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13 **IN THE UNITED STATES DISTRICT COURT**

14 **FOR THE DISTRICT OF ARIZONA**

15 Ed E. Alonzo, on behalf of
16 himself and all other
similarly situated

17 Plaintiff,

18 v.

19 Akal Security, Inc.,

20 Defendant.

No.

**HYBRID COLLECTIVE AND
CLASS ACTION COMPLAINT AND
DEMAND FOR JURY TRIAL**

21 Plaintiff Ed E. Alonzo ("Alonzo") sues Defendant Akal
22 Security, Inc. ("Akal") for violating the minimum wage
23 provisions and overtime provisions of the Fair Labor
24 Standards Act ("FLSA") as well as the provisions of the
25 Arizona Minimum Wage Act ("AMWA").

26 **Parties, Jurisdiction, Venue, Facts**

27 1. Alonzo is and was, at all material times, an
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1 employee of Akal and a non-exempt employee within the
2 meaning of the FLSA. Alonzo is a citizen of the United
3 States who resides in Maricopa County, Arizona. Alonzo is
4 an Air Security Officer ("ASO") who was responsible for the
5 supervision of deportees during flights back to their home
6 country.

7 2. Alonzo has been employed by Akal since July 2011.

8 3. Akal is a New Mexico corporation with its principal
9 place of business in New Mexico. It maintains an operations
10 facility in Mesa, Arizona. Alonzo worked out of Akal's Mesa
11 facility. Akal is a government contractor. Akal is the
12 subcontractor to CSI Aviation, Inc. ("CSI"). CSI's contract
13 with the federal government requires it and its
14 subcontractors, including Akal, to comply with all federal,
15 state and local laws and regulations.

16 4. Jurisdiction is based on 28 U.S.C. § 1331 (federal
17 question jurisdiction).

18 5. Venue is proper in Maricopa County, Arizona, as
19 Alonzo's employment was based in Mesa, Arizona at Akal's
20 Mesa operation. 28 U.S.C. § 82.

21 6. Alonzo worked and still works for Akal as an ASO.
22 His rate of pay was and is \$25.58 per hour. Alonzo is and
23 was a non-exempt employee.

24 7. Alonzo is and was not paid on a salary basis and is
25 not paid any type of flat weekly compensation for all hours
26 worked during the week. Alonzo is an hourly employee.

27 8. Alonzo's job duties included the direct supervision
28

1 of deportees upon their arrival at Akal, their loading onto
2 aircraft for deportation, and in-flight supervision during
3 the trip to the deportee's home country.

4 9. After depositing deportees in their home country,
5 Alonzo returns with the rest of the flight crew to the
6 United States. Alonzo is compensated for the return flight
7 home. Returning home on the aircraft is part of the ASO's
8 job.

9 10. In addition to traveling for Akal on the return
10 flight home (*i.e.*, it is travel that is all in a day's
11 work), the ASOs provide services during the return flight
12 home, including cleaning up the aircraft, collecting and
13 inventorying supplies, filling out paperwork and generally
14 preparing for the next mission.

15 11. The ASOs are not obligated to take a lunch break
16 or to take a lunch break of a given duration. An ASO may
17 not take any lunch break, or, for example, may take a two
18 minute lunch break to eat a power bar. The ASOs may take a
19 lunch break on an outbound flight. Regardless of whether an
20 ASO takes a lunch break, and regardless of how long any
21 actual lunch break is, the ASO is automatically deducted one
22 hour of compensation.

23 12. Akal does not keep records of any ASO's lunch
24 break.

25 13. The one-hour lunch break deduction was completely
26 arbitrary and had no bearing on Alonzo actually taking any
27 lunch break.

1 14. Akal has a company-wide policy of mandating that
2 ASO employees be docked one hour of pay on each return
3 flight back to the United States when no deportees are on
4 board. Alonzo does not actually take a "lunch break" and
5 any meal is eaten while performing services for the company.
6 The one-hour deduction is completely arbitrary, as it bears
7 no relationship to any actual lunch break.

8 15. After the ASO signs and submits a blank timesheet,
9 the supervisor adds in a random one-hour deduction under the
10 guise of a "lunch break." The start and stop time of any
11 "lunch break" is made up by the supervisor.

12 16. There are numerous employees who are similarly
13 situated and who lose the same one-hour of pay pursuant to
14 Akal's lunch break policy.

15 17. At all times on the return flight, Alonzo and the
16 other ASOs are captive on the plane, severely restricting
17 their ability to do any activity for their own benefit. The
18 ASOs cannot make telephone calls, stream internet or movies,
19 send text messages, run errands, pick up dry cleaning, run
20 to a bank, check on their kids or other loved ones, make
21 doctor appointments or do anything else that would be
22 consistent with a bona fide meal break within the meaning of
23 the FLSA.

24 18. The ASOs are not given bona fide meal breaks
25 within the meaning of the FLSA. Even assuming, *arguendo*,
26 the ASOs consumed any food on the plane, they did not do so
27 in adequate facilities provided by the employer. The

1 deportees - some of whom are murderers and child rapists -
2 routinely defecate, urinate and vomit in their seats. The
3 planes smell of feces, urine and vomit. The ASOs do not
4 clean the feces, urine or vomit. Instead, the feces, urine
5 or vomit remains until the plane returns to its home base so
6 that an environmental decontamination team can properly
7 clean up the bodily fluids.

8 19. To the extent that the unpaid lunch break hours
9 were hours in excess of forty hours per week, Alonzo is
10 entitled to time-and-a half for those hours.

11 20. Alonzo and the other ASOs did not and do not
12 receive minimum wage compensation for the hour worked that
13 was improperly deducted from their pay as a result of Akal's
14 lunch break policy.

15 21. Alonzo and the other ASOs did not and do not
16 receive their regular rate of pay for the hour worked that
17 was improperly deducted from their pay as a result of Akal's
18 lunch break policy.

19 22. Akal has been aware of its violation of the FLSA
20 for many years. In 2013, Akal was sued by several ASOs in
21 Texas as a result of the same lunch break policy at issue
22 here. See *Kankel v. Akal Security, Inc.*, N.D. Tex. Case No.
23 3:13-cv-2651. A **nationwide** collective action was certified
24 with over 100 opt-ins. *Id.* at D.E. 68-1. The result of
25 that lawsuit was a collective action settlement that
26 included a release of all FLSA claims occurring on or before
27 June 14, 2014. *Id.* (The release in *Kankel* was limited to

1 releasing claims under the FLSA and no other statutory or
2 common law claim.)

3 23. It is possible that one or more potential opt-ins
4 who were part of the settlement of the Texas litigation is
5 or will be opt-ins in this litigation. For those opt-ins,
6 they would be limited to seeking compensation under the FLSA
7 for a violation occurring after the release date of June 14,
8 2014.

9 24. Akal was also sued in Florida for an identical
10 FLSA violation. See *Gelber v. Akal Security, Inc.*, S.D.
11 Florida Case No. 16-23170. The district judge in *Gelber*
12 certified the collective statewide and there are currently
13 twenty opt-ins.

14 25. Akal did not alter its policy with respect to
15 deducting an hour's pay for an alleged lunch break even
16 after the Texas and Florida litigation. Thus, Akal knows it
17 is violating the FLSA and yet it continues to do so even
18 after being sued and paying out funds for its violation.

19 **Count I - FLSA/Unpaid Minimum Wages**

20 26. Alonzo incorporates paragraphs 1 to 25.

21 27. Alonzo was and is a non-exempt employee of Akal
22 within the meaning of the FLSA. Alonzo is paid hourly and
23 not on a salary or weekly basis.

24 28. Akal was, at all material times, an employer
25 within the meaning of the FLSA.

26 29. Alonzo had one-hour of compensation automatically
27 deducted from his compensation on return flights even though

1 the return flight to the United States was and is part of
2 his job. Thus, Alonzo worked for Akal for one hour on each
3 return flight without any compensation.

4 30. For the alleged hour-long lunch break (even though
5 there was no bona fide lunch break), Alonzo and his
6 colleagues were paid zero dollars per hour.

7 31. The automatic one-hour deduction bears no
8 relationship to any actual time spent by the ASOs not
9 working for Akal. In fact, Akal has no records of any time
10 that Alonzo and his colleagues spent not working for Akal.

11 32. The ASOs, including Alonzo, were not paid minimum
12 wages by Akal for the time periods stated above.

13 33. Akal's violation of the FLSA was willful and
14 intentional.

15 34. Alonzo and his colleagues are entitled to an award
16 of back pay and liquidated damages equal to the amount of
17 the back pay.

18 **Count II - FLSA/Unpaid Overtime**

19 35. Alonzo incorporates paragraph 1 to 25.

20 36. Alonzo was and is a non-exempt employee of Akal
21 within the meaning of the FLSA. He is paid hourly and not
22 on a salary or weekly basis.

23 37. Akal was, at all material times, an employer
24 within the meaning of the FLSA.

25 38. Alonzo and his colleagues worked for Akal and, in
26 certain weeks, worked in excess of forty hours per week. It
27 is possible that, in any given week, the unpaid lunch break

1 hours would have been hours in excess of forty hours per
2 week. For those weeks, the ASOs are entitled to overtime
3 pay at a rate of 1.5 times their regular rate of pay.

4 39. Alonzo was not paid overtime wages by Akal for the
5 time periods stated above.

6 40. Akal's violation of the FLSA was willful and
7 intentional.

8 41. Alonzo and his colleagues are entitled to an award
9 of overtime back pay and liquidated damages equal to the
10 amount of the back pay.

11 **Count III - AMWA/Unpaid Minimum Wages**

12 42. Alonzo incorporates paragraphs 1 to 25.

13 43. Alonzo is paid hourly and not on a salary or
14 weekly basis.

15 44. Akal was, at all material times, an employer
16 within the meaning of the AMWA.

17 45. Alonzo had one-hour of compensation automatically
18 deducted from his compensation on return flights even though
19 the return flight to the United States was and is part of
20 his job. Thus, Alonzo worked for Akal for one hour on each
21 return flight without any compensation.

22 46. For the alleged hour-long lunch break (even though
23 there was no bona fide lunch break), Alonzo and his
24 colleagues were paid zero dollars per hour.

25 47. The automatic one-hour deduction bears no
26 relationship to any actual time spent by the ASOs not
27 working for Akal. In fact, Akal has no records of any time

1 that Alonzo and his colleagues spent not working for Akal.

2 48. The ASOs, including Alonzo, were not paid minimum
3 wages by Akal for the time periods stated above.

4 49. Akal has willfully failed to pay wages at the rate
5 of the AMWA, codified at A.R.S. § 23-363(A). Alonzo and his
6 colleagues are entitled to recover the balance of the wages
7 owed, including interest thereon, and an additional amount
8 equal to twice the underpaid wages pursuant to A.R.S. § 23-
9 364(G).

10 50. Akal's violation of the AMWA was committed as a
11 matter of a continuing course of employer conduct within the
12 meaning of A.R.S. § 23-364(H). As such, this action
13 encompasses all violations that occurred from January 1,
14 2007 until the present day. *Id.*

15 **PRAYER FOR RELIEF**

16 Alonzo prays that he, and the other ASOs in Arizona,
17 recover from Akal the following:

18 1. An award of unpaid overtime and minimum wages in an
19 amount appropriate to the proof adduced at trial pursuant to
20 29 U.S.C. §§ 206 and 216(b);

21 2. An award of liquidated damages regarding # 1,
22 *supra*, in an amount appropriate to the proof adduced at
23 trial pursuant to 29 U.S.C. § 216(b);

24 3. An award of treble the sum of unpaid minimum wages,
25 from January 1, 2007 onward, pursuant to A.R.S. § 23-364(G);

26 4. In the event Akal fails to satisfy any judgment for
27 Plaintiff(s), *to wit*, satisfy a judgment against Akal within

1 ten days of the Order becoming final, Akal shall pay
2 Plaintiff(s) an amount which is treble the amount of the
3 outstanding judgment with interest thereon, in accordance
4 with A.R.S. § 23-360;

5 5. An enhancement payment of no less than five
6 thousand dollars (\$5,000) to Alonzo as compensation for the
7 expense he has incurred on behalf of the class;

8 6. Pre-judgment and post judgment interest on unpaid
9 back wages pursuant to, *inter alia*, A.R.S. § 23-364(G);

10 7. Attorneys' fees pursuant to 29 U.S.C. § 216(b) and
11 A.R.S. § 23-364(G);

12 8. Court costs and costs of litigation pursuant to 29
13 U.S.C. § 216(b) and A.R.S. § 23-364(G);

14 9. A declaratory judgment, pursuant to 28 U.S.C. §§
15 2201-2202, that Akal has violated its statutory and legal
16 obligations and deprived Alonzo and his colleagues of their
17 rights, privileges, protections, compensation, benefits, and
18 entitlements under the law, as alleged herein; and

19 10. Such other and further equitable relief as the
20 Court deems just.

21 DATED this 20th day of March 2017.

22 LUBIN & ENOCH, P.C.
23 KAPLAN YOUNG & MOLL PARRÓN

24 By: /s/ Nicholas J. Enoch
25 Nicholas J. Enoch, Esq.
26 Attorney for Plaintiff
27

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Alonzo demands a trial by jury on all questions raised by the foregoing complaint.

DATED this 20th day of March 2017.

LUBIN & ENOCH, P.C.
KAPLAN YOUNG & MOLL PARRÓN

By: /s/ Nicholas J. Enoch
Nicholas J. Enoch, Esq.
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of March 2017, I electronically transmitted the attached Complaint to the Clerk's Office using the ECF System for filing.

/s/ Cristina Gallardo-Sanidad

F:\Law Offices\client directory\Alonzo\Pleadings\2017-3-20 (6080-001) Complaint.wpd

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff Ed E. Alonzo
(s):

County of Residence: Maricopa

County Where Claim For Relief Arose: Maricopa

Defendant Akal Security, Inc.
(s):

County of Residence: Maricopa

Plaintiff's Atty(s):

**Nicholas J. Enoch
LUBIN & ENOCH, PC
349 N. Fourth Avenue
Phoenix, Arizona 85003
602-234-0008**

Defendant's Atty(s):

II. Basis of Jurisdiction: 3. Federal Question (U.S. not a party)

III. Citizenship of Principal Parties (Diversity Cases Only)

Plaintiff:- 1 Citizen of This State

Defendant:- 4 AZ corp or Principal place of Bus. in AZ

IV. Origin : 1. Original Proceeding

V. Nature of Suit: 710 Fair Labor Standards Act

VI. Cause of Action: FLSA 29 USC 219(b)

VII. Requested in Complaint

Class Action: Yes

Dollar Demand: TBD

Jury Demand: Yes

VIII. This case is not related to another case.

Signature: Nicholas J. Enoch

Date: 3.20.17

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.

Revised: 01/2014

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Akai Security Sued for Alleged FLSA Violations](#)
