

Plaintiff	Margarita Orocio	Nicole Barvie
Defendant	Freshway Farms LLC	Brian Daly

PROPOSED TENTATIVE

The original complaint, filed by plaintiff Margarita Orocio against defendant Freshway Farms, LLC (defendant), was filed on April 8, 2025, asserting civil penalties under Labor Code section 2699, et seq, pursuant to Private Attorneys General Act (the PAGA). For our purposes, plaintiffs in the first amended pleading ask for civil penalties under the PAGA because defendant failed to provide compliant meal and rest periods; allow employees to take duty-free meal and rest periods; pay all minimum, sick pay, regular and overtime wages; correctly calculate the regular rate of pay; to pay within seven (7) days of the close of payroll; pay for all hours worked; maintain true and accurate records; reimburse for required business expenses; permit inspection of payroll records.

On July 3, 2025, defendant filed an answer generally denying all allegations. Defendant included a request for an early evaluation conference and stay in its answer and renewed its request in a case management conference statement filed on September 11, 2025. On September 23, 2025, the court advised defendant to file its motion.

It did so on November 6, 2025. Plaintiff has filed opposition (labeled an objection), arguing she does not oppose an early evaluation conference conducted in good faith and supported by meaningful information exchange, but to the extent that defendant seeks to invoke PAGA’s new “early evaluation” procedure as a basis to obtain a stay of proceedings while continuing to categorically deny liability and withhold representative discovery, good cause exists to deny the request. Reply has been filed. All briefing has been examined.

Before addressing the merits, the court will detail the requirements of the statutory scheme at issue. Pursuant to section 2699.3, subdivision (f)(1)(A), an employer with 100 or more employees “may file a request for an early evaluation conference in the proceedings . . . and a request for a stay of court proceedings prior to or simultaneous with that defendant’s responsive pleading or other initial appearance in the action that includes the claim.”

The purpose of the neutral evaluation “shall include, but” is not limited to, an evaluation of all the following, as applicable:

- whether any of the alleged violations occurred and if so, whether the defendant has cured the alleged violations;

- the strengths and weaknesses of plaintiffs’ claims and the defendant’s defenses;
- whether plaintiffs’ claims for penalties can be settled in whole or in part; and
- whether the parties should share “other information that may facilitate early evaluation and resolution of the dispute.”

(§ 2699.3, subd. (f)(1)(B)(i) to (iv).)

“A request for an early evaluation conference by a defendant . . . shall include a statement regarding whether the defendant intends to cure any or all of the alleged violations, specify the alleged violations it will cure, if applicable, and identify the allegations it disputes.” (§ 2699.3, subd. (f)(2).) “Upon the filing of a request for an early evaluation conference by a defendant and, if requested, a stay of proceedings, a court shall stay the proceedings and issue an order that does the following, absent good cause for denying defendant's request in whole or in part . . .” (§ 2699.3, subd. (f)(3).)

Defendant has not included a statement regarding its intent to cure any of the alleged violations, all of which have been expressly denied by the answer,¹ and it reserves the right to cure any such violations upon plaintiffs’ showing of a factual basis for the alleged violation. Plaintiff argues this itself provides good cause to deny the request as it is contrary to Legislative intent for early evaluations, which is limited to circumstances involving cure and settlement resolution; that an early evaluation conference process cannot resolve merits questions about defendant’s liability; and that an early evaluation conference would waste judicial and party resources. (Opposition, p. 5, ll. 17-19—“A request framed in this manner, devoid of proposed cures, concrete remedial steps, or a substantive explanation of how the statutory process will be used, does not satisfy the purpose or requirements of Labor Code § 2699.3(f).”) Plaintiff asserts the true objective here is delay and procedural manipulation. As such, she argues that good cause exists to deny the request.

However, the scheme distinguishes between two distinct pursuits (with different requirements): 1) one in which defendant indicates it will cure some or all violations; and 2) one in which defendant disputes some or all of plaintiff’s allegations. And although the statute clearly allows for defendant to deny any violation and explore “the strengths and weaknesses of plaintiffs’ claims and the defendant’s defense,” there is a very real logistical problem. The statute provides that defendant that is disputing any alleged violations must submit to the neutral evaluator and serve on the plaintiff a confidential statement that includes for use solely for the early evaluation conference, the basis and evidence for disputing those

¹ The answer states: “Defendant disputes all allegations in Plaintiff Margarita Orocio’s (“Plaintiff”) “Representative Action Complaint” (the “Complaint”). As such, currently, Defendant is unaware of any possible cure of the alleged violations.”

alleged violations. And although not expressly contemplated by the statutory scheme, plaintiff should have an opportunity in turn to comment and address defendant's claims, all of which requires some time. The purpose of the evaluation with these competing representations in mind would be to determine whether any violations occurred, and if so, whether they can be cured; the strengths and weaknesses of plaintiff's claims and defendant's defenses; whether plaintiff's claims can be settled in whole or in part; and whether other information should be shared. This takes time and the statute provides for this all to occur *within 100 days*. (§ 2699, subds. (f)(3)(A); and (f)(11) .)² In contrast, if, on the other hand, defendant plans to cure some of the claimed violations, defendant must present a confidential statement that includes the proposed plan to cure within 21 days after the court's order. Plaintiff in turn has 21 days after service of the defendant's plan to cure to submit a confidential statement addressing the factual basis of each of the alleged violations, the number of penalties for each violation, attorney's fees and costs, and any demand for settlement of the case in its entirety. In other words, when defendant intends to cure violations (rather than just explore allegations of violations), the path has been considered and laid out by the Legislature to fit neatly within the 100-day deadline.

That said, it is unclear how to proceed under these strictures. It appears to the court that a necessary precondition to an effective early evaluation is an expedited or speedy discovery production. It is unclear whether at least some discovery will be needed in order for the conference to be meaningful (which is contemplated by the statutory scheme's express acknowledgment that the conference is to consider whether "other information that may facilitate early evaluation and resolution of the dispute") and if so, whether this "other information" found to be useful can be produced in the short time frame contemplated. If defendant will need long periods of time before producing discovery to plaintiff, as an example, necessitating months, it appears to the court that "good cause" would exist to deny the defendant's early evaluation request. The purpose of the statutory scheme is "early evaluation"; if that cannot be accomplished within the statutory time frame required by the statute, "evaluation" would be an illusory process, amounting only to delay. "Good cause" therefore would exist to deny the request and a stay.³ The court directs the parties to address these concerns at the hearing.

Moreover, the statute is silent on how the neutral evaluator is supposed to lead the discussion when the fact of a violation is in dispute. Instead, it states: If the

² Subdivision (f)(3)(A) provides the conference must be scheduled within 70 days of the date of the order and subdivision (f)(11) provides "The early evaluation process shall not extend beyond 30 days unless parties mutually agree to extend time." It thus appears that the entire process must be completed within 100 days.

³ Put more forcefully, if defendant desires an early evaluation, it most likely must provide discovery to the plaintiff on an expedited basis (working within the accelerated time frame of the statutory scheme). If that cannot be done, the early evaluation process becomes illusory. This issue must be addressed at the hearing.

other alleged violations remain in dispute, the court shall have discretion to defer consideration of the parties' agreement until further litigation proceedings. (§ 2699.3, subd. (f)(7).)

Finally, the parties do not discuss whether they contemplate a "judge or commissioner" to oversee the evaluation, or whether a private mediator, paid for by the parties, is appropriate. Both appear to be authorized. The parties should be prepared to discuss this issue. The evaluator will be authorized to order expedited discovery, to the extent deemed necessary.

Summary:

- The court directs the parties to address its discovery obligations to facilitate the early evaluation conference process under the statutory scheme. The court can deny the request and the stay if "good cause" exists, and in the court's view good cause would exist if defendant were not prepared to provide discovery in a timely way (within the statutory times frames contemplated, leaving room for assessment, within the 100-day requirement). If discovery will take months to accomplish, an "early evaluation" becomes illusory, and "good cause" exists to deny the request. The parties must address this at the hearing.
- The parties should address whether a private neutral evaluator is contemplated, meaning the parties would pay for it, or an appointment by the court of neutral evaluation (a former judge), at court expense.
- If the court is not satisfied with the explanations, and notably the parties' obligations to provide timely discovery to facilitate the early evaluation process, it will deny the request and stay for good cause.
- If the court is satisfied with the explanations, it will grant the request and issue a stay. It will appoint either a private mediator at the parties' expense or a neutral evaluator (a former judge) at court expense. The court directs that the early evaluation conference must be held within 70 days of the court's signed order, although the specific date will be set by the neutral evaluator. Defendant must comply with section 2699.3, subdivision (f) (3)(C) as to those allegations it denies or disputes; in this regard the court directs that the confidential statement for this purpose must be submitted to the neutral evaluator within 21 days of the signed order, and plaintiff has 21 days to offer a confidential response from the notice of defendant's confidential statement. To those allegations or violations defendant plans to cure, defendant and plaintiff must comply

with the express terms section 2699.3, subdivision (f)(3)(B) and (E)(i) to (iv).

- The parties should come prepared to discuss an abbreviated CMC schedule to monitor the progress of the early evaluation process (if the motion is granted).
- Defendant is directed to provide a proposed order for signature commensurate with the court's conclusions in this order following today's hearing.

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