

Larry W. Lee (State Bar No. 228175)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile
lwlee@diversitylaw.com

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 10/23/2024 11:27 AM
Reviewed By: M. Suarez
Case #22CV402169
Envelope: 17058719**

Dennis S. Hyun (State Bar No. 224240)
HYUN LEGAL, APC
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

Edward W. Choi (State Bar No. 211334)
LAW OFFICES OF CHOI & ASSOCIATES,
APLC
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

Attorneys for Plaintiff and the Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

JAMES GUIFFRE, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

BI-RITE RESTAURANT SUPPLY CO.,
INC., a California corporation; and DOES
1 through 50, inclusive,

Defendant.

Case No. 22CV402169

*[Assigned for all purposes to the Hon. Charles F.
Adams in Department 7]*

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT UNDER THE
PRIVATE ATTORNEYS GENERAL ACT OF
2004**

DEMAND EXCEEDS \$25,000.00

1 Plaintiff James Guiffre (“Plaintiff”) hereby submits this First Amended Representative
2 Action Complaint (“Complaint”) against Defendant BI-RITE RESTAURANT SUPPLY CO.,
3 INC. (the “Company” or “Defendant”) and DOES 1-50 (hereinafter collectively referred to as
4 “Defendants”), as a proxy for the State of California on behalf of all aggrieved employees of
5 Defendant, for penalties under the Private Attorneys General Act, Labor Code § 2698, *et seq.*
6 (“PAGA”) for violations of the California Labor Code, including without limitation, for failure to
7 pay all minimum and overtime wages owed, failure to provide paid rest breaks, failure to provide
8 accurate itemized wage statements, failure to pay vacation wages, as follows:

9 **JURISDICTION AND VENUE**

10 1. This representative action is within the Court’s jurisdiction under the Private
11 Attorneys General Act (the “PAGA”), California Labor Code § 2698, *et seq.* As alleged herein,
12 Plaintiff has exhausted his administrative remedies to proceed under the PAGA.

13 2. This Complaint challenges systemic illegal employment practices resulting in
14 violations of the California Labor Code against employees of Defendants.

15 3. Venue is proper in Santa Clara County because Plaintiff worked for Defendant in
16 this county.

17 **PARTIES**

18 4. Plaintiff began working for Defendants on or about April 1, 2018, until on or about
19 October 1, 2021. Plaintiff worked as a Sales Representative and serviced accounts for
20 Defendants’ clients in multiple locations, including in the County of Santa Clara. Plaintiff was
21 compensated on a piece-rate basis for his work because he received commissions based on
22 products and accounts he sold to Defendants’ customer restaurants, including without limitation,
23 food, containers, cutlery kits, and packaging.

24 5. Plaintiff is informed and believes and based thereon alleges Defendant Bi-Rite
25 Restaurant Supply Co., Inc. was and is a California corporation incorporated under the laws of the
26 State of California and headquartered in Brisbane, California. Defendant sells and delivers food
27 and supplies to restaurants in the State of California.

28 6. Plaintiff was and is the victim of the policies, practices, and customs of Defendants

1 complained of in this action in ways that have deprived him of the rights guaranteed by California
2 Labor Code §§ 201-204, 226, 226.2, 227.3, 1194, 1197 and 1197.1, 510, 512, 558, 1174, 1194,
3 1197, 1197.1 and 2699 *et seq.* and claims for violation of relevant Industrial Welfare Commission
4 (“IWC”) Wage Orders.

5 7. Plaintiff is informed and believes, and based thereon alleges, that at all times
6 herein mentioned Defendants and DOES 1 through 50 are and were business entities, individuals,
7 and partnerships, licensed to do business and actually doing business in the State of California.

8 8. As such, and based upon all the facts and circumstances incident to Defendants’
9 business in California, Defendants are subject to California Labor Code §§201-204, 226, 226.2,
10 227.3, 1194, 1197 and 1197.1, 510, 512, 558, 1174, 1194, 1197, 1197.1 and 2699 *et seq.* and
11 claims for violation of relevant Industrial Welfare Commission Wage Orders.

12 9. Plaintiff does not know the true names or capacities, whether individual, partner or
13 corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that reason,
14 said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
15 complaint when the true names and capacities are known. Plaintiff is informed and believes, and
16 based thereon alleges, that each of said fictitious Defendants was responsible in some way for the
17 matters alleged herein and proximately caused Plaintiff and Aggrieved Employees to be subject to
18 the illegal employment practices complained of herein.

19 10. At all times herein mentioned, each of said Defendants participated in the doing of
20 the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
21 Defendants, and each of them, were the agents, servants and employees of each of the other
22 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting
23 within the course and scope of said agency and employment.

24 11. Plaintiff is informed and believes, and based thereon alleges, that at all times
25 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
26 joint venturer of, or working in concert with each of the other co- Defendants and was acting
27 within the course and scope of such agency, employment, joint venture, or concerted activity. To
28 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the

1 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
2 Defendants.

3 12. At all times herein mentioned, Defendants, and each of them, were members of,
4 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
5 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

6 13. At all times herein mentioned, the acts and omissions of various Defendants, and
7 each of them, concurred and contributed to the various acts and omissions of each and all of the
8 other Defendants in proximately causing the violations as herein alleged. At all times herein
9 mentioned, Defendants, and each of them, ratified each and every act or omission complained of
10 herein. At all times herein mentioned, the Defendants, and each of them, aided and abetted the
11 acts and omissions of each and all of the other Defendants in proximately causing the violations
12 as herein alleged.

13 **FIRST CAUSE OF ACTION**

14 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

15 **(BY PLAINTIFF AS A PROXY FOR THE STATE OF CALIFORNIA ON BEHALF OF**
16 **ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)**

17 14. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
18 though fully set for herein.

19 15. Plaintiff brings this cause of action as a proxy for the State of California and in this
20 capacity, seeks penalties on behalf of all Aggrieved Employees from August 18, 2021, through
21 the present, for Defendants' violations of Labor Code §§ 201-204, 226, 226.2, 226.7, 227.3, 510,
22 558, 1194, 1197, and 1197.1, and 2698, *et seq.* for failing to pay all minimum and overtime
23 wages owed, failing to provide paid rest breaks, failing to provide accurate itemized wage
24 statements, failing to pay vacation wages, penalties and/or damages for unfair business practices
25 in violation of Business and Professions Code § 17200, *et seq.*, and penalties under the PAGA.

26 16. Plaintiff alleges that Defendant violated Labor Code §§ 201-204, 226.2, 510, 558,
27 1194, 1197, 1197.1 by not paying proper minimum, regular and overtime wages to Plaintiff and
28 other similarly situated aggrieved employees. Specifically, Plaintiff alleges Defendant pays its

1 non-exempt employees on a commissioned/piece-rate basis. Thus, Defendant does not separately
2 provide paid rest periods as required by law, nor minimum and overtime wages for all hours
3 worked. Moreover, Plaintiff's wage statements failed to accurately list all hours worked for non-
4 productive time, including the minimum and overtime wages, the total hours of compensable rest
5 and recovery periods, and rest periods that should have been paid.

6 17. Plaintiff alleges that Defendant violated Labor Code §§ 226.2 and 226.7 for failure
7 to provide duty-free rest periods. As a result of Defendants' commission and/or piece-rate
8 compensation scheme, Plaintiff and the class were not provided with "paid" rest breaks. In other
9 words, Defendants did not pay wages for non-productive time, including rest breaks. As such,
10 Defendants are responsible for paying premium compensation for missed rest periods, as well as
11 the lost wages for the unpaid rest breaks.

12 18. Plaintiff further alleges that Defendant violated Labor Code §§ 226 and 226.2 for
13 failure to provide accurate itemized wage statements. Specifically, Defendant failed to accurately
14 list all hours worked for non-productive time, including the minimum and overtime wages, the
15 total hours of compensable rest and recovery periods, and rest periods that should have been paid.
16 Accordingly, Defendant violated Labor Code §§ 226(a) and 226.2(a)(2). Defendant further
17 violated Labor Code § 226(a) by not reflecting on wage statements all of the accrued, but
18 unlawfully withheld vacation wages that should have been paid to Plaintiff and Class Members
19 whose employment ended. Plaintiff asserts that Defendant issued similar defective wage
20 statements to all class members in violation of Section 226(a).

21 19. Plaintiff further alleges that Defendant Labor Code §§ 201-203 and 227.3 by
22 failing to pay Plaintiff out for all of his accrued vacation at the separation of employment in
23 violation of Labor Code § 227.3.

24 20. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all
25 applicable civil penalties for Defendants' violation of Labor Code §§ 201-204, 226, 226.2, 227.3,
26 1194, 1197 and 1197.1, 510, 512, 558, 1174, 1194, 1197, 1197.1 and 2699 *et seq.* and claims for
27 violation of relevant Industrial Welfare Commission Wage Orders for the time period described
28 above, on behalf of himself and other Aggrieved Employees.

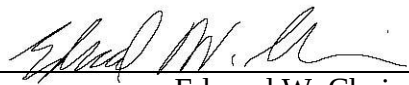
PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment on behalf of the State of California and all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. Upon the First Cause of Action, for civil penalties according to proof pursuant to the PAGA, Labor Code § 226.3, and for costs and attorneys' fees;
2. On all causes of action for attorneys' fees and costs as provided by Labor Code § 2699 and California Code of Civil Procedure section 1021.5; and
3. For such other and further relief as the Court may deem just and proper.

DATED: October 23, 2024

LAW OFFICES OF CHOI & ASSOCIATES

By: 
Edward W. Choi
Attorneys for PLAINTIFF and the AGGRIEVED
EMPLOYEES

PROOF OF SERVICE

I am employed in the County of Los Angeles; I am over the age of 18 years and not a party to the within action; my business address is 515 S. Figueroa St. Suite 1250, Los Angeles, California 90071.

On October 23, 2024, I served the foregoing document(s) described as: **FIRST AMENDED REPRESENTATIVE ACTION COMPLAINT UNDER THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**, on the interested parties in this action by placing a true copy thereof, in a sealed envelope(s) addressed as follows:

Conor J. Dale
Trey Sims
JACKSON LEWIS P.C.
50 California Street, 9th Floor
San Francisco, CA 94111-4615
Phone: (415) 394-9400
Fax: (415) 394-9401
Conor.Dale@jacksonlewis.com
Trey.Sims@jacksonlewis.com
Belinda.Vega@jacksonlewis.com
Benjamin.Clough@jacksonlewis.com
Lauretta.Adams@jacksonlewis.com

Larry W. Lee
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa St., Suite 1250
Los Angeles, California 90071
lwlee@diversitylaw.com
olympia@diversitylaw.com
erika@diversitylaw.com
calendar@diversitylaw.com

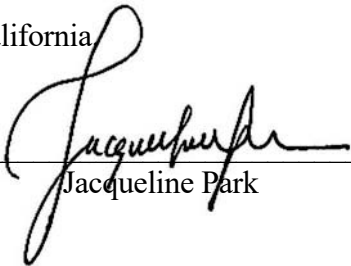
Dennis S. Hyun
HYUN LEGAL, APC
515 S. Figueroa St., Suite 1250
Los Angeles, California 90071
dhyun@hyunlegal.com

 X **BY ELECTRONIC SERVICE**

I caused such document to be uploaded to Odyssey to be served on the offices of the addressees.

 X **(State)** I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 23, 2024, at Los Angeles, California



Jacqueline Park