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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

RICARDO GONZALEZ,

Plaintiff,

vs.

OL CALI UNO MGT, LLC; and DOES 1 to
25, inclusive,

Defendants.

CASE NO.: **24STCV30677**

COMPLAINT FOR DAMAGES FOR:

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

COMES NOW Plaintiff, RICARDO GONZALEZ (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 OL CALI UNO MGT, LLC; and DOES 1 to 25, inclusive (hereinafter collectively “OL CALI UNO” 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 OL CALI UNO MGT, LLC is a Delaware limited liability company, doing business in the County of Los Angeles, State of California, and which employed Plaintiff.

4. Plaintiff is informed and believes that at all times herein mentioned, OL CALI UNO, is considered an employer under California law in that they controlled the hours, wages, and working conditions of Plaintiff.

5. 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

1 fictitiously named defendants, Plaintiff will amend this complaint to show the true names and
2 capacities of these fictitiously named defendants.

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

8 **GENERAL ALLEGATIONS**

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10 5. Plaintiff started working at OL CALI UNO on or around April 2024 as a barback and
11 helper. Plaintiff is and was classified as an hourly, non-exempt employee. Plaintiff's last rate of
12 pay was \$16.75 per hour. Plaintiff's employment ended on or around June or July 2024.

13 6. It is Plaintiff's position that due to personally suffering the below violations, Plaintiff
14 can equivocally bring the following labor code violations on behalf of all other employees,
15 including ALL hourly, non-exempt employees who worked for OL CALI UNO anywhere in
16 the state of California (at all different restaurant locations) during the relevant PAGA period.

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18 7. It is Plaintiff's position that OL CALI UNO has violated the following Labor Code
19 Sections against Plaintiff and other similarly situated aggrieved employees, who include all
20 non-exempt, hourly employees who worked for OL CALI UNO at their various
21 locations/restaurants in the State of California during the relevant PAGA period.

22 8. OL CALI UNO violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed
23 to pay Plaintiff and other similarly situated aggrieved employees for all hours worked,
24 including the statutory minimum wage for all hours worked and for "off the clock" work. This
25 is so because OL CALI UNO had a company policy wherein they would disproportionately
26 round down the number of hours worked, resulting in "time shaving" and further resulting in
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1 aggrieved employees not being paid for all hours worked. In addition, Plaintiff worked “off the
2 clock” in that he performed work tasks after clocking out in order to help with closing tasks
3 and clean-up. In fact, Plaintiff and others stayed 1 to 2 hours after their scheduled shift and
4 management stated they would “adjust” the hours since they were “off the clock”, but never
5 did. Furthermore, and to the extent that Plaintiff worked through any meal periods while
6 clocked out for lunch, the latter would also be a minimum wage violation. Moreover, OL CALI
7 UNO failed to provide its employees with proper and accurate reporting time pay. In addition,
8 Plaintiff has noticed that management would unilaterally deduct a few hours from his time
9 records and would therefore not pay him for all hours worked.
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11 9. Due to the above “off the clock” violations, OL CALI UNO also violated Labor Code
12 §510 because it failed to pay Plaintiff and other aggrieved employees overtime compensation,
13 even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per
14 week throughout their employment. Plaintiff’s and other aggrieved employees’ actual work
15 hours entitled them to overtime compensation, however, OL CALI UNO did not compensate
16 its hourly, non-exempt employees with the correct amount of overtime due to the “off the
17 clock” work and time shaving as described above. Furthermore, OL CALI UNO failed to
18 include bonuses/incentive payments in calculating employees’ regular rate of pay for use in
19 deciphering the correct overtime rate of pay. Additionally, the incentive, shift differential, and
20 bonus payments were also not factored into employees’ regular rate for purposes of receiving
21 meal and rest break premiums per the Ferra v. Loews case.
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23 10. OL CALI UNO also violated Labor Code § 226.7 and the appropriate Industrial
24 Welfare Commission Wage Order no. 5 because it failed to provide Plaintiff and other
25 similarly situated aggrieved employees with 10-minute rest periods for every four hours of
26 work, or majority portion thereof, throughout their employment. OL CALI UNO did not
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1 completely relieve Plaintiff and others of all duty during said rest periods. OL CALI UNO did
2 not pay to Plaintiff and others one additional hour of pay at Plaintiff's regular rate of
3 compensation for each workday that one or more statutory rest periods was not provided.
4 Plaintiff was lucky to receive one rest break per shift if that. Rest breaks were simply not a
5 priority for the restaurant and not enforced. Moreover, it would not have been possible for
6 employees such as Plaintiff to take such rest breaks due to being understaffed in the bar area
7 and due to a heavy workload, especially in the fast-paced restaurant environment. As such, the
8 culture as well as the policies and procedures of OL CALI UNO did not lend itself to the
9 employees receiving consistent statutory rest breaks wherein they were relieved of all work
10 duties. The environment at OL CALI UNO was not conducive to receiving statutory rest
11 breaks under California law and timely, statutory rest breaks were not authorized or enforced.

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13 11. OL CALI UNO violated Labor Code §§ 512 and 226.7 and the appropriate Industrial
14 Welfare Commission Wage Order no. 5 because it failed to provide hourly, non-exempt
15 employees, including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods
16 for every five (5) hours of work throughout their employment. OL CALI UNO did not
17 completely relieve Plaintiff and other employees of all duty during said meal periods. OL
18 CALI UNO did not pay to Plaintiff and its hourly, non-exempt employees one additional hour
19 of pay at their regular rate of compensation for each workday that one or more statutory meal
20 periods was not provided. Like the rest breaks, receiving a consistent thirty-minute
21 uninterrupted and timely meal break was not part of the company culture and was not enforced
22 by OL CALI UNO. Plaintiff's meal breaks would be late and after the 5th hour worked.
23 Moreover, Plaintiff's meal breaks would be interrupted by management asking him to perform
24 tasks wherein Plaintiff would get a call over the radio to change the beer barrel immediately.
25 To the extent that other aggrieved employees even received meal periods, they were either late
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1 or consistently interrupted by work obligations as well. Consequently, it was the normal
2 practice and custom of OL CALI UNO not to authorize, permit, and enforce timely statutory
3 meal periods. If OL CALI UNO had Plaintiff sign a meal period waiver, it would not be valid
4 and enforceable since Plaintiff and others generally worked more than a 5-hour shift.
5 Furthermore, under California law, however, employees must make an affirmative decision
6 every day regarding whether to waive their meal periods. August 13, 2003 DLSE Opinion
7 Letter (“The decision to forego a meal period may not, therefore, be based on a specific
8 requirement of the employer or on a policy or practice which could reasonably be perceived to
9 be a condition of employment. Therefore, blanket “waivers” of meal periods ...whether written
10 or oral, will not be considered valid.”). If OL CALI UNO had Plaintiff sign an on-duty meal
11 period agreement wherein Plaintiff agreed to work through the meal periods, it would be
12 invalid and unenforceable because the nature of Plaintiff’s job does not and did not prevent
13 him from taking a meal period and the company could have hired “breakers” to relieve Plaintiff
14 of his job duties so that he can actually take a timely, uninterrupted meal period. Moreover, any
15 such “on duty” meal period agreement did not allow for Plaintiff to revoke such an agreement
16 even if it was signed. As such, Plaintiff and others did not receive statutory, timely meal
17 periods during their employment. To the extent that OL CALI UNO argues that employees
18 receive meal break premium pay for missed meal periods, that argument is inconsequential for
19 PAGA penalty purposes since the PAGA penalties are for the violations themselves,
20 irrespective of whether an employee received the premium payment for a missed, short, or
21 interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, “section
22 226.7 does not give employers a lawful choice between providing *either* meal and rest
23 breaks *or* an additional hour of pay.” See *Kirby v. Immoos Fire Protection, Inc.*, (2012) 53
24 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse the
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1 violation; the employer has still committed a violation even if the remedy for the violation has
2 been paid. *See Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As
3 such, the work environment and culture at OL CALI UNO was not conducive to receiving
4 consistent, timely, statutory meal breaks under California law. Moreover, any meal or rest
5 break premiums paid were not compensated at the weighted average regular rate, inclusive of
6 bonuses and/or incentive payments as well as overtime compensation.

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8 12. Furthermore, during the relevant time period, and due to the above labor code
9 violations, OL CALI UNO failed to pay Plaintiff and other similarly situated aggrieved
10 employees all wages due to them within any time period specified by California Labor Code
11 section 204. Since Plaintiff was not compensated for his “off the clock” work and since
12 Plaintiff did not receive proper meal and rest break premiums, Plaintiff would still be owed
13 wages pursuant to Labor Code Section 204. In addition, there were numerous occasions
14 wherein Plaintiff was not paid on the designated pay date and was paid late. OL CALI UNO
15 was also in violation of California Labor Code section 226(a) by failing to include pertinent
16 information on the wage statements, including but not limited to, the correct hourly rate, all
17 hours worked, overtime hours worked, correct overtime pay, gross wages earned, net wages
18 earned, premium pay for missed meal and rest breaks, all deductions, the correct start and end
19 of the pay period, all employee identifying information, the correct and complete name and
20 address of the legal employer, tips, and reimbursement for business expenses, among others.
21 As such, OL CALI UNO did not provide Plaintiff and other similarly situated aggrieved
22 employees with complete, accurate itemized wage statements.

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24 13. During the relevant time period, OL CALI UNO also failed to keep accurate and
25 complete payroll records showing the actual hours worked per day and the wages paid to
26 Plaintiff and others pursuant to California Labor Code sections 1174(d).
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1 14. OL CALI UNO also violated Labor Code § 203 because it willfully failed to pay
2 Plaintiff and other similarly situated aggrieved employees earned and due wages upon
3 separation of employment, either immediately upon involuntary termination, or within 72
4 hours of resignation. These earned but unpaid wages include compensation for all hours
5 worked, including minimum wages, overtime compensation, and premium pay for missed meal
6 and rest breaks.

7 15. During the relevant time period, Plaintiff and other aggrieved employees incurred
8 necessary, business-related expenses and costs that were not reimbursed by OL CALI UNO.
9 These costs include but are not limited to uniforms. Accordingly, OL CALI UNO was in
10 violation of California Labor Code sections 2800 and 2802.
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12 16. Additionally, OL CALI UNO violated Labor Code Section 351 and 353 by taking some
13 of the tips meant for employees and also deducting the tips from employees' earned wages. OL
14 CALI UNO also deducted the credit card fee from employees' tips and did not timely provide
15 the credit card and even cash tips to aggrieved employees. As such, aggrieved employees were
16 not given accurate tips to which they were entitled.
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18 17. Furthermore, OL CALI UNO did not provide proper and correct/accurate sick pay
19 (inclusive of all bonuses/shift differentials/incentive payments) that was also delineated on
20 employee pay stubs and also failed to provide proper sick leave in violation of Labor Code
21 sections 233 and 246. Moreover, there were no suitable seating/rest break facilities for the
22 employees pursuant to Wage Order no. 5-2001 as employees did not have a designated break
23 area.
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25 **FIRST CAUSE OF ACTION**

26 **PRIVATE ATTORNEYS GENERAL ACT**

27 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
28 **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)

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

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

4 19. Plaintiff has complied with the procedures for bringing suit specified in California
5 Labor Code § 2699.3. By letter dated August 1, 2024, Plaintiff gave written notice by certified
6 mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the
7 specific provisions of the California Labor Code alleged to have been violated, including the
8 facts and theories to support the alleged violations.

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

11 21. 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 this
13 cause of action and pursue penalties in a representative action for Defendants’ violations of the
14 Labor Code.

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

21 23. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged
22 violator and had one or more of the alleged violations committed against him, and therefore is
23 properly suited to represent the interests of other current and former employees, including all
24 current and former hourly, non-exempt employees who worked for OL CALI UNO in the State
25 of California during the applicable PAGA Period.

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

 25. Plaintiff therefore has exhausted all administrative remedies required of him under

1 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute
2 this cause of action and pursue penalties in a representative action for Defendants' violations of
3 the Labor Code.

4 26. California Labor Code section 2699 et seq. imposes penalties upon culpable
5 Defendants for violating the Labor Code.

6 27. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
7 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
8 seeking individual penalties/victim specific relief or underpaid wages for himself or other
9 employees under this specific PAGA cause of action.

10 28. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for the
11 following:

12 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
13 226.3, 226.7, 233, 246, 351, 353, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1 1198,
14 2800, 2802, and any other Labor Codes/Industrial Welfare Commission Order (No. 5) violated
15 based on the facts alleged in this Complaint.

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

20 **PRAYER FOR RELIEF**

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

- 23 1. For the imposition of civil penalties;
- 24 2. For maximum civil penalties available under Labor Code Section 2699 against
25 Defendants in a manner and amount authorized by that statute, as described more
26 particularly in the Complaint and representative PAGA claims;
- 27 3. For all costs and disbursements incurred in this suit;
- 28 4. Reasonable attorney's fees where available by law, including but not limited to, pursuant

1 to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5, and/or other
2 applicable laws; and

3 5. For such other and further relief as this Court may deem proper.
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5 DATED: November 19, 2024

MESSRELIAN LAW INC.

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7 By  _____

8 Harout Messrelian, Esq.

9 Attorneys for Plaintiff Ricardo Gonzalez
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