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individually and on behalf of all other AGGRIEVED EMPLOYEES

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JUAN GUEVARA, an individual; JOSE OLIVA, an individual, on behalf of themselves) **Case No. 21STCV15142**
and all other AGGRIEVED EMPLOYEES)

Plaintiffs,

vs.

WESTLAKE SERVICES, LLC; DON HANKEY, an individual; and DOES 1 through
100, inclusive,

Defendants.

**COMPLAINT FOR ENFORCEMENT
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT, CALIFORNIA LABOR
CODE § 2698, ET SEQ.**

Violation of California Labor Code § 2698, et
seq. (California Labor Code Private Attorneys
General Act of 2004)

Plaintiffs JUAN GUEVARA and JOSE OLIVA (hereinafter referred to as
“REPRESENTATIVE PLAINTIFF GUEVARA,” “REPRESENTATIVE PLAINTIFF OLIVA,”
and collectively as “REPRESENTATIVE PLAINTIFFS”) allege as follows:

PARTIES

1. REPRESENTATIVE PLAINTIFF GUEVARA is an individual who resides in

1 California and was employed by WESTLAKE SERVICES, LLC, from on or about 2016 until on
2 or about August 21, 2020.

3 2. REPRESENTATIVE PLAINTIFF OLIVA is an individual who resides in
4 California and was employed by WESTLAKE SERVICES, LLC, from on or about December 2011
5 until on or about October 2020.

6 3. REPRESENTATIVE PLAINTIFFS are informed and believe, and based on such
7 information and belief, allege that at all times mentioned herein, WESTLAKE SERVICES, LLC is
8 a California Limited Liability Company licensed to do business and actually doing business in the
9 State of California.

10 4. REPRESENTATIVE PLAINTIFFS are informed and believe, and based on such
11 information and belief, allege that WESTLAKE SERVICES, LLC (hereinafter, "DEFENDANT
12 WESTALEK SERVICES, LLC") specializes in acquisition and servicing of subprime automotive
13 retail installment contracts and has numerous locations throughout California. Thus, DEFENDANT
14 WESTLAKE SERVICES, LLC is subject to the applicable California laws as alleged throughout
15 this Complaint.

16 5. REPRESENTATIVE PLAINTIFFS are informed and believe, and based thereon
17 allege, that DEFENDANT DON HANKEY (hereinafter, "DEFENDANT HANKEY") is an
18 individual who resides in the State of California and the County of Los Angeles. DEFENDANT
19 HANKEY was and is an agent of DEFENDANTS, and in that capacity was and is responsible for
20 overseeing and implementing DEFENDANTS' timekeeping policies and procedures that
21 REPRESENTATIVE PLAINTIFFS and the other AGGRIEVED EMPLOYEES were made to
22 follow.

23 6. REPRESENTATIVE PLAINTIFFS are unaware of the true names and capacities,
24 whether corporate, individual, or otherwise, of DEFENDANTS named as DOES 1 through 100,
25 inclusive. Pursuant to California Code of Civil Procedure section 474, REPRESENTATIVE
26 PLAINTIFFS will seek leave of court to amend this complaint to state said DEFENDANTS' true
27 names and capacities when the same have been ascertained. REPRESENTATIVE PLAINTIFFS
28 are informed and believe, and based thereon allege, that said fictitiously-named DEFENDANTS

1 are responsible in some manner for the injuries and damages to REPRESENTATIVE
2 PLAINTIFFS and the other AGGRIEVED EMPLOYEES as further alleged herein.

3 7. The term “DEFENDANTS” used throughout this Complaint includes all named
4 DEFENDANTS whether corporate, individual, or otherwise, and all unnamed DEFENDANTS
5 whether corporate, individual, or otherwise, that are now unknown but are referred to throughout
6 this Complaint as DOES 1 through 100, inclusive.

7 8. The AGGRIEVED EMPLOYEES worked for all of the DEFENDANTS or for
8 either of the DEFENDANTS as non-exempt, hourly-paid employees. Nothing in this Complaint
9 should be interpreted as limiting the AGGRIEVED EMPLOYEES to non-exempt, hourly-paid
10 employees who worked for all DEFENDANTS only.

11 9. The definition of “employer” for purposes of the California Labor Code includes
12 irregular working arrangements, and was specifically drafted in order to prevent evasion and
13 subterfuge of California’s labor laws. To that end, REPRESENTATIVE PLAINTIFFS are
14 informed and believe, and based thereon allege, that DEFENDANTS, including any as of now
15 unknown entities, must be classified as joint-employers for purposes of liability for civil penalties
16 under the Private Attorneys General Act (“PAGA”). As such, DEFENDANTS are each liable for
17 civil penalties for violation of the California Labor Code as to REPRESENTATIVE PLAINTIFFS
18 and the other AGGRIEVED EMPLOYEES.

19 10. This is only a Private Attorney General Action Complaint, pursuant to California
20 Labor Code section 2699 et seq., on behalf of REPRESENTATIVE PLAINTIFFS and all other
21 persons similarly situated who worked for DEFENDANTS in their California locations as non-
22 exempt, hourly employees (herein collectively identified as “AGGRIEVED EMPLOYEES”) for:

23 (i) Failure to provide employment records in violation of Labor Code sections 226,
24 432, and 1198.5;

25 (ii) failure to pay overtime and double time in violation of Labor Code sections 510 and
26 the applicable Wage Orders;

27 (iii) failure to provide rest and meal periods in violation of Labor Code sections 226.7,
28 512(a), and the applicable Wage Orders;

1 (iv) failure to pay minimum wage in violation of Labor Code sections 1182.12, 1194,
2 1197, 1197.1, and the applicable Wage Orders;

3 (v) failure to keep accurate payroll records and provide itemized wage statements in
4 violation of Labor Code sections 226(a), 1174(d), 1198 and the applicable Wage Orders;

5 (vi) failure to pay all wages earned on time in violation of Labor Code section 204;

6 (vii) failure to pay all wages earned upon discharge or resignation in violation of Labor
7 Code sections 201, 202, and 203;

8 (viii) failure to provide basic information at the time of hiring and when employment
9 changes occur in violation of Labor Code section 2810.5(a)(1)(A)-(C) (Wage Theft Prevention
10 Act).

11 (ix) failure to reimburse necessary, business-related expenses in violation of Labor Code
12 sections 2800 and 2802;

13 (x) failure to provide notice of paid sick time and accrual in violation of Labor Code
14 section 246;

15 (xi) employers, and individuals acting on behalf of employers, violating or causing to be
16 violated a section of the Labor Code or any Wage Order in violation of Labor Code section 558(a).

17 **VENUE AND JURISDICTION**

18 11. Venue as to each Defendant is proper in this judicial district pursuant to California
19 Code of Civil Procedure section 395 and under California Government Code section 12965(b), in
20 that DEFENDANTS conduct business within the County of Los Angeles and each Defendant is
21 within the jurisdiction of this Court for service of process, REPRESENTATIVE PLAINTIFFS'
22 injuries were incurred within the County of Los Angeles, the actions giving rise to
23 REPRESENTATIVE PLAINTIFFS' Complaint arose within the County of Los Angeles,
24 DEFENDANTS employ numerous employees in the County of Los Angeles and DEFENDANTS
25 are located in the County of Los Angeles.

26 12. This Court has jurisdiction over REPRESENTATIVE PLAINTIFFS' claims for
27 civil penalties under the PAGA, California Labor Code sections 2698 *et seq.*

28 **SCOPE**

3.

13. The “AGGRIEVED EMPLOYEES” are DEFENDANTS current and former hourly-paid, non-exempt employees, who either were or are employed in the State of California from December 16, 2019 through the date of judgment in this action.

STATEMENT OF FACTS

14. REPRESENTATIVE PLAINTIFF GUEVARA was hired by DEFENDANTS as a Dialer Admin on or about 2016. REPRESENTATIVE PLAINTIFF worked for DEFENDANTS up until on or about August 2020.

15. REPRESENTATIVE PLAINTIFF OLIVA was hired by DEFENDANTS as a Dialer Admin on or about December 2011. REPRESENTATIVE PLAINTIFF worked for DEFENDANTS up until on or about October 2020.

16. While employed with DEFENDANTS, REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES that REPRESENTATIVE PLAINTIFFS seek to represent in this action, working as non-exempt, hourly-paid employees were regularly required to work off-the-clock, and/or during their rest and/or meal periods.

17. REPRESENTATIVE PLAINTIFFS filed a PAGA Notice against DEFENDANT WESTLAKE SERVICES, LLC on December 16, 2020 by serving a PAGA Notice to all named DEFENDANTS and to the LWDA in compliance with Labor Code section 2699.3. As of February 20, 2021, 65 Days after REPRESENTATIVE PLAINTIFFS' PAGA Notice, REPRESENTATIVE PLAINTIFFS have not received correspondence from the LWDA regarding its intent to investigate PLAINTIFFS' claims.

18. REPRESENTATIVE PLAINTIFFS filed a PAGA Notice against DEFENDANT HANKEY on February 12, 2021 by serving a PAGA Notice to all named DEFENDANTS and to the LWDA in compliance with Labor Code section 2699.3. As of April 17, 2021, 65 Days after REPRESENTATIVE PLAINTIFFS' PAGA Notice, REPRESENTATIVE PLAINTIFFS have not received correspondence from the LWDA regarding its intent to investigate PLAINTIFFS' claims.

19. California Labor Code Section 226 provides, “An employer who receives a written or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a current or former employee [records of hours worked and wages paid]...shall comply with the request as

1 soon as practicable, but no later than 21 calendar days from the date of the request.”

2 20. California Labor Code Section 432 provides, “If an employee signs any instrument
3 relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon
4 request.”

5 21. California Labor Code Section 1198.5 provides that every employee shall be
6 permitted to inspect and obtain a copy of their personnel records upon request.

7 22. In accordance with the process set out in Labor Code Section 226,
8 REPRESENTATIVE PLAINTIFFS requested, in writing by letter via certified first-class mail to
9 DEFENDANTS and regular first-class mail to DEFENDANTS, that DEFENDANTS provide
10 REPRESENTATIVE PLAINTIFFS with wage and payroll history, all documents signed by
11 REPRESENTATIVE PLAINTIFFS pursuant to Labor Code Section 432, and a copy of
12 REPRESENTATIVE PLAINTIFFS’ personnel records pursuant to Labor Code Section 1198.5.

13 23. The time periods provided to DEFENDANTS by Labor Code Sections 226, 432,
14 1198.5 and any other relevant statutes have elapsed since DEFENDANTS received
15 REPRESENTATIVE PLAINTIFFS’ correspondence requesting documents pursuant to Labor
16 Code Sections 226, 432, and 1198.5, and a copy of REPRESENTATIVE PLAINTIFFS’ personnel
17 records pursuant to Labor Code Section 1198.5. However, DEFENDANTS failed to provide
18 REPRESENTATIVE PLAINTIFFS with all of the employment documents to which they are
19 entitled to.

20 24. REPRESENTATIVE PLAINTIFFS are informed and believe, and based thereon
21 allege, that DEFENDANTS failed to provide records in compliance with Labor Code Sections 226,
22 432, and 1198.5 to other AGGRIEVED EMPLOYEES in response to their requests.

23 25. California Labor Code sections 510 and the applicable Wage Orders require
24 employers to pay employees working more than eight (8) hours in a day or more than 40 hours in a
25 week at the rate of at least time-and-one-half (1.5) times their regular rate of pay (“overtime”) for
26 time such worked, and two (2) times their regular rate of pay (“double time”) for such hours
27 worked in excess of 12 hours in a day. “Regular rate” includes all remuneration, including non-
28 discretionary bonuses and incentives.

1 26. During the relevant time period, REPRESENTATIVE PLAINTIFFS and other
2 AGGRIEVED EMPLOYEES regularly worked in excess of eight (8), and in excess of 12, hours in
3 a workday and/or 40 hours in a workweek.

4 27. DEFENDANTS routinely required REPRESENTATIVE PLAINTIFFS and the
5 other AGGRIEVED EMPLOYEES to perform work tasks before and/or after their scheduled
6 shifts, and/or during off-the-clock meal breaks, and/or during rest breaks. As a consequence,
7 DEFENDANTS willfully failed to pay REPRESENTATIVE PLAINTIFFS and the other
8 AGGRIEVED EMPLOYEES all of the wages to which they were entitled.

9 28. California Labor Code sections 226.7, 512(a), and the applicable Wage Orders
10 require employers to pay employees one (1) additional hour of pay at the employees' regular rate
11 for each work day that a legally compliant meal and/or rest break was not provided. Employers
12 cannot require, cause, or permit an employee to work more than five (5) hours per day without
13 providing an uninterrupted meal break. If an employee works over ten (10) hours in a workday,
14 employers are required to either provide a second, uninterrupted 30-minute meal break or pay
15 employees an additional one (1) hour of pay at the employees' regular rate. If the employer fails to
16 properly record a valid meal period, it is presumed that no meal period was provided. Furthermore,
17 no employer shall require an employee to work during any rest period. Rest periods requirements
18 are based on the total hours worked; employees are legally entitled to ten (10) minutes per four (4)
19 hours, or major fraction thereof, that employee worked.

20 29. DEFENDANTS failed to provide REPRESENTATIVE PLAINTIFFS and other
21 AGGRIEVED EMPLOYEES with the required rest and meal break periods. REPRESENTATIVE
22 PLAINTIFFS and other AGGRIEVED EMPLOYEES were routinely required to work through
23 these periods instead, because of understaffing, inadequate coverage, unreasonably high workload
24 and expectations, and/or other actions, inactions, or decisions made by and within the sole control
25 and discretion of DEFENDANTS.

26 30. REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES worked
27 shifts in excess of five (5) hours without a meal break, and worked shifts of ten (10) hours or more
28 without a second meal break, due to understaffing, inadequate coverage, unreasonably high

1 workload and expectations, and/or other actions, inactions, or decisions made by and within the
2 sole control and discretion of DEFENDANTS.

3 31. REPRESENTATIVE PLAINTIFFS are informed and believe, and based thereon
4 allege, that any purported appearance of meal and rest break compliance is because
5 DEFENDANTS systematically and routinely clocked out for and/or otherwise altered the
6 timekeeping records of REPRESENTATIVE PLAINTIFFS and other AGGRIEVED
7 EMPLOYEES in an attempt to hide the aforementioned infractions. DEFENDANTS, knowingly
8 and contrary to law and public policy, employed a tactic of clocking-out employees for rest and/or
9 meal periods that were never taken and/or were legally non-compliant, and/or otherwise falsified or
10 altered timekeeping records.

11 32. DEFENDANTS knew, or should have known, that their behavior caused
12 REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES to work through the
13 above-described meal and/or rest periods. As a company-wide policy, DEFENDANTS still chose
14 not to pay meal and rest period premiums required by law.

15 33. California Labor Code sections 1182.12, 1194, 1197, and 1197.1 require employers
16 to pay the minimum wage as set by the IWC. California Labor Code section 1182.12, as amended
17 by Senate Bill 3, Chapter 4, Section 3, defines the minimum wage as;

18 (1) For any employer who employs 26 or more employees:

19 (A) From January 1, 2017, to December 31, 2017, \$10.50 per hour.

20 (B) From January 1, 2018, to December 31, 2018, \$11 per hour.

21 (C) From January 1, 2019, to December 31, 2019, \$12 per hour.

22 (D) From January 1, 2020, to December 31, 2020, \$13 per hour.

23 (E) From January 1, 2021, to December 31, 2021, \$14 per hour.

24 (F) From January 1, 2022, and until adjusted by subdivision (c) \$15 per hour.

25 (2) For any employer who employs 25 or fewer employees:

26 (A) From January 1, 2018, to December 31, 2018, \$10.50 per hour.

27 (B) From January 1, 2019, to December 31, 2019, \$11 per hour.

28 (C) From January 1, 2020, to December 31, 2020, \$12 per hour.

1 (D) From January 1, 2021, to December 31, 2021, \$13 per hour.

2 (E) From January 1, 2022, to December 31, 2022, \$14 per hour.

3 (F) From January 1, 2023, and until adjusted by subdivision (c) \$15 per hour.

4 34. The minimum wage standard applies to each hour employees worked for which they
5 were not paid. Therefore, employer's failure to pay for any particular hour worked by an employee
6 is unlawful even if averaging an employee's total pay over all hours worked, paid or not, results in
7 an average hourly wage above minimum wage.

8 35. As alleged throughout this Complaint, due to the company-wide failures of
9 DEFENDANTS, REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES were
10 forced to work off-the-clock before and/or after their scheduled work shifts, and/or during rest
11 breaks, and/or during meal breaks. DEFENDANTS failed to pay REPRESENTATIVE
12 PLAINTIFFS and other AGGRIEVED EMPLOYEES minimum wage for this time and/or falsified
13 timekeeping records to hide this fact.

14 36. California Labor Code 226(a) requires employers to create and provide true and
15 accurate employment records to employees. California Labor Code section 226(e) provides that if
16 an employer fails to furnish an employee with same, the employee is entitled to recover the greater
17 of all actual damages, or \$50.00 for an initial infraction, and \$100 per employee for each
18 subsequent violation in any pay period. California Labor Code 226.3 imposes civil penalties on any
19 employer in violation of section 226(a) at \$250 per employee violation in an initial citation, and
20 \$1,000 per employee for each subsequent violation.

21 37. California Labor Code 1174(d) requires employers to keep payroll records showing
22 hours worked, and wages paid to and/or number of piece-rate units earned, for all employees.
23 California Labor Code section 1174.5 subjects employers to a \$500 penalty for failing to maintain
24 same.

25 38. California Labor Code section 1198 provides that maximum hours and standard
26 conditions of labor are fixed by the Labor Commissioner in the applicable Wage Orders. Pursuant
27 to the applicable Wage Order, employers must keep accurate records of when employees begin and
28 end each work period and each meal period.

1 39. DEFENDANTS knowingly provided employees with records that do not meet the
2 statutory requirements of truth and accuracy, because DEFENDANTS failed to truthfully and
3 accurately document, among other things, employees off-the-clock work. As a result,
4 DEFENDANTS failed to accurately list the correct amount of gross and/or net wages earned by
5 REPRESENTATIVE PLAINTIFFS and the other AGGRIEVED EMPLOYEES.

6 40. The statements in question are deficient in many other ways, including, but not
7 limited to: failure to list total hours worked, failing to list applicable hourly rates and the numbers
8 of hours worked at each rate, failure to list piece-rate units earned and the applicable piece-rate,
9 failure to list deductions, failure to track sick leave, failure to list the employee and SSN/EID
10 properly, failure to list the full legal name and address of the employer, failure to list inclusive
11 dates for which employees are paid, failure to provide employees with the ability to easily access
12 wage statements and get hard copies at no expense to the employee, and/or failure to state all hours
13 worked as a result of off-the-clock work.

14 41. DEFENDANTS willfully failed to maintain accurate payroll records for
15 REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES as a result of
16 DEFENDANTS' failure to accurately record employees rest breaks, and/or meal breaks, and/or
17 off-the-clock work. DEFENDANTS' failure makes it impossible for REPRESENTATIVE
18 PLAINTIFFS and other AGGRIEVED EMPLOYEES to accurately determine the extent of their
19 underpayment, thereby causing further injuries to each of them.

20 42. California Labor Code section 204 requires that all wages earned, other than those
21 due upon termination, be paid on time as defined by the statute.

22 43. California Labor Code sections 201, 202, and 203 provide that employees who are
23 terminated are due all wages earned immediately. Employees who resign their employment without
24 giving 72-hours' notice are due all wages earned within 72 hours of their resignation. Employees
25 who resign their employment giving 72-hours' notice are entitled to all wages earned at the time
26 their resignation becomes effective.

1 44. DEFENDANTS terminated their employment relationship with
2 REPRESENTATIVE PLAINTIFF GUEVARA on August 21, 2020. Accordingly,
3 REPRESENTATIVE PLAINTIFF GUEVARA was due all wages earned immediately.

4 45. DEFENDANTS terminated their employment relationship with
5 REPRESENTATIVE PLAINTIFF OLIVA on October 5, 2020. Accordingly, REPRESENTATIVE
6 PLAINTIFF OLIVA was due all wages earned immediately.

7 46. When REPRESENTATIVE PLAINTIFFS finally received REPRESENTATIVE
8 PLAINTIFFS' final paychecks, these final paychecks were legally deficient in that they did not
9 account for all wages earned despite DEFENDANTS knowing that such wages were due to
10 REPRESENTATIVE PLAINTIFFS. Due to the company-wide failures of DEFENDANTS as
11 described throughout this Complaint, DEFENDANTS similarly failed to pay other AGGRIEVED
12 EMPLOYEES timely wages upon their discharge or resignation.

13 47. Codified in California Labor Code section 2810.5, California's Wage Theft
14 Protection Act requires employers to provide employees with basic information at the time of
15 hiring and when changes occur to their employment. The Wage Theft Protection Act provides that
16 an employee must be furnished with written notice of, at the time of hiring; rate of pay (including
17 overtime), whether paid by hour, salary, piece-rate, shift, day, week, commission, or otherwise, and
18 allowances claimed such as meal or lodging. This notice must include a statement that the
19 employee can accrue and use sick leave, has the right to request and use paid sick leave, may not
20 be terminated or retaliated against for requesting or using paid sick leave, and has the right to file a
21 complaint against any employer who does so retaliate.

22 48. DEFENDANTS hired REPRESENTATIVE PLAINTIFF GUEVARA on or about
23 2016, and REPRESENTATIVE PLAINTIFF continued to work for DEFENDANTS until on or
24 about August 21, 2020. During that time, changes, including, but not limited to, raises, promotions,
25 title changes, relocations, and new and additional assignments were earned by and/or assigned to
26 REPRESENTATIVE PLAINTIFF GUEVARA. As a result of each of these, changes occurred to
27 REPRESENTATIVE PLAINTIFF GUEVARA'S employment as defined by Labor Code
28 2810.5(a)(1)(A)-(C) and the Wage Theft Prevention Act.

1 49. DEFENDANTS hired REPRESENTATIVE PLAINTIFF OLIVA on or about
2 December 2011, and REPRESENTATIVE PLAINTIFF continued to work for DEFENDANTS
3 until on or about October 5, 2020. During that time, changes, including, but not limited to, raises,
4 promotions, title changes, relocations, and new and additional assignments were earned by and/or
5 assigned to REPRESENTATIVE PLAINTIFF OLIVA. As a result of each of these, changes
6 occurred to REPRESENTATIVE PLAINTIFF OLIVA'S employment as defined by Labor Code
7 2810.5(a)(1)(A)-(C) and the Wage Theft Prevention Act.

8 50. When hired and each time such changes to REPRESENTATIVE PLAINTIFFS and
9 other AGGRIEVED EMPLOYEES employment occurred, DEFENDANTS were required to
10 furnish documents to REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES
11 with such basic information and written notice of, among other things, their rate of pay (including
12 overtime), their right to accrue and request paid sick leave, and their right to file a complaint
13 against DEFENDANTS should they infringe upon such rights. DEFENDANTS failed to furnish
14 REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES with such written
15 notices as required.

16 51. California Labor Code Sections 2800 and 2802 require that an employer indemnify
17 employees for all necessary expenditures or losses incurred by the employee in direct consequence
18 of the discharge of their duties.

19 52. REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES were
20 directed and expected to incur personal expenses on behalf of DEFENDANTS while performing
21 their job duties. Such personal expenses include, but are not limited to: use of personal cell phone,
22 travel expenses, and parking expenses. REPRESENTATIVE PLAINTIFFS and the other
23 AGGRIEVED EMPLOYEES would not have been able to successfully accomplish their job duties
24 absent incurring these personal expenses. DEFENDANTS failed to indemnify
25 REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES for all necessary
26 expenditures or losses accordingly.

27 53. California Labor Code section 246 provides that an employee who works for the
28 same employer for more than 30 days is entitled to paid sick days. Paid sick leave is to accrue at a

1 rate not less than one (1) hour per every 30 hours worked, such accrual beginning at the
2 commencement of employment. Employers must provide employees with written notice setting the
3 amount of sick leave available (or paid time off in lieu thereof) for use on either itemized wage
4 statements (as described in Labor Code section 226) or in a separate writing accompanying such
5 wage statements.

6 54. REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES worked
7 for DEFENDANT for more than 30 days, triggering the protections of Labor Code section 246 as
8 described above. Nevertheless, DEFENDANTS failed to furnish upon REPRESENTATIVE
9 PLAINTIFFS and other AGGRIEVED EMPLOYEES, either on itemized wage statements or in a
10 separate writing accompanying such wage statements, the amount of sick leave available to
11 REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES.

12 55. As such, DEFENDANTS unlawfully retained and continue to retain paid sick leave
13 that should have been paid to REPRESENTATIVE PLAINTIFFS and other AGGRIEVED
14 EMPLOYEES but for DEFENDANTS failure to properly institute and/or adhere to a legally
15 compliant paid sick leave program. REPRESENTATIVE EMPLOYEES are informed and believe,
16 and based thereon allege, that these practices were experienced and continue to be experienced by
17 the other AGGRIEVED EMPLOYEES.

18 56. California Labor Code section 558(a) provides that any employer, including
19 individuals acting on behalf of employers, that violates, or causes to be violated, a section of the
20 Labor Code or any applicable Wage Orders are subject to the following penalties;

- 21 • \$50 for any initial violation for each underpaid employee for each pay period for
22 which the employee was underpaid in addition to an amount sufficient to recover
23 unpaid wages;
- 24 • \$100 for each subsequent violation for each underpaid employee for each pay period
25 for which the employee was underpaid in addition to an amount to recover unpaid
26 wages;

57. Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. Labor Code section 558(c) provides that the penalties in this section are in addition to any other civil penalty.

58. DEFENDANTS are employers, and DEFENDANT HANKEY, acting on behalf thereof, violated REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES' rights by violating, or causing to be violated, various sections of this code as described throughout this Complaint.

FIRST CAUSE OF ACTION

(VIOLATION OF LABOR CODE § 2698, *ET SEQ.*)

**(By REPRESENTATIVE PLAINTIFFS Against DEFENDANT(S) and Does 1 through 10,
inclusive)**

59. REPRESENTATIVE PLAINTIFFS incorporate by reference the allegations contained in each of the preceding paragraphs and each and every part thereof with the same force and effect as though fully set forth herein.

60. PAGA expressly establishes that any provisions of the California Labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

61. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

62. REPRESENTATIVE PLAINTIFFS and the other hourly-paid or non-exempt employees, are “AGGRIEVED EMPLOYEES” within the meaning of California Labor Code section 2699(c) as they are all current or former employees of DEFENDANT, and one or more of the alleged violations was committed against them.

Failure to Provide Employment Records

1 63. DEFENDANTS failure to provide REPRESENTATIVE PLAINTIFFS and other
2 AGGRIEVED EMPLOYEES with employment records constitutes unlawful and/or unfair activity
3 and is prohibited by California Labor Code 226, 432, and 1198.5.

4 **Failure to Pay Overtime / Double Time**

5 64. DEFENDANTS failure to pay legally required overtime and double time wages to
6 REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES is in violation of the
7 Wage Orders and constitutes unlawful and/or unfair activity prohibited by California Labor Code
8 sections 510 and 1198.

9 **Failure to Provide Meal and Rest Periods**

10 65. DEFENDANTS failure to provide legally required meal and rest periods to
11 REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES constitutes unlawful
12 and/or unfair activity prohibited by California Labor Code sections 226.7, 512(a), and the
13 applicable Wage Orders.

14 **Failure to Pay Minimum Wages**

15 66. DEFENDANTS failure to pay legally required minimum wages to
16 REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES constitutes unlawful
17 and/or unfair activity prohibited by California Labor Code sections 1182.12, 1194, 1197, 1197.1,
18 and the applicable Wage Orders.

19 **Failure to Keep Accurate and Provide Itemized Wage Statements**

20 67. DEFENDANTS failure to keep accurate and provide itemized wage statements to
21 REPRESENTATIVE PLAINTIFFS and other AGGRIEVED EMPLOYEES constitutes unlawful
22 and/or unfair activity prohibited by California Labor Code section 226(a), 1174(d), and 1198.

23 **Failure to Timely Pay Wages During Employment**

24 68. DEFENDANTS failure to timely pay wages to REPRESENTATIVE PLAINTIFF
25 and other AGGRIEVED EMPLOYEES during their employment constitutes unlawful and/or
26 unfair activity prohibited by California Labor Code section 204.

27 **Failure to Timely Pay Wages Upon Termination**

28 69. DEFENDANTS failure to timely pay wages to REPRESENTATIVE PLAINTIFF
14.

1 and other AGGRIEVED EMPLOYEES upon termination constitutes unlawful and/or unfair
2 activity prohibited by California Labor Code sections 201, 202, and 203.

3 **Failure to Provide Information Required by the Wage Theft Prevention Act**

4 70. DEFENDANTS failure to provide basic information to REPRESENTATIVE
5 PLAINTIFF and other AGGRIEVED EMPLOYEES related to the conditions of their pay and their
6 rights regarding sick leave constitutes unlawful and/or unfair activity prohibited by California
7 Labor Code section 2810.5(a)(1)(A)-(C).

8 **Failure to Reimburse Necessary Business-Related Expenses and Costs**

9 71. DEFENDANTS failure to reimburse REPRESENTATIVE PLAINTIFF and other
10 AGGRIEVED EMPLOYEES for necessary business-related expenses and costs constitutes
11 unlawful and/or unfair activity prohibited by California Labor Code sections 2800 and 2802.

12 **Failure to Provide Notice of Paid Sick Time and Accrual**

13 72. DEFENDANTS failure to provide REPRESENTATIVE PLAINTIFF and other
14 AGGRIEVED EMPLOYEES that works for DEFENDANTS for more than 30 days with written
15 notice setting the amount of sick leave available (or paid time off in lieu thereof) for use in their
16 itemized wage statements or in a separate writing accompanying such statements constitutes
17 unlawful and/or unfair activity prohibited by California Labor Code section 246.

18 **Civil Penalties**

19 73. DEFENDANT HANKEY'S actions, as outlined above, on behalf of
20 DEFENDANTS that violated, or caused to be violated, the above-mentioned labor codes constitute
21 unfair and/or unlawful activity in violation of California Labor Code section 558(c). California
22 Labor Code section 558(c) specifically clarifies that penalties in this section are in addition to any
23 other civil penalty.

24 74. Pursuant to California Labor Code section 2699, REPRESENTATIVE
25 PLAINTIFFS, individually, and on behalf of all AGGRIEVED EMPLOYEES, request and are
26 entitled to recover penalties from DEFENDANTS and each of them, for violations of the Labor
27 Code as more fully described herein according to proof, interest, attorneys' fees and costs pursuant
28 to California Labor Code section 218.5, including but not limited to:

a. Penalties under California Labor Code section 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;

b. Penalties under California Code of Regulations Title 8 section 11010, et seq. in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;

c. Penalties under California Labor Code section 210 in addition to, and entirely independent and apart from, any other penalties provided in the California Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation; and

d. Any and all additional penalties and sums as provided by the California Labor Code and/or other statutes, including, but not limited to, penalties pursuant to California Labor Code 558(a).

75. Pursuant to California Labor Code section 2699(i), civil penalties recovered shall be distributed as follows: seventy-five percent (75%) to the Labor and Workforce Development Agency for the enforcement of labor laws and education of employers and employees about their rights and responsibilities and twenty-five percent (25%) to the AGGRIEVED EMPLOYEES.

76. Further, REPRESENTATIVE PLAINTIFFS are entitled to seek and recover reasonable attorneys' fees and costs pursuant to California Labor Code sections 210, 218.5 and 2699 and any other applicable statute.

THEREFORE, REPRESENTATIVE PLAINTIFFS and the individuals he seeks to represent request relief as described below:

PRAYER

THEREFORE, REPRESENTATIVE PLAINTIFFS pray for judgment against DEFENDANTS, and Does 1 through 100, and each of them, as follows:

1 1. Statutory attorneys' fees and costs under PAGA and California Code of Civil
2 Procedure Section 1021.5;

3 2. Statutory penalties under PAGA;

4 3. Costs of suit; and

5 4. Such further relief as the Court deems just and proper.

6
7 Dated: April 21, 2021

HAIG B. KAZANDJIAN LAWYERS, APC.

8
9 By: /s/ Haig Kazandjian

10 Haig B. Kazandjian, Esq.,
11 Cathy Gonzalez, Esq.,
12 Kevin Crough, Esq.,
13 Attorneys for Plaintiff JUAN GUEVARA
14 and JOSE OLIVA
15 Individually and on behalf of other
16 AGGRIEVED EMPLOYEES
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