

AB 2288 (KALRA) – OPPOSE





April 5, 2024

The Honorable Ash Kalra  
California State Assembly  
1021 O Street, Suite 4610  
Sacramento, CA 95814

**SUBJECT: AB 2288 (KALRA) LABOR CODE ENFORCEMENT: PRIVATE CIVIL ACTIONS  
OPPOSE (PAGA) – AS AMENDED FEBRUARY 28, 2024**

Dear Assemblymember Kalra:

The California Chamber of Commerce and the organizations listed below **OPPOSE AB 2288 (Kalra)**.

PAGA is broken. We support meaningful reforms to PAGA to ensure workers get their claims resolved faster, to provide workers more money from labor claims, to punish true bad actors, and to stop the significant frivolous claims that are plaguing small businesses and all employers.

Unfortunately, **AB 2288** would take us in the wrong direction and make a bad problem worse. Much worse.

A law intended to bolster labor law enforcement has been grossly manipulated by trial attorneys as a money-making scheme. These pseudo class actions have no procedural guardrails<sup>1</sup> and steep penalties. Lawyers are incentivized to plead as many claims as possible, regardless of their merit, to get a big settlement check. They know that employers cannot afford to litigate these monstrous lawsuits, so they will be forced to settle. Indeed, there has been **\$10 billion** in PAGA settlements since 2013 *that we are aware of*.<sup>2</sup> That figure does *not* include settlements paid out in response to demand letters that are not reported to the LWDA. A recent court decision also confirmed that these attorneys have nothing to lose – if they lose at trial, California pays the bill.<sup>3</sup>

Most troubling is that the settlement money is not going to workers. Instead, it is going into the attorneys' pockets.<sup>4</sup> As the LWDA itself has said:

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<sup>1</sup> See, e.g., *Arias v. Superior Court*, 46 Cal. 4th 969 (2009) (PAGA plaintiff need not satisfy class action requirements to bring a representative action); *Williams v. Superior Court*, 3 Cal. 5th 531 (2017) (PAGA plaintiff entitled to same discovery as in a class action despite not having to satisfy class action requirements); *Huff v. Securitas*, 23 Cal. App. 5th 745 (2018) (PAGA plaintiff has standing to sue for claims they did not experience); *Kim v. Reins*, 9 Cal. 5th 73 (2020) (PAGA plaintiff retains standing to bring representative action after settling individual claim for compensation); *Johnson v. Maxim Healthcare Servs., Inc.*, 66 Cal. App. 5th 924 (2021) (PAGA plaintiff retains standing to bring representative action even if individual claim is time-barred by statute of limitations); *Lopez v. Friant & Assoc.*, 15 Cal. App. 5th 773 (2017) (PAGA plaintiff need not satisfy "knowing and intentional" standard normally applicable to cases for violations of LC section 226); *Estrada v. Royalty Carpet Mills, Inc.*, 15 Cal. 5th 582 (2024) (trial court cannot dismiss PAGA claim due to concerns about manageability); *Adolph v. Uber*, 14 Cal. 5th 1104 (2023) (PAGA may pursue representative action in court regardless of if they signed arbitration agreement)

<sup>2</sup> Baker & Welsh, LLC, California's Private Attorneys General Act of 2004: An Assessment of Outcomes and Recommendations for a More Effective Alternative (2024)

<sup>3</sup> *Rose v. Hobby Lobby*, Case No. RG17-862127 (Dec. 28, 2023)

<sup>4</sup> Baker & Welsh, LLC, California's Private Attorneys General Act of 2004: An Assessment of Outcomes and Recommendations for a More Effective Alternative (2024)

“Seventy-five percent of the 1,546 settlement agreements reviewed by the PAGA Unit in fiscal years 2016/17 and 2017/18 received a grade of fail or marginal pass, **reflecting the failure of many private plaintiffs’ attorneys to fully protect the interests of the aggrieved employees and the state.**” (emphasis added).<sup>5</sup>

Attorneys walk away with hundreds of thousands or millions of dollars while the employees each receive very little. Data from the LWDA shows that the average employee is worse off when their claim is handled through a PAGA lawsuit than if it were handled through the LWDA.<sup>6</sup> The average employee award received in a PAGA lawsuit is **three times less** than the average award received in cases decided by the LWDA. The LWDA also resolves cases more quickly.<sup>7</sup>

The abuse of PAGA is no secret. The LWDA has told the Legislature in its BCPs that the “substantial majority” of PAGA settlements “fell short” of protecting the state and workers.<sup>8</sup> The Legislature has carved out two industries at the request of labor unions.<sup>9</sup> Those unions sought carve outs because PAGA puts “enormous pressure on employers to settle claims **regardless of the validity of those claims.**”<sup>10</sup> (emphasis added).

**AB 2288** invites more PAGA litigation by authorizing a court to award injunctive or declaratory relief in addition to penalties. This bill is moving in the wrong direction. Now is the time to fix PAGA, not expand it. Our smallest businesses, nonprofits, and public entities depend on it.

For these and other reasons, we **OPPOSE AB 2288**.

Sincerely,



Ashley Hoffman  
Senior Policy Advocate  
California Chamber of Commerce

Acclamation Insurance Management Services (AIMS)  
Allied Managed Care (AMC)  
American Council of Engineering Companies of California (ACEC)  
American Petroleum and Convenience Store Association (APCA)  
American Property Casualty Insurance Association  
Building Owners and Managers Association (BOMA)  
CalBroadband  
California Apartment Association (CAA)  
California Assisted Living Association  
California Association for Health Services at Home  
California Association of Health Facilities  
California Attractions and Parks Association  
California Building Industry Association (CBIA)  
California Business Properties Association (CBPA)  
California Business Roundtable (CBRT)  
California Chamber of Commerce  
California Credit Union League

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<sup>5</sup> 2019 Budget Change Proposal, PAGA Unit Staffing Alignment, 7350-110-BCP-2019-MR

<sup>6</sup> Baker & Welsh, LLC, California’s Private Attorneys General Act of 2004: An Assessment of Outcomes and Recommendations for a More Effective Alternative (2024)

<sup>7</sup> Baker & Welsh, LLC, California’s Private Attorneys General Act of 2004: An Assessment of Outcomes and Recommendations for a More Effective Alternative (2024)

<sup>8</sup> 2019 Budget Change Proposal, PAGA Unit Staffing Alignment, 7350-110-BCP-2019-MR

<sup>9</sup> AB 1654 (Rubio) (2018); SB 646 (Hertzberg) (2021)

<sup>10</sup> Assembly Appropriations Analysis of SB 646

California Farm Bureau  
California Farm Labor Contractor Association  
California Financial Service Providers  
California Financial Services Association (CFSA)  
California Grocers Association  
California Hospital Association (CHA)  
California Hotel & Lodging Association (CHLA)  
California League of Food Producers (CLFP)  
California Manufactures and Technology Association (CMTA)  
California New Car Dealers Association  
California Restaurant Association  
California Retailers Association  
California Travel Association  
Carlsbad Chamber of Commerce  
Chino Valley Chamber of Commerce  
Coalition of Small and Disabled Veteran Businesses  
Construction Employers' Association (CEA)  
Cupertino Chamber of Commerce  
Family Business Association of California  
Family Winemakers of California  
Flasher Barricade Association (FBA)  
Gateway Chambers Alliance  
Goodwill Industries® Sacramento Valley & Northern Nevada  
Greater Riverside Chambers of Commerce  
Greater High Desert Chamber of Commerce  
Greater Stockton Chamber of Commerce  
Housing Contractors of California  
International Franchise Association  
Juma Ventures  
La Cañada Flintridge Chamber of Commerce  
LeadingAge California  
Livermore Valley Chamber of Commerce  
Los Angeles County Business Federation (BizFed LA)  
National Association of Industrial and Office Properties California (NAIOP)  
National Federation of Independent Business (NFIB)  
National Association of Theater Owners of California  
Newport Beach Chamber of Commerce  
Norwalk Chamber of Commerce  
Oceanside Chamber of Commerce  
Paso Robles and Templeton Chamber of Commerce  
Rancho Cordova Area Chamber of Commerce  
Sacramento Metropolitan Chamber of Commerce  
San Juan Capistrano Chamber of Commerce  
Simi Valley Chamber of Commerce  
Torrance Area Chamber of Commerce  
Tulare Chamber of Commerce  
Vacaville Chamber of Commerce  
Valley Industry & Commerce Association  
West Ventura County Business Alliance  
Western Carwash Association  
Western Electrical Contractors Association (WECA)  
Western Growers Association  
Yorba Linda Chamber of Commerce

cc: Legislative Affairs, Office of the Governor

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