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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CENTRAL DISTRICT

TAMARA BROCK, an individual,
WESLEY BENTON, an individual,
NATALIE HAENA, an individual, MARK
HALL, an individual, JOHN HERSH, an
individual, MARK LARSEN, an individual,
LINDY MARTIN, an individual,
ELIZABETH REPESA, an individual,
MERCEDES TAKETA, an individual
vs.

WESTLAKE SERVICES, LLC, a
corporation, and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 22STCV16900

(Assigned to the Hon. Jon R. Takasugi)

**AMENDED COMPLAINT FOR DAMAGES
AND PAGA PENALTIES**

*(Amended as a matter of right under Lab. Code
§2699.3, subd. (a)(2)(C).)*

1. Expense Reimbursement (Lab. Code §2802);

2. Commission Forfeiture (Lab. Code §221);

3. Unpaid Overtime Wages (Lab. Code §1194);

**4. Unpaid Wages and Civil Penalties (Lab.
Code §558);**

5. Waiting Time Penalties (Lab. Code §203);

6. Unfair Business Practices;

**7. Employment Discrimination on the Basis of
Disability;**

FILED
Superior Court of California
County of Los Angeles

05/26/2023

David W. Slayton, Executive Officer / Clerk of Court

By: J. Shuton Deputy

1 **8. Retaliation; and**

2 **9. PAGA Penalties (Lab. Code §2699 *et seq.*)**

3 **GENERAL ALLEGATIONS**

4 1. Plaintiff TAMARA BROCK is an individual who, at all times relevant herein,
5 resided in or near the County of Los Angeles, State of California.

6 2. Plaintiff WESLEY BENTON is an individual who, at all times relevant herein,
7 resided in or near the County of Los Angeles, State of California.

8 3. Plaintiff NATALIE HAENA is an individual who, at all times relevant herein,
9 resided in or near the County of Los Angeles, State of California.

10 4. Plaintiff MARK HALL is an individual who, at all times relevant herein, resided
11 in or near the County of Los Angeles, State of California.

12 5. Plaintiff JOHN HERSH is an individual who, at all times relevant herein, resided
13 in or near the County of Los Angeles, State of California.

14 6. Plaintiff MARK LARSEN is an individual who, at all times relevant herein,
15 resided in or near the County of Los Angeles, State of California.

16 7. Plaintiff LINDY MARTIN is an individual who, at all times relevant herein,
17 resided in or near the County of Los Angeles, State of California.

18 8. Plaintiff ELIZABETH REPESA is an individual who, at all times relevant herein,
19 resided in or near the County of Los Angeles, State of California.

20 9. Plaintiff MERCEDES TAKETA is an individual who, at all times relevant herein,
21 resided in or near the County of Los Angeles, State of California

22 10. Plaintiffs TAMARA BROCK, WESLEY BENTON, NATALIE HAENA, MARK
23 HALL, JOHN HERSH, MARK LARSEN, LINDY MARTIN, ELIZABETH REPESA, and
24 MERCEDES TAKETA are referred to collectively herein as "Plaintiffs."

25 11. Defendant WESTLAKE SERVICES, LLC. ("WSI" or "Defendant") is a
26 corporation which, at all times relevant herein, did business in and around the State of California,
27 including in or near the City and County of Los Angeles, State of California. WSI employed
28 Plaintiffs TAMARA BROCK, WESLEY BENTON, NATALIE HAENA, MARK HALL, JOHN

1 HERSH, MARK LARSEN, LINDY MARTIN, ELIZABETH REPESA, and MERCEDES
2 TAKETA, and other similarly situated employees in and around the State of California, including
3 in or near the City and County of Los Angeles, State of California.

4 12. According to its website, “[WSI] is the largest privately held finance company in
5 the United States with demonstrated growth year over year. We continue to expand our teams,
6 our diversified business model, and more importantly, we begin to cement our role as a future
7 leader in the automotive industry. [¶] [WSI] is a member of the Hankey Group of Companies and
8 has sister companies and subsidiaries such as: Westlake ALPS, Westlake Flooring, Wilshire
9 Consumer Credit and Western Funding.”

10 13. Also according to its website, “At [WSI], we work hard, but play just as hard.”

11 14. The true names and capacities, whether individual, corporate, associate, or
12 otherwise, of Defendants sued herein as DOES 1 through 50, inclusive, are currently unknown to
13 Plaintiffs, who therefore sue Defendants by such fictitious names. Plaintiffs are informed and
14 believe, and based thereon allege, that each of the Defendants designated herein as a DOE is
15 legally responsible in some manner for the events and happenings referred to herein and caused
16 injury and damage proximately thereby to Plaintiff as hereinafter alleged. Plaintiffs will seek
17 leave of the court to amend this Complaint to reflect the true names and capacities of the
18 Defendants designated hereinafter as DOES when the same have been finally ascertained.

19 15. Whenever in this Complaint reference is made to “Defendants,” such allegations
20 shall be deemed to mean the acts of Defendants acting individually, jointly, and/or severally.

21 16. Plaintiffs are informed and believe and based thereon allege, that at all times
22 mentioned herein, each of the Defendants was the agent, servant, employee, co-venturer, and co-
23 conspirator of each of the remaining Defendants, and was at all times herein mentioned, acting
24 within the course, scope, purpose, consent, knowledge, ratification, and authorization of such
25 agency, employment, joint venture, and conspiracy.

26 17. Plaintiff TAMARA BROCK was employed by Defendants as a Dealer Account
27 Manager who was paid an hourly wage plus commission in or near the City and County of Los
28 Angeles, State of California between August, 2013 and the present.

1 18. Plaintiff WESLEY BENTON was employed by Defendants as a Dealer Account
2 Manager who was paid an hourly wage plus commission in or near the City and County of Los
3 Angeles, State of California between June 3, 2019 and January 1, 2020.

4 19. Plaintiff NATALIE HAENA was employed by Defendants as a Dealer Account
5 Manager who was paid an hourly wage plus commission in or near the City and County of Los
6 Angeles, State of California between September 18, 2019 and October 15, 2021.

7 20. Plaintiff MARK HALL was employed by Defendants as an Outside Sales
8 Representative who was paid an hourly wage plus commission in or near the City and County of
9 Los Angeles, State of California between January 19, 2017 and January 19, 2019.

10 21. Plaintiff JOHN HERSH was employed by Defendants as a Dealer Account
11 Manager who was paid an hourly wage plus commission in or near the City and County of Los
12 Angeles, State of California between October 13, 2014 and June 4, 2021.

13 22. Plaintiff MARK LARSEN was employed by Defendants as a Dealer Account
14 Manager who was paid an hourly wage plus commission in or near the City and County of Los
15 Angeles, State of California between January 14, 2013 and the present.

16 23. Plaintiff LINDY MARTIN was employed by Defendants as a Dealer Account
17 Manager who was paid an hourly wage plus commission in or near the City and County of Los
18 Angeles, State of California between April 8, 2019 and November 8, 2021.

19 24. Plaintiff ELIZABETH REPESA was employed by Defendants as a Dealer
20 Account Manager who was paid an hourly wage plus commission in or near the City and County
21 of Los Angeles, State of California between November 4, 2014 and the present.

22 25. Plaintiff MERCEDES TAKETA was employed by Defendants as a Dealer
23 Account Manager who was paid an hourly wage plus commission in or near the City and County
24 of Los Angeles, State of California between April 7, 2007 and November 10, 2021.

25 26. At all times relevant herein, the hours and working conditions of Plaintiffs
26 TAMARA BROCK, WESLEY BENTON, NATALIE HAENA, MARK HALL, JOHN HERSH,
27 MARK LARSEN, LINDY MARTIN, ELIZABETH REPESA, and MERCEDES TAKETA were
28 governed by Title 8, California Code of Regulations Section 11040, Industrial Welfare

Commission Order No. 2001 Regulating Wages, Hours and Working Conditions in the Professional, Technical, Clerical, Mechanical and Similar Occupations ("Wage Order 4").

27. During their employments with Defendants, the job of Plaintiffs TAMARA BROCK, WESLEY BENTON, NATALIE HAENA, MARK HALL, JOHN HERSH, MARK LARSEN, LINDY MARTIN, ELIZABETH REPESA, and MERCEDES TAKETA was to sell tangible or intangible items or to obtain orders or contracts for products, services or use of facilities.

28. During their employments with Defendants, Plaintiffs TAMARA BROCK, WESLEY BENTON, NATALIE HAENA, MARK HALL, JOHN HERSH, MARK LARSEN, LINDY MARTIN, ELIZABETH REPESA, and MERCEDES TAKETA were required to accrue expenditures in connection with, *inter alia*, driving their own personal vehicles to the various locations at which they sold the tangible or intangible items or to obtained orders or contracts for products, services or use of facilities for Defendants. Defendants reimbursed Plaintiffs TAMARA BROCK, WESLEY BENTON, NATALIE HAENA, MARK HALL, JOHN HERSH, MARK LARSEN, LINDY MARTIN, ELIZABETH REPESA, and MERCEDES TAKETA only a flat rate of \$500.00 per month, which was paid as wages and subject to payroll tax and other withholdings, and which meant that each Plaintiff received less than \$500 per month, for those necessary expenditures.

29. In fact, Plaintiffs TAMARA BROCK, WESLEY BENTON, NATALIE HAENA, MARK HALL, JOHN HERSH, MARK LARSEN, LINDY MARTIN, ELIZABETH REPESA, and MERCEDES TAKETA accrued far more than \$500.00 in necessary expenditures in connection with, *inter alia*, driving their own personal vehicles for work-related reasons.

30. Plaintiffs TAMARA BROCK, WESLEY BENTON, NATALIE HAENA, MARK HALL, JOHN HERSH, MARK LARSEN, LINDY MARTIN, ELIZABETH REPESA, and MERCEDES TAKETA earned a commission for their sales which included a variety of "Penalties" which reduced the commission rate for sales. The "Penalties" had the effect on certain transactions of resulting in a negative commission which was charged back against commissions earned on other, unrelated sales. As such, it amounted to a forfeiture of earned

1 wages.

2 31. Plaintiffs TAMARA BROCK, WESLEY BENTON, NATALIE HAENA, MARK
3 HALL, JOHN HERSH, MARK LARSEN, LINDY MARTIN, ELIZABETH REPESA, and
4 MERCEDES TAKETA regularly worked in excess of eight (8) hours per work day and/or forty
5 (40) in one work week, but Defendants did not pay them one-and-one-half (1-1/2) times their
6 regular hour rate (or double-time hours for hours worked in excess of twelve (12) hours per day).

7 **FIRST CAUSE OF ACTION**

8 **(All Plaintiffs for Expense Reimbursement under Labor Code §2802)**

9 32. Plaintiffs repeat and reallege the allegations contained in the preceding paragraphs
10 and incorporate the same by reference as though fully set forth herein.

11 33. This action is brought by Plaintiffs under Labor Code §2802, which provides
12 employers shall indemnify their employees for all necessary expenditures or losses incurred by
13 the employees in direct consequence of the discharge of their duties or of their obedience to the
14 directions of the employer.

15 34. Plaintiffs were required by Defendants to expend monies in direct consequence of
16 the discharge of their duties or of their obedience to the directions of the employer for items
17 including, but not limited to, costs of driving their own personal vehicles for work-related
18 reasons.

19 35. The monthly pre-tax \$500.00 that Defendants paid to Plaintiffs was not enough to
20 reimburse Plaintiffs fully for the monies expended by them in direct consequence of the
21 discharge of their duties or of their obedience to the directions of the employer for items
22 including, but not limited to, costs of driving their own personal vehicles for work-related
23 reasons

24 36. As a direct and proximate result of Defendants' conduct as alleged above,
25 Plaintiffs have sustained damages in the amount of the monies expended by them in direct
26 consequence of the discharge of their duties or of their obedience to the directions of the
27 employer for items including, but not limited to, costs of driving their own personal vehicles for
28 work-related reasons over and above the monthly pre-tax \$500.00 that Defendants paid to

1 Plaintiffs.

2 **SECOND CAUSE OF ACTION**

3 **(All Plaintiffs for Commission Forfeiture under Labor Code §221)**

4 37. Plaintiffs repeat and reallege the allegations contained in the preceding paragraphs
5 and incorporate the same by reference as though fully set forth herein.

6 38. This action is brought by Plaintiffs under Labor Code §221, which provides, in
7 full: “It shall be unlawful for any employer to collect or receive from an employee any part of
8 wages theretofore paid by said employer to said employee.”

9 39. “Labor Code section 221 and related provisions in sections 222 through 223 were
10 enacted in 1937 in response to secret deductions or ‘kickbacks’ that made it appear as if an
11 employer was paying wages in accordance with an applicable contract or statute, whereas, in fact,
12 the employer was paying less.” (Hudgins v. Neiman Marcus Grp., Inc. (1995) 34 Cal.App.4th
13 1109, 1118, citing Kerr’s Catering Serv. v. Dep’t of Indus. Relations (1952) 57 Cal.2d. 319, 328.)
14 The California Court of Appeal has observed, moreover, that these statutory provisions are
15 directed at cases where “the underpayment of wages is a secret being kept from applicable
16 enforcement authorities – i.e., the Labor Commissioner, the employee’s union, or a contracting
17 party -- not from the employees themselves, who presumably are well aware of how much they
18 are paid.” (Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1205, citations omitted).

19 40. The inclusion of a variety of “Penalties” in Plaintiffs’ commission rates had the
20 effect on certain transactions of resulting in a negative commission which was charged back
21 against commissions earned on other, unrelated sales. As such, it amounted to a forfeiture of
22 earned wages.

23 41. As a direct and proximate result of Defendants’ conduct as alleged above,
24 Plaintiffs have sustained damages in the amount of the negative commissions which were
25 charged back against commissions earned on other, unrelated sales.

26 **THIRD CAUSE OF ACTION**

27 **(All Plaintiffs for Unpaid Overtime Wages under Labor Code §1194)**

28 42. Plaintiffs repeat and reallege the allegations contained in the preceding paragraphs

1 and incorporate the same by reference as though fully set forth herein.

2 43. This action is brought by Plaintiffs under Labor Code §1194, which provides that
3 any employee receiving less than the legal overtime compensation applicable to the employee is
4 entitled to recover in a civil action the unpaid balance of the full amount of this overtime
5 compensation, including interest thereon, reasonable attorney's fees, and costs of suit. This
6 action is also brought under Labor Code §515 and Section 3(A) of Wage Order 4, which requires
7 employers to pay employees one-and-one-half (1-1/2) times the regular hour rate for all those
8 hours worked in excess of forty (40) hours in one work week and/or in excess of eight (8) in one
9 work day, and two (2) times the regular rate of pay for hours worked in excess of twelve (12)
10 hours per day, unless such employees are exempt from the requirements of Wage Order 4.

11 44. During their employment with Defendants, Plaintiffs worked excess of forty (40)
12 hours in one work week and/or in excess of eight (8) in one work day but did not receive one-
13 and-one-half (1-1/2) times the regular hour rate for all those hours worked in excess of forty (40)
14 hours in one work week and/or in excess of eight (8) in one work day, and two (2) times the
15 regular rate of pay for hours worked in excess of twelve (12) hours per day.

16 45. Wage Order 4, §1(C) provides that Wage Order 4 does not apply to "outside
17 salespersons."

18 46. Wage Order 4, §2(M) defines an "outside salesperson" as a person "who
19 customarily and regularly works more than half the working time away from the employer's
20 place of business selling tangible or intangible items or obtaining orders or contracts for
21 products, services or use of facilities."

22 47. During certain pay periods, Plaintiffs did not work more than half their working
23 time away from the employer's place of business selling tangible or intangible items or obtaining
24 orders or contracts for products, services or use of facilities.

25 48. Accordingly, Plaintiffs were subject to the requirement to be paid overtime wages
26 under Section 3(D) of Wage Order 4.

27 49. As a direct and proximate result of Defendants' conduct as alleged above,
28 Plaintiffs have sustained damages in the amount of the unpaid legal overtime wage for all

1 overtime hours they worked.

2 **FOURTH CAUSE OF ACTION**

3 **(All Plaintiffs for Unpaid Wages and Civil Penalties under Labor Code §558)**

4 50. Plaintiffs repeat and reallege the allegations contained in the preceding paragraphs
5 and incorporate the same by reference as though fully set forth herein.

6 51. This action is brought Plaintiffs under Labor Code §558, which provides,

7 “Any employer or other person acting on behalf of an employer who
8 violates, or causes to be violated, a section of this chapter or any provision
9 regulating hours and days of work in any order of the Industrial Welfare
Commission shall be subject to a civil penalty as follows:

10 “(1) For any initial violation, fifty dollars (\$50) for each underpaid
11 employee for each pay period for which the employee was underpaid in addition
to an amount sufficient to recover underpaid wages.

12 “(2) For each subsequent violation, one hundred dollars (\$100) for each
13 underpaid employee for each pay period for which the employee was underpaid in
addition to an amount sufficient to recover underpaid wages.”

14 52. Plaintiffs were underpaid wages as a result of the violations of the California
15 Labor Code and Wage Order 4 as alleged in the First through Third Causes of Action, above.

16 53. As a direct and proximate result of Defendants’ conduct as alleged above,
17 Plaintiffs are entitled to a civil penalty of fifty dollars (\$50) for the initial pay period, and one
18 hundred dollars (\$100) for each subsequent pay period for which Defendants violated the
19 California Labor Code and Wage Order 4 as alleged in the First through Third Causes of Action,
20 above.

21 54. As a further direct and proximate result of Defendants’ conduct as alleged above,
22 Plaintiffs have sustained damages in the amount of their unpaid expense reimbursements and
23 commission and overtime wages.

24 **FIFTH CAUSE OF ACTION**

25 **(WESLEY BENTON, NATALIE HAENA, MARK HALL, JOHN HERSH,
26 LINDY MARTIN, and MERCEDES TAKETA for Violation of Labor Code §203)**

27 55. Plaintiffs repeat and reallege the allegations contained in the preceding paragraphs
28 and incorporate the same by reference as though fully set forth herein.

1
2 56. This action is brought under Labor Code §203, which, at all times relevant herein,
3 provided that if an employer willfully fails to pay any wages of an employee who is discharged or
4 quits, the wages of such employee shall continue as from the due date thereof at the same rate
5 until paid or until an action therefor is commenced, for not more than 30 days.

6 57. More than thirty days have past since Plaintiffs were discharged or quit their
7 employment with Defendants.

8 58. As a result of Defendants' willful conduct in not paying the minimum prevailing
9 wages to which Plaintiffs were entitled, Plaintiffs are entitled to thirty days wages as penalty
10 wages under Labor Code §203 together with interest thereon and attorney's fees and costs.

11 **SIXTH CAUSE OF ACTION**

12 **(All Plaintiffs for Unfair Business Practices)**

13 59. Plaintiffs repeat and reallege the allegations contained in the preceding paragraphs
14 and incorporate the same by reference as though fully set forth herein.

15 60. Plaintiffs bring this action for themselves and on behalf of the People of the State
16 of California under the provisions of the Business & Professions Code §§17200 *et seq.* Among
17 the persons adversely affected the unfair business practices of Defendants as alleged herein are
18 all Defendants' employees who did not receive lawful expense reimbursement and commission
19 and overtime wages.

20 61. A representative action pursuant to Business & Professions Code §§17200, 17203
21 and 17204 on behalf of the general public is appropriate and necessary because Defendants did
22 not pay lawful expense reimbursement and commission and overtime wages as a general
23 business practice contrary to the law of the State of California.

24 62. Business & Professions Code §§17200 *et seq.* defines unfair competition to
25 include any "unfair," "unlawful," or "deceptive" business practice. Business & Professions Code
26 §§17200 *et seq.* provides for injunctive and restitutionary relief for violations. Defendants'
27 failure to pay lawful expense reimbursement and commission and overtime wages constitutes an
28 unfair, unlawful and deceptive business practice.

1
2 63. As a direct and proximate result of Defendants' conduct as alleged herein,
3 Plaintiffs have been damaged in the amount of the sum of all unpaid lawful expense
4 reimbursement and commission and overtime wages to which they were entitled. Under Business
5 & Professions Code §§17200 and 17203, Plaintiffs and current and former employees of
6 Defendants are entitled to restitution of all lawful expense reimbursement and commission and
7 overtime wages wrongfully withheld by Defendants, together with interest thereon.

8 64. Under Business & Professions Code §17203, Plaintiffs seeks on their own behalf
9 and on behalf of the People of the State of California an order enjoining Defendants from
10 continuing its aforesaid unlawful practices. Injunctive relief is appropriate to avoid a multiplicity
11 of suits for continuing violations of Business & Professions Code §§17200 *et seq.*

12 **SEVENTH CAUSE OF ACTION**

13 **(WESLEY BENTON for Employment Discrimination on the Basis of Disability)**

14 65. WESLEY BENTON repeats and realleges the allegations contained in the
15 preceding paragraphs and incorporate the same by reference as though fully set forth herein.

16 66. This cause of action is brought pursuant to the California Fair Employment and
17 Housing Act ("FEHA"), Government Code §12940, subdivision (a), which prohibits the
18 discrimination against a person in the terms, conditions, or privilege of employment on the basis
19 of a person's association with a person with a disability, and the corresponding regulations of the
20 California Fair Employment and Housing Commission. (See Castro-Ramirez v. Dependable
21 Highway Express, Inc. (2016) 2 Cal.App.5th 1028, 1037 ("[in] the associational discrimination
22 context, the 'disability' from which the plaintiff suffers is his or her association with a disabled
23 person."))

24 67. At all times relevant herein, Defendants regularly employed five or more persons,
25 bringing Defendants within the provisions of the FEHA prohibiting employers or their agents
26 from discriminating against employees on the basis of disability.

27 68. On or about December 27, 2022, WESLEY BENTON filed a complaint of
28 discrimination on the basis of disability in employment with the California Department of Fair

1 Employment and Housing (“DFEH”). On or about January 27, 2022, WESLEY BENTON filed
2 an amended complaint of discrimination on the basis of disability in employment with the
3 California DFEH.

4 69. On or about January 27, 2022, the DFEH issued its Notice of Right-to-Sue
5 authorizing the filing of a lawsuit, and WESLEY BENTON timely filed this action. WESLEY
6 BENTON has therefore exhausted his available administrative remedies and timely filed this
7 action within the prescribed period following issuance of the Notice of Right-to-Sue.

8 70. In or around October, 2019, WESLEY BENTON’s mother had back surgery and
9 moved in with him, causing WESLEY BENTON to associate with her and to request
10 accommodations on her behalf.

11 71. WESLEY BENTON is informed and believes and based thereon alleges that
12 Defendants regarded WESLEY BENTON as having, or associating with a person having, a
13 physical disability. WESLEY BENTON has or associated with, or is considered by Defendants
14 as having or associating with a person with, a “physical disability,” as that term is used in
15 Government Code §§12926, subdivision (m) and 12940, subdivision (a), because WESLEY
16 BENTON’s mother’s back impairment affected her neurological, immunological,
17 musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular,
18 reproductive, digestive, genitourinary, hemic and lymphatic, skin, and/or endocrine systems and
19 limits her ability to participate in major life activities.

20 72. WESLEY BENTON is informed and believes and based thereon alleges that his
21 association with a person having physical disability and/or the fact that Defendants regarded him
22 as associating with a person with a physical disability was a motivating factor in Defendants’
23 treatment.

24 73. The conduct of Defendants, and each of them, as alleged in this Complaint,
25 constitutes an unlawful employment practice under Government Code §12940, subdivision (a).

26 74. As a direct and proximate result of the discriminatory conduct of Defendants, and
27 each of them, as alleged herein, WESLEY BENTON has suffered and continues to suffer
28 substantial losses in earnings and job benefits, and has suffered extreme and severe mental

1 anguish and emotional distress of the sort naturally associated with employment discrimination
2 based on disability. WESLEY BENTON is thereby entitled to special, general, and compensatory
3 damages in an amount in excess of \$50,000.00, to be proven at the time of trial.

4 75. The outrageous conduct of Defendants, and each of them, as described herein, was
5 willful and done with fraud, oppression, and malice and with a conscious disregard for WESLEY
6 BENTON's right to be free from discrimination on the basis of a person's disability and with the
7 intent, design, and purpose of injuring Plaintiff. Defendants, and each of them, authorized,
8 condoned, and ratified the unlawful conduct by failing to take immediate and appropriate
9 corrective action. By reason thereof, WESLEY BENTON is entitled to punitive and exemplary
10 damages from Defendants, and each of them, in an amount appropriate to punish and make an
11 example of Defendants.

12 **EIGHTH CAUSE OF ACTION**
13 **(WESLEY BENTON for Retaliation)**

14 76. WESLEY BENTON repeats and realleges the allegations in the foregoing
15 paragraphs and incorporates the same by reference as though fully set forth herein.

16 77. This cause of action is brought under California Government Code §12940,
17 subdivision (m)(2), which prohibits retaliation against a person because that person has requested
18 an accommodation.

19 78. WESLEY BENTON is informed and believes and based thereon alleges that his
20 termination of employment was substantially motivated by his requests for accommodations as
21 discussed above.

22 79. As a direct and proximate result of the discriminatory conduct of Defendants, and
23 each of them, WESLEY BENTON has suffered and continues to suffer substantial losses in
24 earnings and job benefits, and extreme and severe mental anguish and emotional distress of the
25 sort naturally associated with retaliation and wrongful termination in employment.

26 80. The outrageous conduct of Defendants, and each of them, as described herein, was
27 willful and done with fraud, oppression, and malice and with a conscious disregard for WESLEY
28 BENTON's right to request accommodation and with the intent, design, and purpose of injuring

1 WESLEY BENTON. Defendants, and each of them, authorized, condoned, and ratified the
2 unlawful conduct by failing to take immediate and appropriate corrective action. By reason
3 thereof, WESLEY BENTON is entitled to punitive and exemplary damages from Defendants,
4 and each of them, in an amount appropriate to punish and make an example of Defendants.

5 **NINTH CAUSE OF ACTION**

6 **(MARK LARSEN and ELIZABETH REPESA for PAGA Penalties)**

7 81. MARK LARSEN and ELIZABETH REPESA repeat and reallege the allegations
8 contained in the preceding paragraphs and incorporate the same by reference as though fully set
9 forth herein.

10 82. On or about March 16, 2023, Plaintiffs MARK LARSEN and ELIZABETH
11 REPESA provided written notice by certified mail to the Labor and Workforce Development
12 Agency ("LWDA") and Defendants of the specific violations of the California Labor Code that
13 Defendants have violated and continue to violate, including the facts and theories that supported
14 each alleged violation.

15 83. To date, the LWDA has not sent notice to any Plaintiff that it intended to
16 investigate the alleged violations.

17 84. Accordingly, Plaintiffs MARK LARSEN and ELIZABETH REPESA have
18 exhausted all administrative procedures required of them under Labor Code §§2698, 2699 and
19 2699.3, and as a result, are justified as a matter of right in bringing forward this cause of action.

20 85. As a result of the acts alleged above, Plaintiffs MARK LARSEN and
21 ELIZABETH REPESA seek penalties under Labor Code §§ 2698 and 2699 because of
22 Defendants' violation of numerous provisions of the California Labor Code.

23 86. Plaintiffs MARK LARSEN and ELIZABETH REPESA seek penalties for
24 Defendants' conduct as alleged herein as permitted by law. Specifically, Plaintiffs MARK
25 LARSEN and ELIZABETH REPESA seek penalties under Labor Code §2699, for the following:

- 26 a. Defendants' failure to comply with the requirement of Labor Code §§201 and 202
27 to pay wages due to employees;
28 b. Defendants' failure to comply with the requirement of Labor Code §203 to pay

1 waiting time penalties to former employees;

2 c. Defendants' failure to comply with the requirement of Labor Code §216 to pay
3 wages to employees after demand was made by Plaintiff;

4 d. Defendants' failure to comply with the requirement of Labor Code §221 to refrain
5 from collecting or receiving back wages paid to employees;

6 e. Defendants' failure to comply with the requirement of Labor Code § 515 to pay
7 the appropriate overtime wage rate for all overtime hours worked to employees;

8 f. Defendants' failure to comply with the requirement of Labor Code §1194 to pay
9 the appropriate overtime wage rate for all overtime hours worked to employees;
10 and,

11 g. Defendants' failure to comply with the requirement of Labor Code §2802 to
12 reimburse employees for expenses discharged in the performance of their duties.

13 87. Under Labor Code §2699, Plaintiffs are entitled to \$100 for any initial violation
14 and \$200 for all subsequent violations of the above-mentioned provisions of the California Labor
15 Code.

16 88. Under Labor Code §2699, Plaintiffs should be awarded twenty-five percent (25%)
17 of all penalties due under California law, interest, attorneys' fees and costs.

18 89. Under Labor Code §2699, the State of California should be awarded seventy-five
19 percent (75%) of the penalties due under California law.

20 **PRAYER FOR RELIEF**

21 **WHEREFORE**, Plaintiffs prays for judgment as follows:

22 1. For reimbursement of all expenses incurred in direct consequence of the
23 discharge of their duties or of their obedience to the directions of the employer according to
24 proof, together with interest thereon;

25 2. For forfeited commission wages, according to proof, together with interest
26 thereon;

27 3. For unpaid overtime wages, according to proof, together with interest thereon;

28 4. For a penalty of fifty dollars (\$50) for the first period for which Defendants

1 underpaid Plaintiffs and one hundred dollars (\$100) for each subsequent pay period for which
2 Defendants underpaid Plaintiffs plus an amount equal to the unpaid and underpaid wages, under
3 Labor Code §558, according to proof, together with interest thereon;

4 5. For special, general, and compensatory damages, including lost wages and
5 benefits, and emotional distress damages, in excess of \$50,000.00, according to proof;

6 6. For punitive damages in an amount sufficient to punish Defendants for the
7 wrongful conduct alleged herein and to deter such conduct in future.

8 7. For penalties under Labor Code §2699;

9 8. For an order enjoining Defendants from continuing to engage in the
10 aforementioned unlawful business practice in violation of California Business & Professions
11 Code §17200;

12 9. For interest under Labor Code §§218.6, 226, and 1194;

13 10. For attorneys' fees, expenses and costs under Labor Code §§ 218.5, 1194, 2699,
14 2802, and/or Code of Civil Procedure §1021.5; and,

15 11. For such other and further relief as the Court deems just and proper.
16

17 DATED: May 26, 2023

James H. Cordes and Associates,

[ELECTRONICALLY SIGNED; CRC RULE 2.257]

19 /s/ *James H. Cordes*

20 James H. Cordes, Esq.

Attorney for Plaintiffs

21 TAMARA BROCK, NATALIE HAENA,
22 MARK HALL, JOHN HERSH, MARK
23 LARSEN, LINDY MARTIN, ELIZABETH
24 REPESA, and MERCEDES TAKETA
25
26
27
28

1 **PROOF OF SERVICE**

2 I am over the age of 18 years, and not a party to the cause. My business address is 831
3 State Street, Suite 205, Santa Barbara, California 93101.

4 On May 26, 2023 I delivered the following document(s):

5 **AMENDED COMPLAINT FOR DAMAGES AND PAGA PENALTIES**

6 in a sealed envelope to the addressee(s) as follows:

7 Eugene Ryu, Esq.
8 Penny Chen Fox, Esq.
9 K&L GATES LLP
10 10100 Santa Monica Blvd. 8th Floor
11 Los Angeles, CA 90067
12 *Gene.Ryu@klgates.com*
13 *Penny.Fox@klgates.com*

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14 Timothy B. Sottile, Esq.
15 Michael F. Baltaxe, Esq.
16 Sottile/Baltaxe
17 4360 Park Terrace Drive, Suite 140
18 Westlake Village, California 91361
19 *tsottile@sottilebaltaxe.com*
20 *mbaltaxe@sottilebaltaxe.com*

21 **By Personal Service.** I personally delivered the documents to the person(s) listed
22 above by delivery to the attorney or at the attorney's office by leaving the documents in an
23 envelope or package clearly labeled to identify the attorney being served with a receptionist or an
24 individual in charge of the office.

25 **By United States Mail.** I enclosed the documents in a sealed envelope or
26 package addressed to the person(s) listed above and placed the envelope for collection and
27 mailing, following our ordinary business practices. I am readily familiar with this business'
28 practice for collecting and processing correspondence for mailing. On the same day that
correspondence is placed for collection and mailing, it is deposited in the ordinary course of
business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I
am a resident or employed in the county where the mailing occurred. The envelope or package
was placed in the mail at Santa Barbara, California.

XXX By E-mail or Electronic Transmission. Based on a court order or an agreement
of the parties to accept service by e-mail or electronic transmission, I caused the documents to be
sent to the person(s) at the e-mail addresses listed above. I did not receive, within a reasonable
time after the transmission, any electronic message or other indication that the transmission
was unsuccessful.

I certify and declare under penalty of perjury under the laws of the State of California that
the foregoing is true and correct. Executed May 26, 2023 at Santa Barbara, California.

[ELECTRONICALLY SIGNED; CRC RULE 2.257]

/s/ *James H. Cordes*

JAMES H. CORDES