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Attorneys for Plaintiff, ANGELICA MARIA RIOS VARGAS

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE
[UNLIMITED CIVIL]

ANGELICA MARIA RIOS VARGAS,
an individual,

Plaintiff,

vs.

AVALONBAY COMMUNITIES, INC., a
corporation; ALFONSO MARTINEZ, an
individual; and DOES 1 through 5, inclusive,

Defendants.

Case No.: 30-2025-01518313-CU-OE-WJC

*Assigned for All Purposes to the Hon. Judge
Sheila Recio in Dept. W08*

FIRST AMENDED COMPLAINT FOR:

- 1. Hostile Work Environment in Violation of FEHA**
- 2. Sexual Harassment in Violation of FEHA**
- 3. Failure to Prevent Harassment in Violation of FEHA**
- 4. Labor Code § 1198.5(k) Penalty**
- 5. Labor Code § 226(f) Penalty**
- 6. Private Attorneys General Act**

DEMAND FOR JURY TRIAL

Complaint Filed: October 10, 2025
Trial Date: None Set

Plaintiff, ANGELICA MARIA RIOS VARGAS, alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to hear the subject matter of this complaint. This Court also has jurisdiction over each defendant, as the unlawful business acts alleged herein occurred in California. Plaintiff's claims arise out of and are related to all Defendant's contacts with California.

2. Venue is proper in any county in which an aggrieved employee worked and Labor Code violations allegedly occurred. Venue is proper in this Court because all or some of the violations of law and unlawful practices alleged herein occurred and are occurring in the County of ORANGE.

PARTIES

3. Plaintiff is an individual who, at all relevant times, has resided in the State of California.

4. Defendant AVALONBAY COMMUNITIES, INC. ("AVALONBAY") is a corporation that conducted, and is conducting, business in the State of California.

5. Defendant ALFONSO MARTINEZ ("MARTINEZ"), is an individual who, at all relevant times, has resided in the State of California.

6. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as DOES 1-5, inclusive, and therefore sues these defendants by such fictitious names and capacities. Plaintiff will seek leave to amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and on that basis alleges that each fictitiously named Defendants are responsible in some manner for the occurrences herein alleged, and that Plaintiff's injuries were proximately caused by the conduct of such defendant.

7. All of the Defendants, including DOES 1-5, are alleged to be co-conspirators with each other, in that each agreed to participate, and participated in, the furtherance of the objective of civil wrongs as alleged in this Complaint.

8. Plaintiff is informed and believes and thereupon alleges that at all times material herein, each defendant was completely dominated and controlled by its, his or her co-Defendants, each was the agent, representative, and alter ego of the others, and all aided and abetted the wrongful acts of the others.

9. Plaintiff is informed and believes and thereupon alleges that at all times material herein, each of the Defendants was the agent, employee and/or joint venturer of, or working in concert with, co-Defendants and was acting within the course and scope of such agency, employment, and/or joint venture or concerted activity. To the extent that said conduct and omissions were perpetrated by certain Defendants, Plaintiff is informed and believes and thereupon alleges that the remaining Defendant and/or Defendants confirmed and ratified said conduct and omissions.

10. Plaintiff is informed and believes and on that basis alleges that at all times relevant herein, the corporate Defendants, and each of them, had the right to control, and controlled, Plaintiff's wages, hours and working conditions, and has the right to control the manner in which Plaintiff performed work duties, including but not limited to supervision of work, engaged Plaintiff, suffered and permitted Plaintiff to work, and they were employers, joint employers, or co-employers of Plaintiff at all relevant times alleged herein.

11. Plaintiff is informed and believes and on that basis alleges that at all times relevant herein, the Defendant, and each of them, were an integrated enterprise in that they had an interrelation of operations, centralized control of labor relations, common management, and common ownership or financial control.

12. At all times pertinent hereto, California Civil Code section 3294(a) provided that as to defendants who have been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover exemplary damages for the sake of example and by way of punishing said defendants.

13. At all times pertinent hereto, California Civil Code section 3294(a) provided that an employer shall be liable for damages pursuant to subdivision (a) if the employer authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice.

14. At all times relevant to this action, the corporate Defendants, and each of them were an employer, joint-employer, or integrated enterprise that regularly employed five or more persons within the meaning of the California Fair Employment and Housing Act ("FEHA") at California Government Code section 12926(d).

GENERAL ALLEGATIONS

15. Plaintiff began employment with Defendant AVALONBAY beginning in or around 2023. During her employment, Plaintiff was subjected to unwelcome sexual advances, gender-based hostility, and racially discriminatory treatment by her supervisor, MARTINEZ. MARTINEZ engaged in coercive behavior to pressure Plaintiff into a sexual relationship in exchange for professional advancement. He also made derogatory remarks to Plaintiff about her national origin, sexual orientation,

1 reproductive health decision making, and marital status. Plaintiff's employment ended in June 2025.

2 16. On June 27, 2025, Plaintiff requested her personnel and itemized wage statement records
3 pursuant to Labor Code sections 226 and 1198.5. To date, Defendant has failed to produce the requested
4 records.

5 **Exhaustion of FEHA Administrative Remedies**

6 17. On September 29, 2025, Plaintiff filed an administrative charge (202509-31456229)
7 against the defendants with the California Civil Rights Department and obtained a Right-to-Sue notice.

8 **FIRST CAUSE OF ACTION**

9 **HOSTILE WORK ENVIRONMENT IN VIOLATION OF FEHA**

10 **(AGAINST ALL DEFENDANTS AND DOES 1-5)**

11 18. Plaintiff incorporates each relevant allegation set forth in all of the preceding paragraphs
12 as though set forth herein in full again.

13 19. It is unlawful for an employer because of [sex, gender, gender identity, gender
14 expression, sexual orientation, race, national origin, marital status, reproductive health decisionmaking]
15 to harass an employee. Cal. Gov. Code § 12940(j)(1). Harassment of an employee shall be unlawful if
16 the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take
17 immediate and appropriate corrective action. Loss of tangible job benefits shall not be necessary in
18 order to establish harassment. Cal. Gov. Code § 12940(j)(1). Under FEHA, an employer is liable for
19 sexual harassment by a co-worker if the employer knew or should have known of the harassment and
20 failed to take immediate and appropriate corrective action. Cal. Gov. Code § 12940(j)(1).

21 20. The FEHA makes the employer strictly liable for harassment by a supervisory employee.
22 Myers v. Trendwest Resorts, Inc., 148 Cal. App. 4th 1403, 1420 (2007). Harassment of an employee by
23 an employee, other than an agent or supervisor, shall be unlawful if the entity, or its agents or
24 supervisors, knows or should have known of this conduct and fails to take immediate and appropriate
25 corrective action. Cal. Gov. Code § 12940(j)(1). The prohibition on harassment is so strong, that an
26 employer may even be responsible for the acts of nonemployees where the employer, or its agents or
27 supervisors, knows or should have known of the conduct and fails to take immediate and appropriate
28 corrective action. Cal. Gov. Code § 12940(j)(1). Loss of tangible job benefits shall not be necessary in

1 order to establish harassment. Cal. Gov. Code § 12940(j)(1). Harassment includes but is not limited to:
2 verbal harassment, e.g., epithets, derogatory comments or slurs on a basis enumerated in the Act; and
3 physical harassment, e.g., assault, impeding or blocking movement, or any physical interference with
4 normal work or movement, when directed at an individual on a basis enumerated in the FEHA. 2 Cal.
5 Code Regs. § 11019(b)(2)(A)(B).

6 21. An employee of an entity subject to FEHA is personally liable for any harassment
7 prohibited by section 12940(j)(1). Cal. Gov. Code § 12940(j)(1).

8 22. It is an unlawful employment practice, for an employer because of sex, gender, gender
9 identity, gender expression, sexual orientation, race, national origin, marital status, reproductive health
10 decisionmaking to harass an employee or a person providing services pursuant to a contract. Cal. Gov.
11 Code § 12940(j)(1).

12 23. “An employer may also be responsible for the acts of nonemployees, with respect to
13 harassment of employees, applicants, unpaid interns or volunteers, or persons providing services
14 pursuant to a contract in the workplace, if the employer, or its agents or supervisors, knows or should
15 have known of the conduct and fails to take immediate and appropriate corrective action.” Cal. Gov.
16 Code § 12940(j)(1).

17 24. Sexual harassment can consist of verbal communications, such as asking for a date,
18 telling sexual jokes, bragging about sexual exploits, making comments regarding appearance or
19 anatomy, or using terms with double meanings (one of which is sexual). 2 Cal. Code Regs. §§
20 7287.6(b)(1), 7291.1(f)(1).

21 25. An employee is personally liable for any harassment prohibited by section 12940 that is
22 perpetrated by the employee. Cal. Gov. Code § 12940(j)(3).

23 26. Plaintiff was subjected to unwanted harassing conduct during Plaintiff’s employment
24 because of Plaintiff’s sex, national origin, sexual orientation, reproductive health decisionmaking, and
25 marital status.

26 27. The harassing conduct was severe or pervasive.

27 28. A reasonable woman of Plaintiff’s circumstances would have considered the work
28 environment to be hostile, intimidating, offensive, oppressive, or abusive.

29. Plaintiff considered the work environment to be hostile, intimidating, offensive, oppressive, or abusive.

30. A supervisor, MARTINEZ, engaged in the conduct.

31. Plaintiff was harmed as a direct, proximate and foreseeable result of Defendant's conduct.

32. Defendant's conduct was a substantial factor in causing Plaintiff's harm.

33. As a direct and proximate result of the actions of Defendant, and each of them, Plaintiff suffered damages in an amount according to proof at trial, and in excess of this Court's minimal jurisdiction.

34. Pursuant to the FEHA, Plaintiff is entitled to an award of attorneys' fees and costs including expert witness fees. Cal. Gov. Code § 12965.

35. Plaintiff is informed, believes, and thereon alleges that Defendant, by and through their respective corporate officers, directors, and managing agents, ordered, authorized, approved, and/or ratified the conduct herein alleged in violation of the FEHA.

36. Plaintiff is informed, believes, and thereon alleges that in doing, ordering, authorizing, approving, and ratifying the acts, policies, and practices alleged herein, Defendant, by and through their officers, directors and managing agents acted in conscious and intentional disregard for the rights, health, and welfare of Plaintiff.

37. Defendant acted with oppression, as such term is defined in Civil Code section 3294(c)(2), in that they engaged in despicable conduct that subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's FEHA rights to work in a harassment free environment.

38. Defendant acted with malice, as such term is defined in Civil Code section 3294(c)(1), in that they engaged in despicable conduct carried out with a willful and conscious disregard for Plaintiff's FEHA rights to work in a harassment free environment.

39. Pursuant to Civil Code section 3294, as a consequence of Defendant, by and through their owners, officers, directors and managing agents' promulgation and enforcement of the oppressive and malicious workplace policies and practices described hereinabove, Plaintiff is entitled to recover actual damages, as well as exemplary damages against Defendant, in an amount deemed by the trier of fact

sufficient to punish, deter, and make an example of said Defendant.

40. Pursuant to the FEHA, Plaintiff is entitled to an award of attorneys' fees and costs including expert witness fees. Gov. Code § 12965.

SECOND CAUSE OF ACTION

SEXUAL HARRASMENT IN VIOLATION OF FEHA

(AGAINST ALL DEFENDANTS AND DOES 1-5)

41. Plaintiff incorporates each relevant allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

42. The opportunity to hold employment without discrimination because of sex or gender is "recognized as and declared to be a civil right." Cal. Gov. Code § 12921(a).

43. It is unlawful for an employer because of [sex, gender, gender identity, gender expression, sexual orientation] to harass an employee. Cal. Gov. Code § 12940(j)(1). Harassment of an employee shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action. Loss of tangible job benefits shall not be necessary in order to establish harassment. Cal. Gov. Code § 12940(j)(1). Under FEHA, an employer is liable for sexual harassment by a co-worker if the employer knew or should have known of the harassment and failed to take immediate and appropriate corrective action. Cal. Gov. Code § 12940(j)(1).

44. It is an unlawful employment practice, for an employer because of sex/gender to harass an employee or a person providing services pursuant to a contract. Cal. Gov. Code § 12940(j)(1).

45. An employee of an entity subject to FEHA is personally liable for any harassment prohibited by FEHA. Cal. Gov. Code § 12940(j)(1).

46. "An employer may also be responsible for the acts of nonemployees, with respect to harassment of employees, applicants, unpaid interns or volunteers, or persons providing services pursuant to a contract in the workplace, if the employer, or its agents or supervisors, knows or should have known of the conduct and fails to take immediate and appropriate corrective action." Cal. Gov. Code § 12940(j)(1).

47. Sexual harassment can consist of verbal communications, such as asking for a date,

1 telling sexual jokes, bragging about sexual exploits, making comments regarding appearance or
2 anatomy, or using terms with double meanings (one of which is sexual). 2 Cal. Code Regs. §§
3 7287.6(b)(1), 7291.1(f)(1).

4 48. MARTINEZ made unwanted sexual advances to Plaintiff or engaged in other unwanted
5 verbal or physical conduct of a sexual nature.

6 49. Plaintiff was subjected to unwelcomed harassment by MARTINEZ in the form of
7 derogatory comments and questions due to Plaintiff's sex/gender.

8 50. A reasonable woman in Plaintiff's circumstances would have considered the work
9 environment to be hostile, intimidating, offensive, oppressive, or abusive.

10 51. Plaintiff considered the work environment to be hostile, intimidating, offensive,
11 oppressive, or abusive.

12 52. Plaintiff was harmed by Defendant's conduct.

13 53. As a direct and proximate result of the actions of Defendant, and each of them, Plaintiff
14 suffered damages in an amount according to proof at trial, and in excess of this Court's minimal
15 jurisdiction.

16 54. Pursuant to the FEHA, Plaintiff is entitled to an award of attorneys' fees and costs
17 including expert witness fees. Cal. Gov. Code § 12965.

18 55. Plaintiff is informed, believes, and thereon alleges that Defendant, by and through their
19 respective corporate officers, directors, and managing agents, ordered, authorized, approved, and/or
20 ratified the conduct herein alleged in violation of the FEHA.

21 56. Plaintiff is informed, believes, and thereon alleges that in doing, ordering, authorizing,
22 approving, and ratifying the acts, policies, and practices alleged herein, Defendant, by and through their
23 officers, directors and managing agents acted in conscious and intentional disregard for the rights,
24 health, and welfare of Plaintiff.

25 57. Defendant acted with oppression, as such term is defined in Civil Code section
26 3294(c)(2), in that they engaged in despicable conduct that subjected Plaintiff to cruel and unjust
27 hardship in conscious disregard of Plaintiff's FEHA rights to work in a hostile free environment.

28 58. Defendant acted with malice, as such term is defined in Civil Code section 3294(c)(1), in

that they engaged in despicable conduct carried out with a willful and conscious disregard for Plaintiff's FEHA rights to work in a hostile free environment.

59. Pursuant to Civil Code section 3294, as a consequence of Defendant, by and through their owners, officers, directors and managing agents' promulgation and enforcement of the oppressive and malicious workplace policies and practices described hereinabove, Plaintiff is entitled to recover actual damages, as well as exemplary damages against Defendant, in an amount deemed by the trier of fact sufficient to punish, deter, and make an example of said Defendant.

60. Plaintiff seeks a public injunction, enjoining Defendant from committing further violations of the FEHA with respect to harassment against female and pregnant workers, and failure to prevent such.

61. Pursuant to the FEHA, Plaintiff is entitled to an award of attorneys' fees and costs including expert witness fees. Gov. Code § 12965.

THIRD CAUSE OF ACTION

FAILURE TO PREVENT HARRASSMENT IN VIOLATION OF FEHA

(AGAINST AVALONBAY AND DOES 1-5)

62. Plaintiff incorporates each relevant allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

63. It is unlawful for an employer to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring. Cal. Gov. Code § 12940(k).

64. Plaintiff was subjected to harassment in the course of Plaintiff's employment.

65. Defendant failed to take all reasonable steps to prevent the harassment from occurring.

66. Plaintiff was harmed.

67. Defendant's failure to take all reasonable steps to prevent harassment was a substantial factor in causing Plaintiff's harm.

68. As a direct and proximate result of the actions of Defendant, and each of them, Plaintiff suffered damages in an amount according to proof at trial, and in excess of this Court's minimal jurisdiction.

69. Pursuant to the FEHA, Plaintiff is entitled to an award of attorneys' fees and costs

1 including expert witness fees. Cal. Gov. Code § 12965.

2 70. Plaintiff is informed, believes, and thereon alleges that Defendant, by and through their
3 respective corporate officers, directors, and managing agents, ordered, authorized, approved, and/or
4 ratified the conduct herein alleged with intent to interfere with, restrain or deny the exercise of, or the
5 attempt to exercise, Plaintiff's rights under the FEHA.

6 71. Plaintiff is informed, believes, and thereon alleges that in doing, ordering, authorizing,
7 approving, and ratifying the acts, policies, and practices alleged herein, Defendant, by and through their
8 officers, directors and managing agents acted in conscious and intentional disregard for the rights,
9 health, and welfare of Plaintiff.

10 72. Defendant acted with oppression, as such term is defined in Civil Code section
11 3294(c)(2), in that they engaged in despicable conduct that subjected Plaintiff to cruel and unjust
12 hardship in conscious disregard of Plaintiff's FEHA rights.

13 73. Defendant acted with malice, as such term is defined in Civil Code section 3294(c)(1), in
14 that they engaged in despicable conduct carried out with a willful and conscious disregard for Plaintiff's
15 FEHA rights.

16 74. Pursuant to Civil Code section 3294, as a consequence of Defendant, by and through their
17 owners, officers, directors and managing agents' promulgation and enforcement of the oppressive and
18 malicious workplace policies and practices described hereinabove, Plaintiff is entitled to recover actual
19 damages, as well as exemplary damages against Defendant, in an amount deemed by the trier of fact
20 sufficient to punish, deter, and make an example of said Defendant.

21 **FOURTH CAUSE OF ACTION**

22 **LABOR CODE § 1198.5(k) PENALTY**

23 **(AGAINST AVALONBAY AND DOES 1-5)**

24 75. Plaintiff incorporates each relevant allegation set forth in all of the preceding paragraphs
25 as though set forth herein in full again.

26 76. The employer shall make personnel records available for inspection to the former
27 employee, or his or her representative, at reasonable intervals and at reasonable times, but "not later than
28 30 calendar days from the date the employer receives a written request." Cal. Lab. Code § 1198.5(b).

1 77. Defendant did not timely provide Plaintiff's personnel records.

2 78. "If an employer fails to permit a current or former employee, or his or her representative,
3 to inspect or copy personnel records within the times specified in this section, or times agreed to by
4 mutual agreement as provided in this section, the current or former employee or the Labor
5 Commissioner may recover a penalty of seven hundred fifty dollars (\$750) from the employer." Cal.
6 Lab. Code § 1198.5(k).

7 79. Because Defendant failed to timely provide the personnel records, Plaintiff is entitled to
8 injunctive relief, for an order that Defendant turn over the complete records, and for an award of
9 attorneys' fees pursuant Cal. Lab. Code § 1198.5(l).

10 **FIFTH CAUSE OF ACTION**

11 **LABOR CODE § 226(f) PENALTY**

12 **(AGAINST AVALONBAY AND DOES 1-5)**

13 80. Plaintiff incorporates each relevant allegation set forth in all of the preceding paragraphs
14 as though set forth herein in full again.

15 81. An employer that is required to keep the information required by Labor Code § 226(a)
16 shall afford current and former employees the right to inspect or copy records pertaining to their
17 employment. Cal. Lab. Code § 226(b). An employer who receives a written or oral request to inspect or
18 copy records pursuant to Labor Code § 226(b) shall comply with the request as soon as practicable, but
19 no later than 21 calendar days from the date of the request. Cal. Lab. Code § 226(c). Defendant
20 violated Labor Code § 226(b)(c) by failing to timely provide Plaintiff with the complete Lab Code §
21 226(a) records pertaining to Plaintiff's employment.

22 82. A failure by an employer to permit a current or former employee to inspect or copy
23 records within the time set forth in Labor Code § 226(c) entitles the current or former employee to
24 recover a seven-hundred-fifty-dollar (\$750) penalty from the employer. Cal. Lab. Code § 226(f).

25 83. An employee may also bring an action for injunctive relief to ensure compliance with
26 section 226, and is entitled to an award of costs and reasonable attorney's fees. Cal. Lab. Code § 226(h).

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SIXTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(AGAINST AVALONBAY AND DOES 1-5)

84. Plaintiff incorporates each relevant allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

85. Pursuant to the California Labor Code Private Attorneys General Act (“PAGA”), “Notwithstanding any other provision of law, any provision of [the California Labor 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.” Cal. Lab. Code § 2699(a). “For all provisions of [the California Labor Code] except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions.” Cal. Lab. Code § 2699(f).

86. This PAGA suit “is fundamentally a law enforcement action.” *Arias v. Super. Ct.*, 46 Cal. 4th 969, 986 (2009); *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348, 386-387 (2014) (“[E]very 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.”); *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”). An employee who brings such an action is acting as an agent of state enforcement agencies. *Kim v. Reins Intl. Cal., Inc.*, 9 Cal.5th 73, 81 (2020).

87. A PAGA “violation” includes, and is used in these allegations to mean, a failure to comply with any requirement of the Labor Code. Cal. Lab. Code § 22.

88. This PAGA action is intended to “remediate present violations and deter future ones.” *Williams*, 3 Cal. 5th at 546. The relevant period for the following PAGA allegations in this cause of action is from October 15, 2024, to present and ongoing.

///

Labor Code Violations §§ 226, 432, 1198.5, 2802

§ 226

89. “An employer that is required by [Labor Code] or any regulation adopted pursuant to this code to keep the information required by [Labor Code section 226] subdivision (a) shall afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer.” Lab. Code § 226(b).

90. Here, Defendant failed to provide Plaintiff with her requested records. Other aggrieved employees are any current or former California non-exempt and non-supervisor employees who were not provided with the requested itemized wage statements.

91. Labor Code Section 226 does not provide for its 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 Plaintiff’s PAGA letter, to present and ongoing.

§ 432

92. Labor Code section 432 provides that “If an employee or applicant signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request.”

93. Defendant failed to provide Plaintiff with the instruments he signed relating to her employment, in violation of section 432. Labor Code section 432 does not provide for its own self-contained “civil” penalty within the statute. Thus, Labor Code Section 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

94. Other aggrieved employees are any current or former California non-exempt and non-supervisor employees who were not provided with the instruments they signed relating to their employment.

§ 1198.5

95. 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). “Upon a written request from a current or former employee, or his or her representative, the employer shall also provide a copy of the personnel records, at a charge not to exceed the actual cost of reproduction.” *Id.*

96. Defendant failed to provide the personnel records that Plaintiff requested within 30 days from the date of the request. This practice violates Labor Code section 1198.5. Labor Code section 1198.5 does not provide for its own self-contained “civil” penalty within the statute. Thus, Labor Code Section 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

97. Other aggrieved employees are any current or former California non-exempt and non-supervisor employees who were not provided with their personnel records within 30 days from their requests.

§ 2802

98. “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.” Lab. Code § 2802(a). In *Cochran v. Schwan’s*, the court held:

99. If an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for purposes of section 2802. It does not matter whether the phone bill is paid for by a third person, or at all. In other words, it is no concern to the employer that the employee may pass on the expense to a family member or friend, or to a carrier that has to then write off a loss. It is irrelevant whether the employee changed plans to accommodate work-related cell phone usage. Also, the details of the employee’s cell phone plan do not factor into the liability analysis. Not only does our interpretation prevent employers from passing on operating expenses, it also prevents them from digging into the private lives of their employees to unearth how they handle their finances vis-à-vis family, friends and creditors. To show liability under section 2802, an employee need only show that he or she

1 was required to use a personal cell phone to make work-related calls, and he or she was not
2 reimbursed.

3 *Cochran v. Schwan's Home Serv., Inc.*, 228 Cal. App. 4th 1137, 1144–45 (2014), *review denied*
4 (Nov. 25, 2014).

5 100. Here, like in *Cochran*, if an employee is required to do work-related activities on a
6 personal cell phone, then he is incurring an expense for purposes of section 2802. Here, as in *Cochran*,
7 to show liability under section 2802, an employee need only show that he was required or directed to use
8 a personal cell phone to do work-related activities and was not reimbursed.

9 101. Defendants did not reimburse or pay Plaintiff or the other non-exempt and non-supervisor
10 aggrieved employees for any portion of their cell phone expenses, in violation of Labor Code § 2802(a).

11 102. Labor Code § 2802 does not have a civil penalty specifically provided. Thus, Labor
12 Code § 2699(f) is applicable to impose civil penalties of one hundred dollars (\$100) for each aggrieved
13 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
14 employee per pay period for each subsequent violation. The relevant period of the foregoing allegations
15 for this notice is from one year preceding Plaintiff's PAGA letter, to present and ongoing.

16 ***Exhaustion of Administrative Remedies***

17 103. On October 16, 2025, Plaintiff provided notice to the California Labor and Workforce
18 Development Agency ("LWDA"), pursuant to Labor Code § 2699.3, detailing the specific provisions of
19 the foregoing Labor Code sections that have been violated, including the facts and theories to support
20 the violations. The LWDA file number is LWDA-CM-1132176. The notice was sent by certified mail
21 on or about October 15, 2025, to CEO, Benjamin W Schall, (9214 8902 6089 5003 6160 27). Plaintiff
22 submitted a fee waiver to the LWDA.

23 104. The LWDA has not, within 65 days of Plaintiff's Notice of violations of the Labor Code,
24 sent Plaintiff notice that it intends to investigate the violations. Thus, Plaintiff has exhausted Plaintiff's
25 administrative remedies, pursuant to Labor Code section 2699.3(a), as a prerequisite to assert a civil
26 action, for civil penalties pursuant to Labor Code section 2699. Defendant has not sent any notice to
27 the LWDA attempting to cure the alleged violations of Labor Code statutes not enumerated in Labor
28 Code section 2699.5. Thus, Plaintiff has exhausted Plaintiff's administrative remedies, pursuant to

1 Labor Code section 2699.3(c), as a prerequisite to assert a civil action, for civil penalties pursuant to
2 Labor Code section 2699.

3 **PRAYER**

4 WHEREFORE, Plaintiff prays:

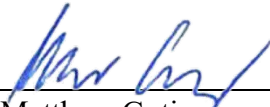
- 5 1. For civil penalties pursuant to Labor Code section 2698 *et seq.*
- 6 2. For a \$750 statutory penalty pursuant to Labor Code section 1198.5.
- 7 3. For a \$750 statutory penalty pursuant to Labor Code section 226.
- 8 4. For compensatory special damages in an amount in excess of this Court's minimal
9 jurisdiction, according to proof at the time of trial, or \$1 million on default.
- 10 5. For compensatory general damages in an amount in excess of this Court's minimal
11 jurisdiction, according to proof at the time of trial, or \$1 million on default.
- 12 6. For exemplary and punitive damages in an amount deemed sufficient by trier or fact to
13 punish, deter, and make an example of Defendants in an amount according to proof at the time of trial,
14 motion, or default.
- 15 7. For injunctive relief in the form of an order compelling Defendant AVALONBAY to
16 produce Plaintiff's personnel and itemized wage statement records.
- 17 8. For injunctive relief in the form of an order enjoining the Defendants from continuing
18 violations of the Government Code.
- 19 9. For reasonable attorneys' fees pursuant to the California Labor Code and Government
20 Code.
- 21 10. For costs of suit including expert witness fees.
- 22 11. For prejudgment interest.
- 23 12. For such other and further relief as the Court may deem proper.

24 **DEMAND FOR JURY TRIAL**

25 Plaintiff ANGELICA RIOS hereby demands a trial by jury.
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Dated: December 16, 2025

LAWYERS FOR LEGAL RIGHTS LLP

By: 
Matthew Gutierrez
Attorneys for Plaintiff, ANGELICA MARIA
RIOS VARGAS