

JUN 26 2020

CLERK OF THE SUPERIOR COURT

By CHOGEL

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and on Behalf of Other Members of the Public
Similarly Situated and the State of California

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

JUAN MARTINEZ, Individually, and on
Behalf of Other Members of the Public
Similarly Situated and the State of California,

Plaintiff,

vs.

GRAYBAR ELECTRIC COMPANY, INC., a
corporation; and DOES 1 through 25,
inclusive,

Defendants.

CASE NO: **RG200660 58**

Assigned for All Purposes to:

CLASS ACTION

COMPLAINT FOR:

**(1) FAILURE TO PAY WAGES AT
DISCHARGE;
(2) LABOR CODE, §§ 2698 ET SEQ.
(PAGA)**

[Unlimited Civil Case – Exceeds \$25,000]

Trial Date: None

Complaint filed:

JURY TRIAL DEMANDED

Comes now JUAN MARTINEZ (“Plaintiff”), who individually and on behalf of other
members of the public similarly situated, and on behalf of the State of California, asserts claims
against GRAYBAR ELECTRIC COMPANY, INC. and Does 1 through 25, inclusive,
(collectively “Defendants”) as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to California Code of Civil Procedure § 382.

1 The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction limits
2 of the California Superior Court and will be established according to proof at trial.

3 2. Plaintiff filed an exhaustion letter with the California Labor and Workforce
4 Development Agency (“LWDA”) providing notice of his intent to bring a private attorneys
5 general action for recovery of penalties under the California Labor Code Private Attorneys
6 General Action of 2004, California Labor Code §§ 2698, *et seq.* (“PAGA”) on behalf of himself,
7 approximately more than 100 similarly situated current and former aggrieved employees
8 employed by Graybar Electric Company, Inc. for the past one-year period (“Statutory Period”),
9 and the People of the State of California (hereinafter collectively “Employees”).

10 3. PAGA permits an “aggrieved employee” to bring a lawsuit for civil penalties to
11 address an employer’s violations of the California Labor Code committed against them and other
12 current and former employees. Upon the conclusion of the PAGA exhaustion period, Plaintiff will
13 file a First Amended Complaint, as permitted by law, to seek penalties as a private attorney
14 general for the California Labor Code violations committed against him and Defendants’ other
15 former California employees.

16 4. This Court has jurisdiction over this action pursuant to the California Constitution,
17 Article VI, §10.

18 5. This Court has jurisdiction over Defendants because, upon information and belief,
19 each defendant is either a resident of California, has sufficient minimum contacts in California, or
20 otherwise intentionally avails itself of the California labor market.

21 6. Venue is proper in this Court because this action arises from Plaintiff’s labor
22 contracted for and/or provided in the County of Alameda.

23 **PARTIES**

24 7. Plaintiff is domiciled in, and at all times mentioned in this complaint was
25 domiciled in, San Joaquin County, California.

26 8. Plaintiff is informed and believes that Graybar Electric Company, Inc. is a New
27 York corporation qualified to do business in California. Plaintiff alleges that at all relevant times
28 referenced herein Defendants did and continue to transact business in California.

9. Whenever in this complaint reference is made to any act, deed, or conduct of Graybar Electric Company, Inc., the allegation means that Graybar Electric Company, Inc. engaged in the act, deed, or conduct by or through one or more of its officers, directors, agents, employees, or representatives, who was actively engaged in the management, direction, control, or transaction of the ordinary business and affairs of Graybar Electric Company, Inc.

10. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, associate, or otherwise, of the defendants sued herein as Does 1 through 25, inclusive, and therefore sues said defendants (the “Doe Defendants”) by such fictitious names. Plaintiff will amend this complaint to insert the true names and capacities of the Doe Defendants at such time as the identities of the Doe Defendants have been ascertained.

11. Plaintiff is informed and believes, and thereon alleges, that the Doe Defendants are the partners, agents, or principals and co-conspirators of Graybar Electric Company, Inc., and of each other; that Graybar Electric Company, Inc. and the Doe Defendants performed the acts and conduct herein alleged directly, aided and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent of the liability of Defendants as alleged herein.

12. Plaintiff is further informed and believes, and thereon alleges, that at all times herein material, each Defendant was completely dominated and controlled by its co-Defendants and each was the alter ego of the other. Whenever and wherever reference is made in this complaint to any conduct by Graybar Electric Company, Inc. or Defendants, such allegations and references shall also be deemed to mean the conduct of each of the Defendants, acting individually, jointly, and severally. Whenever and wherever reference is made to individuals who are not named as Defendants in this complaint, but were employees and/or agents of Defendants, such individuals at all relevant times acted on behalf of Defendants named in this complaint within the scope of their respective employments.

CLASS ACTION ALLEGATIONS

13. Plaintiff brings this action on his own behalf, as well as on behalf of each and all other persons similarly situated, and thus, seeks class certification under California Code of Civil

1 Procedure § 382.

2 14. All claims alleged herein arise under California law for which Plaintiff seeks relief
3 as authorized by California law.

4 15. The proposed Class is comprised of and defined as:

5 Any and all persons who are or were employed as an employee by
6 Graybar Electric Company, Inc. in the state of California who were
7 either discharged or resigned on or after April 24, 2020, without
8 timely payment of all earned wages at the time of separation
(collectively, the “Class Members”).

9 16. There is a well-defined community of interest in this litigation and the Class
10 Members are easily ascertainable as set forth below:

11 a. **Numerosity:** The members of the Class are so numerous that joinder of all Class
12 Members would be unfeasible and impractical. The membership of the entire Class is unknown to
13 Plaintiff at this time; however, the Class is estimated to be greater than 100 individuals, and the
14 identity of such membership is readily ascertainable by inspection of Defendants’ employment
15 records.

16 b. **Typicality:** Plaintiff is qualified to, and will fairly and adequately protect the
17 interests of each Class Member with whom he has a well-defined community of interest.
18 Plaintiff’s claims herein alleged are typical of those claims which could be alleged by any Class
19 Member, and the relief sought is typical of the relief which would be sought by each of the Class
20 Members in separate actions. All Class Members have been similarly harmed by being denied
21 timely payment of wages at or near the time of separation due to Defendants’ policies and
22 Statewide practices. Further, Defendants benefited from the same type of unfair and/or wrongful
23 acts as to each Class Member.

24 c. **Adequacy:** Plaintiff is qualified to, and will fairly and adequately protect the
25 interests of each Class Member with whom he has a well-defined community of interest and
26 typicality of claims, as demonstrated herein. Plaintiff acknowledges he has an obligation to make
27 known to the Court any relationships, conflicts, or differences with any Class Member. Plaintiff’s
28 attorneys and the proposed Class counsel are versed in the rules governing class action discovery,
certification, and settlement and experienced in handling such matters.

d. Superiority: The nature of this action makes the use of class action adjudication superior to other methods. A class action will achieve economies of time, effort, judicial resources, and expense compared to separate lawsuits. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent and/or varying adjudications with respect to the individual Class Members, establishing incompatible standards of conduct for the Defendants and resulting in the impairment of the Class Members' rights and the disposition of their interests through actions to which they were not parties.

e. Public Policy Considerations: Employers in the state of California violate employment and labor laws every day. Current employees are afraid of retaliation. Former employees are fearful of bringing actions because they believe their former employers may damage their future endeavors through negative references and/or other means. The nature of this action allows for the protection of current and former employees' rights without fear for retaliation or damage.

17. There are common questions of law and fact as to the Class that predominate over questions affecting only individual members including, but not limited to:

a. Whether Defendants failed to timely pay Class Members earned wages at or near the time of their separation from employment as required by Labor Code §§ 201-202;

b. Whether Class Members are owed waiting time pay as required by Labor Code § 203;

c. whether Defendants' conduct was knowing, intentional, and/or willful;

d. the appropriate amount of statutory damages and/or monetary penalties resulting from Defendants' violations of California law.

FIRST CAUSE OF ACTION

(For Failure to Pay Wages at Discharge by Plaintiff and Class Members Against All Defendants)

18. Plaintiff incorporates by reference and reallege each and every allegation contained above, as though fully set forth herein.

19. At all times set forth herein, Defendants employed Plaintiff and other persons similarly situated throughout the state of California.

1 20. Plaintiff is informed and believes, and thereon alleges, that Defendants are and
2 were advised by skilled lawyers and other professionals, employees, and advisors with knowledge
3 of the requirements of California's wage and employment laws.

4 21. Plaintiff is informed and believes, and thereon alleges, that Defendants know,
5 should know, knew and/or should have known that Plaintiff and the other Class Members were
6 entitled to receive all earned wages at or near the time of their separation.

7 22. Plaintiff is informed and believes, and thereon allege, that at all times herein
8 mentioned, Defendants knew that they had a duty to timely compensate Plaintiff and Class
9 Members for their wages, and that Defendants had the financial ability to pay such compensation,
10 but willfully, knowingly, recklessly, and/or intentionally failed to do so.

11 23. California Labor Code §§ 201 and 202 require an employer who discharges an
12 employee to pay compensation due and owing to said employee immediately upon discharge and
13 that if an employee voluntarily leaves his or her employment, his or her wages shall become due
14 and payable not later than seventy-two hours thereafter, unless the employee has given seventy
15 two hours' previous notice of his or her intention to quit in which case the employee is entitled to
16 his or her wages on their last day of work. California Labor Code § 203 provides that if an
17 employer willfully fails to pay compensation promptly upon discharge, as required by California
18 Labor Code §§201 and 202, the employer is liable for waiting time penalties in the form of
19 continued compensation for up to thirty work days.

20 24. Defendants Graybar employed the Class Members, including Plaintiff, throughout
21 the State of California. On or about April 24, 2020, Defendants informed the Class Members
22 including Plaintiff "you are being placed on a temporary, unpaid leave of absence, beginning April
23 26, 2020. We intend to restore you to your prior position with the company on or around August
24 3, 2020. However, we reserve the right to change this based on business needs. Your employment
25 continues to be at-will and nothing in this notice or other furlough communications is intended as
26 an express or implied contract. ... You may be eligible for unemployment benefits. Contact your
27 local unemployment office for information on eligibility and how to apply. ... If you find alternate
28 employment during this period or do not intend to return to work at Graybar, please notify human

1 resources immediately....” In the eyes of California law, this was a discharge and termination,
2 coupled with a non-binding statement of intention to re-hire the Class Members at some point in
3 the future.

4 25. In a 1996 opinion letter, the California Division of Labor Standards Enforcement
5 (the “DLSE”) opined that a furlough extending beyond the employee’s normal pay period in
6 which the furlough begins requires the employer to pay final wages under Section 201. The DLSE
7 relied on a Court of Appeal opinion holding that, in the case of workers who are temporarily out of
8 work, “where the employees have no contractual right to recall within any specified time period,
9 the better approach is to treat such layoffs as indefinite, thereby terminating any employment
10 relationship....” *Campos v. Employment Development Dept.* (1982) 132 Cal.App.3d 961, 973-
11 974. Under *Campos* the DLSE’s opinion letter, a furlough that does not have a definite return-to-
12 work date within the shorter of 10 days or the employee’s normal pay period may be construed as
13 a termination, triggering the requirement to pay final wages under Section 201. Under California
14 law, when Defendants discharged the Class Members with no intention to return the Class
15 Members to work for more than three months, it was required to pay all earned and unpaid wages
16 immediately at the time of the discharge which occurred on April 24th.

17 26. The Class Members including Plaintiff had earned their regular wages prior to the
18 discharge and had also earned vested vacation pay. These wages were owed and due to Class
19 Members at the time of their discharge. However, Defendants failed to make these payments to
20 Class Members at the time of discharge or within a sufficient time of resignation as required by
21 law (for any of those Employees who resigned). Defendants failed to pay the Class Members until
22 on or after May 8, 2020, and the Class Members further allege that some Class Members (not
23 including Plaintiff) have still not been paid all of their vacation pay, as Defendants made vacation
24 payouts optional as part of the discharge. Defendants’ failure to timely pay the foregoing wages at
25 the time of discharge, and failure to pay Employees’ waiting time pay for at least 14 and up to 30
26 days thereafter, violated Sections 201, 203, and 227.3.

27 27. During the relevant time period, Defendants willfully failed and refused to pay
28 Plaintiff and Class Members their wages, earned and unpaid, either at the time of discharge, or

1 within seventy-two hours of their voluntarily leaving Defendants' employ.

2 28. Defendants' willful failure to pay Plaintiff and Class Members their wages earned
3 and unpaid at the time of discharge, or within seventy-two hours of their voluntarily leaving
4 Defendants' employ, violates California Labor Code §§ 201 and 202.

5 29. As a result, Defendants are liable to Plaintiff and Class Members for waiting time
6 pay pursuant to California Labor Code § 203, in an amount according to proof at the time of trial.

7 **SECOND CAUSE OF ACTION**

8 **(For Civil Penalties under Labor Code §§ 2698 et seq.**

9 **by Plaintiff Against All Defendants)**

10 30. Plaintiff incorporates by reference and reallege each and every allegation contained
11 above, as though fully set forth herein.

12 31. Plaintiff asserts this Second Cause of Action solely on behalf of the State of
13 California for all aggrieved Employees, and not in his individual capacity.

14 32. On or about June 26, 2020, Plaintiff filed a PAGA Notice of Claims with the
15 LWDA (Case No. LWDA-CM-794719-20) asserting the foregoing violations of the Labor Code
16 committed against the Employees. Plaintiff incorporates the Notice of Claims as if fully set forth
17 herein.

18 33. Defendants are liable to the Employees including Plaintiff for all civil penalties
19 available under the PAGA.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff and Class Members pray for judgment against Defendants, as
22 follows:

23 **a. On the First Cause of Action**

- 24 1. That the action reflected in the First Cause of Action be certified as a class action;
25 2. That Plaintiff be appointed as representative(s) of the Class;
26 3. That counsel for Plaintiff be appointed as counsel for the Class.
27 4. That waiting time pay be awarded in an amount according to proof;
28 5. That reasonable costs of suit be awarded;

1 6. For such other and further relief as the Court deems proper.

2 **b. On the Second Cause of Action**

3 1. That civil penalties be awarded in an amount according to proof;

4 2. That reasonable attorneys' fees and costs be awarded; and

5 3. For such other and further relief as the Court deems proper.

6 **DEMAND FOR JURY TRIAL**

7 Plaintiff demands a trial by jury in this matter.

8 DATED: June 26, 2020

WORKWORLD LAW CORP.

A Professional Corporation

9
10
11 By: 

RUBEN ESCOBEDO

Attorney for Plaintiff, JUAN MARTINEZ,
Individually, and on Behalf of Other Members of
the Public Similarly Situated, and the State of
California