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MICHAEL R. CROSNER (SBN 41294)
mike@crosnerlegal.com
ZACHARY M. CROSNER (SBN 272295)
zach@crosnerlegal.com
BLAKE R. JONES (SBN 211221)
blake@crosnerlegal.com
CROSNER LEGAL, PC
9440 Santa Monica Blvd. Suite 301
Beverly Hills, CA 90210
Tel: (310) 496-5818
Fax: (310) 510-6429

Attorneys for Plaintiff
ARTURO NAVARRO

**SUPERIOR COURT OF STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

ARTURO NAVARRO, an individual, on
behalf of himself and all others similarly
aggrieved,

Plaintiff,

v.

GRUMA CORPORATION, a Nevada
corporation; GRUMA AZTECA, INC., a
Nevada corporation; and DOES 1-50,
inclusive,

Defendants.

CASE NO. 21STCV32920

**PRIVATE ATTORNEYS GENERAL
ACT ("PAGA") REPRESENTATIVE
COMPLAINT**

JURY TRIAL DEMANDED

Plaintiff ARTURO NAVARRO ("Plaintiff"), an individual, on behalf of Plaintiff and
all other similarly aggrieved employees ("Aggrieved Employees"), hereby files this Complaint
against Defendant GRUMA CORPORATION, Defendant GRUMA AZTECA, INC.
(collectively referred to hereinafter as "Defendants") and DOES 1-50, inclusive. Plaintiff
alleges as follows:

THE PARTIES

1. Plaintiff is, and at all relevant times was, an individual domiciled in the State of California and a citizen of the State of California who worked as a non-exempt employee for Defendants, from approximately September 2020 until Plaintiff's last day worked, on or about June 1, 2021.

2. Defendant GRUMA CORPORATION is a Nevada corporation that, at all relevant times, was authorized to do business within the State of California and is doing business in the State of California.

3. Defendant GRUMA AZTECA, INC. is a Nevada corporation that, at all relevant times, was authorized to do business within the State of California and is doing business in the State of California.

4. The true names and capacities of the DOE Defendants sued herein as DOES 1 through 50, inclusive, are currently unknown to Plaintiff, who therefore sues each such Defendant by said fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend this Complaint to reflect the true names and capacities of the Doe Defendants when such identities become known.

5. Plaintiff is further informed and believes that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this complaint. Plaintiff is further informed and believes and thereon alleges that each Defendant acted pursuant to and within the scope of the relationships alleged above, and that at all relevant times, each Defendant knew or should have known about, authorized, ratified, adopted, approved, controlled, aided, and abetted the conduct of all other Defendants.

6. At all relevant times, Defendant was and is legally responsible for all the unlawful conduct, policies, practices, acts, and omissions complained of herein. Further, Defendant is responsible for each of the unlawful acts or omissions complained of herein under the doctrine of respondent

1 superior. The conduct of Defendant's managers and supervisors was at all relevant times
2 undertaken as employees of Defendant, acting within the scope of their employment or authority
3 in all the unlawful activities described herein.

4 7. Whenever and wherever reference is made in this complaint to any act or failure to act by
5 a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the
6 acts and/or failures to act by each Defendant acting individually, jointly, and severally.

7 **JURISDICTION AND VENUE**

8 8. This court possesses original subject matter jurisdiction over this matter. Venue is proper
9 in Los Angeles County, California, because Defendants have not designated a principal place of
10 business in the State of California such that Plaintiff may choose a convenient venue within the
11 state. Moreover, Defendants transact business within this judicial district and some of the
12 complained of conduct occurred in this judicial district.

13 **FACTUAL AND LEGAL ALLEGATIONS**

14 9. During the one year and sixty-five-day period preceding filing of this Complaint,
15 Plaintiff was employed at all relevant times by Defendants as a non-exempt employee in the
16 State of California. Defendants, at all relevant times, exercised control over Plaintiff and the
17 other Aggrieved Employees (as defined below) and suffered and/or permitted them to work.

18 10. Plaintiff worked for Defendants as a non-exempt receiving clerk from approximately
19 September 2020 until Plaintiff's last day worked, on or about June 1, 2021. Plaintiff typically
20 worked eight (8) to eleven-hour shifts (with the occasional shift lasting more than twelve
21 hours), five (5) days per week. Plaintiff was paid hourly.

22 11. Plaintiff was not paid for all hours worked. Defendants regularly required Plaintiff to
23 perform pre-shift and post-shift off-the clock work, *to wit*: When Plaintiff worked shifts with
24 various other employees, upon entering the worksite, Plaintiff and those employees would
25 typically spend a few minutes each day waiting in a long line to clock-in for Plaintiff's shifts,
26 time which was uncompensated. Plaintiff was also required to spend time putting on sanitary
27 protective gear prior to clocking in and remove the gear after clocking out; such time was
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1 uncompensated. This regular off-the-clock work resulted in the underpayment of minimum and
2 overtime wages owed to Plaintiff as well as record-keeping violations.

3 12. Based on information and belief, during certain pay periods, Defendants implemented a
4 time-shaving/time-rounding system that as applied deprived Plaintiff of compensable time by
5 understating actual compensable work time, resulting in the underpayment of wages owed, in
6 violation of California's minimum and overtime wage and record-keeping laws.

7 13. Defendants further violated California's overtime wage laws by failing to incorporate all
8 non-discretionary remuneration, including but not limited to, shift differential and non-
9 discretionary bonus pay, into the regular pay rate used to calculate the overtime rate of pay.
10 This miscalculation of the regular pay rate resulted in the miscalculation and underpayment of
11 owed overtime wages as well as record-keeping violations.

12 14. Plaintiff was not always provided compliant thirty-minute meal periods or premium pay
13 in lieu thereof. At times, Plaintiff was unable to take timely, off-duty, uninterrupted thirty-
14 minute meal periods due to Plaintiff's workload and a lack of available relief workers. Based
15 on information and belief, second meal periods were never provided to Plaintiff on shifts of
16 twelve hours or more. Defendants failed to pay Plaintiff an additional hour of premium pay at
17 Plaintiff's regular rate of pay for each missed or improper meal period, or failed to pay the
18 proper premium, by failing to incorporate all non-discretionary remuneration, including but not
19 limited to, shift differential pay, into the regular rate of pay for purposes of calculating the
20 owed meal period premium.

21 15. Plaintiff did not receive compliant 10 (ten)- minute rest periods for every four (4) hours
22 worked (or major fraction thereof). Plaintiff was often required to work through all or a
23 portion of Plaintiff's rest periods due to Plaintiff's workload and lack of available relief
24 workers. On information and belief, Plaintiff was never paid a rest period premium for any
25 missed/improper rest period.

26 16. On information and belief, Defendants improperly calculated the sick leave accrual and
27 the rate of sick leave pay owed to Plaintiff by failing to base the accrued sick leave hours on
28 the correct number of hours worked and by failing to incorporate all non-discretionary

1 remuneration, including but not limited to, shift differential pay into the sick leave pay rate
2 calculation. On information and belief, Defendants failed to provide notice of the correct sick
3 leave amount balance available to Plaintiff on Plaintiff's wage statements or other written
4 statement of Plaintiff's sick leave balance.

5 17. Defendants failed to provide wage statements that complied with Labor Code section
6 226. Due to various of the aforementioned violations, including off-the-clock work, Plaintiff's
7 wage statements do not always accurately reflect, gross and net wages earned, total hours
8 worked (due to the mandated off-the-clock work alleged herein), all applicable hourly rates in
9 effect during each pay period and all hours worked at each applicable hourly rate.

10 18. On information and belief, Defendants required Plaintiff to submit to an unlawful
11 criminal and/or financial background check as a condition of obtaining and/or holding
12 employment in violation of Labor Code sections 1024.5 and/or 432.7. Defendants also required
13 Plaintiff to agree in writing to unlawful background checks not in conformity with the
14 requirements of Investigative Consumer Reporting Agencies Act, Civil Code sections 1786, et
15 seq. ("ICRAA"), and the Fair Credit Reporting Act, 15 U.S.C. sections 1681, et seq. ("FCRA")

16 19. Plaintiff brings this complaint under the Private Attorneys General Act of 2004, Labor
17 Code sections 2698, *et seq.*, ("PAGA"), as a representative action on behalf of the State of
18 California, regarding violations of the Labor Code as to all similarly aggrieved individuals
19 employed by Defendants in the State of California as a non-exempt employee. This action is
20 brought solely pursuant to PAGA and seeks no relief beyond that available under PAGA.

21 20. From one-year prior to Plaintiff's filing of the required PAGA notice with the Labor
22 Workforce and Development Agency, and continuing through the present, as alleged herein,
23 Defendants violated Labor Code sections 201-202, 216, 221-223, 226, 226.7, 245-248.5,
24 432.5, 432.7, 510, 512, 1024.5, 1174, 1194, 1197, 1198, 1199, 2810.5 and all relevant sections
25 of the applicable Wage Orders, as to Plaintiff and all Aggrieved Employees employed by
26 Defendants who worked as non-exempt employees. These violations subject Defendants to
27 civil penalties as set forth in the foregoing statutes as well as other provisions of the Labor
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Code, including without limitation Labor Code sections 203, 225.5, 256, 210, 1174.5, 1197.1 and 2699.

THE “AGGRIEVED EMPLOYEES”

21. Plaintiff brings this action on behalf of Plaintiff and all similarly aggrieved employees. The other Aggrieved Employees shall be defined as follows: “All non-exempt employees who were employed in California directly by Defendants at any time from one year and sixty-five days prior to the filing of the initial complaint, through the present.”

FIRST CAUSE OF ACTION

**VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT,
LABOR CODE SECTIONS 2698, ET SEQ.**

22. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

23. California law provides employees in California must be paid for all hours worked, at a regular time rate no less than the mandated minimum wage for up to eight (8) hours per day or forty (40) hours per week. California law also provides that employees in California must be paid overtime, equal to 1.5 times the employee’s regular rate of pay, for all hours worked in excess of forty (40) per week or eight (8) per day. Plaintiff and the Aggrieved Employees regularly worked time for which they were not compensated. Defendants regularly required Plaintiff and the Aggrieved Employees to perform pre-shift off-the clock work, *to wit*: upon entering the worksite, Plaintiff and the Aggrieved Employees would typically have to spend time waiting in a long line to clock in for their shifts, time which was uncompensated. Plaintiff and the Aggrieved Employees were also required to spend time putting on protective gear prior to clocking in and removing the gear after clocking out, time which was uncompensated. This regular off-the-clock work resulted in the underpayment of minimum and overtime wages owed to Plaintiff and the Aggrieved Employees, in violation of California's minimum and overtime wage laws. Moreover, based on information and belief, Defendants implemented a time-shaving/time-rounding system that, as applied, systemically deprived Plaintiff and the Aggrieved Employees of compensable time because the time-rounding system would result in understating

1 actual compensable work time and subsequently in the underpayment of wages owed, in
2 violation of California's minimum and overtime wage and record-keeping laws.

3 24. Defendants further violated California's overtime wage laws by failing to incorporate all
4 non-discretionary remuneration, including but not limited to, shift differential and non-
5 discretionary bonus pay, into the regular pay rate for purposes of calculating the correct overtime
6 rate of pay. The failure to accurately calculate the regular rate of pay resulted in the
7 miscalculation and underpayment of overtime wages owed.

8 25. Under the Labor Code and IWC Wage Orders, Defendants were required to provide
9 Plaintiff and the Aggrieved Employees with one thirty (30) minute meal break free from all duties
10 for all shifts longer than five (5) hours, and a second thirty (30) minute meal break free from all
11 duties for all shifts longer than ten (10) hours. The first meal period must be provided before the
12 end of the fifth hour of work and the second meal period before the end of the tenth hour of work.
13 Meal periods can be waived, but only under the following circumstances: (a) if an employee's
14 total work period in a day is over five (5) hours but no more than six (6) hours, the required meal
15 period may be waived by mutual consent of the employer and employee, and (b) if an employee's
16 total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required
17 second meal period may be waived by mutual consent of the employer and employee, but only
18 if the first meal period was not waived. Employers covered by the Wage Orders have an
19 obligation to both (a) relieve their employees for at least one meal period for shifts over five
20 hours, and (b) to record having done so. If the employer fails to properly record a compliant meal
21 period, it is presumed no meal period was provided. Plaintiff and the Aggrieved Employees were
22 not always able to take timely, off-duty, uninterrupted thirty-minute meal periods due to their
23 workload and a lack of relief workers available. Based on information and belief, second meal
24 periods were never provided for shifts of twelve hours or more that Plaintiff worked. Defendants
25 failed to pay Plaintiff an additional hour of premium pay at their regular rate(s) of pay for each
26 missed or improper meal period, or when a premium was paid, failed to pay the proper premium
27 rate, by failing to include in the regular rate of pay calculation all non-discretionary remuneration,

1 including but not limited to, shift differential and non-discretionary bonus pay, for purposes of
2 calculating the owed meal period premium.

3 26. Defendants failed to provide Plaintiff and the Aggrieved Employees all required, fully
4 compliant rest periods, or compensation in lieu thereof. Defendants employed policies and
5 procedures that ensured Plaintiff and the Aggrieved Employees would not receive all legally
6 required rest periods, as Defendant's policies did not authorize or permit all required rest
7 periods in compliance with the timing requirements of all applicable Wage Orders. Plaintiff
8 and the Aggrieved Employees did not receive compliant, timely ten (10) minute rest periods for
9 every four (4) hours worked or major fraction thereof. Plaintiff and the Aggrieved Employees
10 were often required to work through all or a portion of their rest periods due to the workloads
11 and responsibilities assigned, and a lack of available relief workers. Based on information and
12 belief, Plaintiff and the Aggrieved Employees were never paid a rest period premium for any
13 missed or non-compliant rest period.

14 27. California law provides that, at the time of each payment of wages, the employer must
15 provide each employee with an itemized statement showing, *inter alia*, gross wages earned, total
16 hours worked, all deductions taken, net wages earned, the inclusive dates for which the employee
17 is being paid, the employee's name and last four digits of their social security number, the name
18 and address of the legal entity that it is the employer, and all applicable hourly rates in effect
19 during the pay period and all hours worked at each rate. Defendants knowingly and intentionally
20 failed to provide Plaintiff and the Aggrieved Employees with proper, itemized wage statements
21 as not all wage statements provided by Defendants accurately reflect, *inter alia*, the total hours
22 worked, all gross wages earned, all net wages earned, and all applicable hourly rates in effect
23 during each pay period and all hours worked at each applicable hourly rate.

24 28. California law requires employers to keep "accurate and complete" payroll records
25 showing, among other things, the hours worked daily by all non-exempt employees. Section 7
26 of all applicable IWC Wage Orders similarly requires employers to keep time records showing,
27 *inter alia*, when the employees begin and end each work period and reflecting the true start and
28 end times during which all owed meal periods are provided each day. At all relevant times,

1 Defendants have failed, and continue to fail, to keep the required time records, as Defendants
2 have failed to record the true start and end times of Plaintiff and the Aggrieved Employees’
3 workdays and failed to record employee meal periods. Defendants’ failure to keep “accurate and
4 complete” payroll records for Plaintiff and the Aggrieved Employees violates Labor Code
5 sections 1174, 1198-99, and Section 7 of all applicable IWC Wage Orders. These violations
6 subject Defendants to civil penalties under the Labor Code, including without limitation sections
7 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each
8 aggrieved employee, results in a separate civil penalty.

9 29. Labor Code section 201 requires employers to pay all wages earned and unpaid at the
10 time of discharge, immediately upon discharge, and Labor Code section 202 extends those
11 provisions to employees who resign. For all Aggrieved Employees no longer employed by
12 Defendants, Defendants have an ongoing failure to pay such aggrieved employees all wages
13 earned and unpaid at the time of discharge or resignation, due to Defendants’ failure to pay, *inter*
14 *alia*, all owed minimum and overtime wages, all premium wages, and all owed sick pay. These
15 violations subject Defendants to civil penalties under the Labor Code, including without
16 limitation Labor Code sections 203, 256 and 2699. Each violation results in a separate civil
17 penalty, for each Aggrieved Employee for each pay period during which the statutory provisions
18 were violated.

19 30. Labor Code section 216 declares unlawful an employer’s refusal to pay wages due and
20 payable and/or an employer’s denial of the validity of any claim to wages due. Defendants have
21 violated this section by failing to pay Plaintiff and the Aggrieved Employees for all hours worked
22 at the proper wage rate and by failing to pay Plaintiff and the Aggrieved Employees an additional
23 hour of premium wages for each meal or rest period not provided/that was invalid. These
24 violations subject Defendants to civil penalties under Labor Code section 225.5. Each violation
25 results in a separate civil penalty, for each aggrieved employee, for each pay period during which
26 the statute provisions were violated.

27 31. California Labor Code section 223 makes it unlawful for an employer to secretly pay
28 wages lower than required by statute while purporting to pay legal wages. As described above,

1 Defendants willfully and systematically denied Plaintiff and the Aggrieved Employees
2 minimum and overtime wage compensation for all hours worked which resulted in the payment
3 of less than statutorily required wages to them. Defendants acted with the intent to deprive
4 them of statutory wages, including, but not limited to, overtime wages and minimum wages, to
5 which they were entitled to under California law.

6 32. The Labor Code places certain procedural and substantive limits on employers' ability to
7 conduct employee background checks and on how employers can use the information they obtain
8 through those background checks. Labor Code Section 1024.5 states that employers, except for
9 financial institutions, may order a credit check only if the individual works (or is applying to
10 work) in certain positions, and Labor Code Section 432.7 prohibits an employer from asking
11 applicants about past arrest(s) unless they resulted in conviction(s) and even then, certain
12 limitations apply. Additionally, the ICRAA, and the FCRA mandate several requirements prior
13 to and following an employee background check, including but not limited to, identifying an
14 appropriate reason for the background check, a separate consent form with required disclosures
15 and certain formatting requirements, additional forms such as a summary of rights, as well as
16 proper notice of adverse actions taken, among other statutory requirements.

17 33. Defendants required Plaintiff and the Aggrieved Employees to submit to an unlawful
18 criminal and/or financial background check as a condition of obtaining and/or holding
19 employment in violation of Labor Code sections 1024.5 and/or 432.7. Defendants also required
20 Plaintiff and the Aggrieved Employees to agree in writing to unlawful background checks not in
21 conformance with the requirements of ICRAA and/or FCRA. These violations subject
22 Defendants to civil penalties under the Labor Code, including without limitation Labor Code
23 sections 432.5, 432.7 and 2699. Each violation of each Labor Code section and Wage Order
24 provision, for each aggrieved employee, results in a separate civil penalty.

25 34. Under the provisions of PAGA and Labor Code sections 201-202, 216, 221-223, 226,
26 226.7, 245-248.5, 432.5, 432.7, 510, 512, 1024.5, 1174, 1194, 1197, 1198, 1199, and 2810.5,
27 and all relevant sections of the applicable Wage Orders, as well as all interpretations of these
28 laws by California Courts and administrative bodies, as well as any other law that is

1 enforceable through PAGA, Defendants are liable for all statutorily-specified penalties
2 recoverable under PAGA as enumerated in the relevant California Labor Code provisions listed
3 herein, or for default PAGA penalties under Labor Code Section 2699(f) for any violation of a
4 Labor Code section without a specified civil penalty.

5 35. Plaintiff has complied with the administrative exhaustion procedures for bringing suit
6 specified in Labor Code sections 2699.3 and 2699.5. On June 14, 2021, Plaintiff gave written
7 notice to the California Labor and Workforce Development Agency (“LWDA”) via electronic
8 mail at PAGAfilings@dir.ca.gov and to Defendants via certified mail 65 days prior to this
9 Complaint of the specific provisions of the Labor Code and Wage Orders allegedly violated,
10 including the facts and theories to support the alleged violations.

11 36. Under Labor Code section 2699.3, the LWDA must give written notice by certified
12 mail to the parties it intends to investigate the alleged violations within 65 days of the date of
13 Plaintiff’s written notice. As of the expiration of the statutory exhaustion period, the LWDA
14 has not provided the parties any notice of its intention to investigate Plaintiff’s claims on behalf
15 of the State of California and the Aggrieved Employees. As of the filing of this Complaint,
16 Defendants have not responded to Plaintiff’s PAGA notice in an attempt to cure. Accordingly,
17 Plaintiff has exhausted all administrative remedies required by law.

18 37. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
19 Plaintiff is entitled to recover civil penalties, costs, plus reasonable attorney’s fees and costs, all
20 in an amount to be proved.

21
22 **PRAYER**

23 WHEREFORE, Plaintiff, prays for judgment against each Defendant, jointly and
24 severally, as follows:

- 25 1. For civil penalties according to proof;
26 2. For reasonable attorney’s fees and costs of suit; and
27 3. For such other and further relief as the Court deems just and proper.
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1 Dated: September 7, 2021

CROSNER LEGAL, P.C.

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4 Michael R. Crosner
5 Zachary M. Crosner
6 Blake R. Jones

7 Attorneys for Plaintiff ARTURO NAVARRO

8 **DEMAND FOR JURY TRIAL**

9 Plaintiff ARTURO NAVARRO demands a trial by jury on all claims so triable.

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11 Dated: September 7, 2021

CROSNER LEGAL, P.C.

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14 Michael R. Crosner
15 Zachary M. Crosner
16 Blake R. Jones

17 Attorneys for Plaintiff ARTURO NAVARRO
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