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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

SEP 15 2020

BY


GLORIA MARIN, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

AHMAD TEEBA and LARRY MINDHAM as
individuals and on behalf of all others similarly
situated,

Plaintiffs,

vs.

BRILL, INC., a Delaware corporation; and
DOES 1 through 100,

Defendants.

Case No.: CIVDS1923242

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT**

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

UNLIMITED CIVIL CASE

Plaintiffs Ahmad Teeba and Larry Mindham (“Plaintiffs”) on behalf of themselves and other aggrieved employees, hereby bring this First Amended Representative Action Complaint (“Complaint”) against Brill, Inc., a Delaware corporation, and DOES 1 to 100, inclusive (collectively “Defendants”), and on information and belief alleges as follows:

JURISDICTION

1. Plaintiffs bring this Complaint for recovery of civil penalties under Labor Code section 2698 *et seq.*, the Private Attorneys General Act (“PAGA”). This Court has jurisdiction over Defendants’ violations of the California Labor Code because the amount in controversy exceeds this Court's jurisdictional minimum.

VENUE

2. Venue is proper in this judicial district pursuant to California Code of Civil Procedure sections 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the County of San Bernardino.

PARTIES

3. Plaintiffs are individuals over the age of eighteen (18). At all relevant times herein, Plaintiffs were, and currently are, California residents. During the statute of limitations periods, Plaintiffs were employed by Defendants as non-exempt employees.

4. Plaintiffs are informed and believe, and based thereon allege, that during the one year preceding the filing of this Complaint and continuing to the present, Defendants did (and do) business by operating a commercial bakery, and employed Plaintiffs and other similarly-situated non-exempt employees within San Bernardino County and the state of California and, therefore, were (and are) doing business in San Bernardino County and the State of California.

5. Plaintiffs do not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiffs will seek leave from this Court to further amend this Complaint when such true names and capacities are discovered. Plaintiffs are informed, and believe, and thereon allege, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions

1 alleged herein, and proximately caused Plaintiffs and the aggrieved employees to be subject to
2 the unlawful employment practices, wrongs, injuries and damages complained of herein.

3 6. Plaintiffs are informed and believe, and based thereon allege, that at all times
4 mentioned herein, Defendants were and are the employers of Plaintiffs and the aggrieved
5 employees (as defined herein).

6 7. At all times herein mentioned, each of said Defendants participated in the doing
7 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
8 Defendants, and each of them, were the agents, servants, and employees of each and every one of
9 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
10 were acting within the course and scope of said agency and employment. Defendants, and each
11 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
12 omissions complained of herein.

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

18 **REPRESENTATIVE ACTION ALLEGATIONS**

19 9. Defendants operate as an international baking company that offers baking
20 ingredients, baked goods, and other services for retail and foodservice markets, and artisan and
21 industrial bakeries. Plaintiff Teeba has been employed by Defendants as non-exempt
22 “Maintenance Specialist” since approximately May 2016. Plaintiff Mindham was employed by
23 Defendants as a non-exempt employee in the maintenance department from approximately
24 October 17, 2011, to approximately February 27, 2020. Plaintiffs’ job duties consist of providing
25 electrical and mechanical maintenance to Defendants’ commercial baking ovens and other
26 machinery, such as conveyor belts.

27 10. Throughout Plaintiffs’ employment with Defendants, Plaintiffs routinely worked
28 in excess of 8 hours per workday and/or more than 40 hours per workweek but did receive

overtime compensation equal to one and one-half times their regular rate of pay for working overtime hours. Plaintiffs and other non-exempt employees earn shift premiums, “Tip Bonuses,” other non-discretionary bonuses, and other forms of pay that cannot be excluded from the regular rate of pay as a matter of law (hereinafter “Incentive Pay”). As a result of paying Plaintiffs and other non-exempt employees Incentive Pay, Defendants failed to properly calculate the regular rate of pay for overtime purposes, resulting in unpaid overtime wages.

11. Defendants have also failed to provide Plaintiffs with all required meal periods to which they were entitled due to Defendants’ unlawful meal period policies/practices, which do not provide all duty-free 30-minute meal periods as required by California law. Specifically, Defendants maintain an unlawful written meal period policy that only states that “an unpaid meal period is provided during the full shift (8 hours or more) and should generally be taken halfway through the shift.” Defendants’ policy is therefore silent as to the timing of the meal periods and fails to provide for second meal periods in the event that the employee works in excess of 10.0 hours, in violation of Labor Code section 512 and Wage Order 7 section 11. Despite Defendants’ failure to provide Plaintiffs and other non-exempt employees with all lawful meal periods due to their uniform and unlawful practices, Defendants failed to provide Plaintiffs and other non-exempt employees with an hour of pay at their regular rate for each meal period violation as required by Labor Code section 226.7. Additionally, in instances when Defendants did pay meal period premiums, the premiums were not paid at the correct rate of pay as a result of Defendants’ payment of Incentive Pay.

12. Defendants also failed to authorize and permit Plaintiffs to take all duty-free 10-minute rest periods for every four hours worked, or major fraction thereof, due to Defendants’ unlawful rest period policies/practices. Defendants maintain a facially invalid rest period policy that states that “non-exempt employees are not allowed to leave the premises while on a paid break period.” Furthermore, Defendants require Plaintiffs and other non-exempt employees to carry “walkie-talkie” radios throughout their work shifts, including during their rest periods. Defendants’ rest period policies/practices therefore violate *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257 260 (holding that during rest periods “employees must not only be

1 relieved of work duties, but also be freed from employer control over how they spend their
2 time.”). Despite Defendants’ failure to authorize and permit Plaintiffs and other non-exempt
3 employees to take all legally-compliant rest periods to which they were entitled, Defendants failed
4 to compensate Plaintiffs and other non-exempt employees with an additional hour of premium
5 pay at their respective regular rates of pay for each workday in which a rest period violation
6 occurred, as required by Labor Code section 226.7. Upon information and belief, during at least
7 a portion of the relevant time period, Defendants have maintained no mechanism for the payment
8 of rest period premium payments as required by Labor Code section 226.7.

9 13. As a result of Defendants’ failure to pay all overtime wages, and meal and rest
10 period premium wages owed: (1) Defendants maintained inaccurate payroll records and issued
11 inaccurate wage statements to Plaintiffs and (2) Defendants failed to pay Plaintiff Mindham and
12 other former employees all earned wages in cash, on demand, without discount at an established
13 business in the State of California, at the time of their separation of employment. Specifically,
14 Defendants provided Plaintiff Mindham and other former employees their final pay in the form
15 of a debit card, without voluntary authorization from the employees, in violation of Labor Code
16 section 212. Additionally, the wage statements Defendants issued to Plaintiffs and other non-
17 exempt employees during the relevant time period are facially deficient as they do not list the
18 number of hours and corresponding rates of pay associated with shift premium payments.

19 14. Based on the foregoing, Plaintiffs seek to represent themselves and all aggrieved
20 employees, as defined by Labor Code section 2699(c), which include all non-exempt employees
21 who worked for Defendants in California since May 31, 2018.

22 **FIRST CAUSE OF ACTION**

23 **PRIVATE ATTORNEYS GENERAL ACT**

24 **(AGAINST ALL DEFENDANTS)**

25 15. Plaintiffs re-allege and incorporate by reference all prior paragraphs as though
26 fully set forth herein.

27 16. Defendants have committed several Labor Code violations against Plaintiffs and
28 other similarly aggrieved employees. Plaintiffs are “aggrieved employees” within the meaning of

Labor Code section 2698 *et seq.*, and acting on behalf of themselves and other similarly aggrieved employees, bring this Complaint against Defendants to recover the civil penalties due to Plaintiffs, other similarly aggrieved employees, and the State of California according to proof pursuant to Labor Code section 2699 including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code section 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent violation of Labor Code section 226 per employee per pay period pursuant to Labor Code section 226(e); (3) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code section 558 per employee per pay period; (4) \$250.00 per employee for each initial violation and \$1,000.00 per employee for each subsequent violation of Labor Code section 226(a) pursuant to Labor Code section 226.3; (5) \$100.00 per employee per initial violation and \$200.00 per employee per subsequent Labor Code violation pursuant to Labor Code section 2699(f); and/or (6) \$100.00 for each initial violation and \$200.00 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. Failing to pay Plaintiffs and other aggrieved employees all earned overtime compensation in violation of Labor Code sections 204, 510, 558, 1194, and 1198;
- b. Failing to provide all legally required meal periods, and failing to pay meal period premium pay, to Plaintiffs and other aggrieved employees in violation of Labor Code sections 226.7, 512, and 558;
- c. Failing to authorize and permit all legally required rest periods, and failing to pay rest period premiums, to Plaintiffs and other aggrieved employees in violation of Labor Code sections 226.7, 516, and 558;
- d. Failing to furnish Plaintiffs and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code section 226;
- e. Failing to pay Plaintiffs and other aggrieved employees all earned wages at least twice during each calendar month in violation of Labor Code section 204;

- 1 f. Failing to maintain accurate records on behalf of Plaintiffs and other aggrieved
2 employees in violation of Labor Code section 558 and section 1174.
- 3 g. Failing to pay all final wages, including, but not limited to, unpaid overtime wages
4 and meal and rest period premium wages, to Plaintiff Mindham and other
5 aggrieved employees upon their separation of employment in violation of Labor
6 Code sections 201-203; and
- 7 h. Failing to pay Plaintiff Mindham and other aggrieved employees their final wages
8 in a form that was negotiable and payable in cash, on demand, without discount at
9 an established business in the State of California in violation of Labor Code
10 sections 210 and 212.

11 17. On May 31, 2019, Plaintiff Teeba notified Defendants (via certified mail) and the
12 California Labor and Workforce Development Agency (“LWDA”) (via its website) of
13 Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for
14 civil penalties under California Labor Code section 2698 *et seq.* with respect to the violations
15 identified in Paragraph 16 (a)-(f). On August 5, 2019, more than sixty-five days after Plaintiff
16 Teeba notified Defendants of these violations, Plaintiff Teeba filed this Complaint.

17 18. On April 10, 2020, Plaintiff Mindham also notified Defendants (via certified mail)
18 and the California Labor and Workforce Development Agency (“LWDA”) (via its website) of
19 Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for
20 civil penalties under California Labor Code section 2698 *et seq.* with respect to the violations
21 identified in Paragraph 16 (a)-(h). Now that sixty-five days have passed since Plaintiff Mindham
22 notified Defendants of these violations, Plaintiff Mindham has exhausted the administrative
23 requirements for bringing a claim under PAGA with respect to these violations.

24 19. Plaintiffs were compelled to retain the services of counsel to file this court action
25 to protect their interests and the interests of other aggrieved employees, and to assess and collect
26 the civil penalties owed by Defendants. Plaintiffs thereby incurred attorneys’ fees and costs,
27 which they are entitled to receive under California Labor Code section 2699(g).

28

PRAYER

WHEREFORE, Plaintiffs pray for judgment for themselves and for all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. Upon the First Cause of Action, for civil penalties due to Plaintiffs, other aggrieved employees, and the State of California according to proof pursuant to Labor Code section 2699, including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code section 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent violation of Labor Code section 226 per employee per pay period pursuant to Labor Code section 226(e); (3) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code section 558 per employee per pay period; (4) \$250.00 per employee for each initial violation and \$1,000.00 per employee for each subsequent violation of Labor Code section 226(a) pursuant to Labor Code section 226.3; (5) \$100.00 per employee per initial violation and \$200.00 per employee per subsequent Labor Code violation pursuant to Labor Code section 2699(f); and/or (6) \$100.00 for each initial violation and \$200.00 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 violations of Labor Code Sections identified in Paragraph 16 (a)-(h)

2. On all causes of action, for attorneys' fees and costs as provided by Labor Code section 2699(g) and Code of Civil Procedure section 1021.5; and

3. For such other and further relief the Court may deem just and proper.

Dated: September 15, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

By: _____


Fletcher W. Schmidt
Attorneys for Plaintiffs

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San Bernardino Superior Court Case No. CIVDS1923242

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is **[X]** 2155 Campus Drive, Suite 180, El Segundo, California 90245.

FIRST AMENDED REPRESENTATIVE ACTION COMPLAINT

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[X] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Jonathan Ramirez