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JAMES CARR

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO (CENTRAL)

JAMES CARR, individually and as a private
attorney general;

Plaintiff,

vs.

BURGER AUTO GROUP, LLC, a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

COMPLAINT FOR: 37-2020-00041521-CU-OE-CTL

**(1) PRIVATE ATTORNEY
GENERAL ACT, LABOR CODE
§2698 ET SEQ**

DEMAND FOR TRIAL BY JURY

1 Plaintiff JAMES CARR ("Plaintiff"), as an individual, and as a private attorney
2 general alleges as follows:

3 **THE PARTIES, JURISDICTION AND VENUE**

4 1. Plaintiff is, and at all relevant times mentioned herein was, a resident of the
5 County of San Diego, State of California.

6 2. Defendant BURGER AUTO GROUP, LLC ("Burger Auto") is, and at all times
7 mentioned herein was, a corporation organized and existing under the laws of the State
8 of Delaware, doing business in the County of San Diego, California.

9 3. Burger Auto at all times herein mentioned was, (a) conducting business in the
10 County of San Diego, State of California; (b) the employer of Plaintiff consistent with
11 California Labor Code and Industrial Welfare Commission Wage Orders; and (c)
12 Plaintiff's employer as defined under Government Code section 12926 subsection (c).

13 4. The acts alleged herein arose in San Diego County, within the State of
14 California.

15 5. Plaintiff is ignorant of the identities of defendants Does 1 through 50, inclusive,
16 and therefore sues these defendants by such fictitious names. The Doe defendants may
17 be individuals, partnerships, or corporations. Plaintiff is informed and believes, and
18 thereon alleges, that at all times mentioned herein, each of the Doe defendants was the
19 parent, subsidiary, agent, servant, employee, co-venturer, and/or co-conspirator of each
20 of the other defendants and was at all times mentioned, acting within the scope, purpose,
21 consent, knowledge, ratification and authorization of such agency, employment, joint
22 venture and conspiracy. Plaintiff will amend this Complaint to allege their true names
23 and capacities when ascertained. Plaintiff is informed and believes and thereon alleges
24 that each of the fictitiously named Doe defendants is responsible in some manner for the
25 occurrences herein alleged, and that Plaintiff's damages as herein alleged was
26 proximately caused by its conduct. Doe Defendants 1 through 50 and Burger Auto are
27 herein collectively referred to as "Defendants."

28 **GENERAL ALLEGATIONS**

1 6. Plaintiff was employed by Defendants from approximately December 2003
2 through approximately May 2020 at Defendants' car dealership located in San Diego,
3 California.

4 7. During Plaintiff's tenure, he worked in both non-exempt and exempt positions.
5 Plaintiff held various exempt, management positions from approximately 2007 until
6 early February 2020. In mid-February 2020, Plaintiff was shifted into a solely non-exempt
7 position.

8 8. As non-exempt employee, Plaintiff was scheduled to work at least five days
9 per week and required to work at least eight (8) hours per day and sometimes in excess
10 of twelve (12) hours per day.

11 9. As a non-exempt employee, Plaintiff's responsibilities included, in part, all
12 responsibilities related to the sale of cars and preparing cars for sale including but not
13 limited to cleaning cars.

14 10. Plaintiff and similarly aggrieved current and former non-exempt employees
15 ("Aggrieved Employees") were required to regularly work more than five (5) hours
16 without being provided a meal period and to work more than ten (10) hours without
17 being provided with a second meal period. In fact, Plaintiff was reprimanded for taking
18 or attempting to take an uninterrupted 30-minute meal period. Further, Defendants
19 forced Plaintiff and Aggrieved employees to take their lunch after six (6) hours of
20 working.

21 11. Plaintiff and Aggrieved Employees never waived their rights to a meal period
22 when they worked six (6) or more hours.

23 12. Plaintiff and Aggrieved Employees never received a second lunch period.

24 13. Plaintiff and Aggrieved Employees never received payment of one (1)
25 additional hour of pay at their regular rate of pay when a meal period was missed or
26 interrupted.

1 14. Because of Defendants' policies and practices, Plaintiff and Aggrieved
2 Employees were never able to take an uninterrupted ten (10) minute rest break and was
3 reprimanded every time he asked for one or attempted to take one.

4 15. Plaintiff and Aggrieved Employees never received payment of one (1)
5 additional hour of pay at their regular rate of pay when a rest break was missed or
6 interrupted.

7 16. Defendants employed a time rounding policy that was not neutral and
8 designed to consistently round time in Defendants' favor, ensuring that Plaintiff and the
9 Aggrieved Employees were not paid for all time worked.

10 17. Furthermore, Defendants often requested that Plaintiff and Aggrieved
11 Employees work prior to clocking-in or to keep working after they clocked-out for the
12 day to finish their assigned work. Defendants failed to pay Plaintiff and Aggrieved
13 Employees for time worked off the clock prior to and at the end of their respective shifts.

14 18. Plaintiff and Aggrieved Employees regularly worked more than eight (8) hours
15 in a day, and/or forty (40) hours in a week during their employment with Defendants.

16 19. Plaintiff and Aggrieved Employees did not receive payment of all wages,
17 including overtime and minimum wages, meal and rest period premiums, and
18 commission, within any time permissible under California Labor Code section 204.

19 20. Plaintiff and Aggrieved Employees were entitled to receive complete and
20 accurate wage statements in accordance with California law, but, in fact, they did not
21 receive complete and accurate wage statements from Defendants. The deficiencies
22 included, inter alia, the failure to include the legal entity on the wage statement, failure
23 to include the total number of hours worked by Plaintiff and Aggrieved Employees, and
24 the failure to include premium pay for missed and/or interrupted rest and meal breaks.

25 21. On numerous occasions, Plaintiff requested that his supervisors provide him
26 with a ten (10) minute uninterrupted rest break and/or a thirty (30) minute uninterrupted
27 meal period, all commission owed, and an accurate wage statement due to missing
28 wages, however such requests were denied and met with hostile retaliation.

1 22. Defendants retaliated against Plaintiff in direct response to his requests and
2 terminated Plaintiff in approximately May 2020.

3 23. Plaintiff never received the missing wages earned upon termination of his
4 employment.

5 24. On or about July 27, 2020, Plaintiff notified Defendants via certified mail and
6 filed an online PAGA claim notice with the California Labor and Workforce Development
7 Agency ("LWDA") identifying Defendants' violations of the California Labor Code
8 identified in this Complaint and Plaintiff's intent to bring a claim for civil penalties under
9 California Labor Code section 2698 et seq.

10
11 **FIRST CAUSE OF ACTION**

12 **(Violation of Labor Code § 2698, et seq.)**

13 **(Against All Defendants)**

14 25. Plaintiff re-alleges and incorporates herein by reference each and every
15 allegation set forth above.

16 26. Plaintiff brings this claim as an individual employee and in his capacity as a
17 private attorney general pursuant to the Private Attorneys General Act of 2004, California
18 Labor Code section 2698, et seq. ("PAGA").

19 27. On or about July 27, 2020, Plaintiff notified Defendants via certified mail and
20 filed an online PAGA claim notice with the California Labor and Workforce Development
21 Agency ("LWDA") identifying Defendants' violations of the California Labor Code
22 identified in this Complaint and Plaintiff's intent to bring a claim for civil penalties under
23 California Labor Code section 2698 et seq. The LWDA assigned Plaintiff's case number
24 LWDA-CM-800184-20. Plaintiff also submitted a filing fee of seventy-five (\$75.00) to the
25 LWDA in accordance with Labor Code section 2699.3(a)(1)(B). Sixty-five days have
26 passed from the date of Plaintiff's notice to the LWDA, and thus Plaintiff has exhausted
27 his administrative remedies, thereby allowing Plaintiff to commence a civil action against
28 Defendants pursuant to Labor Code section 2699.

1 28. During all relevant times for this action, Defendants regularly required
2 Plaintiff and Aggrieved Employees to work more than eight (8) hours per day and forty
3 (40) hours per week. However, Plaintiff and Aggrieved Employees were not paid wages,
4 including minimum wages and/or overtime wages, including at the required regular rate,
5 for such time worked. Instead, Plaintiff and Aggrieved Employees were paid for just
6 eight (8) hours in a day or forty (40) hours in a week.

7 29. During all relevant times for this action, Defendants failed to provide
8 uninterrupted meal periods to Plaintiff and Aggrieved Employees when they worked
9 more than five (5) hours per day and ten (10) hours per day because Defendants required
10 Plaintiff and Aggrieved Employees to stay on duty and never provided an uninterrupted
11 first or second meal break.

12 30. In addition, Defendants failed to permit Plaintiff and Aggrieved Employees to
13 take uninterrupted rest breaks for any shift exceeding four (4) hours of work or a major
14 fraction thereof.

15 31. Although Defendants failed to provide uninterrupted meal and rest breaks as
16 required by California law, Defendants failed to pay Plaintiff and Aggrieved Employees
17 premium pay for those days in which they were not permitted to take a meal and/or rest
18 break which was duty free.

19 32. Further, Defendants failed to provide Plaintiff and other similarly Aggrieved
20 Employees with the amount of sick leave available, or paid time off leave provided in
21 lieu of sick leave and further failed to accurately include such information on itemized
22 wage statements.

23 33. In addition, Defendants failed to pay Plaintiff and similarly Aggrieved
24 Employees for all earned and unused and accrued vacation time at their final rate of pay
25 at the time of termination of their employment.

26 34. In addition, Defendants failed to provide Plaintiff and Aggrieved Employees
27 with properly itemized wage statements including Defendants failure to include the
28 actual hours worked, the correct rate of pay, the meal and rest period premiums owed,

1 and commission owed.

2 35. Further, during Plaintiff and Aggrieved Employees' employment, Defendants
3 were required to pay all wages earned for labor in excess of the normal work period not
4 later than the payday for the next regular payroll period. However, Defendants failed to
5 pay Plaintiff and Aggrieved Employees all wages due to them within the time period
6 specified by California Labor Code section 204, including premiums and commission
7 owed.

8 36. Additionally, Defendants failed to timely pay Plaintiff and other similarly
9 Aggrieved Employees all wages at the end of employment.

10 37. Further, during all relevant times for this action, Plaintiff complained to
11 Defendants regarding not receiving rest and meal periods, not being paid for all time
12 worked, and not being paid in a timely manner, but Plaintiff was ignored. In response,
13 Defendants terminated Plaintiff's employment.

14 38. Plaintiff, as an "Aggrieved Employee" within the meaning of Labor Code §
15 2698 *et seq.*, acting on behalf of himself and other similarly Aggrieved Employees, brings
16 this representative action against Defendants to recover the civil penalties due to Plaintiff,
17 other similarly Aggrieved Employees, and the State of California according to proof
18 pursuant to Labor Code § 2699 (a) and (f) including, but not limited to \$100.00 for each
19 initial violation and \$200.00 for each subsequent violation per employee per pay period
20 for the following Labor Code violations:

- 21 a. Failing to pay Plaintiff and other similarly Aggrieved Employees all earned
22 minimum wage compensation in violation of Labor Code §§ 1194 and 1198
23 *et seq.*;
- 24 b. Failing to pay Plaintiff and other similarly Aggrieved Employees all earned
25 overtime compensation at the required regular rate in violation of Labor
26 Code §§ 204, 510, 1194, and 1198 *et seq.*;
- 27 c. Failing to pay Plaintiff and other similarly Aggrieved Employees an
28 additional hour of premium pay for meal period violations in violation of

1 Labor Code §§ 226.7 and 512;

2 d. Failing to pay Plaintiff and other similarly Aggrieved Employees an
3 additional hour of premium pay for rest period violations in violation of

4 Labor Code §§ 226.7 and 512;

5 e. Failing to timely pay Plaintiff and other similarly Aggrieved Employees all
6 wages at end of employment, including commission, in violation of Labor
7 Code § 203;

8 f. Failing to timely pay Plaintiff and other similarly Aggrieved Employees all
9 wages owed, including commission, during employment;

10 g. Failing to furnish Plaintiff and other similarly Aggrieved Employees with
11 complete, accurate, itemized wage statements in violation of Labor Code §
12 226;

13 h. Failing to maintain accurate records relating to Plaintiff and other similarly
14 Aggrieved Employees work periods, meal periods, commission owed, total
15 daily hours, hours per pay period, and applicable pay rates;

16 i. Failing to provide Plaintiff and other similarly Aggrieved Employees with
17 the amount of sick leave available, or paid time off leave provided in lieu
18 of sick leave and further failed to accurately include such information on
19 itemized wage statements in violation of Labor Code §§ 245.5, 246, and 226;

20 j. Failing to pay Plaintiff and similarly Aggrieved Employees for all earned
21 and unused and accrued vacation time at their final rate of pay at the time
22 of termination of their employment in violation of Labor Code § 227.3;

23 k. Failing to timely pay Plaintiff and other similarly Aggrieved Employees all
24 wages at the end of employment in violation of Labor Code § 203;

25 l. Defendants' unlawful retaliation against Plaintiff and termination of
26 employment after Plaintiff complained about violations under California's
27 Labor Code in violation of California Labor Code §§ 1102.5(b) and
28 1102.5(f); and

1 m. Defendants' unlawful retaliation against Plaintiff and termination of
2 employment after Plaintiff complained about violations under California's
3 Labor Code in violation of California Labor Code §§ 98.6(a) and 98.6(b)(3).

4 39. Plaintiff was compelled to retain the services of counsel to file this court action
5 to protect his interests and other similarly aggrieved employees, and to assess and collect
6 the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and
7 costs, which they are entitled to recover under California Labor Code § 2699.

1 **PRAYER FOR RELIEF**

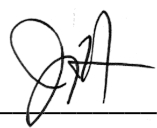
2 WHEREFORE, Plaintiff prays judgment against Defendants as follows:

- 3 1. For general and compensatory damages including but not limited to, lost
4 wages and benefits and damages for emotional distress normally associated retaliation,
5 wrongful termination, humiliation, and loss of reputation;
6 2. For punitive and exemplary damages according to proof;
7 3. For statutory civil penalties pursuant to Labor Code section 2668, *et seq.*, and as
8 allowed by law and according to proof;
9 4. For unpaid wages and overtime;
10 5. For unpaid wage premiums for each day Plaintiff did not receive a meal and/or
11 rest period;
12 6. For costs of suit incurred herein;
13 7. For pre- and post-judgment interest at the maximum legal rate on all amounts
14 claimed; and
15 8. For such other and further relief as the Court may deem just and proper.

16 Respectfully submitted,

17 HARLAN LAW, PC

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19
20 Dated: November 13, 2020

21 BY:  _____

22 Jordon R. Harlan
23 Attorneys for Plaintiff
24 JAMES CARR
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Dated: November 13, 2020

HARLAN LAW, PC

