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10 Attorneys for Plaintiff,
11 IRIS RODRIGUEZ, and all others similarly situated

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13
14 **FOR THE COUNTY OF SANTA CLARA**
15 **(UNLIMITED JURISDICTION)**

16 IRIS RODRIGUEZ,
17
18 *Plaintiff,*
19
20 *vs.*
21
22 FACILITY MASTERS, INC.; and
23 DOES 1 to 25, inclusive,
24
25 *Defendants.*
26
27
28

23CV423999
Case No.:
COMPLAINT FOR DAMAGES FOR:
1) PRIVATE ATTORNEYS
GENERAL ACT (“PAGA”);

E-FILED
10/9/2023 4:11 PM
Clerk of Court
Superior Court of CA,
County of Santa Clara
23CV423999
Reviewed By: B. Roman-Antunez

COMES NOW, Plaintiff, IRIS RODRIGUEZ (hereafter “Plaintiff”), and alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Santa Clara in this judicial district because Defendants FACILITY MASTERS, INC. and DOES 1 to 25, inclusive (hereafter “FACILITY MASTERS” or “Defendants”) do business in the County of Santa Clara and because Defendants’ obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Santa Clara is the subject of this action. Moreover, Plaintiff’s damages sought herein exceed \$25,000.

2. Plaintiff is a female resident of the County of Santa Clara, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant FACILITY MASTERS, INC. is and was a California corporation, doing business in Santa Clara County, California, and which employed Plaintiff.

4. The “aggrieved employees” are all current and former non-exempt or hourly paid employees who worked for Defendants at any of their California locations during the relevant time period pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues them by these fictitious names. Plaintiff is informed and believes that each of the DOE defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible for the conduct alleged herein. Upon discovering the true names and capacities of these fictitiously named defendants, Plaintiff will amend this complaint to show the true names and capacities of these fictitiously named defendants.

6. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of that information and belief, alleges that at all times herein mentioned, each of the remaining codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and under the authority of their agency, employment, or representative capacity, with the consent of

1 his/her codefendants.

2 **GENERAL ALLEGATIONS**

3 7. Plaintiff started working for FACILITY MASTERS in or around 2019 as a
4 janitor. Plaintiff's employment ended on or around November 3, 2022. During her tenure,
5 Plaintiff was classified as an hourly, non-exempt employee and her latest rate of pay was \$17 per
6 hour.

7 8. FACILITY MASTERS has committed numerous labor code violations against
8 Plaintiff and other similarly situated aggrieved employees, including all hourly, non-exempt
9 employees who worked for FACILITY MASTERS at any of their California locations.

10 9. FACILITY MASTERS did not provide Plaintiff and other similarly situated
11 aggrieved employees with the minimum wages to which they were entitled for all work performed
12 and as such did not compensate Plaintiff and others for all hours worked at the minimum wage
13 rate pursuant to California Labor Code sections 1194, 1197 and 1197.1. This is so because the
14 company had a policy of rounding down employee hours to the detriment of the employees, which
15 resulted in employees such as Plaintiff not being paid for all hours worked, including the
16 minimum wage. In addition, Plaintiff and others worked "off the clock" in that Plaintiff would
17 report to work early, however, Plaintiff would not be paid for those extra works wherein she
18 reported to work early. Management was unequivocally aware that Plaintiff was working "off the
19 clock". Moreover, and to the extent employees worked through their meal periods while "off the
20 clock" and were not compensated for that time, FACILITY MASTERS would have also violated
21 California's minimum wage laws.

22 10. Due to the above "off the clock" violations, including the time shaving/rounding,
23 FACILITY MASTERS also violated Labor Code §510 because it failed to pay Plaintiff and other
24 similarly situated aggrieved employees the correct amount of overtime, even though they worked
25 more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their
26 employment. Furthermore, FACILITY MASTERS did not include bonuses and other forms of
27 additional compensation, including incentive pay, in calculating the correct regular rate of pay for
28 purposes of then calculating the correct overtime rate of pay. Additionally, the incentive and

1 bonus payments were also not factored into Plaintiff's regular rate for purposes of receiving meal
2 and rest break premiums per the *Ferra v. Loews* case.

3 11. FACILITY MASTERS violated Labor Code §§ 512 and 226.7 and the applicable
4 Industrial Welfare Commission Wage Order (no. 5) because it failed to provide Plaintiff and other
5 similarly situated aggrieved employees the requisite 30-minute, uninterrupted meal periods for
6 every five (5) hours of work (and before the fifth hour) throughout their employment, and Plaintiff
7 did not validly waive said meal periods. FACILITY MASTERS did not completely relieve
8 Plaintiffs of all duties during said meal periods. FACILITY MASTERS did not pay to Plaintiff
9 one additional hour of pay at Plaintiff's regular rate of compensation for each workday that one
10 or more statutory meal periods was not provided. Like the rest breaks, receiving a timely, thirty-
11 minute uninterrupted meal break, before the 5th hour worked, was not part of the company culture
12 and was not enforced by FACILITY MASTERS. It was the normal practice and custom of
13 FACILITY MASTERS not to authorize, permit, and enforce timely statutory meal periods. There
14 were certainly times wherein Plaintiff would not get a meal break or it would be interrupted or
15 late because there would be occasions wherein there would be a party and Plaintiff would have to
16 be on standby for immediately cleaning. The parties took place every few days and so this was a
17 regular occurrence. To the extent that FACILITY MASTERS argues that employees receive meal
18 break premium pay for missed meal periods, that argument is inconsequential for PAGA penalty
19 purposes since the PAGA penalties are for the violations themselves, irrespective of whether an
20 employee received the premium payment for a missed, short, or interrupted meal period. In *Kirby*
21 *v. Immoos Fire Protection, Inc.*, the Court stated, "section 226.7 does not give employers a lawful
22 choice between providing either meal and rest breaks or an additional hour of pay." *See Kirby v.*
23 *Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the
24 extra hour of pay does not excuse the violation; the employer has still committed a violation even
25 if the remedy for the violation has been paid. *See Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016,
26 2016 WL 1110302 at *4). As such, the work environment and culture at FACILITY MASTERS
27 was not conducive to receiving consistent, timely, statutory meal breaks under California law.
28 Moreover, any meal or rest break premiums paid were not compensated at the weighted average

1 regular rate, inclusive of bonuses and/or incentive payments.

2 12. Furthermore, during the relevant time period, and due to the above labor code
3 violations, FACILITY MASTERS failed to pay Plaintiff and other similarly situated aggrieved
4 employees all wages due to them within any time period specified by California Labor Code
5 section 204. FACILITY MASTERS was also in violation of California Labor Code section 226(a)
6 by failing to include pertinent information on the wage statements, including but not limited to,
7 all hourly rates, all hours worked, overtime hours worked, correct overtime pay, gross wages
8 earned, net wages earned, premium pay for missed/late/short meal and rest breaks, all deductions,
9 the correct start and end of the pay period, all employee identifying information, the correct name
10 and address of the legal employer, and reimbursement for business expenses, among others. As
11 such, FACILITY MASTERS did not provide Plaintiff and other similarly situated aggrieved
12 employees with complete, accurate itemized wage statements.

13 13. FACILITY MASTERS violated Labor Code § 203 because it willfully failed to
14 pay Plaintiff and other similarly situated aggrieved employees earned and due wages upon
15 separation of employment, either immediately upon involuntary termination, or within 72 hours
16 of resignation. These earned but unpaid wages include the unpaid minimum wages/compensation
17 for all hours worked, overtime, premium pay for missed/late/short meal and rest breaks, and
18 business expense reimbursement, among others.

19 14. During the relevant time period, FACILITY MASTERS also failed to keep
20 accurate and complete payroll records showing the correct wages paid to Plaintiff (along with the
21 times that Plaintiff and others took statutory breaks) and other aggrieved employees pursuant to
22 California Labor Code sections 1174(d).

23 15. Alternatively, during the relevant time period, Plaintiff and other aggrieved
24 employees incurred necessary, business-related expenses and costs that were not reimbursed by
25 FACILITY MASTERS. These costs include, but are not limited to, uniforms. Accordingly,
26 FACILITY MASTERS was in violation of California Labor Code sections 2800 and 2802.
27 Furthermore, to the extent that FACILITY MASTERS deducted money from Plaintiff and others
28 for uniforms, it would be an unlawful deduction under Labor Code section 221.

1 16. Furthermore, FACILITY MASTERS violated the applicable Industrial Welfare
2 Commission Wage Order (Wage Order 5, Section 13(b)) in that there was no proper suitable
3 seating/break area for employees.

4 **FIRST (AND ONLY) CAUSE OF ACTION**

5 **PRIVATE ATTORNEYS GENERAL ACT**

6 **Representative Claim for PAGA penalties under California Labor Code sections 201, 202,**
7 **203, 204 and/or 204b, 210, 221, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194,**
8 **1194.2, 1197, 1197.1, 1198, 2698, 2699, 2800, 2802, and the applicable Industrial Welfare**
9 **Commission Wage Order No. 5-2001**

10 **(Against All Named Defendants and all DOE Defendants)**

11 17. Plaintiff re-alleges and incorporates by reference each and every allegation in
12 paragraphs 1 through 16, inclusive, of this Complaint as though fully set forth herein.

13 18. Pursuant to law, on December 1, 2022, Plaintiff provided the required written
14 notice to the California Labor & Workforce Development Agency (LWDA) and Defendants of
15 the specific violations of the California Labor Code that Defendants and DOE defendants have
16 violated and continue to violate.

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

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

23 21. Pursuant to California Labor Code section 2699, any provisions of the Labor Code
24 that provides for a civil penalty to be assessed and collected by the LWDA or any of its
25 departments, divisions, commissions, boards, agencies, or employees for violation of the code
26 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
27 on behalf of himself or herself and other current or former employees pursuant to the procedures
28 specified in California Labor Code section 2699.3.

 22. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the
alleged violator and had one or more of the alleged violations committed against her, and therefore

1 is properly suited to represent the interests of all current and former non-exempt or hourly paid
2 employees who worked for Defendants at any of their California locations during the relevant
3 time period.

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

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

11 25. California Labor Code section 2699 et seq. imposes penalties upon culpable
12 Defendants for violating the Labor Code.

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

21 27. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted
22 by law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
23 seeking individual/victim specific relief or underpaid wages under this particular cause of action.

24 28. Specifically, Plaintiff seeks penalties under California Labor Code section 2699,
25 for the following:

26 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 221,
27 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198,
28 2800, and 2802 via 2698 and 2699, and any other Labor Codes and Wage Order no. 5

1 violated on the facts alleged in this Complaint.

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

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

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

17
18 Respectfully submitted,

19 **MESSRELIAN LAW INC.**

20 Dated: October 9, 2023

21 By Maralle Messrelian
22 Harbut Messrelian, Esq.
23 Maralle Messrelian, Esq., Of Counsel
24 Attorneys for Plaintiff, IRIS RODRIGUEZ
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