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

PAUL SCHWANKE, an individual,
 individually and on behalf of all others similarly
 situated,

Plaintiff,

v.

RSA FILMS, INC., a Delaware Corporation;
 JUSTIN ALVARADO-BROWN, an individual;
 DOE 1 through and including DOE 10,

Defendants,

Case No: 21STCV43920
 Assigned to the Hon. Stuart M. Rice, Dept. 1

FIRST AMENDED COMPLAINT
 [PAGA Representative Action; Class Action]

1. Cal. Lab. Code (the "Code") §§ 201.5 and 203, Continuing Wages
2. Code § 226(a), Pay Stubs
3. Code §§ 510, 515, 1194, and 1198, Overtime
4. Code §§ 510, 1194, 1197 and 1197.1, Minimum Wages
5. Code § 226.7 and 512(a), Meal Breaks
6. Code § 226.7, Rest Breaks
7. Cal. Bus. & Prof. Code § 17200, Unfair Comp.
8. Cal. Lab. Code §§ 2698 et seq., PAGA
9. Fair Labor Standards Act, 29 U.S.C. §.201 *et seq.*

1 Plaintiff Paul Schwanke, by and through his undersigned attorneys, alleges as follows:

2 **JURISDICTION AND VENUE**

3 1. This is a class and representative action brought under the California Labor Code Private
4 Attorneys General Act (“PAGA”), seeking relief under state law on account of unpaid wages, unpaid
5 overtime, damages, continuing wages, liquidated damages, penalties, restitution and attorneys’ fees and
6 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 Paul Schwanke (“Schwanke”) 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 RSA Films, Inc. (“RSA”) is a Delaware corporation, which at all times
15 relevant herein, conducted business within the County of Los Angeles of the State of California. On
16 prior occasions, RSA has been accused of violating the California Labor Code (the “Code”) in lawsuits
17 brought against it. Greenberg v. EP Management Services, LP, Los Angeles Superior Court (Case No.
18 BC250072). In the Greenberg case, Judgment was entered in 2006. Thereafter, by legislation and court
19 decisions, the statutes at issue herein have been strengthened to further protect employees. Defendants
20 are “temporary services employers” as defined by Code § 201.3 and required to pay workers no less
21 frequently than weekly.

22 5. Defendant Justin Alvarado-Brown (“Alvarado-Brown”) is an individual, who at all times
23 relevant herein, conducted business within the County of Los Angeles of the State of California. He is
24 the CEO of Defendant RSA. Alvarado-Brown and RSA are collectively referred to herein as the
25 “Defendants.”

26 6. Defendants Doe One through and including Doe Ten are sued herein under the provisions
27 of section 474 of the California Code of Civil Procedure. Plaintiff is currently ignorant of the true
28 names and capacities, whether individual, corporate, associate, or otherwise, of the defendants sued

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

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

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

23 **GENERAL ALLEGATIONS**

24 9. Defendants employed Plaintiff and others as crew members for a commercial entitled
25 “Magnolia.” (the “Production”). The Aggrieved Employees herein include Plaintiff, crew members on
26 the Production, and other crew members who have been issued wage statements for services performed
27 for RSA in California (collectively, the “Aggrieved Employees”).

28 10. Plaintiff Schwanke was hired to work on September 1-4, 2021 as a crew member on the

1 Production. Once his employment ended, Defendants were required to pay him by Thursday of the next
2 Sunday to Saturday payroll week, no later than by Thursday, September 9, 2021. According to the wage
3 statement issued to Plaintiff, his "Pay Frequency" was "W[EEKLY]". Plaintiff's final paycheck was not
4 prepared until on or after October 1, 2021.

5 11. Although Plaintiff should have been paid in full for his accrued minimum wages and
6 overtime, issued legally compliant wage statements, and paid no later than as required by Code § 201.3
7 and 201.5, Plaintiff was not paid properly.

8 12. Defendants failed to properly compensate Plaintiff and other Aggrieved Employees who
9 performed services on the Production and/or other such projects produced in California for RSA for
10 work performed. Plaintiff and the Aggrieved Employees worked on the Production as well as on other
11 California motion picture projects, yet not being paid timely or with appropriate wage statements, all
12 due to Defendant's undercapitalization and insufficient funding of the payroll accounting function, its
13 profits having routinely been stripped from its balance sheet.

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

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

20 **(A) Daily Overtime - General Provisions**

21 (1) The following overtime provisions are applicable to employees 18 years of age or
22 over and to employees 16 or 17 years of age who are not required by law to attend school
23 and are not otherwise prohibited by law from engaging in the subject work. Such
24 employees shall not be employed more than eight (8) hours in any workday or more than
25 40 hours in any workweek unless the employee receives one and one-half (1.5) times
26 such employee's regular rate of pay for all hours worked over 40 hours in the workweek.
27 Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in
28 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 Code provided in part:

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

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

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

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

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

11 (3) "Next regular payday" means the day designated by the employer, pursuant to Section
12 204, for payment of wages earned during the payroll period in which the termination
13 occurs.

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

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

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

Code § 201.5. At all relevant times mentioned herein, section 201.5 of the Code controlled the final
payment of wages to Plaintiff, the proposed Code Class, and the Aggrieved Employees.

15. At all relevant times mentioned herein, section 203 of the 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 commence; but the wages shall not
continue for more than 30 days.

Code § 203.

1 16. By failing to pay timely Plaintiff and Aggrieved Employees all wages when due at the
2 end of employment, Plaintiff, the proposed Code Class, and Aggrieved Employees are entitled to
3 continuing wages pursuant to section 203 of the Code.

4 17. At all times relevant herein, section 204 of the Code provided in part that all wages be
5 paid as least twice in each calendar month. Code § 204.

6 18. In no event should Plaintiff or the Aggrieved Employees have been paid later than the
7 time periods established by sections 201.3, 201.5 or 204 of the Code, but certain payments to Plaintiff,
8 the Code Class, and the Aggrieved Employees were made after they were due, or not at all, leading to
9 penalties and civil penalties under sections 203 and 210 of the Code and otherwise.

10 19. At all times relevant herein, section 210 of the Code provided:

11 In addition to, and entirely independent and apart from, any other penalty provided in this
12 article, every person who fails to pay the wages of each employee as provided in Sections
13 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as
14 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.

15 Code § 210. The RSA policy has been to devote insufficient capital, manpower and other required
16 resources to its business, including providing sufficient funding of the payroll accounting function, with
17 the inevitable result that employees are routinely paid in tardy fashion, in violation of sections 201.3,
18 203 and/or 204 of the Code. In addition, RSA routinely enters contracts for the production of television
19 commercials which contracts provide that the advertising agency need not pay the full amount owing to
20 RSA until it receives final delivery of a finished product. RSA maintains internal budgets for each
21 individual television commercial it produces. The internal RSA accounting practice has the inevitable,
22 routine result of RSA putting a hold on the funding of final wage payments until it has received
23 sufficient funds to make the payments, all within its internally imposed, discretionary accounting
24 practices.

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

26 Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one
27 workday and any work in excess of 40 hours in any one workweek and the first eight
28 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 hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

Code § 510.

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

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

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

Code § 515(d)(2). Accordingly, a daily wage rate is "deemed to provide compensation only for the employee's regular, non-overtime hours" too. Alvarado v. Dart Container Corp. of Cal., 4 Cal. 5th 542, 564–65, as modified (2018) ("the Legislature expressly endorsed the principle that flat sum non-hourly compensation should be factored into an employee's regular rate of pay by dividing the flat sum by the number of non-overtime hours that exist in the relevant period, and that the flat sum compensates the worker for only nonovertime hours worked.") The California Supreme Court based its holding on fundamental principles that "the obligation to pay premium pay for overtime work reflects a 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.

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

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

Code § 1194.

24. Plaintiff, the proposed Code Class 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.

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

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

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

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

12 Code § 558.1. Alvarado-Brown is a joint employer with RSA, or other persons acting on behalf of an
13 employer, who violated, or caused to be violated the relevant sections of the Code referenced herein.

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

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

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

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

27 (a) An employer, semimonthly or at the time of each payment of wages, shall furnish to
28 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 inclusive dates of the
period for which the employee is paid, (7) the name of the employee and only the last
four digits of his or her social security number or an employee identification number
other than a social security number, (8) the name and address of the legal entity that is the
employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of
Section 1682, the name and address of the legal entity that secured the services of the
employer, and (9) all applicable hourly rates in effect during the pay period and the
corresponding number of hours worked at each hourly rate by the employee and,
beginning July 1, 2013, if the employer is a temporary services employer as defined in
Section 201.3, the rate of pay and the total hours worked for each temporary services
assignment. The deductions made from payment of wages shall be recorded in ink or
other indelible form, properly dated, showing the month, day, and year, and a copy of the
statement and the record of the deductions shall be kept on file by the employer for at

1 least three years at the place of employment or at a central location within the State of
California. . . .

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

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

5 (a) As used in this section:

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

8 . . .

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

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

11 . . .

12 (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.

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

15 (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.

16 (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:

17 (1) The payment of wages.

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

19 (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.

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

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

24 (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.

25 Code § 2810.3.

26 **CLASS-ACTION ALLEGATIONS**

27 29. Plaintiff brings this action on behalf of himself and all others similarly situated as a class
28 action pursuant to section 382 of the Code of Civil Procedure. Plaintiff seeks to represent a “Code

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 Code 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 Pictures (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 “17200 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 Pictures (such persons are referred to hereafter as Meal Break Class Members, and such period is referred to hereafter as the Class Period).

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 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.

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 201.3, 201.5, 203 and/or 204 of the Code.

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

- 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 Code section 1194.2.
- d. Whether Defendants' failure to provide meal breaks to each and every employee violates Code section 226.7 and 512.
- e. Whether Defendants' failure to provide rest breaks to each and every employee violates Code section 226.7.

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 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. 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 has no conflict of interest with the other Class Members and are able to represent the Class Members' interests fairly and adequately.

Adequacy of Representation

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

Superiority of Class Action

36. 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 Class. Each member of the Class has been damaged and is entitled to recovery by reason of Defendants' illegal policy and/or practice of failing to pay hourly wages, failing to pay overtime wages, failing to

1 provide Class Members rest and meal periods without legal compensation. Class action treatment will
2 allow those similarly situated persons to litigate their claims in the manner that is most efficient and
3 economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely
4 to be construed in the management of this action that would preclude its maintenance as a class action.
5 The disposition of all claims of the members of the Class in a class action, rather than in individual
6 actions, benefits the parties and the Court. The interest of the Class Members in controlling the
7 prosecution of separate claims against Defendants is small when compared with the efficiency of a class
8 action.

9 **FIRST CAUSE OF ACTION**

10 (Continuing Wages, Code §§ 201.3, 201.5, 203, 204
11 On Behalf of Plaintiff and the Code Class Against All Defendants)

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

14 38. As hereinabove articulated, Plaintiff, members of the Code Class, and Aggrieved
15 Employees were not timely compensated in full for their services.

16 39. Plaintiff, Aggrieved Employees and the members of the Code Class consistently worked
17 more than 6-hour and/or 12-hour shifts. However, they were required to keep their walkie talkies, radios
18 and/or cell phones on their persons, turned on and audible at all times, including during their rest periods
19 and meal breaks and/or they were precluded from leaving the set and its immediate environs during their
20 breaks, all due to the requirements of the Filmmakers Code of Professional Responsibility, Paras. 6 and
21 14. Accordingly, they were denied their breaks and are entitled to an additional thirty minutes of wages
22 for each faux meal break, funds which remain unpaid.

23 40. Defendants' failure to compensate Plaintiff, Aggrieved Employees and the Code Class
24 within the time for which provision is made by sections 201.3 and 201.5 of the California Labor Code,
25 despite their knowledge of their obligation to do so, was and is "willful" as the word is used in section
26 203.

27 41. Pursuant to section 203 of the Code, Plaintiff and the Code Class Members are entitled to
28 continuing wages from Defendants in an amount according to proof. Plaintiff and Aggrieved
Employees are also entitled to recover costs and reasonable attorneys' fees under section 218.5 of the

1 Code.

2 **SECOND CAUSE OF ACTION**

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

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

7 43. Defendants failed to provide Plaintiff, Aggrieved Employees and the 226 Class with
8 wage statements conforming to the requirements of section 226(a) of the Code. Defendants failed to
9 disclose the rate of pay and the total hours worked for each temporary services assignment or the legal
10 name and address of the temporary services employer as required by Cal Lab Code § 226, thereby
11 violating the requirements of law, making it impossible for the worker to determine from the wage
12 statement alone all required information. Under Code §201.3, employees such as Plaintiff and
13 Aggrieved Employees are to be paid by no later than weekly. RSA and its payroll company treat each
14 payment to the “free-lance” employees who have been hired to work on a RSA television commercial as
15 a separate person for each commercial. The result can be that one, such as Plaintiff here, hired to work
16 for a day on a commercial for an advertiser and its advertising agency, might also be hired to work for
17 RSA in connection with an entirely different client and its advertising agency, all during the same
18 weekly pay period. By not disclosing the required information, “the employee cannot promptly and
19 easily determine from the wage statement alone,” the information as required by Code §226(a).

20 44. The foregoing was intentional misconduct of Defendants that injured Plaintiff and
21 Aggrieved Employees insofar as they were deprived of information to which they were legally entitled,
22 including but not limited to, the name and address of the legal entity that is the employer. Here,
23 Defendants reported one entity as the “Payroll Employer” and another as the “Controlling Employer.”

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

THIRD CAUSE OF ACTION

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

On Behalf of Plaintiff and the Code Class Against All Defendants)

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

47. Plaintiff, as well as the Code Class, worked many hours for Defendants, including overtime, without prompt and/or full compensation for work performed, as required by law. Plaintiff and Aggrieved Employees were routinely deprived of thirty minutes of compensation for services, as Defendants required half hour meal break deductions from daily wages, even though during meal breaks the crew were required to respond to colleagues' queries, whether by walkie-talkies, cell phone "apps", or otherwise. For example, with respect to walkie-talkies, Plaintiff and crew were issued specific devices for each span of service for RSA, and RSA kept track of which device was issued to each member of the crew so Defendants could account for each of the devices which were issued to crew for their use while working for RSA. At the conclusion of their service, each member of the crew returned the walkie-talkie which they had received for use during the project to the appropriate RSA employee, who noted the check in. RSA would routinely rent these walkie-talkie devices from a third party which charged a significant amount were all such walkie-talkie devices not returned at the completion of the rental period.

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

FOURTH CAUSE OF ACTION

(Damages for Unpaid Minimum Wages,

Code §§ 510, 1194, 1194.2, 1197, 1197.2, and 1198

On Behalf of Plaintiff and the Code Class Against All Defendants)

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

50. Plaintiff and the Code Class worked many hours for Defendants, without proper, full compensation for work performed, as required by law. For example, Defendants routinely made thirty or sixty minute deductions from the daily work of each Aggrieved Employee to whom a walkie-talkie

1 had been issued, all on account of the faux meal breaks described herein.

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

5 **FIFTH CAUSE OF ACTION**

6 (Failure to Provide Duty-Free Meal Breaks, Code §§ 226.7 and 512
7 On Behalf of Plaintiff And the 17200 Class And Against All Defendants)

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

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

13 54. Upon information and belief, neither the proposed 17200 class nor the Aggrieved
14 Employees the 17200 Class have been timely compensated in full for their services. Plaintiff and the
15 17200 Class consistently worked more than 6-hour and/or 12-hour shifts. However, they were required
16 to keep their walkie talkies or radios on their persons, turned on and audible at all times, including their
17 rest periods and meal breaks and/or they were precluded from leaving the set during their breaks.
18 Accordingly, they were denied their breaks and are entitled to an additional thirty minutes of wages for
19 each faux meal break. RSA kept records of each individual member of the crew to whom a walkie-
20 talkie was issued so that it could insure the return to it of the device.

21 55. After the Augustus decision, some motion picture production companies such as Warner
22 Bros. claim to have initiated a process under which they would advised employees, in writing, that they
23 need not respond to walkie-talkie calls during breaks. RSA does not claim to have undertaken any such
24 initiative.

25 56. Pursuant to Code section 226.7, Plaintiff and Class Members are entitled to damages in
26 an amount equal to one hour of wages per missed meal break, in an amount according to proof.
27
28

SIXTH CAUSE OF ACTION

(Failure to Provide Duty-Free Rest Breaks, Code §§ 226.7
On Behalf of Plaintiff And the 17200 Class Against All Defendants)

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

58. 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, all as detailed in Brinker.

59. Upon information and belief, neither the proposed 17200 class nor the Aggrieved Employees the 17200 Class have been timely compensated in full for their services. Plaintiff and the 17200 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 faux 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 additional compensation for each faux rest break. Defendants have never paid an employee for a missed, truncated or tardy rest break.

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

SEVENTH CAUSE OF ACTION

(Unfair Business Practices On Behalf of Plaintiff and the 17200 Class Members Against All Defendants)

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

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

63. Defendants’ violations of the California wage and hour laws constitutes a business practice because Defendants’ aforementioned acts and omissions were done repeatedly over a significant period of time, and in a systematic manner, to the detriment of Plaintiff, the proposed 17200 Class and Aggrieved Employees.

64. Defendants have avoided payment of wages and overtime wages and other benefits

1 required by the California Labor Code, the California Code of Regulations, and the applicable IWC
2 Wage Order. Upon information and belief, Aggrieved Employees and the 17200 Class have not been
3 timely compensated in full for their services. Plaintiff and the 17200 Class consistently worked more
4 than 6-hour and/or 12-hour shifts. However, they were required to keep their cell phones, walkie talkies
5 and/or radios on their persons, turned on and audible at all times, including their rest periods and meal
6 breaks and/or they were precluded from leaving the set during their breaks. Accordingly, they were
7 denied their breaks and are entitled to an additional thirty minutes of wages for each faux meal break.

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

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

19 **EIGHTH 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 All Defendants)

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

25 68. Pursuant to section 2699.3(a)(1) of the Labor Code, on February 2, 2022, Plaintiff
26 submitted Plaintiff's 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,
Plaintiff gave written notice by certified mail to Defendants.

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

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

Cal. Lab. Code § 2699.3(a)(2)(A). After sixty-five (65) calendar days from the February 2, 2022, postmark date of the notice sent by Plaintiff, Plaintiff may “commence a civil action pursuant to Section 2699.” Cal. Lab. Code § 2699.3(a)(2)(A). More than sixty-five calendar days have passed since Plaintiff gave written notice of the PAGA violations to the LWDA and Defendants.

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

71. Plaintiff seeks to bring a representative action on behalf of himself and the State of California as well as on behalf of a group of Aggrieved Employees defined as: Plaintiff and/or other persons who performed services for Defendants as a motion picture production crew member in California (“Aggrieved Employees”) during the period from one year prior to the filing of the PAGA Notice until this case is resolved.

72. Plaintiff will seek civil penalties pursuant to PAGA for violations of the Labor Code provisions alleged in the Complaint.

NINTH CAUSE OF ACTION

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

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

74. Plaintiff is informed and believes, and on that basis alleges, that Defendants are employers engaged in an enterprise in interstate commerce pursuant to the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et seq.*

1 75. Plaintiff was not timely paid his wages. Plaintiff and Collective Action Members worked
2 many hours each day during their employment as herein alleged.

3 76. Under the FLSA, Plaintiff and Collective Action Members are entitled to recover from
4 Defendants their liquidated damages for hours worked, as well as costs and attorney's fees.

5 77. Defendants failed to compensate Plaintiff and Collective Action Members as required by
6 the FLSA.

7 78. Defendants' violations were willful and intentional.

8 79. Plaintiff and Collective Action Members are entitled to damages for unpaid wages and/or
9 the associated liquidated damages in an amount to be proven at trial.

10 80. Plaintiff brings this claim on a collective-action basis pursuant to the FLSA. The FLSA
11 permits an employee to bring an action for unpaid wages on "behalf of himself . . . and other employees
12 similarly situated," so long as all similarly situated employees "give[] [their] consent in writing to
13 become . . . a party." 29 U.S.C. § 216(b). On information and belief, none were timely paid all wages as
14 required by section 203 of the California Labor Code.

15
16 **WHEREFORE**, Plaintiff prays judgment as follows:

17 1. That the Court certify the Classes.

18 2. That, under the First Cause of Action for Continuing Wages, it be adjudged that the
19 failure of Defendants to make payment of Plaintiff's and the Code Class Members' wages was in
20 violation of section 201.3, 201.5, 203 and/or 204 of the Code, and was "willful" as that word is used in
21 section 203 of the Code, and that the Court enter judgment against Defendants in favor of Plaintiff and
22 Code Class Members. That judgment be entered in favor of Plaintiff in the amount of at least \$13,200
23 and the 203 Class in an amount according to law and proof, interest thereon, and costs and reasonable
24 attorneys' fees in accordance with the provisions of Code section 218.5.

25 3. That, under the Second Cause of Action for Failure to Provide Compliant Wage
26 Statements, this Court enter judgment in favor of Plaintiff and 226 Class Members against Defendants.
27 That judgment be entered in favor of Plaintiff of at least \$50 and the 226 Class in an amount according
28 to proof, and costs and reasonable attorneys' fees in accordance with the provisions of Code section

1 226(e).

2 4. That, under the Third Cause of Action for Failure to Pay Overtime, this Court enter
3 judgment in favor of Plaintiff and the Code Class against Defendants in the amount of unpaid overtime
4 and damages according to proof, interest thereon, and costs and reasonable attorneys' fees pursuant to
5 the applicable Code requirements.

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

10 6. That, under the Fifth Cause of Action, this Court enter judgment in favor of Plaintiff and
11 the 17200 Class in an amount according to proof and award them their damages, penalties, and costs of
12 suit.

13 7. That, under the Sixth Cause of Action, this Court enter judgment in favor of Plaintiff and
14 the 17200 Class in an amount according to proof and award them their damages, penalties, and costs of
15 suit.

16 8. That, with respect to the Seventh Cause of Action for Unfair Competition, this Court
17 enter judgment in favor of Plaintiff and the 17200 Class against Defendants in an amount according to
18 proof. Plaintiff seeks full restitution from Defendants, as necessary and according to proof, to restore
19 any and all amounts—including interest—withheld, acquired, or converted by Defendants by means of
20 the unfair practices complained of herein. Plaintiff, on behalf of themselves, as well as on behalf of the
21 general public, further seeks attorney's fees and costs pursuant to sections 218.5 of the Code and 1021.5
22 of the Code of Civil Procedure. In addition, Plaintiff seek the appointment of a receiver as necessary.

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

27 10. That, with respect to the Ninth Cause of Action this Court enter judgment in favor of
28 Plaintiff and Collective Action Members against Defendants in an amount according to proof for unpaid

1 wages, liquidated damages, interest thereon, costs and reasonable attorney's fees.

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

5 DATED: March 8, 2023

HARRIS & RUBLE

Alan Harris

Alan Harris
Attorney for Plaintiff