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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
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By: Analycia Tzi, DEPUTY

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

RUBEN RUIZ, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

RADIAL, INC., a Pennsylvania Corporation;
and DOES 1-50, inclusive.

Defendants.

CASE NO.: CIVSB2421760

**PAGA REPRESENTATIVE ACTION
COMPLAINT:**

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

UNLIMITED CIVIL CASE

1 Plaintiff Ruben Ruiz (“Plaintiff”), on behalf of the State of California, hereby brings this
2 PAGA Representative Action Complaint (“Complaint”) against Defendant Radial, Inc.
3 (“Defendant”) and DOES 1 to 50 (collectively, “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendant offers retail order management, store fulfillment, analytics, payment and
6 fraud, and customer service tools to customers in California and the United States.

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

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

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, 1194, 1197.1,
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 because, upon information and belief,
28 Defendant has sufficient minimum contacts in California, or otherwise intentionally avail themselves

1 to the State of California so as to render the exercise of jurisdiction over them by California courts
2 consistent with the traditional notions of fair play and substantial justice.

3 **VENUE**

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

9 **PARTIES**

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

12 10. Plaintiff is informed, believes, and alleges that Defendants are authorized to do
13 business within the County of San Bernardino and is and/or was the legal employer of Plaintiff and
14 the aggrieved employees during the applicable statutory periods. Plaintiff was, and is, a victim of
15 Defendants' policies and/or practices complained of herein and has been deprived of the rights
16 guaranteed to her by California Labor Code §§ 201-203, 204, 210, 226, 226(a), 226(e), 226.3, 226.7,
17 227.3, 246, 510, 512, 516, 1194, 1197.1, 1199, and the California Business and Professions Code §
18 17200 *et seq.*, and 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 San Bernardino.

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 Aggrieved Employees to be subject to the unlawful employment

1 practices 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 the aggrieved employees. At all times
4 herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to
5 have been done by the named Defendants. Furthermore, the Defendants, and each of them, were the
6 agents, servants, and employees of each and every one of the other Defendants, as well as the agents
7 of all Defendants, and at all times herein mentioned, were acting within the course and scope of said
8 agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise
9 ratified 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 aggrieved
14 employees.

15 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

16 15. Defendant offers retail order management, store fulfillment, analytics, payment and
17 fraud, and customer service tools to customers in California and the United States.

18 16. Plaintiff was employed by Defendant as a non-exempt employee with the title of
19 “Picker/Forklift Operator” out of its Rialto, California location, beginning on February 22, 2022, until
20 his separation from employment on March 29, 2024.

21 17. Plaintiff and other aggrieved employees (including, but not limited to, Fulfillment
22 Associate, Team Leader, Warehouse Lead, Warehouse Worker, Planner, Inventory Control
23 Specialist, Transportation Clerk, and all other aggrieved positions) were responsible for all aspects
24 of Defendant’s business in California. However, in these roles, Plaintiff and aggrieved employees
25 were often not afforded all protections and rights conferred under the California Labor Code and
26 applicable wage orders.

27 18. At all relevant times, Plaintiff and other aggrieved employees regularly worked
28 various shifts, many of which were more than 8.0 hours in a workday and 40.0 hours in a workweek.

1 Plaintiff alleges that other aggrieved employees were also subjected to the same policies, procedures,
2 practices, working conditions, and corresponding wage and hour violations to which he was subjected
3 during his employment.

4 19. First, at all relevant times, Defendant required Plaintiff and other aggrieved employees
5 to undergo mandatory security screenings at the beginning of the workday and the end of each shift
6 pursuant to its uniform security screening policies/procedures. However, Defendant uniformly failed
7 to compensate Plaintiff and other aggrieved employees for his time undergoing security checkpoints
8 because they were performed off-the-clock. Indeed, Plaintiff and other aggrieved employees who
9 worked consecutive shifts were required to arrive at the fulfillment center approximately 5 to 10
10 minutes before their scheduled shifts to have enough time to undergo the security screening
11 procedures.

12 20. As such, Defendant systematically failed to pay Plaintiff and other aggrieved
13 employees for all hours worked, including all minimum and overtime wages. Defendant has no valid
14 defense to this claim given the California Supreme Court's recent unanimous decision in *Frlekin v.*
15 *Apple, Inc.* (2020) 8 Cal.5th 1038, which held that employees "must be paid" during security checks
16 since "it is clear that [employees] are subject to [the employer's] control while awaiting, and during,
17 [the] exit searches."

18 21. As a result, over a period of time, Plaintiff and other aggrieved employees needed to
19 be properly paid for all hours worked in violation of Cal. Labor Code §§ 204, 210, 1194, 1197.1,
20 1199, and applicable Wage Orders. Additionally, due to Defendant's unlawful timekeeping
21 policies/practices, Plaintiff and other aggrieved employees were not properly paid at the correct
22 overtime rate for hours worked in excess of eight hours per shift in violation of Labor Code § 510.

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

1 underpaid regardless of whether the initial violation is intentionally committed.

2 23. Labor Code § 510 requires an employer to compensate an employee who works more
3 than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours
4 worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular rate of
5 pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than
6 twice the regular rate of pay when an employee works more than twelve (12) hours in a workday or
7 more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3 of the
8 applicable Wage Orders, aggrieved employees shall not be employed more than eight (8) hours in
9 any workday or more than 40 hours in any workweek, unless the employee receives one and one-half
10 (1 1/2) times such employee's regular rate of pay for all hours, worked over 40 hours in the workweek.

11 24. 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 25. Furthermore, at all relevant times, Plaintiff and other aggrieved employees worked
16 regular shifts that lasted longer than 8.0 hours in a workday and more than 40 hours in a workweek.
17 However, Defendant failed to properly calculate and pay overtime wages at the proper legal rate due
18 to Defendant's uniform failure to include all forms of compensation/remuneration, including, but not
19 limited to, shift differential, commissions, incentives, non-discretionary bonuses, and all other forms
20 of remuneration in calculating the "regular rate of pay" for purposes of overtime compensation.

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

1 *Reynolds Hardwood Co.* (1945) 65 S.Ct. 1242, 1245. (“The regular rate by its very nature must reflect
2 all payments which the parties have agreed shall be received regularly during the workweek,
3 exclusive of overtime payments. It is not an arbitrary label chosen by the parties but an actual fact.
4 Once the parties have decided upon the amount of wages and the mode of payment, the determination
5 of the regular rate becomes a matter of mathematical computation, the result of which is unaffected
6 by any designation of a contrary ‘regular rate’ in the contracts.”); see also 29 CFR §§ 778.110
7 (“production bonus”) and 778.111 (“piece-rate”).

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

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

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

25 30. Additionally, Labor Code § 246(l)(2) states that the paid sick time must be “calculated
26 by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total
27 hours worked in the full pay periods of the prior 90 days of employment.” Finally, Labor Code §246(i)
28 requires employers to “provide an employee with written notice that sets forth the amount of paid

1 sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either
2 the employee's itemized wage statement described in Section 226 or in a separate writing provided
3 on the designated pay date with the employee's payment of wages."

4 31. Here, at all relevant times, Defendant failed in its obligation to provide Plaintiff and
5 other aggrieved employees the legally required paid sick days at the legal rate, including all forms of
6 compensation, pursuant to Labor Code §§ 246(a), (b). As such, Defendant paid sick time below the
7 "regular rate of pay" as required by Labor Code §§ 246(l) (1-2). Based on the foregoing Labor Code
8 violations, Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code
9 § 2699(f)(2), and for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

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

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

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

27 35. Next, at all relevant times, Plaintiff and other aggrieved employees were not provided
28 with all 10-minute rest periods for every four hours worked, or a major fraction thereof, due to

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

6 36. 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 were unable to 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 37. 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 38. 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 Defendant's failure to pay for all overtime/sick pay wages at the appropriate legal rate, and
22 Defendant's failure to pay all meal and rest period premiums at the “regular rate of pay,” Defendant
23 issued wage statements which failed to identify the gross wages earned accurately, the total hours
24 worked, the net wages earned, and the correct corresponding number of hours worked at each hourly
25 rate, in violation of Labor Code § 226(a)(1, 2, 5, and 9).

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

1 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
2 deduction statement or fails to keep the required in subdivision (a) of Section 226.”

3 40. Thus, for the violations of Labor Code section 226 described above, Plaintiff and other
4 aggrieved employees may also recover Labor Code § 226.3 penalties for Defendant’s violations of
5 Labor Code § 226(a). Consequently, because Defendant failed to comply with Labor Code § 226(a),
6 Plaintiff and other aggrieved employees would be entitled to recover penalties under Labor Code §
7 226(e) and/or 2698 *et seq.*

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

13 **FIRST CAUSE OF ACTION**

14 **PRIVATE ATTORNEYS GENERAL ACT**

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

16 42. Plaintiff re-alleges and incorporates by reference each and every allegation outlined
17 in the preceding paragraphs.

18 43. Defendant has committed several Labor Code violations against Plaintiff and other
19 similarly aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code
20 § 2698 *et seq.*, acting on behalf of the State of California, brings this representative action against
21 Defendant to recover the civil penalties due to Plaintiff, other similarly aggrieved employees, and the
22 State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not
23 limited to (1) \$100 for each initial violation and \$200 for each subsequent violation per employee per
24 pay period for those violations of the Labor Code for which no civil penalty is specifically provided
25 based on the following Labor Code violations:

- 26 a) Defendant’s failure to record and pay for all hours worked;
27 b) Defendant’s failure to pay all overtime wages at the “regular rate of pay” because
28 Defendant failed to include all forms of compensation, including, but not limited to, shift differential,

1 commissions, incentives, non-discretionary bonuses, and other forms of remuneration;

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

3 d) Defendant's failure to allow and permit legally compliant meal periods or compensation
4 at the "regular rate of pay" in lieu thereof;

5 e) Defendant's failure to allow and permit legally compliant rest periods or compensation
6 at the "regular rate of pay" in lieu thereof;

7 f) Defendant's failure to furnish legally compliant wage statements pursuant to Labor
8 Code § 226(a); and

9 g) Defendant's failure to pay final wages to aggrieved employees in a timely manner at the
10 time of separation from employment was unlawful.

11 44. On or about April 25, 2024, Plaintiff notified Defendant Radial, Inc. ("Defendant")
12 via certified mail and the California Labor and Workforce Development Agency ("LWDA") via its
13 website of Defendant's violations of the California Labor Code § 2698 *et. seq.* with respect to
14 violations of the California Labor Code identified in Paragraph 43 (a)-(g). Now that sixty-five days
15 (65) have passed from Plaintiff notifying Defendant of these violations, Plaintiff has exhausted his
16 administrative requirements for bringing a claim under the Private Attorneys General Act with respect
17 to these violations.

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

22 **PRAYER FOR RELIEF**

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

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

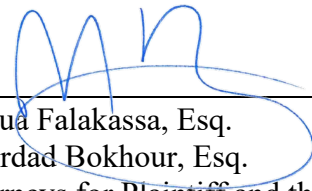
1 specifically provided under the Labor Code;

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

4 3. For such other relief that the Court may deem just and proper.
5

6 Dated: July 2, 2024

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8
9 By: 

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Mehrdad Bokhour, Esq.

Attorneys for Plaintiff and the Aggrieved Employees
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