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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN THE COUNTY OF LOS ANGELES – UNLIMITED JURISDICTION

FAITH STRONGHEART,

Plaintiff,

vs.

Defendants NONFICTION UNLIMITED,
INC., a Delaware Corporation; MICHAEL
DEGAN, an individual; PATRICK
DEGAN, an individual; and DOES 1
through 20 inclusive,

Defendants.

CASE NO.: 23SMCV01691

FIRST AMENDED COMPLAINT FOR:

- 1. FAILURE TO REIMBURSE**
- 2. FAILURE TO ACCOUNT**
- 3. FAILURE TO PAY MINIMUM WAGES**
- 4. FAILURE TO PAY OVERTIME WAGES**
- 5. FAILURE TO PAY WAGES DUE AT SEPARATION**
- 6. RETALIATION**
- 7. UNFAIR COMPETITION**
- 8. CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

(JURY TRIAL DEMANDED)

1 Plaintiff FAITH STRONGHEART complains against Defendants and each of them, demands
2 a trial by jury of all issues and for all causes of action for which she is entitled, and hereby alleges as
3 follows:

4 INTRODUCTION

5 1. This is an action for violations of California's laws prohibiting employer retaliation,
6 violations of California's Labor Code, and violations of California laws prohibiting unfair and
7 unethical business practices.

8 2. This is also a representative action for recovery of penalties under the Private Attorneys
9 General Act of 2004 ("PAGA"), Cal. Lab. Code § 2698 *et seq.* PAGA permits aggrieved employees to
10 bring a lawsuit as a representative action on behalf of themselves and all other current and former
11 aggrieved employees, to recover civil penalties and address an employer's violations of the California
12 Labor Code.

13 3. Plaintiff brings this suit on behalf of herself and any and all persons who currently and
14 formerly worked for Defendants performing production duties during the relevant time period to
15 recover civil penalties and address the employer's violations of the California Labor Code.

16 4. Defendants NONFICTION UNLIMITED, INC., MICHAEL DEGAN, and PATRICK
17 DEGAN, and/or DOES 1 through 20, inclusive: (1) retaliated against Plaintiff when she attempted to
18 exercise her rights under the Labor Code and verify compliance with union rules (Lab. Code §§ 98.6,
19 1102.5); (2) failed to pay minimum and overtime wages (Lab. Code §§ 510, 1194, 1197); (3) failed to
20 account (Lab. Code §§ 226(a), 1174, 1174.5, 1198.5, 558.1)); (4) failed to reimburse for business
21 expenditures (Lab. Code §§ 558.1, 1198, 2802, 2804; Wage Order 12-2001); (5) failed to pay all
22 wages due at separation (Labor Code §§ 201, 203, 558.1); and (6) engaged in unfair business practices
23 by violating numerous sections of the Labor Code, all while profiting from such illegal activities (Bus.
24 & Prof. Code § 17200, *et seq.*).

25 5. Plaintiff in her representative capacity seeks civil penalties on behalf of herself and
26 other aggrieved employees pursuant to the PAGA for Defendants failure to comply with California
27 Labor Code and IWC Wage Order requirements.

28 6. Through this action, Plaintiff seeks compensatory and punitive damages, statutory and

1 civil penalties, pre- and post-judgment interest, declaratory and injunctive relief, and costs and
2 attorneys' fees, as described below.

3 **PARTIES**

4 7. Plaintiff FAITH STRONGHEART ("STRONGHEART" or "Plaintiff") was at all times
5 relevant hereto a California resident working in the City and County of Los Angeles and employed as
6 a producer by NONFICTION UNLIMITED, INC. and DOES 1 through 20. STRONGHEART was
7 hired on June 23, 2022 and terminated on September 19, 2022.

8 8. Defendant NONFICTION UNLIMITED, INC. ("NONFICTION") is a Delaware
9 Corporation with its principal place of business in Santa Monica, California, which lies within the
10 County of Los Angeles. NONFICTION regularly employs five (5) or more persons and is an employer
11 within the meaning of Government Code § 12926.

12 9. Defendant MICHEAL DEGAN ("MICHAEL") is a director, officer, and supervisor of
13 NONFICTION and an employer within the meaning of Labor Code § 558.1. MICHAEL engaged in
14 the conduct described herein in the City of Santa Monica and County of Los Angeles.

15 10. Defendant PATRICK DEGAN ("PATRICK") is an owner, officer, and supervisor of
16 NONFICTION and an employer within the meaning of Labor Code § 558.1. PATRICK engaged in the
17 conduct described herein in the City of Santa Monica and County of Los Angeles.

18 11. Plaintiff is unaware of the identity of those defendants sued as DOES 1 through 20,
19 inclusive, and they are therefore sued under those fictitious names. Plaintiff is informed and believes,
20 and thereon alleges, that she is entitled to the relief requested in this complaint from these Doe
21 defendants and will seek leave of this Court to amend this complaint to reflect these defendants' true
22 names and identities when ascertained.

23 12. Plaintiff is informed and believes and thereon alleges that each of the defendants named
24 herein (collectively, "Defendants") was the agent, employee, or representative of each of the
25 remaining defendants and, in doing the things mentioned herein, was acting in the course and scope of
26 such agency and employment. Plaintiff further alleges that in doing the acts or omissions complained
27 of herein, Defendants, and each of them, acted or omitted to act in concert as agents of or on behalf of
28 the other Defendants named herein.

13 13. Upon information and belief, NONFICTION, MICHAEL, PATRICK, and DOES 1

1 through 20 were at all times relevant the alter egos of one another by reason of: comingling funds as
2 between the business and the personal assets of its owners and officers; failing to segregate funds;
3 diverting corporate funds or assets to non-corporate uses; failing to observe corporate formalities;
4 maintaining interlocking agents, employees, and representatives; and failing to adequately capitalize
5 the businesses, such that ignoring the corporate fiction is necessary to avoid injustice.

6 **JURISDICTION & VENUE**

7 14. This Court has personal jurisdiction over Defendants, and each of them, pursuant to
8 Article 6, § 10 of the California Constitution. The amount in controversy in this action exceeds the
9 minimal jurisdictional dollar amount for this Court of unlimited jurisdiction.

10 15. Jurisdiction is proper before the Superior Court of California because Plaintiff and all
11 Defendants are citizens of, reside in, and/or maintain corporate headquarters in California, and the
12 principal injuries caused by Defendants' conduct all occurred in California.

13 16. Venue is proper in this Court pursuant to Code Civil Procedure § 395 because
14 Defendants' conduct and conducted substantial business, employed Plaintiff, and committed the acts
15 and omissions alleged herein in the City of Santa Monica and County of Los Angeles.

16 **INCORPORATION OF ALLEGATIONS**

17 17. All of the allegations in this complaint are hereby incorporated into each cause of
18 action to the extent necessary or useful to clarify and complete each stated cause of action, to avoid
19 repetition and redundancy.

20 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

21 18. This action is timely because Plaintiff suffered from numerous violations of the
22 California Labor Code within one year of the date on which a PAGA notice was sent to the LWDA via
23 online submission. More than 65 days have passed, and no response has been received by the LWDA.

24 **FACTS COMMON TO MORE THAN ONE CAUSE OF ACTION**

25 Defendants' Business Model is Structured to Evade California Law

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27 19. STRONGHEART was hired as a producer on June 23, 2022 at a rate of \$50.00 per
28 hour, with a corresponding overtime rate of \$75.00 per hour.

1 20. It was anticipated that STRONGHEART would work a maximum of 60 hours per
2 week, which would amount to approximately \$3,500 per week (40 hours at her regular rate of pay and
3 20 hours at her overtime rate).

4 21. Her employment was originally guaranteed to continue through September 2022 and
5 was extended to October 15, 2022 by her supervising producer.

6 22. STRONGHEART is a member of the International Alliance of Theatrical Stage
7 Employees (IATSE), although NONFICTION hired her as a non-union worker.

8 23. When STRONGHEART's employment began, she was informed that NONFICTION
9 would not reimburse her for all the expenses she incurred in performing her duties, including her
10 cellular phone, printer, and computer.

11 24. While employed, STRONGHEART regularly worked over 75 hours per week. On
12 many days, she worked in excess of 12 hours a day.

13 25. Despite regularly working in excess of the 60 hours per week initially agreed upon,
14 PATRICK, NONFICTION's owner and Executive Producer instructed her to complete her timecard
15 each week to reflect only 60 total hours and prohibited her from including any time worked in excess
16 of 60 hours.

17 26. Believing she had no choice, she complied with PATRICK's order to omit hours she
18 worked from her timecard each pay period.

19 27. During her employment with NONFICTION, STRONGHEART was offered a job at
20 Netflix on a project that would have kept her employed until at least January 2023.

21 28. In order to assess her availability, she asked her supervising producer, Jon Campbell,
22 how long she could expect the job at NONFICTION to last. He responded that her position would
23 continue through at least the end of October, possibly longer.

24 29. Based on his representation, she declined the job at Netflix.

25 30. On August 21, 2022, STRONGHEART asked for clarity regarding which union
26 contract NONFICTION was working under in its execution of the project for its client American
Express.

27 31. In order to ensure compliance with union rules for crew hired for that job, she stated:
28 "So we can avoid the union issues we had on the NY shoot, please confirm that we need to hire

1 Teamster 399 drivers for our LA shoot. And, do you have negotiated contracts with each IATSE
2 Local or are we under a general AICP contract with all of them? May I please have copies of said
3 contracts?”

4 32. Mr. Campbell ignored her request for a copy of the contracts and discussed only his
5 hope that there would be “allowances we can take advantage of based on the industrial contract” and
6 that there may be “other reduced minimums we can take advantage of.”

7 33. STRONGHEART again emailed to request a copy of the relevant contracts. In
8 response, PATRICK responded by attaching only the IATSE Commercial Production Agreement,
9 even though NONFICTION purported that the American Express project was not a commercial
10 production and NONFICTION was therefore not bound by that agreement.

11 34. When STRONGHEART asked whether crew would receive PHBP health benefits,
12 NONFICTION’s vendor (Kimberly Morris of Cast and Crew) and “Payroll Administrator” for
13 “Commercials” wrote to NONFICTION’s controller (and copied STRONGHEART) and stated: “This
14 project was set up on your [NONFICTION’s] end as Non-Commercial” and noted that certain union
15 benefits (namely PHBP health benefits) could be withheld from crew members if NONFICTION had
16 correctly designated itself as exempt from the requirements of the commercial production.

17 35. Although NONFICTION’s designation of the project as non-commercial was
18 questionable, NONFICTION’s Controller, Melanie Baines then directed STRONGHEART to “explain
19 to the PHBP people [crew], that because this falls under an ‘industrial’ and not a commercial, that
20 unfortunately we are unable to pay PHBP...”

21 36. NONFICTION’s lack of transparency with regard to the relevant union contracts
22 applicable to the production was mirrored by the uncertainty it injected into the titles held by its
23 employees.

24 37. For example, its employees, including STRONGHEART, are made to perform multiple
25 roles without the corresponding titles - titles which would trigger union pay and benefit obligations.

26 38. STRONGHEART performed the roles of a Second Assistant Director and Production
27 Manager, but NONFICTION titled her a non-union Production Supervisor.

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1 39. On September 18, 2022, STRONGHEART wrote to executive producers and owners
2 PATRICK and MICHAEL and the Controller, Ms. Baines. She wrote that “the work load is beginning
3 to be too much” and continued that she was “doing the job of 5-6 individuals.”

4 40. STRONGHEART detailed the title of each job she was performing as follows: (1)
5 Production Manager, (2) Production Coordinator, (3) Travel Coordinator, (4) Payroll Accountant, (5)
6 Accountant, (6) Location Manager, (7) Second Assistant Director, and (8) Production Assistant.

7 41. In her attempt to be a team player, STRONGHEART explained that, “I am glad to do
8 it and love a good challenge. I just thought it would be helpful to put things in perspective in terms of
9 my responsibilities and work load...”

10 42. STRONGHEART wrote, “I have been working every weekend and usually start my
11 day at 4-5 in the morning and end it around 11pm in order to get everything done for this job. I rarely
12 take or eat a lunch - and when I do, I am working through it. This has a tremendous toll on my family
13 life and personal well-being and I have not complained and will continue to work extremely hard to
14 get everything done.”

15 43. STRONGHEART also complained that her wages were often paid weeks late. And
16 although NONFICTION promised to make payments weekly, payment was delayed significantly on
17 occasion. For example, payment for work STRONGHEART completed on August 22, 2022 was not
18 made until September 21, 2022

19 44. PATRICK agreed to discuss the issues STRONGHEART raised during a meeting set
20 for September 19, 2022.

21 45. At the meeting, STRONGHEART told PATRICK that although she would continue to
22 work long the hours required of her, she needed to put her “real hours worked” moving forward. In
23 response, PATRICK fired her.

24 46. After being terminated, STRONGHEART called her supervisor, Mr. Campbell, to
25 remind him of his promise that her position would continue until the end of October and that she had
26 declined other work based on that representation. He responded only that his promise “would not hold
27 water” because it was not in writing.

28 47. At the time of her termination, STRONGHEART submitted her timecard with all of her
actual hours worked.

1 48. PATRICK refused to pay for all actual hours worked and justified his refusal to do so
2 by stating that NONFICTION had never paid her for all of the hours she worked.

3 **FIRST CAUSE OF ACTION**

4 **FAILURE TO PROVIDE REIMBURSEMENTS**

5 (Lab. Code §§ 558.1, 2802, 2804; Wage Order 4-2001)

6 (Plaintiff in her Individual Capacity against all Defendants)

7 49. Labor Code § 2802 requires employers to reimburse employees for all necessary
8 expenditures incurred by the employee in direct consequence of their duties or of their obedience to
9 the employer's directions.

10 50. Labor Code § 2804 nullifies and voids any contract or agreement, whether express or
11 implied, that is entered into by any employee that attempts to waive the employee's right to
12 reimbursement.

13 51. Plaintiff was made to use her own computer, cell phone and printer, and office supplies
14 (commonly referred to as a "box kit") to complete her duties.

15 52. Defendants did not reimburse Plaintiff for the costs she was forced to bear as a direct
16 consequence of her duties for Defendants.

17 53. Defendants announce their flagrant violation of the Labor Code in their Production
18 Manual, which states, "Nonfiction does not reimburse for cell phone usage. Nor will kit rental
19 submissions be allowed for crew cell phones." The Production Manual further states that "Nonfiction
20 does not pay for computer rentals" that are necessary to complete work on its behalf.

21 54. As described above, Defendants brazenly violated Labor Code § 2802, and their
22 attempt to force employees to contract their obligations away through Defendants' Production Manual
23 makes the provision null and void pursuant to Labor Code § 2804.

24 55. Defendants' violation was willful in that it attempted, through an illegal contract, to
25 force its employees to waive their rights to reimbursement despite Labor Code § 2804's clear language
26 invalidating such agreements.

27 56. Pursuant to Labor Code § 558.1, MICHAEL and PATRICK and DOES 11 – 20, as
28 directors, officers, or managing agents of NONFICTION and DOES 1 – 10, are jointly and severally
liable with NONFICTION and DOES 1 – 10 for the failures to reimburse pled in this cause of action.

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57. As a direct, foreseeable, and proximate result of Defendants' failure to reimburse Plaintiff, she has suffered substantial losses related to the use and enjoyment of such reimbursements and has lost interest on such reimbursements, all to her damage in amounts according to proof at the time of trial.

58. In addition to compensatory damages and interest thereon, Plaintiff is entitled to reasonable attorneys' fees and costs of suit as provided in section 2802(c) of the Labor Code.

WHEREFORE, Plaintiff prays for relief as set forth herein.

SECOND CAUSE OF ACTION
FAILURE TO ACCOUNT

(Lab. Code §§ 226(a), 558.1; Wage Order 4-2001)
(Plaintiff in her Individual Capacity against all Defendants)

59. Pursuant to Labor Code § 226, an employer must furnish each employee with an accurate itemized statement in writing showing: (1) gross wages earned, (2) total hours worked for all non-exempt employees, (3) the number of piece-rate units earned and any applicable piece rates, (4) all deductions made from the employee's paycheck, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number, (8) the name and address of the legal entity of 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.

60. Throughout Plaintiff's employment, Defendants failed to provide accurate and itemized paystubs because each paystub reflects varying and often incorrect rates, hours, gross pay, and net pay.

61. For example, although Defendants did pay Plaintiff her correct overtime rate of \$75 per hour up to twenty hours a week (after which she was not compensated at all), her paystubs often reflect an incorrect overtime hourly wage of \$50 per hour.

62. Although the Labor Code requires that each paystub reflect the dates of work that correspond to each payment, Plaintiff's paystubs are internally inconsistent and make it impossible for her to understand which dates of work are included in the payment.

63. Some paystubs reflect different payments and with different check numbers for the same pay period.

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1 64. Most of Plaintiff's paystubs are heavily redacted to hide necessary information
2 regarding the rate and hours for which Plaintiff was being compensated.

3 65. Plaintiff is informed and believe and based thereon allege that Defendants willfully
4 failed to provide Plaintiff with accurate itemized wage statements and maintain employee records for
5 each and every pay period over the entire course of her employment.

6 66. Pursuant to Labor Code § 558.1, Defendants MICHAEL, PATRICK, and DOES 11 –
7 20 as directors, officers, or managing agents of NONFICTION and DOES 1 – 10, are jointly and
8 severally liable with NONFICTION and DOES 1 – 10 for the wage statement and record maintenance
9 violations pled in this cause of action.

10 67. Plaintiff is thus entitled to recover the greater of actual damages or statutory penalties
11 under Labor Code § 226(e).

12 68. Plaintiff is also entitled to reasonable attorneys' fees and costs of suit as provided in
13 section 226(e) of the California Labor Code.

14 WHEREFORE, Plaintiff prays for relief as set forth herein.

15 **THIRD CAUSE OF ACTION**
16 **FAILURE TO PAY MINIMUM WAGE**

17 (Lab. Code §§ 1194, 1194.2, 1197, 1197.1; Wage Order 4-2001)
18 (Plaintiff in her Individual Capacity against all Defendants)

19 69. Pursuant to California Labor Code § 1197, payment of less than the minimum wage
20 fixed by the Industrial Welfare Commission is unlawful.

21 70. Pursuant to California Labor Code § 1194, employees are entitled to recover the
22 balance of unpaid minimum wages, including interest thereon, reasonable attorneys' fees, and costs of
23 suit.

24 71. Pursuant to California Labor Code § 1194.2, employees are entitled to recover
25 liquidated damages in an amount equal to the unpaid minimum wages and interest thereon.

26 72. Pursuant to California Labor Code § 1197.1, employees are entitled to recover statutory
27 penalties and restitution of wages owed to them.

28 73. Plaintiff was a non-exempt employee entitled to the protections of California Labor
Code §§ 1194, 1194.2, 1197, 1197.1, and Wage Order 4-2001.

1 74. During the course of Plaintiff's employment, Defendants failed to pay Plaintiff the
2 minimum wage by prohibiting her from reporting all hours worked and refusing to pay her for all non-
3 overtime hours worked.

4 75. In violation of state law, Defendants knowingly and willfully engaged in a pattern or
5 practice of refusing to perform their obligations to pay the minimum wage to Plaintiff.

6 76. As a direct, foreseeable, and proximate result of Respondent's knowing and willful
7 failure to pay minimum wages, Plaintiff suffered substantial losses related to the use and enjoyment of
8 such wages, lost interest on such wages, and has incurred and will incur expenses and attorneys' fees
9 in seeking to compel Defendants to perform their obligations under state law, all to her damage in
10 amounts according to proof at the time of trial.

11 77. Plaintiff is thus entitled to recover all minimum wages earned and unpaid, liquidated
12 damages, restitution of wages, interest, attorneys' fees, and costs of suit in amounts according to proof
13 at the time of trial and in post-trial proceedings.

14 WHEREFORE, Plaintiff prays for relief as set forth herein.

15 **FOURTH CAUSE OF ACTION**
16 **FAILURE TO PAY OVERTIME WAGES**

17 (Lab. Code §§ 510, 558.1, 1194, 1197.1, 1198; Wage Order 4-2001)
18 (Plaintiff in her Individual Capacity against all Defendants)

19 78. Pursuant to California Labor Code § 1198, employment of any employee for longer
20 hours than those fixed by the Industrial Wage Commission is unlawful.

21 79. Pursuant to California Labor Code § 510 and Wage Order 4-2001, employers must pay
22 employees for all overtime hours worked at the rate of one and one-half (1½) times the regular hourly
23 wage for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week.

24 80. Pursuant to California Labor Code § 1194, employees may recover the balance of all
25 unpaid overtime wages, including interest thereon, reasonable attorneys' fees, and costs of suit.

26 81. Pursuant to California Labor Code § 1197.1, employees are entitled to restitution of all
27 unpaid overtime wages owed to them.

28 82. Plaintiff was a non-exempt employee entitled to the protections of California Labor
Code §§ 510, 1194, 1197.1, 1198, and Wage Order 4-2001.

83. Throughout Plaintiff's employment, Respondent knowingly and willfully failed to compensate Plaintiff for overtime hours worked by prohibiting her from reporting all overtime hours worked and refusing to pay her for any overtime in excess of 20 hours in one week.

84. Pursuant to Labor Code § 558.1, Defendants MICHAEL, PATRICK, and DOES 11 – 20, as owners, directors, officers, or managing agents of NONFICTION and DOES 1 – 10, are jointly and severally liable with NONFICTION and DOES 1 – 10 for the violations described above and pled in this fourth cause of action.

85. As a direct, foreseeable, and proximate result of Defendants' failure to pay overtime wages, Plaintiff suffered substantial losses related to the use and enjoyment of such wages, lost interest on such wages, and has incurred and will incur expenses and attorneys' fees in seeking to compel Defendants to perform their obligations under state law, all to her damage in amounts according to proof at the time of trial.

86. Plaintiff is thus entitled to recover all overtime wages earned and unpaid, interest, attorneys' fees, and costs of suit in amounts according to proof at trial and in post-trial proceedings.

WHEREFORE, Plaintiff prays for relief as set forth herein.

FIFTH CAUSE OF ACTION
FAILURE TO PAY WAGES DUE AT SEPARATION
 (Lab. Code §§ 201, 203, 558.1; Wage Order 4-2001)
 (Plaintiff in her Individual Capacity against all Defendants)

87. Pursuant to Labor Code § 201, an employer must pay an employee who is terminated all wages earned and due immediately upon termination.

88. Pursuant to Labor Code § 203, if an employer willfully fails to provide earned and due wages to an employee who is discharged, the wages of the employee shall continue as a penalty from the due date thereof for a period not to exceed 30 days.

89. Throughout Plaintiff's employment, Defendants failed and refused to pay all of the wages earned by Plaintiff each and every pay period.

90. Defendants did not pay Plaintiff all of the wages she earned when they terminated her and, to date, have not paid Plaintiff all of the earned and due wages.

91. Defendants knew they had not paid Plaintiff all of the wages earned and due to her, and their failure to pay Plaintiff all wages earned was willful.

1 distress, anguish, humiliation, embarrassment, shock, pain, discomfort and anxiety. Though the exact
2 nature, extent, and duration of said injuries are presently unknown to her, Plaintiff is informed and
3 believes and thereon alleges that these injuries are reasonably certain to be permanent in character.

4 101. Plaintiff is informed and believes, and thereon alleges, that Defendants, by engaging in
5 the acts alleged herein or in authorizing or ratifying such acts, engaged in willful, malicious,
6 intentional, oppressive and despicable conduct, and acted with willful and conscious disregard of the
7 rights, welfare and safety of Plaintiff, thereby justifying the award of punitive and exemplary damages
8 in an amount to be determined at trial.

9 102. As a result of Defendants' acts and conduct as alleged herein, Plaintiff is entitled to
10 reinstatement and reimbursement for lost wages and work benefits pursuant to Section 98.6(b) of the
11 California Labor Code.

12 WHEREFORE, Plaintiff prays for relief as set forth herein.

13 **SEVENTH CAUSE OF ACTION**

14 **RETALIATION**

(Lab. Code § 1102.5(b))

(Plaintiff in her Individual Capacity against NONFICTION and DOES 1 – 10)

15 103. Pursuant to Labor Code § 1102.5, it is unlawful for an employer to retaliate against an
16 employee for disclosing a violation of a statute, rule, or regulation to a person with authority over the
17 employee or to another employee who has the authority to investigate, discover, or correct the
18 violation.

19 104. Plaintiff engaged in protected activity when she requested information to verify that
20 Defendants were not flouting union rules.

21 105. Defendant subjected Plaintiff to adverse employment action by failing to pay her for all
22 hours worked and eventually terminating her.

23 106. As a direct, foreseeable and proximate result of Defendants' retaliation, Plaintiff has
24 suffered and continues to suffer direct and consequential damages including, but not limited to, loss of
25 earnings, future earning capacity, and other losses not presently ascertained.

26 107. As a further direct and legal result of the acts and conduct of Defendants as alleged
27 herein, Plaintiff has been caused to and did suffer and continues to suffer severe emotional and mental
28 distress, anguish, humiliation, embarrassment, shock, pain, discomfort and anxiety. Though the exact

1 nature, extent, and duration of said injuries are presently unknown to her, Plaintiff is informed and
2 believes and thereon alleges that these injuries are reasonably certain to be permanent in character.

3 108. Plaintiff is informed and believes, and thereon alleges, that Defendants by engaging in
4 the acts alleged herein or in authorizing or ratifying such acts, engaged in willful, malicious,
5 intentional, oppressive and despicable conduct, and acted with willful and conscious disregard of the
6 rights, welfare and safety of Plaintiff, thereby justifying the award of punitive and exemplary damages
7 in an amount to be determined at trial.

8 109. Plaintiff is further entitled to reasonable attorneys' fees and costs of suit as provided in
9 section 1102.5(j) of the Labor Code.

10 WHEREFORE, Plaintiff prays for relief as set forth herein.

11 **EIGHTH CAUSE OF ACTION**
12 **UNFAIR COMPETITION**

(Bus. & Prof. Code § 17200, *et seq.*)

13 (Plaintiff in her Individual Capacity against NONFICTION and DOES 1 – 10)

14 110. Pursuant to California's Unfair Competition Law (Bus. & Prof. Code § 17000, *et seq.*),
15 it is unlawful for an entity to engage in unlawful, unfair, or fraudulent business activities.

16 111. Defendants' policy and practice of retaliating against employees violates Labor Code
17 §§ 98.6 and 1102.5 and therefore constitutes an unlawful business act or practice within the meaning
18 of Business and Professions Code § 17200.

19 112. Defendants' policy and practice of failing to failure to reimburse expenses, failing to
20 provide complete and accurate wage statements, and failing to pay minimum and overtime wages
21 violates Labor Code §§ 201(a), 226(a), 510, 1174, 1194, 1198.5, and 2802 and therefore constitutes
22 an unlawful business act or practice within the meaning of Business and Professions Code § 17200.

23 113. The unlawful conduct described herein is continuing and will continue until
24 Defendants are ordered to cease such activity.

25 114. Plaintiff is entitled to equitable and injunctive relief, including full restitution and/or
26 disgorgement of all moneys which have been unlawfully unpaid, withheld as a result of the acts and
27 practices described herein and enjoining Defendants from engaging in the unlawful conduct described
28 herein in the future.

WHEREFORE, Plaintiff prays for relief as set forth herein.

NINTH CAUSE OF ACTION
VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT

(Labor Code § 2698, *et seq.*)

(Plaintiff in her Representative Capacity against NONFICTION and DOES 1 – 10)

115. Pursuant to Labor Code § 2699 of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies, or employees for violation of the Labor Code, such penalties may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3.

116. Plaintiff is aggrieved because she was employed by Defendants as a producer, and each of the alleged violations stated herein were committed against her. Plaintiff is therefore properly suited to represent the interests of other current and former aggrieved employees of Defendants.

117. Plaintiff has exhausted her administrative remedies under Labor Code § 2699.3 by providing notice to the Labor and Workforce Development Agency of each of the violations described herein and sending via certified mail a copy of said notice to Defendants.

118. Plaintiff seeks to recover, on behalf of herself and all other current and former aggrieved employees, all civil penalties pursuant to Labor Code §§ 203, 256, and 2699 for which Defendants are liable as a result of Defendants' violations of Labor Code § 201, which requires that employers pay all wages earned and unpaid at the time of separation when discharging an employee. The penalties owed for these violations are in an amount equal to, for each aggrieved employee, the employee's regular daily wage for each and every day from the due date thereof until paid, for a period not to exceed 30 days.

119. Plaintiff seeks to recover, on behalf of herself and all other current and former aggrieved employees, all civil penalties pursuant to Labor Code §§ 210 and 2699 for which Defendants are liable as a result of Defendants' violations of Labor Code § 204, which requires that an employer must pay all wages earned and unpaid on designated pay dates at least twice per month. The penalties owed for these violations are \$100 for each initial failure to pay each employee and \$200 for each subsequent failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

120. Plaintiff seeks to recover, on behalf of all current and former aggrieved employees, all civil penalties pursuant to Labor Code §§ 226.3 and 2699 for which Defendants are liable as a result

1 of Defendants' violations of Labor Code § 226(a), which requires that employers provide an accurate
2 accounting, including a statement of all hours worked, gross wages earned, and net wages earned. The
3 penalties owed for these violations are \$250 per employee for each initial violation and \$1,000 per
4 employee for each subsequent violation.

5 121. Plaintiff seeks to recover, on behalf of all current and former aggrieved employees, all
6 civil penalties pursuant to Labor Code § 2699 for which Defendants are liable as a result of
7 Defendants' violations of Labor Code § 226(c), which requires that employers comply with a request
8 to inspect or receive a copy of records pertaining to an employee's employment within 21 calendar
9 days. The penalties owed for these violations are \$100 per employee for each initial violation and
10 \$200 per employee for each subsequent violation.

11 122. Plaintiff seeks to recover, on behalf of all current and former aggrieved employees, all
12 civil penalties pursuant to Labor Code §§ 558 and 2699 for which Defendants are liable as a result of
13 Defendants' violations of Labor Code § 510, which requires that employers compensate their
14 employees for all overtime worked at the rate of one and one-half times the regular rate of pay for
15 hours worked in excess of eight hours per day and/or 40 hours per week. The penalties owed for these
16 violations are \$50 per employee for each initial violation plus an amount sufficient to recover
17 underpaid wages, and \$100 per employee for each subsequent violation plus an amount sufficient to
18 recover the underpaid wages of each employee.

19 123. Plaintiff seeks to recover, on behalf of all current and former aggrieved employees, all
20 civil penalties pursuant to Labor Code §§ 1174.5 and 2699 for which Defendants are liable as a result
21 of Defendants' violations of Labor Code § 1174, which requires employers to maintain payroll records
22 showing the hours worked by and wages paid to employees. The penalties owed for these violations
23 are \$500 per employee.

24 124. Plaintiff seeks to recover, on behalf of all current and former aggrieved employees, all
25 civil penalties pursuant to Labor Code §§ 1197.1 and 2699 for which Defendants are liable as a result
26 of Defendants' violations of Labor Code §§ 1194 and 1197, which require payment of at least the
27 minimum wage fixed by the IWC and prohibits payment of a wage less than the minimum wage less
28 than the minimum wage fixed by the IWC. The penalty for each intentionally committed initial
violation is \$100 for each underpaid employee for each pay period for which the employee is

1 underpaid, in addition to an amount sufficient to recover underpaid wages, liquidated damages, and
2 any applicable penalties imposed pursuant to Labor Code § 203. For each subsequent violation, a
3 penalty of \$250 will be assessed for each underpaid employee for each period in which the employee
4 was underpaid regardless of whether the initial violation was intentionally committed.

5 125. Plaintiff seeks to recover all civil penalties pursuant to Labor Code § 2699 for which
6 Defendants are liable as a result of Defendants' violation of Labor Code § 1198.5, which requires
7 employers to make employees' personnel files available for inspection. The penalty for each such
8 violation is \$750.

9 126. Plaintiff seeks to recover all civil penalties pursuant to Labor Code § 2699 for which
10 Defendants are liable as a result of Defendants' violation of Labor Code § 98.6, which prohibits
11 employers from retaliating, discriminating, or taking adverse action against an employee for exercising
12 any right under the Labor Code or because a worker has made an oral or written complaint that he or
13 she is owed unpaid wages. The penalty for such violation is up to \$10,000 for each violation.

14 127. Plaintiff seeks to recover all civil penalties pursuant to Labor Code § 2699 for which
15 Defendants are liable as a result of Defendants' violation of Labor Code § 2802, which requires
16 reimbursement for all necessary expenditures incurred as a direct consequence of performing duties in
17 addition to indemnification of an employee for all necessary expenditures or losses incurred by the
18 employee in direct consequence of the discharge of her duties. The penalties owed for these violations
19 are \$100 per employee for each initial violation and \$200 per employee for each subsequent violation.

20 128. Plaintiff seeks to recover all civil penalties pursuant to Labor Code § 2699 for which
21 Defendants are liable as a result of Defendants' violation of Labor Code § 1199, which provides
22 penalties for an employer who violates or refuses to comply with the Labor Code. The penalties owed
23 for these violations are not less than \$100 per violation.

24 129. The amount of the civil penalties owed for the violations described herein will be
25 determined at the time of trial.

26 130. For bringing this action against Defendants on behalf of all current and former
27 aggrieved employees, Plaintiff is entitled to attorneys' fees and costs of suit under Labor Code §
28 2699(g) in amounts to be determined by the Court.

WHEREFORE, Plaintiff prays for relief as set forth herein.

TENTH CAUSE OF ACTION
VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT

(Labor Code §§ 558, 2753, 2698, *et seq.*)

(Plaintiff in her Representative Capacity against MICHAEL, PATRICK, and DOES 11 – 20)

131. Pursuant to Labor Code § 2699, any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies, or employees for violation of the Labor Code, such penalties may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former aggrieved employees pursuant to the procedures specified in Labor Code § 2699.3.

132. Plaintiff is aggrieved because she was employed as a commission-based employee by Defendants, and each of the alleged violations stated herein were committed against her. Plaintiff is therefore properly suited to represent the interests of other current and former aggrieved employees of Defendants.

133. Plaintiff has exhausted her administrative remedies under Labor Code § 2699.3 by providing notice to the Labor and Workforce Development Agency of each of the violations described herein and sending via certified mail a copy of said notice to Defendants and waiting 65 days without response from the LWDA.

134. Plaintiff seeks to recover, on behalf of all current and former aggrieved employees, all civil penalties pursuant to Labor Code §§ 558 and 2699 for which MICHAEL, PATRICK, and DOES 11 - 20 are liable as a result of violations of Wage Order 12-2001(7)(A)-(C), which requires employers to keep accurate records containing information including time records, total wages, and total hours as they pertain to each employee. The penalties owed for these violations are \$50 per employee for each initial violation and \$100 per employee for each subsequent violation.

135. Plaintiff seeks to recover, on behalf of all current and former aggrieved employees, all civil penalties pursuant to Labor Code §§ 558 and 2699 for which MICHAEL, PATRICK, and DOES 11 - 20 are liable as a result of violations of Labor Code § 510 and Wage Order 12-2001(3)(A), which require that employers compensate their employees for all overtime worked at the rate of one and one-half times the regular rate of pay for hours worked in excess of eight hours per day and/or 40 hours per week. The penalties owed for these violations are \$50 per employee for each initial violation

1 and \$100 per employee for each subsequent violation, plus an amount sufficient to recover the
2 underpaid wages of each employee.

3 136. Plaintiff seeks to recover, on behalf of all current and former aggrieved employees, all
4 civil penalties pursuant to Labor Code §§ 558 and 2699 for which MICHAEL, PATRICK, and DOES
5 11 – 20 are liable as a result of violations of Wage Order 12-2001(9)(A)-(C), which requires that tools
6 or equipment that are required by the employer or are necessary to the performance of a job be
7 provided and maintained by the employer. The penalties owed for these violations are \$50 per
8 employee for each initial violation and \$100 per employee for each subsequent violation.

9 137. Plaintiff seeks to recover, on behalf of all current and former aggrieved employees, all
10 civil penalties pursuant to Labor Code §§ 558 and 2699 for which MICHAEL, PATRICK, and DOES
11 11 – 20 are liable as a result of violations of Wage Order 12-2001(7)(A)-(C), which requires
12 employers to keep accurate records, including time records, total wages, and total hours as they pertain
13 to each employee and make them available for inspection upon reasonable request. The penalties owed
14 for these violations are \$50 per employee for each initial violation and \$100 per employee for each
15 subsequent violation.

16 138. Plaintiff seeks to recover, on behalf of all current and former aggrieved employees, all
17 civil penalties pursuant to Labor Code §§ 558 and 2699 for which MICHAEL, PATRICK, and DOES
18 11 – 20 are liable as a result of violations of Wage Order 12-2001(4)(A)-(B), which requires
19 employers to pay employees, on established paydays, no less than the applicable minimum wage. The
20 penalties owed for these violations are \$50 per employee for each initial violation and \$100 per
21 employee for each subsequent violation, plus an amount sufficient to recover the underpaid wages.

22 139. The amount of the civil penalties owed for the violations described herein will be
23 determined at the time of trial.

24 140. For bringing this action against Defendants on behalf of all current and former
25 aggrieved employees, Plaintiff is entitled to attorneys' fees and costs of suit under Labor Code §
26 2699(g) in amounts to be determined by the Court.

27 WHEREFORE, Plaintiff prays for relief as set forth herein.

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PRAYER

WHEREFORE, Plaintiff prays that judgment be entered against Defendants and each of them and that Plaintiff be awarded the following:

1. Actual and liquidated damages in amounts according to proof or as required by statute;
2. Noneconomic damages in amounts according to proof;
3. Punitive damages in amounts according to proof;
4. Statutory and civil fines and penalties, including those pursuant to the Labor Code and Wage Orders of the Industrial Welfare Commission;
5. Prejudgment and post-judgment interest at the maximum legal rate;
6. Reasonable attorneys' fees as provided by statute;
7. Costs of suit incurred herein as authorized by statute;
8. Restitutionary relief as provided by the Labor and Business and Professions Codes;
9. Injunctive relief in the form of an order requiring Defendants to comply with California laws requiring that employees be compensated for all hours worked and that employees be reimbursed for all expenses incurred in the performance of their duties;
10. Injunctive relief enjoining Defendants from engaging in unfair business practices including retaliating against their employees, failing to pay wages in the manner prescribed by the Labor Code, and failing to reimburse employees for necessary expenditures; and
11. For such other and further relief as the Court deems fair and just.

Dated: September 15, 2023

SEIBERT • BAUTISTA • MONTOYA



Nina Montoya

Attorneys for Plaintiff Faith Strongheart

JURY TRIAL DEMANDED

Plaintiff hereby demands a jury trial as to all issues to which she is entitled.

Dated: September 15, 2023

SEIBERT • BAUTISTA • MONTOYA



Nina Montoya

Attorneys for Plaintiff Faith Strongheart