



STATE OF CALIFORNIA
Labor & Workforce Development Agency

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Agricultural Labor Relations Board • California Unemployment Insurance Appeals Board
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November 25, 2024

Elizabeth Christopher
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Certified Mail

USPS Tracking No. 7017 0190 0000 4177 6811

**Re: *Efrain Cortes v. Marin Baking LLC dba Bordenave's*
Case No. LWDA-CM-1054962-24**

Notice Directing Claimant to Amend PAGA Notice

Dear Ms. Christopher:

On October 7, 2024, you filed a notice on behalf of claimant Efrain Cortes against his former employer, respondent Marin Baking LLC dba Bordenave's, pursuant to the Labor Code Private Attorneys General Act of 2004 (PAGA), codified at Labor Code section¹ 2698 et seq. On November 12, respondent timely submitted a proposal to cure alleged violations, while also raising concerns with deficiencies in the underlying notice. Specifically, respondent contends the nature of the underlying notice provides no reasonable basis for respondent to determine what claimant's claims actually are.

LWDA's PAGA Unit has reviewed claimant's October 7 PAGA notice and has determined it does not satisfy the administrative notice requirements set forth in section 2699.3, subdivision (c)(1). In fact, claimant's 17-page notice recites boilerplate allegations from another matter also submitted by you where it was determined the notice did not satisfy the standard of "nonfrivolousness" applicable to PAGA notices preceding the recent reforms.² (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 545, citing Code Civ. Proc., § 128.7.) As in that matter,

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

² See Notice Re: Claimant Directed to Amend PAGA Notice, Nov. 8, 2024, *Boyd v. Aminco Intl. (USA), Inc.*, case no. LWDA-CM-1052275-24.

the blanket PAGA notice here, reciting a compendium of Labor Code violations without any indication of applicability or relevance to claimant or the nature of his employment with respondent, is tantamount to no notice at all.

Claimant is directed to submit to LWDA via the online PAGA filing portal an amended notice, signed by an attorney of record, setting forth the specific violations personally suffered by claimant and the facts and theories supporting the violations alleged. (See Code Civ. Proc., § 128.7, subds. (a)-(b).) An amended PAGA notice must be submitted no later than Friday, December 6, 2024. Upon proper amendment, respondent shall have 33 days from receipt of the notice to submit a proposal to cure violations pursuant to section 2699.3, subdivision (c)(2)(A).

Absent amendment satisfying the requirements of section 2699.3, subdivision (c)(1), the underlying notice appears insufficient for purposes of the prelitigation administrative exhaustion requirements set forth in the Act, in which case no civil action thereupon may be commenced.

I. Background

Claimant filed the underlying PAGA notice on October 7 against respondent, his former employer. The notice is not signed by any attorney or other representative, but rather concludes with the salutation: "Very truly yours, [¶] BIBIYAN LAW GROUP, P.C."³ According to the notice, claimant was employed with respondent from about August 2022 through July 2024, and his duties while employed with respondent included "making dough and decorating loaves." Claimant provides no other information regarding his employment with respondent.

Claimant's notice then proceeds to allege a litany of Labor Code violations in generic, boilerplate form. There is no indication the allegations bear any relevance to claimant's employment with respondent. The notice in this case is indistinguishable from the notice you recently filed in *Boyd v. Aminco International (USA), Inc.*, *supra*. The PAGA Case Search site, available at < <https://cadir.my.salesforce-sites.com/PagaSearch> >, shows you personally have filed 183 PAGA notices since July 1, 2024.⁴ A review of a representative

³ Notwithstanding this, the PAGA portal online submission form and case information page indicates the notice was submitted by Elizabeth Christopher.

⁴ See < <https://cadir.my.salesforce-sites.com/PagaSearch/PAGASearchResults?ed=2024-11-25&sd=2024-07-01&ss=Elizabeth+Christopher&st=PAGA+Notice> >, last visited November 25, 2024.

sample of these notices demonstrates the notice filed in this matter is a template form without regard to an individual claimant's particular experiences or employment with their respective employer in any particular case.

II. Claimant's Notice Does Not Satisfy PAGA's Administrative Notice Requirements

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."⁵ 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.)

Before the recent PAGA reforms (Stats. 2024, ch. 44 [Assem. Bill No. 2288 (2023-2024 Reg. Sess.)], ch. 45 (Sen. Bill No. 92 (2023-2-24 Reg. Sess.))), the California Supreme Court found PAGA did not require a claimant to "satisfy a particular threshold of weightiness" in describing the facts and theories supporting the violations alleged in a notice. (*Williams, supra*, 3 Cal.5th at p. 546.) In doing so, the court concluded a heightened proof requirement "would undercut the clear legislative purposes the act was designed to serve." (*Ibid.*)

Recent amendments to PAGA evince a legislative intent to increase LWDA 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 [noting bill "increases the role of [LWDA] and better incorporates the available remedies, processes, and outcomes utilized or sought by [LWDA] in its enforcement efforts"]; Assem. Com. on Jud., Analysis of Sen. Bill No. 92 (2023-2024 Reg. Sess.) as amended June 21, 2024, p. 12 ["At its core this bill addresses the business community's objections that PAGA ... denies businesses the right to cure violations and results in protracted and costly litigation"].) 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

⁵ Subdivisions (a)(1)(A) and (b)(1) of section 2699.3 include virtually identical notice requirements for claims subject to those provisions.

PAGA claims. (Assem. Com. on Jud., Analysis of Sen. Bill No. 92 (2023-2024 Reg. Sess.) as amended June 21, 2024, p. 13 ["The underlying rationale for both this measure and AB 2288 appears to be a goal of resolving PAGA disputes in a timelier manner. The cure and early evaluation conference provisions of this bill are designed to promote resolution of PAGA claims without protracted litigation"].)

These early resolution opportunities are complemented by amendments to section 2699.5 expanding the types of claims subject to administrative cure procedures, including the most common types of wage and hour violations alleged in PAGA notices. Another 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.

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. In this matter, many of the violations alleged in the underlying notice appear to have no applicability to this particular claimant and the specific nature of his working conditions with his former employer. (See § 2699, subd. (c)(1).) While the pleading standard attendant to PAGA notices is not necessarily a "weighty" or burdensome one, it is determined this notice does not satisfy even the standard of "nonfrivolousness" applicable to PAGA notices preceding the recent reforms. (*Williams, supra*, 3 Cal.5th at p. 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 recent reforms. The effectiveness of the newly enacted administrative cure procedure set forth in section 2699.3, subdivision (c)(2) depends on proper notice of the violations alleged so LWDA accurately can assess the nature of the claims at issue and an employer has a reasonable opportunity to identify and endeavor to correct them. New standing requirements under section 2699, subdivision (c)(1) further limit the scope of the violations a PAGA claimant may allege.

In light of the above, claimant's boilerplate, blanket PAGA notice is tantamount to no notice at all. 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).)

III. Conclusion and Order

For the foregoing reasons, LWDA's PAGA Unit considers the October 7, 2024 PAGA notice filed on behalf of claimant Efrain Cortes insufficient to satisfy the administrative notice requirements of Labor Code section 2699.3, subdivision (c). Claimant shall file with LWDA an amended notice setting forth those specific violations personally suffered by claimant and the facts and theories supporting the violations alleged no later than Friday, December 6, 2024, via the online PAGA filing portal with service to the employer by certified mail as required by section 2699.3, subdivision (c)(1). Any amended notice shall be signed by an attorney of record pursuant to Code of Civil Procedure section 128.7.

Following such filing and service, respondent Marin Baking LLC dba Bordenave's shall have 33 days from receipt of the amended notice to submit a confidential proposal to cure any violations therein alleged in accordance with section 2699.3, subdivision (c)(2)(A).

Absent proper amendment, claimant's October 7 PAGA notice appears insufficient to satisfy the prelitigation administrative exhaustion requirements of section 2699.3.

Sincerely,



Todd M. Ratshin
Deputy Secretary for Enforcement

cc: Jeanine D. DeBacker
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Certified Mail

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