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Clerk of the Superior Court
By S. Felix, Deputy Clerk

*Attorneys for Plaintiff, on behalf of the State of
California and Aggrieved Employees*

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

CHRISTINA HOWITSON, on behalf of the State
of California and Aggrieved Employees,

Plaintiffs,

vs.

EVANS HOTELS LLC; THE LODGE AT
TORREY PINES PARTNERSHIP, L.P., and
DOES 1-50, Inclusive,

Defendant.

Case No. 37-2020-00026768-CU-CE-CTL

**FIRST AMENDED COMPLAINT FOR
PENALTIES PURSUANT TO SECTIONS
2699(a) and (f) OF THE CALIFORNIA
LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT AND DEMAND FOR
JURY TRIAL**

1 Pursuant to Labor Code §2699.3(a)(2)(C), Plaintiff Christina Howitson (“Plaintiff”), on behalf
2 of the State of California and Aggrieved Employees, brings this First Amended Complaint and
3 complains and alleges as follows:

4 **INTRODUCTION**

5 1. Plaintiff brings this enforcement action on behalf of the State of California against
6 Defendants Evans Hotels LLC, The Lodge at Torrey Pines Partnership, L.P., and Does 1-50, Inclusive
7 (“Defendants” or “Torrey Pines”) for their systematic violations of California labor law with respect
8 to Defendants’ non-exempt hourly employees in California (the “Aggrieved Employees”).

9 2. Defendants impose gratuities and service charges on the sale of food and beverages,
10 but fail to distribute the total proceeds of those gratuities to non-managerial service employees as
11 required by California law. This conduct violates California Labor Code § 351.

12 3. Defendants also fail to factor in charges, such as service charges, when calculating the
13 regular rate for Aggrieved Employees’ premium and overtime payments. California Labor Code §§
14 226.7 and 510.

15 4. Defendants maintain a longstanding policy and practice of failing to properly
16 compensate non-exempt employees for work performed during meal periods, for work performed
17 while “off-the-clock,” and for missed meal and rest periods. These policies deny Plaintiff and
18 Aggrieved Employees payment for all hours worked, including overtime, and deny Plaintiff and
19 Aggrieved Employees meal and rest periods that comply with California law.

20 5. Defendants violate California law by knowingly and willfully requiring Plaintiff and
21 Aggrieved Employees to perform work and/or remain on duty during meal and rest periods,
22 subjecting them to interruption during those times. Defendants require Aggrieved Employees to
23 manually clock out for their unpaid meal periods, even though Aggrieved Employees remain on duty
24 and are continuously subject to interruption during that time.

25 6. Plaintiff and Aggrieved Employees bring this claim to challenge Defendants’ policies
26 and practices of: (1) failing to pay Plaintiff and Aggrieved Employees overtime wages; (2) failing to
27 pay Plaintiff and Aggrieved Employees all tip wages owed from gratuity payments; (3) failing to

1 authorize and permit Plaintiff and Aggrieved Employees to take meal and rest breaks to which they
2 are entitled by law; (4) failing to compensate Plaintiff and Aggrieved Employees for all hours
3 worked; (5) failing to factor in charges, such as service charges, when calculating the regular rate for
4 Aggrieved Employees' premium and overtime payments. (6) failing to provide Plaintiff and
5 Aggrieved Employees accurate, itemized wage statements; (7) failing to timely pay Plaintiff and
6 Aggrieved Employees full wages upon termination or resignation; and (8) failing to remit the total
7 proceeds from mandatory service fee surcharges to non-managerial service workers like the
8 Aggrieved Employees.

9 **PARTIES**

10 7. Plaintiff Christina Howitson is an individual over the age of eighteen, and at all times
11 relevant to this Complaint was a resident of the State of California, County of San Diego. Plaintiff
12 was employed as a service worker for Defendants at The Lodge at Torrey Pines located in La Jolla,
13 California from approximately April 2019 to May 2019.

14 8. Plaintiff is informed, believes, and thereon alleges that Defendant Evans Hotels LLC
15 is a California limited liability company with its principal place of business located in San Diego,
16 California. Defendant may be served with process by serving its registered agent, Julia I De Beers,
17 998 West Mission Bay Drive, San Diego, California 92109.

18 9. Plaintiff is informed, believes, and thereon alleges that Defendant The Lodge at Torrey
19 Pines Partnership L.P. is a California limited partnership with its principal place of business located
20 in San Diego, California. Defendant may be served with process by serving its registered agent,
21 Andrew Puls, 998 West Mission Bay Drive, San Diego, California 92109.

22 10. Plaintiff is informed, believes, and thereon alleges that at all times mentioned in this
23 Complaint, Defendants were the agents and employees of their co-defendants and in doing the things
24 alleged in this Complaint were acting within the course and scope of such agency and employment.

25 11. Plaintiff is informed, believes, and thereon alleges that Defendants maintain a chain of
26 hotels in California. Plaintiff is informed, believes, and thereon alleges that Defendants employ
27 Aggrieved Employees throughout California.

12. Plaintiff is informed and believes that each and every one of the acts and omissions alleged herein were performed by, and/or attributable to, Defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other, and that said acts and failures to act were within the course of scope of said agency, employment and/or direction and control.

13. Plaintiff is informed, believes, and thereon alleges that Defendant Evans Hotels LLC directly controls the operations of its agent, Defendant The Lodge at Torrey Pines. Plaintiff is informed, believes, and thereon alleges that Defendants jointly exercise control over Plaintiff and the Aggrieved Employees with respect to their employment.

14. Throughout this Complaint, any reference to “Defendant” or “Defendants” is intended to refer to Defendants Evans Hotels LLC and The Lodge at Torrey Pines L.P. jointly.

15. At all material times, Defendants have done business under the laws of California, have had places of business in California, including in this County, and have employed Aggrieved Employees in this County and elsewhere in California. Defendants are “person[s]” as defined in Labor Code § 18 and “employer” as that term is used in the Labor Code and the IWC Wage Orders regulating wages, hours, and working conditions.

16. Defendants each individually and/or jointly own, operate, and/or manage hotels, resorts, and restaurants throughout California.

17. Defendants acted as joint employers of Plaintiff because they jointly, directly or indirectly, controlled the employment terms, pay practices, timekeeping practices, and daily work of Plaintiff. Upon information and belief, Defendants jointly employee Aggrieved Employees with the other Defendants and/or with currently unknown entities, because Defendants jointly, directly or indirectly, controlled the employment terms, pay practices, timekeeping practices, and daily work of Plaintiff and the Aggrieved Employees.

SUBJECT MATTER JURISDICTION AND VENUE

18. This Court has jurisdiction over Plaintiff's claims pursuant to the California Labor Code, including the Private Attorney General Act. The Court has jurisdiction over all Defendants because they are California corporations, limited liability companies, and/or limited partnerships,

1 their principal places of business are located in California, and because they are registered with the
2 California Secretary of State.

3 19. Venue is proper in this County pursuant to Code of Civil Procedure § 393 and/or 395.5.
4 Defendants conduct business, employ Aggrieved Employees, and have jobsites in this County.
5 Plaintiff is informed, believes, and thereon alleges that events giving rise to these causes of action
6 occurred in this County, and some part of these causes of action arose in this County.

7 **FACTUAL ALLEGATIONS**

8 20. Defendants operate hotels, resorts, and restaurants in California, including The Lodge
9 at Torrey Pines, which is located in La Jolla, California. Defendants employ dozens of hourly non-
10 exempt workers similarly situated to Plaintiff across their facilities.

11 21. Plaintiff worked at The Lodge at Torrey Pines as a room service worker from
12 approximately April 2019 to May 2019. Plaintiff was paid an hourly wage of \$12 plus tips. Plaintiff
13 typically worked, or was scheduled to work approximately six or more hours per day approximately
14 four-to-five days per week.

15 22. As a matter of course, Defendants charge a mandatory delivery and service fee
16 (hereinafter “service fee”) for food and beverage services of \$4 per delivery, and an additional 20%
17 surcharge to the entire bill. Defendant retains a portion of these service fees and remits a portion to
18 Plaintiff and Aggrieved Employees. Defendants consider this service charge to be wages paid to
19 Plaintiff and Aggrieved Employees

20 23. It is typically customary in the hospitality industry that establishments impose gratuity
21 charges in the range of 18% to 22% of the food and beverage bills. Thus, when customers pay these
22 mandatory service charges, it is reasonable for the customers to believe those service charges are
23 gratuities to be paid to the service staff. Indeed, because of the way these service charges are depicted
24 to customers, and the custom in the food and beverage industry that gratuities range of 18% to 22%
25 are paid for food and beverage service, customers pay these charges reasonably believing they were
26 to be remitted in their entirety to the non-exempt service staff as gratuities.

27 24. However, Defendants do not remit the total proceeds of these service fees to the non-
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1 managerial employees who serve the food and beverages. Instead, Defendants have a policy and
2 practice of retaining a portion of those service charges for themselves and/or for managerial non-
3 service worker employees. As a result, Plaintiff and Aggrieved Employees do not receive the
4 proceeds of the service charges as gratuities, to which they are entitled under California law.

5 25. Defendants also fail to factor in charges, such as service charges, when calculating the
6 regular rate for Aggrieved Employees' premium and overtime payments.

7 26. As a matter of policy, Defendants also require Plaintiff and Aggrieved Employees to
8 remain on duty throughout their scheduled shifts, including during rest breaks and unpaid meal
9 periods. Defendants do not compensate Plaintiff and Aggrieved Employees for work performed
10 while clocked out for meal periods. Plaintiff and Aggrieved Employees are often kept too busy with
11 work responsibilities to take meal and rest breaks. Breaks are often interrupted, cut short, or not taken
12 at all. Defendants keep a telephone in the breakroom, which is used to call Plaintiff and Aggrieved
13 Employees during their meal and rest breaks, and thereby subjects Plaintiff and Aggrieved
14 Employees to potential interruptions even when they attempt to take a meal break. Moreover, it was
15 a well-known problem with Defendants' supervisory employees that Plaintiff and Aggrieved
16 Employees virtually never receive their statutorily required 10-minute rest periods.

17 27. Beyond Defendants' failure to authorize or permit meal and rest breaks, Aggrieved
18 Employees' schedules are too busy, and Defendants' pressure to complete job assignments too
19 constant, for Aggrieved Employees to take compliant meal or rest breaks. Defendants monitor
20 Plaintiff and Aggrieved Employees throughout the day, directing them to go from customer to
21 customer without breaks. Further, Defendants fail to pay Plaintiff and Aggrieved Employees
22 premium wages for their missed breaks. This uniformly violates California law. Plaintiff is informed,
23 believes, and thereon alleges that this policy and practice applies to all Aggrieved Employees
24 throughout California.

25 28. In addition to working through unpaid meal periods, Aggrieved Employees also
26 perform work while "off-the-clock" with Defendants' knowledge and are denied compensation for
27 the time spent engaged in this off-the-clock work. Aggrieved Employees' off-the-clock work
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1 includes changing into their uniform, because Aggrieved Employees are not allowed to take their
2 uniform home, and are required to change into their uniforms at work before clocking in for their
3 shifts. Defendants discourage Aggrieved Employees from recording work hours performed outside
4 of their scheduled shifts. Even though Aggrieved Employees routinely work prior to the start of their
5 shifts, Defendants set strict clock-in procedures requiring Aggrieved Employees to clock in within a
6 few minutes of their scheduled start time, regardless of when they actually start their work.
7 Aggrieved Employees are not compensated for this work performed outside of their recorded hours.
8 On average, during Plaintiff's employment, she worked approximately 15 additional minutes of work
9 while off-the-clock each shift, not including work performed during meal and rest periods.

10 29. As a result of these policies, Defendants deny Plaintiff and Aggrieved Employees
11 gratuities to which they are lawfully owed, meal and rest periods to which they are statutorily entitled,
12 as well as overtime premiums and properly calculated overtime and/or meal premiums resulting from
13 the additional off-the-clock work performed during meal breaks, as well as pre-shift work performed
14 for Defendants' benefit.

15 30. Despite these recurring violations, Defendants do not provide Plaintiff and Aggrieved
16 Employees premium pay for missed meal and rest periods.

17 31. Plaintiff is informed, believes, and thereon alleges that the same timekeeping system is
18 used across all Defendants' facilities.

19 32. Defendants' common course of wage-and-hour abuse includes routinely failing to
20 maintain true and accurate records of the hours worked by Aggrieved Employees. In particular,
21 Defendants have failed to record hours that Plaintiff and Aggrieved Employees worked during
22 missed meal breaks, as well as hours worked off-the-clock.

23 33. Defendants' failure to record all gratuity payments and all hours worked also results in
24 a failure to provide Aggrieved Employees, including Plaintiff, accurate itemized wage statements as
25 required by California law. The wage statements Defendants provide are not accurate because they
26 do not reflect the actual wages earned as gratuity payments, nor the actual hours worked by Plaintiff
27 and Aggrieved Employees. The wage statements do not contain all of the service charges that should

1 be paid as gratuity payments, and do not contain all of the off-the-clock work or time that should be
2 compensable during interruptible meal breaks. Further, the wage statements are inaccurate because
3 they do not include premium pay for missed breaks, overtime, and work that was performed while
4 the timeclock was out of service.

5 34. Defendants also do not provide Aggrieved Employees, including Plaintiff, with full
6 payment of all wages owed at the end of employment. As these workers are owed for earned but
7 unpaid gratuities, as well as off-the-clock work, unpaid overtime, and premium pay when their
8 employment ends, and these amounts remain unpaid under Defendants' policies and practices,
9 Defendants fail to pay all wages due upon termination. As a consequence, Defendants are subject to
10 waiting time penalties.

11 35. On March 26, 2020, pursuant to Labor Code § 2699.3, Plaintiff served the California
12 Labor and Workforce Development Agency with notice of her intention to file a PAGA action for
13 violations of Labor Code §§ 351 (gratuity violation); 1194 (failure to pay minimum wage); 510
14 (failure to pay overtime wages); 204 (failure to compensate for all hours worked); 226.7 and 512
15 (failure to provide meal and rest periods); 226 and 226.3 (failure to provide timely and compliant
16 itemized wage statements); 201-203, 225.5, and 256 (failure to timely pay all wages owed during
17 employment and following separation from employment); and Business and Professions Code §§
18 17200, *et seq.* (engaging in unfair business practices). Plaintiff served Defendants' registered agent
19 with a courtesy copy of the notice via certified mail. On May 22, 2024, pursuant to Labor Code §
20 2699.3, Plaintiff served the California Labor and Workforce Development Agency with an Amended
21 PAGA Notice, explaining that she intended to clarify that her allegations also fell under California
22 Labor Code §§ 226.7 and 510 for Defendants' failure to properly calculate Ms. Howitson's and
23 Aggrieved Employees' premium and overtime payments. Plaintiff served Defendants' registered
24 agent with a courtesy copy of the Amended Notice via certified mail.

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FIRST CAUSE OF ACTION
Penalties Pursuant to Labor Code § 2699(a)

36. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

37. Labor Code § 2699(a) provides:

Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees.

38. Labor Code § 203 provides, in relevant part:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.

39. Labor Code § 226(a) provides:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

1 40. Labor Code § 226.7 provides:

2 If an employer fails to provide an employee a meal or rest or recovery period
3 in accordance with a state law, including, but not limited to, an applicable
4 statute or applicable regulation, standard, or order of the Industrial Welfare
5 Commission, the Occupational Safety and Health Standards Board, or the
6 Division of Occupational Safety and Health, the employer shall pay the
 employee one additional hour of pay at the employee's regular rate of
 compensation for each workday that the meal or rest or recovery period is
 not provided.

7 41. Labor Code § 510(a) provides:

8 Eight hours of labor constitutes a day's work. Any work in excess of eight
9 hours in one workday and any work in excess of 40 hours in any one
10 workweek and the first eight hours worked on the seventh day of work in
11 any one workweek shall be compensated at the rate of no less than one and
12 one-half times the regular rate of pay for an employee. Any work in excess
 of 12 hours in one day shall be compensated at the rate of no less than twice
 the regular rate of pay for an employee.

13 42. Labor Code § 512(a) provides:

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

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21 43. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by
22 Defendants, as alleged above, to timely pay all wages owed to Plaintiff and Aggrieved Employees
23 in compliance with Labor Code §§ 201-202 in the amounts established by Labor Code § 203.
24 Plaintiff seeks such penalties as an alternative to the penalties available under Labor Code § 203, as
25 prayed for herein.

26 44. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each failure
27 by Defendant, alleged above, to provide Plaintiff and Aggrieved Employees an accurate, itemized
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1 wage statement in compliance with Labor Code § 226(a) in the amounts established by Labor Code
2 § 226(e). Plaintiff seeks such penalties as an alternative to the penalties available under Labor Code
3 § 226(e), as prayed for herein.

4 45. Plaintiff also seeks civil penalties pursuant to Sections 225.5, 226.3, and 256 of the
5 California Labor Code.

6 46. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the Labor and
7 Workforce Development Agency (“LWDA”) with notice of her intention to file this claim. Sixty-
8 five calendar days have passed without notice from the LWDA. Plaintiff satisfied the administrative
9 prerequisites to commence this civil action in compliance with § 2699.3(a).

10 47. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
11 Employees, and herself as set forth in Labor Code § 2699(g)(i).

12 48. Defendants are liable to Plaintiff, Aggrieved Employees, and the State of California
13 for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to
14 an award of attorneys’ fees and costs as set forth below.

15 49. Wherefore, Plaintiff requests relief as hereinafter provided.

16 **SECOND CAUSE OF ACTION**
17 **Penalties Pursuant to Labor Code § 2699(f)**

18 50. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
19 herein.

20 51. Labor Code § 2699(f) provides:

21 For all provisions of this code except those for which a civil penalty is
22 specifically provided, there is established a civil penalty for a violation of these
23 provisions, as follows: . . . (2) If, at the time of the alleged violation, the person
24 employs one or more employees, the civil penalty is one hundred dollars (\$100)
25 for each aggrieved employee per pay period for the initial violation and two
hundred dollars (\$200) for each aggrieved employee per pay period for each
subsequent violation.

26 52. To the extent than any violation alleged herein does not carry penalties under Labor
27 Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for Plaintiff and

1 Aggrieved Employees each pay period in which he or she was aggrieved, in the amounts established
2 by Labor Code § 2699(f). Plaintiff seeks civil penalties under Labor Code § 2699(f) for Defendants'
3 violations of Labor Code §§ 351, 1194, and 204.

4 53. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff has provided the LWDA with
5 notice of her intention to file this claim. Sixty-five calendar days have passed without notice from
6 the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil action in
7 compliance with § 2699.3(a).

8 54. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
9 Employees, and themselves as set forth in Labor Code § 2699(g)(i).

10 55. Defendants are liable to Plaintiff, Aggrieved Employees, and the State of California
11 for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to
12 an award of attorneys' fees and costs as set forth below.

13 56. Wherefore, Plaintiff requests relief as hereinafter provided.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of the State of California and Aggrieved Employees, requests the following relief:

1. For an order awarding civil penalties to the full extent provided for by the PAGA;
2. For an award of reasonable attorneys' fees as provided by the California Labor Code, including Labor Code § 2699(g)(1); California Code of Civil Procedure §1021.5; and/or any other applicable law;
3. For all costs of suit;
4. For interest on any penalties awarded, as provided by applicable law; and
5. For such other and further relief as this Court deems just and proper.

Respectfully submitted,

Date: September 24, 2024



Carolyn H. Cottrell
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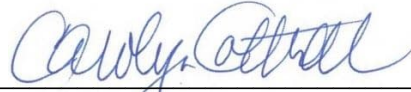
Attorneys for Plaintiff, on behalf of the State of
California and Aggrieved Employees

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby demands a jury trial on all claims and issues for which Plaintiff is entitled to
3 a jury.

4 Respectfully submitted,

5 Date: September 24, 2024



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28 Attorneys for Plaintiff, on behalf of the State of
California and Aggrieved Employees