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VIA CERTIFIED U.S. MAIL

February 1, 2021

Attention: PAGA Administrator
Acting Agency Secretary
California Labor & Workforce Development Agency
PAGAfilings@dir.ca.gov

Comet Building Maintenance, Inc.
Attn: Richard J. Basile, Agent for Service of Process
11 Commercial Blvd. Suite 12
Novato, CA 94949

Comet Building Maintenance, Inc.
Attn: Richard J. Basile, Agent for Service of Process, Director, and CEO
21 Commercial Blvd. Suite 12
Novato, CA 94949

Comet Property Services
21 Commercial Blvd. Suite 12
Novato, CA 94949

RE: Labor Code § 2699 Notice by Aggrieved Employee Erika Samano

Dear PAGA Administrator and All Entities and Persons listed herein:

This constitutes statutory notice pursuant to Labor Code § 2699.3(a)(1) for purposes of bringing a claim under the Private Attorneys General Act, Cal. Labor Code § 2699, *et seq.* Please consider this a request for the California Labor & Workforce Development Agency (“LWDA” or “Agency”) to take action against Comet Building Maintenance, Inc., dba Comet Property Services (“Comet”) and their agents, managers and supervisors, including Director and CEO, Richard J. Basile (collectively “Defendants”), for violations of the California Labor Code described below. I am writing on behalf of Erika Samano, an aggrieved employee represented by this law firm

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(hereinafter “Aggrieved Plaintiff”) who seeks to assert a PAGA claim on behalf of the State of California and all other current or former employees who have been employed by Defendants in California.

Further, pursuant to California Labor Code §§ 210, 558, 558.1, 1197.1, 2699(f) and other provisions of the Labor Code, please consider this a notice to Comet Building Maintenance, Inc.’s owners, supervisors, managers, agents and all other person acting on behalf of Comet (including Richard J. Basile) and the employer who caused to be violated any provision of the California Labor Code or Wage Orders governing hours and days of work. On information and belief, Mr. Richard J. Basile has complete authority to implement and carry out the illegal wage and hour policies at issue herein.

This investigation request and notice of California Labor Code violations concerns the systematic failure by Comet to pay current and former California non-exempt employees in conformance with the California Labor Code and Wage Orders. At the core of Comet’s violations is a policy of failing to record and maintain accurate time records of hours worked, relying instead upon work quotas or schedules at its customer locations and worksites. Comet pays its employees based not on the actual time worked – including any travel time between worksites – but rather based upon a quota or schedule time system which provides for a total number of hours paid for particular job assignments. In sum, if an employee is sent to clean a site, Comet pays that employee the amount of hours indicated by their quota or schedule system regardless of the actual time required to perform the job duties.

Evidence of Comet’s failure to pay actual hours worked is demonstrated by the fact that neither employees nor supervisors record the actual hours worked because payment is contingent upon preset quota or schedule. Thusly, Comet violates the recordkeeping requirement set forth in Labor Code section 1194 and the applicable Wage Order, failing to document actual time records of work period starts and stops, as well as failing to record meal breaks and split shift intervals.

Comet also establishes and assigns split shifts – assigning employees to work at one worksite for a set amount of hours and then assigning them to a different worksite with breaks in between beyond any or without bona fide meal breaks – but does not pay split shift premiums nor pay for the travel time between the worksites nor reimburse employees for expenses incurred traveling between the worksites. For example, Aggrieved Employee Erika Samano worked was assigned to work five scheduled hours at one worksite and then five scheduled hours at a different worksite all within the same workday; Aggrieved Employee Samano incurred expenses transporting themselves between the two sites without reimbursement and was not paid for this time nor provided a split shift premium. Aggrieved Employee Samano also incurred expenses buying bleach needed to clean her assigned worksites, and she was not reimbursed for this expense.

Notwithstanding the fact that Comet’s pay-by-schedule system fails to compensate for hours worked outside schedule, nor travel time, nor pay owed premiums, Comet’s pay-by-schedule

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system does not compensate its employees in conformance with state overtime requirements. Comet's pay-by-schedule system adds all the scheduled hours set to have been worked by employees and compensates them all as regular hours. For instance, as described above, Aggrieved Employee Samano worked two different five-hour schedules. Instead of paying her two premium hours of overtime per day (for the ninth and tenth hours of scheduled work), Comet paid her ten regular hours for the scheduled work. Comet's violations of state overtime requirements again flow directly from its pay-by-schedule system; because it treats worksite schedules as discrete assignments, it calculates hours based on the individual schedules rather than the combined assignments actually worked by employees.

Comet also does not provide its employees with proper rest and meal breaks nor compensate them with break premiums. This, too, stems directly from Comet's pay-by-schedule system. On information and belief, Comet does not have a centralized policy of providing lawful rest and meal breaks to its employees but, even in practice, its system of pay-by-schedule deters employees from being able to take any sort of break. Because Comet's system does not compensate its employees for any time worked outside of the quota or schedule, employees work to complete their job duties within the time allotted to them. By having to fit their work into the time allotted and paid to them, employees, including Aggrieved Employee Samano, are not afforded the ability to take rest or meal breaks. Aggrieved Employee Samano, in the two, five-hour schedule workday example used in this notice, was not provided lawful rest breaks nor meal breaks at either worksite nor in between the two worksites.

Comet failed to issue accurate itemized wage statements to Aggrieved Employee Samano and other similarly situated current and former non-exempt employees. Comet issues wage statements in two parts. The first part shows the employee's pay as either "gross earnings" or salary and provides the total gross compensation to the employees as well as the withholdings and net pay. The "total hours worked" and "all applicable hourly rates" are missing from this part of the wage statement. On information and belief, Comet inserts a second, separate document with the wage statements with its employees checks; this document is titled "Hours for [name of employee] on pay period #[x] ([DATE])." This document, however, does not itemize the total hours worked but rather the scheduled hours of the different schedules worked by the employee during that pay period (e.g., M-F (5 hrs) for one location and M-F (5 hrs) for a second worksite). This document also does not list all applicable hourly rates, instead showing the pay for that entire worksite schedule for the entire pay period. In the previous example, for instance, the first five-hour schedule was paid as a "fixed" amount of \$575 (for the entire two-week pay period) and the second five-hour schedule was paid as a "fixed" amount of \$650. The format used by Comet has, in fact, columns for "hours" and "rates" but does not populate them. Comet's wage statements also do not provide the correct address of the legal entity of the employer, listing Comet's address as merely "21 Commercial #12," when the correct street address is "21 Commercial **Blvd.** Suite 12."

Liability under the Private Attorneys General Act (Cal. Labor Code §§ 2698 *et seq.*) ("PAGA") may be based on a wide variety of Labor Code predicate provisions, including but not limited to

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§§ 201, 202, 203, 210, 216, 218, 218.6, 223, 225, 226, 226.7, 510, 512, 2810.5, 6400, 6401, 6401.7, 6402, 6403, 6404, 1174, 1175, 1194, 1194.2, 1197, 1197.1 1199 and 2673.1(a), IWC wage orders, 2699 et seq. and all of the provisions listed in Labor Code 2699.5 (including the penalty provisions related to these predicate provisions), among others. Any violation of these or any other Labor Code provisions serves as the basis for a PAGA claim by an aggrieved employee on behalf of themselves and other current and former employees and pursuant to the underlying PAGA.

In particular, the policies described above and the violations set forth below relate to all the non-exempt employees employed by Comet at locations and worksites in California and include:

1. Failure to pay non-exempt employees all wages earned in violation of Cal. Labor Code §§ 201, 202, 221, 510, 1194, 558, 1197.1 and the Wage Orders. As described herein, the failure to compensate for all hours worked stems from Comet's pay-by-schedule system and its failure to create and maintain accurate timekeeping records, as well as Comet's failure to pay split shift premiums.
2. Failure to create and maintain accurate records as required by California Labor Code section 1174 and the applicable Wage Order, including accurate start and stop times of work and meal period records, as well as split shift intervals.
3. Failure to pay proper premium/overtime wages both as a result of uncompensated work and as a result of Comet having counted all scheduled hours as regular hours rather than in accordance with California overtime law in violation of Labor Code section 510 and the applicable Wage Order.
4. Failure to properly provide/authorize and permit all paid ten-minute rest breaks to which non-exempt employees are entitled, and failure to pay premium rest period wages in lieu of rest breaks, in violation of Cal. Labor Code §§ 226.7, the applicable Wage Order, and California case law.
5. Failure to properly provide/authorize and permit proper meal breaks to which non-exempt employees are entitled, and failure to pay premium meal period wages in lieu of meal breaks, in violation of Cal. Labor Code §§ 226.7, 512, the applicable Wage Order, and California case law.
6. Failure to reimburse non-exempt employees to necessary business expenditures, including but not limited to mileage/transportation reimbursement for travel between assigned worksites, in violation of Labor Code section 2802 and California case law.
7. Failure to provide accurate wage statements. Employee wage statements failed to include total hours worked, all applicable hourly rates, accurate gross and net wages earned, and

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contained the wrong legal entity employer address in violation of Labor Code §§ 226, 1174 and the Wage Orders.

8. Failure to pay all wages owed immediately or within 72 hours upon separation from employment in violation of Labor Code §§ 201, 202, 203, 256, and 1197.1 since Comet systematically failed to pay all wages earned, including unpaid minimum wages and owed break premiums.

The above provisions do not include all of the derivative penalties associated with the above provisions, which are listed throughout the Labor Code and are PAGA penalties.

Aggrieved Plaintiff, who was a janitorial employee for Comet during the past year, may be contacted through our office: Mallison & Martinez, Attorneys at Law, 1939 Harrison Street, Suite 730, Oakland, California 94612. If no action is taken within 60 days, we will assume that we may pursue this action under the theories described above against the Defendants described above and their managers, agents, owners and other liable persons and entities (pursuant to §§ 210, 558, 1197.1, 2699(f) (and other provisions)).

PLEASE TAKE NOTICE THAT THIS IS ALSO A GENERAL LITIGATION PRESERVATION NOTICE to preserve all documents relating to all employees, including but not limited to all timekeeping and payroll records in paper form, native electronic form and any other format in which they are generated and maintained in the regular course of business; all databases and computer or electronic systems that are used for timekeeping and payroll; all records and evidence in any way related to the facts and claims asserted in this letter; all records and evidence in any way related to claims of Aggrieved Plaintiff, the state, and other current or former employees under the California Labor Code Private Attorney General (including underlying Labor Code and IWC orders), the California Government Code, and the Equal Employment Opportunity Act. These documents include but are not limited to all schedules (both current and former employees), all timekeeping records, all rest and meal period records, all duty and responsibility records, all records which include employee signatures or initials, all payroll records, all state or federal withholding records, all personnel files and other employment records, all records concerning the payment or non-payment of wages, or provision or non-provision of state mandated labor code protections, as well as all documents pertaining to harassment or discrimination against employees, all communications relating to these records and documents, and all emails relating to these records and documents.

Sincerely,
MALLISON & MARTINEZ

A handwritten signature in black ink, appearing to read "M. Turnbull", written over a horizontal line.

Matthew Turnbull, Esq.

062S0010389455

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Attorneys at Law

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Oakland CA 94612

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COMET BUILDING MAINTENANCE, INC.

TO: ATTN: RICHARD J. BASILE,

AGENT FOR SERVICE OF PROCESS, DIRECTOR, AND CEO

21 COMMERCIAL BLVD STE 12

NOVATO CA 94949-6109

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Attorneys at Law

730

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TO:

COMET BUILDING MAINTENANCE, INC.

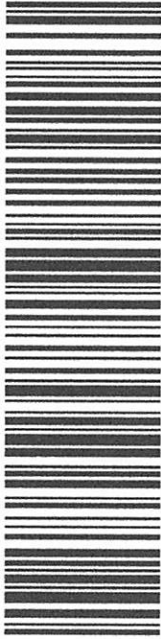
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Street and Apt. No., or PO Box No.

11 Commercial Blvd, Ste. 12

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Novato, CA 94949

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 Novato, CA 94949

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