

SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT: MARRIOTT HOTEL SERVICES, INC., a
(AVISO AL DEMANDADO): Delaware corporation, and DOES 1 through
10, inclusive

E-FILED
7/21/2022 10:08 AM
Clerk of Court
Superior Court of CA,
County of Santa Clara
22CV400968
Reviewed By: R. Walker
Envelope: 9510919

YOU ARE BEING SUED BY PLAINTIFF: GABRIELA BUSTAMANTE, on behalf
(LO ESTÁ DEMANDANDO EL DEMANDANTE): of herself and all
"aggrieved employees" pursuant to Labor Code § 2698 et seq.

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):
Superior Court of California, County of Santa Clara
191 North First Street
San Jose, California 95113

CASE NUMBER:
(Número del Caso)
22CV400968

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: Daniel F. Gaines, Esq. #20754
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

GAINES & GAINES, APLC

4550 E. Thousand Oaks Blvd., Suite 100, Westlake Village, CA 91362

818-703-8985

DATE: 7/21/2022 10:08 AM Clerk of Court Clerk, by R. Walker, Deputy
(Fecha) *(Secretario)* *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify)*:
3. ☐ on behalf of *(specify)*:

under: ☐ CCP 416.10 (corporation)	☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation)	☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership)	☐ CCP 416.90 (authorized person)
☐ other <i>(specify)</i> :	
4. ☐ by personal delivery on *(date)*:

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

Daniel F. Gaines, Esq.

SBN: 202754

GAINES & GAINES, APLC

4550 E. Thousand Oaks Blvd., Suite 100, Westlake Village, CA 91362

TELEPHONE NO.: 818-703-8985

FAX NO. (Optional): 818-703-8984

E-MAIL ADDRESS: daniel@gaineslawfirm.com

ATTORNEY FOR (Name): Plaintiff, Gabriela Bustamante

FOR COURT USE ONLY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA

STREET ADDRESS: 191 North First Street

MAILING ADDRESS: 191 North First Street

CITY AND ZIP CODE: San Jose, 95113

BRANCH NAME: Downtown Superior Court

CASE NAME: Bustamante v. Marriott Hotel Services, Inc., et al.

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 7/21/2022 10:08 AM
Reviewed By: R. Walker
Case #22CV400968
Envelope: 9510919**

CIVIL CASE COVER SHEET

☒ **Unlimited**
(Amount
demanded
exceeds \$25,000)

☐ **Limited**
(Amount
demanded is
\$25,000 or less)

Complex Case Designation

☐ Counter ☐ Joinder

Filed with first appearance by defendant
(Cal. Rules of Court, rule 3.402)

CASE NUMBER
22CV400968

JUDGE:

DEPT.:

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort

☐ Auto (22)

☐ Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

☐ Asbestos (04)

☐ Product liability (24)

☐ Medical malpractice (45)

☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

☐ Business tort/unfair business practice (07)

☐ Civil rights (08)

☐ Defamation (13)

☐ Fraud (16)

☐ Intellectual property (19)

☐ Professional negligence (25)

☐ Other non-PI/PD/WD tort (35)

Employment

☐ Wrongful termination (36)

☒ Other employment (15)

Contract

☐ Breach of contract/warranty (06)

☐ Rule 3.740 collections (09)

☐ Other collections (09)

☐ Insurance coverage (18)

☐ Other contract (37)

Real Property

☐ Eminent domain/Inverse condemnation (14)

☐ Wrongful eviction (33)

☐ Other real property (26)

Unlawful Detainer

☐ Commercial (31)

☐ Residential (32)

☐ Drugs (38)

Judicial Review

☐ Asset forfeiture (05)

☐ Petition re: arbitration award (11)

☐ Writ of mandate (02)

☐ Other judicial review (39)

Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400–3.403)

☐ Antitrust/Trade regulation (03)

☐ Construction defect (10)

☐ Mass tort (40)

☐ Securities litigation (28)

☐ Environmental/Toxic tort (30)

☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint

☐ RICO (27)

☐ Other complaint (not specified above) (42)

Miscellaneous Civil Petition

☐ Partnership and corporate governance (21)

☐ Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses
- b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): One (1)

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 7/21/22

Daniel F. Gaines, Esq.

(TYPE OR PRINT NAME)

Daniel F. Gaines

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)–Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice–Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach–Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case–Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ–Administrative Mandamus
Writ–Mandamus on Limited Court Case Matter
Writ–Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal–Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

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Facsimile: (818) 703-8984

Attorneys for Plaintiff Gabriela Bustamante, on behalf of herself and all “aggrieved employees” pursuant to Labor Code § 2698 *et seq.*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

GABRIELA BUSTAMANTE, on behalf of
herself and all “aggrieved employees” pursuant
to Labor Code § 2698 *et seq.*,

Plaintiff,

v.

MARRIOTT HOTEL SERVICES, INC., a
Delaware corporation, and DOES 1 through
10, inclusive,

Defendants.

CASE NO: **22CV400968**

**REPRESENTATIVE ACTION
COMPLAINT FOR PENALTIES
PURSUANT TO LABOR CODE § 2699(f)
FOR VIOLATIONS OF LABOR CODE
§§ 201, 202, 226(a), 226.7, 510, 512, AND
1194 AND PURSUANT TO LABOR CODE
§ 2699(a) FOR VIOLATIONS OF LABOR
CODE §§ 226.3 AND 558**

1 Plaintiff GABRIELA BUSTAMANTE (“Plaintiff”), on behalf of herself and others as an
2 “aggrieved employee” under the Labor Code Private Attorneys General Act of 2004, complains of
3 MARRIOTT HOTEL SERVICES, INC., a California corporation, and/or any subsidiaries or
4 affiliated companies (hereinafter referred to as “Defendants”), as follows:

5 **I.**

6 **INTRODUCTION AND FACTUAL BACKGROUND**

7 1. This is a Representative Action, pursuant to Labor Code § 2698 et seq., on behalf of
8 Plaintiff and other non-exempt California employees who currently work or formerly worked for
9 Defendants (“Aggrieved Employees”).

10 2. For at least one (1) year prior to the filing of this action and at least one (1) year prior
11 to the date Plaintiff began the process of exhausting the administrative requirements, pursuant to
12 Labor Code § 2698 et seq., and continuing to the present (the “liability period”), Defendants have had
13 consistent policies of:

14 a. Failing to properly compute all non-base hourly wages (including banquet
15 service charges) earned by Plaintiff and other Aggrieved Employees into their regular rate of
16 pay for purposes of paying them meal and rest period premiums and overtime wages at the
17 correct rates, in violation of Labor Code §§ 226.7, 510, 512, 558 and 1194. Defendants paid
18 Plaintiff and other Aggrieved Employees non-base hourly wages (including banquet service
19 charges) for working specific shifts; however, Defendants failed to properly blend these non-
20 base hourly wages and instead paid Plaintiff and other Aggrieved Employees meal and rest
21 period premiums and overtime wages based only on the base hourly rate of pay, or at some
22 other incorrect rate below the proper rate, thus depriving Plaintiff and other Aggrieved
23 Employees of all meal and rest period premiums and overtime wages earned. This violates
24 Labor Code §§ 226.7, 510, 512, 558 and 1194;

25 b. Failing to pay correct premium wages to Plaintiff and other Aggrieved
26 Employees who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage
27 Order 5-2001. Plaintiff and other Aggrieved Employees were routinely not authorized and
28 unable to take an off-duty 10-minute rest period for every four (4) hours of work or major

1 fraction thereof, but were not paid premium wages of one hour's pay at the correct rate for
2 each missed rest period. When they are able to take a rest period, Plaintiff and Aggrieved
3 Employees were improperly prohibited from leaving Defendants' premises, thereby
4 subjecting them to Defendants' control during their rest periods. These instances violate Labor
5 Code §§ 226.7, 510, 558, and 1194 and IWC Wage Order 5-2001;

6 c. Failing to pay correct premium wages to Plaintiff and other Aggrieved
7 Employees who were denied proper meal periods, in violation of Labor Code §§ 226.7, 512,
8 558 and IWC Wage Order 5-2001. Plaintiff and Aggrieved Employees were routinely denied,
9 and not authorized to take, a proper, timely, uninterrupted, 30-minute meal period for every
10 shift worked that exceeded five hours, or a second proper, timely, uninterrupted, 30-minute
11 meal period for every shift worked that exceeded ten hours, but were not paid premium wages
12 of one hour's pay at the correct rate for each missed first or second meal period. When Plaintiff
13 and other Aggrieved Employees were able to take a meal period, they were oftentimes late or
14 short. These instances violate Labor Code §§ 226.7, 510, 512, 558, and 1194 and IWC Wage
15 Order 5-2001;

16 d. Failing to provide Plaintiff and other Aggrieved Employees with wage
17 statements that fully and accurately itemized the requirements set forth in Labor Code §
18 226(a). Plaintiff and Aggrieved Employees were not paid all wages due, as stated above. As
19 such, the wage statements provided by Defendants failed to accurately state all gross wages
20 earned, in violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of
21 Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5)
22 and 226.3, and all applicable hourly rates in effect during the pay period and the corresponding
23 numbers of hours worked at each rate, in violation of Labor Code §§ 226(a)(9) and 226.3; and

24 e. Failing to pay Plaintiff and certain Aggrieved Employees all wages due at the
25 separation of their employment based on the time frames required by Labor Code §§ 201 and
26 202. As stated above, Plaintiff and Aggrieved Employees were not paid all wages due during
27 the course of their employment and, as a result of this failure, they were not timely paid all
28

1 wages due at the separation of their employment. This violates Labor Code §§ 201-202 and is
2 alleged on behalf of Plaintiff and certain Aggrieved Employees no longer employed by
3 Defendants.

4 3. Plaintiff, on behalf of herself and all Aggrieved Employees pursuant to Labor Code §
5 2698 *et seq.*, seeks civil penalties for Defendants' violations of the California Labor Code.

6 II.

7 PARTIES

8 A. Plaintiff

9 4. Plaintiff GABRIELA BUSTAMANTE was employed by Defendants from October
10 2021 through March 2022 as a non-exempt employee in Monterey County, California.

11 B. Defendant

12 5. Defendant MARRIOTT HOTEL SERVICES, INC., is a Delaware corporation.
13 Defendant employed Plaintiff and Aggrieved Employees throughout the State of California, including
14 Santa Clara County, California.

15 6. The true names and capacities, whether individual, corporate, associate, or otherwise,
16 of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who
17 therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is
18 informed and believes, and based thereon alleges, that each of the Defendants designated herein as a
19 DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will
20 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
21 designated hereinafter as DOES when such identities become known.

22 7. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted
23 in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme,
24 business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally
25 attributable to the other Defendants.

26 8. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting
27 on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more
28 provisions of the California Labor Code as alleged herein.

1 IV.

2 CAUSES OF ACTION

3 FIRST CAUSE OF ACTION

4 PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
5 CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF
6 LABOR CODE §§ 201, 202, 226(a), 226.7, 510, 512, AND 1194 AND PURSUANT TO LABOR
7 CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558

8 9. Plaintiff incorporates paragraphs 1 through 8 of this Complaint as though fully set
9 forth herein.

10 10. As a result of the acts alleged above, including the Labor Code violations set forth in
11 paragraph 2 above, Plaintiff seeks civil penalties pursuant to Labor Code §§ 2698 *et seq.*

12 11. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to
13 civil penalties subject to the following formula:

14 a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for
15 each subsequent violation of Labor Code §§ 201, 202, 226(a), 226.7, 510, 512,
16 and 1194; and

17 b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by Labor
18 Code §§ 226.3 and 558.

19 12. Civil penalties recovered will be allocated 75% to the Labor and Workforce
20 Development Agency, and 25% to the affected employees.

21 13. On May 11, 2022, Plaintiff sent a letter, by online submission to the LWDA and by
22 certified mail, return receipt requested, to Defendants setting forth the facts and theories of the
23 violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor
24 Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65)
25 calendar days of May 11, 2022. Plaintiff may therefore commence this action to seek civil penalties
26 pursuant to Labor Code § 2698 *et seq.*

27 Wherefore, Plaintiff and the Aggrieved Employees she seeks to represent request relief as
28 described below.

V.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;
2. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1) and other applicable law;
3. An award of attorneys' fees pursuant to Labor Code § 2699(g)(1) and other applicable law; and
4. Such other and further relief as this Court may deem just and proper.

Dated: July 21, 2022

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By: *Evan S. Gaines*
EVAN S. GAINES
Attorneys for Plaintiff

CIVIL LAWSUIT NOTICE

Superior Court of California, County of Santa Clara
191 North First St., San José, CA 95113

CASE NUMBER: **22CV400968**

PLEASE READ THIS ENTIRE FORM

PLAINTIFF (the person suing): Within 60 days after filing the lawsuit, you must serve each Defendant with the *Complaint*, *Summons*, an *Alternative Dispute Resolution (ADR) Information Sheet*, and a copy of this *Civil Lawsuit Notice*, and you must file written proof of such service.

DEFENDANT (The person sued): You must do each of the following to protect your rights:

1. You must file a written response to the *Complaint*, using the proper legal form or format, in the Clerk's Office of the Court, within 30 days of the date you were served with the *Summons* and *Complaint*;
2. You must serve by mail a copy of your written response on the Plaintiff's attorney or on the Plaintiff if Plaintiff has no attorney (to "serve by mail" means to have an adult other than yourself mail a copy); and
3. You must attend the first Case Management Conference.

Warning: If you, as the Defendant, do not follow these instructions, you may automatically lose this case.

RULES AND FORMS: You must follow the California Rules of Court and the Superior Court of California, County of <_CountyName_> Local Civil Rules and use proper forms. You can obtain legal information, view the rules and receive forms, free of charge, from the Self-Help Center at 201 North First Street, San José (408-882-2900 x-2926).

- State Rules and Judicial Council Forms: www.courtinfo.ca.gov/forms and www.courtinfo.ca.gov/rules
- Local Rules and Forms: <http://www.sccsuperiorcourt.org/civil/rule1toc.htm>

CASE MANAGEMENT CONFERENCE (CMC): You must meet with the other parties and discuss the case, in person or by telephone at least 30 calendar days before the CMC. You must also fill out, file and serve a *Case Management Statement* (Judicial Council form CM-110) at least 15 calendar days before the CMC.

You or your attorney must appear at the CMC. You may ask to appear by telephone – see Local Civil Rule 8.

Your Case Management Judge is: Hon. Patricia M. Lucas Department: 3

The 1st CMC is scheduled for: (Completed by Clerk of Court)

Date: 11/23/22 Time: 2:30pm in Department: 3

The next CMC is scheduled for: (Completed by party if the 1st CMC was continued or has passed)

Date: _____ Time: _____ in Department: _____

ALTERNATIVE DISPUTE RESOLUTION (ADR): If all parties have appeared and filed a completed *ADR Stipulation Form* (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at www.sccsuperiorcourt.org/civil/ADR/ or call the ADR Administrator (408-882-2100 x-2530) for a list of ADR providers and their qualifications, services, and fees.

WARNING: Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.

Reset Form

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
191 N. FIRST STREET
SAN JOSE, CA 95113-1090

TO: FILE COPY

RE: **Bustamante v. Marriott Hotel Services, Inc. (PAGA)**

CASE NUMBER: **22CV400968**

**ORDER DEEMING CASE COMPLEX AND STAYING DISCOVERY
AND RESPONSIVE PLEADING DEADLINE**

WHEREAS, the Complaint was filed by Plaintiff **Gabriela Bustamante** ("Plaintiff") in the Superior Court of California, County of Santa Clara, on **July 21, 2022** and assigned to Department 3 (Complex Civil Litigation), the **Honorable Patricia M. Lucas** presiding, pending a ruling on the complexity issue;

IT IS HEREBY ORDERED that:

The Court determines that the above-referenced case is **COMPLEX** within the meaning of California Rules of Court 3.400. The matter remains assigned, for all purposes, including discovery and trial, to Department 3 (Complex Civil Litigation), the **Honorable Patricia M. Lucas** presiding.

The parties are directed to the Court's local rules and guidelines regarding electronic filing and to the Complex Civil Guidelines, which are available on the Court's website.

Pursuant to California Rules of Court, Rule 3.254, the creation and maintenance of the Master Service List shall be under the auspices of (1) Plaintiff **Gabriela Bustamante**, as the first-named party in the Complaint, and (2) the first-named party in each Cross-Complaint, if any.

Pursuant to Government Code section 70616(b), each party's complex case fee is due within ten (10) calendar days of this date.

Plaintiff shall serve a copy of this Order on all parties forthwith and file a proof of service within seven (7) days of service.

Any party objecting to the complex designation must file an objection and proof of service within ten (10) days of service of this Order. Any response to the objection must be filed within seven (7) days of service of the objection. The Court will make its ruling on the submitted pleadings.

The Case Management Conference remains set for **November 23, 2022 at 2:30 p.m. in Department 3.**

Counsel for all parties are ordered to meet and confer in person at least 15 days prior to the First Case Management Conference and discuss the following issues:

1. Issues related to recusal or disqualification;
2. Issues of law that, if considered by the Court, may simplify or further resolution of the case, including issues regarding choice of law;
3. Appropriate alternative dispute resolution (ADR), for example, mediation, mandatory settlement conference, arbitration, mini-trial;
4. A plan for preservation of evidence and a uniform system for identification of documents throughout the course of this litigation;
5. A plan for document disclosure/production and additional discovery; which will generally be conducted under court supervision and by court order;

6. Whether it is advisable to address discovery in phases so that information needed to conduct meaningful ADR is obtained early in the case (counsel should consider whether they will stipulated to limited merits discovery in advance of certification proceedings), allowing the option to complete discovery if ADR efforts are unsuccessful;
7. Any issues involving the protection of evidence and confidentiality;
8. The handling of any potential publicity issues;

Counsel for Plaintiff is to take the lead in preparing a Joint Case Management Conference Statement to be filed 5 calendar days prior to the First Case Management Conference, and include the following:

1. a brief objective summary of the case;
2. a summary of any orders from prior case management conferences and the progress of the parties' compliance with said orders;
3. significant procedural and practical problems that may likely be encountered;
4. suggestions for efficient management, including a proposed timeline of key events; and
5. any other special consideration to assist the court in determining an effective case management plan.

To the extent the parties are unable to agree on the matters to be addressed in the Joint Case Management Conference Statement, the positions of each party or of various parties should be set forth separately and attached to this report as addenda. The parties are encouraged to propose, either jointly or separately, any approaches to case management they believe will promote the fair and efficient handling of this case. The Court is particularly interested in identifying potentially dispositive or significant threshold issues the early resolution of which may assist in moving the case toward effective ADR and/or a final disposition.

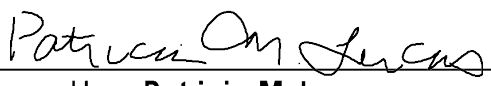
STAY ON DISCOVERY AND RESPONSIVE PLEADING DEADLINE Pending further order of this Court, the service of discovery and the obligation to respond to any outstanding discovery is stayed. However, Defendant(s) shall file a Notice of Appearance for purposes of identification of counsel and preparation of a service list. The filing of such a Notice of Appearance shall be without prejudice to the later filing of a motion to quash to contest jurisdiction. Parties shall not file or serve responsive pleadings, including answers to the complaint, motions to strike, demurrers, motions for change of venue and cross-complaints until a date is set at the First Case Management Conference for such filings and hearings.

This Order is issued to assist the Court and the parties in the management of this "Complex" case through the development of an orderly schedule for briefing and hearings. This Order shall not preclude the parties from continuing to informally exchange documents that may assist in their initial evaluation of the issues presented in this Case.

Plaintiff shall serve a copy of this Order on all the parties in this matter forthwith.

SO ORDERED.

Date: July 21, 2022



Hon. Patricia M. Lucas
Judge of the Superior Court

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408) 882-2700, or use the Court's TDD line, (408) 882-2690 or the Voice/TDD California Relay Service, (800) 735-2922.