

Alan Harris (SBN 146079)  
 David Garrett (SBN 160274)  
 Min Ji Gal (SBN 311963)  
 HARRIS & RUBLE  
 655 North Central Avenue 17<sup>th</sup> Floor  
 Glendale California 91203  
 Tel: 323.962.3777  
 Fax: 323.962.3004  
 harrisa@harrisandruble.com  
 dgarrett@harrisandruble.com  
 mgal@harrisandruble.com

Counsel for Plaintiffs  
 J. Costa and K. Payne

UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

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

Defendants.

Case No: 2:23-cv-01468-WLH-RAO  
 Assigned to Hon. Wesley L. Hsu

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

4 **JURISDICTION AND VENUE**

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

11 2. This Court has original jurisdiction over the Fair Labor Standards Act claim  
12 pled in this Complaint pursuant to 28 U.S.C. § 1331, as well as supplemental jurisdiction  
13 over the state claims pled in this action pursuant to 28 U.S.C. § 1367.

14 3. Venue of this action is proper in this district.

15 **INTRODUCTION**

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

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

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

24 7. During the time that Plaintiff Costa worked for Smuggler, LLC, it was called  
25 Smuggler, Inc., a California Corporation. On or about September 22, 2022, the  
26 corporation converted into a California Limited Liability Company, and on September  
27 30, 2022, converted to a Delaware Limited Liability Company. It currently conducts  
28 business as Smuggler, LLC, a Delaware Limited Liability Company and is managed by

1 Rare Bird Holdings, Inc. Smuggler, Inc. and Smuggler, LLC are collectively referred to  
2 as (“SMI”).

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

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

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

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

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

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

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

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

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

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

(C) Retains the authority to assign or reassign a worker to another client or

customer when the worker is determined unacceptable by a specific client or customer.

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

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

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

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

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

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

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

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

Code §201.3.

14. As a “temporary services employer,” Defendants are an employing unit which contracts with clients—generally advertising agencies--to supply workers to perform services to its clients. SMI performs all of the following functions:

(A) Negotiates with clients and customers for matters such as the time and place where the services are to be provided, the type of work, the working conditions, and the quality and price of the services; (B) Determines assignments or reassignments of workers, even if workers retain the right to refuse specific assignments; (C) Retains the authority to assign or reassign a worker to another client or customer when the worker is determined unacceptable by a specific client or customer; (D) Assigns or reassigns workers to perform services for clients or customers; (E) Sets the rate of pay of workers, whether or not through negotiation; (F) Pays workers from its own account or accounts; and (G) Retains the right to hire and terminate workers.

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

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

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

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

1 of causes of action in court found in codes other than the Code of Civil Procedure.”

2 **GENERAL ALLEGATIONS**

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

8 20. Plaintiff Costa was hired to work for SMI and the Individual Defendants,  
9 providing services on or about August 16 and 17, 2022, during the Sunday to Saturday  
10 workweek of August 14 to 20, 2022. When his services were terminated on August 17,  
11 2022, Costa was not provided another day on which he might return to work for the  
12 Defendants. Defendants were required to pay Costa by Friday of the next Sunday to  
13 Saturday payroll week, on or before August 26, 2022, but Costa was paid most of his  
14 final wages for the Production in tardy fashion. For services provided on August 16 and  
15 17, 2022, Plaintiff Costa’s paycheck was not even prepared until on or after September 6,  
16 2022. Whilst Costa’s paycheck dated September 6, 2022, provides payment for some  
17 unspecified penalties in the total amount of \$134.38, Costa has not been paid his accrued  
18 premium wages owing for the non-provision of compliant meal periods and rest breaks,  
19 as required by Naranjo v. Spectrum Sec. Servs., Inc., 13 Cal. 5th 93, 106-07, 111 (May  
20 23, 2022) (“Naranjo”).

21 21. Separately, for another film production, Plaintiff Costa was hired to work for  
22 SMI and the Individual Defendants, providing services on or about September 13, 2022,  
23 during the Sunday to Saturday workweek of September 11-17, 2022. When his services  
24 were terminated on September 13, 2022, Costa was not provided another day on which he  
25 might return to work for the Defendants, and he has not worked for the Defendants since  
26 that time. Defendants were required to pay Costa by Friday of the next Sunday to  
27 Saturday payroll week, on or before September 23, 2022, but Costa was paid most of his  
28 final wages for the Production in tardy fashion. For services provided on September 13,

1 2022, Plaintiff Costa's paycheck was not even prepared until on or after October 5, 2022.  
2 Whilst Costa's paycheck dated October 5, 2022, provides payment for some unspecified  
3 penalties in the total amount of \$67.19, Costa has not been paid his accrued premium  
4 wages owing for the non-provision of compliant meal periods and rest breaks, as required  
5 by Naranjo.

6 22. Separately, for another film production, a "McDonald's #3098" commercial,  
7 Kevin Payne worked for the Defendants, providing services on or about Friday, February  
8 4, 2022, during the Sunday to Saturday workweek of January 30, 2022, to February 5,  
9 2022. When Payne's services were terminated on February 4, 2022<sup>2020</sup>, he was not  
10 provided another day on which he might return to work for the Defendants. Defendants  
11 were required to pay him by Friday of the next Sunday to Saturday payroll week, on or  
12 before February 10, 2022, but he was paid most of his final wages for the project in tardy  
13 fashion. For services provided on February 4, 2022, his paycheck was not even prepared  
14 until on or after Monday, February 14, 2022. Whilst the paycheck dated February 14,  
15 2022, provides payment for straight time, Payne has not been paid his accrued premium  
16 wages owing for the non-provision of compliant meal periods or rest breaks, as required  
17 by Naranjo.

18 23. Defendants never provided Plaintiffs with required rest breaks.

19 24. In addition to making frequent tardy payment of wages owing to Plaintiffs  
20 and the crews employed by Defendants, the proposed Class Members were not properly  
21 compensated with premium wages owing on account of Defendants' failure to provide  
22 mandatory meal periods and rest breaks. Indeed, it appears that the Defendants routinely  
23 failed to pay the crew properly for missed or tardy meal periods or rest breaks. Indeed,  
24 the crew were instructed to remain within the boundaries of the property that had been  
25 permitted for filming and the crew were instructed that meals shall be confined to the  
26 area designated in the Location Agreement or permit. The crew were instructed that they  
27 should eat within their designated meal area, during scheduled crew meals.

28 25. Although Plaintiffs and others should have been paid in full for their accrued

1 wages, issued legally compliant wage statements, and paid no later than as required by  
2 Code § 201.3 or, in the alternative, Code § 201.5, Plaintiffs and other crewmembers were  
3 not paid properly. For example, they were not paid any rest break premium wages by the  
4 Friday after the Sunday to Saturday workweek during which they completed their  
5 assignments, and most have yet to be paid all accrued premium wages for rest periods or  
6 meal breaks as required by Naranjo.

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

20       27. Wage Order 12 of the California Industrial Welfare Commission applied to  
21 Plaintiffs and Class Members. In part, the Wage Order reflects employer obligations  
22 regarding hours and days of work, reporting time pay and records (obligations which the  
23 employer, here, failed to fulfill, both with respect to Plaintiffs and Class Members). The  
24 Wage Order requires, in relevant part, that meals shall be provided within the initial six  
25 hours of work. However, Defendants' routine practice was to defer meal breaks until  
26 after the sixth and/or twelfth of filming, and then, on occasion, delaying even further due  
27 to imposition of alleged "grace" periods. On occasion, such meals were improperly  
28 truncated and/or in the case of the hereinafter defined Shooting Crew, not provided, at all.

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

10           29. At all relevant times mentioned herein, section 201.5 of the Code provided  
11 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  
14 pictures” means an employee to whom both of the following apply:

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

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

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

24           (3) “Next regular payday” means the day designated by the employer,  
25 pursuant to Section 204, for payment of wages earned during the payroll  
26 period in which the termination occurs.  
27  
28

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

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

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

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

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

27 Code § 201.5. At all relevant times mentioned herein, either section 201.3 or 201.5 of the  
28 Code controlled the final payment of wages to Plaintiffs, the crewmembers in the

1 proposed Code Class. Plaintiffs' claims under Code § 201.5 is made in addition to and as  
2 an alternative to the claims under Code § 201.3.

3 30. At all relevant times mentioned herein, section 203 of the Code provided in  
4 part:

5 If an employer willfully fails to pay, without abatement or reduction, in  
6 accordance with Sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and  
7 205.5, any wages of an employee who is discharged or who quits, the wages  
8 of the employee shall continue as a penalty from the due date thereof at the  
9 same rate until paid or until an action therefor is commenced; but the wages  
10 shall not continue for more than 30 days. An employee who secretes or  
11 absents themselves to avoid payment to them, or who refuses to receive the  
12 payment when fully tendered to them, including any penalty then accrued  
13 under this section, is not entitled to any benefit under this section for the  
14 time during which the employee so avoids payment.

15 Code § 203(a).

16 31. By failing to pay timely Plaintiffs and Class Members all wages when due  
17 at the end of employment, Plaintiffs and the proposed Code Class are entitled to  
18 continuing wages pursuant to section 203 of the Code.

19 32. In no event should Plaintiffs or the Class Members have been paid later than  
20 the time periods established by sections 201.3 or 201.5 of the Code, but certain payments  
21 to Plaintiffs and the Code Class were made after they were due, or, especially with  
22 respect to accrued and unpaid premium wages owing on account of Defendants' failure to  
23 provide compliant rest breaks and meal periods, not at all, leading to penalties under  
24 Code sections 203 and liquidated damages for which provision is made by Code section  
25 1194.2.

26 33. The SMI and DSLLC policies have been to devote insufficient capital,  
27 manpower and other required resources to its business, including providing sufficient  
28

1 funding of the payroll accounting function, with the inevitable result that employees are  
2 routinely paid in tardy fashion, in violation of sections 201.3, 201.5 and/or 203 of the  
3 Code. In addition, SMI and DSLLC routinely enter contracts for the production of  
4 television commercials which contracts provide that the advertising agency or other  
5 contracting party need not pay the full amount owing to SMI or DSLLC until it receives  
6 final delivery of a finished product. SMI and DSLLC maintain internal budgets for each  
7 individual television commercial produced. The internal SMI and DSLLC accounting  
8 practice has the inevitable, routine result of SMI and DSLLC putting a hold on the  
9 funding of final wage payments until it has received sufficient funds to make the  
10 payments, all within its internally imposed, discretionary accounting practices.

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

13 All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or  
14 204.2, earned by any person in any employment are due and payable twice  
15 during each calendar month, on days designated in advance by the employer  
16 as the regular paydays. Labor performed between the 1st and 15th days,  
17 inclusive, of any calendar month shall be paid for between the 16th and the  
18 26th day of the month during which the labor was performed, and labor  
19 performed between the 16th and the last day, inclusive, of any calendar  
20 month, shall be paid for between the 1st and 10th day of the following  
21 month.

22 Cal. Lab. Code § 204.

23 35. In no event should Plaintiffs or Class Members have been paid later than the  
24 time periods established by sections 201.3, 201.5 or 204 of the California Labor Code,  
25 but certain wage payments were made after they were due, some have yet to be made, all  
26 leading to penalties under sections 203, 204 and 226 of the California Labor Code, all as  
27 described in Naranjo.  
28

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

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

14       Code § 510. On information and belief, the Defendants manipulated the data relating to  
15       days worked by its crews in order to avoid the requirement to pay overtime and/or double  
16       time wages to individuals who worked for seven straight days during a workweek and/or  
17       who worked on more than one television commercial production during a single Sunday  
18       to Saturday pay period.

19       37. Defendants failed to pay proper minimum wages or overtime to the proposed  
20       Code Class, delaying such payments to beyond the required next weekly pay period or  
21       failing to make them, all to avoid the minimum wage and/or overtime protections of the  
22       Code.

23       38. At all relevant times mentioned herein, section 515(d)(2) of the Code  
24       provided:

25       Payment of a fixed salary to a nonexempt employee shall be deemed to  
26       provide compensation only for the employee's regular, non-overtime hours,  
27       notwithstanding any private agreement to the contrary.  
28

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

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

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

Code § 1194.

40. Plaintiffs and the proposed Code Class were not timely paid the minimum wages and/or overtime to which they were entitled. Accordingly, they are entitled to liquidated damages under section 1194.2. Biggs v. Wilson, 1 F.3d 1537 (9<sup>th</sup> Cir. 1993).

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

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

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

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

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

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

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

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

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

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

5 43. At all relevant times mentioned herein, section 558 of the Code provided:

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

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

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

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

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

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

1 federal Fair Labor Standards Act.

2 45. At all relevant times mentioned herein, section 2810.3 of the Code provided:

3 (a) As used in this section:

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

7 . . .

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

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

12 . . .

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

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

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

23 (b) A client employer shall share with a labor contractor all civil legal  
24 responsibility and civil liability for all workers supplied by that labor  
25 contractor for both of the following:  
26  
27  
28

1 (1) The payment of wages.

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

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

7  
8 (d) At least 30 days prior to filing a civil action against a client employer for  
9 violations covered by this section, a worker or his or her representative shall  
10 notify the client employer of violations under subdivision (b).

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

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

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

19 **CLASS-ACTION ALLEGATIONS**

20 46. Plaintiff Costa brings this action on behalf of himself and all others similarly  
21 situated as a class action pursuant to section 382 of the Code of Civil Procedure. Plaintiff  
22 Costa seeks to represent a "Code Class" composed of and defined as follows:

23  
24 Excluding those on permanent Staff payroll, employed on a continuous basis  
25 by one of the Corporate Defendants, for the period three years and 178 days  
26 prior to the filling of this Complaint to date, all persons paid wages by SMI  
27 on account of services provided to SMI in the production of Motion  
28

1 Pictures<sup>2</sup> (such persons are referred to hereafter as SMI Code Class  
 2 Members, and such period is referred to hereafter as the SMI Code Class  
 3 Period).

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

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

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

13  
 14 Excluding those on permanent Staff payroll, employed on a continuous basis  
 15 by one of the Corporate Defendants, for the period from one year prior to the  
 16 filling of this Complaint to date, all persons paid wages by SMI on account  
 17 of services provided to SMI in the production of Motion Pictures (such  
 18 persons are referred to hereafter as SMI 226 Class Members, and such  
 19 period is referred to hereafter as the SMI Class Period).

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

24 Excluding those on permanent Staff payroll, employed on a continuous basis  
 25 by one of the Corporate Defendants, for the period three years and 178 days  
 26 prior to the filling of this Complaint to date, all persons paid wages by  
 27

---

28 <sup>2</sup> See Cal. Lab. Code § 201.5 defining Motion Pictures.

1 DSLLC on account of services provided to DSLLC in the production of  
2 Motion Pictures<sup>3</sup> (such persons are referred to hereafter as DSLLC Code  
3 Class Members, and such period is referred to hereafter as the DSLLC Code  
4 Class Period).

5 Plaintiff Payne seeks to represent a “DSLLC 17200 Class” composed of and defined as  
6 follows:  
7

8 Excluding those on permanent Staff payroll, employed on a continuous basis  
9 by one of the Corporate Defendants, for the period four years and 178 days  
10 prior to the filing of this Complaint to date, all persons who were paid for  
11 more than 4 hours in a workday for DSLLC in the production of Motion  
12 Pictures (such persons are referred to hereafter as DSLLC 17200 Class  
13 Members, and such period is referred to hereafter as the DSLLC 17200  
14 Class Period).

15 Plaintiff Payne seeks to represent a “DSLLC 226 Class” composed of and defined  
16 as follows:  
17

18 Excluding those on permanent Staff payroll, employed on a continuous basis  
19 by one of the Corporate Defendants, for the period from one year prior to the  
20 filling of this Complaint to date, all persons paid wages by DSLLC on  
21 account of services provided to Defendant DSLLC in the production of  
22 Motion Pictures (such persons are referred to hereafter as DSLLC 226 Class  
23 Members, and such period is referred to hereafter as the DSLLC 226 Class  
24 Period).

25  
26 **Numerosity**  
27

28 <sup>3</sup> See Cal. Lab. Code § 201.5 defining Motion Pictures.

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

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

#### 10 **Commonality**

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

- 14           a. Whether Defendants failed to pay all wages in a timely fashion in violation  
 15           of sections 201.3, 201.5, 203 and/or 204 of the Code.
- 16           b. Whether Defendants untimely and/or nonpayment of wages give rise to  
 17           liquidated damages for failure to pay minimum wages under Code section  
 18           1194.2.
- 19           c. Whether Defendants' failure to provide meal breaks to each and every  
 20           employee violates Code section 226.7 and 512, as well as the applicable  
 21           Wage Order.
- 22           d. Whether Defendants' failure to provide rest breaks to each and every  
 23           employee violates Code section 226.7, as well as the applicable Wage Order.
- 24           e. Whether Defendants' failure to provide proper wage statements violates  
 25           Code section 226.

#### 26 **Typicality**

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

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

### 9 **Adequacy of Representation**

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

### 14 **Superiority of Class Action**

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

1 claims against Defendants is small when compared with the efficiency of a class action.

2 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

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

61. 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.

62. 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)

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

64. Code section 226.7 requires an employer to pay an additional hour of compensation for each 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.

65. 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

1 persons, turned on and audible at all times, including their rest periods and meal breaks  
 2 and/or they were precluded from leaving the set during their breaks. Accordingly, they  
 3 were denied their breaks and are entitled to an additional thirty minutes of wages for each  
 4 faux meal break. SMI and DSLLC kept records of each individual member of the crew  
 5 to whom a walkie-talkie was issued so that it could insure the return to it of the device.

6 66. After the decision in Augustus v. ABM Sec. Servs., Inc., 2 Cal.5<sup>th</sup> 259  
 7 (2016), some motion picture production companies such as Warner Bros. claim to have  
 8 initiated a process under which they would advised employees, in writing, that they need  
 9 not respond to walkie-talkie calls during breaks. Neither SMI nor DSLLC claim to have  
 10 undertaken any such initiative.

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

#### 15 **FOURTH CAUSE OF ACTION**

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

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

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

24 70. Upon information and belief, neither Plaintiff nor the proposed 17200  
 25 classes have been timely compensated in full for their services. Plaintiffs and the 17200  
 26 Class consistently worked more than 6-hour and/or 12-hour shifts. However, they were  
 27 required to keep their walkie talkies or radios on their persons, turned on and audible at  
 28 all times, including their faux rest periods and meal breaks and/or they were precluded

1 from leaving the set during their breaks. Accordingly, they were denied their breaks and  
 2 are entitled to additional compensation for each faux rest break. On information and  
 3 belief, Defendants have never paid an employee for a missed, truncated or tardy rest  
 4 break.

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

#### 9 **FIFTH CAUSE OF ACTION**

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

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

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

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

26 75. The failure of Defendants to provide compliant wage statements violates  
 27 section 226(a) of the Code. The failure caused them injury by depriving them of  
 28 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)

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

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

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

79. Defendants have avoided payment of wages and other benefits required by the Code, the California Code of Regulations, and the applicable IWC Wage Order. Upon information and belief, Plaintiffs and each member of the 17200 Classes have not been timely compensated in full for their services. Plaintiffs and the 17200 Class consistently worked more than 6-hour and/or 12-hour shifts. However, they were required to keep their cell phones, walkie talkies and/or radios on their persons, turned on and audible at all times, including their rest periods and meal breaks and/or they were

1 precluded from leaving the set during their breaks. Accordingly, they were denied their  
 2 breaks and are entitled to an additional thirty minutes of wages for each faux meal or rest  
 3 break. Some of that additional time should have been compensated as overtime wages.

4 80. As a result of Defendants' unfair and unlawful business practices,  
 5 Defendants have reaped unfair and illegal profits during the relevant time period herein at  
 6 the expense of Plaintiffs and the class members and members of the public. Defendants  
 7 should be made to disgorge their ill-gotten gains and to restore them to Plaintiffs and  
 8 class members.

9 81. The actions of Defendants entitle Plaintiffs to seek the remedies available  
 10 under section 17200 et seq. Plaintiffs seek full restitution of said amounts from  
 11 Defendants, as necessary and according to proof, to restore any and all amounts—  
 12 including interest—withheld, acquired, or converted by Defendants by means of the  
 13 unfair practices complained of herein. Plaintiffs, on behalf of themselves, as well as on  
 14 behalf of the general public, further seeks attorney's fees and costs pursuant to sections  
 15 218.5 of the Labor Code and 1021.5 of the Code of Civil Procedure. In addition,  
 16 Plaintiffs seek the appointment of a receiver as necessary.

#### 17 **SEVENTH CAUSE OF ACTION**

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

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

22 83. In discharge of their duties, Defendants required Plaintiff Payne and SMI  
 23 17200 Class Members to make purchases and/or rent equipment for their work on the set  
 24 of a motion picture production. Plaintiff Payne and Class Members were required to use  
 25 their personal cellphones and/or maintain other computer equipment for the receipt of  
 26 emails and the like, but were not reimbursed for such use.

27 84. Pursuant to section 2802 of the Labor Code, Plaintiff Payne and SMI 17200  
 28 Class Members are entitled to reimbursement of their out-of-pocket expenses from

1 Defendants and damages in addition to interest thereon, attorney's fees and costs.

2  
3 **EIGHTH CAUSE OF ACTION**

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

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

9 86. Pursuant to section 2699.3(a)(1) of the Labor Code, on January 13, 2023,  
10 Plaintiffs submitted their PAGA Claim Notice online to the California Labor and  
11 Workforce Development Agency ("LWDA") and notified the LWDA of the specific  
12 provisions of the Labor Code alleged to have been violated by Defendants, including the  
13 theories set forth in the Complaint. Also on that day, Plaintiffs gave written notice by  
14 certified mail to Defendants.

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

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

24 Cal. Lab. Code § 2699.3(a)(2)(A). After sixty-five (65) calendar days from the January  
25 13, 2023, postmark date of the notice sent by Plaintiffs, Plaintiffs may "commence a civil  
26 action pursuant to Section 2699." Cal. Lab. Code § 2699.3(a)(2)(A). More than sixty-  
27 five calendar days have passed since Plaintiffs gave written notice of the PAGA  
28 violations to the LWDA and Defendants.

88. Plaintiffs seek to recover the PAGA civil penalties through a representative

1 action permitted by PAGA and the California Supreme Court in Arias v. Superior Court,  
2 46 Cal. 4th 969 (2009). Therefore, class certification of the PAGA claims is not required.

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

9 90. Plaintiff will seek civil penalties pursuant to PAGA for violations of the  
10 following Labor Code provisions:

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

12 Employers are required to give a copy of any instrument relating to the obtaining  
13 or holding of employment, if signed by an employee, upon request. Aggrieved  
14 Employees have requested such documents but have not received them. Upon  
15 information and belief, other Aggrieved Employees have requested their signed  
16 documents but have not been provided a copy. Code § 2699(f)(2) imposes a civil penalty  
17 of \$100 per pay period per Aggrieved Employee for initial violations, and \$200 per pay  
18 period per Aggrieved Employee for subsequent violations for all Code provisions for  
19 which a civil penalty is not specifically provided.

20 **2. Failure to timely pay wages during employment in violation of Code §§ 204 and**  
21 **210.**

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

27 Defendants failed to pay Plaintiffs and Aggrieved Employees all wages for a  
28 weekly payroll period within 7 calendar days following the close of the payroll period in

1 violation of Code §§ 204(d) and 210. Plaintiffs and Aggrieved Employees were paid after  
 2 the 7th day following the close of the payroll period in violation of these statutes.

3 Accordingly, each Aggrieved Employee who was not timely paid his or her timely  
 4 wages during their employment is entitled to civil penalties. Code section 210 provides  
 5 for a penalty of \$100 for each initial violation and \$200 for each subsequent, or willful or  
 6 intentional violation plus 25 percent of the amount unlawfully withheld.

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

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

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

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

22  
 23 **4. Unlawful Deductions under Code § 221.**

24 Under Code §§ 221, 222 and 223, it is “unlawful for any employer to collect or  
 25 receive from an employee any part of wages theretofore paid by said employer to said  
 26 employee” and it is “unlawful to secretly pay a lower wage while purporting to pay the  
 27 wage designated by statute or by contract.” Section 222 states that with respect to wages  
 28 agreements via a collective bargaining agreement, an employer may not willfully,

1 unlawfully or with “intent to defraud an employee, a competitor, or any other person, []  
2 withhold from said employee any part of the wage agreed upon.”

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

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

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

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

- 15 a. The wage statements failed to include, among other required information, the  
16 “gross wages earned” as it only shows the gross wages eventually paid.
- 17 b. The wages statements failed to include, among other required information, the  
18 “total hours worked by the employee” as it only shows the total hours eventually  
19 paid.
- 20 c. The wage statements failed to include, among other required information, the  
21 “inclusive dates of the period for which the employee is paid” as it appears to only  
22 show the date/dates worked and do not show the start and end date for each pay  
23 period.
- 24 d. The wage statements failed to include, among other required information, “all  
25 applicable hourly rates in effect during the pay period and the corresponding  
26 number of hours worked at each hourly rate by the employee”
- 27 e. The wage statements failed to include, among other required information, the “the  
28 rate of pay and the total hours worked for each temporary services assignment”

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

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

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

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

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

26 Aggrieved Employees were entitled to certain information in writing at the time of  
27 hiring including, among other items, the following:  
28

- a) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable.
- b) The regular payday designated by the employer in accordance with the requirements of this code.
- c) The name of the employer, including any “doing business as” names used by the employer.
- 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

1 and/or cell phones on so that they could be reached at all times. They were required to  
2 respond regardless of whether they were on a meal or rest break.

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

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

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

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

27 **9. Failure to provide proper rest periods under Code § 226.7 and Wage Order § 12.**  
28

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

13 Code section 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  
15 Employee for subsequent violations for all Code provisions for which a civil penalty is  
16 not specifically provided.

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

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

24 Defendants have failed to reimburse Plaintiffs and Aggrieved Employees the cost  
25 of using their personal cell phones for business related purposes. Defendants required that  
26 Plaintiffs and the Aggrieved Employees be available by cell phone and answer/use their  
27 cell phones while working and this was necessary to perform their job duties. These cell  
28 phones were not provided by Defendants, and Defendants failed to reimburse Aggrieved

1 Employees for the costs associated with using these personal cell phones. They were also  
 2 not reimbursed for the provision and use of personal protective equipment and motion  
 3 picture production equipment and supplies necessary to perform their job duties.

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

8 **11.Failure to pay minimum and overtime wages in violation of Code §§ 510, 515,**  
 9 **558, 1194, and 1198.**

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

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

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

26 Code § 558 imposes a civil penalty in addition to any other penalty provided by  
 27 law of \$50 for initial violations for each underpaid employee for each pay period for  
 28 which the employee was underpaid in addition to an amount sufficient to recover unpaid

1 wages, and \$100 for subsequent violations for each underpaid employee for each pay  
2 period for which the employee was underpaid in addition to an amount sufficient to  
3 recover underpaid wages.

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

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

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

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

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

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

1 provide suitable seats for employees performing work even though the nature of work  
2 reasonably permitted the use of seats.

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

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

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

15 Aggrieved Employees are entitled to recover as follows:

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

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

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

24 Cal. Lab. Code § 558(a).

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

26 Defendants Patrick Milling-Smith and Brian Carmody were each an employer  
27 and/or “other person acting either individually or as an officer, agent, or employee of  
28 another person, who pays or causes to be paid to any employee a wage less than the

1 minimum fixed by an applicable state or local law, or by an order of the Commission.”  
 2 Individual Defendants had control over the payment of wages and intentionally caused  
 3 Aggrieved Employees to be paid less than was required by the Labor Code and the  
 4 Applicable Wage Order. Defendants are responsible for minimum wage restitution,  
 5 liquidated damages and Code § 203 penalties. Aggrieved Employees are entitled to  
 6 recover as follows:

7 (1) For any initial violation that is intentionally committed, one hundred  
 8 dollars (\$100) for each underpaid employee for each pay period for which  
 9 the employee is underpaid. This amount shall be in addition to an amount  
 10 sufficient to recover underpaid wages, liquidated damages pursuant to  
 11 Section 1194.2, and any applicable penalties imposed pursuant to Section  
 12 203.

13 (2) For each subsequent violation for the same specific offense, two hundred  
 14 fifty dollars (\$250) for each underpaid employee for each pay period for  
 15 which the employee is underpaid regardless of whether the initial violation is  
 16 intentionally committed. This amount shall be in addition to an amount  
 17 sufficient to recover underpaid wages, liquidated damages pursuant to  
 18 Section 1194.2, and any applicable penalties imposed pursuant to Section  
 19 203.

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

23 Cal. Lab. Code § 1197.1(a).

### 24 **NINTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

26           99. Plaintiffs were not timely paid their wages. Plaintiffs and Collective Action  
27 Members worked many hours each day during their employment as herein alleged.  
28



**ELEVENTH CAUSE OF ACTION**

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

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

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

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

112. Pursuant to Labor Code Section 1198.5(k), Plaintiffs are entitled, and hereby seeks 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.

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

1. That the Court certify the Classes.
2. That, under the First Cause of Action for Continuing Wages, it be adjudged that the failure of Defendants to make payment of Plaintiffs' and the Code Class Members' wages was in violation of section 201.3, 201.5, 203 and/or 204 of the Code, and was "willful" as that word is used in section 203 of the Code, and that the Court enter judgment against Defendants in favor of Plaintiffs and Code Class Members. That judgment be entered in favor of Plaintiffs and each Class in the amount of at least \$900,000 or more, in an amount according to law and proof, interest thereon, and costs and reasonable attorneys' fees in accordance with the provisions of Code section 218.5.
3. That, under the Second Cause of Action for Failure to Pay Minimum Wages, this Court enter judgment in favor of Plaintiffs and each Code Class against Defendants in the amount of unpaid minimum wages and liquidated damages according to proof, in

1 the amount of at least \$30,000, interest thereon, and costs and reasonable attorneys' fees  
2 pursuant to the applicable Code requirements, including Code sections 1194 and 1194.2.

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

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

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

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

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

27 9. That, with respect to the Eighth Cause of Action this Court award Plaintiffs,  
28 the State of California, and other former and current Aggrieved Employees their civil

1 penalties, attorney's fees, and costs of suit, all according to proof, pursuant to the cited  
2 sections of the Labor Code and the applicable Wage Orders as heretofore articulated.

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

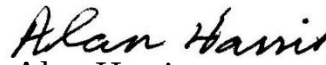
7 11. That, with respect to the Eighth Cause of Action, this Court enter judgment  
8 in favor of Plaintiffs against Defendants of \$750 each, reasonable attorney's fees, and the  
9 costs of bringing this cause of action under Labor Code Section 226(b) and (f).

10 12. That, with respect to the Ninth Cause of Action, this Court enter judgment in  
11 favor of Plaintiffs against Defendants of \$750 each, reasonable attorney's fees, and the  
12 costs of bringing this cause of action pursuant to Labor Code Section 1198.5(k).

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

16 DATED: July 11, 2023

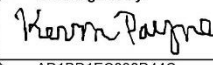
HARRIS & RUBLE

17   
18 Alan Harris  
19 Attorney for Plaintiffs  
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## FLSA CONSENT FORM

Pursuant to the provisions of 29 U.S.C. § 216(b), the Fair Labor Standards Act, I hereby consent to be a party plaintiff to this action.

1/12/2023  
\_\_\_\_\_  
Date

Kevin T. Payne  
\_\_\_\_\_  
Print Name  
DocuSigned by:  
  
\_\_\_\_\_  
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Signature

## FLSA CONSENT FORM

Pursuant to the provisions of 29 U.S.C. § 216(b), the Fair Labor Standards Act, I hereby consent to be a party plaintiff to this action.

9/8/2022

Date

John Costa

Print Name

DocuSigned by:

John Costa

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Signature