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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

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

13 Plaintiff,

14 v.

15 CRANETOWN MEDIA, LLC, a New
16 Jersey Limited liability Company;
17 ANDREW GELMAN, an individual;
18 LAURA SOROKOFF, an individual;
19 PAMELA A. MILLER, an individual;
20 CATHERINE SEEM, an individual;
21 DOE 1 through and including DOE 10,

22 Defendants.

Case No: 21STCV43940

FIRST AMENDED COMPLAINT

[PAGA Representative Action; Class and
Collective Action]

1. Cal. Lab. Code (the "Code") §§ 201.3, 201.5 and 203, Continuing Wages
2. Code § 226(a)(1)(5)(6)(9), Pay Stubs
3. Code §§ 510, 515, 1194, and 1198, Overtime
4. Code §§ 510, 1194, 1197 and 1197.1, Minimum Wages
5. Code § 226.7 and 512(a), Meal Breaks
6. Code § 226.7, Rest Breaks
7. Cal. Bus. & Prof. Code § 17200, Unfair Comp.
8. Fair Labor Standards Act, 29 U.S.C. §201 *et seq.*
9. Code § 2698 *et seq.*, PAGA
10. Code §226(b) Employment Records
11. Code §1198.5 Employment Records

1 Plaintiff Paul Schwanke, by and through his undersigned attorneys, alleges a
2 motion picture industry representative, class and collective action seeking unpaid wages,
3 damages, statutory penalties, attorneys' fees, costs and such other relief as may be
4 appropriate in the circumstances, as follows:

5 **JURISDICTION AND VENUE**

6 1. This is a class action under Section 382 of the California Code of Civil
7 Procedure, as well as a collective action under 29 U.S.C. §201 *et seq.* (the "FLSA") and
8 representative action under the California Labor Code Private Attorneys General Act
9 ("PAGA"), seeking relief under state law on account of unpaid wages, unpaid overtime,
10 damages, continuing wages, liquidated damages, penalties, civil penalties, restitution and
11 attorneys' fees and costs. This case seeks liquidated damages under the FLSA (Biggs v.
12 Wilson, 1 F.3d 1537, 1541 (9th Cir. 1993) as well as PAGA civil penalties on account of
13 the persistent violations of the standards articulated in Augustus and Naranjo.

14 2. Venue as to Defendants is proper in this judicial district, pursuant to
15 California Business & Professions Code section 17203 and California Code of Civil
16 Procedure sections 395(a) and 395.5. Defendants maintain an office, transact business,
17 have an agent, or are found in the County of Los Angeles and are within the jurisdiction
18 of this Court for purposes of service of process. The violations of the FLSA alleged
19 herein had a direct effect on and were committed within the State of California, and
20 impacting Plaintiff and other similarly situated employees.

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

1 proceeding of a civil nature”). . . . The rule also applies to statutes of limitations on filing
2 of causes of action in court found in codes other than the Code of Civil Procedure.”

3 INTRODUCTION

4 4. Plaintiff Paul Schwanke (“Schwanke”) is an individual, who, during the time
5 periods relevant to this Complaint, was and is a resident of the County of Los Angeles,
6 State of California.

7 5. Defendant Cranetown Media, LLC (“CMLLC”) is a New Jersey Limited
8 Liability Company, which at all times relevant herein, conducted business within the
9 County of Los Angeles of the State of California. On prior occasions, CMLLC has been
10 accused of violating the California Labor Code (the “Code”) in lawsuits brought against
11 it.

12 6. Defendant Andrew Gelman (“Gelman”) is an individual, who at all times
13 relevant herein, conducted business within the County of Los Angeles of the State of
14 California. He is responsible for all actions of Defendant CMLLC, as he is its President.
15 Defendant Laura Sorokoff (“Sorokoff”) is an individual, who at all times relevant herein,
16 conducted business within the County of Los Angeles of the State of California. She is
17 responsible for all actions of Defendant CMLLC, as she is its General Manager. Pamela
18 Miller (“Miller”) is an individual, who at all times relevant herein, conducted business
19 within the County of Los Angeles of the State of California. She is responsible for the
20 matters alleged herein, as she is the Accounting Manager for Defendant CMLLC.
21 Catherine Seem (“Seem”) is an individual, who at all times relevant herein, conducted
22 business within the County of Los Angeles of the State of California. She is responsible
23 for the matters alleged herein as she is the V. P. of Labor Relations for Defendant
24 CMLLC. Gelman, Sorokoff, Miller and Seem are herein referred to as the Individual
25 Defendants. The Individual Defendants and CMLLC are collectively referred to herein
26 as the “Defendants.” Defendants are “temporary services employers” as defined by Code
27 § 201.3 and required to pay workers no less frequently than weekly.

28 7. Defendants Doe One through and including Doe Ten are sued herein under

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

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

19 **GENERAL ALLEGATIONS**

20 9. Defendants employed Plaintiff and others as crew members for a motion
21 picture entitled “Reno 911: The Hunt For Qanon” (the “Production”). The Aggrieved
22 Employees herein include Plaintiff, crew members on the Production, and other crew
23 members who have been issued wage statements for services performed for CMLLC in
24 California (collectively, the “Aggrieved Employees”).

25 10. Plaintiff Schwanke was hired to work from in or about the week of July 11
26 to 17, 2021 through the week of August 22 to 28, 2021, toiling as a crew member on the
27 Production. Once the crew employment ended, Defendants were required to pay them by
28 Thursday of the next Sunday to Saturday payroll week, in the case of Plaintiff, no later

1 than by Thursday, September 2, 2021. Plaintiff's base final paycheck for the week
2 ending August 28, 2021 was not prepared until on or after September 8, 2021, tardy by at
3 least a week. Thereafter, another check representing his "final" gross wages for \$181.78
4 was prepared and sent to him on or about November 2, 2021, late by over thirty days.
5 Other crew were similarly paid in tardy fashion. Finally, on information and belief,
6 additional retroactive payments remain to be paid to Plaintiff and other members of the
7 crew.

8 11. Although Plaintiff and other crew should have been paid in full for their
9 accrued minimum wages and overtime, issued legally compliant wage statements, and
10 paid no later than as required by Code §§ 201.3 and 201.5, Plaintiff was not paid
11 properly.

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

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

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

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

27 (1) The following overtime provisions are applicable to employees 18 years
28 of age or over and to employees 16 or 17 years of age who are not required
by law to attend school and are not otherwise prohibited by law from

engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1.5) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime as follows:

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

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

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

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

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

...

7. Records.

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

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

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

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

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

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

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

9 (B) Every employer shall semimonthly or at the time of each payment of
10 wages furnish each employee, either as a detachable part of the check, draft,
11 or voucher paying the employee's wages, or separately, an itemized
12 statement in writing showing: (1) all deductions; (2) the inclusive dates of
13 the period for which the employee is paid; (3) the name of the employee or
14 the employee's social security number; and (4) the name of the employer,
15 provided all deductions made on written orders of the employee may be
16 aggregated and shown as one item.

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

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

24 14. At all relevant times mentioned herein, section 201.5 of the Code provided
25 in part:

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

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

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

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

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

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

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

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

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

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

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

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

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

24 If an employer willfully fails to pay, without abatement or reduction, in
25 accordance with Sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and
26 205.5, any wages of an employee who is discharged or who quits, the wages
of the employee shall continue as a penalty from the due date thereof at the
27 same rate until paid or until an action therefor is commenced; but the wages
shall not continue for more than 30 days.

28 Code § 203.

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

4 17. At all times relevant herein, section 204 of the Code provided in part that all
5 wages be paid as least twice in each calendar month. Code § 204. Section 201.3 of the
6 Code demands weekly payment of wages.

7 18. In no event should Plaintiff or the Aggrieved Employees have been paid
8 later than the time periods established by sections 201.3, 201.5 or 204 of the Code, but
9 certain payments to Plaintiff, the Code Class, and the Aggrieved Employees were made
10 after they were due, or not at all, leading to penalties and civil penalties under sections
11 203 and 210 of the Code and otherwise.

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

13 In addition to, and entirely independent and apart from, any other penalty
14 provided in this article, every person who fails to pay the wages of each
15 employee as provided in Sections 204, 204b, 204.1, 204.2, 205, 205.5, and
16 1197.5, shall be subject to a civil penalty as follows: (a) For any initial
17 violation, one hundred dollars (\$100) for each failure to pay each employee;
18 (b) For each subsequent violation, or any willful or intentional violation, two
19 hundred dollars (\$200) for each failure to pay each employee, plus 25
20 percent of the amount unlawfully withheld.

21 Code § 210. The CMLLC policy has been to devote insufficient capital, manpower and
22 other required resources to its business, including providing sufficient funding of the
23 payroll accounting function, with the inevitable result that employees are routinely paid
24 in tardy fashion, in violation of sections 201.3, 201.5, 203 and/or 204 of the Code. In
25 addition, CMLLC routinely enters contracts for the production of motion pictures which
26 contracts provide that the client need not pay the full amount owing to CMLLC until it
27 receives final delivery of a finished product. CMLLC maintains internal budgets for each
28 individual motion pictures it produces. The internal CMLLC accounting practice has the
inevitable, routine result of CMLLC putting a hold on the funding of final wage
payments until it has received sufficient funds to make the payments, all within its
internally imposed, discretionary accounting practices.

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

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

14 Code § 510.

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

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

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

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

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

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

7 Code § 1194.

8 24. Plaintiff, the proposed Code Class and Aggrieved Employees were not
9 timely paid the minimum wages and/or overtime to which they were entitled.

10 Accordingly, they are entitled to liquidated damages under section 1194.2.

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

12 (a) Any employer or other person acting on behalf of an employer, who
13 violates, or causes to be violated, any provision regulating minimum wages
14 or hours and days of work in any order of the Industrial Welfare
15 Commission, or violates, or causes to be violated, Sections 203, 226, 226.7,
16 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

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

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

24 Code § 558.1. The Individual Defendants are joint employers with CMLLC, or other
25 persons acting on behalf of an employer, who violated, or caused to be violated the
26 relevant sections of the Code referenced herein, particularly insofar as CMLLC is not
27 even authorized to do business within the State of California.

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

Any 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
shall be subject to a civil penalty 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.

Code § 558. Defendants are the employers or other persons acting on behalf of an

1 employer who violated, or caused to be violated the relevant sections of the Code
2 referenced herein.

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

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

17 Code § 226. Defendants did not provide Plaintiff or other Aggrieved Employees wage
18 statements with all required information, including but not limited the legal name and
19 address of the employer, describing Cranetown Media, LLC as the "Client". In addition,
20 Defendants failed to provide the total hours worked with respect to meal periods and rest
21 breaks or with respect to meal periods and rest breaks all applicable hourly rates in effect
22 during the pay period and the corresponding number of hours worked at each hourly rate
23 by the employee. See Naranjo.

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

25 (a) As used in this section:

26 (1) (A) "Client employer" means a business entity, regardless of its form,
27 that obtains or is provided workers to perform labor within its usual course
28 of business from a labor contractor.

28 . . .

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

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

5 ...

6 (4) “Wages” has the same meaning provided by Section 200 and all sums
7 payable to an employee or the state based upon any failure to pay wages, as
8 provided by law.

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

13 (6) “Usual course of business” means the regular and customary work of a
14 business, performed within or upon the premises or worksite of the client
15 employer.

16 (b) A client employer shall share with a labor contractor all civil legal
17 responsibility and civil liability for all workers supplied by that labor
18 contractor for both of the following:

19 (1) The payment of wages.

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

22 (c) A client employer shall not shift to the labor contractor any legal duties
23 or liabilities under Division 5 (commencing with Section 6300) with respect
24 to workers supplied by the labor contractor.

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

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

(f) The provisions of subdivisions (b) and (c) are in addition to, and shall be
supplemental of, any other theories of liability or requirement established by
statute or common law.

Code § 2810.3.

CLASS-ACTION ALLEGATIONS

29. Plaintiff brings this action on their behalf and all others similarly situated as
a class action pursuant to section 382 of the Code of Civil Procedure. Plaintiff seeks to
represent a “Code Class” composed of and defined as follows:

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

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

to hereafter as Code Class Members, and such period is referred to hereafter as the Class Period).

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

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

Plaintiff seeks to represent a “17200 Class” composed of and defined as follows:

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

Numerosity

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

31. Despite the size of the proposed Classes, the Class Members are readily ascertainable through an examination of the records that Defendants are required by law to keep. Likewise, the dollar amount owed to each Class Member is readily ascertainable by an examination of those same records.

Commonality

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

- a. Whether Defendants failed to pay all wages in a timely fashion in violation of sections 201.3 201.5, 203 and/or 204 of the Code.
- b. Whether Defendants’ failure to provide accurate itemized wage statements to each and every employee violates section 226(a).

- 1 c. Whether Defendants untimely and/or nonpayment of wages give rise to
2 liquidated damages for failure to pay minimum wages under Code section
3 1194.2.
- 4 d. Whether Defendants' failure to provide meal breaks or penalty wages on
5 account of same to each and every employee violates Code sections 203,
6 226, 226.7 and 512.
- 7 e. Whether Defendants' failure to provide rest breaks or penalty wages on
8 account of same to each and every employee violates Code sections 203,
9 226, and 226.7.

10 **Typicality**

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

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

20 **Adequacy of Representation**

21 35. Plaintiff will fairly and adequately represent and protect the interests of the
22 members of each Class. Counsel who represents Plaintiff is competent and experienced in
23 litigation large employment class actions. Neither Plaintiff nor their counsel have any
24 conflict with any other Class Member.

25 **Superiority of Class Action**

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

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

13 COLLECTIVE-ACTION ALLEGATIONS

14 37. Plaintiff seeks to represent all nonexempt employees who worked for
15 Defendant during the period beginning no earlier than three years prior to the filing
16 hereof to the mailing of the FLSA Opt-In Notice (such persons are referred to hereafter as
17 "Collective Action Members.").

18 38. Plaintiff is similarly situated to the Collective Action Members in that
19 Plaintiff and the Collective Action Members were employed by Defendant and in that
20 Defendant did not pay Plaintiff and the Collective Action Members their overtime and/or
21 minimum wages when due, all of said wages being due no later than the Friday of the
22 subsequent workweek. Plaintiff's consent to an FLSA collective action is attached hereto
23 as **Exhibit 1**.

24 39. This action is maintainable as an "opt-in" collective action pursuant to 29
25 U.S.C. § 216(b).

26 40. All Collective Action Members should be given notice and be allowed to
27 give their consent in writing to participate in—in other words, to opt into—the collective
28 action pursuant to 29 U.S.C. § 216(b).

41. This action has been brought and may be properly maintained as a Collective Action under the provisions of the FLSA because there is a well-defined community of interest in the litigation and the identity of the members of the proposed Collective Action group is easily ascertainable.

42. Defendants, as to Plaintiff and Collective Action Members, failed to comply with the FLSA and, accordingly, Defendants' failure to make timely payment entitles Plaintiff and each Collective Action Member to statutory damages and/or liquidated damages.

FIRST CAUSE OF ACTION
(CONTINUING WAGES, CODE §§ 201.3, 201.5, 203, 204
ON BEHALF OF PLAINTIFF AND THE CODE CLASS AGAINST ALL
DEFENDANTS)

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

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

45. Plaintiff, Aggrieved Employees and the members of the Code Class consistently worked more than 6-hour and/or 12-hour shifts. However, they were required to keep their walkie talkies, radios and/or cell phones on their persons, turned on and audible at all times, including during their rest periods and meal breaks and/or they were precluded from leaving the set and its immediate environs during their breaks, all due to the requirements of the Filmmakers Code of Professional Responsibility, a copy of which is affixed hereto as Exhibit 2, Paras. 6 and 14. Accordingly, they were denied their breaks and are entitled to an additional thirty minutes of wages for each faux rest and/or meal break, funds which remain unpaid.

46. Defendants’ failure to compensate Plaintiff, Aggrieved Employees and the Code Class within the time for which provision is made by sections 201.3 and 201.5 of the California Labor Code, despite their knowledge of their obligation to do so, was and is “willful” as the word is used in section 203.

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

5 **SECOND CAUSE OF ACTION**
6 (Failure to provide compliant pay stubs, Code § 226(A)
7 ON BEHALF OF PLAINTIFF AND THE 226 CLASS AGAINST ALL
8 DEFENDANTS)

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

11 49. Defendants failed to provide Plaintiff, Aggrieved Employees, the Collective
12 Action Members and the 226 Class with wage statements conforming to the requirements
13 of section 226(a) of the Code. Defendants failed to disclose the rate of pay and the total
14 hours worked for each temporary services assignment or the legal name and address of
15 the temporary services employer as required by Cal Lab Code § 226, thereby violating
16 the requirements of law, making it impossible for the worker to determine from the wage
17 statement alone all required information. Under Code §201.3, employees such as Plaintiff
18 and Aggrieved Employees are to be paid by no later than weekly. CMLLC and its payroll
19 company treat each payment to the "free-lance" employees who have been hired to work
20 on a CMLLC motion picture as a separate person for each motion picture. The result can
21 be that one, such as Plaintiff here, hired to work for a day on a motion picture, might also
22 be hired to work for CMLLC in connection with an entirely different motion picture, all
23 during the same weekly pay period. By not disclosing the required information, "the
24 employee cannot promptly and easily determine from the wage statement alone," the
25 information as required by Code §226(a). Defendants failed to provide the legal name
26 and address of the employer, instead describing Cranetown Media LLC as the "Client."

27 50. The foregoing was intentional misconduct of Defendants that injured
28 Plaintiff and Aggrieved Employees insofar as they were deprived of information to which
they were legally entitled, including but not limited to, the name and address of the legal

1 entity that is the employer. When earning more than a single meal period wage in a week
2 long pay period, the defense fails to provide on the wage statement the requisite detail
3 mandate by Code section 26(a)(9) – “all applicable hourly rates in effect during the pay
4 period and the corresponding number of hours worked at each hourly rate by the
5 employee and, beginning July 1, 2013, if the employer is a temporary services employer
6 as defined in Section 201.3, the rate of pay and the total hours worked for each temporary
7 services assignment.”

8 51. The failure of Defendants to provide compliant wage statements violates
9 section 226(a)(1), (5), (6), (8) and (9) of the Code. The failure caused them injury by
10 depriving them of information to which they are legally entitled. Accordingly, Plaintiff
11 and Class Members are entitled to damages in an amount according to proof and costs
12 and reasonable attorney’s fees in accordance with the provisions of Code section 226(e),
13 all in a sum according to proof. Plaintiff is entitled to an amount according to proof of at
14 least \$50, not including interest thereon, reasonable attorneys’ fees and cost of suit.

15 **THIRD CAUSE OF ACTION**
16 (DAMAGES FOR UNPAID OVERTIME COMPENSATION,
17 CODE §§ 510, 515 AND 1198
ON BEHALF OF PLAINTIFF AND THE CODE CLASS AGAINST ALL
DEFENDANTS)

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

20 53. Plaintiff, as well as the Code Class, as well as the Collective Action
21 Members, worked many hours for Defendants, including overtime, without prompt
22 and/or full compensation for work performed, as required by law. Plaintiff and
23 Aggrieved Employees were routinely deprived of thirty minutes of compensation for
24 services, as Defendants required half hour meal break deductions from daily wages, even
25 though during meal breaks the crew were required to respond to colleagues’ queries,
26 whether by walkie-talkies, cell phone “apps”, or otherwise. For example, with respect to
27 walkie-talkies, Plaintiff and crew were issued specific devices for each span of service for
28 CMLLC, and CMLLC kept track of which device was issued to each member of the crew

1 so Defendants could account for each of the devices which were issued to crew for their
2 use while working for CMLLC. At the conclusion of their service, each member of the
3 crew returned the walkie-talkie which they had received for use during the project to the
4 appropriate CMLLC employee, who noted the check in. CMLLC would routinely rent
5 these walkie-talkie devices from a third party which charged a significant amount were
6 all such walkie-talkie devices not returned at the completion of the rental period.

7 54. Plaintiff and the Code Class are entitled to recover an amount according to
8 proof, including, for example, compensation for unpaid minimum or overtime wages
9 accrued during faux meal breaks. Plaintiff and the Code Class are also entitled to recover
10 costs and reasonable attorneys' fees under section 1194 of the Code.

11 **FOURTH CAUSE OF ACTION**
12 (DAMAGES FOR UNPAID MINIMUM WAGES,
13 CODE §§ 510, 1194, 1194.2, 1197, 1197.2, AND 1198
14 ON BEHALF OF PLAINTIFF AND THE CODE CLASS AGAINST ALL
15 DEFENDANTS)

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

18 56. Plaintiff, the Collective Action Members and the Code Class worked many
19 hours for Defendants, without proper, full compensation for work performed, as required
20 by law. For example, Defendants routinely made thirty- or sixty-minute deductions from
21 the daily work of each Aggrieved Employee to whom a walkie-talkie had been issued, all
22 on account of the faux meal breaks described herein.

23 57. Plaintiff and the Code Class are entitled to recover liquidated damages under
24 section 1194.2 of the Code in an amount according to proof. Plaintiff and Aggrieved
25 Employees are also entitled to recover costs and reasonable attorneys' fees under section
26 1194 of the Code.

27 **FIFTH CAUSE OF ACTION**
28 (FAILURE TO PROVIDE DUTY-FREE MEAL BREAKS, CODE §§ 226.7 AND 512
ON BEHALF OF PLAINTIFF AND THE 17200 CLASS AND AGAINST ALL
DEFENDANTS)

58. Plaintiff realleges and incorporates herein by reference the allegations

1 contained in this Complaint as though fully set forth herein.

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

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

15 61. After the Augustus decision, some motion picture production companies
16 such as Warner Bros. claim to have initiated a process under which they would advised
17 employees, in writing, that they need not respond to walkie-talkie calls during breaks.
18 CMLLC does not claim to have undertaken any such initiative.

19 62. Pursuant to Code section 226.7, Plaintiff and Class Members are entitled to
20 damages in an amount equal to one hour of wages per missed meal break, in an amount
21 according to proof.

22
23 **SIXTH CAUSE OF ACTION**
24 (FAILURE TO PROVIDE DUTY-FREE REST BREAKS, CODE §§ 226.7
25 ON BEHALF OF PLAINTIFF AND THE 17200 CLASS AGAINST ALL
26 DEFENDANTS)

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

64. Code Section 226.7 requires an employer to pay an additional hour of
compensation for each rest period the employer fails to provide a compliant rest period.

1 Employees are entitled to a rest period of ten minutes for every four hours worked or
2 major fraction thereof, all as detailed in Brinker.

3 65. Upon information and belief, neither the proposed 17200 class nor the
4 Aggrieved Employees the 17200 Class have been timely compensated in full for their
5 services. Plaintiff and the 17200 Class consistently worked more than 6-hour and/or 12-
6 hour shifts. However, they were required to keep their walkie talkies or radios on their
7 persons, turned on and audible at all times, including their faux rest periods and meal
8 breaks and/or they were precluded from leaving the set during their breaks. Accordingly,
9 they were denied their breaks and are entitled to additional compensation for each faux
10 rest break. Defendants have never paid an employee for a missed, truncated or tardy rest
11 break.

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

15 **SEVENTH CAUSE OF ACTION**
16 **(UNFAIR BUSINESS PRACTICES ON BEHALF OF PLAINTIFF AND THE 17200**
CLASS MEMBERS AGAINST ALL DEFENDANTS)

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

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

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

28 70. Defendants have avoided payment of wages and overtime wages and other

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

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

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

EIGHTH CAUSE OF ACTION

(FAIR LABOR STANDARDS ACT ON BEHALF OF PLAINTIFF AND COLLECTIVE ACTION MEMBERS AGAINST ALL DEFENDANTS)

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

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

4 75. Plaintiff was not timely paid his wages. Plaintiff and Collective Action
5 Members worked many hours each day during their employment as herein alleged
6 including over forty hours per week.

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

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

12 78. Defendants’ violations were willful and intentional.

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

15 80. Plaintiff brings this claim on a collective-action basis pursuant to the FLSA.
16 The FLSA permits an employee to bring an action for unpaid wages on “behalf of
17 himself . . . and other employees similarly situated,” so long as all similarly situated
18 employees “give[] [their] consent in writing to become . . . a party.” 29 U.S.C. § 216(b).
19 On information and belief, none were timely paid all wages as required by sections 201,
20 202, 203 or 204 of the California Labor Code.

21 **NINTH CAUSE OF ACTION**

22 (CIVIL PENALTIES -- PAGA RELIEF ON BEHALF OF THE STATE OF
23 CALIFORNIA, THE LABOR AND WORKFORCE DEVELOPMENT AGENCY,
24 PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)

25 81. Plaintiff repeats and re-alleges the preceding paragraphs as if fully set forth
26 herein.

27 82. Plaintiff is an “aggrieved employee” under PAGA, as he was employed by
28 Defendants during the applicable statutory period and suffered one or more of the Labor
Code Violation set forth herein. Accordingly, he seeks to recover on behalf of himself,

1 the California Labor and Workforce Development Agency (“LWDA”) and all other
2 current and former Aggrieved Employees of Defendant, the civil penalties for which
3 provision is made by PAGA, as well as reasonable attorney’s fees and costs.

4 83. Pursuant to section 2699.3(a)(1) of the Labor Code, on or about April 20,
5 2022, Plaintiff gave written notice by online filing to the LWDA of the specific
6 provisions of the Labor Code alleged to have been violated, including the theories set
7 forth in this Complaint. Also on that day, Plaintiff gave written notice by certified mail
8 to Defendant of the specific provisions of the Labor Code alleged to have been violated
9 by Defendant.

10 84. Under PAGA, “[t]he agency shall notify the employer and the aggrieved
11 employee or representative by certified mail that it does not intend to investigate the
12 alleged violation within 60 calendar days of the postmark date of the notice received
13 pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided within
14 65 calendar days of the postmark date of the notice given pursuant to paragraph (1), the
15 aggrieved employee may commence a civil action pursuant to Section 2699.” Cal. Lab.
16 Code § 2699.3(a)(2)(A). More than 65 calendar days have passed since PAGA notice
17 was sent by Plaintiff, and Plaintiff therefore may commence a civil action pursuant to
18 Section 2699.

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

22 86. Plaintiff seeks civil penalties pursuant to PAGA for violations of the IWC
23 Wage Order and the following Labor Code provisions: sections 201.3, 201.5, 203, 204,
24 210, 226(a), 226(b), 226.7, 432, 510, 512, 515, 525, 558, 558.1, 1194, 1194.2, 1197,
25 1198.5, and 2810.3.

26 87. On or about April 21, 2022, Plaintiff gave written notice by certified mail
27 and online filing of Defendant’s violations of various provisions of the California Labor
28

1 Code as alleged in this Complaint to the Labor and Workforce Development Agency
2 (“LWDA”) and Defendant.

3 88. More than sixty-five days have passed from the date of Plaintiff’s notice to
4 the LWDA and Plaintiff has not been notified by the LWDA that it intends to investigate
5 Plaintiff’s allegations. Therefore, pursuant to section 2699.3(a)(2)(A), Plaintiff “may
6 commence a civil action pursuant to Section 2699.” Cal. Lab. Code § 2699.3(a)(2)(A).

7 89. Plaintiff is informed and believes and thereon alleges that Defendant has
8 routinely failed to provide Plaintiff and other Aggrieved Employees with the prompt
9 payment of wages and vacation pay upon termination of employment, minimum wages,
10 and proper itemized wage statements.

11 90. Plaintiff alleges that Defendant violated PAGA in the following ways: (1)
12 failing to timely pay all wages, including minimum wages in violation of Labor Code §§
13 201, 202, 203, 204, 1194 and 1194.2; (2) willfully failing to provide Aggrieved
14 Employees with proper itemized wage statements in violation of Labor Code § 226(a);
15 (3) failing to timely and properly respond to Wage Order 12, Labor Code section 226(b),
16 432 and 1198.5 requests for employment records. “PAGA actions can serve to *indirectly*
17 enforce certain wage order provisions by enforcing *statutes* that require compliance with
18 wage orders (e.g., § 1198, which prohibits longer work hours than those fixed by wage
19 order or employment under conditions prohibited by a wage order).” Thurman v.
20 Bayshore Transit Mgmt., Inc., 203 Cal. App. 4th 1112, 1132 (2012).

21 **TENTH CAUSE OF ACTION**

22 (Failure to Provide Employment Records Upon Request Code § 226(b)
23 On Behalf of Plaintiff Against Defendants)

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

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

1 93. Plaintiff requested that Defendants permit inspection or copying of his
2 employment records pursuant to Labor Code section 226(b). Defendants have failed to
3 provide Plaintiff with an opportunity to inspect or copy their employment records within
4 21 days of his request.

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

8 **ELEVENTH CAUSE OF ACTION**

9 (Failure to Provide Employment Records Upon Request Code §1198.5
10 On Behalf of Plaintiff Against Defendants)

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

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

16 97. Plaintiff requested that Defendants permit inspection or copying of their
17 personnel records pursuant to Labor Code section 1198.5. Defendants have failed to
18 provide Plaintiff with an opportunity to inspect or copy the employment records within
19 30 days of their request.

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

23 **WHEREFORE**, Plaintiff prays judgment as follows:

- 24 1. That the Court certify the Classes.
- 25 2. That, under the First Cause of Action for Continuing Wages, it be adjudged
26 that the failure of Defendants to make payment of Plaintiff's and the Code Class
27 Members' wages was in violation of section 201.3, 201.5, 203 and/or 204 of the Code,
28 and was "willful" as that word is used in section 203 of the Code, and that the Court enter

1 judgment against Defendants in favor of Plaintiff and Code Class Members. That
2 judgment be entered in favor of Plaintiff and the 203 Class in an amount according to law
3 and proof, interest thereon, and costs and reasonable attorneys' fees in accordance with
4 the provisions of Code section 218.5.

5 3. That, under the Second Cause of Action for Failure to Provide Compliant
6 Wage Statements, this Court enter judgment in favor of Plaintiff and 226 Class Members
7 against Defendants. That judgment be entered in favor of Plaintiff of at least \$50 and the
8 226 Class in an amount according to proof, and costs and reasonable attorneys' fees in
9 accordance with the provisions of Code section 226(e).

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

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

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

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

26 8. That, with respect to the Seventh Cause of Action for Unfair Competition,
27 this Court enter judgment in favor of Plaintiff and the 17200 Class against Defendants in
28 an amount according to proof. Plaintiff seeks full restitution from Defendants, as

1 necessary and according to proof, to restore any and all amounts—including interest—
2 withheld, acquired, or converted by Defendants by means of the unfair practices
3 complained of herein. Plaintiffs, on behalf of themselves, as well as on behalf of the
4 general public, further seeks attorney's fees and costs pursuant to sections 218.5 of the
5 Code and 1021.5 of the Code of Civil Procedure. In addition, Plaintiff seek the
6 appointment of a receiver as necessary.

7 9. That, with respect to the Eighth Cause of Action for violation of the FLSA,
8 this Court enter judgment in favor of Plaintiff and the Collective Action Members against
9 Defendants in an amount according to proof for unpaid wages, liquidated damages,
10 interest thereon, costs and reasonable attorney's fees.

11 10. That, with respect to the Ninth Cause of Action for violation of the PAGA,
12 this Court enter judgment in favor of Plaintiff and the State of California Labor and
13 Workforce Development Agency against Defendants in an amount according to proof for
14 civil penalties, interest thereon, costs and reasonable attorney's fees.

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

18 12. That, under the Eleventh Cause of Action, this Court enter judgment in favor
19 of Plaintiff in an amount according to proof and award them their damages, penalties, and
20 costs of suit.

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

24 DATED: June 29, 2022

HARRIS & RUBLE



Alan Harris
Attorney for Plaintiff

Index to Exhibits

Exhibit 1: Schwanke FLSA Consent

Exhibit 1

FLSA CONSENT FORM

Pursuant to the provisions of 29 U.S.C. § 216(b), the Fair Labor Standards Act, I hereby consent to be a party plaintiff to this action, Case No.: 21STCV43940.

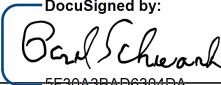
9/9/2021

Date

Paul A. Schwanke

Print Name

DocuSigned by:



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Signature