

JUL 01 2014

SPOKANE COUNTY CLERK

STATE OF WASHINGTON
SPOKANE COUNTY SUPERIOR COURT

TAYLOR BURROWS, KEVIN MCLURE,
and STEVE MYERS on behalf of themselves
and all others similarly situated; DANNY
FLORES, individually; and LEROY
HACKMAN, individually,

Plaintiffs,

vs.

CCC & TB, LLC, d/b/a AUTO CREDIT, a
Washington Corporation; AUTO
MANAGEMENT, INC, a Washington
Corporation; PHOENIX FINANCIAL, LLC,
a Washington Corporation; TOM BRYANT;
DAVID IRISH; and WILLIAM FUNK,

Defendants.

Cause No.: 14-2-02353-1

**AMENDED CLASS ACTION
COMPLAINT FOR INJUNCTIVE
RELIEF AND DAMAGES FOR
VIOLATION OF WASHINGTON'S
WAGE LAWS AND INDIVIDUAL
COMPLAINT FOR VIOLATION OF
WASHINGTON LAW AGAINST
DISCRIMINATION**

JURY TRIAL DEMANDED

I. PARTIES, JURISDICTION, & VENUE

1. Plaintiff Taylor Burrows ("Burrows") is a United States citizen and was a resident of Spokane County, Washington during all times relevant hereto. At all times relevant to this complaint, Plaintiff Burrows was over forty years old and at all times mentioned herein was acting in a reasonable and prudent manner, and performing his work satisfactorily.

1 2. Plaintiff Danny Flores ("Flores") is a United States citizen and was a resident of
2 Spokane County, Washington during all times relevant hereto. At all times relevant to this
3 complaint, Plaintiff Flores was over forty years old and at all times mentioned herein was
4 acting in a reasonable and prudent manner, and performing his work satisfactorily.

5 3. Plaintiff Leroy Hackman ("Hackman") is a United States citizen and was a
6 resident of King County, Washington during all times relevant hereto. At all times relevant to
7 this complaint, Plaintiff Hackman was over forty years old and at all times mentioned herein
8 was acting in a reasonable and prudent manner, and performing his work satisfactorily.

9 4. Plaintiff Kevin McLure ("McLure") is a United States citizen and was a resident
10 of Spokane County, Washington during all times relevant hereto. At all times relevant to this
11 complaint, Plaintiff McLure was over forty years old and at all times mentioned herein was
12 acting in a reasonable and prudent manner, and performing his work satisfactorily.

13 5. Plaintiff Steve Myers ("Myers") is a United States citizen and was a resident of
14 Spokane County, Washington during all times relevant hereto. At all times relevant to this
15 complaint, Plaintiff Myers was acting in a reasonable and prudent manner, and performing his
16 work satisfactorily.

17 6. Defendants CCC & TB, LLC ("CCC") is a Washington corporation authorized to
18 do business in the State of Washington. CCC does business as Auto Credit. At all relevant
19 times hereto, CCC maintained a business located at, *inter alia*, 3927 E. Trent Avenue,
20 Spokane, Washington 99211. CCC is owned by defendant Auto Management, Inc. ("Auto
21 Management"). Upon information and belief, CCC consists of, among other things, several car
22 lots whereupon vehicles are sold and financed to retail consumers.

1 7. Defendant AUTO MANAGEMENT, INC. ("Auto Management") is a
2 Washington corporation authorized to do business in the State of Washington. At all relevant
3 times hereto, Auto Management maintained a business located at 3927 E. Trent Avenue,
4 Spokane, Washington 99211. Auto Management is owned by defendants Tom Bryant, David
5 Irish, and William Funk. Upon information and belief, Auto Management consists of, among
6 other things, several car lots whereupon vehicles are sold and financed to retail consumers.

7 8. Defendant PHOENIX FINANCIAL, LLC ("Phoenix") is a Washington
8 corporation authorized to do business in the State of Washington. At all relevant times hereto,
9 Phoenix maintained a business located at 3927 E. Trent Avenue, Spokane, Washington 99211.
10 The owners/members of Phoenix are defendants Tom Bryant, David Irish, and William Funk.
11 Upon information and belief, Phoenix consists of, among other things, a business through
12 which consumers obtain financing for the purchase of vehicles.

13 9. Unless otherwise stated, the above referenced corporate defendant entities are
14 collectively referred to as "Auto Credit."

15 10. Defendant William Funk ("Funk") was an owner/member of Auto Credit at all
16 relevant times herein. At all times relevant, Defendant Funk exercised significant control over
17 Plaintiffs' hiring and firing, as well as the conditions of employment and compensation for
18 Plaintiffs and the Class. Defendant Funk participated in the decision making that led to
19 defendants' unlawful treatment and payment of wages to plaintiffs and the Class. Defendant
20 Funk maintained (and maintains) a special supervisory relationship over employees as
21 owner/member and has (and had) direct and vicarious responsibility for ensuring compliance
22 with state law, as well as defendants' policies governing training, supervision, treatment, and

1 compensation of employees, and is proximately and legally responsible for the acts, omissions,
2 and damages giving rise to the causes of action as alleged herein. Defendant Funk is being
3 sued individually and in his official capacity for certain claims stated herein as he, *inter alia*,
4 had personal control over the payment of the wages to plaintiffs and the Class, and willfully
5 ratified the withholding of said wages.

6 11. Defendant David Irish ("Irish") was an owner/member of Auto Credit at all
7 relevant times herein. At all times relevant, Defendant Irish exercised significant control over
8 plaintiffs' hiring and firing, as well as the conditions of employment and compensation for
9 plaintiffs and the Class. Defendant Irish participated in the decision making that led to
10 defendants' unlawful treatment and payment of wages to plaintiffs and the Class. Defendant
11 Irish maintained (and maintains) a special supervisory relationship over employees as
12 owner/member and has (and had) direct and vicarious responsibility for ensuring compliance
13 with state and federal law, as well as defendants' policies governing training, supervision,
14 treatment, and compensation of employees, and is proximately and legally responsible for the
15 acts, omissions, and damages giving rise to the causes of action as alleged herein. Defendant
16 Irish is being sued individually and in his official capacity for certain claims stated herein as
17 he, *inter alia*, had personal control over the payment of the wages to plaintiffs and the Class,
18 and willfully ratified the withholding of said wages..

19 12. Defendant Tom Bryant ("Bryant") was an owner/member of Auto Credit at all
20 relevant times herein. At all times relevant, Defendant Bryant exercised significant control
21 over Plaintiffs' hiring and firing, as well as the conditions of employment and compensation for
22 Plaintiffs and the Class. Defendant Bryant participated in the decision making that led to

1 defendants' unlawful treatment and payment of wages to plaintiffs and the Class. Defendant
2 Bryant maintained (and maintains) a special supervisory relationship over employees as
3 owner/member and has (and had) direct and vicarious responsibility for ensuring compliance
4 with state and federal law, as well as defendants' policies governing training, supervision,
5 treatment, and compensation of employees, and is proximately and legally responsible for the
6 acts, omissions, and damages giving rise to the causes of action as alleged herein. Defendant
7 Bryant is being sued individually and in his official capacity for certain claims stated herein as
8 he, *inter alia*, had personal control over the payment of the wages to plaintiffs and the Class,
9 and willfully ratified the withholding of said wages..

10 13. This Court has subject matter jurisdiction pursuant to Washington's wage
11 statutes including, but not limited to, RCW 49.52, and Washington's Law Against
12 Discrimination ("WLAD") including, but not limited to, RCW 49.60.

13 14. Venue is proper in Spokane, Washington because defendants conduct business
14 therein, are licensed/registered therein, and certain acts and omissions of which plaintiffs and
15 the Class complain, in part, occurred therein.

16 II. FACTS

17 15. Plaintiffs incorporate the above paragraphs as if pled verbatim herein.

18 (Danny Flores)

19 16. Auto Credit hired Danny Flores in 2006, initially in a sales person capacity but
20 then as the company's Finance Manager.

17. At all times relevant hereto Danny Flores performed his work in a satisfactory manner. He was also the “face” and “voice” of Auto Credit having appeared in a number of their television advertising spots.

18. In August, 2012, Auto Credit, without notice, terminated Mr. Flores' employment. Auto Credit's stated reason for the termination was because it "wanted to go in a different direction." Mr. Flores was replaced by Earl Adams. Mr. Flores was 45 years old when Auto Credit, suddenly and without explanation, terminated his employment. Mr. Adams was in his early 30s.

19. Mr. Flores was never written up or disciplined during his employ with Auto Credit.

(Taylor Burrows)

20. Auto Credit hired Taylor Burrows in 2007.

21. At all times relevant hereto Mr. Burrows performed his work in a satisfactory manner.

22. During his employ with Auto Credit, Mr. Burrows worked at Auto Credit's facility located at Foothills Drive and Ruby Street, in Spokane, Washington (hereinafter the "Foothills Lot").

23. Mr. Burrows worked as the Foothills Lot's General Manager, and, in that capacity was charged with ensuring that the Foothills Lot was profitable.

24. The Foothills Lot was one of, ultimately, five lots Auto Credit operated in Eastern Washington and Northern Idaho. For the vast majority of Mr. Burrow's employ with

1 Auto Credit, the Foothills Lot was ranked first (out of four, and later five lots) in revenue
2 generated and sales made.

3 25. At all times relevant hereto, Auto Credit utilized a pay policy or practice as
4 follows: (a) a customer would agree to purchase a vehicle from Auto Credit (b) that customer
5 would take out a vehicle loan from Phoenix (c) the employee (here Mr. Burrows) would
6 receive wages based off of each car sold and/or financed; but, (d) if the customer subsequently
7 defaulted on a Phoenix loan, or repairs were made at Auto Credit's expense to a vehicle
8 previously sold, then Auto Credit would deduct these loan default expenses or repair costs
9 from the employee's wages.

10 26. Auto Credit did not inform, or disclose to employees who received commission
11 wages, how said commissions were calculated.

12 27. The above-mentioned chargeback policy or practice affected employees who
13 received wages based upon vehicles sold, including: "Salesmen," "Assistant Managers,"
14 "Managers," and "Finance Managers."

15 28. At all relevant times the defendants employed more than 25 "Salesmen",
16 "Assistant Managers", "Managers", and "Finance Managers."

17 29. The aforementioned chargeback policy violated Washington's wage laws.

18 30. In mid-August, 2013, Mr. Burrows informed Defendant Irish that he had been
19 diagnosed with prostate cancer and was scheduled for surgery in November, 2013.

20 31. On August 30, 2013, without notice, Auto Credit terminated Mr. Burrows'
21 employment.

32. Defendant Irish's stated reason for terminating Mr. Burrows' employment was that Auto Credit was "going in a different direction." General Manager Barry Keene, however, communicated that Mr. Burrows was being let go because he was going through cancer treatment.

33. Mr. Burrows was 61 years of age at the time he was terminated.

34. Auto Credit never disciplined Mr. Burrows during his employment with Auto Credit.

(Steven Myers)

35. Shortly after terminating Mr. Burrows, Auto Credit replaced Mr. Burrows with Steve Myers, an employee younger than 40 years of age.

36. During his employment at Auto Credit, Mr. Meyers was subject to the above-described "chargeback" policy or practice in which monies were deducted from employee wages for business losses due to customer loan defaults or vehicle repairs.

37. During Mr. Myers' employ with Auto Credit, the Foothills Lot, upon whose revenue Mr. Myers' commission pay was derived, was "charged back" at least \$45,000.00 in expenses and costs.

38. Mr. Myers has a child who needs specialized medical care.

39. During his employment at Auto Credit, Auto Credit agreed to provide health care coverage, in the form of medical insurance, to Mr. Meyers and his family, and guaranteed such health care coverage to induce Mr. Myers into working at Auto Credit.

40. For each pay period, amounts were deducted from Mr. Meyers' pay check as his contribution for health care coverage.

1 41. Although Auto Credit deducted hundreds of dollars from Mr. Myer's wages over
2 his employment history, Auto Credit failed to properly insure Mr. Myers or his family for
3 health care coverage.

4 42. Mr. Myers, upon learning that he and his family were uninsured, complained to
5 Auto Credit's management about the lack of health care coverage.

6 43. Auto Credit never refunded the contribution amounts that it deducted from Mr.
7 Myers' paycheck for health care coverage.

8 44. Mr. Myers ended his employment at Auto Credit on or about January 25, 2014
9 because of Auto Credit's failure to pay for Mr. Myers' and his family's health care coverage.

10 45. Although Mr. Meyers worked from January 1, 2014, to January 25, 2014, Auto
11 Credit only paid Mr. Myers for approximately one week of work for January, 2014.

12 46. On or about February 10, 2014, Mr. Myers telephoned Auto Credit manager
13 Barry Keene to ask for the remainder of his monthly pay.

14 47. Upon information and belief, Mr. Keene (on February 10th) saw Mr. Myers'
15 telephone number appear on Mr. Keene's office phone and, in reference to Mr. Myers' number
16 appearing, said words to the effect of "[expletive] you...you're not getting paid [expletive]."

17 48. On or about February 24, 2014, Mr. Myers mailed a letter to Auto Credit that (a)
18 demanded payment of the non-paid wages for January, 2014; and (b) demanded
19 payment/reimbursement of his health insurance contributions.

20 49. Auto Credit did not respond to Mr. Myers' February 24, 2014 letter, never paid
21 Mr. Myers his wrongfully withheld wages, and never remibursed Mr. Myers for his health
22 insurance contributions.

1 **(Leroy Hackman)**

2 50. From approximately 2009 to 2012, Leroy Hackman worked for Auto Credit as a
3 "buyer", meaning that Mr. Hackman purchased cars that Auto Credit ultimately sold.

4 51. Auto Credit's management, specifically Defendant Irish, would routinely refer to
5 Mr. Hackman as a "superstar."

6 52. Mr. Hackman was never written up or disciplined during his employ with Auto
7 Credit.

8 53. In August, 2012, Auto Credit, without warning, terminated Mr. Hackman's
9 employment.

10 54. Mr. Hackman was 64 years old at the time he was terminated.

11 55. Upon information and belief, Mr. Hackman was replaced by an individual
12 younger than 40 years of age.

13 **(Kevin McLure)**

14 56. Auto Credit hired Kevin McLure in September, 2010 to work as a Salesman.

15 57. Auto Credit promoted Mr. McLure in the mid-2011 timeframe to work as
16 Assistant Manager for the company's Airway Heights, Washington store.

17 58. Mr. McLure reported to Heath Irish, defendant Dave Irish's son.

18 59. Mr. McLure was subject to the above-described "chargeback" policy or practice
19 in which monies were deducted from employee wages for business losses due to customer loan
20 defaults or vehicle repairs.

1 60. In July, 2013, Mr. McLure protested to Heath Irish about the company's
2 "chargeback" policy or practice. Mr. McLure insisted that this wage deduction practice stop
3 immediately.

4 61. The following day, Mr. McLure was told by Dave Irish that "[Y]ou are done
5 being a manager. Pack your stuff. You are doing finance at the Post Falls lot." Consistent
6 with this statement, Mr. McLure was demoted from Assistant Manager to Finance Manager
7 and transferred to Auto Credit's Post Falls, Idaho branch.

8 62. In mid-to-late 2013, Mr. McLure was diagnosed with a heart condition in which
9 he was given a low probability of survival. His physician told him that he needed open heart
10 surgery.

11 63. In mid-to-late 2013, Mr. McLure worked under Neil Quaintance, the manager of
12 Auto Credits' Post Falls branch. At the Post Falls branch, Mr. Quaintance informed Mr.
13 McLure that even though he would be the Finance Manager, he would also take "heat calls" - -
14 the phrase Auto Credit used to describe incoming calls from irate customers.

15 64. In the November, 2013 timeframe, Mr. McLure told Mr. Quaintance that he
16 (McLure) needed open heart surgery.

17 65. In the process of coordinating the logistics for his medical treatment and future
18 surgery, Mr. McLure learned that Auto Credit had not insured him for medical treatment. At
19 that time, and the months leading up to, Auto Credit deducted amounts from Mr. McLure's
20 paycheck each month for health insurance coverage.

1 66. Upon discovering this, Mr. McLure immediately informed Mr. Keene of the
2 health care coverage issue. Mr. Keene instructed Mr. McLure to discuss the issue with Peter
3 Melville, an Auto Credit employee and step-son of Dave Irish.

4 67. Mr. McLure telephoned Mr. Melville and informed Mr. Melville that he had no
5 health care coverage even though Auto Credit had, for years, deducted thousands of dollars
6 from Mr. McLure's wages for medical insurance.

7 68. In response to Mr. McLure's query, Mr. Melville referred to Mr. McLure as
8 "you [expletive] old people" and stated "I don't want to deal with this stuff."

9 69. Mr. McLure's open heart surgery was scheduled for December 26, 2013. Prior
10 to that surgery, Auto Credit agreed to pay \$3,000 to Mr. McLure to help with Mr. McLure's
11 time off of work for the scheduled surgery. The \$3,000 was to be allocated as follows: \$1,500
12 for vacation pay and \$1,500 for "good will."

13 70. Mr. McLure returned to work at Auto Credit on February 1, 2014. At that time,
14 Mr. McLure had not received the promised \$3,000. When Mr. McLure asked about the
15 \$3,000, he was told that he would not receive that money. Instead, Auto Credit issued a check
16 to him in the amount of \$1,500 as an advance on future commissions.

17 71. Upon his return to work, Mr. McLure informed Mr. Quaintance that he had
18 medical restrictions related to his heart condition and the surgery. Mr. McLure was restricted
19 by his physician as to the type of work that he could perform. Mr. McLure was released to
20 work to perform certain administrative work, but could not perform any strenuous type of
21 labor.

1 72. Within weeks of informing Mr. Quaintance of his medical restrictions and his
2 request for the \$3,000 check, Mr. Quaintance told Mr. McLure that he was being moved to the
3 Foothills Lot to work as a salesman and that it was not open for discussion.

4 73. Mr. McLure protested the transfer and demotion, and informed Mr. Quaintance
5 that he (McLure) was not cleared to work outside or conduct the functions associated with a
6 Salesman position.

7 74. Upon his arrival to the Foothills Lot, Mr. McLure told Mr. Keene that he could
8 not physically do the sales position work given his medical condition and the order from his
9 physician. Mr. McLure asked that his disability be accommodated. Instead, Mr. McLure was
10 told to do the sales work anyway.

11 75. Mr. McLure's poor health was obvious to those around him, including the
12 customers. Customers would ask about Mr. McLure's poor physical condition and why he was
13 even at work.

14 76. On March 5, 2014, Mr. McLure received a pay check.

15 77. The paystub accompanying the pay check reflected that Auto Credit deducted the
16 \$1,500.00 previously paid to Mr. McLure in February, 2014.

17 78. Auto Credit never paid Mr. McLure the \$3,000.00 it promised Mr. McLure.

18 79. On March 5, 2014, Mr. McLure ended his employment relationship with Auto
19 Credit due to the physical demands of his assigned sales position and the promises broken by
20 Auto Credit.

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5

(1) all current and former Auto Credit Managers, Assistant Managers, Finance Managers, Salesmen, and other employees who were subject to the above-referenced "chargeback" practice or policy; and,

81. Excluded from the Class are the Defendants, the Defendants' legal representatives, assignees, and successors, the judge to whom this case is assigned, any member of the judge's immediate family, and any person who has settled the same claims as set forth in this Complaint.

83. Impracticability of Joinder. The Class is each so numerous that joinder of all members is impracticable. Upon information and belief, the Class has more than 30 members thus joinder of those class members would be, at a minimum, extremely difficult and inconvenient as the class members hail from across Eastern Washington and Northern Idaho. Additionally, the small size of the individual claims, the limited financial resources of the class members, and the inability of the claimants to institute individual actions favors resolution of this case through the class action device. Moreover, the disposition of the claims of the Class in a single action will provide substantial benefits to all parties and the Court by resolving the issues concerning the Washington's Wage Deduction Statute (hereafter the "Act") application in one forum thus preserving judicial economy.

1 84. Commonality. Defendants engaged in a common course of conduct toward
2 Plaintiffs and members of the Class by denying them the benefits of the Act. There are
3 questions of law and fact common to Plaintiffs and members of the Class. These common
4 questions of law and fact include, but are not limited to, the following:

5 (a) Whether Defendants and/or other persons or entities acting on Defendants' behalf violated
6 RCW 49.52 et. seq. and/or WAC 296-126-028 and WAC 296-126-025 for making deductions
7 from Plaintiffs' wages because of Defendants' business losses including but not limited to loan
8 default expenses and vehicle repair costs.

9 (b) Whether Defendants and/or other persons or entities acting on Defendants' behalf were
10 unjustly enriched by withholding Plaintiffs' wages for payment for health care coverage but not
11 properly contributing those withheld wages to Plaintiffs' health care coverage expenses and/or
12 premiums.

13 (c) Whether Plaintiffs are entitled to statutory, compensatory, exemplary, liquidated, and/or
14 punitive damages for Defendants' violations of the law.

15 85. The above-referenced legal and factual questions relate to all of the Class
16 members and those legal questions are substantially related to resolving this litigation.

17 86. Typicality. Plaintiffs' claims are typical of the claims of the Class. Plaintiffs'
18 claims, like the claims of the Class, arise out of the same common course of conduct by
19 Defendants and are based on the same legal and remedial theories.

20 87. Adequacy. Plaintiffs will fairly and adequately protect the interests of the Class.
21 Plaintiffs have retained competent and capable attorneys with experience in class action
22 litigation, including veterans benefits and related class action litigation. Plaintiffs and counsel
23 are committed to prosecuting this action vigorously on behalf of the Class, and neither have
24 interests that are contrary to, or that conflict with, those of the proposed Class.

25 88. CR 23(b)(1). This action is properly maintainable as a class action under CR
23(b)(1) because the prosecution of separate actions by, or against, members of the class would

1 create a risk of inconsistent adjudications regarding individual class members that would
2 establish incompatible standards of conduct for defendants.

3 89. CR 23(b)(2). This action is also properly maintainable as a class action under
4 CR 23(b)(2). Defendants acted on grounds generally applicable to the Class, thereby making
5 final injunctive relief and corresponding declaratory relief with respect to the Class appropriate
6 on a class-wide basis. Defendants have maintained a uniform policy or practice of knowingly
7 violating the Act and have applied that uniform policy to all members of the Class. As such,
8 Defendants have acted or refused to act on grounds that apply generally to the Class. Thus,
9 final declaratory relief is appropriate respecting the Class as a whole. The monetary relief
10 Plaintiffs seek either flows from and/or is incidental to the declaratory relief sought, as it flows
11 directly from the ordering of such declaratory relief and can be calculated in a simple,
12 objective, and mechanical manner.

13 90. CR 23(b)(3). This action is also properly maintainable as a class action under CR
14 23(b)(3). The questions of law and fact common to members of the Class predominate over
15 questions affecting only individual members and a class action is superior to other available
16 methods for the fair and efficient resolution of this controversy.

17 91. Defendants engaged in a common course of conduct toward Plaintiffs and
18 members of the Class. The common issues arising from this conduct that affect Plaintiffs and
19 members of the Class predominate over any individual issues. Adjudication of these common
20 issues in a single action has important and desirable advantages of judicial economy. By
21 resolving the common issues described above in a single class proceeding, each member of the
22 proposed class will receive a determination of whether Auto Credit violated his or her rights

1 under the Act and whether a remedy should be provided under Act. Further, by resolving the
2 dominant, central, and overriding issues as to whether Auto Credit has violated the Class
3 members' Act rights, Auto Credit will not have to be faced with multiple claims relating to the
4 issue.

5 92. A class action is the superior method for the fair and efficient adjudication of this
6 controversy. Class-wide adjudication is a superior manner of compelling Defendants to
7 comply with the benefits of employment afforded to Plaintiffs and members of the Class by
8 virtue of the Act. The interest of individual members of the Class in individually controlling
9 the prosecution of separate claims against Defendants is small, as the denial of Act rights is a
10 common problem that affects the Class and a common resolution of Auto Credit's violations of
11 the law will result in far greater certainty for Auto Credit employees.

12 93. Management of these claims in a Class is likely to present significantly fewer
13 difficulties than are presented in many individual class claims because the relief requires
14 uniform treatment between prevailing Plaintiffs. Class treatment is superior to multiple
15 individual suits or piecemeal litigation because it conserves judicial resources, promotes
16 consistency and efficiency of adjudication, provides a forum for small claimants, and deters
17 illegal activities. There will be no significant difficulty in the management of this case as a
18 class action.

19 94. Upon information and belief, there is no other existing lawsuit begun by
20 members of the Class raising these allegations prior to the time that this Complaint was filed.
21
22

1 **IV. CAUSES OF ACTION**

2 **Individual Cause of Action No. 1 -Violations of the Washington Law Against**
3 **Discrimination - Age Discrimination**
4 **(Burrows, Hackman, Flores, & McLure vs. Auto Credit)**

5 95. Plaintiffs incorporate the above paragraphs as if pled verbatim herein.

6 96. RCW 49.60 and RCW 49.44, in part, make it unlawful for an employer to
7 discharge, terminate or otherwise discriminate against any individual with respect to his
8 compensation, terms, conditions, or privileges of employment, because of such individual's
9 age.

10 97. Defendants violated RCW 49.60 et seq. and RCW 49.44 et seq. insofar as
11 Plaintiffs Flores, Burrows, Hackman, and McLure were all older than 40 years of age,
12 performing their work satisfactorily, and were terminated or discharged based upon their age.

13 98. Defendants willfully violated Plaintiffs' right to be free from age discrimination
14 and have shown a pattern and practice of replacing qualified individuals over the age of 40
15 with younger workers.

16 99. By reason of, and as a direct and proximate result of Defendants' violations of
17 RCW 49.60 et seq. and RCW 49.44 et seq., Plaintiffs suffered damages, all in amounts to be
18 proven at the time of trial.

19 **Individual Cause of Action No. 2 - Violations of WLAD- Failure to Accommodate &**
20 **Disability Discrimination**
21 **(McLure & Burrows vs. Auto Credit)**

22 100. Plaintiffs incorporate the above paragraphs as if pled verbatim herein.

1 101. RCW 49.60 makes it unlawful for an employer to discharge or bar any person
2 from employment or discriminate against any person in compensation or in other terms or
3 conditions of employment because of the employee's sensory, mental, or physical disability.

4 102. Mr. Burrows and Mr. McLure were disabled under RCW 49.60, were qualified
5 to perform the essential functions of their jobs, and were terminated, discharged, barred,
6 demoted, and/or discriminated against on account of their disability by Auto Credit. Further,
7 Auto Credit failed to make any accommodation on account of Mr. Burrows' or Mr. McLure's
8 disability.

9 103. Auto Credit's termination of Mr. McLure and Mr. Burrows is similar to the
10 company's 2011 termination of Mike Doak - - - an Auto Credit employee who was fired within
11 days of Heath Irish discovering that Mr. Doak was on heart medication.

12 104. By reason of, and as a direct and proximate result of Defendants' violations of
13 RCW 49.60 et seq., Plaintiffs suffered damages, all in amounts to be proven at the time of trial.

14 **Individual Cause of Action No. 3 - Violations of Washington Family Leave Act -**
15 **RCW 49.78**
 (McLure & Burrows vs. Auto Credit)

16 105. Plaintiffs reincorporate the above paragraphs as if pled verbatim herein.

17 106. Washington law, including RCW 49.78 et. seq., entitles an employee to twelve
18 weeks of leave per year should serious health conditions render an employee unable to work.

19 107. Prostate cancer is a serious health condition. Mr. Burrows was diagnosed with
20 prostate cancer.

21 108. Open heart surgery is a serious health condition. Mr. McLure was diagnosed
22 with a heart condition requiring surgery.

1 109. Washington law makes it illegal for an employer to "interfere with, restrain, or
2 deny the exercise of, or the attempt to exercise, any right provided under" the Family Leave
3 Act.

4 110. Auto Credit interfered with Mr. Burrows and Mr. McLure's rights under the
5 Family Leave Act by, among other things, terminating Mr. Burrows instead of granting him
6 leave, and refusing to grant Mr. McLure continued leave related to his heart condition.

7 111. By reason of, and as a direct and proximate result of Auto Credit's violation of
8 RCW 49.78 et. seq., Mr. Burrows and Mr. McLure have been damaged in amounts to be
9 proven at trial.

10 **Individual Cause of Action No. 4 - Breach of Contract**
11 **(McLure vs. Auto Credit)**

12 112. Plaintiffs incorporate the above paragraphs as if pled verbatim herein.

13 113. Defendant Auto Credit entered into an oral contract for the payment of monies to
14 Mr. McLure.

15 114. Defendant Auto Credit breached that contract to Mr. McLure thereby causing
16 damage in an amount to be proven at trial.

17 **Class Action Cause of Action No. 1 - Violation of RCW 49.52.050, RCW 49.52.060,**
18 **WAC 296-126-028, WAC 296-126-025**
19 **(Burrows, McLure, & Myers vs. All Defendants)**

20 115. Plaintiffs incorporate the above paragraphs as if pled verbatim herein.

21 116. Under Washington law, including RCW 49.52, et. seq., employers may not
22 deduct amounts from employee wages when (a) the employer derives a financial profit or
23 benefit from the deduction or (b) the deduction does not serve a lawful purpose for the benefit
24 of the employee.

1 117. Washington Administrative Code (WAC) 296-126-028 and 296-126-025
2 provide, in part, that an employer may deduct wages when the employee expressly authorizes
3 the deduction in writing and in advance for a lawful purpose for the benefit of the employee.
4 WAC 296-126-028 and 296-126-025 also state that neither the employer nor any person acting
5 in the interest of the employer can derive any financial profit or benefit from any deduction
6 under this regulation. WAC 296-126-028 and 296-126-025 further state that the employer may
7 not deduct amounts from the employee's wage for business losses or expenses incurred by the
8 employer.

9 118. Mr. Burrows, Mr. McLure, Mr. Myers and the Class had their wages deducted by
10 Auto Credit in violation of Washington law including RCW 49.52 et. seq. and WAC 296-126-
11 028 and 296-126-025.

12 119. Auto Credit deducted Mr. Burrows', Mr. McLure's, Mr. Myers' and the Class'
13 wages for business losses incurred by Auto Credit. Auto Credit's wage deduction policy or
14 practice made the Plaintiffs, and also the Class, insurers of Auto Credit's business losses in
15 violation of Washington wage law.

16 120. Defendants Funk, Irish, and Bryant directly benefitted from the chargeback
17 policy or practice.

18 121. Auto Credit directly benefitted from the chargeback policy or practice.

19 122. Defendants have an actual policy or practice of wage deductions because (a) over
20 30 employees were subject to the wage chargeback scheme since approximately 2011, if not
21 earlier; (b) the improper wage chargeback deductions occurred at Defendants' five stores in two
22 states and were ratified by the individual defendants in the case; (c) the Defendants not only

1 communicated, but mandated, that the members of the Class adhere to the chargeback practice
2 or policy.

3 123. Defendants implemented a wage policy or practice that allowed improper wage
4 deductions.

5 124. Upon information and belief, the Defendants have not reimbursed any employee
6 for the improper wage deductions.

7 125. In violation of Washington law, Defendants failed to identify and record all wage
8 deductions openly and clearly in employee payroll records.

9 126. Defendants have not made a good faith effort to cease its wage chargeback
10 policy or practice as that practice continued beyond employees' objections to it, including
11 objections vocalized by Mr. McLure.

12 127. Mr. McLure's objection was sufficiently clear and detailed so that a reasonable
13 employer would understand that Mr. McLure was asserting his rights under the law and calling
14 for Auto Credit to follow the law.

15 128. Mr. McLure's objection to Auto Credit about the company's chargeback practice
16 or policy put Auto Credit on notice that its practice or policy violated the law.

17 129. Auto Credit's continuation of the chargeback practice or policy constitutes a
18 willful violation of the Act and bars Auto Credit from asserting any "good faith" or "safe
19 harbor" defense to Mr. McLure's claim, Mr. Myers' claim, and the claim of the Class.

20 130. Defendants' deductions from Mr. McLure's, Mr. Myers', and the Class' wages
21 for contributions towards health insurance coverage also violated Washington law where the
22

Defendants failed to apply those wage deductions towards employee health insurance expenses, premiums and/or enrollment in the like.

131. Defendants' illegal chargeback policy deprives and deprived the Plaintiffs and Class of their non-exempt status from Washington's Minimum Wage Act (MWA), RCW 49.46.130(4), which, in turn, requires Defendants to pay Plaintiffs and the Class overtime as required under the MWA.

132. By reason of, and as a direct and proximate result of Defendants' unlawful wage practices set forth above, Mr. Burrows, Mr. McLure, Mr. Myers, and the Class have been damaged by Defendants in amounts to be proven at trial.

**Class Action Cause of Action No. 2 - Violation of MWA
(McLure, Burrows, & Myers vs. All Defendants)**

133. Plaintiffs incorporate the above-paragraphs.

134. Commission-based salespeople in the auto industry are exempt from the MWA's overtime requirements insofar as employers do not have to pay employees overtime for work (at time and one half of the employee's regular rate) in excess of 40 hours per week.

135. However, an employer loses the above-referenced "exempt" status when it utilizes (as is the case here) an illegal wage deduction scheme.

136. As such, the Plaintiffs and Class are subject to the MWA and Defendants owe Plaintiffs and the Class overtime payments for all hours worked, per week, in excess of 40.

137. By reason of, and as a direct and proximate result of Defendants' violations of the MWA, Plaintiffs and the Class have been damaged in amounts to be proven at trial.

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5

139. Unjust enrichment occurs when a party retains money or benefits which in or equity belong to another.

141. Defendant Auto Credit received and/or receives benefits at Plaintiffs' and the Class' expense, and the circumstances make it unjust for Defendant Auto Credit to retain the benefit.

143. By reason of, and as a direct and proximate result of Defendants' unjust enrichment, Mr. Burrows, Mr. McLure, Mr. Myers, and the Class have been damaged in amounts to be proven at trial.

V. DEMAND FOR RELIEF

- a) Certification of the proposed Class;
- b) Appointment of the Named Plaintiffs as representatives of the Class;
- c) Appointment of the undersigned counsel as counsel for the Class;

1 d) A declaration that Defendants' actions, described fully above, violated RCW
2 49.52 et. seq., RCW 49.60 et. seq, RCW 49.46 et. seq., WAC 296-126-028 and WAC
3 296-126-025;

4 e) An order enjoining Defendants and/or related entities, as provided by law, from
5 engaging in the unlawful conduct set forth herein;

6 f) An award to Plaintiffs' and the Class for back pay, front pay, lost benefits of
7 employment, pre- and post-judgment interest, statutory damages, compensatory
8 damages, exemplary damages, punitive damages, liquidated damages, attorneys' fees,
9 costs, litigation expenses, and all other damages, as allowed by law, for violation of the
10 statutes/laws as set forth herein. Statutes authorizing the award of damages include but
11 are not limited to RCW 49.48.030, RCW 49.52.070, RCW 49.60.030, and RCW 49.46;

12 g) An award for damages for unjust enrichment;

13 h) An award for damages for breach of contract;

14 i) An award for equitable relief as the Court deems just;

15 j) An award for damages for Defendants' violation of the WLAD with regard to
16 Burrows, Hackman, Flores, and McLures' individual claims;

17 k) Leave to amend this Complaint to conform to the evidence presented at trial;

18 l) Orders granting such other and further relief as the Court deems necessary, just,
19 and proper; and

20 m) For such other and further relief as this Court deems just and equitable.
21
22

1 DATED this 1 day of JULY, 2014.

2 CROTTY & SON LAW FIRM, PLLC

3  WSBA 29406 FDR

4 MATTHEW Z. CROTTY

5 421 W. Riverside Ave. Ste 1005

6 Spokane, WA 99201

7 Telephone: (509) 850-7011

8 Email: matt@crottyandson.com

9 EYMANN ALLISON HUNTER JONES P.S.

10 

11 JONATHAN H. NEILL, WSBA #29406

12 Attorneys for Plaintiffs

13 2208 W. Second Avenue

14 Spokane, WA 99201

15 Telephone: (509) 747-0101

16 Email: jhneill@eahjlaw.com


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the 1st day of July, 2014, I caused to be served a true and correct copy of the foregoing and addressed to the following in the manner described below:

Michael B. Love
Workland & Witherspoon, PLLC.
601 West Main Avenue, Suite 714
Spokane, WA 99201
Phone: (509) 455-9077
Fax: (509) 6247-6441
Email: mlove@workwith.com

<input type="checkbox"/>	VIA HAND DELIVERY
<input checked="" type="checkbox"/>	VIA U.S. MAIL
<input type="checkbox"/>	VIA FACSIMILE
<input type="checkbox"/>	VIA CERTIFIED MAIL
<input type="checkbox"/>	VIA OVERNIGHT MAIL



JESSICA TURK