

<b>DISTRICT COURT, MESA COUNTY, COLORADO</b> Court Address: 125 N. Spruce Street, Grand Junction, CO 81501	DATE FILED: May 24, 2024 11:47 AM FILING ID: E77F2839C8AE6 CASE NUMBER: 2023CV52
<b>Plaintiff:</b> DEREK PAIZ  <b>vs.</b>  <b>Defendants:</b> RED ROCK AUTO GROUP II, LLC	<p style="text-align: center;">▲ Court Use Only ▲</p>
Attorneys for Plaintiff Tim Turner #41966 Brickelle Bro #58125 WHITCOMB SELINSKY, P.C. 2000 South Colorado Blvd., Tower 1 Ste. #9500 Denver, CO. 80222 Phone Number: (303) 534-1958 FAX Number: (303) 534-1949 Email: <a href="mailto:tim@wsmlawpc.com">tim@wsmlawpc.com</a> <a href="mailto:brickelle@whitcomblawpc.com">brickelle@whitcomblawpc.com</a>	Case No: 2023CV000052  Div.: 9                  Ctrm.
<b>PLAINTIFF'S FOURTH AMENDED COMPLAINT</b>	

Plaintiff Derek Paiz (“Mr. Paiz” or “Plaintiff”), by and through counsel, brings this action against Defendant Red Rock Auto Group II, LLC (“Red Rock” or “Defendant”), and hereby states and alleges as follows:

**JURISDICTION AND VENUE**

1. The events that are the subject of this complaint occurred in Mesa County.

2. The Court has jurisdiction over Defendants pursuant to C.R.S. §13-1-124(a) as the Defendant is a resident of the State of Colorado and has transacted business in this State.
3. Venue is proper in this county as the Defendant is principally located in Grand Junction and all events giving rise to this action occurred in Mesa County.

### **PARTIES**

4. Plaintiff Derek Paiz is a resident of Mesa County, Colorado.
5. Upon information and belief, Defendant Red Rock Auto Group II, LLC is a corporation with its principal place of business at 741 N 1st St, Grand Junction, CO, 81501.

### **PROCEDURAL HISTORY**

6. Derek Paiz initiated this matter on October 26, 2023, filing his initial complaint *pro se* and properly serving Defendant.
7. On October 20, 2023, Mr. Paiz amended his complaint pursuant to Colo. Rev. Civ. P. 15(a).
8. Defendant filed a Motion to Dismiss on November 8, 2023.
9. Mr. Paiz submitted a response to Defendant's motion to dismiss on November 22, 2023, and filed a Second Amended Complaint on the same day.
10. Defendant filed a Motion to Dismiss Plaintiff's Second Amended Complaint on December 5, 2023.
11. Mr. Paiz filed a Motion for Leave to Amend and filed a Third Amended Complaint on December 8, 2023.
12. This Court denied Mr. Paiz' Motion for Leave to Amend and also denied Defendant's Motion to Dismiss, both on December 15, 2023.

13. Defendant filed an answer to Mr. Paiz' complaint on December 29, 2023.
14. Mr. Paiz retained counsel, who submitted Notices of Appearance on March 4, 2024.
15. This Amended Complaint, Plaintiff's Fourth Amended Complaint, results from the above proceedings.

### **FACTUAL ALLEGATIONS**

16. This is a lawsuit for breach of contract and failure to pay wages.
17. Red Rock hired Mr. Paiz on April 19, 2022, as a Flat Rate Detailer.
18. Mr. Paiz's employment agreement required him to perform four distinct duties on each vehicle: a complete detail, sanitation service associated with the detail, paint protection service (sometimes called exterior protections), and fabric protection service (sometimes called interior protections).
19. Red Rock agreed to pay Mr. Paiz at a rate of \$25 per hour with a guarantee of 4.25 hours per vehicle, regardless of how long it took him to complete the vehicle. Moreover, Red Rock agreed to pay Mr. Paiz \$10 for every vehicle sanitation he performed. He performed a sanitation on every detailed vehicle. This meant that Red Rock agreed to pay Mr. Paiz a flat fee of \$116.25 per vehicle for him to perform all four of the above services.
20. The sum of \$116.25 broke down into the following parts: \$56.25 per detail (\$25 per hour for 2.25 hours), \$10 per sanitation (\$25 per hour for .4 hours), \$25 per paint protection (\$25 per hour for 1 hour), and \$25 per fabric protection (\$25 per hour for 1 hour).
21. Mr. Paiz had rotating help; however, none of these individuals were authorized to perform or provide detailing or protection services on the new cars. Even so, if an

individual assisting Mr. Paiz did perform detailing or protection work, Red Rock ensured Mr. Paiz that he would still receive the agreed upon flat rate.

22. Each vehicle at Red Rock typically went through this rigorous cleaning and protection process described above twice – once when a vehicle came onto the lot to be sold, and again after a sale and prior to the customer taking possession.
23. Mr. Paiz performed these flat fee services on about eight to sixteen vehicles a day, depending on how busy the dealership was.
24. Mr. Paiz performed the agreed upon flat fee services on an average of three to six new-to-lot vehicles each day, and around five to ten vehicles sold off the lot each day.
25. Red Rock opened a ticket each time a vehicle went through the detailing and protections process and subsequently closed the ticket after Mr. Paiz completed his tasks and received signoff from a manager.
26. To complete a ticket, Mr. Paiz filled out a checklist, specifying which car he was working on and ensuring that he finished each of the four tasks.
27. When Mr. Paiz completed a ticket, a manager would review the vehicle work and sign off on another sheet of paper to note that Mr. Paiz performed and finished the work satisfactorily.
28. On this second document, where the manager signed, Red Rock warned Managers not to sign unless the detail had been done properly. A manager signature “signifies that is [sic] this car is up the [sic] standards we expect from red rock auto company.”
29. When Red Rock sold a vehicle, it typically did not open a subsequent ticket for details and protections. Instead, Red Rock forced Mr. Paiz to do the work with no documentation or recognition.

30. Red Rock paid Mr. Paiz a flat fee per completed ticket.
31. Because Red Rock did not regularly open new tickets for vehicles it sold, Mr. Paiz did not receive his flat fee payment for services her performed under the agreement. Instead, he was forced to perform work on five to ten cars a day with no pay.
32. Mr. Paiz' internal designation is "Tech 108."
33. Red Rock typically designates Tech 108 on work order tickets as the technician that performed the "full detail."
34. Red Rock marked its work order tickets with Tech 999 to note the performance of the "Worry Free Sanitation," "Interior Protection Guard," and "Paint Protection Guard" processes.
35. In May 2022, Mr. Paiz noticed that his pay did not reflect the terms of his agreement or the promised flat fee per vehicle when he accepted the position.
36. Mr. Paiz texted his supervisor, Andy Borders, on May 20, 2022, to ask if all the flat rate details should be in his name rather than a tech designation.
37. Mr. Borders responded "Yes Sir!! And interior and exterior protection's [sic]."
38. Mr. Paiz responded that Keith, another Manager at Red Rock, had also confirmed that all details and paint and fabric protections were to go in Mr. Paiz' name, "no matter what."
39. Even after confirmation from both Mr. Keith and Mr. Borders, Mr. Paiz' pay did not change.
40. Despite these assurances from management, Red Rock did not correct Mr. Paiz' pay or reconcile the back pay owed to him. Thus, he texted a supervisor and requested that Red Rock pay him for all services he performed to that point that Red Rock incorrectly marked as "Tech 999."

41. To be clear, Mr. Paiz was not marked as the technician for sanitations, fabric protections, or paint protections on vehicles new to the lot, and, thus, was not paid for the work he performed on these vehicles. Additionally, because Red Rock did not consistently open new tickets for vehicles sold off the lot, Mr. Paiz was not documented as having performed this work, and, thus, was not paid for the work he performed on these vehicles.
42. Red Rock also agreed to pay Mr. Paiz \$150 for vehicle Inspections for vehicles new to the lot.
43. On average, there were about 20 to 25 vehicle inspections conducted a week.
44. Mr. Paiz was paid only \$25 per vehicle for these inspections.

## **CAUSES OF ACTION**

### **COUNT I**

#### (Breach of Contract)

45. Plaintiff incorporates by reference all paragraphs above as if fully set forth herein.
46. On or about April 19, 2022, Plaintiff and Defendant entered a contract for Plaintiff to perform services on an ongoing basis as a Flat Rate Detailer for Defendant.
47. Plaintiff gave consideration in the form of agreeing to perform work for Defendant.
48. Defendant gave consideration in the form of agreeing to pay Plaintiff for his work.
49. Both parties mutually assented to the exchange of consideration.
50. Both parties agreed on the essential terms, as evidenced by repeated confirmation that sanitations, fabric protections, and paint protections were to be put in Mr. Paiz' name.
51. Plaintiff performed services on vehicles for about three months for Defendant.
52. Defendant failed to properly pay Plaintiff according to the terms of the contract, thus breaching the contract.

53. As a direct and proximate result of such breach, Plaintiff suffered injuries, damages and losses.

## COUNT II

(Wage Claim Under Colorado Wage Act §8-4)

54. Plaintiff incorporates by reference all paragraphs above as if fully set forth herein.

55. Defendant agreed to pay Plaintiff \$116.25 per vehicle he serviced.

56. Plaintiff serviced up to sixteen vehicles a day.

57. On about half of those vehicles, the ones that were new to the dealership's lot, Plaintiff was only paid \$50, because he was not marked as the technician that did the sanitation, fabric protection, or paint protection. He was marked as the technician that performed the detail. However, he was paid incorrectly even for the detail. He was supposed to be paid \$56.25 per detail.

58. On the other half of those sixteen vehicles, the ones that had been sold off the lot, Plaintiff was not paid for any work, because new tickets were not consistently opened.

59. Plaintiff confirmed with two supervisors that Defendant agreed to pay for all services on all vehicles.

60. Plaintiff requested the payment he was due over text.

61. Defendant ignored Plaintiff's request.

62. Defendant failed to pay Plaintiff properly for his work.

63. As a direct and proximate result of such breach, Plaintiff suffered injuries, damages and losses.

### **COUNT III**

#### **(Promissory Estoppel)**

64. Plaintiff incorporates by reference all paragraphs above as if fully set forth herein.
65. Defendant promised to pay Plaintiff a flat rate for four different services he performed, on every car he performed those services on.
66. Plaintiff relied on the promises made by Defendant and performed the work with the expectation that Defendant would pay him according to the agreement.
67. Defendant reasonably expected the promise to induce action from Plaintiff on the part of the promise.
68. Plaintiff acted on the promise by Defendant and continued acting on the promise even after he became aware that Defendants were not paying Plaintiff as promised, out of the belief that Defendants would come into compliance with their contract once Plaintiff pointed out the deficiency.
69. As a direct and proximate result of such breach, Plaintiff suffered injuries, damages and losses.

### **COUNT IV**

#### **(Unjust Enrichment)**

70. Plaintiff incorporates by reference all paragraphs above as if fully set forth herein.
71. Defendant received the benefit of Plaintiff's work on vehicles on their lot.
72. Defendant received said benefit at the Plaintiff's expense.
73. Defendant did not compensate Plaintiff for the majority of his work.
74. As a direct and proximate result of such breach, Plaintiff suffered injuries, damages and losses.

### **DAMAGES**



75. Plaintiff's economic damages include lost wages for work order tickets requesting sanitations, fabric protections, and paint protections that he performed and completed under the terms of his agreement with Defendant, but which Defendant incorrectly marked as "Tech 999." Defendant also failed to properly pay Plaintiff for the detailing of each vehicle he performed and completed. Defendant failed to pay Plaintiff for services performed and completed on any vehicle sold off the lot. Defendant also failed to pay Plaintiff for the vehicle inspections performed and completed.
76. Defendant is in possession and control of necessary documents and information from which Plaintiff would be able to precisely calculate further damages based on unpaid labor.
77. Plaintiff's noneconomic damages include pain and suffering, for the emotional distress, embarrassment, anxiety, and stress which resulted from Defendants' actions.

### **PRAYER FOR RELIEF**

Mr. Paiz prays for the following relief:

- a. That he be paid the promised rate of \$56.25 for all details he performed and completed;
- b. That he be paid the promised rate of \$25 for all fabric protections he performed and completed;
- c. That he be paid the promised rate of \$25 for all paint protections he performed and completed;
- d. That he be paid the promised rate of \$10 for all sanitations he performed and completed;
- e. That he be paid the promised rate of \$150 for all vehicle inspections he performed and completed;

- f. Also, and in consideration of the emotional distress, harassment, inconvenience, and anxiety caused by Defendants' actions, Mr. Paiz requests compensatory damages;
- g. Punitive damages as available; and
- h. Any other relief as the Court may deem just and proper.

**PLAINTIFF DEMANDS A JURY TRIAL ON ALL ISSUES SO TRIABLE**

Dated: May 3, 2024

WHITCOMB, SELINSKY, P.C.

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*Counsel for the Plaintiff, Derek Paiz*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 3<sup>rd</sup> day of May, 2024, service of the foregoing **FOURTH AMENDED COMPLAINT**, was made and served on all parties in this matter via Colorado Courts E-Filing System (CCES).

/s/ Brickelle Bro  
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