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Superior Court of California
County of Los Angeles

SEP 28 2020

Shari R. Carter, Executive Officer/Clerk of Court

By: Kristina Vargas, Deputy

Alan Harris (SBN 146079)
David Garrett (SBN 160274)
Lin Zhan (SBN 317087)
HARRIS & RUBLE
655 North Central Avenue 17th Floor
Glendale California 91203
Tel: 323.962.3777
Fax: 323.962.3004
harrisa@harrisandruble.com
dgarrett@harrisandruble.com
lzhan@harrisandruble.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

MICHELLE MCGHAN, individually and on
behalf of those similarly situated,

Plaintiff,

v.

BROKEN CAGE, LLC, a California Limited
Liability Company; ABYLAY ZHAKASHOV,
an individual; AVA ISMAIYLOVA, an
individual; MARCELO CANTU, an individual,
MAURICIO CANTU, an individual, DOE 1
through and including DOE 10,

Defendants.

COMPLAINT 20STCV37201

Case No.:

[PAGA and Class Action]

1. Section 203 of the California Labor Code, Continuing Wages
2. Cal. Lab. Code §§ 226.7, 512 and Wage Order 12, Failure to Provide Meal Breaks
3. Cal. Lab. Code § 226.7 and Wage Order 12, Failure to Provide Rest Breaks
4. Sections 510 and 1194 of the California Labor Code, Failure to Pay Minimum Wage and Overtime
5. Section 226(a) of the California Labor Code, Failure to Provide Proper Pay Stubs
6. Section 2802 of the California Labor Code, Failure to Reimburse Necessary Business Expenses
7. Cal. Bus & Prof. Code Section 17200 et seq. – Restitution
8. Failure to Produce employment records upon request Cal. Lab. Code §226(b)
9. Failure to Produce employment records upon request Cal. Lab. Code §1198.5
10. California Labor Code § 2698 et seq. PAGA Civil Penalties

JURY TRIAL DEMANDED

BY FAX

1 Plaintiff McGhan, individually and as a class and representative PAGA action on behalf of the
2 State of California Labor and Workforce Development Agency (the “LWDA”), by and through her
3 undersigned attorneys, allege as follows:

4 **INTRODUCTION**

5 1. Defendant Broken Cage, LLC (“Broken Cage”) maintains an office, transacts business,
6 has an agent, or is found in the County of Los Angeles and is within the jurisdiction of this Court for
7 purposes of service of process. Defendant Broken Cage is a California limited liability company, which
8 at all times relevant herein, engaged in the Motion Picture Industry within the County of Los Angeles of
9 the State of California. Plaintiff worked for Broken Cage on the production of the motion picture
10 entitled “Our Room” (“the Production”).

11 2. Defendant Abylay Zhakashov, is an individual who at times relevant herein, conducted
12 business within the County of Los Angeles. Zhakashov is the owner of Broken Cage and is the producer
13 on the Production on which Plaintiff provided services.

14 3. Defendant Ava Ismaiyllova (“Ismaiyllova”) is an individual who at times relevant herein,
15 conducted business within the County of Los Angeles. Ismaiyllova was the executive producer with
16 responsibility for the Production.

17 4. Defendant Marcelo Cantu (“Marcelo”) is an individual who at times relevant herein,
18 conducted business within the County of Los Angeles. Marcelo was the director/writer with
19 responsibility for the Production.

20 5. Defendant Mauricio Cantu (“Mauricio”) is an individual who at times relevant herein,
21 conducted business within the County of Los Angeles. Mauricio was the executive producer with
22 responsibility for the Production.

23 6. Plaintiff Michelle McGhan (“McGhan”) is an individual, who, during the time periods
24 relevant to this Complaint, was and is a resident of the County of Los Angeles, State of California.

25 7. Broken Cage, Zhakashov, Ismaiyllova, Marcelo, and Mauricio were employers, joint
26 employers, and/or other persons acting on behalf of an employer, who violated, or caused to be violated,
27 various provisions of the California Labor Code and Wage Order 12 regulating minimum wages or
28 hours and days of work in connection with their supervision of the Production and/or who violated, or

1 caused to be violated, California Labor Code Sections 203, 226, and/or 1194 in connection therewith.

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

9 9. Plaintiff is informed and believe and thereon allege that, at all times herein mentioned,
10 Defendants, and each of them, were the agents, servants, employees, and/or joint ventures of their co-
11 Defendants as aforesaid, when acting as a principal, were negligent and reckless in the selection and
12 hiring of each and every other Defendants as an agent, servant, employee, corporate officer, and/or joint
13 venture, and that each and every Defendant ratified the acts of the co-Defendants.

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

18 **GENERAL ALLEGATIONS**

19 11. This is a class and PAGA representative action seeking unpaid wages, continuing wages,
20 damages, statutory and civil penalties and attorneys' fees and costs. Emergency Rule 9, as promulgated
21 by the Judicial Council of California, applies to this case and provides: "Notwithstanding any other law,
22 the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April
23 6, 2020, until October 1, 2020." The Advisory Committee Comment notes that: "Emergency rule 9 is
24 intended to apply broadly to toll any statute of limitations on the filing of a pleading in court asserting a
25 civil cause of action. The term "civil causes of action" includes special proceedings. (See Code Civ.
26 Proc., §§ 312, 363 ["action," as used in title 2 of the code (Of the Time of Commencing Civil Actions),
27 is construed "as including a special proceeding of a civil nature"). . . . The rule also applies to statutes of
28 limitations on filing of causes of action in court found in codes other than the Code of Civil Procedure."

1 12. Defendants employed McGhan and others as crew members on the Production from
2 about June 26 to June 28, 2019.

3 13. Defendants have failed to properly compensate McGhan and/or other nonexempt workers
4 who performed services on the Production or other such projects produced in California (“Aggrieved
5 Employees”) for work performed.

6 14. Shortly after Plaintiff and others worked, they were laid off without a return date for any
7 further work, but were not timely paid their wages. Although Plaintiff and others should have been paid
8 in full for their accrued minimum wages and overtime no later than the next regular payday after they
9 worked in June 2019, as of filing of the complaint, they were not paid the full amount of wages owing to
10 them.

11 15. At all relevant times mentioned herein, Wage Order 12 of the California Industrial
12 Welfare Commission applied to Plaintiff and others. In part, the Wage Order reflects employer
13 obligations regarding hours and days of work, reporting time pay and records (obligations which the
14 employer, here, failed to fulfill, both with respect to Plaintiff and others). The Wage Orders provide, in
15 relevant part:

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

17 (A) Daily Overtime - General Provisions

18 (1) The following overtime provisions are applicable to employees 18 years of age or
19 over and to employees 16 or 17 years of age who are not required by law to attend
20 school and are not otherwise prohibited by law from engaging in the subject work. Such
21 employees shall not be employed more than eight (8) hours in any workday or more than
22 40 hours in any workweek unless the employee receives one and one-half (1.5) times
23 such employee’s regular rate of pay for all hours worked over 40 hours in the workweek.
24 Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in
25 any workday or more than six (6) days in any workweek is permissible provided the
26 employee is compensated for such overtime as follows:
27
28

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

(1) For daily employees and weekly employees, excluding weekly employees guaranteed more than forty (40) hours a workweek and “on call” employees, one and one-half (1.5) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (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.

1 (3) Time records showing when the employee begins and ends each work period. Meal
2 periods, split shift intervals and total daily hours worked shall also be recorded. Meal
3 periods during which operations cease and authorized rest periods need not be recorded.

4 (4) Total wages paid each payroll period, including value of board, lodging, or other
5 compensation actually furnished to the employee.

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

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

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

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

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

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

26 (1) "An employee engaged in the production or broadcasting of motion pictures" means
27 an employee to whom both of the following apply:
28

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

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

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

9 (3) "Next regular payday" means the day designated by the employer, pursuant to Section
10 204, for payment of wages earned during the payroll period in which the termination
11 occurs.

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

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

22 (c) The payment of wages to employees covered by this section may be mailed to the
23 employee or made available to the employee at a location specified by the employer in
24 the county where the employee was hired or performed labor. The payment shall be
25 deemed to have been made on the date that the employee's wages are mailed to the
26 employee or made available to the employee at the location specified by the employer,
27 whichever is earlier.
28

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

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

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

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

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

17 Cal. Lab. Code § 203.

18 18. By failing to pay Plaintiff and others all wages when due at termination, Plaintiff and
19 others are entitled to continuing wages pursuant to section 203 of the California Labor Code.

20 19. At all relevant times mentioned herein, section 226.7 of the California Labor Code
21 provided:

22 (a) As used in this section, “recovery period” means a cooldown period afforded an
23 employee to prevent heat illness.

24 (b) An employer shall not require an employee to work during a meal or rest or recovery
25 period mandated pursuant to an applicable statute, or applicable regulation, standard, or
26 order of the Industrial Welfare Commission, the Occupational Safety and Health
27 Standards Board, or the Division of Occupational Safety and Health.

28 (c) If an employer fails to provide an employee a meal or rest or recovery period in

1 accordance with a state law, including, but not limited to, an applicable statute or
2 applicable regulation, standard, or order of the Industrial Welfare Commission, the
3 Occupational Safety and Health Standards Board, or the Division of Occupational Safety
4 and Health, the employer shall pay the employee one additional hour of pay at the
5 employee's regular rate of compensation for each workday that the meal or rest or
6 recovery period is not provided.

7 20. At all relevant times mentioned herein, section 512 of the California Labor Code
8 provided:

9 (a) An employer may not employ an employee for a work period of more than five hours
10 per day without providing the employee with a meal period of not less than 30 minutes . .

11 21. At all relevant times mentioned herein, section 510(a) of the California Labor Code
12 provided:

13 Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one
14 workday and any work in excess of 40 hours in any one workweek and the first eight
15 hours worked on the seventh day of work in any one workweek shall be compensated at
16 the rate of at least one and one-half times the regular rate of pay for an employee. Any
17 work in excess of 12 hours in one day shall be compensated at the rate of no less than
18 twice the regular rate of pay for an employee. In addition, any work in excess of eight
19 hours on any seventh day of a workweek shall be compensated at the rate of no less than
20 twice the regular rate of pay of an employee. Nothing in this section requires an employer
21 to combine more than one rate of overtime compensation in order to calculate the amount
22 to be paid to an employee for any hour of overtime work. The requirements of this
23 section do not apply to the payment of overtime compensation to an employee working
24 pursuant to any of the following: (1) An alternative workweek schedule adopted
25 pursuant to Section 511. (2) An alternative workweek schedule adopted pursuant to a
26 collective bargaining agreement pursuant to Section 514.

27 Cal. Lab. Code § 510. Defendants failed to pay proper overtime to Plaintiff and others.

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

1 provided:

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

7 Cal. Lab. Code § 1194. Plaintiff and others were not timely paid the minimum wages and/or overtime to
8 which they were entitled. Under section 1194.2, Plaintiff and others are entitled to liquidated damages.

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

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

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

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

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

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

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

1 follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for
2 each pay period for which the employee was underpaid in addition to an amount
3 sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred
4 dollars (\$100) for each underpaid employee for each pay period for which the employee
5 was underpaid in addition to an amount sufficient to recover underpaid wages. (3)
6 Wages recovered pursuant to this section shall be paid to the affected employee.

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

10 25. At all relevant times mentioned herein, section 2802 of the California Labor Code
11 provided in part:

12 (a) An employer shall indemnify his or her employee for all necessary
13 expenditures or losses incurred by the employee in direct consequence of the discharge of
14 his or duties

15 (b) All awards made by a court . . . for reimbursement of necessary expenditures
16 under this section shall carry interest at the same rate as judgments in civil actions.
17 Interest shall accrue from the date on which the employee incurred the necessary
18 expenditure or loss.

19 (c) For purposes of this section, the term “necessary expenditures or losses” shall
20 include all reasonable costs, including, but not limited to, attorney’s fees incurred by the
21 employee enforcing rights granted by this section.

22 Cal. Lab. Code § 2802. Defendants failed to reimburse Plaintiff and others for necessary business
23 expenses incurred in the performance of their duties on the Production.

24 **CLASS-ACTION ALLEGATIONS**

25 26. Plaintiff brings this action on behalf of himself and all others similarly situated as a class
26 action pursuant to section 382 of the Code of Civil Procedure. Plaintiff seeks to represent a “203 Class”
27 composed of and defined as follows:

28 For the period from April 5, 2016 to the date of decision on a Motion for Class Certification

1 herein, all persons whose final payments on account of services provided to MPI (such persons
2 are referred to hereafter as “203 Class Members,” and such period is referred to hereafter as the
3 “203 Class Period”) were not paid in timely fashion, tardy payments being those paid de hors the
4 time requirements of sections 201.5 and/or 203 of the California Labor Code.

5 Plaintiff seeks to represent a “226 Class” composed of and defined as follows:

6 For the period from April 5, 2019 to the date of decision on a Motion for Class Certification
7 herein, all persons who were issued a wage statement on account of services provided to MPI
8 (such persons are referred to hereafter as “226 Class Members,” and such period is referred to
9 hereafter as the “226 Class Period”).

10 27. This action has been brought and may be properly maintained as a class action under the
11 provisions of section 382 of the Code of Civil Procedure because there is a well-defined community of
12 interest in the litigation and the proposed Class is easily ascertainable.

13 28. Defendants, as to Plaintiff and each Class Member, failed to pay at least minimum wage
14 and/or overtime for all hours worked pursuant to sections 510 and 1194 of the Code. Accordingly, each
15 Plaintiff and Class Member is entitled to payment of his or unpaid minimum wage, liquidated damages
16 thereon, unpaid overtime, and interest.

17 29. Defendants, as to Plaintiff and each Class Member, also failed to accurately provide the
18 data required by section 226(a) of the Code and, accordingly, Defendants’ failure to provide such data
19 entitles Plaintiff and each Class Member to either actual damages or statutory liquidated damages,
20 whichever is greater.

21 30. Defendants, as to Plaintiff and each Class Member, failed to timely compensate as
22 required by sections 201.5, 203 and 204 of the Code and, accordingly, Defendants’ failure to make
23 timely payment entitles Plaintiff and each Class Member to either actual damages or statutory damages,
24 whichever is greater.

25 31. Defendants, as to Plaintiff and each Class Member, failed to provide meal and rest breaks
26 as required by sections 226.7, 512 of the Code and Wage Order 12, and, accordingly, Defendants’
27 failure to provide meal and rest breaks entitles Plaintiff and each Class Member to either actual damages
28 or statutory damages, whichever is greater.

1 32. Defendants, as to Plaintiff and each Class Member, failed to reimburse necessary
2 business expenses as required by section 2802 of the Code, and, accordingly, Defendants' failure to
3 reimburse necessary business expenses entitles Plaintiff and each Class Member to either actual
4 damages or statutory damages, whichever is greater.

5 **A. Numerosity**

6 33. The potential members of the Class as defined are so numerous that joinder of all the
7 members of the Class is impracticable. While the precise number of Class Members has not been
8 determined at this time, Plaintiff is informed and believes that Defendant currently employs, and during
9 the relevant time periods employed, hundreds of employees in the State of California, in positions as
10 non-exempt employees dispersed throughout California who have been affected by Defendants' policies
11 of treating employees as independent contractors. The number of Class Members is great, but not so
12 great as to make the class unmanageable. It therefore is impractical to join each Class Member as a
13 named plaintiffs. Accordingly, utilization of a class action is the most economically feasible means of
14 determining the merits of this litigation.

15 34. Despite the size of the proposed Class, the Class Members are readily ascertainable
16 through an examination of the records that Defendants are required by law to keep. Likewise, the dollar
17 amount owed to each Class Member is readily ascertainable by an examination of those same records.

18 **B. Commonality**

19 35. There are questions of law and fact common to the Class that predominate over any
20 questions affecting only individual Class Members. These common questions of law and fact include,
21 without limitation:

- 22 a. Whether Defendants' failure to provide accurate itemized wage statements to each and
23 every employee violates section 226.
- 24 b. Whether Defendants failed to pay workers in a timely fashion upon each and every
25 person's discharge from, or resignation from, work in violation of sections 201.5 and 203
26 of the Code.
- 27 c. Whether Defendants failed to pay proper minimum wages and/or overtime wages under
28 Code sections 510 and 1194.

1 d. Whether Defendants failed to reimburse necessary expenses to each and every employee.

2 **C. Typicality**

3 36. There is a well-defined community of interest in the questions of law and fact common to
4 the Class Members.

5 37. The claims of the named Plaintiff are typical of the claims of the Class, which claims all
6 arise from the same general operative facts, namely, Defendants did not compensate its employees as
7 required by the Code and applicable Wage Order. Plaintiff and all members of the Class sustained
8 injuries and damages arising out of and caused by the Defendants' common course of conduct in
9 violation of laws, regulations that have the force and effect of law, and statutes as alleged herein.
10 Plaintiff has no conflict of interest with the other Class Members and are able to represent the Class
11 Members' interests fairly and adequately.

12 **D. Adequacy of Representation**

13 38. Plaintiff will fairly and adequately represent and protect the interests of the members of
14 the Class. Counsel who represent Plaintiff are competent and experienced in litigation large employment
15 class actions. Neither Plaintiff nor their counsel have any conflict with the Class.

16 **E. Superiority of Class Action**

17 39. A class action is superior to other available means for the fair and efficient adjudication
18 of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and
19 fact common to the Class predominate over any questions affecting only individual members of the
20 Class. Each member of the Class has been damaged and is entitled to recovery by reason of Defendants'
21 illegal policy and/or practice of failing to pay hourly wages, failing to pay overtime wages, failing to
22 provide Class Members rest and meal periods without legal compensation. Class action treatment will
23 allow those similarly situated persons to litigate their claims in the manner that is most efficient and
24 economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely
25 to be construed in the management of this action that would preclude its maintenance as a class action.
26 The disposition of all claims of the members of the Class in a class action, rather than in individual
27 actions, benefits the parties and the Court. The interest of the Class Members in controlling the
28

1 prosecution of separate claims against Defendants is small when compared with the efficiency of a class
2 action.

3 **FIRST CAUSE OF ACTION**

4 (Continuing Wages, California Labor Code §§ 201.5, 203
5 On Behalf of Plaintiff and Class Members Against All Defendants)

6 40. Plaintiff realleges and incorporates herein by reference the allegations contained in this
7 Complaint as though fully set forth herein.

8 41. Plaintiff last worked for Defendants when the Production was concluded. As provided in
9 California Labor Code Section 201.5, Plaintiff should have been compensated final wages by no later
10 than a week after completion of their work on the Production, or the next regular payday. Plaintiff has
11 not received her final wages as of filing of this complaint.

12 42. Defendants' failure to compensate Plaintiff and Class Members within the time for which
13 provision is made by section 201.5 of the California Labor Code, despite their knowledge of their
14 obligation to do so, was and is "willful" as the word is used in section 203.

15 43. Pursuant to section 203 of the California Labor code, Plaintiff and Class Members are
16 entitled to thirty days of continuing wages from Defendants in the following amount, at least
17 **\$272,000.00**. Plaintiff is also entitled to recover costs and reasonable attorneys' fees under section
18 218.5 of the California Labor Code.

19 **SECOND CAUSE OF ACTION**

20 (Failure to Provide Meal Breaks, Cal. Lab. Code §§ 226.7 and 512 and Wage Order
21 On Behalf of Plaintiff and the Class Members Against Defendants)

22 44. Plaintiff realleges and incorporates herein by reference the allegations contained in this
23 Complaint as though fully set forth herein.

24 45. At all times herein relevant, sections 226.7 and 512 of the California Labor Code and
25 IWC Wage Order 12 provided that that employees must receive meal periods of not less than thirty
26 minutes if an employee works for a period of more than six hours and a second thirty minute meal period
27 after no less than six hours after the termination of the preceding meal period. By its failure to provide
28 minimum statutory meal periods to Plaintiff and Class Members, Defendant willfully violated the
provisions of Labor Code sections 226.7 and 512, and IWC Wage Order 12.

46. Because Defendant failed to properly provide the proper meal periods, it is liable to Plaintiff and the Class Members for one hour of additional pay at the regular rate of compensation for each workday that the proper meal periods were not provided.

47. As a result of the unlawful acts of Defendant, Plaintiff and Class Members have been deprived of premium wages, and/or other compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest thereon, attorneys' fees, and costs. Plaintiff is entitled to at least \$100, not including interest thereon, reasonable attorneys' fees and cost of suit.

THIRD CAUSE OF ACTION

(Failure to Provide Rest Breaks, Cal. Lab. Code § 226.7 and IWC Wage Order)
On Behalf of Plaintiff and Class Members Against Defendants)

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

49. At all times herein relevant, sections 226.7 of the California Labor Code and IWC Wage Order 12 provided that employees must receive rest periods of at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.

50. By its failure to provide required breaks to Plaintiff and Class Members, Defendant willfully violated the provisions of Labor Code sections 226.7 and IWC Wage Order 12.

51. Because Defendant failed to properly provide the proper rest breaks, it is liable to Plaintiff and Class Members for one hour of additional pay at the regular rate of compensation for each workday that the proper rest breaks were not provided, pursuant to Labor Code section 226.7 and IWC Wage Order 12.

52. As a result of the unlawful acts of Defendant, Plaintiff and Class Members have been deprived of premium wages, and/or other compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest thereon, attorneys' fees, and costs. Plaintiff is entitled to at least \$100, not including interest thereon, reasonable attorneys' fees and cost of suit.

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FOURTH CAUSE OF ACTION

(Unpaid Minimum Wages and Overtime Compensation,
California Labor Code §§ 510, 1194, 1194.2

On Behalf of Plaintiff and Class Members Against All Defendants)

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

54. Plaintiff was not timely paid the minimum wages and/or overtime to which she was entitled in violation of California Labor Code §§ 510 and 1194. See Biggs v. Wilson, 1 F3d 1537 (9th Cir. 1993), in which the court found both late payment and nonpayment of minimum wages to violate a statute requiring the payment of minimum hourly wage. Id. at 1544 (“[p]aychecks are due on payday. After that, the minimum wage is ‘unpaid.’”)

55. On the Production, Plaintiff worked many hours for Defendants, including overtime, without timely compensation for work performed, as required by law.

56. The Production took place in Los Angeles. The minimum wage in 2019 was \$12 per hour.

57. Accordingly, Plaintiff is owed at least \$288 in wages and liquidated damages under section 1194.2 of the California Labor Code. Plaintiff is also entitled to recover interest thereon, costs and reasonable attorneys’ fees under section 1194 of the California Labor Code.

FIFTH CAUSE OF ACTION

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

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

59. Defendants failed to timely provide Plaintiff with wage statements conforming to the requirements of section 226(a) of the California Labor Code at all. The foregoing was intentional misconduct of Defendants that injured Plaintiff and Class Members insofar as they were deprived of information to which they were legally entitled.

60. Section 226(e)(1) states that:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual

1 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
2 one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
3 not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an
4 award of costs and reasonable attorney's fees.

5 61. The failure of Defendants to provide wage statements violates section 226(a) of the
6 California Labor Code insofar as Plaintiff has not received data to which they are entitled. Accordingly,
7 Plaintiff and Class Members are entitled to \$50 per pay period in which they did not receive a wage
8 statement.

9 62. Plaintiff and Class Members are further entitled to costs and reasonable attorney's fees
10 according to proof pursuant to California Labor Code section 226(e)(1).

11 **SIXTH CAUSE OF ACTION**
12 (Indemnification and Reimbursement of Expenditures,
13 California Labor Code § 2802
14 On Behalf of Plaintiff and Class Members Against All Defendants)

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

17 64. In discharge of their duties, Defendants required Plaintiff to make purchases and/or rent
18 equipment for their work on the Production.

19 65. Pursuant to section 2802 of the Labor Code, Plaintiff and Class Members are entitled to
20 reimbursement of their out-of-pocket expenses from Defendants, interest thereon, attorney's fees and
21 costs.

22 **SEVENTH CAUSE OF ACTION**
23 (Unfair Business Practices On Behalf of Plaintiff and Class Members Against All Defendants)

24 66. Plaintiff realleges and incorporates herein by reference the allegations contained in this
25 Complaint as though fully set forth herein.

26 67. Business and Professions Code section 17200 *et seq.* prohibits acts of unfair competition,
27 including any "unlawful, unfair, or fraudulent business act or practice." Cal. Bus. & Prof. Code § 17200
28 *et seq.* Plaintiff and Class Members allege that Defendants have engaged in unfair business practices in
California by the above-described failure to comply with the California Labor Code.

68. Defendants' violations of California wage and hour laws constitutes a business practice because Defendants' aforementioned acts and omissions were done repeatedly over a significant period of time, and in a systematic manner, to the detriment of Plaintiff and Class Members.

69. Defendants have avoided payment of taxes, wages and overtime wages and other benefits required by the Internal Revenue Code, the California Franchise Board, the California Labor Code, the California Code of Regulations, and the applicable IWC Wage Order. Defendants have failed to record, report and pay the correct sums of assessment to the state authorities under the Labor Code and other applicable regulations.

70. As a result of Defendants' unfair and unlawful business practices, including failure to pay minimum and overtime wages, Defendants have reaped unfair and illegal profits during the relevant time period herein at the expense of Plaintiff, Class Members, and members of the public. Defendants should be made to disgorge their ill-gotten gains and to restore them to Plaintiff and Class Members.

71. The actions of Defendants entitle Plaintiff and Class Members to seek the remedies available under section 17200 *et seq.* Plaintiff and Class Members seek full restitution of the amounts from Defendants, as necessary and according to proof, to restore any and all amounts—including taxes and interest—withheld, acquired, or converted by Defendants by means of the unfair practices complained of herein.

72. Plaintiff and Class Members, on behalf of themselves, as well as on behalf of the general public, further seek attorney's fees and costs pursuant to sections 218.5 of the Labor Code and 1021.5 of the Code of Civil Procedure. In addition, Plaintiff seeks the appointment of a receiver as necessary.

EIGHTH CAUSE OF ACTION

(Failure to Provide Employment Records Upon Request Cal. Lab. Code §226(b)
On Behalf Of Plaintiff McGhan Against All Defendants)

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

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

1 75. Plaintiff McGhan requested that Defendant permit inspection or copying of their
2 employment records pursuant to Labor Code section 226(b). Defendants failed to produce the
3 documents requested.

4 76. Pursuant to Labor Code Section 226(f), Plaintiff is entitled, and hereby seeks to recover
5 from Defendant a seven-hundred-fifty dollar (\$750) penalty as Plaintiff requested but did not receive
6 records under section 226(b), as well as reasonable attorney's fees, and the costs of bringing this cause
7 of action.

8 **NINTH CAUSE OF ACTION**

9 (Failure to Provide Employment Records Upon Request Cal. Lab. Code §1198.5
10 On Behalf Of Plaintiff McGhan Against All Defendants)

11 77. Plaintiff realleges and incorporates herein by reference the allegations contained in this
12 Complaint as though fully set forth herein.

13 78. Pursuant to Labor Code section 1198.5, an employer shall afford current and former
14 employees the right to inspect or copy the records pertaining to that current or former employee, upon
15 reasonable request to the employer.

16 79. Plaintiff McGhan requested that Defendants permit inspection or copying of her
17 employment records pursuant to Labor Code section 1198.5. Defendants failed to produce the
18 documents requested..

19 80. Pursuant to Labor Code Section 1198.5(k), Plaintiff is entitled, and hereby seeks to
20 recover from Defendant a seven-hundred-fifty dollar (\$750) penalty as well as reasonable attorney's
21 fees, and the costs of bringing and prosecuting this cause of action.

22 **TENTH CAUSE OF ACTION**

23 California Labor Code § 2698 et seq. Civil Penalties
24 (On Behalf of Plaintiff individually, the California Labor & Workforce Development Agency and All
25 Class Members, Against All Defendants)

26 81. Plaintiff realleges and incorporates herein by reference the allegations contained in this
27 Complaint as though fully set forth herein.

28 82. Pursuant to section 2699.3(a)(1) of the Labor Code, on approximately March 3, 2020,
Plaintiff submitted her PAGA Claim Notice online to the California Labor and Workforce Development

1 Agency (“LWDA”) and notified the LWDA of the specific provisions of the Labor Code alleged to have
2 been violated by Defendants, including the theories set forth in the Complaint. Also on that day,
3 Plaintiff gave written notice by certified mail to Defendants of the specific provisions of the Labor Code
4 alleged to have been violated by Defendants. At all relevant times, California Labor Code section
5 2699.3(a)(2)(A) provided:

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

12 Cal. Lab. Code § 2699.3(a)(2)(A). When Sixty Five (65) calendar days of the March 3, 2020 postmark
13 date of the notice sent by Plaintiff have passed Plaintiff may “commence a civil action pursuant to
14 Section 2699.” Cal. Lab. Code § 2699.3(a)(2)(A).

15 83. Plaintiff contends that sections 201.5, 203, 204, 210, 226, 226.7, 510, 558, 558.1, 1194,
16 1197.1, and 2699 of the Labor Code enables them to recover civil penalties under PAGA, as well as
17 attorney’s fees and costs, from Defendants, through a civil action on behalf of herself and other Class
18 Members.

19 84. Plaintiff seeks to recover the PAGA civil penalties through a representative action
20 permitted by PAGA and the California Supreme Court in Arias v. Superior Court, 46 Cal. 4th 969
21 (2009). Therefore, class certification of the PAGA claims is not required.

22 85. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor
23 Code provisions:

- 24 a. Section 203 of the California Labor Code, Continuing Wages
- 25 b. Section 226(a) and (b) of the California Labor Code, Failure to Provide Accurate Wage
26 Statements
- 27 c. Sections 510 and 1194 of the California Labor Code, Failure to Pay Overtime and
28 Minimum Wage

1 d. Section 1198.5 of the California Labor Code

2 86. With respect to violations of Labor Code § 201.5, Plaintiff contends that the failure of
3 Defendant to make payments within the time provided for has been and is “willful” within the meaning
4 of such word as used in Section 203 of the California Labor Code and that, accordingly, each Aggrieved
5 Employee who was not timely paid his or her final wages is entitled to civil penalties for which
6 provision is made in Section 210 of the Labor Code on account of violations of section 204.

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

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

12 1. That, under the First Cause of Action, it be adjudged that the failure of Defendants to
13 make payment of Plaintiff’s wages was in violation of section 201.5 of the California Labor Code, and
14 was “willful” as that word is used in section 203 of the California Labor Code, and that the Court enter
15 judgment against Defendants in favor of Plaintiff. That judgment be entered in favor of Plaintiff and
16 Class Members and against Defendants of at least: totaling at least **\$272,000.00**, as prescribed by section
17 203 of the California Labor Code, and costs and reasonable attorneys’ fees in accordance with the
18 provisions of California Labor Code section 218.5.

19 2. That, under the Second Cause of Action, this Court enter judgment in favor of Plaintiff
20 and Class Members and against Defendants. That judgment be entered in favor of Plaintiff and Class
21 Members in the sum of at least \$100, not including interest thereon, reasonable attorneys’ fees and cost
22 of suit.

23 3. That, under the Third Cause of Action, this Court enter judgment in favor of Plaintiff of
24 at least \$100, not including interest thereon, reasonable attorneys’ fees and cost of suit, and enter
25 judgment in favor of Plaintiff and Class Members against Defendant in the amount of damages
26 according to proof, interest thereon, reasonable attorneys’ fees and cost of suit.

27 4. That, under the Fourth Cause of Action, this Court enter judgment in favor of Plaintiff
28 and against Defendants in the amounts according to proof under 1194.2, interest thereon, reasonable

1 attorneys' fees and cost of suit according to proof pursuant to sections 1194, 1194.2 and 1197.1.

2 5. That, under the Fifth Cause of Action, the Court enter judgment in favor of Plaintiff and
3 against Defendants of \$50 for Plaintiff, and for Class Members according to proof, and costs and
4 reasonable attorneys' fees according to proof under section 226(e)(1).

5 6. That, under the Sixth Cause of Action, the Court enter judgment in favor of Plaintiff and
6 Class Members and against Defendants. That judgment be entered in the amounts according to proof,
7 interest thereon, and attorney's fees and costs according to proof, pursuant to section 2802 of the
8 California Labor Code.

9 7. That, under the Seventh Cause of Action, it be adjudged that Defendants' violation of the
10 applicable Wage Order and sections of the California Labor Code violated sections 17200 et seq. of the
11 California Business and Professions Code. Accordingly, Plaintiff requests that the Court order
12 Defendant to pay restitution according to proof, along with interest, and reasonable attorneys' fees
13 pursuant to section 1021.5 of the California Labor Code.

14 8. That, under the Eighth Cause of Action, the Court enter judgment in favor of Plaintiff
15 McGhan and against Defendants. That judgment be entered in the amount of at least \$750 and statutory
16 attorney's fees, according to proof.

17 9. That, under the Ninth Cause of Action, the Court enter judgment in favor of Plaintiff
18 McGhan and against Defendants. That judgment be entered in the amount of at least \$750 and statutory
19 attorney's fees, according to proof.

20 10. That, with respect to the Tenth Cause of Action that this Court award Plaintiff, the
21 LWDA, and other former and current Class Members their civil penalties, attorney's fees, and costs of
22 suit, all according to proof, pursuant to section 201.5, 203, 204, 226, 226.7, 510, 558, 558.1, and 2699 of
23 the Labor Code.

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

27 DATED: September 25, 2020

HARRIS & RUBLE

Alan Harris
Alan Harris/Attorney for Plaintiff