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County of San Diego

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Clerk of the Superior Court
By Maria Acevedo, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

BRIAN SOUZA, on behalf of the State of
California and all aggrieved employees,

Plaintiff,

vs.

SHERATON OPERATING CORPORATION,
a Delaware corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No. 37-2020-00023398-CU-OE-CTL

**REPRESENTATIVE ACTION
COMPLAINT**

**1. CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT OF 2004 (LABOR CODE § 2698
ET SEQ.)**

1 Plaintiff BRIAN SOUZA (“Plaintiff”) on behalf of the State of California and as an
2 “aggrieved employee” acting as a private attorney general under the Labor Code Private
3 Attorneys General Act of 2004 (“PAGA,” Labor Code § 2698 *et seq.*) brings this representative
4 action against Defendants SHERATON OPERATING CORPORATION; and DOES 1 through
5 10 (collectively referred to herein as “Sheraton” or “Defendant”) and alleges on the basis of
6 information and belief as follows:

7 **NATURE OF ACTION**

8 1. This is a civil enforcement action brought under Labor Code § 2698 *et seq.*
9 Plaintiff seeks to recover civil penalties for each violation of the Labor Code committed by
10 Defendant.

11 2. “Notwithstanding any other provision of law, any provision of this code that
12 provides for a civil penalty to be assessed and collected by the Labor and Workforce
13 Development Agency or any of its departments, divisions, commissions, boards, agencies, or
14 employees, for a violation of this code, may, as an alternative, be recovered through a civil
15 action brought by an aggrieved employee on behalf of himself or herself and other current or
16 former employees pursuant to the procedures specified in Section 2699.3.” (Labor Code
17 § 2699(a)).

18 3. Plaintiff seeks to recover civil penalties as an individual aggrieved employee and
19 on behalf of the State of California and all other current and former non-exempt employees of
20 Defendant who work or worked within the State of California within the one-year period prior
21 to the date on which Plaintiff provided written notice to the Labor and Workforce Development
22 Agency (“LWDA”) and Defendant under Labor Code § 2699.3 and continuing through the
23 present.

24 4. Plaintiff worked during this period and is an “aggrieved employee” because
25 Plaintiff was employed by Defendant and suffered one or more of the Labor Code violations
26 committed by Defendant which are alleged in this Representative Action Complaint.

27 5. On May 1, 2020, Plaintiff gave written notice by online filing with the LWDA
28 and by certified mail to Defendant of the specific provisions of the Labor Code alleged to have

1 been violated, including the facts and theories to support the alleged violations. Plaintiff paid
2 the requisite filing fee to the LWDA.

3 6. Within 33 calendar days of the postmark date of the notice sent by Plaintiff,
4 Defendant did not give written notice by certified mail to Plaintiff providing a description of
5 any actions taken to cure the alleged violations.

6 7. Now that at least 65 days have passed from Plaintiff notifying Defendant of
7 these violations, without any notice of cure from them or notice from the LWDA of its intent to
8 investigate the alleged allegations and issue the appropriate citations to Defendant, Plaintiff
9 exhausted all prerequisites and commences this civil action under Labor Code § 2699.

10 **JURISDICTION**

11 8. Jurisdiction of this action is proper in this Court under Article VI, § 10 of the
12 California Constitution. The civil penalties sought in this action exceed the minimum
13 jurisdictional limits of this Court. All of Plaintiff's claims arise under California law.

14 **VENUE**

15 9. Venue as to each defendant is proper in this judicial district under Code of Civil
16 Procedure §§ 395 and 395.5 because Defendant conducts substantial business in this county,
17 employed Plaintiff in this county, and committed at least some of the alleged violations in this
18 county.

19 **AGGRIEVED EMPLOYEES**

20 10. Plaintiff BRIAN SOUZA worked for Defendant in San Diego County until his
21 employment terminated in or around October 2019. Defendant classified Plaintiff as an hourly,
22 non-exempt employee.

23 11. The State of California, via the LWDA, is the real party in interest in this action.

24 12. The "aggrieved employees" in this action are all current and former non-exempt
25 employees of Defendant who work or worked within the State of California and who
26 experienced one or more of the Labor Code violations committed by Defendant during the
27 period from May 1, 2019 continuing through the present.

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13. Unless otherwise stated, all allegations in this Representative Action Complaint occurred during the period from May 1, 2019 through the present (the “PAGA Period”).

DEFENDANTS

14. Defendant SHERATON OPERATING CORPORATION is a Delaware corporation that does business throughout California.

15. SHERATON OPERATING CORPORATION is a subsidiary of Marriott International, Inc. and owns and/or manages properties throughout the United States. Plaintiff worked at the U.S. Grant Hotel in Downtown San Diego, which at all relevant times was owned and/or operated by Defendant.

16. SHERATON OPERATING CORPORATION's employees, including the aggrieved employees, work at different properties throughout California under its management, control and employment. Defendant maintained common and systemic policies and procedures that governed the terms and conditions of its workforce throughout California, including but not limited to common payroll and wage payment procedures, employment and personnel policies, wage statement formats, and human resource management. Defendant employed Plaintiff and the aggrieved employees.

17. All defendants in this action are employers or joint employers and part of a common integrated enterprise in their capacity and operation of Defendant, as each defendant exercises control over the wages, hours, and working conditions of Plaintiff and the aggrieved employees, suffers and permits them to work, and engages the workforce creating a common law employment relationship. Additionally, all defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and are therefore part of a common integrated enterprise.

18. Plaintiff further alleges that each defendant acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in a common integrated enterprise, or in some other capacity on behalf of the employers of Plaintiff and the aggrieved employees, such that the acts and omissions of each defendant are legally

1 attributable to all others rendering each of them liable for the violations and civil penalties plead
2 in this action.

3 19. The true names and capacities, whether individual, corporate, associate, or
4 otherwise, of the parties sued as Defendants DOES 1 through 10, inclusive, are unknown to
5 Plaintiff, who sues them by such fictitious names under Code of Civil Procedure § 474. On
6 information and belief, Plaintiff alleges Defendants DOES are legally responsible in some
7 manner for the acts and omissions alleged herein. Plaintiff will seek leave to amend this
8 Complaint to reflect the true names and capacities of DOE Defendants when they become
9 known. All references to Defendant in this Representative Action Complaint mean and refer to
10 Defendant DOES 1 through 10, inclusive.

11 **GENERAL ALLEGATIONS**

12 20. ***Overtime (Regular Rate of Pay) Violations.*** Defendant violated Labor Code
13 §§ 204, 510, 558, 1194, and 1198 and the IWC Wage Orders by failing to timely pay wages
14 owed at the lawful regular rate of pay for all overtime hours worked by Plaintiff and the
15 aggrieved employees. In pay periods when Plaintiff and other aggrieved employees worked
16 overtime and were paid additional remuneration, such as automatic mandatory service charges,
17 bonuses, commissions or other forms of additional compensation, Defendant did not factor
18 these sums into the regular rate of pay for Plaintiff and other aggrieved employees for purposes
19 of overtime calculation and payment.

20 21. Plaintiff's wage statement with the pay period of 09/21/2019 to 09/27/2019
21 provides one example of Defendant's unlawful payroll practices with respect to how Defendant
22 calculated and paid the regular rate of pay in pay periods when employees earned overtime and
23 other forms of remuneration to Plaintiff and other aggrieved employees. In this pay period,
24 among others as a matter of common policy and practice during the PAGA Period, Defendant
25 paid only the overtime premium (i.e., the 0.5 multiple) at the "regular rate" of pay, rather than
26 all overtime hours at "one and one-half times the regular rate of pay" (i.e., the full 1.5 multiple)
27 as required by Labor Code § 510. Using this method, Defendant underpaid overtime wages to
28 Plaintiff and other aggrieved employees. This is sometimes referred to as the federal method

1 for overtime, but is unlawful in California. *See, e.g., Alvarado v. Dart Container Corp. of Cal.*
2 (2018) 4 Cal. 5th 542, 448, 562-73. As a result of this company-wide practice, Defendant failed
3 to pay Plaintiff and the other aggrieved employees all wages owed at the lawful rate on
4 regularly scheduled paydays in violation of Labor Code §§ 204, 510, 558, 1194, and 1198 and
5 the IWC Wage Orders.

6 22. **Meal Period Violations.** Defendant violated Labor Code §§ 226.7 and 512 and
7 the IWC Wage Orders by failing to provide compliant meal periods or pay meal period
8 premiums at the regular rate of compensation in lieu thereof. Defendant did not maintain a
9 lawful meal period waiver that allowed for Defendant and the aggrieved employees to waive
10 meal periods for shifts of less than six hours in length. During such times, Defendant required
11 Plaintiff and other aggrieved employees to work shifts of five hours or more, but did not
12 provide a timely, uninterrupted 30-minute meal period or a payment of a meal period premium
13 in lieu thereof for those shifts in excess of five hours (with no meal period waiver in effect).
14 Additionally, on days in which Plaintiff and other aggrieved employees did not receive an
15 uninterrupted 30-minute meal period within the first five hours of their shift, Defendant failed
16 to pay a corresponding meal period premium at one hour their regular rate of compensation.
17 Plaintiff alleges, on information and belief, that this practice extends to second meal periods for
18 shifts in excess of 10 hours in a workday, as Defendant had a policy and frequent practice of not
19 paying meal period premiums when due to the aggrieved employees. At some of Defendant's
20 worksites, including Plaintiff's at the U.S. Grant, Defendant required Plaintiff and other
21 aggrieved employees to sign timesheet adjustment forms each time Plaintiff or the other
22 aggrieved employees were entitled to a meal period. Defendant maintained this policy to
23 document and avoid paying meal period premiums. As a result of this company-wide practice,
24 Defendant failed to provide Plaintiff and the other aggrieved employees all meal periods owed
25 and all premiums due at the lawful rate in violation of Labor Code §§ 226.7 and 512 and the
26 IWC Wage Orders.

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1 23. **Rest Period Violations.** Defendant violated Labor Code § 226.7 and the IWC
2 Wage Orders by failing to authorize and permit compliant rest periods for every 4 hours worked
3 or major fraction thereof or pay rest period premiums in lieu thereof. Additionally, on days in
4 which Plaintiff and other aggrieved employees did not receive at least one 10-minute rest period
5 for each four-hour period worked (or major fraction thereof), Defendant failed to pay a
6 corresponding rest period premium at one hour their regular rate of compensation. Plaintiff
7 alleges that it was simply impractical for Plaintiff and other aggrieved employees to take rest
8 periods and that it was common policy and practice for Defendant to disregard and not
9 authorize or permit rest periods, despite the statutory mandate. As a result of this company-
10 wide practice, Defendant failed to provide Plaintiff and the other aggrieved employees all rest
11 periods owed and all premiums due at the lawful rate in violation of Labor Code § 226.7 and
12 the IWC Wage Orders.

13 24. **Failure to Pay All Wages Owed.** Defendant violated Labor Code §§ 201
14 through 204, 510, 1182.12, 1194, 1194.2, 1197, 1198, applicable local minimum wage
15 ordinances, and the IWC Wage Orders by requiring Plaintiff and other aggrieved employees to
16 work off-the-clock without compensation during uncompensated meal periods that were
17 retroactively “waived” under Defendant’s policy and practice of requiring employees to
18 complete timesheet adjustment forms when they were entitled to a premium for a missed break.
19 In these pay periods, Plaintiff and other aggrieved employees were not paid for all hours
20 worked, in violation of the foregoing Labor Code sections.

21 25. **Failure to Timely Pay Wages.** Defendant violated Labor Code §§ 204 and 204b
22 and the IWC Wage Orders by failing to pay all wages earned at least twice each calendar month
23 on days designated in advance as the regular paydays. Defendant committed a series of Labor
24 Code violations which resulted in underpayment of wages, overtime and premiums to Plaintiff
25 and the aggrieved employees. As a result, Defendant has failed to timely pay those wages.

26 26. **Failure to Pay All Wages Upon Separation.** Defendant violated Labor Code
27 § 201, 202 and 203 by failing to timely pay all wages and premiums owed to Plaintiff and the
28 aggrieved employees who terminated their employment during the PAGA Period on their final

1 day of employment (for those who were terminated or quit by giving at least 72 hours' prior
2 notice) or within 72 hours thereof (for who quit without giving notice), as applicable.
3 Defendant failed to pay waiting time penalties when owed based on its failure to pay all wages
4 upon termination. Wages were owed and unpaid for the aggrieved employees upon termination
5 of employment due to Defendant's policies and practices of failing to pay all wages and
6 premiums owed at the lawful rate.

7 27. ***Wage Statement Violations.*** Defendant violated Labor Code § 226(a) and the
8 IWC Wage Orders by failing to accurately state the gross wages earned, total hours worked, net
9 wages earned, and all applicable hourly rates in effect and the total number of hours worked at
10 each rate of pay each pay period, with respect to the wages and earnings of Plaintiff and the
11 other aggrieved employees. The wage statements provided by Defendant to Plaintiff and the
12 aggrieved employees do not accurately itemize all applicable hourly rates in effect during the
13 pay period and the corresponding number of hours worked at each hourly rate, nor do they state
14 the accurate gross and net wages owed or earned or total hours. The wage statements issued to
15 Plaintiff and the aggrieved employees were inaccurate because Defendant did not pay overtime
16 at the regular rate of pay, rendering the overtime rate stated on the wage statement incorrect
17 along with the gross and net wages. As a result, Plaintiff and other aggrieved employees cannot
18 promptly and easily determine from the wage statement alone the wages paid or earned without
19 reference to other documents or information. These wage statement violations are significant
20 because they sowed confusion among Plaintiff and other aggrieved employees with respect to
21 what amounts were owed and paid, at what regular and overtime rates, and how those amounts
22 were calculated. Additionally, the wage statements do not list all meal and rest period
23 premiums earned, owed or paid.

24 28. ***Failure to Maintain Accurate Payroll Records.*** Because of the violations set
25 forth in this Representative Action Complaint, including Defendant's failure to accurately
26 maintain records and record and pay for all hours worked at the appropriate rates, Defendant
27 violated Labor Code § 1174 and the IWC Wage Orders, including section 7 of Wage Order
28 No. 5, by failing to maintain accurate payroll records showing daily hours worked and the

1 wages paid to each employee. As a result, Defendant is liable for a civil penalty of \$500 per
2 employee to Plaintiff and each aggrieved employee under Labor Code § 1174.5.

3 29. ***Unlawful Wage Deductions.*** Defendant violated Labor Code § 221, which
4 prohibits unauthorized wage deductions. Labor Code § 221 renders it unlawful to collect or
5 receive from an employee any part of wages paid by Defendant to Plaintiff or the other
6 aggrieved employees. Yet, Defendant regularly deducted pay from the paychecks of Plaintiff
7 and other aggrieved employees, as evident from the pay period of 09/26/2019 where Plaintiff
8 had a line item deduction marked as “NEGADJ.” and the IWC Wage Orders by failing to
9 accurately state the gross wages earned, total hours worked, net wages earned, and all
10 applicable hourly rates in effect and the total number of hours worked at each rate of pay each
11 pay period, with respect to the wages and earnings of Plaintiff and the other aggrieved
12 employees.

13 30. ***Attorney's Fees and Costs.*** Plaintiff was compelled to retain the services of
14 counsel to file this court action to protect Plaintiff’s interests and those of the other aggrieved
15 employees and to assess and collect civil penalties owed by Defendant. Plaintiff has thereby
16 incurred attorneys’ fees and costs, which Plaintiff is entitled to receive on all cause of action
17 under Labor Code § 2699(g) and Code of Civil Procedure § 1021.5.

18 **FIRST CAUSE OF ACTION**
19 **PRIVATE ATTORNEYS GENERAL ACT**
20 **(AGAINST ALL DEFENDANTS)**

21 31. Plaintiff incorporates in this cause of action all paragraphs outside this section
22 with the same force and effect as if fully set forth herein.

23 32. Defendant committed Labor Code violations against Plaintiff and the other
24 aggrieved employees. Plaintiff brings this representative action as an individual and on behalf
25 of the State of California and all other aggrieved employees of Defendant to recover civil
26 penalties under Labor Code § 2699(a) and (f) for the foregoing Labor Code violations
27 committed against Plaintiff and other aggrieved employees during the PAGA Period, including:
28

- a. Failing to pay all earned overtime compensation for all overtime hours worked at the lawful regular rate of pay in violation of Labor Code §§ 510, 558, 1194 and 1198 and the IWC Wage Orders;
- b. Failing to provide all statutorily-compliant meal periods or payment of meal period premiums at the lawful rate in violation of Labor Code §§ 226.7 and 512 and the IWC Wage Orders;
- c. Failing to authorize and permit all statutorily-compliant rest periods or payment of rest period premiums at the lawful rate in violation of Labor Code §§ 226.7 and the IWC Wage Orders;
- d. Failing to pay all wages owed in violation of Labor Code §§ 201 through 204, 510, 1182.12, 1194, 1194.2, 1197 and 1198 and the IWC Wage Orders;
- e. Failing to timely pay all earned wages in violation of Labor Code §§ 204 and 204b;
- f. Failing to timely pay all final wages due to upon separation of employment or waiting time penalties in violation of Labor Code §§ 201, 202 and 203;
- g. Failing to furnish complete, accurate itemized wage statements each pay period in violation of Labor Code § 226(a);
- h. Failure to maintain accurate records in violation of Labor Code § 1174;
- i. Unlawfully deducting wages from employee pay in violation of Labor Code § 221;
33. For these violations, Plaintiff seeks to recover the following civil penalties:
 - j. Civil penalties recoverable under Labor Code § 2699(a);
 - k. Civil penalties under Labor Code § 2699(f)(2), for all provisions of the Labor Code for which a civil penalty is not specifically provided (including those sections identified in Labor Code § 2699.5), in the amount of \$100 for each aggrieved employee per pay period for all initial violations plus \$200 for each aggrieved employee per pay period for all subsequent violations;

- 1 l. Civil penalties under Labor Code § 226.3 in the amount of \$250 per employee
2 per violation for an initial citation and \$1,000 per employee for each subsequent
3 violation;
- 4 m. Civil penalties under Labor Code § 558(a)(1), (2) for all violations in the amount
5 of \$50 for each underpaid employee per pay period for all initial violations plus
6 \$100 for each underpaid employee per pay period for all subsequent violations;
- 7 n. Civil penalties under Labor Code § 1197.1 for each wage violation in the amount
8 of \$100 for each underpaid employee per pay period for all initial violations and
9 \$250 for each underpaid employee per pay period for all subsequent violations;
- 10 o. Civil penalties under Labor Code § 1174.5 for each recordkeeping violation in
11 the amount of \$500 per employee;
- 12 p. Civil penalties under Labor Code § 225.5 for each violation in the amount of
13 \$100 and \$2000 for each subsequent or any willful or intentional violation;
- 14 34. Plaintiff exclusively seeks to recover civil penalties as a private attorney general
15 under the PAGA and does not seek to recover underpaid wages or other damages in this action.
- 16 35. Plaintiff further seeks to recover attorneys' fees and costs under Labor Code
17 § 2699(g) and Code of Civil Procedure § 1021.5.

18 **PRAYER FOR RELIEF**

19 Plaintiff, on behalf of the State of California and all aggrieved employees as a private
20 attorney general, seeks the following relief against Defendants:

- 21 q. An award of all recoverable civil penalties;
- 22 r. Attorneys' fees and costs of suit; and
- 23 s. Such other relief as the Court may deem just and proper.

24 Dated: July 7, 2020

FERRARO EMPLOYMENT LAW, INC.

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26 NICHOLAS J. FERRARO, ESQ.
27 Attorney for Plaintiff BRIAN SOUZA
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