Matthew Gutierrez[+*°^]
Amber B. Derham[+~]

LAWYERS
FOR LEGAL RIGHTS

+California
*New York
~Tennessee
+U.S. District Court,
Central District of California
+U.S. District Court,
Eastern District of California
^U.S. District Court of Colorado
°U.S. Immigration Courts
°U.S. Tax Court

October 15, 2025

VIA LWDA ONLINE PORTAL
https://dir.govfa.net/411

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

Angelica Rios v. AvalonBay Communities, Inc., et al.
Our Client: Angelica Rios
Our File No.: 4185
Subject: Private Attorneys General Act Notice of Labor Code Violations

To Whom It May Concern:

We are writing on behalf of our client, Angelica Rios ("Plaintiff"), regarding AvalonBay Communities, Inc.'s ("Employer(s)" or "Defendant(s)") violations of the California Labor Code, for which 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. Even if Defendant's CEO, Benjamin W Schall did not cause past violations, any continued violations of statutes or provisions, which are explained below, that are not promptly remedied will be caused by that person.

Factual Background

Defendant employed Plaintiff, as an hourly non-exempt worker, from at least around April 2023 to June 18, 2025. As a company-wide practice, Defendant failed to reimburse Plaintiff and its other non-exempt employees for work-related expenses. On June 27, 2025, Plaintiff requested his employment records pursuant to Labor Code sections 226, 432, and 1198.5. See enclosure. To date Defendant has not provided Plaintiff with her requested records.

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 §§ 226, 432, 1198.5, 2802

Labor Code § 226

"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).

Here, Defendant failed to provide Plaintiff with his requested records. Other aggrieved employees are any current or former California employees who were not provided with the requested itemized wage statements.

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 this letter, to present and ongoing.

Labor Code § 2802

"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:

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

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

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

Defendants did not reimburse or pay Plaintiff or the other aggrieved employees for any portion of their cell phone expenses, in violation of Labor Code § 2802(a).

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

Labor Code § 432

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."

Defendant failed to provide Plaintiff with the instruments he signed relating to his 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.

Other aggrieved employees are any current or former California employees who were not provided with the instruments they signed relating to their employment.

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). "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.*

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 1198.5does 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.

Other aggrieved employees are any current or former California employees who were not provided with their personnel records within 30 days from their requests.

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,

Matthew Gutierrez, Esq.

MG:ep

cc: CEO, Benjamin W Schall
AvalonBay Communities, Inc.
4040 Wilson Blvd., Suite 1000
Arlington, VA 22203
[*Via Certified Mail*]

Enclosure

Matthew Gutierrez[+*°^]
Amber B. Derham[+~]

LAWYERS
FOR LEGAL RIGHTS

[+]California
*New York
~Tennessee
+U.S. District Court,
Central District of California
+U.S. District Court,
Eastern District of California
^U.S. District Court of Colorado
°U.S. Immigration Courts
°U.S. Tax Court

June 27, 2025

VIA US MAIL

Benjamin W. Schall
AvalonBay Communities, Inc.
4040 Wilson Blvd., Suite 1000
Arlington, VA 22203

In re Angelica M. Rios Vargas
Our Client: Angelica M. Rios Vargas
Our File No.: 4185
Subject: Statutory Request for Employment Records

Dear Benjamin W. Schall:

Please be advised that our law firm represents the interests of our client, identified above, in connection with her request for employment records from AvalonBay Communities, Inc. Please direct this correspondence to your Human Resources or Legal Department.

Pursuant to California Labor Code § 226, we are requesting that the company "as soon as practicable but no later than 21 calendar days" from this letter, send us copies of her itemized wage statements for the past four years.

Pursuant to California Labor Code §§ 432 and 1198.5, we are requesting that, within 30 days from the date of this letter, the following records relating to our client be provided:

1. Her employee personnel file in its entirety;
2. Any and all instruments or documents she signed relating to the obtaining or holding of employment;
3. Any and all arbitration agreements which you contend she is bound to;
4. Any and all notices given to her stating her rate(s) of pay, the basis for the pay, any allowances claimed as part of her wages, the payday, the "legal" name and address of the employer and any "doing business as" names used by the employer.
5. Pay stubs, wage stubs and time records for the past four years;
6. Any and all business-related expense reimbursement records for the past four years;

7. Any and all records relating to her performance or to any grievance concerning her, including but not limited to performance reviews, job duties, job description, promotions, demotions, change of pay rate, change of job position, change of job title, verbal or written warnings, verbal or written reprimands, discipline, or adverse actions;
8. Any and all records relating to her missed, late, or interrupted meal or rest breaks for the past four years;
9. Any and all timecards/timesheets that she signed for the past four years;
10. Any and all records relating to overtime compensation received by her for the past four years;
11. Any and all of her records that relate to her compensation, time scheduled or worked, or her employee-related issues for the past four years; and
12. Any and all medical files pertaining to her.

Attached is an authorization from my client authorizing the foregoing records to be released to my office. We request that copies of the records be sent via e-mail service@lawyersforlegal.com or placed on a USB drive and mailed to Lawyers for Legal Rights LLP, 6077 Coffee Rd, Ste 4, Bakersfield, CA 93308.

Please let me know should you have any questions regarding the foregoing and thank you for your courtesy with regard to this matter.

Sincerely,

Matthew Gutierrez, Esq.

Attachment

MG:jg

Matthew Gutierrez[+*°^]
Amber B. Derham[+~]

[+]California
*New York
~Tennessee
+U.S. District Court,
Central District of California
+U.S. District Court,
Eastern District of California
^U.S. District Court of Colorado
°U.S. Immigration Courts
°U.S. Tax Court

AUTHORIZATION TO RELEASE EMPLOYMENT RECORDS

I hereby exercise my rights under the California Labor Code and authorize the attorneys at Lawyers for Legal Rights LLP to request on my behalf, and obtain, a copy of my entire personnel and itemized wage statement records with any former employers of mine, including any d/b/a names and affiliated entities of such employers. This request for records includes, but is not limited to, time records, payroll records, medical file, and any documents signed by me which relate to my employment. This authorization is valid for six months from the date I signed below.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

DATED: 06 / 26 / 2025

By: ______________________
Angelica Rios Vargas