

No. S227228

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

MICHAEL WILLIAMS, an individual,
Plaintiff and Appellant,

v.

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES,
Defendant and Respondent.

MARSHALLS OF CA, LLC,
Real Party in Interest.

SUPREME COURT
FILED

JUN 17 2016

Frank A. McGuire Clerk
Deputy

AFTER DECISION BY THE COURT OF APPEAL,
SECOND APPELLATE DISTRICT, DIVISION ONE,
CASE B259967
FROM THE SUPERIOR COURT,
COUNTY OF LOS ANGELES, CASE NO. BC503806,
ASSIGNED FOR ALL PURPOSES TO JUDGE
WILLIAM F. HIGHBERGER, DEPARTMENT 322

**MOTION FOR JUDICIAL NOTICE; MEMORANDUM OF POINTS AND
AUTHORITIES; PROPOSED ORDER**

CAPSTONE LAW APC
GLENN A. DANAS (SBN 270317)
RYAN WU (SBN (SBN 222323)
ROBERT DREXLER (SBN 119119)
LIANA CARTER (SBN 201974)
1840 CENTURY PARK EAST, SUITE 450
LOS ANGELES, CA 90067
TELEPHONE: (310) 556-4811
FACSIMILE: (310) 943-0396
GLENN.DANAS@CAPSTONELAWYERS.COM
RYAN.WU@CAPSTONELAWYERS.COM
ROBERT.DREXLER@CAPSTONELAWYERS.COM
LIANA.CARTER@CAPSTONELAWYERS.COM

Attorneys for Plaintiff and Appellant
MICHAEL WILLIAMS

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LIANA.CARTER@CAPSTONELAWYERS.COM

Attorneys for Plaintiff and Appellant
MICHAEL WILLIAMS

MOTION FOR JUDICIAL NOTICE

Please take notice that, pursuant to Evidence Code sections 452(c) and (h) and section 459, and California Rules of Court, rules 8.520(g) and 8.252(a), Appellant Michael Williams hereby moves for an order granting judicial notice of the 2016-2017 Trailer Bill Language for proposed changes to the PAGA (Private Attorneys General Act, California Labor Code sections 2699 *et seq.*). The Trailer Bill Language is the implementing language of the California State Budget Bill, and includes the proposed PAGA Trailer Bill Language for this year's Governor's Budget, a true and correct copy of which is attached hereto as Exhibit 1.

This material is directly relevant to the issues raised in the amicus briefs supporting Real Party In Interest, Marshalls of California, LLC, regarding proposed changes to the PAGA. In particular, this material responds to the now-outdated proposal submitted for judicial review by Retail Litigation Center, Inc., California Retailers Association, and California Grocers Association.

The PAGA Trailer Bill Language became available after the order on appeal and therefore was not presented below or the subject of any prior motion for judicial notice. This material is publicly available on the website for the California Department of Finance, at http://www.dof.ca.gov/budgeting/trailer_bill_language/forecasting_labor_and_transportation/documents/403PrivateAttorneyGeneralAct_001.pdf. The motion is based on this notice and the memorandum of points and authorities below.

MEMORANDUM OF POINTS AND AUTHORITIES

I. JUDICIAL NOTICE SHOULD BE GRANTED

Williams seeks judicial notice of Exhibit 1, the PAGA Trailer Bill Language, which is a true and correct copy of the proposed changes to the PAGA statute a part of the 2016-2017 Governor's Budget. Evidence Code section 459(a) provides that a reviewing court may take notice of any matter specified in Evidence Code section 452. The matters that may be judicially noticed under Evidence Code section 452 include the "[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States." (Evidence Code §452(h).) Thus a reviewing court may judicially notice acts of the executive branch, including acts of state government. (*Id.*)

The attached PAGA Trailer Bill Language is relevant to Williams's appeal before this Court because it contains the current proposed changes to the PAGA revised by the Governor and approved by the Legislature, and supplants the now-defunct proposal submitted by amicus for Marshalls, Retail Litigation Center et al., in their motion for judicial notice and relied upon in their briefing. The attached document demonstrates that the PAGA Trailer Language did not adopt any new requirements for the contents of the notice letter that PAGA plaintiffs provide to the Labor Workforce Development Agency or adopt more stringent prerequisites to bringing a PAGA action signifying that any so-called PAGA "abuse," as framed by amici, was not a pressing concern for the Legislature.

Because this evidence pertains to a matter that occurred after the record was created (and indeed, after the Court of Appeal rendered its decision), the evidence could not be included

in the appellate record. Under these circumstances, judicially noticing this evidence is appropriate.

II. CONCLUSION

Based on the foregoing, Appellant Williams respectfully requests this Court to grant this motion for judicial notice.

Dated: June 16, 2016

Respectfully submitted,

Capstone Law APC

By: _____

Glenn A. Danas

Ryan H. Wu

Robert Drexler

Liana Carter

Attorneys for Plaintiff-

Appellant

MICHAEL WILLIAMS

**PROPOSED ORDER GRANTING PLAINTIFF-
APPELLANT'S MOTION FOR JUDICIAL NOTICE**

The Motion For Judicial Notice filed by Plaintiff and Appellant Michael Williams, having been filed, and grounds for judicial notice appearing warranted under Evidence Code section 459 and section 452, IT IS ORDERED that Plaintiff and Appellant's Motion is granted in full and the Court takes judicial notice of Exhibit 1, the 2016-2017 PAGA Trailer Bill Language, attached to the motion.

Date: _____

The Honorable Chief Justice
or Associate Justice of the
California Supreme Court



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An act to amend Section 2699 of, and to amend, repeal, and add Section 2699.3 of, the Labor Code, relating to employment.



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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. It is the intent of the legislature that the Labor and Workforce Development Agency shall continue to assign the duties prescribed in this part to the departments, divisions, commissions, boards, or agencies where those duties are customarily performed.

SEC. 2. Section 2699 of the Labor Code is amended to read:

2699. (a) Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

(b) For purposes of this part, "person" has the same meaning as defined in Section 18.

(c) For purposes of this part, "aggrieved employee" means any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.

(d) For purposes of this part, "cure" means that the employer abates each violation alleged by any aggrieved employee, the employer is in compliance with the underlying statutes as specified in the notice required by this part, and any aggrieved employee is made whole. A violation of paragraph (6) or (8) of subdivision (a) of Section 226 shall only be considered cured upon a showing that the employer has provided a fully



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compliant, itemized wage statement to each aggrieved employee for each pay period for the three-year period prior to the date of the written notice sent pursuant to paragraph (1) of subdivision (c) of Section 2699.3.

(e) (1) For purposes of this part, whenever the Labor and Workforce Development Agency, or any of its departments, divisions, commissions, boards, agencies, or employees, has discretion to assess a civil penalty, a court is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

(2) In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.

(f) For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows:

(1) If, at the time of the alleged violation, the person does not employ one or more employees, the civil penalty is five hundred dollars (\$500).

(2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is 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.



(3) If the alleged violation is a failure to act by the Labor and Workplace Development Agency, or any of its departments, divisions, commissions, boards, agencies, or employees, there shall be no civil penalty.

(g) (1) Except as provided in paragraph (2), an aggrieved employee may recover the civil penalty described in subdivision (f) in a civil action pursuant to the procedures specified in Section 2699.3 filed on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and ~~costs~~ costs, including any filing fee paid pursuant to subparagraph (B) of paragraph (1) of subdivision (a) or subparagraph (B) of paragraph (1) of subdivision (c) of Section 2699.3. Nothing in this part shall operate to limit an employee's right to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part.

(2) No action shall be brought under this part for any violation of a posting, notice, agency reporting, or filing requirement of this code, except where the filing or reporting requirement involves mandatory payroll or workplace injury reporting.

(h) No action may be brought under this section by an aggrieved employee if the agency or any of its departments, divisions, commissions, boards, agencies, or employees, on the same facts and theories, cites a person within the timeframes set forth in Section 2699.3 for a violation of the same section or sections of the Labor Code under which the aggrieved employee is attempting to recover a civil penalty on behalf of himself or herself or others or initiates a proceeding pursuant to Section 98.3.



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(i) Except as provided in subdivision (j), civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor and Workforce Development Agency for enforcement of labor laws laws, including the administration of this part, and for education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes; and 25 percent to the aggrieved employees.

(j) Civil penalties recovered under paragraph (1) of subdivision (f) shall be distributed to the Labor and Workforce Development Agency for enforcement of labor laws laws, including the administration of this part, and for education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes.

(k) Nothing contained in this part is intended to alter or otherwise affect the exclusive remedy provided by the workers' compensation provisions of this code for liability against an employer for the compensation for any injury to or death of an employee arising out of and in the course of employment.

~~(l) The superior court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part.~~

(l) (1) For cases filed on or after July 1, 2016, the aggrieved employee or representative shall, within 10 days following commencement of a civil action pursuant to this part, provide the Labor and Workforce Development Agency with a file-stamped copy of the complaint that includes the case number assigned by the court.



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(2) The superior court shall review and approve any settlement of any civil action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court.

(3) A copy of the superior court's judgment in any civil action filed pursuant to this part and any other order in that action that either provides for or denies an award of civil penalties under this code shall be submitted to the agency within 10 days after entry of the judgment or order.

(4) Items required to be submitted to the Labor and Workforce Development Agency under this subdivision or to the Division of Occupational Safety and Health pursuant to paragraph (4) of subdivision (b) of Section 2699.3, shall be transmitted online through the same system established for the filing of notices and requests under subdivisions (a) and (c) of Section 2699.3.

(m) This section shall not apply to the recovery of administrative and civil penalties in connection with the workers' compensation law as contained in Division 1 (commencing with Section 50) and Division 4 (commencing with Section 3200), including, but not limited to, Sections 129.5 and 132a.

(n) The agency or any of its departments, divisions, commissions, boards, or agencies may promulgate regulations to implement the provisions of this part.

SEC. 3. Section 2699.3 of the Labor Code is amended to read:

2699.3. (a) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section 2699.5 shall commence only after the following requirements have been met:



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(1) (A) The aggrieved employee or representative shall give written notice by ~~certified mail to~~ online filing with the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.

(B) A notice filed with the Labor and Workforce Development Agency pursuant to subparagraph (A) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75). The fees required by this subparagraph are subject to waiver in accordance with the requirements of Sections 68632 and 68633 of the Government Code.

(C) The fees paid pursuant to subparagraph (B) shall be paid into the Labor and Workforce Development Fund and used for the purposes specified in subdivision (j) of Section 2699.

(2) (A) The agency shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation within ~~30~~ 60 calendar days of the postmark date of the notice received pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided within ~~33~~ 65 calendar days of the postmark date of the notice given pursuant to paragraph (1), the aggrieved employee may commence a civil action pursuant to Section 2699.

(B) If the agency intends to investigate the alleged violation, it shall notify the employer and the aggrieved employee or representative by certified mail of its decision within ~~33~~ 65 calendar days of the postmark date of the notice received pursuant to paragraph (1). Within 120 calendar days of that decision, the agency may investigate the alleged violation and issue any appropriate citation. If the agency, during the course



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of its investigation, determines that additional time is necessary to complete the investigation, it may extend the time by not more than 60 additional calendar days, and shall issue a notice of such extension. If the agency determines that no citation will be issued, it shall notify the employer and aggrieved employee of that decision within five business days thereof by certified mail. Upon receipt of that notice or if no citation is issued by the agency within the 158-day period time limits prescribed by subparagraph (A) and this subparagraph or if the agency fails to provide timely or any notification, the aggrieved employee may commence a civil action pursuant to Section 2699.

(C) Notwithstanding any other provision of law, a plaintiff may as a matter of right amend an existing complaint to add a cause of action arising under this part at any time within 60 days of the time periods specified in this part.

(D) The time limits prescribed by this paragraph shall only apply if the notice required by paragraph (1) is filed with the agency on or after July 1, 2016. For notices submitted prior to July 1, 2016, the time limits in effect on the postmark date of the notice shall apply.

(b) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision of Division 5 (commencing with Section 6300) other than those listed in Section 2699.5 shall commence only after the following requirements have been met:

(1) The aggrieved employee or representative shall give notice ~~by certified mail~~ to online filing with the Division of Occupational Safety and Health and by certified mail to the employer, with a copy to the Labor and Workforce Development Agency,



of the specific provisions of Division 5 (commencing with Section 6300) alleged to have been violated, including the facts and theories to support the alleged violation.

(2) (A) The division shall inspect or investigate the alleged violation pursuant to the procedures specified in Division 5 (commencing with Section 6300).

(i) If the division issues a citation, the employee may not commence an action pursuant to Section 2699. The division shall notify the aggrieved employee and employer in writing within 14 calendar days of certifying that the employer has corrected the violation.

(ii) If by the end of the period for inspection or investigation provided for in Section 6317, the division fails to issue a citation and the aggrieved employee disputes that decision, the employee may challenge that decision in the superior court. In such an action, the superior court shall follow precedents of the Occupational Safety and Health Appeals Board. If the court finds that the division should have issued a citation and orders the division to issue a citation, then the aggrieved employee may not commence a civil action pursuant to Section 2699.

(iii) A complaint in superior court alleging a violation of Division 5 (commencing with Section 6300) other than those listed in Section 2699.5 shall include therewith a copy of the notice of violation provided to the division and employer pursuant to paragraph (1).

(iv) The superior court shall not dismiss the action for nonmaterial differences in facts or theories between those contained in the notice of violation provided to the division and employer pursuant to paragraph (1) and the complaint filed with the court.



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(B) If the division fails to inspect or investigate the alleged violation as provided by Section 6309, the provisions of subdivision (c) shall apply to the determination of the alleged violation.

(3) (A) Nothing in this subdivision shall be construed to alter the authority of the division to permit long-term abatement periods or to enter into memoranda of understanding or joint agreements with employers in the case of long-term abatement issues.

(B) Nothing in this subdivision shall be construed to authorize an employee to file a notice or to commence a civil action pursuant to Section 2699 during the period that an employer has voluntarily entered into consultation with the division to ameliorate a condition in that particular worksite.

(C) An employer who has been provided notice pursuant to this section may not then enter into consultation with the division in order to avoid an action under this section.

(4) The superior court shall review and approve any proposed settlement of alleged violations of the provisions of Division 5 (commencing with Section 6300) to ensure that the settlement provisions are at least as effective as the protections or remedies provided by state and federal law or regulation for the alleged violation. The provisions of the settlement relating to health and safety laws shall be submitted to the division at the same time that they are submitted to the court. This requirement shall be construed to authorize and permit the division to comment on those settlement provisions, and the court shall grant the division's commentary the appropriate weight.



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(c) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision other than those listed in Section 2699.5 or Division 5 (commencing with Section 6300) shall commence only after the following requirements have been met:

(1) (A) The aggrieved employee or representative shall give written notice by ~~certified mail to~~ online filing with the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.

(B) A notice filed with the Labor and Workforce Development Agency pursuant to subparagraph (A) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75). The fees required by this subparagraph are subject to waiver in accordance with the requirements of Sections 68632 and 68633 of the Government Code.

(C) The fees paid pursuant to subparagraph (B) shall be paid into the Labor and Workforce Development Fund and used for the purposes specified in subdivision (j) of Section 2699.

(2) (A) The employer may cure the alleged violation within 33 calendar days of the postmark date of the ~~notice~~; notice sent by the aggrieved employee or representative. The employer shall give written notice ~~by certified mail~~ within that period of time by certified mail to the aggrieved employee or representative and by online filing with the agency if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation



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is not cured within the 33-day period, the employee may commence a civil action pursuant to Section 2699.

(B) (i) Subject to the limitation in clause (ii), no employer may avail himself or herself of the notice and cure provisions of this subdivision more than three times in a 12-month period for the same violation or violations contained in the notice, regardless of the location of the worksite.

(ii) No employer may avail himself or herself of the notice and cure provisions of this subdivision with respect to alleged violations of paragraph (6) or (8) of subdivision (a) of Section 226 more than once in a 12-month period for the same violation or violations contained in the notice, regardless of the location of the worksite.

(3) If the aggrieved employee disputes that the alleged violation has been cured, the aggrieved employee or representative shall provide written notice by online filing with the agency and by certified mail, mail to the employer, including specified grounds to support that dispute, to the employer and the agency. Within 17 calendar days of the ~~postmark date~~ receipt of that notice, the agency shall review the actions taken by the employer to cure the alleged violation, and provide written notice of its decision by certified mail to the aggrieved employee and the employer. The agency may grant the employer three additional business days to cure the alleged violation. If the agency determines that the alleged violation has not been cured or if the agency fails to provide timely or any notification, the employee may proceed with the civil action pursuant to Section 2699. If the agency determines that the alleged violation has been cured, but the employee still disagrees, the employee may appeal that determination to the superior court.



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(d) The periods specified in this section are not counted as part of the time limited for the commencement of the civil action to recover penalties under this part.

(e) This section shall remain in effect only until July 1, 2021, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2021, deletes or extends that date.

SEC. 4. Section 2699.3 is added to the Labor Code, to read:

2699.3. (a) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section 2699.5 shall commence only after the following requirements have been met:

(1) (A) The aggrieved employee or representative shall give written notice by online filing with the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.

(B) A notice filed with the Labor and Workforce Development Agency pursuant to subparagraph (A) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75). The fees required by this subparagraph are subject to waiver in accordance with the requirements of Sections 68632 and 68633 of the Government Code.

(C) The fees paid pursuant to subparagraph (B) shall be paid into the Labor and Workforce Development Fund and used for the purposes specified in subdivision (j) of Section 2699.

(2) (A) The agency shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation



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within 60 calendar days of the postmark date of the notice received pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided within 65 calendar days of the postmark date of the notice given pursuant to paragraph (1), the aggrieved employee may commence a civil action pursuant to Section 2699.

(B) If the agency intends to investigate the alleged violation, it shall notify the employer and the aggrieved employee or representative by certified mail of its decision within 65 calendar days of the postmark date of the notice received pursuant to paragraph (1). Within 120 calendar days of that decision, the agency may investigate the alleged violation and issue any appropriate citation. If the agency determines that no citation will be issued, it shall notify the employer and aggrieved employee of that decision within five business days thereof by certified mail. Upon receipt of that notice or if no citation is issued by the agency within the time limits prescribed by subparagraph (A) and this subparagraph or if the agency fails to provide timely or any notification, the aggrieved employee may commence a civil action pursuant to Section 2699.

(C) Notwithstanding any other provision of law, a plaintiff may as a matter of right amend an existing complaint to add a cause of action arising under this part at any time within 60 days of the time periods specified in this part.

(b) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision of Division 5 (commencing with Section 6300) other than those listed in Section 2699.5 shall commence only after the following requirements have been met:



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(1) The aggrieved employee or representative shall give notice by online filing with the Division of Occupational Safety and Health and by certified mail to the employer, with a copy to the Labor and Workforce Development Agency, of the specific provisions of Division 5 (commencing with Section 6300) alleged to have been violated, including the facts and theories to support the alleged violation.

(2) (A) The division shall inspect or investigate the alleged violation pursuant to the procedures specified in Division 5 (commencing with Section 6300).

(i) If the division issues a citation, the employee may not commence an action pursuant to Section 2699. The division shall notify the aggrieved employee and employer in writing within 14 calendar days of certifying that the employer has corrected the violation.

(ii) If by the end of the period for inspection or investigation provided for in Section 6317, the division fails to issue a citation and the aggrieved employee disputes that decision, the employee may challenge that decision in the superior court. In such an action, the superior court shall follow precedents of the Occupational Safety and Health Appeals Board. If the court finds that the division should have issued a citation and orders the division to issue a citation, then the aggrieved employee may not commence a civil action pursuant to Section 2699.

(iii) A complaint in superior court alleging a violation of Division 5 (commencing with Section 6300) other than those listed in Section 2699.5 shall include therewith a copy of the notice of violation provided to the division and employer pursuant to paragraph (1).



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(iv) The superior court shall not dismiss the action for nonmaterial differences in facts or theories between those contained in the notice of violation provided to the division and employer pursuant to paragraph (1) and the complaint filed with the court.

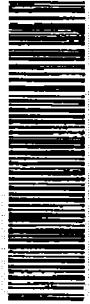
(B) If the division fails to inspect or investigate the alleged violation as provided by Section 6309, the provisions of subdivision (c) shall apply to the determination of the alleged violation.

(3) (A) Nothing in this subdivision shall be construed to alter the authority of the division to permit long-term abatement periods or to enter into memoranda of understanding or joint agreements with employers in the case of long-term abatement issues.

(B) Nothing in this subdivision shall be construed to authorize an employee to file a notice or to commence a civil action pursuant to Section 2699 during the period that an employer has voluntarily entered into consultation with the division to ameliorate a condition in that particular worksite.

(C) An employer who has been provided notice pursuant to this section may not then enter into consultation with the division in order to avoid an action under this section.

(4) The superior court shall review and approve any proposed settlement of alleged violations of the provisions of Division 5 (commencing with Section 6300) to ensure that the settlement provisions are at least as effective as the protections or remedies provided by state and federal law or regulation for the alleged violation. The provisions of the settlement relating to health and safety laws shall be submitted to the division at the same time that they are submitted to the court. This requirement shall



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be construed to authorize and permit the division to comment on those settlement provisions, and the court shall grant the division's commentary the appropriate weight.

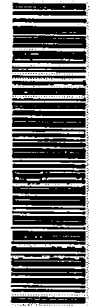
(c) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision other than those listed in Section 2699.5 or Division 5 (commencing with Section 6300) shall commence only after the following requirements have been met:

(1) (A) The aggrieved employee or representative shall give written notice by online filing with the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.

(B) A notice filed with the Labor and Workforce Development Agency pursuant to subparagraph (A) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75). The fees required by this subparagraph are subject to waiver in accordance with the requirements of Sections 68632 and 68633 of the Government Code.

(C) The fees paid pursuant to subparagraph (B) shall be paid into the Labor and Workforce Development Fund and used for the purposes specified in subdivision (j) of Section 2699.

(2) (A) The employer may cure the alleged violation within 33 calendar days of the postmark date of the notice sent by the aggrieved employee or representative. The employer shall give written notice within that period of time by certified mail to the aggrieved employee or representative and by online filing with the agency if the alleged violation is cured, including a description of actions taken, and no civil action pursuant



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to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the employee may commence a civil action pursuant to Section 2699.

(B) (i) Subject to the limitation in clause (ii), no employer may avail himself or herself of the notice and cure provisions of this subdivision more than three times in a 12-month period for the same violation or violations contained in the notice, regardless of the location of the worksite.

(ii) No employer may avail himself or herself of the notice and cure provisions of this subdivision with respect to alleged violations of paragraph (6) or (8) of subdivision (a) of Section 226 more than once in a 12-month period for the same violation or violations contained in the notice, regardless of the location of the worksite.

(3) If the aggrieved employee disputes that the alleged violation has been cured, the aggrieved employee or representative shall provide written notice by online filing with the agency and by certified mail to the employer, including specified grounds to support that dispute, to the employer and the agency. Within 17 calendar days of the receipt of that notice, the agency shall review the actions taken by the employer to cure the alleged violation, and provide written notice of its decision by certified mail to the aggrieved employee and the employer. The agency may grant the employer three additional business days to cure the alleged violation. If the agency determines that the alleged violation has not been cured or if the agency fails to provide timely or any notification, the employee may proceed with the civil action pursuant to Section 2699. If the agency determines that the alleged violation has been cured, but the employee still disagrees, the employee may appeal that determination to the superior court.



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(d) The periods specified in this section are not counted as part of the time limited for the commencement of the civil action to recover penalties under this part.

(e) This section shall become operative on July 1, 2021.

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LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, _____.

General Subject: Labor and Workforce Development Agency: Private Attorneys General Act of 2004.

The Labor Code Private Attorneys General Act of 2004 (act) authorizes an aggrieved employee to bring a civil action to recover specified civil penalties, that would otherwise be assessed and collected by the Labor and Workforce Development Agency (agency), on behalf of the employee and other current or former employees for the violation of certain provisions affecting employees. The act requires notice of the claim from the aggrieved employee to the agency and to the employer by certified mail. The act provides that an employee who prevails in an action under these provisions is entitled to recover his or her reasonable attorneys' fees and costs.

This bill would instead require that the notice to the agency be provided online, accompanied by a reasonable filing fee not to exceed a specified amount that would be deposited into the Labor and Workforce Development Fund to cover the



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administrative costs of processing the notice. The bill would, for cases filed on or after July 1, 2016, extend the timeframe for the agency to notify the employer and employee that it does not intend to investigate the alleged violation. The bill would entitle an employee who prevails in an action under these provisions to also recover his or her filing fees.

Existing law provides that the court review and approve any penalties sought as a part of a proposed settlement of a claim.

This bill would require the proposed settlement agreement to be also sent to the agency. This bill would, until July 2021, authorize the agency to extend the time to complete its investigation by 60 days when the agency determines an extension is necessary and issues a notice, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.



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1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the State of California, County of Los Angeles. I am over the age of
4 18 and not a party to the within suit; my business address is 1840 Century Park East, Suite 450,
5 Los Angeles, California 90067.

6 On **June 16, 2016**, I served the document described as: **MOTION FOR JUDICIAL
7 NOTICE; MEMORANDUM OF POINTS AND AUTHORITIES; PROPOSED ORDER**
8 on the interested parties in this action by sending on the interested parties in this action [] a
9 true copy thereof to interested parties as follows [or] as stated on the attached service list:

10 **See attached service list.**

11 **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the
12 envelope(s) for mailing in the ordinary course of business at Los Angeles,
13 California. I am "readily familiar" with this firm's practice of collection and
14 processing correspondence for mailing. Under that practice, sealed envelopes
15 are deposited with the U.S. Postal Service that same day in the ordinary course
16 of business with postage thereon fully prepaid at Los Angeles, California.

17 **BY E-MAIL:** I hereby certify that this document was served from Los
18 Angeles, California, by e-mail delivery on the parties listed herein at their most
19 recent known e-mail address or e-mail of record in this action.

20 **BY FAX:** I hereby certify that this document was served from Los Angeles,
21 California, by facsimile delivery on the parties listed herein at their most
22 recent fax number of record in this action.

23 **BY PERSONAL SERVICE:** I personally delivered the document, enclosed
24 in a sealed envelope, by hand to the offices of the addressee(s) named herein.

25 **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's
26 practice of collection and processing correspondence for overnight delivery.
27 Under that practice, overnight packages are enclosed in a sealed envelope with
28 a packing slip attached thereto fully prepaid. The packages are picked up by
the carrier at our offices or delivered by our office to a designated collection
site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is
true and correct.

Executed on **June 16, 2016**, at Los Angeles, California.

Greg Fisk
Type or Print Name


Signature

SERVICE LIST

1 2 3 4 5	Frederick Bennett 111 North Hill Street, Room 546 Los Angeles, CA 90012 <i>via U.S. mail</i>	Superior Court of Los Angeles County: Respondent
6 7 8 9 10	Robert Gordon Hulteng Joshua Joseph Cliffe Emily Erin O'Connor Scott D. Helsinger Littler Mendelson, PC 650 California Street, 20th Floor San Francisco, CA 94108-2693 <i>via FedEx</i>	Marshalls of CA, LLC: Real Party in Interest
11 12 13 14	Hon. William F. Highberger Los Angeles Superior Court 600 S. Commonwealth Avenue Los Angeles, CA 90005 <i>via U.S. mail</i>	Respondent
15 16 17 18	Mary-Christine Sungaila Martin Max Ellison Haynes & Boone, LLP 600 Anton Boulevard, Suite 700 Costa Mesa, CA 92626 <i>via U.S. mail</i>	International Association of Defense Counsel: Amicus curiae
19 20 21 22	Karen Kubala Mccay Pahl & Gosselin 160 West Santa Clara Street, Suite 1500 San Jose, CA 95113 <i>via U.S. mail</i>	California Apartment Association: Amicus curiae
23 24 25 26	Stephen D. Pahl Julie Elaine Bonnel Pahyl & McCay 225 West Santa Clara Street, Suite 1500 San Jose, CA 95113 <i>via U.S. mail</i>	California Apartment Association: Amicus curiae
27 28	Lisa Barnett Sween Natalja Marie Fulton Douglas G.A. Johnston	Prometheus Real Estate Group, Inc.: Amicus curiae

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Jackson Lewis P.C. 50 California Street, 9th Floor San Francisco, CA 94111 <i>via U.S. mail</i>	
Patrick Joseph Gregory Shook Hardy & Bacon, LLP One Montgomery Tower, Suite 2700 San Francisco, CA 94104 <i>via U.S. mail</i>	National Association of Manufacturers: Amicus curiae
Patrick Joseph Gregory Shook Hardy & Bacon, LLP One Montgomery Tower, Suite 2700 San Francisco, CA 94104 <i>via U.S. mail</i>	American Coatings Association: Amicus curiae
Patrick Joseph Gregory Shook Hardy & Bacon, LLP One Montgomery Tower, Suite 2700 San Francisco, CA 94104 <i>via U.S. mail</i>	NFIB Small Business Legal Center: Amicus curiae
Cynthia L. Rice California Rural Legal Assistance, Inc. 1430 franklin Street, Suite 103 Oakland, CA 94612 <i>via U.S. mail</i>	California Rural Legal Assistance, Inc.: Amicus curiae
Cynthia L. Rice California Rural Legal Assistance, Inc. 1430 franklin Street, Suite 103 Oakland, CA 94612 <i>via U.S. mail</i>	California Rural Legal Assistance Foundation: Amicus curiae
Cynthia L. Rice California Rural Legal Assistance, Inc. 1430 franklin Street, Suite 103 Oakland, CA 94612 <i>via U.S. mail</i>	National Employment Law Project and the Legal Aid Society: Amicus curiae

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<p>Cynthia L. Rice California Rural Legal Assistance, Inc. 1430 franklin Street, Suite 103 Oakland, CA 94612</p> <p><i>via U.S. mail</i></p>	<p>Employment Law Center: Amicus curiae</p>
<p>William Turley The Turley Law Firm, APLC 7428 Trade Street San Diego, CA 92121</p> <p><i>via U.S. mail</i></p>	<p>Consumer Attorneys of California: Amicus curiae</p>
<p>Apalla U. Chopra O'Melveny & Myers 400 South Hope Street Los Angeles, CA 90071</p> <p><i>via U.S. mail</i></p>	<p>Employers Group: Amicus curiae</p>
<p>Julie Rae Trotter Call & Jensen 610 Newport Center, Drive #700 Newport Beach, CA 92660</p> <p><i>via U.S. mail</i></p>	<p>Retail Litigation Center, Inc.: Amicus curiae</p>
<p>Julie Rae Trotter Call & Jensen 610 Newport Center, Drive #700 Newport Beach, CA 92660</p> <p><i>via U.S. mail</i></p>	<p>California Retailers Association: Amicus curiae</p>
<p>Julie Rae Trotter Call & Jensen 610 Newport Center, Drive #700 Newport Beach, CA 92660</p> <p><i>via U.S. mail</i></p>	<p>California Grocers Association: Amicus curiae</p>
<p>Michael D. Singer Cohelan Khoury & Singer 605 "C" Street, Suite 200 San Diego, CA 92101</p> <p><i>via U.S. mail</i></p>	<p>California Employment Lawyers Association: Amicus curiae</p>