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Attorney for Plaintiff DAVID STRESHLY

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

DAVID STRESHLY, an individual,

Plaintiff,

vs.

CURIO MANAGEMENT LLC, A Limited
Liability Company; CURIO EMPLOYER LLC,
A Limited Liability Company; and DOES 1
through 50, inclusive,

Defendants.

Case No. 37-2021-00014110-CU-OE-CTL

*Assigned for All Purposes to Honorable
Katherine Bacal in Department C-69*

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

**(1) VIOLATION OF CAL. LABOR
CODE § 226**

**(2) VIOLATION OF LABOR CODE §
2698, ET SEQ.**

DEMAND OVER \$25,000

1 Plaintiff DAVID STRESHLY (“Plaintiff”), hereby submits this First Amended Class Action
2 Complaint (“Complaint”) against Defendants CURIO MANAGEMENT LLC, A Limited Liability
3 Company; CURIO EMPLOYER LLC, A Limited Liability Company; and Does 1 through 50
4 (hereinafter collectively referred to as “Defendants”), individually and on behalf of a Class of all other
5 similarly situated current and former employees of Defendants for penalties for violations of the
6 California Labor Code, including without limitation, failure to provide employees with accurate
7 itemized wage statements as follows:

8 **INTRODUCTION**

9 1. This class action is within the Court’s jurisdiction under California Labor Code §226.

10 2. This Complaint challenges systemic illegal employment practices resulting in violations
11 of the California Labor Code against employees of Defendants.

12 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants jointly and
13 severally have acted knowingly and intentionally by failing to provide accurate itemized wage
14 statements.

15 **JURISDICTION AND VENUE**

16 4. The Court has jurisdiction over the violations of the California Labor Code §226.

17 5. Venue is proper in San Diego County because Defendants do business in San Diego
18 County and Plaintiff worked for Defendants in San Diego County.

19 **PARTIES**

20 6. Plaintiff worked for Defendants as a Room Service Attendant. Plaintiff’s last day of
21 employment was February 22, 2021 at Defendant’s San Diego location. During Plaintiff’s employment,
22 he was paid overtime wages and non-discretionary remuneration, including shift differentials. Further,
23 during Plaintiff’s employment, he was issued wage statements that identified the employer as Hilton
24 Memphis Shared Services.

25 7. Defendants are in the hotel industry providing hotel accommodations and amenities in
26 San Diego County, California.

27 8. Plaintiff was and is a victim of the policies, practices, and customs of Defendants
28 complained of in this action in ways that have deprived Plaintiff of the rights guaranteed by California
Labor Code § 226.

1 9. Plaintiff is informed and believes, and based thereon alleges, that at all times herein
2 mentioned Defendants and DOES 1 through 50 are and were business entities, individuals, and
3 partnerships, licensed to do business and actually doing business in the State of California.

4 10. As such, and based upon all the facts and circumstances incident to Defendants' business
5 in California, Defendants are subject to California Labor Code §226.

6 11. Plaintiff does not know the true names or capacities, whether individual, partner or
7 corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that reason, said
8 Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this complaint
9 when the true names and capacities are known. Plaintiff is informed and believes, and based thereon
10 alleges, that each of said fictitious Defendants was responsible in some way for the matters alleged
11 herein and proximately caused Plaintiff and members of the general public and class to be subject to
12 the illegal employment practices, wrongs and injuries complained of herein.

13 12. At all times herein mentioned, each of said Defendants participated in the doing of the
14 acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants,
15 and each of them, were the agents, servants and employees of each of the other Defendants, as well as
16 the agents of all Defendants, and at all times herein mentioned, were acting within the course and
17 scope of said agency and employment.

18 13. Plaintiff is informed and believes, and based thereon alleges, that at all times material
19 hereto, each of the Defendants named herein was the agent, employee, alter ego and/or joint venturer
20 of, or working in concert with each of the other co- Defendants and was acting within the course and
21 scope of such agency, employment, joint venture, or concerted activity. To the extent said acts,
22 conduct, and omissions were perpetrated by certain Defendants, each of the remaining Defendants
23 confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

24 14. At all times herein mentioned, Defendants, and each of them, were members of, and
25 engaged in, a joint venture, partnership and common enterprise, and acting within the course and
26 scope of, and in pursuance of, said joint venture, partnership and common enterprise.

27 15. At all times herein mentioned, the acts and omissions of various Defendants, and each
28 of them, concurred and contributed to the various acts and omissions of each and all of the other
Defendants in proximately causing the injuries and damages as herein alleged. At all times herein

mentioned, Defendants, and each of them, ratified each and every act or omission complained of herein. At all times herein mentioned, the Defendants, and each of them, aided and abetted the acts and omissions of each and all of the other Defendants in proximately causing the damages as herein alleged.

CLASS ACTION ALLEGATIONS

16. **Definition:** The named individual Plaintiff seeks class certification, pursuant to California Code of Civil Procedure § 382, of the following Classes:

- a. All California employees who were paid wages by Defendants at any time from September 30, 2019, through the present (the “Employer Name Class”);
- b. All California non-exempt employees who were paid overtime wages by Defendants at any time from September 30, 2019, through the present (the “Overtime Class”); and
- c. All California non-exempt employees who were paid shift differential/premium wages by Defendants at any time from September 30, 2019, through the present (the “Shift Differential/Premium Class”)

17. **Numerosity and Ascertainability:** The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identity of the members of the Class is readily ascertainable by review of the Defendants records, including payroll records. Plaintiff is informed and believes, and based thereon alleges, that the Defendants failed to provide employees with accurate itemized wage statements in violation of Labor Code § 226.

18. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the class defined above. Plaintiff’s attorneys are ready, willing and able to fully and adequately represent the class and the named Plaintiffs. Plaintiff’s attorneys have prosecuted and settled wage-and-hour class actions in the past and currently have a number of wage-and-hour class actions pending in California courts.

19. Defendants uniformly administered a corporate policy and practice of providing employees with inaccurate itemized wage statements in violation of Labor Code § 226.

20. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest amongst Plaintiffs and the claims of the Class concerning the

Defendants failure to provide employees with accurate itemized wage statements in violation of Labor Code § 226.

21. **Typicality:** The claims of the named Plaintiff are typical of the claims of all members of the Class in that Plaintiff has suffered the harm alleged in this Complaint in a similar and typical manner as the Class members. Plaintiff's wage statement did not accurately reflect the accurate total hours worked when overtime wages were paid. Further, whenever shift differential wages were paid, the wage statements issued to Plaintiff and the Class, the wage statements failed to identify the applicable hourly rates of the pay and hours used to calculate such wages. Finally, Plaintiff was issued wage statements that do not show the name of the legal entity that is the employer. Instead, Hilton Memphis Shared Services is shown on the wage statements. Based on the foregoing, Plaintiff is a member of the Class and has suffered the alleged violations of California Labor Code § 226.

22. The California Labor Code and upon which Plaintiff bases these claims is broadly remedial in nature. These laws and labor standards serve an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment.

23. The nature of this action and the format of laws available to Plaintiff and members of the Class identified herein make the class action format a particularly efficient and appropriate procedure to redress the wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate Defendant would necessarily gain an unconscionable advantage since it would be able to exploit and overwhelm the limited resources of the individual Plaintiff with Defendants' vastly superior financial and legal resources. Requiring each Class member to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damage to their careers at subsequent employment.

24. The prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual Class members against the Defendants and which would establish potentially incompatible standards

of conduct for the Defendants, and/or (b) adjudications with respect to individual Class members which would, as a practical matter, be dispositive of the interest of the other Class members not parties to the adjudications or which would substantially impair or impede the ability of the Class members to protect their interests. Further, the claims of the individual members of the Class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses.

25. Such a pattern, practice and uniform administration of corporate policy regarding illegal employee compensation described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class identified herein, in a civil action any and all applicable penalties and/or damages, reasonable attorneys' fees, and costs of suit according to the mandate of California Labor Code §§ 218.5 and 226 and Code of Civil Procedure § 1021.5.

26. Proof of a common business practice or factual pattern, which the named Plaintiff experienced and are representative of, will establish the right of each of the members of the Class to recovery on the causes of action alleged herein.

27. This action is brought for the benefit of the entire class and will result in the creation of a common fund.

FIRST CAUSE OF ACTION

VIOLATION OF LABOR CODE § 226

(AGAINST ALL DEFENDANTS AND DOES 1-50 BY PLAINTIFF, THE EMPLOYER NAME CLASS, THE OVERTIME CLASS, AND THE SHIFT DIFFERENTIAL/PREMIUM CLASS)

28. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 27 as though fully set for herein.

29. Defendants failed in its affirmative obligation to provide accurate itemized wage statements in violation of Labor Code § 226(a). Specifically, Defendants violated Labor Code § 226(a) by, failing to list the accurate total hours worked whenever overtime wages were paid. Further, whenever shift differential wages were paid, the wage statements issued to Plaintiff and the Class failed to identify the applicable hourly rates of pay and hours used to calculate such wages. Rather, the wage statements simply identified the gross sum of shift differential wages without an explanation as

1 to how such wages were calculated. Finally, the wage statements issued by Defendants to all of its
2 employees failed to identify the correct legal name of the employer. Rather, the wage statements
3 identified the employer as various names, including, but not limited to, “Hilton Memphis Shared
4 Services”.

5 30. Plaintiff is informed and believes, and based thereon alleges, that that the Defendants’
6 violation of Section 226(a) is class-wide.

7 31. Such a pattern, practice and uniform administration of corporate policy as described
8 herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class identified herein, in
9 a civil action, for all damages or penalties pursuant to Labor Code § 226, including interest thereon,
10 attorneys’ fees, and costs of suit according to the mandate of California Labor Code § 226.

11 **SECOND CAUSE OF ACTION**

12 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

13 **(BY PLAINTIFF AS PROXY FOR STATE OF CALIFORNIA AGAINST ALL DEFENDANTS)**

14 32. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 31 as though fully
15 set for herein.

16 33. Plaintiff brings this cause of action on behalf of the State of California and all similarly
17 aggrieved employees pursuant to the Private Attorneys General Act (the “PAGA”), for violation of
18 Labor Code § 226(a), for the time period of September 30, 2019 through the present. As alleged herein,
19 Defendant violated this statute and, therefore, Plaintiff seeks penalties for all violations on behalf of the
20 State of California and all similarly aggrieved employees.

21 34. On or about March 19, 2021, Plaintiff submitted written notice to the Labor Workforce
22 Development Agency (the “LWDA”) and to Defendant via certified mail of the violation of Labor Code
23 § 226(a). As of the date of this filing, the LWDA has not informed Plaintiff whether it intends to
24 investigate the violations. Therefore, Plaintiff may proceed in this action and seek all applicable
25 penalties on behalf of the State and all similarly aggrieved employees pursuant to Labor Code §§ 226.3
26 and 2699, as well as costs and attorneys’ fees.

27 **PRAYER FOR RELIEF**

28 WHEREFORE, Plaintiff prays for judgment individually and all others on whose behalf this
suit is brought against Defendants, jointly and severally, as follows:

1. For an order certifying the proposed Class;
2. For an order appointing Plaintiff as the representative of the Class as described herein;
3. For an order appointing counsel for Plaintiff as Class counsel;
4. Upon the First Cause of Action, for damages and/or penalties pursuant to California Labor Code § 226, and for costs and attorneys' fees;
5. Upon the Second Cause of Action, for civil penalties, costs and attorneys' fees pursuant to Labor Code §§ 226.3 and 2699;
6. On all causes of action, for attorneys' fees and costs as provided by California Labor Code §226 and Code of Civil Procedure § 1021.5; and
7. For such other and further relief as the Court may deem just and proper.

DATED: May 7, 2021

LAW OFFICES OF CHOI & ASSOCIATES, P.C.

By: 
Edward W. Choi
Attorneys for PLAINTIFF and the CLASS