

**BOKHOUR LAW GROUP, P.C.**

Mehrdad Bokhour, Esq., CA Bar No. 285256

*mehrdad@bokhourlaw.com*

1901 Avenue of the Stars, Suite 450

Los Angeles, California 90067

Tel: (310) 975-1493; Fax: (310) 675-0861

**FALAKASSA LAW, P.C.**

Joshua S. Falakassa, CA Bar No. 295045

*josh@falakassalaw.com*

1901 Avenue of the Stars, Suite 450

Los Angeles, California 90067

Tel: (818) 456-6168; Fax: (888) 505-0868

Attorneys for Plaintiff, and the State of California

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF SANTA CLARA**

JOSHUA NISBET, on behalf of himself and all  
others similarly situated,

Plaintiff,

v.

SOUTHERN TIRE MART, LLC., a Mississippi  
Limited Liability Company; and DOES 1-50,  
inclusive.

Defendants.

CASE NO.: 24CV453319

**PAGA REPRESENTATIVE ACTION  
COMPLAINT:**

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

**UNLIMITED CIVIL CASE**

1 Plaintiff Joshua Nisbet (“Plaintiff”), on behalf of the State of California, hereby brings this  
2 PAGA Representative Action Complaint (“Complaint”) against Defendant Southern Tire Mart, LLC.  
3 (“Defendant”) and DOES 1 to 50 (collectively, “Defendants”) and each of them, as follows:

#### 4 **INTRODUCTION**

5 1. Defendant is the largest independently owned commercial tire dealer and retread  
6 manufacturer in the United States. In the past 15 years, Defendant has expanded its business to operate  
7 15 Bandag manufacturing facilities, 80 commercial service locations and have over 2500+ employees  
8 located in ten states.

9 2. Plaintiff brings this PAGA representative action solely on behalf of the State of  
10 California against Defendant for alleged violations of the California Labor Code.

11 3. **Plaintiff does not seek to recover anything other than penalties as permitted by**  
12 **California Labor Code § 2699.**

13 4. As set forth below, Plaintiff alleges that Defendant failed to pay for all hours worked  
14 due to its failure to record and pay for all time worked off the clock. Plaintiff further alleges that  
15 Defendant’s meal and rest period policies and practices failed to allow and permit aggrieved  
16 employees to take all compliant and timely meal and rest periods or pay premium wages at the  
17 “regular rate of pay” in lieu thereof. Moreover, Plaintiff alleges that Defendant failed to provide  
18 aggrieved employees with accurate written itemized wage statements in violation of Labor Code §  
19 226(a), failed to reimburse all necessary business expenses incurred, and failed to timely pay all final  
20 wages upon separation of employment in violation of Labor Code §§ 201-203.

#### 21 **JURISDICTION**

22 5. Plaintiff, on behalf of the State of California, brings this representative action pursuant  
23 to Labor Code § 2699, *et seq.*, seeking penalties for Defendant’s violation of California Labor Code  
24 §§ 201-204, 210, 226(a), 226(a)(6), 226(e), 226.3, 226.7, 227.3, 510, 512, 516, 1194, 1197.1, 1199,  
25 2802-2804, and applicable Industrial Welfare Commission Wage Orders (“Wage Orders”).

26 6. Based upon the foregoing, Plaintiff and all aggrieved employees are aggrieved  
27 employees within the meaning of Labor Code §2699, *et seq.*

28 7. This Court has jurisdiction over Defendant because, upon information and belief,

1 Defendant has sufficient minimum contacts in California, or otherwise intentionally avail themselves  
2 to the State of California so as to render the exercise of jurisdiction over them by California courts  
3 consistent with the traditional notions of fair play and substantial justice.

4 **VENUE**

5 8. Venue is proper in this judicial district pursuant to California Code of Civil Procedure  
6 §§ 395(a) and 395.5, as most of the acts and omissions complained of herein occurred in the County  
7 of Santa Clara. Defendant owns, maintains offices, transacts business, has an agent or agents within  
8 the County of Santa Clara, and/or otherwise are found within the County of Santa Clara, and  
9 Defendant is within the jurisdiction of this Court for purposes of service of process.

10 **PARTIES**

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

13 10. Plaintiff is informed, believes, and alleges that Defendants are authorized to do  
14 business within the County of Santa Clara and is and/or was the legal employer of Plaintiff and the  
15 aggrieved employees during the applicable statutory periods. Plaintiff was, and is, a victim of  
16 Defendants' policies and/or practices complained of herein and has been deprived of the rights  
17 guaranteed to him by California Labor Code §§ 201-204, 210, 226, 226(a), 226(e), 226.3, 226.7,  
18 227.3, 510, 512, 516, 1194, 1197.1, 1199, 2802-2804, and the California Business and Professions  
19 Code § 17200 *et seq.*, and applicable Wage Orders.

20 11. Plaintiff is informed and believes, and based thereon alleges, that during the four years  
21 preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to  
22 do) business in the State of California, County of Santa Clara.

23 12. Plaintiff does not know the true names or capacities, whether individual, partner, or  
24 corporate, of the Defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said  
25 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to  
26 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and  
27 believes, and thereon alleges, that each of said fictitious Defendants, whether individual, partners, or  
28 corporate, were responsible in some manner for the acts and omissions alleged herein, and

1 proximately caused Plaintiff and the aggrieved employees to be subject to the unlawful employment  
2 practices alleged herein.

3 13. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned  
4 herein, Defendants were and are the employers of Plaintiff and the aggrieved employees. At all times  
5 herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to  
6 have been done by the named Defendants. Furthermore, the Defendants, and each of them, were the  
7 agents, servants, and employees of each and every one of the other Defendants, as well as the agents  
8 of all Defendants, and at all times herein mentioned, were acting within the course and scope of said  
9 agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise  
10 ratified each and every one of the acts or omissions complained of herein.

11 14. At all times mentioned herein, Defendants, and each of them, were members of and  
12 engaged in a joint venture, partnership, and common enterprise and acting within the course and  
13 scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff  
14 alleges that all Defendants were joint employers for all purposes of Plaintiff and aggrieved  
15 employees.

16 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

17 15. Defendant is the largest independently owned commercial tire dealer and retread  
18 manufacturer in the United States. In the past 15 years, Defendant has expanded its business to operate  
19 15 Bandag manufacturing facilities, 80 commercial service locations and have over 2500+ employees  
20 located in ten states.

21 16. Plaintiff is employed by Defendant as a non-exempt employee with the title of  
22 “Delivery Driver/Material Handler/Warehouse” out of San Jose, California, beginning in August  
23 2024, until his separation from employment on May 30, 2024. Plaintiff and other aggrieved  
24 employees (including, but not limited to, Tire Technician, Service Technician, Delivery Driver,  
25 Diesel Mechanic, Truck Driver, Warehouse Associate, Warehouse Worker, Order Picker, Forklift  
26 Operator, and all other non-exempt positions) were responsible for all aspects of Defendant’s business  
27 in California.

28 17. However, in these roles, Plaintiff and aggrieved employees were often not afforded all

1 protections and rights conferred under the California Labor Code and applicable wage orders.

2 18. At all relevant times, Plaintiff and other aggrieved employees regularly worked  
3 various shifts, many of which were more than 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 he was subjected  
6 during his employment.

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

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

19 21. 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 22. 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, aggrieved 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 23. Accordingly, through PAGA and to the extent permitted by law, Plaintiff and other  
8 aggrieved employees are entitled to recover penalties for violations of Labor Code §§ 204, 210, 510,  
9 1194, 1197.1, 1199 1197.1 under Labor Code § 1197.1, 1199, or Labor Code § 2699(f)(2), and for  
10 attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

11 24. Moreover, at all relevant times, Plaintiff and other aggrieved employees were denied  
12 compliant and timely 30-minute off-duty meal periods as mandated by California law. Due to  
13 Defendant's uniform meal period policies/practices, operational requirements, and work demands,  
14 Plaintiff and other aggrieved employees often could not take timely and uninterrupted net 30-minute  
15 first meal periods before the end of the fifth hour of work. Further, when Plaintiff and other aggrieved  
16 employees worked more than 10.0 hours in a shift, they were not allowed and permitted to take a  
17 mandated second meal period before the end of the tenth hour of work in violation of the Labor Code  
18 and applicable Wage Orders. Indeed, Plaintiff's and other aggrieved employees' meal periods were  
19 often interrupted and/or lasted fewer than 30 minutes due to Defendant's meal period  
20 policies/procedures, operational requirements, and work demands.

21 25. In addition, for each missed or non-compliant meal period, Defendant failed and  
22 continues to fail to maintain a mechanism by which aggrieved employees were paid meal period  
23 premiums at the "regular rate of pay" pursuant to *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11  
24 5th 858 and Labor Code § 226.7.

25 26. Accordingly, due to Defendant's uniform meal period practices, aggrieved employees  
26 were also regularly denied legally compliant meal periods in violation of Labor Code §§ 226.7, 510,  
27 516, and applicable Wage Orders, and would be entitled to penalties under Labor Code § 2698 *et seq.*

28 27. Next, at all relevant times, Plaintiff and other aggrieved employees were not provided

1 with all 10-minute rest periods for every four hours worked, or a major fraction thereof, due to  
2 Defendant's uniform rest period policies/practices, operational requirements and work demands. As  
3 a result, Plaintiff and other aggrieved employees were and are often unable to take a net 10-minute  
4 duty-free rest period for every major fraction of four hours worked. This includes a second rest period  
5 for shifts in excess of six hours and a third rest period for shifts in excess of 10.0 hours in a workday.

6 28. By not relieving all aggrieved employees of all duties during rest periods, Defendant  
7 failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services, Inc.* (2016)  
8 2 Cal. 5th 257, 269 [concluding that "during rest periods employers must relieve employees of all  
9 duties and relinquish control over how employees spend their time."] (Emphasis added). In *Augustus*,  
10 the California Supreme Court expressly rejected the employer's assertion that it could provide an on-  
11 duty rest period to employees who worked as security guards and further explained: "that employers  
12 [must] relinquish any control over how employees spend their break time and relieve their employees  
13 of all duties." *Id.* at 273. Each time aggrieved employees could not take a compliant rest period;  
14 Defendant failed and continues to fail to adequately pay rest period premium payments at the "regular  
15 rate of pay" as required by Labor Code § 226.7.

16 29. Accordingly, due to Defendant's uniform rest period policies/practices, aggrieved  
17 employees were regularly denied legally compliant rest breaks in violation of Labor Code §§ 226.7,  
18 512, and applicable Wage Orders, and would be entitled to penalties under Labor Code § 2698 *et seq.*

19 30. As a result of Defendant's failure to pay Plaintiff and other aggrieved employees for  
20 all hours they were subject to the control of Defendant, including all minimum and overtime wages,  
21 and Defendant's failure to pay all meal and rest period premiums at the "regular rate of pay,"  
22 Defendant issued wage statements which failed to identify the gross wages earned accurately, the  
23 total hours worked, the net wages earned, and the correct corresponding number of hours worked at  
24 each hourly rate, in violation of Labor Code § 226(a)(1, 2, 5, and 9).

25 31. Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of  
26 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per  
27 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for  
28 each violation in a subsequent citation, for which the employer fails to provide the employee a wage

1 deduction statement or fails to keep the required in subdivision (a) of Section 226.”

2       32.     Thus, for the violations of Labor Code section 226 described above, Plaintiff and other  
3 aggrieved employees may also recover Labor Code § 226.3 penalties for Defendant’s violations of  
4 Labor Code § 226(a). Consequently, because Defendant failed to comply with Labor Code § 226(a),  
5 Plaintiff and other aggrieved employees would be entitled to recover penalties under Labor Code §  
6 226(e) and/or 2698 *et seq.*

7       33.     Moreover, because Defendant failed to pay all minimum wages, overtime wages, and  
8 meal and rest period premiums at the “regular rate of pay,” Defendant also failed and continues to  
9 fail to pay Plaintiff and other aggrieved employees all wages owed at their time of separation from  
10 employment in violation of Labor Code §§ 201-203. Thus, aggrieved employees would be entitled to  
11 recover waiting time penalties under Labor Code §§ 201-203 and/or 2698 *et seq.*

12       34.     Finally, at all relevant times, Defendant required Plaintiff and other aggrieved  
13 employees to incur necessary expenses for work-related purposes but did not reimburse aggrieved  
14 employees adequately for these necessary expenditures in violation of Labor Code §§ 2802-2804.  
15 Here, Defendant uniformly failed to reimburse aggrieved employees for the necessary costs incurred  
16 in discharging their duties. (*See Cochran v. Schwan’s Home Service, Inc.*, (2014) 228 Cal.App.4th  
17 1137, 1144 [“[i]f an employee is required to make work-related calls on a personal cell phone, then  
18 he or she is incurring an expense for the purposes of section 2802. It does not matter whether the  
19 phone bill is paid for by a third person or at all...To show liability under section 2802, an employee  
20 needs only to show that he or she was required to use a personal cell phone to make work-related  
21 calls, and he or she was not reimbursed”].) Accordingly, due to Defendant’s uniform failure to  
22 adequately reimburse for necessary business expenditures in violation of Labor Code §§ 2802-2804  
23 and applicable Wage Orders. Plaintiff and other aggrieved employees would be entitled to civil  
24 penalties under Labor Code § 2698 *et seq.*

25                                   **FIRST CAUSE OF ACTION**

26                                   **PRIVATE ATTORNEYS GENERAL ACT**

27                                   **(Plaintiff and Similarly Aggrieved Employees Against All Defendants)**

28       35.     Plaintiff re-alleges and incorporates by reference each and every allegation outlined

1 in the preceding paragraphs.

2       36. Defendant has committed several Labor Code violations against Plaintiff and other  
3 similarly aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code  
4 § 2698 *et seq.*, acting on behalf of the State of California, brings this representative action against  
5 Defendant to recover the civil penalties due to Plaintiff, other similarly aggrieved employees, and the  
6 State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not  
7 limited to (1) \$100 for each initial violation and \$200 for each subsequent violation per employee per  
8 pay period for those violations of the Labor Code for which no civil penalty is specifically provided  
9 based on the following Labor Code violations:

- 10       a) Defendant’s failure to record and pay for all hours worked;
- 11       b) Defendant’s failure to allow and permit legally compliant meal periods or compensation  
12 at the “regular rate of pay” in lieu thereof;
- 13       c) Defendant’s failure to allow and permit legally compliant rest periods or compensation  
14 at the “regular rate of pay” in lieu thereof;
- 15       d) Defendant’s failure to furnish legally compliant wage statements pursuant to Labor  
16 Code § 226(a);
- 17       e) Defendant’s failure to pay final wages to aggrieved employees in a timely manner at the  
18 time of separation from employment was unlawful; and
- 19       f) Defendant’s failure to reimburse aggrieved employees for all necessary business  
20 expenses in violation of Labor Code §§ 2802-2804.

21       37. On or about September 30, 2024, Plaintiff notified Defendant Southern Tire Mart,  
22 LLC. (“Defendant”) via certified mail and the California Labor and Workforce Development Agency  
23 (“LWDA”) via its website of Defendant’s violations of the California Labor Code § 2698 *et seq.*  
24 with respect to violations of the California Labor Code identified in Paragraph 36 (a)-(f). Now that  
25 sixty-five days (65) have passed since Plaintiff notifying Defendant of these violations, Plaintiff has  
26 exhausted his administrative requirements for bringing a claim under the Private Attorneys General  
27 Act with respect to these violations.

28       38. Plaintiff was compelled to retain the services of counsel to file this court action to

1 protect his interests and the interests of other similarly aggrieved employees and to assess and collect  
2 the civil penalties owed by Defendant. Plaintiff has, therefore, incurred attorneys' fees and costs,  
3 which he is entitled to receive under California Labor Code § 2699.

4 **PRAYER FOR RELIEF**

5 **WHEREFORE**, Plaintiff prays for judgment for himself and all others on whose behalf this  
6 suit is brought against Defendant, as follows:

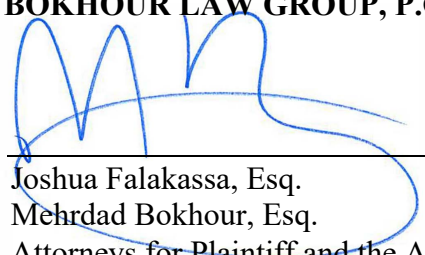
7 1. Upon the First Cause of Action, for civil penalties due to similarly aggrieved  
8 employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f)  
9 including, but not limited to: (1) \$100 for each initial violation and \$200 for each subsequent violation 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

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

14 3. For such other relief that the Court may deem just and proper.  
15

16 Dated: December 4, 2024

**FALAKASSA LAW, P.C.**  
**BOKHOUR LAW GROUP, P.C.**

17  
18  
19 By: 

20 Joshua Falakassa, Esq.

Mehrdad Bokhour, Esq.

21 Attorneys for Plaintiff and the Aggrieved Employees  
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