

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: William Fahey

MESSRELIAN LAW INC.

Harout Messrelian, Esq., SB# 272020
500 N. Central Ave. Suite 840
Glendale, California 91203
Telephone: (818) 484-6531
Facsimile: (818) 956-1983
Email: hm@messrelianlaw.com

Attorneys for Plaintiff EDUARDO ZELAYA

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

EDUARDO ZELAYA,	)	CASE NO.: 22STCV02064
	)	
Plaintiff,	)	COMPLAINT FOR DAMAGES FOR:
	)	
vs.	)	1) PRIVATE ATTORNEYS GENERAL
	)	ACT ("PAGA");
	)	
AKASH GENERAL PARTNERSHIP;	)	
AKASH LLC LLC; MOHAMMAD A.	)	
SIDDIQUI; and DOES 1 to 25, inclusive,	)	
	)	
Defendants.	)	
	)	
	)	
	)	
	)	

COMES NOW Plaintiff, EDUARDO ZELAYA (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 AKASH GENERAL PARTNERSHIP; AKASH LLC LLC; MOHAMMAD A. SIDDIQUI and DOES 1 to 25, inclusive, do business in the County of Los Angeles, and because Defendants' obligations and

1 liabilities arise therein, and because the work that was performed by Plaintiff in the County of
2 Los Angeles is the subject of this action. Moreover, Plaintiff's damages sought herein exceed
3 \$25,000.

4 2. Plaintiff is a male resident of the County of Los Angeles, State of California.

5 3. Plaintiff is informed and believes that at all times herein mentioned, Defendant
6 AKASH GENERAL PARTNERSHIP is a California general partnership, doing business in the
7 County of Los Angeles, State of California, and which operates a "Denny's Restaurant"
8 located at 3012 Temple Ave., Pomona, CA 91766, at which Plaintiff was employed.

9 4. Plaintiff is informed and believes that at all times herein mentioned, Defendant
10 AKASH LLC LLC is a California limited liability company, doing business in the County of
11 Los Angeles, State of California, and which operates a "Denny's Restaurant" located at 3012
12 Temple Ave., Pomona, CA 91766, at which Plaintiff was employed. AKASH GENERAL
13 PARTNERSHIP and AKASH LLC LLC are either "joint employers" in that they each controlled
14 the wages, hours, and working conditions of Mr. Zelaya and others, or they are SUCCESSOR
15 COMPANIES in that AKASH LLC LLC is a mere continuation of AKASH GENERAL
16 PARTNERSHIP with the same ownership and/or management.

17 5. Defendant MOHAMMAD A. SIDDIQUI is an individual, who at all relevant times and
18 on information and belief resided in Los Angeles County, California. Plaintiff is informed and
19 believes that MOHAMMAD A. SIDDIQUI was acting on behalf of and was the managing
20 agent and owner of AKASH GENERAL PARTNERSHIP and AKASH LLC LLC. Plaintiff is
21 informed and believes and thereon alleges that MOHAMMAD A. SIDDIQUI controlled the
22 wages, hours, and working conditions of Plaintiff and other similarly situated aggrieved
23 employees and is therefore being included in this complaint pursuant to California Labor Code
24 section 558.1. AKASH GENERAL PARTNERSHIP, AKASH LLC LLC, and MOHAMMAD
25 A. SIDDIQUI are collectively referred to herein as "AKASH" or "Defendant(s)".
26
27
28

6. 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.

7. 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 under the authority of their agency, employment, or representative capacity, with the consent of his/her codefendants.

GENERAL ALLEGATIONS

8. Plaintiff started working for AKASH as a server at Denny's Restaurant on or around 2017. Plaintiff was classified as an hourly, non-exempt employee and earned \$14.00/hour. Plaintiff's employment with AKASH ended on or around July 2021.

9. It is Plaintiff's position that AKASH has committed numerous labor code violations against Plaintiff and other similarly situated employees, including all hourly, non-exempt employees who worked at any of AKASH's restaurants in the state of California during the PAGA period.

10. AKASH did not provide Plaintiff and other similarly situated aggrieved employees with the minimum wages to which they were entitled for all work performed and did not compensate him and others for all hours worked pursuant to California Labor Code sections 1194, 1197 and 1197.1. Plaintiff and others were not paid for all hours worked and consistently worked “off the clock”. This is so because Plaintiff and others would consistently be required to perform work duties after clocking out for work, including but not limited to, staying on site

1 and "cashing out". Moreover, there would be issues with rounding down the number of hours
2 worked, which led to time shaving and Plaintiff and others not being paid for all hours worked.
3 Moreover, to the extent employees such as Plaintiff and others worked through their meal
4 periods, they were not compensated for that time, which would be akin to a minimum wage
5 violation.

6 11. Due to the above "off the clock" violations and as a matter of company policy, AKASH
7 violated Labor Code §510 because it failed to pay Plaintiff and other similarly situated aggrieved
8 employees overtime, even though they worked more than 8 hours per day, 12 hours per day,
9 and/or 40 hours per week throughout their employment. Plaintiff's and others' actual work hours,
10 which included the "off the clock" work as described above, entitled them to overtime, however,
11 it was not company policy to keep accurate track of all hours worked and to pay employees
12 overtime.

13 12. AKASH violated Labor Code § 226.7 along with Industrial Welfare Commission Wage
14 Order no. 5 because it failed to provide Plaintiff and other similarly situated aggrieved employees
15 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their
16 employment. AKASH did not completely relieve Plaintiff of all duty during said rest periods.
17 AKASH did not pay to Plaintiff one additional hour of pay at Plaintiff's regular rate of
18 compensation for each workday that one or more statutory rest periods was not provided. Rest
19 breaks were not authorized or enforced at the restaurant. In fact, it was not part of AKASH's
20 culture for employees such as Plaintiff and others to take at least one 10-minute rest break every
21 day wherein they are relieved of all work duties. The latter was due to understaffing of servers
22 and servers such as Plaintiff being too busy to be able to take rest breaks. Taking rest breaks
23 meant leaving tables unattended and that could not happen, especially when Plaintiff and other
24 servers were dealing with multiple tables at a time. Additionally, Plaintiff did not have anyone
25 to cover him for any rest break as other servers would be too inundated with their own tables and
26 work to be able to cover.

27 ///

1 13. AKASH also violated Labor Code §§ 512 and 226.7 along with Industrial Welfare
2 Commission Wage Order No. 5 because it failed to provide Plaintiff and other similarly situated
3 aggrieved employees the requisite 30-minute, uninterrupted meal periods for every five (5) hours
4 of work throughout their employment, and Plaintiff did not validly waive said meal periods.
5 AKASH did not completely relieve Plaintiff of all duties during said meal periods. AKASH did
6 not pay to Plaintiff one additional hour of pay at Plaintiff's regular rate of compensation for each
7 workday that one or more statutory meal periods was not provided. If AKASH had Plaintiff sign
8 a meal period waiver, it would not be valid and enforceable since Plaintiff and others generally
9 worked more than a 6-hour shift. If AKASH had Plaintiff sign an on-duty meal period agreement
10 wherein Plaintiff agreed to work through his meal period, it would also be invalid and
11 unenforceable because the nature of Plaintiff's job as a server does not prevent him from taking
12 a meal period. As was the case with rest periods, meal breaks were definitively not part of the
13 AKASH's culture. The meal periods were not authorized and were not enforced. To the extent
14 that AKASH argues that Plaintiff and others were provided meal breaks at the very start of their
15 shift, Plaintiff was instructed to start his "side work" if he was to clock out for a meal period.

16 14. Furthermore, during the relevant time period, AKASH failed to pay Plaintiff and other
17 similarly situated aggrieved employees all wages due to them within any time period specified
18 by California Labor Code section 204, including the minimum wages and overtime as described
19 above as well as meal/rest break premiums.

20 15. AKASH was also in violation of California Labor Code section 226(a) by failing to
21 include pertinent information on the wage statements, including but not limited to, all hours
22 worked, tips earned, gross wages earned, net wages earned, all deductions, premium payments
23 for meal and rest breaks, the correct legal name and address of the employing entity, whether
24 AKASH GENERAL PARTNERSHIP or AKASH LLC LLC, the beginning and end of the pay
25 period, all applicable hourly rates, and all identifying employee information, among other items.
26 As such, AKASH did not provide Plaintiff and other similarly situated aggrieved employees with
27 complete, accurate itemized wage statements.
28

1 16. AKASH violated Labor Code § 203 because it willfully failed to pay Plaintiff and other
2 similarly situated aggrieved employees earned and due wages upon separation of employment,
3 either immediately upon involuntary termination, or within 72 hours of resignation. After
4 Plaintiff stopped working at AKASH and after Plaintiff's employment with AKASH ended,
5 AKASH failed and refused to pay all wages earned and due immediately upon separation. These
6 earned but unpaid wages include compensation for all hours worked including minimum wages
7 and overtime compensation, tips, and premiums for the missed meal and rest breaks.

8 17. During the relevant time period, AKASH also failed to keep accurate and complete
9 payroll records showing the actual hours worked per day (including the time for meal periods)
10 and the wages paid to Plaintiff and other aggrieved employees pursuant to California Labor Code
11 sections 1174(d).

12 **FIRST CAUSE OF ACTION**

13 **PRIVATE ATTORNEYS GENERAL ACT**

14 **Individual and Representative Claim for PAGA penalties under California Labor Code**
15 **sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5,**
16 **1194, 1197, 1198, and the applicable Industrial Welfare Commission Wage Order No. 5-**
2001

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

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

20 19. 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
22 and DOE defendants have violated and continue to violate.

23 20. 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 21. 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

1 Labor Code.

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

9 23. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged
10 violator and had one or more of the alleged violations committed against him, and therefore is
11 properly suited to represent the interests of other current and former hourly, non-exempt
12 employees who worked for AKASH in the State of California at any and all locations during
13 the PAGA period.

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

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

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

23 27. California Labor Code section 558 establishes a civil penalty as follows: Any
24 employer or other person action on behalf of an employer who violates, or causes to be
25 violated, a section of this chapter or any provision regulating hours and days of work in any
26 order of the Industrial Welfare Commission (including the “Hours and Days of Work” section
27 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty
28

1 dollars (\$50) for each underpaid employee for each pay period for which the employee was
2 underpaid ...; (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid
3 employee for each pay period for which the employee was underpaid ...;

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

8 29. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
9 the following:

10 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210,
11 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198 via 2698 and 2699 any
12 other Labor Codes and Wage Orders (including no. 5) violated on the facts alleged in this
13 Complaint.

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

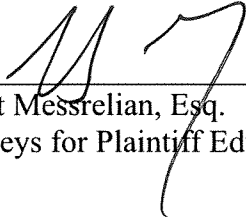
18 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
19 follows:

- 20 1. For the imposition of civil penalties;
- 21 2. For maximum civil penalties available under Labor Code Section 2699
22 against Defendants in a manner and amount authorized by that statute, as described
23 more particularly in the Complaint and representative PAGA claims;
- 24 3. For all costs and disbursements incurred in this suit;
- 25 4. Reasonable attorney's fees where available by law, including but not limited to,
26 pursuant to the California Labor Code, including section 2698 et seq., and/or other
27 applicable laws; and
28

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

2
3 DATED: December 17, 2021

MESSRELIAN LAW INC.

4
5 By 
6 Harout Messrelian, Esq.
7 Attorneys for Plaintiff Eduardo Zelaya
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28