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County of Los Angeles

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

TIMOTHY O'CAIN, an individual, individually
and on behalf of all others similarly situated,

Plaintiff,

v.

TOOL OF NORTH AMERICA, LLC, a
California Limited Liability Company; ERICH
JOINER, an individual; DOE 1 through and
including DOE 10,

Defendants.

Case No: **21STCV16755**

COMPLAINT

[Potential 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

JURY TRIAL DEMANDED

1 Plaintiff Timothy O’Cain by and through his undersigned attorneys, alleges as follows:

2 **JURISDICTION AND VENUE**

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

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

11 **INTRODUCTION**

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

14 4. Defendant Tool of North America, LLC (“TNA”) is a California limited liability
15 company, which at all times relevant herein, conducted business within the County of Los Angeles of
16 the State of California.

17 5. Defendant Erich Joiner (“Joiner”) is an individual, who at all times relevant herein,
18 conducted business within the County of Los Angeles of the State of California. He was the Founder of
19 Defendant Tool of North America, LLC (“TNA”). Joiner and TNA are collectively referred to herein as
20 the “Defendants.”

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

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

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

GENERAL ALLEGATIONS

9. Defendants employed Plaintiff and others as crew members for a commercial entitled “Ford YE #220058.” (“Production”). The Aggrieved Employees herein include Plaintiff, crew members on the Production, and other crew members who have been issued wage statements for services performed for TNA in California (collectively, the “Aggrieved Employees”).

10. Plaintiff O’Cain was hired to work on October 21, 2020 as a crew member on the Production. He worked 11.5 hours that day. Once his employment ended, Defendants were required to pay him by Thursday of the next Sunday to Saturday payroll week, no later than by Thursday, October 29, 2020. According to the wage statement issued to Plaintiff, his “Pay Frequency” was “W[eekly]”. Plaintiff’s final paycheck was not prepared until Tuesday, November 3, 2020. A partially redacted copy of the Plaintiff’s final paycheck is attached hereto as Exhibit 1.

11. Although Plaintiff should have been paid in full for his accrued minimum wages and overtime, issued legally compliant wage statements, and paid no later than as required by Code § 201.5, Plaintiff was not paid properly.

12. Defendants failed to properly compensate Plaintiff and other Aggrieved Employees who performed services on the Production and/or other such projects produced in California for TNA for work performed. Plaintiff and the Aggrieved Employees worked on the Production as well as on other California motion picture projects, yet not being paid timely or with appropriate wage statements, all due to Defendant's undercapitalization and insufficient funding of the payroll accounting function.

13. At all relevant times mentioned herein, Wage Order 12 of the California Industrial Welfare Commission applied to Plaintiff 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 Plaintiff 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.

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

14. 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.

(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 Plaintiff and the Aggrieved Employees.

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

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

Cal. Lab. Code § 203.

16. By failing to pay timely Plaintiff and Aggrieved Employees all wages when due at the

1 end of employment, Plaintiff and Aggrieved Employees are entitled to continuing wages pursuant to
2 section 203 of the California Labor Code.

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

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

11 Cal. Lab. Code § 204.

12 18. In no event should Plaintiff or the Aggrieved Employees have been paid later than the
13 time periods established by sections 201.5 or 204 of the California Labor Code, but certain payments to
14 Plaintiff and the Aggrieved Employees were made after they were due, or not at all, leading to penalties
15 and civil penalties under sections 203 and 204 of the California Labor Code.

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

17 In addition to, and entirely independent and apart from, any other penalty provided in this
18 article, every person who fails to pay the wages of each employee as provided in Sections
19 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as
20 follows: (a) For any initial violation, one hundred dollars (\$100) for each failure to pay
21 each employee; (b) For each subsequent violation, or any willful or intentional violation,
22 two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the
23 amount unlawfully withheld.

24 Cal. Lab. Code § 210. The TNA policy has been to devote insufficient capital, manpower and other
25 required resources to its business, including providing sufficient funding of the payroll accounting
26 function, with the inevitable result that employees are routinely paid in tardy fashion, in violation of
27 sections 203 and 204 of the California Labor Code.

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

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one
workday and any work in excess of 40 hours in any one workweek and the first eight
hours worked on the seventh day of work in any one workweek shall be compensated at
the rate of at least one and one-half times the regular rate of pay for an employee. Any
work in excess of 12 hours in one day shall be compensated at the rate of no less than
twice the regular rate of pay for an employee. In addition, any work in excess of eight

1 hours on any seventh day of a workweek shall be compensated at the rate of no less than
2 twice the regular rate of pay of an employee. Nothing in this section requires an employer
3 to combine more than one rate of overtime compensation in order to calculate the amount
4 to be paid to an employee for any hour of overtime work.

5 Cal. Lab. Code § 510.

6 21. Defendants failed to pay proper minimum wage or overtime to Plaintiff and Aggrieved
7 Employees, delaying such payments to beyond the required next weekly pay period.

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

10 Payment of a fixed salary to a nonexempt employee shall be deemed to provide
11 compensation only for the employee's regular, non-overtime hours, notwithstanding any
12 private agreement to the contrary.

13 Cal. Lab. Code § 515(d)(2). Accordingly, a daily wage rate is "deemed to provide compensation only for
14 the employee's regular, non-overtime hours" too. Alvarado v. Dart Container Corp. of Cal., 4 Cal. 5th
15 542, 564–65, as modified (2018) ("the Legislature expressly endorsed the principle that flat sum non-
16 hourly compensation should be factored into an employee's regular rate of pay by dividing the flat sum
17 by the number of non-overtime hours that exist in the relevant period, and that the flat sum compensates
18 the worker for only nonovertime hours worked.") The California Supreme Court based its holding on
19 fundamental principles that "the obligation to pay premium pay for overtime work reflects a state policy
20 favoring an eight-hour workday and a six-day 40-hour workweek, and discouraging employers from
21 imposing work in excess of those limits." Alvarado, 4 Cal. 5th at 539.

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

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

Cal. Lab. Code § 1194.

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

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

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

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

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

14 Cal. Lab. Code § 558.1. Joiner is a joint employer with TNA, or other persons acting on behalf of an
15 employer, who violated, or caused to be violated the relevant sections of the Code referenced herein.

16 26. At all relevant times mentioned herein, section 558 of the California Labor Code
17 provided:

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

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

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

 (a) An employer, semimonthly or at the time of each payment of wages, shall furnish to
his or her employee, either as a detachable part of the check, draft, or voucher paying the
employee’s wages, or separately if wages are paid by personal check or cash, an
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

1 inclusive dates of the period for which the employee is paid, (7) the name of the
2 employee and only the last four digits of his or her social security number or an
3 employee identification number other than a social security number, (8) the name and
4 address of the legal entity that is the employer and, if the employer is a farm labor
5 contractor, as defined in subdivision (b) of Section 1682, the name and address of the
6 legal entity that secured the services of the employer, and (9) all applicable hourly rates
7 in effect during the pay period and the corresponding number of hours worked at each
8 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. . . .

9 Cal. Lab. Code § 226. Defendants did not provide Plaintiff or other Aggrieved Employees wage
10 statements with all required information, including but not limited to inclusive dates of each pay period.

11 28. At all relevant times mentioned herein, section 2810.3 of the California Labor Code
12 provided:

13 (a) As used in this section:

14 (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
15 contractor.

16 . . .
(2) "Labor" has the same meaning provided by Section 200.

17 (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.

18 . . .
(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.

19 (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
20 pursuant to wage orders by the Industrial Welfare Commission described in Section 515.

21 (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.

22 (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:

23 (1) The payment of wages.

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

25 (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.

26 (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).

27 (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
28 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.

CLASS-ACTION ALLEGATIONS

29. Plaintiff brings this action on behalf of themselves and all others similarly situated as a class action pursuant to section 382 of the Code of Civil Procedure. Plaintiff seeks to represent a “203 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 paid wages on account of services provided for Defendants in the production of Motion Pictures¹ (such persons are referred to hereafter as 203 Class Members, and such period is referred to hereafter as the Class Period).

Plaintiff seeks 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).

Plaintiff seeks to represent a “Meal Break 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 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, Plaintiff seeks to represent a “Rest Break 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 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

30. 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

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

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.

determining the merits of this litigation.

31. 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

32. 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:

- 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.

C. Typicality

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

34. The claims of the named Plaintiff is 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. Plaintiff 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. Plaintiff have no conflict of interest with the other Class Members and are able to represent the Class Members' interests fairly and adequately.

1 **D. Adequacy of Representation**

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

5 **E. Superiority of Class Action**

6 36. A class action is superior to other available means for the fair and efficient adjudication
7 of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and
8 fact common to the Class predominate over any questions affecting only individual members of the
9 Class. Each member of the Class has been damaged and is entitled to recovery by reason of Defendants'
10 illegal policy and/or practice of failing to pay hourly wages, failing to pay overtime wages, failing to
11 provide Class Members rest and meal periods without legal compensation. Class action treatment will
12 allow those similarly situated persons to litigate their claims in the manner that is most efficient and
13 economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely
14 to be construed in the management of this action that would preclude its maintenance as a class action.
15 The disposition of all claims of the members of the Class in a class action, rather than in individual
16 actions, benefits the parties and the Court. The interest of the Class Members in controlling the
17 prosecution of separate claims against Defendants is small when compared with the efficiency of a class
18 action.

19 **FIRST CAUSE OF ACTION**

20 (Continuing Wages, California Labor Code §§ 201.5, 203, 204
21 On Behalf of Plaintiff and the 203 Class Against All Defendants)

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

24 38. Defendants employed Plaintiff. As hereinabove articulated, Plaintiff was not timely
25 compensated in full for his services.

26 39. Upon information and belief, Aggrieved Employees the 203 Class have not been timely
27 compensated for their services. Plaintiff and the 203 Class consistently worked more than 6-hour and/or
28 12-hour shifts. However, they were required to keep their walkie talkies, radios and/or cell phones on

1 their persons, turned on and audible at all times, including during their rest periods and meal breaks
2 and/or they were precluded from leaving the set and its immediate environs during their
3 breaks. Accordingly, they were denied their breaks and are entitled to an additional thirty minutes of
4 wages for each faux meal break.

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

8 41. Pursuant to section 203 of the California Labor Code, Plaintiff and the Class Members
9 are entitled to continuing wages from Defendants in an amount according to proof. Plaintiff and
10 Aggrieved Employees are also entitled to recover costs and reasonable attorneys' fees under section
11 218.5 of the California Labor Code in the total sum of at least \$2,997.16.

12 **SECOND CAUSE OF ACTION**

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

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

17 43. Defendants failed to provide Plaintiff and the 226 Class with wage statements
18 conforming to the requirements of section 226(a) of the Code. Defendants failed to disclose the
19 beginning and end dates of the applicable pay period, thereby violating the requirements of law, making
20 it impossible for the worker to determine from the wage statement alone whether or not the paycheck
21 issued to them had been timely prepared.

22 44. The foregoing was intentional misconduct of Defendants that injured Plaintiff and
23 Aggrieved Employees insofar as they were deprived of information to which they were legally entitled,
24 including but not limited to, hours worked, the inclusive dates of the pay period, the name and address
25 of the legal entity that is the employer, and all applicable rates of pay.

26 45. The failure of Defendants to provide compliant wage statements violates section 226(a)
27 of the Code. The failure caused them injury by depriving them of information to which they are legally
28 entitled. Accordingly, Plaintiff and Class Members are entitled to damages in an amount according to

1 proof and costs and reasonable attorney's fees in accordance with the provisions of Code section 226(e),
2 all in a sum according to proof. Plaintiff is entitled to an amount according to proof of at least \$50 each,
3 not including interest thereon, reasonable attorneys' fees and cost of suit.

4 **THIRD CAUSE OF ACTION**

5 (Damages for Unpaid Overtime Compensation,
6 California Labor Code §§ 510, 515 and 1198

7 On Behalf of Plaintiff and the Rest Break Class Against All Defendants)

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

10 47. Plaintiff, as well as the 203 Class, worked many hours for Defendants, including
11 overtime, without compensation for work performed, as required by law. Aggrieved Employees were
12 routinely deprived of thirty minutes of compensation for services, as Defendants required half hour meal
13 break deductions from daily wages, even though during meal breaks the crew were required to respond
14 to colleagues' queries, whether by walkie-talkies, cell phone "apps", or otherwise. For example, with
15 respect to walkie-talkies, crew were issued specific devices for each span of service for TNA, and TNA
16 kept track of which device was issued to each member of the crew so Defendants could account for each
17 of the devices which were issued to crew for their use while working for TNA. At the conclusion of
18 their service, each member of the crew returned the walkie-talkie which they had received for use during
19 the project to the appropriate TNA employee.

20 48. Plaintiff and the 203 Class are entitled to recover an amount according to proof. Plaintiff
21 and the 203 Class are also entitled to recover costs and reasonable attorneys' fees under section 1194 of
22 the California Labor Code.

23 **FOURTH CAUSE OF ACTION**

24 (Damages for Unpaid Minimum Wages,

25 California Labor Code §§ 510, 1194, 1194.2 and 1198

26 On Behalf of Plaintiff and the Rest Break Class Against All Defendants)

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

50. Plaintiff and the 203 Class, worked many hours for Defendants, without proper, full
compensation for work performed, as required by law. For example, Defendants routinely made thirty

1 or sixty minute deductions from the daily work of each Aggrieved Employee to whom a walkie-talkie
2 had been issued, all on account of the faux meal breaks described herein.

3 51. Plaintiff and the 203 Class are entitled to recover liquidated damages under section
4 1194.2 of the California Labor Code in an amount according to proof. Plaintiff and Aggrieved
5 Employees are also entitled to recover costs and reasonable attorneys' fees under section 1194 of the
6 California Labor Code.

7 **FIFTH CAUSE OF ACTION**

8 (Failure to Provide Duty-Free Meal Breaks, Cal. Lab. Code §§ 226.7 and 512
9 On Behalf of Plaintiff And the Meal Break Class And Against All Defendants)

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

12 53. Labor Code section 226.7 requires an employer to pay an additional hour of
13 compensation for each meal period the employer fails to provide a timely and uninterrupted meal period.
14 Employees are entitled to meal period of at least thirty 30 minutes per 6-hour work period.

15 54. Upon information and belief, Aggrieved Employees the 203 Class have not been timely
16 compensated in full for their services. Plaintiff and the 203 Class consistently worked more than 6-hour
17 and/or 12-hour shifts. However, they were required to keep their walkie talkies or radios on their
18 persons, turned on and audible at all times, including their rest periods and meal breaks and/or they were
19 precluded from leaving the set during their breaks. Accordingly, they were denied their breaks and are
20 entitled to an additional thirty minutes of wages for each faux meal break. TNA kept records of each
21 individual member of the crew to whom a walkie-talkie was issued so that it could insure the return to it
22 of the device.

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

26 **SIXTH CAUSE OF ACTION**

27 (Failure to Provide Duty-Free Rest Breaks, Cal. Lab. Code §§ 226.7
28 On Behalf of Plaintiff And the Rest Break Class Against All Defendants)

56. Plaintiff realleges and incorporates herein by reference the allegations contained in this

1 Complaint as though fully set forth herein.

2 57. Labor Code Section 226.7 requires an employer to pay an additional hour of
3 compensation for each rest period the employer fails to provide a compliant rest period. Employees are
4 entitled to a rest period of ten minutes for every four hours worked or major fraction thereof, all as
5 detailed in Brinker.

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

12 59. Pursuant to Labor Code section 226.7, Plaintiff and the 203 Class are entitled to damages
13 in an amount equal to one hour of wages per missed rest break, in an amount according to proof.

14 **SEVENTH CAUSE OF ACTION**

15 (Unfair Business Practices On Behalf of Plaintiff and the Rest Break Class Members Against All
16 Defendants)

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

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

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

25 63. Defendants have avoided payment of wages and overtime wages and other benefits
26 required by the California Labor Code, the California Code of Regulations, and the applicable IWC
27 Wage Order. Upon information and belief, Aggrieved Employees the 203 Class have not been timely
28

1 compensated in full for their services. Plaintiff and the 203 Class consistently worked more than 6-hour
2 and/or 12-hour shifts. However, they were required to keep their cell phones, walkie talkies and/or
3 radios on their persons, turned on and audible at all times, including their rest periods and meal breaks
4 and/or they were precluded from leaving the set during their breaks. Accordingly, they were denied
5 their breaks and are entitled to an additional thirty minutes of wages for each faux meal break.

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

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

17 **EIGHTH CAUSE OF ACTION**

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

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

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

25 68. Plaintiff requested that Defendants permit inspection or copying of his employment
26 records pursuant to Labor Code section 226(b). Defendants have failed to provide Plaintiff with an
27 opportunity to inspect or copy their employment records within 21 days of their requests. Defendants
28 have not produced any records, at all.

69. Pursuant to Labor Code Section 226(b) and (f), Plaintiff is entitled, and hereby seek to recover from Defendants a seven-hundred-fifty dollar (\$750) penalty for each violation, 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 Against Defendants)

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

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

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

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

WHEREFORE, Plaintiff pray 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 Plaintiffs' 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 \$2,997.16 and the 203 Class in an amount according to law and proof, 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

1 judgment be entered in favor of Plaintiff of at least \$50 and the 226 Class in an amount according to
2 proof, and costs and reasonable attorneys' fees in accordance with the provisions of California Labor
3 Code section 226(e).

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

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

12 6. That, under the Fifth Cause of Action, this Court enter judgment in favor of Plaintiff and
13 the 203 Class in an amount according to proof and award them their damages, penalties, and costs of
14 suit.

15 7. That, under the Sixth Cause of Action, this Court enter judgment in favor of Plaintiff and
16 the 203 Class in an amount according to proof and award them their damages, penalties, and costs of
17 suit.

18 8. That, with respect to the Seventh Cause of Action for Unfair Competition, this Court
19 enter judgment in favor of Plaintiff and the 203 Class against Defendants in an amount according to
20 proof. Plaintiff seeks full restitution from Defendants, as necessary and according to proof, to restore
21 any and all amounts—including interest—withheld, acquired, or converted by Defendants by means of
22 the unfair practices complained of herein. Plaintiffs, on behalf of themselves, as well as on behalf of the
23 general public, further seeks attorney's fees and costs pursuant to sections 218.5 of the Labor Code and
24 1021.5 of the Code of Civil Procedure. In addition, Plaintiff seek the appointment of a receiver as
25 necessary.

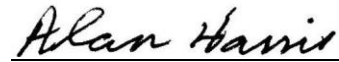
26 9. That, with respect to the Eighth Cause of Action, this Court enter judgment in favor of
27 each Plaintiff against Defendants of \$750 per Defendant, reasonable attorney's fees, and the costs of
28 bringing this cause of action under Labor Code Section 226(b) and (f).

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

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

7 DATED: April 30, 2021

HARRIS & RUBLE



Alan Harris
Attorney for Plaintiff

Index to Exhibits

Exhibit 1 – Partially redacted copy of the final check to Plaintiff for his work on the Production

Exhibit 1

Payroll Employer is NEW CAPS, LLC 2300 EMPIRE AVE, 5TH FL, BURBANK, CA 91504 FEIN # 27-4217142

COMPLETE THE NEW 2020 FED W-4 & ACCESS PAYSTUBS AT MY.CASTANDCREW.COM; WAGE VERIF.: THEWORKNUMBER.COM; EEINQ: 1-888-570-4650

COMPLETE THE NEW 2020 FED W-4 & ACCESS PAYSTUBS AT MY.CASTANDCREW.COM; WAGE VERIF.: THEWORKNUMBER.COM; EMPLOYER:

Employee Name TIMOTHY P O'CAIN	Social Security No. xxx-xx-REDACTED	Pay Period 10/21/2020 - 10/21/2020	Check Date 11/03/2020	Check No. REDACTED			
Deductions	Cur Amt	YTD Amt	Deductions	Current	YTD Amt		
Federal Income Tax	57.50	559.23	wages 10/21/2020			Current Taxable	749.29
FICA	46.46	329.14				Current Non-Tax	0.00
Medicare	10.86	76.97				Current Earnings	749.29
California SDI	7.49	53.09				Current Deductions	138.78
California State Tax	16.47	212.52				Net Wages	610.51
						YTD Taxable	5,308.63
						YTD Non-Tax	0.00
						YTD Earnings	5,308.63
						YTD Deductions	1,230.95
						YTD Net Wages	4,077.68

*Your Federal Taxable Wages this period are \$749.29

Controlling Employer	TOOL OF NORTH AMERICA LLC	Batch	1130428	Extra Withholding	\$0.00	Res State	CA
Job Type	COMMERCIAL	Client Job #	220058	Pay Frequency	W	State Allow	R
Job Name	FORD YE #220058	Federal Filing Status	REDACTED				

Work Date	Union #	Location	Description	Rate	Hours/Units	Amount
10/21/2020 - 10/21/2020	NON	CA-LAC	FIRE SAFETY ADVISORS-STRAIGHT-TIME	56.550000	8.00	452.40
10/21/2020 - 10/21/2020	NON	CA-LAC	FIRE SAFETY ADVISORS-TIME-AND-ONE-HALF	84.825000	3.50	296.89

Controlling Employer: TOOL OF NORTH AMERICA LLC, 2210 BROADWAY, SANTA MONICA, CA, 90404

Net Check: 610.51, Vacation: None, Holiday: None

Total Worked Hours	Total Hours	Total Gross
11.50	11.50	749.29