

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Mel Red Recana

MESSRELIAN LAW INC.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

MIRNA AGUILUZ,

Plaintiff,

vs.

INTERNATIONAL INSTITUTE OF LOS
ANGELES and DOES 1 to 25, inclusive,

Defendants.

) CASE NO.: **20STCV42791**

) **COMPLAINT FOR DAMAGES FOR:**

) **1) PRIVATE ATTORNEYS GENERAL**
) **ACT ("PAGA")**

COMES NOW Plaintiff, MIRNA AGUILUZ (hereinafter "Plaintiff"), and alleges as
follows:

PARTIES, JURISDICTION, VENUE

1
2 1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the
3 County of Los Angeles in this judicial district because Defendants INTERNATIONAL
4 INSTITUTE OF LOS ANGELES and DOES 1 to 25, inclusive (hereinafter collectively known
5 as “Defendants”), do business in the County of Los Angeles and because Defendants’
6 obligations and liabilities arise therein, and because the work that was performed by Plaintiff in
7 the County of Los Angeles is the subject of this action. Moreover, Plaintiff’s damages sought
8 herein exceed \$25,000.
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10 2. Plaintiff is a female resident of the County of San Bernardino, State of California.

11 3. Plaintiff is informed and believes that at all times herein mentioned, Defendant
12 INTERNATIONAL INSTITUTE OF LOS ANGELES (hereinafter “IILA” or “Defendant”) is
13 and was a California domestic nonprofit corporation, doing business in Los Angeles County,
14 California, and which employed Plaintiff.
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16 4. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
17 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
18 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
19 defendants, numbers 1 to 25, reside in the State of California and are in some manner
20 responsible for the conduct alleged herein. Upon discovering the true names and capacities of
21 these fictitiously named defendants, Plaintiff will amend this complaint to show the true names
22 and capacities of these fictitiously named defendants.
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24 5. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
25 that information and belief, alleges that at all times herein mentioned, each of the remaining
26 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
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1 under the authority of their agency, employment, or representative capacity, with the consent
2 of his/her codefendants.

3 4 **GENERAL ALLEGATIONS**

5 6. Plaintiff started working for IILA approximately 19 years ago. Her last date of
6 employment was August 14, 2020. Plaintiff's latest position was that of "AP Manager"
7 (Alternate Payments Manager). She was seemingly salaried at \$25 per hour and worked
8 approximately 75 hours every pay period (two-week period).

9 7. It is Plaintiff's firm position that throughout the duration of her employment tenure at
10 IILA and especially as the "AP Manager", Plaintiff, along with similarly situated aggrieved
11 employees, were unequivocally misclassified as exempt employees. Under California law, in
12 order for Plaintiff to be an exempt employee, he would have to fit in one of the following
13 categories: Administrative, Executive, or Professional.

14 8. Plaintiff is not exempt under the Administrative exemption because his primary duties
15 were not directly related to management policies or general business operations. Plaintiff's work
16 was part of IILA's core, day-to-day operations rather than management or policymaking. *See*
17 Eicher v. Advanced Business Integrators, Inc. (2007), 151 CA4th 1363, 1373-1374.

18 9. As far as the Executive exemption is concerned, Plaintiff would not fit into this
19 category either since she was NOT "primarily engaged in" (more than 50%) duties which met
20 the test of exemption. Work tasks are either exempt or nonexempt as determined by the
21 objective purpose for which the tasks are undertaken. *See Heyen v. Safeway Inc.* (2013) 216
22 CA4th 795, 826-827. In the Heyen case, *supra*, a grocery store assistant manager who spent
23 more than half of her time bagging groceries or checking out customers was deemed to be
24 engaged in nonexempt activities despite concurrently watching over her subordinates' work.
25 Here, Plaintiff spent most of her time submitting reports that involved reconciliation and
26 pulling data, including sending out "Stage 1 invoices" to the State and sending CDE Case Load
27 reports on a monthly basis. Moreover, Plaintiff had to review attendance records for payments
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1 to providers on a daily basis. Plaintiff would also cover the front desk at times. Plaintiff's job
2 was essentially a data entry position (without any independent judgment and discretion being
3 used) and she unequivocally spent less than 50% of her time actually managing any employees.

4 10. Plaintiff cannot be categorized under the Professional exemption either as his work did
5 not fit into one of the enumerated professions (licensed professionals) and is not considered a
6 "learned or artistic/creative profession".

7 11. In addition, even if Plaintiff was arguably an administrative, executive, or professional
8 employee, she did not exercise discretion or independent judgment as part of more than 50% of
9 her job duties. She was simply following orders and guidelines in terms of pulling data,
10 reviewing files and attendance sheets, conducting reconciliations, and inputting data.

11 12. As such, and based on the above, it is Plaintiff's position that IILA has committed
12 numerous labor code violations against Plaintiff and other similarly situated aggrieved
13 employees.

14 13. IILA violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to pay
15 Plaintiff and other similarly situated aggrieved employees California's statutory minimum wage
16 for all hours worked and for "off the clock" work, including but not limited to, the hours spent
17 working from home during non-business hours, which included receiving and responding to
18 emails. Plaintiff generally worked 45 to 50 hours per week at the office but was not compensated
19 for all hours worked due to her apparent "exempt" status. Moreover, as alluded to above, Plaintiff
20 and others were also not compensated for their "off the clock" hours.

21 14. IILA violated Labor Code §510 because it failed to pay Plaintiff and other similarly
22 situated aggrieved employees overtime, even though they worked more than 8 hours per day, 12
23 hours per day, and/or 40 hours per week throughout their employment. Plaintiff's typical
24 workday was 9 to 10 hours per day, not including "off the clock" work, which would entitle
25 Plaintiff to overtime on a daily and weekly basis. Plaintiff and others were misclassified as
26 "exempt" employees and were told they were not entitled to overtime compensation.

27 15. IILA also violated Labor Code §§ 512 and 226.7 along with the applicable Industrial
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1 Welfare Commission Wage Order because it failed to provide Plaintiff and other similarly
2 situated aggrieved employees the requisite 30-minute, uninterrupted meal periods for every five
3 (5) hours of work throughout their employment, and Plaintiff did not validly waive said meal
4 periods. IILA did not completely relieve Plaintiff of all duty during said meal periods. IILA did
5 not pay to Plaintiff one additional hour of pay at Plaintiff's regular rate of compensation for each
6 workday that one or more statutory meal periods was not provided. Plaintiff would consistently
7 work through her meal period. There was no such thing as an uninterrupted, thirty-minute meal
8 period as that was not part of the company culture. It was not company policy and not part of the
9 culture for employees such as Plaintiff and others to take meal breaks. As such, the culture at
10 IILA did not lend itself to the employees receiving statutory breaks wherein they were relieved
11 of all work duties. It was the normal practice and custom of IILA not to authorize, permit, and
12 enforce statutory meal periods.

13 16. IILA also violated Labor Code § 226.7 along with the applicable Industrial Welfare
14 Commission Wage Order because it failed to provide Plaintiff and other similarly situated
15 aggrieved employees 10-minute rest periods for every four hours of work, or majority portion
16 thereof, throughout their employment. IILA did not completely relieve Plaintiff of all duty
17 during
18 said rest periods. IILA did not pay to Plaintiff one additional hour of pay at Plaintiff's regular
19 rate of compensation for each workday that one or more statutory rest periods was not provided.
20 Like meal breaks, Plaintiff and others never took a single, uninterrupted rest break wherein they
21 were relieved of all duty. There was no such thing as an uninterrupted, ten-minute rest period as
22 that was not part of the company culture. It was not company policy and not part of the culture
23 for employees such as Plaintiff and others to take rest breaks. As such, the culture at IILA did
24 not lend itself to the employees receiving statutory breaks wherein they were relieved of all work
25 duties. It was the normal practice and custom of IILA not to authorize, permit, and enforce
26 statutory rest periods.

27 17. Furthermore, during the relevant time period and due to the labor code violations as
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discussed above, IILA failed to pay Plaintiff and other similarly situated aggrieved employees all wages due to them within any time period specified by California Labor Code section 204. IILA was also in violation of California Labor Code section 226(a), by failing to include accurate, pertinent information on the wage statements, including but not limited to, all hours worked, overtime hours worked, all applicable hourly rates, the correct legal name and address of the employer, gross wages earned, all deductions, net wages earned, reimbursement for business expenses, the correct start and end of the applicable pay period, among other items. As such, IILA did not provide Plaintiff and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

18. IILA violated Labor Code § 203 because it willfully failed to pay other similarly situated aggrieved employees earned and due wages upon separation of employment, either immediately upon involuntary termination, or within 72 hours of resignation. These earned but unpaid wages include the unpaid minimum wages, wages for all hours worked, overtime wages, and meal/rest period compensation described above.

19. During the relevant time period, IILA also failed to keep accurate and complete payroll records showing the actual hours worked per day and the wages paid to Plaintiff and other aggrieved employees pursuant to California Labor Code sections 1174(d).

20. During the relevant time period, Plaintiff and other aggrieved employees incurred necessary, business-related expenses and costs that were not reimbursed by IILA. These costs include, but are not limited to, use of personal phones for business-related purposes. Accordingly, IILA was in violation of California Labor Code sections 2800 and 2802.

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FIRST CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(Individual and Representative Claim for PAGA penalties under California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 2802)

(Plaintiff against All Named Defendants and all DOE Defendants)

21. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 20, inclusive, of this Complaint as though fully set forth herein.

22. Pursuant to law, Plaintiff provided the required written notice to the LWDA and Defendants of the specific violations of the California Labor Code that Defendant and DOE defendants have violated and continue to violate.

23. Pursuant to California Labor code section 2699.3, no response was received from the LWDA within 65 days of the postmark date of the above-alleged letter.

24. Plaintiff therefore has exhausted all administrative remedies required of her under California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this cause of action and pursue penalties in a representative action for Defendants' violations of the Labor Code.

25. Pursuant to California Labor Code section 2699, any provisions of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies, or employees for violation of the 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 California Labor Code section 2699.3.

26. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged violators and had one or more of the alleged violations committed against her, and therefore is properly suited to represent the interests of other current and former employees, which include all salaried, exempt employees and all hourly, non-exempt employees who worked for

1 IILA in the State of California during the applicable PAGA period.

2 27. Based on the acts alleged above, Plaintiff, on behalf of herself and others, seeks
3 penalties under California Labor Code sections 2698 and 2699 because of Defendants'
4 violations of numerous provisions of the California Labor Code as alleged in this Complaint.

5 28. Plaintiff therefore has exhausted all administrative remedies required of her under
6 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
7 cause of action and pursue penalties in a representative action for Defendants' violations of the
8 Labor Code.

9 29. California Labor Code section 2699 et seq. imposes penalties upon culpable
10 Defendants for violating the Labor Code.

11 30. California Labor Code section 558 establishes a civil penalty as follows: Any
12 employer or other person action on behalf of an employer who violates, or causes to be
13 violated, a section of this chapter or any provision regulating hours and days of work in any
14 order of the Industrial Welfare Commission (including the "Hours and Days of Work" section
15 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty
16 dollars (\$50) for each underpaid employee for each pay period for which the employee was
17 underpaid... (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid
18 employee for each pay period for which the employee was underpaid...

19 31. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
20 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
21 seeking individual/victim specific relief or underpaid wages.

22 32. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
23 the following:

24 Violations of California Labor Code Representative Claim for PAGA penalties under
25 California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7,
26 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1 2802 via 2698 and 2699 and any
27 other Labor Codes or Industrial Welfare Commission Wage Order(s) violated based on the
28 facts alleged in this Complaint.

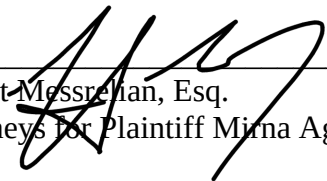
1 33. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,
2 costs and civil penalties on behalf of Plaintiff and other current and former aggrieved
3 employees as alleged herein in an amount to be shown according to proof at trial and within the
4 jurisdictional limits of this Court.

5 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
6 follows:

- 7 1. For the imposition of civil penalties;
- 8 2. For maximum civil penalties available under Labor Code Section 2699
9 against Defendants in a manner and amount authorized by that statute, as described
10 more particularly in the Complaint and representative PAGA claims.
- 11 3. For all costs and disbursements incurred in this suit;
- 12 4. Reasonable attorney's fees where available by law, including but not limited to,
13 pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5,
14 and/or other applicable laws; and
- 15 5. For such other and further relief as this Court may deem proper.
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17
18 **DATED:** November 6, 2020

MESSRELIAN LAW INC.

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20 By  _____
21 Harout Messrelian, Esq.
22 Attorneys for Plaintiff Mirna Aguiluz
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