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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

CHRISTOPHER MORALES et al., Plaintiffs and Respondents, v. GARFIELD BEACH CVS, LLC et al, Defendants and Respondents; RYAN HYAMS, Movant and Appellant.	B312212, B316290 (Los Angeles County Super. Ct. Nos. BC645205, JCCP4975, RG17881136)

APPEAL from a judgment of the Superior Court of Los Angeles County, Carolyn B. Kuhl, Judge. Affirmed.

Law Office of Jocelyn Sperling and Jocelyn Sperling; Gunn Coble, Beth Gunn, Catherine Coble; Hennig Kramer Ruiz & Singh, and Jennifer Kramer for Movant and Appellant.

Matern Law Group, Matthew J. Matern, Debra J. Tauger, and Mikael H. Stahle; Altshuler Berzon and Michael Rubin for

Plaintiffs and Respondents Christopher Morales, Eric Morales, and Dhaval Patel.

Capstone Law, Ryan H. Wu, and Liana C. Carter; Altshuler Berzon and Michael Rubin for Plaintiff and Respondent Jessica Mejia.

Morgan, Lewis & Bockius, Thomas M. Peterson, Jennifer B. Zargarof, and Sonia A. Vucetic for Defendants and Respondents.

These consolidated appeals arise from the settlement of a class action and representative action pursuant to the Private Attorneys General Act of 2004 (PAGA) (Lab. Code,1 § 2698 et seq.).[1] Both the class and PAGA claims, which alleged various Labor Code violations, were alleged on behalf of a putative class of individuals employed as Store Team Leaders by defendants and respondents Garfield Beach CVS, LLC, Longs Drug Stores California, LLC, and CVS Pharmacy, Inc. (collectively, CVS). The trial court preliminarily approved a settlement between the parties, but later, proposed intervenor and appellant Ryan Hyams (Hyams), who is neither a Store Team Leader nor a member of the putative class, moved to intervene in the action, objected to the settlement, and argued he was the only plaintiff authorized to litigate certain PAGA claims that were to be released. The trial court denied Hyams's motion to intervene, overruled his objections to the settlement, and finally approved the settlement. We now consider whether the trial court erred in denying Hyams mandatory or permissive intervention, whether it abused its discretion by granting final approval of the settlement, and whether it erred in denying his subsequent motion to vacate the judgment.

I. BACKGROUND

A. Litigation on Behalf of Store Team Leaders

1. The Morales and Mejia complaints

In December 2016, Christopher Morales and Eric Morales (the Morales plaintiffs) filed a putative class action complaint

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[1] Undesignated statutory references that follow are to the Labor Code.

against CVS. The putative class was comprised of "individuals employed . . . as Store Team Leaders in California at any time on or after December 27, 2012." The complaint alleged the defendants engaged in a company-wide pattern and practice of encouraging or compelling Store Team Leaders to work overtime off the clock without compensation and of denying them their statutorily mandated meal and rest breaks. The Morales plaintiffs later amended their complaint to add allegations that CVS failed to pay all wages earned upon termination and failed to pay compensation for all hours worked.

In August 2017, Jessica Mejia (Mejia) sent a letter to the California Labor & Workforce Development Agency (LWDA) asserting CVS committed Labor Code violations by failing to pay all wages due to non-exempt Store Team Leaders, failing to pay minimum wage, failing to provide meal and rest breaks, and failing to provide employees with complete wage statements. The LWDA did not respond. A few months later, Mejia filed a PAGA enforcement action on behalf of herself, the State of California, and other current and former Store Team Leaders that were employed by CVS at any time from November 2016 through the entry of judgment.

In May 2018, the trial court granted a petition to coordinate the Morales and Mejia actions.

2. The Patel complaint

In November 2019, Dhaval Patel (Patel) informed the LWDA he was investigating a potential representative action on behalf of Store Team Leaders and contending CVS had violated provisions of the Labor Code and an Industrial Welfare Commission Wage Order by failing to provide meal and rest

periods, failing to pay all wages earned, failing to pay wages due to discharged and quitting employees, failing to furnish accurate wage statements, failing to maintain accurate records, and failing to indemnify for necessary expenditures. The letter Patel sent to the LWDA also stated as follows: "This notice shall be construed as extending without limitation to any past, present, future, or continuing violation of the Labor Code, the applicable IWC Wage Order, or any applicable regulation which might be discovered as a result of a reasonable and diligent investigation made pursuant to this notice." The LWDA did not respond to Patel's letter. A few months later, Patel filed a PAGA complaint on behalf of himself and individuals who were employed as Store Team Leaders at any time on or after November 25, 2018.

B. The Hyams Action on Behalf of Non-Exempt Employees

Meanwhile, Hyams had sent a letter to the LWDA in July 2018 (after Mejia's correspondence, but before Patel's) informing the agency of his intent to seek civil penalties against CVS for various Labor Code violations CVS allegedly committed against all non-exempt employees who worked for CVS from the period of one year preceding the date of the letter. Among the many alleged violations Hyams identified were a failure to provide meal and rest breaks, unpaid wages, unreimbursed expenses, failure to pay wages on termination, failure to provide mandated rest days, inaccurate wage statements, and failure to comply with various

sections of the Labor Code and an Industrial Welfare Commission Wage Order.[2]

The LWDA did not respond to Hyams's letter and he subsequently filed suit in San Francisco County Superior Court. CVS removed the case to the United States District Court for the Northern District of California.[3]

C. Morales, Mejia, and Patel Agree to Settle Their Claims

The Morales plaintiffs, Mejia, and Patel (collectively, plaintiffs) and CVS participated in a full-day mediation in May 2020. Though the mediation was adversarial, the parties eventually accepted the mediator's proposal for settlement. As part of the settlement, they stipulated to consolidate the three actions and file a consolidated amended complaint.

The proposed settlement was a global settlement of the claims raised in the Morales, Mejia, and Patel actions as would be alleged in the consolidated amended complaint. It created a settlement fund of $3,000,000 for all current and former non-exempt employees who worked as Store Team Leaders for CVS in the State of California between December 28, 2012, through

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[2] Specifically, Hyams asserted CVS had violated Labor Code sections 201, 202, 204, 223, 226.7, 227.3, 246, subdivision (i), 246.5, 510, 512, 551, 552, 850, 851, 1182.12, 1194, 1194.2, 1197.1, 1198, 2802, and IWC 7-2201.

[3] Hyams's federal court action is stayed pending resolution of Hyams's appeals in this matter and in *Chalian et al. v. CVS Pharmacy, Inc. et al.,* C.D. Cal. Case No. 2:16-cv-08979-AB-AGR (*Chalian*).

August 27, 2020. Of the funds, $160,000 would be allocated to PAGA penalties, $120,000 of which would be paid to the LWDA. The settlement would provide an average payment of $1,064.34 to each of the 1,649 class members. The settlement also awarded class representative service awards to each of the named plaintiffs and attorney fees to class counsel.

Plaintiffs submitted notice of the settlement to the LWDA on October 30, 2020. The LWDA did not comment on or object to the settlement.

D. Preliminary Settlement Approval Proceedings

In November 2020, the parties filed a motion for preliminary approval of the agreed-upon settlement of the class and PAGA claims. Class counsel Matthew Matern filed a declaration in support of the motion for preliminary approval.

Among other things, the Matern declaration summarized plaintiffs' view of the claims, the evidence developed in the case, and the factual and legal bases for the causes of action that were to be alleged in the consolidated amended complaint. Matern's summary asserted CVS committed the following wrongs: failing to pay Store Team Leaders the correct regular rate of pay in three different ways; issuing facially defective wage statements in bonus payroll cycles; failing to pay Store Team Leaders for working off the clock; failing to allocate sufficient labor hours to stores to ensure Store Team Leaders received compliant meal breaks; failing to make a good faith effort to authorize Store Team Leaders to take compliant rest breaks; failing to reimburse Store Team Leaders for employment related expenses; failing to provide written notice of paid sick leave under section 246, subdivision (i); and failing to comply with sections 850 and 851

(which place limits on the number of hours individuals employed to sell drugs or medicines at retail, or to compound prescriptions, may work over any consecutive two-week period).

The Matern declaration identified a maximum potential recovery amount for the alleged violation of certain claims. It also included a calculation of PAGA penalties for violation of Labor Code provisions that provide a specific penalty, including sections 226.3 and 558, subdivision (a); penalties for those that do not, including sections 226, 510, and 851; and wage statement penalties under section 226, subdivision (e)(1).[4] The declaration estimated CVS's aggregate potential liability was approximately $32 million in unpaid wages and interest and $97 million in penalties, for a total of $129 million.

The Matern declaration also generally discussed the work that had been done on the case, including investigation of claims, legal research, and interviews of plaintiffs. The declaration asserted the parties conducted substantial discovery, including eight depositions of CVS's persons most knowledgeable, the deposition of one of the plaintiffs, propounding and responding to written discovery requests (51 requests to CVS and 80 requests to one of the Morales plaintiffs), and the retention of an expert statistician who reviewed and analyzed CVS's payroll and timekeeping data and created a damages model.

In addition, the Matern declaration explained the parties and class counsel considered several factors when agreeing to

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[4] A portion of the declaration that calculated the penalties for violations for which a penalty is not specifically provided represented it was calculating penalties for 12 Labor Code violations but it only identified 11 code sections.

settle the case. These factors included determinations that proving the amount of wages due to each class member would be expensive, time-consuming, and uncertain; that the likelihood of obtaining class certification on all claims was approximately 35%; that proving liability on all claims at trial was approximately 35%; that the risk of maintaining certification was 50%; that continued litigation would likely reduce and substantially delay recovery; and that an appeal would likely follow certification, which would extend the litigation by years and compel incurring thousands of dollars in additional attorney fees. The Matern declaration also acknowledged CVS had raised substantial defenses to plaintiffs' claims and discussed some of those defenses.

The trial court held a hearing on plaintiffs' motion for preliminary approval of settlement in November 2020. Pursuant to discussions between the court and counsel, counsel agreed to submit revised documents to the court.

In mid-December, CVS filed a supplemental notice of related cases that identified, among others, Hyams's case against CVS. The parties also filed an amendment to the class and PAGA settlement agreement and release.

Shortly thereafter, plaintiffs filed their consolidated amended complaint. That complaint alleged the following 12 causes of action: (1) failure to pay overtime compensation (§§ 510, 1194, 1198); (2) failure to provide meal periods (§§ 226.7, 512, and 8 Cal. Code Regs., § 11070(11)); (3) failure to provide rest periods (§ 226.7 and 8 Cal. Code Regs., § 11070(12)); (4) failure to provide accurate itemized statements (§ 226); (5) failure to pay all wages earned upon termination (§§ 201, 202, 203); (6) failure to pay for all hours worked (§§ 200, 226, 500, 510, 1194, 1198; 8 Cal. Code

Regs., § 11070); (7) failure to reimburse for employment related expenses (§ 2802); (8) failure to provide written notice of paid sick leave (§ 246(i)); (9) failure to provide one day's rest in seven (§§ 551, 552, and 852); (10) failure to comply with sections 850 and 851; (11) Unfair Competition (Bus. & Prof. Code, § 17200); and penalties pursuant to PAGA (§ 2698). The claims for failure to provide written notice of paid sick leave in violation of section 246, subdivision (i), failure to provide one day's rest in seven in violation of sections 551-552 and 852, and failure to comply with sections 850 and 851 had not been alleged in any prior complaint.

Not long thereafter, the trial court granted preliminary approval of the class and PAGA settlement agreement and the associated release of claims.

E. Hyams Moves to Intervene and the Court Denies Intervention

Hyams received notice of the proposed settlement in this matter in January 2021. In March of that year, Hyams filed a motion for leave to file a complaint in intervention in this action, contending he had both a mandatory and permissive right to intervene.

Hyams's motion represented he had submitted a letter to the LWDA expressing his intention to pursue PAGA claims for violation of various Labor Code statutes—including sections 246, subdivision (i), 246.5, 551-552, and 850-851—on behalf of all non-exempt CVS employees in California and subsequently filed suit in August 2018. Hyams argued he was entitled to intervene because plaintiffs never expressly notified the LWDA of an intent to pursue claims under the statutes just enumerated and he was

therefore the only individual deputized by the state to prosecute the PAGA claims for those violations.

The trial court held a hearing on the motion to intervene and denied it.

As to mandatory intervention, the trial court found Hyams did not have a direct interest in the litigation because a PAGA action is brought on behalf of the state and Hyams had no individual property right in any PAGA penalties. The court additionally found Hyams had no personal interest in the litigation because while he was a former pharmacist, he was not a "Store Team Leader" and, thus, not a member of the class of aggrieved employees in the litigation. The court also rejected Hyams's argument that plaintiffs were not adequately representing the state, noting that the settlement had been sent to the LWDA and the agency opted not to object.

As to permissive intervention, the trial court again found Hyams had no direct and immediate interest in the PAGA claims. It concluded intervention would enlarge the issues in the litigation (Hyams's claims potentially encompassed many more employees than those represented by plaintiffs) and the parties' interest in resolving the litigation outweighed any reasons for intervention. The court additionally found the parties had a strong interest in bringing the litigation, which had been pending for four years at the time of the hearing, to a close. Additionally, the court concluded intervention was not necessary for Hyams to protect his asserted interests in the litigation. Hyams had already filed his objections to the settlement agreement, and the court was going to consider them when deciding whether to grant final approval.

Hyams filed a notice of appeal of the order denying the motion to intervene in April 2021.

F. Hyams Objects to the Settlement and the Court Overrules the Objections and Gives Its Final Approval

1. Hyams's objections

Hyams filed objections to settlement of PAGA claims encompassed in the parties' agreement and release. Hyams contended, first, that the court lacked jurisdiction to grant a release of claims under sections 246, subdivision (i), 550-551 and 850-852 because no party to the settlement had submitted a PAGA notice to the LWDA regarding those claims before bringing suit. Hyams argued, second, that the amount of the proposed settlement did not serve the statutory purposes of PAGA because the portion of the settlement assigned to PAGA violations appeared unrelated to the litigation risks regarding the PAGA claims. He argued, third, that there was insufficient evidence the proposed settlement was fair and adequate. Specifically, he argued the parties had not provided data regarding the value of the claims brought pursuant to sections 246, subdivision (i), 551-552, and 850-852 and he maintained the record did not demonstrate the parties exercised due diligence in investigating the value of those claims. Hyams further asserted that the release of claims was overly broad and not justified by the facts and that the scope of the release, combined with the late addition of the section 246, subdivision (i), 551-552, and 850-852 claims, suggested collusion or a reverse auction between the plaintiffs and CVS.

The parties responded to Hyams's objections and submitted, among other things, a declaration from CVS's counsel,

Jennifer Zargarof, which stated the section 246, 551, 552 and 850-852 claims "were included in the settlement as a result of the Parties' investigations and negotiations, which revealed that Plaintiffs' facts and theories could implicate Labor Code sections beyond those identified in Plaintiffs' underlying PAGA letters and original complaints." She further stated that, "[b]ecause the work hours of [Store Team Leaders] challenged by Plaintiffs could have caused [Store Team Leaders] to work a seventh day in violation of Sections 551 or 552, or unlawfully work beyond the hours purportedly permitted by Section 850-851, the Parties agreed to settle those claims as well, which arise from the same nucleus of facts and theories as Plaintiffs' original allegations."

2. Plaintiffs' motion for final approval

Plaintiffs moved for final approval of the settlement. Class counsel Matern submitted another declaration in support of the motion. In discussing the risks of litigation, counsel asserted there were legitimate controversies regarding plaintiffs' causes of action—this time specifically listing the failure to provide written notice of paid sick leave and failure to comply with Labor Code sections 850 and 851.

A representative of the settlement administrator also filed a declaration, asserting the administrator had not received any requests for exclusion from the class and had received only one objection (from a prospective intervenor). The declaration also asserted the average estimated payment for class members was $1,064.34, and the largest payment was $3,575.80.

3. The trial court's ruling

The trial court held a hearing on Hyams's objections and the motion for final approval. During argument, plaintiffs' counsel made representations regarding the investigation of the settled claims. Counsel represented, for example, that they investigated the section 246, subdivision (i) sick leave notice claim along with other facial violations of the wage statement (under section 226). With respect to the section 550-551 claims for failure to provide one day's rest in seven, counsel represented plaintiffs had heavily investigated the Store Team Leaders' working hours. They had alleged Store Team Leaders were often compelled to work off the clock many days in a row, which would violate the right to days off. They negotiated valuable consideration based on the overtime statute and agreed to release the section 550-551 claims based on the same investigation. Finally, with regard to the section 850-851 claims, counsel asserted the Store Team Leaders do not work at the pharmacy portion of the store and plaintiffs agreed to release those claims after determining they would likely be de minimis.

The court took the matter under submission and later issued a minute order overruling Hyams's objections—which the court considered as the views of an amicus curiae.

Regarding Hyams's objection that the court lacked jurisdiction over the PAGA claims that plaintiffs had not mentioned in their LWDA notices, the court concluded a PAGA plaintiff who learned of additional violations through discovery could add those claims to their suit because the prosecutorial power conferred on PAGA plaintiffs is exceptionally broad and nothing in the language of PAGA precludes a plaintiff who properly gave notice before initiating a PAGA action from

expanding the statutory bases for the penalty claims. The court acknowledged that notice to the LWDA is a requirement for the initiation of a PAGA action, but the court emphasized prosecution of the action is not thereafter subject to LWDA supervision. The court found plaintiffs' initial notices alerted the LWDA to the core of their claims and the penalties sought in the new PAGA claims overlapped with the penalties listed in the notice. The LWDA was also given notice of the settlement and opted not to object.

Regarding Hyams's allegation that there was insufficient data to support the reasonableness of the settlement of the section 246, subdivision (i), 551-552, and 850-851 claims, the court explained section 246, subdivision (i) provides that penalties for a violation of its terms are "in lieu of" penalties for violation of section 226's requirements for wage statements. Thus, in the court's view, class counsel's calculation of maximum penalties for wage statement violations logically folded in all wage statement errors given that "stacking" of penalties has a low likelihood of success. The court additionally found calculation of penalties for the violation of sections 551-552 and 850-851 claims overlapped with class counsel's analysis of whether CVS complied with 45-hour work schedules and properly paid overtime and minimum wages (including counsel's calculation of maximum potential recovery and penalties for those violations). The court further found Hyams had not attempted to show how attributing a higher value to the claims would be consistent with class counsel's fiduciary duty to the class of Store Team Leaders.

Regarding settlement fairness more generally, the trial court opined class certification in the case would have been difficult and only a minority of settlements recover more than

$1,000 per class member, as this settlement did. The court found there were no indicia of collusion or a reverse auction. The court determined Hyams failed to show the settlement undervalued the new PAGA claims or unfairly allocated too few proceeds to the penalties payable to the state. And the court concluded the release contemplated by the settlement was not overbroad because it did not include claims that were not alleged or investigated in the litigation.

With Hyams's objections overruled, the trial court granted final approval of the settlement. As pertinent here, the trial court found the settlement was fair, reasonable, and adequate, and satisfied the standards and applicable requirements for final approval of the settlement. No settlement class members objected to the terms of the settlement. The court also specifically approved the settlement of claims under PAGA in the total amount of $160,000. It ordered payment of $120,000 to the LWDA.

G. Hyams Files a Motion to Vacate the Judgment Entered Pursuant to the Stipulation

In August 2021, Hyams filed a motion to vacate the judgment entered in accordance with final approval of the settlement. Hyams again argued the judgment was premised on an insufficient record and the court lacked jurisdiction because none of the plaintiffs had complied with PAGA pre-filing notice standards as to the new PAGA claims.

The trial court denied Hyams's motion. It found Hyams lacked standing to bring a motion to vacate for the same reasons he did not have an interest sufficient to allow him to intervene in the case. The court also found the motion was not justified on the

merits because Hyams failed to show the court's final approval of the settlement was based on an incorrect legal analysis inconsistent with the facts.

Hyams noticed an appeal from the judgment and the court's order denying his motion to vacate it. We consolidated the appeal with Hyams's earlier appeal of the trial court's intervention ruling.

II. DISCUSSION

The three trial court rulings Hyams challenges in this appeal were correct.

Hyams was not entitled to mandatory intervention because the settlement will not impair the only interest Hyams can possibly have in the litigation (the state's interest in enforcing labor laws). The trial court did not abuse its discretion in denying him permissive intervention because that would have enlarged the issues in the litigation and because the interests of the parties in concluding the lengthy case outweighed the reasons for intervention.

Hyams's objections to the settlement did not require the trial court to withhold approval. The PAGA statutory scheme does not prohibit plaintiffs from settling the section 246, subdivision (i), 551-552, or 850-851 claims that were not identified in plaintiffs' pre-filing LWDA notice, and any defect in that notice was obviously harmless because the LWDA did not object when given undisputedly proper notice of the proposed settlement that included the aforementioned claims. Additionally, and contrary to Hyams's contentions, the record demonstrates the trial court did not abuse its discretion in overruling Hyams's remaining objections, i.e., concluding the

section 246, subdivision (i), 551-552, and 850-851 claims were sufficiently investigated and valued; the settlement was not a reverse auction; and that the overall value of the settlement was fair and adequate.

Finally, because Hyams's motion to vacate the judgment simply reiterated his objections to the settlement, and because we have held those objections were appropriately overruled, the motion to vacate was properly denied as well.

A. PAGA Overview

"The Legislature enacted PAGA almost two decades ago in response to widespread violations of the Labor Code and significant underenforcement of those laws. [Citations.] Before PAGA's enactment, tools for enforcing the Labor Code were limited. Some statutes allowed employees to sue their employers for damages resulting from Labor Code violations such as unpaid wages. [Citations.] Other Labor Code violations were punishable only as criminal misdemeanors, which local prosecutors tended not to prioritize. [Citation.] Additionally, several statutes provided civil penalties for Labor Code violations, but only state labor law enforcement agencies could bring an action for civil penalties and those agencies lacked sufficient enforcement resources. [Citations.]" (*Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104, 1116.) "To address these shortcomings, the Legislature enacted PAGA to create new civil penalties for various Labor Code violations and "'to allow aggrieved employees, acting as private attorneys general, to recover [those] penalties.'" [Citation.]" (*Ibid.*) "Of the civil penalties recovered, 75 percent goes to the [LWDA], leaving the remaining 25 percent for the

'aggrieved employees.'" (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 980-981.)

"The Legislature's sole purpose in enacting PAGA was 'to augment the limited enforcement capability of the [LWDA] by empowering employees to enforce the Labor Code as representatives of the Agency.' [Citation.]" (*Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 86.) "A PAGA claim is legally and conceptually different from an employee's own suit for damages and statutory penalties. An employee suing under PAGA 'does so as the *proxy or agent of the state's labor law enforcement agencies*.' [Citation.] Every PAGA claim is 'a dispute between an employer and the state.' [Citations.]" (*Id.* at 81.) "Relief under PAGA is designed primarily to benefit the general public, not the party bringing the action. . . . The 'government entity on whose behalf the plaintiff files suit is always the real party in interest.' [Citation.]" (*Ibid.*) Additionally, "'a representative action under PAGA is not a class action.' [Citation.] There is no individual component to a PAGA action because "'every PAGA action . . . is a representative action on behalf of the state.'" [Citation.]" (*Id.* at 87.)

B. The Trial Court Did Not Err in Denying the Motion to Intervene

Code of Civil Procedure section 387 governs nonparty intervention and provides rules for both mandatory intervention

(subdivision (d)(1)) and permissive intervention (subdivision (d)(2)). Hyams argues the trial court erred in denying both.[5]

1. Mandatory intervention

"[T]o establish mandatory intervention, a proposed intervenor must show (1) '"an interest relating to the property or transaction which is the subject of the action"'; (2) the party is '"so situated that the disposition of the action may as a practical matter impair or impede that person's ability to protect that interest"'; and (3) the party is not adequately represented by existing parties. [Citation.]" (*Edwards v. Heartland Payment Systems, Inc.* (2018) 29 Cal.App.5th 725, 732; Code Civ. Proc., § 387, subd. (d)(1)(B).) The question of whether a proposed intervenor has an interest in the property or transaction at issue in the lawsuit has been described as a "threshold question." (*King v. Pacific Gas & Electric Co.* (2022) 82 Cal.App.5th 440, 449.)

"California cases are not settled on whether we review the denial of a request for mandatory intervention pursuant to section 387 de novo or for abuse of discretion." (*Edwards*, *supra*, 29 Cal.App.5th at 732; see also *Crestwood Behavioral Health, Inc. v. Lacy* (2021) 70 Cal.App.5th 560, 573.) We need not determine

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[5] Plaintiffs argued below that Hyams's motion to intervene was properly denied because it was untimely. The trial court impliedly rejected the argument by declining to address it and entertaining Hyams's motion on the merits. Plaintiffs "do not identify any abuse of discretion in that decision and we therefore will not reconsider it on appeal." (*Key v. Tyler* (2019) 34 Cal.App.5th 505, 540, fn. 18.)

which standard is correct because we conclude denial of mandatory intervention was proper under either standard.

If Hyams has any interest in the subject of this action, it is in his capacity as a PAGA plaintiff, not an individual. Indeed, as the parties agree, Hyams is not a member of the putative class and has no interest in the subject of the class claims—as opposed to the PAGA claims. Hyams's interest in this action therefore can only be the state's interest in ensuring CVS is accountable for adherence to applicable labor laws. Assuming without deciding that this interest was sufficient to satisfy the threshold requirement for mandatory intervention,[6] the trial court still did not err in denying Hyams's request because he is not situated such that the disposition of this action will, as a practical matter, impede his ability to protect his interest in the subject matter of the action.

Hyams's only interest in this matter is the state's interest. Plaintiffs, who are also PAGA representatives for the state, share that identical interest. If this settlement is affirmed, the state's interest is vindicated as to the Labor Code violations committed against the class of Store Team Leaders represented by plaintiffs. CVS is duly penalized for violation of those laws, and the LWDA receives its share of the PAGA penalties. Though the settlement would decrease the size of the broad class Hyams is seeking to represent in his separate action, doing so is not contrary or detrimental to the state's interest. Additionally, and in practical terms, formal intervention had little consequence (see, e.g.,

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[6] As discussed, *infra*, our Supreme Court has granted review to decide this issue in *Turrieta v. Lyft, Inc.* (2021) 69 Cal.App.5th 955, 977, review granted Jan. 5, 2022 No. S271721.

Edwards, *supra*, 29 Cal.App.5th at 733); the trial court considered Hyams's objections to the settlement, treating Hyams as a friend of the court. Because we conclude Hyams did not meet the second requirement of mandatory intervention (requiring a showing that disposition of the action may practically impair or impede that person's ability to protect his or her interest), mandatory intervention was properly denied.

2. Permissive intervention

"Under the statute for permissive intervention, trial courts have discretion to permit nonparties to intervene in a lawsuit, provided each of the following four factors are met: (1) the nonparty follows proper procedures; (2) it has a direct and immediate interest in the action; (3) intervention will not enlarge the issues; and (4) the reasons for intervention outweigh any opposition by the existing parties. [Citations.]" (*South Coast Air Quality Management Dist. v. City of Los Angeles* (2021) 71 Cal.App.5th 314, 319-320.) "The trial court must balance the interests of those affected by a judgment against the interests of the original parties in pursuing their case unburdened by others. [Citation.] The trial court has broad discretion to strike this balance. [Citation.] We thus review for abuse of discretion, [Citation.]" (*Ibid.*)

There was no such abuse here. Hyams's proposed complaint in intervention sought to represent all non-exempt employees in California who worked at CVS over a specified period of time—a significantly larger group of people than plaintiffs' putative class, which was comprised only of Store Team

Leaders.[7] Hyams contends this fact demonstrates only that more employees would be involved, not that any issues would be enlarged. That is too simplistic a view. Hyams's addition of a large number of employees who were employed in diverse capacities would have enlarged the issues in the litigation at least by broadening CVS's potential defenses to the claims against it (and the complexity of managing such defenses). It is reasonable to infer, for instance, that CVS's defenses to the section 850 and 851 claims, which CVS contends apply only to employees who dispense prescription drugs, would differ based on the categories of employees on behalf of whom they were asserted.

The trial court also did not abuse its discretion in determining the parties' opposition to intervention and interest in promptly resolving the litigation (relatively speaking) outweighed the reasons for intervention. As the trial court stated, the litigation between CVS and plaintiffs had been pending for four years at the time Hyams's motion was filed. Plaintiffs, as the representatives of the state, had an interest in finalizing the settlement they reached, which served dual purposes of obtaining penalties for the state and of enforcing the law. Additionally, plaintiffs were asserting not just PAGA claims on behalf of other aggrieved employees, but also class claims, and had to consider the interests of the class as well.

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[7] CVS estimated that Hyams's action seeks to represent nearly 60,000 employees. This is a far greater number of employees and categories of employees than the 1,649 Store Team Leaders represented in this action.

Hyams disputes all this, contending that because the settlement could not stand without his involvement or removal of the section 246, subdivision (i), 551, 552 and 850-852 claims, the reasons for intervention outweighed opposition. This was an issue the trial court could, and did, consider as an objection to the settlement. Hyams has not demonstrated the trial court abused its discretion.

C. Hyams's Standing and Plaintiffs' Authority to Settle Certain Claims

1. Standing

The right to appeal is statutory. (*Dana Point Safe Harbor Collective v. Superior Court* (2010) 51 Cal.4th 1, 5; *Conservatorship of Gregory D.* (2013) 214 Cal.App.4th 62, 67.) Pursuant to Code of Civil Procedure section 902, "[a]ny party aggrieved" may appeal from an adverse judgment. (Code Civ. Proc., § 902; *Gregory D.*, *supra*, at 67.) "The test is twofold—one must be both a party of record to the action *and* aggrieved to have standing to appeal." (*Shaw v. Hughes Aircraft Co.* (2000) 83 Cal.App.4th 1336, 1342.) Contrary to CVS's contention that Hyams cannot appeal because he was not a party to the action, a nonparty that is aggrieved by a judgment or order may become a party of record with the right to appeal by moving to vacate the judgment pursuant to Code of Civil Procedure section 663. (*Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 267.) Hyams filed a motion to vacate pursuant to section 663, and so he qualifies as a party for the purposes of this analysis. The question is accordingly whether Hyams was aggrieved by the judgment.

"One is considered 'aggrieved' whose rights or interests are injuriously affected by the judgment. [Citation.] [The a]ppellant's interest "'must be immediate, pecuniary, and substantial and not nominal or a remote consequence of the judgment.'" [Citation.]" (*County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 737.) "The injured interest also must belong *to the party*: 'a would-be appellant "lacks standing to raise issues affecting another person's interests."' [Citation.] [Code of Civil Procedure] Section 902 is a remedial statute, so courts construe it liberally, resolving doubts in favor of standing. [Citation.]" (*Six4Three, LLC v. Facebook, Inc.* (2020) 49 Cal.App.5th 109, 115.)

There is currently a split of authority regarding whether a plaintiff in one PAGA action has the right to intervene, object to, or move to vacate a judgment in a related PAGA action that purports to settle the plaintiff's PAGA claims. The court of appeal in *Turrieta*, *supra*, 69 Cal.App.5th 955 held the plaintiff with overlapping PAGA claims lacked such a right because the state, not the PAGA plaintiff, is the real party in interest and it is the state's rights, and not the PAGA plaintiff's rights, that are affected. (*Id*. at 970-973.) The court of appeal in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56 disagreed, holding that "where two PAGA actions involve overlapping PAGA claims and a settlement of one is purportedly unfair, it follows that the PAGA representative in the separate action may seek to become a party to the settling action and appeal the fairness of the settlement as part of his or her role as an effective advocate for the state." (*Id.* at 73.)

As previously mentioned, our Supreme Court has granted review in *Turrieta*. It suffices for us to say that we generally

agree with *Moniz* that a PAGA plaintiff vested with the authority to prosecute PAGA claims on behalf of the state has, in that capacity, an interest in another PAGA action with overlapping claims sufficient to render the plaintiff "aggrieved" by an unfair settlement. So we treat Hyams as having standing and will analyze on the merits the issues he raises (at least those that are necessary for us to decide) concerning the trial court's disposition of his settlement objections.

2. Authority to settle

"An employee seeking PAGA penalties must notify the employer and the [LWDA] of the specific labor violations alleged, along with the facts and theories supporting the claim. [Citations.] If the agency does not investigate, does not issue a citation, or fails to respond to the notice within 65 days, the employee may sue. [Citation.] The notice requirement allows the relevant state agency 'to decide whether to allocate scarce resources to an investigation.' [Citation.]" (*Kim*, *supra*, 9 Cal.5th at 81.) A PAGA plaintiff is also required to submit a file-stamped copy of the complaint to the LWDA within ten days of filing a lawsuit pursuant to PAGA, and is required to submit a copy of any proposed settlement to the LWDA at the same time a proposed settlement is submitted to the court. (§ 2699, subd. (l)(1)-(2).) "The superior court shall review and approve any settlement of any civil action filed pursuant to this part." (§ 2699, subd. (l)(2).)

Hyams's primary objection to the settlement is that plaintiffs lacked the authority to settle the section 246, subdivision (i), 551-552 and 850-851 claims because neither Mejia nor Patel expressly identified those claims in their pre-filing

notices to the LWDA. The statutory scheme, however, does not prohibit a PAGA plaintiff from settling claims that are not enumerated in an LWDA notice.[8] An employee is permitted to

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[8] Although it is true that neither Patel nor Mejia's letters to the LWDA expressly referenced the section 246, subdivision (i), 551-552, or 850-851 claims, Patel's notice did advise of the possibility that additional claims would be uncovered during his investigation. His letter asserted that it was to be "construed as extending without limitation to any past, present, future, or continuing violation of the Labor Code . . . which might be discovered as a result of a reasonable and diligent investigation made pursuant to this notice."

The section 246, subdivision (i), 551-552 and 850-851 claims that were later added were of a sort that could reasonably be expected to be uncovered "as a result of a reasonable and diligent investigation" into the facts described in the letters. For example, in its discussion of CVS's alleged failure to pay overtime wages, Patel's letter recited that employers are required to pay employees time and a half for the first eight hours on the seventh consecutive day of work and double time for all hours worked in excess of eight hours on the seventh day of any workweek. While not expressly mentioning violations of sections 551-552 (providing employees are entitled to one day's rest in seven) or 850-851 (restricting the number of hours people employed to sell drugs and medicines at retail or to compound physicians' prescriptions), the notice indicates employees were required to work more than permitted by the relevant statutes and suggests the possibility that such claims would be discovered during the investigation. Similarly, the notice that CVS allegedly failed to furnish accurate itemized wage statements fairly suggests the possibility of a violation of section 246, subdivision (i) (requiring employers to provide employees with written notice of their available paid sick leave) because an employer may satisfy the

file suit and prosecute their action independently once the LWDA does not respond to a pre-suit notice or affirmatively declines to investigate. (§ 2699.3, subd. (a)(2)(B); *Julian v. Glenair, Inc.* (2017) 17 Cal.App.5th 853, 866 ["Under the PAGA statutory scheme, an employee authorized to assert a PAGA action is not subject to LWDA supervision"].) At that point, "once deputized, the aggrieved employee has authority to 'seek any civil penalties the state can.' [Citation.]" (*Adolph*, *supra*, 14 Cal.5th at 1116.)

Hyams nonetheless complains the section 246, subdivision (i), 551-552 and 850-851 claims should not have been included in the approved settlement because they were not identified in the pre-suit filing notice sent to the LWDA. But that cannot be a basis for reversal in light of the later proposed settlement notification (§ 2699, subd. (l)(1)-(2)) that plaintiffs undisputedly provided to the LWDA before the court's final approval. The agency voiced no objection to the proposed settlement—which included the section 246, subdivision (i), 551-552 and 850-851 claims.[9] (Cal. Const., art. VI, § 13; Code Civ. Proc., § 475; *Soule v.*

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obligation to provide notice of sick leave by including that information on an employee's wage statement.

[9] The lack of any prejudice from the failure to enumerate the section 246, subdivision (i), 551-552 and 850-851 claims in plaintiffs' prefiling LWDA notice is all the more apparent because the agency did not seek to investigate those same claims that *were* identified in Hyams's PAGA notice (which applied to a much larger class than the settlement class here). Though PAGA claims are not assignable (*Amalgamated Transit Union v. Superior Court* (2009) 46 Cal.4th 993, 1001, 1003-1005), the LWDA's silence in response to Hyams's PAGA notice is further

General Motors Corp. (1994) 8 Cal.4th 548, 573; see also *California Business & Industrial Alliance v. Becerra* (2022) 80 Cal.App.5th 734, 748 ["In the event of an abusive or improper settlement of a PAGA claim . . . California law plainly permits the Attorney General to intervene to protect the state's interest in recovering its share of the civil penalties and oppose judicial approval of the settlement"].)

Hyams's reliance on this court's decision in *Brown v. Ralphs Grocery Co.* (2018) 28 Cal.App.5th 824 does not persuade us to reach a different result. *Brown* did not consider whether a PAGA plaintiff could settle claims not expressly identified in their pre-filing notice. Rather, it considered whether a trial court properly sustained a demurrer to a PAGA complaint on the ground that the notice did not provide sufficient specificity—and a demurrer presents a far different procedural posture than the final approval scenario here, which, for the reasons given, could not have resulted in prejudicial error. Hyams's reliance on *Uribe v. Crown Building Maintenance Co.* (2021) 70 Cal.App.5th 986 is similarly unpersuasive because *Uribe* relies on *Brown* in arriving at its holding. (See, e.g., *id.* at 1005-1006.) Further, the court in *Uribe*, which did not undertake a harmless error analysis, concluded the settlement of a claim not included in a PAGA notice letter was improper because it did not give the LWDA sufficient information to assess the seriousness of the alleged violations and give the agency a meaningful opportunity to decide whether to allocate resources to its investigation. (See, e.g., *id.* at 1005 [notice insufficient where it "stated no 'facts' whatsoever"

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indication that the absence of an express reference to those claims in the prefiling notice in this case made no difference.

regarding a theory of an alleged PAGA violation later encompassed in a settlement].) On the facts here, the LWDA ultimately did have the information and opportunity that was missing in *Uribe*.

D. Hyams's Challenges to Settlement Fairness

Hyams also argues, as he did below, the settlement was unfair in three respects: (1) there was no evidence the plaintiffs investigated or valued the section 246, subdivision (i), 551-552 and 850-851 claims; (2) the settlement was a reverse auction because those claims were not litigated, investigated, or valued; and (3) the settlement value was unreasonably low. The trial court did not err in rejecting these arguments.

1. Standard of review for PAGA settlements

A trial court reviewing a PAGA settlement "should evaluate [it] to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." (*Moniz*, *supra*, 72 Cal.App.5th at 77.) Though a representative action under PAGA is not a class action, many of the factors used to evaluate class action settlements—"including the strength of the plaintiff's case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount"— bear on the settlement's fairness and may be useful in evaluating the fairness of a PAGA settlement. (*Id.* at 78.)

"There is . . . no established appellate standard of review for a PAGA settlement . . . ." (*Moniz*, *supra*, 72 Cal.App.5th at 78.) However, the parties appear to agree abuse of discretion

review should apply. Like the court in *Moniz*, we conclude that "[g]iven the lack of express statutory standard or criteria for approving PAGA settlements, and the obvious discretion a trial court must exercise in determining the settlement's fairness, . . . th[at] standard . . . [is] appropriate." (*Ibid.*)

2. There is sufficient evidence the claims were investigated and valued

Hyams contends the trial court abused its discretion in approving the settlement without evidence the section 246, subdivision (i), 551-552, and 850-851 claims were investigated or valued.[10] There is no authority specifying what, precisely, parties are required to submit to a trial court to demonstrate a proposed PAGA settlement is fair and reasonable. We believe, however, that similar to what is necessary in the class settlement approval context, the trial court "must . . . receive and consider enough information about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an independent assessment of the reasonableness of the terms to which the parties have agreed." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) Contrary to Hyams's contention, that was done here.

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[10] Plaintiffs argue Hyams is barred by judicial estoppel from challenging the investigation and valuation of the claims because he used certain terms of this settlement to argue the terms of the settlement in *Chalian* were not sufficiently favorable to class members. This argument was not raised below, and we will not consider it for the first time on appeal. (*Ochoa v. Pacific Gas & Electric Co.* (1998) 61 Cal.App.4th 1480, 1488, fn. 3.)

There was sufficient (albeit somewhat disjointed) evidence that the claims were investigated. The Matern declaration in support of the motion for preliminary approval described the discovery that had been conducted over the course of the litigation, which included copious written discovery, numerous depositions, and the retention of an expert who analyzed CVS's payroll and timekeeping data. The Matern declaration also referenced, though somewhat less directly, the review of employee wage statements. The declaration therefore demonstrated to the trial court that plaintiffs had the wage statements they needed to evaluate the section 246, subdivision (i) (sick leave notice) claim and the timekeeping data they needed to evaluate both the sections 551-552 (one day's rest) claim and the section 850-851 (maximum work for certain employees) claim.[11] Zargarof's declaration in response to Hyams's objection asserted the claims were included in the settlement as a result of the parties' investigation and negotiations, which revealed plaintiffs' facts and theories could implicate those Labor Code sections. Taken as a whole, the evidence submitted was sufficient to support the trial court's determination that the claims were, in fact, investigated. Moreover, plaintiffs' counsel

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[11] It is true, as Hyams asserts, that the declaration did not specifically address the section 551-552 claims or discuss plaintiffs' investigation into the section 246, subdivision (i) or 850-851 claims. Though it would have been better practice to discuss those claims in the same manner as the other claims addressed by the declaration, there is no authority that the absence of such a discussion, notwithstanding the totality of evidence in the record, automatically renders the trial court's decision an abuse of discretion.

made additional representations about the investigation at the final approval hearing, asserting that they had reviewed the wage statements and heavily investigated Store Team Leaders' working hours, and that the section 550 and 551 claims relate to the same facts as the latter investigation. Though Hyams complains that counsel's representations were not evidence, he cites no authority establishing counsel's representations cannot be considered in weighing a motion for approval of a settlement and we believe a court is entitled to consider such on-the-record representations and give them the weight it deems appropriate.

Hyams's argument to the contrary ignores or discounts much of this evidence and attempts to distinguish the section 551-552 and 850-851 claims as an "on the clock" theory of liability that differs from plaintiffs' investigation of "off the clock" work. But regardless of what terminology one uses, the record reflects plaintiffs investigated and analyzed CVS's payroll and timekeeping records and the Store Team Leaders' working hours. The fact that plaintiffs did not indicate they analyzed the claim in the exact way Hyams contends they should have does not demonstrate the claim was not investigated.

More broadly, there is no requirement that claims must be individually valued for a court to conclude a settlement was fair and reasonable. Rather, a trial court must "'reach a reasoned judgment . . . that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.'" (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) To do so, it must receive sufficient information for the court to "satisfy itself that the class settlement [was] within the 'ballpark' of reasonableness." (*Kullar, supra*, 168 Cal.App.4th at 133.) The trial court does not need to receive evidence of "the maximum amount the plaintiff

class could recover if it prevailed on all its claims" to reach a conclusion. (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409; see *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 250 ["the test is not the maximum amount plaintiffs might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances"], disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

The Matern declaration in support of the motion for preliminary approval included a section that calculated the penalties for the settled PAGA claims at an estimated 100 percent violation rate. It calculated penalties for violation of Labor Code provisions that provide a specific penalty and penalties for those that do not, and it identified the code sections for which it was expressly calculating penalties. This provided the trial court with enough information to determine whether the settlement was within the ballpark of reasonableness.

Hyams contends these calculations were insufficient and believes the trial court's reasoning in concluding otherwise was infirm. Specifically, he contends the trial court erred by concluding penalties for the section 246, subdivision (i) claim were logically encompassed by the penalties for wage statement violations because "stacking" penalties (tabulating and aggregating all potential penalties) has a low likelihood of success. Though Hyams doubts the trial court's opinion on stacking viability, he acknowledges that no published California authority at the time of final approval addressed the topic. Instead, he contends only that federal district courts routinely allow the practice. CVS and plaintiffs, on the other hand, contend stacking is not generally accepted. For our purposes, it

suffices to say that the issue is contested such that the trial court did not abuse its discretion in proceeding on the view, expressed by some federal courts, that stacking was unlikely to occur. (See, e.g., *Merante v. Am. Inst. for Foreign Study, Inc.* (N.D. Cal. July 25, 2022) 2022 U.S. Dist. LEXIS 131833, *18 [noting California law is unsettled as to whether PAGA penalties may be stacked, and courts have gone in different directions on the issue]; *Hamilton v. Juul Labs, Inc.* (N.D. Cal. Nov. 16, 2021) 2021 U.S. Dist. LEXIS 221416, *27 [collecting diverging cases].)

Hyams also argues the court erred in concluding the penalty calculations regarding CVS's other work schedule, minimum wage, and overtime violations overlapped with the potential penalties for violation of sections 551-552 and 850-851.

As an initial matter, the Matern declaration in support of preliminary approval included section 851 in its calculation of PAGA penalties under section 2699, subdivision (f) (which sets the penalty for Labor Code violations that do not specifically provide a civil penalty), so the claim was, in fact, valued. That the portion of the declaration discussing the section 851 claim did not reference the penalty section or separately discuss those calculations is immaterial.

Additionally, the trial court did not abuse its discretion in determining the penalty calculation for the section 551-552 claims overlapped with the calculation of other penalties. The Matern declaration tabulated penalties for violation of section 558, subdivision (a) at an estimated 100 percent violation rate. Section 558, subdivision (a) provides the amount of civil penalties to be assessed against an employer who violates a section of its "chapter," which includes sections 510, 551, and 552. The Matern declaration also included section 510 in its calculation of PAGA

penalties under section 2699, subdivision (f). Section 510 serves as a "fallback" to sections 551-552 and provides employees who forego the day of rest to which they are entitled "consideration for the hardship in the form of premium pay." (*Mendoza v. Nordstrom, Inc.* (2017) 2 Cal.5th 1074, 1085.) The trial court could thus reasonably conclude plaintiffs' calculation of maximum penalties for other wage and hour violations under those sections overlapped with the penalties for the alleged violation of sections 551-552.

3. Adequate evidence supports the trial court's finding that the settlement was not a reverse auction

"A reverse auction is said to occur when 'the defendant in a series of class actions picks the most ineffectual class lawyers to negotiate a settlement with in the hope that the district court will approve a weak settlement that will preclude other claims against the defendant.' [Citation.] It has an odor of mendacity about it." (*Negrete v. Allianz Life Ins. Co. of North America* (9th Cir. 2008) 523 F.3d 1091, 1099.) "To guard against this potential for class action abuse," class action settlements require court approval, "which may be granted only after a fairness hearing and a determination that the settlement taken as a whole is fair, reasonable, and adequate." (*In re Bluetooth Headset Products Liability Litigation* (9th Cir. 2011) 654 F.3d 935, 946.)

The record supports the trial court's finding that the settlement was not the product of a reverse auction. The parties conducted significant discovery throughout the course of the litigation. The mediation that led to the settlement was done at arms-length and involved a neutral arbitrator. Counsel declared

the section 246, subdivision (i), 551-552, and 850-851 claims were included in the settlement as a result of the parties' investigation and negotiations, which revealed plaintiffs' facts and theories could implicate those Labor Code sections. Additionally, though Hyams asserts he was vigorously litigating his own case which included these claims and many others on behalf of a significantly larger class, he does not provide any evidence indicating CVS attempted to settle with him and then determined it would reach a better deal with plaintiffs (or that plaintiffs were likely to agree to a "weak" settlement for any reason). To the contrary, the trial court remarked that based on its experience, only a minority of settlements recover more than $1,000 per class member, as the settlement in this case does.

For the reasons we have already discussed, Hyams's contention that the existence of a reverse auction can be inferred from lack of litigation, investigation, or valuation is not supported by the record. The case law upon which he relies in this regard is also inapposite. In *Belew v. Brink's, Inc.* (9th Cir. 2018) 721 Fed.Appx. 734, 735, the court found a release of claims that arose from a different factual predicate than the claims alleged in the complaint was overbroad and thus an indication of collusion. Here, by contrast, the claims did not arise from a different factual predicate. In *Gonzalez v. Corecivic of Tenn., LLC* (E.D.Cal. Sep. 12, 2018, No. 1:16-cv-01891-DAD-JLT) 2018 U.S.Dist.LEXIS 156549, the court concluded a waiver that released all claims under any provision of the California Labor Code—claims that were not alleged, not litigated, and which the plaintiffs believed did not have any value—was overbroad and suggestive of collusion. Here, on the other hand, the claims were alleged in the consolidated amended complaint, counsel declared

they were discovered during the course of investigation and negotiation, and the claims were either expressly valued (like the section 851 claim) or their value was reasonably accounted for by the valuation of other claims.

4. The court did not err in concluding the settlement value was adequate

Finally, Hyams argues the settlement value was unreasonably low, referencing the percentage of the PAGA penalties in the settlement compared to the total estimated value. The court, however, was not evaluating the fairness of the PAGA settlement alone. It was evaluating the fairness of the settlement as a whole.

Courts have held that a lower value PAGA settlement may be appropriate in the context of a larger class settlement. (See *O'Connor v. Uber Technologies, Inc.* (N.D.Cal. 2016) 201 F.Supp.3d 1110, 1134 ["the purposes of PAGA may be concurrently fulfilled" by a settlement providing substantial monetary relief for the class because "a settlement not only vindicates the rights of the class members as employees, but may have a deterrent effect upon the defendant employer and other employers"]; *Shahbazian v. Fast Auto Loans, Inc.* (C.D.Cal. June 20, 2019) No. 2:18-cv-03076-ODW 2019 U.S. Dist. LEXIS 231416 [2019 WL 8955420, p. 8] ["'where a settlement for a . . . class is robust, the statutory purposes of PAGA may be fulfilled even with a relatively small award on the PAGA claim itself'"].) Our inquiry on appeal "is limited to a review of the trial court's approval for a clear abuse of discretion. [Citations.] We will not 'substitute our notions of fairness for those of the [trial court] and the parties to the agreement. [Citations.]' [Citation.]" (*Dunk*,

supra, 48 Cal.App.4th at 1802.) Taking the entire settlement value into account, the trial court did not abuse its discretion in concluding the value was adequate.

E. Motion to Vacate

"[W]e review the denial of the motion to vacate for an abuse of the trial court's discretion, taking the evidence in the light most favorable to the court's decision. [Citations.] We . . . defer to the trial court's resolution of factual conflicts in the evidence. [Citation.] Questions of law are reviewed de novo." (*American Contractors Indemnity Co. v. Hernandez* (2022) 73 Cal.App.5th 845, 848.)

CVS argues Hyams lacked standing to move to vacate the judgment for the same reasons it argued he lacked standing to appeal the judgment approving the settlement. For the same reasons we have already discussed, we hold Hyams was sufficiently "aggrieved" in his capacity as a proxy of the state to have standing to move to vacate the judgment.

Hyams, in turn, argues the trial court erred by denying his motion to vacate for some of the same reasons he argued the trial court erroneously approved the judgment following settlement. Specifically, he argues plaintiffs lacked authority to settle the section 246, subdivision (i), 551-552, and 850-851 claims. These arguments lack merit for the reasons we have already articulated.

DISPOSITION

The judgment is affirmed. Respondents shall recover their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BAKER, Acting P. J.

We concur:

MOOR, J.

KIM, J.