

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

JOSE JUAN CORNELIO GRANADA and  
JOSE GONZALEZ,

*Plaintiffs,*

v.

KAPOS AUTO INC., MARIUS CALDARAS,  
and MARCEL CALDARAS,

*Defendants.*

**COMPLAINT**

Case No.: 22-cv-5021

Plaintiffs Jose Juan Cornelio Granada and Jose Gonzalez, by their undersigned attorneys Kakalec Law PLLC and Catholic Migration Services, state and allege as follows:

**PRELIMINARY STATEMENT**

1. Plaintiffs Jose Juan Cornelio Granada and Jose Gonzalez (“Plaintiffs”) bring this action to recover damages for Defendants’ violations of the Fair Labor Standards Act (“FLSA”) and New York Labor Law (“NYLL”) arising out of Plaintiffs’ employment at Kapos Auto Inc. (“Kapos Auto”), a used car dealership based in Ridgewood, New York.

2. Mr. Granada and Mr. Gonzalez worked for Defendants cleaning and detailing cars. Throughout Plaintiffs’ employment, which spanned different time periods in 2020 and 2021, the Defendants paid Plaintiffs a flat weekly wage, despite Plaintiffs working almost sixty hours per week throughout their employment. As a result, the effective hourly wage Defendants paid Plaintiffs was as low as approximately \$8.77—well below the New York minimum wage—and did not include required overtime compensation.

3. Defendants committed these acts willfully and intentionally. When Defendants were sued in this Court by another employee in 2021 for violations of the FLSA and the NYLL,

instead of coming into compliance with these laws, the Defendants instead began creating fraudulent payroll records to try to hide their unlawfully low payments to Plaintiffs Granada and Gonzalez.

### **JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction over Plaintiffs' federal claims pursuant to the FLSA, 29 U.S.C. § 201 *et seq.*, and 28 U.S.C. § 1331 (federal question jurisdiction).

5. This Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367. Plaintiffs' state law claims are part of the same case or controversy as Plaintiffs' federal claims.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391, because a substantial part of the acts and/or omissions giving rise to the claims alleged in the Complaint occurred in this District.

### **THE PARTIES**

#### **Plaintiffs**

7. At all times relevant to this action, Plaintiffs were employed by Kapos Auto Inc. Their primary worksite was Kapos Auto's used car dealership located at 80-50 Cypress Ave., Ridgewood, New York.

8. Plaintiff Jose Granada worked at Kapos Auto from approximately August 2020 to mid-October 2021, with a break in employment from approximately March 2021 to September 2021.

9. Plaintiff Jose Gonzalez worked at Kapos Auto from approximately August 2020 to mid-October 2021.

10. Plaintiffs' primary job duties were to clean and detail cars at the dealership. Plaintiffs were also required to perform construction work at other worksites within New York City. Plaintiff Gonzalez also was required to perform duties in connection with the Defendants' business of selling catalytic converters.

11. At all times throughout their employment, Plaintiffs were employees engaged in commerce and/or in the production of goods for commerce, within the meaning of 29 U.S.C. §§ 206(a) and 207(a), insofar as they regularly handled and worked on cars from out of state that were being prepared for sale and offered for sale in New York, and insofar as Plaintiffs regularly used tools and materials in their cleaning and detailing work that originated out of state.

12. Plaintiffs' primary and native language is Spanish.

### **Defendants**

#### Kapos Auto Inc.

13. Defendant Kapos Auto Inc. is a corporation organized under the laws of the State of New York with a principal office located at 80-50 Cypress Ave., Ridgewood, NY 11385.

14. Kapos Auto Inc. was incorporated on or about July 20, 2011.

15. Kapos Auto Inc. operated a used car dealership at 80-50 Cypress Avenue, Ridgewood, NY, throughout at least the period August 2020 to October 2021.

16. Upon information and belief, at all times that Plaintiffs worked for Kapos Auto Inc., it was an enterprise engaged in interstate commerce within the meaning of the FLSA, 29 U.S.C. §§ 203(r)-(s).

17. Upon information and belief, throughout the period Plaintiffs worked for Kapos Auto Inc., Kapos Auto Inc. was an enterprise engaged in interstate commerce within the meaning of the FLSA in that it:

- a. had employees engaged in commerce or in the production of goods for commerce, or who handled, sold or otherwise worked on goods or materials that were moved in or produced for commerce by any person; and
- b. had an annual gross volume of sales made or business done of not less than \$500,000.

18. At all times Plaintiffs worked at Kapos Auto, Kapos Auto Inc. was Plaintiffs' "employer" within the meaning of the FLSA and the NYLL.

Marius Caldaras

19. Upon information and belief, Defendant Marius Caldaras was an owner of Kapos Auto, Inc. during some or all of the period that Plaintiffs worked at Kapos Auto.

20. During the time that Plaintiffs worked for Kapos Auto Inc., Defendant Marius Caldaras hired employees.

21. During the time that Plaintiffs worked for Kapos Auto Inc., Defendant Marius Caldaras determined the work schedules of employees and determined the amount of wages that employees received.

22. Upon information and belief, throughout the time that Plaintiffs worked for Kapos Auto, Inc., Marius Caldaras had the authority to hire and fire employees, maintain employment records, determine rates of pay, and assign work responsibilities.

23. At all times Plaintiffs worked at Kapos Auto, Defendant Marius Caldaras was Plaintiffs' "employer" within the meaning of the FLSA and the NYLL.

Marcel Caldaras

24. Upon information and belief, Defendant Marcel Caldaras was an owner of Kapos Auto, Inc. during some or all of the period that Plaintiffs worked at Kapos Auto.

25. During the time that Plaintiffs worked for Kapos Auto Inc., Defendant Marcel Caldaras hired employees.

26. During the time that Plaintiffs worked for Kapos Auto Inc., Defendant Marcel Caldaras fired employees.

27. During the time that Plaintiffs worked for Kapos Auto Inc., Defendant Marcel Caldaras determined the work schedules of employees and determined the amount of wages that employees received.

28. Upon information and belief, throughout the time that Plaintiffs worked for Kapos Auto, Inc., Marcel Caldaras had the authority to hire and fire employees, maintain employment records, determine rates of pay, and assign work responsibilities.

29. At all times Plaintiffs worked at Kapos Auto, Defendant Marcel Caldaras was Plaintiffs' "employer" within the meaning of the FLSA and the NYLL.

## **FACTS**

### **Working Conditions**

30. Plaintiff Jose Granada worked for Kapos Auto from approximately August 2020 to mid-October 2021, with a break in employment from approximately March 2021 to September 2021.

31. Throughout his employment at Kapos Auto, Plaintiff Granada worked every week, or virtually every week, from approximately 9 AM to 7 PM Monday through Saturday, with one thirty-minute break each day.

32. Throughout his employment at Kapos Auto, Plaintiff Granda worked approximately fifty-seven (57) hours per week, for virtually every week.

33. Kapos Auto paid Plaintiff Granada a flat weekly wage of \$550 for approximately the first two months of his employment. Thereafter through the end of his employment, Kapos Auto paid Plaintiff Granda a flat weekly wage of \$500.

34. Due to the number of hours that Plaintiff Granda worked, the effective hourly wage Defendants paid to Plaintiff Granada fell below the applicable New York State minimum wage throughout the entirety of his employment.

35. For example, during the week ending October 10, 2021, Plaintiff Granada worked Monday through Friday from approximately 9:00 AM to 7:00 PM with a thirty-minute break each day, for a total of approximately fifty-seven (57) hours. Defendants paid Plaintiff Granada \$500 for that workweek. As a result, his effective hourly rate was approximately \$8.77, well below the New York State minimum wage for New York City of \$15 per hour. And Plaintiff Granada did not receive any overtime premium for his hours worked above forty in that week.

36. Kapos Auto never paid Plaintiff Granada overtime premiums for hours worked above forty in a workweek throughout his employment.

37. Plaintiff Jose Gonzalez worked for Kapos Auto from approximately August 2020 to mid-October 2021.

38. Throughout his employment at Kapos Auto, Plaintiff Gonzalez worked every week, or virtually every week, from approximately 9 AM to 7 PM Monday through Saturday, with one thirty-minute break each day.

39. Throughout his employment at Kapos Auto, Plaintiff Gonzalez worked approximately fifty-seven (57) hours per week every week, or virtually every week.

40. Kapos Auto paid Plaintiff Gonzalez a flat weekly wage of \$550 for approximately the first two months of his employment. Thereafter through the end of his employment, Kapos Auto paid Plaintiff Gonzalez a flat weekly wage of \$500.

41. Due to the number of hours that Plaintiff Gonzalez worked, the effective hourly rate Defendants paid to Plaintiff Gonzalez fell below the applicable New York State minimum wage throughout the entirety of his employment.

42. For example, during the week ending October 10, 2021, Plaintiff Gonzalez worked Monday through Friday from approximately 9:00 AM to 7:00 PM with a thirty-minute break each day, for a total of approximately fifty-seven (57) hours. Defendants paid Plaintiff Gonzalez \$500 for that workweek. As a result, his effective hourly rate was approximately \$8.77, well below the New York State minimum wage for New York City of \$15 per hour. And Plaintiff Gonzalez did not receive any overtime premium for his hours worked above forty in that week.

43. Kapos Auto never paid Plaintiff Gonzalez overtime premiums for hours worked above forty in a workweek throughout his employment.

44. Defendants never provided Plaintiffs with any written notice at the time of payment or afterward, explaining the number of hours worked, gross wages, any deductions, and other information as required under NYLL § 195(3).

45. Defendants failed to provide to Plaintiffs at the time of hire or anytime thereafter, in writing in English and in Plaintiffs' primary language, a notice required by NYLL § 195(1)(a) containing the rate or rates of pay and basis thereof; allowances, if any, claimed as part of the minimum wage; the regular pay day designated by the employer; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main

office or principal place of business, and a mailing address if different; and the telephone number of the employer.

### **Willful Violations**

46. Defendants were aware that their employment practices toward Plaintiffs were in violation of the FLSA and the NYLL, yet continued to pay the Plaintiffs unlawfully low wages.

47. In January 2021, Defendants Kapos Auto, Inc., Marius Caldaras, and Marcel Caldaras were sued in the case *Lopez v Kapos Auto Inc.*, 1:21-cv-00145 (E.D.N.Y.), for violating, among other things, federal and state minimum wage and overtime laws.

48. The employment practices alleged to have been unlawful in the *Lopez* complaint are almost identical to the unlawful practices alleged in this case.

49. After being sued in the *Lopez* action, the Defendants continued to perpetrate upon Plaintiffs Granada and Gonzalez the same unlawful employment practices that were the subject of the *Lopez* suit.

50. In approximately June 2021, the Defendants began keeping fraudulent employment records with regard to the hours worked, and wages paid, to Plaintiffs Granada and Gonzalez.

51. The fraudulent employment records stated that Plaintiffs Granada and Gonzalez worked far fewer hours than they really worked. The records also claimed that Kapos Auto was paying the Plaintiffs \$15.00 per hour even though that was not the rate Plaintiffs received.

52. Kapos Auto made Plaintiffs sign the fraudulent payroll records in order to get their flat weekly pay.

53. The fraudulent payroll records maintained by Defendants also included fraudulent paychecks for some workweeks. Kapos Auto created checks made payable to the order of the



Plaintiffs, but did not give most or all of those checks to the Plaintiffs. Instead, the Defendants forged the Plaintiffs' signatures and endorsed the checks back to Kapos Auto.

54. Defendants' actions demonstrate that they knowingly and intentionally violated the FLSA and the NYLL.

### **FIRST CAUSE OF ACTION**

#### **Failure to Pay Overtime Wages Under the Fair Labor Standards Act**

55. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs as if fully set forth herein.

56. At all times relevant to this action, Plaintiffs were employed by Defendants within the meaning of the FLSA, 29 U.S.C. § 203.

57. Defendants failed to pay Plaintiffs overtime wages at rates at least one-and-a-half times the regular rate of pay in violation of 29 U.S.C. § 207, throughout the entirety of Plaintiffs' employment.

58. Defendants' failure to pay Plaintiffs their lawful overtime wages was willful.

59. Due to Defendants' FLSA violations, Plaintiffs are entitled to recover from Defendants, jointly and severally, their unpaid overtime wages and an equal amount of liquidated damages, as well as reasonable attorneys' fees and costs of the action.

### **SECOND CAUSE OF ACTION**

#### **Failure to Pay Minimum Wages Under the New York Labor Law**

60. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs as if fully set forth herein.

61. At all times relevant to this action, Plaintiffs were employed by Defendants within the meaning of the NYLL, including but not limited to NYLL §§ 2 and 651.

62. Throughout their employment at Kapos Auto, Defendants failed to pay Plaintiffs at the applicable legal minimum hourly wage for every hour worked, in violation of NYLL § 652.

63. Due to Defendants' NYLL violations, Plaintiffs are entitled to recover from Defendants, jointly and severally, their unpaid minimum wages, an equal amount as liquidated damages, as well as reasonable attorneys' fees, costs of the action, and interest.

### **THIRD CAUSE OF ACTION**

#### **Overtime Wages Under the New York Labor Law**

64. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs as if fully set forth herein.

65. At all times relevant to this action, Plaintiffs were employed by Defendants within the meaning of the NYLL, including but not limited to NYLL §§ 2 and 651.

66. Throughout Plaintiffs' employment at Kapos Auto, Defendants failed to pay Plaintiffs overtime wages at rates at least one-and-a-half times the regular rate of pay, or one-and-a-half times the applicable minimum wage, for each hour worked in excess of forty hours per week, in violation of the NYLL and accompanying regulations.

67. Due to Defendants' NYLL violations, Plaintiffs are entitled to recover from Defendants, jointly and severally, their unpaid overtime wages, an equal amount as liquidated damages, as well as reasonable attorneys' fees, costs of the action, and interest.

### **FOURTH CAUSE OF ACTION**

#### **Failure to Provide Notice at the Time of Hire Under the New York Labor Law**

68. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs as if fully set forth herein.

69. Defendants failed to provide Plaintiffs written notices at the time of hire in English and in the Plaintiffs' primary language with information such as rate of pay, the regular payday, and the name of the employer, among other information. Defendants' acts violated NYLL § 195(1)(a).

70. Plaintiffs are entitled to recover from Defendants the statutory penalties as set forth in NYLL § 198, plus reasonable attorneys' fees, and costs of the action.

### **FIFTH CAUSE OF ACTION**

#### **Failure to Provide Pay Statements Under the New York Labor Law**

71. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs as if fully set forth herein.

72. Throughout Plaintiffs' employment at Kapos Auto, Defendants failed to provide Plaintiffs with a written statement at the time wages were paid containing the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate(s) of pay and basis this of; gross wages; deductions; allowances, if any; net wages; regular hourly rate of pay; overtime rate of pay; number of regular hours worked; and number of overtime hours worked.

73. Defendants' acts violated NYLL § 195(3) throughout Plaintiffs' employment.

74. Plaintiffs are entitled to recover from Defendants the statutory penalties as set forth in NYLL § 198, plus reasonable attorneys' fees, and costs of the action.

### **PRAYER FOR RELIEF**

WHEREFORE Plaintiffs respectfully request that judgment be granted:

1. Declaring that Defendants' conduct complained of herein is in violation of the FLSA and the NYLL;

2. Awarding Plaintiffs unpaid minimum wages and overtime wages;
3. Awarding Plaintiffs liquidated damages;
4. Awarding Plaintiffs damages due to violations of NYLL § 195 for failure to provide required notices and pay statements;
5. Awarding Plaintiffs attorneys' fees and costs;
6. Awarding Plaintiffs pre- and post-judgment interest; and
7. Awarding Plaintiffs any such further relief as may be just and proper.

DATED: Brooklyn, New York  
August 24, 2022

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