MESSRELIAN LAW INC.
Harout Messrelian, Esq. (SB# 272020)
hm@messrelianlaw.com
101 N. Brand Blvd. Suite 1450
Glendale, California 91203
Telephone: (818) 484-6531
Facsimile: (818) 956-1983

BRADLEY/GROMBACHER, LLP
Marcus J. Bradley, Esq. (SBN 174156)
Kiley L. Grombacher, Esq. (SBN 245960)
Lirit A. King, Esq. (SBN 252521)
Emilie MacLean, Esq. (SBN 349539)
31365 Oak Crest Drive Suite 240
Westlake Village, California 91361
Telephone: (805) 270-7100
Facsimile: (805) 270-7589
E-Mail: mbradley@bradleygrombacher.com
kgrombacher@bradleygrombacher.com
lking@bradleygrombacher.com
emaclean@bradleygrombacher.com

Attorneys for Plaintiffs,
KATHLEEN MCAULIFFE; JARED MORGAN CHANDLER, and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES
(*UNLIMITED JURISDICTION*)

KATHLEEN MCAULIFFE; JARED MORGAN CHANDLER; *Plaintiff,* vs. ALO, LLC; and DOES 1 to 25, inclusive, *Defendants.*	Case No.: 23STCV11684 **FIRST AMENDED COMPLAINT FOR DAMAGES FOR:** **1) PRIVATE ATTORNEYS GENERAL ACT ("PAGA");**

COMES NOW, Plaintiffs, KATHLEEN MCAULIFFE ("Plaintiff McAuliffe") and JARED MORGAN CHANDLER ("Plaintiff Chandler") (hereafter collectively "Plaintiffs"), 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 ALO, LLC; and DOES 1 to 25, inclusive, do business in the County of Los Angeles and because Defendant's 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 KATHLEEN MCAULIFFE is a female resident of the County of Los Angeles, State of California. Plaintiff JARED MORGAN CHANDLER is male resident of the State of California.

3. Plaintiffs are informed and believe that at all times herein mentioned, Defendant ALO, LLC is and was a California corporation, doing business in Los Angeles County, California, and which employed Plaintiff.

4. The "Aggrieved Employees" are all current and former non-exempt or hourly paid employees as well as exempt, salaried employees who were either properly classified or improperly classified and should have been hourly, non-exempt employees and all of whom worked for Defendant at any of their California locations during the relevant time period pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys General Act of 2004 ("PAGA").

5. Plaintiffs are 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. Plaintiffs are informed and believe 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, Plaintiffs will amend this complaint to show the true names

and capacities of these fictitiously named defendants.

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

GENERAL ALLEGATIONS

7. Plaintiff McAuliffe started working at ALO on or around 2022. Plaintiff McAuliffe's employment ended on or around December 2022. Plaintiff McAuliffe was misclassified as an exempt, salaried employee and should have been classified as an hourly, non-exempt employee Under California law, in order for Plaintiff McAuliffe to be an exempt employee, she would have to fit in one of the following categories: Executive, Professional, or Administrative.

8. Plaintiff McAuliffe did not fit under the Executive exemption because she was NOT "primarily engaged in" (more than 50%) duties which met the test of exemption. Plaintiff McAuliffe did not manage or oversee anyone and did not have the ability to hire and fire other employees. Work tasks are either exempt or nonexempt as determined by the objective purpose for which the tasks are undertaken. *See* Heyen v. Safeway Inc. (2013) 216 CA4th 795, 826-827. In the Heyen case, *supra*, a grocery store assistant manager who spent more than half of her time bagging groceries or checking out customers was deemed to be engaged in nonexempt activities despite concurrently watching over her subordinates' work. Plaintiff McAuliffe did not spend the majority of her time in a managerial or supervisorial position.

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9. Plaintiff McAuliffe did not fit under the Professional Exemption because her work did not fit into one of the enumerated professions and is not considered a "learned or artistic profession." The Administrative Exemption also does not apply to Plaintiff McAuliffe either.

10. The overall important thing to note is that Plaintiff McAuliffe could not have possibly been a salaried, exempt employee because she simply did not have the independent judgment and discretion. All of her actions were micromanaged and there is a great deal of oversight. Moreover, the majority of Plaintiff McAuliffe's work duties included gathering information and sending emails regarding the opening of new stores and scheduling calls/meetings.

11. Plaintiff Chandler worked for ALO from approximately July 2022 through approximately January 23, 2023. Plaintiff worked as a general manager.

12. 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.

13. 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. <u>Consequently, it is Plaintiffs' position that Plaintiffs can equivocally bring the following labor code violations on behalf of all other employees.</u>

14. It is Plaintiffs' position that ALO has violated the following Labor Code Sections against Plaintiffs and other similarly situated aggrieved employees, who include all non-exempt, hourly employees and exempt, salaried employees who worked for ALO at their various locations in the State of California during the relevant PAGA period.

15. ALO violated Labor Code §§ 223, 1182.12, 1194, 1194.2, 1197, 1197.1, and 1199 because it failed to pay Plaintiffs 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 ALO 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. Furthermore, and to the extent that Plaintiffs and others worked through their meal periods while "off the clock", they were not compensated for

all hours worked, which would be akin to a minimum wage violation. Moreover, due to being misclassified, Plaintiff McAuliffe was not compensated for all hours worked, including working on weekends and working after hours as proven by the emails sent back and forth after work hours.

16. Due to the above "off the clock" violations and due to the misclassification, ALO also violated Labor Code §510 because it failed to pay Plaintiffs 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. Plaintiffs' and other aggrieved employees' actual work hours entitled them to overtime compensation, however, ALO did not compensate its misclassified exempt employees as well as hourly, non-exempt employees with the correct amount of overtime due to the "off the clock" work and time shaving as described above. In addition, and since Plaintiff McAuliffe was misclassified as an exempt employee, she was not paid any overtime whatsoever, despite working over 8 hours per day and/or 40 hours per week throughout her employment. Furthermore, ALO failed to include bonuses/incentive payments 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. Furthermore, ALO failed to provide Plaintiffs and other employees with one day of rest during a period of seven consecutive work days in violation of California Labor Code Sections 551 and 552.

17. ALO also violated Labor Code § 226.7 and the appropriate Industrial Welfare Commission Wage Order no. 4/7 because it failed to provide Plaintiffs and other similarly situated aggrieved employees with 10-minute rest periods for every four hours of work, or

majority portion thereof, throughout their employment. ALO did not completely relieve Plaintiffs and others of all duty during said rest periods. ALO did not pay to Plaintiffs and others one additional hour of pay at Plaintiffs' 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 Plaintiffs to take at least two rest breaks per shift. The concept of rest breaks was not implemented as it was not company policy. Moreover, it would not have been possible for employees such as Plaintiffs to take such rest breaks due to being understaffed and due to a heavy workload. As such, the culture as well as the policies and procedures of ALO did not lend itself to the employees receiving consistent statutory rest breaks wherein they were relieved of all work duties. The environment at ALO was not conducive to receiving multiple statutory rest breaks under California law and timely, statutory rest breaks were not authorized or enforced.

18. ALO violated Labor Code §§ 512 and 226.7 along with Industrial Welfare Commission Wage Order no. 4/7 because it failed to provide hourly, non-exempt employees, including Plaintiffs and others, the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their employment. ALO did not completely relieve Plaintiffs and other employees of all duty during said meal periods. ALO did not pay to Plaintiffs 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. The hourly, non-exempt employees would often not be able to receive their meal periods before the 5th hour worked due to the workload and due to being in a fast-paced work environment. Like the rest breaks, receiving a thirty-minute <u>uninterrupted</u> and <u>timely</u> meal break was not part of the company culture and was not enforced by ALO. Consequently, it was the normal practice and custom of ALO not to authorize, permit, and enforce timely statutory meal periods, especially

for those employees who were misclassified as salaried, exempt employees and who the company believed were not allowed to take timely, uninterrupted meal breaks. If ALO had Plaintiffs sign a meal period waiver, it would not be valid and enforceable since Plaintiffs and others generally worked more than a 6-hour shift. If ALO had Plaintiffs sign an on-duty meal period agreement wherein Plaintiffs agreed to work through the meal periods, it would be invalid and unenforceable because the nature of Plaintiffs' job does not prevent them from taking a meal period and the company could have hired "breakers" to relieve Plaintiffs of their job duties so that they can actually take a timely, uninterrupted meal period. Moreover, any such "on duty" meal period agreement did not allow for Plaintiffs to revoke such an agreement even if it was signed. As such, Plaintiffs and others did not always receive statutory, timely meal periods during their employment. To the extent that ALO 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 ALO 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 as well as overtime compensation.

19. Furthermore, during the relevant time period, and due to the above labor code violations, ALO failed to pay Plaintiffs and other similarly situated aggrieved employees all wages due to them within any time period specified by California Labor Code section 204 and section 210. ALO 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, ALO did not provide Plaintiffs and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

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

21. ALO also violated Labor Code § 203 because it willfully failed to pay Plaintiffs 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.

22. During the relevant time period, Plaintiffs and other aggrieved employees incurred necessary, business-related expenses and costs that were not reimbursed by ALO. These costs include, but are not limited to, use of personal phones for business-related purposes, uniforms, use of personal equipment from home in effectuating job duties and mileage

reimbursement. Accordingly, ALO was in violation of California Labor Code sections 2800 and 2802.

23. Furthermore, ALO did not provide proper and correct/accurate sick pay (inclusive of all bonuses/incentive/shift differential payments) that was also delineated on employee pay stubs and also failed to provide proper sick leave in violation of Labor Code sections 233, 234, and 245 through 248.5.

FIRST (AND ONLY) CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

Representative Claim for PAGA penalties under California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 223, 226, 226.3, 226.7, 233, 234, 245-248.5, 510, 512, 551, 552, 558, 558.1, 1174(d), 1182.12, 1194, 1194.2, 1197, 1197.1, 1199, 2800, 2802, 2698, 2699, and the applicable Industrial Welfare Commission Wage Order Nos. 4-2001/7-2001

(Plaintiffs Against All Named Defendants and all DOE Defendants)

24. Plaintiffs re-allege and incorporate by reference each and every allegation in paragraphs 1 through 23, inclusive, of this Complaint as though fully set forth herein.

25. Pursuant to law, Plaintiffs provided the required written notice to the California Labor & Workforce Development Agency (LWDA) and Defendant of the specific violations of the California Labor Code that Defendant and DOE defendants have violated and continue to violate.

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

27. Plaintiffs therefore have exhausted all administrative remedies required of them under California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this cause of action and pursue penalties in a representative action for Defendant's violations of the Labor Code.

28. Pursuant to California Labor Code section 2699, any provisions of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies, or employees for violation of the code

may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in California Labor Code section 2699.3.

29. Plaintiffs are "aggrieved employees" because Plaintiffs were employed by the alleged violator and had one or more of the alleged violations committed against them, and therefore are properly suited to represent the interests of all current and former non-exempt or hourly paid employees as well as salaried, exempt employees who were properly classified and improperly classified and all of whom worked for Defendant at any of their California locations during the relevant PAGA time period.

30. Based on the acts alleged above, Plaintiffs, on behalf of themselves and others, seek penalties under California Labor Code sections 2698 and 2699 because of Defendant's violations of numerous provisions of the California Labor Code as alleged in this Complaint.

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

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

33. Plaintiffs seek penalties for Defendant's misconduct as alleged herein as permitted by law, but only those penalties that are required to be shared with the LWDA as Plaintiffs are not seeking underpaid wages under this particular cause of action.

34. Specifically, Plaintiffs seek penalties under California Labor Code section 2699, for the following:

Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 223, 226, 226.3, 226.7, 233, 234, 245-248.5, 510, 512, 551, 552, 558, 558.1, 1174(d), 1182.12, 1194, 1194.2, 1197, 1197.1, 1199, 2800, 2802, 2698, 2699, and the applicable Industrial Welfare Commission Wage Order Nos. 4-2001/7-2001 violated on the facts alleged in this Complaint.

35. Pursuant to Labor Code section 2698 et seq., Plaintiffs seek to recover attorney's fees, costs, and civil penalties on behalf of Plaintiffs and 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.

WHEREFORE, Plaintiffs pray for Judgment against Defendant as follows:

1. For the imposition of civil penalties;
2. For maximum civil penalties available under Labor Code Section 2699 against Defendant 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

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5. For such other and further relief as this Court may deem proper.

Respectfully submitted,

MESSRELIAN LAW INC.

Dated: December 1, 2025

By____/s/________________________
Harout Messrelian, Esq.
Attorneys for Plaintiffs

BRADLEY/GROMBACHER, LLP

Dated: December 1, 2025

By______/s/______________________
Marcus J. Bradley, Esq.
Attorneys for Plaintiffs