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Superior Court of California
County of Los Angeles

03/03/2023

David W. Slayton, Executive Officer / Clerk of Court

By: K. Martinez Deputy

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

N. MARKHAM, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

SOMESUCH, INC., a California Corporation,
SARAH ANNE CAMPBELL, an individual, and
DOE 1 through and including DOE 10,

Defendants.

Case No: 22STCV29530
Assigned to the Hon. Yvette M. Palazuelos,
Dept. 9

**FIRST AMENDED CLASS ACTION
COMPLAINT**

1. Cal. Lab. Code §§ 201.3, 201.5 and 203
Continuing Wages
2. Cal. Lab. Code § 226(a), Failure to Provide
Compliant Wage Statements
3. Cal. Lab. Code § 226.7 and Wage Order,
Failure to Provide Rest Breaks
4. Cal. Lab. Code §§ 1194 and 1198 Failure
to Provide Pay Proper Minimum Wages
5. Cal. Lab. Code § 2802, Failure to
Reimburse Business Expenses
6. Cal. Lab. Code § 226(b), Payroll Records
7. Cal. Lab. Code § 1198.5, Personnel Records
8. Cal. Bus & Prof. Code §§ 17200 *et seq.* –
Restitution
9. Cal. Lab. Code §§ 2698 *et seq.*, PAGA

JURY TRIAL DEMANDED

1 Plaintiff Noah Markham (“Markham” or “Plaintiff”), by and through his undersigned attorneys,
2 alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This is a civil action brought under the California Labor Code Private Attorneys General
5 Act (“PAGA”), seeking unpaid wages, damages, civil penalties, statutory penalties and attorneys’ fees
6 and costs. Plaintiff has provided statutory notice to the California Labor and Workforce Development
7 Agency (“LWDA”) of the claims set forth in this Complaint and to Defendants.

8 2. Venue as to Defendants is proper in this judicial district, pursuant to California Code of
9 Civil Procedure sections 395(a) and 395.5. Defendants maintain an office, transact business, have an
10 agent, or are found in the County of Los Angeles and are within the jurisdiction of this Court for
11 purposes of service of process. The violations of the PAGA alleged herein had a direct effect on and
12 were committed within the State of California, impacting Plaintiff and the Aggrieved Employees.

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

22 **THE PARTIES**

23 4. Plaintiff Markham is an individual, who, during the time periods relevant to this
24 Complaint, was and is a resident of the County of Los Angeles, State of California.

25 5. Defendant Somesuch, Inc. (“Somesuch”) is a California Corporation which at all times
26 relevant herein conducted business within the County of Los Angeles, State of California and produced
27 a Motion Picture television commercial which it referred to as “Gatorade #31074”, it being an
28 advertisement for a public entity, PepsiCo, Inc.

6. Defendant Sarah Anne Campbell (“Campbell”) is an individual who resides and does business in California. She is the CEO of Somesuch.

7. Defendants Doe One through and including Doe Ten are sued herein under the provisions of section 474 of the California Code of Civil Procedure. Plaintiff is unaware of the true names, identities or capacities, whether corporate, individual or otherwise, of said fictitiously named defendants, but leave of Court will be prayed to amend this pleading to insert the same herein when finally ascertained. Plaintiff is informed, believes and thereupon alleges that each of the fictitiously named Defendants is an entity, which during the relevant time period maintained a place of business in the County of Los Angeles of the State of California. Defendants Somesuch, Campbell and Does One through and including Doe Ten are hereinafter collectively referred to as Defendants. Defendants are “temporary services employers” as defined by Code § 201.3 and required to pay workers no less frequently than weekly. Section 201.3 provides, in part:

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

(1) “Temporary services employer” means an employing unit that contracts with clients or customers to supply workers to perform services for the clients or customers and that performs all of the following functions:

(A) Negotiates with clients and customers for matters such as the time and place where the services are to be provided, the type of work, the working conditions, and the quality and price of the services.

(B) Determines assignments or reassignments of workers, even if workers retain the right to refuse specific assignments.

(C) Retains the authority to assign or reassign a worker to another client or customer when the worker is determined unacceptable by a specific client or customer.

(D) Assigns or reassigns workers to perform services for clients or customers.

(E) Sets the rate of pay of workers, whether or not through negotiation.

(F) Pays workers from its own account or accounts.

(G) Retains the right to hire and terminate workers.

...

(4) “Client” and “customer” mean the person with whom a temporary services employer has a contractual relationship to provide the services of one or more individuals employed by the temporary services employer.

(b)(1)(A) Except as provided in paragraphs (2) to (5), inclusive, if an employee of a temporary services employer is assigned to work for a client, that employee’s wages are due and payable no less frequently than weekly, regardless of when the assignment ends, and wages for work performed during any calendar week shall be due and payable not later than the regular payday of the following calendar week. A temporary services employer shall be deemed to have timely paid wages upon completion of an assignment if wages are paid in compliance with this subdivision.

...

(c) A temporary services employer who violates this section is subject to the civil penalties provided for in and to any other penalties available at law.

(d) This section shall not be interpreted to limit any rights or remedies otherwise available under state or federal law.

1 Code § 201.3.

2 8. As a “temporary services employer,” Somesuch is an employing unit which contracts
3 with clients to supply workers to perform services to its clients. TCF performs all of the following
4 functions: (A) Negotiates with clients and customers for matters such as the time and place where the
5 services are to be provided, the type of work, the working conditions, and the quality and price of the
6 services; (B) Determines assignments or reassignments of workers, even if workers retain the right to
7 refuse specific assignments; (C) Retains the authority to assign or reassign a worker to another client or
8 customer when the worker is determined unacceptable by a specific client or customer; (D) Assigns or
9 reassigns workers to perform services for clients or customers; (E) Sets the rate of pay of workers,
10 whether or not through negotiation; (F) Pays workers from its own account or accounts; and (G) Retains
11 the right to hire and terminate workers.

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

20 **GENERAL ALLEGATIONS**

21 10. Defendants employed Plaintiff as a crew member during the class period. Plaintiff
22 worked on or about Friday and Saturday, September 10 and 11, 2021, toiling as a crewmember in
23 connection with the production of a television commercial for Gatorade. However, he was not paid in
24 timely fashion, not paid at all until on or after Wednesday, September 29, 2021. His wages were due on
25 or before September 17, 2021. The wage statement issued to Markham for his work on the commercial
26 clearly states that the applicable “Pay Frequency” was to be “W[EEKLY]”.

27 11. After completing his work on September 11, 2021, Plaintiff was laid off without a return
28 date for any further work.

1 12. With respect to a television commercial known by the defense as “Clear Ghost”,
2 Defendants employed others as crew for a shoot during the period March 10-16, 2019, yet did not pay
3 all of the crew on or before Friday, March 22, 2019, as required. Indeed, the paychecks did not all
4 provide for payment of premium wages owing on account of missed meal periods and rest breaks, all
5 de hors Naranjo.

6 13. With respect to a television commercial known by the defense as “Project Dragon
7 #31046”, Defendants employed others as crew for a September 28, 2020 shoot, yet did not pay all of the
8 crew on or before Friday, October 9, 2020, as required. Indeed, the paychecks did not all provide for
9 payment of premium wages owing on account of missed meal periods and rest breaks, all de hors
10 Naranjo.

11 14. With respect to a television commercial for Mercedes, known by the defense as
12 “Mercedes #31048”, Defendants employed others as crew for an October 24, 2020 shoot, yet did not pay
13 all of the crew on or before Friday, October 30, 2020, as required. Indeed, certain of the paychecks for
14 the crew were not prepared until on or after Thursday, November 5, 2020, and at that time the paychecks
15 did not all provide for payment of premium wages owing on account of missed meal periods and rest
16 breaks, all de hors Naranjo.

17 15. With respect to a television commercial known by the defense as “VW #31072”,
18 Defendants employed others as crew for a Friday, August 13, 2021 shoot, yet did not pay all of the crew
19 on or before Friday, August 20, 2021, as required. Indeed, certain of the paychecks for the crew were
20 not prepared until on or after Monday, August 23, 2021, and at that time the paychecks did not all
21 provide for payment of premium wages owing on account of missed meal periods and rest breaks, all
22 de hors Naranjo.

23 16. With respect to a television commercial known by the defense as “Eucalyptus #31093”,
24 Defendants employed others as crew for June 28, 2022 shoot, yet did not pay all of the crew on or before
25 Friday, July 8, 2022, as required. Indeed, certain of the paychecks for the crew were not prepared until
26 on or after Thursday, July 14, 2022, and at that time the paychecks did not all provide for payment of
27 premium wages owing on account of missed meal periods and rest breaks, all de hors Naranjo.

28 17. Plaintiff and Class Members, were required to keep their walkie talkie radios or cell

1 phones with them at all times, including during meal and rest breaks. Some breaks were simply not
2 provided at all. This policy precluded Defendants from providing Plaintiff and others the ability to enjoy
3 legally compliant meal and rest breaks as required by California law. Augustus v. ABM Sec. Servs. Inc., 2
4 Cal. 5th 257, 260 (2016).

5 18. At all relevant times mentioned herein, Wage Order 12 of the California Industrial
6 Welfare Commission applied to Plaintiff and Class Members. In part, the Wage Order reflects employer
7 obligations regarding hours and days of work, reporting time pay, records, meal periods and rest periods
8 (obligations which the employer, here, failed to fulfill, both with respect to Plaintiff and Class
9 Members). The Wage Order provides, in relevant part:

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

11 (A) Daily Overtime - General Provisions

12 (1) The following overtime provisions are applicable to employees 18 years of age or
13 over and to employees 16 or 17 years of age who are not required by law to attend
14 school and are not otherwise prohibited by law from engaging in the subject work. Such
15 employees shall not be employed more than eight (8) hours in any workday or more than
16 40 hours in any workweek unless the employee receives one and one-half (1.5) times
such employee's regular rate of pay for all hours worked over 40 hours in the workweek.
Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in
any workday or more than six (6) days in any workweek is permissible provided the
employee is compensated for such overtime as follows:

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

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

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

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

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

28 ...

1 **7. Records.**

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

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

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

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

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

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

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

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

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

28 ...

1 **11. Meal Periods.**

2 (A) No employer shall employ any person for a work period of more than six (6) hours
3 without a meal period of not less than thirty (30) minutes, nor more than one (1) hour.
4 Subsequent meal period for all employees shall be called not later than six (6) hours after
5 the termination of the preceding meal period.

6 (B) Unless the employee is relieved of all duty during a thirty (30) minute meal period,
7 the meal period shall be considered an "on duty" meal period and counted as time
8 worked. An "on duty" meal period shall be permitted only when the nature of the work
9 prevents an employee from being relieved of all duty and when by written agreement
10 between the parties an on-the-job paid meal period is agreed to. The written agreement
11 shall state that the employee may, in writing, revoke the agreement at any time.

12 (C) If an employer fails to provide an employee a meal period in accordance with the
13 applicable provisions of this Order, the employer shall pay the employee one (1) hour of
14 pay at the employee's regular rate of compensation for each work day that the meal
15 period is not provided.

16 (D) In all places of employment where employees are required to eat on the premises, a
17 suitable place for that purpose shall be designated.

18 **12. Rest Periods.**

19 (A) Every employer shall authorize and permit all employees to take rest periods, which
20 insofar as practicable shall be in the middle of each work period. The authorized rest

1 period time shall be based on the total hours worked daily at the rate of ten (10) minutes
2 net rest time per four (4) hours or major fraction thereof. However, a rest period need not
3 be authorized for employees whose total daily work time is less than three and one-half
4 (3.5) hours. Authorized rest period time shall be counted as hours worked for which there
5 shall be no deduction from wages.

6 (B) If an employer fails to provide an employee a rest period in accordance with the
7 applicable provisions of this Order, the employer shall pay the employee one (1) hour of
8 pay at the employee's regular rate of compensation for each work day that the rest period
9 is not provided.

10 Cal. Code of Regs., tit. 8, § 11120 ("Wage Order 12").

11 19. At all times relevant herein, section 201.5 of the California Labor Code (the "Code")
12 provided in part:

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

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

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

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

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

24 (3) "Next regular payday" means the day designated by the employer, pursuant to Section
25 204, for payment of wages earned during the payroll period in which the termination
26 occurs.

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

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

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

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

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

Code § 201.5.

20. Defendants employed individuals such as Plaintiff and Class Members to work on the production on motion pictures, yet Defendants failed to timely or fully pay them, all in violation, inter alia, of Code sections 201.3, 201.5 and/or 204.

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

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents themselves to avoid payment to them, or who refuses to receive the payment when fully tendered to them, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which the employee so avoids payment.

Code § 203. By failing to pay Plaintiff and Class Members all wages when due at termination, Plaintiff and Class Members are entitled to continuing wages pursuant to section 203 of the California Labor Code.

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

All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, 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. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.

Cal. Lab. Code § 204.

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

Section 204 shall be inapplicable to employees paid on a weekly basis on a regular day designated by the employer in advance of the rendition of services as the regular payday.

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.

1 Labor performed by a weekly-paid employee during any calendar week and subsequent
2 to the regular payday shall be paid for not later than seven days after the regular payday
3 of the employer for such weekly-paid employee falling during the following calendar
4 week.

5 Cal. Lab. Code § 204b.

6 24. In no event should Plaintiff or Class Members have been paid later than the time periods
7 established by sections 201.3, 201.5 and/or 204b of the California Labor Code, but certain payments to
8 Plaintiff were made after they were due, all leading to penalties and civil penalties under sections 203
9 and 204 or 204b of the California Labor Code, all as described in the Naranjo v. Spectrum Security
10 Services, Inc., 13 Cal. 5th 93 (May 23, 2022)..

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

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

19 Cal. Lab. Code § 210. Further, the Defendants' policy has been to devote insufficient resources to the
20 payroll accounting function, with the inevitable result that employees are routinely paid in tardy fashion,
21 in violation of sections 201.3, 201.5, 203 and/or 204b of the Code, and otherwise in violation of the
22 Code.

23 26. Labor Code sections 226.7, 512 and Section 12 of the Wage Order require an employer to
24 pay an additional hour of compensation for each meal period the employer fails to provide. Section 12
25 requires that "No employer shall employ any person for a work period of more than six (6) hours
26 without a meal period of not less than thirty (30) minutes, nor more than one (1) hour. Subsequent meal
27 period for all employees shall be called not later than six (6) hours after the termination of the preceding
28 meal period." Defendants failed to maintain a policy informing all Class Members of these rights, much
less providing uninterrupted rest periods.

29 27. Defendants implemented a timekeeping system that does not permit employees to track
30 and record their actual hours worked insofar as all are required to report meal breaks of exactly thirty
31 minutes. This policy and practice has the routine and recurrent impact of artificially insulating the

1 employer from incurring additional expense on account of tardy, missed, interrupted and/or short meal
2 periods and depriving compensation for all hours worked. Further, the workers are logged on the clock
3 only at artificially created “call times” which do not reflect when the work day commenced.

4 28. Here, Defendants failed to apprise all Class Members of their rights associated with meal
5 periods and failed to provide timely meal periods. Defendants have had a consistent policy of: (1)
6 requiring all Class Members to take late meal breaks that occurred after the first 6 hours of each shift;
7 (2) requiring Class Members to work shifts over 12 hours without providing a second meal period of 30
8 minutes in length; and (3) failing to pay such employees 1 hour of pay at the employees regular rate of
9 compensation for each workday in which a proper meal break was not provided. At all relevant times
10 mentioned herein, section 226.7 of the California Labor Code provided:

11 (a) As used in this section, “recovery period” means a cooldown period afforded an
12 employee to prevent heat illness.

13 (b) An employer shall not require an employee to work during a meal or rest or recovery
14 period mandated pursuant to an applicable statute, or applicable regulation, standard, or
15 order of the Industrial Welfare Commission, the Occupational Safety and Health
16 Standards Board, or the Division of Occupational Safety and Health.

17 (c) If an employer fails to provide an employee a meal or rest or recovery period in
18 accordance with a state law, including, but not limited to, an applicable statute or
19 applicable regulation, standard, or order of the Industrial Welfare Commission, the
20 Occupational Safety and Health Standards Board, or the Division of Occupational Safety
21 and Health, the employer shall pay the employee one additional hour of pay at the
22 employee's regular rate of compensation for each workday that the meal or rest or
23 recovery period is not provided.

24 Cal. Lab. Code § 226.7.

25 29. At all relevant times mentioned herein, section 226 of the Code provided:

26 (a) Every employer shall, semimonthly or at the time of each payment of wages, furnish
27 each of his or her employees, either as a detachable part of the check, draft, or voucher
28 paying the employee's wages, or separately when wages are paid by personal check or
cash, an itemized statement in writing showing (1) gross wages earned, (2) total hours
worked by the employee, except for any employee whose compensation is solely based
on a salary and who is exempt from payment of overtime under subdivision (a) of Section
515 or any applicable order of the Industrial Welfare Commission, (3) the number of
piece rate units earned and any applicable piece rate if the employee is paid on a piece-
rate basis, (4) all deductions, provided, that all deductions made on written orders of the
employee may be aggregated and shown as one item, (5) net wages earned, (6) the
inclusive dates of the period for which the employee is paid, (7) the name of the
employee and his or her social security number, except that by January 1, 2008, only the
last four digits of his or her social security number or an employee identification number

other than a social security number may be shown on the itemized statement, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

....

(e) An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

....

(g) An employee may also bring an action for injunctive relief to ensure compliance with this section, and is entitled to an award of costs and reasonable attorney's fees.

Code § 226. Defendants employed Plaintiff and 226 Class Members, but, in all cases, Defendants failed to provide them with the data required by section 226(a) of the Code. For example, the wage statement issued to Plaintiff failed to provide the gross wages earned, as no reference is made to accrued wages owing on account of missed rest breaks, all as required by Naranjo. It failed to provide the name and address of the employer, instead identifying in confusing fashion "Somesuch" as the "Controlling Employer" and "New Caps, LLC" as the "Payroll Employer". All of the foregoing was intentional misconduct of Defendants that injured Plaintiff and 226 Class Members insofar as they were subjected to confusion and deprived of information to which they were legally entitled.

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

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

Cal. Lab. Code § 510.

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

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

4 Code § 1194.

5 32. At all relevant times mentioned herein, section 2802 of the California Labor Code
6 provided in part:

7 (a) An employer shall indemnify his or her employee for all necessary
8 expenditures or losses incurred by the employee in direct consequence of the discharge of
his or duties

9 (b) All awards made by a court . . . for reimbursement of necessary expenditures
10 under this section shall carry interest at the same rate as judgments in civil actions.
Interest shall accrue from the date on which the employee incurred the necessary
11 expenditure or loss.

12 (c) For purposes of this section, the term "necessary expenditures or losses" shall
include all reasonable costs, including, but not limited to, attorney's fees incurred by the
employee enforcing rights granted by this section.

13 Cal. Lab. Code § 2802. Defendants failed to reimburse Plaintiff and Class Members for necessary
14 business expenses incurred in the performance of their duties, such as for the use of a personal
15 cell phone and for other motion picture production equipment and supplies.

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

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

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

27 34. At all relevant times mentioned herein, section 558.1 of the California Labor Code
28 provided:

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

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

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

7 Cal. Lab. Code § 558.1. Upon information and belief, Defendants were joint employers or other persons
8 acting on behalf of an employer who violated, or caused to be violated the relevant sections of the Code
9 referenced herein. Defendants directly and/or indirectly controlled the Class Members’ wages, working
10 conditions and hours and were responsible for the policies or lack of policies that caused the Code
11 violations.

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

14 (a) As used in this section:

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

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

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

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

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

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

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

24 (1) The payment of wages.

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

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

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

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

1 action.

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

4 ...

5 Cal. Lab. Code § 2810.3. Gatorade, Mercedes-Benz, Volkswagen and the like were the client employers
6 of Plaintiff and Class Members, and Defendants were the labor contractors

7 **CLASS-ACTION ALLEGATIONS**

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

11 For the period three years and 180 days prior to the filing of this Complaint to date, all persons
12 paid wages on account of services provided for Defendant Somesuch in the production of Motion
13 Pictures¹ in California (such persons are referred to hereafter as Code Class Members, and such
14 period is referred to hereafter as the Class Period)

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

16 All persons paid wages on account of services provided for Defendant Somesuch in the
17 production of Motion Pictures in California during the period beginning no earlier than four
18 years and 180 days prior to the filing hereof to the date of a decision on a Motion for Class
19 Certification (such persons are referred to as “Class Members,” and such period is referred to
20 hereafter as the “Class Period”).

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

22 For the period one year prior to the filing of this Complaint to date, all persons paid wages on
23 account of services provided for Defendant Somesuch in the production of Motion Pictures in
24 California until the date of a decision on a Motion for Class Certification (such persons are
25 referred to hereafter as 226 Class Members, and such period is referred to hereafter as the 226
26 Class Period).

27 37. This action has been brought and may be properly maintained as a class action under the
28 provisions of section 382 of the Code of Civil Procedure because there is a well-defined community of
interest in the litigation and the proposed Class is easily ascertainable.

38. Defendants, as to Plaintiff and 226 Class Members, also failed to accurately provide the
data required by section 226(a) of the Code and, accordingly, Defendants’ failure to provide such data
entitles Plaintiff and each 226 Class Member to either actual damages or statutory liquidated damages,
whichever is greater.

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

1 39. Defendants, as to Plaintiff and Code Class Members, failed to timely compensate the
2 workers as required by sections 201.3, 201.5, 203 and/or 204b of the Code and, accordingly,
3 Defendants' failure to make timely payment entitles Plaintiff and each Code Class Member to statutory
4 damages or penalties.

5 40. Defendants, as to Plaintiff and 17200 Class Members, failed to provide meal and rest
6 breaks as required by sections 226.7, 512 of the Code and Wage Order 12, and, accordingly,
7 Defendants' failure to provide meal and rest breaks entitles Plaintiff and 17200 Class Members to either
8 actual damages or statutory damages, whichever is greater.

9 **A. Numerosity**

10 41. The potential members of each Class as defined are so numerous that joinder of all the
11 members of the Class is impracticable. While the precise number of Class Members has not been
12 determined at this time, Plaintiff is informed and believes that Defendants employed during the relevant
13 time periods at least 100 workers in the State of California. The number of Class Members is great, but
14 not so great as to make the class unmanageable. It therefore is impractical to join each Class Member as
15 a named plaintiff. Accordingly, utilization of a class action is the most economically feasible means of
16 determining the merits of this litigation.

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

20 **B. Commonality**

21 43. There are questions of law and fact common to the Class that predominate over any
22 questions affecting only individual Class Members. These common questions of law and fact include,
23 without limitation:

- 24 a. Whether Defendants failed to pay all wages in a timely fashion upon the discharge of
25 Code Class Members, all in violation of sections 201.3, 201.5, 204b and 203 of the Code.
26 b. Whether Defendants failed to pay all wages during employment , all in violation of
27 sections 204 and 210 of the Code
28

- c. Whether Defendants' failure to provide accurate itemized wage statements to 226 Class Members violates section 226.
- d. Whether Defendants failed to provide meal breaks to 17200 Class Members.
- e. Whether Defendants failed to provide rest breaks to 17200 Class Members.
- f. Whether Defendants failed to pay proper minimum wages to Code Class Members under Code sections 1194 and 1194.2.
- a. Whether Defendants failed to reimburse necessary business expenses to Code Class Members under Code sections 2802.
- b. Whether Class Members are entitled to restitution due to Defendants' unfair or unlawful business practices under Cal. Bus & Prof. Code sections 17200 *et seq.*

C. Typicality

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

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

D. Adequacy of Representation

46. Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Counsel who represent Plaintiff are competent and experienced in litigation large employment class actions. Neither Plaintiff nor Plaintiff's counsel have any conflict with the Class.

E. Superiority of Class Action

47. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the

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

11 **FIRST CAUSE OF ACTION**

12 (Continuing Wages, California Labor Code §§ 201.3, 201.5, 203
13 On Behalf of Plaintiff and the Code Class Against All Defendants)

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

16 49. Defendants employed Plaintiff as a crew member. Plaintiff was not paid all wages
17 accrued upon separation from employment and not paid all wages accrued once the production ended.

18 50. Plaintiff, and Code Class Members consistently worked more than 6-hour and/or 12-hour
19 shifts. However, they were required to keep their walkie talkies, radios and/or cell phones on their
20 persons, turned on and audible at all times, including during their rest periods and meal breaks and/or
21 they were precluded from leaving the set and its immediate environs during their breaks, all due to the
22 requirements of the Filmmakers Code of Professional Responsibility.

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

26 52. Pursuant to section 203 of the California Labor code, Plaintiff and Code Class Members
27 are entitled to continuing wages from Defendants in an amount according to proof, and Plaintiff is
28 entitled to penalties of at least \$30,000. Plaintiff and Code Class Members are also entitled to recover
costs and reasonable attorneys' fees under section 218.5 of the California Labor Code.

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

54. Defendants failed to provide Plaintiff and 226 Class Members with wage statements conforming to the requirements of section 226(a) of the Code.

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

(Failure to Provide Rest Breaks, Cal. Lab. Code § 226.7 and IWC Wage Order)
On Behalf of Plaintiff and the 17200 Class Against Defendants)

58. At all times herein relevant, sections 226.7 of the California Labor Code and IWC Wage Order 12 provided that employees must receive rest periods of at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.

59. By its failure to provide required breaks to Plaintiff and 17200 Class Members, Defendants willfully violated the provisions of Labor Code sections 226.7 and IWC Wage Order 12.

60. Plaintiff and Class Members were not permitted to leave the set of the Production for any purported rest periods. They were required to be available via radio or cell phone at all times.

61. Because Defendants failed to properly provide the proper rest breaks, it is liable to Plaintiff and 17200 Class Members for one hour of additional pay at the regular rate of compensation for each workday that the proper rest breaks were not provided, pursuant to Labor Code section 226.7 and IWC Wage Order 12.

62. As a result of the unlawful acts of Defendants, Plaintiff and 17200 Class Members have been deprived of premium wages, and/or other compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest thereon, fees, and costs.

FOURTH CAUSE OF ACTION

(Damages for Unpaid Minimum Wages,

California Labor Code §§ 1194, 1194.2 and 1198

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

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

64. Plaintiff and the Code Class Members, worked many hours for Defendants, without compensation for work performed, as required by law. Both late payment and non-payment of minimum wages violate the state statute requiring the payment of a minimum hourly wage.

65. Plaintiff and Code Class Members are entitled to recover liquidated damages under section 1194.2 of the California Labor Code in an amount according to proof . Plaintiff and Code Class Members are also entitled to recover costs and reasonable attorneys' fees under section 1194 of the California Labor Code.

FIFTH CAUSE OF ACTION

(Failure to Reimburse Necessary Expenses, Cal. Lab. Code §2802

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

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

67. In discharge of their duties, Defendants required Plaintiff and Code Class Members to make purchases and/or rent equipment for their work on the set of a motion picture production. Plaintiff

1 and Class Members were required to use their personal cellphones but were not always reimbursed for
2 such use.

3 68. Pursuant to section 2802 of the Labor Code, Plaintiff and Code Class Members are
4 entitled to reimbursement of their out-of-pocket expenses from Defendants and damages in addition to
5 interest thereon, attorney's fees and costs.

6 **SIXTH CAUSE OF ACTION**

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

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

11 70. Pursuant to Labor Code section 226(b), an employer shall afford current and former
12 employees the right to inspect or copy the records pertaining to that current or former employee, upon
13 reasonable request to the employer.

14 71. Plaintiff has requested that Defendants permit inspection or copying of Plaintiff's
15 employment records pursuant to Labor Code section 226(b). Defendants failed to provide Plaintiff
16 employment records within 21 days of the requests.

17 72. Pursuant to Labor Code Section 226(b) and (f), Plaintiff is entitled, and hereby seek to
18 recover from Defendants a seven-hundred-fifty dollar (\$750) penalty, reasonable attorney's fees, and the
19 costs of bringing this cause of action.

20 **SEVENTH CAUSE OF ACTION**

21 (Failure to Provide Employment Records Upon Request Cal. Lab. Code § 1198.5
22 On Behalf of Plaintiff Against All Defendants)

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

25 74. Pursuant to Labor Code section 1198.5, an employer shall make the contents of an
26 employee's personnel records available for inspection.

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

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

4
5 **EIGHTH CAUSE OF ACTION**

6 (Unfair Business Practices Business and Professions Code section 17200 *et seq.*
7 On Behalf of Plaintiff and the 17200 Class Against Defendants)

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

10 78. Business and Professions Code section 17200 *et seq.* prohibits acts of unfair competition,
11 including any "unlawful, unfair, or fraudulent business act or practice." Cal. Bus. & Prof. Code § 17200
12 *et seq.* Plaintiff alleges that Defendants engaged in unfair business practices in California by the above-
described failure to timely pay all wages due including overtime wages.

13 79. Defendants' violation of California wage and hour laws as herein articulated constitutes a
14 business practice because Defendants' aforementioned acts and omissions were done repeatedly over a
15 significant period of time, and in a systematic manner, to the detriment of Plaintiff.

16 80. As a result of Defendants' unfair and unlawful business practices, Defendants have
17 reaped unfair and illegal profits during the relevant time period herein at the expense of Plaintiff and the
18 17200 Class Members and members of the public. Defendants should be made to disgorge its ill-gotten
19 gains and to restore them to Plaintiff and the 17200 Class Members.

20 81. The actions of Defendants entitle Plaintiff to seek the remedies available under section
21 17200 *et seq.* Plaintiff seeks full restitution of said amounts from Defendants, as necessary and
22 according to proof, to restore any and all amounts—including interest—withheld, acquired, or converted
23 by Defendants by means of the unfair practices complained of herein. Plaintiff, on behalf of himself, as
24 well as on behalf of the general public, further seeks attorney's fees and costs pursuant to sections 218.5
25 of the Labor Code and 1021.5 of the Code of Civil Procedure. In addition, Plaintiff seeks the
26 appointment of a receiver as necessary.

NINTH CAUSE OF ACTION

(California Labor Code § 2698 et seq. Civil Penalties
(On Behalf of Plaintiff, the California Labor & Workforce Development Agency and Aggrieved
Employees Against All Defendants)

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

83. Pursuant to section 2699.3(a)(1) of the Labor Code, on September 12, 2022, Plaintiff
submitted Plaintiff's PAGA Claim Notice online to the California Labor and Workforce Development
Agency ("LWDA") and notified the LWDA of the specific provisions of the Labor Code alleged to have
been violated by Defendants, including the theories set forth in the Complaint. Also on that day,
Plaintiff gave written notice by certified mail to Defendants.

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

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

Cal. Lab. Code § 2699.3(a)(2)(A). After sixty-five (65) calendar days from the September 12, 2022,
postmark date of the notice sent by Plaintiff, Plaintiff may "commence a civil action pursuant to Section
2699." Cal. Lab. Code § 2699.3(a)(2)(A). Once more than sixty-five calendar days have passed since
Plaintiff gave written notice of the PAGA violations to the LWDA and Defendants. As the stay on this
case was lifted on March 3, 2023, Plaintiff now amends the Complaint to add this PAGA cause of
action.

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

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

1 87. Plaintiff will seek civil penalties pursuant to PAGA for violations of the following Labor
2 Code provisions:

3 **1. Failure to timely pay wages during employment in violation of Code §§ 204 and 210.**

4 Aggrieved Employees were not compensated during their employment by the times prescribed
5 by section 204 due to the failure to allocate sufficient resources to the payroll function. The failure of
6 Defendants to make timely payments within the time provided for has been and is “willful” within the
7 meaning of such word as used in Section 210 of the Code.

8 Defendants failed to pay Plaintiff and Aggrieved Employees all wages for a weekly payroll
9 period within 7 calendar days following the close of the payroll period in violation of Code §§ 204(d)
10 and 210. Plaintiff and Aggrieved Employees were paid after the 7th day following the close of the
11 payroll period in violation of these statutes.

12 **2. Failure to pay wages and/or final wages in violation of Code §§ 201.3, 201.5 and 203.**

13 With respect to violations of Code § 203, the failure of Defendants to make final payments
14 within the time provided for has been and is “willful” within the meaning of such word as used in
15 Section 203 of the Code. Code section 203 provides that if “an employer willfully fails to pay...any
16 wages of an employee who is discharged or who quits, the wages of the employee shall continue as a
17 penalty from the due date thereof at the same rate until paid or until an action therefor is commenced;
18 but the wages shall not continue for more than 30 days.”

19 Here, Plaintiff and Aggrieved Employees were not timely paid all wages due upon their
20 separation from Defendants’ employ. For example, Plaintiff were paid over 30 days after they last
21 worked. As such, Defendants failed to pay Plaintiff and Aggrieved Employees all wages due at the time
22 of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums
23 for thirty (30) days thereafter in violation of Code § 203.

24 Accordingly, each Aggrieved Employee who was not timely paid his or her final wages is
25 entitled to civil penalties. Code § 2699(f)(2) imposes a civil penalty of \$100 per pay period per
26 Aggrieved Employee for initial violations, and \$200 per pay period per Aggrieved Employee for
27 subsequent violations for all Code provisions for which a civil penalty is not specifically provided.

28 **3. Wages by check on which payment refused under Code § 203.1.**

 Certain of the Aggrieved Employees were intentionally paid their wages with checks that
subsequently were refused payment due to insufficient funds. Code § 203.1 provides that:

 If an employer pays an employee in the regular course of employment or in accordance
with Section 201, 201.3, 201.5, 201.7, or 202 any wages or fringe benefits, or both, by
check, draft or voucher, which check, draft or voucher is subsequently refused payment
because the employer or maker has no account with the bank, institution, or person on
which the instrument is drawn, or has insufficient funds in the account upon which the
instrument is drawn at the time of its presentation, so long as the same is presented within
30 days of receipt by the employee of the check, draft or voucher, those wages or fringe
benefits, or both, shall continue as a penalty from the due date thereof at the same rate
until paid or until an action therefor is commenced [up to 30 days].

 Here, Aggrieved Employees were not paid immediately after a dishonored check was presented
to Defendants and waited up to, or more than 30 days, to be paid after informing Defendants.

4. Failure to provide itemized wage statements in violation of Code § 226(a).

 Aggrieved Employees have not been provided a wage statement as required by Code section
226(a). The foregoing was the intentional misconduct of Defendants that was intended to mislead and
injure Aggrieved Employees insofar as they were subjected to confusion and deprived of information to
which they were legally entitled.

- a. The wage statements failed to include, among other required information, “all deductions,
provided that all deductions made on written orders of the employee may be aggregated and
shown as one item”

- 1 b. The wage statements failed to include, among other required information, the “inclusive dates of
2 the period for which the employee is paid” as it appears to only show the date/dates worked and
do not show the start and end date for each pay period.
- 3 c. The wage statements failed to include, among other required information, “all applicable hourly
4 rates in effect during the pay period and the corresponding number of hours worked at each
hourly rate by the employee”

5 Section 226(e) provides that any employee who suffers injury as a result of a knowing and
intentional failure by the employer to comply with its obligation to provide wage statements containing
6 all of the information referenced above is entitled to recover. Section 226.3 provides for a civil penalty
of \$250 per employee per violation in an initial violation and \$1,000 per employee for each violation in
7 a subsequent violation, for which the employer fails to provide the employee a wage deduction
statement or fails to keep the records required in subdivision (a) of Section 226.

8 **5. Failure to provide sick leave information under Code §§ 245.5 and 246.**

9 Code sections 245.5 and 246(i) provide that “[a]n employer shall provide an employee with
written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer
10 provides in lieu of sick leave, for use on either the employee’s itemized wage statement described in
Section 226 or in a separate writing provided on the designated pay date with the employee’s payment
of wages.” Here, Defendants have systematically and intentionally failed to set forth the amount of sick
11 leave available, or paid time off leave an employer provides in lieu of sick leave, on the itemized wage
statements described in Section 226. Defendants did not issue compliant wage statements to Plaintiff
12 and all Aggrieved Employees.

13 Code § 248.5(e) provides “equitable relief on behalf of the aggrieved as may be appropriate to
remedy the violation, including reinstatement, backpay, the payment of sick days unlawfully withheld, .
14 . . any person or entity enforcing this article on behalf of the public as provided for under applicable
state law shall, upon prevailing, be entitled only to equitable, injunctive, or restitutionary relief, and
15 reasonable attorney’s fees and costs.”

16 **6. Failure to furnish information under Code § 2810.5.**

17 Aggrieved Employees were entitled to certain information in writing at the time of hiring
including, among other items, the following:

- 18 a) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary,
piece, commission, or otherwise, including any rates for overtime, as applicable.
- 19 b) The regular payday designated by the employer in accordance with the requirements of this
code.
- 20 c) The name of the employer, including any “doing business as” names used by the employer.
- 21 d) The physical address of the employer’s main office or principal place of business, and a
mailing address, if different.
- 22 e) The telephone number of the employer.
- 23 f) The name, address, and telephone number of the employer’s workers’ compensation
insurance carrier.
- 24 g) That an employee: may accrue and use sick leave; has a right to request and use accrued paid
sick leave; may not be terminated or retaliated against for using or requesting the use of
25 accrued paid sick leave; and has the right to file a complaint against an employer who
retaliates.

26 All Aggrieved Employees were not provided with all of the required information under Section 2810.5.
Code section 2699(f)(2) imposes a civil penalty of \$100 per pay period per Aggrieved Employee for
initial violations, and \$200 per pay period per Aggrieved Employee for subsequent violations for all
27 Labor Code provisions for which a civil penalty is not specifically provided.

28 **7. Failure to provide proper meal periods under Code § 226.7 and Wage Order § 11.**

1 Aggrieved Employees were not provided with timely meal periods in violation of Code section
2 226.7 and Applicable Wage Order section 11. For example, Plaintiff worked over 6 or 12 hours in a day
3 but were not provided with compliant meal break(s) and were not otherwise compensated. Aggrieved
4 Employees were not permitted to leave the set of the Production for meal periods, and were required to
5 keep their walkie talkies and/or cell phones on so that they could be reached at all times. They were
6 required to respond regardless of whether they were on a meal or rest break.

7 Code §§ 226.7, 512 and Section 12 of the Applicable Wage Order require an employer to pay an
8 additional hour of compensation for each meal period the employer fails to provide. Section 12 requires
9 that “No employer shall employ any person for a work period of more than six (6) hours without a meal
10 period of not less than thirty (30) minutes, nor more than one (1) hour. Subsequent meal period for all
11 employees shall be called not later than six (6) hours after the termination of the preceding meal period.”
12 Defendants failed to maintain a policy informing all Aggrieved Employees of these rights.

13 Here, Defendants failed to apprise all Aggrieved Employees of their rights associated with meal
14 periods and failed to provide timely meal periods. Defendants have had a consistent policy of: (1)
15 requiring all Aggrieved Employees to take late meal breaks that occurred after the first 6 hours of each
16 shift; (2) required Aggrieved Employees to work shifts over 12 hours without providing a second meal
17 period of 30 minutes in length; and (3) failed to pay such employees 1 hour of pay at the employees
18 regular rate of compensation for each workday in which a proper meal break was not provided.

19 Additionally, Defendants maintained a policy of automatically deducting 30 minutes from each
20 shift that Plaintiff and the Aggrieved Employees worked. This “auto-deduct” policy was unlawful and
21 did not account for whether the employees took their meal periods, took meal periods late, were
22 interrupted with work, and/or took meal periods of less than 30 minutes.

23 Code section 2699(f)(2) imposes a civil penalty of \$100 per pay period per Aggrieved Employee
24 for initial violations, and \$200 per pay period per Aggrieved Employee for subsequent violations for all
25 Labor Code provisions for which a civil penalty is not specifically provided.

26 **8. Failure to provide proper rest periods under Code § 226.7 and Wage Order § 12.**

27 All Aggrieved Employees were not provided with timely rest periods in violation of Code
28 section 226.7 and Applicable Wage Order section 12. Aggrieved Employees were not permitted to leave
the set of the Production for any purported rest periods. They were required to be available via radio or
cell phone at all times. Plaintiff and Aggrieved Employees were neither informed of nor otherwise
provided with compliant rest breaks. Defendants failed to provide all Aggrieved Employees with rest
breaks of not less than 10 minutes per 4-hour work period, or major fraction thereof. On a regular and
consistent basis, Defendants failed to provide all Aggrieved Employees with a third rest period despite
regularly requiring Aggrieved Employees to work over 10 hours. As such, Defendants failed to provide
all Aggrieved Employees with compliant rest periods. Further, Plaintiff and the Aggrieved Employees
were not compensated with 1 hour of wages for each missed rest period as required by Code § 226.7.

Code section 2699(f)(2) imposes a civil penalty of \$100 per pay period per Aggrieved Employee
for initial violations, and \$200 per pay period per Aggrieved Employee for subsequent violations for all
Code provisions for which a civil penalty is not specifically provided.

9. **Improper classification of employees as independent contractors in violation of Code § 226.8.**

Aggrieved Employees were willfully misclassified as independent contractors even though they
were employees. Production crew members are employees who are granted specific protections under
the Labor Code, as defined in Code § 201.5. Defendants’ failure to properly classify as employees all
Aggrieved Employees was done on a regular and consistent basis. Code section 226.8 requires “a civil
penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars
(\$15,000) for each violation, in addition to any other penalties or fines permitted by law.” If the
employer is found to have engaged in a “pattern or practice” of misclassifying employees, it is subject to
a “civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand
dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.” Cal.
Lab. Code § 226.8(c).

10. **Failure to reimburse necessary business expenses under Code § 2802.**

Aggrieved Employees were not reimbursed for necessary business expenses. Section 2802 requires that an employer indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

Defendants have failed to reimburse Plaintiff and Aggrieved Employees the cost of using their personal cell phones for business related purposes. Defendants required that Plaintiff and the Aggrieved Employees be available by cell phone and answer/use their cell phones while working and this was necessary to perform their job duties. These cell phones were not provided by Defendants, and Defendants failed to reimburse Aggrieved Employees for the costs associated with using these personal cell phones. They were also not reimbursed for the provision and use of personal protective equipment and traffic management and motion picture production equipment and supplies necessary to perform their job duties.

Code section 2699(f)(2) imposes a civil penalty of \$100 per pay period per Aggrieved Employee for initial violations, and \$200 per pay period per Aggrieved Employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

11. Failure to pay minimum and overtime wages in violation of Code §§ 510, 515, 558, 1194, and 1198.

Both late payment and non-payment of minimum wages violate the state statute requiring the payment of a minimum hourly wage. The Labor Code requires an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the regular rate of pay for any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek.

Here, Plaintiff and other Aggrieved Employees were not paid at the proper corresponding rate for all hours worked, including overtime as a result of the following:

1. Failure to compensate time worked during faux meal breaks when those hours would constitute overtime
2. Defendants did not record actual hours and failed to pay for all time worked.
3. Defendants failure to pay for all time spent driving/and or travelling from site to site.
4. Aggrieved Employees routinely work "off the clock" to attend mandatory meetings beyond their scheduled call time.
5. Plaintiff and the Aggrieved Employees are routinely paid until an arbitrary time in the day and not until they have ceased working.

Code § 558 imposes a civil penalty in addition to any other penalty provided by law of \$50 for initial violations for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages, and \$100 for subsequent violations for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

12. Failure to keep complete and accurate payroll records.

Defendants failed to keep complete and accurate payroll records relating to Aggrieved Employees in accordance with Code section 1174(d). Willful failure to maintain accurate and complete records required by section 1174(d) is subject to a civil penalty of \$500. Cal. Lab. Code § 1174.5.

13. Failure to furnish reporting time pay in violation of Applicable Wage Order § 5.

Defendants failed to compensate for reporting time pay. Upon information and belief, Aggrieved Employees reported to work but were not put to work or not furnished at least half of the usual or scheduled hours. If an employee is required to report to work but is not put to work or is furnished less than half of the employee's usual or scheduled day's work, such Aggrieved Employees are entitled to be paid for half the usual or scheduled day's work. Code section 2699(f)(2) imposes a civil penalty of \$100 per pay period per Aggrieved Employee for initial violations, and \$200 per pay period per Aggrieved Employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

1 **14. Personal Liability of Defendant Sarah Anne Campbell under Code § 558.**

2 Defendant Sarah Anne Campbell was an employer and/or “other person acting on behalf of an
3 employer who violates, or causes to be violated, a section of this chapter or any provision regulating
4 hours and days of work in any order of the Industrial Welfare Commission” as he was a member and
5 owner of Defendant Somesuch, Inc., who controlled the payment of wages. Under Code § 558,
6 Defendant Sarah Anne Campbell is responsible for the civil penalties for violation of minimum wages,
7 overtime wages, meal and rest breaks, and reporting time pay.

8 Aggrieved Employees are entitled to recover as follows:

9 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay
10 period for which the employee was underpaid in addition to an amount sufficient to
11 recover underpaid wages.

12 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
13 employee for each pay period for which the employee was underpaid in addition to an
14 amount sufficient to recover underpaid wages.

15 (3) Wages recovered pursuant to this section shall be paid to the affected employee.
16 Cal. Lab. Code § 558(a).

17 **15. Personal Liability of Defendant Sarah Anne Campbell under Code § 1197.1**

18 Defendant Sarah Anne Campbell was an employer and/or “other person acting either
19 individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any
20 employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the
21 Commission.” Defendant Sarah Anne Campbell was an owner, member and executive producer of
22 Somesuch, Inc., which had control over the payment of wages and intentionally caused Aggrieved
23 Employees to be paid less than was required by the Labor Code and the Applicable Wage Order.
24 Defendant is responsible for minimum wage restitution, liquidated damages and Code § 203 penalties.
25 Aggrieved Employees are entitled to recover as follows:

26 (1) For any initial violation that is intentionally committed, one hundred dollars (\$100)
27 for each underpaid employee for each pay period for which the employee is underpaid.
28 This amount shall be in addition to an amount sufficient to recover underpaid wages,
29 liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed
30 pursuant to Section 203.

31 (2) For each subsequent violation for the same specific offense, two hundred fifty dollars
32 (\$250) for each underpaid employee for each pay period for which the employee is
33 underpaid regardless of whether the initial violation is intentionally committed. This
34 amount shall be in addition to an amount sufficient to recover underpaid wages,
35 liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed
36 pursuant to Section 203.

37 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section
38 203, recovered pursuant to this section shall be paid to the affected employee.
39 Cal. Lab. Code § 1197.1(a).

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

41 1. That the Court certify a Class Action.

42 2. That, under the First Cause of Action, it be adjudged that the failure of Defendants to
43 make payment of Plaintiff’s and Code Class Members’ wages was in violation of section 201.3, 201.5,
44 and 204b of the California Labor Code, and was “willful” as that word is used in section 203 of the
45 California Labor Code, and that the Court enter judgment against Defendants in favor of Plaintiff and

1 Code Class Members. That judgment be entered in favor of Plaintiff, of not less than \$30,000, and Code
2 Class Members in an amount prescribed by section 203 of the California Labor Code, and costs and
3 reasonable attorneys' fees in accordance with the provisions of California Labor Code section 218.5.

4 3. That, under the Second Cause of Action, this Court enter judgment in favor of Plaintiff,
5 of at least \$50, not including interest thereon, reasonable attorneys' fees and cost of suit, and enter
6 judgment in favor of the 226 Class Members against Defendants in the amount of damages, interest, and
7 costs, according to proof, and costs and reasonable attorneys' fees in accordance with the provisions of
8 Labor Code section 226(e).

9 4. That, under the Third Cause of Action, this Court enter judgment in favor of Plaintiff and
10 the 17200 Class Members and award them their damages, penalties, and costs of suit, all according to
11 proof, pursuant to section 218.5 and other relevant sections of the Labor Code.

12 5. That, under the Fourth Cause of Action, this Court enter judgment in favor of Plaintiff
13 and Code Class Members and award them their damages, penalties, liquidated damages, reasonable
14 attorney's fees and costs of suit, all according to proof, according to proof, pursuant to section 218.5,
15 1194, 1194.2 and other relevant sections of the Labor Code.

16 6. That, with respect to the Fifth Cause of Action, this Court enter judgment in favor of
17 Plaintiff and Code Class Members against all Defendants in an amount according to proof, interest
18 thereon, costs and reasonable attorney's fees in accordance California Labor Code section 2802(c).

19 7. That, with respect to the Sixth Cause of Action, this Court enter judgment in favor of
20 Plaintiff against Defendants of \$750, reasonable attorney's fees, and the costs of bringing this cause of
21 action under Labor Code Section 226(b) and (f).

22 8. That, with respect to the Seventh Cause of Action, this Court enter judgment in favor of
23 Plaintiff against Defendants of \$750, reasonable attorney's fees, and the costs of bringing this cause of
24 action pursuant to Labor Code Section 1198.5(k).

25 9. That, under the Eighth Cause of Action, it be adjudged that Defendants' violations of the
26 applicable Wage Order and above cited sections of the California Labor Code, and violated section
27 17200 *et seq.* of the California Business and Professions Code. Accordingly, Plaintiff requests that the
28 Court order Defendants to pay restitution with interest to Plaintiff and the 17200 Class Members.

1 Finally, Plaintiff requests that the Court award Plaintiff's reasonable attorneys' fees and costs, pursuant
2 to section 218.5 of the Labor Code and section 1021.5 of the California Code of Civil Procedure.

3 10. That, with respect to the Ninth Cause of Action this Court award Plaintiff, the State of
4 California, and other former and current Aggrieved Employees their civil penalties, attorney's fees, and
5 costs of suit, all according to proof, pursuant to the cited sections of the Labor Code and the applicable
6 Wage Orders as heretofore articulated

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

10 DATED: March 3, 2023

HARRIS & RUBLE

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12 Alan Harris
13 Alan Harris
14 Attorney for Plaintiff
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