



January 28, 2025

VIA LWDA ONLINE PORTAL

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Labor and Workforce Dev. Agency
Attn: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Jeremy Licon v. Pearce Services, LLC

Our Client: Jeremy Licon

Our File No.: 6-043

Subject: Private Attorneys General Act Notice of Labor Code Violations

To Whom It May Concern:

We are writing on behalf of our client, Jeremy Licon (“Plaintiff”), with respect to his claims under the California Labor Code against Pearce Services, LLC, (“Employer(s)” or “Defendant(s)”). Plaintiff intends to seek “civil penalties” in a civil action under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”) on behalf of Plaintiff, other current or former aggrieved employees, and the State of California. This notice is sent to the employer pursuant to the PAGA. As used in this PAGA notice, the term “violation” applied to Labor Code statutes has the same meaning as Labor Code § 22.

Nature of PAGA

The California Supreme Court has identified a number of the legal characteristics of a PAGA representative action. First, an employee plaintiff suing under the PAGA does so as the proxy or agent of the state's labor law enforcement agencies, not other employees. *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348, 380 (2014). Second, the employee plaintiff represents the same legal right and interest as those agencies—namely, the recovery of civil penalties that otherwise would have been assessed and collected by the Labor and Workforce Development Agency. (*Id.*) Thus, a PAGA claim “is fundamentally a law enforcement action.” *Arias v. Super. Ct.*, 46 Cal. 4th at 986 (2009); *Williams v. Super. Ct.*, 3 Cal. 5th 531, 538 (2017) (“a PAGA suit, essentially a qui tam action filed on behalf of the state to assist it with labor law enforcement”).

As a law enforcement action, the issue is the employer's conduct, not whether the employees suffered injury or harm. This is because the "harm" or "injury" at issue in a PAGA action is the harm to the public interest in "maximum compliance with the state labor laws." *Arias*, 46 Cal. 4th at 980. PAGA's purpose includes "deputizing private citizens to pursue violators." *Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th 745, 756 (2018). And "every PAGA action, whether seeking penalties for Labor Code violations as to only one aggrieved employee—the plaintiff bringing the action—or as to other employees as well, is a representative action on behalf of the state." *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348, 386-387 (2014).

PAGA conforms to the traditional criteria of qui tam actions, "except that a portion of the penalty goes not only to the citizen bringing the suit but to all employees affected by the Labor Code violation." *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th at 382. PAGA is not meaningfully distinguishable from comparable qui tam statutes outside the employment context, including the California False Claims Act (Gov. Code, § 12650 et seq.) the Insurance Frauds Prevention Act (Ins. Code, § 1871 et seq.) the Safe Drinking Water and Toxic Enforcement Act of 1986, colloquially known as Proposition 65 (Health & Saf. Code § 25249.5 et seq.) and many others. *Cal. Bus. & Industrial Alliance v. Becerra*, 80 Cal. App. 5th 734, 739 (2022). "Moreover, civil penalties recovered on the state's behalf are intended to 'remediate present violations and deter future ones,' not to redress employees' injuries." *Kim v. Reins Int'l Cal., Inc.*, 9 Cal. 5th 73, 86 (2020).

A corporate employer's owner, president, secretary, and directors are liable for civil penalties as an "other person" who caused violations of the Labor Code, even if there is no allegation that the alter ego doctrine applies or that there is any other basis on which to pierce the corporate veil. *Atempa v. Pedrazzani*, 27 Cal. App. 5th 809 (2018). A "person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation." Lab. Code § 558.1.

Factual Background

Defendant employed Plaintiff, as a Solar Director from July 19, 2021, to February 19, 2024 in the State of California. Defendant unlawfully retaliated against Plaintiff for disclosing what he believed to be violations of California Labor Law to Defendant's human resources department. Plaintiff believes Defendant has retaliated against other potentially aggrieved employees for reports of violations or noncompliance.

Defendant failed to issue Plaintiff his all wages owed at termination, failed to issue accurate itemized wage statements, and failed to produce complete personnel and payroll records as required by California law. Defendant also did this to other potentially aggrieved employees.

The relevant period of the below allegations for this notice is from one year preceding this letter, to present and ongoing.

Violations of Labor Code §§ 1102.5, 1198.5, 226(a), 201, 203, 226(c)

Labor Code § 1102.5

Pursuant to Labor Code § 1102.5, it is unlawful for an employer, or someone acting on their behalf, from retaliating against an employee who discloses information to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, that the employee reasonably believes is a violation of the law.

Labor Code § 1102.5 (f) (1) provides that, “an employer is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each violation of this section to be awarded to the employee who was retaliated against.”

Defendant retaliated against Plaintiff after he reported to Defendant’s human resources department that he believed employees were not being compensated for all hours worked, including the time from when they were required to report to the office until they arrived at specific worksites. Plaintiff reported that these employees submitted timecards which were being approved by supervisors despite the supervisors knowing the employees were working longer hours. Plaintiff reported what believed to be ongoing violations to Defendant’s human resources department so the violations could be investigated and corrected. Plaintiff initially made this report on or around February 12, 2024, and followed up on Friday, February 16, 2024. The following business day on Monday February 19, 2024, Plaintiff was unexpectedly terminated in retaliation for making the disclosures.

Defendants have retaliated against other aggrieved employees who report violations or noncompliance of the law. Plaintiff and other aggrieved employees will therefore seek PAGA penalties pursuant to Labor Code Section 1102.5 (f). The relevant period of the foregoing allegations for this notice is from one year preceding this letter, to present and ongoing.

Labor Code § 1198.5

Labor Code section 1198.5 provides that an employer shall make personnel records available for inspection to the former employee, or his or her representative, at reasonable intervals and at reasonable times, but “not later than 30 calendar days from the date the employer receives a written request.” Lab. Code § 1198.5(b).

Defendant failed to provide the complete personnel records that Plaintiff requested within 30 days from the date of the request. Plaintiff did provide some records requested, however that production was still incomplete.

Defendant also did this to other aggrieved employees. Plaintiff and other aggrieved employees will therefore seek PAGA default penalties as Labor Code Section 2699(f)(2) applies. The relevant period of the foregoing allegations for this notice is from one year preceding this letter, to present and ongoing.

Labor Code § 226 (a)

The pay stub provided to Plaintiff for final payment of wages did not accurately state, among other things, the wages earned, and the inclusive dates of the period for which the employer was paid.

Labor Code § 226 (a) provides that: (a) An employer, semimonthly or at the time of each payment of wages, shall furnish to their employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j),... (6) the inclusive dates of the period for which the employee is paid...

Defendant also did this to other aggrieved employees. Plaintiff and other aggrieved employees will therefore seek PAGA default penalties as Labor Code Section 2699(f)(2) applies. The relevant period of the foregoing allegations for this notice is from one year preceding this letter, to present and ongoing.

Labor Code § 201, 203

Plaintiff did not timely receive all of his final wages within the required timeframe from his discharge date. Specifically, Defendant failed to pay Plaintiff for his earned, non-discretionary bonus at the time of discharge and did not compensate Plaintiff for waiting time penalties under the law.

Thus, Defendant violated Labor Code sections 201, 203. Defendant has also done this to other aggrieved employees. Labor Code Sections 201-203 do not provide for their own self-contained civil penalty within the statute. Thus, Labor Code Section 2699(f)(2) applies. The relevant period of the foregoing allegations for this notice is from one year preceding this letter, to present and ongoing.

Labor Code § 226 (c)

Labor Code section 226(c) provides that "An employer who receives a written or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request." Lab. Code § 226(c).

Defendant violated Labor Code section 226(c) by failing to provide Defendant with her payroll records, and are liable for civil penalties for this separate violation. Specifically, Defendant's failed to provide copies of Plaintiff's *complete* wage statements including the wage statement for the payment he received via direct deposit on or around March 15, 2024.

Thus, Defendant violated Labor Code sections 226(c). Defendant has also done this to other aggrieved employees. Labor Code Sections 226(c) does not provide for their own self-contained civil penalty within the statute. Thus, Labor Code Section 2699(f)(2) applies. The relevant period of the foregoing allegations for this notice is from one year preceding this letter, to present and ongoing.

Civil Action

Plaintiff demands that Defendant take immediate measures to redress the above-referenced violations. Plaintiff intends to initiate a civil action, on behalf of the State of California to seek civil penalties in a cause of action under the PAGA for every violation that affected Plaintiff and other aggrieved employees. If Defendant, or its attorneys if it is represented in this matter, have any questions about the aggrieved employees or the extent of the violations, please see above details and feel free to contact the undersigned, in writing, for any clarification.

The civil action will be a representative action and, as held by the California Supreme Court in *Arias*, need not meet the requirements for class certification. Moreover, the PAGA has no notice requirements for unnamed aggrieved employees in federal courts, unlike Rule 23 of the Federal Rules of Civil Procedure, nor may such employees opt out of a PAGA action. *Baumann v. Chase Inv. Services Corp.*, 747 F.3d 1117 (9th Cir. Mar. 13, 2014). In a PAGA action, the court does not inquire into the named plaintiff's and class counsel's ability to fairly and adequately represent unnamed employees. *Id.* Further, an employee plaintiff need not comply with the Rule 23 requirements, including the "manageability" requirement, to assert a PAGA cause of action. *Hamilton v. Wal-Mart Stores* (9th Cir. 19-56161 6/30/22).

Based on the foregoing, Plaintiff requests an immediate notification from the Labor and Workforce Development Agency, so Plaintiff may pursue civil penalties on behalf of the State of California.

Sincerely,



Amber B. Derham, Esq.

ABD/ep

cc: Adam L. Parry
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[Via Certified Mail]