

1 Scott Edward Cole, Esq. (S.B. #160744)
2 Laura Grace Van Note, Esq. (S.B. #310160)
3 **SCOTT COLE & ASSOCIATES, APC**
4 555 12th Street, Suite 1725
5 Oakland, California 94607
6 Telephone: (510) 891-9800
7 Facsimile: (510) 891-7030
8 Email: scole@scalaw.com
9 Email: lvannote@scalaw.com
10 Web: www.scalaw.com

11 Attorneys for Representative Plaintiff,
12 and Aggrieved Employees

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

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

17 Plaintiff,

18 vs.

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

21 Defendants.

Case No. 20-CIV-04128

PAGA REPRESENTATIVE ACTION

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

[CAL. LAB CODE § 2699]

[JURY TRIAL DEMANDED]

22 Representative Plaintiff alleges as follows:

23 **INTRODUCTION**

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

26 2. Plaintiff Luis Cruz ("Representative Plaintiff" or "Plaintiff") brings this action
27 individually as an aggrieved employee and on behalf of all other persons ("Aggrieved Employees")
28 who are or have been employed by defendant Bi-Rite Restaurant Supply Co., Inc., and does 1

1 through 100, inclusive (collectively “Defendants”) as non-exempt delivery drivers within the State
2 of California at any time after July 9, 2019.

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

6 4. During the Relevant Time Period, Defendants had a consistent policy that (1)
7 violated California Labor Code § 227.3 by failing to pay vested vacation time upon the termination
8 of Plaintiff and Aggrieved Employees employment; (2) violated California Labor Code §§ 200-
9 204, 218, 218.5, 218.6, 558, and/or §§ 11 and 12 of the relevant IWC Wage Order by failing to
10 pay all wages due (including vacation pay); and (3) failed to timely pay wages upon termination
11 of Plaintiff and Aggrieved Employees’ employment, in violation of California Labor Code §§ 200-
12 203, and 256.

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

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

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

27 8. Despite Defendants’ knowledge of Plaintiff’s and Aggrieved Employees’
28 entitlement to these benefits of employment, Defendants failed to provide the same, in violation

1 of California state statutes, the applicable California Industrial Welfare Commission Wage Order,
2 and Title 8 of the California Code of Regulations. This action is brought to redress and end this
3 prolonged pattern of unlawful conduct once and for all.
4

5 **JURISDICTION AND VENUE**

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

8 10. Venue as to Defendants is proper in this judicial district pursuant to California Code
9 of Civil Procedure § 395(a). Defendants provided the aforementioned services within this County
10 where Plaintiff and numerous Aggrieved Employees worked, transacts business, has agents, and
11 is otherwise within this Court's jurisdiction for purposes of service of process. The unlawful acts
12 alleged herein have had a direct effect on Representative Plaintiff and those similarly situated
13 within the State of California and within this County.
14

15 **PLAINTIFF(S)**

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

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

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

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

DEFENDANTS

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

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

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

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

REPRESENTATIVE AND COMMON ALLEGATIONS

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

Non-Exempt Employees

"All persons employed by Defendants as non-exempt employees in California on or after July 9, 2019."

20. Defendants' officers and directors are excluded from the category of Aggrieved Employees defined in the preceding paragraph.

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

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

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

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

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

25. California Labor Code § 2699(a) provides, in pertinent part:

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,

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

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

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

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

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

20 **RELIEF SOUGHT**

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

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

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

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

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

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

7
8 **JURY DEMAND**

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

11 Dated: October 26, 2020

SCOTT COLE & ASSOCIATES, APC

12
13
14 By:



Laura Van Note, Esq.
Attorneys for Representative Plaintiff
and Aggrieved Employees

PROOF OF SERVICE

I am over 18 years of age, not a party to the above-captioned action, and am employed by the law firm of Scott Cole & Associates, APC, 555 12th St., Suite 1725, Oakland, California 94607.

On this date, I served a copy of:

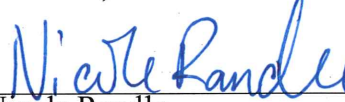
FIRST AMENDED PRIVATE ATTORNEYS GENERAL ACT COMPLAINT FOR CIVIL PENALTIES)

	By depositing the document(s) with the U.S. Postal Service, with postage fully prepaid, addressed as indicated below, in the ordinary course of business.
	By facsimile transmission to the fax number(s) below, before 5:00 p.m. PST.
	By placing the document(s) in a sealed Federal Express envelope, affixing a pre-paid air bill and delivering it to a Federal Express agent.
	By personal delivery.
X	By e-mail transmission to the e-mail address(es) below.
	By electronic filing using the CM/ECF System which will send a Notice of Electronic Filing to the email address(es) listed in the Electronic Mail Notice List.
	By uploading the document(s) to the third-party document management/service company, court-approved for purposes of this litigation.
X	By electronic submission to the Labor and Workforce Development Agency.

on the following person(s):

Amy P. Franzen
JACKSON LEWIS P.C.
50 California Street, 9th Floor
San Francisco, CA 94111
Email: amy.franzen@jacksonlewis.com

I declare under penalty of perjury under the laws of the United States and the State of California the foregoing is true and correct. Executed in Oakland, California on October 27, 2020.



Nicole Randle