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13 J. Costa and K. Payne

14 LOS ANGELES SUPERIOR COURT
15 FOR THE COUNTY OF LOS ANGELES

16 J. COSTA and K. PAYNE, individually and on
17 behalf of all others similarly situated,

18 Plaintiffs,

19 v.

20 SMUGGLER, LLC, a Delaware Limited
21 Liability Company fka Smuggler, Inc., a
22 California Corporation; RARE BIRD
23 HOLDINGS, INC., a Delaware Corporation;
24 BRIAN CARMODY, an individual; PATRICK
25 MILLING-SMITH, an individual; DIVISION7,
26 LLC, a Delaware Limited Liability Company;
27 and DOE 1 through and including DOE 10,

28 Defendants.

Case No: 23STCV01163
Assigned to Hon. Kenneth R. Freeman, Dept.14

FIRST AMENDED COMPLAINT

1. Cal. Lab. Code (the “Code”) §§ 201.3, 201.5 and 203, Continuing Wages
2. Code §§ 510, 1194, 1194.2, 1197 and 1197.1, Minimum Wages
3. Code § 226.7 and 512(a), Meal Breaks
4. Code § 226.7, Rest Breaks
5. Code § 226(a), Wage Statements
6. Cal. Bus. & Prof. Code § 17200, Unfair Comp.
7. Code § 2802, Failure to Reimburse Business Expenses
8. Cal. Lab. Code §§ 2698 et seq., PAGA
9. Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*
10. Cal. Lab. Code § 226(b), Payroll Records.
11. Cal. Lab. Code § 1198.5, Personnel Records.

1 Plaintiffs John Costa (“Costa”) and Kevin Payne (“Payne”), by and through their undersigned
2 attorneys, allege as follows:

3 **JURISDICTION AND VENUE**

4 1. This is a civil and class action brought under the California Labor Code (the “Code”) and
5 the Private Attorneys General Act (“PAGA”), seeking relief under state law on account of unpaid
6 wages, damages, continuing wages, liquidated damages, civil penalties, statutory penalties, restitution
7 and attorneys’ fees and costs. Plaintiffs have provided statutory notice to the California Labor and
8 Workforce Development Agency (“LWDA”).

9 2. Venue as to Defendants is proper in this judicial district, pursuant to California Business
10 & Professions Code section 17203 and California Code of Civil Procedure sections 395(a) and 395.5.
11 Defendants maintain an office, transact business, have an agent, or are found in the County of Los
12 Angeles and are within the jurisdiction of this Court for purposes of service of process.

13 **INTRODUCTION**

14 3. Plaintiff Costa is an individual, who, during the time periods relevant to this Complaint,
15 was a resident of the County of Los Angeles, State of California.

16 4. Plaintiff Payne is an individual, who, during the time periods relevant to this Complaint,
17 was a resident of the County of Los Angeles, State of California.

18 5. Defendant Smuggler, LLC is currently a Delaware Limited Liability Company which at
19 all times relevant herein conducted business within the County of Los Angeles of the State of California.
20 Its Principal Address in California is 823 Seward Ave., Los Angeles, CA 90038.

21 6. During the time that Plaintiff Costa worked for Smuggler, LLC, it was called Smuggler,
22 Inc., a California Corporation. On or about September 22, 2022, the corporation converted into a
23 California Limited Liability Company, and on September 30, 2022, converted to a Delaware Limited
24 Liability Company. It currently conducts business as Smuggler, LLC, a Delaware Limited Liability
25 Company and is managed by Rare Bird Holdings, Inc. Smuggler, Inc. and Smuggler, LLC are
26 collectively referred to as (“SMI”).

27 7. Defendant Rare Bird Holdings, Inc. (RBHI) is a Delaware Corporation which at all times
28 relevant herein conducted business within the County of Los Angeles of the State of California.

1 8. Defendant Brian Carmody (“Carmody”) founded SMI, and is a resident of Los Angeles
2 County. Carmody helped found SMI and he has been active in the business since that time. Carmody is
3 the Secretary of RBHI and was the Secretary of SMI when it was a corporation.

4 9. Defendant Patrick Milling-Smith (“Milling-Smith”) was also a founder of SMI, and is a
5 resident of Los Angeles County. Carmody and Milling-Smith are collectively referred to herein as the
6 (“Individual Defendants”). Milling-Smith is the CEO of RBHI and was the CEO of SMI when it was a
7 corporation.

8 10. Division7, LLC (“DSLCC”) is a Delaware Limited Liability Company, managed by SMI.
9 Its Principal Address in California is shared with SMI and the Individual Defendants at 823 Seward
10 Ave., Los Angeles, CA 90038.

11 11. From 2019 to date, Defendants have produced television commercials for Aldi, AT&T,
12 Spotify, Xfinity, Walmart, McDonald’s, Burger King, Google, Microsoft, CarMax and many other A-
13 List clients.

14 12. Defendants are “temporary services employers” as defined by Code § 201.3 and required
15 to pay their freelance motion picture workers no less frequently than weekly. Code Section 201.3
16 provides, in part:

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

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

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

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

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

28 (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

1 later than the regular payday of the following calendar week. A temporary services
2 employer shall be deemed to have timely paid wages upon completion of an assignment
if wages are paid in compliance with this subdivision.

3 ...
(c) A temporary services employer who violates this section is subject to the civil
penalties provided for in Section 203 and to any other penalties available at law.

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

5 Code §201.3.

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

16 14. SMI, RBHI, DSLLC, the Individual Defendants, and Does One through and included
17 Doe Ten are collectively referred to herein as the “Defendants.”

18 15. Defendants Doe One through and including Doe Ten are sued herein under the provisions
19 of section 474 of the California Code of Civil Procedure. Plaintiffs are currently ignorant of the true
20 names and capacities, whether individual, corporate, associate, or otherwise, of the defendants sued
21 herein under fictitious names and therefore sue such defendants by such fictitious names. Plaintiffs will
22 seek leave to amend this complaint to allege the true names and capacities of said fictitiously named
23 defendants when their true names and capacities have been ascertained. Plaintiffs are informed and
24 believe and thereon allege that each of the fictitiously named defendants is legally responsible in some
25 manner for the events and occurrences alleged herein, and for the damages suffered by the Class.

26 16. Plaintiffs are informed and believes and thereon allege that all Defendants, including the
27 fictitious Doe Defendants, were at all relevant times acting as actual agents, conspirators, ostensible
28 agents, alter egos, partners and/or joint venturers and/or employees of all other Defendants, and that all

1 acts alleged herein occurred within the course and scope of said agency, employment, partnership, and
2 joint venture, conspiracy or enterprise, and with the express and/or implied permission, knowledge,
3 consent authorization and ratification of their co-defendants; however, each of these allegations are
4 deemed “alternative” theories whenever not doing so would result in a contradiction with other
5 allegations.

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

15 **GENERAL ALLEGATIONS**

16 18. Defendants employed Plaintiffs and others as crew members to work on motion pictures.
17 The Class Members herein include Plaintiffs and other crew members who have worked for one or more
18 of the Defendants and who have been issued wage statements for services producing Motion Pictures
19 performed in whole or in part for one or more of the Defendants in California (collectively, the “Class
20 Members”).

21 19. Plaintiff Costa was hired to work for SMI and the Individual Defendants, providing
22 services on or about August 16 and 17, 2022, during the Sunday to Saturday workweek of August 14 to
23 20, 2022. When his services were terminated on August 17, 2022, Costa was not provided another day
24 on which he might return to work for the Defendants. Defendants were required to pay Costa by Friday
25 of the next Sunday to Saturday payroll week, on or before August 26, 2022, but Costa was paid most of
26 his final wages for the Production in tardy fashion. For services provided on August 16 and 17, 2022,
27 Plaintiff Costa’s paycheck was not even prepared until on or after September 6, 2022. Whilst Costa’s
28 paycheck dated September 6, 2022, provides payment for some unspecified penalties in the total amount

1 of \$134.38, Costa has not been paid his accrued premium wages owing for the non-provision of
2 compliant meal periods and rest breaks, as required by Naranjo v. Spectrum Sec. Servs., Inc., 13 Cal. 5th
3 93, 106-07, 111 (May 23, 2022) ("Naranjo").

4 20. Separately, for another film production, Plaintiff Costa was hired to work for SMI and the
5 Individual Defendants, providing services on or about September 13, 2022, during the Sunday to
6 Saturday workweek of September 11-17, 2022. When his services were terminated on September 13,
7 2022, Costa was not provided another day on which he might return to work for the Defendants, and he
8 has not worked for the Defendants since that time. Defendants were required to pay Costa by Friday of
9 the next Sunday to Saturday payroll week, on or before September 23, 2022, but Costa was paid most of
10 his final wages for the Production in tardy fashion. For services provided on September 13, 2022,
11 Plaintiff Costa's paycheck was not even prepared until on or after October 5, 2022. Whilst Costa's
12 paycheck dated October 5, 2022, provides payment for some unspecified penalties in the total amount of
13 \$67.19, Costa has not been paid his accrued premium wages owing for the non-provision of compliant
14 meal periods and rest breaks, as required by Naranjo.

15 21. Separately, for another film production, a "McDonald's #3098" commercial, Kevin
16 Payne worked for the Defendants, providing services on or about Friday, February 4, 2022, during the
17 Sunday to Saturday workweek of January 30, 2022, to February 5, 2022. When Payne's services were
18 terminated on February 4, 2022²⁰²⁰, he was not provided another day on which he might return to work
19 for the Defendants. Defendants were required to pay him by Friday of the next Sunday to Saturday
20 payroll week, on or before February 10, 2022, but he was paid most of his final wages for the project in
21 tardy fashion. For services provided on February 4, 2022, his paycheck was not even prepared until on
22 or after Monday, February 14, 2022. Whilst the paycheck dated February 14, 2022, provides payment
23 for straight time, Payne has not been paid his accrued premium wages owing for the non-provision of
24 compliant meal periods or rest breaks, as required by Naranjo.

25 22. Defendants never provided Plaintiffs with required rest breaks.

26 23. In addition to making frequent tardy payment of wages owing to Plaintiffs and the crews
27 employed by Defendants, the proposed Class Members were not properly compensated with premium
28 wages owing on account of Defendants' failure to provide mandatory meal periods and rest breaks.

1 Indeed, it appears that the Defendants routinely failed to pay the crew properly for missed or tardy meal
2 periods or rest breaks. Indeed, the crew were instructed to remain within the boundaries of the property
3 that had been permitted for filming and the crew were instructed that meals shall be confined to the area
4 designated in the Location Agreement or permit. The crew were instructed that they should eat within
5 their designated meal area, during scheduled crew meals.

6 24. Although Plaintiffs and others should have been paid in full for their accrued wages,
7 issued legally compliant wage statements, and paid no later than as required by Code § 201.3 or, in the
8 alternative, Code § 201.5, Plaintiffs and other crewmembers were not paid properly. For example, they
9 were not paid any rest break premium wages by the Friday after the Sunday to Saturday workweek
10 during which they completed their assignments, and most have yet to be paid all accrued premium
11 wages for rest periods or meal breaks as required by Naranjo.

12 25. Defendants failed to properly compensate Plaintiffs and other Class Members who
13 performed services on motion picture production projects produced in California. Plaintiffs and the
14 Class Members who worked for Defendants on California motion picture projects, were routinely not
15 paid timely, with all premium wages, or with appropriate wage statements, all due to Defendant's
16 undercapitalization and insufficient funding of the payroll accounting function, its profits having
17 routinely been stripped from the balance sheets of SMI and DSLLC, respectively. It is an additional
18 expense to issue weekly paychecks rather than paying wages 24 or 26 times per year, or when a given
19 Motion Picture project no longer requires that SMI or DSLLC employ any more temporary employees
20 for a specific project. Once SMI or DSLLC delivers such a television commercial to the advertising
21 agency or other client which commissioned it, all persons who were hired by SMI as "temporary
22 services employees" are discharged and taken off payroll.

23 26. Wage Order 12 of the California Industrial Welfare Commission applied to Plaintiffs and
24 Class Members. In part, the Wage Order reflects employer obligations regarding hours and days of
25 work, reporting time pay and records (obligations which the employer, here, failed to fulfill, both with
26 respect to Plaintiffs and Class Members). The Wage Order requires, in relevant part, that meals shall be
27 provided within the initial six hours of work. However, Defendants' routine practice was to defer meal
28 breaks until after the sixth and/or twelfth of filming, and then, on occasion, delaying even further due to

1 imposition of alleged “grace” periods. On occasion, such meals were improperly truncated and/or in the
2 case of the hereinafter defined Shooting Crew, not provided, at all.

3 27. Defendants implemented a timekeeping system that does not permit employees to track
4 and record their actual hours worked insofar as all are most frequently required to report meal breaks of
5 exactly thirty minutes. This policy and practice have the recurrent impact of artificially insulating the
6 employer from incurring additional expense on account of tardy, missed, interrupted and/or short meal
7 periods and depriving compensation for all hours worked. Further, the workers are logged on the clock
8 only at artificially created “call times” which do not reflect when the workday actually commenced, and
9 workers are routinely taken off payroll at artificially imposed “wrap” times, whether or not their work
10 has actually concluded.

11 28. At all relevant times mentioned herein, section 201.5 of the Code provided in part:

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

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

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

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

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

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

26 (4) “Production or broadcasting of motion pictures” means the development, creation,
27 presentation, or broadcasting of theatrical or televised motion pictures, television
28

1 programs, commercial advertisements, music videos, or any other moving images,
2 including, but not limited to, productions made for entertainment, commercial, religious,
3 or educational purposes, whether these productions are presented by means of film, tape,
4 live broadcast, cable, satellite transmission, Web cast, or any other technology that is now
5 in use or may be adopted in the future.

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

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

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

18 (e) Nothing in this section prohibits the parties to a valid collective bargaining agreement
19 from establishing alternative provisions for final payment of wages to employees covered
20 by this section if those provisions do not exceed the time limitation established in Section
21 204.

22 Code § 201.5. At all relevant times mentioned herein, either section 201.3 or 201.5 of the Code
23 controlled the final payment of wages to Plaintiffs, the crewmembers in the proposed Code Class.
24 Plaintiffs' claims under Code § 201.5 is made in addition to and as an alternative to the claims under
25 Code § 201.3.

26 29. At all relevant times mentioned herein, section 203 of the Code provided in part:

27
28 If an employer willfully fails to pay, without abatement or reduction, in accordance with

1 Sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an
2 employee who is discharged or who quits, the wages of the employee shall continue as a
3 penalty from the due date thereof at the same rate until paid or until an action therefor is
4 commenced; but the wages shall not continue for more than 30 days. An employee who
5 secretes or absents themselves to avoid payment to them, or who refuses to receive the
6 payment when fully tendered to them, including any penalty then accrued under this
7 section, is not entitled to any benefit under this section for the time during which the
8 employee so avoids payment.

9 Code § 203(a).

10 30. By failing to pay timely Plaintiffs and Class Members all wages when due at the end of
11 employment, Plaintiffs and the proposed Code Class are entitled to continuing wages pursuant to section
12 203 of the Code.

13 31. In no event should Plaintiffs or the Class Members have been paid later than the time
14 periods established by sections 201.3 or 201.5 of the Code, but certain payments to Plaintiffs and the
15 Code Class were made after they were due, or, especially with respect to accrued and unpaid premium
16 wages owing on account of Defendants' failure to provide compliant rest breaks and meal periods, not at
17 all, leading to penalties under Code sections 203 and liquidated damages for which provision is made by
18 Code section 1194.2.

19 32. The SMI and DSLLC policies have been to devote insufficient capital, manpower and
20 other required resources to its business, including providing sufficient funding of the payroll accounting
21 function, with the inevitable result that employees are routinely paid in tardy fashion, in violation of
22 sections 201.3, 201.5 and/or 203 of the Code. In addition, SMI and DSLLC routinely enter contracts for
23 the production of television commercials which contracts provide that the advertising agency or other
24 contracting party need not pay the full amount owing to SMI or DSLLC until it receives final delivery of
25 a finished product. SMI and DSLLC maintain internal budgets for each individual television
26 commercial produced. The internal SMI and DSLLC accounting practice has the inevitable, routine
27 result of SMI and DSLLC putting a hold on the funding of final wage payments until it has received
28 sufficient funds to make the payments, all within its internally imposed, discretionary accounting

1 practices.

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

3 All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned
4 by any person in any employment are due and payable twice during each calendar month,
5 on days designated in advance by the employer as the regular paydays. Labor performed
6 between the 1st and 15th days, inclusive, of any calendar month shall be paid for between
7 the 16th and the 26th day of the month during which the labor was performed, and labor
8 performed between the 16th and the last day, inclusive, of any calendar month, shall be
9 paid for between the 1st and 10th day of the following month.

10 Cal. Lab. Code § 204.

11 34. In no event should Plaintiffs or Class Members have been paid later than the time
12 periods established by sections 201.3, 201.5 or 204 of the California Labor Code, but certain wage
13 payments were made after they were due, some have yet to be made, all leading to penalties under
14 sections 203, 204 and 226 of the California Labor Code, all as described in Naranjo.

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

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

26 Code § 510. On information and belief, the Defendants manipulated the data relating to days worked by
27 its crews in order to avoid the requirement to pay overtime and/or double time wages to individuals who
28

1 worked for seven straight days during a workweek and/or who worked on more than one television
2 commercial production during a single Sunday to Saturday pay period.

3 36. Defendants failed to pay proper minimum wages or overtime to the proposed Code Class,
4 delaying such payments to beyond the required next weekly pay period or failing to make them, all to
5 avoid the minimum wage and/or overtime protections of the Code.

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

7
8 Payment of a fixed salary to a nonexempt employee shall be deemed to provide
9 compensation only for the employee's regular, non-overtime hours, notwithstanding any
10 private agreement to the contrary.

11 Code § 515(d)(2). Accordingly, a daily wage rate is "deemed to provide compensation only for the
12 employee's regular, non-overtime hours" too. Alvarado v. Dart Container Corp. of Cal., 4 Cal. 5th 542,
13 564–65, as modified (2018) ("the Legislature expressly endorsed the principle that flat sum non-hourly
14 compensation should be factored into an employee's regular rate of pay by dividing the flat sum by the
15 number of non-overtime hours that exist in the relevant period, and that the flat sum compensates the
16 worker for only nonovertime hours worked.") The California Supreme Court based its holding on
17 fundamental principles that "the obligation to pay premium pay for overtime work reflects a state policy
18 favoring an eight-hour workday and a six-day 40-hour workweek, and discouraging employers from
19 imposing work in excess of those limits." Alvarado, 4 Cal. 5th at 539.

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

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

26 Code § 1194.

27 39. Plaintiffs and the proposed Code Class were not timely paid the minimum wages and/or
28 overtime to which they were entitled. Accordingly, they are entitled to liquidated damages under

1 section 1194.2. Biggs v. Wilson, 1 F.3d 1537 (9th Cir. 1993).

2 40. At all relevant times mentioned herein, section 2802 of the California Labor Code
3 provided in part:

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

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

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

14 Cal. Lab. Code § 2802. Defendants failed to reimburse Plaintiffs and Class Members for necessary
15 business expenses incurred in the performance of their duties, such as for the use of a personal cell
16 phone and/or other computer equipment for receipt of emails and/or text messages regarding, for
17 example, scheduling and communicating regarding the location for Covid testing and other procedures,
18 as well as for motion picture production equipment and supplies.

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

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

25 (b) For purposes of this section, the term “other person acting on behalf of an employer”
26 is limited to a natural person who is an owner, director, officer, or managing agent of the
27 employer, and the term “managing agent” has the same meaning as in subdivision (b) of
28

1 Section 3294 of the Civil Code.

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

4 Code § 558.1. Carmody, Milling-Smith, SMI, RBHI, DSLLC and Does One through and including Doe
5 10 are joint employers with one another, or other persons acting on behalf of an employer, who violated,
6 or caused to be violated the relevant sections of the Code referenced herein.

7 42. At all relevant times mentioned herein, section 558 of the Code provided:

8
9 Any employer or other person acting on behalf of an employer who violates, or causes to
10 be violated, a section of this chapter or any provision regulating hours and days of work
11 in any order of the Industrial Welfare Commission shall be subject to a civil penalty as
12 follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for
13 each pay period for which the employee was underpaid in addition to an amount
14 sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred
15 dollars (\$100) for each underpaid employee for each pay period for which the employee
16 was underpaid in addition to an amount sufficient to recover underpaid wages. (3)

17 Wages recovered pursuant to this section shall be paid to the affected employee.

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

20 43. At all relevant times mentioned herein, section 226 of the Code provided:

21 (a) An employer, semimonthly or at the time of each payment of wages, shall furnish to
22 his or her employee, either as a detachable part of the check, draft, or voucher paying the
23 employee's wages, or separately if wages are paid by personal check or cash, an accurate
24 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by
25 the employee, except as provided in subdivision (j), (3) the number of piece-rate units
26 earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
27 deductions, provided that all deductions made on written orders of the employee may be
28

1 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the
2 period for which the employee is paid, (7) the name of the employee and only the last
3 four digits of his or her social security number or an employee identification number
4 other than a social security number, (8) the name and address of the legal entity that is the
5 employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of
6 Section 1682, the name and address of the legal entity that secured the services of the
7 employer, and (9) all applicable hourly rates in effect during the pay period and the
8 corresponding number of hours worked at each hourly rate by the employee and,
9 beginning July 1, 2013, if the employer is a temporary services employer as defined in
10 Section 201.3, the rate of pay and the total hours worked for each temporary services
11 assignment. The deductions made from payment of wages shall be recorded in ink or
12 other indelible form, properly dated, showing the month, day, and year, and a copy of the
13 statement and the record of the deductions shall be kept on file by the employer for at
14 least three years at the place of employment or at a central location within the State of
15 California. . . .

16 Code § 226. Defendants did not provide Plaintiffs or other Class Members wage statements with all
17 required information, including but not limited to accrued and unpaid premium wages owing on account
18 of rest break and meal period violations. Section 226 of the Code must be interpreted to protect the
19 employee rather than the employer and, as such, the only reasonable interpretation of the statute requires
20 the worker to be able to determine from the wage statement alone both the length of the pay period and
21 the first and last day of the pay period, whether it be weekly, every other week, or twice each month.
22 Without this information the employee is unable to determine whether or not they have been paid
23 timely, either under sections 201.3 or 201.5 of the Code or under the federal Fair Labor Standards Act.

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

25 (a) As used in this section:

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

1 contractor.

2 . . .

3 (2) "Labor" has the same meaning provided by Section 200.

4
5 (3) "Labor contractor" means an individual or entity that supplies, either with or without
6 a contract, a client employer with workers to perform labor within the client employer's
7 usual course of business.

8 . . .

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

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

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

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

19 (1) The payment of wages.

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

21
22 (c) A client employer shall not shift to the labor contractor any legal duties or liabilities
23 under Division 5 (commencing with Section 6300) with respect to workers supplied by
24 the labor contractor.

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

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

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

6 Code § 2810.3. Aldi, Proctor & Gamble, Comcast Cable Communications, LLC (a/k/a Xfinity) and
7 others were all Client Employers.

8 **CLASS-ACTION ALLEGATIONS**

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

12
13 Excluding those on permanent Staff payroll, employed on a continuous basis by one of
14 the Corporate Defendants, for the period three years and 178 days prior to the filing of
15 this Complaint to date, all persons paid wages by SMI on account of services provided to
16 SMI in the production of Motion Pictures¹ (such persons are referred to hereafter as SMI
17 Code Class Members, and such period is referred to hereafter as the SMI Code Class
18 Period).

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

20 Excluding those on permanent Staff payroll, employed on a continuous basis by one of
21 the Corporate Defendants, for the period four years and 178 days prior to the filing of
22 this Complaint to date, all persons paid wages by SMI on account of services provided to
23 SMI and who were paid for more than 4 hours in a workday for Defendant SMI in the
24 production of Motion Pictures (such persons are referred to hereafter as SMI 17200 Class
25 Members, and such period is referred to hereafter as the SMI 17200 Class Period).

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

27
28 ¹ See Cal. Lab. Code § 201.5 defining Motion Pictures.

1 Excluding those on permanent Staff payroll, employed on a continuous basis by one of
2 the Corporate Defendants, for the period from one year prior to the filling of this
3 Complaint to date, all persons paid wages by SMI on account of services provided to SMI
4 in the production of Motion Pictures (such persons are referred to hereafter as SMI 226
5 Class Members, and such period is referred to hereafter as the SMI Class Period).

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

9 Excluding those on permanent Staff payroll, employed on a continuous basis by one of
10 the Corporate Defendants, for the period three years and 178 days prior to the filling of
11 this Complaint to date, all persons paid wages by DSLCC on account of services
12 provided to DSLCC in the production of Motion Pictures² (such persons are referred to
13 hereafter as DSLCC Code Class Members, and such period is referred to hereafter as the
14 DSLCC Code Class Period).

15
16 Plaintiff Payne seeks to represent a “DSLCC 17200 Class” composed of and defined as follows:

17 Excluding those on permanent Staff payroll, employed on a continuous basis by one of
18 the Corporate Defendants, for the period four years and 178 days prior to the filling of
19 this Complaint to date, all persons who were paid for more than 4 hours in a workday for
20 DSLCC in the production of Motion Pictures (such persons are referred to hereafter as
21 DSLCC 17200 Class Members, and such period is referred to hereafter as the DSLCC
22 17200 Class Period).

23
24 Plaintiff Payne seeks to represent a “DSLCC 226 Class” composed of and defined as follows:

25
26 Excluding those on permanent Staff payroll, employed on a continuous basis by one of
27

28 ² See Cal. Lab. Code § 201.5 defining Motion Pictures.

1 the Corporate Defendants, for the period from one year prior to the filing of this
2 Complaint to date, all persons paid wages by DSLLC on account of services provided to
3 Defendant DSLLC in the production of Motion Pictures (such persons are referred to
4 hereafter as DSLLC 226 Class Members, and such period is referred to hereafter as the
5 DSLLC 226 Class Period).

6 **Numerosity**

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

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

15 **Commonality**

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

- 19 a. Whether Defendants failed to pay all wages in a timely fashion in violation of sections
20 201.3, 201.5, 203 and/or 204 of the Code.
21 b. Whether Defendants untimely and/or nonpayment of wages give rise to liquidated
22 damages for failure to pay minimum wages under Code section 1194.2.
23 c. Whether Defendants' failure to provide meal breaks to each and every employee violates
24 Code section 226.7 and 512, as well as the applicable Wage Order.
25 d. Whether Defendants' failure to provide rest breaks to each and every employee violates
26 Code section 226.7, as well as the applicable Wage Order.
27
28

e. Whether Defendants' failure to provide proper wage statements violates Code section 226.

Typicality

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

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

Adequacy of Representation

52. Plaintiffs will fairly and adequately represent and protect the interests of the members of each Class. Counsel who represents each Plaintiff are competent and experienced in litigation of large employment class actions. Neither Plaintiff nor their counsel have any conflict with any Class.

Superiority of Class Action

53. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each member of each Class has been damaged and is entitled to recovery by reason of Defendants' illegal policy and/or practice of failing to pay hourly wages, failing to pay minimum and overtime wages, failing to provide Class Members rest and meal periods without legal compensation, and failure to provide proper wage statements. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiffs are unaware of any difficulties that are likely to be construed in the management of this action that would preclude its maintenance as a class action. The disposition of all claims of the members of each Class in a class action, rather than in individual actions, benefits the

1 parties and the Court. The interest of the Class Members in controlling the prosecution of separate
2 claims against Defendants is small when compared with the efficiency of a class action.

3 **FIRST CAUSE OF ACTION**

4 (Continuing Wages, Code §§ 201.3, 201.5, 203
On Behalf of Plaintiffs and Each Code Class Against All Defendants)

5 54. Plaintiffs reallege and incorporate herein by reference the allegations contained in this
6 Complaint as though fully set forth herein.

7 55. As hereinabove articulated, Plaintiffs and members of each Code Class were not timely
8 compensated in full for their services, and have yet to be paid all accrued premium wages owing on
9 account of Defendants' failure to provide proper rest breaks and meal periods. Plaintiffs and many
10 others were not timely paid even the undisputed "Straight Time" wages owing to them.

11 56. Plaintiffs and the members of each Code Class consistently worked more than 6-hour
12 and/or 12-hour shifts. However, they were required to keep their walkie talkies, radios and/or cell
13 phones on their persons, turned on and audible at all times, including during their rest periods and meal
14 breaks and/or they were precluded from leaving the set and its immediate environs during their
15 breaks. Accordingly, at least non-union workers and many hundreds of others were denied their meal
16 breaks and are entitled to premium wages and/or an additional thirty minutes of wages for each faux
17 meal break, funds which were routinely deducted from wage payments and remain unpaid.

18 57. Defendants' failure to compensate Plaintiffs and each Code Class within the time for
19 which provision is made by sections 201.3 or, in the alternative, 201.5 of the California Labor Code,
20 despite their knowledge of their obligation to do so, was and is "willful" as the word is used in section
21 203.

22 58. Pursuant to section 203 of the Code, Plaintiffs and the Members of each Code Class are
23 entitled to continuing wages from Defendants in an amount according to proof, of at least \$900,000.
24 Plaintiffs are also entitled to recover costs and reasonable attorneys' fees under section 218.5 of the
25 Code.

SECOND CAUSE OF ACTION

(Damages for Unpaid Minimum Wages,
Code §§ 510, 1194, 1194.2, 1197, 1197.2, and 1198
On Behalf of Plaintiffs and Each 17200 Class Against All Defendants)

59. Plaintiffs reallege and incorporate herein by reference the allegations contained in this Complaint as though fully set forth herein.

60. Plaintiffs and each 17200 Class worked many hours for Defendants, without proper, full compensation for work performed, as required by law. For example, Defendants routinely paid earned wages in tardy fashion, resulting in responsibility to pay liquidated damages under Biggs v. Wilson, and made thirty- or sixty-minute deductions from the daily work of Employees to whom a walkie-talkie had been issued, all on account of the faux meal breaks described herein.

61. Plaintiffs and each 17200 Class Member are entitled to recover damages and liquidated damages under sections 1194 and 1194.2 of the Code in an amount according to proof, in the amount of at least \$30,000, not including interest thereon, reasonable attorneys' fees and cost of suit. They are also entitled to recover costs and reasonable attorneys' fees under section 1194 and 1194.2 of the Code.

THIRD CAUSE OF ACTION

(Failure to Provide Duty-Free Meal Breaks, Code §§ 226.7 and 512
On Behalf of Plaintiffs and Each 17200 Class and Against All Defendants)

62. Plaintiffs reallege and incorporate herein by reference the allegations contained in this Complaint as though fully set forth herein.

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

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

1 65. After the decision in Augustus v. ABM Sec. Servs., Inc., 2 Cal.5th 259 (2016), some
2 motion picture production companies such as Warner Bros. claim to have initiated a process under
3 which they would advised employees, in writing, that they need not respond to walkie-talkie calls during
4 breaks. Neither SMI nor DSLLC claim to have undertaken any such initiative.

5 66. Pursuant to Code section 226.7, Plaintiffs and 17200 Class Members are entitled to
6 damages in an amount equal to one hour of wages per missed meal break, in an amount according to
7 proof, a total of at least \$30,000, not including interest thereon, reasonable attorneys' fees and cost of
8 suit.

9
10 **FOURTH CAUSE OF ACTION**

11 (Failure to Provide Duty-Free Rest Breaks, Code §§ 226.7
12 On Behalf of Plaintiffs and Each 17200 Class Against All Defendants)

13 67. Plaintiffs reallege and incorporate herein by reference the allegations contained in this
14 Complaint as though fully set forth herein.

15 68. Code Section 226.7 requires an employer to pay an additional hour of compensation for
16 each rest period the employer fails to provide a compliant rest period. Employees are entitled to a rest
17 period of ten minutes for every four hours worked or major fraction thereof, all as detailed in Brinker.

18 69. Upon information and belief, neither Plaintiff nor the proposed 17200 classes have been
19 timely compensated in full for their services. Plaintiffs and the 17200 Class consistently worked more
20 than 6-hour and/or 12-hour shifts. However, they were required to keep their walkie talkies or radios on
21 their persons, turned on and audible at all times, including their faux rest periods and meal breaks and/or
22 they were precluded from leaving the set during their breaks. Accordingly, they were denied their
23 breaks and are entitled to additional compensation for each faux rest break. On information and belief,
24 Defendants have never paid an employee for a missed, truncated or tardy rest break.

25 70. Pursuant to Code section 226.7, Plaintiffs and each 17200 Class is entitled to damages in
26 an amount equal to one hour of wages per missed rest break, in an amount according to proof, a total of
27 at least \$30,000, not including interest thereon, derivative penalties and civil penalties, reasonable
28 attorneys' fees and cost of suit.

FIFTH CAUSE OF ACTION

(Failure to Provide Compliant Pay Stubs, Code § 226(a)
On Behalf of Plaintiffs and each 226 Class Against All Defendants)

71. Plaintiffs reallege and incorporate herein by reference the allegations contained in this Complaint as though fully set forth herein.

72. Defendants failed to provide Plaintiffs and the 226 Class with wage statements conforming to the requirements of section 226(a) of the Code. Under Naranjo, employees such as Plaintiffs and Class Members must be paid with compliant wage statements. However, for example, none of the wage statements provide payment for the premium wages owing on account of missed rest breaks. By not timely disclosing the required information, “the employee cannot promptly and easily determine from the wage statement alone,” the information as required by Code §226(a). In addition, the wage statements failed to reflect net or gross wages or funds due on account of overtime wages, missed meal periods and missed rest breaks. The wage statements failed to account for the missed meal period and rests breaks.

73. The foregoing was intentional misconduct of Defendants that injured Plaintiffs and Class Members insofar as they were deprived of information to which they were legally entitled.

74. 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, Plaintiffs and 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. Plaintiffs are entitled to an amount according to proof of at least \$250, not including interest thereon, reasonable attorneys’ fees and cost of suit.

SIXTH CAUSE OF ACTION

(Unfair Business Practices on Behalf of Plaintiffs and each 17200 Class Against All Defendants)

75. Plaintiffs reallege and incorporate herein by reference the allegations contained in this Complaint as though fully set forth herein.

76. Business and Professions Code section 17200 et seq. prohibits acts of unfair competition, including any “unlawful, unfair, or fraudulent business act or practice.” Cal. Bus. & Prof. Code § 17200 et seq. Plaintiffs allege that Defendants have engaged in unfair business practices in California by the above-described failure to pay all accrued minimum wages or to reimburse crew for premium wages

1 owing on account of depriving Plaintiffs and the crew of compliant meal periods and rest breaks. SMI
2 fails to reimburse crew for the cost of maintaining cell phones with email and/or text capabilities,
3 without which it would be a practical impossibility for the crew to know where to go and when to report.

4 77. Defendants' violations of the California wage and hour laws constitutes a business
5 practice because Defendants' aforementioned acts and omissions were done repeatedly over a significant
6 period of time, and in a systematic manner, to the detriment of Plaintiffs and each proposed 17200 Class.

7 78. Defendants have avoided payment of wages and other benefits required by the Code, the
8 California Code of Regulations, and the applicable IWC Wage Order. Upon information and belief,
9 Plaintiffs and each member of the 17200 Classes have not been timely compensated in full for their
10 services. Plaintiffs and the 17200 Class consistently worked more than 6-hour and/or 12-hour shifts.
11 However, they were required to keep their cell phones, walkie talkies and/or radios on their persons,
12 turned on and audible at all times, including their rest periods and meal breaks and/or they were
13 precluded from leaving the set during their breaks. Accordingly, they were denied their breaks and are
14 entitled to an additional thirty minutes of wages for each faux meal or rest break. Some of that additional
15 time should have been compensated as overtime wages.

16 79. 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 Plaintiffs and
18 the class members and members of the public. Defendants should be made to disgorge their ill-gotten
19 gains and to restore them to Plaintiffs and class members.

20 80. The actions of Defendants entitle Plaintiffs to seek the remedies available under section
21 17200 et seq. Plaintiffs seek 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. Plaintiffs, on behalf of
24 themselves, as well as on behalf of the general public, further seeks attorney's fees and costs pursuant to
25 sections 218.5 of the Labor Code and 1021.5 of the Code of Civil Procedure. In addition, Plaintiffs
26 seek the appointment of a receiver as necessary.

SEVENTH CAUSE OF ACTION

(Failure to Reimburse Necessary Expenses, Cal. Lab. Code §2802
On Behalf of Plaintiffs and Each 17200 Class Against All Defendants)

81. Plaintiffs reallege and incorporate herein by reference the allegations contained in this Complaint as though fully set forth herein.

82. In discharge of their duties, Defendants required Plaintiff Payne and SMI 17200 Class Members to make purchases and/or rent equipment for their work on the set of a motion picture production. Plaintiff Payne and Class Members were required to use their personal cellphones and/or maintain other computer equipment for the receipt of emails and the like, but were not reimbursed for such use.

83. Pursuant to section 2802 of the Labor Code, Plaintiff Payne and SMI 17200 Class Members are entitled to reimbursement of their out-of-pocket expenses from Defendants and damages in addition to interest thereon, attorney's fees and costs.

EIGHTH 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)

84. Plaintiffs reallege and incorporate herein by reference the allegations contained in this Complaint as though fully set forth herein.

85. Pursuant to section 2699.3(a)(1) of the Labor Code, on January 13, 2023, Plaintiffs submitted their 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, Plaintiffs gave written notice by certified mail to Defendants.

86. 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

1 the notice given pursuant to Paragraph (1), the aggrieved employee may commence a
2 civil action pursuant to Section 2699.

3 Cal. Lab. Code § 2699.3(a)(2)(A). After sixty-five (65) calendar days from the January 13, 2023,
4 postmark date of the notice sent by Plaintiffs, Plaintiffs may “commence a civil action pursuant to
5 Section 2699.” Cal. Lab. Code § 2699.3(a)(2)(A). More than sixty-five calendar days have passed since
6 Plaintiffs gave written notice of the PAGA violations to the LWDA and Defendants.

7 87. Plaintiffs seek to recover the PAGA civil penalties through a representative action
8 permitted by PAGA and the California Supreme Court in Arias v. Superior Court, 46 Cal. 4th 969
9 (2009). Therefore, class certification of the PAGA claims is not required.

10 88. Plaintiffs seek to bring a representative action on behalf of themselves and the State of
11 California as well as on behalf of a group of Aggrieved Employees defined as: Plaintiffs and/or other
12 persons who performed services for Defendant SMI and/or DSLLC as a motion picture production crew
13 member in California (“Aggrieved Employees”) during the period from one year prior to the filing of the
14 PAGA Notice until this case is resolved.

15 89. Plaintiff will seek civil penalties pursuant to PAGA for violations of the following Labor
16 Code provisions:

17
18 **1. Failure to provide records in violation of Code § 432.**

19 Employers are required to give a copy of any instrument relating to the obtaining or holding of
20 employment, if signed by an employee, upon request. Aggrieved Employees have requested such
21 documents but have not received them. Upon information and belief, other Aggrieved Employees have
22 requested their signed documents but have not been provided a copy. Code § 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.

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

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

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

Accordingly, each Aggrieved Employee who was not timely paid his or her timely wages during
their employment is entitled to civil penalties. Code section 210 provides for a penalty of \$100 for each

1 initial violation and \$200 for each subsequent, or willful or intentional violation plus 25 percent of the
2 amount unlawfully withheld.

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

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

10 Here, Plaintiffs and Aggrieved Employees were not timely paid all wages due upon their
11 separation from Defendants’ employ.

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

16 **4. Unlawful Deductions under Code § 221.**

17 Under Code §§ 221, 222 and 223, it is “unlawful for any employer to collect or receive from an
18 employee any part of wages theretofore paid by said employer to said employee” and it is “unlawful to
19 secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.”
20 Section 222 states that with respect to wages agreements via a collective bargaining agreement, an
21 employer may not willfully, unlawfully or with “intent to defraud an employee, a competitor, or any
22 other person, [] withhold from said employee any part of the wage agreed upon.”

23 Here, Defendants made improper deductions for which Aggrieved Employees did not expressly
24 authorize in writing. Plaintiffs and Aggrieved Employees were paid less than the wages they were owed
25 because they had to cover extra costs and expenses that were not reimbursed or otherwise were deducted
26 from pay.

27 Section 225.5 provides for a civil penalty of \$100 for each failure to pay each employee in an
28 initial violation and \$200 for each failure to pay each employee in a subsequent violation, plus 25
percent of the amount unlawfully withheld.

5. 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, the “gross wages earned” as it only shows the gross wages eventually paid.
- b. The wages statements failed to include, among other required information, the “total hours worked by the employee” as it only shows the total hours eventually paid.
- c. The wage statements failed to include, among other required information, the “inclusive dates of 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.
- d. The wage statements failed to include, among other required information, “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee”
- e. The wage statements failed to include, among other required information, the “the rate of pay and the total hours worked for each temporary services assignment”

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

7 **6. Failure to provide sick leave information under Code §§ 245.5 and 246.**

8 Code sections 245.5 and 246(i) provide that “[a]n employer shall provide an employee with
9 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
11 Section 226 or in a separate writing provided on the designated pay date with the employee’s payment
12 of wages.” Here, Defendants have systematically and intentionally failed to set forth the amount of sick
13 leave available, or paid time off leave an employer provides in lieu of sick leave, on the itemized wage
14 statements described in Section 226 to Plaintiffs and all Aggrieved Employees.

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

20 **7. Failure to furnish information under Code § 2810.5.**

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

- 23 a) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary,
24 piece, commission, or otherwise, including any rates for overtime, as applicable.
- 25 b) The regular payday designated by the employer in accordance with the requirements of this
26 code.
- 27 c) The name of the employer, including any “doing business as” names used by the employer.
- 28 d) The physical address of the employer’s main office or principal place of business, and a
mailing address, if different.
- e) The telephone number of the employer.
- f) The name, address, and telephone number of the employer’s workers’ compensation
insurance carrier.
- 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
accrued paid sick leave; and has the right to file a complaint against an employer who
retaliates.

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
Labor Code provisions for which a civil penalty is not specifically provided.

8. Failure to provide proper meal periods under Code § 226.7 and Wage Order § 11.

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

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

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

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

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

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

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

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 Plaintiffs and Aggrieved Employees the cost of using their
personal cell phones for business related purposes. Defendants required that Plaintiffs 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 motion picture production equipment and supplies necessary to perform their job duties.

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

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

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

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

- 13 1. Defendants' misclassification of these individuals as independent contractors.
- 14 2. Defendants did not record actual hours and failed to pay for all time worked.
- 15 3. Defendants failure to pay for all time spent driving/and or travelling from site to site.
- 16 4. Defendants' failure to calculate the correct overtime rate under Code § 515.
- 17 5. Aggrieved Employees routinely work "off the clock" to attend mandatory meetings beyond their
18 scheduled call time.
- 19 6. Plaintiffs and the Aggrieved Employees are routinely paid until an arbitrary time in the day and
20 not until they have ceased working.

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

26 **12. Failure to keep complete and accurate payroll records.**

27 Defendants failed to keep complete and accurate payroll records relating to Aggrieved
28 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.

14. Failure to provide seating in violation of Wage Order § 14.

Code § 1199 prohibits an employer from causing any employee to work under conditions of
labor prohibited by an order of the Industrial Welfare Commission (IWC) or from violating, refusing, or
neglecting to comply with any order of the commission's orders regarding wages, hours, and working
conditions. Additionally, Labor Code § 1198 states that the standard conditions of labor fixed by the
commission shall be the standard conditions of labor for employees and forbids the employment of any
employee under conditions of labor prohibited by the commission's wage orders. Section 14 of the
applicable IWC Wage Order requires employers to provide employees with suitable seats when the
nature of work reasonably permits the use of seats. Here, Defendants did not provide suitable seats for
employees performing work even though the nature of work reasonably permitted the use of seats.

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

4 **15. Personal Liability of Individual Defendants under Code § 558.**

5 Defendants Patrick Milling-Smith and Brian Carmody were each an employer and/or “other
6 person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or
7 any provision regulating hours and days of work in any order of the Industrial Welfare Commission.”
8 Each had control over the payment of wages. Under Code § 558, Individual Defendants are responsible
9 for the civil penalties for violation of minimum wages, overtime wages, meal and rest breaks, and
10 reporting time pay.

11 Aggrieved Employees are entitled to recover as follows:

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

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

18 (3) Wages recovered pursuant to this section shall be paid to the affected employee.

19 Cal. Lab. Code § 558(a).

20 **16. Personal Liability of Individual Defendants under Code § 1197.1**

21 Defendants Patrick Milling-Smith and Brian Carmody were each an employer and/or “other
22 person acting either individually or as an officer, agent, or employee of another person, who pays or
23 causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local
24 law, or by an order of the Commission.” Individual Defendants had control over the payment of wages
25 and intentionally caused Aggrieved Employees to be paid less than was required by the Labor Code and
26 the Applicable Wage Order. Defendants are responsible for minimum wage restitution, liquidated
27 damages and Code § 203 penalties. Aggrieved Employees are entitled to recover as follows:

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

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

(3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section
203, recovered pursuant to this section shall be paid to the affected employee.

Cal. Lab. Code § 1197.1(a).

NINTH CAUSE OF ACTION

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

91. Plaintiffs reallege and incorporate herein by reference the allegations contained in this Complaint as though fully set forth herein.

92. Plaintiffs seek to represent all employees who worked for Defendants SMI and DSQLC during the period beginning no earlier than three years prior to the filing hereof to the mailing of the FLSA Opt-In Notice (such persons are referred to hereafter as “Collective Action Members.”).

93. Plaintiffs are similarly situated to the Collective Action Members in that Plaintiffs and the Collective Action Members were employed by Defendants and in that Defendants did not pay Plaintiffs and the Collective Action Members their overtime and/or minimum wages when due. Plaintiffs’ consents to an FLSA collective action are attached hereto as **Exhibit 1**.

94. This action is maintainable as an “opt-in” collective action pursuant to 29 U.S.C. § 216(b).

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

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

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

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

99. Plaintiffs were not timely paid their wages. Plaintiffs and Collective Action Members worked many hours each day during their employment as herein alleged.

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

101. Defendants failed to compensate Plaintiffs and Collective Action Members as required by the FLSA.

102. Defendants' violations were willful and intentional.

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

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

TENTH CAUSE OF ACTION

(Failure to Provide Employment Records Upon Request Cal. Lab. Code § 226(b))

105. Plaintiffs reallege and incorporate herein by reference the allegations contained in this Complaint as though fully set forth herein.

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

107. Plaintiffs have requested that Defendants permit inspection or copying of Plaintiffs' employment records pursuant to Labor Code section 226(b). Defendants failed to provide Plaintiffs employment records within 21 days of the requests.

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

ELEVENTH CAUSE OF ACTION

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

1 109. Plaintiffs reallege and incorporate herein by reference the allegations contained in this
2 Complaint as though fully set forth herein.

3 110. Pursuant to Labor Code section 1198.5, an employer shall make the contents of an
4 employee's personnel records available for inspection.

5 111. Plaintiffs requested that Defendants permit inspection or copying of the personnel records
6 pursuant to Labor Code section 1198.5. Defendants have failed to provide Plaintiffs with an opportunity
7 to inspect or copy the employment records within 30 days of the request.

8 112. Pursuant to Labor Code Section 1198.5(k), Plaintiffs are entitled, and hereby seeks to
9 recover from Defendants a seven-hundred-fifty dollar (\$750) penalty, per Plaintiff, reasonable attorney's
10 fees, and the costs of bringing this cause of action.

11
12 **WHEREFORE**, Plaintiffs pray judgment as follows:

13 1. That the Court certify the Classes.

14 2. That, under the First Cause of Action for Continuing Wages, it be adjudged that the
15 failure of Defendants to make payment of Plaintiffs' and the Code Class Members' wages was in
16 violation of section 201.3, 201.5, 203 and/or 204 of the Code, and was "willful" as that word is used in
17 section 203 of the Code, and that the Court enter judgment against Defendants in favor of Plaintiffs and
18 Code Class Members. That judgment be entered in favor of Plaintiffs and each Class in the amount of
19 at least \$900,000 or more, in an amount according to law and proof, interest thereon, and costs and
20 reasonable attorneys' fees in accordance with the provisions of Code section 218.5.

21 3. That, under the Second Cause of Action for Failure to Pay Minimum Wages, this Court
22 enter judgment in favor of Plaintiffs and each Code Class against Defendants in the amount of unpaid
23 minimum wages and liquidated damages according to proof, in the amount of at least \$30,000, interest
24 thereon, and costs and reasonable attorneys' fees pursuant to the applicable Code requirements,
25 including Code sections 1194 and 1194.2.

26 4. That, under the Third Cause of Action, this Court enter judgment in favor of Plaintiff
27 Costa and the SMI 17200 Class in an amount according to proof in the amount of at least \$30,000, and
28 award them their damages, penalties, and costs of suit.

1 5. That, under the Fourth Cause of Action, this Court enter judgment in favor of Plaintiffs
2 and each 17200 Class in an amount according to proof in the amount of at least \$30,000, and award
3 them their damages, penalties, and costs of suit.

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

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

15 8. That, with respect to the Seventh Cause of Action this Court award Plaintiffs judgment in
16 their favor and in favor of each 17200 Class against all Defendants in an amount according to proof,
17 interest thereon, costs and reasonable attorney's fees in accordance Code section 2802.

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

22 10. That, with respect to the Ninth Cause of Action this Court enter judgment in favor of
23 Plaintiffs and Collective Action Members against Defendants in an amount according to proof for
24 damages, liquidated damages, interest thereon, costs and reasonable attorney's fees.

25 11. That, with respect to the Tenth Cause of Action, this Court enter judgment in favor of
26 Plaintiffs against Defendants of \$750 each, reasonable attorney's fees, and the costs of bringing this
27 cause of action under Labor Code Section 226(b) and (f).

28 12. That, with respect to the Eleventh Cause of Action, this Court enter judgment in favor of

1 Plaintiffs against Defendants of \$750 each, reasonable attorney's fees, and the costs of bringing this
2 cause of action pursuant to Labor Code Section 1198.5(k).

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

6 DATED: August 20, 2024

HARRIS & RUBLE

7 
8 Alan Harris
9 Attorney for Plaintiffs
