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13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15
16 FOR THE COUNTY OF LOS ANGELES

17 DAMIAN VEGA, individually and on behalf of
18 all others similarly situated,

19 Plaintiff,

20 v.

21 BULLITT, LLC, a Delaware Limited Liability
22 Company; TODD MAKURATH, an individual;
23 ANTHONY RUSSO; an individual, JOE
24 RUSSO, an individual, JUSTIN LIN, an
25 individual; and DOE 1 through and including
26 DOE 10,

27 Defendants.

Case No: 23STCV12992

*Assigned to the Hon. David S. Cunningham.
Dept. 11*

FIRST AMENDED COMPLAINT

1. Cal. Lab. Code (the “Code”) §§ 201.3,
201.5, 203 and/or 204 -- Continuing Wages

2. Code § 226(a), Failure to Provide
Compliant Wage Statements

3. Code §§ 226.7, 512 and Wage Order,
Failure to Provide Meal Breaks

4. Code § 226.7 and Wage Order, Failure to
Provide Rest Breaks

5. Cal. Lab. Code §§ 1194 and 1198 Failure
to Provide Pay Proper Minimum Wages

6. Code § 2802, Failure to Reimburse
Business Expenses

7. Code § 226(b), Payroll Records

8. Code § 1198.5, Personnel Records

9. Cal. Bus & Prof. Code §§ 17200 *et seq.* –
Restitution

10. Cal. Lab. Code §§ 2698 *et seq.*, PAGA.

JURY TRIAL DEMANDED

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

3 **JURISDICTION AND VENUE**

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

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

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

23 **THE PARTIES**

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

26 5. Defendant BULLITT, LLC (“BLLC”) is a Delaware Limited Liability Company, which
27 at all times relevant herein, conducted business within the County of Los Angeles, State of California
28 and produced a commercial entitled “VW #321” (“hereinafter the Production”).

6. Defendant Todd Makurath (“Makurath”) is a Founder/Chairman of BLLC.

7. Defendant Anthony Russo (“Russo”) is a Founder of BLLC.

8. Defendant Joe Russo (“Russo”) is a Founder of BLLC.

9. Defendant Justin Lin (“Lin”) is a Founder of BLLC.

10. In or around April of 2014, Captain America: The Winter Soldier directing duo Anthony and Joe Russo joined forces with Fast & Furious franchise helmer Justin Lin and producer and former Caviar COO Todd Makurath to form a branded entertainment production company Bullitt. The company’s aim was to create content for agencies, brands, and other businesses by well-known narrative feature and television directors, merging the entertainment and advertising worlds. As of early 2014 Bullitt had already partnered with Google ATAP and Harley-Davidson on campaigns integrating narrative content and is headquartered out of the offices of Ridley Scott’s commercials production company RSA. The strategic partnership between Bullitt and RSA came together under RSA President Jules Daly. Bullitt was represented by Maven Label, The House of Representatives, and Venable LLP. Lin was represented by CAA.

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

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

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

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

performs all of the following functions:

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

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

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

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

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

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

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

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

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

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

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

Code § 201.3.

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

14. 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

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

6 **GENERAL ALLEGATIONS**

7 15. Defendants employed Plaintiff during the class period as a crew member for the filming
8 for the Commercial entitled “VW #321” on November 22, 2022 and November 23, 222, as a crew
9 member on the Production. Once his employment ended, Defendants were required to pay him by the
10 next week on or before December 2, 2022. However, his check was not prepared until on or after
11 December 6, 2022. Defendants are routinely tardy in their wage payments to crew. Such tardy
12 payments were also made, for example, in connection with a commercial known as “USO #036” shot in
13 January of 2020; “Parking Lot #274” shot in October of 2020.

14 16. Although Plaintiff Vega should have been paid in full for the accrued minimum wages,
15 provided proper, uninterrupted meal periods and rest breaks, and issued final wages no later than as
16 required by Code § 201.5, he has yet to be paid the full amount of wages owing to him. The final
17 payment did not fully compensate Plaintiff for all outstanding wages. Plaintiff and Class Members have
18 as of the date of filing of this Complaint not been fully compensated for work performed for the
19 Defendants.

20 17. Plaintiff and Class Members, were also required to keep their walkie talkie radios or cell
21 phones with them at all times, including during meal and rest breaks. Some breaks were simply not
22 provided at all. This policy precluded Defendants from providing Plaintiff and others the ability to enjoy
23 legally compliant meal and rest breaks as required by California law. Augustus v. ABM Sec. Servs. Inc., 2
24 Cal. 5th 257, 260 (2016).

25 18. Plaintiff is typically hired as an employee on the production of filmed content. He
26 typically works under the direction and supervision of producers, directors, ad agencies and clients.
27 Some supplies and equipment were provided by Defendants and/or leased by them for use on the
28 Production. Some supplies and equipment were provided by Defendants, and some were provided by

1 Plaintiff, for which he subsequently requested reimbursement for such expenses. Defendants secured
2 and provided the location for the Production where the work took place.

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

8
9 **3. Hours and Days of Work.**

10 (A) Daily Overtime - General Provisions

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

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

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

28 (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

1 net rest time per four (4) hours or major fraction thereof. However, a rest period need not
2 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.

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

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

7 20. At all times relevant herein, section 201.5 of the Code provided in part:

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

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

10 (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
11 motion pictures.

12 (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.

13 (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.

14 (3) "Next regular payday" means the day designated by the employer, pursuant to Section
15 204, for payment of wages earned during the payroll period in which the termination
occurs.

16 (4) "Production or broadcasting of motion pictures" means the development, creation,
presentation, or broadcasting of theatrical or televised motion pictures, television
17 programs, commercial advertisements, music videos, or any other moving images,
including, but not limited to, productions made for entertainment, commercial, religious,
18 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
19 in use or may be adopted in the future.

20 (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
21 the time of the termination by the next regular payday.

22 (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
23 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
24 employee or made available to the employee at the location specified by the employer,
whichever is earlier.

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

27 (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
28

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 201.3, 201.5 and/or 204.

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 Code.

23. At all times relevant herein, section 204 of the 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.

Code § 204.

24. In no event should Plaintiff or Class Members have been paid later than the time periods established by sections 201.3, 201.5 and/or 204 of the 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 Code, all as described in the Naranjo v. Spectrum Security Services, Inc., 13 Cal. 5th 93 (2022).

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

In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as

1 follows: (a) For any initial violation, one hundred dollars (\$100) for each failure to pay
2 each employee; (b) For each subsequent violation, or any willful or intentional violation,
3 two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the
4 amount unlawfully withheld.

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

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

14 27. Defendants implemented a timekeeping system that does not permit employees to track
15 and record their actual hours worked insofar as all are required to report meal breaks of exactly thirty
16 minutes. This policy and practice has the routine and recurrent impact of artificially insulating the
17 employer from incurring additional expense on account of tardy, missed, interrupted and/or short meal
18 periods and depriving compensation for all hours worked. Further, the workers are logged on the clock
19 only at artificially created "call times" which do not reflect when the work day commenced.

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

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

(b) An employer shall not require an employee to work during a meal or rest or recovery
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.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited 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, 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.

Code § 226.7.

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

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

....

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

....

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

Code § 226. Defendants employed Plaintiff and 226 Class Members, but, in all cases, Defendants failed to provide them with the data required by section 226(a) of the Code. Defendants did not provide a wage statement which identifies the legal name and address of the employer, instead listing one entity as

1 the “Payroll Employer” and another as the “Controlling Employer,” as well as failing to describe the
2 inclusive dates of the pay period. Rather, they engaged in a practice of substituting the days worked, all
3 of which prevents the worker from determining “from the wage statement alone” when their wages were
4 due and whether they were paid all overtime wages which accrued during the pay period, all in violation
5 of the plain statutory language. All of the foregoing was intentional misconduct of Defendants that
6 injured Plaintiff and Class Members insofar as they were subjected to confusion and deprived of
7 information to which they were legally entitled.

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

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

19 Cal. Lab. Code § 510.

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

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

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

Code § 1194.

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

(a) An employer shall indemnify his or her employee for all necessary

expenditures or losses incurred by the employee in direct consequence of the discharge of his or duties

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

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

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 other motion picture production equipment and supplies. Cell phones are required for onboarding; preparation of time cards; and other, routine, on-the-job communications with other members of the crew.

34. At all relevant times mentioned herein, section 558 of the 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.

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 Code referenced herein.

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

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

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

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

Code § 558.1. Upon information and belief, Defendants were joint employers or other persons acting on

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

6 36. At all relevant times mentioned herein, section 2810.3 of the Code 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
9 contractor.

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
14 pursuant to wage orders by the Industrial Welfare Commission described in Section 515.

15 (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.

16 (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:

17 (1) The payment of wages.

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

19 (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.

20 (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).

21 (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.

22 (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.

23 ...

24 Code § 2810.3. The manufacturer Volkswagen Group/or distributor of Volkswagen vehicles was the
25 client employer and Class Members, and Defendants were the labor contractors

26 **CLASS-ACTION ALLEGATIONS**

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

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

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

8 All persons paid wages on account of services provided for Defendant BLLC in the production
9 of Motion Pictures in California during the period beginning no earlier than four years and 180
10 days prior to the filing hereof to the date of a decision on a Motion for Class Certification (such
persons are referred to as “17200 Class Members,” and such period is referred to hereafter as the
“Class Period”).

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

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

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

18 39. 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. For example, with respect to the wage statements issued to other for their work on
22 January 18, 2022, the defense listed a faux, single-day pay period, “01/18/2020 - 01/18/2020.” On wage
23 statements issued to others, in connection with commercials for such entities as USO in 2020 to an
24 October 2021 commercial known as “QVC + HSN #309,” the Defendants advised workers that their
25 “Pay Frequency” was “W[EEKLY]”. Inexplicably, commencing in around April 2022, this information
26 was removed from Defendants’ wage statements.

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

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

4 41. Defendants, as to Plaintiff and 17200 Class Members, failed to provide meal and rest
5 breaks as required by sections 226.7, 512 of the Code and Wage Order 12, and, accordingly,
6 Defendants' failure to provide meal and rest breaks entitles Plaintiff and 17200 Class Members to either
7 actual damages or statutory damages, whichever is greater, as well as continuing wages for which
8 provision is made by Naranjo.

9 **A. Numerosity**

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

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

20 **B. Commonality**

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

24 a. Whether Defendants failed to pay all wages in a timely fashion upon the discharge of
25 Code Class Members, all in violation of sections 201.3, 201.5, 203 and/or 204 of the Code.

26 b. Whether Defendants failed to pay all wages during employment, all in violation of
27 sections 204 and 210 of the Code.
28

1 c. Whether Defendants' failure to provide accurate itemized wage statements to 226 Class
2 Members violates section 226.

3 d. Whether Defendants failed to provide meal breaks to 17200 Class Members.

4 e. Whether Defendants failed to provide rest breaks to 17200 Class Members.

5 f. Whether Defendants failed to pay proper minimum wages to Code Class Members under
6 Code sections 1194 and 1194.2.

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

9 **C. Typicality**

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

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

19 **D. Adequacy of Representation**

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

23 **E. Superiority of Class Action**

24 48. A class action is superior to other available means for the fair and efficient adjudication
25 of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and
26 fact common to the Class predominate over any questions affecting only individual members of the
27 Class. Each member of the Class has been damaged and is entitled to recovery by reason of Defendants'
28 illegal policy and/or practice of failing to pay hourly wages, failing to pay overtime wages, failing to

1 provide Class Members rest and meal periods without legal compensation. Class action treatment will
2 allow those similarly situated persons to litigate their claims in the manner that is most efficient and
3 economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely
4 to be construed in the management of this action that would preclude its maintenance as a class action.
5 The disposition of all claims of the members of the Class in a class action, rather than in individual
6 actions, benefits the parties and the Court. The interest of the Class Members in controlling the
7 prosecution of separate claims against Defendants is small when compared with the efficiency of a class
8 action.

9 **FIRST CAUSE OF ACTION**

(Continuing Wages, Code § 201.3, 201.5, 203, 204

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

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

13 50. Defendants employed Plaintiff as a crew member. Plaintiff was not paid all wages
14 accrued upon separation from employment and not paid all wages accrued once the production ended.

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

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

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

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SECOND CAUSE OF ACTION

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

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

55. Defendants failed to provide Plaintiff and 226 Class Members with wage statements conforming to the requirements of section 226(a) of the Code. For a majority of the workers, the wage statements fail to provide a statement of all gross and net wages, or all deductions, as the information concerning payments to union health and pension plans is not presented.

56. 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. Further, with respect to guild and union workers, the wage statements fail to provide information regarding all gross or net wages or all deductions as the wage statements as the wage statements fail to reflect wages earned in connection with funds accrued for payment to pension and health funds or that these amounts are deducted from wage payments.

57. 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, Code §§ 226.7 and 512 and Wage Order
On Behalf of Plaintiff and the 17200 Class Against Defendants)

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

3 59. At all times herein relevant, sections 226.7 and 512 of the Code and IWC Wage Order 12
4 provided that those employees must receive meal periods of not less than thirty minutes if an employee
5 works for a period of more than six hours and a second thirty-minute meal period after no less than six
6 hours after the termination of the preceding meal period. By its failure to provide minimum statutory
7 meal periods to Plaintiff and Class Members, Defendants willfully violated the provisions of Code sections
8 226.7 and 512, and IWC Wage Order 12.

9 60. Defendants failed to apprise Plaintiff and 17200 Class Members of their rights associated
10 with meal periods and failed to provide timely meal periods. Defendants have had a consistent policy of:
11 (1) requiring all workers to take late meal breaks that occurred after the first 6 hours of each shift; (2)
12 required Aggrieved Employees to work shifts over 12 hours without providing a second meal period of
13 30 minutes in length; and (3) failed to pay such employees 1 hour of pay at the employees regular rate of
14 compensation for each workday in which a proper meal break was not provided. Plaintiff and Class
15 Members were not permitted to leave the set of the Production for meal periods.

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

19 62. As a result of the unlawful acts of Defendants, Plaintiff and 17200 Class Members have
20 been deprived of premium wages, and/or other compensation in amounts to be determined at trial, and are
21 entitled to recovery of such amounts, in an amount of not less than \$35,000 for Plaintiff, plus interest
22 thereon, and costs.

23
24 **FOURTH CAUSE OF ACTION**

25 (Failure to Provide Rest Breaks, Code § 226.7 and IWC Wage Order)

26 On Behalf of Plaintiff and the 17200 Class Against Defendants)

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

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

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

66. Plaintiff and Class Members were not permitted to leave the set of the Production for any purported rest periods. They were required to be available via radio or personal cell phone at all times, yes were not reimbursed for the expense of owning and maintaining a personal cell phone.

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

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

FIFTH CAUSE OF ACTION
(Damages for Unpaid Minimum Wages,
Code §§ 1194, 1194.2 and 1198

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

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

70. Plaintiff and the 17200 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.

71. Plaintiff and Code Class Members are entitled to recover liquidated damages under section 1194.2 of the 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 Code.

SIXTH CAUSE OF ACTION

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

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

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

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

SEVENTH CAUSE OF ACTION

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

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

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

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

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

EIGHTH CAUSE OF ACTION

(Failure to Provide Employment Records Upon Request Code § 1198.5
On Behalf of Plaintiff Against All Defendants)

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

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

3 81. Plaintiff requested that Defendants permit inspection or copying of the personnel records
4 pursuant to Code section 1198.5. Defendants have failed to provide Plaintiff with an opportunity to
5 inspect or copy the employment records within 30 days of the request.

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

9
10 **NINTH CAUSE OF ACTION**

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

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

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

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

22 86. As a result of Defendants' unfair and unlawful business practices, Defendants have
23 reaped unfair and illegal profits during the relevant time period herein at the expense of Plaintiff and the
24 17200 Class Members and members of the public. Defendants should be made to disgorge its ill-gotten
25 gains and to restore them to Plaintiff and the 17200 Class Members.

26 87. The actions of Defendants entitle Plaintiff to seek the remedies available under section
27 17200 *et seq.* Plaintiff seeks full restitution of said amounts from Defendants, as necessary and
28 according to proof, to restore any and all amounts—including interest—withheld, acquired, or converted
by Defendants by means of the unfair practices complained of herein. Plaintiff, on behalf of himself, as

1 well as on behalf of the general public, further seeks attorney's fees and costs pursuant to sections 218.5
2 of the Code and 1021.5 of the Code of Civil Procedure. In addition, Plaintiff seeks the appointment of a
3 receiver as necessary.
4

5
6 **TENTH CAUSE OF ACTION**

(Code § 2698 et seq. Civil Penalties

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

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

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

15 90. At all relevant times, Code section 2699.3(a)(2)(A) provided:

16 The agency shall notify the employer and the aggrieved employee or representative by
17 certified mail that it does not intend to investigate the alleged violation within 60 calendar
18 days of the postmark date of the notice received pursuant to Paragraph (1). Upon receipt
19 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.

20 Code § 2699.3(a)(2)(A). After sixty-five (65) calendar days from the postmark date of the notice sent by
21 Plaintiff, Plaintiff may "commence a civil action pursuant to Section 2699." Code § 2699.3(a)(2)(A).
22 Once more than sixty-five calendar days have passed since Plaintiff gave written notice of the PAGA
23 violations to the LWDA and Defendants.

24 91. Plaintiff seeks to recover the PAGA civil penalties through a representative action
25 permitted by PAGA and the California Supreme Court in Arias v. Superior Court, 46 Cal. 4th 969
26 (2009). Therefore, class certification of the PAGA claims is not required.

27 92. Plaintiff seeks to bring a representative action on behalf of himself and the State of
28 California as well as on behalf of a group of Aggrieved Employees defined as: Plaintiff and/or other

persons who performed services for Defendant BLLC as a motion picture production crew member in California (“Aggrieved Employees”) during the period from one year prior to the filing of the PAGA Notice until this case is resolved.

93. Attached hereto as **Exhibit 1** is a true and correct copy of the PAGA Notice that was submitted to the LWDA and served on Defendants. Plaintiff will seek to recover the PAGA penalties through a representative action permitted by PAGA and the California Supreme Court in Arias v. Superior Court, 46 Cal. 4th 969 (2009) and Huff v. Securitas Sec’y Servs. USA, Inc., 23 Cal. App. 5th 745, 756 (2018). Plaintiff will seek civil penalties pursuant to PAGA for violations of the following Labor Code provisions:

1. Failure to provide payroll records in violation of Code § 226(b).

Employers must afford current and former employees the right to inspect or copy the records pertaining to that current or former employee, upon reasonable request to the employer. Upon information and belief, other Aggrieved Employees have requested their payroll records but have not been given access to them pursuant to section 226(b). Code § 2699(f)(2) imposes a civil penalty of \$100 per pay period per Aggrieved Employee for initial violations, and \$200 per pay period per Aggrieved Employee for subsequent violations for all Code provisions for which a civil penalty is not specifically provided.

2. Failure to personnel records in violation of Code § 1198.5.

Employers must afford current and former employees the right to inspect or copy the personnel records pertaining to that current or former employee, upon reasonable request to the employer. Aggrieved Employees have requested but have not been provided with an opportunity to inspect or copy all personnel records within 30 days of request. Upon information and belief, other Aggrieved Employees have requested their personnel records but have not been given access to them pursuant to section 1198.5. Code § 2699(f)(2) imposes a civil penalty of \$100 per pay period per Aggrieved Employee for initial violations, and \$200 per pay period per Aggrieved Employee for subsequent violations for all Code provisions for which a civil penalty is not specifically provided.

3. Failure to provide records in violation of Code § 432.

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

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

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

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

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

amount unlawfully withheld.

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

With respect to violations of Code §§ 201.3 and 201.5, the failure of Defendants to make final payments within the time provided for has been and is “willful” within the meaning of such word as used in Section 203 of the Code. Code section 203 provides that if “an employer willfully fails to pay...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.”

Here, Plaintiff and Aggrieved Employees were not timely paid all wages due upon their separation from Defendants’ employ. For example, Plaintiff Vega was paid over 14 days after he last worked. As such, Defendants failed to pay Plaintiff and Aggrieved Employees all wages due at the time of termination, within seventy-two (72) hours of resignation, or as otherwise required by the Code and have failed to pay those sums for thirty (30) days thereafter in violation of Code § 203.

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

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

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

- a. The wage statements failed to include, among other required information, the “name and address of the legal entity that is the employer” as it
 - does not reflect the full legal name of the employer
 - misstates that the employer is only a “Client”
- b. The wage statements failed to include, among other required information, “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee” such as the double time rate.
- c. The wage statements failed to include, among other required information, the “the rate of pay and the total hours worked for each temporary services assignment”
- d. The wage statements, for guild and union workers, fail to include all gross or net wages or all deductions as the wage statements fail to reflect wages earned in connection with funds accrued for payment to pension and health funds or that these amounts are deducted from wage payments to union and guild workers.

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

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

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

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

8. Failure to furnish information under Code § 2810.5.

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

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

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

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

Aggrieved Employees were not provided with timely meal periods in violation of Code section 226.7 and Applicable Wage Order section 11. For example, Plaintiffs worked over 6 or 12 hours in a day but were not provided with compliant meal break(s) and were not otherwise compensated.

Aggrieved Employees were not permitted to leave the production set for meal periods.

Code §§ 226.7, 512 and Section 12 of the Applicable Wage Order require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Section 12 requires that “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.” Defendants failed to maintain a policy informing all Aggrieved Employees of these rights.

Here, Defendants failed to apprise all Aggrieved Employees of their rights associated with meal periods and failed to provide timely meal periods, often calling for “grace” – a procedure which might provide delay in the commencement of a meal break for certain union members, but not for those like Plaintiff who were not union members—all with the end result that on such days on which “grace” has been called all non-union crew should be paid an additional hour of compensation. Defendants have had a consistent policy of: (1) requiring all Aggrieved Employees 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 30 minutes in length; and (3) failed to pay such employees 1 hour of pay at the employees regular rate of compensation for each workday in which a proper meal break was not provided.

Additionally, Defendants maintained a policy of automatically deducting 30 minutes from each shift that Plaintiffs and the Aggrieved Employees worked. This “auto-deduct” policy was unlawful and did not account for whether the employees took their meal periods, took meal periods late, were interrupted with work, and/or took meal periods of less than 30 minutes. Code section 2699(f)(2)

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

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

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

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

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

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

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

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

19 **12. Failure to pay minimum and overtime wages in violation of Code §§ 510, 515, 558,
20 1194, and 1198.**

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

Here, Plaintiffs and other Aggrieved Employees were not paid at the proper corresponding rate
for all hours worked, including overtime as Plaintiffs were not paid the correct double time rate.

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

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

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

1 **14. Personal Liability of Defendants under Code § 558.**

2 Todd Makurath, Agent and Founder/Chairman of BLLC; Anthony Russo, Founder and Officer
3 of BLLC; Joe Russo, Founder and Officer of BLLC; Justin Lin, Founder and Officer of BLLC, were
4 employers and/or “other persons acting on behalf of an employer who violates, or causes to be violated,
5 a section of this chapter or any provision regulating hours and days of work in any order of the Industrial
6 Welfare Commission” as agents or officers acting on behalf of Defendant BLLC who controlled the
7 payment of wages. Under Code § 558, Defendants are responsible for the civil penalties for violation of
8 minimum wages, overtime wages, meal and rest breaks, and reporting time pay.

9 Aggrieved Employees are entitled to recover as follows:

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

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

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

18 **15. Personal Liability of Defendants under Code § 1197.1**

19 Todd Makurath, Agent and Founder/Chairman of BLLC; Anthony Russo, Founder and Officer
20 of BLLC; Joe Russo, Founder and Officer of BLLC; Justin Lin, Founder and Officer of BLLC, were
21 employers and/or “other persons acting either individually or as officers, agents, or employees of
22 another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by
23 an applicable state or local law, or by an order of the Commission.” Defendants are agents or officers
24 acting on behalf of Defendant BLLC and had control over the payment of wages and intentionally
25 caused Aggrieved Employees to be paid less than was required by the Code and the Applicable Wage
26 Order. Defendant is responsible for minimum wage restitution, liquidated damages and Code § 203
27 penalties. Aggrieved Employees are entitled to recover as follows:

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

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

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

94.

WHEREFORE, Plaintiff prays judgment as follows:

1. That the Court certify a Class Action.

2. That, under the First Cause of Action, it be adjudged that the failure of Defendants to
make payment of Plaintiff’s and Code Class Members’ wages was in violation of sections 201.3, 201.5,

203 and/or 204 of the Code, and was “willful” as that word is used in section 203 of the Code, and that the Court enter judgment against Defendants in favor of Plaintiff and Code Class Members. That judgment be entered in favor of Plaintiff, of not less than \$30,000, and Code Class Members in an amount prescribed by section 203 of the Code, and costs and reasonable attorneys’ fees in accordance with the provisions of Code section 218.5.

3. That, under the Second Cause of Action, this Court enter judgment in favor of Plaintiff, of at least \$50, not including interest thereon, reasonable attorneys’ fees and cost of suit, and enter judgment in favor of the 226 Class Members against Defendants in the amount of damages, interest, and costs, according to proof, not less than \$100,000 for the 226 Class, and costs and reasonable attorneys’ fees in accordance with the provisions of Code section 226(e).

4. That, under the Third Cause of Action, this Court enter judgment in favor of Plaintiff and the Code Class Members and award them their damages, penalties, and costs of suit, all according to proof, in an amount of not less than \$35,000, pursuant to section 218.5 and other relevant sections of the 17200.

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

6. That, under the Fifth Cause of Action, this Court enter judgment in favor of Plaintiff and the Code Class Members and award them their damages, penalties, liquidated damages, reasonable attorney’s fees and costs of suit, all according to proof, of no less than \$333 for Plaintiff, pursuant to section 218.5, 1194, 1194.2 and other relevant sections of the Code.

7. That, with respect to the Sixth Cause of Action, this Court enter judgment in favor of Plaintiff and 17200 Class Members against all Defendants in an amount according to proof, interest thereon, costs and reasonable attorney’s fees in accordance Code section 2802(c).

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

9. That, with respect to the Eighth Cause of Action, this Court enter judgment in favor of

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

3 10. That, under the Ninth Cause of Action, it be adjudged that Defendants' violations of the
4 applicable Wage Order and above cited sections of the Code and violated section 17200 *et seq.* of the
5 California Business and Professions Code. Accordingly, Plaintiff requests that the Court order
6 Defendants to pay restitution with interest to Plaintiff and the 17200 Class Members. Finally, Plaintiff
7 requests that the Court award Plaintiff's reasonable attorneys' fees and costs, pursuant to section 218.5
8 of the Code and section 1021.5 of the California Code of Civil Procedure.

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

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

16 DATED: October 6, 2023

HARRIS & RUBLE



Alan Harris
Attorney for Plaintiff

Exhibit 1

HARRIS & RUBLE

ATTORNEYS AND COUNSELORS AT LAW

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SUBMITTED ONLINE

June 13, 2023

California Labor & Workforce Development Agency

Re: *Vega v. Bullitt, LLC et al.* – PAGA Notice

To whom it may concern:

Pursuant to the applicable provisions of the California Labor Code Private Attorneys General Act, Damian Vega (“Plaintiff”) hereby alleges with respect to his employment with Bullitt, LLC, Todd Makurath, Anthony Russo, John Russo, Justin Lin, and Does 1 to 10 (collectively “Defendants”), that Defendants violated provisions of the California Labor Code (hereinafter the “Code”) and applicable Industrial Welfare Commission Wage Order 12 (“Applicable Wage Order”).

Defendant Bullitt, LLC (“BLLC”) is a Delaware Limited Liability Company, which at all times relevant herein, conducted business within the County of Los Angeles of the State of California. Defendant Todd Makurath (“Makurath”) is an Agent and Founder/Chairman of BLLC. Defendant Anthony Russo (“Russo”) is a Founder and Officer acting on behalf of BLLC. Defendant Joe Russo (“Russo”) is a Founder and Officer acting on behalf of BLLC. Defendant Justin Lin (“Lin”) is a Founder and Officer acting on behalf of BLLC and are responsible for BLLC. Plaintiff is currently ignorant of the true names and capacities, whether individual, corporate, associate, or otherwise, of the defendants named herein under fictitious names and therefore gives notice of the existence of such other defendants by such fictitious names. Plaintiff will seek leave to amend this PAGA Notice to allege the true names and capacities of said fictitiously named defendants when their true names and capacities have been ascertained. Plaintiff is informed, believes and thereon alleges that each of the fictitiously named defendants

is legally responsible in some manner for the events and occurrences alleged herein, and for the damages suffered by Plaintiff and other employees.

Defendants employed Plaintiff during the class period as a crew member for the filming for the Commercial entitled “VW #321” on November 22, 2022 and November 23, 2022, as a crew member on the Production. Once his employment ended, Defendants were required to pay him by the next week on or before December 2, 2022. However, his check was not prepared until on or after December 6, 2022.

Plaintiff and other crew members worked on the Production but were paid late. Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of a group of Aggrieved Employees defined as: Plaintiff and/or other persons who performed services as nonexempt workers on the Production or other such projects produced in California by BLLC during the period from one year prior to the filing of the PAGA Notice until this case is resolved (“Aggrieved Employees”).

California law provides that:

[i]f an employee of a temporary services employer is assigned to work for a client, that employee’s wages are due and payable no less frequently than weekly, regardless of when the assignment ends, and wages for work performed during any calendar week shall be due and payable not later than the regular payday of the following calendar week. A temporary services employer shall be deemed to have timely paid wages upon completion of an assignment if wages are paid in compliance with this subdivision.

(Cal. Lab. Code § 201.3(b)(1)(A)).

[i]f an employee of a temporary services employer in the security services industry is a security guard who is registered pursuant to Chapter 11.5 (commencing with Section 7580) of Division 3 of the Business and Professions Code, is employed by a private patrol operator licensed pursuant to that chapter, and is assigned to work for a client, that employee’s wages are due and payable no less frequently than weekly, regardless of when the assignment ends, and wages for work performed during any workweek, as defined under Section 500, shall be due and payable not later than the regular payday of the following workweek.

(Cal. Lab. Code § 201.3(b)(1)(B)) (emphasis added).

Defendant BLLC is a temporary service employer within the meaning of Labor Code § 201.3, and Defendant does not fall within any of the exceptions for the payment of wages to its employees. Defendant employs/employed Plaintiff and other aggrieved employees to work as crew members of the Production.

On a regular and consistent basis, for all aggrieved employees employed by Defendant, Defendant has failed to comply with Labor Code section 201.3. Plaintiff and the other aggrieved employees are/were paid more frequently than weekly. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code §201.3(b)(1)(A) and Labor Code § 201.3(b)(1)(B) with respect to Plaintiff and all Aggrieved Employees.

On a regular and consistent basis, for all Aggrieved Employees employed by Defendants, Defendants have failed to comply with Labor Code section 201.3.

Labor Code § 2810.3 requires a client employer to share with a labor contractor all civil legal responsibility and civil liability for all workers supplied by that labor contractor for, among other things, the payment of wages and failure to secure valid workers' compensation coverage. A "labor contractor" is defined as 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." A "client employer" is defined as "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."

Here, Volkswagen Group of America and its agents were the joint employers and client employers of Plaintiff and BLCC was an employer and labor contractor. BLCC was contracted to supply personnel for a number of the productions in California. Volkswagen and its agents are a company in which motion picture production of new media filmed entertainment like the Volkswagen commercial are "within [their] usual course of business." Volkswagen is responsible for all civil legal responsibility and liability for all workers supplied by BLCC for violations related to the payment of wages under the Labor Code. On June 13, 2023, Plaintiff gave written notice to Volkswagen under section 2810.3.

Here, Defendants are a staffing agency that served as a labor contractor covered by Labor Code §2810.3. Defendant provided workers to client employers to be used in the client employers' usual course of business in California. Defendant attempts to abrogate the liability of a contract employer by requiring Plaintiff and the aggrieved employees to sign a contract in which Defendant assumes sole responsibility for Plaintiff and the aggrieved employees in violation of Labor Code § 2810.3.

Plaintiff and other Aggrieved Employees worked many hours on the Production but were not timely paid for their work or paid certain sums at all. Plaintiff contends that the Labor Code sections listed below, and the Applicable Wage Order enables Plaintiff to recover civil penalties under PAGA, as well as attorneys' fees and costs from Defendants through a civil action on behalf of all Aggrieved Employees.

Plaintiff will seek to recover the PAGA penalties through a representative action permitted by PAGA and the California Supreme Court in Arias v. Superior Court, 46 Cal. 4th 969 (2009) and Huff v. Securitas Sec'y Servs. USA, Inc., 23 Cal. App. 5th 745, 756 (2018). Plaintiff will seek civil penalties pursuant to PAGA for violations of the following Labor Code provisions:

1. Failure to provide payroll records in violation of Code § 226(b).

Employers must afford current and former employees the right to inspect or copy the records pertaining to that current or former employee, upon reasonable request to the employer. Upon information and belief, other Aggrieved Employees have requested their payroll records but have not been given access to them pursuant to section 226(b). Code § 2699(f)(2) imposes a civil penalty of \$100 per pay period per Aggrieved Employee for initial violations, and \$200 per pay period per Aggrieved Employee for subsequent violations for all Code provisions for which a civil penalty is not specifically provided.

2. Failure to personnel records in violation of Code § 1198.5.

Employers must afford current and former employees the right to inspect or copy the personnel records pertaining to that current or former employee, upon reasonable request to the employer. Aggrieved Employees have requested but have not been provided with an opportunity to inspect or copy all personnel records within 30 days of request. Upon information and belief, other Aggrieved Employees have requested their personnel records but have not been given access to them pursuant to section 1198.5. Code § 2699(f)(2) imposes a civil penalty of \$100 per pay period per Aggrieved Employee for initial violations, and \$200 per pay period per Aggrieved

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

3. Failure to provide records in violation of Code § 432.

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

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

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

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

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

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

With respect to violations of Code §§ 201.3 and 201.5, the failure of Defendants to make final payments within the time provided for has been and is “willful” within the meaning of such word as used in Section 203 of the Code. Code section 203 provides that if “an employer willfully fails to pay...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.”

Here, Plaintiff and Aggrieved Employees were not timely paid all wages due upon their separation from Defendants’ employ. For example, Plaintiff Vega was paid over 14 days after he last worked. As such, Defendants failed to pay Plaintiff and Aggrieved Employees all wages due at the time of termination, within seventy-two (72) hours of resignation, or as otherwise required by the Code and have failed to pay those sums for thirty (30) days thereafter in violation of Code § 203.

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

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

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

- a. The wage statements failed to include, among other required information, the “name and address of the legal entity that is the employer” as it
 - does not reflect the full legal name of the employer
 - misstates that the employer is only a “Client”
- b. The wage statements failed to include, among other required information, “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee” such as the double time rate.
- c. The wage statements failed to include, among other required information, the “the rate of pay and the total hours worked for each temporary services assignment”
- d. The wage statements, for guild and union workers, fail to include all gross or net wages or all deductions as the wage statements fail to reflect wages earned in connection with funds accrued for payment to pension and health funds or that these amounts are deducted from wage payments to union and guild workers.

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

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

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

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

8. Failure to furnish information under Code § 2810.5.

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

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

- e) The telephone number of the employer.
- f) The name, address, and telephone number of the employer's workers' compensation insurance carrier.
- g) That an employee: may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

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

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

Aggrieved Employees were not provided with timely meal periods in violation of Code section 226.7 and Applicable Wage Order section 11. For example, Plaintiffs worked over 6 or 12 hours in a day but were not provided with compliant meal break(s) and were not otherwise compensated. Aggrieved Employees were not permitted to leave the production set for meal periods.

Code §§ 226.7, 512 and Section 12 of the Applicable Wage Order require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Section 12 requires that "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." Defendants failed to maintain a policy informing all Aggrieved Employees of these rights.

Here, Defendants failed to apprise all Aggrieved Employees of their rights associated with meal periods and failed to provide timely meal periods, often calling for "grace" – a procedure which might provide delay in the commencement of a meal break for certain union members, but not for those like Plaintiff who were not union members—all with the end result that on such days on which "grace" has been called all non-union crew should be paid an additional hour of compensation. Defendants have had a consistent policy of: (1) requiring all Aggrieved Employees 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 30 minutes in length; and (3) failed to pay such employees 1 hour of pay at the employees regular rate of compensation for each workday in which a proper meal break was not provided.

Additionally, Defendants maintained a policy of automatically deducting 30 minutes from each shift that Plaintiffs and the Aggrieved Employees worked. This "auto-deduct" policy was unlawful and did not account for whether the employees took their meal periods, took meal periods late, were interrupted with work, and/or took meal periods of less than 30 minutes. Code section 2699(f)(2) imposes a civil penalty of \$100 per pay period per Aggrieved Employee for initial violations, and \$200 per pay period per Aggrieved Employee for subsequent violations for all Code provisions for which a civil penalty is not specifically provided.

10. Failure to provide proper rest periods under Code § 226.7 and Wage Order § 12.

All Aggrieved Employees were not provided with timely rest periods in violation of Code section 226.7 and Applicable Wage Order section 12. Aggrieved Employees were not permitted to leave the set of the Production for any purported rest periods. They were required to be available via radio or cell phone at all times. Plaintiffs and Aggrieved Employees were neither informed of nor otherwise provided with compliant rest breaks. Defendants failed to provide all

Aggrieved Employees with rest breaks of not less than 10 minutes per 4-hour work period, or major fraction thereof. On a regular and consistent basis, Defendants failed to provide all Aggrieved Employees with a third rest period despite regularly requiring Aggrieved Employees to work over 10 hours. As such, Defendants failed to provide all Aggrieved Employees with compliant rest periods. Further, Plaintiffs and the Aggrieved Employees were not compensated with 1 hour of wages for each missed rest period as required by Code § 226.7.

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

11. Failure to reimburse necessary business expenses under Code § 2802.

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

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

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

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

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

Here, Plaintiffs and other Aggrieved Employees were not paid at the proper corresponding rate for all hours worked, including overtime as Plaintiffs were not paid the correct double time rate.

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

13. Failure to keep complete and accurate payroll records.

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

14. Personal Liability of Defendants under Code § 558.

Todd Makurath, Agent and Founder/Chairman of BLLC; Anthony Russo, Founder and Officer of BLLC; Joe Russo, Founder and Officer of BLLC; Justin Lin, Founder and Officer of BLLC, were employers and/or “other persons 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” as agents or officers acting on behalf of Defendant BLLC who controlled the payment of wages. Under Code § 558, Defendants are responsible for the civil penalties for violation of minimum wages, overtime wages, meal and rest breaks, and reporting time pay.

Aggrieved Employees are entitled to recover 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(a).

15. Personal Liability of Defendants under Code § 1197.1

Todd Makurath, Agent and Founder/Chairman of BLLC; Anthony Russo, Founder and Officer of BLLC; Joe Russo, Founder and Officer of BLLC; Justin Lin, Founder and Officer of BLLC, were employers and/or “other persons acting either individually or as officers, agents, or employees of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the Commission.” Defendants are agents or officers acting on behalf of Defendant BLLC and had control over the payment of wages and intentionally caused Aggrieved Employees to be paid less than was required by the Code and the Applicable Wage Order. Defendant is responsible for minimum wage restitution, liquidated damages and Code § 203 penalties. Aggrieved Employees are entitled to recover as follows:

- (1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.
- (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.
- (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.

Cal. Lab. Code § 1197.1(a).

Emergency Rule 9 as promulgated by the Judicial Council of California and amended May 29, 2020, provides: “Notwithstanding any other law, the statutes of limitations and repose

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

Please advise whether you will proceed with an investigation of this matter or whether Plaintiff Vega may seek a civil-penalty recovery for the alleged violations under the Labor Code Private Attorneys General Act through his private counsel.

Very truly yours,

/s/ Alan Harris

Alan Harris

Cc: (Via Certified Mail) Bullitt, LLC, c/o Todd Makurath, 1633 Cosmo St. Hollywood, CA, 90028; Todd Makurath, 21609 Pacific Coast Hwy, Malibu, CA, 90265; Anthony Russo, 11150 W. Olympic, Blvd. Ste. 1000, Los Angeles, CA, 90064; Joe Russo, 11150 W. Olympic, Blvd. Ste. 1000, Los Angeles, CA, 90064; Justin Lin, 2397 Silver Lake Blvd. Apt. 21, Los Angeles, CA, 90039.

1 **PROOF OF SERVICE**

2 I am an attorney for the plaintiff(s) herein, over the age of eighteen years, and not a party to the within
3 action. My business address is Harris & Ruble, 655 N. Central Ave., 17th Floor, Glendale CA, 91203.
4 On October 6, 2023, I served the within documents:

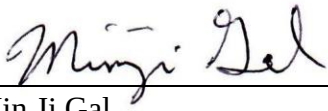
5 **FIRST AMENDED COMPLAINT**

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

9 SCOTT WITLIN (SBN 137413)
10 MICHAEL WITCZAK (SBN 329960)
11 BARNES & THORNBURG LLP
12 2029 Century Park East, Ste. 300
13 Los Angeles, CA 90067
14 Telephone: (310) 284-3777
15 Facsimile: (310) 2894-3894
16 Scott.witlin@btlaw.com
17 michael.witczak@btlaw.com

18 Attorneys for Defendant Magnetic Field fka as
19 Bullitt, LLC

20 I declare under penalty of perjury that the above is true and correct. Executed on October 6, 2023, at
21 Los Angeles, California.

22 
23 Min Ji Gal