

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

Nicholas J. De Blouw (State Bar #280922)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858)551-1223

Facsimile: (858) 551-1232

Website: www.bamlawca.com

Attorneys for Plaintiff

Assigned For All Purposes

Judge Glenda Sanders

CX-101

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

BRIANNE WALIGURSKY, on behalf of
the State of California, as a private
attorney general,

Plaintiff,

vs.

USGI, a California Corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. 30-2022-01250268-CU-OE-CXC

**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, 221,
226(a), 226.7, 510, 512, 558(a)(1)(2),
1194, 1197, 1197.1, 1198, 1198.5, 2802,
California Code of Regulations, Title 8,
Section 11040, Subdivision 5(A)-(B), and
the applicable Wage Order(s).

1 Plaintiff Brianne Waligursky (“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 her own acts and knowledge which are based on personal
5 knowledge, the following:

6
7 **INTRODUCTION**

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

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

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

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THE PARTIES

4. DEFENDANT is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California. DEFENDANT provides security services throughout the State of California, including in Orange County.

5. PLAINTIFF has been employed by DEFENDANT since February of 2019 and has been at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

6. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, brings this Representative Action on behalf of the State of California with respect to herself and all individuals who are or previously were employed by DEFENDANT in California and who were classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period of November 11, 2020 until a date as determined by the Court (the "PAGA PERIOD").

7. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 1198.5, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s). Based upon the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

8. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of Defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.

1 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
2 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
3 responsible in some manner for one or more of the events and happenings that proximately
4 caused the injuries and damages hereinafter alleged.

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

13 THE CONDUCT

14
15 10. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
16 required to pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all their time
17 worked, meaning the time during which an employee is subject to the control of an employer,
18 including all the time the employee is suffered or permitted to work. DEFENDANT required
19 PLAINTIFF and other AGGRIEVED EMPLOYEES to work without paying them for all the
20 time they were under DEFENDANT's control. Specifically, DEFENDANT required
21 PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty
22 meal break. PLAINTIFF was from time to time interrupted by work assignments. Additionally,
23 PLAINTIFF and other AGGRIEVED EMPLOYEES were required by DEFENDANT to clock
24 out of DEFENDANT's timekeeping system, in order to perform additional work for
25 DEFENDANT as required to meet DEFENDANT's job requirements. PLAINTIFF and other
26 AGGRIEVED EMPLOYEES also worked off the clock with respect to time spent undergoing
27 mandatory drug testing or any other testing and/or examination required as a condition of
28 employment. Further, PLAINTIFF and the other AGGRIEVED EMPLOYEES from time to

1 time were not paid wages for all time worked, including overtime wages, such that in the
2 aggregate employees were underpaid wages as a result of DEFENDANT's pattern and practice
3 of unevenly rounding time worked by its employees. As a result, PLAINTIFF and the other
4 AGGRIEVED EMPLOYEES forfeited minimum wage and overtime compensation by from
5 time to time working without their time being accurately recorded and without compensation
6 at the applicable minimum wage and overtime rates. DEFENDANT's policy and practice not
7 to pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all time worked is evidenced
8 by DEFENDANT's business records.

9 11. As a result of their rigorous work schedules, PLAINTIFF and the other
10 AGGRIEVED EMPLOYEES were from time to time unable to take thirty (30) minute off duty
11 meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
12 AGGRIEVED EMPLOYEES were required from time to time to perform work as ordered by
13 DEFENDANT for more than five (5) hours during some shifts without receiving a meal break.
14 Further, DEFENDANT failed to provide PLAINTIFF and the AGGRIEVED EMPLOYEES
15 with a second off-duty meal period for some workdays in which these employees were required
16 by DEFENDANT to work ten (10) hours of work from time to time. DEFENDANT also
17 engaged in the practice of rounding the meal period times to avoid paying penalties to
18 PLAINTIFF and other AGGRIEVED EMPLOYEES. As a result, DEFENDANT's failure to
19 provide PLAINTIFF and the AGGRIEVED EMPLOYEES with legally required meal breaks
20 is evidenced by DEFENDANT's business records. PLAINTIFF and the other AGGRIEVED
21 EMPLOYEES therefore forfeited meal breaks without additional compensation and in
22 accordance with DEFENDANT's corporate policy and practice.

23 12. During the PAGA PERIOD, PLAINTIFF and the other AGGRIEVED
24 EMPLOYEES were also required from time to time to work in excess of four (4) hours without
25 being provided ten (10) minute rest periods. Further, these employees were denied their first
26 rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
27 hours from time to time, a first and second rest period of at least ten (10) minutes for some shifts
28 worked of between six (6) and eight (8) hours from time to time, and a first, second and third

1 rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from
2 time to time. PLAINTIFF and the AGGRIEVED EMPLOYEES were also not provided with
3 one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and
4 the other AGGRIEVED EMPLOYEES were from time to time denied their proper rest periods
5 by DEFENDANT and DEFENDANT's managers. Additionally, the applicable California
6 Wage Order requires employers to provide employees with off-duty rest periods, which the
7 California Supreme Court defined as time during which an employee is relieved from all work
8 related duties and free from employer control. In so doing, the Court held that the requirement
9 under California law that employers authorize and permit all employees to take rest periods
10 means that employers must relieve employees of all duties and relinquish control over how
11 employees spend their time which includes control over the locations where employees may
12 take their rest period. Employers cannot impose controls that prohibit an employee from taking
13 a brief walk - five minutes out, five minutes back. Here, DEFENDANT's policy restricts
14 PLAINTIFF and the other AGGRIEVED EMPLOYEES from unconstrained walks and requires
15 these employees to remain on DEFENDANT's premises under DEFENDANT's control during
16 what should be their paid, off duty rest periods.

17 13. State law provides that employees must be paid overtime and meal and rest break
18 premium pay at one-and-one-half times their "regular rate of pay." PLAINTIFF and the other
19 AGGRIEVED EMPLOYEES were compensated at an hourly rate plus incentive pay that was
20 tied to specific elements of an employee's performance.

21 14. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
22 compensation was DEFENDANT's non-discretionary incentive program that paid PLAINTIFF
23 and the other AGGRIEVED EMPLOYEES incentive wages based on their performance for
24 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
25 hourly basis with incentive compensation when the employees met the various performance
26 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
27 overtime and premiums for meal and rest break violations to PLAINTIFF and the other
28 AGGRIEVED EMPLOYEES, DEFENDANT failed to include the incentive compensation as

1 part of the employees' "regular rate of pay" for purposes of calculating overtime pay and
2 premium pay for meal and rest break violations. Management and supervisors described the
3 incentive program to potential and new employees as part of the compensation package. As a
4 matter of law, the incentive compensation received by PLAINTIFF and the other AGGRIEVED
5 EMPLOYEES must be included in the "regular rate of pay." The failure to do so has resulted
6 in an underpayment of overtime compensation and meal and rest break premium pay to
7 PLAINTIFF and other AGGRIEVED EMPLOYEES by DEFENDANT.

8 15. Cal. Lab. Code § 204 provides that "[a]ll wages. . . earned by any person in any
9 employment are due and payable twice during each calendar month, on days designated in
10 advance by the employer as the regular paydays." Further, Cal. Lab. Code § 204(d) expressly
11 requires employers to pay employees all wages owed within seven (7) days of the close of the
12 payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and the
13 AGGRIEVED EMPLOYEES all wages owed to them within seven (7) days of the close of the
14 payroll period.

15 16. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
16 to collect or receive from an employee any part of wages theretofore paid by said employer to
17 said employee." DEFENDANT failed to pay all compensation due to PLAINTIFF and the other
18 AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to
19 PLAINTIFF and the other AGGRIEVED EMPLOYEES, failed to disclose all aspects of the
20 deductions from compensation payable to PLAINTIFF and the other AGGRIEVED
21 EMPLOYEES, and thereby failed to pay these employees all wages due at each applicable pay
22 period and upon termination.

23 17. DEFENDANT underpaid sick pay wages to PLAINTIFF and the other
24 AGGRIEVED EMPLOYEES by failing to pay such wages at the regular rate of pay in violation
25 of Cal. Lab. Code Section 246. Specifically, PLAINTIFF and other non-exempt employees earn
26 non-discretionary remuneration. Rather than pay sick pay at the regular rate of pay,
27 DEFENDANT underpaid sick pay to PLAINTIFF and other AGGRIEVED EMPLOYEES at
28 their base rates of pay.

1 18. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
2 employees be calculated by dividing the employee's total wages, not including overtime
3 premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days
4 of employment.

5 19. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at
6 the regular rate of pay. PLAINTIFF and the AGGRIEVED EMPLOYEES routinely earned non-
7 discretionary incentive wages which increased their regular rate of pay. However, when sick pay
8 was paid, it was paid at the base rate of pay for PLAINTIFF and the AGGRIEVED
9 EMPLOYEES, as opposed to the correct, higher regular rate of pay, as required under Cal. Lab.
10 Code Section 246.

11 20. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and
12 the AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time
13 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes
14 and based thereon alleges that such failure to pay sick pay at regular rate was willful, such that
15 PLAINTIFF and the AGGRIEVED EMPLOYEES whose employment has separated are
16 entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

17 21. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
18 other AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed
19 to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
20 provides that every employer shall furnish each of his or her employees with an accurate
21 itemized wage statement in writing showing, among other things, gross wages earned and all
22 applicable hourly rates in effect during the pay period and the corresponding amount of time
23 worked at each hourly rate. Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES
24 were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly
25 rates during the pay period and the total hours worked, and the applicable pay period in which
26 the wages were earned pursuant to California Labor Code Section 226(a). The wage statements
27 Defendant provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to identify such
28 information. More specifically, the wage statements failed to identify the accurate total hours

1 worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). DEFENDANT also
2 violated Cal. Lab. Code Section 226 (a)(8) by failing to list the correct legal entity that is the
3 employer of PLAINTIFF and other AGGRIEVED EMPLOYEES. Aside, from the violations
4 listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage
5 statement that lists all the requirements under California Labor Code 226 *et seq.* As a result,
6 DEFENDANT from time to time provided PLAINTIFF and the other AGGRIEVED
7 EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

8 22. DEFENDANT failed to reimburse and indemnify PLAINTIFF and the other
9 AGGRIEVED EMPLOYEES for required business expenses incurred by PLAINTIFF and other
10 AGGRIEVED EMPLOYEES in direct consequence of discharging their duties on behalf of
11 DEFENDANT. Under California Labor Code Section 2802, employers are required to
12 indemnify employees for all expenses incurred in the course and scope of their employment.
13 Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee
14 for all necessary expenditures or losses incurred by the employee in direct consequence of the
15 discharge of his or her duties, or of his or her obedience to the directions of the employer, even
16 though unlawful, unless the employee, at the time of obeying the directions, believed them to
17 be unlawful."

18 23. In the course of their employment PLAINTIFF and other AGGRIEVED
19 EMPLOYEES as a business expense, were required by DEFENDANT to use personal cellular
20 phones as a result of and in furtherance of their job duties as employees for DEFENDANT but
21 were not reimbursed or indemnified by DEFENDANT for the cost associated with the use of
22 the personal cellular phones for DEFENDANT's benefit. As a result, in the course of their
23 employment with DEFENDANT, PLAINTIFF and other AGGRIEVED EMPLOYEES incurred
24 unreimbursed business expenses which included, but were not limited to, costs related to the use
25 of their personal cellular phones, all on behalf of and for the benefit of DEFENDANT.

26 24. In violation of the applicable sections of the California Labor Code and the
27 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT
28

1 intentionally and knowingly failed to compensate PLAINTIFF and the other AGGRIEVED
2 EMPLOYEES for missed meal and rest periods and all time worked. This policy and practice
3 of DEFENDANT was intended to purposefully avoid the payment for all time worked as
4 required by California law which allows DEFENDANT to illegally profit and gain an unfair
5 advantage over competitors who complied with the law. To the extent equitable tolling operates
6 to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the PAGA PERIOD
7 should be adjusted accordingly.

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

13 **JURISDICTION AND VENUE**

14 26. This Court has jurisdiction over this Action pursuant to California Code of Civil
15 Procedure, Section 410.10.

16 27. Venue is proper in this Court pursuant to California Code of Civil Procedure,
17 Sections 395.5 and 393, because DEFENDANT operates in locations across California,
18 employs AGGRIEVED EMPLOYEES across California, including in this County, and
19 committed the wrongful conduct herein alleged in this County against AGGRIEVED
20 EMPLOYEES.

21 **FIRST CAUSE OF ACTION**

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

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

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

25 28. PLAINTIFF realleges and incorporates by this reference, as though fully set
26 forth herein, the prior paragraphs of this Complaint.
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1 29. PAGA is a mechanism by which the State of California itself can enforce state
2 labor laws through the employee suing under the PAGA who do so as the proxy or agent of
3 the state's labor law enforcement agencies. An action to recover civil penalties under
4 PAGA is fundamentally a law enforcement action designed to protect the public and not to
5 benefit private parties. The purpose of the PAGA is not to recover damages or restitution,
6 but to create a means of "deputizing" citizens as private attorneys general to enforce the
7 Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the
8 public interest to allow aggrieved employees, acting as private attorneys general to recover
9 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
10 claims cannot be subject to arbitration.

11 30. PLAINTIFF, and such persons that may be added from time to time who
12 satisfy the requirements and exhaust the administrative procedures under the Private
13 Attorney General Act, brings this Representative Action on behalf of the State of California
14 with respect to herself and all individuals who are or previously were employed by
15 DEFENDANT in California and who were classified as non-exempt employees
16 ("AGGRIEVED EMPLOYEES") during the time period of November 11, 2020 until a date
17 as determined by the Court (the "PAGA PERIOD").

18 31. On November 11, 2021, PLAINTIFF gave written notice by electronic mail to
19 the Labor and Workforce Development Agency (the "Agency") and by certified mail to the
20 employer of the specific provisions of this code alleged to have been violated as required by
21 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations
22 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
23 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy
24 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

25 32. The policies, acts and practices heretofore described were and are an unlawful
26 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
27 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
28 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,

(d) failed to pay overtime and sick pay wages, and (e) failed to reimburse employees for required expenses, all in violation of the applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 1198.5, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

PRAYER FOR RELIEF

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

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

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

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

Dated: March 16, 2022 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
LLP

By: /s/ Nicholas De Blouw
Nicholas J. De Blouw
Attorneys for Plaintiff

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