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Page: 3 of 15

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ALAMEDA COUNTY

December 22, 2020

CLERK OF
THE SUPERIOR COURT
By Milagros Cortez, Deputy

CASE NUMBER:

RG20069869

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

SUPERIOR COURT OF CALIFORNIA**COUNTY OF ALAMEDA**

BENJAMIN ZERMENO, on behalf of the State
of California and Aggrieved Employees,

Plaintiff,

vs.

REMINGTON LODGING & HOSPITALITY,
LLC, ASHFORD HOSPITALITY TRUST,
INC., ASHFORD HOSPITALITY ADVISORS
LLC, and ASHFORD TRS BEVERLY HILLS
LLC and DOES 1 through 50 inclusive,

Defendants.

Case No. RG20069869

**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**

DEMAND FOR JURY TRIAL

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

3 **INTRODUCTION**

4 1. Plaintiff brings this enforcement action on behalf of the State of California against
5 Defendants Remington Lodging & Hospitality, LLC, Ashford Hospitality Trust, Inc., Ashford
6 Hospitality Advisors LLC, and Ashford TRS Beverly Hills LLC (collectively “Defendants”) for their
7 systematic violations of California labor law with respect to Defendants’ current and former non-
8 exempt employees who worked in California (the “Aggrieved Employee”). Throughout the relevant
9 time period, Plaintiff and Aggrieved Employees have been denied proper payment for all hours
10 worked, minimum wages, overtime wages, failure to provide compliant rest periods, failure to pay all
11 wages owed after separation of employment, failure to provide timely and compliant wage statements,
12 as well as unpaid gratuity payments, pursuant to California law.

13 2. Defendants impose mandatory gratuity charges in the form of “service fee” surcharges
14 on the sale of food and beverages, but fail to distribute the total proceeds of those gratuities to non-
15 managerial service employees as gratuity payments as required by California law. This conduct
16 violates California Labor Code § 351.

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

21 4. Plaintiff and Aggrieved Employees bring this action 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 rest breaks to which they are entitled
25 by law; (4) failing to compensate Plaintiff and Aggrieved Employees for all hours worked; (5) failing
26 to provide Plaintiff and Aggrieved Employees accurate, itemized wage statements; and (6) failing to
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1 timely pay Plaintiff and Aggrieved Employees full wages upon termination or resignation.

2 5. Plaintiff and Aggrieved Employees seek penalties under the Labor Code Private
3 Attorneys General Act of 2004 ("PAGA").

4 **JURISDICTION AND VENUE**

5 6. This Court has jurisdiction over Plaintiff's claims for penalties pursuant to PAGA. The
6 Court also has general jurisdiction over Defendants because they are authorized to do business in the
7 State of California and are registered with the California Secretary of State.

8 7. Venue is proper in this judicial district pursuant to Code of Civil Procedure §§ 393 and
9 395.5. Defendants conduct business and employ Aggrieved Employees in this County, and therefore
10 liability arises in this County.

11 **PARTIES**

12 8. Plaintiff Benjamin Zermeno is an individual over the age of eighteen, and at all times
13 relevant to this Complaint was a resident of the State of California, County of Los Angeles. Plaintiff
14 was employed as a lounge attendant and server by Defendants at their Beverly Hills Marriott location
15 in Los Angeles, California from approximately December 2018 until August 2019.

16 9. The Aggrieved Employees are current and former similarly situated, hourly, non-
17 exempt employees of Defendants in California.

18 10. Plaintiff is informed, believes, and thereon alleges that Defendant Remington Lodging
19 & Hospitality, LLC is a Delaware limited liability company with its principal place of business in
20 Texas, and is registered to do business in California. Remington Lodging & Hospitality, LLC may be
21 served with process by serving its registered agent, CSC - Lawyers Incorporating Service, 2710
22 Gateway Oaks Drive, Suite 150N, Sacramento, CA 95833.

23 11. Plaintiff is informed, believes, and thereon alleges that Defendant Ashford Hospitality
24 Trust, Inc. is a Maryland limited liability company with its principal place of business in Texas.
25 Ashford Hospitality Trust, Inc. may be served with process by serving its corporate address, 14185
26 Dallas Parkway, Suite 1100, Dallas, TX 75254.

1 12. Plaintiff is informed, believes, and thereon alleges that Defendant Ashford Hospitality
2 Advisors LLC is a Delaware limited liability company with its principal place of business in Texas,
3 and is registered to do business in California. Ashford Hospitality Advisors LLC may be served with
4 process by serving its registered agent, CSC - Lawyers Incorporating Service, 2710 Gateway Oaks
5 Drive, Suite 150N, Sacramento, CA 95833.

6 13. Plaintiff is informed, believes, and thereon alleges that Defendant Ashford TRS
7 Beverly Hills LLC is a Delaware limited liability company with its principal place of business in
8 Texas, and is registered to do business in California. Ashford TRS Beverly Hills LLC may be served
9 with process by serving its registered agent, CSC - Lawyers Incorporating Service, 2710 Gateway
10 Oaks Drive, Suite 150N, Sacramento, CA 95833.

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

14 15. At all material times, Defendants have done business under the laws of California, have
15 places of business in the State of California, including in this judicial district, and have employed Class
16 members in this judicial district. Defendants are a “person” as defined in California Labor Code § 18
17 and California Business and Professions Code § 17201. Defendants are also “employers” as that term
18 is used in the California Labor Code and the IWC Wage Orders.

19 16. Upon information and belief, Defendants Ashford Hospitality Trust, Inc., Ashford
20 Hospitality Advisors LLC, and Ashford TRS Beverly Hills LLC., operate and/or manage a litany of
21 hotels, including the Beverly Hills Marriott, where Plaintiff Zermeno worked, and employ Aggrieved
22 Employees throughout the State of California.

23 17. Defendant Remington Lodging & Hospitality, LLC, according to its website, operates
24 and/or manages multiple hotels, including the Beverly Hills Marriott where Plaintiff Zermeno worked,
25 and employs Aggrieved Employees, throughout the State of California.

26 ///

1 **FACTUAL ALLEGATIONS**

2 18. Defendants own operate and/or manage hotels throughout California, including the
3 Beverly Hills Marriott in Los Angeles and the Fremont Marriott Silicon Valley in Alameda County.
4 Defendants employ hundreds of hourly non-exempt workers similarly situated to Plaintiff across these
5 facilities.

6 19. Plaintiff worked at the Beverly Hills Marriott as a lounge attendant and server from
7 approximately December 2018 to August 2019. Plaintiff was paid at an hourly rate of about \$16.37
8 plus tips. On average, Plaintiff was scheduled to work 6 to 8 hours per shift, 4 days week, for an
9 average of 24 to 40 hours in a week. Occasionally, Plaintiff was scheduled to work over 40 hours in a
10 week.

11 20. Aggrieved Employees were and are employed by Defendants and performed work
12 materially similar to Plaintiff throughout California.

13 21. Aggrieved Employees perform their jobs under Defendants' supervision and using
14 materials and technology approved and supplied by Defendants.

15 22. Aggrieved Employees are required to follow and abide by common work, time, and
16 pay policies and procedures in the performance of their jobs.

17 23. At the end of each pay period, Aggrieved Employees members receive wages from
18 Defendants that are determined by common systems and methods that Defendants select and controls.

19 24. Defendants pay Aggrieved Employees on an hourly rate basis.

20 25. As a matter of course, Defendants routinely add a service charge of 12.5% to their in-
21 room dining bills. These service charges have been in the form of automatic charges which customers
22 are required to pay, and which reasonably appear to be gratuities for the service staff.

23 26. There is a custom in the hospitality industry to treat sums designated as "service
24 charges" as gratuities for service worker employees. For example, it is typically customary in the
25 hospitality industry that establishments impose gratuity charges in the range of 15% to 20% of the
26 food and beverage bills. This, it is reasonable for customers who have paid these mandatory service
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1 changes to believe those surcharges are gratuities to be paid to the service staff. Indeed, because of the
2 way these service charges are depicted to customers, and the custom in the food and beverage industry
3 that gratuities generally range from 15% to 20%, customers pay these surcharges reasonably believing
4 they were to be remitted to the service staff as gratuities. However, Defendants do not remit the total
5 proceeds of these gratuities to the non-managerial employees who serve the food and beverages,
6 including Plaintiff and the Aggrieved Employees. Instead, Defendants have a policy and practice of
7 retaining portions of those gratuities for themselves. As a result, Plaintiff and Aggrieved Employees
8 do not receive the total proceeds of the gratuities, to which they are entitled under California law.

9 27. As a matter of policy and/or practice, Defendants also fail to authorize and/or permit
10 Plaintiff and Aggrieved Employees to take compliant rest breaks by requiring them to remain on duty
11 during their scheduled shifts, including during statutory rest periods. Plaintiff is informed, believes,
12 and thereon alleges that this policy and practice applies to all Aggrieved Employees throughout
13 California.

14 28. Beyond Defendants' failure to authorize or permit rest breaks, Plaintiff and Aggrieved
15 Employees' schedules are too busy, Plaintiff and Aggrieved Employees stand to lose too much income
16 from tip wages, and Defendants' pressure to complete job assignments too constant, for Plaintiff and
17 Aggrieved Employee to take compliant rest breaks.

18 29. Further, Defendants fail to pay Plaintiff and Aggrieved Employees premium wages for
19 their missed breaks. This uniformly violates California law.

20 30. In addition to working through their rest breaks, Plaintiff and Aggrieved Employees
21 also perform work while "off-the-clock" with Defendants' knowledge, and are denied compensation
22 for the time spent engaged in this off-the-clock work. Defendants require Plaintiff and Aggrieved
23 Employees to clock in and clock out of work using company-issued software. Aggrieved Employees
24 are sometimes asked to clock out at the end of their scheduled shifts and perform work while off-the-
25 clock for the benefit of Defendants, including cleaning, vacuuming, mopping, picking up glassware,
26 and other similar tasks. This is largely due to understaffing.

31. As a result of this off-the-clock work, Plaintiff and Aggrieved Employees are not adequately compensated for all hours worked at their regular rate or at the applicable overtime rates. Plaintiff frequently worked approximately 30 to 60 minutes of work while off-the-clock as a lounge attendant, and 30 to 60 minutes of off-the-clock work on a regular basis as a server.

32. As a result of these policies and/or practices, Defendants deny Plaintiff and Aggrieved Employees gratuities to which they are lawfully owed and statutorily-compliant rest periods, as well as overtime premiums and minimum wages resulting from and time worked while off-the-clock for Defendants' benefit.

33. Defendants' common course of wage-and-hour abuse includes routinely failing to maintain true and accurate records of the hours worked by Aggrieved Employees. In particular, Defendants have failed to record hours that Plaintiff and Aggrieved Employees work while off-the-clock.

34. Defendants' failure to record all gratuity payments and all hours worked also results in a failure to provide Aggrieved Employees, including Plaintiff, accurate itemized wage statements as required by California law. The wage statements Defendants provide are not accurate because they do not reflect the actual wages earned as gratuity payments, nor the actual hours worked by Plaintiff and Aggrieved Employees. The wage statements do not contain all of the service charges that should be paid as gratuity payments, premium pay for missed breaks, and do not contain all of the off-the-clock work or time that should be compensable pre-shift.

35. Further, Defendants do not provide Aggrieved Employees, including Plaintiff, whose employment has ended, with full payment of all wages owed at the end of their employment. As these workers are owed for off-the-clock work, unpaid overtime, and premium pay when their employment ends, and these amounts remain unpaid under Defendants' policies and practices, Defendants fail to pay all wages due upon termination. As a consequence, Defendants are subject to waiting time penalties.

36. Defendants have employed hundreds of people similarly situated to Plaintiff.

1 37. Defendants' method of paying Plaintiff and Aggrieved Employees is willful, and is not
2 based on a good faith and reasonable belief that their conduct complies with California law.
3 Defendants' conduct causes significant damages to non-exempt hourly employees in an amount to be
4 determined at trial.

5
6 **FIRST CAUSE OF ACTION**
 Penalties Pursuant to Labor Code § 2699(a)

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

9 39. Labor Code § 2699(a) provides:

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

17 40. Labor Code § 226(a) provides:

18 Every employer shall, semimonthly or at the time of each payment of
19 wages, furnish each of his or her employees, either as a detachable part of
20 the check, draft, or voucher paying the employee's wages, or separately
21 when wages are paid by personal check or cash, an accurate itemized
22 statement in writing showing (1) gross wages earned, (2) total hours worked
23 by the employee, except for any employee whose compensation is solely
24 based on a salary and who is exempt from payment of overtime under
25 subdivision (a) of Section 515 or any applicable order of the Industrial
26 Welfare Commission, (3) the number of piece-rate units earned and any
27 applicable piece rate if the employee is paid on a piece-rate basis, (4) all
28 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.

39 41. Labor Code § 512(a) provides:

40 An employer shall not employ an employee for a work period of more than
41 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.

42. 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.

43. Labor Code § 226.3 provides:

Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law.

44. 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.

45. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by Defendants, 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 § 226(e). Plaintiff seeks such penalties as an alternative to the penalties available under Labor Code § 226(e), as prayed for herein.

46. Plaintiff also seeks civil penalties pursuant to Sections 225.5, 226.3, and 256 of the

1 California Labor Code.

2 47. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the Labor and
3 Workforce Development Agency (“LWDA”) with notice of his intention to file this claim against
4 Remington Lodging & Hospitality, LLC on May 27, 2020. Sixty-five calendar days have passed
5 without notice from the LWDA. Plaintiff provided the LWDA supplemental notice of his intention to
6 bring this claim against additional defendants Ashford Hospitality Trust, Inc., Ashford Hospitality
7 Advisors LLC, and Ashford TRS Beverly Hills LLC on October 15, 2020. Sixty-five calendar days
8 have passed without notice from the LWDA. Plaintiff therefore satisfied the administrative
9 prerequisites to commence this civil action in compliance with § 2699.3(a). Plaintiff files this First
10 Amended Complaint pursuant to Labor Code 2699.3(a)(2)(C).

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

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

16 50. Wherefore, Plaintiff requests relief as hereinafter provided.

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

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

21 52. Labor Code § 2699(f) provides:

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

53. To the extent than any violation alleged herein does not carry penalties under Labor

1 Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for Plaintiff and
2 Aggrieved Employees each pay period in which he or she was aggrieved, in the amounts established
3 by Labor Code § 2699(f). Plaintiff seeks civil penalties under Labor Code § 2699(f) for Defendants'
4 violations of Labor Code § 226.7, 351, 204, 510, 512, and 1194.

5 54. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff has provided the LWDA with
6 notice of his intention to file this claim against Remington Lodging & Hospitality, LLC on May 27,
7 2020. Sixty-five calendar days have passed without notice from the LWDA. Plaintiff provided the
8 LWDA supplemental notice of his intention to bring this claim against additional defendants Ashford
9 Hospitality Trust, Inc., Ashford Hospitality Advisors LLC, and Ashford TRS Beverly Hills LLC on
10 October 15, 2020. Sixty-five calendar days have passed without notice from the LWDA. Plaintiff
11 therefore satisfied the administrative prerequisites to commence this civil action in compliance with §
12 2699.3(a). Plaintiff files this First Amended Complaint pursuant to Labor Code 2699.3(a)(2)(C).

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

15 56. Defendants are liable to Plaintiff, Aggrieved Employees, and the State of California for
16 the civil penalties set forth in this Complaint. Plaintiff is also entitled to an award of attorneys' fees
17 and costs as set forth below.

18 57. Wherefore, Plaintiff requests relief as hereinafter provided.

19 **PRAYER FOR RELIEF**

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

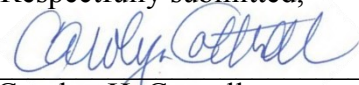
- 22 1. For an order awarding civil penalties to the full extent provided for by the PAGA;
- 23 2. For an award of reasonable attorneys' fees as provided by the California Labor Code,
24 including Labor Code § 2699(g)(1); California Code of Civil Procedure §1021.5;
25 and/or any other applicable law;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

Date: December 22, 2020

Respectfully submitted,



Carolyn H. Cottrell
Ori Edelstein
Kristabel Sandoval
SCHNEIDER WALLACE
COTTRELL KONECKY LLP

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
5 Date: December 22, 2020

Respectfully submitted,



6
7 Carolyn H. Cottrell
Ori Edelstein
8 Kristabel Sandoval
SCHNEIDER WALLACE
9 COTTRELL KONECKY LLP

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