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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*

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

- (1) VIOLATION OF CAL. LABOR
CODE § 226;**
- (2) VIOLATION OF LABOR CODE §
226.7 AND 512;**
- (3) VIOLATION OF LABOR CODE §
2698, ET SEQ.; AND**
- (4) VIOLATION OF BUSINESS &
PROFESSIONS CODE § 17200, ET
SEQ.**

DEMAND OVER \$25,000

1 Plaintiff DAVID STRESHLY (“Plaintiff”), hereby submits this Second 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 and failure to pay meal break premium wages at the regular rate of pay as
8 follows:

9 **INTRODUCTION**

10 1. This class action is within the Court’s jurisdiction under California Labor Code §§ 201-
11 203, 226, 226.7, 512, and 2698, *et seq.*, the California Industrial Welfare Commission’s (“IWC”) Wage
12 Orders, and California Business & Professions Code § 17200, *et seq.*

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

15 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants jointly and
16 severally have acted knowingly and intentionally by failing to provide accurate itemized wage
17 statements and failing to pay meal break premium wages at the regular rate of pay.

18 **JURISDICTION AND VENUE**

19 4. The Court has jurisdiction over the violations of the California Labor Code §§ 201-203,
20 226, 226.7, 512, and 2698, *et seq.*

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

23 **PARTIES**

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

7. Defendants are in the hotel industry providing hotel accommodations and amenities in

1 San Diego County, California.

2 8. Plaintiff was and is a victim of the policies, practices, and customs of Defendants
3 complained of in this action in ways that have deprived Plaintiff of the rights guaranteed by California
4 Labor Code §§ 201-203, 226, 226.7, 512, and 2698, *et seq.*

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

8 10. As such, and based upon all the facts and circumstances incident to Defendants' business
9 in California, Defendants are subject to California Labor Code §§ 201-203, 226, 226.7, 512, and 2698,
10 *et seq.*

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

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

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

28 14. At all times herein mentioned, Defendants, and each of them, were members of, and

engaged in, a joint venture, partnership and common enterprise, and acting within the course and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

15. At all times herein mentioned, the acts and omissions of various Defendants, and each 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”);
- 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”); and
- d. All California non-exempt employees who were paid non-discretionary incentive wages including, but not limited to, shift differential wages and meal break premium wages in the same period at any time during the period of time from September 30, 2016, through the present (the “Meal Period 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

1 with accurate itemized wage statements in violation of Labor Code § 226 and failed to pay employees
2 their meal break premium wages at their regular rate of pay in violation of Labor Code §§ 201-203,
3 226.7 and 512.

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

9 **19.** Defendants uniformly administered a corporate policy and practice of providing
10 employees with inaccurate itemized wage statements in violation of Labor Code § 226 and failure to
11 pay employees their meal break premium wages at their regular rate of pay in violation of Labor Code
12 §§ 201-203, 226.7 and 512.

13 **20. Common Question of Law and Fact:** There are predominant common questions of
14 law and fact and a community of interest amongst Plaintiffs and the claims of the Class concerning the
15 Defendants failure to provide employees with accurate itemized wage statements in violation of Labor
16 Code § 226 and failure to pay employees their meal break premium wages at their regular rate of pay
17 in violation of Labor Code §§ 201-203, 226.7 and 512.

18 **21. Typicality:** The claims of the named Plaintiff are typical of the claims of all members
19 of the Class in that Plaintiff has suffered the harm alleged in this Complaint in a similar and typical
20 manner as the Class members. Plaintiff's wage statement did not accurately reflect the accurate total
21 hours worked when overtime wages were paid. Further, whenever shift differential wages were paid,
22 the wage statements issued to Plaintiff and the Class, the wage statements failed to identify the
23 applicable hourly rates of the pay and hours used to calculate such wages. Additionally, Defendants
24 violated Labor Code §§226.7 and 512 by failing to pay meal break premium wages at the regular rate
25 of pay. Specifically, whenever meal break premium wages were paid to Plaintiff and other class
26 members, the meal break premium wages were paid at the base hourly rate of pay, which did not
27 include the shift differential wages that such employees received during the same period. Thus, the
28 meal break premium wages were not paid at the regular rate of pay. Finally, Plaintiff was issued wage

1 statements that do not show the name of the legal entity that is the employer. Instead, Hilton Memphis
2 Shared Services is shown on the wage statements. Based on the foregoing, Plaintiff is a member of
3 the Class and has suffered the alleged violations of California Labor Code §§ 201-203, 226, 226.7, and
4 512.

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

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

19 24. The prosecution of separate actions by the individual class members, even if possible,
20 would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual
21 Class members against the Defendants and which would establish potentially incompatible standards
22 of conduct for the Defendants, and/or (b) adjudications with respect to individual Class members
23 which would, as a practical matter, be dispositive of the interest of the other Class members not parties
24 to the adjudications or which would substantially impair or impede the ability of the Class members to
25 protect their interests. Further, the claims of the individual members of the Class are not sufficiently
26 large to warrant vigorous individual prosecution considering all of the concomitant costs and
27 expenses.

28 25. Such a pattern, practice and uniform administration of corporate policy regarding

1 illegal employee compensation described herein is unlawful and creates an entitlement to recovery by
2 Plaintiff and the Class identified herein, in a civil action any and all applicable penalties and/or
3 damages, reasonable attorneys' fees, and costs of suit according to the mandate of California Labor
4 Code §§ 218.5 and 226 and Code of Civil Procedure § 1021.5.

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

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

10 **FIRST CAUSE OF ACTION**

11 **VIOLATION OF LABOR CODE § 226**

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

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

16 29. Defendants failed in its affirmative obligation to provide accurate itemized wage
17 statements in violation of Labor Code § 226(a). Specifically, Defendants violated Labor Code §
18 226(a) by, failing to list the accurate total hours worked whenever overtime wages were paid. Further,
19 whenever shift differential wages were paid, the wage statements issued to Plaintiff and the Class
20 failed to identify the applicable hourly rates of pay and hours used to calculate such wages. Rather, the
21 wage statements simply identified the gross sum of shift differential wages without an explanation as
22 to how such wages were calculated. Finally, the wage statements issued by Defendants to all of its
23 employees failed to identify the correct legal name of the employer. Rather, the wage statements
24 identified the employer as various names, including, but not limited to, "Hilton Memphis Shared
25 Services".

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

28 31. Such a pattern, practice and uniform administration of corporate policy as described

herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class identified herein, in a civil action, for all damages or penalties pursuant to Labor Code § 226, including interest thereon, attorneys' fees, and costs of suit according to the mandate of California Labor Code § 226.

SECOND CAUSE OF ACTION

VIOLATION OF LABOR CODE §§ 226.7 AND 512

(AGAINST ALL DEFENDANTS AND DOES 1-50 BY PLAINTIFF AND THE MEAL PERIOD PREMIUM CLASS)

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

33. At all relevant times, Defendants failed in their affirmative obligation to ensure that Plaintiff, and other class members, had the opportunity to take and were provided with off-duty meal periods in accordance with the mandates of the California Labor Code and the applicable IWC Wage Order. Plaintiff and Class Members were suffered and permitted to work through legally required meal breaks and were denied the opportunity to take their full 30-minute off-duty meal breaks. As such, Defendants are responsible for paying premium compensation for missed meal periods pursuant to Labor Code §§ 226.7 and 512 and the applicable IWC Wage Order. Specifically, Labor Code § 226.7(c) provides that "the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday the meal or rest or recovery period is not provided." Defendants, as a matter of corporate policy and procedure, regularly failed to pay the meal period premium at the correct rate of pay. Plaintiff and Class Members earned non-discretionary incentive pay, such as shift differential wages, which was not factored into the regular rate of pay for purposes of paying meal period premium pay. Instead, during the same periods in which Plaintiff and Class Members earned non-discretionary remuneration, Defendants improperly paid the meal premium pay at the base rate of pay.

34. Plaintiff is informed and believe and based thereon alleges that Defendants willfully failed to include all remuneration, including non-discretionary remuneration, in the regular rate of pay for purposes of calculating meal period premium pay, as required by Labor Code §§ 226.7 and 512, and the applicable IWC Wage Order. Plaintiff further alleges that Plaintiff and similarly situated employees are owed wages for the meal period violations set forth above.

1 35. Plaintiff is informed and believes, and based thereon allege, that Defendants' willful
2 failure to provide all meal period premium pay and/or wages due and owing them upon separation from
3 employment results in a continued payment of wages up to thirty (30) days from the time the wages
4 were due. Therefore, Plaintiff and other members of the Class who have separated from employment
5 are entitled to compensation pursuant to Labor Code § 203.

6 36. Such a pattern, practice and uniform administration of corporate policy as described
7 herein is unlawful and creates an entitlement to recovery by the Plaintiff and Class Members identified
8 herein, in a civil action, for the unpaid balance of the unpaid premium compensation pursuant to Labor
9 Code §§ 201, 202, 203, 226.7 and 512, and the applicable IWC Wage Order, including interest thereon,
10 penalties, and costs of suit.

11 **THIRD CAUSE OF ACTION**

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

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

14 37. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 36 as though fully
15 set for herein.

16 38. 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 39. On or about March 22, 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 40. On December 9, 2021, Plaintiff submitted an Amendment to his March 22, 2021 written
28 notice to the LWDA for Defendant's violation of Labor Code §§203, 226.7 and 226. As of the date of
this filing, the LWDA has not informed Plaintiff whether it intends to investigate the violations.

1 Therefore, Plaintiff may proceed in this action and seek all applicable penalties on behalf of the State
2 and all similarly aggrieved employees pursuant to Labor Code §§ 226.3 and 2699, as well as costs and
3 attorneys' fees.

4 **FOURTH CAUSE OF ACTION**

5 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200, *ET SEQ.***

6 **(BY PLAINTIFF ON BEHALF OF THE MEAL PREMIUM CLASS AGAINST ALL**
7 **DEFENDANTS)**

8 41. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 39 as though
9 fully set for herein.

10 42. Defendants, and each of them, have engaged and continue to engage in unfair and
11 unlawful business practices in California by practicing, employing and utilizing the employment
12 practices outlined above, include, to wit, by failing to include all non-discretionary remuneration, in
13 the regular rate of pay for purposes of calculating meal period premium pay in violation of Labor
14 Code §§ 226.7 and 512.

15 43. Defendants' utilization of such unfair and unlawful business practices constitutes
16 unfair, unlawful competition and provides an unfair advantage over Defendants' competitors.

17 44. Plaintiff seeks individually and on behalf of all other members of the Class similarly
18 situated, full restitution of monies, as necessary and according to proof, to restore any and all monies
19 withheld, acquired and/or converted by the Defendants by means of the unfair practices complained
20 of herein.

21 45. Plaintiff is informed and believes, and based thereon alleges, that at all times herein
22 mentioned Defendants have engaged in unlawful, deceptive and unfair business practices, as
23 proscribed by California Business and Professions Code § 17200, *et seq.*, including those set forth
24 herein above thereby depriving Plaintiff and other members of the class the minimum working
25 condition standards and conditions due to them under the California laws as specifically described
26 therein.

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 damages and/or penalties pursuant to Labor Code §§ 201-203, 226, 226.7, and 512, and for costs;
6. Upon the Third Cause of Action, for civil penalties, costs and attorneys' fees pursuant to Labor Code §§ 226.3 and 2699;
5. Upon the Fourth Cause of Action, for restitution to Plaintiff and other similarly effected members of the general public of all funds unlawfully acquired by Defendant by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq*;
7. 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
8. For such other and further relief as the Court may deem just and proper.

DATED: February 8, 2022

LAW OFFICES OF CHOI & ASSOCIATES, P.C.

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

PROOF OF SERVICE

I am employed in the County of Los Angeles; I am over the age of 18 years and not a party to the within action; my business address is 515 S. Figueroa St., Suite 1250, Los Angeles, California 90071.

On February 8, 2022, I served the foregoing document(s) described as: **SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT**, on the interested parties in this action by placing a true copy thereof, in a sealed envelope(s) addressed as follows:

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BY MAIL

As follows: I am “readily familiar” with the practice of Choi & Associates, Attorneys at Law for collection and processing of correspondence for mailing with the United States Postal Service and that correspondence placed in the outgoing mail tray in my office for collection would be deposited in the United States Mail that same day in the ordinary course of business.

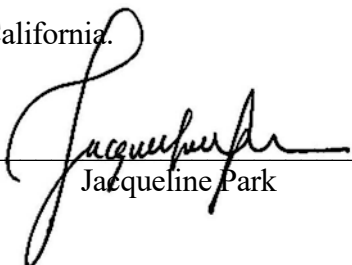
BY ELECTRONIC SERVICE

I caused such document to be served on the offices of the addressees via electronic transmission.

(State) I declare under penalty of perjury that the foregoing is true and correct.

(Federal) I declare under penalty of perjury that the foregoing is true and correct, and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on February 8, 2022, at Los Angeles, California.


Jacqueline Park