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Via Email

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Re: **Proposed Regulations Implementing the Private Attorneys General Act (PAGA) — Notice of Proposed Rulemaking (Z2026-0121-03)**

Dear Ms. West:

We respectfully submit these comments on behalf of The John Stewart Company ("JSCo") in response to the Labor and Workforce Development Agency's ("LWDA" or "Agency") proposed regulations implementing the Private Attorneys General Act of 2004, as amended by the 2024 reforms. JSCo's Comment is joined by similar affordable housing developers, providers, and managers at Mercy Housing Management Group, Inc. ("Mercy"), Resources for Community Development ("RCD"), Affordable Housing Association of Northern California and Hawaii ("AHMA-NCH"), Burbank Housing ("Burbank"), EAH Housing ("EAH"), Eden Housing ("Eden"), The Michaels Organization ("Michaels"), Satellite Affordable Housing Associates ("Satellite"), and Tenderloin Neighborhood Association ("TNA") (JSCo and other companies are collectively referred to as "Interested Parties").

Interested Parties JSCo, Mercy, RCD, AHMA-NCH, Burbank, EAH, Eden, Michaels, Satellite, and TNA are leaders in the management, development, and consultation for affordable and market rate housing, special needs housing, senior housing, and common interest developments. Together, Interested Parties manage, develop, and represent over 125,000 affordable housing units for some of the most vulnerable residents of our State.

Interested Parties are well-familiar with PAGA and how, as the Assembly Bill Analysis observed, PAGA has been "manipulated" by "trial attorneys as a money-making scheme." In just the last fifteen months, JSCo alone has received seven separate, and often overlapping and duplicative, notices of alleged PAGA violations. Though JSCo maintains robust, compliant wage-and-hour policies and practices and frequently self-audits to ensure it remains aligned with the Labor Code,

the "costs of doing business" in California under the current statutory framework includes responding to PAGA claims, no matter their merit or, more frustratingly, place in line relative to other identical lawsuits.

These costs are substantial, even for compliant businesses, because there is no meaningful cost-effective off-ramp. Plaintiffs leverage this dynamic by stacking duplicative claims on top of prior ones on the premise that the least costly outcome for employers is often to pay those subsequent plaintiffs to "go away." For Interested Parties, this reality carries particular negative effects, because each PAGA claim extracts money that would otherwise be allocated to developing and supporting low-income housing in California.

Interested Parties recognize that PAGA serves a vital public purpose: enabling workers to recover civil penalties for Labor Code violations on behalf of the State and supplementing the Agency's own enforcement capacity. However, as the California Supreme Court has recognized, and as the Agency reaffirms in its Initial Statement of Reasons, PAGA's "sole purpose" is to vindicate the Agency's interest in enforcing the Labor Code; PAGA is not designed "to promote private enforcement without regard to the Agency."

We support the Agency's stated objectives to: (1) bring greater transparency and efficiency to PAGA's administrative processes; (2) strengthen Agency oversight; and (3) give both employees and employers clearer guidance on their rights and obligations. The comments below are offered in that same spirit. We believe several provisions of the proposed regulations, with targeted adjustments, would better serve PAGA's goals and the workers it is designed to protect, while also improving the effectiveness and fairness of the administrative process for all participants.

I. Notice Requirements: Specificity Enables Enforcement

The proposed standardized notice form is a meaningful step forward, but requiring more specific factual allegations would make it far more effective.

The Agency correctly identifies widespread boilerplate and template notice practices as a core problem. This makes it difficult for the Agency to assess the seriousness and scope of a claim, and equally difficult for employers to understand what they are being asked to correct.

We recommend that, in addition to the proposed notice requirements in Section 17420, the standardized notice form also require filers to include:

- The approximate dates on which alleged violations occurred;
- A description of the specific workplace conditions or practices at issue; and
- A sworn good-faith basis to believe the alleged violations are systemic rather than isolated incidents.

This level of specificity is especially critical now that the effectiveness of the early resolution and cure process depends on employers receiving adequate notice of what, specifically, allegedly must

be fixed. A notice that does no more than recite the statute cannot meaningfully trigger a cure.

We further recommend that notices found to be insufficient not be permitted to "relate back" to the original filing date. The Agency's own data shows that when it directed amended notices in 178 matters, approximately 25% of those claims were abandoned, which indicates that many insufficient notices were not filed in good faith to begin with. Allowing relation back rewards that practice and undermines the Agency's ability to manage its caseload efficiently.

Finally, we recommend that employers be given a defined mechanism during the 65-day notice period to formally challenge an insufficient notice before the Agency, with a clear timeline for resolution. This would reduce downstream litigation over notice defects and allow the Agency to exercise its supervisory role early and efficiently.

II. High-Frequency and Vexatious Filers: Thresholds and Consequences That Match the Problem

The proposed safeguards for high-frequency and vexatious filers are a welcome development, but the thresholds and enforcement mechanisms need strengthening to be meaningful.

The proposed regulations define a "high-frequency filer" as an attorney or law firm that has filed 200 or more PAGA notices in the preceding 12 months. We respectfully submit that this threshold is too high to serve its intended purpose. Two hundred filings in 12 months means an average of nearly 17 filings per month — a volume that is plainly inconsistent with the kind of individualized, fact-specific notice practice these regulations are trying to encourage. We recommend reducing the threshold to 50 filings in a 12-month period, which would still capture only the most active filers while meaningfully incentivizing quality over volume.

The vexatious filer provisions, while well-intentioned, will have limited practical effect without more meaningful consequences.

The proposed vexatious filer provisions establish a process for identifying filers who repeatedly submit noncompliant, frivolous, or harassing notices, and would require Agency pre-screening before such filers' notices are accepted. We support this framework.

However, as currently designed, the primary consequence of being designated a vexatious filer is a heightened certification and signature requirement. That requirement is easily absorbed into an existing template practice – i.e., the same practice these regulations are trying to stop. A firm already filing 200-plus notices per year can add a signature block to a template just as easily as it added everything else. Without more meaningful deterrence, the designation functions more as a procedural inconvenience than a real check on abusive behavior.
We recommend two targeted improvements:

- **Alternative judicial pathway.** Allow parties to seek a vexatious filer determination through the courts as an alternative to the Agency process. This would reduce the administrative burden on the Agency and provide an additional check on abusive filing practices without monopolizing Agency resources.
- **Monetary penalties.** Implement meaningful monetary penalties against law firms found to have filed notices in bad faith or in a manner that meets the vexatious filer criteria. Penalties tied to the number of noncompliant filings — assessed against the firm, not the client — would create a real financial disincentive and align consequences with the Agency's stated goal of ensuring that PAGA functions as a genuine enforcement tool rather than a revenue mechanism for the plaintiffs' bar. The Agency already has authority to assess penalties in other enforcement contexts; applying that same logic here is a natural extension of the regulatory framework.

III. The Cure Process: Protecting Its Integrity and Expanding Its Reach

The cure process works best when it is genuinely available, genuinely confidential, and genuinely efficient.

Expanding Access to the Cure Mechanism

The statute currently limits the prelitigation cure process to employers with fewer than 100 employees. This threshold, however, denies the cure mechanism (and the timely, make-whole relief it offers workers) to the very employers who may have the largest number of aggrieved employees. As is, very few employers can and do take advantage of the cure opportunity. Since the 2024 reforms, only 148 employers sought out this opportunity, which is only a handful per month.

We recommend that the cure mechanism be made available to all California employers. At a minimum, the threshold should be substantially raised. We suggest a cap of 2,000 current California employees at the time the PAGA notice is filed to align the mechanism's reach with the 2024 reforms' goals of delivering more timely remedies through early resolution.

Protecting the Confidentiality of Cure Submissions

The Agency has designed the cure process to be confidential to encourage candid, good-faith participation. Requiring claimants to approve an employer's cure plan, however, undermines that confidentiality and creates a strong disincentive for employers to use the process at all. A claimant and counsel facing a potential fee award has little incentive to agree that a cure is sufficient and, moreover, may use detailed cure submissions to build a litigation case, thus eroding the candor the process depends on.

Consistent with well-established precedent that PAGA claimants have no right to opt out of or object to PAGA settlements and judgments, we recommend that the Agency's determination of

the sufficiency of a cure plan be binding on the claimant. This would preserve the Agency's central role as the real party in interest, reduce inefficiencies from multiple layers of appeal, and encourage fuller participation in the cure process.

Wage Statement Cure: Protecting Employee Privacy

The proposal requiring employers to produce all wage statements to both the Agency and the claimant as part of a wage statement cure would expose sensitive personal financial information about non-party employees to private third parties, and would subject employers to a discovery burden that does not exist in litigation and discourage use of the very mechanism the regulations are designed to promote.

We recommend that a representative sample of no more than 50 wage statements be submitted to the Agency only, subject to appropriate safeguards for protection of privacy rights. This approach gives the Agency the information it needs to verify that a cure has occurred, without compromising the privacy of employees who are not parties to the proceeding.

Voluntary Pre-Notice Compliance Determination

A formal pre-notice compliance determination process would incentivize the very goals that animate the cure mechanism, while giving employers meaningful clarity on how Labor Code sections 2699(g) and (h) apply to their compliance efforts.

We recommend the Agency consider establishing a voluntary pre-notice compliance determination process, modeled on the cure framework, through which employers who have proactively taken steps to comply with the Labor Code may apply to the Agency for a determination that any potential violations were addressed prior to receiving a PAGA notice. Just as the cure process encourages employers to remediate violations promptly upon receiving notice, a pre-notice compliance determination would incentivize employers to invest in compliance before any notice is filed. Employers who know they can obtain a formal Agency determination recognizing their compliance efforts would have every incentive to maximize adherence to the Labor Code and employees, in turn, would experience far fewer wage and hour violations as a result.

IV. Settlement: Trusting the Court Process

PAGA settlements already require court approval, so additional procedural layers risk undermining settlement as an efficient path to making workers whole.

When a PAGA lawsuit is filed, the Agency is a real party in interest, and proposed settlements are already subject to inherent safeguards and checks. Ever since the first iteration of PAGA, settlements must already be submitted to the Agency and approved by the court. The proposal allowing any person receiving notice of a pending settlement to submit comments to the Agency

risks being used by competing plaintiffs' counsel — who stand to lose their fees if a settlement resolves the case — to delay or derail settlements that genuinely benefit the affected workers.

The existing system of court approval, combined with Agency review, already provides the checks and balances needed to protect workers' interests. We recommend that this provision be reconsidered because it introduces additional costs and delays without a commensurate improvement to the existing processes.

Furthermore, if the Agency's concern is protecting workers who have pending PAGA claims against the same employer, a more targeted solution would be to require claimants' counsel to certify, prior to filing, that they conducted a diligent search and confirmed their notice is not duplicative of a pending claim. Doing so would obviate the need for this proposal – such search and certification would eliminate the otherwise affected claims – while also alleviating the congestion to the Agency and courts' dockets, and employer burden, that these overlapping actions often create with no additional benefit to workers.

V. Conclusion

We appreciate the Agency's thoughtful approach to these regulations and its commitment to ensuring that PAGA functions as it was intended. We look forward to collaborating and appearing at the upcoming public hearing.

Respectfully submitted,

Penny Chen Fox