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12 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **IN AND FOR THE COUNTY OF SAN MATEO**

14 LUIS CRUZ, individually, and on behalf
15 of all others similarly situated,

16 Plaintiff,

17 vs.

18 BI-RITE RESTAURANT SUPPLY CO.,
19 INC., and DOES 1 through 100, inclusive,

20 Defendants.

Case No. 20-CIV-04128

PAGA REPRESENTATIVE ACTION

**SECOND AMENDED PRIVATE
ATTORNEYS GENERAL ACT COMPLAINT
FOR CIVIL PENALTIES**

[CAL. LAB CODE § 2699]

[JURY TRIAL DEMANDED]

21 Representative Plaintiff alleges as follows:

22 **INTRODUCTION**

23 1. This is a representative action seeking civil penalties under the Labor Code Private
24 Attorneys General Act of 2004, codified as California Labor Code §§ 2698 *et seq.* (“PAGA”).

25 2. Plaintiff Luis Cruz (“Representative Plaintiff” or “Plaintiff”) brings this action
26 individually as an aggrieved employee and on behalf of all other persons (“Aggrieved Employees”)
27 who are or have been employed by defendant Bi-Rite Restaurant Supply Co., Inc., and does 1
28 through 100, inclusive (collectively “Defendants”) as non-exempt delivery drivers within the State
of California at any time after July 9, 2019.

1 3. The “Relevant Time Period” is designated as the time from July 9, 2019 through
2 the date of trial, based upon the allegation that the violations of California’s wage and hour laws,
3 as described more fully below, have been ongoing throughout that time.

4 1. During the Relevant Time Period, Defendant has had a consistent policy of (1)
5 unlawfully denying Plaintiff and Aggrieved Employees statutorily-mandated meal and rest
6 periods, (2) willfully failing to provide Plaintiff and Aggrieved Employees with accurate
7 semimonthly itemized wage statements reflecting the total number of hours each worked, the
8 applicable deductions, and the applicable hourly rates in effect during the pay period, and (3)
9 willfully failing to pay compensation in a prompt and timely manner to Plaintiff and those
10 Aggrieved Employees whose employment with Defendant has terminated.

11 4. Defendants operated a restaurant supply company within California for which
12 Representative Plaintiff worked as a delivery driver. The Representative Plaintiff is informed and
13 believes and, on that basis, alleges that, within the relevant time period, Defendants employed
14 scores of individuals in California to perform these services, employment positions which did not,
15 and currently do not, meet any known test for exemption from the payment of overtime wages
16 and/or the entitlement to meal or rest periods.

17 5. Despite actual knowledge of these facts and legal mandates, Defendants have and
18 continue to enjoy an advantage over their competition and a resultant disadvantage to their workers
19 by electing not to sufficiently offer rest periods to Aggrieved Employees and by not providing
20 them all pay when due and/or when certain Aggrieved Employees’ employment with Defendants
21 terminated.

22 6. Representative Plaintiff is informed and believes and, based thereon, alleges that
23 Defendants’ knew of these facts and legal mandates yet, nonetheless, repeatedly authorized and/or
24 ratified the violation of the laws cited herein.

25 7. Despite Defendants’ knowledge of Plaintiff’s and Aggrieved Employees’
26 entitlement to these benefits of employment, Defendants failed to provide the same, in violation
27 of California state statutes, the applicable California Industrial Welfare Commission Wage Order,
28

1 and Title 8 of the California Code of Regulations. This action is brought to redress and end this
2 prolonged pattern of unlawful conduct once and for all.

3
4 **JURISDICTION AND VENUE**

5 8. This Court has jurisdiction over Plaintiff's and Aggrieved Employees' claims for
6 civil penalties sought herein under the California Labor Code §§ 2698 *et seq.*

7 9. Venue as to Defendants is proper in this judicial district pursuant to California Code
8 of Civil Procedure § 395(a). Defendants provided the aforementioned services within this County
9 where Plaintiff and numerous Aggrieved Employees worked, transacts business, has agents, and
10 is otherwise within this Court's jurisdiction for purposes of service of process. The unlawful acts
11 alleged herein have had a direct effect on Representative Plaintiff and those similarly situated
12 within the State of California and within this County.

13
14 **PLAINTIFF(S)**

15 10. Representative Plaintiff is a natural person who was employed by Defendants as a
16 delivery driver during the Relevant Time Period. At all times herein relevant, Plaintiff was and is
17 now an individual within the category of Aggrieved Employees further described and defined
18 herein.

19 11. In these capacities, Representative Plaintiff is and was entitled to full, uninterrupted
20 and statutorily-mandated meal and rest periods, as well as other benefits of employment as set
21 forth herein.

22 12. As used throughout this Complaint, the term "Aggrieved Employees" refers to the
23 named Plaintiff herein as well as each and every person employed by Defendants in California as
24 a non-exempt employee during the Relevant Time Period.

25 13. Plaintiff brings this action individually and as a representative action, pursuant to
26 California Labor Code §§ 2699, on behalf of all Aggrieved Employees similarly situated and
27 proximately damaged by the unlawful conduct described herein.

28 **DEFENDANTS**

1 14. Representative Plaintiff is informed and believes and, based thereon, alleges that,
2 at all times herein relevant, Defendants (including the Doe defendants) did business within the
3 State of California by providing restaurant supply services.

4 15. Those defendants identified as Does 1 through 100, inclusive, are and were, at all
5 relevant times herein-mentioned, officers, directors, partners, and/or managing agents of some or
6 each of the remaining defendants. Representative Plaintiff is informed and believes and, on that
7 basis, alleges that, at all relevant times herein mentioned, Defendants, and each of them, employed
8 and/or exercised control over the wages, hours, and/or working conditions of the Representative
9 Plaintiff and the Aggrieved Employees within the State of California.

10 16. The Representative Plaintiff is unaware of the true names and capacities of those
11 defendants sued herein as Does 1 through 100, inclusive and, therefore, sues these defendants by
12 such fictitious names. The Representative Plaintiff will seek leave of court to amend this
13 Complaint when such names are ascertained. The Representative Plaintiff is informed and believes
14 and, on that basis, alleges that each of the fictitiously-named defendants were responsible in some
15 manner for, gave consent to, ratified, and/or authorized the conduct herein alleged and that the
16 damages, as herein alleged, were proximately caused thereby.

17 17. Representative Plaintiff is informed and believes and, on that basis, alleges that, at
18 all relevant times herein mentioned, each of the defendants was the agent and/or employee of each
19 of the remaining defendants and, in doing the acts herein alleged, was acting within the course and
20 scope of such agency and/or employment.

21
22 **REPRESENTATIVE AND COMMON ALLEGATIONS**

23 18. The Representative Plaintiff brings this action as a representative action on behalf
24 of the following category of Aggrieved Employees:

25 **Non-Exempt Employees**

26 “All persons employed by Defendants as non-exempt employees in
27 California on or after July 9, 2019.”
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1 19. Defendants' officers and directors are excluded from the category of Aggrieved
2 Employees defined in the preceding paragraph.

3 20. As described herein, for years, Defendants have knowingly failed to properly
4 compensate Plaintiff and the Aggrieved Employees for all wages earned and due (including, but
5 not necessarily limited to, compensation for missed meal and/or rest periods). Moreover,
6 Defendants have failed to provide Plaintiff and the Aggrieved Employees with net ten-minute rest
7 periods for work shifts exceeding four hours or a major fraction thereof. Defendants have declined
8 to pay these wages, even upon an Aggrieved Employee's termination or resignation from
9 employment, in blatant violation of California Labor Code §§ 201-204, inclusive.

10 21. As a direct and proximate result of Defendants' unlawful conduct, as set forth
11 herein, Plaintiff and Aggrieved Employees are entitled to penalties pursuant to Labor Code §§
12 2698 *et seq.* for violations described above including missed rest periods, in an amount to be
13 established at trial. As a further direct and proximate result of Defendants' unlawful conduct, as
14 set forth herein, Plaintiff and Aggrieved Employees are also entitled to recover attorneys' fees,
15 litigation costs, and restitution of ill-gotten gains, pursuant to statute.

16 22. Representative Plaintiff has complied with the procedures for bringing suit (as
17 specified in California Labor Code § 2699.3) necessary to maintain a civil action against
18 Defendants for violation of (and/or recovery under) California's Private Attorneys General Act.
19 On July 9, 2019, Representative Plaintiff served and filed a notice upon the Labor and Workforce
20 Development Agency in compliance with Labor Code §§ 2699, *et seq.*

21
22 **FIRST CAUSE OF ACTION**
PRIVATE ATTORNEYS GENERAL ACT CLAIM
23 **(California Labor Code §§ 2699)**

24 23. Each and every allegation of the preceding paragraphs is incorporated in this cause
25 of action with the same force and effect as though fully set forth herein.

26 24. California Labor Code § 2699(a) provides, in pertinent part:
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28 Notwithstanding any other provision of the law, any provision of this code
that provides for a civil penalty to be assessed and collected by the Labor
and Workforce Development Agency or any of its departments, divisions,

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commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees. . .

26. Representative Plaintiff and each and every other Aggrieved Employee working for Defendants within one year of Representative Plaintiff's exhaustion of its administrative prerequisites under the California Private Attorneys General Act are "aggrieved employees," as defined by California Labor Code § 2699(c), because they were employed by Defendants and were among the employees against whom violations of law were committed.

27. Representative Plaintiff has met all of the requirements set forth in California Labor Code § 2699.3 necessary to maintain a civil action against Defendants for violations of (and/or recovery under) California's Private Attorneys General Act.

28. Representative Plaintiff brings this action individually and on behalf of all Aggrieved Employees alleging violations of the California Labor Code provisions cited in the preceding paragraphs.

29. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Representative Plaintiff and Aggrieved Employees are entitled to recover penalties as provided by California Labor Code § 2699, in an amount to be established at trial, as well as costs and attorneys' fees, pursuant to statute.

RELIEF SOUGHT

WHEREFORE, the Representative Plaintiff, individually and on behalf of the Aggrieved Employees, prays for judgment and the following specific relief against Defendants, and each of them, jointly and separately, as follows:

1. That the Court declare, adjudge, and decree that this action is a proper representative action pursuant to California Labor Code § 2699;

2. That the Court make an award of civil penalties for violations of the California Labor Code, pursuant to California Labor Code § 2699;

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3. For reasonable attorneys' fees, pursuant to California Labor Code § 2699(g) and/or California Code of Civil Procedure § 1021.5;

4. For costs of suit and any and all such other relief as the Court deems just and proper; and

5. For all other Orders, findings and determinations identified and sought in this Complaint.

JURY DEMAND

Representative Plaintiff and the Aggrieved Employees hereby demand a trial by jury of all issues trial as of right by jury.

Dated: December 10, 2020

SCOTT COLE & ASSOCIATES, APC

By: _____
Laura Van Note, Esq.
Attorneys for Representative Plaintiff, et al.

