

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

2 Norman B. Blumenthal (State Bar #068687)

3 Kyle R. Nordrehaug (State Bar #205975)

4 Aparajit Bhowmik (State Bar #248066)

5 Nicholas J. De Blouw (State Bar #280922)

6 2255 Calle Clara

7 La Jolla, CA 92037

8 Telephone: (858)551-1223

9 Facsimile: (858) 551-1232

10 Website: www.bamlawca.com

11 Attorneys for Plaintiff

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF SAN DIEGO**

14 JAMES STARVOICE, on behalf of the
15 State of California, as a private attorney
16 general,

17 Plaintiff,

18 vs.

19 G4S SECURE SOLUTIONS (USA) INC.,
20 a Corporation; and DOES 1 through 50,
21 inclusive,

22 Defendants.

Case No. 37-2021-00007316-CU-OE-CTL

REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
226(a), 226.7, 351, 510, 512, 558(a)(1)(2),
1194, 1197, 1197.1, 1198, 2802,
California Code of Regulations, Title 8,
Section 11040, Subdivision 5(A)-(B),
California Code of Regulations, Title 8,
Section 1 1070(14) (Failure to Provide
Seating)

1 Plaintiff James Starvoice (“PLAINTIFF”), on behalf of the people of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on
4 information and belief, except for his own acts and knowledge which are based on personal
5 knowledge, the following:

6 INTRODUCTION

7 1. PLAINTIFF brings this action against Defendant G4S SECURE SOLUTIONS
8 (USA) INC.(“DEFENDANT”) seeking only to recover PAGA civil penalties for himself, and
9 on behalf of all current and former aggrieved employees that worked for DEFENDANT.
10 PLAINTIFF does not seek to recover anything other than penalties as permitted by
11 California Labor Code § 2699. To the extent that statutory violations are mentioned for wage
12 violations, PLAINTIFF does not seek underlying general and/or special damages for those
13 violations, but simply the civil penalties permitted by California Labor Code § 2699.

14 2. California has enacted the PAGA to permit an individual to bring an action on
15 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and sole
16 nature of this action.

17 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
18 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
19 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
20 complaint should be construed as attempting to obtain any relief that would not be available in
21 a PAGA-only action.

22 THE PARTIES

23 4. Defendant G4S Secure Solutions (USA) Inc.(“DEFENDANT”) is a California
24 limited liability company that at all relevant times mentioned herein conducted and continues
25 to conduct substantial business in the state of California.

26 5. DEFENDANT provides integrated security solutions. DEFENDANT offers
27 detection and assessment systems, electric monitoring, security facilities, community
28

1 supervision, physical protection, software and technology, and security professionals.

2 6. PLAINTIFF was employed by DEFENDANT in California from 2015 to
3 February 25, 2020 and was at all times classified by DEFENDANT as a non-exempt employee,
4 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
5 of minimum and overtime wages due for all time worked.

6 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
7 the requirements and exhaust the administrative procedures under the Private Attorney General
8 Act, brings this Representative Action on behalf of the State of California with respect to
9 himself and all individuals who are or previously were employed by DEFENDANT in
10 California and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during
11 the time period of June 5, 2019 until a date as determined by the Court (the "PAGA PERIOD").

12 8. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
13 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
14 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
15 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510,
16 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,
17 Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1
18 1070(14) (Failure to Provide Seating), and the applicable Wage Order(s). Based upon the
19 foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within
20 the meaning of Labor Code § 2699, *et seq.*

21 9. The true names and capacities, whether individual, corporate, subsidiary,
22 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
23 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
24 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
25 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
26 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
27 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
28 responsible in some manner for one or more of the events and happenings that proximately

caused the injuries and damages hereinafter alleged.

10. The agents, servants and/or employees of the Defendants and each of them acting on behalf of the Defendants acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF and the other AGGRIEVED EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants' agents, servants and/or employees.

THE CONDUCT

11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying them for all the time they were under DEFENDANT's control. Specifically, PLAINTIFF and AGGRIEVED EMPLOYEES would clock out of DEFENDANT's timekeeping system, in order to perform additional work for DEFENDANT as required to meet DEFENDANT's job requirements. DEFENDANT required PLAINTIFF and AGGRIEVED EMPLOYEES to work two (2) shifts in a single workday without paying them for all the time they were under DEFENDANT's control, specifically by requiring PLAINTIFF and the AGGRIEVED EMPLOYEES to clock out of DEFENDANT's timekeeping system after the end of their first work shift for the workday and then drive to their second work shift location assigned by DEFENDANT. Furthermore, the PLAINTIFF and AGGRIEVED EMPLOYEES were not paid for the time spent traveling their first designated job site to their second designated job site. Further, PLAINTIFF and other AGGRIEVED EMPLOYEES from time to time were not paid wages for all time worked, including overtime wages, such that in the aggregate employees were underpaid wages as a result of

1 DEFENDANT's pattern and practice of unevenly rounding time worked by its employees.
2 DEFENDANT's policy and practice not to pay PLAINTIFF and other AGGRIEVED
3 EMPLOYEES for all time worked, is evidenced by DEFENDANT's business records.

4 12. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
5 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks
6 and were not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED
7 EMPLOYEES were required from time to time to perform work as ordered by DEFENDANT
8 for more than five (5) hours during some shifts without receiving a meal break. Further,
9 DEFENDANT from time to time failed to provide PLAINTIFF and AGGRIEVED
10 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
11 were required by DEFENDANT to work ten (10) hours of work. PLAINTIFF and other
12 AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional compensation
13 and in accordance with DEFENDANT's corporate policy and practice.

14 13. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
15 were also required from time to time to work in excess of four (4) hours without being provided
16 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
17 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
18 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
19 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
20 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
21 PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one hour
22 wages in lieu thereof. Additionally, the applicable California Wage Order requires employers
23 to provide employees with off-duty rest periods, which the California Supreme Court defined
24 as time during which an employee is relieved from all work related duties and free from
25 employer control. In so doing, the Court held that the requirement under California law that
26 employers authorize and permit all employees to take rest period means that employers must
27 relieve employees of all duties and relinquish control over how employees spend their time
28 which includes control over the locations where employees may take their rest period.

1 Employers cannot impose controls that prohibit an employee from taking a brief walk - five
2 minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and other
3 AGGRIEVED EMPLOYEES from unconstrained walks and was unlawful based on
4 Defendant's rule which stated PLAINTIFF and other AGGRIEVED EMPLOYEES could not
5 leave the work premises during their rest period and also that these employees were to keep
6 their radios on at all times during their rest breaks in case they needed to respond to
7 DEFENDANT or DEFENDANT's customers..

8 14. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
9 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
10 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
11 DEFENDANT is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all
12 time worked, meaning the time during which an employee was subject to the control of an
13 employer, including all the time the employee was permitted or suffered to permit this work.
14 DEFENDANT required these employees to work off the clock without paying them for all the
15 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have
16 known that PLAINTIFF and the other AGGRIEVED EMPLOYEES were under compensated
17 for all time worked. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited
18 time worked by working without their time being accurately recorded and without compensation
19 at the applicable minimum wage and overtime wage rates. To the extent that the time worked
20 off the clock did not qualify for overtime premium payment, DEFENDANT failed to pay
21 minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
22 1197, and 1197.1.

23 15. State and federal law provide that employees must be paid overtime at one-and-
24 one-half times their "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES
25 were compensated at an hourly rate plus incentive pay that was tied to specific elements of an
26 employee's performance.

27 16. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
28 compensation was DEFENDANT's non-discretionary incentive program that paid PLAINTIFF

1 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
2 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
3 hourly basis with incentive compensation when the employees met the various performance
4 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
5 overtime to PLAINTIFF and other AGGRIEVED EMPLOYEES, DEFENDANT failed to
6 include the incentive compensation as part of the employees' "regular rate of pay" for purposes
7 of calculating overtime pay. Management and supervisors described the incentive program to
8 potential and new employees as part of the compensation package. As a matter of law, the
9 incentive compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must
10 be included in the "regular rate of pay." DEFENDANT also underpaid sick pay wages to
11 PLAINTIFF and other AGGRIEVED EMPLOYEES by failing to pay such wages at the regular
12 rate of pay. Specifically, PLAINTIFF and other non-exempt employees regularly earn non-
13 discretionary remuneration, including but not limited to, incentives, shift differential pay, and
14 bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick pay
15 to PLAINTIFF and other AGGRIEVED EMPLOYEES at their base rates of pay. The failure
16 to do so has resulted in an underpayment of overtime compensation to PLAINTIFF and other
17 AGGRIEVED EMPLOYEES by DEFENDANT.

18 17. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
19 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
20 incurred by PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
21 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
22 2802, employers are required to indemnify employees for all expenses incurred in the course
23 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
24 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
25 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
26 directions of the employer, even though unlawful, unless the employee, at the time of obeying
27 the directions, believed them to be unlawful."

28 18. In the course of their employment PLAINTIFF and other AGGRIEVED

1 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
2 cellular phones and personal vehicles as a result of and in furtherance of their job duties as
3 employees for DEFENDANT but were not reimbursed or indemnified by DEFENDANT for
4 the cost associated with the use of their personal cellular phones and personal vehicles,
5 including but not limited to gas money and paying for parking, for DEFENDANT's benefit.
6 As a result, in the course of their employment with DEFENDANT, PLAINTIFF and other
7 AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which included, but
8 were not limited to, costs related to the use of their personal cellular phones and personal
9 vehicles all on behalf of and for the benefit of DEFENDANT.

10 19. Further, PLAINTIFF alleges that the worksites for DEFENDANT's California
11 customers are generally similar in their layout and design and that there is ample space to allow
12 for the presence and use of a stool or seat by DEFENDANT's Security Guards during the
13 performance of their work duties. DEFENDANT's Security Guards working at
14 DEFENDANT's locations spend a very substantial portion, and, in many workdays, the vast
15 majority of their working time standing up. The nature of the Security Guards position can
16 reasonably be accomplished while using a seat/stool.

17 20. In violation of the applicable sections of the California Labor Code and the
18 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
19 DEFENDANT as a matter of company policy, practice and procedure, intentionally and
20 knowingly fails to provide PLAINTIFF and the other AGGRIEVED EMPLOYEES suitable
21 seating when the nature of these employees' work reasonably permits sitting.

22 21. DEFENDANT knew or should have known that PLAINTIFF and other
23 AGGRIEVED EMPLOYEES were entitled to suitable seating and/or were entitled to sit when
24 it did not interfere with the performance of their duties, and that DEFENDANT did not provide
25 suitable seating and/or did not allow them to sit when it did not interfere with the performance
26 of their duties.

27 22. By reason of this conduct applicable to PLAINTIFF and other AGGRIEVED
28 EMPLOYEES, DEFENDANT violated California Labor Code Section 1198 and Wage Order

1 4-2001, Section 14 by failing to provide suitable seats.

2 23. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
3 other AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed
4 to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
5 provides that every employer shall furnish each of his or her employees with an accurate
6 itemized wage statement in writing showing, among other things, gross wages earned and all
7 applicable hourly rates in effect during the pay period and the corresponding amount of time
8 worked at each hourly rate. Aside, from the violations listed above in this paragraph,
9 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
10 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to
11 time provided PLAINTIFF and the other AGGRIEVED EMPLOYEES with wage statements
12 which violated Cal. Lab. Code § 226.

13 24. In violation of the applicable sections of the California Labor Code and the
14 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
15 a matter of company policy, practice and procedure, intentionally and knowingly failed to
16 compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES for missed meal and rest
17 periods. This policy and practice of DEFENDANT is intended to purposefully avoid the
18 payment for all time worked as required by California law which allows DEFENDANT to
19 illegally profit and gain an unfair advantage over competitors who complied with the law. To
20 the extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against
21 DEFENDANT, the PAGA PERIOD should be adjusted accordingly.

22 25. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
23 EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure which failed
24 to accurately calculate and record all missed meal and rest periods by PLAINTIFF and other
25 AGGRIEVED EMPLOYEES. The proper recording of these employees' missed meal and rest
26 breaks is the DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of
27 the obligation to meet this burden, DEFENDANT failed to properly calculate and/or pay all
28 required compensation for work performed by the AGGRIEVED EMPLOYEES and violated

1 the California Labor Code and regulations promulgated thereunder as herein alleged.

2 26. All of the conduct and violations alleged herein occurred during the PAGA
3 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
4 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
5 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
6 AJDAR 12157 (Certified for Publication 12/19/18).

7
8 **JURISDICTION AND VENUE**

9 27. This Court has jurisdiction over this Action pursuant to California Code of Civil
10 Procedure, Section 410.10.

11 28. Venue is proper in this Court pursuant to California Code of Civil Procedure,
12 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
13 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
14 in this County and/or conducts substantial business in this County, and (ii) committed the
15 wrongful conduct herein alleged in this County against PLAINTIFF and the AGGRIEVED
16 EMPLOYEES.

17 **FIRST CAUSE OF ACTION**

18 **For Violation of the Private Attorneys General Act**

19 **[Cal. Lab. Code §§ 2698, *et seq.*]**

20 **(By PLAINTIFF and Against All Defendants)**

21 29. PLAINTIFF incorporates by reference the allegations set forth in paragraphs 1-28,
22 supra, as though fully set forth at this point.

23 30. PAGA is a mechanism by which the State of California itself can enforce state
24 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
25 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
26 fundamentally a law enforcement action designed to protect the public and not to benefit private
27 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
28 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In

1 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
2 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
3 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be
4 subject to arbitration.

5 31. PLAINTIFF, and such persons that may be added from time to time who satisfy
6 the requirements and exhaust the administrative procedures under the Private Attorney General
7 Act, brings this Representative Action on behalf of the State of California with respect to
8 himself and all individuals who are or previously were employed by DEFENDANT in
9 California and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during
10 the time period of June 5, 2019 until a date as determined by the Court (the "PAGA PERIOD").

11 32. On June 5, 2020, PLAINTIFF gave written notice by electronic mail to the Labor
12 and Workforce Development Agency (the "Agency") and by certified mail to the employer of
13 the specific provisions of this code alleged to have been violated as required by Labor Code §
14 2699.3. The statutory waiting period for PLAINTIFF to add these allegations to the Complaint
15 has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a
16 representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of
17 California with respect to all AGGRIEVED EMPLOYEES as herein defined.

18 33. The policies, acts and practices heretofore described were and are an unlawful
19 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
20 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
21 and provide legally required meal and rest periods, (c) failed to pay overtime wages, (d) failed
22 to pay minimum wages, (e) failed to reimburse for required business expenses, (f) failed to pay
23 wages when due, and (g) failed to provide seating, all in violation of the applicable Labor Code
24 sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512,
25 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section
26 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14)
27 (Failure to Provide Seating), and the applicable Industrial Wage Order(s), and thereby gives rise
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1 to civil penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of only civil
2 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
3 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
4 the other AGGRIEVED EMPLOYEES.

5
6 **PRAYER FOR RELIEF**

7 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
8 severally, as follows:

9 1. On behalf of the State of California and with respect to all AGGRIEVED
10 EMPLOYEES:

11 A) Recovery of civil penalties as prescribed by the Labor Code Private
12 Attorneys General Act of 2004; and,

13 B) An award of attorneys' fees and cost of suit, as allowable under the
14 law, including, but not limited to, pursuant to Labor Code §2699.

15
16 Dated: February 19, 2021 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

17
18 By: /s/ Norman Blumenthal
19 Norman B. Blumenthal

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28 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code §558(a)(3).