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individually and on behalf of others similarly situated

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Superior Court of California,
County of Orange
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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF ORANGE

13 PEDRO MEDINA RIVERA, individually and)
14 on behalf of himself and others similarly)
15 situated,)

16 Plaintiff,

17 vs.

18 HILTON WORLDWIDE, INC., a Delaware)
19 corporation, and DOES 1 through 100,)
20 inclusive,)

21 Defendants.

CASE NO.: 30-2012-00571445-CU-OE-CXC

CLASS ACTION
COMPLAINT FOR DAMAGES,
RESTITUTION AND INJUNCTIVE
RELIEF

- 1. Underpayment of Hourly Wages (Labor Code §204, Wage Order 5-2001)
- 2. Underpayment of Overtime Wages (Labor Code §1194, Wage Order 5-2001)
- 3. Failure to Properly Calculate Meal Period Premium Payments (Labor Code §226.7)
- 4. Failure to Provide Accurate Itemized Wage Statements (Labor Code §§226, 1174)
- 5. Failure to Timely Pay Wages to Terminated Employees (Labor Code §§201- 203)
- 6. Violation of Unfair Competition Law (Business & Professions Code §17200, et seq.)

DEMAND FOR JURY TRIAL

Judge Steven L. Perk

1 Plaintiff PEDRO MEDINA RIVERA (“Plaintiff”), individually and on behalf of himself
2 and others similarly situated, alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class action against Defendant HILTON WORLDWIDE, INC.
5 and DOES 1 through 100 (“Defendants” or “HILTON”) to recover underpaid regular and
6 underpaid overtime wages due to Defendants’ policy of paying rounded hours rather than actual
7 hours worked. Defendants failed to properly calculate the regular rate of compensation for meal
8 period premium payments. Plaintiff also seeks penalties for Defendants’ failure to pay all wages
9 due to all terminated or resigned employees and failure to properly itemize wage statements.

10 **JURISDICTION AND VENUE**

11 2. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
12 Civil Procedure, section 395. Defendant HILTON is a Delaware corporation with its principal
13 place of business in McLean, Virginia. Defendants employ hourly hotel employees and conduct
14 business in Orange County, and each Defendant is within the jurisdiction of this Court for service
15 of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and those
16 similarly situated within the State of California and within Orange County. Defendants employ
17 numerous Class Members in Orange County. There is no federal question at issue as the issues
18 herein are based solely on California statutes and law, including the Labor Code, IWC Wage
19 Orders, Code of Civil Procedure, Civil Code, and Business and Professions Code.

20 3. Further, Business and Professions Code, section 17203 provides that any person
21 who engages in unfair competition may be enjoined in any court of competent jurisdiction.
22 Business and Professions Code, section 17204 provides that any person acting on his or her own
23 behalf may bring an action in a court of competent jurisdiction. Thus, the above entitled court
24 maintains appropriate jurisdiction to hear this matter.

25 **PARTIES**

26 4. Plaintiff PEDRO MEDINA RIVERA is a resident of the State of California.
27 Plaintiff PEDRO MEDINA RIVERA was employed by Defendants in the State of California as an
28 hourly hotel employee. Plaintiff was paid based upon rounded time records rather than actual time

1 to work for a lesser wage, an employee receiving less than the legal overtime compensation is
2 entitled to recover in a civil action the unpaid balance of their overtime compensation, including
3 interest thereon, reasonable attorneys' fees, and costs of suit.

4 10. Plaintiff and each Plaintiff Class member were non-exempt employees covered
5 under one or more Industrial Welfare Commission (IWC) Wage Orders, including 5-2001 ("Wage
6 Orders"), and Labor Code section 510, and/or other applicable wage orders, regulations and
7 statutes, and each Plaintiff Class member was not subject to an exemption for executive,
8 administrative, professional employees, or any other exemption, which imposed an obligation on
9 the part of the Defendants to pay Plaintiff and Plaintiff Class members lawful overtime
10 compensation.

11 11. During the Class Period, Defendants were obligated to pay Plaintiff and the
12 Plaintiff Class overtime compensation for all hours worked over eight (8) hours of work in one
13 day or forty (40) hours in one week.

14 12. Plaintiff and each Plaintiff Class member worked in excess of the maximum
15 regular rate hours set by the IWC in the above Wage Orders, regulations or statutes, and therefore
16 entitled the Plaintiff and Plaintiff Class members to appropriate overtime compensation at time
17 and a half (1 ½) rate of their regular pay, and when applicable, double time rates as set forth by the
18 above Wage Orders, regulations and/or statutes.

19 13. During the Class Period, the Defendants, and each of them, required the Plaintiff
20 and Plaintiff Class members to work overtime but did not pay lawful overtime compensation, in
21 violation of the various above applicable Wage Orders, regulations and statutes.

22 14. During the class period, the Defendants, and each of them, failed to provide
23 accurate, itemized wage statements to Plaintiff and members of the Plaintiff Class.

24 15. During the class period, the Defendants, and each of them, failed to pay all wages
25 owed to terminated or resigned members of the Plaintiff Class.

26 16. Business and Professions Code, section 17203 provides that any person who
27 engages in unfair competition may be enjoined in any court of competent jurisdiction. Business
28 and Professions Code, section 17204 provides that any person who has suffered actual injury and

1 has lost money or property as a result of the unfair competition may bring an action in a court of
2 competent jurisdiction.

3 **CLASS ACTION ALLEGATIONS**

4 17. Plaintiff brings this action on behalf of himself and all others similarly situated as a
5 class action pursuant to Code of Civil Procedure, section 382. The members of the Class are
6 defined as follows:

7 All individuals employed by Hilton Worldwide, Inc. in California as hourly
8 hotel employees at any time beginning four years prior to the filing of this
complaint.

9 18. Further, Plaintiff brings this action on behalf of himself and all other similarly
10 situated persons in a Sub-Class of the Plaintiff Class, which is composed of and defined as
11 follows:

12 All members of the Plaintiff class who were subject to a company practice of
rounding time clock hours ("Rounding Subclass").

13 19. Further, Plaintiff brings this action on behalf of himself and all other similarly
14 situated persons in a Sub-Class of the Plaintiff Class, which is composed of and defined as
15 follows:

16 All members of the Plaintiff class who were subject to a company practice of
17 failing to properly calculate the regular rate of pay for meal period premium
payments ("Meal Period Premium Pay Subclass").

18 20. Further, Plaintiff brings this action on behalf of himself and all other similarly
19 situated persons in a Sub-Class of the Plaintiff Class, which is composed of and defined as
20 follows:

21 All members of the Plaintiff class who, within one year of the filing of the
22 Complaint, were subject to a company practice of failing to accurately itemize
wage statements ("Wage Statement Subclass").

23 21. Further, Plaintiff brings this action on behalf of himself and all other similarly
24 situated persons in a Sub-Class of the Plaintiff Class, which is composed of and defined as
25 follows:

26 All members of the Plaintiff class who, within three years of the filing of the
27 Complaint, were subject to a company practice of failing to timely pay wages upon
28 separation from employment ("Waiting Time Penalty Subclass").

22. Further, Plaintiff brings this action on behalf of himself and all other similarly
situated persons in a Sub-Class of the Plaintiff Class, which is composed of and defined as

1 follows:

2 All California Class members subject to Defendants' policies and/or practices of
3 rounding actual hours worked resulting in underpayment of regular and overtime
4 wages and failing to properly calculate the regular rate of pay for purposes of
making meal period premium payments who are thereby owed restitution under the
California Unfair Competition Law ("Unfair Competition Law Subclass").

5 23. Plaintiff reserves the right under California Rule of Court 3.765(b) and other
6 applicable law to amend or modify the class definition with respect to issues or in any other ways.
7 Plaintiff is the Named Representative and is a member of the Plaintiff Class. Plaintiff seeks class-
8 wide recovery based on the allegations set forth in this complaint.

9 24. This action has been brought any may be maintained as a class action pursuant to
10 Code of Civil Procedure, section 382 because there is a well-defined community of interest in the
11 litigation and the proposed Class is easily ascertainable through the records Defendants are
12 required to keep.

13 25. Numerosity. The members of the Class are so numerous that individual joinder of
14 all of them as Plaintiff is impracticable. While the exact number of the Class members is
15 unknown to Plaintiff at this time, Plaintiff is informed and believes and thereon alleges that there
16 are thousands of Class members.

17 26. Commonality. Common questions of law and fact exist as to all Class members
18 and predominate over any questions that affect only individual members of the Class. These
19 common questions include, but are not limited to:

- 20 a. Did Defendants violate Labor Code section 204 by improperly rounding
21 hours worked resulting in underpayment of straight time wages?
- 22 b. Did Defendants violate Labor Code sections 510 or 1194 by improperly
23 rounding hours worked resulting in underpayment of overtime time wages?
- 24 c. Did Defendants violate Labor Code section 226.7 by improperly calculating
25 the regular rate of pay for purposes of making meal period premium
26 payments?
- 27 d. Did Defendants violate Labor Code section 226 by knowingly and
28 intentionally failing to provide accurate itemized wage statements?

- 1 e. Did Defendants violate Labor Code sections 201 and/or 202 by not paying
2 Class Members who are no longer employed by Defendants all earned
3 wages, including straight time and overtime wages, upon their separation
4 from employment? If so, were such violations “willful” within the meaning
5 of Labor Code section 203?
- 6 f. Did Defendants violate the Unfair Competition Law, Business &
7 Professions Code, section 17200, et seq., by engaging in the conduct alleged
8 in this complaint?
- 9 g. What are the effects and the extent of any injuries sustained by the Plaintiff
10 Class and Plaintiff Sub-Class members and appropriate type and/or measure
11 of damages?
- 12 h. What is the amount of restitution owed by the Defendants attributable to
13 their violation of the Unfair Competition Law by rounding time entries
14 resulting in underpayment of straight time and overtime wages and failing
15 to properly calculate regular rate of pay for purposes of meal period
16 premium payments, and other wage violations?
- 17 i. What is the appropriateness and nature of relief to each Plaintiff Class and
18 Sub-Class member?
- 19 j. What is the extent of liability of each Defendant, including DOE
20 defendants, to each Plaintiff Class and Sub-Class member?
- 21 k. Is injunctive relief appropriate to ensure Defendants’ compliance with the
22 requirements of the Labor Code with respect to members of the Class who
23 are still currently employed by Defendants?

24 27. Typicality. Plaintiff’s claims are typical of the claims of the other members of the
25 Class. Plaintiff and other members of the Class were subject to the same policy and practice of
26 paying employees based upon rounded time records rather than actual hours worked, resulting in
27 underpayment for straight time and overtime hours and failing to properly calculate the regular
28 rate of pay for meal period premium payments. Defendants failed to provide accurate, itemized

1 wage statements to Plaintiff and members of the Plaintiff Class. Finally, Defendants failed to pay
2 all wages owed to Plaintiff and Plaintiff Class members upon separation of employment.

3 28. Adequacy. Plaintiff will adequately and fairly protect the interests of the members
4 of the Class. Plaintiff has no interest adverse to the interests of absent Class members. Plaintiff is
5 represented by attorneys who have substantial class action experience in wage-and-hour and class
6 action law.

7 29. Superiority. A class action is superior to other available means for fair and
8 efficient adjudication of the claims of the Class and would be beneficial for the parties and the
9 Court. Class action treatment will allow a large number of similarly situated persons to prosecute
10 their common claims in a single forum, simultaneously, efficiently, and without the unnecessary
11 duplication of effort and expense that numerous individual actions would require. The damages
12 suffered by each Class member are relatively small in the sense pertinent to class action analysis,
13 and the expense and burden of individual litigation would make it extremely difficult or
14 impossible for the individual Class members to seek and obtain individual relief. A class action
15 will serve an important public interest by permitting such individuals to effectively pursue
16 recovery of the sums owed to them. Further, class litigation prevents the potential for inconsistent
17 or contradictory judgments raised by individual litigation.

18 **FIRST CAUSE OF ACTION**
19 **FAILURE TO PAY REGULAR WAGES**
20 **(Labor Code §204)**
21 **(Plaintiff and Plaintiff Class against each Defendant)**

22 30. Plaintiff incorporates the preceding paragraphs.

23 31. By rounding time worked rather than paying for actual time worked, Defendants
24 willfully breached their agreement to pay regular wages, violating the provisions of Labor Code
25 section 204 and Wage Order 5-2001.

26 32. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to
27 represent have been deprived of regular wages and/or other compensation in amounts to be
28 determined at trial, and are entitled to recovery of such amounts, plus interest thereon, attorneys'
fees, and costs.

1 33. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as
2 described below.

3 **SECOND CAUSE OF ACTION**
4 **FAILURE TO PAY OVERTIME WAGES**
5 **(Labor Code §§510, 1194)**
6 **(Plaintiff and Plaintiff Class against each Defendant)**

7 34. Plaintiff incorporates the preceding paragraphs.

8 35. By rounding time worked rather than paying for actual time worked, Defendants
9 willfully breached their obligation pay regular overtime wages, violating the provisions of Labor
10 Code sections 510 and 1194 and Wage Order 5-2001.

11 36. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to
12 represent have been deprived of overtime wages and/or other compensation in amounts to be
13 determined at trial, and are entitled to recovery of such amounts, plus interest thereon, attorneys'
14 fees, and costs.

15 37. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as
16 described below.

17 **THIRD CAUSE OF ACTION**
18 **FAILURE TO PROPERLY CALCULATE MEAL PERIOD PREMIUM PAYMENTS**
19 **(Labor Code §§226.7)**
20 **(Plaintiff and Plaintiff Class against each Defendant)**

21 38. Plaintiff incorporates the preceding paragraphs.

22 39. Under Labor Code section 226.7, if an employer fails to provide a meal period in
23 accordance with the applicable wage order, the employer is required to pay the employee an hour
24 of pay at the employee's "regular rate of compensation for each work day that the meal or rest
25 period is not provided."

26 40. By failing to properly calculate the regular rate of compensation for meal period
27 premium payments, Defendants have underpaid the Plaintiff and Plaintiff Class members for meal
28 period premium payments.

 41. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to
represent have been deprived of meal period premium payments and/or other compensation in
amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest

1 thereon.

2 42. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as
3 described below.

4 **FOURTH CAUSE OF ACTION**
5 **FAILURE TO PROPERLY ITEMIZE WAGE STATEMENTS**
6 **(Labor Code §§226)**
7 **(Plaintiff and Plaintiff Class against each Defendant)**

8 43. Plaintiff incorporates the preceding paragraphs.

9 44. Labor Code section 226 subdivision (a) requires Defendants to itemize in wage
10 statements all deductions from payment of wages and to accurately report total hours worked by
11 Plaintiff and members of the Plaintiff Class. Defendants have knowingly and intentionally failed
12 to comply with Labor Code section 226, subdivision (a) on each and every wage statement that
13 should have been provided to Plaintiff and members of the Plaintiff Class.

14 45. Labor Code section 1174 requires Defendants to maintain and preserve, in a
15 centralized location, among other items, records showing the names and addresses of all
16 employees employed, payroll records showing the hours worked daily by and the wages paid to
17 their employees. Defendants have knowingly and intentionally failed to comply with Labor Code
18 section 1174. Defendants' failure to comply with Labor Code section 1174 is unlawful pursuant to
19 Labor Code section 1175.

20 46. Wage Order 5-2001(7) requires Defendants to maintain time records showing,
21 including but not limited to, when the employee begins and ends each work period, split shift
22 intervals and total daily hours worked in itemized wage statements, and must show all deductions
23 from payment of wages, and accurately report total hours worked by Plaintiff and members of the
24 Plaintiff Class.

25 47. WHEREFORE, Plaintiff and the Plaintiff Class he seeks to represent request relief
26 as described below.

27 **FIFTH CAUSE OF ACTION**
28 **FAILURE TO PAY WAGES TO TERMINATED OR RESIGNED EMPLOYEES**
(Labor Code §203)
(Plaintiff and Plaintiff Class against each Defendant)

48. Plaintiff incorporates the preceding paragraphs.

1 members of the Class are entitled to restitution of all wages and other moneys owed and belonging
2 to them, including interest thereon that Defendants wrongfully withheld from them and retained
3 for themselves by means of their unlawful and unfair business practices.

4 58. Pursuant to Business & Professions Code, section 17203, Plaintiff and other
5 members of the Class are entitled to an injunctive relief to prevent the continuance of Defendants'
6 unlawful and unfair business practices.

7 59. Plaintiff and other members of the Class are entitled to recover reasonable
8 attorneys' fees pursuant to Code of Civil Procedure, section 1021.5, the substantial benefit
9 doctrine, and/or the common fund doctrine.

10 **PRAYER**

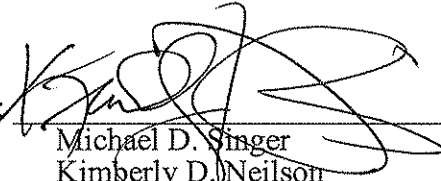
11 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays for
12 relief and judgment against Defendants, jointly and severally, as follows:

- 13 A. For certification of this action as a class action;
- 14 B. For appointment of Plaintiff as the representative of the Class;
- 15 C. For appointment of counsel for Plaintiff as Class Counsel;
- 16 D. For unpaid regular wages;
- 17 E. For unpaid overtime wages;
- 18 F. For meal period premium payments using the appropriate regular rate of
19 compensation;
- 20 G. For penalties under Labor Code section 203;
- 21 H. For remedies under Labor Code section 226(e) and (g);
- 22 I. For prejudgment interest;
- 23 J. For reasonable attorneys' fees and costs of suit pursuant to Labor Code section
24 1194;
- 25 K. For reasonable attorneys' fees and costs of suit pursuant to Labor Code section
26 1021.5;
- 27 L. For injunctive relief; and
- 28 M. For such other relief the Court deems just and proper.

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Dated: May 22, 2012

COHELAN KHOURY & SINGER
LAW OFFICES OF SAHAG MAJARIAN II

By: 
Michael D. Singer
Kimberly D. Neilson

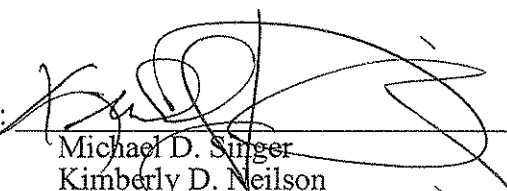
Attorneys for Plaintiff PEDRO MEDINA
RIVERA, individually and on behalf of
others similarly situated

DEMAND FOR JURY TRIAL

Plaintiff demands jury trial for all claims so triable.

Dated: May 22, 2012

COHELAN KHOURY & SINGER
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Attorneys for Plaintiff PEDRO MEDINA
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