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Superior Court of California
County of Los Angeles

MAR 12 2021

Sherri R. Carter, Executive Officer/Clerk of Court

Attorneys for Plaintiff Glenda Durden

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

11 GLEND DURDEN,

12 Plaintiff,

13 v.

14 HILTON MANAGEMENT LLC, a limited
15 liability company; HILTON HOTEL
16 EMPLOYER LLC, a limited liability
company; and DOES 1-100, inclusive,

17 Defendants.

Case No.: **21STCV09880**

CLASS ACTION, INDIVIDUAL ACTION,
AND REPRESENTATIVE COMPLAINT

1. DISABILITY DISCRIMINATION
2. FAILURE TO ACCOMMODATE
3. FAILURE TO ENGAGE IN
INTERACTIVE PROCESS
4. RETALIATION FOR OPPOSING
UNLAWFUL CONDUCT
5. RETALIATION FOR REQUESTING
ACCOMMODATION
6. FAILURE TO PREVENT
DISCRIMINATION AND
RETALIATION
7. FAILURE TO PROPERLY
CALCULATE AND PAY OVERTIME
8. FAILURE TO PROPERLY
CALCULATE AND PAY SICK LEAVE
9. FAILURE TO FURNISH ACCURATE
ITEMIZED WAGE STATEMENTS
10. FAILURE TO PAY WAGES DUE UPON
CESSATION OF EMPLOYMENT
11. UNFAIR BUSINESS PRACTICES
12. PRIVATE ATTORNEYS GENERAL
ACT

1 Plaintiff Glenda Durden brings this class action against Hilton Management LLC, Hilton Hotel
2 Employer LLC, and Does 1 through 100, for violations of the Government Code and Labor Code.

3 **PARTIES**

4 1. Plaintiff Glenda Durden ("Plaintiff" or "Durden") is and at all times relevant herein was
5 employed in Los Angeles County, California, and was an "employee" as defined by the Fair
6 Employment and Housing Act ("FEHA", Gov. Code, § 12900 et seq.) and the Labor Code.

7 2. Hilton Hotel Employer LLC is a Virginia limited liability company, formed under the
8 laws of Delaware. At all times relevant herein, Hilton Hotel Employer LLC has been an "employer" as
9 defined by the FEHA and the Labor Code.

10 3. Hilton Management LLC is a Virginia limited liability company, formed under the laws
11 of Delaware. At all times relevant herein, Hilton Management LLC has been an "employer" as defined
12 by the FEHA and the Labor Code.

13 4. Hilton Hotel Employer LLC, Hilton Management LLC, and Does 1-100 are collectively
14 referred to as Defendants.

15 5. Durden is not aware of the true names and capacities of the Defendants sued herein as
16 Does 1 through 100, whether individual, corporate, associate, or otherwise and therefore sues such
17 Defendants by these fictitious names. Durden will amend this Complaint to allege their true names and
18 capacities when ascertained. Durden are informed and believe, and on that basis allege, that each of
19 the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged and
20 that Durden's injuries and damages herein alleged were legally caused by such Defendants. Unless
21 otherwise indicated, each Defendant was acting within the course and scope of said agency and/or
22 employment, with the knowledge and/or consent of said co-Defendant.

23 6. Durden are informed and believe and thereupon allege that at all times mentioned
24 herein, each of the Defendants, including each Doe Defendant, was acting as the agent, servant,
25 employee, partner and/or joint venturer of and was acting in concert with each of the remaining
26 Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times acting
27 within the course and scope of such agency, service, employment partnership, joint venture and/or
28 concert of action. Each Defendant, in doing the acts alleged herein, was acting both individually and

1 within the course and scope of such agency and/or employment, with the knowledge and/or consent of
2 the remaining Defendants.

3 JURISDICTION AND VENUE

4 7. This Court is the proper Court, and this action is properly filed in the Superior Court of
5 California for the County of Los Angeles because Defendants conduct business in this County and
6 Durden has performed work for Defendants in this County. Durden hereby demands a jury trial.

7 GENERAL ALLEGATIONS

8 8. Durden was hired by Hilton Management LLC on or around July 31, 2007 as a
9 security office at the Beverly Hilton Hotel in Beverly Hills, California.

10 9. At all times relevant herein, Durden performed her job duties with distinction.

11 10. Durden suffers from arthritis in both of her knees and has a liver disease; both
12 conditions limit her ability to walk and stand for extended amounts of time (and thus affected her
13 ability to perform her customary job duties). Durden's liver disease caused her liver to "flare up"
14 occasionally, and Durden was unable to work during a flareup.

15 11. At all times relevant herein, Defendants were aware of Durden's arthritis and liver
16 disease.

17 12. In or around August 2018, Durden provided a doctor's note of restrictions to
18 Defendants. Durden's restrictions prohibited prolonged standing beyond twenty minutes and
19 provided that she was to be given four days off per episode, per month, if her liver flared up.

20 13. Defendants accommodated Durden's medical leave in instances in which her liver
21 flared up.

22 14. However, in or around January 2019, Durden was informed by the human resources
23 director, Bernice (last name unknown), that security personnel were not permitted to have any
24 physical restrictions. Relying on this information, and not wanting to lose her job, in or around
25 February 2019, Durden requested from her doctor that the standing restriction be lifted so she could
26 continue working.

27 15. In or around February 2019, Durden complained to Defendants that she was being
28 sexually harassed by her director, Nelson Kafieh.

1 16. Beginning in 2020, Durden's wage statements began to show Hilton Hotel
2 Employer LLC as her employer, demonstrating that Hilton Hotel Employer LLC had become either
3 Durden's joint employer or sole employer.

4 17. On or around April 30, 2020, Durden was told by Defendants that they needed
5 documentation to allow her any days off in case she had a liver flareup. In response, Durden's
6 doctor faxed to Defendants a note of restrictions: In addition to the days off in the case of a liver
7 flareup, Durden was restricted from prolonged standing and prolonged patrolling for periods of
8 twenty minutes or longer. Defendants refused to accommodate these restrictions without further
9 accommodation.

10 18. On or around July 20, 2020, and not least because of the arthritis in both of her
11 knees and Defendants' refusal to accommodate, Durden fell and injured her left knee while she was
12 working.

13 19. On or around August 10, 2020, Durden received a write-up for "loitering" in the
14 lobby. This was clearly pretext to Defendants' discriminatory animus, as roving the lobby was part
15 of Durden's job duties while stationed in the front lobby. Additionally, Durden has seen other
16 security guards "loitering" in the front lobby while stationed there, but she was the only one to
17 receive disciplinary action.

18 20. On or around August 24, 2020, Durden received another writeup. This time, she was
19 disciplined because a man urinated on the building while she was working the security dispatch
20 post.

21 21. Due to the ongoing discrimination and retaliation Durden was experiencing, her
22 stress level rose to the point where it was necessary for her to take a leave of absence. Durden
23 remains employed with Defendants.

24 22. On December 8, 2020, Durden filed a complaint with the Department of Fair
25 Employment and Housing relating to the aforementioned unlawful conduct, and she was issued a
26 right-to-sue notice that same day. (**Exhibit 1.**)

27 23. Separately from the foregoing, Defendants violated multiple provisions of the Labor
28 Code, as to both Durden as well as former and other current employees in California.

1 24. At all times during her employment with Defendants, Durden was an hourly
2 employee, eligible for overtime under the Labor Code.

3 25. Durden indeed worked overtime on a regular basis. However, Defendants failed to
4 properly calculate her regular rate of pay for overtime purposes, resulting in an underpayment of
5 wages.

6 26. During her employment, Durden earned commissions, nondiscretionary bonuses,
7 and other items of compensation (including meal stipends) in addition to her base hourly pay.
8 (Exhibit 2.) However, Defendants willfully failed to account for the value of such compensation
9 when determining Durden's and its other hourly, nonexempt employees' regular rate of pay for
10 purposes of calculating and paying overtime.

11 27. For example, during the pay period of April 16-30, 2020, Durden was paid a meal
12 stipend in the amount of \$37.45. (Exhibit 1.) However, and pursuant to their uniform policy and
13 practice, Defendants failed to include the value of this payment when calculating Durden's regular
14 rate of pay for purposes of overtime and, accordingly, underpaid her. (*Id.*) Accordingly, Defendants
15 violated Labor Code section 510.

16 28. Durden and Defendants' other hourly, nonexempt employees in California were also
17 entitled to paid sick leave pursuant to Labor Code section 245, *et seq.* Any sick pay used by
18 Defendants' employees appeared on their wage statements as "Paid Time Of" [sic]. (Exhibit 1.)
19 Although Labor Code section 248.5, subdivision (l)(1) mandates that paid sick leave for
20 nonexempt employees be "calculated in the same manner as the regular rate of pay for the
21 workweek in which the employee uses paid sick time", Defendants failed to include commissions,
22 nondiscretionary bonuses, and other items of compensation (including meal stipends) when
23 determining Durden's and other hourly, nonexempt California employees' regular rate of pay for
24 purposes of calculating and paying paid sick leave. (*Id.*) Instead, paid sick leave was paid only at
25 Durden's and the other California employees' base rate. Accordingly, Defendants violated Labor
26 Code section 246.

27 29. Because Durden was not paid overtime at the appropriate regular rate of pay, the
28 itemized wage statements issued to her failed to accurately show the gross wages earned, the net

1 wages earned, and all applicable hourly rates in effect during the pay period and the corresponding
2 number of hours worked at each rate, in violation of Labor Code section 226, subdivisions (a)(1),
3 (5), and (9).

4 30. Furthermore, and independent of any other Labor Code violation, the wage
5 statements issued to Durden and others inaccurately showed total hours worked. In the wage
6 statement attached hereto as **Exhibit 2**, it shows the value of "total hours worked" as 88.05.
7 However, the wage statement also shows that such figure includes the value of 16 hours of paid
8 time off/sick leave (which, of course, are *not* hours worked). Additionally, and instead of showing
9 Durden's overtime rate as a single rate, it showed 0.04 hours worked at \$23 (the base) and also
10 0.04 hours worked at \$11.76 (the overtime "premium"), thus essentially "double-counting" the
11 overtime hours worked and incorporating that inaccurate figure into the figure of total hours
12 worked. The upshot of this is that Durden actually worked 72.01 hours during the subject pay
13 period, not 88.05. Thus, Defendants also violated Labor Code section 226, subdivision (a)(2).

14 31. The foregoing Labor Code violations, and each of them, were committed against
15 other California employees of Defendants, and within the last year.

16 32. On December 18, 2020, Durden provided written notice to the Labor and Workforce
17 Development Agency ("LWDA"), Hilton Management LLC, and Hilton Hotel Employer LLC,
18 regarding the specific provisions of the Labor Code alleged to have been violated, including the
19 facts and theories to support those alleged violations. (**Exhibit 3.**)

20 33. As of the filing of this Complaint, more than 65 calendar days after Durden's initial
21 written notice, the LWDA has not provided written notice that it intends to investigate any of
22 Durden's allegations as set forth above. Accordingly, Durden has satisfied the administrative
23 prerequisites under Labor Code section 2699.3 to bring a civil action to recover civil penalties
24 against Defendants, in addition to other remedies, for violations of the California Labor Code.

25 34. The foregoing list of misconduct is a partial list only and is set forth by way of example.

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CLASS ACTION ALLEGATIONS

35. Durden seek to maintain this action as a class action as to the Seventh through Eleventh Causes of Action. Durden bring this action, on behalf of herself and all others similarly situated, as a class action pursuant to Code of Civil Procedure 382. The classes which Durden seeks to represent consist of the following:

- a. All current and former nonexempt California employees of Defendants who worked some amount of overtime at any time from four years prior to the filing of this complaint through the entry of final judgment in this action, and who were also paid commissions, nondiscretionary bonuses or other items of compensation, including but not limited to meal stipends, in addition to their base hourly pay (the "Regular Rate Class");
- b. All current and former nonexempt California employees of Defendants who received commissions, nondiscretionary bonuses or other items of compensation, including but not limited to meal stipends, and received sick pay during one or more pay periods at any time from four years prior to the filing of this complaint through the entry of final judgment in this action (the "Sick Pay Class");
- c. All members of the Regular Rate Class and the Sick Pay Class who received one or more wage statements at any time from one year prior to the filing of this complaint through the entry of final judgment in this action (the "Wage Statement Class"); and
- d. All members of the Regular Rate Class whose employment with Defendants ended at any point from three years prior to the filing of this complaint through the entry of final judgment in this action (the "Waiting Time Penalty Class").

The Regular Rate Class, the Sick Pay Class, the Wage Statement Class, and the Waiting Time Penalty Class are collectively referred to as "the Class."

36. The Class is so numerous that joinder of all members is impracticable, and the disposition of their claims in a class action is a benefit to the parties and to the Court. Plaintiff is informed and believes, and based thereon alleges, that Defendants employ more than 100 employees who satisfy the class definition. Although the exact number and identity of class members is not presently known, they can be identified in Defendants' records through coordinated discovery pursuant to this class action.

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1 37. This action may be maintained as a class because the questions of law and fact which are
2 common to class members clearly predominate over any questions affecting only individual members
3 and because a class action is superior to other available methods for adjudicating the controversy.

4 38. There are numerous common questions of law and fact arising out of Defendants'
5 conduct. This class action focuses on Defendants': (a) systematic failure to properly pay employees for
6 overtime hours; (b) systematic failure to properly pay employees with paid sick leave, (c) systematic
7 failure to pay all wages due and owing at the end of employment; and (e) systematic failure to comply
8 with Labor Code section 226(a).

9 39. Furthermore, common questions of fact and law predominate over any questions
10 affecting only individual members of the class. The predominating common or class-wide questions of
11 law and fact include the following:

- 12 a. Whether Defendants failed to properly calculate and pay their nonexempt
13 California employees' overtime pay;
- 14 b. Whether Defendants failed to properly calculate and pay their nonexempt
15 California employees with paid sick leave;
- 16 c. Whether Defendants failed to pay all wages due and owing at end of their
17 nonexempt California employees' employment;
- 18 d. Whether the wage statements Defendants furnished to their California employees
19 comply with Labor Code section 226;
- 20 e. Whether the alleged violations of the Labor Code constitute unfair business
21 practices;
- 22 f. Whether the Class is entitled to injunctive relief; and
- 23 g. Whether the Class is entitled to unpaid wages, statutory penalties, and/or
24 restitutionary relief, and the amount of the same.

25 40. Durden's claims are typical of the claims of the members of the Class as a whole, all of
26 whom have sustained and/or will sustain damage and injury as a proximate and/or legal result of the
27 alleged violations of Defendants. Durden's claims are typical of those of the Class because Defendants
28 subjected Plaintiff and each member of the Class to the same violations alleged herein.

1 41. The defenses of Defendants, to the extent that such defenses apply, are applicable
2 generally to the whole Class and are not distinguishable as to the proposed class members.

3 42. Durden will fairly and adequately protect the interests of all members of the Class, and
4 has retained attorneys with extensive experience in litigation, including class and representative actions.
5 Plaintiff has no interests that conflict with those of the Class. Durden are able to fairly and adequately
6 protect the interests of all members of the class because it is in their best interest to prosecute the claims
7 alleged herein in order to obtain the full compensation due themselves and the other class members.

8 43. A class action is superior to any other method available for fairly and efficiently
9 adjudicating the controversy because 1) joinder of individual class members is not practicable, 2)
10 litigating the claims of individual class members would be unnecessarily costly and burdensome and
11 would deter individual claims, 3) litigating the claims of individual class members would create a risk
12 of inconsistent or varying adjudications that would establish incompatible standards of conduct for
13 Defendants, 4) class members still working for Defendants may be fearful of retaliation if they were to
14 bring individual claims, 5) class members would be discouraged from pursuing individual claims
15 because the damages available to them are relatively small, and 6) public policy encourages the use of
16 the class actions to enforce employment laws and protect individuals who, by virtue of their
17 subordinate position, are particularly vulnerable.

18 44. Judicial economy will be served by maintenance of this lawsuit as a class action. To
19 process numerous virtually identical individual cases will significantly increase the expense on the
20 Court, the class members, and Defendants, all while unnecessarily delaying the resolution of this
21 matter. There are no obstacles to effective and efficient management of this lawsuit as a class action by
22 this Court and doing so will provide multiple benefits to the litigating parties including, but not limited
23 to, efficiency, economy, and uniform adjudication with consistent results.

24 45. Notice of a certified class action and any result or resolution of the litigation can be
25 provided to class members by mail, email, publication, or such other methods of notice as deemed
26 appropriate by the Court.

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FIRST CAUSE OF ACTION
DISABILITY DISCRIMINATION
(Gov. Code, § 12940(a))
Against Defendants

46. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

47. The Fair Employment and Housing Act ("FEHA") explicitly prohibits an employer from refusing to hire or employ a person, discharging a person from employment, or discriminating against such person in compensation or in terms, conditions or privileges of employment on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age or sexual orientation. Gov. Code § 12940(a). "Race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation" includes a perception that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics. Gov. Code § 12926(n).

48. At all times relevant herein mentioned, Plaintiff was qualified for the position she held with Defendants.

49. Defendants were at all times material herein Plaintiff's employer pursuant to Government Code section 12926(d) and were therefore barred from discriminating in their employment decisions in violation of Government Code section 12940(a).

50. Nevertheless, as set forth above, Defendants discriminated against Plaintiff based on disability, in violation of Government Code section 12940(a).

51. The acts taken toward Plaintiff were carried out by and/or ratified by Defendants and/or managing agents/employees of Defendants acting in an oppressive, fraudulent and malicious manner in order to injure or damage Plaintiff, thereby justifying an award of punitive damages.

52. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered damages and requests relief as hereafter provided.

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SECOND CAUSE OF ACTION
FAILURE TO ACCOMMODATE
(Gov. Code, § 12940, subd. (m))
Against Defendants

53. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

54. The FEHA requires an employer to “make reasonable accommodation for the known physical or mental disability of an applicant or employee.” (Gov. Code, § 12940(m).)

55. Defendants were at all times material herein Plaintiff’s employer pursuant to Government Code section 12926(d), had knowledge of Plaintiff’s disabilities, and were required to reasonably accommodate her pursuant to Government Code section 12940(m).

56. Nevertheless, as set forth above, Defendants failed to make a reasonable accommodation for Plaintiff’s known disabilities in violation of Government Code section 12940(m).

57. The acts taken toward Plaintiff were carried out by and/or ratified by Defendants and/or managing agents/employees of Defendants acting in an oppressive, fraudulent and malicious manner in order to injure or damage Plaintiff, thereby justifying an award of punitive damages.

58. As a direct and proximate result of Defendants’ conduct, Plaintiff has suffered damages and requests relief as hereafter provided.

THIRD CAUSE OF ACTION
FAILURE TO ENGAGE IN INTERACTIVE PROCESS
(Gov. Code, § 12940, subd. (n))
Against Defendants

59. Plaintiff hereby realleges and incorporates by reference each and every allegation set above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

60. The FEHA requires an employer “to engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical disability or known medical condition.” (Gov. Code, § 12940, subd. (n).)

1 61. Defendants were at all times material herein Plaintiff's employer(s) pursuant to
2 Government Code section 12926, subdivision (d), had knowledge of Plaintiff's disabilities/medical
3 condition, and was required to engage in the interactive process pursuant to Government Code
4 section 12940, subdivision (n).

5 62. Nevertheless, as set forth above, Defendants failed to engage in a timely, good faith,
6 interactive process to determine effective reasonable accommodations in violation of Government
7 Code section 12940, subdivision (n).

8 63. Defendants' actions towards Plaintiff were committed or ratified by Defendants,
9 and/or their managing agents and/or employees in an oppressive, fraudulent, and malicious manner
10 in order to injure or damage Plaintiff, thereby justifying an award of punitive damages.

11 64. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered
12 damages and requests relief as hereafter provided.

13 **FOURTH CAUSE OF ACTION**
14 **RETALIATION FOR OPPOSING UNLAWFUL CONDUCT**
15 **(Gov. Code, § 12940, subd. (h))**
16 **Against Defendants**

17 65. Plaintiff hereby realleges and incorporates by reference each paragraph above as
18 though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this
19 cause of action.

20 66. The FEHA explicitly prohibits an employer from retaliating against an employee
21 because the employee has opposed any practices forbidden by the FEHA or because the employee
22 has filed a complaint, testified or assisted in any proceeding under the FEHA. (Gov. Code, §
23 12940, subd. (h).)

24 67. Nevertheless, as set forth above, Defendants retaliated against Plaintiff in violation
25 of Government Code section 12940, subdivision (h).

26 68. The acts taken toward Plaintiff were carried out by and/or ratified by Defendants
27 and/or managing agents/employees of Defendants acting in an oppressive, fraudulent and malicious
28 manner in order to injure or damage Plaintiff, thereby justifying an award of punitive damages.

69. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered damages and requests relief as hereafter provided.

FIFTH CAUSE OF ACTION
RETALIATION FOR REQUESTING ACCOMMODATION
(Gov. Code, § 12940, subd. (h))
Against Defendants

70. Plaintiff hereby realleges and incorporates by reference each paragraph above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

71. The FEHA explicitly prohibits an employer from retaliating against an employee because the employee has requested accommodation for a disability. (Gov. Code, § 12940, subd. (m)(2).)

72. Nevertheless, as set forth above, Defendants retaliated against Plaintiff in violation of Government Code section 12940, subdivision (m)(2).

73. The acts taken toward Plaintiff were carried out by and/or ratified by Defendants and/or managing agents/employees of Defendants acting in an oppressive, fraudulent and malicious manner in order to injure or damage Plaintiff, thereby justifying an award of punitive damages.

74. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered damages and requests relief as hereafter provided.

SIXTH CAUSE OF ACTION
FAILURE TO PREVENT DISCRIMINATION AND RETALIATION
(Gov. Code, § 12940(k))
Against Defendants

75. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

76. FEHA requires an employer to "take all reasonable steps necessary to prevent discrimination and harassment from occurring." Gov. Code § 12940(k).

77. Nevertheless, as set forth above, Defendants failed to prevent the discrimination against Plaintiff.

1 78. Defendants' actions towards Plaintiff were committed by Defendants, their officers,
2 directors, and/or managing agents, and/or employees in an oppressive, fraudulent, and malicious
3 manner, and ratified by Defendants, in order to injure or damage Plaintiff, thereby justifying an
4 award of punitive damages.

5 79. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered
6 damages and requests relief as hereafter provided.

7 **SEVENTH CAUSE OF ACTION**
8 **FAILURE TO PROPERLY CALCULATE AND PAY OVERTIME**
9 **(Labor Code §§ 510 and 1198)**
 By the Regular Rate Class Against Defendants

10 80. Plaintiff hereby reallege and incorporate by reference each and every allegation set forth
11 above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of
12 this cause of action.

13 81. Pursuant to California Labor Code section 510, any work in excess of eight hours in
14 one workday and any work in excess of 40 hours in any one workweek and the first eight hours
15 worked on the seventh day of work in any one workweek shall be compensated at the rate of no
16 less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12
17 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an
18 employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall
19 be compensated at the rate of no less than twice the regular rate of pay of an employee.

20 82. Pursuant to California Labor Code section 1198, the maximum hours of work and
21 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
22 standard conditions of labor for employees and the employment of any employee for longer hours
23 than those fixed by the commission or under conditions of labor prohibited by the order is
24 unlawful.

25 83. The "regular rate of pay" includes all remuneration for employment paid to the
26 employee and includes, but is not limited to, hourly earnings, salary, piece work earnings,
27 commissions, non-discretionary bonuses, and the value of meals and lodging. DLSE Enforcement
28 Policies and Interpretations Manual Section 49.

1 84. During the relevant time period, Plaintiff and the other members of the Regular Rate
2 Class regularly worked overtime.

3 85. During the relevant time period, Defendants intentionally and willfully failed to pay the
4 proper overtime wages due to Plaintiff and the other members of the Regular Rate Class.

5 86. Wherefore, Plaintiff and the other members of the Regular Rate Class have been injured
6 as set forth above and request relief as hereafter provided.

7 **EIGHTH CAUSE OF ACTION**
8 **FAILURE TO PROPERLY CALCULATE AND PAY SICK PAY**
9 **(Labor Code, §§ 218, 233, 246 *et seq.*)**
10 **By the Sick Pay Class Against Defendants**

11 87. Plaintiff hereby reallege and incorporate by reference each and every allegation set
12 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
13 allegations of this cause of action.

14 88. Labor Code section 246(l) requires that employers pay sick time pay to non-exempt
15 employees at that employee's "regular rate of pay."

16 89. The "regular rate of pay" includes all remuneration for employment paid to the
17 employee and includes, but is not limited to, hourly earnings, salary, piece work earnings,
18 commissions, non-discretionary bonuses, and the value of meals and lodging. DLSE Enforcement
19 Policies and Interpretations Manual Section 49.

20 90. During the relevant time period, Defendants failed to include commissions, non-
21 discretionary bonuses and/or other items of compensation when determining the "regular rate of
22 pay" for Plaintiff and their other non-exempt employees for purposes of sick time pay.

23 91. According to the California Supreme Court, sick pay is a form of wages. *Murphy v.*
24 *Kenneth Cole Productions* (2007) 40 Cal.4th 1094, 1103.

25 92. Labor Code section 233 provides that "any employer who provides sick leave for
26 employees shall permit an employee to use in any calendar year the employee's accrued and
27 available sick leave entitlement, in an amount not less than the sick leave that would be accrued
28 during six months at the employee's then current rate of entitlement, for the reasons specified in
subdivision (a) of Section 246.5."

1 93. During the relevant time period, Defendants intentionally and willfully failed to pay
2 Plaintiff and the other members of the Sick Pay Class their sick pay at the rate of pay required by
3 law. Accordingly, Plaintiff did not receive the full amount of paid sick time that they were entitled
4 to receive by law, and were therefore denied the right to use sick leave within the meaning of
5 Labor Code sections 233(a) and (c).

6 94. Any employer who violates Labor Code section 233 is liable to employees for the
7 greater of one days' pay or actual damages, reasonable equitable relief, and reasonable attorneys'
8 fees and costs. Labor Code §233(d), (e).

9 95. Further, Labor Code section 218 authorizes a private right of action to recover
10 unpaid wages.

11 96. Wherefore, Plaintiff and the other members of the Sick Pay Class have been injured
12 as set forth above and request relief as hereafter provided.

13 **NINTH CAUSE OF ACTION**
14 **FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**
15 **(Lab. Code, § 226(a))**
16 **By the Wage Statement Class Against Defendants**

17 97. Plaintiff hereby reallege and incorporate by reference each and every allegation set forth
18 above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of
19 this cause of action.

20 98. Pursuant to California Labor Code section 226(a) "every employer shall, semimonthly
21 or at the time of each payment of wages, furnish each of his or her employees, either as a detachable
22 part of the check, draft, or voucher paying the employee's wages, or separately when the wages are
23 paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages
24 earned, (2) total hours worked by the employee [. . .], (3) the number of piece-rate units earned and any
25 applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages
26 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
27 employee and only the last four digits of his or her social security number or an employee identification
28 number, (8) the name and address of the legal entity that is the employer [. . .], (9) all applicable hourly
rates in effect during the pay period and corresponding number of hours worked at each hourly rate by

1 the employee and, if the employer is a temporary services employer [. . .], the rate of pay and the total
2 hours worked for each temporary services assignment.”

3 99. An employee suffering injury as a result of the knowing and intentional failure by an
4 employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual
5 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
6 dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed the aggregate
7 penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s
8 fees. Labor Code § 226(e)(1).

9 100. An employee is deemed to suffer injury if the employer fails to provide a wage
10 statement or if the employer fails to provide accurate and complete information as required by any one
11 or more of the items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and
12 easily determine from the wage statement alone, i) the amount of gross/net wages paid to the employee
13 during the pay period or any of the other information required to be provided pursuant to Labor Code
14 section 226(a) items (2) to (4), inclusive, (6) and (9), ii) deductions made by the employer, iii) the name
15 and address of the employer and iv) the name of the employee and the last four digits of his or her
16 social security number or employee identification number. Labor Code § 226(e)(2)(A) and (B)(i)-(iv).
17 “Promptly and easily determine” means a reasonable person would be able to readily ascertain the
18 information without reference to other documents or information. Labor Code § 226(e)(2)(C).

19 101. As set forth above, Defendants intentionally and willfully failed to furnish accurate
20 itemized wage statements which complied with Labor Code section 226.

21 102. Wherefore, Plaintiff and the other members of the Wage Statement Class have been
22 injured as set forth above and request relief as hereafter provided.

23 **TENTH CAUSE OF ACTION**
24 **FAILURE TO PAY ALL WAGES DUE AND OWING UPON CESSATION OF**
25 **EMPLOYMENT**

26 **(Lab. Code, § 201, *et seq.*)**

27 **By the Waiting Time Penalty Class Against Defendants**

28 103. Plaintiff hereby reallege and incorporate by reference each and every allegation set forth
above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of
this cause of action.

104. California Labor Code section 201 provides that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

105. California Labor Code section 202 requires an employer to pay an employee all earned wages within 72 hours of the employee quitting his or her employment, or immediately at the time of quitting if the employee has given 72 hours previous notice of his or her intention to quit.

106. As set forth above, Plaintiff and the other members of the Waiting Time Penalty Class were not timely paid all of their earned but unpaid wages when their employment with Defendants ended.

107. Wherefore, Plaintiff and the other members of the Waiting Time Penalty Class have been injured as set forth above and request relief as hereafter provided.

ELEVENTH CAUSE OF ACTION
UNFAIR BUSINESS PRACTICES
(Bus. & Prof. Code, § 17200, *et seq.*)

By the Regular Rate Class and the Sick Pay Class Against Defendants

108. Plaintiff hereby reallege and incorporate by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

109. The statutory violations, as alleged above, are unfair business practices within the meaning of the Unfair Competition Law (Business and Professions Code sections 17200 *et seq.*), and include, but are not limited to, failing to properly pay overtime wages and failing to properly pay sick leave.

110. Wherefore, Plaintiff and the other members of the Regular Rate Class and the Sick Pay Class have been injured as set forth above and request relief as hereafter provided.

TWELFTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(Lab. Code, § 2698 *et seq.*)
Against Defendants

115. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

1 116. Pursuant to Labor Code section 2699, subdivision (a), any provision of the Labor
2 Code which provides for a civil penalty to be assessed and collected by the LWDA for violations
3 of the Labor Code may, as an alternative, be recovered through a civil action brought by an
4 aggrieved employee on behalf of himself or herself and other current or former employees pursuant
5 to the procedures outlined in Labor Code section 2699.3.

6 117. Plaintiff was employed by Defendants and the alleged violations were committed
7 against him during his time of employment. Plaintiff is therefore an aggrieved employee as
8 defined by Labor Code section 2699, subdivision (c). Other current and former employees are also
9 aggrieved employees in that one or more of the alleged violations were also committed against
10 them during their time of employment with Defendants.

11 118. Pursuant to Labor Code section 2699, subdivision (f), the civil penalty recoverable
12 in a PAGA action is that which is provided for by the Labor Code or, where no civil penalty is
13 specifically provided, one hundred dollars (\$100) for each aggrieved employee per pay period for
14 the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for
15 each subsequent violation.

16 119. Pursuant to California Labor Code section 2699, subdivision (g), an aggrieved
17 employee may recover the civil penalty on behalf of himself or herself and other current or former
18 employees against whom one or more of the alleged violations was committed. Furthermore, any
19 employee who prevails in any such action shall be entitled to an award of reasonable attorney's fees
20 and costs.

21 120. Wherefore, Plaintiff and other employees (current and former) have been aggrieved
22 as set forth above and request relief as hereafter provided.

23 PRAYER FOR RELIEF

24 WHEREFORE, Plaintiff prays judgment against Defendants as follows:

25 **As to the First through Sixth Causes of Action:**

- 26 1. For general and special damages;
- 27 2. For punitive damages;
- 28

3. For injunctive and declaratory relief, including, but not limited to, a cease-and-desist order requiring Defendants to halt their unlawful practices; an order requiring Defendants to conduct training for all its employees, supervisors, and management on the requirements of FEHA; an order requiring Defendants to develop and promulgate an effective anti-discrimination policy for its employees; and an order requiring Defendants to develop and maintain an effective internal grievance procedure for employee complaints regarding unlawful discrimination;
4. For statutory attorneys' fees and costs, including but not limited to those available under Gov. Code § 12965(b);
5. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including but not limited to that available under Civil Code §§ 3287(a) and 3289(b); and
6. For such other and further relief as the court deems just and proper.

As to the Seventh through Eleventh Causes of Action:

1. That this Court certify the Class;
2. That this Court appoint Durden as the representative of the Class;
3. That this Court appoint Mayall Hurley, P.C. as Class Counsel;
4. That this Court award actual, compensatory, special, and general damages as well as restitutionary relief to Durden and the members of the Class, including but not limited to the remedies provided for under Labor Code section 233, subdivision (d);
5. That this Court award injunctive relief, including that available under Labor Code section 226(h) and Business and Professions Code Section 17203;
6. That this Court award penalties and liquidated damages including, but not limited to, those available under Labor Code §§ 203 and 226(e);
7. That this Court award statutory attorneys' fees and costs, including those available under Labor Code §§ 218.5, 226(e)(1), 233(e), 1194, and 2699(g), as well as Code of Civil Procedure § 1021.5;

1 8. That this Court award prejudgment and post-judgment interest according to any
2 applicable provision of law or as otherwise permitted by law; and

3 9. That this Court award such other and further relief as the court deems just and proper.

4 **As to the Twelfth Cause of Action:**

5 1. For civil penalties, including but not limited to those available under Labor Code
6 sections 226.3, 558, and 2699(f);

7 2. For injunctive relief;

8 3. For statutory attorneys' fees and costs, including but not limited to those available
9 under Labor Code section 2699(g);

10 4. For prejudgment and post-judgment interest according to any applicable provision
11 of law or as otherwise permitted by law, including those available under Civil Code
12 sections 3287(a) and 3289(b); and

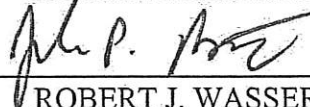
13 5. For such other and further relief as the court deems just and proper.

14 ///

15 **DATED:** February 22, 2021

MAYALL HURLEY P.C.

16 By



17 ROBERT J. WASSERMAN
18 JOHN P. BRISCOE
19 Attorneys for Plaintiff
20 GLENDA DURDEN
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Exhibit 1



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

December 8, 2020

Rachael Allgaier
2453 Grand Canal Blvd. 2nd Floor
Stockton, California 95207

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 202012-12019808
Right to Sue: / Hilton Management LLC

Dear Rachael Allgaier:

Attached is a copy of your **amended** complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq.

Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer. You or your client must serve the complaint.

The amended complaint is deemed to have the same filing date of the original complaint. This is not a new Right to Sue letter. The original Notice of Case Closure and Right to Sue issued in this case remains the only such notice provided by the DFEH. (Cal. Code Regs., tit. 2, § 10022.)

Be advised that the DFEH does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Department of Fair Employment and Housing

COMPLAINT OF EMPLOYMENT DISCRIMINATION
BEFORE THE STATE OF CALIFORNIA
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
Under the California Fair Employment and Housing Act
(Gov. Code, § 12900 et seq.)

In the Matter of the Complaint of

Glenda Durden

DFEH No. 202012-12019808

Complainant,

vs.

Hilton Management LLC
755 Crossover Lane
Memphis, Tennessee 38117

Hilton Hotel Employer LLC
755 Crossover Lane
Memphis, Tennessee 38117

Respondents

1. Respondent **Hilton Management LLC** is an employer **Hilton Management LLC** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2. Complainant is naming **Hilton Hotel Employer LLC** as individual Co-Respondent(s).

3. Complainant **Glenda Durden**, resides in the City of **Los Angeles**, State of **California**.

4. Complainant alleges that on or about **August 24, 2020**, respondent took the following adverse actions:

Complainant was harassed because of complainant's sex/gender, family care or medical leave (cfra) (employers of 50 or more people), disability (physical or mental), other, sexual harassment- hostile environment.

Complainant was discriminated against because of complainant's sex/gender, family care or medical leave (cfra) (employers of 50 or more people), disability (physical or mental), sexual harassment- hostile environment and as a result of the discrimination was reprimanded, denied any employment benefit or privilege, denied reasonable accommodation for a disability, other, denied work opportunities or assignments.

Complainant experienced retaliation because complainant reported or resisted any form of discrimination or harassment, requested or used a disability-related accommodation,

1 requested or used leave under the california family rights act or fmla (employers of 50 or
2 more people) and as a result was reprimanded, denied any employment benefit or privilege,
3 denied reasonable accommodation for a disability, other, denied work opportunities or
4 assignments.

4 **Additional Complaint Details:** Complainant was hired by Respondents on or around July
5 31, 2007 as a security officer. At all times relevant herein, Complainant performed her job
6 duties with distinction. Complainant suffers from arthritis in both of her knees and has a liver
7 disease, both of which limited her ability to perform major life activities. Complainant's
8 arthritis limits her ability to walk and stand for extended amounts of time (and thus, her
9 ability to work). Complainant's liver disease caused her liver to "flare up" occasionally, and
10 Complainant was unable to work during a flare up. At all times relevant herein,
11 Respondents were aware of Complainant's arthritis and liver disease. In or around August
12 2018, Complainant provided a doctor's note of restrictions to Respondents. Complainant's
13 restrictions restricted prolonged standing for anything over 20 minutes and provided that she
14 was to be given four days off per episode, per month, if her liver flared up. Respondents
15 accommodated Complainant's medical leave in instances in which her liver flared up.
16 However, in or around January 2019, Complainant was told by human resources director,
17 Bernice (last name unknown), that security personnel were not permitted to have any
18 physical restrictions. Relying on this information, and not wanting to lose her job, in or
19 around February 2019, Complainant requested from her doctor that the standing restriction
20 be removed so that she could continue working. On or around April 30, 2020, Complainant
21 was told by Respondents that they needed documentation to allow her any days off in case
22 she has a liver flare up. In response, Complainant's doctor faxed in a note of restrictions. In
23 addition to the days off in the case of a live flare up, Complainant was restricted from
24 prolonged standing and prolonged patrolling for periods of twenty minutes or longer.
25 Respondents refused to accommodate these restrictions without further documentation. On
26 or around July 20, 2020, and not least because of the arthritis in both of her knees and
27 Respondents' refusal to accept her restrictions, Complainant fell and injured her left knee
28 while she was working. On or around August 10, 2020, Complainant received a write-up for
loitering in the front lobby. This write-up was clearly pretext to Respondents' discriminatory
animus, as roving the lobby was part of her job duties while stationed in the front lobby.
Additionally, Complainant has seen other security guards "loitering" in the front lobby while
stationed there, but she was the only one to receive any disciplinary action. On or around
August 24, 2020, Complainant again received a write-up. This time, she was disciplined
because a man urinated on the building while she was working the security dispatch post.
Feeling as though she was being targeted due to her disabilities and requests for
accommodation, Complainant's stress level rose to the point where she needed to take a
leave of absence. On or around August 26, 2020, Complainant began a leave of absence.
Separately from the above, in or around February 2019, Complainant reported to
Respondents that she was being sexually harassed by her director, Nelson Kafieh. It was
only after her report of sexual harassment and requests for accommodation that
Respondents began to retaliate against Complainant by repeatedly subjecting her to
adverse employment actions in the form of write-ups. The foregoing list of misconduct is a
partial list only, and set forth by way of example. Respondents failed to prevent the
foregoing.

1 VERIFICATION

2 I, **Rachael Allgaier**, am the **Attorney** in the above-entitled complaint. I have read the
3 foregoing complaint and know the contents thereof. The matters alleged are based
4 on information and belief, which I believe to be true.

5 On December 8, 2020, I declare under penalty of perjury under the laws of the State
6 of California that the foregoing is true and correct.

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Stockton, California

Exhibit 2

CO: EMPLOYEE ID: 000000000000
 SW: 1335289
 Durden
 Dept: 71300-G & A Security
 Hilton Hotel Employer LLC
 755 Crossover Lane
 Memphis, TN 38117

Earnings Statement

Page 001 of 001
 Period Beg/End: 04/16/2020 - 04/30/2020
 Advice Date: 05/07/2020
 Advice Number: 0000000219
 Batch Number: SCOTDEJDUQ5

Durden, Glenda E

Job Title: Security Officer G&A
 Total Hours Worked: 88.05
 Basis of Pay: Hourly

FEIN: 842067873 Location #:

Earnings	Rate	Hours	This Period	Year-to-Date
Meals Non Ta			37.45	336.97
Overtime Inc 23.0000	0.04		0.92	116.23
Overtime Inc 11.7601	0.04		0.48	59.63
Paid Time Of 23.0000	16.00		368.00	3243.00
Regular Hour 23.0000	71.97		1655.31	14898.31
Gross Pay			2062.16	18554.14

Taxes

FIT	0.00	525.22
Medicare Employee	24.58	220.86
Social Security Employee	105.10	944.35
CASIT	34.93	316.13
CASDI Employee	16.95	152.31
Total Taxes	181.46	2158.87

Deductions

*Dental	21.64	194.76
*Health Care Account	16.67	150.03
*Medical Pre-Tax	295.49	2569.41
*Parking Pre-Tax 2nd Pay Period	0.00	120.00
*Vision	5.73	51.57
ADD Insurance	4.90	44.10
Accident Insurance ML	5.96	47.84
LTD - Each pay period	24.30	218.70
Meals Non Taxable Deduction	37.45	336.97
Supplemental Life Insurance	39.27	353.43
T Rowe Price 401k Loan LA	111.55	1021.95
Total Deductions	551.93	5108.75
Net Pay		1306.51

Your Federal taxable wages for this period are: \$1,695.18

Hilton Hotel Employer LLC
 755 Crossover Lane
 Memphis, TN 38117

Advice Number: 0000000219
 Advice Date: 05/07/2020

Deposited to the account of Durden, Glenda E Account Number Transit ABA Amount \$1325.72

THIS IS NOT A CHECK

Exhibit 3

LAW OFFICES
MAYALL HURLEY

A PROFESSIONAL CORPORATION

SOUTHERN CALIFORNIA OFFICE
450 N. BRAND BLVD., SUITE 600
GLENDALE, CALIFORNIA 91203
(818) 646-6440

MAILING ADDRESS:
2453 GRAND CANAL BLVD.
STOCKTON, CALIFORNIA 95207

2453 GRAND CANAL BOULEVARD
STOCKTON, CALIFORNIA 95207-8258

FAX (209) 473-4818
TELEPHONE (209) 477-3833
WWW.MAYALLLAW.COM

VLADIMIR F. KOZINA
STEVEN A. MALCOUN
MARK E. BERRY
WILLIAM J. GORHAM III
NICHOLAS F. SCARDIGLI
ROBERT J. WASSERMAN
JENNY D. BAYSINGER
JOHN P. BRISCOE
VLADIMIR J. KOZINA
RACHAEL ALLGAIER

OF COUNSEL
J. ANTHONY ABBOTT

December 18, 2020

SUBMITTED ELECTRONICALLY

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, California 94612

SENT VIA CERTIFIED MAIL

Hilton Management LLC
755 Crossover Lane
Memphis, TN 38117

Hilton Hotel Employer LLC
755 Crossover Lane
Memphis, TN 38117

Re: Glenda Durden

To whom it may concern:

This firm represents Glenda Durden ("Durden") in relation to her employment with Hilton Management LLC and Hilton Hotel Employer LLC (collectively "Hilton"). In accordance with California Labor Code section 2699.3, this letter shall serve as Durden's written notice to the Labor and Workforce Development Agency ("LWDA") and Hilton regarding the following violations, and facts and theories supporting those violations, on Durden's behalf and, as a proxy for the LWDA, on behalf of former and other current California employees of Hilton.

Durden was hired by Hilton Management LLC on or around July 31, 2007. Beginning in 2020, Durden's wage statements began showing "Hilton Hotel Employer LLC", demonstrating that Hilton Hotel Employer LLC had become either Durden's joint employer or sole employer. Durden remains employed with Hilton Hotel Employer, LLC and, on information and belief, with Hilton Management LLC. At all times during her employment with Hilton, Durden has been an hourly employee, eligible for overtime under the Labor Code. Most recently, she was paid an hourly rate of \$23, or \$24.25 if she was performing supervisory duties.

Durden indeed worked overtime on a regular basis; however, Hilton failed to properly calculate her "regular rate of pay" for overtime purposes, resulting in an underpayment of wages. During her employment, Durden earned commissions, nondiscretionary bonuses, and other items of compensation (including meal stipends) in addition to her base hourly pay. (Exhibit A.) However, Hilton willfully failed to account for the value of such compensation when

Labor and Workforce Development Agency
Hilton Management LLC
Hilton Hotel Employer LLC
Re: Glenda Durden
December 18, 2020
Page 2 of 3

determining Durden's and its other hourly, nonexempt employees' regular rate of pay for purposes of calculating and paying overtime wages. For example, during the pay period of April 16-30, 2020, Durden was paid a meal stipend in the amount of \$37.45. (*Id.*) Yet, and pursuant to its uniform policy and practice, Hilton failed to include the value of this payment when calculating Durden's regular rate of pay for purposes of overtime and, accordingly, underpaid her. Instead, Hilton paid Durden's overtime at a lesser rate. (*Id.*) Accordingly, Hilton violated Labor Code section 510.

Durden and Hilton's other hourly, nonexempt California employees were also entitled to paid sick leave pursuant to Labor Code section 245, *et seq.* Any sick pay used appeared on their wage statements as "Paid Time Of" (sic). (Exhibit A.) Although Labor Code section 248.5, subdivision (1)(1) mandates that paid sick leave for nonexempt employees be "calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time", Hilton failed to include commissions, nondiscretionary bonuses, and other items of compensation (including meal stipends) when determining Durden's and other hourly, nonexempt California employees' regular rate of pay for purposes of paid sick leave. (*Id.*) Instead, paid sick leave was paid only at Durden's and the other California employees' base rate. Accordingly, Hilton violated Labor Code section 246.

Because Durden was not paid overtime at the appropriate regular rate of pay, the itemized wage statements issued to her failed to show the gross wages earned, the net wages earned, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each rate, in violation of Labor Code section 226, subdivisions (a)(1), (5), and (9). Furthermore, and independent of any other violation, the wage statements inaccurately showed total hours worked. In the wage statement attached hereto as Exhibit A, it shows the value of "Total Hours Worked" as 88.05. However, the wage statement itself shows that such figure includes the value of 16 hours of paid time off/sick leave (which, of course, are *not* hours worked). Additionally, and instead of showing Durden's overtime rate as a single rate, it showed 0.04 hours worked at \$23 (the base), and also 0.04 hours worked at \$11.76 (the overtime "premium"), thus essentially "double-counting" the overtime worked and incorporating such into the figure of total hours worked. The upshot of this is that Durden actually worked 72.01 hours during the subject pay period, *not* 88.05. Thus, Hilton also violated Labor Code section 226, subdivision (a)(2).

The foregoing violations, and each of them, were committed as against other employees of Hilton in California, and within the last year.

If the LWDA believes that it needs additional information to determine whether to investigate these claims, please contact me immediately to request the additional information, which I will provide to the extent it is available to me or my client.

Labor and Workforce Development Agency
Hilton Management LLC
Hilton Hotel Employer LLC
Re: Glenda Durden
December 18, 2020
Page 3 of 3

If the LWDA does not intend to investigate these violations, Durden intends to file a civil complaint against Hilton pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code, § 2698 *et seq.*), on her behalf and, as a proxy for the LWDA, on behalf of all aggrieved current and former employees. Thank you for your attention in this matter.

Sincerely,

MAYALL HURLEY P.C.

By


JOHN P. BRISCOE

Exhibit A

CO EMPLOYEE ID 000000000000
 SVR 1135283
 Durden
 Dept:71300-G & A Security
 Hilton Hotel Employer LLC
 755 Crossover Lane
 Memphis, TN 38117

Earnings Statement

Page 001 of 001
 Period Beg/End: 04/16/2020 - 04/30/2020
 Advice Date: 05/07/2020
 Advice Number: 0000000219
 Batch Number: SCOFTEJDUQ5

Durden, Glenda E

Job Title: Security Officer G&A
 Total Hours Worked: 88.05
 Basis of Pay: Hourly

FEIN: 842067873

Location #:

Earnings	Rate	Hours	This Period	Year-to-Date
Meals Non Ta			37.45	336.97
Overtime Inc 23.0000		0.04	0.92	116.23
Overtime Inc 11.7601		0.04	0.48	59.63
Paid Time Off 23.0000		16.00	368.00	3243.00
Regular Hour 23.0000		71.97	1655.31	14898.31
Gross Pay			2052.16	16554.14

Taxes

FIT		0.00	525.22
Medicare Employee		24.58	220.86
Social Security Employee		105.10	944.35
CASIT		34.83	316.13
CASDI Employee		16.95	152.31
Total Taxes			181.46

Deductions

*Dental		21.64	194.76
*Health Care Account		16.67	150.03
*Medical Pre-Tax		285.49	2569.41
*Parking Pre-Tax 2nd Pay Period		0.00	120.00
*Vision		5.73	51.57
ADD Insurance		4.90	44.10
Accident Insurance ML		5.98	47.84
LTD - Each pay period		24.30	218.70
Meals Non Taxable Deduction		37.45	336.97
Supplemental Life Insurance		39.27	353.43
T Rowe Price 401k Loan 1A		111.55	1021.95
Total Deductions			551.93
Net Pay			1325.72

Other Benefits and

Information	This Period	Year-to-Date
PTO		Balance
FTO		8.69
Direct Deposits		
Checking		1325.72

Your Federal taxable wages for this period are: \$1,695.18

Hilton Hotel Employer LLC
 755 Crossover Lane
 Memphis, TN 38117

Advice Number: 0000000219
 Advice Date: 05/07/2020

Deposited to the account of

Durden, Glenda E

Account Number

Transit ABA

Amount

\$1325.72

THIS IS NOT A CHECK

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

HILTON MANAGEMENT LLC, a limited liability company; HILTON HOTEL EMPLOYER LLC, a limited liability company; and DOES

YOU ARE BEING SUED BY PLAINTIFF: 1-100, inclusive
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

GLEND A DURDEN

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

MAR 12 2021

Sherri R. Carter, Executive Officer/Clerk of Court

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): LOS ANGELES

111 North Hill Street
Los Angeles, CA 90012

CASE NUMBER:
(Número del Caso):

21STCV09880

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
John P. Briscoe, Mayall Hurley, P.C., 2453 Grand Canal Blvd., Stockton, CA 95207; (209) 477-3833

DATE: MAR 12 2021
(Fecha)

Sherri R. Carter, Clerk

Clerk, by
(Secretario)

STEVEN OREN

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)	☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation)	☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership)	☐ CCP 416.90 (authorized person)
☐ other (specify):	
4. ☐ by personal delivery on (date):