

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Michael Linfield

1 AARON N. COLBY (State Bar No. 247339)  
aaron@colbylegal.com  
2 ZOE YUZNA (State Bar No. 268496)  
zoe@colbylegal.com  
3 COLBY LAW FIRM, PC  
13263 Ventura Boulevard, Suite 203  
4 Studio City, California 91604  
Telephone: (818) 253-1599  
5 Fax: (818) 475-1981

6 Attorneys for Plaintiff  
DIANA SMYTH

8  
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **FOR THE COUNTY OF LOS ANGELES**

11 DIANA SMYTH, an individual,  
12  
13 Plaintiff,  
14 vs.  
15 MONIQUE LHUILLIER, INC., a corporation;  
and DOES 1 through 10 inclusive,  
16 Defendant.

Case No. 23STCV04016

**PLAINTIFF’S COMPLAINT FOR  
PENALTIES PURSUANT TO:**

**1. PRIVATE ATTORNEYS GENERAL  
ACT, LABOR CODE SECTION 2698  
ET SEQ.**

**JURY TRIAL DEMANDED TO THE  
EXTENT PERMITTED BY LAW**

17  
18  
19  
20 Plaintiff Diana Smyth (“Plaintiff”) alleges and complains against Defendants Monique  
21 Lhuillier, Inc. and Does 1 through 10, inclusive (collectively, “Defendants”) as follows:

22 **INTRODUCTION**

23 1. This is a representative action for penalties pursuant to the Private Attorneys General  
24 Act of 2004, Labor Code section 2698 *et seq.* (“PAGA”).

25 2. PAGA allows an aggrieved employee to recover penalties on behalf of herself and  
26 other aggrieved employees. Accordingly, Plaintiff seeks civil penalties on behalf of herself and  
27 other aggrieved employees, along with attorney’s fees and costs, pursuant to PAGA.

28 ///

**PARTIES | JURISDICTION | VENUE**

1  
2           3.       Defendant Monique Lhuillier, Inc. (“Defendant”) is a corporation organized and  
3 existing under the laws of California with its principal place of business located at 4533 Pacific  
4 Boulevard, Vernon, California 90058.

5           4.       This Court has personal jurisdiction over Defendant because they conduct business  
6 in the State of California.

7           5.       The true names and capacities of the defendants named herein as Does 1 through 10,  
8 inclusive, whether individual, corporate, associate or otherwise, are unknown to Plaintiff who  
9 therefore sues such defendants by fictitious names pursuant to California Code of Civil Procedure  
10 section 474. Plaintiff believes that all of the Doe defendants are California residents. Plaintiff will  
11 amend this Complaint to show such true names and capacities when they have been determined.  
12 Defendants and the Doe Defendants are collectively referred to as “Defendants” or “Defendant  
13 Employers.”

14           6.       Plaintiff believes that, at all times relevant herein, each defendant designated,  
15 including Does 1 through 10, was the agent, managing agent, principal, owner, partner, joint  
16 venture, representative, manager, servant, employee, and/or co-conspirator of each of the other  
17 defendants, and was at all times mentioned herein acting within the course and scope of said agency  
18 and employment, and that all acts or omissions alleged herein were duly committed with the  
19 ratification, knowledge, permission, encouragement, authorization, and consent of each defendant  
20 designated herein.

21           7.       Defendants, and each of them, acted in concert with one another to commit the  
22 wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another in  
23 the wrongful acts alleged herein, and/or attempted to do so. Defendants, and each of them,  
24 formed and executed a conspiracy or common plan pursuant to which they would commit the  
25 unlawful acts alleged herein, with all such acts alleged herein done as part of and pursuant to said  
26 conspiracy, intended to cause and actually causing Plaintiff harm.

27 ///

28 ///

1 EXHAUSTION OF ADMINISTRATIVE REMEDIES

2 8. Plaintiff exhausted administrative remedies for bringing Plaintiff’s claims.

3 9. On December 16, 2022, Plaintiff’s counsel gave written notice by online filing with  
4 the California Labor & Workforce Development Agency (“LWDA”) and by sending via certified  
5 mail to Defendants a letter specifying the California Labor Code provisions Defendants violated,  
6 including the facts and theories supporting the alleged violations. More than sixty-five (65) days  
7 have passed since Plaintiff’s counsel submitted the letter to the LWDA and certified-mailed the  
8 letter to Defendants, and the LWDA has not provided notice of intent to investigate the alleged  
9 violations, nor have Defendants provided notice of intent or any efforts to cure. Accordingly, the  
10 statutory period for any investigation or response has concluded and Plaintiff may commence this  
11 lawsuit pursuant to Labor Code section 2699, as provided by subsection 2699.3.

12 FACTUAL ALLEGATIONS

13 10. **Defendant.** Defendant Monique Lhuillier, Inc. operates an international clothing  
14 brand and retail stores, with headquarters at 4533 Pacific Boulevard, Vernon, California 90058.

15 11. **Plaintiff’s Hire.** On January 26, 2016, Defendant hired Plaintiff Diana Smyth as an  
16 employee in the job position of Ready to Wear Specialist to work the Melrose Place location,  
17 located at 8485 Melrose Place, West Hollywood, California 90069.

18 12. Throughout Plaintiff’s employment, Plaintiff was an exemplary employee, never  
19 receiving a negative performance counseling or review, until her wrongful termination.

20 13. **Plaintiff’s Job Duties.** As a Ready to Wear Specialist, Plaintiff’s job duties  
21 included selling bridal gowns, pieces for red carpet events, and other high-end clothing items for  
22 special occasions. Plaintiff reported to Chelsea Polk, Store Manager of the Melrose Place location.

23 14. **Plaintiff’s Schedule.** Throughout Plaintiff’s employment, Plaintiff’s work schedule  
24 was typically Monday, Tuesday, Wednesday, Friday, and Saturday at the Melrose Place store from  
25 9:30am to 6:30pm. In addition, Defendant required Plaintiff to work after hours for off-site work  
26 at sample sales, events, and client consultations and fittings. The off-site work was no less than  
27 three days a week for multiple hours a day on average.

28 ///

1           15.   **Plaintiff's Compensation.** Throughout Plaintiff's employment, Defendant  
2 classified Plaintiff as an "exempt" employee. Defendant paid Plaintiff "\$60,000 per year with  
3 commissions as discussed."

4           16.   Defendant provided Plaintiff "15 paid days off (PTO) accrued annually" without a  
5 restriction or maximum cap applicable to carry over of accrued but unused PTO.

6           17.   **Plaintiff Complains Continually About Unreimbursed Business Expenses And**  
7 **Unpaid Wages.** Throughout Plaintiff's employment, Plaintiff witnessed and complained to  
8 Defendant about violations of the California Labor Code. Plaintiff complained starting in late-2017  
9 and through March 2020 when Defendant furloughed employees in response to the COVID-19  
10 pandemic.

11           18.   Plaintiff first asked Kadie Uretz, Retail Director, for Defendant to reimburse  
12 Plaintiff for expenses relating to her personal mobile device usage and miles driven in her personal  
13 vehicle for work purposes. Plaintiff reminded Kadie Uretz that Plaintiff used her personal mobile  
14 device to coordinate and her personal vehicle to drive to essential off-site work duties such as  
15 meeting with clients at hotels and homes for fittings and consultations, attending sample sales, and  
16 other work.

17           19.   Even after Plaintiff complained about the unreimbursed expenses due to the off-site  
18 work to Kadie Uretz, Defendant still refused to reimburse Plaintiff's requested expenses.

19           20.   Plaintiff asked Defendant for reimbursement again in January of 2019, after learning  
20 that Defendant reimbursed a seamstress .20 per mile. Again, Defendant refused to reimburse  
21 Plaintiff's mileage.

22           21.   Plaintiff asked Kadie Uretz for pay for the off-site and after-hours work, and  
23 complained to Kadie Uretz about the lack of pay.

24           22.   Instead of compensating Plaintiff (by properly classifying her as "non-exempt"),  
25 Kadie Uretz's response was "it's all about timing Diana," referring to the urgent need to attend to  
26 customers on their schedule.

27           23.   On March 20, 2022, Defendant furloughed retail store employees due to the COVID-  
28 19 pandemic. Defendant did not pay-out Plaintiff's accrued-but-unused PTO at that time.

1           24.     **Termination.** On or about April 6, 2022, Defendant’s Controller Sheryl Sadis  
2     emailed Plaintiff that there is “*no position available as a [Ready to Wear] sales consultant at*  
3     *Melrose Place [and] there is no other dedicated [Ready to Wear] sales consultant at that location*  
4     *and it is anticipated that there will not be a need for an employee that position in the foreseeable*  
5     *future.*” Defendant gave Plaintiff the choice of having her employment “*come to an end*” or  
6     transferring her to “*an hourly [Ready to Wear] sales consultant [position] that pays \$28.85 per*  
7     *hour.*”

8           25.     There was no commission offered in the new position that was over 50 miles away  
9     from the Melrose Place store, so Plaintiff refused the “transfer.” This was an effective termination.

10          26.     **Commissions Violations.** Defendant verbally promised Plaintiff sales commission.  
11     However, Defendant failed to provide a signed commission agreement to Plaintiff, and failed to  
12     calculate and pay all earned commissions to Plaintiff in a complete and timely manner.

13          27.     **PTO Violations.** Defendant failed to pay all of Plaintiff’s accrued by unused PTO  
14     in a timely manner. Defendant did not allow for carry-over of Plaintiff’s annual accrued-but-unused  
15     PTO even though there was no maximum cap that would lead to a forfeiture. Defendant failed to  
16     pay out Plaintiff’s accrued-but-unused PTO when Defendant put Plaintiff on furlough. Defendant  
17     failed to pay out Plaintiff’s accrued but unused PTO when Plaintiff was on protected CFRA leave.  
18     Defendant failed to pay out all of Plaintiff’s accrued-but-unused PTO on termination.

19          28.     **Misclassification As Exempt.** Throughout her employment, Defendant  
20     misclassified Plaintiff as an exempt employee. Defendant did not allow Plaintiff to customarily  
21     and regularly exercise discretion and independent judgment in performing her job duties, and  
22     Plaintiff’s job duties and compensation structure did not meet any exemption. The commissions  
23     paid to Plaintiff did not amount to more than 50% of total wages paid to Plaintiff.

24          29.     **Overtime Work.** Throughout Plaintiff’s employment, Defendant failed to pay  
25     Plaintiff for all time worked at the overtime rate of pay (which would include Plaintiff’s  
26     commissions as part of the regular rate for overtime).

27          30.     **Meal Break Violations.** Throughout Plaintiff’s employment Defendant failed to  
28     provide Plaintiff with a first or second timely, uninterrupted 30-minute meal break as required by



1           36.     PAGA authorizes an aggrieved employee on behalf of herself and other current and  
2 former employees to recover civil penalties for violations of the Labor Code. *See* Labor Code  
3 section 2698 *et seq.*

4           37.     Here, Plaintiff is an “aggrieved employee” under Labor Code section 2699(c)  
5 because Plaintiff was employed by Defendants and Defendants violated Plaintiff’s rights under  
6 Labor Code sections:

7           •     Labor Code §§ 201, 201.5, 202, 203. Failure to pay all wages immediately upon  
8 termination or within 72 hours after notice of separation.

9           •     Labor Code § 204. Failure to pay all earned wages within the time prescribed in  
10 Labor Code §§ 204(a) and 204(b).

11          •     Labor Code § 206. Failure to pay all undisputedly owed wages.

12          •     Labor Code § 210. Failure to pay wages as required by Labor Code §§ 201.3, 204,  
13 204b, 204.1, 204.2, 205, 205.5, and/or 1197.5.

14          •     Labor Code § 212. Failure to include the name and address of established place of  
15 business in the state on pay checks to cash or deposit pay checks.

16          •     Labor Code § 221. Failure to not collect and receive owed wages.

17          •     Labor Code § 226. Failure to provide timely and accurate wage statements.

18          •     Labor Code § 226.3. Failure to comply with Labor Code § 226(a).

19          •     Labor Code § 226.7. Failure to provide proper rest periods and failure to provide an  
20 additional hour of pay at the regular rate of compensation in lieu of the mandated rest periods.

21          •     Labor Code §§ 226.7 and 512. Failure to provide proper meal periods and failure to  
22 provide an additional hour of pay at the regular rate of compensation in lieu of the mandated meal  
23 periods.

24          •     Labor Code § 256. Failure to pay all wages immediately upon termination or within  
25 72 hours after notice of separation.

26          •     Labor Code §§ 510 and 1194. Failure to pay overtime and double time  
27 compensation.

28     ///

- 1 • Labor Code §§ 510, 1194, 1194.2, and 1197. Failure to pay minimum wages,  
2 including overtime and double time compensation at the minimum wage rate.
- 3 • Labor Code § 558. Violation of a section of the chapter of the Labor Code starting  
4 with Labor Code § 500, *et seq.*, or any provision regulating hours and days of work in any order of  
5 the Industrial Welfare Commission.
- 6 • Labor Code § 558.1. Violation any provision regulating minimum wages or hours  
7 and days of work in any order of the Industrial Welfare Commission, and violating Labor Code §§  
8 203, 226, 226.7, 1193.1, and/or 1194.
- 9 • Labor Code § 1174. Failure to maintain compliant employee and payroll records.
- 10 • Labor Code § 1197.1. Failure to pay minimum wage.
- 11 • Labor Code § 1199. Violation of the provisions of an order of the Industrial Welfare  
12 Commission.
- 13 • Labor Code § 1198. Violation of the following sections of orders of the Industrial  
14 Welfare Commission for conditions of labor prohibited by such:
  - 15 • Wage Order 1-2001 (or other applicable Wage Order), Section 3, requiring an  
16 employer to pay overtime and double time compensation.
  - 17 • Wage Order 1-2001 (or other applicable Wage Order), Section 4, requiring an  
18 employer to pay minimum wages, including overtime and double time compensation at the  
19 minimum wage rate.
  - 20 • Wage Order 1-2001 (or other applicable Wage Order), Section 7, requiring an  
21 employer to maintain accurate information with respect to each employee; provide employees with  
22 thorough and accurate itemized wage statements; and, provide clocks within a reasonable distance  
23 from employees' work areas.
  - 24 • Wage Order 1-2001 (or other applicable Wage Order), Section 11, requiring an  
25 employer to provide its employees with adequate meal periods and an additional hour of pay at the  
26 regular rate of compensation in lieu of the mandated rest periods.
- 27 ///
- 28 ///



1 • Wage Order 1-2001 (or other applicable Wage Order), Section 12, requiring an  
2 employer to provide its employees with adequate rest periods and an additional hour of pay at the  
3 regular rate of compensation in lieu of the mandated rest periods.

- 4 • Labor Code § 2802. Failure to reimburse necessary business expenses.
- 5 • Labor Code § 2751. Failure to have written, signed commission agreement.

6 38. Plaintiff is therefore authorized by PAGA to recover civil penalties on behalf of  
7 Plaintiff and other aggrieved employees – *i.e., all other individuals Defendants employed in*  
8 *California at any time from one year before Plaintiff’s PAGA notice through the present* (the  
9 “Aggrieved Employees”).

10 39. Plaintiff thus seeks penalties on behalf of herself and the other Aggrieved Employees  
11 based on Defendants’ violations of the Labor Code sections set forth herein as prescribed by  
12 PAGA’s tolling provision at subsection 2699.3.

13 40. Plaintiff exhausted administrative remedies, as set forth herein, and has satisfied all  
14 requirements for bringing this representative action.

15 41. Accordingly, Plaintiff seeks civil penalties due to Plaintiff, other Aggrieved  
16 Employees, and the State of California for every pay period for every Aggrieved Employee who  
17 experienced one or more of the Labor Code section violations set forth herein , according to proof  
18 as prescribed by the Labor Code, including sections 2699(a) and 2699(f), in particular, which  
19 provide for \$100 for each initial Labor Code violation and \$200 for each subsequent violation per  
20 employee pay period.

21 42. Additionally, Plaintiff seeks to recover from Defendants other civil penalties  
22 provided by PAGA, including but not limited to penalties under Labor Code sections 210, 225.5,  
23 226.3, 558, 1174.5, 1197.1, and 1199.

24 43. Plaintiff is entitled to an award of reasonable attorney’s fees and costs pursuant to  
25 subsection 2699(g)(1).

26 ///

27 ///

28 ///

1 **JURY TRIAL DEMANDED**

2 Plaintiff demands a jury trial to the extent permitted by law.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 5 a. For statutory civil penalties pursuant to Labor Code section 2698 *et seq.*;
- 6 b. For pre-judgment interest and post-judgment interest as permitted by law;
- 7 c. For attorney’s fees as permitted by law;
- 8 d. For costs of suit incurred herein; and
- 9 e. For such other and further relief as this Court deems just and proper.

10  
11 DATED: February 22, 2023

COLBY LAW FIRM, PC

12  
13  
14 By:  \_\_\_\_\_

AARON N. COLBY  
ZOE YUZNA

15  
16 Attorneys for Plaintiff  
17 DIANA SMYTH  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28