Parties/Attorneys:

Plaintiff	Raquel Pineda Salto; Laura Garzia	David D. Bibiyan Diego Aviles Bibiyan Law Group
Defendant	Destiny Farms, LLC; Durant Harvesting, Inc. Durant Harvesting, LLC.	Rafael Gonzalez Brian T. Daly Christina M. Behrman, Mullen & Henzell L.L.P.

TENTATIVE RULING

1. Motion for Judgment on the Pleadings

For all the reasons discussed below, the motion for judgment on the pleadings is granted without leave to amend.

2. Motion: Sanctions Under Section 128.7

The motion for sanctions is denied, as detailed below.

The parties are instructed to appear at the hearing for oral argument. Appearance by Zoom Videoconference is optional and does not require the filing of Judicial Council form RA-010, Notice of Remote Appearance. (See Remote Appearance (Zoom) Information | Superior Court of California | County of Santa Barbara.)

According to the first amended complaint, plaintiffs Raquel Pineda and Laura Garzia were employed by defendants Destiny Farms, LLC, Durant Harvesting, Inc., and Durant Harvesting, LLC from May 2018 through November 2020. Plaintiff Pineda had duties that included planting, and loading/unloading plant containers. Plaintiff Garzia had duties that included loading and unloading machines with agricultural products. They filed a complaint against defendants alleging class and representative claims as follows: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) waiting time penalties; (6) wage statement violations; (7) failure to indemnify; (8) unfair competition; and (9) civil penalties under the Private Attorneys General Act.

On March 30, 2022, defendant Durant Harvesting Inc. filed a motion to compel arbitration, dismiss the class and representative claims, and stay proceedings. On September 13, 2022, the court found the arbitration agreement was procedurally unconscionable; the confidentiality provision was substantively unconscionable but severable from the agreement; that with the severance, the agreement was enforceable and the motion to compel was granted; and that the PAGA claim would proceed in this court.

Defendant now moves the court for judgment on the pleadings on the basis that the PAGA notice was insufficient. Opposition and reply have been filed. Plaintiffs move for sanctions on the basis that the motion for judgment on the pleadings in frivolous and without factual or legal merit. Opposition and reply have been filed.

Motion: Judgment on the Pleadings

1. Legal Background

Defendants challenge the sufficiency of the prefiling notice submitted to the LWDA and employer. Before bringing a PAGA lawsuit, an aggrieved employee must give written notice to the Labor and Workforce Development Agency and the employer of "the specific provisions of [the Labor Code] alleged to have been violated, including the facts and theories to support the alleged violation." (Lab. Code[1] § 2699.3, subd. (a)(1)(A).) If the LWDA elects not to investigate, or investigates without issuing a citation, the employee may file a civil action. (§ 2699.3, subd. (a)(2).) If the LWDA does not notify the employee that it intends to investigate within 65 calendar days of the employee's notice to the LWDA, the employee may commence a civil action. (§ 2699.3, subd. (a)(2)(A).)

To comply with PAGA's prefiling notice requirement, the notice must include "the facts and theories" to support the alleged Labor Code violations. (§ 2699.3, subd. (a)(1)(A).) "The requirement of pre-suit administrative exhaustion of PAGA claims is not particularly stringent, but it is not an empty formality either. Textually, the PAGA scheme is unmistakably clear on this point. As a condition of suit, an aggrieved employee acting on behalf of the state and other current or former employees must provide notice to the employer and the responsible state agency of the specific provisions of [the Labor Code] alleged to have been violated, *including the facts and theories to support the alleged violation*." (*LaCour v. Marshalls of California, LLC* (2023) 94 Cal.App.5th 1172, 1193 [emphasis in original; otherwise cleaned up].)

The prelitigation notice requires more than bare allegations of Labor Code violations. (*Ibarra v. Chuy & Sons Labor, Inc.* (2024) 102 Cal.App.5th 874, 881;

[1] All future statutory references are to the Labor Code unless specified otherwise.

Brown v. Ralphs Grocery Co. (2018) 28 Cal.App.5th 824, 836.) It must provide sufficient information to allow the LWDA " 'to intelligently assess the seriousness of the alleged violations' or give the employer enough information 'to determine what policies or practices are being complained of so as to know whether to fold or fight.' " (*Brown, supra,* at p. 837.) This allows the LWDA the opportunity to " ' "act first on more 'serious' violations such as wage and hour violations and give[s] employers an opportunity to cure less serious violations." ' " (*Santos v. El Guapos Tacos, LLC* (2021) 72 Cal.App.5th 363, 369.) It also allows "the employer to submit a response to [the LWDA] [citation], again thereby promoting an informed agency decision as to whether to allocate resources toward an investigation." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 545-546.)

2. Procedural Guidelines

A defendant's motion for judgment on the pleadings is appropriate when the plaintiff's complaint fails to allege facts sufficient to state a cause of action. (Code Civ. Proc., § 428; (2024) 105 Cal.App.5th 1143 *Santa Clarita Organization etc. v. County of Los Angeles*; *Shin v. Kong* (2000) 80 Cal.App.4th 498; *Third Eye Blind, Inc. v. Near North Entertainment Ins. Services, LLC* (2005) 127 Cal.App.4th 1311.) The sufficiency of the prefiling notice may be challenged by a motion for judgment on the pleadings. (See *Ibarra, supra*, at 881—finding that prelitigation notice was sufficient and thus reversing court order that granted motion for judgment on pleadings; *Uribe v. Crown Bldg. Maint. Co.* (2021) 70 Cal.App.5th 986, 1003—courts have affirmed that "[p]roper notice under section 2699.3 is a 'condition' of a PAGA lawsuit.")

The grounds for the motion for judgment on the pleadings must appear on the face of the challenged pleading or from matters subject to judicial notice. (Code Civ. Proc., § 438.) Here, defendants assert that the submitted notice is boilerplate; that the LWDA has concluded that notices like the one submitted here are insufficient to exhaust PAGA's pre-filing requirements and directed submission of amended PAGA notices to rectify the deficiency; and that in any event, the notice does not satisfy even the minimum standard for PAGA prefiling notices.

(a) Defendants' Request for Judicial Notice

In support of their argument, defendants request the court take judicial notice of the following:

- A letter from the California Labor & Workforce Development Agency ("LWDA") to Elizabeth Christopher of Bibiyan Law Group, P.C. dated February 13, 2025 (the "LWDA Letter"). This document was obtained via a public records act request to the California Department of Industrial Relations ("DIR"). (See Daly Decl., ¶ 3, Exhibit 1.)

- A report downloaded from the DIR's online searchable database of PAGA claims filed with the LWDA, listing all PAGA notices submitted to the LWDA by "Bibiyan Law Group" from May 1, 2020, to May 1, 2025. (See Daly Decl., ¶ 4; Exhibit 2.)
- The PAGA notice dated November 10, 2021, that Plaintiffs Raquel Pineda Salto and Laura Garzia (collectively, "Plaintiffs") submitted to the LWDA in connection with this litigation. This document was mailed to Defendants at the time it was electronically filed with the LWDA, and a copy of the document was also obtained via a public records act request to the DIR. (See Daly Decl., ¶ 5; Exhibit 3.)
- Ten PAGA notices submitted to the LWDA by Bibiyan Law Group, P.C. in 2021 in connection with other PAGA litigation matters. These documents, along with 34 other PAGA notices submitted by Bibiyan Law Group to the LWDA in 2021 (available to the Court upon request), were obtained via a public records act request to the DIR. (See Daly Decl., ¶ 6; Exhibit 4.)
- Ten of the 137 PAGA notices discussed in the LWDA's letter dated February 13, 2025. These documents, along with the 127 other PAGA notices at issue in the LWDA's letter (available to the Court upon request) were obtained via a public records act request to the DIR. (See Daly Decl., ¶ 7; Exhibit 5.)

Defendants assert the court may take judicial notice of these document under either Evidence Code section 452 subdivision (c) ["[o]fficial acts of the legislative, executive, and judicial departments of the United States or of any state of the United States."] or Evidence Code section 452, subdivision (h), as "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." Plaintiffs oppose the request solely based on relevance. The court will first consider whether the documents in each exhibit are capable of judicial notice and will then consider relevance.

Exhibit 1 is a letter from Todd Ratshin, Deputy Secretary for Enforcement of the LWDA, that concerns the interpretation of the PAGA prefiling notice requirements. As such, it appears to be an advisory letter which qualifies as an " 'official act' " of an " 'executive ... department[.]' (*Mission Springs Water Dist. v. Desert Water Agency* (2024) 101 Cal.App.5th 413, 436—taking judicial notice of an advisory opinion letter by the State Water Board to the County of Monterey regarding "Request for Clarification Regarding Groundwater Sustainability Agency Formation Notices"; see *Fisher v. County of Orange* (2022) 82 Cal.App.5th 39, 48—taking judicial notice an advisory letter from the State Board of Equalization that concluded the extraction method was the " 'most reasonable way of allocating the value" between the mobilehome and the underlying fractional interest in a mobilehome park.) The court will take judicial notice of it.

Exhibit 2 is capable of judicial notice. Information collected from government websites is generally presumed to be reliable. (See *People v. Morales* (2018) 25 Cal.App.5th 502, 511, fn. 7 ["courts may take judicial notice of information published on official government websites"].)

Exhibit 3 is the PAGA notice submitted *in this case*. While there is authority that holds papers filed with state and federal agencies do not fall within the ambit of "official acts" (*Stevens v. Sup.Ct. (API Ins. Services, Inc.)* (1999) 75 Cal.App.4th 594, 607-608), there is also authority that observes courts routinely take judicial notice of LWDA letters submitted in connection to PAGA actions. (*Carr v. Walmart, Inc.* (C.D. Cal. 2025) 764 F.Supp.3d 879, 888.) Because plaintiff's PAGA claim depends on the sufficiency of the letter's content, and plaintiffs do not dispute its authenticity, the court will take judicial notice of this exhibit.

Exhibit 4 constitutes papers filed with the LWDA and as such, fall within the ambit of *Stevens v. Sup.Ct. (API Ins. Services, Inc.)* (1999) 75 Cal.App.4th 594, 607-608 [documents that are not "official acts" are not subject to judicial notice].) The request for judicial notice of these documents is denied.

Exhibit 5 also consists of papers filed with the LWDA, but as they are documents specifically identified in LWDA's advisory letter (Exhibit 1) as notices it deemed insufficient, they are sufficiently related to the opinion offered and necessary for context. The court will take judicial notice of these exhibits.

Plaintiff objects to the court taking judicial notice of any of these documents on the basis of relevance. Clearly, the PAGA notice submitted in this case (Exhibit 3) is relevant. The amended complaint alleges that plaintiffs provided such notice. (Amended Complaint, ¶ 18.) Its relevance can't be disputed.

Plaintiffs object to the relevance of the letter from the LWDA (Exhibit 1), since it does not mention plaintiffs, this case, or even plaintiffs' counsel of record. Moreover, plaintiffs argue that the standard is different now than it was in 2021 when the letter was offered and rejected by the LWDA. However, although the opinion is not binding, it is relevant to the extent the letter offers an opinion on the adequacy of prefiling notices that contain the same deficiencies identified in the letter. Courts independently evaluate the agency interpretations and adopt them only if they find them to be correct. For example, in California, courts do not grant automatic deference to the DLSE's interpretations of labor laws. Instead, courts independently evaluate the DLSE's interpretations and adopt them only if they find them to be correct. (*Hernandez v. Pacific Bell Telephone C*o. (2018) 29 Cal.App.5th 131, 143; *Sumuel v. ADVO, Inc*. (2007) 155 Cal.App.4th 1099, 1109—"Although it is well established that the courts need not defer to DLSE's interpretations, we may give them whatever persuasive weight they carry.") Similarly here, the court finds the LWDA advisory letter to be relevant (as are those notices deemed to be insufficient

in Exhibit 5), even if not dispositive, and the court will grant whatever persuasive weight it independently deems the opinion to carry.

In summary, the court grants the request for judicial notice as to Exhibits 1-3, and Exhibit 5. All are deemed relevant; and those documents related to the opinion of the LWDA may be given persuasive weight, but the conclusion will be assessed independently.

(b) Plaintiffs' Request for Judicial Notice

Plaintiffs request the court take judicial notice of a letter dated April 16, 2025, from Todd Ratshin, the same official who authored the letter in Exhibit 1 above, to defendant's attorney, who asserted his client was unable to respond specifically to claimant's amended PAGA notice because it "does not offer meaningful clarification" in terms of the alleged violations. Ratshin responds by opining on the ways in which the amended PAGA notice was clarified. He concludes: "These facts as alleged by claimant adequately define the scope of the violations alleged." (Plaintiffs' Request for Judicial Notice, Exhibit 1.) The court grants the request and takes judicial notice on the same terms as described above.

3. Analysis

The February 13, 2025 LWDA letter is directed at attorney Elizabeth Christopher of the Bibiyan Law Group. It notes:

- "[Y]ou have filed numerous boilerplate PAGA notices containing seemingly frivolous allegations on behalf of allegedly aggrieved employees against employers throughout the state. These notices do not appear to satisfy PAGA's prelitigation administrative notice requirements under Labor Code section1 2699.3."
- "A review of a sampling of these notices demonstrates the notice filed in each matter consists of a template form without regard to any individual claimant's particular experiences or employment with their respective employer in any given case."
- "With [] considerations [of the reforms enacting early resolution opportunities] in mind, a PAGA notice properly must inform both LWDA and the employer of the nature of the violations alleged with some level of detail in describing the "facts and theories" supporting them. The boilerplate PAGA notices you are filing (*at an extraordinary rate of more than two per business day*) generally fail to demonstrate any applicability or relevance to a particular claimant or their unique circumstances in terms of their employment with their current or former employer in any specific case." (Emphasis in original.)

- Given the exhaustive recitation of numerous alleged Labor Code violations in each matter it is impossible to discern what violation(s), if any, a claimant in any case actually personally suffered. (See § 2699, subd. (c)(1).) As you previously have been cautioned, such blanket notices are tantamount to no notice at all, either to LWDA for purposes of determining whether to investigate a particular matter or to an employer seeking to ascertain the nature of the claims at issue for purposes of attempting to cure or resolve them. While the pleading standard attendant to PAGA notices is not necessarily a "weighty" or burdensome one, the notices you are filing do not satisfy even the minimal standard of "nonfrivolousness" applicable to PAGA notices preceding the recent reforms. (Williams v. Superior Court (2017) 3 Cal.5th 531, 545, citing Code Civ. Proc., § 128.7.)
- "[Y]ou hereby are directed to file amended PAGA notices in each matter listed in the index included with this letter. [] All amended notices shall set forth those specific violations personally suffered by each particular claimant and describe the particular facts and theories supporting the specific violations alleged in each case."

(Daly Decl., Exhibit 1.)

In summary, Deputy Secretary Ratshin's letter suggests that the notices submitted are overly inclusive in their recitation of violations, thus obscuring any particular violation.

As noted above, the notice must include "the facts and theories" to support the alleged Labor Code violations. While the "facts and theories" provided in support of violations identified in the notice need not satisfy a particular threshold of weightiness, they must comport with the requirements of nonfrivolousness generally applicable to any civil filing. (See Code Civ. Proc., § 128.7; *Williams v. Superior Court* (2017) 3 Cal.5th 531, 545—"Nothing in Labor Code section 2699.3, subdivision (a)(1)(A), indicates the "facts and theories" provided in support of "alleged" violations must satisfy a particular threshold of weightiness, beyond the requirements of nonfrivolousness generally applicable to any civil filing. (See Code Civ. Proc., § 128.7.)") Thus, at the time the notice is given, plaintiff's attorney must believe the allegations and other factual contentions have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery. (Code Civ. Proc., § 128.7, subd. (b)(3).) Plaintiffs' assert that the notice was well-grounded in fact and warranted by existing law, pointing to the alleged violations identified in the notice that supported, for example, the claim that defendants had a practice of failing to provide a meal period, failed to provide overtime pay or rest periods. These claims were all, ultimately, included in the complaint. (Amended Complaint, 1st [failure to pay overtime wages]; 3rd [failure to provide meal periods] and 4th [failure to provide rest periods] Causes of Action.) But plaintiffs do not confront the issue here, e.g., that they have included many more

alleged violations in the notice that *do not* appear in the Amended Complaint. The fact that those violations identified were omitted from the complaint suggests that plaintiffs held no such belief that the assertion in the notice had evidentiary support.

The parties have not presented, and the court was unable to find, any cases discussing whether the overbreadth of the notice invalidated it under the PAGA scheme. However, an analogous situation arose in the Proposition 65 context. The Safe Drinking Water and Toxic Enforcement Act of 1986 (Health & Saf. Code , §§ 25249.5 et seq.) prohibits "expos[ing] any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual." (§ 24249.6.) Persons who violate or threaten to violate this section may be enjoined in any court of competent jurisdiction and are subject to a civil penalty. (§24249.7, subds. (a), (b).) A private citizen (also sometimes called "private enforcer") may enforce the Act if applicable government agencies fail to undertake enforcement after notice of violation has been given to the applicable government agencies and to the alleged violator. (*Id*. at subd. (d).) As in the PAGA context, the purpose of the notice is to enable "meaningful investigation" by those public authorities "prior to citizen intervention." (*Consumer Defense Group v. Rental Housing Industry Members* (2006) 137 Cal.App.4th 1185, 1208.)

The court in *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2007) 150 Cal.App.4th 953 considered whether plaintiff's notice to the Attorney General and the alleged violator was so overbroad as to be invalid. It began its analysis by observing:

> "Standing alone, overbreadth, even where substantial, does not demonstrate that the notices are invalid. Instead, the key queries are (1) whether the requirements of section 12903 are satisfied; (2) whether the notice is sufficiently specific to permit the Attorney General and the accused a meaningful opportunity to investigate; and (3) whether the notice is sufficiently specific to permit the accused a meaningful opportunity to cure.
>
> (*Consumer Advocacy Group, Inc.*, *supra,* at 966.)
>
> It continued:
>
> "While broad language arguably may increase the burden on both the public prosecutor and the accused, [a finding the notice is invalid] is not automatic. For example, a hotel lacking a pool incurs no additional burden when it receives notice it failed to provide reasonable warnings in a pool area. The hotel is justified in concluding that it is not required to take any action with respect to a nonexistent pool. Thus, where an alleged violation is clear and specific, the

existence of extra, inapplicable violations does not, without more, render the notice invalid."

"In contrast, notice that identifies possible but unclear and general violations makes it impossible for the recipient to understand the specific violation. For example, the *Miramar* court explained that alleging exposure through " 'inhalation, ingestion, and dermal contact,' in nearly the exact words of the regulation ... suggest[s] that the violation consisted of contact, but state[s] no facts describing how the contact occurred, and neither the dates of exposure (a period of years) nor the description of persons exposed (every general class of employee respondents might have) provide any clarification." (*Miramar, supra,* 88 Cal.App.4th at p. 747, 106 Cal.Rptr.2d 332, italics omitted.) The failure of the notice to identify the route of exposure led the court to speculate that CAG intended to allege that the route of exposure was through contact. However, CAG's third set of notices indicates the route of exposure is through inhalation. The court, like the *Miramar* respondents and the public prosecutor, was unable to understand the overly broad notice."

(*Id.*)

Applying the key queries from *Consumer Advocacy Group*, and modifying them to fit the applicable statutory scheme, the court should consider: (1) whether the requirements of section 2699.3 are satisfied (e.g., have facts and theories been identified to support the alleged violation); (2) whether the notice is sufficiently specific to permit the LWDA and the employer a meaningful opportunity to investigate; and (3) whether the notice is sufficiently specific to permit the employer a meaningful opportunity to cure. Taking a sample from the notice given here, plaintiffs assert the following bases for their claim they are owed overtime:

> Employee and other aggrieved employees are covered by Labor Code section 510 and applicable Wage Orders. Employee is informed and believes, and based thereon alleges, that Employer had and has a policy or practice of requiring its employees to work more than eight (8) hours per day, forty (40) hours per week, and/or seven (7) straight workdays in a workweek without paying them proper overtime wages, as a result of, without limitation, failing to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to come early to work and leave late work without being able to clock in for all that time, to suffer under Employers' control due to long lines for clocking in, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock out for rest periods, to don and doff uniforms and/or safety equipment off the clock, to attend company meetings off the clock, to make phone calls or drive off the clock, and/or go through security screenings and/or temperature checks off the clock; by prohibiting employees from recording their own hours or approving their hours worked by Employer; by deducting time for meal periods even when meal periods were not taken or cut short; failing to pay for all non-productive time; failing to pay for all rest and recovery periods; failing to include all forms of remuneration, including non-discretionary bonuses, incentive pay, meal allowances, and other forms of remuneration into the regular rate of pay for the pay periods where overtime was worked and the additional compensation was earned for the purpose of calculating the overtime rate of pay; detrimental rounding of employee time entries, editing and/or manipulation of time entries to show less hours than actually worked, and for paying straight pay instead of overtime pay to the detriment of Employee and other aggrieved employees. Consequently, Employee is informed and believes, and based thereon alleges, that Employers violated Labor Code sections 510, 1194, and applicable Wage Orders based on its practice of providing total compensation that is less than the required legal overtime compensation for the overtime worked, entitling Employee and other aggrieved employees to damages. Employers would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

This paragraph does allege facts *and* theories. Asserting that an employer has required its employees to come to work early and leave work late without being able to clock in for all that time are facts that support the theory that overtime laws have been violated. However, it also asserts facts in support of no fewer than 17 policies and practices defendants *might* have engaged in to support plaintiffs' claim that defendants violated overtime laws. This shotgun approach obfuscates the real issues and undermines the ability of the LWDA or the employer to investigate the claims.

Unlike *Consumer Advocacy Group*, where the court found that a notice which identified an obviously inapplicable violation was not burdensome, the notice here identifies policies that are not so obviously inapplicable. The asserted policy requiring employees to work off the clock includes *nine* (9) subcategories, however, only one (1) of the subcategories was alleged to have been violated in the amended complaint. (Amended Complaint, ¶ 52.) Permitting this practice allows the filer to, n order to survive later challenge, create a template that is so universally complete (by asserting every conceivable Labor Code violation) that it encompasses all conceivable claims. This shifts the responsibility to the employer to determine *which* of the identified policies might form the basis of the claim. In *Consumer Advocacy Group,* this was an easy task because the physical structure of the

building itself informed the applicability of the alleged violation. However, the same isn't necessarily true here. Excessive allegations can quickly become burdensome because the employer must confirm whether each identified policy violation applies. For example, the instant notice asserts the employer has a policy that its employees must don and doff uniforms or safety equipment off the clock. An employer who has a written policy that such donning and doffing must occur on the clock cannot assume that such an assertion is inapplicable to it, because it remains possible the policy is not being enforced by its managers and supervisors. Thus, the shotgun approach used by plaintiffs here tends to undermine the employer's or the LWDA's ability to investigate actual problems while it attempts to exclude the extraneous policies described in the notice.

In other words, an employer cannot exclude the possibility the employee is asserting it has violated a particular Labor Code as easily as a property owner can exclude an asserted violation based on whether it has a pool. Simple knowledge of the particular employers' practices or policies does not identify which asserted policy violations are extraneous. Considered on a continuum, the shotgun approach lead to a brief distraction in *Consumer Advocacy Group* that did not require much thought beyond simply crossing it off the list of things to investigate. Not so in this case. The shotgun approach here would require investigation of many of (and maybe all) the asserted violations, whether or not they were intended to be surplus. Shifting this investigative load to the employer is burdensome in this case in a way it was not in *Consumer Advocacy Group*.

Other examples of this shotgun approach are found in pages 6 and 7 of the notice, where the plaintiffs assert that the employer had a policy or practice of: failing to provide paid sick leave and denying its use; failing to provide paid time off; failing to pay wages in accordance with the applicable statute; failing to provide temporary workers with wages owed in a timely fashion; failing to provide suitable seats; preventing employees from using the skills or knowledge they obtained working with the employer and preventing them from disclosing their wages in negotiating a new job with a prospective employer; preventing the employee from disclosing violations of state and federal law; preventing the employee from engaging in lawful conduct during non-work hours; and requiring as a condition of employment the employee to waive their rights for a violation of the Fair Employment and Housing Act or the Labor Code. None of these asserted policies were alleged as a basis for the causes of action identified in the amended complaint.

In the end, "[i]f . . . if the notice is so much shotgun boilerplate covering every carcinogenic molecule currently known—then meaningful review is impossible." (*Consumer Defense Group v. Rental Housing Industry Members* (2006) 137 Cal.App.4th 1185, 1212.) Similarly here, if the notice is so much shotgun boilerplate covering every policy that could violate labor laws then meaningful review is impossible.

Much of the briefing in this case is devoted to comparing the instant notice to those submitted previously by this firm. The court finds it need not examine those arguments at length as the issue can be resolved on the face of the notice submitted in this case. As such, this decision is not intended as a condemnation of all PAGA notices filed by this firm.

The motion for judgment on the pleading is granted.

Defendants argue that its motion should be granted without leave to amend, as the deficiencies in plaintiffs' PAGA notice cannot be cured through the filing of an amended notice. A one-year statute of limitations period applies to a PAGA claim. (See Civ. Proc. Code § 340, subds. (a), (b)[establishing one-year statute of limitations for "an action upon a statute for a penalty"]; see also *Brown, supra*, 28 Cal.App.5th at p. 839; see also *Crosby v. Wells Fargo Bank, N.A.* (2014)42 F. Supp. 3d 1343, 1346 ["Because the civil penalties recoverable under PAGA are 'penalties' within the meaning of CCP § 340(a), PAGA claims are subject to a one-year statute of limitations."].) Neither plaintiff has worked for defendants since 2020. (See First Amended Complaint, ¶ 3-4.) Thus, any attempt to provide sufficient notice to LWDA now would come more than four years after the Plaintiffs last suffered any alleged violations, far beyond the one-year statute of limitations period. (*Brown, supra,* 28 Cal.App.5th at p. 839; Code Civ. Proc., § 340, subds. (a), (b); *Crosby v. Wells Fargo Bank, N.A., supra*, 42 F. Supp. 3d at p. 1346.)

While there is some concern in rewarding defendants' delay in bringing this argument, which has existed since the action was filed, the court is satisfied that the claims would be lost regardless of the timing. "When an initial notice is deficient in facts or theories to permit LWDA to determine whether to investigate a complaint, Plaintiff cannot cure it by filing with an amended notice. *Ovieda v. Sodexo Operations, LLC*, 2013 WL 3887873, at *3 (C.D. Cal. July 3, 2013) (explaining that in "each of the cases where the court concluded that the plaintiff failed to adequately exhaust because the [PAGA] notice was factually insufficient, no court permitted the plaintiff to submit an amended notice ..."); see also *Lopez v. Lassen Dairy, Inc.*, 2008 WL 4657740 (E.D. Cal. Oct. 20, 2008) (finding that when plaintiff filed a deficient initial notice to LWDA, followed by a complaint that contains a PAGA claim, and finally a factually sufficient amended notice, plaintiff cannot cure the original defective notice). Allowing an amended notice to be submitted after a civil action has already been filed in court defeats the very purpose of the pre-filing requirement: to give the LWDA ample opportunity to make an informed decision about whether to pursue the matter." (*Lucas v. Michael Kors* (USA), Inc. (C.D. Cal. 2018) 2018 WL 6177225, at *3.)

Leave to amend is inappropriate.

Motion for Sanctions

Plaintiffs move for sanctions pursuant to Code of Civil Procedure section 128.7, asserting the motion for judgment on the pleadings is frivolous, containing no factual or legal merit, and asserted primarily for an improper purpose.

"Under [Code of Civil Procedure, section] 128.7, a court may impose sanctions for filing a pleading if the court concludes the pleading was filed for an improper purpose or was indisputably without merit, either legally or factually. ... A claim is factually frivolous if it is 'not well grounded in fact' and it is legally frivolous if it is 'not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.' [Citation.] In either case, to obtain sanctions, the moving party must show the party's conduct in asserting the claim was objectively unreasonable. [Citation.] A claim is objectively unreasonable if 'any reasonable attorney would agree that [it] is totally and completely without merit.' " (*Peake v. Underwood* (2014) 227 Cal.App.4th 428, 440; *Ponce v. Wells Fargo Bank* (2018) 21 Cal.App.5th 253, 260–261.)

Here, plaintiffs argue that defendants' motion is factually without merit for three reasons: first, it's based on the false premise that the letter sent by Mr. Ratshin "acts as a scarlet letter on more than a decade of work product from Bibiyan Law Group;" second, the fact that the LWDA had the power to demand more specific facts be pleaded within the PAGA notice but never did so is clear and undeniable proof that plaintiffs' PAGA notice is sufficient; and third, the parties engaged in years of litigation in this case, which undermines defendants' motion that the PAGA notice is so boilerplate that neither they nor the LWDA could be put on notice for the violations alleged.

Plaintiffs argue that the motion is also made without legal support, as the LWDA's letter does not provide guidance to the courts regarding interpretation of the PAGA pleading standard and that plaintiffs otherwise fail to argue the notice does not meet the legal pleading standard. Finally, plaintiffs argue the LWDA letter is not admissible or subject to judicial notice.

Moreover, plaintiffs assert: "Defendants never expected, or even intended, to have the MJOP granted. The **only** purpose in bringing this motion was to broadcast this unpublished, irrelevant, inapplicable letter to this Court with the intent to bias this Court against Plaintiffs and their counsel. The drafting of a motion for the purpose of biasing the Court against Plaintiffs and their Counsel is improper and in direct violation of CCP section 128.7(b)(1)."

Most of these arguments are undermined by the court's decision on the motion for judgment on the pleadings: the court finds the LWDA Letter to be capable of judicial notice; the fact the LWDA did not request a more precise notice is not

binding on the court; and the LWDA's opinions expressed in the letter may be assigned persuasive value but are not binding on the court. Moreover, the argument that defendants engaged in litigation is not persuasive on the issue whether the pre-suit notice was sufficient, as the complaint omitted many of the surplus allegations included in the pre-suit notice. The court accordingly determines that the motion was not factually or legally frivolous.

This leaves plaintiffs' argument that the motion was brought primarily to harass. Harassment focuses upon the improper purpose of the signer, objectively tested, rather than the consequences of the signer's act, subjectively viewed by the signer's opponent. (*Zaldivar v. City of Los Angeles* (9th Cir. 1986) 780 F.2d 823, 832.)[2] It is presently unclear whether an attorney may be sanctioned for a paper that is not factually or legally frivolous if the attorney's motive for doing so is improper. (*Id.*—"A more difficult question of interpretation exists as to whether a pleading or other paper which is well grounded in fact and in law as required by the Rule may ever be the subject of a sanction because it is signed and filed for an improper purpose. In short, may an attorney be sanctioned for doing what the law allows, if the attorney's motive for doing so is improper? The Rule itself does not provide a clear answer to this question.") It is often the case that the two standards are used together, with one providing evidence of the other. Thus, for example, "the total lack of merit of an appeal is viewed as evidence that appellant must have intended it only for delay." (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650.)

However, the court need not resolve the issue. Here, defendants presented the court with a novel legal question that has not been considered or rejected by other courts. (*Zaldivar, supra,* 780 F.2d at 832—"successive complaints based upon propositions of law previously rejected may constitute harassment under Rule 11.") There is no evidence that defendants were otherwise attempting to redress a private grievance. (See *State of California ex rel. Standard Elevator Co., Inc. v. West Bay Builders, Inc.* (2011) 197 Cal.App.4th 963, 983—finding action to be harassment under former Government Code section 12652, subdivision (g)(9) permitting prevailing defendant in a CFCA suit to recover attorney fees if the claim "was clearly frivolous, clearly vexatious," or brought solely "for purposes of harassment.") Plaintiffs assert that the defendants knew the letter from Mr. Ratshin was hearsay and only introduced it to harm plaintiffs' counsel and paint a scarlet letter on the firm. But there is no such evidence, in the record other than counsel's conjecture. Under the objective test of reasonableness, it does not appear the motion was brought primarily for an improper purpose, such as harassment. The motion for sanctions is denied.

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[2] "The Legislature enacted section 128.7 based on rule 11 of the Federal Rules of Civil Procedure (28 U.S.C.), as amended in 1993 [(rule 11)]. [Citations.] Therefore, federal case law construing rule 11 is persuasive authority on the meaning of section 128.7." (*Bucur v. Ahmad* (2016) 244 Cal.App.4th 175, 190, 198 Cal.Rptr.3d 127; see also *Optimal Markets, Inc. v. Salant* (2013) 221 Cal.App.4th 912, 921, 164 Cal.Rptr.3d 901 (*Optimal Markets*) [federal cases construing rule 11 are instructive for purposes of interpreting § 128.7, which is modeled on rule 11].)