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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-OE-CTL

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

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

07/30/2020 at 09:19:31 PM

Clerk of the Superior Court
By Linda Sheffa, Deputy Clerk

1 Plaintiff Christina Howitson (“Plaintiff”), on behalf of the State of California and Aggrieved
2 Employees, complains and alleges as follows:

3 **INTRODUCTION**

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

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

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

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

21 5. Plaintiff and Aggrieved Employees bring this claim to challenge Defendants’ policies
22 and practices of: (1) failing to pay Plaintiff and Aggrieved Employees overtime wages; (2) failing to
23 pay Plaintiff and Aggrieved Employees all tip wages owed from gratuity payments; (3) failing to
24 authorize and permit Plaintiff and Aggrieved Employees to take meal and rest breaks to which they
25 are entitled by law; (4) failing to compensate Plaintiff and Aggrieved Employees for all hours worked;
26 (5) failing to provide Plaintiff and Aggrieved Employees accurate, itemized wage statements; (6)
27 failing to timely pay Plaintiff and Aggrieved Employees full wages upon termination or resignation;

1 and (7) failing to remit the total proceeds from mandatory service fee surcharges to non-managerial
2 service workers like the Aggrieved Employees.

3 **PARTIES**

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

8 7. Plaintiff is informed, believes, and thereon alleges that Defendant Evans Hotels LLC
9 is a California limited liability company with its principal place of business located in San Diego,
10 California. Defendant may be served with process by serving its registered agent, Julia I De Beers,
11 998 West Mission Bay Drive, San Diego, California 92109.

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

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

19 10. Plaintiff is informed, believes, and thereon alleges that Defendants maintain a chain of
20 hotels in California. Plaintiff is informed, believes, and thereon alleges that Defendants employ
21 Aggrieved Employees throughout California.

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

26 12. Plaintiff is informed, believes, and thereon alleges that Defendant Evans Hotels LLC
27 directly controls the operations of its agent, Defendant The Lodge at Torrey Pines. Plaintiff is

1 informed, believes, and thereon alleges that Defendants jointly exercise control over Plaintiff and the
2 Aggrieved Employees with respect to their employment.

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

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

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

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

18 **SUBJECT MATTER JURISDICTION AND VENUE**

19 17. This Court has jurisdiction over Plaintiff’s claims pursuant to the California Labor
20 Code, including the Private Attorney General Act. The Court has jurisdiction over all Defendants
21 because they are California corporations, limited liability companies, and/or limited partnerships,
22 their principal places of business are located in California, and because they are registered with the
23 California Secretary of State.

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

FACTUAL ALLEGATIONS

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

20. Plaintiff worked at The Lodge at Torrey Pines as a room service worker from approximately April 2019 to May 2019. Plaintiff was paid an hourly wage of \$12 plus tips. Plaintiff typically worked eight hours per day, four-to-five days per week, and on average worked 32 hours per week.

21. As a matter of course, Defendants charge a mandatory delivery and service fee (hereinafter “service fee”) for food and beverage services of \$4 per delivery, and an additional 20% surcharge to the entire bill. These service fees are in the form of automatic charges which customers are required to pay, and which reasonably appear to be gratuities for the service staff.

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

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

24. As a matter of policy, Defendants also require Plaintiff and Aggrieved Employees to remain on duty throughout their scheduled shifts, including during rest breaks and unpaid meal periods. Defendants do not compensate Plaintiff and Aggrieved Employees for work performed

1 while clocked out for meal periods. Plaintiff and Aggrieved Employees are often kept too busy with
2 work responsibilities to take meal and rest breaks. Breaks are often interrupted, cut short, or not taken
3 at all. Defendants keep a telephone in the breakroom, which is used to call Plaintiff and Aggrieved
4 Employees during their meal and rest breaks, and thereby subjects Plaintiff and Aggrieved
5 Employees to potential interruptions even when they attempt to take a meal break. Moreover, it was
6 a well-known problem with Defendants' supervisory employees that Plaintiff and Aggrieved
7 Employees virtually never receive their statutorily required 10-minute rest periods.

8 25. Beyond Defendants' failure to authorize or permit meal and rest breaks, Aggrieved
9 Employees' schedules are too busy, and Defendants' pressure to complete job assignments too
10 constant, for Aggrieved Employees to take compliant meal or rest breaks. Defendants monitor
11 Plaintiff and Aggrieved Employees throughout the day, directing them to go from customer to
12 customer without breaks. Further, Defendants fail to pay Plaintiff and Aggrieved Employees
13 premium wages for their missed breaks. This uniformly violates California law. Plaintiff is informed,
14 believes, and thereon alleges that this policy and practice applies to all Aggrieved Employees
15 throughout California.

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

1 27. As a result of these policies, Defendants deny Plaintiff and Aggrieved Employees
2 gratuities to which they are lawfully owed, meal and rest periods to which they are statutorily entitled,
3 as well as overtime premiums resulting from the additional off-the-clock work performed during
4 meal breaks, as well as pre-shift work performed for Defendants' benefit.

5 28. Despite these recurring violations, Defendants do not provide Plaintiff and Aggrieved
6 Employees premium pay for missed meal and rest periods.

7 29. Plaintiff is informed, believes, and thereon alleges that the same timekeeping system is
8 used across all Defendants' facilities.

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

13 31. Defendants' failure to record all gratuity payments and all hours worked also results in
14 a failure to provide Aggrieved Employees, including Plaintiff, accurate itemized wage statements as
15 required by California law. The wage statements Defendants provide are not accurate because they
16 do not reflect the actual wages earned as gratuity payments, nor the actual hours worked by Plaintiff
17 and Aggrieved Employees. The wage statements do not contain all of the service charges that should
18 be paid as gratuity payments, and do not contain all of the off-the-clock work or time that should be
19 compensable during interruptible meal breaks. Further, the wage statements are inaccurate because
20 they do not include premium pay for missed breaks, overtime, and work that was performed while
21 the timeclock was out of service.

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

1 33. On March 26, 2020, pursuant to Labor Code § 2699.3, Plaintiff served the California
2 Labor and Workforce Development Agency with notice of her intention to file a PAGA action for
3 violations of Labor Code §§ 351 (gratuity violation); 1194 (failure to pay minimum wage); 510
4 (failure to pay overtime wages); 204 (failure to compensate for all hours worked); 226.7 and 512
5 (failure to provide meal and rest periods); 226 and 226.3 (failure to provide timely and compliant
6 itemized wage statements); 201-203, 225.5, and 256 (failure to timely pay all wages owed during
7 employment and following separation from employment); and Business and Professions Code §§
8 17200, *et seq.* (engaging in unfair business practices). Plaintiff served Defendants' registered agent
9 with a courtesy copy of the notice via certified mail.

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

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

14 35. Labor Code § 2699(a) provides:

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

22 36. Labor Code § 203 provides, in relevant part:

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

28 37. Labor Code § 226(a) provides:

29 Every employer shall, semimonthly or at the time of each payment of wages,
30 furnish each of his or her employees, either as a detachable part of the check,
31 draft, or voucher paying the employee's wages, or separately when wages are
32 paid by personal check or cash, an accurate itemized statement in writing
33 showing (1) gross wages earned, (2) total hours worked by the employee,
34 except for any employee whose compensation is solely based on a salary and
35 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.

38. Labor Code § 510(a) provides:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and 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.

39. Labor Code § 512(a) provides:

An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not 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.

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

41. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by Defendant, alleged above, to provide Plaintiff and Aggrieved Employees an accurate, itemized wage statement in compliance with Labor Code § 226(a) in the amounts established by Labor Code

1 § 226(e). Plaintiff seeks such penalties as an alternative to the penalties available under Labor Code
2 § 226(e), as prayed for herein.

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

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

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

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

14 46. Wherefore, Plaintiff requests relief as hereinafter provided.

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

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

19 48. Labor Code § 2699(f) provides:

20 For all provisions of this code except those for which a civil penalty is
21 specifically provided, there is established a civil penalty for a violation of these
22 provisions, as follows: . . . (2) If, at the time of the alleged violation, the person
23 employs one or more employees, the civil penalty is one hundred dollars (\$100)
24 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.

25 49. To the extent than any violation alleged herein does not carry penalties under Labor
26 Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for Plaintiff and
27 Aggrieved Employees each pay period in which he or she was aggrieved, in the amounts established

1 by Labor Code § 2699(f). Plaintiff seeks civil penalties under Labor Code § 2699(f) for Defendants'
2 violations of Labor Code §§ 351, 1194, and 204.

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

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

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

12 53. Wherefore, Plaintiff requests relief as hereinafter provided.

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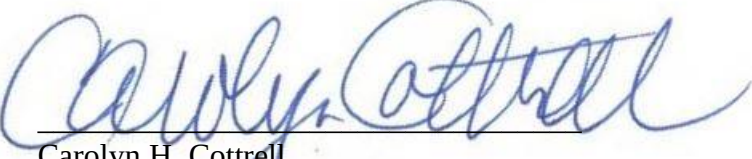
1 **PRAYER FOR RELIEF**

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

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

11 Respectfully submitted,

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13 Date: July 30, 2020



Carolyn H. Cottrell
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William M. Hogg
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18 Attorneys for Plaintiff, on behalf of the State of
19 California and Aggrieved Employees
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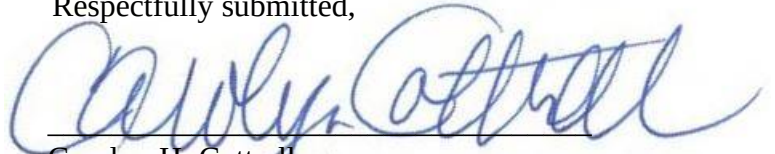
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DEMAND FOR JURY TRIAL

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

Respectfully submitted,

Date: July 30, 2020



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