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EDGAR ROCHA

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

EDGAR ROCHA, as an individual and on
behalf of all others similarly aggrieved,

Plaintiff,

v.

SNAP INC. WHICH WILL DO BUSINESS IN
CALIFORNIA AS SNAPCHAT INC., a
Delaware corporation; PSA RISK
MANAGEMENT SERVICES INC., a Delaware
corporation; and DOES 1-50, inclusive,

Defendants.

CASE NO. **21STCV12758**

**PRIVATE ATTORNEYS GENERAL
ACT ("PAGA") REPRESENTATIVE
COMPLAINT**

JURY TRIAL DEMANDED

1 Plaintiff EDGAR ROCHA (“Plaintiff”), an individual, on behalf himself and all other
2 similarly aggrieved employees (“the Aggrieved Employees”), hereby files this Complaint against
3 Defendant SNAP INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS SNAPCHAT INC.
4 and Defendant PSA RISK MANAGEMENT SERVICES INC. (collectively referred to hereinafter
5 as “Defendants”) and DOES 1-50, inclusive, and alleges as follows:

6 **JURISDICTION AND VENUE**

7 1. This court possesses original subject matter jurisdiction over this matter. Venue is proper
8 in Los Angeles County, California, because Defendants’ principal place of business is located in
9 Los Angeles County and some of the complained of conduct occurred in this judicial district.

10 **THE PARTIES**

11
12 2. Plaintiff is, and at relevant times was, an individual domiciled in the State of California
13 and a citizen of the State of California who worked as a non-exempt employee for Defendants, in
14 the State of California, from approximately February 2019 to on or about April 28, 2020.

15 3. Defendant SNAP INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS SNAPCHAT
16 INC.(“SNAPCHAT”) is a Delaware corporation that, at all relevant times, was authorized to do
17 business within the State of California and is doing business in the State of California. SNAPCHAT
18 is a camera and social media company.

19 4. Defendant PSA RISK MANAGEMENT SERVICES INC. (“PSA RISK”) is a Delaware
20 corporation that, at all relevant times, was authorized to do business within the State of California
21 and is doing business in the State of California. PSA RISK primarily offers human resources/risk
22 management/staffing and/or recruiting services to companies such as SNAPCHAT.

23 5. The true names and capacities of the DOE Defendants sued herein as DOES 1 through
24 50, inclusive, are currently unknown to Plaintiff, who therefore sues each such Defendant by said
25 fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the
26 unlawful acts alleged herein. Plaintiff will seek leave of Court to amend this Complaint to reflect
27 the true names and capacities of the Doe Defendants when such identities become known.

28 6. Plaintiff is informed and believes that, at all relevant times, each Defendant was the

1 principal, agent, partner, joint venturer, joint employer, officer, director, controlling
2 shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in
3 interest of some or all of the other Defendants, and was engaged with some or all of the other
4 defendants in a joint enterprise for profit, and bore such other relationships to some or all of the
5 other Defendants so as to be liable for their conduct with respect to the matters alleged in this
6 complaint. Plaintiff is further informed and believes and thereon alleges that each Defendant acted
7 pursuant to and within the scope of the relationships alleged above, and that at all relevant times,
8 each Defendant knew or should have known about, authorized, ratified, adopted, approved,
9 controlled, aided and abetted the conduct of all other Defendants.

10 7. At all relevant times, Defendants were and are legally responsible for all of the unlawful
11 conduct, policies, practices, acts and omissions complained of herein. Further, Defendants are
12 responsible for each of the unlawful acts or omissions complained of herein under the doctrine of
13 respondent superior. The conduct of Defendants' managers and supervisors was at all relevant
14 times undertaken as employees of Defendants, acting within the scope of their employment or
15 authority in all of the unlawful activities described herein.

16 8. Plaintiff is informed and believes, and thereon allege that at all relevant times SNAPCHAT
17 and PSA RISK operated as a single integrated enterprise with common ownership and centralized
18 human resources as a set forth herein. As a result, SNAPCHAT and PSA RISK utilized the same
19 unlawful wage and hour policies and practices across all of their facilities and subjected all
20 Aggrieved Employees to these same policies and practices regardless of the facilities where they
21 worked.

22 9. Plaintiff is informed and believes, and thereon alleges that at all times relevant to this
23 Complaint, Defendants were the joint employers of Plaintiff and/or the other Aggrieved Employees
24 upon whose behalf Plaintiff brings these class action claims, in that Defendants, exercised sufficient
25 control over Plaintiff and the other Aggrieved Employees' wages, hours and working conditions,
26 and/or suffered or permitted Plaintiff and the other Aggrieved Employees to work, so as to be
27 considered the joint employers of Plaintiff and the other Aggrieved Employees. Specifically, upon
28 information and belief, Plaintiff alleges that Defendants created a uniform set of written policies

1 and procedures concerning, inter alia, hourly and overtime pay, time-keeping practices, meal and
2 rest periods that were distributed to, applied to, and controlled the wages, hours and working
3 conditions of Plaintiff and the other Aggrieved Employees, and further that Defendants uniformly
4 compensated and controlled the wages of Plaintiff and the other Aggrieved Employees in a uniform
5 manner. Defendants collectively represented to Plaintiff and the other Aggrieved Employees that
6 each was an “at-will” employee of Defendants, and that Defendants collectively retained the right
7 to terminate Plaintiff’s and the other Aggrieved Employees’ employment with or without cause.
8 Upon information and belief, Defendants further collectively represented to Plaintiff and the other
9 Aggrieved Employees in writing the details of their compensation and the manner in which he or
10 she was to take meal and rest periods, the procedures required by Defendants collectively for
11 recordation of hours worked and the policies applicable to Plaintiff and the other Aggrieved
12 Employees by which Defendants collectively would evaluate the wage rate of Plaintiff and the other
13 Aggrieved Employees.

14 10. Thus, Defendants collectively exercised the right to control the wages, hours and working
15 conditions of Plaintiff and the other Aggrieved Employees. Defendants informed Plaintiff and the
16 other Aggrieved Employees in writing of the uniform standards by which Plaintiff and the other
17 Aggrieved Employees would have to abide in their employment with Defendants. Further, upon
18 information and belief, Defendants collectively set forth guidelines concerning Plaintiff’s and the
19 other Aggrieved Employees’ personal appearance at work with which each was required to comply
20 as a condition of their employment. As such, Defendants collectively held the right to control
21 virtually every aspect of Plaintiff and the other Aggrieved Employees’ employment, including the
22 instrumentality that resulted in the illegal conduct for which Plaintiff seeks relief in this Complaint.

23 11. California Labor Code section 2810.3(b)(1) provides that “a client employer shall share
24 with the labor contractor all civil legal responsibility and civil liability for all workers supplied by
25 that labor contractor for . . . the payment of wages.” A “labor contractor” means “an individual
26 or entity that supplies, either with or without a contract, a client employer with workers to perform
27 labor within the client employer’s usual course of business.” Cal. Labor Code § 2810.3(a)(3). A
28 “client employer” is “a business entity, regardless of its form, that obtains or is provided workers

1 to perform labor within its usual course of business from a labor contractor.” Cal. Labor Code §
2 2810.3(a)(1)(A). Client employers do not include a business entity with a workforce of fewer than
3 twenty-five workers or with five or fewer workers provided by a labor contractor or labor
4 contractors to the client employer at any time. Cal. Labor Code § 2810.3(a)(1)(B). “Usual course
5 of business” means “the regular and customary work of a business, performed within or upon the
6 premises or worksite of the client employer.” Cal. Labor Code § 2810.3(a)(6).

7 12. PSA RISK is a “labor contractor” in that it supplies a client employer, SNAPCHAT, with
8 workers to perform labor within the SNAPCHAT’s usual course of business.

9 13. SNAPCHAT is a “client employer” as it obtains or is provided workers to perform labor
10 within its usual course of business from labor contractors, including Defendant PSA RISK.
11 SNAPCHAT has a workforce of more than twenty-five workers and is supplied with at least five
12 workers from a labor contract at any given time.

13 14. Under California Labor Code Section 2810.3, SNAPCHAT, a client employer, shares with
14 the labor contractor, PSA RISK, all civil legal responsibility and civil liability for all workers
15 supplied by that labor contractor for the payment of wages.

16 15. Plaintiff complied with Labor Code Section 2810.3 by mailing certified a letter outlining
17 the substance of the allegations alleged herein to the “Client Employer,” namely SNAPCHAT,
18 thirty (30) days before filing suit.

19 16. Whenever and wherever reference is made in this complaint to any act or failure to act
20 by a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the
21 acts and/or failures to act by each Defendant acting individually, jointly and severally.

22 **FACTUAL ALLEGATIONS**

23 17. During the one year and sixty-five day period preceding filing of this Complaint, Plaintiff
24 was employed by Defendants as a non-exempt employee in the State of California. Defendants,
25 at all relevant times, exercised control over Plaintiff and the other Aggrieved Employees (as
26 defined below) and suffered and/or permitted them to work.

27 18. Plaintiff worked for Defendants as a non-exempt security guard from approximately
28 February 2019 to on or about April 18, 2020. Plaintiff was paid an hourly rate for time counted

1 by employer as time worked.

2 19. Plaintiff was not provided proper meal periods during his employment. Plaintiff was often
3 forced to work through his meal periods or forced to take late, shortened, interrupted and/or on-
4 duty meal periods due to his workload/commentary from supervisors pressuring Plaintiff to take
5 improper meal periods or skip meal periods completely. Plaintiff was at all times during his shifts
6 required to remain onsite and tethered to his company radio/other communication device,
7 rendering any purported meal periods on duty. Plaintiff did not execute a written on-duty meal
8 period waiver agreement. Nevertheless, Defendants had a policy and practice of automatically
9 deducting a half hour per shift/requiring Plaintiff to clock out for purported meal periods, despite
10 having actual and/or constructive knowledge that Plaintiff did not receive compliant meal periods.
11 Upon information and belief, Defendants also rounded the start and stop times of employee meal
12 periods resulting in Plaintiff receiving shorter and/or later meal periods than he was entitled to.
13 Defendants failed to pay Plaintiff an additional hour of pay at Plaintiff's regular rate of pay for
14 each missed or improper meal period and/or did not pay proper meal period premiums for failure
15 to incorporate all non-discretionary remunerations, including but not limited to, incentive pay,
16 bonuses, and/or meal allowances, into the regular rate of pay for purposes of calculating the owed
17 meal period premiums.

18 20. Plaintiff did not receive compliant, timely 10 (ten)- minute rest periods for every four
19 (4) worked hours or major fraction thereof. Plaintiff was often required to work through all or
20 part of his rest periods due to his workload/commentary from supervisors pressuring Plaintiff to
21 take improper rest periods or skip his rest periods completely. Plaintiff was at all times during his
22 shifts required to remain onsite and monitor his company radio/other communication device and
23 thus remained under employer control during any purported rest periods, rendering said rest
24 periods improper. Plaintiff was not paid rest period premiums for these missed/improper rest
25 periods.

26 21. During Plaintiff's employment, Plaintiff was forced to perform off-the-clock work, *to wit*:
27 Defendants automatically deducted a half hour per shift/required Plaintiff to clock out for
28 purported meal periods, despite having actual and/or constructive knowledge that Plaintiff did not

1 receive compliant meal periods. This resulted in the underpayment of minimum wages and
2 overtime pay. In addition, Plaintiff alleges on information and belief that Defendants
3 implemented a time-shaving/time-rounding system with respect to shift start and end times that as
4 applied systematically deprived Plaintiff of compensable time because the time-rounding system
5 implemented by Defendants would almost always, if not always, understate actual compensable
6 work time. Upon further information and belief, Defendants rounded the start and stop times of
7 employee meal periods resulting in Plaintiff receiving shorter meal periods than he was entitled to
8 and uncompensated work time. Based on information and belief, Defendants had actual or
9 constructive knowledge that its time-rounding policy resulted in off-the-clock pre-shift and post-
10 shift work and meal periods being cut short and thus the underpayment of minimum and overtime
11 wages owed to Plaintiff, in violation of California's minimum and overtime wage.

12 22. Defendants further violated California's overtime wage laws by failing to incorporate all
13 non-discretionary remunerations, including but not limited to, incentive pay, bonuses, and/or meal
14 allowances, into the regular pay rate for purposes of calculating the owed overtime rate of pay
15 and therefore miscalculated and underpaid owed overtime wages.

16 23. Based on information and belief, Defendants either failed to provide sick leave pay at all
17 or improperly accrued the amount of sick leave pay owed Plaintiff for failure to base the owed
18 sick leave pay on the correct number of hours worked and for failure to include all non-
19 discretionary remunerations, including but not limited to, incentive pay, bonuses, and/or meal
20 allowances into the sick pay calculation. On further information and belief, Defendants failed to
21 provide notice of the correct sick leave amount balance available to Plaintiff.

22 24. Defendants failed to reimburse Plaintiff for all necessary business-related expenditures
23 incurred by Plaintiff in direct discharge of his duties, including but not limited to, cell phone/data
24 usage expenses. Plaintiff was regularly required to use his personal cell phone to perform his job
25 duties, including but not limited to, for meetings, scheduling, training, and to clock in and out on
26 an app he was required to download. Plaintiff was not reimbursed in full for the expenses
27 associated with this cell phone use.

28 25. Additionally, Defendants failed to provide wage statements that complied with Labor

1 Code section 226. Among other things, the wage statements do not accurately reflect, gross
2 wages earned, total hours worked, net wages earned, all applicable hourly rates in effect during
3 each pay period and all hours worked at each applicable hourly rate. Notably, due to Defendants'
4 unlawful time shaving and meal period auto-deduction practices, Defendants' wage statements
5 fail to display the actual hours Plaintiff worked, a requirement of Labor Code section 226, such
6 that in order to ascertain his owed wages for the pay period, Plaintiff was required to perform
7 math beyond basic addition/subtraction in an attempt to figure out whether he had been provided
8 with the proper hours worked; even assuming Plaintiff was capable of performing the complex
9 math required to figure this out, he could not even do so because he was not provided with the
10 native time-keeping records (i.e. with actual clock in/out) and a copy of the rounded records.
11 Accordingly, Defendants have violated Labor Code section 226 as to Plaintiff.

12 26. Upon termination, Defendants failed to furnish Plaintiff with his final paycheck
13 containing all earned and owed wages. Plaintiff's final paycheck did not include all wages owed
14 to Plaintiff as it was devoid of, including but not limited to, all earned and unpaid minimum and
15 overtime wages.

16 27. Furthermore, Defendants required Plaintiff to submit to an unlawful criminal and/or
17 financial background check as a condition of obtaining and/or holding employment in violation of
18 Labor Code sections 1024.5 and/or 432.7. Defendants also required Plaintiff to agree in writing to
19 unlawful background checks not in conformance with the requirements ICRAA and/or FCRA.
20 Based on information and belief, Defendants also asked about arrests not resulting in convictions
21 on its employment application.

22 28. Plaintiff brings this complaint under the Private Attorneys General Act of 2004, Labor
23 Code sections 2698, *et seq.*, ("PAGA"), as a representative action on behalf of the State of
24 California, regarding violations of the Labor Code as to all similarly aggrieved individuals
25 employed by Defendants in the State of California as non-exempt employees. This action is
26 brought solely pursuant to PAGA and seeks no relief beyond that available under PAGA.

27 29. During the period beginning one-year period preceding the filing of the required PAGA
28 notice with the Labor Workforce and Development Agency, and continuing through the present, as

1 alleged herein, Defendant violated Labor Code sections 201-202, 204, 216, 221-223, 226, 226.7,
2 245-248.5, 432.5, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, 1199, 2802, 2810.5 and all
3 relevant sections of the applicable Wage Orders, as to Plaintiff and the other Aggrieved
4 Employees. These violations subject Defendants to civil penalties as set forth in the foregoing
5 statutes as well as other provisions of the Labor Code, including without limitation Labor
6 Code sections 203, 225.5, 256, 210, 1174.5, 1197.1 and 2699.

7
8 **THE "AGGRIEVED EMPLOYEES"**

9 30. Plaintiff brings this action on behalf of himself and all similarly aggrieved employees.
10 The Aggrieved Employees shall be defined as follows: "All non-exempt employees employed by
11 SNAPCHAT and/or PSA RISK in California at any time within the one year and sixty-five days
12 prior to the filing of the initial complaint."

13
14 **FIRST CAUSE OF ACTION**

15 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT,**
16 **LABOR CODE SECTIONS 2698, ET SEQ.**

17 31. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

18 32. Under the Labor Code and IWC Wage Orders, Defendants were required to provide
19 Plaintiff and the other Aggrieved Employees with one 30-minute meal break free from all duties
20 before the end of the fifth of work for all shifts lasting more than five (5) hours and a second 30-
21 minute meal break free from all duties before the end of the tenth hour of work for all shifts
22 lasting more than ten hours. Meal periods can be waived, but only under the following
23 circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more
24 than six (6) hours, the required meal period may be waived by mutual consent of the employer
25 and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no
26 more than twelve (12) hours, the required second meal period may be waived by mutual consent
27 of the employer and employee, but only if the first meal period was not waived. Employers
28 covered by the Wage Orders have an obligation to both (1) relieve their employees for at least one

1 meal period for shifts over five hours (see above), and (2) to record having done so. If the
2 employer fails to properly record a valid meal period, it is presumed no meal period was
3 provided.

4 33. Plaintiff and the other Aggrieved Employees regularly worked periods of more than five (5)
5 hours in a workday without being provided a mandatory thirty-minute, duty-free meal period.
6 Plaintiff and the other Aggrieved Employees were often forced to work through their meal periods
7 or forced to take late, shortened, interrupted and/or on-duty meal periods due to their
8 workload/commentary from supervisors pressuring Plaintiff and the other Aggrieved Employees to
9 take improper meal periods or skip meal periods completely. Plaintiff and the other Aggrieved
10 Employees were required to always remain onsite and tethered to their company radios/other
11 communication devices, rendering any meal periods on duty. Plaintiff and the other Aggrieved
12 Employees did not execute written on-duty meal period waiver agreements. Nevertheless,
13 Defendants had a policy and practice of automatically deducting a half hour per shift/requiring
14 Plaintiff and the other Aggrieved Employees to clock out for purported meal periods, despite having
15 actual and/or constructive knowledge that Plaintiff and the other Aggrieved Employees did not
16 receive compliant meal periods. Upon information and belief, Defendants also rounded the start
17 and stop times of employee meal periods resulting in Plaintiff and the other Aggrieved Employees
18 receiving shorter and/or later meal periods than they were entitled to. Notably, the other Aggrieved
19 Employees were not authorized nor permitted to take a compliant second meal period for those
20 shifts consisting of more than ten hours. Defendants failed to pay Plaintiff and the other Aggrieved
21 Employees an additional hour of pay at their regular rate(s) of pay for each missed or improper
22 meal period and/or did not pay proper meal period premiums for failure to incorporate all non-
23 discretionary remunerations, including but not limited to, incentive pay, bonuses, and/or meal
24 allowances, into the regular rate(s) of pay for purposes of calculating the owed meal period
25 premiums.

26 34. Defendants failed to provide Plaintiff and the other Aggrieved Employees all required
27 and/or fully compliant rest periods, or compensation in lieu thereof. Defendants employed
28 policies and procedures that ensured Plaintiff and the other Aggrieved Employees would not

1 receive all legally required rest periods. Plaintiff and the other Aggrieved Employees did not
2 receive compliant, timely 10 (ten)- minute rest periods for every four (4) hours worked or major
3 fraction thereof. Plaintiff and the other Aggrieved Employees were often required to work
4 through all or part of their rest periods due to their workloads/commentary from supervisors
5 pressuring Plaintiff and the other Aggrieved Employees to take improper rest periods or skip rest
6 periods completely. Plaintiff and the other Aggrieved Employees were at all times during their
7 shifts required to remain onsite and monitor their company radios/other communication devices
8 and thus remained under employer control during any purported rest periods, rendering said rest
9 periods improper. Notably, the other Aggrieved Employees were not authorized nor permitted to
10 take a third rest break for those shifts lasting more than ten hours. Plaintiff and the other
11 Aggrieved Employees were not paid rest period premiums for these missed/improper rest periods.

12 35. California law provides employees in California must be paid for all hours worked, up to
13 40 per week or eight (8) per day, at a regular time rate no less than the mandated minimum wage.
14 California law also provides employees in California must be paid overtime, equal to 1.5 times
15 the employee's regular rate of pay, for all hours worked in excess of 40 per week or eight (8) per
16 day and at a rate of double the employee's regular rate of pay for time worked beyond twelve
17 hours in a day. Plaintiff and the other Aggrieved Employees regularly worked time for which they
18 were not compensated, *to wit*: Defendants automatically deducted a half hour per shift/required
19 Plaintiff and the other Aggrieved Employees to clock out for purported meal periods, despite
20 having actual and/or constructive knowledge that Plaintiff and the other Aggrieved Employees
21 did not receive compliant meal periods. This resulted in the underpayment of minimum and
22 overtime wages. In addition, Plaintiff alleges on information and belief that Defendants
23 implemented a time-shaving/time-rounding system with respect to shift start and end times that as
24 applied systematically deprived Plaintiff and the other Aggrieved Employees of compensable
25 time because the time-rounding system implemented by Defendants would almost always, if not
26 always, understate actual compensable work time. Upon further information and belief,
27 Defendants rounded the start and stop times of employee meal periods resulting in Plaintiff and
28 the other Aggrieved Employees receiving shorter meal periods than they were entitled to and

1 uncompensated work time. Based on information and belief, Defendants had actual or
2 constructive knowledge that its time-rounding policy resulted in off-the-clock pre-shift and post-
3 shift work and meal periods being cut short and thus the underpayment of minimum and overtime
4 wages owed to Plaintiff, in violation of California's minimum and overtime wage laws.

5 36. Defendants further violated California's overtime wage laws by failing to incorporate all
6 non-discretionary remunerations, including but not limited to, incentive pay, bonuses, and/or meal
7 allowances, into the regular pay rates for purposes of calculating the owed overtime rates of pay
8 and therefore miscalculated and underpaid owed overtime wages.

9 37. California law provides that, at the time of each payment of wages, the employer must
10 provide each employee with an itemized statement showing, *inter alia*, gross wages earned, total
11 hours worked, all deductions taken, net wages earned, the inclusive dates for which the employee
12 is being paid, the employee's name and last four digits of their social security number, the name
13 and address of the legal entity that it is the employer, and all applicable hourly rates in effect during
14 the pay period and all hours worked at each rate. Defendants knowingly and intentionally failed to
15 provide Plaintiff and the other Aggrieved Employees with proper, itemized wage statements as the
16 wage statements provided by Defendant do not accurately reflect, *inter alia*, all gross wages earned,
17 all net wages earned, all applicable hourly rates in effect during each pay period and all hours
18 worked at each applicable hourly rate. Notably, due to Defendants' unlawful time shaving and
19 meal period auto-deduction practices, Defendants' wage statements fail to display the actual hours
20 Plaintiff and the other Aggrieved Employees worked, a requirement of Labor Code section 226,
21 such that in order to ascertain their owed wages for the pay period, Plaintiff and the other Aggrieved
22 Employees were required to perform math beyond basic addition/subtraction in an attempt to figure
23 out whether they had been provided with the proper hours worked; even assuming Plaintiff and the
24 other Aggrieved Employees were capable of performing the complex math required to figure this
25 out, they could not even do so because they were not provided with the native time-keeping records
26 (i.e. with actual clock in/outs) and a copy of the rounded records. Accordingly, Defendants have
27 violated Labor Code section 226 as to Plaintiff and the other Aggrieved Employees.
28

1 38. California law requires employers to keep “accurate and complete” payroll records
2 showing, among other things, the hours worked daily by all non-exempt employees. Section 7 of
3 all applicable IWC Wage Orders similarly requires employers to keep time records showing, *inter-*
4 *alia*, when the employees begin and end each work period and reflecting the times during which
5 all owed meal periods are provided each day. At all relevant times, Defendants have failed, and
6 continue to fail, to keep the required time records, as Defendants did not record the true start and
7 stop times of Plaintiff and the other Aggrieved Employees’ workdays and failed to accurately
8 record employee meal periods. Defendants’ failure to keep “accurate and complete” payroll records
9 for Plaintiff and the other Aggrieved Employees violates Labor Code sections 1174, 1198-99, and
10 Section 7 of all applicable IWC Wage Orders. These violations subject Defendants to civil
11 penalties under the Labor Code, including without limitation sections 1174.5 and 2699. Each
12 violation of each Labor Code section and Wage Order provision, for each aggrieved employee,
13 results in a separate civil penalty.

14 39. California Labor Code section 204 requires an employer to pay employees all wages due
15 and payable at least twice each calendar month. Defendants failed to comply with Labor Code
16 section 204 by failing to timely pay twice during each calendar month all wages due and payable
17 to Plaintiff and the other Aggrieved Employees. Defendants’ violations of Labor Code section 204
18 subject Defendant to civil penalties, including but not limited to the penalties set forth in California
19 Labor Code sections 210 and 2699. Each violation results in a separate civil penalty, for each
20 Aggrieved Employee for each pay period during which the statutory provisions were violated.

21 40. Labor Code section 201 requires employers to pay all wages earned and unpaid at the time
22 of discharge, immediately upon discharge. Labor Code section 202 states similar provisions with
23 respect to employees who resign. For all Aggrieved Employees no longer employed by Defendants,
24 Defendants still has not paid such aggrieved employees all wages earned and unpaid at the time of
25 discharge, in that Defendants have not paid for, *inter alia*, all owed minimum and overtime wages.
26 These violations subject Defendants to civil penalties under the Labor Code, including without
27 limitation Labor Code sections 203, 256 and 2699. Each violation results in a separate civil penalty,
28 for each Aggrieved Employee for each pay period during which the statutory provisions were

1 violated.

2 41. Labor Code section 216 declares unlawful an employer's refusal to pay wages due and
3 payable and/or denial of the validity of any claim to wages due. Defendants violated/violates this
4 section by failing to pay Plaintiff and the other Aggrieved Employees for all hours worked at the
5 proper wage rate and by failing to pay Plaintiff and the other Aggrieved Employees an additional
6 hour of pay for each meal/rest period not provided/that was invalid. These violations subject
7 Defendants to civil penalties under Labor Code section 225.5. Each violation results in a separate
8 civil penalty, for each aggrieved employee, for each pay period during which the statute
9 provisions were violated.

10 42. California Labor Code section 223 makes it unlawful for an employer to secretly pay
11 wages lower than required by statute while purporting to pay legal wages. As described above,
12 Defendants willfully and systematically denied Plaintiff and the other Aggrieved Employees
13 minimum and overtime wage compensation for all hours worked which resulted in the payment
14 of less than statutorily required wages to them. Defendants acted with the intent to deprive them
15 of statutory wages, including, but not limited to, overtime wages and minimum wages, to which
16 they were entitled to under California law.

17 43. Defendants failed to provide Plaintiff and the other Aggrieved Employees paid sick days
18 in accordance with Labor Code sections 245 through 248.5, further failing to put them on notice
19 of their paid sick leave rights—or thereby putting their entitlement to sick leave in a Labor Code
20 section 2810.5 notice. Defendants failed to maintain accurate records documenting the hours
21 worked and paid sick days accrued and used by employees in violation of Labor Code section
22 247.5, permitting the presumption that Plaintiff and the other Aggrieved Employees were entitled
23 to the maximum number of hours accruable under this article at the time of their respective
24 separations of employment. Furthermore, Defendants failed to incorporate all forms of non-
25 discretionary remuneration, including but not limited to, incentive pay, bonuses, and/or meal
26 allowances into the sick pay calculation. By failing to correctly account for the true hours
27 Plaintiff and the other Aggrieved Employees worked and by failing to incorporate all non-
28 discretionary remunerations into the sick pay calculation, Defendants unlawfully retained and

1 continue to retain paid sick leave that should have been paid and was not. Accordingly,
2 Defendants have violated Labor Code sections 233 and 234 as to Plaintiff and the other
3 Aggrieved Employees. These violations subject Defendants to civil penalties under the Labor
4 Code, including without limitation Labor Code sections 233 and 234 and 2699. Each violation of
5 each Labor Code section and Wage Order provision, for each aggrieved employee, results in a
6 separate civil penalty.

7 44. California Labor Code section 2802 requires employers to indemnify employees for all
8 necessary expenditures incurred by employees in the direct discharge of their duties.
9 Defendants failed to reimburse Plaintiff and the other Aggrieved Employees for all
10 necessary business-related expenditures incurred by them in direct discharge of their duties,
11 including but not limited to, cell phone/data usage expenses. Plaintiff and the other Aggrieved
12 Employees were regularly required to use their personal cell phone to perform their job duties,
13 including but not limited to, for meetings, scheduling, training, and to clock in and out on an app
14 they were required to download. Plaintiff and the other Aggrieved Employees were not
15 reimbursed in full for the expenses associated with this cell phone use. In failing to indemnify all
16 business-related expenses incurred by Plaintiff and the other Aggrieved Employees, Defendants
17 have violated Labor Code section 2802. This violation subjects Defendants to civil penalties
18 under Labor Code sections 2802, 558, 558.1 and 2699. Each violation of each Labor Code section
19 and Wage Order provision, for each aggrieved employee, results in a separate civil penalty.

20 45. The Labor Code places certain procedural and substantive limits on employers' ability
21 to conduct employee background checks and on how employers can use the information they
22 obtain through those background checks. Labor Code Section 1024.5 states that employers,
23 except for financial institutions, may order a credit check only if the individual works (or is
24 applying to work) in certain positions, and Labor Code Section 432.7 prohibits an employer from
25 asking applicants about past arrest(s) unless they resulted in conviction(s) and even then certain
26 limitations apply. Additionally, the Investigative Consumer Reporting Agencies Act, Civil Code
27 §§ 1786, *et seq.* ("ICRAA"), and the Fair Credit Reporting Act, 15 U.S.C. §§ 1681, *et seq.*
28 ("FCRA"), mandate several requirements prior to and following an employee background check,

1 including but not limited to, identifying an appropriate reason for the background check, a
2 separate consent form with required disclosures and certain formatting requirements, additional
3 forms such as a summary of rights, as well as proper notice of adverse actions taken, among other
4 statutory requirements.

5 46. Defendants required Plaintiff and other Aggrieved Employees to submit to an unlawful
6 criminal and/or financial background check as a condition of obtaining and/or holding employment
7 in violation of Labor Code sections 1024.5 and/or 432.7. Defendants also required Plaintiff and the
8 other Aggrieved Employees to agree in writing to unlawful background checks not in conformance
9 with the requirements ICRAA and/or FCRA. Based on information and belief, Defendants also
10 asked about arrests not resulting in convictions on its employment application. These violations
11 subject Defendants to civil penalties under the Labor Code, including without limitation Labor
12 Code sections 432.5, 432.7 and 2699. Each violation of each Labor Code section and Wage Order
13 provision, for each aggrieved employee, results in a separate civil penalty.

14 47. Under the provisions of PAGA and Labor Code sections 201-202, 204, 216, 221-223, 226,
15 226.7, 245-248.5, 432.5, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, 1199, 2802, 2810.5 and
16 all relevant sections of the applicable Wage Orders, as well as all interpretations of these laws by
17 California Courts and administrative bodies, as well as any other law that is enforceable through
18 PAGA, Defendants are liable for all statutorily-specified penalties recoverable under PAGA as
19 enumerated in the relevant California Labor Code provisions listed herein, or for default PAGA
20 penalties under Labor Code Section 2699(f) for any violation of a Labor Code section without a
21 specified civil penalty.

22 48. Plaintiff complied with the procedures for bringing suit specified in Labor Code sections
23 2699.3 and 2699.5. Plaintiff gave written notice to the California Labor and Workforce
24 Development Agency (“LWDA”) via electronic mail at PAGAfilings@dir.ca.gov and to
25 Defendants via certified mail 65 days prior to this Complaint of the specific provisions of the
26 Labor Code and Wage Orders allegedly violated, including the facts and theories to support the
27 alleged violations.

28 49. Under Labor Code section 2699.3, the LWDA must give written notice by certified mail

1 to the parties it intends to investigate the alleged violations within 65 days of the date of
2 Plaintiff's written notice. As of the expiration of the statutory exhaustion period, the LWDA has
3 not provided the parties any notice of its intention to investigate Plaintiff's claims on behalf of the
4 State of California and the other Aggrieved Employees. As of the filing of this Complaint,
5 Defendants have not responded to Plaintiff's PAGA notice in an attempt to cure. Accordingly,
6 Plaintiff has exhausted all administrative remedies required by law.

7 50. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
8 Plaintiff is entitled to recover civil penalties, costs, plus reasonable attorney's fees and costs, all
9 in an amount to be proved.

10 **PRAYER**

11 WHEREFORE, Plaintiff, prays for judgment against each Defendant, jointly and severally,
12 as follows:

- 13 1. For civil penalties according to proof;
- 14 2. For reasonable attorney's fees and costs of suit; and
- 15 3. For such other and further relief as the Court deems just and proper.

16
17
18 Dated: April 2, 2021

CROSNER LEGAL, P.C.

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20 Michael R. Crosner
21 Zachary M. Crosner
22 Blake R. Jones
23 Attorneys for Plaintiff EDGAR ROCHA
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DEMAND FOR JURY TRIAL

Plaintiff EDGAR ROCHA demands a trial by jury on all claims so triable.

Dated: April 2, 2021

CROSNER LEGAL, P.C.



Michael R. Crosner
Zachary M. Crosner
Blake R. Jones
Attorneys for Plaintiff EDGAR ROCHA