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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JASMINE ROBLES, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

RITMO LATINO WIRELESS LLC., a New
Jersey Limited Liability Company; and DOES 1-
50, inclusive.

Defendants.

CASE NO.: **24STCV16964**

**PAGA REPRESENTATIVE ACTION
COMPLAINT:**

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

UNLIMITED CIVIL CASE

1 Plaintiff Jasmine Robles (“Plaintiff”), on behalf of the State of California, hereby brings this
2 PAGA Representative Action Complaint (“Complaint”) against Defendant Ritmo Latino Wireless
3 LLC (“Defendant”) and DOES 1 to 50 (collectively “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendant is a T-Mobile retainer and is one of T-Mobile’s top-performing TPR
6 partners nationwide and 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. **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 pay all overtime
12 compensation and sick pay wages at the proper legal rates by failing to calculate the “regular rate of
13 pay” correctly. Moreover, Plaintiff alleges that Defendant’s meal and rest period policies and
14 practices failed to allow and permit aggrieved employees to take all compliant and timely meal and
15 rest periods or pay premium wages at the “regular rate of pay” in lieu thereof. Plaintiff further alleges
16 that Defendant failed to provide aggrieved employees with accurate written itemized wage statements
17 in violation of Labor Code § 226(a), failed to reimburse all necessary business expenses incurred,
18 and failed to timely pay all final wages upon separation of employment in violation of Labor Code
19 §§ 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, 1174, 1174.4,
24 1199, 2802-2804, 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 Los Angeles. Defendant owns, maintains offices, transacts business, has an agent or agents within
7 the County of Los Angeles, and/or otherwise are found within the County of Los Angeles, and
8 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 Los Angeles and is and/or was the legal employer of Plaintiff and the
14 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, 1174, 1174.4, 1199, 2802-2804, and the California Business and
18 Professions Code § 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 Los Angeles.

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 is one of T-Mobile's top-performing TPR partners nationwide and in
17 California.

18 16. Plaintiff was employed by Defendant as a non-exempt employee with the title of
19 "Retail Sales Associate" beginning on July 22, 2022, out of its Palmdale, California, location.

20 17. Plaintiff and other aggrieved employees (including, but not limited to, Retail Sales
21 Associate, Retail Assistant Manager, Bilingual Retail Salesperson, Sales Analyst, Operations
22 Analyst, Mobile Expert, Office Manager, and all other aggrieved positions) were responsible for all
23 aspects of Defendant's business in the State of California. However, in these roles, Plaintiff and
24 aggrieved employees were often not afforded all protections and rights conferred under the California
25 Labor Code and applicable Wage Orders.

26 18. 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 she was
2 subjected during her employment.

3 19. 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, shift pay,
8 incentives, non-discretionary bonuses, and all other forms of remuneration in calculating the "regular
9 rate of pay" for purposes of overtime compensation.

10 20. 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 21. Labor Code § 510 requires an employer to compensate an employee who works more
26 than eight (8.0) hours in one workday, forty (40.0) 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 (12.0) hours in a
2 workday or more than eight (8.0) hours on the seventh consecutive day of work. Pursuant to Section
3 3 of the applicable Wage Orders, aggrieved employees shall not be employed more than eight (8.0)
4 hours in any workday or more than 40.0 hours in any workweek unless the employee receives one
5 and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in
6 the workweek.

7 22. 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 23. 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 24. 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 25. 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 26. 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 27. 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, staffing shortages, and
12 work demands, Plaintiff and other aggrieved employees often could not take timely and uninterrupted
13 net 30-minute first meal periods before the end of the fifth hour of work. Further, when Plaintiff and
14 other aggrieved employees worked more than 10.0 hours in a shift, they were not always allowed and
15 permitted to take a mandated second meal period before the end of the tenth hour of work in violation
16 of the Labor Code and applicable Wage Orders. Indeed, Plaintiff's and other aggrieved employees'
17 meal periods were often interrupted and/or lasted fewer than 30 minutes due to Defendant's meal
18 period policies/procedures, operational requirements, and work demands.

19 28. 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) and
22 Labor Code § 226.7.

23 29. 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 30. 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 31. 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 32. 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 33. 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 wages, sick pay wages,
20 Defendant’s failure to adequately pay for all overtime/sick pay wages at the appropriate legal rate,
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 34. In addition to Defendant’s 226(a) violation outlined above, the wage statements issued
26 by Defendant to Plaintiff and other aggrieved employees also fail to include all applicable hourly
27 rates in effect during the pay period and the corresponding number of hours worked at an hourly rate
28 in violation of Labor Code § 226(a)(9) and fails to include the correct name of the legal entity that

1 this employer in violation of Labor Code § 226(a)(8).

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

7 36. Thus, for the violations of Labor Code section 226 described above, Plaintiff and other
8 aggrieved employees may also recover Labor Code § 226.3 penalties for Defendant’s violations of
9 Labor Code § 226(a). Consequently, because Defendant failed to comply with Labor Code § 226(a),
10 Plaintiff and other aggrieved employees would be entitled to recover penalties under Labor Code §
11 226(e) and/or 2698 *et seq.*

12 37. Furthermore, because Defendant failed to pay all overtime, sick pay wages, and meal
13 and rest period premiums at the “regular rate of pay,” Defendant also failed and continues to fail to
14 pay Plaintiff and other aggrieved employees all wages owed at their time of separation from
15 employment in violation of Labor Code §§ 201-203. Thus, aggrieved employees would be entitled to
16 recover waiting time penalties under Labor Code §§ 201-203 and/or 2698 *et seq.*

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

1 would be entitled to civil penalties under Labor Code § 2698 *et seq.*

2 **FIRST CAUSE OF ACTION**

3 **PRIVATE ATTORNEYS GENERAL ACT**

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

5 39. Plaintiff re-alleges and incorporates by reference each and every allegation outlined
6 in the preceding paragraphs.

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

15 a) Defendant’s failure to pay all overtime wages at the “regular rate of pay” because
16 Defendant failed to include all forms of compensation, including, but not limited to, shift differential,
17 commissions, incentives, non-discretionary bonuses, and other forms of remuneration;

18 b) Defendant’s failure to pay all sick pay at the “regular rate of pay”;

19 c) Defendant’s failure to allow and permit legally compliant meal periods or compensation
20 at the “regular rate of pay” in lieu thereof;

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

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

25 f) Defendant’s failure to timely pay final wages to aggrieved employees at the time of
26 separation from employment was unlawful; and

27 g) Defendant’s failure to reimburse aggrieved employees for all necessary business
28 expenses in violation of Labor Code §§ 2802-2804.

41. On or about May 3, 2024, Plaintiff notified Defendant Ritmo Latino Wireless LLC. (“Defendant”) via certified mail and the California Labor and Workforce Development Agency (“LWDA”) via its website of Defendant’s violations of the California Labor Code § 2698 *et. seq.* with respect to violations of the California Labor Code identified in Paragraph 40 (a)-(g). Now that sixty-five days (65) have passed from Plaintiff notifying Defendant of these violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

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

PRAYER FOR RELIEF

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

1. Upon the First Cause of Action, for civil penalties due to 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 under the Labor Code;

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

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

Dated: July 9, 2024

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