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County of San Joaquin  
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN JOAQUIN

10 KATHERINE CARDENAS,

11 Plaintiff,

12 vs.

13 USG, LLC, and DOES 1-10, inclusive,

14 Defendants.  
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Case No.: STK-CV-UOE-2020-5826

FIRST AMENDED COMPLAINT FOR  
DAMAGES AND PENALTIES FOR

1. RETALIATION - LABOR CODE § 1102.5
2. RETALIATION - LABOR CODE § 6310
3. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY
4. FAILURE TO PROVIDE REST BREAKS
5. FAILURE TO PROVIDE MEAL BREAKS
6. FAILURE TO PROVIDE ACCURATE WAGE STATEMENT
7. VIOLATIONS OF LABOR CODE § 2698 ET SEQ. (PAGA)

JURY TRIAL DEMANDED

22 Plaintiff Katherine Cardenas (“Cardenas”) brings this action against Defendant USG, LLC,  
23 (“USG”), and Does 1-10, inclusive as referred to herein, for general, compensatory, and statutory  
24 damages, penalties, interest, costs, and attorneys’ fees resulting from the defendants’ unlawful  
25 conduct. As grounds Cardenas therefore alleges:

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1 **PARTIES**

2 1. Cardenas is and/or was at times relevant herein an individual and a resident of  
3 California.

4 2. USG is and/or was at times relevant herein a California corporation.

5 3. USG and Does 1-10 are referred to collectively herein as “Defendants.”

6 4. Cardenas is not aware of the true names and capacities of the defendants sued herein  
7 as Does 1-10, whether individual, corporate, associate, or otherwise, and, therefore, sues such  
8 defendants by these fictitious names. Cardenas will amend this complaint to allege their true  
9 names and capacities when ascertained. Cardenas is informed and believes, and on that basis  
10 alleges, that each of the fictitiously named defendants is responsible in some manner for the  
11 occurrences herein alleged and that Cardenas’s injuries herein alleged were legally caused by such  
12 defendants. Unless otherwise indicated, each defendant was acting within the course and scope of  
13 said agency and/or employment, with the knowledge and/or consent of said co-defendant.

14 **VENUE AND JURY TRIAL DEMAND**

15 5. Venue is proper in this Court because the unlawful acts alleged herein took place in  
16 San Joaquin County and Cardenas’ place of employment with USG was within San Joaquin  
17 County.

18 6. Cardenas hereby demands a jury trial.

19 **GENERAL ALLEGATIONS**

20 7. USG owns and operates Rodeway Inn Stockton, located at 8009 N. Highway 99,  
21 Stockton, California.

22 8. Cardenas was employed by USG in a non-exempt position of housekeeper at  
23 Rodeway Inn Stockton, a motel.

24 9. USG hired Cardenas as a full-time housekeeper at Rodeway Inn Stockton on June 2,  
25 2020. Cardenas started the next day, June 3, 2020.

26 10. On her first day, Cardenas discovered that USG management was not changing all  
27 bed linens on a daily basis, both for extended stay, or “rollover,” guests and new guests. Ms.  
28 Cardenas raised this violation of California law with the supervisor who interviewed and hired her,

1 “Jenee” Selsor (“Selsor”).

2 11. The next morning, on June 4, 2020, “Miriam,” USG’s Housekeeping Lead, who was  
3 in charge of training Cardenas, told her that USG does not change all bed linens because they  
4 “don’t have enough.”

5 12. That same day, while performing housekeeping duties in several rooms, Cardenas  
6 witnessed USG’s policy of not changing all linens. Cardenas refused to participate in this violation  
7 of law and submitted a written complaint to USG.

8 13. That evening, Selsor called Cardenas and acknowledged USG’s unlawful conduct.

9 14. The next morning, on June 5, 2020, USG retaliated against Cardenas for her  
10 complaints and refused to engage in a violation of law by assigning her to the laundry room instead  
11 of her regular housekeeping duties.

12 15. That same day, Miriam tried to convince Cardenas that USG has, in fact, been  
13 replacing all linens. However, having seen first-hand USG’s unlawful policy the prior two days,  
14 Cardenas disputed this lie.

15 16. Also that same day, Cardenas complained to USG in writing that she felt USG was  
16 retaliating against her for refusing to follow USG’s unlawful linen policy by assigning her to the  
17 laundry room. In addition, due to USG’s failure to provide meal or rest breaks to her during her  
18 previous two workdays, Cardenas complained to USG in writing that she was not provided meal  
19 breaks. Cardenas also filed a complaint online with Cal/OSHA regarding USG’s unlawful linen  
20 policy.

21 17. In retaliation for Cardenas’ complaints and refusal to violate law, USG refused to  
22 place Cardenas on a work schedule after July 5, 2020.

23 18. Over the next few days, Cardenas repeatedly contacted USG management  
24 requesting to be placed back on the schedule so that she could return to work. Cardenas cited her  
25 refusal to follow USG’s unlawful linen policy as follows: “Aside my refusal to use dirty linen on  
26 clean rooms there has been no issue. I feel like something has changed.”

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1           19.     Subsequently, on July 8, 2020, USG, through its General Manager Irene Groves,  
2 terminated Cardenas' employment, in retaliation for Cardenas' complaints and refusal to violate  
3 law.

4           20.     When Cardenas asked the reason, Groves answered, "This is California – I don't  
5 need a reason."

6                                   **FIRST CAUSE OF ACTION**  
7                                   **VIOLATION OF LABOR CODE § 1102.5**  
8                                   **(Retaliation)**  
                                     **Against Defendants**

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

12          22.     Labor Code § 1102.5(a) prohibits an employer, or any person acting on behalf of the  
13 employer, from making, adopting, or enforcing any rule, regulation, or policy preventing an  
14 employee from disclosing information to the employer or government or law enforcement agency  
15 that the employee has reasonable cause to believe discloses a violation of law or for refusing to  
16 participate in an activity that would result in a violation of law.

17          23.     Labor Code § 1102.5(b) prohibits an employer, or any other person acting on behalf  
18 of the employer, from retaliating against any employee because the employee disclosed  
19 information to the employer or government or law enforcement agency that the employee has  
20 reasonable cause to believe discloses a violation of law or for refusing to participate in an activity  
21 that would result in a violation of law.

22          24.     California Code of Regulations states that the "bed linen in a hotel shall be changed  
23 before a new guest occupies the bed." 25 CCR § 40. In additional, various state and local Covid-  
24 19 orders require hotels to change and sanitize bed linens.

25          25.     Nevertheless, as set forth above, Defendants made, adopted, or enforced a rule,  
26 regulation, or policy, and retaliated against Cardenas in violation of Labor Code §§ 1102.5(a) and  
27 (b).

28          26.     As a result, Cardenas has been injured.

1           27. Defendants' actions towards Cardenas were committed or ratified by Defendants  
2 and their managing agents (e.g., Groves, Miriam, and Selsor) in an oppressive, fraudulent, and  
3 malicious manner in order to injure or damage Cardenas, thereby justifying an award of punitive  
4 damages.

5           28. Wherefore, Cardenas seeks relief as set forth below.

6                                   **SECOND CAUSE OF ACTION**  
7                                   **VIOLATION OF LABOR CODE § 6310**  
8                                   **(Retaliation)**  
9                                   **Against Defendants**

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

13           30. Labor Code § 6310 prohibits an employer from retaliating against an employee for  
14 making an oral or written complaint to Cal/OSHA or to the employer or employer's representative  
15 of unsafe working conditions or practices.

16           31. Nevertheless, as set forth above, Defendants retaliated against Cardenas in violation  
17 of Labor Code § 6310.

18           32. As a result, Cardenas has been injured.

19           33. Defendants' actions towards Cardenas were committed or ratified by Defendants  
20 and their managing agents (e.g., Groves, Miriam, and Selsor) in an oppressive, fraudulent, and  
21 malicious manner in order to injure or damage Cardenas, thereby justifying an award of punitive  
22 damages.

23           34. Wherefore, Cardenas seeks relief as set forth below.

24                                   **THIRD OF ACTION**  
25                                   **WRONGFUL TERMINATION IN**  
26                                   **VIOLATION OF PUBLIC POLICY**  
27                                   **Against Defendants**

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

1 36. Labor Code §§ 1102.5 and 6310 embody fundamental public policies of California.

2 37. Nevertheless, as set forth above, Defendants terminated Cardenas in violation of  
3 Labor Code §§ 1102.5 and 6310.

4 38. As a result, Cardenas has been injured.

5 39. Defendants' actions towards Cardenas were committed or ratified by Defendants  
6 and their managing agents (e.g., Groves, Miriam, and Selsor) in an oppressive, fraudulent, and  
7 malicious manner in order to injure or damage Cardenas, thereby justifying an award of punitive  
8 damages.

9 40. Wherefore, Cardenas seeks relief as set forth below.

10 **FOURTH CAUSE OF ACTION**  
11 **VIOLATION OF LABOR CODE §§ 226.7 and 512**  
12 **(Failure to Provide Rest Breaks)**  
13 **Against Defendants**

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

17 42. Labor Code § 226.7 requires employers to provide employees rest periods as  
18 mandated by Order of the Industrial Welfare Commission. It states:

19 a. No employer shall require any employee to work during any meal or rest  
20 period mandated by an applicable order of the Industrial Welfare Commission.

21 b. If an employer fails to provide an employee a meal period or rest period in  
22 accordance with an applicable order of the Industrial Welfare Commission, the employer  
23 shall pay the employee one additional hour of pay at the employee's regular rate of  
24 compensation for each work day that the meal or rest period is not provided.

25 43. Nevertheless, as set forth above, Defendants failed to provide rest breaks to  
26 Cardenas.

27 44. Wherefore, Cardenas requests relief as set forth below.

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**FIFTH CAUSE OF ACTION**  
**VIOLATION OF LABOR CODE §§ 226.7 and 512**  
**(Failure to Provide Meal Breaks)**  
**Against Defendants**

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

46. Labor Code § 226.7 requires employers to provide employees meal periods as mandated by Order of the Industrial Welfare Commission. It states:

a. No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

b. If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

47. Nevertheless, as set forth above, Defendants failed to provide meal breaks to Cardenas.

48. Wherefore, Cardenas requests relief as set forth below.

**SIXTH CAUSE OF ACTION**  
**VIOLATION OF LABOR CODE § 226**  
**(Failure to Furnish Accurate Wage Statement)**  
**Against Defendants**

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

50. Pursuant to Labor Code § 226(a), "An 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 the 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 as provided in subdivision (j), (3) the number of

1 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,  
2 (4) all deductions, provided that all deductions made on written orders of the employee may be  
3 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for  
4 which the employee is paid, (7) the name of the employee and only the last four digits of his or her  
5 social security number or an employee identification number, (8) the name and address of the legal  
6 entity that is the employer and, if the employer is a farm contractor, as defined in subdivision (b) of  
7 Section 1682, the name and address of the legal entity that secured the services of the employer,  
8 and, (9) all applicable hourly rates in effect during the pay period and corresponding number of  
9 hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a  
10 temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked  
11 for each temporary services assignment.”

12         51. Pursuant to Labor Code § 226(e)(2)(B), “An employee is deemed to suffer injury for  
13 purposes of this subdivision if the employer fails to provide accurate and complete information as  
14 required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee  
15 cannot promptly and easily determine from the wage statement alone” the inclusive dates of the  
16 period for which the employee is paid.

17         52. Nevertheless, as evidenced above, Defendants failed to furnish Cardenas with an  
18 accurate wage statement at the time of payment of her final wages, because the pay period dates on  
19 the statement are listed as “03/31/2020 – 04/13/2020,” in violation of Labor Code § 226(a)(6).

20         53. As a result, Cardenas has suffered “injury,” as defined in Labor Code § 226(e),  
21 because a reasonable person cannot promptly and easily determine from the wage statement alone  
22 the inclusive dates of the period for which Cardenas was paid.

23         54. Wherefore, Cardenas seeks relief as set forth below.

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**SEVENTH CAUSE OF ACTION**  
**VIOLATIONS OF LABOR CODE § 2698 *ET SEQ.***  
**(Private Attorneys General Act)**  
**Against Defendants**

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

56. Pursuant to the provisions of Labor Code § 2699.3, an aggrieved employee may pursue a civil action arising under the California Private Attorneys General Act of 2004 (“PAGA”) after the following requirements have been met:

- a. The aggrieved employee shall give written notice by certified mail to the LWDA and the employer (hereinafter “Employee’s Notice”) of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations;
- b. The LWDA shall provide notice (hereinafter “LWDA’s Notice”) to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violation within 60 calendar days of the postmark date of the Employee’s Notice. Upon receipt of the LWDA’s Notice, or if the LWDA does not provide notice within 65 calendar days of the postmark date of the Employee’s Notice, the aggrieved employee may commence a civil action pursuant to Labor § 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

57. On June 24, 2020, Cardenas provided written notice by online submission to the LWDA, and by certified mail to Rodeway Inn of Rodeway Inn’s violations of the Labor Code set forth below, including the facts and theories to support the alleged violations. As of today’s date, more than 65 days have passed without the LWDA providing written notice that it intends to investigate the allegations in the June 24, 2020 notice. Accordingly, Cardenas has satisfied the administrative prerequisites under Labor Code § 2699.3 in effect at the time of the postmark of her

1 notice to bring a civil action to recover penalties against Rodeway Inn under PAGA. Furthermore,  
2 Cardenas and Rodeway Inn entered into a tolling agreement, stipulating to the following:

- 3           a.       All applicable statutes of limitations as to any and all rights and claims that  
4                   Cardenas, herself and as a proxy for the LWDA on behalf of other allegedly  
5                   aggrieved employees, current and former, has against Rodeway Inn for civil  
6                   penalties, attorneys fees, and costs for violations of the California Labor  
7                   Code under PAGA, as set forth in Cardenas's June 24, 2020 LWDA Notice,  
8                   shall be tolled from August 31, 2020, under 7 days after the conclusion of  
9                   mediation, i.e., November 30, 2020.

10           58.     Within the relevant time period, including within the past year, and in accordance  
11 with a uniform, company-wide policy, Rodeway Inn furnished intentionally and regularly failed to  
12 provide complaint 10-minute rest breaks to Cardenas and its current and other former non-exempt  
13 employees for every 4 hours they worked, in violation of Labor Code §§ 226.7 and 512. As to  
14 Cardenas specifically, who was employed as a non-exempt housekeeper from June 3, 2020, to June  
15 9, 2020, but only worked three days due to Rodeway Inn's unlawful retaliation, Rodeway Inn  
16 refused to give her any rest (or meal) breaks despite working more than 6 hours straight on June 3,  
17 2020, and more than 7 hours straight on June 4, 2020. Rodeway Inn's failure to provide rest breaks  
18 was in accordance with a policy and practice that it imposes on its other non-exempt employees.

19           59.     Likewise, and also within the relevant time period, including within the past year,  
20 and in accordance with a uniform, company-wide policy, Rodeway Inn intentionally and regularly  
21 failed to provide Cardenas and its current and other former non-exempt employees with compliant  
22 meal periods in violation of Labor Code §§ 226.7 and 512. Specifically, Rodeway Inn required  
23 Cardenas and current and other former non-exempt employees to work periods of more than five  
24 hours per day without providing them with a meal period of not less than 30 minutes, and also  
25 failed to relieve current and other former non-exempt employees of all of their duties when meal  
26 periods were provided. Again, Rodeway Inn provided Cardenas with no meal breaks during her  
27 employment.

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1           60.     Also within the relevant time period, including within the past year and continuing  
2 to date, Rodeway Inn has employed a minor “under the table” at a rate less than that paid to adults  
3 in the same establishment for the same work, in violation of Labor Code § 1391.2(b). Rodeway  
4 Inn also violated working-hour provisions of Labor Code § 1391 and/or 1391.1, as to this minor,  
5 because it employed her to work before 7 a.m. or after 7 p.m., for more than 4 hours during  
6 schooldays, and/or more than 8 hours per day. Rodeway Inn also failed to furnish wage statements  
7 to this minor, in violation of Labor Code § 226.

8           61.     Wherefore, Cardenas requests relief as set forth below.

9                               **PRAYER FOR RELIEF**

10           WHEREFORE, the following relief is sought:

11   **As to the First Cause of Action:**

- 12           1.     For compensatory, special, and general damages;
- 13           2.     For punitive and/or exemplary damages;
- 14           3.     For a civil penalty pursuant to Labor Code § 1102.5(f);
- 15           4.     For attorneys’ fees and costs, including but not limited to those available under
- 16                 Code of Civil Procedure § 1021.5;
- 17           5.     For prejudgment and post-judgment interest according to any applicable provision
- 18                 of law or as otherwise permitted by law, including that available under Civ. Code §
- 19                 3287, according to proof; and
- 20           6.     For such other and further relief as the court deems proper.

21   **As to the Second Cause of Action:**

- 22           1.     For compensatory, special, and general damages;
- 23           2.     For punitive and/or exemplary damages;
- 24           3.     For reinstatement pursuant to Labor Code § 6310(b);
- 25           4.     For attorneys’ fees and costs, including but not limited to those available under
- 26                 Code of Civil Procedure § 1021.5;
- 27           5.     For prejudgment and post-judgment interest according to any applicable provision
- 28                 of law or as otherwise permitted by law, including but not limited to that available

under Civil Code §§ 3287(a) and 3289(b); and

6. For all other and further relief as the court deems just and proper.

**As to the Third Cause of Action:**

1. For compensatory, special, and general damages;

2. For punitive and/or exemplary damages;

3. For attorneys' fees and costs, including but not limited to those available under Code of Civil Procedure § 1021.5;

4. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including that available under Civ. Code § 3287, according to proof; and

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

**As to the Fourth and Fifth Causes of Action:**

1. For compensatory damages, including but not limited to unpaid premium wages for missed meal and rest breaks;

2. For penalties, including but not limited to those recoverable under Labor Code §§ 226.7 and 558;

3. For restitution;

4. For statutory attorneys' fees and costs, including but not limited to those available under Code of Civil Procedure § 1021.5 and Labor Code § 218.5;

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

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

**As to the Sixth Cause of Action:**

1. For statutory penalties pursuant to Labor Code § 226(e);

2. For statutory attorneys' fees and costs, including but not limited to those available under Code of Civil Procedure § 1021.5 and Labor Code § 226(e);

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1           3.     For prejudgment and post-judgment interest according to any applicable provision  
2                   of law or as otherwise permitted by law, including those available under Civil Code  
3                   §§ 3287(a) and 3289(b); and/or

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

5 **As to the Seventh Cause of Action:**

6           1.     For civil penalties recoverable under PAGA, including but not limited to those  
7                   available under Labor Code §§ 226.3 and 2699(f); and

8           2.     For statutory attorneys' fees and costs, including but not limited to those available  
9                   under Code of Civil Procedure § 1021.5 and Labor Code § 2699(g);

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

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

14  
15 **DATED:** November 30, 2020

**MAYALL HURLEY P.C.**

16  
17 By \_\_\_\_\_



NICHOLAS F. SCARDIGLI  
Attorneys for Plaintiff  
KATHERINE CARDENAS

**PROOF OF SERVICE**

I, the undersigned, certify and declare as follows:

I am over the age of eighteen years and not a party to this action. My business address is 2453 Grand Canal Boulevard, Stockton, California 95207 that is located in the county where the mailing and/or delivery below took place.

On December 1, 2020, I served the following document:

**FIRST AMENDED COMPLAINT FOR DAMAGES AND PENALTIES**

addressed to:

Jamie M. Bossuat  
Kroloff, Belcher, Smart, Perry & Christopherson, APLC  
7540 Shoreline Drive  
Stockton, CA 95219  
Email: [jbossuat@kroloff.com](mailto:jbossuat@kroloff.com); [mlawson@kroloff.com](mailto:mlawson@kroloff.com)  
*Attorneys for Defendant*

☒ **BY EMAIL:** Pursuant to Judicial Council's Mandate requiring service by electronic means during the COVID-19 pandemic [See Emergency Rules Related to COVID-19, Emergency Rule 12], on the date specified below, I directed to be transmitted by e-mail the document described above.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 1, 2020, at Stockton, California.



NICHOLAS F. SCARDIGLI