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March 23, 2026

VIA ELECTRONIC SUBMISSION

Danielle West, PAGA Rulemaking and Policy Analyst
California Labor and Workforce Development Agency
1416 Ninth Street (MIC-55)
Sacramento, CA 95814
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RE: **NOTICE OF PROPOSED RULEMAKING - [PROPOSED] LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

Dear Ms. West:

My name is Seung L. Yang, and I am the founder and managing attorney at the Sentinel Firm, APC. The Sentinel Firm is a newer firm based out of the Los Angeles area that is focused on protecting employee rights, including the interests of the State of California and its citizens as it relates to enforcement of the wage and hour laws of this State. When I set out to form the Sentinel Firm, it was my goal to provide the highest quality legal services possible to working class communities in California. The Sentinel Firm represents both individual employees in claims (including discrimination, harassment and wrongful termination) as well as collective claims asserting wage and hour violations on both a class-wide basis and claims based on the Private Attorney Generals Act of 2004.

This letter is written in response to the February 6, 2026 Notice of Proposed Rulemaking which was issued by the California Labor and Workforce Development Agency and which relates to several proposed rules changes relating to the Private Attorney Generals Act of 2004.

A. The Proposed Revision Could Frustrate the Purpose of the Private Attorney Generals Act and Lead to Less Robust Enforcement.

Since its inception, the Private Attorney Generals Act has been an essential tool in helping to correct the wage abuse that commonly occurs to workers around the State. PAGA's protections are more vital than ever in today's era considering the continued hostility towards class actions in the form of forced arbitration agreements. Even data from almost a decade ago

showed that almost 67.4% of California employers are using arbitration agreements which are forced upon employees as a condition of their employment in order to divert any employment claims (including wage and hour matters) from the Court system to private arbitration[1]. Effectively all these arbitration agreements contain waivers of all collective or class action and require these arbitration proceedings to occur solely on an individual basis. This has a profoundly deleterious effect on the workers around the State, because most wage claims are relatively small. Because each individual claim is comparatively small (as compared to, for example, a wrongful termination claim), it is not often feasible for workers, even when subject to rampant and deliberate schemes of wage abuse, to find an attorney with the time and inclination to take on many of these small, individual cases. This would ordinarily be where a collective action such a class action would be helpful, because this consolidates many meritorious claims into a single proceeding, which furthers public policy and is beneficial for workers, the State, and the Court system. Thus, arbitration agreement-based class waivers have the practical effect of allowing many employers to contractually insulate themselves from liability for even blatant wage and hour violations, thus dramatically lessening the impact of the Labor Code's protections.

This is why PAGA is vital to Californians: because representative PAGA claims are not subject to mandatory arbitration, private enforcement of the Labor Code's civil penalties provisions through employee actions serves to further the State's purposes and policies behind the Labor Code itself by providing an enforcement mechanism which cannot be adequately served by the Agency alone. Given this background, I am of the belief that it is vital that PAGA claims should not be restricted other than as explicitly provided by the Legislature and the Labor Code. I believe that many of these proposed provisions will both frustrate the purpose of PAGA itself and simply reduce access to justice for the citizens of this State.

B. Frequent-Filer Designations and Vexatious Filer Designations May Reduce Access to Experienced Counsel Without the Benefit of Due-Process.

The "high-frequency filer" and "vexatious litigant" provisions of Subdivision (c) of proposed section 17415 seem designed to impose limitations on the practice of law as to attorneys and larger law firms which file numerous PAGA actions. However, I am of the belief that these designations are not only arbitrary, but that they would have little practical effect other than reducing access to the Courts as provided for by PAGA's statutory framework with little benefit to either the Agency or the State.

First, these provisions operate to limit or restrict employees from retaining the counsel of their choice when it comes to pursuing meritorious claims because these changes will have the effect of making it more difficult for experienced counsel to be able to file claims on their behalf.

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[1] See https://www.epi.org/publication/the-growing-use-of-mandatory-arbitration-access-to-the-courts-is-now-barred-for-more-than-60-million-american-workers/

This could have a serious negative impact on workers because the focus on volume rather than on the filing of non-meritorious PAGA Notices means that the most experienced and knowledgeable attorneys will be flagged by the Agency as problematic or even as "vexatious." Practice in the narrow fields of wage and hour litigation requires skill and knowledge concerning rapidly evolving substantive law, as well as the complex procedural laws in navigating PAGA litigation. The experience of counsel is integral in evaluating strengths and weaknesses of cases and in electing how to proceed in litigating a complex PAGA claim.

Next, the high-frequency filing limit appears to be largely arbitrary and bears no rational relationship to the stated issue relating to factually-deficient PAGA notices. The number of Notices that are filed by a single firm does not necessarily correlate with Notices either being deficient or lacking in merit. The high-frequency filer designation would simply serve to flag larger, more experienced law firms as potentially problematic without any determination being made as to whether such attention is warranted. To the extent that abuses of the PAGA process exist, there is no rational reason why a larger law firm would be more likely to file these abusive claims than a smaller firm. Moreover, the exclusion of non-profit agencies from these provisions also does not seem to have any particular basis because there is no rational connection between a profit-based motive and a deficient notice.

The Sentinel Firm employs almost twenty attorneys who specialize in the bringing of such claims where they are appropriate. It is our goal that we not only file claims that are warranted based on the facts and the law, but that we only file claims that we have sufficient personnel to fully and fairly litigate. By focusing on the number of PAGA Notices which are filed by a firm, the proposed rules disregard the fact that each individual attorney employed by the firm may be working on a small number of claims. The high-frequency filer designation could mean that these individual attorneys are effectively punished by association through an arbitrary Agency designation which likely has nothing to do with that individual attorney's work product or the merits of the claims.

I also believe that the "vexatious litigant" designation is particularly pernicious. While the proposed vexatious litigant rules seem to be patterned after the "vexatious litigant" provisions embodied in Cal. Code of Civ. Proc. section 391, the proposed rules contain none of the same protections against the punitive designation as that section of the Code of Civil Procedure. For example, section 391 applies solely to litigants, and not to the attorneys who file claims on their behalf. In contrast, the proposed rules seek to impose a punitive designation on attorneys, as opposed to litigants themselves. Furthermore, the proposed rules will designate entire law firms as "vexatious" simply on the grounds that the Notice lacks factual detail which the Agency seeks. But the "vexatious" designation as used in the Code of Civil Procedure relates to the final determination of the merits of a claim, not to the sole fact that some number of claims are brought at all. This is because it is perfectly possible for an individual to bring many claims, all of which have merit. Thus, that designation relates to whether the litigant files claims that are lacking in justification as demonstrated by the final outcomes of those cases and/or the litigation

status of those claims. No similar protection is provided by the proposed rules, which instead focuses on the perceived quality of the notices submitted to the Agency.

C. The Proposed Revisions Usurp the Court's Role in Evaluating PAGA Claims and Usurp the Legislature's Role in Crafting Appropriate Restrictions on Conferring Standing.

Although I have many other concerns with the proposed regulations, I urge the Agency to consider the fact that these proposed rules seem to have the effect of both eliminating the Court's role in overseeing and evaluating PAGA claims, and the Legislature's role in creating the body of law upon which PAGA derives. For example, under the Proposed Regulations, at § 17415(b)(2), the "vexatious filer" term is defined as meaning "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." Not only are these standards inherently nebulous but they improperly provide the Agency itself with the authority to brand a firm with this designation based on these unclear standards. These determinations cannot be simply made by the declaration of the Agency itself because they involve complicated legal determinations which are within the purview of a Court. The legal requirements of a PAGA notice are determined by the Legislature through the enactment of the statutory framework, and through the Courts which interpret that statutory framework. This is particularly troubling because whether a Notice complies with the "legal requirements" has little to do with the underlying merits of a claim or what purpose it is brought for. Moreover, the lack of clear standards effectively empowers the Agency to designate a law firm with the damaging moniker of "vexatious" with little due process other than the mere right to respond as specified in Proposed Regulations, at § 17415(d). But that right to respond is lacking in due process and could conceivably be based on existing notices which are later found to be "deficient." Such a process cannot take place within the confines of an administrative process.

Similarly, I find troubling that a number of the provisions appear to usurp the Legislature's role by crafting heightened standards which are not contained within the statutory framework as crafted by PAGA. Specifically, Proposed Regulation § 17420 purports to impose a requirement that a Notice to the LWDA contain a heightened level of specific facts and theories and that failure to include these facts is "not sufficient." Yet this materially conflicts with PAGA itself, which provides that a Notice must contain the "specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation." Courts have determined that PAGA's prelitigation notice requirement is "minimal." See *Ibarra v. Chuy & Sons Labor, Inc.* (2024) 102 Cal.App.5th 874, 882. Yet the Court's determination on this matter was based on the statute itself, not regulatory additions. It is simply improper for the Agency to contravene the statute and attempt to heighten that bar because this would create a material conflict with the statute itself.

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Moreover, other provisions are troubling for the same reasoning. For example, Proposed Regulation § 17420.5 prohibits the filing of Amended PAGA claims after a settlement is reached. This ignores the fact that PAGA empowers the Court to approve a Settlement and that the Legislature has never empowered the Agency to reject a PAGA notice on such grounds. What this would effectively accomplish is to rewrite the statute to empower the LWDA to reject a settlement on grounds unrelated to whether they are subject to approval by a Court. Moreover, the practical reality is that specific violations are routinely discovered during the discovery and/or mediation processes; for example, a Plaintiff working in the farming industry might file a PAGA notice based on pay violations which are applicable to the general public, but later determine through the mediation and discovery processes that the pay practices violates Labor Code section 205 relating to the terms and conditions of work in agricultural, viticultural, household domestic service. The amendment procedure is vital to the functioning of any lawsuit or PAGA claim for these reasons.

While I sympathize with the Agency's desire to streamline the processing of PAGA claims, we believe that these proposed revisions would not have the intended effect, exceed the regulatory authority granted by the enabling statutory framework, and would ultimately harm the very workers who PAGA aims to protect.

Sincerely,

THE SENTINEL FIRM, APC

Seung L. Yang, Esq.