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December 13, 2024

Filed Online

Labor and Workforce Development Agency
Department of Industrial Relations
Private Attorneys General Act (PAGA) - Filing
New PAGA Claim Notice

Via Certified U.S. Mail – Return Receipt Requested

CT Corporation System
C/O Courtyard Management LLC
818 West 7th Street
Los Angeles, California 90017

Re: Notice Pursuant to California Labor Code § 2699.3

To Representatives of Courtyard Management LLC, and Representatives of the LWDA:

My office represents Ms. Rosa Bonilla, a former non-exempt employee of Courtyard Management LLC dba Marriott International. Ms. Bonilla hereby provides notice to Courtyard Management LLC, and all related entities (collectively, “Employer”), pursuant to California Labor Code § 2699.3.

My office is investigating a potential representative action on behalf of all current and former non-exempt employees of Employer (“Aggrieved Employees”) in the State of California regarding Employer’s unlawful policies and practices with respect to their employment, and more specifically, violations of California wage and hour laws, as described below.

Please be advised that this letter constitutes written notice required by Labor Code §§ 2699.3(a)(1) and 2699.3(c)(1) and may lead to immediate action against Employer in a court of law and/or administrative proceedings, as well as the imposition of substantial penalties and other remedies against Employer, as well as against any and all officers, owners, directors,

managers, managing agents, or entities who are or may be liable under law for any of the violations alleged herein.

This notice shall be construed as extending without limitation to any past, present, future or continuing violation of the California Labor Code, applicable IWC wage orders, or regulations thereunder which might be discovered as a result of a reasonable and diligent investigation made pursuant to this notice.

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), California Labor Code § 2698 *et seq.*, this letter sets forth the specific provisions of the California Labor Code and Industrial Welfare Commission (“IWC”) Wage Order No. 5-2001 and any other applicable IWC Wage Order, which Ms. Bonilla alleges that Employer has violated, including the facts and theories to support the alleged violations.

PRELIMINARY STATEMENT

Among other things, Ms. Bonilla alleges that Employer is liable for the following: failure to provide meal and rest periods to aggrieved employees, in violation of California Labor Code §§ 226.7, 510, 512, 558, 1194, 1197 and Wage Order No.5-2001, §§ 10-11 (including requiring employees to carry cell phones during meal periods, auto-deducting meal periods); failure to pay one addition hour of compensation to aggrieved employees at their regular rates of pay for each work day that a meal or rest period is not provided, in violation of California Labor Code § 226.7 and Wage Order No. 5-2001, §§11(B) and 12(B) (including the failure to pay premium payments at the regular rate of pay); failure to pay aggrieved employees overtime wages, and failure to properly calculate overtime wages, in violation of California Labor Code §§ 510, 1194, 1198, and Wage Order No. 5-2001, § 3 (including off the clock work, failure to pay the regular rate of pay; editing/manipulating time entries); failure to pay minimum wages and straight time to aggrieved employees in violation of California Labor Code §§ 510, 1194 and IWC Wage Order. 5-2001, §4; willful failure to pay discharged or quitting aggrieved employees all wages due, in violation of California Labor Code §§ 201-203; failure to provide accurate itemized wage statements to aggrieved employees, in violation of California Labor §§ 226, 1174, and 1174.5; failure to maintain required records of aggrieved employees, in violation of California Labor Code §§ 1174, 1174.5, and Wage Order No. 5-2001, § 14; failure to pay sick leave at the regular rate of pay, pursuant to Labor Code § 246; failure to indemnify aggrieved employees for employment expenditures, and/or losses, in violation of California Labor Code §2802; failure to provide suitable resting facilities, in violation of IWC Wage Order No. 5-2001, § 13 failure to provide suitable seating, in violation of IWC Wage Order No. 5-2001, § 14; failure to implement a Workplace Prevention Policy, in violation of California Labor Code §§6401.7 and 6401.9; and the failure to comply and implement a Heat & Temperature Illness Program, in violation of Labor Code §§6721, Sections 3395 and 3396 of Title 8 of the California Code of Regulations, otherwise known as the Maria Isabel Vasquez Jimenez heat illness standard.

This letter also serves as notice of Ms. Bonilla’s demand for preservation and non-spoilation of evidence, requesting that all relevant documents and data be saved and that all electronic files and hard-copy documents that are related to Ms. Bonilla’s employment and potential claims must be preserved, even without a court order. Spoliation of evidence may result in legal claims for damages and monetary and evidentiary sanctions, including “adverse inference” jury instructions. Furthermore, intentional spoliation of evidence may carry criminal consequences pursuant to California Penal Code § 135.

FACTS AND THEORIES

Ms. Bonilla was employed by Courtyard Management LLC, as a Guest Environment Expert, a non-exempt position paid at an hourly rate of \$21.50. Ms. Bonilla’s duties and responsibilities included but were not limited to, cleaning rooms; replacing linens and towels, laundry of dirty linens and towels, staging rooms for future guests, and general cleaning services. Ms. Bonilla was assigned to work at 3501 Seagate Way, Oceanside, California 92056. Ms. Bonilla was employed by Employer from on or around August 2018 to October 4, 2024.

Ms. Bonilla, on behalf of herself and other aggrieved employees of Employer in the State of California during the one (1) year preceding the date of this notice letter, alleges the following facts and theories:

I. Meal Period Violations

Pursuant to California Labor Code § 116.7, 512, 558 and IWC Order No. 5-2001, § 11, no employer shall employ any non-exempt employee for a work period of more than five (5) hours without a meal period of not less than thirty (30) minutes. Non-exempt employees are also entitled to two (2) meal periods of not less than thirty (30) minutes for a work period longer than ten (10) hours. An employer is required to pay one (1) hour of compensation for each missed or non-compliant meal periods to its non-exempt employees. Moreover, Employer restricted Ms. Bonilla and the other aggrieved employees and prevented them from leaving their work areas, and Employer’s meal policy failed to provided that Ms. Bonilla and the other aggrieved employees could leave the hotel when taking their meal periods.

Employer regularly did not allow their non-exempt employees, including Ms. Bonilla, to take a full thirty minute meal period, and meal periods were regularly short (less than thirty minutes), late (taken after 5 hours), and interrupted (work was performed during the meal period). Among other things, Employer did not properly staff its housekeeping business such that Ms. Bonilla and the other aggrieved employees could not take compliant meal periods. This practice caused Ms. Bonilla and the other aggrieved employees to miss or otherwise take non-compliant meal periods.

Next, Employer consistently denied Ms. Bonilla and other aggrieved employees compliant meal periods by requiring them to complete so much work within their shifts that they would be forced to skip their meal periods, to take them after working longer than five (5) hours, to perform work during their meal periods, or to return to work after taking a meal period lasting less than thirty (30) minutes. Further, Ms. Bonilla and the other aggrieved employees could not leave their workstation and/or no one was available to cover for them which resulted in taking non-compliant meal periods.

Employer further violated California Labor Code § 226.7 and IWC Wage Order No. 5-2001 by willfully failing to compensate Ms. Bonilla and other aggrieved employees who were not provided with a meal period in compliance with California law with one (1) additional hour of compensation at their regular rates of pay, based upon nondiscretionary incentive payments, for each workday that a compliant meal period was not provided.

II. Rest Period Violations

Employer failed to authorize and permit Ms. Bonilla and other aggrieved employees to take rest periods as required under California Labor Code §§ 226.7 and 512, and § 12 of IWC Wage Order No. 5-2001 and any other applicable wage order. California employers are required to provide a ten (10) minute rest period for every four hours worked, or major fraction thereof. Further, California employers are required to pay one (1) hour of compensation at Ms. Bonilla and the other aggrieved employees regular rate of pay, based upon nondiscretionary incentive payments for each day in which a legally compliant rest period is not provided. Moreover, Employer restricted Ms. Bonilla and the other aggrieved employees and prevented them from leaving their work areas when taking their rest periods, and Employer's rest period policy failed to provide that Ms. Bonilla and the other aggrieved employees could leave the hotel when taking their rest periods.

As with meal periods, Employer's policies and practices caused Ms. Bonilla and other aggrieved employees to miss or otherwise take non-compliant rest periods by, among other things, giving them unreasonable amounts of work that had to be completed within their shift such that rest periods simply could not be taken. This was the result of systemic understaffing. For example, Ms. Bonilla was constantly busy with her job duties such that she could not take complete and uninterrupted rest periods. Employer maintained complete control over the aggrieved employees when they attempted to take rest periods (requiring aggrieved employees to carry cell phones); and other methods yet to be discovered.

Employer also violated Labor Code § 226.2, subdivision (a), paragraphs (1) and (3), which provides that piece-rate employees must be paid compensation for rest periods that is separate from their piece-rate compensation. Employer failed to compensate Ms. Bonilla and the other aggrieved employees for their rest periods when they provided cleaning services for additional rooms they were paid on a piece rate basis.

The hourly rate of compensation for rest periods must be the same as the hourly rate (averaged over the workweek) that Ms. Bonilla and the other aggrieved employees earned during the workweek for time during which they were performing work. If, for some reason, this average hourly rate comes out to less than minimum wage, then the employee must be paid at minimum wage. Employer's wage statements list the amount for each additional room cleaned at less than the minimum wage mandated by the State of California.

III. Failure to Pay Overtime Wages

Pursuant to California Labor Code §§ 510, 1194 and IWC Wage Order No. 5-2001, § 3, Employer is required to compensate Ms. Bonilla and other aggrieved employees for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive day of any workweek, or after twelve (12) hours in any workday.

Ms. Bonilla and other aggrieved employees are entitled to the protections of California Labor Code §§ 510, 1195 and IWC Wage Order No. 5-2001. Employer has failed to compensate Ms. Bonilla and other aggrieved employees for all overtime hours worked by, among other things: failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay as provided by California Labor Code §§ 510, 1194 and IWC Wage Order No. 5-2001, § 3; requiring, permitting or suffering Ms. Bonilla and other aggrieved employees to work through meal and rest periods but not compensating them for this time, illegally and inaccurately recording time in which Ms. Bonilla and other aggrieved employees worked; rounding and/or manipulating time cards; failing to pay for pre-work and post-work; and other methods to be discovered.

IV. Failure to Pay Minimum Wages and Straight Time Pay

Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Order No. 5-2001, § 4, payment to a non-exempt employee of less than the applicable minimum wage for all hours worked by, among other things: requiring, permitting or suffering Ms. Bonilla and other aggrieved employees to work off the clock; requiring, permitting or suffering Ms. Bonilla and other aggrieved employees to work through meal and rest periods but not compensating them for this time, and failing to include this time in all hours worked; illegally and inaccurately recording time that Ms. Bonilla and other aggrieved employees worked; compensating less the minimum wage for cleaning additional rooms; and other methods to be discovered.

V. Failure to Pay All Wages Due at Discharge or Termination

Pursuant to California Labor Code § 201, 202, and 203, California employers are required to pay all earned and unpaid wages to a non-employee who is discharged. California Labor Code § 201

mandates that if an employer discharges a non-exempt employee, that employee's wages accrued and unpaid at the time of discharge are due and payable immediately. Pursuant to California Labor Code § 202, California employers are required to pay all accrued wages due to a non-exempt employee no later than 72 hours after the employee quits his or her employment, unless the employee provides 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

California Labor Code §203 provides that if an employer willfully fails to pay, in accordance with California Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the non-exempt employee at the same rate for up to thirty (30) workdays.

Because Employer, among other things, has required Ms. Bonilla and other aggrieved employees to work off the clock without compensation, has required them to work through their meal and rest periods without proper compensation and/or remuneration, failed to pay premium payments for missed/noncompliant meal and rest periods; failure to pay minimum wages for cleaning additionally rooms; and it has willfully failed and continues to fail to pay wages due to Ms. Bonilla and other aggrieved employees in accordance with California Labor Code §§ 201 and 202.

VI. Failure to Maintain Required Records

Employer has failed to maintain records as required under California Labor Code §§ 226, 1174 and IWC Wage Order No. 5-2001, § 7, including but not limited to, the following records: total daily hours worked by each employee; applicable rates of pay; all deductions; meal periods; time records showing when each employee begins and ends each work period; failure to provide accurate itemized statements reflecting all compensation and remuneration owed and due to them. Employer has knowledge that it is not providing its non-exempt employees with proper meal and rest periods, but omits from the wage statements such compensation and/or remuneration. Additionally, Employer requires aggrieved employees to work through meal and rest periods and work off the clock and fails to record this time or compensate for this time, and failed to maintain records for all hours worked by Ms. Bonilla and the other aggrieved employees on work projects.

VII. Failure to Furnish Accurate Wage Statements

Employer has failed to provide Ms. Bonilla and other aggrieved employees with timely, accurate, and itemized wage statements (i.e., pay stubs) in writing showing each employee's gross wages earned, total hours worked, all deductions made, net wages earned, the name and address of the legal entity employing, Ms. Bonilla and other aggrieved employees, the inclusive dates of the period for which the employee is paid, and all applicable hourly rates in effect during each pay

period and the corresponding number of hours worked at each hourly rate, premium pay for missed meal, and rest periods, all in violation of California Labor Code § 226 and IWC Wage Order No. 5-2001, § 7. Employer also failed to pay the regular rate of pay for meal and rest period premium payments and for sick leave based upon nondiscretionary commission payments. In addition, Employer required Ms. Bonilla and other aggrieved employees to clean additional rooms which were paid at rates less than minimum wage based upon Employer's inaccurate wage statements. Ms. Bonilla and other aggrieved employees were confused by these inaccurate wage statements, which resulted in substantial harm to them, because it prevented them from discovering the scope and extent of Employer's violations of California wage and hour laws.

VIII. Failure to Comply With Labor Code § 246

Labor Code § 246 provides that an employee who works in California for more than "30 or more days within a year ... is entitled to be paid sick days ..." Labor Code Section § 246 (i) requires an employer to provide an employee with "written notice" that sets forth the "amount of sick leave available" on the employee's wage statement pursuant to Labor Code § 226 or "... in a separate writing provided on the designated pay date with the employee's payment of wages." Moreover, Employer is required to pay sick leave at the regular rate of pay. See, Labor Code § 246. Here, Employer failed to provide Ms. Bonilla and the aggrieved employee with sick leave at the regular rate of pay based upon nondiscretionary incentive payments.

IX. Failure to Provide Suitable Resting Facilities

IWC Wage Order No. 5-2001, § 13 provides: "Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours." Employer has failed to provide suitable resting facilities by not providing a break room, or any other appropriate designated area on the work premises, where Ms. Bonilla and other aggrieved employees could take meal periods and rest breaks.

X. Failure to Provide Suitable Seating

IWC Wage Order No. 5-2001, § 14 provides:

“(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

Employer has failed to provide suitable seating by not providing any seats or stools at work locations worked by Plaintiff and other aggrieved employees. The nature of the work reasonably permits the use of seats when working. To the extent that the use of seats could interfere with their work duties, at all times herein it is and has been reasonable for Employer to place seats in reasonable proximity to the areas worked by Ms. Bonilla and other aggrieved employees when doing so would not interfere with their job duties.

XI. Failure to Indemnify Employees for Necessary Employment Expenditure

California Labor Code § 2802(a) requires California Employer to indemnify non-exempt employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer. Employer has failed to indemnify Ms. Bonilla and other aggrieved employees for all business expenses and/or losses incurred in direct consequence of the discharge of their duties while working under the direction of Employer in violation of California Labor Code § 2802. Employer failed to properly indemnify Ms. Bonilla and other aggrieved employees for use of their personal cell phones and the maintenance of their mandatory uniforms; and other unreimbursed expenses which they used regularly for work purposes.

XII. Failure to Implement Workplace Violence Prevention Policy

California Labor Code §§ 6401.7 and 6401.9 required Employer to develop and implement a workplace violence prevention plan in accordance with newly codified Labor Code section 6401.9, which sets out the requirements for the plan. Starting July 1, 2024, Employer was required to establish, implement, and maintain a Workplace Violence Prevention Plan that includes: 1) implementation of a Workplace Violence Prevention Plan; 2) maintaining a violence incidence log; 3) training program to discuss and prevent workplace violence; and 4) maintain records relating to workplace violence which includes, records or workplace violence hazard identifications, evaluations, and correction must be created and maintained for a minimum of five years; training records must be created and maintained; incident logs; and records of workplace violence incident investigations must be maintained.

Here, Employer willfully failed to implement a Workplace Violence Prevention Policy starting on or about July 1, 2024. Ms. Bonilla and the other aggrieved employees are entitled to recover penalties up to \$25,000 for serious violations, and up to \$158,727 for “willful” violations. See, Labor Code §§ 6401.17, 6401.9, 6428, and 6429

XIII. Failure to Implement a Heat Prevention Policy

Employer failed to maintain adequate temperatures which created excessive heat or humidity exposing Ms. Bonilla and the other aggrieved employees to temperature related hazards. Employer failed to maintain a comfortable working environment.

On June 20, 2024, the Occupational Safety and Health Standards Board approved California Code of Regulations, Title 8, section 3396, “Heat Illness Prevention in Indoor Places of Employment”. This standard applies to most workplaces where the indoor temperature reaches 82°F. It established required safety measures for indoor workplaces to prevent worker exposure to risk of heat illness. This standard went into effect on July 23, 2024. Employer has failed to comply with the mandates of the new OSHA regulations and California law.

The applicable provisions of the IWC Wage Orders require temperature to be maintained at comfortable levels. Section 15 of the applicable Wage Orders States the following:

15. Temperature

(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.

(B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort.

Pursuant to California Labor Code §6721, Employer was mandated to implement indoor heat prevention standards as set forth in the recently amended Sections 3395 and 3396 of Title 8 of the California Code of Regulations, otherwise known as the Maria Isabel Vasquez Jimenez heat illness standard. Employer failed to implement Indoor Heat Prevention policies for Ms. Bonilla and the aggrieved employees at its hotels throughout the State of California.

Section 3396 required Employer to establish, implement, and maintain an effective Heat Illness Prevention Plan for indoor places of employment. The plan must be in writing and include procedures for water provision, access to cool-down areas, temperature measurement, emergency response, and acclimatization. Employer failed to establish, implement and maintain an effective Heat Illness Prevention Plan for both indoor and outdoor places of employment for Ms. Bonilla and the other aggrieved employees.

Employer’s failure to comply with California Labor Code §6721 and the recently amended Section 3395 of Title 8 of the California Code of Regulations will result in the imposition of substantial civil penalties. In particular, California Labor Code §6428 provides that any employer which violates any occupational safety or health standard shall be assessed a civil penalty of up to \$25,000 for each serious violation. Any Employer that operates without an injury prevention program can be assessed heightened penalties of up to \$124,708. See, California Labor Code §6429.

DEMAND

Demand is hereby made that Employer shall agree, writing received by this office no later than thirty-three (33) calendar days from the postmark date of this notice, to pay Ms. Bonilla and all other aggrieved employees employed by Employer at any time during the past twelve (12) months, back pay and compensation for the above-referenced violations. Additionally, demand is hereby made that Employer shall agree to comply with all California wage and hour laws as described herein and ensure that its hourly aggrieved employees are paid proper overtime compensation and given required meal and rest periods. In addition, the following demands are hereby made:

1. Employer shall agree to conduct a survey or interview of all aggrieved employees in California during the past twelve (12) months to obtain information from them about the number of meal and rest periods each employee missed, interrupted, late, or otherwise non-compliant, during their work shifts, with the investigation to be completed within thirty (30) days.
2. Employer shall agree to pay each aggrieved employee one (1) hour of pay for every shift in which he or she missed, interrupted, or otherwise did not take a compliant meal or rest period, payable at the regular rate of pay, as required by California Labor Code § 226.7 and the applicable wage order.
3. Employer shall agree to pay each aggrieved employee all unpaid overtime, minimum, and straight time hours, as required pursuant to California Labor Code §§ 510, 1194, 1198, and Wage Order No. 5-2001, § 3.
4. Employer shall pay all sick leave based upon the regular rate of pay, based upon nondiscretionary incentive payments;
5. Employer shall conduct a survey of all aggrieved employees to determine if he, she or they have unreimbursed business expenses, and agree to reimburse those aggrieved employees who were forced to pay for any business expenses incurred for the benefit of Employer pursuant to California Labor Code § 2802;
6. Employer shall conduct an audit to confirm all hotels and other facilities operated by Employer have suitable resting facilities, within thirty (30) days of this Notice;
7. Employer shall conduct an audit to confirm that suitable seating is provided to all aggrieved employees, where reasonably practicable, within (30) days of this Notice;

8. Employer shall provide copies of all documents used for obtaining and/or holding employment as requested by any aggrieved employee within thirty (30) days of this Notice;
9. Employer shall agree to pay a thirty (30) day waiting time penalty, equal to thirty (30) days of pay, to each formerly employed aggrieved employee who reports any unpaid wages as described herein;
10. Employer thereafter shall issue corrected and revised wage statements, within sixty (60) days of receipt of this Notice;
11. Implement a Workplace Violence Prevention Policy, pursuant to California Labor Code §§ 6401.7 and 6401.9, within thirty (30) days of this Notice;
12. Implement an Occupational Safety and Health Standards Board approved California Code of Regulations, Title 8, section 3396, within thirty (30) days of this Notice;
13. Employer shall agree to pay accrued interest to all aggrieved employees at the rate of ten percent (10%) per annum for said unpaid wages; and
14. Employer shall agree to pay all penalties and civil penalties due arising from the violations of the California Labor Code and IWC wage order sections referenced above and pursuant to PAGA, California Labor Code § 2698 *et seq.*

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please provide notice, via United States Certified Mail to:

The Wheeler Law Firm, APC
Scott Ernest Wheeler, Esq.
Justin A. Wheeler, Esq.
250 West First Street, Suite 216 Claremont, California 91711
Telephone: (909) 621-4988
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Courtyard Management LLC
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In the event that you have any questions, do not hesitate to contact my firm.

Very Truly Yours,

A handwritten signature in blue ink, appearing to read "Scott Ernest Wheeler", with a stylized flourish extending to the right.

SCOTT ERNEST WHEELER

SEW/yc