

1 Timothy D. Cohelan, Esq. (SBN 60827)
Isam C. Khoury, Esq. (SBN 58759)
2 Michael D. Singer, Esq. (SBN 115301)
Jeff Geraci, Esq. (SBN 151519)
3 **COHELAN KHOURY & SINGER**
605 C Street, Suite 200
4 San Diego, California 92101
Phone: (619) 595-3001
5 Fax: (619) 595-3000

6 Sahag Majarian, II, Esq. (SBN 146621)
7 **LAW OFFICES OF SAHAG MAJARIAN II**
18250 Ventura Blvd.
8 Tarzana, CA 91356
Phone: (818) 609-0807
9 Fax: (818) 609-0892

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

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

22 Defendants.)
23

ELECTRONICALLY FILED
Superior Court of California,
County of Orange

12/14/2012 at 12:23:17 PM
Clerk of the Superior Court
By Enrique Veloz, Deputy Clerk

CASE NO. 30-2012-00618870-CU-OE-CXC

Judge Gail A. Andler

**COMPLAINT FOR VIOLATION OF THE
PRIVATE ATTORNEYS GENERAL ACT
OF 2004 ("PAGA")**

[Cal. Labor Code Section 2698, et seq.]

DEMAND FOR JURY TRIAL

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 action against Defendant HILTON WORLDWIDE, INC. and
5 DOES 1 through 100 (“Defendants” or “HILTON”) to recover penalties. Defendants’ policy to
6 pay based on rounded time records, rather than actual time worked, resulted in Defendants’ failure
7 to pay all regular and overtime wages due, correctly calculate the regular rate of pay and pay the
8 required amount for missed meal period premiums, issue accurate itemized wage statements, and
9 pay all wages due at termination.

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. Thus, the
20 above entitled court maintains appropriate jurisdiction to hear this matter.

21 **PARTIES**

22 3. Plaintiff PEDRO MEDINA RIVERA is a resident of the State of California.
23 Plaintiff PEDRO MEDINA RIVERA was employed by Defendants in the State of California as an
24 hourly hotel employee. Plaintiff was paid based upon rounded time records rather than actual time
25 worked, resulting in underpayment of regular wages and overtime wages, and failure to properly
26 calculate the regular rate of pay when making meal period premium payments, failure to timely
27 pay wages at separation from employment and failure to provide accurate, itemized wage
28 statements.

1 4. Defendant HILTON is a Delaware corporation and operates within California.
2 HILTON has numerous employees in Orange County at hotels operated by HILTON. At each of
3 its locations, HILTON employs hourly hotel employees. As a matter of company payroll
4 practices, Defendant HILTON rounds hourly time clock in/out records and pays employees based
5 upon those rounded hours rather than actual time worked, incorrectly shorting employees of
6 straight time and overtime worked. HILTON also fails to properly calculate the regular rate of pay
7 for meal period premium payments and fails to provide accurate wage statements and timely pay
8 all wages owed to separated employees.

9 5. Plaintiff is unaware of the true names, capacities, relationships, and extent of
10 participation in the conduct alleged herein, of the Defendants sued as DOES 1 through 100, but is
11 informed and believes and thereon alleges that said Defendants are legally responsible for the
12 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
13 Plaintiff will amend this complaint when their true names and capabilities are ascertained.

14 6. Plaintiff is informed and believes and thereon alleges that each Defendant, directly
15 or indirectly, or through agents or other persons, employed Plaintiff and other members of the
16 class, and exercised control over their wages, hours, and working conditions. Plaintiff is informed
17 and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as
18 the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects
19 pertinent hereto, and the acts of each Defendant is legally attributable to the other Defendants.

20 7. By this Complaint, Plaintiff, brings this case as a representative action seeking
21 penalties for the State of California in a representative capacity, as provided by the Private
22 Attorneys General Act ("PAGA") to the extent permitted by law, as an aggrieved employee who
23 held the position identified and did not receive regular wages, was underpaid overtime wages due
24 to Defendants' policy of paying rounded hours rather than actual hours worked, and did not
25 receive all wages due at the termination of employment. A true and correct copy of the Notice
26 correspondence showing compliance with Labor Code §2699.3 is attached as Exhibit "A" and
27 demonstrates that Plaintiff is an aggrieved employee and has standing to bring a representative
28 action on behalf of the State of California Labor and Workforce Development Agency (LWDA)

1 and as a private attorney general. No notice of cure by Defendant was provided and no notice of
2 investigation was received from the LWDA in the statutorily proscribed 33-day period since the
3 mailing of the notice of the action. Accordingly, Plaintiff files this action as a “Representative
4 Action” as provided by California Code of Civil Procedure as specifically permitted and
5 authorized by Labor Code §2699.3(a)(2)(C).

6 **GENERAL ALLEGATIONS**

7 8. During all, or a portion, of the one year period before Plaintiff filed Notice of his
8 claims with the LWDA, Plaintiff and each of the aggrieved employees Plaintiff seeks to represent,
9 were employed by Defendants and each of them, in the State of California.

10 9. California Labor Code section 204 provides that all wages earned are due and
11 payable at least twice each month and section 1194 provides that notwithstanding any agreement
12 to work for a lesser wage, an employee receiving less than the legal overtime compensation is
13 entitled to recover in a civil action the unpaid balance of their overtime compensation, including
14 interest thereon, reasonable attorneys’ fees, and costs of suit.

15 10. Plaintiff and each aggrieved employee were non-exempt employees covered under
16 one or more Industrial Welfare Commission (IWC) Wage Orders, including 5-2001 (“Wage
17 Orders”), and Labor Code section 510, and/or other applicable wage orders, regulations and
18 statutes, and were not subject to an exemption for executive, administrative, professional
19 employees, or any other exemption, which imposed an obligation on the part of the Defendants to
20 pay Plaintiff and each aggrieved employee lawful compensation, including overtime
21 compensation.

22 11. Defendants were obligated to pay Plaintiff and the aggrieved employees
23 compensation for all hours worked, including overtime compensation for all hours worked over
24 eight (8) hours in one day or forty (40) in one week.

25 12. Plaintiff and each aggrieved employee worked in excess of the hours set by the
26 IWC in the above Wage Orders, regulations or statutes, and this entitled Plaintiff and the
27 aggrieved employees to appropriate overtime compensation at time and a half (1 ½) rate of their
28 regular pay, and when applicable, double time rates as set forth by the above Wage Orders,

1 regulations and/or statutes.

2 13. Defendants required the Plaintiff and aggrieved employees to work overtime but
3 did not pay lawful overtime compensation, in violation of the various above applicable Wage
4 Orders, regulations and statutes.

5 14. Defendants were obligated to pay Plaintiff and the aggrieved employees one (1)
6 hour's compensation for each meal period not provided to them. By failing to paying employees
7 based on rounded time records, rather than actual time worked, Defendants failed to pay all missed
8 meal period compensation due.

9 15. Defendants, and each of them, failed to provide accurate, itemized wage statements
10 to Plaintiff and members of the aggrieved employees.

11 16. Defendants, and each of them, failed to pay all wages owed to terminated or
12 resigned members of the aggrieved employees.

13 17. Business and Professions Code, section 17203 provides that any person who
14 engages in unfair competition may be enjoined in any court of competent jurisdiction. Business
15 and Professions Code, section 17204 provides that any person who has suffered actual injury and
16 has lost money or property as a result of the unfair competition may bring an action in a court of
17 competent jurisdiction.

18 18. Plaintiff brings this action on behalf of himself and all other aggrieved employees
19 defined as all individuals employed by Hilton Worldwide, Inc. in California as hourly hotel
20 employees at any time beginning one year prior to the date Plaintiff filed a complaint with the
21 LWDA, who were subject to a practice of being paid based on rounded time rather than actual
22 time worked.

23 19. Plaintiff reserves the right to amend or modify the definition of aggrieved
24 employees with respect to issues or in any other way.

25 ///

26 ///

27 ///

28 ///

1
2 **FIRST CAUSE OF ACTION**
3 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004 (“PAGA”)**
4 **(Labor Code §2698, et seq.)**
5 **(Plaintiff and Aggrieved Employees against each Defendant)**

6 20. Plaintiff incorporates the preceding paragraphs of this Complaint.

7 21. Plaintiff, by virtue of his employment with HILTON and the Defendant’s policy to
8 pay based on rounded, rather than actual time worked, which resulted in its failure to pay all
9 regular and overtime wages, correctly calculate the regular rate of pay and pay the required
10 amount for missed meal period premiums, issue accurate itemized wage statements, and pay all
11 wages due at termination, is an aggrieved employee with standing to bring an action under the
12 PAGA. Plaintiff, by virtue of the attached Exhibit “A,” has satisfied all prerequisites to serve as a
13 representative of the general public to enforce California's labor laws, including, without
14 limitation, the penalty provisions identified in Labor Code section 2699.5. Since the LWDA took
15 no steps within the time period required to intervene and because Defendant took no corrective
16 action to remedy the allegations set forth above, Plaintiff, as a representative of the people of the
17 State of California, will seek any and all penalties otherwise capable of being collected by the
18 Labor Commission and/or the Department of Labor Standards Enforcement (DLSE). This
19 includes each of the following, as set forth in Labor Code Section 2699.5, which provides that
20 Section 2699.3(a) applies to any alleged violation of the following provisions: Sections 201, 202,
21 203, 204, 226, 226.7, 510, 558, 1174, 1194, 1197, 1197.1, 1199.

22 22. Plaintiff is informed and believes that Defendants have violated and continue to
23 violate provisions of the California Labor Code and applicable Wage Orders related to the
24 payment of regular and overtime wages, payment of the correct amount for meal period premiums,
25 the issuance of accurate itemized wage statements, and the payment of all wages due at
26 termination. Despite mailing of Exhibit “A” at least 33-days prior to the filing of this complaint,
27 no state agency has acknowledged or accepted the Complaint. By operation of law, Plaintiff is
28 entitled to commence this cause of action in the California Superior Court as a representative
action under PAGA.

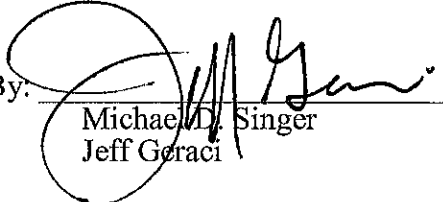
1 23. Plaintiff, as a personal representative of the general public, will and does seek to
2 recover any and all penalties for each and every violation shown to exist or to have occurred
3 during the one year period before Plaintiff filed Notice with the LWDA of his intent to bring this
4 action, in an amount according to proof, as to those penalties that are otherwise only available to
5 public agency enforcement actions. Funds recovered will be distributed in accordance with the
6 PAGA, with at least 75% of the penalties recovered being reimbursed to the State of California
7 and the Labor and Workforce Development Agency (LWDA).

8 **PRAYER**

9 Plaintiff, on behalf of himself and all other aggrieved employees, prays for relief and
10 judgment against Defendants, jointly and severally, as follows: For penalties as provided, per each
11 violation, by the Private Attorneys General Act (PAGA) Labor Code section 2699, *et seq.*

12
13 Dated: December 13, 2012

COHELAN KHOURY & SINGER
LAW OFFICES OF SAHAG MAJARIAN II

14
15 By: 
16 Michael D. Singer
17 Jeff Geraci


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

20 **DEMAND FOR JURY TRIAL**

21 Plaintiff demands jury trial for all claims so triable.

22
23 Dated: December 13, 2012

COHELAN KHOURY & SINGER
LAW OFFICES OF SAHAG MAJARIAN II

24
25 By: 
26 Michael D. Singer
27 Jeff Geraci

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

EXHIBIT A

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

FILE COPY

TIMOTHY D. COHELAN,* APLC
ISAM C. KHOURY, APC
DIANA M. KHOURY, APC
MICHAEL D. SINGER,•APLC

ATTORNEYS AT LAW

605 "C" STREET, SUITE 200
SAN DIEGO, CALIFORNIA 92101-5305

Telephone: (619) 595-3001

Facsimile: (619) 595-3000

www.ckslaw.com

JEFF GERACI ▲
J. JASON HILL†
KIMBERLY D. NEILSON

(† Also admitted in Illinois) . . .
(▲ Of Counsel)

(* Also admitted in the District of Columbia)

(• Also admitted in Colorado)

September 5, 2012

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE SECTION 2699.3

**To: Labor and Workforce Development Agency
Hilton Worldwide, Inc.**

From: Pedro Medina Rivera, on behalf of himself and all current and former non-exempt employees who worked under a system which paid based on rounded, not actual time worked, and did not include all compensation in the weekly rate

Factual Statement:

Pedro Medina Rivera worked as a driver and bellman for Hilton Worldwide, Inc. ("Hilton") at the "DoubleTree by Hilton" location in Orange, California from 2007 until March 2012. Hilton had a uniform policy of paying hourly employees based on rounded, rather than actual time. It also had a uniform policy of failing to include all compensation earned in a workweek when calculating an employee's regular rate of pay. These policies resulted in underpayment of wages to Mr. Rivera and all other employees paid pursuant to them. During his employment, the Company failed to pay him, and other similarly situated employees, minimum wages for all hours worked, and overtime wages for all hours worked in excess of eight (8) hours per day, and/or forty (40) hours per week, all premiums for missed meal periods, and has not provided accurate itemized wage statements. It is believed that such violations are ongoing, systematic and continuous. He intends to bring an action against Hilton Worldwide, Inc. under the Private Attorneys General Act ("PAGA") to recover wages and penalties as provided by California law.

Labor Code Violations and Remedies:

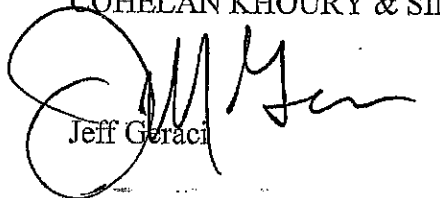
Mr. Rivera was employed at the "DoubleTree by Hilton" location in Orange, California, as a bellman/driver. He performed functions which are not exempt from California's wage and hour laws and which require that he be paid minimum wages, overtime compensation, and be provided premium pay equal to one hour of his regular rate of pay for meal periods not provided to him. During his employment, the Company has failed to pay him, and other similarly situated employees, minimum wages for all hours worked, and for hours worked in excess of eight (8) hours per day, and/or forty (40) hours per week.

Hilton's failure to pay employees minimum wages for all hours worked, overtime wages for hours worked in excess of eight (8) hours per day, and/or forty (40) hours per week, and the failure to provide fully compliant rest periods, establishes the right to recover wages and penalties as set forth in the Labor Code.

Victoria Bradshaw, Secretary
California LWDA
Hilton Worldwide, Inc.
September 5, 2012
Page 2

Mr. Rivera, and other similarly situated employees, are entitled to recover unpaid wages, with interest, penalties, and attorneys' fees as permitted by the Labor Code, including sections 203, 210, 1194, and 1198. He intends to bring an action against Hilton Worldwide, Inc., under the Private Attorney General Act ("PAGA") to recover wages, interest, penalties, and attorneys' fees. If permitted, he will seek any and all amounts capable of being collected by the Commission pursuant to Labor Code Section 2699.3 *et seq.*

Respectfully submitted,
COHELAN KHOURY & SINGER



Jeff Geraci

VIA CERTIFIED U.S. MAIL WITH RETURN RECEIPT

Victoria Bradshaw, Secretary
California Labor and Workforce Development Agency
California Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, CA 95814

Hilton Worldwide, Inc.
c/o Cynthia L. Filla, Esq.
JACKSON LEWIS LLP
725 South Figueroa St., Suite 2500
Los Angeles, CA 90017

SENDER: COMPLETE THIS SECTION

- Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.
- 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:

**Victoria Bradshaw, Secretary
California Labor & Workforce
Development Agency
800 Capitol Mall, M1C-55
Sacramento, CA 95814**

2. Article Number

(Transfer from service label)

7012 1010 0000 3177 5586

PS Form 3811, February 2004.

Domestic Return Receipt

102595-02-M-154

COMPLETE THIS SECTION ON DELIVERY

A. Signature: **DEVELOPMENT DEPARTMENT**
X 800 Capitol Mall Agent
Sacramento, CA 95814 Addressee
 B. Received by (Printed Name)
 C. Date of Delivery: **SEP 10 2016**

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

3. Service Type

- Certified Mail Express Mail
- Registered Return Receipt for Merchandise
- Insured Mail O.O.D.

4. Restricted Delivery? (Extra Fee)

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Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$ 5.75	

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Victoria Bradshaw, Secretary
 Street, Apt. No.,
800 Capitol Mall, M1C-55
 or PO Box No.
 City, State, ZIP+4[®]
Sacramento, CA 95814
 PS Form 3800, August 2006
 See Reverse for Inland Hours

9855 227E 0000 0101 2102

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Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$ 5.75	

Sent To
Hilton Worldwide, Inc.
 Street, Apt. No.,
125 South Figueroa St., Ste. 2500
 or PO Box No.
 City, State, ZIP+4[®]
Los Angeles, CA 90017

6655 227E 0000 0101 2102