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SUPERIOR COURT-STOCKTON

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9 **SUPERIOR COURT OF CALIFORNIA**  
10 **FOR THE COUNTY OF SAN JOAQUIN**

11 SAM KEOPHIMANE and LUIS MEDINA,  
on behalf of Aggrieved Employees,

12 Plaintiff,

13 vs.  
14

15 TRACY AUTO L.P. (DBA TRACY  
TOYOTA), a California Limited Partnership;  
16 LOTT AUTOMOTIVE, INC., a California  
Corporation;  
17 RONALD M. LOTT, an individual; and  
18 DOES 1 to 100, inclusive,

19 Defendants.  
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STK-CV- VOE -2022- 1117

**COMPLAINT FOR CIVIL PENALTIES**

**1. Private Attorneys General Act  
(Labor Code § 2698, *et seq.*)**

1 Plaintiff SAM KEOPHIMANE and LUIS MEDINA ("Plaintiffs"), hereby file this Complaint  
2 against Defendants TRACY AUTO L.P., a California Limited Partnership; LOTT AUTOMOTIVE,  
3 INC., a California Corporation; RONALD M. LOTT, an individual; and DOES 1 to 100, inclusive  
4 (hereinafter all collectively referred to as "Defendants"). On information and belief, Plaintiffs allege  
5 the following:

6 **JURISDICTION AND VENUE**

7 1. The San Joaquin County Superior Court has jurisdiction in this matter pursuant to  
8 California Code of Civil Procedure section 410.10 to determine alleged violations of the California  
9 Labor Code and Wage Order No. 7.

10 2. Venue is proper pursuant to Civil Procedure Code §§ 395(a), and 395.5, in that  
11 Defendants reside in San Joaquin County. In addition, some of the wrongful acts and violations of law  
12 asserted herein occurred within San Joaquin County, and Defendants' obligation to pay wages arose in  
13 San Joaquin County pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414  
14 (1984).

15 3. Plaintiffs have sought permission pursuant to Labor Code section 2699, *et seq.* to pursue  
16 the claims set forth in this Complaint against Defendants as a private attorney general on behalf of  
17 themselves and all other Aggrieved Employees. Plaintiff defines "Aggrieved Employees" as follows:

18 All of Defendants' nonexempt, employees who have or continue to work for  
19 Defendants from November 23, 2020, to the present.

20 4. Pursuant to California Labor Code section 2699.3, Plaintiffs have submitted written  
21 notice to the Labor and Workforce Development Agency ("LWDA") of the Private Attorney General  
22 Act ("PAGA") claims outlined in this Complaint via online submission on November 23, 2021.  
23 Plaintiffs also submitted the \$75.00 filing fee. The notice was also sent to Defendants via certified mail  
24 on the same day it was submitted to the LWDA. More than the statutorily required time has passed  
25 without the LWDA notifying Plaintiffs that it intends to investigate the violations. As such, Plaintiffs  
26 have exhausted all administrative remedies under the PAGA and may bring this action on behalf of all  
27 Aggrieved Employees, as outlined in the notice to the LWDA. *See* Cal. Lab. Code § 2699.3(a)(2)(A),  
28 (c)(3); *Caliber Bodyworks, Inc. v. Sup. Ct.*, 134 Cal.App.4th 365, 383 n.18, 385 n.19 (2005).

**PARTIES**

5. SAM KEOPHIMANE is an individual over the age of eighteen (18) and is a resident of the State of California.

6. LUIS MEDINA is an individual over the age of eighteen (18) and is a resident of the State of California.

7. On information and belief, Plaintiffs allege, TRACY AUTO L.P. (DBA TRACY TOYOTA), is now and/or at all times mentioned in this Complaint was a California Limited Partnership and the owner and operator of an industry, business and/or facility doing business in the State of California.

8. On information and belief, Plaintiffs allege LOTT AUTOMOTIVE, INC., is now and/or at all times mentioned in this Complaint was a California Corporation and the owner and operator of an industry, business and/or facility doing business in the State of California.

9. On information and belief, Plaintiff alleges, that RONALD M. LOTT is an individual over the age of eighteen (18) and is a resident of the State of California. Plaintiff further allege(s) that RONALD M. LOTT is an owner, director, officer, and/or managing agent of TRACY AUTO L.P., and LOTT AUTOMOTIVE, INC., responsible for causing the violations outlined below. As such RONALD M. LOTT is individually liable pursuant to California Labor Code section 558.1.

10. Defendants DOES 1 through 100 are affiliates, subsidiaries, and related entities and the alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and are liable for the actions herein alleged. Plaintiffs will seek to amend this Complaint to allege the true names and capacities of these DOE Defendants when they are ascertained.

11. At all times mentioned herein, each Defendant was the agent or employee of each of the other Defendants and was acting within the course and scope of such agency or employment. The Defendants are jointly and severally liable to Plaintiffs.

12. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint employment, joint venture, partnership and common enterprise, and were acting within the course and scope of, and in pursuance of said joint employment, joint venture, partnership and common enterprise.

13. Defendants, and each of them, now and/or at all times mentioned in this Complaint approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

14. Defendants proximately caused Plaintiffs to be subjected to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

## GENERAL ALLEGATIONS

15. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 14 as though fully set forth herein.

16. Defendants run car dealerships where Plaintiffs worked as service salespeople. Plaintiff SAM KEOPHIMANE was employed by Defendants from approximately July 2020 through October 2021 and Plaintiff LUIS MEDINA was employed from approximately October 2020 through October 2021. Defendants paid Plaintiffs and Aggrieved Employees on an hourly basis plus incentive-based pay such as commissions, bonuses, and other types of non-discretionary remuneration. Plaintiffs and Aggrieved Employees were paid the additional non-discretionary remuneration on a monthly basis that covered the production and/or sales from the previous month. The additional non-discretionary remuneration would be offset in a reconciliation against a draw payment for anticipated additional non-discretionary remuneration paid in the previous month. Plaintiffs and Aggrieved Employees also earned compensation by selling approved third-party products and services, *e.g.* from BG Products, through Defendants and on Defendants' premises. Several of the bonuses paid to Plaintiffs and Aggrieved Employees were based on the quality of their customer services ratings and other performance-based metrics other than selling.

17. Plaintiffs and Aggrieved Employees were not always paid overtime for hours in excess of eight (8) hours a day and forty (40) hours a week. The Department of Industrial Relations Alternative Workweek Database does not show any alternative workweek schedule ever being adopted by Defendants. Even if there were a valid alternative workweek schedule adopted, Defendants failed to pay overtime for the first eight (8) hours on days in addition to any regularly scheduled alternative workweek or double time for hours in excess of eight (8) on days in addition to any regularly scheduled alternative workweek.

1           18. Defendants regularly failed to provide all meal and rest periods owed to Plaintiffs and  
2 Aggrieved Employees due to inadequate staffing, high workloads, and explicit instructions to perform  
3 certain work tasks during "break" time. As a result of Defendants' policies and practices, Plaintiffs and  
4 Aggrieved Employees were not authorized and permitted to take all meal and rest periods they were  
5 entitled to. Plaintiffs and Aggrieved Employees were also regularly unable to take any meal periods  
6 until well after the fifth hour of work, if any was able to be taken at all. Meal and rest periods were  
7 regularly interrupted and cut short due to instructions to immediately help customers upon being  
8 approached by customers.

9           19. Defendants failed to pay overtime premiums, meal and rest period premiums, and sick  
10 leave premiums at the correct regular rate of pay. Defendants never paid overtime at a premium rate  
11 beyond 1.5 the basic hourly rate, failing to include the value of bonuses, commissions, and other non-  
12 discretionary remuneration into the regular rate calculation. Similarly, Defendants paid meal and rest  
13 period premiums at Plaintiffs' and Aggrieved Employees' basic hourly rate rather than their regular rate  
14 of pay. Defendants' failure to pay for all overtime hours worked and failure to properly calculate the  
15 regular rate of pay when calculating overtime, meal period premiums, and sick leave resulted in  
16 Defendants' failure to pay Plaintiffs and Aggrieved Employees all wages they were owed during the  
17 applicable pay periods.

18           20. Defendants failed to issue Plaintiffs and Aggrieved Employees wage statements that  
19 stated their total hours worked, and the number of regular and overtime hours they worked and  
20 corresponding applicable hourly rates, the correct amount of gross and net wages, and amounts for meal  
21 and rest period premiums.

22           21. At the end of their employment, Plaintiffs and Aggrieved Employees had their earned  
23 hourly wages and vacation/PTO wages deducted to offset any advanced commissions at the time of  
24 termination. Because of this, Plaintiffs and Aggrieved Employees were not paid minimum and any  
25 overtime wages for all hours worked as well as vested vacation wages at the time of termination.  
26 Additionally, as stated above, there remained unpaid overtime, meal and rest period premiums, and sick  
27 leave wages owed to Plaintiffs and Aggrieved employees at the time of termination. These amounts  
28 remain unpaid.

22. Plaintiffs and Aggrieved Employees also regularly used their personal cellphones for work to speak with and receive calls from prospective customers and management. Despite this, Defendants did not have any policy or practice to reimburse Aggrieved Employees for this expense. Defendants were aware and encouraged the use of Plaintiffs' and Aggrieved Employees' personal cell phones, as there were only a small number of phones available at the dealership for use by employees. Therefore, Plaintiffs and Aggrieved Employees had to use their personal cell phones to complete company business.

### CAUSE OF ACTION

**FIRST CAUSE OF ACTION**  
**PRIVATE ATTORNEYS GENERAL ACT**  
**(As to All Defendants)**

23. Plaintiffs incorporate by reference and re-allege paragraphs 1 through 22 as though fully set forth herein.

24. Plaintiffs have alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in its dealings with Plaintiffs and other current and former Aggrieved Employees:

- Violation of Labor Code sections 510, 1194; IWC Wage Order 7, § 3 (Failure to Pay Overtime Wages);
- Violation of Labor Code sections 1194, 1197.1; IWC Wage Order 7, § 4 (Failure to Pay Minimum Wages);
- Violation of Labor Code §§ 226.7, 512 and Wage Order No. 7, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof);
- Violation of Labor Code § 226.7 and Wage Order No. 7, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements);
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages);
- Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses);

- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order);
- Violation of Labor Code §§ 221, 223, 225 (Failure to Pay Contract Wages and Unlawful Deductions);
- Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)
- Violation of Labor Code sections 246, 246.5, 247.5, 248.5 (Failure to Provide Paid Sick Leave, and Failure to Keep Adequate Records of Paid Sick Leave); and
- Violation of Labor Code sections 204, 210 (Untimely Payment of Wages);

25. Plaintiffs seek civil penalties against Defendants as provided in the Labor Code, or, if no civil penalty is provided, default penalties pursuant to Labor Code section 2699(f)(2).

26. Plaintiffs have received authorization, based on the LWDA's failure to send notice of its intent to pursue Plaintiffs' claims, to act on behalf of the Labor Commissioner to assess civil penalties against Defendant.

### **DAMAGES**

WHEREFORE Plaintiffs requests relief as follows:

1. **As to the First Cause of Action (PAGA):**

- a. Penalties according to the following schedule: For any initial violation, one hundred dollars (\$100) for each Aggrieved Employee per pay period; For any subsequent violation, two hundred dollars (\$200) for each Aggrieved Employee per pay period; or civil penalties as otherwise enumerated for each enumerated Labor Code section;
- b. Reasonable attorney's fees and costs pursuant to the Labor Code section 2699;
- c. For such other and further relief as this Court may deem just and proper.

Dated: February 9, 2022

**Shimoda & Rodriguez Law, PC**

By: \_\_\_\_\_

Galen T. Shimoda  
Justin P. Rodriguez  
Attorneys for Plaintiffs

# SUPERIOR COURT OF CALIFORNIA

County of San Joaquin  
180 E Weber Avenue  
Stockton, CA 95202

## NOTICE OF CASE ASSIGNMENT AND NOTICE OF HEARING

Case Number: **STK-CV-UOE-2022-0001117**

A Case Management Conference has been scheduled for your case as indicated below. A copy of this information must be provided with the complaint or petition, and with any cross-complaint that names a new party to the underlying action. Disregard hearing date if that date has expired.

|                                                                                                           |                         |                                              |
|-----------------------------------------------------------------------------------------------------------|-------------------------|----------------------------------------------|
| <b>Hearing: Case Management Conference</b>                                                                | <b>Date: 08/12/2022</b> | <b>Time: 8:30 AM Department:11B</b>          |
| <b>JUDGE</b>                                                                                              | <b>COURT LOCATION</b>   | <b>PHONE Numbers:</b>                        |
| THIS CASE HAS BEEN ASSIGNED TO JUDGE ROBERT T. WATERS IN DEPARTMENT 11B FOR ALL PURPOSES, INCLUDING TRIAL | Stockton                | Stockton: 209-992-5693<br>Lodi: 209-992-5522 |

[ X ] ADR & Scheduling Information is available on the court website @ [sjcourts.org/self-help](https://www.sjcourts.org/self-help)

1. You must:

- a. **Serve** all named defendant's and file proofs of service on those defendants with the court Within 60 days of filing of the complaint. (CRC 3.110)
  - b. **File and serve** a completed Case Management Conference Statement (use of JC form CM-110 is mandatory) at least 15 days before the Case Management Conference.
  - c. **Meet and Confer**, in person or by telephone, to consider each of the issues identified in CRC 3.727 no later than 30 calendar days before the date set for the Case Management Conference. (CRC 3.724)
  - d. **Collection cases** are managed pursuant to CRC 3.740.
2. Case Management Conferences, Law and Motion and Ex Parties will be held remotely unless ordered otherwise. For telephonic appearance phone numbers, information and instructions visit @ <https://www.sjcourts.org/division/civil>.
3. If this case was eFiled, the plaintiff/petitioner or their attorney must access their copy of this notice and the issued summons for service from the court's case management system at the following link:  
[cms.sjcourts.org/fullcourtweb/start.do](https://cms.sjcourts.org/fullcourtweb/start.do).
4. Courtesy Copies: Courtesy copies must be submitted as outlined in Local Rule 3-117. Courtesy copies (only) may be placed in the drop boxes located on the 10<sup>th</sup> and 11<sup>th</sup> floor. Courtesy copies can also be placed in the drop box located outside of the courthouse.

Visit our website @ [www.sjcourts.org](https://www.sjcourts.org) for more information regarding civil cases, local rules, and forms.

Date: 02/14/2022

Kacey Sutton, Deputy Clerk

NOTICE OF CASE ASSIGNMENT AND NOTICE OF HEARING