

Larry W. Lee (State Bar No. 228175)
Kristen M. Agnew (State Bar No. 247656)
Nicholas Rosenthal (State Bar No. 268297)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

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By: Rowena Esquerra, Deputy

William L. Marder (State Bar No. 170131)
Polaris Law Group LLP
501 San Benito Street, Suite 200
Hollister, CA 95023
(831) 531-4214
(831) 634-0333 facsimile

Attorneys for Plaintiff, the Class, and Aggrieved Employees

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

CHRISTOPHER ALMEIDA, as an
individual and on behalf of all others
similarly situated,

Plaintiffs,

vs.

LITHIA SEASIDE, INC., a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 20CV002002

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR:**

- (1) VIOLATION OF LABOR CODE
§ 226(a);
(2) VIOLATION OF CAL. LABOR CODE
§ 2698, *ET SEQ.*

DEMAND OVER \$25,000.00

1 Plaintiff Christopher Almeida (“Plaintiff”) hereby submits this Class and Representative
2 Action Complaint (“Complaint”) against Defendant Lithia Seaside, Inc. (“Defendant”) and Does
3 1 through 50 (collectively, “Defendants”) on behalf of himself and all other similarly situated
4 current and former employees of Defendants, for penalties and/or damages for failure to provide
5 complete and accurate itemized wage statements in violation of the California Labor Code as
6 follows:

7 **INTRODUCTION**

8 1. This class and representative action is within the Court’s jurisdiction under
9 California Labor Code §§ 226 and 2698, *et seq.*

10 2. This Complaint challenges systemic illegal employment practices resulting in
11 violations of the California Labor Code against individuals who worked for Defendants.

12 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
13 jointly and severally, have acted intentionally and with deliberate indifference and conscious
14 disregard to the rights of all employees by failing to provide complete and accurate itemized
15 wage statements to Plaintiff and Class Members.

16 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants
17 have engaged in, among other things a system of willful violations of the California Labor Code
18 by creating and maintaining policies, practices, and customs that knowingly deny its employees
19 the above stated rights and benefits.

20 5. The policies, practices and customs of defendants described above and below
21 have resulted in unjust enrichment of Defendants and an unfair business advantage over
22 businesses that routinely adhere to the strictures of the California Labor Code.

23 **JURISDICTION AND VENUE**

24 6. The Court has jurisdiction over the violations of California Labor Code §§ 226
25 and 2698, *et seq.*

26 7. Venue is proper because Defendants are located in Monterey County.

27 **PARTIES**

28 8. Plaintiff was employed by Defendants as a Service Advisor from about December

1 2008 until on or about March 2020. Plaintiff worked as an hourly, non-exempt employee.

2 9. Plaintiff was and is the victim of the policies, practices, and customs of
3 Defendants complained of in this action in ways that have deprived him of the rights guaranteed
4 by California Labor Code §§ 226 and 2698, *et seq.*

5 10. Plaintiff is informed and believes, and based thereon alleges, that Lithia Seaside,
6 Inc. was and is a California corporation doing business in the State of California, and is engaged
7 in the business of selling automobiles.

8 11. Plaintiff is informed and believes and thereon alleges that at all times herein
9 mentioned Defendant and Does 1 through 50, are and were corporations, business entities,
10 individuals, and partnerships, licensed to do business and actually doing business in the State of
11 California. As such, and based upon all the facts and circumstances incident to Defendants'
12 business, Defendants are subject to California Labor Code §§ 226 and 2698, *et seq.*

13 12. Plaintiff does not know the true names or capacities, whether individual, partner
14 or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason,
15 said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
16 Complaint when the true names and capacities are known. Plaintiff is informed and believes and
17 based thereon alleges that each of said fictitious defendants were responsible in some way for the
18 matters alleged herein and proximately caused Plaintiff and members of the general public and
19 class to be subject to the illegal employment practices, wrongs, and injuries complained of
20 herein.

21 13. At all times herein mentioned, each of said Defendants participated in the doing
22 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
23 Defendants, and each of them, were the agents, servants and employees of each of the other
24 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
25 acting within the course and scope of said agency and employment.

26 14. Plaintiff is informed and believes, and based thereon alleges, that at all times
27 material hereto, each of the Defendants named herein was the agent, employee, alter ego, and/or
28 joint venturer of, or working in concert with each of the other co-Defendants and was acting

1 within the course and scope of such agency, employment, joint venture, or concerted activity.

2 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of
3 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
4 Defendants.

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

8 16. At all times herein mentioned, the acts and omissions of various Defendants, and
9 each of them, concurred and contributed to the various acts and omissions of each and all of the
10 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
11 herein mentioned, Defendants, and each of them, ratified each and every act or omission
12 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
13 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
14 damages as herein alleged.

15 **CLASS ACTION ALLEGATIONS**

16 17. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
17 California Code of Civil Procedure § 382. Plaintiff proposes the following Class: all current and
18 former employees of Defendants in the State of California who were paid overtime wage
19 payments such as “OT Bonus”, paid time off, and/or meal break premiums at any time from
20 April 6, 2019, through the present (the “Class”).

21 18. Plaintiff further reserves the right to amend such Class definition based upon
22 further discovery.

23 19. **Numerosity and Ascertainability:** The members of the Class are so numerous
24 that joinder of all members would be impractical, if not impossible. The identities of the
25 members of the Class are readily ascertainable by review of Defendants’ records, including
26 payroll records. Plaintiff is informed and believes, and based thereon alleges, that Defendants
27 failed to provide accurate itemized wage statements to its employees that identified the
28 applicable hourly rates of pay and number of hours worked for overtime wage payments, and the

1 applicable hourly rates of pay for paid time off and meal break premiums, whenever such wages
2 were paid, in violation of Labor Code § 226(a).

3 20. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
4 necessary steps to represent fairly and adequately the interests of the Class defined above.
5 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the Class and
6 the individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class
7 actions in the past and currently have a number of wage-and-hour class actions pending in
8 California state and federal courts.

9 21. Defendants uniformly administered a corporate policy and practice of failing to
10 provide accurate itemized wage statements to Plaintiff and the Class that identified the applicable
11 hourly rates of pay and number of hours worked for overtime wage payments, and the applicable
12 hourly rates of pay for paid time off and meal break premiums, whenever such wages were paid,
13 in violation of Labor Code § 226(a).

14 22. Plaintiff is informed and believes, and based thereon alleges, that this corporate
15 conduct is accomplished with the advance knowledge and designed intent to willfully and
16 intentionally fail to accurately record proper rates of pay and number of hours worked.

17 23. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
18 a consistent and uniform policy, practice, and procedure of willfully failing to comply with
19 Labor Code § 226(a).

20 24. **Common Question of Law and Fact:** There are predominant common questions
21 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
22 concerning Defendants' policy and practice of failing to provide accurate itemized wage
23 statements to Plaintiff and the Class that identified the applicable hourly rates of pay and number
24 of hours worked for overtime wage payments, and the applicable hourly rates of pay for paid
25 time off and meal break premiums, whenever such wages were paid, in violation of Labor Code
26 § 226(a).

27 25. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
28 Class in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner

1 as the Class Members. As with other California employees, Plaintiff was paid on an hourly
2 basis. Whenever overtime wage payments such as “OT Bonus” wages were paid, however, the
3 wage statements provided to Plaintiff simply identified the gross wages paid. No hourly rates of
4 pay and hours were listed, in violation of Labor Code § 226(a)(9). In addition, whenever paid
5 time off and meal break premiums were paid, no hourly rates of pay were listed. Therefore,
6 Plaintiff is a member of the Class and has suffered the alleged violations of California Labor
7 Code § 226(a).

8 26. The California Labor Code upon which Plaintiff bases these claims are broadly
9 remedial in nature. These laws and labor standards serve an important public interest in
10 establishing minimum working conditions and standards in California. These laws and labor
11 standards protect the average working employee from exploitation by employers who may seek
12 to take advantage of superior economic and bargaining power in setting onerous terms and
13 conditions of employment.

14 27. The nature of this action and the format of laws available to Plaintiff and
15 members of the Class identified herein make the class action format a particularly efficient and
16 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
17 file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable
18 advantage since it would be able to exploit and overwhelm the limited resources of each
19 individual plaintiff with their vastly superior financial and legal resources. Requiring each Class
20 Member to pursue an individual remedy would also discourage the assertion of lawful claims
21 by employees who would be disinclined to file an action against their former and/or current
22 employer for real and justifiable fear of retaliation and permanent damage to their careers at
23 subsequent employment.

24 28. The prosecution of separate actions by the individual Class Members, even if
25 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
26 to individual Class Members against the Defendants and which would establish potentially
27 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
28 individual Class Members which would, as a practical matter, be dispositive of the interest of the

1 other Class Members not parties to the adjudications or which would substantially impair or
 2 impede the ability of the Class Members to protect their interests. Further, the claims of the
 3 individual Class Members are not sufficiently large to warrant vigorous individual prosecution
 4 considering all of the concomitant costs and expenses.

5 29. Such a pattern, practice and uniform administration of corporate policy regarding
 6 illegal employee compensation described herein is unlawful and creates an entitlement to
 7 recovery by Plaintiff and the Class identified herein, in a civil action, for applicable penalties,
 8 reasonable attorneys' fees, and costs of suit according to the mandate of California Labor Code
 9 § 226 and Code of Civil Procedure § 1021.5.

10 30. Proof of a common business practice or factual pattern, which the named Plaintiff
 11 experienced and is a representative of, will establish the right of each of the members of the
 12 Plaintiff Class to recovery on the causes of action alleged herein.

13 **FIRST CAUSE OF ACTION**

14 **VIOLATION OF LABOR CODE § 226(a)**

15 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

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

18 32. Labor Code § 226(a) requires employers to provide itemized wage statements to
 19 its employees that identify accurate information, including without limitation, all applicable
 20 hourly rates in effect during the pay period and the number of hours worked at each rate.
 21 Defendants failed in their affirmative obligation to provide accurate itemized wage statements to
 22 Plaintiff and the Class in violation of Labor Code § 226(a).

23 33. Plaintiff and the Class were paid hourly. As such, the wage statements should
 24 have reflected the accurate hourly rates of pay and number of hours worked at each rate.
 25 Whenever overtime wage payments such as "OT Bonus" wages were paid, however, Defendants
 26 failed to identify the applicable hourly rates of pay and number of hours worked on wage
 27 statements issued to Plaintiff and the Class. In addition, whenever paid time off and meal break
 28 premiums were paid, the wage statements failed to identify the applicable hourly rates of pay.

1 Instead, Defendants had a policy and practice of only identifying the amount of gross wages
2 earned as a lump sum, without any way to calculate how such wages were paid. This policy and
3 practice is a direct violation of Labor Code § 226(a)(9).

4 34. Such a pattern, practice and uniform administration of corporate policy as
5 described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class
6 identified herein, in a civil action, for all damages or penalties pursuant to Labor Code § 226,
7 including interest thereon, attorneys' fees, and costs of suit according to the mandate of
8 California Labor Code § 226.

9 **SECOND CAUSE OF ACTION**

10 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

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

12 35. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
13 though fully set forth herein.

14 36. Plaintiff brings this cause of action as a proxy for the State of California and in
15 this capacity, seeks penalties on behalf of all Aggrieved Employees from July 20, 2019, through
16 the present, for Defendants' violation of Labor Code § 226(a) as alleged above. Specifically,
17 Defendants violated Labor Code § 226(a) by failing to provide accurate itemized wage
18 statements to Plaintiff and other Aggrieved Employees that identified the applicable hourly rates
19 of pay and number of hours worked whenever overtime wage payments such as "OT Bonus"
20 wages were paid, and the applicable hourly rates of pay whenever paid time off and meal break
21 premiums were paid.

22 37. Plaintiff is an "aggrieved employee" pursuant to Labor Code § 2699, as Plaintiff
23 has suffered the violations of Labor Code § 226(a) alleged above.

24 38. On or about July 20, 2020, Plaintiff sent written notice to the California Labor &
25 Workforce Development Agency ("LWDA") of Defendants' violation of Labor Code § 226(a),
26 pursuant to Labor Code § 2698, *et seq.*, the Private Attorneys General Act ("PAGA"). As of the
27 date of the filing of this Complaint, the LWDA has not responded to Plaintiff's written notice nor
28 indicated whether it intends to investigate the Labor Code violations provided for in the written

notice. Pursuant to Labor Code § 2699.3, Plaintiff also sent written notice of Defendants' violations of the Labor Code to Defendants via certified mail.

39. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all applicable civil penalties for Defendants' violations of Labor Code § 226(a) for the time period described above, on behalf of himself and other Aggrieved Employees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment for himself and all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. For an order certifying the proposed Class;
2. For an order appointing Plaintiff as the representative of the Class;
3. For an order appointing Counsel for Plaintiff as Class Counsel;
4. Upon the First Cause of Action, for penalties and/or damages pursuant to Labor Code § 226, and for costs and attorneys' fees;
5. Upon the Second Cause of Action, for civil penalties according to proof pursuant to Labor Code §§ 226.3 and 2698, *et seq.*, and for costs and attorneys' fees;
6. On all causes of action for attorneys' fees and costs as provided by California Labor Code §§ 226, and 2699, and Code of Civil Procedure § 1021.5; and
7. For such other and further relief that the Court may deem just and proper.

DATED: July 29, 2020

DIVERSITY LAW GROUP, P.C.

By: _____

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

Attorneys for Plaintiff, the Class, and Aggrieved Employees