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Electronically
FILED
by Superior Court of California, County of San Mateo
ON 11/14/2023
By /s/ Anthony Berini
Deputy Clerk

FOR THE COUNTY OF SAN MATEO

CASE NO.:

COMPLAINT FOR DAMAGES FOR:

1) FAILURE TO COMPENSATE FOR ALL HOURS WORKED;

**HERSHA HOSPITALITY
MANAGEMENT, L.P. dba Holiday Inn &
Suites San Mateo-San Francisco SFO; and
DOES 1 to 25, inclusive,**

ACCURATE ITEMIZED WAGE STATEMENTS;

**5) FAILURE TO PAY WAGES OWED
EVERY PAY PERIOD;**

7) FAILURE TO PROVIDE MEAL BREAKS:

**9) PRIVATE ATTORNEYS GENERAL
ACT ("PAGA")**

10) VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200

JURY TRIAL DEMANDED

COMES NOW Plaintiff, SARA GUZMAN (hereinafter "Plaintiff"), and alleges as follows:

PARTIES, JURISDICTION, and VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of San Mateo in this judicial district because Defendants HERSHA HOSPITALITY MANAGEMENT, L.P. dba Holiday Inn & Suites San Mateo-San Francisco SFO ; and DOES 1 to 25, inclusive (hereinafter collectively "HERSHA" or "Defendant(s)") do business in the County of San Mateo, and because Defendants' obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of San Mateo is the subject of this action. Moreover, Plaintiff's damages sought herein exceed \$25,000.

2. Plaintiff is a female resident of the County of San Mateo, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant HERSHA HOSPITALITY MANAGEMENT, L.P.. is a Pennsylvania Limited Partnership, doing business in the County of San Mateo, State of California, and which employed Plaintiff. . Plaintiff specifically worked at the Holiday Inn & Suites San Mateo-San Francisco SFO, located at 330 N Bayshore Blvd, San Mateo, CA 94401.

4. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues them by these fictitious names. Plaintiff is informed and believes that each of the DOE defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible for the conduct alleged herein. Upon discovering the true names and capacities of these fictitiously named defendants, Plaintiff will amend this complaint to show the true names and capacities of these fictitiously named defendants.

5. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of

1 that information and belief, alleges that at all times herein mentioned, each of the remaining
2 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
3 under the authority of their agency, employment, or representative capacity, with the consent of
4 his/her codefendants.

5 **GENERAL ALLEGATIONS**

6 6. Plaintiff started working at HERSHA on or around early 2022 in the housekeeping
7 department. Plaintiff was classified as an hourly, non-exempt employee and continues to
8 be employed by HERSHA.

9 7. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018),
10 Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas
11 Security Services USA, Inc., an onsite security provider. After about a year of employment,
12 Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff
13 specifically alleged violations to the Labor Code requiring immediate payment of wages upon
14 termination of employment and weekly payment of wages to temporary employees. The trial
15 court determined Huff was not a temporary employee, and therefore, lacked standing to bring
16 the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court
17 granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue
18 was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not
19 directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the
20 PAGA representative to sue for violations that the representative has personally suffered. The
21 PAGA statute states that an “aggrieved employee” is able to file suit on behalf of themselves
22 and others. The statute also states that an “aggrieved employee” is “any person who was
23 employed by the alleged violator and against whom one or more of the alleged violations was
24 committed.” Because at least one of the violations that Huff had alleged had affected him
25 personally, the Court of Appeal denied Securitas’ motion.

26 8. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and
27 other employees, it allows for suits broader than the specific violations the named
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1 employee experienced. Therefore, even if the employee did not personally experience the
2 Labor Code violations, the employer may still be liable to under PAGA. Consequently, it is our
3 position that Plaintiff can equivocally bring the following labor code violations on behalf
4 of all other employees, including ALL hourly, non-exempt employees, irrespective of job title
5 or job duties, who worked for HERSHA at the Holiday Inn San Mateo during the relevant
6 PAGA period.

7 9. It is Plaintiff's position that HERSHA has violated the following Labor Code Sections
8 against Plaintiff and other similarly situated aggrieved employees, who include all non-exempt,
9 hourly employees who worked for HERSHA at the Holiday Inn San Mateo location in the State
10 of California during the relevant PAGA period.

11 10. HERSHA violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to pay
12 Plaintiff and other similarly situated aggrieved employees for all hours worked, including the
13 statutory minimum wage for all hours worked and for "off the clock" work. This is so because
14 HERSHA had a company policy wherein they would disproportionately round down the number
15 of hours worked, resulting in "time shaving" and further resulting in aggrieved employees not
16 being paid for all hours worked. Furthermore, and to the extent that Plaintiff and others
17 worked through their meal periods while "off the clock", they were not compensated for all hours
18 worked, which would be akin to a minimum wage violation. Furthermore, aggrieved employees
19 regularly performed work related tasks before clocking in and after clocking out for which they
20 were not compensated, which would also be an example of a minimum wage violation.

21 11. Due to the above "off the clock" violations, HERSHA also violated Labor Code §510
22 because it failed to pay Plaintiff and other aggrieved employees overtime compensation, even
23 though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week
24 throughout their employment. Plaintiff's and other aggrieved employees' actual work hours
25 entitled them to overtime compensation, however, HERSHA did not compensate its hourly, non-
26 exempt employees with the correct amount of overtime due to the "off the clock" work and time
27 shaving as described above. Furthermore, HERSHA failed to include bonuses/incentive
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1 payments in calculating employees' regular rate of pay for use in deciphering the correct
2 overtime rate of pay. Additionally, the incentive and bonus payments were also not factored into
3 employees' regular rate for purposes of receiving meal and rest break premiums per the Ferra v.
4 Loews case. Furthermore, when Plaintiff and others would work a double shift, they would
5 not receive the proper overtime compensation even though the shift was 16-hours long.

6 12. HERSHA also violated Labor Code § 226.7 and the appropriate Industrial Welfare
7 Commission Wage Order no. 5 because it failed to provide Plaintiff and other similarly situated
8 aggrieved employees with 10-minute rest periods for every four hours of work, or majority
9 portion thereof, throughout their employment. HERSHA did not completely relieve Plaintiff
10 and others of all duty during said rest periods. HERSHA did not pay to Plaintiff and others one
11 additional hour of pay at Plaintiff's regular rate of compensation for each workday that one or
12 more statutory rest periods was not provided. It was not part of the company policy for employees
13 such as Plaintiff to take even one rest break, much less two rest breaks per shift. The concept
14 of rest breaks was not implemented as it was not company policy. As such, Plaintiff did not
15 and does not take statutory rest breaks during her employment. Moreover, it would not have been
16 possible for employees such as Plaintiff and others to take such rest breaks due to being
17 understaffed and due to a heavy workload, especially in the fast-paced hotel/motel industry
18 wherein housekeepers needed to tidy up and clean rooms quickly and efficiently for new and
19 current guests. As such, the culture as well as the policies and procedures of HERSHA did not
20 lend itself to the employees receiving consistent statutory rest breaks wherein they were relieved
21 of all work duties. The environment at HERSHA was not conducive to receiving multiple
22 statutory rest breaks under California law and timely, statutory rest breaks were not authorized
23 or enforced.

24 13. HERSHA violated Labor Code §§ 512 and 226.7 and the appropriate Industrial Welfare
25 Commission Wage Order no. 5 because it failed to provide hourly, non-exempt employees,
26 including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods for every
27 five (5) hours of work throughout their employment. HERSHA did not completely relieve
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1 Plaintiff and other employees of all duty during said meal periods. HERSHA did not pay to
2 Plaintiff and its hourly, non-exempt employees one additional hour of pay at their regular
3 rate of compensation for each workday that one or more statutory meal periods was not provided.
4 If Plaintiff and other aggrieved employees were able to take meal breaks, the meal breaks
5 would be late and after the 5th hour worked or they would be interrupted due to work obligations
6 as Plaintiff would often get a call on her cell phone during a meal break with a request to
7 complete the cleaning of a room or review something in a specific room. The latter was due to
8 the workload and due to being in a fast-paced hotel/motel environment. Like the rest breaks,
9 receiving a thirty-minute uninterrupted and timely meal break was not part of the company
10 culture and was not enforced by HERSHA. Consequently, it was the normal practice and custom
11 of HERSHA not to authorize, permit, and enforce timely statutory meal periods. If HERSHA
12 had Plaintiff sign a meal period waiver, it would not be valid and enforceable since Plaintiff
13 and others generally worked more than a 6-hour shift. If HERSHA had Plaintiff sign an on-
14 duty meal period agreement wherein Plaintiff agreed to work through the meal periods, it would
15 be invalid and unenforceable because the nature of Plaintiff's job in the housekeeping
16 department does not and did not prevent her from taking a meal period and the company could
17 have hired "breakers" to relieve Plaintiff of her job duties so that she can actually take a
18 timely, uninterrupted meal period. Moreover, any such "on duty" meal period agreement did not
19 allow for Plaintiff to revoke such an agreement even if it was signed. As such, Plaintiff and
20 others did not always receive statutory, timely meal periods during their employment. To the
21 extent that HERSHA argues that employees receive meal break premium pay for missed, short,
22 or late meal periods, that argument is inconsequential for PAGA penalty purposes since the
23 PAGA penalties are for the violations themselves, irrespective of whether an employee received
24 the premium payment for a missed, short, or interrupted meal period. In *Kirby v. Immoos Fire*
25 *Protection, Inc.*, the Court stated, "section 226.7 does not give employers a lawful choice
26 between providing *either* meal and rest breaks *or* an additional hour of pay." *See Kirby v.*
27 *Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the
28 extra hour of pay does not excuse the violation; the employer has still committed a violation even

1 if the remedy for the violation has been paid. *See Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016,
2 2016 WL 1110302 at *4). As such, the work environment and culture at HERSHA was not
3 conducive to receiving consistent, timely, statutory meal breaks under California law. Moreover,
4 any meal or rest break premiums paid were not compensated at the weighted average regular
5 rate, inclusive of bonuses and/or incentive payments as well as overtime compensation.

6 14. Furthermore, during the relevant time period, and due to the above labor code violations,
7 HERSHA failed to pay Plaintiff and other similarly situated aggrieved employees all wages
8 due to them within any time period specified by California Labor Code section 204. HERSHA
9 was also in violation of California Labor Code section 226(a) by failing to include pertinent
10 information on the wage statements, including but not limited to, the correct hourly rate, all hours
11 worked, overtime hours worked, all earned tips, correct overtime pay, gross wages earned, net
12 wages earned, premium pay for missed meal and rest breaks, all deductions, the correct start and
13 end of the pay period, all employee identifying information, the correct and complete name and
14 address of the legal employer, and reimbursement for business expenses, among others. As such,
15 HERSHA did not provide Plaintiff and other similarly situated aggrieved employees with
16 complete, accurate itemized wage statements.

17 15. During the relevant time period, HERSHA also failed to keep accurate and complete
18 payroll records showing the actual hours worked per day and the wages paid to Plaintiff and
19 others pursuant to California Labor Code sections 1174(d).

20 16. HERSHA also violated Labor Code § 203 because it willfully failed to pay other similarly
21 situated aggrieved employees earned and due wages upon separation of employment, either
22 immediately upon involuntary termination, or within 72 hours of resignation. These earned but
23 unpaid wages include compensation for all hours worked, including minimum wages, overtime
24 compensation, and premium pay for missed meal and rest breaks.

25 17. During the relevant time period, Plaintiff and other aggrieved employees incurred
26 necessary, business-related expenses and costs that were not reimbursed by HERSHA. These
27 costs include, but are not limited to, uniforms, use of personal cell phones for work purposes,
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1 and equipment needed to effectuate her job duties. Accordingly, HERSHA was in violation of
2 California Labor Code sections 2800 and 2802.

3 18. Furthermore, Plaintiff believes Defendant has also violated Labor Code Section 558
4 and has engaged in business practices which violate Business and Professions Code Section
5 17200.

6 **FIRST CAUSE OF ACTION**

7 **FAILURE TO COMPENSATE FOR ALL HOURS WORKED**

8 **(California Industrial Welfare Commission Order 4-2001/5-2001, California Code of**
9 **Regulations Title 8 Section 11040/11050, and California Labor Code Section 1198)**

10 **(Plaintiff against all named defendants and all DOE defendants)**

11 19. Plaintiff re-alleges and incorporates by reference each and every allegation in
12 paragraphs 1 through 18, inclusive, of this Complaint as though fully set forth herein.

13 20. At all times relevant herein, Defendants were required to compensate its employees for
14 all hours worked upon reporting for work at the appointed time stated by the employer
15 pursuant to Industrial Welfare Commission Order 4-2001/5-2001, California Code of
16 Regulations, Title 8, Section 11040/11050.

17 21. For the three (3) years preceding filing of this action, Defendants failed to compensate
18 Plaintiff for all hours worked.

19 22. Under the aforementioned wage order and regulations, Plaintiff is to recover
20 compensation for all hours worked but not paid by Defendants for the three (3) years
21 preceding the filing of this Complaint.

22 23. As a proximate result of the aforementioned violations, Plaintiff has been damaged in
23 an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of
24 this Court.

25 24. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
26 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
27 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
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1 reasonable attorney's fees and costs of suit.

2 25. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
3 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
4 amount known to Plaintiff once she has obtained all of her payroll records from
5 Defendants.

6 **SECOND CAUSE OF ACTION**

7 **FAILURE TO PAY MINIMUM WAGES**

8 **(California Labor Code Sections 1194, 1194.2, 1197)**

9 **(Plaintiff against all named defendants and all DOE defendants)**

10 26. Plaintiff re-alleges and incorporates by reference each and every allegation in
11 paragraphs 1 through 25, inclusive, of this Complaint as though fully set forth herein.

12 27. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
13 to suffer or permit a California employee to work without paying wages at the minimum wage
14 rate for all hours worked as required by the applicable Industrial Welfare Commission
15 (hereinafter "IWC") Wage Order No. 4-2001/5-2001, codified at California Code of
16 Regulations, Title 8, Section 11040/11050, subdivision 4.

17 28. Pursuant to IWC Wage Order no. 4-2001/5-2001, subdivision 2(K)/(H), at all relevant
18 times, "hours worked" included "the time during which an employee is subject to the control of
19 an employer, and includes all the time the employee is suffered or permitted to work, whether
20 or not required to do so..."

21 29. During her employment, Plaintiff was regularly required as a matter of uniform
22 policy and practice to work, and in fact worked, as an employee of Defendants and Plaintiff
23 was paid less than the minimum wage rate by Defendants for hours worked in violation of
24 California Labor Code Section 1197 and the applicable California Industrial Wage
25 Commission wage order(s).

26 30. Plaintiff was, at all relevant times, under the control of Defendants and suffered or
27 permitted to work by Defendants. Defendants' acts or omissions in failing to adequately
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1 compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants
2 to believe that their acts or omissions were not contrary to California law.

3 31. For all hours worked by Plaintiff for which he was paid less than the minimum wage
4 rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum
5 wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount
6 equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194,
7 Plaintiff is also entitled to attorney's fees, costs and interests according to proof.

8 32. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
9 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
10 trial.

11 **THIRD CAUSE OF ACTION**

12 **FAILURE TO PAY OVERTIME**

13 **(California Industrial Welfare Commission Order 4-2001/5-2001, California Code of**
14 **Regulations Title 8 Section 11040/11050; California Labor Code Section 510)**
15 **(Plaintiff against all named defendants and all DOE defendants)**

16 33. Plaintiff re-alleges and incorporates by reference each and every allegation in
17 paragraphs 1 through 32, inclusive, of this Complaint as though fully set forth herein.

18 34. Pursuant to Industrial Welfare Commission Order No. 4-2001/5-2001, Cal. Code of
19 Regs., Title 8, Section 11040/11050, for the period of Plaintiff's employment, Defendants were
20 required to compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5)
21 times the regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours
22 in a week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12)
23 hours in a day or hours worked in excess of eight (8) on the seventh consecutive work day in a
24 week.

25 35. Plaintiff was a non-exempt employee entitled to the protections of the California
26 Industrial Welfare Commission Order No. 4-2001/5-2001, California Code of Regulations,
27 Title 8, Section 11040/11050.
28

1 36. Plaintiff worked more than eight (8) hours in a single workday, twelve (12) hours in a
2 single workday or forty (40) hours in a single workweek on numerous occasions.

3 37. Plaintiff was entitled to the above overtime premiums.

4 38. Defendants did not pay Plaintiff premium wages of at least one and one-half times
5 Plaintiff's regular rate of pay for hours worked past eight (8) in a day. Defendants did not pay
6 Plaintiff premium wages of at least twice Plaintiff's regular rate of pay for hours worked past
7 twelve (12) in a day.

8 39. Defendants did not pay Plaintiff premium wages of at least one and one-half times
9 Plaintiff's regular rate of pay for hours worked past forty (40) in a week.

10 40. Plaintiff worked at least one pay period in which he was not properly paid overtime
11 within the three (3) years prior to the initiation of this lawsuit.

12 41. Defendants know or should know the actual dates of overtime worked, the amount of
13 overtime worked, and the amount of unpaid overtime due.

14 42. As a proximate result of Defendants' violations, Plaintiff has been damaged in an
15 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
16 Court.

17 43. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
18 Regulations, Title 8, Sections 11040/11050, Plaintiff is entitled to recover damages for the
19 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
20 reasonable attorney's fees and costs of suit.

21 44. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
22 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
23 trial.

24 **FOURTH CAUSE OF ACTION**

25 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

26 **(California Labor Code Section 226)**

27 **(Plaintiff against all named defendants and all DOE defendants)**

1 45. Plaintiff re-alleges and incorporates by reference each and every allegation in
2 paragraphs 1 through 44, inclusive, of this Complaint as though fully set forth herein.

3 46. Pursuant to California Labor Code Section 226, every employer must furnish each
4 employee an itemized statement of wages and deductions at the time of payment of wages.

5 47. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that
6 accurately reflected all information required by Labor Code Section 226, including but not
7 limited to, gross wages earned, including overtime, minimum wages, and premium pay for
8 missed meal and rest breaks, net wages earned, total hours worked by the employee, and all
9 deductions. Therefore, Defendants failed to maintain and provide accurate itemized wage
10 statements to Plaintiff in accordance with California Labor Code Section 226(a).

11 48. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
12 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
13 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
14 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
15 reasonable attorney's fees.

16 49. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
17 sustained damages, including loss of earnings, in an amount to be established at trial. As a
18 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
19 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
20 and attorney's fees pursuant to statute.

21 50. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
22 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
23 trial.

24 **FIFTH CAUSE OF ACTION**

25 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

26 **(California Labor Code Section 204)**

27 **(Plaintiff against all named defendants and all DOE defendants)**

1 51. Plaintiff re-alleges and incorporates by reference each and every allegation in
2 paragraphs 1 through 50, inclusive, of this Complaint as though fully set forth herein.

3 52. California Labor Code Section 204 establishes the fundamental right of all employees
4 in the State of California to be paid wages in a timely fashion for their work.

5 53. At all times relevant during the liability period, Defendants failed to pay Plaintiff the
6 full amount of all owed wages when due as required by California Labor Code Section 204.

7 54. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
8 informed, believes, and thereon alleges, that all times relevant during the liability period,
9 Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked,
10 including overtime hours, the minimum wage, and premium pay for missed meal and rest
11 breaks.

12 55. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
13 amount, subject to proof, to the extent she was not paid all wages each pay period. The precise
14 amount of unpaid wages is not presently known to Plaintiff but can be determined directly
15 from Defendants' records or indirectly based on information from Defendants' records.

16 56. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
17 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
18 trial.

19 **SIXTH CAUSE OF ACTION**

20 **FAILURE TO GIVE REST BREAKS**

21 **(Plaintiff against all named defendants and all DOE defendants)**

22
23 57. Plaintiff re-alleges and incorporates by reference each and every allegation in
24 paragraphs 1 through 56, inclusive, of this Complaint as though fully set forth herein.

25 58. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 26 a. Title 8 of the California Code of Regulations Sections 11040/11050(12)(A), which
27 provides that every employer shall authorize and permit all employees to take rest
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1 periods, which insofar as practicable shall be in the middle of each work period.

2 The authorized rest period time shall be based on the total hours worked daily at the
3 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;

4 b. Title 8 of the California Code of Regulations Sections 11040/11050(12)(B), which
5 provides that if an employer fails to provide an employee a rest period in
6 accordance with the applicable provisions of this order, the employer shall pay the
7 employee one (1) hour of pay at employee's regular rate of compensation for each
8 workday that the rest period is not provided;

9
10 c. Title 8 of the California Code of Regulations sections 11040/11050(20)(A), which
11 penalizes the employer \$50.00 for each initial violation, per employee, of any
12 provision of the Wage Order, and \$100.00 for each additional violation thereafter
13 per employee; and

14 d. California Labor Code section 226.7, which states that (a) no employer shall require
15 any employee to work during any rest period mandated by an applicable order of
16 the Industrial Welfare Commission, and (b) if an employer fails to provide an
17 employee a rest period in accordance with an applicable order of the Industrial
18 Welfare Commission, the employer shall pay the employee one (1) additional hour
19 of pay at employee's regular rate of compensation for each work day that the rest
20 period is not provided.
21

22 59. Plaintiff alleges that she was not authorized and permitted to take a ten (10) minute
23 rest break after every four (4) hours of work or major fraction thereof, as required by California
24 law.
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26 60. Under this cause of action, Plaintiff prays for wages due to her under the statutes,
27 regulations, and wage orders alleged in this cause of action along with any allowable interest,
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1 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
2 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

3 61. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
4 fees as well as interest under Labor Code section 218.6.

5 62. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
6 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
7 trial.

8 **SEVENTH CAUSE OF ACTION**

9 **FAILURE TO GIVE MEAL BREAKS**

10 **(Plaintiff against all named defendants and all DOE defendants)**

11 63. Plaintiff re-alleges and incorporates by reference each and every allegation in
12 paragraphs 1 through 62, inclusive, of this Complaint as though fully set forth herein.

13 64. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 14 a. California Labor Code section 512(a), which requires that employees be given a 30-
15 minute uninterrupted meal break after five (5) hours of work, and a second
16 uninterrupted meal break after ten (10) hours of work;
17
18 b. California Labor Code section 226.7, which states that (a) no employer shall require
19 any employee to work during any meal period mandated by an applicable order of
20 the Industrial Welfare Commission, and (b) if any employer fails to provide an
21 employee a meal period in accordance with an applicable order of the Industrial
22 Welfare Commission, the employer shall pay the employee one (1) additional hour
23 of pay at the employee's regular rate of compensation for each workday that the
24 meal period is not provided;
25
26 c. California Industrial Welfare Commission Order No. 4/5 section 11(B), as codified
27 under Title 8 of the California Code of Regulations Section 11040/11050, which
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1 states that if an employer fails to provide an employee a meal period in accordance
2 with the applicable provisions of the Wage Order, the employer shall pay the
3 employee one (1) hour of pay at the employee's regular rate of compensation for
4 each workday that the meal period is not provided;

5 d. California Industrial Welfare Commission Wage Order No. 4/5 Section 7(A)(3), as
6 codified under Title 8 of the California Code of Regulations Section 11040/11050,
7 which requires an employer to maintain records documenting its employees' meal
8 periods;

9
10 e. California Industrial Welfare Commission wage order No. 4/5 Section 20(A), as
11 codified under California Code of Regulations Section 11040/11050, which
12 penalizes the employer \$50.00 for each initial violation, per employee, of any
13 provision of the Wage Order, and \$100.00 for each additional violation thereafter
14 per employee; and

15 f. California Labor Code section 1171 and 1173, which have given the California
16 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 4
17 and 5) as enforceable law.
18

19 65. Plaintiff alleges that she was not authorized and permitted to take relieved meal breaks
20 after five (5) hours of work. Plaintiff further alleges that she was not authorized and permitted
21 to take a second relieved meal break after ten (10) hours of work, as required by California
22 law. California Labor Code section 512(a) and California Industrial Welfare Commission
23 Order No. 4/5, as codified under California Code of Regulations Sections 11040/11050 et. seq.
24 requires that employees receive uninterrupted meal periods every five (5) hours of consecutive
25 work, and that the meal period be at least 30 minutes in length, wherein employee is relieved of
26 all work duty. California Labor Code section 226.7 provides that employers may not require
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1 their employees to work through their meal periods. California Labor Code section 226.7 and
2 California Code of Regulations section 11040/11050 requires that if the employer fails to
3 provide the employee with an uninterrupted meal period, the employer must pay the employee
4 one (1) hour of pay for each work day that the meal period is not given.

5 66. Under this cause of action, Plaintiff prays for wages due to her under the statutes,
6 regulations, and wage orders alleged in this cause of action along with any allowable interest,
7 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
8 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

9 67. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
10 fees as well as interest under Labor Code section 218.6.

11 68. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
12 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
13 trial.

14 **EIGHTH CAUSE OF ACTION**

15 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

16 **(Plaintiff against All Named Defendants and all DOE defendants)**

17 69. Plaintiff re-alleges and incorporates by reference each and every allegation in
18 paragraphs 1 through 68, inclusive, of this Complaint as though fully set forth herein.

19 70. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her
20 employee for all necessary expenditures or losses incurred by the employee in direct
21 consequence of the discharge of his or her duties."

22 71. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
23 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
24 of completing his job duties, which were not reimbursed by Defendant. These expenses
25 include, but are not limited to, use of personal cell phones for work purposes and uniforms.

26 72. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest
27
28

and attorney's fees and costs, under Labor Code section 2802.

NINTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

Representative Claim for PAGA penalties under California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197.1, 1198, 2802)

(Plaintiff against All Named Defendants and all DOE defendants)

73. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 72, inclusive, of this Complaint as though fully set forth herein.

74. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated February 17, 2023, Plaintiff gave written notice by certified mail to the Labor and Workforce Development Agency ("LWDA") and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

75. Pursuant to California Labor code section 2699.3, no response was received from the LWDA within 65 days of the postmark date of the above-alleged letter.

76. Plaintiff therefore has exhausted all administrative remedies required of her under California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this cause of action and pursue penalties in a representative action for Defendants' violations of the Labor Code.

77. Pursuant to California Labor Code section 2699, any provisions of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies, or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in California Labor Code section 2699.3.

78. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged violator and had one or more of the alleged violations committed against her, and therefore is properly suited to represent the interests of other current and former employees, including all

1 current and former hourly, non-exempt employees who worked for HERSHA at the specific
2 Holiday Inn & Suites in San Mateo as referenced above during the applicable PAGA Period.

3 79. Based on the acts alleged above, Plaintiff, on behalf of others, seeks penalties
4 under California Labor Code sections 2698 and 2699 because of Defendants' violations of
5 numerous provisions of the California Labor Code as alleged in this Complaint.

6 80. Plaintiff therefore has exhausted all administrative remedies required of her under
7 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute
8 this cause of action and pursue penalties in a representative action for Defendants' violations of
9 the Labor Code.

10 81. California Labor Code section 2699 et seq. imposes penalties upon culpable
11 Defendants for violating the Labor Code.

12 82. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
13 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
14 seeking individual penalties/victim specific relief or underpaid wages for herself or other
15 employees under this specific PAGA cause of action. Plaintiff has separate causes of action in
16 this Complaint for individual wages but is not seeking wages through the PAGA action.

17 83. Specifically, Plaintiff seeks penalties under California Labor Code
18 section 2699, for the following:

19 Violations of California Labor Code sections 201, 202, 203, 204, and/or 204b, 210, 226,
20 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197.1, 1198, 2802, and any other Labor
21 Codes/Industrial Welfare Commission Order (No. 4/5) violated based on the facts alleged in
22 this Complaint.

23 84. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,
24 costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved employees
25 as alleged herein in an amount to be shown according to proof at trial and within the jurisdictional
26 limits of this Court.

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TENTH CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200

(California Business and Professions Code Section 17200)

(Plaintiff against All Named Defendants and all DOE defendants)

85. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 84, inclusive, of this Complaint as though fully set forth herein.

86. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants constitutes unfair and unlawful business practices under California Business and Professions Code Section 17200, et seq.

87. Defendant's violations of the California labor laws and the Labor Code constitutes a business practice because it was done repeatedly over a significant period of time in a systematic manner that was detrimental to Plaintiff and other employees.

88. As a result of the acts of Defendants, as alleged herein, Plaintiff is entitled to reasonable attorneys' fees and costs of said suit as specifically provided in California Code of Civil Procedure Section 1021.5 and California Business and Professions Code section 17200 et seq.

89. As a result of the acts of Defendants, as alleged herein, Plaintiff is entitled to multiple damages as specifically provided in California Business and Professions Code section 17200 et seq.

90. For the four years preceding the filing of this action, Plaintiff requests restitution of all monies and profits to be disgorged from Defendants in an amount according to proof at time of trial, but in excess of the jurisdiction of this Court.

PRAYER FOR RELIEF

1. For compensatory damages including lost past and future wages, overtime, commissions, and all other sums of money, including employment benefits, together with interest on said amounts, and any other economic injury to Plaintiff, according to

- 1 proof;
- 2 2. For special and consequential damages to the extent allowed by law;
- 3 3. For restitution and disgorgement for all unfair business practices by corporate
- 4 Defendants against Plaintiff in an amount according to proof;
- 5 4. For an order enjoining corporate Defendants from further unfair and unlawful business
- 6 practices in violation of Business and Professions Code section 17200, et seq.;
- 7 5. For damages and penalties against Defendants under Labor Code section
- 8 226 for Plaintiff in an amount subject to proof at trial;
- 9 6. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
- 10 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period.
- 11 7. For one hour of wages due to Plaintiff for each work period of at least three-and-a-half
- 12 (3.5) hours when Plaintiff did not receive an uninterrupted ten (10) minute rest period.
- 13 8. For maximum civil penalties available under the Labor Code and applicable Wage Order
- 14 against Defendant as described more particularly in the Complaint and Representative
- 15 PAGA claim/action;
- 16 9. For all remedies available to Plaintiff under the applicable Wage Order and the
- 17 Labor Code including an award of unpaid wages, attorney's fees, costs, interest,
- 18 liquidated damages, damages, penalties, and waiting time penalties according to proof
- 19 to the extent permitted by law;
- 20 10. For the imposition of civil penalties and/or statutory penalties;
- 21 11. Reasonable attorney's fees where available by law, including but not limited to,
- 22 pursuant to the California Labor Code, including section 2698, and/or other
- 23 applicable laws; and
- 24 12. Costs and expenses of suit incurred herein;
- 25 13. For all interest as allowed by law;

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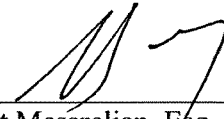
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14. For such other and further relief as the Court deems just and proper.

DATED: November 14, 2023

MESSRELIAN LAW INC.

By 
Harout Messrelian, Esq.
Attorneys for Plaintiff Sara Guzman

DEMAND FOR JURY TRIAL

Plaintiff hereby demands, as a matter of right, a trial by jury in this case.

DATED: November 14, 2023

MESSRELIAN LAW INC.

By 
Harout Messrelian, Esq.
Attorneys for Plaintiff Sara Guzman

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Harout Messrelan, Esq. (272020) Messrelan Law Inc., 500 N. Central Ave., Suite 840, Glendale, CA 91203 TELEPHONE NO.: 818-484-6531 FAX NO. (Optional): 818-956-1983 E-MAIL ADDRESS: hm@messrelanlaw.com ATTORNEY FOR (Name): Plaintiff, Sara Guzman		FOR COURT USE ONLY Electronically FILED by Superior Court of California, County of San Mateo ON 11/14/2023 By /s/ Anthony Berini Deputy Clerk	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO STREET ADDRESS: 400 County Center MAILING ADDRESS: CITY AND ZIP CODE: Redwood City, CA 94063 BRANCH NAME: Southern Branch		CASE NUMBER 23-CIV-05463 JUDGE: DEPT.:	
CASE NAME: Guzman v. HERSHA HOSPITALITY MANAGEMENT, L.P.			
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)	

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): **10** - individual wage and hour violations and PAGA penalties
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: November 14, 2023

Harout Messrelan, Esq.

(TYPE OR PRINT NAME)

(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

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

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