

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 751 W. Santa Ana Blvd MAILING ADDRESS: P.O. Box 1994 CITY AND ZIP CODE: Santa Ana CA 92702 BRANCH NAME: Civil Complex Center	<i>FOR COURT USE ONLY</i>
SHORT TITLE: Silva vs. Premier Chevrolet of Buena Park, LLC	
NOTICE OF CONFIRMATION OF ELECTRONIC FILING	CASE NUMBER: 30-2021-01218096-CU-OE-CXC

The Electronic Filing described by the below summary data was reviewed and accepted by the Superior Court of California, County of Orange. In order to process the filing, the fee shown was assessed.

Electronic Filing Summary Data

Electronically Submitted By: Ronald Silva
 On Behalf of: Ronald Silva; CCMS ID: 79596974
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 Case Number: 30-2021-01218096-CU-OE-CXC
 Case Title: Silva vs. Premier Chevrolet of Buena Park, LLC
 Location: Civil Complex Center
 Case Type: Other employment
 Case Category: Civil - Unlimited
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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Anthony J. Nunes (SBN # 290224) NUNES WORKER RIGHTS LAW, APC 15260 Ventura Blvd, Suite 1200 Sherman Oaks, CA 91403 TELEPHONE NO.: (530) 848-1515 FAX NO.: (424) 252-4301 ATTORNEY FOR (Name): Ronald Silva		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange STREET ADDRESS: 751 W. Santa Ana Blvd. MAILING ADDRESS: CITY AND ZIP CODE: Santa Ana, 92701 BRANCH NAME: Civil Complex Center		
CASE NAME: Ronald Silva v. Premier Chevrolet of Buena Park, LLC et al.		
CIVIL CASE COVER SHEET ☒ Unlimited (Amount demanded exceeds \$25,000) ☐ Limited (Amount demanded is \$25,000 or less)	Complex Case Designation ☐ Counter ☐ Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: 30-2021-01218096-CU-OE-CXC JUDGE: Judge Glenda Sanders DEPT: CX-101

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort ☐ Auto (22) ☐ Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort ☐ Asbestos (04) ☐ Product liability (24) ☐ Medical malpractice (45) ☐ Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort ☐ Business tort/unfair business practice (07) ☐ Civil rights (08) ☐ Defamation (13) ☐ Fraud (16) ☐ Intellectual property (19) ☐ Professional negligence (25) ☐ Other non-PI/PD/WD tort (35) Employment ☐ Wrongful termination (36) ☒ Other employment (15)	Contract ☐ Breach of contract/warranty (06) ☐ Rule 3.740 collections (09) ☐ Other collections (09) ☐ Insurance coverage (18) ☐ Other contract (37) Real Property ☐ Eminent domain/Inverse condemnation (14) ☐ Wrongful eviction (33) ☐ Other real property (26) Unlawful Detainer ☐ Commercial (31) ☐ Residential (32) ☐ Drugs (38) Judicial Review ☐ Asset forfeiture (05) ☐ Petition re: arbitration award (11) ☐ Writ of mandate (02) ☐ Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) ☐ Antitrust/Trade regulation (03) ☐ Construction defect (10) ☐ Mass tort (40) ☐ Securities litigation (28) ☐ Environmental/Toxic tort (30) ☐ Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment ☐ Enforcement of judgment (20) Miscellaneous Civil Complaint ☐ RICO (27) ☐ Other complaint (not specified above) (42) Miscellaneous Civil Petition ☐ Partnership and corporate governance (21) ☐ Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. ☐ Large number of separately represented parties | d. ☐ Large number of witnesses |
| b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. ☐ Substantial amount of documentary evidence | f. ☐ Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): 1
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: August 20, 2021

Anthony J. Nunes

(TYPE OR PRINT NAME)

► Tony Nunes

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE - Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions. - File this cover sheet in addition to any cover sheet required by local court rule. - If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding. - Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.
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Assigned for all Purposes
Judge Glenda Sanders

Attorneys for Plaintiff, **RONALD SILVA**
and all others similarly situated

CX-101

8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF ORANGE**

10 RONALD SILVA, on behalf of himself
11 and all others similarly situated,

Case No.: 30-2021-01218096-CU-OE-CXC

12 Plaintiff,

PLAINTIFF'S COMPLAINT FOR:

13 vs.

**1. Claim for Civil Penalties for
Violations of California Labor Code,
Pursuant to PAGA Section 2698, Et
Seq.**

14 PREMIER CHEVROLET OF BUENA
15 PARK, LLC, a California corporation,
16 PREMIER AUTOMOTIVE
17 MANAGEMENT, LLC, a Louisiana
18 Corporation, dba Premier Automotive,
19 PREMIER NISSAN OF SAN JOSE, LLC,
20 a California Limited Liability Company,
21 PREMIER AUTOMOTIVE C OF
22 CARLSBAD, LLC, a California Limited
23 Liability Company, PREMIER
24 AUTOMOTIVE HCDJ OF
25 CALIFORNIA, LLC, a California Limited
26 Liability Company, PREMIER
27 AUTOMOTIVE IMPORTS OF CA, LLC,
28 a California Limited Liability Company,
PREMIER AUTOMOTIVE K OF
CARLSBAD, LLC, a California Limited
Liability Company, PREMIER
AUTOMOTIVE CJDR OF BUENA
PARK, LLC, a California Limited Liability
Company, PREMIER AUTOMOTIVE OF
CA, LLC, a California Limited Liability
Company, PREMIER AUTOMOTIVE OF
CLAREMONT, LLC, a California Limited
Liability Company, PREMIER
AUTOMOTIVE OF NEWARK, LLC, a
California Limited Liability Company,
PREMIER AUTOMOTIVE OF
OAKLAND PAH, LLC, a California
Limited Liability Company, PREMIER

DEMAND FOR JURY TRIAL

1 AUTOMOTIVE OF PLACENTIA, LLC, a
2 California Limited Liability Company,
3 PREMIER AUTOMOTIVE OF SEASIDE,
4 LLC, a California Limited Liability
5 Company, PREMIER AUTOMOTIVE OF
6 STEVENS CREEK, LLC, a California
7 Limited Liability Company and PREMIER
8 AUTOMOTIVE OF WEST COVINA,
9 LLC, a California Limited Liability
10 Company and DOES 1-10,

11 Defendants.

12 Plaintiff RONALD SILVA ("Plaintiff"), as an aggrieved employee and on behalf of
13 the State of California and all other aggrieved employees, alleges causes of action against
14 Defendants, and each of them, as follows:

15 **I.**

16 **INTRODUCTION**

17 1. This is an enforcement action brought on behalf of current and former
18 employees under the Labor Code Private Attorneys General Act of 2004, California Labor
19 Code sections 2698, et. seq. ("PAGA") to recover civil penalties and any other available
20 relief on behalf of Plaintiff, the State of California, and other current and former employees
21 who worked for Defendants in California as non-exempt employees (including hourly paid
22 and employees who earned commissions or other forms of incentive compensation) and
23 received at least one wage statement and against who one or more violations of any provision
24 in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating hours and days
25 of work in the applicable Industrial Welfare Commission ("IWC") Wage Order were
26 committed, as set forth in this Complaint, at any time between one year prior to the filing of
27 the pre-filing written notice to the Labor and Workforce Development Agency ("LWDA")
28 in this case on February 24, 2019, until judgment ("Non-Party Aggrieved Employees.")

2. Plaintiff is a former Automotive Technician for "Premier Automotive of
Buena Park dba Premier Chevrolet of Buena Park, located in Buena Park, California.

3. Defendants' policies are in violation of the California Labor Code, as well as

1 California Industrial Welfare Commission (“IWC”) Wage Order No. 9-2001, as amended
2 (“Wage Order No. 9”) which include:

- 3 a) Failing to pay its employees premium wages for missed meal periods;
- 4 b) Failing to pay its employees premium wages for missed rest periods;
- 5 c) Failing to pay its employees minimum wage as required by California law for
6 every hour worked;
- 7 d) Failing to pay its employees for overtime hours worked;
- 8 e) Failing to pay its employees wages earned during employment;
- 9 f) Failing to maintain accurate employment records for its employees in
10 California;
- 11 g) Failing to pay its employees amounts owed at the end of employment;
- 12 h) Unlawful requirement for release of claims as a condition to receiving
13 wages;
- 14 i) Violating California’s unfair business practices law;
- 15 j) Collecting or receiving wages already paid;
- 16 k) Secret payment of lower wages;
- 17 l) Failing to provide written notice to its employees of paid sick leave
18 benefits;
- 19 m) Failing to pay its employees for costs of medical or physical examinations;
20 and
- 21 n) Failing to reimburse its employees for necessary business expenses

22 II.

23 **JURISDICTION AND VENUE**

24 4. The Court has jurisdiction because at all relevant times herein Defendants
25 were and continue to do business in this county and the events constituting the conduct
26 set forth below in this Complaint occurred in the County of Orange.

27 5. Venue is proper in this Court under California Code of Civil Procedure section
28 395 because the wrongful conduct alleged herein occurred in this county, the records relevant

1 to Plaintiff's employment are maintained in this county, and the Parties reside in or operate
2 in the County of Orange, State of California.

3 **III.**

4 **PARTIES**

5 6. Plaintiff is a resident of Orange County, California. At all relevant times herein,
6 Plaintiff was employed by Defendants in Orange County, California, as a non-exempt
7 Automotive Technician.

8 7. Defendant PREMIER AUTOMTOIVE OF BUENA PARK, LLC dba
9 PREMIER CHEVROLET OF BUENA PARK was and is, upon information and belief, a
10 California limited liability company, and at all times hereinafter mentioned, an employer
11 whose employees are engaged throughout this county and the State of California.

12 8. Defendant PREMIER AUTOMOTIVE MANAGEMENT dba PREMIER
13 AUTOMOTIVE was and is, upon information and belief, a Louisiana limited liability
14 company, and at all times hereinafter mentioned, an employer whose employees are engaged
15 throughout this county and the State of California.

16 9. Defendant PREMIER NISSAN OF SAN JOSE, LLC was and is, upon
17 information and belief, a California limited liability company, and at all times hereinafter
18 mentioned, an employer whose employees are engaged throughout this county and the State
19 of California.

20 10. Defendant PREMIER AUTOMOTIVE C OF CARLSBAD, LLC was and is,
21 upon information and belief, a California limited liability company, and at all times
22 hereinafter mentioned, an employer whose employees are engaged throughout this county
23 and the State of California.

24 11. Defendant PREMIER AUTOMOTIVE HCDJ OF CALIFORNIA, LLC was
25 and is, upon information and belief, a California limited liability company, and at all times
26 hereinafter mentioned, an employer whose employees are engaged throughout this county
27 and the State of California.

28 12. Defendant PREMIER AUTOMOTIVE IMPORTS OF CA, LLC was and is,

1 upon information and belief, a California limited liability company, and at all times
2 hereinafter mentioned, an employer whose employees are engaged throughout this county
3 and the State of California.

4 13. Defendant PREMIER AUTOMOTIVE K OF CARLSBAD, LLC was and is,
5 upon information and belief, a California limited liability company, and at all times
6 hereinafter mentioned, an employer whose employees are engaged throughout this county
7 and the State of California.

8 14. Defendant PREMIER AUTOMOTIVE CJDR OF BUENA PARK, LLC was
9 and is, upon information and belief, a California limited liability company, and at all times
10 hereinafter mentioned, an employer whose employees are engaged throughout this county
11 and the State of California.

12 15. Defendant PREMIER AUTOMOTIVE OF CA, LLC was and is, upon
13 information and belief, a California limited liability company, and at all times hereinafter
14 mentioned, an employer whose employees are engaged throughout this county and the State
15 of California.

16 16. Defendant PREMIER AUTOMOTIVE OF CLAREMONT, LLC was and is,
17 upon information and belief, a California limited liability company, and at all times
18 hereinafter mentioned, an employer whose employees are engaged throughout this county
19 and the State of California.

20 17. Defendant PREMIER AUTOMOTIVE OF NEWARK, LLC was and is, upon
21 information and belief, a California limited liability company, and at all times hereinafter
22 mentioned, an employer whose employees are engaged throughout this county and the State
23 of California.

24 18. Defendant PREMIER AUTOMOTIVE OF OAKLAND PAH, LLC was and
25 is, upon information and belief, a California limited liability company, and at all times
26 hereinafter mentioned, an employer whose employees are engaged throughout this county
27 and the State of California.

28 19. Defendant PREMIER AUTOMOTIVE OF PLACENTIA, LLC was and is,

1 upon information and belief, a California limited liability company, and at all times
2 hereinafter mentioned, an employer whose employees are engaged throughout this county
3 and the State of California.

4 20. Defendant PREMIER AUTOMOTIVE OF SEASIDE, LLC was and is, upon
5 information and belief, a California limited liability company, and at all times hereinafter
6 mentioned, an employer whose employees are engaged throughout this county and the State
7 of California.

8 21. Defendant PREMIER AUTOMOTIVE OF STEVENS CREEK, LLC, was and
9 is, upon information and belief, a California limited liability company, and at all times
10 hereinafter mentioned, an employer whose employees are engaged throughout this county
11 and the State of California.

12 22. Defendant PREMIER AUTOMOTIVE OF WEST COVINA, LLC was and is,
13 upon information and belief, a California limited liability company, and at all times
14 hereinafter mentioned, an employer whose employees are engaged throughout this county
15 and the State of California.

16 23. All individual Defendants named above are collectively herein referred to as
17 “Defendants.”

18 24. The true names and capacities, whether individual, corporate, associate, or
19 otherwise, of Defendants sued here in as DOES 1 through 10, inclusive, are currently
20 unknown to Plaintiff, who therefore sues Defendants by such fictitious names. Plaintiff is
21 informed and believes, and based thereon alleges, that Defendants designated herein as
22 DOE(S) are legally responsible in some manner for the unlawful acts referred to herein.

23 25. Plaintiff will seek leave of court to amend this complaint to reflect the true
24 names and capacities of the Defendants designated hereinafter as DOE(S) when such
25 identities become known.

26 26. Plaintiff is informed and believes and thereon alleges that at all relevant times
27 each defendant, directly or indirectly, or through agents or other persons, employed Plaintiff
28 and the other class members and Non-Party Aggrieved Employees, and exercised control

1 over the wages, hours, and working conditions of Plaintiff and the other class members and
2 Non-Party Aggrieved Employees.

3 27. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
4 each Defendant was the principal, agent, partner, joint venturer, officer, director, controlling
5 shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor
6 in interest of some or all of the other Defendants, and was engaged with some or all of the
7 other Defendants in a joint enterprise for profit, and bore such other relationships to some or
8 all of the other Defendants so as to be liable for their conduct with respect to the matters
9 alleged below. And as such, each Defendant is the joint employer of Plaintiff and the Non-
10 Party Aggrieved Employees.

11 28. Plaintiff is informed and believes and thereon alleges that each Defendant
12 acted pursuant to and within the scope of the relationships alleged above, that each Defendant
13 knew or should have known about, authorized, ratified, adopted, approved, controlled, aided
14 and abetted the conduct of all other Defendants.

15 **IV.**

16 **GENERAL ALLEGATIONS**

17 29. Defendants are a privately held car dealership group serving customers in
18 California, Kansas, Louisiana, Texas, and Missouri. There are approximately nine dealership
19 locations owned and operated by Defendants in California.

20 30. Upon information and belief, Defendants maintain a single, centralized human
21 resources department at their corporate headquarters in New Orleans, Louisiana, which is
22 responsible for the recruiting and hiring of new employees, and communicating and
23 implementing Defendants company-wide policies, including timekeeping policies and meal
24 and rest period policies to employees throughout California.

25 31. Plaintiff worked as an Automotive Technician for Defendant Premier
26 Automotive of Buena Park, LLC dba Premier Chevrolet of Buena Park in Buena Park,
27 California from approximately August 2019 to November 2019.

28 32. Upon information and belief, Defendants continue to employ non-exempt

1 employees (including hourly paid and employees who earned commissions or other forms
2 of incentive compensation) in California.

3 33. Plaintiff alleges that Defendants' corporate policies, procedures, and uniform
4 understaffing, were either written or institutionalized into each Defendants labor practices,
5 such that Plaintiff and the Non-Party Aggrieved Employees he seeks to represent were not
6 able to, or permitted to, take timely rest breaks or lunch periods, pursuant to the Labor Code,
7 Industrial Welfare Commission Wage Order 5-2001, and other applicable Wage Orders.

8 34. Plaintiff alleges that as an Automotive Technician for Defendants he regularly
9 worked off-the-clock, and that the Non-Party Aggrieved Employees worked off the clock.

10 35. Plaintiff alleges that Defendants' management regularly changed Plaintiff's
11 and the Non-Party Aggrieved Employees' timecards to inaccurately reduce his work hours.

12 36. Plaintiff alleges he and the Non-Party Aggrieved Employees were frequently
13 required to work on repair orders that would be credited to a different repair order and his
14 work time was frequently credited to another automotive technician for the purpose of
15 allocating Defendants' production bonuses.

16 37. Plaintiff alleges Defendants implemented and maintained a companywide
17 policy to pay non-exempt employees less than the applicable minimum wage, including failing
18 to pay employees for all hours worked. Defendants were aware of the fact that under their
19 system, Plaintiff and the Non-Party Aggrieved Employees regularly worked unpaid hours
20 and/or worked for compensation at less than the applicable minimum wage (double regular
21 minimum wage when providing own tools per California Wage Order).

22 38. Plaintiff alleges Defendants also failed to provide overtime wages earned for
23 all hours worked by Plaintiff and the Non-Party Aggrieved Employees in excess of eight
24 hours per day and/or forty hours per week. Where overtime compensation was received at
25 all, it was for fewer than all overtime hours worked and was paid at less than the amount
26 required by Federal and California law.

27 39. Plaintiff alleges that in order to meet Defendants' workload requirement, he and
28 the Non-Party Aggrieved Employees typically worked through both meal periods and rest

1 breaks.

2 40. Plaintiff alleges Defendants also failed to provide Plaintiff and the Non-Party
3 Aggrieved Employees with all the required meal periods when they worked more than five
4 hours in a day; and Defendants failed to pay Plaintiff and the Non-Party Aggrieved
5 Employees a one-hour premium wage in lieu thereof.

6 41. Plaintiff alleges Defendants failed to provide Plaintiff and the Non-Party
7 Aggrieved Employees with timely and accurate wage statements.

8 42. Plaintiff alleges Defendants failed to pay all wages owed to him and the Non-
9 Party Aggrieved Employees during their employment.

10 43. Plaintiff alleges Defendants maintained a uniform policy of requiring himself
11 and/or the Non-Party Aggrieved Employees to sign a release of claims as a condition to
12 receiving wages owed.

13 44. Plaintiff alleges Defendants collected or received wages already paid to
14 himself and/or the Non-Party Aggrieved Employees.

15 45. Plaintiff alleges Defendants secretly paid its himself and/or the Non-Party
16 Aggrieved Employees lower wages than required by law.

17 46. Plaintiff alleges Defendants failed to pay the costs of required medical or
18 physical examinations incurred by himself and/or the Non-Party Aggrieved Employees.

19 47. Plaintiff alleges Defendants failed to provide written notice of paid sick leave
20 benefits to himself and/or the Non-Party Aggrieved Employees.

21 48. Plaintiff alleges Defendants failed to reimburse himself and/or the Non-Party
22 Aggrieved Employees for necessary business expenses.

23 49. Plaintiff alleges Defendants did not maintain adequate records pertaining to
24 when Plaintiff the Non-Party Aggrieved Employees began and finished each work period;
25 meal/rest breaks; hours worked per day; hours worked per pay period; and applicable rates
26 of pay for all regular hours and overtime.

27 50. Plaintiff alleges that Defendants have maintained and continue to maintain
28 uniform practices and procedures which are in inconsistent with state and federal law.

1 51. Plaintiff alleges that Defendants engaged in uniform policies and conduct, as
2 alleged herein resulting in violations of Labor Code §§ 201-204, 206.5, 221, 222.5, 223, 224,
3 226, 226.7, 246, 510, 512, 516, 1174, 1175, 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

4 52. On February 4, 2020, Plaintiff sent a first notice of Private Attorney General
5 Act ("PAGA") claims to Defendants Premier Automotive of Buena Park, LLC dba Premier
6 Chevrolet of Buena Park and Premier Automotive Management, LLC dba Premier
7 Automotive and the LWDA. On February 26, 2021, Plaintiff sent an amended notice to the
8 LWDA and to all Defendants.

9 53. Plaintiff, by virtue of his employment with Defendants is an aggrieved
10 employee with standing to bring an action under the PAGA. Plaintiff has satisfied all
11 prerequisites to serve as a representative of the general public to enforce California's labor
12 laws, including, without limitation, the penalty provisions identified in Labor Code section
13 2699.5.

14 54. Since the LWDA took no steps within the time period required to intervene
15 and because Defendants took no corrective action to remedy the allegations set forth above,
16 Plaintiff as a representative of the people of the State of California, seeks any and all
17 penalties otherwise capable of being collected by the Labor Commission and/or the
18 Department of Labor Standards Enforcement ("DLSE"). This includes each of the following,
19 as set forth in Labor Code Section 2699.5, which provides that Section 2699.3(a) applies to
20 any alleged violation of the following provisions: Sections 558, 1194, 1197, 1197.1, and
21 1199.

22 55. Labor Code section 2699 provides for civil penalties of \$100 per employee per
23 pay period for the initial violation and \$200 per employee per pay period for each subsequent
24 violation.

25 56. Plaintiff, as a representative of the general public, seeks to recover any and all
26 penalties for each and every violation shown to exist or to have occurred during the one year
27 period before Plaintiff filed Notice with the LWDA of his intent to bring this action, in an
28 amount according to proof, as to those penalties that are otherwise only available to public

agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with at least 75% of the penalties recovered being reimbursed to the State of California and the LWDA.

57. As a result of the acts alleged above, Plaintiff, the Non-Party Aggrieved Employees, and the class he seeks to represent allege penalties for violations of Labor Code §§ 201-204, 206.5, 221, 222.5, 223, 224, 226, 226.7, 246, 510, 512, 516, 1174, 1175, 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

58. Plaintiff, as a representative of the general public, seeks to recover reasonable attorneys' fees and costs under the PAGA, Labor Code section 2699(g)(1).

59. WHEREFORE, Plaintiff and Non-Party Aggrieved Employees he seeks to represent request relief as described herein and below and as deemed just.

V.

CAUSES OF ACTION

First Cause of Action

Claim for Civil Penalties for Violation of California Labor Code, Pursuant to PAGA,

Sections 2698, *Et. Seq.*

60. Plaintiff incorporates all previous paragraphs of this Complaint as though full set forth herein.

61. California Labor Code sections 2698, *et. seq.* ("PAGA") permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5.

62. Labor Code section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 206.5, 221, 222.5, 223, 224, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802.

63. Labor code section 2600.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 246, 516, and 1182.12.

64. Defendants' conduct, as alleged herein, violates numerous sections of the

1 Labor Code, including but not limited to, the following:

2 a) Violation of Labor Code sections 510, 1198, and the applicable IWC wage
3 order for Defendants failure to compensate Plaintiff and other Non-Party Aggrieved
4 Employees with all required overtime pay and failure to properly calculate the overtime
5 rates paid to Plaintiff and other Non-Party Aggrieved Employees, as set forth below;

6 b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198, and
7 the applicable IWC wage order for Defendants failure to compensate Plaintiff and other
8 Non-Party Aggrieved Employees with at least minimum wages for all hours worked as set
9 forth below;

10 c) Violation of Labor Code sections 226.7, 512(a), 516, 1198, and the
11 applicable IWC wage order for Defendants failure to provide Plaintiff and other Non-Party
12 Aggrieved Employees with meal periods, as set forth below;

13 d) Violation of Labor Code sections 226.7, 516, 1198 and the applicable
14 IWC wage order for Defendants failure to authorize and permit Plaintiff and other Non-
15 Party Aggrieved Employees to take rest periods, as set forth below;

16 e) Violation of Labor Code sections 226(a), 1175 and 1198, and the
17 applicable IWC wage order for failure to provide accurate and complete wage statements
18 to Plaintiff and other Non-Party Aggrieved Employees, as set forth below;

19 f) Violation of Labor Code sections 1174(d), 1198 and the applicable IWC
20 wage order for failure to maintain payroll records as set forth below;

21 g) Violation of Labor Code section 204 for failure to pay all earned wages
22 during employment as set forth below;

23 h) Violation of Labor Code sections 201-203 for failure to pay all earned
24 wages upon termination as set forth below;

25 i) Violation of Labor Code section 206.5 for requiring Plaintiff and other
26 Non-Party Aggrieved Employees to execute a release of claims as a condition to receiving
27 wages due to them, as set forth below;

28 j) Violation of Labor Code sections 221 and 224 for unlawfully deducting a

1 portion of wages previously paid to Plaintiff and other Non-Party Aggrieved Employees, as
2 set forth below;

3 k) Violation of Labor Code section 223 for secretly paying Plaintiff and other
4 Non-Party Aggrieved Employees lower wages than required by statute, while purporting to
5 pay the proper wages, as set forth below;

6 l) Violation of Labor Code section 222.5 for failure to compensate Plaintiff
7 and other Non-Party Aggrieved Employees for mandatory physical examinations and/or
8 drug testing as set forth below;

9 m) Violation of Labor Code section 246 for failure to provide written notice
10 of paid sick leave available, or paid time off to Plaintiff and other Non-Party Aggrieved
11 Employees as set forth below; and

12 n) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and
13 other Non-Party Aggrieved Employees for all business expenses necessarily incurred, as
14 set forth below.

15 **Failure to Pay Minimum Wage**

16 **(Labor Code sections 1182.12, 1194, 1197, 1197.1, IWC Wage Orders, and FLSA 29**

17 **U.S.C. 201, et. seq.)**

18 65. Plaintiff incorporates all previous paragraphs of this Complaint as though fully
19 set forth herein.

20 66. At all relevant times, the Industrial Welfare Commission (IWC) Wage Orders
21 contained in Title 8 of the Code of Regulations (“Wage Orders”) applied to Plaintiffs and the
22 Non-Party Aggrieved Employees in their capacity as employees of Defendants. The Wage
23 Orders and California law provided, among other things, that employees must receive
24 minimum wage earnings for all hours worked.

25 67. During the liability period, Defendants have routinely failed to pay Plaintiff and
26 the Non-Party Aggrieved Employees the minimum wage required under California law.
27 Because Plaintiff and other Non-Party Aggrieved Employees were required to provide and
28 maintain their own hand tools, that minimum wage was double the standard minimum wage

1 per IWC Wage Order 4-2001.

2 68. Plaintiff and other Non-Party Aggrieved Employees purchased and used their
3 own hand tools to perform work for Defendants. The hand tools provided and used were
4 necessary for the performance of their duties as an auto technician.

5 69. Plaintiff and other Non-Party Aggrieved Employees' timecards and pay stubs
6 did not list their actual regular and overtime hours worked.

7 70. Plaintiff and other Non-Party Aggrieved Employees worked unpaid hours for
8 Defendants as a part of systematic pattern of Defendants' failing to pay employees for all
9 hours worked, including by failing to provide a way for Plaintiff and the Non-Party
10 Aggrieved Employees to record work time before and after shifts and for work performed
11 during meal breaks. Defendants further failed to compensate Plaintiff and the Non-Party
12 Aggrieved Employees for other compensable activities, such as mandated medical and
13 physical examinations, trainings, meetings and fingerprinting.

14 71. Labor Code Section 1194 provides in pertinent part: "any employee receiving
15 less than the legal minimum wage or the legal overtime compensation applicable to the
16 employee is entitled to recover in a civil action the unpaid balance of the full amount of this
17 minimum wage or overtime compensation, including interest thereon, reasonable attorney's
18 fees, and costs of suit."

19 72. Labor Code Section 1197 provides that the "minimum wage for employees
20 fixed by the commission or by any applicable state or local law, is the minimum wage to be
21 paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful."

22 73. Defendants violated California Labor Code sections 1182.12, 1194, 1197,
23 1197.1 and the applicable Wage Order, Wage Order No. 9, by willfully failing to pay all
24 minimum wages due to Plaintiff and the Non-Party Aggrieved Employees.

25 74. Defendants' failure to pay all wages owed violates Labor Code sections
26 1182.12, 1194, 1197, and 1198, and thus, Plaintiff and the Non-Party Aggrieved Employees
27 are entitled to recover civil penalties pursuant to PAGA.

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76. Throughout the period applicable to this cause of action, California law, as set forth in relevant part by the Industrial Welfare Commission Wage Order No. 9 at section (11), provided as follows: No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes. If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided.

78. Labor Code section 226.7 requires payment of one (1) hour of pay in lieu of each meal periods not provided by the employer.

80. Throughout the period applicable to this cause of action, Defendants required Plaintiff and the Non-Party Aggrieved Employees to work during meal periods mandated by the applicable orders of the Industrial Welfare Commission.

81. On information and belief, Plaintiff alleges that the Non-Party Aggrieved Employees did not voluntarily or willfully waive rest and/or meal periods and were regularly

1 required to work through meal periods. Defendants failed to meet the requirements for lawful
2 on-duty meal periods and/or instituted a course of conduct that created a working
3 environment in which non-exempt employees were incapable of taking rest and/or meal
4 periods. As such, Plaintiff and the Non-Party Aggrieved Employees were intimidated or
5 coerced into waiving meal periods, and any written waivers were obtained without full
6 disclosure and are thus involuntarily and without consent.

7 82. Plaintiff and the Non-Party Aggrieved Employees are entitled to penalties for
8 these violations under PAGA as described herein, including civil penalties pursuant to Labor
9 Code sections 558 and/or 2699(a), (f) and (g).

10 **Failure to Provide Rest Breaks**
11 **(Labor Code sections 226.7 and 512)**

12 83. Plaintiff incorporates all previous paragraphs of this Complaint as though fully
13 set forth herein.

14 84. Wage Order No. 9, Section 12, requires each employer to provide each of its
15 employees with at least one rest period of 10-minutes rest time for each 4 hours, or major
16 fraction thereof, that each such employee works during each workday.

17 85. Labor Code Section 226.7 provides that if an employer fails to provide an
18 employee with a rest period in accordance with Wage Order No. 9, the employer must pay
19 such employee(s) one additional hour of pay at the employee's regular rate of pay for each
20 day that such a rest period was not provided.

21 86. By their failure to provide rest periods for every four (4) hours or major
22 fraction thereof worked per workday by Plaintiff and the Non-Party Aggrieved Employees,
23 and failing to provide one (1) hour's pay in lieu thereof, as alleged above and herein,
24 Defendants willfully violated the provisions of Labor Code sections 226.7 and IWC Wage
25 Orders at section (12).

26 87. By failing to keep adequate time records required by sections 226 and 1174(d)
27 of the Labor Code and IWC Wage Order at section (7), Defendants have injured Plaintiff
28 and Non-Party Aggrieved Employees, and made it difficult to calculate the unpaid rest and

1 meal period compensation due Plaintiff and Non-Party Aggrieved Employees. On
2 information and belief, Plaintiff alleges that Defendants failure to maintain accurate records
3 was willful.

4 88. Plaintiff and the Non-Party Aggrieved Employees are entitled to penalties for
5 these violations under PAGA as described herein, including civil penalties pursuant to Labor
6 Code sections 558 and/or 2699(a), (f) and (g).

7 **Failure to Pay All Wages at Termination**

8 **(Labor Code sections 201-203)**

9 89. Plaintiff incorporates all previous paragraphs of this Complaint as though fully
10 set forth herein.

11 90. Plaintiff and other Non-Party Aggrieved Employees quit or were discharged
12 from their employment within the statute of limitations period applicable to this cause of
13 action.

14 91. Defendants failed to pay said employees, without abatement, all wages (as
15 defined by applicable California law) within the time required by applicable California law.
16 Defendants failure to pay said wages within the required time was willful within the meaning
17 of Labor Code section 203.

18 92. As of the filing of the Complaint, Defendants failed to timely pay wages due,
19 and Plaintiff and other Non-Party Aggrieved Employees are owed penalties pursuant to
20 Labor Code sections 201, 202, 203.

21 93. Plaintiff and the Non-Party Aggrieved Employees are entitled to penalties for
22 these violations under PAGA, including Labor Code sections 256 and/or 2699(a), (f) and (g)
23 as described herein.

24 **Failure to Provide Accurate Wage Statements**

25 **(Labor Code sections 226(b), 1174, 1175)**

26 94. Plaintiff incorporates all previous paragraphs of this Complaint as though fully
27 set forth herein.

28 95. Labor Code section 1174(d) requires that every employee maintain “payroll

1 records showing the hours worked daily by and the wages paid to, and the number of piece-
2 rate units earned by and any applicable piece rate aid to, employees employed” in California.

3 96. Wage Order No. 9, Section 7 requires every employer in California
4 to “keep accurate information with respect to each employee including,” . . . “[t]ime records
5 showing when the employee begins and ends each work period. Meal periods, split shift
6 intervals and total daily hours worked shall also be recorded.”

7 97. Plaintiff is informed and believes and upon that basis alleges, that Defendants
8 have failed to maintain accurate records in compliance with Labor Code section section 1174
9 and/or Wage Order No. 9 for Plaintiff and the Non-Party Aggrieved Employees.

10 98. Labor Code section 226 requires each employer to furnish accurate itemized
11 wage statements at the time of payment reflecting (1) the gross wages earned, (2) the total
12 hours worked, except for those whose compensation is based solely on a salary and who is
13 exempt, (3) the number of piece-rate units earned and any applicable piece-rate if the
14 employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the dates
15 of the period for which the employee is paid, (7) the name of the employee and last four
16 digits of the employee’s social security number or identification number, (8) the name and
17 address of the legal entity that is the employer , and (9) all applicable hourly rates in effect
18 during the pay period and the corresponding number of hours worked at each hourly rate by
19 the employee beginning July 1, 2013.

20 99. Throughout the period applicable to this cause of action, Defendants
21 intentionally failed to furnish to Plaintiff and the Non-Party Aggrieved Employees, upon
22 each payment of wages, itemized statements accurately showing, among other matters: total
23 hours worked, the applicable hourly rates in effect during the pay period, and the
24 corresponding number of hours worked at each hourly rate.

25 100. Plaintiff and the Non-Party Aggrieved Employees were damaged by these
26 failures because, among other things, the failures led them to believe that they were not
27 entitled to be paid, even though they were so entitled, and because the failures hindered them
28 from determining the amounts of wages owed to them.

1 101. Plaintiff and the Non-Party Aggrieved Employees are entitled to penalties for
2 these violations under PAGA, including pursuant to Labor Code sections 226.3, 1174.5
3 and/or 2699(a), (f), and (g).

4 **Failure to Pay Overtime Wages**
5 **(Labor Code sections 510, 1194, and 1198)**

6 102. Plaintiff incorporates all previous paragraphs of this Complaint as though fully
7 set forth herein.

8 103. Labor Code section 510 provides overtime compensation at one and one-half
9 times the regular rate of pay for hours worked in excess of eight hours in a day or more than
10 forty hours in a workweek or for the first eight hours worked on the seventh day of work and
11 for overtime compensation at twice the employee's regular rate of pay for hours worked in
12 excess of twelve hours in a day or in excess of eight hours in a day on the seventh day of work.
13 Moreover, the IWC provides that employers are required to pay applicable employees working
14 more than twelve hours in a day overtime compensation at a rate of two times their regular
15 rate of pay.

16 104. Labor Code section 1198 provides that the conditions fixed by the commission
17 are the standard conditions of labor and makes it illegal to employ an employee under
18 conditions of labor that are prohibited by the IWC.

19 105. During the relevant time period, Defendants failed to compensate Plaintiff and
20 other Non-Party Aggrieved Employees overtime premiums for all house worked in excess of
21 8 hours in day, 12 hours in a day and/or in excess of 40 hours in a way. Additionally, because
22 Defendants failed to record actual hours worked, hours that employees worked off the clock
23 was not compensated at all, thus falling below minimum wage requirements. Defendants knew
24 work was performed off the clock and required it by, among other things, heavy workloads,
25 pressure exerted to meet quotas, requiring employees to close deals and respond to
26 communications before and/or after their shifts, requiring work during meal breaks and
27 altering time records. Thus, Plaintiff alleges he and the Non-Party Aggrieved Employees were
28 not paid required overtime premiums. To the extent Defendants paid overtime, Plaintiff

1 alleges that he and other Non-Party Aggrieved Employees were not paid the correct regular
2 rate of pay that took into account all eligible income including commissions, incentive pay,
3 non-discretionary bonuses and/or other forms of compensation.

4 106. Defendants' failure to pay overtime wages to Plaintiff and other Non-Party
5 Aggrieved Employees violates the Labor Code. As such Plaintiff and other non-party
6 Aggrieved Employees are entitled to recover civil penalties pursuant to Labor Code sections
7 558 and/or 2699(a), (f), and (g).

8 **Failure to Pay Wages During Employment**

9 **(Labor Code section 204)**

10 107. Plaintiff incorporates all previous paragraphs of this Complaint as though fully
11 set forth herein.

12 108. Labor code section 204 provides that all wages earned by any person between
13 the 1st and 15th days of the month, are due and payable between the 16th and 26th day of the
14 month during which the labor was performed. Additionally, all wages earned between the 16th
15 and last day are due and payable between the 1st and 10th day of the following month.
16 Moreover, all wages earned in excess of the normal work period must be paid no later than the
17 payday for the next regular payroll period.

18 109. Plaintiff and the Non-Party Aggrieved Employees were not paid for all hours
19 worked, including but not limited to overtime hours, missed meal and rest breaks, and off the
20 clock work. As such, Defendants failed to pay him and the Non-Party Aggrieved Employees
21 all wages owed during the employment.

22 110. Accordingly, Plaintiff and the Non-Party Aggrieved Employees are entitled to
23 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

24 **Unlawful Requirement for Release of Claims as a Condition to Receiving Wages**

25 **(Labor Code section 206.5)**

26 111. Plaintiff incorporates all previous paragraphs of this Complaint as though fully
27 set forth herein.

28 112. Labor Code section 206.5 prohibits employers from requiring employees to

1 execute releases of a claim or right on account of wages due, or to become due, or made as an
2 advance on wages to be earned, unless payment of those wages has been made.

3 113. Plaintiff and other Non-Aggrieved Employees were required to sign
4 verifications that they received all wages owed prior to receiving their wages at termination.
5 Defendants compelled other Non-Party Aggrieved Employees to sign this false verification
6 when they, in fact, had not received all earned and unpaid wages, including overtime wages,
7 minimum wages, and/or meal and rest period premium wages. As such, Defendants violated
8 Labor Code section 206.5.

9 114. Accordingly, Plaintiff and class members are entitled to recover civil penalties
10 pursuant to Labor Code section 2699(a), (f), and (g).

11 **Collecting or Receiving Wages Already Paid**

12 **(Labor Code sections 221 and 224)**

13 115. Plaintiff incorporates all previous paragraphs of this Complaint as though fully
14 set forth herein.

15 116. Labor Code section 221 states that it is unlawful for an employer to collect or
16 receive from an employee any wages paid by employer to employee.

17 117. Labor Code section 224 provides that it is lawful to withhold a portion of the
18 employee's wages if a deduction is expressly authorized in writing by the employee.

19 118. During the relevant time period, Defendants unlawfully deducted a portion of
20 Plaintiff's and the Non-Party Aggrieved Employees' wages on a weekly basis for various
21 programs, such as bonuses and donations. These programs were compulsory and Plaintiff and
22 Non-Party Aggrieved Employees did not consent to and authorize the deductions. Thus, the
23 deductions constitute violations of Labor Code sections 221 and 224.

24 119. Accordingly, Plaintiff and Non-Party Aggrieved Employees are entitled to
25 recover civil penalties pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (g).

26 **Secret Payment of Lower Wages**

27 **(Labor Code section 223)**

28 120. Plaintiff incorporates all previous paragraphs of this Complaint as though fully

1 set forth herein.

2 121. Labor Code section 223 makes it unlawful for an employer to secretly pay wages
3 lower than required.

4 122. During the relevant time period, Defendants implemented an illegal policy of
5 deducting from Plaintiff's and the Non-Party Aggrieved Employees' wages on a weekly basis.
6 As a result of these deductions, Defendants secretly paid Plaintiff and the Non-Party
7 Aggrieved Employees wages that were lower than they were entitled to and required by the
8 Labor Code and IWC. As such, Defendants have violated Labor Code section 223.

9 123. Accordingly, Plaintiff and the Non-Party Aggrieved Employees are entitled to
10 recover civil penalties pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (g).

11 **Failure to Pay Costs of Medical or Physical Examination**

12 **(Labor Code Section 222.5)**

13 124. Plaintiff incorporates all previous paragraphs of this Complaint as though fully
14 set forth herein.

15 125. Labor Code section 222.5 requires employers to pay for the costs an employee
16 incurs for obtaining any required medical or physical examination.

17 126. During the relevant time period, Defendants implemented a company-wide
18 policy requiring Plaintiff and the Non-Party Aggrieve Employees to undergo mandatory drug
19 tests and/or physical examinations but required the employees to do so at their own expense.
20 However, Defendants failed to compensate the employees for the costs of the medical and/or
21 physical examinations by failing to compensate the employees for their time spent completing
22 the examinations and for their travel expenses incurred getting to and from the exams.

23 127. Therefore, Plaintiff and Non-Party Aggrieved Employees are entitled to recover
24 civil penalties pursuant to Labor Code section 2699(a), (f), and (g).

25 **Failure to Provide Written Notice of Paid Sick Leave Benefits**

26 **(Labor Code section 246)**

27 128. Plaintiff incorporates all previous paragraphs of this Complaint as though fully
28 set forth herein.

1 129. Labor Code section 246 provides that an employer must provide an employee
2 with written notice that sets forth the amount of paid sick leave available, or paid time off that
3 an employer provides in lieu of sick leave, for use on either the employee's itemized wage
4 statement or in a separate written statement provided on the designated pay date with the
5 employee's wages.

6 130. During the relevant time period, Defendants failed to provide Plaintiff and the
7 Non-Party Aggrieved Employees with written notice of their paid sick leave benefits.
8 Therefore, Defendants violated Labor Code section 246.

9 131. Plaintiff and Non-Party Aggrieved Employees are entitled to recover civil
10 penalties pursuant to Labor Code sections 248.5 and/or 2699(a), (f), and (g).

11 **Failure to Reimburse Necessary Business Expenses**

12 **(Labor Code section 2802)**

13 132. Plaintiff incorporates all previous paragraphs of this Complaint as though fully
14 set forth herein.

15 133. Labor Code section 2802 requires employers to reimburse employees for all
16 necessary expenditures and losses incurred by the employee in the performance of their job.

17 134. Plaintiff and other Non-Party Aggrieved Employees were required to provide
18 their own tools and incurred significant costs (approximately \$80,000.00) in doing so. These
19 tools were necessary for the performance of their jobs but Defendants did not reimburse
20 employees for these expenses. Defendants also required Plaintiff and other Non-Party
21 Aggrieved Employees to utilize their own cell phone and data to perform work but failed to
22 fully reimburse employees for these expenses. Defendants also required Plaintiff and Non-
23 Party Aggrieved Employees to utilize their personal vehicles to carry out company business,
24 including to attend trainings, medical exams, drug testing, fingerprinting, meetings and to
25 travel to customer homes, but failed to reimburse for all travel related expenses, including
26 mileage. Defendants also required Plaintiff and other Non-Party Aggrieved Employees to
27 purchase office supplies to perform their work duties but failed to fully reimburse employees
28 for such expenses. Therefore, Defendants have violated Labor Code section 2802.

135. Plaintiff and the Non-Party Aggrieved Employees are entitled to recover civil penalties pursuant to Labor Code section 2699(a), (f), and (g).

VI.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff on behalf of himself and all members of the class and all other non-party aggrieved employees, pray for relief as follows:

1. For civil penalties pursuant to Labor Code Sections 210, 225.5, 226(e), 226.3, 226.8(b), 226.8(c), 248.5, 256, 558, 1174.5, 1197.1, 2699.(a), (f), (g), for violations of California Labor Code sections 201, 202, 203, 204, 206.5, 221, 222.5, 223, 224, 226(a), 226.7, 246, 510, 512, 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802;
2. For a declaration that the Defendants violated the following Labor Code provisions as to Plaintiff and/or other Non-Party Aggrieved Employees, Labor Code sections 201, 202, 203, 204, 206.5, 221, 222.5, 223, 224, 226(a), 226.7, 246, 510, 512, 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802;
3. For reasonable attorneys' fees and costs pursuant to Labor Code Section 2699(g)(1) and any other relevant statutes;
4. For pre-judgment and post-judgment interest;
5. A declaratory judgment that the practices complained of herein are unlawful under California state law; and
6. Such other of relief as the Court may deem equitable and appropriate.

DATED: August 20, 2021

NUNES WORKER RIGHTS LAW, APC

By

Anthony Nunes

ANTHONY J. NUNES

Attorneys for Plaintiff

**RONALD SILVA and all others
similarly situated**