CALL & JENSEN
EST. 1981

LAWYERS

610 NEWPORT CENTER DRIVE, SUITE 700
NEWPORT BEACH, CALIFORNIA 92660

TELEPHONE 949.717.3000
FACSIMILE 949.717.3100

CALLJENSEN.COM

August 18, 2026

OUR FILE NUMBER
ECC01-06

BY EMAIL ONLY

Danielle West
Rulemaking and Program Analyst
Labor and Workforce Development Agency
1416 Ninth Street (MIC-55)
Sacramento, California 95814
Danielle.West@labor.ca.gov

Re: **15-Day Comments on Modified Proposed Regulations Implementing the Private Attorneys General Act; OAL Notice File No. Z2026-0121-03**

Dear Ms. West:

Call & Jensen, APC ("Call & Jensen") submits these comments in response to the August 3, 2026 Notice of Modifications to Text of Proposed Regulations and of Addition of Documents to the Rulemaking File. These comments are directed to the following: (i) newly proposed section 17400(b); (ii) modified sections 17420.5 and 17450.5; and (iii) modified section 17461.

Call & Jensen recognizes the LWDA's legitimate interest in deterring collusive settlements and abusive filing practices. However, several of the modified regulations will impede—rather than promote—resolution of PAGA claims. By treating settlement-related amendments as presumptively suspect, and imposing obstacles to legitimate comprehensive settlements, the proposed rules will delay recoveries for employees and the State, reduce settlement values, and multiply litigation costs. These comments identify three principal concerns and propose alternatives that preserve the LWDA's oversight authority while permitting fair and comprehensive resolution of PAGA actions.

I. SECTION 17400(b) IS NOT CONGRUENT WITH THE ADDENDUM AND DOES NOT PROVIDE FAIR NOTICE OF THE REGULATIONS' APPLICATION TO PENDING CASES.

New section 17400(b) states that the regulations will apply to "all pending administrative processes," including administrative reporting obligations owed to the LWDA in connection with a pending PAGA action, and to new PAGA notices and actions arising from them filed after the regulations take effect. The section does not define what a "pending administrative process" means. The Addendum to the Initial Statement of Reasons ("Addendum"), in contrast, states that the regulations are intended to apply "to all matters or cases pending at or filed after the time these regulations take effect."

Those formulations are not equivalent. The regulatory text raises the inference that "pending administrative processes" means something less than pending civil actions generally. The difference in scope is material, because the regulations will impose substantive changes to how PAGA claims can be amended and settled, among other changes.

The discrepancy between the text of the proposed regulations and the Addendum fails to provide the clarity required by the Administrative Procedure Act. A regulation must be "written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them." (Gov. Code, §§ 11349, subd. (c); 11349.1, subd. (a)(3).) Employers, employees, counsel, and courts cannot determine from section 17400(b) whether an amendment filed and administratively exhausted before the effective date must later satisfy requirements that did not exist when it was filed merely because the associated civil action remains pending.

The Addendum cites *Lozano v. Workers' Comp. Appeals Bd*. (2015) 236 Cal.App.4th 992 for the proposition that the regulations will apply to all cases or matters pending at or filed after the time the regulations take effect. But application of new procedural rules to future steps in a pending matter does not answer whether an agency may retroactively invalidate or reopen a completed notice or amendment. Retroactive application of substantive requirements to completed procedural steps would also raise due process concerns under article I, section 7 of the California Constitution, and would be inconsistent with Government Code section 11340.5(a), which prohibits an agency from enforcing a rule that has not been properly adopted as a regulation.

Call & Jensen respectfully proposes that section 17400(b) be revised substantially as follows:

> These regulations apply prospectively to: (1) administrative acts, proceedings, or submissions occurring on or after their effective date, including administrative reporting obligations that become due on or after that date in connection with a then-pending civil action; and (2) PAGA notices and amended PAGA notices filed on or after their effective date, and civil actions arising from those notices. The sufficiency, amendment, and administrative exhaustion of a PAGA notice or amended PAGA notice filed before the effective date shall be governed by the law applicable when the notice or amendment was filed. Nothing in this chapter reopens or invalidates a notice, amendment, exhaustion period, settlement agreement, or other procedural act completed before the effective date.

II. SECTIONS 17420.5(d) AND 17450.5(d) CONFUSE PERMISSIBLE COMPREHENSIVE SETTLEMENTS WITH DISFAVORED REVERSE AUCTIONS.

The LWDA has identified legitimate concerns about inadequately supported settlements sometimes described as "reverse auctions." But the modified regulations address those concerns through rules that will prevent fair and comprehensive settlements of overlapping PAGA actions. As it now stands, multiple private plaintiffs frequently pursue substantially overlapping claims against the same employer. If those actions cannot be resolved comprehensively, the result will be serial litigation, duplicative attorneys' fees and administrative expenses, delayed payments to employees and the State, inconsistent outcomes, and reduced incentives to settle. Those consequences do not advance PAGA's worker-protection purposes.

The modified regulations retreat slightly from the original categorical prohibition on settlement-related amendments, but the revised text remains unworkable.

First, the timing of an amendment (i.e., at or after settlement) is not a reliable proxy for collusion or inadequacy. A reverse auction is objectionable because the settlement is collusive, inadequately investigated, or insufficiently compensates the State and affected employees—not because the parties seek comprehensive finality. Modified section 17461 already requires extensive settlement documentation and gives the LWDA at least 45 days to review the settlement. Further, courts independently assess whether PAGA settlements are fair, adequate, and reasonable in light of PAGA's purposes in deciding whether to grant approval. (*See* Lab. Code § 2699(s)(2); *Moniz v. Adecco USA, Inc*. (2021) 72 Cal.App.5th 56, 76-77, disapproved on other grounds by *Turrieta v. Lyft, Inc*. (2024) 16 Cal.5th 664, 709-710.) These safeguards directly address settlement adequacy. A separate rule that impedes amendments based principally on timing is unnecessary and poorly tailored.

Moreover, imposing obstacles to comprehensive settlements will only serve to reduce and delay recoveries. An employer facing multiple overlapping claims that cannot obtain meaningful finality through comprehensive settlement has diminished incentive to offer substantial consideration, regardless of the strength of the claims. This outcome disserves the State and employees alike.

The proposed impediments to amendment may also produce the opposite of the LWDA's intended reform. If later amendment is uncertain or unavailable, plaintiffs' counsel will be encouraged to include every conceivable statutory violation, theory, entity, and employee group in the initial notice. That incentive favors maximalist boilerplate—the very filing practice the proposed regulations elsewhere seek to deter.

Finally, the stated concern about reverse auctions cannot be separated from the proliferation of overlapping PAGA notices and actions. The LWDA's proposed regulations address the problem at the back end rather than the front. In other words, the agency should address overlapping PAGA filings at intake rather than obstruct their eventual resolution. The LWDA is uniquely positioned to identify duplication because every PAGA notice must be filed with it. A more coherent regulatory approach would identify substantially overlapping notices when they are received and encourage coordinated investigation, early resolution, or consolidation. Upstream coordination would advance the interests of employees and the State. It would reduce duplicative fee claims and administrative expenses, avoid inconsistent treatment of similarly situated employees, preserve the available recovery pool, and promote earlier correction of challenged practices. By contrast, allowing duplicative actions to proliferate and then preventing the parties from resolving them comprehensively preserves the inefficiency while eliminating its principal exit mechanism.

For all these reasons, sections 17420.5(d) and 17450.5(d) should be deleted. Failing that, the heightened requirements should apply only to amendments filed after the regulations' effective date.

III. MODIFIED SECTION 17461(b) CREATES AN UNWARRANTED COLLATERAL-OBJECTION PROCESS.

Modified section 17461(b) should be deleted. It creates, through administrative regulation, the functional equivalent of a settlement-objector role, even though the California Supreme Court has held that PAGA confers no such role on plaintiffs in separately pending actions. *Turrieta v. Lyft, Inc*. (2024) 16 Cal.5th 664 recognizes that PAGA's statutory scheme relies on the LWDA and the courts—not competing PAGA plaintiffs—to oversee settlements—and that competing plaintiffs have no right to intervene, move to vacate, or compel a court to receive and consider their objections. (*Id*. at pp. 705-707, 716.)

The practical effect of section 17461(b) is an agency-sponsored objection procedure through which competing plaintiffs may attempt to delay or defeat a settlement they have no statutory right to challenge directly. Mandatory notice invites strategic objections and holdout behavior regardless of whether the settlement fairly compensates the State and aggrieved employees. The LWDA may independently review a settlement, request information, and exercise its statutory oversight authority. It should not deputize economically interested nonparties to perform that function.

For the foregoing reasons, section 17461(a)(5), subdivision (b), and subdivision (c)(2)—the provisions establishing and implementing the collateral notice-and-comment procedure—should be deleted.

IV. CONCLUSION

The LWDA can protect against collusive or inadequate settlements without making legitimate comprehensive settlements impracticable. The PAGA regulations should not treat settlement-related amendments and comprehensive settlements as inherently suspect. Early identification and coordination of overlapping filings by the LWDA would address the structural problem that gives rise to competing settlements in the first place.

Thank you for considering these comments.

Very truly yours,

Ellen Cohen

Ellen Connelly Cohen
For Call & Jensen
A Professional Corporation

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