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VIA EMAIL

Danielle West, PAGA Rulemaking and Policy Analyst
California Labor and Workforce Development Agency
1416 Ninth Street (MIC-55)
Sacramento, CA 95814

Re: **Comments to the LWDA's Modifications to Text of Proposed PAGA Regulations**

Dear Ms. West and the Labor and Workforce Development Agency:

Littler Mendelson, P.C. submits the following comments to the *modified* proposed regulatory language of California Code of Regulations, Title 1, Section 8, Chapter 9, Labor Code Private Attorneys General Act of 2004 ("PAGA") Subchapter 6, proposed Section 17461 (OAL Notice File Number Z2026-0121-03).

Littler Mendelson, P.C. ("Littler") is the largest management side labor and employment law firm in California and routinely handles several hundred PAGA actions at any one time on behalf of California employers. My colleague, Marlene Muraco, Esq., appeared and spoke at the hearing on the LWDA's initial proposed regulations on April 9, 2026. During that hearing, Ms. Muraco noted that original proposed Section 17410.5(d), as it was written, was materially ambiguous and lacked clarity, given that the prior language of Section 17410.5(d) would prohibit a PAGA claimant from amending their PAGA Notice after the litigants have reached "a proposed settlement." Littler appreciates the LWDA's modifications now eliminate the blanket prohibition on amending PAGA notices in connection with PAGA settlements.

However, we now write to identify concerns persisting in and introduced by both the original and modified proposed regulations – particularly Subchapter 6, regarding "Submitting Proposed Settlements of Civil Actions to the Agency; Notice to Other Persons with Pending Actions." Specifically, the proposed regulations which imply that the LWDA has the ability to "intervene" in settlements of PAGA actions *after* the expiration of the 65-day notice period. Indeed, the proposed *modified* language of Section 17461(a), now states:

To aid in determining whether to support or object to a proposed settlement, or to intervene in such action or exercise other powers committed to it by law, a proposed settlement agreement submitted to the Agency pursuant to Labor Code section 2699, subdivision (s)2() must now include the following [...]

Littler questions whether the LWDA has such statutory authority to “intervene” in any such PAGA settlement. For example, under the current PAGA statute, once the 65-day notice period expires, one could argue that the LWDA has effectively determined that it has chosen not to pursue a PAGA action against an employer, and now, the notice-submitting private Plaintiff may proceed to prosecute their alleged PAGA claims against their employer. In other words, one could say that the LWDA has effectively waived its right to “intervene” in the prosecution of a private plaintiff’s PAGA action after the expiration of that period. Indeed, the California Supreme Court has recently discussed this interpretation in *Turrieta v. Lyft, Inc.* ((2024) 16 Cal.5th 664). In *Turrieta*, the Parties argued that the proposed intervenor (another private PAGA Plaintiff named Olson) could not assert the state’s right to intervene because the state itself has no such right. The Parties asserted in *Turrieta* that Code of Civil Procedure, section 387, subdivision (b), by its terms, authorizes intervention only by “a nonparty,” and that the state is not a nonparty; it is already a party through its proxy, *Turrieta*, or is the real party in interest represented by *Turrieta*. Because the Court concluded the scope of Olson’s authority did not include the right to seek intervention on the state’s behalf, the Court declined to discuss whether the LWDA had such a right. *Id.* at 687, n. 9; 707, n. 24 (noting “we emphasize that...we express no opinion on whether the state itself has a right to intervene, to move to vacate the judgment, and/or to require courts to receive and consider settlement objections” and emphasizing “the unique considerations that may bear on these questions [includes] the Legislature’s addition to PAGA in 2016 of detailed provisions regarding the state’s involvement in a PAGA action”). However, the Court concluded that, at a minimum, the LWDA has the right to “informally submit comments on the fairness of proposed settlements and that courts have discretion to consider such comments.” *Id.* at 706-707.

Littler believes that this proposed modified amendment could materially impede the settlement of PAGA actions, which is by far the most common means of resolving such actions, should LWDA now intend to “intervene” in settlements once a private plaintiff has been deputized to bring an action before a California Court. Littler believes this potential could have a “chilling” effect on settlement, if in the event the private plaintiff and the employer reach an agreeable settlement, that upon seeking court approval of the settlement, LWDA could intervene in that settlement.

Moreover, the proposed regulation appears to exceed the scope of the LWDA's rulemaking authority under PAGA and the Labor Code. An administrative agency may only adopt regulations that are consistent with and reasonably necessary to effectuate the purposes of the statute it is charged with enforcing; it may not, through regulation, create substantive rights or powers that the Legislature itself has not granted. Here, PAGA expressly delineates the LWDA's role in the notice-and-investigation process and provides various mechanisms for Agency participation, including notice of proposed settlements and the opportunity to provide input regarding settlement fairness. However, Littler is unaware of any provision of the Labor Code that expressly authorizes the LWDA to intervene in a privately prosecuted PAGA action after expiration of the statutory notice period, much less to intervene in connection with a proposed settlement. By incorporating references to the Agency's ability to “intervene” into Section 17461(a), the proposed regulation appears to recognize and exercise a substantive enforcement power that is not found in the governing statute. To the extent the proposed regulation purports to create such authority, it would exceed the LWDA's statutory mandate and

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therefore raises serious concerns regarding its validity under established principles governing administrative rulemaking.

Once again, although Littler is appreciative of the LWDA's efforts to regulate PAGA actions and address perceived abuses of the statute, Littler respectfully submits that this proposed, modified regulation may exceed the scope of the LWDA's statutory and regulatory authority. In addition, the regulation risks creating substantial uncertainty regarding the finality of settlements and may have the aforementioned chilling effect on the private resolution of PAGA claims. For these reasons, Littler respectfully requests that the reference to the Agency's authority to "intervene" be stricken from the proposed modified regulation in its entirety, or, at a minimum, clarified to identify the specific statutory authority on which the Agency relies for such asserted power.

Sincerely,



Nathaniel H. Jenkins