

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Thomas Long

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CHRISTINA FRANCO,

Plaintiff,

vs.

M&B RESTAURANT GROUP and DOES
1 to 25, inclusive,

Defendants.

) CASE NO.: **23STCV06880**

) **COMPLAINT FOR DAMAGES FOR:**

) **1) PRIVATE ATTORNEYS GENERAL**
) **ACT ("PAGA");**

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COMES NOW Plaintiff, CHRISTINA FRANCO (hereinafter “Plaintiff”), and alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Los Angeles in this judicial district because Defendants M&B RESTAURANT GROUP and DOES 1 to 25, inclusive, do business in the County of Los Angeles and because Defendants’ obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Los Angeles is the subject of this action. Moreover, Plaintiff’s damages sought herein exceed \$25,000.

2. Plaintiff is a female resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant M&B RESTAURANT GROUP is and was a California business entity, form unknown, doing business in Los Angeles County, and which employed Plaintiff at the Jack in the Box Restaurant located at 535 S. Citrus Ave., Covina, CA 91723. Defendant M&B RESTAURANT GROUP and DOES 1 to 25, inclusive, are referred to herein as “M&B” or “Defendant(s)”.

4. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues them by these fictitious names. Plaintiff is informed and believes that each of the DOE defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible for the conduct alleged herein. Upon discovering the true names and capacities of these fictitiously named defendants, Plaintiff will amend this complaint to show the true names and capacities of these fictitiously named defendants.

5. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of

1 that information and belief, alleges that at all times herein mentioned, each of the remaining
2 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
3 under the authority of their agency, employment, or representative capacity, with the consent
4 of his/her codefendants.

5 **GENERAL ALLEGATIONS**

6 6. Plaintiff started working for M&B on or around July 2021 as a crew member/service
7 member for M&B's "Jack in the Box" store located in Covina, California. During her tenure,
8 Plaintiff was classified as an hourly, non-exempt employee and her latest rate of pay was
9 \$15.50/hour. Plaintiff's employment ended on or around May 2022.

10 7. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018),
11 Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas
12 Security Services USA, Inc., an onsite security provider. After about a year of employment,
13 Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff
14 specifically alleged violations to the Labor Code requiring immediate payment of wages upon
15 termination of employment and weekly payment of wages to temporary employees. The trial
16 court determined Huff was not a temporary employee, and therefore, lacked standing to bring
17 the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court
18 granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue
19 was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not
20 directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the
21 PAGA representative to sue for violations that the representative has personally suffered. The
22 PAGA statute states that an "aggrieved employee" is able to file suit on behalf of themselves
23 and others. The statute also states that an "aggrieved employee" is "any person who was
24 employed by the alleged violator and against whom one or more of the alleged violations was
25 committed." Because at least one of the violations that Huff had alleged had affected him
26 personally, the Court of Appeal denied Securitas' motion.

27 8. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and
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1 other employees, it allows for suits broader than the specific violations the named employee
2 experienced. Therefore, even if the employee did not personally experience the Labor Code
3 violations, the employer may still be liable to under PAGA. Consequently, it is Plaintiff's
4 position that Plaintiff can equivocally bring the following labor code violations on behalf of all
5 other employees, including ALL hourly, non-exempt employees.

6 9. It is Plaintiff's position that M&B has violated numerous Labor Code Sections against
7 Plaintiff and other similarly situated aggrieved employees, who include all non-exempt, hourly
8 employees who worked for M&B at their various locations in the State of California during the
9 relevant PAGA period.

10 10. M&B violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to pay
11 Plaintiff and other similarly situated aggrieved employees for all hours worked, including the
12 statutory minimum wage for all hours worked and for "off the clock" work. This is so because
13 M&B had a company policy wherein they would disproportionately round down the number of
14 hours worked by Plaintiff and other aggrieved employees, resulting in "time shaving" and further
15 resulting in aggrieved employees not being paid for all hours worked. Plaintiff and others were
16 also not fully compensated for all hours worked in that they would perform work duties before
17 clocking in for or after clocking out for work, especially when it came to clean up duties at the
18 end of their respective shifts as well as waiting for further relief/coverage. Furthermore, and to
19 the extent that Plaintiff and others worked through their meal periods while "off the clock", they
20 were not compensated for all hours worked, which would be akin to a minimum wage violation.

21 11. Due to the above "off the clock" violations and due to company policy, M&B also
22 violated Labor Code §510 because it failed to pay Plaintiff and other aggrieved employees
23 overtime compensation, even though they worked more than 8 hours per day, 12 hours per day,
24 and/or 40 hours per week throughout their employment. Plaintiff's and other aggrieved
25 employees' actual work hours entitled them to overtime compensation, however, M&B did not
26 compensate its hourly, non-exempt employees with the correct amount of overtime due to the
27 "off the clock" work and time shaving as described above. Furthermore, M&B failed to include
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bonuses/incentive payments in calculating Plaintiff' and other employees' regular rate of pay for use in deciphering the correct overtime rate of pay. Additionally, the incentive and bonus payments were also not factored into Plaintiff's and others' regular rate for purposes of receiving meal and rest break premiums per the Ferra v. Loews case.

12. M&B also violated Labor Code § 226.7 and the appropriate Industrial Welfare Commission Wage Order no. 5 because it failed to provide Plaintiff and other similarly situated aggrieved employees with 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their employment. M&B did not completely relieve Plaintiff and others of all duty during said rest periods. M&B did not pay to Plaintiff and others one additional hour of pay at Plaintiff's regular rate of compensation for each workday that one or more statutory rest periods was not provided. It was not part of the company policy for employees such as Plaintiff to take rest breaks. The concept of rest breaks was never discussed with employees nor was it ever implemented as it was not company policy. Moreover, it would not have been possible for employees such as Plaintiff to take such rest breaks due to being short staffed and having consistent job duties with respect to tending to customers. As such, the culture as well as the policies and procedures of M&B did not lend itself to the employees receiving statutory rest breaks wherein they were relieved of all work duties. The environment at M&B was not conducive to receiving statutory rest breaks under California law and timely, statutory rest breaks were not authorized or enforced.

13. M&B violated Labor Code §§ 512 and 226.7 along with Industrial Welfare Commission Wage Order no. 5 because it failed to provide hourly, non-exempt employees, including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their employment. M&B did not completely relieve Plaintiff and other employees of all duty during said meal periods. M&B did not pay to Plaintiff and its hourly, non-exempt employees one additional hour of pay at their regular rate of compensation for each workday that one or more statutory meal periods was not provided. The hourly, non-exempt employees would often not be able to receive their meal periods before the 5th hour worked due to being continually understaffed. The latter was the same reason that Plaintiff and others were not able to take

1 uninterrupted and complete meal periods wherein they were relieved of all work duties.

2 Furthermore, and as alluded to above, Plaintiff and others would also have to work through their
3 statutory breaks due to the workload. Like the rest breaks, receiving a thirty-minute uninterrupted
4 and timely meal break was not part of the company culture and was not enforced by M&B.

5 Consequently, it was the normal practice and custom of M&B not to authorize, permit, and
6 enforce timely statutory meal periods. If M&B had Plaintiff sign a meal period waiver, it would
7 not be valid and enforceable since Plaintiff and others generally worked more than a 6-hour shift.

8 If M&B had Plaintiff sign an on-duty meal period agreement wherein Plaintiff agreed to work
9 through the meal periods, it would be invalid and unenforceable because the nature of Plaintiff's
10 jobs does not prevent her from taking a meal period. Moreover, any such "on duty" meal period

11 agreement did not allow for Plaintiff to revoke such an agreement even if it was signed. As such,
12 Plaintiff and others rarely received statutory, timely meal periods during their employment. To

13 the extent that M&B argues that employees receive meal break premium pay for missed meal
14 periods, that argument is inconsequential for PAGA penalty purposes since the PAGA penalties

15 are for the violations themselves, irrespective of whether an employee received the premium
16 payment for a missed, short, or interrupted meal period. In *Kirby v. Immoos Fire Protection,*

17 *Inc.*, the Court stated, "section 226.7 does not give employers a lawful choice between

18 providing *either* meal and rest breaks *or* an additional hour of pay." See *Kirby v. Immoos Fire*

19 *Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of

20 pay does not excuse the violation; the employer has still committed a violation even if the remedy
21 for the violation has been paid. See *Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL

22 1110302 at *4). As such, the work environment and culture at M&B was not conducive to

23 receiving consistent, timely, statutory meal breaks under California law. Moreover, any meal or
24 rest break premiums paid were not compensated at the weighted average regular rate, inclusive
25 of bonuses and/or incentive payments.

26 14. Furthermore, during the relevant time period, and due to the above labor code violations,
27 M&B failed to pay Plaintiff and other similarly situated aggrieved employees all wages due to
28 them within any time period specified by California Labor Code section 204. M&B was also in
violation of California Labor Code section 226(a) by failing to include pertinent information on

1 the wage statements, including but not limited to, the correct hourly rate, all hours worked,
2 overtime hours worked, correct overtime pay, gross wages earned, net wages earned, premium
3 pay for missed meal and rest breaks, all deductions, the correct start and end of the pay period,
4 all employee identifying information, the correct and complete name and address of the legal
5 employer, and reimbursement for business expenses, among others. As such, M&B did not
6 provide Plaintiff and other similarly situated aggrieved employees with complete, accurate
7 itemized wage statements.

8 15. During the relevant time period, M&B also failed to keep accurate and complete payroll
9 records showing the actual hours worked per day and the wages paid to Plaintiff and others
10 pursuant to California Labor Code sections 1174(d).

11 16. M&B also violated Labor Code § 203 because it willfully failed to pay Plaintiff and
12 other similarly situated aggrieved employees earned and due wages upon separation of
13 employment, either immediately upon involuntary termination, or within 72 hours of resignation.
14 These earned but unpaid wages include compensation for all hours worked, including minimum
15 wages, overtime compensation, and premium pay for missed meal and rest breaks.

16 17. During the relevant time period, Plaintiff and other aggrieved employees incurred
17 necessary, business-related expenses and costs that were not reimbursed by M&B. These costs
18 include, but are not limited to, use of personal phones for business-related purposes and
19 uniforms. Accordingly, M&B was in violation of California Labor Code sections 2800 and 2802.

20
21 **FIRST CAUSE OF ACTION**

22 **PRIVATE ATTORNEYS GENERAL ACT**

23 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
24 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194,**
25 **1197, 1198, 2800, 2802, and Wage Order no. 5**

26 **(Against all Named Defendants and all DOE Defendants)**

27 18. Plaintiff re-alleges and incorporates by reference each and every allegation in
28 paragraphs 1 through 17, inclusive, of this Complaint as though fully set forth herein.

1 19. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
2 Defendants of the specific violations of the California Labor Code that Defendants
3 and DOE defendants have violated and continue to violate.

4 20. Pursuant to California Labor code section 2699.3, no response was received from the
5 LWDA within 65 days of the postmark date of the above-alleged letter.

6 21. Plaintiff therefore has exhausted all administrative remedies required of her under
7 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
8 cause of action and pursue penalties in a representative action for Defendants' violations of the
9 Labor Code.

10 22. Pursuant to California Labor Code section 2699, any provisions of the Labor Code
11 that provides for a civil penalty to be assessed and collected by the LWDA or any of its
12 departments, divisions, commissions, boards, agencies, or employees for violation of the code
13 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
14 on behalf of himself or herself and other current or former employees pursuant to the
15 procedures specified in California Labor Code section 2699.3.

16 23. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
17 violator and had one or more of the alleged violations committed against her, and therefore is
18 properly suited to represent the interests of other current and former hourly, non-exempt
19 employees who worked for M&B at any of their various California locations during the
20 relevant PAGA period.

21 24. Based on the acts alleged above, Plaintiff, on behalf of herself and others, seeks
22 penalties under California Labor Code sections 2698 and 2699 because of Defendants'
23 violations of numerous provisions of the California Labor Code as alleged in this Complaint.

24 25. Plaintiff therefore has exhausted all administrative remedies required of her under
25 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
26 cause of action and pursue penalties in a representative action for Defendants' violations of the
27 Labor Code.
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1 26. California Labor Code section 2699 et seq. imposes penalties upon culpable
2 Defendants for violating the Labor Code.

3 27. California Labor Code section 558 establishes a civil penalty as follows: Any
4 employer or other person action on behalf of an employer who violates, or causes to be
5 violated, a section of this chapter or any provision regulating hours and days of work in any
6 order of the Industrial Welfare Commission (including the "Hours and Days of Work" section
7 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty
8 dollars (\$50) for each underpaid employee for each pay period for which the employee was
9 underpaid ...; (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid
10 employee for each pay period for which the employee was underpaid ...;

11 28. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
12 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
13 seeking individual/victim specific relief or underpaid wages under this particular cause of
14 action.

15 29. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
16 the following:

17 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210,
18 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1198, 2800, 2802
19 via 2698 and 2699 any other Labor Codes and Wage Orders (including no. 5) violated on
20 the facts alleged in this Complaint.

21 30. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,
22 costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved
23 employees as alleged herein in an amount to be shown according to proof at trial and within the
24 jurisdictional limits of this Court.

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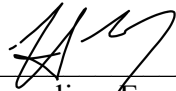
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1 WHEREFORE, Plaintiff prays for Judgment against Defendants, and each of them, as
2 follows:

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- 4 1. For the imposition of civil penalties;
- 5 2. For maximum civil penalties available under Labor Code Section 2699 against
6 Defendants in a manner and amount authorized by that statute, as described more
7 particularly in the Complaint and representative PAGA claims;
- 8 3. For all costs and disbursements incurred in this suit;
- 9 4. Reasonable attorney's fees where available by law, including but not limited to,
10 pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section
11 1021.5, and/or other applicable laws; and
- 12 5. For such other and further relief as this Court may deem proper.

13 DATED: March 29, 2023

MESSRELIAN LAW INC.

15 By  _____
16 Harout Messrelian, Esq.
17 Attorneys for Plaintiff Christina Franco