

FINEMAN POLINER LLP

Phillip R. Poliner – SBN 156145

Phillip@FinemanPoliner.com

Neil B. Fineman – SBN 177915

Neil@FinemanPoliner.com

155 North Riverview Drive

Anaheim Hills, California 92808-1225

Telephone: (714) 620-1125

Facsimile: (714) 701-0155

OLIVIER & SCHREIBER LLP

Monique Olivier – SBN 190385

monique@os-legal.com

475 14th Street, Suite 250

Oakland, CA 94612

Telephone: (415) 484-0980

Facsimile: (415) 658-7758

Rachel Bien – SBN 315886

rachel@os-legal.com

128 N. Fair Oaks Ave.

Pasadena, CA 91103

Telephone: (323) 325-3430

Facsimile: (415) 658-7758

Attorneys for Plaintiffs,

MARTIN NEDER and FABIAN OCHOA

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF VENTURA

MARTIN NEDER and FABIAN OCHOA, on
behalf of themselves and Aggrieved
Employees,

Plaintiffs,

v.

SILVER STAR THOUSAND OAKS, INC.,
SILVER STAR JLR, INC., SILVER STAR
MOTOR COMPANY, THOUSAND OAKS
IMPORTS, TOPA MOTORS, INC., and
DOES 1 through 100,

Defendants.

Case No.:

COMPLAINT FOR:

**PRIVATE ATTORNEYS GENERAL
ACT [Cal. Labor Code § 2966 et seq.]**

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 All allegations made in this Complaint are based upon information and belief, except those
3 allegations which pertain to MARTIN NEDER and FABIAN OCHOA (“Plaintiffs”) and Plaintiffs’
4 counsel, which are based on personal knowledge. Plaintiffs’ information and belief are based upon,
5 *inter alia*, Plaintiffs’ own investigation and the investigation conducted by Plaintiffs’ attorneys.

6 Plaintiffs hereby allege:

7 **INTRODUCTION**

8 1. This case alleges that SILVER STAR THOUSAND OAKS, INC., SILVER STAR
9 JLR, INC., SILVER STAR MOTOR COMPANY, THOUSAND OAKS IMPORTS, TOPA
10 MOTORS, INC. and DOES 1 through 100 (“Defendants”) failed to properly pay Plaintiffs and their
11 commissioned salespeople (“Aggrieved Employees”) by miscalculating their regular rate of pay for
12 purposes of paying them overtime, sick leave pay, and meal break premiums under California law.

13 2. On behalf of Aggrieved Employees and the State of California, Plaintiffs, as Private
14 Attorneys General Act (“PAGA”) representatives, seek civil penalties for the above-referenced
15 violations during the relevant period.

16 **JURISDICTION AND VENUE**

17 3. The Court has jurisdiction over Plaintiffs’ claims under the California Labor Code.

18 4. The Court has personal jurisdiction over Defendants because each conducts
19 substantial business activity in California and engaged in the unlawful acts described herein in
20 California.

21 5. Venue is proper in this county because events and omissions giving rise to the claims
22 alleged herein occurred in this county.

23 6. Notice of the PAGA claims alleged herein was provided to the California Labor &
24 Workforce Development Agency (“LWDA”) and Defendants by Plaintiffs’ counsel on July 22 and
25 October 7, 2022. The LWDA did not take action with regard to any of the claims during the
26 requisite notice periods.

27 **THE PARTIES**

28 7. Plaintiffs were salespeople at dealerships owned by Defendants.

8. Plaintiff Neder worked for Defendants between approximately September 5, 2019 and approximately November 10, 2021.

9. Plaintiff Ochoa worked for Defendants between approximately May 2010 and October 18, 2021.

10. Defendants are all California corporations that maintain their principal place of business in Los Angeles, California.

11. Defendants' business involves selling automobiles.

12. Defendants have been engaged in this business for at least the last four years.

13. Plaintiffs are currently unaware of the true names and capacities of the Defendants sued in this action by the fictitious names DOES 1 through 100, inclusive, and therefore sue those Defendants by fictitious names. Plaintiffs shall seek leave to amend the Complaint to allege the true names and capacities of such fictitiously named Defendants when they are ascertained.

14. Plaintiffs are informed and believe, and based thereon allege, that each Defendant sued in this action acts and acted, in all respects pertinent to this action, as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and that the acts of each Defendant are legally attributable to the other Defendants.

15. Plaintiffs are informed and believe, and based thereon allege, that each Defendant sued in this action, including each Defendant sued by the fictitious names DOES 1 through 100, inclusive, is directly or indirectly responsible in some manner for the occurrences, controversies, and violations alleged herein, in various capacities, including but not limited to serving as joint employer, joint tortfeasor, single enterprise, alter ego, or agent of the other Defendants. Each Defendant approved, participated in, controlled, or ratified the acts of all other Defendants.

LABOR CODE VIOLATIONS

16. Defendants employ or employed Plaintiffs and Aggrieved Employees as car salespeople at their dealerships in Thousand Oaks, California.

17. Pursuant to their policy and practice, during the relevant period, Defendants failed to include all of the compensation earned by Plaintiffs and Aggrieved Employees, including bonuses, commissions, and/or meal break premiums, in calculating their regular rate of pay.

1 18. During the relevant period, pursuant to Defendants' policy or practice, Defendants
2 paid Plaintiffs and Aggrieved Employees sick leave pay at a rate that was less than the regular rate
3 of pay.

4 19. As a result of these policies and practices, Defendants failed to provide Plaintiffs
5 and Aggrieved Employees with accurate wage statements, all wages due at regular paydays, and all
6 wages due upon their separation or termination from employment.

7 **CAUSE OF ACTION**
8 **VIOLATION OF PAGA**
 (Cal. Lab. Code §§ 2699 et seq.)
 [Against All Defendants]

9 20. Plaintiffs refer to and incorporate by reference each and every paragraph above as
10 though set forth fully herein.

11 21. At all relevant times, Defendants have been an employers, and Plaintiffs and
12 Aggrieved Employees were employees under California law entitled to the protections of the
13 California Labor Code.

14 22. The foregoing conduct, as alleged, constitutes violations of California Labor Code
15 §§ 201-204, 210, 226, 226.3, 226.7, 246, 510, 512, 558, 1174, 1174.5, 1194, 2810.5, and Wage
16 Order 7.

17 23. Plaintiffs, on behalf of the State of California and Aggrieved Employees, seek to
18 recover the appropriate civil penalties set out in Labor Code §§ 558 and 2699 and attorneys' fees
19 and costs.

20 **PRAYER FOR RELIEF**

21 **WHEREFORE**, Plaintiffs pray that the Court award relief as follows:

22 1. Civil penalties for Plaintiffs, Aggrieved Employees, and the State of California,
23 according to proof;

24 2. Attorneys' fees and costs pursuant to, *inter alia*, California Labor Code section
25 2699, and California Code of Civil Procedure section 1021.5;

26 3. Service awards for Plaintiffs in recognition of their services to as PAGA
27 representatives;

28 4. A determination that Plaintiffs are the prevailing parties; and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5. Any other and further relief the Court may deem proper.

Dated: January 11, 2023

OLIVIER & SCHREIBER LLP



Rachel Bien
Monique Olivier

FINEMAN POLINER LLP
Phillip R. Poliner
Neil B. Fineman

Attorneys for Plaintiffs and Aggrieved Employees