

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Steven Kleinfeld

1 Alan Harris (SBN 146079)
2 David Garrett (SBN 160274)
3 Lin Zhan (SBN 317087)
4 HARRIS & RUBLE
5 655 North Central Avenue 17th Floor
6 Glendale California 91203
7 Tel: 323.962.3777
8 Fax: 323.962.3004
9 harrisa@harrisandruble.com
10 dgarrett@harrisandruble.com
11 lzhan@harrisandruble.com

12 Attorneys for Plaintiff

13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF LOS ANGELES

16 BRIAN SCOTTI, individually and on behalf of
17 the State of California as well as Aggrieved
18 Employees,

19 Plaintiff,

20 v.

21 OVERSCENE LLC and KAREEM
22 JOHNSON, an individual, and DOE 1 through
23 and including DOE 10,

24 Defendants.

Case No: 20STCV17477
COMPLAINT
[PAGA Representative Action]

1. Section 203 of the California Labor Code, Continuing Wages
2. Sections 510 and 1194 of the California Labor Code, Failure to Pay Minimum Wage and Overtime
3. Section 226(a) of the California Labor Code, Failure to Provide Pay Stubs
4. Cal. Bus & Prof. Code Section 17200 et seq. – Restitution
5. Cal. Lab. Code Section 226(b), Failure to Provide Employment Records
6. Cal. Lab. Code Section 1198.5, Failure to Provide Employment Records
7. California Labor Code § 2698 et seq. PAGA Civil Penalties

JURY TRIAL DEMANDED

1 Plaintiff BRIAN SCOTTI (“Plaintiff”), by and through his undersigned attorneys,
2 alleges as follows:

3 **PARTIES, JURISDICTION AND VENUE**

4 1. Plaintiff Brian Scotti (“Scotti”) is an individual, who, during the time
5 periods relevant to this Complaint, was and is a resident of the County of Los Angeles,
6 State of California.

7 2. Defendant Overscene LLC (“Overscene”) is a New York limited liability
8 company, which at all times relevant herein, conducted business within the County of
9 Los Angeles of the State of California. Overscene was the production company for the
10 Rosalia Music Video, shot at 2400 E. Pacific Coast Highway, in Wilmington, California,
11 on October 20, 2019.

12 3. Defendant Kareem Johnson (“Johnson”), is an individual who was a
13 producer on the Production and at times relevant herein, ran the Production here at issue
14 within the County of Los Angeles of the State of California. Jay Tauzin was the
15 Production Supervisor.

16 4. Defendants Doe One through and including Doe Ten are sued herein under
17 the provisions of section 474 of the California Code of Civil Procedure. Plaintiff are
18 unaware of the true names, identities or capacities, whether corporate, individual or
19 otherwise, of said fictitiously name defendants, but leave of Court will be prayed to
20 amend this pleading to insert the same herein when finally ascertained. Plaintiff are
21 informed, believes and thereupon alleges that each of the fictitiously named Defendants
22 is an entity, which during the relevant time period maintained a place of business in the
23 County of Los Angeles of the State of California.

24 5. Plaintiff is informed and believe and thereon allege that, at all times herein
25 mentioned, Defendants, and each of them, were the agents, servants, employees, and/or
26 joint ventures of their co-Defendants as aforesaid, when acting as a principal, were
27 negligent and reckless in the selection and hiring of each and every other Defendants as
28

1 an agent, servant, employee, corporate officer, and/or joint venture, and that each and
2 every Defendant ratified the acts of the co-Defendants.

3 6. Venue as to Defendants is proper in this judicial district, pursuant to
4 California Business & Professions Code section 17203 and California Code of Civil
5 Procedure sections 395(a) and 395.5. Defendants maintain an office, transact business,
6 have an agent, or are found in the County of Los Angeles.

7 **GENERAL ALLEGATIONS**

8 7. This case is a law enforcement action under the California Labor Code
9 Private Attorneys General Act (“PAGA”) seeking unpaid wages, continuing wages,
10 damages, civil penalties, statutory penalties and attorneys’ fees and costs.

11 8. Defendants employed Plaintiff SCOTTI as a crew member (balloon lighting
12 tech) on or about October 20 of 2019, at a rate of approximately \$1,025 per day.
13 Defendants have failed to properly compensate Plaintiff and/or other persons who
14 performed services on the Production or other such projects produced in California
15 (“Aggrieved Employees”) for work performed. Defendants paid Scott over 30 days late,
16 not paying him until on or after December 5, 2019.

17 9. Plaintiff and the Aggrieved Employees worked overtime on the filming of
18 the Production, toiling in excess of eight hours in a single day. However, as of the filing
19 of this Complaint, neither Plaintiff nor other Aggrieved Employees have been
20 compensated as required by law, Defendants, for example, failing to make required tax
21 payments on behalf of Plaintiff.

22 10. Although Plaintiff should have been timely paid in full for their accrued
23 minimum wages and overtime, they were not so paid the wages owing to them. Further,
24 they have not received any wage statement for their work, documentation providing
25 information such as hours worked, rate of pay, and the legal name and address of the
26 employer, as well as detailing required tax withholding. Plaintiff and other similarly
27 situated Aggrieved Employees of the Defendants have, as of the date of filing of this
28 Complaint, not received proper wage statements for all work.

1 11. At all relevant times mentioned herein, Wage Order 12 of the California
2 Industrial Welfare Commission applied to Plaintiff and Aggrieved Employees. In part,
3 the Wage Order reflects employer obligations regarding hours and days of work,
4 reporting time pay, records, meal periods and rest periods (obligations which the
5 employer, here, failed to fulfill, both with respect to Plaintiff and Aggrieved Employees).
6 The Wage Order provides, in relevant part:

7 **3. Hours and Days of Work.**

8 (A) Daily Overtime - General Provisions

9 (1) The following overtime provisions are applicable to employees 18 years
10 of age or over and to employees 16 or 17 years of age who are not required
11 by law to attend school and are not otherwise prohibited by law from
12 engaging in the subject work. Such employees shall not be employed more
13 than eight (8) hours in any workday or more than 40 hours in any workweek
14 unless the employee receives one and one-half (1.5) times such employee's
15 regular rate of pay for all hours worked over 40 hours in the workweek.
16 Eight (8) hours of labor constitutes a day's work. Employment beyond eight
17 (8) hours in any workday or more than six (6) days in any workweek is
18 permissible provided the employee is compensated for such overtime as
19 follows:

20 (a) Employees may be employed up to a maximum of sixteen (16) hours
21 including meal periods in any one day from the time they are required and
22 do report until dismissed, provided the employee is compensated for such
23 overtime at not less than:

24 (1) For daily employees and weekly employees, excluding weekly
25 employees guaranteed more than forty (40) hours a workweek and "on call"
26 employees, one and one-half (1.5) times the employee's regular rate of pay
27 for all hours worked in excess of eight (8) hours up to and including twelve
28

(12) hours in any one workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

(2) Double the employee's regular rate of pay for all hours worked in excess of twelve (12) hours in any workday, , and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

(3) Overtime payments shall not be compounded and all payments made by the employer for daily overtime on the basis herein above specified shall be applied toward any sum for weekly overtime.

(4) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary. The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

...

7. Records.

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

(B) Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

(C) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.

12. At all relevant times mentioned herein, section 201.5 of the California Labor Code provided in part:

(a) For purposes of this section, the following definitions apply:

(1) "An employee engaged in the production or broadcasting of motion pictures" means an employee to whom both of the following apply:

(A) The employee's job duties relate to or support the production or broadcasting of motion pictures or the facilities or equipment used in the production or broadcasting of motion pictures.

(B) The employee is hired for a period of limited duration to render services relating to or supporting a particular motion picture production or broadcasting project, or is hired on the basis of one or more daily or weekly calls.

(2) "Daily or weekly call" means an employment that, by its terms, will expire at the conclusion of one day or one week, unless renewed.

(3) "Next regular payday" means the day designated by the employer, pursuant to Section 204, for payment of wages earned during the payroll period in which the termination occurs.

(4) "Production or broadcasting of motion pictures" means the development, creation, presentation, or broadcasting of theatrical or televised motion pictures, television programs, commercial advertisements, music videos, or any other moving images, including, but not limited to, productions made for entertainment, commercial, religious, or educational purposes, whether these productions are presented by means of film, tape, live broadcast, cable, satellite transmission, Web cast, or any other technology that is now in use or may be adopted in the future.

(b) An employee engaged in the production or broadcasting of motion pictures whose employment terminates is entitled to receive payment of the wages earned and unpaid at the time of the termination **by the next regular payday**.

(c) The payment of wages to employees covered by this section may be mailed to the employee or made available to the employee at a location specified by the employer in the county where the employee was hired or performed labor. The payment shall be deemed to have been made on the date that the employee's wages are mailed to the employee or made available to the employee at the location specified by the employer, whichever is earlier.

1 (d) For purposes of this section, an employment terminates when the
2 employment relationship ends, whether by discharge, lay off, resignation,
3 completion of employment for a specified term, or otherwise.

4 (e) Nothing in this section prohibits the parties to a valid collective
5 bargaining agreement from establishing alternative provisions for final
6 payment of wages to employees covered by this section if those provisions
7 do not exceed the time limitation established in Section 204.

8 Cal. Lab. Code § 201.5. At all relevant times mentioned herein, section 201.5 of the
9 California Labor Code controlled final payment of wages to Plaintiff and the Aggrieved
10 Employees.

11 13. At all times relevant hereto, section 203 of the California Labor Code
12 provided, in part: "If an employer willfully fails to pay, without abatement or reduction,
13 in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an
14 employee who is discharged or who quits, the wages of the employee shall continue as a
15 penalty from the due date thereof at the same rate until paid or until an action therefor is
16 commenced; but the wages shall not continue for more than 30 days."

17 14. At all times relevant herein, section 203.1 of the California Labor Code
18 provided in part:

19 If an employer pays an employee in the regular course of employment or in
20 accordance with Section 201, 201.3, 201.5, 201.7, or 202 any wages or fringe
21 benefits, or both, by check, draft or voucher, which check, draft or voucher is
22 subsequently refused payment because the employer or maker has no account with
23 the bank, institution, or person on which the instrument is drawn, or has
24 insufficient funds in the account upon which the instrument is drawn at the time of
25 its presentation, so long as the same is presented within 30 days of receipt by the
26 employee of the check, draft or voucher, those wages or fringe benefits, or both,
27 shall continue as a penalty from the due date thereof at the same rate until paid or
28 until an action therefor is commenced.

1 Cal. Lab Code § 203.1.

2 15. At all times relevant herein, section 204 of the California Labor Code
3 provided in part:

4 All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or
5 204.2, earned by any person in any employment are due and payable twice
6 during each calendar month, on days designated in advance by the employer
7 as the regular paydays. Labor performed between the 1st and 15th days,
8 inclusive, of any calendar month shall be paid for between the 16th and the
9 26th day of the month during which the labor was performed, and labor
10 performed between the 16th and the last day, inclusive, of any calendar
11 month, shall be paid for between the 1st and 10th day of the following
12 month.

13 Cal. Lab. Code § 204.

14 16. In no event should Plaintiff or the Aggrieved Employees have been paid
15 later than the time periods established by sections 201.5 or 204 of the California Labor
16 Code, but certain payments to Plaintiff and the Aggrieved Employees have yet to be
17 made, all leading to penalties and civil penalties under sections 203 and 204 of the
18 California Labor Code.

19 17. At all relevant times mentioned herein, section 203 of the California Labor
20 Code provided:

21 If an employer willfully fails to pay, without abatement or reduction, in
22 accordance with Sections 201, 201.5, 202 and 202.5, any wages of an
23 employee who is discharged or who quits, the wages of the employee shall
24 continue as a penalty from the due date thereof at the same rate until paid or
25 until action therefore is commence; but the wages shall not continue for
26 more than 30 days.

27 Cal. Lab. Code § 203.

28 18. By failing to pay Plaintiff and Aggrieved Employees all wages when due at

1 their termination, Plaintiff and Aggrieved Employees are entitled to continuing wages
2 pursuant to section 203 of the California Labor Code.

3 19. At all times relevant herein, section 210 of the California Labor Code
4 provided:

5 In addition to, and entirely independent and apart from, any other penalty
6 provided in this article, every person who fails to pay the wages of each
7 employee as provided in Sections 204, 204b, 204.1, 204.2, 205, 205.5, and
8 1197.5, shall be subject to a civil penalty as follows: (a) For any initial
9 violation, one hundred dollars (\$100) for each failure to pay each employee;
10 (b) For each subsequent violation, or any willful or intentional violation, two
11 hundred dollars (\$200) for each failure to pay each employee, plus 25
12 percent of the amount unlawfully withheld.

13 Cal. Lab. Code § 210.

14 20. At all relevant times mentioned herein, section 510(a) of the California
15 Labor Code provided:

16 Eight hours of labor constitutes a day's work. Any work in excess of eight
17 hours in one workday and any work in excess of 40 hours in any one
18 workweek and the first eight hours worked on the seventh day of work in
19 any one workweek shall be compensated at the rate of at least one and one-
20 half times the regular rate of pay for an employee. Any work in excess of 12
21 hours in one day shall be compensated at the rate of no less than twice the
22 regular rate of pay for an employee. In addition, any work in excess of eight
23 hours on any seventh day of a workweek shall be compensated at the rate of
24 no less than twice the regular rate of pay of an employee. Nothing in this
25 section requires an employer to combine more than one rate of overtime
26 compensation in order to calculate the amount to be paid to an employee for
27 any hour of overtime work. The requirements of this section do not apply to
28 the payment of overtime compensation to an employee working pursuant to

any of the following: (1) An alternative workweek schedule adopted pursuant to Section 511. (2) An alternative workweek schedule adopted pursuant to a collective bargaining agreement pursuant to Section 514.

Cal. Lab. Code § 510.

21. Defendants failed to pay proper overtime to Plaintiff and Aggrieved Employees.

22. At all relevant times mentioned herein, section 1194 of the California Labor Code provided:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

Cal. Lab. Code § 1194.

23. Plaintiff and Aggrieved Employees were not timely paid the minimum wages and/or overtime to which they were entitled.

24. At all relevant times mentioned herein, section 558.1 of the California Labor Code provided:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of Section 3294 of the Civil

1 Code.

2 (c) Nothing in this section shall be construed to limit the definition of employer
3 under existing law.

4 Code § 558.1. Defendants are the joint employers or other persons acting on behalf of an
5 employer who violated, or caused to be violated the relevant sections of the Code
6 referenced herein.

7 25. At all relevant times mentioned herein, section 558 of the California Labor
8 Code provided:

9 Any employer or other person acting on behalf of an employer who violates,
10 or causes to be violated, a section of this chapter or any provision regulating
11 hours and days of work in any order of the Industrial Welfare Commission
12 shall be subject to a civil penalty as follows: (1) For any initial violation,
13 fifty dollars (\$50) for each underpaid employee for each pay period for
14 which the employee was underpaid in addition to an amount sufficient to
15 recover underpaid wages. (2) For each subsequent violation, one hundred
16 dollars (\$100) for each underpaid employee for each pay period for which
17 the employee was underpaid in addition to an amount sufficient to recover
18 underpaid wages. (3) Wages recovered pursuant to this section shall be paid
19 to the affected employee.

20 Cal. Lab. Code § 558. Defendants are the employers or other persons acting on behalf of
21 an employer who violated, or caused to be violated the relevant sections of the California
22 Labor Code referenced herein.

23 26. At all relevant times mentioned herein, in part, section 226 of the Code
24 provided:

25 (a) Every employer shall, semimonthly or at the time of each payment of
26 wages, furnish each of their or her employees, either as a detachable part of
27 the check, draft, or voucher paying the employee's wages, or separately
28 when wages are paid by personal check or cash, an itemized statement in

1 writing showing (1) gross wages earned, (2) total hours worked by the
2 employee, except for any employee whose compensation is solely based on
3 a salary and who is exempt from payment of overtime under subdivision (a)
4 of Section 515 or any applicable order of the Industrial Welfare
5 Commission, (3) the number of piece rate units earned and any applicable
6 piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
7 provided, that all deductions made on written orders of the employee may be
8 aggregated and shown as one item, (5) net wages earned, (6) the inclusive
9 dates of the period for which the employee is paid, (7) the name of the
10 employee and their or her social security number, except that by January 1,
11 2008, only the last four digits of their or her social security number or an
12 employee identification number other than a social security number may be
13 shown on the itemized statement, (8) the name and address of the legal
14 entity that is the employer, and (9) all applicable hourly rates in effect during
15 the pay period and the corresponding number of hours worked at each
16 hourly rate by the employee. The deductions made from payments of wages
17 shall be recorded in ink or other indelible form, properly dated, showing the
18 month, day, and year, and a copy of the statement or a record of the
19 deductions shall be kept on file by the employer for at least three years at the
20 place of employment or at a central location within the State of California.

21

22 (e) An employee suffering injury as a result of a knowing and intentional
23 failure by an employer to comply with subdivision (a) is entitled to recover
24 the greater of all actual damages or fifty dollars (\$50) for the initial pay
25 period in which a violation occurs and one hundred dollars (\$100) per
26 employee for each violation in a subsequent pay period, not exceeding an
27 aggregate penalty of four thousand dollars (\$4,000), and is entitled to an
28 award of costs and reasonable attorney's fees.

1

2 (g) An employee may also bring an action for injunctive relief to ensure
3 compliance with this section, and is entitled to an award of costs and
4 reasonable attorney's fees.

5 Code § 226. Defendants employed Plaintiff and Aggrieved Employees, but, in all cases,
6 Defendants failed to provide them with the data required by section 226(a) of the Code.
7 That is, Defendants failed to provide wage statements at all. All of the foregoing was
8 intentional misconduct of Defendants that injured Plaintiff and Aggrieved Employees
9 insofar as they were subjected to confusion and deprived of information to which they
10 were legally entitled.

11 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

12 27. On March 15, 2020, Plaintiff gave online notice of Defendants' violations of
13 various provisions of the California Labor Code as alleged in the Complaint to the Labor
14 and Workforce Development Agency ("LWDA") and notice via certified mail to
15 Defendants.

16 28. At all relevant times mention herein, section 2699.3 of the California Labor
17 Code provided in pertinent part:

18 (a) A civil action by an Aggrieved Employee pursuant to subdivision (a) or (f) of
19 Section 2699 alleging a violation of any provision listed in Section 2699.5 shall
20 commence only after the following requirements have been met:

21 (1) The Aggrieved Employee or representative shall give written notice by certified
22 mail to the Labor and Workforce Development Agency and the employer of the
23 specific provisions of this code alleged to have been violated, including the facts
24 and theories to support the alleged violation.

25 (2) (A) The agency shall notify the employer and the Aggrieved Employee or
26 representative by certified mail that it does not intend to investigate the alleged
27 violation within 60 calendar days of the postmark date of the notice received
28 pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided

1 within 65 calendar days of the postmark date of the notice given pursuant to
2 paragraph (1), the Aggrieved Employee may commence a civil action pursuant to
3 Section 2699.

4 Cal. Lab. Code §2699.3

5 29. Following sixty Five (65) calendar days of the notice sent by Plaintiff have
6 passed, thus Plaintiff may “commence a civil action pursuant to Section 2699.” Cal. Lab.
7 Code §2699.3(a)(2)(A).

8 30. Plaintiff contend that the failure of Defendants to make payments within the
9 time provided for in California Labor Code section 201 has been and is “willful” within
10 the meaning of such word as used in section 203 of the California Labor Code and that,
11 accordingly, each Aggrieved Employee who was not timely paid their final wages is
12 entitled to civil penalties for which provision is made in section 210 of the California
13 Labor Code on account of Defendants’ violations of section 204 of the Code.

14 31. Plaintiff contend Defendants are subject to civil penalties for which
15 provision is made in Labor Code §2699(f)(2) for their failure to provide Plaintiff and
16 Aggrieved Employees with proper itemized wage statements, all in violation of Labor
17 Code §226(a).

18 32. The number of Aggrieved Employees is great. Plaintiff contends the
19 representative action is maintainable despite the number of Aggrieved Employees. The
20 identity of the Aggrieved Employees is readily ascertainable through an examination of
21 the records which the Defendants are required by law to keep and which they have kept.
22 Likewise, the civil penalties owed to The State of California, Plaintiff, and to each
23 Aggrieved Employee is readily ascertainable by an examination of the same records.

24 33. Plaintiff seek to recover the PAGA civil penalties through a representative
25 action permitted by PAGA and the California Supreme Court in Arias v. Superior Court,
26 46 Cal.4th 969 (2009). Therefore, class certification of the PAGA claims is not required.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

(Continuing Wages, California Labor Code § 201.5, 203
On Behalf of Plaintiff Against All Defendants)

34. Plaintiff realleges and incorporate herein by reference the allegations contained in this Complaint as though fully set forth herein.

35. Defendants employed Plaintiff as a crew member for, on or around October 20 of 2019. Nevertheless, Plaintiff was not compensated timely for his services.

36. Defendants’ failure to compensate Plaintiff within the time for which provision is made by section 201.5 of the California Labor Code, despite their knowledge of their obligation to do so, was and is “willful” as the word is used in section 203.

37. Pursuant to section 203 of the California Labor code, Plaintiff are entitled to continuing wages from Defendants in an amount according to proof, at least \$100,000 Plaintiff are also entitled to recover costs and reasonable attorneys' fees under section 218.5 of the California Labor Code.

SECOND CAUSE OF ACTION

(Damages for Unpaid Minimum Wages and Overtime Compensation,
California Labor Code §§ 510 and 1194
On Behalf of Plaintiff Against All Defendants)

38. Plaintiff realleges and incorporate herein by reference the allegations contained in this Complaint as though fully set forth herein.

39. During his employment by Defendants on the Production, Plaintiff, as well as Aggrieved Employees, worked many hours, including overtime, without timely compensation for work performed, as required by law.

40. Plaintiff is entitled to recover liquidated damages under section 1194.2 of the California Labor Code in an amount according to proof. Plaintiff is also entitled to recover costs and reasonable attorneys' fees under section 1194 of the California Labor Code, damages in excess of \$10,000.

THIRD CAUSE OF ACTION

(Failure to Provide Information on Pay Stubs, California Labor Code § 226(a)
On Behalf of Plaintiff Against All Defendants)

41. Plaintiff realleges and incorporate herein by reference the allegations

1 contained in this Complaint as though fully set forth herein.

2 42. Defendants failed to timely provide Plaintiff and Aggrieved Employees with
3 wage statements conforming to the requirements of section 226(a) of the California Labor
4 Code.

5 43. The failure of Defendants to provide proper wage statements violates section
6 226(a) of the California Labor Code insofar as neither the Plaintiff nor other Aggrieved
7 Employees have received data to which they are entitled. The failure to provide Plaintiff
8 or Aggrieved Employees with wage statements caused Plaintiff and Aggrieved
9 Employees injury by depriving them of information to which they are legally entitled.

10 44. Accordingly, Plaintiff are entitled to damages in an amount according to
11 proof and costs and reasonable attorney's fees in accordance with the provisions of
12 California Labor Code section 226(e), all in an amount of at least \$150.

13 **FOURTH CAUSE OF ACTION**

14 (Unfair Business Practices On Behalf of Plaintiff Against All Defendants)

15 45. Plaintiff realleges and incorporate herein by reference the allegations
16 contained in this Complaint as though fully set forth herein.

17 46. Business and Professions Code section 17200 et seq. prohibits acts of unfair
18 competition, including any "unlawful, unfair, or fraudulent business act or practice." Cal.
19 Bus. & Prof. Code § 17200. Plaintiff allege that Overscene has engaged in unfair
20 business practices in California by the above-described failure to pay all accrued
21 overtime and minimum wages to Plaintiff and Aggrieved Employees.

22 47. Defendants' violations of California wage and hour laws constitutes a
23 business practice because Defendants' aforementioned acts and omissions were done
24 repeatedly over a significant period of time, and in a systematic manner, to the detriment
25 of Plaintiff and Aggrieved Employees.

26 48. Defendants have avoided payment of wages and overtime wages required by
27 the California Labor Code, the California Code of Regulations, and the applicable IWC
28 Wage Order. Further, Defendants have failed to record, report and pay the correct sums

1 of assessment to the state authorities under the California Labor Code and other
2 applicable regulations.

3 49. As a result of Defendants' unfair and unlawful business practices,
4 Defendants have reaped unfair and illegal profits during the relevant time period herein at
5 the expense of Plaintiff and the Aggrieved Employees and members of the public.
6 Defendants should be made to disgorge their ill-gotten gains and to restore them to
7 Plaintiff and Aggrieved Employees.

8 50. Defendants' actions entitle Plaintiff to seek the remedies available under
9 section 17200 et seq. Plaintiff seek full restitution of said amounts from Defendants, as
10 necessary and according to proof, to restore any and all amounts—including interest—
11 withheld, acquired, or converted by Defendants by means of the unfair practices
12 complained of herein. Plaintiff, on behalf of themselves, as well as on behalf of the
13 general public, further seek attorney's fees and costs pursuant to sections 218.5 of the
14 Labor Code and 1021.5 of the Code of Civil Procedure. In addition, Plaintiff seeks the
15 appointment of a receiver as necessary.

16 **FIFTH CAUSE OF ACTION**

17 (Failure to Provide Employment Records Upon Request Cal. Lab. Code §226(b)
18 On Behalf of Plaintiff Only Against Defendants)

19 51. Plaintiff realleges and incorporate herein by reference the allegations
20 contained in this Complaint as though fully set forth herein.

21 52. Pursuant to Labor Code section 226(b), an employer shall afford current and
22 former employees the right to inspect or copy the records pertaining to that current or
23 former employee, upon reasonable request to the employer.

24 53. Plaintiff have requested that Defendant permit inspection or copying of their
25 employment records pursuant to Labor Code section 226(b). Defendant has failed to
26 provide Plaintiff with an opportunity to inspect or copy their employment records within
27 21 days of their requests. Defendant has not produced any records at all.

28 54. Pursuant to Labor Code Section 226(f) and (6), Plaintiff are entitled, and
hereby seeks to recover from Defendant a seven-hundred-fifty dollar (\$750) penalty for

1 each violation, reasonable attorney's fees, and the costs of bringing this cause of action.

2 **SIXTH CAUSE OF ACTION**

3 (Failure to Provide Employment Records Upon Request Cal. Lab. Code §1198.5
4 On Behalf of Plaintiff Only Against Defendants)

5 55. Plaintiff realleges and incorporate herein by reference the allegations
6 contained in this Complaint as though fully set forth herein.

7 56. Pursuant to Labor Code section 1198.5, an employer shall afford current and
8 former employees the right to inspect or copy the records pertaining to that current or
9 former employee, upon reasonable request to the employer.

10 57. Plaintiff has requested that Defendants permit inspection or copying of his
11 employment records pursuant to Labor Code section 1198.5. Defendants have failed to
12 provide Plaintiff with an opportunity to inspect or copy their employment records within
13 30 days of his request.

14 58. Pursuant to Labor Code Section 1198.5(k), Plaintiff are entitled, and hereby
15 seeks to recover from Defendant a seven-hundred-fifty dollar (\$750) penalty for each
16 violation, reasonable attorney's fees, and the costs of bringing this cause of action.

17 **SEVENTH CAUSE OF ACTION**

18 California Labor Code § 2698 et seq. Civil Penalties
19 (On Behalf of Plaintiff individually, the California Labor & Workforce Development
20 Agency and All Aggrieved Employees, Against All Defendants except Leslie Bates)

21 59. Plaintiff realleges and incorporate herein by reference the allegations
22 contained in this Complaint as though fully set forth herein.

23 60. Pursuant to section 2699.3(a)(1) of the Labor Code, on approximately March
24 15, 2020, Plaintiff submitted his PAGA Claim Notice online to the California Labor and
25 Workforce Development Agency ("LWDA") and notified the LWDA of the specific
26 provisions of the Labor Code alleged to have been violated by Defendant, including the
27 theories set forth in the Complaint. Also on that day, Plaintiff gave written notice by
28 certified mail to Defendants of the specific provisions of the Labor Code alleged to have
been violated by Defendants.

61. At all relevant times, California Labor Code section 2699.3(a)(2)(A)

1 provided:

2 The agency shall notify the employer and the aggrieved employee or
3 representative by certified mail that it does not intend to investigate the
4 alleged violation within 60 calendar days of the postmark date of the notice
5 received pursuant to Paragraph (1). Upon receipt of that notice or if no
6 notice is provided within 65 calendar days of the postmark date of the notice
7 given pursuant to Paragraph (1), the aggrieved employee may commence a
8 civil action pursuant to Section 2699.

9 Cal. Lab. Code § 2699.3(a)(2)(A). When Sixty Five (65) calendar days of the postmark
10 date of the notice sent by Plaintiff has passed Plaintiff may “commence a civil action
11 pursuant to Section 2699.” Cal. Lab. Code § 2699.3(a)(2)(A).

12 62. Plaintiff contend that sections 201.5, 203, 203.1, 204, 210, 226, 226.8, 510,
13 558, 558.1, 1194, 1197.1, and 2699 of the Labor Code enables them to recover civil
14 penalties under PAGA, as well as attorney’s fees and costs, from Defendants, through a
15 civil action on behalf of themselves and other Aggrieved Employees.

16 63. Plaintiff seek to recover the PAGA civil penalties through a representative
17 action permitted by PAGA and the California Supreme Court in Arias v. Superior Court,
18 46 Cal. 4th 969 (2009). Therefore, class certification of the PAGA claims is not required.

19 64. Plaintiff seek civil penalties pursuant to PAGA for violations of the
20 following Labor Code provisions:

- 21 a. Section 203 of the California Labor Code, Continuing Wages
- 22 b. Section 226(a) of the California Labor Code, Failure to Provide Accurate
23 Wage Statements
- 24 c. Sections 510 and 1194 of the California Labor Code, Failure to Pay
25 Overtime and Minimum Wage
- 26 d. Willful misclassification of an individual as an independent contractor in
27 violation of Labor Code §226.8.

28 65. With respect to violations of Labor Code § 201.5, Plaintiff contend that the

1 failure of Defendant to make payments within the time provided for has been and is
2 “willful” within the meaning of such word as used in Section 203 of the California Labor
3 Code and that, accordingly, each Aggrieved Employee who was not timely paid his or her
4 final wages is entitled to civil penalties for which provision is made in Section 210 of the
5 Labor Code on account of violations of section 204.

6 66. Labor Code §2699 et seq. imposes a civil penalty of one hundred dollars
7 (\$100) per pay period, per Aggrieved Employee for initial violations, and two hundred
8 dollars (\$200) per pay period, per Aggrieved Employee for subsequent violations for all
9 Labor Code provisions for which a civil penalty is not specifically provided.

10 **WHEREFORE**, Plaintiff prays judgment as follows:

11 1. That, under the First Cause of Action, it be adjudged that the failure of
12 Defendants to make payment of Plaintiff’ wages was in violation of section 201.5, and
13 204 of the California Labor Code, and was “willful” as that word is used in section 203 of
14 the California Labor Code, and that the Court enter judgment against Overscene in favor
15 of Plaintiff. That judgment be entered in favor of Plaintiff in an amount of at least
16 \$100,000, and costs and reasonable attorneys’ fees in accordance with the provisions of
17 California Labor Code section 218.5.

18 2. That, under the Second Cause of Action, this Court enter judgment in favor
19 of Plaintiff of at least \$10,000, and of an amount to be established by proof for Plaintiff
20 and Aggrieved Employees for unpaid liquidated damages, interest thereon, reasonable
21 attorneys’ fees and cost of suit pursuant to sections 218.5, 1194, 1194.2, and 1197.1 of
22 the Code.

23 4. That, under the Third Cause of Action, the Court enter judgment in favor of
24 Plaintiff and against Overscene. That judgment be entered in favor of Plaintiff in an
25 amount of at least \$150, and costs and reasonable attorneys’ fees in accordance with the
26 provisions of California Labor Code section 226(e).

27 5. That, under the Fourth Cause of Action, this Court enter judgment in favor
28 of Plaintiff against Defendants in the amount of damages according to proof, interest

1 thereon, reasonable attorneys' fees and cost of suit.

2 6. That, under the Fifth Cause of Action, the Court enter judgment in favor of
3 Plaintiff and against Defendants. That judgment be entered in favor of Plaintiff \$750
4 each and for reasonable attorneys' fees.

5 7. That, under the Sixth Cause of Action, the Court enter judgment in favor of
6 Plaintiff and against Defendants. That judgment be entered in favor of Plaintiff \$750
7 each and for reasonable attorneys' fees.

8 8. That, with respect to the Seventh Cause of Action that this Court award
9 Plaintiff, The State of California, and other former and current Aggrieved Employees
10 their civil penalties, attorney's fees, and costs of suit, all according to proof, pursuant to
11 section 201.5, 203, 203.1, 226, 226.8, 510, 558, 558.1, and 2699 of the Labor Code.

12 9. For such further relief as the Court may order, including attorney's fees,
13 costs, and interest pursuant to Labor Code sections 218.5 and 218.6, and Code of Civil
14 Procedure section 1021.5, in an amount according to proof.

15
16 DATED: March 15, 2020

HARRIS & RUBLE



Alan Harris
David Garrett
Attorney for Plaintiff

Exhibit 1

HARRIS & RUBLE

ATTORNEYS AND COUNSELORS AT LAW

SOUTHERN CALIFORNIA OFFICE:

655 NORTH CENTRAL AVE 17th FL
GLENDALE CA 91203
TELEPHONE: 323.962.3777
FAX: 323.962.3004
www.harrisandruble.com

ALAN HARRIS

PRIYA MOHAN
DAVID GARRETT
MIN JI GAL
LIN ZHAN

NORTHERN CALIFORNIA OFFICE:

116 E. BLITHEDALE AVE SUITE 2
MILL VALLEY, CA 94941
TELEPHONE: 312.543.0967
FAX: 323.962.3004

SUBMITTED ONLINE

March 15, 2020

California Labor & Workforce Development Agency

Re: *Brian Scotti v. Overscene LLC* – PAGA Notice

To whom it may concern:

Pursuant to the applicable provisions of the California Labor Code Private Attorneys General Act, Brian Scotti (“Plaintiff”), hereby alleges with respect to their employment with *Overscene LLC* (“Defendant”), that Defendant violated provisions of the California Labor Code. On or about 10/20/2019, Defendant hired cast and crew members on a production of the Rosalia Music Video (the “Production”). Plaintiff worked for many hours on the Production. Defendant has failed to properly compensate Plaintiff and/or other persons who performed services on the Production and/or other such projects produced in California (“Aggrieved Employees”) for work performed.

Defendant *Overscene LLC* is a New York Limited Liability Company, which at all times relevant herein, conducted business within the County of Los Angeles of the State of California. Plaintiffs and other Aggrieved Employees worked many hours on the Production and were not timely paid for their work, or paid at all. In addition, Defendant misclassified Plaintiffs and Aggrieved Employees as independent contractors as no deductions were made for payroll taxes, failed to provide them wage statements with the information required by Labor Code section 226(a), and were not properly compensated for overtime.

Plaintiff contends that Sections 201.5, 203, 226, 226.8, 510, 512, 558, 1194, 1198, 2802, and 2699 et seq. of the California Labor Code and the applicable Wage Order enables Plaintiffs to recover civil penalties under PAGA, as well as attorneys’ fees and costs from Defendants through a civil action on behalf of himself and other Aggrieved Employees.

Plaintiff will seek to recover the PAGA penalties through a representative action permitted by PAGA and the California Supreme Court in Arias v. Superior Court, 46 Cal. 4th 969

(2009). Plaintiff will seek civil penalties pursuant to PAGA for violations of the following Labor Code provisions:

1. **Failure to pay wages and/or final wages to Plaintiffs and Aggrieved Employees in violation of Labor Code §§ 201.5 and 203.** With respect to violations of Labor Code § 201.5, Plaintiffs contend that the failure of Defendants to make final payments within the time provided for has been and is “willful” within the meaning of such word as used in Section 203 of the California Labor Code and that, accordingly, each Aggrieved Employee who was not timely paid his or her final wages is entitled to civil penalties. Labor Code section 203 provides for a penalty of wages to be paid at the same rate until the wages are paid for up to thirty days.
2. **Failure to provide itemized wage statements to Plaintiffs and Aggrieved Employees in violation of Labor Code § 226(a).** Plaintiffs and other Aggrieved Employees have not been provided a wage statement as required by Labor Code section 226(a). The foregoing was the intentional misconduct of Defendants that was intended to mislead and injure Plaintiffs and other Aggrieved Employees insofar as they were subjected to confusion and deprived of information to which they were legally entitled. Section 226(e) provides that any employee who suffers injury as a result of a knowing and intentional failure by the employer to comply with its obligation to provide wage statements containing all of the information referenced above is entitled to recover the greater of his actual damages or \$50 for the first violation by the employer. The employee is also entitled to recover \$100 for each violation in a subsequent pay period, not to exceed an aggregate penalty of \$4,000.
3. **Improper classification of employees as independent contractors in violation of Labor Code § 226.8.** Plaintiffs and Aggrieved Employees were willfully misclassified as independent contractors even though they were not exempt employees. Labor Code section 226.8 requires “a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.” If the employer is found to have engaged in a “pattern or practice” of misclassifying employees, it is subject to a “civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.” Cal. Lab. Code § 226.8(c).
4. **Failure to reimburse necessary business expenses under Labor Code § 2802.** Plaintiffs and Aggrieved Employees were not reimbursed for necessary business expenses. Labor Code 2699 *et seq.* imposes a civil penalty of one hundred dollars per pay period per aggrieved employee for initial violations, and two hundred dollars per pay period per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.
5. **Failure to pay minimum and overtime wages to Plaintiffs and Aggrieved Employees in violation of Labor Code §§ 510, 558, 1194, and 1198.** Both late payment and non-payment of minimum wages violate the state statute requiring the payment of a minimum hourly wage. Labor Code section 558 imposes a civil penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial violations for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages, and one hundred (\$100) for subsequent violations for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

Please advise whether you will proceed with an investigation of this matter or whether Plaintiffs may seek a civil-penalty recovery for the alleged violations under the Labor Code Private Attorneys General Act through his private counsel.

Very truly yours,

/s/ Alan Harris

Alan Harris

Cc: (Via Certified Mail) Overscene LLC, 2500 University Ave #3, Bronx, NY, 10468.