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Attorneys for Plaintiff DJ GLENON,
on behalf of himself and all others similarly situated
and on behalf of the general public

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

DJ GLENON, on behalf of himself and
all others similarly situated, and on
behalf of the general public,

Plaintiff,

v.

EXTREME MARKETING AND
PROMOTIONS, INC., and DOES 1-
100,

Defendants.

Case No. 37-2020-00034344-CU-OE-CTL

PLAINTIFF DJ GLENON'S PAGA COMPLAINT

1. Violation of the Private Attorney General Act of 2004 (PAGA) for Failure to Pay Straight, Regular Rate Wages for All Work Performed (Cal. Lab. Code § 2698, et. seq.)
2. Violation of the PAGA for Failure to Pay All Overtime and Doubletime Wages (Cal. Lab. Code § 2698, et. seq.)
3. Violation of the PAGA for Failure to Provide Meal Periods (Cal. Lab. Code § 2698, et. seq.)
4. Violation of the PAGA for Failure to Provide Rest Periods (Cal. Lab. Code § 2698, et. seq.)
5. Violation of the PAGA for Failure to Pay Wages Due at Termination and During Employment (Cal. Lab. Code § 2698, et. seq.)
6. Violation of the PAGA for Knowing and Intentional Failure to Comply with Itemized Employee Wage Statements (Cal. Lab. Code § 2698, et. seq.)
7. Violation of the PAGA for Failure to Pay Employees Two Times Per Month (Cal. Lab. Code § 2698, et. seq.)
8. Violation of the PAGA for Failure to Adopt a Compliant Sick Pay/Paid Time Off Policy (Cal. Lab. Code § 2698, et. seq.); and,
9. Violation of the PAGA for Failure to Reimburse Expenses in Discharging Duties (Cal. Lab. Code § 2698, et. seq.); and,
10. Violation of the PAGA for Failure to Provide Suitable Seating (Cal. Lab. Code § 2698, et. seq.).

DEMAND FOR JURY TRIAL

1 Plaintiff DJ GLENON (“Plaintiff”), on behalf of himself and all others similarly aggrieved
2 employees (“aggrieved employees”), files this Complaint against Defendant Extreme Marketing and
3 Promotions, Inc. including, but not limited to, any related entity, any parent, subsidiary or affiliate
4 thereof or any successor in interest of any of the foregoing (collectively “Defendant” or “EXTREME
5 MARKETING AND PROMOTIONS”) and/or DOES 1-100.

6 **I. INTRODUCTION**

- 7 1. This is a representative action seeking recovery of penalties under the California Labor Code
8 Private Attorney General Act of 2004 (PAGA), California Labor Code § 2698 *et. seq.*, against
9 Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES 1-100. The PAGA
10 permits an “aggrieved employee” to bring a lawsuit on behalf of himself and other current and
11 former employees to address an employer’s violations of the California Labor Code.
- 12 2. This action is brought on behalf of Plaintiff and all other aggrieved employees of Defendant
13 EXTREME MARKETING AND PROMOTIONS and/or DOES who: worked a shift of at least
14 five (5) hours without receiving a meal period; worked four (4) hours, or a major fraction
15 thereof, without receiving a ten (10) minute net rest break; worked qualifying shifts without
16 receiving second meal periods and second and third rest breaks, were not provided accurate
17 itemized wage statements, were not paid all wages owed twice per month, were not provided
18 paid sick leave, were not paid compensation for all time worked at the straight, overtime, or
19 double time rate, were not provided reimbursements for business expenditures; were not paid
20 waiting time penalties; or, were not provided suitable seating. Plaintiff seeks penalties on
21 behalf of himself and all other aggrieved employees of Defendant EXTREME MARKETING
22 AND PROMOTIONS and/or DOES as provided herein. This Complaint also seeks attorneys’
23 fees and costs under the PAGA, Cal. Lab. Code § 2699(g)(1).
- 24 3. By misclassifying Plaintiff and all other aggrieved employees as independent contractors,
25 DEFENDANT EXTREME MARKETING AND PROMOTIONS AND/OR DOES has sought
26 to avoid its legal obligations as “employer” of Plaintiff and all other aggrieved employees
27 under the California Labor Code. Pursuant to its misclassification of Plaintiff and the aggrieved
28 employees, DEFENDANT EXTREME MARKETING AND PROMOTIONS AND/OR

DOES have sought to avoid and have violated, among other things, the duty to provide meal and rest periods and pay all wages owed for all hours worked. DEFENDANT EXTREME MARKETING AND PROMOTIONS AND/OR DOES' misclassification regime has also resulted in Plaintiff and the aggrieved employees having to shoulder the burden of paying business expenses that, as the employer, DEFENDANT EXTREME MARKETING AND PROMOTIONS AND/OR DOES, would otherwise be obligated to pay. For instance, under DEFENDANT EXTREME MARKETING AND PROMOTIONS AND/OR DOES's misclassification scheme, Plaintiff and the aggrieved employees must pay for the including the depreciation of vehicles, fuel, maintenance, and other vehicle operating costs (mileage), cellphone costs (including minutes & data), camera and photography costs, other miscellaneous equipment (including GPS navigational equipment), and other business-related expenses that, as the legal employer, DEFENDANT EXTREME MARKETING AND PROMOTIONS AND/OR DOES is obligated to pay and/or reimburse Plaintiff and the aggrieved employees for.

4. DEFENDANT EXTREME MARKETING AND PROMOTIONS AND/OR DOES may not lawfully avoid these legal obligations by labeling workers like Plaintiff and the aggrieved employees as an "independent contractor," when the nature of that engagement is an employment one.

5. At all times mentioned herein, the common policies and practices of DEFENDANT EXTREME MARKETING AND PROMOTIONS AND/OR DOES were a direct cause of DEFENDANT EXTREME MARKETING AND PROMOTIONS' AND/OR DOES' failure to comply with California's wage and hours laws, Wage Orders, and/or the California Labor Code, as set forth more fully within.

6. Due to its misclassification scheme, DEFENDANT EXTREME MARKETING AND PROMOTIONS AND/OR DOE have not provided Plaintiff and the aggrieved employees with meal periods and/or rest breaks. DEFENDANT EXTREME MARKETING AND PROMOTIONS AND/OR DOE do not have policies that provide Plaintiff and the aggrieved employees with meal periods that comply with California law. Under the umbrella of their

misclassification scheme, DEFENDANT EXTREME MARKETING AND PROMOTIONS AND/OR DOES fails to provide meal and rest breaks wherein Plaintiff and the aggrieved employees are relieved of all control and duty for thirty-minutes (meal periods) and ten-minutes (rest periods). Also motivated by their misclassification of Plaintiff and the aggrieved employees, DEFENDANT EXTREME MARKETING AND PROMOTIONS AND/OR DOES do not pay Plaintiff and the aggrieved employees one hours' pay at Plaintiff's and the aggrieved employees' regular rate of pay for each day DEFENDANT EXTREME MARKETING AND PROMOTIONS AND/OR DOES do not provide a meal and/or a rest period in accordance with California law.

7. At all times mentioned herein, Plaintiff and the other aggrieved employees were not classified as "Exempt" or primarily employed in an executive, professional, or administrative capacity. Thus, under California law, Plaintiff and the aggrieved employees should be: provided meal periods; authorized and permitted to take rest periods; paid one hour of premium pay for all unprovided meal periods; paid one hour of premium pay for all rest periods that were not authorized and/or permitted; paid penalties for not being provided itemized wage statements; paid penalties for not being provided paid sick leave; paid compensation for all time worked at the regular, overtime or double time rate; paid all wages owed twice per month; reimbursed business expenses provided suitable seating; and, paid penalties for not being paid timely at the time of termination.

8. At all times mentioned herein, Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES controlled the working conditions of Plaintiff and the aggrieved employees including, but not limited to, having the authority to hire and fire Plaintiff and the other aggrieved employees, setting the wages of Plaintiff and the other aggrieved employees, and instructing Plaintiff and the other aggrieved employees when and/or where to work. In addition, Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES developed, wrote, dictated, approved and/or authorized wage and hour policies and/or practices that Plaintiff and the aggrieved employees labored under. These policies and/or practices included, but were not limited to, policies and/or practices regarding meal periods, straight

time, overtime, double time, rest periods, wage statements, paid sick leave, suitable seating paying compensation at time of termination, reimbursing business expenses; and timing of payment. Further, Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES had the ability to prevent Plaintiff and the other aggrieved employees from working.

II. JURISDICTION AND VENUE

9. Plaintiff DJ GLENON is an individual residing in California. Plaintiff was employed by Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES in California. Plaintiff, and each of the aggrieved employees, were employees of Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES, and/or its operating divisions and subsidiaries, within the State of California. Plaintiff and each of the aggrieved employees were subject to the unlawful policies beginning one (1) year prior to the date Plaintiff sent Notice to the State of California Labor and Workforce Development Agency (LWDA).
10. Venue as to each Defendant and/or DOE is proper in this judicial district. Each Defendant and/or DOE operates facilities, employs hourly employees, conducts business, and commits *California Labor Code* violations within San Diego County and California. Each Defendant and/or DOE is within the jurisdiction of this Court for service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and the other aggrieved employees situated within the State of California which has included within San Diego County. Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES employ numerous aggrieved employees in California and/or San Diego County.
11. Plaintiff brings this action on behalf of himself and the other aggrieved employees of and/or DOES pursuant to the PAGA. Plaintiff, as a personal representative of the general public, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the one (1) year period before Plaintiff filed Notice with the LWDA of his intent to bring this action, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with at least seventy-five (75) percent of the penalties recovered being reimbursed to the State of California and the LWDA.

12. There is no federal question at issue as the issues herein are based solely upon California statutes and law, including the *California Labor Code*, IWC Wage Orders, *Code of Civil Procedure*, and *Civil Code*.

13. The California Superior Court also has jurisdiction in this matter because the penalties sought exceed the minimum jurisdictional limits of the Superior Court and will be established at trial, according to proof. Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES either own, maintain offices, transact business, have an agent or agents, have their principal place of business in, and/or otherwise are found within the County of San Diego, California.

III. THE PARTIES

A. Plaintiff

14. Plaintiff DJ GLENON, a former employee of Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES, and similar aggrieved employees were and are entitled to statutory meal periods, statutory rest periods, suitable seating, reimbursements, accurate itemized wage statements, payment of wages owed twice a month, paid sick leave, compensation for all time worked at the regular, overtime, and doubletime rate, and to be paid timely pursuant to California law and/or to receive timely wages at the time of termination from Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES.

15. Plaintiff and similar aggrieved employees were and are employed in the State of California by the Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES as non-exempt individuals who signed contracts with Defendant EXTREME MARKETING AND PROMOTIONS and/or its subsidiaries or affiliated companies and/or predecessors within the State of California and worked as brand ambassadors, event managers, in-store demonstrators, costume characters, guerrilla marketers, market managers, promotional models, bilingual ambassadors, college tour guides, liquor models, actors, dancers, voice overs, djs and emcees, and similar job designations and titles, for Defendant EXTREME MARKETING AND PROMOTIONS in California in service of those contracts.

16. These claims are for Plaintiff and all the non-exempt individuals who signed contracts with

Defendant EXTREME MARKETING AND PROMOTIONS and/or its subsidiaries or affiliated companies and/or predecessors within the State of California and worked as brand ambassadors, event managers, in-store demonstrators, costume characters, guerrilla marketers, market managers, promotional models, bilingual ambassadors, college tour guides, liquor models, actors, dancers, voice overs, djs and emcees, and similar job designations and titles, for Defendant EXTREME MARKETING AND PROMOTIONS in California in service of those contracts.

17. A notice correspondence showing compliance with Cal. Lab. Code § 2699.3 was sent to the LWDA and Defendant EXTREME MARKETING AND PROMOTIONS on July 21, 2020. This notice demonstrates that Plaintiff is an aggrieved employee and has standing to bring a representative action on behalf of the LWDA and as a private attorney general. No notice of cure by Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES was provided and no notice of investigation was received from the LWDA in the statutorily proscribed sixty-five (65) day period since the mailing of the notice of the action. Accordingly, Plaintiff files this action as a “Representative Action” as authorized by Cal. Lab. Code § 2699.3(a)(2)(C).

B. Defendants

18. Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES are engaged in the ownership and operation of industrial work sites located within San Diego County and throughout California. Per Defendant’s EXTREME MARKETING AND PROMOTIONS website, Defendant EXTREME MARKETING AND PROMOTIONS is a “full service national event staffing and management company for live events.” Also, per the company’s website, Defendant EXTREME MARKETING AND PROMOTIONS is a “nationwide experiential staffing agency that trains and develops dedicated brand ambassadors who create meaningful experiences.” However, Defendant EXTREME MARKETING AND PROMOTIONS fails to obey California’s Labor Code in doing so.
19. Defendant EXTREME MARKETING AND PROMOTIONS’ and/or DOES’ principal place of business was/is in the State of California.

- 1 20. Defendant and/or DOES have numerous offices and/or contracts in the State of California.
- 2 21. California is the nerve center of Defendant EXTREME MARKETING AND PROMOTIONS’
- 3 and/or DOES’ operations.
- 4 22. Despite misclassifying Plaintiff and the aggrieved employees as independent contractors,
- 5 Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES were the employer
- 6 of Plaintiff and the aggrieved employees he represents. Plaintiff and those similarly situated
- 7 aggrieved employees work under the control and direction of Defendant EXTREME
- 8 MARKETING AND PROMOTIONS and/or DOES in connection with the performance of
- 9 work, both under the contract for hire for the performance of work and for the performance of
- 10 work in fact. Plaintiff and the aggrieved employees do not perform work that is outside
- 11 Defendant EXTREME MARKETING AND PROMOTIONS’ and/or DOES’ usual course of
- 12 business, and Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES
- 13 retain the right to control Plaintiff’s and the aggrieved employees’ work details. The work
- 14 performed by Plaintiff and the aggrieved employees constitutes the integral, if not the essential,
- 15 part of Defendant EXTREME MARKETING AND PROMOTIONS’ and/or DOES’ business.
- 16 As such, PROFESSIONAL AUTO TRANSPORT, INC. and/or DOES is the employer of
- 17 Plaintiff and the aggrieved employees and owes the statutory protections the California Labor
- 18 Code affords employees, such as the right to compliant meal periods and rest breaks, suitable
- 19 seating, the payment of wages for all hours worked, properly itemized wage statements, and
- 20 the payment of all wages owed at the time of termination, and reimbursement of all business
- 21 related expenses.
- 22 23. Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES retain the right to
- 23 control the manner and means of accomplishing the desired result of completing events for
- 24 Defendant EXTREME MARKETING AND PROMOTIONS’ and/or DOES’ customers.
- 25 24. Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES, not Plaintiff or
- 26 the aggrieved employees, sets the prices for its work/events.
- 27 25. Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES, not Plaintiff or
- 28 the aggrieved employees, sets the duration of time the contract for hire is to be in effect.

1 26. Plaintiff and the aggrieved employees work events for Defendant EXTREME MARKETING
2 AND PROMOTIONS and/or DOES .

3 27. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in
4 the conduct alleged, of the Defendants sued as DOES 1 through 100, inclusive, but on
5 information and belief alleges that said Defendants are now, and/or at all times mentioned in
6 this Complaint were doing business in the State of California and/or throughout the United
7 States. Plaintiff is informed and believes that each of the Defendants designated as a DOE is
8 legally responsible in some manner for the unlawful acts alleged. Plaintiff will amend this
9 Complaint to allege the true names and capacities of the DOE Defendants when ascertained.

10 28. Plaintiff is informed and believes each Defendants acted, in whole or in part, in all respects
11 pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business
12 plan or policy in all respects pertinent hereto, and the acts of each Defendants are legally
13 attributable to the other Defendants as each Defendants has ratified, approved, and/or
14 authorized the acts of each of the remaining Defendants.

15 29. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 100 are partners,
16 agents, owners, and/or shareholders of Defendants and/or DOES and were acting on behalf of
17 Defendants and/or DOES at all times.

18 **IV. GENERAL ALLEGATIONS**

19 30. During all, or a portion, of the one (1) year period before Plaintiff filed Notice of his claims
20 with the LWDA, Plaintiff and each of the aggrieved employees were employed by Defendant
21 and/or DOES in the State of California. Plaintiff and the other aggrieved employees are
22 composed of all persons who performed services at Defendant EXTREME MARKETING
23 AND PROMOTIONS' stores, facilities, centers and customer locations in the State of
24 California as non-exempt individuals who signed contracts with Defendant EXTREME
25 MARKETING AND PROMOTIONS and/or its subsidiaries or affiliated companies and/or
26 predecessors within the State of California and worked as brand ambassadors, event managers,
27 in-store demonstrators, costume characters, guerrilla marketers, market managers, promotional
28 models, bilingual ambassadors, college tour guides, liquor models, actors, dancers, voice

overs, djs and emcees, and similar job designations and titles, for Defendant EXTREME MARKETING AND PROMOTIONS in California in service of those contracts.

31. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that Plaintiff and the aggrieved employees were entitled to be provided legally compliant meal periods in a timely manner or payment of one hour of pay as additional compensation at Plaintiff's and the aggrieved employees' regular rate of pay when they did not receive a timely, uninterrupted meal period.

32. By failing to provide a duty-free meal period of not less than thirty (30) minutes for every shift of at least five (5) hours worked per day by Plaintiff and all aggrieved employees, and by failing to provide compensation for these unprovided meal periods, Defendant and/or DOES willfully violated the provisions of Cal. Lab. Code § 226.7, IWC Wage Order No. 4-2001, and California Code of Regulations, Section 11040(11). In addition, Defendant and/or DOES failed to provide Plaintiff and the other aggrieved employees another duty-free meal period of not less than thirty (30) minutes for every shift of more than ten (10) hours per day.

33. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that Plaintiff and the aggrieved employees were entitled to be authorized and/or permitted to take legally compliant rest periods in a timely manner or payment of one hour of pay as additional compensation at Plaintiff's and the aggrieved employees' regular rate of pay when they were not authorized and/or permitted to take a legally compliant rest period.

34. By failing to provide paid ten (10) minute rest periods for every four (4) hours or major fraction thereof, worked per day by Plaintiff and all aggrieved employees and by failing to provide compensation for these periods, Defendant and/or DOES willfully violated the provisions of *Cal. Lab. Code* § 226.7, IWC Wage Order No. 4-2001, and California Code of Regulations, Section 11040(12).

35. At all times mentioned herein, Defendant and/or DOES failed to pay all wages owed to Plaintiff and to other terminated or resigned members of the aggrieved employees and failed to timely pay wages during employment.

36. At all times mentioned herein, Defendant and/or DOES failed to pay Plaintiff and the aggrieved

- 1 employees all wages earned twice per month.
- 2 37. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
- 3 Plaintiff and the aggrieved employees were entitled to receive complete and accurate pay
- 4 statements in accordance with California law.
- 5 38. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
- 6 they were not providing complete and accurate pay statements in accordance with California
- 7 law to Plaintiff and the aggrieved employees.
- 8 39. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
- 9 they failed to adopt a sick pay policy for Plaintiff and the aggrieved employees that is compliant
- 10 with California law.
- 11 40. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
- 12 Plaintiff and the aggrieved employees were entitled to receive pay statements itemizing the
- 13 amount of accrued/available sick leave for Plaintiff and the aggrieved employees in accordance
- 14 with California law.
- 15 41. At all times mentioned herein, Defendant and/or DOES did not reimburse Plaintiff and the
- 16 aggrieved employees for business expenses.
- 17 42. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
- 18 they had a duty to compensate Plaintiff and the other aggrieved employees in accordance with
- 19 California law, and that Defendant and DOES had the ability to pay such compensation, but
- 20 willfully and intentionally failed to do so, and Defendant and DOES falsely represented to
- 21 Plaintiff and the other aggrieved employees that they were properly compensating Plaintiff and
- 22 the other aggrieved employees.
- 23 43. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
- 24 Plaintiff and the other aggrieved employees were entitled to timely wages at the time of
- 25 termination. Defendant and/or DOES did not pay all timely wages owed, straight-time wages
- 26 owed, meal period premiums, and/or rest period premiums owed at the time of termination.
- 27 44. At all times mentioned herein, Defendant and/or DOES failed to pay Plaintiff and the other
- 28 aggrieved employees a sum certain at the time of termination or within seventy-two (72) hours

of their resignation and have failed to pay those sums for thirty (30) days thereafter.

45. Plaintiff brings this action on behalf of himself and all other aggrieved employees defined as all the non-exempt individuals who signed contracts with Defendant EXTREME MARKETING AND PROMOTIONS and/or its subsidiaries or affiliated companies and/or predecessors within the State of California and worked as brand ambassadors, event managers, in-store demonstrators, costume characters, guerrilla marketers, market managers, promotional models, bilingual ambassadors, college tour guides, liquor models, actors, dancers, voice overs, djs and emcees, and similar job designations and titles, for Defendant EXTREME MARKETING AND PROMOTIONS in California in service of those contracts that Defendant EXTREME MARKETING AND PROMOTIONS in California, employed beginning one year prior to the date Plaintiff sent Notice to the LWDA.

46. Plaintiff reserves the right to amend or modify the definition of aggrieved employees with respect to the issues or in any other way.

FIRST CAUSE OF ACTION AGAINST DEFENDANT EXTREME MARKETING AND PROMOTIONS AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Pay Straight, Regular Rate Wages for All Work Performed (Cal. Lab. Code §2698 et. seq.).

47. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

48. It is fundamental that an employer must pay its employees for the time worked. Cal. Lab. Code § 222 prohibits the withholding on part of a wage. Cal. Lab. Code § 223 prohibits the pay of less than a statutory or contractual wage scale. Cal. Lab. Code §§ 1194-1197.1 prohibits the payment of less than the minimum wage. Cal. Lab. Code § 224 only permits deductions from wages when the employer is required or empowered to do so by state or federal law or when the deduction is expressly authorized in writing by the employee for specified purposes that do not in effect reduce the agreed upon wage.

49. Cal. Lab. Code § 1197.1 of the California Labor Code states “[a]ny employer or other person acting individually as an officer, agent, or employee of another person, who pays or causes to

1 be paid to any employee a wage less than the minimum fixed by an applicable state or local
2 law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
3 liquidated damages payable to the employee, and any applicable penalties pursuant to Section
4 203.”

5 50. Under Defendant EXTREME MARKETING AND PROMOTIONS’ and/or DOES’
6 misclassification scheme, Plaintiff and the aggrieved employees must pay sums for including
7 the depreciation of vehicles, fuel, maintenance, and other vehicle operating costs (mileage),
8 cellphone costs (including minutes & data), camera and photography costs, other
9 miscellaneous equipment (including GPS navigational equipment), and other business-related
10 expenses that, as the legal employer, Defendant EXTREME MARKETING AND
11 PROMOTIONS and/or DOES are obligated to pay and/or reimburse Plaintiff and the
12 aggrieved employees for. When these substantial business expenses are accounted for, the net
13 reality is Plaintiff and similarly situated misclassified aggrieved employees are not paid at the
14 statutory minimum hourly wage for all hours worked.

15 51. Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES have a continuous
16 policy of not paying Plaintiff and the aggrieved employees for all hours worked. Defendant
17 EXTREME MARKETING AND PROMOTIONS and/or DOES have not paid for all the time
18 Plaintiff and the aggrieved employees worked throughout the day. Including, but not limited
19 to, time spent working through meal periods, and/or any other time in the day when the
20 employees were performing work tasks, subject to the control of their employer and/or
21 otherwise had work duties. Plaintiff and aggrieved employees are always subjected to
22 Defendant EXTREME MARKETING AND PROMOTIONS’ and/or DOES’ control
23 throughout the workday, even during unpaid periods of the workday. Defendant EXTREME
24 MARKETING AND PROMOTIONS and/or DOES have failed to pay Plaintiff and the
25 aggrieved employees for—including but not limited to—receiving, reading, and responding to
26 emails regarding event details and instructions, commute time between assignments/events as
27 well as returning home after the final assignments/events, for completing mandatory surveys,
28 and for telephone conversations to discuss assignments/events.

1 52. In the alternative, Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES
2 have established split shifts for Plaintiff and the aggrieved employees as they have been forced
3 to commute between assignments/event. Pursuant to IWC Wage Order No. 4-2001 section
4 4(C), “[w]hen an employee works a split shift, one (1) hour's pay at the minimum wage shall
5 be paid in addition to the minimum wage for that workday, except when the employee resides
6 at the place of employment.” Although Plaintiff and the aggrieved employees have worked
7 split shifts, Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES have
8 not provided them with split shift premiums.

9 53. Plaintiff and the aggrieved employees were employed by Defendant EXTREME
10 MARKETING AND PROMOTIONS and/or DOES at all relevant times. Defendant
11 EXTREME MARKETING AND PROMOTIONS and/or DOES were required to compensate
12 Plaintiff for all hours worked and were prohibited from making deductions that had the effect
13 of reducing the agreed upon wage.

14 54. Plaintiff and the aggrieved employees were entitled to be paid the minimum wage for all time
15 worked. By failing to pay for all work performed, including time spent subject to Defendant
16 EXTREME MARKETING AND PROMOTIONS’ and/or DOES’ control, Defendant
17 EXTREME MARKETING AND PROMOTIONS’ and/or DOES’ compensation to Plaintiff
18 and the aggrieved employees fell below the applicable minimum wage.

19 55. Plaintiff and the aggrieved employees have suffered, and continue to suffer, substantial unpaid
20 wages, and lost interest on such wages, and expenses.

21 56. Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES committed the acts
22 alleged herein knowingly and willfully, with the wrongful and deliberate intention of injuring
23 Plaintiff and the aggrieved employees. Defendant EXTREME MARKETING AND
24 PROMOTIONS and/or DOES acted with malice or in conscious disregard of Plaintiff’s and
25 the aggrieved employees’ rights.

26 57. These claims are for Plaintiff and all the non-exempt individuals who signed contracts with
27 Defendant EXTREME MARKETING AND PROMOTIONS and/or its subsidiaries or
28 affiliated companies and/or predecessors within the State of California and worked as brand

1 ambassadors, event managers, in-store demonstrators, costume characters, guerrilla marketers,
2 market managers, promotional models, bilingual ambassadors, college tour guides, liquor
3 models, actors, dancers, voice overs, djs and emcees, and similar job designations and titles,
4 for Defendant EXTREME MARKETING AND PROMOTIONS in California in service of
5 those contracts.

6 58. Plaintiff, as a former non-exempt employee of Defendant EXTREME MARKETING AND
7 PROMOTIONS and/or DOES who Defendant EXTREME MARKETING AND
8 PROMOTIONS' and/or DOES' failed to pay all wages, is an aggrieved employee with
9 standing to bring an action under the PAGA. Plaintiff satisfied all prerequisites to serve as
10 representatives of the general public to enforce California's labor laws, and the penalty
11 provisions identified in Cal. Lab. Code § 2699.5.

12 59. Plaintiff, as a representative of the people of the State of California, will seek any and all
13 penalties otherwise capable of being collected by the Labor Commission and/or the
14 Department of Labor Standards Enforcement (DLSE). This includes each of the following, as
15 set forth in Cal. Lab. Code § 2699.5, which provides that section 2699.3(a) applies to any
16 alleged violation of the following provisions: sections 510, 1194, 1197, and 1199.

17 60. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
18 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
19 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
20 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
21 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

22 61. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
23 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
24 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
25 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
26 pursuant to Cal. Lab. Code § 558(a).

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SECOND CAUSE OF ACTION AGAINST DEFENDANT EXTREME MARKETING AND PROMOTIONS AND/DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Pay All Overtime and Double time Wages Owed

62. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

63. Cal. Lab. Code § 510 states that eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.

64. Cal. Lab. Code § 510 dictates that any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

65. Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES failed to pay overtime when employees worked over eight (8) hours per day and when employees worked over 40 hours per week. Plaintiff and the aggrieved employees frequently worked over 8 hours per day or over 40 hours per week.

66. Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES failed to pay proper double time when Plaintiff and the aggrieved employees worked seven days in a row or over twelve hours in a day.

67. Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES have a continuous policy of not paying Plaintiff and the aggrieved employees for all hours worked. Plaintiff and the aggrieved employees have been subject to Defendant EXTREME MARKETING AND PROMOTIONS' and/or DOES' control pre-shift, post-shift, and during unpaid meal periods resulting in unpaid overtime where they are not getting paid, which, when working overtime eligible shifts results in underpaid overtime compensation.

68. Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES have a continuous

1 policy of not paying Plaintiff and the aggrieved employees for all hours worked. Defendant
2 EXTREME MARKETING AND PROMOTIONS and/or DOES have not paid for all the time
3 Plaintiff and the aggrieved employees worked throughout the day. Including, but not limited
4 to, time spent working through meal periods, and/or any other time in the day when the
5 employees were performing work tasks, subject to the control of their employer and/or
6 otherwise had work duties. Plaintiff and the aggrieved employees frequently work over eight
7 daily and forty weekly hours, and, therefore, this compensable time is owed at the overtime
8 rates of Plaintiff and the aggrieved employees.

9 69. Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES failed to pay
10 Plaintiff and the aggrieved employees at the appropriate rate of pay, such as overtime pay.
11 Specifically, Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES
12 failed to incorporate bonuses, split shift premiums, and/or commissions into overtime pay
13 calculations.

14 70. In every pay period during the relevant statute of limitations, Plaintiff and the aggrieved
15 employees did not earn at least one-and-a-half times the minimum wage nor did they earn more
16 than half their income in the form of commissions.

17 71. Plaintiff and the aggrieved employees have suffered, and continue to suffer, substantial unpaid
18 wages, and lost interest on such wages, and expenses.

19 72. These claims are for Plaintiff and all the non-exempt individuals who signed contracts with
20 Defendant EXTREME MARKETING AND PROMOTIONS and/or its subsidiaries or
21 affiliated companies and/or predecessors within the State of California and worked as brand
22 ambassadors, event managers, in-store demonstrators, costume characters, guerrilla marketers,
23 market managers, promotional models, bilingual ambassadors, college tour guides, liquor
24 models, actors, dancers, voice overs, djs and emcees, and similar job designations and titles,
25 for Defendant EXTREME MARKETING AND PROMOTIONS in California in service of
26 those contracts.

27 73. Plaintiff, as a representative of the people of the State of California, will seek any and all
28 penalties otherwise capable of being collected by the Labor commission and/or the Department

of Labor Standards Enforcement (DLSE) for violations of Cal. Lab. Code § 510.

74. Plaintiff, as a representative of the people of the State of California, will seek all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in Cal. Lab. Code § 2699.5, which provides that Section 2699.3(a) applies to any alleged violation of the following provisions: sections 226.7, and 512.

75. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

76. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

THIRD CAUSE OF ACTION AGAINST DEFENDANT EXTREME MARKETING AND PROMOTIONS AND/DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Provide Meal Periods (Cal. Lab. Code §2698 et. seq.).

77. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

78. Under Cal. Lab. Code § 512, and IWC Wage Order 4-2001, no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. During this meal period of not less than thirty (30) minutes, the employee is to be completely free of the employer's control and must not perform any work for the employer. If the employee does perform work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the law. Also, the employee is to be compensated for any work performed during the thirty (30) minute meal period.

- 1 79. In addition, an employer may not employ an employee for a work period of more than ten (10)
2 hours per day without providing the employee with another meal period of not less than thirty
3 (30) minutes.
- 4 80. Under Cal. Lab. Code § 226.7, if the employer does not provide an employee a meal period in
5 accordance with the above requirements, the employer shall pay the employee one (1) hour of
6 pay at the employee's regular rate of compensation for each workday that the meal period is
7 not provided.
- 8 81. Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES failed to provide
9 thirty (30) minute, uninterrupted meal periods to its hourly, non-exempt employees who
10 worked for work periods of more than five (5) consecutive hours. As such, Defendant
11 EXTREME MARKETING AND PROMOTIONS and/or DOES non-exempt workers were
12 required to work over five (5) consecutive hours at a time without being provided a thirty (30)
13 minute uninterrupted meal period within that time.
- 14 82. Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES failed to provide
15 thirty (30) minute, uninterrupted meal periods to its Non-Exempt employees for every five (5)
16 continuous hours worked.
- 17 83. Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES has a consistent
18 policy and/or practice of not providing meal periods to Plaintiff and all aggrieved employees
19 and/or providing compensation in lieu thereof. Specifically, Defendant EXTREME
20 MARKETING AND PROMOTIONS and/or DOES' business model was such that Plaintiff
21 and the aggrieved employees were assigned too much work that could not be reasonably
22 completed in their assigned shift. The result is that Defendant EXTREME MARKETING
23 AND PROMOTIONS and/or DOES employees routinely and regularly are forced to eat their
24 meals while working. Defendant EXTREME MARKETING AND PROMOTIONS and/or
25 DOES have a consistent policy and/or practice of not providing meal periods to Plaintiff and
26 all aggrieved employees and/or providing compensation in lieu thereof. As a matter of policy
27 and practice, Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES do
28 not provide employees with full 30-minute meal periods for each day worked where they are

1 free from Defendant EXTREME MARKETING AND PROMOTIONS’ and/or DOES’
2 control. Plaintiff and aggrieved employees are always subjected to Defendant EXTREME
3 MARKETING AND PROMOTIONS’ and/or DOES’ control throughout the workday, even
4 during mandated breaks and meal periods. As a matter of policy and practice, Defendant
5 EXTREME MARKETING AND PROMOTIONS and/or DOES do not provide 30-minute
6 meal periods before the end of the fifth hour. As a matter of policy and practice, Defendant
7 EXTREME MARKETING AND PROMOTIONS and/or DOES do not provide a full 30-
8 minute second meal period when employee shifts eclipse 10-hours wherein employees are free
9 from Defendant EXTREME MARKETING AND PROMOTIONS’ and/or DOES’ control.
10 Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES do not provide a
11 second 30-minute meal periods before the end of the tenth hour. Due to the thrust of business,
12 Defendant EXTREME MARKETING AND PROMOTIONS’ and/or DOES’ policies and
13 practices encourage employees to stay working as opposed to encouraging the rest and
14 nourishment meal periods are designed to provide. As a matter of policy and practice,
15 Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES fails to relinquish
16 all control over employees to permit them with reasonable opportunities to take meal periods.

17 84. Moreover, Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES did not
18 have a policy of providing a second meal period to employees before the end of the tenth hour.

19 85. By failing to provide statutory first and/or second meal periods, and by failing to provide
20 compensation for unprovided meal periods, as alleged above, Defendant EXTREME
21 MARKETING AND PROMOTIONS willfully violated the provisions of Cal. Lab. Code §§
22 226.7 and 512.

23 86. These claims are for Plaintiff and all the non-exempt individuals who signed contracts with
24 Defendant EXTREME MARKETING AND PROMOTIONS and/or its subsidiaries or
25 affiliated companies and/or predecessors within the State of California and worked as brand
26 ambassadors, event managers, in-store demonstrators, costume characters, guerrilla marketers,
27 market managers, promotional models, bilingual ambassadors, college tour guides, liquor
28 models, actors, dancers, voice overs, djs and emcees, and similar job designations and titles,

for Defendant EXTREME MARKETING AND PROMOTIONS in California in service of those contracts.

87. Plaintiff, as a non-exempt employee who unlawfully was deprived of first and second meal periods, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5.

88. Plaintiff, as a representative of the people of the State of California, will seek all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in Cal. Lab. Code § 2699.5, which provides that Section 2699.3(a) applies to any alleged violation of the following provisions: sections 226.7, and 512.

89. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

90. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

FOURTH CAUSE OF ACTION AGAINST DEFENDANT EXTREME MARKETING AND PROMOTIONS AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Provide Rest Periods (Cal. Lab. Code §2698 et. seq.).

91. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

92. Industrial Welfare Commission Order No. 4-2001 section 12(A) states "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work week period. The authorized rest period time shall be based on the

total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

93. At all times mentioned herein, Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES failed to authorize and/or permit rest period time based upon the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.

94. Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES has had a consistent policy and/or practice of not providing rest periods to Plaintiff and all aggrieved employees and/or providing compensation in lieu thereof. Specifically, Plaintiff and the aggrieved employees work up to twelve (12) hour shifts but did not receive first, second, third, or fourth rest breaks.

95. As a matter of policy and practice, Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES do not authorize and permit employees to take net ten-minute rest breaks every four hours or major fraction thereof. Defendant EXTREME MARKETING AND PROMOTIONS’ and/or DOES’ policies and practices encourage production over breaks. Likewise, Defendant EXTREME MARKETING AND PROMOTIONS’ and/or DOES’ policies and practices fail to relinquish all control over employees during breaks. In sum, this time is counted as part of Plaintiff, and the aggrieved employees’ rest period, even though they remain subject to Defendant EXTREME MARKETING AND PROMOTIONS’ and/or DOES’ control, thereby denying Plaintiff and the aggrieved employees of the right to be completely free from employer control under California law.

96. Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES have a consistent policy and/or practice of not providing net ten-minute rest breaks to Plaintiff and all aggrieved employees and/or providing compensation in lieu thereof. Plaintiff and the aggrieved employees are required to work through rest periods to complete the demanding duties required by Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES, thereby denying them their right to be completely free from employer control under California law. As a matter of policy and practice, Defendant EXTREME MARKETING AND PROMOTIONS

1 and/or DOES have not authorize and permit employees to take duty-free rest breaks. Hiding
2 behind its misclassification of Plaintiff and all aggrieved employees as independent
3 contractors, Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES have
4 not provided ten-minute rest periods to Plaintiff and all aggrieved employees who worked four
5 hours or a major fraction thereof during the workday.

6 97. Furthermore, Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES
7 breached the legal duty to provide rest periods to employees by failing to provide Plaintiff and
8 all aggrieved employees with a suitable resting facility in which to take their rest breaks in
9 violation of Industrial Welfare Commission Order No. 4-2001 section 13(B).

10 98. Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES breached the duty
11 to provide rest periods to Plaintiff and all aggrieved employees by imposing a continuous and
12 consistent policy requiring employees to remain under its control during breaks. Subjecting
13 aggrieved employees to control during breaks violates Cal. Lab. Code § 226.7's and Wage
14 Order 4-2001's requirement that rest periods, like meal periods, be free of all employer
15 restraints and controls. Employees working time-qualifying shifts, then, have not received
16 compliant rest periods and have been entitled to the Cal. Lab. Code § 226.7 premiums.

17 99. By failing to provide rest periods for every four (4) hours or major fraction thereof worked per
18 day by non-exempt employees, and by failing to provide compensation for these unprovided
19 periods, as alleged above, Defendant EXTREME MARKETING AND PROMOTIONS and/or
20 DOES willfully violated the provisions of Cal. Lab. Code § 226.7.

21 100. These claims are for Plaintiff and all the non-exempt individuals who signed contracts with
22 Defendant EXTREME MARKETING AND PROMOTIONS and/or its subsidiaries or
23 affiliated companies and/or predecessors within the State of California and worked as brand
24 ambassadors, event managers, in-store demonstrators, costume characters, guerrilla marketers,
25 market managers, promotional models, bilingual ambassadors, college tour guides, liquor
26 models, actors, dancers, voice overs, djs and emcees, and similar job designations and titles,
27 for Defendant EXTREME MARKETING AND PROMOTIONS in California in service of
28 those contracts.

1 101. Plaintiff—a non-exempt employee who was unlawfully deprived of paid ten (10) minute rest
2 periods—is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff
3 has satisfied all prerequisites to serve as a representative of the general public to enforce
4 California’s labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5 and
5 Industrial Welfare Commission Order No. 4-2001 § 20 for violations of Cal. Lab. Code § 226.7
6 and Industrial Welfare Commission Order No. 4-2001 § 12(A).

7 102. Plaintiff, as a representative of the people of the State of California, will seek all penalties
8 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
9 each of the following, as set forth in Cal. Lab. Code § 2699.5, which provides that section
10 2699.3(a) applies to any alleged violation of the following provisions: section 226.7.

11 103. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
12 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
13 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
14 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
15 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

16 104. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
17 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
18 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
19 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
20 pursuant to Cal. Lab. Code § 558(a).

21 **FIFTH CAUSE OF ACTION AGAINST DEFENDANT EXTREME MARKETING AND**
22 **PROMOTIONS AND/OR DOES: Violation of the Private Attorneys General Act of 2004**
23 **(PAGA) for Failure to Pay Wages Due at Termination and During Employment (Cal. Lab. Code**
24 **§2698 et. seq.).**

25 105. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
26 as if fully plead.

27 106. Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES and/or their
28 officers and/or managing agents willfully failed to pay, in a timely manner, wages owed to

- 1 Plaintiff and the other aggrieved employees who left Defendant EXTREME MARKETING
2 AND PROMOTIONS' and/or DOES' employ or who were terminated.
- 3 107. Plaintiff and/or the other aggrieved employees who ended their employment with Defendant
4 EXTREME MARKETING AND PROMOTIONS and/or DOES during the last year were
5 entitled to be promptly paid all lawful compensation, and other premiums, as required by Cal.
6 Lab. Code §§ 201 through 203.
- 7 108. At all relevant times, Cal. Lab. Code §§ 201 and 202 provide that if an employer discharges
8 an employee, the wages earned and unpaid at the time of discharge are due and payable
9 immediately, and if an employee quits his or her employment, his or her wages shall become
10 due and payable no later than seventy-two (72) hours thereafter, unless the employee has given
11 seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is
12 entitled to his or her wages at the time of quitting.
- 13 109. During the relevant time period, Defendant EXTREME MARKETING AND PROMOTIONS
14 and/or DOES intentionally and willfully failed to pay Plaintiff and the other aggrieved
15 employees who are no longer employed by Defendant EXTREME MARKETING AND
16 PROMOTIONS and/or DOES their wages, that were earned and unpaid, within seventy-two
17 (72) hours of their leaving Defendant EXTREME MARKETING AND PROMOTIONS'
18 and/or DOES' employ.
- 19 110. Defendant EXTREME MARKETING AND PROMOTIONS' and/or DOES' failure to pay
20 Plaintiff and the aggrieved employees who are no longer employed by Defendant EXTREME
21 MARKETING AND PROMOTIONS and/or DOES their wages, that were earned and unpaid,
22 within seventy-two (72) hours of their leaving Defendant EXTREME MARKETING AND
23 PROMOTIONS' and/or DOES' employ, is in violation of Cal. Lab. Code §§ 201 and 202.
- 24 111. Cal. Lab. Code § 203 provides that when an employer willfully fails to pay wages owed, in
25 accordance with sections 201 and 202, the wages of the employee shall continue as a penalty
26 from the due date thereof at the same rate until paid or until action is commenced; but, the
27 wages shall not continue for more than thirty (30) days.
- 28 112. Plaintiff, as a non-exempt employee who Defendant EXTREME MARKETING AND

PROMOTIONS and/or DOES failed to pay all wages due at termination, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5.

113. Plaintiff, as a representative of the people of the State of California, seeks all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement ("DLSE"). This includes each of the following, as set forth in Cal. Lab. Code § 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 201 through 203.

114. These claims are for Plaintiff and all the non-exempt individuals who signed contracts with Defendant EXTREME MARKETING AND PROMOTIONS and/or its subsidiaries or affiliated companies and/or predecessors within the State of California and worked as brand ambassadors, event managers, in-store demonstrators, costume characters, guerrilla marketers, market managers, promotional models, bilingual ambassadors, college tour guides, liquor models, actors, dancers, voice overs, djs and emcees, and similar job designations and titles, for Defendant EXTREME MARKETING AND PROMOTIONS in California in service of those contracts.

115. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

116. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

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1 **SIXTH CAUSE OF ACTION AGAINST DEFENDANT EXTREME MARKETING AND**
2 **PROMOTIONS AND/OR DOES: Violation of the Private Attorneys General Act of 2004**
3 **(PAGA) for Knowing and Intentional Failure to Comply with Itemized Employee Wage**
4 **Statement Provisions (Cal. Lab. Code § 2698 *et. seq.*).**

5 117. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
6 as if fully plead.

7 118. Cal. Lab. Code § 226 subdivision (a) requires Defendant EXTREME MARKETING AND
8 PROMOTIONS and/or DOES to itemize in wage statements all deductions from payment of
9 wages and to accurately report total hours worked by Plaintiff and the other aggrieved
10 employees. Cal. Lab. Code § 226(a) requires Defendant EXTREME MARKETING AND
11 PROMOTIONS and/or DOES, at the time of each payment of wages, to “furnish each of her
12 or her employees, either as an detachable part of the check, draft, or voucher paying the
13 employee’s wages, or separately when wages are paid by personal check or cash, an accurate
14 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
15 employee...(3) the number of piece-rate units earned and any applicable piece rate if the
16 employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made
17 on written orders of the employee may be aggregated and shown as one item, (5) net wages
18 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of
19 the employee and only the last four digits of his or her social security number or an employee
20 identification number other than the social security number, (8) the name and address of the
21 legal entity that is the employer...(9) all applicable hourly rates in effect during the pay period
22 and the corresponding number of hours worked at each hourly rate and the corresponding
23 number of hours worked at each hourly rate by the employee....”

24 119. Cal. Lab. Code § 226, subdivision (a) also requires that “deductions made from payment of
25 wages shall be recorded in ink or other indelible form, properly dated, showing the month, day
26 and year, and a copy of the statement and the record of the deductions shall be kept on file by
27 the employer for at least three years at the place of employment or at a central location within
28 the State of California.”

1 120. Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES have knowingly
2 and intentionally failed to comply with Cal. Lab. Code § 226(a) because, as a matter of policy
3 and practice, Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES have
4 not provided Plaintiff and the other aggrieved employees with itemized wage statements.
5 Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES have only
6 provided Plaintiff and the other aggrieved employees with checks, but every check provided
7 has to include any itemization as required under Cal. Lab. Code § 226(a).

8 121. Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES have had a
9 uniform policy of deducting \$50.00 for each shift either Plaintiff or the aggrieved employees
10 failed to appear but have failed to itemize this deduction. As such Defendant EXTREME
11 MARKETING AND PROMOTIONS and/or DOES have violated the Labor Code section 226,
12 subdivision (a) requirement of itemizing all deductions from wages.

13 122. During the relevant time period, Defendant EXTREME MARKETING AND PROMOTIONS
14 and/or DOES intentionally and willfully failed to provide Plaintiff and the aggrieved
15 employees with wage statements at the time of each payment.

16 123. Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES have knowingly
17 and intentionally failed to comply with Cal. Lab. Code § 226(a) on each and every wage
18 statement provided to Plaintiff and the other aggrieved employees.

19 124. Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES knowingly and
20 intentionally failed to accurately itemize the gross wages earned, bonuses, and/or commissions,
21 on Plaintiff's and the aggrieved employees' wage statements.

22 125. In every pay period during the period of the relevant statute of limitations, Defendant
23 EXTREME MARKETING AND PROMOTIONS and/or DOES knowingly and intentionally
24 did not itemize the total hours worked on wage statements as Cal. Lab. Code § 226, subsection
25 (a), requires. In every pay period during the period of the relevant statute of limitations,
26 Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES knowingly and
27 intentionally did not include the total hours worked on wage statements and failed to include
28 this information accurately. Defendant EXTREME MARKETING AND PROMOTIONS

and/or DOES therefore knowingly and intentionally failed to itemize the total hours worked on Plaintiff's and the aggrieved employees' wage statements.

126. In every pay period during the period of the relevant statute of limitations, the total regular and overtime hours listed in Defendant EXTREME MARKETING AND PROMOTIONS' and/or DOES' wage statements, when added together, do not sum up to the total hours worked by the employee during the pertinent time period. Without additional information regarding the wage statement, an employee cannot simply 'arrive at the sum of hours worked.' Thus, Defendant EXTREME MARKETING AND PROMOTIONS' and/or DOES' wage statement do not comply with Cal. Lab. Code § 226(a)(2).

127. In every pay period during the period of the relevant statute of limitations, Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES knowingly and intentionally did not include the name of the legal entity that is the employer thereby failing to furnish accurate itemized statements. *See, e.g.*, Cal. Lab. Code 226(a)(8). Plaintiff and the aggrieved employees could not promptly and easily determine the employer's name from the wage statements alone.

128. In every pay period during the period of the relevant statute of limitations, Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES has knowingly and intentionally failed to properly itemize the overtime rate and hours worked, making it impossible to determine the correct pay rate promptly and easily with the corresponding hours and pay. As such, Defendant EXTREME MARKETING AND PROMOTIONS' and/or DOES' wage statements do not comply with Labor Code Section 226(a)(9) which requires an itemized statement to show 'all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.'"

129. In every pay period during the period of the relevant statute of limitations, Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES knowingly and intentionally did not include the net wages earned on wage statements.

130. In every pay period during the period of the relevant statute of limitations, Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES knowingly and intentionally

1 did not include Plaintiff's and the aggrieved employees net wages on wage statements and
2 failed to itemize this amount accurately.

3 131. In every pay period, Defendant EXTREME MARKETING AND PROMOTIONS and/or
4 DOES have a consistent policy and/or practice of not itemizing all applicable hourly rates in
5 effect during the pay period and the corresponding number of hours worked at each hourly rate
6 by the employee or providing accurate rates as well as the corresponding number of hours
7 worked at each rate.

8 132. In every pay period during the period of the relevant statute of limitations, Defendant
9 EXTREME MARKETING AND PROMOTIONS and/or DOES knowingly and intentionally
10 did not include all deductions on Plaintiff's and the aggrieved employees' wage statements
11 and/or failed to itemize deductions accurately.

12 133. In every pay period during the period of the relevant statute of limitations, Defendant
13 EXTREME MARKETING AND PROMOTIONS and/or DOES knowingly and intentionally
14 did not include the inclusive dates for which the employees are paid or the last four digits of the
15 aggrieved employees social security number or an employee identification number and/or
16 failed to itemize this information accurately.

17 134. In every pay period during the period of the relevant statute of limitations, Defendant
18 EXTREME MARKETING AND PROMOTIONS and/or DOES knowingly and intentionally
19 did not itemize the amount of paid sick leave/paid time off Plaintiff and the aggrieved
20 employees have available on Plaintiff's and the aggrieved employees' wage statements.

21 135. Throughout the statutory period, because of the knowing and intentional failure by Defendant
22 EXTREME MARKETING AND PROMOTIONS and/or DOES to comply with itemized
23 employee wage statement provisions, Plaintiff and the aggrieved employees have been able to
24 reconstruct only a reasonable estimate of the hours worked and have, therefore, not received
25 full compensation.

26 136. These claims are for Plaintiff and all the non-exempt individuals who signed contracts with
27 Defendant EXTREME MARKETING AND PROMOTIONS and/or its subsidiaries or
28 affiliated companies and/or predecessors within the State of California and worked as brand

1 ambassadors, event managers, in-store demonstrators, costume characters, guerrilla marketers,
2 market managers, promotional models, bilingual ambassadors, college tour guides, liquor
3 models, actors, dancers, voice overs, djs and emcees, and similar job designations and titles,
4 for Defendant EXTREME MARKETING AND PROMOTIONS in California in service of
5 those contracts.

6 137. Plaintiff, as a non-exempt employee who Defendant EXTREME MARKETING AND
7 PROMOTIONS and/or DOES failed to provide accurate and itemized wage statements, is an
8 aggrieved employee with standing to bring an action under the PAGA. Plaintiff satisfied all
9 prerequisites to serve as a representative of the general public to enforce California's labor
10 laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5.

11 138. Plaintiff, as a representative of the people of the State of California, will seek all penalties
12 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
13 each of the following, as set forth in Cal. Lab. Code § 2699.5, which provides that section
14 2699.3(a) applies to any alleged violation of the following provisions: sections 226, 1174,
15 1199.

16 139. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
17 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
18 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
19 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
20 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

21 140. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
22 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
23 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
24 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
25 pursuant to Cal. Lab. Code § 558(a).

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1 **SEVENTH CAUSE OF ACTION AGAINST DEFENDANT EXTREME MARKETING AND**
2 **PROMOTIONS AND/OR DOES: Violation of the Private Attorneys General Act of 2004**
3 **(PAGA) for Failing to Pay Employees Twice Per Month (Cal. Lab. Code § 2698 et. seq.).**

4 141. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
5 as if fully plead.

6 142. Cal. Lab. Code § 204(a) of the *California Labor Code* requires that all wages earned by any
7 person in any employment are due and payable twice during each calendar month, on days
8 designated in advance by the employer as the regular paydays.

9 143. Cal. Lab. Code § 226 subdivision (a) provides “[a]ll wages . . . earned by any person in any
10 employment are due and payable twice during each calendar month, on days designated in
11 advance by the employer as the regular paydays. Labor performed between the 1st and 15th
12 days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the
13 month during which the labor was performed, and labor performed between the 16th and the
14 last day, inclusive, of any calendar month shall be paid for between the 1st and 10th day of the
15 following month.”

16 144. Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES have a consistent
17 policy and/or practice of failing to pay Plaintiff and the aggrieved employees twice per month.
18 By failing to pay employees twice per month, Defendant EXTREME MARKETING AND
19 PROMOTIONS and/or DOES willfully violated the provisions of Cal. Lab. Code § 204(a).

20 145. During the relevant time period, Defendant EXTREME MARKETING AND PROMOTIONS
21 and/or DOES intentionally and willfully failed to pay Plaintiff and the aggrieved employees
22 their wages, bonuses, and/or commissions that were earned and unpaid, twice during each
23 calendar month.

24 146. Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES failure to pay
25 Plaintiff and the aggrieved employees their wages, bonuses, and/or commissions, that were
26 earned and unpaid, twice during each calendar month, is in violation of Cal. Lab. Code § 204.
27 Specifically, Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES
28 violated Cal. Lab. Code §204 by paying Plaintiff and the aggrieved employees between 30 to

45 days after the completion of the event they worked (which could be even longer than 30 to 45 days after they completed their services). On occasion, it could take 60 days for employees to receive their pay.

147. These claims are for Plaintiff and all the non-exempt individuals who signed contracts with Defendant EXTREME MARKETING AND PROMOTIONS and/or its subsidiaries or affiliated companies and/or predecessors within the State of California and worked as brand ambassadors, event managers, in-store demonstrators, costume characters, guerrilla marketers, market managers, promotional models, bilingual ambassadors, college tour guides, liquor models, actors, dancers, voice overs, djs and emcees, and similar job designations and titles, for Defendant EXTREME MARKETING AND PROMOTIONS in California in service of those contracts.

148. Plaintiff, as a non-exempt employee who Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES failed pay all wages owed twice per month, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5 for violations of Cal. Lab. Code § 204.

149. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

150. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

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EIGHTH CAUSE OF ACTION AGAINST DEFENDANT EXTREME MARKETING AND PROMOTIONS AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failing to Adopt a Compliant Sick Pay/Paid Time Off Policy (Cal. Lab. Code § 2698 et. seq.)

151. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

152. Section 246(a)(1) of the California Labor Code states: “An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section.”

153. Section 246(c) of the Labor Code states: “An employee shall be entitled to use accrued paid sick days beginning on the 90th day of employment, after which day the employee may use paid sick days as they are accrued.”

154. Section 233(c) of the California Labor Code states: “An employer shall not deny an employee the right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using, or attempting to exercise the right to use, sick leave to attend to an illness or the preventive care of a family member, or for any other reason specified in subdivision (a) of Section 246.5.”

155. Section 233(d) of the California Labor Code provides relief for violations of this section, stating that “[a]ny employee aggrieved by a violation of this section shall be entitled to reinstatement and actual damages or one day’s pay, whichever is greater, and to appropriate equitable relief.”

156. Section 234 of the California Labor Code further forbids employers from adopting an “absence control policy that counts sick leave taken pursuant to Section 233 as an absence that may lead to or result in discipline, discharge, demotion, or suspension is a per se violation of Section 233. An employee working under this policy is entitled to appropriate legal and equitable relief pursuant to Section 233.”

157. Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES have failed to provide Plaintiff and the aggrieved employees with paid sick days in compliance with Section

246 and Section 246.5. Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES have had a policy and practice which denied Plaintiff and the aggrieved employees from accruing paid sick days after having been employed by Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES for 30 or more days. Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES have a policy and practice which denied Plaintiff and the aggrieved employees of using their paid sick days after having been employed by Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES for 90 or more days.

158. Further, Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES have adopted a policy and practice that denies Plaintiff and the aggrieved employees the ability to use their sick days in compliance with Labor Code Sections 233 and 246.5. For example. Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES threaten to discipline or discharge the aggrieved employees for failing to provide Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES with sufficient advanced notice of their intent to use their paid sick days in clear violation of Labor Code Section 234. Plaintiff and the aggrieved employees were entitled to actual damages or one day's pay pursuant to Labor Code Section 233(d).

159. Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES' sick pay policy has failed to pay sick pay for all appropriate and protected purposes enumerated in Labor Code section 233, 234, 246, and 246.5.

160. Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES fail to itemize the amount of accrued/available sick leave employees have on wage statements each pay period.

161. These claims are for Plaintiff and all the non-exempt individuals who signed contracts with Defendant EXTREME MARKETING AND PROMOTIONS and/or its subsidiaries or affiliated companies and/or predecessors within the State of California and worked as brand ambassadors, event managers, in-store demonstrators, costume characters, guerrilla marketers, market managers, promotional models, bilingual ambassadors, college tour guides, liquor models, actors, dancers, voice overs, djs and emcees, and similar job designations and titles,

for Defendant EXTREME MARKETING AND PROMOTIONS in California in service of those contracts.

162. Plaintiff, as a non-exempt employee subject to Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES' unlawful sick pay policy, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5 for violations of Cal. Lab. Code §§ 233, 234, and 246.

163. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

164. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

NINTH CAUSE OF ACTION AGAINST DEFENDANT EXTREME MARKETING AND PROMOTIONS AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failing to Reimburse Employees for Business Expenses (Cal. Lab. Code § 2698 et. seq.)

165. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

166. Cal. Lab. Code § 2802(a) requires "[a]n employer [to] indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties."

167. Plaintiff and the aggrieved employees incurred expenses in the discharge of their duties without

1 reimbursement from Defendant EXTREME MARKETING AND PROMOTIONS and/or
2 DOES. Expenses include, but are not limited to, depreciation of vehicles, fuel, maintenance,
3 and other vehicle operating costs (mileage), cellphone costs (including minutes & data),
4 camera and photography costs, other miscellaneous equipment (including GPS navigational
5 equipment), and other business-related expenses that, as the legal employer, Defendant
6 EXTREME MARKETING AND PROMOTIONS and/or DOES are obligated to pay and/or
7 reimburse Plaintiff and the aggrieved employees for.

8 168. Cal. Lab. Code § 2802(a) has entitled Plaintiff and the aggrieved employees to reimbursement
9 for said necessary expenditures, plus interest and expenses which have not been paid.

10 169. These claims are for Plaintiff and all the non-exempt individuals who signed contracts with
11 Defendant EXTREME MARKETING AND PROMOTIONS and/or its subsidiaries or
12 affiliated companies and/or predecessors within the State of California and worked as brand
13 ambassadors, event managers, in-store demonstrators, costume characters, guerrilla marketers,
14 market managers, promotional models, bilingual ambassadors, college tour guides, liquor
15 models, actors, dancers, voice overs, djs and emcees, and similar job designations and titles,
16 for Defendant EXTREME MARKETING AND PROMOTIONS in California in service of
17 those contracts.

18 170. Plaintiff, as a non-exempt employee who Defendant EXTREME MARKETING AND
19 PROMOTIONS and/or DOES failed to reimburse for business expenses, is an aggrieved
20 employee with standing to bring an action under the PAGA.

21 171. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to
22 enforce California's labor laws, and the penalty provisions identified in *Labor Code* section
23 2699.5 for violations of *Labor Code* section 2802.

24 172. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
25 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
26 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
27 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
28 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

1 173. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
2 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
3 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
4 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
5 pursuant to Cal. Lab. Code § 558(a).

6 **TENTH CAUSE OF ACTION AGAINST DEFENDANT EXTREME MARKETING AND**
7 **PROMOTIONS AND/OR DOES: Violation of the Private Attorneys General Act of 2004**
8 **(PAGA) for Failing to Provide Suitable Seating (Cal. Lab. Code § 2698 *et. seq.*)**

9 174. Pursuant to IWC Wage Order No. 4-2001 section 14, “(A) All working employees shall be
10 provided with suitable seats when the nature of the work reasonably permits the use of seats.
11 (B) When employees are not engaged in the active duties of their employment and the nature
12 of the work requires standing, an adequate number of suitable seats shall be placed in
13 reasonable proximity to the work area and employees shall be permitted to use such seats when
14 it does not interfere with the performance of their duties.”

15 175. The suitable seating requirement is a “standard condition of labor fixed by the commission.”
16 See Cal. Lab. Code § 1198. Such conditions “shall be ... the standard conditions of labor for
17 employees.” (Ibid.) By incorporating the suitable seating requirement into Cal. Lab. Code §
18 1198's required conditions of labor, a violation of the suitable seating requirement is a violation
19 of section 1198. Employment under a condition that violates section 1198 is “employment ...
20 under conditions of labor prohibited by the order” and, accordingly, “is unlawful.” See Cal.
21 Lab. Code § 1198.

22 176. Plaintiff and the aggrieved employees work could have been performed sitting had Defendant
23 EXTREME MARKETING AND PROMOTIONS and/or DOES permitted sitting; however,
24 Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES did not permit
25 Plaintiff and the aggrieved employees to sit while working. Moreover, even when Plaintiff and
26 the aggrieved employees have not been engaged in the active duties of their employment, if
27 the nature of the work has required standing, an adequate number of suitable seats have not
28 been placed in reasonable proximity to the work area, and Plaintiff and the aggrieved

employees have not been permitted to use such seats even though it would not interfere with the performance of their duties.

177. By failing to provide Plaintiff and the aggrieved employees with seats, in violation of Wage Order 4-2001, Section 14, Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES violated Cal. Lab. Code § 1198.

178. These claims are for Plaintiff and all non-exempt individuals who signed contracts with Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES and/or its subsidiaries or affiliated companies and/or predecessors within the State of California and worked as brand ambassadors, event managers, in-store demonstrators, costume characters, guerrilla marketers, market managers, promotional models, bilingual ambassadors, college tour guides, liquor models, actors, dancers, voice overs, djs and emcees, and similar job designations and titles, for Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES in California in service of those contracts.

179. Plaintiff, as a non-exempt employee who Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES failed to provide suitable seating, is an aggrieved employee with standing to bring an action under the PAGA.

180. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *Labor Code* section 2699.5 for violations of *Labor Code* section 1198.

181. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

182. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages

pursuant to Cal. Lab. Code § 558(a).

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other aggrieved employees, prays for relief and judgment against Defendant EXTREME MARKETING AND PROMOTIONS and/or DOES, jointly and severally, as follows:

- A. For penalties as provided under Cal. Lab. Code § 558(a)(1) and 558(a)(2).
- B. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for failure to provide compliant meal periods;
- C. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for each pay period during which an employee was underpaid due to failure to provide paid meal periods;
- D. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for failure to provide all rest periods;
- E. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for each pay period during which an employee was underpaid due to failure to provide paid rest periods;
- F. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for failure to timely pay wages at separation;
- G. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for failure to provide compensation at the regular, overtime, and double time rate for all time worked;
- H. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for failure to provide compensation at the minimum wage;
- I. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for failure to provide accurate, itemized wage statements;
- J. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for failure to pay employees all wages owed twice per month;
- K. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*

- 1 for failure to adopt a sick pay policy compliant with California law;
- 2 L. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
- 3 for failure to reimburse business expenses;
- 4 M. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
- 5 for failure to provide suitable seating; and,
- 6 N. For reasonable attorneys' fees and costs under the PAGA, Cal. Lab. Code § 2699(g)(1).

7 **DEMAND FOR JURY TRIAL**

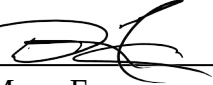
8 Plaintiff demands a jury trial.

9 **MARA LAW FIRM, PC**

10

11

12 Date: September 28, 2020

Signed: 
David Mara, Esq.
Tony Roberts, Esq.
Attorneys for Plaintiff DJ GLENON, on
behalf of himself and all others similarly
situated, and on behalf of the general public