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Attorney for Plaintiffs Sage Forsythe and Niko
Protacio, aggrieved employees deputized as
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General Act of 2004

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

SAGE FORSYTHE and NIKO PROTACIO,
aggrieved employees deputized as Attorneys
General under the Private Attorneys General Act
of 2004,

Plaintiffs,

v.

ACW ESCAPE LLC d/b/a Escapade Games, a
California limited liability company, JORIN
ANDRESEN, an individual, CHRISTINA
COMPANI, an individual, and DOES 1-25,
inclusive,

Defendants.

Case No.: 30-2025-01483626-CU-OE-CXC

**COMPLAINT FOR ENFORCEMENT OF
THE CALIFORNIA LABOR CODE UNDER
THE PRIVATE ATTORNEYS GENERAL
ACT OF 2004 (CAL. LAB. CODE §§ 2698,
ET SEQ.)**

Assigned for All Purposes:
Judge David A. Hoffer
Dept. CX103

INTRODUCTION

Plaintiffs SAGE FORSYTHE and NIKO PROTACIO, aggrieved employees deputized as
Attorneys General under the Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, et
seq.)(“PAGA”), bring this lawsuit against Defendants ACW ESCAPE LLC d/b/a Escapade Games,

COMPLAINT FOR ENFORCEMENT OF THE CALIFORNIA LABOR CODE UNDER THE
PRIVATE ATTORNEYS GENERAL ACT OF 2004

CHRISTINA COMPANI, JORIN ANDRESEN, and DOES 1-25, inclusive (collectively, “Defendants”), for the enforcement of California’s Labor Code.

PARTIES

1. Plaintiff SAGE FORSYTHE (“Plaintiff Forsythe”) was an aggrieved employee and a deputized Attorney General under PAGA of Defendants from November 13, 2023 to February 7, 2025. Plaintiff Forsythe is a citizen of the State of California.

2. Plaintiff NIKO PROTACIO (“Plaintiff Protacio”) was an aggrieved employee and a deputized Attorney General under PAGA of Defendants from in or around April 2024 to February 7, 2025. Plaintiff Protacio is a citizen of the State of California.

3. Defendant ACW ESCAPE LLC d/b/a Escapade Games (“ACW”) is a California corporation with a principal place of business located at 1111 East Commonwealth Avenue, Suite A, Fullerton, California 92831. ACW provides immersive in-person horror simulacra games, namely *Zoe: Reborn*. In *Zoe: Reborn*, ACW’s customers pay to be frightened by actors while solving myriad puzzles in an attempt to escape the game. Upon information and belief, ACW currently employed approximately 13 full-time employees during the relevant time period.

4. Defendant JORIN ANDRESEN (“Defendant Andresen”) is a natural person who maintains a principal place of business located at 1111 East Commonwealth Avenue, Suite A, Fullerton, California 92831. Upon information and belief, Defendant Andresen had and has actual knowledge of Plaintiffs’ claims contained in this Complaint for the Enforcement of the California Labor Code Under the Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, et seq.)(“Complaint”). Upon information and belief, Defendant Andresen exercised discretion and authority over ACW’s unlawful employment policies and practices during the relevant time period. Upon further information and belief, Defendant Andresen was a managing agent of ACW during the relevant time period pursuant to Labor Code section 558.1 and Civil Code section 3294.

5. Defendant CHRISTINA COMPANI (“Defendant Compani”) is a natural person who maintains a principal place of business located at 1111 East Commonwealth Avenue, Suite A, Fullerton, California 92831. Upon information and belief, Defendant Compani had and has actual knowledge of Plaintiffs’ claims contained in this Complaint. Upon information and belief,

1 Defendant Compani exercised discretion and authority over ACW's unlawful employment policies
2 and practices during the relevant time period. Upon further information and belief, Defendant
3 Compani was a managing agent of ACW during the relevant time period pursuant to Labor Code
4 section 558.1 and Civil Code section 3294.

5 6. Plaintiff is unaware of the true names and capacities of all defendants. Plaintiffs sue
6 those unknown defendants by their fictitious names, DOES 1-25, inclusive. Plaintiffs will seek
7 leave to amend this Complaint once their true and correct names are ascertained.

8 7. Upon information and belief, during the relevant time period, one or more of each
9 of the named Defendants, or all of them, were in some fashion—by contract or otherwise—the
10 managing agents, predecessors, affiliates, alter egos, assigns, joint venturers, co-venturers, and/or
11 partners of one or more of the remaining and/or unnamed defendants, and was acting within that
12 respective capacity.

13 8. Upon information and belief, at all relevant times, one or more the remaining named
14 and/or unnamed defendants are the successors of one or more of the remaining named and/or
15 unnamed defendants. Such successors are liable for the transactions, occurrences, series of
16 transactions, and/or Plaintiffs and/or the aggrieved employees' damages and injuries arising from
17 the same extent of those successors' predecessors.

18 9. Upon information and belief, at all relevant times, the Defendants were and/or are
19 the alter egos of all defendants in this pending civil action. Defendants each acted for their own
20 benefit and/or the benefit of one or more of the remaining named and/or unnamed defendants.
21 Defendants were acting on behalf of each other in the establishment of, ratification of, and/or
22 execution of the illegal practices and policies described in this Complaint.

23 10. Upon information and belief, at all relevant times, Defendants had decision-making
24 authority, responsibility, oversight, and influence for the establishment and execution of
25 Defendants' illegal employment practices and policies. Accordingly, the Defendants—individually
26 and all named and/or unnamed defendants collectively—are liable for each of the causes of action
27 alleged in this Complaint.
28

11. Upon information and belief, at all relevant times, there existed and/or exists a unity of interest and ownership between each DOE defendant and the Defendants, jointly and severally, such that their individuality and separateness ceased to exist. More specifically, the business affairs of the Defendants and all named and/or unnamed defendants could not be segregated, and were and/or are inextricably intertwined, commingled, and combined.

12. Defendants DOES 1-25, inclusive, were and/or are still used as mere shells and conduits for the Defendants' business affairs individually and/or collectively. The recognition of the separate existence of each such DOE defendant would not promote justice because it would permit Defendants to insulate themselves from individual liability as to Plaintiffs, the aggrieved employees, and the State of California. Defendants constitute the alter egos of each other, and the fiction of their separate existence must be disregarded at law and equity to avoid fraud and injustice to Plaintiff, the aggrieved employees, and the State of California.

JURISDICTION AND VENUE

13. This Court has original jurisdiction over this pending civil action under Article VI, section of the California Constitution, exercisable under Code of Civil Procedure section 410.10. This Court has subject matter jurisdiction.

14. This Court has personal jurisdiction over Defendants because they were/are citizens of and/or residents of the State of California during the relevant time period. This Court's exercise of personal jurisdiction over Defendants comports with traditional notions of fair play and substantial justice.

15. Venue is proper under Code of Civil Procedure section 395 because Defendants' place of business was/is located in this judicial district during the relevant time period. Venue is also proper because this Court has personal jurisdiction over Defendants.

STATEMENT OF FACTS

Plaintiff Forsythe

16. From November 13, 2023 to February 7, 2025 ("Forsythe Employment Period"), Plaintiff Forsythe worked for ACW as Scarer/Actor. ACW classified her as an independent contractor, not an employee. Accordingly, ACW did not pay for Plaintiff Forsythe's employer

1 funded payroll taxes, withhold employee funded taxes or withhold applicable taxes and
2 contributions. As a direct and proximate result, her transcript with the Internal Revenue Service is
3 inaccurate.

4 17. Although ACW classified Plaintiff Forsythe as an independent contractor, ACW
5 controlled and directed the performance of her work during the Forsythe Employment Period.
6 Moreover, Plaintiff Forsythe's work as Scarer/Actor was in the usual course of ACW's business of
7 providing its customers with immersive in-person horror simulacra games. Plaintiff Forsythe was
8 also not customarily engaged in any independently established trade, occupation, or business.

9 18. For example, Plaintiff Forsythe did not hold herself out as being in engaged in any
10 occupation or business distinct from that of ACW. Plaintiff Forsythe's work as Scarer/Actor was a
11 regular and integral part of ACW's business. ACW furnished Plaintiff Forsythe with the tools and
12 instrumentalities (i.e., sets and props) that she used to scare customers and act during costumed
13 performances of *Zoe: Reborn*. And ACW set Plaintiff Forsythe's schedule and dictated when,
14 where, and how she should perform her job duties.

15 19. Upon hire, Defendant Compani ordered Plaintiff Forsythe to download software
16 applications (e.g., Homebase, Discord and Resova) on her personal cell phone for use during work.
17 Plaintiff Forsythe was required to use Homebase to clock-in and clock-out each workday; she was
18 required to communicate with Defendants Compani and Andresen and other ACW employee using
19 Discord or iMessage; and she was required to use Resova to monitor and manage ACW's customer
20 bookings. ACW did not reimburse Plaintiff Forsythe for using her personal cell phone for work
21 during the Forsythe Employment Period.

22 20. Plaintiff Forsythe's initial rate of pay was \$16 per hour. At ACW's direction,
23 Plaintiff Forsythe typically worked Thursday through Sunday from beginning in the afternoon until
24 past midnight into the very early morning the following-day. ACW further required Plaintiff
25 Forsythe to remain "on-call" or on "standby" during those days. ACW also did not permit Plaintiff
26 Forsythe to trade her on-call responsibilities with all other co-workers. Yet, ACW did not pay
27 Plaintiff Forsythe for her compensable "on-call" or "standby" time despite the fact that she was
28 required to remain available to report to work at any time during those days.

1 21. During the Forsythe Employment Period, Plaintiff Forsythe occasionally worked
2 more than eight hours in a workday. ACW did not pay her overtime pay in the form of one-and-
3 one-half times her regular rate of pay.

4 22. Plaintiff Forsythe was also regularly required to work off-the-clock without any
5 compensation during the Forsythe Employment Period. For instance, Plaintiff Forsythe was
6 required to don and doff her *Zoe: Reborn* costume off-the-clock without any compensation. In fact,
7 Defendants Compani and Andresen routinely scolded Plaintiff Forsythe (and other ACW workers)
8 by exclaiming, “We’re not paying you to get undressed!”

9 23. Separately, ACW instructed Plaintiff Forsythe to run errands for work (e.g.,
10 purchasing supplies), off-the-clock, using her personal vehicle several times each workweek. Each
11 errand typically took 10 to 20 minutes. ACW did not compensate her for the time she spent running
12 errands. ACW also did not reimburse Plaintiff Forsythe for vehicle mileage or—on multiple
13 occasions—for the supplies she was instructed to purchase.

14 24. Similarly, ACW instructed Plaintiff Forsythe to make her own *Zoe: Reborn* costume
15 but did not pay for the time she spent making it; ACW also did not reimburse her for the materials
16 costs. Plaintiff Forsythe spent five to eight hours making a custom-made costume and an additional
17 three hours fixing the custom-made costume during the Forsythe Employment Period. Plaintiff
18 Forsythe is informed and believes that she spent \$120 in materials for the costume.

19 25. During the Forsythe Employment Period, Plaintiff Forsythe was typically assigned
20 to perform costumed performances in *Zoe: Reborn*. She typically worked more than six hours in a
21 workday on those occasions. But ACW did not authorize or permit her to take compliant meal
22 periods. Specifically, she was not authorized or permitted to take a 30-minute uninterrupted duty-
23 free meal period after each five hours of work. Instead, ACW required her to quickly eat a meal—
24 in less than 30-minutes—before being instructed to resume her costumed performance. ACW did
25 not pay her a meal period wage in the form of an additional hour of pay at her regular rate of pay
26 for each workday on those occasions.

27 26. Plaintiff Forsythe was also not authorized or permitted to take a 10-minute
28 uninterrupted duty-free rest period after each four hours of work or major fraction thereof. ACW

1 did not pay her a rest period wage in the form of an additional hour of pay at her regular rate of pay
2 for each workday on those occasions either.

3 27. During the Forsythe Employment Period, Plaintiff Forsythe accrued paid sick leave
4 under California's Healthy Workplaces, Healthy Families Act. Plaintiff Forsythe called in sick on
5 at least one occasion during the Forsythe Employment Period. However, ACW did not pay her paid
6 sick leave when she called in sick.

7 28. ACW paid Plaintiff Forsythe intermittently via PayPal, Zelle or Venmo on random
8 days during the Forsythe Employment Period. Worse, ACW did not furnish her with statements
9 that itemized her gross wages earned, total hours worked, all deductions made, net wages earned,
10 inclusive dates of the period for which she was being paid, and her name and Social Security
11 number. Not surprisingly, Plaintiff Forsythe was confused about how ACW computed her wages
12 during the Forsythe Employment Period.

13 29. On January 24, 2025, Plaintiff Forsythe requested copies of her payroll records and
14 personnel file in writing. ACW received her request on January 27, 2025. ACW's last day to
15 produce Plaintiff Forsythe's payroll records and personnel file was February 13, 2025 and February
16 26, 2025, respectively. To-date, ACW has not produced any of her records.

17 30. After January 27, 2025, ACW reduced the number of hours Plaintiff Forsythe's was
18 scheduled to work. Plaintiff Forsythe is informed and believes that ACW retaliated against her
19 because she exercised her legal right to request copies of her payroll records and personnel file.

20 31. On February 7, 2025, Plaintiff Forsythe was constructively terminated by ACW. In
21 particular, ACW's unlawful and unfair employment acts and practices were so intolerable that
22 Plaintiff Forsythe was forced to quit. ACW did not pay Plaintiff Forsythe all of her earned but
23 unpaid wages immediately upon her constructive termination or within 72-hours of her forced
24 resignation. To-date, ACW has not paid Plaintiff Forsythe all of her earned but unpaid wages.

25 **Plaintiff Protacio**

26 32. From in or around April 2024 to February 7, 2025 ("Protacio Employment Period"),
27 Plaintiff Protacio worked for ACW as Game Master / Actor. ACW classified Plaintiff Protacio as
28 an independent contractor, not an employee. Accordingly, ACW did not pay for Plaintiff Protacio's

1 employer funded payroll taxes, withhold employee funded taxes or withhold applicable taxes and
2 contributions. As a direct and proximate result, Plaintiff Protacio's transcript with the Internal
3 Revenue Service is inaccurate.

4 33. Although ACW classified Plaintiff Protacio as an independent contractor, ACW
5 controlled and directed the performance of his work during the Protacio Employment Period.
6 Plaintiff Protacio's work as Game Master and Actor was in the usual course of ACW's business of
7 providing its customers with immersive in-person horror simulacra games. Moreover, Plaintiff
8 Protacio was not customarily engaged in any independently established trade, occupation, or
9 business.

10 34. For example, Plaintiff Protacio did not hold himself out as being in engaged in any
11 occupation or business distinct from that of ACW. Plaintiff Protacio's work as Game Master /
12 Actor was a regular and integral part of ACW's business. ACW furnished Plaintiff Protacio with
13 the tools and instrumentalities (i.e., sets and props) that he used to scare customers and act during
14 costumed performances. And ACW set Plaintiff Protacio's schedule and dictated when, where, and
15 how he should perform his job duties.

16 35. Upon hire, Defendant Compani ordered Plaintiff Protacio to download software
17 applications (e.g., Homebase, Discord and Resova) on his personal cell phone for use during work.
18 Plaintiff Protacio was required to use Homebase to clock-in and clock-out each workday; he was
19 required to communicate with Defendants Compani and Andresen and other ACW employee using
20 Discord or iMessage; and he was required to use Resova to monitor and manage ACW's customer
21 bookings. ACW did not reimburse Plaintiff Protacio for using his personal cell phone for work
22 during the Protacio Employment Period.

23 36. Plaintiff Protacio's initial rate of pay was \$16 per hour. At ACW's direction,
24 Plaintiff Protacio typically worked Thursday through Sunday from beginning in the afternoon until
25 past midnight into the very early morning the following-day. Plaintiff Protacio routinely worked
26 more than eight hours each workday and more than 40-hours each workweek. However, ACW did
27 not pay Plaintiff Protacio overtime pay in the form of one-and-one-half times his regular rate of
28 pay on those occasions.

1 37. Sometimes, Plaintiff Protacio worked more than 12-hours each workday. For
2 example, ACW instructed Plaintiff Protacio to participate in evaluating actors during auditions.
3 During those auditions, Plaintiff Protacio worked more than 12-hours. ACW did not pay Plaintiff
4 Protacio twice his regular rate of pay when he worked more than 12-hours in a workday.

5 38. Plaintiff Protacio was regularly required to work off-the-clock without any
6 compensation. For example, Plaintiff Protacio was often charged with running errands (e.g.,
7 purchasing supplies), off-the-clock, using his personal vehicle several times each workweek. Each
8 errand typically took 10 to 20 minutes. ACW did not compensate him for the time he spent running
9 errands. ACW also did not reimburse Plaintiff Protacio for or—on multiple occasions—for the
10 supplies he was instructed to purchase.

11 39. During the Protacio Employment Period, Plaintiff Protacio was typically assigned to
12 perform costumed performances in *Zoe: Reborn*. But ACW did not authorize or permit him to take
13 compliant meal periods. Specifically, Plaintiff Protacio was not authorized or permitted to take a
14 30-minute uninterrupted duty-free meal period after each five hours of work. Instead, Plaintiff
15 Protacio would be expected to quickly eat a meal—in less than 30-minutes—before being
16 instructed to resume his costumed performance. ACW did not pay Plaintiff Protacio a meal period
17 in the form of an additional hour of pay at his regular rate of pay for each workday on those
18 occasions.

19 40. Similarly, Plaintiff Protacio was not authorized or permitted to take a 10-minute
20 uninterrupted duty-free rest period after each four hours of work or major fraction thereof. ACW
21 did not pay Plaintiff Protacio a rest period in the form of an additional hour of pay at his regular
22 rate of pay for each workday on those occasions.

23 41. During the Protacio Employment Period, Plaintiff Protacio accrued paid sick leave
24 under California's Health Workplaces, Healthy Families Act. Plaintiff Protacio called in sick on at
25 least one occasion during the Protacio Employment Period. However, ACW did not pay him paid
26 sick leave when he called in sick.

27 42. ACW paid Plaintiff Protacio intermittently via PayPal, Zelle or Venmo on random
28 days during the Protacio Employment Period. Worse, ACW did not furnish him with statements

1 that itemized his gross wages earned, total hours worked, all deductions made, net wages earned,
2 inclusive dates of the period for which he was being paid, and his name and Social Security
3 number. Not surprisingly, Plaintiff Protacio was confused about how ACW computed his wages
4 during the Protacio Employment Period.

5 43. On January 23, 2025, through counsel, Plaintiff Protacio requested copies of his
6 payroll records and personnel file in writing. ACW received Plaintiff Protacio's request on January
7 27, 2025. ACW's last day to produce Plaintiff Protacio's payroll records and personnel file was
8 February 13, 2025 and February 26, 2025, respectively. To-date, ACW has not produced any of
9 Plaintiff Protacio's records.

10 44. On February 7, 2025, Plaintiff Protacio was forced to quit because of ACW's
11 unlawful and unfair employment acts and practices described above. ACW did not pay Plaintiff
12 Protacio all of his earned but unpaid wages immediately upon his constructive termination or
13 within 72-hours of his forced resignation. Indeed, to-date, ACW has not paid Plaintiff Protacio all
14 of his earned but unpaid wages.

15 **PAGA Allegations**

16 45. During the relevant time period, Plaintiffs were aggrieved employees of Defendants
17 under PAGA. Plaintiffs are informed and believe that Defendants employed at least 13 aggrieved
18 employees from March 13, 2024 to the present ("PAGA Period").

19 46. Plaintiffs are informed and believe Defendants willfully misclassified all of its
20 employees as independent contractors during the PAGA Period. Plaintiffs are further informed and
21 believe that Defendants' pattern and practice of employee misclassification was to evade paying
22 employer funded payroll taxes.

23 47. Plaintiffs are informed and believe Defendants controlled and directed the aggrieved
24 employees' performance of work during the PAGA Period. Plaintiffs are informed and believe the
25 aggrieved employees' work was in the usual course of Defendants' business. Plaintiffs are further
26 informed and believe that the aggrieved employees were not customarily engaged in any
27 independent established trade, occupation or business of the same nature as that involved in the
28 work that they performed for Defendants during the PAGA Period.

1 48. Plaintiffs are informed and believe that, upon hire, each of the aggrieved employees
2 was ordered to download software applications (e.g., Homebase, Discord, and Resova) on their
3 respective personal cell phones for work during the PAGA Period. Plaintiffs are informed and
4 believe Defendants did not reimburse the aggrieved employees for requiring them to use their
5 personal cell phones for work during the PAGA Period.

6 49. Plaintiffs are informed and believe Defendants required the aggrieved employees to
7 use their personal vehicles to run errands for work during the PAGA Period. Plaintiffs are informed
8 and believe Defendants did not reimburse those aggrieved employees for vehicle mileage on those
9 occasions during the PAGA Period.

10 50. Plaintiffs are informed and believes the aggrieved employees worked more than
11 eight hours in a workday during the PAGA Period. Plaintiffs are informed and believe that
12 Defendants did not pay the aggrieved employees one-and-one-half times their respective regular
13 rates of pay on those occasions during the PAGA Period.

14 51. Plaintiff Protacio is informed and believe that a subset of the aggrieved employees
15 worked more than 12-hours in a workday during the PAGA Period. Plaintiff Protacio is informed
16 and believes that Defendants did not pay that subset of aggrieved employees twice their respective
17 regular rates of pay on those occasions during the PAGA Period.

18 52. Plaintiffs are informed and believe Defendants required the aggrieved employees to
19 remain “on call” or on “standby” during the PAGA Period. Plaintiffs are informed and believe that
20 Defendants did not pay the aggrieved employees for their compensable “on-call” or “standby”
21 time.

22 53. Plaintiffs are informed and believe Defendants required the aggrieved employees to
23 work off-the-clock without any compensation during the PAGA Period.

24 54. Plaintiffs are informed and believe Defendants did not authorize or permit the
25 aggrieved employees to take a 30-minute uninterrupted duty-free meal period after each five hours
26 of work during the PAGA Period. Plaintiffs are informed and believe Defendants did not pay the
27 aggrieved employees meal period wages in the form of an additional hour of pay at their respective
28 regular rates of pay on those occasions during the PAGA Period.

1 55. Plaintiffs are informed and believe Defendants did not authorize or permit the
2 aggrieved employees to take a 10-minute uninterrupted duty-free rest period after each four hours
3 of work or major fraction thereof during the PAGA Period. Plaintiffs are informed and believe
4 Defendants did not pay the aggrieved employees rest period wages in the form of an additional
5 hour of pay at their respective regular rates of pay on those occasions during the PAGA Period.

6 56. Plaintiffs are informed and believe the aggrieved employees accrued paid sick leave
7 under California's Healthy Workplaces, Healthy Families Act during the PAGA Period. Plaintiffs
8 are informed and believe the aggrieved employees were unable to work because they were sick on
9 occasion during the PAGA Period. Plaintiffs are informed and believe Defendants did not pay
10 those aggrieved employees accrued paid sick leave on those occasions during the PAGA Period.

11 57. Plaintiffs are informed and believe Defendants paid the aggrieved employees
12 intermittently via PayPal, Zelle or Venmo on random days during the PAGA Period. Plaintiffs are
13 informed and believe Defendants did not pay the aggrieved employees on regular paydays, at least
14 twice each month, during the PAGA Period.

15 58. Plaintiffs are informed and believe Defendants did not furnish the aggrieved
16 employees wage statements that itemized their gross wages earned, total hours worked, all
17 deductions made, net wages earned, inclusive dates of the period for which they were being paid,
18 and their respective names and Social Security numbers. Plaintiffs are informed and believe the
19 aggrieved employees were confused about how Defendants computed the aggrieved employees'
20 respective wages during the PAGA Period.

21 59. Plaintiffs are informed and believe that some of the aggrieved employees requested
22 their respective payroll records and personnel files during the PAGA Period. Plaintiffs are
23 informed and believe Defendants did not produce those aggrieved employees' respective requested
24 payroll records and/or personnel files within the time periods prescribed by law during the PAGA
25 Period.

26 60. Plaintiffs are informed and believe that some of the aggrieved employees
27 complained to Defendants about their illegal wage and hour practices during the PAGA Period.
28 Plaintiffs are informed and believe Defendants retaliated against those complaining aggrieved

1 employees by actually and/or constructively terminating their employment during the PAGA
2 Period.

3 61. Plaintiffs are informed and believe Defendants did not pay the aggrieved employees
4 all of their respectively earned but unpaid wages immediately upon termination.

5 **ADMINISTRATIVE EXHAUSTION**

6 62. On March 13, 2025, Plaintiffs electronically notified the California Labor
7 Workforce Development Agency (“LWDA”) of Defendants’ Labor Code violations during the
8 PAGA Period and also served a copy to Defendants via Certified Mail, Return Receipt Requested.
9 (Exhibit “A” is comprised of true and correct copies of Plaintiffs’ notices to LWDA.)

10 63. The last day for Defendants to confidentially propose a cure to LWDA was April 5,
11 2025.

12 64. The last day for WDA to set a conference to discuss Defendants’ a confidential
13 proposal to cure Plaintiffs’ claims enumerated in the March 13, 2025 notice was April 19, 2025.
14 LWDA has not notified Plaintiff of any such conference.

15 65. The last day for LWDA to notify Plaintiffs of LWDA’s intent to investigate their
16 claims was May 12, 2025. To date, LWDA has not communicated with Plaintiffs following their
17 March 13, 2025 letter.

18 **FIRST CAUSE OF ACTION**

19 **Violation of Private Attorneys General Act of 2004**

20 **(Cal. Lab. Code §§ 2698, et seq.)**

21 66. Plaintiffs repeat and incorporate by reference all previous allegations and further
22 alleges the following:

23 67. PAGA permits LWDA to assess and collect civil penalties under PAGA for
24 violating California’s Labor Code. Alternatively, PAGA also permits an aggrieved employee like
25 Plaintiffs to recover civil penalties, in a civil action, on behalf of themselves, the other aggrieved
26 employees, and the State of California, pursuant to the procedures enumerated in Labor Code
27 section 2699.3.

1 68. Under PAGA, a civil action that alleges a PAGA cause of action may be brought by
2 an “aggrieved employee.” An “aggrieved employee” is any person that was employed by the
3 alleged violator against whom one or more of the alleged violations was committed. Plaintiffs are
4 aggrieved employees of Defendants under PAGA.

5 69. Willful Misclassification. Defendants violated Labor Code sections 226.8 by
6 willfully misclassifying Plaintiffs and the aggrieved employees as independent contractors instead
7 of employees.

8 70. Minimum Wage Violations. Defendants violated Labor Code sections 1182.12, 8
9 CCR 11100(4), and MW-2024 by Plaintiffs and the aggrieved employees to perform off-the-clock
10 work without any compensation during the PAGA Period.

11 71. Overtime Violations. Defendants violated Labor Code section 510 by not paying
12 Plaintiffs and the aggrieved employees one-and-one-half times their respective regular rates of pay
13 when they worked more than eight hours in a workday, 40-hours in a workweek, and/or seven
14 consecutive days in a workweek during the PAGA Period.

15 72. Double-Time Violations. Defendants violated Labor Code section 510 by not
16 paying Plaintiff Protacio and the aggrieved employees twice their respective regular rates of pay
17 when they worked more than 12-hours in a workday during the PAGA Period.

18 73. Reporting Time Pay. Defendants did not pay Plaintiffs and/or the aggrieved
19 employees reporting time pay when they were required to report to work, actually reported to
20 work, and were not put to work or was furnished less than half the usual or scheduled day’s work
21 during, in violation of California, during the PAGA Period.

22 74. Meal Period Violations. Defendants violated Labor Code section 226.7, 512, 1198,
23 1199, and 8 CCR 11100(11) for not authorizing and/or permitting Plaintiffs and the aggrieved
24 employees to take timely, 30-minute uninterrupted duty-free meal periods after each five hours of
25 work during the PAGA Period. Defendants further violated Labor Code sections 226.7, 512 1198,
26 1199, and 8 CCR 11100(11) by not paying Plaintiffs and the aggrieved employees a meal period
27 wage during the PAGA Period.
28

1 75. Rest Period Violations. Defendants violated Labor Code section 226.7, 1198, 1199,
2 and 8 CCR 11100(12) for not authorizing and/or permitting Plaintiffs and the aggrieved employees
3 to take timely, 10-minute uninterrupted duty-free rest periods after each four hours of work or
4 major fraction thereof during the PAGA Period. Defendants further violated Labor Code sections
5 226.7, 1198, 1199, and 8 CCR 11100(12) by not paying Plaintiffs and the aggrieved employees a
6 rest period wage during the PAGA Period.

7 76. Sick Pay. Defendants violated Labor Code section 246 for not paying Plaintiffs and
8 the aggrieved employees paid sick leave when they had accrued paid sick leave and were sick
9 during the PAGA Period.

10 77. Failure to Pay Wages Due Upon Separation. Defendants violated Labor Code
11 sections 201-203 because Defendants failed and/or refused to timely pay Plaintiffs and the
12 aggrieved employees all of their earned but unpaid wages upon termination and/or voluntary
13 resignation during the PAGA Period.

14 78. Failure to Reimburse Necessary Business Expenses. Defendants violated Labor
15 Code sections 2800-2802 because Defendants failed and/or refused to reimburse Plaintiffs and the
16 aggrieved employees for all necessary business expenses, including but not limited to necessary
17 business expenses associated with personal cell phone usage, vehicle mileage, and materials for
18 work purposes that Plaintiffs and/or the aggrieved employees incurred on behalf of Defendants
19 during the PAGA Period.

20 79. Failure to Pay Wages Semi-Monthly. Defendants violated Labor Code section 204
21 because Defendants failed and/or refused to pay Plaintiffs and the aggrieved employees at least
22 semi-monthly during the PAGA Period.

23 80. Failure to Pay Wages on Regular Pay Day. Defendants violated Labor Code section
24 204b because Defendants failed and/or refused to pay Plaintiffs and the aggrieved employees on a
25 regular pay day during the PAGA Period.

26 81. Illegal Retaliation. Defendants violated Labor Code section 98.6 because
27 Defendants retaliated against Plaintiffs and the aggrieved employees by adversely changing
28 Plaintiffs' and/or the aggrieved employees' wages, hours, and/or working conditions after Plaintiffs

1 and/or the aggrieved employees' complained about Defendants' illegal wage and hour practices
2 during the PAGA Period.

3 82. Wage Statement Violations. Defendants violated Labor Code section 226 by failing
4 and/or refusing to furnish Plaintiffs and the aggrieved employees with accurate and sufficiently
5 itemized wage statements during the PAGA Period. During the PAGA Period, Plaintiffs, and upon
6 information and belief, the aggrieved employees were confused by Defendants' inaccurate and
7 insufficiently itemized wage statements.

8 83. Willful Failure to Maintain Records. Defendants violated Labor Code section 1174
9 because Defendants willfully failed and/or refused to maintain accurate payroll records for
10 Plaintiffs and the aggrieved employees during the PAGA Period.

11 84. Failure to Produce Payroll Records. Defendants violated Labor Code section 226 by
12 failing and/or refusing to timely produce Plaintiffs' and/or the aggrieved employees' respective
13 payroll records upon request during the PAGA Period.

14 85. Failure to Produce Personnel File. Defendants violated Labor Code section 1198.5
15 by failing and/or refusing to timely produce Plaintiffs' and/or the aggrieved employees' respective
16 personnel file upon request during the PAGA Period.

17 86. Defendants' myriad Labor Code violations make them liable to Plaintiffs and the
18 aggrieved employees for civil penalties under PAGA.

19 87. Plaintiffs complied with PAGA's administrative exhaustion requirements. LWDA
20 did not investigate Plaintiffs' claims within the PAGA statutory period. Defendants failed to cure
21 and provide notice within the PAGA statutory period.

22 88. Defendants are liable to Plaintiffs and the aggrieved employees for civil penalties
23 under PAGA for the Labor Code violations alleged in the Complaint.

24 89. Plaintiffs seek civil penalties in the amounts set forth in each statute allegedly
25 violated in the Complaint, for all statutes that lack a specified penalty, and seeks default penalties
26 under PAGA.

27 90. Plaintiffs also seeks an award of reasonable attorney's fees and costs in connection
28 with their claims for civil penalties under PAGA.

PRAYER FOR RELIEF

91. Plaintiffs request the following:

- A. Civil penalties in an amount to be proven at trial;
- B. Accrued interest at the maximum legal rate in an amount to be proven at trial;
- C. Reasonable attorney's fees and costs;
- D. All other remedies this Court deems just and proper.

LAW OFFICE OF SHAFIEL A. KARIM, P.C.



Shafiel A. Karim

Date: May 19, 2025

Attorney for Plaintiffs Sage Forsythe and Niko
Protacio, aggrieved employees deputized as
Attorneys General under the Private Attorneys
General Act of 2004

EXHIBIT "A"

March 13, 2025

Labor & Workforce Development Agency
Attention: PAGA Administrator
151 Clay Street, Suite 801
Oakland, California 94612

VIA ELECTRONIC SUBMISSION

Re: Sage Forsythe's Claims Against ACW Escape LLC d/b/a Escapade Games, et al. Private Attorney General Act (Cal. Lab. Code §§ 2698, et seq.)

Dear Sir or Madam:

We represent Sage Forsythe in connection with her employment law claims against ACW Escape LLC d/b/a Escapade Games ("Escapade"), Jorin Andresen, Christina Compani, and David Watermeier (collectively, "ACW") from on or around November 13, 2023 to February 7, 2025. This letter is notice to Labor Workforce Development Agency ("LWDA") of Ms. Forsythe's claims under Labor Code section 2699.3(a). If ACW has not availed of its right to cure its blatant Labor Code violations "more than three times in a 12-month period for the same violations or violations contained in this notice," this notice is also intended to permit ACW an opportunity to cure its numerous Labor Code violations under section 2699.3(c)(2)(A). (See Cal. Lab. Code § 2699.3(c)(2)(B).)

ACW blatantly disregarded the Labor Code and IWC Wage Order No. 10-2001 and is liable to Ms. Forsythe, the aggrieved employees, and the State of California under the Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, et seq.) ("PAGA") for civil penalties. If LWDA elects not to investigate Ms. Forsythe's claims, she will seek civil penalties against ACW on behalf of herself, the aggrieved employees, and the State of California under, *inter alia*, Labor Code sections 201-204, 204b, 223, 226, 226.7, 226.8, 246, 248.5, 432.5, 512, 1174, 1198.5, 1197, 1199, 2800 and 2802, and 2802.

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1. Parties

a. ACW Escape LLC d/b/a Escapade Games

Escapade is a California corporation with a principal place of business located at 1111 East Commonwealth Avenue, Suite A, Fullerton, California 92831. Escapade provides immersive in-person horror simulacra games, namely *Zoe: Reborn*. In *Zoe: Reborn*, Escapade's customers pay to be frightened by actors while solving myriad puzzles in an attempt to escape the game. Upon information and belief, Escapade currently employs approximately 13 full-time employees.

b. Jorin Andresen

Upon information and belief, Jorin Andresen is a managing agent of Escapade and maintains a principal place of business located at 1111 East Commonwealth Avenue, Suite A, Fullerton, California 92831. Upon information and belief, Mr. Andresen had, and has, actual knowledge of Ms. Forsythe's claims contained in this letter. Moreover, Mr. Andresen exercised discretion and authority over Escapade's unlawful employment policies and practices during the relevant time period.

c. Christina Compani

Upon information and belief, Christina Compani is a managing agent of Escapade and maintains a principal place of business located at 1111 East Commonwealth Avenue, Suite A, Fullerton, California 92831. Upon information and belief, Ms. Compani had, and has, actual knowledge of Ms. Forsythe's claims contained in this letter. Moreover, Ms. Compani exercised discretion and authority over Escapade's unlawful employment policies and practices during the relevant time period.

d. David Watermeier

Upon information and belief, David Watermeier is a managing agent of Escapade and maintains a principal place of business located at 1111 East Commonwealth Avenue, Suite A, Fullerton, California 92831. Upon information and belief, Mr. Watermeier had, and has, actual knowledge of Ms. Forsythe's claims contained in this letter. Moreover,

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Mr. Watermeier had oversight of Escapade's operations and influence over its illegal employment policies and practices during the relevant time period.

e. Sage Forsythe

From November 13, 2023 to February 7, 2025 ("Employment Period"), Ms. Forsythe worked for ACW as Scarer/Actor. ACW classified her as an independent contractor, not an employee. Accordingly, ACW did not pay for Ms. Forsythe's employer funded payroll taxes, withhold employee funded taxes or withhold applicable taxes and contributions. As a direct and proximate result, her transcript with the Internal Revenue Service is inaccurate.

Although ACW classified Ms. Forsythe as an independent contractor, ACW controlled and directed the performance of her work during the Employment Period. Moreover, Ms. Forsythe's work as Scarer/Actor was in the usual course of ACW's business of providing its customers with immersive in-person horror simulacra games. Ms. Forsythe was also not customarily engaged in any independently established trade, occupation, or business.

For example, Ms. Forsythe did not hold herself out as being engaged in any occupation or business distinct from that of ACW. Ms. Forsythe's work as Scarer/Actor was a regular and integral part of ACW's business. ACW furnished Ms. Forsythe with the tools and instrumentalities (i.e., sets and props) that she used to scare customers and act during costumed performances of *Zoe: Reborn*. And ACW set Ms. Forsythe's schedule and dictated when, where, and how she should perform her job duties.

Upon hire, Ms. Compani ordered Ms. Forsythe to download software applications (e.g., Homebase, Discord and Resova) on her personal cell phone for use during work. Ms. Forsythe was required to use Homebase to clock-in and clock-out each workday; she was required to communicate with Ms. Compani, Messrs. Andresen and Watermeier and other ACW employee using Discord or iMessage; and she was required to use Resova to monitor and manage ACW's customer bookings. ACW did not reimburse Ms. Forsythe for using her personal cell phone for work during the Employment Period.

Ms. Forsythe's initial rate of pay was \$16 per hour. At ACW's direction, Ms. Forsythe typically worked Thursday through Sunday from beginning in the afternoon

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until past midnight into the very early morning the following-day. ACW further required Ms. Forsythe to remain “on-call” or on “standby” during those days. ACW also did not permit Ms. Forsythe to trade her on-call responsibilities with other co-workers. Yet, ACW did not pay Ms. Forsythe for her compensable “on-call” or “standby” time despite the fact that she was required to remain available to report to work at any time during those days.

During the Employment Period, Ms. Forsythe occasionally worked more than eight hours in a workday. ACW did not pay her overtime pay in the form of one-and-one-half times her regular rate of pay.

Ms. Forsythe was also regularly required to work off-the-clock without any compensation During the Employment Period. For instance, Ms. Forsythe was required to don and doff her *Zoe: Reborn* costume off-the-clock without any compensation. In fact, Ms. Compani and Mr. Andresen routinely scolded Ms. Forsythe (and other ACW workers) by exclaiming, “We’re not paying you to get undressed!”

Separately, ACW instructed Ms. Forsythe to run errands for work (e.g., purchasing supplies), off-the-clock, using her personal vehicle several times each workweek. Each errand typically took 10 to 20 minutes. ACW did not compensate her for the time she spent running errands. ACW also did not reimburse Ms. Forsythe for vehicle mileage or—on multiple occasions—for the supplies she was instructed to purchase.

Similarly, ACW instructed Ms. Forsythe to make her own *Zoe: Reborn* costume but did not pay for the time she spent making it; ACW also did not reimburse her for the materials costs. Ms. Forsythe spent five to eight hours making a custom-made costume and an additional three hours fixing the custom-made costume during the Employment Period. Ms. Forsythe is informed and believes that she spent \$120 in materials for the costume.

During the Employment Period, Ms. Forsythe was typically assigned to perform costumed performances in *Zoe: Reborn*. She typically worked more than six hours in a workday on those occasions. But ACW did not authorize or permit her to take compliant meal periods. Specifically, she was not authorized or permitted to take a 30-minute uninterrupted duty-free meal period after each five hours of work. Instead, ACW required her to quickly eat a meal—in less than 30-minutes—before being instructed to resume

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her costumed performance. ACW did not pay her a meal period wage in the form of an additional hour of pay at her regular rate of pay for each workday on those occasions.

Ms. Forsythe was also not authorized or permitted to take a 10-minute uninterrupted duty-free rest period after each four hours of work or major fraction thereof. ACW did not pay her a rest period wage in the form of an additional hour of pay at her regular rate of pay for each workday on those occasions either.

During the Employment Period, Ms. Forsythe accrued paid sick leave under California's Healthy Workplaces, Healthy Families Act. Ms. Forsythe called in sick on at least one occasion during the Employment Period. However, ACW did not pay her paid sick leave when she called in sick.

ACW paid Ms. Forsythe intermittently via PayPal, Zelle or Venmo on random days during the Employment Period. Worse, ACW did not furnish her with statements that itemized her gross wages earned, total hours worked, all deductions made, net wages earned, inclusive dates of the period for which she was being paid, and her name and Social Security number. Not surprisingly, Ms. Forsythe was confused about how ACW computed her wages during the Employment Period.

On January 24, 2025, Ms. Forsythe requested copies of her payroll records and personnel file in writing. ACW received her request on January 27, 2025. ACW's last day to produce Ms. Forsythe's payroll records and personnel file was February 13, 2025 and February 26, 2025, respectively. To-date, ACW has not produced any of her records.

After January 27, 2025, ACW reduced the number of hours Ms. Forsythe's was scheduled to work. Ms. Forsythe is informed and believes that ACW retaliated against her because she exercised her legal right to request copies of her payroll records and personnel file.

On February 7, 2025, Ms. Forsythe was constructively terminated by ACW. In particular, ACW's unlawful and unfair employment acts and practices were so intolerable that Ms. Forsythe was forced to quit. ACW did not pay Ms. Forsythe all of her earned but unpaid wages immediately upon her constructive termination or within 72-hours of her forced resignation. To-date, ACW has not paid Ms. Forsythe all of her earned but unpaid wages.

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2. PAGA Allegations

During the Employment Period, Ms. Forsythe was an “aggrieved employee” under PAGA. Ms. Forsythe is further informed and believes that from March 13, 2024 to the present (“PAGA Period”), ACW employed approximately 13 “aggrieved employees,” including herself, for PAGA purposes.

Ms. Forsythe is informed and believes ACW misclassified all of its workers as independent contractors instead of employees during the PAGA Period. She is further informed and believes that ACW’s pattern and practice of misclassifying its workers was designed to evade paying employer funded payroll taxes, withhold employee funded taxes or withhold applicable taxes and contributions.

Ms. Forsythe is informed and believes ACW controlled and directed the performance of the aggrieved employees’ work during the PAGA Period. She is informed and believes the aggrieved workers’ work was in the usual course of ACW’s business of providing its customers with immersive in-person horror simulacra games. She is further informed and believes that the aggrieved employees were not customarily engaged in any independently established trade, occupation, or business during the PAGA Period.

Ms. Forsythe is informed and believes that, upon hire, the aggrieved employees were ordered to download software applications (e.g., Homebase, Discord, and Resova) on their respective personal cell phones for work during the PAGA Period. She is informed and believes that ACW did not reimburse the aggrieved employees for using their respective personal cell phones for work during the PAGA Period.

Ms. Forsythe is informed and believes the aggrieved employees worked more than eight hours in a workday during the PAGA Period. She is further informed and believes that ACW did not pay the aggrieved employees overtime pay in the form of one-and-one-half times their respective regular rates of pay on those occasions.

Ms. Forsythe is informed and believes that ACW required the aggrieved employees to remain “on call” or “standby” during the PAGA Period. She is further informed and believes that ACW did not pay the aggrieved employees for their compensable “on-call” or “standby” time.

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Ms. Forsythe is informed and believes that ACW required the aggrieved employees to work off-the-clock without any compensation during the PAGA Period.

Ms. Forsythe is informed and believes that ACW required the aggrieved employees to use their personal vehicles to run errands for work during the PAGA Period. She is further informed and believes that ACW did not reimburse those aggrieved employees for vehicle mileage on those occasions.

Ms. Forsythe is informed and believes that the aggrieved employees were not authorized or permitted to take a 30-minute uninterrupted duty-free meal period after each five hours of work during the PAGA Period. She is further informed and believes that ACW did not pay the aggrieved employees a meal period wage in the form of an additional hour of pay at the aggrieved employees' respective regular rate of pay on those occasions.

Ms. Forsythe is informed and believes that the aggrieved employees were not authorized or permitted to take 10-minute uninterrupted duty-free rest periods after each four hours of work or major fraction thereof during the PAGA Period. She is further informed and believes that ACW did not pay the aggrieved employees a rest period wage on those occasions.

Ms. Forsythe is informed and believes that the aggrieved employees accrued paid sick leave under California's Healthy Workplaces, Healthy Families Act during the PAGA Period. She is informed and believes that the aggrieved employees were unable to work because they were sick on occasion. She is further informed and believes that ACW did not pay those aggrieved employees their accrued paid sick leave on those occasions.

Ms. Forsythe is informed and believes that ACW paid the aggrieved employees intermittently via PayPal, Zelle or Venmo on random days during the PAGA Period. She is informed and believes that ACW did not consistently pay the aggrieved employees their respective wages on regular paydays, at least twice each month, during the PAGA Period.

Ms. Forsythe is informed and believes that ACW did not furnish the aggrieved employees statements that itemized their respective gross wages earned, total hours worked, all deductions made, net wages earned, inclusive dates of the period for which

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she was being paid, and her name and Social Security number. She is further informed and believes that the aggrieved employees were confused about how ACW computed their respective wages during the PAGA Period.

Ms. Forsythe is informed and believes that some of the aggrieved employees requested their payroll records and personnel file during the PAGA Period. She is further informed and believes that ACW did not produce the aggrieved employees' requested payroll records and personnel file within the time period prescribed by law.

Ms. Forsythe is informed and believes that some of the aggrieved employees complained to ACW about its illegal wage and hour practices during the PAGA Period. She is further informed and believes that ACW unlawfully retaliated against those aggrieved employees by actually and/or constructively terminated them.

Ms. Forsythe is informed and believes ACW did not pay the aggrieved employees all of their respective earned but unpaid wages immediately upon termination.

3. Joint Employer Liability

An “employer” includes “any person...who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any employee.” (8 CCR 11100(2)(H).) The term “employer” is broadly construed under federal law and allows for multiple persons to be liable for unpaid wages and penalties. (Cal. DLSE Man. § 37.1.2; *Real v. Driscoll Strawberry Assoc.* (9th Cir. 1979) 603 F.2d 748, 754 (wage claim against joint employer decided under federal wage and hour laws).)

In California, the term “employer” is even more broadly construed because the Labor Code is more protective than federal wage and hour laws. That is because “[t]he language of the IWC’s ‘employer’ definition has the obvious utility of reaching situations in which multiple entities control different aspects of the employment relationship, as when one entity, which hires and pays workers, places them with other entities that supervise the work.” (*Martinez v. Coombs* (2010) 49 Cal. 4th 35, 59; see, also *Guerrero v. Superior Court* (2013) 213 Cal. App. 4th 912, 945-47 (employer includes person who merely controls the “power of the purse” and exercises “quality control authority.”).) A

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person is an “employer” if it exercises “control” over the worker. (*Vernon v. State of California* (2004) 116 Cal. App. 4th 114, 126.)

Moreover, Labor Code section 558.1 imposes liability for the employer and “any other person acting on behalf of an employer who violates, or causes to be violated, a section of...[the Labor Code]...” The term “any other person acting on behalf of an employer” expressly includes “an owner, director, officer, or managing agent of the employer.” (Cal. Lab. Code § 558.1(b).) And the term “managing agent” means a person is in a policy making position (Cal. Code § 558.1(b); Cal. Civ. Code § 3294(b); *Kelly-Zurian v. Wohl Shoe Co.* (1994) 22 Cal. App. 4th 397, 422 (person with discretion to make decisions that will ultimately determine corporate policy is managing agent); *Espinoza v. Hepta Run, Inc.* (2022) 74 Cal. App. 5th 44, 59 (managing agent liability attaches even if individual did not have “involvement in the day-to-day operations of the company” and only “had some oversight of the company’s operations or some influence on corporate policy that resulted in Labor Code violations.”).) “Such a person is personally liable for overtime, meal period, rest period, and reporting time wages.” (Cal. DLSE Man. § 37.1.4.) Additionally, she or she would also be liable to the employee for minimum wage restitution, liquidated damages, and waiting time penalties. (Cal. Lab. Code § 1197.1.)

Here, Ms. Compani and Mr. Andresen exercised control over Ms. Forsythe’s and the aggrieved employees’ wages, hours, and working conditions during the PAGA Period. Although Mr. Watermeier did not personally control Ms. Forsythe’s or the aggrieved employees’ respective wages, hours, and/or working conditions, he had oversight of Escapade’s operations and influence over its employment policies and practices during the PAGA Period. Accordingly, Escapade, Ms. Compani, and Messrs. Andresen and Watermeier are each, jointly and severally, liable for the myriad wage and hour violations enumerated in this letter during the PAGA Period.

4. Labor Code Violations

a. Willful Misclassification in Violation of Labor Code Section 226.8

Willfully misclassifying workers as independent contractors is unlawful. (Cal. Lab. Code § 226.8(a)(1).) An employer that willfully misclassifies a worker as an independent contractor “shall be subject to a civil penalty of not less than...\$5,000...and

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not more than...\$15,000...*for each violation*, in addition to any other penalties or fines permitted by law.” (Cal. Lab. Code § 226.8(b).) If an employer engages in a “pattern or practice” of willfully misclassifying a worker as an independent contractor, the employer “shall be subject to a civil penalty of not less than...\$10,000...and not more than...\$25,000...*for each violation*, in addition to any other penalties or fines permitted by law.” (Cal. Lab. Code § 226.8(c).)

In California, there is rebuttable presumption that most workers are employees rather than independent contractors. (Cal. Lab. Code § 2750.5.) That is because an independent contractor is “any person who renders service for a specified recompense for a specified result, under the control of her principal as to the result of her work only and not as to the means by which such result is accomplished.” (Cal. Lab. Code § 3353.) A worker is an independent contractor *only if all three* of the following factors are satisfied:

(A) that the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact, (B) that the worker performs work that is outside the usual course of the hiring entity’s business, and (C) that the worker is customarily engaged in an independently established trade, occupation, or business, the worker should be considered an employee and the hiring business an employer under the suffer or permit to work standard in wage orders. The hiring entity’s failure to prove any one of these three prerequisites will be sufficient in itself to establish that the worker is an included employee, rather than an excluded independent contractor, for purposes of the wage order.

(*Dynamex Ops. W. v. Superior Court* (2018) 4 Cal. 5th 903, 964.)

Here, ACW willfully misclassified Ms. Forsythe and the aggrieved employees as independent contractor during the PAGA Period. Neither Ms. Forsythe nor the aggrieved employees were customarily engaged in any independently established trade, occupation, or business during the PAGA Period. Ms. Forsythe is informed and believes ACW willfully misclassified Ms. Forsythe and the aggrieved employees as part of a scheme to evade paying employer funded payroll taxes, withhold employee funded taxes or withhold applicable taxes and contributions. She is further informed and believes ACW’s

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misclassification scheme was designed to unlawfully reduce its business variable operating costs. Thus, ACW engaged in an illegal pattern and practice of misclassifying Ms. Forsythe and the aggrieved employees during the PAGA Period.

b. Failure to Pay at Least Minimum Wages in Violation of Labor Code Sections 1182.12 and 1197, and IWC Wage Order MW-2024

“The minimum wage for employees...is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” (Cal. Lab. Code § 1197.) If an employer pays an employee less than the applicable minimum wage, it is liable for civil penalties of \$100 “for each underpaid employee for each pay period for which the employee is underpaid” and \$250 “for each underpaid employee for each [subsequent] pay period for which the employee is underpaid.” (Cal. Lab. Code § 1197.1(a).)

The applicable minimum wage \$15 in 2023, and \$16 in 2024. (Cal. Lab. Code § 1182.12(b)(1); MW-2024.) An employer that pays an employee less than the applicable statutory minimum wage is liable for “the full amount of...minimum wage or overtime compensation, including interest...reasonable attorney’s fees, and costs of suit.” (Cal. Lab. Code § 1194.) Such employees are also entitled to recover liquidated damages “in an amount equal to the wages unlawfully unpaid and interest thereon.” (Cal. Lab. Code § 1194.2(a).)

Here, Ms. Forsythe and the aggrieved employees were required to work off-the-clock on various occasions during the PAGA Period. For example, they were required to don and doff their costumes off-the-clock. They were also required to run errands off-the-clock. And finally, they were required to respond to messages and communicate with Ms. Compani and Mr. Andresen about various work related matters off-the-clock. Yet, ACW did not pay Ms. Forsythe and/or the aggrieved employees any wages for these instances of off-the-clock compensable work during the PAGA Period.

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c. Secret Payment of Wages Lower Than Designated Scale in Violation of Cal. Lab. Code § 223

“Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawfully to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.” Cal. Lab. Code § 223.

Here, Ms. Forsythe and the aggrieved employees were required to work off-the-clock on various occasions during the PAGA Period. For example, they were required to don and doff their costumes off-the-clock. They were also required to run errands off-the-clock. And finally, they were required to respond to messages and communicate with Ms. Compani and Mr. Andresen about various work related matters off-the-clock. Yet, ACW did not pay Ms. Forsythe and/or the aggrieved employees any wages for these instances of off-the-clock compensable work during the PAGA Period.

d. Failure to Pay Overtime Pay in Violation of Labor Code Section 510 and IWC Wage Order No. 10-2001

If an employee works more than eight hours in a workday, 40-hours in a workweek, or seven consecutive days in a workweek, the employee is entitled to overtime compensation in the form of one and one-half times her or her regular rate of pay. (Cal. Lab. Code § 510(a); 8 CCR 11100(3)(A)(1)(a).) If an employee works more than twelve hours in a workday, that employee is entitled to twice their regular rate of pay. (Cal. Lab. Code § 510(a); 8 CCR 11100(3)(A)(1)(b).)

Here, Ms. Forsythe and the aggrieved employees worked more than eight hours in a workday during the PAGA Period. ACW did not pay Ms. Forsythe and/or the aggrieved employees overtime pay in the form of one-and-one-half times their respective regular rates of pay during the PAGA Period.

e. Failure to Pay Reporting Time Pay

Employees are entitled to reporting time pay if the employee is required to report for work, does report, but is not put to work or is furnished less than half the usual or scheduled day’s work. (Cal. DLSE Man. § 45.1(A).) In such cases, employers must pay no less than two hours of the employee’s regular rate of pay and no more than four hours

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of the employee’s regular rate of pay. (Cal. DLSE Man. § 45.1(B).) This is because reporting time pay “compensate[s] employees” and “encourages proper notice and scheduling.” (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal. 4th 1094, 1111-1112.) Moreover, physical reporting is not required for reporting time pay to accrue. (*Ward v. Tilly’s Inc.* (2019) 31 Cal. App. 5th 1167.) An employer’s requirement to pay reporting time pay is waived if civil authorities suspend the employer’s operations, public utilities fail, or a force majeure event occurs. (Cal. DLSE Man. § 45.1(C).)

Here, ACW required Ms. Forsythe and the aggrieved employees to remain “on-call” or remain on “standby” on days they were scheduled to work during the PAGA Period. ACW required them to remain available to report to work at any time during days they were scheduled to work. ACW did not permit them trade their on-call responsibilities with other co-workers. Yet, ACW did not pay Ms. Forsythe and the aggrieved employees for their compensable “on-call” or “standby” time at their respective rates of pay during the PAGA Period.

f. Failure to Authorize or Permit Meal Breaks in Violation of Labor Code Sections 226.7, 512 and 1198, and IWC Wage Order No. 10-2001

“The employment of any employee for longer hours than those fixed [by law]...is unlawful.” (Cal. Lab. Code § 1198.) “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes....” (Cal. Lab. Code § 512(a).) During a meal break, employers must relieve employees of all work. (Cal. Lab. Code § 226.7(b); 8 CCR 11100(11); *Brinker Restaurant Corp v. Superior Court* (2012) 53 Cal. 4th 1004, 1035-36; *In re Dear Mr. Rosenberg*, 1988 Cal. DLSE LEXIS 21 (Cal. DLSE, Jan. 5, 1988).) If an employee works during a meal period, that employee is entitled to “one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal...period is not provided.” (Cal. Lab. Code § 226.7(c); *Brinker Restaurant Corp.*, 53 Cal. 4th at 1039-40.)

Here, Ms. Forsythe and the aggrieved employees were not authorized or permitted to take compliant meal periods during the PAGA Period. Specifically, they were not authorized or permitted to take a 30-minute uninterrupted duty-free meal period after each five hours of work. Instead, ACW required them to quickly eat their meals—in less than 30-minutes—before being instructed to resume their respective costumed

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performance. ACW did not pay Ms. Forsythe and/or the aggrieved employees a meal period wage in the form of an additional hour of pay at their respective regular rates of pay for each workday on those occasions during the PAGA Period.

g. Failure to Authorize or Permit Rest Breaks in Violation of Labor Code Sections 226.7, 1198 and 1199, and IWC Wage Order No. 10-2001

“The employment of any employee for longer hours than those fixed [by law]...is unlawful.” (Cal. Lab. Code § 1198.) Employers must authorize and permit employees a 10-minute uninterrupted paid rest break after four hours of work. (8 CCR 11100(12)(A).) Specifically, employers must “relieve employees of all work-related duties and employer control” during an employee’s rest break. (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 270.) If an employer fails to authorize or permit an employee from taking their mandatory rest period, that employee is entitled to “one additional hour of pay at the employee’s regular rate of compensation for each workday that the...rest...period is not provided.” (Cal. Lab. Code § 226.7(c).)

Here, Ms. Forsythe and the aggrieved employees were not authorized or permitted to take a 10-minute uninterrupted duty-free rest period after each four hours of work or major fraction thereof during the PAGA Period. ACW did not pay them a rest period wage in the form of an additional hour of pay at their respective regular rates of pay for each workday on those occasions during the PAGA Period.

h. Failure to Pay Sick Pay in Violation of the Healthy Workplaces, Healthy Families Act

“An employee...accrue[s] paid sick days at the rate of not less than one hour per every 30 hours worked.” (Cal. Lab. Code § 246(b)(1).) Typically, employees are entitled to “not less than 24 hours or 3 days of paid sick leave...by the completion of the employee’s 120th calendar day of employment...” (Cal. Lab. Code § 246(b)(4).) Employees are “entitled to use accrued paid sick days beginning on the 90th day of employment...” (Cal. Lab. Code § 246(c).) “[A]n employer may limit an employee’s use of accrued paid sick days to 40 hours or five days in each of employment...” (Cal. Lab. Code § 246(d).) Violations of California’s Healthy Workplaces, Healthy Families Act are

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Labor & Workforce Development Agency
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actionable under PAGA. (*Wood v. Kaiser Foundation Hospitals* (2023) 88 Cal. App. 5th 742.)

Here, the PAGA period spans more than one year. ACW should have accrued paid sick days for Ms. Forsythe and the aggrieved employees during the PAGA Period. However, ACW did not provide Ms. Forsythe and/or the aggrieved employees any accrued paid sick days as required by California’s Healthy Workplaces, Healthy Families Act during the PAGA Period.

i. Failure to Pay All Earned But Unpaid Wages Upon Separation of Employment in Violation of Labor Code Sections 201 and 203

“If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” (Cal. Lab. Code § 201(a).) Failure to pay all wages earned and unpaid at the time of discharge will “continue” for 30 days. (Cal. Lab. Code § 203(a).) Specifically, the continued unpaid wages or waiting time penalties “accrue not only on the days that the employee might have worked, but also on nonworkdays.” (*Mamika v. Barca* (1998) 69 Cal. App. 4th 487, 492-493.) Waiting time penalties are computed by calculating the daily rate of pay “multiplied by the number of days of nonpayment, up to 30 days.” (*Id.*)

The purpose and intent of Labor Code sections 201 and 203 “is to compel the prompt payment of earned wages.” (*Oppenheimer v. Sunkist Growers, Inc.* (1957) 153 Cal. App. 2d Supp. 897, 898-99.) More specifically, “The object of the statutory plan is to encourage employers to pay amounts concededly owed by her to her discharged or terminated employee without undue delay and to hasten settlement of disputed amounts.” (*Triad Data Services, Inc. v. Jackson* (1984) 153 Cal. App. Supp. 1, 11.)

Here, ACW constructively terminated Ms. Forsythe on February 7, 2025. Ms. Forsythe is informed and believes that a subset of the aggrieved employees was terminated and/or voluntarily quit during the PAGA Period. But ACW did not pay Ms. Forsythe and/or the aggrieved employees all of their respective earned but unpaid wages immediately upon termination during the PAGA Period.

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j. Failure to Reimburse Necessary Business Expenses in Violation of Labor Code Section 2802 and IWC Wage Order No. 10-2001

Employers are required to indemnify employees for all necessary business expenses incurred on behalf of the employer. Cal. Lab. Code § 2802. For example, employers are required to reimburse an employee's use of her or cell phone for work. (*Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal. App. 4th 1137, 1140.) An employer must even reimburse an employee for using her or cell phone for work even if the employee has unlimited cell phone minutes or data. (*Tehrani v. Macy's W. Stores, Inc.*, 2016 U.S. Dist. LEXIS 51713 at *24-25 (C.D. Cal. Apr. 18, 2016).)

Here, during the PAGA Period, ACW ordered Ms. Forsythe and/or the aggrieved employees to download software applications (e.g., Homebase, Discord and Resova) on their respective personal cell phones for use during work. ACW instructed them to run errands using their respective personal vehicles and/or purchase supplies and/or costume materials. ACW did not reimburse Ms. Forsythe and/or the aggrieved employees for these necessary business expenses during the PAGA Period.

k. Failure to Pay Wages Semi-Monthly in Violation of Cal. Lab. Code § 204

With the exception of waiting time penalties, 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." Cal. Lab. Code § 204. An employer that violates Labor Code section 204 triggers civil penalties of \$100 for the "initial violation...for each failure to pay each employee" and \$200 "[f]or each subsequent violation...for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld." Cal. Lab. Code § 210(a) and (c).

Here, ACW did not pay Ms. Forsythe and the aggrieved employees twice during calendar month, on days designated in advance by the employer as the regular paydays during the PAGA Period. Instead, ACW paid Ms. Forsythe and the aggrieved employees intermittently via PayPal, Zelle or Venmo on random days during the PAGA Period.

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l. Failure to Pay Wages on a Regular Pay Day in Violation of Cal. Lab. Code § 204b

“Labor performed by a weekly-paid employee during any calendar week and prior to or on the regular payday shall be paid for not later than the regular payday of the employer for such weekly-paid employee falling during the following calendar week.” Cal. Lab. Code § 204b. Additionally, “Labor performed by a weekly-paid employee during any calendar week and subsequent to the regular payday shall be paid for not later than seven days after the regular payday of the employer for such weekly-paid employee falling during the following calendar week.” Id. An employer’s failure to strictly comply with Labor Code section 204b is guilty of a misdemeanor. Cal. Lab. Code § 215; Cal. DLSE Man. § 10.1. An employer that violates Labor Code section 204 triggers civil penalties of \$100 for the “initial violation...for each failure to pay each employee” and \$200 “[f]or each subsequent violation...for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.” Cal. Lab. Code § 210(a) and (c).

Here, ACW did not pay Ms. Forsythe and the aggrieved employees twice during calendar month, on days designated in advance by the employer as the regular paydays during the PAGA Period. Instead, ACW paid Ms. Forsythe and the aggrieved employees intermittently via PayPal, Zelle or Venmo on random days during the PAGA Period.

m. Failure to Furnish Accurate or Itemized Wage Statements in Violation of Labor Code Section 226(a) and IWC Wage Order No. 10-2001

Employers must furnish accurate and itemized wage statements to employees semimonthly or at the time of payment of wages. (Cal. Lab. Code § 226(a); 8 CCR 11100(7).) A proper wage statement must enumerate, *inter alia*, gross wages earned and total hours worked. Id. Failure to furnish accurate and itemized wage statements entitles an employee to recover \$50 for the first violation, \$100 for each subsequent violation, up to a maximum penalty of \$4,000 plus attorney’s fees and costs. (Cal. Lab. Code §§ 226(e)(1) and 218.5; 8 CCR 11100(7); *Elliot v. Spherion Pac. Work, LLC*, 572 F. Supp. 2d 1169, 1181 (C.D. Cal. Aug. 13, 2008)(Labor Code section 226 is intended to prevent employee confusion about wages).)

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Here, ACW did not pay for Ms. Forsythe's and/or the aggrieved employees' employer funded payroll taxes, withhold employee funded taxes or withhold applicable taxes and contributions during the PAGA Period. Moreover, ACW did not furnish Ms. Forsythe and/or the aggrieved employees with statements that itemized their respective gross wages earned, total hours worked, all deductions made, net wages earned, inclusive dates of the period for which they were being paid, and their respective names and Social Security numbers.

n. Failure to Maintain Accurate Payroll Records in Violation of Labor Code Section 1174 and IWC Wage Order No. 10-2001

Employers must keep accurate payroll records of, *inter alia*, total hours worked and applicable rates of pay, and meal periods. (Cal. Lab. Code § 1174(c); 8 CCR 11100(7)(A).) Accurate payroll records "facilitates...information-gathering" and is "necessary for the employees' welfare." (*Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal. 4th 557, 577; *California Manufacturers Assn. v. Industrial Welfare Com.* (1980) 109 Cal. App. 3d 95, 112.) An employer's failure to maintain accurate payroll is a misdemeanor punishable by a \$500 civil penalty. (Cal. Lab. Code §§ 1175(d) and 1174.5.) This is so because an employer's failure to maintain accurate payroll records "affects a broad public interest." (*Gould v. Maryland South Industries, Inc.* (1995) 31 Cal. App. 4th 1137, 1148-49.)

Here, ACW willfully misclassified Ms. Forsythe and/or the aggrieved employees as independent contractors during the PAGA Period. It naturally follows that ACW also willfully failed to maintain accurate payroll records for her and the aggrieved employees.

o. Failure to Produce Payroll Records in Violation of Labor Code Section 226(c)

"An employer who receives a written or oral request to inspect or receive a copy of records...shall comply...no later than 21 calendar days from the date of the request." Cal. Lab. Code § 226(c). An employer that fails or refuses to comply with a payroll records request is liable for a \$750 statutory penalty to the requesting employee. Cal. Lab. Code § 226(f).

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Here, Ms. Forsythe requested copies of her payroll records on November 18, 2024. ACW received the letter on November 21, 2024. The last day for ACW to produce Ms. Forsythe's payroll records was December 9, 2024. To-date, ACW has not produced Ms. Forsythe's payroll records. Ms. Forsythe is informed and believes that a subset of aggrieved employees requested their payroll records during the PAGA Period but that ACW did not timely produce them to the requesting aggrieved employees.

p. Failure to Produce Personnel File in Violation of Labor Code Section 1198.5

An employer is legally required to produce an employee's personnel file "not later than 30 calendar days from the date the employer receives a written request...." (Cal. Lab. Code § 1198.5(b).) An employer that fails or refuses to comply with a personnel file request is liable for a \$750 statutory penalty to the requesting employee. (Cal. Lab. Code § 1198.5(k).)

Here, Ms. Forsythe requested copies of her personnel file on November 18, 2024. ACW received the letter on November 21, 2024. The last day for ACW to produce Ms. Forsythe's personnel file was December 21, 2024. To-date, ACW has not produced Ms. Forsythe's personnel file. Ms. Forsythe is informed and believes that a subset of aggrieved employees requested their personnel file during the PAGA Period but that ACW did not timely produce them to the requesting aggrieved employees.

q. PAGA Civil Penalties

An employer that violates a provision of the Labor Code is guilty of a misdemeanor punishable by a \$100 fine. (Cal. Lab. Code § 1199.) PAGA imputes a civil penalty of \$100 for each aggrieved employee per pay period for the initial Labor Code violation and \$200 per each aggrieved employee for each subsequent violation. (Cal. Lab. Code § 2699(f)(2).) Moreover, an employee who asserts PAGA claims in a representative capacity is entitled to recover reasonable attorney's fees and costs. (Cal. Lab. Code § 2699(g); see, also Cal. Lab. Code § 218.5.)

Here, ACW violates, inter alia, Labor Code sections 201-204, 204b, 223, 226, 226.7, 226.8, 246, 248.5 512, 1174, 1198.5, 1197, 1199, 2800 and 2802 during the PAGA Period for the reasons enumerated *supra*. Accordingly, ACW is liable to Ms. Forsythe,

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the aggrieved employees, and the State of California for civil penalties under the Labor Code. Ms. Forsythe is also entitled to recover reasonable attorney's fees and costs.

Please review Ms. Forsythe's notice and act against ACW as soon as possible. If LWDA declines to act against ACW, please notify this office. In turn, Ms. Forsythe will seek civil penalties, accrued interest, attorney's fees and costs, and all other relief recoverable under PAGA on behalf of herself, all aggrieved employees, and the State of California.

Sincerely,

LAW OFFICE OF SHAFIEL A. KARIM,
P.C.



Shafiel A. Karim
Attorney at Law

cc: Client (via email)

File No. 3076.00001

David Watermeier (via Certified Mail, Return Receipt Requested)
ACW Escape LLC d/b/a Escapade Games
1111 East Commonwealth Avenue, Suite A
Fullerton, California 92831

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Shafiel A. Karim SBN 291725 Law Office of Shafiel A. Karim 1154 E. Wardlow Rd Long Beach, CA 90807 TELEPHONE NO.: 562/246-5371 FAX NO. (Optional): E-MAIL ADDRESS (Optional): shafiel@skarimlaw.com ATTORNEY FOR (Name):	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: SAGE FORSYTHE RESPONDENT/DEFENDANT: ACW Escape LLC d/b/a Escapade Games	
PROOF OF SERVICE BY FIRST-CLASS MAIL—CIVIL	
CASE NUMBER: LWDA-CM-1085887-25	

(Do not use this Proof of Service to show service of a Summons and Complaint.)

1. I am over 18 years of age and **not a party to this action**. I am a resident of or employed in the county where the mailing took place.

2. My residence or business address is:

PO BOX 91985
 LONG BEACH CA 90809

Type text here

3. On (date): 03/13/25 I mailed from (city and state): LONG BEACH, CA
 the following **documents** (specify):

PAGA NOTICE LETTER

☐ The documents are listed in the *Attachment to Proof of Service by First-Class Mail—Civil (Documents Served)* (form POS-030(D)).

4. I served the documents by enclosing them in an envelope and (check one):

- a. ☐ **depositing** the sealed envelope with the United States Postal Service with the postage fully prepaid.
- b. ☒ **placing** the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

5. The envelope was addressed and mailed as follows:

a. **Name** of person served: DAVID WATERMEIR

b. **Address** of person served:
 ACW Escape LLC d/b/a Escapade Games
 1111 East Commonwealth Avenue
 Suite A
 Fullerton, California 92831

☐ The name and address of each person to whom I mailed the documents is listed in the *Attachment to Proof of Service by First-Class Mail—Civil (Persons Served)* (POS-030(P)).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: MARCH 14 2025

MARIA GARCIA

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)



Maria Garcia

(SIGNATURE OF PERSON COMPLETING THIS FORM)

9589 0710 5270 0409 0059 62

U.S. Postal Service™
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For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee \$ **4.85**
 Extra Services & Fees (check box, add fees as appropriate)
☒ Return Receipt (hardcopy) \$ **4.15**
☐ Return Receipt (electronic) \$ _____
☐ Certified Mail Restricted Delivery \$ _____
☐ Adult Signature Required \$ _____
☐ Adult Signature Restricted Delivery \$ _____

Postage \$ **2.31**
 Total Postage and Fees \$ **11.26**

13 2024
 Postmark Here

80815

Se David Watermeier
 SF ACW Escape LLC d/b/a Escapade Games
 CI 1111 E. Commonwealth Ave., Ste. A
 Fullerton, CA 92831

PS Form 3800, January 2023 PSN 7530-02-000-0047 See Reverse for Instructions

Dispatch Document Entry

Invoice Number 898748
 Client Number KARIM LAW OFFICE OF SHAFIEL A KARIM
 Case Name SAGE FORSYTHE VS ACE ESCAPADE
 Case I.D. LWDA-CM-1085887-25
 Reference 3076.00001

Contact Name

Courthouse SERVICE BY CERT MAIL

Line# Doc # Description
 0010 99 PAGA NOTICE LETTER

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY																	
- Complete items 1, 2, and 3. - Print your name and address on the reverse so that we can return the card to you. - Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature  B. Received by (Printed Name) C. Date of Delivery D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No																	
1. Article Addressed to: David Watermeier ACW Escape LLC d/b/a Escapade Games 1111 E. Commonwealth Ave., Ste. A Fullerton, CA 92831																			
2. Article Number (Transfer from service label) 9589 0710 5270 0409 0059 62		3. Service Type <table border="0"> <tr> <td>☐ Adult Signature</td> <td>☐ Priority Mail Express®</td> </tr> <tr> <td>☐ Adult Signature Restricted Delivery</td> <td>☐ Registered Mail™</td> </tr> <tr> <td>☐ Certified Mail®</td> <td>☐ Registered Mail Restricted Delivery</td> </tr> <tr> <td>☐ Certified Mail Restricted Delivery</td> <td>☐ Signature Confirmation™</td> </tr> <tr> <td>☐ Collect on Delivery</td> <td>☐ Signature Confirmation Restricted Delivery</td> </tr> <tr> <td>☐ Collect on Delivery Restricted Delivery</td> <td></td> </tr> <tr> <td>☐ Insured Mail</td> <td></td> </tr> <tr> <td>☐ Insured Mail Restricted Delivery (over \$500)</td> <td></td> </tr> </table>		☐ Adult Signature	☐ Priority Mail Express®	☐ Adult Signature Restricted Delivery	☐ Registered Mail™	☐ Certified Mail®	☐ Registered Mail Restricted Delivery	☐ Certified Mail Restricted Delivery	☐ Signature Confirmation™	☐ Collect on Delivery	☐ Signature Confirmation Restricted Delivery	☐ Collect on Delivery Restricted Delivery		☐ Insured Mail		☐ Insured Mail Restricted Delivery (over \$500)	
☐ Adult Signature	☐ Priority Mail Express®																		
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☐ Certified Mail Restricted Delivery	☐ Signature Confirmation™																		
☐ Collect on Delivery	☐ Signature Confirmation Restricted Delivery																		
☐ Collect on Delivery Restricted Delivery																			
☐ Insured Mail																			
☐ Insured Mail Restricted Delivery (over \$500)																			

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

From: LWDA DO NOT REPLY lwdadonotreply@dir.ca.gov
Subject: Thank you for submission of your PAGA Case.
Date: March 13, 2025 at 11:15 AM
To: shafiel@skarimlaw.com

3/13/2025

LWDA Case No. LWDA-CM-1085887-25
Law Firm : Law Office of Shafiel A. Karim, P.C.
Plaintiff Name : Sage Forsythe
Employer: ACW Escape LLC d/b/a Escapade Games
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

Please note that a PAGA Notice is not a complaint within the meaning of Division 5 (Labor Code §§6300 et seq.). To file a complaint about workplace safety and health hazards with Cal/OSHA, please visit: <https://www.dir.ca.gov/dosh/complaint.htm>

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

March 13, 2025

Labor & Workforce Development Agency
Attention: PAGA Administrator
151 Clay Street, Suite 801
Oakland, California 94612

VIA ELECTRONIC SUBMISSION

Re: Niko Protacio's Claims Against ACW Escape LLC d/b/a Escapade Games, et al. Private Attorney General Act (Cal. Lab. Code §§ 2698, et seq.)

Dear Sir or Madam:

We represent Niko Protacio in connection with his employment law claims against ACW Escape LLC. d/b/a Escapade Games ("Escapade"), Jorin Andresen, Christina Compani, and David Watermeier (collectively, "ACW") from in or around April 2024 to February 7, 2025. This letter is notice to Labor Workforce Development Agency ("LWDA") of Mr. Protacio's claims under Labor Code section 2699.3(a). If ACW has not availed of its right to cure its blatant Labor Code violations "more than three times in a 12-month period for the same violations or violations contained in this notice," this notice is also intended to permit ACW to cure its myriad blatant violations of the Labor Code under Labor Code section 2699.3(c)(2)(A). (See Cal. Lab. Code § 2699.3(c)(2)(B).)

ACW blatantly disregarded the Labor Code and IWC Wage Order No. 10-2001. ACW is liable to Mr. Protacio, the aggrieved employees, and the State of California under the Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, et seq.) ("PAGA") for civil penalties. If LWDA elects not to investigate Mr. Protacio's claims, he will seek civil penalties against ACW on behalf of himself, the aggrieved employees, and the State of California under, *inter alia*, Labor Code sections 98.6, 201-204, 204b, 223, 226, 226.7, 226.8, 246, 248.5, 432.5, 512, 1174, 1198.5, 1197, 1199, 2800 and 2802, and 2802.

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1. Parties

a. ACW Escape LLC d/b/a Escapade Games

Escapade is a California corporation with a principal place of business located at 1111 East Commonwealth Avenue, Suite A, Fullerton, California 92831. ACW provides immersive in-person horror simulacra games, namely *Zoe: Reborn*. In *Zoe: Reborn*, Escapade's customers pay to be frightened by actors while solving myriad puzzles in an attempt to escape the game. Upon information and belief, Escapade currently employs approximately 13 full-time employees.

b. Jorin Andresen

Upon information and belief, Jorin Andresen is a managing agent of Escapade and maintains a principal place of business located at 1111 East Commonwealth Avenue, Suite A, Fullerton, California 92831. Upon information and belief, Mr. Andresen had, and has, actual knowledge of Mr. Protacio's claims contained in this letter. Moreover, Mr. Andresen exercised discretion and authority over Escapade's unlawful employment policies and practices during the relevant time period.

c. Christina Compani

Upon information and belief, Christina Compani is a managing agent of Escapade and maintains a principal place of business located at 1111 East Commonwealth Avenue, Suite A, Fullerton, California 92831. Upon information and belief, Ms. Compani had, and has, actual knowledge of Mr. Protacio's claims contained in this letter. Moreover, Ms. Compani exercised discretion and authority over Escapade's unlawful employment policies and practices during the relevant time period.

d. David Watermeier

Upon information and belief, David Watermeier is a managing agent of Escapade and maintains a principal place of business located at 1111 East Commonwealth Avenue, Suite A, Fullerton, California 92831. Upon information and belief, Mr. Watermeier had, and has, actual knowledge of Mr. Protacio's claims contained in this letter. Moreover,

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Mr. Watermeier had oversight of Escapade’s operations and influence over its employment policies and practices that resulted in Labor Code violations.

e. Niko Protacio

From in or around April 2024 to February 7, 2025 (“Employment Period”), Mr. Protacio worked for ACW as Game Master / Actor. ACW classified Mr. Protacio as an independent contractor, not an employee. Accordingly, ACW did not pay for Mr. Protacio’s employer funded payroll taxes, withhold employee funded taxes or withhold applicable taxes and contributions. As a direct and proximate result, Mr. Protacio’s transcript with the Internal Revenue Service is inaccurate.

Although ACW classified Mr. Protacio as an independent contractor, ACW controlled and directed the performance of his work during the Employment Period. Mr. Protacio’s work as Game Master and Actor was in the usual course of ACW’s business of providing its customers with immersive in-person horror simulacra games. Moreover, Mr. Protacio was not customarily engaged in any independently established trade, occupation, or business.

For example, Mr. Protacio did not hold himself out as being in engaged in any occupation or business distinct from that of ACW. Mr. Protacio’s work as Game Master / Actor was a regular and integral part of ACW’s business. ACW furnished Mr. Protacio with the tools and instrumentalities (i.e., sets and props) that he used to scare customers and act during costumed performances. And ACW set Mr. Protacio’s schedule and dictated when, where, and how he should perform his job duties.

Upon hire, Ms. Compani ordered Mr. Protacio to download software applications (e.g., Homebase, Discord and Resova) on his personal cell phone for use during work. Mr. Protacio was required to use Homebase to clock-in and clock-out each workday; he was required to communicate with Ms. Compani, Messrs. Andresen and Watermeier and other ACW employee using Discord or iMessage; and he was required to use Resova to monitor and manage ACW’s customer bookings. ACW did not reimburse Mr. Protacio for using his personal cell phone for work during the Employment Period.

Mr. Protacio’s initial rate of pay was \$16 per hour. At ACW’s direction, Mr. Protacio typically worked Thursday through Sunday from beginning in the afternoon

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until past midnight into the very early morning the following-day. Mr. Protacio routinely worked more than eight hours each workday and more than 40-hours each workweek. However, ACW did not pay Mr. Protacio overtime pay in the form of one-and-one-half times his regular rate of pay on those occasions.

Sometimes, Mr. Protacio worked more than 12-hours each workday. For example, ACW instructed Mr. Protacio to participate in evaluating actors during auditions. During those auditions, Mr. Protacio worked more than 12-hours. ACW did not pay Mr. Protacio twice his regular rate of pay when he worked more than 12-hours in a workday.

Mr. Protacio was regularly required to work off-the-clock without any compensation. For example, Mr. Protacio was often charged with running errands (e.g., purchasing supplies), off-the-clock, using his personal vehicle several times each workweek. Each errand typically took 10 to 20 minutes. ACW did not compensate him for the time he spent running errands. ACW also did not reimburse Mr. Protacio for or—on multiple occasions—for the supplies he was instructed to purchase.

During the Employment Period, Mr. Protacio was typically assigned to perform costumed performances in *Zoe: Reborn*. But ACW did not authorize or permit him to take compliant meal periods. Specifically, Mr. Protacio was not authorized or permitted to take a 30-minute uninterrupted duty-free meal period after each five hours of work. Instead, Mr. Protacio would be expected to quickly eat a meal—in less than 30-minutes—before being instructed to resume his costumed performance. ACW did not pay Mr. Protacio a meal period in the form of an additional hour of pay at his regular rate of pay for each workday on those occasions.

Similarly, Mr. Protacio was not authorized or permitted to take a 10-minute uninterrupted duty-free rest period after each four hours of work or major fraction thereof. ACW did not pay Mr. Protacio a rest period in the form of an additional hour of pay at his regular rate of pay for each workday on those occasions.

During the Employment Period, Mr. Protacio accrued paid sick leave under California's Health Workplaces, Healthy Families Act. Mr. Protacio called in sick on at least one occasion during the Employment Period. However, ACW did not pay him paid sick leave when he called in sick.

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ACW paid Mr. Protacio intermittently via PayPal, Zelle or Venmo on random days during the Employment Period. Worse, ACW did not furnish him with statements that itemized his gross wages earned, total hours worked, all deductions made, net wages earned, inclusive dates of the period for which he was being paid, and his name and Social Security number. Not surprisingly, Mr. Protacio was confused about how ACW computed his wages during the Employment Period.

On January 23, 2025, through counsel, Mr. Protacio requested copies of his payroll records and personnel file in writing. ACW received Mr. Protacio's request on January 27, 2025. ACW's last day to produce Mr. Protacio's payroll records and personnel file was February 13, 2025 and February 26, 2025, respectively. To-date, ACW has not produced any of Mr. Protacio's records.

On February 7, 2025, Mr. Protacio was forced to quit because of ACW's unlawful and unfair employment acts and practices described above. ACW did not pay Mr. Protacio all of his earned but unpaid wages immediately upon his constructive termination or within 72-hours of his forced resignation. Indeed, to-date, ACW has not paid Mr. Protacio all of his earned but unpaid wages.

2. PAGA Allegations

During the Employment Period, Mr. Protacio was an "aggrieved employee" under PAGA. Mr. Protacio is further informed and believes that from March 13, 2024 to the present ("PAGA Period"), ACW employed 13 "aggrieved employees," including himself, for PAGA purposes.

Mr. Protacio is informed and believes ACW misclassified all of its workers as independent contractors instead of employees during the PAGA Period. Mr. Protacio is further informed and believes that ACW's pattern and practice of misclassifying its workers was to evade paying employer funded payroll taxes, withhold employee funded taxes or withhold applicable taxes and contributions.

Mr. Protacio is informed and believes ACW controlled and directed the performance of the aggrieved employees' work during the PAGA Period. He is informed and believes the aggrieved workers' work was in the usual course of ACW's business of providing its customers with immersive in-person horror simulacra games. He is

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informed and believes that the aggrieved employees were not customarily engaged in any independently established trade, occupation, or business of the same nature as that involved in the work that they performed for ACW during the PAGA Period.

Mr. Protacio is informed and believes that, upon hire, the aggrieved employees were ordered to download software applications (e.g., Homebase, Discord and Resova) on their respective personal cell phones for use while working during the PAGA Period. He is informed and believes that ACW did not reimburse the aggrieved employees for using their respective personal cell phones for work during the PAGA Period.

Mr. Protacio is informed and believes the aggrieved employees worked more than eight hours in a workday during the PAGA Period. He is further informed and believes that ACW did not pay the aggrieved employees one-and-one-half times their respective regular rates of pay on those occasions.

Mr. Protacio is informed and believes that a subset of aggrieved employees worked more than 12-hours in a workday during the PAGA Period. He is further informed and believes that ACW did not pay those aggrieved employees twice their respective regular rates of pay on those occasions.

Mr. Protacio is informed and believes that ACW required the aggrieved employees to remain “on call” or “standby” during the PAGA Period. He is further informed and believes that ACW did not pay the aggrieved employees for their compensable “on-call” or “standby” time.

Mr. Protacio is informed and believes that ACW required the aggrieved employees to work off-the-clock without any compensation during the PAGA Period.

Mr. Protacio is informed and believes that ACW required the aggrieved employees to use their personal vehicles to run errands for work during the PAGA Period. He is further informed and believes that ACW did not reimburse those aggrieved employees for vehicle mileage on those occasions.

Mr. Protacio is informed and believes that the aggrieved employees were not authorized or permitted to take a 30-minute uninterrupted duty-free meal period after each five hours of work during the PAGA Period. He is further informed and believes

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that ACW did not pay the aggrieved employees a meal period wage in the form of an additional hour of pay at the aggrieved employees' respective regular rate of pay on those occasions.

Mr. Protacio is informed and believes that the aggrieved employees were not authorized or permitted to take 10-minute uninterrupted duty-free rest periods after each four hours of work or major fraction thereof during the PAGA Period. He is further informed and believes that ACW did not pay the aggrieved employees a rest period wage on those occasions.

Mr. Protacio is informed and believes that the aggrieved employees accrued paid sick leave under California's Healthy Workplaces, Healthy Families Act during the PAGA Period. He is informed and believes that the aggrieved employees were unable to work because they were sick on occasion. He is further informed and believes that ACW did not pay those aggrieved employees paid sick leave on those occasions.

Mr. Protacio is informed and believes that ACW paid the aggrieved employees intermittently via PayPal, Zelle or Venmo on random days during the PAGA Period. He is informed and believes that ACW did not consistently pay the aggrieved employees their respective wages on regular paydays, at least twice each month, during the PAGA Period.

Mr. Protacio is informed and believes that ACW did not furnish the aggrieved employees statements that itemized their gross wages earned, total hours worked, all deductions made, net wages earned, inclusive dates of the period for which he was being paid, and his name and Social Security number. He is further informed and believes that the aggrieved employees were confused about how ACW computed their respective wages during the PAGA Period.

Mr. Protacio is informed and believes that some of the aggrieved employees requested their payroll records and personnel file during the PAGA Period. He is further informed and believes that ACW did not produce the aggrieved employees' requested payroll records and personnel file within the time period prescribed by law.

Mr. Protacio is informed and believes that some of the aggrieved employees complained to ACW about its illegal wage and hour practices during the PAGA Period.

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He is further informed and believes that ACW actually and/or constructively terminated those complaining aggrieved employees.

Mr. Protacio is informed and believes ACW did not pay the aggrieved employees all of their respective earned but unpaid wages immediately upon termination.

3. Joint Employer Liability

An “employer” includes “any person...who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any employee.” (8 CCR 11100(2)(H).) The term “employer” is broadly construed under federal law and allows for multiple persons to be liable for unpaid wages and penalties. (Cal. DLSE Man. § 37.1.2; *Real v. Driscoll Strawberry Assoc.* (9th Cir. 1979) 603 F.2d 748, 754 (wage claim against joint employer decided under federal wage and hour laws).)

In California, the term “employer” is even more broadly construed because the Labor Code is more protective than federal wage and hour laws. That is because “[t]he language of the IWC’s ‘employer’ definition has the obvious utility of reaching situations in which multiple entities control different aspects of the employment relationship, as when one entity, which hires and pays workers, places them with other entities that supervise the work.” (*Martinez v. Coombs* (2010) 49 Cal. 4th 35, 59; see, also *Guerrero v. Superior Court* (2013) 213 Cal. App. 4th 912, 945-47 (employer includes person who merely controls the “power of the purse” and exercises “quality control authority.”).) A person is an “employer” if it exercises “control” over the worker. (*Vernon v. State of California* (2004) 116 Cal. App. 4th 114, 126.)

Moreover, Labor Code section 558.1 imposes liability for the employer and “any other person acting on behalf of an employer who violates, or causes to be violated, a section of...[the Labor Code]...” The term “any other person acting on behalf of an employer” expressly includes “an owner, director, officer, or managing agent of the employer.” (Cal. Lab. Code § 558.1(b).) And the term “managing agent” means a person is in a policy making position (Cal. Code § 558.1(b); Cal. Civ. Code § 3294(b); *Kelly-Zurian v. Wohl Shoe Co.* (1994) 22 Cal. App. 4th 397, 422 (person with discretion to make decisions that will ultimately determine corporate policy is managing agent); *Espinoza v. Hepta Run, Inc.* (2022) 74 Cal. App. 5th 44, 59 (managing agent liability

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attaches even if individual did not have “involvement in the day-to-day operations of the company” and only “had some oversight of the company’s operations or some influence on corporate policy that resulted in Labor Code violations.”.) “Such a person is personally liable for overtime, meal period, rest period, and reporting time wages.” (Cal. DLSE Man. § 37.1.4.) Additionally, he or she would also be liable to the employee for minimum wage restitution, liquidated damages, and waiting time penalties. (Cal. Lab. Code § 1197.1.)

Here, Ms. Compani and Mr. Andresen exercised control over Mr. Protacio’s and the aggrieved employees’ wages, hours, and working conditions during the PAGA Period. Although Mr. Watermeier did not personally control Mr. Protacio’s or the aggrieved employees’ respective wages, hours, and/or working conditions, he had oversight of Escapade’s operations and influence over its employment policies and practices during the PAGA Period. Accordingly, Ms. Compani and Messrs. Andresen and Watermeier are each, jointly and severally, liable for myriad wage and hour violations enumerated in this letter during the PAGA Period.

4. Labor Code Violations

a. Willful Misclassification in Violation of Labor Code Section 226.8

Willfully misclassifying workers as independent contractors is unlawful. (Cal. Lab. Code § 226.8(a)(1).) An employer that willfully misclassifies a worker as an independent contractor “shall be subject to a civil penalty of not less than...\$5,000...and not more than...\$15,000...*for each violation*, in addition to any other penalties or fines permitted by law.” (Cal. Lab. Code § 226.8(b).) If an employer engages in a “pattern or practice” of willfully misclassifying a worker as an independent contractor, the employer “shall be subject to a civil penalty of not less than...\$10,000...and not more than...\$25,000...*for each violation*, in addition to any other penalties or fines permitted by law.” (Cal. Lab. Code § 226.8(c).)

In California, there is rebuttable presumption that most workers are employees rather than independent contractors. (Cal. Lab. Code § 2750.5.) That is because an independent contractor is “any person who renders service for a specified recompense for a specified result, under the control of his principal as to the result of his work only and

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not as to the means by which such result is accomplished.” (Cal. Lab. Code § 3353.) A worker is an independent contractor *only if all three* of the following factors are satisfied:

(A) that the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact, (B) that the worker performs work that is outside the usual course of the hiring entity’s business, and (C) that the worker is customarily engaged in an independently established trade, occupation, or business, the worker should be considered an employee and the hiring business an employer under the suffer or permit to work standard in wage orders. The hiring entity’s failure to prove any one of these three prerequisites will be sufficient in itself to establish that the worker is an included employee, rather than an excluded independent contractor, for purposes of the wage order.

(*Dynamex Ops. W. v. Superior Court* (2018) 4 Cal. 5th 903, 964.)

Here, ACW willfully misclassified Mr. Protacio and the aggrieved employees as independent contractors during the PAGA Period. Neither Mr. Protacio nor the aggrieved employees were customarily engaged in any independently established trade, occupation, or business during the PAGA Period. Mr. Protacio is informed and believes ACW willfully misclassified Mr. Protacio and the aggrieved employees as part of its scheme to evade paying employer funded payroll taxes, withhold employee funded taxes or withhold applicable taxes and contributions. He is further informed and believes ACW’s misclassification scheme was designed to unlawfully reduce its business variable operating costs. Thus, ACW engaged in an illegal pattern and practice of misclassifying Mr. Protacio and the aggrieved employees during the PAGA Period.

b. Failure to Pay at Least Minimum Wages in Violation of Labor Code Sections 1182.12 and 1197, and IWC Wage Order MW-2024

“The minimum wage for employees...is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” (Cal. Lab. Code § 1197.) If an employer pays an employee less than the applicable minimum wage, it is liable for civil penalties of \$100 “for each underpaid employee for

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each pay period for which the employee is underpaid” and \$250 “for each underpaid employee for each [subsequent] pay period for which the employee is underpaid.” (Cal. Lab. Code § 1197.1(a).)

The applicable minimum wage \$15 in 2023, and \$16 in 2024. (Cal. Lab. Code § 1182.12(b)(1); MW-2024.) An employer that pays an employee less than the applicable statutory minimum wage is liable for “the full amount of...minimum wage or overtime compensation, including interest...reasonable attorney’s fees, and costs of suit.” (Cal. Lab. Code § 1194.) Such employees are also entitled to recover liquidated damages “in an amount equal to the wages unlawfully unpaid and interest thereon.” (Cal. Lab. Code § 1194.2(a).)

Here, Mr. Protacio and the aggrieved employees were required to work off-the-clock on various occasions during the PAGA Period. For example, they were required to don and doff their costumes off-the-clock. They were also required to run errands off-the-clock. And finally, they were required to respond to messages and communicate with Ms. Compani and Mr. Andresen about various work related matters off-the-clock. Yet, ACW did not pay Mr. Protacio or the aggrieved employees any wages for these instances of off-the-clock compensable work.

c. Secret Payment of Wages Lower Than Designated Scale in Violation of Cal. Lab. Code § 223

“Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawfully to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.” Cal. Lab. Code § 223.

Here, Mr. Protacio and the aggrieved employees were required to work off-the-clock on various occasions during the PAGA Period. For example, they were required to don and doff their costumes off-the-clock. They were also required to run errands off-the-clock. And finally, they were required to respond to messages and communicate with Ms. Compani and Mr. Andresen about various work related matters off-the-clock. Yet, ACW did not pay Mr. Protacio or the aggrieved employees any wages for these instances of off-the-clock compensable work.

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d. Failure to Pay Overtime Pay in Violation of Labor Code Section 510 and IWC Wage Order No. 10-2001

If an employee works more than eight hours in a workday, 40-hours in a workweek, or seven consecutive days in a workweek, the employee is entitled to overtime compensation in the form of one and one-half times his or his regular rate of pay. (Cal. Lab. Code § 510(a); 8 CCR 11100(3)(A)(1)(a).)

Here, Mr. Protacio and/or the aggrieved employees routinely worked more than eight hours each workday and more than 40-hours each workweek during the PAGA Period. ACW did not pay them one-and-one-half times their respective regular rates of pay during the PAGA Period.

e. Failure to Pay Double-Time Pay in Violation of Labor Code Section 510 and IWC Wage Order No. 10-2001

If an employee works more than twelve hours in a workday, that employee is entitled to twice their regular rate of pay. (Cal. Lab. Code § 510(a); 8 CCR 11100(3)(A)(1)(b).)

Here, Mr. Protacio and/or a subset of the aggrieved employees worked more than 12-hours in a workday during the PAGA Period. ACW did not pay them twice their respective regular rates of pay during the PAGA Period.

f. Failure to Pay Reporting Time Pay

Employees are entitled to reporting time pay if the employee is required to report for work, does report, but is not put to work or is furnished less than half the usual or scheduled day's work. (Cal. DLSE Man. § 45.1(A).) In such cases, employers must pay no less than two hours of the employee's regular rate of pay and no more than four hours of the employee's regular rate of pay. (Cal. DLSE Man. § 45.1(B).) This is because reporting time pay "compensate[s] employees" and "encourages proper notice and scheduling." (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal. 4th 1094, 1111-1112.) Moreover, physical reporting is not required for reporting time pay to accrue. (*Ward v. Tilly's Inc.* (2019) 31 Cal. App. 5th 1167.) An employer's requirement to pay

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reporting time pay is waived if civil authorities suspend the employer's operations, public utilities fail, or a force majeure event occurs. (Cal. DLSE Man. § 45.1(C).)

Here, ACW required Mr. Protacio and the aggrieved employees to remain “on-call” or remain on “standby” on days they were scheduled to work during the PAGA Period. ACW required them to remain available to report to work at any time during days they were scheduled to work. ACW did not permit them trade their on-call responsibilities with other co-workers. Yet, ACW did not pay Mr. Protacio and the aggrieved employees for their compensable “on-call” or “standby” time at their respective rates of pay during the PAGA Period.

g. Failure to Authorize or Permit Meal Breaks in Violation of Labor Code Sections 226.7, 512 and 1198, and IWC Wage Order No. 10-2001

“The employment of any employee for longer hours than those fixed [by law]...is unlawful.” (Cal. Lab. Code § 1198.) “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes....” (Cal. Lab. Code § 512(a).) During a meal break, employers must relieve employees of all work. (Cal. Lab. Code § 226.7(b); 8 CCR 11100(11); *Brinker Restaurant Corp v. Superior Court* (2012) 53 Cal. 4th 1004, 1035-36; *In re Dear Mr. Rosenberg*, 1988 Cal. DLSE LEXIS 21 (Cal. DLSE, Jan. 5, 1988).) If an employee works during a meal period, that employee is entitled to “one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal...period is not provided.” (Cal. Lab. Code § 226.7(c); *Brinker Restaurant Corp.*, 53 Cal. 4th at 1039-40.)

Here, Mr. Protacio and the aggrieved employees were not authorized or permitted to take compliant meal periods during the PAGA Period. Specifically, they were not authorized or permitted to take a 30-minute uninterrupted duty-free meal period after each five hours of work. Instead, ACW required them to quickly eat their meals—in less than 30-minutes—before being instructed to resume their respective costumed performance. ACW did not pay Mr. Protacio and/or the aggrieved employees a meal period wage in the form of an additional hour of pay at their respective regular rates of pay for each workday on those occasions during the PAGA Period.

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h. Failure to Authorize or Permit Rest Breaks in Violation of Labor Code Sections 226.7, 1198 and 1199, and IWC Wage Order No. 10-2001

“The employment of any employee for longer hours than those fixed [by law]...is unlawful.” (Cal. Lab. Code § 1198.) Employers must authorize and permit employees a 10-minute uninterrupted paid rest break after four hours of work. (8 CCR 11100(12)(A).) Specifically, employers must “relieve employees of all work-related duties and employer control” during an employee’s rest break. (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 270.) If an employer fails to authorize or permit an employee from taking their mandatory rest period, that employee is entitled to “one additional hour of pay at the employee’s regular rate of compensation for each workday that the...rest...period is not provided.” (Cal. Lab. Code § 226.7(c).)

Here, Mr. Protacio and the aggrieved employees were not authorized or permitted to take a 10-minute uninterrupted duty-free rest period after each four hours of work or major fraction thereof during the PAGA Period. ACW did not pay them a rest period wage in the form of an additional hour of pay at their respective regular rates of pay for each workday on those occasions during the PAGA Period.

i. Failure to Pay Sick Pay in Violation of the Healthy Workplaces, Healthy Families Act

“An employee...accrue[s] paid sick days at the rate of not less than one hour per every 30 hours worked.” (Cal. Lab. Code § 246(b)(1).) Typically, employees are entitled to “not less than 24 hours or 3 days of paid sick leave...by the completion of the employee’s 120th calendar day of employment...” (Cal. Lab. Code § 246(b)(4).) Employees are “entitled to use accrued paid sick days beginning on the 90th day of employment...” (Cal. Lab. Code § 246(c).) “[A]n employer may limit an employee’s use of accrued paid sick days to 40 hours or five days in each of employment...” (Cal. Lab. Code § 246(d).) Violations of California’s Healthy Workplaces, Healthy Families Act are actionable under PAGA. (*Wood v. Kaiser Foundation Hospitals* (2023) 88 Cal. App. 5th 742.)

Here, the PAGA period spans more than one year. ACW should have accrued paid sick days for Mr. Protacio and the aggrieved employees during the PAGA Period.

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However, ACW did not provide Mr. Protacio and/or the aggrieved employees any accrued paid sick days as required by California's Healthy Workplaces, Healthy Families Act during the PAGA Period.

j. Failure to Pay All Earned But Unpaid Wages Upon Separation of Employment in Violation of Labor Code Sections 201 and 203

"If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." (Cal. Lab. Code § 201(a).) Failure to pay all wages earned and unpaid at the time of discharge will "continue" for 30 days. (Cal. Lab. Code § 203(a).) Specifically, the continued unpaid wages or waiting time penalties "accrue not only on the days that the employee might have worked, but also on nonworkdays." (*Mamika v. Barca* (1998) 69 Cal. App. 4th 487, 492-493.) Waiting time penalties are computed by calculating the daily rate of pay "multiplied by the number of days of nonpayment, up to 30 days." (*Id.*)

The purpose and intent of Labor Code sections 201 and 203 "is to compel the prompt payment of earned wages." (*Oppenheimer v. Sunkist Growers, Inc.* (1957) 153 Cal. App. 2d Supp. 897, 898-99.) More specifically, "The object of the statutory plan is to encourage employers to pay amounts concededly owed by his to his discharged or terminated employee without undue delay and to hasten settlement of disputed amounts." (*Triad Data Services, Inc. v. Jackson* (1984) 153 Cal. App. Supp. 1, 11.)

Here, ACW terminated Mr. Protacio on February 7, 2025. Mr. Protacio is informed and believes that a subset of aggrieved employees was terminated and/or voluntarily quit during the PAGA Period. But ACW did not pay Mr. Protacio and/or the aggrieved employees all of their respective earned but unpaid wages immediately upon termination during the PAGA Period.

k. Failure to Reimburse Necessary Business Expenses in Violation of Labor Code Section 2802 and IWC Wage Order No. 10-2001

Employers are required to indemnify employees for all necessary business expenses incurred on behalf of the employer. Cal. Lab. Code § 2802. For example, employers are required to reimburse an employee's use of his or cell phone for work. (*Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal. App. 4th 1137, 1140.) An

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employer must even reimburse an employee for using his or cell phone for work even if the employee has unlimited cell phone minutes or data. (*Tehrani v. Macy's W. Stores, Inc.*, 2016 U.S. Dist. LEXIS 51713 at *24-25 (C.D. Cal. Apr. 18, 2016).)

Here, during the PAGA Period, ACW ordered Mr. Protacio and/or the aggrieved employees to download software applications (e.g., Homebase, Discord and Resova) on their respective personal cell phones for use during work. ACW instructed them to run errands using their respective personal vehicles and/or purchase supplies and/or costume materials. ACW did not reimburse Mr. Protacio and/or the aggrieved employees for these necessary business expenses during the PAGA Period.

l. Failure to Pay Wages Semi-Monthly in Violation of Cal. Lab. Code § 204

With the exception of waiting time penalties, 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.” Cal. Lab. Code § 204. An employer that violates Labor Code section 204 triggers civil penalties of \$100 for the “initial violation...for each failure to pay each employee” and \$200 “[f]or each subsequent violation...for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.” Cal. Lab. Code § 210(a) and (c).

Here, during the PAGA Period, ACW did not pay Mr. Protacio and the aggrieved employees twice during calendar month, on days designated in advance by the employer as the regular paydays. Instead, ACW paid Mr. Protacio and the aggrieved employees intermittently via PayPal, Zelle or Venmo on random days during the PAGA Period.

m. Failure to Pay Wages on a Regular Pay Day in Violation of Cal. Lab. Code § 204b

“Labor performed by a weekly-paid employee during any calendar week and prior to or on the regular payday shall be paid for not later than the regular payday of the employer for such weekly-paid employee falling during the following calendar week.” Cal. Lab. Code § 204b. Additionally, “Labor performed by a weekly-paid employee during any calendar week and subsequent to the regular payday shall be paid for not later than seven days after the regular payday of the employer for such weekly-paid employee

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falling during the following calendar week.” Id. An employer’s failure to strictly comply with Labor Code section 204b is guilty of a misdemeanor. Cal. Lab. Code § 215; Cal. DLSE Man. § 10.1. An employer that violates Labor Code section 204 triggers civil penalties of \$100 for the “initial violation...for each failure to pay each employee” and \$200 “[f]or each subsequent violation...for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.” Cal. Lab. Code § 210(a) and (c).

Here, during the PAGA Period, ACW did not pay Mr. Protacio and the aggrieved employees twice during the calendar month, on days designated in advance by the employer as the regular paydays during the PAGA Period. Instead, ACW paid Mr. Protacio and the aggrieved employees intermittently via PayPal, Zelle or Venmo on random days during the PAGA Period.

n. Failure to Furnish Accurate or Itemized Wage Statements in Violation Of Labor Code Section 226(a) and IWC Wage Order No. 10-2001

Employers must furnish accurate and itemized wage statements to employees semimonthly or at the time of payment of wages. (Cal. Lab. Code § 226(a); 8 CCR 11100(7).) A proper wage statement must enumerate, *inter alia*, gross wages earned and total hours worked. Id. Failure to furnish accurate and itemized wage statements entitles an employee to recover \$50 for the first violation, \$100 for each subsequent violation, up to a maximum penalty of \$4,000 plus attorney’s fees and costs. (Cal. Lab. Code §§ 226(e)(1) and 218.5; 8 CCR 11100(7); *Elliot v. Spherion Pac. Work, LLC*, 572 F. Supp. 2d 1169, 1181 (C.D. Cal. Aug. 13, 2008)(Labor Code section 226 is intended to prevent employee confusion about wages).)

Here, ACW did not pay for Mr. Protacio’s and/or the aggrieved employees’ employer funded payroll taxes, withhold employee funded taxes or withhold applicable taxes and contributions during the PAGA Period. Moreover, ACW did not furnish Mr. Protacio and/or the aggrieved employees with statements that itemized their respective gross wages earned, total hours worked, all deductions made, net wages earned, inclusive dates of the period for which they were being paid, and their respective names and Social Security numbers.

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o. Failure to Maintain Accurate Payroll Records in Violation of Labor Code Section 1174 and IWC Wage Order No. 10-2001

Employers must keep accurate payroll records of, *inter alia*, total hours worked and applicable rates of pay, and meal periods. (Cal. Lab. Code § 1174(c); 8 CCR 11100(7)(A).) Accurate payroll records “facilitates...information-gathering” and is “necessary for the employees’ welfare.” (*Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal. 4th 557, 577; *California Manufacturers Assn. v. Industrial Welfare Com.* (1980) 109 Cal. App. 3d 95, 112.) An employer’s failure to maintain accurate payroll is a misdemeanor punishable by a \$500 civil penalty. (Cal. Lab. Code §§ 1175(d) and 1174.5.) This is so because an employer’s failure to maintain accurate payroll records “affects a broad public interest.” (*Gould v. Maryland South Industries, Inc.* (1995) 31 Cal. App. 4th 1137, 1148-49.)

Here, ACW willfully misclassified Mr. Protacio and/or the aggrieved employees as independent contractors during the PAGA Period. It naturally follows that ACW also willfully failed to maintain accurate payroll records for his and the aggrieved employees.

p. Failure to Produce Payroll Records in Violation of Labor Code Section 226(c)

“An employer who receives a written or oral request to inspect or receive a copy of records...shall comply...no later than 21 calendar days from the date of the request.” Cal. Lab. Code § 226(c). An employer that fails or refuses to comply with a payroll records request is liable for a \$750 statutory penalty to the requesting employee. Cal. Lab. Code § 226(f).

Here, Mr. Protacio requested copies of his payroll records on November 18, 2024. ACW received the letter on November 21, 2024. The last day for ACW to produce Mr. Protacio’s payroll records was December 9, 2024. To-date, ACW has not produced Mr. Protacio’s payroll records. Mr. Protacio is informed and believes that a subset of aggrieved employees requested their payroll records during the PAGA Period but that ACW did not timely produce them to the requesting aggrieved employees.

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q. Failure to Produce Personnel File in Violation of Labor Code Section 1198.5

An employer is legally required to produce an employee's personnel file "not later than 30 calendar days from the date the employer receives a written request...." (Cal. Lab. Code § 1198.5(b).) An employer that fails or refuses to comply with a personnel file request is liable for a \$750 statutory penalty to the requesting employee. (Cal. Lab. Code § 1198.5(k).)

Here, Mr. Protacio requested copies of his personnel file on November 18, 2024. ACW received the letter on November 21, 2024. The last day for ACW to produce Mr. Protacio's personnel file was December 21, 2024. To-date, ACW has not produced Mr. Protacio's personnel file. Mr. Protacio is informed and believes that a subset of aggrieved employees requested their personnel file during the PAGA Period but that ACW did not timely produce them to the requesting aggrieved employees.

r. PAGA Civil Penalties

An employer that violates a provision of the Labor Code is guilty of a misdemeanor punishable by a \$100 fine. (Cal. Lab. Code § 1199.) PAGA imputes a civil penalty of \$100 for each aggrieved employee per pay period for the initial Labor Code violation and \$200 per each aggrieved employee for each subsequent violation. (Cal. Lab. Code § 2699(f)(2).) Moreover, an employee who asserts PAGA claims in a representative capacity is entitled to recover reasonable attorney's fees and costs. (Cal. Lab. Code § 2699(g); see, also Cal. Lab. Code § 218.5.)

Here, ACW violates, inter alia, Labor Code sections 201-204, 204b, 223, 226, 226.7, 226.8, 246, 248.5 512, 1174, 1198.5, 1197, 1199, 2800 and 2802 during the PAGA Period for the reasons enumerated *supra*. Accordingly, ACW is liable to Mr. Protacio, the aggrieved employees, and the State of California for civil penalties under the Labor Code. Mr. Protacio is also entitled to recover reasonable attorney's fees and costs.

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Please review Mr. Protacio's notice and act against ACW as soon as possible. If LWDA declines to act against ACW, please notify this office; Mr. Protacio will seek civil penalties, accrued interest, attorney's fees and costs, and all other relief recoverable under PAGA on behalf of himself, all aggrieved employees, and the State of California.

Sincerely,

LAW OFFICE OF SHAFIEL A. KARIM,
P.C.



Shafiel A. Karim
Attorney at Law

cc: Client (via email)

File No. 3069.00001

David Watermeier (via Certified Mail, Return Receipt Requested)
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PETITIONER/PLAINTIFF: NIKO PROTACIO RESPONDENT/DEFENDANT: ACW Escape LLC d/b/a Escapade Games	
PROOF OF SERVICE BY FIRST-CLASS MAIL—CIVIL	
CASE NUMBER: LWDA-CM-1085915-25	

(Do not use this Proof of Service to show service of a Summons and Complaint.)

1. I am over 18 years of age and **not a party to this action**. I am a resident of or employed in the county where the mailing took place.

2. My residence or business address is:

PO BOX 91985
 LONG BEACH CA 90809

3. On (date): 03/13/25 I mailed from (city and state): LONG BEACH, CA
 the following **documents** (specify):

PAGA NOTICE LETTER

☐ The documents are listed in the *Attachment to Proof of Service by First-Class Mail—Civil (Documents Served)* (form POS-030(D)).

4. I served the documents by enclosing them in an envelope and (check one):

- a. ☐ **depositing** the sealed envelope with the United States Postal Service with the postage fully prepaid.
- b. ☒ **placing** the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

5. The envelope was addressed and mailed as follows:

- a. **Name** of person served: DAVID WATERMEIR
- b. **Address** of person served:
 ACW Escape LLC d/b/a Escapade Games
 1111 East Commonwealth Avenue
 Suite A
 Fullerton, California 92831

☐ The name and address of each person to whom I mailed the documents is listed in the *Attachment to Proof of Service by First-Class Mail—Civil (Persons Served)* (POS-030(P)).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: MARCH 14 2025

MARIA GARCIA

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)



Maria Garcia

(SIGNATURE OF PERSON COMPLETING THIS FORM)

9589 0710 5270 0409 0059 79

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

Certified Mail Fee \$ 4.95
Services & Fees (check box, add fee as appropriate)
☒ Return Receipt (hardcopy) \$ 4.10
☐ Return Receipt (electronic) \$ _____
☐ Certified Mail Restricted Delivery \$ _____
☐ Adult Signature Required \$ _____
☐ Adult Signature Restricted Delivery \$ _____

Postage \$ 2.31
Total Postage and Fees \$ 11.26

Ser. David Watermeier
Stn ACW Escape LLC d/b/a Escapade Games
1111 E. Commonwealth Ave., Ste. A
City Fullerton, CA 92831

PS Form 3800, January 2023 PSN 7520-02-010-9047

See Reverse for Instructions



Dispatch Document Entry

Invoice Number 898749
 Client Number KARIM LAW OFFICE OF SHAFIEL A KARIM
 Case Name NIKO PROTACIO VS ACW ESCAPE
 Case I.D. LWDA-CM-1085915-25
 Reference 3069.00001

Contact Name

Courthouse SERVICE BY CERT MAIL

Line# Doc # Description
 0010 99 PAGA NOTICE LETTER

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
- Complete items 1, 2, and 3. - Print your name and address on the reverse so that we can return the card to you. - Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature ☒ <i>[Signature]</i> ☐ Agent ☐ Addressee	
1. Article Addressed to: David Watermeier ACW Escape LLC d/b/a Escapade Games 1111 E. Commonwealth Ave., Ste. A Fullerton, CA 92831		B. Received by (Printed Name)	C. Date of Delivery
2. Article Number (Transfer from service label) 9590 9402 9352 5002 3801 06		D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
3. Service Type ☐ Adult Signature ☐ Adult Signature Restricted Delivery ☐ Certified Mail® ☐ Certified Mail Restricted Delivery ☐ Collect on Delivery ☐ Collect on Delivery Restricted Delivery ☐ Insured Mail ☐ Insured Mail Restricted Delivery (over \$500)		☐ Priority Mail Express® ☐ Registered Mail™ ☐ Registered Mail Restricted Delivery ☐ Signature Confirmation™ ☐ Signature Confirmation Restricted Delivery	

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

From: LWDA DO NOT REPLY lwdadonotreply@dir.ca.gov
Subject: Thank you for submission of your PAGA Case.
Date: March 13, 2025 at 12:29 PM
To: shafiel@skarimlaw.com

3/13/2025

LWDA Case No. LWDA-CM-1085915-25
Law Firm : Law Office of Shafiel A. Karim, P.C.
Plaintiff Name : Niko Protacio
Employer: ACW Escape LLC d/b/a Escapade Games
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

Please note that a PAGA Notice is not a complaint within the meaning of Division 5 (Labor Code §§6300 et seq.). To file a complaint about workplace safety and health hazards with Cal/OSHA, please visit: <https://www.dir.ca.gov/dosh/complaint.htm>

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm