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JOSEPHINE GEORGE

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO – UNLIMITED CIVIL

JOSEPHINE GEORGE, on behalf of herself
and others similarly situated,

Plaintiffs,

vs.

EVENTPRO SERVICES, LLC D/B/A
KAABOO-DEL MAR, LLC FORMERLY
KNOWN AS KAABOO-SAN DIEGO, a
corporation, THE MADISON
COMPANIES, LLC, a corporation,
VIRGIN FEST, LLC, a corporation, AND
DOES 1-100,

Defendants.

Case No.: 37-2020-00018421-CU-OE-CTL

CLASS ACTION COMPLAINT

1. **Failure to Pay Minimum Wage [Cal. Lab. Code §§ 1194, 1197 and IWC Wage Order 9-2001];**
2. **Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226];**
3. **Failure to Provide Rest and Meal Periods [Cal. Lab. Code §§ 226.7, 512 and IWC Wage Order 9-2001];**
4. **Failure to Timely Pay Final Wages [Cal. Lab. Code §§ 201-203];**
5. **Failure to Timely Pay Wages [Cal. Lab. Code §§ 204, 210];**
6. **Failure to Reimburse Necessary Expenditures [Cal. Lab. Code §§ 2802, 2804];**
7. **Engaging in Unfair Competition [Cal. Bus. & Prof. Code §§ 17200, *et seq.*]; and**
8. **Violations of the Private Attorney General Act [Cal. Lab. Code §§ 2698, 2699]**

[JURY TRIAL DEMANDED]

Plaintiff, JOSEPHINE GEORGE (“PLAINTIFF”), on behalf of herself and all others similarly situated (“PLAINTIFFS”), brings this action against Defendants, EVENTPRO SERVICES, LLC D/B/A KAABOO-DEL MAR, LLC FORMERLY KNOWN AS KAABOO-SAN DIEGO, THE MADISON COMPANIES, LLC, VIRGIN FEST, LLC, (collectively “DEFENDANTS” or “KAABOO”) and DOES 1 through 100, and alleges, upon information and belief, except as to her own actions, the investigation of her counsel, and the facts that are a matter of public record, as follows:

INTRODUCTION

1. PLAINTIFF brings this action to obtain damages and restitution, as well as injunctive and other relief, individually and on behalf of a proposed class defined below (“CLASS”).

2. This Class Action Complaint is brought on behalf of individuals who work or have worked for DEFENDANTS as “Street Team Members” and were improperly classified as independent contractors rather than employees in violation of California law.

3. KAABOO produces music, comedy, art and culinary festivals and concerts, which have grown increasingly popular in recent years.

4. KAABOO holds itself out as an “[a]n adult escape, uniquely curated to appeal to all five of your senses, with world-class music, hilarious comedy, inspiring contemporary art, gourmet cuisine, and craft libations.”¹

5. PLAINTIFFS consist of current and former Street Team Members employed by DEFENDANTS to promote KAABOO’s festivals and concerts.

6. PLAINTIFF’s responsibility, among others, was to promote KAABOO by handing out flyers at restaurants, bars, university campuses, stores or other local establishments, as well events such as concerts or sporting events.

7. PLAINTIFFS are located all across California.

8. As described more fully below, PLAINTIFF is a former Street Team Member who was improperly misclassified as an independent contractor.

9. Because of PLAINTIFFS’ misclassification as independent contractors, DEFENDANTS have unlawfully required each and every one of them to pay business expenses (including expenses to maintain and fuel their vehicles, as well as phone/data expenses) in violation of Cal. Lab. Code §§ 2802 and 2804 and have also failed to pay required minimum wage

¹ <https://www.kaaboosd.com>

for all hours worked in violation of Cal. Lab. Code §§ 1182.12, 1194, 1194.1, 1197, 1198 and the Industrial Welfare Commission Wage Order 9-2001.

10. DEFENDANTS' actions have also violated Cal. Lab. Code §§ 226.7, 512 and the Industrial Welfare Commission Wage Order 9-2001 by failing to provide rest and meal periods to PLAINTIFFS; Cal. Lab. Code §§ 204, 210 for failure to timely pay wages; Cal. Lab. Code § 226 for failure to provide accurate itemized wage statements; Cal. Lab. Code §§ 201-203 for failure to timely pay final wages; Cal. Bus. & Prof. Code §§ 17200, *et seq.* by engaging in unfair competition; and the Private Attorney General Act ("PAGA"), pursuant to Cal. Lab. Code §§ 2698, 2699.

11. PLAINTIFF seeks actual and/or compensatory damages, civil penalties, restitution, equitable relief, costs and expenses of litigation, including attorneys' fees, and all additional and further relief that may be available and that the Court may deem appropriate and just under the circumstances.

JURISDICTION AND VENUE

12. Venue is proper because the actions and injuries giving rise to this Class Action Complaint took place in the County of San Diego, State of California, and because DEFENDANTS and/or DOES 1-100 conduct business in San Diego County.

13. Personal jurisdiction is proper because the events that injured PLAINTIFF occurred in the City of San Diego, County of San Diego, and State of California.

PARTIES

14. PLAINTIFF is and at all times relevant herein was, a resident of Chula Vista, California, where she has worked for KAABOO as a Street Team Member in Southern California, including the San Diego area.

15. PLAINTIFF brings this action on her own behalf and on behalf of all others similarly situated, namely all other individuals who are currently or formerly employed by KAABOO as Street Team Members in California.

16. Defendant Eventpro Services, LLC d/b/a KAABOO-Del Mar, LLC formerly known as KAABOO-San Diego is a Delaware corporation with its principal place of business located in Greenwood Village, Colorado. Eventpro Services, LLC d/b/a KAABOO-Del Mar, LLC formerly known as KAABOO-San Diego maintains substantial ongoing business operations throughout California, including San Diego County and is in the business of producing music, food, and comedy festivals, including but not limited to, KAABOO San Diego.

17. Defendant The Madison Companies, LLC is a Delaware corporation with its principal place of business located in Greenwood Village, Colorado. The Madison Companies, LLC maintains substantial ongoing business operations throughout California, including San Diego County and is in the business of producing music, food, and comedy festivals, including but not limited to, KAABOO San Diego

18. Defendant Virgin Fest, LLC is a Delaware corporation with its principal place of business located in Winter Park, Florida. Virgin Fest, LLC maintains substantial ongoing business operations throughout California, including San Diego County and is in the business of producing music, food, and comedy festivals, including but not limited to, KAABOO San Diego.

DOE DEFENDANTS

19. The true names and capacities of DOES 1 through 100, inclusive, are unknown to PLAINTIFF who sue Defendants by use of such fictitious names. PLAINTIFF will amend this Class Action Complaint to add the true names when they are ascertained. PLAINTIFF is informed and believes and thereon alleges that each of the fictitiously named defendants is legally responsible for the occurrences herein alleged, and that PLAINTIFF's damages as herein alleged were proximately caused by their conduct.

ALTER EGO/JOINT EMPLOYER ALLEGATIONS

20. At all times mentioned herein, DEFENDANTS and DOES 1 through 100 were acting as an individual, corporate, affiliate, employer, employee, supervisor, agency, associate aider and abettor and/or alter ego of each remaining DEFENDANTS, and were acting with permission and consent of each other, and within the course and scope of said agency and/or employment and personally participated in the conduct alleged herein on behalf of the defendant with respect to the conduct alleged herein. Consequently, the acts of each defendant are legally attributable to the other defendants, and all defendants are jointly and severally liable to PLAINTIFFS for the loss sustained as a proximate result of the conduct of the defendants' agents, servants and/or employees. On information and belief, DEFENDANTS and DOES 1 through 100, and each of them, acted as joint employers, alter egos, and an integrated enterprise, and jointly exercised control over the employment practices alleged herein. On information and belief, DEFENDANTS and DOES 1 through 100, by and through their officers, directors or managing agents, ratified, authorized and approved, expressly or impliedly, all of the conduct alleged hereinafter.

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1 **FACTUAL ALLEGATIONS**

2 21. KAABOO produces music, comedy, art and culinary festivals and concerts, which
3 have grown increasingly popular each year.

4 22. By way of example, KAABOO is producing a three-day event at Petco Park in San
5 Diego, California from September 18, 2020 to September 20, 2020. The last edition of the lineup
6 included the following musicians: Kings of Leon, Mumford & Sons, Wu-Tang Clan, Snoop Dogg,
Duran Duran, Dave Matthews Band, The Black Eyed Peas, OneRepublic and Sheryl Crow.²

7 23. PLAINTIFF was hired by DEFENDANTS in or around March 2018 to promote
8 KAABOO as a “Street Team Member”. PLAINTIFF ceased to work for DEFENDANTS on or
9 about September 5, 2019.

10 24. DEFENDANTS classify its Street Team Members like PLAINTIFF as
11 “independent contractors,” but under California law, they should be classified as employees.

12 25. Street Team Members perform visibility and networking activities for KAABOO,
including but not limited to:

- 13 a. Interacting with guests while informing them about the festival;
14 b. Answering questions about KAABOO’s events;
15 c. Assisting KAABOO with email acquisition;
16 d. Selling passes to KAABOO events;
17 e. Handing out flyers and other promotional items;
18 f. Promoting KAABOO in a positive light; and
g. Loading/setting up and taking down of each event.

19 26. In essence, PLAINTIFF’s responsibility was to promote KAABOO by handing out
20 flyers, created by DEFENDANTS, at restaurants, bars, university campuses, stores or other local
21 establishments, as well events such as concerts or sporting events, including but not limited to,
22 beer festivals, the San Diego County Fair, the San Diego Pride Festival, the Rock N’ Roll
Marathon, etc.

23 27. PLAINTIFF was also required to sell passes to KAABOO’s events using a
24 KAABOO owned iPad.

25 28. On average, PLAINTIFF worked approximately six (6) hours on each day she was
26 required to promote KAABOO’s events.

27 _____
28 ² <https://www.festicket.com/festivals/kaaboo-del-mar/>

29. As compensation, DEFENDANTS promised to pay PLAINTIFF the total sum of \$12.00 / per hour.

30. At all relevant times, DEFENDANTS exerted control over PLAINTIFF in a manner consistent with an employer-employee relationship, including but not limited to, directing PLAINTIFF to specific locations to promote KAABOO, controlling her wages, enforcing a specific code of conduct and generally controlling the means, manner, and method by which she performed her work.

31. At all relevant times, DEFENDANTS directed PLAINTIFF precisely when and where she was to perform these promotional activities, how she was to interact with potential concertgoers, and, among others, required PLAINTIFF to wear clothing bearing DEFENDANTS' insignia.

32. At all relevant times, PLAINTIFF was assigned this work by DEFENDANTS, through its coordinators.

33. On a typical workday, PLAINTIFF received a text message from KAABOO directing PLAINTIFF to drive to a specific location where she would be required to set up a tent and interact with individuals in order to drive up sales of KAABOO's festivals and concerts.

34. PLAINTIFF did not have any role or discretion in determining the manner of executing her duties and/or the timing or scope of her work.

35. At all relevant times, PLAINTIFF was not permitted to distribute flyers and informational materials in a location and/or event of her choosing.

36. Additionally, PLAINTIFF was not allowed to add to, delete from or modify any materials provided by DEFENDANTS.

37. Notwithstanding the foregoing, at all times during her employment with DEFENDANTS, PLAINTIFF was misclassified as an independent contractor by DEFENDANTS, and was in fact an employee of DEFENDANTS, and suffered actual economic harm as a consequence of this misclassification.

38. By misclassifying PLAINTIFF as an independent contractor, DEFENDANTS were able to avoid the significant responsibilities associated with the employer/employee relationship, including, expense reimbursements, provision of worker's compensation insurance, payment of state and federal taxes, and other benefits.

39. At all relevant times, PLAINTIFFS' worked numerous hours without any compensation or for compensation below the applicable minimum wage rate.

40. PLAINTIFF was required to bear many of the expenses of her employment, including expenses for her vehicles, gas, and other expenses. DEFENDANTS also required PLAINTIFF to use her own smart phone and data from her personal cell phone service plan as a condition of her work in order to receive and carry out her job duties as directed by DEFENDANTS' coordinators. DEFENDANTS did not reimburse PLAINTIFF for these work-related expenses.

41. DEFENDANTS failed to provide PLAINTIFF with itemized wage statements.

42. DEFENDANTS did not maintain any policy to provide PLAINTIFF with at least one 30-minute, uninterrupted, off-duty meal break for each continuous work period of at least five (5) hours.

43. Nor did DEFENDANTS maintain any policy that authorized or permitted PLAINTIFF to take off-duty rest breaks of at least 10-minutes for each four (4) hours of work, or major fraction thereof.

44. California law require payment of all earned wages immediately at the time of termination of employment, except upon resignation with less than 72 hours of notice to the employer all earned wages must then be paid within 72 hours of resignation. Despite these legal obligations, DEFENDANTS failed to pay all earned wages to PLAINTIFF at the time of termination.

45. At all relevant times, California Labor Code § 204 was in full force and effect and required DEFENDANTS to pay to PLAINTIFF all earned wages at least twice each month on days designated as regular paydays. Despite this legal obligation, DEFENDANTS failed to pay PLAINTIFF all earned wages in accordance with California Labor Code § 204. Rather, PLAINTIFF was required to submit a detailed invoice showing dates worked, hours worked on each date and name of event worked to DEFENDANTS. Each invoice was to be paid within thirty (30) days after DEFENDANTS received such invoice. On many occasions, however, DEFENDANTS failed to compensate PLAINTIFF in a timely manner or at all.

46. In misclassifying PLAINTIFF as an independent contractor and failing to pay PLAINTIFF wages and compensation due to her, as well as by committing the numerous other violations detailed above and further below, DEFENDANTS, by and through its officers, directors and/or managing agents, acted with malice, oppression and or conscious disregard for the statutory and/or other rights of PLAINTIFF.

47. Upon hire, PLAINTIFF was required to sign an "Independent Contractor Agreement" as part of her employment with KAABOO.

48. Under California law, however, “[t]he label placed by the parties on their relationship is not dispositive.” *S.G. Borello & Sons, Inc. v. Department of Industrial Relations*, 48 Cal. 3d 341, 349 (1989).

49. Further, on April 30, 2018, the California Supreme Court adopted its decision in *Dynamex Operations W. v. Superior Court*, which makes it clear that PLAINTIFF should have been classified as an employee rather than as an independent contractor under California law for purposes of wage-and-hour statutes like the ones at issue here. 4 Cal. 5th 903, 955-56.

50. Under the “ABC” test adopted in *Dynamex*, in order to justify classifying PLAINTIFF as an independent contractor, KAABOO would have to prove the following, which it cannot do: (a) that the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of such work and in fact; (b) that the worker performs work that is outside the usual course of the hiring entity’s business; and (c) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed. *Id.* at 955.

51. At all relevant times, KAABOO exerted control over PLAINTIFFS in a manner consistent with an employer-employee relationship.

52. At all relevant times, PLAINTIFFS services are fully integrated into KAABOO’s business and PLAINTIFFS are not typically engaged in their own promotional business.

53. As a result, KAABOO cannot meet all three of the conditions set forth in *Dynamex*.

54. Further, on September 18, 2019, California governor Gavin Newsom signed into law AB 5, codifying *Dynamex*. Under AB 5, which took effect on January 1, 2020, PLAINTIFFS will be considered to be employees of KAABOO unless it can show that the work PLAINTIFFS perform meets the “ABC test” set forth in *Dynamex*, which, as mentioned above, KAABOO cannot do so.

55. Based on the aforementioned conduct, PLAINTIFFS contend that KAABOO misclassified them as independent contractors rather than employees and, in doing so, violated several California statutes.

CLASS ACTION ALLEGATIONS

56. PLAINTIFF brings this class action pursuant to Code of Civil Procedure, Section 382, on behalf of herself and the following CLASS:

All former and current persons hired to promote KAABOO as “Street Team Members” in California for or on behalf of EVENTPRO SERVICES, LLC D/B/A KAABOO-DEL MAR, LLC FORMERLY KNOWN AS KAABOO-SAN DIEGO,

THE MADISON COMPANIES, LLC, and/or VIRGIN FEST, LLC dating back four (4) years from the date of filing of this action through the date of trial.

57. PLAINTIFF reserves the right to amend this CLASS definition if discovery and/or further investigation demonstrate that the CLASS should be expanded or otherwise modified.

58. The members of the CLASS are so numerous that joinder of all members would be impracticable.

59. Common questions of law and fact regarding DEFENDANTS' conduct in classifying Street Team Members as independent contractors, rather than employees, exist as to all members of the CLASS and predominate over any questions affecting solely any individual member of the CLASS. Among the questions of law and fact common to the CLASS are:

- a. Whether CLASS member have been required to follow uniform procedures and policies regarding their work for DEFENDANTS;
- b. Whether the work performed by the CLASS members in promoting KAABOO is within its usual course of business;
- c. Whether CLASS members are customarily engaged in their own promoting business or whether they wear the "gear" of DEFENDANTS when performing promotional services;
- d. Whether the CLASS members are free from the control and direction of DEFENDANTS in connection with promoting KAABOO, both under its "Independent Contractor Agreement" or in fact;
- e. Whether DEFENDANTS failed to reimburse the CLASS members for expenses incurred during the course of their employment as required by California law;
- f. Whether DEFENDANTS failed to pay the CLASS members minimum wage as required by California law;
- g. Whether DEFENDANTS provided CLASS members with accurate wage statements as required by California law;
- h. Whether DEFENDANTS timely paid final wages to the CLASS members as required by California law;
- i. Whether DEFENDANTS provided the CLASS members with rest and meal periods as required by California law;
- j. Whether DEFENDANTS provided the CLASS members all wages due and owing in a timely manner as required by California law;

1 k. Whether DEFENDANTS' conduct violates Section 17200 of the Business and Professions Code;

2 l. Whether DEFENDANTS conduct otherwise violates California law; and/or

3 m. Whether, as a result of DEFENDANTS misconduct, the CLASS members are
4 entitled to damages, restitution, equitable relief and/or other damages and relief,
5 and, if so, the amount and nature of such relief.

6 60. PLAINTIFF's claims are typical of the claims of the members of the CLASS as she
7 worked as a Street Team Member for DEFENDANTS in California throughout 2018 and 2019.

8 61. PLAINTIFF has no interests antagonistic to those of the Class and is not subject to
9 any unique defenses.

10 62. PLAINTIFF will fairly and adequately protect the interests of all members of the
11 CLASS and has retained attorneys experienced in class actions and complex litigation.

12 63. A class action is superior to all other available methods for the fair and efficient
13 adjudication of this controversy for, *inter alia*, the following reasons:

- 14 a. It is economically impractical for members of the CLASS to prosecute
15 individual actions;
- 16 b. The CLASS is readily definable;
- 17 c. Prosecution as a class action will eliminate the possibility of repetitious
18 litigation;
- 19 d. A class action will enable claims to be handled in an orderly and expeditious
20 manner; and
- 21 e. PLAINTIFF does not anticipate any difficulty in the management of this
22 litigation.

23 CAUSES OF ACTION

24 **FIRST CAUSE OF ACTION**

25 **Failure to Pay Minimum Wages [Cal. Lab. Code §§ 1194, 1197 and Wage Order No. 9- 26 2001] (Against All DEFENDANTS and DOE Defendants)**

27 64. PLAINTIFF hereby realleges and incorporates by reference all paragraphs above
28 as if set forth in detail herein.

65. During the course of PLAINTIFF's employment, DEFENDANTS failed to pay
PLAINTIFF and the CLASS members' the state required minimum wage in violation of Cal. Lab.
Code § 1194.2 and Wage Order No. 9-2001.

66. PLAINTIFFS' worked numerous hours without any compensation at all or for compensation below the applicable minimum wage rate.

67. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and members of the CLASS have suffered damages in amount to be determined at trial.

68. Pursuant to Cal. Lab. Code §§ 1194 and 1194.2, PLAINTIFF and members of the CLASS are entitled to recover unpaid minimum wage, interest thereon, liquidated damages in the amount of their unpaid minimum wages, and attorneys' fees and costs.

SECOND CAUSE OF ACTION

Failure to Provide Accurate Wage Statements [Cal. Lab. Code § 226]

(Against All DEFENDANTS and DOE Defendants)

69. PLAINTIFF hereby realleges and incorporates by reference all paragraphs above as if set forth in detail herein.

70. During the course of PLAINTIFF's employment, DEFENDANTS failed to provide PLAINTIFF and members of the CLASS with statutorily compliant itemized wage statements in violation of Cal. Lab. Code § 226.

71. As a result of DEFENDANTS' willful failure to provide PLAINTIFF and members of the CLASS with accurate itemized wage statements, PLAINTIFF and members of the CLASS are entitled to recover damages and penalties pursuant to Cal. Lab. Code § 226(e).

THIRD CAUSE OF ACTION

Failure to Provide Rest and Meal Periods [Cal. Lab. Code §§ 226.7, 512 and Wage Order

No. 9-2001] (Against All DEFENDANTS and DOE Defendants)

72. PLAINTIFF hereby realleges and incorporates the above allegations by reference as if set forth fully herein.

73. PLAINTIFFS were not allowed to take a duty-free thirty (30) minute meal periods, or rest periods, as stated herein.

74. Despite working an average of six (6) hours per day worked, PLAINTIFF was not allowed to take a meal and/or rest period.

75. As a result, DEFENDANTS are liable to PLAINTIFF and the CLASS for premium compensation of one (1) hour of pay at the employees' regular rate for each workday that meal and rest periods were not authorized or permitted pursuant to Cal. Lab. Code § 226.7, in a total amount to be determined at trial.

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FOURTH CAUSE OF ACTION

Failure to Pay Final Wages [Cal. Lab. Code §§ 201-203]

(Against All DEFENDANTS and DOE Defendants)

76. PLAINTIFF hereby realleges and incorporates the above allegations by reference as if set forth fully herein.

77. DEFENDANTS failed to pay PLAINTIFF and members of the CLASS all wages earned and owed at the time of termination, or within the required time following a notice of resignation.

78. In addition to such other damages as may properly be recovered herein; PLAINTIFF and members of the CLASS are entitled to recover waiting time penalties pursuant to Cal. Lab. Code § 203.

79. In addition to such other damages as may properly be recovered herein, PLAINTIFF and the CLASS members are entitled to recover prevailing party attorneys' fees, costs and interest pursuant to Cal. Lab. Code §§ 218.5 and 218.6.

FIFTH CAUSE OF ACTION

Failure to Pay Wages on Regularly Scheduled Paydays [Cal. Lab. Code §§ 204, 210]

(Against All DEFENDANTS and DOE Defendants)

80. PLAINTIFF hereby realleges and incorporates the above allegations by reference as if set forth fully herein.

81. At all relevant times, California Labor Code § 204 was in force and effect and required DEFENDANTS to pay to PLAINTIFF and the CLASS members all earned wages on the regularly scheduled paydays.

82. DEFENDANTS violated Cal. Lab. Code § 204 by failing to pay all earned wages within the time periods required by Cal. Lab. Code § 204.

83. Instead, PLAINTIFF was required to submit a detailed invoice showing dates worked, hours worked on each date and name of event worked to DEFENDANTS. Each invoice was to be paid within thirty (30) days after DEFENDANTS received such invoice. On many occasions, however, DEFENDANTS failed to pay PLAINTIFF her wages in a timely manner or at all.

84. PLAINTIFFS have suffered injury as a result of DEFENDANTS' violations of California Labor Code § 204.

85. As a result of DEFENDANTS' violations alleged herein, PLAINTIFFS are entitled to recover penalties under Cal. Lab. Code § 204, to other legal and equitable remedies available under law, and to all statutory and civil penalties resulting therefrom.

SIXTH CAUSE OF ACTION

Failure to Reimburse for Business Expenses [Cal. Lab. Code §§ 2802 & 2804 *et seq.* and Wage Order No. 9-2001] (Against All DEFENDANTS and DOE Defendants)

86. PLAINTIFF hereby realleges and incorporates the above allegations by reference as if set forth fully herein.

87. Pursuant to Cal. Lab. Code §§ 2802 and 2804, *et seq.*, and Wage Order No. 9-2001, an employer must indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.

88. DEFENDANTS violated these requirements by requiring PLAINTIFF and members of the CLASS to make expenditures required for work and failed to indemnify and reimburse PLAINTIFFS as required by law.

89. DEFENDANTS failed and refused to reimburse all necessary business expenses by, *inter alia*, engaging in the following actions: requiring PLAINTIFFS to pay out of their own pockets for the expenses incurred in the course and scope of their employment (e.g., for cell phones and other required business expenses). PLAINTIFFS have thus been damaged in an amount according to proof at the time of trial.

90. As a result of DEFENDANTS' violations, PLAINTIFFS are entitled to reimbursement of the incurred expenses pursuant to Labor Code §§ 224 and 2802, as well as attorneys' fees and costs and all civil penalties available as a result of such conduct.

SEVENTH CAUSE OF ACTION

For Unlawful, Unfair and Deceptive Business Practices [Cal. Bus. and Prof. Code §§ 17200, *et seq.*] (Against All DEFENDANTS and DOE Defendants)

91. PLAINTIFF hereby realleges and incorporates the above allegations by reference as if set forth fully herein.

92. PLAINTIFF brings this cause of action on behalf of herself and on behalf of the CLASS.

93. DEFENDANTS have engaged in unfair, unlawful, and fraudulent business practices as set forth above and further below.

94. By engaging in the above-described acts and practices, DEFENDANTS have committed one or more acts of unfair competition within the meaning of Section 17200. These

acts and practices constitute a continuing and ongoing unfair, unlawful and/or fraudulent business activity defined by the Unfair Competition Law (“UCL”), and justify the issuance of an injunction, restitution, and other equitable relief pursuant to the UCL.

“Unlawful” Prong

95. DEFENDANTS committed acts of “unlawful” business practices within the meaning of Bus. & Prof. Code §§ 17200, *et seq.* by misclassifying PLAINTIFFS as independent contractors rather than employees in violation of California law.

96. DEFENDANTS have unlawfully treated PLAINTIFFS as independent contractors to avoid timely payment of minimum wages and other benefits in violation of, *inter alia*, the Labor Code, the Civil Code, and the applicable IWC Orders.

97. In addition, DEFENDANTS have wrongly and illegally failed to compensate PLAINTIFFS for work-related expenses including but not limited to gas, vehicle maintenance services, and smartphone data packages.

98. DEFENDANTS’ conduct in misclassifying PLAINTIFFS and failing to pay wages for hours worked was unlawful within the meaning of the UCL because it was against California law, including but not limited to, the Labor Code, the Civil Code, and the applicable IWC Orders.

99. As a direct and proximate result of the DEFENDANTS’ above alleged conduct, PLAINTIFF and members of the CLASS incurred damages.

“Unfair” Prong

100. DEFENDANTS committed acts of unfair business practices within the meaning of Bus. & Prof. Code §§ 17200, *et seq.* by misclassifying PLAINTIFFS as independent contractors rather than employees.

101. DEFENDANTS have unfairly treated PLAINTIFFS as independent contractors to avoid timely payment of minimum wages and other benefits in violation of, *inter alia*, the Labor Code, the Civil Code, and the applicable IWC Orders.

102. In addition, DEFENDANTS have wrongly, illegally, and unfairly failed to compensate PLAINTIFFS for work-related expenses including but not limited to gas, vehicle maintenance services, and smartphone data packages.

103. For reasons discussed above, among others, DEFENDANTS’ conduct in misclassifying PLAINTIFFS and failing to pay wages for hours worked was unfair within the meaning of the UCL.

104. As a direct and proximate result of the DEFENDANTS’ above alleged conduct, PLAINTIFF and members of the CLASS incurred damages.

“Fraudulent” Prong

105. DEFENDANTS engaged in “fraudulent” business practices by misclassifying PLAINTIFFS as independent contractors rather than employees.

106. DEFENDANTS have fraudulently treated PLAINTIFFS as independent contractors to avoid payment of minimum wages and other benefits in violation of, *inter alia*, the Labor Code, the Civil Code, and the applicable IWC Orders.

107. DEFENDANTS fraudulently failed to compensate PLAINTIFFS for work-related expenses including but not limited to gas, vehicle maintenance services, and smartphone data packages.

108. The conduct of DEFENDANTS is contrary to the public welfare as it transgresses civil statutes of the State of California designed to protect workers from exploitation.

109. DEFENDANTS’ conduct in misclassifying PLAINTIFFS and failing to pay wages for hours worked was unlawful, unfair, and fraudulent within the meaning of the UCL because it was against established public policy and has been pursued to attain an unjustified monetary advantage for DEFENDANTS by creating personal disadvantage and hardship to its employees. As such, DEFENDANTS business practices and acts have been immoral, unethical, oppressive and unscrupulous.

110. The injury to PLAINTIFFS as a result of DEFENDANTS’ conduct is far greater than any alleged countervailing benefit.

111. As a direct and proximate result of the DEFENDANTS’ above alleged conduct, PLAINTIFF and members of the CLASS incurred damages.

112. By and through its unfair, unlawful, and fraudulent business practices and acts described herein, DEFENDANTS have obtained valuable services from PLAINTIFFS and have deprived PLAINTIFFS of valuable rights and benefits guaranteed by law, all to their detriment.

113. PLAINTIFF seeks an order of this Court awarding restitution, disgorgement, injunctive relief and all other relief allowed under the UCL, including interest and attorneys’ fees pursuant to, *inter alia*, Cal. Code of Civ. Proc. § 1021.5.

EIGHT CAUSE OF ACTION

Violation of the Private Attorney General Act [Cal. Lab. Code §§ 2698, 2699]

(Against All DEFENDANTS and DOE Defendants)

114. PLAINTIFF hereby realleges and incorporates the above allegations by reference as if set forth fully herein.

115. PLAINTIFF brings this cause of action on behalf of herself and on behalf of the
1 CLASS.

2 116. At all times relevant herein, Cal Lab. Code § 2698 was applicable to PLAINTIFF's
3 employment by DEFENDANTS.

4 117. PLAINTIFF has satisfied the jurisdictional prerequisites for an action under Cal.
5 Lab. Code §§ 2699, *et seq.* ("PAGA") in that on January 30, 2020, she gave notice to the Labor
6 and Workforce Development Agency ("LWDA") and DEFENDANTS by certified mail that
7 DEFENDANTS were in violation of certain sections of the Labor Code.

8 118. The Labor Commissioner provided no notice within sixty 60 calendar days of the
9 postmark date of PLAINTIFF's notice that it intended to investigate the alleged violations.

10 119. Therefore, PLAINTIFF has satisfied the requirements of Cal Lab. Code § 2699.3
11 and may recover civil penalties for DEFENDANTS' violations of Cal Lab. Code §§ 1182.12,
12 1194, 1194.1, 1197, 1198, 226, 226.7, 512, 204, 210, 201-203, 2802, 2804, and the applicable
13 Industrial Wage Order(s).

14 120. PLAINTIFF's LWDA Letter is attached hereto as **Exhibit "A"**.

15 121. Pursuant to Cal Lab. Code §§ 2699(f) and (g), PLAINTIFF is entitled to recover
16 civil penalties in the amount of one hundred dollars (\$100) for each aggrieved employee per pay
17 period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per
18 pay period for each subsequent violation, plus costs and attorneys' fees for DEFENDANTS'
19 violations of Cal Lab. Code §§ 1182.12, 1194, 1194.1, 1197, 1198, 226, 226.7, 512, 204, 210, 201-
20 203, 2802, 2804, and the applicable Industrial Wage Order(s).

21 **PRAYER FOR RELIEF**

22 WHEREFORE, PLAINTIFFS, pray for judgment against DEFENDANTS as follows:

- 23 A. An order certifying this case as a class action and appointing PLAINTIFF and her
24 counsel to represent the CLASS;
- 25 B. For actual and compensatory damages according to proof pursuant to the Labor Code,
26 applicable IWC Orders and all other applicable laws and regulations;
- 27 C. For restitution and disgorgement to the extent permitted by applicable law;
- 28 D. For an order enjoining DEFENDANTS from continuing to engage in the conduct
described herein;
- E. For civil and statutory penalties available under applicable law;
- F. For pre-judgment and post-judgment interest;
- G. For an award of attorneys' fees, costs and expenses as authorized by applicable law;

- H. Actual, consequential, and incidental losses and damages, according to proof;
I. For liquidated damages;
J. For injunctive relief; and
K. For such other and further relief as this Court may deem just and proper.

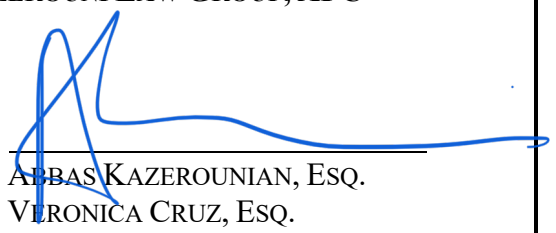
JURY DEMAND

122. PLAINTIFF demands a trial by jury on all causes of action as set forth herein.

Dated: June 2, 2020

Respectfully submitted,

KAZEROUNI LAW GROUP, APC

By: 

ABBAS KAZEROUNIAN, ESQ.

VERONICA CRUZ, ESQ.

ATTORNEYS FOR PLAINTIFFS

Exhibit A



245 Fischer Avenue, Unit D1
Costa Mesa, CA 92626
Telephone: (800) 400-6808
Facsimile: (800) 520-5523
www.kazlg.com

January 30, 2020

Via Electronic Filing Only

Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Via Certified First-Class Mail Only

Eventpro Services, LLC d/b/a KAABOO-Del Mar, LLC currently known as KAABOO-San Diego
5619 DTC Parkway, Suite 800
Greenwood Village, CO 80111

The Madison Companies, LLC
5619 DTC Parkway, Suite 800
Greenwood Village, CO 80111

Virgin Fest, LLC
270 West New England Avenue
Winter Park, FL 32789

Via Certified First-Class Mail Only

CSC – Lawyers Incorporating Service
C/O: Eventro Services, LLC d/b/a KAABOO-Del Mar, LLC currently known as KAABOO-San Diego
C/O: Virgin Fest, LLC
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

CSC – Lawyers Incorporating Service
C/O: The Madison Companies, LLC
1900 W. Littleton Boulevard,
Littleton, CO 80120

RE: ***Josephine George v. Eventpro Services, LLC d/b/a KAABOO-Del Mar, LLC currently known as KAABOO-San Diego, The Madison Companies, LLC, and Virgin Fest, LLC***

To Whom It May Concern:

Please be advised that this office has been retained to represent Josephine George with respect to her employment claims for violations of: (1) Cal. Lab. Code §§ 1182.12, 1194, 1194.1, 1197, 1198 and Industrial Welfare Commission Wage Order 9-2001 for failure to pay minimum

wage; (2) Cal. Lab. Code § 226 for failure to provide accurate itemized wage statements; (3) Cal. Lab. Code §§ 226.7, 512 and Industrial Welfare Commission Wage Order 9-2001 by failing to provide rest and meal periods; (4) Cal. Lab. Code §§ 204, 210 for failure to timely pay wages; (5) Cal. Lab. Code §§ 201-203 for failure to timely pay final wages; (6) Cal. Lab. Code §§ 2802 & 2804 for failure to reimburse for all necessary expenditures and losses incurred in the performance of job-related duties; (7) Cal. Bus. & Prof. Code §§ 17200, *et seq.* by engaging in unfair competition; and (8) Plaintiffs also seek to hold KAABOO's owners, directors, officers, and managing agents personally liable for KAABOO's legal violations under Cal. Lab. Code §§ 226.8 and 2753(a).

I am writing on behalf of Josephine George, individually, and on behalf of all other aggrieved employees (collectively "Plaintiffs"), who are either former or current Street Team Members of Eventpro Services, LLC d/b/a KAABOO-Del Mar, LLC currently known as KAABOO-San Diego, The Madison Companies, LLC, and Virgin Fest, LLC (hereinafter collectively referred to as the "Company" or "KAABOO").

Plaintiffs allege that KAABOO has misclassified them as independent contractors and, in doing so, has violated the aforementioned California statutes.

Pursuant to Labor Code § 2699.3, this letter constitutes written notice of the Company's various Labor Code violations and of our intent to recover statutory penalties under the Private Attorneys General Act of 2004. A copy of this letter is concurrently being sent to the Company via certified first-class mail. Payment of the required fee will be sent under separate cover.

The Company engaged in the aforementioned Labor Code violations, based on the following facts and theories to support each violation:

KAABOO considers itself an upscale music, comedy, art and culinary festival, which has grown increasingly popular each year.

Plaintiffs consist of employees hired to promote KAABOO as "Street Team Members". Street Team Members perform visibility and networking activities for KAABOO, including but not limited to, interacting with guests while informing them about the festival, answering questions about the event, email acquisition, selling passes to the event, handing out flyers and other promotional items, and loading/setting up and taking down of each event. In essence, Plaintiffs responsibility is to promote KAABOO by handing out flyers at restaurants, bars, university campuses, stores or other local establishments, as well events such as concerts or sporting events. Plaintiffs are located in San Diego, Orange County, Los Angeles, and surrounding areas.

Plaintiffs are required to sign "Independent Contractor Agreements" as part of their employment with KAABOO. Under California law, "[t]he label placed by the parties on their relationship is not dispositive." *S.G. Borello & Sons, Inc. v. Department of Industrial Relations*, 48 Cal. 3d 341, 349 (1989). On April 30, 2018, the California Supreme Court adopted its decision in *Dynamex Operations W. v. Superior Court*, which makes it clear that Plaintiffs should be classified as employees rather than as independent contractors under California law for

purposes of wage-and-hour statutes like the ones at issue here. 4 Cal. 5th 903, 955-56. Under the “ABC” test adopted in *Dynamex*, in order to justify classifying Plaintiffs as independent contractors, KAABOO would have to prove the following, which it cannot do:

- A. That the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of such work and in fact;
- B. That the worker performs work that is outside the usual course of the hiring entity's business; and
- C. That the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.

Dynamex, 4 Cal. 5th at 955. At all relevant times, KAABOO exerted control over Plaintiffs in a manner consistent with an employer-employee relationship, including but not limited to, directing Plaintiffs to specific locations for promotional purposes, controlling their wages, enforcing a specific code of conduct and generally controlling the means, manner, and method by which they perform their work. Clearly, KAABOO cannot meet all three of the conditions set forth in *Dynamex*.

Further, on September 18, 2019, California governor Gavin Newsom signed into law AB 5, codifying *Dynamex*. Under AB 5, which took effect January 1, 2020, Plaintiffs will be considered to be employees of KAABOO unless it can show the work they perform meets the “ABC test” set forth in *Dynamex*, which, as mentioned above, KAABOO cannot do so.

Based on the aforementioned conduct, Plaintiffs contend that KAABOO misclassified them as independent contractors rather than employees and, in doing so, violated the following California statutes:

A. Cal. Lab. Code §§ 1182.12, 1194, 1194.1, 1197, 1198 and Industrial Welfare Commission Wage Order 9-2001 for Failure to Pay Minimum Wage

It is illegal for California employers to pay employees less than the minimum wage. Cal. Lab. Code § 1197. As of January 1, 2019, California’s minimum wage rate for employers of 26 or more is \$12.00 per hour; and will be increased to \$13.00 per hour on January 1, 2020, with an increase of \$1.00 every year thereafter until it reaches \$15.00 per hour in 2022. Cal. Lab. C. § 1182.12.

Some cities in California impose an even higher minimum wage on employers for each hour worked within the city’s geographic boundaries. For example, the City of Los Angeles minimum wage rate is \$13.25 per hour for employers with 25 or fewer employees and \$14.25 per hour where there are 26 or more employees.

Damages for minimum wage violations are calculated by determining the difference between the amount the minimum wage requirements guarantee and the total amount of wages and other credits received on a weekly basis. Therefore, Plaintiffs are entitled to an amount equal

to the difference between what they were actually paid for the period in question and what they should have been paid for that period.

B. Cal. Lab. Code § 226 for Failure to Provide Accurate Itemized Wage Statements

KAABOO failed to provide Plaintiffs with accurate wage records of pay indicating the hours worked and/or the wages paid for the hours worked. KAABOO's conduct in failing to provide itemized wage statements, as required by California state law, violates California Labor Code § 226(a). Pursuant to California Labor Code § 226.7, Plaintiffs are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and are entitled to an award of costs and reasonable attorney's fees.

C. Cal. Lab. Code §§ 226.7, 512 and Industrial Welfare Commission Wage Order 9-2001 by Failing to Provide Rest and Meal Periods

Plaintiffs were not properly provided with meal or rest periods as required by California Labor Code §§ 226.7 and 512. KAABOO has required and continues to expect Plaintiffs to work for periods of more than 5 hours per day with no provision of a meal period of at least 30 minutes and for periods of more than 10 hours per day with no provision of a second meal period of at least 30 minutes. KAABOO also requires Plaintiffs to work for periods of more than 4 hours per day with no provision of a rest period of at least 10 minutes.

As a result of KAABOO's conduct, Plaintiffs are entitled to an additional hour of pay for every day that Plaintiffs were not provided meal or rest breaks pursuant to California Labor Code § 226.7.

D. Cal. Lab. Code §§ 201 - 203 for Failure to Timely Pay Final Wages

KAABOO failed to pay Plaintiffs all wages earned and owed at the time of termination, or within the required time following a notice of resignation. Based on the foregoing conduct, Plaintiffs who have been terminated or resigned are entitled to recover waiting time penalties pursuant to California Labor Code § 203. The waiting time penalty is equal to the amount of the employee's daily rate of pay for each day the wages remain unpaid, up to a maximum of 30 days. *Id.*

E. Cal. Lab. Code §§ 204, 210 for Failure to Timely Pay Wages

Under California law, all employers have a legal obligation to pay employees the entire amount of wages they have earned and to pay these wages on time. *See* Cal. Lab. Code § 204. Every person who fails to pay the wages of each employee, shall be subject to a penalty as follows: (1) for any initial violation, one hundred dollars (\$100) for each failure to pay each employee and (2) for each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld. Cal. Lab. Code § 210.

F. Cal. Lab. Code §§ 2802 & 2804 for Failure to Reimburse for All Necessary Expenditures and Losses Incurred in the Performance of Job-Related Duties

KAABOO's conduct in misclassifying Plaintiffs as independent contractors, and failing to reimburse them for expenses they paid that should have been borne by KAABOO, constitutes a violation of California Labor Code § 2802. This law is intended to prevent employers from passing their operating expenses on to their employees, which is precisely what KAABOO does.

As employees, Plaintiffs would be entitled to the protections of California Labor Code § 2802, which requires that employees be reimbursed for expenses such as gas and cell phone bills. In California, when an employer requires its employees to use their personal cell phones for work, California law requires the employer to pay some reasonable percentage of the employees' cell phone bills. *See Cochran v. Schwan's Home Serv., Inc.*, B247160, 2014 WL 3965240, at *4 (Cal. Ct. App. Aug. 12, 2014). To be entitled to reimbursement, an employee need not have changed her or his personal cell phone plan or incurred overage charges to accommodate work-related use; the employer's obligation to reimburse applies even if the employee incurred no extra expense. *Id.* An employer must pay a reasonable percentage of the employee's cell phone bills even if the employee does not actually pay her cell phone bill, and even when an employee has a plan providing for unlimited calls, texts, and data. *Id.*

Throughout their employment, KAABOO failed to reimburse Plaintiffs for all necessary expenditures incurred in the performance of job related duties. In failing to do so, KAABOO has violated California Labor Code § 2802. As a result, Plaintiffs are entitled to reimbursement of all incurred expenses, as well as attorney's fees and costs.

G. Cal. Bus. & Prof. Code §§ 17200, *et seq.* by Engaging in Unfair Competition

By engaging in the above described acts and practices, KAABOO has committed one or more acts of unfair competition within the meaning of Cal. Bus. & Prof. Code §§ 17200, *et seq.* ("UCL"). These acts and practices constitute a continuing and ongoing unfair and unlawful business activity as defined by the UCL. As a result, Plaintiffs have suffered injury in fact and lost money and property, including, but not limited to, lost wages.

Pursuant to California Business and Professions Code § 17203, Plaintiffs seek to recover restitution. Pursuant to California Code of Civil Procedure § 1021.5, Plaintiffs are also entitled to recover reasonable attorneys' fees, costs, and expenses.

H. Plaintiffs also Seeks to Hold KAABOO's Owners, Directors, Officers, and Managing Agents Personally Liable for KAABOO's Legal Violations under Cal. Lab. Code §§ 226.8 and 2753(a)

Lastly, Plaintiffs seek to hold KAABOO's owners, directors, officers and managing agents personally liable for KAABOO's legal violations. By misclassifying Plaintiffs as independent contractors rather than employees, KAABOO deprives Plaintiffs of the various benefits they are entitled to under the law. The decision to improperly classify Plaintiffs as

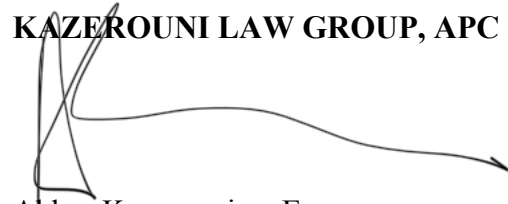
independent contractors is made by KAABOO's owners, directors, officers, and managing agents. Those individuals should be held personally liable for KAABOO's legal violations.

Accordingly, Plaintiffs respectfully request that the Labor & Workforce Development Agency ("LWDA") initiate an enforcement action with respect to the aforementioned violations. If the LWDA declines to pursue enforcement, Plaintiffs fully intend to pursue these claims for statutory penalties on behalf of themselves and all other current and former employees similarly situated in a Superior Court action.

Thank you for your time and attention to this matter. Please do not hesitate to contact my office should you have any additional questions or concerns.

Regards,

KAZEROUNI LAW GROUP, APC

A handwritten signature in dark ink, appearing to read 'Abbas Kazerounian', is written over the firm name. The signature is stylized with a large, sweeping initial 'A' and a long horizontal stroke extending to the right.

Abbas Kazerounian, Esq.
Email: ak@kazlg.com