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Attorneys for Plaintiff
JAMES WHEELER; as an individual and
on behalf of other aggrieved employees

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO**

JAMES WHEELER; as an individual and
on behalf of other aggrieved employees,

Plaintiffs,

vs.

CRITTER CONTROL OPERATIONS,
INC., a United States Corporation,
ROLLINS, INC., a United States
Corporation, and DOES 1 – 10, inclusive,

Defendants.

CASE NO.

**COMPLAINT FOR CIVIL PENALTIES
UNDER THE PRIVATE ATTORNEY
GENERAL ACT OF 2004 (Labor Code §§2698,
et. seq.)**

BY FAX

1 Plaintiff JAMES WHEELER, as an individual and on behalf of all other aggrieved employees
2 (“Plaintiff”), hereby file this Complaint against Defendants CRITTER CONTROL OPERATIONS,
3 INC. (“Critter Control”), ROLLINS, INC. (“Rollins”), and DOES 1 through 10, inclusive (collectively
4 “Defendants”). Plaintiff is informed and believes, and on the basis of that information and belief,
5 alleges as follows:

6 **INTRODUCTION**

7 1. This action is brought by Plaintiff on behalf of all non-exempt employees working at
8 Defendants’ pest control centers in California, and challenges Defendants’ employment practices with
9 respect to payment of wages and provisions for meal and rest periods applicable to non-exempt
10 employees, including Defendants’ policies and practices of (a) failing to pay for every hour worked,
11 including minimum wages, designated wages, and overtime; (b) failing to provide meal and rest breaks
12 that comply with California law; (c) failing to pay premium wages and/or restitution for on-duty,
13 missed, short, and/or late meal and rest breaks and/or failure to pay premium wages at the regular rate;
14 (d) failing to maintain accurate employment records for aggrieved employees; (e) failing to provide
15 accurate itemized pay stubs; (f) failing to pay all wages owed timely on regular payroll and upon
16 termination; and (g) failing to reimburse for business related expenses.

17 2. In this case, Plaintiff, individually and on behalf of other aggrieved employees, seeks
18 civil penalties for Defendants’ violations of the California Labor Code, including failure of Defendants
19 to pay Plaintiff and other aggrieved employees all wages due to them including, minimum wages,
20 accurate wages, and overtime for all hours worked (Labor Code §§ 223, 510, 512, 558, 1174.5,
21 1182.12; 1193.5, 1193.6, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, and IWC Wage Order 4); failure
22 to pay premium wages and failure to pay premium wages at the regular rate (Labor Code §§ 226.7,
23 512, 1194.5, and IWC Wage Order 7); failure to maintain accurate employment records and to timely
24 furnish accurate, itemized wage statements (201.3, 203, 204, 210, 221-223, 225.5, 226(e), 226.3,
25 226.7, 256, 510, 512, 558, 1174, 1174.5, 1182.12, 1193.5, 1194, 1194.2(a), 1197.1, 1194.5, 1198,
26 2699; and Wage Order 4-2001); for failure to pay wages timely on regular payroll and on termination
27 (Labor Code §§ 201-204); for failure to provide meal and rest periods (Labor Code §§ 226.7, 512 and
28 IWC Wage Order 4); and for failure to reimburse for business related expenses (Labor Code § 2802).

3. In this action Plaintiff, individually and on behalf of other aggrieved employees, seeks penalties established by Labor Code section 2699, the Private Attorney General’s Act (“PAGA”) and other provisions in the Labor Code, against Defendants for their unlawful employment practices.

4. The acts complained of herein have occurred, are presently occurring, and are expected to continue occurring, within the time period from one year prior to the filing of this complaint up to and through the time of a judgment is entered in this matter (hereinafter, the “Relevant Time Period”).

PARTIES

Plaintiff JAMES WHEELER

5. Plaintiff JAMES WHEELER is an individual over the age of eighteen (18) and is now and/or at all relevant times mentioned in this Complaint was a resident and domiciliary of Placer County, State of California. Mr. Wheeler worked as a non-exempt as a wildlife sales consultant for Defendants in Sacramento County, California, during the statutory time period.

Defendants

6. Plaintiff is informed and believes, and based thereon alleges, that Defendants Critter Control and Rollins, acting as dual employers, operate pest control services in Sacramento, California, as well as other locations within California, whereas hourly employees handle and provide assessments to consumers with concerns of pest control, and contribute to citing quotations for the removal of pests from homes and businesses provided by Defendants.

7. Defendant Critter Control is a corporation which, on information and belief, is conducting business in good standing in California. Defendants operate pest control services and employ persons in Sacramento County and throughout California.

8. Plaintiff is informed and believes that Defendants are liable for all acts set forth in this complaint under general joint employer liability and Labor Code Section 2810.3.

9. DOES 1 through 10 inclusive are now and/or at all times mentioned in this Complaint were, licensed to do business and/or actually doing business in the State of California. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of DOES 1 through 10, inclusive and for that reason, DOES 1 through 10 are sued under such fictitious names pursuant to California Code of Civil Procedure, section 474. Plaintiff will seek leave of court to amend this

1 Complaint to allege such names and capacities as soon as they are ascertained. DOES 1 through 5 are
2 believed to be business entities who were also co-employers of the Plaintiff and other aggrieved
3 employees herein.

4 10. Plaintiff is informed and believes and based thereon alleges that at all times herein
5 mentioned, Defendants were responsible in whole for the matters referred to herein.

6 11. Plaintiff is informed and believes and based thereon alleges that at all times herein
7 mentioned, Defendants caused Plaintiff, all others similarly situated and the general public to be
8 subjected to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this
9 Complaint.

10 12. Plaintiff is informed and believes and based thereon alleges that Defendants caused the
11 injuries and/or damages alleged in this Complaint.

12 **JURISDICTION AND VENUE**

13 13. The California Superior Court has jurisdiction in the matter because the claims exceed
14 the jurisdictional minimum of this court and Plaintiff is a resident of the state of California and
15 Defendants perform substantial business in the State of California. Further, the issues herein are based
16 on California statutes, specifically the Private Attorney General Act of 2004.

17 14. Venue is proper in the County of Sacramento because Defendants transact substantial
18 business in this County and Plaintiff's claims arose in this County.

19 **FACTUAL ALLEGATIONS**

20 ***Background***

21 15. Defendants Critter Control and Rollins employ non-exempt wildlife sales consultants,
22 and others with similar job titles and responsibilities as wildlife sales consultants, who are the
23 Aggrieved Employees in this lawsuit.

24 16. Plaintiff JAMES WHEELER worked in the position of wildlife sales consultant for
25 Defendants, in Sacramento County, California, during the statutory time period and is no longer
26 employed by them.

27 17. Defendants operate pest control services in Sacramento, California, as well as other
28 locations within California, whereas hourly employees handle and provide assessments to consumers

1 with concerns of pest control, and contribute to citing quotations for the removal of pests from homes
2 and businesses provided by Defendants.

3 18. Plaintiff, and other Aggrieved Employees' job duties were to travel to participate in
4 weekly meetings, receive a schedule determined by Defendants, travel to locations during the time
5 block provided by Defendants, inspect the location for pests and wildlife, and report findings to
6 prepare a quotation for the removal of pests and wildlife, and install prevention measures, amongst
7 other duties related to these activities.

8 19. Defendants had the power to hire and fire Plaintiff and other persons similarly situated.
9 Defendants controlled and set the schedules for Plaintiff and other persons similarly situated.

10 20. Defendants knowingly required Plaintiff and Aggrieved Employees to work overtime
11 and during meal or rest periods, and/or failed to pay premium wages for missed, short, late, or on-duty
12 meal or rest periods and/or pay premiums at the regular rate.

13 21. Defendants supervised and controlled the work schedule of Plaintiff and Aggrieved
14 Employees.

15 22. Plaintiff and Aggrieved Employees worked or work beyond 8 hours per day, and in
16 excess of forty hours per week for Defendants in a given workweek.

17 23. Defendants required Plaintiff and Aggrieve Employees to provide their own business-
18 related equipment.

19 24. Defendants required and/or permitted Plaintiff and those similarly situated to him to
20 work portions of the day during which they were subject to Defendants' control without pay.

21 25. Defendants determined the rate of pay for Plaintiff and other similarly situated persons.

22 26. Defendants supervised and controlled the work schedule of Plaintiff and other similarly
23 situated persons.

24 27. Plaintiff and the other employees are also similar because Defendants did not pay them
25 for all time they actually worked.

26 28. The net effect of Defendants' policies and practices, instituted and approved by
27 company managers and supervisors, is that Defendants willfully failed to pay all compensation owed
28 to Plaintiff and others similarly situated, and willfully failed to keep accurate time records to save

1 payroll costs. Defendants thus enjoyed ill-gained profits at the expense of its hourly employees.

2 29. Defendants' policy and practice of requiring and/or permitting its employees, including
3 Plaintiff and other non-exempt, hourly employees, to perform work without pay for such work
4 performed, violates California Labor Code.

5 30. Defendants' policy and practice of requiring its employees to perform work without
6 pay in many instances has caused and continues to cause Plaintiff and certain other similarly situated
7 hourly employees to work in excess of forty hours per week, without being properly compensated at
8 a minimum or regular wage or 1.5 times their respective hourly rate for such work performed.

9 31. Defendants' failure to compensate its non-exempt, hourly employees, in the position,
10 of wildlife sales consultants, and others with similar job titles and responsibilities as wildlife sales
11 consultants, with the full amount of the applicable minimum or regular wage or overtime wage has
12 caused Plaintiff and other similarly situated non-exempt employees to suffer harm.

13 32. Defendants' non-exempt employees are entitled to compensation for all time they
14 worked without pay in any given workweek.

15 ***Defendants' Failure to Pay Minimum Wages and Designated Rates***

16 33. IWC Wage Order, No. 4 defines "hours worked" to mean "the time during which an
17 employee is subject to the control of an employer, and includes all the time the employee is suffered
18 or permitted to work, whether or not required to do so."

19 34. Labor Code § 1182.12 and IWC Wage Order, No. 4-2001, § 4 provide that on and after
20 January 1, 2020, the minimum wage for all industries shall be not less than thirteen dollars (\$13.00)
21 per hour, and on and after January 1, 2021, the minimum wage for all industries shall be not less than
22 fourteen dollars (\$14) per hour.

23 35. Labor Code § 1194(a) provides in relevant part: "Notwithstanding any agreement to
24 work for a lesser wage, any employee receiving less than the legal minimum wage [] is entitled to
25 recover in a civil action the unpaid balance of the full amount of this minimum wage [], including
26 interest thereon, reasonable attorney's fees, and costs of suit."

27 36. Labor Code § 1194.2(a) provides in relevant part: "In any action under Section 1193.6
28 or Section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed

1 by an order of the commission, an employee shall be entitled to recover liquidated damages in an
2 amount equal to the wages unlawfully unpaid and interest thereon.”

3 37. Labor Code § 1197 provides: “The minimum wage for employees fixed by the
4 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
5 minimum so fixed is unlawful.”

6 38. Labor Code § 223 provides: “Where any statute or contract requires an employer to
7 maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting
8 to pay the wage designated by statute or contract.”

9 39. Defendants classified Plaintiff and other aggrieved employees as non-exempt and paid
10 them on an hourly basis. Hours worked include, but are not limited to, all hours that an employee is
11 permitted or suffered to work including, but not limited to, off-the-clock work that an employer either
12 knew or should have known that an employee was performing.

13 40. As a matter of policy and/or practice, Defendants routinely required or permitted
14 Plaintiff and other aggrieved employees to work portions of the day during which they were subject
15 to Defendants’ control, but Defendants failed to compensate them.

16 41. Throughout the Relevant Time Period, Plaintiff and other aggrieved employees, were
17 subject to Defendants’ uniform policy and/or practice of failing to pay minimum wages and/or
18 designated rates for hours worked off-the-clock. As a result, Plaintiff and other aggrieved employees
19 were routinely denied compensation for all hours worked.

20 42. Additionally, Defendants did not maintain adequate records of all wages earned, hours
21 worked, and meal and rest breaks taken.

22 ***Defendants’ Failure to Pay Overtime Compensation***

23 43. Labor Code § 1194 provides that an employee receiving less than the legal overtime
24 compensation is entitled to recover in a civil action the unpaid balance of the full amount of this
25 minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and
26 costs of suit.

27 44. Labor Code § 510(a) states: “Any work in excess of eight hours in one workday and
28 any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh

1 day of work in any one workweek shall be compensated at the rate of no less than one and one-half
2 times the regular rate of pay for an employee.” Labor Code § 510(a) further states: “Any work in
3 excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of
4 pay for an employee.” Labor Code § 510(a) further states: “[A]ny work in excess of eight hours on
5 any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate
6 of pay of an employee.”

7 45. Throughout the Relevant Time Period, Wage Order No. 4-2001 provided for payment
8 of overtime wages equal to one and one-half (1 + 1/2) times an employee’s regular rate of pay for all
9 hours worked over eight (8) hours per day and/or forty (40) hours in a workweek, and/or for payment
10 of overtime wages equal to double the employee’s regular rate of pay for all hours worked in excess
11 of twelve (12) hours in any workday and/or for all hours worked in excess of eight (8) hours on the
12 seventh (7th) day of work in any one workweek.

13 46. Defendants classified Plaintiff and other aggrieved employees as non-exempt, therefore
14 they were entitled to overtime compensation for all hours worked more than the hours and time
15 specified in the Wage Order, statutes and regulations identified herein.

16 47. As a matter of policy and/or practice, Defendants routinely required or permitted
17 Plaintiff and other aggrieved employees to work portions of the day during which they were subject
18 to Defendants’ control and failed to compensate them. Accordingly, Defendants failed to properly
19 record the actual hours worked by Plaintiff and other aggrieved employees, and thus failed to pay
20 overtime wages for the actual amount of overtime hours worked.

21 ***Defendants’ Failure to Provide Meal Breaks***

22 48. At all times relevant hereto, Labor Code § 226.7 and IWC Wage Order, No. 7-2001, §
23 11, required employers to authorize, permit, and provide a meal period of not less than thirty (30)
24 minutes when the employee is completely relieved of all duty.

25 49. Plaintiff and other aggrieved employees did not waive their meal periods, by mutual
26 consent with Defendants or otherwise. Plaintiff is informed and believes, and based thereon alleges,
27 that Defendants failed to effectively communicate California meal period requirements to Plaintiff and
28 other aggrieved employees.

1 50. Plaintiff is further informed and believe, and based thereon allege, that as a matter of
2 policy and/or practice, Defendants routinely failed to provide Plaintiff and other aggrieved employees,
3 with meal periods during which they were relieved of all duties.

4 51. Specifically, throughout the Relevant Time Period, Defendants regularly:

- 5 a. Failed to provide Plaintiff and aggrieved employees with a first meal period of not
6 less than thirty (30) minutes during which they are relieved of all duty before
7 working more than five (5) hours;
8 b. Failed to provide Plaintiff and aggrieved employees with a second meal period of
9 not less than thirty (30) minutes during which they are relieved of all duty before
10 working more than ten (10) hours per day; and
11 c. Failed to pay Plaintiff and aggrieved employees one hour of pay at their regular
12 rate of compensation for each workday that a meal period was not provided; and
13 d. Failed to accurately record all meal periods.

14 ***Defendants' Failure to Provide Rest Breaks***

15 52. At all times relevant hereto, Labor Code § 226.7 and IWC Wage Order, No. 7-2001, §
16 12, required employers to authorize, permit, and provide a ten (10) minute paid rest for each four (4)
17 hours of work, during which employees are relieved of all duty.

18 53. At all times relevant hereto, Labor Code § 226.7(b) and IWC Wage Order, No. 7-2001,
19 § 12 required employers to pay one hour of additional pay at the regular rate of compensation for each
20 employee and each workday that a proper rest period is not provided.

21 54. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to
22 effectively communicate California rest period requirements to Plaintiff and other aggrieved
23 employees. Plaintiff is further informed and believes, and based thereon alleges that throughout the
24 Relevant Time Period Defendants failed to provide rest periods.

25 55. Throughout the Relevant Time Period, Plaintiff and other aggrieved employees were
26 routinely denied the rest breaks they were entitled to under California law.

27 56. Specifically, throughout the Relevant Time Period, Defendants regularly:

- 28 a. Failed to provide paid rest periods of ten (10) minutes during which Plaintiff and other

aggrieved employees were relieved of all duty for each four (4) hours of work and able to take rest periods within the middle of the shift;

- b. Failed to pay Plaintiff and other aggrieved employees one (1) hour of pay at their regular rate of compensation for each workday that a rest period was not permitted.

Defendants' Failure to Pay All Wages Due Timely and at Termination of Employment

57. At all times relevant hereto, Labor Code § 201 required an employer that discharges an employee to pay compensation due and owing to said employee immediately upon discharge. Labor Code § 202 requires an employer to pay an employee who quits any compensation due and owing to said employee within seventy-two (72) hours of an employee's resignation. Labor Code § 203 provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required under Sections 201 and 202, then the employer is liable for waiting time penalties in the form of continued compensation for up to thirty (30) work days.

58. At all times relevant thereto, California Labor Code § 204(b)(d) provides that all wages payable on a weekly, biweekly, or semimonthly payroll become due and payable within seven calendar days following the close of the payroll period.

59. California Labor Code §210 provides for penalties for violations of Labor Code §204 in the amount of (a) \$100 for an initial violation; (b) \$200 for a subsequent violation, or any willful or intentional violation, \$200 for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

60. As of January 1, 2020, AB 673 amends Labor Code §210 to create a private right of action to seek penalties for late payment of payday wages.

61. Defendants willfully and knowingly failed to pay Plaintiff JAMES WHEELER, and other aggrieved employees, upon termination of employment, all accrued compensation including payment of minimum wage compensation, agreed wages, overtime, and/or premium wages.

Defendants' Failure to Maintain Accurate Employment Records

62. At all times relevant hereto, Labor Code §§ 226, 1174, 1174.5, 1194.5 and Cal. Code Regs., tit. 8, § 11090 required employers to maintain accurate employment records.

63. As noted herein, throughout the Relevant Time Period, Defendants failed to maintain documentation of the actual hours worked each day by Plaintiff and other aggrieved employees, all wages earned, hourly rates applicable, and meal breaks taken. As such, Defendants failed to maintain accurate employment records.

Defendants' Failure to Provide Accurate, Itemized Wage Statements

64. At all times relevant hereto, Labor Code § 226 and IWC Wage Order, No. 4-2001, § 7 required employers to maintain adequate employment records and provide employees with accurate itemized wage statements showing gross wages, total hours worked, all applicable hourly rates worked during each pay period, the corresponding number of hours worked at each hourly rate, and meal breaks taken.

65. Wage statements provided to Plaintiff and other aggrieved employees by Defendants do not show all wages earned, all hours worked, or all applicable rates, in violation of Labor Code § 226, IWC Wage Order, No. 4-2001, § 7.

66. Moreover, Defendants did not maintain adequate records of all wages earned, hours worked, and breaks taken.

Defendants' Failure to Reimburse for Business Related Expenses

67. At all times relevant hereto, Labor Code 2802(a) provides that an employer indemnify his or her employee for all necessary expenditures or losses incurred by the employees in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.

68. During relevant periods of time, Defendants' uniform policy, practice and procedure was to not reimburse Plaintiff and the other aggrieved employees for all business-related expenses.

69. At all relevant times, Plaintiff and the other Aggrieved Employees paid for the cost of equipment required by Defendants and/or which were necessary to the performance of their job, including but not limited to, tools, flashlights, covid protections, OSHA compliant respirators, etc. These expenses were necessary to complete their principal job duties.

70. Although these expenses were necessary expenses incurred by Plaintiff and other aggrieved employees, Defendants failed to indemnify and reimburse Plaintiff and other aggrieved

1 employees for these expenses as an employer is required to do under the laws and regulations of
2 California.

3 **FIRST CAUSE OF ACTION**

4 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

5 **(Lab. Code §§ 2698 *et seq.*)**

6 71. Plaintiff incorporates by reference the allegations set forth above.

7 72. Pursuant to California Labor Code § 2698 *et seq.*, Plaintiff is entitled to act as a private
8 attorney general to assess and recover civil penalties against Defendants on behalf of Plaintiff and any
9 other current or former employees of Defendants for violations of the California Labor Code.

10 73. In this case, Plaintiff, individually and on behalf of all other Aggrieved Employees,
11 seek relief for Defendants' unlawful employment policies, practices and procedures, which have
12 resulted in the failure of Defendants to pay Plaintiff and the aggrieved employees all wages due to
13 them including, minimum wages and overtime for all hours worked (Labor Code §§ 223, 510, 512,
14 558, 1174.5, 1182.12; 1193.5, 1193.6, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, and IWC Wage
15 Order 4); failure to pay premium wages at the regular rate (Labor Code §§ 226.7, 512, 1194.5, and
16 IWC Wage Order 7); failure to maintain accurate employment records and to timely furnish accurate,
17 itemized wage statements (201.3, 203, 204, 210, 221-223, 225.5, 226(e), 226.3, 226.7, 256, 510, 512,
18 558, 1174, 1174.5, 1182.12, 1193.5, 1194, 1194.2(a), 1197.1, 1194.5, 1198, 2699; and Wage Order 4-
19 2001); for failure to pay wages timely on regular payroll and on termination (Labor Code §§ 201-204);
20 for failure to provide meal and rest periods; (Labor Code §§ 226.7, 512 and IWC Wage Order 4); and
21 for failure to reimburse for business related expenses (Labor Code § 2802).

22 74. Plaintiff asserts claims on behalf of the following "Aggrieved Employees":

23 a. Aggrieved Employee Group: All persons employed as non-exempt wildlife sales
24 consultants, and others with similar job titles and responsibilities as wildlife sales
25 consultants, by Defendants who, at any time from one year prior to the filing of this
26 complaint to present, worked one or more shifts in California Pest Control Centers.

27 b. Former Aggrieved Employee Group: All persons formerly employed as non-exempt
28 wildlife sales consultants, and others with similar job titles and responsibilities as

1 wildlife sales consultants, by Defendants who, at any time from one year prior to the
2 filing of this complaint to present, worked one or more shifts in California Pest Control
3 Centers.

4 75. Pursuant to *Labor Code* § 2699.3, an aggrieved employee, may commence a civil
5 action arising under *Labor Code* § 2699 after the following requirements have been met:

6 a. The aggrieved employee shall give written notice (hereinafter “Notice”) by
7 certified mail to the Labor and Workforce Development Agency (hereinafter
8 “Agency”) and the employer of the specific provisions of the Labor Code alleges
9 to have been violated, including the facts and theories to support the alleges
10 violation.

11 b. The agency shall notify the employer and the aggrieved employee or representative
12 by certified mail that it does not intend to investigate the alleged violation within
13 sixty (60) calendar days of the postmark date of the notice received. Upon receipt
14 of that notice or if no notice is provided within sixty-five (65) calendar days of the
15 postmark date of the notice, the aggrieved employee may commence a civil action
16 pursuant to Section 2699.

17 76. Plaintiff has complied with the procedures for bringing suit specified in California
18 Labor Code Section 2699.3. Within the statutory time frame, Plaintiff, individually and on behalf of
19 other Aggrieved Employees, gave the required notice to the Labor and Workforce Development
20 Agency (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleged to
21 have been violated, including the facts and theories to support the alleged violations. See Exhibit “A”
22 attached hereto. Plaintiff also paid the \$75.00 fee to the LWDA pursuant to SB 836. More than sixty-
23 five (65) days passed and the LWDA did not respond to Plaintiff’s letters. Furthermore, a copy of this
24 complaint is being provided to the LWDA the same day this document is filed with the Superior Court.

25 **Penalties Authorized by PAGA**

26 77. Defendants violated Labor Code §§ 210, 225.5, 223, 510, 1174.5, 1182.12, 1193.5,
27 1193.6, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, and Wage Order 4-2001 when they failed to pay
28 Plaintiff and other aggrieved employees for off-the-clock time worked. As a matter of policy and/or

1 practice, Defendants failed to compensate Plaintiff and other aggrieved employees for all work hours
2 and thus, failed to pay minimum wages, accurate wages, and overtime wages for all hours worked by
3 Plaintiff and other aggrieved employees in violation of California law.

4 78. Defendants violated Labor Code §§ 226.7, 512, 1194.5, and IWC Wage Order No. 4-
5 2001, section 11, by failing to provide Plaintiff and other aggrieved employees a meal period of at
6 least 30 minutes when the work period is more than five hours and a second meal period of at least 30
7 minutes when the work period is more than 10 hours. Defendants routinely failed to provide Plaintiff
8 and other aggrieved employees, with meal periods during which they were relieved of all duties.
9 Similarly, IWC Wage Order No. 4-2001, § 12 requires employers to “authorize and permit” employees
10 to take a 10-minute rest break every four hours of work, during which they must be relieved of all
11 duties. Defendants failed to do so, entitling Plaintiff and other aggrieved employees to a premium of
12 one hour’s worth of pay at the employee’s regular rate for each day that Defendants failed to provide
13 a meal or period, pursuant to Labor Code section 226.7(c). Defendants further failed to pay premium
14 pay when a meal or rest break was reported late, missed, short, or on-duty in violation of the same
15 Labor Code sections and failed to properly record meal periods.

16 79. Defendants violated Labor Code §§ 226, 226.3, 226.4, 1174, 1174.5, and 1194.5 by
17 knowingly and intentionally providing Plaintiff and other aggrieved employees with wage statements
18 that, among others items required, do not show all applicable wage rates, the number of hours worked,
19 and the applicable rate for those hours, and all wages earned.

20 80. Defendants violated Labor Code §§ 226, 1174, 1174.5, and 1194.5, and IWC Wage
21 Order No. 4-2001 by failing to maintain documentation of the actual hours worked each day by
22 Plaintiff and other aggrieved employees, all wages earned, hourly rates applicable, and meal breaks
23 taken.

24 81. Defendants violated Labor Code §§ 201-203, 204 and 201.3 by failing to timely pay all
25 earned and unpaid wages, including unpaid minimum wage, during employment and at the time of
26 separation from employment, for those aggrieved employees no longer employed by Defendants.

27 82. Defendants violated Labor Code § 2802 by failing to reimburse Plaintiff and other
28 aggrieved employees for Business Related Expenses.

83. Plaintiff is entitled to recover 25% of any civil penalties assessed against Defendants for such violations, with the remaining 75% of the recover being paid to the Labor and Workforce Development Agency.

84. Accordingly, Plaintiff seeks to recover any and all civil penalties otherwise capable of being collected under the law, including any statutes applicable under section 2699.5, and any penalty provisions provided for by §§ 201.3, 203, 204, 210, 225.5, 226(e), 226.3, 226.7, 256, 1174.5, 1194, 1194.2(a), 1197.1, and 2699; CA Civil Code 3287(b); and Wage Order 4-2001.

85. Labor Code section 2699(g) also provides for the payment of reasonable attorneys' fees and costs to a prevailing party seeking recovery under the Private Attorney General Act. Accordingly, Plaintiff seeks to recover civil penalties, attorneys' fees, and costs in an amount to be proven at trial pursuant to any applicable provisions of the law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- a. Civil penalties;
- b. Other penalties and fines permitted by law;
- c. Costs of suit;
- d. Injunctive Relief;
- e. Reasonable attorneys' fees; and
- f. Such other relief as the Court deems just and proper.

DATED: November 4, 2022

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Attorneys for Plaintiff JAMES WHEELER as an individual and on behalf of other aggrieved employees

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of Plaintiff's and the members of the aggrieved employees
by jury to the extent authorized by law.

DATED: November 4, 2022

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*Attorneys for Plaintiff JAMES WHEELER as an
individual and on behalf of other aggrieved
employees*

Exhibit A



Christina Humphrey Law

August 31, 2022

SUBMITTED TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY

VIA ONLINE CLAIM NOTICE: <https://dir.tfaforms.net/295>

Labor and Workforce Development Agency

Attn: PAGA Administrator

455 Golden Gate Avenue, 9th Floor

San Francisco, CA 94102

Filed online at dir.ca.gov

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED TO:

ROLLINS, INC

2170 PIEDMONT ROAD NE

ATLANTA, GA 30324

-And -

CRITTER CONTROL OPERATIONS, INC

2170 PIEDMONT ROAD NE

ATLANTA, GA 30324

RE: James Wheeler, et al. v. Critter Control Operations, Inc., And Rollins, Inc., et. al.

PAGA Administrator and To Whom It May Concern,

This office, along with Christina Humphrey Law, P.C., has been retained by James Wheeler, Employee ID 006981110, in connection with claims arising out of his employment with Critter Control Operations, Inc. and Rollins, Inc., acting as dual employers.

Pursuant to *Labor Code* 2699.3, please accept this as notice that James Wheeler ("Plaintiff"), alleges that Critter Control Operations, Inc. and Rollins, Inc., acting as dual employers, (hereinafter "Defendants") violated, and continues to violate, provisions of the California Labor Code including, but not limited to, Labor Code §§ 201-203, 221-223, 226, 226.7, 510, 512, 1174, 1182.12, 1194, 1194.2, 1197, 1198, 2802 and 2699.

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Plaintiff worked as a wildlife sales consultant for Defendants. Throughout his employment, Defendants failed to pay proper wages and provide proper meal and rest breaks to Plaintiff and others with the same or similar job titles and responsibilities as employees under state wage and hour laws. Plaintiff and others should have been paid minimum wages, and provided proper meal and rest breaks. In doing so, Defendants have violated numerous California labor code sections as described herein.

Defendants operate pest control services in Sacramento, California, as well as other locations within California and the United States, whereas hourly employees handle provide assessments to consumers with concerns of pest control, and contribute to citing quotations for the removal of pests from homes and businesses provided by Defendants. Plaintiff worked as a non-exempt employee in Sacramento, California. His job duties were to travel to participate in weekly meetings, receive a schedule determined by Defendants, travel to locations during the time block provided by Defendants, inspect the location for pests and wildlife, and report findings to prepare a quotation for the removal of pests and wildlife, and install prevention measures, amongst other duties related to these activities.

Defendant failed to pay Plaintiff and other non-exempt employees for all time worked for Defendants. Plaintiff and other employees were not paid minimum wages, and routinely worked beyond 8 hours per day. Defendants did not provide for adequate or mandated meal and rest periods for Plaintiff and other non-exempt employees. Defendants required Plaintiff and other non-exempt employees to provide their own business-related expenses. Defendants failed to keep accurate time records and at times, and intentionally manipulated time records to avoid having to compensate for overtime.

Plaintiff is an “aggrieved employee” as defined in Labor Code section 2699, subdivision (a) and brings this Private Attorney General’s Act action on behalf of herself and all other aggrieved employees. Plaintiff, on behalf of herself and other aggrieved employees, seeks penalties under the Private Attorney General’s Act (Labor Code § 2698, *et seq.*). The specific provisions of the Labor Code allegedly violated, and the facts and theories which support said alleged violations, are as follows:

Failure to Pay Minimum Wages and Designated Rates

Defendant failed to pay Plaintiff and other aggrieved employees minimum wages set by state law. As a matter of policy and/or practice, Defendant routinely required Plaintiff and other aggrieved employees to work portions of the day during which they were subject to Defendants’ control, but Defendant failed to compensate them for this time. Plaintiff routinely worked 10-14 hours per day, and was not compensated for all hours worked.

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As a result, Defendants violated Labor Code §§ 1182.12, 1197 and Wage Order No. 4 due to their failure to pay minimum wages and designated rates for all hours worked. Labor Code § 1194.2 entitles Plaintiff and other aggrieved employees to recover liquidated damages in an amount equal to the unpaid wages and interest thereon.

Failure to Pay Overtime and Premium Compensation

Due to Defendants' practice of requiring Plaintiff and other aggrieved employees to work portions of the day during which they were subject to Defendants' control without pay, Defendant failed to properly record actual hours worked by Plaintiff and other aggrieved employees and failed to pay overtime wages for the actual amount of overtime worked.

The Defendants' actions violate Labor Code § 1194, § 510(a), and Wage Order No. 4 due to their failure to pay overtime wages equal to one and one half times the employee's regular rate for hours worked over eight per day and forty per workweek or double the employee's regular rate for all hours worked in excess of twelve hours in any workday or eight hours on the seventh day of work in any one workweek. Defendants failed to pay premium wages and failed to pay premium wages at regular rates.

Failure to Pay Compensation Timely and Timely at Time of Termination

As a result of the failures of the Defendant to keep adequate employment records including records of hours worked and overtime Plaintiff and aggrieved employees were not paid all compensation owed during regular pay periods and at the time of termination. The Defendants' failure to pay all outstanding compensation owed at the time of termination violates Labor Code § 201-204.

Failure to Provide Accurate Itemized Wage Statements and Maintain Records

Labor Code § 226(a) requires every employer to provide employees with itemized wage statements that accurately reflect, among other things, total hours worked. In additions, Employers must retain accurate wage records. Defendants consistently violated this Labor Code provision through Defendants' failure to accurately keep track of all hours worked by Plaintiff and aggrieved employees. Hours worked included time worked without being paid by the Defendant as well as missed meal and rest breaks.

As a result of the violations of numerous provisions of California law, the Plaintiff and other Aggrieved Employees are civil penalties allowed by law pursuant to CA Labor Code §§ 201.3, 203, 204, 210, 221-223, 225.5, 226(e), 226.3, 226.7, 256, 510, 512, 558, 1174, 1174.5, 1182.12, 1193.5, 1194, 1194.2(a), 1197.1, 1194.5, 1198, 2699; and Wage Order 4-2001.

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Failure to Provide Meal and Rest Periods

California Labor Code Sections 226.7, 512 and a number of Wage Orders of IWC (Industrial Welfare Commission) prohibit employers from employing a worker for more than five hours without a meal period of not less than 30 minutes, and from employing an employee for more than ten hours per day without providing a second meal period of not less than 30 minutes.

California Labor Code Section 226.7, and the applicable wage orders, also require employers to provide employees ten minutes of net rest time per four hours or major fraction thereof of work, and to pay employees their full wages during those rest periods. Unless the employee is relieved of all duty during the 30-minute meal period and ten-minute rest period, the employee is considered "on duty" and the meal period is counted as time worked under the applicable wage orders.

Under section 226.7(b), and employer who fails to provide a required meal period must, as compensation, pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the meal period was not provided. Similarly, an employer must pay an employee denied a required rest period one hour of pay at the employee's regular rate of pay for each workday that the rest period was not provided.

Defendants failed to provide Plaintiff and other similarly situated proper meal and rest periods. In addition, Defendants failed to compensate Plaintiff and others similarly situated for missed meal and rest periods, at premium wages and at premium wage rate in violation of California law.

Failure to Reimburse for Business Related Expenses

Labor Code 2802 requires (a) An employer shall indemnify his or his employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or his duties, or of his or his obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful. Plaintiff and others similarly situated were not reimbursed for all business related expenses, including, but not limited to, tools, flashlights, covid protections, OSHA compliant respirators, etc.

Plaintiff respectfully requests that the LWDA notify this office within sixty (60) days if it wishes to investigate this matter further. A copy is being sent via certified mail, return receipt, to Defendant.

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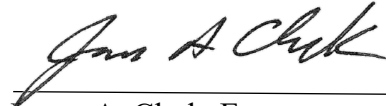
LWDA

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August 31, 2022

Page 5

Should you have any questions or concerns or require additional information, please do not hesitate to contact the undersigned.



James A. Clark, Esq.

Christina A. Humphrey, Esq.

Attorneys for Plaintiff James Wheeler

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