

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Barbara Meiers

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

WILLIAM HOLMES,

Plaintiff,

vs.

LESLIE'S POOLMART, INC. and DOES 1
to 25, inclusive,

Defendants.

) CASE NO.: **20STCV24698**

) **COMPLAINT FOR DAMAGES FOR:**

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

COMES NOW Plaintiff, WILLIAM HOLMES (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 LESLIE'S POOLMART, INC. and DOES 1 to 25, inclusive inclusive, (hereinafter collectively known as "Defendants"), 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 male resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant LESLIE'S POOLMART, INC. ("LESLIE'S") is and was a Delaware corporation, doing business in Los Angeles County, 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
2 of his/her codefendants.

3 4 **GENERAL ALLEGATIONS**

5 6. Plaintiff started working for LESLIE'S in September 2008. Plaintiff latest job title was
6 Tarzana Store Manager and he was classified as an hourly, non-exempt employee. Plaintiff's
7 employment with LESLIE'S ended on or around April 12, 2019.

8 7. LESLIE'S has committed numerous labor code violations against Plaintiff and other
9 similarly situated aggrieved employees, which are defined as all hourly, non-exempt
10 employees who worked for LESLIE's in California during the applicable period under the
11 Private Attorneys General Act (PAGA).

12 8. LESLIE'S violated Labor Code §510 because it failed to pay Plaintiff and other
13 similarly situated aggrieved employees the proper and correct amount of overtime, even though
14 they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout
15 their employment. This is so because Plaintiff and others received performance-based bonuses
16 that were not factored into the equation in deciphering Plaintiff ' and others' overtime rate of
17 pay. In other words, the performance-based bonuses that were received by Plaintiff and other
18 similarly situated aggrieved employees were not factored into Plaintiff regular rate of pay for
19 the purposes of figuring out the overtime rate of pay. As such, Plaintiff and others were not
20 paid the proper, accurate amount of overtime compensation.

21 9. LESLIE'S violated Labor Code §§ 512 and 226.7 (along with the applicable Wage
22 Order, 7-2001) because it failed to provide Plaintiff and other similarly situated aggrieved
23 employees the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work
24 throughout their employment, and Plaintiff did not validly waive said meal periods.
25 LESLIE'S did not completely relieve Plaintiff of all duties during said meal periods.
26 LESLIE'S did not pay to Plaintiff one additional hour of pay at Plaintiff 's regular rate of
27 compensation for each workday that one or more statutory meal periods was not provided.
28 Plaintiff was not able to take timely meal breaks due to understaffing issues and not having

1 anyone to cover for him. As such, Plaintiff would often times take his meal breaks after the
2 5th hour worked and would also not be relieved of all duty. Plaintiff would be forced to
3 essentially eat and work at the same time. If LESLIE'S had Plaintiff sign a meal period
4 waiver, it would not be valid and enforceable since Plaintiff and others generally worked more
5 than a 6-hour shift. If LESLIE'S had Plaintiff sign an on-duty meal period agreement wherein
6 Plaintiff agreed to work through his lunch, it would also be invalid and unenforceable because
7 the nature of Plaintiff's job does not prevent him from taking a meal period. As such, Plaintiff
8 and others never received statutory, timely meal periods during their employment. Timely,
9 statutory meal breaks wherein Plaintiff and others were relieved of all duty were definitively
10 not part of LESLIE'S culture. The meal periods were not authorized and were not enforced.

11 10. Furthermore, during the relevant time period and due to the labor code violations as
12 discussed above, LESLIE'S failed to pay Plaintiff and other similarly situated aggrieved
13 employees all wages due to them within any time period specified by California Labor Code
14 section 204. LESLIE'S was also in violation of California Labor Code section 226(a) by failing
15 to include pertinent information on the wage statements, including but not limited to, all hours
16 worked, all applicable hourly rates, overtime hours worked, gross wages earned, premium pay
17 for missed meal and rest breaks, the beginning and end of every pay period, all deductions, net
18 wages earned, the correct name and address of the employer, premium pay for missed meal
19 breaks and reimbursement for business expenses, among others. As such, LESLIE'S did not
20 provide Plaintiff and other similarly situated aggrieved employees with complete, accurate
21 itemized wage statements.

22 11. LESLIE'S violated Labor Code § 203 because it willfully failed to pay Plaintiff and
23 other similarly situated aggrieved employees their earned and due wages upon separation of
24 employment, either immediately upon involuntary termination, or within 72 hours of
25 resignation. These earned but unpaid wages include the unpaid overtime, premium pay for
26 missed meal breaks, and business expense reimbursement, among others.

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1 12. During the relevant time period, LESLIE'S also failed to keep accurate and complete
2 payroll records showing the hours worked by Plaintiff and other similarly situated aggrieved
3 employees as well as the correct wages paid to Plaintiff and other aggrieved employees
4 pursuant to California Labor Code sections 1174(d).

5 13. Additionally, during the relevant time period, Plaintiff and other aggrieved employees
6 incurred necessary, business-related expenses and costs that were not reimbursed by
7 LESLIE'S. These costs include, but are not limited to, the use of their personal cell phones for
8 work purposes as Plaintiff would have to use his personal cell phone to communicate with
9 other stores and to look up information on the internet since the internet on the computers at
10 the store only allowed one to navigate LESLIE's website. Accordingly, LESLIE'S was in
11 violation of California Labor Code sections 2800 and 2802.

12
13 **FIRST CAUSE OF ACTION**

14 **PRIVATE ATTORNEYS GENERAL ACT**

15 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
16 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 2802)**

17 **(Against All Named Defendants and all DOE Defendants)**

18 14. Plaintiff re-alleges and incorporates by reference each and every allegation in
19 paragraphs 1 through 13, inclusive, of this Complaint as though fully set forth herein.

20 15. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
21 Defendants of the specific violations of the California Labor Code that Defendants and DOE
22 defendants have violated and continue to violate.

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

25 17. Plaintiff therefore has exhausted all administrative remedies required of him under
26 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
27 cause of action and pursue penalties in a representative action for Defendants' violations of the
28 Labor Code.

1 18. Pursuant to California Labor Code section 2699, any provisions of the Labor Code that
2 provides for a civil penalty to be assessed and collected by the LWDA or any of its
3 departments, divisions, commissions, boards, agencies, or employees for violation of the code
4 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
5 on behalf of himself or herself and other current or former employees pursuant to the
6 procedures specified in California Labor Code section 2699.3.
7

8 19. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged
9 violators and had one or more of the alleged violations committed against him, and therefore is
10 properly suited to represent the interests of other current and former employees, which
11 include all hourly, non-exempt employees who worked for LESLIE’s during the applicable
12 PAGA period.

13 20. Based on the acts alleged above, Plaintiff, on behalf of himself and others, seeks
14 penalties under California Labor Code sections 2698 and 2699 because of Defendants’
15 violations of numerous provisions of the California Labor Code as alleged in this Complaint.

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

20 22. California Labor Code section 2699 et seq. imposes penalties upon culpable
21 Defendants for violating the Labor Code.

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

3 24. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
4 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
5 seeking individual/victim specific relief or underpaid wages.

6 25. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
7 the following:

8 Violations of California Labor Code 201, 202, 203, 204 and/or 204b, 210, 226, 226.3,
9 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2802 via 2698 and 2699 and any
10 other Labor Codes or Industrial Welfare Commission Wage Order(s) violated based on the
11 facts alleged in this Complaint.

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

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

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

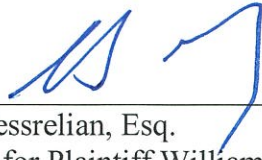
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1 5. For such other and further relief as this Court may deem proper.
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3 DATED: June 30, 2020

MESSRELIAN LAW INC.

4 By 
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Harout Messrelian, Esq.

6 Attorneys for Plaintiff William Holmes
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