



**MESSRELIAN LAW**  
**ATTORNEYS AT LAW**

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**VIA ELECTRONIC FILING**

**May 1, 2024**

California Labor & Workforce Development Agency (LWDA)  
Attn. PAGA Administrator  
800 Capitol Mall, MIC-55  
Sacramento, California 95814

**VIA U.S. CERTIFIED MAIL (RETURN RECEIPT REQUESTED)**

MB DINING, LLC  
THE ZISLIS GROUP, INC.  
MICHAEL ANDREW ZISLIS  
ANDREA MARIE ZISLIS  
c/o Gabriela Herrera  
321 12TH STREET, Suite 200  
MANHATTAN BEACH, CA 90266

**ENRIQUE MENA v. MB DINING, LLC; THE ZISLIS GROUP, INC.; MICHAEL ANDREW ZISLIS; ANDREA MARIE ZISLIS**

**RE: PRIVATE ATTORNEYS GENERAL ACT NOTICE**

To Whom It May Concern:

Please be informed that our client, Mr. Enrique Mena (hereinafter “Mr. Mena” or “our client”) seeks penalties on behalf of the State of California and all current and former non-exempt or hourly paid California employees (“aggrieved employees”) who worked for MB DINING, LLC; THE ZISLIS GROUP, INC.; MICHAEL ANDREW ZISLIS; and ANDREA MARIE ZISLIS (hereinafter collectively referred to as “MB DINING”) **at all of their restaurant locations in the State of California**, during the relevant time period pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys General Act of 2004 (“PAGA”). The purpose of this letter is to comply with the statutory requirements of California Labor Code section 2699.3 and shall constitute notice of the same. MB DINING, LLC and THE ZISLIS GROUP, INC. are considered joint employers in that they each controlled the wages, hours, and/or working conditions of the employees. They are also considered an integrated enterprise under the law. The integrated enterprise test sets forth four factors for assessing whether two entities are considered a single entity for purposes of liability: (1) interrelation of operations; (2) common management; (3) centralized control of labor relations; and (4) common ownership or financial control. Even though one does not have to show proof of all factors to prevail on an integrated enterprise claim, here the factors are unequivocally met as all companies and entities have the exact same ownership and management, including Michael Andrew Zislis and Andrea Marie Zislis. Furthermore, there is centralized control of labor relations and there is interrelation of operations in running at least



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“The Strand House” restaurant. Moreover, individuals MICHAEL ANDREW ZISLIS and ANDREA MARIE ZISLIS are being included in this notice pursuant to Labor Code section 558.1 in that they were and are the owners, managing agents, and/or directors of MB DINING, LLC and THE ZISLIS GROUP, INC., were involved in the day to day operations of the businesses, including the wage and hour policies and practices, and as such, controlled the wages, hours, and/or working conditions of the employees, including Mr. Mena.

Mr. Mena started working at MB DINING on or around 2024. Mr. Mena was classified as an hourly, non-exempt employee and his employment ended on or around late April 2024.

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

In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and other employees, it allows for suits broader than the specific violations the named employee experienced. Therefore, even if the employee did not personally experience the Labor Code violations, the employer may still be liable to under PAGA. Consequently, it is our position that Mr. Mena can equivocally bring the following labor code violations on behalf of all other employees, including ALL hourly, non-exempt employees who worked for MB DINING anywhere in the state of California (at all different restaurant locations) during the relevant PAGA period.

It is our position that MB DINING has violated the following Labor Code Sections against Mr. Mena and other similarly situated aggrieved employees, who include all non-exempt, hourly employees who worked for MB DINING at their various locations/restaurants in the State of California during the relevant PAGA period.

MB DINING violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to pay our client and other similarly situated aggrieved employees for all hours worked, including the statutory minimum wage for all hours worked and for “off the clock” work. This is so because MB



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DINING had a company policy wherein they would disproportionately round down the number of hours worked, resulting in “time shaving” and further resulting in aggrieved employees not being paid for all hours worked. In addition, and to the extent Mr. Mena and other employees worked through meal periods while “off the clock”, the latter would be considered a minimum wage violation under California law. Moreover, MB DINING failed to provide its employees with proper and accurate reporting time pay. Furthermore, it is important to note that on one occasion, management clocked out Mr. Mena at 10pm. Mr. Mena was not aware that he had been clocked out by management and when he actually went to clock out at 10:15am, he realized that he had already been clocked out and had been working “off the clock” that entire period with no compensation, which is a violation of California’s minimum wage laws.

Due to the above “off the clock” violations, MB DINING also violated Labor Code §510 because it failed to pay our client and other aggrieved employees overtime compensation, even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment. Aggrieved employees’ actual work hours entitled them to overtime compensation, however, MB DINING did not compensate its hourly, non-exempt employees with the correct amount of overtime due to the “off the clock” work and time shaving as described above. Furthermore, MB DINING failed to include bonuses/incentive payments/sick pay in calculating 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 employees’ regular rate for purposes of receiving meal and rest break premiums per the Ferra v. Loews case.

MB DINING also violated Labor Code § 226.7 and the appropriate Industrial Welfare Commission Wage Order no. 5 because it failed to provide our client and other similarly situated aggrieved employees with 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their employment. MB DINING did not completely relieve our client and others of all duty during said rest periods. MB DINING did not pay to our client and others one additional hour of pay at our client’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 Mr. Mena to consistently take either one or two rest breaks per shift. The concept of rest breaks was not consistently implemented. In fact, there was one specific incident on April 19, 2024 wherein Mr. Mena was attempting to take a 10-minute break and was trying to eat an orange when the manager on duty told Mr. Mena that he can’t take a break and to go outside a clean the tables. Mr. Mena protested that it had already been 4 hours and he had not taken a break. The manager got upset and in a retaliatory fashion told Mr. Mena that he would be going home at 10pm even though Mr. Mena was scheduled to work until closing that day. Moreover, it would not have been possible for employees such as Mr. Mena to consistently take rest breaks due to being understaffed and due to a heavy workload, especially in the fast-paced restaurant industry. As such, the culture as well as the policies and procedures of MB DINING did not lend itself to the employees receiving consistent statutory rest breaks wherein they were relieved of all work duties. The environment at MB DINING was not conducive to receiving multiple statutory rest breaks under California law and timely, statutory rest breaks were not authorized or enforced.

MB DINING violated Labor Code §§ 512 and 226.7 and the appropriate Industrial Welfare Commission Wage Order no. 5 because it failed to provide hourly, non-exempt employees,



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including Mr. Mena and others, the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their employment. MB DINING did not completely relieve Mr. Mena and other employees of all duty during said meal periods. MB DINING did not pay to Mr. Mena 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. Mr. Mena and others did not always receive timely, uninterrupted meal breaks due to work obligations. Like the rest breaks, receiving a thirty-minute uninterrupted and timely (before the 5<sup>th</sup> hour) meal break was not consistently part of the company culture and was not enforced by MB DINING. Consequently, it was the normal practice and custom of MB DINING not to authorize, permit, and enforce timely statutory meal periods. In fact, it was commonplace for the hourly employees to have their meal breaks interrupted by management personnel due to work duties and in dealing with customers and orders. If MB DINING had our client sign a meal period waiver, it would not be valid and enforceable since our client and others generally worked more than a 5-hour shift. If MB DINING had our client sign an on-duty meal period agreement wherein our client agreed to work through the meal periods, it would be invalid and unenforceable because the nature of our client's job does not and did not prevent him from taking a meal period and the company could have hired "breakers" to relieve Mr. Mena of his job duties so that he can actually take a timely, uninterrupted meal period. Moreover, any such "on duty" meal period agreement did not allow for our client to revoke such an agreement even if it was signed. As such, our client and others did not always receive statutory, timely meal periods during their employment. To the extent that MB DINING argues that employees receive meal break premium pay for missed meal periods, that argument is inconsequential for PAGA penalty purposes since the PAGA penalties are for the violations themselves, irrespective of whether an employee received the premium payment for a missed, short, or interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, "section 226.7 does not give employers a lawful choice between providing *either* meal and rest breaks *or* an additional hour of pay." See *Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse the violation; the employer has still committed a violation even if the remedy for the violation has been paid. See *Wert v. U.S. Bancorp.*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at \*4). As such, the work environment and culture at MB DINING was not conducive to receiving consistent, timely, statutory meal breaks under California law. Moreover, any meal or rest break premiums paid were not compensated at the weighted average regular rate, inclusive of bonuses and/or incentive payments/sick pay as well as overtime compensation.

Furthermore, during the relevant time period, and due to the above labor code violations, MB DINING failed to pay our client and other similarly situated aggrieved employees all wages due to them within any time period specified by California Labor Code section 204. Since Mr. Mena was not compensated for his "off the clock" work and since Mr. Mena did not receive meal and rest break premiums, Mr. Mena would still be owed wages pursuant to Labor Code Section 204. MB DINING was also in violation of California Labor Code section 226(a) by failing to include pertinent information on the wage statements, including but not limited to, the correct hourly rate, all hours worked, overtime hours worked, correct overtime pay, gross wages earned, net wages earned, premium pay for missed meal and rest breaks, all deductions, the correct start and end of

the pay period, all employee identifying information, the correct and complete name and address of the legal employer, and reimbursement for business expenses, among others. As such, MB DINING did not provide our client and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

During the relevant time period, MB DINING also failed to keep accurate and complete payroll records showing the actual hours worked per day and the wages paid to Mr. Mena and others pursuant to California Labor Code sections 1174(d).

MB DINING also violated Labor Code § 203 because it willfully failed to pay our client and other similarly situated aggrieved employees earned and due wages upon separation of employment, either immediately upon involuntary termination, or within 72 hours of resignation. These earned but unpaid wages include compensation for all hours worked, including minimum wages, overtime compensation, and premium pay for missed meal and rest breaks.

During the relevant time period, Mr. Mena and other aggrieved employees incurred necessary, business-related expenses and costs that were not reimbursed by MB DINING. These costs include, but are not limited to, uniforms, including having to purchase shoes specifically for the job. Accordingly, MB DINING was in violation of California Labor Code sections 2800 and 2802.

Additionally, MB DINING violated Labor Code Section 351 and 353 by taking some of the tips meant for employees and also deducting the tips from employees' earned wages. MB DINING also deducted the credit card fee from employees' tips and did not timely provide the credit card and even cash tips to aggrieved employees. As such, aggrieved employees were not given accurate tips to which they were entitled.

Furthermore, MB DINING did not provide proper and correct/accurate sick pay that was also delineated on employee pay stubs and also failed to provide proper sick leave in violation of Labor Code sections 233 and 246. Moreover, there were no suitable seating/rest break facilities for the employees pursuant to Wage Order no. 5-2001 as employees did not have a designated break area where they could take a meal or rest break.

Furthermore, we believe your companies have also violated Labor Code Section 558 and has engaged in business practices which violate Business and Professions Code Section 17200.

Each of the aforementioned violations, except the violations for inaccurate pay statements under Labor Code section 226(a), is among the enumerated violations set forth in Labor Code § 2699.5, for which there is no statutory right to cure.

Please take notice that, based upon the above-mentioned violations, and in addition to the penalties provided by those specific sections themselves, Mr. Mena also intends to seek penalties under the following Labor Code sections which themselves are inviolable but provide for recovery of penalties for violating one or more of the above-mentioned Labor Code sections: Labor Code §§ 558, 226.3, 1197.1.



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Should your agency choose not to pursue this matter, this law office intends to vigorously prosecute the aforementioned Labor Code violations on its behalf and vindicate the rights of all employees who have been subjected to these same Labor Code violations by MB DINING.

If you have any questions or require additional information, please do not hesitate to contact us.  
Thank you in advance for your attention to this matter.

Very Truly Yours,

Harout Messrelian, Esq.