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December 18, 2020

BY U.S. EMAIL/ELECTRONIC SUBMISSION
PAGAfilings@dir.ca.gov
State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

Re: PRODUCTIONS PLUS, INC.
CM-766624-20

Dear Representative:

We hereby amend our January 13, 2020 letter sent to your office in compliance with the reporting requirements of California Labor Code section 2699.3. A true and correct copy of the January 13, 2020 letter is attached to this submission as **Exhibit A** for reference. We are amending that notice to include additional factual allegations.

We have been retained to represent Fred Dresch against Productions Plus, Inc. (including any and all affiliates, subsidiaries, and parents, and their shareholders, officers, directors, and employees), individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1, and DOES 11-20[1] for violations of California wage-and-hour laws (hereinafter collectively referred to as "PPI").

Mr. Dresch is pursuing his California Labor Code section 2698, *et seq*., the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Mr. Dresch may seek penalties and wages for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Productions Plus, Inc. is a Michigan corporation headquartered at 30600 Telegraph Road, Suite 2156, Bingham Farms, Michigan 48025.

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[1] Mr. Dresch does not know the true names or capacities, whether individual, partner or corporate, of DOES 1 through 20, inclusive, and for that reason, said DOES are designated under such fictitious names. Mr. Dresch will amend this notice when the true names and capacities are known. Mr. Dresch is informed and believes that each DOE was responsible in some way for the matters alleged herein and proximately caused Mr. Dresch and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

PPI employed Mr. Dresch as an hourly-paid, non-exempt Product Ambassador within one year of the date of the January 13, 2020 letter (until in or about 2020) in the State of California. PPI directly controlled the wages, hours and working conditions of Mr. Dresch's employment.

The "aggrieved employees" that Mr. Dresch may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees and independent contractors of PPI within the State of California.

PPI failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to issue compliant wage statements, and failed to reimburse for all necessary business-related costs and expenses, thus resulting in other Labor Code violations as stated below.

PPI misclassified other aggrieved employees (including brand ambassadors, product specialists models, or other occupations that are in the fields of advertising, art, entertainment, radio, television, theater, promotional endeavors and others related fields of endeavor) as independent contractors, despite PPI: (a) setting their assignment locations and schedules; (b) mandating they report receipt of any assignment offers from PPI's clients; (c) providing them mandatory job training; (d) retaining the right to terminate their relationship at-will or without cause; and (e) requiring compliance with any policies and procedures required by PPI and/or its clients. Consequently, PPI failed to properly pay misclassified aggrieved employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to issue compliant wage statements and failed to reimburse for all necessary business-related costs and expenses, thus resulting in other Labor Code violations as stated below.

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Moreover, in ***Dynamex Operations W. v. Super. Ct.***, 4 Cal. 5th 903 (2018), the California Supreme Court adopted the three-part "ABC" test used in many other jurisdictions to decide whether a worker is a covered employee or rather an independent contractor. Under the ABC test, a worker is presumed to be an employee, unless the hiring entity establishes each of the following: "(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 the work and in fact; and (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***, supra, 4 Cal.5th at p. 957. On September 19, 2019, Governor Gavin Newsom signed AB5, which codifies the California Supreme Court's holding in ***Dynamex*** and adopts an "ABC" test to determine whether a worker is classified as an "employee" for purposes of California's Labor Code and wage orders. PPI misclassified independent contractors under the ABC test because they were performing promotional work that falls within the usual course of PPI's business and were not operating as independently established business.

Pursuant to ***Huff v. Securitas Security Services***, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Mr. Dresch has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at PPI, regardless of their classification, job title, location, or whether they were hired directly or through a staffing agency.

PPI has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double-time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates.

During the relevant time period, PPI misclassified aggrieved employees as independent contractors and failed to compensate them overtime for work performed in excess of 8 hours in a day and/or 40 hours in a week.

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During the relevant time period, Mr. Dresch and other non-exempt aggrieved employees regularly worked in excess of 8 hours in a day and 40 hours in a week. PPI failed to compensate Mr. Dresch and other non-exempt aggrieved employees for all hours worked and performing work off-the-clock, including pre- and post-shift, while traveling to assignments, and during training sessions and meal breaks. Additionally, PPI failed to factor non-discretionary bonuses and incentives in non-exempt aggrieved employees' regular rate of pay for purposes of overtime compensation. Therefore, Mr. Dresch and other non-exempt aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided.

During the relevant time period, PPI misclassified aggrieved employees as independent contractors and failed to provide them legally mandated meal and rest breaks.

During the relevant time period, PPI failed to inform Mr. Dresch and other non-exempt aggrieved employees of their rights to meal or rest breaks under California law and failed to affirmatively provide them with meal breaks and authorize and permit them to take rest breaks. PPI also routinely required other non-exempt aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with PPI policies and expectations. Despite these facts, PPI failed to compensate Mr. Dresch and other non-exempt aggrieved employees all the premium wages they were owed.

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California Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202 requires that if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. During the relevant time period, PPI failed to pay Mr. Dresch and other aggrieved employees all wages due to them within any time period specified by California Labor Code sections 201 and 203, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks, and misclassification, and therefore is liable under California Labor Code section 203.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, PPI failed to pay Mr. Dresch and other aggrieved employees all wages due to them within any time period specified by California Labor Code section 204, including for uncompensated off-the-clock work, unpaid overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks, and misclassification, and therefore is liable under California Labor Code section 204.

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California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, PPI did not provide Mr. Dresch and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from PPI were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Mr. Dresch and other aggrieved employees, (2) total hours worked by Mr. Dresch and other aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by Mr. Dresch and other aggrieved employees (4) all deductions for Mr. Dresch and other aggrieved employees, (5) net wages earned by Mr. Dresch and other aggrieved employees, (6) the inclusive dates of the period for which Mr. Dresch and other aggrieved employees are paid, (7) the name of the aggrieved employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Mr. Dresch and other aggrieved employees. PPI also failed to provide wage statements to aggrieved employees misclassified as independent contractors.

California Labor Code section 558 allows recovery of penalties. (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. Mr. Dresch and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, PPI failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Mr. Dresch and other aggrieved employees.

California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, PPI did not provide Mr. Dresch and other non-exempt aggrieved employees with the minimum wages to which they were entitled despite constructive and actual knowledge of off-the-clock work, including pre- and post-shift, while traveling, and during training sessions and meal breaks.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During their employment, Mr. Dresch and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by PPI, including for using their personal cellular phones to communicate with management about assignments and vehicles to travel to jobsites.

We believe that Mr. Dresch and other current and former California-based hourly-paid or non-exempt employees and independent contractors of PPI are entitled to penalties as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the applicable IWC Wage Order.

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Mr. Dresch will seek these penalties and wages on his own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees and independent contractors of PPI within one year of the date of the original January 13, 2020 letter, as allowed by law.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

Douglas Han, Esq.

CC: (By Certified Mail Only):

Hedy Popson
c/o Productions Plus, Inc.
909 Electric Ave. Suite 204 & 205
Seal Beach, CA 90740
Agent for Service of Process for Productions Plus, Inc.

CC: (By Electronic Mail Only):

Heather Stone, Esq.
Heather.stone@dinsmore.com
DINSMORE & SHOHL LLP
Counsel of Record for Productions Plus, Inc.

EXHIBIT A

JUSTICE
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January 13, 2020

BY U.S. EMAIL/ELECTRONIC SUBMISSION
PAGAfilings@dir.ca.gov
State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

Re: <u>PRODUCTIONS PLUS, INC.</u>

Dear Representative:

We have been retained to represent Fred Dresch against Productions Plus, Inc. (including any and all affiliates, subsidiaries, and parents, and their shareholders, officers, directors, and employees), individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1, and DOES 11-20[1] for violations of California wage-and-hour laws (hereinafter collectively referred to as "PPI").

Mr. Dresch is pursuing his California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Mr. Dresch may seek penalties and wages for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Productions Plus, Inc. is a Michigan corporation headquartered at 30600 Telegraph Road, Suite 2156, Bingham Farms, Michigan 48025.

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[1] Mr. Dresch does not know the true names or capacities, whether individual, partner or corporate, of DOES 1 through 20, inclusive, and for that reason, said DOES are designated under such fictitious names. Mr. Dresch will amend this notice when the true names and capacities are known. Mr. Dresch is informed and believes that each DOE was responsible in some way for the matters alleged herein and proximately caused Mr. Dresch and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

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Pursuant to ***Huff v. Securitas Security Services***, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Mr. Dresch has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at PPI, regardless of their classification, job title, locations, or whether they were hired directly or through a labor contractor or staffing agency.

PPI has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates. During the relevant time period, Mr. Dresch and other aggrieved employees regularly worked in excess of 8 hours in a day and 40 hours in a week. PPI failed to compensate Mr. Dresch and other aggrieved employees for all hours worked and performing work off-the-clock, including pre- and post-shift, while traveling, and during training sessions and meal breaks. Additionally, PPI failed to factor non-discretionary bonuses and incentives in the aggrieved employees' regular rate of pay for purposes of overtime compensation. Therefore, Mr. Dresch and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, PPI failed to inform Mr. Dresch and other aggrieved employees of their rights to meal or rest breaks under California law and failed to affirmatively provide them with meal breaks and authorize and permit them to take rest breaks. PPI also routinely required other aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with PPI policies and expectations. Despite these facts, PPI failed to compensate Mr. Dresch and other aggrieved employees all the premium wages they were owed.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, PPI failed to pay Mr. Dresch and other aggrieved employees all wages due to them within any time period specified by California Labor Code section 204.

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California Labor Code section 558 allows recovery of penalties. (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. Mr. Dresch and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, PPI failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Mr. Dresch and other aggrieved employees.

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We believe that Mr. Dresch and other current and former California-based hourly-paid or non-exempt employees of PPI are entitled to penalties and wages as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802.

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The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Mr. Dresch will seek these penalties and wages on his own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees of PPI within one year of the date of this letter, as allowed by law.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

D. Han

Douglas Han, Esq.

CC: (By Certified Mail Only)
Hedy Popson
c/o Productions Plus, Inc.
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Seal Beach, CA 90740
Agent for Service of Process for Productions Plus, Inc.