "not permit private actions by persons who suffered no harm from the alleged wrongful act." Cal. Assembly Comm. on Judiciary, *Report on Senate Bill 796*, at 6 (June 26, 2003) (Assembly Comm. on Judiciary Report).[8]

Before filing a PAGA action, the employee must comply with detailed procedural requirements, including giving notice to the government and to the employer describing the alleged violations. Cal. Lab. Code §§ 2699, 2699.3(a)(1)(A), (b)(1), (c)(1)(A). The notice gives the LWDA (or, as appropriate, the Division of Occupational Safety and Health) the opportunity to enforce the law itself by commencing its own investigation. *Id.* § 2699.3(a)(2)(B), (b)(2)(A). In general, the LWDA has 60 days to decide whether to further investigate the alleged violation, and 65 days to inform the employee of that decision. *Id.* § 2699.3(a)(2)(A). If the LWDA elects not to further investigate, the employee may commence a PAGA action. *Id.* If the LWDA chooses to investigate but does not issue a citation or initiate its own lawsuit, the aggrieved employee may pursue private enforcement under PAGA in certain circumstances, subject to additional procedural requirements. *Id.* § 2699.3(a)(2)(B), (b)(2)(A)(ii). The notice required by PAGA also provides the employer

[8] This aspect of the State's Unfair Competition Law was reformed by the voters in November 2004; a private plaintiff must now demonstrate harm to bring a claim under that law. *Californians for Disability Rts. v. Mervyn's, LLC*, 39 Cal. 4th 223, 227 (2006); *see* Cal. Bus. & Prof. Code § 17204.

with a qualified opportunity to cure certain violations, potentially reducing or avoiding litigation and resulting civil penalties. *Id.* § 2699.3(c)(2)(A).

PAGA claims are subject to a one-year statute of limitations, Cal. Civ. Proc. Code § 340(a), which functions to limit the accumulation of civil penalties. In addition, PAGA's default penalties were set "'on the low end' of the range of existing civil penalties" but at an amount that was "significant enough to deter violations." Assembly Comm. on Judiciary Report, *supra*, at 4. "For Labor Code violations for which no penalty is provided, the PAGA provides that the penalties are generally $100 for each aggrieved employee per pay period for the initial violation and $200 per pay period for each subsequent violation." *Iskanian*, 59 Cal. 4th at 379 (citing Cal. Lab. Code § 2699(f)(2)). Courts are authorized to "award a lesser amount than the maximum civil penalty amount specified" to avoid "an award that is unjust, arbitrary and oppressive, or confiscatory." Cal. Lab. Code § 2699(e)(2).

The employee must provide the LWDA with a copy of the complaint within ten days of commencement of a PAGA action. Cal. Lab. Code § 2699(l)(1). Where the employee prevails, 75 percent of civil penalties recovered goes to the LWDA, leaving the remaining 25 percent to be distributed among "the aggrieved employees." *Id.* § 2699(i). Penalties recovered are thus "dedicated in part to public use . . . instead of being awarded entirely to a private plaintiff." Assembly Comm. on Judiciary Report, *supra*, at 5. Further, court approval is required for any settlement of a PAGA action. Cal. Lab. Code § 2699(l)(2). "The proposed settlement" must be "submitted to the agency at the same time that it is submitted to the court," *id.*, which provides the LWDA with the opportunity to

comment on or object to PAGA settlements as appropriate.[9]

A judgment in a PAGA action "binds all those, including nonparty aggrieved employees, who would be bound by a judgment in an action brought by the government" with respect to civil penalties under the Labor Code. *Iskanian*, 59 Cal. 4th at 381; *see also ZB, N.A. v. Superior Ct.,* 8 Cal. 5th 175, 196-197 (2019).[10]

B. PAGA Actions Are State Law Enforcement Actions

Petitioner contends that "there is no meaningful distinction between the class action in *Concepcion*, the collective action in *Epic*, and representative PAGA actions like the one here." Pet. Br. 2; *see also id*. at 23, 43. According to petitioner, the *Iskanian* rule is therefore nothing more than an attempt to "evade the FAA." *Id*. at 3; *see also id.* at 43. That view ignores the law enforcement purpose and function of PAGA claims.

As discussed, PAGA was enacted to help ensure the adequate enforcement of California's labor laws by deputizing employees to act on the State's behalf. To be sure, a PAGA action is "representative" in the sense that the aggrieved employee acts as "proxy" for the

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[9] This additional notice allows the LWDA the opportunity to intervene as appropriate to ensure that the purposes of PAGA are served. *See, e.g.*, *McCracken v. Riot Games, Inc.*, No. 18STCV03957 (L.A. Super. Ct. 2020); *Tabola v. Uber Techs., Inc.*, No. CGC-16-550992 (S.F. Super. Ct. 2021).

[10] In addition, the Legislature recently added two conditional, industry-specific provisions to PAGA facilitating arbitration of Labor Code claims pursuant to the terms of collective bargaining agreements. *See* Cal. Lab. Code § 2699.6 (applying to specified workers in the construction industry); *id*. § 2699.8 (applying to certain union-represented janitors).

State. *Iskanian*, 59 Cal. 4th at 359, 378; *id*. at 388; *see also supra* pp. 7-8. But a PAGA action is not a class action seeking vindication of individual employee claims, *Kim v. Reins Int'l Cal., Inc.*, 9 Cal. 5th 73, 86-87 (2020), and does not involve class notice or class certification requirements, *see Arias*, 46 Cal. 4th at 976, 986-988; *Iskanian*, 59 Cal. 4th at 388; *see also Iskanian*, 59 Cal. 4th at 381 (noting that "civil penalties recovered on behalf of the state under the PAGA are distinct from the statutory damages to which employees may be entitled in their individual capacities").

And although a PAGA claim is brought by a private party, it does not constitute a private dispute. Rather, it is "an enforcement action between the LWDA and the employer, with the PAGA plaintiff acting on behalf of the government." *Reins*, 9 Cal. 5th at 86. Aggrieved employees "pursue sanctions"—civil penalties—"on the state's behalf." *Id*. at 91. While PAGA creates financial incentives for employees to bring claims against employers that have violated labor laws, the Act at core is designed "to protect the public and not to benefit private parties." *Iskanian*, 59 Cal. 4th at 381 (internal quotation marks and citation omitted); *see also Reins*, 9 Cal. 5th at 81. The Act's civil penalties are intended to punish employers that have engaged in wrongdoing, not to compensate individual employees for damages sustained. *ZB, N.A.*, 8 Cal. 5th at 185-187; *see also id*. at 182 (civil penalties recoverable under PAGA do not include amounts to compensate for unpaid wages). These attributes mark PAGA actions as *qui tam* in nature. *Iskanian*, 59 Cal. 4th at 382; *Reins*, 9 Cal. 5th at 81. As the California Supreme Court noted in *Iskanian*, while PAGA was enacted relatively recently, government "use of qui tam actions" to serve sovereign prerogatives "is venerable, dating back to colonial times." 59 Cal. 4th at 382; *see*

also Vt. Agency of Nat. Res. v. U.S. ex rel. Stevens, 529 U.S. 765, 774-777 (2000).[11]

Petitioner contends that PAGA actions are not *qui tam* in nature, asserting that a PAGA plaintiff has "virtually complete" and "unfettered control" over the action and that "the state is unable to exercise any control over [a PAGA claim] or direct it in any way." Pet. Br. 37-38. But that assertion fails to account for PAGA's mandatory, detailed pre- and post-filing notice requirements; the LWDA's many responsibilities as set out in the statute; and the agency's real-world involvement in overseeing PAGA and participating in PAGA litigation and settlement. *See supra* pp. 9-11. If petitioner's complaint is simply that PAGA cases are instituted by private actors and litigated by private counsel, *see* Pet. Br. 38, the same can be said of all *qui tam*-type claims. *See Iskanian*, 59 Cal. 4th at 390; *see also Vt. Agency of Nat. Res.*, 529 U.S. at 769-770.

Indeed, that feature is how *qui tam* claims serve their enforcement-leveraging purpose: they "enhance the state's ability to use [its] scarce resources by enlisting willing citizens in the task of civil enforcement." *Iskanian*, 59 Cal. 4th at 390. *Qui tam* statutes reflect the reality that "the choice often confronting the Legislature is not between prosecution by a financially interested private citizen and prosecution by a neutral prosecutor, but between a private citizen suit and no suit at all." *Id.*

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[11] "*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.' The phrase dates from at least the time of Blackstone." *Vt. Agency of Nat. Res.*, 529 U.S. at 768 n.1 (citing 3 William Blackstone, Commentaries *160).

C. PAGA Is Integral to the Adequate Enforcement of the State's Labor Laws

Petitioner minimizes PAGA's role in the State's labor law enforcement scheme. *See*, *e.g.*, Pet. Br. 2 (stating that "PAGA claims have become another tax for doing business in California"). In practice, however, PAGA has served an important function in the adequate and fair enforcement of the State's labor laws, supporting and supplementing direct government enforcement.

Enforcing California's labor laws is a formidable undertaking. In the 18-plus years since PAGA's enactment, California's labor force has grown by about two million, now comprising some 19 million individuals.[12] The number of establishments subject to the State's labor laws has also grown, to over 1.6 million.[13] The State continues to use the resources available to it to enforce its labor laws though targeted inspections and audits.[14] For example, the Bureau of Field Enforcement within the Division of Labor Standards Enforcement "focuses on major underground economy industries in California in which labor law violations are the most rampant, including agriculture, garment,

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[12] U.S. Bureau of Lab. Stat., *Economic News Release: Table 1. Civilian Labor Force and Unemployment by State and Selected Area, Seasonally Adjusted* (2021), https://tinyurl.com/2yzdcekj; *see also* Cal. Emp. Dev. Dep't, *California Demographic Labor Force: Summary Tables* (2021), https://tinyurl.com/ycksbs96.

[13] Cal. Emp. Dev. Dep't, *Quarterly Census of Employment and Wages* (2021), https://tinyurl.com/4jxwwxcv (analysis of statewide and second quarter 2021 data).

[14] *See*, *e.g.*, Cal. Div. of Lab. Standards Enf't, *2018-2019 The Bureau of Field Enforcement Fiscal Year Report* 3 (2019), https://tinyurl.com/2rffwxwj.

construction, car wash, and restaurants."[15] In recent years, "the Division has increased its focus in industries where wage theft has been particularly challenging to combat, such as janitorial work, residential care homes, and warehousing."[16] But the Bureau cannot visit every regulated business. In a recent, representative year, the Bureau was able to "conduct[] 1,734 inspections, which led to the issuance of citations for 3,586 violations."[17]

PAGA plays a critical role in supplementing these traditional enforcement mechanisms. The alleged Labor Code violations that aggrieved employees pursue through PAGA are often serious in nature, including wage theft and illegal working conditions. *See*, *e.g.*, *Iskanian*, 59 Cal. 4th at 359-361 (failure to pay drivers for overtime, meal, and rest periods); *Arias*, 46 Cal. 4th at 976 (various wage-related violations, including failure to pay wages when due and on termination); *Home Depot U.S.A., Inc. v. Superior Ct.*, 191 Cal. App. 4th 210, 215 (2010) (failure to provide workers with required, suitable seating). One report found that 89 percent of PAGA claims alleged wage theft.[18] This particular violation causes serious harm, especially to lower-wage workers, who may not have savings to cover for unpaid wages. And the significant sums recovered in PAGA actions suggest that there is much

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[15] *Id.* at 2.

[16] *Id.*

[17] *Id.* at 4 (FY 2018-2019).

[18] *See* Deutsch et al., UCLA Lab. Ctr., *California's Hero Labor Law: The Private Attorneys General Act Fights Wage Theft and Recovers Millions from Lawbreaking Corporations* 10 (2020), https://tinyurl.com/yckkdcpv (*California's Hero Labor Law*).

enforcement to do.[19] Without this private enforcement mechanism, costs to the State to enforce labor laws would increase substantially.[20]

PAGA has also helped to remedy previous, longstanding agency funding deficiencies. "In 2019 alone, PAGA generated over $88 million in civil penalties for California's LWDA." *California's Hero Labor Law*, *supra*, at 8 (emphasis omitted). From 2016 to 2019, the agency "recovered an annual average of $42 million in civil penalties and filing fees . . . all statutorily allocated to enhance education and compliance efforts." *Id.* (footnote and emphasis omitted). Civil penalties remitted to the LWDA exceeded $107 million in 2020, and exceeded $128 million in 2021.[21] Civil penalties recovered in PAGA actions help to fund the LWDA in carrying out its regulatory responsibilities related to covered employers—without passing those costs on to taxpayers generally or diverting funds from other priorities.

And PAGA's notice requirements have allowed the State to efficiently target additional direct enforcement efforts.[22] In 2016, California created the PAGA

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[19] *Id.* at 8.

[20] *See* Letter from Gabriel Petek, Legis. Analyst, Cal. Legis. Analyst's Off., to Rob Bonta, Att'y Gen., Cal. 4 (Nov. 23, 2021), https://tinyurl.com/y89wtewz (discussing the fiscal effects of a proposal that would repeal PAGA and, to compensate for such repeal, increase the responsibilities of the state Labor Commissioner).

[21] Data provided by the Division of Labor Standards Enforcement on January 31, 2022.

[22] The State receives about 5,000 PAGA notices annually. Letter from Gabriel Petek to Rob Bonta, *supra*, at 2.

Unit within the Department of Industrial Relations.[23] That unit reviews PAGA notices, choosing which ones to further investigate.[24] "PAGA notices have proven to be high quality leads identifying serious violations that in many cases would otherwise have remained underground."[25] By following up on PAGA notices, the PAGA Unit has pursued and resolved cases involving a variety of labor law violations, including those involving wage theft, denial of meal and rest breaks, worker misclassification, and dangerous or unhealthy working conditions.[26] PAGA notices thus have enabled the State to pursue and resolve significant Labor Code violations that may not have otherwise come to light.

In light of the history that gave rise to PAGA and the important law enforcement purposes it serves, petitioner's suggestion that PAGA claims are the equivalent of class-action claims reframed "through barely-artful pleading," Pet. Br. 45, is without merit. And petitioner's complaints of alleged PAGA abuses, *see id.* at 47-48, are substantially overstated. No doubt, when employers violate the State's labor laws, that misconduct may expose them to large civil penalties—especially for large employers that engage in widespread violations. That is as it should be. By contrast, employers that ensure compliance with labor laws, engage in best practices (such as self-audits), and take

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[23] Cal. Dep't of Indus. Rels., *Budget Change Proposal, FY 2019-2020*, at 7-8 (2019) (*Budget Change Proposal*), https://tinyurl.com/2ba3r85f.

[24] *See id.* at 9.

[25] *Id.*

[26] *See id.* at 10.

advantage of PAGA's opportunity to cure when violations come to light, are insulated from those types of penalties. Robust enforcement of the State's labor laws through PAGA actions as a complement to direct enforcement helps to ensure that employers that act in good faith are not be at a competitive disadvantage as compared to those that shirk the law. If accepted, petitioner's preemption arguments threaten to hamper the enforcement of California's labor laws—to the detriment of workers and responsible businesses alike. As respondent and the lower courts have persuasively explained, that result is not one intended by Congress in enacting the FAA.

CONCLUSION

The judgment of the court of appeal should be affirmed.

Respectfully submitted,

ROB BONTA
Attorney General of California
MICHAEL J. MONGAN
Solicitor General
JANILL L. RICHARDS
Principal Deputy Solicitor General
NICOLE WELINDT
Associate Deputy Solicitor General

March 9, 2022