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

SAMUEL SINGH, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

WEST COVINA AUTO RETAIL, INC.;
and DOES 1 through 50, inclusive,

Defendants.

Case No.: **21STCV28584**

**REPRESENTATIVE ACTION COMPLAINT
FOR VIOLATION OF LABOR CODE § 2698,
ET SEQ**

DEMAND OVER \$25,000.00

1 Plaintiff Samuel Singh (“Plaintiff”), hereby submits this Representative Action
2 Complaint against Defendant West Covina Auto Retail, Inc. (“Defendant”) and Does 1-50
3 (hereinafter collectively referred to as “Defendants”), on behalf of himself and other aggrieved
4 employees of Defendant, for penalties pursuant to the Private Attorneys General Act (“PAGA”)
5 for Defendant’s violations of the California Labor Code, as follows:

6 **INTRODUCTION**

7 1. This representative action is within the Court’s jurisdiction under California
8 Labor Code sections 201, 202, 203, 204, 218, 226, 226.7, 256, 510, 512, 1174, 1194, 1197,
9 1197.1, 1198, 1199(c), 2698 *et seq.*, 2751, 2802 and 2804, and the California Industrial Welfare
10 Commission’s (“IWC”) Wage Orders.

11 2. This Complaint challenges systemic illegal employment practices resulting in
12 violations of the California Labor Code against employees of Defendant.

13 3. Plaintiff is informed and believes and based thereon alleges that Defendants
14 jointly and severally have acted intentionally and with deliberate indifference and conscious
15 disregard to the rights of all employees by: a) requiring employees to submit to drug screenings
16 before reporting to work, without compensation; b) failing to properly calculate the regular rate
17 of pay for purposes of paying overtime wages; c) failing to provide timely and uninterrupted
18 meal and rest periods; d) failing to properly calculate the regular rate of pay for purposes of
19 paying premium wages for missed meal and rest periods; e) failing to provide employees with
20 written commission agreements; f) failing to reimburse employees for all work related expenses;
21 g) failing to provide accurate itemized wage statements; h) failing to pay all final wages upon
22 separation of employment; and i) failing to accurately record employees’ hours worked.

23 4. Plaintiff is informed and believes and based thereon alleges that Defendants have
24 engaged in, among other things a system of willful violations of the California Labor Code and
25 applicable IWC Wage Orders by creating and maintaining policies, practices and customs that
26 knowingly deny employees the above stated rights and benefits.

27 **JURISDICTION AND VENUE**

28 5. The Court has jurisdiction over the violations of the California Labor Code

sections 201, 202, 203, 204, 218, 226, 226.7, 256, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 1199(c), 2698 *et seq.*, 2751, 2802 and 2804.

6. Venue is proper in Los Angeles County because Defendant maintains operations in West Covina, California.

PARTIES

7. Plaintiff is a former non-exempt employee of Defendant. Plaintiff's employment with Defendant ended on or about December 11, 2020.

8. Plaintiff was and is the victim of the policies, practices, and customs of Defendant complained of in this action in ways that have deprived him of the rights guaranteed by California Labor Code sections 201, 202, 203, 204, 218, 226, 226.7, 256, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 1199(c), 2698 *et seq.*, 2751, 2802 and 2804, and the applicable IWC Wage Orders.

9. Plaintiff is informed and believes and based thereon alleges that Defendant West Covina Auto Retail, Inc. was and is a California corporation that does business in California, including in Los Angeles County.

10. Plaintiff is informed and believes and based thereon alleges that at all times herein mentioned Defendant and Does 1 through 50 are and were business entities, individuals, and partnerships, licensed to do business and actually doing business in the State of California.

11. As such, and based upon all the facts and circumstances incident to Defendants' business in California, Defendants are subject to California Labor Code sections 201, 202, 203, 204, 218, 226, 226.7, 256, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 1199(c), 2698 *et seq.*, 2751, 2802 and 2804, and the applicable IWC Wage Orders.

12. Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this complaint when the true names and capacities are known. Plaintiff is informed and believes and based thereon alleges that each of said fictitious defendants were responsible in some way for the matters alleged herein and proximately caused Plaintiff and other aggrieved employees to be

1 subject to the illegal employment practices, wrongs and injuries complained of herein.

2 13. At all times herein mentioned, each of said Defendants participated in the doing
3 of the acts hereinafter alleged to have been done by the named Defendant; and furthermore, the
4 Defendants, and each of them, were the agents, servants and employees of each of the other
5 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
6 acting within the course and scope of said agency and employment.

7 14. Plaintiff is informed and believes and based thereon alleges that at all times
8 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
9 joint venturer of, or working in concert with each of the other co-defendants and was acting
10 within the course and scope of such agency, employment, joint venture, or concerted activity.
11 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of
12 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
13 Defendants.

14 15. At all times herein mentioned, Defendants, and each of them, were members of,
15 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
16 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

17 16. At all times herein mentioned, the acts and omissions of various Defendants, and
18 each of them, concurred and contributed to the various acts and omissions of each and all of the
19 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
20 herein mentioned, Defendants, and each of them, ratified each and every act or omission
21 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided
22 and abetted the acts and omissions of each and all of the other Defendants in proximately causing
23 the damages as herein alleged.

24 **FIRST CAUSE OF ACTION**

25 **VIOLATION OF LABOR CODE § 2698 ET SEQ.**

26 **(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)**

27 17. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
28 though fully set forth herein.

1 18. Plaintiff brings this cause of action for violation of the Private Attorneys General
2 Act, as a proxy for the State of California and in this capacity, seeks penalties on behalf of all
3 Aggrieved Employees from June 3, 2020, through the present for Defendant's violations of
4 Labor Code sections 201, 202, 203, 204, 218, 226, 226.7, 256, 510, 512, 1174, 1194, 1197,
5 1197.1, 1198, 1199(c), 2698 *et seq.*, 2751, 2802 and 2804, arising from Defendant's policy and
6 practice of: a) requiring employees to submit to drug screenings before reporting to work,
7 without compensation; b) failing to properly calculate the regular rate of pay for purposes of
8 paying overtime wages; c) failing to provide timely and uninterrupted meal and rest periods; d)
9 failing to properly calculate the regular rate of pay for purposes of paying premium wages for
10 missed meal and rest periods; e) failing to provide employees with written commission
11 agreements; f) failing to reimburse employees for all work related expenses; g) failing to provide
12 accurate itemized wage statements; h) failing to pay all final wages upon separation of
13 employment; and i) failing to accurately record employees' hours worked.

14 19. Defendant did not pay Plaintiff and other Aggrieved Employees for all hours
15 worked, in violation of Labor Code sections 510, 1194, 1197 and 1198. Defendant required
16 employees to submit to off-the-clock drug screenings before reporting to work, but, as a matter
17 of practice and policy, did not pay employees for the time spent going through the mandatory
18 screening. Plaintiff alleges that he and other Aggrieved Employees remained under the control of
19 Defendant during the screening process.

20 20. Defendant, as a matter of policy and practice, failed to pay Aggrieved Employees
21 overtime pay at the correct regular rate of pay, in violation of Labor Code sections 510, 558 and
22 1194. Non-exempt Aggrieved Employees earned non-discretionary incentive pay and/or bonuses
23 and overtime wages during the same work week. For the purpose of determining the applicable
24 overtime rate, Defendant failed to include all non-discretionary remuneration in the calculation
25 of the employee's regular rate of pay. Thus, when Non-exempt Aggrieved Employees worked
26 overtime and earned non-discretionary pay in the same workweek, the employees were paid
27 overtime based on a lower, base rate that did not take into account additional items of non-
28 discretionary remuneration.

1 21. Defendant violated Labor Code sections 226.7 and 512. Defendant failed in its
2 affirmative obligation to ensure that Plaintiff and other non-exempt Aggrieved Employees had
3 the opportunity to take and were provided with off-duty 10-minute rest periods and a thirty (30)
4 minute uninterrupted duty-free meal period within five (5) hours of the beginning of their shift.
5 Specifically, because of staffing issues, Defendant required employees to respond to customer
6 and other work-related issues that caused rest periods and meal breaks to be missed, taken in an
7 untimely manner, and/or to be interrupted.

8 22. Defendant is responsible for paying premium compensation for missed,
9 interrupted and untimely meal and rest periods pursuant to Labor Code section 226.7 and the
10 applicable IWC Wage Order. Specifically, Labor Code section 226.7(c) states that “the employer
11 shall pay the employee one additional hour of pay at the employee’s regular rate of
12 compensation for each workday that the meal or rest or recovery period is not provided.”
13 Defendant, as a matter of corporate policy and procedure, regularly failed to pay such premium
14 compensation at the correct regular rate. For the purpose of calculating the premium
15 compensation, Defendant failed to include non-discretionary incentive pay and/or bonuses in the
16 calculation of the regular rate. Thus, when Plaintiff and other non-exempt Aggrieved Employees
17 received meal/rest period premium compensation and earned non-discretionary incentive pay
18 and/or bonuses in the same workweek, the employees were paid a meal/rest period premium
19 based on a lower, base rate that failed to take into account additional items of non-discretionary
20 remuneration.

21 23. Defendant also failed in its affirmative obligation to provide accurate itemized
22 wage statements, in violation of Labor Code section 226(a). The wage statements provided to
23 Plaintiff and other non-exempt Aggrieved Employees, should have reflected all applicable hourly
24 rates in effect during the pay period, the corresponding number of hours worked at each hourly
25 rate, total hours worked, and net and gross wages earned. However, as a result of the
26 underpayment and/or nonpayment of wages, including overtime and meal/rest period premium
27 pay, the wage statements provided to Plaintiff and non-exempt Aggrieved Employees identified
28 incorrect wage rates, total hours worked, and net and gross wages earned. In addition, when

1 Plaintiff and Aggrieved Employees received payment for hourly wages, the corresponding wage
2 statement did not identify the applicable rate of pay, the applicable number of hours worked
3 and/or the total hours worked.

4 24. Defendant paid Plaintiff and other Aggrieved Employees commission wages. As a
5 matter of corporate policy, Defendant failed to provide employees with written commission
6 agreements that specified the terms and conditions of the commission payments, in violation of
7 Labor Code section 2751.

8 25. Defendant regularly failed to reimburse and indemnify Plaintiff and Aggrieved
9 Employees for business expenses necessary for the discharge of their duties, in violation of
10 Labor Code section 2802. Specifically, Defendant failed to pay employees for work-related
11 expenses, including without limitation, the costs incurred with the use of personal cell phones.
12 Defendant also failed to reimburse employees for gas and mileage expenses from travel related
13 to mandatory drug tests.

14 26. Defendant violated Labor Code sections 201 and 202. As a matter of corporate
15 policy and practice, Defendant does not automatically pay final wages upon the separation of
16 employment to Aggrieved Employees. For Aggrieved Employees who separate in the middle of
17 a payroll cycle, Defendant delays the payment of final wages to the next regular payday. For
18 example, Plaintiff's employment ended on or about December 11, 2020. However, Plaintiff was
19 paid a portion of his final wages on December 21, 2020.

20 27. Moreover, to date, Defendant has not paid Plaintiff commissions and accrued paid
21 time off that is indisputably owed. Plaintiff is informed and believes that Defendant similarly has
22 failed to pay other separated Aggrieved Employees commissions and accrued paid time off that
23 is indisputably owed.

24 28. Furthermore, as a result of the underpayment and/or nonpayment of wages,
25 including overtime and meal/rest period premium pay, Defendant failed to pay Plaintiff and
26 Aggrieved Employees, whose employment was separated for any reason (voluntary or
27 involuntary), all wages due and owing upon the separation of employment.

28 29. On or about June 3, 2021, Plaintiff sent written notice to the California Labor &

1 Workforce Development Agency (“LWDA”) of Defendant’s violations of Labor Code sections
2 201, 202, 203, 204, 218, 226, 226.7, 256, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 1199(c),
3 2698 *et seq.*, 2751, 2802 and 2804, pursuant to Labor Code section 2698, *et seq.* To date, the
4 LWDA has not responded to Plaintiff’s written notice.

5 30. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any
6 and all applicable civil penalties for Defendant’s violation of Labor Code sections 201, 202, 203,
7 204, 218, 226, 226.7, 256, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 1199(c), 2698 *et seq.*,
8 2751, 2802 and 2804, for the time period described above, on behalf of himself and other
9 Aggrieved Employees.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for judgment as an individual and on behalf of all others
12 that this suit is brought against Defendants, jointly and severally, as follows:

- 13 1. Upon the First Cause of Action, for civil penalties according to proof pursuant to Labor
14 Code section 2698 *et seq.*, and for costs and attorneys’ fees;
15 2. On all causes of action for attorneys’ fees and costs as provided by California Labor
16 Code section 2699, and Code of Civil Procedure section 1021.5; and
17 3. For such other and further relief the Court may deem just and proper.

18
19 DATED: August 3, 2021

DIVERSITY LAW GROUP, P.C.

20
21 By: 

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22 Attorneys for Plaintiff and the Aggrieved
23 Employees
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