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 ADAN VASQUEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ADAN VASQUEZ, as an individual and on
 behalf of all others similarly situated,

Plaintiff,

vs.

GITIBIN & ASSOCIATES, INC. d/b/a GO
 RENTALS, a California corporation; and
 DOES 1 through 100, inclusive,

Defendants.

Case No.: 20VECV00834

**SECOND AMENDED
 REPRESENTATIVE ACTION
 COMPLAINT:**

**(1) REPRESENTATIVE ACTION FOR
 CIVIL PENALTIES UNDER THE
 PRIVATE ATTORNEYS GENERAL
 ACT (LABOR CODE § 2698 *et seq.*)**

FILED
 Superior Court of California
 County of Los Angeles
 12/14/2020

Sherri R. Carter, Executive Officer / Clerk of Court
 By: R. Redmond Deputy

1 Plaintiff Adan Vasquez (“Plaintiff”), on behalf of himself and all aggrieved employees,
2 hereby brings this Second Amended Representative Action Complaint (“FAC”) against Gitibin
3 & Associates, Inc. d/b/a Go Rentals, and DOES 1 through 100, inclusive, (collectively
4 “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all other aggrieved employees, hereby brings
7 this Second Amended Representative Action Complaint (“SAC”) for recovery of civil penalties
8 under California Labor Code Private Attorneys General Act (“PAGA”), Cal. Labor Code § 2698
9 *et seq.* This Court has jurisdiction over Defendants’ violations of the California Labor Code
10 because the amount in controversy exceeds this Court’s jurisdictional minimum.

11 **VENUE**

12 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§
13 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the
14 County of Los Angeles. Defendants own, maintain offices, transact business, have agent(s)
15 within the County of Los Angeles, and/or otherwise are found within the County of Los Angeles,
16 and Defendants are within the jurisdiction of this Court for purposes of service of process.

17 **PARTIES**

18 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
19 Plaintiff was and currently is, a California resident. During the statute of limitations period
20 applicable to the cause of action pled herein, Plaintiff was employed by Defendants as a non-
21 exempt employee.

22 4. Plaintiff is informed and believes, and based thereon alleges, that during the one
23 year preceding April 6, 2020¹ and Plaintiff giving the required notice under the PAGA, and
24 continuing to the present, Defendants did (and continue to do) business as an elite car rental
25 service company providing car rental services during the time period relevant to this action to
26

27 ¹ On April 6, 2020, the Chief Justice of California issued Emergency Rule 9 which tolls the statute
28 of limitations for civil causes of action, notwithstanding any other law, from April 6, 2020 until
90 days after the Governor of California declares that the state of emergency related to the COVID-
19 pandemic is lifted.

1 customers throughout California. Defendants employed Plaintiff and other, non-exempt
2 employees within, among other counties, Los Angeles County and the state of California and,
3 therefore, were (and are) doing business in Los Angeles County and the State of California.

4 5. Plaintiff does not know the true names or capacities, whether individual, partner,
5 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
6 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
7 amend this SAC when such true names and capacities are discovered. Plaintiff is informed, and
8 believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
9 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
10 and proximately caused Plaintiff and the aggrieved employees to be subject to the unlawful
11 employment practices, wrongs, injuries and damages complained of herein.

12 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
13 herein, Defendants were and are the employers of Plaintiff and other aggrieved employees.

14 7. At all times herein mentioned, each of said Defendants participated in the doing
15 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
16 Defendants, and each of them, were the agents, servants, and employees of each and every one of
17 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
18 were acting within the course and scope of said agency and employment. Defendants, and each
19 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
20 omissions complained of herein.

21 8. At all times mentioned herein, Defendants, and each of them, were members of
22 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
23 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
24 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all other
25 aggrieved employees.

26 **GENERAL FACTUAL ALLEGATIONS**

27 9. Defendants did (and continue to do) business as an elite car rental service company
28 providing car rental services during the time period relevant to this action to customers throughout

1 California. Plaintiff was employed by Defendants as an hourly, non-exempt employee from on
2 or about July 25, 2019 through on or about July 31, 2019, at which time he voluntarily separated
3 his employment with Defendants. During his employment with Defendants, Plaintiff was a
4 Driver/Detailer.

5 10. Throughout his employment, Plaintiff was not provided all required meal periods
6 due to Defendants' meal period policies and practices which fail to provide uninterrupted, duty-
7 free 30-minute meal periods when employees work in excess of 5.0 hours in a day. Specifically,
8 Plaintiff was not provided uninterrupted, duty-free 30-minute meal periods prior to the start of
9 the fifth hour of work. Plaintiff was unable to take a legally compliant first meal period because
10 of the heavy work demands imposed by Defendants which prevented him from taking a legally
11 compliant meal period.

12 11. Although Defendants paid Plaintiff a meal period premium when he was not
13 provided a legally compliant meal period, the extra hour of pay does not excuse the violation for
14 failing to provide a compliant break in the first instance; and Defendant has still committed a
15 violation even if the 226.7 remedy for the violation has been paid. The California Supreme
16 Court's statement in *Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244, 1256 supports
17 this by saying that "section 226.7 does not give employers a lawful choice between providing
18 *either* meal and rest breaks *or* an additional hour of pay." (emphasis in original). *See also Wert*
19 *v. U.S. Bancorp* (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4 [finding that payment of
20 premiums does not absolve a defendant of PAGA liability for failing to provide the breaks in the
21 first instance); *see also Tenorio v. Gallardo*, No. 116CV00283DADJLT, 2019 WL 338220, at *8
22 (E.D. Cal. Jan. 28, 2019) (court held that plaintiffs are entitled to both statutory and civil penalties
23 for the same violation of the California Labor Code); *Jones v. Spherion Staffing LLC*, No. LA
24 CV11-06462 JAK, 2012 WL 3264081, at *8 (C.D. Cal. Aug. 7, 2012) (agreeing with *Kirby*, the
25 court reasoned that even if the employee agreed to work through a required break in exchange for
26 one hour of pay, and if the extra pay were provided to the employee and recorded on the
27 employee's wage statement, the employee would nonetheless have a claim pursuant to section
28 226.7. Accordingly, because the employer cannot remedy a section 226.7 violation by

1 compensating the employee, the wrongdoing by the employer is more than the failure to pay
2 wages; it is a failure to ensure the employee's health and wellbeing through reasonable working
3 conditions); *Hildebrandt v. TWC Admin. LLC*, No. EDCV1302276JGBDTBX, 2015 WL
4 12911754, at *16 (C.D. Cal. Mar. 18, 2015) (Defendants' payment of meal break premiums does
5 not entitle Defendants to summary judgment on Plaintiffs' claim for untimely or missed meal
6 breaks).

7 12. In addition, throughout Plaintiff's employment with Defendants, Plaintiff was not
8 authorized and permitted to take legally required rest periods due to Defendants' unlawful rest
9 period policies and practices. Defendants' rest period policies and practices fail to authorize and
10 permit paid rest periods for every four hours worked, or *major fraction thereof*. Specifically, as
11 a result of the work demands imposed by Defendants, Plaintiff was often not authorized and
12 permitted to take his rest periods.

13 13. Although Plaintiff was not provided with all legally-compliant rest periods to
14 which he was entitled, Defendants failed to compensate Plaintiff with the required rest period
15 premium for each workday in which he experienced a rest period violation as mandated by Labor
16 Code § 226.7. Upon information and belief during at least a portion of the class period,
17 Defendants maintained no payroll code or other mechanism for the payment of rest period
18 premium payments under Labor Code § 226.7 in the event that a legally compliant rest period
19 was not provided to Plaintiff and their non-exempt employees.

20 14. Further, in *Huff v. Securitas Security Services* 23 Cal. App. 5th 745, 757 (2018),
21 the court held employees may bring suits under the PAGA for Labor Code violations not
22 personally affecting the named employees, as long as other employees experienced the violations.
23 As such, the fact that other non-exempt employees were not being properly compensated for all
24 of their overtime hours worked, Plaintiff seeks to represent them. Specifically, other non-exempt
25 employees received non-discretionary bonuses, including but not limited to performance bonuses
26 and/or other forms of pay not excludable as a matter of law when calculating an employee's
27 regular rate (hereinafter the aforementioned forms of pay are collectively referred to as "Incentive
28 Pay"). Despite Defendants' payment of Incentive Pay to its non-exempt employees, Defendants

1 failed to include all forms of Incentive Pay when calculating their regular rate of pay, thereby
2 causing its non-exempt employees to be underpaid all of their required overtime wages. Rather,
3 Defendants' non-exempt employees were only paid one and a half times (or two times in the case
4 of double-time hours) their base hourly rate, which was not equal to their regular rate, as
5 Defendants failed to include the various forms of Incentive Pay earned during corresponding time
6 periods that were required to be included in the regular rate.

7 15. As a result of Defendants' failure to pay all overtime wages owed to its non-exempt
8 employees (due to the failure by Defendants to include all forms of Incentive Pay when calculating
9 their regular rate of pay) who have separated employment with Defendants, Defendants failed to
10 pay all wages owed to those non-exempt employees upon their separation of employment from
11 Defendants in violation of Labor Code section 203.

12 16. Based on the foregoing, Plaintiff seeks to represent himself and all other aggrieved
13 employees, as defined by Labor Code section 2699(c), in order to recover civil penalties as
14 amended by Labor Code section 2669(f).

15 **FIRST CAUSE OF ACTION**

16 **PRIVATE ATTORNEYS GENERAL ACT OF 2004**

17 **(AGAINST ALL DEFENDANTS)**

18 17. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

19 18. Defendants have committed several Labor Code violations against Plaintiff and
20 other aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code
21 § 2698 *et seq.*, acting on behalf of himself and other aggrieved employees, brings this
22 representative action against Defendants to recover the civil penalties due to Plaintiff, the other
23 aggrieved employees, and the State of California according to proof pursuant to Labor Code §
24 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation and \$200.00
25 for each subsequent violation per employee per pay period for those violations of the Labor Code
26 for which no civil penalty is specifically provided; and/or (2) \$50.00 for each initial violation and
27 \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period,
28 based on the following Labor Code violations:

- 1 a) Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide
2 all legally required meal periods and failing to pay meal period premiums to
3 Plaintiff and other aggrieved employees;
- 4 b) Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to provide all
5 legally required rest periods and failing to pay rest period premiums to Plaintiff
6 and other aggrieved employees;
- 7 c) Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to
8 pay other aggrieved employees all overtime compensation earned;
- 9 d) Defendants violated Labor Code § 1174 by failing to maintain accurate records
10 on behalf of Plaintiff and other aggrieved employees;
- 11 e) Defendants violated Labor Code § 204 by failing to pay Plaintiff and other
12 aggrieved employees all earned wages at least twice during each calendar month;
13 and
- 14 f) Defendants violated Labor Code § 203 by failing to pay other aggrieved
15 employees for all overtime wages owed at the time of their termination of
16 employment.

17 19. On May 27, 2020, Plaintiff notified Defendants via certified mail, and notified the
18 California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’
19 violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties
20 under California Labor Code § 2698 *et seq.* with respect to violations of the California Labor
21 Code identified in Paragraph 19 (a)-(f). Now that at least sixty-five days have passed from
22 Plaintiff notifying Defendants and the LWDA of these violations, and the LWDA has not
23 provided notice that it intends to investigate the violations, Plaintiff has exhausted his
24 administrative requirements for bringing a claim under the Private Attorneys General Act with
25 respect to these violations.

26 20. Plaintiff was compelled to retain the services of counsel to file this court action to
27 protect his interests and the interests of other aggrieved employees, and to assess and collect the
28 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which

1 he is entitled to recover under California Labor Code § 2699(g).

2 **PRAYER**

3 WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf
4 this suit is brought against Defendants, as follows:

5 1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other aggrieved
6 employees, and the State of California according to proof pursuant to Labor Code § 2699(a) and
7 (f) including, but not limited to: (1) \$100.00 for each initial violation and \$200.00 for each
8 subsequent violation per employee per pay period for those violations of the Labor Code for
9 which no civil penalty is specifically provided, based on the violations of Labor Code sections
10 cited in Paragraph 19 (a)-(f); and/or (2) \$50.00 for each initial violation and \$100 for each
11 subsequent violation pursuant to Labor Code § 558 per employee per pay period;

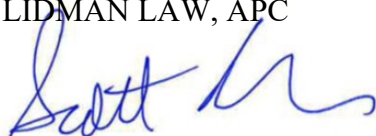
12 2. Upon the First Cause of Action, for attorneys' fees and costs as provided by Labor
13 Code § 2699(g) and Code of Civil Procedure § 1021.5; and

14 3. For such other and further relief the Court may deem just and proper.

15 Dated: December 14, 2020

Respectfully submitted,
LIDMAN LAW, APC

17 By:



18 Scott M. Lidman
19 Elizabeth Nguyen
20 Milan Moore
21 Attorneys for Plaintiff
22 ADAN VASQUEZ
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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 2155 Campus Drive, Suite 150, El Segundo, California 90245.

On December 14, 2020, I served the foregoing document(s) described as: **SECOND AMENDED REPRESENTATIVE ACTION COMPLAINT** on the interested party(ies) in this action:

FORDHARRISON LLP
Paul Suh (psuh@fordharrison.com)
David Cheng (dcheng@fordharrison.com)
350 South Grand Avenue, Suite 2300
Los Angeles, CA 90071

Attorneys for Defendant
GITIBIN & ASSOCIATES, INC. d/b/a GO RENTALS

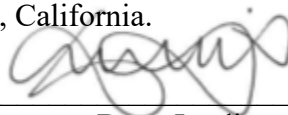
☐ (BY MAIL) I am "readily familiar" with Lidman Law, APC's practice of collection and processing correspondence for mailing. I enclosed the document(s) in a sealed envelope or package addressed to the persons at the address(es) listed above. Under the practice the correspondence would be deposited with the U.S. postal service on the same day with postage thereof fully prepaid at El Segundo, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage date is more than one day after date of deposit for mailing in affidavit.

☒ (BY ELECTRONIC SERVICE) I caused the above document(s) to be electronically served on the interested parties identified above by using First Legal LLC, and electronically served the listed document(s) upon the attorney(s) of record for each party in the case at the email address(es) registered for such service through First Legal Online Court Services.

☒ (BY ELECTRONIC SERVICE – Electronic Mail) I caused a true and correct copy of the document(s) described above to be electronically served via electronic mail on counsel of record at the electronic service addresses listed.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 14, 2020 at El Segundo, California.



Dana Joudi