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GIOVANNI DIAZ

10 **SUPERIOR COURT OF STATE OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES**
12

13
14 GIOVANNI DIAZ, an individual, on
behalf of himself, and all others similarly
15 aggrieved,

16 Plaintiff,

17
18 v.

19
20 GALPIN MOTORS, INC., a California
corporation; GALPIN AUTO SPORTS
21 LLC, a California limited liability
company; GALPIN JAGUAR LINCOLN-
22 MERCURY, INC., a California
corporation; GALPIN VOLKSWAGEN
23 LLC, a California limited liability
company; and DOES 1-100, inclusive,

24 Defendants.
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CASE NO. **21STCV36464**

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

DEMAND FOR JURY TRIAL

1 Plaintiff GIOVANNI DIAZ (“Plaintiff”), an individual, on behalf of Plaintiff and all
2 other similarly aggrieved employees (“Aggrieved Employees”), hereby files this Complaint
3 against Defendants GALPIN MOTORS, INC., GALPIN AUTO SPORTS LLC, GALPIN
4 JAGUAR LINCOLN-MERCURY, INC., GALPIN VOLKSWAGEN LLC (collectively
5 referred to hereinafter as “Defendants”) and DOES 1-100, inclusive. Plaintiff is informed and
6 believes and thereon alleges as follows:

7 **THE PARTIES**

8 **1. Plaintiff Giovanni Diaz.** Plaintiff is, and at all relevant times was, an individual
9 domiciled in the State of California who worked as a non-exempt employee for Defendants,
10 from approximately 2002 until Plaintiff’s last day worked, on or about August 15, 2020.

11 **2. Defendant Galpin Motors, Inc.** Defendant GALPIN MOTORS, INC. is a California
12 corporation that, at all relevant times, was authorized to do business within the State of
13 California and is doing business in the State of California.

14 **3. Defendant Galpin Auto Sports LLC.** Defendant GALPIN AUTO SPORTS LLC is
15 a California limited liability company that, at all relevant times, was authorized to do business
16 within the State of California and is doing business in the State of California.

17 **4. Defendant Galpin Jaguar Lincoln-Mercury, Inc.** Defendant GALPIN JAGUAR
18 LINCOLN-MERCURY, INC. is a California corporation that, at all relevant times, was
19 authorized to do business within the State of California and is doing business in the State of
20 California.

21 **5. Defendant Galpin Volkswagen LLC.** Defendant GALPIN VOLKSWAGEN LLC is
22 a California limited liability company that, at all relevant times, was authorized to do business
23 within the State of California and is doing business in the State of California.

24 **6. Doe Defendants.** The true names and capacities of the DOE Defendants sued herein
25 as DOES 1 through 100, inclusive, are currently unknown to Plaintiff, who therefore sues each
26 such Defendant by said fictitious names. Each of the Defendants designated herein as a DOE
27 is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to
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1 amend this Complaint to reflect the true names and capacities of the Doe Defendants when such
2 identities become known.

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

13 8. At all relevant times, Defendants were and are legally responsible for all of the unlawful
14 conduct, policies, practices, acts and omissions complained of herein. Further, Defendants are
15 responsible for each of the unlawful acts or omissions complained of herein under the doctrine
16 of respondent superior. The conduct of Defendants' managers and supervisors was at all relevant
17 times undertaken as employees of Defendants, acting within the scope of their employment or
18 authority in all of the unlawful activities described herein.

19 9. Plaintiff is informed and believes, and thereon alleges that at all relevant times,
20 Defendants operated as a single integrated enterprise with common ownership and centralized
21 human resources as set forth herein. As a result, Defendants utilized the same unlawful wage and
22 hour policies and practices across all of their dealerships and subjected all Aggrieved Employees
23 to these same policies and practices regardless of the dealerships where they worked.

24 10. Plaintiff is informed and believes, and thereon alleges that at all relevant times,
25 Defendants were the joint employers of Plaintiff and/or the Aggrieved Employees upon whose
26 behalf Plaintiff brings these representative claims, in that Defendants, exercised sufficient control
27 over Plaintiff and the Aggrieved Employees' wages, hours and working conditions, and/or
28 suffered or permitted Plaintiff and the Aggrieved Employees to work, so as to be considered the

1 joint employers of Plaintiff and the Aggrieved Employees. Specifically, based upon information
2 and belief, Plaintiff alleges that Defendants created a uniform set of written policies and
3 procedures concerning, inter alia, commission, piece rate, hourly and overtime pay, time-keeping
4 practices, meal and rest periods that were distributed to, applied to, and controlled the wages,
5 hours and working conditions of Plaintiff and the Aggrieved Employees, and further that
6 Defendants uniformly compensated and controlled the wages of Plaintiff and the Aggrieved
7 Employees in a uniform manner. Defendants collectively represented to Plaintiff and the
8 Aggrieved Employees that each was an “at-will” employee of Defendants, and that Defendants
9 collectively retained the right to terminate Plaintiff’s and the Aggrieved Employees’ employment
10 with or without cause. Upon information and belief, Defendants further collectively represented
11 to Plaintiff the Aggrieved Employees in writing the details of their compensation any
12 commission pay agreements, and the manner in which he or she was to take meal and rest periods,
13 the procedures required by Defendants collectively for recordation of hours worked and the
14 policies applicable to Plaintiff and the Aggrieved Employees by which Defendants collectively
15 would evaluate the wage rate of Plaintiff and the Aggrieved Employees.

16 11. Thus, Defendants collectively exercised the right to control the wages, hours and
17 working conditions of Plaintiff and the Aggrieved Employees. Based on information and belief,
18 Defendants informed Plaintiff and the Aggrieved Employees in writing of the uniform standards
19 by which Plaintiff and the Aggrieved Employees would have to abide in their employment with
20 Defendants. Further, based upon information and belief, Defendants collectively set forth
21 guidelines concerning Plaintiff’s and the Aggrieved Employees’ personal appearance at work
22 with which each was required to comply as a condition of his employment. As such, Defendants
23 collectively held the right to control virtually every aspect of Plaintiff’s and the Aggrieved
24 Employees’ employment, including the instrumentality that resulted in the illegal conduct for
25 which Plaintiff seeks relief in this Complaint.

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

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3 **JURISDICTION AND VENUE**

4 13. This court possesses original subject matter jurisdiction over this matter. Venue is
5 proper in Los Angeles County, California, because Defendants maintain a principal place of
6 business in this judicial district. Moreover, Defendants transact business within this judicial
7 district and some of the complained of conduct occurred in this judicial district.

8 **FACTUAL AND LEGAL ALLEGATIONS**

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

13 15. Plaintiff worked for Defendants as a non-exempt shipping and receiving clerk from
14 approximately 2002 until Plaintiff's last day worked on or about August 15, 2020. Plaintiff's
15 official schedule was typically eight (8) to nine (9) hours per day, five (5) days per week. Plaintiff
16 was paid on an hourly basis, but only for time counted by Defendants as hours worked, that is,
17 the eight (8) to nine (9) hours within the official shift time, after a daily meal period deduction
18 of thirty minutes.

19 16. **Unpaid Minimum and Overtime Wages.** Plaintiff was not paid for all hours worked.
20 Plaintiff and Aggrieved Employees were required to perform work prior to clocking in and after
21 clocking out and during uncompensated meal periods. Defendants implemented an automatic
22 deduction policy and practice for meal periods, described in further detail below. This regular
23 performance of off-the-clock work resulted in Defendants underpaying both minimum wages
24 and overtime wages owed to Plaintiff, as well as record-keeping violations. Aggrieved
25 Employees who were paid on a piece rate or commissioned basis were also not paid separately
26 for rest breaks and all non-productive time and were not paid at the correct regular rate of pay,
27 resulting in underpayment of both minimum wages and overtime wages, as well as record-
28 keeping violations.

1 17. Defendants also violated California's overtime wage laws by failing to incorporate all
2 non-discretionary remuneration, including but not limited to, non-discretionary bonus pay, into
3 the regular pay rate used to calculate the overtime rate of pay. For example, during pay periods
4 in which Plaintiff worked overtime, Plaintiff received a "longevity bonus" that was not
5 incorporated into the regular pay rate for purposes of calculating the owed overtime rate. Failing
6 to include non-discretionary compensation in the regular pay rate resulted in a miscalculation of
7 Plaintiff's overtime wage rate, as well as record-keeping violations.

8 18. Defendants further violated California's overtime wage laws by failing to blend
9 multiple rates of pay in calculating owed overtime wages. Defendants sometimes paid Plaintiff
10 multiple types/rates of pay in one pay period for the same kind of work but failed to average the
11 rates of pay when calculating overtime. Under California law, "[w]here two rates of pay are paid
12 during a workweek, the California method for determining the regular rate of pay for calculating
13 overtime in that workweek mirrors the federal method, based upon the weighted average of all
14 hourly rates paid." DLSE Manual 49.2.5 (citing 29 CFR § 778.115). This "weighted average"
15 method provides, "[w]here an employee in a single workweek works at two or more different
16 types of work for which different non-overtime rates of pay (of not less than the applicable
17 minimum wage) have been established, their regular rate for that week is the weighted average
18 of such rates. That is, the total earnings (except statutory exclusions) are computed to include his
19 compensation during the workweek from all such rates, and are then divided by the total number
20 of hours worked at all jobs. . ." 29 CFR section 778.115. Defendants' failure to average the rates
21 of pay when calculating overtime resulted in underpaid overtime at times, as well as inaccurate
22 and incomplete wage statements.

23 19. **Meal Breaks.** Plaintiff was not provided timely, off-duty, uninterrupted thirty-minute
24 meal periods. Plaintiff was suffered and permitted to take meal periods well after the fifth hour
25 of work on a regular basis due to pressure to meet deadlines, lack of relief workers available, and
26 or the need to tend to incoming/outgoing shipments. Defendants required Plaintiff to remain on
27 duty during meal periods and or interrupted/cut short Plaintiff's meal periods by requiring
28 Plaintiff to tend to work tasks during his meal periods. Defendants required Plaintiff to clock out

thirty minutes per shift for these shortened/interrupted and or on-duty meal periods. This policy and practice for meal periods where Plaintiff and Aggrieved Employees were not relieved of all duties resulted in Plaintiff and Aggrieved Employees not being compensated for all hours worked. Defendants failed to pay Plaintiff and Aggrieved Employees an additional hour of premium pay at Plaintiff's regular rate of pay for each day Plaintiff missed a meal period or received an improper meal period, or Defendants did not pay the proper premium, for failure to incorporate all non-discretionary remuneration, including but not limited to, non-discretionary bonus pay, into the regular rate of pay for purposes of calculating the owed meal period premium.

20. **Rest Breaks.** Plaintiff did not receive compliant net ten (10)-minute rest periods for every four (4) hours worked (or major fraction thereof). Plaintiff regularly worked more than three-and-one-half (3½) hours without being authorized or permitted to take a paid net ten (10) minute rest period. Defendants required Plaintiff to continuously work without authorizing or providing paid rest periods. Any purported rest periods would be interrupted, cut short, on duty, and or late due to the nature and constraints of Plaintiff's job duties and or commentary from supervisors pressuring Plaintiff to skip rest breaks completely/take non-compliant rest breaks. Plaintiff was prohibited from availing himself of his rest breaks for various reasons, including but not limited to, pressure to meet deadlines, lack of relief workers available, and or the need to tend to incoming/outgoing shipments. Moreover, based on information and belief, Plaintiff was required to remain on the worksite premises during any purported rest periods and thus remained under employer control, rendering any provided rest periods noncompliant with California law. Defendants had no policy in place nor instruction as to the taking or timing of rest periods. Plaintiff was never paid a rest period premium for any missed/improper rest period.

21. **Inaccurate Wage Statements.** Defendants failed to furnish Plaintiff with complete and accurate wage statements in compliance with Labor Code section 226. Defendants' wage statements do not accurately reflect the total hours worked, as the total hours reflected on his wage statements do not include time spent working pre- and post- shift and during unpaid meal periods. As a result, Defendants' wage statements fail to reflect the true total hours Plaintiff worked, a requirement of Labor Code section 226.

22. Timely Wages at Termination. Upon separation of employment, Defendants failed to furnish Plaintiff with a final paycheck containing all earned and unpaid wages, as the check did not include all wages for time spent working pre- and post- shift and during unpaid meal periods, nor all wages calculated at the correct wage rate. Defendants willfully failed to timely pay all wages upon separation of employment.

23. **Background Checks.** Based on information and belief, Defendants required Plaintiff to submit to an unlawful criminal and/or financial background check as a condition of obtaining and/or holding employment in violation of Labor Code sections 1024.5 and/or 432.7. Based on further information and belief, Defendants also required Plaintiff to agree in writing to unlawful background checks not in conformity with the requirements of Investigative Consumer Reporting Agencies Act, Civil Code sections 1786, et seq. (“ICRAA”), and the Fair Credit Reporting Act, 15 U.S.C. sections 1681, et seq. (“FCRA”).

PAGA

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

25. Under Labor Code section 2699.3, the LWDA must give written notice by certified mail to the parties that it intends to investigate the alleged violations within 65 days of the date of Plaintiff's written notice. Plaintiff has complied with the administrative exhaustion procedures for bringing suit specified in Labor Code sections 2699.3 and 2699.5. Plaintiff gave timely written notice by certified mail to Defendants of the violation of various provisions of the California Labor Code as alleged in this complaint and filed notice of the violations online with the Labor and Workforce Development Agency ("LWDA"). Plaintiff filed his initial notice with the LWDA on August 2, 2021 and served Defendants via certified mail. Plaintiff filed an amended notice with the LWDA on or around August 11, 2021 and served Defendants via

1 certified mail. The LWDA assigned Plaintiff the following case number: LWDA-CM-840033-
2 21.

3 26. The LWDA did not provide notice of its intention to investigate Plaintiff's claims on
4 behalf of the State of California and the Aggrieved Employees after expiration of the 65-day
5 waiting time period, or at any time. Defendants also failed to cure within the time allotted by
6 PAGA. Consequently, Plaintiff has exhausted all administrative remedies and Plaintiff's right to
7 file the instant lawsuit then duly accrued.

8 27. From one-year prior to Plaintiff's filing of the required PAGA notice with the Labor
9 Workforce and Development Agency, and continuing through the present, as alleged herein,
10 Defendants violated Labor Code sections 201-202, 204, 216, 221-223, 226, 226.7, 432.5,
11 432.7, 510, 512, 1024.5, 1174, 1194, 1197, 1198, 1199, and 2810.5, and all relevant sections of
12 the applicable Wage Orders, as to Plaintiff and all Aggrieved Employees employed by
13 Defendants who worked as non-exempt employees. These violations subject Defendants to
14 civil penalties as set forth in the foregoing statutes as well as other provisions of the Labor
15 Code, including without limitation Labor Code sections 203, 210, 225.5, 226, 226.3, 256,
16 1174.5, 1197.1 and 2699.

17 28. Plaintiff is an "aggrieved employee" as that term is defined under the Labor Code
18 section 2699(c), as Plaintiff was employed by Defendants during the applicable statutory
19 limitations period and suffered one or more of the Labor Code violations set forth herein.
20 Accordingly, Plaintiff seeks to recover on behalf of himself and all Aggrieved Employees, the
21 civil penalties provided by PAGA, plus reasonable attorneys' fees and costs.

22 29. Plaintiff has standing to bring a PAGA action on behalf of the defined Aggrieved
23 Employees, as he was employed by Defendants and affected by one or more of the alleged
24 violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 757. A
25 PAGA plaintiff has authority to seek penalties for all known violations committed by the
26 employer – regardless of whether Plaintiff experienced all violations personally. *Id.* at 760-761.

27 **THE "AGGRIEVED EMPLOYEES"**

1 30. Plaintiff brings this action on behalf of Plaintiff and all similarly aggrieved employees.
2 The Aggrieved Employees shall be defined as follows: “All non-exempt workers – whether paid
3 hourly, on a commission basis, or piece-rate basis – employed in California by Defendants at any
4 time from one year and sixty-five days prior to the filing of the initial complaint, through the
5 present.”

6 **FIRST CAUSE OF ACTION**
7 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT,**
8 **LABOR CODE SECTIONS 2698, ET SEQ.**
9 **(AGAINST ALL DEFENDANTS)**

10 31. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

11 32. **Unpaid Minimum and Overtime Wages.** At all times relevant to this complaint, Cal.
12 Labor Code § 1194 and IWC Wage Order Nos. 4 were in full force and effect and required that
13 Defendants’ employees in California be paid for all hours worked, up to forty per week or eight
14 per day, at a regular time rate no less than the mandated minimum wage.

15 33. Effective January 1, 2016, the California minimum wage was \$10.00 per hour. Pursuant
16 to Cal. Labor Code § 1182.12, effective January 1, 2017, the California minimum wage rate for
17 employers with 26 employees increased to \$10.50 per hour. On January 1, 2018, this rate was
18 increased to \$11.00 per hour. On January 1, 2019, this rate was increased to \$12.00 per hour. On
19 January 1, 2020, this rate was increased again to \$13.00 per hour. Finally, on January 1, 2021,
20 this rate was increased again to \$14.00 per hour and is scheduled to increase to \$15.00 per hour
21 on January 1, 2022.

22 34. “Employer” means “any person who directly or indirectly, or through an agent or any
23 other person, employs or exercises control over the wages, hours, or working conditions of any
24 person.” Cal. Lab. Code § 1182.12(b)(3).

25 35. At all times relevant to this complaint, Defendants were employers who employed 26
26 or more employees.

27 36. Pursuant to Cal. Labor Code § 510 and IWC Wage Order Nos. 4 and 9, § 3, employees
28 in California must be paid overtime, equal to one and a half (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 workday and

1 must be paid double the regular hourly rate of pay for each hour worked beyond twelve (12)
2 hours per workday and for all hours worked in excess of eight (8) hours on the seventh
3 consecutive day of work in a work week, unless they are exempt.

4 37. Plaintiff and the Aggrieved Employees were non-exempt employees who regularly
5 worked time for which they were not compensated, resulting in unpaid minimum and overtime
6 wages.

7 38. Plaintiff and the Aggrieved Employees were not paid for all hours worked because
8 Defendants directed, suffered, or permitted Plaintiff and Aggrieved Employees to perform work
9 off-the-clock, with such hours worked not recorded. Defendants also required employees to
10 record unpaid meal periods, despite Plaintiff and Aggrieved Employees not being relieved of all
11 duties and employer control during the thirty (30) minutes during which they were required to
12 clock out. This practice resulted in Plaintiff and the Aggrieved Employees not being paid for all
13 time worked, with regular off-the-clock work – including during the meal period - resulting in
14 the underpayment of minimum and overtime wages owed to Plaintiff and the Aggrieved
15 Employees, as well as record-keeping violations.

16 39. Defendants also failed to compensate Aggrieved Employees who were compensated on
17 a piece rate or commissioned basis separately for non-piece-rate/non-commission-generating
18 activities, including but not limited to, rest periods, meetings, training, scheduling, among other
19 job activities integral and indispensable to their employment. This failure to separately
20 compensate for non-piece-rate/commission-generating activities violates California's wage laws.

21 40. Defendants also violated California's overtime wage laws by failing to incorporate all
22 non-discretionary remuneration, including but not limited to, non-discretionary bonuses,
23 commission and or piece rate pay, into the regular pay rate used to calculate the overtime rate of
24 pay. This miscalculation of the regular pay rate and correct overtime rate of pay resulted in the
25 miscalculation and, on information and belief, the underpayment of owed overtime wages, as
26 well as record-keeping violations.

27 41. Defendants further violated California's overtime wage laws by failing to blend
28 multiple rates of pay in calculating owed overtime wages. Defendants sometimes paid the

1 Aggrieved Employees multiple types/rates of pay in one pay period for the same kind of work
2 but failed to average the rates of pay when calculating overtime. Under California law, "[w]here
3 two rates of pay are paid during a workweek, the California method for determining the regular
4 rate of pay for calculating overtime in that workweek mirrors the federal method, based upon the
5 weighted average of all hourly rates paid." DLSE Manual 49.2.5 (citing 29 CFR § 778.115). This
6 "weighted average" method provides, "[w]here an employee in a single workweek works at two
7 or more different types of work for which different non-overtime rates of pay (of not less than
8 the applicable minimum wage) have been established, their regular rate for that week is the
9 weighted average of such rates. That is, the total earnings (except statutory exclusions) are
10 computed to include his compensation during the workweek from all such rates, and are then
11 divided by the total number of hours worked at all jobs. . ." 29 CFR section 778.115. Defendants'
12 failure to average the rates of pay when calculating overtime resulted in underpaid overtime at
13 times, as well as inaccurate and incomplete wage statements.

14 **42. Meal Breaks.** Under Labor Code §§ 226.7, 512, and the applicable IWC Wage Orders,
15 Defendants were required to provide Plaintiff and the Aggrieved Employees with one thirty (30)
16 minute meal break free from all duties for all shifts greater than five (5) but less than ten (10)
17 hours in length, and a second thirty (30) minute meal break free from all duties for all shifts of
18 ten (10) hours or more. The first meal period must be provided before the end of the fifth hour
19 of work and the second meal period before the end of the tenth hour of work. Employers covered
20 by the Wage Orders have an obligation to both (a) relieve their employees for at least one meal
21 period for shifts over five hours, and (b) to record having done so. If the employer fails to
22 properly record a compliant meal period, it is presumed no meal period was provided. Plaintiff
23 and the Aggrieved Employees were not provided timely, off-duty, uninterrupted thirty-minute
24 meal periods.

25 **43.** Plaintiff and other Aggrieved Employees were suffered and permitted to take meal
26 periods well after the fifth hour of work on a regular basis due to, including but not limited to,
27 pressure to meet deadlines, lack of relief workers available, and or the need to tend to
28 incoming/outgoing shipments. Defendants required the Aggrieved Employees to remain on duty

1 during meal periods and or interrupted/cut short the Aggrieved Employees' meal periods by
2 requiring them to tend to work tasks during their meal periods. Defendants required the
3 Aggrieved Employees to clock out thirty minutes per shift for these shortened/interrupted and or
4 on-duty meal periods. This policy and practice for meal periods resulted in Plaintiff and the
5 Aggrieved Employees not being compensated for all hours worked as well as record-keeping
6 violations. Based on information and belief, second meal periods were never provided to the
7 Aggrieved Employees when they worked more than ten hours. Defendants had actual and/or
8 constructive knowledge that Plaintiff and the Aggrieved Employees were not receiving timely,
9 compliant, uninterrupted meal periods, resulting in off-the-clock work, yet Defendants failed to
10 pay the Aggrieved Employees an additional hour of premium pay at their respective regular
11 rate(s) of pay for each day a meal period was missed or improper. Defendants either failed to pay
12 any premium pay for these denied meal periods or did not pay the proper premium, for failure to
13 incorporate all non-discretionary remuneration, including but not limited to, non-discretionary
14 bonus pay, into the regular rate of pay for purposes of calculating the owed meal period premium.

15 **44. Rest Breaks.** Plaintiff and other Aggrieved Employees did not receive compliant net
16 ten (10)-minute rest periods for every four (4) hours worked (or major fraction thereof), as
17 required by Labor Code 226.7 and the applicable IWC Wage Orders. Plaintiff and other
18 Aggrieved Employees regularly worked more than three-and-one-half (3½) hours without being
19 authorized or permitted to take a paid net ten (10) minute rest period. Defendants required
20 Plaintiff and other Aggrieved Employees to continuously work without authorizing or providing
21 paid rest periods. Any purported rest periods would be interrupted, cut short, on duty, and or late
22 due to the nature and constraints of the Aggrieved Employees' job duties and or commentary
23 from Defendants pressuring them to skip rest breaks completely/take non-compliant rest breaks.
24 Plaintiff and other Aggrieved Employees were unable to avail themselves of their rest breaks for
25 various reasons, including but not limited to, pressure to meet deadlines and or make sales, lack
26 of relief workers available, and or the need to tend to incoming/outgoing shipments. Moreover,
27 based on information and belief, Plaintiff and other Aggrieved Employees were required to
28 remain on the worksite premises during any purported rest periods and thus remained under

1 employer control, rendering any provided rest periods noncompliant with California law.
2 Defendants had no policy in place nor instruction as to the taking or timing of rest periods.
3 Plaintiff and other Aggrieved Employees were never paid a rest period premium for any
4 missed/improper rest period.

5 **45. Inaccurate Wage Statements.** California Labor Code § 226 and the applicable IWC
6 Wage Order provides that, at the time of each payment of wages, the employer must provide
7 each employee with an itemized statement showing, *inter alia*, gross wages earned, total hours
8 worked, all deductions taken, net wages earned, the inclusive dates for which the employee is
9 being paid, the employee's name and last four digits of their social security number, the name
10 and address of the legal entity that it is the employer, and all applicable hourly rates in effect
11 during the pay period and all hours worked at each rate.

12 46. Defendants knew or had reason to know Plaintiff and the Aggrieved Employees were
13 working during their meal breaks and otherwise working off-the-clock and not being paid for all
14 hours worked. Defendants knowingly and intentionally failed to provide Plaintiff and the
15 Aggrieved Employees with accurate, itemized wage statements as the wage statements provided
16 by Defendants do not accurately reflect, *inter alia*, the correct total hours worked. Due to
17 Defendants' unlawful practice for shortened/on-duty meal periods and other mandated off-the-
18 clock work as described herein, Defendants' wage statements fail to reflect the true total hours
19 the Aggrieved Employees worked, as required under Labor Code § 226. As a result of
20 Defendants' failure, Plaintiff and the Aggrieved Employees suffered injury. Accordingly,
21 Defendants have violated Cal. Labor Code § 226.

22 **47. Record Keeping.** California Labor Code sections 226 and 1174 require employers to
23 keep "accurate and complete" payroll records showing, among other things, the hours worked
24 daily by all non-exempt employees. Section 7 of all applicable IWC Wage Orders similarly
25 requires employers to keep time records showing, *inter alia*, when the employees begin and end
26 each work period and reflecting the true start and end times during which all owed meal periods
27 are provided each day. At all relevant times, Defendants have failed, and continue to fail, to keep
28 the required time records, as Defendants have failed to record the true start and end times of

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

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

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

26 **50. Statutory Wages.** California Labor Code § 223 makes it unlawful for an employer to
27 secretly pay wages lower than required by statute while purporting to pay legal wages. As
28 described above, Defendants willfully and systematically denied Plaintiff and the Aggrieved

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

5 51. By virtue of its violations with respect to meal period, rest period, recordkeeping
6 provisions and minimum and overtime wage laws, Defendants further violated Labor Code
7 sections 1198 and 1199, which together make unlawful any employment of any employee under
8 conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to
9 comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174,
10 1197, and 1198, or order or ruling of the commission.

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

22 53. Based on information and belief, Defendants required Plaintiff and the Aggrieved
23 Employees to submit to an unlawful criminal and/or financial background check as a condition
24 of obtaining and/or holding employment in violation of Labor Code sections 1024.5 and/or
25 432.7. Based on further information and belief, Defendants also required Plaintiff and the
26 Aggrieved Employees to agree in writing to unlawful background checks not in conformance
27 with the requirements of ICRAA and/or FCRA. These violations subject Defendants to civil
28 penalties under the Labor Code, including without limitation Labor Code sections 432.5, 432.7

1 and 2699. Each violation of each Labor Code section and Wage Order provision, for each
2 aggrieved employee, results in a separate civil penalty.

3 54. Under the provisions of PAGA and Labor Code sections 201-202, 204, 216, 221-223,
4 226, 226.7, 432.5, 432.7, 510, 512, 1024.5, 1174, 1194, 1197, 1198, 1199, 2810.5, and all
5 relevant sections of the applicable Wage Orders, as well as all interpretations of these laws by
6 California Courts and administrative bodies, as well as any other law that is enforceable through
7 PAGA, Defendants are liable for all statutorily-specified penalties recoverable under PAGA as
8 enumerated in the relevant California Labor Code provisions listed herein, or for default PAGA
9 penalties under Labor Code section 2699(f) for any violation of a Labor Code section without a
10 specified civil penalty.

11 55. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
12 Plaintiff is entitled to recover civil penalties, costs, plus reasonable attorney's fees and costs, all
13 in an amount to be proved.

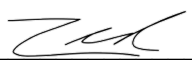
14 **PRAYER**

15 WHEREFORE, Plaintiff, prays for judgment against each Defendant, jointly and
16 severally, as follows:

- 17 1. For civil penalties according to proof;
18 2. For reasonable attorney's fees and costs of suit; and
19 3. For such other and further relief as the Court deems just and proper.
20
21

22 Dated: October 4, 2021

CROSNER LEGAL, P.C.

24 
25 Michael R. Crosner
26 Zachary M. Crosner
27 Blake R. Jones
28 Jamie Serb

Attorneys for Plaintiff GIOVANNI DIAZ

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DEMAND FOR JURY TRIAL

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

Dated: October 4, 2021

CROSNER LEGAL, P.C.



Michael R. Crosner
Zachary M. Crosner
Blake R. Jones
Jamie Serb

Attorneys for Plaintiff GIOVANNI DIAZ