

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Carlos Diaz v. Chevron Corporation, et al.

Diaz · No. 25-cv-03327-EMC · Decided December 15, 2025

SUMMARY

The United States District Court for the Northern District of California resolves cross-motions for partial summary judgment concerning Carlos Diaz’s California Private Attorneys General Act claim against Contra Costa Electric. The court holds that CCE waived its ability to invoke California Labor Code section 2699.6 and to compel arbitration after litigating the matter for approximately five years without pursuing those defenses. The court further holds that the PAGA notice broadly covers uncompensated employer-mandated travel time, but does not cover alleged uncompensated donning and doffing of protective equipment.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Edward M. Chen
JURISDICTION	United States District Court for the Northern District of California
DECIDED	December 15, 2025
DOCKET	25-cv-03327-EMC
DISPOSITION	other
PROCEDURAL POSTURE	Cross-motions for partial summary judgment concerning the scope and applicability of a California Private Attorneys General Act claim.
STANDARD OF REVIEW	Summary judgment is proper when the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The evidence is viewed in the light most favorable to the nonmoving party, with all justifiable inferences drawn in that party's favor. A defendant may prevail by identifying the plaintiff's failure to make a showing sufficient to establish an essential element, while a plaintiff seeking judgment on its own claim must establish every essential element through undisputed facts.
PRECEDENTIAL VALUE	Unknown; federal district court order.

TOPICS

wage and hour

summary judgment

arbitration

waiver

construction law

PRACTICE AREAS

employment law

wage and hour

labor law

civil procedure

arbitration

QUESTIONS PRESENTED

1. Whether CCE waived its right to invoke California Labor Code section 2699.6 after litigating the case for approximately five years without pursuing that defense.
2. Whether CCE waived its right to compel arbitration under the applicable collective bargaining agreements by litigating the case extensively without seeking arbitration.
3. Whether the PAGA notice limited the representative claim to employees required to report to specified parking lots at specified times, or instead encompassed uncompensated employer-mandated travel time more broadly.
4. Whether the PAGA notice also encompassed claims for uncompensated time spent donning and doffing protective gear or equipment.

HOLDINGS

1. CCE waived its right to rely on section 2699.6 by litigating the merits for years in state court without timely asserting and pursuing the statute as a bar to the PAGA claim.
2. CCE waived its right to seek arbitration by litigating the case in state court for approximately five years without pursuing its arbitration defense.
3. The PAGA notice was not limited to employees who were required to report to particular parking lots at specified times; it sufficiently encompassed the broader alleged failure to compensate employees for employer-mandated travel time, including travel from refinery entrances to worksites.
4. The PAGA notice did not sufficiently encompass a claim for uncompensated time spent donning or doffing protective gear or equipment.

KEY QUOTATIONS

“The fact that CCE never raised its § 2699.6 argument before the state court – though it could have been raised through, e.g., a motion for summary adjudication – is conduct so inconsistent with an intent to enforce the right as to induce a reasonable belief that such right has been relinquished.” (Section II.B.1)

“The PAGA notice extends more broadly to uncompensated employer-mandated travel time.” (Conclusion)

FACTUAL BACKGROUND

Diaz worked for Contra Costa Electric at Chevron's Richmond refinery from approximately October 2018 through January 2019. He alleged that CCE failed to pay employees for employer-mandated travel between refinery entrances or parking lots and worksites, and that CCE improperly docked pay when employees left designated parking lots before the end of their shifts. The PAGA claim sought relief on behalf of allegedly aggrieved employees at both the Richmond and El Segundo refineries. CCE relied on collective bargaining

agreements and California Labor Code section 2699.6, while Diaz argued that CCE waived that defense by litigating the case for years without invoking it.

PROCEDURAL HISTORY

Carlos Diaz filed a wage-and-hour action in California state court in 2020 against Chevron Corporation, Nooter, and Contra Costa Electric. Diaz settled with Chevron and Nooter, leaving CCE as the remaining defendant. CCE removed the case to federal court in April 2025. The federal court allowed removal to stand because Diaz did not seek remand based on the asserted untimeliness defect, and the parties then filed cross-motions for partial summary judgment directed to the PAGA claim.

DISPOSITION

other

CASES CITED

- *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49, 252, 255 (1986)
- *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)
- *Cabo Distrib. Co. v. Brady*, 821 F. Supp. 601, 607 (N.D. Cal. 1992)
- *Fontenot v. Upjohn Co.*, 780 F.2d 1190, 1194 (5th Cir. 1986)
- *Oswald v. Murray Plumbing & Heating Corp.*, 82 Cal. App. 5th 938, 941 (2022)
- *Redwood Theatres, Inc. v. Festival Enters., Inc.*, 908 F.2d 477, 483 n.6 (9th Cir. 1990)
- *AP-Colton LLC v. Ohaeri*, 240 Cal. App. 4th 500, 507 (2015)
- *Dones v. Life Ins. Co. of N. Am.*, 55 Cal. App. 5th 665, 677-78 (2020)
- *Hill v. Xerox Bus. Servs., LLC*, 59 F.4th 457, 460 (9th Cir. 2023)
- *Rojas-Cifuentes v. Superior Court*, 58 Cal. App. 5th 1051, 1059 (2020)
- *Williams v. Superior Ct.*, 3 Cal. 5th 531, 545-46 (2017)
- *Bowen v. Target Corp.*, No. EDCV 16-2587 JGB (MRWx), 2020 WL 1931278, at *4-*5 (C.D. Cal. Jan. 24, 2020)
- *Mays v. Wal-Mart Stores, Inc.*, 354 F. Supp. 3d 1136, 1148 (C.D. Cal. 2019)
- *Ibarra v. Chuy & Sons Labor, Inc.*, 102 Cal. App. 5th 874, 885 (2024)
- *Olson v. Tesoro Ref. & Mktg. Co.*, No. C06-1311RSL, 2007 U.S. Dist. LEXIS 67747, at *2 (W.D. Wash. Sept. 12, 2007)
- *Ripley v. Sunoco, Inc.*, 287 F.R.D. 300, 323 (E.D. Pa. 2012)
- *Jones v. CertifiedSafety, Inc.*, No. 17-cv-02229-RS, 2017 U.S. Dist. LEXIS 233226, at *5 (N.D. Cal. Aug. 28, 2017)
- *Wyatt v. City of Burlingame*, No. 16-cv-02681-DMR, 2017 U.S. Dist. LEXIS 20175, at *24, *29 (N.D. Cal. Feb. 13, 2017)

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6 7
CARLOS DIAZ, Case No. 25-cv-03327-EMC 8 Plaintiff, ORDER GRANTING IN PART AND 9
v. DENYING IN PART DEFENDANT’S MOTION FOR SUMMARY 10 CHEVRON
CORPORATION, et al., JUDGMENT; AND GRANTING IN PART AND DENYING IN PART
11 Defendants. PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT 12 13 Docket Nos. 27,
30 14 15 Plaintiff Carlos Diaz initiated this wage-and-hour lawsuit in state court back in 2020.

16 Three companies were named as defendants: Chevron, Nooter,¹ and Contra Costa Electric 17
(“CCE”). The case was litigated in state court for approximately five years. During that time, Mr.
18 Diaz settled his claims against Chevron and Nooter.

Thus, at this juncture, the only remaining 19 defendant is CCE. In April 2025, CCE removed the
instant case from state to federal court. The 20 Court allowed the removal to stand because Mr.
Diaz did not move for a remand based on 21 untimeliness (i.e., the Court could not sua sponte
remand based on a nonjurisdictional defect). 22 Now pending before the Court are cross-motions
for partial summary judgment.

The motions are 23 targeted at only one of the claims brought by Mr. Diaz, specifically, his claim
for violation of the 24 California Private Attorneys General Act (“PAGA”). 25 Having considered
the parties’ briefs and accompanying submissions, as well as the oral 26 argument of counsel, the
Court hereby GRANTS in part and DENIES in part each party’s motion.

27 1 I. FACTUAL & PROCEDURAL BACKGROUND 2 CCE is an electrical construction firm.
See Church Decl. ¶ 4. According to Mr. Diaz, he 3 was a CCE employee and, in conjunction with
that employment, worked at a Chevron refinery. 4 See FAC ¶¶ 15-16. CCE had its employees
work at two different Chevron refineries: one in 5 Richmond, California, and the other in El
Segundo, California.

Mr. Diaz worked at the Richmond 6 refinery, from approximately October 2018 to January 2019.
See FAC ¶ 8. 7 According to Mr. Diaz, CCE violated California wage-and-hour law primarily
because it 8 failed to pay him and others similarly situated for all hours worked. Mr. Diaz
maintains that CCE 9 failed to pay him and others similarly situated for employer-mandated travel
– i.e., the time they 10 spent traveling between the refinery parking lot/entrance and the actual
worksite within the 11 refinery – both at the beginning of the day and at the end of the day (the
reverse route).

Mr. Diaz 12 also asserts that, at the end of the day, if they arrived at the parking lot before the end
of the shift 13 time and left the parking lot, their pay would be docked. See FAC ¶¶ 2, 33-36. The
following is a 14 summary of Mr. Diaz’s allegations of unlawful conduct as alleged in this suit: 15
(a) Defendants’ policy and practice of failing to compensate 16 Plaintiff and Employees for all
hours worked at the start of their workdays, starting from the time Defendants required 17 Plaintiff

and Employees to report to designated parking lots for employer-mandated travel to their worksites; 18 (b) Defendants' policy and practice of not compensating 19 Plaintiff and Employees for all hours worked at the end of their workdays, including through the time Plaintiff and 20 Employees were able to depart after employer-mandated travel from their worksites back to designated parking lots; 21 (c) When Plaintiff and Employees left early from designated 22 parking lots, Defendants' policy and practice of docking their pay in increments of time that exceeded the amount of 23 time that Plaintiff and Employees left early from work....

24 FAC ¶ 2. 25 Among the causes of action pled in the operative first amended complaint ("FAC") is a 26 violation of PAGA. This claim allows Mr. Diaz to seek relief on behalf of others besides himself 27 – both those who worked at the Richmond refinery (as Mr. Diaz did) and those who worked at the 1 the Richmond refinery.

In his FAC, he added allegations about the El Segundo refinery. Chevron 2 (prior to settling with Mr. Diaz) moved to strike the allegations related to the El Segundo refinery, 3 arguing that such allegations were outside the scope of the PAGA notice.

The state court rejected 4 that argument. See Elster Decl., Ex. 10 (Order at 2) ("The fact that plaintiff's LWDA notice 5 happens to reference works at the Richmond refinery [specifically] does not preclude plaintiff 6 from representing similarly situated workers at the El Segundo refinery."). 7 In the pending motions for partial summary judgment, the parties seek clarity as to which 8 allegedly aggrieved CCE employees are entitled to PAGA relief.

9 II. DISCUSSION 10 A. Legal Standard 11 Federal Rule of Civil Procedure 56 provides that a "court shall grant summary judgment 12 [to a moving party] if the movant shows that there is no genuine dispute as to any material fact and 13 the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). An issue of fact is 14 genuine only if there is sufficient evidence for a reasonable jury to find for the nonmoving party.

15 See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986). "The mere existence of a 16 scintilla of evidence... will be insufficient; there must be evidence on which the jury could 17 reasonably find for the [nonmoving party]." *Id.* at 252. At the summary judgment stage, evidence 18 must be viewed in the light most favorable to the nonmoving party and all justifiable inferences 19 are to be drawn in the nonmovant's favor.

See *id.* at 255. 20 Where a defendant moves for summary judgment based on a claim for which the plaintiff 21 bears the burden of proof, the defendant need only point to the plaintiff's failure "to make a 22 showing sufficient to establish the existence of an element essential to [the plaintiff's] case." 23 *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). 24 Where a plaintiff moves for summary judgment on claims that it has brought (i.e., for 25 which it has the burden of proof), it "must prove each element essential of the claims... by 26 undisputed facts." *Cabo Distrib.*

Co. v. Brady, 821 F. Supp. 601, 607 (N.D. Cal. 1992); see also 27 Fontenot v. Upjohn Co., 780 F.2d 1190, 1194 (5th Cir. 1986) (stating that, “if the movant bears 1 an affirmative defense, he must establish beyond peradventure all of the essential elements of the 2 claim or defense to warrant judgment in his favor”) (emphasis omitted). 3 B. California Labor Code § 2699.6 4 As a general matter, the right to file a PAGA suit cannot be waived by contract.

However, 5 there is a provision in the Act – § 2699.6 – that “exempts construction workers from PAGA if a 6 [collective bargaining agreement] covers wages, hours and working conditions and (1) has a 7 grievance and arbitration procedure to redress Labor Code violations; (2) clearly waives PAGA; 8 and (3) authorizes the arbitrator to award all remedies available under the Labor Code.” Oswald v. 9 Murray Plumbing & Heating Corp., 82 Cal. App.

5th 938, 941 (2022). The relevant text from § 10 2699.6 is provided below: 11 (a) This part [i.e., Part 13 which consists of PAGA] shall not apply to an employee in the construction industry with 12 respect to work performed under a valid collective bargaining agreement that expressly provides for the wages, 13 hours of work, and working conditions of employees, premium wage rates for all overtime hours worked, and for 14 the employee to receive a regular hourly pay rate of not less than 30 percent more than the state minimum wage rate, and 15 the agreement does all of the following: 16 (1) Prohibits all of the violations of this code that would be redressable pursuant to this part and provides for a 17 grievance and binding arbitration procedure to redress those violations.

18 (2) Expressly waives the requirements of this part in 19 clear and unambiguous terms. 20 (3) Authorizes the arbitrator to award any and all remedies otherwise available under this code, 21 provided that nothing in this section authorizes the award of penalties under this part that would be 22 payable to the Labor and Workforce Development Agency. 23 24 (c) For purposes of this section, “employee in the construction 25 industry” means an employee performing work associated with construction, including work involving alteration, 26 demolition, building, excavation, renovation, remodeling, maintenance, improvement, repair work, and any other work 27 as described by Chapter 9 (commencing with Section 7000) 1 Cal. Lab.

Code 2699.6. 2 In the instant case, CCE relies on § 2699.6 to argue that some of the allegedly aggrieved 3 employees are barred from getting relief under PAGA because they are subject to CBAs that meet 4 the statutory criteria. CCE cites to CBAs for three different unions: 5 • The Inside Wiremen’s Agreements between Local Union 11 IBEW and the Los 6 Angeles County Chapter National Electrical Contractors Association.

See Mot. at 7 14 (asserting that some of the CCE employees at the El Segundo refinery are 8 covered by two CBAs, one covering the period 2019-2022 and the other 2023- 9 2026); Church Decl., Exs. A-B (CBAs). 10 • The CBAs for the Plumbers, Steamfitters & Refrigeration Fitters, U.A. Local 11 Union 342. See Mot. at 15 (asserting that some of the CCE employees at the 12

Richmond refinery are covered by three CBAs: “one from July 1, 2018, through June 30, 2021[;] one from July 1, 2021, through June 30, 2024[;] and a third from July 1, 2024, through June 30, 2027”); Church Decl., Exs.

C-D (CBAs).² 15 • The Pipe Trades Master Agreement for the UA District Council 16, including 16 Local 250. See Mot. at 16 (asserting that some of the CCE employees at the El 17 Segundo refinery are covered by the CBA, effective July 1, 2017); Church Decl., 18 Ex. E (CBA). 19 In response, Mr. Diaz argues that CCE has waived the right to invoke § 2699.6 because it 20 litigated for years in state court (e.g., engaging in discovery and motion practice) but did not bring 21 up the statute until now.

Mr. Diaz also argues that, even if there is no waiver, there is one 22 statutory criterion that has not been met. Specifically, he argues that the CBAs do not “prohibit[] 23 24 2 CCE provided copies of only the last two CBAs (covering the periods July 1, 2021-June 30, 2024, and July 1, 2024-June 30, 2027). It did not provide a copy of the first CBA (covering the 25 period July 1, 2018-June 30, 2021).

As a result, Mr. Diaz argues in his sur-reply that there is no basis for arbitration for any employees who worked before July 2021 (including himself). See 26 Sur-Reply at 1 (arguing that, at the very least, CCE’s reliance on § 2699.6 has no application to employees who worked prior to July 2021).

The Court need not address this argument because, as 27 discussed below, Mr. Diaz has a stronger argument – i.e., that CCE has waived the right to rely on 1 all of the violations of this code that would be redressable” under PAGA, Cal. Lab. Code § 2 2699.6(a)(1).”³ Opp’n at 10. 3 The Court agrees with Mr. Diaz that there has been waiver (and therefore does not address 4 his second argument).

Waiver in the situation before the Court has two components: (1) did CCE 5 waive its right to rely on § 2699.6, and (2) did CCE waive its right to arbitration? 6 1. Waiver of Right to Rely on § 2699.6 7 With respect to the first issue, there is no dispute that CCE could waive its right to rely on 8 § 2699.6. CCE has not argued, e.g., that § 2699.6 is jurisdictional in nature.

Cf. *Redwood 9 Theatres, Inc. v. Festival Enters., Inc.*, 908 F.2d 477, 483 n.6 (9th Cir. 1990) (taking note of ““the 10 traditional rule that the parties cannot by consent, waiver or estoppel obtain federal subject matter 11 jurisdiction””); *AP-Colton LLC v. Ohaeri*, 240 Cal. App. 4th 500, 507 (2015) (noting that 12 ““[s]ubject matter jurisdiction... cannot be conferred by waiver, consent, or estoppel””).

Waiver 13 of a substantive right under California law “means the intentional relinquishment or abandonment 14 of a known right”: “[t]he intention may be express, based on the waiving party’s

words, or 15 implied, based on conduct that is so inconsistent with an intent to enforce the right as to induce a 16 reasonable belief that such right has been relinquished.” *Dones v. Life Ins.*

Co. of N. Am., 55 Cal. 17 App. 5th 665, 677-78 (2020) (internal quotation marks omitted; emphasis added). 18 Here, CCE did not expressly waive its right to invoke § 2699.6. However, it implied 19 waived the right.⁴ As an initial matter, it is worth noting that, although CCE did mention § 2699.6 20 in its answer and amended answer, it was not in the context of making the argument it now makes 21 in the pending motion.

In its answer and amended answer, CCE asserted: “To the extent civil 22 penalties are sought pursuant to PAGA, such penalties would violate the Equal Protection Clause 23 of the United States and California Constitutions, as it arbitrarily and unjustly exempts some 24 employers to the exclusion of others. See Cal. Lab. Code § 2699.6.” Diaz Decl., Ex. 6 (CCE’s 25 3 This is the only statutory criterion that Mr. Diaz has put at issue.

He has not made any other 26 contention that any other criteria have not been met. 27 4 At the hearing, CCE suggested that there could never be an implied waiver until a final 1 Ans. ¶ 24); Diaz Decl., Ex. 7 (CCE’s Am. Ans. ¶ 24). CCE did not make any contention – as it 2 does now – that § 2699.6 precludes a PAGA claim from existing in the first instance (for those 3 employees covered by the statute and so long as the statutory criteria are met).

4 In any event, even if CCE did make, in one of its pleadings, an assertion along the lines of 5 the argument it now makes, it would fare no better. CCE never pursued that assertion and 6 substantively litigated the case on the merits for years in state court for years without making 7 further mention of § 2699.6.

Although CCE tries to minimize the litigation that took place 8 (noting, e.g., that there was a stay for a period of time), the record reflects that significant litigation 9 did take place, ranging from discovery, mediation, and a motion for summary adjudication.

The 10 fact that CCE never raised its § 2699.6 argument before the state court – though it could have been 11 raised through, e.g., a motion for summary adjudication – is conduct so inconsistent with an intent 12 to enforce the right as to induce a reasonable belief that such right has been relinquished. See 13 *Dones*, 55 Cal. App. 5th at 677-78. 14 CCE protests that the waiver analysis is misplaced because its argument is that there can be 15 no PAGA claim at all for those employees who meet the statutory criteria – i.e., even if it waived 16 its right to bring up § 2699.6, the statute entirely forecloses employees who meet the statutory 17 criteria from having a PAGA claim at all.

CCE focuses on the language in § 2699.6 that PAGA 18 “shall not apply to an employee in the construction industry with respect to work performed under 19 a valid bargaining agreement....” Cal. Lab. Code § 2699.6(a) (emphasis added). According to 20 CCE: 21 Section 2699.6 precludes

a PAGA claim in the first instance for certain construction employees, by carving them out of the PAGA's reach entirely....

23... [T]he actual question is not whether these PAGA claims could have been or can be arbitrated, but whether these PAGA claims even 24 existed to be arbitrated: Section 2699.6 says they do not exist when its elements are satisfied.

Thus, there can be no “waiver” by CCE to 25 compel arbitration of a PAGA claim where that claim does not exist 26 27 Reply at 5 (emphasis added). 1 as excluding certain construction employees entirely from PAGA or as a form of statutorily 2 prescribed arbitration in lieu of PAGA judicial remedies. But that dispute is a re herring. Waiver 3 obtains under either standard.

As noted above, general waiver standards apply since § 2699.6 is 4 not jurisdiction and is thus waivable if not timely asserted by the employer. And as noted below, 5 viewed as an arbitration clause, waiver obtains thereof as well. 6 As a matter of statutory construction as informed by public policy, sanctioning CCE's 7 conduct in this litigation would undermine the overall statutory scheme embodied by PAGA and § 8 2699.6 CCE's interpretation allowing it to assert § 2699.6 at this juncture is problematic because it 9 could encourage forum shopping.

A defendant could do what CCE did here – i.e., test the waters 10 of a PAGA claim in litigation, and then, if rulings are not to the defendant's liking, move to 11 dismiss the PAGA claim on the basis that a judicial forum is foreclosed by § 2699.6.5 Also, the 12 benefit of the grievance/arbitration process integral to § 2699.6 – the section does not merely 13 exempt covered construction workers from PAGA, it does so in favor of grievance and arbitration 14 processes prescribed in the collective bargaining agreements – would be negated: permitting 15 extensive litigation in court before invoking arbitration undermines the advantageous nature of the 16 faster, less expensive, and less burdensome arbitration process.

17 The entire point of PAGA is to protect the rights of employees. If an employer sits on its 18 rights and does not promptly seek an arbitral forum for the underlying Labor Code violations, then 19 the employee should be allowed to litigate a PAGA claim as the parties have done here for years 20 before CCE sought to invoke § 2699.6. 21 2. Waiver of Right to Arbitration 22 CCE waived not only the right to invoke § 2699.6 but also waived the right to seek 23 arbitration.

See *Hill v. Xerox Bus. Sers., LLC*, 59 F.4th 457, 460 (9th Cir. 2023) (stating that the 24 “rule of waiver of the right to arbitrate... is nothing more than the general rule of waiver of a 25 26 5 As indicated above, the state court rejected an argument made by a different defendant – Chevron – that the PAGA claim should be limited to the Richmond factory. That ruling, however, 27 clearly impacted CCE.

The state court also rejected CCE's contention (during summary 1 contractual right: a party waives its right to compel arbitration when (1) it has knowledge of the 2 right, and (2) it acts

inconsistently with that right”). CCE did, in its original and amended 3 answers, raise the right to compel arbitration as an affirmative defense. See Diaz Decl., Exs. 6-7 4 (CCE’s Ans. and Am.

Ans.) (in second affirmative defense, asserting that “[t]he [operative] 5 Complaint is barred because Plaintiff’s claims, or a portion thereof, is subject to mandatory and 6 final arbitration under the CBA”). But similar to above, CCE never pursued that defense in its 7 litigation before the state court for five years – thus forsaking the purported benefits of the 8 alternative arbitral forum.

It has acted “inconsistently with that right” to arbitrate. 9 C. Scope of PAGA Notice and/or FAC 10 According to CCE, even if the Court rejects its argument above, there is an independent 11 reason some employees are not entitled to PAGA relief. Specifically, CCE contends that some 12 employees cannot obtain any relief under PAGA because they were never – in the first place – 13 “subject to the allegedly violative practices underpinning Plaintiff’s PAGA claim.” Mot. at 17; 14 see also Mot. at 18 (“If an employee was not subject to the alleged violations for which penalties 15 are sought, that employee is not ‘aggrieved’ and no penalty can be sought on their behalf.”).

16 Essentially, CCE’s argument here is that Mr. Diaz can represent in this PAGA action only those 17 who were allegedly exposed to specific practices expressly identified in the notice. This was an 18 issue that was being teed up for the state court when CCE removed before the state court could 19 decide the issue. See Opp’n at 8-9. 20 In evaluating CCE’s argument, the Court first takes note of the following: 21 • The El Segundo refinery has an entrance gate for employees referred to as Gate 22 10A.

23 • The Richmond refinery has two primary entrances for employees: Gate 91 and 24 Kellum. 25 In his PAGA notice, Mr. Diaz claimed: 26 Defendants fail to compensate employees for employer-mandated travel time from employer-controlled parking lots to work site (e.g., 27 at Chevron’s Richmond refinery). Defendants require Mr. Diaz and the Gate 91 lot and the Kellum lot, and further require employees to 1 be transported via buses that Chevron owns or controls to the work site each day.

Defendants then fail to pay Mr. Diaz and other 2 similarly aggrieved employees for all such employer-mandated travel time at the beginning of each work day.... 3 4 Cogbill Decl., Ex. A (PAGA notice). According to CCE, it only required employees to “report at 5 specific times” to a “designated parking lot[]” for the Kellum entrance (and only for certain 6 periods of time).

It never imposed such a requirement for the Gate 91 and Gate 10A entrances; 7 thus, those employees entering through those gates are not covered by the PAGA notice and 8 cannot be represented herein. 9 In response, Mr. Diaz contends that CCE is fixating too narrowly on certain language in 10 his PAGA notice – ignoring the broader point asserted in the notice that CCE

“require[s] 11 employees to be transported via buses that Chevron owns or controls to the work site each day” 12 (i.e., “employer-mandated travel time”).

The fact that employees do not get on the bus in the 13 parking lot – i.e., they get on the bus after they enter through the gate – is not the central point. 14 What the notice illustrated was that an employee cannot get to the actual work site without first 15 taking the company bus to get to that site. See Elster Decl., Ex. 4 (CCE document related to 16 parking) (stating that “[a]ll contractors [i.e., employees] accessing refinery via Gate 91 parking lot 17 will be picked up by their respective companies for dispersion to assigned work locations”); see 18 also Diaz Decl. ¶ 6 (testifying that “CCE would not begin paying us until the precise start time of 19 the daily safety meeting at our worksites within Chevron’s refinery..., which means CCE did 20 not pay us beginning with the time we badged in (passed through the turnstiles or were swiped on 21 a bus), waited to board a vehicle, were transported by a vehicle to our worksite within the refinery, 22 put on PPE at the worksite, and then waited for the start time of the daily safety meeting at our 23 worksites”).

The gravamen of the complaint asserted in the PAGA notice was that workers were 24 not compensated for time they spent under the control of the company – when they were engaged 25 in employer-mandated travel. 26 The Court finds Mr. Diaz’s position more convincing.

As the state court noted when 27 confronted with the question of whether Mr. Diaz’s PAGA notice limited the case to only the 1 *Rojas-Cifuentes v. Superior Court*, 58 Cal. App. 5th 1051, 1059 (2020) (noting that, although 2 plaintiff’s “‘facts and theories’... did not exhaustively explain why [defendant’s] wage 3 statements were inadequate,” they sufficiently notified defendant and the LWDA “of the general 4 basis for this claim”) (emphasis added).

5 The evident purpose of the notice requirement is [simply] to afford the relevant state agency, the Labor and Workforce Development 6 Agency, the opportunity to decide whether to allocate scarce resources to an investigation, a decision better made with knowledge 7 of the allegations an aggrieved employee is making and any basis for those allegations. Notice to the employer serves the purpose of 8 allowing the employer to submit a response to the agency, again thereby promoting an informed agency decision as to whether to 9 allocate resources toward an investigation.

10 *Williams v. Superior Ct.*, 3 Cal. 5th 531, 545-46 (2017) (adding that, in light of these purposes, 11 there is no requirement that allegations in a PAGA notice “already be backed by some particular 12 quantum of admissible proof”); see also *Bowen v. Target Corp.*, No. EDCV 16-2587 JGB 13 (MRWx), 2020 WL 1931278, at *4 (C.D. Cal. Jan. 24, 2020) (stating that “a PAGA notice is 14 factually sufficient if it notices the LWDA of a potential investigation and permits an employer to 15 determine whether to ‘fold or fight’”).

As one district court has noted, it would be “absurd” and 16 would “undermine the principles of PAGA” to bind a plaintiff to the facts and theories “exactly as 17 laid out” in the PAGA notice. *Mays v. Wal-Mart Stores, Inc.*, 354 F.Supp.3d 1136, 1148 (C.D. 18 Cal. 2019) (internal quotation marks omitted). This is especially true since “PAGA notices 19 necessarily precede the commencement of litigation and discovery.” *Bowen v. Target Corp.*, 2020 20 WL 1931278, at *5; cf. *Ibarra v. Chuy & Sons Labor, Inc.*, 102 Cal. App.

5th 874, 885 (2024) 21 (stating that “we see nothing in section 2699.3 suggesting that factual allegations in PAGA 22 notices must exceed those normally found sufficient in complaints”). 23 Here, Mr. Diaz’s PAGA notice did specifically mention employees being required to 24 report to a parking lot at a specific time. But he also clearly implicated the broader practice of 25 failing to compensate for “employer-mandated travel time.” CCE’s attempt to limit such 26 employer-mandated travel time as travel time from a parking lot to a work site while excluding 27 travel time from inside the entrance gate to the work site (e.g., via a company bus) is inconsistent 1 on sufficiently clear notice that Mr. Diaz was asserting that failure to compensate workers for time 2 spent during any employer-mandated travel violated California labor law.6 3 That being said, to the extent Mr. Diaz now argues that failure to compensate for time 4 spent donning and doffing protective gear or equipment is also part of this civil lawsuit, the Court 5 rejects that contention.

The subject of the PAGA notice is clearly employer-mandated travel time. 6 Failure to compensate for travel time is markedly different from failure to compensate for time 7 donning or doffing. There is also no apparent reason why Mr. Diaz did not mention, or could not 8 have mentioned, donning or doffing in his PAGA notice and the notice was insufficient in regard 9 thereto.

Compare *Olson v. Tesoro Ref. & Mktg. Co.*, No. C06-1311RSL, 2007 U.S. Dist. LEXIS 10 67747, at *2 (W.D. Wash. Sept. 12, 2007) (taking note of plaintiffs’ allegation that employer 11 “permitted... workers [at a refinery] to perform unpaid pre-shift work routines, including 12 donning personal protective gear, gathering equipment and tools, and traveling to their work 13 sites”); *Ripley v. Sunoco, Inc.*, 287 F.R.D.

300, 323 (E.D. Penn. 2012) (taking note of release of 14 following claims by plaintiff: “failure to pay wages and overtime for all required work time, 15 including but not limited to, time spent clearing a security checkpoint at the beginning of each 16 work shift, engaged off site and off-the-clock while ‘on call,’ donning and doffing personal 17 protective equipment, obtaining and storing work tools, traveling to and from assigned work sites.

18., preparing and cleaning work equipment and engaging in required shift change briefings with 19 co-workers”); *Jones v. CertifiedSafety, Inc.*, No. 17-cv-02229-RS, 2017 U.S. Dist. LEXIS 233226, 20 at *5 (N.D. Cal. Aug. 28, 2017) (discussing allegations by safety attendants and oil drilling 21 platforms that they, inter alia, “were required to park and don their protective gear at a

lot several 22 miles from the job site” and “then took a shuttle provided by [the defendant] to the site”).

See 23 generally *Wyatt v. City of Burlingame*, No. 16-cv-02681-DMR, 2017 U.S. Dist. LEIS 20175, at 24 *24, 29 (N.D. Cal. Feb. 13, 2017) (Title VII claim dismissed for failure to exhaust administrative 25 6 As noted above, the state court in this case also ruled in favor of Mr. Diaz when addressing 26 Chevron’s contention that the PAGA notice should be confined to only the Richmond refinery.

See Elster Decl., Ex. 10 (Order at 2) (“The fact that plaintiff’s LWDA notice happens to reference 27 works at the Richmond refinery [specifically] does not preclude plaintiff from representing 1 remedies “where the factual allegations in the EEOC charge bear no reasonable relationship to the 2 || claims in [the] plaintiff’s complaint” and “would not have reasonably led to an investigation of 3 || those claims”; holding that plaintiff failed to exhaust claims for wrongful termination on the basis 4 || of national origin even though EEOC charge described national origin-based harassment — 5 “[w]hen a plaintiff’s charge is ‘very specific,’ courts have been reluctant to construe a charge as 6 || including additional claims”).

7 II. CONCLUSION 8 For the foregoing reasons, the Court grants in part and denies in part each party’s motion 9 || for summary judgment. The Court rejects CCE’s contention that some of the allegedly aggrieved 10 || employees’ claims are barred by § 2699.6.

The Court also rejects CCE’s argument that the scope 11 of the PAGA notice is limited to only employees who were required to report to parking lots at 12 || specific times. The PAGA notice extends more broadly to uncompensated employer-mandated 13 || travel time.

However, the Court rejects Mr. Diaz’s contention that his PAGA notice fairly 14 || implicates conduct distinct from failure to compensate for travel time — specifically, failure to 3 15 compensate for time spent donning or doffing protective gear or equipment. a 16 This order disposes of Docket Nos. 27 and 30. 18 IT IS SO ORDERED. 19 20 Dated: December 15, 2025 21 22 EDWARD M. CHEN 23 United States District Judge 24 25 26 27 28