

1 Alan Harris (SBN 146079)
2 David Garrett (SBN 160274)
3 Priya Mohan (SBN 228984)
4 HARRIS & RUBLE
5 655 North Central Avenue 17th Floor
6 Glendale California 91203
7 Tel: 323.962.3777
8 Fax: 323.962.3004
9 harrisa@harrisandruble.com
10 dgarrett@harrisandruble.com
11 pmohan@harrisandruble.com
12
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FILED
Superior Court of California
County of Los Angeles
02/02/2023

David W. Slayton, Executive Officer / Clerk of Court

By: T. Bivins Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

PETER YAURI, an individual, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

GE PROJECTS, INC., a California Corporation;
GABRIEL HILL, an individual; ONE THIRTY
EIGHT PRODUCTIONS, LLC, a California
Limited Liability Company; SIMON
MALIVINDI, an individual, DOE 1 through
and including DOE 10,

Defendants.

Case No: 21STCV31556

Assigned to the Hon. Lawrence P. Riff,
Dept. 7

SECOND AMENDED COMPLAINT
[PAGA Representative Action; Class Action]

1. Cal. Lab. Code ("Code") §§ 201, 201.3, 201.5, 201.6, 202, 203 and/or 204, Continuing Wages
2. Code §§ 510, 515 and 1198, Wage Order 4 and/or 12, Failure to Pay Overtime
3. Code §§ 1194, 1197 and 1197.1, Wage Order 4 and/or 12, Failure to Pay Minimum Wages
4. Code § 226.7 and 512(a), Wage Order 4 and/or 12, Failure to Provide Meal Breaks
5. Code § 226.7, Wage Order 4 and/or 12, Failure to Provide Rest Breaks
6. Cal. Bus. & Prof. Code § 17200, Unfair Competition
7. Code § 226(b), Failure to Provide Employment Records
8. Code § 1198.5, Failure to Provide Employment Records
9. Code §2698 et seq., PAGA

JURY TRIAL DEMANDED

1
2 Plaintiff Peter Yauri by and through his undersigned attorneys, alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This case is a PAGA Representative Action and putative class action. This proceeding
5 seeks relief under the California Labor Code (the “Code”) on account of unpaid wages, unpaid overtime,
6 damages, continuing wages, liquidated damages, penalties, restitution and attorneys’ fees and costs.

7 2. Venue as to Defendants is proper in this judicial district, pursuant to California Business
8 & Professions Code section 17203 and California Code of Civil Procedure sections 395(a) and 395.5.
9 Defendants maintain an office, transact business, have an agent, or are found in the County of Los
10 Angeles and are within the jurisdiction of this Court for purposes of service of process.

11 **INTRODUCTION**

12 3. Plaintiff Peter Yauri (“Yauri”) is an individual, who, during the time periods relevant to
13 this Complaint, was and is a resident of the County of Los Angeles, State of California.

14 4. Defendant GE Projects, Inc. is a California Corporation, which at all times relevant
15 herein, conducted business within the County of Los Angeles of the State of California.

16 5. Defendant Gabriel Hill (“Hill”) is an individual, who at all times relevant herein,
17 conducted business within the County of Los Angeles of the State of California. Hill is the owner of GE
18 Projects, Inc.

19 6. Defendant One Thirty Eight Productions, LLC is a California limited liability company,
20 which at all times relevant herein, conducted business within the County of Los Angeles of the State of
21 California.

22 7. Defendant Simon Malivindi (“Malivindi”) is an individual, who at all times relevant
23 herein, conducted business within the County of Los Angeles of the State of California. Malivindi is the
24 owner of One Thirty Eight Productions, LLC. GE Projects, Inc., Hill, One Thirty Eight Productions,
25 LLC, and Malivindi are collectively referred to herein as the “Defendants.”

26 8. Defendants are “temporary services employers” as defined by Code § 201.3 and required
27 to pay workers no less frequently than weekly. As a “temporary services employer,” OTEP is an
28 employing unit which contracts with clients to supply workers to perform services to its clients. OTEP

1 performs all of the following functions and did so in the present Production: (A) Negotiates with clients
2 and customers for matters such as the time and place where the services are to be provided, the type of
3 work, the working conditions, and the quality and price of the services; (B) Determines assignments or
4 reassignments of workers, even if workers retain the right to refuse specific assignments; (C) Retains the
5 authority to assign or reassign a worker to another client or customer when the worker is determined
6 unacceptable by a specific client or customer; (D) Assigns or reassigns workers to perform services for
7 clients or customers; (E) Sets the rate of pay of workers, whether or not through negotiation; (F) Pays
8 workers from its own account or accounts; and (G) Retains the right to hire and terminate workers.

9 9. Defendants Doe One through and including Doe Ten are sued herein under the provisions
10 of section 474 of the California Code of Civil Procedure. Plaintiff is currently ignorant of the true
11 names and capacities, whether individual, corporate, associate, or otherwise, of the defendants sued
12 herein under fictitious names and therefore sue such defendants by such fictitious names. Plaintiff will
13 seek leave to amend this complaint to allege the true names and capacities of said fictitiously named
14 defendants when their true names and capacities have been ascertained. Plaintiff is informed and
15 believes and thereon alleges that each of the fictitiously named defendants is legally responsible in some
16 manner for the events and occurrences alleged herein, and for the damages suffered by the Class.

17 10. Plaintiff is informed and believes and thereon alleges that all defendants, including the
18 fictitious Doe defendants, were at all relevant times acting as actual agents, conspirators, ostensible
19 agents, alter egos, partners and/or joint venturers and/or employees of all other defendants, and that all
20 acts alleged herein occurred within the course and scope of said agency, employment, partnership, and
21 joint venture, conspiracy or enterprise, and with the express and/or implied permission, knowledge,
22 consent authorization and ratification of their co-defendants; however, each of these allegations are
23 deemed “alternative” theories whenever not doing so would result in a contradiction with other
24 allegations.

25 11. Emergency Rule 9 as promulgated by the Judicial Council of California on April 6, 2020,
26 provides: “Notwithstanding any other law, the statutes of limitations and repose for civil causes of
27 action that exceed 180 days are tolled from April 6, 2020, until October 1, 2020.” The Advisory
28 Committee Comment notes that: “Emergency rule 9 is intended to apply broadly to toll any statute of

1 limitations on the filing of a pleading in court asserting a civil cause of action. . . . The rule also applies
2 to statutes of limitations on filing of causes of action in court found in codes other than the Code of Civil
3 Procedure.”

4 **GENERAL ALLEGATIONS**

5 12. Defendants employed Plaintiff and others as crew members for a still photography
6 Production. The proposed Class Members herein include Plaintiff, crew members on the Production,
7 and all crew members who have been issued wage statements for services performed for Defendants in
8 California (collectively, the “Class Members”).

9 13. Plaintiff Yauri was hired to work for Defendants on or about Sunday, June 30, 2019,
10 employed as a crew member on the Production. He worked at least 10 hours on that date. Plaintiff’s
11 Form W-4 and Form I-9 relating to his aforesaid employment on June 30, 2019, were both executed by
12 him on June 30, 2019, and then provided to the Defendants. (GE 00003-9). Once his employment
13 ended, Defendants were required to pay him immediately on June 30, 2019 or certainly no later than on
14 Wednesday, July 10, 2019. However, Plaintiff’s final pay-check was not even prepared until Friday,
15 August 2, 2019.

16 14. Although Plaintiff should have been paid in full for his accrued minimum wages and
17 overtime, issued legally compliant wage statements, and paid no later than as required by the Fair Labor
18 Standards Act or sections 201, 201.3, 201.5 and/or 201.6 of the Code, Plaintiff was not paid properly
19 and in timely fashion.

20 15. Defendants failed to properly compensate Plaintiff and other Class Members who
21 performed services on the Production and/or other such projects produced in California for GE Projects,
22 Inc. for work performed. Plaintiff and the Class Members worked on the Production as well as on other
23 California motion picture projects, yet were not paid timely or with appropriate wage statements, all due
24 to Defendant GE Projects, Inc.’s undercapitalization and insufficient funding of the payroll accounting
25 function.

26 16. At times mentioned herein, Wage Order 4 of the California Industrial Welfare
27 Commission applied to Plaintiff and Class Members. In part, the Wage Order reflects employer
28 obligations regarding hours and days of work, reporting time pay and records (obligations which the

1 employer, here, failed to fulfill, both with respect to Plaintiff and Class Members.). In the alternative,
2 Wage Order 12 of the California Industrial Welfare Commission applied to Plaintiff and Class
3 Members. In part, the Wage Order reflects employer obligations regarding hours and days of work,
4 reporting time pay and records (obligations which the employer, here, failed to fulfill, both with respect
5 to Plaintiff and Class Members).

6 17. At all relevant times herein, section 201 of the Code provided, in part, that “the wages
7 earned and unpaid at the time of discharge are due and payable immediately.” At times herein, section
8 201.3 of the Code provided, in part, that “if an employee of a temporary services employer is assigned to
9 work for a client, that employee’s wages are due and payable no less frequently than weekly.” At times
10 mentioned herein, section 201.5 of the Code provided in part:

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

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

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

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

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

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

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

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

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

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
for a specified term, or otherwise.

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

5 Code § 201.5 (emphasis added in bold). Effective after September 5, 2019, section 201.6 of the Code
6 provided that “[p]rint shoot employees” were to be paid their wages “earned and unpaid at the time of
7 termination by the next regular payday.” At all relevant times mentioned herein, sections 201, 201.3,
8 201.5, 201.6, and/or 204 of the Code controlled the final payment of wages to Plaintiff and the Class
9 Members.

10 18. At all relevant times mentioned herein, section 203 of the Code provided:

11 If an employer willfully fails to pay, without abatement or reduction, in accordance with
12 Sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202 and 202.5, any wages of an
13 employee who is discharged or who quits, the wages of the employee shall continue as a
14 penalty from the due date thereof at the same rate until paid or until action therefore is
commence; but the wages shall not continue for more than 30 days.

15 Code § 203.

16 19. By failing to pay timely Plaintiff and Class Members all wages when due at the end of
17 employment, Plaintiff and Class Members are entitled to continuing wages pursuant to section 203 of
18 the Code.

19 20. At all times relevant herein, section 204 of the Code provided in part:

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

24 Code §204.

25 21. In no event should Plaintiff or the Class Members have been paid later than the time
26 periods established by sections 201, 201.3, 201.5, 201.6 and/or 204 of the Code, but certain payments to
27 Plaintiff and the Class Members were made after they were due, or not at all, leading to penalties and
28 civil penalties under sections 203 and/or 204 of the Code.

1 22. At all times relevant herein, section 210 of the Code provided:

2 In addition to, and entirely independent and apart from, any other penalty provided in this
3 article, every person who fails to pay the wages of each employee as provided in Sections
4 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as
5 follows: (a) For any initial violation, one hundred dollars (\$100) for each failure to pay
6 each employee; (b) For each subsequent violation, or any willful or intentional violation,
7 two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the
8 amount unlawfully withheld.

9 Code § 210. The Defendants' policy has been to devote insufficient capital, manpower and other
10 required resources to its business, including the payroll accounting function, with the inevitable result
11 that employees are routinely paid in tardy fashion, in violation of the Code. In addition, Defendants
12 routinely enter contracts to produce still photograph projects which contracts provide that the product
13 vendor, magazine, and/or advertising agency need not pay the full amount owing to Defendants until it
14 receives final delivery of a finished product. Defendants maintain internal budgets for each still
15 photography project they produce. The Defendants' internal accounting practices have the inevitable,
16 routine result of the defense delaying the funding of final wage payments until they have received
17 sufficient funds to make the payments, all within internally imposed, discretionary accounting practices.

18 23. At all relevant times mentioned herein, section 510(a) of the Code provided:

19 Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one
20 workday and any work in excess of 40 hours in any one workweek and the first eight
21 hours worked on the seventh day of work in any one workweek shall be compensated at
22 the rate of at least one and one-half times the regular rate of pay for an employee. Any
23 work in excess of 12 hours in one day shall be compensated at the rate of no less than
24 twice the regular rate of pay for an employee. In addition, any work in excess of eight
25 hours on any seventh day of a workweek shall be compensated at the rate of no less than
26 twice the regular rate of pay of an employee. Nothing in this section requires an employer
27 to combine more than one rate of overtime compensation in order to calculate the amount
28 to be paid to an employee for any hour of overtime work.

29 Code § 510.

30 24. Defendants failed to pay proper minimum wages or overtime to Plaintiff and Class
31 Members, delaying such payments to beyond the required time.

32 25. At all relevant times mentioned herein, section 515(d)(2) of the Code provided:

33 Payment of a fixed salary to a nonexempt employee shall be deemed to provide
34 compensation only for the employee's regular, nonovertime hours, notwithstanding any
35 private agreement to the contrary.

1 Code § 515(d)(2). Accordingly, a daily wage rate is “deemed to provide compensation only for the
2 employee’s regular, nonovertime hours” too. Alvarado v. Dart Container Corp. of Cal., 4 Cal. 5th 542,
3 564–65 (2018), as modified (Apr. 25, 2018) (“the Legislature expressly endorsed the principle that flat
4 sum nonhourly compensation should be factored into an employee’s regular rate of pay by dividing the
5 flat sum by the number of nonovertime hours that exist in the relevant period, and that the flat sum
6 compensates the worker for only nonovertime hours worked.”) The California Supreme Court based its
7 holding on fundamental principles that “the obligation to pay premium pay for overtime work reflects a
8 state policy favoring an eight-hour workday and a six-day 40-hour workweek, and discouraging
9 employers from imposing work in excess of those limits.” Alvarado, 4 Cal. 5th at 539.

10 26. At all relevant times mentioned herein, section 1194 of the Code provided:

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

Code § 1194.

15 27. Plaintiff and Class Members were not timely paid the minimum wages and/or overtime to
16 which they were entitled. Accordingly, they are entitled to liquidated damages under section 1194.2.

17 28. At all relevant times mentioned herein, section 558.1 of the Code provided:

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

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

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

25 Code § 558.1. Hill, Malivindi, GE Projects, Inc. and One Thirty Eight Productions Inc. are joint
26 employers with one another or other persons acting on behalf of an employer, who violated, or caused to
27 be violated the relevant sections of the Code referenced herein.
28

29. At all relevant times mentioned herein, section 558 of the Code provided:

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

Code § 558. Defendants are the employers or other persons acting on behalf of an employer who violated, or caused to be violated the relevant sections of the Code referenced herein.

30. At all relevant times mentioned herein, section 2810.3 of the Code provided:

(a) As used in this section:

(1) (A) "Client employer" means a business entity, regardless of its form, that obtains or is provided workers to perform labor within its usual course of business from a labor contractor.

...
(2) "Labor" has the same meaning provided by Section 200.

(3) "Labor contractor" means an individual or entity that supplies, either with or without a contract, a client employer with workers to perform labor within the client employer's usual course of business.

...
(4) "Wages" has the same meaning provided by Section 200 and all sums payable to an employee or the state based upon any failure to pay wages, as provided by law.

(5) "Worker" does not include an employee who is exempt from the payment of an overtime rate of compensation for executive, administrative, and professional employees pursuant to wage orders by the Industrial Welfare Commission described in Section 515.

(6) "Usual course of business" means the regular and customary work of a business, performed within or upon the premises or worksite of the client employer.

(b) A client employer shall share with a labor contractor all civil legal responsibility and civil liability for all workers supplied by that labor contractor for both of the following:

(1) The payment of wages.

(2) Failure to secure valid workers' compensation coverage as required by Section 3700.

(c) A client employer shall not shift to the labor contractor any legal duties or liabilities under Division 5 (commencing with Section 6300) with respect to workers supplied by the labor contractor.

(d) At least 30 days prior to filing a civil action against a client employer for violations covered by this section, a worker or his or her representative shall notify the client employer of violations under subdivision (b).

(e) Neither the client employer nor the labor contractor may take any adverse action against any worker for providing notification of violations or filing a claim or civil action.

(f) The provisions of subdivisions (b) and (c) are in addition to, and shall be supplemental of, any other theories of liability or requirement established by statute or common law.

...

Code § 2810.3.

1 **CLASS-ACTION ALLEGATIONS**

2 31. Plaintiff brings this action on behalf of himself and all others similarly situated as a class
3 action pursuant to section 382 of the Code of Civil Procedure. Plaintiff seeks to represent a Class
4 composed of and defined as follows:

5 For the period four years and 180 days prior to the filing of this Complaint to date, all
6 persons issued wage statements on account of services provided for Defendants in
7 California (such persons are referred to hereafter as Class Members, and such period is
referred to hereafter as the Class Period).

8 Upon completion of class discovery, Plaintiff may move for certification of one or more subclasses.

9 **A. Numerosity**

10 32. The potential members of the Class are so numerous that joinder of all the members of
11 any Class or subclass is impracticable. The number of Class Members is great, but not so great as to
12 make the Class unmanageable. It, therefore, is impractical to join each Class Member as a named
13 plaintiff. Accordingly, utilization of a class action is the most economically feasible means of
14 determining the merits of this litigation.

15 33. 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 34. There are questions of law and fact common to each 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 failed to pay all wages in a timely fashion in violation of sections
23 201, 201.3, 201.5, 201.6, 203 and/or 204 of the Code.
- 24 b. Whether Defendants' untimely and/or nonpayment of wages give rise to liquidated
25 damages for failure to pay minimum wages under section 1194.2.
- 26 c. Whether Defendants' failure to provide rest breaks to each and every employee violates
27 Code section 226.7.
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1 d. Whether Defendants' failure to provide meal breaks to each and every employee violates
2 Code sections 226.7 and 512, the Defendants routinely provide meal breaks only well
3 after the first five hours of work, rather than within the first five hours as required by
4 Wage Order 4.

5 **C. Typicality**

6 35. There is a well-defined community of interest in the questions of law and fact common to
7 the Class Members.

8 36. The claims of the named Plaintiff are typical of the claims of the Class, which claims all
9 arise from the same general operative facts, namely, Defendants did not compensate its employees as
10 required by the Code and applicable Wage Order 4 and/or Wage Order 12. Plaintiff and all members of
11 the Class sustained injuries and damages arising out of and caused by Defendants in violation of laws,
12 regulations that have the force and effect of law, and statutes as alleged herein. Plaintiff has no conflict
13 of interest with the other Class Members and is able to represent the Class Members' interests fairly and
14 adequately.

15 **D. Adequacy of Representation**

16 37. Plaintiff will fairly and adequately represent and protect the interests of the members of
17 each Class. Counsel who represents Plaintiff is competent and experienced in litigation large
18 employment class actions. Neither Plaintiff nor his counsel have any conflict with either Class.

19 **E. Superiority of Class Action**

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

1 The disposition of all claims of the members of the Class in a class action, rather than in individual
2 actions, benefits the parties and the Court. The interest of the Class Members in controlling the
3 prosecution of separate claims against Defendants is small when compared with the efficiency of a class
4 action.

5 **FIRST CAUSE OF ACTION**

6 (Continuing Wages, Code §§ 201, 201.3, 201.5, 201.6, 202, 203, and/or 204
7 On Behalf of Plaintiff and the Class Against All Defendants)

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

10 40. Defendants employed Plaintiff. As hereinabove articulated, Plaintiff was not timely
11 compensated in full for his services.

12 41. Upon information and belief, Class Members have not been timely compensated for their
13 services. Plaintiff and the Class consistently worked more than 5-hour or 6-hour shifts. However, they
14 were required to keep their walkie talkies or radios on their persons, turned on and audible at all times,
15 including their rest periods and meal breaks and/or they were precluded from leaving the set during their
16 breaks. Accordingly, they were denied their breaks and are entitled to at least an additional thirty
17 minutes of wages for each faux meal break.

18 42. Defendants' failure to compensate Plaintiff and the Class within the time for which
19 provision is made by section 201, 201.3, 201.5, 201.6, 202 and/or 204 of the Code, despite their
20 knowledge of their obligation to do so, was and is "willful" as the word is used in section 203.

21 43. Pursuant to section 203 of the Code, Plaintiff and the Class Members are entitled to
22 continuing wages from Defendants in an amount according to proof, computed with respect to the wages
23 already paid to Plaintiff and the additional premium wage owing to Plaintiff on account of Defendants'
24 failure to provide compliant meal periods and rest breaks. Plaintiff and Class Members are also entitled
25 to recover costs and reasonable attorneys' fees under section 218.5 of the Code in the total sum of at
26 least in the total sum of at least \$18,000.00.
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SECOND CAUSE OF ACTION

(Damages for Unpaid Overtime Compensation,
Code §§ 510, 515 and 1198

On Behalf of Plaintiff and the Class Against All Defendants)

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

45. Plaintiff, as well as the Class, worked many hours for Defendants, including overtime, without compensation for work performed, as required by law. Class Members were routinely deprived of thirty minutes of compensation for services, as Defendants routinely participated in a scheme to force half hour deductions from wages, even though the crew were required to respond to colleagues' queries, whether by walkie-talkies, cell phone "apps", or otherwise. For example, with respect to walkie-talkies, crew were issued specific devices for each span of service for GE Projects, Inc., and GE Projects, Inc. kept track of which device was issued to each member of the crew so Defendants could account for each of the devices which were issued to crew for their use while working for GE Projects, Inc.. At the conclusion of their service, each member of the crew returned his or her walkie-talkie to appropriate GE Projects, Inc. employee.

46. Plaintiff and the Class are entitled to recover an amount according to proof. Plaintiff and the Class are also entitled to recover costs and reasonable attorneys' fees under section 1194 of the Code.

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THIRD CAUSE OF ACTION

(Damages for Unpaid Minimum Wages,
Code §§ 510, 1194, 1194.2 and 1198

On Behalf of Plaintiff and the Class Against All Defendants)

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

48. Plaintiff and the Class, worked many hours for Defendants, without proper, full compensation for work performed, as required by law.

49. Plaintiff and the Class are entitled to recover liquidated damages under section 1194.2 of the Code in an amount according to proof. Plaintiff and Class Members are also entitled to recover costs and reasonable attorneys' fees under section 1194 of the Code.

FOURTH CAUSE OF ACTION

(Failure to Provide Duty-Free Meal Breaks, Code §§ 226.7 and 512; Wage Order 4 and/or 12;
On Behalf of Plaintiff And The Class And Against All Defendants)

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

51. Labor Code section 226.7 requires an employer to pay an additional hour of compensation for each workday on which there is a missed, tardy or truncated meal period as required by Wage Order 4 and/or 12, the Code and Brinker Rest. Corp. v. Superior Court, 53 Cal. 4th 1004 (2012).

52. . Employees are entitled to meal period of at least thirty 30 minutes per 5-hour or 6-hour work period, as mandated in part by Wages Orders 4 and 12.

53. Upon information and belief, Class Members have not been timely compensated in full for their services. Plaintiff and the Class consistently worked more than 5-hour, 6-hour, and/or longer days of 10 or more hours, requiring a second meal period. However, they were required to keep their walkie talkies or radios on their persons, turned on and audible at all times, including their rest periods and meal breaks and/or they were precluded from leaving the set during their breaks. Accordingly, they were denied their breaks and are entitled to an additional thirty minutes of wages for each faux meal break.

54. Pursuant to Labor Code section 226.7, Plaintiff and Class Members are entitled to damages in an amount equal to one hour of wages per day on which they experienced a missed, tardy or truncated meal break, in an amount according to proof.

FIFTH CAUSE OF ACTION

(Failure to Provide Duty-Free Rest Breaks, Code §§ 226.7 and 512; Wage Orders 4 and 12;
On Behalf of Plaintiff And The Class And Against All Defendants)

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

56. Labor Code section 226.7 requires an employer to pay an additional hour of compensation for day on which the employer fails to provide timely and uninterrupted rest breaks as mandated by Wage Order 4 and/or Wage Order 12, the Code and Brinker Rest. Corp. v. Superior Court, 53 Cal. 4th 1004 (2012).

1 57. Upon information and belief, Class Members have not been timely compensated in full
2 for their services. Plaintiff and the Class consistently worked more than 4-hour shifts. However, they
3 were required to keep their walkie talkies or radios on their persons, turned on and audible at all times,
4 including their rest periods and meal breaks and/or they were precluded from leaving the set during their
5 breaks. Accordingly, they were denied their rest breaks and are entitled to an additional hour of wages
6 for each day on which a truncated or no rest break was provided. Defendants kept records of each
7 individual member of the crew to whom a walkie-talkie was issued so that it could insure the return to it
8 of the device.

9 58. Pursuant to Labor Code section 226.7, Plaintiff and Class Members are entitled to
10 damages in an amount equal to one hour of wages, per day for each day on which they experienced a
11 missed or truncated rest break, in an amount according to proof.

12 **SIXTH CAUSE OF ACTION**

13 (Unfair Business Practices On Behalf of Plaintiff and the Class Members Against All Defendants)

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

16 60. Business and Professions Code section 17200 et seq. prohibits acts of unfair competition,
17 including any “unlawful, unfair, or fraudulent business act or practice.” Cal. Bus. & Prof. Code § 17200
18 et seq. Plaintiff allege that Defendants have engaged in unfair business practices in California by the
19 above-described failure to pay all accrued overtime.

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

23 62. Defendants have avoided payment of wages and overtime wages and other benefits
24 required by the Code, the California Code of Regulations, and the applicable IWC Wage Order 4 and/or
25 12. Upon information and belief, Class Members have not been timely compensated in full for their
26 services. Plaintiff and the Class consistently worked more than 6-hour shifts. However, they were
27 required to keep their cell phones, walkie talkies and/or radios on their persons, turned on and audible at
28 all times, including their rest periods and meal breaks and/or they were precluded from leaving the set

1 during their breaks. Accordingly, they were denied their breaks and are entitled to an additional thirty
2 minutes of wages for each faux meal break.

3 63. As a result of Defendants' unfair and unlawful business practices, failing to provide
4 sufficient capital to sustain its operations and failing to devote sufficient resources to the payroll
5 accounting function, Defendants have reaped unfair and illegal profits during the relevant time period
6 herein at the expense of Plaintiff and Class Members and members of the public, including by failing to
7 compensate its workers for the costs associated with maintaining cell phones, essential to their work.
8 Defendants should be made to disgorge their ill-gotten gains and to restore them to Plaintiff and Class
9 Members.

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

17 **SEVENTH CAUSE OF ACTION**

18 (Failure to Provide Employment Records Upon Request Code § 226(b)
19 On Behalf of Plaintiff Against Defendant GE Projects, Inc.)

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

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

25 67. On or about August 26, 2020, Plaintiff requested that Defendant GE Projects, Inc. permit
26 inspection or copying of his employment records pursuant to Labor Code section 226(b). Defendant GE
27 Projects, Inc. has failed to provide Plaintiff with an opportunity to inspect or copy their employment
28

1 records within 21 days of his request. Defendant GE Projects, Inc. has produced some, but not all, of
2 Plaintiff's records.

3 68. Pursuant to Labor Code Section 226(b) and (f), Plaintiff is entitled, and hereby seek to
4 recover from Defendant GE Projects, Inc. a seven-hundred-fifty dollar (\$750) penalty for the violation,
5 reasonable attorney's fees, and the costs of bringing this cause of action.

6 **EIGHTH CAUSE OF ACTION**

7 (Failure to Provide Employment Records Upon Request Code § 1198.5
8 On Behalf of Plaintiff Against Defendant GE Projects, Inc.)

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

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

14 71. On or about August 26, 2020, Plaintiff requested that Defendant GE Projects, Inc. permit
15 inspection or copying of their personnel records pursuant to Labor Code section 1198.5. Defendant GE
16 Projects, Inc. has failed to provide Plaintiff with an opportunity to inspect or copy the employment
17 records within 30 days of their request.

18 72. Pursuant to Labor Code Section 1198.5(k), Plaintiff is entitled, and hereby seeks to
19 recover from Defendant GE Projects, Inc. a seven-hundred-fifty dollar (\$750) penalty for the violation,
20 reasonable attorney's fees, and the costs of bringing this cause of action.

21 **NINTH CAUSE OF ACTION**

22 California Labor Code § 2698 et seq. Civil Penalties
23 (On Behalf of Plaintiff, the California Labor & Workforce Development Agency and Aggrieved
24 Employees Against Defendants)

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

27 74. Pursuant to section 2699.3(a)(1) of the Labor Code, on September 3, 2020¹, Plaintiff
28 submitted their PAGA Claim Notice online to the California Labor and Workforce Development

¹ The PAGA notice was amended on October 13, 2020 to add new claims.

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’ Registered Agents for Service of Process of
4 the specific provisions of the Labor Code alleged to have been violated by Defendant.

5 75. Plaintiff seeks to represent all Aggrieved Employees, defined as Plaintiff and/or other
6 persons who performed services on the Production or other such projects produced in California for
7 Defendants during the period of time commencing one year prior to the filing of the Complaint.

8 76. At all relevant times, California Labor Code section 2699.3(a)(2)(A) provided:

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

12 Cal. Lab. Code § 2699.3(a)(2)(A).

13 77. When sixty-five (65) calendar days of the postmark date of the notice sent by Plaintiff
14 have passed Plaintiff may “commence a civil action pursuant to Section 2699.” Cal. Lab. Code §
15 2699.3(a)(2)(A). More than sixty-five calendar day have passed since Plaintiff gave written notice of
16 the PAGA violations to the LWDA and Defendants.

17 78. Plaintiff contends that sections 201.3, 201.5, 201.6, 203, 204, 226, 226.7, 226.8, 510,
18 512, 515, 558, 558.1, 1194, 1197, 1198, 2802, and 2699 et seq. of the Labor Code enable them to
19 recover civil penalties under PAGA, as well as attorney’s fees and costs, from Defendants, through a
20 civil action on behalf of themselves and other Aggrieved Employees.

21 79. Plaintiff seeks to recover the PAGA civil penalties through a representative action
22 permitted by PAGA and the California Supreme Court in Arias v. Superior Court, 46 Cal. 4th 969
23 (2009). Therefore, class certification of the PAGA claims is not required.

24 80. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor
25 Code provisions:

26 81. Failure to timely pay wages during employment to Plaintiff and Aggrieved Employees in
27 violation of Labor Code §§ 204 and 210. Plaintiff were not compensated twice during each calendar
28

1 month for wages earned by the times prescribed by section 204. Plaintiff contends that the failure of
2 Defendants to make timely payments within the time provided for has been and is “willful” within the
3 meaning of such word as used in Section 210 of the California Labor Code and that, accordingly, each
4 Aggrieved Employee who was not timely paid his or her timely wages during their employment is
5 entitled to civil penalties. Labor Code section 210 provides for a penalty of \$100 for each initial
6 violation and \$200 for each subsequent, or willful or intentional violation plus 25 percent of the amount
7 unlawfully withheld.

8 82. Failure to pay wages and/or final wages to Plaintiff and Aggrieved Employees in
9 violation of Labor Code §§ 201.5 and 203. With respect to violations of Labor Code § 201.5, Plaintiff
10 contends that the failure of Defendants to make final payments within the time provided for has been
11 and is “willful” within the meaning of such word as used in Section 203 of the California Labor Code
12 and that, accordingly, each Aggrieved Employee who was not timely paid his or her final wages is
13 entitled to civil penalties. Labor Code section 2699(f)(2) imposes a civil penalty of \$100 per pay period
14 per Aggrieved Employee for initial violations, and \$200 per pay period per Aggrieved Employee for
15 subsequent violations for all Labor Code provisions for which a civil penalty is not specifically
16 provided.

17 83. Failure to provide compliant itemized wage statements to Plaintiff and Aggrieved
18 Employees in violation of Labor Code § 226(a). Plaintiff and other Aggrieved Employees have not been
19 provided a wage statement as required by Labor Code section 226(a). The foregoing was the intentional
20 misconduct of Defendants that was intended to mislead and injure Plaintiff and other Aggrieved
21 Employees insofar as they were subjected to confusion and deprived of information to which they were
22 legally entitled. Section 226(e) provides that any employee who suffers injury as a result of a knowing
23 and intentional failure by the employer to comply with its obligation to provide wage statements
24 containing all of the information referenced above is entitled to recover the greater of his actual damages
25 or \$50 for the first violation by the employer. The employee is also entitled to recover \$100 for each
26 violation in a subsequent pay period, not to exceed an aggregate penalty of \$4,000.

27 84. Failure to provide proper rest and meal periods to Plaintiff and Aggrieved Employees.
28 Plaintiff and Aggrieved Employees were not provided with timely meal and rest periods in violation of

1 Labor Code section 226.7 and the applicable Living Wage Order sections 4 and/or 12. Labor Code
2 section 226.7 requires “one additional hour of pay at the employee’s regular rate of compensation for
3 each workday that the meal or rest or recovery period is not provided.”

4 85. Failure to reimburse necessary business expenses under Labor Code § 2802. Plaintiff and
5 Aggrieved Employees were not reimbursed for necessary business expenses. Labor Code 2699 et seq.
6 imposes a civil penalty of one hundred dollars per pay period per aggrieved employee for initial
7 violations, and two hundred dollars per pay period per aggrieved employee for subsequent violations for
8 all Labor Code provisions for which a civil penalty is not specifically provided.

9 86. Improper classification of employees as independent contractors in violation of Labor
10 Code § 226.8. Plaintiff and Aggrieved Employees were willfully misclassified as independent
11 contractors even though they were not exempt employees. Labor Code section 226.8 requires “a civil
12 penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars
13 (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.” If the
14 employer is found to have engaged in a “pattern or practice” of misclassifying employees, it is subject to
15 a “civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand
16 dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.” Cal.
17 Lab. Code § 226.8(c).

18 87. Failure to pay minimum and overtime wages to Plaintiff and Aggrieved Employees in
19 violation of Labor Code §§ 510, 558, 1194, and 1198. Both late payment and non-payment of minimum
20 wages violate the state statute requiring the payment of a minimum hourly wage. Labor Code section
21 558 imposes a civil penalty in addition to any other penalty provided by law of fifty dollars (\$50) for
22 initial violations for each underpaid employee for each pay period for which the employee was
23 underpaid in addition to an amount sufficient to recover unpaid wages, and one hundred (\$100) for
24 subsequent violations for each underpaid employee for each pay period for which the employee was
25 underpaid in addition to an amount sufficient to recover underpaid wages.

26 88. Failure to keep complete and accurate payroll records. Failure to keep complete and
27 accurate payroll records relating to Plaintiff and Aggrieved Employees in accordance with California
28 Labor Code section 1174(d) constitutes unlawful and/or unfair activity prohibited by California Labor

1 Code section 1174(d).

2 89. With respect to violations of Labor Code sections 201.3, 201.5, 201.6 and 203 Plaintiff
3 contend that the failure of Defendants to make payments within the time provided for has been and is
4 “willful” within the meaning of such word as used in Section 203 of the California Labor Code and that,
5 accordingly, each Aggrieved Employee who was not timely paid his or her final wages is entitled to civil
6 penalties for which provision is made in Section 210 of the Labor Code on account of violations of
7 section 204.

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

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

13 1. That the Court certify the Classes.

14 2. That, under the First Cause of Action for Continuing Wages, it be adjudged that the
15 failure of Defendants to make payment of Plaintiff’s and Class Members’ wages was in violation of
16 sections 201, 201.3, 201.5, 201.6, 202, 204 and/or 203 of the Code, and was “willful” as that word is
17 used in section 203 of the Code, and that the Court enter judgment against Defendants in favor of
18 Plaintiff and Class Members. That judgment be entered in favor of Plaintiff in the amount of at least
19 \$18,000.00 and the Class in an amount according to law and proof, interest thereon, and costs and
20 reasonable attorneys’ fees in accordance with the provisions of Code section 218.5.

21 3. That, under the Second Cause of Action for Failure to Pay Overtime, this Court enter
22 judgment in favor of Plaintiff and the Class against Defendants in the amount of unpaid overtime and
23 liquidated damages according to proof, interest thereon, and costs and reasonable attorneys’ fees
24 pursuant to Code section 1194.

25 4. That, under the Third Cause of Action for Failure to Pay Minimum Wages, this Court
26 enter judgment in favor of Plaintiff and the Class against Defendants in the amount of unpaid minimum
27 wages and liquidated damages according to proof, interest thereon, and costs and reasonable attorneys’
28 fees pursuant to Code sections 1194 and 1194.2.

1 5. That, under the Fourth Cause of Action, this Court enter judgment in favor of Plaintiff
2 and the Class in an amount according to proof and award them their damages, penalties, and costs of
3 suit.

4 6. That, under the Fifth Cause of Action, this Court enter judgment in favor of Plaintiff and
5 the Class in an amount according to proof and award them their damages, penalties, and costs of suit.

6 7. That, under the Sixth Cause of Action, this Court enter judgment in favor of Plaintiff and
7 the Class in an amount according to proof and award them their damages, penalties, and costs of suit.
8 Plaintiff, on behalf of himself, as well as on behalf of the general public, further seeks attorney's fees
9 and costs pursuant to sections 218.5 of the Labor Code and 1021.5 of the Code of Civil Procedure.

10 8. That, with respect to the Seventh Cause of Action, this Court enter judgment in favor of
11 each Plaintiff against Defendant GE Projects, Inc. in the amount of \$750, reasonable attorney's fees, and
12 the costs of bringing this cause of action under Code Section 226(b) and (f).

13 9. That, with respect to the Eighth Cause of Action, this Court enter judgment in favor of
14 each Plaintiff against Defendant GE Projects, Inc. in the amount of \$750, reasonable attorney's fees, and
15 the costs of bringing this cause of action pursuant to Code Section 1198.5(k).

16 10. That, with respect to the Ninth Cause of Action this Court award Plaintiff, the State of
17 California, and other former and current Aggrieved Employees their civil penalties, attorney's fees, and
18 costs of suit, all according to proof, pursuant to sections 201.3, 201.5, 201.6, 203, 204, 210, 226, 226.7,
19 510, 512, 515, 558, 558.1, 1174, 1194, 1194.2, 1197, 1198, 2802 and 2699 et seq. of the Labor Code and
20 the applicable Wage Orders as heretofore articulated.

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

24 DATED: February 1, 2023

HARRIS & RUBLE



Alan Harris
Attorney for Plaintiff

PROOF OF SERVICE

I am over the age of eighteen years, and not a party to the within action. My business address is Harris & Ruble, 655 North Central Avenue, 17th Floor, Glendale, California 91203. On February 2, 2023, I served the within documents:

SECOND AMENDED COMPLAINT

Hand Delivery: I caused such envelope to be delivered by hand in person to:

N/A

Facsimile: I caused such envelope to be delivered by e-mail or fax to:

N/A

Electronic Service: Based on a court order, I cause the above-entitled document(s) to be served through Case Anywhere addressed to all parties appearing on the electronic service list for the above-entitled case and on the interested parties in this case:

LEECH TISHMAN FUSCALDO & LAMPL, LLC
Robert A. Orozco (rorozco@leechtishman.com)
Philip Toomey (ptoomey@leechtishman.com)
Eric Wu (ewu@leechtishman.com)
2041 Rosecrans Avenue, Suite 300
El Segundo, CA 90245
Tel: (424) 738-4400

I declare under penalty of perjury that the above is true and correct. Executed on February 2, 2023, at Los Angeles, California.



Priya Mohan