TITLE 8. INDUSTRIAL RELATIONS
DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS
[*PROPOSED*] CHAPTER 9. LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004

INITIAL STATEMENT OF REASONS IN SUPPORT OF PROPOSED REGULATORY ACTION TO:

- **Adopt New Sections 17400, 17401, 17410, 17411, 17412, 17413, 17414, 17415, 17420, 17420.5, 17421, 17422, 17423, 17424, 17430, 17430.5, 17431, 17432, 17433, 17434, 17435, 17436, 17437, 17438, 17439, 17439.5, 17440, 17441, 17442, 17443, 17450, 17450.5, 17451, 17460, 17461, 17462, and 17463.**

PROBLEM STATEMENT

Overview and Background of the Law

The California Labor and Workforce Development Agency (Agency) is an administrative agency charged with overseeing seven major departments, boards, and panels that serve California workers and employers, including the Agricultural Labor Relations Board, Department of Industrial Relations, Employment Development Department, Employment Training Panel, Public Employment Relations Board, Unemployment Insurance Appeals Board, and Workforce Development Board. The Agency strives to achieve a California economy that works for all by ensuring safe and fair workplaces, delivering critical worker benefits, and promoting good jobs for all.

The Labor Code Private Attorneys General Act of 2004 (PAGA), codified at Labor Code section 2698 et seq., is one of the laws administered by the Agency.[1] PAGA is a landmark law enacted in 2004 to augment the state's limited staffing and resources to increase enforcement for violations of employment and workplace requirements. The law achieves this goal by allowing employees to file lawsuits against their current or former employers for Labor Code violations on behalf of the state to recover civil penalties that otherwise would be recoverable only by the state. Any civil penalties recovered by an employee under PAGA are divided between the Agency and the aggrieved employees, which are allocated with 65% going to the Agency and 35% to the aggrieved employees. While individual aggrieved employees may be deputized to act on behalf of the Agency when pursuing a lawsuit to recover civil penalties under PAGA, the law is not designed "to promote private

[1] Subsequent statutory references are to the Labor Code unless otherwise indicated.

enforcement without regard to the [Agency]." (*Esparza v. Safeway, Inc*. (2019) 36 Cal.App.5th 42, 61.) The California Supreme Court has stated PAGA's "sole purpose is to vindicate [the Agency's] interest in enforcing the Labor Code . . .." (*Ibid*., quoting *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 388-389.)

To that end, before an employee may file a lawsuit against their current or former employer under PAGA, certain administrative notice requirements must be met and several administrative processes may follow before an employee is allowed to file a PAGA lawsuit in court. And, even after an employee is authorized to file a PAGA lawsuit, certain administrative reporting obligations continue to apply to safeguard the Agency's role in monitoring PAGA actions to protect the interests of both the state and the other aggrieved employees on behalf of whom such actions are brought. There currently are no regulations implementing these administrative notice, procedural, and reporting requirements. This proposed regulatory action intends to address this.

This proposed rulemaking will make more transparent and effective the administrative requirements and procedures under PAGA, particularly in light of reforms adopted in 2024 substantially amending the law. (Stats. 2024, ch. 44 [Assem. Bill No. 2288 (2023-2024 Reg. Sess.)]; Stats. 2025, ch. 45 [Sen. Bill No. 92 (2023-2024 Reg. Sess.)].) The proposed regulations will provide better guidance and clarity to employees and employers concerning their respective rights and obligations under PAGA, including as it relates to new administrative early resolution, or "cure," procedures adopted by the 2024 reforms and as discussed more fully below.

<u>Prelitigation Administrative Notice Requirements</u>

1. *Notice Requirements, Generally*

As stated above, before filing a PAGA lawsuit an employee first must provide written notice both to the Agency and employer describing the Labor Code violations the employee alleges the employer committed. This type of notice by an employee commonly is referred to as a "PAGA notice." The notice must specifically identify the Labor Code sections allegedly violated and describe "the facts and theories" supporting the violations alleged. (§ 2699.3, subds. (a)(1)(A), (b)(1), and (c)(1)(A).) This prelitigation notice obligation has been described as an "administrative exhaustion" requirement (*Rojas-Cifuentes v. Superior Court* (2020) 58 Cal.App.5th 1051, 1056), and courts have affirmed that "[p]roper notice under section 2699.3 is a 'condition' of a PAGA lawsuit." (*Uribe v. Crown Bldg. Maint. Co*. (2021) 70 Cal.App.5th 986, 1003.)

This notice requirement is intended to give the Agency a "right of first prosecution" before an employee is authorized to sue. (*Williams v. Alacrity Solutions Group, LLC* (2015) 110 Cal.App.5th 932, 941, review granted July 9, 2025, S291199.) Thus, the notice must include sufficient information to allow the Agency "to intelligently assess the seriousness of the alleged violations." (*Ibarra v. Chuy & Sons Labor, Inc*. (2024) 102 Cal.App.5th 874, 881.) These requirements promote informed Agency decisionmaking whether to allocate scarce resources to an investigation or possible prosecution.

This prelitigation notice requirement also serves to inform an employer of the allegations made against it. Therefore, the notice must give the employer enough information to understand the nature of the violations alleged against it so the employer, in turn, may decide whether to dispute or attempt to resolve them. (*Ibarra*, *supra*, 102 Cal.App.5th at p. 881, quoting *Brown v. Ralph's Grocery Co*. (2018) 28 Cal.App.5th 824, 837.) Proper notice to the employer in this manner further promotes informed decisionmaking by the Agency in determining whether to allocate resources to an investigation.

In the absence of administrative guidance, courts previously have described PAGA's notice requirement as "minimal" (*Ibarra*, *supra*, 102 Cal.App.5th at p. 882) and subject to a low standard of "nonfrivolousness" (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 545, citing Code Civ. Proc., § 128.7.) However, the notice must include "facts and theories" articulating the basis for the violations alleged; conclusory assertions or language paraphrasing or summarizing the statutory language of the code sections allegedly violated are not sufficient. (*Uribe*, *supra*, 70 Cal.App.5th at p. 1004; *Brown*, *supra*, 28 Cal.App.5th at p. 837; see *Mora v. C.E. Enterprises, Inc*. (Oct. 21, 2025, B337830) 116 Cal.App.5th 72 [2025 WL 3214076, *8] [employees' PAGA notice did not satisfy administrative notice and exhaustion requirements because it did "not set forth the specific theories of liability . . . much less state any facts in support of those theories"].)

These notice requirements take on increased importance after the comprehensive legislative reforms to PAGA adopted in 2024. There are two reasons for this.

a. Proper Notice Is Necessary to Ensure Proper Functioning of New Early Resolution Procedures

The effectiveness of the expanded early resolution opportunities available to employers to "cure," or correct, violations before or immediately after a lawsuit is filed depends on proper notice of the violations alleged. The 2024 reforms evince a legislative intent to increase Agency oversight of PAGA and provide more robust early resolution avenues for employers, both with an aim towards achieving more timely remedies to make employees whole without the type of

protracted and costly litigation that has led to criticism of the Act. (Sen. Com. on Jud., analysis of Assem. Bill No. 2288 (2023-2024 Reg. Sess.) as amended June 21, 2024, p. 1; Assem. Com. on Jud., analysis of Sen. Bill No. 92 (2023-2024 Reg. Sess.) as amended June 21, 2024, p. 12.) Two key components of the reforms are (1) the small employer prelitigation cure process administered by the Agency, and (2) the early evaluation conference procedure available after a PAGA lawsuit has been filed, both of which are designed to facilitate more timely resolution of PAGA claims. (Assem. Com. on Jud., analysis of Sen. Bill No. 92 (2023-2024 Reg. Sess.) as amended June 21, 2024, p. 13.) Along these lines, the 2024 reforms expanded the types of violations subject to cure procedures to include the most common violations alleged in PAGA cases, including overtime, meal and rest period, and business reimbursement, among others. Sufficient notice of the violations alleged—including the particular facts supporting them—is essential to ensure the proper functioning of these early resolution opportunities. Proper notice of the violations at issue is necessary for employers to understand the nature of the claims at issue so that proper curative and prospective compliance measures may be taken. Such notice further aids the Agency's review of the claims at issue to ascertain the sufficiency of an employer's proposal to cure alleged violations or any measures taken by the employer to cure violations alleged.

b. New Standing Rules Limit the Types of Claims a Person May Allege Under PAGA

The 2024 reforms introduced new standing requirements applicable to all PAGA notices filed on or after June 19, 2024. Before, an employee pursuing claims under PAGA could allege, and recover civil penalties for, Labor Code violations on behalf of other workers that the employee did not personally suffer so long as the employee could show they suffered at least one of the violations alleged. (*Huff v. Securitas Security Services USA, Inc*. (2018) 23 Cal.App.5th 745, 754.) Now, as a general rule, an employee only may allege violations under PAGA that the employee personally suffered while employed by the employer and within one year of the date a PAGA notice is filed. (§ 2699, subd. (c)(1).)[2] These new standing restrictions are consistent with an intent to curtail abusive practices and "unjust lawsuits that hurt employers," while making PAGA actions more manageable and limited in scope. (Sen. Com. on Jud., analysis of Assem. Bill No. 2288 (2023-2024 Reg. Sess.) as amended June 21, 2024, pp. 13-14; Assem. Com. on Jud., analysis of Sen. Bill No. 92 (2023-2024 Reg. Sess.) as amended

[2] A limited exception to this rule applies in situations where an employee is represented by nonprofit legal aid organization or a qualified legal services project or support center meeting certain requirements. (§ 2699, subd. (c)(2).) In these situations, the "old" (pre-reform) standing rule applies.

June 21, 2024, p. 11; see also § 2699, subd. (p).) Accordingly, proper notice clearly articulating the facts and theories supporting the violations alleged is necessary to ensure an individual has standing to pursue such claims.

2. *Trends and Practices Have Developed Over Time that Frustrate and Impede the Purpose of PAGA's Administrative Notice Requirement*

In addition to the above, and notwithstanding the law's requirements concerning notice of the "facts and theories" supporting the violations alleged in a PAGA notice, filing practices before the Agency are not meeting the purpose or intent of PAGA's administrative notice requirement in many cases. Experience has shown a propensity by some attorneys to exploit the minimal notice requirements described by courts before the 2024 legislative reforms, resulting in conduct detrimental to the proper functioning of the law. (See *Williams*, *supra*, 110 Cal.App.5th at pp. 943-944 ["When our Legislature recently amended PAGA, it did so in response to the observation that PAGA's goal of "bolster[ing] labor law enforcement" had been "manipulated over its 20-year history by certain trial attorneys as a money-making scheme"], citing Assem. Floor Analysis, Assem. Bill No. 2288 (2023-2024 Reg. Sess.) June 27, 2024, p. 5.) There currently is no uniform prescribed format for PAGA notices, and many attorneys and law firms have developed their own templates. These templates then are used to produce (often in large volume) PAGA notices that generally repeat the same alleged violations using the same or similar boilerplate, conclusory language generally paraphrasing or summarizing the law without concern or regard to a particular employee and their unique circumstances in terms of their employment with their current or former employer in any given case.

These filing practices impede the Agency's role under PAGA and frustrate the proper functioning of the administrative processes the law provides. To illustrate these concerns, a total of 8,846 PAGA notices were filed with the Agency during fiscal year 2024-2025 (FY 24/25). During this one-year period (from July 1, 2024, through June 30, 2025):

- Five law firms filed a total of 2,086 PAGA notices—about one-quarter (24%) of all PAGA notice filings;
- Three law firms filed on average more than one PAGA notice per day, with one filing 605 notices, another filing 535, and the third filing 409;
- Four law firms filed more than 300 PAGA notices;
- Eight law firms filed more than 200 PAGA notices;
- Five attorneys filed a total of 1,571 PAGA notices, accounting for about 18%, or almost one-fifth, of all PAGA notices;
- Ten attorneys filed a total of 2,192 PAGA notices, accounting for about one-quarter (25%) of all PAGA notices; and

- One attorney filed 597 PAGA notices and another filed 368.[3]

In light of the volume of PAGA notice filings received by the Agency—including by a group of actors responsible for a disproportionate amount of all filings, the boilerplate nature of the filings in many cases impedes the Agency's efforts to distinguish one case from another or to adequately assess the nature, scope, or seriousness of the violations alleged in any given case. This frustrates the intent, and defeats the purpose, of the administrative notice obligation and the requirement an employee provide the Agency sufficient information "to intelligently assess the seriousness" of the violations alleged to determine whether to allocate resources for further investigation or prosecution. (See *Ibarra*, *supra*, 102 Cal.App.5th at p. 881.) Nor do such generic, conclusory boilerplate PAGA notices provide employers sufficient information to understand the nature of the violations alleged against them so they may (1) take appropriate measures to correct, or cure, alleged violations, (2) implement appropriate measures to ensure prospective compliance with the law, or (3) formulate a response to the allegations or dispute them so as to further inform the Agency's administrative review and decisionmaking processes.

These types of filing practices also give rise to other concerns regarding use of the law. For example, PAGA has been subject to criticism on grounds certain attorneys have exploited it as a "money-making scheme" due to the ability to recover attorneys' fees. (See *Williams*, *supra*, 110 Cal.App.5th at pp. 943-944, citing Assem. Floor Analysis, Assem. Bill No. 2288 (2023-2024 Reg. Sess.) June 27, 2024, p. 5; see also Assem. Com. on Jud., analysis of Sen. Bill No. 92 (2023-2024 Reg. Sess.) as amended June 21, 2024, p. 10 ["two decades after its enactment, serious flaws in the PAGA have come to light due to some bad actors"].) Available data shows that some attorneys or law firms responsible for a high volume of PAGA notice filings do not file or report filing PAGA lawsuits, evidencing an apparent strategy of using PAGA claims as a bargaining chip in seeking a quick individual settlement for the employee alongside a recovery of attorneys' fees. The conduct of attorneys in failing to report filed PAGA lawsuits further frustrates the role of the Agency in monitoring PAGA lawsuits as recognized by the courts. (*Turrieta v. Lyft, Inc*. (2024) 16 Cal.5th 664, 696; see *California Business & Industrial Alliance v. Becerra* (2022) 80 Cal.App.5th 734, 748.) For example, during FY 24/25:

[3] Appendix A to this initial statement of reasons in support of the proposed rulemaking (ISOR, App. A) includes two lists showing the number of PAGA notices filed during FY 24/25 by the 25 law firms and attorneys who filed the most PAGA notices in that period.

- One law firm filed 409 PAGA notices but reported filing only 63 PAGA lawsuits based on these notices;
- One law firm filed 230 PAGA notices but reported filing only 10 PAGA lawsuits;
- One law firm filed 222 PAGA notices but reported filing only 5 PAGA lawsuits; and
- One law firm filed 125 PAGA notices but reported filing only 2 PAGA lawsuit.[4]

Further illustrative of the filing practices described here, the Agency is including as part of the record of this proposed rulemaking several examples of PAGA notices filed by several law firms during FY 24/25. (ISOR, App. C [representative samples of PAGA notices filed by select law firms or attorneys].) Over the course of the past year the Agency has issued notices to several law firms directing them to correct patent deficiencies in PAGA notices they filed. An example of one of those letters also is included in the record supporting this proposed rulemaking. (ISOR, App. D.) Of the total 178 cases subject to directions an amended PAGA notice be filed, amended notices were filed in 134 cases, meaning PAGA claims were abandoned in about 25% of the cases.

3. Addressing PAGA Notice Filing Problems

The conduct and filing practices describe above do not further or protect the interests of the state or other aggrieved employees. To address these problems, this proposed regulatory action would:

(1) standardize the required format and content of PAGA notices;
(2) clarify the content required in PAGA notices, including as it relates to the facts and theories supporting the violations alleged; and
(3) introduce certain safeguards to protect against and deter abusive filing practices that undermine or frustrate the intent and proper administration of the law.

In doing so, this proposed regulatory action will benefit all parties in PAGA cases by providing greater clarity and guidance regarding PAGA's administrative notice requirements. This will result in improved articulation of the violations alleged in cases, which will aid the Agency's role in reviewing PAGA notices and the violations alleged. Improved clarity and guidance in terms of the

[4] Appendix B to this initial statement of reasons in support of the proposed rulemaking (ISOR, App. B) shows the number of PAGA lawsuits based on PAGA notices filed during FY 24/25 as reported by the 25 law firms that filed the most PAGA notices during this period.

requirements of PAGA notices also will assist employers in better understanding the nature of the violations alleged against them. These requirements will provide greater transparency in, and result in more efficient review and processing of, PAGA cases. This, in turn, will aid in achieving better results in PAGA cases for employees and employers, alike, and in doing so will further the policies of the law by ensuring more effective enforcement of state labor standards, deterring unlawful employer conduct, and securing fair and safe workplaces for all employees.

Prelitigation Administrative Procedures

During the notice period before an employee may file a PAGA lawsuit, there are several administrative processes that may occur. Currently there are no regulations governing these processes. This proposed regulatory action addresses this problem by implementing the procedures described in statute and providing clearer guidance to parties in proceedings before the Agency.

1. *Investigations*

Investigations of Labor Code violations alleged in PAGA notices are conducted by the Division of Labor Standards Enforcement, commonly known as the "Labor Commissioner's Office" (LCO), or the Division of Occupational Safety and Health (Cal/OSHA), both within the Department of Industrial Relations (DIR). For alleged wage and hour violations subject to the LCO's jurisdiction, the Agency has assigned administration of PAGA to DIR, which in turn delegated such authority to LCO, as it relates to the review, investigation, and handling of such cases. Cal/OSHA has authority over alleged violations of safety and health requirements. (§ 2699.3, subd. (b).)

With respect to alleged wage and hour violations, LCO may provide notice to the parties it will investigate violations alleged in a PAGA notice. Notice of an investigation must issue within 65 days from the postmark date of the PAGA notice. (§ 2699.3, subds. (a)(2)(B), (c)(1)(E).) In cases where LCO commences an investigation, it has 120 days to conduct the investigation. (*Ibid*.) On the other hand, Cal/OSHA investigations of safety and health violations alleged in PAGA notices are subject to procedures prescribed in statute. (§ 2699.3, subd. (b)(2)(A); see § 6300 et seq.)

The proposed regulatory action provides guidance to parties in PAGA cases regarding the procedures by which alleged violations may be investigated. The proposed rulemaking also provides guidance regarding the respective rights and obligations of employees and employers during an investigation conducted by LCO or Cal/OSHA.

2. *Cure Procedures*

After the 2024 reforms there now are two separate administrative cure procedures available to employers to resolve certain types of alleged violations before a lawsuit may be filed. One process is available to "small employers" for curing certain types of wage and hour violations commonly alleged in PAGA notices, e.g., overtime, meal and rest period, and business reimbursement, among others. The other procedure is a more streamlined process available to all employers where the only violation to be cured involves a violation of wage statement requirements under section 226.

a. Small Employer Cure Procedures (§ 2699.3, subd. (c)(2))

Existing law after the 2024 reforms allows an employer that employed less than 100 employees total during the one-year period before a PAGA notice is filed to submit to the Agency a proposal to cure certain alleged violations. The proposal must be submitted within 33 days after the employer receives the PAGA notice, and the Agency has 14 days to determine whether the proposal is facially sufficient or if a conference is necessary to determine whether a sufficient cure is possible. If a conference is warranted, it must be scheduled within 30 days after the date of the Agency conference notice. If the Agency determines a sufficient cure is possible, the employer has up to 45 days from the date of the conference to complete the cure actions and produce specified records to the Agency regarding those actions taken. The Agency then has 20 days to verify the cure measures are complete. If an employee disputes the adequacy of a cure, the employee may request a hearing to dispute the cure determination. After a hearing, if the cure is determined to be adequate the employee may challenge that determination in superior court. If the cure is determined to be inadequate, the employee may proceed with a lawsuit.

While the statute describes the general framework governing these cure proceedings, the proposed regulatory action will provide greater clarity and guidance to employees and employers engaged in these proceedings, including as to their respective rights and obligations before the Agency. To this end, the proposed regulations will (1) describe the information an employer must provide to the Agency in a proposal to cure alleged violations; (2) inform the parties of applicable requirements before a cure conference is held, including the filing of preconference statements to aid in the parties' and Agency's assessment of cure proposals and the measures necessary to cure alleged violations; (3) describe the format of a cure conference and how conferences will be conducted, including the parties' rights and obligations during the course of a conference; (4) describe the procedures applicable when the Agency determines a sufficient cure is possible for alleged violations; (5) set forth the information an employer must include when submitting a sworn

notice to the Agency that the cure has been completed; (6) identify the process and timeframe in which an employee may dispute a determination by the Agency a sufficient cure has been completed; and (7) describe the procedures applicable to a cure dispute hearing and the parties' respective rights and obligations during such proceedings when an employee disputes an Agency cure determination.

The proposed regulatory action will provide increased transparency into the Agency's cure procedures and result in greater efficiency in the processing of employer cure proposals.

b. Wage Statement Cure Procedures (§ 2699.3, subd. (c)(3))

Existing law after the 2024 reforms allows employers to cure violations of wage statement requirements through an expedited process before a lawsuit may be filed. An employer's notice it has cured a wage statement violation must be submitted to the Agency and employee within 33 days of the postmark date of the PAGA notice. The notice must describe the actions taken by the employer to cure the violations. An employee may dispute an employer's purported cure by filing a notice with the Agency. Upon receipt of an employee's cure dispute notice, the Agency has 17 days to issue a decision regarding the sufficiency of the cure actions taken by the employer. If the Agency determines the violation is not cured, the Agency may allow the employer an additional three business days to complete the cure. If the Agency determines a violation has been cured, the employee may challenge that determination in superior court. If the violation is not cured the employee may proceed with a lawsuit.

The proposed regulatory action will provide guidance to employers and employees regarding their respective rights and obligations during wage statement cure proceedings. The proposed regulations will, among other things, (1) describe the information an employer must include with a wage statement cure notice to aid in the Agency's, and the employee's, ability to assess the sufficiency of the cure actions taken; (2) prescribe the time in which an employee must file a notice disputing the employer's cure and the information that must be included in such a notice; (3) clarify the procedures by which the Agency will review an employer's cure notice in circumstances where an employee does not dispute the employer's cure; and (4) describe the procedures by which the Agency will review an employer's supplemental cure notice in the event an employer is provided additional time to complete a cure.

This proposed rulemaking will provide increased transparency into the procedures by which the Agency reviews employer wage statement cure notices. The proposed rulemaking also will result in improved efficiencies in these

matters by clarifying the parties' respective rights and obligations during wage statement cure procedures.

Litigation Reporting Obligations (§ 2699, subd. (s))

Existing law allows an employee to file a lawsuit against their current or former employer to recover civil penalties under PAGA if the Agency does not cite the employer for the violations alleged or choose to prosecute the violations itself within the time required, or where the violations alleged by the employee are not cured during administrative cure proceedings. An employee authorized to proceed with a PAGA lawsuit does so on behalf of the Agency, and the Agency is a real party in interest in such actions. (*Rose v. Hobby Lobby Stores, Inc*. (2025) 111 Cal.App.5th 162, 169, 173.)

Existing law requires a PAGA plaintiff submit to the Agency various court-related filings to facilitate the Agency's review and oversight of such actions, including the complaint, court orders awarding or denying civil penalties, court judgments, and proposed settlement agreements. Settlements of PAGA cases are subject to approval by the court, and a plaintiff is required to submit the proposed settlement agreement to the Agency at the time it is submitted to the court. The purpose of these reporting obligations, and in particular the obligation that parties submit proposed settlement agreements to the Agency, is to increase the Agency's role in monitoring PAGA actions to ensure the interests of the state and other aggrieved employees are protected. (*Turrieta*, *supra*, 16 Cal.5th at p. 696; see *California Business & Industrial Alliance*, *supra*, 80 Cal.App.5th at p. 748.)

However, in many cases parties do not submit their court-related documents to the Agency, thereby frustrating the Agency's ability to monitor PAGA cases. (See pp. 6-7, *supra*.) Also, the information submitted to the Agency when parties have reached proposed settlement agreements often is insufficient to allow the Agency to review them effectively to ensure they are fair, adequate, and reasonable both to the state, on whose behalf a case is prosecuted, and the other affected employees. This conduct, which often occurs in "top-filing" or "reverse auction" scenarios, or both, contribute to significant problems and challenges in the administration of PAGA as a public enforcement tool.

The act of "top-filing" refers to a situation where a plaintiff files a PAGA notice or lawsuit against an employer already being sued under PAGA.[5] In other words,

[5] Courts have found PAGA does not prevent multiple overlappling lawsuits against a single employer. (*Tan v. GrubHub, Inc*. (N.D. Cal. 2016) 171 F.Supp.3d 998, 1012-1013, citing *O'Connor v. Uber Technologies, Inc*. (N.D. Cal., Feb. 4, 2016) 2016 WL 11556426, at *1; see also, e.g., *Campbell v. Pricewaterhouse*

the late-coming plaintiff has filed "on top of" the earlier plaintiff pursuing an action against the same defendant. A "reverse auction" scenario arises where a defendant subject to multiple lawsuits seeks to settle claims with a plaintiff willing to take the lowest amount. Courts have stated "[a] reverse auction is said to occur when 'the defendant in a series of class actions picks the most ineffectual class lawyers to negotiate a settlement with in the hope that the district court will approve a weak settlement that will preclude other claims against the defendant.' [Citation.] It has an odor of mendacity about it." (*Negrete v. Allianz Life Ins. Co. of North America* (9th Cir. 2008) 523 F.3d 1091, 1099.) In some instances plaintiff attorneys may encourage or cooperate in this conduct. This may include situations where an attorney has filed an action against a defendant and seeks to pursue a quick settlement at a very preliminary stage without engaging in any substantial investigation or discovery efforts, with the practical effect of any such settlement extinguishing similar claims of other plaintiffs that have been engaged in litigation with the same defendant. However, reverse auctions do not depend on collusive conduct between plaintiff and defense attorneys but rather may occur in the context of a defendant—who is in a much better position to know all the different lawsuits and overlapping claims filed against it—"plaintiff shopping" to pursue a settlement with the plaintiff willing to take the lowest amount.[6] (See *In re Neutron Holdings Wage and Hour Cases*, case no. CJC-19-005044, Redacted Order Denying Without Prejudice Plaintiff's Motion for Approval of PAGA Settlement, etc., Feb. 18, 2021.)[7]

Coopers, LLP (E.D. Cal., June 5, 2008) 2008 WL 2345035, at *1 [recognizing "it is not unusual for class actions to be filed 'on top of' an originally filed class action"].) The California Employment Lawyers Association (CELA) has described the act of "top-filing" as "the practice of filing a class action or PAGA lawsuit even though a previous lawsuit with identical or similar claims has already been filed against the same defendant. Top-filing can be intentional or inadvertent." (CELA Amicus Curiae Br., *Turrieta v. Lyft, Inc*., case no S271721, July 18, 2022, p. 12, available at <https://cela.org/?pg=AmicusActivity> [as of Jan. 20, 2026].)

[6] CELA describes a reverse auction as occurring "when there are two or more class action or representative PAGA cases with overlapping claims, and the defendant chooses to settle with the plaintiff who is willing to exchange the broadest release of claims for the lowest price." (CELA Amicus Curiae Br., *supra*, at p. 11; see also *id*. at pp. 14-19 [illustrating a reverse auction scenario and its impact on affected employees], pp. 21-23 [CELA member statements describing experiences with reverse auction practices].)

[7] The court in this matter addresses various issues common in reverse auction scenarios in denying approval of a proposed PAGA settlement the court did not find fair, adequate, and reasonable. A copy of this order is included as

Reverse auctions are harmful to both the state and other affected employees. As noted above, they often are implicated in situations where a defendant negotiates with the weakest plaintiff, or a plaintiff's attorney complicit in such negotiations, to resolve a case in the quickest manner or without having to expend substantial effort or resources. Thus, reverse auctions result in significantly reduced settlement values, which, in turn, results in reduced penalty recoveries by the state—on whose behalf a PAGA action is litigated, as well as other aggrieved employees whom the PAGA plaintiff purports to represent. These practices are detrimental to the interests of both the state (on whose behalf a PAGA case is litigated) and other aggrieved employees (the interests of whom the PAGA plaintiff purports to represent). Settlement agreements in PAGA cases benefiting the individual plaintiff and plaintiff's attorney, who may have done minimal work in a case, at the expense of the state and other aggrieved employees fail to further PAGA's public enforcement purposes, do not adequately deter unlawful employer practices, and are not fair or reasonable to the state or other affected employees. (*Howitson v. Evans Hotels, LLC* (2022) 81 Cal.App.5th 475, 485 [a PAGA action "is fundamentally a law enforcement action designed to protect the public and not to benefit private parties"], quoting *Arias v. Superior Court* (2009) 46 Cal.4th 969, 986; *Turrieta*, *supra*, 16 Cal.5th at p. 695 [noting PAGA's "dual statutory purposes of punishment and deterrence"].)[8]

Another problematic practice under PAGA in the settlement context involves situations where a plaintiff entering into a proposed settlement agreement with an employer files an amended PAGA notice with the Agency to add new claims not previously alleged in the earlier PAGA notice or ensuing civil action. The effect of filing such amended PAGA notices to allege new claims in this context is to "ripen" the additional claims for purposes of administrative exhaustion purposes so they can be included within the proposed settlement agreement. This, in turn, allows the employer to obtain a release of all such claims in the settlement. And the ultimate effect of such a release is to extinguish all other claims and actions brought by other employees against the employer—despite the claims not being investigated, litigated, or pursued in the

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Appendix E to this initial statement of reasons in support of the proposed rulemaking.

[8] It is noted CELA has adopted a Reverse Auctions Policy identifying various harms posed by reverse auctions in representative actions, including PAGA, with an aim towards facilitating cooperation among plaintiffs' counsel and advancing enforcement of state and federal labor laws. (CELA, The Reverse Auctions Policy, Oct. 8, 2020, at <https://cela.org/?pg=ReverseAuctionsPolicy> [as of Jan. 20, 2026].)

case being settled, and at the expense of those other employees who have devoted time and resources to investigating and pursuing those claims.

The proposed regulatory action will aid the Agency's role in monitoring PAGA actions by providing clearer guidance and requirements for parties regarding their litigation and settlement reporting obligations to the Agency. In particular, this proposed rulemaking provides clear direction regarding the materials required to be submitted to the Agency to facilitate its review of proposed settlement agreements consistent with PAGA's framework and intent. In doing so, the proposed rulemaking further will enable the Agency to comment or object to proposed agreements in a more meaningful and effective manner in situations where a proposed agreement is not fair and reasonable to the state or other aggrieved employees or when other issues exist.

ANTICIPATED BENEFITS

As indicated above, the proposed regulations are designed to (1) provide guidance to employees and employers regarding their respective rights and obligations in actions under PAGA, including before the Agency; (2) offer increased clarity and transparency into the Agency's prelitigation administrative procedures under PAGA; and (3) aid the Agency in its role under PAGA to review and monitor PAGA lawsuits, including for purposes of ensuring proposed settlements of PAGA actions are fair, reasonable, and further PAGA's public law enforcement and deterrent purposes.

By providing this guidance and clarity to both employee and employer stakeholders so they may better understand the processes administered by the Agency and their respective rights and obligations during such proceedings, this proposed rulemaking further is intended to increase efficiencies in proceedings before the Agency and strengthen the Agency's role under the law.

SECTION-BY-SECTION EXPLANATION FOR ADOPTION

Proposed Subchapter 1. Scope and Application

Proposed section 17400 adds language defining the scope of the proposed regulations as governing the administrative procedures and review requirements under PAGA. This is necessary to clarify the application of the regulations as implementing, interpreting, and making more specific the provisions of PAGA administered and enforced by the Agency. (Lab. Code, § 2699, subd. (u); Gov. Code, § 11342.600.)

Proposed section 17401 adopts definitions for terms commonly used in proceedings under PAGA. Definitions are included for references to different

state entities that administer different parts of PAGA, including the Agency, LCO, and Cal/OSHA. These definitions are necessary to clarify the entity responsible for administering different aspects of the law. Definitions for terms commonly used in PAGA proceedings, and throughout these proposed regulations, further are necessary to create a uniform source of terminology and clarity for both internal and external stakeholders and avoid confusion when terms may carry certain legal significance in the manner of their use, may be ambiguous, or may be susceptible to more than one meaning.

Proposed Subchapter 1.5. Filing and Service

Proposed section 17410 adds provisions describing the procedures by which a party is required to file documents with the Agency. These instructions are necessary because Labor Code section 2699.3, subdivisions (a), (b), and (c) each require employees and employers file documents electronically with the Agency, but no further description of the manner in which documents must be electronically filed is provided. Labor Code section 2699, subdivision (s)(4) also requires parties to submit litigation documents to the Agency using the Agency's electronic filing system. As previously stated, administration of certain aspects of PAGA is assigned to divisions within DIR, and DIR maintains a Web page through which parties may file documents electronically. This Web page, the "online PAGA filing portal" available at <https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>, includes different hyperlinks for parties to file or submit different types of documents. This is important because, as stated, different entities administer different parts of the law, and use of the correct filing hyperlinks is critical to ensuring documents properly are designated and routed to the proper entity for review and handling. For example, the Agency PAGA Unit administers the early resolution procedures under Labor Code section 2699.3, subdivisions (c)(2) and (c)(3), and an employer submitting a cure proposal or notice must use the "Employer Cure Notice or Proposal to Cure" link on the online PAGA filing portal to ensure the submission properly is designated and routed to the Agency PAGA Unit for handling. There have been occasions where employers have submitted cure proposals using an incorrect link, which then are not properly designated or routed to the Agency PAGA Unit for handling. Accordingly, this regulation is necessary to provide clear instruction to parties to avoid mislabeling of documents. This also will aid in the proper docketing and organization of case information, which is publicly accessible using the PAGA Case Search Web site at <https://cadir.my.salesforce-sites.com/PagaSearch> and allows individuals to search and review specific case information or to conduct searches using filters for particular types of filings within prescribed date ranges. Finally, consistent with statutory requirements that all filings or submissions to the Agency in PAGA cases be done electronically using an online filing system (§ 2699, subd. (s)(4)), this regulation also clarifies that a person filing or submitting documents with the

Agency using the online PAGA filing portal indicates their consent to receive electronic communications and documents regarding the case except where otherwise provided by statute or regulation. This is necessary to establish a uniform system of communication with parties in PAGA cases, including case-specific inquiries that may be time-sensitive or more efficiently handled via email as opposed to regular mail, while recognizing statutory requirements that certain documents from the Agency be transmitted by certified mail. (See § 2699.3, subd. (a)(2)(A)-(B) [regarding administrative investigations of alleged violations], subd. (c)(1)(D)-(E) [same], subd. (c)(3)(B) [regarding Agency wage statement cure decision].)

Proposed section 17411 adds language implementing the provisions of Labor Code section 2699.3 that require a $75 filing fee for certain employee and employer filings with the Agency. This regulation will clarify that a $75 filing fee is required for all PAGA notices and employer responses to PAGA notices, including employer cure notices or proposals under Labor Code section 2699.3, subdivision (c) responding to particular violations alleged in a PAGA notice. Labor Code section 2699.3 also provides that the filing fee may be waived pursuant to Government Code sections 68632 and 68633. This regulation reiterates those provisions and further will require the online PAGA filing portal include the applicable forms prepared by the California Judicial Council for individuals to use to apply for a fee waiver. This requirement is necessary to provide better guidance to parties and make the fee waiver process more accessible to individuals who wish to avail themselves of such relief.

Proposed section 17412 adds provisions describing the type of personally identifiable information a party must redact from any PAGA filings or submissions using the online PAGA filing portal. Except for employer cure submissions and documents related to cure proceedings before the Agency under subdivisions (c)(2) and (c)(3) of Labor Code section 2699.3, documents filed with or submitted to the Agency in PAGA proceedings generally are subject to disclosure under the California Public Records Act. (See Gov. Code, § 7920.000 et seq.; Stats. 2024, ch. 45, § 4 [Sen. Bill No. 92 (2023-2024 Reg. Sess.) § 4].) The instructions in this regulation to parties to redact personally identifiable information from their filings is necessary to protect the private information of employees whose personal information may be included in employment records submitted to the Agency in connection with a PAGA proceeding.

Proposed section 17413 adds provisions describing the manner in which parties are required to serve documents on each other during PAGA proceedings. Labor Code section 2699.3, subdivisions (a), (b), and (c) each require an employee send a copy of a PAGA notice filed with the Agency to the employer by certified mail, and subdivision (c)(3) requires an employer send an employee a copy of a wage statement cure notice by certified mail. The statute does not

describe the manner in which an employer must serve a response to a PAGA notice on an employee, nor does the statute describe service requirements applicable to certain procedures, including cure proceedings under subdivision (c)(2) of Labor Code section 2699.3. This regulation is necessary to avoid confusion and ensure a uniform and consistent process for employees and employers to serve each other copies of filings in PAGA cases before the Agency. This regulation will require the parties and Agency to serve documents by certified mail where the statute requires, but in all other instances the parties and Agency may serve documents electronically. The statute also does not include any specific proof of service requirements for parties when filing documents with the Agency. This regulation will require parties to include a proof of service with their filings evidencing service of the documents on the other party in situations where service is required. This is necessary for the Agency to be assured that filings are being received by all parties when applicable, thereby increasing transparency in the Agency's proceedings and the exchange of information between the parties.

Proposed section 17414 clarifies when documents are deemed filed with the Agency and the calculation of certain timeframes under PAGA, including when deadlines may fall on weekends or holidays. Subdivision (a) of this regulation clarifies the manner by which filing deadlines under PAGA are calculated. Subdivision (b) of this regulation states that if the last day to perform an act required or allowed under PAGA falls on a weekend or holiday, that deadline will be continued to the next business day. These rules are consistent with Code of Civil Procedure section 12a, which applies to the Labor Code. (Code Civ. Proc., § 12a; *Parsons v. Estenson Logistics, LLC* (2022) 86 Cal.App.5th 1260.) The administrative procedures under PAGA and described in subdivisions (a), (b), and (c) of Labor Code section 2699.3, as well as in these regulations, include various deadlines for certain actions to occur, and this regulation thus is necessary to provide clarity to parties and avoid confusion over the calculation of applicable deadlines, including when deadlines fall on a weekend or holiday. Subdivision (c) of this regulation identifies when a document electronically filed with the Agency is deemed filed. This clarification is necessary because all filings and submissions to the Agency must be done using an electronic filing system, and parties often file documents after normal business hours or during non-business days. This regulation thus is necessary to clarify that documents electronically filed with the Agency outside regular business hours (e.g., after 5:00 p.m. on a typical weekday) still will be deemed filed that same day, unless the filing is on a weekend or holiday in which case the document will be considered filed the next business day. These rules will provide greater clarity and instruction to parties regarding the calculation of deadlines under PAGA and timeframes in which certain actions are required in proceedings before the Agency.

Proposed section 17415 describes additional notice requirements and other measures designed to ensure proper safeguards and deter abuses of PAGA's administrative notice requirements.

Subdivision (a): This subdivision states the fundamental public policies underlying PAGA, including as a tool for enforcing labor laws, encouraging compliance with Labor Code requirements, and deterring violations in order to ensure the protection of workers' rights. It is necessary to emphasize these policies to put in context abusive PAGA notice filing practices encountered by the Agency and how such practices impact the Agency and undermine furtherance of these policies.

This subdivision further describes examples of the abusive PAGA notice filing practices observed by the Agency, including situations where attorneys have filed PAGA notices alleging frivolous, conclusory, or boilerplate violations based on templates they have developed to facilitate filing notices quickly and sometimes in large scale. Further information regarding such practices are discussed above. (See pp. 5-7, *supra*.) This subdivision also describes how such practices interfere with the Agency's role under the law. These filing practices impact the Agency's ability to review PAGA notices effectively and interfere with the proper functioning of the administrative cure process available to small employers. These filing practices also deprive employers of fair and proper notice of the violations alleged against them, including the factual bases for them. This subdivision also notes that some attorneys who engage in such abusive filing practices also fail to report filing PAGA lawsuits, which frustrates the Agency's review and monitoring efforts while also demonstrating an apparent strategy to use PAGA notices as a bargaining chip in extracting quick settlements and attorney's fees recoveries from employers. This conduct does not reflect the purpose of the law as protecting the interests of all aggrieved employees or the state, including for purposes of encouraging compliance with state labor standards and deterring violations of the law. As noted, it is necessary to document these issues in this regulation to put in context the nature of the abusive PAGA notice filing practices observed by the Agency and their impact on the proper functioning of the law.

Subdivision (b): This subdivision provides definitions for certain terms relevant to describing or addressing abusive PAGA notice filing practices.

Paragraph (1): This paragraph defines the term "high-frequency filer" as any attorney or law firm that has filed 200 or more PAGA notices during the 12-month period preceding the filing of a particular PAGA notice. Based on FY 24/25 PAGA notice filing data, eight law firms and four attorneys would meet this criteria. Setting the threshold for designation as a high-frequency filer at 200 PAGA notices over a 12-month period is justified to address the filing behaviors

of the most prolific PAGA notice filing law firms and attorneys. The 200-notice threshold also is appropriate because the data shows a marked gap between the number of filings by law firms or attorneys exceeding that threshold and other PAGA notice filers. Accordingly, the Agency has determined setting the threshold at this point is reasonable and appropriately tailored to address the conduct and practices of the most prolific PAGA notice filers for purposes of triggering heightened safeguards. (See Code Civ. Proc., § 425.55, subd. (a); Assem. Com. on Jud., analysis of Assem. Bill No. 1521 (2015-2016 Reg. Sess.) as amended Sept. 4, 2015, pp. 2-3 [discussing measures to "combat the problem of serial Unruh-ADA litigation," including by "unethical attorneys whose business model is easy settlement"].) In doing so, this paragraph provides that certain nonprofit or legal services organizations are not subject to the provisions applicable to other attorneys or law firms designated as high-frequency filers. (See Code Civ. Proc., § 425.55, subd. (b)(3).) This exception is warranted in that such nonprofit organizations do not share any profit-oriented motivations and often provide critical services advancing public interests, often to underrepresented groups otherwise lacking access to the courts. However, it also is noted no such group appears close to the threshold described in this paragraph.

Paragraph (2): This paragraph defines the term "vexatious filer" to mean any person or attorney that has repeatedly filed PAGA notices that do not comply with legal requirements, including on grounds the notices fail to allege adequately the facts and theories supporting the violations alleged or where the allegations appear frivolous or intended to harass. This definition is necessary to provide notice to parties of the type of conduct considered to constitute vexatiousness for purposes of triggering heightened safeguards and filing controls. The definition provided here also is consistent with definitions of the term under other provisions of law addressing similar behavior. (See Code Civ. Proc., § 391, subd. (b)(3); Cal. Code Regs., tit. 8, § 10430, subd. (a)(2); see also Cal. Code Regs., tit. 4, § 146.1, subd. (i); Cal. Code Regs., tit. 15, § 3000.)

Paragraph (3): This paragraph defines the term "prefiling screening order." A prefiling screening order in a civil litigation context is a tool for preventing an individual designated as a vexatious litigant from filing new lawsuits. Under such an order, the designated individual must first submit the proposed lawsuit to a court to ensure compliance with applicable requirements and that the proposed lawsuit is not intended to harass. (See Code Civ. Proc., § 391.7; Cal. Code Regs., tit. 8, § 10430, subd. (e).) Such an order here, as described in this paragraph, would serve a similar purpose of allowing the Agency to review a proposed PAGA notice for compliance with applicable requirements before it is formally accepted for filing.

Subdivision (c): This subdivision describes procedures and filing requirements for attorneys or law firms designated as high-frequency filers.

Paragraph (1): This paragraph requires a high-frequency filer to include a cover letter with each PAGA notice the attorney or law firm files that provides notice to persons or employers to whom the PAGA notice relates that the firm or attorney is designated as a high-frequency filer. Such a requirement is consistent with other provisions of law involving similar filing practices warranting similar designation. (See Code Civ. Proc., § 425.50, subd. (a)(4)(A).) This is necessary to provide proper notice to affected parties a PAGA notice has been filed by an attorney or firm designated as a high-frequency filer that is subject to heightened safeguards and additional notice requirements.

In addition, this paragraph requires the cover letter described above also include a certification to be signed by the employee on whose behalf the PAGA notice is filed. The required certification states the employee has reviewed the PAGA notice, the notice accurately describes the violations the employee believes they personally suffered within the past year, and the notice is not presented for an improper purpose, such as to harass or annoy. This certification requirement is necessary as an additional safeguard to ensure PAGA notices accurately state violations alleged by an employee and are not presented for improper purposes, and that the notices have been reviewed and authorized by the aggrieved employee. To illustrate the concern addressed here in this context where a law firm has used template PAGA notices to assert violations in boilerplate fashion, the Agency has encountered instances while conducting cure conferences where an employee denied, disclaimed, or otherwise directly contradicted violations alleged in a PAGA notice filed on their behalf. Requiring an employee provide the certification required by this paragraph is a necessary safeguard to ensure PAGA notices being filed by law firms or attorneys designated as high-frequency filers accurately reflect an employee's claims and do not merely repeat boilerplate allegations.

Paragraph (2): This paragraph clarifies that the cover letter required by paragraph (1) be included with the PAGA notice filed with the Agency and served on the employer. This is necessary to ensure compliance with heightened notice safeguards and requirements.

Paragraph (3): This paragraph provides a high-frequency filer's failure to comply with the safeguard requirements applicable to high-frequency filers could additionally result in designation as a "vexatious filer" based on repeated noncompliance with applicable filing requirements. This is necessary to ensure compliance with applicable notice and filing requirements and to deter continued noncompliant, abusive, or evasive behaviors.

Subdivision (d): This subdivision describes procedures and filing requirements for persons or attorneys designated as vexatious filers, including the procedures applicable before a person or attorney may be designated as a vexatious filer.

Paragraph (1): This paragraph requires a person or attorney must be provided notice and an opportunity to heard before the person or attorney may be designated as a vexatious filer. This is necessary to ensure such individuals are provided proper notice and an opportunity to respond to identified concerns before vexatious filer controls, such as a prefiling screening order, may be imposed on them. Notice and an opportunity to respond also ensures compliance with applicable due process requirements and is consistent with similar provisions in existing law. (See Code Civ. Proc., §§ 391.1, 391.3, 391.7; Cal. Code Regs., tit. 8, § 10430, subd. (c).)

Under this paragraph, the Agency would be required to provide written notice to a person or attorney considered for designation as a vexatious filer, including the reasons alleged to support such a designation. This paragraph requires the Agency to provide such notice to the person or attorney by email, which is necessary to ensure prompt and reliable delivery of the notice to the affected individual.

This paragraph allows a person or attorney in receipt of a notice from the Agency the individual is being considered for vexatious filer designation an opportunity to respond to the notice within 30 days from the date of the Agency notice. This timeframe is both reasonable to allow sufficient opportunity to respond and necessary to ensure the prompt processing and disposition of such issues without unwarranted delay. The regulation requires a response be filed with the Agency using the "Other Documents" link available on the online PAGA filing portal. This is necessary to provide guidance to affected individuals on the proper methods for electronically filing documents with the Agency in this context. This paragraph also requires a response to an Agency notice include a declaration from the individual to support any facts or evidence upon which the individual relies to dispute a potential designation as a vexatious filer. This is necessary to ensure the proper presentation of evidence relied upon by an individual who disputes their potential designation as a vexatious filer and to ensure a proper record before the Agency before any designation determination is made.

Paragraph (2): This paragraph requires the Agency to issue a written determination whether it will designate a person or attorney as a vexatious filer within 30 days after receiving a response from the individual, or the deadline by which a response was required to be filed if none was. The Agency must serve its determination on the individual by email, and the determination must state the bases for the Agency's decision whether to designate the individual as a

vexatious filer. These provisions are necessary to ensure the prompt disposition of such matters and communication of the reasons for the Agency's decision to designate or not designate an individual as a vexatious filer. The requirement the Agency serve its determination on the individual by email is necessary to ensure the prompt and reliable delivery of the determination to the affected individual.

Paragraph (3): This paragraph states a person designated as a vexatious filer will be subject to a prefiling screening order. This paragraph further allows the Agency to apply the order to the attorney's law firm to prevent circumvention of prefiling screening requirements. If the Agency intends to apply prefiling screening requirements to the attorney's law firm, this paragraph requires the Agency to state that in its determination designating the individual as a vexatious filer. As noted above, a prefiling screening order is an appropriate tool and safeguard for ensuring compliance with statutory and regulatory filing requirements and deterring abusive filing practices. Requiring a prefiling screening order is necessary to assist the Agency in ensuring PAGA notice filings are complete and compliant with all applicable requirements before they are accepted for filing, which will deter abusive practices and ensure the purposes of PAGA's administrative notice requirements are satisfied.

This paragraph also clarifies that all applicable limitations periods or timeframes under PAGA are tolled upon submission of a proposed PAGA notice subject to prefiling screening requirements. This is necessary to ensure affected employees' rights are not adversely affected based on the Agency review that must occur before a PAGA notice formally is accepted for filing. This regulation also clarifies applicable administrative investigation or cure procedure deadlines do not begin to run until a PAGA notice subject to prefiling screening formally is accepted for filing. This is necessary to ensure the Agency's review of a proposed PAGA notice subject to prefiling screening requirements before the notice formally is accepted for filing does not negatively impact the Agency in its ability thereafter to review the substance of a PAGA notice for possible investigation. This also will ensure employers are not required to respond and incur potentially unnecessary expenses responding to a notice before the Agency determines the PAGA notice satisfies applicable requirements and is accepted for filing. Thus, this provision is necessary to ensure proper functioning of the various administrative procedures under PAGA still may occur after the Agency accepts a PAGA notice for filing without prejudice to the state or other parties based on the time necessary to review a PAGA notice subject to prefiling screening.

Finally, this paragraph clarifies the Agency's review procedure upon receipt of a PAGA notice subject to prefiling screening. As stated in this paragraph, the Agency shall review such a PAGA notice to determine whether

it complies with applicable statutory and regulatory requirements. The Agency must issue a written determination to the parties by certified mail within 30 days after submission of the proposed PAGA notice. This paragraph further specifies that a proposed PAGA notice will be deemed accepted for filing if the Agency does not issue a determination within 30 days. These provisions are necessary to ensure the prompt disposition of such reviews and to ensure employees' rights are not adversely affected by prolonged delays. The requirement the Agency provide notice of its determination to the parties by certified mail is necessary to ensure a reliable method of delivery to both parties, as the Agency at this stage generally only has the employer's mailing address. Service by certified mail also is consistent with statutory requirements applicable to the service of PAGA notices on employers. (See Lab. Code, § 2699.3, subd. (a)(1)(A), (b)(1), (c)(1)(A).) In such circumstances, this notice from the Agency thus would provide proper notice to the parties consistent with statutory service requirements for purposes of commencing applicable administrative periods for the investigation of alleged violations or processing of employer cure notices or proposals.

Paragraph (4): This paragraph allows a person or attorney designated as a vexatious filer to petition the Agency to remove such designation. Such a petition must be filed using the "Other Documents" link available on the online PAGA filing portal. A petition to remove a vexatious filer designation cannot be filed within six months after the designation was made, but the Agency has discretion to prescribe a longer period based on the nature of the conduct supporting the vexatious filer designation. These provisions are necessary to clarify the rights of a person or attorney subject to a vexatious filer designation and the ability to petition for removal of such designation upon a showing of corrected filing practices to comply with applicable statutory and regulatory requirements. Vexatious litigant statutes afford a similar opportunity to an individual to remove such designation, albeit subject to a longer waiting period before a removal petition may be filed. (See Code Civ. Proc., § 391.8.)

Subdivision (e): This subdivision states the Agency shall maintain a list on the online PAGA filing portal identifying all persons, attorneys, or law firms designated as high-frequency or vexatious filers. This is necessary to ensure transparency and public awareness of individuals subject to heightened safeguards and notice requirements, including employers who receive PAGA notices filed by such individuals so that they may better understand the procedures applicable to such individuals and their rights with respect to notices filed by such individuals.

Proposed Subchapter 2. Pre-Litigation Notice and Investigation of Claims Under Subdivisions (a) or (c) of Labor Code Section 2699.3

Proposed section 17420

Subdivision (a): This subdivision describes the process by which an aggrieved employee may file a PAGA notice with the Agency using the online PAGA filing portal. This is necessary to clarify the appropriate hyperlink to use on the online PAGA filing portal, as the statute refers only to the requirement of "online filing" with the Agency without providing further instruction. (See Lab. Code, § 2699.3, subds. (a)(1)(A), (b)(1), (c)(1)(A).) This subdivision also clarifies that upon proper filing a confirmation email will be sent to the filer providing the case number assigned to the case, which is necessary for purposes of advising the employee of receipt of the filing and the case number assigned for purposes of future communications or filings involving the case. This subdivision also will require an employee filing a PAGA notice to use a standardized PAGA notice form prescribed by the Agency, which will be made available for use on the online PAGA filing portal. The requirement of a standardized PAGA notice form is necessary to create a uniform template by which employees can notify the Agency and employers of alleged Labor Code violations under PAGA. This will aid in the Agency's review of PAGA notices and the violations alleged therein, including by making more identifiable and accessible the portions of the notice requiring a statement of the facts and theories supporting the violations alleged. This will better align with the intent and purposes of the prelitigation notice requirement, aid the Agency in more efficiently and effectively reviewing PAGA notices to ascertain the nature and seriousness of the violations alleged, and assist employers in better understanding the claims alleged against them and the steps necessary to resolve such claims in the event the employer intends to pursue early resolution opportunities under the cure procedures adopted in the 2024 PAGA reforms.

Subdivision (b): This subdivision describes applicable service requirements when an employee files a PAGA notice with the Agency. The statute requires a copy of the PAGA notice be sent to the employer by certified mail with no further instruction. (See Lab. Code, § 2699.3, subds. (a)(1)(A), (b)(1), (c)(1)(A).) This subdivision requires a PAGA notice be accompanied by proof of service, and also requires the proof of service to include the certified mail tracking numbers on all persons served. This is necessary to confirm a copy of the PAGA notice properly was sent to the employer as required by statute. The inclusion of the tracking numbers is necessary to assist the Agency in calculating applicable timeframes under the law. This is because several deadlines are measured according to the postmark date of the PAGA notice (Lab. Code, § 2699.3, subds. (a)(2), (c)(1)(D)-(E), (c)(3)(A)), but this information is not readily accessible to the Agency. Accordingly, requiring an employee filing a PAGA notice to

include a proof of service with the applicable mail tracking information will allow the Agency to readily ascertain applicable deadlines by which certain actions must occur.

Subdivision (c): This subdivision clarifies that alleged safety and health violations under the Labor Code (see Lab. Code, § 6300 et seq.) can be combined in a PAGA notice alleging Labor Code wage and hour violations that are subject to the jurisdiction of the Labor Commissioner's Office. While this generally already occurs in practice where parties alleging both wage and hour and safety and health violations combine such allegations in a single PAGA notice, this subdivision is necessary to clarify the procedures for doing so because the statute describes separate processes applicable to the investigation of such claims.

Subdivision (d): This subdivision describes the information that must be included in a PAGA notice filed with the Agency using the Agency's prescribed form.

Paragraph (1): This paragraph describes the general background information that must be included in a PAGA notice, including (1) the names of the employee and employer, (2) the dates the employee was employed with the employer, (3) the location or address of the workplace where the employee was employed, (4) the position held by the employee, and (5) the employee's duties while employed. Many PAGA notices filed with the Agency do not include sufficient information to aid in the Agency's assessment of the nature, scope, or seriousness of the violations alleged, and the information required here is necessary to assist in the Agency in better understanding the context of the violations alleged and the nature of the claimant and other employees' working conditions. In addition, the information required here—specifically the dates of employment—is necessary to enable the Agency to determine whether the violations alleged are timely asserted by the employee. This is because an employee only may allege violations personally suffered by the employee within one year of the date the PAGA notice is filed. (Lab. Code, § 2699, subd. (c)(1).)

Paragraph (2): This paragraph requires an employee filing a PAGA notice identify the specific Labor Code sections allegedly violated by an employer. This incorporates requirements in statute. (See Lab. Code, § 2699.3, subds. (a)(1)(A), (b)(1), (c)(1)(A).)

This paragraph also requires an employee provide a short and plain statement of the facts and theories supporting each violation alleged. As discussed further above, many PAGA notices allege violations only in a very generic sense, e.g., alleging employees were denied reimbursement due to using personal cell phones, but not describing the manner or frequency in which

phones were used or required, or alleging meal or rest period violations without stating any actual facts describing the manner in which meal or rest periods were interrupted, less than the required time, late, or otherwise noncompliant. These types of generic, conclusory allegations make it difficult, if not impossible, for the Agency to ascertain the actual nature of the violations alleged, including the frequency, breadth, and seriousness of the violations—a problem compounded by the high volume of cases filed with the Agency (especially by some attorneys responsible for a disproportionate amount of all PAGA notices). Thus, this regulation would require more accurate articulation of the facts and theories supporting an alleged violation and specifically provide that conclusory, generalized, or vague allegations, or allegations that summarize or paraphrase legal requirements, are not sufficient. Requiring such articulation of the violations alleged is necessary for the Agency to effectively perform its role under the law, including reviewing, investigating, and prosecuting alleged violations. This information also will aid the Agency in reviewing and assessing the sufficiency of employer cure proposals, including for purposes of determining whether a proposal is sufficient to warrant a conference and further processing or for purposes of identifying the measures necessary to sufficiently cure an alleged violation.

While this regulation requires a statement of the facts and theories supporting violations the claimant personally suffered, an exception is provided for certain legal aid or services organizations, where an employee need only have experienced one of the violations alleged. (See Lab. Code, § 2699, subd. (c)(2).) This paragraph accounts for this exception and requires an employee subject to this exception to specifically identify what violation or violations the employee personally suffered, while also stating the basis upon which the employee is alleging other violations solely on behalf of others that the claimant did not personally suffer. This information is necessary to assist the Agency in reviewing the violations alleged, identifying the specific violations on which the employee bases a claim of standing to assert other violations, and obtaining a clearer understanding of the claims for which the employee may be able to provide further direct information, as well as what information the employee is relying upon in asserting other violations solely on behalf of other employees.

Finally, this paragraph requires an employee to identify the Labor Code sections under which civil penalties are sought for the violations alleged. Requiring this information is necessary to provide greater notice of the claims asserted and will allow employers in receipt of PAGA notices to more readily assess the nature of the violations alleged against them, including the bases and amounts of civil penalties potentially recoverable based on the claims asserted.

Subdivision (e): This subdivision requires an employee or attorney filing a PAGA notice to sign the notice and certify the claims asserted are not

presented for an improper purpose, have legal support, and have evidentiary support or are likely to after a reasonable opportunity for discovery. The nature of this certification follows the requirements of Code of Civil Procedure section 128.7, subdivision (a). The California Supreme Court has stated PAGA notices are subject to similar certification requirements under that section as it applies to filings in civil actions. (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 545, citing Code Civ. Proc., § 128.7.) This is necessary to ensure employees and attorneys filing PAGA notices understand the seriousness of filing a PAGA notice, which triggers administrative review of the violations alleged and is a necessary step to filing a lawsuit regarding such claims. This certification requirement also is warranted as a measure to deter abusive PAGA notice filing practices, as there have been instances of attorneys filing PAGA notices without signing them or including their names on the notices filed. (See ISOR, App. C [at p. 17].)

Subdivision (f): This subdivision adds language providing no violation or theory of violation may be alleged in a lawsuit under PAGA unless the violation or theory of violation was stated in a PAGA notice filed with the Agency. Courts have described PAGA's prelitigation notice obligation as an "administrative exhaustion" requirement (*Rojas-Cifuentes*, *supra*, 58 Cal.App.5th at p. 1056), and courts have affirmed that "[p]roper notice under section 2699.3 is a 'condition' of a PAGA lawsuit." (*Uribe*, *supra*, 70 Cal.App.5th at p. 1003.) This subdivision is necessary to clearly express this rule and ensure employees filing PAGA notices are aware they may not allege violations, or new theories of violations, in any subsequent lawsuit if such claims are not first presented to the Agency for the opportunity to review and investigate, or for an employer potentially to pursue early resolution opportunities based on such claims.

Proposed section 17420.5 adds provisions clarifying the ability of an employee to amend a PAGA notice previously filed with the Agency. Amendments to PAGA notices commonly are filed with the Agency although the statutes do not refer to amendments of PAGA notices. This regulation instructs employees filing amended PAGA notices to use the "Amended PAGA Claim Notice" link available on the online PAGA filing portal and to serve the employer by certified mail. This regulation is necessary to ensure employees are aware of their right to amend PAGA notices and the procedures for doing so, including in terms of online filing with the Agency and service on an employer. The requirement of service on the employer by certified mail is consistent with the statutory requirement for serving PAGA notices. This regulation further requires an amended notice comply with requirements applicable to initial PAGA notices, including with respect to providing information regarding the employee's employment with the employer, describing the factual bases for the violations alleged, and certifying the claims are not brought for an improper purpose and have legal and evidentiary support (see prop. reg. 17420, subds. (d), (e)).

This regulation also clarifies that the 65-day administrative review and 120-day investigation periods applicable to new PAGA notices as set forth in subdivisions (a)(2)(B) and (c)(1)(E) apply equally to amended PAGA notices. The statute does not mention or refer to amended PAGA notices, but the Agency has long maintained procedures for filing and reviewing amended PAGA notices. While application of these review and investigation periods to amended PAGA notices is consistent with longstanding practice, this provision is necessary to address a potential gap in the statute. (See *Brown v. Dave & Buster's of California, Inc*. (2025) 116 Cal.App.5th 164 [339 Cal.Rptr.3d 270, 276] [stating the statute does not specify that the administrative review period applicable to PAGA notices applies to amended PAGA notices].) Finally, this regulation would prohibit an employee from filing an amended PAGA notice adding new violations not previously alleged if the employee has reached a proposed settlement agreement with an employer in a civil action including claims under PAGA. This is necessary to prevent a common practice where employees amend PAGA notices to add new claims when settling a PAGA lawsuit, despite the employee oftentimes conducting no investigation into the newly asserted claims. By doing so, the employee and employer may include, and release, the new claims in their proposed settlement agreement, thereby extinguishing claims being pursued against the same employer by other PAGA plaintiffs without evidence the employer has corrected the alleged violation or that the proposed settlement agreement is adequate, fair, and reasonable to other affected aggrieved employees.

Proposed section 17421

Subdivision (a): This subdivision clarifies an employer may, but is not required to, file a response to a PAGA notice with the Agency. The statute references the ability of an employer to respond to a PAGA notice, but does not describe the process or requirements for any employer response filed with the Agency. (Lab. Code, § 2699.3, subds. (a)(1)(B), (c)(1)(B).) This subdivision is necessary to clarify the procedures by which an employer may file a response to a PAGA notice and the required contents of a response.

Subdivision (b): This subdivision describes requirements for an employer filing and serving a response to a PAGA notice. This subdivision specifies the procedure for filing a response using the online PAGA filing portal. This is necessary to clarify the proper process when filing a response electronically with the Agency, which is not described in statute. This subdivision also specifies that an employer shall serve a response electronically on the employee that filed the PAGA notice. This is necessary because the statute does not describe the applicable service requirements for an employer filing a response to a PAGA notice with the Agency. Requiring service of a response will assist in facilitating the exchange of information between the parties regarding applicable claims

or defenses, and such communication may aid the parties in exploring early resolution opportunities. In addition, the filing of a PAGA notice often is the first step an employee takes in pursuing wage claims against an employer, and an employee at this early stage typically lacks access to information relevant to their claims. Requiring service of an employer response on the employee thus will aid the employee in understanding the nature and bases of an employer's response to the allegations. This regulation would require electronic service of an employer response, which is convenient and consistent with electronic filing requirements under PAGA. Finally, this subdivision would specifically state documents submitted as an employer response will not be treated or handled as an employer cure notice or proposal. As previously stated, there have been instances where employers have submitted cure proposals using the incorrect "Employer Response" link on the online PAGA filing portal, and as a result the submission was not docketed as a cure proposal or routed to the proper unit for handling as such. Accordingly, specification of the proper hyperlinks for submitting different documents is necessary to ensure parties properly submit documents to the Agency so they may be docketed and processed correctly within applicable timeframes.

Subdivision (c): This subdivision requires any employer response be filed with the Agency within 33 days after the employer receives the employee's PAGA notice. This is necessary because the statute does not provide a timeframe in which an employer response must be filed with the Agency. Requiring a response within 33 days after receipt of a PAGA notice is consistent with the statutory deadline for an employer submitting a cure proposal pursuant to Labor Code section 2699.3, subdivision (c)(2)(A), and thus aligns with the statute in that respect. Further, requiring a response be filed within this period is necessary to provide the Agency a sufficient opportunity to review the response and consider the employer's positions in determining whether to conduct an investigation within the 65-day period required under the statute. (See Lab. Code, § 2699.3, subds. (a)(2)(B), (c)(1)(E).)

Subdivision (d): This subdivision instructs an employer filing a response to a PAGA notice need not respond to each violation alleged, but should identify the violations to which it is responding and to respond separately to each such violation. This subdivision also requires the employer to state the basis for any violation it disputes and allows the employer to provide supporting evidence with its response. This is necessary to provide guidance to employers regarding the content of any response to a PAGA notice, including articulation of the basis for disputing any violation. This information will aid in the Agency's review of violations alleged in a PAGA notice, including for purposes of ascertaining the nature, seriousness, or merit of the violations alleged. These requirements also will aid in the exchange of information between the employee and employer with an aim towards increasing communication between the parties and facilitating

dialogue for purposes of seeking to resolve claims, including as may be applicable in the event an employer intends to request early evaluation to avoid protracted litigation and resolve claims if a lawsuit is filed.

Proposed section 17422 specifies the requirements when the Labor Commissioner's Office intends to conduct an investigation of violations alleged in a PAGA notice. This regulation requires the Labor Commissioner's Office to provide written notice of an investigation to both the employee and employer by certified mail within 65 days of the date of the postmark date of the employee's PAGA notice, consistent with the provisions of Labor Code section 2699.3, subdivisions (a)(2)(B) and (c)(1)(E). This subdivision also requires the notice issued by the Labor Commissioner's Office to identify the violations to be investigated and the period of time covered by the investigation. This requirement is necessary to ensure the parties receive sufficient notice of the scope of the investigation and the violations being investigated by the Labor Commissioner's Office. These requirements are consistent with existing law regarding the notice the Labor Commissioner's Office provides to employers when commencing an investigation regarding alleged Labor Code violations. (See Lab. Code, § 90.6, subd. (a).)

Proposed section 17423

Subdivision (a): This subdivision specifies the Labor Commissioner's Office shall have free access to any worksite or records of an employer during an investigation of violations alleged in a PAGA notice. This is consistent with Labor Code sections 90 and 1174. This provision is necessary to reiterate and clarify the authority of the Labor Commissioner's Office when conducting an investigation under PAGA, particularly in light of the rapid timeframes in which any investigation must occur. (See Lab. Code, § 2699.3, subds. (a)(2)(B), (c)(1)(E) [any citation based on an investigation must be issued within 120 days of the date notice is provided of an investigation].)

Subdivision (b): This subdivision requires an employee who has filed a PAGA notice to make themself available for an interview with the Labor Commissioner's Office upon request, including before the Labor Commissioner's Office issues any formal notice of investigation. This requirement is necessary to secure the cooperation of an employee who seeks to be deputized to pursue claims under PAGA on behalf of the Agency and to ensure the Labor Commissioner's Office can meet with the employee to obtain a better understanding of the nature of the violations alleged and the bases for them. Under the statute the Agency has a "right of first prosecution" before an employee is authorized to file a PAGA lawsuit. (*Williams*, *supra*, 110 Cal.App.5th at p. 941.) This requirement an employee cooperate with an investigation and

participate in an interview upon request will aid in the review of PAGA notices and the expeditious investigation of claims alleged under PAGA.

Subdivision (c): This subdivision describes the manner by which the Labor Commissioner's Office may conduct an investigation of violations alleged in a PAGA notice. This subdivision reiterates the authority of the Labor Commissioner's Office to issue interrogatories (written questions) to an employer, request records from an employer, issue subpoenas requiring the testimony of witnesses or the production of records, and to take depositions or sworn statements from witnesses. The authority to conduct an investigation using these methods is consistent with existing law. (Gov. Code, § 11181, Lab. Code, §§ 92, 1174.1.) Clarifying the scope of the authority of the Labor Commissioner's Office to investigate alleged violations using these methods is necessary because PAGA itself does not describe the manner by which investigations are conducted, and describing those investigatory methods here will provide transparency and clarity to the parties, particularly in light of the rapid timeframes in which an investigation must occur.

Subdivision (d): This subdivision defines the term "records" to include various types of written documents, including common types of employment records such as payrolls, books, accounts, and contracts. This is necessary to clarify the scope of the authority of the Labor Commissioner's Office to request or subpoena the production of certain types of employment records during an investigation, consistent with existing law. (Gov. Code, § 11181, Lab. Code, §§ 92, 1174.1.)

Proposed section 17424

Subdivision (a): This subdivision specifies the Labor Commissioner's Office may issue a citation to an employer or file an action to prosecute the employer following an investigation and determination the employer has committed Labor Code violations. This subdivision states a citation must be served by certified mail to the employer unless the employer agrees to an alternative method of service. These provisions are necessary to clarify the manner by which an investigation may be concluded when it is determined an employer committed violations of the Labor Code, including specifying the manner by which a citation must be issued to an employer in such circumstances.

Subdivision (b): This subdivision provides an employee may not file a lawsuit under PAGA in situations where the Labor Commissioner's Office has exercised its authority to cite or prosecute an employer for Labor Code violations. This is necessary to clarify the state's "right of first prosecution" in the investigation and prosecution of Labor Code violations (*Williams*, *supra*, 110 Cal.App.5th at p. 941),

and is consistent with, and reiterates, the applicable provisions of PAGA (Lab. Code, § 2699.3, subd. (*l*)).

Proposed Subchapter 3. Small Employer Cure Procedures

Proposed section 17430 describes procedures and requirements necessary to provide guidance to employers for submitting to the Agency proposals to cure alleged violations.

Subdivision (a): This subdivision codifies Labor Code section 2699.3, subdivision (c)(2)(A), which allows the submission of a confidential proposal to cure alleged violations by an employer that employed less than 100 employees in total in the one-year period before a PAGA notice is filed. The limit on the number of employees is consistent with the statute. (*Ibid*.) This subdivision also describes the process for submitting a cure proposal to the Agency using the online PAGA filing portal. This is necessary because the statute does not mention the process for electronically submitting proposals to the Agency. (Lab. Code, § 2699.3, subd. (c)(2).) Further, the online PAGA filing portal includes a variety of hyperlinks for parties to select when submitting or filing documents with the Agency, and this provision is necessary to provide guidance to employers regarding the appropriate hyperlink to use. Although an employer is not required to serve a cure proposal on an employee (see *ibid*.), employers often do serve cure proposals on employees and there are certain benefits that may result from such service, including more transparent communication and facilitating the exchange of information during efforts to resolve claims informally. In situations where an employer chooses to serve a cure proposal on an employee, this subdivision requires electronic service and proof of service. This is necessary to ensure a convenient and uniform manner of serving cure proposals, when employers choose to do so, and further will provide clearer notification to the Agency that the cure proposal has been provided to the employee. This will assist the Agency in situations where the Agency does not set a conference in a particular case for purposes of identifying whether such notice also should be sent to the employee. (See prop. reg. 17431, subd. (b) [Agency notice to employer that a conference will not be scheduled also to be provided to the employee if the employer served its proposal on the employee].)

Subdivision (b): This subdivision requires a cure proposal be submitted to the Agency within 33 days after an employer receives a PAGA notice, or an amended PAGA notice alleging violations or facts not included in an earlier filed notice. This deadline is consistent with statute. (Lab. Code, § 2699.3, subd. (c)(2)(A).) This subdivision also requires an employer's cure proposal state the date the employer received the PAGA notice or amended PAGA notice. These provisions are necessary to clarify the timeframe applicable to submitting cure

proposals to the Agency, including that an employer may pursue this cure process when an amended PAGA notice alleging new violations or facts is filed. The requirement an employer state the date it received the PAGA notice or amended PAGA notice is necessary to allow the Agency to determine whether a cure proposal timely is submitted, which is measured in terms of the date the employer received the notice. This information is not otherwise readily available to the Agency.

Subdivision (c): This subdivision requires an employer to state specifically the total number of employees it employed during the one-year period before a PAGA notice was filed. This is necessary because the cure process under Labor Code section 2699.3, subdivision (c)(2) is available only to employers that employed less than 100 employees total during this period. Requiring an employer to provide this information in its cure proposal will assist the Agency in its review of cure proposals under the statute, as employers sometimes submit proposals stating only they employed "less than 100" employees or using similarly vague and nonspecific language where eligibility may be disputed. This subdivision also defines the term "employee" for purposes of this regulation as including all employees employed by the employer at any time during the one-year period preceding a PAGA notice. This is necessary to provide clarification to employers that all employees are included in determining eligibility for the cure process under Labor Code section 2699.3, subdivision (c)(2), including current or former employees, employees that are exempt and not exempt from overtime requirements, and employees employed outside California. Finally, this regulation provides the Agency may decline to schedule a cure conference or may conclude a cure proceeding at any time in circumstances where more than one employer may be deemed joint employers or a single enterprise and the total number of employees between them would make them ineligible for the administrative cure process. This is necessary as situations have arisen where a business may consist of separately organized divisions but the circumstances suggest they operate as a single entity for purposes of identifying the proper employer and accurately identifying the full scope of the aggrieved employees whose interests a PAGA plaintiff may represent in an action under PAGA.

Subdivision (d): This subdivision requires an employer identify in its cure proposal the violation or violations it proposes to cure and, for each violation, to describe the actions the employer proposes to take to cure the violation. This is necessary to aid in the Agency's review of employer cure proposals, including for purposes of determining whether a proposal meets statutory requirements and would be sufficient to cure the violations it addresses. (Lab. Code, §§ 2699, subd. (d), 2699.3, subd. (c)(2)(B).) This will provide more effective Agency review of cure proposals to identify those matters warranting the scheduling of a conference for further resolution proceedings.

Subdivision (e): This subdivision reiterates employer cure proposals are treated as confidential settlement communications and may not be deemed an admission of liability or otherwise relied upon to prove the validity or invalidity of any claim or defense. This is consistent with statute. (Lab. Code, § 2699.3, subd. (c)(2)(E); Evid. Code, § 1152; Stats. 2024, ch. 45, § 4 [Sen. Bill No. 92 (2023-2024 Reg. Sess.) § 4].) Providing this clarification in regulation is necessary to ensure employers are confident a proposal to cure an alleged violation will not later be used in any proceeding against the employer as an admission of liability. This clarification is equally important to employees and attorneys representing employees that they may not use employer cure proposals for purposes of establishing liability or the validity of any claim in any later proceeding. These clarifications further are necessary to the effectiveness of the administrative cure process by encouraging and facilitating the exchange of information between the parties. This will aid the Agency's efforts to resolve disputes informally and assuage any fear or concern by employers information provided in a cure proposal may be misused or taken advantage of in any later proceeding if the cure process is unable to resolve the parties' dispute.

Proposed section 17430.5 adds provisions limiting an employer's ability to use the administrative cure process if the employer submitted a cure proposal or cure notice within the preceding 12 months after receiving a PAGA notice alleging violations of the same Labor Code section, regardless of the location or worksite. Labor Code section 2699.3, subdivision (d) states an employer "may not avail itself" of the cure provisions of that section more than once in a 12-month period. This regulation is necessary to clarify the scope of this preclusive measure concerning subsequent cure attempts.

Proposed section 17431 states the Agency will review an employer's cure proposal to determine if it facially is sufficient to cure the violations it addresses or if a conference would assist the Agency in determining whether a sufficient cure is possible. This is consistent with Labor Code section 2699.3, subdivision (c)(2)(B). Subdivision (b) of this regulation states the Agency will provide written notice to an employer within 14 days after the employer submits a cure proposal if the Agency does not set the proposal for a conference. The Agency would be required to serve the notice on the employer by email and state the reasons why the Agency did not schedule the employer's proposal for a conference. If the employer served its proposal on the employee the Agency also would be required serve the notice on the employee. These provisions are necessary because the statute does not describe the manner in which the Agency communicates with the employer if the Agency does not deem an employer's cure proposal to be sufficient or to warrant a conference. (See Lab. Code, § 2699.3, subd. (c)(2)(B).) This regulation thus provides important clarification in that respect and guidance to the parties regarding the Agency's handling and review of cure proposals. Subdivision (b) also clarifies the administrative cure

procedure is deemed exhausted if the Agency issues a notice declining a proposal or does not timely respond to an employer's cure proposal.

Proposed section 17432

Subdivision (a): This subdivision states the Agency will issue a written notice scheduling a cure conference if the Agency determines an employer's cure proposal facially is sufficient to cure the alleged violations it addresses or a conference would assist in determining whether a sufficient cure is possible. This is consistent with the statutory requirement the Agency set a conference in such circumstances (Lab. Code, § 2699.3, subd. (c)(2)(B)), and is necessary to provide clarity and guidance to the parties regarding the procedures applicable after the Agency determines a cure proposal is sufficient to warrant further proceedings. This subdivision further would specify that the Agency will provide notice to the parties of the scheduling of a cure conference by email within 14 days after the employer submitted its cure proposal. This period also is consistent with the statute (*ibid*.), and the requirement the notice be provided by email generally is consistent with the electronic filing and service requirements under PAGA as it relates to filings with the Agency. Providing the notice to the parties by email also is necessary to ensure the parties receive prompt notification of the scheduling of a conference in light of the limited 30-day period in which conferences should occur under the statute. (*Ibid*.)

Subdivision (b): This subdivision requires a conference notice issued by the Agency state the dates by which the employer and employee must file and serve pre-conference statements, including any additional documents requested by the Agency depending on the nature of the cure proposals and the violations they purport to address. This provision is necessary to inform parties of the applicable requirements before a conference is held, including providing additional information to the Agency to assist it in ascertaining the requirements of a cure in a given case and facilitating the exchange of information between the parties so they may prepare for the conference. (See Lab. Code, § 2699.3, subd. (c)(2)(B).)

Subdivision (c): This subdivision requires a cure conference notice to identify whether the conference will be conducted in person, by videoconference, or by teleconference. This is necessary to communicate to the parties where or how the conference will be conducted, as the statute allows any of these options. (Lab. Code, § 2699.3, subd. (c)(2)(B).) This subdivision also allows a party to request a conference be conducted in a different location or manner than that specified in the notice, and requires a party making such a request to confer with the other party and to propose a mutually agreeable alternative location or method by which to conduct the conference within seven days of the date of the notice. This is necessary to allow accommodations as to the

location or manner by which the conference will be conducted where the parties agree on an alternative location or manner. The requirement a request to conduct the conference in a different location or manner be made within seven days of the date of the notice is necessary to ensure arrangements can be made quickly in light of the limited period in which conferences should occur under the statute. (*Ibid*.)

Subdivision (d): This subdivision requires a cure conference notice to identify the date and time of the conference. This is necessary to inform the parties when the conference will occur.

Paragraph (1): This paragraph allows parties to request continuances of a cure conference based on good cause. To do so, a party first must confer with the other party regarding the request and proposed alternative dates, and the request to the Agency must state the basis for the request, whether the requesting party conferred with the other party, and three proposed alternative dates. This information is necessary to allow the Agency to assess the basis for the request, whether the other party is amenable to the request, and to facilitate rescheduling of the conference to a date on which all parties are available, including the Agency attorney conducting the conference, when good cause exists to support rescheduling. The requirement a continuance request be supported by a showing of good cause is necessary in light of the limited 30-day period in which conferences should occur under the statute. (Lab. Code, § 2699.3, subd. (c)(2)(B).)

Paragraph (2): This paragraph states the Agency will not consider continuance requests received less than seven days before the scheduled date of a conference absent extraordinary circumstances. The term "extraordinary circumstances" is defined to mean an exigent, or urgent, need has arisen that requires rescheduling of the conference and the request could not reasonably have been made sooner. (See *Doe v. Superior Court* (2023) 15 Cal.5th 40, 69 [interpreting the term "extraordinary circumstances" as involving "a stronger showing of good cause"], italics omitted.) In such situations, the party making a continuance request is required to meet and confer with the other party regarding the request and proposed alternative dates. The requesting party then must inform the Agency of the basis for the request, whether the party conferred with the other party or, if not, the reason why, and proposed dates to reschedule the conference. The heightened showing required to support a late continuance request is necessary to ensure parties act promptly and to avoid delay in presenting a request to the Agency to reschedule a conference, particularly in light of the timeframe in which a conference should occur. (Lab. Code, § 2699.3, subd. (c)(2)(B).)

Paragraphs (3): This paragraph would require parties to make a continuance request to the Agency by email and to include the other party in the email correspondence. This is necessary to ensure a convenient and expeditious manner for presenting and responding to continuance requests, including in light of the statutory procedures describing the period in which a conference should be held. (Lab. Code, § 2699.3, subd. (c)(2)(B).)

Paragraph (4): This paragraph instructs that a cure conference may be continued only once absent a showing of exigent circumstances. This is necessary to avoid delays in the administrative early resolution process in light of the statutory framework directing such matters proceed expeditiously. (Lab. Code, § 2699.3, subd. (c)(2).)

Subdivision (e): This subdivision allows a party to request a reasonable accommodation in connection with a cure conference when such accommodation may be needed to enable a party or a party's representative to participate fully in the conference. A request for reasonable accommodation must be made within seven days of the date of the cure conference notice. This is necessary to ensure parties act quickly and without delay in presenting requests to the Agency, particularly in light of the timeframe for conducting conferences and to ensure sufficient time to arrange accommodation when warranted. (Lab. Code, § 2699.3, subd. (c)(2)(B).)

Subdivision (f): This subdivision states any applicable statute of limitation on violations alleged by a claimant in a PAGA notice remain tolled while the Agency's cure process remains pending. This is consistent with Labor Code section 2699.3, subdivision (c)(2)(B). This provision is necessary to provide clarity to the parties regarding the status of a case pending in the cure process when the general 65-day period for administrative investigation of claims expires and a claimant otherwise would be permitted to commence a civil action where no action is taken on the notice.

Proposed section 17433

Subdivision (a): This subdivision describes the process by which parties are required to file with the Agency and serve on each other pre-conference statements before a cure conference is held. This subdivision further states the purpose of pre-conference statements as important to assisting the Agency in conducting a cure conference by identifying the specific cure measures an employer proposes to take and any dispute regarding the sufficiency of those measures by the claimant for purposes of curing the violations alleged. These provisions are necessary to provide guidance to the parties regarding the requirement that parties file preconference statements before a cure

conference is held and the purpose of the statements to aid in the Agency's determination whether a sufficient cure is possible for the violations alleged.

Subdivision (b): This subdivision describes the requirements for an employer's pre-conference statement. Unless the Agency notice scheduling a cure conference provides a different due date, the statement must be filed at least 14 days before the conference and describe the cure measures the employer proposes to take. The statement also must include any records requested by the Agency in its cure conference notice, which may vary on a case-by-case basis depending on the alleged violations at issue and the nature of an employer's cure proposal. If an employer does not timely file a pre-conference statement or produce the records requested by the Agency, this subdivision further states the Agency, in its discretion, may cancel the conference and deem the cure process terminated. The deadline for an employer to file a pre-conference statement is necessary in light of the statutory timeframe in which the conference should occur (i.e., within 30 days after notice of the conference is provided by the Agency). (Lab. Code, § 2699.3, subd. (c)(2)(B).) This deadline ensures the Agency timely receives detailed information regarding the employer's cure proposals and further ensures the claimant—who may not have received the employer's initial cure proposal to the Agency, which the employer is not required to serve on the claimant—has a sufficient opportunity to review the employer's proposals and respond to them. The requirement the employer produce records requested by the Agency is necessary to assist the Agency in assessing the sufficiency of the employer's proposals, and this information will allow for a more productive and robust discussion at the conference for purposes of ascertaining whether a sufficient cure is possible. The direction a conference may be cancelled and the cure process deemed terminated if an employer does not comply with pre-conference statement requirements is necessary to ensure compliance with applicable procedures and to ensure the timely dissemination of information regarding the employer's proposals for the cure process to function properly. This subdivision further provides that, in the event a conference is cancelled, the employer is not precluded from requesting early evaluation under subdivision (f) of Labor Code section 2699.3 if a civil action later is filed. This is consistent with subdivisions (c)(2)(B) and (f)(14) of section 2699.3, which allow employers eligible to cure violations under subdivision (c)(2) to also request early evaluation under such terms and conditions available to other litigants.

Subdivision (c): This subdivision requires a claimant to file a pre-conference statement with the Agency at least seven days before the cure conference unless the Agency's notice of scheduling a cure conference provides a different date. This requirement is necessary to ensure the timely submission of information to the Agency to allow the Agency to prepare for the conference, while also providing sufficient opportunity for the claimant to respond to an employer's

pre-conference statement and cure proposal. This subdivision also requires a claimant to state the factual basis for any dispute the claimant has regarding the sufficiency of an employer's cure proposal, accompanied by any evidence upon which the claimant relies to support a contention the employer's cure proposal is not sufficient. These requirements are necessary to aid the Agency's inquiry into the bases for the violations alleged and ascertainment of the measures necessary to cure them. This subdivision also requires a claimant represented by counsel to include in the claimant's pre-conference statement the attorney's fees and costs incurred at the time of the conference. This is necessary to aid in the Agency's inquiry into what costs the claimant incurred that may be subject to reimbursement and identification of a reasonable amount of attorney's fees in the event a cure is possible, as attorney's fees and costs are required elements of any completed cure. (Lab. Code, § 2699, subd. (d)(1).) Finally, this subdivision also states the Agency may, in its discretion, disregard allegations or facts a claimant fails to describe adequately in a pre-conference statement for purposes of the Agency's determination regarding the sufficiency of an employer's proposal or the measures necessary to cure an alleged violation, to the extent such allegations or facts are of a nature of which the claimant was aware or should have been aware at the time. This provision is necessary to ensure compliance with the Agency's procedures, including for purposes of aiding the Agency's assessment of an employer's cure proposal and inquiry into the measures necessary to cure alleged violations. This provision further ensures fairness in the administrative process and would prevent a claimant from disputing the sufficiency of an employer's cure actions when the basis relied upon by the claimant never previously was articulated to the Agency or employer, while also taking into account the information asymmetry often applicable at this stage of proceedings where the employee has not had an opportunity to conduct litigation discovery and may not have access to information possessed by the employer and relevant to the claims at issue.

Subdivision (d): This subdivision requires each party to serve its pre-conference statement on the other party by email the same day the pre-conference statements are submitted to the Agency. This is necessary to ensure the quickest manner of delivery to ensure each party timely receives information from the other to prepare for the conference, including as to issues that may remain in dispute between the parties. This subdivision further requires each party to file its pre-conference statement with the Agency using the "Cure Documents" link on the online PAGA filing portal with proof of service on the other party. These requirements are necessary to ensure clear guidance and instruction to parties filing documents with the Agency and for the Agency to confirm each party appropriately served its pre-conference statement on the other. This further will enable the Agency to verify it and each party has access to the same information during the course of the Agency's inquiry into the sufficiency of an employer's cure proposal.

Subdivision (e): This subdivision specifies the parties' pre-conference statements are deemed confidential settlement communications subject to Evidence Code sections 1152 and 1154. This is necessary to ensure free communication between the parties and Agency and to prevent either party from attempting to use another party's statements against them later as admissions of liability or as evidencing the invalidity of any claim or defense. This is consistent with Labor Code section 2699.3, subdivision (c)(2)(E), as well as section 4 of Senate Bill No. 92 (2023-2024 Reg. Sess.), which states: "Preserving the confidentiality of statements presented during settlement negotiations, neutral evaluation of claims, or assessments of attempts to cure violations pursuant to this act is necessary to facilitate early resolution of claims and encourage employers to take prompt action to make aggrieved employees whole." (Stats. 2024, ch. 45, § 4 [Sen. Bill No. 92 (2023-2024 Reg. Sess.) § 4].)

Proposed section 17434

Subdivision (a): This subdivision informs the parties that information provided during a cure conference is subject to Evidence Code sections 1152 and 1154. This subdivision also advises that recording of any portion of a conference by audio or video means strictly is prohibited, and conferences are not transcribed. These requirements are consistent with Labor Code section 2699.3, subdivision (c)(2)(E), and are necessary to ensure a free and full exchange of information by the parties during the Agency's inquiry into the sufficiency of an employer's cure proposal and efforts to ascertain the requirements of a sufficient cure for the alleged violations at issue. (See also Stats. 2024, ch. 45, § 4 [Sen. Bill No. 92 (2023-2024 Reg. Sess.) § 4].)

Subdivision (b): This subdivision informs parties they may be represented by counsel during the conference, while additionally instructing the attendance of the claimant and a representative of the employer with settlement authority is required. This is necessary to ensure the attendance of individuals knowledgeable of the claims at issue and who have authority to enter agreements to resolve them. This subdivision also prohibits the attendance of other witnesses or observers. This is necessary to maintain the confidentiality of the cure proceedings and to aid in the full and free exchange of information between the parties. This subdivision further provides that failure by an employer representative to attend the conference will result in cancellation of the conference and a determination the employer has abandoned its cure proposal for purposes of this administrative process, absent a showing of good cause excusing the employer's failure to attend. This provision is necessary to ensure compliance with cure conference requirements and the attendance of necessary parties. In the event of a cancellation based on an employer's failure to attend, such cancellation would not prevent the employer from requesting

early evaluation in court if a lawsuit is filed and the employer still desires to cure alleged violations. This is consistent with the provisions of Labor Code section 2699.3, subdivisions (c)(2)(B) and (f)(14). This subdivision also states a claimant's failure to attend the conference will result in the claimant being precluded from contesting any determination by the Agency concerning the sufficiency of an employer's cure proposal or the measures required to cure an alleged violation, absent a showing of good cause excusing the employee's failure to attend. This is necessary to ensure a claimant's attendance and cooperation in the cure process and to prevent a claimant from later attempting to dispute a cure determination by the Agency based on information the claimant failed to previously disclose to the Agency.

Subdivision (c): This subdivision describes the purpose of the cure conference to ascertain the requirements of a sufficient cure for the violations addressed by an employer's cure proposal. This subdivision further states the manner by which the conference may be conducted. The Agency attorney conducting the conference may speak with both parties separately or together as may be appropriate to identify issues in dispute, ascertain the bases for the violations alleged, and determine the scope and sufficiency of any measures needed to cure the violations at issue. These provisions are necessary to provide guidance to the parties regarding what to expect in a cure conference to enable them to prepare adequately, which will contribute to more efficient and productive discussions with the parties.

This subdivision also describes the procedures applicable when the Agency determines a sufficient cure is possible, including in situations where the parties mutually agree to the cure provisions or in circumstances where the parties have not reached agreement but the Agency has made a determination concerning the measures necessary to cure alleged violations. In either situation, the Agency will prepare a cure plan confirming the terms of the cure measures to be taken by the employer. The plan must be signed by both parties if the parties have reached a mutual agreement regarding the cure, or by the employer in situations where the cure measures have been determined by the Agency. After the plan is signed by all required parties, the Agency will email the cure plan to all parties. These requirements are necessary to provide guidance to parties regarding the manner by which the Agency will memorialize the cure measures to be taken by an employer and communicate those measures to the parties. This is necessary to maintain transparency and clear communication regarding the measures the Agency has determined necessary to cure alleged violations. The cure plan requirements described in this subdivision will aid the employer in clearly understanding what measures must be taken to cure alleged violations, and further will result in a more efficient process later when the Agency reviews the employer's cure completion notice and supporting materials for purposes of verifying the employer has completed all measures

prescribed by the cure plan. Finally, transmission of the cure plan to the parties by email is necessary to ensure the prompt exchange of information in light of the timeframes applicable to an employer's completion of a cure, which under statute must be completed within 45 days after a conference. (Lab. Code, § 2699.3, subd. (c)(2)(C).)

Proposed section 17435

Subdivision (a): This subdivision states that an employer must complete cure measures described in a cure plan within 45 days after conclusion of the cure conference. This is consistent with the timing requirement of Labor Code section 2699.3, subdivision (c)(2)(C). Upon completing the cure measures, the employer must submit to the Agency a sworn statement signed by an individual with personal knowledge attesting to the employer's completion of the cure measures and compliance with the underlying statutes allegedly violated by the employer. These provisions are consistent with the statutory requirements when an employer submits notice to the Agency it has completed prescribed cure measures, and further are consistent with the requirements of a cure as defined in statute to require an employer demonstrate compliance with applicable statutes. (Lab. Code, §§ 2699, subd. (d)(1), 2699.3, subd. (c)(2)(C).) This subdivision also requires the employer to include with its sworn statement any records required by the Agency in the cure plan. This is consistent with the requirement of subdivision (c)(2)(C) of Labor Code section 2699.3, which requires an employer to produce a payroll audit and check register of any payments made, in addition to any other records deemed necessary for the Agency to verify the completion of the cure measures taken by the employer.

Subdivision (b): This subdivision instructs that an employer's cure completion notice and accompanying records must be submitted to the Agency using the "Cure Documents" link available on the online PAGA filing portal and served on the employee by email. These provisions are necessary to provide guidance to employers regarding the method by which to submit documents electronically to the Agency and the manner by which the documents must be served on the employee. Electronic service by email is necessary to ensure the prompt transmission of records between the parties to enable the employee also to review the employer's submission in light of the short statutory deadline for the Agency to verify a cure. (See Lab. Code, § 2699.3, subd. (c)(2)(C).)

Proposed section 17436

Subdivision (a): This subdivision states the Agency will review the employer's cure completion notice and supporting records to verify the cure measures prescribed in the cure plan issued by the Agency have been completed. This is consistent with the Agency's obligation to review and verify an employer has

completed a cure as described in Labor Code section 2699.3, subdivision (c)(2)(C). This regulation also clarifies it is the employer's burden to demonstrate it has completed the cure measures.

Subdivision (b): This subdivision provides the Agency may provide an employer additional time to complete an aspect of a cure if the Agency finds some aspect of the cure to be incomplete. This provision is necessary to allow an employer to correct technical or other minor issues identified by the Agency and thereby complete a cure. This provision further is necessary to ensure minor, easily identifiable and correctable issues in an employer's cure submission do not frustrate or prevent the efficient resolution of claims. This is consistent with the Legislature's intent to encourage early resolution of disputes without unnecessary or protracted litigation, as well as general rules of jurisprudence favoring substance over form. (Assem. Com. on Jud., analysis of Sen. Bill No. 92 (2023-2024 Reg. Sess.) as amended June 21, 2024, p. 12; Civ. Code, §§ 3528, 3533.) This subdivision further provides that the 20-day period under Labor Code section 2699.3, subdivision (c)(2)(C) for the Agency to issue a determination verifying completion of a cure may not be extended. Accordingly, this subdivision is consistent with the timeframe in which the Agency must issue a determination verifying whether a cure is complete, and thus is consistent with the statutory procedure for ensuring the efficient resolution of disputes.

This subdivision additionally requires an employer provided an opportunity to complete an aspect of the cure found by the Agency to be incomplete must submit a sworn statement to the Agency upon completing such terms. This is consistent with the statutory requirement an employer attest in a sworn notice it has completed the measures necessary to cure a violation. (Lab. Code, § 2699.3, subd. (c)(2)(C).) This subdivision instructs the sworn statement, and any accompanying records, must be submitted to the Agency using the "Cure Documents" link available on the online PAGA filing portal and served on the employee by email. These provisions are necessary to provide guidance to employers regarding the method by which to submit documents electronically to the Agency and the manner by which the documents must be served on the employee. Electronic service by email is necessary to ensure the prompt transmission of records between the parties to enable the employee also to review the employer's submission in light of the short statutory deadline for the Agency to verify a cure. (See Lab. Code, § 2699.3, subd. (c)(2)(C).)

Subdivision (c): This subdivision states the Agency is required to issue a determination within 20 days after the employer submits notice it has completed the cure measures prescribed by the Agency. The Agency determination must state whether the Agency finds the cure measures have been completed and identify any violations cured. If the Agency determines a violation has not been cured, the Agency is required state what violations are not cured and the

reasons for its determination. The deadline for the Agency to issue a determination regarding an employer's cure notice is consistent with statute. (Lab. Code, § 2699.3, subd. (c)(2)(C).) The requirement the Agency identify the basis for a determination a violation has not been cured is necessary to provide the employer with sufficient information to understand the reasons for a determination a violation is not resolved, including for purposes of allowing the employer to continue to pursue a cure through private mediation or early evaluation if a lawsuit is filed, as the statute allows. (See Lab. Code, § 2699.3, subd. (f)(14).) Finally, this regulation requires the Agency to serve its cure determination on the parties by email. This is necessary to ensure the parties are informed of the Agency's determination in a timely manner consistent with the statutory framework requiring the efficient processing of cure matters.

Proposed section 17437

Subdivision (a): This subdivision states a claimant may dispute an Agency cure determination by requesting a hearing, as allowed by Labor Code section 2699.3, subdivision (c)(2)(D). A request for a cure hearing must be submitted to the Agency electronically using the "Employee Cure Hearing Request" link available on the online PAGA filing portal and served on the employer by email. These instructions are necessary to provide guidance to employees regarding the proper process for requesting a hearing to dispute a determination by the Agency a violation has been cured, including service on the employer when the employee disputes a cure determination. This is because the statute does not specify the manner by which an employee requests a hearing or notifies the employer of such a request. (Lab. Code, § 2699.3, subd. (c)(2)(D).) The requirement the employee serve its request on the employer by email is necessary to ensure prompt notification of the request in light of the short timeframes in which cure proceedings are handled, including that a hearing be scheduled within 30 days after the Agency's determination. (*Ibid*.)

Subdivision (b): This subdivision states a claimant must submit a cure hearing request within 10 days after the Agency issues its cure determination. This is necessary because the statute does not provide a timeframe in which such a request must be filed. (Lab. Code, § 2699.3, subd. (c)(2)(D).) This expedited timeframe is consistent with the framework of the cure process to move expeditiously, and also is necessary because the statute requires a cure hearing be scheduled within 30 days of the Agency's cure determination. (*Ibid*.) Thus, requiring an employee file a hearing request within 10 days after the Agency issues a cure determination is necessary to allow review of the employee's cure hearing request to ensure it satisfies applicable requirements, while still allowing time to schedule a hearing within the statutory period. This subdivision further states failure to file a timely cure hearing request will be deemed to waive any dispute by the claimant regarding the Agency's cure determination. This is

necessary to provide guidance to the parties and ensure finality in the process consistent with the purpose of this procedure to expeditiously resolve claims before a lawsuit is filed.

Subdivision (c): This subdivision requires a claimant requesting a cure hearing to identify each violation for which the claimant disputes the sufficiency of a cure and to state the alleged factual basis supporting each cure determination disputed by the claimant. This subdivision further states conclusory assertions of a dispute unsupported by facts are insufficient. These requirements are necessary to inform the employer and the Labor Commissioner's Office—which administers the cure hearing process—of the nature of the disputed issues and the facts relied upon by the claimant in disputing a cure determination. Because the hearing process moves forward on an expedited basis it is necessary to require articulation of the disputed issues to allow both the Labor Commissioner's Office and the employer the ability to prepare for the hearing with some knowledge of the issues to be addressed.

Subdivision (d): This subdivision requires the Labor Commissioner's Office to dismiss any cure hearing request that does not comply with the requirements of this regulation for a claimant requesting a cure hearing. This is necessary to ensure compliance with the requirements for requesting a cure hearing and also allows for the proper screening of cure hearing requests to ensure preservation of administrative resources, which should be devoted to conducting hearings only when proper requests articulating the nature and basis of a cure dispute are submitted. (See *J.R. Norton Co. v. ALRB* (1979) 26 Cal.3d 1, 14 ["it is well established that a statutory hearing requirement does not preclude an agency from setting reasonable threshold standards that must be met before such a right is invoked"]; *id*. at p. 18 [finding regulation served a "valid purpose" in assuring an agency "will not dissipate its limited resources" by holding hearings on insufficient claims].)

Proposed section 17438

Subdivision (a): This subdivision requires the Labor Commissioner's Office to issue a written notice scheduling a cure hearing within 20 days after a claimant timely files a proper hearing request. The notice must be served on the parties by email. These provisions are necessary to ensure timely and prompt notification to the parties a cure hearing has been scheduled within the time required by statute. (Lab. Code, § 2699.3, subd. (c)(2)(D).) In this regard, Labor Code section 2699.3, subdivision (c)(2)(D) requires a hearing be scheduled within 30 days after the Agency issues a preliminary cure determination. Proposed regulation 17437, subdivision (b) requires an employee submit a cure hearing request to dispute an Agency cure determination within 10 days after the Agency issues its determination—a deadline necessary to state in regulation

because the statute does not identify one. Thus, if an employee files a cure hearing request 10 days after the Agency issues a cure determination, the 20-day deadline for the Labor Commissioner's Office to issue a notice scheduling a cure hearing is consistent with the statutory scheduling deadline.

Subdivision (b): This subdivision requires a cure hearing notice to identify the date and time of the hearing. The hearing will be held within 30 days of the date of the notice. These requirements are necessary to inform the parties when the conference will occur and to ensure the prompt scheduling of hearings consistent with the statutory framework that cure procedures move expeditiously. (See Lab. Code, § 2699.3, subds. (c)(2)(B)-(D).)

This subdivision further allows parties to request continuances of a cure hearing based on good cause. To do so, a party first must confer with the other party regarding the request and proposed alternative dates, and the request to the Labor Commissioner's Office must state the basis for the request, whether the party conferred with the other party, and proposed alternative dates. This information is necessary to allow the Labor Commissioner's Office to assess the basis for the request, whether the other party is amenable to the request, and to facilitate rescheduling of the hearing to a date on which all parties are available, including the Labor Commissioner's Office.

This subdivision also allows parties to request a continuance of a hearing within seven days before the date of the hearing, but in such circumstances the request must be supported by a showing of extraordinary circumstances, meaning an urgent need has arisen that requires rescheduling of the hearing and the request could not have been made sooner. In these situations, a similar process applies for a party making such a request to the Labor Commissioner's Office, including conferring with the other party, proposing alternative dates, and informing the Labor Commissioner's Office of the basis for the request, whether the party conferred with the other party, and proposed dates to reschedule the conference. The heightened showing required to support a late continuance request is necessary to ensure parties act promptly to request continuances when a continuance may be necessary. (See *Doe*, *supra*, 15 Cal.5th at p. 69 [describing "extraordinary circumstances" as a higher showing than good cause].) This is necessary to avoid delay in presenting a request to the Labor Commissioner's Office to reschedule a hearing, particularly in light of the timeframe in which hearings should occur. (Lab. Code, § 2699.3, subd. (c)(2)(D).)

Subdivision (c): This subdivision requires a cure hearing notice identify whether the hearing will be conducted in person, by videoconference, or by teleconference. This is necessary to communicate to the parties where or how the hearing will be conducted. This subdivision also allows a party to request a

hearing be conducted in a different location or manner than that specified in the notice, and requires a party making such a request to confer with the other party and to propose a mutually agreeable alternative location or method by which to conduct the hearing within seven days of the date of the notice. This is necessary to allow accommodations as to the location or manner by which the hearing will be conducted where the parties agree on an alternative location or manner. The requirement a request to conduct the hearing in a different location or manner be made within seven days of the date of the notice is necessary to ensure alternative arrangements can be made quickly in light of the expeditious manner in which hearings should be scheduled and occur. (Lab. Code, § 2699.3, subd. (c)(2)(D).)

Subdivision (d): This subdivision allows a party to request a reasonable accommodation in connection with a cure hearing when such accommodation may be needed to enable a party or a party's representative to participate fully in the hearing. A request for reasonable accommodation must be made within seven days of the date of the cure hearing notice. This deadline is necessary to ensure parties act quickly and without delay in presenting requests to the Labor Commissioner's Office, particularly in light of the timeframe for scheduling and conducting hearings, and to ensure sufficient time to arrange accommodation when warranted. (See Lab. Code, § 2699.3, subd. (c)(2)(D).)

Proposed section 17439

Subdivision (a): This subdivision states a cure hearing will be presided over by a deputy or agent of the Labor Commissioner's Office. The hearing will be reported or recorded by audio means, and either party may request a copy of the transcript or recording. A party requesting a copy of a transcript or recording shall be responsible for all costs for its preparation. If a record of a hearing is transcribed by a party the party is required to provide the Labor Commissioner's Office a copy of the transcript within five days at no cost. These requirements are necessary to provide proper guidance to parties regarding the hearing process and how to obtain a copy of a transcript or recording of the hearing. The statute does not describe the specific manner in which the hearing is to be conducted. (See Lab. Code, § 2699.3, subd. (c)(2)(D).) The provisions regarding the process for requesting transcripts and the responsibility of parties for the costs of preparing transcripts are consistent with existing law and hearing practices involving the Labor Commissioner's Office. (Cal. Code Regs., tit. 8, § 13502.)

Subdivision (b): This subdivision states parties may, but are not required to, be represented by counsel during a cure hearing, and parties have the right to introduce evidence, examine witnesses, and cross-examine opposing witnesses

at hearing. The statute does not describe the specific manner in which the hearing is to be conducted. (See Lab. Code, § 2699.3, subd. (c)(2)(D).) Thus, these provisions are necessary to provide guidance to the parties concerning the hearing process and a party's rights during the course of a hearing.

Subdivision (c): This subdivision states the scope of a cure hearing is limited to issues specifically identified in a claimant's cure hearing request, and a claimant has the burden of proof regarding any claim the Agency's determination of a cure is incorrect. These provisions are necessary to provide guidance to the parties regarding the scope of a cure hearing. The statute does not describe the specific manner in which the hearing is to be conducted. (See Lab. Code, § 2699.3, subd. (c)(2)(D).) These requirements will ensure the hearing process operates smoothly and efficiently by limiting the scope of a hearing to those issues specifically identified by a claimant when requesting a hearing. Further, placing the burden of proof on the claimant to establish the Agency incorrectly determined a violation to be cured is appropriate where the claimant is the party requesting a hearing and asserting a dispute with the Agency's determination.

Subdivision (d): This subdivision describes the authority of a deputy or agent of the Labor Commissioner's Office presiding over a cure hearing, including overseeing the presentation of evidence and ruling on matters concerning the conduct of the hearing. The officer presiding over a hearing may issue subpoenas on application of a party before hearing to require the attendance of witnesses or the production of records at hearing. However, the presiding officer may limit the number of witnesses possibly needed to establish a single fact in issue or where the party requesting a subpoena fails to show the witness can give competent testimony to the issue at hearing. The statute does not describe the specific manner in which the hearing is to be conducted. (See Lab. Code, § 2699.3, subd. (c)(2)(D).) These provisions thus are necessary to provide proper guidance to the parties regarding the conduct of a cure hearing and the process for applying for the issuance of subpoenas to compel the attendance of witnesses or production of records that may be necessary to support a party's positions at hearing. The authority of the presiding officer to limit the number of witnesses to testify regarding certain issues is necessary to ensure the efficient conduct of a hearing and to avoid unnecessary delays due to redundant or duplicative testimony. These procedures and provisions are consistent with existing law regarding the manner in which the Labor Commissioner's Office conducts hearings. (See Cal. Code Regs., tit. 8, § 13506.)

Subdivision (e): This subdivision states there is no right to conduct discovery or file motions before a cure hearing, except as it relates to the issuance of subpoenas under subdivision (d). The statute does not describe the specific manner in which the hearing is to be conducted. (See Lab. Code, § 2699.3,

subd. (c)(2)(D).) These provisions thus are necessary to provide guidance to the parties regarding the hearing process and to ensure the hearing process operates efficiently and expeditiously, as the scope of the hearing already is defined by the scope of a claimant's hearing request and the parties already will have ample opportunity to prepare for the hearing.

Subdivision (f): This subdivision states a cure hearing will not be conducted according to formal rules of evidence applied by courts, but oral evidence (i.e., witness testimony) will be taken only on oath or affirmation. The presiding officer has discretion to exclude evidence that is not relevant to the issues or is repetitious of other evidence already admitted. Rules of privilege apply to protect disclosure of information claimed to be subject to a recognized privilege (e.g., attorney-client privilege). The statute does not describe the specific manner in which the hearing is to be conducted. (See Lab. Code, § 2699.3, subd. (c)(2)(D).) Thus, these provisions are necessary to provide guidance to the parties regarding the evidentiary rules applicable to a cure hearing, consistent with other forms of hearings conducted by administrative agencies. (See Gov. Code, § 11513, subd. (d), e.g., Cal. Code Regs., tit. 8, §§ 340.44, subd. (b), 376.2, 17244, subd. (d), 20370, subd. (d), 32176.)

This subdivision also specifies that the Agency's cure plan and cure determination shall be entered into the record. This is necessary as these documents are directly relevant to the scope of a cure hearing and any inquiry into the cure measures the Agency prescribed and found completed. This subdivision also reiterates that the Agency's cure plan and cure determination, and other information provided by parties during the cure conference process, are subject to the provisions of Evidence Code sections 1152 and 1154. This is necessary to protect information shared or produced during the cure process as confidential settlement communications and ensure parties do not misuse such information in these or later proceedings as purported admissions of liability or regarding the validity or invalidity of any claim or defense.

Subdivision (g): This subdivision states a cure hearing request will be dismissed if the claimant fails to attend the scheduled hearing and the Agency's determination will be deemed final, unless good cause exists to excuse claimant's failure, in which case the Labor Commissioner's Office may reschedule the hearing. This is necessary to provide finality to the cure process when a claimant that initially requests a hearing to dispute an Agency cure determination then fails to appear at the hearing to present the alleged dispute without sufficient excuse. If a claimant fails to appear at hearing and thus fails to prove at hearing the Agency's cure determination was incorrect, the Agency determination will be deemed final. This subdivision also states that the hearing will proceed if the employer fails to attend the scheduled hearing, but that the employer will not have the opportunity to present evidence in support of its

position a violation has been cured, unless good cause exists to excuse the employer's failure, in which case the Labor Commissioner's Office may reschedule the hearing. These rules are consistent with the nature of the burden of proof a claimant bears during a cure hearing, and a claimant must meet that burden even when an employer fails to appear at hearing, though the absent employer will not be able to dispute the claimant's evidence or present its own evidence without sufficient excuse.

Proposed section 17439.5 states the Labor Commissioner's Office must issue a determination regarding the adequacy of a cure completed by the employer within 20 days after the cure hearing. This is consistent with Labor Code section 2699.3, subdivision (c)(2)(D). The determination issued by the Labor Commissioner's Office must state the reasons for its determination, which is consistent with the statute and necessary to inform the parties of the bases for determining whether a cure disputed by the employee is deemed adequate to cure the violations it addresses. This subdivision also states the determination shall be served on the parties by email, which is necessary to ensure the prompt and reliable delivery of the determination to the parties.

Subchapter 4. Wage Statement Cure Procedures

Proposed section 17440 describes the process by which an employer may cure alleged violations of Labor Code section 226.

Subdivision (a): This subdivision clarifies any employer, regardless of size, may use this cure process when the only violation to be cured involves an alleged violation of Labor Code section 226. This is consistent with Labor Code section 2699.3, subdivision (c)(3)(A), and is necessary to provide guidance to employers and avoid confusion in light of the fact the other administrative cure process (described in Labor Code section 2699.3, subdivision (c)(2) and proposed subchapter 3 of these regulations) is available only to employers that employed less than 100 employees during the one-year period before a PAGA notice is filed.

This subdivision additionally requires an employer curing a violation of Labor Code section 226 to file notice of the cure using the "Employer Cure Notice or Proposal to Cure" link available on the online PAGA filing portal. The notice must be served on the claimant by certified mail. The notice must be filed with the Agency and served on claimant within 33 days of the postmark date of the PAGA notice, and the notice is required to state the postmark date of the PAGA notice or amended PAGA notice. These provisions are necessary to provide guidance to employers regarding the process for filing and serving cure notices. The statute requires electronic filing with the Agency but does not include specific instructions regarding the electronic filing process. (Lab. Code, § 2699.3,

subd. (c)(3)(A).) The requirement of service on an employee by certified mail is consistent with the statute. (*Ibid*.) The filing deadline is consistent with statute, and the requirement a cure notice identify the postmark date of the PAGA notice or amended PAGA notice is necessary because the Agency does not have access to that information and reference to that date is necessary to enable to Agency to determine whether a cure notice is timely filed. (*Ibid*.)

Subdivision (b): This subdivision requires an employer's cure notice to describe with specificity the actions taken by the employer to cure the alleged violations consistent with statutory requirements applicable to curing wage statement itemization violations. The notice also must be accompanied by a declaration from an individual with personal knowledge of the employer's cure actions. If the cure involves a violation of the requirement a wage statement correctly identify the name and address of the legal entity that is the employer (Lab. Code, § 2699, subd. (d)(2)(A)), the declaration must include a copy of the notice issued to aggrieved employees. If the cure involves a violation of any other itemization requirement under subdivision (a) of Labor Code section 226 (see Lab. Code, § 2699, subd. (d)(2)(B)), the declaration must include a copy of corrected wage statements issued or made accessible to the claimant, as well as a copy of any letter or notice sent to other aggrieved employees regarding their corrected wage statements. These requirements are necessary to provide guidance to employers regarding the contents of a wage statement cure notice. These requirements further are necessary to aid in the Agency's review of an employer's notice it has cured wage statement violations of Labor Code section 226, subdivision (a), consistent with the applicable cure requirements of Labor Code section 2699, subdivision (d)(2). Requiring a declaration by an individual with personal knowledge of the employer's cure actions, as well as the documentation that must be included with a declaration, will allow the Agency to confirm the accuracy of an employer's statement it has cured applicable violations.

Subdivision (c): This subdivision specifies a cure notice under this process is deemed a confidential settlement communication under Evidence Code section 1152 and may not be deemed an admission of liability or otherwise relied upon to prove the validity or invalidity of any claim or defense. This is consistent with the statute and necessary to encourage employer use of this cure process to resolve claims informally before litigation without concern or fear that information conveyed during the process will be used in any later proceeding as an admission or proof of liability. (Stats. 2024, ch. 45, § 4 [Sen. Bill No. 92 (2023-2024 Reg. Sess.) § 4].)

Subdivision (d): This subdivision describes the Agency's process for reviewing an employer's cure notice when the employee has not filed any notice disputing the sufficiency of the cure. This is necessary because the statute does

not describe the process by which the Agency reviews or determines the sufficiency of an employer's cure in the absence of an employee dispute. (Lab. Code, § 2699.3, subd. (c)(3).) Thus, this process will provide clarity and finality in such circumstances.

In situations where an employee does not dispute the sufficiency of an employer's cure, the Agency will review the employer's cure notice and supporting documents to verify the sufficiency of the cure actions taken by the employer. Within 17 days after expiration of the time in which an employee could submit a dispute notice, the Agency is required to issue a cure determination stating whether the employer's actions appear facially sufficient to cure the violations addressed. The determination must be served on the parties by certified mail. The 17-day deadline for the Agency to issue a determination is consistent with the statute in situations where an employee does dispute the sufficiency of a cure, and the requirement the Agency serve its decision on the parties by certified mail also is consistent with the statute. (Lab. Code, § 2699.3, subd. (c)(3)(B).)

Proposed section 17441

Subdivision (a): This subdivision requires a claimant who disputes the sufficiency of an employer's cure actions regarding a violation of Labor Code section 226 to file a notice with the Agency regarding such dispute within 14 days after the date the employer filed its cure notice. This deadline is necessary because the statute does not provide any deadline for an employee to dispute the sufficiency of an employer's cure. (Lab. Code, § 2699.3, subd. (c)(3)(B).) The 14-day deadline further is necessary to ensure the administrative process moves expeditiously, consistent with the statutory framework, and provides an employee sufficient time to review an employer's notice and decide whether to dispute it.

Subdivision (b): This subdivision requires a claimant who disputes an employer's cure to file notice of such dispute with the Agency using the "Employee Cure Dispute" link available on the online PAGA filing portal. The claimant's dispute notice also must be served on the employer by certified mail. These requirements are consistent with the statute. (Lab. Code, § 2699.3, subd. (c)(3)(B).) The specification of the proper hyperlink to use on the online PAGA filing portal is necessary because the statue does not provide specific instruction of the manner by which a claimant must electronically file such a notice with the Agency.

Subdivision (c): This subdivision requires a claimant's dispute notice to specifically describe the factual and legal basis for disputing the sufficiency of the employer's cure actions. This is consistent with the statutory requirement an

employee state the "specified grounds" for disputing an employer's cure. (Lab. Code, § 2699.3, subd. (c)(3)(B).) This information is necessary to give the Agency a clear understanding of the claimant's position and will allow the Agency to review effectively the nature of the dispute regarding the sufficiency of the employer's cure and the bases for it.

Proposed section 17442

Subdivision (a): This subdivision requires the Agency review an employer's cure actions after a claimant files a notice disputing the sufficiency of an employer's cure and issue a determination within 17 days whether the employer has cured the violations addressed. The Agency's determination must be served on the parties by certified mail. These requirements are consistent with the statute (Lab. Code, § 2699.3, subd. (c)(3)(B)), and are necessary to provide clear instruction and guidance to the parties regarding the Agency's procedure for reviewing employer cure notices when an employee disputes the sufficiency of the cure actions.

Subdivision (b): This subdivision allows the Agency to provide an employer an additional three business days to cure an alleged violation in situations where the Agency has determined the employer's original cure actions are insufficient. These provisions are consistent with statute. (Lab. Code, § 2699.3, subd. (c)(3)(B).) When the Agency, in its discretion, allows this additional cure opportunity, the Agency determination must describe the measures remaining to be taken by the employer to complete the cure, and the determination must be emailed to the parties. These requirements are necessary to provide clear instruction to an employer of the actions remaining to be taken to complete a cure, and the requirement the Agency email its determination to the parties is necessary to ensure the prompt communication of such instructions in light of the short timeframe an employer has to complete the remaining cure actions.

Subdivision (c): This subdivision describes the process by an employer that has been provided an additional three days to complete a cure files and serves such a supplemental cure notice. The employer must file its supplemental cure notice with the Agency using the "Cure Documents" link on the online PAGA filing portal and serve the claimant by email. The employer's supplemental cure notice must describe the additional actions taken by the employer and be accompanied by a declaration and supporting documents similar to the requirements applicable when an employer filed its original cure notice. This subdivision further provides the Agency shall issue a determination regarding the sufficiency of the employer's cure within seven days, and the determination shall state the reasons for the Agency's determination. These provisions are necessary because the statute does not describe the process by which an employer files with the Agency evidence of actions taken to complete a cure in

situations where the Agency has provided the employer additional time, nor does the statute describe the Agency process for issuing a determination in such circumstances. (Lab. Code, § 2699.3, subd. (c)(3)(B).) These provisions further are necessary to provide clear guidance to the parties regarding the Agency's procedures. The requirement an employer serve its supplemental notice on the claimant by email and that the Agency issue a determination within seven days are necessary to ensure these cure procedures move expeditiously and to provide finality to the administrative process.

Subdivision (d): This subdivision clarifies that any statute of limitations on violations alleged by a claimant remain tolled while the Agency's administrative cure process remains pending. This is necessary because the timeframes under this process where an employee disputes the sufficiency of an employer's cure may exceed the 65-day period after which a claimant ordinarily may file a lawsuit. (See Lab. Code, § 2699.3, subd. (c)(1)(E).) This provision is consistent with a similar statutory provision under the small employer cure process where the administrative cure process may exceed such time. (See Lab. Code, § 2699.3, subd. (c)(2)(C).)

Proposed section 17443 adds provisions limiting an employer's ability to use the administrative cure process if the employer submitted a cure proposal or cure notice within the preceding 12 months after receiving a PAGA notice alleging violations of the same Labor Code section, regardless of the location or worksite. Labor Code section 2699.3, subdivision (d) states an employer "may not avail itself" of the cure provisions of that section more than once in a 12-month period. This regulation is necessary to clarify the scope of this preclusive measure concerning subsequent cure attempts

Proposed Subchapter 5. Pre-Litigation Notice and Investigation of Claims Arising Under Division 5 (Lab. Code, § 2699.3, subd. (b))

Proposed section 17450

Subdivision (a): This subdivision describes the process by which an aggrieved employee may file a PAGA notice with the Division of Occupational Safety and Health (Division) and Agency using the online PAGA filing portal for violations of Division 5 (commencing with section 6300 of the Labor Code) pursuant to subdivision (b) of Labor Code section 2699.3. This is necessary to clarify the appropriate hyperlink to use on the online PAGA filing portal, as the statute refers only to the requirement of "online filing" without providing further instruction. (See Lab. Code, § 2699.3, subd. (b)(1).) This subdivision also clarifies that upon proper filing a confirmation email will be sent to the filer providing the case number assigned to the case, which is necessary for purposes of advising the employee of receipt of the filing and the case number assigned for purposes

of future communications involving the case. This subdivision further requires an employee filing a PAGA notice to use a standardized form prescribed by the Agency, which will be made available on the online PAGA filing portal. The requirement of a standardized PAGA notice form is necessary to create a uniform template by which employees can notify the Division, Agency, and employers of alleged safety and health violations. This will aid in the Division's review and investigation of PAGA notices and the violations alleged, including by making more identifiable and accessible the portions of the notice requiring a statement of the facts and theories supporting the violations alleged. This will better align with the intent and purposes of the prelitigation notice requirement, aid the Division in reviewing and investigating alleged violations, and assist employers in better understanding the claims alleged against them.

Subdivision (b): This subdivision describes applicable service requirements when an employee files a PAGA notice with the Division and Agency. The statute only requires a copy of the PAGA notice be sent to the employer by certified mail with no further instruction. (See Lab. Code, § 2699.3, subd. (b)(1).) This subdivision requires a PAGA notice be accompanied by proof of service, and also requires the proof of service to include the certified mail tracking numbers on all persons served. This is necessary to confirm a copy of the PAGA notice properly was sent to the employer as required by statute, and the inclusion of the tracking numbers is necessary to calculate properly applicable timeframes under the law.

Subdivision (c): This subdivision describes the information that must be included in a PAGA notice filed using the Agency's prescribed standardized form.

Paragraph (1): This paragraph describes the general background information that must be included in a PAGA notice, including (1) the names of the employee and employer, (2) the dates the employee was employed with the employer, (3) the position held by the employee, (4) the employee's duties while employed, and (5) the location or address of the workplace where the employee worked or where the safety and health violations allegedly exist or existed. Many PAGA notices filed with the Division and Agency do not include sufficient information to aid in the Division's assessment of the seriousness of the violations alleged, and the information required here is necessary to assist in the Division's review of the violations alleged and the nature of the working conditions experienced by the employees. The information required here—including the dates of employment—also is necessary to enable the Division to determine whether the violations alleged are timely asserted by the employee. This is because PAGA provides an employee only may allege violations personally suffered by the employee within one year of the date the PAGA notice is filed. (Lab. Code, § 2699, subd. (c)(1).) In addition, the Division may not

issue citations more than six months after the occurrence of a violation. (Lab. Code, § 6317, subd. (e).) The requirement a claimant identify the address or specific location where they worked and where the alleged safety and health violations exist or existed is necessary to enable the Division to identify the employer location at which an investigation should occur.

Paragraph (2): This paragraph requires an employee filing a PAGA notice to identify the specific Labor Code sections allegedly violated by an employer. This incorporates requirements in statute. (See Lab. Code, § 2699.3, subd. (b)(1).)

This paragraph further requires an employee filing a PAGA notice to provide a short and plain statement of the facts and theories supporting each violation alleged. As discussed more fully above, many PAGA notices allege violations only in a very generic sense that makes it difficult, if not impossible, for the Division or the Agency to ascertain the actual nature of the violations alleged, including the scope and seriousness of the violations. Labor Code section 2699, subdivision (c)(1) also requires an employee alleging violations under PAGA must have personally suffered each of the violations alleged. Accordingly, requiring further articulation of the violations alleged is necessary for the Division to verify the employee's standing to allege such violations and effectively perform its role under the law to investigate alleged violations. And, while this regulation requires a statement of the facts and theories supporting violations the claimant personally suffered, an exception is provided for certain legal aid or services organizations, where an employee need only have experienced one of the violations alleged. (See Lab. Code, § 2699, subd. (c)(2).) This paragraph accounts for this exception and requires an employee subject to this exception to specifically identify what violation or violations the employee personally suffered, while also stating the basis upon which the employee is alleging other violations solely on behalf of others that the claimant did not personally suffer. This information is necessary to assist the Division in reviewing the violations alleged, identifying the specific violations on which the employee bases a claim of standing to assert other violations, and obtaining a clearer understanding of the claims for which the employee may be able to provide further direct information, as well as what information the employee is relying upon in asserting other violations solely on behalf of other employees.

Finally, this paragraph requires an employee to identify the Labor Code sections under which civil penalties are sought for the violations alleged. Requiring this information is necessary to provide greater notice of the claims asserted and will allow employers in receipt of PAGA notices to more readily assess the nature of the violations alleged against them, including the bases and amounts of civil penalties potentially recoverable based on the claims asserted.

Subdivision (d): This subdivision requires an employee or attorney filing a PAGA notice to sign the notice and certify the claims asserted are not presented for an improper purpose, have legal support, and have evidentiary support or are likely to after a reasonable opportunity for discovery. The nature of this certification follows the requirements of Code of Civil Procedure section 128.7, subdivision (a). The California Supreme Court has stated PAGA notices are subject to similar certification requirements under that section as it applies to filings in civil actions. (*Williams*, *supra*, 3 Cal.5th at p. 545, citing Code Civ. Proc., § 128.7.) This is necessary to ensure employees and attorneys filing PAGA notices understand the seriousness of filing a PAGA notice, which triggers administrative review of the violations alleged and is a necessary step to filing a lawsuit regarding such claims. This certification requirement also is warranted as a measure to deter abusive PAGA notice filing practices, as there have been instances of attorneys filing PAGA notices without signing them or including their names on the notices filed. (See ISOR, App. C [at p. 17].)

Subdivision (e): This subdivision adds language providing no violation or theory of violation may be alleged in a lawsuit under PAGA unless the violation or theory of violation was stated in a PAGA notice filed with the Agency. This requirement is consistent with current law. Courts have described PAGA's prelitigation notice obligation as an "administrative exhaustion" requirement (*Rojas-Cifuentes*, *supra*, 58 Cal.App.5th at p. 1056), and courts have affirmed that "[p]roper notice under section 2699.3 is a 'condition' of a PAGA lawsuit." (*Uribe*, *supra*, 70 Cal.App.5th at p. 1003.) This subdivision is necessary to clearly express this rule and ensure employees filing PAGA notices are aware they may not allege violations or theories of violations in any subsequent lawsuit if such claims are not first presented to the Division or Agency for the opportunity to review and investigate.

Proposed section 17450.5 adds provisions clarifying the ability of an employee to amend a PAGA notice previously filed with the Division and Agency. Amendments to PAGA notices commonly are filed with the Agency although the statute does not refer to amendments of PAGA notices. This regulation instructs employees filing amended PAGA notices to use the "Amended PAGA Claim Notice" link available on the online PAGA filing portal and to serve the employer by certified mail. This regulation is necessary to ensure employees are aware of their right to amend PAGA notices and the procedures for doing so, including in terms of online filing with the Division and Agency and service on the employer. The requirement of service by certified mail is consistent with the statutory procedures for serving PAGA notices. This regulation further requires an amended notice comply with requirements applicable to initial PAGA notices, including with respect to providing information regarding the employee's employment with the employer, describing the factual bases for the violations alleged, and certifying the claims are not brought for an improper purpose and

have legal and evidentiary support (see prop. reg. 17450, subds. (c), (d)). Finally, this regulation would prohibit an employee from filing an amended PAGA notice adding new violations not previously alleged if the employee has reached a proposed settlement agreement with an employer in a civil action including claims under PAGA. This is necessary to prevent a common practice where employees amend PAGA notices to add new claims when settling a PAGA lawsuit. By doing so, the employee and employer may include, and release, the new claims in their proposed settlement agreement, thereby extinguishing claims being pursued against the same employer by other PAGA plaintiffs.

Proposed section 17451

Subdivision (a): This subdivision describes the process by which the Division commences and conducts an investigation regarding safety and health violations alleged in a PAGA notice. The Division shall investigate the employment or place of employment with or without notice to the employer when the Division has reason to believe an employment or place of employment is not safe or is injurious to the welfare of an aggrieved employee. These provisions are consistent with the statutory direction the Division investigate claims in the manner provided in Labor Code section 6309. (See Lab. Code, § 2699.3, subd. (b)(2)(B).) This subdivision further clarifies a PAGA notice is not deemed a "complaint" within the meaning of Labor Code section 6309, subdivision (a). This is necessary because a complaint under that section, and the process by which such a complaint is made to the Division, follows a different procedure than the process by which an aggrieved employee files a PAGA notice. Such complaints also are subject to different timeframes than investigations conducted under PAGA, which incorporates the six-month investigation and citation period set forth in Labor Code section 6317. (See Lab. Code, § 2699.3, subd. (b)(2)(A)(ii).) This clarification is necessary to provide proper guidance to parties when a PAGA notice alleges safety and health violations to provide a clearer understanding of the applicable investigation procedures and timeframes.

Subdivision (b): This subdivision states the Division shall issue a citation to an employer if the Division believes the employer has violated any safety and health requirement under Division 5. However, the Division may not issue a citation more than six months after the occurrence of the violation. This regulation further defines when a violation is deemed to be "occurring" for these purposes. These provisions are consistent with statutory procedures governing investigations by the Division, and are necessary to incorporate here to provide clear guidance to the parties regarding the applicable administrative investigation process where a PAGA notice alleges safety and health violations, including the applicable timeframes in which violations are

deemed to be "occurring." (Lab. Code, §§ 2699.3, subd. (b)(2)(A)(ii), 6317, subd. (e).)

Subdivision (c): This subdivision provides the Division is required to notify the claimant and employer within 14 days after certifying the employer has corrected a violation for which it previously was cited. Such notice shall be served on the parties by certified mail. This notice requirement is consistent with statute and necessary here to provide clear guidance to the parties regarding the administrative procedures applicable when the Division has issued a citation to an employer. (Lab. Code, § 2699.3, subd. (b)(2)(A)(i).) The statute does not specify the manner by which such notice is provided, and the requirement here that notice be given by certified mail is necessary to ensure prompt and reliable delivery to the parties.

Subdivision (d): This subdivision describes the procedures available to a claimant in circumstances where the Division fails to inspect or investigate an alleged violation. These provisions are necessary to provide proper guidance to parties in circumstances where a PAGA notice alleges safety and health violations. As provided in this subdivision, if the Division fails to cite an employer because the Division failed commence an inspection or investigation of safety and health violations alleged in a PAGA notice, the claimant may commence a civil action consistent with the provisions of Labor Code section 2699.3, subdivision (c)(1)(D). These provisions are consistent with the statutory framework, including Labor Code section 2699.3, subdivision (b)(2)(B), which states the provisions of section 2699.3, subdivision (c) shall apply when the Division fails to inspect or investigate alleged violations. This subdivision thus clarifies that cure procedures under subdivision (c)(2) and (c)(3) are unavailable in such circumstances. This is consistent with both subdivision (c) of section 2699.3 and section 2699.5, under which violations of Division 5 of the Labor Code are not subject to cure. Moreover, in light of the timeframe the Division has to investigate alleged safety and health violations and issue citations under Division 5—up to six months after the occurrence of the violation—the time to commence any administrative cure process under section 2699.3, subdivisions (c)(2) or (c)(3) likely may have passed by the time the period in which the Division may issue a citation expires, thus rendering those procedures unavailable.

Paragraph (1): This paragraph defines the circumstances under which the Division may be considered to have failed to commence an inspection or investigation. Under this paragraph, the Division will not be deemed to have failed to commence an inspection or investigation when the Division has determined a PAGA notice is invalid or does not meet statutory or regulatory requirements. This paragraph is necessary to provide clarity to the parties

regarding the circumstances under which the Division can be found to have failed to commence an inspection or investigation.

Paragraph (2): This paragraph clarifies that the Division is deemed to have commenced an inspection or investigation of alleged safety and health violations upon review of the PAGA notice for purposes of assessing the nature of the violation alleged. This paragraph further requires the Division to enter confirmation of the commencement of an inspection or investigation in the PAGA Case Detail docket information for a case. This information is publicly accessible, and thus a party may look up the case using the PAGA Case Search Web site to determine whether the Division has commenced an inspection or investigation. Finally, this paragraph would require the Division to enter such notation in the case details for a PAGA case within 65 days of the postmark date of the claimant's PAGA notice. This is necessary to clarify the time for the Division to act. Further, this will provide clarity in circumstances where an employee may be permitted to commence a PAGA lawsuit based on expiration of the 65-day administrative investigation period applicable to PAGA notices under Labor Code section 2699.3, subdivision (c)(1)(E) in situations where the Division fails to commence an inspection or investigation of safety and health violations within the time allowed.

Proposed Subchapter 6. Submitting Court Filings, Proposed Settlements, and Other Documents to the Agency

Proposed section 17460

Subdivision (a): This subdivision clarifies the procedures and timeframes by which a claimant who has filed a lawsuit under PAGA must submit copies of court-related documents to the Agency as required by Labor Code section 2699, subdivision (s). These provisions are necessary to provide guidance to the parties regarding the proper manner by which to submit court-related documents to the Agency, as the statute only refers to the submission of documents to the Agency electronically without further instruction. (Lab. Code, § 2699, subd. (s)(4).) Under subdivision (a)(1) of this proposed regulation, a file-stamped complaint must be submitted by the plaintiff to the Agency within 10 days after it is filed in court using the "Court Complaint" link on the online PAGA filing portal. This period in which to submit the complaint to the Agency is consistent with the statute. Subdivision (s)(2) requires a plaintiff to submit any amended complaint to the Agency within five days after it is filed in court. The statute does not provide for the filing of amended complaints, but requiring the submission of amended complaints will aid the Agency's oversight of litigation filed by private employees under PAGA. (*Turrieta v. Lyft, Inc*. (2024) 16 Cal.5th 664, 696.) Subdivision (a)(3) describes the process for submitting a proposed settlement agreement with the Agency using the "Proposed Settlement of

PAGA case" link on the online PAGA filing portal. The proposed settlement must be submitted before or on the same day it is submitted to the court for approval under Labor Code section 2699, subdivision (s)(2), which is consistent with the statutory directive the settlement be submitted to the Agency when it is submitted to the court. This provision further is necessary because parties sometimes have submitted proposed settlement agreements to the Agency using the "Other Documents" link on the online PAGA filing portal. As previously noted, this results in misidentification of the document which is not properly designated and routed for appropriate review and handling as a proposed settlement agreement. To the extent such practices are designed to evade Agency review of proposed settlement agreements, this regulation clarifies the proper process for submitting documents to the Agency. Subdivision (a)(4) requires a judgment entered by the court or any other order, including an order or award entered during arbitration, that disposes of claims asserted under PAGA to be submitted to the Agency using the "Court Order or Judgment in PAGA case" link on the online PAGA filing portal within 10 days after entry of the judgment or order, consistent with Labor Code section 2699, subdivision (s)(3). Specification of arbitration awards or orders is necessary because employees may be required to arbitrate certain claims if a valid arbitration agreement exists between an employee and employer. Finally, subdivision (a)(5) requires the submission of any order awarding or denying civil penalties under PAGA using the "Order or Judgment in PAGA case" link on the online PAGA filing portal within 10 days after entry of the order, which again is consistent with the requirement of section 2699, subdivision (s)(3).

Subdivision (b): This subdivision expressly clarifies that the submission of court-related documents using the online PAGA filing portal does not constitute formal service of process on the Agency or any of its departments or divisions. This is necessary because parties previously have uploaded documents to the online PAGA filing portal but have not formally served the Agency in situations where the Agency is entitled to service of process. Accordingly, this regulation clarifies a party's obligations when documents are required to be served on the Agency, as opposed to filed or submitted using the online PAGA filing portal.

Proposed section 17461

Subdivision (a): This subdivision describes the requirements for a plaintiff submitting a proposed settlement agreement to the Agency. Specifically, the plaintiff must submit (1) a copy of the fully executed proposed settlement agreement, (2) a copy of the motion or other request filed with the court seeking approval of the proposed settlement, including all declarations or other documents submitted to the court in support of the request to approve the proposed settlement, and (3) a copy of a notice issued to other employees that have pending PAGA claims against the same employer with whom the plaintiff

has entered into a proposed settlement agreement. These documents are necessary to assist the Agency in its review of proposed settlement agreements to ensure they are fair, reasonable, and adequate to those affected, thereby aiding the Agency in its role to protect the interests of the state, on whose behalf the deputized PAGA plaintiff is acting, and other aggrieved employees affected by the agreement. (*Turrieta*, *supra*, 16 Cal.5th at p. 706; see *O'Connor v. Uber Technologies, Inc*. (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1134-1135.) By requiring a plaintiff to submit to the Agency all documents filed with the court supporting the proposed settlement agreement, the Agency will be able to more fully review the proposed settlement to assess the fairness and adequateness of its terms. These provisions are necessary because plaintiffs often submit to the Agency only a copy of the proposed settlement agreement itself, which does not afford the Agency sufficient information to effectively review the proposed settlement. The requirement a plaintiff provide notice to other employees with pending PAGA claims against the same employer is necessary to assist the Agency in its review of the proposed settlement and to ensure other employees with pending claims against the same employer are aware of the proposed settlement, which may extinguish other PAGA plaintiffs' claims if approved by the court. (*Turrieta*, *supra*, 16 Cal.5th at pp. 706-707.)

Subdivision (b): This subdivision describes the procedures by which a settling PAGA plaintiff provides notice of the proposed settlement to other PAGA claimants and plaintiffs with pending claims against the same employer. The term "actions pending" is defined for purposes of this subdivision to include all PAGA cases where a PAGA notice has been filed and no settlement or court disposition of the claims are reflected on the online PAGA Case Search Web site, an online docket of all PAGA cases filed with the Agency. This is necessary to ensure broad notice to all affected employees with cases pending against the same employer. The requirement an employer verify the accuracy of the list of persons entitled to such notice is necessary because the employer is in a better position to identify all pending claims against it.

The notice a settling plaintiff must provide to other PAGA claimants and plaintiffs with pending PAGA actions must include (1) the case name, number, and court information where the lawsuit to which the settlement pertains is pending; (2) the Agency case number assigned to the PAGA notice filed by the settling plaintiff before filing a PAGA lawsuit; (3) the date of any scheduled hearing at which the court will consider whether to approve the proposed settlement, including any information regarding a court's tentative ruling system; and (4) a summary listing of all PAGA claims encompassed by the proposed settlement. In addition, the notice to other employees must include an explicit written statement notifying the recipient the settling plaintiff and employer have reached a proposed settlement of claims under PAGA that has been filed with the court for approval, that the settlement agreement is available online on the

PAGA Case Search Web site, and that the settlement will become final if approved by the court, which may impact or foreclose the recipient's ability to pursue claims under PAGA against the same employer.

These provisions are necessary to ensure prompt and proper notice to other employees whose PAGA claims may be impacted or foreclosed by a proposed PAGA settlement in any given case. These requirements further are necessary to aid the Agency's oversight of PAGA actions, including proposed settlements of PAGA actions. This is because other PAGA claimants or plaintiffs may submit comments to the Agency regarding the settlement and whether it is fair, adequate, and reasonable. Other employees with PAGA claims against the same employer generally are familiar with the facts and issues involving the same or similar claims against the employer, and thus are uniquely situated to advise the Agency regarding such matters. Such other parties may file comments with the court where the proposed settlement is pending, but they lack the ability to intervene in such cases. (*Turrieta*, *supra*, 16 Cal.5th at p. 716.) As an alternative, they may—and often do—submit comments to the Agency so the Agency, which is a real party in interest in all PAGA actions and in position to intervene in such cases, may more adequately review such proposed settlements and take appropriate action where warranted. (*Turrieta*, *supra*, 16 Cal.5th at pp. 706-707.)

Subdivision (c): This subdivision requires a party submitting a proposed settlement agreement to the Agency to provide the Agency at least 45 days to review the settlement agreement, and further directs a party shall not voluntarily consent to any court hearing seeking approval of the settlement that does not provide the Agency at least 45 days to review it. This is necessary because the statute does not describe any procedures applicable to the Agency's review of proposed settlement agreements. (Lab. Code, § 2699, subd. (s)(2).) Courts have found the requirement a party submit a proposed settlement to the Agency is intended to further the Agency's oversight and monitoring of PAGA cases. (*California Business & Industrial Alliance*, *supra*, 80 Cal.App.5th at p. 748.) These provisions thus are necessary to ensure the Agency has a sufficient opportunity to review proposed settlements, which in class or PAGA representative actions may be lengthy and complex documents.

This subdivision also allows any employee with pending PAGA claims against the same employer to submit comments regarding the settlement to the Agency. This is necessary to assist the Agency in its role reviewing proposed settlements, and stating in regulation employees may file comments with the Agency regarding proposed settlement agreements is consistent with current practices, as many plaintiff attorneys currently notify the Agency when concerns exist regarding a proposed settlement agreement involving an employer against whom the attorney has a pending case. This regulation specifies that

comments must be submitted to the Agency by email within 21 days after the employee receives notice of the proposed settlement, and any comments opposing approval of the settlement shall state the reasons for opposing it. The requirement comments be submitted by email within 21 days after an employee receives notice of the settlement is necessary to allow the Agency prompt notice of the comments and sufficient time to review them, and, if warranted, to take appropriate measures to oppose approval of a proposed settlement in court. The requirements parties state the reasons for opposing a settlement is necessary to aid the Agency inquiry into the alleged reasons why a settlement may not be fair, reasonable, or adequate.

Subdivision (d): This subdivision clarifies the fact the Agency has not filed comments regarding a proposed settlement may not be construed as an approval or endorsement of the settlement by the Agency. This is necessary because parties and courts previously have asserted the Agency's failure to object to a settlement establishes the Agency's support for it. (See *Martinez v. Semi-Tropic Cooperative Gin & Almond Huller, Inc*. (E.D. Cal., May 19, 2023) 2023 WL 3569906, at *22; *Brown v. Dave & Buster's of California, Inc*., *supra*, 116 Cal.App.5th 164 [339 Cal.Rptr.3d at p. 276].) However, due to the volume of PAGA cases, the number of settlements submitted to the Agency, and the Agency's limited staffing and resources, the Agency is not always able to sufficiently review and comment on all proposed settlements. During FY 24/25, about 4,523 proposed PAGA settlements were submitted to the Agency. (ISOR, App. F [table showing number of proposed PAGA settlements submitted to the Agency on a monthly basis].) Thus, the Agency rejects the implication parties and courts have suggested that its failure to object to a proposed settlement agreement equates to the Agency's approval of it. This regulation clarifies this principle.

Subdivision (e): This subdivision requires parties to include a copy of this regulation, and verify compliance with it, in any submission to the court seeking approval of a proposed settlement. This provision is necessary so the court is aware of the Agency's review process and applicable timeframes, and further so the court may be assured the parties have complied with administrative reporting obligations when submitting a proposed settlement to the court for approval.

Proposed section 17462 provides that no settlement agreement between an employee that has filed a PAGA notice with the Agency and the employer against whom such notice is filed, that is entered into after the filing of a PAGA notice but before a lawsuit has been filed, may purport to release the employer from any PAGA claims belonging to the employee, the state, or any other person, or any claims belonging to the state or any other person. This is necessary because a settlement between an employee and employer after a

PAGA notice is filed but before a lawsuit is filed is not subject to the rigorous oversight and approval requirements of Labor Code section 2699, subdivision (s). Thus, the Agency has no ability to monitor such settlements. Nor are any other safeguards in place to allow the Agency to assess whether the settlement is fair, reasonable, and adequate to protect the interests of the state and other aggrieved employees, as a settlement in this context generally occurs at a time when there may have been no formal litigation discovery or proper investigation of the violations alleged. Due to the lack of sufficient safeguards and oversight capabilities, it is improper and inconsistent with the statutory scheme to allow releases of PAGA claims, or any other claims belonging to the state or other employees, in such a context. Nothing in this regulation prohibits an employee from settling and releasing their own individual claims against the employer.

Proposed section 17463 describes the procedures by which a party to a lawsuit who seeks to serve the Agency with filings in the case may do so. This is necessary to clarify the procedures for serving the Agency with court filings in circumstances where formal service on the Agency is required. This regulation clarifies that service on the Agency shall be done in accordance with the applicable provisions of the Code of Civil Procedure generally applicable in court proceedings. Alternatively, this regulation allows a party to contact the Agency to facilitate a different method of service. This regulation provides instructions to email the Labor Commissioner's Office to obtain information for facilitating service on the Agency, including the email address to which such inquiries must be directed, the subject of the email, and the text of the email. These instructions are necessary so that a request to facilitate service on the Agency is clearly labeled and easily identifiable, and will provide the Agency sufficient information about the case and the nature of the documents to be served. This regulation is necessary to avoid confusion that may arise due to the fact that uploading documents via the online PAGA filing portal does not constitute service of process on the Agency. Accordingly, this section provides guidance to parties regarding how to serve, or facilitate service on, the Agency.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

In preparing this proposed regulatory action, the Agency reviewed applicable laws, including the Labor Code, legislative history concerning PAGA and the 2024 legislative reforms,[9] and relevant court decisions interpreting and applying PAGA, as cited herein.

[9] Information concerning the legislative history of PAGA, including bill information, Legislative Counsel Digests, and histories and analyses, are available using the California Legislative Information Web site, at <https://leginfo.legislature.ca.gov/>. Bills specific to PAGA include:

The Agency also prepared the following reports to illustrate data pertaining to filing practices under PAGA, as previously referenced herein:

- Total PAGA Notice Filings by Top 25 Attorneys and Law Firms with Highest Filing Totals in Fiscal Year 2024-2025 (Appendix A); and
- Court Complaint Reporting Statistics Based on PAGA Notices Filed in Fiscal Year 2024-2025 for Top 25 Filing Law Firms (Appendix B).

The Agency also reviewed and relied upon the following records illustrating concerns expressed herein regarding abusive filing practices or other problematic conduct under PAGA, which are included as appendices to this initial statement of reasons in support of the proposed rulemaking:

- Selected PAGA Notices Filed in Fiscal Year 2024-2025 (Appendix C);
- Notice Issued to Attorney Directing Filing of Amended PAGA Notices (Appendix D);
- *In re Neutron Holdings Wage and Hour Cases*, case no. CJC-19-005044, Redacted Order Denying Without Prejudice Plaintiff's Motion for Approval of PAGA Settlement, etc., Feb. 18, 2021 (Appendix E); and
- Table Showing Number of Proposed PAGA Settlements Submitted to LWDA on Monthly Basis (Appendix F); as well as,
- California Lawyers Association (CELA) Amicus Curiae Brief, *Turrieta v. Lyft, Inc*., case no S271721, filed July 18, 2022, available at <https://cela.org/?pg=AmicusActivity> (as of Jan. 20, 2026); and

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- Sen. Bill No. 796 (2003-2004 Reg. Sess.) [Stats. 2003, ch. 906], at <https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200320040SB796>;
- Sen. Bill No. 1809 (2003-2004 Reg. Sess.) [Stats. 2004, ch. 221], at <https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200320040SB1809>;
- Sen. Bill No. 836 (2015-2016 Reg. Sess.) [Stats. 2016, ch. 31], at <https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB836>;
- Assem. Bill No. 2288 (2023-2024 Reg. Sess.) [Stats. 2024, ch. 44], at <https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB2288>; and
- Sen. Bill No. 92 (2023-2024 Reg. Sess.) [Stats. 2024, ch. 45], at <https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB92>.

- CELA, The Reverse Auctions Policy, Oct. 8, 2020, available at <https://cela.org/?pg=ReverseAuctionsPolicy> (as of Jan. 20, 2026).

The Agency also has relied upon its experience processing current PAGA notices and cure proceedings since the 2024 reforms, additional information regarding which is available using the PAGA Case Search Web site, at <https://cadir.my.salesforce-sites.com/PagaSearch>.

ECONOMIC IMPACT ASSESSMENT (Gov. Code, § 11346.3, subd. (b))

The proposed regulations are designed to implement the statutory procedures and reporting requirements under PAGA and otherwise inform interested parties and stakeholders of their rights and obligations with respect to such procedures.

In accordance with Government Code section 11346.3, subdivision (b), the Agency has made the following assessments regarding the proposed regulations:

Creation or Elimination of Jobs Within the State of California

The proposed regulations are designed to implement administrative procedures under PAGA, as well as inform interested stakeholders of their rights and obligations with respect to such procedures. In doing so, no jobs in California will be created or eliminated.

Creation of New Businesses or Elimination of Existing Businesses Within the State of California

The proposed regulations are designed to implement administrative procedures under PAGA, as well as inform interested stakeholders of their rights and obligations with respect to such procedures. In implementing these statutory provisions, no new businesses will be created or existing businesses eliminated, and the ability of businesses in California to compete with businesses in other states will not be impacted.

Expansion of Businesses Within the State of California

The proposed regulations are designed to implement administrative procedures under PAGA, as well as inform interested employee and employer stakeholders of their rights and obligations with respect to such procedures. In implementing the administrative requirements under PAGA, this regulatory action will not result in the expansion of any existing businesses in the California.

The Agency will continue to investigate the potential for economic impact throughout this rulemaking process.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

By providing clear guidance to affected stakeholders regarding the administrative notice requirements, investigation and early resolution procedures, and litigation reporting obligations under PAGA, the Agency's proposed regulatory action will improve administration of PAGA and the law's effectiveness as a tool for augmenting the state's labor law enforcement abilities. The proposed regulations will strengthen by Agency's role under the law by providing clearer guidance concerning PAGA's administrative notice and litigation reporting requirements, including as it relates to proposed settlements of PAGA cases. The proposed regulations further will improve transparency into the Agency's administrative procedures, including the early resolution procedures added by the 2024 legislative reforms, and thus improve the effectiveness and efficiency of such procedures consistent with the intent and purpose of such procedures to resolve disputes more quickly and to reduce litigation and the attendant costs and delays that come with it. The proposed regulations thus will benefit workers and employers concerning their rights under PAGA.

The proposed regulatory action will not adversely affect the health and welfare of California residents, worker safety, or the state's environment. The proposed regulatory action will further the policies of encouraging the prompt resolution of disputes. The proposed regulations further aid the Agency's ability to perform its role under the law to monitor PAGA actions and ensure interests of the state and aggrieved workers are protected. California residents' general welfare will be benefitted by stable employee-employer relations and more effective use of PAGA as an enforcement tool to prevent and deter labor law violations, thereby providing safer and healthier workplaces for all Californians.

INFORMATION RELIED UPON TO SUPPORT THE AGENCY'S INITIAL DETERMINATION THAT THE PROPOSED REGULATORY ACTION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

The Agency is charged with administering the provisions of PAGA. This regulatory action is designed to provide clarity and increased transparency to employees and employers, as well as other stakeholders, regarding PAGA's administrative notice, investigation, early resolution, and litigation reporting requirements. In doing so, the proposed regulatory action is intended to provide guidance and instruction to parties concerning the Agency's administrative procedures. As

such, the Agency initially has determined this proposed regulatory action will not have a significant adverse economic impact on business.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Agency has not identified any adverse impacts on small business as a result of these proposed regulations and has not identified alternatives that would lessen any adverse impact on small business. In fact, the small employer cure procedures added to PAGA by the 2024 legislative reforms, and the proposed regulations implementing that procedure, are designed to assist small businesses in resolving PAGA actions more quickly to avoid more protracted and costly litigation. Thus, no such alternative has been proposed.

MANDATED USE OF SPECIFIC TECHNOLOGIES OR EQUIPMENT

The Agency's proposed regulatory action mandates the use of specific technologies or equipment in that parties must file documents electronically with the Agency and serve documents on other parties electronically via email. Electronic filing requirements are consistent with statutory requirements that all documents filed with the Agency "be transmitted online." (§ 2699, subd. (s)(4).) While PAGA requires parties serve each other certain documents by certified mail, the requirements in these proposed regulations or other documents to be served electronically via email is consistent with the statutory framework favoring electronic transmissions, and further results in greater expediencies in the transmission of documents. These electronic filing and service rules will require parties to have the proper computer hardware, internet access, and software to convert documents to PDF format and send using an email platform.

APPENDIX A

Total PAGA Notice Filings by Top 25 Attorneys and Law Firms with Highest Filing Totals in Fiscal Year 2024-2025

Total PAGA Notice Filings By Attorney (Top 25) During Fiscal Year 2024-2025
(July 1, 2024 – June 30, 2025)

Attorney (with Ranking)	PAGA Notices Filed
Attorney 1	597
Attorney 2	368
Attorney 3	230
Attorney 4	222
Attorney 5	154
Attorney 6	137
Attorney 7	126
Attorney 8	121
Attorney 9	119
Attorney 10	118
Attorney 11	111
Attorney 12	107
Attorney 13	98
Attorney 14 (*two tied*)	93
Attorney 16	92
Attorney 17	87
Attorney 18	86
Attorney 19	85
Attorney 20	80
Attorney 21	76
Attorney 22	75
Attorney 23 (*two tied*)	74
Attorney 25	73

Appendix A
Initial Statement of Reasons in Support of Proposed Rulemaking

Total PAGA Notice Filings By Law Firm (Top 25) During Fiscal Year 2024-2025
(July 1, 2024 – June 30, 2025)

Law Firm (with Ranking)	PAGA Notices Filed
Law Firm 1	604
Law Firm 2	535
Law Firm 3	409
Law Firm 4	308
Law Firm 5	230
Law Firm 6	222
Law Firm 7	221
Law Firm 8	219
Law Firm 9	187
Law Firm 10	169
Law Firm 11	159
Law Firm 12	155
Law Firm 13	154
Law Firm 14	144
Law Firm 15	137
Law Firm 16	128
Law Firm 17	125
Law Firm 18	124
Law Firm 19	119
Law Firm 20	113
Law Firm 21	109
Law Firm 22	108
Law Firm 23	94
Law Firm 24	93
Law Firm 25	87

Appendix A
Initial Statement of Reasons in Support of Proposed Rulemaking

APPENDIX B

Court Complaint Reporting Statistics Based on PAGA Notices Filed in Fiscal Year 2024-2025 for Top 25 Filing Law Firms

Complaints Submitted to LWDA By Top 25 Law Firms With Highest PAGA Notice Filing Totals During Fiscal Year 2024-2025
(July 1, 2024 – June 30, 2025)

Law Firm	PAGA Notices Filed	Complaints Submitted*
Law Firm 1	604	277
Law Firm 2	535	420
Law Firm 3	409	63
Law Firm 4	308	243
Law Firm 5	230	10
Law Firm 6	222	5
Law Firm 7	221	176
Law Firm 8	219	91
Law Firm 9	187	111
Law Firm 10	169	75
Law Firm 11	159	18
Law Firm 12	155	107
Law Firm 13	154	134
Law Firm 14	144	136
Law Firm 15	137	78
Law Firm 16	128	56
Law Firm 17	125	2
Law Firm 18	124	105
Law Firm 19	119	17
Law Firm 20	113	96
Law Firm 21	109	51
Law Firm 22	108	48
Law Firm 23	94	60
Law Firm 24	93	84
Law Firm 25	87	14

** As of January 8, 2026.*

APPENDIX C

Selected PAGA Notices Filed in Fiscal Year 2024-2025

[redacted]

September 23, 2024

PAGA NOTICE FILED ELECTRONICALLY

Re: *Notice Letter of on Behalf of [redacted] and Aggrieved Employees Under California Labor section 2699.3*

Employer: [redacted]

To Whom It May Concern:

This letter shall constitute notice under Labor Code section 2699.3 (hereinafter "PAGA Notice"). The $75 filing fee for the PAGA Notice was paid online by credit card at the time this PAGA Notice was submitted online to the Department of Industrial Relations.

This PAGA Notice concerns [redacted] ("Employee") employment with Employee's former employer: [redacted] (hereinafter, collectively, "Employer"). Employee was employed as a non-exempt employee of Employer, at without limitation [redacted], with duties that included, but were not limited to, creating concepts in universities for bottle openers and lanyards, from approximately August of 2022 through approximately July of 2024. In connection with the alleged claims for failure to comply with Labor Code sections 96, 98.6, 200, 201, 201.5, 201.7, 202, 203, 203.5, 204, 204a, 205, 205.5, 210, 212, 221, 222, 223, 222.5, 226, 226.2, 226.3, 227.3, 232, 232.5, 245, 246, 432, 432.3, 432.5, 432.7, 432.8, 1102.5, 1197.5, 1198, 1198.5, 1527, 3366, 3457, and 8397.4, Employee seeks to represent all employees of Employer, and each of them, as well as their parents, subsidiaries and affiliates. On all other claims mentioned herein, Employee seeks to represent only non-exempt employees of Employer. All employees that Employee seeks to represent, as detailed in this Paragraph, shall be referred to as "Aggrieved Employees". Moreover, the allegations herein shall encompass the "PAGA Period", which shall refer to three years preceding the date of this letter and continuing past the date of this Letter into perpetuity.

Employee and other Aggrieved Employees personally suffered Employer's violations of the 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 Employee and other Aggrieved Employees to work more than eight (8) hours per day, forty (40) hours per week, and/or seven (7) straight workdays in a workweek (in violation of Labor Code sections 551 and 552) without paying them proper overtime wages every day, 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 Employer's 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; failing to include all forms of remuneration, including non-discretionary bonuses, incentive pay, meal allowances, mask allowances, gift cards 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, for paying straight pay instead of overtime pay, for failing to pay overtime as required under Labor Code section 226.2, and by attempting but failing to properly implement an alternative workweek schedule ("AWS") (including, without limitation, by failing to implement a written agreement designating the regularly scheduled alternative workweek in which the specified number of work days and work hours are regularly recurring; failing to adopt the AWS in a secret ballot election, before the performance of work, by at least a two-thirds (2/3) vote of the affected employees in the work unit; failing to follow the notice/disclosures procedures prior to any AWS election; and/or failing to register an AWS election with the State of California, as required by Labor Code section 511 and applicable Wage Orders) all to the detriment of Employee and other Aggrieved Employees. Consequently, Employee is informed and believes, and based thereon alleges, that Employer violated Labor Code sections 221, 222, 223, 226.2, 510, 511, 551, 552, 1194, 1198 (as it pertains to employees governed by a collective bargaining agreement ["CBA"]), 1811, 1815 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, including, without limitation, at least one hour of unpaid overtime wages each day worked by each Aggrieved Employee during the PAGA Period. Employee further informed and believes, and based thereon alleges, that Employer's conduct above gave rise to such violations was malicious, fraudulent, or oppressive. Employer would also be liable for civil penalties pursuant to Labor Code sections 210 (for failure to timely pay these wages), 558, 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Employer would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

Employee is informed and believes, and based thereon alleges, that Employer had and has a practice or policy of failing to compensate Employee and other Aggrieved Employees with minimum wages for all hours worked or otherwise under Employer's control every day 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 Employer's 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 undergo security checks and/or bag checks off the clock, to store and retrieve personal belongings off the clock, to attend company meetings off the clock, to make phone calls, receive and respond to emails and/or texts, or drive off-the-clock; detrimental

rounding of employee time entries; editing and/or manipulation of time entries to show less hours than actually worked; ; failing to pay the minimum amounts required under Labor Code section 226.2; and failing to pay split shift premiums. In addition, Employee and other Aggrieved Employees were required to report to work, and did report, but were not put to work and/or were furnished less than half their usual or scheduled day's work without being paid for half the usual or scheduled work at their regular rate of pay. As such, Employee is informed and believes, and based thereon alleges, that Employer violated, without limitation, Labor Code sections 221, 222 (as it pertains to employees governed by a CBA), 223, 226.2, 1197, 1182.12, Cal. and applicable Wage Orders based on its continued failure to pay minimum wages for all hours worked, that Employee and other Aggrieved Employees personally suffered these violations, and that Employee and other Aggrieved Employees are entitled to actual and liquidated damages under, without limitation, Labor Code sections 1475, 1194, 1194.2, and 1198 to compensate them for at least one unpaid hour of work per day for each Aggrieved Employee in the PAGA Period. Employee further informed and believes, and based thereon alleges, that Employer's conduct above gave rise to such violations was malicious, fraudulent, or oppressive. Employer would also be liable for civil penalties pursuant to Labor Code sections 210 (for failure to timely pay these wages), 558, 1197.1, 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Employer would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

Employee is informed and believes, and based thereon alleges, that Employer had and has a practice or policy of failing to compensate Employee and other Aggrieved Employees with minimum wages for all hours worked or otherwise under Employer's control every day 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 Employer's 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 undergo security checks and/or bag checks off the clock, to store and retrieve personal belongings off the clock, to attend company meetings off the clock, to make phone calls, receive and respond to emails and/or texts, or drive off-the-clock; detrimental rounding of employee time entries; editing and/or manipulation of time entries to show less hours than actually worked; and failing to pay split shift premiums. In addition, Employee and other Aggrieved Employees were required to report to work, and did report, but were not put to work and/or were furnished less than half their usual or scheduled day's work without being paid for half the usual or scheduled work at their regular rate of pay. These acts and/or omissions violated Labor Code sections 1771, 1774 and 1198, and, thus Employer would be liable for civil penalties pursuant to these sections and Labor Code section 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Employee further informed and believes, and based thereon alleges, that Employer's conduct above gave rise to such violations was malicious, fraudulent, or oppressive. Employer would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

Employee is informed and believes, and based thereon alleges, that Employer had and has a policy or practice of compelling its Employee and other Aggrieved Employees during the PAGA Period to every day work in excess of five (5) and ten (10) hours per day, without being afforded uninterrupted, timely, and complete 30-minute meal periods or compensation in lieu thereof including, each workday, without limitation: by interrupting meal periods; not providing timely meal periods; failing to provide first and second meal periods; providing short meal periods, including without, limitation meal periods that were recorded for less than thirty minutes, and meal periods that may appear on the record to be thirty minutes or longer but in practice were shorter than thirty minutes due to time required to walk to and from a suitable break area, time spent having to wait in line to clock back in, having to don and doff safety gear during the meal period, having to undergo security or bag checks during the meal period, and /or having to retrieve and store personal belongings during the meal period; requiring that employees carry cellular telephones or walkie-talkies 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. Employee and other Aggrieved Employees personally suffered these violations. Consequently, Employee is informed and believes, and based thereon alleges, that Employer violated Labor Code sections 221, 222 (as to employees governed by a CBA), 223, 512 and 1198 each day for each Aggrieved Employee during the PAGA Period, and that, thus each Aggrieved Employee was owed one hour of premium pay at their regular rate of pay for each day worked during the PAGA Period under Labor Code section 226.7. However, Employee is informed and believes that those premium payments under Labor Code section 226.7 were not made, either, for these non-compliant meal periods, either at all or at the proper regular rate of pay. Employer would thus be liable for civil penalties pursuant to Labor Code sections 210 (for failure to timely pay these wages), 221, 222 (for employees governed by a CBA), 223, 558, 1198 and 2699 for both failing to authorize the taking of compliant meal periods and for failing to provide premium pay under Labor Code section 226.7, or injunctive relief under sections 2699(e)(1) and 2699(k). Employee further informed and believes, and based thereon alleges, that Employer's conduct above gave rise to such violations was malicious, fraudulent, or oppressive. Employer would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

Employee is informed and believes, and based thereon alleges, that Employer maintains policies or practices of compelling Employee and other Aggrieved Employees every day to, including, without limitation, work over four-hour periods (or major fractions thereof) without authorizing and permitting Employee and other Aggrieved Employees to take uninterrupted, timely, and complete ten-minute rest periods in which the employees are completely relieved of all of their duties, including, without limitation: by failing to provide rest periods all together; failing to provide rest periods that were at least ten minutes in length, including rest periods that were shorter than ten minutes, or rest periods that may have encompassed a total of ten minutes but were in practice less than ten uninterrupted minutes due to, without limitation, due to time required to walk to and from a suitable break area, time spent having to don and doff safety gear during the rest period, having to retrieve and store personal belongings during the rest period, and/or having to undergo security or bag checks during the rest period, requiring that they be bundled together and/or with meal periods; interrupting them; requiring that employees carry

cellular telephones or walkie-talkies during rest periods; not providing rest periods in a timely fashion; and not permitting employees to leave the premises; and otherwise requiring on-duty/on-call rest periods. Employee and other Aggrieved Employees personally suffered these violations. Consequently, Employee is informed and believes, and based thereon alleges, that Employer violated the applicable Wage Order(s) each day for each Aggrieved Employee during the PAGA Period, and that, thus each Aggrieved Employee was owed one hour of premium pay at their regular rate of pay for each day worked during the PAGA Period under Labor Code section 226.7. However, Employee is informed and believes that those premium payments under Labor Code section 226.7 were not made, either, for these non-compliant rest periods, either at all or at the proper regular rate of pay, in violation of Labor Code sections 226.7 and 1198. Employer would thus be liable for civil penalties pursuant to Labor Code sections 210 (for failure to timely pay these wages), 221, 222 (for employees governed by a CBA), 223, 558, 1198 and 2699 for both failing to authorize the taking of compliant rest periods and for failing to provide premium pay under Labor Code section 226.7, or injunctive relief under sections 2699(e)(1) and 2699(k). Employee further informed and believes, and based thereon alleges, that Employer's conduct above gave rise to such violations was malicious, fraudulent, or oppressive. Employer would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

Employee is informed and believes, and based thereon alleges, that Employer maintains policies or practices of failing to permit Employee and other Aggrieved Employees from taking cooldown periods every day as required under California Code of Regulations, Title 8, Section 3395; rest and recovery periods as required by Labor Code section 226.2; and premium pay in lieu thereof under Labor Code section 226.7. Employee and other Aggrieved Employees personally suffered these violations. Consequently, Employee is informed and believes, and based thereon alleges, that Employer violated California Code of Regulations, Title 8, Section 3395 each day for each Aggrieved Employee during the PAGA Period, and that, thus each Aggrieved Employee was owed one hour of premium pay at their regular rate of pay for each day worked during the PAGA Period under Labor Code section 226.7. In addition, for the failure each day of the PAGA Period by Employer to provide rest and recovery periods under Labor Code section 226.2, each Aggrieved Employee was owed compensation at a regularly hourly rate that is no less than the higher of the amounts set forth in Labor Code section 226.2(a)(3)(A)(i) or 226.2(a)(3)(A)(ii). However, Employee is informed and believes that those premium payments under Labor Code section 226.7, and rest and recovery periods under Labor Code section 226.2(a)(3)(A) were not made for these non-compliant cooldown periods and/or rest and recovery periods, either at all or at the proper rate of pay, in violation of Labor Code sections 226.2, 226.7 and/or 1198. Employer would thus be liable for civil penalties pursuant to Labor Code sections 210 (for failure to timely pay these wages), 221, 222 (for employees governed by a CBA), 223, 558, 1198 and 2699 for both failing to authorize the taking of compliant rest periods and for failing to provide premium pay under Labor Code section 226.7, or injunctive relief under sections 2699(e)(1) and 2699(k). Employee further informed and believes, and based thereon alleges, that Employer's conduct above gave rise to such violations was malicious, fraudulent, or oppressive. Employer would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

In addition to the above, Employee is informed and believes, and based thereon alleges that Employer failed and continue to fail to keep adequate or accurate time records including wage statements and similar payroll documents under Labor Code section 226, documents signed to obtain or hold employment under Labor Code section 432, personnel records under Labor Code section 1198.5, time records under Labor Code section 1174, the names and addresses of all employees employed and the ages of all minors under Labor Code section 1174, subsection (c), payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by, and applicable piece rate paid to, employees employed at the respective place of employment under Labor Code section 1174, subsection (d), and a copy of the payroll record provided by the contractor under Labor Code section 1695.55, as well as the information required to be kept under Labor Code sections 2673 and/or 1776, subdivision (a), making it difficult for Employee and other aggrieved employees to calculate their unpaid wages and/or premium payments. Employer also failed to provide these documents to Employee and other Aggrieved Employees upon request in violation of these Labor Code sections, as well as Labor Code section 1198 and/or 1775, subdivision (b)(1). Employee and the Aggrieved Employees personally suffered these violations, which in turn would entitle Employee and other Aggrieved Employees to penalties prescribed by Labor Code sections 226 and 1198.5. Employer would also be liable for civil penalties pursuant to Labor Code sections 558, 1174.5, 1695.55, 1198 and 2699. Employee further informed and believes, and based thereon alleges, that Employer's conduct above gave rise to such violations was malicious, fraudulent, or oppressive. Employer would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

Both independently and as a result of, among other things, Employer's herein-described policy or practice of failing to: accurately record time; failing to pay overtime and minimum wages; failing to provide meal periods; failing to provide rest periods; and failing to provide compensation in lieu of meal or rest periods, as described above, Employee is informed and believes, and based thereon alleges, that Employer also intentionally failed and continues to fail to furnish Aggrieved Employees, including, without limitation, Employee, with itemized wage statements that accurately reflect: gross wages earned; total hours worked by the employee; net wages earned; the inclusive dates of the period for which the employee is paid; the name of the employee and only the last four digits of their social security number or an employee identification number other than a social security number; all deductions; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; the legal name and address of the other (and, in the case of a farm labor contractor, the name and address of the legal entity that secured the services of the employer); and other such information as required by Labor Code section 226, subdivision (a), as well as Labor Code section 226.2 to the extent it does not include for piece-rate work the information required therein including, without limitation, the quantity, rate and units worked per piece, as well as separately itemized non-productive time and rest and recovery periods. Specifically, Employer intentionally failed to furnish employees with itemized wage statements that accurately reflect the hours worked by Employee and other Aggrieved Employees and the rates of pay at which they were or should have been paid (including due to failure to pay at the proper regular rate), thus resulting in a failure to reflect gross and net wages earned and paid at each rate, as well. Consequently, Employee is informed and believes, and based thereon alleges, that Employer violated Labor Code sections

226, 226.2, 1696.5 and 1198 each day for each Aggrieved Employee during the PAGA Period, and that, thus Employee and each Aggrieved Employee personally suffered these violations and was owed penalties under Labor Code section 226 and 226.2 for each pay period worked during the PAGA Period. However, Employee is informed and believes that those penalties under Labor Code section 226 and 226.2 were not paid for these violations of Labor Code sections 226 and 226.2. Employer would thus be liable for civil penalties pursuant to Labor Code sections 226.2, 226.3, 558, 1198, 1696.5 and 2699. Employee further informed and believes, and based thereon alleges, that Employer's conduct above gave rise to such violations was malicious, fraudulent, or oppressive. Employer would also be liable for civil penalties pursuant to Labor Code sections 226.2, 226.3, 558, and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Employer would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

Employee is informed and believes, and based thereon alleges, that Employer also willfully or intentionally failed and refused, and continue to fail and refuse, to timely pay compensation to Employee and other terminated or resigned employees, including but not limited to, all overtime wages owed; all minimum wages owed; all paid sick leave, vacation pay and paid time off; and all premium pay owed as set out above, including, without limitation, for failure to pay at the proper regular rate of pay, among other things. Consequently, Employee is informed and believes, and based thereon alleges, that Employer violated Labor Code sections 201, 201.5, 201.7, 202 203, 203.5 ,204a, 204.1, 204.2, 205, 205.5 and 1198 each pay period for each Aggrieved Employee during the PAGA Period, and that, thus Employee and each Aggrieved Employee personally suffered these violations and was owed penalties under Labor Code section 203 (or, as applicable, 203.5, 204a, 204.1, 204.2, 205 and/or 205.5) for each pay period worked during the PAGA Period. However, Employee is informed and believes that those penalties under Labor Code section 203 (or 203.5 and/or 204a) were not made for these violations of Labor Code sections 201, 201.5, 201.7, 202, 203, 203.5, 204b, 204.1, 204.2, 205 and/or 205.5. Employee further informed and believes, and based thereon alleges, that Employer's conduct above gave rise to such violations was malicious, fraudulent, or oppressive. Employer would also be liable for civil penalties pursuant to Labor Code sections 558, 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(j). Employer would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

Employee is informed and believes, and based thereon alleges, that Employer required or requires the execution of a release of claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, including, without limitation, as a condition of being paid, to execute a statement of the hours worked during a pay period in which Employer knew to be false. As such, Employee is informed and believes, and based thereon alleges that Employer violated Labor Code sections 206.5 and 1198, and that Employee and other Aggrieved Employees have personally suffered these violations. Employee further informed and believes, and based thereon alleges, that Employer's conduct above gave rise to such violations was malicious, fraudulent, or oppressive. Employer would be liable for civil penalties pursuant to Labor Code sections 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Employer would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

Employee is informed and believes, and based thereon alleges, that Employer has or had a policy or practice of unlawfully deducting wages from Employee and other Aggrieved Employees, by issuing in payment of wages due, or to become due, or as an advance on wages to be earned: (1) an order, check, draft, note, memorandum, gift card, or other acknowledgement of indebtedness, (unless it was negotiable and payable in cash, on demand, without discount, at some established place of business in the state), the name and address of which must but did not appear on the instrument, and at the time of its issuance and for a reasonable time thereafter, which must be but was not at least 30 days, the maker or drawer did not have sufficient funds in, or credit, arrangement, or understanding with the drawee for its payment; and/or (2) any scrip, coupon cards, or other thing redeemable, in merchandise or purporting to be payable or redeemable otherwise than in money. Employee is further informed and believes, and based thereon alleges, that such wages were not compensated at the "regular rate" of compensation as provided under Labor Code sections 226.7 and 510, subsection (a), thus violating those Labor Code sections, as well as Labor Code section 1198. In addition, Employee is informed and believes that Employer, by these deductions and/or otherwise, have caused wages earned by Employee and Aggrieved Employees to be charged back or kicked back to Employer. Consequently, Employee is informed and believes, and based thereon alleges, that Employee and other Aggrieved Employees have personally suffered violations under these sections and are entitled to relief under, without limitation, Labor Code sections 212, 221, 222 (as it pertains to employees governed by a CBA), 223, 226.7, 246, 510 subsection (a), 1194, and 1197. Employee further informed and believes, and based thereon alleges, that Employer's conduct above gave rise to such violations was malicious, fraudulent, or oppressive. Employer would thus be liable for civil penalties pursuant to Labor Code sections 558, 1197.1, 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Employer would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

Employee is further informed and believes, and based thereon alleges that Employer failed and refused, and continues to fail and refuse, to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft Protection Act of 2011) by, among other things, failing to provide Employee and other Aggrieved Employees with the rates of pay and overtime rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the regular payday designated by Employer, the name of the employer, including any "doing business as" names used, the name, address and telephone number of the workers' compensation insurance carrier, information regarding paid sick leave, and other pertinent information required to be disclosed by Employer under Labor Code section 2810.5. Employee is informed and believes that failure to provide such information, including rates of pay that are in effect, has permitted Employer to pay employees at rates of pay that were not agreed upon and violate minimum wage and overtime wage laws in California. Employee is additionally informed and believes that the notice requirement of Labor Code section 2810.5 involves a mandatory payroll or workplace injury reporting. Employee is informed and believes that Employer violated Labor Code sections 1198 and 2810.5. Employee and other Aggrieved Employees personally suffered these violations. Employee further informed and believes, and based thereon alleges, that Employer's conduct above gave rise to such violations was malicious, fraudulent, or oppressive. Among other relief, employees may collect from Employer in connection with these violations' civil penalties pursuant to Labor Code sections 558, 1198 and 2699, or injunctive relief under sections 2699(e)(1) and

2699(k). Employer would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

Employee is informed and believes, and based thereon alleges that Employer also failed and refused, and continues to fail and refuse, to reimburse employees, including, without limitation, Employee and other Aggrieved Employees, with their costs incurred for driving personal vehicles (*i.e.*, mileage and gas), purchasing uniforms, providing uniform and other deposits, separately laundering mandatory uniforms, for the purchase of tools and safety equipment, and for the purchase and maintenance of cellular phones and cellular phone plans, for pre-employment medical, physical or drivers' exams taken as a condition of employment, or for compelling or coercing Employee and Aggrieved Employees, including applicants, to patronize in the purchase of a value or things, including, without limitation, the Employer's product(s) and/or service(s), in direct consequence of the discharge of their duties, or of their obedience to the directions of Employer, as required by Labor Code sections 222.5, 231, 450, 1198, 2800, 2802, and other statutory and common law offenses. As a result, Employee and other Aggrieved Employees have personally suffered these violations and Employer are liable to reimburse Employee and other Aggrieved Employees for these costs incurred in furtherance of work duties. Employee further informed and believes, and based thereon alleges, that Employer's conduct above gave rise to such violations was malicious, fraudulent, or oppressive. In addition, Employer would be liable for civil penalties pursuant to Labor Code sections 558, 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Employer would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

Employee is further informed and believes, and based thereon alleges, that Employer has or had a policy or practice of failing to reimburse deposits made, including uniform deposits together with all interest owed at the separation of employment in violation of Labor Code sections 404 and 1198, that Employee and other Aggrieved Employees personally suffered these violations, and that Employee and other Aggrieved Employees are entitled to damages in the amount of the deposit and accrued interest. Employee further informed and believes, and based thereon alleges, that Employer's conduct above gave rise to such violations was malicious, fraudulent, or oppressive. Employer would also be liable for civil penalties under Labor Code sections 558, 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Employer would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

Employee is further informed and believes, and based thereon alleges, that Employer has or had a policy or practice of failing to provide Employee and other aggrieved employees with all rights afforded to them under the Healthy Workplace Heathy Families Act of 2014, codified at Labor Code section 245, *et seq.,* including, without limitation, the amount of paid sick leave required to be provided pursuant to California and local laws. Employee is further informed and believes that the sick pay was not provided at the proper regular of pay as required under California law due to failure to properly calculate the regular rate. Employee is further informed and believes that Employer also did not permit its use upon request by Employee and other Aggrieved Employees as contemplated under California and local laws, including, without limitation, under Labor Code section 233, that permits its use to attend to an illness of a child, parent, spouse, or

domestic partner without retaliation. Employee is additionally informed and believes that the notice requirement of Labor Code section 221, 222 (as it pertains to employees governed by a CBA), 223, 233, 234, 245 and 246 involves a mandatory payroll or workplace injury reporting. Employee is thus informed and believes that Employer violated these Labor Code sections, as well as Labor Code section 1198. As such, Employee and other Aggrieved Employees have personally suffered violations under these sections and Employer would be liable for civil penalties for violation of the paid sick leave regulations under Labor Code sections 1198 and 2699, as well as equitable, injunctive, or restitutionary relief, and reasonable attorneys' fees and costs. Employee further informed and believes, and based thereon alleges, that Employer's conduct above gave rise to such violations was malicious, fraudulent, or oppressive. Employer would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of failing to pay Employee and other Aggrieved Employees their paid time off and vacation time owed upon separation of employment as wages at their final rate of pay in violation of Labor Code sections 221, 222 (as it pertains to employees governed by a CBA), 223, 227.3 and applicable Wage Orders. Employee is thus informed and believes that Employer violated these Labor Code sections, as well as Labor Code section 1198. As such, Employee and other Aggrieved Employees have personally suffered these violations and Employer would be liable for civil penalties for violation of Labor Code section 227.3 under Labor Code section 558, 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Employee further informed and believes, and based thereon alleges, that Employer's conduct above gave rise to such violations was malicious, fraudulent, or oppressive. Employer would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of failing to pay aggrieved employees their wages in accordance with Labor Code Section 204, which requires that: "[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive of any calendar month, shall be paid for between the 1st and 10th day of the following month." Employee is informed and believes and based thereon alleges that Employer did not and do not pay Employee and other Aggrieved Employees every day and every workweek in accordance with Labor Code sections 204 and 1198. As such, Employee is informed and believes, and based thereon alleges that Employer violated Labor Code section 204 and that Employee and other Aggrieved Employees have personally suffered these violations. Employee further informed and believes, and based thereon alleges, that Employer's conduct above gave rise to such violations was malicious, fraudulent, or oppressive. Employer would be liable for civil penalties pursuant to Labor Code sections 210, 558, 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Employer would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

Employee is informed and believes, and based thereon alleges that Employer had and has a policy of failing to provide all temporary workers, including without limitation, Employee, with

owed wages weekly by not later than the regular payday of the following week. Employee is informed and believes that this has resulted in a violation of Labor Code sections 201.3 and 1198. As a result, pursuant to Labor Code section 201.3, Employee and other Aggrieved Employees have personally suffered violations thereto and Employer would be liable for civil penalties pursuant to Labor Code sections 201.3, 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Employee further informed and believes, and based thereon alleges, that Employer's conduct above gave rise to such violations was malicious, fraudulent, or oppressive. Employer would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

Employee is informed and believes, and based thereon alleges, that Employer has or had collected, taken, or received gratuities (or a part thereof) that is paid, given to, or left for Employee and/or Aggrieved Employees by a patron, or deducted amounts from wages due to Employee and/or Aggrieved Employees on account of a gratuity, or required Employee and/or Aggrieved Employees to credit the amount (or a part thereof) of a gratuity against and as part of the wages due to the Employee and/or Aggrieved Employees from the Employer. In addition, Employee is informed and believes, and based thereon alleges, that Employer permits and/or permitted patrons to pay gratuities by credit card but failed to pay Employee and/or Aggrieved Employees the full amount of the gratuity that the patron indicated on the credit card slip, without any deductions, for any credit card payment processing fees that may be charged to the employer by the credit card company by not later than the regular payday following the date the patron authorized the credit card. In addition, Employer failed to keep accurate records of all gratuities received by Employer and made those open to inspection at all reasonable hours. Employee is informed and believes that this has resulted in a violation of Labor Code sections 351, 353, 1198. As a result, pursuant to Labor Code sections 351 and 353, Employee and other Aggrieved Employees have personally suffered violations thereto and Employer would be liable for civil penalties pursuant to Labor Code sections 351, 353, 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Employee further informed and believes, and based thereon alleges, that Employer's conduct above gave rise to such violations was malicious, fraudulent, or oppressive. Employer would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of failing to provide all working employees, including without limitation Employee, with suitable seats when the nature of the work reasonably permits the use of seats. Employee is further informed and believes, and based thereon alleges that Employer has failed to place an adequate number of seats in reasonable proximity to the work area and/or permitted Employee and other Aggrieved Employees to use such seats when it does not interfere with the performance of their duties when employees are not engaged in the active duties of their employment and the nature of their work requires standing. Employee and other aggrieved employees have personally suffered these violations. Employee is informed and believes that this has resulted in a violation of Labor Code section 1198. As a result, Employee and other Aggrieved Employees have personally suffered violations thereto and Employer would be liable for civil penalties under Labor Code sections 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Employee further informed and believes, and based thereon alleges, that Employer's

conduct above gave rise to such violations was malicious, fraudulent, or oppressive. Employer would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of preventing Employee and other Aggrieved Employees from using or disclosing the skills, knowledge and experience they obtained at Employer for purposes of competing with Employer, including, without limitation, preventing Employee and Aggrieved Employees from disclosing their wages in negotiating a new job with a prospective employer, and from disclosing who else works at Employer and under what circumstances that they might be receptive to an offer from a rival employer. As such, Employee is informed and believes that this violates Business and Professions Code sections 17200, 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor Code sections 232, 232.5, 1197.5, subdivision (k), and 1198, and that Employee and other Aggrieved Employees have personally suffered these violations. Employee further informed and believes, and based thereon alleges, that Employer's conduct above gave rise to such violations was malicious, fraudulent, or oppressive. Employer would be liable for civil penalties pursuant to Labor Code sections 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Employer would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of preventing Employee and other Aggrieved Employees from disclosing violations of state and federal law, either within Employer to their managers or outside of Employer to private attorneys or government officials, among others, in violation of Business and Professions Code section 17200, and, thus, in violation of Labor Code section 1102.5. Employee and other Aggrieved Employees personally suffered these violations. In addition, Employee is informed and believes that these policies and/or practices prevent Employee and other Aggrieved Employees from disclosing information about unsafe or discriminatory working conditions, or about wage and hour violations in violation of Labor Code sections 232, 232.5 and 1198. Employee and other Aggrieved Employees personally suffered these violations of the Labor Code, and as such, these violations would expose Employer to liability for civil penalties pursuant to Labor Code sections 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Employee further informed and believes, and based thereon alleges, that Employer's conduct above gave rise to such violations was malicious, fraudulent, or oppressive. Employer would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of preventing Employee and other Aggrieved Employees from engaging in lawful conduct during non-work hours, thus violating state statutes entitling employees to disclose wages, working conditions, and illegal conduct, including, without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, 1197.5, subdivision (k), and 1198. Employee and other Aggrieved Employees personally suffered these violations. Employee is informed and believes that this lawful conduct includes, without limitation, the exercise of Employee and other Aggrieved Employee's constitutional rights of freedom of speech and economic liberty and would thus expose Employer to liability for civil penalties pursuant to Labor Code sections 1198 and 2699, or

injunctive relief under sections 2699(e)(1) and 2699(k). Employee further informed and believes, and based thereon alleges, that Employer's conduct above gave rise to such violations was malicious, fraudulent, or oppressive. Employer would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

Employee is informed and believes, and based thereon alleges that Employer had and has made, adopted, and/or enforced rules, regulations and/or policies that tend to forbid or prevent Aggrieved Employees, including Employee, from engaging or participating in politics and/or from becoming a candidate for public office. Moreover, Employee is informed and believes, and based thereon alleges that Employer coerced, influenced and/or attempted to coerce and/or influence Employee and other Aggrieved Employees, through or by means of threat of discharge and/or loss of employment, to adopt or follow or refrain from adopting or following a particular course or line of political action and/or political activity. Employee is informed and believes, and based thereon alleges that in doing so, Employer has violated, without limitation, Labor Code sections 1101, 1102, 1102.5 and 1198. Employee and other Aggrieved Employees personally suffered these violations and are thus informed and believe that Employer is exposed to liability for civil penalties pursuant to Labor Code sections 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Employee further informed and believes, and based thereon alleges, that Employer's conduct above gave rise to such violations was malicious, fraudulent, or oppressive. Employer would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

Employee is informed and believes, and based thereon alleges, that Employer, including its agents, managers, superintendents, and/or officers, required Employee and/or Aggrieved Employees to agree, in writing, to terms and conditions known by Employer (and its agents, managers, superintendents and/or officers) to be prohibited by law, including, without limitation, non-compete agreements, terms known to be illegal in purported arbitration agreements, purported confidentiality agreements, purported severance agreements, or purported release agreements, and other written documents presented for signature and/or assent to Employee and/or Aggrieved Employees by Employer. And, even more specifically, Employee is informed and believes, and based thereon alleges, that Employer had and has a practice or policy of requiring Employee and other Aggrieved Employees to agree in writing to confidentiality policies that unlawfully restrain trade by prohibiting employees from speaking with prospective employers about their work with Employer, including but not limited to their wages and working conditions. Employer also required Employee and Aggrieved Employees to inform prospective employers of Employer's restrictions of Employee's and Aggrieved Employees' freedom to work. As a result, Employee is informed and believes that Employer violated Labor Code sections 432.5, 1700.31 and 1198. As such, Employee is informed and believes, and based thereon alleges, that Employee and other Aggrieved Employees personally suffered these violations, and that Employer violated, without limitation, Labor Code section 432.5 and Government Code section 12952, entitling Employee and other Aggrieved Employees to damages. Employee further informed and believes, and based thereon alleges, that Employer's conduct above gave rise to such violations was malicious, fraudulent, or oppressive. Employer would also be liable for civil penalties pursuant to Labor Code sections 432.5, 1198, 1700.31 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k).

Employer would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

Employee is informed and believes, and based thereon alleges, that Employer had and has a practice or policy of conducting unlawful background checks on prospective and current employees, including without limitation Employee, prior to making a conditional offer. Employee is informed and believes, and based thereon alleges, that Employer violated applicable laws by, without limitation: requiring job applicants and employees to disclose their conviction history before Employer made a conditional offer of employment; inquiring into or considering the conviction history of applicants before Employer made any conditional offers of employment; considering, distributing, or disseminating information about arrests not followed by conviction, referrals to or participation in a pretrial or posttrial diversion program, convictions that have been sealed, dismissed, expunged, or statutorily eradicated pursuant to law, or any conviction for which the convicted person has received a full pardon or has been issued a certificate of rehabilitation, while conducting conviction history background checks in connection with any applications for employment; intending to deny an applicant a position of employment solely or in part because of the applicant's conviction history; and asking applicants for employment to disclose, through any written form or verbally, information concerning or related to an arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while the person was subject to the process and jurisdiction of the juvenile court, to the detriment of Employee and other aggrieved employees. As such, Employee is informed and believes, and based thereon alleges, that Employee and other Aggrieved Employees personally suffered these violations, as well as violation of Labor Code section 1198, and that Employer violated, without limitation, Labor Code sections 432.7 and 1198, as well as Government Code section 12952, entitling Employee and other Aggrieved Employees to damages. Employee further informed and believes, and based thereon alleges, that Employer's conduct above gave rise to such violations was malicious, fraudulent, or oppressive. Employer would also be liable for civil penalties pursuant to Labor Code sections 432.7, 432.8, 1198, and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Employer would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

Employee is informed and believes, and based thereon alleges, that Employer had and has a practice or policy of relying on the salary history information of an applicant for employment as a factor in determining whether to offer employment to an applicant or what salary to offer the applicant in violation of Labor Code section 432.3 by including, on Employer's application for employment, an inquiry regarding current and/or former salary history information, including, without limitation, compensation and benefits of the applicant for employment. Employee is informed and believes that this practice has resulted in unequal pay. Specifically, for this reason, as well as for other reasons, Employee is informed and believes, and based thereon alleges, that Employer has failed to pay its employees at wage rates less than those paid to employees of the opposite sex and/or another race or ethnicity for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and/or performed under similar working conditions without sufficient legal rationale. Finally, Employee is informed and believes, and based thereon alleges that Employer has discharged and/or discriminated and/or retaliated against Employee and Aggrieved Employees by reason of an action taken by them to invoke or assist in the enforcement

of Labor Code section 1197.5. As such, Employee is informed and believes, and based thereon alleges, that Employer violated, without limitation, Labor Code sections 432.3, 1102.5, 1197.5, and 1198. Employee also alleges that Employee and other Aggrieved Employees personally suffered these violations, and that Employee and other Aggrieved Employees are entitled to damages. Employee further informed and believes, and based thereon alleges, that Employer's conduct above gave rise to such violations was malicious, fraudulent, or oppressive. Employer would also be liable for civil penalties pursuant to Labor Code sections 432.3, 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Employer would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

Employee is informed and believes, and based thereon alleges that Employer and others in connection with the Employer (including, without limitation, the owner of the property, controller, and others in concert with the Employer) employed, permitted and/or suffered to work minors under the age of sixteen (16) years in connection with a manufacturing establishment or other place of employment; in adjusting belts to machinery, sewing or lacing machine belts in a workshop or factory, and/or oiling, wiping, cleaning machinery and/or assisting therewith; in operating or assisting in operating machines, including circular or band saws, wood shapers, wood-jointers, planers, sandpaper machinery, wood-polishing machinery, wood turning or boring machinery, picker machines, machines used in picking wool, cotton, hair or other material, carding machines, leather-burnishing machines, laundry machines, printing-presses, boring or drill presses, stamping machines used in sheet-metal and tinware, in paper and leather manufacturing, in washer and nut factories, metal or paper-cutting machines, paper-lace machines, corner-staying machines in paper-box factories, corrugating rolls, dough brakes, cracker machinery, wire or iron straightening or drawing machinery, rolling mill machinery, power punches or shears, washing, grinding or mixing machinery, calendar rolls in paper and rubber manufacturing, steam boilers, and others, even in or out of proximity to hazardous or unguarded belts, machinery or gearing; and in occupations declared hazardous as set forth in Labor Code section 1293.1; all in violation of Labor Code sections 1290, 1292, 1293, 1294.1 and 1301. In addition, Employee is informed and believes, and based thereon alleges that Aggrieved Employees are covered by Labor Code section 1391, Educational Code 49112 and Educational Code 49116. Employee is informed and believes, and based thereon alleges, that Employer had and has a policy or practice of requiring its employees, who are fifteen (15) years old or younger to work for more than eight (8) hours in one day of twenty-four (24) hours, and/or more than forty (40) hours in one week, and/or before 7:00 a.m. or after 7:00 p.m. Employee is further informed and believes, and based thereon alleges, that Employer had and has a policy or practice of, among other things, requiring its employees, who are fourteen (14) or (15) years old to work, while school is in session, for more than three hours in any schoolday and/or more than eighteen (18) hours in any week. Employee is further informed and believes, and based thereon alleges, that Employer had and has a policy or practice of, among other things, requiring its employees, who are sixteen (16) or seventeen (17) years old, to work for more than eight (8) hours in one day, and/or more than 48 hours in one week, and/or before 5 a.m., and/or after 10 p.m. on any day preceding a schoolday, and/or to work more than four (4) hours on a schoolday. Accordingly, for violations of Labor Code section 1391, *et seq.*, As such, Employee is informed and believes, and based thereon alleges, that Employer violated, without limitation, Labor Code sections 1290, 1292, 1293, 1294.1 and 1301, 1391 and 1198. Employee

also alleges that Employee and other Aggrieved Employees personally suffered these violations, and that Employee and other Aggrieved Employees are entitled to damages. Employee further informed and believes, and based thereon alleges, that Employer's conduct above gave rise to such violations was malicious, fraudulent, or oppressive. Employer would also be liable for civil penalties pursuant to Labor Code sections 1290, 1292, 1293, 1294.1 and 1301, 1391 and 1198 and 2699, or injunctive relief under sections 2699(e)(1) and 2699(k). Employer would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

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Although notice is not required under Labor Code section 2699.3 to recover penalties under Labor Code section 226.8, Employee is informed and believes, and based thereon alleges that Employer willfully misclassified Employee and Aggrieved Employees as independent contractors and charged willfully misclassified independent contractors a fee, or made deductions from compensation for purposes that include, without limitation, goods, materials space, rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual's employment where these acts would have violated the law if the individual were not misclassified. As such, including the Labor Code sections described hereabove, Employee is informed and believes, and based thereon alleges, that Employer violated, without limitation, Labor Code section 226.8. Employee is further informed and believes, and based thereon alleges, that Employer's conduct above gave rise to such violations was malicious, fraudulent, or oppressive. Employer would also be liable for injunctive relief under sections 2699(e)(1) and 2699(k). Employer would further be liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(ii).

To the extent Employer previously used the notice and cure provision of Labor Code section 2699.3 within the last twelve months, under section 2699.3(d), Employer is not eligible to cure the violations discussed herein under section 2699.3 or otherwise use the early evaluation conference process pursuant to section 2699.3(f).

In the event that Employer is determined to have satisfied sections 2699(g), 2699(h), or otherwise 2699(d)(1), Employer is also, in the alternative, liable for civil penalties pursuant to Labor Code sections 2699(j), 2699(e)(2), and 2699(f)(2).

In the event that Employer is determined to have, prior to this notice or a request for records pursuant to Labor Code section 226, 432, or 1198.5, from Employee or his/her counsel, adequately taken all reasonable steps to be in compliance with all provisions identified in this notice, Employer is still liable for civil penalties pursuant to section 2699(g)(1)-(3).

In the event that Employer is deemed to have adequately taken all reasonable steps to be in compliance with all provisions identified in this notice within 60 days of receiving this notice, Employer is still liable for civil penalties pursuant to Labor Code section 2699(h)(1)-(3).

Employee is further informed and believes that within 5 years of any of violations described above, the LWDA or a court has issued a finding or determination to the Employer that its policy or practice giving rise to such violations was unlawful, and thus Employer is further

liable for civil penalties pursuant to Labor Code section 2699(f)(2)(B)(i). Employer was found to have unlawfully committed some or all of the above-related Labor Code violations, and thus is subject to increased penalties, as applicable, under Labor Code sections 2699(f)(2)(B)(i), 2699(g)(3) and 2699(h)(3), and is **not** eligible for reduced penalties under either Labor Code sections 2699(g) or 2699(h) for remedying violations either prior to or after the serving of this notice. Regardless, as the Employer's conduct giving rise to the violations detailed herein was and is malicious, fraudulent, and/or oppressive, the Employer thus is subject to increased penalties under Labor Code section 2699(f)(2)(B)(ii) and, per Labor Code sections 2699(g)(3) and 2699(h)(3), is **not** eligible for reduced penalties under either 2699(g) or 2699(h), for remedying violations either prior to or after the Employer's receipt of this notice.

Pursuant to Labor Code section 2699.3, subdivisions (a)(2)(A), (c)(1)(D)-(E), and/or (c)(2)(A)-(B), please advise within sixty-five (65) calendar days of the postmarked date of this notice whether the LWDA intends to investigate the violations alleged above. Our office understands that if we do not receive a response within sixty-five (65) calendar days of the postmark date of this PAGA Notice that the LWDA intends to investigate these allegations, Employee may immediately thereafter file a civil complaint against Employer to allege causes of action for civil penalties or for injunctive relief under the Private Attorney General Act for the herein-described alleged violations of the Labor Code.

Very truly yours,

[redacted]

[**Note: Only law firm name provided here with no signature*]

cc: [redacted]
(via U.S. Certified Mail, Return Receipt Requested)

[redacted]

March 26, 2025

PAGA NOTICE FILED ELECTRONICALLY; SENT VIA CERTIFIED U.S. MAIL

Human Resources Administrator
[redacted]
Tracking: [redacted]

[redacted] – Agent for Service of Process
[redacted]
Tracking: [redacted]

Re: *Notice Letter of* [redacted] *on Behalf of Himself and Aggrieved Employees Under California Labor section 2699.*

Employer: [redacted]

To Whom It May Concern:

This letter shall constitute as Notice under Labor Code section 2699.3 (hereinafter "PAGA Notice"). The $75 filing fee for the PAGA Notice was paid online by credit card at the time this PAGA Notice was submitted online to the Department of Industrial Relations.

This PAGA Notice concerns [redacted] ("Employee") employment with Employee's employer: [redacted] (hereinafter as "Employer"). Employee is employed as a non-exempt employee of Employer, at without limitation, [redacted], with duties that include, but are not limited to, tasks relating to customer service as well as handling food and cleaning food preparatory areas, among other tasks, from approximately June 22, 2023 through the present.

In connection with the alleged and aforementioned claims for failure to comply with Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 212, 223, 226, 226.3, 227.3, 432, 2800, and 2802, Employee seeks to represent all employees of Employer, and each of them, as well as their parents, subsidiaries and affiliates (hereinafter, collectively, "Employer"). On all other claims mentioned herein, Employee seeks to represent only non-exempt employees of Employer. All employees that Employee seeks to represent, as detailed in this Paragraph, shall be referred to as "Aggrieved Employees." Moreover, the allegations herein shall encompass the "PAGA Period,"

which shall refer to one year preceding the date of this letter and continuing past the date of this Letter into perpetuity.

Employee alleges during his employment with Employer, Employer has, at times, failed to pay overtime and minimum wages to Employee in violation of California state wage and hour laws as a result of, among other things, at times, failing to accurately track and/or pay for all minutes actually worked at their regular rate of pay that is above the minimum wage to the detriment of Employee and Aggrieved Employees. Employer has, at times, failed to provide Employee and Aggrieved Employees, full, timely thirty (30) minute uninterrupted meal period for days on which they worked more than five (5) hours in a work day and a second thirty (30) minute uninterrupted meal period for days on which they worked in excess of ten (10) hours in a work day, and failing to provide compensation for such unprovided meal periods as required by California wage and hour laws. Employer has, at times, failed to authorize and permit Employee and Aggrieved Employees, or some of them, to take rest periods of at least ten (10) minutes per four (4) hours worked or major fraction thereof and failed to provide compensation for such unprovided rest periods as required by California wage and hour laws, Employer has, at times, failed to pay Employee and Aggrieved Employees, or some of them, the full amount of their wages owed to them upon termination and/or resignation as required by Labor Code sections 201 and 202, including for, without limitation, failing to pay overtime wages, minimum wages, and premium wages. Employer has, at times, failed to furnish Employee and Aggrieved Employees, or some of them, with itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages earned; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate; the name and address of the legal entity that is the employer; and other such information as required by Labor Code section 226, subdivision (a). As a result thereof, Employer has further failed to furnish employees with an accurate calculation of gross and net wages earned, as well as gross and net wages paid. In addition, Employer has, at times, failed to pay Employee and Aggrieved Employees, or some of them, the full amount of their wages for labor performed in a timely fashion as required under Labor Code section 204. Employer has, at times, failed to indemnify Employee and Aggrieved Employees, or some of them, for the personal costs incurred for work-related purposes.

To the extent Employer previously used the notice and cure provision of Labor Code section 2699.3 within the last twelve months, under section 2699.3(d), Employer is not eligible to cure the violations discussed herein under section 2699.3 or otherwise use the early evaluation conference process pursuant to section 2699.3(f).

In the event that Employer is determined to have satisfied sections 2699(g), 2699(h), or otherwise 2699(d)(1), Employer is also, in the alternative, liable for civil penalties pursuant to Labor Code sections 2699(j), 2699(e)(2), and 2699(f)(2).

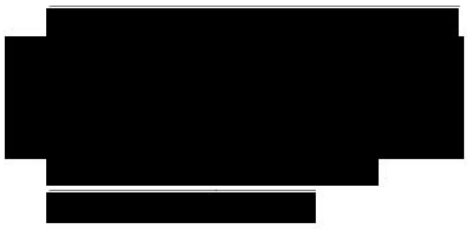
In the event that Employer is determined to have, prior to this notice or a request for records pursuant to Labor Code section 226, 432, or 1198.5, from Employee or his/her counsel, adequately taken all reasonable steps to be in compliance with all provisions identified in this notice, Employer is still liable for civil penalties pursuant to section 2699(g)(1)-(3).

In the event that Employer is deemed to have adequately taken all reasonable steps to be in compliance with all provisions identified in this notice within 60 days of receiving this notice, Employer is still liable for civil penalties pursuant to Labor Code section 2699(h)(1)-(3).

Employer was found to have unlawfully committed some or all of the above-related Labor Code violations, and thus is subject to increased penalties, as applicable, under Labor Code sections 2699(f)(2)(B)(i), 2699(g)(3) and 2699(h)(3), and is **not** eligible for reduced penalties under either Labor Code sections 2699(g) or 2699(h) for remedying violations either prior to or after the serving of this notice. Regardless, as the Employer's conduct giving rise to the violations detailed herein was and is malicious, fraudulent, and/or oppressive, the Employer thus is subject to increased penalties under Labor Code section 2699(f)(2)(B)(ii) and, per Labor Code sections 2699(g)(3) and 2699(h)(3), is **not** eligible for reduced penalties under either 2699(g) or 2699(h), for remedying violations either prior to or after the Employer's receipt of this notice.

Pursuant to Labor Code section 2699.3, subdivisions (a)(2)(A), (c)(1)(D)-(E), and/or (c)(2)(A)-(B), please advise within sixty-five (65) calendar days of the postmarked date of this notice whether the LWDA intends to investigate the violations alleged above. Our office understands that if we do not receive a response within sixty-five (65) calendar days of the postmark date of this PAGA Notice that the LWDA intends to investigate these allegations, Employee may immediately thereafter file a civil complaint against Employer to allege causes of action for civil penalties or for injunctive relief under the Private Attorney General Act for the herein-described alleged violations of the Labor Code.

Very truly yours,



[redacted]

March 31, 2025

SUBMITTED ONLINE

Stewart Knox
Secretary
Labor and Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, CA 95814

Re: [redacted]

Dear Secretary Knox:

Pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code §§ 2698, *et seq.*), [redacted] ("[redacted]") hereby provides notice on behalf of herself and other current and former California employees who held the position of cook, chef, waiter/waitress, busboy, and other similar positions (hereinafter referred to as "aggrieved employees") with employers [redacted] (collectively, "Employer"), of violations of Labor Code §§ 98.6, 201, 201.5, 202, 203, 204, 208, 210, 218.5, 226(a), 226.7, 226.8, 256, 510, 512, 515, 1182.12, 1182.13, 1194, 1197, 1197.1, 1198, and 2802, and any other applicable sections affording the types of penalties hereinafter described.

As set forth herein, [redacted] alleges that Employer has violated the aforementioned sections of the Labor Code by failing to provide her and other aggrieved employees with all earned wages, minimum wages, overtime wages, meal and rest periods, or premium wages in lieu thereof, accurate and timely wage statements, and final paychecks, among other things. Based on these alleged violations of the Labor Code, [redacted] intends to seek civil penalties in the amounts set forth below if the Labor and Workforce Development Agency ("LWDA") declines to investigate these allegations.

Background

[redacted] has been subject to one or more of the alleged Labor Code violations during her employment within the one-year before the mailing of this notice.

At all relevant times, Employer was an employer of [redacted] and other aggrieved employees within the meaning of Section 2(H) of Industrial Welfare Commission Order No. 4-2001 ("Wage Order 4") and Labor Code § 18 in that Employer exercised control over the wages, hours, and/or working conditions of [redacted] and other aggrieved employees. Other Wage Order(s) may be applicable here.

At all relevant times, [redacted] and aggrieved employees have been both "employees" within the meaning of Section 2(F) of the Wage Order and "aggrieved employees" within the meaning of Labor Code § 2699(c). At all relevant times, [redacted] and aggrieved employees have

[redacted]

been non-exempt employees of Employer, and are entitled to the full protections of the Labor Code and the Wage Order.

Failure to Provide Meal and Rest Periods
(Labor Code §§ 226.7, 512, and 1198)

Labor Code § 512(a) states,

> An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, Labor Code § 1198 states,

> The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.

In relevant part, Section 11 of Wage Order 4 states,

> (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
>
> (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided.

In relevant part, Section 12 of Wage Order 4 states,

> (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted, as hours worked, for which there shall be no deduction from wages.
>
> (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.
>
> (Wage Order 7 contains the same protections for employees.)

Labor Code § 226.7 states,

> (a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.
>
> (b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

At all relevant times, Employer violated, and/or caused to be violated, the above-referenced provisions of the Labor Code and the Wage Order by:

1. Failing to maintain practices that ensure that legally mandated meal periods are provided to [redacted] and aggrieved employees, and that rest periods are affirmatively authorized and permitted for [redacted] and aggrieved employees;

2. Failing to pay premium wages to [redacted] and aggrieved employees in lieu of meal periods that are not provided, or in lieu of rest periods that are not affirmatively authorized and permitted; and

3. Employing [redacted] and aggrieved employees, or causing them to be employed, under conditions that violate the Labor Code and the Wage Order; and

4. Underpaying [redacted] and aggrieved employees, or causing them to be underpaid, in violation of the Labor Code and the Wage Order.

For Employer's violations of the above-referenced Labor Code sections, [redacted] intends to seek civil penalties against Employer on behalf of herself and aggrieved employees as follows:

1. **Against Employer:** For all initial violations of Labor Code § 512, $50.00 for each aggrieved employee per pay period for each violation, in addition to an amount sufficient to recover underpaid wages, and, for all subsequent violations, $100.00 for each aggrieved employee per pay period for each violation, in addition to an amount sufficient to recover underpaid wages (penalty amounts established by Labor Code § 558); and

2. **Against Employer:** For all initial violations of Labor Code §§ 226.7 and 1198, $100.00 for each aggrieved employee per pay period for each violation and, for all subsequent violations, $200.00 for each aggrieved employee per pay period for each violation (penalty amounts established by Labor Code § 2699(f)(2)).

Failure to Provide Overtime Compensation
(Labor Code §§ 510 and 1198)

In relevant part, Labor Code § 510(a) states,

> Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Labor Code § 1198 states,

> The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.

In relevant part, Wage Order 7-2001(3)(A) states,

> (A) Daily Overtime - General Provisions: (1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in

> any workweek unless the employee receives one and one-half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:
>
> (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and
>
> (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.
>
> (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

At all relevant times, Employer violated, and/or caused to be violated, the above-referenced provisions of the Labor Code and the Wage Order by:

1. Failing to maintain practices that ensure that legally mandated overtime compensation be provided to [redacted] and aggrieved employees;

2. Failing to pay premium overtime compensation to [redacted] and aggrieved employees;

3. Employing [redacted] and aggrieved employees, or causing them to be employed, under conditions that violate the Labor Code and the Wage Order; and

4. Underpaying [redacted] and aggrieved employees, or causing them to be underpaid, in violation of the Labor Code and the Wage Order.

For Employer' violations of the above-referenced Labor Code sections, [redacted] intends to seek civil penalties against Employer on behalf of herself and aggrieved employees as follows:

1. **Against Employer**: For all initial violations of Labor Code § 510, $50.00 for each aggrieved employee per pay period for each violation, in addition to an amount sufficient to recover underpaid wages, and, for all subsequent violations, $100.00 for each aggrieved employee per pay period for each violation, in addition to an amount sufficient to recover underpaid wages (penalty amounts established by Labor Code § 558); and

2. **Against Employer**: For all initial violations of Labor Code § 510, $100.00 for each aggrieved employee per pay period for each violation and, for all subsequent violations, $200.00 for each aggrieved employee per pay period for each violation (penalty amounts established by Labor Code § 2699(f)(2)).

Failure To Timely Pay All Wages, Failure To Pay All Wages Upon Discharge, And Waiting Time Penalties
(Labor Code §§ 201, 202, 203, 204, and 256)

In relevant part, Labor Code § 201(a) states,

> If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

Labor Code § 202(a) states,

> If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

Labor Code § 203(a) states,

> If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents himself or herself to avoid payment to him or her, or who refuses to receive the payment when fully tendered to him or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment.

In relevant part, Labor Code § 204 states,

> (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or

> 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. However, salaries of executive, administrative, and professional employees of employers covered by the Fair Labor Standards Act, as set forth pursuant to Section 13(a)(1) of the Fair Labor Standards Act, as amended through March 1, 1969, in Part 541 of Title 29 of the Code of Federal Regulations, as that part now reads or may be amended to read at any time hereafter, may be paid once a month on or before the 26th day of the month during which the labor was performed if the entire month's salaries, including the unearned portion between the date of payment and the last day of the month, are paid at that time.
>
> (b)(1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

At all relevant times, Employer violated the rights of [redacted] and aggrieved employees under Labor Code §§ 202(a), 203(a), and 256 by failing to pay them fully and promptly all wages that were due upon discharge.

For Employer' violations of the above-referenced Labor Code sections, [redacted] intends to seek civil penalties against Employer as follows on behalf of herself and aggrieved employees:

1. **Against Employer**: For all initial violations of Labor Code §§ 98.6, 201 and 203, $100.00 for each aggrieved employee per pay period for each violation and, for all subsequent violations, $200.00 for each aggrieved employee per pay period for each violation (penalty amounts established by Labor Code § 2699(f)(2));

2. **Against Employer**: For violations of Labor Code §§ 98.6, 201 and 203, a civil penalty of $500.00 (penalty amount established by Labor Code § 2699(f)(1)); and

3. **Against Employer**: For violations of Labor Code § 204, $100.00 for each aggrieved employee per pay period for the initial violation (if found to be neither willful nor intentional) and $200.00 for each aggrieved employee, plus 25% of the amount unlawfully withheld, per pay period for the initial violation (if found to be either willful or intentional) and for each subsequent violation of (regardless of whether they are found to be either willful or intentional) (penalty amounts established by Labor Code § 210).

Failure to Provide Accurate Wage Statements
(Labor Code § 226(a))

Labor Code § 226(a) states,

> Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

At all relevant times, Employer violated the rights of [redacted] and aggrieved employees under Labor Code § 226(a) by providing them with written wage statements that failed to accurately reflect:

1. Their applicable wage rates, and corresponding units worked at each applicable rate, by not paying them premium wages in lieu of meal and rest periods; and

2. The amounts of their gross and net wages earned as a result of these failures.

For Employer' violations of Labor Code § 226(a), [redacted] intends to seek civil penalties on behalf of herself and aggrieved employees in the amount of $250 per employee per violation if a civil action results in an initial citation or its functional equivalent, and $1,000 per employee per violation if a civil action results in a subsequent citation or its functional equivalent (penalties established by Labor Code § 226.3).

Conclusion

As indicated herein, this letter constitutes the notice required under Labor Code § 2699.3, et seq. Insofar as it is directed toward Employer and any other applicable entities or parties, please be advised that [redacted] intends to seek attorneys' fees and costs, in addition to civil penalties, in a civil action should the LWDA decline to investigate this matter. Please do not hesitate to contact me if you have any questions.

Sincerely,

[redacted]

cc: [redacted]

APPENDIX D

Notice Directing Filing of Amended PAGA Notices

STATE OF CALIFORNIA
Labor & Workforce Development Agency

GOVERNOR Gavin Newsom • SECRETARY Stewart Knox

Agricultural Labor Relations Board • California Unemployment Insurance Appeals Board
California Workforce Development Board • Department of Industrial Relations
Employment Development Department • Employment Training Panel • Public Employment Relations Board

February 13, 2025

[redacted]

Certified Mail
USPS Tracking No. [redacted]

Re: *Notice Directing Submission of Amended PAGA Notices*
See Index Listing Cases

[redacted]:

It has come to the attention of the Private Attorneys General Act (PAGA) Unit of the California Labor and Workforce Development Agency (LWDA) that you 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 section[1] 2699.3. Based on a demonstrated pattern of conduct evidencing abuse of the prelitigation administrative processes administered by LWDA, you hereby are directed to file amended PAGA notices in each pending matter listed in the index included with this letter consistent with the instructions provided. Failure to correct this behavior moving forward may result in referral to the State Bar.

Five letters already have been issued to you in specific cases requiring you file amended PAGA notices based on the conduct described above. ([redacted]

[1] Subsequent statutory citations are to the Labor Code unless otherwise indicated.

[redacted].)[2] The PAGA Case Search site, available at < https://cadir.my.salesforce-sites.com/PagaSearch >, shows you personally have filed 335 PAGA notices since July 1, 2024.[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. In every case you specifically state there are 75 impacted employees, without variance. Despite the letters sent to you in the specific cases listed above, your conduct has continued unabated without sign of any intention by you to correct your behavior.

Before an "aggrieved employee" may commence a civil action under PAGA, section 2699.3, subdivision (c)(1) requires the employee give written notice to LWDA and the employer "of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation."[4] This prelitigation notice obligation has been described as an "administrative exhaustion" requirement (*Rojas-Cifuentes v. Superior Court* (2020) 58 Cal.App.5th 1051, 1056), and courts have affirmed that "[p]roper notice under section 2699.3 is a 'condition' of a PAGA lawsuit." (*Uribe v. Crown Bldg. Maint. Co.* (2021) 70 Cal.App.5th 986, 1003.)

The PAGA reforms enacted last year (Stats. 2024, ch. 44 [Assem. Bill No. 2288 (2023-2024 Reg. Sess.)], ch. 45 (Sen. Bill No. 92 (2023-2024 Reg. Sess.)]), effective July 1, 2024, establish a legislative intent to increase LWDA oversight of PAGA, including for purposes of providing more robust early resolution avenues for employers and to achieve more timely remedies for employees without the type of protracted and costly litigation that has led to criticism of the Act. (Sen. Com. on Jud., analysis of Assem. Bill No. 2288 (2023-2024 Reg. Sess.) as amended June 21, 2024, p. 1; Assem. Com. on Jud., Analysis of Sen. Bill No. 92 (2023-2024 Reg. Sess.) as amended June 21, 2024, p. 12.) Two key components of the reforms are (1) the small employer prelitigation cure process administered by LWDA and (2) the early evaluation conference procedure available after a civil action has commenced, both of which are designed to facilitate more timely resolution of PAGA claims. (Assem. Com. on Jud., Analysis of Sen. Bill No. 92 (2023-2024 Reg. Sess.) as amended June 21, 2024, p. 13.)

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[2] The PAGA notices filed in [redacted], *supra*, and [redacted], *supra*, are not included in the index at the end of this letter, as you already have been directed to file amended notices in those cases.

[3] See < https://cadir.my.salesforce-sites.com/PagaSearch/PAGASearchResults?ed=2025-02-13&sd=2024-07-01&ss=[redacted]&st=PAGA+Notice >, last visited Feb. 12, 2025.

[4] Subdivisions (a)(1)(A) and (b)(1) include similar notice requirements for claims subject to those provisions.

These early resolution opportunities are complemented by amendments to section 2699.5 expanding the types of claims subject to cure and early resolution procedures, including the most common types of wage and hour violations alleged in PAGA notices. Another important aspect of the reforms relevant here is the limitation on employee standing; under section 2699, subdivision (c)(1) a claimant must have been employed by the employer "and personally suffered each of the violations alleged" within one year of the date the PAGA notice is filed. (Emphasis added.)

With these considerations 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. 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.)

Courts previously have found a PAGA notice "must be specific enough such that the LWDA and the [employer] can glean the underlying factual basis for the alleged violations." (*Ibarra v. Chuy & Sons Labor, Inc*. (2024) 102 Cal.App.5th 874, 882, quoting *Gunther v. Alaska Airlines, Inc*. (2021) 72 Cal.App.5th 334, 351.) Thus, "more than bare allegations" are required. (*Ibarra*, *supra*, 102 Cal.App.5th at p. 881.) The notice must contain sufficient information to allow LWDA "to intelligently assess the seriousness of the alleged violations" and to give the employer enough information to understand the nature of the violations so it may decide "whether to fold or fight." (*Ibid*., quoting *Brown v. Ralph's Grocery Co*. (2018) 28 Cal.App.5th 824, 837.) Proper notice to the employer informing it of the violations alleged enables the employer to submit a response to LWDA, which, in turn, further promotes informed agency decisionmaking whether to allocate resources to an investigation. (*Ibarra*, *supra*, 102 Cal.App.5th at p. 881; *Uribe*, *supra*, 70 Cal.App.5th at pp. 1003-1004.)

These considerations underlying PAGA's prelitigation notice requirements take on even more importance after the reforms enacted last year. The effectiveness of the new administrative cure procedure set forth in section 2699.3, subdivision (c)(2) and judicial early evaluation procedure set forth in section 2699.3, subdivision (f) depend on proper notice of the violations alleged both so LWDA accurately can assess the nature of the claims at issue and an employer has a reasonable opportunity to identify, respond, and endeavor to correct them.[5] New standing requirements under section 2699, subdivision (c)(1) further limit the scope of the violations a PAGA claimant may allege.

A claimant or claimant's representative must participate in PAGA's prelitigation administrative procedures in good faith. Abusive, evasive, or other tactics designed to frustrate the role of LWDA during these procedures, or the ability of employers to identify the nature of the claims actually at issue, will not be tolerated. An attorney presenting a matter to LWDA in accordance with PAGA's prelitigation administrative notice requirements is certifying the matter (1) is not being presented for an improper purpose, such as to harass a party; (2) the claims asserted are warranted and not frivolous; and (3) the allegations and other factual contentions are supported by evidence. (See Code Civ. Proc., § 128.7, subd. (b).)[6]

Accordingly, you hereby are directed to file amended PAGA notices in each matter listed in the index included with this letter.[7] 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. All amended PAGA notices must be filed via the online PAGA filing portal with service to the employer or any identified employer representative by certified mail as required by section 2699.3, subdivision (c)(1). All amended notices shall be signed by an attorney of record pursuant to Code of Civil Procedure section 128.7.

Absent amendment, the notices in the matters listed in the index included with this letter appear insufficient to satisfy the administrative notice requirements of

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[5] As noted, you represent there are 75 impacted employees in every case you have filed. If true, every employer against whom you have filed a notice is eligible to participate in the cure procedures described in section 2699.3, subdivision (c)(2).

[6] In many cases the PAGA notices you are filing are not signed by you and bear no indication you are the filing attorney, but rather conclude with the salutation: "Very truly yours, [¶] [redacted]" (See, e.g., [redacted], *supra*; [redacted], *supra*; [redacted], *supra*; [redacted], *supra*.) Notwithstanding this, the PAGA portal online submission form and case information page identify you as the filer.

[7] The index is limited to matters pending before LWDA and within the applicable period for administrative investigation. (See § 2699.3, subd. (c)(1)(E).)

section 2699.3, subdivision (c).

Failure to comply prospectively with PAGA's prelitigation notice requirements may result in further action against you and/or your law firm, after due notice and an opportunity to be heard, including, but not limited to, pre-filing screening requirements. Failure to correct the behavior described in this letter, as well as in the previous letters sent to you, additionally may result in referral to the State Bar.

Sincerely,

Todd M. Ratshin
Deputy Secretary for Enforcement

cc: All Employers or Identified Employer Representatives in the Matters Listed in the Following Index

Index of PAGA Notices Filed by [redacted]
December 9, 2024 — February 12, 2025*
[Lab. Code, § 2699.3, subds. (a)(2)(B), (c)(1)(E)]

[*NOTE: Index Listing 137 Notices Filed During the Period Identified Above Omitted]

[redacted]

* The information set forth in this index is extracted from search results using the PAGA Case Search site, available at < https://cadir.my.salesforce-sites.com/PagaSearch >, for PAGA notices filed by [redacted] from December 10, 2024, through February 12, 2025.

APPENDIX E

***In re Neutron Holdings Wage and Hour Cases*, case no. CJC-19-005044, Redacted Order Denying Without Prejudice Plaintiff's Motion for Approval of PAGA Settlement, etc., Feb. 18, 2021**

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

DEPARTMENT 613

COORDINATION PROCEEDING SPECIAL TITLE [RULE 3.550(c)] **NEUTRON HOLDINGS WAGE AND HOUR CASES**	Case No. CJC-19-005044 JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 5044 REDACTED ORDER DENYING WITHOUT PREJUDICE PLAINTIFF REBECA TORRES'S MOTION FOR APPROVAL OF PAGA SETTLEMENT AND MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS AND SERVICE AWARD
This Order Relates to All Cases.	

INTRODUCTION

This matter came on regularly for hearing on February 2, 2021 in Department 613, the Honorable Andrew Y.S. Cheng, presiding. Gay Crosthwait Grunfeld, Seth Yohalem, and Jenny Yelin appeared for Plaintiff Yassin Olabi ("Olabi"). Dimitrios Korovilas appeared for Plaintiff Steven Tameny ("Tameny"). Alexander Wheeler appeared for Plaintiff Jon Osuna ("Osuna"). Joel B. Young appeared for Plaintiff Rebeca Torres ("Torres"). Joshua S. Lipshutz and Michael Holecek appeared for Defendant Neutron Holdings ("Defendant" or "Lime").

Having reviewed and considered the arguments, pleadings, and written submissions of all parties, the Court **DENIES** the motion **WITHOUT PREJUDICE**.

PROCEDURAL HISTORY

Torres filed her motion for approval of PAGA Settlement on August 17, 2020. On September 1, 2021, Plaintiffs Olabi, Osuna and Tameny (collectively "Objecting Plaintiffs") filed a motion to intervene in the Torres Action. On September 24, 2020, the Court issued a tentative ruling continuing Torres's motion for supplemental briefing due no later than October 23, 2020. The Court vacated the hearing on the motion to intervene pending supplemental briefing. Torres, the Objecting Plaintiffs and Lime timely filed supplemental briefing.

On November 6, 2020, the Court issued a second tentative ruling continuing Torres's motion for supplemental briefing due no later than December 4, 2020. Torres, the Objecting Plaintiffs and Lime filed timely filed supplemental briefing. On January 15, 2021, the Court set the motion for hearing on February 4, 2021. The Court then advanced the hearing to February 2, 2021.

DISCUSSION AND ANALYSIS

The Court denies the motion without prejudice because of (1) concerns regarding the circumstances surrounding the Torres Settlement negotiations, (2) inadequate investigation and discovery prior to the settlement, (3) inaccurate and incomplete maximum damages calculations, (4) the unjustified zero valuation of claims and (5) the unsupported 98.73-99.34% reduction of the total maximum theoretical recovery. The Court cannot find that the PAGA settlement is fair and adequate in view of the purpose and polices of the statute. The Court encourages the parties to continue to negotiate to see if they are able to present a new settlement agreement for approval.

I. Fairness

a. Reverse Auction

The Court is concerned about the circumstances surrounding the negotiation of the *Torres* Settlement. The Settlement is not the product of the group negotiation process all parties to the coordinated action initially agreed to and utilized.

"A reverse auction is said to occur when 'the defendant in a series of class actions picks the most ineffectual class lawyers to negotiate a settlement with in the hope that the [trial] court will approve a weak settlement that will preclude other claims against the defendant'.... It has an odor of mendacity

about it." (See *Negrete v. Allianz Life Ins. Co.* (9th Cir. 2008) 523 F.3d 1091, 1099 [citing *Reynolds v. Beneficial Nat'l Bank* (7th Cir. 2002) 288 F.3d 277, 282; Manual for Complex Litigation § 10.22; Cal. R. Court 3.541].) PAGA actions are a form of representative action; therefore, the concern may arise that a settlement is the product of a reverse action, collusion or overreaching by the parties. Settlement of representative actions "creates obvious dangers; the representative may have been a poor negotiator or may even be in cahoots with the defendant." (*Glidden v. Chromalloy American Corp.* (7th Cir. 1986) 808 F.2d 621, 627.) "It is therefore incumbent on a court in PAGA actions to closely scrutinize the circumstances underlying PAGA settlements, even absent direct evidence of collusive conduct, just as it would with respect to class actions." (Declaration of Gay Crosthwait Grunfeld in Support of Plaintiffs Olabi, Osuna, and Tameny's Response to the Court's November 6, 2020 Tentative Ruling Regarding the Torres Settlement, Ex. H [Labor Commissioner's Amicus Curiae Brief Pursuant to May 11, 2017 Order in *Price v. Uber Technologies, Inc.*, Los Angeles Superior Court Case No. BC554512 ("Price Brief")], 7.) "The exercise of vigilance is especially critical given that . . . a resolution of specifically-identified PAGA claims has preclusive impact on the State." (*Id.*)

When the parties first appeared in this coordination proceeding on December 11, 2019, the plaintiffs, including Torres, represented that they were working cooperatively. At the case management conference on January 16, 2020, the parties informed the Court of a scheduled joint mediation. The parties conducted that joint mediation on April 29, 2020, before the Honorable Bonnie Sabraw (ret.), with plaintiffs negotiating as a group. On July 10, 2020, the parties, including Torres, filed a joint statement with the Court indicating that a further joint mediation session had been scheduled for October 15, 2020, "to allow time for the parties' settlement discussions to be informed by Court rulings" on various discovery and merits issues. Contrary to Torres' representation that she would participate in that further joint mediation, on August 3, 2020, Lime filed a motion to stay the other cases indicating that it had reached a settlement with plaintiff Torres only. Lime and Torres represented that this settlement was the product of an offer made pursuant to Cal. Civ. Pro. Code § 998, an offer which the other three plaintiffs rejected. Lime and Torres did not disclose until September 18, 2020, after prodding from the other plaintiffs about the circumstances giving rise to the individual settlement, that the settlement in fact

resulted from separate negotiations, including a mediation conducted between Lime and Torres on July 23, 2020, before the Honorable Michael Latin (ret.), which was never previously disclosed to the other parties. Torres' conduct of negotiating individually while simultaneously representing to the Court and the other plaintiffs that she would negotiate jointly, as well as representing to the Court and other plaintiffs that the settlement was the product of a take-it-or-leave-it § 998 offer when in fact it was the product of separate side negotiation, evidences an "odor of mendacity," a lack of arms-length bargaining, and a likely reverse action.

b. Investigation and Discovery

Objecting Plaintiffs have raised concerns that insufficient discovery and investigation was completed by the parties prior to entering the Torres Settlement. At the time Torres filed her motion for settlement approval, she had admittedly conducted no formal discovery. Instead, since the Plaintiffs agreed to share discovery, Torres relied on the formal discovery propounded by the Objecting Plaintiffs. Since Torres filed the instant motion, Objecting Plaintiffs have conducted additional discovery, including taking the PMK deposition of Lime and three additional depositions of current and former Lime employees. In addition, the bulk of documents produced by Lime in these cases was not produced until November 4, 2020, after Torres filed her motion for settlement approval. Objecting Plaintiffs represent that the many of the assumptions underlying Torres's calculations and discounts are incorrect and suggest that the proposed settlement significantly undervalues the potential value of this case.

For example, Objecting Plaintiffs represent that this discovery revealed, among other things, that [redacted].[1] Objecting Plaintiffs assert Lime has yet to produce much of that data and it is the subject of their currently pending motion to compel. Further, in the Court's November 6, 2020 tentative ruling, the Court noted that "Torres did not calculate PAGA penalties under Labor Code § 226.8(a)(2) because Objecting Plaintiffs 'have not identified any evidence that Defendant made any deductions from compensation or charged any fees.'" (Nov. 6, 2020 Tentative Ruling, 3.) Objecting Plaintiffs assert it was later revealed at the PMK deposition that Lime in fact [redacted] for failure to comply

[1] This Order is conditionally sealed pending the Court's ruling on Lime's motion to seal set for hearing on March 19, 2021.

with Lime's battery, timing, and location requirements regarding the juicing process. Torres' valuation of her claims does not account for this because she did not have the necessary data.

The Court's obligation to "review" the settlement under Lab. Code § 2699(l)(2) requires the Court to analyze all available information, and the information yielded in the discovery taken after this settlement was reached indicates that the proposed settlement does not adequately reflect the potential value of this case to the State of California and the Juicers.

c. Maximum Penalties Calculations and Discounts

i. Maximum Penalties

The Court has repeatedly requested that Torres explain the basis for the $4.98 million proposed settlement, including her calculation of the maximum total penalties available. To date, Torres has not provided the Court with complete and accurate penalties calculations.

A. Theoretical Maximum Recovery

In any refiled motion, the Court will only consider the "theoretical maximum recovery" and not any reduced values based on an "assumed rate of violations". The assumed rate of violations results in double discounting (i.e. applying discounts once in *calculating* penalties based on an assumed rate of violations, and again in justifying the *settlement results obtained*). Thus, for each individual claim, the theoretical maximum recovery should be calculated based on a 100% violation rate. Then, the discounted value should reflect any assumed violation rate applied and the bases for the application of any assumed violation should be explained.

B. Unpaid Minimum Wage Penalties

Torres chose to calculate the maximum theoretical value of the Unpaid Minimum Wage claim based on Labor Code § 1197 (i.e., one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation) because it represents a "middle ground" on the penalty amounts associated with Labor Code § 558 (i.e., fifty dollars ($50) for the initial penalty and one hundred dollars ($100) for each subsequent penalty) in comparison to Labor Code § 1197.1 (i.e., one-hundred dollars ($100) for the initial penalty and two hundred fifty dollars ($250) for each subsequent penalty). (See Brief, 5.) This is

improper. The maximum theoretical recovery for the unpaid minimum wage claims should be based on Labor Code § 1197.1. Torres's explanation of why the "middle ground" figure was chosen is a justification for a discount, not a maximum damages calculation.

C. Unpaid Overtime and Failure to Provide Meal Break Penalties

Torres's decision not to value these penalties is problematic. Torres must evaluate these claims through the following lens: "it *may be* reasonable to settle a weak claim for *relatively little, while it is not reasonable to settle a strong claim for the same amount.*" (*O'Connor v. Uber Technologies, Inc.* (2016) 201 F.Supp.3d 1110, 1134-1135 [emphasis supplied].) For the reasons stated below, Torres's lack of valuation is unconvincing.

- Unpaid Overtime Penalties – Labor Code §§ 510, 558: Torres did not assign a value to overtime violations because "Juicers would face significant and likely insurmountable barriers to prevailing on overtime claims at trial". (Brief, 5.) Torres argues: (1) there would be significant issues in proving that a Juicer worked over eight (8) hours in day and (2) it would be difficult if not impossible to prove that all of the time Juicers spent collecting and charging scooters was compensable because Lime would argue (a) as soon as a Juicer has "plugged in" scooters to charge, the charging process was a passive activity (indeed, Juicers could sleep during that time) and that passive "charging" time was not compensable time and (b) when Juicers engaged in personal activities (such as personal phone calls, personal errands, and sleeping) was not compensable time. (Brief, 5-6.) These are reasons for discounting a claim, not valuing it at zero. Rather than provide a zero valuation, the parties must value the claim and *then* apply the relevant discounts.
- Failure to Provide Meal Break Claims – Labor Code §§ 226.7, 512: Torres contends there would be difficulty in establishing that Juicers worked at least five hours per day as most Juicers interviewed by Torres's counsel indicated that they worked less than three (3) hours per day, and all of them indicated that they could take a meal break at any point because Juicers had free rein to sign on and off the app whenever they wanted.

Therefore, Torres's position is that, for settlement purposes, no value should be assigned to the meal break claims. Again, these are reasons for discounting a claim, not valuing it at zero. Rather than provide a zero valuation, the parties must value the claim and *then* apply the relevant discounts.

ii. Discounts

In light of Torres's Second Supplemental Brief in Support of Motion for Approval of PAGA Settlement ("Brief"), Torres now values the theoretical maximum recovery as between $391,921,000[2] - $749,698,117.50[3]. Based on Torres's maximum recovery calculations, the $4.98 million settlement is approximately .66 – 1.27% of the maximum theoretical recovery of civil penalties. The Objecting Plaintiffs now estimate the maximum theoretical recovery to be [redacted]. (See Plaintiffs Olabi, Osuna, and Tameny's Response to the Court's November 6, 2020 Tentative Ruling Regarding the Torres Settlement ["Response"], 17 [estimating the maximum theoretical value of the Section 226.8(a)(2) alone to be "[redacted]"].) The risks at issue rest primarily on the merits of plaintiffs' labor code claims (particularly, misclassification) and the discretionary reduction of statutory penalties. The Court is cognizant that even if a verdict were rendered for the PAGA claims, a penalty of $749,698,117.50 would likely be reduced. (See *O'Connor, supra,* 201 F.Supp.3d at 1133; see also Cal. Lab. Code § 2699(e)(2).) While some discounting is appropriate, Torres failed to provide sufficient justification for the discounts she applied.

A. Overall

The parties failed to augment the factual and legal bases for the settlement discounts as requested in the Court's September 24, 2020 Tentative Ruling. Torres provided the Court with only half of the picture – the half favorable to Defendants. (See Plaintiff Rebeca Torres's Supplemental Brief in Support of Motion for Approval of PAGA Settlement (Filed Oct. 23, 2020) ["Oct. 23, 2020 Brief"], 18-22.) Even assuming Torres's calculations are accurate, the parties' failure to provide the complete picture counsels

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[2] 153,736,000 (Torres' Prior Calculation of the Theoretical Maximum Recovery) + 158,790,000 (lower end of Willful Misclassification Claim) + 79,395,000 (lower end of Charging Misclassified Workers a Fee Claim).

[3] 153,736,000 (Torres' Prior Calculation of the Theoretical Maximum Recovery) + 499,617.50 (assuming 2.5% violation rate for Unpaid Overtime Claims) + 396,975,000 (higher end of Willful Misclassification Claim) + 198,487,500 (higher end of Charging Misclassified Workers a Fee Claim).

against crediting a 98.73-99.34% reduction of the total maximum theoretical recovery.

B. Specific Issues

Though Torres declined to provide the Court with a complete picture of the discounts, nonetheless, the Objecting Plaintiffs provided the other half of the picture. Because willful misclassification is the most probative risk, the Court focuses on it below.

1. Willful Misclassification

As an initial matter, Torres and the Objecting Plaintiffs agree that Proposition 22 has no effect on Lime's liability in this case. Lime contends Proposition 22 applies to this case, is retroactive, repeals the "ABC" test and prevents plaintiffs from prevailing in these actions. However, the Court of Appeal declined requests to depublish or rehear *People v. Uber Technologies, Inc.* (2020) 56 Cal.App.5th 266 after the passage of Proposition 22. Furthermore, on January 14, 2021, well after Proposition 22 passed, the California Supreme Court issued its opinion in *Vasquez v. Jan-Pro Franchising Int'l, Inc.* (2021) 10 Cal.5th 944 holding that *Dynamex* applies retroactively. Finally, on January 26, 2021, in *James v. Uber Technologies, Inc.* (N.D. Cal. Jan. 26, 2021) Case No. 3:19-cv-06462-EMC, 2021 WL 254303, the District Court found that Proposition 22 does not apply retroactively. Since all plaintiffs agree that Proposition 22 is not a reason to discount the value of the case, absent further argument to the contrary from Lime, this Court likewise declines to do so.

Torres and Objecting Plaintiffs dispute whether Lime's failure to comply with *Dynamex* constitutes "willful" misclassification. In their response, Objecting Plaintiffs proffer evidence they argue supports "it is now clear that Lime made the decision to classify Juicers as independent contractors deliberately with open eyes, fully aware of the potential legal ramifications of doing so." (Response, 12.) Torres asserts that given the uncertainty following *Dynamex* but before the passage of Assembly Bill 5, "a court could easily conclude that Defendant's obligations under the law were genuinely unclear until the passage of Assembly Bill 5, and that failure to comply with *Dynamex* does not constitute "willful" misclassification." (Oct. 23, 2020 Brief, 20-21.) In assigning negligible value to multiple Labor Code penalties, Torres fails to consider the possibility that a court could find that Lime knew about the *Dynamex* decision and its applicability and that it was misclassifying Juicers under *Dynamex*.

Torres still has not cited a single case explicitly finding that post-*Dynamex*, an employer's obligations under the law remained unclear. After *Dynamex*, it was at least clear that the "ABC" test applied to wage order claims. (See *Dynamex Operations W. v. Sup. Ct.* (2018) 4 Cal.5th 903, 964.) In this respect, Torres's reliance on *Garcia v. Border Transp. Grp., LLC* (2018) 28 Cal.App.5th 558, 563-564 as modified on denial of reh'g (Nov. 13, 2018) is misguided. In *Garcia*, the question was whether *Dynamex* applied to *all* sections of the Labor Code. The court explicitly noted "[i]t is logical to apply the 'suffer or permit to work' standard (and the ABC test that explicates it) to wage order claims." (*Id.* at 571.) Objecting Plaintiffs offer evidence that after the Supreme Court issued its decision in *Dynamex* on April 30, 2018, [redacted]. (See Response, 12.) Torres offers no response to Objecting Plaintiffs' repeated assertion that uncertainty as to whether *Dynamex* applied to certain sections of the Labor Code cannot be used to justify Lime's decision to willfully misclassify Juicers as to deny them protections of the Wage Orders. Moreover, Torres does not cite any authority to support that any uncertainty post-*Dynamex* and pre-AB 5 forecloses finding willful misclassification for the non-wage order claims.

Any discounts in a refiled motion must account for the real risks for both parties. (See Response, 12-15 [setting forth both evidence and case law to support a finding that Lime's misclassification was willful].)

2. Other Discounts

The Court credits the discretionary reduction, stacking and manageability arguments justifying a discount in the settlement figure. But again, the parties overstate the risk. Specifically, the Court believes this risk is overstated based on Torres's (1) failure to address the strength of Plaintiffs' PAGA claim and/or the likelihood that Plaintiffs may succeed on the merits, and (2) assignment of "negligible value" to several of the underlying violations. (See Oct. 23, 2020 Brief, 25, 30, 32-33.)

d. Conclusion

Based on the present record, the Court cannot conclude that the Settlement is fair, adequate, and reasonable.

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I. MOTION FOR ATTORNEYS' FEES, COSTS AND INCENTIVE AWARDS

A. Attorneys' Fees and Costs

Because the Court denies the motion without prejudice, it will reserve its evaluation of attorneys' fees and costs (including the issue of the direction of fees and the appropriate multiplier).

CONCLUSION

The Court **DENIES** Torres's Motion **WITHOUT PREJUDICE**.

IT IS SO ORDERED.

Dated: February 18, 2021

ANDREW Y.S. CHENG
Judge of the Superior Court

CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.260(g))

I, KEITH TOM, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On February 18, 2021, I electronically served the ATTACHED DOCUMENT(S) via File&ServeXpress on the recipients designated on the Transaction Receipt located on the File&ServeXpress website.

Dated: February 18, 2021

T. Michael Yuen, Clerk

By: _____
KEITH TOM, Deputy Clerk

APPENDIX F

Table Showing Number of Proposed PAGA Settlements Submitted to LWDA on Monthly Basis

Proposed Settlements Submitted to LWDA from September 2016 Through December 2025													
Year	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**	**Oct**	**Nov**	**Dec**	**Total**
2016									51	62	79	56	248
2017	73	79	136	86	106	107	87	66	83	69	83	64	1,039
2018	69	84	105	104	81	93	108	100	88	107	94	113	1,146
2019	122	119	144	141	167	139	169	164	149	195	139	153	1,801
2020	175	188	148	113	126	224	218	197	207	241	204	197	2,238
2021	200	222	290	279	215	258	209	243	241	249	228	266	2,900
2022	256	257	298	295	284	269	256	268	275	259	222	226	3,165
2023	283	258	287	270	319	291	251	326	273	306	254	261	3,379
2024	335	294	293	307	358	305	344	348	320	449	316	343	4,012
2025	370	350	391	448	386	459	402	400	365	464	400	436	4,871
Total	1,883	1,851	2,092	2,043	2,042	2,145	2,044	2,112	2,052	2,401	2,019	2,115	24,799

Appendix F

Initial Statement of Reasons in Support of Proposed Rulemaking