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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF SANTA CLARA**

JASON AMYX, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

BOARDWALK AUTO CENTER, INC.;  
and DOES 1 through 20, inclusive,

Defendants.

Case No.: 21CV379043

Assigned For All Purposes To:  
Hon. Sunil R. Kulkarni; Department 1

**[Amended as a matter of right, pursuant to  
Labor Code section 2699.3(a)(2)(C)]**

**FIRST AMENDED COMPLAINT FOR  
VIOLATION OF THE CALIFORNIA  
LABOR CODE PRIVATE ATTORNEYS  
GENERAL ACT OF 2004 (CAL. LAB.  
CODE §§ 2698, ET SEQ.)**

1 Plaintiff Jason Amyx, individually, and on behalf of all other aggrieved employees,  
2 alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Jason Amyx (“Plaintiff”) brings this representative action against  
5 defendant Boardwalk Auto Center, Inc., and DOES 1 through 20, inclusive (collectively,  
6 “Defendants”), on behalf of himself and all other aggrieved employees employed by Defendants  
7 throughout California

8 2. Defendants are in the business of operating an automotive dealership.

9 3. Through this action, Plaintiff alleges that Defendants engaged in a systematic  
10 pattern of wage and hour violations under the California Labor Code and Industrial Welfare  
11 Commission (“IWC”) Wage Orders.

12 4. Plaintiff is informed and believes, and thereon alleges, that Defendants have  
13 increased their profits by violating state wage and hour laws by, among other things:

- 14 (a) failing to pay all wages (including minimum wages and overtime wages);
- 15 (b) failing to pay wages for non-productive time, including time spent in rest  
16 breaks;
- 17 (c) failing to provide lawful meal periods or compensation in lieu thereof;
- 18 (d) failing to authorize or permit lawful rest breaks or provide compensation  
19 in lieu thereof;
- 20 (e) failing to pay wages to commission or piece-rate workers for time spent in  
21 rest breaks and/or recovery periods;
- 22 (f) failing to reimburse necessary business-related costs;
- 23 (g) failing to provide accurate itemized wage statements; and
- 24 (h) failing to pay all wages due upon separation of employment.

25 5. Plaintiff is informed and believes, and thereon alleges, that Defendants violated  
26 Labor Code §§ 201, 202, 203, 204, 210, 223, 226, 226.2, 226.3, 226.7, 510, 512, 558, 1174,  
27 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802, and all applicable Wage  
28 Orders and applicable law.

6. Plaintiff brings this representative action against Defendants on behalf of himself and other aggrieved employees to recover, among other things, civil penalties, attorney's fees and costs and expenses pursuant to the Private Attorneys General Act of 2004, Cal. Lab. Code. § 2698 *et seq.* ("PAGA").

## JURISDICTION AND VENUE

7. This is a representative action brought under the Private Attorneys General Act of 2004, Cal. Lab. Code. § 2698 *et seq.* (“PAGA”). The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.

8. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those given by statutes to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

9. This Court has jurisdiction over all Defendants because, upon information and belief, they are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

10. Venue is proper in this Court because, upon information and belief, Defendants reside, transact business, or have offices in this county, and the acts and omissions alleged herein took place in this county.

## THE PARTIES

11. Plaintiff is a resident of California and worked for Defendants during the relevant time periods as alleged herein.

12. Plaintiff is informed and believes, and thereon alleges, that at all times hereinafter mentioned, Defendants were and are subject to the Labor Code and IWC Wage Orders as employers, whose employees were and are engaged throughout this county and the State of California.

1           13.     Plaintiff is unaware of the true names or capacities of the defendants sued herein  
2 under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this  
3 Complaint and serve such fictitiously named defendants once their names and capacities become  
4 known.

5           14.     Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 20  
6 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants at  
7 all relevant times.

8           15.     Plaintiff is informed and believes, and thereon alleges, that each defendant acted  
9 in all respects pertinent to this action as the agent of the other defendant, carried out a joint  
10 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant  
11 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as the  
12 employer and/or joint employer of Plaintiff and other aggrieved employees.

13           16.     Plaintiff is informed and believes, and thereon alleges, that each and all of the acts  
14 and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES  
15 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on the  
16 other's behalf. The acts of any and all Defendants were in accordance with, and represent, the  
17 official policy of Defendants.

18           17.     At all relevant times, Defendants, and each of them, acted within the scope of  
19 such agency or employment, or ratified each and every act or omission complained of herein. At  
20 all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of  
21 each and all the other Defendants in proximately causing the damages herein alleged.

22           18.     Plaintiff is informed and believes, and thereon alleges, that each of said  
23 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,  
24 omissions, occurrences, and transactions alleged herein.

25                               **GENERAL ALLEGATIONS**

26           19.     At all relevant times mentioned herein, Defendants employed Plaintiff and other  
27 aggrieved employees as non-exempt employees or employees paid in whole or in part on a  
28

1 commission or piece rate basis throughout California at Defendants' California business  
2 location(s).

3 20. Defendants continue to employ non-exempt employees or employees paid in  
4 whole or in part on a commission or piece rate basis within California.

5 21. Plaintiff is informed and believes, and thereon alleges, that at all times herein  
6 mentioned, Defendants were advised by skilled lawyers, employees, and other professionals who  
7 were knowledgeable about California's wage and hour laws, employment and personnel  
8 practices, and the requirements of California law.

9 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
10 should have known that Plaintiff and other aggrieved employees were entitled to receive wages  
11 for all time worked (including minimum wages and overtime wages) and that they were not  
12 receiving all wages earned for work that was required to be performed. In violation of the Labor  
13 Code and IWC Wage Orders, Plaintiff and other aggrieved employees were not paid all wages  
14 (including minimum wages and overtime wages) for all hours worked, including, but not limited  
15 to, non-productive time, as well as when Defendants required Plaintiff and other aggrieved  
16 employees to work off-the-clock, through meal periods, and during off-duty hours, but failed to  
17 compensate Plaintiff and other aggrieved employees for these hours. Further Defendants failed  
18 to properly calculate the overtime rate owed to Plaintiff and other aggrieved employees due to  
19 failure to properly included commissions, bonuses, and/or piece rate.

20 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
21 should have known that Plaintiff and other aggrieved employees were entitled to receive all  
22 required meal periods or payment of one (1) additional hour of pay at Plaintiff's and other  
23 aggrieved employees' regular rate of pay when they did not receive a timely, uninterrupted meal  
24 period. In violation of the Labor Code and IWC Wage Orders, Plaintiff and other aggrieved  
25 employees did not receive all meal periods or payment of one (1) additional hour of pay at  
26 Plaintiff's and other aggrieved employees' regular rate of pay when they did not receive a timely,  
27 uninterrupted meal period.

1           24.     Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
2     should have known that Plaintiff and other aggrieved employees were entitled to receive all rest  
3     breaks or payment of one (1) additional hour of pay at Plaintiff's and other aggrieved employees'  
4     regular rate of pay when a rest break was late, missed, or interrupted. In violation of the Labor  
5     Code and IWC Wage Orders, Plaintiff and other aggrieved employees did not receive all rest  
6     breaks or payment of one (1) additional hour of pay at Plaintiff's and other aggrieved employees'  
7     regular rate of pay when a rest break was missed, late, or interrupted.

8           25.     Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
9     should have known they had a duty to separately compensate Plaintiff and other aggrieved  
10    employees who were commission or piece-rate workers for time spent during rest breaks, when  
11    rest breaks were taken. In violation of the Labor Code, Defendants did not pay commission or  
12    piece-rate workers for time spent during rest breaks, when rest breaks were taken.

13          26.     Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
14    should have known that Plaintiff and other aggrieved employees were entitled to reimbursement  
15    and/or indemnification for all necessary business expenditures or losses as a direct consequence  
16    of the discharge of their duties, or of their obedience to the directions of Defendants. In violation  
17    of the Labor Code and IWC Wage Orders, Plaintiff and other aggrieved employees incurred  
18    necessary business expenses or losses, but were not reimbursed nor indemnified of such  
19    expenses or losses that were incurred as a direct consequence of the discharge of their duties, or  
20    of their obedience to the directions of Defendants.

21          27.     Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
22    should have known that Plaintiff and other aggrieved employees were entitled to receive  
23    itemized wage statements that accurately showed the following information pursuant to the  
24    Labor Code: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of  
25    piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;  
26    (4) all deductions, provided that all deductions made on written orders of the employee may be  
27    aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for  
28    which the employee is paid; (7) the name of the employee and only the last four digits of his or

1 her social security number or an employee identification number other than a social security  
2 number; (8) the name and address of the legal entity that is the employer; and (9) all applicable  
3 hourly rates in effect during the pay period and the corresponding number of hours worked at  
4 each hourly rate by the employee. In violation of the Labor Code, Plaintiff and other aggrieved  
5 employees were not provided with accurate itemized wage statements.

6 28. Defendants knew or should have known that Plaintiff and other aggrieved  
7 employees were entitled to timely payment of wages due upon separation of employment. In  
8 violation of the Labor Code, Plaintiff and other aggrieved employees did not receive payment of  
9 all wages within the permissible time periods.

10 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
11 should have known they had a duty to compensate Plaintiff and other aggrieved employees, and  
12 Defendants had the financial ability to pay such compensation but willfully, knowingly, and  
13 intentionally failed to do so in order to increase Defendants' profits.

#### 14 **FIRST CAUSE OF ACTION**

##### 15 **ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. ("PAGA")**

16 30. Plaintiff hereby re-alleges and incorporate by reference the previous paragraphs  
17 as though fully set forth herein.

18 31. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides  
19 for a civil penalty to be assessed and collected by the Labor and Workforce Development  
20 Agency ("LWDA") or any of its departments, divisions, commissions, boards, agencies, or  
21 employees for violation of the Labor Code may, as an alternative, be recovered through a civil  
22 action brought by an aggrieved employee on behalf of himself or herself and other current or  
23 former employees pursuant to the procedures specified in Labor Code § 2699.3.

24 32. For all provisions of the Labor Code except those for which a civil penalty is  
25 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred  
26 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two  
27 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay  
28 period in which Defendants violated these provisions of the Labor Code.

1           33. Defendants' conduct violates numerous Wage Order and Labor Code sections,  
2 including, but not limited to, the following:

- 3           a. violation of Labor Code §§ 201-203, 204, 210, 510, 1182.12, 1194,  
4           1194.2, 1197, 1197.1, and 1198 for failure to timely pay all earned wages  
5           (including minimum wage and overtime wages) owed to Plaintiff and  
6           other aggrieved employees during employment and upon separation of  
7           employment as herein alleged;
- 8           b. violation of Labor Code §§ 226.7 and 512 for failure to provide meal  
9           periods to Plaintiff and other aggrieved employees and failure to pay  
10          premium wages for missed meal periods as herein alleged;
- 11          c. violation of Labor Code § 226.7 for failure to permit rest breaks to  
12          Plaintiff and other aggrieved employees and failure to pay premium  
13          wages for missed rest periods as herein alleged;
- 14          d. violation of Labor Code § 226.2 for failure to pay wages to commission  
15          or piece-rate workers for time spent in rest breaks and/or recovery  
16          periods to Plaintiff and other aggrieved employees as herein alleged;
- 17          e. violation of Labor Code §§ 2800 and 2802 for failure to reimburse all  
18          necessary business expenses to Plaintiff and other aggrieved employees  
19          as herein alleged;
- 20          f. violation of Labor Code §§ 226 and 226.3 for failure to provide accurate  
21          itemized wage statements to Plaintiff and other aggrieved employees as  
22          herein alleged; and
- 23          g. violation of Labor Code §§ 1174 and 1174.5 for failure to maintain  
24          accurate and complete records showing, among other things, the hours  
25          worked daily by and the wages paid to aggrieved employees.

26          34. Plaintiff is an "aggrieved employee" because he was employed by the alleged  
27 violator and had one or more of the violations committed against him, and therefore is properly  
28 suited to represent the interests of all other aggrieved employees.

35. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and all other aggrieved employees under PAGA.

36. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

37. For bringing this action, Plaintiff is entitled to attorney's fees and costs incurred herein.

### **PRAYER FOR RELIEF**

Plaintiff, on his own behalf and on behalf of all other aggrieved employees, prays for relief and judgment against Defendants as follows:

1. For civil penalties against Defendants on behalf of all other aggrieved employees;

2. For reasonable attorneys' fees and costs of suit to the extent permitted by law, including pursuant to Code of Civil Procedure § 1021.5 and Labor Code §§ 2698, *et seq.*; and

3. For such other relief as the Court deems just and proper.

Dated: July 22, 2021

**AEGIS LAW FIRM, PC**

By:   
Kristy R. Connolly  
Attorneys for Plaintiff Jason Amyx

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, am employed in the County of Orange, State of California. I am over  
3 the age of 18 and not a party to the within action; am employed with Aegis Law Firm PC and  
my business address is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

4 On July 26, 2021, I served the foregoing document entitled:

- 5 • **[Amended as a matter of right, pursuant to Labor Code section**  
6 **2699.3(a)(2)(C)] FIRST AMENDED COMPLAINT FOR VIOLATION OF**  
7 **THE CALIFORNIA LABOR CODE PRIVATE ATTORNEYS GENERAL**  
8 **ACT OF 2004 (CAL. LAB. CODE §§ 2698, ET SEQ.)**

9 on all the appearing and/or interested parties in this action by delivering ☐ the original ☒ a true  
10 copy thereof on the party(ies) addressed below as follows:

11 Collin Cook  
12 Adam Sloustcher  
13 Haylee Saathoff  
14 **FISHER & PHILLIPS LLP**  
One Embarcadero Center, Suite 2050  
San Francisco, CA 94111  
Telephone: (415) 490-9000  
Facsimile: (415) 490-9001  
[ccook@fisherphillips.com](mailto:ccook@fisherphillips.com)  
[asloustcher@fisherphillips.com](mailto:asloustcher@fisherphillips.com)  
[hsaathoff@fisherphillips.com](mailto:hsaathoff@fisherphillips.com)

15 *Attorneys for Defendant:*  
16 BOARDWALK AUTO CENTER, INC.

17 ☐ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing  
18 correspondence for mailing. Under that practice it would be deposited with the U.S.  
Postal Service on that same day with postage thereon fully prepaid at Irvine, California  
19 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 meter date is more than one  
20 day after date of deposit for mailing this affidavit. (*Cal Code Civ. Proc.* § 1013(a); *Fed.*  
*R. Civ. Proc.* 5(a); *Fed. R. Civ. Proc.* 5(c).)

21 ☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business  
22 practice of Aegis Law Firm PC for collection and processing correspondence for  
overnight delivery, and I caused such document(s) described herein to be deposited for  
23 delivery to a facility regularly maintained Federal Express for overnight delivery. (*Cal*  
*Code Civ. Proc.* § 1013(c); *Fed. R. Civ. Proc.* 5(c).)

24 ☒ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via  
25 electronic transmission via the above listed email addresses on the date below. (*Cal.*  
*Code Civ. Proc.* § 1010.6(6); *Fed. R. Civ. Proc.* 5(b)(2)(E); *Fed. R. Civ. Proc.* 5(b)(3).)

26 ☐ **(BY PERSONAL SERVICE)** I delivered the foregoing document by hand delivery to  
27 the addressed named above. (*Cal Code Civ. Proc.* § 1011; *Fed. R. Civ. Proc.*  
5(b)(2)(A).)

28 ///

///

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

3 Executed on July 26, 2021, at Irvine, California.

4   
5 Andrea Drocco