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August 17, 2026

Ms. Danielle West
PAGA Rulemaking and Policy Analyst
California Labor and Workforce Development Agency
1416 Ninth Street (MIC-59)
Sacramento, CA 95814
Sent by email to Danielle.West@labor.ca.gov

Re: Comments on Modified Proposed PAGA Regulations on Behalf of Service Employees International Union California State Council

Dear Ms. West:

On behalf of the **Service Employees International Union California State** Council, we submit the following brief comments on the Agency's modified proposed regulations under the California Labor Code Private Attorneys General Act ("PAGA").

The SEIU California State Council appreciates the Agency's ongoing regulatory efforts and its responsiveness to the comments received from interested parties, including our own submission on March 22, 2026. In particular, we appreciate the modifications that respond to SEIU California State Council's previously stated concerns and that adopt, in whole or principal part, our previous suggestions for addressing those concerns.

Because of these modifications, our remaining comments will be brief.

As you know, the SEIU California State Council was actively involved in the initial enactment of PAGA, in the negotiations that resulted in the enactment of SB 92 and AB 2288 (the 2024 PAGA amendments), and in the first round of comments on the proposed regulations. Preserving PAGA as a robust statutory mechanism for protecting the rights of California workers remains of paramount importance to the State Council and its members, and we appreciate the opportunity to comment on the modified proposed regulations.

We reiterate at the outset our belief and understanding, based on decades of experience, that the overwhelming majority of PAGA claims are filed in good faith by legitimate claimants and their representatives. Since 2004, PAGA has been a highly effective tool for deterring employer wrongdoing, and the threat of good faith PAGA litigation brought by aggrieved employees on behalf of the Agency continues to provide a powerful disincentive to employer wrongdoing. Enhancing that deterrent effect was a crucial goal of the 2024 amendments, including the provisions that fine-tuned the prior civil penalty and other remedial provisions. That is why, as before, we principally focus our comments on the likely consequences of the new regulations on *legitimate* claimants and their representatives, who comprise the overwhelming majority of PAGA litigants.

1. **§17400: Effective Date and Retroactivity.** We appreciate the Agency's response to our suggestion that the regulations should clarify whether they will be applied prospectively or retroactively as of the Effective Date. Although some issues of retroactivity may remain to be resolved (for example, in determining whether pre-Effective Date filings count in applying the definitions of high-frequency and non-compliant filers), we agree that this new provision is consistent with the distinction between procedural and substantive rules addressed in *Lozano* v. *Workers' Compensation Appeals Board* (2015) 236 Cal.App.4th 992, 998-1000, and is an appropriate response to our suggestion that there should be no retroactive consequences to claimants based on their failure to comply with regulatory provisions that did not previously exist.

2. **§17420/§17450: Written Notice by Aggrieved Employee or Representative (PAGA Notices):** We continue to have concerns about the additional detail and specificity that the Agency proposes to require from new PAGA filers. We understand the Agency's stated concerns about abusive filers-which it addresses throughout the proposed regulations. But because the vast majority of PAGA claims are filed in good faith belief based on fair and reasonable investigation, the Agency's apparent intent to require more specificity than courts would require under longstanding notice-pleading norms will likely undermine the statutory purposes by providing recalcitrant employers new opportunities to delay or derail PAGA litigation by asserting-even without good cause-that the claimants did not provide sufficient detail in their PAGA notices, thereby triggering extended and unnecessary delay and litigation expense.

The core statutory language has not changed over time, including in the 2024 amendments. Under the statute, a PAGA notice is sufficient as long as it states "the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation." Labor Code §2699.3(l)(a). To the extent the Agency is proposing to modify, rather than merely implement, the existing statutory standard as it has been construed by the appellate courts (as forth in cases such as *Ibarra v. Chuy & Sons Labor, Inc.* (2024) 102 Cal.App.5th 874, 881; *Williams v. Superior Court* (2017) 3 Cal.5th 531; *Gunther v. Alaska Airlines, Inc.* (2021) 72 Cal.App.5th 334; *Santos v. El Guapos Tacos, LLC* (2021) 72 Cal.App.5th 363; and/or *Rojas-Cifuentes v. Superior Court* (2020) 58 Cal.App.5th 1051), the Agency should say so expressly and should explain in its Statement of Reasons why it proposes to do so. After all, the compromise agreement resulting in the 2024 amendments to PAGA expressly rejected the proposal to require claimants to state the *"specific* facts and theories to support the alleged violation and to identify the number, positions, and locations of employees alleged to be impacted by each violation." *See* SEIU State Council comments (March 22, 2026) at 2. If a PAGA notice contains enough detail to satisfy the requirements of the current appellate case law, and if a complaint setting forth that information would satisfy the notice pleading requirements of the Code of Civil Procedure, that should be sufficient-although in any particular case, if the Agency is truly unable to evaluate how to proceed without further information, it can exercise its authority (as it has done in the past) to request that information as a condition of allowing the potential claim to proceed.

As previously noted, we also appreciate the Agency's policy and practice (now made explicit in §17420(h), as we had requested) of returning inadequate notices to claimants with an explanation of why the Agency deems the notice deficient and how to remedy the identified deficiency. However, although that provision provides a 30-day period for the claimant to remedy the deficiency, neither that provision nor anything in the following§17420.5 addresses "relation back." In furtherance of the underlying policies of PAGA, revised PAGA notices submitted in response to asserted deficiencies under §17420(h) and amended PAGA notices submitted in light of new legal or factual developments under§17420.5 should be found to relate back to the initial notice for statute of limitations purposes *to the same extent an amended complaint in similar circumstances would be deemed to relate back* in a judicial proceeding. *See, e.g.* , *Estrada v. Royalty Carpet Mills, Inc.* (2022) 76 Cal.App.5th 685, 714, *affd* (2024) 15 Cal.5th 582. Otherwise, employers would have undue incentive to challenge on technical grounds the sufficiency of PAGA notices, in the hope that the claimants' counsel might respond by filing a revised or amended notice that, if not found to relate back, would eliminate a potentially significant portion of the covered PAGA period.

While our preference would be for the Agency to include express language stating that revisions and amendments to initial PAGA notices will be subject to the same relation-back principles that are otherwise applicable to court filings, an alternative would be to clarify in the Agency's Statement of Reasons that relation back is for the courts to determine and that nothing in the regulations is intended to affect application of those principles at the appropriate time.

3. **§17420.5: Amendments to PAGA Notices:** We support the Agency's responses to concerns about reverse auctions that we, and others, addressed in our previous comments, and believe the Agency has struck a fair and reasonable balance. At this point, we have only a few remaining concerns.

First, as noted above, we believe the Agency should clarify that the usual principles governing relation back should apply to revised notices under§17420(h) and §17420.5. This is crucial for vindicating the workers' Labor Code rights.

Second, while we understand that in most instances proposed amendments to PAGA notices cannot be litigated until expiration of the usual 65-day notice period, we continue to believe that the Agency should retain the authority, in a particular case and for good cause shown, to allow expedited consideration of notice amendments-for example, where the claimant demonstrates that the proposed amendment must be accomplished quickly to comply with a court order or to avoid causing undue delay in a matter that is in, or rapidly approaching, trial. Allowing for the possibility of expedited consideration under special circumstances that serve the interests of justice will further the statutory goals of more effective and robust Labor Code enforcement.

Third, we continue to have concerns about the unintended hardships and consequences that may arise from application of§ 17420(g) (formerly (f)), which prohibits PAGA claimants from litigating or settling any "violation or theory of violation ... as supporting a cause of action or claim under PAGA" unless that violation, including the supporting facts and theories, has been alleged in a PAGA notice or amended PAGA notice. We understand that this provision was included to address the Agency's (and our and many commentators') significant concerns about reverse auctions. But this provision also applies to the situation in which a claimant, acting diligently and in good faith, develops new facts and legal theories over the course of litigation that are closely related to the claims alleged in her PAGA notice, but arguably vary enough from the language of the notice that the employer might seek delay or other litigation advantage by asserting an otherwise unavailable defense that the initial notice was not sufficiently detailed. In employment rights litigation, including under PAGA, plaintiffs and their counsel often learn new facts through discovery and develop new theories as a result of pre-trial motions practice that were not reasonably known at the initial filing or pre-filing stage.

That is why the governing principle in the state court system is that variances between pleading and proof are generally deemed immaterial in the absence of demonstrable prejudice to the opposing party. *See, e.g.,* Cal. Code Civ. Proc. §469. As we noted in our previous comments, given that previously unknown facts and theories often evolve as litigation proceeds, a prohibition against litigating or settling a case based on such facts or theories seems unduly technical and rigid-even if the modified regulations permit the plaintiff to (1) acknowledge the discrepancy (which may require a difficult strategic decision if it's a close call), (2) file an amended notice, and (3) defer any litigation over the arguably new issue or theory while awaiting expiration of the 65-notice period. After all, during that period of delay, neither the court's pre-trial deadlines nor California's five-year deadline for bringing a civil case to trial would be stayed, and choices would have to be made about proceeding with depositions of key witnesses (which may usually only be taken once) and about filing motions for summary judgment or partial summary judgment (which may likewise generally only be filed once). To require key aspects of ongoing litigation to be put on hold while plaintiffs amend and wait more than two months to resume - or alternatively, subject themselves to the risk that the employer will be able to successfully defend on grounds of non-exhaustion-seems contrary to the underlying statutory purposes.

There are several ways this problem could be addressed, including some that we have referred to above. For example, the Agency could clarify that its regulations are not intended to effect a substantive change in how much detail of facts and theories PAGA requires a notice to include. A mechanism could be added to enable streamlined amendment upon a sufficient showing of good cause. The Agency could distinguish between amendment for purpose of effecting a settlement (where the concerns about expanding the scope of an ambiguous notice seem most appropriate, especially in a potential reverse-auction situation) and amendment while in the heat of litigation. And there are perhaps other mechanisms or distinctions that would eliminate an employer's incentive to challenge even minor variances between litigation theory and the theory stated in a notice where the consequence of such challenge could be to eliminate a core element of a claimed violation or to require unnecessary delay-causing amendment. Otherwise, the ambiguity inherent in the qualifying phrase "including the facts and theories supporting the violation" potentially creates an unintended trap rather than an effective mechanism for ensuring that an employer has fair notice of the claims against it and that the Agency has sufficient opportunity to decide whether to investigate and pursue its own enforcement action.

4. **§17460/§17461: Submitting Proposed Settlements of Civil Actions to the Agency; Notice to Other Persons with Pending Actions:** We agree with the proposed modifications to these procedural requirements and with the Agency's explanation for including them in §17461, as we had requested. However, we did not see in the Statement

of Reasons why the Agency declined to place the burden of sending this notice on defendant, but instead proposes to require the plaintiffs to provide notice to those with pending civil actions asserting PAGA claims against the same employer. We do not believe that placing that burden on plaintiffs is appropriate, even though the modified regulation continues to require counsel for the settling defendant employer to verify the list of such plaintiffs.

For practical, logical, and resource reasons, we continue to believe that the obligation to provide this notice should be on the employer that is aware of all pending PAGA cases filed against it. *Compare, e.g.,* N.D. Cal. Procedural Guidance for Class Action Settlements at (13) ("OVERLAPPING CASES-Within one day of filing of the preliminary approval motion, the defendants should serve a copy on counsel for any plaintiffs with pending litigation, whether at the trial court or appellate court level, whether active or stayed, asserting claims on a representative (e.g., class, collective, PAGA, etc.) basis that defendants believe may be released by virtue of the settlement."), accessible at Procedural Guidance for Class Action Settlements | Northern District of California | United States District Court The problem with placing the initial burden on the claimant is that often, claimants will lack firsthand information about other claims or lawsuits, including about lawsuits that have been threatened but not yet been formally filed. The defendant employer will in most cases be in a far better position to know about all other pending PAGA actions against it.

Thank you for this additional opportunity to comment on the proposed regulations. If there is any other information we can provide to be helpful in this process, please do not hesitate to contact us.

Sincerely,

Michael Rubin
ALTSHULER BERZON, LLP
Counsel for Service Employees International Union
California State Council