

1 CHANTAL MCCOY PAYTON, ESQ. (293215)
 CPayton@PaytonEmploymentLaw.com
 2 LAUREL N. HOLMES, ESQ. (SBN 308515)
 LHolmes@PaytonEmploymentLaw.com
 3 **PAYTON EMPLOYMENT LAW, PC**
 3807 W. Sierra Highway, Suite 206
 4 Acton, California 93510
 Telephone: (661) 434-1144
 5 Facsimile: (661) 434-1144

6 *Attorney for Plaintiff Jeremy Hartwell,*
 7 *and the putative class*

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 11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 12 **COUNTY OF LOS ANGELES**

13 JEREMY HARTWELL, an individual; and on
 14 behalf of all others similarly situated,

15 Plaintiff,

16 v.

17 KINETIC CONTENT, LLC, a Delaware limited
 liability company; NETFLIX US, LLC, a
 18 Delaware limited liability company; NETFLIX,
 INC., a Delaware Corporation; DELIRIUM TV,
 19 LLC, a Delaware limited liability company;
 DOES 1-10, business entities, forms unknown;
 20 DOES 11-20, individuals; and DOES 21-30,
 inclusive,

21 Defendants.
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Case No.: **22STCV21223**

Plaintiff's Class Action Complaint For:

1. **Failure to Pay Overtime Wages (L.C. §§ 204, 510, and 1194 and Wage Order 12-2001, § 3);**
2. **Failure to Pay Minimum Wages (L.C. §§ 204, 1194, 1197, and 1197.1 and Wage Order 12-2001);**
3. **Liquidated Damages for Failure to Pay Minimum Wages (L.C. § 1194.2);**
4. **Failure to Provide Accurate and Itemized Wage Statements (L.C. §§ 226 and Wage Order 12-2001);**
5. **Failure to Provide Uninterrupted Meal Periods (L.C. §§ 226.7, 512, and Wage Order 12-2001, § 11);**
6. **Failure to Provide Uninterrupted Rest Periods (L.C. §§ 226.7 and Wage Order 12-2001, § 12);**
7. **Failure to Pay Wages Promptly Upon Termination (L.C. §§ 201, 202, and 203);**
8. **Unfair Business Practices (Bus. & Prof. Code §§ 17200, *et seq.*); and Private Attorneys General Act (L.C. §§ 2698, *et seq.*)**

Plaintiff Jeremy Hartwell (“Plaintiff”), on behalf of himself and all others similarly situated, hereby files this Complaint against Kinetic Content, LLC, a Delaware limited liability company; Netflix US, LLC, a Delaware limited liability company; Netflix, Inc., a Delaware Corporation; Delirium TV, LLC, a Delaware limited liability company; and DOES 1-30 (collectively “Defendants”). Plaintiff is informed and believes, and based thereon alleges, as follows:

I. INTRODUCTION

1. Plaintiff brings this class action on behalf of himself and “Class Members” and “Aggrieved Employees” who consist of any persons who applied for and/or participated in all non-scripted content produced in California on behalf of Netflix, Inc., Netflix US, LLC, and by Kinetic Content, LLC and/or any persons who signed a similar agreement document with Delirium TV, LLC to work in California on any non-scripted content productions from the date four years prior to the filing of this Complaint through the date of trial in this action.

2. The “Class Period” is designated as the time from four years prior to the filing of this Complaint through the trial of this action based upon the allegation that the violations of the Labor Code described herein have been ongoing since at least four years prior to the date of filing of this Complaint and are continuing.

3. By way of example, the “Class Members” and “Aggrieved Employees” consist of employees who were misclassified as independent contractors hold or held job titles such as “Contestant,” “Participant,” “Cast Member,” and similar job titles and individuals who applied to be cast in such positions on reality TV shows such as those streaming on Netflix, including but not limited to the series “*Love Is Blind*.” Defendants operate production and distribution businesses employing Class Members for content on television and streaming services. Defendants employ these workers and are aware of and ratified the employment conditions of these workers to perform various tasks, including acting and participation in content production, filming their daily lives on and off set, participating in interviews, and promoting television series through social media and public appearances.

4. Defendants willfully misclassified employees as independent contractors despite Defendants exercising substantial and excessive control over the manner, means, and timing of the work performed by Class Members and Aggrieved Employees. These individuals were in reality employees that were

1 entitled to protections under California law, including but not limited to the California Labor Code and
2 the applicable Wage Order. Defendants maintained a practice of willfully misclassifying employees to
3 deny these individuals such protections and avoid paying Class Members and Aggrieved Employees
4 proper minimum wage and overtime pay. Defendants maintained excessive control over virtually every
5 aspect of the lives of their shows' Cast, including exerting complete domination over their time,
6 schedule, and their ability to eat, drink, and sleep, and communicate with the outside world during the
7 period of employment; and restricted their ability to engage in a multitude of activities that Defendants
8 forbid both during the period of employment and thereafter. In doing so, Defendants created and
9 maintained unsafe and inhumane working conditions for the Cast of the shows.

10 5. Defendants unlawfully required Class Members and Aggrieved Employees to agree, in writing,
11 to terms and conditions which are expressly prohibited by California law in violation of Labor Code §
12 432.5. Defendants required all Cast Members and possible participants of production to agree, as a
13 condition of employment, to a purported contractual agreement containing several provisions which
14 Defendants knew or had reason to know were unlawful. Notably, the purported contract unlawfully
15 mandated that the Class Members and Aggrieved Employees pay *so-called liquidated damages of*
16 *\$50,000.00* (which was in effect an excessively large and retaliatory penalty) if they were casted and
17 left the shows during production or otherwise breached their purported contracts with Defendants as a
18 scare tactic to exert further control and maintain the Cast Members' compliance during production.
19 required Class Members and Aggrieved Employees to waive their rights to pursue virtually any
20 cognizable claim against Defendants before such claims and

21 6. Defendants failed and continue to fail to compensate Class Members and Aggrieved Employees
22 for all hours worked, including minimum wage and overtime hours, as a result of maintaining a practice
23 of requiring Class Members and Aggrieved Employees to work up to twenty (20) hour days, seven
24 days per week, while paying them a flat amount of \$1,000.00 per filming week. Resultantly, these
25 workers were effectively as little \$7.14 per hour which is less than half of the applicable minimum
26 wage rate of \$15.00 per hour, less than one-third of the minimum overtime rate of \$22.50 per hour, and
27 less than one-fourth of the minimum double-time rate of \$30.00 per hour pursuant to the applicable
28 Los Angeles City and County minimum wage ordinances. Defendants failed and continue to fail to

1 pay all formerly employed Class Members and Aggrieved Employees their compensation due at
2 termination, as required by Labor Code §§ 201-203, in part because Defendants failed and continue to
3 fail to pay wages for all hours worked by each Class Members and Aggrieved Employees, including
4 regular wages, minimum wages, and overtime wages.

5 7. Defendants failed and continue to fail to furnish accurate and itemized wage statements
6 showing, among other things, the total compensation due to Class Members and Aggrieved Employees
7 for each pay period, in part because Defendants maintained a practice of not providing wage statements.

8 8. Defendants failed and continue to fail to provide legally mandated off-duty meal periods and
9 rest periods because, among other reasons, Defendants maintained a policy and practice of failing to
10 provide meal and rest breaks to Class Members and Aggrieved Employees until well past their fifth
11 hour of work, and then even when purportedly provided of requiring Class Members and Aggrieved
12 Employees to work or remain on-call during meal periods and rest periods that were provided.
13 Defendants failed and continue to fail to pay all premiums for the meal and rest period violations.

14 9. By the predicate violations of law described above, Defendants also violated Business and
15 Professions Code §§ 17200, *et seq.*

16 10. Plaintiff, on behalf of himself and the Class Members and Aggrieved Employees, seeks unpaid
17 overtime compensation, unpaid minimum wages, waiting time penalties, statutory penalties, restitution,
18 declaratory and injunctive relief, attorneys' fees and costs, prejudgment interest, and other appropriate
19 relief pursuant the Private Attorneys General Act ("PAGA"), Labor Code § 2698 *et seq* for violations
20 of Wage Order 12-2001, Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 226.8, 232, 432.5,
21 432.7, 432.8, 510, 512, 558, 1019.1, 1024.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 2698, 3700,
22 3708, 6400, 6402, Government Code § 12940, Civil Code § 1671, Business and Professions Code
23 §§17200, *et seq.*, and other relevant law of the State of California.

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11. Plaintiff alleges that these acts violate the California Labor Code (“Labor Code”) under the Private Attorneys General Act (“PAGA”), Labor Code § 2698 *et seq.* In this action, Plaintiff, on behalf of himself and all Aggrieved Employees, and as a Private Attorney General on behalf of the State of California, seeks all civil penalties that may be pursued under the California Labor Code as a result of the Defendants’ unlawful conduct, declaratory and injunctive relief, attorneys’ fees and costs, prejudgment interest, and other relief and penalties pursuant to Labor Code § 2698 *et seq.*

II. PARTIES, JURISDICTION, AND VENUE

12. Plaintiff Jeremy Hartwell is an individual who was employed by Defendants in the County of Los Angeles during the Class Period. Plaintiff and each Class Member were or are employed by Defendants within the State of California and were subject to the unlawful policies and practices described herein.

13. Plaintiff Jeremy Hartwell was employed with Defendants from April 24, 2021 through at least May 1, 2021 as a contestant for the Netflix reality TV show, “*Love Is Blind*,” which Defendants cast and produce for online streaming on Netflix. During this period, Mr. Hartwell was misclassified as an independent contractor and was subjected to the violations detailed herein.

14. Plaintiff brings this action as a class action on behalf of himself and all others similarly situated, pursuant to Code of Civil Procedure § 382.

15. Defendant Delirium TV, LLC is a Delaware limited liability company maintaining its principal place of business in Los Angeles, California, which is located within the County of Los Angeles, California and is in the business of casting participants for productions which are distributed by companies including Netflix US, LLC.

16. Defendant Kinetic Content is a Delaware limited liability company maintaining its principal place of business in Los Angeles, California, which is located within the County of Los Angeles, California and is in the business of creating and producing content, including a variety of non-scripted productions, docuseries, and competition shows, for the global market. Kinetic Content is a partner of Netflix US, LLC and many of its productions are distributed through Netflix’s streaming website.

17. Defendant Netflix US, LLC is a Delaware limited liability company maintaining its principal place of business in Los Angeles, California, which is located within the County of Los Angeles,

California and operates a subscription streaming service and production company. Netflix partners with production-related companies, such as Kinetic Content and Delirium TV, to produce various forms of content to be distributed through Netflix's streaming service.

18. Defendant Netflix, Inc. is a Delaware corporation maintaining its principal place of business in Los Gatos, California, which is located within the County of Santa Clara, doing business in Los Angeles, California and operates a subscription streaming service and production company. Netflix partners with production-related companies, such as Kinetic Content and Delirium TV, to produce various forms of content to be distributed through Netflix's streaming service.

19. At all times herein mentioned, DOES 1 through 10 were headquartered or residing in the State of California, and licensed to do business or actually doing business therein, including the County of Los Angeles.

20. The true names and/or capacities, whether individual, corporate, associate, or otherwise, of defendants named herein as DOES 1 through 30, inclusive, are unknown to Plaintiff at this time, who therefore sue said defendants by such fictitious names. Each of the defendants designated herein by fictitious name is in some manner responsible for the events and happenings herein referred to, and caused damages proximately and foreseeably thereby to Plaintiff and the Class Members as hereinafter alleged. Plaintiff asks leave of the Court to amend this Complaint when the true names and capacities of the DOE defendants have been ascertained.

21. Each defendant acted in all respects pertinent to this action as the agent of the other defendants, carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendants as each defendant has ratified, approved, and authorized the acts of each of the remaining defendants with full knowledge of said acts.

22. Venue is proper in the Superior Court of California for the County of Los Angeles as this Court has personal jurisdiction over Defendants pursuant to Code of Civil Procedure § 395. Plaintiff worked in and violations occurred in Los Angeles County.

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III. FACTUAL ALLEGATIONS

a. Defendants' Willful Misclassification of its Cast Members As Independent Contractors

23. Defendants willfully misclassified and upon information and belief continue to misclassify Plaintiff, the Class Members, and Aggrieved Employees, including those holding positions as "Contestant," "Participant," "Cast Member," and similar job titles (herein referred to as the "Cast"), as independent contractors through substantial exercise of control over the manner, means, and timing of their work performed for Defendants' non-scripted content productions, including but not limited to the Netflix reality TV show, "*Love Is Blind*." Defendants exercised substantial control over every aspect of the Cast's lives during production, including the Cast's time, access to food and drinks, sleeping arrangements, and contact with family and friends and other persons outside of production. Defendants did not allow the Cast to move or act of their own free will while the production took place.

24. Once the Cast agreed to participate in Defendants' production, Defendants exercised and continued to exercise an egregious amount of control over the Cast from the moment of their arrival in the production's city (i.e., Los Angeles for California Cast Members) until the Cast left the production altogether.

25. The Cast arrived to the city where production would take place via airplane. Upon the Cast's arrival, Defendants isolated the Cast and took away their ability to contact family, friends, and other persons outside of production. This continued for the entire length of the Cast's participation in the production. Defendants also forced the Cast to give up all forms of identification, wallets, phones, cash, and credit and debit cards to Defendants, thus eliminating the Cast's ability to leave the hotel living quarters or production set. In fact, Defendants did not allow the Cast to leave the premises of the hotel or studio at all unless explicitly directed to do so by Defendants. To force, the Casts' cooperation with this instruction, Defendants also did not allow any of the Cast members to hold a key to their own hotel rooms to prevent them from leaving their hotel rooms.

26. Defendants forbid the Cast members from driving themselves to and from the production location. The Cast's only way to leave the hotel or production set was via the shuttles provided by Defendants, who exerted full control over the times and manner that the Cast was transported to and

from the hotel.

27. Defendants would strongly suggest that there would be negative repercussions if the Cast refused to remain working on the production until the late hours of the night and then required them to return the next day in the early morning. Defendants only allowed the Cast to rest at their hotel living quarters for a few hours in between late nights on set and early morning call times.

28. At times, Defendants left members of the Cast alone for hours at a time with no access to a phone, food, or any other type of contact with the outside world until they were required to return to working on the production.

29. Defendants further controlled the Cast by restricting food and drink at all hours of the day. Defendants regularly refused timely food and water to the Cast while on set severely restricting the availability of hydration opportunities. Even at the hotel living quarters, food was restricted to the point of severe hunger. Defendants, having knowledge of the fact that Cast member at times would be starving, instructed the hotel staff to not provide food to any Cast member that asked them for food because of hunger, in a clear effort to ensure that the Cast would continue to be deprived of food outside of the presence of the production team. The only drinks that Defendants regularly provided to the Cast were alcoholic beverages, soft drinks, energy drinks, and mixers. Hydrating drinks such as water were strictly limited to the Cast during the day.

30. Defendants were encouraged to consume alcohol throughout the entire day and were plied with an unlimited amount of alcohol without meaningful or regular access to appropriate food and water to moderate their inevitable drunkenness. The combination of sleep deprivation, isolation, lack of food, and an excess of alcohol all either required, enabled, or encouraged by Defendants contributed to inhumane working conditions and altered mental state for the Cast. Upon information and belief, Defendants did this—purposely withheld necessities such as food, sleep, and water from the Cast and cut off their access to the outside world—in order to maintain a heightened degree of control and direct the conduct of the Cast into making manipulated decisions for the benefit of the shows’ entertainment value.

31. As a result of Defendants’ encouraging the Cast to perform work in a hazardous work environment while in an altered mental state, Defendants failed to provide a safe and healthful place

of employment. The Cast worked on a production set which contained various hazards including large and delicate equipment, trip hazards, electric hazards, and heavy unsecured equipment. Further, the Cast was more prone to injury due to their excessive intake of alcohol, minimal intake of food, and sleep deprivation. The Cast were forced to perform in various states of fatigue, hunger, and drunkenness on top of working excessive hours, leading to an unsafe and unhealthful environment.

b. Defendants Required the Cast to Enter into a Contract Littered with Illegal Terms that California Law Expressly Prohibits in Order to Participate in Shows.

32. Defendants further attempted to control the Cast by requiring the Cast to enter into a contract which contained several illegal terms and unlawful provisions that California expressly prohibits in order to participate in Defendants' productions.

33. Defendants forced the Cast and applicants to the show to agree to not apply or audition to appear on any other media production while still only being considered, not yet hired, for Defendants' production. Defendants also required access to and control of the Cast's social media accounts, even after the production had finished filming and the participants had gone back home. Defendants coerced the Cast to agree to their private lives being filmed at all hours of the day, including in their homes and during private conversations. No aspect of the Casts' lives was not controlled substantially by Defendants throughout the entire production.

34. Defendants required the Cast and applicants to sign a document which stated that all decisions on matters relating to the production would be within Defendants' sole control, further exercising a substantial amount of control over the Cast.

35. Defendants required, as a condition of employment, that the Cast refrain from disclosing the amount of wages provided during production. Defendants compensated the Cast members a flat amount of one thousand dollars (\$1,000) per week for up to eight thousand dollars (\$8,000) total for the entire length of production. Defendants unlawfully compelled the Cast to not speak with each other regarding the amount of wages they were provided (notably, wages that were far below the minimum wage), during production.

36. Defendants unlawfully sought information concerning past felony convictions as a condition of employment. Defendants required the Cast and applicants for employment to affirm whether they had

1 any past convictions before being hired for production, including convictions protected from inquiry
2 by employers.

3 37. Defendants required the Cast and other applicants for employment to unlawfully submit to a
4 medical examination, psychological examination, and background check as a condition for possible
5 employment.

6 38. Other unlawful provisions required for the agreement include authorizing Defendants to
7 conduct background checks including checks of consumer credit reports, unlawful restriction of the
8 opportunity to work in the United States by refusing to honor documents of work authorization,
9 requiring the Cast to assume any and all risks related to their conduct on set, an unlawful penalty clause
10 with an unreasonably large estimate of *so-called liquidated damages of \$50,000.00* (which was in
11 effect a penalty of 25 to 50 times what most Cast Members earned during production and over six times
12 the amount the Cast had the *potential* to earn during production) for the Cast's breach of contract –
13 including leaving the shows production early, unlawful waiver of the Cast's potential claims under the
14 California Fair Employment and Housing Act, including claims for sexual assault, sexual battery, rape
15 and other conduct that may consistent sexual harassment under the law, and release of the Cast's rights
16 to pursue any and all legal claims they may have against Defendants.

17 **c. Defendants' Failure to Properly Pay Class Members and Aggrieved Employees**
18 **and Provide Compliant Meal and Rest Breaks**

19 39. During the Class Period, Defendants failed and continue to fail to pay Plaintiff, the Class
20 Members, and Aggrieved Employees for all hours required for Class Members and Aggrieved
21 Employees for work during Defendants' various productions of non-scripted content including but not
22 limited to the Netflix reality TV show, "*Love Is Blind*," which Defendants cast and produce for online
23 streaming on Netflix. Defendants failed and continue to fail to compensate Plaintiff, Class Members,
24 and Aggrieved Employees for all hours worked, including minimum wage and overtime hours, as a
25 result of maintaining a practice of willfully misclassifying Class Members' employment status as
26 independent contractors even though Defendants exercised substantial control over the manner, means,
27 and timing of the work performed by Class Members and Aggrieved Employees.

28 40. Defendants willfully misclassified Plaintiff, Aggrieved Employees, and Class Members in

1 order to pay them less than minimum wage for the true number of hours worked, and refusing to
2 compensate Plaintiff, Class Members, and Aggrieved Employees for all work performed.

3 41. Defendants also failed and continue to fail to pay Plaintiff, Class Members, and Aggrieved
4 Employees for all compensable hours spent traveling to, from, and between their hotel living quarters
5 and the production set every day while employed by Defendants.

6 42. Unpaid time also includes time spent working during the purported meal breaks that were
7 consistently on-duty and subject to interruption and delay at the Defendant's election.

8 43. Plaintiff, Class Members, and Aggrieved Employees regularly worked up to 20-hour shifts,
9 well in excess of eight (8) or twelve (12) hours per day but Defendants, as a matter of policy or practice,
10 failed and fail to pay applicable overtime or double-time compensation for all hours actually worked
11 as required by Labor Code §§ 204, 510, 1194, 1194.2, and Industrial Welfare Commission Wage Order
12 ("Wage Order") 12-2001, § 3.

13 44. During the Class Period, Defendants failed and continue to fail to compensate Plaintiff, Class
14 Members, and Aggrieved Employees at the legally required minimum wage rate for any and all work
15 performed for Defendants' production in violation of Labor Code §§ 1194 and 1197.

16 45. During the Class Period, Defendants failed and continue to fail to pay Plaintiff, Class Members,
17 and Aggrieved Employees their owed compensation due at termination in a timely fashion as required
18 by Labor Code §§ 201-203, in part because Defendants failed and continue to fail to pay wages for all
19 hours worked by Plaintiff, Class Members, and Aggrieved Employees who are no longer employed by
20 Defendants or because Defendants failed and continue to fail to pay all compensation due and owing
21 to Plaintiff, Class Members, and Aggrieved Employees upon separation, as required by Labor Code §§
22 201 and 202. Plaintiff further alleges that this failure to pay all compensation due was willful, due to
23 Defendants' unlawful practices of willfully misclassifying Class Members' employment status as
24 independent contractors even though Defendants exercised substantial control over the manner, means,
25 and timing of the work performed by Class Members and Aggrieved Employees.

26 46. As a result of Defendants' failure to pay wages for all work performed as discussed above,
27 pursuant to Labor Code § 203, Plaintiff, Class Members, and Aggrieved Employees are entitled to
28 recover up to thirty (30) days of wages for Defendants' willful failure to comply with the statutory

requirements of Labor Code §§ 201 and 202.

47. During the Class Period, Defendants knowingly and intentionally failed and continue to fail to furnish Plaintiff, Class Members, and Aggrieved Employees with any wage statements accurately showing, among other things, total hours worked, total wages owed, and applicable rates of pay, as required by Labor Code § 226(a). No wage statements were provided to Class Members and Aggrieved Employees to reflect their hours worked or total compensation due for all hours worked. As Plaintiff, Class Members, and Aggrieved Employees were not paid all wages due for all minimum, overtime, and double-time wages, as discussed above, Defendants failed to set forth wage statements containing all gross wages earned, in violation of Labor Code § 226(a)(1), the total hours worked, in violation of Labor Code § 226(a)(2), and net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked, in violation of Labor Code § 226(a)(9).

48. During the Class Period, Defendants failed and continue to fail to maintain a policy or practice that provides Plaintiff, Class Members, and Aggrieved Employees with off-duty meal periods as required by California law. Plaintiff, Class Members, and Aggrieved Employees regularly worked in excess of five (5) hours a day and at times in excess of ten (10) hours a day without being provided at least half-hour meal periods in which they were relieved of all duties, as required by Labor Code §§ 226.7, 512, and Wage Order 12-2001, § 11. Plaintiff, Class Members, and Aggrieved Employees were required to work through or were interrupted during their off-duty meal breaks, and further were regularly denied food both on the Defendants' production set and in their hotel living quarters.

49. Defendants failed and continue to fail to maintain a policy or practice that provides Plaintiff, Class Members, and Aggrieved Employees with off-duty rest periods as required by California law. Plaintiff, Class Members, and Aggrieved Employees regularly worked in excess of four hours or a major fraction thereof during workdays without being provided at least a ten-minute rest period in which they were not required to remain on-call or perform work during the period, as required by Labor Code §§ 226.7, 512, and Wage Order 12-2001, § 12.

50. During the Class Period, Defendants maintained a policy and practice of requiring Plaintiff, Class Members, and Aggrieved Employees to work on-duty meal and rest periods, including by

requiring Plaintiff, Class Members, and Aggrieved Employees to perform for the Defendants' television production, to remain on-call, and/or to remain on the premises during meal and rest periods.

51. Defendants also failed and continue to fail to provide timely meal periods as required by law, including on occasions where Class Members worked shifts with an excess of 10 hours between meals. Defendants also failed and continue to fail to provide a third or fourth rest periods where required by law, including on occasions where Class Members worked in excess of 10 hours.

52. During the Class Period, Defendants did not maintain on-duty meal period agreements for Class Members and Aggrieved Employees, and the nature of Class Members and Aggrieved Employees' work does not meet the requirements permitting on-duty meal periods as follows:

- a. The type of non-scripted, "reality television" performances by Class Members and Aggrieved Employees is not such that off-duty meal periods are not feasible;
- b. Other employees, such as the production's crew, were able to take off-duty meal periods while Class Members and Aggrieved Employees were regularly denied the same opportunity;
- c. The potential consequences to Defendants of providing off-duty meal periods are negligible;
- d. Defendants can reasonably anticipate and minimize any performance issues preventing provision of off-duty meal periods by scheduling employees to perform in a schedule that would allow Class Members and Aggrieved Employees to take off-duty meal periods; and,
- e. The production and performances by Class Members and Aggrieved Employees would not be delayed, disrupted, or destroyed if Class Members and Aggrieved Employees were provided off-duty meal periods.

53. During the Class Period, Defendants did not pay Plaintiff, Class Members, or Aggrieved Employees all the premium compensation mandated by Labor Code § 226.7(b) for non-compliant and/or missed meal and rest periods.

54. Defendants consistently failed and continue to fail to pay employees all wages earned and owed specified in Labor Code §§ 204(d) and 210 twice each calendar month, including, but not limited to,

1 minimum wages, overtime wages, double-time wages, and premium pay for missed rest periods.
2 Accordingly, Defendants have violated and continue to violate California Labor Code §§ 204(d) and
3 210 by not timely paying all wages owed to Plaintiff, Class Members, or Aggrieved Employees.

4 55. Defendants failed and continue to fail to maintain adequate records showing the total hours
5 worked daily, as a result of maintaining a practice of willfully misclassifying employees as independent
6 contractors in order to pay Plaintiff, Class Members, or Aggrieved Employees less than the true number
7 of hours worked in violation of Labor Code § 1174.

8 56. Plaintiff alleges that these acts, which violate numerous provisions of the Labor Code and
9 Industrial Welfare Commission Wage Order 12-2001, constitute unlawful and unfair business practices
10 in violation of the Unfair Competition Law, Business and Professions Code §§ 17200, *et seq.*

11 57. During the Class Period, Defendants also violated the Private Attorneys General Action, Labor
12 Code §§ 2698, *et seq.*, by the predicate violations of law described above.

13 **IV. CLASS ACTION ALLEGATIONS**

14 58. Plaintiff brings this action on behalf of himself and all others similarly situated who were
15 engaged as purported participants in Defendants' non-scripted content production, as a class action
16 pursuant to Code of Civil Procedure § 382 as to violations of the Labor Code, Business and Professions
17 Code §§ 17200, *et seq.*, and Wage Order 12-2001 for unpaid overtime wages, unpaid minimum wages,
18 meal and rest break penalties, waiting time penalties, statutory penalties, restitution, declaratory and
19 injunctive relief, attorneys' fees and costs, prejudgment interest, and other appropriate relief. The
20 similarly situated employees are known to Defendants and are readily identifiable and locatable
21 through Defendants' own records.

22 59. The Class Members and Aggrieved Employees that Plaintiff seeks to represent are composed
23 of and defined as follows:

24 60. Throughout discovery in this litigation, Plaintiff may find it appropriate and/or necessary to
25 amend the definition of the Class. In any event, Plaintiff will formally designate a class definition at
26 such time when Plaintiff seeks to certify the Class alleged herein.

27 61. **Ascertainable Class:** The proposed class is ascertainable in that their members all were
28 involved in, hired for, or performed for one of Defendants' non-scripted television productions. The

exact names of such members can be identified and located using information contained in Defendants' personnel records and signed documents, including the purported agreement to participate in Defendants' production which all participants of the production were required to sign, of which records of signatures can be used to ascertain the exact number of Class Members.

62. **Numerosity:** The potential quantity of members of the Class as defined is so numerous that joinder of all members would be unfeasible and impractical, due to the numerous non-scripted "reality television" shows Defendants produce, of which each typically consist of several seasons, filmed annually, and consisting of several new participants or potential participants each season. The disposition of their claims through this class action will benefit both the parties and this Court. The quantity of members of the Class is unknown to Plaintiff at this time; however, it is believed that the number is more than 100 individuals. Defendants, collectively and individually, have produced several television shows which film seasons regularly or annually and employ dozens of new "participants" each season. The quantity and identify of such membership is readily ascertainable via inspection of Defendants' documents and records.

63. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class mentioned herein because all members of the Class participated in one of Defendants' non-scripted productions and as such sustained injuries and damages arising out of Defendants' common course of conduct in violation of law and the injuries and damages of all members of the Class were caused by Defendants' wrongful conduct in violation of law, as alleged herein.

64. **Adequacy:** Plaintiff is an adequate representative of the Class herein, will fairly protect the interests of the members of the Class, has no interests antagonistic to the members of the Class, and will vigorously pursue this suit via attorneys who are competent, skilled, and experienced in litigating matters of this type. Class Counsel is competent in litigating wage and hour class actions and is experienced in California employment litigation.

65. **Superiority:** The nature of this action and the nature of laws available to Plaintiff makes the class action format a particularly efficient and appropriate procedure to afford relief to Plaintiff for the wrongs alleged herein, as follows:

- a. This case involves large, corporate Defendants and a large number of individual Class

- 1 Members with many relatively small claims and common issues of law and fact;
- 2 b. If each individual member of each of the Class was required to file an individual lawsuit,
- 3 the large corporate Defendants would necessarily gain an unconscionable advantage
- 4 because Defendants would be able to exploit and overwhelm the limited resources of
- 5 each individual member of the Class with Defendants' vastly superior financial and
- 6 legal resources;
- 7 c. Requiring each individual member of the Class to pursue an individual remedy would
- 8 also discourage the assertion of lawful claims by the members of the Class who would
- 9 be disinclined to pursue an action against Defendants because of an appreciable and
- 10 justifiable fear of retaliation and permanent damage to their lives, careers, and well-
- 11 being;
- 12 d. Proof of a common business practice or factual pattern, which the members of the Class
- 13 experienced, is representative of the Class herein and will establish the right of each of
- 14 the members of the Class to recover on the causes of action alleged herein;
- 15 e. The prosecution of separate actions by the individual members of the Class, even if
- 16 possible, would create a substantial risk of inconsistent or varying verdicts or
- 17 adjudications with respect to the individual members of the Class against Defendants;
- 18 and would establish potentially incompatible standards of conduct for Defendants;
- 19 and/or legal determinations with respect to individual members of the Class which
- 20 would, as a practical matter, be dispositive of the interest of the other members of the
- 21 Class who are not parties to the adjudications or which would substantially impair or
- 22 impede the ability of the members of the Class to protect their interests;
- 23 f. The claims of the individual members of the Class are not sufficiently large to warrant
- 24 vigorous individual prosecution considering all of the concomitant costs and expenses
- 25 appurtenant thereto;
- 26 g. The cost to the court system of adjudication of such individualized litigation would be
- 27 substantial;
- 28 h. The expenses and burden of individual litigation would make it difficult or impossible

for individual members of the class to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action; and

i. Filing a claim with the California Labor Commission is an inferior alternative to addressing this matter as a class action, given the lack of discovery in such proceedings, the availability of fewer remedies, and the fact that the losing party has the right to a trial *de novo* in the Superior Court.

66. **Existence and Predominance of Common Questions of Law and Fact:** There are common questions of law and fact as to the members of the Class which predominate over questions affecting only individual members of the Class including, without limitation:

- a. Whether Class Members were willfully misclassified as independent contractors for Defendant
- b. Whether Defendants' failure to pay overtime wages to the Class Members violates Labor Code §§ 204, 510, and 1194 and Wage Order 12-2001;
- c. Whether Defendants' failure to pay minimum wages to the Class Members violates Labor Code §§ 204, 1194, 1197, 1197.1, and Wage Order 12-2001;
- d. Whether Defendants' failure to provide the Class Members with accurate and itemized wage statements worked violate Labor Code § 226 and Wage Order 12-2001;
- e. Whether Defendants' failure to provide the Class Members with all wages due upon separation violates Labor Code §§ 201-203;
- f. Whether Defendants' failure to provide the Class Members with off-duty meal and rest periods violates Labor Code §§ 226.7, 512, and Wage Order 12-2001;
- g. Whether Defendants required Class Members to agree to terms prohibited by law violates Labor Code § 432.5;
- h. Whether Defendants' conduct constitutes unfair competition within the meaning of Business and Professions Code §§ 17200 *et seq.*;
- i. Whether members of the Class are entitled to compensatory damages, and if so, the means of measuring such damages;
- j. Whether the members of the Class are entitled to injunctive relief;

- k. Whether the members of the Class are entitled to restitution;
- l. Whether Defendants are liable for pre-judgment interest; and
- m. Whether Defendants are liable for attorneys' fees and costs.

67. Common questions of law and/or fact predominate over questions that affect only individual Class Members. Plaintiff's claims are typical of those belonging to the members of the Class they seek to represent, and Plaintiff can adequately represent the Class they seek to represent.

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

LABOR CODE §§ 204, 510, 1194, AND WAGE ORDER 12-2001

(Against all Defendants, on behalf of Plaintiff and the Class)

68. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though fully set forth herein.

69. Labor Code § 510 states that an employee must be paid overtime, equal to one and one-half (1 ½) times the employee's regular rate of pay, for all hours worked in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek and the first eight (8) hours worked on the seventh day of work in any one workweek.

70. Labor Code § 510 also states that any work in excess of twelve (12) hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee.

71. Wage Order 12-2001 § 3, which governs the profession of the Plaintiff herein, states that an employee must be paid overtime, equal to one and one-half (1 ½) times the employee's regular rate of pay, for all hours worked in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. "Hours worked" is defined as: "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered and permitted to work, whether or not required to do so." (Wage Order 12-2001 § 2(K)).

72. Plaintiff, Class Members, and Aggrieved Employees are entitled to bring a civil action to recover on claims involving failure to pay overtime pursuant to Labor Code § 1194.

73. Plaintiff, Class Members, and Aggrieved Employees worked more than forty (40) hours per

1 week and/or eight (8) hours per day, but were not paid overtime wages for such work.

2 74. Defendants have failed and refused to pay overtime compensation to Plaintiff, Class Members,
3 and Aggrieved Employees.

4 75. Pursuant to Labor Code § 1194, Plaintiff, Class Members, and Aggrieved Employees are
5 entitled to recover unpaid overtime compensation and interest thereon pursuant to Labor Code § 218.6,
6 plus attorneys' fees and costs pursuant to Labor Code § 218.5, in an amount to be established according
7 to proof at trial.

8 76. Plaintiff, on behalf of himself and the Class Members and Aggrieved Employees, also request
9 relief as described below.

10 **SECOND CAUSE OF ACTION**

11 **FAILURE TO PAY MINIMUM WAGES**

12 **LABOR CODE §§ 204, 1194, 1197, 1197.1, AND WAGE ORDER 12-2001**

13 **(Against all Defendants, on behalf of Plaintiff and the Class)**

14 77. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though fully set
15 forth herein.

16 78. As a pattern and practice, Defendants failed and refused to pay Plaintiff, Class Members, and
17 Aggrieved Employees minimum wages owed to them pursuant to Wage Order 12-2001 § 4 by, *inter*
18 *alia*, requiring or permitting Plaintiff, Class Members, and Aggrieved Employees to perform off-the-
19 clock work for which Plaintiff, Class Members, and Aggrieved Employees were not compensated.

20 79. As a result of Defendants violations of Labor Code §§ 1194 and 1197 and Wage Order 12-2001
21 for failure to pay minimum wage, Plaintiff, Class Members and Aggrieved Employees are entitled to
22 recover unpaid minimum wage compensation and interest thereon pursuant to Labor Code § 218.6,
23 plus attorneys' fees and costs pursuant to Labor Code § 218.5, in an amount to be established according
24 to proof at trial.

25 80. Plaintiff, on behalf of himself and the Class Members and Aggrieved Employees, also request
26 relief as described below.

27 ///

28 ///

THIRD CAUSE OF ACTION

LIQUIDATED DAMAGES FOR FAILURE TO PAY MINIMUM WAGES

LABOR CODE § 1194.2

(Against all Defendants, on behalf of Plaintiff and the Class)

81. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though fully set forth herein.

82. Pursuant to Labor Code § 1194.2, in any action under Section 1194 to recover wages as a result of payment less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

83. Plaintiff, Class Members, and Aggrieved Employees were not paid at least the minimum wage for all hours worked, as required by the Labor Code, Wage Order 12-2001 § 4.

84. Plaintiff, Class Members, and Aggrieved Employees are entitled to recover liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon, plus attorneys' fees and costs, in an amount to be established according to proof at trial.

85. Plaintiff, on behalf of himself and the Class Members and Aggrieved Employees, also request relief as described below.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE AND ITEMIZED WAGE STATEMENTS

LABOR CODE §§ 226 AND WAGE ORDER 12-2001

(Against all Defendants, on behalf of Plaintiff and the Class)

86. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though fully set forth herein.

87. Labor Code § 226 requires an employer to furnish its employees with an accurate itemized statement in writing showing, among other things, (1) gross wages earned, (2) total hours worked by each respective individual, (3) all deductions, (4) net wages earned and/or (5) all applicable hourly rates in effect during each respective pay period and the corresponding number of hours worked at each hourly rate by each respective individual.

88. As a pattern and practice, in violation of Labor Code § 226(a), Defendants did not furnish Plaintiff, Class Members, and Aggrieved Employees with accurate itemized statements in writing showing the total hours worked by each individual, the applicable rates of pay for each hour worked, or the total compensation owed to each individual.

89. As a pattern and practice, in violation of Labor Code § 226(a), Defendants did not maintain accurate records pertaining to the total hours worked for such Defendants by Plaintiff, Class Members, and Aggrieved Employees, including the total hours worked by each individual, the applicable rates of pay for each hour worked, and the total compensation owed to each individual.

90. Defendants have knowingly and intentionally failed and continue to fail to comply with Labor Code § 226(a).

91. Pursuant to Labor Code § 226(e), Plaintiff, Class Members, and Aggrieved Employees are entitled to penalties as follows:

- a. Fifty dollars (\$50.00) per employee for the initial pay period in which a violation occurs; and
- b. One hundred dollars (\$100.00) per employee for each violation in a subsequent pay period, not to exceed \$4,000 per employee.

92. Pursuant to Labor Code § 226(h), Plaintiff, Class Members, and Aggrieved Employees are entitled to an award of costs and reasonable attorneys' fees.

93. Plaintiff, on behalf of himself and the Class Members and Aggrieved Employees, also request relief as described below.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE MEAL BREAKS IN VIOLATION OF WAGE ORDER 12-2001, § 11 AND LABOR CODE §§ 226.7, 512

(Against all Defendants, on behalf of Plaintiff and the Class)

94. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

95. Pursuant to California Labor Code § 512, and Wage Order 12-2001, no employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30

minutes.

96. California Labor Code § 226.7 provides that an employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute or order of the Industrial Welfare Commission.

97. Wage Order 12-2001, § 11 and Labor Code § 226.7 both mandate that an employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

98. Defendants did not provide Plaintiff, Class Members, and Aggrieved Employees with required meal period on a number of workdays. Furthermore, Defendants failed and continue to fail to compensate Plaintiff, Class Members, and Aggrieved Employees one hour of pay for each workday that a meal period was not provided.

99. As a result of Defendants' conduct, Plaintiff, Class Members, and Aggrieved Employees have sustained economic damages, including but not limited to unpaid wages and lost interest, in an amount to be established at trial, and Plaintiff, Class Members, and Aggrieved Employees are entitled to recover economic and statutory damages and penalties and other appropriate relief from Defendants' violations of the California Labor Code and IWC Wage Order 12-2001.

SIXTH CAUSE OF ACTION

**FAILURE TO PROVIDE REST BREAKS IN VIOLATION OF WAGE ORDER 12-2001,
AND LABOR CODE §§ 226.7**

(Against all Defendants, on behalf of Plaintiff and the Class)

100. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

101. California Labor Code § 226.7 prohibits an employer from requiring an employee to work during any rest period mandated by an applicable Industrial Wage Order.

102. Pursuant to Wage Order 12-2001, every employer shall authorize and permit all employees to take rest periods at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.

103. If an employer fails to provide an employee with a rest period as required, the employer must pay the employee one hour of pay at the employee's regular rate of compensation for each workday

1 that a rest period is not provided as required.

2 104. Defendants failed and continue to fail to authorize or permit Plaintiff, Class Members, and
3 Aggrieved Employees to take a rest period on a number of workdays. Furthermore, Defendants failed
4 and continue to fail to compensate Plaintiff, Class Members, and Aggrieved Employees one hour of
5 pay for each workday that a rest period was not provided.

6 105. As a result of Defendants' conduct, Plaintiff, Class Members, and Aggrieved Employees have
7 sustained economic damages, including but not limited to unpaid wages and lost interest, in an amount
8 to be established at trial, and Plaintiff, Class Members, and Aggrieved Employees are entitled to
9 recovery economic and statutory damage and penalties and other appropriate relief from Defendants'
10 violations of the California Labor Code and IWC Wage Order 12-2001.

11 **SEVENTH CAUSE OF ACTION**

12 **FAILURE TO PAY WAGES PROMPTLY AFTER TERMINATION**

13 **LABOR CODE §§ 201, 202, AND 203**

14 **(Against all Defendants, on behalf of Plaintiff and the Class)**

15 106. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though fully set
16 forth herein.

17 107. Labor Code § 201 requires employers to pay all compensation due and owing to their employees
18 immediately upon discharge.

19 108. Labor Code § 202 requires employers to pay all compensation due and owing to an employee
20 who quits his or her employment no later than 72 hours after the time of quitting.

21 109. Labor Code § 203 provides that if an employer willfully fails to pay compensation promptly
22 upon discharge or resignation, as required by Sections 201 and 202, then the employer is liable for
23 "waiting time" penalties in the form of continued compensation at the employee's regular rate of pay
24 for each day that wages remain unpaid, up to thirty days.

25 110. Defendants failed and continue to fail to pay Plaintiff, Class Members, and Aggrieved
26 Employees who are no longer employees of Defendants all wages due immediately upon termination
27 as required by Labor Code § 201, or within 72 hours as required by Labor Code § 202. To date,
28 Defendants have still not paid Plaintiff, Class Members, and Aggrieved Employees who are no longer

employees of Defendants.

111. Defendants willfully failed and continue to fail to pay Plaintiff, Class Members, and Aggrieved Employees who are no longer employees of Defendants wages pursuant to the requirements of Labor Code §§ 201 and 202, and therefore Plaintiff, Class Members, and Aggrieved Employees who are no longer employees of Defendants are entitled to recover unpaid wages, waiting-time penalties under Labor Code § 203, plus attorneys' fees and costs, in an amount to be established according to proof at trial.

112. Plaintiff, on behalf of himself and the Class Members and Aggrieved Employees, also request relief as described below.

EIGHTH CAUSE OF ACTION

UNFAIR BUSINESS PRACTICES

BUS. & PROF. CODE §§ 17200, ET SEQ.

(Against all Defendants, on behalf of the Class and on behalf of Plaintiff individually and as members of the general public)

113. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though fully set forth herein.

114. Business and Professions Code § 17200 prohibits unfair competition in the form of any unlawful, unfair, or fraudulent business act or practice.

115. Business and Professions Code § 17204 allows "any person who has suffered injury in fact and has lost money or property" to prosecute a civil action for violation of the Unfair Competition Law.

116. Defendants have committed unlawful, unfair, and/or fraudulent business acts and practices as defined by Business and Professions Code §§ 17200, *et seq.*, by willfully misclassifying employees as independent contractors, failing to pay wages for all hours worked, including minimum and overtime wages, failing to provide compliant meal and rest breaks or pay meal and rest break premiums owed, and failing to pay wages due at the time of separation, and requiring such employees to entered into purported contracts containing terms expressly prohibited by law under the guise that such persons are independent contractors.

117. The above-described unlawful actions of Defendants constitute false, unfair, fraudulent, and/or

1 deceptive business practices, within the meaning of Business and Professions Code §§ 17200, *et seq.*
2 118. Plaintiff, Class Members, and Aggrieved Employees are entitled to equitable relief against such
3 unlawful practices in order to prevent future damage, for which there is no adequate remedy at law,
4 and to avoid a multiplicity of lawsuits. Plaintiff brings this cause of action individually, on behalf of
5 the Class Members and Aggrieved Employees, and as members of the general public as representatives
6 of all others subject to Defendants' unlawful acts and practices.

7 119. As a result of their unlawful acts, Defendants have reaped and continue to reap unfair benefits
8 at the expense of Plaintiff, the Class Members, Aggrieved Employees, and the general public.

9 120. Defendants should made to disgorge these ill-gotten gains and restore to Plaintiff, Class
10 Members, and Aggrieved Employees all wrongfully withheld wages and other amounts owed, pursuant
11 to Business and Professions Code §§ 17200, *et seq.* Defendants are unjustly enriched as a result of
12 their failure to comply with the provisions of the Labor Code and IWC Wage Order 12-2001 as alleged
13 herein.

14 121. Plaintiff, Class Members, and Aggrieved Employees are severely prejudiced by Defendants'
15 unfair trade practices.

16 122. As a direct and proximate result of the unfair business practices of Defendants, Plaintiff, Class
17 Members, and Aggrieved Employees are entitled to equitable relief, including full restitution,
18 disgorgement, and/or specific performance of payment of all wages and other amounts owed that have
19 been unlawfully withheld from Plaintiff, Class Members, and Aggrieved Employees as a result of the
20 business acts and practices described herein.

21 **NINTH CAUSE OF ACTION**

22 **PRIVATE ATTORNEYS GENERAL ACT**

23 **Labor Code §§ 2698, *et. seq.***

24 **(Against All Defendants, on behalf of Plaintiff and Aggrieved Employees)**

25 123. Plaintiff re-alleges each and every paragraph of this Complaint as though fully set forth herein.

26 124. Plaintiff is an "aggrieved employee" under PAGA, as he was employed by Defendants during
27 the applicable statutory period and suffered one or more of the Labor Code violations herein. As such,
28 he seeks to recover, on behalf of himself and all other aggrieved employees of Defendants, the civil

1 penalties provided by PAGA, plus reasonable attorney's fees and costs.

2 125. Plaintiff seeks to recover the PAGA civil penalties through a representative action permitted by
3 PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969.

4 126. Plaintiff seeks to pursue remedies pursuant to PAGA for the following violations:

5 a. Under California Labor Code §226.8(a) It is unlawful for any person or employer to
6 engage in any of the following activities: (1) Willful misclassification of an individual
7 as an independent contractor. Where willful misclassification is defined as "avoiding
8 employee status for an individual by voluntarily and knowingly misclassifying that
9 individual as an independent contractor." Cal. Labor Code §226.8(i)(4). Defendants had
10 knowledge of the underlying facts making Plaintiff and Class Members employees and
11 specifically imposed a level of control over how Class Members performed their work
12 so as to have knowledge that they were employees. Defendants are sophisticated
13 corporations employing numerous people doing business in California and were aware
14 of the employment requirement of properly classifying workers as employees were they
15 suffer and permit individuals to work in their primary business and exert control over
16 the manner and method by which that work is performed. Defendants chose to
17 misclassify employee Class Members as independent contractors voluntarily to avoid
18 paying required employee wages and avoid assuming employer liabilities.

19 b. Labor Code §226.8 imposes a civil penalty in addition to any other penalty provided by
20 law for willful misclassification of an individual as an independent contractor, for which
21 the person or employer shall be subject to a civil penalty of not less than ten thousand
22 dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each
23 violation where such represents a pattern and practice of such violations.

24 c. Labor Code § 226.3 imposes a civil penalty in addition to any other penalty provided
25 by law of two hundred fifty dollars (\$250) per aggrieved employee for the first violation,
26 and one thousand dollars (\$1,000) per aggrieved employee for each subsequent
27 violation of Labor Code § 226(a). Defendants failed to provide Aggrieved Employees
28 including Plaintiff with any paystubs, much less ones that included accurate information

regarding the nine identified requirements under Labor Code § 226(a).

- d. Pursuant to Labor Code § 203, for an employer who willfully fails to pay any wages of an employee who is discharged or quits, that employee's wages shall continue as a penalty from the due date at the same rate until paid, but shall not continue for more than thirty (30) days. Labor Code § 256 imposes a civil penalty in an amount not exceeding thirty days' pay as waiting time under the terms of Labor Code § 203. Defendant failed to pay minimum wages and meal and rest break premiums and so failed to pay Plaintiff and other Aggrieved Employees for all wages owed pursuant to Code related to their respective separation of employment.
- e. Under California Labor Code §§ 510 and 1194, Defendants are liable for failing to pay the Aggrieved Employees overtime. Defendants failed to pay Plaintiff and Aggrieved employees at 1.5 times their regular rate of pay for all hours worked over eight hours worked per day.
- f. Under California Labor Code §§ 226.7 and 512, Defendants are liable for failing to either provide rest periods and meal periods or pay the Aggrieved Employees one hour of pay for every missed rest period and meal period. Defendants required Plaintiff and other Aggrieved Employees to be on-duty during their purported rest and meal periods and their meal periods were scheduled long after such individuals had worked for over five hours.
- g. Under California Labor Code §§ 1194, 1197, and 1197.1, Defendants are liable for failing to pay Aggrieved Employees minimum wage for all hours worked. Defendant's paid Plaintiff and Aggrieved Employees a flat fee for performing work during and after production but such amount was woefully inadequate to meet even minimum wage for rates for the hours actually worked by Plaintiff and other Aggrieved Employees.
- h. Labor Code §§ 432.7 and 432.8 imposes a civil penalty of two hundred dollars (\$200) for Defendants' unlawful requirement that applicants for employment disclose information concerning an arrest or detention that did not result in a conviction or concerning a conviction that has been judicially dismissed. Under California Labor

Code § 232, Defendants are liable for unlawfully seeking information on prior convictions from Aggrieved Employees as applicants for employment. In paragraph 1(c) of the purported agreement between Defendants and Aggrieved Employees, Defendants unlawfully sought the disclosure of any former felonies or protective orders entered against Aggrieved Employees. Defendants included a broad provision in the document which required Aggrieved Employees confess to any and all convictions against them, including those judicially dismissed by the Court, in violation of Labor Code § 432.7. This includes any possible convictions related to marijuana, violating Labor Code § 432.8 as well.

- i. Labor Code § 1019.1 imposes a civil penalty that shall not exceed ten thousand dollars (\$10,000) per violation against Defendants for refusing to honor work authorization documents. Defendants unlawfully restricted the opportunity to work to legal United States residents, and in doing so, refused to honor documents of work authorization for non-citizens. In paragraph 1(b) of the purported agreement, Aggrieved Employees must confirm that they are a legal United States resident, violation Labor Code § 1019.1 by not allowing those authorized to work in the United States as non-citizens to be employed by Defendants.
- j. Labor Code § 3700 and 3708 imposes a civil penalty of up to double the amount of premium, as determined by the court, that would otherwise have been due to secure the payment of compensation at the time it was due, but not less than ten thousand dollars (\$10,000). Defendants unlawfully require Aggrieved Employees to assume any and all risks related to conduct which was typical for the type of production. In paragraphs 16 and 55(a) of the purported agreement, Defendants required Aggrieved Employees to waive Defendants' liability for any risks associated with intimate conduct usual for participants of the production, including pregnancy, sexually transmitted diseases, and any other communicable diseases. As such conduct is typical and expected for the type of production, Defendants were excluding the possibility of worker's compensation for Aggrieved Employees in violation of Labor Code § 3700 and 3708.

- 1 k. Under California Labor Code § 1024.5, Defendants are liable for using consumer credit
2 reports for employment purposes for a position not listed in the section as an exception.
3 Defendants unlawfully required Aggrieved Employees to authorize Defendants to
4 conduct background checks including a check of their consumer credit report, violating
5 Labor Code § 1024.5. None of the exceptions in the statute apply to Aggrieved
6 Employees and thus a consumer credit report is unlawful in this situation.
- 7 l. Under California Labor Code § 980, Defendants are liable for requiring and requesting
8 employees allow access to their personal social media and divulge personal social media
9 to Defendants for employment. In paragraph 57(c) of the purported agreement,
10 Defendants required Aggrieved Employees to limit their personal social media accounts
11 to content only about the production and change the privacy settings on their accounts
12 in violation of Labor Code § 980.
- 13 m. Violations of California Labor Code § 432.5 that requires no employer shall require any
14 employee or applicant for employment to agree, in writing, to any term or condition
15 which is known by such employer to be prohibited by law. Defendants knowingly
16 required Plaintiff, and Aggrieved Employees to sign a purported contract containing
17 several unlawful provisions. Class Members and Aggrieved Employees were required
18 at the time of application and employment to purportedly agree to provisions outlawed
19 under the Labor Code as set for above in sections h. through l. above. In addition to the
20 unlawful provisions detailed above, Defendants' purported agreement also required the
21 Class Members and Aggrieved Employees to purportedly agree to following unlawful
22 provisions:
- 23 i. In violation of Government Code § 12940, Defendants unlawfully required
24 medical examinations of applicants for employment and made inquiries about
25 applicants' possible mental or physical disabilities as to Plaintiff and other
26 Aggrieved Employees. In paragraphs 1(g), 9, 12, and 20 of the purported
27 agreement, Defendants require Aggrieved Employees to unlawfully submit to a
28 medical examination, psychological examination, and background check in

- violation of Government Code § 12940(e), where no job or production-related functions exist which would warrant the type of invasive medical exams which Defendants ask Aggrieved Employees to submit to;
- ii. In violation of Civil Code § 1671, Defendants unlawfully required an agreement to an unreasonable estimate of liquidated damages that did not realistically reflect damages incurred as retaliation for employees' breach of contract. In paragraph 8 of the purported agreement, Defendants included a liquidated damages clause which requires an excessive amount of damages be paid if the Cast left production or otherwise breached their contracts with Defendants. The estimate of damages did not account for how long Aggrieved Employees have participated in the production. The estimate did not realistically reflect damages incurred by Defendants if Aggrieved Employees were to leave the production, especially because this production was one in which participants regularly withdrew from competition. Defendants also attempted to penalize Aggrieved Employees through excessive liquidated damages by including a one million dollar (\$1,000,000) penalty for breaching the publicity agreement in paragraph 59 of the document, further violating Civil Code § 1671;
- iii. In violation of Government Code § 12964.5(a)(1)(a)(i), Defendants unlawfully required the Class Members and Aggrieved Employees to waive their rights and remedies under the Fair Employment and Housing Act ("FEHA"). In paragraph 55(a) of the purported agreement, Aggrieved Employees are required to assume the risk of activities in connection with the production, including contracting sexually transmitted infections, hepatitis, HIV, pregnancy, serious personal injury, and non-consensual physical contact. The same clause required Aggrieved Employees to consent to such conduct and agree that such risks are waived by their signing of the document. Defendants have lawfully compelled Aggrieved Employees to waive any rights which fall under FEHA, in direct violation of Government Code § 12964.5(a)(1)(a)(i); and

- iv. In violation of *Santa Barbara v. Superior Court* (Cal. 2007) 41 Cal.4th 747, 751, Defendants unlawfully required Class Members and Aggrieved Employees to release Defendants of liability for Defendants' future gross negligence. In multiple paragraphs throughout the purported agreement, including paragraphs 19 (which purports to relieve Defendants of liability for defamation of any Aggrieved Employee that may occur in the future), paragraph 55(a) (which purports to relieve Defendants of liability for multiple risks of participating in the production), and paragraph 64 (which purports to require Aggrieved Employees to not bring any legal action or claim against Defendants based upon released claims within the document), Defendants required Aggrieved Employees to agree to release their rights to pursue any and all legal claims that they may have against Defendants and releases Defendants from liability for all such claims, violating *Santa Barbara v. Superior Court* (Cal. 2007) 41 Cal.4th 747, 751.
- n. Under California Labor Code §§ 6400 and 6402, Defendants are liable for failing to provide a safe and healthful place of employment. Defendants failed to provide a safe and healthful working environment by inducing and encouraging Plaintiff and Aggrieved Employees to work in a highly hazard work environment on set with electrical, video, and construction equipment present while Defendants knew and encouraged Aggrieved Employees to be in and lowered and altered state of awareness brought on by increasing sleep deprivation, isolation, hunger, and ubiquitous alcohol as the primarily available beverage.
- o. Labor Code § 210 imposes civil penalties for failure to pay all wages earned twice each calendar month in violation of Labor Code § 204 of one hundred dollars (\$100) for each initial failure to pay each employee, and for each subsequent, or any willful or intentional, failure to pay each employee, two hundred dollars (\$200) plus 25 percent of the amount unlawfully withheld. Under California Labor Code § 204, Defendants are liable for failing to pay Aggrieved Employees wages earned during the course of

employment in a timely manner. California Labor Code § 204 states that “All wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” During the Relevant Period, Defendants failed to compensate Aggrieved Employees all wages earned twice during each calendar month.

- p. During the relevant period, Defendants failed to properly compensate Aggrieved Employees for hours worked in excess of eight in a day and forty in a week, as well as for missed meal and rest periods. California Labor Code § 558 imposes a civil penalty upon “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission as follows: “(1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee.”

127. During the Relevant Period, Defendants have failed to keep payroll records showing total hours worked and wages paid to employees. Under California Labor Code § 1174(d), employers must keep “payroll records showing the hours worked daily by and the wages paid to . . . employees [. . .].” To the extent that this failure to keep accurate payroll records was willful, they are liable for civil penalties under California Labor Code § 1174.5.

128. Labor Code § 2698 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per pay period, per aggrieved employee for the initial violation of Labor Code §§ 204, 226.7, 510, 512, 1174, and 1194 two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

129. Under Civil Code § 1671, Defendants are liable for requiring an unreasonable estimate of liquidated damages that do not realistically reflect damages incurred as retaliation for employees' breach of contract. Defendants included a liquidated damages clause which requires an excessive

1 amount of damages be paid if the Cast left production or otherwise breached their contracts with
2 Defendants.

3 130. Plaintiff has fully complied with the procedural requirements specified in California Labor
4 Code § 2699.3 as to each of the alleged violations. On April 22, 2022, Plaintiff provided notice to the
5 California Labor & Workforce Development Agency (“LWDA”) of Plaintiff’s claims based on the
6 alleged Labor Code violations committed by Defendants, including the facts and theories supporting
7 these claims. The LWDA provided no notice to Plaintiff within 65 calendar days of the postmark date
8 of that notice regarding its intentions to investigate or not investigate Plaintiff’s claims. A true and
9 correct copy of this notice is attached hereto as “Exhibit A.” Accordingly, Plaintiff may therefore
10 commence this action to seek civil penalties pursuant to Labor Code § 2698.

11 131. Enforcement of statutory provisions to protect workers and to ensure proper and prompt
12 payment of wages is a fundamental public interest. Plaintiff’s successful enforcement of important
13 rights affecting the public interest will confer a significant benefit upon the general public. Private
14 enforcement of these rights is necessary, as no public agency has pursued enforcement.

15 132. Plaintiff is incurring a financial burden in pursuing this action, and it would be against the
16 interest of justice to require the payment of attorneys’ fees and costs from any recovery obtained,
17 pursuant to, inter alia, California Labor Code § 2699.

18 133. Plaintiff, on behalf of himself and the Aggrieved Employees, also requests relief as described
19 below.

20 **PRAYER FOR RELIEF**

21 **WHEREFORE**, Plaintiff pray as follows:

22 1. For certification of Plaintiff’ claims as a class action, pursuant to Code of Civ. Proc. § 382, on
23 behalf of the proposed class, and certification of each of the classes specified herein;

24 2. For class notice to all Class Members and Aggrieved Employees who worked for Defendants
25 in the State of California from four years prior to the filing of this Complaint through the date of trial
26 in this action;

27 3. That the Court declare that Defendants’ policy and/or practice of failing to pay wages to
28 Plaintiff, Class Members, and Aggrieved Employees for all hours worked violates Labor Code §§ 204,

1 510, 558, 1194, and 1197;

2 4. That the Court declare that Defendants' policy and/or practice of failing to provide
3 uninterrupted meal periods violates Labor Code §§ 226.7, 512, and Wage Order 12-2001 by failing to
4 provide Plaintiff, Class Members, and Aggrieved Employees a meal period of at least one half hour in
5 which they were relieved of all duties for every five hours of work;

6 5. That the Court declare that Defendants' policy and/or practice of failing to provide
7 uninterrupted rest periods violates Labor Code § 226.7, 512, 558 and Wage Order 12-2001 by failing
8 to provide Plaintiff, Class Members, and Aggrieved Employees a rest period of at least ten minutes for
9 every four hours of work or major fraction thereof;

10 6. That the Court declare that, as to the Class Members that are former employees of Defendants,
11 Defendants have violated Labor Code §§ 201-203 by willfully failing to pay compensation due at the
12 time of termination of employment or within 72 hours thereafter;

13 7. That the Court declare that Defendants' policy and/or practice of failing to furnish accurate and
14 itemized wage statements violates Labor Code § 226;

15 8. That the court declare that Plaintiff and Class Members were willfully misclassified as
16 independent contractors in violation of Labor Code §226.8 and awarded the associated penalties for
17 each violation as to each Class Member.

18 9. That the Court declare that Defendants' above-mentioned policies and/or practices violate Bus.
19 & Prof. Code §§ 17200, *et seq.* as to Plaintiff, Class Members, and Aggrieved Employees;

20 10. For an order preliminarily and permanently enjoining Defendants from engaging in the
21 practices alleged herein;

22 11. For an award of all wages owed by Defendants to Plaintiff, Class Members, and Aggrieved
23 Employees, including regular wages, minimum wages, liquidated damages on unpaid minimum wages,
24 and overtime wages;

25 12. For an award to Plaintiff, Class Members, and Aggrieved Employees of one (1) hour of
26 additional pay at the regular rate of compensation for each required meal period that was not provided,
27 pursuant to Labor Code § 226.7 and Wage Order 12-2001;

28 13. For an award to Plaintiff, Class Members, and Aggrieved Employees of one (1) hour of

1 additional pay at the regular rate of compensation for each workday that rest periods were not provided,
2 pursuant to Labor Code § 226.7 and Wage Order 12-2001;

3 14. For an award of penalties to Plaintiff, Class Members, and Aggrieved Employees for
4 Defendants' failure to provide accurate itemized wage statements, pursuant to Labor Code § 226;

5 15. For an award of waiting time penalties due to Plaintiff, Class Members, and Aggrieved
6 Employees that are former employees of Defendants pursuant to Labor Code § 203;

7 16. For an order that Defendants make restitution to Plaintiff, Class Members, and Aggrieved
8 Employees for Defendants' unlawful business practices, as described herein, pursuant to Business and
9 Professions Code §§ 17200, *et seq.*;

10 17. For an award of interest pursuant to Labor Code §§ 218.6, 510, or 1194, and any other
11 applicable law;

12 18. Civil penalties pursuant to Labor Code §§ 2698, *et. seq.* for violations of Labor Code sections
13 201, 202, 203, 204, 210, 226, 226.3, 226.7, 226.8, 232, 432.5, 432.7, 432.8, 510, 512, 558, 1019.1,
14 1024.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 2698, 3700, 3708, 6400, 6402, *et seq.*, Government
15 Code sections 12940, Civil Code section 1671, and IWC Wage Order No. 12-2001;

16 19. For an award of attorneys' fees and costs pursuant to Code of Civ. Proc. § 1021.5, Labor Code
17 §§ 218.5, 226, 1194, Labor Code §§ 2698, *et. seq.* and any other applicable law; and

18 20. For such other and further relief as the Court deems just and proper.
19

20 Respectfully submitted,

21 Dated: June 29, 2022
22

PAYTON EMPLOYMENT LAW, PC

23
24 By: 

25 Laurel Holmes, Esq.
26 Chantal Payton, Esq.
27 *Attorney for Plaintiff Jeremy Hartwell and the*
28 *putative Class*

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury of this action.

Respectfully submitted,

Dated: June 29, 2022

PAYTON EMPLOYMENT LAW, PC

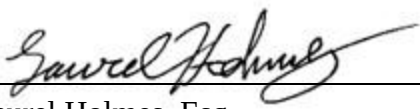
By: 
Laurel Holmes, Esq.
Chantal Payton, Esq.
*Attorney for Plaintiff Jeremy Hartwell and the
putative Class*

EXHIBIT A

Chantal McCoy Payton, Esq.
Laurel N. Holmes, Esq.
Robert Torres, Esq.
Marissa L. Simmons, Esq.*
Melody R. Rissell, Esq.*

**Of Counsel*

Sender

Chantal Payton, Esq.
CPayton@PaytonEmploymentLaw.com
(661) 434-1144 Extension 700



Los Angeles

11500 W. Olympic Boulevard, Suite 400
Los Angeles, California 90064
Telephone: (424) 334-3194
Facsimile: (424) 334-3194

Antelope Valley

3807 W. Sierra Highway, Suite 206
Acton, California 93510
Telephone: (661) 434-1144
Facsimile: (661) 434-1144

April 22, 2022

VIA CERTIFIED MAIL AND ONLINE SUBMISSION TO THE LWDA

Labor & Workforce Development Agency

By online Submission

Netflix US, LLC
c/o CT Corporation System
330 N. Brand Blvd. Ste 700
Glendale, CA 91203

Via Certified Mail

Netflix, Inc.
c/o C T Corporation System
330 N. Brand Blvd. Ste 700
Glendale, CA 91203

Via Certified Mail

Delirium TV, LLC
c/o eResidentAgent, Inc.
7801 Folsom Blvd. Ste. 202
Sacramento, CA 95826

Via Certified Mail

Kinetic Content
c/o eResidentAgent, Inc.
7801 Folsom Blvd. Ste. 202
Sacramento, CA 95826

Via Certified Mail

RE: Jeremy Hartwell v. Delirium TV, Kinetic Content, Netflix US, Netflix, Inc.

Dear PAGA Administrator:

This law firm represents Mr. Jeremy Hartwell (hereinafter "Claimant"), former employee of Delirium TV, LLC, Netflix, Inc., Netflix US, LLC, and Kinetic Content, LLC (hereinafter "Delirium," "Netflix," "Kinetic Content," or "Respondents") with headquarters and a California business location at 11755 Wilshire Boulevard, Suite 2000, Los Angeles, CA 90025.

In compliance with Labor Code § 2699.3, and your agency's right to investigate these violations, this letter shall serve as notice of Labor Code violations committed by Respondents, including Labor Code sections 204, 226.8, 232, 432, 510, 512, 980, 1019, 1024.5, 1194, 1197, 3700, 3708, 6400, and 6402, Government Codes §§ 1542, 12940, 12964, and Civil Code § 1671, as well as the provisions of the IWC Wage Orders which pertain to the payment of compensation for all hours worked, payment of daily, weekly, and overtime compensation, payment of minimum

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and double-time compensation, the provision of legally compliant meal and rest periods; and the itemized pay statement requirements.

Claimant Jeremy Hartwell was employed with Respondents from April 24, 2021 through at least May 1, 2021 and was subjected to the violations detailed herein. Claimant was a contestant for a reality TV show which Respondents cast and produce for television and online streaming. Their counterparts were the other applicants and contestants who similarly engaged with and performed for Respondents' production.

Delirium TV, LLC is a Delaware limited liability company doing business in California responsible for casting participants for productions which are distributed by companies including Netflix US, LLC.

Kinetic Content, LLC is a Delaware limited liability television production company doing business in California which creates and produces content, including a variety of non-scripted productions, docuseries, and competition shows, for the global market. Kinetic Content is a partner of Netflix US, LLC and many of its productions are distributed through Netflix's streaming website.

Netflix US, LLC is Delaware limited liability company doing business in California which operates a subscription streaming service and production company. Netflix partners with production-related companies, such as Kinetic Content and Delirium TV, to produce various forms of content to be distributed through Netflix's streaming service.

Netflix, Inc. is Delaware Corporation doing business in California which operates a subscription streaming service and production company. Netflix partners with production-related companies, such as Kinetic Content and Delirium TV, to produce various forms of content to be distributed through Netflix's streaming service.

Delirium TV, Kinetic Content, Netflix, Inc., and Netflix US, LLC are alleged to have engaged in the conduct hereafter described. The companies together are defined as "Respondents" hereafter.

Claimant seek to represent himself, any persons who applied for and/or participated in all non-scripted content produced in California by Kinetic Content and any persons who signed a similar agreement document with Delirium to work in California on any non-scripted productions ("Aggrieved Employees") to pursue appropriate penalties, statutory damages, damages, unpaid wages, prejudgment interest, costs, attorneys' fees, restitution, and all other just compensation and/or recoverable items of damages for Respondents' violations of the California Labor Code.

The below allegations are made as to Claimant and are also all alleged to have occurred against other Aggrieved Employees. The described conduct which occurred against "Aggrieved Employees" encompasses conduct which occurred against Claimant as well.

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I. NATURE OF THE ALLEGATIONS AND STATUTORY VIOLATIONS

The specific provisions of this code that Aggrieved Employees allege have been violated by Respondents, and the facts and theories to support the alleged violations are detailed as follows:

a. Willful Misclassification of Employment Status

As a matter of policy, pattern, and practice, Respondents willfully misclassified and upon information and belief continue to misclassify Aggrieved Employees as independent contractors in violation of Labor Code § 226.8, notwithstanding the fact that Respondents exercised substantial control over the manner, means, and timing of the work performed by Aggrieved Employees, and such work was performed using the instrumentalities and facilities of Respondents, and such work constituted the regular business of Respondents and was an integral part of Respondents' operation.

Respondents exercised and upon information and belief continue to exercise an egregious amount of control over Aggrieved Employees throughout production. Aggrieved Employees were not allowed to leave the premises of the hotel or studio unless directed to do so by Respondents. At times, Aggrieved Employees were left alone for hours at a time with no access to a phone or any other type of contact with the outside world. Aggrieved Employees were not allowed to contact family and friends before or during production. Aggrieved Employees were forced to give up their IDs, wallets, phones, and bank cards to Respondents.

Respondents further controlled Aggrieved Employees by restricting food and drink at all hours of the day. Respondents regularly refused food and water to Aggrieved Employees while on set and at their hotel. The hotel staff was instructed by Respondents to not provide food to Aggrieved Employees who asked for food. The only drinks that Respondents regularly provided to Aggrieved Employees was alcohol. The combination of sleep deprivation, lack of food, and an excess of alcohol contributed to a lack of self-awareness and altered mental state for the Aggrieved Employees. Respondents purposely withheld necessities such as food, sleep, and water from Aggrieved Employees in order to maintain a heightened degree of control and direct the conduct of Aggrieved Employees towards making irrational decisions for the benefit of the program.

In paragraph 3 of the purported agreement, Respondents required Aggrieved Employees to promise they will not apply or audition to appear on any other media production while still being considered for this production. This clause restricted Aggrieved Employees' ability to do work in an entire industry besides Respondents' production. Respondents did not allow Aggrieved Employees to operate a separate business or trade in the same industry beyond their work with Respondents.

The purported agreement document required Aggrieved Employees to produce work for Respondents for which they were not compensated. Paragraph 23(a) states that Aggrieved Employees must be available for a period of five (5) years from the initial broadcast of the last episode in which they appear for promotion and marketing "at no cost to the Producer and/or Network." Under this clause, Respondents required Aggrieved Employees to publish posts across their social media platforms about the production at the discretion of Respondents with no compensation for such work.

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Respondents required Aggrieved Employees to agree to their private lives being filmed at all hours of the day. In paragraph 23(b), Respondents required Aggrieved Employees to allow recordings of all aspects of their lives, including doctor's visits, private areas of the home, and private conversations. Respondents asserted their purported right to view Aggrieved Employees' actions on a "24-hours-a-day, 7-days-a-week" basis.

Respondents required all participants and Aggrieved Employees to sign a document which stated that all decisions on matters relating to the production would be within Respondents' sole control. In paragraph 11, the document stated that all decisions of Respondents would be final and binding on Aggrieved Employees. Respondents knowingly required Aggrieved Employees to sign the document in an attempt to avoid their liability as employers through willfully attempting to misclassify the workers as independent contractors. Respondents knowingly required Aggrieved Employees sign a purported agreement replete with unlawful provisions and which unlawfully misclassified them as independent contractors.

b. Requiring Employee to Agree to Terms Prohibited By Law

Respondents unlawfully required Aggrieved Employees to agree, in writing, to terms and conditions which are prohibited by law in violation of Labor Code § 432.5. Before production, Respondents required Aggrieved Employees to sign a release and agreement document with little time to read and understand it. The document contained several terms and conditions which are unlawful.

The unlawful provisions are as follows:

- **Unlawfully Seeking Information on Prior Convictions** (Labor Code §§ 432.7 and 432.8)
- **Unlawfully Seeking Information Through Consumer Credit Reports** (Labor Code § 1024.5)
- **Refusal to Honor Documents of Work Authorization** (Labor Code § 1019.1)
- **Requirement of Medical or Physical Exams by Applicants** (Government Code § 12940(e))
- **Unlawful Waiver of Worker's Compensation** (Labor Code §§ 3700 and 3708)
- **Excessive Liquidated Damages as a Penalty** (Civil Code § 1671)
- **Requirement of Access to Social Media Accounts** (Labor Code § 980)
- **Unlawful Waiver of Rights Under FEHA** (Government Code § 12964.5(a)(1)(a)(i))
- **Unlawful Release of Liability for Respondents' Future Gross Negligence** (*Santa Barbara v. Superior Court* (Cal. 2007) 41 Cal.4th 747, 751)

In paragraph 1(c), Respondents unlawfully sought the disclosure of any former felonies or protective orders entered against Aggrieved Employees. Respondents included a broad provision in the document which required Aggrieved Employees confess to any and all convictions against them, including those judicially dismissed by the Court, in violation of Labor Code § 432.7. This includes any possible convictions related to marijuana, violating Labor Code § 432.8 as well.

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Respondents unlawfully required Aggrieved Employees to authorize Respondents to conduct background checks including a check of their credit. Respondents may not use a consumer credit report for employment purposes unless the position is one of the exceptions listed under Labor Code § 1024.5. None of the exceptions apply to Aggrieved Employees.

Respondents unlawfully restricted the opportunity to work to legal United States residents, and in doing so, refused to honor documents of work authorization for non-citizens. In paragraph 1(b), Aggrieved Employees must confirm that they are a legal United States resident, violating Labor Code § 1019.1 by not allowing those authorized to work in the United States as non-citizens.

In paragraphs 1(g), 9, 12, and 20 of the purported agreement, Respondents required and upon information and belief continue to require Aggrieved Employees to unlawfully submit to a medical examination, psychological examination, and background check. Respondents required medical examinations by applicants for employment and further made inquiries about applicants' possible mental or physical disabilities is a violation of Government Code § 12940(e). No job or production-related functions exist which would warrant the type of invasive medical exams which Respondents ask Aggrieved Employees to submit to.

Respondents required Aggrieved Employees to assume any and all risks related to conduct which was typical for the type of production in paragraph 16 and 55(a). Respondents required Aggrieved Employees to waive Respondents' liability for any risks associated with intimate conduct usual for participants of the production, including pregnancy, sexually transmitted diseases, and any other communicable diseases. As such conduct is typical and expected for the type of production, Respondents were excluding the possibility of worker's compensation for Aggrieved Employees who are injured while doing so in violation of Labor Code §§ 3700 and 3708.

Respondents included an unlawful penalty clause within the document that stated an unreasonable estimate of liquidated damages for Aggrieved Employees' breach of contract. Paragraph 8 of the document states that if Aggrieved Employees chose to leave the production, Aggrieved Employees agreed to pay an excessive amount of damages to Respondents. Respondents were using an excessive and unreasonable estimate of damages as a penalty for breach of the agreement in violation of Civil Code § 1671 which prohibits such unreasonable provisions. The estimate of damages did not account for how long Aggrieved Employees have participated in the production. The damages did not realistically reflect damages incurred by Respondents if Aggrieved Employees were to leave production, especially because this production was one in which participants regularly withdrew from competition. Respondents attempted to further penalize Aggrieved Employees through excessive liquidated damages by including a \$1 million penalty for breaching the publicity agreement in paragraph 59.

In paragraph 57(c), Respondents unlawfully required access to Aggrieved Employees' social media accounts or instructed Aggrieved Employees how their social media accounts must

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be run. As part of signing the contract, Respondents required Aggrieved Employees to limit their social media accounts to content only about the production and change the privacy settings on their accounts in violation of Labor Code § 980.

Respondents unlawfully required, as a condition of employment, that Aggrieved Employees sign a release of a claim under the Fair Employment and Housing Act and Government Code § 12964.5(a)(1)(a)(i). In paragraph 55(a), Aggrieved Employees are purportedly required to assume the risk of activities in connection with the production, including contracting sexually transmitted infections, hepatitis, HIV, pregnancy, serious personal injury, and non-consensual physical contact. The same clause required that Aggrieved Employees consent to such conduct and agree that such risks are waived by the written, purported participant agreement document. Respondents may not lawfully compel Aggrieved Employees to waive any rights which fall under FEHA.

In multiple paragraphs throughout the Document, including paragraphs 19 (which purports to relieve Respondents of liability for defamation of any Aggrieved Employee that may occur in the future), paragraph 55(a) (which purports to relieve Respondents of liability for multiple risks of participating in the production), and paragraph 64 (which purports to require Aggrieved Employees to not bring any legal action or claim against Respondents based upon released claims within the document), Respondents required Aggrieved Employees to agree to release their rights to pursue any and all legal claims that they may have against Respondents and releases Respondents from liability for all such claims, including future claims that have yet to accrue. Public policy prohibits release of liability for future gross negligence. (See *Santa Barbara v. Superior Court* (Cal. 2007) 41 Cal.4th 747, 751 ("[An] agreement, to the extent it purports to release liability for future gross negligence, violates public policy and is unenforceable."))

c. Failure to Pay Wages for All Hours Worked

Respondents failed and continue to fail to compensate Claimant and the Aggrieved Employees for all hours worked, including minimum wage and overtime hours, as a result of maintaining a practice of providing Aggrieved Employees with weekly "Stipends" as the only wages paid which, when calculated out, is far below the minimum wage owed to Aggrieved Employees for all hours worked. Respondents therefore paid Claimant and the Aggrieved Employees for less than less than minimum wage based on the true number of hours worked. Respondents refused and continue to refuse to compensate Claimant and the Aggrieved Employees for all work performed.

Respondents also failed and continue to fail to pay Claimant and the Aggrieved Employees for all compensable hours spent traveling to, from, and between the Aggrieved Employees' hotel and the production location through employer-provided transportation. Unpaid time also includes time spent working during the purported meal breaks that Respondents regularly did not allow Aggrieved Employees to take.

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d. Failure to Pay Minimum Wages

Respondents failed and continue to fail to compensate Claimant and the Aggrieved Employees at the legally required minimum wage rate (or at least one-and-one-half or two times the legal minimum wage rate where applicable for overtime or double-time hours worked) during all possible pay periods in violation of Labor Code §§ 1194 and 1197.

Further, paragraph 24 of the purported participant agreement contains a clause which allows Respondents to withdraw any consideration, claw-back the wages paid, of Aggrieved Employees' work if Aggrieved Employees are removed from the show at the discretion of the Respondents. If the Producers decide to remove Aggrieved Employees from the production, Aggrieved Employees could be required to not only forfeit any consideration they have received, but also reimburse Respondents for expenses previously paid.

e. Failure to Pay Overtime Wages

Claimant and the Aggrieved Employees regularly worked or continue to work in excess of eight (8) or twelve (12) hours per day and/or forty (40) hours per workweek and/or on the seventh consecutive day in a given workweek, but Respondents, as a matter of policy or practice, failed and continue to fail to pay applicable overtime or double-time compensation for all premium hours actually worked as required by Labor Code §§ 204, 510, 1194, 1194.2 and Industrial Welfare Commission Wage Order ("Wage Order") 12-2001, § 3. Respondents regularly required Claimant and the Aggrieved Employees to work up to twenty (20) hours per day and over 40 hours per workweek.

f. Failure to Provide Meal Breaks

Respondents failed and continue to fail to maintain a policy or practice that provides Claimant and the Aggrieved Employees with off-duty meal periods as required by California law. Aggrieved Employees regularly work in excess of five (5) hours and at times in excess of up to twenty (20) hours per day without being provided at least half-hour meal periods in which they were relieved of all duties, as required by Labor Code §§ 226.7, 512, and Wage Order 12-2001, § 11.

Respondents maintained a policy and practice of requiring Claimant and the Aggrieved Employees to work on-duty meal periods, including by requiring Claimant and the Aggrieved Employees to perform their regular duties, to perform and participate in the production for many continuous hours, to remain available at all times to Respondents for interviews or other productions, and/or to remain on the premises during rest periods. Respondents also failed and continue to fail to provide two meal periods where required by law, including on occasions where Claimant and the Aggrieved Employees worked in excess of 10 hours.

Respondents engaged in the practice of allowing crew members from the production to take their meal breaks before Aggrieved Employees. Claimant and Aggrieved Employees were forced to wait until after the crew had eaten before Respondents gave them permission to take a meal period, resulting in Aggrieved Employees taking meal periods after already working in excess of 5 hours. Aggrieved Employees' meal periods were interrupted by work because Aggrieved Employees were required to be available and "on-call" to Respondents at all times as Respondents needed them for filming and were made to work during their meal periods.

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Respondents failed and continue to fail to pay Claimant and the Aggrieved Employees the premium compensation mandated by Labor Code § 226.7(b) for these non-compliant and/or missed rest periods.

g. Failure to Provide Rest Breaks

Respondents failed and continue to fail to maintain a policy or practice that provides Claimant and the Aggrieved Employees with off-duty rest periods as required by California law. Aggrieved Employees regularly work in excess of four hours or a major fraction thereof during workdays without being provided at least a ten-minute rest period in which they were relieved of all duties, as required by Labor Code §§ 226.7, 512 and Wage Order 12-2001, § 12.

Respondents maintained a policy and practice of requiring Claimant and the Aggrieved Employees to work on-duty rest periods, including by requiring Claimant and the Aggrieved Employees to perform their regular duties to perform and participate in the production for many continuous hours, to remain available at all times to Respondents for interviews or other productions, and/or to remain on the premises during rest periods. Respondents also failed and continue to fail to provide a third or fourth rest period where required by law, including on occasions where Claimant and the Aggrieved Employees worked in excess of 10 hours and up to 20 hours per shift.

Respondents failed and continue to fail to pay Claimant and the Aggrieved Employees the premium compensation mandated by Labor Code § 226.7(b) for these non-compliant and/or missed rest periods.

h. Failure to Provide Accurate Itemized Wage Statements

Respondents failed and continue to fail to issue any wage statements to Claimant and Aggrieved Employees whatsoever in violation of Labor Code § 226. Respondents misclassified Claimant and Aggrieved Employees as independent contractors to avoid paying wages due for all hours worked and issuing wage statements as required for employees.

Labor Code § 226 requires an employer to furnish its employees with an accurate itemized statement in writing showing, among other things, (1) gross wages earned, (2) total hours worked by each respective individual, (3) all deductions, (4) net wages earned and/or (5) all applicable hourly rates in effect during each respective pay period and the corresponding number of hours worked at each hourly rate by each respective individual. As a pattern and practice, in violation of Labor Code § 226(a), Respondents failed and continue to fail to furnish Claimant and Aggrieved Employees with accurate itemized statements in writing showing all information required by Section 226.

Respondents have knowingly and intentionally failed and continue to fail to comply with Labor Code § 226(a).

i. Unlawful Restriction on Disclosing Wages

Respondents required and upon information and belief continue to require, as a condition of employment, that Aggrieved Employees refrained from disclosing the amount of wages provided during production. Aggrieved Employees were compensated a flat amount of \$1,000.00

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per week, and up to \$8,000.00 total if Aggrieved Employees stayed for the entire length of production. In paragraph 50 of the purported agreement, Respondents violate Labor Code § 232(a) by compelling Aggrieved Employees to promise not to advertise or otherwise disclose details concerning their compensation or any other consideration. Respondents required Aggrieved Employees to sign a document that purported to waive their right to disclose the amount of wages received, further in violation of Labor Code § 232(b).

j. Unlawfully Seeking Information on Prior Convictions

Respondents unlawfully asked and upon information and belief continue to ask Aggrieved Employees to disclose information and/or unlawfully sought and upon information and belief continue to seek information or records concerning felony convictions prohibited by Labor Code §§ 432.7 and 432.8. In paragraph 1(c), Respondents compelled Aggrieved Employees to assert they have not been convicted of any felony or had a protective order entered against them, and thereby sought and upon information and belief continue to seek to disclose information on such past convictions, including convictions protected from inquiry by employers under Labor Code §§ 432.7 and 432.8. Accordingly, Respondents have violated and upon information and belief continue to violate Labor Code §§ 432.7 and 432.8.

k. Requirement for Medical or Psychological Exams by Applicants

In paragraphs 1(g), 9, 12, and 20 of the purported agreement, Respondents required and upon information and belief continue to require Aggrieved Employees to unlawfully submit to a medical examination, psychological examination, and background check. By requiring medical examinations of applicants for employment and further making inquiries about applicants' possible mental or physical disabilities, Respondents have violated and upon information and belief continue to violate Government Code § 12940(e). No job or production-related functions exist which would warrant the type of invasive medical exams which Respondents required Aggrieved Employees to submit to.

l. Failure to Provide a Safe Work Environment

Respondents failed to provide a safe and healthful place of employment for Aggrieved Employees in violation of Labor Code §§ 6400 and 6402. Respondents allowed and encouraged Aggrieved Employees to work in a high hazard work environment while in a lowered state of awareness induced by sleep deprivation, hunger, and extensive consumption of alcohol that made Aggrieved Employees more prone to injury. Production sets contain various hazards such as large equipment and Aggrieved Employees worked in various states of fatigue, hunger, and drunkenness while working excessive hours, leading to an unsafe and unhealthful environment.

II. CONCLUSION

Respondents' violations were extensive, voluminous, and not subject to simple itemization and as such are summarized above. As in the ordinary course, it is understood that additional legal implications of the above violations under the California Labor Code and/or applicable Wage

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Orders are evident from or derivative from the facts referenced in this letter or the circumstances of Claimant's employment. It is the intention of Claimant to pursue penalties and other available relief in connection with all such claims regardless of whether specifically itemized here.

As a result of the foregoing violations, Respondents are liable for civil and statutory penalties including pursuant to California Labor Code 204, 226, 232, 432, 510, 512, 980, 1019, 1024, 1194, 1197, 3700, 3708, 6400, and 6402, Government Codes §§ 1542, 12940, 12964, and Civil Code § 1671, as pending a full investigation, any later discovered violations may also be subject to our enforcement.

In view of the duties imposed on your agency and this office by the statutes cited above, please be advised we will advance our calendars sixty-five (65) days of the date of this letter.

Sincerely,

A handwritten signature in dark ink, appearing to read "C. Payton", written in a cursive style.

Payton Employment Law, PC
Chantal Payton, Esq.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 3807 W. Sierra Highway, Suite 206, Acton, CA 93510.

On the date set forth below, I served the document(s) described as:

JEREMY HARTWELL V. DELIRIUM TV, KINETIC CONTENT, NETFLIX US, NETFLIX, INC. – PAGA CLAIM NOTICE

on the person(s) listed below:

Netflix US, LLC
c/o CT Corporation System
330 N. Brand Blvd. Ste 700
Glendale, CA 91203

Agent for Service of Process for Netflix US, LLC

Netflix, Inc.
c/o C T Corporation System
330 N. Brand Blvd. Ste 700
Glendale, CA 91203

Agent for Service of Process for Netflix, Inc.

Delirium TV, LLC
c/o eResidentAgent, Inc.
7801 Folsom Blvd. Ste. 202
Sacramento, CA 95826

Agent for Service of Process for Delirium TV, LLC

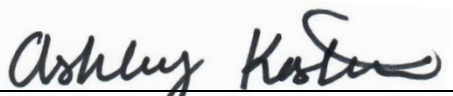
Kinetic Content, LLC
c/o eResidentAgent, Inc.
7801 Folsom Blvd. Ste. 202
Sacramento, CA 95826

Agent for Service of Process for Kinetic Content, LLC

X (BY CERTIFIED MAIL) I placed the above-described documents in an envelope, sealed the envelope and deposited it with the United States Postal Service to be sent by certified mail with return receipt requested on the date set forth below with the postage thereon fully prepaid.

X (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Dated: April 22, 2022


Ashley Kasten