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9 Attorneys for Plaintiff, on behalf of the State of California

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF LOS ANGELES**

12 LEO CARBONELL, on behalf of himself and all
13 others similarly situated,

14 Plaintiff,

15 v.

16 AKASH MANAGEMENT, LLC., a California
Corporation; A&KRB, LLC; and DOES 1-50,
17 inclusive.

18 Defendants.
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FILED
Superior Court of California
County of Los Angeles
03/11/2024

David W. Slayton, Executive Officer / Clerk of Court

By: R. Sanchez Deputy

CASE NO.: 23STCV11181

**SECOND AMENDED PAGA
REPRESENTATIVE ACTION
COMPLAINT:**

(1) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

1 Plaintiff Leo Carbonell (“Plaintiff”), on behalf of the State of California, hereby brings this
2 PAGA Representative Action Complaint (“Complaint”) against defendant Akash Management, LLC
3 and A&KRB, LLC and DOES 1 to 50 (collectively “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendants are a restaurant company based in Pomona, California, with various
6 restaurants, including Arby’s.

7 2. Plaintiff brings this PAGA representative action solely on behalf of the State of
8 California against Defendants for alleged violations of the California Labor Code and applicable
9 Wage Orders of the IWC.

10 3. As set forth below, Plaintiff alleges that Defendants failed to pay all minimum and
11 overtime wages by failing to accurately record all time worked, including all time spent working off
12 the clock. Plaintiff further alleges that Defendants deprived Plaintiff and other non-exempt employees
13 of all overtime and sick pay wages by failing to properly calculate the “regular rate of pay.” Moreover,
14 Plaintiff alleges that Defendants’ meal and rest period policies and practices failed to provide him
15 and all other similarly situated employees with compliant meal and rest periods or pay premium pay
16 at the “regular rate of pay” in lieu thereof.

17 4. Finally, Plaintiff alleges that Defendants failed to provide non-exempt employees with
18 accurate written itemized wage statements and failed to pay all final wages in a timely manner upon
19 separation of employment.

20 5. Based on these alleged Labor Code violations, Plaintiff now brings this class and
21 PAGA representative action to recover penalties and other related relief for himself and all others
22 similarly situated.

23 **JURISDICTION**

24 6. This is a representative action brought pursuant to Labor Code § 2698 *et seq.* on
25 behalf of the State of California and the group of aggrieved employees defined as follows: “All
26 individuals who are or were employed as hourly, aggrieved employees by Defendants, or their
27 predecessors or merged entities, in the State of California from May 23, 2022, to January 15, 2024
28 (“aggrieved employees).”

7. Plaintiff, of behalf of the State of California brings this representative action pursuant to Labor Code § 2698, *et seq.* seeking penalties for Defendants' violation of California Labor Code §§ 201-203, 204, 210, 221, 226(a), 226.7, 226 (e), 226.3, 256, 510, 512, 516, 1174, 1174.4, 1194, 1194.2, 1197.1, 1199, and all applicable IWC Wage Orders.

8. Based upon the foregoing, Plaintiff and all aggrieved employees are aggrieved employees within the meaning of Labor Code §2698, *et seq.*

9. This Court has jurisdiction over Defendants because, upon information and belief, Defendants have sufficient minimum contacts in California or otherwise intentionally avail themselves to the State of California to render the exercise of jurisdiction over them by California courts consistent with the traditional notions of fair play and substantial justice.

VENUE

10. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, as most of the acts and omissions complained of herein occurred in the County of Alameda. Defendants own, maintain offices, transact business, have an agent or agents within the County of Alameda, and/or otherwise are found within the County of Los Angeles, and Defendants are within the jurisdiction of this Court for purposes of service of process.

PARTIES

11. At all relevant times herein, Plaintiff, who is over 18, was and currently is a California resident residing in the State of California.

12. Plaintiff is informed and believes and thereon alleges that Defendants Akash Management, LLC and A&KRB, LLC are authorized to do business in California and is and/or was the legal employer of Plaintiff and the aggrieved employees during the applicable statutory periods. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of herein and has been deprived of the rights guaranteed to her by California Labor Code §§ 201-203, 204, 210, 221, 226(a), 226.7, 226 (e), 226.3, 256, 510, 512, 516, 1174, 1174.4, 1194, 1194.2, 1197.1, 1199, 2698 *et seq.*, and applicable Wage Orders.

13. Plaintiff is informed and believes, and based thereon alleges, that at all relevant times preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to

1 do) business in the State of California, County of Alameda.

2 14. Plaintiff does not know the true names or capacities, whether individual, partner, or
3 corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
4 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
5 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed and
6 believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or
7 corporate, were responsible in some manner for the acts and omissions alleged herein and proximately
8 caused Plaintiff and the aggrieved employees to be subject to the unlawful employment practices
9 alleged herein.

10 15. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
11 herein, Defendants were and are the employers of Plaintiff and the aggrieved employees. At all times
12 herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to
13 have been done by the named Defendants; and furthermore, the Defendants, and each of them, were
14 the agents, servants, and employees of each and every one of the other Defendants, as well as the
15 agents of all Defendants, and at all times herein mentioned were acting within the course and scope
16 of said agency and employment. Defendants, and each of them, approved of, condoned, and/or
17 otherwise ratified each and every one of the acts or omissions complained of herein.

18 16. At all times mentioned herein, Defendants, and each of them, were members of and
19 engaged in a joint venture, partnership, and common enterprise and acting within the course and
20 scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff
21 alleges that all Defendants were joint employers for all purposes of Plaintiff and the aggrieved
22 employees.

23 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

24 17. Defendants are a restaurant company based out of Pomona, California, with various
25 restaurants, including Arby's.

26 18. Plaintiff was a non-exempt employee with the title of "Assistant Manager" from
27 September 6, 2022, until his separation from employment on or about January 2023. Plaintiff and
28 other non-exempt employees were employed as restaurant crew members, associates, cooks, assistant

1 managers, and all other non-exempt positions for Akash Management in California.

2 19. First, at all relevant times, Plaintiff and other aggrieved employees regularly worked
3 various shifts, many of which were in excess of 8.0 hours in a workday and 40.0 hours in a workweek.
4 Plaintiff alleges that other aggrieved employees were also subjected to the same policies, procedures,
5 practices, working conditions, and corresponding wage and hour violations to which Plaintiff was
6 subjected during his employment.

7 20. First, at all relevant times, Akash Management has consistently failed to accurately
8 record all time worked, including all-time under which aggrieved employees were under the
9 employer's control. This included a policy and practice of failing to properly record aggrieved
10 employees' time worked, including all time spent working off the clock. As a result of this company-
11 wide policy/practice, Mr. Carbonell and other aggrieved employees are not compensated for all the
12 hours that they work and all of the overtime hours they work, in violation of Labor Code §§ 204, 210,
13 510, 1194, 1197.1, 1199, and applicable Wage Orders.

14 21. As a result, Plaintiff and other aggrieved employees were not properly paid for all
15 hours worked violating Labor Code §§ 204, 210, 1194, 1197.1, 1199, and applicable Wage Orders.
16 Additionally, due to the unlawful timekeeping policy/practices, Plaintiff and other aggrieved
17 employees were also not properly paid at the correct overtime rate for hours worked in excess of eight
18 hours per shift in violation of Labor Code § 510.

19 22. Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed
20 by an applicable state or local law or by an order of the commission a civil penalty, restitution of
21 wages, and liquidated damages as follows: (1) for any initial violation that is intentionally committed,
22 one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
23 is underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred
24 fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is
25 underpaid regardless of whether the initial violation was intentionally committed.

26 23. Labor Code § 510 requires an employer to compensate an employee who works more
27 than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours
28 worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular rate of

1 pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than
2 twice the regular rate of pay when an employee works more than twelve (12) hours in a workday or
3 more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3 of the
4 applicable Wage Orders, non-exempt employees shall not be employed more than eight (8) hours in
5 any workday or more than 40 hours in any workweek unless the employee receives one and one-half
6 (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek

7 24. At all relevant times, Plaintiff and other non-exempt aggrieved employees regularly
8 worked various shifts, many of which were in excess of 8.0 hours in a workday and 40.0 hours in a
9 workweek. Plaintiff alleges that other non-exempt employees were also subjected to the same
10 policies, procedures, and practices, working conditions, and corresponding wage and hour violations
11 to which she was subjected during his employment.

12 25. First, at all relevant times, Plaintiff and other non-exempt aggrieved employees were
13 not properly paid at the correct overtime rate for all hours worked in excess of eight (8) hours per
14 workday and/or forty (40) hours per workweek. Although Plaintiff and other non-exempt employees
15 regularly worked overtime hours, they were not compensated at one and one-half times their "regular
16 rate of pay" because Defendants failed to include all forms of compensation, including, but not
17 limited to, non-discretionary bonuses, shift differentials, non-discretionary bonuses, incentive pay,
18 and other forms of remuneration when calculating the "regular rate of pay" used for payment of
19 overtime wages.

20 26. Under the California Labor Code (as well as the FLSA), courts have consistently held
21 that regularly paid non-discretionary bonuses (and other forms of pay) must be included in
22 determining an employee's "regular rate of pay" for purposes of calculating overtime. (See *Haber v.*
23 *The Americana Corp.* 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency
24 bonuses must be included in calculating the "regular rate"]; *Wang v. Chinese Daily News, Inc.* 435 F.
25 Supp. 2d 1042, 1055-1057 (C.D. Cal. 2006) [granting summary judgement to Plaintiff under
26 California and federal law on the grounds, that Defendant improperly calculated overtime by
27 excluding annual bonuses paid to employees from the "regular rate of compensation"].) see *Walling*
28 *v. Youngerman-Reynolds Hardwood Co.* (1945) 65 S.Ct. 1242, 1245. ("The regular rate by its very

1 nature must reflect all payments which the parties have agreed shall be received regularly during the
2 workweek, exclusive of overtime payments. It is not an arbitrary label chosen by the parties; it is an
3 actual fact. Once the parties have decided upon the amount of wages and the mode of payment the
4 determination of the regular rate becomes a matter of mathematical computation, the result of which
5 is unaffected by any designation of a contrary ‘regular rate’ in the contracts.”); see also 29 CFR §§
6 778.110 (“production bonus”) and 778.111 (“piece-rate”).)

7 27. By their policy of requiring Plaintiff and the other non-exempt aggrieved employees
8 to work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without
9 compensating them at the lawful rate of one-half (1 1/2) their “regular rate of pay,” Defendants
10 willfully violated the provisions of Labor Code § 510 and the applicable Wage Orders.

11 28. Accordingly, to the extent permitted by law, Plaintiff and other non-exempt aggrieved
12 employees are entitled to recover unpaid wages and penalties for violations of Labor Code §§ 204,
13 210, 510, 1197.1.

14 29. Similarly, at all relevant times, Defendants also failed in its obligation to provide
15 Plaintiff and other non-exempt aggrieved employees the legally required paid sick days at the legal
16 rate pursuant to Labor Code §§ 246(a),(b), which requires that “[a]n employee who, on or after July
17 1, 2015, works in California for the same employer for 30 or more days within a year from the
18 commencement of employment is entitled to paid sick days. . . at the rate of not less than one hour
19 per every 30 hours worked, beginning at the commencement of employment.” Labor Code § 246(l)(1)
20 provides that paid sick time for non-exempt employees must be “calculated in the same manner as
21 the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not
22 the employee actually works overtime in that workweek.”

23 30. Additionally, Labor Code § 246(l)(2) states that the paid sick time must be “calculated
24 by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total
25 hours worked in the full pay periods of the prior 90 days of employment.” Finally, Labor Code §246(i)
26 requires employers to “provide an employee with written notice that sets forth the amount of paid
27 sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either
28 the employee’s itemized wage statement described in Section 226 or in a separate writing provided

1 on the designated pay date with the employee's payment of wages."

2 31. Here, at all relevant times, Defendants failed in its obligation to provide Plaintiff and
3 other non-exempt employees the legally required paid sick days at the legal rate, including all forms
4 of compensation, pursuant to Labor Code §§ 246(a),(b). As such, Defendants paid sick time below
5 his base rate of pay, rather than the "regular rate of pay" as required by Labor Code §§ 246(l)(1-2).

6 32. Next, at all relevant times, Plaintiff and other non-exempt employees were denied
7 compliant and timely 30-minute off-duty meal periods as mandated by California law. Due to
8 Defendants' uniform meal period policies/practices, operational requirements, and work demands,
9 Plaintiff and other non-exempt employees often could not take timely and uninterrupted 30-minute
10 first meal periods before the end of the fifth hour of work. Further, when Plaintiff and other non-
11 exempt employees worked more than 10.0 hours in a shift, they were not always allowed and
12 permitted to take a mandated second meal period before the end of the tenth hour of work in violation
13 of the Labor Code and applicable Wage Orders.

14 33. Additionally, for each missed or non-compliant meal period, Defendants failed to
15 maintain a mechanism by which non-exempt employees were paid meal period premiums at the
16 "regular rate of pay" pursuant to *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 5th 858 and Labor
17 Code § 226.7. Accordingly, due to Defendants' uniform meal period practices, Plaintiff and other
18 non-exempt employees were also regularly denied legally compliant meal periods in violation of
19 Labor Code 226.7, 510, 516, and applicable IWC Wage Orders.

20 34. Moreover, at all relevant times, Plaintiff and other non-exempt aggrieved employees
21 were not provided with all 10-minute rest periods for every four hours worked, or a major fraction
22 thereof, due to Defendants' uniform rest period policies/practices, operational requirements, and
23 work demands. As a result, Plaintiff and other non-exempt employees were and are often unable to
24 take a net 10-minute duty-free rest period for every major fraction of four hours worked. This includes
25 a second rest period for shifts over six hours and a third rest period for shifts in excess of 10.0 hours
26 in a workday. To the extent non-exempt were permitted to take rest periods, the rest periods were
27 often cut short or interrupted for work reasons.

1 35. By not relieving all non-exempt aggrieved employees of all duties during rest periods,
2 Defendants failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services,*
3 *Inc.* (2016) 2 Cal. 5th 257, 269 [concluding that “during rest periods employers must relieve
4 employees of all duties and relinquish control over how employees spend their time.”]. In *Augustus*,
5 the California Supreme Court expressly rejected the employer’s assertion that it could provide an on-
6 duty rest period to employees who worked as security guards and further explained: “that employers
7 [must] relinquish any control over how employees spend their break time and relieve their employees
8 of all duties.” *Id.* at 273.

9 36. Each time Plaintiff and other non-exempt aggrieved employees could not take a
10 compliant rest period, Defendants failed and failed to adequately pay rest period premium payments
11 at the “regular rate of pay” as required by Labor Code § 226.7.

12 37. Accordingly, due to Defendants’ uniform rest period policies/practices and work
13 demands, Plaintiff and other non-exempt employees were also regularly denied legally compliant rest
14 breaks in violation of Labor Code §§ 226.7, 512, and applicable Wage Orders.

15 38. As a result of Defendants’ failure to pay Plaintiff and other non-exempt employees for
16 all minimum wages, overtime wages, sick pay wages at the appropriate legal rate, and Defendants’
17 failure to pay for meal and rest period premiums at the “regular rate of pay,” Defendants issued wage
18 statements which failed to identify the gross wages earned accurately, the total hours worked, the net
19 wages earned, and the correct corresponding number of hours worked at each hourly rate, in violation
20 of Labor Code § 226(a)(1, 2, 5, and 9).

21 39. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
22 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
23 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
24 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
25 deduction statement or fails to keep the required in subdivision (a) of Section 226.”

26 40. Thus, for the violations of Labor Code § 226 described above, Plaintiff and other
27 aggrieved non-exempt employees may also recover Labor Code § 226.3 penalties for Defendants’
28 violations of Labor Code § 226(a).

41. As a further result of Defendants' failure to pay all minimum, sick pay and overtime wages, and meal and rest period premiums at the "regular rate of pay," Defendants also failed and continues to fail to pay the non-exempt employees all wages owed at their time of separation from employment in violation of Labor Code §§ 201-203.

FIRST CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(Plaintiff and Similarly Aggrieved Employees Against All Defendants)

42. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

43. Defendants have committed several Labor Code violations against Plaintiff and other similarly aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of the State of California, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, other similarly aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not limited to (1) \$100 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided based on the following Labor Code violations:

(a) Defendants' failure to pay all minimum and overtime wages to the aggrieved employees;

(b) Defendants’ failure to pay all overtime wages at the “regular rate of pay” because Defendants failed to include all forms of compensation, including, but not limited to, shift differentials, non-discretionary bonuses, incentive pay, and other forms of remuneration.

(c) Defendants' failure to pay all wages in a timely fashion in violation of Labor Code §§ 204 and 210;

(d) Defendants' failure to pay all sick pay at the "regular rate of pay";

(e) Defendants' failure to allow and permit legally compliant meal periods or compensation at the "regular rate of pay" in lieu thereof;

(f) Defendants' failure to allow and permit legally compliant rest periods or compensation at the "regular rate of pay" in lieu thereof;

1 (g) Defendants' failure to furnish legally compliant wage statements pursuant to Labor
2 Code § 226(a); and

3 (h) Defendants' failure to timely pay final wages to aggrieved employees at the time of
4 separation from employment was unlawful.

5 44. On or about May 12, 2023, and February 5, 2024, Plaintiff notified Defendants via
6 certified mail and the California Labor and Workforce Development Agency ("LWDA") via its
7 website of Defendant's violations of the California Labor Code § 2698 *et. seq.* with respect to
8 violations of the California Labor Code identified in Paragraph 45 (a)-(g).

9 45. Now that sixty-five days (65) have passed since Plaintiff initially notified Defendant of
10 these violations, Plaintiff has exhausted her administrative requirements for bringing a claim under
11 the Private Attorneys General Act with respect to these violations.

12 46. Plaintiff was compelled to retain the services of counsel to file this court action to protect
13 her interests and the interests of other similarly aggrieved employees and to assess and collect the
14 civil penalties owed by Defendants. Plaintiff has, therefore, incurred attorneys' fees and costs, which
15 he is entitled to receive under California Labor Code § 2698 *et seq.*

16 **PRAYER FOR RELIEF**

17 **WHEREFORE**, Plaintiff prays for judgment on behalf of the State of California against
18 Defendants, as follows:

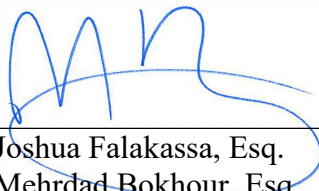
19 1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other similarly
20 aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699
21 (a) and (f) including, but not limited to (1) \$100 for each initial violation and \$200 for each subsequent
22 violation per employee per pay period for those violations of the Labor Code for which no civil
23 penalty is specifically provided under the Labor Code;

24 2. For attorneys' fees and costs as provided by Labor Code § 2698 *et seq.*, and Code
25 of Civil Procedure §1021.5; and

26 3. For such other and further relief, the Court may deem just and proper.
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1 Dated: February 26, 2024

FALAKSSA LAW, P.C.
BOKHOUR LAW GROUP, P.C.

2
3
4 By: 

Joshua Falakassa, Esq.

Mehrdad Bokhour, Esq.

Attorneys for Plaintiff and the Aggrieved Employees

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1901 Avenue of the Stars, Suite 450, Los Angeles, California 90067.

On March 11, 2024, I served the following document(s) described as **SECOND AMENDED PAGA REPRESENTATIVE ACTION COMPLAINT**: on the interested parties in this action to the addressed as follows:

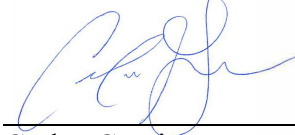
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BY ELECTRONIC SERVICE: I transmitted the above-referenced document(s) via electronic service provider First Legal to the person(s) identified above at the email address(es) indicated and did not, within a reasonable time after transmission, receive any message or communication indicating that delivery failed or that any other error had occurred which would delay or caused failure in transmission and delivery of the document and/or any attachments thereto.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 11, 2024, at Los Angeles, California.



Carlos Garcia