

1 DAVID G. SPIVAK (SBN 179684)
2 david@spivaklaw.com
3 CAROLINE TAHMASSIAN (SBN 285680)
4 caroline@spivaklaw.com
5 THE SPIVAK LAW FIRM
6 8605 Santa Monica Blvd., PMB 42554
7 West Hollywood, CA 90069
8 Telephone (818) 582-3086
9 Facsimile (818) 582-2561

10 Attorneys for Plaintiff,
11 WILLIAM D. O'GRADY, and all others similarly situated
12 (Additional Counsel for Plaintiff and Defendants on Following Page)

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF SAN DIEGO**
15 **(UNLIMITED JURISDICTION)**

16 WILLIAM D. O'GRADY, and HAROLD
17 THOMAS, on behalf of themselves and all
18 others similarly situated,

19 *Plaintiff(s),*

20 vs.

21 TEAM CAR CARE, LLC, a Delaware limited
22 liability company; ~~TEAM CAR CARE WEST,~~
23 ~~LLC, a Delaware limited liability company;~~
24 ~~HEARTLAND AUTOMOTIVE SERVICES,~~
25 ~~INC., a Minnesota corporation; HEARTLAND~~
26 ~~AUTOMOTIVE SERVICES II, INC., a~~
27 ~~Delaware corporation; HEARTLAND~~
28 ~~AUTOMOTIVE SERVICES, an entity of~~
~~unknown form; and DOES 1 through 50,~~
inclusive,

Defendant(s).

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

**THIRD AMENDED COMPLAINT FOR
VIOLATIONS OF THE LABOR CODE
AND CIVIL PENALTIES UNDER THE
LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004, LABOR
CODE §§ 2698, ET SEQ.**



ADDITIONAL ATTORNEY FOR PLAINTIFF

WALTER HAINES (SBN 71075)

whaines@uelglaw.com

UNITED EMPLOYEES LAW GROUP

5500 Bolsa Ave, Suite 201

Huntington Beach, CA 92649

Telephone: (562) 256-1047

Facsimile: (562) 256-1006

Neama Rahmani (State Bar No. 223819)

efilings@westcoasttriallawyers.com

Ronald L. Zambrano (State Bar No. 255613)

ron@westcoasttriallawyers.com

Crystal F. Mohsin (State Bar No. 333299)

crystal@westcoasttriallawyers.com

WEST COAST EMPLOYMENT LAWYERS, APLC

1147 South Hope Street

Los Angeles, California 90071

Telephone: (213) 927-3700

Facsimile: (213) 927-3701

Attorneys for Plaintiff, HAROLD THOMAS



1 Plaintiff WILLIAM D. O'GRADY and Plaintiff HAROLD THOMAS (hereafter
2 "Plaintiffs"), on behalf of themselves, the State of California, and other Aggrieved Employees,
3 complains and alleges as follows:

4 INTRODUCTION

5 1. Plaintiffs bring this representative action based on alleged violations of the
6 California Labor Code, Industrial Welfare Commission Order No. 7-2001 (hereafter "the Wage
7 Order") and the Business and Professions Code (i.e., *Business and Professions Code* sections
8 17200, et seq.) against Defendants TEAM CAR CARE, LLC, and Does 1-50, inclusive
(collectively "Defendants").

9 2. As set forth in more detail below, Plaintiffs allege that Defendants are liable to
10 them, the State of California, and aggrieved current and former employees who worked in
11 California for unpaid wages and other related relief. These claims are based on Defendants'
12 alleged failures to (1) provide all rest and meal periods, (2) pay all wages earned for all hours
13 worked, (3) indemnify for all business expenses, (4) fairly compete, (5) provide accurate written
14 wage statements, and (6) timely pay final wages upon termination of employment. Accordingly,
15 Plaintiff now seeks civil penalties and related relief through this representative action.

16 PARTIES

17 3. Defendants first hired Plaintiff O'GRADY in or about August of 2016 to work in
18 California as a non-exempt, hourly assistant general manager. Three months later, Defendants
19 promoted Plaintiff O'GRADY to a non-exempt, hourly store manager position. During his
20 employment with Defendants, Plaintiff O'GRADY worked in several of Defendants' stores,
21 including those located in San Diego, El Cajon, and Encinitas. Plaintiff O'GRADY resigned from
22 his employment with Defendants in November of 2019. At all relevant times, Plaintiff O'GRADY
23 was an "employee" within the meaning of Title 8 California Code of Regulations Section 11070
24 and an "aggrieved employee" within the meaning of Labor Code Section 2699(c).

25 4. Plaintiff O' GRADY resides in El Cajon, California.

26 5. Defendants first hired Plaintiff THOMAS on or about February 18, 2017 to work
27 in California as a non-exempt, hourly Automotive Technician. Plaintiff THOMAS had been
28 working for Defendants for nearly four years without a promotion. Plaintiff THOMAS resigned
from his employment with Defendants in May of 2022. At all relevant times, Plaintiff THOMAS
was an "employee" within the meaning of Title 8 California Code of Regulations Section 11070



and an “aggrieved employee” within the meaning of Labor Code Section 2699(c).

6. Plaintiff THOMAS resides in Oceanside, California.

7. Defendant TEAM CAR CARE, LLC is a limited liability company organized under the laws of Delaware and also a citizen of California based on Plaintiff’s information and belief.

8. Plaintiffs are ignorant of the true names, capacities, relationships, and extents of participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but are informed and believe and thereon allege that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sue these defendants by such fictitious names. Plaintiffs will amend the complaint to allege the true names and capacities of the DOE defendants when ascertained.

9. Plaintiffs are informed and believe and thereon allege that, at all relevant times herein, all Defendants were the agents, employees and/or servants, masters or employers of the remaining defendants, and in doing the things hereinafter alleged, were acting within the course and scope of such agency or employment, and with the approval and ratification of each of the other Defendants.

10. At all relevant times, in perpetrating the acts and omissions alleged herein, defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack of a practice which resulted in Defendants not paying Plaintiffs and the Aggrieved Employees in accordance with applicable California labor laws as alleged herein.

11. Plaintiffs are informed and believe and thereon allege that each and every one of the acts and omissions alleged herein were performed by, and/or attributable to, all defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other defendants, and that said acts and failures to act were within the course and scope of said agency, employment and/or direction and control.

THE AGGRIEVED EMPLOYEES

12. The “Aggrieved Employees” are all individuals Defendants employed in California, including exempt and non-exempt employees, hourly assistant general managers and store managers, and persons in other comparable positions, at any time during the period beginning on September 24, 2019 and ending on the date that final judgment is entered in this action.



1 **FIRST (AND ONLY) CAUSE OF ACTION**

2 **CIVIL PENALTIES**

3 **(Lab. Code §§ 2698, *et seq.*)**

4 **(By Plaintiffs, on behalf of themselves and the other Aggrieved Employees,**
5 **against all Defendants)**

6 13. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

7 14. At all relevant times during the applicable limitations period, Plaintiffs and the
8 Aggrieved Employees have been employees of Defendants and entitled to the benefits and
9 protections of California Labor Code and the Wage Order.

10 **A. FAILURE TO PROVIDE REST BREAKS**

11 15. Labor Code § 1198 states,

12 “The maximum hours of work and the standard conditions of labor fixed
13 by the commission shall be the maximum hours of work and the standard
14 conditions of labor for employees. The employment of any employee for
15 longer hours than those fixed by the order or under conditions of labor
16 prohibited by the order is unlawful.”

17 16. In relevant part, Section 12 of the Wage Order states:
18 Rest Periods:

19 (A) Every employer shall authorize and permit all employees to
20 take rest periods, which insofar as practicable shall be in the middle
21 of each work period. The authorized rest period time shall be based
22 on the total hours worked daily at the rate of ten (10) minutes net
23 rest time per four (4) hours or major fraction thereof. However, a
24 rest period need not be authorized for employees whose total daily
25 work time is less than three and one-half (3 1/2) hours. Authorized
26 rest period time shall be counted as hours worked for which there
27 shall be no deduction from wages.

28 (B) If an employer fails to provide an employee a rest period in
accordance with the applicable provisions of this Order, the
employer shall pay the employee one (1) hour of pay at the
employee’s regular rate of compensation for each work day that the
rest period is not provided.

17. In addition, Labor Code Section 226.7 states

(b) An employer shall not require an employee to work during a meal
or rest or recovery period mandated pursuant to an applicable statute, or



1 applicable regulation, standard, or order of the Industrial Welfare
2 Commission, the Occupational Safety and Health Standards Board, or the
3 Division of Occupational Safety and Health.

4 (c) If an employer fails to provide an employee a meal or rest or
5 recovery period in accordance with a state law, including, but not limited
6 to, an applicable statute or applicable regulation, standard, or order of the
7 Industrial Welfare Commission, the Occupational Safety and Health
8 Standards Board, or the Division of Occupational Safety and Health, the
9 employer shall pay the employee one additional hour of pay at the
10 employee's regular rate of compensation for each workday that the meal or
11 rest or recovery period is not provided.

12 18. Pursuant to the Wage Order, Plaintiffs and the Aggrieved Employees were entitled
13 to be provided with net rest breaks of at least ten minutes for each four-hour period of work, or
14 major fraction thereof.

15 19. Due to their workload, Defendants failed to provide Plaintiffs and the Aggrieved
16 Employees with all of the required rest breaks in accordance with the Wage Order. Plaintiffs are
17 informed and believe and thereon alleges that, at relevant times within the applicable limitations
18 period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not
19 providing the Aggrieved Employees with all rest breaks required by California law, including but
20 not limited, to the third rest breaks when Plaintiffs and the Aggrieved Employees worked more
21 than 10 hours in a workday. Further, Defendants often scheduled only one store manager, assistant
22 manager, or assistant general manager (the "key holders") for each shift which often prevented
23 them from leaving the stores during their rest breaks.

24 20. During the entirety of Plaintiff THOMAS' employment with Defendants, Plaintiff
25 THOMAS was denied meal and rest breaks. In these instances, Plaintiff was not paid a meal break
26 or rest break premium, in violation of IWC Wage Orders and California Labor Code §§ 226.7 and
27 512.

28 21. Plaintiff THOMAS worked over eight hours without a meal or rest break.

22. Defendants failed to pay Plaintiffs the additional wages required by California
Labor Code § 226.7 for all rest breaks not provided to them. Plaintiffs are informed and believe
and thereon allege that, at relevant times within the applicable limitations period, Defendants have
maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the
Aggrieved Employees with additional wages for all rest breaks not provided to them as required



by California Labor Code § 226.7.

B. FAILURE TO PROVIDE MEAL PERIODS

23. Labor Code § 1198 states,

“The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

24. In relevant part, Labor Code Section 512 states

“An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

25. In relevant part, Section 11 of the Wage Order states:

Meal Periods:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.

(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of employer and employee only if the first meal period was not waived.

...

(D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the



employee's regular rate of compensation for each workday that the meal period is not provided.

26. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiffs and the Aggrieved Employees were entitled to be provided with uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512 and the Wage Order, they were also entitled to a second 30-minute meal period when they worked more than ten (10) hours in a workday.

27. During the relevant time period, Defendants failed to provide Plaintiffs and the Aggrieved Employees with timely first meal periods in accordance with California Labor Code § 512 and the Wage Order. Due to their workload, Defendants often provided Plaintiffs and the Aggrieved Employees with a meal period after they had already worked more than five (5) hours in a workday. Defendants often scheduled only one store manager, assistant manager, or assistant general manager (the "key holders") for each shift which often prevented them from leaving the stores during their meal periods. Due to their workload, Plaintiffs and the Aggrieved Employees also had to clock out for their meal periods and continue working off the clock. Defendants also failed to provide a second meal period to Plaintiffs and the Aggrieved Employees when they worked more than 10 hours in a workday.

28. Defendants instructed the store managers to edit and falsify the Aggrieved Employees' time records to show that they took duty-free meal periods before the end of the fifth hour worked. Defendants also authorized their district managers to edit the store managers' time records to show they received timely meal periods. Defendants, on many occasions, reminded Plaintiff O'GRADY and the other store managers to "clean up" the time records "on a daily basis" to make sure meal period violations were not evident the time records. Defendants failed to pay premium wages for all days on which they failed to provide Plaintiffs and the Aggrieved Employees with all their timely and uninterrupted meal periods. Defendants paid premium wages only for days that meal period violations were not "cleaned up" by the management.

29. During the entirety of Plaintiff THOMAS' employment with Defendants, Plaintiff THOMAS was denied meal and rest breaks. In these instances, Plaintiff was not paid a meal break or rest break premium, in violation of IWC Wage Orders and California Labor Code §§ 226.7 and 512.

///



30. Plaintiff THOMAS worked over eight hours without a meal or rest break. Additionally, Plaintiff THOMAS' timecards incorrectly showed that he took his lunch break when he did not actually take a lunch break.

31. Plaintiffs are informed and believe and thereon allege that, at relevant times within the applicable limitations period, Defendants maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing Plaintiffs and the Aggrieved Employees with all timely meal periods required by California Labor Code § 512 and the Wage Order.

32. Defendants failed to pay Plaintiffs the additional wages required by California Labor Code § 226.7 for all meal periods not provided to them. Plaintiffs are informed and believe and thereon alleges that, at relevant times within the applicable limitations period, Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the Aggrieved Employees with additional wages for all meal periods not provided to them as required by California Labor Code § 226.7.

C. FAILURE TO PAY EMPLOYEES ALL WAGES FOR ALL HOURS WORKED
AT

33. Section 2 of the applicable Wage Order defines "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

34. Section 4 of the applicable Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consist of all hours that an employer has actual or constructive knowledge that employees are working.

35. Labor Code § 1194 invalidates any agreement between an employer and an employee to work for less than the minimum or overtime wages required under the applicable Wage Order.

36. Labor Code § 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.

37. Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

///

///

///



1 46. In relevant part, Section 3 of the Wage Order states,

2 (A) Daily Overtime - General Provisions

3 (1) The following overtime provisions are applicable to
4 employees 18 years of age or over and to employees 16 or
5 17 years of age who are not required by law to attend school and
6 are not otherwise prohibited by law from engaging in the subject
7 work. Such employees shall not be employed more than eight
8 (8) hours in any workday or more than 40 hours in any
9 workweek unless the employee receives one and one-half (1 ½)
10 times such employee's regular rate of pay for all hours worked
11 over 40 hours in the workweek. Eight (8) hours of labor
12 constitutes a day's work. Employment beyond eight (8) hours
13 in any workday or more than six (6) days in any workweek is
14 permissible provided the employee is compensated for such
overtime at not less than:

(a) One and one-half (1 ½) times the employee's regular rate of
pay for all hours worked in excess of eight (8) hours up to and
including 12 hours in any workday, and for the first eight (8)
hours worked on the seventh (7th) consecutive day of work in a
workweek.

15 38. In relevant part, California Labor Code § 510 states,

16 Any work in excess of eight hours in one workday and any work in excess
17 of 40 hours in any one workweek and the first eight hours worked on the
18 seventh day of work in any one workweek shall be compensated at the rate
19 of no less than one and one-half times the regular rate of pay for an
20 employee. Any work in excess of 12 hours in one day shall be compensated
21 at the rate of no less than twice the regular rate of pay for an employee. In
addition, any work in excess of eight hours on any seventh day of a
workweek shall be compensated at the rate of no less than twice the regular
rate of pay of an employee.

22 39. At all relevant times, Defendants issued Plaintiffs and the Aggrieved Employees
23 their wages on a biweekly basis. Defendants compensated Plaintiffs and some of the Aggrieved
24 Employees with an hourly rate of pay.

25 40. As described above, Defendants required Plaintiffs and the Aggrieved Employees
26 to clock out for meal periods even if they were not able to take an uninterrupted, duty-free meal
27 period and failed to compensate them for the work they performed during their clocked-out meal
28 periods. Further, the district managers often contacted Plaintiff O'GRADY and the other store



managers on their cellphones on days that they were not scheduled to work and knowingly and intentionally required them to respond to their calls, emails, and text messages off the clock.

41. Defendants failed to compensate Plaintiffs and the Aggrieved Employees for all travel time. Defendants required their hourly store managers to attend quarterly meetings. Defendants often scheduled these meetings at a location different from the stores Plaintiffs and the Aggrieved Employees were assigned to. These meetings were often eight (8) to 15 miles from Plaintiffs and the Aggrieved Employees' assigned stores. Defendants scheduled these meetings to take place in the morning and before Plaintiffs and the Aggrieved Employees' scheduled shifts or on their days off. Defendants, however, required Plaintiffs and the Aggrieved Employees to travel to these quarterly meetings off the clock and failed to compensate them for such travel time.

42. Beginning in September 2017, Plaintiff THOMAS was instructed not to clock out on his timecard. Plaintiff THOMAS was told that Defendants would clock Plaintiff out. Plaintiff THOMAS often worked overtime on the days he was told not to clock on.

43. Throughout Plaintiff THOMAS' employment with Defendants, Plaintiff noticed that he was not being paid for overtime hours worked on his paystubs.

44. In or around March 2020, Plaintiff THOMAS asked his supervisors why his paycheck did not include the overtime hours he worked. Sean Olds, the General Manager at that time, told Plaintiff THOMAS that if corporate payroll found out that employees were working overtime, the General Manager would "get in trouble."

45. Additionally, Defendants consistently failed to include all applicable forms of remuneration in calculating the regular rates of pay for Plaintiffs and the Aggrieved Employees, including non-discretionary bonuses. As a result, Defendants failed to pay Plaintiffs and the Aggrieved Employees all wages earned, including all overtime wages at the legal rates of pay.

46. Plaintiffs are informed and believe and thereon allege that, at all relevant times, Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants' failure to compensate Plaintiffs and the Aggrieved Employees for all hours worked at the correct rates of pay.

D. FAILURE TO INDEMNIFY

47. In pertinent part, California Labor Code § 2802(a) states, "An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties."



1 48. At all relevant times during the applicable limitations period, Defendants required
2 Plaintiffs and the Aggrieved Employees to incur certain business expenses in the course of
3 performing their duties, including mileage expenses and use of a personal mobile telephone.
4 Defendants required their store managers, assistant managers, or assistant general managers to
5 use their personal vehicles to travel to banks to make deposits or travel to other Jiffy Lube service
6 centers or stores such as AutoZone to pick up or purchase products or to perform services.
7 Defendants also required Plaintiff O'GRADY and their other store managers to use their personal
8 vehicles to travel for their quarterly meetings. Defendants, however, failed to reimburse them for
9 mileage expenses that they incurred. Defendants also required Plaintiffs and the Aggrieved
10 Employees to use their personal mobile telephone to communicate with their supervisors,
11 customers, and management for Defendants. Defendants, however, failed to reimburse them for
12 such expenses.

13 49. Plaintiffs are informed and believe and thereon allege that, at all relevant times,
14 Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants'
15 failure to indemnify the Aggrieved Employees for the reasonable expenses they incurred in the
16 course of performing their duties.

17 **E. FAILURE TO PROVIDE ACCURATE, WRITTEN WAGE STATEMENTS**

18 50. Pursuant to California Labor Code § 226(a), Plaintiffs and the Aggrieved
19 Employees were entitled to receive, semimonthly or at the time of each payment of wages, an
20 accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable
21 hourly rates in effect during the pay period; and d) the corresponding number of hours worked at
22 each hourly rate by the employee.

23 51. Pursuant to California Labor Code § 226(e), an employee suffering injury as a
24 result of a knowing and intentional failure by an employer to comply with subdivision (a) is
25 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period
26 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
27 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and
28 is entitled to an award of costs and reasonable attorney's fees.

 52. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer
injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer
injury if the employer fails to provide accurate and complete information as required by California



Labor Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement alone one or more of the following:

A. The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to California Labor Code § 226(a);

B. Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period;

C. The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name and address of the legal entity that secured the services of the employer during the pay period; and

D. The name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number.

53. “Promptly and easily determine,” as stated in California Labor Code § 226(e), means a reasonable person would be able to readily ascertain the information without reference to other documents or information.

54. As alleged herein, Defendants have failed to properly and accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked by employees and other requirements of California Labor Code § 226. Further, Defendants failed to state the earned meal and rest period premium wages and their business expenses on Plaintiffs and the Aggrieved Employees’ itemized written wage statements. As a result, Defendants have violated California Labor Code § 226.

55. Defendants’ failure to provide Plaintiffs and the Aggrieved Employees with accurate wage statements was knowing and intentional. Defendants had the ability to provide Plaintiffs and the Aggrieved Employees with accurate wage statements but intentionally provided wage statements that Defendants knew were not accurate.

56. As a result of being provided with inaccurate wage statements by Defendants, Plaintiffs and the Aggrieved Employees have suffered injury. Their legal rights to receive accurate wage statements were violated and they were misled about the amount of wages they had actually earned and were owed. In addition, the absence of accurate information on their wage statements prevented immediate challenges to Defendants’ unlawful pay practices, has required discovery



1 and mathematical computations to determine the amounts of wages owed, has caused difficulty
2 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
3 inaccurate information about wages to state and federal government agencies. Further, Plaintiffs
4 and the Aggrieved Employees were not able to ascertain from the wage statements whether
5 Defendants complied with their obligations under California Labor Code § 226(a).

6 **F. UNTIMELY FINAL WAGES**

7 57. Labor Code § 201 provides that all earned and unpaid wages of an employee who
8 is discharged are due and payable immediately at the time of discharge.

9 58. Labor Code § 202 provides that all earned and unpaid wages of an employee who
10 quits after providing at least 72-hours notice before quitting are due and payable at the time of
11 quitting and that all earned and unpaid wages of an employee who quits without providing at least
12 72-hours notice before quitting are due and payable within 72 hours.

13 59. By failing to pay earned minimum, overtime, and premium wages to Plaintiffs and
14 the Aggrieved Employees, Defendants failed to timely pay them all earned and unpaid wages in
15 violation of Labor Code § 201 or § 202. Defendants failed to timely pay Plaintiffs and the
16 Aggrieved Employees their final wages. On November 12, 2019, Plaintiff O'GRADY notified
17 Defendants of his resignation and that his last day worked would be November 26, 2019.
18 Defendants, however, paid Plaintiff O'GRADY his final wages on December 12, 2019,
19 approximately 16 days after his last day worked.

20 60. Labor Code § 203 provides that the wages of an employee continue on a daily
21 basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and
22 unpaid wages to the employee in accordance with Labor Code § 201 or § 202.

23 61. Plaintiffs are informed and believe that Defendants' failures to timely pay
24 Plaintiffs and the Aggrieved Employees all of their earned and unpaid wages have been willful in
25 that, at all relevant times, Defendants have deliberately maintained policies and practices that
26 violate the requirements of the Labor Code and the Wage Order even though, at all relevant times,
27 they have had the ability to comply with those legal requirements.

28 **G. UNTIMELY WAGES DURING EMPLOYMENT**

62. Labor Code § 204 states

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1,
or 204.2, earned by any person in any employment are due and payable twice



during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

63. Defendants paid wages to employees on regular intervals. Defendants, however, failed to pay Plaintiffs on such intervals for all wages earned and all hours worked. On information and belief, Plaintiffs allege that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

H. CIVIL PENALTIES SOUGHT

64. During the applicable time period, Defendants violated California Labor Code §§ 200, 201, 202, 203, 204, 210, 221, 225.5, 226, 226.3, 226.7, 226.8, 351, 510-515, 558, 558.1, 1194, 1197, 1198, 1770-1774, and 2802.

65. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

66. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiffs and the Aggrieved Employees are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 200, 201, 202, 203, 204, 210, 221, 225.5, 226, 226.3, 226.7, 226.8, 351,



510-515, 558, 558.1, 1194, 1197, 1198, 1770-1774, and 2802 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee for each subsequent violations (penalties set by Labor Code § 210).

B. For violations of California Labor Code § 226(a), two hundred fifty dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

C. For violations of California Labor Code §§ 510-515, fifty dollars (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 558).

D. For violations of California Labor Code § 1197, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed) (penalty amounts established by California Labor Code § 1197.1).

E. For violations of California Labor Code §§ 200, 201, 202, 203, 221, 225.5, 226.7, 226.8, 351, 1770-1774, 1194, 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

I. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS

67. Plaintiff O'GRADY has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated September 24, 2020, Plaintiff O'GRADY gave written notice by certified mail to the Labor and Workforce Development Agency ("LWDA") and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. A true and correct copy of Plaintiff's written notices to the LWDA dated September 24, 2020 is attached as **Exhibit A**.



The LWDA has failed to take action in response, but Plaintiff anticipates that the LWDA will provide written notice to Plaintiff informing him that it does not intend to investigate these allegations.

68. Plaintiff THOMAS has complied with the procedures for bringing suit specified in California Labor Code §2699.3. By letter dated August 13, 2020, Plaintiff THOMAS gave written notice by certified mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. A true and correct copy of Plaintiff’s written notices to the LWDA dated August 13, 2020 is attached as **Exhibit B**. The LWDA has failed to take action in response, but Plaintiff anticipates that the LWDA will provide written notice to Plaintiff informing him that it does not intend to investigation these allegations.

69. Pursuant to California Labor Code § 2699(g), Plaintiffs and the Aggrieved Employees are entitled to an award of civil penalties, reasonable attorney’s fees, and costs in connection with their claims for civil penalties.

PRAYER FOR RELIEF

70. WHEREFORE, Plaintiffs, on behalf of themselves, the State of California, and the Aggrieved Employees, pray for relief and judgment against Defendants as follows:

- A. Civil penalties;
- B. Costs of suit;
- C. Reasonable attorney’s fees; and
- D. Such other relief as the Court deems just and proper.

71. For clarity, any reference above to liabilities other than PAGA civil penalties is made only to establish liability for PAGA civil penalties. Plaintiffs stipulate that this lawsuit seeks only recovery of PAGA civil penalties for Plaintiffs, the State of California, and the Aggrieved Employees, costs of suit, and reasonable attorneys’ fees.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: August 3, 2022

By 
DAVID SPIVAK
CAROLINE TAHMASSIAN, Attorneys for
Plaintiff, WILLIAM D. O’GRADY



EXHIBIT A



Shant Jaltorossian <shant@spivaklaw.com>

Thank you for submission of your PAGA Case.

1 message

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
To: "shant@spivaklaw.com" <shant@spivaklaw.com>

Thu, Sep 24, 2020 at 4:28 PM

9/24/2020

LWDA Case No. LWDA-CM-807631-20
Law Firm : The Spivak Law Firm
Plaintiff Name : William O'Grady
Employer: Team Car Care, LLC

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

September 24, 2020

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

RE: *William D. O'Grady / Team Car Care*

To whom it may concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), William D. O'Grady (hereafter "O'Grady") provides notice on behalf of himself and of all individuals currently and formerly employed in California as non-exempt, hourly employees, including but not limited to assistant general managers and store managers, and in similar positions (hereafter referred to as "Aggrieved Employees," by Team Car Care, LLC, a Delaware limited liability company, Team Car Care West, LLC, a Delaware limited liability company, Heartland Automotive Services, an entity of unknown form, Heartland Automotive Services, Inc., a Minnesota corporation, Heartland Automotive Services II, Inc., a Delaware corporation, (hereafter collectively referred to as "Team Car Care") of violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802.

At all relevant times, Team Car Care has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California. O'Grady and the Aggrieved Employees are "employees" within the meaning of Industrial Welfare Commission Order No. 7-2001 (hereafter "the Wage Order"), paragraph 2.E, and "aggrieved employees" within the meaning of California Labor Code § 2699(c).

Statement of Facts

In August of 2016, Team Car Care first employed O’Grady to work in California as a non-exempt, hourly assistant general manager. Three months later, Team Car Care promoted O’Grady to a non-exempt, hourly store manager position. During his employment with Team Car Care, O’Grady worked in several stores located in San Diego, El Cajon, and Encinitas. O’Grady resigned from his employment with Team Car Care in November of 2019.

At all relevant times, Team Car Care issued O’Grady and other Aggrieved Employees their wages on a biweekly basis. Team Car Care paid O’Grady and other Aggrieved Employees with an hourly rate of pay.

Due to their workload, Team Car Care often provided O’Grady and other Aggrieved Employees with a meal period after they had already worked more than five (5) hours in a workday. Team Car Care often scheduled only one store manager, assistant manager, or assistant general manager (the “key holders”) for each shift which often prevented them from leaving the stores during their meal or rest periods. Due to their workload, O’Grady and other Aggrieved Employees also had to clock out for their meal periods and continue working off the clock. Further, due to their workload, O’Grady and other Aggrieved Employees also did not have time to take all their rest breaks. Team Car Care also failed to provide a second meal period or a third rest break to O’Grady and other Aggrieved Employees when they worked more than 10 hours in a workday.

As described above, Team Car Care often compelled O’Grady and other Aggrieved Employees to work more than five (5) hours in a workday without a duty-free, 30-minute meal period. Team Car Care instructed the store managers to edit and falsify the Aggrieved Employees’ time records to show that they took duty-free meal periods before the end of the fifth hour worked. Team Car Care also authorized its district managers to edit the store managers’ time records to show they received timely meal periods. Team Car Care, on many occasions, reminded O’Grady and the other store managers to “clean up” the

time records “on a daily basis” to make sure meal period violations were not evident the time records. Team Car Care failed to pay premium wages for all days on which it failed to provide O’Grady and other Aggrieved Employees with all their timely and uninterrupted meal and rest periods. Team Car Care paid premium wages only for days that meal period violations were not “cleaned up” by the management.

As described above, Team Car Care required O’Grady and other Aggrieved Employees to clock out for meal periods even if they were not able to take an uninterrupted, duty-free meal period and failed to compensate them for the work they performed during their clocked-out meal periods. Further, the district managers often contacted O’Grady and the other store managers on their cellphones on days that they were not scheduled to work and knowingly and intentionally required them to respond to their calls, emails, and text messages off the clock.

Team Car Care, further, failed to compensate O’Grady and the Aggrieved Employees for all travel time. Team Car Care required its store managers to attend quarterly meetings. Team Car Care often scheduled these meetings at a location different from the stores O’Grady and the Aggrieved Employees were assigned to. These meetings were often eight (8) to 15 miles from O’Grady and the Aggrieved Employees’ assigned stores. Team Car Care scheduled these meetings to take place in the morning and before O’Grady and Aggrieved Employees’ scheduled shifts or on their days off. Team Car Care, however, required O’Grady and the Aggrieved Employees to travel to these quarterly meetings off the clock and failed to compensate them for such travel time.

Additionally, Team Car Care consistently failed to include all applicable forms of remuneration in calculating the regular rates of pay for O’Grady and other Aggrieved Employees, including non-discretionary bonuses. As a result, Team Car Care failed to pay O’Grady and other Aggrieved Employees all wages earned, including all overtime wages at the legal rates of pay.

Team Car Care required O’Grady and other Aggrieved Employees to incur certain business expenses in the course of performing their duties. Team Car

Care required its store managers, assistant managers, or assistant general managers to use their personal vehicles to travel to banks to make deposits or travel to other Jiffy Lube service centers or stores such as AutoZone to pick up or purchase products or to perform services. Team Car Care also required O'Grady and its other store managers to use their personal vehicles to travel for their quarterly meetings. Team Car Care, however, failed to reimburse them for mileage expenses that they incurred. Team Car Care also required O'Grady and other Aggrieved Employees to use their personal mobile telephone to communicate with their supervisors, customers, and management for Team Car Care. Team Car Care, however, failed to reimburse them for such expenses.

Team Car Care failed to timely pay O'Grady and other Aggrieved Employees their final wages. On November 12, 2019, O'Grady notified Team Car Care of his resignation and that his last day worked would be November 26, 2019. Team Car Care, however, paid O'Grady his final wages on December 12, 2019, approximately 16 days after his last day worked. Finally, Team Car Care failed to provide O'Grady and other Aggrieved Employees with accurate itemized wage statements that set forth all the information required by Labor Code section 226 and did not pay them the unpaid wages described above as earned or with their final wages upon termination or resignation.

For the reasons herein, O'Grady alleges the following violations of the California Labor Code and the Wage Order on behalf of himself and the Aggrieved Employees:

- a) Team Car Care failed to provide O'Grady and other Aggrieved Employees with all meal and rest periods;
- b) Team Car Care failed to compensate O'Grady and other Aggrieved Employees at one hour's pay for each day in which they were not provided the meal periods required by law;

- c) Team Car Care failed to compensate O'Grady and other Aggrieved Employees at one hour's pay for each day in which they were not provided the rest breaks required by law;
- d) Team Car Care failed to compensate O'Grady and other Aggrieved Employees for all hours worked at the correct rates of pay;
- e) Team Car Care failed to indemnify O'Grady and other Aggrieved Employees for all business expenses;
- f) Team Car Care failed to provide O'Grady and other Aggrieved Employees with accurate wage statements; and
- g) Team Car Care failed to timely pay O'Grady and other Aggrieved Employees all earned and unpaid wages during their employment at Team Car Care and at the time such employment ended.

Accordingly, O'Grady now seeks civil penalties on behalf of himself and other Aggrieved Employees based on Team Car Care's alleged violations of the California Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to all persons employed in any industry, business, or establishment operated for the purpose of purchasing, selling, or distributing goods or commodities at wholesale or retail; or for the purpose of renting goods or commodities, whether paid on a time, piece rate, commission, or other basis. §§ 1-2. At all relevant times during the applicable limitations period, Team Car Care was doing business in California as a Jiffy Lube franchisee and provided its customers with automotive parts and services. Accordingly, O'Grady and other Aggrieved Employees are entitled to the protections provided under the Wage Order.

Failure To Provide Meal and Rest Periods

(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

In relevant part, California Labor Code § 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was no waived.

In relevant part, Section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the

meal period may be waived by mutual consent of the employer and the employee.

- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of employer and employee only if the first meal period was not waived.

...

- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

In relevant part, Section 12 of the Wage Order states:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate often (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

California Labor Code § 226.7 states:

- (a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.
- (b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

Team Car Care has intentionally and improperly failed to provide all timely meal periods and rest breaks free from any work or duties to O'Grady and other Aggrieved Employees as required by law. In failing to do so, Team Car Care violated the provisions of California Labor Code §§ 226.7, 512, and 1198.

Accordingly, O'Grady seeks civil penalties on behalf of himself and other Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.7, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
2. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 512, and \$100 for each Aggrieved

Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 558); and

3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure To Pay All Wages Earned For All Hours Worked
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code § 1197, “The minimum wage for employees fixed by the [Industrial Welfare] commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

Section 4 of Wage Order states that every employer shall pay to each employee not less than the applicable minimum wage for all hours worked in the payroll period.

In relevant part, Section 2 of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, California Labor Code § 1194 states,

(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

In relevant part, Section 3 of the Wage Order states,

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

In relevant part, California Labor Code § 510 states,

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the

regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

At all relevant times during the applicable limitations period, Team Car Care failed to compensate O'Grady and other Aggrieved Employees for all hours worked, including, but not limited to overtime wages for all overtime hours they worked at the correct rates of pay.

Accordingly, O'Grady seeks civil penalties on behalf of himself and other Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 558);
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
4. \$100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code § 1197, and \$250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed) (penalties set by California Labor Code § 1197.1).

Failure to Reimburse for Expenses
(Lab. Code § 2802)

In pertinent part, California Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

As describe above, during the applicable limitations period, Team Car Care required O’Grady and other Aggrieved Employees to incur certain business expenses which it failed to indemnify them for both during and after their employment ended. Accordingly, O’Grady seeks civil penalties on behalf of himself and other Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 2802, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure To Provide Accurate Wage Statements
(Lab. Code § 226)

California Labor Code § 226 require employers to furnish employees with accurate itemized written wage statements showing:

- 1) gross wages earned,
- 2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- 3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- 4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- 5) net wages earned,
- 6) the inclusive dates of the period for which the employee is paid,
- 7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number

- other than a social security number may be shown on the itemized statement,
- 8) the name and address of the legal entity that is the employer, and
 - 9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At relevant times during the applicable limitations period, Team Car Care violated California Labor Code § 226, in that it failed to properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of California Labor Code § 226.

Accordingly, O'Grady seeks civil penalties on behalf of himself and Aggrieved Employees as follows: \$250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and \$1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 226.3).

Failure to Timely Pay Wages
(Lab. Code § 204)

California Labor Code § 204 states all wages (other than those mentioned in Labor Code sections 201–202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

Because of Team Car Care's failures to pay O'Grady and the Aggrieved Employees within the time periods set by California Labor Code § 204, Team Car Care failed to timely pay all wages due during employment.

Accordingly, O'Grady seeks civil penalties on behalf of himself and Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 204, and \$200 for each Aggrieved Employee for each subsequent violations (penalties set by Labor Code § 210).

Failures to Timely Pay Wages Upon Termination
(Lab. Code §§ 201-203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay, without abatement or reduction, in accordance §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

By failing to pay wages to O'Grady and other Aggrieved Employees as set forth above, Team Car Care is liable for violations of Labor Code §§ 201, 202, and

203. Accordingly, on behalf of himself and other Aggrieved Employees, O'Grady seeks civil penalties from Team Car Care as follows:

1. For violations of Labor Code § 201, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code § 2699, subdivision (g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

david@spivaklaw.com

cc: William D. O'Grady
Walter Haines, Esq.

Team Car Care, LLC
c/o C T Corporation System (C0168406)
Agent for Service of Process
818 West Seventh Street, Suite 930
Lon Angles, CA 90017

Team Car Care West, LLC
c/o C T Corporation System (C0168406)
Agent for Service of Process
818 West Seventh Street, Suite 930
Lon Angles, CA 90017

Heartland Automotive Services
c/o Jeff Balagna
105 Decker Court, Suite 900
Irving, TX 75062

Heartland Automotive Services
c/o C T Corporation System (C0168406)
Agent for Service of Process
818 West Seventh Street, Suite 930
Lon Angles, CA 90017

Heartland Automotive Services, Inc.
c/o Jeff Balagna
105 Decker Court, Suite 900
Irving, TX 75062

Heartland Automotive Services, Inc.
c/o C T Corporation System (C0168406)
Agent for Service of Process
818 West Seventh Street, Suite 930
Lon Angles, CA 90017

Heartland Automotive Services II, Inc.
c/o Jeff Balagna
105 Decker Court, Suite 900
Irving, TX 75062

Heartland Automotive Services II, Inc.
c/o C T Corporation System (C0168406)
Agent for Service of Process
818 West Seventh Street, Suite 930
Lon Angles, CA 90017

EXHIBIT B



August 13, 2020

Via Certified Mail

Team Car Care, LLC, dba Jiffy Lube
c/o C T Corporation System
Agent for Service of Process
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

In re Harold Thomas - Notice of PAGA Claim

Dear Sir or Madam:

This office has been retained by Harold Thomas (hereinafter "Plaintiff"), a present employee of Team Car Care, LLC, dba Jiffy Lube ("Jiffy Lube"). Pursuant to Labor Code § 2699.3(a), we are providing written notice that Jiffy Lube violated various provisions of the California Labor Code. Plaintiff intends on filing a complaint against Jiffy Lube in San Diego County Superior Court pursuant to Labor Code § 2699 et. seq. on behalf of himself and all hourly employees for Jiffy Lube ("Aggrieved Employees").

Specifically, Plaintiff and Aggrieved Employees were not compensated for all time working or engaging in activities integral to the employee's principal activities. Moreover, Plaintiff and Aggrieved Employees were denied the ability to take meal breaks and rest breaks on an almost daily basis, nor were they compensated separately for their meal and rest breaks. As a result, Plaintiff and Aggrieved Employees were provided inaccurate wage statements and denied applicable overtime pay.

Accordingly, Jiffy Lube is in violation of the following provisions of the Labor Code: § 201-204 (Waiting Time Penalties); § 226.7 and 512 (Meal and Rest Periods); and § 226 (Wage Statement Accuracy) and §§ 510-515 (Unpaid Overtime). Please be advised Plaintiff intends to enforce these claims against all owners, directors, officers, and managing agents of Jiffy Lube under section 558.1 of the Labor Code. Finally, pursuant to Labor Code § 2699.3(a)(1), Plaintiff will serve the same written notice to Jiffy Lube by and through its respective agents of service of process by certified mail.

Very truly yours,

A handwritten signature in black ink, appearing to read "R. Zambrano", is written over a horizontal line.

Ronald L. Zambrano, Esq.

CC: California Labor and Workforce
Development Agency

350 South Grand Avenue, Suite 3325 Los Angeles, California 90071
Phone (800) 247-WCEL (9235) Fax (213) 927-3701
www.westcoastemploymentlawyers.com

State of California,
County of Los Angeles

2. I am familiar with the practice of The Spivak Law Firm, for collection and processing of correspondence for mailing with the United States Postal Service. It is the practice that correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

Ernest W. Klatte, III, Esq.
Summer Young-Agriesti, Esq.
Ana Thomas, Esq.
KLATTE, BUDENSIEK & YOUNG-AGRIESTI, LLP
1111A Quail St.
Newport Beach, CA 92660
ewklatte@kbylaw.com
syoung@kbylaw.com
athomas@kbylaw.com

EXECUTED on Thursday, August 04, 2022, at Thousand Oaks, California.

____ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


STACY SUSSMAN