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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES**

RICHARD JOHN TRINIDAD, on behalf
of the State of California, as a private attorney
general,

Plaintiff,

vs.

ASCOT HOTEL, L.P., a California
Limited Partnership, and DOES 1 through
50, inclusive,

Defendants.

Case No. 21SMCV00575**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,
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 Richard John Trinidad ("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 Ascot Hotel, L.P.
8 ("DEFENDANT") seeking only to recover PAGA civil penalties for himself, and on behalf of
9 all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF does
10 **not seek to recover anything other than penalties as permitted by California Labor Code**
11 **§ 2699.** To the extent that statutory violations are mentioned for wage violations, PLAINTIFF
12 does not seek underlying general and/or special damages for those violations, but simply the
13 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 sole
16 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 – that
19 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
20 complaint should be construed as attempting to obtain any relief that would not be available in
21 a PAGA-only action.

22 THE PARTIES

23 4. Defendant Ascot Hotel, L.P. ("DEFENDANT") is a California limited partnership
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 specializes in hotel ownership and management in California.
27 DEFENDANT does business as Hotel Angeleno in California. Hotel Angeleno is a luxury
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1 boutique hotel located on the west side of Los Angeles.

2 6. PLAINTIFF was employed by DEFENDANT in California at Hotel Angeleno as
3 a non-exempt employee from October of 2015 to September of 2020 and was at all times
4 classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled
5 to the legally required meal and rest periods and payment of minimum and overtime wages due
6 for all time worked.

7 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
8 the requirements and exhaust the administrative procedures under the Private Attorney General
9 Act, brings this Representative Action on behalf of the State of California with respect to
10 himself and all individuals who are or previously were employed by DEFENDANT in
11 California and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during
12 the time period of January 6, 2020 until a date as determined by the Court (the "PAGA
13 PERIOD").

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

22 9. The true names and capacities, whether individual, corporate, subsidiary,
23 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
24 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
25 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
26 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
27 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
28 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are

1 responsible in some manner for one or more of the events and happenings that proximately
2 caused the injuries and damages hereinafter alleged.

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

11 THE CONDUCT

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13 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
14 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked,
15 meaning the time during which an employee is subject to the control of an employer, including
16 all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF
17 and AGGRIEVED EMPLOYEES to work without paying them for all the time they are under
18 DEFENDANT's control. DEFENDANT requires PLAINTIFF and the AGGRIEVED
19 EMPLOYEES to work off the clock without paying them for all the time they performed post-
20 shift duties, specifically by failing to provide enough labor hours to accomplish all the job tasks
21 that DEFENDANT expected PLAINTIFF and AGGRIEVED EMPLOYEES to complete on a
22 daily and/or weekly basis. Specifically, as to PLAINTIFF, immediately upon arrival, he was
23 told to get busy as there was an urgent need to set up for banquets and provide other necessary
24 services - before he was afforded the opportunity to check in. Sometimes, PLAINTIFF was able to
25 clock in after he started his work, yet he routinely lost all the time for which he had been working
26 off-the-clock as the time-inputting system was unable to retroactively account for his off-the-clock
27 work. Other times, management clocked in for him at their whim and discretion, again costing
28 PLAINTIFF his off-the-clock time. PLAINTIFF also had to complete a document which detailed his

1 symptoms, if any, during the COVID-19 pandemic. This work also was done off-the-clock and
2 before PLAINTIFF clocked in for the day. At the conclusion of his work day, PLAINTIFF clocked
3 out and continued to work as management asked. Additionally, from time to time,
4 DEFENDANT requires PLAINTIFF to work while clocked out during what is supposed to
5 be PLAINTIFF's off-duty meal break. PLAINTIFF is from time to time interrupted by work
6 assignments. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeit
7 minimum wage and overtime compensation by from time to time working without their time
8 being accurately recorded and without compensation at the applicable minimum wage and
9 overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and
10 other AGGRIEVED EMPLOYEES for all time worked is evidenced by DEFENDANT's
11 business records.

12 12. As a result of their rigorous work schedules, PLAINTIFF and other
13 AGGRIEVED EMPLOYEES are also from time to time unable to take off duty meal breaks
14 and are not fully relieved of duty for meal periods. PLAINTIFF and other AGGRIEVED
15 EMPLOYEES are from time to time required to perform work as ordered by DEFENDANT
16 for more than five (5) hours during a shift without receiving an off-duty meal break.
17 Further, DEFENDANT fails to provide PLAINTIFF and AGGRIEVED EMPLOYEES with
18 a second off-duty meal period from time to time in which these employees are required by
19 DEFENDANT to work ten (10) hours of work from time to time. PLAINTIFF and the other
20 AGGRIEVED EMPLOYEES therefore forfeit meal breaks without additional compensation
21 and in accordance with DEFENDANT's corporate policy and practice.

22 13. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED
23 EMPLOYEES are also required from time to time to work in excess of four (4) hours
24 without being provided ten (10) minute rest periods. Further, these employees are denied
25 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2)
26 to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
27 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
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1 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
2 hours or more from time to time. PLAINTIFF and other AGGRIEVED EMPLOYEES are
3 also not provided with one hour wages in lieu thereof. As a result of their rigorous work
4 schedules, PLAINTIFF and other AGGRIEVED EMPLOYEES are from time to time
5 denied their proper rest periods by DEFENDANT and DEFENDANT's managers.
6 Additionally, the applicable California Wage Order requires employers to provide
7 employees with off-duty rest periods, which the California Supreme Court defined as time
8 during which an employee is relieved from all work related duties and free from employer
9 control. In so doing, the Court held that the requirement under California law that
10 employers authorize and permit all employees to take rest period means that employers must
11 relieve employees of all duties and relinquish control over how employees spend their time
12 which includes control over the locations where employees may take their rest period.
13 Employers cannot impose controls that prohibit an employee from taking a brief walk - five
14 minutes out, five minutes back. Here, DEFENDANT's policy restricts PLAINTIFF and
15 other AGGRIEVED EMPLOYEES from unconstrained walks and requires these employees
16 to remain on DEFENDANT's premises under DEFENDANT's control during what should
17 be their paid, off duty rest periods.

18 14. During the PAGA period, pursuant to DEFENDANT's company policies and
19 practices, PLAINTIFF and other AGGRIEVED EMPLOYEES were forced to gratuities left
20 for them by customers to DEFENDANT's agents who provided no service to the customers
21 that resulted in the gratuity. DEFENDANT routinely added anywhere from 18%-22%
22 service charges to its food and beverage banquet bills. These service charges were in the
23 form of automatic charges which customers are required to pay, and which reasonably
24 appear to be gratuities for the service staff. It is typical and customary in the hospitality
25 industry that establishments impose gratuity charges in the range of 18%-22% of the food
26 and beverage bill. Thus, when customers have paid these charges, it is reasonable for them
27 to have believed they were gratuities to be paid to the service staff. Indeed, because many of
28 these charges are depicted to customers, and the custom in the food and beverage industry

1 that gratuities in the range of 18%-22% are paid for food and beverage service, customers
2 have paid these charges reasonably believing they were remitted to the service staff.
3 However, DEFENDANT has not remitted the total proceeds of these gratuities to the non-
4 managerial employees who serve the food and beverages. Instead, DEFENDANT has a
5 policy and practice of retaining for itself a portion of these gratuities and/or using a portion
6 of these gratuities to pay managers or other non-service employees. As a result, PLAINTIFF
7 and other AGGRIEVED EMPLOYEES have not received the total proceeds of the
8 gratuities, to which they are entitled to under California law.

9 15. DEFENDANT is generally in the business of owning and operating hotels,
10 including the pubs and restaurants in the hotels. In addition, DEFENDANT also provides
11 banquet services to large groups, such as wedding parties and other banquet events. During
12 the CALIFORNIA CLASS PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
13 were in the "chain of service" and earned gratuities based on their service for their
14 customers. However, PLAINTIFF and other AGGRIEVED EMPLOYEES were forced to
15 forfeit portions of their gratuities, which said gratuities were kept by DEFENDANT and
16 their agents who were not in the chain of service from which the gratuity resulted.
17 PLAINTIFF and other AGGRIEVED EMPLOYEES contend that any gratuities kept by
18 DEFENDANT were illegal and in violation of California law because PLAINTIFF and
19 other AGGRIEVED EMPLOYEES, not DEFENDANT, provided the service for to whom
20 the gratuity should have been paid.

21 16. California Labor Code § 351 establishes the requirements for an employer
22 regarding the payment of gratuities. Specifically, gratuities are the sole property of the
23 employees. California Labor Code § 351 expressly prohibits employers and their agents
24 from collecting, taking, or receiving any portion of a gratuity. California Labor Code §
25 350(e) defines the term "gratuity" as including any money that has been paid or given or left
26 for an employee by a patron of a business over and above the actual amount due the business
27 for services rendered or for goods, food, drink or articles sold or served to such patron.
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1 Labor Code § 353 requires employers to keep accurate records of all gratuities they receive,
2 directly or indirectly.

3 17. Although tip pooling is not expressly prohibited by the Labor Code, employees
4 who mandate tip pooling must only distribute pooled tips to employees in the “chain of
5 service.” By distributing tips to DEFENDANT directly and to their agents who were not in
6 the “chain of service,” DEFENDANT has violated and continue to violate the legal
7 requirements for handling pooled tips and violated the holding in *O’Grady v. Merchant*
8 *Exchange Productions, Inc.*, No. A148513 (Court of Appeals of California, First District,
9 Division Two.)

10 18. DEFENDANT also fails to provide PLAINTIFF and the other AGGRIEVED
11 EMPLOYEES with complete and accurate wage statements which failed to show, among
12 other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that
13 every employer shall furnish each of his or her employees with an accurate itemized wage
14 statement in writing showing, among other things, gross wages earned and all applicable
15 hourly rates in effect during the pay period and the corresponding amount of time worked at
16 each hourly rate. Aside, from the violations listed above, DEFENDANT failed to issue to
17 PLAINTIFF an itemized wage statement that lists all the requirements under California
18 Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFF
19 and the other AGGRIEVED EMPLOYEES with wage statements which violated Cal. Lab.
20 Code § 226.

21 19. DEFENDANT intentionally and knowingly fails to reimburse and indemnify
22 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
23 incurred by PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
24 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
25 2802, employers are required to indemnify employees for all expenses incurred in the course
26 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer
27 shall indemnify his or her employee for all necessary expenditures or losses incurred by the
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1 employee in direct consequence of the discharge of his or her duties, or of his or her
2 obedience to the directions of the employer, even though unlawful, unless the employee, at
3 the time of obeying the directions, believed them to be unlawful."

4 20. In the course of their employment PLAINTIFF and other AGGRIEVED
5 EMPLOYEES as a business expense, are required by DEFENDANT to use their own
6 personal cellular phones and personal vehicles to inter-location travel as a result of and in
7 furtherance of their job duties as employees for DEFENDANT but are not reimbursed or
8 indemnified by DEFENDANT for the cost associated with the use of their personal cellular
9 phones and personal vehicles, including but not limited to gas money, for DEFENDANT's
10 benefit. Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES are required by
11 DEFENDANT to use their personal cellular phones to respond to managers while off the
12 clock (which also results in minimum wage and overtime violations). As a result, in the
13 course of their employment with DEFENDANT, PLAINTIFF and other AGGRIEVED
14 EMPLOYEES incurred unreimbursed business expenses which included, but were not
15 limited to, costs related to the use of their personal cellular phones and personal vehicles all
16 on behalf of and for the benefit of DEFENDANT.

17 21. In violation of the applicable sections of the California Labor Code and the
18 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
19 a matter of company policy, practice and procedure, intentionally, knowingly and
20 systematically failed to compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES
21 for missed meal and rest periods. This uniform policy and practice of DEFENDANT is
22 intended to purposefully avoid the payment for all time worked as required by California law
23 which allows DEFENDANT to illegally profit and gain an unfair advantage over
24 competitors who complied with the law. To the extent equitable tolling operates to toll
25 claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the PAGA PERIOD
26 should be adjusted accordingly.
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22. By reason of this uniform conduct applicable to PLAINTIFF and all AGGRIEVED EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure which fails to accurately calculate and record all missed meal and rest periods and failed to pay all minimum and overtime wages due to PLAINTIFF and other AGGRIEVED EMPLOYEES. The proper recording of these employees' missed meal and rest breaks is the DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT fails to properly calculate and/or pay all required compensation for work performed by the AGGRIEVED EMPLOYEES and violated the California Labor Code and regulations promulgated thereunder as herein alleged.

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

JURISDICTION AND VENUE

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

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

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1 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations
2 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
3 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy
4 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

5 30. The policies, acts and practices heretofore described were and are an unlawful
6 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
7 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
8 record and provide legally required meal and rest periods, (c) failed to pay overtime wages,
9 (d) failed to pay minimum wages, and (e) failed to reimburse for required business expenses,
10 all in violation of the applicable Labor Code sections listed in Labor Code §§ 201, 202, 203,
11 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802,
12 California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the
13 applicable Industrial Wage Order(s), and thereby gives rise to civil penalties as a result of
14 such conduct.¹ PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by
15 the Labor Code Private Attorney General Act of 2004 as the representative of the State of
16 California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
17 EMPLOYEES.

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25 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
26 Code §558(a)(3).
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1. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

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

By:


MATT BLUM, ESQ.