

1 **MESSRELIAN LAW INC.**

2 Harout Messrelian, Esq., SB# 272020

3 500 N. Central Ave., Suite 840

4 Glendale, California 91203

5 Telephone: (818) 484-6531

6 Facsimile: (818) 956-1983

7 Attorneys for Plaintiff Guille Martinez

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF LOS ANGELES**

10 **GUILLE MARTINEZ,**

11 **Plaintiff,**

12 **vs.**

13 **COMET ELECTRIC, INC.; and DOES 1 to**
14 **25, inclusive,**

15 **Defendants.**

) **CASE NO.: 25STCV06753**

) **COMPLAINT FOR DAMAGES FOR:**

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

COMES NOW Plaintiff, GUILLE MARTINEZ (hereinafter "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 Los Angeles in this judicial district because Defendants COMET ELECTRIC, INC., and DOES 1 to 25, inclusive, do business in the County of Los Angeles and because Defendants' obligations and liabilities arise therein. Moreover, Plaintiff's damages sought herein exceed \$35,000.

2. Plaintiff is a female resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant COMET ELECTRIC, INC. to hereinafter referred to as "COMET" or "Defendant(s)", is a California Corporation, doing business in Los Angeles County, California, and which employed Plaintiff.

4. 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.

5. 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 his/her codefendants.

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2 **GENERAL ALLEGATIONS**

3 6. During her employment tenure at COMET, Plaintiff was classified as an hourly,
4 non-exempt employee. Plaintiff's last rate of pay was around \$17.84 per hour. Plaintiff's
5 employment ended on or around December 2024 or January 2025.

6 7. It is Plaintiff's position that due to personally suffering the below violations, Plaintiff
7 can equivocally bring the following labor code violations on behalf of all other employees,
8 including ALL hourly, non-exempt employees who worked for COMET anywhere in the state
9 of California (at all different locations) during the relevant PAGA period.
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11 8. It is Plaintiff's position that COMET has violated the following Labor Code Sections
12 against Plaintiff and other similarly situated aggrieved employees, who include all non-exempt,
13 hourly employees who worked for COMET at their various locations in the State of California
14 during the relevant PAGA period.
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16 9. COMET violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to pay
17 Plaintiff and other similarly situated aggrieved employees for all hours worked, including the
18 statutory minimum wage for all hours worked and for "off the clock" work. This is so because
19 COMET had a company policy wherein they would disproportionately round down the number
20 of hours worked, resulting in "time shaving" and further resulting in aggrieved employees not
21 being paid for all hours worked. Moreover, Plaintiff regularly worked "off the clock" and
22 while she was not clocked in by traveling to Home Depot to buy tools, and recycling wire for
23 Mr. Luis Briones, who was Plaintiff's supervisor and the LAX Superintendent. In addition, Mr.
24 Briones was certainly aware of Plaintiff's "off the clock" work. Moreover, also while "off the
25 clock", Plaintiff would spend time looking for buyers for extra/old and refurbished breakers
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1 that the company was trying to sell. Moreover, COMET failed to provide its employees with
2 proper and accurate reporting time pay.

3 10. Due to the above "off the clock" violations, COMET also violated Labor Code §510
4 because it failed to pay Plaintiff and other aggrieved employees overtime compensation, even
5 though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week
6 throughout their employment. Plaintiff's and other aggrieved employees' actual work hours,
7 especially the "off the clock" work mentioned above, entitled them to overtime compensation,
8 however, COMET did not compensate Plaintiff and its hourly, non-exempt employees with the
9 proper overtime due to the "off the clock" hours and rounding/time shaving as described
10 above. Since Plaintiff's were already over 8 hours long, all of the extra work in trying to find
11 buyers, going to Home Depot, and recycling wire would have been overtime compensation that
12 Plaintiff never received. Furthermore, COMET failed to include bonuses/incentive
13 payments/shift differentials in calculating employees' regular rate of pay for use in deciphering
14 the correct overtime rate of pay. Additionally, the incentive, shift differential, and bonus
15 payments were also not factored into employees' regular rate for purposes of receiving meal
16 and rest break premiums per the Ferra v. Loews case.

17 11. COMET also violated Labor Code § 226.7 and the appropriate Industrial Welfare
18 Commission Wage Order no. 4/16 because it failed to provide Plaintiff and other similarly
19 situated aggrieved employees with 10-minute rest periods for every four hours of work, or
20 majority portion thereof, throughout their employment. COMET did not completely relieve
21 Plaintiff and others of all duty during said rest periods. COMET did not pay to Plaintiff and
22 others one additional hour of pay at Plaintiff's regular rate of compensation for each workday
23 that one or more statutory rest periods was not provided. Plaintiff and others did not always
24 receive timely, uninterrupted rest breaks throughout their employment and rest breaks were not
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1 consistently enforced and not part of the culture. Plaintiff was not always able to take rest
2 breaks due to Plaintiff's heavy workload and since Plaintiff was expected to finish her
3 workload daily and before the day was over. As such, the culture as well as the policies and
4 procedures of COMET did not lend itself to the employees receiving consistent statutory rest
5 breaks wherein they were relieved of all work duties. The environment at COMET was not
6 conducive to receiving statutory rest breaks under California law and timely, statutory rest
7 breaks were not authorized or enforced.

9 12. COMET violated Labor Code §§ 512 and 226.7 and the appropriate Industrial Welfare
10 Commission Wage Order no. 4/16 because it failed to provide hourly, non-exempt employees,
11 including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods for every
12 five (5) hours of work throughout their employment. COMET did not completely relieve
13 Plaintiff and other employees of all duty during said meal periods. COMET did not pay to
14 Plaintiff and its hourly, non-exempt employees one additional hour of pay at their regular rate
15 of compensation for each workday that one or more statutory meal periods was not provided.
16 Like the rest breaks, receiving a consistent thirty-minute uninterrupted and timely meal break
17 before the 5th hour was not part of the company culture and was not enforced by COMET. To
18 the extent that Plaintiff and other aggrieved employees even received meal periods, they were
19 late, interrupted (due to phone calls and requests from Brandee Ivey and Luis Briones), or after
20 the 5th hour worked. Moreover, *Donohue v. AMN Services, LLC*, 11 Cal. 5th 58, 77-78 (2021)
21 is relevant (citing *Brinker*, 53 Cal. 4th at 1054) (meal period violations appearing on the face of
22 the time records creates a rebuttable presumption that the employer actually failed to provide
23 compliant meal periods). Plaintiff's meal breaks were late approximately 4 times per week,
24 interrupted almost every day of the week, and were sometimes short and less than 30 minutes.
25 Consequently, it was the normal practice and custom of COMET not to authorize, permit, and
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1 enforce timely statutory meal periods. If COMET had Plaintiff sign a meal period waiver, it
2 would not be valid and enforceable since Plaintiff and others generally worked more than a 5-
3 hour shift. Furthermore, under California law, however, employees must make an affirmative
4 decision every day regarding whether to waive their meal periods. August 13, 2003 DLSE
5 Opinion Letter (“The decision to forego a meal period may not, therefore, be based on a
6 specific requirement of the employer or on a policy or practice which could reasonably be
7 perceived to be a condition of employment. Therefore, blanket “waivers” of meal periods
8 ...whether written or oral, will not be considered valid.”). If COMET had Plaintiff sign an on-
9 duty meal period agreement wherein Plaintiff agreed to work through the meal periods, it
10 would be invalid and unenforceable because the nature of Plaintiff’s job does not and did not
11 prevent her from taking a meal period and the company could have hired “breakers” to relieve
12 Plaintiff of her job duties so that she can actually take a timely, uninterrupted meal period.
13 Moreover, any such “on duty” meal period agreement did not allow for Plaintiff to revoke such
14 an agreement even if it was signed. As such, Plaintiff and others did not always receive
15 statutory, timely meal periods during their employment. To the extent that COMET argues that
16 employees receive meal break premium pay for missed meal periods, that argument is
17 inconsequential for PAGA penalty purposes since the PAGA penalties are for the violations
18 themselves, irrespective of whether an employee received the premium payment for a missed,
19 short, or interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated,
20 “section 226.7 does not give employers a lawful choice between providing *either* meal and rest
21 breaks *or* an additional hour of pay.” See *Kirby v. Immoos Fire Protection, Inc.*, (2012) 53
22 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse the
23 violation; the employer has still committed a violation even if the remedy for the violation has
24 been paid. See *Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As
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1 such, the work environment and culture at COMET was not conducive to receiving consistent,
2 timely, statutory meal breaks under California law. Moreover, any meal or rest break premiums
3 paid were not compensated at the weighted average regular rate, inclusive of bonuses and/or
4 incentive payments as well as overtime compensation.

5 13. Furthermore, during the relevant time period, and due to the above labor code
6 violations, COMET failed to pay Plaintiff and other similarly situated aggrieved employees all
7 wages due to them within any time period specified by California Labor Code section 204.
8 Since Plaintiff was not compensated fully due to her "off the clock work", whether it be
9 minimum wages or overtime, and since Plaintiff did not receive proper and complete meal and
10 rest break premiums, Plaintiff would still be owed wages pursuant to Labor Code Section 204.
11 COMET was also in violation of California Labor Code section 226(a) by failing to include
12 pertinent information on the wage statements, including but not limited to, the correct hourly
13 rate, all hours worked, overtime hours worked, correct overtime pay, gross wages earned, net
14 wages earned, premium pay for missed meal and rest breaks, all deductions, the correct start
15 and end of the pay period, all employee identifying information, the correct and complete name
16 and address of the legal employer, and reimbursement for business expenses, among others. As
17 such, COMET did not provide Plaintiff and other similarly situated aggrieved employees with
18 complete, accurate itemized wage statements.
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21 14. During the relevant time period, and as mentioned above, COMET also failed to keep
22 accurate and complete payroll records showing the actual hours worked per day and the wages
23 paid to Plaintiff and others pursuant to California Labor Code sections 1174(d).
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25 15. COMET also violated Labor Code § 203 because it willfully failed to pay other
26 similarly situated aggrieved employees earned and due wages upon separation of employment,
27 either immediately upon involuntary termination, or within 72 hours of resignation. These
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1 earned but unpaid wages include compensation for all hours worked, including minimum
2 wages, overtime compensation, and premium pay for missed meal and rest breaks.

3 16. During the relevant time period, Plaintiff and other aggrieved employees incurred
4 necessary, business-related expenses and costs that were not reimbursed by COMET. These
5 costs include, but are not limited to, use of personal cell phones for work purposes in that
6 Plaintiff would use her personal cell phone daily for the following tasks: internet to find certain
7 hardware or electrical parts as requested by the foreman; capturing photos of electrical
8 hardware and material; finding certain Milwaukee power tools on the Home Depot database;
9 searching for buyers of used, old or refurbished breakers; navigation (GPS); making phone
10 calls to other employees and communicating throughout the day during and after work hours
11 with Luis Briones. Despite the latter use of her cell phone, however, Plaintiff was not
12 reimbursed at all. Accordingly, COMET was in violation of California Labor Code sections
13 2800 and 2802.
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15 17. Furthermore, COMET did not provide proper and correct/accurate sick pay (inclusive
16 of all bonuses/shift differentials/incentive payments) that was also delineated on employee pay
17 stubs and also failed to provide proper sick leave in violation of Labor Code sections 233 and
18 246. Moreover, there were no suitable seating/rest break facilities for the employees pursuant
19 to Wage Order no. 4-2001/16-2001 as employees did not have a designated break area or
20 suitable seats in performing work duties.
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22 **FIRST CAUSE OF ACTION**

23 **PRIVATE ATTORNEYS GENERAL ACT**

24 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
25 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 233, 246, 510, 512, 558, 1174, 1174.5,**
26 **1194, 1194.2, 1197, 1197.1, 1198, 2802, and IWC Wage Order nos. 4-2001/16-2001)**

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

28 18. Plaintiff re-alleges and incorporates by reference each and every allegation in

1 paragraphs 1 through 17, inclusive, of this Complaint as though fully set forth herein.

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

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

7 21. 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
9 cause of action and pursue penalties in a representative action for Defendants' violations of the
10 Labor Code.

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

17 23. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
18 violator and had one or more of the alleged violations committed against her, and therefore is
19 properly suited to represent the interests of other current and former employees, including all
20 hourly, non-exempt employees who worked for COMET at any of their California locations
21 during the relevant and applicable PAGA period.

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

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

3 26. California Labor Code section 2699 et seq. imposes penalties upon culpable
4 Defendants for violating the Labor Code.

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

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

16 29. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted
17 by law. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
18 the following:

19 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
20 226.3, 226.7, 233, 246, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2802 via
21 2698 and 2699, and any other Labor Codes and Industrial Welfare Commission Wage Order
(Order Nos. 4/16) violated based on the facts alleged in this Complaint.

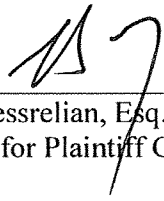
22 30. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,
23 costs, and civil penalties on behalf of other current and former Aggrieved Employees as alleged
24 herein in an amount to be shown according to proof at trial and within the jurisdictional limits
25 of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

26 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
27 follows:
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1. For the imposition of civil penalties;
2. For maximum civil penalties available under Labor Code Section 2699 against Defendants in a manner and amount authorized by that statute, as described more particularly in the Complaint and representative PAGA claims;
3. For all costs and disbursements incurred in this suit;
4. Reasonable attorney's fees where available by law, including but not limited to, pursuant to Labor Code section 2698 et seq., the Labor Code generally, Code of Civil Procedure section 1021.5, and/or other applicable laws; and
5. For such other and further relief as this Court may deem proper.

DATED: March 10, 2025

MESSRELIAN LAW INC.

By 
Harout Messrelian, Esq.
Attorneys for Plaintiff Guille Martinez