

1 DAVID G. SPIVAK (SBN 179684)
david@spivaklaw.com
2 CAROLINE TAHMASSIAN (SBN 285680)
caroline@spivaklaw.com
3 MAYA CHEAITANI (SBN 335777)
maya@spivaklaw.com
4 THE SPIVAK LAW FIRM
5 8605 Santa Monica Bl
PMB 42554
6 West Hollywood CA 90069
7 Telephone: (213) 725-9094
Facsimile: (213) 634-2485

8 Attorneys for Plaintiff(s),
9 WILLIAM DENNIS O'GRADY, and all others similarly situated
10 (Additional attorneys for parties on following page)

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF SAN DIEGO**

13 **(UNLIMITED JURISDICTION)**

14 WILLIAM DENNIS O'GRADY and HAROLD
15 THOMAS, as "aggrieved employees" on behalf of
other "aggrieved employees" under the Labor
16 Code Private Attorneys General Act of 2004,

17 *Plaintiff(s),*

18 vs.

19 TEAM CAR CARE, LLC, a Delaware limited
20 liability company; and DOES 1-50, inclusive,

21 *Defendant(s).*

Case No. 37-2020-00035860-CU-OE-CTL

PAGA SETTLEMENT AGREEMENT

Action 10/7/2020
filed:
Dept: C-73 The Honorable Joel R.
Wohlfeil

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
26
27
28

ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)

WALTER L. HAINES (SBN 71075)
walter@uelglaw.com
UNITED EMPLOYEES LAW GROUP
4276 Katella Ave
Suite 301
Los Alamitos CA 90720
Telephone: (562) 256-1047
Facsimile: (562) 256-1006

Attorneys for Plaintiff(s),
WILLIAM DENNIS O'GRADY, and all others similarly situated

RONALD L. ZAMBRANO (SBN 255613)
ron@westcoasttriallawyers.com
WEST COAST EMPLOYMENT LAWYERS
1147 South Hope Street
Los Angeles CA 90015
Telephone: (800) 247-9235
Facsimile: (213) 927-3701

Attorneys for Plaintiff(s),
HAROLD THOMAS, and all others similarly situated

ATTORNEYS FOR DEFENDANT(S)

SUMMER A. YOUNG-AGRIESTI (SBN 232883)
syoun@kbylaw.com
KLATTE, BUDENSIEK & YOUNG-AGRIESTI, LLP
1111A Quail Street
Newport Beach, CA 92660
Telephone: (949) 221-8700
Facsimile: (949) 222-1044

Attorneys for Defendant(s),
TEAM CAR CARE, LLC

1 Subject to Court approval by the Superior Court for the State of California, County of
2 San Diego ("Court") pursuant to section 2699(l) of the California Labor Code, Plaintiffs William
3 Dennis O'Grady and Harold Thomas (collectively "Plaintiffs") on behalf of themselves and each
4 of the other PAGA Members (as defined herein), on the one hand and Defendant Team Car Care,
5 LLC ("Defendant"), on the other (collectively, Plaintiffs and Defendant are the "Parties") hereby
6 agree to the following binding settlement ("Settlement" or "Settlement Agreement") of the
7 PAGA claims in the Action entitled William Dennis O'Grady v. Team Car Care, LLC, San Diego
8 County Superior Court case no. 37-2020-00035860-CU-OE-CTL and Thomas v. Team Car Care,
9 LLC, San Diego Superior Court case no. 37-2021-00006134-CU-OE-CTL (collectively, the
"Action"), subject to the following terms and conditions:

10 **PAGA MEMBERS BY THE SETTLEMENT**

11 1. **PAGA Members:** This Settlement covers all current and former California
12 employees Defendant employed any time during the PAGA Period (the "PAGA Members").

13 2. **PAGA Period:** The Settlement covers the period from September 24, 2019
14 through the date of Court approval of the Settlement (the "PAGA Period").

15 3. **Effective Date:** The effective date ("Effective Date") of this Agreement shall be
16 the last to occur of the following that apply: (a) if no objections to the Settlement are filed, the
17 date of entry of Order granting approval of this Settlement; (b) if one or more objections are filed,
18 but no appeal is taken on the Court's order approving the Settlement, sixty-five (65) calendar
19 days after the date of entry of an order and judgment approving this Settlement or the date on
20 which the time for all appeals from objections to the Settlement has passed, whichever is later;
21 (c) if there are intervenors to the Action, and if an appeal, review or writ is not sought from the
22 order granting approval of the settlement, then upon the expiration date of the time for the filing
23 or noticing of any appeal from, or other challenge to, the judgment; or (d) if an appeal, review or
24 writ is sought from the judgment, thirty (30) calendar days after the judgment is affirmed or the
25 appeal, review or writ is dismissed or denied, or the time for any further appeal has expired,
26 whichever is later, and the judgment is no longer subject to further judicial review. Prior to the
27 Effective Date of the Settlement, Defendant will not be required to fund the Settlement, in whole
28 or in part, through the Settlement Administrator or any third party. If PAGA Counsel were to

1 appeal a ruling with respect to fees or costs, such appeal shall not affect the Effective Date and
2 the Settlement Administrator shall reserve such funds sufficient to cover the dispute. Any
3 subsequent distribution shall be at PAGA Counsel's expense. If the Effective Date falls on a
4 holiday or weekend, the Effective Date shall be the next calendar day.

5 **SETTLEMENT CONSIDERATION**

6 4. **Gross Settlement Amount:** Defendant will pay \$435,000.00 to settle the PAGA
7 claims in the Action ("Maximum Settlement Amount") pursuant to the terms of this Agreement.
8 In no event shall Defendant pay more than the Maximum Settlement Amount of Four Hundred
9 Thirty Five Thousand Dollars and Zero Cents (\$435,000.00) as a result of this Settlement,
10 regardless of how the Court rules on the first or subsequent motions for approval. The Maximum
11 Settlement Amount will be allocated as follows:

- 12 a. Third-Party Settlement Administration Fees of up to Twenty Thousand
13 Dollars and Zero Cents (\$20,000.00);
- 14 b. Plaintiffs' counsel's, David Spivak of The Spivak Law Firm, Walter L.
15 Haines of United Employees Law Group, and Ronald L. Zambrano of
16 West Coast Employment Lawyers (collectively, "PAGA Counsel"),
17 request for attorneys' fees of up to one-third (1/3) of the Maximum
18 Settlement Amount, or One Hundred and Forty Five Thousand Dollars
19 and Zero Cents (\$145,000.00) ("PAGA Counsel's Fees"), subject to Court
20 approval, plus actual costs and expenses incurred by PAGA Counsel
21 related to the Action as supported by declaration, which are currently
22 estimated to be no greater than Twenty Thousand Dollars and Zero Cents
23 (\$20,000.00) ("PAGA Counsel's Costs"). The PAGA Counsel's Fees
24 awarded by the Court shall be divided among Plaintiffs' counsel as
25 follows: (1) sixty five percent (65%), or Ninety-Four Thousand Two
26 Hundred and Fifty Dollars and Zero Cents (\$94,250) to Plaintiff William
27 Dennis O'Grady's counsel; and (2) thirty five percent (35%), or Fifty
28 Thousand Seven Hundred and Fifty Dollars and Zero Cents (\$50,750) to
Plaintiff Harold Thomas's counsel;

- 1 c. A payment to each Plaintiff in the amount of Fifteen Thousand Dollars
2 and No Cents (\$15,000.00) (“General Release Payment”) for (1) a release
3 of any and all claims against Defendant and/or the Released Persons
4 (identified below) and agreement to execute and/or endorse the Personal
5 Release contained herein, which includes a release of claims pursuant to
6 California Civil Code section 1542 and (2) their service to the State of
7 California and the PAGA Members in prosecuting the Action; and
- 8 d. The remaining funds in the amount of Two Hundred and Twenty
9 Thousand Dollars and Zero Cents (\$220,000) (the Maximum Settlement
10 Amount less the Third-Party Settlement Administration Fees, PAGA
11 Counsel’s Fees, PAGA Counsel’s Costs, and each Plaintiff’s General
12 Release Payment) shall be referred to as the “Net Settlement Amount.”

13 5. **Distribution of the Net Settlement Amount.** The Net Settlement Amount shall
14 be designated as PAGA penalties in full satisfaction of all claims for PAGA civil penalties under
15 the California Labor Code, Wage Orders, regulations, and/or other provisions of law alleged to
16 have been violated in or reasonably related to the operative Complaint with respect to PAGA
17 Members, allocated between the LWDA and the PAGA Members pursuant to Labor Code
18 Section 2699(i) with 75%, or One Hundred and Sixty-Five Thousand Dollars and Zero Cents
19 (\$165,000), paid to the LWDA and 25% or Fifty-Five Thousand Dollars (\$55,000), paid to the
20 PAGA Members on an equal, per capita basis (“PAGA Penalties Fund”).

21 6. **Settlement Administration.** Settlement Administrator Phoenix Class Action
22 Administration Solutions, or as otherwise agreed to by the Parties and approved by the Court,
23 will administer this Settlement and will be responsible for issuing payments and appropriate tax
24 forms to PAGA Members, the LWDA, Plaintiffs, and PAGA Counsel. Plaintiff’s counsel has
25 obtained several bids and Phoenix Settlement Administrators is on the lower end of comparable
26 administrators. The estimate of costs of administration for the disbursement of the PAGA
27 Penalties Fund is no more than \$20,000.00. If less than \$20,000.00 is spent on the Settlement
28 Administrator, the unused funds will be re-allocated to the Net Settlement Amount. The
Settlement Administrator costs include the fees and costs incurred or charged by the Settlement

1 Administrator in connection with the execution of its duties under this Agreement including, but
2 not limited to: (i) fees and costs associated with preparing, issuing and/or monitoring reports,
3 filings and notices (including the cost of printing, verifying addresses through a United States
4 Postal Service national change of address database (which provides updated addresses for any
5 individual who has moved in the previous four years who has notified the U.S. Postal Service of
6 a forwarding address) to obtain current address information, skip tracing, and mailing all notices
7 and other documents to the PAGA Members) required to be prepared in the course of
8 administering the Settlement; (ii) computing the amount of the Settlement Payments, taxes, and
9 any other payments to be made under this Agreement; (iii) handling inquiries about the
10 calculation of individual Settlement Payments or mailings; (iv) establishing and operating a
11 physical Settlement payment center address, and phone number to receive PAGA Members'
12 inquiries about the Settlement; (v) remitting any tax deductions or subtractions applicable under
13 the law and/or pursuant to this Agreement and preparing and submitting any filings required by
14 any governmental taxing authority or other governmental agency and/or Defendant's worker's
15 compensation insurer; and (vi) establishing a Qualified Settlement Fund.

14 7. **Court Approval of the Settlement and Distribution of Settlement Payments.**

15 As soon as practicable, PAGA Counsel will present this Settlement Agreement to the Court for
16 its approval pursuant to section 2699(l) of the California *Labor Code*, as this Agreement is fair,
17 adequate and reasonable, and will request that the Court issue a Court Approval Order and
18 Judgment approving and incorporating by reference the terms and conditions of the Settlement
19 Agreement (the "Court Approval Order and Judgment"), dismissing the Action with prejudice,
20 and entering judgment. The Parties shall submit this Settlement Agreement for the Court's
21 approval by stipulation and order, unless the Court requires a motion, in which event, the
22 Plaintiffs will undertake that responsibility. Such submission will also include a Notice of PAGA
23 Settlement.

24 However, if the settlement fails to be approved or otherwise fails to be consummated for
25 any reason whatsoever, including but not limited to the Order not becoming final, then the Parties
26 retain all rights previously available to them, and any provisional approval of the settlement, or
27 the adoption of any procedure herein, shall be undone and the Parties restored to their pre-
28 settlement status as if no settlement had been reached and no decisions were made pursuant to it,

1 except as otherwise expressly provided herein. In that event, nothing in this Agreement or other
2 papers or proceedings related to the settlement shall be used as evidence or argument by any
3 party or PAGA Member. To the extent that this Agreement is deemed void or the Effective Date
4 does not occur or for whatever reason does not result in the final resolution of the Action,
5 Defendant does not waive, and, instead, expressly reserves its rights to challenge all claims and
6 allegations in the Action upon all procedural, factual and legal grounds, as well as asserting any
7 and all other potential defenses or privileges. The Parties further agree that nothing in this
8 Agreement is deemed to waive or otherwise prevent Defendant from filing a motion to compel
9 individual arbitration, if the Settlement does not become effective for any reason. Plaintiffs and
10 PAGA Counsel agree that Defendant retains and reserves these rights, and agrees not to argue or
11 present any argument, and hereby waives any argument that, based on this Agreement, Defendant
12 cannot assert any and all potential defenses and privileges if this Action were to proceed. The
13 Parties further agree that nothing in this Agreement is deemed to waive or otherwise prevent
14 Plaintiffs from opposing Defendant's motion to compel arbitration or challenge the enforceability
15 of Defendant's arbitration agreement (s). The Parties do not waive, and instead expressly reserve,
16 their respective rights with respect to the prosecution and defense of the Action as if this
17 Agreement never existed.

18 At the approval hearing, the Plaintiffs, on behalf of themselves and the PAGA Members,
19 shall ask the Court to give approval to this Agreement and the settlement contained herein, and
20 Defendant shall make no objection. PAGA Counsel will submit with its approval motion or
21 stipulation a proposed Order and Judgment – the form and content of which is agreed to by
22 Counsel for Defendants. Upon granting approval of the settlement contained herein, the Court
23 shall also enter an Order implementing the releases contained in Section 12 as to Plaintiffs and
24 all PAGA Members as well as the personal release contained in the Section 11 of this Agreement.
25 The releases contained in Sections 11 and 12 of this Agreement shall enter into effect
26 concurrently with the issuance of the Order granting approval.

27 8. **Notice to LWDA.** Pursuant to California *Labor Code* § 2699(1)(1), the Plaintiffs
28 shall submit to the LWDA a copy of this Settlement Agreement and all supporting approval
documents at the same time that Plaintiffs submit it to the Court for approval.

1 9. **Funding of the Settlement.** Within forty-five (45) calendar days after the
2 Effective Date and notice by the Court or Plaintiffs that the Action has been dismissed with
3 prejudice, Defendant shall deposit the Maximum Settlement Amount with the Settlement
4 Administrator, who shall issue payment to PAGA Counsel and Plaintiffs within ten (10) calendar
5 days of receipt of the Maximum Settlement Amount. Within forty-five (45) calendar days after
6 the Effective Date, Defendant shall provide the Settlement Administrator with information
7 maintained by Defendant in the normal course of its business operations concerning all PAGA
8 Members with each listed employee's full name, date of hire, and, if applicable, termination dates
9 in connection with the employee's employment with Defendant during the PAGA Period, last
10 known mailing address, and social security number. Data provided by Defendant shall be kept
11 confidential by the Settlement Administrator except for purposes of administering the settlement
12 and this data shall not be provided to Plaintiffs' counsel for any reason. Within twenty (20)
13 calendar days of receipt of the list of all PAGA Members, the Settlement Administrator shall run
14 all the addresses of PAGA Members through the United States Postal Service NCOA database
15 to obtain current address information, and issue payments to (a) PAGA Members; (b) the LWDA;
16 and (c) itself. The Settlement Administrator will skip-trace return mail and re-mail within five
17 (5) calendar days. In the event that prior to the final date for any PAGA Member to cash the
18 Settlement Payment, any notice mailed to the PAGA Member is returned as having been
19 undelivered by the U.S. Postal Service, the Settlement Administrator shall, via skip-tracing, seek
20 an address correction from such PAGA Member(s), and send a Notice to the new or different
21 address within seven days. The Settlement Administrator may conduct any investigation it
22 deems reasonable and consistent with its role and industry practice to determine the correct
23 address of any PAGA Member.

24 The Settlement Administrator will issue the appropriate tax forms for all payments issued
25 under this Settlement. If the Effective Date falls on a holiday or weekend, the Effective Date
26 shall be the next calendar day.

27 As soon as practicable, the Settlement Administrator shall provide PAGA Counsel and
28 Counsel for Defendant a declaration attesting to completion of the notice and payment process
set forth above, including an explanation of efforts to resend Notice Returns, and a summary of

1 claims paid, and checks cashed and uncashed, which if requested by the Court, shall be filed by
2 PAGA Counsel.

3 10. **Settlement Payments to PAGA Members:** The Settlement Administrator will
4 issue each PAGA Member a check for his or her share of the Net Settlement Amount along with
5 an explanatory letter in the form attached as Exhibit A. Checks will remain negotiable for one
6 hundred eighty (180) days. Any checks returned as non-deliverable on or before the check
7 cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address
8 affixed thereto. Funds represented by settlement checks returned as undeliverable and those
9 settlement checks remaining un-cashed for more than 180 days after issuance shall be paid to the
10 California State Controller's Office Unclaimed Property Fund with an identification of the
11 amount of unclaimed funds attributable to each PAGA Member. The Parties do not bear any
12 liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of
13 checks. Unless responsible by its own acts of omission or commission, the same is true for the
14 Settlement Administrator. All settlement payments to PAGA Members will be treated as
15 miscellaneous income for which an IRS Form 1099 will be issued by the Settlement
16 Administrator if required by law.

17 Each Party to this Agreement acknowledges and agrees that (1) no provision of this
18 Agreement, and no written communication or disclosure between or among the Parties or their
19 attorneys and other advisers, is or was intended to be, nor shall any such communication or
20 disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United
21 States Treasury Department Circular 230 (31 CFR Part 10, as amended); (2) the Party (a) has
22 relied exclusively upon his, her or its own independent legal and tax advisers for advice
23 (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement
24 based upon the recommendation of any other party or any attorney or advisor to any other party,
25 and (c) is not entitled to rely upon any communication or disclosure by any attorney or adviser
26 to any other party to avoid any tax penalty that may be imposed on the party; and (3) no attorney
27 or adviser to any other party has imposed any limitation that protects the confidentiality of any
28 such attorney's or adviser's tax strategies (regardless of whether such limitation is legally
binding) upon disclosure by the party of the tax treatment or tax structure of any transactions,
including any transactions contemplated by this Agreement.

1 11. **Release of Each Plaintiff's Individual Claims:** Plaintiffs and their respective
2 representative(s), heir(s), assign(s), attorney(s) and/or insurer(s) hereby irrevocably and
3 unconditionally release, acquit, and discharge the Team Car Care, LLC, Team Car Care West,
4 LLC, Heartland Automotive Services, Inc., Heartland Automotive Services II, Inc., and
5 Heartland Automotive Services and their respective agents, attorneys, insurers, past, present and
6 future divisions, affiliates, any DBAs, predecessors, successors, shareholders, officers, directors,
7 managers, employees, trustees, representatives, administrators, fiduciaries, assigns, subrogees,
8 executors, partners, parents, subsidiaries, privies, and/or any and all persons and/or corporate
9 entities acting by, through, under or in concert with any of them ("Released Persons") from any
10 and all complaints, claims, liabilities, obligations, promises, agreements, controversies, damages,
11 costs, losses, debts and expenses (including attorneys' fees and costs actually incurred), of any
12 nature whatsoever, including but not limited to the release of any and all claims arising under
13 any of the following, as amended: the National Labor Relations Act ("NLRA"), Title VII of the
14 Civil Rights Act of 1964, Sections 1981 through 1988 of Title 42 of the United States Code, the
15 Employee Retirement Income Security Act of 1974 ("ERISA"), the Americans with Disabilities
16 Act of 1990 ("ADA"), the Fair Labor Standards Act ("FLSA"), the Occupational Safety and
17 Health Act ("OSHA"), the Consolidated Omnibus Budget Reconciliation Act of 1985
18 ("COBRA"), the Genetic Information Nondiscrimination Act ("GINA"), the Family and Medical
19 Leave Act ("FMLA"), the Worker Adjustment and Retraining Notification Act ("WARN"), the
20 California Fair Employment and Housing Act ("FEHA"), the Family and Medical Leave Act of
21 1993 ("FMLA") and the California Family Rights Act ("CFRA"), the Private Attorneys' General
22 Act ("PAGA"), the California Worker Adjustment and Retraining Notification Act ("Cal-
23 WARN"), the California Business and Professions Code, including the Unfair Competition Law,
24 Cal. Bus. & Prof. Code § 17200, the California Minimum Wage Law, the Equal Pay Law for
25 California, the California Labor Code (including specifically, Section 132a) and California Wage
26 Orders, together with any alleged violation of the United States or any state Constitution, any
27 local, state or federal law, regulation or ordinance, and/or public policy, contract or tort or
28 common-law, any claim for injunctive or declaratory relief any violation of the penal code, and
any other claim whether cognizable at law or in equity having any bearing whatsoever on
Plaintiffs' application for employment, employment with, or separation of employment from the
Released Persons, which Plaintiffs ever had, now have, or shall have, from the beginning of time

1 to the date of the Effective Date. Plaintiffs further acknowledge the existence of and, with respect
2 to the release given in this paragraph and Paragraph 12 herein, expressly waive and relinquish
3 any and all rights and benefits each Plaintiff has or may have under California Civil Code, Section
4 1542, which provides:

5 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR
6 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR
7 HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF
8 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
9 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

10 Each Plaintiff acknowledges that he may hereafter discover facts different from or in addition to
11 those which each he or his attorneys now know or believe to be true with respect to the matters
12 released in this settlement, and agrees that the release in this paragraph and in Paragraph 12, shall
13 be and remain in effect as a full and complete release of all claims, notwithstanding any such
14 different or additional facts.

15 12. **Settled and Released PAGA Claims.** As of and subject to the occurrence of the
16 Effective Date, and in consideration for the Maximum Settlement Amount, the claims settled,
17 fully released and forever discharged by the LWDA and the PAGA Members, including
18 Plaintiffs, constitute any and all claims, rights, demands, liabilities and causes of action for civil
19 penalties Plaintiffs, the PAGA Members, and the State of California may have against the
20 Released Parties under the PAGA that arose during the PAGA Period, based on the factual
21 allegations pled in the operative complaint in the Action under the California Labor Code, Wage
22 Orders, regulations, and/or any other provisions of state and federal law arising from allegations
23 that the PAGA Members suffered Labor Code violations based on, and any other Labor Code
24 violations that were alleged in the Action, or that could have been alleged in the Action based on
25 the facts alleged in the Action, which includes, but is not limited to, alleged violations of Labor
26 Code sections , and 2698 *et seq.* with respect to the following claims: (a) failure to pay all
27 overtime wages (*Labor Code* sections 510-515, 558, 1194 and 1198); (b) failure to pay all wages
28 and/or minimum wages for all hours worked (*Labor Code* sections 221, 225.5, 351, 1770-1774
et seq., 1194, 1197, and 1198 IWC Wage Order sections 2, 3 and 4); (c) failure to provide proper
meal periods or pay penalties for such failure (*Labor Code* sections 1198, 226.7, 512, 558 and
558.1 and IWC Wage Order section 11); (d) failure to authorize and permit rest periods or pay
penalties for such failure (*Labor Code* sections 1198, 226.7 and IWC Wage Order section 12);

1 (e) failure to furnish accurate wage statements (*Labor Code* sections 226 and 226.3); (f) failure
2 to reimburse employees for business expenses (*Labor Code* section 2802); (g) failure to timely
3 pay final wages and wages during employment (*Labor Code* sections 200-204 and 210); (h)
4 misclassification (*Labor Code* section 226.8); (i) unfair business practices (*Business and*
5 *Professions Code* sections 17200, et seq.) and (j) violations of the California Private Attorneys'
6 General Act of 2004 (*Labor Code* section 2698, et. seq., 2699, 2699.3 and 2699.5) including any
7 related claims for attorneys' fees, costs, penalties or interest resulting therefrom from September
8 24, 2019 through the date of approval ("PAGA Released Claims").

9 The PAGA Released Claims shall specifically include all civil penalties or other amounts
10 which are or may be available under or through the PAGA based on the facts that were alleged
11 in the operative complaint filed in the Action, and/or predicated on any violation of the Labor
12 Code, Wage Orders, regulations, and/or any other provisions of state and federal law asserted in
13 the operative complaint filed in the Action, inclusive of all PAGA Members and the PAGA
14 Members' attorneys' fees and costs. As to the foregoing claims, Plaintiff and PAGA Members
15 release PAGA civil penalties recoverable under any theory of liability upon which such civil
16 penalties under the PAGA could have been recovered based upon the factual and legal allegations
17 in the operative complaint filed in the Action. The "Released Parties" are Team Car Care, LLC
18 and its present and former agents, attorneys, insurers, past, present and future divisions, affiliates,
19 any DBAs, predecessors, successors, shareholders, officers, directors, managers, employees,
20 trustees, representatives, administrators, fiduciaries, assigns, subrogees, executors, partners,
21 parents, subsidiaries, privies, and/or any and all persons and/or corporate entities acting by,
22 through, under or in concert with any of them (hereinafter "Released Parties").

23 Any PAGA Member covered by this Agreement will be barred from proceeding with any
24 Claim released by this Agreement.

25 13. **No Credit Toward Benefit Plans.** Payments to PAGA Members as referenced
26 herein will not be utilized to calculate any additional benefits under any benefit plans to which
27 any PAGA Member may be eligible, including, but not limited to profit-sharing plans, bonus
28 plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any
other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not

1 affect any rights, contributions, or amounts to which any PAGA Member may be entitled under
2 any benefit plans.

3 14. **No Prior Assignments.** The Parties and their counsel represent, covenant, and
4 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported
5 to assign, transfer, or encumber to any person or entity any portion of any liability, claim,
6 demand, action, cause of action or right herein released and discharged.

7 15. **Nullification of Settlement Agreement.** Should the Court not approve this
8 Agreement, the Parties shall request leave and shall work jointly to attempt to remedy the PAGA
9 settlement in order to obtain the Court's approval, provided, however, that invalidation of any
10 material portion of this Agreement shall invalidate this Agreement in its entirety unless the
11 Parties agree in writing that the remaining provisions shall remain in full force and effect. In the
12 event that: (i) the Court does not approve the Settlement as provided herein; or (ii) the Settlement
13 does not become final for any other reason, then this Settlement Agreement, and any documents
14 generated to bring it into effect, will be null and void, and the Parties will be returned to their
15 original respective positions, without prejudice, as if the settlement had been neither entered into
16 nor filed with the Court.

17 16. **Code of Civil Procedure Section 384 Does Not Apply To The Maximum**
18 **Settlement Amount.** The Parties agree that California *Civil Procedure Code* section 384 is not
19 applicable since this is not a class action.

20 17. **Waiver of Appeals.** The Parties agree to waive appeals; provided, however, that
21 either Party may appeal any Order issued by the Court that materially alters the terms of the
22 Agreement.

23 18. **Continued Jurisdiction.** After entry of the Court Approval Order and Judgment,
24 the Court will have continuing jurisdiction under California Code of Civil Procedure § 664.6
25 solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the
26 Settlement, (ii) settlement administration matters, and (iii) such post-Court Approval matters as
27 may be appropriate under court rules or as set forth in this Settlement.
28

1 19. **Entire Agreement.** This Settlement Agreement constitutes the entirety of the
2 Parties' settlement terms regarding the Action. No other prior or contemporaneous written or
3 oral agreements may be deemed binding on the Parties.

4 20. **Amendment or Modification.** This Settlement Agreement may be amended or
5 modified only by a written instrument, signed by either all the Parties or their successors-in-
6 interest or counsel for all Parties.

7 21. **Authorization to Enter Into Settlement Agreement.** Counsel for all Parties
8 warrant and represent they are expressly authorized by the Parties whom they represent to
9 negotiate this Settlement Agreement and to take all appropriate action required or permitted to
10 be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to
11 execute any other documents required to effectuate the terms of this Settlement Agreement. The
12 Parties and their counsel will cooperate with each other and use their best efforts to effect the
13 implementation of the Settlement. If the Parties are unable to reach agreement on the form or
14 content of any document needed to implement the Settlement, or on any supplemental provisions
15 that may become necessary to effectuate the terms of this Settlement, the Parties may seek the
16 assistance of the Court to resolve such disagreement.

17 22. **Binding on Successors and Assigns.** This Settlement Agreement will be binding
18 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously
19 defined.

20 23. **California Law Governs.** All terms of this Settlement Agreement and Exhibit(s)
21 hereto will be governed by and interpreted according to the laws of the State of California.

22 24. **Execution and Counterparts.** This Settlement Agreement is subject only to the
23 execution of all Parties. However, the Settlement Agreement may be executed in one or more
24 counterparts. All executed counterparts and each of them, including facsimile and scanned
25 copies of the signature page, will be deemed to be one and the same instrument.

26 25. **Acknowledgement that the Settlement is Fair and Reasonable.** The Parties
27 believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action
28 and have arrived at this Settlement after arm's-length negotiations by experienced counsel before

1 the Honorable Jeff Winikow (ret.), an experienced and well-respected mediator who focuses on
2 mediation of employment matters involving alleged wage and hour violations. The Parties
3 further acknowledge that they are each represented by competent counsel and that they have had
4 an opportunity to consult with their counsel regarding the fairness and reasonableness of this
5 Settlement.

6 26. **Denial of Liability.** The Parties expressly recognize that the making of this
7 Settlement Agreement does not in any way constitute an admission or concession of wrongdoing
8 on the part of Defendant, the Released Parties, or Plaintiffs. Nothing in this Settlement, nor any
9 action taken in implementation thereof, nor any statements, discussions or communications, nor
10 any materials prepared, exchanged, issued or used during the course of this Action, is intended
11 by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible
12 in any way in any other judicial, arbitral, administrative, investigative or other forum or
13 proceeding, as evidence of any violation of any federal, state, or local law, statute, ordinance,
14 regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding
15 the foregoing, this Settlement Agreement may be used in any proceeding in the Court that has as
16 its purpose the interpretation, implementation, or enforcement of the Settlement or any orders or
17 judgments of the Court entered into in connection therewith. This Agreement may also be used
18 by Defendant and/or the Released Persons to prove or defend against any claim released herein
19 by Plaintiffs or any PAGA Member in any judicial, quasi-judicial, administrative or
20 governmental proceeding. This Agreement shall not be subject to collateral attack by any PAGA
21 Member. Such prohibited collateral attacked shall include, but not be limited to, claims that the
22 PAGA Member failed, for any reason, to timely receive his or her Settlement Payment.

23 27. **Captions.** The captions and section numbers in this Settlement Agreement are
24 inserted for the reader's convenience, and in no way define, limit, construe or describe the scope
25 or intent of the provisions of this Settlement Agreement.

26 28. **Waiver.** No waiver of any condition or covenant contained in this Settlement
27 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered
28 to imply or constitute a further waiver by such party of the same or any other condition, covenant,
right or remedy.

1 29. **Mutual Preparation.** The Parties have had a full opportunity to negotiate the
2 terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement
3 will not be construed more strictly against one party than another merely by virtue of the fact that
4 it may have been prepared by counsel for one of the Parties, it being recognized that, because of
5 the arms-length negotiations between the Parties, all Parties have contributed to the preparation
6 of this Settlement Agreement.

7 30. **Representation By Counsel.** The Parties acknowledge that they have been
8 represented by counsel throughout all negotiations that preceded the execution of this Settlement
9 Agreement, and that this Settlement Agreement has been executed with the consent and advice
10 of counsel, and reviewed in full.

11 31. **Cooperation and Execution of Necessary Documents.** All Parties will
12 cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate
13 the terms of this Settlement Agreement.

14 32. **Binding Agreement.** The Parties warrant that they understand and have full
15 authority to enter into this Settlement, and further intend that this Settlement Agreement will be
16 fully enforceable and binding on all Parties, and agree that it will be admissible and subject to
17 disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality
18 provisions that otherwise might apply under federal or state law.

19 33. **Confidentiality.** The Parties and their counsel agree that they will not issue any
20 press releases, initiate any contact with the press, respond to any press inquiry or have any
21 communication with the press about the fact, amount or terms of the Settlement. In addition,
22 PAGA Counsel agree that they will not engage in any advertising or distribute any marketing
23 materials specifying any material terms specifically relating to the Settlement of this case,
24 including but not limited to legal periodicals and publications such as “Jury Verdicts” or
25 disclosure by postings on any websites maintained by PAGA Counsel. The Parties intend this
26 paragraph to prohibit PAGA Counsel from discussing, answering questions about, promoting or
27 publicizing the Agreement, its terms, or the negotiations leading to the Agreement with anyone
28 other than the Court or those individuals necessary to effectuate the terms of the Agreement. Any
communication about the Settlement to PAGA Members will be limited to a statement that a

1 settlement has been reached and the details will be communicated in a forthcoming notice letter
2 in the form attached hereto as Exhibit A. Notwithstanding the foregoing, Plaintiffs and PAGA
3 Counsel (1) may tell the public in general only that certain claims “have been resolved by the
4 Parties;” and (2) may disclose the terms of the Agreement (a) in appropriate filings with the Court
5 in this case; (b) where required by law (e.g., income tax returns); and (c) to accountants or other
6 tax professionals for the purpose of preparing tax returns.. These restrictions shall also apply to
7 the settlement stipulation entered into by the Parties. PAGA Counsel may not identify
8 Defendants or the Released Parties on its website.

08 / 03 / 2022



DATE

William Dennis O’Grady, Plaintiff

DATE

Harold Thomas, Plaintiff

DATE

XXXXXXX [name]
XXXXXXX [title] for
Defendant Team Car Care, LLC

APPROVED AS TO FORM

THE SPIVAK LAW FIRM

08 / 03 / 2022

DATE

David Spivak for Plaintiff(s) William Dennis
O’Grady

UNITED EMPLOYEES LAW GROUP

DATE

Walter L. Haines for Plaintiff William
Dennis O’Grady

1 settlement has been reached and the details will be communicated in a forthcoming notice letter
2 in the form attached hereto as Exhibit A. Notwithstanding the foregoing, Plaintiffs and PAGA
3 Counsel (1) may tell the public in general only that certain claims “have been resolved by the
4 Parties;” and (2) may disclose the terms of the Agreement (a) in appropriate filings with the Court
5 in this case; (b) where required by law (e.g., income tax returns); and (c) to accountants or other
6 tax professionals for the purpose of preparing tax returns.. These restrictions shall also apply to
7 the settlement stipulation entered into by the Parties. PAGA Counsel may not identify
8 Defendants or the Released Parties on its website.

9 DATE

William Dennis O’Grady, Plaintiff

12 DATE

Harold Thomas, Plaintiff

15 DATE

XXXXXXXX [name]
XXXXXXXX [title] for
Defendant Team Car Care, LLC

18 **APPROVED AS TO FORM**

19 THE SPIVAK LAW FIRM

21 08 / 03 / 2022



22 DATE

David Spivak for Plaintiff(s) William Dennis
O’Grady

23 UNITED EMPLOYEES LAW GROUP

26 DATE

Walter L. Haines for Plaintiff William
Dennis O’Grady

1 settlement has been reached and the details will be communicated in a forthcoming notice letter
2 in the form attached hereto as Exhibit A. Notwithstanding the foregoing, Plaintiffs and PAGA
3 Counsel (1) may tell the public in general only that certain claims “have been resolved by the
4 Parties;” and (2) may disclose the terms of the Agreement (a) in appropriate filings with the Court
5 in this case; (b) where required by law (e.g., income tax returns); and (c) to accountants or other
6 tax professionals for the purpose of preparing tax returns.. These restrictions shall also apply to
7 the settlement stipulation entered into by the Parties. PAGA Counsel may not identify
8 Defendants or the Released Parties on its website.

9 DATE

William Dennis O’Grady, Plaintiff

12 DATE

Harold Thomas, Plaintiff

15 DATE

XXXXXXXX [name]
XXXXXXXX [title] for
Defendant Team Car Care, LLC

18 **APPROVED AS TO FORM**

19 THE SPIVAK LAW FIRM

21 DATE

David Spivak for Plaintiff(s) William Dennis
O’Grady

23 UNITED EMPLOYEES LAW GROUP

25 08 / 03 / 2022

W. L. Haines

26 DATE

Walter L. Haines for Plaintiff William
Dennis O’Grady

1 settlement has been reached and the details will be communicated in a forthcoming notice letter
2 in the form attached hereto as Exhibit A. Notwithstanding the foregoing, Plaintiffs and PAGA
3 Counsel (1) may tell the public in general only that certain claims “have been resolved by the
4 Parties;” and (2) may disclose the terms of the Agreement (a) in appropriate filings with the Court
5 in this case; (b) where required by law (e.g., income tax returns); and (c) to accountants or other
6 tax professionals for the purpose of preparing tax returns.. These restrictions shall also apply to
7 the settlement stipulation entered into by the Parties. PAGA Counsel may not identify
8 Defendants or the Released Parties on its website.

9 DATE

William Dennis O’Grady, Plaintiff

11 Aug 19, 2022


Harold Thomas (Aug 19, 2022 12:16 PDT)

12 DATE

Harold Thomas, Plaintiff

15 DATE

XXXXXXXX [name]
XXXXXXXX [title] for
Defendant Team Car Care, LLC

18 APPROVED AS TO FORM

THE SPIVAK LAW FIRM

21 08 / 03 / 2022



22 DATE

David Spivak for Plaintiff(s) William Dennis
O’Grady

UNITED EMPLOYEES LAW GROUP

26 DATE

Walter L. Haines for Plaintiff William
Dennis O’Grady

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
26
27
28

WEST COAST EMPLOYMENT LAWYERS

August 19, 2022



DATE

Ronald L. Zambrano for Plaintiff Harold Thomas

KLATTE, BUDENSIEK & YOUNG-
AGRIESTI, LLP

DATE

Summer A. Young-Agriesti for Defendant Team Car Care, LLC

1 settlement has been reached and the details will be communicated in a forthcoming notice letter
2 in the form attached hereto as Exhibit A. Notwithstanding the foregoing, Plaintiffs and PAGA
3 Counsel (1) may tell the public in general only that certain claims "have been resolved by the
4 Parties;" and (2) may disclose the terms of the Agreement (a) in appropriate filings with the Court
5 in this case; (b) where required by law (e.g., income tax returns); and (c) to accountants or other
6 tax professionals for the purpose of preparing tax returns.. These restrictions shall also apply to
7 the settlement stipulation entered into by the Parties. PAGA Counsel may not identify
8 Defendants or the Released Parties on its website.

9 _____
DATE

William Dennis O'Grady, Plaintiff

10 _____
11 _____
12 DATE

Harold Thomas, Plaintiff

13 _____
14 August 17, 2022
15 DATE

Robert Sheehy
Chief Financial Officer for
Defendant Team Car Care, LLC

16 _____
17 _____
18 **APPROVED AS TO FORM**

19 _____
20 THE SPIVAK LAW FIRM

21 _____
22 DATE

David Spivak for Plaintiff(s) William Dennis
O'Grady

23 _____
24 UNITED EMPLOYEES LAW GROUP

25 _____
26 DATE

Walter L. Haines for Plaintiff William
Dennis O'Grady

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
26
27
28

WEST COAST EMPLOYMENT LAWYERS

DATE

Ronald L. Zambrano for Plaintiff Harold Thomas

KLATTE, BUDENSIEK & YOUNG-AGRIESTI, LLP

August 19, 2022

DATE


Summer A. Young-Agriesti for Defendant Team Car Care, LLC

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
26
27
28

EXHIBIT A

1 **NOTICE OF PAGA SETTLEMENT**

2 *William Dennis O’Grady, et al. v. Team Car Care, LLC, et al.*

3 *Superior Court of California, San Diego County*

4 *Case No. 37-2020-00035860-CU-OE-CTL*

5 << Phoenix Class Action Administration Solutions>>

6 []

7 []

Telephone: []

8 «Barcode» «BarcodeString»

SIMID «SIMID»

9 «FirstName»

10 «LastName»

11 «Address1» «Address2»

«City» «State» «Zip»

12 You are receiving this notice as a result of lawsuits brought on a representative basis
13 under the Private Attorneys General Act, Labor Code § 2698 et seq. (“PAGA”) (“the Action”).
14 An action under PAGA is an enforcement action, in which an aggrieved employee acts as a
15 private attorney general to collect penalties from employers. The plaintiffs in the Action are
16 William Dennis O’Grady and Harold Thomas (collectively “Plaintiffs”) and the defendant is
17 Team Car Care, LLC (“Defendant”). The Action seeks civil penalties for purported violations
18 of the California Labor Code on behalf of all Defendant’s current and former California
19 employees (“PAGA Members”) who Defendant employed during the PAGA Period of
20 September 24, 2019 through [the date of Court approval of the Settlement].

21 Defendant denies all claims and allegations in the Action, denies that it owes any
22 penalties, and asserts that it has fully complied with all applicable Labor Code
23 provisions. Nevertheless, to avoid further costs and time in defending the Action and interference
24 with Defendant’s business operations, the Parties have concluded that it is in the best interests of
25 the Parties to settle. By settling the Action, Defendant is not admitting that it has done anything
26 wrong.

27 On _____, 2022, Judge Joel R. Wohlfeil of the Superior Court of California,
28 for the County of San Diego issued an order approving the settlement and release of claims. This
settlement affects certain current and former employees of Defendant. You are receiving this
Notice of Settlement because you worked for Defendant at some point between September 24,
2019 and _____, 2022 (“Claims Period”).

Pursuant to the Settlement, enclosed is a check for your share of a portion of the civil
penalties. This check will remain valid for 180 days from the date of issuance. If you do not
cash your check within 180 days of issuance, the funds will be deposited by the Settlement
Administrator with the California State Controller to be deposited in the Unclaimed Property

1 Fund in your name. If you are still employed by Defendant, your decision to cash the check will
2 not affect your employment.

3 Payment of this settlement includes a release of any and all claims pursuant to the
4 California Labor Code § 2698, which were alleged based on the facts in the operative Complaint
5 or notice for the California Labor Workforce Development Agency (“LWDA”) on behalf of
6 Plaintiffs and all aggrieved employees during the Claims Period. The release includes all claims,
7 rights, demands, liabilities and causes of action that arose during the PAGA Period, based on the
8 factual allegations pled in the operative complaint in the Action under the California Labor Code,
9 Wage Orders, regulations, and/or any other provisions of state and federal law arising from
10 allegations that the PAGA Members suffered Labor Code violations based on, and any other
11 Labor Code violations that were alleged in the Action, or that could have been alleged in the
12 Action based on the facts alleged in the Action, which includes, but is not limited to, alleged
13 violations of Labor Code sections , and 2698 et seq. with respect to the following claims: (a)
14 failure to pay all overtime wages (Labor Code sections 510-515, 558, 1194 and 1198); (b) failure
15 to pay all wages and/or minimum wages for all hours worked (Labor Code sections 221, 225.5,
16 351, 1770-1774 et seq., 1194, 1197, and 1198 IWC Wage Order sections 2, 3 and 4); (c) failure
17 to provide proper meal periods or pay penalties for such failure (Labor Code sections 1198, 226.7,
18 512, 558 and 558.1 and IWC Wage Order section 11); (d) failure to authorize and permit rest
19 periods or pay penalties for such failure (Labor Code sections 1198, 226.7 and IWC Wage Order
20 section 12); (e) failure to furnish accurate wage statements (Labor Code sections 226 and 226.3);
21 (f) failure to reimburse employees for business expenses (Labor Code section 2802); (g) failure
22 to timely pay final wages and wages during employment (Labor Code sections 200-204 and 210);
23 (h) misclassification (Labor Code section 226.8); (i) unfair business practices (Business and
24 Professions Code sections 17200, et seq.)and (j) violations of the California Private Attorneys’
25 General Act of 2004 (Labor Code section 2698, et. seq., 2699, 2699.3 and 2699.5) including any
26 related claims for attorneys’ fees, costs, penalties or interest resulting therefrom from September
27 24, 2019 through the date of approval (“PAGA Released Claims”).

18 The “Released Parties” are Team Car Care, LLC and its present and former agents,
19 attorneys, insurers, past, present and future divisions, affiliates, any DBAs, predecessors,
20 successors, shareholders, officers, directors, managers, employees, trustees, representatives,
21 administrators, fiduciaries, assigns, subrogees, executors, partners, parents, subsidiaries,
22 including Team Car Care West, LLC, privies, and/or any and all persons and/or corporate entities
23 acting by, through, under or in concert with any of them (hereinafter “Released Parties”)

22 Please Note: One hundred percent (100%) of your individual PAGA payment under this
23 Settlement will be considered penalties and may be subject to local, state, or federal tax
24 withholdings and will be reported to the IRS and state tax authorities. You should rely on your
25 own tax advisors as to the tax consequences of your individual PAGA payment. Neither Plaintiffs
26 nor Defendant have made any representations or warranties regarding the taxation of your
27 individual PAGA payment. Nothing within this notice or any other communication shall
28 constitute or be construed or relied upon as tax advice within the meaning of United States
Treasury Department Circular 230 (31 C.F.R. Part 10, as amended). Enclosed are the appropriate
tax forms pertaining to your payment.

1 Do not call or write the Court or Office of the Clerk to ask questions about the settlement
2 or to ask questions about the claims process. If you have any questions, you may call or write to
3 Phoenix Class Action Administration Solutions (the Settlement Administrator) using the contact
4 information at the top of this correspondence.
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28