

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: David Cowan

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ARTHUR QUINTERO, JR., as an individual
and on behalf of all other aggrieved employees,

Plaintiff,

vs.

SEIDNER-MILLER, INC, a California
corporation, dba TOYOTA OF GLENDORA;
SEIDNER-MILLER AUTOMOTIVE, INC., a
California corporation; and DOES 1 through
100,

Defendants.

Case No. 20STCV36852

**REPRESENTATIVE ACTION
COMPLAINT:**

**(1) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

UNLIMITED CIVIL CASE

1 Plaintiff Arthur Quintero, Jr. ("Plaintiff"), on behalf of himself and all other aggrieved
2 employees, hereby brings this Representative Action Complaint against Seidner-Miller, Inc, a
3 California corporation, dba Toyota of Glendora; Seidner-Miller Automotive, Inc., a California
4 corporation; and DOES 1 to 100, inclusive (collectively "Defendants"), and on information and
5 belief alleges as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of himself and all other aggrieved employees, hereby brings
8 this representative action for recovery of civil penalties under California Labor Code §§ 2698 *et*
9 *seq.*

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

15 **VENUE**

16 3. Venue as to each Defendant is proper in this judicial district pursuant to California
17 Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions
18 complained of herein occurred in the County of Los Angeles. Further, at all times relevant herein
19 Plaintiff was employed by Defendants within the County of Los Angeles.

20 **PARTIES**

21 4. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was, and currently is, a California resident, residing in the County of Los Angeles.
23 During the one year immediately preceding Plaintiff's giving of the required notice under the
24 PAGA, and within the statute of limitations periods applicable to the cause of action pled herein,
25 Plaintiff was employed by Defendants as a non-exempt employee.

26 5. Plaintiff is informed and believes, and based thereon alleges, that during the one
27 year preceding Plaintiff's giving of the required notice under the PAGA and continuing to the
28 present, Defendants did (and do) business by operating an automotive retailer, and employed

1 Plaintiff and other similarly-situated non-exempt employees within the County of Los Angeles
2 and, therefore, were (and are) doing business in the County of Los Angeles and the State of
3 California.

4 6. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
5 herein, Defendants were licensed to do business in California and the County of Los Angeles, and
6 were the employers of Plaintiff and the Aggrieved Employees (as defined in Paragraph 18).

7 7. Plaintiff does not know the true names or capacities, whether individual, partner,
8 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
9 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
10 amend this Representative Action Complaint when such true names and capacities are discovered.
11 Plaintiff is informed, and believes, and thereon alleges, that each of said fictitious defendants,
12 whether individual, partners, or corporate, were responsible in some manner for the acts and
13 omissions alleged herein, and proximately caused Plaintiff and the Aggrieved Employees (as
14 defined in Paragraph 18) to be subject to the unlawful employment practices, wrongs, injuries,
15 and damages complained of herein.

16 8. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
17 herein, Defendants were and are the employers of Plaintiff and the Aggrieved Employees (as
18 defined in Paragraph 18).

19 9. At all times herein mentioned, each of said Defendants participated in the doing
20 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
21 Defendants, and each of them, were the agents, servants, and employees of each and every one of
22 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
23 were acting within the course and scope of said agency and employment. Defendants, and each
24 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
25 omissions complained of herein.

26 10. At all times mentioned herein, Defendants, and each of them, were members of
27 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
28 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,

1 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the
2 Aggrieved Employees (as defined in Paragraph 18).

3 **REPRESENTATIVE ACTION ALLEGATIONS**

4 11. Defendants own and operate Toyota of Glendora, an automotive retailer in
5 California. Plaintiff worked for Defendants as a non-exempt “Sales Closer” from approximately
6 March 2019 until approximately May 2020. During Plaintiff’s employment with Defendants,
7 Plaintiff and aggrieved employees were paid on a commission-only basis, whereby they were
8 paid a commission per vehicle sold or leased. While paid on a commission-only basis, Plaintiff
9 and aggrieved employees were not separately compensated for time spent working on tasks which
10 were not compensated on a commission basis, including for example, hours spent waiting for
11 customers, cleaning the dealership, and attending mandatory sales meetings (i.e., non-productive
12 time). As a result, Plaintiff and aggrieved employees were not paid at least the minimum wage
13 for all hours worked.

14 12. Further, while working on a commission-only basis, Plaintiff and aggrieved
15 employees worked shifts in excess of 3.5 hours, and were not provided with a paid rest period for
16 every 4-hour period worked, or major fraction thereof, because Defendants’ commission
17 compensation plan failed to separately compensate Plaintiff and aggrieved employees for required
18 rest periods at the correct rate of pay. See *Vaquero v. Stoneledge Furniture LLC*, 9 Cal.App.5th
19 98 (2017); *Bluford v. Safeway Inc.*, 216 Cal.App.4th 864 (2013) (“There is no dispute that
20 Safeway’s activity-based compensation system did not separately compensate drivers for their
21 rest periods.”). As a result, Plaintiff and aggrieved employees were not provided with
22 compensated rest periods or rest periods compensated at the correct rate of pay as required by
23 Industrial Welfare Commission Wage Order 4, § 12(A). Moreover, Plaintiff and aggrieved
24 employees were not authorized and permitted to take legally-compliant rest periods due to work
25 demands imposed by Defendants.

26 13. In addition, Defendants routinely failed to provide Plaintiff and aggrieved
27 employees with timely, full 30-minute first meal periods commencing before the conclusion of
28 the fifth hour of work in violation of Labor Code § 512, and Wage Order 4, § 11(A). Specifically,

1 due to work demands imposed by Defendants, Plaintiff and aggrieved employees were
2 occasionally not provided with any first meal period. Further, upon information and belief, for a
3 portion of the liability period, Plaintiff and aggrieved employees were not provided with a legally-
4 compliant second meal period for shifts in excess of 10.0 hours. On those occasions when Plaintiff
5 was not provided with all legally-required meal periods to which he was entitled, Defendants
6 failed to compensate Plaintiff with the required meal period premium for each workday in which
7 he experienced a meal period violation as mandated by Labor Code § 226.7. Upon information
8 and belief, Defendants did not maintain a payroll code or other mechanism for the payment of
9 meal period premiums under Labor Code § 226.7 in the event that Defendants failed to provide a
10 legally compliant meal period to their non-exempt employees.

11 14. Plaintiff and aggrieved employees also routinely worked in excess of 8 hours per
12 workday and/or 40 hours per workweek, but did not receive overtime compensation equal to one
13 and one-half times their regular rate of pay for working overtime hours. Specifically, Defendants
14 paid Plaintiff and aggrieved employees commission earnings, non-discretionary bonuses, and
15 other forms of non-discretionary pay that are not excludable from the regular rate of pay
16 (hereinafter the aforementioned forms of pay are referred to as “Incentive Pay”). Despite
17 Defendants’ payment of Incentive Pay to Plaintiff and aggrieved employees, Defendants failed to
18 properly calculate the regular rate of pay, thereby causing Plaintiff and aggrieved employees to
19 be underpaid all required overtime wages. Further, Plaintiff and aggrieved employees were not
20 paid all overtime wages owed because Defendants failed to include the value of non-productive
21 time when calculating the regular rate of pay for overtime purposes.

22 15. Defendants also failed to reimburse Plaintiff and aggrieved employees for use of
23 their personal cellular phones for a variety of work activities, including, but not limited to,
24 communicating with coworkers and customers. Plaintiff and aggrieved employees were required
25 to use their personal cellular phones for such work activities; however, Plaintiff and aggrieved
26 employees were never reimbursed for their cellular phone expenses.

27 16. As a result of Defendants’ failure to pay all minimum and overtime wages, rest
28 period premium wages, and meal period premium wages, Defendants maintained inaccurate

1 payroll records and issued inaccurate wage statements to Plaintiff and aggrieved employees.
2 Further, Defendants issued facially non-compliant wage statements to Plaintiff and aggrieved
3 employees that failed to list all hourly rates and corresponding hours worked at each rate in
4 violation of Labor Code § 226(a)(9). Specifically, the wage statements issued by Defendants to
5 Plaintiff and aggrieved employees failed to list the hourly rate for their respective “Regular” rates
6 of pay. For example, during the pay period beginning on February 1, 2020 and ending on
7 February 15, 2020, Defendants paid Plaintiff \$2,275.00 for “Regular” but failed to list the rate
8 and corresponding number of hours associated with “Regular” pay.

9 17. As a further result of Defendants’ failure to pay all minimum and overtime wages,
10 rest period premium wages, and meal period premium wages, Defendants failed to pay all wages
11 owed to Plaintiff and aggrieved employees upon their separation of employment with Defendants.

12 18. Based on the foregoing, Plaintiff seeks to represent himself and other aggrieved
13 employees, as defined by Labor Code § 2699(c), who have been aggrieved by the Labor Code
14 violations discussed herein.

15 **FIRST CAUSE OF ACTION**

16 **PRIVATE ATTORNEYS GENERAL ACT**

17 **(AGAINST ALL DEFENDANTS)**

18 19. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
19 fully set forth herein.

20 20. Defendants have committed several Labor Code violations against Plaintiff and
21 other aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor
22 Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved employees, brings this
23 representative action against Defendants to recover the civil penalties due to Plaintiff, other
24 aggrieved employees, and the State of California according to proof, including, but not limited
25 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for
26 each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for
27 each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for
28 each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per

employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation; and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay minimum wages for all hours worked to Plaintiff and other aggrieved employees in violation of Labor Code §§ 558, 1182.12, 1194, 1194.2, and 1197;
- b. Failing to authorize and permit all legally required rest periods, and/or failing to separately compensate Plaintiff and other aggrieved employees for required rest periods at the correct rate of pay, in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- c. Failing to provide all legally required meal periods, or to pay premium pay in lieu thereof, to Plaintiff and other aggrieved employees at the regular rate of pay in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- d. Failing to pay Plaintiff and other aggrieved employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- e. Failing to reimburse Plaintiff and other aggrieved for all necessary business expenses in violation of Labor Code §§ 2802 and 2804;
- f. Failing to furnish Plaintiff and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- g. Failing to timely pay all final wages due to Plaintiff and other aggrieved employees in violation of Labor Code §§ 201 - 203;
- h. Failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month in violation of Labor Code § 204; and
- i. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code § 1174.

21. On or about July 22, 2020, Plaintiff notified Defendants Seidner-Miller, Inc, dba Toyota of Glendora; and Seidner-Miller Automotive, Inc., via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to violations of the California Labor Code identified in Paragraph 20 (a)-(i). Now that sixty-five days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

22. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which he is entitled to receive under California Labor Code § 2699.

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the Labor Code violations identified in Paragraph 20 (a)-(i);

1 2. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
2 2699(g) and Code of Civil Procedure § 1021.5; and

3 3. For such other and further relief the Court may deem just and proper.

4
5 Dated: September 25, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

6
7 By:



Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff