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March 23, 2026

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Re: NOTICE OF PROPOSED RULEMAKING - [PROPOSED] CHAPTER 9.  
LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004

Dear Ms. West:

This correspondence is responsive to the February 6, 2026 Notice of Proposed Rulemaking (“Notice”) issued by the California Labor and Workforce Development Agency (“Agency”). The Notice states that “any interested person, or the representative of any interested person, may submit written comments relevant to the proposed regulatory action to the Agency.” On behalf of Moon Law Group, LLP (“MLG”), I write to state our concerns regarding portions of the currently proposed regulations to be added adopted as Title 8, Division 1, Chapter 9, concerning the Labor Code Private Attorneys General Act of 2004 (“Proposed Regulations”) and request revisions to or retractions of those Proposed Regulations. In addition, I will address certain problematic assertions in the Agency’s February 2, 2026, Initial Statement of Reasons in Support of Proposed Regulatory Action (“Initial Statement”).

MLG is a Los Angeles-based law firm focused on advocating for and protecting the rights of employees throughout California. Formed in 2007, MLG has recovered for its employee clients in complex, labor-intensive cases, including wage and hour matters, gender/age/racial discrimination suits, sexual harassment suits, whistleblower suits, and other employment-related single-plaintiff, class-action, and PAGA matters.

## **A GENERAL COMMENT ON CORE ASPECTS OF THE AGENCY’S STATED REASONS FOR THE PROPOSED RULEMAKING**

MGL recognizes that the Agency has undertaken a significant effort in preparing the first draft of the Proposed Regulations. The Proposed Regulations cover a wide array of issues related to

PAGA and address issues that are of appropriate concern to the Agency. For example, a number of the Proposed Regulations apply to the new provisions of PAGA that govern such issues as cure conferences. The Initial Statement is necessarily voluminous as a result. It also undertakes to address concerns that exist, to a degree, in all civil litigation, such as sufficient clarity of allegations.

One issue that seems of paramount concern in the Proposed Regulations is the volume of annual PAGA notice filings. In fact, this issue appears to be one of the primary motivating factors behind many of the Proposed Regulations if the quantity of the discussion of that topic is any indicator of its significance as a basis for the Proposed Regulations. For example, after summarizing fiscal year 2024-2025 filing totals for law firms filing the largest numbers of PAGA notices, the Notice says:

In light of the volume of PAGA notice filings received by the Agency—including by a group of actors responsible for a disproportionate amount of all filings, the boilerplate nature of the filings in many cases impedes the Agency’s efforts to distinguish one case from another or “to intelligently assess” the scope or seriousness of the violations alleged in any given case.

(Notice, at 9.) The Initial Statement repeats this text, verbatim. (Initial Statement, at 6.) However, the Initial Statement expands significantly on the theme that too many PAGA notices were filed in recent years. Appendix A to the Initial Statement includes two lists showing the number of PAGA notices filed during fiscal year 2024-2025 by the 25 law firms and attorneys who filed the most PAGA notices in that period. Moreover, the Initial Statement couples its discussion of PAGA notice filing volume with a reference to nebulous criticisms of PAGA sometimes being used as a “money-making scheme.” The Initial Statement supports this claim by asserting:

Available data shows that some attorneys or law firms responsible for a high volume of PAGA notice filings do not file or report filing PAGA lawsuits, evidencing an apparent strategy of using PAGA claims as a bargaining chip in seeking a quick individual settlement for the employee alongside a recovery of attorneys’ fees.

(Initial Statement, at 6.) As for data to support this contention, the Initial Statement identifies firms filing PAGA notices but only a comparatively small number of lawsuits based on the PAGA notices. This described situation, however, is incomplete for several reasons. First, there appears to be no information explaining why a lawsuit is not reported after a PAGA notice was filed. It could be that no suit was filed, but a client and/or an attorney can decide not to proceed for many reasons. It could also be that one or more of the identified firms is not rigorous in uploading complaints after filing. It could be, as is often true, that, based on existing, earlier filed cases, a later case with a PAGA claim was not ultimately filed. Frequently, Courts stay

cases where earlier-filed cases are identified. Sometimes these stays preclude the filing of a PAGA claim while the earlier case proceeds, and then a settlement of the earlier case moots the need to file a PAGA claim at all, and the case is then individually settled because nothing remains but the plaintiff's own claims.

Practices in the legal industry also vary as to how PAGA claims are brought initially. Some firms file a PAGA notice, wait for the exhaustion period to lapse, and then file a complaint containing both direct labor code violations (usually asserted as class action claims) and a PAGA cause of action. Other firms file the PAGA notice and the initial lawsuit at the same time, waiting to add a PAGA as a new cause of action in an amended complaint. These variations in approach generate unexpected outcomes, such as when an employer's counsel contacts a firm and informs them that there are only a few employees or the employer is nearly insolvent, rendering the pursuit of a PAGA claim economically non-viable as a reasonable risk for a private firm. When such an outcome occurs, the choice not to proceed is not indicative of a "money-making scheme;" PAGA does not require counsel to tilt at windmills.

There is yet another reason for a mismatch between PAGA notices and reported PAGA cases. When a case is initiated, a plaintiff often refers co-workers to the firm. Firms that have filed an initial case will sometimes be retained by the later-referred co-workers. When that occurs, firms sometimes amend the initial PAGA notice, but they sometimes file a separate PAGA notice for the new employee, frequently waiting to add the new client as a named plaintiff in the existing lawsuit. PAGA provides no information about whether one approach is preferable to the other. But what the filing of a separate PAGA notice does do is increase the number of filed notices while not increasing the number of reported cases in lockstep.

The Agency's discussion does not provide an indication that it sought to understand the many reasons why a PAGA notice is filed but a lawsuit containing a PAGA claim is not reported to the Agency. Second, the placement of this speculative discussion immediately following remarks about the volume of PAGA notices filed at least sounds intended to suggest that attorneys or firms filing more PAGA notices are engaged in malfeasant conduct of some sort. As will be discussed in more detail below, specifically as to Proposed Regulations, § 17415, the Initial Statement and Notice contain flawed analyses that, as currently drafted, would present to a neutral viewer as either arbitrary or designed to target larger law firms specifically.

For example, after discussing instances where PAGA notices were filed but the filing of lawsuits was not reported to the Agency, the Initial Statement then describes sending deficiency notices to some law firms, directing those firms to correct "patent deficiencies" in the PAGA notices that had been filed. The discussion concludes by noting, "Of the total 178 cases subject to directions an amended PAGA notice be filed, amended notices were filed in 134 cases, meaning PAGA claims were abandoned in about 25% of the cases." (Initial Statement, at 7.) The significance of the 25% figure is never explicitly stated. Rather, one is left with the impression that the significance is left unstated to permit the inuendo that only an improper initial filing explains the

failure to cure each and every PAGA notice. Other reasons, less nefarious, are never discussed, but they would be as speculative as the suggestion that the 25% of uncorrected PAGA Notices could not be cured in any manner.

Similarly, the Initial Statement, in its discussion of trends, said, “Experience has shown a propensity by some attorneys to *exploit* the minimal notice requirements described by courts before the 2024 legislative reforms, resulting in conduct detrimental to the proper functioning of the law.” (Initial Statement, at 5, emphasis added.) Compliance with notice requirements approved by courts is not “exploitive.” The use of non-neutral language in the Initial Statement raises concerns of bias in the creation of the Proposed Regulations. And while the Agency is likely operating under the best of intentions, public trust in regulatory bodies is reduced when even the possibility of bias can be identified in regulatory actions.

Finally, the Initial Statement makes no mention of an external series of events significantly impacting firms in the wage and hour field, ultimately leading to a marked increase in PAGA lawsuits. A shift in practice began after 2010, when the United States Supreme Court issued *Stolt-Nielsen S. A. v. AnimalFeeds Int’l Corp.*, 559 U.S. 662 (2010). That seminal decision on the issue of class action arbitrations prompted employers to increase the rate at which arbitration agreements were imposed on employees. Until 2014, there was substantial uncertainty as to how arbitration agreements operated as to PAGA claims. Then, in 2014, the California Supreme Court issued its decision in *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348, 379 (2014), *overruled in part by Quach v. California Com. Club, Inc.*, 16 Cal. 5th 562 (2024), and *abrogated in part by Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639, 142 S. Ct. 1906, 213 L. Ed. 2d 179 (2022). This arbitration arc appears to have reached its conclusion when *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639, 142 S. Ct. 1906, 213 L. Ed. 2d 179 (2022) concluded that, in matters governed by the FAA, PAGA claims could be split between “individual” PAGA claims impacting the plaintiff (which would be sent to arbitration) and “non-individual” PAGA claims impacting all other aggrieved employees (which the United States Supreme Court speculated could not be pursued), and *Adolph v. Uber Techs., Inc.*, 14 Cal. 5th 1104 (2023), where the California Supreme Court held that plaintiffs could pursue “non-individual” PAGA claims in Court, regardless of any arbitration agreement. This *Iskanian* decision prompted plaintiff-side firms in the wage and hour employment law practice area to increase their focus on PAGA actions as an alternative to wage and hour class actions that were increasingly precluded by arbitration agreements. Of course, that shift could not happen overnight, and Appendix F to the Initial Statement reflects the statewide-shift towards PAGA actions, with settlement submissions logically acting as a lagging indicator. A substantial increase in settlement submissions is seen in 2017, and it climbs from that year. This is entirely consistent with an increase in PAGA action filings beginning in 2015, in response to *Iskanian*. Wage and hour class action practitioners, whose practice focus was optimized to litigate complex cases asserting violations impacting large groups of employees were forced to shift their focus to PAGA actions to achieve a portion of the same ends. Thus the subtext to the Initial Statement, that wage and hour practitioners are engaged in something nefarious by filing more PAGA

notices now than they were prior to *Iskanian*, should, instead, recognize that federal law and the United States Supreme Court are primarily responsible for what the Agency has observed and documents in Appendix F to the Initial Statement. Misplaced blame, and a failure to consider the evolution of the entire wage and hour litigation landscape in response to external forces, calls into question whether (1) the Agency has conducted the necessary due diligence before promulgating the Proposed Regulations, and (2) the Agency's stated reasons for the choices made in drafting the Proposed Regulations are less than fully candid and harbor some unstated bias or animus. The Agency should give significant thought to reevaluating the many speculative statements in its Initial Statement and reflectively ask whether it has fully considered events impacting wage and hour litigation practices and has complied with its statutory obligation to consider the least burdensome methods for accomplishing legitimate goals that fall within its sphere of responsibility (without modifying or exceeding the stated text of PAGA).

In short, significant portions of the Notice and Initial Statement seem less about simple standardization and clarity and more about substantiating regulatory discrimination focused on a tiny minority of large employment law firms. In order for the public at large to have faith in the even dispensation of justice, regulatory actions should not have the appearance of discriminatory targeting as even a portion of their animus.

### **MISSING INFORMATION IS NEEDED TO EVALUATE THE INITIAL STATEMENT IN CONTEXT**

As discussed above, the Notice and the Initial Statement both explain that the volume of annual PAGA notice filings and their content "impedes the Agency's efforts to distinguish one case from another or to adequately assess the nature, scope, or seriousness of the violations alleged in any given case." (Initial Statement, at 6.) While the Notice and Initial Statement offer data regarding the total number of PAGA notice filed, and data about firms and attorneys filing the largest numbers of PAGA notices, there is no annual data regarding the number of cases selected by the Agency to investigate after receiving a PAGA notice. This information would add context to the claim that trends in the drafting of PAGA notices has impeded the Agency's ability to evaluate cases. If the number of cases taken by the Agency each year has not changed significantly over time since 2004, even as the number of PAGA notices has increased significantly, then factors other than trends in the content of PAGA notices are likely at work. One obvious explanation is that budgetary limitations impacting staffing at the Agency is the primary factor limiting the Agency, not the manner in which PAGA notices were drafted in recent years:

The Legislature enacted PAGA almost two decades ago in response to widespread violations of the Labor Code and significant underenforcement of those laws. (See *Arias v. Superior Court* (2009) 46 Cal.4th 969, 980, 95 Cal.Rptr.3d 588, 209 P.3d 923 (*Arias*); Assem. Com. on Labor & Employment, Analysis of Sen. Bill No.

796 (2003–2004 Reg. Sess.) as amended July 2, 2003, p. 3 (Assembly Labor Committee Analysis).)

*Adolph v. Uber Techs., Inc.*, 14 Cal. 5th 1104, 1116 (2023). Before implementing regulations that impermissibly and arbitrarily target a small group of larger law firms for disparate treatment, the Agency should provide additional data to permit the public to evaluate whether its enforcement capabilities have changed in obvious ways since PAGA was enacted in 2004.

**COMMENTS ON § 17415. HIGH-FREQUENCY AND VEXATIOUS FILERS;  
ADDITIONAL NOTICE REQUIREMENTS AND PREFILING SCREENING ORDERS**

Proposed Regulations, § 17415, as presently drafted, contains a sufficient number of errors and objectionable material that minor corrective edits are unlikely to address its shortcomings. As such, section 17415 should be withdrawn. In particular, section 17415 imposes an arbitrary application trigger that targets only large law firms; discriminates between for-profit and non-profit organizations; lacks a rational basis for the threshold that triggers the “high-frequency filer” designation; interferes with the attorney-client relationship, violates due process requirements in that it fails to establish an objective and clearly-defined mechanism for application of the punitive designation of “vexatious filer;” violates due process requirements in that it fails to establish an objective and clearly-defined mechanism for contesting the punitive designation of “vexatious filer” that includes a hearing and mechanism for review of the Agency’s determination; appears to impose pleading requirements that are inconsistent with the language of PAGA and pleading standards applicable to wage and hour violations generally; and is predicated upon utterly unsupported speculation about motives. Beyond all of those issues, the Initial Statement as to section 17415 (and, in fact, the Initial Statement as to all of the Proposed Regulations), contains no “description of reasonable alternatives to the regulation and the agency’s reasons for rejecting those alternatives.”

***Non-compliance with Government Code § 11346.2***

Government Code § 11346.2 provides, in part, that any proposed action by an agency must provide, as part of its proposed rulemaking action:

A description of reasonable alternatives to the regulation and the agency's reasons for rejecting those alternatives. Reasonable alternatives to be considered include, but are not limited to, alternatives that are proposed as less burdensome and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific by the proposed regulation. In the case of a regulation that would mandate the use of specific technologies or equipment or prescribe specific actions or procedures, the imposition of performance standards shall be considered as an alternative.

Gov't Code § 11346.2(b)(4). The Initial Statement, as it pertains to Proposed Regulations, § 17415, contains no discussion of reasonable alternatives to the imposition of the pejorative classifications of “high-frequency filer” and “vexatious filer.”<sup>1</sup>

### ***“High Frequency” Filers***

The “high-frequency filer” provisions of Proposed Regulations, § 17415, suffer from multiple shortcomings. First, as noted above, the Initial Statement contains no discussion of alternatives to the discriminatory “high-frequency filer” designation that applies only to “any attorney or law firm that has filed 200 or more PAGA notices in the 12-month period preceding the filing of the current PAGA notice.” Taking, for the moment, the Agency’s statements within the actual proposed text of Section 17415 at face value that the sole purposes of Section 17415 are to address (1) PAGA notices that are based on “templates alleging frivolous, conclusory, or boilerplate violations of the Labor Code,” and (2) the Agency’s speculation that any failure to report the filing of a lawsuit constitutes a “strategy of using PAGA notices as a bargaining chip in seeking quick individual settlements,” it at least appears that arbitrarily picking 200 filings as a threshold to impose non-statutory additional filing requirements on aggrieved employees and their counsel was not drafted following a thorough consideration of alternative methods to improve (1) the Agency’s opinion of the quality of written PAGA notices and (2) the compliance rate for reporting PAGA lawsuit filings. The entirety of the Proposed Regulations, § 17415, is thus invalid for the failure to comply with Government Code § 11346.2.

Second, the “high-frequency filer” provision of Proposed Regulations, § 17415, are invalid because of the arbitrary exemption of both legal aid organizations and smaller law firms from the obligations imposed on a “high-frequency filer” cannot be justified on equal protection grounds, *even* under a rational basis review standard.<sup>2</sup> For example, a Court struck down a workplace safety regulation that exempted small employers from its ambit:

The breadth and magnitude of the exemption is staggering: It immunizes nearly four of five employers from regulation; 25 percent of all employees in California

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<sup>1</sup> This defect permeates the entire set of Proposed Regulations. There are no discussions of reasonable alternatives and why the Agency has rejected less burdensome alternatives. Thus, the Proposed Regulations cannot be implemented in light of this overarching failure to adhere to the requirements of the APA.

<sup>2</sup> And there is reason to believe that the standard of review applicable to section 17415 would be a heightened standard, since the provisions of section 17415 impair the core, fundamental right of free access to courts because clients cannot freely select the largest and most experienced law firms to handle their wage and hour issues without considering the risks arising from the required client certification and infringe upon freedom of association rights by placing burdens on relationships between clients and their chosen counsel.

are shorn of all protection against RMIs. The trial court ruled this provision was inconsistent with the Board's statutory mandate to minimize RMI's in the workplace. On this count we agree with the trial court.

*Pulaski v. California Occupational Safety & Health Standards Bd.*, 75 Cal. App. 4th 1315, 1338, (1999), *as modified on denial of reh'g* (Nov. 24, 1999). Here, section 17415 excludes any firm or attorney who filed less than 200 PAGA notices in the 12-month period preceding the most recent filing and excludes non-profit legal aid organizations, regardless of the number of PAGA notices filed:

a nonprofit legal aid organization that has obtained Section 501(c)(3) tax-exempt status (26 U.S.C. § 501(c)(3)) and is a qualified legal services project or qualified support center, as defined in section of the Business and Professions Code, shall not be subject to the provisions of this regulation regarding high-frequency filers.

(Proposed Regulations, § 17415(b)(1)(B).) These exclusions are improper (setting aside that the “high-frequency filer” provisions are not the least burdensome means by which the Agency can address the two stated purposes of Section 17415). Section 17415 must be consistent with express terms of Labor Code §§ 2699 and 2699.3 (the authority upon which Section 17415 expressly rests). Labor Code § 2699.3 states:

The aggrieved employee or representative shall give written notice by online filing with the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.

Lab. Code § 2699.3(a)(1)(A). This requirement applies to all aggrieved employees, without distinguishing between the nature of the law firm retained to represent them. Treating a law firm that files 199 PAGA notices in a 12-month period differently from a law firm that files 201 PAGA notices in a 12-month period is an arbitrary distinction that cannot withstand even minimal scrutiny.

Moreover, the distinction by filer frequency is irrational. Again, taking at face value the Agency’s claim that one of the two purposes of Section 17415 is to address PAGA notices that are based on “templates alleging frivolous, conclusory, or boilerplate violations of the Labor Code” because they impose a burden on the Agency, it is clear that Section 17415 is not well focused on achieving that goal. If it is accepted that a PAGA notice “alleging frivolous, conclusory, or boilerplate violations of the Labor Code” imposes some measure of burden on the Agency when reviewing the PAGA notice, then an inescapable corollary to that premise is that the quantum of burden imposed by such a PAGA notice filed by a firm that submits one such PAGA notice per year is essentially identical to that caused by such a notice filed by a firm that submits 250 PAGA notices per year. The magnitude of the burden imposed by a particular

PAGA notice is not in any way determined by how many *other* PAGA notices that firm filed in the prior 12 months. Thus, there is no reason why an arbitrarily selected filing frequency trigger should impose different filing obligations on different firms. It does not rationally address the stated issue. Instead, it penalizes larger employment law firms for the solitary fact that they are large.

Proposed Regulations, § 17415(c)(1)(B), imposes a requirement on claimants who have retained large law firms meeting the “high-frequency filer” threshold to personally certify that the violations alleged “accurately describe the violations I believe I personally suffered.” The Initial Statement justifies this requirement by mentioning instances where employees at cure conferences contradicted violations alleged on their behalf. (Initial Statement, at 20.) This requirement is improper because its application depends upon the size of firm selected by the aggrieved employee to represent them, and it imposes on aggrieved employees a vague obligation to certify the accuracy of violations when such a certification depends upon legal conclusions and specialized knowledge regarding wage and hour requirements.

First, for many PAGA claims, whether a violation occurred requires a legal evaluation coupled with specialized knowledge that most employees have no ability to perform. Most employees are unaware of legal rights provided under the Labor Code, having no awareness, for example, of the required timing of meal periods, their required duration, that they cannot be interrupted, that they must be free of all employer control, when a second meal period is required, how a meal period can be waived, or what must occur if a meal period is not provided in accordance with all legal requirements. When testifying at depositions, employees often respond to open-ended questions about issues with work conditions like meal period compliance by providing simplistic answers that sound like there are no problems. For example, a nervous employee can testify that “I got my lunches,” failing to explain that they had to have their phone on and respond to work-related calls during their meal period. The testimony, taken at face value, is portrayed by the employer’s counsel as a statement that meal periods were provided in a lawful manner. The employee’s lack of expertise in wage and hour law is the issue. The certification requirement treats employees like they are attorneys.

Second, Section 17415(c)(1)(B) undermines the policy purpose behind PAGA passage by placing heightened risk on employees (but, selectively, only on those employees who select larger firms with greater resources to represent them). An employer is not required to respond to a PAGA notice and can therefore avoid any certified statement. (Proposed Regulations, § 17421(a).) An employer’s cure proposal is a confidential settlement communication. (Proposed Regulations, § 17430(e).) An employer’s cure-completion notice requires a sworn statement from a company representative with full access to the employer’s policy documents, time records, payroll systems, personnel files, and legal counsel. (Proposed Regulations, § 17435(a).) The employee, by contrast, must personally certify the legal accuracy of complex claims based only on their memory of their work experience, without the legal expertise to evaluate those work experiences in the correct legal context.

Once an employee signs a certification attesting to violations they “personally suffered,” the certification becomes a target in discovery and depositions. A plaintiff who cannot explain the mechanics of a regular-rate violation, which virtually no lay employee can, will be characterized as unable to support the very claims they certified. The certification converts the employee’s understandable lack of legal expertise into an affirmative though unjustifiable vulnerability. The lack of legal expertise will be transformed into an attack on the plaintiff’s credibility. Thus, the Agency’s proposed certification requirement undermines enforcement by establishing a system where straw man arguments can be used to attack credibility. Notably, as discussed elsewhere herein, this undermining of aggrieved employees is not neutrally applied; only a handful of larger law firms will have their clients placed at heightened risk of having their lack of legal sophistication used later, in litigation, to undermine their credibility in a PAGA lawsuit. But, because larger firms handle more cases, a non-trivial percentage of aggrieved employees will be exposed to this credibility attack vector.

Finally, a separate Section, Proposed Regulations, § 17420(e), accomplishes the certification goal in an even-handed manner, applicable to all filers. Every PAGA notice will be required to include a section 128.7-style certification by the aggrieved employee or their attorney that the claims have legal and evidentiary support and are not presented for an improper purpose. An attorney is qualified to evaluate whether a regular-rate claim is plausibly supported or whether a wage-statement deficiency can appropriately be alleged as a section 226 violation (importantly, it is also recognized that it is appropriate to assert a claim exists despite current authority to the contrary when a non-frivolous argument exists that prior decisional law is incorrect and should be reconsidered; a layperson has absolutely no ability to evaluate claims asserted in that scenario). Section 17420(e) applies uniformly to all filers. If the Agency’s concern is that some attorneys file notices without consulting their clients, the appropriate remedy is to enforce the existing attorney certification more rigorously, not shift the burden of supporting legal contentions onto the client.

The “high-frequency filer” requirements should be withdrawn from any final regulations.

### ***Pre-Filing Screening Orders***

The Administrative Procedures Act, at Government Code § 11346.5(a)(2) states that the “notice of proposed adoption, amendment, or repeal of a regulation shall include,” among other things:

Reference to the authority under which the regulation is proposed and a reference to the particular code sections or other provisions of law that are being implemented, interpreted, or made specific.

Gov’t Code § 11346.5(a)(2). In the Notice, the Agency identifies only Sections 2699 and 2699.3 of the Labor Code. Since Labor Code § 2699.3 sets for the statutory basis for administrative

exhaustion, a review of the requirements of that section shows that the imposition of a “prefiling screening order” exceeds the requirements imposed under Section 2699.3, which, as noted above, states only that the “aggrieved employee or representative shall give written notice” to the Agency and employer. Lab. Code § 2699.3(a)(1)(A). No provision of PAGA empowers the Agency to change the statutory authorization which permits any aggrieved employee (on their own or through counsel) to “file” a written notice. The statute does not use the word “submit.” It, in fact, requires filing of a notice. Nor does PAGA authorize the Agency to decline to permit the filing of a written notice of alleged violations. This is improper under the APA:

Government Code section 11342.2 provides: “Whenever by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, *no regulation adopted is valid or effective unless consistent and not in conflict with the statute* and reasonably necessary to effectuate the purpose of the statute.” (Italics added.) “Administrative regulations that alter or amend the statute or enlarge or impair its scope are void and courts not only may, but it is their obligation to strike down such regulations.” (*Morris v. Williams* (1967) 67 Cal.2d 733, 748, 63 Cal.Rptr. 689, 433 P.2d 697.)

*Pulaski v. California Occupational Safety & Health Standards Bd.*, 75 Cal. App. 4th 1315, 1341 (1999), *as modified on denial of reh'g* (Nov. 24, 1999). Here, the Agency is attempting to alter the express terms of PAGA by proposing regulatory provisions that would grant the Agency the right to impose a “prefiling screening order” on a “vexatious” filer. PAGA authorizes the Agency to implement PAGA with *supporting* regulations, not re-write it.

In addition, PAGA specifies time limits for both Agency action and the filing of a PAGA claim in Court after Agency inaction. Proposed Regulations, § 17415, purports to alter those explicit timing provisions, creating uncertainty. For example, Proposed Regulations, § 17415(d)(3)(B), states that “where a person, attorney, or law firm is subject to a prefiling screening order as provided in this subdivision, tolling of the applicable limitations period under subdivision (e) of Labor Code section 2699.3 shall commence upon the submission of a PAGA notice to the Agency for review before its acceptance for filing,” but “applicable periods for the investigation of alleged violations or other processes set forth in subdivisions (a), (b), or (c) of Labor Code section 2699.3 shall not commence unless and until a conditionally filed PAGA notice has been screened and accepted for filing by the Agency.” This creates ambiguity as to the period covered by the tolling provision, aside from the question of whether the Agency has any authority to alter tolling provisions set forth in the statute.

In addition, Proposed Regulations, § 17415(d)(3)(B), purports to alter the plain language of Labor Code § 2699.3(a)(2)(A), which states: “The agency shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation within 60 calendar days of the postmark date of the notice *received* pursuant to

paragraph (1).” The 60-day period to invoke an investigation right commences upon “receipt,” not an extra-statutory “acceptance” date. “Administrative regulations that alter or amend the statute or enlarge or impair its scope are void and courts not only may, but it is their obligation to strike down such regulations.” *Morris v. Williams*, 67 Cal. 2d 733, 748 (1967).

The “prefiling screening order” provisions are contrary to the explicit provisions of PAGA authorizing the filing of a written notice of alleged violations and must be withdrawn.

### **“Vexatious” Filers**

The “vexatious filer” provisions of Proposed Regulations, § 17415, also suffer from multiple shortcomings. First, as noted above, the Initial Statement contains no discussion of alternatives to the punitive “vexatious filer” designation.

Second, the “vexatious filer” provisions violate basic principles of due process. “The liberty interest which the court recognized as a substantive right protected against arbitrary deprivation by the due process clause of the Fourteenth Amendment includes the right of the individual ‘to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling [and] *to pursue any livelihood or avocation....*’ ” *Conservatorship of Valerie N.*, 40 Cal. 3d 143, 162 (1985). The “vexatious filer” provisions would directly interfere with an attorney’s or a law firm’s pursuit of professional endeavors. Thus, the “vexatious filer” provisions implicate a liberty interest subject to due process protections. It is irrelevant that the impairment would be via Agency action through regulations and not a Court: “The requirements of due process extend to administrative adjudications.” *Today's Fresh Start, Inc. v. Los Angeles Cnty. Off. of Educ.*, 57 Cal. 4th 197, 214, 303 P.3d 1140, 1150 (2013). Several due process failings are identified below.

The proposed regulatory language is fatally vague, but it appears that the advocacy and adjudicatory functions are not distinctly separated:

Although procedural fairness does not prohibit the combination of the advocacy and adjudicatory functions within a single administrative agency, tasking the same individual with both roles violates the minimum constitutional standards of due process. The irreconcilable conflict between advocating for the agency on one hand, and being an impartial decisionmaker on the other, presents a “ ‘particular combination of circumstances creating an unacceptable risk of bias.’ ”

*California DUI Laws. Assn. v. Dep't of Motor Vehicles*, 77 Cal. App. 5th 517, 532 (2022). Nothing in the proposed language of Section 17415 specifies who at the Agency will make the initial determination that someone should be notified of an intention to designate them as a “vexatious filer,” and, who at the Agency, subsequent thereto, shall adjudicate the requested designation. Setting aside all other failings, this is improper and must be clarified or removed.

The proposed regulatory language is unconstitutionally vague in that it entirely lacks clear standards that will be used to subject an individual or law firm to a pejorative designation with serious punitive ramifications impacting the conduct of business and freedom of association rights between attorneys and clients. Statutes or ordinances that are not clear as to the regulated conduct are void for three reasons: (1) to avoid punishing people for behavior that they could not have known was illegal; (2) to avoid subjective enforcement of the laws based on arbitrary and discriminatory enforcement by government officers; and (3) to avoid any chilling effect on the exercise of First Amendment freedoms. *Grayned v. City of Rockford*, 408 U.S. 104, 108, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972). “As to the first two applications, the Fourteenth Amendment due process guarantee against vagueness requires that laws provide adequate warning to people of ordinary intelligence of the conduct that is prohibited, and standards to protect against arbitrary and discriminatory enforcement.” *Concerned Dog Owners of California v. City of Los Angeles*, 194 Cal. App. 4th 1219, 1231 (2011); *see also, Britt v. City of Pomona*, 223 Cal. App. 3d 265, 278 (1990) (“[D]ue process of law is violated by ‘a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application.’ [Citations.]”). Here the “vexatious filer” provisions of Section 17415 is void under all three applications.

There is no objective measure in Section 17415 as to what constitutes a “vexatious filer.” The definition in the proposed regulation states, in full:

The term “vexatious filer” means any person or attorney who has **repeatedly** filed PAGA notices that do not comply with legal requirements, including, **but not limited to**, on grounds the PAGA notices fail to allege **adequately** the facts and theories supporting the violations alleged or where the violations alleged are frivolous or appear intended to harass.

(Proposed Regulations, § 17415(b)(2), emphasis added.) However, no reader of this language could identify what frequency constitutes “repeatedly.” If a firm that files 300 PAGA notices a year has 15 deemed by the Agency to be “inadequate,” is that “repeatedly?” That is just a 5% rate of deemed inadequacy. Compare that to a firm that files 10 PAGA notices a year, but has 5 deemed “inadequate.” Is that “repeatedly?” It constitutes a 50% rate of deemed inadequacy, so is this conduct “worse” than the large firm with the 5% rate of “inadequate” designations? “Repeatedly” is, itself, a vague word. Dictionaries define “repeatedly” as meaning “again and again,” “often,” or “many times.”<sup>3</sup> Using imprecise terms to define imprecise terms underscores the absence of clarity in Section § 17415(b)(2), such that readers “of common intelligence must necessarily guess at its meaning and differ as to its application.”

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<sup>3</sup> *See, e.g.*, <https://www.merriam-webster.com/dictionary/repeatedly> (last viewed March 18, 2026); <https://www.dictionary.com/browse/repeatedly> (last viewed March 18, 2023).

Section § 17415(b)(2) is also unclear as to what conduct would constitute violations contributing to a finding of being a “vexatious filer.” As seen in the Section, quoted fully above, “repeatedly” filing PAGA notices that fail to allege *adequately* the facts and theories supporting the violations alleged can lead to a finding of being a “vexatious filer.” But that is not the only potential trigger of that punitive designation. The filing of PAGA notices that “do not comply with legal requirements” is, under the language of the Proposed Section, broader than the specific example of filing PAGA notices that fail to allege *adequately* the facts and theories supporting the violations. What is not at all clear from Section § 17415(b)(2) is what, precisely, is the full set of legal requirements that could precipitate the “vexatious filer” designation if not followed. Statutes and regulations must be devised so as to “avoid punishing people for behavior that they could not have known was illegal.” Section § 17415(b)(2) fails that test.

Similarly, Section § 17415(b)(2) is void for vagueness because a core portion of that Section, the statement that the “vexatious filer” designation can be imposed for failing to “adequately” allege the facts and theories supporting the violations is devoid of any objective measure of what constitutes an “adequate” allegation. Looking to PAGA itself, the statute only requires an aggrieved employee to include in a PAGA notice the “specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.” The regulation cannot impose a pleading standard not required by the statute. The question, then, is what standard governs? Proposed Section § 17415(b)(2) imposes a new but vague requirement – the requirement that the “fact and theories” must be stated “adequately.” While “adequately” is undefined, the statutory use of the phrase “facts and theories” appears comparable to the requirement that a complaint must include a “statement of the facts constituting the cause of action, in ordinary and concise language.” Code Civ. Proc. § 425.10. As interpreted under California law, this means that “the complaint need only allege facts sufficient to state a cause of action; each evidentiary fact that might eventually form part of the plaintiff’s proof need not be alleged.” *C.A. v. William S. Hart Union High School Dist.*, 53 Cal. 4th 861, 872 (2012). Does the Agency intend to impose what would be a heightened pleading standard for PAGA notices vis-à-vis standard complaints? Or is the finding of “adequately” the functional equivalent of a demurrer for uncertainty? If that is the intended standard to be applied here, it should almost never be imposed. Demurrers for uncertainty are almost never sustained when the facts alleged in the complaint are presumptively within the knowledge of the demurring party or ascertainable by invoking discovery procedures. *Chen v. Berenjian*, 33 Cal. App. 5th 811, 822 (2019); *A.J. Fistes Corp. v. GDL Best Contractors, Inc.*, 38 Cal. App. 5th 677, 695 (2019). I presume that the Agency intends to impose an undisclosed, heightened pleading standard, given that the Initial Statement complains that:

In the absence of administrative guidance, courts previously have described PAGA’s notice requirement as “minimal” (*Ibarra, supra*, 102 Cal.App.5th at p. 882) and subject to a low standard of “nonfrivolousness” (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 545, citing Code Civ. Proc., § 128.7.)

(Initial Statement, at 3.) Were it otherwise, the Agency would not have prefaced that comment with “In the absence of administrative guidance.” This presupposes that the Agency can override the PAGA notice pleading standard described by Courts construing unchanged language in PAGA. It cannot. PAGA states what is required, and the Agency has no power to alter those requirements in the guise of providing “guidance.” All that aside, the core problem remains that, under the Proposed Section, an unspecified pleading requirement will be imposed that is not consistent with statutory language of PAGA, not consistent with pleading standards generally, and not disclosed such that readers “of common intelligence must necessarily guess at its meaning and differ as to its application.” As stated above, statutes and regulations must be devised so as to “avoid punishing people for behavior that they could not have known was illegal.” Section § 17415(b)(2) again fails that test.

Section § 17415(d) also fails to provide adequate procedural due process to anyone charged with an impending “vexatious filer” designation. No formal hearing is permitted. All that the Agency provides is a short period of 30 days in which the accused can submit a response that must be supported with a declaration. No hearing is provided. No opportunity to confront the Agency is available. This is the embodiment of the perhaps apocryphal “star chamber” in which the Agency renders a verdict out of sight, applying standards that are undisclosed.

In what is perhaps the most egregious of the many due process and equal protection violations extant in Section 17415 generally, Section 17415(d)(4), while narrow in scope, is profoundly improper. Section 17415(d)(4) states:

(4) Any person or attorney designated as a vexatious filer may petition the Agency to remove such designation. A petition to remove a vexatious filer designation must be filed in accordance with regulation 17410, subdivision (a)(6). No such petition may be filed within six months from the date of the Agency’s determination designating the petitioning person or attorney as a vexatious filer. ***The Agency may prescribe a period longer than six months before a removal petition may be filed based on the nature of the conduct supporting the individual’s vexatious filer designation as set forth in the Agency notice under paragraph (2) of this subdivision.***

(Proposed Regulations, § 17415(d)(4), emphasis added.) That the Agency finds it appropriate to reserve for itself the ability to impose a limitless prescription period before a removal petition can be filed suggests that concerns about the potential for abuse of void statutes and regulations by government actors are well justified. What conduct justifies a longer prescription period? What are the potential lengths of such periods? How is that determined, objectively? This provision is unconstitutionally void for vagueness. That said, the entire framework for “vexatious filers” is so rife with subjective, undisclosed standards and undefined terms that it must be excised in its entirety from any regulation that is ultimately promulgated.

**COMMENTS ON § 17420. WRITTEN NOTICE BY AGGRIEVED EMPLOYEE OR REPRESENTATIVE (PAGA NOTICES)**

Proposed Regulations, § 17420, as presently drafted, is void for vagueness because the proposed Section imposes a heightened but imprecise pleading standard that does not align with the simple and clear language of Labor Code § 2699.3. Proposed Regulations, § 17420(d)(2)(B) states:

A short and plain statement of the facts and theories supporting each violation alleged and personally suffered by the claimant. ***Conclusory statements, generalized or vague allegations of violations without supporting facts particular to the claimant’s circumstances or working conditions, or statements summarizing or restating the law or legal requirements are not sufficient.*** If the claimant is represented by a nonprofit legal aid organization, a qualified legal services project, or a qualified support center that meets the requirements of Labor Code section 2699, subdivision (c)(2), the notice shall specify which violations the claimant personally suffered, as well as the basis upon which claimant alleges any other violations the claimant did not experience but asserts on behalf of other employees

(Proposed Regulations, § 17420(d)(2)(B), emphasis added.) But, looking to PAGA itself, the statute only requires an aggrieved employee to include in a PAGA notice the “specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.” The regulation cannot impose a pleading standard not required by the statute. The question, then, is what standard governs? Proposed Section § 17420(d)(2)(B) imposes a new but vague requirement – the statement that the “fact and theories” must be other than “[c]onclusory statements, generalized or vague allegations of violations without supporting facts particular to the claimant’s circumstances or working conditions, or statements summarizing or restating the law or legal requirements.” As noted above, the statutory use of the phrase “facts and theories” appears comparable to the requirement that a complaint must include a “statement of the facts constituting the cause of action, in ordinary and concise language.” Code Civ. Proc. § 425.10. As interpreted under California law, this means that “the complaint need only allege facts sufficient to state a cause of action; each evidentiary fact that might eventually form part of the plaintiff’s proof need not be alleged.” *C.A. v. William S. Hart Union High School Dist.*, 53 Cal. 4th at 872. Does the Agency intend to impose what would be a heightened pleading standard for PAGA notices vis-à-vis standard complaints? Or is the Agency claiming the right to exercise the functional equivalent of a demurrer for uncertainty? If that is the intended standard to be applied here, it should almost never be imposed. Demurrers for uncertainty are almost never sustained when the facts alleged in the complaint are presumptively within the knowledge of the demurring party or ascertainable by invoking discovery procedures. *Chen v. Berenjian*, 33 Cal. App. 5th at 822; *A.J. Fistes Corp. v. GDL Best Contractors, Inc.*, 38 Cal. App. 5th at 695. As stated above, it appears that the Agency intends to impose an undisclosed, heightened pleading standard, given that the Initial Statement complains that:

In the absence of administrative guidance, courts previously have described PAGA’s notice requirement as “minimal” (*Ibarra, supra*, 102 Cal.App.5th at p. 882) and subject to a low standard of “nonfrivolousness” (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 545, citing Code Civ. Proc., § 128.7.)

(Initial Statement, at 3.) Were it otherwise, the Agency would not have prefaced that comment with “In the absence of administrative guidance.” This presupposes that the Agency can override the PAGA notice pleading standard described by Courts construing unchanged language in PAGA. It cannot. PAGA states what is required, and the Agency has no power to alter those requirements in the guise of providing “guidance.” All that aside, the core problem remains that, under the Proposed Section, an unspecified pleading requirement will be imposed that is not consistent with statutory language of PAGA, not consistent with pleading standards generally, and not disclosed such that readers “of common intelligence must necessarily guess at its meaning and differ as to its application.”

Under the conventional pleading standard applicable to civil matters, the “facts” to be pleaded are those upon which liability depends, to wit, “the facts constituting the cause of action.” These are commonly referred to as “ultimate facts.” *Doe v. City of Los Angeles*, 42 Cal. 4th 531, 550 (2007). “Ultimate facts” are those that raise the issues on which the right to recover depends, meaning the essential elements of the cause of action. Only the facts that are material to the cause of action, the facts that make a difference to the outcome of the case, must be alleged *Estes v. Eaton Corp.*, 51 Cal. App. 5th 636, 643 n. 2 (2020); *Foster v. Sexton*, 61 Cal. App. 5th 998, 1027 (2021) (discussing distinction between “ultimate facts,” “evidentiary facts,” and “legal conclusions”); *Thomas v. Regents of Univ. of Calif.*, 97 Cal. App. 5th 587, 610-611 (2023). Thus, under this settled pleading standard, a cause of action asserting the failure to provide timely meal periods as required under the Labor Code is sufficiently stated by nothing more than allegations that (1) plaintiff was employed by defendant, (2) plaintiff was non-exempt, (3) plaintiff worked in excess of five hours during shifts, and (4) defendant failed on one or more occasions to provide a meal period to plaintiff before the end of the fifth hour of work. Additional allegations beyond those essential, ultimate facts, would either constitute “evidentiary facts” or “legal conclusions.” For example, alleging that on June 5th, a supervisor told plaintiff to finish a project before taking lunch is an “evidentiary fact;” it is not required to state the cause of action. It is of no moment that a defendant may complain of the general nature of these allegations. It is irrelevant to argue that a different pleading standard in civil actions might be desirable for various reasons. The undisputed fact is that PAGA requires a statement of “facts and theories,” which is most consistent with the basic civil pleading standard that Court have *already* evaluated, as the Initial Statement concedes. (Initial Statement, at 3.) The Agency is not empowered to change the statutory pleading standard to one that it prefers. “Administrative regulations that alter or amend the statute or enlarge or impair its scope are void and courts not only may, but it is their obligation to strike down such regulations.” *Morris v. Williams*, 67 Cal. 2d at 748.

## COMMENTS ON § 17420.5. AMENDMENTS TO PAGA NOTICES

Proposed Regulations, § 17420.5, as presently drafted, is void as an unauthorized impairment of PAGA. Proposed Regulations, § 17420.5(d) states:

Notwithstanding subdivision (a), a claimant may not amend a PAGA notice to add violations not alleged in a prior PAGA notice as part of, or at any time after the claimant has reached, a proposed settlement agreement with the employer in a pending civil action.

(Proposed Regulations, § 17420.5(d).) However, Labor Code § 2699 states, in its entirety as to settlements:

The superior court shall review and approve any settlement of any civil action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court.

Lab. Code § 2699(s)(2). All that is required to settle a PAGA claim under the PAGA statute is (1) approval by a Court, and (2) submission of the proposed settlement to the Agency. As an additional condition precedent, administrative exhaustion must occur, meaning that a PAGA notice must have been submitted to the Agency identifying the violations revolved by way of the settlement. Nothing in PAGA limits the ability to reach a proposed settlement that requires amendment of a PAGA notice to include additional violations. The parties will still be required to wait for the Agency to evaluate whether it wants to investigate the additional issues raised in the amended PAGA notice. A Court will still be required to approve the settlement. But what the Agency cannot do is, by fiat, bar a class of proposed settlements from consideration when PAGA does not contain a single provision suggesting that such an options exists at all or is vested in the Agency.

Beyond this, Section 17420.5(d) appears to have been devised without an awareness of the varied circumstances that can arise in litigation. As but one example, it precludes discovery of new violations while preparing for mediated settlement discussions. Often, when parties agree to mediation, an agreement is reached to share data necessary to evaluate the allegations in the action. Routinely, this data includes pay data, timeclock data, and policy documents. In many instances, a review of these materials uncovers additional Labor Code compliance issues. If the parties reach a tentative settlement at mediation after disclosure of additionally discovered compliance issues, the parties understand that to lawfully settle those newly disclosed potential violations they must be presented to the Agency first, and only after the exhaustion period has expired can the plaintiff amend the operative complaint and submit a motion for approval of the proposed settlement. Section 17420.5(d) precludes this frequent circumstance. Instead, what Section 17420.5(d) would require is a cancellation of a scheduled mediation, at great expense if

the new violations are found after the mediation cancellation period has lapsed, and a substantial delay to reschedule a mediation after completing the administrative exhaustion process for an amended PAGA notice. Section 17420.5(d) does not discuss this substantial cost or consider alternative solutions. It is therefore invalid pursuant Government Code § 11346.2. The Agency appears to mistakenly believe that all amendments to PAGA notices that occur after a tentative settlement was reached are intended for improper purpose. Such speculation that also fails to acknowledge and consider other reasonably probable causes is an insufficient basis upon which to justify that absolute, extra-statutory bar on such settlements.

### **COMMENTS ON § 17450. WRITTEN NOTICE BY AGGRIEVED EMPLOYEE OR REPRESENTATIVE (PAGA NOTICES)**

Proposed Regulations, § 17450(c)(2)(B), suffers from the same defect discussed above, as to Section 17420. However, Section 17450(c)(2)(B) compounds those infirmities by requiring the pleading of additional evidentiary material far outside the scope of the statutory language. Labor Code § 2699.3(b) states:

The aggrieved employee or representative shall give notice by online filing with the Division of Occupational Safety and Health and by certified mail to the employer, with a copy to the Labor and Workforce Development Agency, of the specific provisions of Division 5 (commencing with Section 6300) alleged to have been violated, including the facts and theories to support the alleged violation.

However, Section 17450(c)(2)(B), in addition to the vague but heightened pleading requirements in Section 17420, requires as follows:

A short and plain statement of the facts and theories supporting each violation alleged and personally suffered by the claimant, including the date or dates of the violations and whether the violations alleged are continuing. If the claimant no longer is employed with the employer at the time of filing the PAGA notice, the claimant shall state the basis for any contention a violation has occurred or is continuing during the time after claimant no longer worked with the employer. If the claimant contends a substantially similar violation as the violation personally suffered by the claimant is occurring at another worksite of the employer, the claimant shall state the basis for such contention, including the address or addresses where a violation occurred or is occurring and the date or dates of the violation, including whether the violation is continuing.

(Proposed Regulations, § Section 17450(c)(2)(B).) The imposition of evidentiary pleading is a significant departure from settled pleading standards that were invoked by the Legislature when it required only a statement of “facts and theories” sufficient to state alleged violations. As explained above, that standard is satisfied through the pleading of “ultimate facts.” The precise

dates when specific events occurred is not required to state complete causes of action. The Agency exceeds its statutory authority by requiring otherwise.

**COMMENTS ON § 17462. PROPOSED SETTLEMENTS BEFORE COMMENCEMENT OF A CIVIL ACTION; RELEASE OF CLAIMS AGAINST THE EMPLOYER.**

Proposed Regulations, § 17462, as presently drafted, is void as an unauthorized impairment of PAGA. Proposed Regulations, § 17462 states:

No settlement agreement between an employer and an employee that is reached after the employee has filed a PAGA notice with the Agency, but before the employee commences a civil action asserting claims under PAGA, may purport to release the employer from any PAGA claims belonging to the employee, the state, or any other person, or any claims belonging to the state or any other person.

(Proposed Regulations, § 17462.) However, Labor Code § 2699 states, in its entirety as to settlements:

The superior court shall review and approve any settlement of any civil action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court.

Lab. Code § 2699(s)(2). Thus, Section 17462 suffers the same infirmity discussed above as to Section 17420.5. Nothing in PAGA limits the ability to reach a proposed settlement before a complaint is filed. A Court will still be required to approve the settlement, meaning that a complaint will need to be filed. But what the Agency cannot do is, by fiat, bar a class of proposed settlements from consideration when PAGA does not contain a single provision suggesting that such an options exists at all or is vested in the Agency.

**CONCLUDING REMARKS**

The California Supreme Court has, on several occasions, described the primary reason for the enactment of PAGA. In one detailed explanation, the Court said:

The PAGA addressed two problems. First, the bill sponsors observed that “many Labor Code provisions are unenforced because they are punishable only as criminal misdemeanors, with no civil penalty or other sanction attached. Since district attorneys tend to direct their resources to violent crimes and other public priorities, Labor Code violations rarely result in criminal investigations and prosecutions.” (Sen. Judiciary Com., Analysis of Sen. Bill No. 796 (Reg.Sess. 2003–2004) as amended Apr. 22, 2003, p. 5.) The solution was to enact civil penalties for Labor Code violations “significant enough to deter violations.”

(*Ibid.*) For Labor Code violations for which no penalty is provided, the PAGA provides that the penalties are generally \$100 for each aggrieved employee per pay period for the initial violation and \$200 per pay period for each subsequent violation. (§ 2699, subd. (f)(2).)

The second problem was that even when statutes specified civil penalties, there was a shortage of government resources to pursue enforcement. The legislative history discussed this problem at length. Evidence gathered by the Assembly Committee on Labor and Employment indicated that the Department of Industrial Relations (DIR) “was failing to effectively enforce labor law violations. Estimates of the size of California's ‘underground economy’—businesses operating outside the state's tax and licensing requirements—ranged from 60 to 140 billion dollars a year, representing a tax loss to the state of three to six billion dollars annually. Further, a U.S. Department of Labor study of the garment industry in Los Angeles, which employs over 100,000 workers, estimated the existence of over 33,000 serious and ongoing wage violations by the city's garment industry employers, but that DIR was issuing fewer than 100 wage citations per year for all industries throughout the state. [¶] Moreover, evidence demonstrates that the resources dedicated to labor law enforcement have not kept pace with the growth of the economy in California.” (Assembly Com. on Labor and Employment, Analysis of Sen. Bill No. 796 (Reg.Sess. 2003–2004) as amended July 2, 2003, p. 4.)

*Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348, 379 (2014), *overruled in part by Quach v. California Com. Club, Inc.*, 16 Cal. 5th 562 (2024), and *abrogated in part by Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639, 142 S. Ct. 1906, 213 L. Ed. 2d 179 (2022). The Proposed Regulations, and the Initial Statement supporting them, have lost sight of that core purpose. What is clear from the tenor of the remarks in the Initial Statement is that aggrieved employees can no longer be confident that the Agency has their best interests in mind. If the “DIR was issuing fewer than 100 wage citations per year for all industries throughout the state,” there can be no realistic expectation that the Agency has the operational capacity to neutrally evaluate the allegations of many thousands of PAGA notices (filed because the Legislature determined that doing so furthered the policies underlying the Labor Code) and then apply a vague, heightened, but undisclosed pleading standard to those many thousands of PAGA notices in an even-handed and objective manner. Instead, the Proposed Regulations and Initial Statement telegraph an intention by the Agency to single out larger firms for disparate treatment, all while imposing requirements in excess of PAGA and disregarding the APA by failing to comply with the requirement of Government Code § 11346.2 to evaluate, identify, and explain why less burdensome solutions were not proposed by the Agency.

Public trust in government is critical, and it is declining at a distressingly precipitous rate. Actions bearing even the superficial hallmarks of targeted retaliation against a few simply

Danielle West, PAGA Rulemaking and Policy Analyst  
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accelerate that decline, creating the impression that the Agency is the adversary of the very individuals it is supposed to support. The Proposed Regulations are void in their entirety for failure to comply with the requirement of Government Code § 11346.2. Beyond that, the specific Proposed Regulations discussed herein must either be withdrawn or substantially reformulated to address the many fatal defects in their proposed terms.

Sincerely,

MOON LAW GROUP, PC



H. Scott Leviant

HSL:sp