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VIA E-MAIL AND U.S. MAIL

Ms. Danielle West
Rulemaking and Program Analyst
Labor and Workforce Development Agency
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1416 Ninth Street
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Sacramento, CA
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Re: Comments on Proposed Rulemaking

Dear Ms. West:

The California Employment Law Council ("CELC") and Employers Group (collectively, the "Commenting Groups") submit the following comments and recommendations in connection with the Notice of Proposed Rulemaking to the Private Attorneys General Act of 2004, codified at Labor Code section 2698 *et seq.* ("PAGA").

For decades, the Commenting Groups have participated as amici curiae in the most significant employment law matters before the courts of California, the Ninth Circuit and, occasionally, the U.S. Supreme Court. Together, members of the Commenting Groups represent a wide spectrum of employers, from very small to the largest in the state. Their members employ collectively several million Californians.

I. THE COMMENTING GROUPS

Employers Group is the nation's oldest and largest human resources management organization for employers. It represents more than 3,000 California employers of all sizes in a wide range of industries, which collectively employ more than three million employees.

Many of the members of Employers Group are small and medium-sized businesses. All of its members strive – often with the assistance of Employers Group or other outside consultants or counsel – to comply with the complex and frequently-changing California wage and hour rules. Those rules are far more complicated, and the penalties for violations more severe, than in any other state. Many, many members of Employers Group have become involved in disputes under PAGA. As such, those members and their counsel have vast experience with the reality of PAGA litigation, the practice of numerous plaintiffs' attorneys who pursue such litigation, and the complexities of complying with California's wage and hour rules. Employers Group has for decades appeared before the courts of California, including the California Supreme Court, the United States Court of Appeals for the Ninth Circuit, and, on occasion, the United States Supreme Court, in many important employment-related cases.

The CELC is a voluntary, non-profit organization that promotes the common interests of employers and the general public in fostering the development in California of reasonable, equitable, and progressive rules of employment law. CELC's membership includes approximately 70 private sector employers in the State of California who collectively employ well in excess of a half million Californians. Like Employers Group, CELC has for decades appeared as amicus before the courts of California and the Ninth Circuit. CELC also for decades has been involved in outreach to the California Legislature in the development of employment-related statutes.

II. THE PROPOSED REGULATIONS ARE A GOOD FIRST STEP TO ADDRESS THE CURRENT ABUSE OF THE PAGA STATUTE

Commenting Groups appreciate the LWDA's efforts to address PAGA's impact through these proposed regulations in light of its 20-year history. However, Commenting Groups request that the LWDA revise the proposed regulations to ensure that they achieve their intended results and to avoid unintended consequences. More specifically, Commenting Groups request that the LWDA: (1) refine the online filing system; (2) increase the cost of filing a PAGA notice to deter frivolous complaints; (3) require greater specificity of the nature of each alleged Labor Code violation, and the relevant "facts and circumstances," and (4) impose more stringent rules for frequent and vexatious filers, as well as consequences for those who repeatedly violate or abuse the process. Commenting Groups request that the LWDA permit parties to PAGA litigation to amend PAGA notices even after a settlement has been reached. This is an essential feature of the law that has been fairly and effectively managed by courts to achieve the statutory goal of compliance with the Labor Code.

The LWDA can manage any potential abuse of either the amendment or settlement process by simply imposing a time delay between filing an amendment and court approval of a settlement, affording the LWDA more time to review, analyze and if necessary comment upon the claims being settled.

The LWDA's proposed regulations are an overdue, important and necessary adjunct to PAGA and its 2024 amendments. The Commenting Groups recognize these proposed regulations cannot alter the PAGA statute or completely eliminate the litigation incentives it creates for plaintiffs and their attorneys. Many of the proposed regulations do address, at least in part, some of the more obvious abuses. However, in many instances, they do not go far enough. And we hope our comments will encourage the LWDA to seek further amendments to the statute.

III. RECOMMENDATIONS FROM THE COMMENTING GROUPS

§ 17410. FILING VIA THE ONLINE PAGA FILING PORTAL.

Comment: The Commenting Groups understand the LWDA's need for an easily navigated online filing system. However, many smaller or less sophisticated employers, particular those without experienced counsel, will struggle to file their documents in the correct link. There are at least twelve such links currently on the portal. The apparent penalty for a timely misfiling is essentially a default: the document, albeit timely filed but in the wrong link, is simply "not deemed filed."

Recommendation: We recommend an appeal process or a "good faith" exception for timely but improperly linked filings, similar to the standard for relief in Code of Civil Procedure, section 473. Alternatively, the LWDA might wish to consider reducing the number of links.

§ 17411. Filing Fees; Waivers.

Comment: The filing fee of $75.00 is statutory and far too low. The low fee incentivizes marginal or even frivolous filings. Unfortunately, the fee cannot be changed by administrative action.

Recommendation: We urge the LWDA to recommend legislation to increase the fee to at least $1,000 per filing.

§ 17413. Service of Documents on Other Parties.

Comment: Many members of the Commenting Groups have received PAGA Notices addressed to out-of-state locations or facilities, even though the location identified in the PAGA Notice is a California facility. In some cases, such letters are sent by plaintiffs' firms without any specific identification of an individual (e.g. to "Human Resources"), and in some cases with no addressee at all, other than an arbitrary address that includes the corporate or entity name.

Some plaintiffs' attorneys simply send a PAGA notice to an employer's general address without even designating the employer's agent for service of legal process or even a department or function, such as the employer's legal counsel or Human Resources. As a result, such notices may be received by an employer's mail room and never received by a person who knows what to do. Likewise, such letters received by employees at facilities outside California may be lost or not properly forwarded to a responsible person.

The practice of sending PAGA Notices to out-of-state locations appears in many cases to be tactical and intentional: by sending the letter to some remote location, or the general address of a huge organization, without identification of a specific addressee, the employer loses time that could be spent investigating the alleged violations and developing a cure, if a cure is appropriate.

Recommendation: PAGA Notices should be sent only to a person having statutory authority to accept process on behalf of the responding company or entity. The regulations should require a prelitigation PAGA Notice be served on the Employer by certified mail on the Employer's ***registered agent for service of process*** as listed on the California Secretary of State website.

§ 17415. High-Frequency and Vexatious Filers; Additional Notice Requirements and Prefiling Screening Orders.

Comment: The Commenting Groups strongly support the High-Frequency and Vexatious filer provisions. Those proposed regulations, however, should be expanded as described below. The Commenting Groups agree with the LWDA's assessment and conclusions in section (a)(2) of this regulation and make additional recommendations for necessary "safeguards."

Recommendation: **Subd. (b)(1)** First, the definition of "high frequency filer" should be changed so that the term includes any individual or firm with one or a combination of individuals that has filed either: (1) more than 25 PAGA notices in the past 36 months or (2) 10 or more PAGA notices in the twelve-month period preceding the filing of the current PAGA

notice. The 200-filings standard is far too lax: a firm filing 199 PAGA notices in twelve months is filing at the rate of almost four notices PER WEEK, or almost one notice per business day. No firm, especially a firm filing that number of PAGA notices year after year, can effectively litigate the equivalent number of resulting lawsuits. To the contrary, such high-filing rates are inherently abusing and symptomatic of shakedown tactics that encourage template filings of uninvestigated, boilerplate, often frivolous claims.

The high frequency filer provisions should be implemented retroactive to the date the Notice of Proposed Rulemaking was first published, or the date the comment period closes, which is presently set to occur on March 23, 2026. Law firms should be deemed high-frequency filers if they have filed over 25 PAGA notices either in the 36 months prior to February 6, 2026, or 10 PAGA notices during the twelve months prior to March 23, 2026. Further, the regulations do not provide an adequate sanction or deterrent for continued, improper filings by high frequency filers (or by other filers). See discussion below.

Recommendation: **Subd. (b)(2)** The definition of "vexatious filer" must be more specific: the term "repeatedly" in this regulation should be defined as three or more non-compliant PAGA notices by either any lawyer or combination of lawyers and other members or representatives in one firm within a twelve-month or 36-month time span (whichever is applicable) making the firm and all its lawyers a vexatious filer. Such status should follow them to any other office or firm they may transition to. Firms should not be able to avoid the vexatious filer designation by having multiple lawyers within the firm file one or two meritless or vexatious filings every twelve months. We note that one of the high-frequency filers criticized by the LWDA for abusive practices actually uses multiple firm names and multiple individuals as part of the practice to file numerous claims by different persons aligned with the firm. This must be disallowed as an artifice.

We also recommend that a person or firm designated as a vexatious filer remain so designated for at least twelve months, unless "de-designated" by the LWDA. See comment on subd. (d) below. The agency could retain discretion to remove a vexatious filer designation for good cause shown, via the hearing process described in subdivision (d)(4) of this regulation.

Recommendation: **Subd. (c)(1)(b)** Claimants filing PAGA notices who are represented by high-frequency filers should be required to sign a declaration with their PAGA notice stating: "I am prepared to testify under penalty of perjury about the violations I believe I personally suffered during my employment within the past year that are described in this PAGA notice."

Recommendation: **Subd. (c)(3)** There is currently no administrative sanction for the filing of a defective or non-compliant PAGA notice. The regulations should create a sanction,

consistent with the intent of PAGA's 2024 amendments. The regulations should: (1) state that the filing of a non-compliant PAGA notice shall be deemed by the LWDA a failure to comply with the pre-filing notification provision of the statute; and the failure to satisfy the pre-filing exhaustion requirement of Labor Code Section 2699.3; (2) the LWDA may, but need not, notify the person or firm filing a non-compliant notice about the lack of compliance; (3) any notice to the claimant or claimant's firm that a PAGA notice is non-compliant or ineffective will be copied to the employer; and (4) the filing of a non-compliant PAGA notice shall not toll the time for the commencement of a civil action to recover PAGA penalties pursuant to Labor Code Section 2699.3. We agree with and suggest the LWDA retain the existing language that a high frequency filer's failure to comply with the regulation may result in the additional designation of the filer as a vexatious filer.

Recommendation: **Subd. (d)(1)(A)** Add that any Respondent(s) shall also be given notice that claimant's counsel is being considered for designation as a vexatious filer due to a PAGA notice filed against that Respondent.

Recommendation: **Subd.(d)(3)(A)** The "vexatious" filer designation should automatically extend to the entire law firm, and any successor firm or firm for which a high-frequency or vexatious filer works, so that the prefiling screening requirements extend to the firm. This will prevent an attorney who violates the regulations from escaping the consequences of the designation by moving to a new firm.

Recommendation: **Subd. (d)(4)** The vexatious filer designation should extend a minimum of twelve months; we recommend no petition to remove the designation may be filed within twelve months of the LWDA's designation of a person or firm as a vexatious filer.

Recommendation: **Subd (e)** In addition to the list referenced in the regulation, the agency shall notify the California State Bar on a quarterly basis of all lawyers or firms designated as a high frequency filer or a vexatious filer.

Subchapter 2. Pre-Litigation Notice and Investigation of Claims Filed Under Subdivisions (a) or (c) of Labor Code Section 2699.3

§ 17420. Written Notice by Aggrieved Employee or Representative (PAGA Notices).

Comment: The almost ubiquitous practice of filing vague, nonspecific PAGA notices precludes employers from properly identifying, assessing, and investigating instances or policies or practices that may not be in compliance with California law. Indeed, more specificity is necessary so that employers may take action to cure any non-compliance as intended by the

PAGA reforms, especially given the short time period (33 days after receipt of the PAGA notice) for the employer to submit its cure proposal. It also precludes the LWDA from properly evaluating the claims for purposes of determining whether to exercise its authority to investigate the claims. Moreover, requiring greater specificity better enables the LWDA to assess whether a small employer availing itself of the small employer cure process under Labor Code § 2699.3(c)(2) has cured any alleged non-compliance and will enable the courts to assess whether employers availing themselves of the early evaluation process set forth in Labor Code § 2699.3(f) have cured any alleged non-compliance.

Recommendations: There should be a greater obligation on the PAGA claimant and the claimant's counsel to describe with particularity the basis for any alleged violations. As to violations the claimant claims personally to have experienced, the following information must be provided, at a minimum, in addition to the information required by section 17420, subd(d): (1) the claimant's dates of employment; (2) the position and/or job title; (3) details of claimant's status as an hourly, salaried, and/or piece rate or commissioned employee; (4) whether the employee was covered by a collective bargaining agreement; (5) the dates the alleged violations occurred; (6) the location the alleged violations occurred; (7) the name of the claimant's supervisor at the place and dates the violations occurred; and (8) whether the claimant reported any of the alleged violations and to whom. The proposed form of notice should be amended to include questions on these factual issues, which any claimant should know.

The regulation also should state that conclusory or incomplete statements, in response to the various questions on the form, shall be deemed non-compliant and ineffective. For example, "to be determined by discovery," or "to be provided," or similar non responsive statements, shall be deemed non-compliant and ineffective as a satisfactory statement of "facts and theories."

As to violations the claimant did not personally experience ("non-personal claims") but asserts on behalf of others, such claims are permitted, after the 2024 PAGA amendments, only if brought by claimants represented by specified non-profit legal aid organizations, qualified legal services projects or qualified support centers. The 2024 amendments eliminated the prior practice, and supporting case law, of claimants seeking to assert PAGA claims for violations the claimant did not personally experience. If this aspect of the regulations is to be maintained, the LWDA form should contain an entirely separate section for such alleged violations and include all of the questions included in the existing subd. (d) as well as the four additional questions in the above recommendation. Further, for such non-personal claims by the permitted non-profit organizations, the claimant and submitting organization must identify each location where alleged violations occurred and the basis for asserting such claims, such as the identities of

persons who experienced the alleged violations, and the dates and locations of the alleged non personal violations. Such specificity is necessary for the employer to be able to take action to cure instances or practices of non-compliance, and for the LWDA and courts to assess whether employers availing themselves of the LWDA small employer cure process or the court's early evaluation process have cured such violations. It will both help the LWDA recognize whether it can and should take jurisdiction of the claim and help the courts and parties assess whether such claims can be brought on a representative basis in the first place.

The regulation should state that any PAGA notice failing to contain the required information, or alleging non-personal claims arising or occurring prior to July 1, 2024 (other than such claims brought by one of the specified not for profit agencies) should be automatically deemed invalid by the LWDA or otherwise limited to only those claims alleged in the notice deemed in compliance by the LWDA, and the submitting person or firm, as well as individuals and locations identified and the employer involved, shall be so notified in writing by LWDA.

§ 17420.5. Amendments to PAGA Notices.

Comments and Recommendation: **Subd. (d)** The Commenting Groups recognize the LWDA's interest in obtaining timely notification of amendments to previously filed PAGA notices. However, the proposed regulation unnecessarily restricts parties from reaching mutually agreeable settlements. The Commenting Groups recommend that this subdivision be deleted in its entirety. The prohibition to filing an amended PAGA notice as part of a settlement of a civil PAGA action will impede and, in many cases, prevent the resolution of civil PAGA claims, resulting in more litigation and trials. If the genesis of the proposed regulation is LWDA's ability to review, evaluate, and if necessary respond, to a settlement involving an amended notice, that can be addressed through a longer period, running from the date of the amended notice, for the agency to respond.

In many cases, as parties and their counsel progress through the stages of litigation, discovery and mediation, previously unknown or unappreciated issues of alleged non-compliance are identified. In those cases, the better course is not to force plaintiffs to file new lawsuits and employers to defend successive lawsuits, but to allow the claimant to file an amended PAGA notice, disclosing all of the potential violations that were discussed during the course of discovery, mediation or the settlement process.

Where the parties have reached a resolution of the case, nearly all employers are prepared to enter into a settlement *only* where the resulting settlement (in cases involving a PAGA claim or class claims and thus requiring court approval) includes a release of all the claims

alleged up to an agreed upon date (e.g., the date of preliminary approval in a class action case). Most courts will only release those PAGA claims alleged in the operative PAGA notice. In order to secure a release that more accurately reflects the allegations and claims identified in the course of the litigation, the parties agree, with full disclosure to and approval by the court, that the claimant will file a new PAGA notice to include any new claims identified during the course of the litigation.

Moreover, employers often choose settlement over litigation because of the certainty of a comprehensive release and to avoid a multiplicity of successive lawsuits or inconsistencies between the scope of class and PAGA settlements. (See, e.g., *Shine v. Williams-Sonoma, Inc.* (2018) 23 Cal.App.5th 1070, 1080.) The proposed language, allowing employers to only resolve PAGA claims on a more narrow, piecemeal basis, will clog court dockets. PAGA claims that could have once been resolved in one proceeding would need to be approved through multiple separate filings or motions for approval of PAGA settlement.

It is also now common for larger employers to be defending multiple PAGA clams simultaneously. For example, there were ten PAGA notices filed against "Amazon.com Services LLC" in 2025 alone. This is another example of the desirability to permit amendments, during the course of a civil action, to facilitate settlement of claims that otherwise would require unnecessary—and in some cases extraordinary—use of judicial resources, not to mention cost, delay and disruption to the settling parties. In such "serial" PAGA claims, it is commonplace, and not objectionable, to permit amended PAGA notices so the matter is resolved on a comprehensive basis.

The current process is in the best interests of the workers involved, the employer, the LWDA, and the courts, because it enables the parties to reach a full resolution of claims at issue and it also provides both the LWDA and the courts with the ability to review and scrutinize the settlement to ensure it is fair. Such amendments also result in increased compensation to potentially aggrieved employees. The LWDA retains its inherent authority to object to court approval of the settlement.

Even where an amended PAGA notice is filed as part of a settlement of a civil PAGA action, the LWDA must: (1) receive a copy of the proposed settlement agreement filed with the court; and (2) receive the amended notice. We infer the reason for this proposed regulation is the LWDA's concern that it has insufficient time to evaluate and, if necessary, either investigate the new claims in the amended PAGA notice, or to comment or object to the settlement. This valid concern can, however, be achieved by less onerous means.

If subdivision (d) is not deleted, the Commenting Groups recommend subdivision (d) of the proposed regulations be revised to state: "If a claimant files an Amended PAGA notice after the filing of a civil action based on a previously filed PAGA notice against the same employer, or affiliated employer, the parties shall not schedule or calendar with the Court any hearing on the proposed settlement of claims identified in the amended notice to be heard earlier than: (1) 150 days after the filing of the amended PAGA notice, or (2) receipt of written notification by the LWDA that the LWDA does not oppose the proposed settlement including any settlement based on facts or theories alleged in the amended PAGA notice."

The proposed 150-day period before hearing of any proposed settlement would provide the LWDA with the full 120-day period to consider investigating the amended claims, plus an additional thirty days to evaluate the proposed settlement. The parties could set a hearing date, not less than 150 days after the amended notice, but no court approval could occur until the 150 day period has elapsed.

Commenting Parties' proposed 150-day period would permit the amendment of PAGA notices as part of a court-approved settlement, thereby advancing PAGA's goal in achieving maximum compliance (together with the payment of penalties, a portion of which are paid to the aggrieved employees), while protecting the LWDA's ability to evaluate proposed PAGA amendments and to oversee and participate in the settlement process. To force settling parties to file a new lawsuit every time they discover a new or related claim would result in an unnecessary multiplicity of PAGA actions.

The LWDA would retain the right to investigate and, if appropriate, comment or object to the settlement during the 150-day period. And, the court has the obligation to review and approve all PAGA settlements to guard against collusive agreements.

§ 17424. Citations or Prosecutions by the Labor Commissioner's Office.

Recommendation: The Commenting Groups recommend the regulation be amended so that, if the LWDA elects to investigate, cite or sue the employer, after the statutory deadlines outlined in Labor Code Section 2699.3, subd. (a)(2)(B) passes, the employer can request and the court must grant a stay of any pre-existing, pending PAGA action until the LWDA completes its action.

Subchapter 3. Small Employer Cure Procedures

§ 17430. Confidential Cure Proposals.

Recommendation: The 100-employee limitation for status as a "small employer" should be limited to employees in California, consistent with PAGA's territorial scope. If the LWDA believes the 100-employee standard is statutory and cannot be changed as requested, we recommend LWDA support legislation to expand the 100 employee limitation to at least 250 employees employed in California within the preceding 12 months.

§ 17433. Pre-Conference Submissions.

Recommendation: The proposed subdivision (c)(1) should be amended to require in instances the claimant alleges the proposed cure is insufficient and such cure involves more than one location, that the claimant provide, for each location the claimant contends the proposed cure is insufficient, the factual basis accompanied by any evidence upon the claimant relies in making the allegation.

Subchapter 5. Pre-Litigation Notice and Investigation of Claims Arising Under Division 5 (Lab. Code, § 2699.3, subd. (b))

§ 17450.5. Amendments to PAGA Notices.

Comment: **subd. (c)** The Commenting Groups believe it is important that claimants be permitted to file an amended notice of settlement for reasons listed above in Section 17420.5, subd. (d). Many claimants and their counsel fail to file proper PAGA notices for health and safety violations, because they fail to realize they need to file them with the Division of Occupational Safety and Health. Employers should not be forced to point out an employee's mistake, thus delaying any settlement and resulting in a second PAGA proceeding.

§ 17461. Submitting Proposed Settlements of Civil Actions to the Agency; Notice to Other Persons with Pending Actions.

Comment: See comments above regarding proposed regulations 17420.5 and settlements that involve amended PAGA notices filed after a settlement has been reached. The suggestion of a 150-day period between the date of the amended PAGA notice and the hearing date for court approval of a settlement may apply in many situations where there are multiple PAGA civil actions simultaneously against the same employer.

§ 17462. Proposed Settlements Before Commencement of a Civil Action; Release of Claims Against the Employer.

Comment and Recommendation: The Commenting Groups agree there is a risk of extorted or collusive settlements after the filing of a PAGA notice and prior to the filing of a civil action based on the PAGA notice. However, not all such settlements are improper or collusive: the allegations in the notice may be simply false or grossly overstated; only a single employee or a very small number of employees may have been affected; the employer named in the notice may not actually have employed the claimant; and other reasons may make "individual" non PAGA settlements appropriate. Further, any settlement reached without a civil filing cannot as a matter of law release PAGA claims, because no court approval can be obtained without a civil filing, notice to the LWDA, and court approval. The regulation as proposed seems to merely restate existing law and does not provide a solution to the perceived problem.

To be clear, the Commenting Groups do not condone the practices of some plaintiffs' attorneys that amount to shakedowns, or the mass-filing of ill-investigated, boilerplate claims, or threats to an employer merely to extract a quick, cheap settlement (including, of course, attorneys fees). If the LWDA determines a plaintiff lawyer or firm has engaged in any such abuses, it should designate the plaintiff attorney and firm as a vexatious filer without punishing the employer that simply seeks economic peace through a negotiated resolution. The Commenting Groups do not believe the LWDA has statutory authority to object to or become involved in settlements that do not include a proposed release of the State's right to purse PAGA civil penalties. There is a justified distinction between holding abusive filers accountable, which is laudable and desirable, and interfering with a non-PAGA settlement agreed to by the parties.

If the LWDA's concern is tracking PAGA notices after filing, or being aware of multiple PAGA notices against the same employer, the goal can be achieved by requiring some form of notice to the LWDA of any non-PAGA settlement entered into after filing of a PAGA notice and based on the same facts and theories stated in the notice.

IV. RECOMMENDATIONS FOR LEGISLATIVE ACTION

The Commenting Groups greatly appreciate the LWDA's thoughtful efforts to advance the goals of PAGA through the proposed regulations. However, many of the abuses that prompted the 2024 revision of PAGA persist. (*Williams v. Alacrity Sols. Group.* (2025) 110 Cal.App.5th 932, 944, review granted July 9, 2025 S291199, citing Assem. Floor Analysis, Assem. Bill No. 2288 (2023-2024 Reg. Sess) June 27, 2024, p. 5 ["When our Legislature recently amended PAGA, it did so in response to the observation that PAGA's goal of "bolster[ing] labor

law enforcement" had been "manipulated over its 20-year history by certain trial attorneys as a money-making scheme."]; see also Senate Committee On Labor, Public Employment And Retirement Analysis, Assem. Bill No. 2288 (2023-2024 Reg. Sess.) May 9, 2024, p. 8 ["A law intended to bolster labor law enforcement has been grossly manipulated . . . These pseudo class actions have no procedural guardrails and steep penalties. Lawyers are incentivized to plead as many claims as possible, regardless of their merit, to get a big settlement check."].)

Commenting Groups submit that further revisions of the statute are necessary to align the statutory purposes with the reality of the profit-motivated "bounty" system. We recommend the LWDA consider sponsoring and advocating statutory revisions to include the following:

1. Increase the filing fee to $1,000 per PAGA notice, as recommended above. The provisions for fee waivers would remain in place.

2. Require that court approval of all PAGA settlements include analysis of the plaintiff's lodestar attorney fees and prohibit personal injury style fee awards that are based on a percentage of the overall settlement amount. In the experience of the Commenting Groups, courts frequently do not scrutinize the amount of fees claimed by plaintiffs' firms. Defendant employers almost universally are required, as part of a settlement, to not oppose a fee award based on a percentage of the total amount. The percentage fee request frequently exceeds substantially the lodestar amount, not infrequently by a multiple of two or more. There is no reason the vast majority of PAGA settlements justify a departure from the lodestar calculation.

3. Limit PAGA plaintiffs' attorney fees in any settlement at 20% of the total gross settlement, even if the amount requested is greater than the lodestar amount and the court finds a lodestar enhancement is appropriate under established law.

4. Restrict the use of statewide data, personal contact information, and wage history until and unless the plaintiff/claimant establishes some reasonable basis to justify such discovery beyond the location, plant or facility in which the plaintiff/claimant worked. At present, a claimant in a PAGA case, who worked at only one of multiple California facilities, can demand and obtain statewide employee personal contact information simply by filing a PAGA notice and a lawsuit. It is not true that the identities of employees at remote locations, working at times and under supervisors different from the claimant, are automatically "witnesses" to the claimant's claims. It is true, however, that the burden, expense and consequences of producing such information frequently forces defendants to settle even meritless PAGA actions. Some judges also permit

statewide or other broad discovery of employee time punch, wage payment, work hours, attendance or other private, personal information, beyond the facility where the claimant worked, or for remote and irrelevant periods of time. Before such personal, private information is discovered, there should be a showing of some reasonable basis to conclude the information will be material to the claims actually in dispute.

5. Create a statutory presumption that any PAGA civil complaint not timely transmitted to the LWDA in accordance with the statute will be dismissed for lack of prosecution, unless: (1) Plaintiff/claimant and counsel establish good cause for the failure to timely provide the complaint to LWDA and (2) LWDA consents to the late submission of the complaint and is given an opportunity to respond to the plaintiff/claimant's showing of good cause.

6. Amend the attorney fees provision of the PAGA statute to permit recovery of attorney fees and costs by an employer, against the claimant, if the employer is the prevailing party at trial and the court finds the case, or some portion of it, was brought or maintained without a good faith belief the allegations, or some of them, were meritorious. Also, create a vehicle, similar to Code of Civil Procedure section 998, to enable a defendant/employer to offer a specified amount or specified settlement terms, with the plaintiff/claimant to be denied post offer attorneys' fees and costs if a less favorable result is obtained at trial.

7. Create a rebuttable statutory presumption that any written finding by LWDA that a particular PAGA notice is non-compliant establishes the notice did not as a matter of law satisfy the administrative exhaustion requirement of the statute.

8. Revise the statute to provide that no PAGA violation occurs, and no civil penalty may be recovered if, following knowledge of a possible meal, rest or recovery period violation, the employer pays a premium pursuant to Labor Code section 226.7 in the appropriate amount, within one complete pay period after the meal, rest, or recovery period violation. This option would be denied if the evidence indicates the employer is knowingly and deliberately disregarding its obligation to provide meal and rest periods.

9. Allow, by statute, that individual PAGA claims, be subject to mandatory arbitration agreements. Allow, by statute, for a waiver of the right to bring a representative "non-individual" PAGA claim in state court.

10. Add features to PAGA that require certification of PAGA claims on terms that align with the Code of Civil Procedure, section 382, including the same standards of numerosity, commonality, adequacy, typicality, superiority, and manageability.

Thank you for considering our comments and recommendations.

Sincerely,

QUARLES & BRADY LLP

Aaron A. Buckley
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Nora J. Steinhagen
Counsel for Employers Group and the California Employment Law Council

Cc: George S. Howard, Jr.