

MESSRELIAN LAW INC.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ENRIQUE MENA,

Plaintiff,

vs.

MB DINING, LLC; THE ZISLIS GROUP,
INC.; MICHAEL ANDREW ZISLIS;
ANDREA MARIE ZISLIS; and DOES 1
to 25, inclusive,

Defendants.

) CASE NO.: **24STCV17912**

) **COMPLAINT FOR DAMAGES FOR:**

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

COMES NOW Plaintiff, ENRIQUE MENA (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 MB DINING, LLC; THE ZISLIS GROUP, INC.; MICHAEL ANDREW ZISLIS; ANDREA MARIE ZISLIS 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 \$35,000.

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 MB DINING, LLC is and was a California Limited Liability Company, doing business in Los Angeles County, California, and which employed Plaintiff.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendant THE ZISLIS GROUP, INC. is and was a California corporation, doing business in Los Angeles County, California, and which employed Plaintiff.

5. Individual Defendants MICHAEL ANDREW ZISLIS and ANDREA MARIE ZISLIS are residents of the County of Los Angeles, State of California and the owners, directors, and/or managing agents of MB DINING, LLC and THE ZISLIS GROUP, INC. They are being included in this complaint pursuant to Labor Code section 558.1 in that they controlled the wages, hours, and/or working conditions of Plaintiff and other employees and were also involved in the wage and hour policies and practices of the businesses. Moreover, Defendants MB DINING, LLC, THE ZISLIS GROUP, INC., MICHAEL ANDREW ZISLIS and

1 ANDREA MARIE ZISLIS are considered “joint employers” in that they all controlled the
2 wages, hours, and/or working conditions of Plaintiff and other employees. Furthermore, MB
3 DINING, LLC and THE ZISLIS GROUP, INC. are considered an “integrated enterprise” under
4 the law. The integrated enterprise test sets forth four factors for assessing whether two entities
5 are considered a single entity for purposes of liability: (1) interrelation of operations; (2) common
6 management; (3) centralized control of labor relations; and (4) common ownership or financial
7 control. Even though one does not have to show proof of all factors to prevail on an integrated
8 enterprise claim, here all four factors are unequivocally met as all companies and entities have
9 the exact same ownership and management, including Michael Andrew Zislis and Andrea Marie
10 Zislis. Furthermore, there is centralized control of labor relations and there is interrelation of
11 operations considering the fact that employees from one restaurant also worked for the other
12 restaurants/businesses. Defendants MB DINING, LLC; THE ZISLIS GROUP, INC.;
13 MICHAEL ANDREW ZISLIS; ANDREA MARIE ZISLIS and DOES 1 to 25, inclusive are
14 hereinafter collectively referred to as “Defendant(s)” or “MB DINING”.

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

23 7. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
24 that information and belief, alleges that at all times herein mentioned, each of the remaining
25 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
26 under the authority of their agency, employment, or representative capacity, with the consent
27 of his/her codefendants.
28

GENERAL ALLEGATIONS

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

9. 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 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.

10. In sum, since PAGA allows Plaintiffs to bring suit on behalf of 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 Plaintiff’s position that Plaintiff 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.

11. It is Plaintiff’s position that MB DINING has violated numerous Labor Code Sections against Plaintiff 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.

1 12. MB DINING violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to
2 pay Plaintiff and other similarly situated aggrieved employees for all hours worked, including
3 the statutory minimum wage for all hours worked and for “off the clock” work. This is so because
4 MB DINING had a company policy wherein they would disproportionately round down the
5 number of hours worked, resulting in “time shaving” and further resulting in aggrieved
6 employees not being paid for all hours worked. In addition, and to the extent Plaintiff and other
7 employees worked through meal periods while “off the clock”, the latter would be considered a
8 minimum wage violation under California law. Moreover, MB DINING failed to provide its
9 employees with proper and accurate reporting time pay. Furthermore, it is important to note that
10 on one occasion, management clocked out Plaintiff at 10pm. Plaintiff was not aware that he had
11 been clocked out by management and when he actually went to clock out at 10:15am, he realized
12 that he had already been clocked out and had been working “off the clock” that entire period
13 with no compensation, which is a violation of California’s minimum wage laws.

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

25 14. MB DINING also violated Labor Code § 226.7 and the appropriate Industrial Welfare
26 Commission Wage Order no. 5 because it failed to provide Plaintiff and other similarly situated
27 aggrieved employees with 10-minute rest periods for every four hours of work, or majority
28 portion thereof, throughout their employment. MB DINING did not completely relieve Plaintiff
and others of all duty during said rest periods. MB DINING 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 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 Plaintiff was attempting to take a 10-minute break and was trying to eat an orange when the manager on duty told Plaintiff that he can't take a break and to go outside a clean the tables. Plaintiff 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 Plaintiff that he would be going home at 10pm even though Plaintiff was scheduled to work until closing that day. Moreover, it would not have been possible for employees such as Plaintiff 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.

15. 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, including Plaintiff 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 Plaintiff and other employees of all duty during said meal periods. MB DINING 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. Plaintiff 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 5th 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 Plaintiff sign a meal period waiver, it would not be valid and enforceable since Plaintiff and others generally worked more than a 5-hour shift. If MB DINING had Plaintiff sign an on-duty meal period agreement wherein Plaintiff agreed to work through the meal periods, it would be invalid and unenforceable because the nature of Plaintiff's job does not and did not prevent him from taking a meal period and the company could have hired "breakers" to relieve Plaintiff of his job duties so that he can actually

1 take a timely, uninterrupted meal period. Moreover, any such “on duty” meal period agreement
2 did not allow for Plaintiff to revoke such an agreement even if it was signed. As such, Plaintiff
3 and others did not always receive statutory, timely meal periods during their employment. To
4 the extent that MB DINING argues that employees receive meal break premium pay for missed
5 meal periods, that argument is inconsequential for PAGA penalty purposes since the PAGA
6 penalties are for the violations themselves, irrespective of whether an employee received the
7 premium payment for a missed, short, or interrupted meal period. In *Kirby v. Immoos Fire*
8 *Protection, Inc.*, the Court stated, “section 226.7 does not give employers a lawful choice
9 between providing *either* meal and rest breaks *or* an additional hour of pay.” See *Kirby v.*
10 *Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the
11 extra hour of pay does not excuse the violation; the employer has still committed a violation even
12 if the remedy for the violation has been paid. See *Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016,
13 2016 WL 1110302 at *4). As such, the work environment and culture at MB DINING was not
14 conducive to receiving consistent, timely, statutory meal breaks under California law. Moreover,
15 any meal or rest break premiums paid were not compensated at the weighted average regular
16 rate, inclusive of bonuses and/or incentive payments/sick pay as well as overtime compensation.

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

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

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

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

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

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

24 **FIRST CAUSE OF ACTION**

25 **PRIVATE ATTORNEYS GENERAL ACT**

26 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
27 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 233, 246, 351, 353, 510, 512, 558, 1174,**
28 **1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, and IWC Wage Order 5-2001)**

(Against All Named Defendants and all DOE Defendants)

22. Plaintiff re-alleges and incorporates by reference each and every allegation in
paragraphs 1 through 21, inclusive, of this Complaint as though fully set forth herein.

1 23. 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 24. 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 25. Plaintiff therefore has exhausted all administrative remedies required of him 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 26. 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 other current or former employees pursuant to the procedures specified in
15 California Labor Code section 2699.3.

16 27. 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 him, and therefore is
18 properly suited to represent the interests of other current and former hourly, non-exempt
19 employees who worked for Defendants at any and all locations in the State of California during
20 the PAGA period.

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

24 29. Plaintiff therefore has exhausted all administrative remedies required of him 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 30. California Labor Code section 2699 et seq. imposes penalties upon culpable
2 Defendants for violating the Labor Code.

3 31. 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 32. 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 33. 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, 226,
18 226.3, 226.7, 233, 246, 351, 353, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1,
19 1198, 2800, 2802, via 2698 and 2699 any other Labor Codes and Wage Orders (including no.
20 5) violated based on the facts alleged in this Complaint.

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

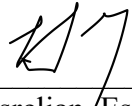
25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
27 follows:
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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: July 18, 2024

MESSRELIAN LAW INC.

By 
Harout Messrelian, Esq.
Attorneys for Plaintiff Enrique Mena