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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF SAN MATEO**

15 **Nikol Lockett**, individually and on behalf of all
16 similarly situated individuals,

17 Plaintiff,

18 vs.

19 **Stanford Park Hotel, LLC**, a Delaware
20 Limited Liability Company; **Avi Haksar**, an
21 individual; and **Does 1-10**, inclusive;

22 Defendants.

Electronically
FILED
by Superior Court of California, County of San Mateo
ON 3/28/2024
By /s/ Hessen Ladcani
Deputy Clerk

23 CASE NO. 24-CIV-01940

24 **REPRESENTATIVE COMPLAINT FOR:**

25 1) **PAGA Penalties (Labor Code §§ 2698,**
26 ***et seq.*)**

1 Plaintiff Nikol Lockett, in her representative capacity, hereby brings this action on behalf of
2 herself and all other similarly situated current and former employees and alleges as follows, by and
3 through her counsel of record:

4 **THE PARTIES**

5 1. Plaintiff **Nikol Lockett** ("Plaintiff") is a resident of the County of San Mateo in the
6 State of California. Ms. Lockett was employed by Defendants as a Reservations Agent, a full-time
7 nonexempt position, from approximately September 21, 2022 through the present date.

8 2. Defendant **Stanford Park Hotel, LLC** (the "Hotel") is a Delaware corporation
9 with its principal place of business 1100 Alma Street, Suite 106, Menlo Park, CA 94025. Upon
10 information and belief, the Hotel employs at least 130 employees.

11 3. Defendant **Avi Haksar** is an individual who, on information and belief, resides in
12 the County of San Mateo. Upon information and belief, Mr. Haksar is the Managing Director for
13 the Hotel. Per Labor Code § 558.1, since Mr. Haksar is a managing agent, director, and/or officer
14 of the Hotel and, upon information and belief, as he caused or directed the acts described herein,
15 he is personally liable for the penalties sought under PAGA for predicate violations of the Labor
16 Code.

17 4. The true names and capacities of the defendants named herein as Does 1 through 10,
18 inclusive (together with the Hotel, "Defendants"), are unknown to Plaintiff at this time.
19 Accordingly, Plaintiff brings this suit against them by fictitious names pursuant to California Code
20 of Civil Procedure section 474. Plaintiff believes that each of the Doe Defendants is a California
21 resident and/or does substantial business in the State of California. At all relevant times, Does 1
22 through 10 were acting within the course and scope of their employment and agency with
23 Defendants. Plaintiff is informed and believes that each Doe Defendant is responsible for the
24 injuries and damages alleged herein. Plaintiff will amend this complaint to reflect Does 1 through
25 10's true names and capacities when they have been determined.

26 5. Except as otherwise noted herein, Defendants participated in the acts alleged herein
27 and/or were the agents, servants, employees, or representatives of the other Defendants. At all
28 times relevant to this complaint, Defendants were acting within the course, scope, and authority of

1 their agency and employment such that the acts of one defendant are legally attributable to the other
2 Defendants. Defendants, in all respects, acted as employers and/or joint employers of Plaintiff and
3 Aggrieved Employees in that each of them exercised control over the wages, hours, and/or working
4 conditions of Defendants' hourly non-exempt employees.

5 JURISDICTION AND VENUE

6 6. The court has jurisdiction over all causes of action in this complaint pursuant to
7 Article VI, section 10 of the California Constitution. No federal question is at issue; Plaintiff relies
8 solely on California statutes and law, including the Labor Code, IWC Wage Orders, Code of Civil
9 Procedure, and the Business & Professions Code.

10 7. Venue as to Defendants is proper in this Superior Court pursuant to California Code
11 of Civil Procedure section 395. Defendants' principal places of business are located in Los Angeles
12 County and Defendants are within the jurisdiction of the court for service of process. The unlawful
13 acts alleged have directly affected Plaintiff and similarly situated employees within Los Angeles
14 County.

15 8. Finally, Business & Professions Code section 17204 provides that any person acting
16 on her own behalf may bring an action in any court of competent jurisdiction. This court has
17 jurisdiction as set forth above. This Court maintains appropriate jurisdiction over this dispute.

18 FIRST CAUSE OF ACTION

19 *California Labor Code §2699, et seq.*

20 *Private Attorneys General Act ("PAGA") Penalties*

21 **(Plaintiff and Aggrieved Employees Against Defendants)**

22 9. Plaintiff repeats, repleads, and incorporates by reference, as though fully set forth in
23 this paragraph, all the allegations of this Complaint.

24 10. Failure to Provide Compliant Meal Periods. Labor Code section 226.7, 512(a), and
25 1198 provide that no employer shall require an employee to work during any meal period mandated
26 by an applicable order of the IWC. "An off-duty meal period, therefore, is one in which the
27 employee is relieved of all duty during the 30-minute meal period . . . an employer's obligation is to
28 provide an off-duty meal period: an uninterrupted 30-minute period during which the employee is

relieved of all duty.” *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1035 (2012).

11. Defendants’ policies and practices served to deprive the Aggrieved Employees of complaint 30-minute breaks free of employer control and/or relieved of all duties.

12. Upon information and belief, Aggrieved Employees were required to skip breaks, take breaks after the fifth hour of work, interrupt breaks, remain on call, or work through them due to Defendants’ policies and practices.¹

13. Additionally, numerous Aggrieved Employees, were required to sign on-duty meal period waivers, as a condition of employment, indicating that they forfeited their right to meal periods even through on-duty meal periods were not required as a matter of necessity or the nature of the work and were instead imposed upon employees simply because Defendant does not want to adequately staff its facilities during certain hours.²

14. Accordingly, Aggrieved Employees were uniformly denied meal periods as a result of Defendants’ formal policies and practices.

15. Failure to Provide Compliant Rest Periods. Labor Code § 226.7, 512(a), and 1198 provide that no employer shall require an employee to work during any rest or meal period mandated by an applicable order of the IWC.

16. Employers must authorize and permit employees to be relieved of all duty during their rest and meal periods: “A rest period, in short, must be a period of rest.”³ *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal.5th 257, 273 (2016).

¹ Employees are instructed that they cannot take their meal periods in view of Hotel guests or on the Hotel property.

² On-duty meal periods are only allowed when the “nature of the work” prevents the employee from being relieved from all duties. The “nature of the work” exception applies in very narrow situations (namely, where there is an external force requiring employee to be on duty at all times and where the employee is the sole employee). *See Augustus v. ABM Sec. Servs., Inc.*, 2 Cal. 5th 257, 266 (2016), *as modified on denial of reh’g* (Mar. 15, 2017) (on duty exception is “exceedingly narrow”); *Abdullah v. U.S. Sec. Assocs., Inc.*, 731 F.3d 952, 959 (9th Cir. 2013).

³ Employees must also be free to leave the premises. *Augustus*, 2 Cal. 5th at 270; *see also* Department of Industrial Relations, “Rest Periods/Lactation Accommodations,” *available at* https://www.dir.ca.gov/dlse/FAQ_RestPeriods.htm (“Q. Can my employer require that I stay on the work premises during my rest period? A. No, your employer cannot impose any restraints not inherent in the rest period requirement itself.”)

1 17. Employees must also be free to leave the employer's premises during their rest
2 period. *See id.* at 270; *see also* Department of Industrial Relations, "Rest Periods," *available at*
3 *https://www.dir.ca.gov/dlse/FAQ_RestPeriods.htm* ("Q. Can my employer require that I stay on the
4 work premises during my rest period? A. No, your employer cannot impose any restraints not
5 inherent in the rest period requirement itself.").

6 18. On information and belief, Defendants failed to authorize or permit all required
7 compliant paid rest periods for shifts worked by Aggrieved Employees by requiring them to skip
8 rest periods, interrupt rest periods, work through rest periods, or remain on call during rest periods.

9 19. Additionally, employees are instructed that they can only take their rest periods in
10 the break room or in their car, functionally creating an on-premises rest period requirement.

11 20. Failure to Provide and Maintain Compliant Wage Statements. Labor Code § 226
12 requires employers to furnish employees with an accurate, itemized statement in writing showing,
13 among other things, (1) gross wages earned; (2) total hours worked by the employee (for hourly-
14 paid, non-exempt employees); (3) all deductions; (4) net wages earned; (5) the inclusive dates of
15 the period for which the employee is paid; (6) the name of the employee and the last four digits of
16 his or her social security number; (7) the name and address of the legal entity that is the employer;
17 and (8) all applicable hourly rates in effect during the pay period and the corresponding number of
18 hours worked at each hourly rate by the employee.

19 21. Because Defendant did not record the time Plaintiff and Aggrieved Employees spent
20 working off the clock, Defendant did not list the correct amount of gross wages and net wages earned
21 by Plaintiff and Aggrieved Employees in compliance with section 226(a)(1) and 226(a)(5). For the
22 same reason, Defendant failed to accurately list the total number of hours worked by Plaintiff and
23 Aggrieved Employees in violation of section 226(a)(2), and failed to list the applicable hourly rates
24 of pay in effect during the pay period and corresponding accurate number of work hours worked at
25 each hourly rate in violation of section 226(a)(9). Defendants also failed to list all earned premium
26 wages for missed meal and rest periods on Aggrieved Employees' wage stubs in violation of section
27 226(a)(1) and (a)(5). *Naranjo v. Spectrum Sec. Servs.*, 13 Cal.5th 93, 121 (2022).

28 22. Defendant knowingly and intentionally failed to comply with Labor Code § 226,

1 causing injury and damages to Plaintiffs and Aggrieved Employees. Plaintiffs and all those similarly
2 situated were injured by these failures because, among other things, they were confused about
3 whether they were paid properly and/or they were misinformed about how much compensation was
4 owed. These damages include, but are not limited to, costs incurred calculating the correct net
5 wages for each pay period and the amount of employment taxes that were not paid to state and
6 federal tax authorities.

7 23. Failure to Pay All Wages Due On Regular Pay Days And At Separation. At all times
8 relevant herein set forth, Labor Code § 204 provides that all wages earned by any person in any
9 employment between the first (1st) and the fifteenth (15th) days, inclusive, of any calendar month,
10 other than those wages due upon termination of an employee, are due and payable between the
11 sixteenth (16th) and the twenty-sixth (26th) day of the month during which the labor was
12 performed.

13 24. At all times relevant herein, Labor Code § 204 provides that all wages earned by any
14 person in any employment between the sixteenth (16th) and the last day, inclusive, of any calendar
15 month, other than those wages due upon termination of an employee, are due and payable between
16 the first (1st) and the tenth (10th) day of the following month.

17 25. At all times relevant herein, Labor Code § 204 provides that all wages earned for
18 labor in excess of the normal work period shall be paid no later than the payday for the next regular
19 payroll period. Alternatively, at all times relevant herein, Labor Code § 204 provides that the
20 requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or
21 semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close
22 of the payroll period.

23 26. During the relevant time period, Defendant willfully failed to pay Plaintiffs and
24 Aggrieved Employees all wages due including, but not limited to, and meal and rest period premium
25 wages within the time periods specified by California Labor Code § 204.

26 27. Defendant's failure to pay Plaintiffs and Aggrieved Employees all wages due violates
27 Labor Code § 204. Plaintiffs and Aggrieved Employees are therefore entitled to recover from
28 Defendant the statutory penalty wages pursuant to California Labor Code § 210.

1 28. Labor Code § 203 provides that “[i]f an employer willfully fails to pay, without
2 abatement or reduction, in accordance with § 201, 201.5, 202, and 205.5, any wages of an employee
3 who is discharged or who quits, the wages of the employee shall continue as a penalty from the due
4 date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall
5 not continue for more than 30 days.”

6 29. Aggrieved Employees have left Defendants’ employ during the Period. Defendants
7 knowingly failed to pay Aggrieved Employees all earned wages upon termination by failing to pay
8 all earned premium wages for non-compliant meal and rest periods at the applicable regular rate of
9 pay in violation of Labor Code §§ 201 and 202. *Naranjo v. Spectrum Sec. Servs.*, 13 Cal.5th 93, 117
10 (2022).

11 30. Defendants’ failure to pay Aggrieved Employees who are no longer employed by
12 Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72)
13 hours of their leaving Defendants’ employment, violates Labor Code §§ 201 and 202. Plaintiff and
14 formerly employed Aggrieved Employees are therefore entitled to recover from Defendants the
15 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a 30-day
16 maximum penalty under Labor Code § 203.

17 31. Failure to Provide Suitable Seating. Labor Code § 1198 provides that it is illegal to
18 employ an employee for “longer hours than those fixed by the [applicable wage order] or under
19 conditions of labor prohibited by the [applicable wage] order.”

20 32. Wage Order No. 5 governs employees in the public housekeeping industry, defined
21 as ““any industry, business, or establishment which provides meals, housing, or maintenance
22 services whether operated as a primary business or when incidental to other operations in an
23 establishment not covered by an industry order of the Commission.” 8 C.C.R. § 11050(2)(P). It
24 expressly incluydings hotels, such as the Hotel. 8 C.C.R. § 11050(2)(P)(3).

25 33. Wage Order No. 5 provides that “[a]ll working employees *shall* be provided with
26 suitable seats when the nature of the work reasonably permits the use of seats.” *Id.* § 11050(14)(A)
27 (emphasis added). “When the employees are not engaged in the active duties of their employment
28 and the nature of the work requires standing, an adequate number of suitable seats *shall* be placed

1 in reasonable proximity to the work area and employees shall be permitted to use such seats when
2 it does not interfere with the performance of their duties.” *Id.* § 11050(14)(B) (emphasis added).

3 34. The Hotel has a practice and policy of denying employees who work in customer
4 facing roles the right or permission to sit—regardless of whether the nature of the work would
5 permit it. Upon information and belief, the Hotel also to failed provide sufficient suitable seating in
6 reasonable proximity to the work area.

7 35. These policies and practices violated Wage Order No. 5 and Labor Code § 1198.

8 36. Failure to Reimburse Necessary Business Expenses. Labor Code § 2802 provides
9 that “[a]n employer shall indemnify his or his employee for all necessary expenditures or losses
10 incurred by the employee in direct consequence of the discharge of his or his duties, or of his or his
11 obedience to the directions of the employer.” Lab. Code § 2802. The purpose of Labor Code
12 section 2802 is to prevent employers from passing off their cost of doing business and operating
13 expenses on to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137,
14 1144 (2014).

15 37. Defendants required Aggrieved Employees to use their cellphones in the regular
16 course of employment by answering texts and calls from their supervisors while at work or on a
17 break, for purposes of scheduling and re-scheduling future work, being assigned tasks, and general
18 administrative matters.

19 38. Defendants failed to reimburse a reasonable portion of the Class Members’
20 cellphone and internet related expenses despite requiring the use of the device and/or applications
21 that required a data plan. *See Cochran v. Schwan’s Home Serv., Inc.*, 228 Cal. App. 4th 1137, 1144
22 (“We hold that when employees must use their personal cell phones for work related calls, Labor
23 Code section 2802 requires the employer to reimburse them. Whether the employees have cell
24 phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable
25 percentage of their cell phone bills.”).

26 39. Entitlement to Penalties. Under the California Private Attorneys General Act
27 (“PAGA”), Labor Code § 2698, *et seq.*, an aggrieved employee may bring a representative action as
28 a private attorney general, on behalf of herself and other current or former employees as well as the

1 general public, to recover penalties for an employer's violations of the Labor Code and IWC Wage
2 Orders.

3 40. These penalties may be "stacked" separately for each of Defendants' violations of
4 the Labor Code. *See, e.g., Hernandez v. Towne Park, Ltd.*, No. CV 12-02972, 2012 WL 2373372, at
5 *17, n.77 (C.D. June 22, 2012) ("[F]ederal courts applying California law have concluded that
6 stacking is appropriate."); *see also O'Connor v. Uber Techs., Inc.*, No. 13-CV-03826-EMC, 2016 WL
7 3548370, at *7 (N.D. Cal. June 30, 2016) ("Finally, Plaintiff ignore[s] the potential for stacking of
8 PAGA penalties related to wage-and-hour claims other than the gratuities and expense reimburse-
9 ment claim, i.e., meal and rest breaks, minimum wage and overtime, and workers' compensation.").

10 41. Plaintiff, by nature of her employment with Defendants, is an aggrieved employee
11 for purposes of this Complaint with standing to bring an action under PAGA. Plaintiff, on behalf of
12 herself, and all other Aggrieved Employees, brings this representative action pursuant to Labor
13 Code § 2699, *et seq.*, seeking civil penalties for Defendants' violation of Labor Code §§ 201-204,
14 210, 226, 226.7, and 1198 as described herein, plus attorneys' fees and costs.

15 42. Per Labor Code § 2699(f), and based on the foregoing, Plaintiff and Aggrieved
16 Employees are entitled to civil penalties in an amount to be shown at trial subject to the following
17 formula:

- 18 a. In an amount set forth as a civil penalty in the underlying
19 statute; or
20 b. \$100 per initial violation per employee per pay period, and
21 \$200 for each subsequent violation per employee per pay
22 period.

23 43. These penalties shall be allocated seventy-five percent to the Labor and Workforce
24 Development Agency and twenty-five percent to the affected employees. These penalties may be
25 stacked separately for each of Defendants' violations of the Labor Code. *See, e.g., Hernandez v.*
26 *Towne Park, Ltd.*, No. CV 12-02972, 2012 WL 2373372, at *17, n.77 (C.D. Cal. June 22, 2012)
27 ("[F]ederal courts applying California law have concluded that stacking is appropriate."); *see also*
28 *O'Connor v. Uber Techs., Inc.*, No. 13-CV-03826-EMC, 2016 WL 3548370, at *7 (N.D. Cal. June 30,

2016) (“Finally, Plaintiff ignore the potential for stacking of PAGA penalties related to wage-and-hour claims other than the gratuities and expense reimbursement claim, i.e., meal and rest breaks, minimum wage and overtime, and workers’ compensation.”).

44. Procedural Requirements Met. Plaintiff has satisfied all prerequisites to serve as a representative to enforce California’s labor laws including without limitation the penalty provisions identified above. As the LWDA took no steps within the prescribed time to intervene and because the violations described herein are not subject to cure under Labor Code § 2699.3, Plaintiff—as a representative of the People of the State of California—is entitled to seek any and all penalties otherwise capable of being collected by the Labor Commission or Department of Labor Standards Enforcement (“DLSE”).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for judgment as follows:

- A. For statutory and civil penalties and special damages, according to proof at trial;
- B. For pre- and post-judgment interest on monetary damages;
- C. For preliminary and permanent injunctive relief;
- D. For reasonable attorney’s fees and costs and expert fees and costs; and
- E. For such other relief as this Court deems just and proper.

Dated: March 28, 2024

Respectfully submitted,

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