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Superior Court of California
County of Los Angeles

FEB 11 2021

Sherril R. Carter, Executive Officer/Clerk of Court

Attorneys for Plaintiff and the Proposed Class

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]

**SECOND AMENDED CLASS AND
REPRESENTATIVE AND ACTION
COMPLAINT**

1. Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, and 1199
2. Failure to Provide Meal Breaks Pursuant to Labor Code §§ 226.7 and 512
3. Failure to Provide Rest Breaks Pursuant to Labor Code §§ 226.7
4. Violation of Labor Code § 226(a)
5. Penalties Pursuant to Labor Code § 203
6. Violation of Business & Professions Code § 17200
7. 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 at the Warner
13 Center Marriott since four (4) years prior to the filing of this action
14 to the present.

15 2. From at least four (4) years prior to the filing of this action continuing to the present,
16 Defendant has had a consistent policy of failing to pay wages and/or overtime to all Proposed Class
17 Members when they work more than eight (8) hours in a day or forty (40) hours in a week. Plaintiff
18 and other Proposed Class Members were not properly compensated for overtime at the appropriate
19 rate of pay.

20 3. From 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 meal periods by way of a lawful policy and requiring Proposed Class Members
23 within the State of California, including Plaintiff, to work at least five (5) hours without a meal
24 period and failing to pay such employees one (1) hour of pay at the employees' regular rate of
25 compensation for each workday that the meal period is not provided or provided after five (5)
26 hours, as required by California state wage and hour laws.

27 4. For at least four (4) years prior to the filing of this action and continuing to the
28 present, Defendant has had a consistent policy of failing to inform Proposed Class Members of
their right to take rest periods by way of a lawful policy and of failing to provide Proposed Class

1 Members within the State of California, including Plaintiff, rest periods of at least ten (10) minutes
2 per four (4) hours worked or major fraction thereof and failing to pay such employees one (1) hour
3 of pay at the employee's regular rate of compensation for each workday that the rest period was
4 not provided, as required by California state wage and hour laws.

5 5. For at least one (1) year prior to the filing of this action continuing to the present,
6 Defendant has failed to comply with Industrial Welfare Commission ("IWC") Wage Order 5-2001
7 and Labor Code § 226(a) by failing to provide accurate itemized wage statements to Plaintiff and
8 members of the Proposed Class.

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

12 7. Plaintiff, on behalf of herself and all Proposed Class Members brings this action
13 pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, and 1199; Wage Order
14 5-2001; and California Code of Regulations, Title 8, Section 11050, seeking unpaid
15 wages/overtime, meal and rest period penalties, accurate itemized wage statements, other
16 penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

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

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

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II.

JURISDICTION AND VENUE

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

11. This Court has personal jurisdiction over Defendant because Defendant has caused injuries in the County of Los Angeles and the State of California through their acts, and by their violation of the California Labor Code, California state common law, and California Business & Professions Code § 17200, *et seq.*

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

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

III.

PARTIES

A. PLAINTIFF

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

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

- a. Work without being paid for all hours at the appropriate overtime rate;
- b. Work without being provided compliant meal periods;
- c. Work without being provided rest periods;

1 d. Work without being provided accurate itemized wage statements;

2 e. Work without being provided with suitable seating; and

3 16. Defendant willfully failed to compensate Plaintiff and all Proposed Class Members
4 for wages at the termination of their employment with Defendant.

5 17. As a result of this conduct, Defendant has engaged in unfair competition and
6 unlawful business practices.

7 18. Plaintiff and all aggrieved employees as defined in her notice letter to the LWDA
8 are "aggrieved employees" within the meaning of Labor Code § 2699, *et seq.* (see Labor Code
9 §2699(c).)

10 **B. DEFENDANTS**

11 19. Defendant MERRITT HOSPITALITY, LLC is believed to be a Delaware
12 corporation operating within the State of California. Defendant's corporate address is believed to
13 be 101 Merritt 7, 1st Floor, Norwalk, CT 06851. Upon information and belief, Defendant
14 employed Plaintiff and similarly situated persons as hourly employees within California.
15 Defendant has done and does business throughout the State of California.

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

23 21. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
24 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
25 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
26 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
27 employer and/or joint employer of Plaintiff and the Proposed Class Members.

28 22. Furthermore, Defendants acted in all respects as the employers or joint employers

1 of the Proposed Class. Defendants, and each of them, exercised control over the wages, hours or
2 working conditions of the Proposed Class, or suffered or permitted the Proposed Class to work, or
3 engaged, thereby creating a common law employment relationship, with the Proposed Class.
4 Therefore, Defendants, and each of them, employed or jointly employed the Proposed Class.

5 **IV.**

6 **FACTUAL BACKGROUND**

7 23. Plaintiff and the Proposed Class are, and at all times pertinent hereto, have been
8 classified as non-exempt employees by Defendant. Defendant hires employees who work as
9 hourly employees who are paid on an hourly basis.

10 24. Upon information and belief, Plaintiff and the Proposed Class are covered by
11 California Industrial Welfare Commission Occupational Wage Order No. 5-2001 (Title 8 Cal.
12 Code of Regs. § 11050).

13 25. On a regular and consistent basis, Plaintiff and the Proposed Class Members were
14 not paid at the proper rate of compensation. Plaintiff and Proposed Class Members were not
15 properly compensated for overtime at the appropriate rate of pay because Defendant failed to
16 compensate them at the appropriate overtime rate when they worked over eight (8) hours in one
17 day or forty (40) hours in one week.

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

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

28. Defendant has failed to comply with Industrial Welfare Commission (“IWC”) Wage Order 5-2001(7) and Labor Code § 226(a) by failing to provide accurate itemized wage statements that show all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

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

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

V.

CLASS ACTION ALLEGATIONS

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

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 at the Warner Center Marriott since four (4) years prior to the filing of this action to the present.

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

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

A. NUMEROSITY

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

1 of the Proposed Class.

2 35. Plaintiff alleges that Defendant's employment records would provide information
3 as to the number and location of all Proposed Class Members. Joinder of all members of the
4 Proposed Class is not practicable.

5 **B. COMMONALITY**

6 36. There are questions of law and fact common to the Proposed Class that predominate
7 over any questions affecting only individual Proposed Class Members. These common questions
8 of law and fact include, without limitation:

9 a. Whether Defendant failed to pay wages and/or overtime compensation as
10 required by the Labor Code and Wage Orders under Labor Code §§ 510, 1194, and 1199;

11 b. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order 5-
12 2001 or other applicable IWC Wage Orders, by failing to inform Plaintiff and the Proposed Class
13 of their right to take meal periods and by failing to provide required meal periods throughout the
14 term of employment and failing to compensate said employees one (1) hours wages in lieu of meal
15 periods;

16 c. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order 5 -
17 2001 or other applicable IWC Wage Orders, by failing to inform Plaintiff and the Proposed Class
18 of their right to take rest periods and failing to provide required rest periods throughout the term
19 of employment and failing to compensate said employees one (1) hours wages in lieu of rest
20 periods;

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

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

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

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

3 h. Whether Defendant violated Labor Code § 2699, *et seq.* by engaging in the
4 acts alleged herein.

5 **C. TYPICALITY**

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

10 **D. ADEQUACY OF REPRESENTATION**

11 38. Plaintiff will fairly and adequately represent and protect the interests of the
12 members of the proposed Class.

13 39. Counsel who represent Plaintiff and the Proposed Class are competent and
14 experienced in litigating large employment class actions.

15 **E. SUPERIORITY OF CLASS ACTION**

16 40. A class action is superior to other available means for the fair and efficient
17 adjudication of this controversy. Individual joinder of all Proposed Class Members is not
18 practicable, and questions of law and fact common to the Proposed Class predominate over any
19 questions affecting only individual members of the Proposed Class. Each member of the Proposed
20 Class has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or
21 practice of failing to provide meal and rest periods, failing to provide accurate itemized wage
22 statements, and failing to pay all wages upon resignation or termination.

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

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PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS

LABOR CODE §§ 510, 1194, AND 1199

43. Labor Code §§ 510, 1194 and 1199 require an employer to compensate its employees at the rate of no less than one and one-half times the regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek.

45. By their policy of requiring Plaintiff and members of the Proposed Class to work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating them at the rate of one-half (1 ½) their regular rate of pay, Defendant willfully violated the provisions of Labor Code §§ 510, 1194 and 1199.

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1 VII.
2 SECOND CAUSE OF ACTION
3 PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS
4 FAILURE TO PROVIDE MEAL PERIODS PURSUANT TO
5 LABOR CODE § 226.7 AND LABOR CODE § 512

6 47. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by
7 reference all previous paragraphs.

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

14 49. Defendant failed to maintain a policy informing Plaintiff and the Proposed Class of
15 these rights.

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

20 51. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to
21 damages in an amount equal to one (1) hour of wages per missed meal break, per day in a sum to
22 be proven at trial.

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1 VIII.
2 THIRD CAUSE OF ACTION
3 PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS
4 FAILURE TO ALLOW REST PERIODS PURSUANT TO
5 LABOR CODE § 226.7

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

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

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

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

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

19 IX.
20 FOURTH CAUSE OF ACTION
21 PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS
22 VIOLATION OF LABOR CODE § 226(A)

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

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

1 **XI.**

2 **SIXTH CAUSE OF ACTION**

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

4 **UNFAIR COMPETITION PURSUANT TO BUSINESS & PROFESSIONS CODE § 17200**

5 66. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by
6 reference all previous paragraphs.

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

13 68. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204,
14 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
15 appropriate equitable relief.

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

18 70. California’s wage and hour laws express fundamental public policies. Providing
19 employees with proper wages and compensation are fundamental public policies of this State and
20 of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce
21 vigorously minimum labor standards, to ensure that employees are not required or permitted to
22 work under substandard and unlawful conditions, and to protect law-abiding employers and their
23 employees from competitors who lower their costs by failing to comply with minimum labor
24 standards.

25 71. Defendant has violated statutes and public policies as alleged herein. Through the
26 conduct alleged in this Complaint, Defendant has acted contrary to these public policies, have
27 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
28 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 72. Defendant's conduct, as alleged hereinabove, constitutes unfair competition in
4 violation of § 17200, *et seq.* of the Business & Professions Code.

5 73. 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 74. 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 75. 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 XII.

18 SEVENTH CAUSE OF ACTION

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

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

22 77. 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 78. 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 at the

1 Warner Center Marriott since one (1) year prior to the date of
2 this letter and continuing to the present. ("Aggrieved
Employees").

- 3 b. All persons employed or formerly employed by MERRITT
4 HOSPITALITY, LLC, who worked at the front desk at the
5 Warner Center Marriott for one or more pay periods since one
6 (1) year prior to the date of this letter and continuing to the
7 present. ("Suitable Seating Aggrieved Employees").

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

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

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

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

28 83. 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 84. Defendant's violation of Labor Code sections 1198 and 1199 were all done on a
4 regular and consistent basis.

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

7 86. 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 87. 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 88. 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 89. These penalties will be allocated 75% to the Labor Workforce Development
19 Agency and 25% to the affected employees.

20 90. 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 entity'
22 address, which is 101 Merritt 7, 1st Floor, Norwalk, CT 06851, as proscribed by the Code on
23 February 24, 2020, describing Defendant's conduct in violation of Labor Code §§ 201, 202, 203,
24 226(a), 226.7, 512, 1198, and 1199. (*see* Exhibit "1.")

25 91. Plaintiff also obtained an e-filing confirmation from the LWDA confirming receipt
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27 ¹ Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California
28 Labor and Workforce Development Agency / Department of Industrial Relations website
(<https://dir.tfaforms.net/266>).

1 of the notice (*see* Exhibit “2”) and a signed certified green return receipt from Defendant
2 establishing that is also received Plaintiff’s notice. (*see* Exhibit “3.”)

3 92. As no letter evidencing the LWDA’s intention to investigate was received by
4 Plaintiff’s Counsel within sixty-five (65) calendar days, Plaintiff is entitled to commence a civil
5 action as though the LWDA had not chosen to investigate pursuant to Labor Code
6 §2699.3(a)(2)(A). Plaintiff will also provide the LWDA with a filed-stamped copy of the First
7 Amended Class and Representative Action Complaint immediately.

8 **RELIEF REQUESTED**

9 **WHEREFORE**, Plaintiff prays for the following relief:

10 1. For compensatory damages in the amount of unpaid wages and/or overtime not paid
11 to Plaintiff and each Proposed Class Member from at least four (4) years prior to the filing of this
12 action to the present as may be proven;

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

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

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

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

25 6. An award of prejudgment and post judgment interest;

26 7. An order enjoining Defendant and its agents, servants, and employees, and all
27 persons acting under, in concert with, or for it from providing Plaintiff with proper wages and/or
28 overtime, meal periods, rest periods, accurate itemized wage statements, and wages upon

1 termination/resignation pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194,
2 1199, and IWC 5-2001;

3 8. For restitution for unfair competition pursuant to Business & Professions Code
4 § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

5 9. For penalties under Labor Code §2699, *et seq.* for Defendant's violation of Labor
6 Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, and 1199.

7 10. An award providing for payment of costs of suit;

8 11. An award of attorneys' fees; and

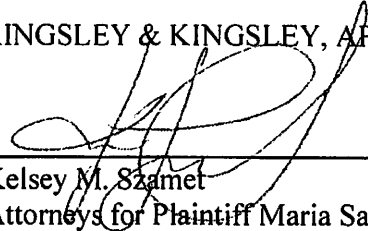
9 12. Such other and further relief as this Court may deem proper and just.

10 **DEMAND FOR JURY TRIAL**

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

12
13 DATED: February 11, 2021

KINGSLEY & KINGSLEY, APC

14
15 By: 

16 Kelsey M. Szamet
17 Attorneys for Plaintiff Maria Sandoval Nunez and
18 the Proposed Class
19
20
21
22
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28

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 & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

February 24, 2020

Page 3 of 3

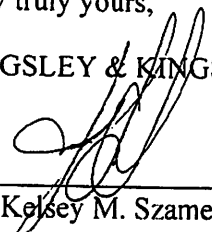
Labor Code § 1199 prohibits an employer from causing any employee to work under conditions of labor prohibited by an order of the Industrial Welfare Commission (IWC) or from violating, refusing, or neglecting to comply with any order of the commission's orders regarding wages, hours, and working conditions. 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.com

(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

- 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. C-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

☐ 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

fail

fail Restricted Delivery

(over \$500)

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

(PROOF OF SERVICE)
[CCP 1013(a)(3)]

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On February 11, 2021, I served all interested parties in this action the following documents described as: **SECOND AMENDED CLASS AND REPRESENTATIVE AND ACTION COMPLAINT** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Jeffrey P. Fuchsman
jfuchsman@brgslaw.com
Ballard, Rosenberg, Golper & Savitt, LLP
15760 Ventura Blvd., 18th Floor
Encino, CA 91436

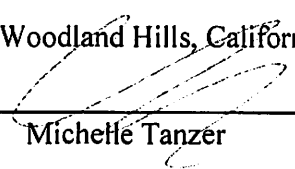
☐ (BY MAIL) I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at Encino, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ (BY ELECTRONIC MAIL THROUGH CASE ANYWHERE): On interested parties set forth on the attached service list.

☒ (BY ELECTRONIC MAIL TRANSMISSION): I caused the document to be send to the persons at the e-mail address(es) listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A pdf copy of which was sent via email to the below email address(es).

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 11, 2021, at Woodland Hills, California.


Michelle Tanzer