

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

\_\_\_\_\_, Individually and On  
Behalf of All Others Similarly Situated,

Plaintiff,

v.

LMP AUTOMOTIVE HOLDINGS, INC.,  
SAM TAWFIK, and ROBERT  
BELLAFLORES,

Defendants.

Case No. DRAFT

**CLASS ACTION COMPLAINT FOR  
VIOLATIONS OF THE FEDERAL  
SECURITIES LAWS**

**JURY TRIAL DEMANDED**

Plaintiff \_\_\_\_\_ (“Plaintiff”), individually and on behalf of all others similarly situated, by and through his attorneys, alleges the following upon information and belief, except as to those allegations concerning Plaintiff, which are alleged upon personal knowledge. Plaintiff’s information and belief is based upon, among other things, his counsel’s investigation, which includes without limitation: (a) review and analysis of regulatory filings made by LMP Automotive Holdings, Inc. (“LMP” or the “Company”) with the United States (“U.S.”) Securities and Exchange Commission (“SEC”); (b) review and analysis of press releases and media reports issued by and disseminated by LMP; and (c) review of other publicly available information concerning LMP.

### **NATURE OF THE ACTION AND OVERVIEW**

1. This is a class action on behalf of persons and entities that purchased or otherwise acquired LMP securities between June 29, 2021, and May 19, 2022, inclusive (the “Class Period”). Plaintiff pursues claims against the Defendants under the Securities Exchange Act of 1934 (the “Exchange Act”).

2. LMP, through its subsidiaries, offers customers the ability to buy, sell, rent and subscribe for, and obtain financing for automobiles online and in person. LMP buys pre-owned automobiles primarily through auctions or directly from other automobile dealers, and new automobiles from manufacturers and manufacturer distributors at fleet rates. LMP rents its automobiles to our customers and allows them to enter into subscription plans for automobiles in which customers have use of an automobile for a minimum of thirty days. LMP also sells its inventory, including automobiles previously included in its rental and subscription programs, to customers.

3. On April 15, 2022, LMP issued a press release titled “LMP Automotive Holdings, Inc. Provides a Corporate Update and Announces it will Delay its 2021 Financial Results.”

Therein, MLP disclosed, that the Company was the Company's "delay in timely filing its Form 10-K is primarily a result of its ongoing evaluation of (i) the proper identification and elimination of intercompany transactions, (ii) estimates of chargeback reserves for finance and insurance products and (iii) various financial presentation matters related to the Company's business, *including as it relates to the presentation, characterization and amounts of such items in prior fiscal quarters.*" (Emphasis added).

4. On this news, the Company's stock price fell \$0.26 per share, or 6%, to close at \$4.02 per share on April 18, 2022.

5. On May 17, 2022, after the market closed, LMP disclosed that it could not timely file its Q1 2021 quarterly report because "[t]he compilation, dissemination and review of the information required to be presented in the Form 10-Q for the relevant fiscal quarter has imposed time constraints that have rendered timely filing of the Form 10-Q impracticable without undue hardship and expense to the registrant." In particular, the Company claimed the delay was attributable to its ongoing evaluation of "(i) the proper identification and elimination of intercompany transactions, (ii) estimates of chargeback reserves for finance and insurance products and (iii) various financial presentation matters related to the registrant's business." LMP further disclosed that due to errors in the Company's quarterly reports during fiscal year 2021, such reports "will likely need to be restated." The Company also disclosed that these errors may impact "certain previously disclosed material weaknesses in the registrant's controls over financial reporting."

6. On this news, the Company's stock price fell \$0.07 per share, or 1.5%, to close at \$4.60 per share on May 18, 2022.

7. On May 19, 2022, after the market closed, LMP issued a press release disclosing that “the Company’s previously issued condensed consolidated financial statements as of and for the quarters ended March 31, 2021, June 30, 2021, and September 30, 2021 are required to be restated and should no longer be relied upon primarily due to the following errors: (i) the improper identification and elimination of intercompany transactions, (ii) incorrect estimates of chargeback reserves for finance and insurance products, and (iii) certain financial statement misclassifications impacting various balance sheet and income statement financial statement captions in the Relevant Periods.” LMP further disclosed that the errors would cause “[a]n approximate decrease in total revenues and total cost of sales” of “\$10 to \$15 million for the nine months ended September 30, 2021,” “\$4 to \$8 million for the six months ended June 30, 2021,” and “\$500 thousand to \$1 million for the three months ended March 31, 2021.” LMP further disclosed that “[c]ertain balance sheet captions for certain of the [r]elevant [p]eriods, including accounts payable, other non-current liabilities, and other current assets, are expected to be materially impacted.” LMP further disclosed that “in light of the misstatements . . . material weaknesses exist in the Company’s internal control over financial reporting and that the Company’s disclosure controls and procedures were not effective.”

8. On this news, the Company’s stock price fell \$0.20 per share, or 4.4%, to close at \$4.26 per share on May 20, 2022.

9. Throughout the Class Period, Defendants made materially false and/or misleading statements, as well as failed to disclose material adverse facts about the Company’s business, operations, and prospects. Specifically, Defendants failed to disclose to investors: (1) that the Company lacked adequate internal controls over accounting and financial reporting; (2) that, as a result, the Company engaged in the improper identification and elimination of intercompany

transactions; (3) that the Company used incorrect estimates for chargeback reserves for finance and insurance products; (4) that the Company had misclassified certain items in its financial statements which impacting balance sheet and income statement financial statement captions; (5) that, as a result, the Company overstated its revenue; (6) that, as a result of the foregoing, the Company would have to restate certain of its previously issued financial statements and results; and (7) that, as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects were materially misleading and/or lacked a reasonable basis.

10. As a result of Defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's securities, Plaintiff and other class members have suffered significant losses and damages.

#### **JURISDICTION AND VENUE**

11. The claims asserted herein arise under Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. § 240.10b-5).

12. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and Section 27 of the Exchange Act (15 U.S.C. § 78aa).

13. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b) and Section 27 of the Exchange Act (15 U.S.C. § 78aa(c)). Substantial acts in furtherance of the alleged fraud or the effects of the fraud have occurred in this Judicial District. Many of the acts charged herein, including the dissemination of materially false and/or misleading information, occurred in substantial part in this Judicial District. In addition, the Company's principal executive offices are in this District.

14. In connection with the acts, transactions, and conduct alleged herein, Defendants directly and indirectly used the means and instrumentalities of interstate commerce, including the

United States mail, interstate telephone communications, and the facilities of a national securities exchange.

### **PARTIES**

15. Plaintiff \_\_\_\_\_, as set forth in the accompanying certification, incorporated by reference herein, purchased LMP securities during the Class Period, and suffered damages as a result of the federal securities law violations and false and/or misleading statements and/or material omissions alleged herein.

16. Defendant LMP is incorporated under the laws of Delaware with its principal executive offices located in Ft. Lauderdale, Florida. LMP's common stock trades on the NASDAQ exchange under the symbol "LMPX."

17. Defendant Sam Tawfik ("Tawfik") was the Company's Chief Executive Officer ("CEO") at all relevant times and the Company's interim Chief Financial Officer ("CFO") from April 16, 2021 to July 7, 2021.

18. Defendant Robert Bellaflores ("Bellaflores") was the Company's Chief Financial Officer ("CFO") from July 7, 2021, through the end of the Class Period.

19. Defendants Tawfik and Bellaflores (collectively the "Individual Defendants"), because of their positions with the Company, possessed the power and authority to control the contents of the Company's reports to the SEC, press releases and presentations to securities analysts, money and portfolio managers and institutional investors, i.e., the market. The Individual Defendants were provided with copies of the Company's reports and press releases alleged herein to be misleading prior to, or shortly after, their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material non-public information available to them, the Individual Defendants knew that the adverse facts specified herein had not been disclosed to, and were being concealed from, the public,

and that the positive representations which were being made were then materially false and/or misleading. The Individual Defendants are liable for the false statements pleaded herein.

## **SUBSTANTIVE ALLEGATIONS**

### **Background**

20. LMP, through its subsidiaries, offers customers the ability to buy, sell, rent and subscribe for, and obtain financing for automobiles online and in person. LMP buys pre-owned automobiles primarily through auctions or directly from other automobile dealers, and new automobiles from manufacturers and manufacturer distributors at fleet rates. LMP rents its automobiles to our customers and allows them to enter into subscription plans for automobiles in which customers have use of an automobile for a minimum of thirty days. LMP also sells its inventory, including automobiles previously included in its rental and subscription programs, to customers.

### **Materially False and Misleading Statements Issued During the Class Period**

21. The Class Period begins on June 29, 2021. On that day, LMP published a press release titled “LMP Automotive Holdings, Inc. Announces First Quarter Financial Results And Provides Second Quarter Internal Outlook.” Therein, LMP, in relevant part, stated:

#### **First Quarter 2021 Highlights**

All financial comparisons stated below are versus Q-1 2020, unless otherwise noted.

- **Revenue increased \$27.7M to \$33.0M**
- **Overall Gross Profit increased by \$5.5M to \$6.0M**
- **Gross Profit Margin increased by 8.9% to 18.2%**
- **Adjusted EBITDA 1 increased by \$3.1M to \$1.9M or \$0.19 per share**
- **Adjusted Net Income was \$1.3M or \$0.13 per share**
- **Cash increased by \$1.3M to \$19.4M**
- **Adjusted Shareholder Equity increased by \$18.3M to \$47.5M**

## **Second Quarter 2021 Internal Outlook**

Second quarter 2021 internal outlook data stated below are approximations and could vary based on actual results.

- **Revenue - \$147.6M**
- **Overall Gross Profit - \$26.7M**
- **Gross Profit Margin - 18.1%**
- **Cash - \$25.1M**
- **Adjusted EBITDA - \$10.3M or \$1.03 per share**

FORT LAUDERDALE, Fla., June 29, 2021 (GLOBE NEWSWIRE) -- LMP Automotive Holdings, Inc. (NASDAQ: LMPX) (“LMP” or the “Company”), an e-commerce and facilities-based automotive retailer in the United States, today reported its strongest first quarter financial results in Company history and provided its second quarter internal outlook. Management will hold a conference call at 4:30p.m. ET today to review and discuss the Company's business and results.

Sam Tawfik, the Company’s Chairman and Chief Executive Officer commented, “The strong improvements throughout the quarter occurred as a result of contributions of only a fractional month in March from acquisitions that we closed. This led us to the strongest first quarter financial results in our history. Management also witnessed accelerating growth in sales and gross profits in the second quarter and, as a result, we are expecting the second quarter results to be ahead of our internal outlook with expected revenue of approximately \$147.6 million and Adjusted EBITDA of approximately \$10.3 million or \$1.03 per share. On an annualized basis in the second half of this year, we are expecting revenue to be approximately \$610 million and Adjusted EBITDA of \$44 million or \$4.38 per share.”

Tawfik concluded, “In March, we announced an agreement to purchase an 85% interest in two metropolitan area Chrysler Jeep Dodge Ram dealerships in New York, which we expect close in the third quarter of this year. Upon the closing of these acquisitions and the one remaining Stage One dealership acquisition, LMP’s total franchise dealership operations and location count would be 19 and 17 respectively, with expected consolidated annualized revenue, Adjusted EBITDA and Adjusted EBITDA per share run rate to be approximately \$910 million, \$53 million, and \$5.18, respectively.

Our pipeline of prospective dealership acquisitions is more active than we have ever seen, and we believe we are on track to achieve our goal of adding an additional 80 to 100 locations to our network by the end of next year by way of partnerships, mergers, and acquisitions. We project these additions to our network have the potential to add \$5.1 billion to \$6.4 billion in revenue, \$229 to \$288 million in Adjusted EBITDA or \$8.80 to \$11.00 in Adjusted EBITDA per share.

22. On June 29, 2021, LMP filed its Quarterly Report with the SEC on Form 10-Q for the quarterly period ended March 31, 2021. The Company's 10-Q was signed by Defendant Tawfik and reaffirmed the Company's financial results previously announced the same day.

23. The Company's Form 10-Q contained a certification pursuant to the Sarbanes-Oxley Act of 2002 ("SOX"), signed by Defendant Tawfik, who certified:

1. I have reviewed this Quarterly Report on Form 10-Q of LMP Automotive Holdings, Inc. for the quarter ended March 31, 2021.

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent

fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

24. On August 12, 2021, LMP published a press release titled "LMP Automotive Holdings, Inc. Announces Second Quarter Financial Results." Therein, LMP, in relevant part, stated:

**Second Quarter 2021 Highlights**

All financial comparisons stated below are compared to the second quarter of 2020, unless otherwise noted.

- **Revenue increased \$132.3M to \$140.0M**
- **Overall Gross Profit increased by \$25.0M to \$26.4M**
- **Gross Profit Margin increased by 0.9% to 18.9%**
- **Adjusted Net Income was \$8.6M or \$0.86 per share**
- **Adjusted EBITDA increased by \$10.3 M to \$11.1M or \$1.10 per share**
- **Cash increased by \$6.7M to \$24.3M**
- **Adjusted Shareholder Equity increased by \$17.4M to \$46.6M**

FORT LAUDERDALE, Fla., Aug. 12, 2021 (GLOBE NEWSWIRE) -- LMP Automotive Holdings, Inc. (NASDAQ: LMPX) ("LMP" or the "Company"), an e-commerce and facilities-based automotive retailer in the United States, today reported its second quarter financial results. Management will hold a conference call at 4:30p.m. ET today to review and discuss the Company's business and results. Sam Tawfik, the Company's Chairman and Chief Executive Officer, commented, "On an annualized basis in the second half of this year, we are expecting revenue

to be approximately \$610 million and Adjusted EBITDA of \$44 million or \$4.38 per share.”

Tawfik concluded, “Upon closing of all the acquisitions we previously announced, LMP’s total franchise dealerships and retail & fleet operations location count would be 28 and 21, respectively, with expected consolidated annualized revenue, Adjusted EBITDA and Adjusted EBITDA per share run rate to be approximately \$1.4 billion, \$88 million, and \$8.04, respectively. These acquisitions will strategically add density in key geographic markets and increase our regional footprint.

Our pipeline of prospective dealership acquisitions is more active than we have ever seen, and we believe we are on track to achieve our goal of 80 to 100 locations within our network by the end of next year by way of partnerships, mergers, and acquisitions. We project these additions to our network combined with our current operations and contracted acquisitions on an annualized basis will propel the company to total of \$6.5 billion to \$7.8 billion in revenue, \$317 to \$376 million in Adjusted EBITDA or \$16.84 to \$19.04 in Adjusted EBITDA per share.”

(Footnotes omitted.)

25. On August 16, 2021, LMP filed its Quarterly Report with the SEC on Form 10-Q for the quarterly period ended June 30, 2021. The Company’s Form 10-Q was signed by Defendants Tawfik and Bellaflores reaffirmed the Company’s financial results previously announced on August 12, 2021. The Form 10-Q contained certifications pursuant to SOX, signed by Defendants Tawfik and Bellaflores, substantially similar to the certifications described in ¶ 21, *supra*.

26. On November 15, 2021, LMP published a press release titled “LMP Automotive Holdings, Inc. Announces Third Quarter 2021 Financial Results.” Therein, LMP, in relevant part, stated:

**Third Quarter 2021 Highlights**

All financial comparisons stated below are compared to the third quarter of 2020, unless otherwise noted.

- **Revenue increased \$128.0M to \$141.4M**
- **Overall Gross Profit increased by \$26.7M to \$27.6M**
- **Gross Profit Margin increased by 12.9% to 19.5%**

- **Adjusted Net Income was \$8.6M or \$0.85 per share**
- **Adjusted EBITDA increased by \$12.1M to \$11.9M or \$1.18 per share**
- **Adjusted Shareholder Equity <sup>1</sup> increased by \$19.3M to \$50.9M**

FORT LAUDERDALE, Fla., Nov. 15, 2021 (GLOBE NEWSWIRE) -- LMP Automotive Holdings, Inc. (NASDAQ: LMPX) (“LMP” or the “Company”), an e-commerce and facilities-based automotive retailer in the United States, today reported its third quarter 2021 financial results. Management will hold a conference call at 4:30p.m. ET today to review and discuss the Company's business and results. Sam Tawfik, the Company’s Chairman and Chief Executive Officer commented, “During the quarter, consumer demand continued to outpace supply, driven by the ongoing manufacturing supply chain disruptions, historical consumer purchase deferrals and the increased consumer desire for personal transportation. New vehicle inventory remains at historically low levels and predicted to remain the same into the near future.

New vehicle sales are constrained by reduced production volume and low inventory levels. We expect this pent-up demand to continue to support sales for the foreseeable future."

Tawfik concluded, “LMP has signed and announced acquisition agreements which are subject to customary terms and conditions, including manufacturer approval, and are expected to close in the coming months.

These acquisitions will strategically add density in key geographic markets and increase our regional footprint.”

(Footnotes omitted.)

27. On November 16, 2021, LMP filed its Quarterly Report with the SEC on Form 10-Q for the quarterly period ended September 30, 2021. The Company’s Form 10-Q was signed by Defendants Tawfik and Bellaflores reaffirmed the Company’s financial results previously announced on November 15, 2021. The Form 10-Q contained certifications pursuant to SOX, signed by Defendants Tawfik and Bellaflores, substantially similar to the certifications described in ¶ 21, *supra*.

28. On November 15, 2021, LMP published a press release titled “LMP Automotive Holdings, Inc. Announces Third Quarter 2021 Financial Results.” Therein, LMP, in relevant part, stated:

**Third Quarter 2021 Highlights**

All financial comparisons stated below are compared to the third quarter of 2020, unless otherwise noted.

- **Revenue increased \$128.0M to \$141.4M**
- **Overall Gross Profit increased by \$26.7M to \$27.6M**
- **Gross Profit Margin increased by 12.9% to 19.5%**
- **Adjusted Net Income was \$8.6M or \$0.85 per share**
- **Adjusted EBITDA increased by \$12.1M to \$11.9M or \$1.18 per share**
- **Adjusted Shareholder Equity <sup>1</sup> increased by \$19.3M to \$50.9M**

FORT LAUDERDALE, Fla., Nov. 15, 2021 (GLOBE NEWSWIRE) -- LMP Automotive Holdings, Inc. (NASDAQ: LMPX) (“LMP” or the “Company”), an e-commerce and facilities-based automotive retailer in the United States, today reported its third quarter 2021 financial results. Management will hold a conference call at 4:30p.m. ET today to review and discuss the Company's business and results. Sam Tawfik, the Company’s Chairman and Chief Executive Officer commented, “During the quarter, consumer demand continued to outpace supply, driven by the ongoing manufacturing supply chain disruptions, historical consumer purchase deferrals and the increased consumer desire for personal transportation. New vehicle inventory remains at historically low levels and predicted to remain the same into the near future.

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Tawfik concluded, “LMP has signed and announced acquisition agreements which are subject to customary terms and conditions, including manufacturer approval, and are expected to close in the coming months.

These acquisitions will strategically add density in key geographic markets and increase our regional footprint.”

(Footnotes omitted.)

29. On November 16, 2021, LMP filed its Quarterly Report with the SEC on Form 10-Q for the quarterly period ended September 30, 2021. The Company’s Form 10-Q was signed by

Defendants Tawfik and Bellaflores reaffirmed the Company's financial results previously announced on November 15, 2021. The Form 10-Q contained certifications pursuant to SOX, signed by Defendants Tawfik and Bellaflores, substantially similar to the certifications described in ¶ 21, *supra*.

30. The above statements identified in ¶¶ 19-27 were materially false and/or misleading, and failed to disclose material adverse facts about the Company's business, operations, and prospects. Specifically, Defendants failed to disclose to investors: (1) that the Company lacked adequate internal controls over accounting and financial reporting; (2) that, as a result, the Company engaged in the improper identification and elimination of intercompany transactions; (3) that the Company used incorrect estimates for chargeback reserves for finance and insurance products; (4) that the Company had misclassified certain items in its financial statements which impacting balance sheet and income statement financial statement captions; (5) that, as a result, the Company overstated its revenue; (6) that, as a result of the foregoing, the Company would have to restate certain of its previously issued financial statements and results; and (7) that, as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects were materially misleading and/or lacked a reasonable basis.

31. On April 15, 2022, LMP issued a press release titled "LMP Automotive Holdings, Inc. Provides a Corporate Update and Announces it will Delay its 2021 Financial Results." Therein, MLP disclosed, in relevant part:

DFORT LAUDERDALE, Fla., April 15, 2022 (GLOBE NEWSWIRE) -- LMP Automotive Holdings, Inc. (NASDAQ: LMPX) ("LMP" or the "Company"), an e-commerce and facilities-based automotive retailer in the United States, today provided a corporate update and announces it will delay its 2021 financial results.

**Q1 2022 Financial Update**

Year to date, we are witnessing robust gross profits and revenue growth month-over-month. Revenue in the month of March was at its highest levels as compared to monthly revenue in the trailing 9 months.

### **Balance Sheet Update**

**LMP utilized approximately \$16 million in cash from its balance sheet in the fourth quarter of 2021 for the following:**

We completed the acquisition of our contracted White Plains, New York Chrysler Dodge Jeep Ram in the early fourth quarter of 2021 using approximately **\$5 million** in cash from the company's balance sheet, 55,000 shares of common stock and \$1.3 million in cash from our existing credit facility.

We reduced our existing term loan debt by approximately **\$11 million** in the fourth quarter of 2021, resulting in a balance of approximately \$85 million, of which the Company allocates \$53 million to its real-estate holdings and \$32 million to its dealership blue sky purchase debt.

Cash at the end of the first quarter of 2022 was approximately \$30 million, our highest on record.

### **Delay of 2021 Financial Results**

As stated on our Form 12b-25 filed with the Securities and Exchange Commission on March 31, 2022, there was a significant change in our results of operations when compared to the results from the corresponding period in the prior year, primarily as a result of previously announced acquisitions that closed during the year ended December 31, 2021.

The compilation, dissemination and review of the information required to be presented in the Company's Form 10-K for the year ended December 31, 2021 has imposed time constraints that have rendered timely filing of the Form 10-K impracticable without undue hardship and expense to the Company. The Company's delay in timely filing its Form 10-K is primarily a result of its ongoing evaluation of (i) the proper identification and elimination of intercompany transactions, (ii) estimates of chargeback reserves for finance and insurance products and (iii) various financial presentation matters related to the Company's business, ***including as it relates to the presentation, characterization and amounts of such items in prior fiscal quarters***. The Company is also evaluating the impact of these matters as it relates to certain previously disclosed material weaknesses in the company's controls over financial reporting.

(Emphasis added.)

32. On this news, the Company's stock price fell \$0.26 per share, or 6%, to close at \$4.02 per share on April 18, 2022.

33. The above statements identified in ¶ 29 were materially false and/or misleading, and failed to disclose material adverse facts about the Company's business, operations, and prospects. Specifically, Defendants failed to disclose to investors: (1) that the Company lacked adequate internal controls over accounting and financial reporting; (2) that, as a result, the Company engaged in the improper identification and elimination of intercompany transactions; (3) that the Company used incorrect estimates for chargeback reserves for finance and insurance products; (4) that the Company had misclassified certain items in its financial statements which impacting balance sheet and income statement financial statement captions; (5) that, as a result, the Company overstated its revenue; (6) that, as a result of the foregoing, the Company would have to restate certain of its previously issued financial statements and results; and (7) that, as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects were materially misleading and/or lacked a reasonable basis.

34. On May 17, 2022, after the market closed, LMP disclosed that it could not timely file its Q1 2021 quarterly report because "[t]he compilation, dissemination and review of the information required to be presented in the Form 10-Q for the relevant fiscal quarter has imposed time constraints that have rendered timely filing of the Form 10-Q impracticable without undue hardship and expense to the registrant." In particular, the Company claimed the delay was attributable to its ongoing evaluation of "(i) the proper identification and elimination of intercompany transactions, (ii) estimates of chargeback reserves for finance and insurance products and (iii) various financial presentation matters related to the registrant's business." LMP further disclosed that due to errors in the Company's quarterly reports during fiscal year 2021,

such reports “will likely need to be restated.” The Company also disclosed that these errors may impact “certain previously disclosed material weaknesses in the registrant’s controls over financial reporting.” In greater part, the Company disclosed:

The compilation, dissemination and review of the information required to be presented in the Form 10-Q for the relevant fiscal quarter has imposed time constraints that have rendered timely filing of the Form 10-Q impracticable without undue hardship and expense to the registrant. The registrant’s delay in timely filing its Form 10-Q is primarily a result of its ongoing evaluation of (i) the proper identification and elimination of intercompany transactions, (ii) estimates of chargeback reserves for finance and insurance products and (iii) various financial presentation matters related to the registrant’s business, in each case, in the context of its ongoing preparation of its Annual Report on Form 10-K for the year ended December 31, 2021, including as it relates to the presentation, characterization and amounts of such items in the fiscal 2021 quarters, the Quarterly Reports on Form 10-Q for which the registrant currently believes will likely need to be restated. The registrant is also evaluating the impact of these matters as it relates to certain previously disclosed material weaknesses in the registrant’s controls over financial reporting, which the registrant is evaluating in the context of its Annual Report on Form 10-K as well. The registrant undertakes the responsibility to use its best efforts to file such quarterly report as soon as reasonably practicable and, in any event, following the filing by the registrant of its Annual Report on Form 10-K for the year ended December 31, 2021.

35. On this news, the Company’s stock price fell \$0.07 per share, or 1.5%, to close at \$4.60 per share on May 18, 2022.

36. The above statements identified in ¶ 32 were materially false and/or misleading, and failed to disclose material adverse facts about the Company’s business, operations, and prospects. Specifically, Defendants failed to disclose to investors: (1) that the Company lacked adequate internal controls over accounting and financial reporting; (2) that, as a result, the Company engaged in the improper identification and elimination of intercompany transactions; (3) that the Company used incorrect estimates for chargeback reserves for finance and insurance products; (4) that the Company had misclassified certain items in its financial statements which impacting balance sheet and income statement financial statement captions; (5) that, as a result,

the Company overstated its revenue; (6) that, as a result of the foregoing, the Company would have to restate certain of its previously issued financial statements and results; and (7) that, as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects were materially misleading and/or lacked a reasonable basis.

### **Disclosures at the End of the Class Period**

37. On May 19, 2022, after the market closed, LMP issued a press release disclosing that "the Company's previously issued condensed consolidated financial statements as of and for the quarters ended March 31, 2021, June 30, 2021, and September 30, 2021 are required to be restated and should no longer be relied upon primarily due to the following errors: (i) the improper identification and elimination of intercompany transactions, (ii) incorrect estimates of chargeback reserves for finance and insurance products, and (iii) certain financial statement misclassifications impacting various balance sheet and income statement financial statement captions in the Relevant Periods." LMP further disclosed that the errors would cause "[a]n approximate decrease in total revenues and total cost of sales" of "\$10 to \$15 million for the nine months ended September 30, 2021," "\$4 to \$8 million for the six months ended June 30, 2021," and "\$500 thousand to \$1 million for the three months ended March 31, 2021." LMP further disclosed that "[c]ertain balance sheet captions for certain of the [r]elevant [p]eriods, including accounts payable, other non-current liabilities, and other current assets, are expected to be materially impacted." LMP further disclosed that "in light of the misstatements . . . material weaknesses exist in the Company's internal control over financial reporting and that the Company's disclosure controls and procedures were not effective." In greater part, the Company stated:

LMP Automotive Holdings, Inc. (NASDAQ: LMPX) ("LMP" or the "Company"), an e-commerce and facilities-based automotive retailer in the United States, today announced that it plans to restate previously issued financial statements as of and for each of the first three quarterly periods in 2021 to correct certain accounting items.

On May 16, 2022, management of LMP Automotive Holdings, Inc. and the audit committee of the Company's board of directors concluded that the Company's previously issued condensed consolidated financial statements as of and for the quarters ended March 31, 2021, June 30, 2021, and September 30, 2021 are required to be restated and should no longer be relied upon primarily due to the following errors: (i) the improper identification and elimination of intercompany transactions, (ii) incorrect estimates of chargeback reserves for finance and insurance products, and (iii) certain financial statement misclassifications impacting various balance sheet and income statement financial statement captions in the Relevant Periods.

The aggregate effects are currently estimated to be the following:

- An approximate decrease in total revenues and total cost of sales as follows:
  - \$10 to \$15 million for the nine months ended September 30, 2021
  - \$4 to \$8 million for the six months ended June 30, 2021
  - \$500 thousand to \$1 million for the three months ended March 31, 2021
- Gross profit and net income for the Relevant Periods are not expected to be materially impacted.
- Certain balance sheet captions for certain of the Relevant Periods, including accounts payable, other non-current liabilities, and other current assets, are expected to be materially impacted.
- Total assets and total liabilities for the Relevant Periods are not expected to be materially impacted.

The expected changes do not affect compliance with the financial covenants contained in the Company's outstanding debt instruments or compliance with any other agreement of the Company or its subsidiaries.

As such, the Company will restate its financial statements for the Relevant Periods in its Annual Report on Form 10-K for the year ended December 31, 2021 (the "2021 10-K"). The Company's management has concluded that in light of the misstatements described above, material weaknesses exist in the Company's internal control over financial reporting and that the Company's disclosure controls and procedures were not effective. The Company's planned remediation with respect to such material weaknesses will be described in more detail in the 2021 10-K.

The Company's management and the Audit Committee have discussed the matters disclosed in this Current Report on Form 8-K with its independent registered public accounting firm.

38. On this news, the Company's stock price fell \$0.20 per share, or 4.4%, to close at \$4.26 per share on May 20, 2022.

### **CLASS ACTION ALLEGATIONS**

39. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a class, consisting of all persons and entities that purchased or otherwise acquired LMP securities between June 29, 2021 and May 19, 2022, inclusive, and who were damaged thereby (the "Class"). Excluded from the Class are Defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which Defendants have or had a controlling interest.

40. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, LMP's shares actively traded on the NASDAQ. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are at least hundreds or thousands of members in the proposed Class. Millions of LMP shares were traded publicly during the Class Period on the NASDAQ. Record owners and other members of the Class may be identified from records maintained by LMP or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

41. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

42. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

43. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) whether the federal securities laws were violated by Defendants' acts as alleged herein;

(b) whether statements made by Defendants to the investing public during the Class Period omitted and/or misrepresented material facts about the business, operations, and prospects of LMP; and

(c) to what extent the members of the Class have sustained damages and the proper measure of damages.

44. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation makes it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

#### **UNDISCLOSED ADVERSE FACTS**

45. The market for LMP's securities was open, well-developed and efficient at all relevant times. As a result of these materially false and/or misleading statements, and/or failures to disclose, LMP's securities traded at artificially inflated prices during the Class Period. Plaintiff and other members of the Class purchased or otherwise acquired LMP's securities relying upon the integrity of the market price of the Company's securities and market information relating to LMP, and have been damaged thereby.

46. During the Class Period, Defendants materially misled the investing public, thereby inflating the price of LMP's securities, by publicly issuing false and/or misleading statements

and/or omitting to disclose material facts necessary to make Defendants' statements, as set forth herein, not false and/or misleading. The statements and omissions were materially false and/or misleading because they failed to disclose material adverse information and/or misrepresented the truth about LMP's business, operations, and prospects as alleged herein.

47. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused or were a substantial contributing cause of the damages sustained by Plaintiff and other members of the Class. As described herein, during the Class Period, Defendants made or caused to be made a series of materially false and/or misleading statements about LMP's financial well-being and prospects. These material misstatements and/or omissions had the cause and effect of creating in the market an unrealistically positive assessment of the Company and its financial well-being and prospects, thus causing the Company's securities to be overvalued and artificially inflated at all relevant times. Defendants' materially false and/or misleading statements during the Class Period resulted in Plaintiff and other members of the Class purchasing the Company's securities at artificially inflated prices, thus causing the damages complained of herein when the truth was revealed.

### **LOSS CAUSATION**

48. Defendants' wrongful conduct, as alleged herein, directly and proximately caused the economic loss suffered by Plaintiff and the Class.

49. During the Class Period, Plaintiff and the Class purchased LMP's securities at artificially inflated prices and were damaged thereby. The price of the Company's securities significantly declined when the misrepresentations made to the market, and/or the information alleged herein to have been concealed from the market, and/or the effects thereof, were revealed, causing investors' losses.

## **SCIENTER ALLEGATIONS**

50. As alleged herein, Defendants acted with scienter since Defendants knew that the public documents and statements issued or disseminated in the name of the Company were materially false and/or misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, the Individual Defendants, by virtue of their receipt of information reflecting the true facts regarding LMP, their control over, and/or receipt and/or modification of LMP's allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning LMP, participated in the fraudulent scheme alleged herein.

### **APPLICABILITY OF PRESUMPTION OF RELIANCE (FRAUD-ON-THE-MARKET DOCTRINE)**

51. The market for LMP's securities was open, well-developed and efficient at all relevant times. As a result of the materially false and/or misleading statements and/or failures to disclose, LMP's securities traded at artificially inflated prices during the Class Period. On August 11, 2021, the Company's share price closed at a Class Period high of \$19.54 per share. Plaintiff and other members of the Class purchased or otherwise acquired the Company's securities relying upon the integrity of the market price of LMP's securities and market information relating to LMP and have been damaged thereby.

52. During the Class Period, the artificial inflation of LMP's shares was caused by the material misrepresentations and/or omissions particularized in this Complaint causing the damages sustained by Plaintiff and other members of the Class. As described herein, during the Class Period, Defendants made or caused to be made a series of materially false and/or misleading

statements about LMP's business, prospects, and operations. These material misstatements and/or omissions created an unrealistically positive assessment of LMP and its business, operations, and prospects, thus causing the price of the Company's securities to be artificially inflated at all relevant times, and when disclosed, negatively affected the value of the Company shares. Defendants' materially false and/or misleading statements during the Class Period resulted in Plaintiff and other members of the Class purchasing the Company's securities at such artificially inflated prices, and each of them has been damaged as a result.

53. At all relevant times, the market for LMP's securities was an efficient market for the following reasons, among others:

(a) LMP shares met the requirements for listing, and was listed and actively traded on the NASDAQ, a highly efficient and automated market;

(b) As a regulated issuer, LMP filed periodic public reports with the SEC and/or the NASDAQ;

(c) LMP regularly communicated with public investors via established market communication mechanisms, including through regular dissemination of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and/or

(d) LMP was followed by securities analysts employed by brokerage firms who wrote reports about the Company, and these reports were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

54. As a result of the foregoing, the market for LMP's securities promptly digested current information regarding LMP from all publicly available sources and reflected such

information in LMP's share price. Under these circumstances, all purchasers of LMP's securities during the Class Period suffered similar injury through their purchase of LMP's securities at artificially inflated prices and a presumption of reliance applies.

55. A Class-wide presumption of reliance is also appropriate in this action under the Supreme Court's holding in *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128 (1972), because the Class's claims are, in large part, grounded on Defendants' material misstatements and/or omissions. Because this action involves Defendants' failure to disclose material adverse information regarding the Company's business operations and financial prospects—information that Defendants were obligated to disclose—positive proof of reliance is not a prerequisite to recovery. All that is necessary is that the facts withheld be material in the sense that a reasonable investor might have considered them important in making investment decisions. Given the importance of the Class Period material misstatements and omissions set forth above, that requirement is satisfied here.

#### **NO SAFE HARBOR**

56. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. The statements alleged to be false and misleading herein all relate to then-existing facts and conditions. In addition, to the extent certain of the statements alleged to be false may be characterized as forward looking, they were not identified as "forward-looking statements" when made and there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. In the alternative, to the extent that the statutory safe harbor is determined to apply to any forward-looking statements pleaded herein, Defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the speaker

had actual knowledge that the forward-looking statement was materially false or misleading, and/or the forward-looking statement was authorized or approved by an executive officer of LMP who knew that the statement was false when made.

### **FIRST CLAIM**

#### **Violation of Section 10(b) of The Exchange Act and Rule 10b-5 Promulgated Thereunder Against All Defendants**

57. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

58. During the Class Period, Defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing public, including Plaintiff and other Class members, as alleged herein; and (ii) cause Plaintiff and other members of the Class to purchase LMP's securities at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, Defendants, and each defendant, took the actions set forth herein.

59. Defendants (i) employed devices, schemes, and artifices to defraud; (ii) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (iii) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to maintain artificially high market prices for LMP's securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5. All Defendants are sued either as primary participants in the wrongful and illegal conduct charged herein or as controlling persons as alleged below.

60. Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a

continuous course of conduct to conceal adverse material information about LMP's financial well-being and prospects, as specified herein.

61. Defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of LMP's value and performance and continued substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and/or omitting to state material facts necessary in order to make the statements made about LMP and its business operations and future prospects in light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of the Company's securities during the Class Period.

62. Each of the Individual Defendants' primary liability and controlling person liability arises from the following facts: (i) the Individual Defendants were high-level executives and/or directors at the Company during the Class Period and members of the Company's management team or had control thereof; (ii) each of these defendants, by virtue of their responsibilities and activities as a senior officer and/or director of the Company, was privy to and participated in the creation, development and reporting of the Company's internal budgets, plans, projections and/or reports; (iii) each of these defendants enjoyed significant personal contact and familiarity with the other defendants and was advised of, and had access to, other members of the Company's management team, internal reports and other data and information about the Company's finances, operations, and sales at all relevant times; and (iv) each of these defendants was aware of the Company's dissemination of information to the investing public which they knew and/or recklessly disregarded was materially false and misleading.

63. Defendants had actual knowledge of the misrepresentations and/or omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing LMP's financial well-being and prospects from the investing public and supporting the artificially inflated price of its securities. As demonstrated by Defendants' overstatements and/or misstatements of the Company's business, operations, financial well-being, and prospects throughout the Class Period, Defendants, if they did not have actual knowledge of the misrepresentations and/or omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

64. As a result of the dissemination of the materially false and/or misleading information and/or failure to disclose material facts, as set forth above, the market price of LMP's securities was artificially inflated during the Class Period. In ignorance of the fact that market prices of the Company's securities were artificially inflated, and relying directly or indirectly on the false and misleading statements made by Defendants, or upon the integrity of the market in which the securities trades, and/or in the absence of material adverse information that was known to or recklessly disregarded by Defendants, but not disclosed in public statements by Defendants during the Class Period, Plaintiff and the other members of the Class acquired LMP's securities during the Class Period at artificially high prices and were damaged thereby.

65. At the time of said misrepresentations and/or omissions, Plaintiff and other members of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiff and the other members of the Class and the marketplace known the truth regarding the problems

that LMP was experiencing, which were not disclosed by Defendants, Plaintiff and other members of the Class would not have purchased or otherwise acquired their LMP securities, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices which they paid.

66. By virtue of the foregoing, Defendants violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

67. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their respective purchases and sales of the Company's securities during the Class Period.

## **SECOND CLAIM**

### **Violation of Section 20(a) of The Exchange Act Against the Individual Defendants**

68. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

69. Individual Defendants acted as controlling persons of LMP within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions and their ownership and contractual rights, participation in, and/or awareness of the Company's operations and intimate knowledge of the false financial statements filed by the Company with the SEC and disseminated to the investing public, Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which Plaintiff contends are false and misleading. Individual Defendants were provided with or had unlimited access to copies of the Company's reports, press releases, public filings, and other statements

alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

70. In particular, Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

71. As set forth above, LMP and Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their position as controlling persons, Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- (a) Determining that this action is a proper class action under Rule 23 of the Federal Rules of Civil Procedure;
- (b) Awarding compensatory damages in favor of Plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
- (c) Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and
- (d) Such other and further relief as the Court may deem just and proper.

#### **JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

Dated: \_\_\_\_\_, 2022

By:     DRAFT      
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