PROPOSED TENTATIVE

The original complaint, filed by plaintiffs Bryan Tapia and Adrian Velasquez (plaintiffs) against defendant Kenai Drilling Limited (defendant), was filed on October 2, 2024 as a class action exclusively. Defendant answered on November 15, 2024. On May 27, 2025, the court granted plaintiffs' request to file a first amended complaint. The first amended complaint was filed on the May 27, 2025, which raised the same class action claims, but raised a new claim for 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 asks for civil penalties under the PAGA because defendant failed to pay all earned minimum wage compensation; failed to pay all earned overtime compensation; failed to provide legally required meal and rest periods; failed to pay timely all wages during and at the end of employment; failed to furnish complete, accurate itemized wage statements; failed to maintain accurate employment records; and failed to reimburse for necessary business-related expenses. On June 4, 2025, a notice of related case was filed relating the two cases (*Copeland, et al, v. Kenai Drilling Limited*, Case No. 25CV01181, and Copeland v. Kenai Drilling Limited, 25CV02636).

On June 30, 2025, defendant, before filing a responsive pleading, filed a request for an early evaluation conference and a stay under the newly minted PAGA scheme. Defendant denies that it failed to provide all legally required meal- and rest-periods; failed to indemnify its employees for necessary business expenses; required employees work to "off-the-clock"; disputes any assertions the employees' wage statements were deficient and/or inaccurate; and denies there were any wage statement violations as asserted by plaintiffs. Defendant asks the court to appoint a neutral mediator for an early evaluation conference and stay the pending resolution of that process. Plaintiff has filed opposition, claiming initially that the request for an early evaluation conference is untimely because defendant failed to file a responsive pleading within 30 days of the filing of the first amended complaint; good cause exists to deny the request because (according to plaintiffs) defendant "cannot timely produce documents and data" for the early evaluation process to be effective; and finally, defendant will have to produce a confidential statement concerning its ability to cure, which it has not indicated it will do. Defendant on August 12, 2025 filed a reply. 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 of the following, as applicable: whether any of the alleged violations occurred and if so, whether the defendant has cured the allegation 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 pursuant to paragraph (1) 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 and a stay, "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:

- Schedules a mandatory early evaluation conference for a date as soon as possible from the date of the order but in no event later than 70 days after issuance of the order;
- Directs defendant "that has filed a statement that it intends to cure any and all of the alleged violations" "to submit confidentially to the neutral evaluator and serve on the plaintiff, within 21 days after issuance of the order, the employer's proposed plan to cure those violations;
- Directs a defendant that is disputing any alleged violations to submit to the neutral evaluation 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 alleged violations;
- Directs the parties to appear at the time set for the conference;
- Directs plaintiff to submit to the neutral evaluator and serve on the defendant no more than 21 days after service of defendant's proposed cure plan, a confidential statement that includes, to the extent reasonably known, for use solely for the purpose of the early evaluation conference, the factual basis for each of the alleged violations, the amount of penalties claimed for each violation if any, and the basis for that calculation, the amount of attorney's fees and costs incurred to date, if any, a demand for settlement of the case in its entirety, and the basis for accepting or not accepting the employer's proposed plan for curing any or all alleged violations. (§ 2699.3, subd. (f)(3)(A) to (E).)

If the neutral evaluator accepts the employer's proposed plan for curing any or all alleged violations, the defendant must present evidence within 10 calendar days or such longer period as agreed by the parties or set by the neutral evaluator, demonstrating that the cure has been accomplished. If the defendant "indicated it would cure any alleged violations and fails to timely submit the required evidence showing correction of the violation or violations to the neutral evaluator and plaintiff, the early evaluation process and any stay may be terminated by the court." (§ 2699.3, subd. (f)(4).) If the neutral evaluator and the parties agree that the employee has cured the allegation violations that it stated an intention to cure, the parties shall jointly submit a statement to the court setting forth the terms of their agreement. (§ 2699.3, subd. (f)(5)). If no other alleged violations remain in dispute, the parties and the court shall treat the parties' submission as a proposed settlement. (§ 2699.3, subd. (f)(6).) If the 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.)) If the neutral evaluator or plaintiff does not agree that the employer has cured the alleged violations that it stated an intention to cure, "the employer may file a motion to request the court to approve the cure and submit evidence showing correction of the alleged violations. The court may request further briefing and

evidentiary submissions from the parties in response to that motion and evidence." (§2699.3, subd. (f)(9).)

The early evaluation process shall not extend beyond 30 days unless the parties mutually agree to extend time. (2699.3, subd. (f)(11.) Early evaluation conferences shall be conducted by a judge or commissioner or such other person knowledgeable about and experienced with issues arising under the code whom the court shall designate." (2699.3, subd. (f)(12.).)

With this legal background, the court makes the following determinations.

The court directs defendant to confirm on the record at the hearing that it employs 100 or more employees.

Second, the court rejects plaintiff's claim that the request is untimely. It is true that defendant's answer was due on June 27, 2025, 30 days after the first amended complaint was filed. It is also true that the PAGA claims were first raised in the first amended complaint, and the statutory scheme expressly provides that a request for early evaluation under the statute can exist before a responsive pleading has been filed. Further, it is settled that a responsive pleading may be filed after 30 days when no entry of default has been obtained. (See, e.g., *Goddard v. Pollock* (1974) 37 Cal.App.3d 137, 141 [it is now well established by the case law that where a pleading is belatedly filed, but at the time when a default has not yet been taken, the plaintiff, has, in effect, granted the defendant additional time within which to plead and he is not strictly in default]; see also *Fiorentino v. City of Fresno* (2007) 150 Cal.App.4th 596, 605, fn. 3 [until plaintiff files a request for entry of default, courts have deemed plaintiff to have in effect "allowed" the defendant "further time" to response].) These rules apply here. As plaintiff did not seek entry of default, a responsive pleading – and thus the request for early evaluation – was timely, as plaintiff is deemed to have granted defendant additional time. Three days after the responsive pleading deadline is not significant.

Third, the court directs defendant at the hearing to provide clarity on how it plans to proceed with the early evaluation conference process. 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. While defendant in its request for early evaluation rejects any claim that it failed to provide meal and rest breaks, failed to indemnify, never asked employees to work "off the clock," always provided accurate wage statements, and denies any and all "wage statement violations" asserted by plaintiffs, it does not challenge ***all*** claimed violations listed in the operative pleading. For example, defendant does not dispute the alleged any failure to pay for overtime, and does not dispute that if failed to pay timely wages on termination. Is it planning to cure those alleged violations?[1]

[1] Defendant in reply does not address the issue to the court's satisfaction, claiming simply that "it is unable to come up with a plan to "cure" this alleged violation." There are sufficient allegations in the operative pleading for defendant to determine whether it is even contemplating curing any alleged violations, or not. If it cannot determine what is alleged, it must file a demurrer/motion to strike, and then before the responsive answer, seek a request.

Different provisions of statutory scheme apply to these differing requests. If defendant is disputing any or all alleged violations, it must submit to the neutral evaluator and serve on the plaintiff a confidential statement that includes the basis and evidence of disputing those alleged violations. No statutory timeframe is expressly indicated for this, although reasonableness is contemplated within the mandatory 70 days for the evaluation hearing from the date of the order. 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. 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. Whatever path is chosen, all has to be accomplished within 70 days of the court's order, because that is the last day for the conference, although the parties may extend the early evaluation process beyond 30 days unless mutually agreed upon. Defendant must be clearer about how it wishes to proceed.

There is a greater issue subsumed within this. The statutory scheme contemplates that the court must grant defendant's request and issue a stay ***unless*** "good cause" is shown, although the provision does not define "good cause," meaning (as a practical matter) that its contours depend largely on the circumstances of each case. In any event, in either situation (denial of the allegations or a plan to cure), defendant will be required to provide a factual basis for a claim and evidence in support, and plaintiff will be required to respond with evidence and argument. Can the discovery in defendant's possession (the usual fuel that fires the PAGA engine) be provided in a timely way in order to allow for a ***meaningful*** early evaluation process (a hearing must be had no more than 70 days after the court's order, and the early evaluation process shall not extend beyond 30 days unless parties mutually agreed)?[2] It appears to the court that a necessary precondition to an effective early evaluation is an expeditated or speedy discovery production. If defendant will continue to 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

---

[2] The court is not persuaded by defendant's claim, made in reply, that nothing in the "PAGA statute provides for discovery as part of the Early Neutral Evaluation process . . . ." Even though the statute does not expressly discuss discovery, it simply is untrue to say that because discovery is not expressly discussed it is not otherwise required. The law abhors an idle act and an early evaluation without sufficient discovery amounts to just that – an idle act. (See, e.g., *Resure, Inc. v. Superior Court* (1996) 42 Cal.App.4th 156, 165.) The court expects defendant to explain ***how*** it will be able to provide sufficient discovery to make the early evaluation meaningful and not a perfunctory exercise in futility.

the defendant's early evaluation request.[3] 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.[4] The court directs the parties to address these concerns at the hearing.

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 court will appoint a neutral evaluator, at court expense, or appoint a private evaluator with wage and hour experience, at the expense of the parties.

Summary:

- The court directs defendant to confirm that it has 100 or more employees.
- The court rejects plaintiff's claim that defendant's request for an early evaluation conference is untimely.
- The court directs defendant to address whether it denies all alleged violations raised in the operative pleading, or only some, and notably whether it will offer a plan to cure those claims not disputed.
- The court directs the parties to address its discovery obligations in order to facilitate the early evaluation conference process under the statutory scheme. The court can deny the request and stay if "good cause" exists, and in the court's view good cause would exist if defendant is not prepared to provide discovery in a timely way (within the statutory times frames contemplated, leaving room for assessment, within the 70-day requirement -- although the process can last no more than 30 days without mutual consent) 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.

---

[3] Plaintiffs identify a not uncommon problem in the PAGA context that underscores the point. Plaintiffs claim that since December 2024 they have sought time and pay records of putative aggrieved employees. In a declaration from attorney Ryan Chuman, Mr. Chuman observes that plaintiff propounded discovery on December 20, 2024, and defendant served objection only responses on February 28, 2025. Defendant of course has a right to object, and during subsequent meet and confer discussions, Mr. Chuman indicated that defense counsel indicated it would take "at least three (3) months to produce a sampling of the responsive time and pay records . . . ." Defendant will have to be able to overcome these timing hurdles (if they remain relevant) in order for the early evaluation procedure to have any meaning.

[4] Put more forcefully, if defendant desires an early evaluation, it must provide discovery to the plaintiff on an expediated 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.

- If the court is not satisfied with the explanations, and notably the parties' obligations to provide timely discovery in order 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 response. 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 in order 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.