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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

FRANK GAZETA, on behalf of the State of
California, as a private attorney general,

Case No. _____

REPRESENTATIVE ACTION
COMPLAINT FOR:

Plaintiff,

vs.

CRITTER CONTROL OPERATIONS, INC.,
a Corporation; and DOES 1 through 50,
inclusive,

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
218, 221, 226(a), 226.7, 227.3, 510, 512,
558(a)(1)(2), 1194, 1197, 1197.1, 1198,
2802, California Code of Regulations,
Title 8, Section 11040, Subdivision 5(A)-
(B), and the applicable Wage Order(s).

Defendants.

BY FAX

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

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Defendant Critter Control Operations, Inc.
8 (referred to as “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 Critter Control Operations, Inc. (“DEFENDANT”) is a Corporation
24 that at all relevant times mentioned herein conducted and continues to conduct substantial
25 business in the state of California.

26 5. DEFENDANT is the nation’s leading wildlife control company and has been
27 resolving wildlife and pest issues for customers for over 30 years
28

1 6. PLAINTIFF has been employed by DEFENDANT in California since March of
2 2021 and has been at all times classified by DEFENDANT as a non-exempt employee, paid on
3 an hourly basis, and entitled to the legally required meal and rest periods and payment of
4 minimum and overtime wages due for all time worked.

5 7. 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, including any employees staffed with DEFENDANT by a third party, and classified
10 as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period of August
11 31, 2021 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, 218, 221, 226(a), 226.7,
16 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations,
17 Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s). Based upon
18 the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees
19 within the meaning of Labor Code § 2699, *et seq.*

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

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

THE CONDUCT

11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and the 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 requires PLAINTIFF and the AGGRIEVED EMPLOYEES to work without paying them for all the time they are under DEFENDANT's control. Among other things, DEFENDANT requires PLAINTIFF to work while clocked out during what is supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work assignments while clocked out for what should have been PLAINTIFF's off-duty meal break. Additionally, DEFENDANT, as a matter of established company policy and procedure, administers a uniform practice of rounding the actual time worked and recorded by PLAINTIFF and the AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANT, so that during the course of their employment, PLAINTIFF and AGGRIEVED EMPLOYEES are paid less than they would have been paid had they been paid for actual recorded time rather than "rounded" time. Additionally, DEFENDANT engages in the practice of requiring PLAINTIFF and the AGGRIEVED EMPLOYEES to perform work off the clock in that DEFENDANT, as a condition of employment, required these employees to submit to mandatory temperature checks and symptom questionnaires for COVID-19 screening prior to clocking into DEFENDANT's timekeeping system for the workday. As a result, PLAINTIFF and the AGGRIEVED EMPLOYEES forfeit minimum wage, overtime

1 wage compensation, and off-duty meal breaks by working without their time being correctly
2 recorded and without compensation at the applicable rates. DEFENDANT's policy and practice
3 not to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all time worked, is evidenced
4 by DEFENDANT's business records. DEFENDANT also fails to pay PLAINTIFF and the
5 AGGRIEVED EMPLOYEES for the actual time worked. These employees are placed on-call,
6 but DEFENDANT fails to pay the required compensation for time worked while on controlled
7 standby time worked. The effect of DEFENDANT's on-call system is that the PLAINTIFF and
8 the AGGRIEVED EMPLOYEES must stay in close proximity to their assigned territory where
9 they must report to in order to perform their on-call duties. PLAINTIFF and the AGGRIEVED
10 EMPLOYEES are therefore effectively precluded from engaging in any activity outside of work
11 that would hinder his or her ability to immediately respond to the DEFENDANT's call. As a
12 result, their on-call time is predominantly spent for the benefit of DEFENDANT.
13 AGGRIEVED EMPLOYEES' movements are also severely geographically restricted by
14 DEFENDANT's on-call requirements. Any personal activities which require longer than thirty
15 (30) minutes to perform without interruption, and/or required more than thirty (30) minutes to
16 travel to and from, including, but not limited to, going to see a movie in a theater, dining at a
17 restaurant, engaging in organized sporting activities, participating in weddings, supplementing
18 one's income with a second job, and/or attending to medical issues with the assistance of a
19 doctor, dentist, or other professional, has to be eliminated while on-call. Despite these
20 demanding conditions imposed by DEFENDANT, minimum wage and overtime compensation
21 for the time worked during the on-call shifts is withheld by DEFENDANT from PLAINTIFF
22 and the AGGRIEVED EMPLOYEES.

23 12. State law provides that employees must be paid overtime and meal and rest break
24 premiums at one-and-one-half times their "regular rate of pay." PLAINTIFF and the
25 AGGRIEVED EMPLOYEES are compensated at an hourly rate plus incentive pay that is tied
26 to specific elements of an employee's performance.

27 13. The second component of PLAINTIFF's and the AGGRIEVED EMPLOYEES'
28 compensation is DEFENDANT's non-discretionary incentive program that paid PLAINTIFF

1 and the 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 and meal and rest break premiums to PLAINTIFF and the AGGRIEVED
6 EMPLOYEES, DEFENDANT failed to include the incentive compensation as part of the
7 employees' "regular rate of pay" for purposes of calculating overtime pay and meal and rest
8 break premium pay. Management and supervisors described the incentive program to potential
9 and new employees as part of the compensation package. As a matter of law, the incentive
10 compensation received by PLAINTIFF and the AGGRIEVED EMPLOYEES must be included
11 in the "regular rate of pay." The failure to do so has resulted in a underpayment of overtime
12 compensation and meal and rest break premiums to PLAINTIFF and the AGGRIEVED
13 EMPLOYEES by DEFENDANT.

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

26 15. During the PAGA PERIOD, PLAINTIFF and the AGGRIEVED EMPLOYEES
27 are also required from time to time to work in excess of four (4) hours without being provided
28 ten (10) minute rest periods. Further, these employees are denied their first rest periods of at

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

18 16. During the PAGA PERIOD, DEFENDANT fails to accurately record and pay
19 PLAINTIFF and the AGGRIEVED EMPLOYEES for the actual amount of time these
20 employees work. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
21 is required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all time worked,
22 meaning the time during which an employee was subject to the control of an employer,
23 including all the time the employee was permitted or suffered to permit this work.
24 DEFENDANT requires these employees to work off the clock without paying them for all the
25 time they are under DEFENDANT's control. As such, DEFENDANT knew or should have
26 known that PLAINTIFF and the AGGRIEVED EMPLOYEES are under compensated for all
27 time worked. As a result, PLAINTIFF and the AGGRIEVED EMPLOYEES forfeit time
28 worked by working without their time being accurately recorded and without compensation at

1 the applicable minimum wage and overtime wage rates. To the extent that the time worked off
2 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay minimum
3 wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and
4 1197.1.

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

16 18. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
17 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the
18 wages are paid not more than seven calendar days following the close of the payroll period.
19 Cal. Lab. Code § 210 provides:

20 [I]n addition to, and entirely independent and apart from, any other penalty provided in
21 this article, every person who fails to pay the wages of each employee as provided in
22 Sections. . . .204. . .shall be subject to a civil penalty as follows: (1) For any initial
23 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
24 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
25 for each failure to pay each employee, plus 25 percent of the amount unlawfully
26 withheld.

27 19. DEFENDANT from time to time fails to pay PLAINTIFF and the AGGRIEVED
28 EMPLOYEES within seven (7) days of the close of the payroll period in accordance with Cal.
Lab. Code § 204(d).

20. DEFENDANT underpays sick pay wages to PLAINTIFF and the AGGRIEVED
EMPLOYEES by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.

1 Code Section 246. Specifically, PLAINTIFF and other non-exempt employees earn non-
2 discretionary remuneration, including but not limited to, incentives, shift differential pay, and
3 bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpays sick pay
4 to PLAINTIFF and the AGGRIEVED EMPLOYEES at their base rates of pay.

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

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

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

21 24. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
22 to collect or receive from an employee any part of wages theretofore paid by said employer to
23 said employee." DEFENDANT fails to pay all compensation due to PLAINTIFF and the
24 AGGRIEVED EMPLOYEES, makes unlawful deductions from compensation payable to
25 PLAINTIFF and the AGGRIEVED EMPLOYEES, fails to disclose all aspects of the
26 deductions from compensation payable to PLAINTIFF and the AGGRIEVED EMPLOYEES,
27 and thereby fails to pay these employees all wages due at each applicable pay period and upon
28 termination.

1 25. DEFENDANT intentionally and knowingly fails to reimburse and indemnify
2 PLAINTIFF and the AGGRIEVED EMPLOYEES for required business expenses incurred by
3 the PLAINTIFF and the AGGRIEVED EMPLOYEES in direct consequence of discharging
4 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers
5 are required to indemnify employees for all expenses incurred in the course and scope of their
6 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
7 her employee for all necessary expenditures or losses incurred by the employee in direct
8 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
9 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
10 believed them to be unlawful."

11 26. In the course of their employment PLAINTIFF and the AGGRIEVED
12 EMPLOYEES as a business expense, are required by DEFENDANT to use their own personal
13 cellular phones and personal home offices as a result of and in furtherance of their job duties
14 as employees for DEFENDANT but are not reimbursed or indemnified by DEFENDANT for
15 the cost associated with the use of their personal cellular phones and personal home offices for
16 DEFENDANT's benefit. Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES are
17 required by DEFENDANT to use their personal cellular phones and personal home offices. As
18 a result, in the course of their employment with DEFENDANT, PLAINTIFF and the
19 AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which included, but
20 were not limited to, costs related to the use of their personal cellular phones and personal home
21 offices all on behalf of and for the benefit of DEFENDANT.

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

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1 himself and all individuals who are or previously were employed by DEFENDANT in
2 California, including any employees staffed with DEFENDANT by a third party, and classified
3 as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period of August
4 31, 2021 until a date as determined by the Court (the "PAGA PERIOD").

5 33. On August 31, 2022, PLAINTIFF gave written notice by electronic mail to the
6 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
7 employer of the specific provisions of this code alleged to have been violated as required by
8 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations to
9 the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
10 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of
11 the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

12 34. The policies, acts and practices heretofore described were and are an unlawful
13 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
14 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
15 and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed
16 to pay overtime wages and sick pay wages, and (e) failed to reimburse employees for required
17 expenses, all in violation of the applicable Labor Code sections listed in Labor Code §§ 201,
18 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197,
19 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-
20 (B), and the applicable Wage Order(s), and thereby gives rise to civil penalties as a result of
21 such conduct.¹ PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by the
22 Labor Code Private Attorney General Act of 2004 as the representative of the State of
23 California for the illegal conduct perpetrated on PLAINTIFF and the AGGRIEVED
24 EMPLOYEES.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and

27
28 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code §558(a)(3).

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: November 18, 2022

BLUMENTHAL NORDREHAUG BHOWMIK DE
BLOUW LLP

By:



Norman B. Blumenthal
Nicholas J. De Blouw
Attorneys for Plaintiff