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Attorneys for Plaintiff, on behalf of the State of California

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

MUSTAFA ALKARKHI, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

ABC PHONES OF NORTH CAROLINA, INC.
a North Carolina Corporation; and DOES 1-50,
inclusive.

Defendants.

CASE NO.: **CVRI 2402256**

**REPRESENTATIVE ACTION
COMPLAINT:**

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

UNLIMITED CIVIL CASE

1 Plaintiff Mustafa Alkarkhi (“Plaintiff”), on behalf of himself and all other similarly situated
2 aggrieved employees, alleges and complains of Defendant ABC Phones of North Carolina, Inc. *dba*
3 Victra (“Defendant”) and DOES 1 to 50 (collectively “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendant’s line of business includes cellular telephone services and is the largest
6 Verizon Wireless authorized retailer in California.

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

9 3. As set forth below, Plaintiff alleges that Defendant failed to pay all overtime
10 compensation and sick pay wages at the proper legal rates by failing to calculate the “regular rate of
11 pay” correctly. Moreover, Plaintiff alleges that Defendant’s meal, rest, and recovery period policies,
12 and practices failed to allow and permit aggrieved employees to take all compliant and timely meal,
13 rest, and recovery periods or pay premium wages at the “regular rate of pay” in lieu thereof. Plaintiff
14 further alleges that Defendant failed to provide aggrieved employees with accurate written itemized
15 wage statements in violation of Labor Code § 226(a) and failed to timely pay all final wages upon
16 separation of employment in violation of Labor Code §§ 201-203.

17 4. Based on these alleged Labor Code violations, Plaintiff now brings this class action
18 and representative action to recover unpaid wages, restitution, penalties, and other related relief for
19 himself and all other similarly situated aggrieved employees.

20 **JURISDICTION**

21 5. Plaintiff, on behalf of the State of California, brings this representative action pursuant
22 to Labor Code § 2699, *et seq.*, seeking penalties for Defendant’s violation of California Labor Code
23 §§ 201-204, 210, 226(a), 226(a)(6), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1174, 1174.4,
24 1199, and applicable Industrial Welfare Commission Wage Orders (“Wage Orders”).

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

27 7. This Court has jurisdiction over Defendant’s violations of the California Labor Code
28 and applicable Wage Orders because the amount in controversy exceeds this Court’s jurisdictional

1 minimum.

2 **VENUE**

3 8. Venue is proper in this judicial district pursuant to California Code of Civil Procedure
4 §§ 395(a) and 395.5, as most of the acts and omissions complained of herein occurred in the County
5 of Riverside. Defendant owns, maintain offices, transact business, have an agent or agents within the
6 County of Riverside, and/or otherwise are found within the County of Riverside, and Defendant is
7 within the jurisdiction of this Court for purposes of service of process.

8 **PARTIES**

9 9. At all relevant times herein, Plaintiff, who is over the age of 18, was and currently is a
10 California resident residing in the State of California. Defendants employed Plaintiff as an aggrieved
11 employee.

12 10. Plaintiff is informed, believes, and alleges that Defendants are authorized to do
13 business within the County of Riverside and is and/or was the legal employer of Plaintiff and the
14 Class Members during the applicable statutory periods. Plaintiff was, and is, a victim of Defendants'
15 policies and/or practices complained of herein and has been deprived of the rights guaranteed to him
16 by California Labor Code §§ 201-203, 204, 210, 226, 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510,
17 512, 516, 1174, 1174.4, 1199, and the California Business and Professions Code § 17200 *et seq.*, and
18 applicable Wage Orders.

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

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

1 alleged herein.

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

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

15 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

16 15. Defendant's line of business includes cellular telephone services and is the largest
17 Verizon Wireless authorized retailer in California.

18 16. Plaintiff was employed by Defendant as a non-exempt employee with the title of
19 "Sales Representative" out of its Temecula, California, location beginning in or around March 2022
20 until his separation from employment on December 27, 2023. Plaintiff and other aggrieved employees
21 (including, but not limited to, Retail Sales Associate, Wireless Consultant, Retail Sales Consultant,
22 Sales Lead, Assistant General Manager, and all other aggrieved positions) were responsible for all
23 aspects of Defendant's business in California. However, in these roles, Plaintiff and other aggrieved
24 employees were often not afforded all protections and rights conferred under the California Labor
25 Code and applicable wage orders.

26 17. At all relevant times, Plaintiff and other aggrieved employees regularly worked
27 various shifts, many of which were more than 8.0 hours in a workday and 40.0 hours in a workweek.
28 Plaintiff alleges that other aggrieved employees were also subjected to the same policies, procedures,

1 practices, working conditions, and corresponding wage and hour violations to which he was subjected
2 during his employment.

3 18. First, at all relevant times, Plaintiff and other aggrieved employees worked regular
4 shifts that lasted longer than 8.0 hours in a workday and resulted in aggrieved employees regularly
5 working more than 40 hours in a workweek. However, Defendant uniformly failed to properly
6 calculate and pay overtime wages at the proper legal rate due to Defendant's failure to include all
7 forms of compensation/remuneration, including, but not limited to, commissions, non-discretionary
8 bonuses, shift pay, incentives, and all other forms of remuneration in calculating the "regular rate of
9 pay" for purposes of overtime compensation.

10 19. Under the California Labor Code (as well as the FLSA), courts have consistently held
11 that regularly paid non-discretionary bonuses (and other forms of pay) must be included in
12 determining an employee's "regular rate of pay" for purposes of calculating overtime. (See *Haber v.*
13 *The Americana Corp.* 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency
14 bonuses must be included in calculating the "regular rate"]; *Wang v. Chinese Daily News, Inc.* 435 F.
15 Supp. 2d 1042, 1055-1057 (C.D. Cal. 2006) [granting summary judgment to Plaintiff under California
16 and federal law on the grounds that Defendant improperly calculated overtime by excluding annual
17 bonuses paid to employees from the "regular rate of compensation"]; see *Walling v. Youngerman-*
18 *Reynolds Hardwood Co.* (1945) 65 S.Ct. 1242, 1245. ("The regular rate by its very nature must reflect
19 all payments which the parties have agreed shall be received regularly during the workweek,
20 exclusive of overtime payments. It is not an arbitrary label chosen by the parties but an actual fact.
21 Once the parties have decided upon the amount of wages and the mode of payment, the determination
22 of the regular rate becomes a matter of mathematical computation, the result of which is unaffected
23 by any designation of a contrary 'regular rate' in the contracts."); see also 29 CFR §§ 778.110
24 ("production bonus") and 778.111 ("piece-rate").

25 20. Labor Code § 510 requires an employer to compensate an employee who works more
26 than eight (8.0) hours in one workday, forty (40) hours in a workweek, and for the first eight (8.0)
27 hours worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular
28 rate of pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less

1 than twice the regular rate of pay when an employee works more than twelve (12) hours in a workday
2 or more than eight (8.0) hours on the seventh consecutive day of work. Pursuant to Section 3 of the
3 applicable Wage Orders, aggrieved employees shall not be employed more than eight (8.0) hours in
4 any workday or more than 40.0 hours in any workweek unless the employee receives one and one-
5 half (11/2) times such employee's regular rate of pay for all hours worked over 40 hours in the
6 workweek.

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

11 22. Accordingly, through PAGA and to the extent permitted by law, Plaintiff and other
12 aggrieved employees are entitled to recover penalties for violations of Labor Code §§ 204, 210, 510,
13 1194, 1197.1, 1199 1197.1 under Labor Code § 1197.1, 1199, or Labor Code § 2699(f)(2), and for
14 attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

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

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

1 the employee's itemized wage statement described in Section 226 or in a separate writing provided
2 on the designated pay date with the employee's payment of wages."

3 25. Here, at all relevant times, Defendant failed in its obligation to provide Plaintiff and
4 other aggrieved employees the legally required paid sick days at the legal rate, including all forms of
5 compensation, pursuant to Labor Code §§ 246(a), (b). As such, Defendant paid sick time below the
6 "regular rate of pay" as required by Labor Code §§ 246(l) (1-2). Based on the foregoing Labor Code
7 violations, Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code
8 § 2699(f)(2), and for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

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

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

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

26 29. Next, at all relevant times, Plaintiff and other aggrieved employees were not provided
27 with all 10-minute rest periods for every four hours worked, or a major fraction thereof, due to
28 Defendant's uniform rest period policies/practices, operational requirements, staffing shortages, and

1 work demands. As a result, Plaintiff and other aggrieved employees were and are often unable to take
2 a net 10-minute duty-free rest period for every major fraction of four hours worked. This includes a
3 second rest period for shifts in excess of six hours and a third rest period for shifts in excess of 10.0
4 hours in a workday.

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

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

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

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

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

35. Finally, because of Defendant's failure to pay all overtime, sick pay wages, and meal and rest period premiums at the "regular rate of pay," Defendant also failed and continues to fail to pay Plaintiff and other aggrieved employees all wages owed at their time of separation from employment in violation of Labor Code §§ 201-203. Thus, aggrieved employees would be entitled to recover waiting time penalties under Labor Code §§ 201-203 and/or 2698 *et seq.*

FIRST CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(Plaintiff and Similarly Aggrieved Employees Against All Defendants)

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

37. Defendant has 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 Defendant 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) Defendant's failure to pay all overtime wages at the "regular rate of pay" because Defendant failed to include all forms of compensation, including, but not limited to, shift differentials, non-discretionary bonuses, incentive pay, and other forms of remuneration;

b) Defendant's failure to pay all sick pay at the "regular rate of pay";

c) Defendant's failure to allow and permit legally compliant meal periods or compensation

1 at the “regular rate of pay” in lieu thereof;

2 d) Defendant’s failure to allow and permit legally compliant rest periods or compensation
3 at the “regular rate of pay” in lieu thereof;

4 e) Defendant’s failure to furnish legally compliant wage statements pursuant to Labor
5 Code § 226(a);

6 f) Defendant’s failure to pay all wages in a timely fashion in violation of Labor Code §
7 204; and

8 g) Defendant’s failure to timely pay final wages to aggrieved employees at the time of
9 separation from employment was unlawful.

10 38. On or about February 20, 2024, Plaintiff notified Defendant ABC Phones of North
11 Carolina, Inc. via certified mail and the California Labor and Workforce Development Agency
12 (“LWDA”) via its website of Defendant’s violations of the California Labor Code § 2698 *et. seq.*
13 with respect to violations of the California Labor Code identified in Paragraph 40 (a)-(i). Now that
14 sixty-five days (65) have passed from Plaintiff notifying Defendant of these violations, Plaintiff has
15 exhausted his administrative requirements for bringing a claim under the Private Attorneys General
16 Act with respect to these violations.

17 39. Plaintiff was compelled to retain counsel to file this court action to protect his interests
18 and the interests of other similarly aggrieved employees and to assess and collect the civil penalties
19 owed by Defendant. Plaintiff has, therefore, incurred attorneys’ fees and costs, which he is entitled
20 to receive under California Labor Code § 2699.

21 **PRAYER FOR RELIEF**

22 **WHEREFORE**, Plaintiff prays for judgment on behalf of the State of California against
23 Defendant, as follows:

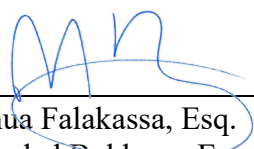
24 1. Upon the First Cause of Action, for civil penalties due to similarly aggrieved
25 employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f)
26 including, but not limited to: (1) \$100 for each initial violation and \$200 for each subsequent violation
27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

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

3 3. For such other relief that the Court may deem just and proper.
4

5 Dated: April 25, 2024

FALAKASSA LAW, P.C.
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7
8 By: 

Joshua Falakassa, Esq.

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Attorneys for Plaintiff and the Putative Classes
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