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

9 THOMAS PENA, an individual, individually
and on behalf of all others similarly situated,

10 Plaintiff,

11 v.

12 AYZENBERG GROUP, INC., a California
13 Corporation; ERIC AYZENBERG, an
14 individual; ADRIANE ZAUDKE, an
15 individual; KRISTEN VAIK VAZQUEZ, an
16 individual; and DOE 1 through and including
17 DOE 10,

18 Defendants.

Case No: 21STCV15447

Assigned to the Hon. Maren Nelson, Dept. 17

SECOND AMENDED COMPLAINT

[PAGA Representative Action; Class Action]

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 § 226.7 and 512(a), Failure to Provide Meal Breaks
6. Cal. Lab. Code § 226.7, Failure to Provide Rest Breaks
7. Cal. Bus. & Prof. Code § 17200, Unfair Competition
8. Cal. Lab. Code § 226(b), Failure to Provide Employment Records
9. Cal. Lab. Code § 1198.5, Failure to Provide Employment Records
10. Cal. Lab. Code §2698 et seq., PAGA
11. FLSA

JURY TRIAL DEMANDED

1 Plaintiff Thomas Pena, Plaintiff Erich Ulbrich, and Plaintiff Mark Ramsey (collectively, “Plaintiffs”) by
2 and through their undersigned attorneys, alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This is a representative action brought under the California Labor Code Private Attorneys
5 General Act (“PAGA”), seeking relief under state law on account of unpaid wages, unpaid overtime,
6 damages, continuing wages, liquidated damages, penalties, restitution and attorneys’ fees and costs.
7 action in court found in codes other than the Code of Civil Procedure.”

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

12 **INTRODUCTION**

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

15 4. Plaintiff Erich Ulbrich (“Ulbrich”) is an individual who, during the time periods relevant
16 to this Complaint, was employed within the County of Los Angeles, State of California. Plaintiff is a
17 resident of the County of Los Angeles, State of California.

18 5. Plaintiff Mark Ramsey (“Ramsey”) is an individual who, during the time periods relevant
19 to this Complaint, was employed within the County of Los Angeles, State of California. Plaintiff is a
20 resident of the County of Los Angeles, State of California.

21 6. Defendant AYZENBERG GROUP, INC. (“Ayzenberg Group”) is a California
22 corporation, which at all times relevant herein, conducted business within the County of Los Angeles of
23 the State of California.

24 7. Defendant Eric Ayzenberg (“Ayzenberg”) is an individual, who at all times relevant
25 herein, conducted business within the County of Los Angeles of the State of California. He is the CEO
26 and Founder of Ayzenberg Group.

27 8. Defendant Adriane Zaudke (“Zaudke”) is an individual, who at all times relevant herein,
28 conducted business within the County of Los Angeles of the State of California. On the Pokemon

1 project to which reference is made herein, Zaudke was the Producer. Kristen Vaik Vazquez is an
2 individual, who at all times relevant herein, conducted business within the County of Los Angeles of the
3 State of California. On the Pokemon project, Zaudke was the Production Manager.

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

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

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

GENERAL ALLEGATIONS

12. Defendants Ayzenberg Group employed Plaintiffs and Aggrieved Employees as crew members for a production entitled “Pokémon 25th Anniversary Trailer” (“Production”).

13. Plaintiff Pena was hired to work from December 7 to December 9, 2020 as an electrician on the Production. He worked 12 hours on December 7, 2020, 13 hours on December 8, 2020, and 14 hours on December 9, 2020. Once his employment ended, Defendants were required to pay him by the next week. However, as of filing of this Complaint, he has not yet been paid.

14. Plaintiff Ulbrich was hired to work from in or about December 6 to December 9, 2020 as a Director and Director of Photography on the Production. Once his employment ended, Defendants were required to pay him by the next week, no later than on or about December 17, 2020. However, his paycheck was not prepared until January 29, 2021.

15. Plaintiff Mark Ramsey worked as a Gaffer for Defendants during the work week of Sunday, December 6 to Saturday, December 12, 2020.

16. Nevertheless, Defendants failed to pay any wages to Ramsey until on or after January 27, 2021, more than thirty days after they were due. Pursuant to California Labor Code sections 201.3 and/or 201.5, Ramsey and the crew for the Pokeman motion picture here at issue – as well as other crew working for other employers such as Microsoft or Facebook -- should have been paid their wages no later than the Thursday of the following work week, December 17, 2020.

17. Although Plaintiffs should have been paid in full for the accrued minimum wages and overtime, issued legally compliant wage statements, and reimbursed for all expenses no later than as required by Code § 201.5, they have yet to be paid properly.

18. Defendants failed to fully compensate Plaintiffs and other nonexempt workers who performed services on the Production or other such projects produced in California for Defendants (“Aggrieved Employees”) for work performed. Plaintiffs and the Aggrieved Employees worked on the Production as well as on other California motion picture projects, toiling in excess of eight hours in a single day and over forty hours in a work week, yet not being paid timely or with appropriate wage statements, all due to Defendant’s insufficient funding of the payroll accounting function.

19. It is “an employer’s duty under the FLSA to maintain accurate records of its employees’

hours” and that duty “is non-delegable.” Kuebel v. Black & Decker Inc., 643 F.3d 352, 363 (2d Cir. 2011). Although Kuebel establishes that it is solely the employer’s duty to keep track of hours worked under the federal FLSA, and although Plaintiff’s wage-and-hour claims are brought under the state law, the fact remains that Defendant, at all times, was subject to the FLSA and therefore was itself required to keep track of Plaintiff’s hours worked. See Troester v. Starbucks Corp., 5 Cal. 5th 829, 839 (2018) (explaining that, although California’s wage-and-hour laws are “more protective than federal law” and that “California is free to offer [employees] greater protection,” the FLSA “provide[s] a level of employee protection that a state may not derogate”). Troester, 5 Cal. 5th at 846 (“Nor is it clear why, when it is difficult to keep track of time worked, the employee alone should bear the burden of that difficulty”), 848 (“An employer may be able to customize and adapt available time tracking tools or develop new ones when no off-the-shelf product meets its needs. And even when neither a restructuring of work nor a technological fix is practical, it may be possible to reasonably estimate work time . . . and to compensate employees for that time.”). Marlo v. United Parcel Serv., Inc., No. CV 03-04336 DDP (RZx), 2009 WL 1258491, at *3 (C.D. Cal. May 5, 2009) explains that, under California law, “employers must keep track of the hours . . . employees work.”

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

3. Hours and Days of Work.

(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.

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

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

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

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

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

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

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

15 (3) "Next regular payday" means the day designated by the employer, pursuant to Section
16 204, for payment of wages earned during the payroll period in which the termination
17 occurs.

18 (4) "Production or broadcasting of motion pictures" means the development, creation,
19 presentation, or broadcasting of theatrical or televised motion pictures, television
20 programs, commercial advertisements, music videos, or any other moving images,
21 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,
23 live broadcast, cable, satellite transmission, Web cast, or any other technology that is now
24 in use or may be adopted in the future.

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

28 (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.

(e) Nothing in this section prohibits the parties to a valid collective bargaining agreement
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.

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

22. At all relevant times mentioned herein, section 203 of the California Labor Code

1 provided:

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

7 Cal. Lab. Code § 203.

8 23. By failing to pay Plaintiffs and Aggrieved Employees all wages when due at the end of
9 employment, Plaintiffs and Aggrieved Employees are entitled to continuing wages pursuant to section
10 203 of the California Labor Code.

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

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

19 Cal. Lab. Code § 204.

20 25. In no event should Plaintiffs or the Aggrieved Employees have been paid later than the
21 time periods established by sections 201.3, 201.5 or 204 of the California Labor Code, but certain
22 payments to Plaintiffs and the Aggrieved Employees were made months after they were due, or not at
23 all, leading to penalties and civil penalties under sections 203 and 204 of the California Labor Code.

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

25 In addition to, and entirely independent and apart from, any other penalty provided in this
26 article, every person who fails to pay the wages of each employee as provided in Sections
27 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as
28 follows: (a) For any initial violation, one hundred dollars (\$100) for each failure to pay
each employee; (b) For each subsequent violation, or any willful or intentional violation,
two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the
amount unlawfully withheld.

Cal. Lab. Code § 210. Further, the Defendants' policy has been to devote insufficient manpower and
other resources to the payroll accounting function, with the inevitable result that employees are routinely
paid in tardy fashion, in violation of sections 203 and 204 of the California Labor Code.

1 27. At all relevant times mentioned herein, section 510(a) of the California Labor Code
2 provided:

3 Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one
4 workday and any work in excess of 40 hours in any one workweek and the first eight
5 hours worked on the seventh day of work in any one workweek shall be compensated at
6 the rate of at least one and one-half times the regular rate of pay for an employee. Any
7 work in excess of 12 hours in one day shall be compensated at the rate of no less than
8 twice the regular rate of pay for an employee. In addition, any work in excess of eight
9 hours on any seventh day of a workweek shall be compensated at the rate of no less than
10 twice the regular rate of pay of an employee. Nothing in this section requires an employer
11 to combine more than one rate of overtime compensation in order to calculate the amount
12 to be paid to an employee for any hour of overtime work.

13 Cal. Lab. Code § 510.

14 28. Defendants failed to pay proper minimum wage or overtime to Plaintiffs and Aggrieved
15 Employees.

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

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

21 Cal. Lab. Code § 515(d)(2). Accordingly, a daily wage rate is "deemed to provide compensation only for
22 the employee's regular, nonovertime hours" too. Alvarado v. Dart Container Corp. of Cal., 4 Cal. 5th
23 542, 564–65 (2018), as modified (Apr. 25, 2018) ("the Legislature expressly endorsed the principle that
24 flat sum nonhourly compensation should be factored into an employee's regular rate of pay by dividing
25 the flat sum by the number of nonovertime hours that exist in the relevant period, and that the flat sum
26 compensates the worker for only nonovertime hours worked.") The California Supreme Court based its
27 holding on fundamental principles that "the obligation to pay premium pay for overtime work reflects a
28 state policy favoring an eight-hour workday and a six-day 40-hour workweek, and discouraging
employers from imposing work in excess of those limits." Alvarado, 4 Cal. 5th at 539.

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

31 Notwithstanding any agreement to work for a lesser wage, any employee receiving less
32 than the legal minimum wage or the legal overtime compensation applicable to the

1 employee is entitled to recover in a civil action the unpaid balance of the full amount of
2 this minimum wage or overtime compensation, including interest thereon, reasonable
3 attorney's fees, and costs of suit.

4 Cal. Lab. Code § 1194.

5 31. Plaintiffs and Aggrieved Employees were not timely paid the minimum wages and/or
6 overtime to which they were entitled. Accordingly, they are entitled to liquidated damages under
7 section 1194.2.

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

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

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

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

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

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

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

Cal. Lab. 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 California Labor Code referenced
herein.

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

1 provided:

2 (a) An employer, semimonthly or at the time of each payment of wages, shall furnish to
3 his or her employee, either as a detachable part of the check, draft, or voucher paying the
4 employee's wages, or separately if wages are paid by personal check or cash, an
5 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
6 worked by the employee, except as provided in subdivision (j), (3) the number of piece-
7 rate units earned and any applicable piece rate if the employee is paid on a piece-rate
8 basis, (4) all deductions, provided that all deductions made on written orders of the
9 employee may be aggregated and shown as one item, (5) net wages earned, (6) the
10 inclusive dates of the period for which the employee is paid, (7) the name of the
11 employee and only the last four digits of his or her social security number or an
12 employee identification number other than a social security number, (8) the name and
13 address of the legal entity that is the employer and, if the employer is a farm labor
14 contractor, as defined in subdivision (b) of Section 1682, the name and address of the
15 legal entity that secured the services of the employer, and (9) all applicable hourly rates
16 in effect during the pay period and the corresponding number of hours worked at each
17 hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary
18 services employer as defined in Section 201.3, the rate of pay and the total hours worked
19 for each temporary services assignment. The deductions made from payment of wages
20 shall be recorded in ink or other indelible form, properly dated, showing the month, day,
21 and year, and a copy of the statement and the record of the deductions shall be kept on
22 file by the employer for at least three years at the place of employment or at a central
23 location within the State of California. . . .

24 Cal. Lab. Code § 226. Defendants did not provide Plaintiffs or other Aggrieved Employees wage
25 statements at all.

26 35. At all relevant times mentioned herein, section 2810.3 of the California Labor Code
27 provided:

28 (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.
...

Cal. Lab. Code § 2810.3.

36. Defendants have violated Labor Code § 226.8(a)(1) by willfully misclassifying their non-exempt workers as independent contractors instead of employees, who performed services on the Production or other such projects produced in California for Defendants. As described above, Defendants had and exercised significant control of its workers, set the workers' schedules and pay, paid the workers by the hour, paid the workers on a weekly basis, the workers were a regular part Defendants' business, and Defendants' revenues depended on the workers' completion of each projects. Despite Defendants' choice to retain a significant right to control its workers, Defendants' creation of an employee relationship, and Defendants' knowledge that the workers were employees, Defendants chose to uniformly classify Plaintiffs and other workers as independent contractors. Defendants have engaged in a pattern or practice of willful misclassification of its workers as independent contractors because they have misclassified all of its workers as independent contractors as opposed to employees. Labor Code § 226.8(c). As a result, Defendants are liable for civil penalties pursuant to Labor Code §§ 226.8(a)(1), 226.8(c), and 2698 et seq.

CLASS-ACTION ALLEGATIONS

37. Plaintiffs bring this action on behalf of himself and all others similarly situated as a class action pursuant to section 382 of the Code of Civil Procedure. Plaintiffs seek to represent a "203 Class" composed of and defined as follows:

For the period four years and 180 days prior to the filing of this Complaint to date, all persons paid wages on account of services provided for Defendants in the production of Motion Pictures¹

¹ See Cal. Lab. Code § 201.5 defining Motion Pictures.

(such persons are referred to hereafter as 203 Class Members, and such period is referred to hereafter as the Class Period).

Plaintiffs seek to represent a “226 Class” composed of and defined as follows:

For the period one year and 180 days prior to the filing of this Complaint to date, all persons paid wages on account of services provided for Defendants in the production of Motion Pictures² (such persons are referred to hereafter as 226 Class Members, and such period is referred to hereafter as the Class Period).

Plaintiffs seek to represent a “Meal Break Class” composed of and defined as follows:

For the period three years and 180 days prior to the filing of this Complaint to date, all persons who were not provided proper meal breaks by Defendants in the production of Motion Pictures³ (such persons are referred to hereafter as Meal Break Class Members, and such period is referred to hereafter as the Class Period).

Further, Plaintiffs seek to represent a “Rest Break Class” composed of and defined as follows:

For the period three years and 180 days prior to the filing of this Complaint to date, all persons who were not provided proper rest breaks by Defendants in the production of Motion Pictures⁴ (such persons are referred to hereafter as Rest Break Members, and such period is referred to hereafter as the Class Period).

A. Numerosity

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

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

B. Commonality

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

² See Cal. Lab. Code § 201.5 defining Motion Pictures.

³ See Cal. Lab. Code § 201.5 defining Motion Pictures.

⁴ See Cal. Lab. Code § 201.5 defining Motion Pictures.

- a. Whether Defendants failed to pay all wages in a timely fashion in violation of sections 201.5, 203 and/or 204 of the Code.
- b. Whether Defendants' failure to provide accurate itemized wage statements to each and every employee violates section 226(a).
- c. Whether Defendants untimely and/or nonpayment of wages give rise to liquidated damages for failure to pay minimum wages under section 1194.2.
- d. Whether Defendants' failure to provide meal breaks to each and every employee violates section 226.7 and 512.
- e. Whether Defendants' failure to provide rest breaks to each and every employee violates section 226.7.
- f. Whether Defendants misclassified each and every employee as independent contractors.

C. Typicality

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

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

D. Adequacy of Representation

43. Plaintiffs will fairly and adequately represent and protect the interests of the members of each Class. Counsel who represents Plaintiffs are competent and experienced in litigation large employment class actions. Neither Plaintiffs nor their counsel have any conflict with either Class.

E. Superiority of Class Action

44. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the

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

11 **FIRST CAUSE OF ACTION**

12 (Continuing Wages, California Labor Code §§ 201.5, 203, 204
13 On Behalf of Plaintiffs and the 203 Class Against All Defendants)

14 45. Plaintiffs reallege and incorporate herein by reference the allegations contained in this
15 Complaint as though fully set forth herein.

16 46. Defendants employed Plaintiffs. As of the date of filing of this Complaint, Plaintiffs
17 have not been timely compensated in full for their services.

18 47. Upon information and belief, Aggrieved Employees the 203 Class have not been timely
19 compensated in full for their services. Plaintiffs and the 203 Class consistently worked more than 6-hour
20 and/or 12-hour shifts. However, they were required to keep their walkie talkies or radios on their
21 persons, turned on and audible at all times, including their rest periods and meal breaks and/or they were
22 precluded from leaving the set during their breaks. Accordingly, they were denied their breaks and are
23 entitled to an additional thirty minutes of wages for each faux meal break.

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

27 49. Pursuant to section 203 of the California Labor Code, Plaintiffs and the Class Members
28 are entitled to continuing wages from Defendants in an amount according to proof. Plaintiffs and
Aggrieved Employees are also entitled to recover costs and reasonable attorneys' fees under section

1 218.5 of the California Labor Code in the total sum of at least \$42,000.

2 **SECOND CAUSE OF ACTION**

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

5 50. Plaintiffs reallege and incorporate herein by reference the allegations contained in this
6 Complaint as though fully set forth herein.

7 51. Defendants failed to provide Plaintiffs and the 226 Class with wage statements
8 conforming to the requirements of section 226(a) of the Code.

9 52. The foregoing was intentional misconduct of Defendants that injured Plaintiffs and
10 Aggrieved Employees insofar as they were deprived of information to which they were legally entitled,
11 including but not limited to, hours worked, the inclusive dates of the pay period, the name and address
12 of the legal entity that is the employer, and all applicable rates of pay.

13 53. The failure of Defendants to provide compliant wage statements violates section 226(a)
14 of the Code. The failure caused Plaintiffs injury by depriving him of information to which he is legally
15 entitled. Accordingly, Plaintiffs and Class Members are entitled to damages in an amount according to
16 proof and costs and reasonable attorney's fees in accordance with the provisions of Code section 226(e),
17 all in a sum according to proof. Plaintiffs are entitled to an amount according to proof of at least \$50
18 each, not including interest thereon, reasonable attorneys' fees and cost of suit.

19 **THIRD CAUSE OF ACTION**

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

23 54. Plaintiffs reallege and incorporate herein by reference the allegations contained in this
24 Complaint as though fully set forth herein.

25 55. Plaintiffs, as well as the 203 Class, worked many hours for Defendants, including
26 overtime, without compensation for work performed, as required by law.

27 56. Plaintiffs and the 203 Class are entitled to recover an amount according to proof.
28 Plaintiffs and the 203 Class are also entitled to recover costs and reasonable attorneys' fees under
section 1194 of the California Labor Code.

FOURTH CAUSE OF ACTION

(Damages for Unpaid Minimum Wages,
California Labor Code §§ 510, 1194, 1194.2 and 1198
On Behalf of Plaintiffs and the 203 Class Against All Defendants)

57. Plaintiffs reallege and incorporate herein by reference the allegations contained in this Complaint as though fully set forth herein.

58. Plaintiffs and the 203 Class, worked many hours for Defendants, without compensation for work performed, as required by law.

59. Plaintiffs and the 203 Class are entitled to recover liquidated damages under section 1194.2 of the California Labor Code in an amount according to proof. Plaintiffs and Aggrieved Employees are also entitled to recover costs and reasonable attorneys' fees under section 1194 of the California Labor Code.

FIFTH CAUSE OF ACTION

(Failure to Provide Meal Breaks, Cal. Lab. Code §§ 226.7 and 512
On Behalf of Plaintiffs And the 203 Class And Against All Defendants)

60. Plaintiffs reallege and incorporate herein by reference the allegations contained in this Complaint as though fully set forth herein.

61. Labor Code section 226.7 requires an employer to pay an additional hour of compensation for each meal period the employer fails to provide a timely and uninterrupted meal period. Employees are entitled to meal period of at least thirty 30 minutes per 5-hour work period.

62. Upon information and belief, Aggrieved Employees the 203 Class have not been timely compensated in full for their services. Plaintiffs and the 203 Class consistently worked more than 6-hour and/or 12-hour shifts. 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.

63. Pursuant to Labor Code section 226.7, Plaintiffs and Class Members are entitled to damages in an amount equal to one hour of wages per missed meal break, in an amount according to proof.

SIXTH CAUSE OF ACTION

(Failure to Provide Rest Breaks, Cal. Lab. Code §§ 226.7
On Behalf of Plaintiffs And the 203 Class Against All Defendants)

64. Plaintiffs reallege and incorporate herein by reference the allegations contained in this Complaint as though fully set forth herein.

65. Labor Code Section 226.7 requires an employer to pay an additional hour of compensation for each rest period the employer fails to provide a compliant rest period. Employees are entitled to a rest period of ten minutes for every four hours worked or major fraction thereof.

66. Upon information and belief, Aggrieved Employees the 203 Class have not been timely compensated in full for their services. Plaintiffs and the 203 Class consistently worked more than 6-hour and/or 12-hour shifts. 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.

67. Pursuant to Labor Code section 226.7, Plaintiffs and the 203 Class are entitled to damages in an amount equal to one hour of wages per missed meal break, in an amount according to proof.

SEVENTH CAUSE OF ACTION

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

68. Plaintiffs reallege and incorporate herein by reference the allegations contained in this Complaint as though fully set forth herein.

69. 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. Plaintiffs allege that Defendants have engaged in unfair business practices in California by the herein-described failures to follow the requirements of the California Labor Code as well as their violations of the federal Fair Labor Standards Act.

70. 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 Plaintiffs and Aggrieved Employees.

71. 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

1 Wage Order. Upon information and belief, Aggrieved Employees the 203 Class have not been timely
2 compensated in full for their services. Plaintiffs and the 203 Class consistently worked more than 6-hour
3 and/or 12-hour shifts. However, they were required to keep their walkie talkies or radios on their
4 persons, turned on and audible at all times, including their rest periods and meal breaks and/or they were
5 precluded from leaving the set during their breaks. Accordingly, they were denied their breaks and are
6 entitled to an additional thirty minutes of wages for each faux meal break.

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

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

18 **EIGHTH CAUSE OF ACTION**

19 (Failure to Provide Employment Records Upon Request Cal. Lab. Code § 226(b)
20 On Behalf of Plaintiffs Against Defendants)

21 74. Plaintiffs reallege and incorporate herein by reference the allegations contained in this
22 Complaint as though fully set forth herein.

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

26 76. Plaintiffs have requested that Defendants permit inspection or copying of their
27 employment records pursuant to Labor Code section 226(b). Defendants have failed to provide
28 Plaintiffs with an opportunity to inspect or copy their employment records within 21 days of their

1 requests. Defendants have not produced any records at all.

2 77. Pursuant to Labor Code Section 226(b) and (f), Plaintiffs are entitled, and hereby seek to
3 recover from Defendants a seven-hundred-fifty dollar (\$750) penalty for each violation, reasonable
4 attorney's fees, and the costs of bringing this cause of action.

5 **NINTH CAUSE OF ACTION**

6 (Failure to Provide Employment Records Upon Request Cal. Lab. Code §1198.5
7 On Behalf of Plaintiffs Against Defendants)

8 78. Plaintiffs reallege and incorporate herein by reference the allegations contained in this
9 Complaint as though fully set forth herein.

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

13 80. Plaintiffs have requested that Defendants permit inspection or copying of their personnel
14 records pursuant to Labor Code section 1198.5. Defendants have failed to provide Plaintiffs with an
15 opportunity to inspect or copy the employment records within 30 days of their request.

16 81. Pursuant to Labor Code Section 1198.5(k), Plaintiffs are entitled, and hereby seek to
17 recover from Defendants a seven-hundred-fifty dollar (\$750) penalty per Defendant, reasonable
18 attorney's fees, and the costs of bringing this cause of action.

19 **TENTH CAUSE OF ACTION**

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

23 82. Plaintiffs reallege and incorporate herein by reference the allegations contained in this
24 Complaint as though fully set forth herein.

25 83. Pursuant to section 2699.3(a)(1) of the Labor Code, on April 28, 2021, Plaintiffs
26 submitted their PAGA Claim Notice online to the California Labor and Workforce Development
27 Agency ("LWDA") and notified the LWDA of the specific provisions of the Labor Code alleged to have
28 been violated by Defendants, including the theories set forth in the Complaint. Also on that day,
Plaintiffs gave written notice by certified mail to Defendants' Registered Agents for Service of Process
of the specific provisions of the Labor Code alleged to have been violated by Defendant.

1 84. Plaintiffs seek to represent all Aggrieved Employees, defined as Plaintiffs and/or other
2 persons who performed services on the Production or other such projects produced in California for
3 Defendants during the period of time commencing one year prior to the filing of the Complaint.

4 85. At all relevant times, California Labor Code section 2699.3(a)(2)(A) provided:
5 The agency shall notify the employer and the aggrieved employee or representative by certified
6 mail that it does not intend to investigate the alleged violation within 60 calendar days of the
7 postmark date of the notice received pursuant to Paragraph (1). Upon receipt of that notice or if
8 no notice is provided within 65 calendar days of the postmark date of the notice given pursuant
9 to Paragraph (1), the aggrieved employee may commence a civil action pursuant to Section 2699.
10 Cal. Lab. Code § 2699.3(a)(2)(A).

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

15 87. Plaintiffs contend that sections 201.5, 203, 204, 226, 226.7, 226.8, 510, 512, 515, 558,
16 558.1, 1194, 1197, 1198, 2802, and 2699 et seq. of the Labor Code enables them to recover civil
17 penalties under PAGA, as well as attorney’s fees and costs, from Defendants, through a civil action on
18 behalf of themselves and other Aggrieved Employees.

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

22 89. Plaintiffs seek civil penalties pursuant to PAGA for violations of the following Labor
23 Code provisions:

24 90. Failure to timely pay wages during employment to Plaintiffs and Aggrieved Employees
25 in violation of Labor Code §§ 204 and 210. Plaintiffs were not compensated twice during each calendar
26 month for wages earned by the times prescribed by section 204. Plaintiffs contend that the failure of
27 Defendants to make timely payments within the time provided for has been and is “willful” within the
28 meaning of such word as used in Section 210 of the California Labor Code and that, accordingly, each
29 Aggrieved Employee who was not timely paid his or her timely wages during their employment is
30 entitled to civil penalties. Labor Code section 210 provides for a penalty of \$100 for each initial

1 violation and \$200 for each subsequent, or willful or intentional violation plus 25 percent of the amount
2 unlawfully withheld.

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

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

22 93. Failure to provide proper rest and meal periods to Plaintiffs and Aggrieved Employees.
23 Plaintiffs and Aggrieved Employees were not provided with timely meal and rest periods in violation of
24 Labor Code section 226.7 and the applicable Living Wage Order sections 11 and 12. Labor Code section
25 226.7 requires “one additional hour of pay at the employee’s regular rate of compensation for each
26 workday that the meal or rest or recovery period is not provided.”

27 94. Failure to reimburse necessary business expenses under Labor Code § 2802. Plaintiffs
28 and Aggrieved Employees were not reimbursed for necessary business expenses. Labor Code 2699 et

1 seq. imposes a civil penalty of one hundred dollars per pay period per aggrieved employee for initial
2 violations, and two hundred dollars per pay period per aggrieved employee for subsequent violations for
3 all Labor Code provisions for which a civil penalty is not specifically provided.

4 95. Improper classification of employees as independent contractors in violation of Labor
5 Code § 226.8. Plaintiffs and Aggrieved Employees were willfully misclassified as independent
6 contractors even though they were not exempt employees. Labor Code section 226.8 requires “a civil
7 penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars
8 (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.” If the
9 employer is found to have engaged in a “pattern or practice” of misclassifying employees, it is subject to
10 a “civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand
11 dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.” Cal.
12 Lab. Code § 226.8(c).

13 96. Failure to pay minimum and overtime wages to Plaintiffs and Aggrieved Employees in
14 violation of Labor Code §§ 510, 558, 1194, and 1198. Both late payment and non-payment of minimum
15 wages violate the state statute requiring the payment of a minimum hourly wage. Labor Code section
16 558 imposes a civil penalty in addition to any other penalty provided by law of fifty dollars (\$50) for
17 initial violations for each underpaid employee for each pay period for which the employee was
18 underpaid in addition to an amount sufficient to recover unpaid wages, and one hundred (\$100) for
19 subsequent violations for each underpaid employee for each pay period for which the employee was
20 underpaid in addition to an amount sufficient to recover underpaid wages.

21 97. Failure to keep complete and accurate payroll records. Failure to keep complete and
22 accurate payroll records relating to Plaintiffs and Aggrieved Employees in accordance with California
23 Labor Code section 1174(d) constitutes unlawful and/or unfair activity prohibited by California Labor
24 Code section 1174(d).

25 98. With respect to violations of Labor Code sections 201.5 and 203 Plaintiffs contend that
26 the failure of Defendants to make payments within the time provided for has been and is “willful” within
27 the meaning of such word as used in Section 203 of the California Labor Code and that, accordingly,
28 each Aggrieved Employee who was not timely paid his or her final wages is entitled to civil penalties for

1 which provision is made in Section 210 of the Labor Code on account of violations of section 204.

2 99. Labor Code § 2699(f) imposes a civil penalty of one hundred dollars (\$100) per pay
3 period, per Aggrieved Employee for initial violations, and two hundred dollars (\$200) per pay period,
4 per Aggrieved Employee for subsequent violations for all Labor Code provisions for which a civil
5 penalty is not specifically provided.

6
7 **ELEVENTH CAUSE OF ACTION**

8 (Fair Labor Standards Act On Behalf of Plaintiffs and Collective
9 Action Members Against All Defendants)

10 100. Plaintiffs reallege and incorporate herein by reference the allegations contained in this
11 Complaint as though fully set forth herein.

12 101. Plaintiffs are informed and believes, and on that basis allege, that Defendants are
13 employers engaged in an enterprise in interstate commerce pursuant to the Fair Labor Standards Act
14 (“FLSA”), 29 U.S.C. § 201 et seq. Defendants’ participation in interstate commerce is substantial, in
15 excess of \$1,000,000 per year.

16 102. Plaintiffs were not timely paid their wages. Plaintiffs and Collective Action Members
17 worked many hours each day during their employment as herein alleged.

18 103. Under the FLSA, Plaintiffs and Collective Action Members are entitled to recover from
19 Defendants their liquidated damages for hours worked, as well as costs and attorney’s fees.

20 104. Defendants failed to compensate Plaintiffs and Collective Action Members as required
21 by the FLSA.

22 105. Defendants’ violations were willful and intentional.

23 106. Plaintiffs and Collective Action Members are entitled to damages for unpaid wages
24 and/or the associated liquidated damages in an amount to be proven at trial.

25 107. Plaintiffs brings this claim on a collective-action basis pursuant to the FLSA. The FLSA
26 permits an employee to bring an action for unpaid wages on “behalf of himself . . . and other employees
27 similarly situated,” so long as all similarly situated employees “give[] [their] consent in writing to
28 become . . . a party.” 29 U.S.C. § 216(b). Pursuant to the FLSA, Plaintiffs seek to represent a Collective
Action.

1 **WHEREFORE**, Plaintiffs pray judgment as follows:

2 1. That the Court certify the Class.

3 2. That, under the First Cause of Action for Continuing Wages, it be adjudged that the
4 failure of Defendants to make payment of Plaintiffs' and Class Members' wages was in violation of
5 section 201.5, 203 and 204 of the California Labor Code, and was "willful" as that word is used in
6 section 203 of the California Labor Code, and that the Court enter judgment against Defendants in favor
7 of Plaintiffs and Class Members. That judgment be entered in favor of Plaintiffs of at least \$42,000 and
8 the 203 Class in an amount according to law and proof, interest thereon, and costs and reasonable
9 attorneys' fees in accordance with the provisions of California Labor Code section 218.5.

10 3. That, under the Second Cause of Action for Failure to Provide Compliant Wage
11 Statements, this Court enter judgment in favor of Plaintiffs and Class Members against Defendants.
12 That judgment be entered in favor of Plaintiffs of at least \$50 and the 226 Class in an amount according
13 to proof, and costs and reasonable attorneys' fees in accordance with the provisions of California Labor
14 Code section 226(e).

15 4. That, under the Third Cause of Action for Failure to Pay Overtime, this Court enter
16 judgment in favor of Plaintiffs and the 203 Class against Defendants in the amount of unpaid overtime
17 and liquidated damages according to proof, interest thereon, and costs and reasonable attorneys' fees
18 pursuant to sections 1194.

19 5. That, under the Fourth Cause of Action for Failure to Pay Minimum Wages, this Court
20 enter judgment in favor of Plaintiffs and the 203 Class against Defendants in the amount of unpaid
21 minimum wages and liquidated damages according to proof, interest thereon, and costs and reasonable
22 attorneys' fees pursuant to sections 1194 and 1194.2.

23 6. That, under the Fifth Cause of Action, this Court enter judgment in favor of Plaintiffs and
24 the 203 Class in an amount according to proof and award them their damages, penalties, and costs of
25 suit.

26 7. That, under the Sixth Cause of Action, this Court enter judgment in favor of Plaintiffs
27 and the 203 Class in an amount according to proof and award them their damages, penalties, and costs of
28 suit.

1 8. That, with respect to the Seventh Cause of Action for Unfair Competition, this Court
2 enter judgment in favor of Plaintiffs and the 203 Class against Defendants in an amount according to
3 proof. Plaintiffs seek full restitution from Defendants, as necessary and according to proof, to restore
4 any and all amounts—including interest—withheld, acquired, or converted by Defendants by means of
5 the unfair practices complained of herein. Plaintiffs, on behalf of himself, as well as on behalf of the
6 general public, further seeks attorney’s fees and costs pursuant to sections 218.5 of the Labor Code and
7 1021.5 of the Code of Civil Procedure. In addition, Plaintiffs seek the appointment of a receiver as
8 necessary.

9 9. That, with respect to the Eighth Cause of Action, this Court enter judgment in favor of
10 each Plaintiffs against Defendants of \$750 per Defendant, reasonable attorney’s fees, and the costs of
11 bringing this cause of action under Labor Code Section 226(b) and (f).

12 10. That, with respect to the Ninth Cause of Action, this Court enter judgment in favor of
13 each Plaintiffs against Defendants of \$750 per Defendant, reasonable attorney’s fees, and the costs of
14 bringing this cause of action pursuant to Labor Code Section 1198.5(k).

15 11. That, with respect to the Tenth Cause of Action this Court award Plaintiffs, the State of
16 California, and other former and current Aggrieved Employees their civil penalties, attorney’s fees, and
17 costs of suit, all according to proof, pursuant to sections 201.3, 201.5, 203, 204, 210, 226, 226.7, 226.8,
18 510, 512, 515, 558, 558.1, 1174, 1194, 1194.2, 1197, 1198, 2802 and 2699 et seq. of the Labor Code and
19 the applicable Wage Orders as heretofore articulated.

20 12. That, with respect to the Eleventh Cause of Action for Violation of the FLSA, that this
21 Court award Plaintiffs and others who join this action their wages, liquidated damages, attorney’s fees,
22 and costs of suit, as the case may be, all according to proof.

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

26 DATED: March 29, 2022

HARRIS & RUBLE



Alan Harris
Attorney for Plaintiffs

PROOF OF SERVICE

I am attorney for the plaintiffs herein, 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 March 29, 2022, 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

I am readily familiar with the Firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business, addressed as follows:

Sheppard, Mullin, Richter & Hampton LLP
Ronda Jamgotchian
Michael Campbell
Raymond Nhan
1901 Avenue of the Stars, Ste. 1600
Los Angeles, CA 90067-6017

I declare under penalty of perjury that the above is true and correct. Executed on March 29, 2022, at Los Angeles, California.



Lin Zhan