

1 **MESSRELIAN LAW INC.**
2 Harout Messrelian, Esq. (272020)
3 500 N. Central Ave., Suite 840
4 Glendale, California 91203
5 Telephone: (818) 484-6531
6 Facsimile: (818) 956-1983

7 Attorneys for Plaintiff Tatiana Munguia

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF SAN MATEO**

10 TATIANA MUNGUIA,

11 Plaintiff,

12 vs.

13 LOTUS HOSPITALITY, INC.;
14 GANENDRA SINGH; and DOES 1 to 25,
15 inclusive,

16 Defendants.

Electronically

FILED

by Superior Court of California, County of San Mateo

ON

5/14/2024

By

/s/ **Hessen Ladcani**
Deputy Clerk

CASE NO.: 24-CIV-02945

COMPLAINT FOR DAMAGES FOR:

**1) PRIVATE ATTORNEYS GENERAL
ACT ("PAGA");**

COMES NOW Plaintiff, TATIANA MUNGUIA (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 LOTUS HOSPITALITY, INC.; GANENDRA SINGH;; and DOES 1 to 25, inclusive (hereinafter collectively "LOTUS" 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 LOTUS HOSPITALITY, INC.; is a California corporation, doing business in the County of San Mateo, State of California, and which employed Plaintiff.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendant GANENDRA SINGH is a female resident of the State of California, and the owner, managing agent, and/or director LOTUS HOSPITALITY INC. GANENDRA SINGH is being included in this lawsuit pursuant to Labor Code Section 558.1 as she was involved in the day-to-day operations of the business, including wage and hour practices and policies, and as such, controlled the hours, wages, and/or working conditions of Plaintiff and other hourly, non-exempt employees. Defendants LOTUS HOSPITALITY INC. and GANENDRA SINGH are collectively referred to herein as "Defendant(s)" (unless otherwise noted) or "LOTUS".

5. 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

1 defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible
2 for the conduct alleged herein. Upon discovering the true names and capacities of these
3 fictitiously named defendants, Plaintiff will amend this complaint to show the true names and
4 capacities of these fictitiously named defendants.

5 6. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
6 that information and belief, alleges that at all times herein mentioned, each of the remaining
7 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
8 under the authority of their agency, employment, or representative capacity, with the consent of
9 his/her codefendants.

11 **GENERAL ALLEGATIONS**

12 7. Plaintiff's employment with LOTUS started in late 2022 in the housekeeping
13 department. Plaintiff's employment ended on or around January 18, 2024. During her
14 employment tenure, Plaintiff was classified as an hourly, non-exempt employee.

15 8. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018),
16 Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas
17 Security Services USA, Inc., an onsite security provider. After about a year of employment,
18 Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff
19 specifically alleged violations to the Labor Code requiring immediate payment of wages upon
20 termination of employment and weekly payment of wages to temporary employees. The trial
21 court determined Huff was not a temporary employee, and therefore, lacked standing to bring
22 the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court
23 granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue
24 was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not
25 directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the
26 PAGA representative to sue for violations that the representative has personally suffered. The
27 PAGA statute states that an "aggrieved employee" is able to file suit on behalf of themselves
28

1 and others. The statute also states that an “aggrieved employee” is “any person who was
2 employed by the alleged violator and against whom one or more of the alleged violations was
3 committed.” Because at least one of the violations that Huff had alleged had affected her
4 personally, the Court of Appeal denied Securitas’ motion.

5 9. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and
6 other employees, it allows for suits broader than the specific violations the named employee
7 experienced. Therefore, even if the employee did not personally experience the Labor Code
8 violations, the employer may still be liable to under PAGA. Consequently, it is Plaintiff’s
9 position that Plaintiff can equivocally bring the following labor code violations on behalf of all
10 other employees, including ALL hourly, non-exempt employees and those employees who
11 were improperly classified as 1099 independent contractors and who worked for LOTUS in the
12 State of California during the relevant PAGA period.

13 10. It is Plaintiff’s position that LOTUS has violated the following Labor Code Sections
14 against Plaintiff and other similarly situated aggrieved employees, who include all non-exempt,
15 hourly employees and those misclassified as independent contractors who worked for LOTUS
16 at any and all of their hotel/motel locations in the State of California during the relevant PAGA
17 period.

18 11. LOTUS committed numerous labor code violations against Plaintiff and others.

19 12. LOTUS also violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to
20 pay Plaintiff and other similarly situated aggrieved employees for all hours worked, including
21 the statutory minimum wage for all hours worked and for “off the clock” work. This is so for
22 various reasons, including the fact that Plaintiff and others’ work hours were deducted whenever
23 they engaged in a rest break that was greater than 10 minutes long, even though they were still
24 under the control of the employer. LOTUS had a policy and practice of essentially “time
25 shaving” and deleting work hours from employees because they took a 12-minute break instead
26 of a 10-minute break. Since rest periods are considered “on the clock”, deleting minutes on a
27 daily basis is considered wage theft and illegal under California law. The latter is also a minimum
28

1 wage violation. Furthermore, the company had a policy and practice of “time shaving” and
2 rounding down work hours, which is akin to a minimum wage violation in that Plaintiff and
3 others were not paid for all hours worked. Moreover, and to the extent that Plaintiff and others
4 worked through meal periods, they were not compensated for this time, which is akin to a
5 minimum wage violation. Moreover, there were occasions wherein Plaintiff was asked to return
6 to work, while off the clock, to search for an item in the trash dumpster.

7 13. Due to the above violations, and specifically the “off the clock” work, LOTUS also
8 violated Labor Code §510 because it failed to pay Plaintiff and other aggrieved employees
9 overtime and double time compensation, even though they worked and/or were under the control
10 of the employer for more than 8 hours per day, 12 hours per day, and/or 40 hours per week
11 throughout their employment. Plaintiff’s and other aggrieved employees’ actual work hours and
12 the hours during which they were under the control of the employer entitled them to overtime
13 compensation, however, LOTUS did not compensate its hourly, non-exempt employees with the
14 proper and correct overtime as a matter of company policy. Furthermore, LOTUS failed to
15 include bonuses/incentive payments in calculating employees’ regular rate of pay for use in
16 deciphering the correct overtime rate of pay. Additionally, the incentive and bonus payments
17 were also not factored into employees’ regular rate for purposes of receiving meal and rest break
18 premiums per the Ferra v. Loews case.

19 14. LOTUS also violated Labor Code § 226.7 and the appropriate Industrial Welfare
20 Commission Wage Order no. 5 because it failed to consistently provide Plaintiff and other
21 similarly situated aggrieved employees with 10-minute rest periods for every four hours of
22 work, or majority portion thereof, throughout their employment. LOTUS did not completely
23 relieve Plaintiff and others of all duty during said rest periods. LOTUS did not pay to Plaintiff
24 and others one additional hour of pay at Plaintiff’s regular rate of compensation for each
25 workday that one or more statutory rest periods was not provided. As alluded to above,
26 Plaintiff and others would get time deducted if their rest breaks exceeded 10 minutes long even
27 though rest periods are supposed to be “on the clock”. Moreover, Plaintiff and others did not
28 always receive two uninterrupted and timely rest periods per shift per California law.

1 15. LOTUS violated Labor Code §§ 512 and 226.7 and the appropriate Industrial Welfare
2 Commission Wage Order no. 5 because it failed to provide hourly, non-exempt employees,
3 including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods for every five
4 (5) hours of work throughout their employment. LOTUS did not completely relieve Plaintiff and
5 other employees of all duty during said meal periods. LOTUS did not pay to Plaintiff and its
6 hourly, non-exempt employees one additional hour of pay at their regular rate of compensation
7 for each workday that one or more statutory meal periods was not provided. Plaintiff and others
8 did not consistently receive uninterrupted (Plaintiff was asked to throw items away on her meal
9 break) and timely (before the 5th hour) meal breaks during their employment tenure.
10 Consequently, it was the normal practice and custom of LOTUS not to consistently authorize,
11 permit, and enforce timely, uninterrupted statutory meal periods. If LOTUS had Plaintiff sign a
12 meal period waiver, it would not be valid and enforceable since Plaintiff and others generally
13 worked more than a 6-hour shift in a day. If LOTUS had Plaintiff sign an on-duty meal period
14 agreement wherein Plaintiff agreed to work through the meal periods, it would be invalid and
15 unenforceable because the nature of Plaintiff's job does not and did not prevent her from taking
16 a meal period and the company could have hired "breakers" to relieve Plaintiff of her duties so
17 that she can actually take a timely, uninterrupted meal period. Moreover, any such "on duty"
18 meal period agreement did not allow for Plaintiff to revoke such an agreement even if it was
19 signed. As such, Plaintiff and others did not receive statutory, timely meal periods during their
20 employment. If LOTUS argues that Plaintiff and others were paid for taking their meal breaks
21 since they were on the clock, the latter would still constitute an injury to Plaintiff and others
22 because they were not able to take an uninterrupted break wherein they can rest, eat, and are
23 relieved of all duties. To the extent that LOTUS argues that employees receive meal break
24 premium pay for missed, short, or late meal periods, that argument is inconsequential for PAGA
25 penalty purposes since the PAGA penalties are for the violations themselves, irrespective of
26 whether an employee received the premium payment for a missed, short, or interrupted meal
27 period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, "section 226.7 does not give
28 employers a lawful choice between providing *either* meal and rest breaks *or* an additional hour

1 of pay.” See *Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in
2 original). Thus, the extra hour of pay does not excuse the violation; the employer has still
3 committed a violation even if the remedy for the violation has been paid. See *Wert v. U.S.*
4 *Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As such, the work environment
5 and culture at LOTUS was not conducive to receiving consistent, timely, statutory meal breaks
6 under California law. Moreover, any meal or rest break premiums paid were not compensated at
7 the weighted average regular rate, inclusive of bonuses and/or incentive payments as well as
8 overtime compensation.

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

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

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

28 19. During the relevant time period, Plaintiff and other aggrieved employees incurred

1 necessary, business-related expenses and costs that were not reimbursed by LOTUS. These costs
2 include, but are not limited to, uniforms, mops, and brooms. Plaintiff had to purchase her own
3 mop and broom to work and management was aware of this but never reimbursed Plaintiff.
4 Moreover, since Plaintiff brought her own equipment to effectuate her job duties, she was to
5 receive at least double the minimum wage pursuant to IWC Wage Order no. 5, section 9(B).
6 Accordingly, LOTUS was in violation of California Labor Code sections 2800 and 2802.

7 20. Furthermore, LOTUS did not provide for any sick pay that was also delineated on
8 employee pay stubs and also failed to provide proper sick leave in violation of Labor Code
9 sections 233 and 246. Moreover, LOTUS failed to provide worker's compensation in
10 contravention of Labor Code section 3700.5. In addition, there no suitable seating and no suitable
11 rest facilities/area for the employees.

12 21. Each of the aforementioned violations, except the violations for inaccurate pay
13 statements under Labor Code section 226(a), is among the enumerated serious violations set
14 forth in Labor Code § 2699.5, for which there is no statutory right to cure.

15 **FIRST CAUSE OF ACTION**

16 **PRIVATE ATTORNEYS GENERAL ACT**

17 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
18 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 233, 246, 510, 512, 558, 1174, 1174.5,**
19 **1194, 1197.1, 1198, 2802, 3700.5 and IWC 5-2001)**

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

21 22. Plaintiff re-alleges and incorporates by reference each and every allegation in
22 paragraphs 1 through 21, inclusive, of this Complaint as though fully set forth herein.

23 23. Plaintiff has complied with the procedures for bringing suit specified in California
24 Labor Code § 2699.3. By letter dated February 1, 2024, Plaintiff gave written notice by certified
25 mail to the Labor and Workforce Development Agency ("LWDA") and Defendants of the
26 specific provisions of the California Labor Code alleged to have been violated, including the
27 facts and theories to support the alleged violations.

28 24. 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.

25. Plaintiff therefore has exhausted all administrative remedies required of her under

1 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
2 cause of action and pursue penalties in a representative action for Defendants' violations of the
3 Labor Code.

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

10 27. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
11 violator and had one or more of the alleged violations committed against him, and therefore is
12 properly suited to represent the interests of other current and former employees, including all
13 current and former hourly, non-exempt employees who worked for LOTUS at all locations in
14 the State of California during the applicable PAGA Period.

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

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

22 30. California Labor Code section 2699 et seq. imposes penalties upon culpable
23 Defendants for violating the Labor Code.

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

32. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for the

1 following:

2 Violations of California Labor Code sections 201, 202, 203, 204, and/or 204b, 210, 226,
3 226.3, 226.7, 233, 246, 510, 512, 558, 1174, 1174.5, 1194, 1197.1, 1198, 2802, 3700.5, and
4 any other Labor Codes/Industrial Welfare Commission Order (No. 5) violated based on the
5 facts alleged in this Complaint.

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

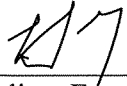
10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs pray for Judgment against Defendants and each of them, as
12 follows:

- 13 1. For the imposition of civil penalties;
- 14 2. For maximum civil penalties available under Labor Code Section 2699 against
15 Defendants in a manner and amount authorized by that statute, as described more
16 particularly in the Complaint and representative PAGA claims;
- 17 3. For all costs and disbursements incurred in this suit;
- 18 4. Reasonable attorney's fees where available by law, including but not limited to,
19 pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section
20 1021.5, and/or other applicable laws; and
- 21 5. For such other and further relief as this Court may deem proper.

22 DATED: May 13, 2024

MESSRELIAN LAW INC.

23
24 By 
25 Harout Messrelian, Esq.
26 Attorneys for Plaintiff Tatiana Munguia
27
28