

May 19, 2025

VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency (LWDA)
Attn: PAGA Administrator
300 W. Fourth Street, Suite 450
Los Angeles, CA 90013

Re: *Darren Edwards v. AIDS Healthcare Foundation*
Labor & Workforce Development Agency No. LWDA-CM-1071357-25

Dear LWDA Representative:

This letter constitutes the response to counsel for AIDS Healthcare Foundation's ("Employer") May 12, 2025 correspondence to Darren Edwards ("Employee"). Their letter pertains to Employee's Amended Notice to the Labor and Workforce Development Agency ("LWDA" or "The Agency") in the above-referenced matter dated February 26, 2025 ("Employee's Amended Notice").

At first blush, it is not clear what Employer attempts to do. By the time their correspondence was written, 65 days had passed since Plaintiff's Amended PAGA Notice. The inaction of the Agency, in contrast with its action taken on February 13, thus already showed that the Agency was satisfied that sufficient notice was given in its view and the Agency has no intention to intervene and prosecute the matter. That is because Employee's Amended PAGA met the minimal standard.

As stated in the Deputy Secretary of the LWDA's February 13, 2025 correspondence included as Exhibit "B" of Employer's letter, "PAGA's prelitigation notice requirement is 'minimal.'" (*Ibarra v. Chuy & Sons Labor, Inc.* (2024) 102 Cal.App.5th at 784, 881, internal citations and quotations omitted.) "So long as the PAGA plaintiff provides facts and theories to support that alleged wage and hour violations were committed against them and includes nonfrivolous allegations that other employees were similarly subjected to such practices, the notice is sufficient." (*Id.* at 883, internal citations and quotations omitted.)

"[T]he [*Williams*] court examined other statutory provisions within the PAGA framework and found "no evidence of a legislative intent to impose a heightened preliminary proof requirement" a plaintiff must satisfy before bringing a lawsuit. To insert a heightened requirement of proof "would undercut the clear legislative purposes the act was designed to serve." (*Id.* at 882-883, referring to *Williams v. Superior Court* (2017) 3 Cal.5th 531, 546.) Indeed, facts and theories alleged in a PAGA notice need not satisfy a "particular threshold of weightiness, beyond the requirement of non-frivolousness generally applicable to any filing." (*Id.* at 545, emphasis added.)

The purpose of the notice requirement is to “afford the relevant state agency, the [LWDA], the opportunity to decide whether to allocate scarce resources to an investigation, a decision better made with knowledge of the allegation an aggrieved employee is making and any basis for those allegations.” (*Id.*) “Notice to the employer serves the purpose of allowing the employer to submit a response to the agency (see Cal. Lab Code section 2699.3, subd. (a)(1)(B)), again thereby promoting an informed agency decision as to whether to allocate resources towards an investigation. Neither purpose depends on requiring employees to submit only allegations that can already be backed by some particular quantum of admissible proof.” (*Id.* at 545-546.)

Requiring aggrieved employees to explicitly detail any and all potential violations before discovery would undermine the underlying public policy of the PAGA statute.” (*Rojas-Cifuentes v. Superior Court* (2020) 58 Cal.App.5th 1051, 1057.) The allegations in a PAGA Notice need only identify the employer and the LWDA of the “general basis for [the] claim” in order to satisfy administrative requirements. (*Id.* at 1059.) “[A] PAGA notice need not be exhaustive to serve that purpose,” and “few facts and theories are needed to satisfy the PAGA’s notice requirement.” (*Id.* at 1057.) In the *Rojas-Cifuentes* matter, for instance, the trial court granted Defendant’s Motion for Summary Adjudication, finding the Plaintiff’s PAGA notice failed to allege “facts and theories” sufficient to exhaust administrative remedies. (*Id.* at 1055.) The Appellate Court overturned the ruling, holding that although the Plaintiff’s PAGA Notice “did not exhaustively explain why [Defendant’s] wage statements were inadequate,” his allegations nevertheless “sufficed to notify [Defendant] and the [LWDA] of the general basis for the claim. (*Id.* at 1059.)

Indeed, based on the pleading standard set forth above, together with the supporting facts in Employee’s Amended PAGA Notice dated February 26, 2025, Employer’s allegation that Employee’s Amended PAGA Notice does not include enough facts to exhaust the minimal requirement of Labor Code section 2699.3 is entirely unfounded, unwarranted, and in and of itself a frivolous allegation made to a government entity. Employee both met the pleading standard and in fact exceeded it.

For instance, Employer alleges Employee’s Amended PAGA Notice fails to provide Employer with facts sufficient for them to determine whether employees worked off the clock. However, Employee most certainly provided the requisite supporting facts, as Employee’s Amended PAGA Notice clearly states Employees were required to “*don and doff uniforms and/or safety equipment off the clock; and to make or receive phone calls off the clock.*” Employer’s allegation is meritless, since this is undoubtedly specific enough for Employer to glean the underlying factual basis for this allegation. Employer’s argument is thus preposterous, as Employee both met and exceeded the statutory notice requirement.

Employer makes the same erroneous allegation in connection with the meal break violations alleged by Employer. However, Employee most certainly provided the requisite supporting facts, as Employee’s Amended PAGA Notice clearly states Employees were required to “*don and doff safety gear and/or uniforms; having to retrieve and store personal belongings during the meal period; requiring that employees carry cellular telephones during meal periods;*

not permitting employees to leave the premises; otherwise requiring on-duty/on-call meal periods; and auto-deducting meal periods that could not be auto-deducted by law or during which employees worked.” Employer takes the self-serving position that it is impossible to evaluate these claims based on the information provided. This is an absurd assertion that both runs afoul of the PAGA statute, is not supported by case law, and effectively does away with discovery protocol. As supported by case law, the notice standard is a very low standard. So long as the Employee provides facts and theories to support that alleged wage and hour violations were committed against them, and includes nonfrivolous allegations that other employees were similarly subjected to such practices, the notice is sufficient. (*Ibarra v. Chuy & Sons Labor, Inc.* (2024) 102 Cal.App.5th at 883.) As such, Employee both met and exceeded the minimal pleading standard.

So why was this lazy letter written to the Agency after the Agency’s cure and intervention jurisdiction over the matter ceased? Why is this letter being written to the LWDA at all? Nowhere in the statute is an employer permitted to write such correspondence, which is a highly improper communication not permitted or contemplated by the PAGA statute. Nor should an employee have to respond to such improper correspondence as it improperly raises the burden on an Employee to serve as a proxy of the LWDA in express contravention of the legislative intent behind the PAGA statute. So, again, why is it being written?

The first answer is to harass and defame me and my law firm in violation of Rule 3.1(a) of the California Rules of Professional Conduct, which prohibits lawyers from making threats without probable cause for the purpose of harassing or maliciously injuring a person. Employer bases its attack on this Agency’s previously writing letters when it found what it perceived to be issues with the notices. Here, the Agency declined to intervene or write such a letter after 65 days. Thus, there is no probable cause for the letter by its own standard. And, this letter serves no legal purpose as there is no forum for communication with the LWDA that is permissible and, even if there were, the 65-day period has passed. Rather, this letter was written to harass me and my law firm and bias this Agency against us for the purpose of this action and further anticipated PAGA actions that may be handled between my firm and counsel for Employer.

The second answer, which is more troubling, is **to conspire with this Agency to violate Rule 3.10(a) of the California Rules of Professional Conduct.** Rule 3.10(a) prohibits a lawyer from threatening to present administrative or disciplinary charges to obtain an advantage in a civil dispute. Certainly, the mere fact they made this threat through a third-party conduit does *not* prevent this from being a Rule 3.10(a) violation. By way of the reminder, the February 13, 2025 letter regrettably includes a threat to report an attorney from my office to the State Bar for violation of Labor Code section 128.7. Once again, there is no legal recourse that can be requested of this Agency at this time. The 65-day period has run. The Agency decided not to investigate. Counsel for lawyers recognizes that, now, Employee will file a PAGA Action. It threatens that it may bring a motion to challenge the filing in Court or file a Motion for 128.7. However, Employer then demands the LWDA hold us to a 128.7 standard. Given that is the only action remaining that the LWDA can take, and its Deputy Secretary threatened to do it in the past, **the main purpose for this letter is to threaten to dissuade the filing of a PAGA Action to avoid the LWDA’s Deputy Secretary potentially reporting me to the State Bar, which it threatens and invites him to do.**

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It is imperative that this Agency, and its Deputy Secretary who is being implicitly implored to conspire in ethical violations to further the litigation aims of Employer, affirmatively denounce such attempts and take affirmative efforts to ensure they do not occur anymore. Otherwise, they will be implicitly condoned, particularly if they occur repeatedly.

For the same reason, if any challenge (or sanctions motion) were filed using the rationale set forth here, this letter that serves no legal purpose whatsoever will be attached as Exhibit "A" to the Motion to show that there is no actual reason for its filing except to harass and bias decisionmakers against our law firm based on the February 13, 2025 letter of this Agency. It will anyways serve as one of the bases for our Motion for Disqualification against counsel for Employer.

Very truly yours,

/s/ David D. Bibiyan

David D. Bibiyan

cc: Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
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(via U.S. Certified Mail, Return Receipt Requested)