

1 Alan Harris (SBN 146079)
2 David Garrett (SBN 160274)
3 Min Ji Gal (SBN 311963)
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 mgal@harrisandruble.com

12 Attorneys for Plaintiff Juan Barroso

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

JUAN BARROSO, individually and on behalf
of a class of similarly situated persons,

Plaintiff,

v.

SUPPLY & DEMAND, INC., a New York
Corporation; TIMOTHY P. CASE, an
individual; NATHAN DE LA RIONDA, an
individual; and DOE 1 through and including
DOE 10,

Defendants.

Case No: 21STCV00585

**FIRST AMENDED CLASS ACTION &
PRIVATE ATTORNEY GENERAL ACT
COMPLAINT**

1. Cal. Lab. Code §§ 201.5 and 203, Continuing Wages
2. Cal. Lab. Code § 226(a), Failure to Provide Compliant Pay Stubs
3. Cal. Lab. Code §§ 510, 515 and 1198, Failure to Pay Overtime
4. Cal Lab. Code §§ 1194, 1197 and 1197.1, Failure to Pay Minimum Wages
5. Cal. Lab. Code §§ 204 and 210, Untimely Wages.
6. Cal. Bus. & Prof. Code § 17200, Unfair Competition
7. Cal. Lab. Code §§ 2698 et seq., PAGA
8. Cal. Lab. Code § 226(b), Failure to Provide Records
9. Cal. Lab. Code §1198.5, Failure to Provide Records

JURY TRIAL DEMANDED

1 Plaintiff Juan Barroso, by and through his undersigned attorneys, alleges as follows:

2 **JURISDICTION AND VENUE**

3 1. This is a class action seeking relief under state law on account of unpaid wages, unpaid
4 overtime, damages, continuing wages, liquidated damages, penalties, restitution, attorneys' fees and
5 costs, as well as such other relief, such as civil penalties, as may be deemed appropriate.
6

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. This is a civil law enforcement action under the California Labor Code Private Attorneys
13 General Act ("PAGA") seeking unpaid wages, continuing wages, damages, civil penalties, statutory
14 penalties and attorneys' fees and costs. Plaintiff has provided statutory notice to the California Labor
15 and Workforce Development Agency ("LWDA") of the claims set forth in this Complaint and to
16 Defendants.

17 4. Plaintiff Juan Barroso ("Barroso") is an individual who, during the time periods relevant
18 to this Complaint, was and is a resident of the County of Los Angeles, State of California.

19 5. Defendant Supply & Demand, Inc. ("SDI") is a New York Corporation, which at all
20 times relevant herein, conducted business within the County of Los Angeles, State of California.

21 6. Defendant Timothy P. Case ("Case") is an individual who resides in the County of Los
22 Angeles, California, and is an owner of SDI.

23 7. Defendant Nathan De La Rionda ("DLR") is an individual who resides in the County of
24 Los Angeles, California, and is the Senior Head of Production for SDI.

25 8. Defendants Doe One through and including Doe Ten are sued herein under the provisions
26 of section 474 of the California Code of Civil Procedure. Plaintiff is currently ignorant of the true
27 names and capacities, whether individual, corporate, associate, or otherwise, of the Defendants sued
28 herein under fictitious names and therefore sue such Defendants by such fictitious names. Plaintiff will

1 seek leave to amend this complaint to allege the true names and capacities of said fictitiously named
2 Defendants when their true names and capacities have been ascertained. Plaintiff is informed and
3 believes and thereon alleges that each of the fictitiously named Defendants is legally responsible in
4 some manner for the events and occurrences alleged herein, and for the damages suffered by Plaintiff.

5 9. Defendants SDI, Case, DLR and Does One through and including Doe Ten are
6 hereinafter collectively referred to as Defendants.

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

15 11. Emergency Rule 9 as promulgated by the Judicial Council of California on insert date,
16 provides: “Notwithstanding any other law, the statutes of limitations and repose for civil causes of
17 action that exceed 180 days are tolled from April 6, 2020, until October 1, 2020.” The Advisory
18 Committee Comment notes that: “Emergency rule 9 is intended to apply broadly to toll any statute of
19 limitations on the filing of a pleading in court asserting a civil cause of action. The term “civil causes of
20 action” includes special proceedings. (See Code Civ. Proc., §§ 312, 363 [“action,” as used in title 2 of
21 the code (Of the Time of Commencing Civil Actions), is construed “as including a special proceeding of
22 a civil nature”). . . . The rule also applies to statutes of limitations on filing of causes of action in court
23 found in codes other than the Code of Civil Procedure.”

24 **GENERAL ALLEGATIONS**

25 12. Plaintiff worked as a crew member in connection with the Production of a motion picture
26 commercial known as “Florida Blue #20028,” produced in or about August 2020 (the “Production”).

27 13. With respect to his work on the Production, Plaintiff was hired by SDI. The Crew
28

1 Timecard issued to Plaintiff for his work on the Production, reflects that he provided services on August
2 26-28, 2020. Defendants offered to compensate Plaintiff at a “rate” of \$600 for per 10-hour day of
3 work which requires straight time wages at \$75 per hour and overtime at a rate of \$112.5 per hour.
4 Plaintiff was not paid for all hours worked and was not paid for all overtime hours worked at the correct
5 rate

6 14. With respect to the Production, SDI was the production company and a common law
7 employer of Plaintiff and other members of the crew.

8 15. Plaintiff and other of Defendants’ workers on the Production of August 26-28, 2020 and
9 otherwise, should have been paid in full for accrued minimum wages and overtime, issued legally
10 compliant wage statements, and reimbursed for all expenses no later than as required by Code §§ 201.5
11 203, 204, and 226(a), yet Plaintiff’s paycheck was not even prepared until September 15, 2020, and, as
12 detailed below, the paycheck prepared on September 15, 2020 did not pay Plaintiff all of his accrued
13 wages or provide him with the require data to be disclosed on the wage statement.

14 16. Defendants were joint employers of Plaintiff, as they hired Plaintiff and others, and had
15 the authority to control and direct their work, but failed to ensure that Plaintiff was timely paid.

16 17. Defendants failed to fully compensate Plaintiff and other persons who performed services
17 for Defendants for work performed. Plaintiff and many of the Aggrieved Employees worked on the
18 Production and otherwise, oft toiling in excess of eight hours in a single day, yet not being paid timely
19 or with appropriate wage statements, all due to Defendants’ insufficient funding of their payroll
20 accounting function and, apparently, hiring individuals to work for them without sufficient capital to
21 timely pay the workers.

22 18. At all relevant times mentioned herein, Wage Order 12 of the California Industrial
23 Welfare Commission applied to Plaintiff and Aggrieved Employees. In part, the Wage Order reflects
24 employer obligations regarding hours and days of work, reporting time pay and records (obligations
25 which the employer, here, failed to fulfill, both with respect to Plaintiff and Aggrieved Employees). The
26 Wage Order provides, in relevant part:

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

28 (A) Daily Overtime - General Provisions

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

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

(1) For daily employees and weekly employees, excluding weekly employees guaranteed more than forty (40) hours a workweek and "on call" employees, one and one-half (1.5) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any one workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

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

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

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

...

7. Records.

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

(1) Full name, home address, occupation and social security number.

(2) Birth date, if under 18 years, and designation as a minor.

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

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

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

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

(B) Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all

deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

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

Cal. Code Regs., Title 8 §§ 11110, 11120.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 Cal. Lab. Code § 203.

15 21. By failing to pay Plaintiff and Aggrieved Employees all wages when due at the end of
16 employment, Plaintiff and Aggrieved Employees are entitled to continuing wages pursuant to section
17 203 of the California Labor Code.

18 22. At all times relevant herein, section 204 of the California Labor Code provided in part:

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

26 Cal. Lab. Code § 204. Defendants routinely violated this provision of law.

27 23. In no event should Plaintiff or the Aggrieved Employees have been paid later than the
28 time periods established by sections 201.5, 203 or 204 of the California Labor Code, but certain
payments to Plaintiff and the Aggrieved Employees were made long after they were due, or, as here,
wages were not paid in full, leading to penalties and civil penalties under sections 203 and 204 of the
California Labor Code.

24. Prior, similar cases have been commenced against Supply & Demand, Inc., yet it fails
and refuses to devote sufficient resources to its payroll accounting function, thereby systematically

1 violating the California Labor Code.

2 25. At all times relevant herein, section 210 of the California Labor Code provided:

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

10 Cal. Lab. Code § 210. Further, the Defendants' policy has been to devote insufficient resources to
11 payroll, with the inevitable result that employees are routinely paid in tardy fashion, in violation of
12 sections 203 and 204 of the California Labor Code. Accordingly, on account of the prior violations as
13 herein referenced, the provisions of section 210(b) should be applied in this matter.

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

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

26 Cal. Lab. Code § 510.

27 27. Defendants failed to pay proper minimum wage or overtime to Plaintiff and Aggrieved
28 Employees.

29 28. At all relevant times mentioned herein, section 515(d)(2) of the California Labor Code
30 provided:

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

34 Cal. Lab. Code § 515(d)(2). Accordingly, a daily wage rate is "deemed to provide compensation only for

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

9 29. Here, Defendants agreed to pay Plaintiff a flat sum per day. For example, Plaintiff
10 Baker's time card, reflecting his rate as one based on "\$600/10 hr." day. Under California law, the
11 worker is paid a straight time rate based on \$600 for 8 hours and is guaranteed at least two hours of
12 overtime. Accordingly, Plaintiff is owed \$600 for eight hours of work in a day resulting in a straight
13 time hourly rate of \$75.00 ($=\$600/8$) and overtime rate of \$112.50 ($=\$75*1.5$).

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

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

21 Cal. Lab. Code § 1194.

22 31. Plaintiff and Aggrieved Employees were not timely paid the minimum wages and/or
23 overtime to which they were entitled. Accordingly, they are entitled to liquidated damages under
24 section 1194.2.

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

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

(b) For purposes of this section, the term "other person acting on behalf of an employer"

1 is limited to a natural person who is an owner, director, officer, or managing agent of the
2 employer, and the term “managing agent” has the same meaning as in subdivision (b) of
3 Section 3294 of the Civil Code.

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

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

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

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

19 Cal. Lab. Code § 558. Defendants are the employers or other persons acting on behalf of an employer
20 who violated, or caused to be violated the relevant sections of the California Labor Code referenced
21 herein. Upon information and belief, Case and DLR were responsible for establishing the policies
22 resulting in the payment of wages less than the minimum fixed by law and late payment of wages.

23 34. At all relevant times mentioned herein, section 226 of the California Labor Code
24 provided:

25 (a) An employer, semimonthly or at the time of each payment of wages, shall furnish to
26 his or her employee, either as a detachable part of the check, draft, or voucher paying the
27 employee’s wages, or separately if wages are paid by personal check or cash, an
28 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
worked by the employee, except as provided in subdivision (j), (3) the number of piece-
rate units earned and any applicable piece rate if the employee is paid on a piece-rate
basis, (4) all deductions, provided that all deductions made on written orders of the
employee may be aggregated and shown as one item, (5) net wages earned, (6) the
inclusive dates of the period for which the employee is paid, (7) the name of the
employee and only the last four digits of his or her social security number or an
employee identification number other than a social security number, (8) the name and
address of the legal entity that is the employer and, if the employer is a farm labor
contractor, as defined in subdivision (b) of Section 1682, the name and address of the
legal entity that secured the services of the employer, and (9) all applicable hourly rates
in effect during the pay period and the corresponding number of hours worked at each

hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. . . .

Cal. Lab. Code § 226. Defendants did not provide Plaintiff or other Aggrieved Employees wage statements with all required information, including but not limited to, the legal name and address of the employer.

35. At all relevant times mentioned herein, section 1197.1 of the California Labor Code provided in part:

(a) Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission, shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.

Cal. Lab. Code § 1197.1. Upon information and belief, Case and DLR were responsible for establishing the policies resulting in the payment of wages less than the minimum fixed by law.

CLASS-ACTION ALLEGATIONS

36. Plaintiff brings this action on behalf of himself and all other similarly-situated SDI workers in California as a class action pursuant to section 382 of the Code of Civil Procedure. Plaintiff seek to represent a “203 Class” composed of and defined as follows:

For the period three years prior to the filing of the Complaint to date, as extended by Emergency

1 Rule 9, supra, all persons who received a final paycheck and wage statement on account of
2 services provided for SDI in California (such persons are referred to hereafter as 203 Class
3 Members, and such period is referred to hereafter as the 203 Class Period).

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

5 For the period one year prior to the filing of the Complaint to date, as extended by Emergency
6 Rule 9, supra, all persons who received a wage statement on account of services provided for
7 SDI in California (such persons are referred to hereafter as 226 Class Members, and such period
8 is referred to hereafter as the 226 Class Period).

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

12 38. Defendants, as to Plaintiff and Class Members, failed to pay all accrued overtime for all
13 hours worked pursuant to sections 510, 515 and 1194 of the Code. Accordingly, each Plaintiff and Class
14 Member is entitled to payment of his or her unpaid overtime and interest as well as reimbursement of
15 their attorneys’ fees and reasonable costs.

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

20 40. Defendants, as to Plaintiff and Class Members, failed to timely compensate the workers
21 as required by sections 201.5, 203 and 204 of the Code and, accordingly, Defendants’ failure to make
22 timely payment entitles Plaintiff and each Class Member to statutory damages.

23 **A. Numerosity**

24 41. The potential members of each Class are so numerous that joinder of all the members is
25 impracticable. The number of Class Members is great, but not so great as to make the class
26 unmanageable. It, therefore, is impractical to join each Class Member as a named plaintiff.
27 Accordingly, utilization of a class action is the most economically feasible means of determining the
28 merits of this litigation.

42. Despite the size of the proposed Classes, the Class Members are readily ascertainable
through an examination of the records that Defendants are required by law to keep. Likewise, the dollar

1 amount owed to each Class Member is readily ascertainable by an examination of those same records.

2 **B. Commonality**

3 43. There are questions of law and fact common to each Class that predominate over any
4 questions affecting only individual Class Members. These common questions of law and fact include,
5 without limitation:

- 6 a. Whether Defendants failed to pay all wages in a timely fashion in violation of sections
7 201.5, 203 and/or 204 of the Code.
- 8 b. Whether Defendants' failure to provide accurate itemized wage statements to each and
9 every employee violates section 226(a).
- 10 c. Whether Defendants' untimely and/or nonpayment of wages give rise to liquidated
11 damages for failure to pay minimum wages under section 1194.2.

12 **C. Typicality**

13 44. There is a well-defined community of interest in the questions of law and fact common to
14 the Class Members.

15 45. The claims of the named Plaintiff is typical of the claims of each Class, which claims all
16 arise from the same general operative facts, namely, Defendants did not compensate its employees as
17 required by the Code and applicable Wage Order. Plaintiff and all members of the Classes sustained
18 injuries and damages arising out of and caused by Defendants in violation of laws, regulations that have
19 the force and effect of law, and statutes as alleged herein. Plaintiff has no conflict of interest with the
20 other Class Members and are able to represent the Class Members' interests fairly and adequately.

21 **D. Adequacy of Representation**

22 46. Plaintiff will fairly and adequately represent and protect the interests of the members of
23 the Class. Counsel who represent Plaintiff are competent and experienced in litigation large employment
24 class actions. Neither Plaintiff nor his counsel have any conflict with the Class.

25 **E. Superiority of Class Action**

26 47. A class action is superior to other available means for the fair and efficient adjudication
27 of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and
28

fact common to the Class predominate over any questions affecting only individual members of the Class. Each member of the Class has been damaged and is entitled to recovery by reason of Defendants' illegal policy and/or practice of failing to pay hourly wages, failing to pay overtime wages, failing to provide Class Members rest and meal periods without legal compensation. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be construed in the management of this action that would preclude its maintenance as a class action. The disposition of all claims of the members of the Class in a class action, rather than in individual actions, benefits the parties and the Court. The interest of the Class Members in controlling the prosecution of separate claims against Defendants is small when compared with the efficiency of a class action.

FIRST CAUSE OF ACTION

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

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

49. Defendants employed Plaintiff on the Production as a crew member in August of 2020. As of the date of filing of this Complaint, some Plaintiff has not been timely compensated in full for their services.

50. Upon information and belief, Aggrieved Employees the 203 Class have not been timely compensated in full for their services.

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

52. Pursuant to section 203 of the California Labor Code, Plaintiff and the Class Members are entitled to continuing wages from Defendants in an amount according to proof. Plaintiff and Aggrieved Employees are also entitled to recover costs and reasonable attorneys' fees under section 218.5 of the California Labor Code in the total sum of at least \$18,000 each.

SECOND CAUSE OF ACTION

(Failure to Provide Compliant Pay Stubs, Cal. Lab. Code § 226(a)
On Behalf of Plaintiff and the 226 Class Against All Defendants)

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

54. Defendants failed to provide Plaintiff and the 226 Class with wage statements conforming to the requirements of section 226(a)(6) and (8) of the Code. The wage statements fail to show either “the inclusive dates of the period for which the employee is paid” or “the name and address of the legal entity that is the employer.”

55. The foregoing was intentional misconduct of Defendants that injured Plaintiff and Aggrieved Employees insofar as they were deprived of information to which they were legally entitled, including but not limited to the name and address of the legal entity that is the employer, and all applicable rates of pay.

56. The failure of Defendants to provide compliant wage statements violates section 226(a) of the Code. The failure caused them injury by depriving them of information to which they are legally entitled. Accordingly, Plaintiff and Class Members are entitled to damages in an amount according to proof and costs and reasonable attorney’s fees in accordance with the provisions of Code section 226(e), all in a sum according to proof. Plaintiff is entitled to an amount according to proof of at least \$50 each not including interest thereon, reasonable attorneys’ fees and cost of suit.

THIRD CAUSE OF ACTION

(Damages for Unpaid Overtime Compensation,
California Labor Code §§ 510, 515 and 1198
On Behalf of Plaintiff and the 203 Class Against All Defendants)

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

58. Plaintiff, as well as the 203 Class, worked many hours for Defendants, including overtime, without compensation for work performed, as required by law.

59. At all relevant times mentioned herein, section 515(d)(2) of the California Labor Code provided:

Payment of a fixed salary to a nonexempt employee shall be deemed to provide

1 compensation only for the employee's regular, nonovertime hours, notwithstanding any
2 private agreement to the contrary

3 Cal. Lab. Code § 515(d)(2).

4 60. Plaintiff and the 203 Class are entitled to recover an amount according to proof, of at
5 least \$3,000. Plaintiff and the 203 Class are also entitled to recover costs and reasonable attorneys' fees
6 under section 1194 of the California Labor Code.

7 **FOURTH CAUSE OF ACTION**

8 (Damages for Unpaid Minimum Wages,

9 California Labor Code §§ 1194, 1194.2 and 1198

10 On Behalf of Plaintiff and the 203 Class Against All Defendants)

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

13 62. Plaintiff and the 203 Class, worked many hours for Defendants, without compensation
14 for work performed, as required by law.

15 63. Plaintiff and the 203 Class are entitled to recover liquidated damages under section
16 1194.2 of the California Labor Code in an amount according to proof of at least \$2,800. Plaintiff and
17 Aggrieved Employees are also entitled to recover costs and reasonable attorneys' fees under section
18 1194 of the California Labor Code.

19 **FIFTH CAUSE OF ACTION**

20 (Untimely Wage During Employment, Cal. Lab. Code §§ 204 and 210

21 On Behalf of Plaintiff and the 203 Class and Against All Defendants)

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

24 65. Plaintiff was not compensated the correct amount of overtime under section 515 and not
25 paid all of the minimum and overtime wages for their work. Accordingly, Defendants failed to pay
26 Plaintiff and Aggrieved Employees all wages for a weekly payroll period within 7 calendar days
27 following the close of the payroll period in violation of Code §§ 204(d) and 210. Plaintiff and Aggrieved
28 Employees were paid after the 7th day following the close of the payroll period in violation of these
statutes.

66. Plaintiff contend that the failure of Defendants to make timely payments within the time provided for has been and is “willful” within the meaning of such word as used in Section 210 of the California Labor Code.

67. Labor Code section 210 provides for a statutory penalty of \$100 for each initial violation and \$200 for each subsequent, or willful or intentional violation plus 25 percent of the amount unlawfully withheld.

68. Plaintiff is entitled to damages and statutory penalties of an amount to be proven at trial, and attorney's fees and costs pursuant to sections 218.5 of the Labor Code and 1021.5 of the Code of Civil Procedure.

SIXTH CAUSE OF ACTION

(Unfair Business Practices On Behalf of Plaintiff and the 203 Class Members Against All Defendants)

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

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

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

72. Defendants have avoided payment of wages and overtime wages and other benefits required by the California Labor Code, the California Code of Regulations, and the applicable IWC Wage Order.

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

74. The actions of Defendants entitle Plaintiff to seek the remedies available under section

17200 et seq. Plaintiff seek full restitution of said amounts from Defendants, as necessary and according to proof, to restore any and all amounts—including interest—withheld, acquired, or converted by Defendants by means of the unfair practices complained of herein. Plaintiff, on behalf of themselves, as well as on behalf of the general public, further seeks attorney’s fees and costs pursuant to sections 218.5 of the Labor Code and 1021.5 of the Code of Civil Procedure. In addition, Plaintiff seeks the appointment of a receiver as necessary

SEVENTH CAUSE OF ACTION

(California Labor Code § 2698 et seq. Civil Penalties

On Behalf of Plaintiff, the California Labor & Workforce Development Agency and Aggrieved Employees Against All Defendants Except SA)

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

76. Pursuant to section 2699.3(a)(1) of the Labor Code, on October 16, 2020, Plaintiff submitted Plaintiff’s PAGA Claim Notice online to the California Labor and Workforce Development Agency (“LWDA”) and notified the LWDA of the specific provisions of the Labor Code alleged to have been violated by Defendants, including the theories set forth in the Complaint. Also on that day, Plaintiff gave written notice by certified mail to Defendants.

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

The agency shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation within 60 calendar days of the postmark date of the notice received pursuant to Paragraph (1). Upon receipt 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.

Cal. Lab. Code § 2699.3(a)(2)(A). After sixty-five (65) calendar days from the October 16, 2020, postmark date of the notice sent by Plaintiff, Plaintiff may “commence a civil action pursuant to Section 2699.” Cal. Lab. Code § 2699.3(a)(2)(A). Once more than sixty-five calendar days have passed since Plaintiff gave written notice of the PAGA violations to the LWDA and Defendants, Plaintiff will seek to amend the Complaint to add a PAGA cause of action.

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

(2009). Therefore, class certification of the PAGA claims is not required.

79. Plaintiff seeks to bring a representative action on behalf of himself and the State of California as well as on behalf of a group of Aggrieved Employees defined as: Plaintiff and/or other persons who were issued a wage statement on account of the provision of services performed for one or more Defendants on the Production or other such projects produced in California (“Aggrieved Employees”) during the period from one year prior to the filing of the PAGA Notice until this case is resolved.

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

1. **Failure to timely pay wages during employment in violation of Labor Code §§ 204 and 210.** Aggrieved Employees were not compensated twice during each calendar month for wages earned by the times prescribed by section 204. The failure of Defendants to make timely payments within the time provided for has been and is “willful” within the meaning of such word as used in Section 210 of the California Labor Code and that, accordingly, each Aggrieved Employee who was not timely paid his or her timely wages during their employment is entitled to civil penalties. Labor Code section 210 provides for a penalty of \$100 for each initial violation and \$200 for each subsequent, or willful or intentional violation plus 25 percent of the amount unlawfully withheld.
2. **Failure to pay wages and/or final wages in violation of Labor Code §§ 201.5 and 203.** With respect to violations of Labor Code § 201.5, the failure of Defendants to make final payments within the time provided for has been and is “willful” within the meaning of such word as used in Section 203 of the California Labor Code and that, accordingly, each Aggrieved Employee who was not timely paid his or her final wages is entitled to civil penalties. Labor Code section 2699(f)(2) imposes a civil penalty of \$100 per pay period per Aggrieved Employee for initial violations, and \$200 per pay period per Aggrieved Employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided. Defendants paid Plaintiff many days after final wages were due or not at all as of the writing of this letter.
3. **Failure to provide itemized wage statements in violation of Labor Code § 226(a).** Aggrieved Employees have not been provided a wage statement as required by Labor Code section 226(a). The foregoing was the intentional misconduct of Defendants that was intended to mislead and injure Aggrieved Employees insofar as they were subjected to confusion and deprived of information to which they were legally entitled. Section 226(e) provides that any employee who suffers injury as a result of a knowing and intentional failure by the employer to comply with its obligation to provide wage statements containing all of the information referenced above is entitled to recover. Section 226.3 provides for a civil penalty of \$250 per employee per violation in an initial violation and \$1,000 per employee for each violation in a subsequent violation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. Defendants failed to provide Plaintiff and Aggrieved Employees with a wage statement including all of the information as required by section 226(a)

- 1 4. **Failure to provide proper rest and meal periods.** Aggrieved Employees were not provided
2 with timely meal and rest periods in violation of Labor Code section 226.7 and the applicable
3 Living Wage Order sections 11 and 12. Labor Code section 2699(f)(2) imposes a civil penalty of
4 \$100 per pay period per Aggrieved Employee for initial violations, and \$200 per pay period per
5 Aggrieved Employee for subsequent violations for all Labor Code provisions for which a civil
6 penalty is not specifically provided. Plaintiff and Aggrieved Employees worked over six hours
7 but were not provided with a compliant meal break as it was interrupted, untimely, truncated or
8 not provided at all. Plaintiff and Aggrieved Employees were not provided with the required rest
9 periods that were uninterrupted and timely.
- 10 5. **Failure to reimburse necessary business expenses under Labor Code § 2802.** Plaintiff and
11 Aggrieved Employees were not reimbursed for necessary business expenses. Labor Code
12 section 2699(f)(2) imposes a civil penalty of \$100 per pay period per Aggrieved Employee for
13 initial violations, and \$200 per pay period per Aggrieved Employee for subsequent violations for
14 all Labor Code provisions for which a civil penalty is not specifically provided.
- 15 6. **Failure to pay minimum and overtime wages in violation of Labor Code §§ 510, 515, 558,
16 1194, and 1198.** Both late payment and non-payment of minimum wages and overtime wages
17 violate the state statute requiring the payment of a minimum hourly wage. Labor Code section
18 558 imposes a civil penalty in addition to any other penalty provided by law of \$50 for initial
19 violations for each underpaid employee for each pay period for which the employee was
20 underpaid in addition to an amount sufficient to recover unpaid wages, and \$100 for subsequent
21 violations for each underpaid employee for each pay period for which the employee was
22 underpaid in addition to an amount sufficient to recover underpaid wages.
- 23 7. **Failure to keep complete and accurate payroll records.** Defendants failed to keep complete
24 and accurate payroll records relating to Plaintiff and Aggrieved Employees in accordance with
25 California Labor Code section 1174(d). Willful failure to maintain accurate and complete
26 records required by section 1174(d) is subject to a civil penalty of \$500. Cal. Lab. Code §
27 1174.5.

EIGHTH CAUSE OF ACTION

(Failure to Provide Employment Records Upon Request Cal. Lab. Code § 226(b)
On Behalf of Plaintiff and Against Defendant SDI)

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

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

83. On October 19, 2020, Plaintiff requested to Defendant SDI to permit inspection or
copying of his employment records pursuant to Labor Code section 226(b) and 1198.5. Defendants
have failed to provide Plaintiff the employment records within 21 days or even a month of the request.

84. Pursuant to Labor Code Section 226(b) and (f), Plaintiff is entitled, and hereby seeks to recover from Defendants a seven-hundred-fifty dollar (\$750) penalty, reasonable attorney's fees, and the costs of bringing this cause of action.

NINTH CAUSE OF ACTION

(Failure to Provide Employment Records Upon Request Cal. Lab. Code § 1198.5
On Behalf of Plaintiff and Against Defendant SDI)

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

86. Pursuant to Labor Code section 1198.5, an employer shall make the contents of an employee's personnel records available for inspection.

87. Plaintiff requested that Defendant SDI permit inspection or copying of his personnel records pursuant to Labor Code section 1198.5. Defendant has failed to provide Plaintiff with an opportunity to inspect or copy the records within 30 days of the request.

88. Pursuant to Labor Code Section 1198.5(k), Plaintiff is entitled, and hereby seeks to recover from Defendants a seven-hundred-fifty dollar (\$750) penalty for Plaintiff, reasonable attorney's fees, and the costs of bringing this cause of action.

WHEREFORE, Plaintiff prays judgment as follows:

1. That the Court certify the Class.
2. That, under the First Cause of Action for Continuing Wages, it be adjudged that the failure of Defendants to make payment of Plaintiff's and Class Members' wages was in violation of section 201.5, 203 and 204 of the California Labor Code, and was "willful" as that word is used in section 203 of the California Labor Code, and that the Court enter judgment against Defendants in favor of Plaintiff and Class Members. That judgment be entered in favor of Plaintiff of at least \$18,000 and the 203 Class in an amount according to law and proof, no less than \$500,000, interest thereon, and costs and reasonable attorneys' fees in accordance with the provisions of California Labor Code section 218.5.
3. That, under the Second Cause of Action for Failure to Provide Compliant Wage Statements, this Court enter judgment in favor of Plaintiff and Class Members against Defendants. That judgment be entered in favor of Plaintiff of at least \$50 each and the 226 Class in an amount according

1 to proof, and costs and reasonable attorneys' fees in accordance with the provisions of California Labor
2 Code section 226(e).

3 4. That, under the Third Cause of Action for Failure to Pay Overtime, this Court enter
4 judgment in favor of Plaintiff of at least \$3,000 and the 203 Class against Defendants in the amount of
5 unpaid overtime and liquidated damages according to proof, interest thereon, and costs and reasonable
6 attorneys' fees pursuant to sections 1194.

7 5. That, under the Fourth Cause of Action for Failure to Pay Minimum Wages, this Court
8 enter judgment in favor of Plaintiff of at least \$2,800 each and the 203 Class against Defendants in the
9 amount of unpaid minimum wages and liquidated damages according to proof, interest thereon, and
10 costs and reasonable attorneys' fees pursuant to sections 1194 and 1194.2.

11 6. That, under the Fifth Cause of Action, this Court enter judgment in favor of Plaintiff and
12 the 203 Class and against Defendants in an amount according to proof and award them their damages,
13 penalties, and attorney's fees and costs pursuant to sections 218.5 of the Labor Code and 1021.5 of the
14 Code of Civil Procedure.

15 7. That, with respect to the Sixth Cause of Action for Unfair Competition, this Court enter
16 judgment in favor of Plaintiff and the 203 Class against Defendants in an amount according to proof.
17 Plaintiff seek full restitution from Defendants, as necessary and according to proof, to restore any and all
18 amounts—including interest—withheld, acquired, or converted by Defendants by means of the unfair
19 practices complained of herein. Plaintiff, on behalf of themselves, as well as on behalf of the general
20 public, further seeks attorney's fees and costs pursuant to sections 218.5 of the Labor Code and 1021.5
21 of the Code of Civil Procedure. In addition, Plaintiff seeks the appointment of a receiver as necessary.

22 8. That, with respect to the Seventh Cause of Action this Court award Plaintiff, the State of
23 California, and other former and current Aggrieved Employees their civil penalties, attorney's fees, and
24 costs of suit, all according to proof, pursuant to the cited sections of the Labor Code and the applicable
25 Wage Orders as heretofore articulated.

26 9. That, with respect to the Eighth Cause of Action this Court award Plaintiff a \$750
27 penalty, attorney's fees, and costs of suit, all according to proof, pursuant to the cited sections of the
28

1 Labor Code and the applicable Wage Orders as heretofore articulated.

2 10. That, with respect to the Ninth Cause of Action this Court award Plaintiff a \$750 penalty,
3 attorney's fees, and costs of suit, all according to proof, pursuant to the cited sections of the Labor Code
4 and the applicable Wage Orders as heretofore articulated.

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

8 DATED: April 25, 2021

HARRIS & RUBLE

9 

10 Alan Harris
11 Attorney for Plaintiff
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

FIRST AMENDED COMPLAINT

LAURA.REATHAFORD@LATHROPGPM.COM

/s/ David Garrett
David Garrett