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FILED
 Superior Court of California
 County of Los Angeles
09/05/2023

David W. Slayton, Executive Officer / Clerk of Court

By: M. Arellanes Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

A. SACHS, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

SEPHORA USA, INC, a Michigan Corporation
and DOE 1 through and including DOE 10,

Defendants.

Case No: 23STCV04384
 (Class Action and PAGA Representative Action)
 Assigned to Hon. David S. Cunningham III, Dept.
 SS11

FIRST AMENDED COMPLAINT

1. Cal. Lab. Code §203 Continuing Wages
2. Cal. Lab. Code § 226(a), Failure to Provide
Compliant Wage Statements
3. Cal. Lab. Code §§ 226.7, 512 and Wage
Order, Failure to Provide Meal Breaks
4. Cal. Lab. Code § 226.7 and Wage Order,
Failure to Provide Rest Breaks
5. Cal. Lab. Code § 510, 515, and 1194
Failure to Provide Pay Proper Overtime
6. Cal. Lab. Code §§ 1194 and 1198 Failure
to Provide Pay Proper Minimum Wages
7. Cal. Lab. Code § 2802, Failure to
Reimburse Business Expenses
8. Cal. Lab. Code § 226(b), Payroll Records
9. Cal. Lab. Code § 1198.5, Personnel Records
10. Cal. Bus & Prof. Code §§ 17200 *et seq.* –
Restitution
11. Cal. Lab. Code § 2698, *et seq.*, PAGA civil
penalties

JURY TRIAL DEMANDED

1 Plaintiff Andrea Sachs (“Sachs” or “Plaintiff”), by and through her undersigned attorneys,
2 alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This is a class action to be pursued on account of violations of the California Labor Code
5 (the “Code”), seeking relief under state law on account of unpaid wages, unpaid overtime, damages,
6 continuing wages, liquidated damages, penalties, restitution and attorney’s fees and costs. This
7 Complaint includes a representative claim brought under the California Labor Code Private Attorneys
8 General Act (“PAGA”), Code § 2698, *et seq.* seeking civil penalties on behalf of Plaintiff and on behalf
9 of Aggrieved Employees. Plaintiff has provided statutory notice to the California Labor and Workforce
10 Development Agency (“LWDA”) of the claims set forth in this Complaint and to Defendants. Since the
11 statutory period has expired, Plaintiff has amended the Complaint to assert a claim for relief under
12 PAGA on behalf of all those similarly situated.

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

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

27 **THE PARTIES**

28 4. Plaintiff Sachs is an individual, who, during the time periods relevant to this Complaint,

1 was and is a resident of the County of Los Angeles, State of California. Sachs is a highly regarded
2 “gaffer” or head of the lighting department in the production of television commercials and other motion
3 pictures. She is skilled in special lighting and other crucial, subtle techniques to properly highlight
4 products such as the cosmetics offered by Defendants. As such, she has been repeatedly hired by
5 Defendant SEP to act as a nonunion gaffer on a long series of motion picture projects, dating from at
6 least in or about 2018. For the vast majority of her similar work in the motion picture industry, Plaintiff
7 has worked as a union employee, protected by a CBA.

8 5. Defendant Sephora USA, Inc. (“SEP”) is a California Limited Liability Company, which
9 at all times relevant herein conducted business within the County of Los Angeles, State of California,
10 and produced a series of motion pictures. In Smith v. Superior Court, 39 Cal. 4th 77, 81 (2006), the
11 California Supreme Court considered the case of “Plaintiff Amanda Smith [who] was working as a
12 salesperson in a Beverly Hills boutique when a representative of defendant L’Oréal USA, Inc.,
13 approached her and asked if she would like to be a ‘hair model’ at an upcoming show featuring L’Oréal
14 products and a hair stylist.” Smith v. Superior Court, 39 Cal. 4th 77, 81 (2006). The Court held that
15 “the discharge element of sections 201 and 203 may be satisfied either when an employee is
16 involuntarily terminated from an ongoing employment relationship or when an employee is released
17 after completing the specific job assignment or time duration for which the employee was hired.” Id., at
18 93-94.

19 6. [Reserved].

20 7. Defendants Doe One through and including Doe Ten are sued herein under the provisions
21 of section 474 of the California Code of Civil Procedure. Plaintiff is unaware of the true names,
22 identities or capacities, whether corporate, individual or otherwise, of said fictitiously named defendants,
23 but leave of Court will be prayed to amend this pleading to insert the same herein when finally
24 ascertained. Plaintiff is informed, believes and thereupon alleges that each of the fictitiously named
25 Defendants is an entity, which during the relevant time period maintained a place of business in the
26 County of Los Angeles of the State of California. Defendants SEP and Does One through and including
27 Doe Ten are hereinafter collectively referred to as Defendants.
28

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

GENERAL ALLEGATIONS

9. Recently, as for many prior projects, at least a dozen since July of 2018, Defendants employed Plaintiff as a department head and crew member on a motion picture Production for Defendants, which project (known internally as Social Video Shoot 18) was completed on or about November 11, 2022. With respect to that project, although the industry norm is to be paid weekly, Plaintiff was told she would be paid in thirty days. However, rather than paying her wages on or before December 12, 2022, Defendants – on December 20, 2022, having still not paid Plaintiff -- sent Plaintiff another “invitation” to “activate your Sephora early Payment account” so she could thereby receive her pay sooner, but taking a reduction in the total amount offered and being paid as an independent contractor. The Sephora email of December 20, 2022 (sent with a handful of holiday shopping days left in the season), sought to “remind you to activate your Sephora Early Payment Program account” as “[t]his program enables you to offer a discount on one or all of your outstanding Sephora-approved invoices in exchange for early payment.”

10. On November 29, 2022, John Morgan (“Morgan”), on behalf of Defendants, requested Plaintiff to “hold” January 11-13, 2023, for another Sephora project, the foregoing being a routine request of Plaintiff and others that they refrain from booking other work on those dates in 2023 so they might be available to work with the defense. Plaintiff acknowledged receipt of the request and confirmed that she would be available for the assignment. Again, on December 18, 2022, Morgan confirmed the shoot for two days, January 11 and 12, 2023.

11. Since she had not been paid her wages owing for her work in early November, by letter

1 of December 1, 2022, Plaintiff requested that documents “pertaining to her employment” be sent to her
2 undersigned counsel at Harris & Ruble.

3 12. Rather than supply either Plaintiff’s wages or the documents she had requested, on
4 December 9, 2022, Maria Guarnieri called H&R, advising that she was with Sephora and that she had
5 received a “subpoena” for Plaintiff’s records. Ms. Guarnieri advised the Paralegal who took the call that
6 with confirmation of Plaintiff’s middle name and disclosure of the last four numbers of her social
7 security account, Guarnieri would provide the requested documents. H&R provided the Plaintiff’s
8 middle name and information regarding Plaintiff’s social security number, but the defense has not yet
9 provided Plaintiff or her counsel with any of the requested documents.

10 13. Finally, on December 26, 2022, by text message to Plaintiff, Morgan advised that he was
11 “releasing you” from her responsibility to assist on the January 2023 shoot. Plaintiff replied, advising
12 that she had also been requested to work as a model on the shoot. Morgan responded: “That’s not
13 happening.”

14 14. Plaintiff’s response to Morgan: “Just wondering why I was cancelled off 10 & 11.”
15 Morgan has not replied to the question which Plaintiff put to him.

16 15. While working on the short Motion Picture projects for which Plaintiff and Class
17 Members were retained, they were required to keep their walkie talkie radios and/or cell phones with
18 them at all times, including during meal and rest breaks, responding at all times. Some breaks were simply
19 not provided at all. This policy precluded Defendants from providing Plaintiff and others the ability to
20 enjoy legally compliant meal and rest breaks as required by California law. Augustus v. ABM Sec. Servs.
21 Inc., 2 Cal. 5th 257, 260 (2016).

22 16. In or around November 11, 2022, Plaintiff was laid off without a return date for any
23 further work. Although Plaintiff should have been paid in full for her accrued overtime wages and meal
24 and rest break wages by no later than later in November of 2022, she was not paid any of the wages
25 owing to her until December 29, 2022. That payment did not fully compensate Plaintiff for all
26 outstanding wages. Plaintiff and Class Members have as of the date of filing of this action not been
27 fully compensated for work performed for the Defendants, either the premium wages owing for missed
28 meal periods and rest breaks or the correct amount of accrued overtime.

1 17. Defendants were employers of Plaintiff and Class Members. Upon information and
2 belief, employees, agents and/or representatives Employees and representatives of the production
3 department were on the set of the Production on location and worked alongside Plaintiff and Class
4 Members, directing their work, providing feedback and making final decisions. Upon information and
5 belief, they gave specific instructions on the manner in which work was to be completed and reviewed
6 and approved such work. They had creative and operational authority and reviewed and approved
7 various aspects of the Production including locations (where the shoot would take place), casting (who
8 would be chosen to be in the video), wardrobe (what the cast would wear) and “look.” Various options
9 were presented to the employees, agents and/or representatives of Sony and they gave the approval for
10 final execution.

11 18. Plaintiff is typically hired as a union employee on the production of Motion Pictures.
12 Plaintiff typically works under the direction and supervision of producers, directors, ad agencies and
13 clients. All or almost all of the supplies and equipment used in the production of their Motion Pictures
14 are provided by Defendants and/or leased by them for use on the Production. Defendants secured and
15 provided the location for the Production where the work took place.

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

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

22 (A) Daily Overtime - General Provisions

23 (1) The following overtime provisions are applicable to employees 18 years of age or
24 over and to employees 16 or 17 years of age who are not required by law to attend
25 school and are not otherwise prohibited by law from engaging in the subject work. Such
26 employees shall not be employed more than eight (8) hours in any workday or more than
27 40 hours in any workweek unless the employee receives one and one-half (1.5) times
28 such employee’s regular rate of pay for all hours worked over 40 hours in the workweek.
Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in
any workday or more than six (6) days in any workweek is permissible provided the
employee is compensated for such overtime as follows:

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

(1) For daily employees and weekly employees, excluding weekly employees guaranteed more than forty (40) hours a workweek and "on call" employees, one and one-half (1.5) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any one workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and
(2) Double the employee's regular rate of pay for all hours worked in excess of twelve (12) hours in any workday, and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.
(3) Overtime payments shall not be compounded and all payments made by the employer for daily overtime on the basis herein above specified shall be applied toward any sum for weekly overtime.
(4) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary. The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

...
7. Records.

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

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

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

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

...
11. Meal Periods.

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

(B) Unless the employee is relieved of all duty during a thirty (30) minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement

between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

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

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

12. Rest Periods.

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3.5) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

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

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

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

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

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

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

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

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

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

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

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

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

employee or made available to the employee at the location specified by the employer, whichever is earlier.

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

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

Code § 201.5.

21. Defendants employed individuals such as Plaintiff and Class Members to work on the production on motion pictures, yet Defendants failed to timely or fully pay them, all in violation, inter alia, of Code sections 201.5, 203, 204 and/or 210.

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

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

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

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

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

Cal. Lab. Code § 204.

24. In no event should Plaintiff or Class Members have been paid later than the time periods established by sections 201.5, 203 and 204 of the California Labor Code, but certain payments to Plaintiff were made after they were due, all leading to penalties and civil penalties under sections 203 and 204 of the California Labor Code, all as described in the Naranjo v. Spectrum Security Services,

1 Inc., 13 Cal. 5th 93 (May 23, 2022).

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

3 In addition to, and entirely independent and apart from, any other penalty provided in this
4 article, every person who fails to pay the wages of each employee as provided in Sections
5 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as
6 follows: (a) For any initial violation, one hundred dollars (\$100) for each failure to pay
each employee; (b) For each subsequent violation, or any willful or intentional violation,
two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the
amount unlawfully withheld.

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

10 26. Labor Code sections 226.7, 512 and Section 12 of the Wage Order require an employer to
11 pay an additional hour of compensation for each meal period the employer fails to provide. Section 12
12 requires that "No employer shall employ any person for a work period of more than six (6) hours
13 without a meal period of not less than thirty (30) minutes, nor more than one (1) hour. Subsequent meal
14 period for all employees shall be called not later than six (6) hours after the termination of the preceding
15 meal period." Defendants failed to maintain a policy informing all Class Members of these rights, and,
16 treating the workers as independent contractors rather than employees, failed to ever pay premium
17 wages for missed, tardy or truncated meal periods or rest breaks.

18 27. Defendants implemented a timekeeping system that does not permit employees to track
19 and record their actual hours worked insofar as all are required to "report" meal breaks of exactly thirty
20 minutes. These policies and practices have the routine and recurrent impact of artificially insulating the
21 employer from incurring additional expense on account of tardy, missed, interrupted and/or short meal
22 periods and depriving compensation for all hours worked. Further, the workers are logged on the clock
23 only at artificially created "call times" which do not reflect when the work day commenced, and wages
24 are terminated at artificial "wrap" times, often honored in the breach with workers continuing to toil,
25 well after "wrap" is called.

26 28. Here, Defendants failed to apprise all Class Members of their rights associated with meal
27 periods and failed to provide timely meal periods. Defendants have had a consistent policy of: (1)
28 requiring all Class Members to take late meal breaks that occurred after the first 6 hours of each shift;

1 (2) requiring Class Members to work shifts over 12 hours without providing a second meal period of 30
2 minutes in length; and (3) failing to pay such employees 1 hour of pay at the employees' regular rate of
3 compensation for each workday in which a proper meal break was not provided. At all relevant times
4 mentioned herein, section 226.7 of the California Labor Code provided:

5 (a) As used in this section, "recovery period" means a cooldown period afforded an
employee to prevent heat illness.

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

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

12 Cal. Lab. Code § 226.7.

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

14 (a) Every employer shall, semimonthly or at the time of each payment of wages, furnish
15 each of his or her employees, either as a detachable part of the check, draft, or voucher
16 paying the employee's wages, or separately when wages are paid by personal check or
17 cash, an itemized statement in writing showing (1) gross wages earned, (2) total hours
worked by the employee, except for any employee whose compensation is solely based
18 on a salary and who is exempt from payment of overtime under subdivision (a) of Section
515 or any applicable order of the Industrial Welfare Commission, (3) the number of
19 piece rate units earned and any applicable piece rate if the employee is paid on a piece-
20 rate basis, (4) all deductions, provided, that all deductions made on written orders of the
employee may be aggregated and shown as one item, (5) net wages earned, (6) the
21 inclusive dates of the period for which the employee is paid, (7) the name of the
employee and his or her social security number, except that by January 1, 2008, only the
22 last four digits of his or her social security number or an employee identification number
other than a social security number may be shown on the itemized statement, (8) the
23 name and address of the legal entity that is the employer, and (9) all applicable hourly
rates in effect during the pay period and the corresponding number of hours worked at
each hourly rate by the employee. The deductions made from payments of wages shall
24 be recorded in ink or other indelible form, properly dated, showing the month, day, and
year, and a copy of the statement or a record of the deductions shall be kept on file by the
employer for at least three years at the place of employment or at a central location within
the State of California.

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

28

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

2 Code § 226. Defendants employed Plaintiff and 226 Class Members, but, in all cases, Defendants failed
3 to provide them with the data required by section 226(a) of the Code. Defendants did not provide a
4 wage statement, at all, the defense practice preventing the workers from determining "from the wage
5 statement alone" when their wages were due and whether they were paid all overtime and other wages
6 which accrued during the pay period, all in violation of the plain statutory language of the Code. All of
7 the foregoing was intentional misconduct of Defendants that injured Plaintiff and Class Members insofar
8 as they were subjected to confusion and deprived of information to which they were legally entitled.

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

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

16 Cal. Lab. Code § 510.

17 31. Class Members were not timely paid proper overtime wages to which they were entitled
18 in violation of Code §§ 510, 515 and 1194. Both late payment and nonpayment of overtime wages for
19 all hours worked violates the overtime wage statute. Defendants are subject to the civil penalties for
20 which provision is made in Code § 558 by failing to pay each Class Member their overtime wages.

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

22 Notwithstanding any agreement to work for a lesser wage, any employee receiving less
23 than the legal minimum wage or the legal overtime compensation applicable to the
24 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.

25 Code § 1194.

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

28 (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 Plaintiff 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 for motion picture production equipment and supplies.

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

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

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

35. At all relevant times mentioned herein, section 558.1 of the California Labor 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.

Cal. Lab. Code § 558.1. Upon information and belief, Defendants were joint employers or other persons acting on behalf of an employer who violated, or caused to be violated the relevant sections of the Code

1 referenced herein. Defendants directly and/or indirectly controlled the Class Members' wages, working
2 conditions and hours and were responsible for the policies or lack of policies that caused the Code
3 violations. Defendants' personnel and/or representatives were on the set of the productions and actively
4 participated in the productions, and/or had the authority to do so.

5 36. At all relevant times mentioned herein, section 2810.3 of the California Labor Code
6 provided:

7 (a) As used in this section:

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

9 ...
10 (2) "Labor" has the same meaning provided by Section 200.

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

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

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

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

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

16 (1) The payment of wages.

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

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

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

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

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

22 ...
23

24 Cal. Lab. Code § 2810.3.

25 **CLASS-ACTION ALLEGATIONS**

26 37. Plaintiff brings this action on behalf of herself and all others similarly situated as a class
27 action pursuant to section 382 of the Code of Civil Procedure. Plaintiff seeks to represent a "Code
28 Class" composed of and defined as follows:

1 For the period three years and 180 days prior to the filing of this Complaint to date, all
2 persons paid wages on account of services provided for Defendant SEP in the production
of Motion Pictures¹ as freelance workers (such persons are referred to hereafter as Code
Class Members, and such period is referred to hereafter as the Class Period)

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

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

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

8 For the period one year prior to the filing of this Complaint to date, all persons paid
9 wages on account of services provided for Defendant SEP in the production of Motion
Pictures as freelance workers in California until the date of a decision on a Motion for
10 Class Certification (such persons are referred to hereafter as 226 Class Members, and
such period is referred to hereafter as the 226 Class Period).

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

14 39. Defendants, as to Plaintiff and Code Class Members, failed to pay all accrued wages for
15 all hours worked pursuant to sections 510, and 1194 of the Code. Accordingly, each Plaintiff and Class
16 Member is entitled to payment of their unpaid wages and interest as well as reimbursement of their
17 attorneys’ fees and reasonable costs.

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

22 41. Defendants, as to Plaintiff and Code Class Members, failed to timely compensate the
23 workers as required by sections 201.5, 203 and/or 204 of the Code and, accordingly, Defendants’ failure
24 to make timely payment entitles Plaintiff and each Class Member to statutory damages.

25 42. Defendants, as to Plaintiff and 17200 Class Members, failed to provide meal and rest
26 breaks as required by sections 226.7, 512 of the Code and Wage Order 12, and, accordingly,

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

Defendants' failure to provide meal and rest breaks entitles Plaintiff and 17200 Class Members to either actual damages or statutory damages, whichever is greater, as well as continuing wages for which provision is made by Naranjo.

A. Numerosity

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

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

B. Commonality

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

- a. Whether Defendants failed to pay all wages in a timely fashion upon the discharge of Code Class Members, all in violation of sections 201.5 and 203 of the Code.
- b. Whether Defendants' failure to provide accurate itemized wage statements to 226 Class Members violates section 226.
- c. Whether Defendants failed to provide meal breaks to 17200 Class Members.
- d. Whether Defendants failed to provide rest breaks to 17200 Class Members.
- e. Whether Defendants failed to pay proper minimum wages to Code Class Members under Code sections 1194 and 1194.2.
- f. Whether Defendants failed to pay proper overtime wages to 17200 Class Members under Code sections 510, 515 and 1194.

g. Whether Defendants failed to reimburse necessary business expenses to Code Class Members under Code sections 2802.

h. Whether Class Members are entitled to restitution due to Defendants' unfair or unlawful business practices under Cal. Bus & Prof. Code sections 17200 *et seq.*

C. Typicality

46. There is a well-defined, common community of interest in the questions of law and fact.

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

D. Adequacy of Representation

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

E. Superiority of Class Action

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

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

4 **FIRST CAUSE OF ACTION**

(Continuing Wages, California Labor Code § 201.5, 203 and/or 204
5 On Behalf of Plaintiff and the Code Class Against All Defendants)

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

8 51. Defendants employed Plaintiff as a crew member on the Production. Plaintiff was not
9 paid all wages accrued upon separation from employment and not properly paid all wages accrued once
10 each Production ended.

11 52. Plaintiff, and Code Class Members consistently worked more than 6-hour and/or 12-hour
12 shifts. However, they were required to keep their walkie talkies, radios and/or cell phones on their
13 persons, turned on and audible at all times, including during their rest periods and meal breaks and/or
14 they were precluded from leaving the set and its immediate environs during their breaks, all due to the
15 requirements of the Filmmakers Code of Professional Responsibility. Accordingly, they were denied
16 their breaks and are entitled to an additional thirty minutes of wages for each faux meal break, funds
17 which remain unpaid.

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

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

25 **SECOND CAUSE OF ACTION**

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

27 55. Plaintiff incorporates by reference each and every allegation set forth in this Complaint as
28 though fully set forth herein.

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

57. The foregoing was intentional misconduct of Defendants that injured Plaintiff and 226 Class Members insofar as they were deprived of information to which they were legally entitled, including but not limited to all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee the name and address of the legal entity that is the employer, inclusive dates of the weekly period for which the employee is paid, and all applicable rates of pay.

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

THIRD CAUSE OF ACTION

(Failure to Provide Meal Breaks, Cal. Lab. Code §§ 226.7 and 512 and Wage Order
On Behalf of Plaintiff and the 17200 Class Against Defendants)

59. Plaintiff incorporates by reference each and every allegation set forth in this Complaint as though fully set forth herein.

60. At all times herein relevant, sections 226.7 and 512 of the California Labor Code and IWC Wage Order 12 provided that employees must receive meal periods of not less than thirty minutes if an employee works for a period of more than six hours and a second thirty minute meal period after no less than six hours after the termination of the preceding meal period. By its failure to provide minimum statutory meal periods to Plaintiff and Class Members, Defendants willfully violated the provisions of Labor Code sections 226.7 and 512, and IWC Wage Order 12.

61. Defendants failed to apprise Plaintiff and 17200 Class Members of their rights associated with meal periods and failed to provide timely meal periods. Defendants have had a consistent policy of: (1) requiring all workers to take late meal breaks that occurred after the first 6 hours of each shift; (2) required Aggrieved Employees to work shifts over 12 hours without providing a second meal period of

1 30 minutes in length; and (3) failed to pay such employees 1 hour of pay at the employees' regular rate
2 of compensation for each workday in which a proper meal break was not provided. Plaintiff and Class
3 Members were not permitted to leave the set of the Production for meal periods.

4 62. Because Defendants failed to properly provide the proper meal periods, it is liable
5 to Plaintiff for one hour of additional pay at the regular rate of compensation for each workday that the
6 proper meal periods were not provided.

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

10 **FOURTH CAUSE OF ACTION**

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

13 64. Plaintiff incorporates by reference each and every allegation set forth in this Complaint as
14 though fully set forth herein.

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

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

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

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

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

FIFTH CAUSE OF ACTION

(Damages for Unpaid Overtime Compensation,
California Labor Code §§ 510, 558.1 and 1194
On Behalf of Plaintiff and the Code Class Against All Defendants)

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

71. During Plaintiff's employment by Defendants, Plaintiff, as well as Code Class Members, worked many hours, including overtime, without proper compensation for work performed, as required by law.

72. Plaintiff and Code Class Members are entitled to recover such unpaid overtime under section 1194 of the California Labor Code in an amount according to proof. Plaintiff and Code Class Members are also entitled to recover costs and reasonable attorneys' fees under section 1194 of the California Labor Code.

SIXTH CAUSE OF ACTION

(Damages for Unpaid Minimum Wages,
California Labor Code §§ 1194, 1194.2 and 1198
On Behalf of Plaintiff and the Code Class Against All Defendants)

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

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

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

SEVENTH CAUSE OF ACTION

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

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

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

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

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

6 **EIGHTH CAUSE OF ACTION**

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

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

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

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

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

20 **NINTH CAUSE OF ACTION**

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

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

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

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

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

4 **TENTH CAUSE OF ACTION**

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

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

9 88. Business and Professions Code section 17200 *et seq.* prohibits acts of unfair competition,
10 including any "unlawful, unfair, or fraudulent business act or practice." Cal. Bus. & Prof. Code § 17200
11 *et seq.* Plaintiff alleges that Defendants engaged in unfair business practices in California by the above-
12 described failure to timely pay all wages due including overtime wages, as well as by delaying
13 payments, economically forcing its workers to join the outrageously avaricious Sephora Early Payment
14 Program.

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

18 90. As a result of Defendants' unfair and unlawful business practices, Defendants have
19 reaped unfair and illegal profits during the relevant time period herein at the expense of Plaintiff and the
20 17200 Class Members and members of the public. Defendants should be made to disgorge its ill-gotten
21 gains and to restore them to Plaintiff and the 17200 Class Members. The actions of Defendants entitle
22 Plaintiff to seek the remedies available under section 17200 *et seq.* Plaintiff seeks full restitution of said
23 amounts from Defendants, as necessary and according to proof, to restore any and all amounts—
24 including interest—withheld, acquired, or converted by Defendants by means of the unfair practices
25 complained of herein. Plaintiff, on behalf of herself, as well as on behalf of the general public, further
26 seeks attorney's fees and costs pursuant to sections 218.5 of the Labor Code and 1021.5 of the Code of
27 Civil Procedure. In addition, Plaintiff seeks the appointment of a receiver as necessary.
28

ELEVENTH CAUSE OF ACTION

(PAGA Civil Penalties, Cal. Lab. Code § 2698 *et seq.*)

On Behalf of Plaintiff, the California Labor & Workforce Development Agency and Aggrieved Employees Against Defendants)

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

92. Pursuant to section 2699.3(a)(1) of the Labor Code, on or about March 29, 2023, Plaintiff Sachs submitted her PAGA Claim Notice online to the California Labor and Workforce Development Agency (“LWDA”) and notified the LWDA of the specific provisions of the Labor Code alleged to have been violated by Defendants, including the theories set forth in the Complaint. Also, on that day, Plaintiff gave written notice by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated by Defendants.

93. Plaintiff seeks to represent all Aggrieved Employees, defined as Plaintiff and/or other persons who performed services in California for Defendants during the period of time commencing one year prior to March 29, 2023.

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

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

Cal. Lab. Code § 2699.3(a)(2)(A).

95. When sixty-five (65) calendar days of the postmark date of the notice sent by Plaintiff have passed, Plaintiff may “commence a civil action pursuant to Section 2699.” Cal. Lab. Code § 2699.3(a)(2)(A). More than sixty-five calendar days have passed since Plaintiff gave written notice of the PAGA violations to the LWDA and Defendants.

96. Plaintiff contends that sections 201.3, 201.5, 201.6, 203, 210, 226, 226.7, 226.8, 510, 512, 558, 1194, 1198, 2802, and 2699 *et seq.* of the Labor Code enables Plaintiff to recover civil penalties under PAGA, as well as attorney’s fees and costs, from Defendants, through a civil action on behalf of herself and other Aggrieved Employees.

1 97. Plaintiff seeks to recover the PAGA civil penalties through a representative action
2 permitted by PAGA and the California Supreme Court in Arias v. Superior Court, 46 Cal. 4th 969
3 (2009). Therefore, class certification of the PAGA claims is not required.

4 98. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor
5 Code provisions, among others:

- 6 a. Failure to pay wages and/or final wages to Plaintiff and Aggrieved Employees in
7 violation of Labor Code §§ 201.3, 201.5 and 203. With respect to violations of Labor
8 Code § 201.3 and/or 201.5, Plaintiff contends that 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 California Labor Code and that, accordingly,
11 each Aggrieved Employee who was not timely paid his or her final wages is entitled to
12 civil penalties. Labor Code section 2699(f)(2) imposes a civil of \$100 per pay period per
13 Aggrieved Employee for initial violations, and \$200 per pay period per Aggrieved
14 Employee for subsequent violations for all Labor Code provisions for which a civil
15 penalty is not specifically provided.
- 16 b. Failure to provide compliant itemized wage statements to Plaintiff and Aggrieved
17 Employees in violation of Labor Code § 226(a). Plaintiff and other Aggrieved Employees
18 have not been provided compliant wage statements as required by Labor Code section
19 226(a). The foregoing was the intentional misconduct of Defendants that was intended to
20 mislead and injure Plaintiff and other Aggrieved Employees insofar as they were
21 subjected to confusion and deprived of information to which they were legally entitled.
22 Section 226(e) provides that any employee who suffers injury as a result of a knowing
23 and intentional failure by the employer to comply with its obligation to provide wage
24 statements containing all of the information referenced above is entitled to recover the
25 greater of his actual damages or \$50 for the first violation by the employer. The employee
26 is also entitled to recover \$100 for each violation in a subsequent pay period, not to
27 exceed an aggregate penalty of \$4,000.
- 28

- 1 c. Failure to provide proper rest and meal periods to Plaintiff and Aggrieved Employees.
2 Plaintiff and Aggrieved Employees were not provided with timely meal and rest periods
3 in violation of Labor Code section 226.7 and the applicable Wage Order sections. Labor
4 Code section 226.7 requires “one additional hour of pay at the employee’s regular rate of
5 compensation for each workday that the meal or rest or recovery period is not provided.”
- 6 d. Failure to pay minimum and overtime wages to Plaintiff and Aggrieved Employees in
7 violation of Labor Code §§ 510, 558, 1194, and 1198. Both late payment and non-
8 payment of minimum wages violate the state statute requiring the payment of a minimum
9 hourly wage. Labor Code section 558 imposes a civil penalty in addition to any other
10 penalty provided by law of fifty dollars (\$50) for initial violations for each underpaid
11 employee for each pay period for which the employee was underpaid in addition to an
12 amount sufficient to recover unpaid wages, and one hundred (\$100) for subsequent
13 violations for each underpaid employee for each pay period for which the employee was
14 underpaid in addition to an amount sufficient to recover underpaid wages.
- 15 e. Failure to keep complete and accurate payroll records. Failure to keep complete and
16 accurate payroll records relating to Plaintiff and Aggrieved Employees in accordance
17 with California Labor Code section 1174(d) constitutes unlawful and/or unfair activity
18 prohibited by California Labor Code section 1174(d).
- 19 f. Failure to reimburse necessary business expenses in accordance with California Labor
20 Code section 2802.
- 21 g. With respect to violations of Labor Code sections 201.3, 201.5 and 203 Plaintiff contend
22 that the failure of Defendants to make payments within the time provided for has been
23 and is “willful” within the meaning of such word as used in Section 203 of the California
24 Labor Code and that, accordingly, each Aggrieved Employee who was not timely paid
25 his or her final wages is entitled to civil penalty for which provision is made in Section
26 210 of the Labor Code on account of violations of section 204.
- 27
28

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

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

6 1. That the Court certify a Class Action.

7 2. That, under the First Cause of Action, it be adjudged that the failure of Defendants to
8 make payment of Plaintiff's and Code Class Members' wages was in violation of sections 201.5, 203,
9 and 204 of the California Labor Code, and was "willful" as that word is used in section 203 of the
10 California Labor Code, and that the Court enter judgment against Defendants in favor of Plaintiff and
11 Code Class Members. That judgment be entered in favor of Plaintiff and Code Class Members in an
12 amount prescribed by section 203 of the California Labor Code, not less than \$300,000, and costs and
13 reasonable attorneys' fees in accordance with the provisions of California Labor Code section 218.5.

14 3. That, under the Second Cause of Action, this Court enter judgment in favor of Plaintiff,
15 of at least \$250, not including interest thereon, reasonable attorneys' fees and cost of suit, and enter
16 judgment in favor of the 226 Class Members against Defendants in the amount of damages, interest, and
17 costs, according to proof, and costs and reasonable attorneys' fees in accordance with the provisions of
18 Labor Code section 226(e).

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

22 5. That, under the Fourth Cause of Action, this Court enter judgment in favor of Plaintiff
23 and the 17200 Class Members and award them their damages, penalties, and costs of suit, all according
24 to proof, pursuant to section 218.5 and other relevant sections of the Labor Code.

25 6. That, under the Fifth Cause of Action, this Court enter judgment in favor of Plaintiff and
26 Code Class Members in the amount of unpaid overtime wages according to proof, including interest
27 thereon, reasonable attorneys' fees and cost of suit, and enter judgment against Defendants in the
28 amount of damages according to proof, interest thereon, reasonable attorneys' fees and cost of suit.

1 7. That, under the Sixth Cause of Action, this Court enter judgment in favor of Plaintiff and
2 Code Class Members and award them their damages, penalties, liquidated damages, reasonable
3 attorney's fees and costs of suit, all according to proof, pursuant to section 218.5, 1194, 1194.2 and
4 other relevant sections of the Labor Code.

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

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

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

14 11. That, under the Tenth Cause of Action, it be adjudged that Defendants' violations of the
15 applicable Wage Order and above cited sections of the California Labor Code, and violated section
16 17200 *et seq.* of the California Business and Professions Code. Accordingly, Plaintiff requests that the
17 Court order Defendants to pay restitution with interest to Plaintiff and the 17200 Class Members.
18 Finally, Plaintiff requests that the Court award Plaintiff's reasonable attorneys' fees and costs, pursuant
19 to section 218.5 of the Labor Code and section 1021.5 of the California Code of Civil Procedure.

20 12. That, under the Eleventh Cause of Action, this Court award Plaintiff, the State of
21 California, and other former and current Aggrieved Employees their civil penalties, attorney's fees, and
22 costs of suit, all according to proof.

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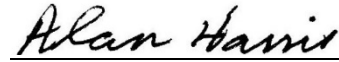
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1 13. For such further relief as the Court may order, including attorney's fees, costs, and
2 interest pursuant to Labor Code sections 218.5 and 218.6, and Code of Civil Procedure section 1021.5,
3 in an amount according to proof.

4 DATED: August 23, 2023

HARRIS & RUBLE

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Alan Harris
Attorney for Plaintiff

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PROOF OF SERVICE

I am an attorney for the plaintiff herein, over the age of eighteen years, and not a party to the within action. My business address is Harris & Ruble, 655 N. Central Ave., 17th Floor, Glendale CA, 91203. On September 5, 2023, I served the within documents:

FIRST AMENDED COMPLAINT

Electronic Service: I caused the above-entitled document(s) to be served through Case Anywhere addressed to all parties appearing on the electronic service list for the above-entitled case and on the interested parties in this case:

Andrew Livingston
ORRICK, HERRINGTON & SUTCLIFFE LLP
The Orrick Bldg., 405 Howard Street
San Francisco, CA
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I declare under penalty of perjury that the above is true and correct. Executed on September 5, 2023, at Los Angeles, California.



Priya Mohan