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David W. Slayton,
Executive Officer/Clerk of Court,
By E. Galicia, Deputy Clerk

Attorneys for Plaintiff Antonio Martinez

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ANTONIO MARTINEZ, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

ROOSEVELT HOTEL, LLC, a California
limited liability company; and DOES 1
through 10, inclusive;

Defendants.

CASE NO.: **23STCV26346**

**COMPLAINT FOR VIOLATIONS OF THE
PRIVATE ATTORNEYS GENERAL ACT
(LABOR CODE § 2698 ET SEQ.)**

1 Plaintiff ANTONIO MARTINEZ on behalf of himself and all others similarly situated,
2 alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this representative enforcement action under the Private Attorneys
5 General Act of 2004 (Labor Code §§ 2698 et seq.) (“PAGA”) on behalf of himself and all other
6 current or former non-exempt employees of Defendants in California that suffered at least one or
7 more of the Labor Code violations alleged herein within the applicable statute of limitations up to
8 the time this action is brought to trial (“Aggrieved Employees”).

9 2. Defendants have engaged in a systematic pattern of wage and hour abuse towards
10 Plaintiff and other Aggrieved Employees by denying them specific rights afforded to them under
11 the California Labor Code and applicable Industrial Welfare Commission (“IWC”) Wage Order as
12 discussed herein.

13 **JURISDICTION AND VENUE**

14 1. Venue as to each Defendant is proper in this judicial district pursuant to Code of
15 Civil Procedure 395(a). Defendants conduct business in Los Angeles County, and each Defendant
16 is within the jurisdiction of this Court for service of process purposes. Defendants maintain
17 offices, transact business, and/or have an agent in Los Angeles County. Defendants employed
18 Plaintiff and numerous similarly situated non-exempt employees and committed many of the
19 unlawful activities subject to this Complaint in Los Angeles County.

20 2. This Court has subject matter jurisdiction over this action pursuant to Code of Civil
21 Procedure § 410.10 and Labor Code §§ 2698 et seq.

22 **THE PARTIES**

23 3. Plaintiff ANTONIO MARTINEZ is, and at all relevant times, was a resident of Los
24 Angeles County, California.

25 4. Defendant ROOSEVELT HOTEL, LLC, (the “Hotel” or “Defendant”) owns and
26 operates a hotel and restaurant located at 7000 Hollywood Blvd, Los Angeles, CA 90028.

5. The true names and capacities of Defendants sued herein as DOES 1-10, inclusive, are currently unknown to Plaintiff, who therefore sues them by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes that each of the Defendants designated as a DOE is legally responsible in some manner for the unlawful acts alleged. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of Defendants designated as DOES when those identities become known.

6. Plaintiff is informed and believes that each Defendant acted in all respects pertinent to this action as the aged of the other Defendants, carried out a joint scheme, business plan or policy, and the acts of each Defendant are legally attributable to the other Defendants.

GENERAL ALLEGATIONS

7. Plaintiff has been employed as a banquet server by Defendants since he was rehired by Defendants in March 2021.

8. The Los Angeles Citywide Hotel Worker Minimum Ordinance prohibits hotels with sixty or more rooms within the city of Los Angeles from retaining any service charges and requires that such service charges be paid in the entirety to hotel workers performing services for the customers from whom the service charges are collected. “Hotel Workers” do not include managerial or supervisory employees. (Los Angeles Municipal Code, Chap. XVII, Art.6, §§ 186.01 and 186.03.)

9. Labor Code section 204 requires employers to pay employees all wages that are due and owing twice during each month on days designated in advance by the employer as the regular paydays.

10. Defendants operate a hotel in the city of Los Angeles with sixty or more rooms.

11. During the PAGA Period (one year + 60 days prior to the filing of this Complaint), Defendants violated this Ordinance by failing to pay Plaintiff and the Aggrieved Employees all service charges that they were owed as required by Labor Code section 204.

12. Labor Code § 351 provides in relevant part that “[n]o employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee

1 by a patron, or deduct any amount from wages due an employee on account of a gratuity, or
2 require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of
3 the wages due the employee from the employer. Every gratuity is hereby declared to be the sole
4 property of the employee or employees to whom it was paid, given, or left for. . . . Payment of
5 gratuities made by patrons using credit cards shall be made to the employees not later than the
6 next regular payday following the date the patron authorized the credit card payment.”

7 13. Employers may not avoid paying employees gratuities by labeling such monies
8 “service charges” where the employer fails to notify customers that the “service charges” will be
9 distributed to individuals other than those employees who provided services. (O’Grady v.
10 Merchant Exchange Productions, Inc. (2019) 41 Cal.App. 5th 771, 790.)

11 14. During the PAGA period, Defendants charged customers service charges, but did
12 not inform them that a portion of the service charges would be retained by Defendants (and/or not
13 all of the services charged would be distributed to the Aggrieved Employees). Consequently,
14 these “service charges” were disguised gratuities that Defendants should have distributed to
15 Plaintiff and the Aggrieved Employees who rendered the services. Employer therefore violated
16 Labor Code § 351 and is liable for civil penalties under Labor Code § 2699(f).

17 15. California law requires employers to pay overtime equal to one and one- half times
18 the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each
19 hour worked beyond forty (40) hours per work week. Employers must pay overtime equal to
20 double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday
21 and for all hours worked in excess of eight (8) hours on the seventh consecutive day or work in a
22 work week. (Lab. Code § 510; IWC Wage Orders § 3 (A).

23 16. During the PAGA period, Defendants violated California overtime laws by failing
24 to pay Plaintiff and the Aggrieved Employees overtime at the correct rates. Specifically,
25 Employer failed to include all of the service charges that were owed in the regular rates of pay
26 when calculating overtime rates. Employer therefore violated Labor Code §§ 510 and the
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1 applicable IWC Wage Order; and, is therefore liable for civil penalties under Labor Code § and
2 2699(f).

3 17. California law requires employers to provide employees a reasonable opportunity
4 to take a duty-free thirty (30) minute meal period when an employee works more than five (5)
5 hours in a workday. Unless the employee is relieved of all duty during a 30-minute meal period,
6 the meal period shall be considered an “on duty” meal period and counted as time worked.
7 Employers must also provide employees with a second meal period when an employee works
8 more than (10) hours in a workday, except under certain conditions. Employers must pay
9 employees an additional hour of wages at the employees’ regular rate of pay for each missed meal
10 period. (Labor Code §§ 226.7 and 512, IWC Wage Orders § 11.)

11 18. Labor Code § 516 provides that the Industrial Welfare Commission may adopt or
12 amend working condition orders with respect to break periods, meal periods, and days of rest for
13 any workers in California consistent with the health and welfare of those workers.

14 19. During the PAGA period, Defendants failed to provide Plaintiff and the Aggrieved
15 Employees with compliant meal periods. Among other things, Plaintiff and Aggrieved Employees
16 routinely did not receive full thirty-minute meal periods or were forced to take late meal periods
17 due to the nature of the work.

18 20. Defendants often failed to pay Plaintiff and the Aggrieved Employees for non-
19 compliant meal periods. When they did so, they paid premiums at the wrong rates by failing to
20 include all of the service charges that Plaintiff and the Aggrieved Employees were owed in their
21 regular rates of pay.

22 21. Defendants violated California Labor Code §§ 226.7, 512 and 516 and IWC Wage
23 Orders § 11. Defendants are therefore liable for civil penalties under California Labor Code §§
24 558 and/or 2699(f).

25 22. Under California law, employers must provide employees with a paid, duty- free
26 net ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. (Labor
27 Code § 226.7 and IWC Wage Order § 12). Employers must pay employees an additional hour of
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1 wages at the employee's regular rate of pay where it fails to provide a compliant rest period. (Lab.
2 Code § 226.7).

3 23. During the PAGA period, Defendants violated Labor Code §§ 226.7 and 516, and
4 IWC Wage Orders Section 11 by failing to provide the Aggrieved Employees with all required,
5 compliant rest periods. Plaintiff and the Aggrieved Employees routinely did not receive full ten-
6 minute rest periods due to the nature of the work and the lack of coverage.

7 24. Defendants often did not pay Plaintiff and the Aggrieved Employees one additional
8 hour of pay at their regular rates when Defendants failed to provide compliant rest periods. When
9 Defendants paid rest periods premiums, they failed to calculate them correctly by not including
10 service charges owed to Plaintiff and the Aggrieved Employees when calculating their regular rate
11 of pay for rest period premiums. Consequently, the Aggrieved Employees were underpaid.

12 25. Accordingly, Defendants are subject to civil penalties under California Labor Code
13 § 2699(f) for failing to provide compliant rest periods and underpaying rest period premiums.

14 26. California Labor Code section 246(l) provides that an employer must calculate sick
15 pay leave using any of the following calculations: (1) paid sick time for nonexempt employees
16 shall be calculated in the same manner as the regular rate of pay for the workweek in which the
17 employee uses paid sick time, whether or not the employee actually works overtime in that
18 workweek; (2) paid sick time for nonexempt employees shall be calculated by dividing the
19 employee's total wages, not including overtime premium pay, by the employee's total hours
20 worked in the full pay periods of the prior 90 days of employment; or, (3) paid sick time for
21 exempt employees shall be calculated in the same manner as the employer calculates wages for
22 other forms of paid leave time.

23 27. During the PAGA period, Defendants failed to pay Plaintiff and the Aggrieved
24 Employees for sick pay using one of the foregoing calculation methods. Among other things,
25 Defendants failed to include the full portion of service charges to which they were entitled into the
26 regular rate when calculating sick pay; and, they did not otherwise calculate sick pay as statutorily
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1 required. Accordingly, Defendants are subject to civil penalties under California Labor Code §
2 2699(f).

3 28. An employer, semimonthly or at the time of each payment of wages, shall furnish
4 to his or her employee, either as a detachable part of the check, draft, or voucher paying the
5 employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized
6 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee,
7 except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable
8 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all
9 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
10 net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
11 name of the employee and only the last four digits of his or her social security number or an
12 employee identification number other than a social security number, (8) the name and address of
13 the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in
14 subdivision (b) of Section 1682, the name and address of the legal entity that secured the services
15 of the employer, and (9) all applicable hourly rates in effect during the pay period and the
16 corresponding number of hours worked at each hourly rate by the employee and, beginning July 1,
17 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay
18 and the total hours worked for each temporary services assignment. (Labor Code § 226(a).)

19 29. During the PAGA period, Defendants violated Labor Code section 226(a) by
20 failing to provide Plaintiff and the Aggrieved Employees with accurate itemized written wage
21 statements. Specifically, Employer failed to correctly list the total wage earned or the applicable
22 hourly rates of pay.

23 30. If an employer discharges an employee, the wages earned and unpaid at the time of
24 discharge are due and payable immediately. (Labor Code § 201.) If an employee not having a
25 written contract for a definite period quits his or her employment, his or her wages shall become
26 due and payable not later than 72 hours thereafter, unless the employee has given 72 hours
27 previous notice of his or her intention to quit, in which case the employee is entitled to his or her
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1 wages at the time of quitting. (Labor Code § 202.) If an employer willfully fails to pay, without
2 abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202,
3 and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee
4 shall continue as a penalty from the due date thereof at the same rate until paid or until an action
5 therefor is commenced; but the wages shall not continue for more than 30 days. (Labor Code §
6 203.)

7 31. During the PAGA period, Defendants violated these statutes by failing to timely
8 pay the Aggrieved Employees (who are former employees) all wages that were due and owing
9 upon separation of employment, including failing to pay them for all hours worked and premiums
10 for non-compliant meal and rest periods. Employer is therefore subject to civil penalties under
11 Labor Code §§ 2699 and/or 203.

12 **FIRST CAUSE OF ACTION**

13 **(Violation of the Private Attorneys General Act)**

14 **[Labor Code §§ 2698 et seq.]**

15 32. Plaintiff incorporates each of the preceding paragraphs of this Complaint.

16 33. During the PAGA period, Defendants violated Labor Code sections 201-203, 204,
17 210, 221, 226, 226.3, 226.7, 246, 510, 512, 516, 558, 1194, 1198 and the applicable Wage Order,
18 Sections 3, 7, 11, 12, and 20. These violations subject Defendant to civil penalties as set forth in,
19 inter alia, Labor Code section 2699.

20 34. Plaintiff complied with the procedures for bringing suit specified in Labor Code
21 sections 2699.3 and 2699.5 by letter dated July 5, 2023. Plaintiff gave written notice to the LWDA
22 via electronic submission, and via certified mail to all Defendants, of the specific provisions of the
23 Labor Code and applicable Wage Order allegedly violated, including the facts and theories to
24 support the alleged violations.

25 35. Under Labor Code section 2699.3, the LWDA must give written notice to the
26 parties it intends to investigate the alleged violations within 60 days of the date of the Plaintiff's
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1 written notice. As of the filing of this Complaint, the LWDA has not provided the parties with any
2 notice of its intention to investigate these claims.

3 36. Under Labor Code section 2699.3, Defendants has 33 days after the date of written
4 notice to cure the alleged violations. As of the filing of this Complaint, Defendants have not
5 responded to Plaintiff's PAGA notice in an attempt to cure.

6 37. Plaintiff seeks civil penalties in the amounts set forth in the Labor Code for each of
7 the aforesaid violations and/or default penalties as provided by Labor Code section 2699.

8 38. Under Labor Code section 2699(g), Plaintiff is also entitled to an award of
9 reasonable attorney's fees and costs in connection with his claims for civil penalties.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for relief as follows:

- 12 (1) for civil penalties according to proof;
13 (2) for pre-judgment interest as permitted by law;
14 (3) for reasonable attorneys' fees and costs of suit; and,
15 (4) for such other and further relief as the Court deems appropriate.

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17 Dated: October 27, 2023

BLAKE JONES LAW, PC.

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19 By: _____



20 Blake R. Jones
21 Attorneys for Plaintiff
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