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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF LOS ANGELES**

10 GIUSEPPE LOSAVIO,

11 Plaintiff,

12 vs.

13 362NCD BEVERLY HILLS LLC; and
14 DOES 1 to 25, inclusive,

15 Defendants.

) CASE NO.: **24STCV30619**

) **COMPLAINT FOR DAMAGES FOR:**

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

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COMES NOW Plaintiff, GIUSEPPE LOSAVIO (hereinafter “Plaintiff”), and alleges as follows:

PARTIES, JURISDICTION, and 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 362NCD BEVERLY HILLS LLC; and DOES 1 to 25, inclusive (hereinafter collectively “362NCD” or “Defendant(s)”) 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 \$35,000.

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

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant 362NCD BEVERLY HILLS LLC, is a California limited liability company, doing business in the County of Los Angeles, State of California, and which employed Plaintiff.

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 that information and belief, alleges that at all times herein mentioned, each of the remaining codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and

1 under the authority of their agency, employment, or representative capacity, with the consent of
2 his/her codefendants.

3 **GENERAL ALLEGATIONS**

4 6. Plaintiff started working at 362NCD on or around January 2024 as a waiter.
5 Plaintiff was classified as an hourly, non-exempt employee. Plaintiff's employment at 362NCD
6 ended in 2024.

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

24 8. In sum, since PAGA allows Plaintiffs to bring suit on behalf of other employees, it
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1 allows for suits broader than the specific violations the named employee experienced.

2 Therefore, even if the employee did not personally experience the Labor Code violations, the
3 employer may still be liable to under PAGA. Consequently, it is Plaintiff's position that
4 Plaintiff can equivocally bring the following labor code violations on behalf of all other
5 employees, including ALL hourly, non-exempt employees who worked for 362NCD anywhere
6 in the state of California (at all different restaurant locations) during the relevant PAGA period.

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8 9. It is Plaintiff's position that 362NCD has violated the following Labor Code Sections
9 against Plaintiff and other similarly situated aggrieved employees, who include all non-exempt,
10 hourly employees who worked for 362NCD at their various locations/restaurants in the State of
11 California during the relevant PAGA period.

12 10. 362NCD violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to pay
13 Plaintiff and other similarly situated aggrieved employees for all hours worked, including the
14 statutory minimum wage for all hours worked and for "off the clock" work. This is so because
15 362NCD had a company policy wherein they would disproportionately round down the
16 number of hours worked, resulting in "time shaving" and further resulting in aggrieved
17 employees not being paid for all hours worked. In addition, and to the extent Plaintiff and other
18 employees worked through meal periods (when they finally started getting them) while "off the
19 clock", the latter would be considered a minimum wage violation under California law.
20 Moreover, 362NCD failed to provide its employees with proper and accurate reporting time
21 pay. In addition, one look at Plaintiff's pay stubs indicates that his work hours are rounded
22 hours and not in line with reality.

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24 11. Due to the above "off the clock" violations, 362NCD also violated Labor Code §510
25 because it failed to pay Plaintiff and other aggrieved employees overtime compensation, even
26 though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week
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1 throughout their employment. Plaintiff's and other aggrieved employees' actual work hours
2 entitled them to overtime compensation, however, 362NCD did not compensate its hourly,
3 non-exempt employees with the correct amount of overtime due to the "off the clock" work
4 and time shaving as described above. Furthermore, 362NCD failed to include
5 bonuses/incentive payments in calculating employees' regular rate of pay for use in
6 deciphering the correct overtime rate of pay. Additionally, the incentive and bonus payments
7 were also not factored into employees' regular rate for purposes of receiving meal and rest
8 break premiums per the Ferra v. Loews case.

10 12. 362NCD also violated Labor Code § 226.7 and the appropriate Industrial Welfare
11 Commission Wage Order no. 5 because it failed to provide Plaintiff and other similarly situated
12 aggrieved employees with 10-minute rest periods for every four hours of work, or majority
13 portion thereof, throughout their employment. 362NCD did not completely relieve Plaintiff
14 and others of all duty during said rest periods. 362NCD did not pay to Plaintiff and others one
15 additional hour of pay at Plaintiff's regular rate of compensation for each workday that one or
16 more statutory rest periods was not provided. It was not part of the company policy for
17 employees such as Plaintiff to take at least two rest breaks per shift. The concept of rest breaks
18 was not consistently implemented as it was not company policy. Moreover, it would not have
19 been possible for employees such as Plaintiff to take such rest breaks due to being understaffed
20 and due to a heavy workload, especially in the fast-paced restaurant industry wherein customer
21 service is of paramount importance. As such, the culture as well as the policies and procedures
22 of 362NCD did not lend itself to the employees receiving consistent statutory rest breaks
23 wherein they were relieved of all work duties. The environment at 362NCD was not conducive
24 to receiving multiple statutory rest breaks under California law and timely, statutory rest breaks
25 were not authorized or enforced.

1 13. 362NCD violated Labor Code §§ 512 and 226.7 and the appropriate Industrial Welfare
2 Commission Wage Order no. 5 because it failed to provide hourly, non-exempt employees,
3 including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods for every
4 five (5) hours of work throughout their employment. 362NCD did not completely relieve
5 Plaintiff and other employees of all duty during said meal periods. 362NCD did not pay to
6 Plaintiff and its hourly, non-exempt employees one additional hour of pay at their regular rate
7 of compensation for each workday that one or more statutory meal periods was not provided.
8 Plaintiff and others did not always receive uninterrupted meal breaks due to work obligations.
9 In addition, and while the company tried to schedule meal breaks within one hour of
10 employees starting their shift, this translates into employees such as Plaintiff and others
11 working more than 5 consecutive hours without getting a meal period. Like the rest breaks,
12 receiving a thirty-minute uninterrupted and timely meal break was not consistently part of the
13 company culture and was not enforced by 362NCD. Consequently, it was the normal practice
14 and custom of 362NCD not to authorize, permit, and enforce timely statutory meal periods. If
15 362NCD had Plaintiff sign a meal period waiver, it would not be valid and enforceable since
16 Plaintiff and others generally worked more than a 6-hour shift. If 362NCD had Plaintiff sign an
17 on-duty meal period agreement wherein Plaintiff agreed to work through the meal periods, it
18 would be invalid and unenforceable because the nature of Plaintiff's job does not and did not
19 prevent him from taking a meal period and the company could have hired "breakers" to relieve
20 Plaintiff of his job duties so that he can actually take a timely, uninterrupted meal period.
21 Moreover, any such "on duty" meal period agreement did not allow for Plaintiff to revoke such
22 an agreement even if it was signed. As such, Plaintiff and others did not always receive
23 statutory, timely meal periods during their employment. To the extent that 362NCD argues that
24 employees receive meal break premium pay for missed meal periods, that argument is
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1 inconsequential for PAGA penalty purposes since the PAGA penalties are for the violations
2 themselves, irrespective of whether an employee received the premium payment for a missed,
3 short, or interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated,
4 “section 226.7 does not give employers a lawful choice between providing *either* meal and rest
5 breaks *or* an additional hour of pay.” See *Kirby v. Immoos Fire Protection, Inc.*, (2012) 53
6 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse the
7 violation; the employer has still committed a violation even if the remedy for the violation has
8 been paid. See *Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As
9 such, the work environment and culture at 362NCD was not conducive to receiving consistent,
10 timely, statutory meal breaks under California law. Moreover, any meal or rest break premiums
11 paid were not compensated at the weighted average regular rate, inclusive of bonuses and/or
12 incentive payments as well as overtime compensation.

14 14. Furthermore, during the relevant time period, and due to the above labor code
15 violations, 362NCD failed to pay Plaintiff and other similarly situated aggrieved employees all
16 wages due to them within any time period specified by California Labor Code section 204.
17 Since Plaintiff was not compensated for his “off the clock” work and since Plaintiff did not
18 receive meal and rest break premiums, Plaintiff would still be owed wages pursuant to Labor
19 Code Section 204. 362NCD was also in violation of California Labor Code section 226(a) by
20 failing to include pertinent information on the wage statements, including but not limited to,
21 the correct hourly rate, all hours worked, overtime hours worked, correct overtime pay, gross
22 wages earned, net wages earned, premium pay for missed meal and rest breaks, all deductions,
23 the correct start and end of the pay period, all employee identifying information, the correct
24 and complete name and address of the legal employer, and reimbursement for business
25 expenses, among others. As such, 362NCD did not provide Plaintiff and other similarly
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1 situated aggrieved employees with complete, accurate itemized wage statements. Moreover,
2 Plaintiff and others did not have access to their pay stubs and would not be able to figure out
3 the breakdown of wages when they received their paychecks.

4 15. During the relevant time period, 362NCD also failed to keep accurate and complete
5 payroll records showing the actual hours worked per day and the wages paid to Plaintiff and
6 others pursuant to California Labor Code sections 1174(d).

7 16. 362NCD also violated Labor Code § 203 because it willfully failed to pay other
8 similarly situated aggrieved employees earned and due wages upon separation of employment,
9 either immediately upon involuntary termination, or within 72 hours of resignation. These
10 earned but unpaid wages include compensation for all hours worked, including minimum
11 wages, overtime compensation, and premium pay for missed meal and rest breaks.
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13 17. During the relevant time period, Plaintiff and other aggrieved employees incurred
14 necessary, business-related expenses and costs that were not reimbursed by 362NCD. These
15 costs include, but are not limited to, use of personal cell phones for work purposes and
16 uniforms. Accordingly, 362NCD was in violation of California Labor Code sections 2800 and
17 2802.
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19 18. Additionally, 362NCD violated Labor Code Section 351 and 353 by taking some of the
20 tips meant for employees and also deducting the tips from Plaintiff's and others' earned wages.
21 In fact, Plaintiff's manager would often take the tips that belonged to the other waiters even
22 though the manager was not a waiter. 362NCD also deducted the credit card fee from
23 Plaintiff's and others' tips and did not timely provide the credit card and even cash tips to
24 Plaintiff and other similarly situated aggrieved employees. As such, Plaintiff and the other
25 similarly situated employees were not given accurate tips to which they were entitled.
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27 19. Furthermore, 362NCD did not provide proper and correct/accurate sick pay that was
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1 also delineated on employee pay stubs and also failed to provide proper sick leave in violation
2 of Labor Code sections 233 and 246. Moreover, there were no suitable seating/rest break
3 facilities for the employees pursuant to Wage Order no. 5-2001. In fact, on the latter point and
4 since there was no rest break/eating facility for employees, when employees were able to get
5 meal periods, they would eat outside on the stairs or on the ground.

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7 **FIRST CAUSE OF ACTION**

8 **PRIVATE ATTORNEYS GENERAL ACT**

9 **Representative Claim for PAGA penalties under California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 233, 246, 351, 353, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802 and IWC Wage Order 5-2001)**

10 **(Plaintiff against All Named Defendants and all DOE defendants)**

11 20. Plaintiff re-alleges and incorporates by reference each and every allegation in
12 paragraphs 1 through 19, inclusive, of this Complaint as though fully set forth herein.

13 21. Plaintiff has complied with the procedures for bringing suit specified in California
14 Labor Code § 2699.3. By letter dated April 19, 2024, Plaintiff gave written notice by certified
15 mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the
16 specific provisions of the California Labor Code alleged to have been violated, including the
17 facts and theories to support the alleged violations.

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

20 23. Plaintiff therefore has exhausted all administrative remedies required of him under
21 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
22 cause of action and pursue penalties in a representative action for Defendants’ violations of the
23 Labor Code.

24 24. Pursuant to California Labor Code section 2699, any provisions of the Labor
25 Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its
26 departments, divisions, commissions, boards, agencies, or employees for violation of the code
27 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
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1 on behalf of other current or former employees pursuant to the procedures specified in California
2 Labor Code section 2699.3.

3 25. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged
4 violator and had one or more of the alleged violations committed against him, and therefore is
5 properly suited to represent the interests of other current and former employees, including all
6 current and former hourly, non-exempt employees who worked for 362NCD in the State of
7 California during the applicable PAGA Period.

8 26. Based on the acts alleged above, Plaintiff, on behalf of others, seeks penalties
9 under California Labor Code sections 2698 and 2699 because of Defendants’ violations of
10 numerous provisions of the California Labor Code as alleged in this Complaint.

11 27. Plaintiff therefore has exhausted all administrative remedies required of him under
12 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute
13 this cause of action and pursue penalties in a representative action for Defendants’ violations of
14 the Labor Code.

15 28. California Labor Code section 2699 et seq. imposes penalties upon culpable
16 Defendants for violating the Labor Code.

17 29. Plaintiff seeks penalties for Defendants’ misconduct as alleged herein as permitted by
18 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
19 seeking individual penalties/victim specific relief or underpaid wages for himself or other
20 employees under this specific PAGA cause of action.

21 30. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for the
22 following:

23 Violations of California Labor Code sections 201, 202, 203, 204, and/or 204b, 210, 226,
24 226.3, 226.7, 233, 246, 351, 353, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1,
25 1198, 2800, 2802, via 2698 and 2699 and any other Labor Codes/Industrial Welfare
26 Commission Order (No. 5) violated based on the facts alleged in this Complaint.

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

PRAYER FOR RELIEF

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

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

DATED: November 19, 2024

MESSRELIAN LAW INC.

By 

Harout Messrelian, Esq.
Attorneys for Plaintiff Giuseppe Losavio