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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

10 B. ZUCKER, A. SIMMS, and M. BONNER,
11 individually and on behalf of all others similarly
12 situated,

12 Plaintiffs,

13 v.

14 MORTON JANKEL ZANDER, INC., a
15 California Limited Liability Company; DAVID
16 ZANDER, an individual; DOE 1 through and
17 including DOE 10,

17 Defendants.

Case No: 23STCV00262

Assigned to the Hon. Maren E. Nelson, Dept. 17

FIRST AMENDED COMPLAINT

1. Cal. Lab. Code (the “Code”) §§ 201.3, 201.5 and 203 Continuing Wages
2. Cal. Lab. Code §§ 226.7, 512 and Wage Order 12, Failure to Provide Meal Breaks
3. Cal. Lab. Code § 226.7 and Wage Order 12, Failure to Provide Rest Breaks
4. Cal. Lab. Code §§ 1194 and 1198 Failure to Provide Pay Proper Minimum Wages
5. Cal. Lab. Code § 2802, Failure to Reimburse Business Expenses
6. Cal. Lab. Code § 226(b), Payroll Records
7. Cal. Lab. Code § 1198.5, Personnel Records
8. Cal. Bus & Prof. Code §§ 17200 *et seq.* – Restitution
9. Cal. Lab. Code §§ 2698 *et seq.*, PAGA
10. Fair Labor Standards Act, 29 U.S.C. §.201 *et seq.*
11. Cal. Lab Code § 226(a), Wage Statements

JURY TRIAL DEMANDED

1 Plaintiffs Arthur Simms (“Simms”), Michael Bonner (“Bonner”) and Benjamin Zucker
2 (“Zucker”) (collectively, “Plaintiffs”), by and through their undersigned attorneys, allege as follows:

3 **JURISDICTION AND VENUE**

4 1. This is an action under the California Labor Code Private Attorneys General Act
5 (“PAGA”), seeking unpaid wages, damages, continuing wages, liquidated damages, civil penalties,
6 statutory penalties and attorneys’ fees and costs. Plaintiffs Bonner and Simms have provided statutory
7 notice to the California Labor and Workforce Development Agency (“LWDA”) of the claims set forth in
8 this 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 Plaintiffs and the Aggrieved Employees.

14 3. Emergency Rule 9 as promulgated by the Judicial Council of California, provides:
15 “Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that
16 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. Plaintiffs Simms, Bonner and Zucker are individuals, who, during the time periods
25 relevant to this Complaint, were resident of the County of Los Angeles, State of California.

26 5. Defendant Morton Jankel Zander, Inc. (“MJZ”) is a California Corporation, which at all
27 times relevant herein, conducted business within the County of Los Angeles, State of California,
28 engaged in the production of motion pictures, including television commercials.

1 6. Defendant David Zander (“Zander”) is an owner of MJZ. Defendant David Zander is a
2 Director of MJZ as well as its CEO and CFO. Defendants Doe One through and including Doe Ten are
3 sued herein under the provisions of section 474 of the California Code of Civil Procedure.

4 7. On prior occasion, MJZ has been accused of violating the California Labor Code (the
5 “Code”) in lawsuits which are similar to the instant matter, brought against MJZ. Greenberg v. E.P.
6 Management Services, LP, Los Angeles Superior Court, Case No. BC237787 and Hutchins v. Producers
7 Payroll, Inc., 2008 U.S. Dist. LEXIS 129237

8 8. Plaintiffs are unaware of the true names, identities or capacities, whether corporate,
9 individual or otherwise, of said fictitiously named defendants, but leave of Court will be prayed to
10 amend this pleading to insert the same herein when finally ascertained. Plaintiffs are informed, believe
11 and thereupon allege that each of the fictitiously named Defendants is an entity, which during the
12 relevant time period maintained a place of business in the County of Los Angeles of the State of
13 California. Defendants MJZ, Zander, and Does One through and including Doe Ten are hereinafter
14 collectively referred to as (“Defendants”).

15 9. Defendants. Defendants are “temporary services employers” as defined by California
16 Labor Code (the “Code”) § 201.3 and required to pay freelance motion picture production workers such
17 as Plaintiffs no less frequently than weekly.

18 10. Defendants are “temporary services employers” as defined by Code § 201.3 and required
19 to pay Plaintiffs and other, similarly situated crew no less frequently than weekly. Section 201.3
20 provides, in part:

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

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

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

28 **(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.

1 ...
2 **(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.

3 **(b)(1)(A)** Except as provided in paragraphs (2) to (5), inclusive, if an employee of a
4 temporary services employer is assigned to work for a client, that employee’s wages are
5 due and payable no less frequently than weekly, regardless of when the assignment ends,
6 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.

7 ...
8 **(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.

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

10 Code § 201.3.

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

20 12. Plaintiffs are informed and believe and thereon allege that all defendants, including the
21 fictitious Doe defendants, were at all relevant times acting as actual agents, conspirators, ostensible
22 agents, alter egos, partners and/or joint venturers and/or employees of all other defendants, and that all
23 acts alleged herein occurred within the course and scope of said agency, employment, partnership, and
24 joint venture, conspiracy or enterprise, and with the express and/or implied permission, knowledge,
25 consent authorization and ratification of their co-defendants; however, each of these allegations are
26 deemed “alternative” theories whenever not doing so would result in a contradiction with other
27 allegations
28

GENERAL ALLEGATIONS

13. Defendants employed Plaintiff and others as crew members for a commercial entitled “Leather”. The Aggrieved Employees herein include Plaintiff, crew member on the Leather Production, and other crew members who have been issued wage statements for services producing Motion Pictures performed in whole or in part for MJZ in California (collectively, the “Aggrieved Employees”).

14. Plaintiff was hired to work in January of 2020 as a crew member on the Leather Production. Defendants were required to pay Zucker by Friday of the next Sunday to Saturday payroll week, but Zucker was paid his final wages for the Leather Production in tardy fashion.

15. Zucker worked for a total of two days on the Leather Production. According to the wage statements issued to Plaintiff Zucker, his pay frequency was weekly, as Zucker’s first day of work was during the “Period Begin” date of Sunday “1/5/20” and “Period End” date of Saturday “1/11/2020” and his second day of work was during the “Period Begin” date of Sunday “1/12/20” and “Period End” date of Saturday “1/18/2020”. Partially redacted copies of those two wage statements are attached as Exhibits 1-001 and 1-002. In addition, a copy of the January 10, 2020, California Labor Code Section 2810.5 Wage Theft Protection Act Notice as issued to Zucker by Defendants reflects that the Defendants’ “Designated Payday” would be on Friday, each week. A copy of the Wage Theft Protection Act Notice as executed by “Employee” Zucker and the “Production Co[mpany]” is attached hereto as Exhibit 2, being marked by MJZ in the alpha-numeric series MJZ0009.

16. Examination of Exhibit 1-001 reveals that the paycheck for Zucker’s work during the week of Sunday “1/5/20” to Saturday “1/11/2020” was prepared on or after Friday, January 17, 2020, the item being dated within the subsequent week. However, examination of Exhibit 1-002 reveals that the paycheck for Zucker’s work during the week of Sunday “1/12/20” to Saturday “1/18/2020” was prepared in tardy fashion, on or after Friday, January 24, 2020, as promised and required by law. Instead, the tardy paycheck was not prepared until on or after Monday, January 27, 2020. In any event, under Naranjo v. Spectrum Sec. Servs., Inc., 13 Cal. 5th 93, 106-07, 111 (May 23, 2022), neither check paid all wages owing, as Defendants routinely failed to pay accrued and owing premium wages owing on account of missed meals or missed rest breaks.

17. During the period from approximately from June of 2018 to date, from Zucker worked

1 for Defendants on the Leather Production in January of 2020; as well as on a separate Motion Picture,
2 called “Project M # 20-2447” in September of 2020 and on yet a third Motion Picture, called “VW #19-
3 2397” in December of 2019.

4 18. With respect to “VW #19-2397”, Zucker worked on one day during the “Period Begin”
5 date of Sunday “12/15/2019” and “Period End” date of Saturday “12/21/2019.” His paycheck should
6 have been prepared on or before Friday, December 27, 2019. However, the paycheck was prepared in
7 tardy fashion, on or after Tuesday, December 31, 2019. A partially redacted copy of the delinquent
8 paystub, dated December 31, 2019, is attached hereto as Exhibit 3. Again, under Naranjo v. Spectrum
9 Sec. Servs., Inc., 13 Cal. 5th 93, 106-07, 111 (May 23, 2022), neither check paid all wages owing, as
10 Defendants routinely failed to pay accrued and owing premium wages owing on account of missed
11 meals or missed rest breaks.

12 19. With respect to Plaintiff Simms (“Simms”), he worked on several discrete MJZ projects,
13 including “Project 213”; “Project M Square”; and a project for “Haagen Dazs.” According to the wage
14 statements issued to Simms, his pay frequency was weekly, as in each case the first day of work was
15 during the “Period Begin” date of Sunday and each reflected a “Period End” date of Saturday. On
16 Project 213, Simms worked during the week ending 12/18/21, but his paycheck was late, not being
17 prepared on or before 12/24/21 but rather being prepared on or after 12/27/21. On Project M Square,
18 Simms worked during the week ending 3/6/21, but his paycheck was late, not being prepared on or
19 before 3/12/21 but rather being prepared on or after 3/17/21. On the Haagen Dazs project, Simms
20 worked during the week ending 12/19/20, but his paycheck was late, not being prepared until on or after
21 12/27/24.

22 20. With respect to Plaintiff Bonner (“Bonner”), he worked on the production of a television
23 commercial in March of 2021. Plaintiff requested his employment records but not all records were
24 provided in a timely basis. According to the wage statements issued to Bonner, his pay frequency was
25 weekly, as in each case the first day of work was during the “Period Begin” date of Sunday and reflected
26 a “Period End” date of Saturday. Bonner worked during the week ending 3/20/21, but his paycheck was
27 late, as it was prepared on or after 4/20/21.

28 21. In addition to making frequent tardy payment of final wages owing to crewmembers,

1 Plaintiff and the crews employed by Defendants were not properly compensated with premium wages
2 owing on account of Defendants' failure to provide mandatory meal periods and rest breaks. Indeed, it
3 appears that the Defendants routinely failed to pay the crew properly for missed or tardy meal periods or
4 rest breaks. Indeed, the crew were instructed to remain within the boundaries of the property that had
5 been permitted for filming and the crew were instructed that meals shall be confined to the area
6 designated in the Location Agreement or permit. The crew were instructed that they should eat within
7 their designated meal area, during scheduled crew meals.

8 22. Although Plaintiff and others should have been paid in full for their accrued wages,
9 issued legally compliant wage statements, and paid no later than as required by Code § 201.3 or, in the
10 alternative, Code § 201.5, Plaintiff and other crewmembers were not paid properly. For example, they
11 were not paid any rest break premium wages by the Friday after the Sunday to Saturday workweek
12 during which they completed their assignments, and most have yet to be paid all accrued premium
13 wages for meal breaks as required by Naranjo v. Spectrum Sec. Servs., Inc., 13 Cal. 5th 93, 106-07, 111
14 (May 23, 2022).

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

26 24. Wage Order 12 of the California Industrial Welfare Commission applied to Plaintiffs,
27 Aggrieved Employees and Class Members. In part, the Wage Order reflects employer obligations
28 regarding hours and days of work, reporting time pay records, meal periods and rest periods (obligations

1 which the employer, here, failed to fulfill, both with respect to Plaintiffs, Aggrieved Employees and
2 Class Members). The Wage Order requires, in relevant part, that meals shall be provided within the
3 initial six hours of work. However, Defendants' routine practice was to defer meal breaks until after the
4 sixth and/or twelfth of filming, and then, on occasion, delaying even further due to imposition of alleged
5 "grace" periods. On occasion, such meals were improperly truncated and/or in the case of the
6 hereinafter defined Shooting Crew, not provided, at all. The Wage Order provides, in relevant part:

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

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

16 **(A) Daily Overtime - General Provisions**

17 (1) The following overtime provisions are applicable to employees 18 years of age or
18 over and to employees 16 or 17 years of age who are not required by law to attend
19 school and are not otherwise prohibited by law from engaging in the subject work. Such
20 employees shall not be employed more than eight (8) hours in any workday or more than
21 40 hours in any workweek unless the employee receives one and one-half (1.5) times
22 such employee's regular rate of pay for all hours worked over 40 hours in the workweek.
23 Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in
24 any workday or more than six (6) days in any workweek is permissible provided the
25 employee is compensated for such overtime as follows:

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

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

(2) Double the employee's regular rate of pay for all hours worked in excess of twelve
(12) hours in any workday, and for all hours worked in excess of eight (8) hours on the
seventh (7th) consecutive day of work in a workweek.

(3) Overtime payments shall not be compounded and all payments made by the employer for daily overtime on the basis herein above specified shall be applied toward any sum for weekly overtime.

(4) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary. The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

...

7. Records.

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

(1) Full name, home address, occupation and social security number.

(2) Birth date, if under 18 years, and designation as a minor.

(3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

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

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

...

12. Rest Periods.

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

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of

1 pay at the employee's regular rate of compensation for each work day that the rest period
2 is not provided.

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

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

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

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

9 (A) The employee's job duties relate to or support the production or broadcasting of
10 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
13 supporting a particular motion picture production or broadcasting project, or is hired on
14 the basis of one or more daily or weekly calls.

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

17 (3) "Next regular payday" means the day designated by the employer, pursuant to Section
18 204, for payment of wages earned during the payroll period in which the termination
19 occurs.

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

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

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

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

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

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

1 Plaintiff's claim under Code § 201.5 is made in addition to and as an alternative to the claims under
2 Code § 201.3.

3 27. Defendants employed individuals such as Plaintiffs and Class Members to work on the
4 production on motion pictures, yet Defendants failed to timely or fully pay them, all in violation, inter
5 alia, of Code sections 201.3, 201.5 and 204.

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

7 If an employer willfully fails to pay, without abatement or reduction, in accordance with
8 Sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an
9 employee who is discharged or who quits, the wages of the employee shall continue as a
10 penalty from the due date thereof at the same rate until paid or until an action therefor is
11 commenced; but the wages shall not continue for more than 30 days. An employee who
12 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.

13 Code § 203(a).

14 29. By failing to pay timely Plaintiff and Aggrieved Employees all wages when due at the
15 end of employment, Plaintiff and the proposed Code Class are entitled to continuing wages pursuant to
16 section 203 of the Code.

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

23 31. The MJZ policy has been to devote insufficient capital, manpower and other required
24 resources to its business, including providing sufficient funding of the payroll accounting function, with
25 the inevitable result that employees are routinely paid in tardy fashion, in violation of sections 201.3,
26 201.5 and/or 203 of the Code. In addition, MJZ routinely enters contracts for the production of
27 television commercials which contracts provide that the advertising agency or other contracting party
28 need not pay the full amount owing to MJZ until it receives final delivery of a finished product. MJZ

1 maintains internal budgets for each individual television commercial it produces. The internal MJZ
2 accounting practice has the inevitable, routine result of MJZ putting a hold on the funding of final wage
3 payments until it has received sufficient funds to make the payments, all within its internally imposed,
4 discretionary accounting practices.

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

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

11 Cal. Lab. Code § 204.

12 33. In no event should Plaintiffs or Class Members have been paid later than the time periods
13 established by sections 201.3, 201.5 or 204 of the California Labor Code, but certain payments to
14 Plaintiffs were made after they were due, some have yet to be made, all leading to penalties and civil
15 penalties under sections 203 and 204 of the California Labor Code, all as described in the Naranjo v.
16 Spectrum Sec. Servs., Inc., 13 Cal. 5th 93, 106-07, 111 (May 23, 2022).

17 34. At all relevant times mentioned herein, section 226 of the Code provided

18 (a) An employer, semimonthly or at the time of each payment of wages, shall furnish to
19 his or her employee, either as a detachable part of the check, draft, or voucher paying the
20 employee's wages, or separately if wages are paid by personal check or cash, an accurate
21 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by
22 the employee, except as provided in subdivision (j), (3) the number of piece-rate units
23 earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
24 deductions, provided that all deductions made on written orders of the employee may be
25 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the
26 period for which the employee is paid, (7) the name of the employee and only the last
27 four digits of his or her social security number or an employee identification number
28 other than a social security number, (8) the name and address of the legal entity that is the
employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of
Section 1682, the name and address of the legal entity that secured the services of the
employer, and (9) all applicable hourly rates in effect during the pay period and the
corresponding number of hours worked at each hourly rate by the employee and,
beginning July 1, 2013, if the employer is a temporary services employer as defined in
Section 201.3, the rate of pay and the total hours worked for each temporary services
assignment. The deductions made from payment 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 and the 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. . . .

Code § 226. Defendants did not provide Plaintiff or other Aggrieved Employees wage statements with all required information, including but not limited to inclusive dates of each pay period.

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

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

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

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

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

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

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

1 favoring an eight-hour workday and a six-day 40-hour workweek, and discouraging employers from
2 imposing work in excess of those limits.” Alvarado, 4 Cal. 5th at 539

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

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

9 Code § 1194.

10 39. Plaintiff, the proposed Code Class and Aggrieved Employees were not timely paid the
11 minimum wages and/or overtime to which they were entitled. Accordingly, they are entitled to
12 liquidated damages under section 1194.2. At all relevant times mentioned herein, section 2802 of the
13 California Labor Code provided in part:

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

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

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

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

40. Zanker and Does One through and including Doe 10 are joint employers with MJZ, or
other persons acting on behalf of an employer, who violated, or caused to be violated the relevant
sections of the Code referenced herein.

41. 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

1 violated, a section of this chapter or any provision regulating hours and days of work in any
2 order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For
3 any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for
4 which the employee was underpaid in addition to an amount sufficient to recover underpaid
5 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.

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

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

11 (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be
12 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.

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

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

17 Cal. Lab. Code § 558.1. Defendants are the joint employers or other persons acting on behalf of an
18 employer who violated, or caused to be violated the relevant sections of the Code referenced herein.
19 Defendants directly and/or indirectly controlled the Class Members' wages, working conditions and
20 hours. Defendants' personnel and/or representatives were on the set of the productions and actively
21 participated in the productions, and/or had the authority to do so.

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

23 (a) An employer, semimonthly or at the time of each payment of wages, shall furnish to
24 his or her employee, either as a detachable part of the check, draft, or voucher paying the
employee's wages, or separately if wages are paid by personal check or cash, an accurate
25 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by
the employee, except as provided in subdivision (j), (3) the number of piece-rate units
26 earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
deductions, provided that all deductions made on written orders of the employee may be
27 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 only the last
28 four digits of his or her social security number or an employee identification number
other than a social security number, (8) the name and address of the legal entity that is the

1 employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of
2 Section 1682, the name and address of the legal entity that secured the services of the
3 employer, and (9) all applicable hourly rates in effect during the pay period and the
4 corresponding number of hours worked at each hourly rate by the employee and,
5 beginning July 1, 2013, if the employer is a temporary services employer as defined in
6 Section 201.3, the rate of pay and the total hours worked for each temporary services
assignment. The deductions made from payment 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 and the 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. . . .

7 Code § 226. Defendants did not provide Plaintiff or other Aggrieved Employees wage statements with
8 all required information, including but not limited to accrued and unpaid premium wages owing on
9 account of rest break and meal period violations. Section 226 of the Code must be interpreted to protect
10 the employee rather than the employer and, as such, the only reasonable interpretation of the statute
11 requires the worker to be able to determine from the wage statement alone both the length of the pay
12 period and the first and last day of the pay period, whether it be weekly, every other week, or twice each
13 month. Without this information the employee is unable to determine whether or not they have been
14 paid timely, either under sections 201.3 or 201.5 of the Code or under the federal Fair Labor Standards
15 Act.

16 37. At all relevant times mentioned herein, section 2810.3 of the California Labor Code
17 provided:

18 (a) As used in this section:

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

20 . . .
(2) "Labor" has the same meaning provided by Section 200.

21 (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.

22 . . .
(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.

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

24 (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.

25 (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:

26 (1) The payment of wages.

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

28 (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.

(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).

(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.

(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.

...

Cal. Lab. Code § 2810.3.

CLASS-ACTION ALLEGATIONS

38. Plaintiffs bring this action on behalf of themselves and all others similarly situated as a class action pursuant to section 382 of the Code of Civil Procedure. Plaintiffs seek to represent a “Code Class” composed of and defined as follows:

Excluding regular staff, all persons, paid wages by Defendant MJZ (whether directly or indirectly, including MJZ’s payroll company) on account of services provided for Defendants in the production of Motion Pictures¹ (such persons are referred to hereafter as Code Class Members, and such period is referred to hereafter as the Class Period)

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

Excluding regular staff, all persons paid wages by Defendant MJZ (whether directly or indirectly, including MJZ’s payroll company) on account of services provided for Defendants in the production of Motion Pictures in California (such persons are referred to as “17200 Class Members,”).

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

40. Defendants, as to Plaintiffs and Code Class Members, failed to pay all accrued minimum wages and overtime for all hours worked pursuant to sections 510, 515 and 1194 of the Code. Accordingly, each Plaintiff and Class Member is entitled to payment of his or her unpaid overtime and interest as well as reimbursement of their attorneys’ fees and reasonable costs.

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

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

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

9 **A. Numerosity**

10 43. The potential members of the 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, Plaintiffs are informed and believe that Defendants employed during the
13 relevant time periods at least 7,000 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 44. 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 45. 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
Code Class Members, all in violation of sections 201.3, 201.5 and 203 of the Code.
- 25 b. Whether Defendants' untimely and/or nonpayment of wages give rise to liquidated
26 damages for failure to pay all wages during employment, all in violation of sections 204
and 210 of the Code
- 27 c. Whether Defendants failed to provide meal breaks to each and every employee violates
28 Code section 226.7 and 512, as well as the applicable Wage Order to 17200 Class
Members.

- d. Whether Defendants' failure to provide rest breaks to each and every 17200 Class Member violates Code section 226.7, as well as the applicable Wage Order.
- e. Whether Defendants failed to pay proper minimum wages to Code Class Members under Code sections 1194 and 1194.2.
- f. Whether Defendants failed to pay proper overtime wages to 17200 Class Members under Code sections 510, 515 and 1194.
- g. Whether Defendants failed to reimburse necessary business expenses to Code Class Members under Code sections 2802.
- h. Whether Class Members are entitled to restitution due to Defendants' unfair or unlawful business practices under Cal. Bus & Prof. Code sections 17200 *et seq.*
- i. Whether Defendants' failure to provide accurate itemized wage statements to each and every employee violates section 226(a).

C. Typicality

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

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

D. Adequacy of Representation

48. Plaintiffs will fairly and adequately represent and protect the interests of the members of the Class. Counsel who represent Plaintiffs are competent and experienced in litigation large employment class actions, including the aforesaid Greenberg and Harrington litigations. Neither Plaintiffs nor their counsel have any conflict with the Class.

E. Superiority of Class Action

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

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

9 **COLLECTIVE-ACTION ALLEGATIONS**

10 50. Plaintiffs seek to represent all employees who worked for Defendant MJZ during the
11 period beginning no earlier than three years prior to the filing hereof to the mailing of the FLSA Opt-In
12 Notice (such persons are referred to hereafter as “Collective Action Members.”).

13 51. Plaintiffs are similarly situated to the Collective Action Members in that Plaintiffs and
14 the Collective Action Members were employed by Defendants and in that Defendants did not pay
15 Plaintiffs and the Collective Action Members their overtime and/or minimum wages when due.

16 52. This action is maintainable as an “opt-in” collective action pursuant to 29 U.S.C.
17 § 216(b).

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

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

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

FIRST CAUSE OF ACTION

(Continuing Wages, California Labor Code §§ 201.3, 201.5, 203
On Behalf of Plaintiffs and the Code Class Against All Defendants)

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

57. As hereinabove articulated, Plaintiff and members of the Code Class were not timely compensated in full for their services, and have yet to be paid all accrued premium wages owing on account of Defendants' failure to provide proper rest breaks and meal periods. Plaintiff and many others were not timely paid even the undisputed "Straight Time" wages owing to them, as reflected in Exhibits 1-3.

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

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

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

60. Pursuant to section 203 of the California Labor code, Plaintiffs and Code Class Members are entitled to continuing wages from Defendants in an amount according to proof, and Plaintiffs are

1 entitled to penalties of at least \$20,000, each. Plaintiffs and Code Class Members are also entitled to
2 recover costs and reasonable attorneys' fees under section 218.5 of the California Labor Code, a total in
3 excess of \$900,000.

4 **SECOND CAUSE OF ACTION**

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

6 61. Plaintiffs reallege and incorporate by reference each and every allegation set forth in this
7 Complaint as though fully set forth herein.

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

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

19 64. After the Augustus decision, some motion picture production companies such as Warner
20 Bros. claim to have initiated a process under which they would advised employees, in writing, that they
21 need not respond to walkie-talkie calls during breaks. MJZ does not claim to have undertaken any such
22 initiative.

23 65. Pursuant to Code section 226.7, Plaintiff Zucker and 17200 Class Members are entitled to
24 damages in an amount equal to one hour of wages per missed meal break, in an amount according to
25 proof, of at least \$30,000, not including interest thereon, reasonable attorneys' fees and cost of suit.
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THIRD CAUSE OF ACTION

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

66. Plaintiffs reallege and incorporate by reference each and every allegation set forth in this Complaint as though fully set forth herein.

67. At all times herein relevant, sections 226.7 of the California Labor 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.

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

69. Plaintiffs and 17200 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 cell phone at all times.

70. Because Defendants failed to properly provide the proper rest breaks, it is liable to Plaintiffs and 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 Labor Code section 226.7 and IWC Wage Order 12.

71. As a result of the unlawful acts of Defendants, Plaintiffs 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.

FOURTH CAUSE OF ACTION

(Damages for Unpaid Overtime Compensation,
California Labor Code §§ 510, 515, 558.1 and 1194
On Behalf of Plaintiffs and the 17200 Class Against All Defendants)

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

73. During Plaintiffs' employment by Defendants, Plaintiffs, as well as 17200 Class Members, worked many hours, including overtime, without proper compensation for work performed, as required by law.

74. Plaintiffs and Class Members are entitled to recover such unpaid overtime under section 1194 of the California Labor Code in an amount according to proof. Plaintiffs and 17200 Class Members are also entitled to recover costs and reasonable attorneys' fees under section 1194 of the California Labor Code.

FIFTH CAUSE OF ACTION

(Damages for Unpaid Minimum Wages,

California Labor Code §§ 1194, 1194.2 and 1198

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

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

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

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

SIXTH CAUSE OF ACTION

(Failure to Reimburse Necessary Expenses, Cal. Lab. Code §2802)

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

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

79. In discharge of their duties, Defendants required Plaintiff and 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 and/or maintain other computer equipment for the receipt of emails and the like, but were not reimbursed for such use.

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

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5 **SEVENTH CAUSE OF ACTION**

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

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

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

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

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

19 **EIGHTH CAUSE OF ACTION**

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

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

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

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

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

4
5 **NINTH CAUSE OF ACTION**

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

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

10 90. Business and Professions Code section 17200 *et seq.* prohibits acts of unfair competition,
11 including any "unlawful, unfair, or fraudulent business act or practice." Cal. Bus. & Prof. Code § 17200
12 *et seq.* Plaintiff alleges that Defendants have engaged in unfair business practices in California by the
13 above-described failure to pay all accrued minimum wages or to reimburse crew for necessary business
14 expenses. For example, certain other motion picture producers routinely reimburse crew for the cost of
15 maintaining cell phones with email and/or text capabilities, without which it would be a practical
16 impossibility for the crew to know where to go and when to report.

17 91. Defendants' violations of the California wage and hour laws constitutes a business
18 practice because Defendants' aforementioned acts and omissions were done repeatedly over a significant
19 period of time, and in a systematic manner, to the detriment of Plaintiff, the proposed 17200 Class and
20 Aggrieved Employees.

21 92. Defendants have avoided payment of wages and other benefits required by the California
22 Labor Code, the California Code of Regulations, and the applicable IWC Wage Order. Upon
23 information and belief, Aggrieved Employees and the 17200 Class have not been timely compensated in
24 full for their services. Plaintiff and the 17200 Class consistently worked more than 6-hour and/or 12-
25 hour shifts. However, they were required to keep their cell phones, walkie talkies and/or radios on their
26 persons, turned on and audible at all times, including their rest periods and meal breaks and/or they were
27 precluded from leaving the set during their breaks. Accordingly, they were denied their breaks and are
28 entitled to an additional thirty minutes of wages for each faux meal break. Some of that additional time
should have been compensated as overtime wages.

1 93. As a result of Defendants’ unfair and unlawful business practices, Defendants have
2 reaped unfair and illegal profits during the relevant time period herein at the expense of Plaintiff and the
3 Aggrieved Employees and members of the public. Defendants should be made to disgorge their ill-
4 gotten gains and to restore them to Plaintiff and Aggrieved Employees.

5 94. The actions of Defendants entitle Plaintiff to seek the remedies available under section
6 17200 et seq. Plaintiff seeks full restitution of said amounts from Defendants, as necessary and
7 according to proof, to restore any and all amounts—including interest—withheld, acquired, or converted
8 by Defendants by means of the unfair practices complained of herein. Plaintiff, on behalf of themselves,
9 as well as on behalf of the general public, further seeks attorney’s fees and costs pursuant to sections
10 218.5 of the Labor Code and 1021.5 of the Code of Civil Procedure. In addition, Plaintiff seeks the
11 appointment of a receiver as necessary.
12

13 **TENTH CAUSE OF ACTION**

14 (California Labor Code § 2698 et seq. Civil Penalties
15 On Behalf of Plaintiffs, the California Labor & Workforce Development Agency and Aggrieved
16 Employees Against All Defendants)

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

19 96. Pursuant to section 2699.3(a)(1) of the Labor Code, on January 30, 2024, Plaintiff
20 Bonner submitted his PAGA Claim Notice online to the California Labor and Workforce Development
21 Agency (“LWDA”) and notified the LWDA of the specific provisions of the Labor Code alleged to have
22 been violated by Defendants, including the theories set forth in the Complaint. Plaintiff Simms
23 submitted his PAGA Claim Notice on December 18, 2022.

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

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

Cal. Lab. Code § 2699.3(a)(2)(A). More than sixty-five calendar days have passed since Plaintiffs gave
written notice of the PAGA violations to the LWDA and Defendants.

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

4 99. Plaintiffs seek to bring a representative action on behalf of themselves and the State of
5 California as well as on behalf of a group of Aggrieved Employees defined as: Plaintiffs and/or other
6 persons who performed services for one or more of the Defendants on the Production or other such
7 projects produced in California (“Aggrieved Employees”) during the period from one year prior to the
8 filing of the PAGA Notice until this case is resolved.

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

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

12 Employers must afford current and former employees the right to inspect or copy the records
13 pertaining to that current or former employee, upon reasonable request to the employer. Plaintiff has not
14 been provided with an opportunity to inspect or copy all payroll records within 21 days of request. Upon
15 information and belief, other Aggrieved Employees have requested their payroll records but have not
16 been given access to them pursuant to section 226(b). Code § 2699(f)(2) imposes a civil penalty of \$100
17 per pay period per Aggrieved Employee for initial violations, and \$200 per pay period per Aggrieved
18 Employee for subsequent violations for all Code provisions for which a civil penalty is not specifically
19 provided.

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

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

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

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

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

27 Aggrieved Employees were not compensated during their employment by the times prescribed
28 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.

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 § 203, 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 is still unpaid thousands of dollars for their work on the Production despite repeated requests for payment. For example, Plaintiff Washington was paid over 30 days after he last worked. As such, Defendants failed to pay Plaintiff and Aggrieved Employees all wages due at the time of termination or within seventy-two (72) hours of their resignation, 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. Unlawful Deductions under Code § 221.

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

Here, Defendants made improper deductions for which Aggrieved Employees did not expressly authorize in writing.

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

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

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

- a. The wage statements failed to include, among other required information, the “gross wages earned” as it only shows the gross wages eventually paid.
- b. The wages statements failed to include, among other required information, the “total hours worked by the employee” as it only shows the total hours eventually paid.
- c. The wage statements failed to include, among other required information, “all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item”
- d. The wage statements failed to include, among other required information, “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee”
- e. The wage statements failed to include, among other required information, the “the rate of pay and the total hours worked for each temporary services assignment”

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.

8. 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.”

9. 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.

10. 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, Plaintiff Bonner worked over 6 or 12 hours in a day but was not provided with compliant meal breaks and was not otherwise compensated. Aggrieved Employees were not permitted to leave the set of the Production for meal periods, and were required to keep their walkie talkies and/or cell phones on so that they could be reached at all times. They were required to respond regardless of whether they were on a meal or rest break.

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

1 period of not less than thirty (30) minutes, nor more than one (1) hour. Subsequent meal period for all
2 employees shall be called not later than six (6) hours after the termination of the preceding meal period.”
3 Defendants failed to maintain a policy informing all Aggrieved Employees of these rights.

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

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

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

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

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

28 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.

12. **12. 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/ motion picture 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.

13. **13. 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, Plaintiff and other Aggrieved Employees were not paid at the proper corresponding rate for all hours worked, including overtime as a result of the following:

1. Defendants did not record actual hours and failed to pay for all time worked.
2. Defendants' failure to pay for all time spent driving/and or travelling from site to site.
3. Defendants' failure to calculate the correct overtime rate under Code § 515.
4. Aggrieved Employees routinely work "off the clock" beyond their scheduled call time.
5. Plaintiff and the Aggrieved Employees are routinely paid until an arbitrary time in the day and not until they have actually ceased working.

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.

14. 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.

15. Violation of WARN Act, Cal. Lab. Code §§ 1400 et seq.

The California Worker Adjustment and Retraining Notification Act ("WARN Act"), Cal. Labor Code § 1400 et seq., requires employers at a "covered establishment," that employs 75 or more employees, give 60 days' notice before a mass layoff (of 50 or more employees), a relocation, or a cessation of doing business. Employers must give notice not only to employees, but also to the relevant California government agency, the Employment Development Department. See Cal. Labor Code § 1401(a). Employers are excused from providing notice of a mass layoff only if there is a "physical calamity" (such as an earthquake) or "act of war." § 1401(b). Pursuant to Code § 1402(a)-(c), if an employer fails to give notice of a mass layoff, relocation, or cessation of business, its employees are entitled to recover up to 60 days of back-pay and the value of the cost of any benefits the employee would have been entitled had his or her employment not been lost, or one-half the number of days that the employee was employed by the employer, whichever is smaller.

Defendant MJZ is an employer that operates a "covered establishment" under the California WARN Act, Cal. Lab. Code § 1400 et seq., because Defendant employs 75 or more employees. Plaintiff and all Aggrieved Employees have been employed by Defendant for at least 6 months of the 12 months preceding the date of termination. Defendant engaged in a "mass layoff" because they terminated 50 or more employees, including Plaintiff, within a 30-day period. Defendant did not provide advance notice to Plaintiff and all Aggrieved Employees that they would be terminated on April 23, 2019, as required by the WARN Act. As such, Defendant willfully violated the California WARN Act by failing to provide Plaintiff and the Aggrieved Employees the required notice. Further, Defendant failed to compensate Plaintiff and all Aggrieved Employees all back-pay wages and benefits due for sixty (60) days following the termination of their employment with Defendant in violation of Code § 1400 et seq.

16. Personal Liability of Defendant David Zander under Code § 558.

Defendant David Zander was an employer and/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" as he was an owner CFO and CEO of Defendant MJZ who controlled the payment of wages. Under Code § 558, Defendant Zander is 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).

17. **Personal Liability of Defendant David Zander under Code § 1197.1**

Defendant David Zander was an employer and/or “other person acting either individually or as an officer, agent, or employee 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.” Defendant Zander was an owner, CFO and CEO of Defendant MJZ, which had control over the payment of wages and intentionally caused Aggrieved Employees to be paid less than was required by the Labor 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).

ELEVENTH CAUSE OF ACTION

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

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

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

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

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

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

110. Defendants' violations were willful and intentional.

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

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

TWELFTH CAUSE OF ACTION

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

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

114. Defendants failed to provide Plaintiffs, Aggrieved Employees and the 226 Class with wage statements conforming to the requirements of section 226(a) of the Code.

115. Aggrieved Employees insofar as they were deprived of information to which they were legally entitled.

116. The failure of Defendants to provide compliant wage statements violates section 226(a) of the Code. The failure caused them injury by depriving them of information to which they are legally entitled. Accordingly, Plaintiffs and Class Members are entitled to damages in an amount according to proof and costs and reasonable attorney's fees in accordance with the provisions of Code section 226(e), all in a sum according to proof.

WHEREFORE, Plaintiffs pray 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

1 make payment of Plaintiffs' and Class Members' wages was in violation of sections 201.3 and 201.5,
2 and 204 of the California Labor Code, and was "willful" as that word is used in section 203 of the
3 California Labor Code, and that the Court enter judgment against Defendants in favor of Plaintiffs and
4 Class Members. That judgment be entered in favor of Plaintiffs, and Class Members in an amount
5 prescribed by section 203 of the California Labor Code, and costs and reasonable attorneys' fees in
6 accordance with the provisions of California Labor Code section 218.5.

7 3. That, under the Second Cause of Action, this Court enter judgment in favor of Plaintiffs
8 and Class Members and award them their damages, penalties, and costs of suit, all according to proof, ,
9 pursuant to section 218.5 and other relevant sections of the Labor Code.

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

13 5. That, under the Fourth Cause of Action, this Court enter judgment in favor of Plaintiffs
14 and Class Members in the amount of unpaid overtime wages according to proof, including interest
15 thereon, reasonable attorneys' fees and cost of suit, and enter judgment against Defendants in the
16 amount of damages according to proof, interest thereon, reasonable attorneys' fees and cost of suit.

17 6. That, under the Fifth Cause of Action, this Court enter judgment in favor of Plaintiffs and
18 Class Members and award them their damages, penalties, liquidated damages, reasonable attorney's fees
19 and costs of suit, all according to proof, pursuant to section 218.5, 1194, 1194.2 and other relevant
20 sections of the Labor Code.

21 7. That, with respect to the Sixth Cause of Action, this Court enter judgment in favor of
22 Plaintiffs and Class Members against all Defendants in an amount according to proof, of no less than
23 \$500 for each Plaintiff, interest thereon, costs and reasonable attorney's fees in accordance California
24 Labor Code section 2802(c).

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

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

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

3 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 California Labor Code, and violated section
5 17200 *et seq.* of the California Business and Professions Code. Accordingly, Plaintiffs request that the
6 Court order Defendants to pay restitution with interest to Plaintiffs and Class Members. Finally,
7 Plaintiffs request that the Court award Plaintiffs' reasonable attorneys' fees and costs, pursuant to
8 section 218.5 of the Labor 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 Plaintiffs, 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. That, with respect to the Eleventh Cause of Action this Court enter judgment in favor of
14 Plaintiff and Collective Action Members against Defendants in an amount according to proof for unpaid
15 wages, liquidated damages, interest thereon, costs and reasonable attorney's fees.

16 13. That, with respect to the Twelfth Cause of Action for Failure to Provide Compliant Wage
17 Statements, this Court enter judgment in favor of Plaintiffs and 226 Class Members against Defendants.
18 That judgment be entered in in an amount according to proof, and costs and reasonable attorneys' fees in
19 accordance with the provisions of Code section 226(e).

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

23 DATED: July 1, 2024

HARRIS & RUBLE

24 

25 Alan Harris
26 Attorney for Plaintiffs
27
28

INDEX TO EXHIBITS

- Exhibit 1-001 -- The paycheck for Zucker's work during the week of Sunday "1/5/20" to Saturday "1/11/2020".
- Exhibit 1-002 -- The paycheck for Zucker's work during the week of Sunday "1/12/20" to Saturday "1/18/2020".
- Exhibit 2 -- A copy of the Wage Theft Protection Act Notice as executed by "Employee" Zucker and the "Production Co[mpany]", being marked by MJZ in the alpha-numeric series MJZ0009.
- Exhibit 3 -- the paycheck for Zucker's work during the week of Sunday "12/15/2019" to Saturday "12/21/2019".

Exhibit 1

media services Film Commercials CA, Inc. 500 S SEPULVEDA BLVD LOS ANGELES, CA 90049 T 310 440 9600 mediaservices.com		Employee Name: BENJAMIN J ZUCKER SSN/SIN: [REDACTED] Address: [REDACTED] City/State/Zip: [REDACTED] Corporation Name: Fed Tax ID:		Check Number: 109122 Check Date: 1/17/2020 Invoice #				
W-4 Status Marital FED ST LOC M 0 0 0		Days Worked 1		Resident St CA0000				
Union Local NON-UNION		Basis HOURLY		IAP Rate Period Begin 1/5/2020 Period End 1/11/2020				
Production Company Employer: MORTON JANKEL ZANDER, INC. 2201 CARMELINA AVE, Los Angeles CA90064		Show Name: MORTON JANKEL ZANDER, INC.		PCX0E688F3576				
TAX ST	EARNINGS TYPE	OCCUPATION	Hours	RATE	AMOUNT	DEDUCTION	CURRENT	YTD
CA0009	Straight Time	Police	8.00	62.02	496.16	FICA	30.76	30.76
						Federal Income Tax	26.73	26.73
						Medicare	7.19	7.19
						State Withholding - CA	5.27	5.27
						CA VPD	4.47	4.47
Paid Leave Act			Current	Balance				
Los Angeles CITY Sick Leave Ordinance			0.27	0.27				
California Healthy Workplace Healthy Family Act				0.27				
TOTALS								
2020	Taxable	NonTax	Total Gross	Deductions	Net Amount			
Current	\$496.16		\$496.16	\$74.42	\$421.74			
YTD	\$496.16	\$0.00	\$496.16	\$74.42	\$421.74			
Disability Claim Inquiry: Contact Media Services at 310-471-9388 for instructions prior to filing.						Job/Epi/Proj Comment		
Unemployment Claim Inquiry: Go to your state's unemployment web site.						LEATHER		
Employer For Unemployment & Workers' Compensation Claims Only: Film Commercials CA, Inc. 500 S Sepulveda Blvd Los Angeles, CA 90049 State: CA Employer: 437-7909-9						PMT Comment:		
All other employment related inquiries, contact Production Company Employer.								
Please go to mediaservices.com for important W2 information Send address changes to W2@mediaservices.com / Fax 310-254-1700 / Phone 310-471-9386.								

PAY TO THE ORDER OF
BENJAMIN J ZUCKER



File Copy

media services Film Commercials CA, Inc. 500 S SEPULVEDA BLVD LOS ANGELES, CA 90049 T 310 440 9600 mediaservices.com		Employee Name: BENJAMIN J ZUCKER SSN/SIN: [REDACTED] Address: [REDACTED] City/State/Zip: [REDACTED] Corporation Name: Fed Tax ID:		Check Number: 109671 Check Date: 1/27/2020 Invoice #	
W-4 Status Marital FED ST LOC M 0 0 0		Days Worked 1		Resident St CA0000	
Union Local NON-UNION		Basis HOURLY		IAP Rate Period Begin 1/12/2020 Period End 1/18/2020	
Production Company Employer:		MORTON JANKEL ZANDER, INC. 2201 CARMELINA AVE, Los Angeles CA90064		Show Name: MORTON JANKEL ZANDER, INC.	
TAX ST EARNINGS TYPE OCCUPATION		Hours RATE AMOUNT		DEDUCTION CURRENT YTD	
CA0009 Straight Time Police		8.00 62.02 496.16		FICA 53.83 84.59	
CA0009 O.T.-1.5X Police		4.00 93.03 372.12		Federal Income Tax 69.14 95.87	
				Medicare 12.59 19.78	
				State Withholding - CA 13.46 18.73	
				CA VPDI 7.81 12.28	
Paid Leave Act		Current Balance			
Los Angeles CITY Sick Leave Ordinance		0.40		0.67	
California Healthy Workplace Healthy Family Act				0.27	
TOTALS					
2020 Taxable NonTax Total Gross Deductions Net Amount					
Current \$868.28		\$868.28 \$156.83 \$711.45			
YTD \$1,364.44 \$0.00		\$1,364.44 \$231.25 \$1,133.19			
Disability Claim Inquiry: Contact Media Services at 310-471-9388 for instructions prior to filing.					
Unemployment Claim Inquiry: Go to your state's unemployment web site.					
Employer For Film Commercials CA, Inc. Unemployment & 500 S Sepulveda Blvd Workers' Compensation Los Angeles, CA 90049 Claims Only: State: CA Employer: 437-7909-9					
All other employment related inquiries, contact Production Company Employer.					
Please go to mediaservices.com for important W2 information Send address changes to W2@mediaservices.com / Fax 310-254-1700 / Phone 310-471-9386.					
Job/Epi/Proj		Comment			
LEATHER					
PMT Comment:					

PAY TO THE ORDER OF
BENJAMIN J ZUCKER



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Exhibit 2

California Labor Code Section 2810.5**Written Notice and Acknowledgement of Pay Rate and Designated Payday**

Rev. 07-27-2018

Effective January 1, 2012, the California Wage Theft Prevention Act of 2011, Labor Code section 2810.5(a) requires that ALL NON-EXEMPT employees be given written notice of their regular rate of pay, wage status and designated payday at time of hire. Any non-exempt employee working under a Collective Bargaining Agreement (CBA) does not need to be given a written notice if the CBA underscores terms for wages, hours of work and working conditions of the employee as well as provides premium wage rates of all OT hours worked and a regular rate of pay no less than 30% over the state minimum wage. For production employees, a written notice must be provided for each project on which the employee is hired.

Production Co./Employer <u>Morton Jankel Zander, Inc.</u>		EIN (Optional) <u>95-4332573</u>	
Check all that apply: ☐ Sole Proprietor ☒ Corporation ☐ Limited Liability Company ☐ General Partnership			
Other name Employer is doing business as (if applicable): <u>None</u>			
Physical address <u>2201 Carmelina</u>	City <u>Los Angeles</u>	State <u>CA</u>	Zip <u>90064</u> Phone <u>(310) 826-6200</u>
Mailing address <u>same</u>	City _____	State _____	Zip _____ Phone (____) _____
Payroll Company <u>Film Commercials CA, Inc.</u>			
Address <u>500 S. Sepulveda Blvd., 4th Floor</u>		City <u>Los Angeles</u>	State <u>CA</u> Zip <u>90049</u> Phone <u>(310) 440-9600</u>
Workers' Compensation Insurance Carrier <u>Arch Insurance Company (administered by Broadspire)</u>			
Address <u>P.O. Box 14352</u>		City <u>Lexington</u>	State <u>KY</u> Zip <u>40512-4352</u> Phone <u>(310) 440-9691</u>
Employee Name <u>BENJAMIN ZUCKER</u>		E-mail Address _____	
Address _____		City _____	State _____ Zip _____
Your Job/Occupation Category is <u>CARD MOTOR OIL</u>		Hire Date <u>1-10-20</u>	
Project Name (Job) / Number <u>Leather / #20-2410</u>			
Non-Exempt Employees: Regular rate(s) of pay <u>\$6.04</u> per hour. Overtime rate(s): 1 1/2 x per hour <u>93.03</u> x per hour <u>124.04</u>			
Additional regular rate(s) of pay per hour or premium overtime rate(s) (provide specifics): _____			
Employment agreement is: ☐ Oral ☒ Written			
Allowances Taken: ☒ None ☐ Meals _____ per meal ☐ Lodging _____ ☐ Other _____			
Designated Payday <u>Friday</u> ☒ Weekly ☐ Bi-Weekly ☐ Other _____ if more frequent.			
Notice Given: ☒ At Hiring ☐ Before a change in pay rate(s), allowances claimed, or payday.			

Employee Acknowledgement of Receipt:

Employee Signature _____ Date: 1-10-20
 Production Co. Signature _____ Date: 1/10/20

Labor Code section 2810.5(b) requires that the employer notify you in writing of any changes to the information set forth in this notice within seven (7) calendar days after the time of the changes, unless one of the following applies: (a) All changes are reflected on a timely wage statement furnished in accordance with Labor Code section 226; (b) Notice of all changes is provided in another writing required by law within seven (7) days of the changes. The full text of Labor Code section 2810.5 may be found at www.dir.ca.gov/calaw.html. Check "Labor Code" and search for "2810.5" in quotes.

The employee's signature on this notice merely constitutes acknowledgement of receipt. In accordance with an employer's general recordkeeping requirements under the law, it is the employer's obligation to ensure that the employment and wage-related information provided on this notice is accurate and complete. Furthermore, the employee's signature acknowledging receipt of this notice does not constitute a voluntary written agreement as required under the law between the employer and employee in order to credit any meals or lodging against the minimum wage. Any such voluntary written agreement must be evidenced by a separate document.

This notice form is an adaptation of the template notice form issued by the CA DLSE on December 29, 2011 which may be found at www.dir.ca.gov/DLSE. This notice form is made available as an aid to be in compliance with the CA Labor Code section 2810.5(a). It is not intended as legal advice or as a substitute for review by legal counsel.

A signed copy to be provided to the employee and payroll company. Original should be retained by the production company/employer for at least 3 years.

MJZ0009

Exhibit 3

media services Film Commercials CA, Inc. 500 S SEPULVEDA BLVD LOS ANGELES, CA 90049 T 310 440 9600 mediaservices.com		Employee Name: BENJAMIN J ZUCKER SSN/SIN: [REDACTED] Address: [REDACTED] City/State/Zip: [REDACTED] Corporation Name: Fed Tax ID:		Check Number:	
				108319	
				Check Date:	
				12/31/2019	
				Invoice #	
				PCX0E688F3543	

W-4 Status				Days Worked	Resident St	Union Local	Basis	IAP Rate	Period Begin	Period End
Marital	FED	ST	LOC	1	CA0000	NON-UNION	HOURLY		12/15/2019	12/21/2019
M	0	0	0							

Production Company Employer: MORTON JANKEL ZANDER, INC. 2201 CARMELINA AVE, Los Angeles CA90064		Show Name: MORTON JANKEL ZANDER, INC.	
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TAX ST	EARNINGS TYPE	OCCUPATION	Hours	RATE	AMOUNT	DEDUCTION	CURRENT	YTD
CA0000	Straight Time	Police	8.00	62.02	496.16	FICA	30.76	30.76
Total Hours: 8.00						Federal Income Tax	26.92	26.92
						Medicare	7.19	7.19
						State Withholding - CA	5.44	5.44
						CA VPDI	4.47	4.47

Paid Leave Act		Current	Balance
California Healthy Workplace Healthy Family Act		0.27	Ineligible for Use

TOTALS					
2019	Taxable	NonTax	Total Gross	Deductions	Net Amount
Current	\$496.16		\$496.16	\$74.78	\$421.38
YTD	\$496.16	\$0.00	\$496.16	\$74.78	\$421.38

<i>Disability Claim Inquiry: Contact Media Services at 310-471-9388 for instructions prior to filing.</i> <i>Unemployment Claim Inquiry: Go to your state's unemployment web site.</i> Employer For Film Commercials CA, Inc. Unemployment & 500 S Sepulveda Blvd Workers' Compensation Los Angeles, CA 90049 Claims Only: State: CA Employer: 437-7909-9 <i>All other employment related inquiries, contact Production Company Employer.</i>		Job/Epi/Proj VW Comment PMT Comment:	
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Please go to mediaservices.com for important W2 information Send address changes to W2@mediaservices.com / Fax 310-254-1700 / Phone 310-471-9386.

PAY TO THE ORDER OF
BENJAMIN J ZUCKER



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