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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN AND FOR THE COUNTY OF MARIN

11 ERIKA SAMANO, individually, and on behalf
of others similarly situated,

12 Plaintiff,

13 vs.

14 COMET BUILDING MAINTENANCE, INC.,
15 dba COMET PROPERTY SERVICES, and
DOES ONE through TWENTY inclusive,

16 Defendants.
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22
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FILED

APR 15 2021

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Chen, Deputy

Case No.: CIV2100550

**FIRST AMENDED CLASS ACTION
COMPLAINT**

*Assigned for all purposes to Judge Stephen P.
Freccero*

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Pay Split Shift Wages;
4. Failure to Provide Rest or Pay
Additional Wages in Lieu Thereof;
5. Failure to Provide Meal Periods or Pay
Additional Wages in Lieu Thereof;
6. Failure to Indemnify Employees for
Necessary Business Expenditures or
Losses Incurred;
7. Failure to Maintain and Provide Accurate
Itemized Employee Wage Statements and
Records;
8. Violation of Unfair Competition Law,
Cal. Bus. & Prof. Code, §§ 17200 *et seq.*

NON-CLASS PAGA CLAIM

9. Penalties Pursuant to the Private
Attorneys General Act (PAGA), Cal. Lab.
Code, §§ 2698 *et seq.*

27 DEMAND FOR JURY TRIAL
REQUEST FOR COMPLEX DESIGNATION
28 Complaint filed: February 2, 2021

1 **I. INTRODUCTION**

2 1. Plaintiff ERIKA SAMANO (“PLAINTIFF”) brings this representative action pursuant to
3 California Code of Civil Procedure section 382 against Defendant COMET BUILDING
4 MAINTENANCE, INC., dba COMET PROPERTY SERVICES (“COMET”), and DOES ONE through
5 TWENTY (collectively with COMET, “ALL DEFENDANTS”).

6 2. The class that PLAINTIFF seeks to represent (“Class”) is composed of California
7 residents who worked for COMET in the State of California as non-exempt workers paid on an hourly
8 basis (“Class Members”) at any time during the period beginning four years prior to the filing of the
9 original complaint through the future date of notice to the Class Members that a class has been certified
10 in this action (“Class Period”). The wage and hour violations alleged in this Complaint revolve around
11 COMET’s systemic failure to pay its non-exempt California employees in conformance with the
12 California Labor Code, Business and Professions Code, the applicable Wage Order, and other California
13 statutes and caselaw. Principally, COMET fails to create and maintain records of actual hours worked
14 by its employees; instead, COMET engages in a practice of compensating its employees based on an
15 hourly quota or schedule system, paying employees for the number of hours allotted or scheduled to a
16 worksite rather the hours actually worked by employees. From this practice, which directly results in
17 unpaid time, are related other violations, including but not limited to recordkeeping violations, the failure
18 to provide proper rest and meal breaks, and wage statement violations. PLAINTIFF and the class are
19 owed wages, interest, and penalties as a result of COMET’s enforcement of these policies and practices
20 that violate the California Labor Code, applicable Wage Order, and California’s unfair competition law
21 (Cal. Bus. & Prof. Code section 17200 et seq., hereinafter “UCL”), as described below.

22 3. At all times relevant hereto, COMET’s unlawful policies and practices were centrally
23 devised and commonly applied to all Class Members.

24 4. This action is also a law enforcement action that seeks penalties pursuant to the Private
25 Attorneys General Act (PAGA), Labor Code sections 2698 et seq. This action seeks reasonable
26 attorneys’ fees and costs pursuant to Labor Code sections 2698 et seq., Labor Code sections 218.5 and
27 218.6, and Code of Civil Procedure section 1021.5.
28

II. THE PARTIES

5. PLAINTIFF is a non-exempt, California-resident employee of COMET during the Class Period. PLAINTIFF has been employed by COMET since approximately June 2017. PLAINTIFF works as a janitor for COMET and, over the course of their employment with COMET, has worked at a variety of customer worksites in the Bay Area. As a result of ALL DEFENDANTS' violations of the Labor Code, PLAINTIFF is an aggrieved employee within the meaning of the PAGA statute and has suffered injury-in-fact and has lost money or property as a result of ALL DEFENDANTS' practices. This injury-in-fact and lost money or property consists of lost wages, premium pay, and other harms provided by the Labor Code as detailed in this Complaint. A tally of these harms cannot readily be determined as the necessary records are held nearly exclusively in ALL DEFENDANTS' possession, custody, and control. However, on information and belief, this injury-in-fact amounts to hundreds of thousands, if not millions, of dollars for the Class. PLAINTIFF, and the Class they seek to represent, were regularly subjected to, or had personal knowledge of, the violations described in the Complaint and/or the allegations contained herein made on information and belief based upon investigation of counsel.

6. Defendant COMET is a janitorial services business that has been incorporated in California and headquartered at 21 Commercial Blvd., Suite 12, Novato, California (County of San Marin). On information and belief, COMET does business as Comet Property Services. As stated on its website, COMET provides complete janitorial services, porter services, shopping center maintenance, and landscaping maintenance to clients in the greater San Francisco Bay Area. COMET's agent for service of process is Richard J. Basile, 11 Commercial Blvd. Suite 12, Novato, California, as per its July 30, 2012, and July 31, 2019, filings with the California Secretary of State.

7. The true names and capacities, whether individual, corporate, associates, or otherwise of Defendants sued herein as DOES 1 through 20, inclusive, are currently unknown to PLAINTIFF, who therefore sue such Defendants by fictitious names under Code of Civil Procedure section 474. PLAINTIFF is informed and believe, and based thereon allege, that each of the other Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. PLAINTIFF will seek leave of court to amend this Complaint to reflect the true names and capacities of

1 the Defendants designated hereinafter as DOES when such identities become known.

2 8. PLAINTIFF is informed and believes that the COMET is liable to PLAINTIFF and Class
3 Members as an “employer,” as that term is defined in section 18 of the Labor Code. As the employer of
4 PLAINTIFF and Class Members throughout the Class Period, COMET is liable for the economic
5 damages and statutory penalties owed to PLAINTIFF and Class Members.

6 **III. JURISDICTION**

7 9. This Court has jurisdiction over PLAINTIFF’s action, which arises under the California
8 Labor Code and alleges damages exceeding \$25,000.00.

9 **IV. VENUE**

10 10. Venue is proper pursuant to California Code of Civil Procedure section 395(a), because
11 PLAINTIFF was harmed by ALL DEFENDANTS’ violations of the California Labor Code in Marin
12 County, COMET is headquartered in Marin County, and COMET continues to do business in Marin
13 County, and and employs individuals in Marin County. Defendants committed the acts in question in
14 the Complaint, partly or wholly, in Marin County.

15 **V. FACTUAL BACKGROUND**

16 11. As set forth below and at all times relevant hereto, COMET’s unlawful policies and
17 practices were centrally devised and commonly applied to all Class Members, including PLAINTIFF.

18 12. The claims of this lawsuit spring from a pattern of employer misconduct and wrongdoing
19 that is characteristic of the labor system utilized by COMET. Instead of recording and compensating for
20 employees’ actual hours worked, COMET uses a pre-established quota or schedule system to
21 compensate its employees for work performed at its various customer worksites. COMET provides for
22 a total number of hours to be scheduled and paid for particular job assignments. For example, if a non-
23 exempt janitorial worker is sent to clean a site and COMET has allotted or scheduled a certain amount
24 of hours for that assignment, COMET pays the employee for the number of hourly indicated by its quota
25 or schedule regardless of the actual time required for the employee to perform their job duties and
26 regardless of the actual time taken by the employee to perform their job duties. COMET’s system of
27 paying by schedule results in unpaid regular and premium hours. COMET’s failure to pay actual hours
28 worked is evidenced by the fact that neither non-exempt employees nor their supervisors record the

1 actual hours worked, because payment is contingent only upon the time quota or pre-established
2 schedule.

3 13. COMET establishes their employees' work schedules and, on information and belief,
4 assigns non-exempt janitorial employees to work at more than one worksite on a given day. For example,
5 PLAINTIFF worked at one location for an assignment scheduled to be completed in five hours and then
6 worked at a second location for a different assignment scheduled to be completed in five hours. COMET
7 does not pay its non-exempt employees for the travel time between worksites, nor does COMET
8 reimburse its employees for their necessary travel expenses (i.e., mileage). COMET also did not
9 reimburse PLAINTIFF for having to buy bleach necessary for her job duties and, in information and
10 belief, other similarly situated employees incurred unreimbursed expenses on similar cleaning products.
11 Moreover, COMET's scheduling of employees at multiple worksites within the same workday creates
12 split shifts, but COMET does not pay its non-exempt employees split shift premiums when owed.

13 14. COMET's quota or pay-by-schedule system also does not compensate its employees in
14 conformance with state overtime requirements. COMET's pay-by-schedule system adds all the
15 scheduled hours set to have been worked by its employees and compensates them all as regular hours.
16 For instance, in the example provided above, PLAINTIFF worked two different five-hour schedules
17 within the same workday. Instead of paying PLAINTIFF two premium hours of overtime per day (for
18 the ninth and tenth hours of scheduled work), COMET paid her ten regular hours for the scheduled work.
19 COMET's violations of state overtime requirements flow directly from its pay-by-schedule system;
20 because COMET treats worksite quotas or schedules as discrete assignments, COMET calculates hours
21 based on the individual assignments rather than the combined assignments, let alone the hours actually
22 worked by employees.

23 15. COMET also does not provide its employees with proper rest and meal breaks nor
24 compensate them with break premiums. This, too, stems directly from COMET's quota or pay-by-
25 schedule system. On information and belief, COMET does not have a centralized policy of providing
26 lawful rest and meal breaks to its employees but, even in practice, its system of pay-by-schedule deters
27 employees from being able to take any sort of break. Because COMET's system does not compensate
28 its employees for any time worked outside of the quota or schedule, employees work to complete their

1 job duties within the time allotted to them. By having to fit their work into the time allotted and paid to
2 them, employees, including PLAINTIFF, are not afforded the ability to take rest or meal breaks.

3 16. COMET also fails to issue accurate itemized wage statements to its non-exempt
4 employees. On information and belief, COMET issues wage statements in two parts. The first part
5 shows the employee's pay as either "gross earnings" or salary and provides the total gross compensation
6 to the employees as well as the withholdings and net pay. The "total hours worked" and "all applicable
7 hourly rates" are missing from this part of the wage statement. On information and belief, COMET
8 inserts a second, separate document with the wage statements and employees checks; this document is
9 titled "Hours for [name of employee] on pay period #[x] ([DATE])." This document, however, does not
10 itemize the total hours worked but rather the scheduled hours of the different schedules worked by the
11 employee during that pay period (e.g., M-F (5 hrs) for one location and M-F (5 hrs) for a second
12 worksite). This document also does not list all applicable hourly rates, instead showing the pay for that
13 entire worksite schedule for the entire pay period. For instance, on one of PLAINTIFF's wage statements
14 in which they worked two, five-hour schedules per day, the first five-hour schedule was paid as a "fixed"
15 amount of \$575 (for the entire two-week pay period) and the second five-hour schedule was paid as a
16 "fixed" amount of \$650. The format used by COMET has, in fact, columns for "hours" and "rates" but
17 COMET does not populate them. COMET's wage statements also do not provide the correct address of
18 the legal entity of the employer, listing COMET's address as merely "21 Commercial #12," when the
19 correct street address is "21 Commercial **Blvd.** Suite 12."

20 17. As a result of the aforementioned violations of the Labor Code and applicable Wage
21 Order, COMET, by way of its unlawful and unfair pay-by-schedule system, has violated California
22 Business and Professions Code section 17200 et seq.

23 18. Owing to the preceding allegations, for at least four years prior to the filing of this action
24 and through to the present, COMET maintained and enforced against PLAINTIFF and the Class
25 unlawful practices and policies in violation of California wage and hour laws, including but not limited
26 to:

- 27 a. forcing Class Members, including PLAINTIFF, to work "off the clock" time without
28 compensation as required by law;

- b. failing to create and maintain accurate records of work periods, meal periods, and split shift intervals as required by law for Class Members, including PLAINTIFF;
- c. failing to pay Class Members, including PLAINTIFF, overtime and double-overtime when required by law;
- d. failing to pay Class Members, including PLAINTIFF, for travel time as required by law;
- e. failing to reimburse Class Members, including PLAINTIFF, for expenses incurred, including travel expenses, as required by law;
- f. requiring Class Members, including PLAINTIFF, to work a split-shift without the required additional hour of pay at the minimum wage, as required by law;
- g. failing to properly provide/authorize Class Members, including PLAINTIFF, rest periods of at least (10) minutes per four (4) hours worked, or major fraction thereof, and failing to pay such employees one (1) hour of additional wages at the employees' regular rate of compensation for each workday that the rest period was not provided, in violation of California law and public policy;
- h. failing to provide proper, timely meal breaks, requiring Class Members, including PLAINTIFF, to work at least five (5) hours without a full, thirty-minute, uninterrupted meal period, and failing to pay such employees one (1) hour of additional wages at the employees' regular rate of compensation for each workday that the meal period was not provided, in violation of California state laws and public policy;
- i. failing to provide Class Members, including PLAINTIFFS, with accurate itemized wage statements in violation of California law and public policy;
- j. failing to pay all wages owed (i.e., wages for all "hours worked," premium rest and meal period wages, and vested vacation wages) to employees timely upon the termination of the employment relationship;

19. On information and belief, COMET was on notice of the improprieties alleged and/or has intentionally, deliberately, and willfully carried out these unlawful and unfair business practices.

1 20. COMET has made it difficult to account with precision for the unlawfully withheld wages
2 due to PLAINTIFF and the Class during all relevant times herein, because COMET did not fully
3 implement and preserve a timekeeping and record-keeping method to accurately record all hours worked,
4 meal breaks, and wages earned by its employees as required for non-exempt employees by California
5 Labor Code sections 226 and 1174(d), and Industrial Welfare Commission Wage Orders.

6 21. The enforcement of statutory provisions to protect workers and to ensure, for example,
7 pay for all hours worked and proper rest and meal breaks, is a fundamental public interest. PLAINTIFF's
8 successful enforcement of important rights affecting the public interest will confer a significant benefit
9 upon the general public. Private enforcement of these rights is necessary, as no public agency has
10 pursued enforcement. PLAINTIFF is incurring a financial burden in pursuing this action, and it would
11 be against the interests of justice to require the payment of attorneys' fees and costs from any recovery
12 obtained.

13 22. On February 1, 2021, PLAINTIFF, through counsel, sent via certified mail to COMET
14 and certified mail and e-portal submission to the California Labor & Workforce Development Agency
15 (LWDA) notice of the specific provisions of the Labor Code COMET is alleged to have violated (which
16 described herein in this complaint) as well as the facts and theories supporting the alleged violations.
17 PLAINTIFF alleged themselves to be an aggrieved employee within the meaning of the PAGA statute.
18 More than 65 days have elapsed since the postmark date of PLAINTIFF'S PAGA notice, and no notice
19 has been received by PLAINTIFF of the LWDA's intent to investigate any of the alleged violations.

20 **VI. CLASS ACTION ALLEGATIONS**

21 23. PLAINTIFF brings this action on behalf of themselves and all others similarly situated
22 as a class action pursuant to section 382 of the Code of Civil Procedure. PLAINTIFF seeks to represent
23 the following "Class" composed of and defined as follows:

24 All non-exempt persons who are employed or have been employed by COMET
25 in the State of California who, within four (4) years of the filing of the original
26 Complaint.
27
28

1 24. On information and belief, the legal and factual issues implicated by this Complaint are
2 common to the Class and affect all Class Members. PLAINTIFF reserves the right under Rule 3.765,
3 California Rules of Court, to amend or modify the class description or divide into subclasses.

4 25. This action has been brought and may properly be maintained as a class action under the
5 provisions of section 382 of the Code of Civil Procedure because there is a well-defined community of
6 interest in the litigation and the proposed Class is easily ascertainable.

7
8 **A. Numerosity**

9 26. The potential members of the Class as defined are so numerous that joinder of all the
10 members of the Class is impracticable. While the precise number of Class Members has not been
11 determined at this time, PLAINTIFF is informed and believe that COMET has employed hundreds of
12 non-exempt employees in the State of California during the Class Period and who are, or have been,
13 affected by COMET's unlawful practices as alleged herein.

14 27. Upon information and belief, PLAINTIFF alleges that COMET's employment records
15 would provide information as to the number and location of all Class Members. Joinder of all members
16 of the proposed Class is not practicable.

17
18 **B. Commonality**

19 28. There are questions of law and fact common to the Class predominating over any
20 questions affecting only individual Class Members. These common questions of law and fact include,
21 without limitation:

- 22 a. Whether Defendants violated the California Labor Code and applicable
23 Wage Order by not compensating PLAINTIFF and other Class Members for
24 all hours worked;
25 b. Whether Defendants violated the California Labor Code and applicable
26 Wage Order by not compensating PLAINTIFF and other Class Members at
27 hourly wage rates below the minimum wage rate;
28

- 1 c. Whether Defendants violated the California Labor Code and applicable
2 Wage Order by not compensating PLAINTIFF and other Class Members for
3 owed premium hours (i.e., overtime and double-overtime);
- 4 d. Whether Defendants violated the California Labor Code and applicable
5 Wage Order by not compensating PLAINTIFF and other Class Members for
6 all hours worked;
- 7 e. Whether Defendants violated the California Labor Code, Wage Orders, or
8 public policy by failing to provide daily rest periods to PLAINTIFF and the
9 other Class Members for every four hours or major fraction thereof worked
10 and failing to compensate said employees one hours of additional wages in
11 lieu of each rest period denied;
- 12 f. Whether Defendants violated the California Labor Code, Wage Orders, or
13 public policy by failing to provide a full, timely meal period to PLAINTIFF
14 and the other Class Members on days they worked work periods in excess of
15 five hours and failing to compensate said employees one hour additional
16 wages in lieu of each meal period denied, and by deducting for lunch periods
17 that were not taken;
- 18 g. Whether Defendants violated the California Labor Code and applicable
19 Wage Order by failing to create and maintain accurate records of work
20 periods, meal periods, and split shift intervals for Class Members, including
21 PLAINTIFF;
- 22 h. Whether Defendants violated the California Labor Code and applicable
23 Wage Order by failing pay Class Members, including PLAINTIFF, split-shift
24 premiums;
- 25 i. Whether Defendants violated the California Labor Code by failing to
26 compensate Class Members, including PLAINTIFF, for necessary expenses;
27 and
28

j. Whether PREMIER committed unfair or unlawful business practices in violation of section 17200 *et seq.* of the Business and Professions Code.

C. Typicality

29. The claims of the named PLAINTIFF are typical of the claims of the Class. PLAINTIFF and all members of the Class sustained injuries and damages arising out of and caused by COMET's common course of conduct in violation of California laws, regulations, and public policy as alleged herein.

D. Adequacy of Representation

30. PLAINTIFF will fairly and adequately represent and protect the interests of the members of the Class. Counsel who represent PLAINTIFF are competent and experienced in litigating large employment class actions.

E. Superiority of Class Action

31. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each member of the Class has been damaged and is entitled to recovery by reason of COMET's unlawful policy and/or practice of failing to compensate Class Members for the unlawful practices herein complained of.

32. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. PLAINTIFF is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

VII. CAUSES OF ACTION

FIRST CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES

(CALIFORNIA LABOR CODE §§ 1194, 1194.2, 1197, WAGE ORDER 5-2001, AND OTHERS)

(PLAINTIFF INDIVIDUALLY AND ON BEHALF OF THE CLASS AGAINST ALL

DEFENDANTS)

33. PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

34. Defendants failed to pay minimum wage for “all hours worked.” For example, PLAINTIFF and the Class were forced to work “off the clock” time without compensation. Additionally, Defendants failed to pay for travel time.

35. Labor Code section 1197 states that the minimum wage for employees is “fixed by commission or by any applicable state or local law” and states that “the payment of a lower wage than the minimum so fixed is unlawful.”

36. Absent a local minimum wage ordinance, the applicable minimum wages fixed by the commission for public housekeeping industry workers is found in Wage Order 5-2001, with Section 4(A) amended and republished by the Department of Industrial Relations to account for changes in state minimum wage requirements.

37. The minimum wage provision of the California Labor Code is enforceable by private civil action pursuant to section 1194(a), which provides a private right of action to recover the unpaid balance of the full amount of minimum wage or overtime compensation and recovery of attorney fees and costs.

38. Labor Code section 1194.2 provides for recovery of “liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon” in suits brought under section 1194.

39. Defendants have the ability to pay minimum wages for all hours worked and have willfully refused to pay such wages with the intent to secure for themselves a discount upon this indebtedness and with the intent to annoy, harass, oppress, hinder, delay, or defraud PLAINTIFF and the Class and have, therefore, also violated Labor Code section 226(a).

40. As a result of Defendants’ violations of the minimum wage by failing to record and pay minimum wages for all hours worked, Defendants violated section 226(a) by inaccurately stating gross wages earned, total hours worked, deductions, net wages, and other issues as described herein.

Defendants have also violated Labor Code section 226.6 and Wage Order 5-2001.

41. In sum, PLAINTIFF, individually and on behalf of the Class, may bring this action for minimum wages, interest, cost of suit, and attorney fees pursuant to section 1194(a) and the UCL.

42. WHEREFORE, PLAINTIFF and the Class are entitled to recover the unpaid minimum wages, liquidated damages in the amount equal to the minimum wages withheld, interest, costs, and attorney fees.

SECOND CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES

(CALIFORNIA LABOR CODE §§ 510, 1194, 1194.2, AND WAGE ORDER 5-2001)

(PLAINTIFF INDIVIDUALLY AND ON BEHALF OF THE CLASS AGAINST ALL
DEFENDANTS)

43. PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

44. Labor Code section 510(a) provides for overtime for work in excess of eight hours in one workday and any work in excess of 40 hours in any one work week. It also provides for double-time pay for work in excess of twelve hours in a workday, overtime pay for the first eight hours of work on the seventh day of a workweek, and double-time pay for work on the seventh day beyond the first eight hours. The same standards are set forth in Section 3(A) of Wage Order 5-2001.

45. As described herein, Defendants violated Labor Code section 510 and Wage Order 5-2001 by employing PLAINTIFF and Class Members in excess of eight hours in one day, 40 hours in a workweek, and on the seventh day of a workweek without overtime pay. Defendants also violated section 510 and the applicable Wage Order by employing PLAINTIFF and Class Members greater than eight hours on the seventh day of work and in excess of twelve hours in a day without double-time pay.

46. PLAINTIFF, individually and on behalf of the Class, may bring this action for overtime wages, interest, cost of suit, and attorney fees pursuant to section 1194(a).

47. WHEREFORE, PLAINTIFF and the Class are entitled to recover the unpaid overtime wages, interest, costs, and attorney fees.

THIRD CAUSE OF ACTION
FAILURE TO PAY SPLIT SHIFT WAGES

(CALIFORNIA LABOR CODE §§ 1194, 1194.2, 1197, WAGE ORDER 5-2001)
(PLAINTIFF INDIVIDUALLY AND ON BEHALF OF THE CLASS AGAINST ALL
DEFENDANTS)

48. PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

49. Defendants failed to pay split shift wages. In particular, PLAINTIFF and the Class were required to work shifts split by non-paid, non-working periods of time established by Defendants that were not bona fide rest or meal periods. As defined in the applicable Wage Order, a “split shift” is a “work schedule which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.”

50. Labor Code section 1197 states that the minimum wage for employees is “fixed by commission or by any applicable state or local law” and states that “the payment of a lower wage than the minimum so fixed is unlawful.”

51. Section 4(C) of Wage Order 5-2001 states that “[w]hen an employee works a split shift, one hour’s pay at the minimum wage shall be paid in addition to the minimum wage for that workday.”

52. As set forth above, the minimum wage provisions are enforceable by private right of action pursuant to Labor Code section 1194, and, under sections 1194 and 1194.2, the unpaid balance, liquidated damages equivalent to the unpaid balance, interest, attorney fees, and costs of suit are available remedies to employees in their private suits.

53. WHEREFORE, PLAINTIFF and the Class are entitled to recover the unpaid split shift minimum wages, liquidated damages in the amount equal to the split shift minimum wages withheld, interest, costs, and attorney fees.

FOURTH CAUSE OF ACTION
PROVIDE REST PERIODS OR PAY ADDITIONAL WAGES IN LIEU THEREOF

(CALIFORNIA LABOR CODE § 226.7 AND WAGE ORDER 5-2001)
(PLAINTIFF INDIVIDUALLY AND ON BEHALF OF THE CLASS AGAINST ALL
DEFENDANTS)

54. PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

1 55. Defendants did not authorize or permit PLAINTIFF and the Class to take all required rest
2 periods. PLAINTIFF and the Class routinely worked and work four-hour periods during the day without
3 rest periods or compensation in lieu thereof. Defendant's employment practices did not provide for rest
4 periods as mandated by California law.

5 56. California Labor Code section 226.7 states:

6
7 (a) No employer shall require any employee to work during any meal or rest period
mandated by an applicable order of the Industrial Welfare Commission.

8 (b) If an employer fails to provide an employee a meal period or rest period in accordance
9 with an applicable order of the Industrial Welfare Commission, the employer shall pay
10 the employee one additional hour of pay at the employee's regular rate of compensation
for each work day that the meal or rest period is not provided.

11 57. The applicable wage order issued by the Industrial Welfare Commission is Wage Order
12 5-2001, which states at Section 12 with regard to rest periods:

13
14 (A) Every employer shall authorize and permit all employees to take rest periods, which
15 insofar as practicable shall be in the middle of each work period. The authorized rest
16 period time shall be based on the total hours worked daily at the rate of ten (10) minutes
17 net rest time per four (4) hours or major fraction thereof. However, a rest period need not
be authorized for employees whose total daily work time is less than three and one-half
(3 1/2) hours. Authorized rest period time shall be counted, as hours worked, for which
there shall be no deduction from wages.

18 (B) If an employer fails to provide an employee a rest period in accordance with the
19 applicable provisions of this Order, the employer shall pay the employee one (1) hour of
20 pay at the employee's regular rate of compensation for each work day that the rest period
is not provided.

21
22 58. Defendants violated California law by failing to provide rest periods mandated by Labor
23 Code section 226.7 and Wage Order 5 and by failing to provide one hour pay at the employees' regular
24 rate of compensation for each work day that a required rest period was not provided.

25 59. PLAINTIFF and the Class did not voluntarily or willfully waive rest periods. Any
26 express or implied waivers obtained from PLAINTIFF and Class members were not willfully obtained,
27 was not voluntarily agreed to, was a condition of employment, or part of a contract of an unlawful
28 adhesion.

60. By failing to keep adequate time records required by Labor Code sections 226, 1174 and the Wage Order, Defendants have made it difficult to calculate the unpaid rest period compensation due PLAINTIFF and the Class. As a consequence, PLAINTIFF and the Class may be entitled to prove their damages to this claim by just and reasonable inference.

61. As a result of the unlawful acts of Defendant, PLAINTIFF and the Class have been deprived of premium wages in amounts to be determined at trial and are entitled to recovery of such amounts, plus interest and penalties thereon, attorney fees, and costs, under Labor Code sections 226.7, 1194, other statutes, and Wage Order 5.

62. WHEREFORE, PLAINTIFF and the Class are entitled to recover the unpaid rest break premiums, interest, costs, and attorney fees.

FIFTH CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS OR PAY ADDITIONAL WAGES IN LIEU THEREOF

(CALIFORNIA LABOR CODE §§ 226.7, 512, AND WAGE ORDER 5-2001)

(PLAINTIFF INDIVIDUALLY AND ON BEHALF OF THE CLASS AGAINST ALL
DEFENDANTS)

63. PLAINTIFF incorporate all preceding paragraphs as though fully set forth herein.

64. PLAINTIFF and the Class were not afforded meal periods as required by California law, since they were routinely required to work five hours or more without a full, thirty-minute, uninterrupted meal period, and they were not compensated for these missed meal periods.

65. California Labor Code section 226.7 states:

(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

66. The applicable wage order issued by the Industrial Welfare Commission is Wage Order 5-2001. Section 11 of Wage Order 5-2001 states with regards to meal periods:

1
2 (A) No employer shall employ any person for a work period of more than five (5)
3 hours without a meal period of not less than 30 minutes, except that when a work period
4 of not more than six (6) hours will complete the day's work the meal period may be
5 waived by mutual consent of the employer and employee. Unless the employee is relieved
6 of all duty during a 30 minute meal period, the meal period shall be considered an "on
7 duty" meal period and counted as time worked. An "on duty" meal period shall be
permitted only when the nature of the work prevents an employee from being relieved of
all duty and when by written agreement between the parties an on-the-job paid meal
period is agreed to. The written agreement shall state that the employee may, in writing,
revoke the agreement at any time.

8 (B) If an employer fails to provide an employee a meal period in accordance with the
9 applicable provisions of this Order, the employer shall pay the employee one (1) hour of
10 pay at the employee's regular rate of compensation for each work day that the meal period
is not provided.

11 67. A similar provision is contained in Labor Code section 512, which states:

12
13 (a) An employer shall not employ an employee for a work period of more than five
14 hours per day without providing the employee with a meal period of not less than 30
15 minutes, except that if the total work period per day of the employee is no more than six
16 hours, the meal period may be waived by mutual consent of both the employer and
17 employee. An employer shall not employ an employee for a work period of more than 10
hours per day without providing the employee with a second meal period of not less than
30 minutes, except that if the total hours worked is no more than 12 hours, the second
meal period may be waived by mutual consent of the employer and the employee only if
the first meal period was not waived.

18 68. In this case, there was no mutual waiver of meal periods and employees worked for
19 periods of more than five hours without an off-duty meal period of at least 30 minutes. Any express or
20 implied waivers obtained from PLAINTIFF and the Class was not willfully obtained, was not voluntarily
21 agreed to, was a condition of employment, or part of a contract of an unlawful admission. Therefore, as
22 noted above, Defendants violated Labor Code sections 226.7, 512, and Wage. As such, Defendants are
23 liable for one hour of pay at each respective employee's regular rate of compensation for each workday
24 that meal periods were not provided.

25 69. By failing to keep adequate time records required by Labor Code sections 1174 and the
26 Wage Order, Defendants made it difficult to calculate the unpaid meal period compensation due
27 PLAINTIFF and the Class. As a consequence, PLAINTIFF and the Class may be entitled to prove their
28 damages to this claim by just and reasonable inference.

70. As a result of the unlawful acts of Defendant, PLAINTIFF and the Class have been deprived of premium wages in amounts to be determined at trial and are entitled to recovery of such amounts, plus interest and penalties thereon, attorney fees, and costs, under Labor Code sections 226.7, 1194, other statutes, and Wage Order 5.

71. WHEREFORE, PLAINTIFF and the Class are entitled to recover the unpaid meal break premiums, interest, costs, and attorney fees.

SIXTH CAUSE OF ACTION
**FAILURE TO INDEMNIFY EMPLOYEES FOR NECESSARY BUSINESS EXPENDITURES
OR LOSSES INCURRED**

(CALIFORNIA LABOR CODE § 2802 AND WAGE ORDER 5-2001)

(PLAINTIFF INDIVIDUALLY AND ON BEHALF OF THE CLASS AGAINST ALL
DEFENDANTS)

72. PLAINTIFFS incorporate all preceding paragraphs as though fully set forth herein.

73. Defendants failed to reimburse PLAINTIFF and the Class for necessary expenses in traveling between worksites, as well as for cleaning supplies, like bleach, necessary to perform their job duties.

74. Labor Code section 2802 states:

(a) 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, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

...

(c) For purposes of this section, the term “necessary expenditures or losses” shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.

75. In this case, PLAINTIFF and the Class were required to incur travel costs between sites, which typically consisted of automobile travel, and were not reimbursed for these travel expenses. As such, PLAINTIFF, individually and on behalf of the Class, may bring this claim in this action for reimbursement for mileage, including interest, costs of suit, and attorney fees pursuant to Labor Code section 2802.

1 76. WHEREFORE, PLAINTIFF and the Class are entitled to reimbursement for necessary
2 expenditures and losses incurred by PLAINTIFF and the Class Members in direct consequence of the
3 discharge of their duties, or of their obedience to the directions of Defendants, interest thereon, costs of
4 suit, and attorney fees.

5 **SEVENTH CAUSE OF ACTION**
6 **FAILURE TO MAINTAIN AND PROVIDE ACCURATE ITEMIZED EMPLOYEE WAGE**
7 **STATEMENTS AND RECORDS**

8 (CALIFORNIA LABOR CODE §§ 226, 1174, 1175, AND WAGE ORDER 5-2001)

9 (PLAINTIFF INDIVIDUALLY AND ON BEHALF OF THE CLASS AGAINST ALL
10 DEFENDANTS)

11 77. PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

12 78. California Labor Code section 226(a) states:

13 (a) An employer, semimonthly or at the time of each payment of wages, shall
14 furnish to his or her employee, either as a detachable part of the check, draft, or
15 voucher paying the employee's wages, or separately if wages are paid by personal
16 check or cash, an accurate itemized statement in writing showing (1) gross wages
17 earned, (2) total hours worked by the employee, except as provided in subdivision
18 (j), . . . (4) all deductions, provided that all deductions made on written orders of
19 the employee may be aggregated and shown as one item, (5) net wages earned, . . .
20 (8) the name and address of the legal entity that is the employer . . . and (9) all
21 applicable hourly rates in effect during the pay period and the corresponding
22 number of hours worked at each hourly rate by the employee

23 79. Defendants failed to provide "accurate itemized statements" to PLAINTIFF and the
24 Class, because the wage statements: 1) did not include itemizations on a detachable portion but rather
25 in a separate document; 2) falsely understated the gross wages earned; 3) falsely stated or omitted total
26 hours worked; 4) falsely understated net wages earned; 5) omitted the full address of the legal entity;
27 and 6) falsely stated or omitted the numbers of hours worked at each hourly rate.

28 80. California Labor Code section 226(e) and (g) provide for the remedy for the violations
described above:

 (e) An employee suffering injury as a result of a knowing and intentional failure by an
employer to comply with subdivision (a) is entitled to recover the greater of all actual
damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and

1 one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
2 not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to
an award of costs and reasonable attorney's fees.

3 (g) An employee may also bring an action for injunctive relief to ensure compliance with
4 this section and is entitled to an award of costs and reasonable attorney's fees.

5 81. By failing to keep adequate time records required by sections 226 and 1174 (d) of the
6 Labor Code, Defendants have made it difficult to calculate the unpaid hours and premiums due and the
7 applicable hourly rates of pay for said hours and premiums, and PLAINTIFF and the Class are entitled
8 to up to \$4,000.00 in penalties each.

9 82. WHEREFORE, PLAINTIFF and the Class they seek to represent are entitled to damages
10 in an amount to be determined at trial, not to exceed \$4,000 per employee, cost of suit, attorney fees,
11 and injunctive relief.

12 **EIGHTH CAUSE OF ACTION**
13 **VIOLATION OF UNFAIR COMPETITION LAW**

14 (CALIFORNIA BUS. & PROF. CODE §§ 17200 ET SEQ.)

15 (PLAINTIFF INDIVIDUALLY AND ON BEHALF OF THE CLASS AGAINST ALL
16 DEFENDANTS)

17 83. PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

18 84. By their policies and practices described above, Defendants engaged in unlawful activity
19 prohibited by Business and Professions Code sections 17200 et seq. Defendants' actions as alleged
20 within this Complaint constitute unlawful and unfair business practices, within the meaning of Business
21 and Professions Code sections 17200 et seq, and PLAINTIFF and similarly situated employee Class
22 members have suffered injury and have lost money or property as a result of Defendants' failure to
23 comply with well-established labor laws.

24 85. As a result of their unlawful acts, Defendants reaped and continue to reap unfair benefits
25 and unlawful profits at the expense of PLAINTIFF and the Class. Defendants should be enjoined from
26 this activity and made to disgorge these ill-gotten gains and restore to PLAINTIFF and the Class the
27 wrongfully withheld wages pursuant to Business and Professions Code section 17203. PLAINTIFF is
28

1 informed and believes and thereon alleges that Defendants have been unjustly enriched through these
2 unlawful practices.

3 86. The unlawful conduct alleged herein is continuing, and there is no indication that
4 Defendants will not continue such activity in the future. PLAINTIFF alleges that if Defendants are not
5 enjoined from the conduct set forth in this Complaint, Defendants will continue these violations. As a
6 direct and proximate result of the unfair business practices of Defendants, PLAINTIFF and the Class
7 are entitled to equitable and injunctive relief, including full restitution and/or disgorgement of all wages
8 which have been unlawfully withheld from PLAINTIFF and the Class as a result of the business acts
9 and practices described herein and enjoining Defendants to cease and desist from engaging in the
10 practices described herein for the maximum time permitted pursuant to Business and Professions Code
11 section 17208 including any tolling.

12 87. WHEREFORE, PLAINTIFFS for themselves and the Class they seek to represent
13 request injunctive, declaratory, and restitutionary relief as described herein and below.

14 **NINTH CAUSE OF ACTION**
15 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**
16 (CALIFORNIA LAB. CODE §§ 2698 ET SEQ.)

17 (PLAINTIFF AGAINST COMET)

18 88. PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

19 89. PLAINTIFF brings this claim themselves as an aggrieved employee on behalf of the State
20 of California and other current and former employees, as expressly authorized by Labor Code
21 sections 2699 et seq. PAGA is an enforcement action that empowers an aggrieved employee to seek
22 penalties on behalf of themselves, current and former employees, and the State, without the need to
23 certify a class. For purposes of this claim only, therefore, PLAINTIFF brings this claim for themselves
24 and other current and former employees and need not comply with Class Action Certification.

25 90. PLAINTIFF is an aggrieved employee as defined in Labor Code section 2699(a). They
26 bring this cause of action on behalf of themselves and other current or former aggrieved employees
27 affected by the labor law violations alleged in this complaint and set forth in the facts and theories of
28 their pre-lawsuit notice.

91. The pre-lawsuit notice requirements set forth in Labor Code § 2699.3 have been satisfied by written notice by certified mail to COMET and to the Labor and Workforce Development Agency, detailing the facts and theories of the Labor Code and IWC Wage Order violations averred in this complaint.

92. PLAINTIFF seeks penalties due from COMET on behalf of themselves, other aggrieved current and former employees, and the State, as provided by Labor Code § 2699(i) as a result of COMET'S violations of the provisions of the Labor Code and the IWC Wage Order as alleged in this complaint. Each of the cause of actions alleged herein gives rise to direct and derivative bases for PAGA penalty liability. The allegations herein also make COMET liable for penalties under the Labor Code for which there is not a private right of action. For instance, owing to COMET'S failure to keep "payroll records showing the hours worked daily by and the wages paid to" employees (Lab. Code, § 1174), and COMET's failure to create and maintain accurate records of work periods, meal breaks, and split shift intervals under the applicable Wage Order, COMET is liable for PAGA penalties under Labor Code sections 1174 and 1174.5 for its recordkeeping violations.

93. PLAINTIFF seeks all available civil penalties as provided under applicable Labor Code sections for violations of the Labor Code alleged herein pursuant to Labor Code section 2699(a). To the extent that any violation alleged herein does not carry a penalty, PLAINTIFF seeks civil penalties pursuant to Labor Code section 2699(f) for themselves, other current or former employees, and the State for violations of those sections. PLAINTIFF is also entitled to an award of attorneys' fees and costs as set forth below.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment for PLAINTIFF and the Class as follows:

1. That the Court determine that this action may be maintained as a class action with the named PLAINTIFF appointed as Class Representative;
2. For the attorneys appearing on the above caption to be named Class Counsel;
3. For compensatory damages in an amount according to proof with interest thereon;
4. For economic and/or special damages in an amount according to proof with interest

thereon;

5. For a declaratory judgment that each of the Defendants violated the rights of PLAINTIFF and Class under the California Labor Code, and California Business and Professions Code, as set forth in the preceding paragraphs;
6. That Defendants be found to have engaged in unfair competition in violation of section 17200 of the Business and Professions Code;
7. That Defendants be ordered and enjoined to make restitution to PLAINTIFF and the Class due to their unfair competition, including disgorgement of their wrongfully-obtained revenues, earnings, profits, compensation, and benefits pursuant to Business and Professions Code section 17203 and 17204;
8. That Defendants be enjoined from continuing the unlawful course of conduct alleged herein;
9. For declaratory and injunctive relief to PLAINTIFF and the Class;
10. For premium pay and penalties to PLAINTIFF and the Class;
11. For wages and premium wages to PLAINTIFF and the Class;
12. For all civil penalties pursuant to PAGA;
13. For attorney fees, interest, and costs of suit;
14. For liquidated damages for failure to pay minimum wages to PLAINTIFF and the Class;
15. For reimbursement of necessary expenditures to PLAINTIFF and the Class and attorney fees;
16. For such other and further relief as the Court deems just and proper.

JURY TRIAL DEMANDED

PLAINTIFF hereby demands trial of their claims and of the Class by jury to the extent authorized by law.

1 Dated: April 8, 2021

Respectfully submitted,

2 MALLISON & MARTINEZ

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4 _____
5 Stan S. Mallison
6 Hector R. Martinez
7 Matthew Turnbull
8 Attorneys for PLAINTIFF
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