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

MARIA SANDOVAL NUNEZ, an
individual, on behalf of herself and others
similarly situated

PLAINTIFF,

v.

MERRITT HOSPITALITY, LLC; and DOES
1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 20STCV07198

[Case assigned for All Purposes to Hon. Judge
Maren Nelson, in Dept. 17]

**FIRST AMENDED CLASS AND
REPRESENTATIVE AND ACTION
COMPLAINT**

1. Failure to Provide Meal Breaks Pursuant to Labor Code §§ 226.7 and 512
2. Failure to Provide Rest Breaks Pursuant to Labor Code §§ 226.7
3. Violation of Labor Code § 226(a)
4. Penalties Pursuant to Labor Code § 203
5. Violation of Business & Professions Code § 17200
6. Penalties Pursuant to Labor Code § 2699, et seq.

1 Plaintiff MARIA SANDOVAL NUNEZ, an individual, on behalf of herself, all others
2 similarly situated, and on behalf of the people of the State of California and as an “aggrieved
3 employee” under the Labor Code Private Attorneys General Act of 2004, § 2699, et seq.
4 (“PAGA”), complains of Defendant MERRITT HOSPITALITY, LLC (“Defendant”) and each of
5 them, as follows:

6 I.

7 INTRODUCTION

8 1. This is a Class and Representative Action, pursuant to Code of Civil Procedure
9 §382, and Labor Code §2699, et seq., on behalf of Plaintiff and a Proposed Class defined as:

10 All persons who are employed or have been employed as an hourly
11 employee by MERRITT HOSPITALITY, LLC, in the State of
12 California who worked one or more pay periods since four (4) years
prior to the filing of this action to the present. (“Proposed Class”)

13 2. From at least four (4) years prior to the filing of this action and continuing to the
14 present, Defendant has had a consistent policy of failing to inform Proposed Class Members of
15 their right to take meal periods by way of a lawful policy and requiring Proposed Class Members
16 within the State of California, including Plaintiff, to work at least five (5) hours without a meal
17 period and failing to pay such employees one (1) hour of pay at the employees’ regular rate of
18 compensation for each workday that the meal period is not provided or provided after five (5)
19 hours, as required by California state wage and hour laws.

20 3. For at least four (4) years prior to the filing of this action and continuing to the
21 present, Defendant has had a consistent policy of failing to inform Proposed Class Members of
22 their right to take rest periods by way of a lawful policy and of failing to provide Proposed Class
23 Members within the State of California, including Plaintiff, rest periods of at least ten (10) minutes
24 per four (4) hours worked or major fraction thereof and failing to pay such employees one (1) hour
25 of pay at the employee’s regular rate of compensation for each workday that the rest period was
26 not provided, as required by California state wage and hour laws.

27 4. For at least one (1) year prior to the filing of this action continuing to the present,
28 Defendant has failed to comply with Industrial Welfare Commission (“IWC”) Wage Order 5-2001

1 and Labor Code § 226(a) by failing to provide accurate itemized wage statements to Plaintiff and
2 members of the Proposed Class.

3 5. For at least three (3) years prior to the filing of this action continuing to the present,
4 Defendant has failed to pay all wages due at the time of termination or resignation to Plaintiff and
5 the Proposed Class.

6 6. Plaintiff, on behalf of herself and all Proposed Class Members brings this action
7 pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, and 512; Wage Order 5-2001; and
8 California Code of Regulations, Title 8, Section 11050, seeking meal and rest period penalties,
9 accurate itemized wage statements, other penalties, injunctive and other equitable relief, and
10 reasonable attorneys' fees and costs.

11 7. Plaintiff, on behalf of herself and all Proposed Class Members, pursuant to Business
12 & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and disgorgement of
13 all benefits Defendant enjoyed from its unlawful conduct as described herein.

14 8. For at least one (1) year prior to the date of the letter sent to the Labor Workforce
15 Development Agency ("LWDA") and Defendant, Defendant has violated several Labor Code
16 provisions, as detailed below, giving rise to a claim pursuant to PAGA. Plaintiff brings this cause
17 of action on behalf of herself and all aggrieved employees as defined in her notice letter to the
18 LWDA. (See Exhibit "1").

19 II.

20 JURISDICTION AND VENUE

21 9. This Court has subject matter jurisdiction over all causes of action asserted herein
22 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure
23 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive
24 of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the
25 State of California or is subject to adjudication in the courts of the State of California.

26 10. This Court has personal jurisdiction over Defendant because Defendant has caused
27 injuries in the County of Los Angeles and the State of California through their acts, and by their
28 violation of the California Labor Code, California state common law, and California Business &

1 Professions Code § 17200, *et seq.*

2 11. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
3 Civil Procedure § 395. Defendant operates within California and does business within Los
4 Angeles County. The unlawful acts alleged herein have a direct effect on Plaintiff and all Proposed
5 Class Members within the State of California and the county of Los Angeles.

6 12. This case should be classified as complex according to Rule 3.400 of the California
7 Rules of Court, and assigned to a complex litigation judge and department, as it will involve
8 substantial documentary evidence, a large number of witnesses, and is likely to involve extensive
9 motion practice raising difficult or novel issues that will be time-consuming to resolve and would
10 require substantial post judgment judicial supervision.

11 **III.**

12 **PARTIES**

13 **A. PLAINTIFF**

14 13. Plaintiff MARIA SANDOVAL NUNEZ is a resident of California.

15 14. Plaintiff and all Proposed Class Members, were regularly required to:

- 16 a. Work without being provided compliant meal periods;
17 b. Work without being provided rest periods;
18 c. Work without being provided accurate itemized wage statements;
19 d. Work without being provided with suitable seating; and

20 15. Defendant willfully failed to compensate Plaintiff and all Proposed Class Members
21 for wages at the termination of their employment with Defendant.

22 16. As a result of this conduct, Defendant has engaged in unfair competition and
23 unlawful business practices.

24 17. Plaintiff and all aggrieved employees as defined in her notice letter to the LWDA
25 are “aggrieved employees” within the meaning of Labor Code § 2699, *et seq.* (*see* Labor Code
26 §2699(c).)

27 **B. DEFENDANTS**

28 18. Defendant MERRITT HOSPITALITY, LLC is believed to be a Delaware

1 corporation operating within the State of California. Defendant's corporate address is believed to
2 be 101 Merritt 7, 1st Floor, Norwalk, CT 06851. Upon information and belief, Defendant
3 employed Plaintiff and similarly situated persons as hourly employees within California.
4 Defendant has done and does business throughout the State of California.

5 19. The true names and capacities, whether individual, corporate, associate, or
6 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
7 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
8 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
9 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
10 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
11 capacities of the Defendants designated hereinafter as DOES when such identities become known.

12 20. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
13 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
14 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
15 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
16 employer and/or joint employer of Plaintiff and the Proposed Class Members.

17 21. Furthermore, Defendants acted in all respects as the employers or joint employers
18 of the Proposed Class. Defendants, and each of them, exercised control over the wages, hours or
19 working conditions of the Proposed Class, or suffered or permitted the Proposed Class to work, or
20 engaged, thereby creating a common law employment relationship, with the Proposed Class.
21 Therefore, Defendants, and each of them, employed or jointly employed the Proposed Class.

22 IV.

23 FACTUAL BACKGROUND

24 22. Plaintiff and the Proposed Class are, and at all times pertinent hereto, have been
25 classified as non-exempt employees by Defendant. Defendant hires employees who work as
26 hourly employees who are paid on an hourly basis.

27 23. Upon information and belief, Plaintiff and the Proposed Class are covered by
28 California Industrial Welfare Commission Occupational Wage Order No. 5-2001 (Title 8 Cal.

1 Code of Regs. § 11050).

2 24. Plaintiff and all Proposed Class Members have been forced by Defendant to work
3 over five (5) hours in one day without being provided a thirty (30) minute uninterrupted meal break
4 and not being compensated one (1) hour of pay at the regular rate of compensation for each
5 workday that a meal period was not provided or provided after five (5) hours, all in violation of
6 California labor laws, regulations, and Industrial Welfare Commission Wage Orders.
7 Additionally, Defendant failed to inform Plaintiff and the Proposed Class of their right to take
8 meal periods by way of a lawful policy.

9 25. Plaintiff and the Proposed Class have been required to work four hour increments,
10 or major fractions thereof, without being provided with a ten (10) minute rest period. Additionally,
11 Defendant failed to inform Plaintiff and the Proposed Class of their right to take rest periods by
12 way of a lawful policy.

13 26. Defendant has failed to comply with Industrial Welfare Commission ("IWC")
14 Wage Order 5-2001(7) and Labor Code § 226(a) by failing to provide accurate itemized wage
15 statements that show 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.

17 27. Defendant willfully failed to pay wages and compensation, when Plaintiff and all
18 Proposed Class Members quit or were discharged. This failure was willful, without legal
19 justification, and interfered with Plaintiff's and Class Members' rights.

20 28. As a result of the acts alleged herein, Defendant violated Labor Code §2699, *et seq.*

21 V.

22 **CLASS ACTION ALLEGATIONS**

23 29. Plaintiff brings this action on behalf of herself and all others similarly situated as a
24 Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent a
25 proposed class composed of and defined as follows:

26 All persons who are employed or have been employed as an hourly
27 employee by MERRITT HOSPITALITY, LLC, in the State of
28 California who worked one or more pay periods since four (4) years
prior to the filing of this action to the present. ("Proposed Class")

1 30. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to
2 amend or modify the class description with greater specificity, by division into subclasses, or by
3 limitation to particular issues.

4 31. This action has been brought and may properly be maintained as a class action
5 under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined
6 community of interest in the litigation and the Proposed Classes are easily ascertainable.

7 A. **NUMEROSITY**

8 32. The potential members of the Proposed Class as defined are so numerous that
9 joinder of all the members of the Proposed Class is impracticable. While the precise number of
10 proposed Class Members has not been determined at this time, Plaintiff is informed and believes
11 that Defendant currently employ, and during the relevant time periods employed over 50 members
12 of the Proposed Class.

13 33. Plaintiff alleges that Defendant's employment records would provide information
14 as to the number and location of all Proposed Class Members. Joinder of all members of the
15 Proposed Class is not practicable.

16 B. **COMMONALITY**

17 34. There are questions of law and fact common to the Proposed Class that predominate
18 over any questions affecting only individual Proposed Class Members. These common questions
19 of law and fact include, without limitation:

20 a. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order 5-
21 2001 or other applicable IWC Wage Orders, by failing to inform Plaintiff and the Proposed Class
22 of their right to take meal periods and by failing to provide required meal periods throughout the
23 term of employment and failing to compensate said employees one (1) hours wages in lieu of meal
24 periods;

25 b. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order 5 -
26 2001 or other applicable IWC Wage Orders, by failing to inform Plaintiff and the Proposed Class
27 of their right to take rest periods and failing to provide required rest periods throughout the term
28 of employment and failing to compensate said employees one (1) hours wages in lieu of rest

1 periods;

2 c. Whether Defendants violated Labor Code § 226(a) and Wage Order 5-2001
3 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11050 by failing to
4 issue accurate itemized wage statements to Plaintiff and the members of the Proposed Class;

5 d. Whether Defendant violated §§ 201-203 of the Labor Code by failing to pay
6 compensation due and owing at the time that any Proposed Class Member's employment with
7 Defendant terminated;

8 e. Whether Defendant violated § 17200, *et seq.* of the Business & Professions
9 Code by engaging in the acts previously alleged; and

10 f. Whether Plaintiff and the members of the Proposed Class are entitled to
11 equitable relief pursuant to Business & Professions Code § 17200, *et seq.*

12 g. Whether Defendant violated Labor Code § 2699, *et seq.* by engaging in the
13 acts alleged herein.

14 **C. TYPICALITY**

15 35. The claims of Plaintiff are typical of the claims of the Proposed Class. Plaintiff and
16 all members of the Proposed Class sustained injuries and damages arising out of and caused by
17 Defendant's common course of conduct in violation of laws, regulations that have the force and
18 effect of law, and statutes as alleged herein.

19 **D. ADEQUACY OF REPRESENTATION**

20 36. Plaintiff will fairly and adequately represent and protect the interests of the
21 members of the proposed Class.

22 37. Counsel who represent Plaintiff and the Proposed Class are competent and
23 experienced in litigating large employment class actions.

24 **E. SUPERIORITY OF CLASS ACTION**

25 38. A class action is superior to other available means for the fair and efficient
26 adjudication of this controversy. Individual joinder of all Proposed Class Members is not
27 practicable, and questions of law and fact common to the Proposed Class predominate over any
28 questions affecting only individual members of the Proposed Class. Each member of the Proposed

1 Class has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or
2 practice of failing to provide meal and rest periods, failing to provide accurate itemized wage
3 statements, and failing to pay all wages upon resignation or termination.

4 39. Class action treatment will allow those similarly situated persons to litigate their
5 claims in the manner that is most efficient and economical for the parties and the judicial system.
6 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
7 action that would preclude its maintenance as a class action.

8 **VI.**

9 **FIRST CAUSE OF ACTION**

10 **PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS**

11 **FAILURE TO PROVIDE MEAL PERIODS PURSUANT TO**

12 **LABOR CODE § 226.7 AND LABOR CODE § 512**

13 40. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by
14 reference all previous paragraphs.

15 41. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of
16 compensation for each meal period the employer fails to provide. Employees are entitled to a first
17 meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the
18 first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts
19 over ten (10) hours. If an employee is entitled to a second meal period, it must be provided after
20 no more than ten (10) hours of work.

21 42. Defendant failed to maintain a policy informing Plaintiff and the Proposed Class of
22 these rights.

23 43. Plaintiff and the Proposed Class consistently worked shifts over five (5) hours.
24 Defendant failed to provide Plaintiff and the Proposed Class with proper meal periods of not less
25 than thirty (30) minutes within the first five hours of the shift as required and failed to pay meal
26 period premiums in lieu thereof.

27 44. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to
28 damages in an amount equal to one (1) hour of wages per missed meal break, per day in a sum to

1 be proven at trial.

2 **VII.**

3 **SECOND CAUSE OF ACTION**

4 **PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS**

5 **FAILURE TO ALLOW REST PERIODS PURSUANT TO**

6 **LABOR CODE § 226.7**

7 45. Plaintiff, on behalf of herself and the proposed Class, realleges and incorporates by
8 reference all previous paragraphs.

9 46. Labor Code § 226.7 requires an employer to pay an additional hour (1) of
10 compensation for each rest period the employer fails to provide. Employees are entitled to a paid
11 ten (10) minute rest break for every four (4) hours worked or major fraction thereof.

12 47. Defendant failed to maintain a policy informing Plaintiff and the Proposed Class of
13 this right.

14 48. Defendant consistently failed to provide Plaintiff and the Proposed Class with rest
15 breaks of not less than ten (10) minutes as required by the Labor Code during the relevant time
16 period.

17 49. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to
18 damages in an amount equal to one (1) hour of wages per missed rest period, in a sum to be proven
19 at trial.

20 **VIII.**

21 **THIRD CAUSE OF ACTION**

22 **PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS**

23 **VIOLATION OF LABOR CODE § 226(A)**

24 50. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by
25 reference all previous paragraphs.

26 51. Labor Code § 226(a)(9) requires that every employer shall semimonthly or at the
27 time of each payment of wages, furnish each of his or her employees, an accurate itemized
28 statement in writing showing all applicable hourly rates in effect during the pay period and the

1 corresponding number of hours worked at each hourly rate by the employee.

2 52. Defendant issued Plaintiff and the Proposed Class itemized wage statements that
3 do not accurately show the overtime rates in violation of Labor Code §226(a)(9). Further, Plaintiff
4 and the Proposed Class are issued wage statements that do not include meal premiums.

5 53. Defendant's failure to provide accurate itemized wages statements according to
6 Labor Code § 226(a) was all done on a regular and consistent basis.

7 54. An employee suffering injury as a result of a knowing and intentional failure by an
8 employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual
9 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
10 dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an
11 aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and
12 reasonable attorneys' fees.

13 **IX.**

14 **FOURTH CAUSE OF ACTION**

15 **WAITING TIME PENALTIES UNDER LABOR CODE § 203**

16 55. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by
17 reference all previous paragraphs.

18 56. Numerous members of the Proposed Class including the Plaintiff are no longer
19 employed by Defendant. They were either fired or quit Defendant's employ.

20 57. Defendant's failure to pay wages, as alleged above was willful in that Defendant
21 knew wages to be due but failed to pay them, thus entitling Plaintiff and the Proposed Class to
22 penalties under Labor Code §203, which provides that an employee's wages shall continue as a
23 penalty until paid for a period of up to thirty (30) days from the time they were due.

24 58. Defendant has failed to pay Plaintiff and others a sum certain at the time of
25 termination or within seventy-two (72) hours of their resignation, and have failed to pay those
26 sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code § 203, Plaintiff and
27 the Proposed Class are entitled to a penalty in the amount of Plaintiff's and the Proposed Class
28 Members' daily wage multiplied by thirty (30) days.

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PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS

UNFAIR COMPETITION PURSUANT TO BUSINESS & PROFESSIONS CODE § 17200

60. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of herself, on behalf of the general public, and on behalf of the Proposed Class, bring this claim pursuant to Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

62. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair business practices.

64. Defendant has violated statutes and public policies as alleged herein. Through the conduct alleged in this Complaint, Defendant has acted contrary to these public policies, have violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in violation of Business & Profession Code § 17200, *et seq.*, depriving Plaintiff,

1 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
2 guaranteed to all employees under law.

3 65. Defendant's conduct, as alleged hereinabove, constitutes unfair competition in
4 violation of § 17200, *et seq.* of the Business & Professions Code.

5 66. Defendant, by engaging in the conduct herein alleged, either knew or in the exercise
6 of reasonable care, should have known that the conduct was unlawful. As such it is a violation of
7 § 17200, *et seq.* of the Business & Professions Code.

8 67. As a proximate result of the above-mentioned acts of Defendant, Plaintiff and
9 others similarly situated have been damaged in a sum as may be proven.

10 68. Unless restrained, Defendant will continue to engage in the unlawful conduct as
11 alleged above. Pursuant to the Business & Professions Code, this court should make such orders
12 or judgments, including the appointment of a receiver, as may be necessary to prevent the use or
13 employment by Defendant, its agents, or employees, of any unlawful or deceptive practices
14 prohibited by the Business & Professions Code, and/or, including but not limited to, restitution
15 and disgorgement of profits which may be necessary to restore Plaintiff and members of the
16 proposed Class the money Defendant has unlawfully failed to pay.

17 **XI.**

18 **SIXTH CAUSE OF ACTION**

19 **PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ.**

20 69. Plaintiff, on behalf of the State of California, and the aggrieved employees,
21 realleges and incorporates by reference all previous paragraphs.

22 70. As a result of the acts alleged above and the additional acts alleged in this section,
23 Plaintiff seeks penalties under Labor Code §§ 201-203, 226(a), 226.7, 512, 1198 and 1199, for
24 which a civil penalty applies under PAGA.

25 71. Plaintiff brings this representative action on behalf of herself and the State of
26 California as well as on behalf of two groups of aggrieved employees defined as:

- 27 a. All persons who are employed or have been employed as an
28 hourly employee by MERRITT HOSPITALITY, LLC, in the
State of California who worked one or more pay periods since

one (1) year prior to the date of this letter and continuing to the present. ("Aggrieved Employees").

- b. All persons employed or formerly employed by MERRITT HOSPITALITY, LLC, who worked at the front desk at one of MERRITT HOSPITALITY, LLC's California properties for one or more pay periods since one (1) year prior to the date of this letter and continuing to the present. ("Suitable Seating Aggrieved Employees").

72. In addition to the meal period, rest period, and penalty claims alleged in detail above, Plaintiff also alleges a suitable seating violation as the basis for a PAGA claim on behalf of the Suitable Seating Aggrieved Employees. Defendant did not provide suitable seats for employees performing work at the front desk even though the nature of work reasonably permitted the use of seats. Seats were not available to Plaintiff and other Aggrieved Employees.

73. For at least one (1) year prior to the date of the letter sent to the Labor Workforce Development Agency and Defendant giving notice of these PAGA claims and continuing to the present, Defendant has violated Labor Code sections 1198 and 1199 with respect to Plaintiff and all aggrieved employees. Defendant required Plaintiff and the aggrieved employees to work under conditions of labor prohibited by an order of the Industrial Welfare Commission (IWC) by violating, refusing, and neglecting to comply with the commission's orders regarding working conditions.

74. Wage Order 5-2001 states that "All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats." Labor Code sections 1198 and 1199 penalize and bar employers from employing, requiring, or causing an employee to work under conditions of labor prohibited by a wage order, and from violating, refusing, or neglecting to comply with such an order.

75. Defendant violated Labor Code sections 1198 and 1199 by failing to provide Plaintiff and other employees with suitable seating pursuant to Industrial Welfare Commission Wage Order 5-2001, sections 14(A) and (B).

76. When Plaintiff and other Aggrieved Employees worked at the front desk, the nature of the work allowed for a suitable seat to be provided. However, Defendant did not make a suitable

1 seat available to Plaintiff and other Aggrieved Employees at the front desk locations within its
2 stores.

3 77. Defendant's violation of Labor Code sections 1198 and 1199 were all done on a
4 regular and consistent basis.

5 78. Defendant's violation of Labor Code Labor Code §§1198 and 1199 was all done
6 on a regular and consistent basis.

7 79. As a result of the acts alleged above, Plaintiff, on behalf of herself and all other
8 Aggrieved Employees, seeks penalties under Labor Code section 2699, *et seq.* because of
9 Defendant's violation of Labor Code sections 1198 and 1199, for which a civil penalty applies
10 under PAGA.

11 80. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code
12 § 2699, *et seq.* because of Defendant's violation of Labor Code §§ 201-203, 226(a), 226.7, 512,
13 1198 and 1199, which call for civil penalties.

14 81. For each such violation, Plaintiff and all other aggrieved employees are entitled to
15 penalties in an amount to be shown at the time of trial subject to the following formula:

- 16 a. \$100 for the initial violation per employee per pay period; and
17 b. \$200 for each subsequent violation per employee per pay period.

18 82. These penalties will be allocated 75% to the Labor Workforce Development
19 Agency and 25% to the affected employees.

20 83. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded a notice letter to the
21 LWDA¹ and mailed a letter by certified mail to Defendant MERRITT HOSPITALITY, LLC
22 entity' address, which is 101 Merritt 7, 1st Floor, Norwalk, CT 06851, as proscribed by the Code
23 on February 24, 2020, describing Defendant's conduct in violation of Labor Code §§ 201, 202,
24 203, 226(a), 226.7, 512, 1198, and 1199. (*see* Exhibit "1.")

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28 ¹ Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California
Labor and Workforce Development Agency / Department of Industrial Relations website
(<https://dir.tfaforms.net/266>).

84. Plaintiff also obtained an e-filing confirmation from the LWDA confirming receipt of the notice (*see* Exhibit “2”) and a signed certified green return receipt from Defendant establishing that is also received Plaintiff’s notice. (*see* Exhibit “3.”)

85. As no letter evidencing the LWDA's intention to investigate was received by Plaintiff's Counsel within sixty-five (65) calendar days, Plaintiff is entitled to commence a civil action as though the LWDA had not chosen to investigate pursuant to Labor Code §2699.3(a)(2)(A). Plaintiff will also provide the LWDA with a filed-stamped copy of the First Amended Class and Representative Action Complaint immediately.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages in the amount of Plaintiff's and each Proposed Class Members' hourly wage for each meal period missed or taken late from at least four (4) years prior to the filing of this action to the present as may be proven;

2. For compensatory damages in the amount of Plaintiff's and each Proposed Class Members' hourly wage for each rest period missed or taken late from at least four (4) years prior to the filing of this action to the present as may be proven;

3. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code § 226(a) in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000);

4. For penalties pursuant to Labor Code § 203 for all employees who were terminated or resigned equal to their daily wage times thirty (30) days;

5. An award of prejudgment and post judgment interest;

6. An order enjoining Defendant and its agents, servants, and employees, and all persons acting under, in concert with, or for it from providing Plaintiff with proper meal periods, rest periods, accurate itemized wage statements, and wages upon termination/resignation pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 512, and IWC 5-2001;

7. For restitution for unfair competition pursuant to Business & Professions Code

1 § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

2 8. For penalties under Labor Code §2699, *et seq.* for Defendant's violation of Labor
3 Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1198, and 1199.

4 9. An award providing for payment of costs of suit;

5 10. An award of attorneys' fees; and

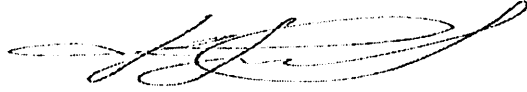
6 11. Such other and further relief as this Court may deem proper and just.

7 **DEMAND FOR JURY TRIAL**

8 Plaintiff hereby demands a trial of her claims by jury to the extent authorized by law.

9
10 DATED: May 4, 2020

KINGSLEY & KINGSLEY, APC

11
12 By: 

13 Kelsey M. Szamet
14 Attorneys for Plaintiff MARIA SANDOVAL
15 NUNEZ and the Proposed Class
16
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EXHIBIT "1"

KINGSLEY & KINGSLEY

| L A W Y E R S |

February 24, 2020

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Merritt Hospitality, LLC
101 Merritt 7, 1st Floor
Norwalk, CT 06851
7018 1130 0001 5815 1383

Re: MARIA SANDOVAL NUNEZ v. MERRITT HOSPITALITY, LLC
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents MARIA SANDOVAL NUNEZ ("Plaintiff") and a proposed group of current and former employees working for MERRITT HOSPITALITY, LLC ("Defendant") in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant's aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of herself and the State of California as well as on behalf of two groups of aggrieved employees defined as:

1. All persons who are employed or have been employed as an hourly employee by MERRITT HOSPITALITY, LLC, in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present. ("Aggrieved Employees").
2. All persons employed or formerly employed by MERRITT HOSPITALITY, LLC, who worked at the front desk at one of MERRITT HOSPITALITY, LLC's California properties for one or more pay periods since one (1) year prior to the date of this letter and continuing to the present. ("Suitable Seating Aggrieved Employees").

Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours. Likewise, the Wage Orders (5-2001) state that: An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

February 24, 2020

Page 2 of 3

meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. Pursuant to Labor Code §226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner.

Here, Defendant failed to apprise Plaintiff and the Aggrieved Employees of their rights associated with meal periods by way of a lawful meal period policy and failed to provide compliant meal periods. Defendant required Plaintiff and the Aggrieved Employees to work shifts without providing them with meal periods of at least thirty minutes in length within the first five hours of their shifts and failed to pay such employees one (1) hour of pay at the employees regular rate of compensation for each workday that the first meal period was not provided within the first five (5) hours of the shift.

Labor Code § 226.7 and Wage Order 5-2001 require Defendant to provide Plaintiff and the Aggrieved Employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. On a regular and consistent basis, Defendant failed to provide Plaintiff and the Aggrieved Employees with compliant rest periods. Further, Plaintiff and the Aggrieved Employees were not compensated with one (1) hour of wages for each missed rest period as required by Labor Code § 226.7.

Defendant engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a) which requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Here, Defendant issued Plaintiff and the Aggrieved Employees itemized wage statements that do not accurately show overtime rates in violation of Labor Code §226(a)(9). Further, Plaintiff and the Aggrieved Employees are issued wage statements that do not include meal premiums as a result of the claims alleged above.

Labor Code § 203 provides that if "an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days." Here, Plaintiff and all Aggrieved Employees were not paid all wages due upon their separation from Defendant's employ. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiff and all Aggrieved Employees all wages due at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code § 203.

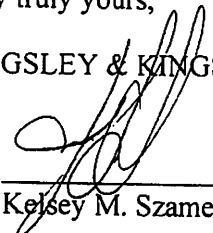
Labor Code § 1199 prohibits an employer from causing any employee to work under conditions of labor prohibited by an order of the Industrial Welfare Commission (IWC) or from violating, refusing, or neglecting to comply with any order of the commission's orders regarding wages, hours, and working conditions. Additionally, Labor Code § 1198 states that the standard conditions of labor fixed by the commission shall be the standard conditions of labor for employees and forbids the employment of any employee under conditions of labor prohibited by the commission's wage orders. IWC Wage Order 5-2001 requires employers to provide employees with suitable seats when the nature of work reasonably permits the use of seats. (See *Bright v. 99c Only Stores* (2010) 189 Cal.App.4th 1472, 1481-1482.)

Here, Defendant did not provide suitable seats for Suitable Seating Aggrieved Employees even though the nature of work reasonably permitted the use of seats. Suitable Aggrieved Employees' duties mainly consist of assisting customers at the front desk. This could have been performed while seated, but Suitable Aggrieved Employees had to stand at their workstations for hours a time because Defendant failed to provide seats.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 512, 1198, and 1199 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet

KMS/dm

Cc: 1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/260>

EXHIBIT "2"

New PAGA Claim Notice



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Kelsey

Your Last Name *

Szamet



Firm Name (if any) *

Kingsley & Kingsley, APC

Your Email Address *

service@kingsleykingsley.c

(Enter "in pro per" if you are representing yourself)

Your Street Name, Number
and Suite/Apt *

16133 Ventura Boulevard,

Your Mobile Phone Number

Your City *

ENCINO

Your Work Phone Number

8189908300

Your State *

California ▼

Your Zip/Postal Code *

91436

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

Maria Sandoval Nunez

Plaintiff/Aggrieved Employee Occupation *

Hourly Employee

[Add Additional Plaintiffs](#)

- Employer Information

Employer Information

Employer Entity Type

Employer Name *

Merritt Hospitality, LLC

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt

101 Merritt 7, 1st Floor

Employer City

Norwalk

Employer State

Employer Zip/Postal Code

Norwalk

Employer Industry

Add additional defendants

- ☐ Add any entity other than an individual
- ☐ Add an individual/sole proprietor employer

Notice General Information

Estimated Number of
Employees Impacted by
Violations

Notice Violations - Check All that Apply *

☐ Misclassification Employee Classified as Contractor☐ Misclassification NonExempt Classified as Exempt☐ Child LaborSpecify Ages

☐ Minimum Wage☐ Overtime

- ☐ Not paid for all hours worked
- ☒ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☐ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☒ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030-1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☒ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping

- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)

Please Provide Details of Retaliation**Other(Maybe Multiple)**

- ☒ Other Violation

Provide Details of Other Violation

Failure to provide workplace accommodations pursuant to Labor Code §§ 1198 and 1199

- ☐ Add Another Violation

PAGA Claim Type – Check All that Apply *

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)

- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☐ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice. Filing fees should be paid by check, made out to LWDA, and sent by regular mail to:

Department of Industrial Relations
Accounting Unit
455 Golden Gate Ave, 10th Floor
San Francisco, CA 94102

The check should be accompanied by a cover letter with sufficient information to identify the notice, including the LWDA case number assigned upon submission of this form.

Parties requesting in forma pauperis status should complete a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form and submit it online with the notice below.

IFP

- ☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.
- ☒ I declare that I have or will pay the filing fees required by statute [Labor Code section 2699.3(a)(1)(B)] according to the instructions on the PAGA home page, unless I have claimed in forma pauperis by checking the box below.

Notice and Other Attachments

PAGA Claim Notice (must be a .pdf) *

LWDA ltr. - Me...ality, LLC.pdf

Other Attachment – (if any) (must be a .pdf)

No file chosen

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

- ☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

Submit

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
To: Service Email
Subject: Thank you for submission of your PAGA Case.
Date: Tuesday, February 25, 2020 10:57:59 AM

2/25/2020

LWDA Case No. LWDA-CM-774632-20
Law Firm : Kingsley & Kingsley, APC
Plaintiff Name : Maria Sandoval Nunez
Employer: Merritt Hospitality, LLC

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

KINGSLEY & KINGSLEY

| L A W Y E R S |

February 24, 2020

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Merritt Hospitality, LLC
101 Merritt 7, 1st Floor
Norwalk, CT 06851
7018 1130 0001 5815 1383

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LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

February 24, 2020

Page 3 of 3

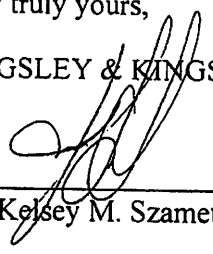
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Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet

KMS/dm

Cc: 1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/260>

Thank you for your initial PAGA notice submission to the Labor and Workforce Development Agency on 02/25/2020 10:57:09 AM submitted by Kingsley & Kingsley, APC representing Maria Sandoval Nunez against Merritt Hospitality, LLC. An email will be sent to you confirming your submission and provided your Case Number for future reference and submissions.

EXHIBIT "3"

USPS TRACKING #



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

9590 9402 5537 9249 5272 33

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box •

KINGSLEY & KINGSLEY, APC
16133 VENTURA BLVD.
SUITE 1200
ENCINO, CA 91436

Merritt Hospitality.

SENDER: COMPLETE THIS SECTION

- ☐ Complete items 1, 2, and 3.
☐ Print your name and address on the reverse so that we can return the card to you.
☐ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Merritt Hospitality, LLC
101 Merritt 7, 1st Floor
NORWALK, CT 06851



9590 9402 5537 9249 5272 33

2. Article Number (transfer from service label)

7018 1130 0001 5815 1383

COMPLETE THIS SECTION ON DELIVERY

A. Signature

John Yang

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☒ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

tail
Restricted Delivery
(over \$500)

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt