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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MONTEREY

GARY MILLER, on behalf of the State of California,
as a private attorney general,

Plaintiff,

vs.

PREMIER AUTOMOTIVE OF SEASIDE, LLC, a
California Limited Liability Company; PREMIER
AUTOMOTIVE BCG OF CARLSBAD LLC, a
California Limited Liability Company; PREMIER
AUTOMOTIVE C OF CARLSBAD LLC, a California
Limited Liability Company; PREMIER
AUTOMOTIVE CJDR OF BUENA PARK, LLC, a
California Limited Liability Company; PREMIER
AUTOMOTIVE HCDJ OF CALIFORNIA, LLC, a
California Limited Liability Company; PREMIER
AUTOMOTIVE IMPORTS OF CA, LLC, a California
Limited Liability Company; PREMIER
AUTOMOTIVE K OF CARLSBAD LLC, a California
Limited Liability Company; PREMIER
AUTOMOTIVE OF BUENA PARK, LLC, a
California Limited Liability Company; PREMIER
AUTOMOTIVE OF CA, LLC, a California Limited
Liability Company; PREMIER AUTOMOTIVE OF
NEWARK, LLC, a California Limited Liability
Company; PREMIER AUTOMOTIVE OF
PLACENTIA, LLC, a California Limited Liability
Company; PREMIER AUTOMOTIVE OF STEVENS
CREEK, LLC, a California Limited Liability
Company; PREMIER AUTOMOTIVE OF WEST
COVINA, LLC, a California Limited Liability
Company; and Does 1 through 50, Inclusive;

Defendants.

Case No. 21CV003719

REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
226(a), 226.7, 351, 510, 512, 558(a)(1)(2),
1194, 1197, 1197.1, 1198, 2802, California
Code of Regulations, Title 8, Section 11040,
Subdivision 5(A)-(B).

1 Plaintiff Gary Miller (“PLAINTIFF”), on behalf of the people of the State of California
 2 and as an “aggrieved employee” acting as a private attorney general under the Labor Code
 3 Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on information
 4 and belief, except for his own acts and knowledge which are based on personal knowledge, the
 5 following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Premier Automotive of Seaside, LLC and/or
 8 Premier Automotive BCG of Carlsbad LLC and/or Premier Automotive C of Carlsbad, LLC
 9 and/or Premier Automotive CJDR of Buena Park, LLC and/or Premier Automotive HCDJ of
 10 California, LLC and/or Premier Automotive Imports of CA, LLC and/or Premier Automotive
 11 K of Carlsbad LLC and/or Premier Automotive of Buena Park, LLC and/or Premier Automotive
 12 of CA, LLC and/or Premier Automotive of Newark, LLC and/or Premier Automotive of
 13 Placentia, LLC and/or Premier Automotive of Stevens Creek, LLC and/or Premier Automotive
 14 of West Covina, LLC (referred to herein as “DEFENDANT”) seeking only to recover PAGA
 15 civil penalties for himself, and on behalf of all current and former aggrieved employees that
 16 worked for DEFENDANT. PLAINTIFF does **not seek to recover anything other than**
 17 **penalties as permitted by California Labor Code § 2699.** To the extent that statutory
 18 violations are mentioned for wage violations, PLAINTIFF does not seek underlying general
 19 and/or special damages for those violations, but simply the civil penalties permitted by California
 20 Labor Code § 2699.

21 2. California has enacted the PAGA to permit an individual to bring an action on
 22 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and sole
 23 nature of this action.

24 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
 25 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
 26 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
 27 complaint should be construed as attempting to obtain any relief that would not be available in
 28

1 a PAGA-only action.

2
3 **THE PARTIES**

4 4. Defendant Premier Automotive of Seaside, LLC is a California Limited Liability
5 Company that at all relevant times mentioned herein conducted and continues to conduct
6 substantial and regular business throughout California.

7 5. Defendant Premier Automotive BCG of Carlsbad LLC is a California Limited
8 Liability Company that at all relevant times mentioned herein conducted and continues to
9 conduct substantial and regular business throughout California.

10 6. Defendant Premier Automotive C of Carlsbad, LLC is a California Limited
11 Liability Company that at all relevant times mentioned herein conducted and continues to
12 conduct substantial and regular business throughout California.

13 7. Defendant Premier Automotive CJDR of Buena Park, LLC is a California Limited
14 Liability Company that at all relevant times mentioned herein conducted and continues to
15 conduct substantial and regular business throughout California.

16 8. Defendant Premier Automotive HCDJ of California, LLC is a California Limited
17 Liability Company that at all relevant times mentioned herein conducted and continues to
18 conduct substantial and regular business throughout California.

19 9. Defendant Premier Automotive Imports of CA, LLC is a California Limited
20 Liability Company that at all relevant times mentioned herein conducted and continues to
21 conduct substantial and regular business throughout California.

22 10. Defendant Premier Automotive K of Carlsbad LLC is a California Limited
23 Liability Company that at all relevant times mentioned herein conducted and continues to
24 conduct substantial and regular business throughout California.

25 11. Defendant Premier Automotive of Buena Park, LLC is a California Limited
26 Liability Company that at all relevant times mentioned herein conducted and continues to
27 conduct substantial and regular business throughout California.

1 12. Defendant Premier Automotive of CA, LLC is a California Limited Liability
2 Company that at all relevant times mentioned herein conducted and continues to conduct
3 substantial and regular business throughout California.

4 13. Defendant Premier Automotive of Newark, LLC is a California Limited Liability
5 Company that at all relevant times mentioned herein conducted and continues to conduct
6 substantial and regular business throughout California.

7 14. Defendant Premier Automotive of Placentia, LLC is a California Limited Liability
8 Company that at all relevant times mentioned herein conducted and continues to conduct
9 substantial and regular business throughout California.

10 15. Defendant Premier Automotive of Stevens Creek, LLC is a California Limited
11 Liability Company that at all relevant times mentioned herein conducted and continues to
12 conduct substantial and regular business throughout California.

13 16. Defendant Premier Automotive of West Covina, LLC is a California Limited
14 Liability Company that at all relevant times mentioned herein conducted and continues to
15 conduct substantial and regular business throughout California.

16 17. DEFENDANT sells new and used cars in California.

17 18. PLAINTIFF alleges there has existed a unity of interest and ownership between
18 Premier Automotive of Seaside, LLC and/or Premier Automotive BCG of Carlsbad LLC and/or
19 Premier Automotive C of Carlsbad, LLC and/or Premier Automotive CJDR of Buena Park, LLC
20 and/or Premier Automotive HCDJ of California, LLC and/or Premier Automotive Imports of
21 CA, LLC and/or Premier Automotive K of Carlsbad LLC and/or Premier Automotive of Buena
22 Park, LLC and/or Premier Automotive of CA, LLC and/or Premier Automotive of Newark, LLC
23 and/or Premier Automotive of Placentia, LLC and/or Premier Automotive of Stevens Creek,
24 LLC and/or Premier Automotive of West Covina, LLC such that any individuality and
25 separateness between the entities has ceased and all Defendants are referred to herein as
26 “DEFENDANT.”

27 19. PLAINTIFF alleges that DOES 1-50 are the partners, agents, owners, or managers
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1 of DEFENDANT at all relevant times. PLAINTIFF alleges there has existed a unity of interest
 2 and ownership between DEFENDANT such that any individuality and separateness between the
 3 entities has ceased. Premier Automotive of Seaside, LLC and/or Premier Automotive BCG of
 4 Carlsbad LLC and/or Premier Automotive C of Carlsbad, LLC and/or Premier Automotive
 5 CJDR of Buena Park, LLC and/or Premier Automotive HCDJ of California, LLC and/or Premier
 6 Automotive Imports of CA, LLC and/or Premier Automotive K of Carlsbad LLC and/or Premier
 7 Automotive of Buena Park, LLC and/or Premier Automotive of CA, LLC and/or Premier
 8 Automotive of Newark, LLC and/or Premier Automotive of Placentia, LLC and/or Premier
 9 Automotive of Stevens Creek, LLC and/or Premier Automotive of West Covina, LLC and DOES
 10 1-50 are therefore alter egos of each other. Adherence to the fiction of the separate existence
 11 of DEFENDANT would permit an abuse of the corporate privilege, and would promote injustice
 12 by protecting DEFENDANT from liability for the wrongful acts committed by them.

13 20. PLAINTIFF further alleges that Defendants are the alter egos of each other for the
 14 following reasons:

15 (A) On the California Secretary of State's website
 16 (<https://businesssearch.sos.ca.gov/>) Premier Automotive of Seaside, LLC
 17 and/or Premier Automotive BCG of Carlsbad LLC and/or Premier
 18 Automotive C of Carlsbad, LLC and/or Premier Automotive CJDR of
 19 Buena Park, LLC and/or Premier Automotive HCDJ of California, LLC
 20 and/or Premier Automotive Imports of CA, LLC and/or Premier
 21 Automotive K of Carlsbad LLC and/or Premier Automotive of Buena Park,
 22 LLC and/or Premier Automotive of CA, LLC and/or Premier Automotive
 23 of Newark, LLC and/or Premier Automotive of Placentia, LLC and/or
 24 Premier Automotive of Stevens Creek, LLC and/or Premier Automotive of
 25 West Covina, LLC have the same entity address and/or mailing address
 26 and/or Agent for Service of Process; and,

27 (B) On information and belief Premier Automotive of Seaside, LLC and/or
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Premier Automotive BCG of Carlsbad LLC and/or Premier Automotive C of Carlsbad, LLC and/or Premier Automotive CJDR of Buena Park, LLC and/or Premier Automotive HCDJ of California, LLC and/or Premier Automotive Imports of CA, LLC and/or Premier Automotive K of Carlsbad LLC and/or Premier Automotive of Buena Park, LLC and/or Premier Automotive of CA, LLC and/or Premier Automotive of Newark, LLC and/or Premier Automotive of Placentia, LLC and/or Premier Automotive of Stevens Creek, LLC and/or Premier Automotive of West Covina, LLC utilize the same standardized employment forms and issue the same employment policies.

21. PLAINTIFF was employed by DEFENDANT in California as a non-exempt employee entitled to overtime pay and meal and rest periods from July of 2020 to December 11, 2020. PLAINTIFF was at all times relevant mentioned herein classified by DEFENDANT as a non-exempt employee paid in whole or in part on an hourly basis and received additional compensation from DEFENDANT in the form of non-discretionary incentive wages.

22. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, brings this Representative Action on behalf of the State of California with respect to himself and all individuals who are or previously were employed by Premier Automotive of Seaside, LLC and/or Premier Automotive BCG of Carlsbad LLC and/or Premier Automotive C of Carlsbad, LLC and/or Premier Automotive CJDR of Buena Park, LLC and/or Premier Automotive HCDJ of California, LLC and/or Premier Automotive Imports of CA, LLC and/or Premier Automotive K of Carlsbad LLC and/or Premier Automotive of Buena Park, LLC and/or Premier Automotive of CA, LLC and/or Premier Automotive of Newark, LLC and/or Premier Automotive of Placentia, LLC and/or Premier Automotive of Stevens Creek, LLC and/or Premier Automotive of West Covina, LLC in California and who were classified as non exempt employees (“AGGRIEVED EMPLOYEES”) during the time period of August 6, 2020 until a

1 date as determined by the Court (the "PAGA PERIOD").

2 23. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
3 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
4 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
5 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 351,
6 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title
7 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s). Based upon the
8 foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within
9 the meaning of Labor Code § 2699, *et seq.*

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

19 25. The agents, servants and/or employees of the Defendants and each of them acting
20 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
21 agent, servant and/or employee of the Defendants, and personally participated in the conduct
22 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
23 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
24 Defendants are jointly and severally liable to PLAINTIFF and the AGGRIEVED EMPLOYEES,
25 for the loss sustained as a proximate result of the conduct of the Defendants' agents, servants
26 and/or employees.

THE CONDUCT

26. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked, meaning the time during which an employee was subject to the control of an employer, including all the time the employee was permitted or suffered to permit this work. DEFENDANT required these employees to work off the clock without paying them for all the time they were under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work assignments. PLAINTIFF and other AGGRIEVED EMPLOYEES also worked off the clock with respect to time spent undergoing mandatory drug testing or any other testing and/or examination required as a condition of employment. Also, DEFENDANT, as a matter of established company policy and procedure, administered a uniform practice of rounding the actual time worked and recorded by PLAINTIFF and other AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANT, so that during the course of their employment, PLAINTIFF and other AGGRIEVED EMPLOYEES were paid less than they would have been paid had they been paid for actual recorded time rather than "rounded" time. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum wage and overtime compensation by working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. To the extent that the time worked off the clock did not qualify for overtime premium payment, DEFENDANT failed to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1. Further, PLAINTIFF and other AGGRIEVED EMPLOYEES from time to time were not paid wages for all time worked, including overtime wages, such that in the aggregate employees were underpaid wages as a result of DEFENDANT's pattern and practice of unevenly rounding time worked by its

1 employees.

2 27. State law provides that employees must be paid overtime and meal and rest break
3 premiums at one-and-one-half times their “regular rate of pay.” PLAINTIFF and other
4 AGGRIEVED EMPLOYEES were compensated at an hourly rate plus incentive pay that was
5 tied to specific elements of an employee’s performance.

6 28. The second component of PLAINTIFF’s and other AGGRIEVED EMPLOYEES’
7 compensation was DEFENDANT’s non-discretionary incentive program that paid PLAINTIFF
8 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
9 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
10 hourly basis with incentive compensation when the employees met the various performance
11 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
12 overtime and meal and rest break premiums to PLAINTIFF and other AGGRIEVED
13 EMPLOYEES, DEFENDANT failed to include the incentive compensation as part of the
14 employees’ “regular rate of pay” for purposes of calculating overtime pa and meal and rest break
15 premium pay. Management and supervisors described the incentive program to potential and
16 new employees as part of the compensation package. As a matter of law, the incentive
17 compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must be included
18 in the “regular rate of pay.” DEFENDANT also underpaid meal and rest break penalties and
19 sick pay wages to PLAINTIFF and other AGGRIEVED EMPLOYEES by failing to pay such
20 wages at the regular rate of pay. Specifically, PLAINTIFF and other non-exempt employees
21 regularly earn non-discretionary remuneration, including but not limited to, incentives, shift
22 differential pay, and bonuses. Rather than pay meal and rest break penalties and sick pay at the
23 regular rate of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other AGGRIEVED
24 EMPLOYEES at their base rates of pay. The failure to do so has resulted in a systematic
25 underpayment of compensation to PLAINTIFF and other AGGRIEVED EMPLOYEES by
26 DEFENDANT.

27 29. In violation of the applicable sections of the California Labor Code and the
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1 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT
2 intentionally and knowingly failed to compensate PLAINTIFF and the other AGGRIEVED
3 EMPLOYEES at the correct rate of pay for all overtime worked. This policy and practice of
4 DEFENDANT is intended to purposefully avoid the payment of the correct overtime
5 compensation as required by California law which allowed DEFENDANT to illegally profit and
6 gain an unfair advantage over competitors who complied with the law. To the extent equitable
7 tolling operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the
8 PAGA PERIOD should be adjusted accordingly.

9 30. As a result of their rigorous work schedules, PLAINTIFF and other
10 AGGRIEVED EMPLOYEES were from time to time unable to take off duty meal breaks and
11 were not fully relieved of duty for meal periods. PLAINTIFF and other AGGRIEVED
12 EMPLOYEES were from time to time required to perform work as ordered by DEFENDANT
13 for more than five (5) hours during a shift without receiving an off-duty meal break. Further,
14 DEFENDANT failed to provide PLAINTIFF and other AGGRIEVED EMPLOYEES with a
15 second off-duty meal period from time to time in which these employees were required by
16 DEFENDANT to work ten (10) hours of work. PLAINTIFF and the other AGGRIEVED
17 EMPLOYEES therefore forfeited meal breaks without additional compensation and in
18 accordance with DEFENDANT's corporate policy and practice.

19 31. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
20 were from time to time also required to work in excess of four (4) hours without being provided
21 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
22 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and
23 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and
24 eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some
25 shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other
26 AGGRIEVED EMPLOYEES were also not provided with one hour wages in lieu thereof. As
27 a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED EMPLOYEES
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1 were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's
2 managers. Additionally, the applicable California Wage Order requires employers to provide
3 employees with off-duty rest periods, which the California Supreme Court defined as time
4 during which an employee is relieved from all work related duties and free from employer
5 control. In so doing, the Court held that the requirement under California law that employers
6 authorize and permit all employees to take rest period means that employers must relieve
7 employees of all duties and relinquish control over how employees spend their time which
8 includes control over the locations where employees may take their rest period. Employers
9 cannot impose controls that prohibit an employee from taking a brief walk - five minutes out,
10 five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and other
11 AGGRIEVED EMPLOYEES from unconstrained walks and was unlawful based on
12 Defendant's rule which stated PLAINTIFF and other AGGRIEVED EMPLOYEES could not
13 leave the work premises during their rest period.

14 32. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
15 employees with an accurate itemized wage statement in writing showing, among other things,
16 gross wages earned and all applicable hourly rates in effect during the pay period and the
17 corresponding amount of time worked at each hourly rate. DEFENDANT from time to time
18 failed to provide to PLAINTIFF and other AGGRIEVED EMPLOYEES wage statements that
19 identify the correct gross and net wages earned, the applicable number of hours worked and
20 rates of pay. PLAINTIFF and other AGGRIEVED EMPLOYEES were paid on an hourly basis.
21 As such, the wage statements should reflect all applicable hourly rates during the pay period and
22 the total hours worked, and the applicable pay period in which the wages were earned pursuant
23 to California Labor Code Section 226(a). The wage statements DEFENDANT provided to
24 PLAINTIFF and other AGGRIEVED EMPLOYEES failed to identify such information. More
25 specifically, the wage statements failed to identify the accurate total hours worked each pay
26 period in violation of Cal. Lab. Code Section 226(a)(2). When the hours shown on the wage
27 statements were added up, they did not equal the actual total hours worked during the pay
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1 period. Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue
2 to PLAINTIFF and other AGGRIEVED EMPLOYEES an itemized wage statement that lists
3 all the requirements under California Labor Code 226 *et seq.*

4 33. DEFENDANT underpaid sick pay wages to PLAINTIFF and other AGGRIEVED
5 EMPLOYEES by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.
6 Code Section 246. Specifically, PLAINTIFF and other non-exempt employees earned non-
7 discretionary remuneration, including but not limited to, incentives and bonuses. Rather than
8 pay sick pay at the regular rate of pay, DEFENDANT underpaid sick pay to PLAINTIFF and
9 other AGGRIEVED EMPLOYEES at their base rates of pay.

10 34. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
11 employees be calculated by dividing the employee's total wages, not including overtime
12 premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days
13 of employment.

14 35. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at
15 the regular rate of pay. PLAINTIFF and the AGGRIEVED EMPLOYEES routinely earned non-
16 discretionary incentive wages, including but not limited to, incentives and bonuses, which
17 increased their regular rate of pay. However, when sick pay was paid, it was paid at the base
18 rate of pay for PLAINTIFF and the AGGRIEVED EMPLOYEES, as opposed to the correct,
19 higher regular rate of pay, as required under Cal. Lab. Code Section 246.

20 36. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and
21 other AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time
22 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes
23 and based thereon alleges that such failure to pay sick pay at regular rate was willful, such that
24 PLAINTIFF and the AGGRIEVED EMPLOYEES whose employment has separated are
25 entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

26 37. Cal. Lab. Code § 204 provides that "[a]ll wages. . . earned by any person in any
27 employment are due and payable twice during each calendar month, on days designated in
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1 advance by the employer as the regular paydays.” Further, Cal. Lab. Code § 204(d) expressly
2 requires employers to pay employees all wages owed within seven (7) days of the close of the
3 payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other
4 AGGRIEVED EMPLOYEES all wages owed to them within seven (7) days of the close of the
5 payroll period.

6 38. Pursuant to Cal. Lab. Code Section 221, “It shall be unlawful for any employer
7 to collect or receive from an employee any part of wages theretofore paid by said employer to
8 said employee.” DEFENDANT made unlawful deductions from compensation payable to
9 PLAINTIFF and other AGGRIEVED EMPLOYEES, failed to disclose all aspects of the
10 deductions from compensation payable to PLAINTIFF and other AGGRIEVED EMPLOYEES,
11 and thereby failed to pay these employees all wages due at each applicable pay period and upon
12 termination.

13 39. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
14 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
15 incurred by the PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
16 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
17 2802, employers are required to indemnify employees for all expenses incurred in the course
18 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
19 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
20 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
21 directions of the employer, even though unlawful, unless the employee, at the time of obeying
22 the directions, believed them to be unlawful."

23 40. In the course of their employment PLAINTIFF and other AGGRIEVED
24 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
25 cellular phones as a result of and in furtherance of their job duties as employees for
26 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
27 associated with the use of their personal cellular phones for DEFENDANT’s benefit. As a
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1 result, in the course of their employment with DEFENDANT, PLAINTIFF and other
2 AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which included, but
3 were not limited to, costs related to the use of their personal cellular phones all on behalf of and
4 for the benefit of DEFENDANT.

5 41. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
6 EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure which failed
7 to accurately calculate and record the correct overtime rate for the overtime worked by
8 PLAINTIFF and other AGGRIEVED EMPLOYEES. The proper calculation of these
9 employees' overtime hour rates is the DEFENDANT's burden. As a result of DEFENDANT's
10 intentional disregard of the obligation to meet this burden, DEFENDANT failed to properly
11 calculate and/or pay all required overtime compensation for work performed by the
12 AGGRIEVED EMPLOYEES and violated the California Labor Code and regulations
13 promulgated thereunder as herein alleged.

14 42. All of the conduct and violations alleged herein occurred during the PAGA
15 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
16 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
17 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
18 AJDAR 12157 (Certified for Publication 12/19/18).

19
20 **JURISDICTION AND VENUE**

21 43. This Court has jurisdiction over this Action pursuant to California Code of Civil
22 Procedure, Section 410.10.

23 44. Venue is proper in this Court pursuant to California Code of Civil Procedure,
24 Sections 395 and 395.5, because DEFENDANT (i) currently maintains and at all relevant times
25 maintained offices and facilities in this County and/or conducts substantial business in this
26 County, and (ii) committed the wrongful conduct herein alleged in this County against
27 PLAINTIFF and other AGGRIEVED EMPLOYEES.

FIRST CAUSE OF ACTION

For Violation of the Private Attorneys General Act

[Cal. Lab. Code §§ 2698, *et seq.*]

(By PLAINTIFF and Against All Defendants)

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

46. PAGA is a mechanism by which the State of California itself can enforce state labor laws through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law enforcement action designed to protect the public and not to benefit private parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general to recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be subject to arbitration.

47. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, brings this Representative Action on behalf of the State of California with respect to himself and all individuals who are or previously were employed by Premier Automotive of Seaside, LLC and/or Premier Automotive BCG of Carlsbad LLC and/or Premier Automotive C of Carlsbad, LLC and/or Premier Automotive CJDR of Buena Park, LLC and/or Premier Automotive HCDJ of California, LLC and/or Premier Automotive Imports of CA, LLC and/or Premier Automotive K of Carlsbad LLC and/or Premier Automotive of Buena Park, LLC and/or Premier Automotive of CA, LLC and/or Premier Automotive of Newark, LLC and/or Premier Automotive of Placentia, LLC and/or Premier Automotive of Stevens Creek, LLC and/or Premier Automotive of West Covina,

1 LLC in California and who were classified as non exempt employees (“AGGRIEVED
2 EMPLOYEES”) during the time period of August 6, 2020 until a date as determined by the
3 Court (the "PAGA PERIOD").

4 48. On August 6, 2021, PLAINTIFF gave written notice by electronic mail to the
5 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
6 employer of the specific provisions of this code alleged to have been violated as required by
7 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations
8 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may
9 now commence a representative civil action under PAGA pursuant to Section 2699 as the
10 proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein
11 defined.

12 49. The policies, acts and practices heretofore described were and are an unlawful
13 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
14 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
15 properly record and provide legally required meal and rest periods, (c) failed to pay
16 minimum wages, (d) failed to pay overtime wages and sick pay wages, (e) failed to
17 reimburse employees for required expenses, and (f) failed to provide wages when due, all in
18 violation of the applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204
19 *et seq.*, 210, 221, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198,
20 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the
21 applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such
22 conduct.¹ PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by the
23 Labor Code Private Attorney General Act of 2004 as the representative of the State of
24 California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
25 EMPLOYEES.

26
27 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).

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

A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004; and,

B) An award of attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §2699.

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