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9 and Veronica Andrade

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES**
12 **UNLIMITED JURISDICTION**

13 NOEL VAN WAGNER, an individual; and
14 VERONICA ANDRADE, an individual,

15 Plaintiffs,

16 v.

17 WESTLAKE PROPERTIES, INC.; and DOES
18 1-25, inclusive,

19 Defendants.

Case No. 22STCV16191

COMPLAINT FOR:

(1) UNLAWFUL RETALIATION;
(2) FAILURE TO PROVIDE MEAL PERIODS;
(3) FAILURE TO PROVIDE REST PERIODS;
(4) FAILURE TO REIMBURSE;
(5) FAILURE TO PAY OVERTIME WAGES;
(6) FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS;
(7) FAILURE TO PAY WAGES ON TIME, WAITING TIME PENALTIES;
(8) FAILURE TO PROVIDE EMPLOYMENT RECORDS;
(9) UNFAIR BUSINESS PRACTICES; and
(10) PENALTIES PURSUANT TO PAGA (LABOR CODE §2698, et seq.)

24 Plaintiffs Noel Van Wagner and Veronica Andrade allege as and for cause of action
25 against Defendants, and each of them, as follows:

26 **PARTIES**

27 1. Plaintiffs Noel Van Wagner and Veronica Andrade are individuals who were
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employed by and performed work for Defendants in Los Angeles County.

2. Defendant Westlake Properties, Inc. (“Westlake”) is a Delaware corporation doing business in Los Angeles County, California.

3. Plaintiffs are informed and believe and, based upon such information and belief, allege that each of the Defendants designated as Does 1 through 25, inclusive, is contractually, intentionally, negligently, legally, or in some manner responsible for the events and occurrences more fully described below and which proximately caused injuries and/or damages to Plaintiffs as alleged. Plaintiffs are unaware of the true names and capacities of those Defendants sued herein as Does 1 through 25, inclusive, and therefore sues such Defendants by fictitious names. Plaintiffs will seek leave to amend this Complaint to set forth the true names and capacities of those Defendants when they have been ascertained.

4. Plaintiffs are informed and believe and, based on such information and belief, allege that at all times mentioned each of the Defendants was the agent and/or employee of the remaining Defendants, and was at all times acting within the scope and purpose of this agency and/or employment and with the consent and permission of the remaining Defendants.

5. Plaintiffs are further informed and believe and, based on such information and belief, allege that at all times relevant hereto that each of the Defendants acted as agent or alter ego of or for the other Defendants such that each is liable for the wrongdoings described herein.

FACTS

6. Westlake operates a resort and spa in Westlake Village, California. On information and belief, Westlake employs more than one hundred employees in California.

7. Ms. Van Wagner was employed by Westlake as a massage therapist from approximately January 2020 to January 2022.

1 8. Ms. Andrade was employed by Westlake as a massage therapist from
2 approximately January 2020 to April 2022.

3 9. During the relevant time period, Westlake scheduled massages back-to-back in a
4 manner that made it impossible for employees, including Plaintiffs, to take timely meal or rest
5 periods. When meal periods were provided, Plaintiffs and other employees were obligated to
6 clock out but continue working in order to prepare their workspaces for the next massage client.
7 This problem was compounded by the fact that employees were required to leave their normal
8 workspace and travel to another building to clock in or out – further eroding their break time.
9 Because of the time slots set for massages, employees often had to cut their meal and/or rest
10 periods short in order to accommodate the next massage client.
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12 10. Because Westlake failed to provide timely meal and rest periods, it owes Plaintiffs
13 and other employees one hour of compensation for each day worked without a timely meal period
14 and one hour of compensation for each day worked with a missed rest period. Westlake failed to
15 pay Plaintiffs and other employees those wages when they were due and failed to pay Plaintiffs
16 and other employees those wages upon termination.
17

18 11. In or around 2021, Westlake implemented a new policy requiring employees to
19 download and use an “app” to verify their own time and access their wage records. The app was
20 difficult to use and no training was provided, despite requests from Plaintiffs and other employees.
21 As a result of Westlake offloading this employer responsibility onto its employees, employees
22 were required to spend additional time working off-the-clock and without compensation in order
23 to learn and use the app, and Plaintiffs and the other employees were required to use their personal
24 mobile phones for work purposes for the benefit of their employer, without reimbursement.
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26 12. On information and belief, this scheduling scheme and new app policy resulted in
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1 employees being paid less than minimum wage and not being paid overtime premiums for work in
2 excess of eight hours per day, forty hours per week, or six days within one workweek.

3 13. During the relevant time period, Westlake failed to provide Plaintiffs and other
4 employees with accurate, itemized wage statements as required by Labor Code §226. On
5 information and belief, Westlake also failed to maintain records of time worked as required by
6 Labor Code §247.5.

8 14. When Ms. Van Wagner complained about these Labor Code violations, Westlake
9 terminated her in retaliation.

11 15. When Ms. Van Wagner's employment ended, Westlake failed to pay her all wages
12 owed at the time of termination. To the extent that other employees also resigned from or were
13 terminated by Westlake during the past year, Westlake willfully failed to pay those employees all
14 wages due upon termination or within 72 hours of said members' resignation.

15 **PAGA ALLEGATIONS**

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17 16. Plaintiffs bring their Tenth Cause of Action in a representative capacity on behalf
18 of the Labor & Workforce Development Agency and their fellow aggrieved employees under the
19 Private Attorney General Act ("PAGA"), and seek to vindicate their rights under the Labor Code
20 as well as those of all other aggrieved current and former employees of Westlaske.

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22 17. The group of aggrieved employees consists of those employees of Westlake
23 working in California at any time since February 2, 2021, and through the date of entry of final
24 judgment or approval of settlement in this matter.

25 18. Plaintiffs sent the PAGA notices attached hereto as Exhibit A to Westlake on
26 February 2, 2022 and February 25, 2022. Plaintiffs allege that by the conduct described herein,
27 Westlake violated Labor Code §§201, 202, 204, 226, 226.7, 510, 512, 558, 1194, 2802, and IWC
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1 Wage Order No. 2-2001 (8 C.C.R. §11020), for which it is subject to civil penalties under PAGA.
2 Sixty-five calendar days have now passed since Plaintiffs gave the LWDA notice of their PAGA
3 claims, and the LWDA has not responded or taken any position as to those claims.
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5 **FIRST CAUSE OF ACTION**

6 **(Whistleblower Retaliation; Violation of Labor Code §1105.2) – Plaintiff Van Wagner**

7 19. Plaintiffs incorporate the allegations above as though they were fully set forth
8 herein.

9 20. As detailed above, Ms. Van Wagner complained to her supervisors about her
10 unlawful treatment at work and Westlake's Labor Code violations. Ms. Van Wagner reasonably
11 believed that the matters she was disclosing constituted violations of state or federal statutes, or
12 violations of or noncompliance with local, state, or federal rules or regulations.
13

14 21. Instead of addressing those concerns, Westlake took retaliatory adverse
15 employment actions against Ms. Van Wagner, including terminating her.
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17 22. Westlake and its principals, officers, directors, and managing agents intended to
18 cause Ms. Van Wagner injury and/or willfully and consciously disregarded her rights. The
19 conduct described above was authorized, ratified, and/or personally committed by Westlake's
20 principals, officers, directors, and/or managing agents.
21

22 23. As a result of Westlake's wrongful conduct, Ms. Van Wagner has suffered, and
23 will continue to suffer, a loss of wages and other employment benefits, a loss of future earning
24 capacity, a loss of emotional tranquility, a loss of enjoyment of life, and a loss of reputation, and
25 has been damaged in an amount to be proved at trial, which amount exceeds the jurisdictional
26 minimum of this court.
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Violation of Labor Code §§226.7, 512, I.W.C. Wage Order No. 2-2001)

25. As set forth above, Westlake routinely scheduled Plaintiffs' massages in such a manner that they could not reasonably take a 30-minute, uninterrupted, off-duty meal period within the first five hours of work.

27. As a proximate result of Westlake's failure to allow Plaintiffs to have timely and uninterrupted meal periods and failure to compensate Plaintiffs for missed meal periods, Plaintiffs have suffered damages in an amount to be proved at trial.

(Failure to Provide Rest Periods;

29. As set forth above, Westlake routinely scheduled Plaintiffs' massages in such a manner that they could not reasonably take 10-minute, uninterrupted, off-duty rest periods within the first five hours of work.

30. On these occasions, Westlake failed to pay Plaintiffs one additional hour of pay at their regular rate of compensation.

1 31. As a proximate result of Westlake's failure to allow Plaintiffs to have timely and
2 uninterrupted meal periods and failure to compensate Plaintiffs for missed meal periods, Plaintiffs
3 have suffered damages in an amount to be proved at trial.

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5 **FOURTH CAUSE OF ACTION**

6 **(Failure to Reimburse Employment-Related Expenses; Violation of Labor Code §2802)**

7 32. Plaintiffs incorporate the allegations above as though they were fully set forth
8 herein.

9 33. As set forth above, Westlake required Plaintiffs to use their personal mobile phones
10 for work purposes.

11 34. Westlake failed to compensate Plaintiffs or the other employees for the expense of
12 purchasing these phones and related monthly plans, despite the fact that they were expenses
13 incurred at the instruction of Westlake and for the benefit of Westlake's business.

14 35. As a result, Plaintiffs have been damaged in an amount to be proved at trial.

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16 **FIFTH CAUSE OF ACTION**

17 **(Failure to Pay Overtime Wages;**

18 **Violation of Labor Code §§510, 1194, I.W.C. Wage Order No. 2-2001)**

19 36. Plaintiffs incorporate the allegations above as though they were fully set forth
20 herein.

21 37. As set forth above, Plaintiffs worked in excess of eight hours a day, forty hours a
22 week, and/or on the seventh consecutive day in a workweek for a rate of pay without any overtime
23 pay.

24 38. Westlake failed to pay Plaintiffs for the overtime hours worked, and failed to pay
25 Plaintiffs any overtime premiums for the overtime hours worked.
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1 **EIGHTH CAUSE OF ACTION**

2 **(Failure to Provide Employment Records;**

3 **Violation of Labor Code §§226, 247.5, 432, and 1198.5)**

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5 45. Plaintiffs incorporate the allegations above as though they were fully set forth
6 herein.

7 46. On January 28, 2022, counsel for Plaintiffs requested Ms. Van Wagner's
8 employment records pursuant to Labor Code §§226, 247.5, 432, and 1198.5. On February 25,
9 2022, counsel for Plaintiffs requested Ms. Andrade's employment records pursuant to Labor Code
10 §§226, 247.5, 432, and 1198.5.

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12 47. Westlake did not respond until March 24, 2022, indicating that it would not
13 produce any employment records without a signed authorization from Plaintiffs. Plaintiff
14 promptly provided Westlake with authorizations from Plaintiffs. Westlake then provide some
15 records that were both untimely and incomplete.

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17 **NINTH CAUSE OF ACTION**

18 **(Unfair Business Practices, Violation of Bus. & Prof. Code §17200)**

19 48. Plaintiffs incorporate the allegations above as though they were fully set forth
20 herein.

21
22 49. Westlake's conduct, as set forth above, violates the California Unfair Competition
23 Law, Bus. & Prof. Code §17200, *et seq.* ("UCL"). Westlake's conduct constitutes unlawful,
24 unfair, or fraudulent business acts or practices in that they willfully fail to pay employees for hours
25 worked, fail to pay overtime wages, fail to provide meal and rest breaks, fail to provide accurate
26 wage statements, fail to reimburse employees for work expenses, the like.

27
28 50. As a result of Westlake's unlawful, unfair, and fraudulent conduct, Plaintiffs have

1 suffered injury in fact.

2 51. Plaintiffs are informed and believe, and on that basis allege, that Westlake
3 continues to engage in the unlawful, unfair, and fraudulent practices as alleged herein, and that it
4 will continue to do so unless enjoined by this court.
5

6 52. Pursuant to Bus. & Prof. Code §17203, Plaintiffs seek declaratory and injunctive
7 relief for Westlake’s unlawful, unfair, and fraudulent conduct, and to recover restitution.
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9 **TENTH CAUSE OF ACTION**

10 **(Violations of the California Labor Code under the Private Attorneys General Act**

11 **(Lab. Code §2699, et seq.))**

12 53. Plaintiffs incorporate the allegations above as though they were fully set forth
13 herein.

14 54. Plaintiffs bring this cause of action in a representative capacity on behalf of the
15 Labor & Workforce Development Agency (“LWDA”) and their fellow aggrieved employees
16 pursuant to the California Private Attorneys General Act (Labor Code §2699, *et seq.*), and seek to
17 vindicate their rights under the Labor Code as well as those of all other aggrieved current and
18 former employees of Westlake.
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20 55. For purposes of this cause of action, the group of aggrieved employees consist of
21 those employees of Westlake working in California (the “Representative Group”) at any time
22 since February 2, 2021, and through the date of entry of final judgment or approval of settlement
23 in this matter (the “Claim Period”).
24

25 56. As set forth above, Westlake has violated Labor Code §§201, 202, 204, 226, 226.7,
26 510, 512, 558, 1194, 2802, and IWC Wage Order No. 2-2001 (8 C.C.R. §11020) with respect to
27 Plaintiffs and the Representative Group, who have been injured as a result of these violations.
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1 57. Plaintiffs seek to recover civil penalties for violations of the Labor Code committed
2 by Westlake against Plaintiffs and all other aggrieved employees as set out in the PAGA notices
3 submitted to the LWDA. True and correct copies of the PAGA notices are attached hereto as
4 Exhibit A, and their contents are incorporated by reference as though expressly set out herein.

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6 58. For the violations of the Labor Code alleged, Plaintiffs and other aggrieved
7 employees have no further administrative remedies to exhaust.

8 59. Plaintiffs have fully complied with notice requirements under PAGA by giving
9 written notice to both the LWDA and Westlake pursuant to Labor Code §2699.3(a)(1)(A), and by
10 paying the filing fee required by subsection (a)(1)(B) of the same.

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12 60. Sixty-five calendar days have now passed since Plaintiffs gave the LWDA notice
13 of their PAGA claims, and the LWDA has not responded or taken any position as to those claims.
14 Accordingly, Plaintiffs now have the right to pursue those claims through a representative civil
15 suit pursuant to Labor Code §2699.3(a)(2)(A).

16
17 61. Plaintiffs have been injured as a direct and proximate result of Westlake's
18 violations of the Labor Code as set out in Exhibit A.

19 62. Pursuant to Labor Code §2699(a) and (f), Plaintiffs accordingly seek to recover
20 civil penalties against Westlake for the specified Labor Code violations against Plaintiffs and all
21 other aggrieved employees.

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23 63. In addition, Plaintiffs seek to recover their reasonable attorneys' fees and costs
24 pursuant to Labor Code §2699(g)(1).

25
26 WHEREFORE, Plaintiffs pray for relief against Westlake as follows:

- 27 1. For damages according to proof at trial;
28 2. For unpaid wages owed;

3. For prejudgment interest on that amount at the legal rate;
4. For one additional hour of pay for each workday that Westlake failed to provide a meal period pursuant to Labor Code Sec. 226.7;
5. For one additional hour of pay for each workday that Westlake failed to provide rest periods pursuant to Labor Code Sec. 226.7;
6. For waiting time penalties pursuant to Labor Code §203;
7. For penalties pursuant to Labor Code §§226 and 1198.5;
8. For reimbursement for work-related expenses incurred by Plaintiff pursuant to Labor Code §2802;
9. For injunctive relief enjoining Westlake from continuing to engage in the unlawful conduct described herein;
10. For costs of suit herein incurred, including attorneys' fees; and
11. For such further relief as the court deems just.

DATED: May 13, 2022

AIMAN-SMITH & MARCY, P.C.



John A. Lofton, Esq.
Attorney for Plaintiffs Noel Van Wagner and
Veronica Andrade