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of himself and others similarly situated

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF MERCED**

CRAIG KITNICK, ROBERTO FRAIRE, AND  
PATRICIA YANCY, on behalf of themselves  
and others similarly situated,

Plaintiffs,

v.

GROUP 1 AUTOMOTIVE, INC., a Delaware  
corporation; GPI CA-DMII, INC., a Delaware  
corporation; GPI CA-TII, INC., a Delaware  
corporation; GPI CA-SV, INC., a Delaware  
corporation; MILLER-DM, INC., a Delaware  
corporation; and DOES 1 through 100,  
inclusive,

Defendants.

FILED

2023 DEC 20 PM 2: 52

CLERK OF THE SUPERIOR COURT  
*[Signature]*  
DEPUTY

Case No.: 22CV-00793

Assigned for all purposes to:  
Hon. Brian McCabe, Dept. 8

**CLASS ACTION**

**~~PROPOSED~~ ORDER GRANTING  
PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
AND REPRESENTATIVE ACTION  
SETTLEMENT**

Preliminary Approval Hearing  
Date: December 20, 2023  
Time: 8:15 a.m.  
Dept.: 8

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1 Plaintiffs Craig Kitnick, Roberto Fraire, and Patricia Yancy’s (“Plaintiffs”) Motion for  
2 Preliminary Approval of Class and Representative Action Settlement (“Motion”), requesting  
3 preliminary approval of the settlement entered into with Defendants Group 1 Automotive, Inc., GPI  
4 CA-DMII, Inc., GPI CA-TII, Inc., GPI CA-SV, Inc., and Miller-DM, Inc. (“Defendants”; Plaintiffs  
5 and Defendants are collectively referred to herein as “Parties”), came on for hearing before the  
6 Honorable Brian L. McCabe in Department 8 of the Superior Court of the State of California for the  
7 County of Merced, on December 20, 2023 at 8:15 a.m. CounselOne, PC, James Hawkins, APLC,  
8 and Otkupman Law Firm, respectively, appeared for Plaintiffs, individually and on behalf of all  
9 others similarly situated, and Fisher & Phillips LLP appeared as counsel for Defendants.

10 The Court, having carefully considered the papers, argument of counsel, and all matters  
11 presented to the Court, and good cause appearing, hereby the Motion, as follows:

12 **IT IS HEREBY ORDERED THAT:**

13 1. The Court preliminarily approves the Class Action and PAGA Settlement Agreement  
14 and the Amendment to the Class Action and PAGA Settlement Agreement (together, “Settlement  
15 Agreement”), attached as **EXHIBIT A** to the Declaration of Anthony J. Orshansky in Support of  
16 Plaintiffs’ Motion for Preliminary Approval of Class and Representative Action Settlement. This is  
17 based on the Court’s determination that the settlement falls within the range of possible approval as  
18 fair, adequate, and reasonable.

19 2. This Order incorporates by reference the definitions in the Settlement Agreement,  
20 and all capitalized terms defined therein shall have the same meaning in this Order as set forth in the  
21 Settlement Agreement.

22 3. It appears to the Court on a preliminary basis that the settlement is fair, adequate and  
23 reasonable. It appears to the Court that extensive investigation and research have been conducted  
24 such that counsel for the Parties at this time are able to reasonably evaluate their respective positions.  
25 Additionally, it appears to the Court that the settlement, at this time, will avoid substantial additional  
26 costs by all Parties, as well as avoid the delay and risks that would be presented by the further  
27 prosecution of the case. It further appears that the settlement has been reached as the result of  
28 intensive, serious and non-collusive, arms-length negotiations, and was entered into in good faith.

1           4.       The Court preliminarily finds that the settlement, including the allocations for the  
2 Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative  
3 Service Payments, PAGA Penalties Payment, Settlement Administrator Expenses Payment, and  
4 payments to Settlement Class Members and PAGA Group Members provided thereby appear to be  
5 within the range of reasonableness of a settlement that could ultimately be given final approval by  
6 this Court. Indeed, the Court has reviewed the monetary recovery that is being granted as part of the  
7 settlement and preliminarily finds that the monetary settlement awards made available to Settlement  
8 Class Members and PAGA Group Members are fair, adequate, and reasonable when balanced  
9 against the probable outcome of further litigation relating to certification, liability, and damages  
10 issues.

11           5.       The Court concludes that, for settlement purposes only, the proposed Class meets the  
12 requirements for certification under section 382 of the California Code of Civil Procedure in that:  
13 (a) the Class is ascertainable and so numerous that joinder of all members of the Class is  
14 impracticable; (b) common questions of law and fact predominate, and there is a well-defined  
15 community of interest amongst the members of the Class with respect to the subject matter of the  
16 litigation; (c) Plaintiffs' claims are typical of the claims of the members of the Class; (d) Plaintiffs  
17 will fairly and adequately protect the interests of the members of the Class; (e) a class action is  
18 superior to other available methods for the efficient adjudication of the controversy; and (f) Class  
19 Counsel are qualified to act as counsel for Plaintiffs in their individual capacities and as the  
20 representatives of the Class.

21           6.       The Court conditionally certifies, for settlement purposes only, the Class, defined as  
22 follows:

23           All current and former non-exempt employees paid in whole or part on a commission  
24 basis, who work or worked in finance, service, or sales for Defendants in the State of  
California from April 1, 2020 through December 31, 2023.

25           7.       The Court provisionally appoints CounselOne, PC, James Hawkins, APLC, and the  
26 Otkupman Law Firm, as counsel for the Class ("Class Counsel").

27           8.       The Court provisionally appoints Plaintiffs as the representatives of the Class ("Class  
28 Representatives").

1           9.     The Court provisionally appoints CPT Group Inc. (“CPT”) to handle the  
2 administration of the settlement (“Settlement Administrator”).

3           10.    Defendants shall provide the Settlement Administrator with the following  
4 information about each Class Member: full name, last-known mailing address, Social Security  
5 number, number of workweeks during the Class Period, number of pay periods during the PAGA  
6 Period (“Class Data”) in conformity with the Settlement Agreement.

7           11.    The Court approves, both as to form and content, the Court Approved Notice of Class  
8 and Representative Action Settlement and Hearing Date for Final Court Approval (“Class Notice”).  
9 The Class Notice shall be provided to Class Members and PAGA Group Members in the manner set  
10 forth in the Settlement Agreement. The Court finds that the Class Notice appears to fully and  
11 accurately inform Class Members and PAGA Group Members of all material elements of the  
12 Settlement Agreement, of Class Members’ right to be excluded from the class settlement by  
13 submitting an opt out request to the Settlement Administrator, of Settlement Class Members’ right  
14 to dispute the workweeks credited to each of them, and of each Settlement Class Member’s right  
15 and opportunity to object to the class settlement. The Court further finds that distribution of the Class  
16 Notice substantially in the manner and form set forth in the Settlement Agreement and this Order,  
17 and that all other dates set forth in the Settlement Agreement and this Order, meet the requirements  
18 of due process and shall constitute due and sufficient notice to all persons entitled thereto. The Court  
19 further orders the Settlement Administrator to mail the Class Notice by first class U.S. Mail to all  
20 Class Members and PAGA Group Members as soon as possible, and in no event later than ten (10)  
21 business days after receipt of the Class Data, pursuant to the terms set forth in the Settlement  
22 Agreement.

23           12.    The Court hereby preliminarily approves the proposed procedure, set forth in the  
24 Settlement Agreement, for seeking exclusion from the class settlement. Any Class Member may  
25 choose to be excluded from the class settlement by submitting a timely written request for exclusion  
26 in conformity with the requirements set forth in the Class Notice, to the Settlement Administrator,  
27 no later than the date which is forty-five (45) calendar days from the initial mailing of the Class  
28 Notice to Class Members (plus an additional fourteen (14) days for Class Members whose Class

1 Notice is re-mailed). Any such person who timely and validly chooses to opt out of, and be excluded  
2 from, the class settlement will not be entitled to recovery under the class settlement and will not have  
3 any right to object, appeal, or comment on the settlement. Class Members who have not submitted  
4 a timely and valid request to be excluded from the settlement (i.e., Settlement Class Members) shall  
5 be bound by the Settlement Agreement and any final judgment based thereon. All Class Members,  
6 whether or not they submit a request for exclusion, employed by Defendants during the PAGA  
7 Period (i.e., PAGA Group Members) will receive an Individual PAGA Payment and will no longer  
8 be able to seek penalties pursuant to the PAGA, arising from any and all claims, for the period from  
9 April 1, 2020 to December 31, 2023, alleged in the operative complaint, or that could have been  
10 asserted based on the facts alleged by Plaintiffs in the operative complaint.

11 13. A Final Approval Hearing shall be held before this Court on April 30, 2024  
12 at 8:15 a.m./p.m. in Department 8 of the Merced County Superior Court, located at 627 West  
13 21st Street, Merced, California 95340, to determine all necessary matters concerning the settlement,  
14 including: whether the proposed settlement of the action on the terms and conditions provided for in  
15 the Settlement Agreement is fair, adequate, and reasonable and should be finally approved by the  
16 Court; whether a judgment, as provided in the Settlement Agreement, should be entered herein;  
17 whether the plan of allocation contained in the Settlement Agreement should be approved as fair,  
18 adequate, and reasonable to Settlement Class Members and PAGA Group Members; and determine  
19 whether to finally approve the requests for attorneys' fees and costs, enhancement payments, and  
20 administration costs.

21 14. Class Counsel shall file a motion for final approval of the settlement and for Class  
22 Counsel's Fees Payment and Class Counsel Litigation Expenses Payment, Class Representative  
23 Service Payments, and Settlement Administration Expenses Payment, along with the appropriate  
24 declarations and supporting evidence, including the Settlement Administrator's declaration, by  
25 April 1, 2024, to be heard at the Final Approval Hearing.

26 15. To object to the class settlement, a Settlement Class Member must send his or her  
27 objection to the Settlement Administrator no later than the date which is forty-five (45) calendar  
28 days from the initial mailing of the Class Notice to Class Members (plus an additional fourteen (14)

1 days for Class Members whose Class Notice is re-mailed). The objection may be mailed or emailed  
2 to the Settlement Administrator, as set forth in the Settlement Agreement and Class Notice.  
3 Settlement Class Members may also appear in court (or hire an attorney to appear in court) to present  
4 objections at the Final Approval Hearing.


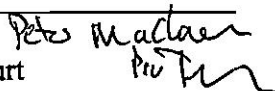
5 16. Except as required to implement the settlement, all proceedings and all litigation of  
6 the action are stayed pending the Final Approval Hearing.

7 17. The settlement is not a concession or admission and shall not be used against  
8 Defendants as an admission or indication with respect to any claim of any fault or omission by  
9 Defendants. Whether or not the settlement is finally approved, neither the settlement, nor any  
10 document, statement, proceeding or conduct related to the settlement, nor any reports or accounts  
11 thereof, shall in any event be construed as, offered or admitted into evidence as, received as or  
12 deemed to be in evidence for any purpose adverse to the Defendants, including, but not limited to,  
13 evidence of a presumption, concession, indication or admission by Defendants of any liability, fault,  
14 wrongdoing, omission, concession, or damage, except for legal proceedings concerning the  
15 implementation, interpretation, or enforcement of the Settlement Agreement.

16 18. In the event the settlement does not become effective in accordance with the terms of  
17 the Settlement Agreement, or the settlement is not finally approved, or is terminated, cancelled, or  
18 fails to become effective for any reason, this Order shall be rendered null and void, shall be vacated,  
19 and the Parties shall revert back to their respective positions as of before entering into the Settlement  
20 Agreement.

21 19. The Court reserves the right to adjourn or continue the date of the Final Approval  
22 Hearing and any dates provided for in the Settlement Agreement without further notice to the Class  
23 Members and retains jurisdiction to consider all further applications arising out of or connected with  
24 the settlement.

25  
26 Dated: 12-20-23

27   
Hon. Brian L. McCabe   
Judge of the Superior Court 