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Attorneys for Plaintiffs SAM KEOPHIMANE and LUIS MEDINA
individually and on behalf of similarly situated employees

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

SAM KEOPHIMANE and LUIS MEDINA,
individually and on behalf of all other
similarly situated employees,

Plaintiffs,

vs.

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

Defendants.

Case No. STK-CV-UOE-2022-0001117

*Assigned for All Purposes to Hon. Robert T.
Waters, Department 11B*

**EXHIBIT LIST AND EXHIBITS IN
SUPPORT OF PLAINTIFFS' MOTION TO
APPROVE PRIVATE ATTORNEYS
GENERAL ACT SETTLEMENT**

Date:

Time: 9:00 a.m.

Dept.: 11B

Judge: Hon. Robert T. Waters

Filed: February 14, 2022

Trial Date: None Set

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Proposed Private Attorneys General Act Settlement
B	Plaintiffs' Operative Complaint
C	Plaintiffs' Letter to the Labor and Workforce Development Agency
D	ILYM Group, Inc. Quote
E	Proposed Notice of Settlement
F	Proof of Submission of Proposed Settlement Agreement to LWDA
G	Plaintiffs' Itemized Costs

Dated: August 8, 2023

Shimoda & Rodriguez Law, PC

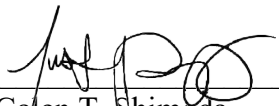
By: 
 Galen T. Shimoda
 Justin P. Rodriguez
 Renald Konini
 Attorneys for Plaintiffs

EXHIBIT A

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LOTT AUTOMOTIVE, INC., and RONALD M. LOTT

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Case No.: STK-CV-VOE-2022-0001117

**PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT**

Filed: February 14, 2022

Trial Date: None Set

1 This Private Attorneys General Act Settlement is made and entered into between the Plaintiffs
2 Sam Keophimane and Luis Medina (“Plaintiffs”), on behalf of themselves, the Labor and Workforce
3 Development Agency, and Aggrieved Employees, and Defendants Tracy Auto L.P. *dba* Tracy Toyota,
4 Lott Automotive, Inc., and Ronald M. Lott, (“Defendants”). This Agreement is subject to the terms and
5 conditions set forth below and approval of the Court.

6 **1. DEFINITIONS**

7 The following terms, when used in this Agreement, have the following meanings:

8 1.1 “Action” means the above stated lawsuit, *Keophimane, et al. v. Trace Auto L.P. et al.*, San
9 Joaquin County Superior Court, Case No. STK-CV-VOE-2022-0001117, filed February 14, 2022.

10 1.2 “Aggrieved Employee(s)” means All of Defendants’ nonexempt, employees who have or
11 continue to work for Defendants from November 23, 2020, up to either (1) the Final Approval Date, or
12 (2) sixty (60) days after this Agreement is signed, whichever is earlier. The estimated number of
13 Aggrieved Employees is 143.

14 1.3 “Agreement” or “Settlement” or “Settlement Agreement” means this Private Attorneys
15 General Act Settlement.

16 1.4 “Complaint” means the operative Complaint on file in the Action with the Court.

17 1.5 “Court” means the San Joaquin County Superior Court.

18 1.6 “Defendants” means Tracy Auto L.P. *dba* Tracy Toyota, Lott Automotive, Inc., and Ronald
19 M. Lott.

20 1.7 “Defendants’ Counsel” means Fine, Boggs & Perkins.

21 1.8 “Enhancement Payment” means the amount approved by the Court to be paid to the
22 Plaintiffs in recognition of the time and effort expended for the benefit of the Labor and Workforce
23 Development Agency and Aggrieved Employees, which is in addition to any Individual Settlement
24 Amount paid to the Plaintiffs as Aggrieved Employees. Also, the payment is in exchange for a waiver of
25 individual claims by Plaintiffs, including a waiver of Civil Code section 1542.

26 1.9 “Effective Date” means the Final Approval Date unless there is a timely objection lodged
27 that has not later been withdrawn, in which case the Effective Date will be either (a) the 60th calendar day
28 after a signed order approving this settlement has been filed provided no appellate proceeding having been

1 filed; or (b) seventh (7th) calendar day after any appellate proceeding opposing the settlement has been
2 finally dismissed with no material change to the terms of this settlement and there is no right to pursue
3 further remedies or relief, whichever is later.

4 1.10 "Final Approval Date" means the date the Court enters a signed order granting approval of
5 the Agreement.

6 1.11 "Gross Settlement Amount" is the sum of Two Hundred Twenty-Two Thousand Dollars
7 and Zero Cents (\$222,000).

8 1.12 "Individual Settlement Amount" means an individual Aggrieved Employees' allocation of
9 the Net Settlement Amount, as defined in Section 1.14 and 5.7.

10 1.13 "LWDA" means the California Labor and Workforce Development Agency.

11 1.14 "Net Settlement Amount" is the portion of the Gross Settlement Amount available for
12 distribution between Aggrieved Employees and the LWDA pursuant to Labor Code section 2699(i), after
13 deduction of Plaintiffs' attorneys' fees and litigation costs, any Enhancement Payments to Plaintiffs
14 awarded by the Court, and Settlement Administrator Costs.

15 1.15 "Notice of Settlement" means the document substantially in the form attached hereto as
16 Exhibit 1.

17 1.16 "PAGA" means Private Attorneys General Act.

18 1.17 "PAGA Claim Period" means November 23, 2020, and up to either (1) the Final Approval
19 Date, or (2) sixty (60) days after this Agreement is signed, whichever is earlier.

20 1.18 "PAGA Payment" means the 75% share of the Net Settlement Amount paid to the LWDA
21 pursuant to Labor Code section 2699(i).

22 1.19 "Parties" mean Defendants and Plaintiffs.

23 1.20 "Plaintiffs" means Sam Keophimane and Luis Medina.

24 1.21 "Plaintiffs' Counsel" means Galen T. Shimoda, Justin P. Rodriguez and Renald Konini of
25 Shimoda & Rodriguez Law, PC.

26 1.22 "Plaintiffs' Released Claims" means all of Plaintiffs' individual, non-PAGA, claims
27 arising from, could have been asserted, or related in any way to the Plaintiffs' employment with
28 Defendants, under federal, state, or local laws, and/or ordinances, or tort or contract theories, including,

without limitation, claims under the Civil Rights Act of 1964, Title VII, the California Fair Employment and House Act, the Americans with Disabilities Act and all amendments thereto, the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act, ERISA, the Family and Medical Leave Act, the California Family Rights Act, the Fair Labor Standards Act, the California Labor Code, the Industrial Welfare Commission Wage Orders, and the California Business and Professions Code, whether known or unknown, and whether anticipated or unanticipated, including without limitation statutory, constitutional, contractual or common law claims for lost wages, unpaid wages, emotional distress, punitive damages, special damages, damages, unpaid costs, penalties, liquidated damages, interest, attorneys' fees, litigation costs, restitution, equitable relief or other similar relief or claims. The Plaintiffs' Released Claims exclude claims for workers' compensation, unemployment insurance benefits, or other claims that cannot be released as a matter of law.

1.23 "QSF" means a Qualified Settlement Fund set up by the Settlement Administrator for the benefit of the Aggrieved Employees and from which the payments under this Agreement shall be made. Any amounts Defendants have agreed to pay under this Agreement shall remain the property of Defendants until the payments required under the Agreement are made.

1.24 "Qualifying Pay Periods" are pay periods worked by Aggrieved Employees during the PAGA Claim Period in California. The calculation of an Aggrieved Employees' pay periods and a determination as to whether an Aggrieved Employee was actively employed in California in a particular pay period shall be construed from Defendants' records.

1.25 "Released PAGA Claims" means any and all claims for civil penalties that were brought under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.*, that were asserted in the Complaint and any additional claims for civil penalties under the PAGA that could have been brought based on the facts alleged therein during the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver of claims.

1.26 "Released Parties" means Defendants, as well as Defendants' officers, shareholders, directors, agents, employees, attorneys, and insurers.

1.27 "Settlement Administrator" means and refers to ILYM Group, Inc., the third-party entity that will administer the Agreement as outlined in Section 7, or any other third-party administrator agreed

1 to by the Parties and approved by the Court for the purposes of administering this Agreement. The Parties
2 each represent that they do not have any financial interest in the Settlement Administrator.

3 1.28 "Settlement Administrator Costs" means the fees and expenses reasonably incurred by the
4 Settlement Administrator as a result of the procedures and processes expressly required by this Agreement,
5 and shall include all costs of administering the Agreement, including, but not limited to, all tax document
6 preparation, custodial fees, and accounting fees incurred by the Settlement Administrator; all costs and
7 fees associated with preparing, issuing and mailing any and all notices and other correspondence to
8 Aggrieved Employees; all costs and fees associated with communicating with Aggrieved Employees,
9 Plaintiffs' Counsel, and Defendants' Counsel; all costs and fees associated with computing, processing,
10 reviewing, and paying the Individual Settlement Amounts, and resolving disputes; all costs and fees
11 associated with calculating tax withholdings and payroll taxes, if any, making related payment to federal
12 and state tax authorities, if any, and issuing tax forms relating to payments made under the Agreement; all
13 costs and fees associated with preparing any tax returns and any other filings required by any governmental
14 taxing authority or agency; all costs and fees associated with preparing any other notices, reports, or filings
15 to be prepared in the course of administering Individual Settlement Amounts; and any other costs and fees
16 incurred and/or charged by the Settlement Administrator in connection with the execution of its duties
17 under this Agreement.

18 **2. DESCRIPTION OF THE LITIGATION**

19 2.1 On or about November 23, 2021, Plaintiffs sent notice to the LWDA to exhaust
20 administrative remedies under the PAGA for (1) Failure to Pay Overtime Wages, (2) Failure to Pay
21 Minimum Wages, (3) Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof, (4) Failure to
22 Provide Rest Periods or Pay Premium in Lieu Thereof, (5) Failure to Provide Accurate Wage Statements,
23 (6) Failure to Pay Final Wages, (7) Failure to Pay Reimbursements for Expenses, (8) Failure to Pay
24 Contract Wages and Unlawful Deductions, (9) Failure to Maintain Accurate Records, (10) Failure to
25 Provide Paid Sick Leave, and (11) Untimely Payment of Wages. Plaintiffs also asserted there was
26 individual liability for several of these violations pursuant to Labor Code sections 558, 558.1 (Regarding
27 Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order). The
28

1 LWDA did not respond to the notice within the statutorily required time frame and, as such, Plaintiffs
2 became authorized to act as a Private Attorneys General on all alleged PAGA claims.

3 2.2 After exhausting administrative remedies, Plaintiffs filed a Complaint on February 14,
4 2022, in San Joaquin County Superior Court on behalf of themselves and Aggrieved Employees for claims
5 alleged in the November 23, 2021 notice to the LWDA.

6 2.3 Defendants filed a petition to compel arbitration, which the Court denied. Defendants
7 timely appealed the order denying Defendants petition to compel arbitration to the Third District Court
8 of Appeal. While the appeal was pending, the Parties engaged in mediation. Through informal
9 discovery and Plaintiffs' independent investigations, the applicable payroll and Aggrieved Employee
10 information were reviewed and analyzed in advance of mediation. On June 1, 2023, the Parties
11 participated in a lengthy mediation with private mediator Lisa Klerman. At the conclusion of the
12 mediation, the Parties were unable to come to a resolution. However, on June 8, 2023, the Parties were
13 able to resolve the asserted claims through the use of a mediator's proposal. At all times, the Parties'
14 settlement negotiations have been non-collusive, adversarial, and at arm's length.

15 2.4 Discussions between Plaintiffs and Plaintiffs' Counsel, between counsel for the Parties, the
16 mediator, document and data reviews, extensive legal analysis, and the provision of information by
17 Defendants to Plaintiffs have permitted each side to assess the relative merits of the PAGA claims and the
18 defenses to those claims.

19 2.5 In the Action, Plaintiffs contends that Defendants violated California law by 1) failing to
20 pay overtime wages, 2) failing to pay minimum wages, 3) failing to provide meal periods or pay premiums
21 in lieu thereof, 4) failing to provide rest periods or pay premium in lieu thereof, 5) failing to provide
22 accurate wage statements, 6) failing to pay final wages, 7) failing to pay reimbursements for expenses, 8)
23 failing to pay contract wages and unlawful deductions, 9) failing to maintain accurate records, 10) failing
24 to provide paid sick leave, and 11) untimely payment of wages. Plaintiff also alleged individual liability
25 for several of these alleged Labor Code violations under Labor Code sections 558, 558.1. The agreed
26 upon Gross Settlement Amount was reached after evaluating the Parties' theories of potential exposure
27 for the PAGA claims. The Parties, with the assistance of the mediator, also assessed appropriate discounts
28 to the potential liability based on Defendants' factual and legal contentions and defenses.

1 2.6 The Parties agree that the above-described investigation and evaluation, as well as informal
2 discovery and the information exchanged to date, are more than sufficient to assess the merits of the
3 respective Parties' positions and to compromise the issues on a fair and equitable basis. Plaintiffs,
4 Plaintiffs' Counsel, Defendants, and Defendants' Counsel have concluded that it is desirable that the
5 PAGA claims asserted in the Action be settled in a manner and upon such terms and conditions set forth
6 herein in order to avoid further expense, inconvenience and distraction of further legal proceedings, and
7 the risk of an adverse outcome each of the Parties potentially face. Plaintiffs, Plaintiffs' Counsel,
8 Defendants, and Defendants' Counsel are of the opinion that the Agreement for the consideration and
9 terms set forth herein is fair, reasonable, and adequate in light of all known facts and circumstances.

10 **3. THE CONDITIONAL NATURE OF THIS AGREEMENT**

11 3.1 This Agreement and all associated exhibits or attachments are made for the sole purpose
12 of settling the PAGA claims asserted in the Action. This Agreement and the settlement it evidences are
13 made in compromise of disputed claims. The Parties enter into this Agreement and associated settlement
14 on a conditional basis in order for the Court to evaluate and approve the settlement. If the Effective Date
15 does not occur, or if the Court's approval of the settlement is reversed or materially modified on appellate
16 review, this Agreement shall be deemed null and void; it shall be of no force or effect whatsoever; it shall
17 not be referred to or utilized for any purpose whatsoever; and the negotiation, terms and entry of the
18 Agreement shall remain subject to the provisions of California Evidence Code Sections 1119 and 1152,
19 Federal Rule of Evidence 408, and any other analogous rules of evidence that may be applicable.

20 3.2 Defendants have denied all claims as to liability, damages, penalties, interest, fees,
21 injunctive relief and all other forms of relief asserted in the Action. Defendants have agreed to resolve
22 the asserted PAGA claims in the Action via this Agreement, but, to the extent this Agreement is deemed
23 void or the Effective Date does not occur, Defendants do not waive, and are expressly reserving, all rights
24 to challenge all such claims and allegations in the Action upon all procedural and factual grounds,
25 including, without limitation, the ability to challenge representative or collective treatment on any
26 grounds, as well as to assert any and all other potential defenses or privileges.

1 **4. SCOPE OF THE AGGRIEVED EMPLOYEES**

2 4.1 The scope of individuals encompassed under the Agreement, who are entitled to all benefits
3 as authorized under the Agreement and subject to all obligations and duties required under the Agreement,
4 shall include all Aggrieved Employees as defined in Section 1.2.

5 4.2 Aggrieved Employees entitled to recover under this Agreement will include only those
6 individuals who are identified in Defendants' records as having worked as an Aggrieved Employee.

7 **5. TERMS OF THE SETTLEMENT**

8 The Parties agree as follows:

9 5.1 Gross Settlement Amount: In consideration and exchange for the releases described in
10 Section 6, Defendants shall pay the Gross Settlement Amount (\$222,000). Funding of the Gross
11 Settlement Amount shall occur within twenty-eight (28) calendar days after the Effective Date, to be held
12 in trust in a QSF by the Settlement Administrator. The Gross Settlement Amount represents the maximum
13 amount payable under this Agreement by Defendants, and includes without limitation, the PAGA
14 Payment, all payments to the Aggrieved Employees, all attorneys' fees, costs and litigation expenses
15 directly related to the Action incurred to date, as well as all such fees and costs incurred in documenting
16 the Agreement, any Enhancement Payment to Plaintiffs that may be awarded by the Court, administering
17 the Agreement (including Settlement Administrator Costs), and obtaining approval of the Agreement.

18 5.2 Attorneys' Fees and Costs: Plaintiffs' Counsel will apply to the Court for attorney's fees
19 of 35% of the Gross Settlement Amount, which shall be paid from the Gross Settlement Amount.
20 Defendants have agreed to not oppose Plaintiffs' Counsel's application for attorneys' fees so long as it
21 does not exceed the 35% threshold. Plaintiffs' Counsel will also be entitled to reimbursement for
22 advanced litigation expenses not to exceed \$15,000.00, which shall be paid from the Gross Settlement
23 Amount. Defendants have agreed to not oppose Plaintiffs' Counsel's request for reimbursement for
24 advanced litigation expenses so long as they do not exceed the \$15,000.00 threshold. The Settlement
25 Administrator will issue Plaintiffs' Counsel an IRS Form 1099 for the attorneys' fees and costs paid under
26 this Agreement. In the event that the Court awards less than the requested attorney's fees and/or costs,
27 the portion of the requested amounts not awarded to Plaintiffs' Counsel shall be added to the Net
28 Settlement Amount as defined in section 1.14.

1 5.3 Settlement Administrator Costs: The Settlement Administrator Costs shall be paid from
2 the Gross Settlement Amount and shall not exceed \$5,000.00. The difference between any actual costs
3 and the allocated \$5,000.00 shall be added to the Net Settlement Amount as defined in section 1.14.

4 5.4 Enhancement Payment: Plaintiffs' Counsel, on behalf of Plaintiffs, shall apply to the Court
5 for an Enhancement Payment to Plaintiffs in an amount not to exceed Ten Thousand Dollars (\$10,000.00)
6 each to compensate for the risks, time, and expense of their involvement in the Action and securing the
7 benefits of this Agreement for the LWDA and Aggrieved Employees. The Enhancement Payment is in
8 addition to the Individual Settlement Amount Plaintiffs would otherwise be due under the Agreement as
9 an Aggrieved Employee. Defendants have agreed to not oppose Plaintiffs' Counsel's request for
10 Enhancement Payments to Plaintiffs so long as they do not exceed the amount stated herein. The
11 Enhancement Payment will be designated as a non-wage payment and reported on an IRS Form 1099-
12 MISC. In the event that the Court awards less than the Enhancement Payment amounts requested, then
13 any portion of the requested amount not awarded to Plaintiffs shall be added to the Net Settlement Amount
14 as defined in section 1.14.

15 5.5 Treatment of Residue and Cy Pres: For any portion of the Net Settlement Amount allocated
16 to Aggrieved Employees that was not claimed by Aggrieved Employees by cashing their respective
17 settlement checks before the deadline to do so, that remaining amount shall be donated to Childrens
18 Advocacy Centers of California (CACC) under the doctrine of *cy pres*. No portion of the Gross Settlement
19 Amount will revert to Defendants for any reason.

20 5.6 No Additional Benefits Contributions: All Individual Settlement Amounts paid to
21 Aggrieved Employees shall be deemed to be income solely in the year in which such amounts were
22 actually received by Aggrieved Employees. It is expressly understood and agreed that the receipt of such
23 Individual Settlement Amounts will not entitle any Aggrieved Employee to any new or additional
24 compensation or benefits under any company bonus or other compensation or benefit plan or agreement
25 in place during the period covered by the Agreement, nor will it entitle any Aggrieved Employee to any
26 increased retirement, 401(k) benefits or matching benefits, or deferred compensation benefits. It is the
27 intent of this Agreement that the Individual Settlement Amounts provided for in this Agreement are the
28 sole payments to be made by Defendants to the Aggrieved Employees in connection with this Agreement

(notwithstanding any contrary language or agreement in any benefit or compensation plan document that might have been in effect during the period covered by this Agreement).

5.7 Tax Allocation: The Parties recognize that the Individual Settlement Amounts to be paid to Aggrieved Employees reflect settlement of a dispute over claimed penalties. The characterization of Individual Settlement Amounts to Aggrieved Employees are as follows:

5.7.1 One Hundred percent (100%) of each Aggrieved Employees' Individual Settlement Amount shall be allocated for payment of disputed civil penalties. This portion of the Individual Settlement Amount consists of other income, not wages, for which the Aggrieved Employees shall receive an IRS form 1099-MISC.

5.7.2 Aggrieved Employees shall be solely responsible for the reporting and payment of their share of any federal, state and/or municipal income or other taxes on payments made pursuant to this Agreement. No party has made any representation to any of the other Parties as to the taxability of any payments pursuant to this Agreement, including the payments to Aggrieved Employees, the payments to Plaintiffs' Counsel, or otherwise as to tax implications of any provision of this Agreement.

5.8 Pro Rata Distribution Formula: After Court approved attorneys' fees and costs, Enhancement Payments, and Settlement Administrator Costs are determined and a Net Settlement Amount has been established, that Net Settlement Amount shall be divided between the PAGA Payment and payment to Aggrieved Employees. The PAGA Payment to the LWDA will be 75% of the Net Settlement Amount. 25% of the Net Settlement Amount will be paid to Aggrieved Employees. Each individual Aggrieved Employees' Individual Settlement Amount shall be determined by taking the Qualifying Pay Periods for the individual Aggrieved Employee and dividing that by the Qualifying Pay Periods for all Aggrieved Employees and multiplying that fraction by the 25% share of the Net Settlement Amount. Payment to Aggrieved Employees of their Individual Settlement Amount will not require the submission of any claim form.

5.9 No Additional Contribution by Defendants: Defendants' monetary obligation under this Agreement is limited to the Gross Settlement Amount as described above. All other costs and expenses arising out of or in connection with the performance of this Agreement shall be paid from the Gross Settlement Amount, unless expressly provided otherwise herein. However, in the event this agreement is

1 deemed null and void as described in Section 3, then Defendants and Plaintiffs shall be equally responsible
2 for the Settlement Administrator Costs incurred between the date the Agreement was executed and the
3 date of such event.

4 **6. RELEASE**

5 6.1 Upon the Effective Date, Plaintiffs and each Aggrieved Employee shall be deemed to fully,
6 finally, and forever release the Released Parties from all Released PAGA Claims.

7 6.2 Release by Plaintiffs: Upon the Effective Date, Plaintiffs will be deemed to fully, finally
8 and forever release the Released PAGA Claims and Plaintiffs' Released Claims as to all Released Parties.
9 Plaintiffs' Released Claims include any and all of their individual claims, whether or not they know or
10 suspect to them exist in their favor at the time of the releases, which, if known, might have affected
11 Plaintiffs' settlement with, and release of, the Released Parties. With respect to Plaintiffs' Released
12 Claims, each Plaintiff stipulates and agrees that they shall be deemed to have, and by operation of Final
13 Approval of this Agreement shall have, expressly waived and relinquished, to the fullest extent permitted
14 by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, which states:

15 A general release does not extend to claims that the creditor or releasing
16 party does not know or suspect to exist in his or her favor at the time of
17 executing the release and that, if known by him or her, would have
18 materially affected his or her settlement with the debtor or released party.

19 **7. SETTLEMENT ADMINISTRATION**

20 7.1 Duties of Settlement Administrator: The Settlement Administrator shall be responsible
21 for: 1) receiving and reviewing for accuracy Aggrieved Employee contact information; 2) calculating
22 estimated Individual Settlement Amounts and any and all taxes associated with the Individual Settlement
23 Amount, including employer taxes, if any; 3) taking appropriate steps to trace and locate any individual
24 Aggrieved Employees whose address or contact information as provided to the Settlement Administrator
25 is inaccurate or outdated and mailing the Notice of Settlement to Aggrieved Employees; 4) providing
26 notification to the appropriate state officials of this Agreement as required; 5) maintaining the Gross
27 Settlement Amount in a QSF; 6) determining and paying the final amounts due to be paid under the
28 Agreement after resolution of awarded attorneys' fees and costs and Settlement Administrator Costs; 7)

1 paying any residual funds from uncashed checks to the *cy pres* beneficiaries; 8) reporting to Plaintiffs’
2 Counsel and Defendants’ Counsel regarding the statistics of the administration, including (a) the number
3 of initial Notice of Settlements mailed; (b) the number of forwarded Notice of Settlements; (c) the number
4 of re-mailed Notice of Settlements; (d) the number of total undeliverable Notice of Settlements; (e) the
5 number of address traces performed for undeliverable Notice of Settlements; (g) the number of Notice of
6 Settlements undeliverable from traced addresses; 9) providing a declaration to the Court regarding the
7 final statistics of the administration and compliance with all payment obligations under the Agreement;
8 10) completing all necessary tax reporting on the QSF and payment of the Individual Settlement Amounts
9 to Aggrieved Employees; and 11) carrying out other related tasks as necessary to effectuate the terms of
10 this Agreement and any Order of the Court. All disputes relating to the Settlement Administrator’s ability
11 and need to perform its duties shall be referred to the Court, if necessary, which will have continuing
12 jurisdiction over the terms and conditions of this Agreement, until all payments and obligations
13 contemplated by the Agreement have been fully executed.

14 7.2 Aggrieved Employee Data: Within seven (7) calendar days after the Effective Date,
15 Defendants shall provide the Settlement Administrator with the name, last known mailing address, last
16 known telephone number, Social Security Number, and Qualifying Pay Periods of each Aggrieved
17 Employee. The Settlement Administrator shall review the data to determine the number of Qualifying
18 Pay Periods for each Aggrieved Employee. Defendants shall not provide any information for pay periods
19 during which an Aggrieved Employee may have worked as an exempt employee, worked outside
20 California, or worked outside the PAGA Claim Period. The Settlement Administrator shall maintain all
21 information received from Defendants confidential to itself, and Defendants’ Counsel. However,
22 Plaintiffs’ Counsel shall be able to review the breakdown of Qualified Pay Periods and estimated
23 Individual Settlement Amounts for Aggrieved Employees prior to mailing for quality assurance.

24 7.3 Determination of Payments to Aggrieved Employees, Plaintiffs’ Counsel, and the LWDA:
25 Within seven (7) calendar days after Defendants have provided the Settlement Administrator with
26 information regarding Aggrieved Employees, the Settlement Administrator shall calculate the final Net
27 Settlement Amount, PAGA Payment, and the final Individual Settlement Amounts for Aggrieved
28 Employees, and report the results of these calculations to Plaintiffs’ Counsel and Defendants’ Counsel.

1 7.4 Settlement Administrator Payments to Aggrieved Employees, Plaintiffs' Counsel, and the
2 LWDA: Defendants shall wire the Gross Settlement Amount as described in Section 5.1 to the Settlement
3 Administrator within fourteen (14) calendar days after receiving the funding calculation and report from
4 the Settlement Administrator to be to be held in trust in a QSF. Within seven (7) calendar days after the
5 Settlement Administrator receives the Gross Settlement Amount, the Settlement Administrator shall
6 deliver payment of Plaintiffs' Counsels' attorney's fees and costs, the PAGA Payment payable to the
7 LWDA, Settlement Administrator Costs, and payment for Individual Settlement Amounts to Aggrieved
8 Employees as required under this Agreement and approved by the Court. Plaintiffs' Counsel shall provide
9 the Settlement Administrator with the pertinent taxpayer identification number and payment instructions
10 for the attorney's fees and costs after the Effective Date.

11 7.5 Notice to Aggrieved Employees: Defendants represent and warrant that Aggrieved
12 Employees are able to read and write in English such that no translation of the Notice of Settlement into
13 another language is necessary. The Settlement Administrator will provide a Notice of Settlement,
14 substantially in the form attached as Exhibit 1, to each Aggrieved Employee concurrently with providing
15 payment for Individual Settlement Amounts as described in Sections 5.7 and 7.4. The Notice of
16 Settlement will inform Aggrieved Employees of a summary of the terms and conditions of the Agreement.
17 The Notice of Settlement will also inform Aggrieved Employees of the Gross Settlement Amount, Net
18 Settlement Amount, attorneys' fees and costs allocations, Settlement Administrator Cost allocations,
19 PAGA Payment allocations, the scope of individuals covered by this Agreement, and the nature and extent
20 of the Released PAGA Claims.

21 7.6 Aggrieved Employee Mailing: Within seven (7) calendar days after the Settlement
22 Administrator receives the Gross Settlement Amount, the Settlement Administrator will perform a
23 national change of address ("NCOA") search, update the addresses per the results of the NCOA search
24 and will mail the respective Individual Settlement Amount, as determined in Sections 5.7 and 7.4, and
25 Notice of Settlement, to each Aggrieved Employee by first-class mail, postage prepaid.

26 7.7 Returned and/or Re-mailed Notice Packets: In the event that a Notice of Settlement and
27 Individual Settlement Amount payment is returned to the Settlement Administrator as undeliverable, the
28 Notice of Settlement and Individual Settlement Amount payment shall be sent to the forwarding address

1 affixed thereto within seven (7) calendar days. If no forwarding address is provided, then the Settlement
2 Administrator shall promptly attempt to determine a correct address using a single skip-trace, computer
3 or other search using the name, address and/or Social Security number of the individual involved, and
4 shall then perform a single re-mailing within seven (7) calendar days. Following each search that does
5 not result in a corrected address, for those Aggrieved Employees who appear to be current employees of
6 Defendants at the time of the Effective Date, the Settlement Administrator shall contact Defendants'
7 Counsel for assistance and Defendants shall cooperate in good faith with the Settlement Administrator's
8 reasonable efforts to obtain valid mailing addresses for Aggrieved Employees to the extent they were
9 active employees of Defendants at the time of the Effective Date. In the event the procedures in this
10 paragraph are followed and the intended recipient of a Notice of Settlement and Individual Settlement
11 Amount payment still does not receive the Notice of Settlement and/or Individual Settlement Amount
12 payment, the Aggrieved Employee shall still be bound by all terms of the Agreement, including the
13 releases contained in Sections 1.25 and 6.1, and any final judgment entered by the Court.

14 7.8 Due Process Acknowledgement: Compliance with the procedures set forth in Sections 7.2
15 to 7.7 shall constitute due and sufficient notice to Aggrieved Employees of the Action and the Agreement
16 and shall satisfy Aggrieved Employees' due process rights. Nothing else shall be required of the Parties,
17 Plaintiffs' Counsel, or Defendants' Counsel to provide notice of the Agreement except as expressly
18 required by the Court.

19 7.9 Settlement Check Expiration and Cy Pres: The Settlement Administrator shall issue
20 Individual Settlement Amounts to Aggrieved Employees in the form of a check, which shall become null
21 and void if not deposited within one hundred eighty (180) calendar days of issuance. After one hundred
22 eighty (180) calendar days of issuance, the checks shall be voided and funds from all undeposited checks
23 shall be transmitted to the *cy pres* beneficiaries identified in Section 5.4. The Settlement Administrator
24 shall deliver the *cy pres* funds within fourteen (14) calendar days after the check cashing deadline.

25 7.10 Settlement Administrator Declaration Regarding Settlement Administration: Within
26 twenty-one (21) calendar days after the last day for Aggrieved Employees to cash their settlement checks,
27 the Settlement Administrator shall provide Plaintiffs' Counsel and Defendants' Counsel with a signed
28

1 declaration under penalty of perjury providing a complete and detailed report regarding the settlement
2 administration and that all the obligations of the Settlement Administrator have been completed.

3 **8. SETTLEMENT ADMINISTRATION SCHEDULE**

4 8.1 The schedule may be modified depending on whether and when the Court grants necessary
5 approvals, orders notice to Aggrieved Employees, and sets further hearings, if any. The schedule may
6 also be modified to correct clerical errors and to reflect the provisions in the Agreement as described
7 above. In the event of such modification, the Parties shall cooperate to complete the settlement procedures
8 as expeditiously as reasonably practicable. The schedule for notice and payment procedures carrying out
9 the Agreement is as follows.

10 Last day for Defendants to provide Settlement 11 Administrator with Aggrieved Employee 12 information	Within 7 calendar days after the Effective Date
13 Last day for Settlement Administrator to calculate 14 and report to the Parties the Net Settlement 15 Amount, PAGA Payment, and Individual Settlement Amounts for Aggrieved Employees	Within 7 calendar days after receiving Aggrieved Employee information
16 Last day for Defendants to fund Gross Settlement 17 Amount	Within 14 calendar days after the Settlement Administrator calculates and reports to the 18 Parties the Net Settlement Amount, PAGA Payment, and Individual Settlement Amounts 19 for Aggrieved Employees
20 Last day for Settlement Administrator to 21 complete NCOA search, update Aggrieved Employee mailing information, and complete 22 mailing	Within 7 calendar days after Defendants have funded the settlement
23 Last day for Settlement Administrator to deliver 24 payment of Plaintiffs' Counsel's attorney's fees and costs, PAGA Payment, Settlement 25 Administrator Costs, and payment to Aggrieved Employees	Within 7 calendar days after Defendants have funded the settlement
26 Last day for Aggrieved Employees to cash 27 settlement checks	180 calendar days after issuance of checks to 28 Aggrieved Employees

Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

9. MISCELLANEOUS TERMS

9.1 Defendants Appeal: Within seven (7) calendar days after this Agreement becomes fully executed, Defendants shall file a Notice of Abandonment of Appeal with the Court to enable the Court to regain jurisdiction from the Court of Appeal and allow the settlement review and approval process to commence. The dismissal of Defendants' appeal in this manner shall be without prejudice to Defendants refiling the appeal in the event the Court does not approve the Agreement.

9.2 Dismissal and Retention of Jurisdiction to Enforce: Upon the Effective Date, the Released PAGA Claims will be dismissed with prejudice, with the Court to retain jurisdiction over the Parties to enforce the terms of the Agreement pursuant to Civil Procedure Code section 664.6. The prevailing party in any action to enforce the terms of the Agreement shall be entitled to reasonable attorneys' fees and costs. The Parties agree to meet and confer in good faith to resolve any issue before any such motion for attorney's fees and costs is filed.

9.3 Additional Pay Period Contingency: Defendants have represented that there are no more than 3,694 pay periods during the PAGA Claim Period. In the event the number of pay periods during the PAGA Claim Period is more than 4,063.4 (*i.e.*, greater than 10% more than 3,694), then the Gross Settlement Amount shall be increased proportionally by the pay periods in excess of 3,694, multiplied by the pay period value. For example, if there were 11,900 pay periods represented to exist during the PAGA Claim Period, but there are actually 15,000 pay periods in the PAGA Claim Period, and the actual pay period value is \$5.00 per pay period, Defendants would have to increase the Gross Settlement Amount by \$15,500.00 (15,000 pay periods – 11,900 pay periods = 3,100 pay periods x \$5.00/pay period).

1 9.4 Mutual Cooperation: The Parties agree to cooperate fully with one another to accomplish
2 and implement the terms of this Agreement. Such cooperation shall include, but not be limited to,
3 execution of such other documents and the taking of such other action as may reasonably be necessary to
4 fulfill the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including
5 all efforts contemplated by this Agreement and any other efforts that may become necessary by Court
6 order, or otherwise, to effectuate this Agreement and the terms set forth herein. This may include
7 modifying and/or resubmitting the Agreement for approval. Plaintiffs' Counsel shall be responsible for
8 drafting the court approval paperwork. All parties agree to act immediately and diligently to perform their
9 obligations under this Agreement, including the review and approval of settlement documents, such that
10 there are no substantial delays in seeking court approval or administration of this settlement. Plaintiffs'
11 Counsel shall endeavor to file a motion for approval of this settlement within sixty (60) calendar days of
12 the date this Agreement is signed. Plaintiffs' Counsel shall provide Defendants' Counsel with a draft
13 approval motion within 2 weeks after this Agreement is fully executed. Defendants' Counsel will provide
14 comments and/or proposed revisions within 2 weeks after receipt of the draft motion.

15 9.5 No Admission of Liability: Neither the acceptance nor the performance by Defendants of
16 the terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to
17 be, construed as, or deemed to be, an admission by Defendants of the truth of any of the allegations in the
18 Complaint, the representative character of the Action, the validity of any of the claims that were or could
19 have been asserted by Plaintiffs and/or Aggrieved Employees in the Action, or of any liability or guilt of
20 Defendants in the Action. Nothing in this Agreement shall be construed to be or deemed an admission by
21 Defendants of any liability, culpability, negligence, or wrongdoing toward Plaintiffs, the Aggrieved
22 Employees, or any other person, and Defendants have specifically disclaimed any liability, culpability,
23 negligence, or wrongdoing toward Plaintiffs, the Aggrieved Employees, or any other person. Each of the
24 Parties has entered into this Agreement with the intention to avoid further disputes and litigation.

25 9.6 Notices: Unless otherwise specifically provided herein, all notices, demands, or other
26 communications given hereunder shall be in writing and shall be deemed to have been duly given as of
27 the third business day after mailing by United States certified mail, return receipt requested, addressed as
28 follows:

To the Plaintiffs:

Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
Shimoda & Rodriguez Law, PC
9401 E. Stockton Blvd., Suite 120
Elk Grove, CA 95624

To Defendants:

John P. Boggs
David J. Reese
Daniel J. Padova
FINE, BOGGS & PERKINS, LLP
111 W. Ocean Blvd., Ste 2400
Long Beach, California 90802

9.7 Mutual Drafting of Agreement: The Parties hereto agree that the terms and conditions of this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or its counsel participated in the drafting of this Agreement.

9.8 Binding Effect of Agreement: The Parties, by signing this Agreement, are bound by the terms herein. The Parties waive their rights to file an appeal, writ, or any challenge whatsoever to the terms of this Agreement. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, Settlement Administrators, successors, and assigns.

9.9 Attorneys' Fees and Costs Limitations: Neither Plaintiffs' Counsel nor any other attorneys acting for, or purporting to act for, Aggrieved Employees, or Plaintiffs, may recover or seek to recover any amounts for fees, costs, or disbursements from the Released Parties or the Gross Settlement Amount except as expressly provided herein.

9.10 No Modifications: This Agreement may not be changed, altered, or modified, except in writing signed by the Parties hereto and approved by the Court. This Agreement may not be discharged except by performance in accordance with its terms.

9.11 Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this

1 Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of
2 this Agreement

3 9.12 Counterparts: This Agreement shall become effective upon its execution by all of the
4 undersigned. Plaintiffs, Plaintiffs' Counsel, Defendants and Defendants' Counsel may execute this
5 Agreement in counterparts, and execution of counterparts shall have the same force and effect as if each
6 had signed the same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the
7 same force and effect of originals.

8 9.13 Choice of Law: The Agreement and the exhibits hereto shall be considered to have been
9 negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and
10 the rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance
11 with, and governed by, the substantive laws of the State of California without giving effect to that State's
12 choice of law principles.

13 9.14 Headings and Captions: Paragraph titles or captions contained in the Agreement are
14 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the
15 scope of this Agreement, or any provision thereof.

16 9.15 No Retaliation or Discouragement: The Parties agree they will take no action that could
17 be construed as retaliation against any Aggrieved Employees for participating in this settlement.

18 9.16 Integrated Agreement: This Agreement sets forth the entire understanding between the
19 Parties with regard to any and all material terms or otherwise and supersedes any and all prior agreements,
20 oral or written, pertaining to the subject matter hereof. Each party acknowledges that there is no
21 representation, inducement, promise or agreement which has been made, orally or otherwise, by the other
22 party, concerning the terms or conditions of this Agreement, which is not expressly embodied in this
23 Agreement. In entering into this Agreement, the Parties represent that the terms of this Agreement are
24 fully understood and voluntarily accepted by the Parties.

25 9.17 Exhibits Incorporated by Reference: The terms of this Agreement include the terms set
26 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth in this
27 Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.
28

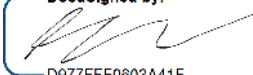
9.18 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

9.19 Waiver of Compliance: No waiver of any condition or covenant contained in this Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy

IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized attorneys, as of the day and year herein set forth.

For Plaintiffs:

Date: 7/14/2023

DocuSigned by:

 D977FFF0803A41F...

SAM KEOPHIMANE

Date: _____

LUIS MEDINA

For Defendants:

Date: _____

By: _____
 For TRACY AUTO L.P. (DBA TRACY TOYOTA)

Date: _____

By: _____
 For LOTT AUTOMOTIVE, INC.

Date: _____

RONALD M. LOTT

APPROVED AS TO FORM

Shimoda & Rodriguez Law, PC

Dated: _____

By: _____
 Galen T. Shimoda
 Justin P. Rodriguez
 Attorneys for Plaintiffs and Aggrieved Employees

9.18 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

9.19 Waiver of Compliance: No waiver of any condition or covenant contained in this Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy

IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized attorneys, as of the day and year herein set forth.

For Plaintiffs:

Date: _____

SAM KEOPHIMANE

Date: 7/12/2023

DocuSigned by:
Luis Medina
038BF2BECDD654DD...

LUIS MEDINA

For Defendants:

Date: _____

By:
For TRACY AUTO L.P. (DBA TRACY TOYOTA)

Date: _____

By:
For LOTT AUTOMOTIVE, INC.

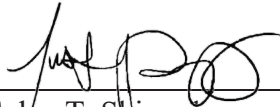
Date: _____

RONALD M. LOTT

APPROVED AS TO FORM

Shimoda & Rodriguez Law, PC

Dated: 7/20/23

By: 

Galen T. Shimoda
Justin P. Rodriguez
Attorneys for Plaintiffs and Aggrieved Employees

1 9.18 Invalidity of Any Provision: Before declaring any provision of this Agreement invalid, the
2 Court will first attempt to construe the provision as valid to the fullest extent possible consistent with
3 applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

4 9.19 Waiver of Compliance: No waiver of any condition or covenant contained in this
5 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply
6 or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy

7 IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized
8 attorneys, as of the day and year herein set forth.

9 **For Plaintiffs:**

10 Date: _____

11 _____
SAM KEOPHIMANE

12 Date: _____

13 _____
LUIS MEDINA

14 **For Defendants:**

15 Date: July 24, 2023

16 By: [Signature]
For TRACY AUTO L.P. (DBA TRACY
TOYOTA) Auto up

17 Date: July 24, 2023

18 By: [Signature]
For LOTT AUTOMOTIVE, INC. Automotive up

19 Date: July 24, 2023

20 _____
RONALD M. LOTT

21 APPROVED AS TO FORM

22 Shimoda & Rodriguez Law, PC

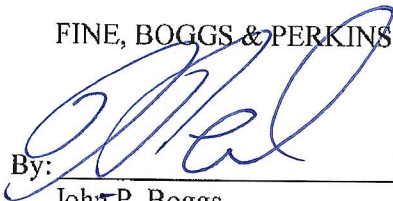
23 Dated: _____

24 By: _____
25 Galen T. Shimoda
26 Justin P. Rodriguez
27 Attorneys for Plaintiffs and Aggrieved
28 Employees

1
2 APPROVED AS TO FORM

FINE, BOGGS & PERKINS LLP

3
4 Dated: July 25, 2023

By: 

John P. Boggs

David J. Reese

Daniel J. Padova

Attorneys for Defendants

Exhibit 1

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN**

SAM KEOPHIMANE and LUIS MEDINA,
individually and on behalf of all other similarly
situated employees,

Plaintiffs,

vs.

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

Defendants.

Case No. STK-CV-VOE-2022-0001117

**NOTICE OF PRIVATE ATTORNEYS GENERAL
ACT SETTLEMENT PAYMENT**

TO: All of Defendants' nonexempt, employees who have or continue to work for Defendants from November 23, 2020 to [REDACTED] (the "Aggrieved Employees")

This Notice is being provided to you to inform you of a Private Attorney General Act ("PAGA") Settlement and your proportional share of this settlement payment. The payment is a result of a Court approved PAGA Settlement in the case of *Keophimane, et al. v. Tracy Auto L.P. et al.*, San Joaquin County Superior Court of California, Case No. STK-CV-VOE-2022-0001117, filed February 14, 2022 (the "Action"). You are receiving this letter because you fall within the definition of Aggrieved Employees identified above. This Settlement **does not** release any individual claims that you might have against Defendants outside of the PAGA.

In the Action, Plaintiffs Sam Keophimane and Luis Medina ("Plaintiffs") sought to obtain civil penalties, fees, and costs on behalf of themselves and Aggrieved Employees. Plaintiffs alleged that Tracy Auto L.P. dba Tracy Toyota, Lott Automotive, Inc., and Ronald M. Lott ("Defendants") violated California law by 1) failing to pay overtime wages, 2) failing to pay minimum wages, 3) failing to provide meal periods or pay premiums in lieu thereof, 4) failing to provide rest periods or pay premium in lieu thereof, 5) failing to provide accurate wage statements, 6) failing to pay final wages, 7) failing to pay reimbursements for expenses, 8) failing to pay contract wages and unlawful deductions, 9) failing to maintain accurate records, 10) failing to provide paid sick leave, and 11) untimely payment of wages. Plaintiffs also alleged individual liability for the alleged violations under Labor Code sections 558 and 558.1. Defendants have denied all of Plaintiffs' allegations.

This notice is not intended to be, and should not be construed as, an expression of any opinion by the Court with respect to the truth of the allegations in the Action or the merits of the claims or defenses asserted. Defendants have denied engaging in any unlawful conduct in any respect and further disputes all of Plaintiffs' allegations in the Action. By entering into the PAGA Settlement, Defendants do not admit any liability to Plaintiffs or to any other current or former employees, and Defendants do not admit that any violations of Plaintiffs' rights, or the rights of any other current or former employees has occurred.

Plaintiffs filed a notice with the California Labor and Workforce Development Agency ("LWDA") to exhaust administrative remedies and pursue claims under the PAGA, California Labor Code §§ 2698 *et seq.*, predicated on violations of Labor Code sections 201-203, 204, 210, 221, 223, 225, 226, 226.3, 226.7, 246, 246.5, 248.5, 256, 510, 512, 558, 558.1, 1174, 1194, 1197.1, and 2802. The scope of the PAGA Settlement includes all of the Aggrieved Employees for the time period identified above. In exchange for payment under the Settlement, Plaintiffs have agreed to waive any and all claims for civil penalties that were brought under the PAGA that were asserted in the Complaint and any additional claims for civil penalties under the PAGA that could have been brought based on the facts alleged therein arising between November 23, 2020 and [REDACTED]. Aggrieved Employees cannot opt out of this waiver of claims. However, the waiver **does not** extend to any non-PAGA claims you may have.

Under the terms of the Settlement, Defendants have agreed to pay a Gross Settlement Amount of \$222,000 to resolve the PAGA claims alleged in the Action ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount were sums approved by the

Court for attorneys' fees \$ [REDACTED], attorneys' costs in the amount of \$ [REDACTED], the fees and expenses of the Settlement Administrator in the amount of \$ [REDACTED], and Enhancement Payments to Plaintiffs in the amount of \$ [REDACTED] each., which will resulted in a "Net Settlement Amount" of \$ [REDACTED] for distribution to between Aggrieved Employees and the Labor and Workforce Development Agency ("LWDA") as required by the California Labor Code. 75% of the Net Settlement Amount (\$ [REDACTED]) is being paid to the LWDA and 25% of the Net Settlement Amount (\$ [REDACTED]) is being paid to Aggrieved Employees pursuant to Labor Code section 2699(i). Each individual Aggrieved Employee's share of the Net Settlement Amount was determined by taking their individual number of pay periods worked between November 23, 2020, and [REDACTED], dividing that number by the number of pay periods worked for all Aggrieved Employees between November 23, 2020, and [REDACTED], and then multiplying that fraction by the 25% share of the Net Settlement Amount.

Enclosed in this mailing, you will find a check containing your share of the PAGA Settlement based on this allocation. Should you have any questions or concerns, you may contact counsel for Plaintiffs and/or Defendants.

Galen T. Shimoda
Justin P. Rodriguez
Shimoda & Rodriguez Law, PC
9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733
On behalf of Plaintiffs

John P. Boggs
David J. Reese
Daniel J. Padova
FINE, BOGGS & PERKINS, LLP
111 W. Ocean Blvd., Ste 2400
Long Beach, California 90802
On behalf of Defendants

EXHIBIT B

FILED
SUPERIOR COURT-STOCKTON

2022 FEB 14 PM 1:07

BRANDON E. RILEY, CLERK

BY KACEY SUTTON
DEPUTY

1 Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
2 **Shimoda & Rodriguez Law, PC**
9401 East Stockton Boulevard, Suite 120
3 Elk Grove, CA 95624
Telephone: (916) 525-0716
4 Facsimile: (916) 760-3733

5 Attorneys for Plaintiffs SAM KEOPHIMANE
and LUIS MEDINA on behalf of Aggrieved Employees

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

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

12 Plaintiff,

13 vs.

14 TRACY AUTO L.P. (DBA TRACY
15 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.

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

EXHIBIT C



Shimoda Law Corp.
9401 East Stockton Blvd.
Suite #120
Elk Grove, CA 95624
Ph. (916) 525-0716
Fax (916) 760-3733
www.shimodalaw.com

November 23, 2021

For Online Filing:

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Keophimane, et al. v. Tracy Auto, L.P., et al.*

Dear Labor Commissioner,

As counsel for Sam Keophimane and Luis Medina (“Plaintiffs”), I am writing to provide you and the following “employers” notice pursuant to California Labor Code section 2699.3:

Tracy Auto L.P. (dba Tracy Toyota)
2895 Naglee Road
Tracy, CA 95304

Tracy Auto Land, LLC
2895 Naglee Road
Tracy, CA 95376

Lott Automotive, Inc. (dba Tracy Toyota, Tracy Auto L.P. and
Tracy Auto Land, LLC)
4675 Stevens Creek, Blvd., Suite 125
Santa Clara, CA 95051

Ronald M. Lott
4675 Stevens Creek, Blvd., Suite 125
Santa Clara, CA 95051

Ronald M. Lott
2895 Naglee Road
Tracy, CA 95376

We are setting forth the “facts and theories” to support each of the counts found within this complaint. Please notify us of your intent to investigate any or all of the claims alleged herein against Tracy Auto L.P. (dba Tracy Toyota), Tracy Auto Land, LLC, Lott Automotive, Inc. (dba Tracy Toyota, Tracy Auto L.P. and Tracy Auto Land, LLC) and Ronald M. Lott (“Defendants”). Should you decide not to investigate, we request that you allow us to bring the



following action on behalf of Plaintiffs and all Aggrieved Employees, pursuant to Labor Code section 2699(a). Specifically, Aggrieved Employees shall include, but are not limited to, the following: all non-exempt employees who have or continue to work for Defendants in California. Plaintiffs are clearly entitled to bring a Private Attorneys General Act (“PAGA”) claim for civil penalties on behalf of these individuals pursuant to *Huff v. Securitas Security Services USA, Inc.*, 23 Cal.App.5th 745, 757 (2018) (finding a plaintiff has PAGA standing if affected by one of the alleged violations; the plaintiff need not have personally experienced all the violations pursued in PAGA action).

A. FACTS

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.

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.

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



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

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

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

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.

Ronald M. Lott was an officer, director, shareholder, and/or managing agent of Defendants responsible for the violations stated herein as he was in a position of authority with the power and responsibility to monitor, institute, and/or modify the unlawful practices, but chose to ratify them instead

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B. ALLEGATIONS AND CHARGES

Count 1 – Violation of Labor Code §§ 510, 1194; IWC Wage Order 7, § 3 (Failure to Pay Overtime Wages)

Labor Code sections 510 and 1194 require employers to pay employees 1 ½ times their regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Employers must also pay employees 1 ½ times their regular rate of pay for the first eight (8) hours worked on the seventh day of work in any one workweek. Finally, employers must pay employees 2 times their regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh day of work in any one workweek. As stated above, Plaintiffs and Aggrieved Employees worked over eight (8) hours per day and forty (40) hours per week and were not paid all overtime wages owed. Plaintiffs and all Aggrieved Employees are entitled to recover all unpaid overtime wages. Failure to pay such wages is against the law.

Count 2– Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 7, § 4 (Failure to Pay Minimum Wages)

During the period Plaintiffs and Aggrieved Employees were employed by Defendants they were entitled to be paid at least the State's minimum wage rate for each hour that they worked. *See, e.g.*, IWC Wage Order MW-2019; IWC Wage Order No. 7, § (4); Cal. Lab. Code §§ 1194, 1197.1. For the reasons stated above, Defendants did not pay Plaintiffs and Aggrieved Employees for all hours worked. Thus, Plaintiffs and Aggrieved Employees were not paid at least the applicable state minimum wage for those hours worked. This is against the law.

Count 3 - 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)

Labor Code section 226.7 and Wage Order No. 7, section 11(A) require employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked, which is to be taken before the completion of the fifth hour. Labor Code section 512 and Wage Order No. 7, section 11(B) further provide that employers may not employ employees for a work period of more than ten (10) hours per day without providing the employee with a second meal period of thirty (30) minutes; however, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. For the reasons stated above, Plaintiffs and Aggrieved Employees were not authorized and permitted to take legally compliant meal periods pursuant to California law. Defendants also failed to pay any meal period premiums for their failure to provide meal periods. This was in violation of the law.



Count 4 – Violation of Labor Code § 226.7 and Wage Order No. 7, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)

Labor Code section 226.7 and Wage Order No. 7, section 12(A) require employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or major fraction thereof worked. For the reasons stated above, Plaintiffs and Aggrieved Employees were not authorized and permitted to take legally compliant rest periods pursuant to California law. Defendants also failed to pay any rest period premiums for their failure to provide rest periods. This was in violation of the law.

Count 5 – Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)

Labor Code section 226 requires employers to furnish to employees with “an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer . . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee” For the reasons stated above, Defendants failed to comply with these requirements with respect to Plaintiffs and Aggrieved Employees. This is in violation of the law.

Count 6 – Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)

Labor Code sections 201-203 require that all wages, including minimum and overtime wages and meal and rest period premiums, be paid to employees upon separation and/or termination of employment. Here, for the reasons stated above, Plaintiffs and Aggrieved Employees did not receive all final wages due and owing to them at the time of termination or seventy-two (72) hours thereafter as required by Labor Code sections 201-203. This is in violation of the law.

Count 7 – Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)

Labor Code section 2802(a) states that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” Defendants failed to pay reimbursements to Plaintiffs and



Aggrieved Employees for personal cell phone use incurred by Plaintiffs and Aggrieved Employees while they were employed by Defendants. This was in violation of the law.

Count 8 – Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)

Labor Code section 558 states that it is unlawful for any employer, or other person acting on behalf of an employer, to violate or cause to be violated any of sections 500 to 558.1 of the Labor Code or any order of the Industrial Welfare Commission. Similarly, Labor Code section 558.1 states that it is unlawful for any employer or other person acting on behalf of an employer to violate, or cause to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, as well as Sections 203, 226, 226.7, 1193.6, 1194, or 2802 of the Labor Code. As described above, Defendants, by and through Defendants' agents, violated Plaintiffs and Aggrieved Employees' rights provided for under Labor Code sections 558 and 558.1 as well as the incorporated Wage Orders and incorporated statutes therein. Ronald M. Lott was an officer, director, shareholder, and/or managing agent of Defendants responsible for the violations stated herein as he was in a position of authority with the power and responsibility to monitor, institute, and/or modify the unlawful practices, but chose to ratify them instead. This is against the law.

Count 9 – Violation of Labor Code §§ 221, 223, 225 (Failure to Pay Contract Wages and Unlawful Deductions)

Labor Code section 221 states that "[it] shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee." Labor Code section 223 prohibits employers from paying an employee less than a contractually obligated amount. As stated above, Defendants failed to pay Plaintiffs and Aggrieved Employees their contracted compensation for all hours worked. This was against the law.

Count 10 – Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)

Labor Code section 226.3 provides that any employer who fails to maintain records required by Labor Code section 226(a) or provide records required by 226(a) shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation. Labor Code section 1174(d) provides that employers must keep and maintain accurate payroll records showing the hours worked daily by, and the wages paid to, employees. Defendants failed to maintain the accurate records required by law and, instead, maintained incomplete, inaccurate records regarding Plaintiffs and Aggrieved Employees' wage records and hours worked. This was against the law.



Count 11 – Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

Labor Code sections 246, *et seq.*, mandate that employers must provide California employees, who work thirty (30) or more days within a year for the employer, paid sick leave of at least one (1) hour for every thirty (30) hours worked that begins to accrue at the commencement of employment. An employer may use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than twenty-four (24) hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period. An employer may limit the use of sick leave to either twenty-four (24) hours or the equivalent of three (3) days, whichever is greater, during a year period. However, employers using an accrual method rather than a lump sum method must allow employees to accrue up to forty-eight (48) hours or the equivalent of six (6) days at any given time. Employers must authorize employees to take paid sick leave under the conditions set forth in the Healthy Workplaces, Healthy Families Act of 2014 (“HWHFA”) for the diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee’s family member. Any sick leave taken must be paid at the employee’s regular rate of pay. As discussed above, Defendants failed to properly calculate the regular rate of pay by failing to incorporate the value of commissions and other non-discretionary bonuses into their calculations. For the reasons state above, Defendants failed to provide Plaintiffs and Aggrieved Employees with sick leave meeting the requirements set forth in HWHFA. Plaintiffs will be seeking equitable, injunctive, and restitutionary relief to remedy these violations.

Count 12 – Violation of Labor Code §§ 204, 210 (Untimely Payment of Wages)

Labor Code section 204(a) provides that “all wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. As stated above, Defendants failed to comply with this provision by paying Plaintiffs and Aggrieved Employees for wages earned between the 1st and 15th and between the 16th and last day of the month beyond the maximum time allowed under the statute. This was in violation of the law.

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If you have any questions or require any further information regarding the facts and theories to support these claims, do not hesitate to contact our office.

Very truly yours,

Shimoda Law Corp.

By: _____


Justin P. Rodriguez

JPR/jlh

cc: Client via e-mail

1 *Keophimane, et al. v. Tracy Auto, L.P., et al.*

2 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**
3 **and California Rules of Court, Rule 1.21 and Rule 2.150**

4 I, Caitlyn A. Lopez, declare that:

5 I am a citizen of the United States and am over the age of eighteen years and not a party to
6 the within above-entitled action.

7 On November 23, 2021, I served the following documents on the party below:

- 8 • Private Attorney General Act Letter

9 Tracy Auto L.P. (dba Tracy Toyota) 10 2895 Naglee Road 11 Tracy, CA 95304	Tracy Auto Land, LLC 2895 Naglee Road Tracy, CA 95376
12 Lott Automotive, Inc. (dba Tracy Toyota, Tracy 13 Auto L.P. and Tracy Auto Land, LLC) 14 4675 Stevens Creek, Blvd., Suite 125 Santa Clara, CA 95051	Ronald M. Lott 4675 Stevens Creek, Blvd., Suite 125 Santa Clara, CA 95051
15 Ronald M. Lott 16 2895 Naglee Road 17 Tracy, CA 95376	

18 [XXX] [By Certified Mail] I am familiar with my employer's practice for the collection
19 and processing of correspondence for mailing with the United States Postal
20 Service and that each day's mail is deposited with the United States Postal
21 Service that same day in the ordinary course of business. On the date set forth
22 above, I served the aforementioned document(s) on the parties in said action by
placing a true copy thereof enclosed in a sealed envelope with postage thereon
fully prepaid, for collection and mailing on this date, following ordinary business
practices, at Elk Grove, California, addressed as set forth above.

23 [] [By Personal Service] By personally delivering a true copy thereof to the office
of the addressee above.

24 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
25 personally delivered via the following overnight courier service:_____.

26 I declare under penalty of perjury under the laws of the State of California that the foregoing
27 is true and correct, and that this declaration was executed on November 23, 2021, at Elk Grove,
California.

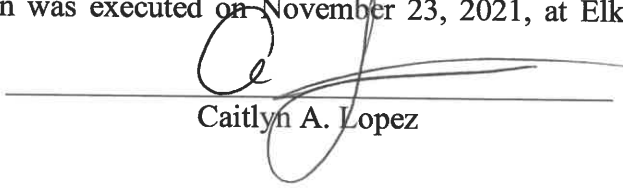
28 
Caitlyn A. Lopez

EXHIBIT D

Case Name: Keophimane v. Tracy Auto L.P. (DBA Tracy Toyota) et al.

Thursday, June 15, 2023

Requesting Attorneys Name:	Renald Konini
E-Mail:	rkonini@shimodalaw.com
ILYM Contact:	Lisa Mullins
E-Mail:	lisa@ilymgroup.com
Contact Number:	714.878.8836

Assumptions: PAGA Settlement

ASSUMPTIONS	
Total Estimated # of Class Members	150
NCOA	Yes
Remail of Undeliverables	Yes
Case Duration (Years)	1

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - <i>Import and Formatting of Data*</i>	Hourly	\$125.00	1	\$125.00
Project Manager (Case notification and maintenance)	Hourly	\$120.00	2	\$240.00
NCOA	Flat Rate	\$49.00	1	\$49.00
				Subtotal
				\$414.00

*ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.

DISTRIBUTION (Includes EIN, Bank Acct /QSF Setup)*				
Distribution Setup & Management	Hourly	\$150.00	2	\$300.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	1	\$125.00
Check Stub & Release - (including 1099)	Per Check	\$1.00	150	\$150.00
USPS First Class 1oz Postage	Per Piece	\$0.60	150	\$90.00
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$1.50	14	\$21.00
Preparation of Taxes	Hourly	\$125.00	2	\$250.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00
				Subtotal
				\$2,436.00

*Additional Bank fees may apply

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	1	\$100.00
Declaration	Hourly	\$100.00	1	\$100.00
				Subtotal
				\$200.00

TOTAL CASE ESTIMATE: \$3,050.00

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

EXHIBIT E

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN**

Case No. STK-CV-VOE-2022-0001117

**NOTICE OF PRIVATE ATTORNEYS GENERAL
ACT SETTLEMENT PAYMENT**

SAM KEOPHIMANE and LUIS MEDINA,
individually and on behalf of all other similarly
situated employees,

Plaintiffs,

vs.

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

Defendants.

TO: All of Defendants' nonexempt, employees who have or continue to work for Defendants from November 23, 2020 to [REDACTED] (the "Aggrieved Employees")

This Notice is being provided to you to inform you of a Private Attorney General Act ("PAGA") Settlement and your proportional share of this settlement payment. The payment is a result of a Court approved PAGA Settlement in the case of *Keophimane, et al. v. Tracy Auto L.P. et al.*, San Joaquin County Superior Court of California, Case No. STK-CV-VOE-2022-0001117, filed February 14, 2022 (the "Action"). You are receiving this letter because you fall within the definition of Aggrieved Employees identified above. This Settlement **does not** release any individual claims that you might have against Defendants outside of the PAGA.

In the Action, Plaintiffs Sam Keophimane and Luis Medina ("Plaintiffs") sought to obtain civil penalties, fees, and costs on behalf of themselves and Aggrieved Employees. Plaintiffs alleged that Tracy Auto L.P. dba Tracy Toyota, Lott Automotive, Inc., and Ronald M. Lott ("Defendants") violated California law by 1) failing to pay overtime wages, 2) failing to pay minimum wages, 3) failing to provide meal periods or pay premiums in lieu thereof, 4) failing to provide rest periods or pay premium in lieu thereof, 5) failing to provide accurate wage statements, 6) failing to pay final wages, 7) failing to pay reimbursements for expenses, 8) failing to pay contract wages and unlawful deductions, 9) failing to maintain accurate records, 10) failing to provide paid sick leave, and 11) untimely payment of wages. Plaintiffs also alleged individual liability for the alleged violations under Labor Code sections 558 and 558.1. Defendants have denied all of Plaintiffs' allegations.

This notice is not intended to be, and should not be construed as, an expression of any opinion by the Court with respect to the truth of the allegations in the Action or the merits of the claims or defenses asserted. Defendants have denied engaging in any unlawful conduct in any respect and further disputes all of Plaintiffs' allegations in the Action. By entering into the PAGA Settlement, Defendants do not admit any liability to Plaintiffs or to any other current or former employees, and Defendants do not admit that any violations of Plaintiffs' rights, or the rights of any other current or former employees has occurred.

Plaintiffs filed a notice with the California Labor and Workforce Development Agency ("LWDA") to exhaust administrative remedies and pursue claims under the PAGA, California Labor Code §§ 2698 *et seq.*, predicated on violations of Labor Code sections 201-203, 204, 210, 221, 223, 225, 226, 226.3, 226.7, 246, 246.5, 248.5, 256, 510, 512, 558, 558.1, 1174, 1194, 1197.1, and 2802. The scope of the PAGA Settlement includes all of the Aggrieved Employees for the time period identified above. In exchange for payment under the Settlement, Plaintiffs have agreed to waive any and all claims for civil penalties that were brought under the PAGA that were asserted in the Complaint and any additional claims for civil penalties under the PAGA that could have been brought based on the facts alleged therein arising between November 23, 2020 and [REDACTED]. Aggrieved Employees cannot opt out of this waiver of claims. However, the waiver **does not** extend to any non-PAGA claims you may have.

Under the terms of the Settlement, Defendants have agreed to pay a Gross Settlement Amount of **\$222,000** to resolve the PAGA claims alleged in the Action ("Gross Settlement Amount"). Deducted from this Gross Settlement Amount were sums approved by the

Court for attorneys' fees \$_____, attorneys' costs in the amount of \$_____, the fees and expenses of the Settlement Administrator in the amount of \$_____, and Enhancement Payments to Plaintiffs in the amount of \$_____ each., which will result in a "Net Settlement Amount" of \$_____ for distribution to between Aggrieved Employees and the Labor and Workforce Development Agency ("LWDA") as required by the California Labor Code. 75% of the Net Settlement Amount (\$_____) is being paid to the LWDA and 25% of the Net Settlement Amount (\$_____) is being paid to Aggrieved Employees pursuant to Labor Code section 2699(i). Each individual Aggrieved Employee's share of the Net Settlement Amount was determined by taking their individual number of pay periods worked between November 23, 2020, and _____, dividing that number by the number of pay periods worked for all Aggrieved Employees between November 23, 2020, and _____, and then multiplying that fraction by the 25% share of the Net Settlement Amount.

Enclosed in this mailing, you will find a check containing your share of the PAGA Settlement based on this allocation. Should you have any questions or concerns, you may contact counsel for Plaintiffs and/or Defendants.

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On behalf of Defendants

EXHIBIT F

EXHIBIT G

Date	Description	Amount
10/28/2021	Administration Fee - Phone, Fax, Scan, Copying, Westlaw Legal Research Fees	\$500.00
11/23/2021	Payment to LWDA - PAGA Filing Fee	\$75.00
11/23/2021	Certified Mail - PAGA Letter to Employers	\$22.40
2/9/2022	Priority Mail - Complaint to Court	\$7.75
2/9/2022	Payment to Court - Complex Fees	\$1,000.00
2/9/2022	Payment to Court - Complaint Fee Superior Court	\$435.00
3/8/2022	ALS Service Fee - Tracy auto inv 172715	\$165.00
4/19/2022	One Legal Service Fee - inv 04012975	\$109.38
7/28/2022	One Legal Service Fee - Case Management Statement order 18633335	\$61.26
8/2/2022	One Legal Service Fee - Proposed order #18654617	\$61.26
9/21/2022	E-Filing Charge - Truefiling - respondent's mediation statement	\$10.50
9/27/2022	One Legal Service Fee - Notice of Association of Counsel order 18970698	\$61.26
1/6/2023	Mediation fee to Lisa Kerman	\$10,000.00
1/19/2023	E-Filing Charge - CMC 19670826	\$61.26
6/2/2023	One Legal Service Fee - Case Management Statement order 20519086	\$61.26
Anticipated	One Legal Service & Filing Fee - Preliminary Approval Motion	\$375.00
Anticipated	One Legal Fee - CMC Statement	\$61.26
Anticipated	One Legal Fee - Compliance Declaration	\$61.26

Total: \$13,128.85