PUBLIC COMMENT

Settlement Provisions in the Modified Proposed PAGA Regulations

To: California Labor and Workforce Development Agency

Attention: Danielle West, PAGA Rulemaking and Policy Analyst

From: Capstone Law APC

Date: August 18, 2026

Re: OAL Notice File No. Z2026-0121-03; August 3, 2026 modifications and added documents

Capstone Law APC submits these comments on the settlement-related modifications noticed August 3, 2026, and on the documents added to the rulemaking file. Representing employees and consumers in class and representative actions, Capstone is a recognized leader in developing the law on PAGA, having served as lead counsel in *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, *Williams v. Superior Court* (2017) 3 Cal.5th 531, and *Baumann v. Chase Inv. Svcs. Corp.* (9th Cir. 2014) 747 F.3d 1117. The firm's PAGA matters have delivered more than $100 million in civil penalties to the Agency.

Capstone supports meaningful Agency oversight of PAGA settlements and measures that deter collusive or inadequately investigated releases. But a regulation must stay within the authority the Legislature delegated, be reasonably necessary to effectuate the statute, and respect the settlement-review function assigned to the courts. Several of the proposals regarding settlement do not. They add obligations and delays that PAGA does not impose, assign critical duties to the party least able to perform them, and adopt by rulemaking positions the Courts of Appeal have already rejected.

I. Summary

The modified proposal would require a settling plaintiff to serve a detailed settlement notice on other employees and counsel with pending PAGA claims against the same employer; allow those persons to comment to the Agency; guarantee the Agency at least 45 days to review; impose heightened pleading requirements on settlement-related amended notices; and restart the 65-day review and 120-day investigation periods for amended notices. Capstone's principal objections are these:

- Section 17461's notice-and-comment procedure appears nowhere in Labor Code section 2699. The Legislature knew how to create a right to comment — it did so expressly for health and safety claims in section 2699.3, subdivision (b)(4) — and did not do so here. (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal. App. 5th 56, 78-79.)

- If comments are to be solicited, the Agency should solicit them from its own statewide records. The notice duty should not fall on the settling plaintiff, who has far less information than the employer or the Agency.
- A second notice is unnecessary when PAGA claims are resolved through a class settlement, because class members already receive court-supervised notice and may object, appear, and be heard under California Rules of Court, rule 3.769.
- The 45-day rule interferes with judicial calendaring and may require counsel to resist a date the court itself selected, though PAGA prescribes no review period.
- Sections 17420.5(d) and 17450.5(d) impose requirements Labor Code section 2699.3 does not and delegate to the Agency questions that the Legislature committed to the trial court.
- Restarting administrative waiting periods for amended notices conflicts with *Brown v. Dave & Buster's of California, Inc.* (2025) 116 Cal. App. 5th 164, and delays resolution precisely when the parties have reached agreement.
- Section 17400 would apply these obligations to matters already pending, including settlements already negotiated or submitted.

II. Section 17461 Imposes a Settlement Notice Duty PAGA Does Not Contain

Labor Code section 2699, subdivision (s)(2) provides that the plaintiff must submit the proposed settlement to the Agency at the same time it goes to the court. The statute says nothing about identifying or notifying other PAGA claimants, circulating a summary of the release, soliciting comments, or administering a collateral participation process.

Through Section 17461, the LWDA adds these new requirements. This creates a new procedural regime governing who learns of a settlement and who may participate in reviewing it, by rulemaking rather than by statute.

The Agency's policy concerns, while very important, do not establish the need for these provisions. Courts already require notice in related or coordinated proceedings when the circumstances warrant. Defendants seeking a global resolution already have every incentive to identify overlapping actions, notify affected parties, and pursue coordination, stays, or dismissals. A categorical statewide obligation should not be imposed without a showing as to why these existing tools and incentives have failed. (Gov. Code, § 11349, subd. (f).)

Section 17461(e) compounds the burden by requiring the parties to attach the regulation itself and the Agency's email confirmation to every approval motion. A short verification of compliance in the motion would serve the same purpose without adding exhibits to every filing.

III. The Rule Assigns Notice to the Party with the Least Information

The proposed rule would place the burden on the settling plaintiff when the employer knows its own litigation history. On top of that, the Agency receives PAGA notices statewide and maintains searchable case information. In fact, the settling plaintiff knows only what the employer, the Agency's system, related-case filings, or informal channels reveal. No plaintiff has an independent statewide source identifying every pending PAGA notice or action involving an employer, its name variants, its affiliates, or their counsel. Between the defendant-employer, the LWDA, and the plaintiff, the plaintiff has the most limited access to the relevant information.

Section 17461 nevertheless makes the settling plaintiff responsible for the notice and relies on the employer to verify the recipient list. That allocation invites disputes over completeness, timing, service, related entities, and what counts as the "same employer," and it makes settlement approval turn on information the plaintiff does not control.

If the Agency retains an external notice requirement, the employer should identify pending actions and certify the list, and the Agency should identify pending administrative notices from its database. Whatever the solution the Agency proposes, a plaintiff should not be penalized for omissions in information the employer or the Agency supplied.

IV. The Agency, Not the Settling Plaintiff, Should Solicit Any Comments

Capstone does not oppose giving other PAGA claimants in overlapping PAGA suits an opportunity to be heard by the Agency. In *Turrieta v. Lyft, Inc.* (2024) 16 Cal.5th 664, 706-707, the California Supreme Court identified comments to the Agency as one channel available to a competing plaintiff, because the Agency — unlike that plaintiff — is a real party in interest with the ability to appear and object. Informed by parties' comments, the LWDA can act and provide comments to a court evaluating a PAGA settlement. Capstone believes that such a procedure would be helpful in protecting PAGA actions from being eviscerated through reverse auctions.

But the procedure currently envisioned by the proposal is problematic. Two features of the statutory scheme should shape the rule. First, the Legislature created a very narrow comment procedure for PAGA: in actions alleging health and safety violations, the Division of Occupational Safety and Health may comment on a proposed settlement and the court must give those comments appropriate weight. (Lab. Code, § 2699.3, subd. (b)(4).) *Moniz* contrasted that provision with the general settlement-approval language, which contains no comparable right, and held that "PAGA does not provide that aggrieved employees must be heard on the approval of PAGA settlements." (*Moniz, supra,* 72 Cal.App.5th at pp. 78-79.) Where the Legislature has spoken this precisely, a broader participation right is a legislative judgment, not a gap for rulemaking to fill.

Second, *Turrieta* held that a plaintiff in a competing PAGA action has no right to intervene, to move to vacate the judgment, or to appeal—at least based on that plaintiff's interest as a related-case plaintiff. (*Turrieta, supra,* 16 Cal.5th at p. 716.) A regulation that requires the settling plaintiff to serve a formal notice on those same claimants, and then invites their submissions, risks being

read as conferring the participation those decisions withheld — and as inviting collateral attacks on approval orders in the guise of Agency comments.

However, the Agency, as the real party in interest, always has the right to solicit and accept comments as part of its review process, as the California Supreme Court has already recognized in *Turrieta*. The LWDA may do so through its automated process as described below. And if the Agency determines that the circumstances warrant objecting to a settlement or intervening in an action, it may do so. The portal for soliciting comments should confirm that any comment process creates no intervention, objection, appeal, or other participation rights beyond those recognized by PAGA, and that a comment does not displace a hearing date set by the court.

V. Automated Agency Notice Is More Accurate and Less Burdensome

The Agency already collects everything needed to identify overlapping PAGA matters — employer, claimant, counsel, provisions alleged, and case-specific data — through its filing portal and PAGA Case Search system. The solution is therefore technological.

When a proposed settlement is uploaded, the Agency could match the employer and alleged violations against its own records and automatically email counsel in potentially related matters, directing them to the public case entry, inviting comments to the Agency, and stating the deadline for submitting them. Automated notice would draw on a single statewide dataset, eliminate disputes about service lists, avoid duplication, and place the task with the entity that holds the records. It would also reach counsel earlier than a plaintiff-generated notice could, which is the change most likely to prevent a repeat of *Moniz* and *Turrieta*.

That approach is more accurate, more efficient, and less burdensome than requiring each settling plaintiff to reconstruct information the Agency already has. It is exactly the kind of alternative the Agency should meaningfully consider. (Gov. Code, § 11346.2, subd. (b)(4)(A).)

If any notice must come from the parties, its content should track what a settlement actually does. Section 17461(b) would require the notice to state that the settlement may foreclose the recipient's ability to pursue PAGA claims against the employer. A PAGA judgment binds the state and nonparty employees only as to civil penalties arising from the same claims; it does not resolve the recipient's individual claims. The prescribed language should say so, or it will prompt unnecessary appearances and objections premised on a misunderstanding of the release.

VI. The 45-Day Restriction Interferes with Judicial Management of Settlement Motions

Section 17461(c) guarantees the Agency at least 45 days to respond to a notice and directs parties not to consent to a hearing date affording less time. But PAGA prescribes no review period at all. The rule could therefore require counsel to decline a date the trial court selected, even where the court concludes the motion can fairly be heard sooner.

Trial courts control their own process and calendars. (Code Civ. Proc., § 128, subd. (a).) Class settlements are governed by rule 3.769. A regulation should not displace that authority through a categorical scheduling restriction, particularly when ordinary noticed-motion practice proceeds on far shorter timelines. (Code Civ. Proc., § 1005.)

Capstone agrees that the Agency should have a meaningful opportunity for settlement review. Therefore, the regulation should require contemporaneous submission, as the statute directs, and leave the hearing date to the court. If the Agency needs more time in a particular matter, it can ask the court and explain why.

VII. The Amended-Notice Requirements Exceed Section 2699.3

Sections 17420.5(d) and 17450.5(d) impose special requirements when a claimant adds violations as part of, or after reaching, a proposed settlement. The claimant must identify the new provisions and theories, describe the investigation or discovery conducted, address personal standing, and explain how the amendment and the settlement advance PAGA's worker-protection purposes and the interests of justice.

Labor Code section 2699.3 already specifies what a notice must contain: the provisions allegedly violated and the facts and theories supporting them. It prescribes no heightened standard keyed to when an amendment is filed or whether settlement is under discussion. It certainly does not require a claimant to persuade the Agency that a private settlement serves the interests of justice.

The administrative notice process exists so the Agency can decide whether to investigate or prosecute. It is not a licensing process for determining whether an amendment or a settlement is worthwhile. Whether a settlement adequately serves PAGA's purposes is part of the trial court's approval function. (*Moniz, supra,* 72 Cal.App.5th at pp. 64-65, 88-90.)

The premise of these provisions is also inconsistent with the governing standard. The Addendum treats settlement-related amendments as presumptively suspect because they may facilitate reverse auctions. *Amaro* holds otherwise. A defendant sued in multiple overlapping actions may negotiate separately with each named plaintiff, and there is nothing inherently improper in a global settlement that extinguishes earlier-filed claims; an objector "must at least provide some evidence of unfairness to the class or misconduct to support a reverse auction finding." (*Amaro, supra,* 69 Cal.App.5th at p. 546.) A rule that imposes heightened pleading on every settlement-related amendment, without regard to any indication of unfairness, is not tailored to the harm the Agency describes.

These requirements also create perverse incentives. New violations frequently surface only after payroll production, time-data analysis, depositions, mediation, or information from related cases. Making amendment harder at exactly the moment the record is best developed will produce narrower and less accurate settlements, additional notices and actions, delayed payments to

employees, and unresolved claims. It rewards an employer that withholds information until late in negotiations.

VIII. Section 17420(g) Adopts a Rule the Courts of Appeal Have Rejected

Section 17420, subdivision (g), would bar any violation or theory from a settlement unless it appeared in a PAGA notice. That is precisely the position the Agency advanced, and lost, in *Moniz*.

In *Moniz*, the Agency objected that the release was invalid because it extended beyond the claims listed in the plaintiff's PAGA notice. The trial court rejected that argument and the Court of Appeal affirmed, reasoning that because a PAGA judgment has preclusive effect as to claims arising from the same primary right, a PAGA plaintiff is authorized to bind the state to a release "commensurate with those [claims] that would be barred by res judicata in a subsequent suit had the settling suit been litigated to judgment by the state." (*Moniz, supra,* 72 Cal.App.5th at pp. 82-83.) *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521 reached a parallel conclusion as to time: releasing PAGA claims beyond the one-year limitations period of the plaintiff's own claim "is not unlawful per se," though "[a] trial court may still refuse to approve such a release if it is unfair given the circumstances of the case." (*Id.* at pp. 543-544.)

A regulation may implement and make specific a statute, but it may not adopt a construction the courts have rejected. (Gov. Code, §§ 11342.2, 11349, subd. (d).) Subdivision (g) would do that, and the consequences are practical as well as legal. A defendant will not fund a settlement that leaves it exposed to successive representative actions arising from the same primary rights. If the release cannot be coextensive with preclusion, global resolutions become unavailable, cases fragment, and aggrieved employees and the state recover less and later.

Subdivision (g) should be limited to what may be alleged in a lawsuit — its stated exhaustion rationale — and should leave the scope of a negotiated release to the approving court, which *Amaro* confirms may reject an overbroad release on the facts of the case.

IX. Renewed Waiting Periods for Amended Notices Conflict with *Brown*

The proposal applies the 65-day review period, and a possible 120-day investigation period, to amended PAGA notices. The Addendum describes the absence of an express waiting period as a gap. But *Brown v. Dave & Buster's of California, Inc.* recognized that the statutory administrative review period does not apply to amended notices. (*Brown,* 116 Cal. App. 5th 164, 172.) The proposal fills the asserted gap by imposing the very delay the Court of Appeal found absent from the text.

Section 2699.3 conditions the commencement of a civil action on specified pre-suit procedures. It does not condition a court's authority to approve a settlement in a pending action on renewed waiting periods after an amended notice. This distinction matters: an amended notice may arrive

in an action pending for months or years, after substantial discovery, and after the Agency has had the original notice and every court filing.

A mandatory restart also conflicts with the policy favoring settlement and with the 2024 reforms' goal of faster, more efficient resolution. If the Agency believes a particular amendment warrants investigation, it can say so to the parties and the court. A categorical delay in every settlement-related amendment is neither tailored nor necessary.

X. Section 17400 Should Not Apply These Obligations to Pending Matters

Section 17400 would apply the regulations to all matters pending when they take effect. Applied to the settlement provisions, that reaches cases in which notices were served, amendments filed, discovery completed, and settlements negotiated or already submitted under the current framework. Parties cannot retroactively serve a notice that did not exist at the time of the trigger or restart a waiting period that has passed. The Agency should exempt settlements executed or submitted before the effective date, and should apply the amended-notice provisions only to notices filed after that date.

XI. Requested Revisions

In light of the above, Capstone respectfully requests the following changes:

- Delete section 17461's requirement that the settling plaintiff identify and notify other PAGA claimants and administer the comment process.
- If comments are to be solicited, have the Agency solicit them, using automated notice generated from its statewide filing system to counsel in potentially related matters.
- If any party-generated notice is retained, assign identification duties to the employer and the Agency and protect the plaintiff from omissions in the information they supply.
- Confirm that any comment process creates no intervention, objection, appeal, or other participatory rights beyond those recognized by PAGA, the rules of court, *Moniz*, and *Turrieta*, and that a comment does not displace a hearing date set by the court.
- Conform the prescribed notice language to *Turrieta* by stating that the settlement affects PAGA claims for civil penalties arising from the same claims and does not release the recipient's individual claims.
- Remove the categorical 45-day restriction. Require contemporaneous submission and leave the hearing date to the trial court, subject to a case-specific Agency request for more time.
- Replace section 17461(e)'s attachment requirements with a short compliance statement in the approval motion.

- Delete the heightened "worker-protection purposes and interests of justice" showing in sections 17420.5(d) and 17450.5(d), and apply the same statutory facts-and-theories standard to initial and amended notices.
- Limit section 17420(g) to the allegations of a lawsuit, and confirm that a settlement may release PAGA claims coextensive with the preclusive effect of a judgment, consistent with *Moniz* and *Amaro*, subject to the approving court's review.
- Delete the renewed 65-day and 120-day waiting periods for amended notices in pending actions, consistent with *Brown*.
- Exempt matters settled or submitted before the effective date from the settlement provisions of section 17400.
- Revise the necessity and alternatives analyses to address existing class-notice procedures, the judicial gatekeeping described in *Amaro* and *Moniz*, employer incentives, the Agency's own statewide data, and automated notice as a less burdensome alternative.

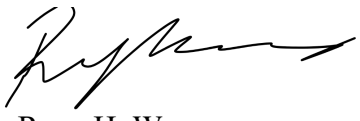
Conclusion

The proposed changes create notice, participation, scheduling, pleading, and waiting-period obligations the Legislature did not enact, and in the case of section 17420(g) adopt a construction of the statute the Courts of Appeal have rejected. Those obligations duplicate existing judicial protections, burden the party with the least information, and can delay or defeat fair settlements without a demonstrated corresponding benefit.

Capstone respectfully requests that the Agency withdraw or revise proposed sections 17420(g), 17420.5(d), 17450.5(d), and 17461; use its existing statewide data to solicit any comments it wishes to receive; and preserve the trial court's authority to manage settlement notice, participation, timing, and approval on the facts of each case.

Respectfully submitted,

CAPSTONE LAW APC



Ryan H. Wu