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6 Attorneys for Plaintiffs
LANESSA THOMAS, DAVID PRETE,
7 and LISA SHIGA

8 SUPERIOR COURT OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SONOMA

11 LANESSA THOMAS, DAVID PRETE,
And LISA SHIGA, on behalf of all others
12 similarly situated, aggrieved employees,
and the State of California

13 Plaintiff,

14 vs.

15 SONOMA MISSION INN MANAGEMENT
16 COMPANY, LLC, d/b/a THE FAIRMONT
SONOMA MISSION INN, and DOES 1-25,

17 Defendants,
18

Case No.

**CLASS ACTION COMPLAINT FOR
VIOLATIONS OF THE CALIFORNIA
LABOR CODE AND CALIFORNIA
BUSINESS AND PROFESSIONS
CODE**

DEMAND FOR JURY TRIAL

19
20 Plaintiffs LANESSA THOMAS, DAVID PRETE, and LISA SHIGA (hereinafter
21 "Plaintiffs"), on behalf of themselves and all others similarly situated, all other aggrieved
22 employees, and the State of California, by and through their attorneys, file this Complaint
23 against Defendant SONOMA MISSION INN MANAGEMENT COMPANY, LLC, d/b/a THE
24 FAIRMONT SONOMA MISSION INN (hereinafter "Fairmont") seeking to recover for

1 Defendant's violations of the California Labor Code, applicable Industrial Welfare
2 Commission ("IWC") Wage Orders, and the Unfair Business Practices Act, California
3 Business and Professions Code §§ 17200, *et seq.* ("UCL"). Plaintiffs, on behalf of themselves
4 and all others similarly situated and aggrieved, complain and allege as follows:

5 **INTRODUCTION**

6 1. This is a class action complaint against Defendant to challenge its policies and
7 practices of: (1) failing to authorize, permit, and/or make available to its non-exempt service
8 providers ("SPs") who work at Fairmont's spa located in Sonoma, CA, meal and rest periods
9 to which they are entitled by law and failing to pay premium pay for these missed breaks; (2)
10 as a result of the missed breaks, failing to pay its non-exempt CSSs for all hours worked,
11 including overtime compensation and minimum wage; (3) failing to provide such employees
12 with accurate, itemized wage statements; and (4) failing to pay all wages owed after these
13 employees voluntarily or involuntarily terminated their employment with Defendant. Plaintiffs
14 are current and former SPs of Defendant who performed services for at the spa at the
15 Fairmont Sonoma Mission Inn. Plaintiffs seek to represent other current and former SPs in
16 this class and representative action. Plaintiffs allege that Defendants have engaged in
17 unlawful patterns and practices of failing to meet the requirements of the California Labor
18 Code, the applicable IWC Wage Orders, and the California Business and Professions Code.

19 2. Plaintiffs regularly worked shifts in excess of six-hours and were routinely denied
20 timely and compliant rest and meal periods and Defendant failed to pay them the premium
21 wages for the missed breaks, and the requisite pay for working through the rest breaks to
22 which they were entitled. Defendant's scheduling procedures precluded SPs' ability to take
23 such breaks, and discouraged employees from taking such breaks, and usually made
24 attempting to take a meal and/or rest period impossible due to the scheduling practices.

1 3. This daily time that Defendant required Plaintiffs and the class members to work
2 through breaks without compensation for that time deprived them of substantial amounts of
3 pay to which they are entitled under California law. Depending on how many hours Plaintiffs
4 and the class worked on a given day, this unpaid time is owed to Plaintiffs and the class at
5 both straight-time and overtime rates.

6 4. Defendant routinely refuses to authorize, permit, and/or make available to Plaintiffs
7 timely and compliant thirty-minute meal periods as required by law. Under California law,
8 generally, non-exempt hourly employees are to receive one thirty-minute unpaid meal break
9 at the conclusion of every five hours of labor performed. Defendant's policy violates California
10 law in this respect.

11 5. Defendant also routinely refuses to authorize or permit Plaintiffs to take ten-minute
12 rest periods as required by law. Under California law, non-exempt hourly employees are to
13 receive one ten-minute rest period for every four hours, or major fraction thereof, worked.
14 Defendants' policy violates California law in this respect.

15 6. Defendant engages in illegal behavior with respect to wage statements as well: failing
16 to provide such employees with accurate, itemized wage statements.

17 7. Defendant has also failed to pay all wages after these hourly employees voluntarily
18 or involuntarily terminated their employment with Fairmont.

19 8. As a result of these violations, Defendant is liable for additional, various other penalties
20 under the Labor Code, including the Private Attorneys' General Act and for violation of the
21 Unfair Business Practices Act.

22 9. Plaintiffs seek full compensation for all denied timely and compliant meal and rest
23 periods, unpaid wages, including unpaid overtime, waiting time penalties, and premium
24 wages under the applicable sections of the Labor Code. Plaintiffs also seek declaratory and

1 injunctive relief, including restitution. Finally, Plaintiffs seek reasonable attorneys' fees and
2 costs under the California Labor Code and California Code of Civil Procedure § 1021.5.

3 **JURISDICTION AND VENUE**

4 10. The amount of damages sought herein is greater than \$25,000. Hence this case is
5 within the unlimited jurisdiction of this Court.

6 11. Venue is proper in Sonoma County pursuant to California Code of Civil Procedure §
7 395.5 because The Fairmont Sonoma Mission Inn, where all relevant events occurred, is in
8 Sonoma County.

9 **PARTIES**

10 12. The Plaintiffs are all residents of the state of California.

11 13. Plaintiff LaNessa Thomas is a current employee of Defendant as an SP, and has
12 worked for Defendant since approximately March 2012.

13 14. Plaintiff David Prete is a current employee of Defendant, and has worked for
14 Defendant since approximately August 1996. He has been an SP since approximately March
15 2000.

16 15. Plaintiff Lisa Shiga worked as an SP for Defendant from approximately May 1992 until
17 December 2013.

18 16. On information and belief, Defendant Fairmont is a Delaware Limited Liability
19 Company. According to documents filed with the California Secretary of State, its
20 headquarters are located at 100 Boyes Blvd. in Boyes Hot Springs (Sonoma), CA 95416. At
21 all relevant times, Defendant has done business under the laws of California, has had places
22 of business in the State of California, and has employed class members in this state.
23 Defendant is a "person" as defined in California Labor Code § 18 and California Business
24 and Professions Code § 17201. Defendant is also an "employer" as that term is used in the

1 California Labor Code and the IWC's Wage Orders.

2 17. Plaintiffs do not know the true names and capacities of Defendants sued herein as
3 DOES 1–25 and therefore sues these Defendants by such fictitious names. Plaintiffs will
4 amend this Demand to allege their true identity and capacities when ascertained. Plaintiffs
5 are informed and believe, and on that basis allege, that each of these fictitiously named
6 Defendants is responsible in some manner for the occurrences alleged herein and thereby
7 proximately caused Plaintiffs' injuries alleged herein.

8 18. Plaintiffs are informed and believe, and on that basis allege, that, at all relevant times,
9 each of the Defendants was the agent or employee of each of the remaining Defendants,
10 and, in doing the things herein alleged was acting within the course and scope of such
11 employment, and that Defendants authorized ratified, and approved, expressly or implicitly,
12 all of the conduct alleged herein.

13 19. At all times relevant hereto, Defendants, and each of them, were the agents,
14 employees, managing agents, supervisors, co-conspirators, parent corporation, joint
15 employers, alter ego, and/or joint ventures of the other Defendants, and each of them, and
16 in doing the things alleged herein, were acting at least in part within the course and scope of
17 said agency, employment, conspiracy, joint employer, alter ego status, and/or joint venture
18 and with the permission and consent of each of the other Defendants.

19 20. Whenever and wherever reference is made in this Complaint to any act or failure to
20 act by a Defendant or co-Defendant, such allegations and references shall also be deemed
21 to mean the acts and/or failures to act by each Defendant acting individually, jointly and
22 severally.

23 **FACTUAL ALLEGATIONS**

24 21. Defendant is in the business of providing hotel accommodations to visitors to Sonoma,

1 CA and the surrounding area. Fairmont's "Willow Stream Spa" provides massage, salon and
2 facial services of many varieties to its customers those services are performed by the SPs.

3 22. Plaintiffs are current and former non-exempt SPs who worked at the spa at the
4 Fairmont Sonoma Mission Inn, providing services to guests at the spa, including massage
5 and other treatments. They are paid a nominal hourly wage, and also a set fee for each
6 service that they perform according to a fee schedule kept by Defendant.

7 23. Defendant regularly failed to timely authorize, permit, provide, or make available to
8 Plaintiff Thomas all of the meal and rest periods to which she was entitled. Thomas was never
9 paid any premium wages for the meal and rest periods which were interrupted, untimely, or
10 otherwise not in compliance with the applicable Wage Orders and law. Like all SPs, Thomas's
11 treatments were scheduled back to back, at least four in a row, with only fifteen (15) minutes
12 in between treatments, during which time she was required to break down and clean up the
13 preceding treatment, and prepare the next location for the upcoming treatment, leaving no
14 time for breaks.

15 24. Defendant regularly failed to timely authorize, permit, provide, or make available to
16 Plaintiff Prete all of the meal and rest periods to which he was entitled. Prete was never paid
17 any premium wages for the meal and rest periods which were interrupted, untimely, or
18 otherwise not in compliance with the applicable Wage Orders and law. Like all SPs, Prete's
19 treatments were scheduled back to back, at least four in a row, with only fifteen (15) minutes
20 in between treatments, during which time he was required to break down and clean up the
21 preceding treatment, and prepare the next location for the upcoming treatment, leaving no
22 time for breaks.

23 25. Defendant regularly failed to timely authorize, permit, provide, or make available to
24 Plaintiff Shiga all of the meal and rest periods to which she was entitled. Shiga was never

1 paid any premium wages for the meal and rest periods which were interrupted, untimely, or
2 otherwise not in compliance with the applicable Wage Orders and law. Like all SPs, Shiga's
3 treatments were scheduled back to back, at least four in a row, with only fifteen (15) minutes
4 in between treatments, during which time she was required to break down and clean up the
5 preceding treatment, and prepare the next location for the upcoming treatment, leaving no
6 time for breaks.

7 26. The class members were situated similarly to Plaintiffs in that they are and/or were
8 SPs who worked for Defendant at the spa at the Fairmont Sonoma Mission Inn, and were
9 subject to the same uniform scheduling practices of stacking four treatments back to back for
10 hours, with only fifteen (15) minutes between treatments, during which time the SPs are
11 required to perform work duties such that taking an uninterrupted meal or rest period is
12 impossible. Work is also required to be performed both before the first break and after the
13 last break such that no meal period is possible before the end of the fifth hour of work.
14 Plaintiffs are informed, believe, and thereon allege that the policies and practices of
15 Defendant have at all relevant times been similar for Plaintiffs and the putative class
16 members, regardless of location. Indeed, when Plaintiffs and other Class Members have
17 repeatedly complained that they do not have time to take breaks due to this scheduling
18 practice, their supervisors have told them that the practice was the "industry standard."

19 27. Defendant routinely denied Plaintiffs timely and compliant off-duty meal periods and
20 routinely refused to authorize or permit them to take compliant rest periods. Plaintiffs and
21 similarly situated non-exempt hourly employees typically work at least six-hour days, yet are
22 routinely denied meal and rest periods due to the uniform scheduling practices of Defendant.

23 28. Defendant is aware of the fact that its non-exempt SPs do not get the meal and rest
24 periods to which they are entitled and that it maintains policies and practices that deprive

1 their non-exempt SPs of compensation for time worked, including overtime compensation. In
2 fact, Plaintiffs complained on multiple occasions that they should be authorized and permitted
3 to take breaks, yet Defendant continues to engage in these practices. Therefore, the denial
4 of meal and rest periods and denial of wages to Plaintiffs is knowing and willful.

5 29. Defendant is aware of the fact that its non-exempt SPs do not get timely and compliant
6 meal and rest periods to which they are entitled and that it has, and is, depriving its hourly
7 non-exempt employees of compensation for all time worked. Furthermore, Defendant is
8 aware that it must compensate Plaintiffs for missed and/or non-compliant meal and rest
9 periods, yet it refuses to do so. Defendant's unlawful conduct has been widespread,
10 repeated, and willful throughout its spa at which SPs work.

11 30. On May 12, 2015, Plaintiffs provided notice by U.S. Certified Mail to the Labor
12 Workforce and Development Agency and also to Defendant of its intent to seek penalties
13 pursuant to the Private Attorney's General Act ("PAGA;" Labor Code § 2698, *et seq.*). The
14 LWDA failed to respond to that notice within thirty-three calendar days.

15 **CLASS ACTION ALLEGATIONS**

16 31. Plaintiffs bring the First through Eighth Causes of Action on behalf of themselves and
17 all non-exempt SPs who performed work serving clients and/or customers of Defendant at
18 its spa at the Fairmont Sonoma Mission Inn during the four years' preceding the date that
19 Plaintiffs submitted their arbitration demand to the American Arbitration Association ("AAA")
20 prior to the filing of this class action through the date of final judgment in this action. Defendant
21 failed to respond to communications from the AAA, which then closed the arbitration demand
22 as a result of Defendant's failure to respond, constituting a waiver of any right it had to
23 arbitrate these claims.

24 32. Class Members number well over fifty.

1 33. Common questions of law and fact exist with regard to Class Members, including,
2 without limitation, the following:

3 a. Whether Defendants authorized and permitted Class Members to take a paid,
4 10-minute rest period as near as possible to the middle of each four hours of work;

5 b. Whether Defendants failed to pay Class Members' a premium wage for each
6 missed and/or non-compliant rest period;

7 c. Whether Defendants authorized and permitted Class Members to take an off-
8 duty 30-minute meal period as near as possible to the middle of each five hours of work;

9 d. Whether Defendants failed to track Class Members' meal periods;

10 e. Whether Defendants failed to pay Class Members' a premium wage for each
11 missed and/or noncompliant meal period;

12 f. Whether Defendants were on notice that Class Members were not receiving
13 premium compensation for non-compliant and/or missed meal and rest periods;

14 g. Whether Defendants failed to maintain and furnish Class Members with
15 accurate records of hours worked;

16 h. Whether Defendants failed to furnish Class Members with accurate, itemized
17 wage statements;

18 i. Whether Defendants failed to pay all wages to its terminated employees
19 immediately upon termination;

20 j. The proper measure of damages sustained and the proper measure of
21 restitution recoverable by Class Members;

22 k. Whether the commission rates paid for a particular service must be included in
23 the regular rate for the purpose of determining the correct amount of a premium wage
24 payment for a missed meal or rest period.

1 34. Common methods of proof exist, including, without limitation, the following:

2 a. Deposition testimony of Defendants' Person Most Knowledgeable and the head
3 supervisor of all Class Members during the applicable class period;

4 b. Company-wide written policies;

5 c. Electronic timekeeping records;

6 d. Electronic compensation records;

7 e. Scheduling records (which are kept in a computer);

8 f. Representative declaration testimony of Class Members.

9 35. Plaintiffs' claims are typical of Class Members' claims. Plaintiffs, like other Class
10 Members, was subjected to Defendants' common policy, plan, or practice of scheduling
11 treatments and services in a way that did not provide time for an uninterrupted ten-minute
12 rest period, and no meal period before the end of the fifth hour of work when four hours of
13 treatments were scheduled prior to a scheduled meal period, failing to authorize and permit
14 meal and rest breaks, failing to pay premium wages for missed breaks, failing to maintain
15 accurate timekeeping records, failing to furnish accurate, itemized wage statements, and
16 failing to pay all wages immediately upon termination, in violation of California law.

17 36. Plaintiffs will fairly and adequately represent and protect the interests of the Class
18 Members.

19 37. Plaintiffs have retained counsel competent and experienced in complex wage-and-
20 hour class action litigation. Plaintiffs' counsel have litigated numerous class actions on behalf
21 of employees asserting wage-and-hour claims under California and federal law. Plaintiffs'
22 counsel intend to commit the necessary resources to prosecute this action vigorously for the
23 benefit of all Class Members.

24 38. Class certification is appropriate because common questions of law and fact

1 predominate over questions relating only to individual Class Members, and because a class
2 action is superior to other available methods for the fair and efficient adjudication of Class
3 Members' claims. The damages suffered by individual Class Members may be small
4 compared to the expense and burden of the prosecution of individual actions. Furthermore,
5 class certification will obviate the need for unduly duplicative litigation that might result in
6 inconsistent judgments regarding Defendants' employment practices.

7 **FIRST CAUSE OF ACTION**

8 **Failure to Provide Rest Periods**

9 Plaintiffs incorporate each of the foregoing paragraphs as though fully set forth herein
10 below.

11 39. Defendant's conduct, as alleged herein, constitutes a violation of Lab. Code § 226.7,
12 which prohibits an employer from requiring employees to work during any meal or rest period
13 mandated by the IWC. The applicable Wage Order requires that employers authorize and
14 permit their employees to take one ten-minute paid rest period as near as possible to the
15 middle of every four hours worked, or major fraction thereof. Lab. Code § 226.7(b) and the
16 applicable Wage Order also require employers to pay employees one hour of premium wages
17 at the employee's regular rate of compensation for each day that all rest periods are not
18 provided in accordance with the law.

19 40. Defendant knowingly and intentionally failed to authorize and permit Plaintiffs and the
20 Class Members with the legally required rest periods and failed to pay them the resulting
21 premium wages owed.

22 41. As a direct result of Defendant's unlawful employment practices, as alleged herein,
23 Plaintiffs and the Class members have been injured and are entitled to recover unpaid
24 premium wages and interest.

1 below.

2 46. California law requires an employer to pay its employees for all hours worked,
3 including overtime.

4 47. Defendant maintained a practice of paying employees without regard to the number
5 of hours actually worked by refusing to pay Plaintiffs wages for the time that they are entitled
6 to be taking paid rest periods which are missed and/or non-compliant with the requirements
7 of the California Labor Code and the applicable IWC Wage Order.

8 48. Because of Defendant's failures as alleged herein, Plaintiffs and the Class Members
9 did not receive compensation for all hours actually worked for Defendant, and did not receive
10 all of the overtime compensation to which they were entitled.

11 49. Defendant's failure to pay the correct amount of straight-time hourly wages permits a
12 civil suit to recover wages due to Plaintiffs and the Class Members under Labor Code § 204,
13 plus recovery of interest.

14 50. By violating Labor Code §§ 204 and 510, and the applicable IWC Wage Order,
15 Defendant is also liable for reasonable attorneys' fees and costs pursuant to Labor Code §
16 1194.

17 **FOURTH CAUSE OF ACTION**

18 **Failure to Provide Accurate Wage Statements**

19 Plaintiffs incorporate each of the foregoing paragraphs as though fully set forth herein
20 below.

21
22 51. Defendant's conduct, as alleged herein, constitutes a violation of Lab. Code § 226(a),
23 which requires an employer to provide employees with accurate itemized wage statements
24 for each pay period. Defendant knowingly and intentionally failed to provide Plaintiffs and the

1 Class Members with accurate itemized wage statements showing total hours worked and
2 total wages earned, including wages and premium wages for missed breaks.

3 52. As a direct result of Defendant's unlawful employment practices, as alleged herein,
4 Plaintiffs and the Class Members have been injured and are entitled to recover statutory
5 penalties and attorney's fees under Lab. Code § 226(e). Specifically, Plaintiffs and the Class
6 Members have been injured because Defendant failed to provide accurate and complete
7 information regarding Plaintiffs' and the Class Members' total hours worked and total wages
8 earned, and it was therefore impossible for them to determine from the wage statement alone
9 their total number of hours worked and total wages earned during each pay period without
10 engaging in discovery or complicated mathematics.

11 **FIFTH CAUSE OF ACTION**

12 **Waiting Time Penalties**

13 Plaintiffs incorporate each of the foregoing paragraphs as though fully set forth herein
14 below.

15 53. Defendant's conduct, as alleged herein, constitutes a violation of Lab. Code § 201(a),
16 which requires an employer to pay an employee all earned and unpaid wages immediately
17 upon discharge. Defendant wilfully failed to pay Plaintiffs and other Class Members who were
18 terminated all wages owed upon their termination.

19 54. As a direct result of Defendant's unlawful employment practices, as alleged herein,
20 Plaintiffs and the Class Members have been injured as alleged herein and are entitled to
21 recover statutory penalties under Lab. Code § 203(a).

22 **SIXTH CAUSE OF ACTION**

23 **Unfair and Unlawful Business Practices**

24 Plaintiffs incorporate each of the foregoing paragraphs as though fully set forth herein

1 below.

2 55. Defendant's conduct, as alleged herein, constitutes unfair competition in violation of
3 Bus. & Prof. Code § 17200 *et seq.*, which prohibits unfair business acts and/or practices.

4 56. As a direct result of Defendant's unlawful employment practices, as alleged herein,
5 Plaintiffs and the Class Members have suffered, and are entitled to recover, unpaid wages,
6 interest, and attorney's fees.

7 **SEVENTH CAUSE OF ACTION**

8 **Declaratory Relief**

9 Plaintiffs incorporate each of the foregoing paragraphs as though fully set forth herein
10 below.

11 57. An actual controversy has arisen between Plaintiffs and the Class members on the
12 one hand, and Defendant on the other, as to their respective rights, remedies and obligations
13 with regard to Defendant's unlawful conduct, as alleged herein.

14 58. Plaintiffs therefore seeks a declaratory judgment as to the respective rights, remedies,
15 and obligations of the parties.

16 **EIGHTH CAUSE OF ACTION**

17 **Private Attorneys' General Act Penalties**

18 Plaintiffs incorporate each of the foregoing paragraphs as though fully set forth herein
19 below.

20 59. As described hereinabove, during the period one year prior to Plaintiffs submitting their
21 demand for arbitration with the AAA prior to the filing of this action, Defendant's wage and
22 hour practices with respect to Plaintiffs and other aggrieved employees violated Labor Code
23 §§ 201-203, 204, 226, 226.3, 226.7, 558, 1174, and 1174.5.

24 60. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee to bring a civil action

1 to recover civil penalties pursuant to the procedures specified in Labor Code § 2699.3.
2 Pursuant to those sections Plaintiffs are entitled to recover civil penalties for Defendant's
3 violations of the Labor Code as described hereinabove.

4 61. Pursuant to Labor Code § 2699.3, Plaintiffs gave written notice by U.S. Certified Mail
5 to the California Labor and Workforce Development Agency ("LWDA") and to Defendant of
6 the specific provisions of the Labor Code alleged to have been violated and the facts and
7 theories to support the alleged violations. The LWDA failed to respond to that notice within
8 thirty-three calendar days. Thus, under California law, Plaintiffs are permitted to bring this
9 cause of action for PAGA penalties.

10 62. Pursuant to Labor Code § 2699(g), Plaintiffs are entitled to an award of reasonable
11 attorneys' fees and costs in connection with their claim for civil penalties.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

- 14 1. Certification of this action as a class action on behalf of the Class Members;
- 15 2. Designation of Plaintiffs as representatives of the Class;
- 16 3. Designation of Plaintiffs' counsel of record as class counsel for the Class;
- 17 4. Damages and restitution for unpaid wages and missed break premium wages,
18 together with interest at the legal rate;
- 19 5. All applicable statutory penalties arising from Defendant's unlawful conduct, as alleged
20 herein;
- 21
- 22 6. Attorney's fees and costs pursuant to Code Civ. Proc. § 1021.5 and any other attorney
23 fee provisions referenced herein;
- 24 7. Injunctive and declaratory relief;

1 8. Such other relief as the Court deems just and proper.

2 **DEMAND FOR JURY TRIAL**

3 Plaintiffs hereby demand a jury trial on all causes of action and claims with respect to
4 which they has a right to jury trial.

5
6 Respectfully submitted,

7
8 Date: July 21, 2015

HOYER & ASSOCIATES



9
10 Ryan L. Hicks
11 Attorneys for Plaintiffs
LANESSA THOMAS, DAVID PRETE and
LISA SHIGA