

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

PREMIUM AUTOS INC., a California Corporation; and Does 1 through 50, Inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

GLADYS LEON, individually and on behalf of all persons similarly situated,

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Los Angeles Superior Court, Stanley Mosk Courthouse
111 North Hill Street
Los Angeles, CA 90012

CASE NUMBER: 22STCV02677
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Shani O. Zakay, Esq. SBN:277924 Tel: (619) 255-9047 Fax: (858) 404-9203
Zakay Law Group, APLC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

Sherri R. Carter Executive Officer / Clerk of Court

DATE:

(Fecha) 01/24/2022

Clerk, by _____, Deputy
(Secretario) R. Lozano (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)	☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation)	☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership)	☐ CCP 416.90 (authorized person)
☐ other (specify):	
4. ☐ by personal delivery on (date):

[SEAL]



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Attorneys for Plaintiff GLADYS LEON

SUPERIOR COURT OF THE STATE OF CALIFORNIA**IN AND FOR THE COUNTY OF LOS ANGELES**

GLADYS LEON, individually and on behalf of
 all persons similarly situated,

PLAINTIFFS,

vs.

PREMIUM AUTOS INC., a California
 Corporation; and Does 1 through 50, Inclusive,

DEFENDANTS.

Case No.: 22STCV02677

CLASS ACTION COMPLAINT FOR:

1. **UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE § 17200, et seq.;**
2. **FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;**
3. **FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;**
4. **FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1182.12, 1194, 1197 & 1197.1;**
5. **FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, et seq.;**
6. **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN**

VIOlation OF CAL. LAB. CODE §
226;
7. FAILURE TO PROVIDE WAGES
WHEN DUE IN VIOLATION OF CAL.
LAB. CODE §§ 201, 202 AND 203; and
8. FAILURE TO REIMBURSE
EMPLOYEES FOR REQUIRED
EXPENSES IN VIOLATION OF
CALIFORNIA LABOR CODE §2802;
9. VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT
[LABOR CODE §§ 2698 ET SEQ.]

[JURY TRIAL DEMANDED]

Plaintiff GLADYS LEON (“PLAINTIFF”), individually and on behalf of all those similarly situated, allege on information and belief, except for their own acts and knowledge, the following:

THE PARTIES

1. Defendant PREMIUM AUTOS INC. is a California Corporation that at all relevant times mentioned was in the business of selling and servicing automobiles in California.

2. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon that information and belief allege, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive (hereinafter collectively “DEFENDANTS” or “DEFENDANT”), are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

3. The agents, servants and/or employees of the DEFENDANTS and each of them acting on behalf of the DEFENDANT acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the DEFENDANT, and personally participated in the conduct alleged herein on behalf of the DEFENDANT with respect to the conduct alleged herein.

1 Consequently, the acts of each of the DEFENDANTS are legally attributable to the other and all
2 DEFENDANTS are jointly and severally liable to PLAINTIFF and those similarly situated, for
3 the loss sustained as a proximate result of the conduct of the DEFENDANTS' agents, servants
4 and/or employees.

5 4. Plaintiff GLADYS LEON ("PLAINTIFF" or "LEON") worked for
6 DEFENDANTS from approximately June of 2021 through August of 2021. During that time
7 period, LEON worked as a car sales agent and misclassified as an exempt employee.

8 **JURISDICTION AND VENUE**

9 5. The Superior Court of the State of California has jurisdiction in this matter because
10 DEFENDANT, a California limited liability company, and DOES 1 through 50 inclusive
11 (hereinafter "DEFENDANT" or "DEFENDANTS"), are qualified to do business in California and
12 regularly conduct business in California. Further, no federal question is at issue because the claims
13 are based solely on California law.

14 6. Venue is proper in this judicial district and the County of Los Angeles, California
15 because DEFENDANTS maintain offices and facilities and transact business in the County of
16 Los Angeles, and because DEFENDANTS' illegal payroll policies and practices which are the
17 subject of this action were applied, at least in part, to residents of the County of Los Angeles.

18 7. PLAINTIFF bring this class action under California Code of Civil Procedure § 382
19 on behalf of a class of employees that worked for DEFENDANTS and classified as exempt and
20 who earned less than two times the state minimum wage, in California (the "CALIFORNIA
21 CLASS") at any time during the period beginning four (4) years prior to the filing of this Complaint
22 and ending on the date as determined by the Court ("CLASS PERIOD"). The members of the
23 class are so numerous that joinder of all class members is impractical. PLAINTIFF reserves the
24 right to amend the following class definitions before the Court determines whether class
25 certification is appropriate, or thereafter upon leave of Court.

26 **THE CONDUCT**

27 9. To qualify as an exempt employee, California requires that an employee must be
28 "primarily engaged in the duties that meet the test of the exemption" and "earns a monthly salary

equivalent to no less than two times the state minimum wage for full-time employment.” *Labor Code* § 515. This forms the two-part test the employers must establish to properly exempt its employees from overtime laws: (1) the salary basis test and (2) the duties test.

10. For example, on January 1, 2021, the minimum wage in the State of California increased to \$14.00 per hour for employers. Thus, based on a forty (40) hour workweek, the minimum salary for California exempt employees employed by employers with at least twenty-six (26) employees in 2021, is \$58,240. Further, on January 1, 2021, the minimum wage in the State of California increased to \$13.00 per hour for employers with twenty-five (25) employees or less. Thus, based on a forty (40) hour workweek, the minimum salary for California exempt employees employed by employers with twenty-five (25) employees or less in 2021, is \$54,080.

11. From June of 2021 to August of 2021, DEFENDANTS employed PLAINTIFF in an automotive sales position. Defendant improperly classified this position as exempt from overtime laws and other laws governing the employment of non-exempt employees.

12. At all times during the CLASS PERIOD, DEFENDANTS failed to compensate PLAINTIFF and the other members of the Class, with an annual salary of at least two times the state minimum wage for full time employment by employers with at least twenty-six employees and/or with twenty-five employees or less. Specifically, PLAINTIFF earned an annual salary of \$41,600 well below the \$58,240 and/or \$54,080 salary threshold to meet the test of exemption.

13. At all times during the CLASS PERIOD, PLAINTIFF and the other members of the Class primarily performed non-exempt job duties and were not primarily engaged in duties that meet the test of the exemption, but were nevertheless classified by DEFENDANTS as exempt. PLAINTIFF and the other members of the CALIFORNIA CLASS engaged in a finite set of tasks and had no power to exercise any independent judgment and/or discretion. More specifically, DEFENDANTS’ policy, practice and procedure restrained PLAINTIFF and the other members of the CALIFORNIA CLASS from evaluating possible courses of action and implementing decisions based on their independent judgment and discretion. In other words, in exercising their duties, PLAINTIFF and the other members of the CALIFORNIA CLASS lacked any power to make any independent choice free from immediate supervision and with respect to

1 matters of significance. PLAINTIFF and other members of the CALIFORNIA CLASS did not
2 exercise the requisite discretion or independent judgment in the training or supervision of
3 employees based on the constraints, direction and control imposed by DEFENDANTS.

4 14. At all times during the CLASS PERIOD, PLAINTIFF and the members of the
5 CALIFORNIA CLASS did not did not have the authority to hire, fire, or promote employees,
6 determine their pay rates or benefits, or give raises, or otherwise make employment-related,
7 personnel decisions. Consequently, PLAINTIFF and the other members of the CALIFORNIA
8 CLASS did not have the authority to decide whether or not an employee should be disciplined for
9 an infraction. Disciplinary decisions were made by other departments, or dictated by company
10 policies. Overall, recommendations made by PLAINTIFF and the other members of the
11 CALIFORNIA CLASS were given no weight on all the above issues. As a result, as PLAINTIFF
12 and the other members of the CALIFORNIA CLASS were engaged in a type of work that required
13 no exercise of independent judgment or discretion as to any matter of significance. Moreover,
14 PLAINTIFF and the other members of the CALIFORNIA CLASS were engaged in a type of
15 work unrelated to management policies.

16 15. Further, the work schedule for PLAINTIFF and the other members of the
17 CALIFORNIA CLASS, were set by DEFENDANTS. Typically, PLAINTIFF and the other
18 members of the CALIFORNIA CLASS, regularly worked in excess of eight (8) hours in a
19 workday and more than forty (40) hours in a workweek. Nevertheless, DEFENDANTS never
20 provided PLAINTIFF and the other members of the CALIFORNIA CLASS with overtime
21 compensation and other benefits for the overtime hours worked as required by law due to
22 DEFENDANTS' improper treatment.

23 16. As a matter of company policy, practice, and procedure, DEFENDANTS have
24 unlawfully, unfairly and/or deceptively treated its PLAINTIFF and the other members of the
25 CALIFORNIA CLASS as exempt employees, failed to pay the required overtime compensation
26 and otherwise failed to comply with all applicable labor laws with respect to PLAINTIFF and the
27 other members of the CALIFORNIA CLASS.
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1 17. By reason of this uniform exemption practice, policy and procedure applicable to
2 the PLAINTIFF, DEFENDANTS committed acts of unfair competition in violation of the
3 California Unfair Competition law, Cal. Bus. & Prof. Code § 17200 (the "UCL"), by engaging in
4 a company-wide policy, practice and procedure which failed to properly classify the PLAINTIFF
5 and the other members of the Class and thereby failed to pay them overtime wages for
6 documented overtime hours worked.

7 18. The proper classification of the PLAINTIFF and the other members of the
8 CALIFORNIA CLASS is DEFENDANTS' burden. DEFENDANTS had no business policy,
9 practice, or procedure to ensure that the PLAINTIFF and the other members of the CALIFORNIA
10 CLASS were properly classified as exempt, and in fact, as a matter of corporate policy
11 erroneously and unilaterally classified misclassified as exempt based on job title alone. As a result
12 of DEFENDANTS' intentional disregard of the obligation to meet this burden, DEFENDANTS
13 failed to pay all required overtime compensation for work performed by the PLAINTIFF and the
14 other members of the CALIFORNIA CLASS and violated the California Labor Code and
15 regulations promulgated thereunder as herein alleged.

16 19. Additionally, DEFENDANTS failed to provide all the legally required off-duty
17 meal and rest breaks to PLAINTIFF and the other members of the CALIFORNIA CLASS, as
18 required by the applicable Wage Order and Labor Code. As a result of its willful misclassification,
19 DEFENDANTS did not have a practice of providing meal and rest breaks to the PLAINTIFF and
20 the other members of the CALIFORNIA CLASS. DEFENDANTS' failure to provide the
21 PLAINTIFF with legally required meal and rest breaks is evidenced by DEFENDANTS' business
22 records which contain no record of these breaks.

23 20. DEFENDANTS as a matter of corporate policy, practice, and procedure,
24 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF
25 and the other members of the CALIFORNIA CLASS for required business expenses incurred by
26 the PLAINTIFF and other members of the CALIFORNIA CLASS in direct consequence of
27 discharging their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802,
28 employers are required to indemnify employees for all expenses incurred in the course and scope

1 of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify
2 his or her employee for all necessary expenditures or losses incurred by the employee in direct
3 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
4 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
5 believed them to be unlawful."

6 21. To date, DEFENDANTS has not fully paid PLAINTIFF and the other members of
7 the CALIFORNIA CLASS the overtime compensation still owed to them. The amount in
8 controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000. Further,
9 the amount in controversy for the aggregate claim of the CALIFORNIA CLASS members is
10 under five million dollars (\$5,000,000.00).

11 22. This action is appropriately suited for a Class Action because:

- 12 a. The potential class is a significant number. Joinder of all current and former
13 employees individually would be impractical.
- 14 b. This action involves common questions of law and fact to the potential
15 CALIFORNIA CLASS because the action focuses on DEFENDANTS' systematic
16 course of classification and illegal practices and policies, which was applied to all
17 of the members of the CALIFORNIA CLASS in violation of the Labor Code, the
18 applicable IWC wage order, and the Business and Professions Code which prohibits
19 unfair business practices arising from such violations.
- 20 c. The claims of the PLAINTIFF are typical of the class because DEFENDANTS
21 subjected all misclassified employees to identical violations of the Labor Code, the
22 applicable IWC wage order, and the Business and Professions Code.
- 23 d. PLAINTIFF is able to fairly and adequately protect the interest of all members of
24 the CALIFORNIA CLASS because it is in their best interest to prosecute the claims
25 alleged herein to obtain full compensation due to them for all services rendered and
26 hours worked.

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1 relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the
2 conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

3 27. By the conduct alleged herein, DEFENDANTS' practices were unlawful and unfair
4 in that these practices violate public policy, were immoral, unethical, oppressive, unscrupulous
5 or substantially injurious to employees, and were without valid justification or utility for which
6 this Court should issue equitable and injunctive relief pursuant to Section 17203 of the California
7 Business & Professions Code, including restitution of wages wrongfully withheld.

8 28. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
9 fraudulent in that DEFENDANTS' uniform policy and practice failed to pay PLAINTIFF, and
10 other members of the CALIFORNIA CLASS, all wages due to them for all hours worked, and
11 premiums for their missed meal and rest periods, pursuant to the applicable Cal. Lab. Code, and
12 Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*,
13 and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof.
14 Code § 17203, including restitution of wages wrongfully withheld.

15 29. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
16 unfair and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the
17 other members of the CALIFORNIA CLASS to be underpaid during their employment with
18 DEFENDANTS.

19 30. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
20 unfair and deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to
21 provide legally required uninterrupted duty-free meal breaks to PLAINTIFF and the other
22 members of the CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

23 31. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
24 CALIFORNIA CLASS member, all unpaid wages resulting from working off-the-clock, all
25 unpaid wages from resulting from misclassification, one (1) hour of pay at the regular rate of
26 compensation for each workday in which an off-duty meal period was not timely provided for
27 each five (5) hours of work, and/or one (1) hour of pay for each workday in which a second off-
28 duty meal period was not timely provided for each ten (10) hours of work.

1 32. PLAINTIFF further demands on behalf of themselves and on behalf of each
2 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
3 not timely provided and/or paid as required by law.

4 33. By and through the unlawful and unfair business practices described herein,
5 DEFENDANTS have obtained valuable property, money and services from PLAINTIFF and the
6 other members of the CALIFORNIA CLASS, including earned wages for time worked, including
7 overtime worked, and has deprived them of valuable rights and benefits guaranteed by law and
8 contract, all to the detriment of these employees and to the benefit of DEFENDANTS so as to
9 allow DEFENDANTS to unfairly compete against competitors who comply with the law.

10 34. All the acts described herein as violations of, among other things, the Industrial
11 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
12 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive and
13 unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business
14 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

15 35. PLAINTIFF and the other members of the CALIFORNIA CLASS were further
16 entitled to, and do, seek a declaration that the described business practices were unlawful, unfair
17 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
18 engaging in any unlawful and unfair business practices in the future.

19 36. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
20 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
21 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As
22 a result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
23 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
24 and economic harm unless DEFENDANTS are restrained from continuing to engage in these
25 unlawful and unfair business practices.

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[Cal. Lab. Code §§ 226.7 & 512]

37. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

38. During the CLASS PERIOD, DEFENDANTS failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and the CALIFORNIA CLASS members did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. As a result of misclassification in the case the Misclassification Class, PLAINTIFF and other CALIFORNIA CLASS members were often not fully relieved of duty by DEFENDANTS during their meal periods. Additionally, DEFENDANTS' failure to provide PLAINTIFFS and the CALIFORNIA CLASS members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANTS' business records. As a result, PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANTS' strict corporate policy and practice.

39. DEFENDANTS further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS members who were not provided a meal period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that a meal period was not provided.

40. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

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1 52. In committing these violations of the California Labor Code, DEFENDANTS
2 inaccurately calculated the correct time worked and consequently underpaid the actual time
3 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANTS
4 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation
5 of the California Labor Code, the Industrial Welfare Commission requirements and other
6 applicable laws and regulations.

7 53. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
8 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
9 minimum wage compensation for their time worked for DEFENDANTS.

10 54. During the CLASS PERIOD, PLAINTIFF and the other members of the
11 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a
12 failure to pay all earned wages.

13 55. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
14 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
15 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have
16 suffered and will continue to suffer an economic injury in amounts which are presently unknown
17 to them and which will be ascertained according to proof at trial.

18 56. DEFENDANTS knew or should have known that PLAINTIFF and the other
19 members of the CALIFORNIA CLASS were under compensated for their time worked.
20 DEFENDANTS systematically elected, either through intentional malfeasance or gross
21 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
22 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
23 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages
24 for their time worked.

25 57. In performing the acts and practices herein alleged in violation of California labor
26 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
27 and provide them with the requisite compensation, DEFENDANTS acted and continues to act
28 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the

CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the consequences to them, and with the despicable intent of depriving them of their property and legal rights, and otherwise causing them injury in order to increase company profits at the expense of these employees.

58. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the California Labor Code and/or other applicable statutes. To the extent minimum wage compensation is determined to be owed to the CALIFORNIA CLASS members who have terminated their employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS members. DEFENDANTS' conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS members are entitled to seek and recover statutory costs.

FIFTH CAUSE OF ACTION

For Failure to Pay Overtime Compensation

[Cal. Lab. Code §§ 510, *et seq.*]

(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

59. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though full set forth herein, the prior paragraphs of this Complaint.

60. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for DEFENDANTS' willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANTS' failure to pay these employees for all overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

1 61. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
2 policy, an employer must timely pay its employees for all hours worked.

3 62. Cal. Lab. Code § 510 further provides that employees in California shall not be
4 employed more than eight (8) hours per workday and more than forty (40) hours per workweek
5 unless they receive additional compensation beyond their regular wages in amounts specified by
6 law.

7 63. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
8 including minimum wage and overtime compensation and interest thereon, together with the costs
9 of suit.

10 64. Cal. Lab. Code § 1198 further states that the employment of an employee for longer
11 hours than those fixed by the Industrial Welfare Commission is unlawful.

12 65. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS members
13 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time
14 they worked, including overtime work.

15 66. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
16 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
17 implementing a uniform policy and practice that failed to accurately record overtime worked by
18 PLAINTIFF and other CALIFORNIA CLASS members and denied accurate compensation to
19 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
20 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
21 (12) hours in a workday, and/or forty (40) hours in any workweek.

22 67. In committing these violations of the California Labor Code, DEFENDANTS
23 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
24 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANTS acted in an illegal
25 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
26 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
27 regulations.
28

1 68. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
2 the PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full
3 compensation for overtime worked.

4 69. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
5 from the overtime requirements of the law. None of these exemptions are applicable to the
6 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the
7 other members of the CALIFORNIA CLASS were not subject to a valid collective bargaining
8 agreement that would preclude the causes of action contained herein this Complaint. Rather,
9 PLAINTIFF brings this action on behalf of herself and the CALIFORNIA CLASS based on
10 DEFENDANTS' violations of non-negotiable, non-waivable rights provided by the State of
11 California.

12 70. During the CLASS PERIOD, PLAINTIFF and the other members of the
13 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,
14 constituting a failure to pay all earned wages.

15 71. DEFENDANTS failed to accurately pay the PLAINTIFFS and the other members
16 of the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of
17 the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even
18 though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to work,
19 and did in fact work, overtime as to which DEFENDANTS failed to accurately record and pay as
20 evidenced by DEFENDANTS' business records and witnessed by employees.

21 72. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
22 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
23 amount of time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS
24 have suffered and will continue to suffer an economic injury in amounts which are presently
25 unknown to them and which will be ascertained according to proof at trial.

26 73. DEFENDANTS knew or should have known that PLAINTIFF and the other
27 members of the CALIFORNIA CLASS were under compensated for all overtime worked.
28 DEFENDANT systematically elected, either through intentional malfeasance or gross

1 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
2 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
3 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

4 74. In performing the acts and practices herein alleged in violation of California labor
5 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all overtime
6 worked and provide them with the requisite overtime compensation, DEFENDANTS acted and
7 continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other
8 members of the CALIFORNIA CLASS with a conscious of and utter disregard for their legal
9 rights, or the consequences to them, and with the despicable intent of depriving them of their
10 property and legal rights, and otherwise causing them injury in order to increase company profits
11 at the expense of these employees.

12 75. PLAINTIFFS and the other members of the CALIFORNIA CLASS therefore
13 request recovery of all overtime wages, according to proof, interest, statutory costs, as well as the
14 assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the
15 California Labor Code and/or other applicable statutes. To the extent minimum and/or overtime
16 compensation is determined to be owed to the CALIFORNIA CLASS members who have
17 terminated their employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or
18 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
19 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS
20 members. DEFENDANTS' conduct as alleged herein was willful, intentional and not in good
21 faith. Further, PLAINTIFF and other CALIFORNIA CLASS members are entitled to seek and
22 recover statutory costs.

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1 78. When PLAINTIFF and the other CALIFORNIA CLASS members were not
2 compensated for all wages due to them for their off-the-clock work, and for their missed meal
3 and rest breaks, and for overtime, DEFENDANTS also failed to provide PLAINTIFF and the
4 other members of the CALIFORNIA CLASS with complete and accurate wage statements. Cal.
5 Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an
6 accurate itemized wage statement in writing showing, among other things, gross wages earned
7 and all applicable hourly rates in effect during the pay period and the corresponding amount of
8 time worked at each hourly rate. As a result, DEFENDANTS provided PLAINTIFF and the other
9 members of the CALIFORNIA CLASS with wage statements which violate Cal. Lab. Code §
10 226. Aside, from the violations listed above in this paragraph, DEFENDANTS failed to issue to
11 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
12 Code 226 *et seq.*

13 79. DEFENDANTS knowingly and intentionally failed to comply with Cal. Lab. Code
14 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
15 CLASS. These damages include, but are not limited to, costs expended calculating the correct
16 rates for the overtime hours worked and the amount of employment taxes which were not properly
17 paid to state and federal tax authorities. These damages are difficult to estimate. Therefore,
18 PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover liquidated
19 damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and
20 one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab.
21 Code § 226, in an amount according to proof at the time of trial (but in no event more than four
22 thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA
23 CLASS.

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1 **SEVENTH CAUSE OF ACTION**

2 **For Failure to Pay Wages When Due**

3 **[Cal. Lab. Code §§ 201, 202, 203]**

4 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

5 80. PLAINTIFF and the members of the CALIFORNIA CLASS reallege and
6 incorporate by reference, as though fully set forth herein, the prior paragraphs of this Complaint.

7 81. Cal. Lab. Code § 200 provides, in relevant part, that:

8 As used in this article:

9 (a) "Wages" includes all amounts for labor performed by employees of every
10 description, whether the amount is fixed or ascertained by the standard of time,
11 task, piece, Commission basis, or other method of calculation.

12 (b) "Labor" includes labor, work, or service whether rendered or performed under
13 contract, subcontract, partnership, station plan, or other agreement if the labor to be
14 paid for is performed personally by the person demanding payment.

15 82. Cal. Lab. Code § 201 provides, in relevant part, "that if an employer discharges an
16 employee, the wages earned and unpaid at the time of discharge are due and payable
17 immediately."

18 83. Cal. Lab. Code § 202 provides, in relevant part, that: "If an employee not having a
19 written contract for a definite period quits his or her employment, his or her wages shall become
20 due and payable not later than 72 hours thereafter, unless the employee has given 72 hours
21 previous notice of his or her intention to quit, in which case the employee is entitled to his or her
22 wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits
23 without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so
24 requests and designates a mailing address. The date of the mailing shall constitute the date of
25 payment for purposes of the requirement to provide payment within 72 hours of the notice of
26 quitting."

27 84. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS
28 Members' employment contract. Cal. Lab. Code § 203 provides, in relevant part, that: "If an

1 employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201,
2 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of
3 the employee shall continue as a penalty from the due date thereof at the same rate until paid or
4 until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

5 85. The employment of PLAINTIFF and many CALIFORNIA CLASS Members has
6 terminated and DEFENDANT has not tendered payment of all wages owed as required by law.

7 86. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the
8 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated,
9 PLAINTIFF demands thirty days of pay as penalty for not paying all wages due at time of
10 termination for all employees who terminated employment during the CALIFORNIA CLASS
11 PERIOD and demands an accounting and payment of all wages due, plus interest and statutory
12 costs as allowed by law.

13 **EIGHTH CAUSE OF ACTION**

14 **Failure To Reimburse Employees For Required Expenses**

15 **(Cal. Lab. Code §§ 2802)**

16 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

17 87. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
18 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
19 Complaint.

20 88. Cal. Lab. Code § 2802 provides, in relevant part, that:

21 An employer shall indemnify his or her employee for all necessary expenditures or losses
22 incurred by the employee in direct consequence of the discharge of his or her duties, or
23 of his or her obedience to the directions of the employer, even though unlawful, unless
24 the employee, at the time of obeying the directions, believed them to be unlawful

25 91. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal.
26 Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the
27 CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for
28 DEFENDANTS’ benefit. DEFENDANTS failed to reimburse PLAINTIFF and the members of
the CALIFORNIA CLASS for expenses which included, but were not limited to, costs related

1 to using their personal cellular phone all on behalf of and for the benefit of DEFENDANTS.
2 Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS were required by
3 DEFENDANTS to use their personal cell phones to execute their essential job duties on behalf
4 of DEFENDANTS. DEFENDANTS' uniform policy, practice and procedure was to not
5 reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for expenses resulting
6 from using their personal cellular phones for DEFENDANTS within the course and scope of
7 their employment for DEFENDANTS. These expenses were necessary to complete their
8 principal job duties. DEFENDANTS are estopped by DEFENDANTS' conduct to assert any
9 waiver of their expectation. Although these expenses were necessary expenses incurred by
10 PLAINTIFF and the members of the CALIFORNIA CLASS, DEFENDANTS failed to
11 indemnify and reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for these
12 expenses as an employer is required to do under the laws and regulations of California.

13 92. PLAINTIFF therefore demands reimbursement on behalf of the members of the
14 CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and
15 on behalf of DEFENDANTS, or his/her obedience to the directions of DEFENDANT, with
16 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

17 **NINTH CAUSE OF ACTION**

18 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

19 **(Cal. Lab. Code §§2698 et seq.)**

20 **(Alleged by PLAINTIFF against all Defendants)**

21 93. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
22 herein, the prior paragraphs of this Complaint.

23 94. PAGA is a mechanism by which the State of California itself can enforce state labor
24 laws through the employee suing under the PAGA who does so as the proxy or agent of the state's
25 labor law enforcement agencies. An action to recover civil penalties under PAGA is
26 fundamentally a law enforcement action designed to protect the public and not to benefit private
27 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means
28 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting PAGA,

1 the California Legislature specified that "it was ... in the public interest to allow aggrieved
2 employees, acting as private attorneys general to recover civil penalties for Labor Code violations
3 ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be subject to arbitration.

4 95. PLAINTIFF, and such persons that may be added from time to time who satisfy the
5 requirements and exhaust the administrative procedures under the Private Attorney General Act,
6 bring this Representative Action on behalf of the State of California with respect to themselves
7 and all individuals who are or previously were employed by DEFENDANT and classified as non-
8 exempt employees in California during the time period of November 19, 2020 until the present
9 (the "AGGRIEVED EMPLOYEES").

10 96. On November 19, 2021, PLAINTIFF gave written notice by certified mail to the
11 Labor and Workforce Development Agency (the "Agency") and the employer of the specific
12 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See
13 Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting period
14 for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant to Section
15 2699.3, Plaintiff may now commence a representative civil action under PAGA pursuant to Section
16 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as
herein defined.

17 97. The policies, acts and practices heretofore described were and are an unlawful
18 business act or practice because DEFENDANTS (a) failed to properly record and pay PLAINTIFF
19 and the other AGGRIEVED EMPLOYEES for all of the hours they worked, including overtime
20 hours in violation of the Wage Order, (b) failed to provide accurate itemized wage statements, (c)
21 failed to provide mandatory meal breaks and rest breaks, (d) failed to pay meal and rest break
22 premiums at the correct rate, and (e) failed to timely pay wages at the correct rate, all in violation
23 of the applicable Labor Code sections listed in Labor Code §2699.5, including but not limited to
24 Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510,
25 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, and the
26 applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a result of such
27 conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code
28

1 Private Attorney General Act of 2004 as the representative of the State of California for the illegal
2 conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
5 severally, as follows:

6 On behalf of the CALIFORNIA CLASS:

7 A) That the Court certify the First, Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
8 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to
9 Cal. Code of Civ. Proc. § 382;

10 B) An order temporarily, preliminarily and permanently enjoining and restraining
11 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;

12 C) An order requiring DEFENDANTS to pay all wages and all sums unlawfully withheld
13 from compensation due to PLAINTIFFS and the other members of the CALIFORNIA
14 CLASS; and,

15 D) Restitutionary disgorgement of DEFENDANTS' ill-gotten gains into a fluid fund for
16 restitution of the sums incidental to DEFENDANTS' violations due to PLAINTIFFS
17 and to the other members of the CALIFORNIA CLASS.

18 E) Compensatory damages, according to proof at trial, including compensatory damages
19 for minimum and overtime compensation due PLAINTIFFS and the other members of
20 the CALIFORNIA CLASS, during the applicable CALIFORNIA LABOR SUB-
21 CLASS PERIOD plus interest thereon at the statutory rate;

22 F) Meal and rest period compensation pursuant to California Labor Code Section 226.7
23 and the applicable IWC Wage Order;

24 G) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which
25 a violation occurs and one hundred dollars (\$100) per each member of the
26 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an
27 aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation
28 of Cal. Lab. Code § 226;

1 H) The wages of all terminated employees from the CALIFORNIA CLASS as a penalty
2 from the due date thereof at the same rate until paid or until an action therefore is
3 commenced, in accordance with Cal. Lab. Code § 203.

4 On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:
5 Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General
6 Act of 2004;

7 On all claims:

8 A) An award of interest, including prejudgment interest at the legal rate;

9 B) Such other and further relief as the Court deems just and equitable; and,

10 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
11 including, but not limited to, pursuant to Labor Code §218.5, §226, and/or §1194.

12 Dated: January 24, 2022

ZAKAY LAW GROUP, APC

14 

15 Shani O. Zakay
16 Attorney for PLAINTIFF

17 **DEMAND FOR A JURY TRIAL**

18 PLAINTIFF demands a jury trial on issues triable to a jury.

19 DATED: January 24, 2022

20 ZAKAY LAW GROUP, APC

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22 Shani O. Zakay
23 Attorney for PLAINTIFF
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EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

Client #43701

November 19, 2021

Via Online Filing to LWDA and Certified Mail to Defendant

Labor and Workforce Development Agency

Online Filing

PREMIUM AUTOS INC.

c/o Ghulam Hazrat

2100 Hamner Ave.

Norco, CA 92860

Sent Via Certified Mail & Return Receipt No. 7021 2720 0000 9972 6112

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff GLADYS LEON (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Defendant PREMIUM AUTOS, INC. (“Defendant”). Plaintiff was employed by Defendant in California from June of 2021 to August 2021 and was entitled to payment of all wages and the legally required meal and rest breaks. Plaintiff was paid on an hourly basis and entitled to legally required meal and rest periods. At all times during her employment, Defendant failed to, among other things, provide Plaintiff, and all those similarly situated, with all wages owed and legally mandated off-duty meal and rest periods.

As a consequence, Plaintiff contends that Defendant failed to fully compensate her and other similarly situated and aggrieved employees, for all earned wages and failed to provide California-compliant meal and rest breaks and accurate wage statements. Accordingly, Plaintiff contends that Defendant’s conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt and exempt employees who worked for Defendant during the relevant claim period.

A true and correct copy of the proposed Complaint for the class action is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) sets forth the illegal practices used by Defendant. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiff reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendant is on notice that Plaintiff continues her investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

If the agency needs any further information, please do not hesitate to ask. The class action lawsuit consists of a class of other aggrieved employees. As class counsel, our intention is to vigorously prosecute the class wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Plaintiff and all aggrieved California employees and Class Members.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Shani O. Zakay', with a stylized flourish at the end.

Shani O. Zakay
Attorney for Plaintiff

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Attorneys for Plaintiff Gladys Leon

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

GLADYS LEON, individually and on behalf of
all persons similarly situated

PLAINTIFFS,

vs.

PREMIUM AUTOS INC., a California
Corporation; and Does 1 through 50, Inclusive,

DEFENDANTS.

Case No.: _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE § 17200, et seq.;
2. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
3. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
4. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1182.12, 1194, 1197 & 1197.1;
5. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, et seq;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;

- 1 7. FAILURE TO PROVIDE WAGES WHEN
2 DUE IN VIOLATION OF CAL. LAB.
3 CODE §§ 201, 202 AND 203; and
4 8. FAILURE TO REIMBURSE EMPLOYEES
FOR REQUIRED EXPENSES IN
VIOLATION OF CALIFORNIA LABOR
CODE §2802

[JURY TRIAL DEMANDED]

5
6 Plaintiff GLADYS LEON (“PLAINTIFF”), individually and on behalf of all those
7 similarly situated, allege on information and belief, except for their own acts and knowledge, the
8 following:

9 **THE PARTIES**

10 1. Defendant PREMIUM AUTOS INC. is a California Corporation that at all
11 relevant times mentioned was in the business of selling and servicing automobiles in California.

12 2. The true names and capacities, whether individual, corporate, subsidiary,
13 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
14 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
15 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the
16 true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
17 PLAINTIFF is informed and believes, and based upon that information and belief allege, that the
18 Defendants named in this Complaint, including DOES 1 through 50, inclusive (hereinafter
19 collectively “DEFENDANTS” or “DEFENDANT”), are responsible in some manner for one or
20 more of the events and happenings that proximately caused the injuries and damages hereinafter
21 alleged.

22 3. The agents, servants and/or employees of the DEFENDANTS and each of them
23 acting on behalf of the DEFENDANT acted within the course and scope of his, her or its authority
24 as the agent, servant and/or employee of the DEFENDANT, and personally participated in the
25 conduct alleged herein on behalf of the DEFENDANT with respect to the conduct alleged herein.
26 Consequently, the acts of each of the DEFENDANTS are legally attributable to the other and all
27 DEFENDANTS are jointly and severally liable to PLAINTIFF and those similarly situated, for
28

1 the loss sustained as a proximate result of the conduct of the DEFENDANTS' agents, servants
2 and/or employees.

3 4. Plaintiff GLADYS LEON ("PLAINTIFF" or "LEON") worked for
4 DEFENDANTS from approximately June of 2021 through August of 2021. During that time
5 period, LEON worked as a car sales agent and misclassified as an exempt employee.

6 **JURISDICTION AND VENUE**

7 5. The Superior Court of the State of California has jurisdiction in this matter because
8 DEFENDANT, a California limited liability company, and DOES 1 through 50 inclusive
9 (hereinafter "DEFENDANT" or "DEFENDANTS"), are qualified to do business in California and
10 regularly conduct business in California. Further, no federal question is at issue because the claims
11 are based solely on California law.

12 6. Venue is proper in this judicial district and the County of Los Angeles, California
13 because DEFENDANTS maintain offices and facilities and transact business in the County of
14 Los Angeles, and because DEFENDANTS' illegal payroll policies and practices which are the
15 subject of this action were applied, at least in part, to residents of the County of Los Angeles.

16 7. PLAINTIFF bring this class action under California Code of Civil Procedure § 382
17 on behalf of a class of employees that worked for DEFENDANTS and classified as exempt and
18 who earned less than two times the state minimum wage, in California (the "CALIFORNIA
19 CLASS") at any time during the period beginning four (4) years prior to the filing of this Complaint
20 and ending on the date as determined by the Court ("CLASS PERIOD"). The members of the
21 class are so numerous that joinder of all class members is impractical. PLAINTIFF reserves the
22 right to amend the following class definitions before the Court determines whether class
23 certification is appropriate, or thereafter upon leave of Court.

24 **THE CONDUCT**

25 9. To qualify as an exempt employee, California requires that an employee must be
26 "primarily engaged in the duties that meet the test of the exemption" and "earns a monthly salary
27 equivalent to no less than two times the state minimum wage for full-time employment." *Labor*
28

Code § 515. This forms the two-part test the employers must establish to properly exempt its employees from overtime laws: (1) the salary basis test and (2) the duties test.

10. For example, on January 1, 2021, the minimum wage in the State of California increased to \$14.00 per hour for employers. Thus, based on a forty (40) hour workweek, the minimum salary for California exempt employees employed by employers with at least twenty-six (26) employees in 2021, is \$58,240. Further, on January 1, 2021, the minimum wage in the State of California increased to \$13.00 per hour for employers with twenty-five (25) employees or less. Thus, based on a forty (40) hour workweek, the minimum salary for California exempt employees employed by employers with twenty-five (25) employees or less in 2021, is \$54,080.

11. From June of 2021 to August of 2021, DEFENDANTS employed PLAINTIFF in an automotive sales position. Defendant improperly classified this position as exempt from overtime laws and other laws governing the employment of non-exempt employees.

12. At all times during the CLASS PERIOD, DEFENDANTS failed to compensate PLAINTIFF and the other members of the Class, with an annual salary of at least two times the state minimum wage for full time employment by employers with at least twenty-six employees and/or with twenty-five employees or less. Specifically, PLAINTIFF earned an annual salary of \$41,600 well below the \$58,240 and/or \$54,080 salary threshold to meet the test of exemption.

13. At all times during the CLASS PERIOD, PLAINTIFF and the other members of the Class primarily performed non-exempt job duties and were not primarily engaged in duties that meet the test of the exemption, but were nevertheless classified by DEFENDANTS as exempt. PLAINTIFF and the other members of the CALIFORNIA CLASS engaged in a finite set of tasks and had no power to exercise any independent judgment and/or discretion. More specifically, DEFENDANTS' policy, practice and procedure restrained PLAINTIFF and the other members of the CALIFORNIA CLASS from evaluating possible courses of action and implementing decisions based on their independent judgment and discretion. In other words, in exercising their duties, PLAINTIFF and the other members of the CALIFORNIA CLASS lacked any power to make any independent choice free from immediate supervision and with respect to matters of significance. PLAINTIFF and other members of the CALIFORNIA CLASS did not

1 exercise the requisite discretion or independent judgment in the training or supervision of
2 employees based on the constraints, direction and control imposed by DEFENDANTS.

3 14. At all times during the CLASS PERIOD, PLAINTIFF and the members of the
4 CALIFORNIA CLASS did not did not have the authority to hire, fire, or promote employees,
5 determine their pay rates or benefits, or give raises, or otherwise make employment-related,
6 personnel decisions. Consequently, PLAINTIFF and the other members of the CALIFORNIA
7 CLASS did not have the authority to decide whether or not an employee should be disciplined for
8 an infraction. Disciplinary decisions were made by other departments, or dictated by company
9 policies. Overall, recommendations made by PLAINTIFF and the other members of the
10 CALIFORNIA CLASS were given no weight on all the above issues. As a result, as PLAINTIFF
11 and the other members of the CALIFORNIA CLASS were engaged in a type of work that required
12 no exercise of independent judgment or discretion as to any matter of significance. Moreover,
13 PLAINTIFF and the other members of the CALIFORNIA CLASS were engaged in a type of
14 work unrelated to management policies.

15 15. Further, the work schedule for PLAINTIFF and the other members of the
16 CALIFORNIA CLASS, were set by DEFENDANTS. Typically, PLAINTIFF and the other
17 members of the CALIFORNIA CLASS, regularly worked in excess of eight (8) hours in a
18 workday and more than forty (40) hours in a workweek. Nevertheless, DEFENDANTS never
19 provided PLAINTIFF and the other members of the CALIFORNIA CLASS with overtime
20 compensation and other benefits for the overtime hours worked as required by law due to
21 DEFENDANTS' improper treatment.

22 16. As a matter of company policy, practice, and procedure, DEFENDANTS have
23 unlawfully, unfairly and/or deceptively treated its PLAINTIFF and the other members of the
24 CALIFORNIA CLASS as exempt employees, failed to pay the required overtime compensation
25 and otherwise failed to comply with all applicable labor laws with respect to PLAINTIFF and the
26 other members of the CALIFORNIA CLASS.

27 17. By reason of this uniform exemption practice, policy and procedure applicable to
28 the PLAINTIFF, DEFENDANTS committed acts of unfair competition in violation of the

1 California Unfair Competition law, Cal. Bus. & Prof. Code § 17200 (the "UCL"), by engaging in
2 a company-wide policy, practice and procedure which failed to properly classify the PLAINTIFF
3 and the other members of the Class and thereby failed to pay them overtime wages for
4 documented overtime hours worked.

5 18. The proper classification of the PLAINTIFF and the other members of the
6 CALIFORNIA CLASS is DEFENDANTS' burden. DEFENDANTS had no business policy,
7 practice, or procedure to ensure that the PLAINTIFF and the other members of the CALIFORNIA
8 CLASS were properly classified as exempt, and in fact, as a matter of corporate policy
9 erroneously and unilaterally classified misclassified as exempt based on job title alone. As a result
10 of DEFENDANTS' intentional disregard of the obligation to meet this burden, DEFENDANTS
11 failed to pay all required overtime compensation for work performed by the PLAINTIFF and the
12 other members of the CALIFORNIA CLASS and violated the California Labor Code and
13 regulations promulgated thereunder as herein alleged.

14 19. Additionally, DEFENDANTS failed to provide all the legally required off-duty
15 meal and rest breaks to PLAINTIFF and the other members of the CALIFORNIA CLASS, as
16 required by the applicable Wage Order and Labor Code. As a result of its willful misclassification,
17 DEFENDANTS did not have a practice of providing meal and rest breaks to the PLAINTIFF and
18 the other members of the CALIFORNIA CLASS. DEFENDANTS' failure to provide the
19 PLAINTIFF with legally required meal and rest breaks is evidenced by DEFENDANTS' business
20 records which contain no record of these breaks.

21 20. DEFENDANTS as a matter of corporate policy, practice, and procedure,
22 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF
23 and the other members of the CALIFORNIA CLASS for required business expenses incurred by
24 the PLAINTIFF and other members of the CALIFORNIA CLASS in direct consequence of
25 discharging their duties on behalf of DEFENDANTS. Under California Labor Code Section 2802,
26 employers are required to indemnify employees for all expenses incurred in the course and scope
27 of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify
28 his or her employee for all necessary expenditures or losses incurred by the employee in direct

consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

21. To date, DEFENDANTS has not fully paid PLAINTIFF and the other members of the CALIFORNIA CLASS the overtime compensation still owed to them. The amount in controversy for PLAINTIFF individually does not exceed the sum or value of \$75,000. Further, the amount in controversy for the aggregate claim of the CALIFORNIA CLASS members is under five million dollars (\$5,000,000.00).

22. This action is appropriately suited for a Class Action because:

- a. The potential class is a significant number. Joinder of all current and former employees individually would be impractical.
- b. This action involves common questions of law and fact to the potential CALIFORNIA CLASS because the action focuses on DEFENDANTS' systematic course of classification and illegal practices and policies, which was applied to all of the members of the CALIFORNIA CLASS in violation of the Labor Code, the applicable IWC wage order, and the Business and Professions Code which prohibits unfair business practices arising from such violations.
- c. The claims of the PLAINTIFF are typical of the class because DEFENDANTS subjected all misclassified employees to identical violations of the Labor Code, the applicable IWC wage order, and the Business and Professions Code.
- d. PLAINTIFF is able to fairly and adequately protect the interest of all members of the CALIFORNIA CLASS because it is in their best interest to prosecute the claims alleged herein to obtain full compensation due to them for all services rendered and hours worked.

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1 relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the
2 conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

3 27. By the conduct alleged herein, DEFENDANTS' practices were unlawful and unfair
4 in that these practices violate public policy, were immoral, unethical, oppressive, unscrupulous
5 or substantially injurious to employees, and were without valid justification or utility for which
6 this Court should issue equitable and injunctive relief pursuant to Section 17203 of the California
7 Business & Professions Code, including restitution of wages wrongfully withheld.

8 28. By the conduct alleged herein, DEFENDANTS' practices were deceptive and
9 fraudulent in that DEFENDANTS' uniform policy and practice failed to pay PLAINTIFF, and
10 other members of the CALIFORNIA CLASS, all wages due to them for all hours worked, and
11 premiums for their missed meal and rest periods, pursuant to the applicable Cal. Lab. Code, and
12 Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*,
13 and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof.
14 Code § 17203, including restitution of wages wrongfully withheld.

15 29. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
16 unfair and deceptive in that DEFENDANTS' employment practices caused PLAINTIFF and the
17 other members of the CALIFORNIA CLASS to be underpaid during their employment with
18 DEFENDANTS.

19 30. By the conduct alleged herein, DEFENDANTS' practices were also unlawful,
20 unfair and deceptive in that DEFENDANTS' uniform policies, practices and procedures failed to
21 provide legally required uninterrupted duty-free meal breaks to PLAINTIFF and the other
22 members of the CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

23 31. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
24 CALIFORNIA CLASS member, all unpaid wages resulting from working off-the-clock, all
25 unpaid wages from resulting from misclassification, one (1) hour of pay at the regular rate of
26 compensation for each workday in which an off-duty meal period was not timely provided for
27 each five (5) hours of work, and/or one (1) hour of pay for each workday in which a second off-
28 duty meal period was not timely provided for each ten (10) hours of work.

1 32. PLAINTIFF further demands on behalf of themselves and on behalf of each
2 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
3 not timely provided and/or paid as required by law.

4 33. By and through the unlawful and unfair business practices described herein,
5 DEFENDANTS have obtained valuable property, money and services from PLAINTIFF and the
6 other members of the CALIFORNIA CLASS, including earned wages for time worked, including
7 overtime worked, and has deprived them of valuable rights and benefits guaranteed by law and
8 contract, all to the detriment of these employees and to the benefit of DEFENDANTS so as to
9 allow DEFENDANTS to unfairly compete against competitors who comply with the law.

10 34. All the acts described herein as violations of, among other things, the Industrial
11 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
12 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive and
13 unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business
14 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

15 35. PLAINTIFF and the other members of the CALIFORNIA CLASS were further
16 entitled to, and do, seek a declaration that the described business practices were unlawful, unfair
17 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
18 engaging in any unlawful and unfair business practices in the future.

19 36. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
20 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of
21 DEFENDANTS. Further, the practices herein alleged presently continue to occur unabated. As
22 a result of the unlawful and unfair business practices described herein, PLAINTIFF and the other
23 members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal
24 and economic harm unless DEFENDANTS are restrained from continuing to engage in these
25 unlawful and unfair business practices.

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1 **FOURTH CAUSE OF ACTION**

2 **For Failure to Pay Minimum Wages**

3 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

4 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

5 45. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
6 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
7 Complaint.

8 46. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
9 for DEFENDANTS' willful and intentional violations of the California Labor Code and the
10 Industrial Welfare Commission requirements for DEFENDANTS' failure to pay PLAINTIFF and
11 the members of the CALIFORNIA CLASS for all hours worked and, as a result, not paying
12 minimum wages for all hours worked by PLAINTIFFS and CALIFORNIA CLASS Members.

13 47. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
14 policy, an employer must timely pay its employees for all hours worked.

15 48. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
16 commission is the minimum wage to be paid to employees, and the payment of a less wage than
17 the minimum so fixed is unlawful.

18 49. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
19 including minimum wage compensation and interest thereon, together with the costs of suit.

20 50. DEFENDANTS maintained a uniform wage practice of paying PLAINTIFF and
21 the other members of the CALIFORNIA CLASS without regard to the correct amount of time
22 they work. As set forth herein, DEFENDANTS' uniform policy and practice was to unlawfully
23 and intentionally deny timely payment of wages due to PLAINTIFF and the other members of
24 the CALIFORNIA CLASS.

25 51. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
26 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
27 implementing a uniform policy and practice that denies accurate compensation to PLAINTIFF
28 and the other members of the CALIFORNIA CLASS in regards to minimum wage pay.

1 52. In committing these violations of the California Labor Code, DEFENDANTS
2 inaccurately calculated the correct time worked and consequently underpaid the actual time
3 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANTS
4 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation
5 of the California Labor Code, the Industrial Welfare Commission requirements and other
6 applicable laws and regulations.

7 53. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
8 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
9 minimum wage compensation for their time worked for DEFENDANTS.

10 54. During the CLASS PERIOD, PLAINTIFF and the other members of the
11 CALIFORNIA CLASS were paid less for time worked that they were entitled to, constituting a
12 failure to pay all earned wages.

13 55. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
14 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
15 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have
16 suffered and will continue to suffer an economic injury in amounts which are presently unknown
17 to them and which will be ascertained according to proof at trial.

18 56. DEFENDANTS knew or should have known that PLAINTIFF and the other
19 members of the CALIFORNIA CLASS were under compensated for their time worked.
20 DEFENDANTS systematically elected, either through intentional malfeasance or gross
21 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
22 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
23 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages
24 for their time worked.

25 57. In performing the acts and practices herein alleged in violation of California labor
26 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
27 and provide them with the requisite compensation, DEFENDANTS acted and continues to act
28 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the

1 CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the
2 consequences to them, and with the despicable intent of depriving them of their property and legal
3 rights, and otherwise causing them injury in order to increase company profits at the expense of
4 these employees.

5 58. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request
6 recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
7 assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the
8 California Labor Code and/or other applicable statutes. To the extent minimum wage
9 compensation is determined to be owed to the CALIFORNIA CLASS members who have
10 terminated their employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or
11 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
12 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS
13 members. DEFENDANTS' conduct as alleged herein was willful, intentional and not in good
14 faith. Further, PLAINTIFF and other CALIFORNIA CLASS members are entitled to seek and
15 recover statutory costs.

16 **FIFTH CAUSE OF ACTION**

17 **For Failure to Pay Overtime Compensation**

18 **[Cal. Lab. Code §§ 510, *et seq.*]**

19 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All**
20 **Defendants)**

21 59. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
22 incorporate by this reference, as though full set forth herein, the prior paragraphs of this
23 Complaint.

24 60. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
25 for DEFENDANTS' willful and intentional violations of the California Labor Code and the
26 Industrial Welfare Commission requirements for DEFENDANTS' failure to pay these employees
27 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
28 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

1 61. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public
2 policy, an employer must timely pay its employees for all hours worked.

3 62. Cal. Lab. Code § 510 further provides that employees in California shall not be
4 employed more than eight (8) hours per workday and more than forty (40) hours per workweek
5 unless they receive additional compensation beyond their regular wages in amounts specified by
6 law.

7 63. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
8 including minimum wage and overtime compensation and interest thereon, together with the costs
9 of suit.

10 64. Cal. Lab. Code § 1198 further states that the employment of an employee for longer
11 hours than those fixed by the Industrial Welfare Commission is unlawful.

12 65. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS members
13 were required by DEFENDANTS to work for DEFENDANTS and were not paid for all the time
14 they worked, including overtime work.

15 66. DEFENDANTS' uniform pattern of unlawful wage and hour practices manifested,
16 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
17 implementing a uniform policy and practice that failed to accurately record overtime worked by
18 PLAINTIFF and other CALIFORNIA CLASS members and denied accurate compensation to
19 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
20 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
21 (12) hours in a workday, and/or forty (40) hours in any workweek.

22 67. In committing these violations of the California Labor Code, DEFENDANTS
23 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
24 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANTS acted in an illegal
25 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
26 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
27 regulations.
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1 68. As a direct result of DEFENDANTS' unlawful wage practices as alleged herein,
2 the PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full
3 compensation for overtime worked.

4 69. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
5 from the overtime requirements of the law. None of these exemptions are applicable to the
6 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the
7 other members of the CALIFORNIA CLASS were not subject to a valid collective bargaining
8 agreement that would preclude the causes of action contained herein this Complaint. Rather,
9 PLAINTIFF brings this action on behalf of herself and the CALIFORNIA CLASS based on
10 DEFENDANTS' violations of non-negotiable, non-waivable rights provided by the State of
11 California.

12 70. During the CLASS PERIOD, PLAINTIFF and the other members of the
13 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,
14 constituting a failure to pay all earned wages.

15 71. DEFENDANTS failed to accurately pay the PLAINTIFFS and the other members
16 of the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of
17 the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even
18 though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to work,
19 and did in fact work, overtime as to which DEFENDANTS failed to accurately record and pay as
20 evidenced by DEFENDANTS' business records and witnessed by employees.

21 72. By virtue of DEFENDANTS' unlawful failure to accurately pay all earned
22 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
23 amount of time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS
24 have suffered and will continue to suffer an economic injury in amounts which are presently
25 unknown to them and which will be ascertained according to proof at trial.

26 73. DEFENDANTS knew or should have known that PLAINTIFF and the other
27 members of the CALIFORNIA CLASS were under compensated for all overtime worked.
28 DEFENDANT systematically elected, either through intentional malfeasance or gross

1 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
2 and procedure, and DEFENDANTS perpetrated this systematic scheme by refusing to pay
3 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

4 74. In performing the acts and practices herein alleged in violation of California labor
5 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all overtime
6 worked and provide them with the requisite overtime compensation, DEFENDANTS acted and
7 continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other
8 members of the CALIFORNIA CLASS with a conscious of and utter disregard for their legal
9 rights, or the consequences to them, and with the despicable intent of depriving them of their
10 property and legal rights, and otherwise causing them injury in order to increase company profits
11 at the expense of these employees.

12 75. PLAINTIFFS and the other members of the CALIFORNIA CLASS therefore
13 request recovery of all overtime wages, according to proof, interest, statutory costs, as well as the
14 assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the
15 California Labor Code and/or other applicable statutes. To the extent minimum and/or overtime
16 compensation is determined to be owed to the CALIFORNIA CLASS members who have
17 terminated their employment, DEFENDANTS' conduct also violates Labor Code §§ 201 and/or
18 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
19 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS
20 members. DEFENDANTS' conduct as alleged herein was willful, intentional and not in good
21 faith. Further, PLAINTIFF and other CALIFORNIA CLASS members are entitled to seek and
22 recover statutory costs.

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1 **SIXTH CAUSE OF ACTION**

2 **For Failure to Provide Accurate Itemized Statements**

3 **[Cal. Lab. Code § 226]**

4 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

5 76. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
6 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
7 Complaint.

8 77. Cal. Labor Code § 226 provides that an employer must furnish employees with an
9 “accurate itemized” statement in writing showing:

- 10 1. gross wages earned,
 - 11 2. total hours worked by the employee, except for any employee whose
12 compensation is solely based on a salary and who is exempt from payment of
13 overtime under subdivision (a) of Section 515 or any applicable order of the
14 Industrial Welfare Commission,
 - 15 3. the number of piece rate units earned and any applicable piece rate if the
16 employee is paid on a piece-rate basis,
 - 17 4. all deductions, provided that all deductions made on written orders of the
18 employee may be aggregated and shown as one item,
 - 19 5. net wages earned,
 - 20 6. the inclusive dates of the period for which the employee is paid,
 - 21 7. the name of the employee and her or her social security number, except that by
22 January 1, 2008, only the last four digits of her or her social security number or
23 an employee identification number other than a social security number may be
24 shown on the itemized statement,
 - 25 8. the name and address of the legal entity that is the employer, and
 - 26 9. all applicable hourly rates in effect during the pay period and the corresponding
27 number of hours worked at each hourly rate by the employee.
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1 78. When PLAINTIFF and the other CALIFORNIA CLASS members were not
2 compensated for all wages due to them for their off-the-clock work, and for their missed meal
3 and rest breaks, and for overtime, DEFENDANTS also failed to provide PLAINTIFF and the
4 other members of the CALIFORNIA CLASS with complete and accurate wage statements. Cal.
5 Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an
6 accurate itemized wage statement in writing showing, among other things, gross wages earned
7 and all applicable hourly rates in effect during the pay period and the corresponding amount of
8 time worked at each hourly rate. As a result, DEFENDANTS provided PLAINTIFF and the other
9 members of the CALIFORNIA CLASS with wage statements which violate Cal. Lab. Code §
10 226. Aside, from the violations listed above in this paragraph, DEFENDANTS failed to issue to
11 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
12 Code 226 *et seq.*

13 79. DEFENDANTS knowingly and intentionally failed to comply with Cal. Lab. Code
14 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
15 CLASS. These damages include, but are not limited to, costs expended calculating the correct
16 rates for the overtime hours worked and the amount of employment taxes which were not properly
17 paid to state and federal tax authorities. These damages are difficult to estimate. Therefore,
18 PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover liquidated
19 damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and
20 one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab.
21 Code § 226, in an amount according to proof at the time of trial (but in no event more than four
22 thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA
23 CLASS.

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1 employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201,
2 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of
3 the employee shall continue as a penalty from the due date thereof at the same rate until paid or
4 until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

5 85. The employment of PLAINTIFF and many CALIFORNIA CLASS Members has
6 terminated and DEFENDANT has not tendered payment of all wages owed as required by law.

7 86. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the
8 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated,
9 PLAINTIFF demands thirty days of pay as penalty for not paying all wages due at time of
10 termination for all employees who terminated employment during the CALIFORNIA CLASS
11 PERIOD and demands an accounting and payment of all wages due, plus interest and statutory
12 costs as allowed by law.

13 **EIGHTH CAUSE OF ACTION**

14 **Failure To Reimburse Employees For Required Expenses**

15 **(Cal. Lab. Code §§ 2802)**

16 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

17 87. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
18 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
19 Complaint.

20 88. Cal. Lab. Code § 2802 provides, in relevant part, that:

21 An employer shall indemnify his or her employee for all necessary expenditures or losses
22 incurred by the employee in direct consequence of the discharge of his or her duties, or
23 of his or her obedience to the directions of the employer, even though unlawful, unless
24 the employee, at the time of obeying the directions, believed them to be unlawful

25 91. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal.
26 Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the
27 CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for
28 DEFENDANTS’ benefit. DEFENDANTS failed to reimburse PLAINTIFF and the members of
the CALIFORNIA CLASS for expenses which included, but were not limited to, costs related

1 to using their personal cellular phone all on behalf of and for the benefit of DEFENDANTS.
2 Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS were required by
3 DEFENDANTS to use their personal cell phones to execute their essential job duties on behalf
4 of DEFENDANTS. DEFENDANTS' uniform policy, practice and procedure was to not
5 reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for expenses resulting
6 from using their personal cellular phones for DEFENDANTS within the course and scope of
7 their employment for DEFENDANTS. These expenses were necessary to complete their
8 principal job duties. DEFENDANTS are estopped by DEFENDANTS' conduct to assert any
9 waiver of their expectation. Although these expenses were necessary expenses incurred by
10 PLAINTIFF and the members of the CALIFORNIA CLASS, DEFENDANTS failed to
11 indemnify and reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for these
12 expenses as an employer is required to do under the laws and regulations of California.

13 92. PLAINTIFF therefore demands reimbursement on behalf of the members of the
14 CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and
15 on behalf of DEFENDANTS, or his/her obedience to the directions of DEFENDANT, with
16 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
19 severally, as follows:

20 On behalf of the CALIFORNIA CLASS:

- 21 A) That the Court certify the First, Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth
22 Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to
23 Cal. Code of Civ. Proc. § 382;
- 24 B) An order temporarily, preliminarily and permanently enjoining and restraining
25 DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
- 26 C) An order requiring DEFENDANTS to pay all wages and all sums unlawfully withheld
27 from compensation due to PLAINTIFFS and the other members of the CALIFORNIA
28 CLASS; and,

1 D) Restitutionary disgorgement of DEFENDANTS' ill-gotten gains into a fluid fund for
2 restitution of the sums incidental to DEFENDANTS' violations due to PLAINTIFFS
3 and to the other members of the CALIFORNIA CLASS.

4 E) Compensatory damages, according to proof at trial, including compensatory damages
5 for minimum and overtime compensation due PLAINTIFFS and the other members of
6 the CALIFORNIA CLASS, during the applicable CALIFORNIA LABOR SUB-
7 CLASS PERIOD plus interest thereon at the statutory rate;

8 F) Meal and rest period compensation pursuant to California Labor Code Section 226.7
9 and the applicable IWC Wage Order;

10 G) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which
11 a violation occurs and one hundred dollars (\$100) per each member of the
12 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an
13 aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation
14 of Cal. Lab. Code § 226;

15 H) The wages of all terminated employees from the CALIFORNIA CLASS as a penalty
16 from the due date thereof at the same rate until paid or until an action therefore is
17 commenced, in accordance with Cal. Lab. Code § 203.

18 On all claims:

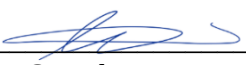
19 A) An award of interest, including prejudgment interest at the legal rate;

20 B) Such other and further relief as the Court deems just and equitable; and,

21 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
22 including, but not limited to, pursuant to Labor Code §218.5, §226, and/or §1194.

23 Dated: November 19, 2021

ZAKAY LAW GROUP, APC

25 
26 Shani O. Zakay
27 Attorney for PLAINTIFF
28

DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

DATED: November 19, 2021

ZAKAY LAW GROUP, APC



Shani O. Zakay
Attorney for PLAINTIFF