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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN DIEGO**

10 PABLO MARTINEZ, on behalf of the State
11 of California, as a private attorney general,

12 Plaintiff,

13 vs.

14 LAKEHOUSE HOTEL LLC, a Limited
15 Liability Company; and DOES 1 through 50,
16 inclusive,

17 Defendants.
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Case No. 37-2021-00010118-CU-OE-NC

REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
221, 226(a), 226.7, 351, 510, 512,
558(a)(1)(2), 1194, 1197, 1197.1, 1198,
2802, California Code of Regulations,
Title 8, Section 11040, Subdivision 5(A)-
(B)

1 Plaintiff Pablo Martinez ("PLAINTIFF"), on behalf of the people of the State of
2 California and as an "aggrieved employee" acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* ("PAGA") only, alleges on
4 information and belief, except for his own acts and knowledge which are based on personal
5 knowledge, the following:

6 INTRODUCTION

7 1. PLAINTIFF brings this action against Defendant LAKEHOUSE HOTEL LLC
8 ("DEFENDANT") seeking only to recover PAGA civil penalties for himself, and on behalf
9 of all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF
10 does not seek to recover anything other than penalties as permitted by California
11 Labor Code § 2699. To the extent that statutory violations are mentioned for wage
12 violations, PLAINTIFF does not seek underlying general and/or special damages for those
13 violations, but simply the civil penalties permitted by California Labor Code § 2699.

14 2. California has enacted the PAGA to permit an individual to bring an action on
15 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and
16 sole nature of this action.

17 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
18 DEFENDANT's violations under PAGA and solely for the relief as permitted by PAGA –
19 that is, penalties and any other relief the Court deems proper pursuant to the PAGA.
20 Nothing in this complaint should be construed as attempting to obtain any relief that would
21 not be available in a PAGA-only action.

22 THE PARTIES

23 4. Defendant Lakehouse Hotel LLC ("DEFENDANT") is a limited liability
24 company that at all relevant times mentioned herein conducted and continues to conduct
25 substantial business in the state of California.

26 5. DEFENDANT owns and operates Lakehouse Hotel & Resort, located in San
27 Marcos, California.
28

1 6. PLAINTIFF was employed by DEFENDANT in California from May of 2017
2 to July of 2020 and was at all times classified by DEFENDANT as a non-exempt employee,
3 paid on an hourly basis, and entitled to the legally required meal and rest periods and
4 payment of minimum and overtime wages due for all time worked.

5 7. PLAINTIFF, and such persons that may be added from time to time who
6 satisfy the requirements and exhaust the administrative procedures under the Private
7 Attorney General Act, brings this Representative Action on behalf of the State of California
8 with respect to himself and all individuals who are or previously were employed by
9 DEFENDANT in California and classified as non-exempt employees ("AGGRIEVED
10 EMPLOYEES") during the time period of October 28, 2019 until a date as determined by
11 the Court (the "PAGA PERIOD").

12 8. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES
13 presently or formerly employed by DEFENDANT during the PAGA PERIOD, brings this
14 representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for
15 DEFENDANT's violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221,
16 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code
17 of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage
18 Order(s).¹ Based upon the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are
19 aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

20 9. The true names and capacities, whether individual, corporate, subsidiary,
21 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are
22 presently unknown to PLAINTIFF who therefore sues these Defendants by such fictitious
23 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this
24 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when
25 they are ascertained. PLAINTIFF is informed and believes, and based upon that information
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28 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code § 558(a)(3).

1 and belief alleges, that the Defendants named in this Complaint, including DOES 1 through
2 50, inclusive, are responsible in some manner for one or more of the events and happenings
3 that proximately caused the injuries and damages hereinafter alleged.

4 10. The agents, servants and/or employees of the Defendants and each of them
5 acting on behalf of the Defendants acted within the course and scope of his, her or its
6 authority as the agent, servant and/or employee of the Defendants, and personally
7 participated in the conduct alleged herein on behalf of the Defendants with respect to the
8 conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to
9 the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF and
10 the other AGGRIEVED EMPLOYEES, for the loss sustained as a proximate result of the
11 conduct of the Defendants' agents, servants and/or employees.

12 13 THE CONDUCT

14 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
15 was required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time
16 worked, meaning the time during which an employee is subject to the control of an
17 employer, including all the time the employee is suffered or permitted to work.
18 DEFENDANT required PLAINTIFF and AGGRIEVED EMPLOYEES to work without
19 paying them for all the time they were under DEFENDANT's control. Specifically,
20 DEFENDANT required PLAINTIFF to work while clocked out during what was supposed
21 to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by
22 work assignments while clocked out for what should have been PLAINTIFF's off-duty meal
23 break. Additionally, PLAINTIFF and AGGRIEVED EMPLOYEES would clock out of
24 DEFENDANT's timekeeping system, in order to perform additional work for
25 DEFENDANT as required to meet DEFENDANT's job requirements. Specifically, during
26 the PAGA PERIOD, DEFENDANT engages in the uniform and systematic practice of
27 requiring PLAINTIFF and AGGRIEVED EMPLOYEES to perform work off the clock after
28 clocking out in that DEFENDANT, as a condition of employment, required these employees

1 from time to time to respond to noise complaints, break-up potential altercations and detail
2 such incidents to management. Further, PLAINTIFF and other AGGRIEVED
3 EMPLOYEES from time to time were not paid wages for all time worked, including
4 overtime wages, such that in the aggregate employees were underpaid wages as a result of
5 DEFENDANT's pattern and practice of unevenly rounding time worked by its employees.
6 DEFENDANT also underpaid sick pay wages to PLAINTIFF and other AGGRIEVED
7 EMPLOYEES by failing to pay such wages at the regular rate of pay. Specifically,
8 PLAINTIFF and other non-exempt employees regularly earn non-discretionary
9 remuneration, including but not limited to, incentives, shift differential pay, and bonuses.
10 Rather than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick pay to
11 PLAINTIFF and other AGGRIEVED EMPLOYEES at their base rates of pay.
12 DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other
13 AGGRIEVED EMPLOYEES for all time worked, is evidenced by DEFENDANT's business
14 records.

15 12. As a result of their rigorous work schedules, PLAINTIFF and other
16 AGGRIEVED EMPLOYEES were from time to time unable to take thirty (30) minute off
17 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF
18 and other AGGRIEVED EMPLOYEES were required from time to time to perform work as
19 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving
20 a meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and
21 AGGRIEVED EMPLOYEES with a second off-duty meal period for some workdays in
22 which these employees were required by DEFENDANT to work ten (10) hours of work.
23 PLAINTIFF and other AGGRIEVED EMPLOYEES therefore forfeited meal breaks without
24 additional compensation and in accordance with DEFENDANT's strict corporate policy and
25 practice. DEFENDANT failed to maintain adequate staffing levels while increasing the
26 production levels for each employee at the busy airports they operated at.

27 13. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED
28 EMPLOYEES were also required from time to time to work in excess of four (4) hours

1 without being provided ten (10) minute rest periods. Further, these employees were denied
2 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2)
3 to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
4 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
5 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
6 hours or more from time to time. PLAINTIFF and other AGGRIEVED EMPLOYEES were
7 also not provided with one hour wages in lieu thereof. Additionally, the applicable
8 California Wage Order requires employers to provide employees with off-duty rest periods,
9 which the California Supreme Court defined as time during which an employee is relieved
10 from all work related duties and free from employer control. In so doing, the Court held that
11 the requirement under California law that employers authorize and permit all employees to
12 take rest period means that employers must relieve employees of all duties and relinquish
13 control over how employees spend their time which includes control over the locations
14 where employees may take their rest period. Employers cannot impose controls that prohibit
15 an employee from taking a brief walk - five minutes out, five minutes back. Here,
16 DEFENDANT's uniform policy restricted PLAINTIFF and other AGGRIEVED
17 EMPLOYEES from unconstrained walks and was unlawful based on DEFENDANT's rule
18 which stated PLAINTIFF and other AGGRIEVED EMPLOYEES could not leave the work
19 premises during their rest period.

20 14. During the PAGA PERIOD, DEFENDANT failed to accurately record and
21 pay PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
22 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
23 DEFENDANT is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for
24 all time worked, meaning the time during which an employee was subject to the control of
25 an employer, including all the time the employee was permitted or suffered to permit this
26 work. DEFENDANT required these employees to work off the clock without paying them
27 for all the time they were under DEFENDANT's control. As such, DEFENDANT knew or
28 should have known that PLAINTIFF and the other AGGRIEVED EMPLOYEES were under

1 compensated for all time worked. As a result, PLAINTIFF and other AGGRIEVED
2 EMPLOYEES forfeited time worked by working without their time being accurately
3 recorded and without compensation at the applicable minimum wage and overtime wage
4 rates. To the extent that the time worked off the clock did not qualify for overtime premium
5 payment, DEFENDANT failed to pay minimum wages for the time worked off-the-clock in
6 violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

7 15. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
8 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
9 incurred by PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
10 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
11 2802, employers are required to indemnify employees for all expenses incurred in the course
12 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer
13 shall indemnify his or her employee for all necessary expenditures or losses incurred by the
14 employee in direct consequence of the discharge of his or her duties, or of his or her
15 obedience to the directions of the employer, even though unlawful, unless the employee, at
16 the time of obeying the directions, believed them to be unlawful."

17 16. In the course of their employment PLAINTIFF and other AGGRIEVED
18 EMPLOYEES as a business expense, were required by DEFENDANT to use their own
19 personal cellular phones as a result of and in furtherance of their job duties as employees for
20 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
21 associated with the use of their personal cellular phones for DEFENDANT's benefit. As a
22 result, in the course of their employment with DEFENDANT, PLAINTIFF and other
23 AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which included, but
24 were not limited to, costs related to the use of their personal cellular phones all on behalf of
25 and for the benefit of DEFENDANT.

26 17. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
27 other AGGRIEVED EMPLOYEES with complete and accurate wage statements which
28 failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code

1 § 226 provides that every employer shall furnish each of his or her employees with an
2 accurate itemized wage statement in writing showing, among other things, gross wages
3 earned and all applicable hourly rates in effect during the pay period and the corresponding
4 amount of time worked at each hourly rate. Additionally, DEFENDANT failed to list the
5 address of the legal entity that was the employer in violation of Cal. Lab. Code 226(a)(8).
6 Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to
7 PLAINTIFF an itemized wage statement that lists all the requirements under California
8 Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFF
9 and the other AGGRIEVED EMPLOYEES with wage statements which violated Cal. Lab.
10 Code § 226.

11 18. In violation of the applicable sections of the California Labor Code and the
12 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
13 a matter of company policy, practice and procedure, intentionally, knowingly and
14 systematically failed to compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES
15 for missed meal and rest periods. This uniform policy and practice of DEFENDANT is
16 intended to purposefully avoid the payment for all time worked as required by California law
17 which allows DEFENDANT to illegally profit and gain an unfair advantage over
18 competitors who complied with the law. To the extent equitable tolling operates to toll
19 claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the PAGA PERIOD
20 should be adjusted accordingly.

21 19. By reason of this uniform conduct applicable to PLAINTIFF and all
22 AGGRIEVED EMPLOYEES, DEFENDANT engaged in a company-wide policy and
23 procedure which failed to accurately calculate and record all missed meal and rest periods by
24 PLAINTIFF and other AGGRIEVED EMPLOYEES. The proper recording of these
25 employees' missed meal and rest breaks is the DEFENDANT's burden. As a result of
26 DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT
27 failed to properly calculate and/or pay all required compensation for work performed by the
28 AGGRIEVED EMPLOYEES and violated the California Labor Code and regulations

1 promulgated thereunder as herein alleged.

2 20. All of the conduct and violations alleged herein occurred during the PAGA
3 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
4 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
5 that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
6 2018 AJDAR 12157 (Certified for Publication 12/19/18).

7 **JURISDICTION AND VENUE**

8 21. This Court has jurisdiction over this Action pursuant to California Code of
9 Civil Procedure, Section 410.10.

10 22. Venue is proper in this Court pursuant to California Code of Civil Procedure,
11 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
12 DEFENDANT (i) currently maintains and at all relevant times maintained offices and
13 facilities in this County and/or conducts substantial business in this County, and (ii)
14 committed the wrongful conduct herein alleged in this County against PLAINTIFF and the
15 AGGRIEVED EMPLOYEES.

16 **FIRST CAUSE OF ACTION**

17 **For Violation of the Private Attorneys General Act**

18 **[Cal. Lab. Code §§ 2698, *et seq.*]**

19 **(By PLAINTIFF and Against All Defendants)**

20 23. PLAINTIFF incorporates by reference, as though fully set forth herein, the
21 prior paragraphs of this Complaint.

22 24. PAGA is a mechanism by which the State of California itself can enforce state
23 labor laws through the employee suing under the PAGA who do so as the proxy or agent of
24 the state's labor law enforcement agencies. An action to recover civil penalties under
25 PAGA is fundamentally a law enforcement action designed to protect the public and not to
26 benefit private parties. The purpose of the PAGA is not to recover damages or restitution,
27 but to create a means of "deputizing" citizens as private attorneys general to enforce the
28 Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the

1 public interest to allow aggrieved employees, acting as private attorneys general to recover
2 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
3 claims cannot be subject to arbitration.

4 25. PLAINTIFF, and such persons that may be added from time to time who
5 satisfy the requirements and exhaust the administrative procedures under the Private
6 Attorney General Act, brings this Representative Action on behalf of the State of California
7 with respect to himself and all individuals who are or previously were employed by
8 DEFENDANT in California and classified as non-exempt employees ("AGGRIEVED
9 EMPLOYEES") during the time period of October 28, 2019 until a date as determined by
10 the Court (the "PAGA PERIOD").

11 26. On October 28, 2020, PLAINTIFF gave written notice by electronic mail to
12 the Labor and Workforce Development Agency (the "Agency") and by certified mail to the
13 employer of the specific provisions of this code alleged to have been violated as required by
14 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations
15 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
16 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy
17 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

18 27. The policies, acts and practices heretofore described were and are an unlawful
19 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
20 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
21 record and provide legally required meal and rest periods, (c) failed to pay overtime wages,
22 (d) failed to pay minimum wages, (e) failed to reimburse for required business expenses, and
23 (f) failed to provide wages when due, all in violation of the applicable Labor Code sections
24 listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 351, 510, 512,
25 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,
26 Section 11040, Subdivision 5(A)-(B), and the applicable Industrial Wage Order(s), and
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1 thereby gives rise to civil penalties as a result of such conduct.² PLAINTIFF hereby seeks
2 recovery of only civil penalties as prescribed by the Labor Code Private Attorney General
3 Act of 2004 as the representative of the State of California for the illegal conduct
4 perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

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6 **PRAYER FOR RELIEF**

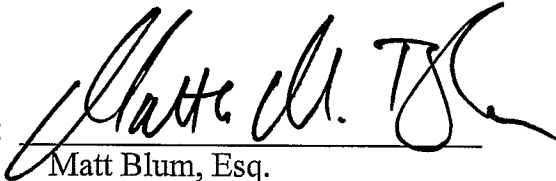
7 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
8 severally, as follows:

9 1. On behalf of the State of California and with respect to all AGGRIEVED
10 EMPLOYEES:

11 A) Recovery of civil penalties as prescribed by the Labor Code Private
12 Attorneys General Act of 2004; and,

13 B) An award of attorneys' fees and cost of suit, as allowable under the
14 law, including, but not limited to, pursuant to Labor Code §2699.

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16 Dated: March 8, 2021 THE LAW OFFICE OF MATT BLUM

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19 By: 

20 Matt Blum, Esq.

21 Attorneys for Plaintiff
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28 ²Plaintiff specifically excludes and/or does not allege any claims under California Labor Code §558(a)(3).