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County of Santa Barbara
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By: Narzralli Baksh, Deputy

1 RUBEN ESCOBEDO (SBN 277866)
2 WORKWORLD LAW CORP.
3 A Professional Corporation
4 6907 El Camino Real, Suite A
5 Atascadero, CA 93422
6 Telephone: (805) 335-2476
7 Facsimile: (805) 892-6213
8 Email: support@workworldlaw.com

9 Attorney for GRACIELA ORTEGA,
10 as Private Attorney General

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SANTA BARBARA – ANACAPA DIVISION**

13 STATE OF CALIFORNIA ex rel.
14 GRACIELA ORTEGA, as Private
15 Attorney General,

16 Plaintiff,

17 v.

18 STATE STREET HOSPITALITY INC.;
19 and DOES 1-25, inclusive,

20 Defendants.

Case No. 22CV02942

Assigned for All Purposes to:

**COMPLAINT FOR CIVIL PENALTIES
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004**

Trial Date: None

Complaint filed:

21 COMES NOW Plaintiff STATE OF CALIFORNIA ex rel. GRACIELA ORTEGA as
22 Private Attorney General (“Plaintiff”), who asserts claims against STATE STREET
23 HOSPITALITY INC. and DOES 1-25, inclusive (collectively “Defendants” or “Employer”) as
24 follows:

INTRODUCTION

25 1. Plaintiff brings this action under the Labor Code Private Attorneys General Act of
26 2004 (“PAGA”), Labor Code sections 2698, *et seq.*, on behalf of herself, approximately more than
27 250 similarly situated current and former aggrieved employees employed by Employer between
28 May 23, 2021, and the resolution of this action (“Statutory Period”), and the People of the State of

1 California (hereinafter collectively "Employees"). Ms. Ortega worked for Employer as a
2 housekeeper during the Statutory Period.

3 2. PAGA, specifically Section 2699, subdivision (a) of the California Labor Code,
4 permits an aggrieved employee to recover civil penalties set forth within the California Labor
5 Code for violations of the California Labor Code. In addition, Section 2699(f) establishes civil
6 penalties for violations of California Labor Code provisions that do not contain their own civil
7 penalties. Employees bring this civil action to recover civil penalties for the violations identified
8 below, including civil penalties pursuant to Section 2699, subdivision (f) as well as those civil
9 penalties specifically set forth within the text of the California Labor Code. Those civil penalties
10 are sought for violations committed against Employees of Employers.

11 3. Plaintiff has filed an exhaustion letter with the California Labor and Workforce
12 Development Agency ("LWDA") providing notice of his intent to bring a private attorneys
13 general action for recovery of penalties under the PAGA. The LWDA has not investigated within
14 the time set forth by statute and Plaintiff is now authorized to bring the present action.

15 **JURISDICTION AND VENUE**

16 4. This Court has jurisdiction over this action pursuant to the California Constitution,
17 Article VI, §10.

18 5. Venue is proper in this Court because this action arises from work performed in
19 Santa Barbara County.

20 **PARTIES**

21 6. For all times relevant herein, GRACIELA ORTEGA was an adult individual
22 residing in the State of California. Ms. Ortega is not suing in her individual capacity; she is
23 proceeding herein solely under the PAGA exclusively in a representative capacity, on behalf of the
24 State of California.

25 7. For all times relevant herein, Plaintiff is informed and believes, and on that basis
26 alleges, that Defendant STATE STREET HOSPITALITY INC. was and is a corporation with its
27 principal place of business in California.

1 8. Whenever in this Complaint reference is made to any act, deed, or conduct of
2 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or
3 through one or more of its agents, employees, or representatives, who was actively engaged in the
4 management, direction, control, or transaction of the business and affairs of Defendants.

5 9. Plaintiff is ignorant of the true names and capacities, whether individual, corporate,
6 associate, or otherwise, of the defendants sued herein as Does 1 through 25, inclusive, and
7 therefore sues said defendants (the "Doe Defendants") by such fictitious names. Plaintiff will
8 amend this Complaint to insert the true names and capacities of the Doe Defendants at such time
9 as the identities of the Doe Defendants are ascertained.

10 10. Plaintiff is informed and believes, and based thereon alleges, that the Doe
11 Defendants are the partners, agents, or principals and co-conspirators of Defendants, and of each
12 other; that Defendants and the Doe Defendants performed the acts and conduct herein alleged
13 directly, aided and abetted the performance thereof, or knowingly acquiesced in, ratified, and
14 accepted the benefits of such acts and conduct, and therefore each of the Doe Defendants is liable
15 to the extent of the liability of Defendants as alleged herein.

16 11. Plaintiff is further informed and believe, and thereon allege, that at all times herein
17 material, each Defendant was completely dominated and controlled by its co-Defendant(s) and
18 each was the alter ego of the other. Whenever and wherever reference is made in this Complaint to
19 any conduct by Defendants, or any of them, such allegations and references shall also be deemed
20 to mean the conduct of each of the Defendants, acting individually, jointly, and severally.
21 Whenever and wherever reference is made to individuals who are not named as defendants in this
22 Complaint, but were employees and/or agents of Defendants, such individuals at all relevant times
23 acted on behalf of Defendants named in this Complaint within the scope of their respective
24 employment or agency with Defendants.

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1 **FIRST COUNT**

2 **Failure to Provide Compliant Rest Periods or Pay Rest Premiums**

3 **(By Plaintiff against All Defendants)**

4 12. Plaintiff incorporates by reference and realleges each and every allegation
5 contained above, as though fully set forth herein.

6 13. Pursuant to the applicable Industrial Welfare Commission Wage Order,
7 employers must provide non-exempt employees a ten (10) minute duty-free rest period for every
8 four (4) hours worked or major fraction thereof. Duty-free rest periods must be paid. Moreover,
9 the applicable Wage Order provides “Every employer shall authorize and permit all employees to
10 take rest periods, which insofar as practicable shall be in the middle of each work period.” An
11 employer who fails to provide a duty-free and timely rest period must pay the employee an
12 additional one (1) hour of regular pay for each day in which a duty-free rest period is not provided.
13 Cal. Lab. Code, § 226.7, subd. (c).

14 14. In addition, “Any employer or other person acting on behalf of an employer who
15 violates, or causes to be violated, a section of this chapter or any provision regulating hours and
16 days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty
17 as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each
18 pay period for which the employee was underpaid in addition to an amount sufficient to recover
19 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each
20 underpaid employee for each pay period for which the employee was underpaid in addition to an
21 amount sufficient to recover underpaid wages.” Cal. Lab. Code, § 558, subd. (a).

22 15. Throughout the Statutory Period, Employer maintained a policy and practice of
23 scheduling and assigning an excessive amount of work and responsibilities which precluded
24 Employees from taking timely, compliant, off-duty rest periods for full ten-minute periods
25 throughout their workdays. Employer’s policy and practice made the Employees on-call for all
26 intents and purposes throughout their shifts, including times during which they should have been
27 permitted to take a completely off-duty break. Employer violated Section 226.7 throughout the
28 Statutory Period and is subject to additional civil penalties. Employer also failed to pay premium

1 wages as required by Section 226.7, resulting in derivative violations of Sections 201, 202, 203,
2 204, and 226 based on Employer's failure to pay those wages to Employees within the time
3 prescribed by Section 204, or at the time of their termination, or within 72 hours of their
4 resignation, as prescribed by Sections 201-203, and based on Employer's failure to issue itemized
5 wage statements at the time of each payment of wages showing the premium wages earned as
6 prescribed by Section 226.

7 16. Defendants are subject to all civil penalties and other remedies under the PAGA.

8 **SECOND COUNT**

9 **Failure to Pay Out Vacation Wages at Termination**

10 **(By Plaintiff against All Defendants)**

11 17. Plaintiff incorporates by reference and realleges each and every allegation
12 contained above, as though fully set forth herein.

13 18. "Unless otherwise provided by a collective-bargaining agreement, whenever a
14 contract of employment or employer policy provides for paid vacations, and an employee is
15 terminated without having taken off his vested vacation time, all vested vacation shall be paid to
16 him as wages at his final rate in accordance with such contract of employment or employer policy
17 respecting eligibility or time served; provided, however, that an employment contract or employer
18 policy shall not provide for forfeiture of vested vacation time upon termination." Lab. Code, §
19 227.3.

20 19. Throughout the Statutory Period, Employer offered Employees vacation time, but
21 Employees are informed and believe that Employer did not and does not pay out Employees
22 accrued vacation at the time of termination of their employment. These wages were owed and due
23 to Employees at the time of their separation. Employer did not provide these payments to
24 Employees at the time of termination or within a sufficient time of resignation as required by law.
25 Employer's failure to timely pay these wages at the time of separation, and failure to pay
26 Employees' continued wages for the 30-day period thereafter, constitutes a violation of Sections
27 201, 202, and 203.

28 20. Defendants are subject to all civil penalties and other remedies under the PAGA.

1 **THIRD COUNT**

2 **Failure to Establish, Implement, and Maintain Effective Injury Prevention Program**

3 **(By Plaintiff against All Defendants)**

4 21. Plaintiff incorporates by reference and realleges each and every allegation
5 contained above, as though fully set forth herein.

6 22. "Every employer shall establish, implement, and maintain an effective injury
7 prevention program. The program shall be written, except as provided in subdivision (e), and shall
8 include, but not be limited to, the following elements: (1) Identification of the person or persons
9 responsible for implementing the program. (2) The employer's system for identifying and
10 evaluating workplace hazards, including scheduled periodic inspections to identify unsafe
11 conditions and work practices. (3) The employer's methods and procedures for correcting unsafe
12 or unhealthy conditions and work practices in a timely manner. (4) An occupational health and
13 safety training program designed to instruct employees in general safe and healthy work practices
14 and to provide specific instruction with respect to hazards specific to each employee's job
15 assignment. (5) The employer's system for communicating with employees on occupational health
16 and safety matters, including provisions designed to encourage employees to inform the employer
17 of hazards at the worksite without fear of reprisal. (6) The employer's system for ensuring that
18 employees comply with safe and healthy work practices, which may include disciplinary action."
19 Lab. Code, 6401.7, subd. (a). "The employer shall correct unsafe and unhealthy conditions and
20 work practices in a timely manner based on the severity of the hazard." Lab. Code, 6401.7, subd.
21 (b).

22 23. "The employer shall train all employees when the training program is first
23 established, all new employees, and all employees given a new job assignment, and shall train
24 employees whenever new substances, processes, procedures, or equipment are introduced to the
25 workplace and represent a new hazard, and whenever the employer receives notification of a new
26 or previously unrecognized hazard." Lab. Code, 6401.7, subd. (c). "The employer shall keep
27 appropriate records of steps taken to implement and maintain the program." Lab. Code, 6401.7,
28

1 subd. (d). The standards board shall adopt a standard setting forth the employer's duties under this
2 section....” Lab. Code, 6401.7, subd. (e)(1).

3 24. To substantially comply with Section 6401.7, the employer must provide adequate
4 “meetings, training programs, posting, written communications, a system of anonymous
5 notification by employees about hazards, labor/management safety and health committees, or any
6 other means that ensures communication with employees.” Cal. Code Regs., tit. 8, § 3203, subd.
7 (a)(3).

8 25. “Records of the steps taken to implement and maintain the Program shall include:
9 (1) Records of scheduled and periodic inspections required by subsection (a)(4) [of § 3203] to
10 identify unsafe conditions and work practices, including person(s) conducting the inspection, the
11 unsafe conditions and work practices that have been identified and action taken to correct the
12 identified unsafe conditions and work practices. These records shall be maintained for at least one
13 (1) year; and ... (2) Documentation of safety and health training required by subsection (a)(7) for
14 each employee, including employee name or other identifier, training dates, type(s) of training,
15 and training providers. This documentation shall be maintained for at least one (1) year.” Cal.
16 Code Regs., tit. 8, § 3203, subd. (b).

17 26. Throughout the Statutory Period, Employer subjected all Employees, including Ms.
18 Ortega, to working conditions that exposed them to hazards from the lack of a legally compliant
19 injury prevention program. Employer was subject to all of the foregoing requirements with regard
20 to all of its operations, and Employer failed to establish, implement, and maintain an effective
21 injury prevention program. Employer rushed Employees, including Ms. Ortega, without an
22 opportunity to take adequate breaks as required to reduce the risk of occupational injury.
23 Employer is subject to civil penalties as provided by law.

24 27. Defendants are subject to all civil penalties and other remedies under the PAGA.

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1 **FOURTH COUNT**

2 **Violations of Hotel Housekeeping Musculoskeletal Injury Prevention Standards**

3 **(By Plaintiff against All Defendants)**

4 28. Plaintiff incorporates by reference and realleges each and every allegation
5 contained above, as though fully set forth herein.

6 29. “Every employer and every employee shall comply with occupational safety and
7 health standards, with Section 25910 of the Health and Safety Code, and with all rules,
8 regulations, and orders pursuant to this division which are applicable to his own actions and
9 conduct.” Lab. Code 6407.

10 30. Among these rules, regulations, and orders is Title 8, Section 3345 of the California
11 Code of Regulations, which was applicable to Employer and Employees who were hotel
12 housekeepers (“Hotel Housekeepers”). Throughout the Statutory Period, Employer violated the
13 following provisions of § 3345:

14 31. As part of the Injury and Illness Prevention Program (IIPP) required by Section
15 3203, each employer covered by this section shall establish, implement, and maintain an effective,
16 written, musculoskeletal injury prevention program (MIPP) that addresses hazards specific to
17 housekeeping. The written MIPP may be incorporated into the written IIPP, or may be maintained
18 as a separate program, and must be readily accessible during each work shift to employees when
19 they are in the lodging establishment where they work. (Electronic access and other alternatives to
20 maintaining paper copies of the MIPP are permitted as long as no barriers to employee access are
21 created by such options.) ...

22 32. Hotel Housekeepers were denied compliant rest periods as required by the
23 applicable Wage Order and as alleged above. The Employer’s excessive work rates and denial of
24 rest periods had adverse health consequences on Hotel Housekeepers, and created illegal safety
25 hazards throughout their employment.

26 33. Employer, was required to implement its written MIPP by July 1, 2018, and
27 commence effective procedures for identifying and evaluating housekeeping hazards for the
28 protection of Hotel Housekeepers. Throughout the Statutory Period, Employees are informed and

1 believe that Employer violated the foregoing provisions by failing to establish, implement, and
2 maintain an effective, written, MIPP addressing hazards specific to Hotel Housekeepers'
3 housekeeping activities. Among other things, Employer failed to effectively address hazards
4 related to excessive work rates and inadequate recovery time between housekeeping tasks [§ 3345,
5 subd. (c)(4)(E)(9)-(10)].

6 34. The MIPP shall include: (1) Names or job titles of the persons with authority and
7 responsibility for implementing the MIPP at each worksite. (2) A system for ensuring that
8 supervisors and housekeepers comply with the MIPP, follow the employer's safe workplace
9 housecleaning practices, and use the housekeeping tools or equipment deemed appropriate for
10 each housekeeping task. Substantial compliance with this provision includes recognition of
11 employees who follow the employer's safe workplace housecleaning practices and use the
12 appropriate tools and equipment, training and retraining programs, disciplinary actions, or other
13 means that ensures employee compliance with the MIPP.

14 35. Throughout the Statutory Period, Employees are informed and believe Employer
15 violated the foregoing provisions by failing to establish a system ensuring that supervisors and
16 Hotel Housekeepers complied with the MIPP and followed safe workplace housecleaning
17 practices. Hotel Housekeepers' supervisors created excessive risks of injury as a result of
18 excessive work-rates and inadequate recovery time between housekeeping tasks. "Employees
19 denied their rest and meal periods face greater risk of work-related accidents and increased stress,
20 especially low-wage workers who often perform manual labor." *Murphy v. Kenneth Cole*
21 *Productions, Inc.* (2007) 40 Cal.4th 1094, 1113. Employer's denied compliant rest breaks to Hotel
22 Housekeepers as required by Wage Order 5, and corresponding excessive work-rate and
23 inadequate recovery time between housekeeping tasks, created an unsafe working environment.

24 36. [The MIPP shall include:] (3) A system for communicating with housekeepers in a
25 form readily understandable by all housekeepers on matters relating to occupational safety and
26 health, as required by Section 3203, including provisions designed to encourage housekeepers to
27 inform the employer of hazards at the worksite, and injuries or symptoms that may be related to
28 such hazards without fear of reprisal.

1 37. Throughout the Statutory Period, Employer violated the foregoing provisions by
2 failing to establish a system for communicating with Hotel Housekeepers in a form they would
3 readily understand to encourage them to inform Employer of hazards related to excessive work-
4 rates and inadequate recovery time between housekeeping tasks.

5 38. (4) Procedures for identifying and evaluating housekeeping hazards through a
6 worksite evaluation. (A) The initial worksite evaluation shall be completed within three months
7 after [July 1, 2018] the effective date of this section or within three months after the opening of a
8 new lodging establishment. (B) The procedures shall include an effective means of involving
9 housekeepers and their union representative in designing and conducting the worksite evaluation.
10 (C) Housekeepers shall be notified of the results of the worksite evaluation in writing or by
11 posting it in a location readily accessible to them. The results of the worksite evaluation shall be in
12 a language easily understood by housekeepers. (D) The worksite evaluation shall be reviewed and
13 updated: 1. Whenever new processes, practices, procedures, equipment or guest room renovations
14 are introduced that may change or increase housekeeping hazards; 2. Whenever the employer is
15 made aware of a new or previously unrecognized housekeeping hazard based on information such
16 as, but not limited to, the findings and recommendations of injury investigations conducted in
17 accordance with subsection (c)(5); 3. At least annually for each worksite.

18 39. Throughout the Statutory Period, Employer violated the foregoing provisions by
19 failing to review and effectively update its worksite evaluation in a timely manner on or before
20 October 1, 2019, and at such earlier times when it became aware of additional housekeeping
21 hazards related to excessive work-rates and inadequate recovery time between housekeeping tasks.
22 Hotel Housekeepers' injuries, including Ms. Ortega's injuries, placed Employer on notice that
23 additional worksite evaluations were necessary.

24 40. (E) The worksite evaluation shall identify and address potential injury risks to
25 housekeepers including, but not limited to: (1) slips, trips and falls; (2) prolonged or awkward
26 static postures; (3) extreme reaches and repetitive reaches above shoulder height, (4) lifting or
27 forceful whole body or hand exertions; (5) torso bending, twisting, kneeling, and squatting; (6)
28 pushing and pulling; (7) falling and striking objects; (8) pressure points where a part of the body

1 presses against an object or surface; (9) excessive work-rate; and (10) inadequate recovery time
2 between housekeeping tasks.

3 41. Throughout the Statutory Period, Employer violated the foregoing provision by
4 failing to effectively identify and address potential injury risks to Hotel Housekeepers from
5 excessive work-rate and inadequate recovery time between housekeeping tasks in its evaluations
6 and updated evaluations.

7 42. (5) Procedures to investigate musculoskeletal injuries to housekeepers. Injury
8 investigations shall include, at a minimum: ... (C) Input from the injured housekeeper, the
9 housekeeper's union representative, and the housekeeper's supervisor as to whether any other
10 control measure, procedure, or tool would have prevented the injury.

11 43. Throughout the Statutory Period, Employer violated the foregoing provision by
12 failing to establish and implement effective procedures to investigate musculoskeletal injuries to
13 Hotel Housekeepers which include input from the Hotel Housekeepers and their representatives as
14 to whether additional actions (including safe work-rates and additional recovery time between
15 housekeeping tasks) would have prevented the injury.

16 44. (d) Training. The employer shall provide training to housekeepers and their
17 supervisors in a language easily understood by these employees. ... (2) Training shall include at
18 least the following elements as applicable to the housekeeper's assignment: (A) The signs,
19 symptoms, and risk factors commonly associated with musculoskeletal injuries, (B) The elements
20 of the employer's MIPP and how the written MIPP and all records in subsection (e)(1) will be
21 made available to housekeepers; (C) The process for reporting safety and health concerns without
22 fear of reprisal; (D) Body mechanics and safe practices including: identification of hazards at the
23 workplace, how those hazards are controlled during each housekeeping task, the appropriate use of
24 cleaning tools and equipment, and the importance of following safe work practices and using
25 appropriate tools and equipment to prevent injuries; (E) The importance of, and process for, early
26 reporting of symptoms and injuries to the employer; (F) Practice using the types and models of
27 equipment and tools that the housekeeper will be expected to use; (G) An opportunity for
28 interactive questions and answers with a person knowledgeable about hotel housekeeping

1 equipment and procedures; and (H) Training of supervisors on how to identify hazards, the
2 employer's hazard correction procedures, how defective equipment can be identified and replaced,
3 how to obtain additional equipment, how to evaluate the safety of housekeepers' work practices,
4 and how to effectively communicate with housekeepers regarding any problems needing
5 correction.

6 45. Throughout the Statutory Period, Employer violated the foregoing provisions by
7 failing to effectively train Hotel Housekeepers and supervisors regarding hazards related to
8 excessive work-rates and inadequate recovery time between housekeeping tasks, following safe
9 practices to avoid these risks and injuries therefrom (including safe work-rates and additional
10 recovery time between housekeeping tasks), reporting of symptoms and injuries arising from these
11 risks, and effective communications between supervisors and Hotel Housekeepers regarding work
12 rates, recovery time, and problems in these areas needing correction.

13 46. Employer is subject to additional civil penalties as provided by law.

14 **FIFTH COUNT**

15 **Permitting Unsafe Work and Failure to Provide Safe Workplace, Practices, and Processes**

16 **(By Plaintiff against All Defendants)**

17 47. Plaintiff incorporates by reference and realleges each and every allegation
18 contained above, as though fully set forth herein.

19 48. By committing the acts and omissions described in the preceding sections
20 throughout Employees' employment and throughout the past year, Employer also violated Labor
21 Code, §§ 6400, 6401, 6402, 6403, 6404 by requiring and permitting unsafe work, and failing to
22 provide safe workplaces, practices, and processes to its Employees, including Ms. Ortega.
23 Employer is subject to additional civil penalties as provided by law.

24 **PRAYER**

25 WHEREFORE, Plaintiff and Employees pray for judgment against Defendants, as follows:

26 1. For civil penalties pursuant to Labor Code sections 2698, *et seq.* in an amount to
27 be ascertained at trial exceeding \$25,000.

28 2. For reasonable costs and attorneys' fees; and

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3. For such other and further relief as the Court deems proper.

DATED: July 29, 2022

WORKWORLD LAW CORP.
A Professional Corporation

By 

RUBEN ESCOBEDO
Attorneys for GRACIELA ORTEGA
as Private Attorney General