

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

3 CAROL FERGUSON and LYNDA
4 FREEMAN,

5 Plaintiff,

6 vs.

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

11 Defendants.

No. 18CV07330

DEFENDANTS' FIRST AMENDED ANSWER
AND AFFIRMATIVE DEFENSES TO FIRST
AMENDED CLASS ACTION COMPLAINT

11 Defendant Gladstone Auto, LLC ("Gladstone"), and Carros, Inc. ("Carros") (collectively,
12 "Defendants") hereby respond to Plaintiffs' First Amended Class Action Complaint (hereinafter the
13 "FACAC") as follows.

14 1. Defendants deny the allegations in the first sentence of paragraph 1. In response to the
15 allegations in the second sentence of paragraph 1, Defendants admit that Plaintiffs requested their
16 personnel files and time and pay records from Gladstone, and that Gladstone provided those records.
17 In response to the allegations in the third sentence of paragraph 1, Defendants are without sufficient
18 knowledge upon which to admit or deny the allegations and therefore deny them. Defendants deny
19 any remaining allegations in paragraph 1.

20 2. In response to the allegations in the first sentence of paragraph 2 of the FACAC, Defendants
21 are without sufficient knowledge upon which to admit or deny the allegations and therefore deny them.
22 In response to the allegations in the second sentence of paragraph 2, Defendants admit that plaintiffs
23 were employees of Toyota of Gladstone. Defendants deny any remaining allegations in paragraph 2.
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1 3. In response to paragraph 3 of the FACAC, Defendants admit that Gladstone is an Oregon
2 limited liability company, and Carros is an Oregon corporation. Defendants deny the remaining
3 allegations in paragraph 3.

4 4. Defendants deny the allegations in paragraph 4 of the FACAC.

5 5. Defendants deny the allegations in paragraph 5 of the FACAC.

6 6. Defendants deny the allegations in paragraph 6 of the FACAC.

7 7. Defendants deny the allegations in paragraph 7 of the FACAC.

8 8. Defendants deny the allegations in paragraph 8 of the FACAC.

9 9. Paragraph 9 of the FACAC calls for a legal conclusion and therefore no response is
10 required, but to the extent a response is required, Defendants deny the allegations.

11 10. Paragraph 10 of the FACAC calls for a legal conclusion and therefore no response is
12 required, but to the extent a response is required, Defendants deny the allegations.

13 11. Paragraph 11 of the FACAC calls for a legal conclusion and therefore no response is
14 required, but to the extent a response is required, Defendants deny the allegations.

15 12. In response to the allegations in paragraph 12 of the FACAC, Defendants admit and deny
16 as set forth above.

17 13. Paragraph 13 of the FACAC calls for a legal conclusion and therefore no response is
18 required, but to the extent a response is required, Defendants deny the allegations.

19 14. Defendants deny the allegations in paragraph 14 of the FACAC.

20 15. In response to the allegations in paragraph 15 of the FACAC, Defendants admit and deny
21 as set forth above.

22 16. Paragraph 16 of the FACAC calls for a legal conclusion and therefore no response is
23 required, but to the extent a response is required, Defendants deny the allegations.

24 17. Defendants deny the allegations in paragraph 17 of the FACAC.

25 18. In response to the allegations in paragraph 18 of the FACAC, Defendants admit and deny
26 as set forth above.

1 **TENTH AFFIRMATIVE DEFENSE**

2 **(No Separate Remedy)**

3 10. Plaintiffs are not legally entitled to a monetary remedy under ORS 652.140 and .150
4 penalties for any underpayment of wages due to an alleged improper deduction separate from that
5 provided under ORS 652.615.

6 **ELEVENTH AFFIRMATIVE DEFENSE**

7 **(Recoupment)**

8 11. During the relevant time period, Defendants mistakenly accrued and made payments for
9 Paid Time Off (“PTO”) for Plaintiffs and certain class members. The erroneous accruals and
10 payments were made by a payroll employee (the Payroll/Accounts Receivable Clerk) who
11 misinterpreted and misapplied Defendants’ PTO accrual and payment policy in several material
12 ways to Defendants’ detriment, a circumstance which did not become known to Defendants’
13 management until late October 2020 as Defendants’ Dealerships were being sold in an asset sale to a
14 third party (the Sale”). The total amounts erroneously accrued and overpaid to Plaintiffs and to
15 members of the class are in excess of \$600,000 by Gladstone Toyota and more than \$200,000 by
16 Gladstone Mazda. Defendants are legally entitled to set off and recoup such funds from any
17 amounts determined to be owing to Plaintiffs and members of any certified class, together with
18 prejudgment interest and any other amounts the Court may deem to be appropriate.

19 The mistaken accruals and overpayments were contrary to Defendants’ PRO policy in the
20 following ways:

- 21 • PTO payments as wages in lieu of time off were calculated by including overtime,
22 commissions, and other compensation including bonuses instead being based solely on
23 employees’ base rate of pay;
- 24 • PTO was erroneously accrued and credited to employees on a calendar year basis, rather
25 than from employee anniversary dates, a of the employee’s hire;
- 26 • PTO accruals were erroneously rolled over in amounts greater than allowed by;

1 5. That Defendants shall be entitled to recover their costs in defending against these
2 claims; and

3 6. That Defendants be granted such other relief that this Court may deem just and
4 proper.

5 DATED: May 27, 2021

Respectfully submitted,

LITTLER MENDELSON, P.C.

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7
8 */s/Bryce W. Hanks*

Douglas S. Parker, OSB No. 821017

dparker@littler.com

Bryce W. Hanks, OSB No. 143321

bhanks@littler.com

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11 Attorneys for Defendants
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on May 27, 2021, I served a full, true, and correct copy of the foregoing
3 Defendants' First Amended Answer and Affirmative Defenses to First Amended Class Action
4 Complaint:
5

- 6 By delivery via messenger, or otherwise by hand,
7 By facsimile,
8 By e-mail and/or the State Court e-filing system,
9 Mailing same, postage paid,

10 addressed to:

11 Jon Egan
12 Jon M. Egan, PC
13 547 Fifth Street
14 Lake Oswego, OR 97034-3009
15 Phone: (503) 697-3427
16 Fax: (866) 311-5629
17 Email: Jegan@eganlegalteam.com

18 Of Attorneys for Plaintiff

19 By: /s/Natalie Hatfield
20 Natalie M. Hatfield
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