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2 IN THE CIRCUIT COURT OF THE STATE OF OREGON
3 FOR THE COUNTY OF CLACKAMAS

4 CAROL FERGUSON and LYNDA
FREEMAN,
5 Plaintiffs,
6 vs.

7 GLADSTONE AUTO, LLC, an Oregon
limited liability company, and
8 CARROS, INC., an Oregon limited
liability company,
9 Defendants.

Case No. 18CV07330
FIRST AMENDED CLASS ACTION COMPLAINT
Tort Other
Damages estimated at \$999,999.99
Jury Trial Requested
NOT SUBJECT TO MANDATORY ARBITRATION
Filing fee of \$560 per ORS 21.160(1)(c)

10 Plaintiffs Carol Ferguson and Lynda Freeman complain as follows against
11 Gladstone Auto, LLC and Carros, Inc. (collectively, "GLADSTONE AUTO"), on behalf
12 of themselves and all others similarly situated.

13 **PRELIMINARY STATEMENT**

14 1.

15 This is a class action under state wage-and-hour and other statutes to recover
16 unpaid wages, statutory damages, civil penalties, attorney fees, costs and
17 disbursements (and pre- and post-judgment interest thereon). Plaintiffs requested
18 their personnel files and their and the other employees' time and pay records from
19 GLADSTONE AUTO prior to this litigation, but GLADSTONE AUTO refused to
20 provide anyone's records except the named plaintiffs, or a copy of its pertinent
21 policies and procedures. All allegations herein are therefore made to the best of
22 plaintiffs' and their counsel's good-faith knowledge, information and belief, based
23

1 upon the evidence adduced to date, and plaintiffs reserve the right to amend their
2 Complaint upon the discovery of additional facts.

3 **PARTIES**

4 2.

5 At all material times, plaintiffs were residents and citizens of the State of Oregon.
6 Plaintiffs and the other class members are or were employees of GLADSTONE AUTO.

7 3.

8 Defendant Gladstone Auto, LLC is an Oregon limited liability company; defendant
9 Carros, Inc. is an Oregon corporation; both do business in Multnomah County and
10 elsewhere.

11 **FACTS**

12 4.

13 GLADSTONE AUTO deducted time from plaintiffs' and the other employees' time
14 records for breaks of fewer than 30 minutes.

15 5.

16 GLADSTONE AUTO deducted money from plaintiffs' and the other employees'
17 paychecks for unexplained items, as well as in amounts in excess of those allowed or
18 required by law. For the class, these include overdeductions of the Oregon Workers'
19 Benefit Fund assessment; for Lynda Freeman, this also includes unexplained
20 deductions marked "A/R".

21 6.

22 Plaintiffs' attorney gave GLADSTONE AUTO more than 30 days' written
23 prelitigation notice of the alleged causes of action and demanded that GLADSTONE

1 AUTO correct and rectify the violations enumerated herein. Plaintiffs' attorney also
2 gave more than 30 days' written prelitigation notice of nonpayment and notice of this
3 wage claim to GLADSTONE AUTO. Plaintiffs' attorney also demanded the
4 production of plaintiffs' personnel files and their and the class members' time and
5 pay records more than 45 days before filing this lawsuit. GLADSTONE AUTO made
6 partial but not full payments, and produced only the named plaintiffs' individual
7 records.

8 CLASS ACTION ALLEGATIONS

9 7.

10 GLADSTONE AUTO engaged in acts and practices that violated the class
11 members' rights under Oregon law. This action is brought on behalf of all
12 GLADSTONE AUTO employees from February 1, 2012 through the time of trial.

13 Numerosity

14 8.

15 The above class is so numerous that joinder of all members is impractical,
16 consisting of an estimated 50 or more people.

17 Commonality

18 9.

19 There are questions of law and fact common to the class, which predominate over
20 any issues involving only individual class members. The principal questions are:

- 21 a. What rates GLADSTONE AUTO withheld from its employees' paychecks,
22 what rates it was supposed to withhold, whether it had notice of the proper
23 rates, whether GLADSTONE AUTO promptly paid those amounts to the

1 appropriate governmental entities, and what damages result.

2 b. Whether GLADSTONE AUTO's various deductions were legal under

3 Oregon law, and what damages were suffered as a result.

4 c. Whether GLADSTONE AUTO deducted time from employees' time records
5 for breaks of fewer than 30 minutes.

6 d. Whether the violations were willful and what remedies are available for the
7 violations.

8 **Typicality**

9 10.

10 Plaintiffs' claims are typical of those of the other class members because:

11 a. Plaintiffs are members of the class.

12 b. Plaintiffs' claims stem from the same practice or course of conduct that
13 forms the basis for the class claims.

14 c. All of the class members' claims are based on the same facts and legal
15 theories.

16 d. There is no antagonism between the interests of Plaintiffs and the class
17 members, because their claims are for damages provided to each class
18 member separately by law.

19 **Adequacy of Representation by Plaintiffs**

20 11.

21 Plaintiffs will fairly and adequately protect the interests of the class because:

22 a. There is no conflict between Plaintiffs' claims and those of the other class
23 members.

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15.

All previous paragraphs are incorporated by reference herein.

16.

Pursuant to ORS 652.610, GLADSTONE AUTO was prohibited from deducting certain amounts from plaintiffs' and the other employees' paychecks but willfully did so.

17.

Plaintiffs and the other employees are entitled to (for each violation) the greater of \$200 or actual damages in an amount to be proven at trial, pursuant to ORS 652.615, together with attorney fees, costs and pre- and post-judgment interest.

THIRD CLAIM FOR RELIEF

Unpaid Wages Upon Termination

18.

All previous paragraphs are incorporated by reference herein.

19.

Pursuant to ORS 652.140, GLADSTONE AUTO was required to pay plaintiffs and the other employees all earned and unpaid wages by the statutory deadline upon termination of employment but willfully failed to do so.

20.

Plaintiffs and the other employees are entitled to collect all wages remaining due, in an amount to be proven at trial, together with attorney fees and costs, as well as pre- and post-judgment interest, and the 30 days of statutory penalty wages provided by ORS 652.150.

1 **FOURTH CLAIM FOR RELIEF**

2 Declaratory Judgment

3 21.

4 All previous paragraphs are incorporated by reference herein.

5 22.

6 Plaintiffs and the other employees are entitled to a declaratory judgment
7 declaring defendants' violations as outlined above.

8 **JURY TRIAL DEMAND**

9 23.

10 Plaintiffs demand a jury trial on all claims and issues to the extent allowed under
11 the law.

12 **PRAYER FOR RELIEF**

13 **WHEREFORE**, plaintiffs and the other employees request that the Court award
14 such actual, statutory, penalty, and other damages as set forth above and in amounts
15 to be proven at trial; award them attorney fees, costs and expenses of suit; order
16 defendant to pay pre-judgment and post-judgment interest on all amounts due to
17 plaintiffs and the other employees as a result of the claims; declare defendants'
18 violations as enumerated above; and order such further or alternative relief as the
19 Court deems appropriate.

20 DATED this July 25, 2020

JON M. EGAN, P.C.

21 *s/ Jon M. Egan*

22

Jon M. Egan, OSB #002467
23 Attorney for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing FIRST AMENDED CLASS ACTION COMPLAINT was served on defendants via eFile and Service to their counsel of record.

DATED this July 25, 2020

JON M. EGAN, P.C.

s/ Jon M. Egan

Jon M. Egan, OSB #002467
Attorney for Plaintiffs