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Attorneys for Plaintiff Daniel Ferguson

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

DANIEL FERGUSON, individually, on behalf
 of other persons similarly situated and in his
 representative capacity,

Plaintiff,

vs.

MERE MORTALS PRODUCTIONS, INC.,
 a California corporation; **LIONS GATE
 TELEVISION, INC.**, a foreign corporation;
UBISOFT LA, INC., a California corporation;
LIONS GATE ENTERTAINMENT. INC., a
 foreign corporation; **3 ARTS
 ENTERTAINMENT, LLC**, a foreign limited
 liability company; and **DOES 1 through 50**,
 inclusive,

Defendants.

Case No.: 24STCV07977
 [The Hon. Stuart M. Rice, Dept. 1]

FIRST AMENDED COMPLAINT

- (1) Failure to Pay All Premium Wages
- (2) Failure to Pay All Overtime Wages
- (3) Failure to Pay All Wages Due and
Owing On Separation;
- (4) Failure to Provide Accurate Wage
Statements;
- (5) Unlawful Business Practices [Cal. Bus.
& Prof. Code §§ 17200]
- (6) Penalties Pursuant to Private Attorneys
General Act of 2004

Complaint Filed: March 28, 2024
 Trial Date: None Set

FILED
 Superior Court of California
 County of Los Angeles
05/22/2024
 David W. Slayton, Executive Officer / Clerk of Court
 By: R. Lozano Deputy

1 Plaintiff Daniel Ferguson (“Plaintiff”) on behalf of himself, and all others similarly
2 situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. This is a class action lawsuit brought on behalf of Plaintiff and other similarly
5 situated persons who work or worked as non-union background talent for Defendants Mere
6 Mortals Productions, Inc., Lions Gate Television, Inc., Lions Gate Entertainment, Inc., Ubisoft
7 LA, Inc., and/or 3 Arts Entertainment, LLC. who, in addition to their base hourly rate, earned
8 other forms of compensation not excludable under California law when calculating an
9 employee’s regular rate. Plaintiff’s claims for overtime and meal and rest period violations,
10 inaccurate wage statement penalties, waiting time penalties, and unfair competition arise from
11 Defendants’ failure to factor these forms of non-discretionary remuneration into the calculation
12 of the regular rate of pay for the payment of overtime (and double time) and the calculation of
13 the regular rate of compensation for the payment of break premiums under Labor Code § 226.7
14 and 512. Pursuant to Code of Civil Procedure § 382, Plaintiff seeks class-wide remedies for
15 underpayment of premium wages for meal and rest period violations, underpayment of overtime
16 wages, waiting time penalties in the form of continuation wages for failure to timely pay
17 employees all wages, inaccurate wage statement penalties, equitable relief, reasonable attorneys’
18 fees and costs.

19 2. Plaintiff, as proxy for the State of California, also brings this action pursuant to
20 the California Private Attorneys General Act, Labor Code sections 2698 et seq. (“PAGA”) to
21 recover civil penalties (75% payable to the Labor Workforce Development Agency and 25%
22 payable to aggrieved employees). Plaintiff seeks to represent all aggrieved employees who
23 suffered one or more violations of the applicable Labor Code.

24 **JURISDICTION AND VENUE**

25 3. The Superior Court of the State of California has jurisdiction in this matter
26 because Plaintiff is a resident in the State of California and Defendants are qualified to do
27 business in and regularly conduct business in California. Further, no federal question is at issue
28 because the claims are based solely on California law.

4. This Court has jurisdiction over Plaintiff's claims for civil penalties pursuant to PAGA.

5. This Court has jurisdiction over this action under Article 6 of the California Constitution and California Code of Civil Procedure § 410.10.

6. This Court has jurisdiction over Plaintiff's and Class Members' claims for unpaid overtime wages, unpaid premium wages and waiting time penalties under California Labor Code § 218.

7. This Court has jurisdiction over Plaintiff's and the Class Members' claims for restitution of unpaid wages and other ill-gotten benefits arising from Defendants' unlawful and/or unfair business practices under California Business & Professions Code §§ 17200 et seq.

8. Venue is proper in this judicial district, pursuant to California Code of Civil Procedure § 395.5, because Plaintiff, and other persons similarly situated, performed work for Defendants in the County of Los Angeles, Defendants maintain offices and facilities and transact business in the County of Los Angeles, and Defendants' illegal policies and practices that are the subject of this action were applied, at least in part, to Plaintiff and other persons similarly situated in the County of Los Angeles.

PARTIES

9. Plaintiff Daniel Ferguson is a resident of Los Angeles County, California. Plaintiff was employed by Defendants as a non-exempt non-union background actor in Los Angeles, California, on December 6, 2023.

10. Plaintiff appears in this action on behalf of himself and on behalf of all others similarly situated.

11. During Plaintiff's employment, Plaintiff worked more than 8 hours per day. In addition, Plaintiff and other similarly situated hourly employees received various forms of non-discretionary incentive pay, including but not limited to shift differentials or lump sum payments for wet work, smoke work, hair premiums, body make-up premiums, wardrobe allowances, night premiums, among other things, that are not excludable under California law when calculating an employee's regular rate (hereinafter the aforementioned forms of pay are collectively referred to

as “Incentive Pay”).

12. On information and belief, Mere Mortals Productions, Inc. is now, and at all times mentioned in this complaint, was, a corporation organized and existing under the laws of the state of California and is qualified to do business in California.

13. On information and belief, Lions Gate Television, Inc. is now, and at all times mentioned in this complaint, was, a foreign corporation organized and existing under the laws of the state of Delaware and is qualified to do business in California.

14. On information and belief, Lions Gate Entertainment, Inc. is now, and at all times mentioned in this complaint, was, a foreign corporation organized and existing under the laws of Delaware and is qualified to do business in California.

15. On information and belief, 3 Arts Entertainment, LLC is now, and at all times mentioned in this complaint, was, a foreign limited liability company organized and existing under the laws of the state of Delaware and is qualified to do business in California.

16. On information and belief, Ubisoft LA, Inc. is now, and at all times mentioned in this complaint, was, a corporation organized and existing under the laws of the state of California and is qualified to do business in California.

17. Plaintiff is informed and believes that DOES 1 through 50 are corporations, individuals, limited liability partnerships, limited liability companies, general partnerships, sole proprietorships or are other business entities or organizations of a nature not currently known to Plaintiff.

18. Plaintiff is unaware of the true names of Defendants DOES 1 through 50. Plaintiff sues said defendants by said fictitious name and will amend this complaint when the true names and capacities are ascertained or when such facts pertaining to liability are ascertained, or as permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously named Defendants is in some manner responsible for the events and allegations set forth in this complaint.

19. All of the acts and failures to act alleged herein were duly performed by and were attributable to all Defendants, each acting as a joint employer, successor, agent, employee, or

1 under the direction and control of the others, except as specifically alleged otherwise. Said acts
2 and failures to act were within the scope of such agency and/or employment, and each Defendant
3 participated in, approved and/or ratified the unlawful acts and omissions by the other Defendants
4 complained of herein. Whenever and wherever reference is made in this Complaint to any act by
5 a Defendant or Defendants, such allegations and reference shall also be deemed to mean the acts
6 and failures to act of each Defendant acting individually, jointly and/or severally.

7 20. Plaintiff makes the allegations in this complaint without any admission that, as to
8 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading, and
9 Plaintiff reserves all of Plaintiff's rights to plead in the alternative.

10 21. Defendants Mere Mortals Productions, Inc., Lions Gate Television, Inc., Lions
11 Gate Entertainment, Inc., 3 Arts Entertainment, LLC, Ubisoft LA, Inc., and/or DOES 1-50 are
12 collectively referred to herein as "Defendants".

13 **GENERAL FACTUAL ALLEGATIONS**

14 22. **Facts Related to Defendants' Calculation of Overtime Wages:** On December
15 6, 2023 Defendants employed Plaintiff as a non-union background actor to appear in the
16 television show, "Mere Mortals" aka "Hydra." Defendants paid Plaintiff a base hourly rate of
17 \$17.00 per hour. Plaintiff worked at least 8.2 hours that day with no meal or rest break as required
18 under California law.

19 23. Because Plaintiff worked at least 8.2 hours, Defendants paid Plaintiff 0.2 hours of
20 overtime at one and one-half times his base hourly rate (or \$25.50/hour).

21 24. Plaintiff also earned and was paid an additional \$5 for performing work that
22 involved smoke (referred to on his wage statement or voucher as "SMOKE WORK". The \$5
23 payment was non-discretionary because it was not paid at Defendants' sole discretion, and, as
24 such, was required to be factored into the calculation of Plaintiff's regular rate of pay for the
25 payment of his overtime and double time wages and into the calculation of Plaintiff's regular
26 rate of compensation for the payment of his meal period premium.

27 25. Despite Defendants' payment of the non-discretionary "SMOKE WORK"
28 payment to Plaintiff, and other similarly situated hourly employees, Defendants failed to include

1 the payment when calculating Plaintiff's and other similarly situated persons' regular rate of pay,
2 thereby causing them to be underpaid all of their required overtime and double time wages.
3 Instead, Defendant paid Plaintiff one and one-half times his base rate, which was not equal to
4 one and one-half times the applicable regular rate.

5 26. On information and belief, during the relevant period, Defendants have failed to
6 factor other forms of Incentive Pay into the regular rates of pay for the payment of overtime and
7 double time wages to persons employed as background talent.

8 27. **Facts Related to Defendants' Calculation of Meal and Rest Period Premiums:**
9 Section 11 of the applicable Wage Orders provides: "If an employer fails to provide an employee
10 a meal period in accordance with the applicable provisions of this order, the employer shall pay
11 the employee one (1) hour of pay at the employee's **regular rate of compensation** for each
12 workday that the meal period is not provided." See, e.g., Wage Order 12-2001(11)(C), (12)(B)
13 (same re rest periods) (emphasis added); see also Labor Code § 226.7(c) ("If an employer fails
14 to provide an employee a meal or rest or recovery period in accordance with a state law, ..., the
15 employer shall pay the employee one additional hour of pay at the employee's **regular rate of**
16 **compensation** for each work day that the meal or rest period is not provided." (Emphasis added).

17 28. During the relevant period, Defendants were required to pay premium wages to
18 Plaintiff and other members of the Meal and Break Premium Class for violations of the
19 California's meal and rest break laws. For example, because Plaintiff experienced a meal period
20 violation on December 6, 2023, due to Defendants' failure to provide him with a compliant meal
21 period, Defendants were required to factor the \$5 "SMOKE WORK" payment into the
22 calculation of Plaintiff's regular rate of compensation for the payment of his meal period
23 premium.

24 29. However, Defendants failed to pay Plaintiff and other members of the Meal and
25 Break Premium Class one hour of pay for violations of the meal and rest period requirements,
26 including in periods when the employee earned Incentive Pay required to be factored into an
27 employee's regular rate of compensation.

28 30. On information and belief, during the relevant period, Defendants have failed to

factor other forms of Incentive Pay into the regular rates of compensation for the payment of premium wages to persons employed as background talent.

CLASS DEFINITIONS AND CLASS ALLEGATIONS

31. Plaintiff brings this action on behalf of himself, on behalf of all others similarly situated, and as a member of Classes defined as follows:

- a. Overtime Class: All current and former non-exempt non-union employees of Defendants employed as background talent in California who earned and were paid overtime wages on the same work day that Defendants paid them Incentive Pay (as defined above) during the four years preceding the filing of Plaintiff's Complaint through the date Notice is mailed to the members of this Class.
- b. Meal and Break Premium Class: All current and former non-exempt non-union employees of Defendants employed as background talent in California to whom Defendants paid premium pay pursuant to Labor Code section 226.7 or Sections 11 or 12 of the applicable Wage Orders on the same work day that Defendants paid them Incentive Pay (as defined above) during the four years preceding the filing of Plaintiff's Complaint through the date Notice is mailed to the members of this Class.
- c. Waiting Time Penalty Class: Members of the Overtime Class and members of the Break Premium Class whose employment by Defendants ended at any time during the three years preceding the filing of Plaintiff's Complaint through the date Notice is mailed to the members of this Class.
- c. Wage Statement Class: Members of the Overtime Class and members of the Meal and Break Premium Class employed by Defendants at any time during the one-year period preceding the filing of Plaintiff's Complaint through the date Notice is mailed to the members of this Class.

32. This action has been brought and may be properly maintained as a class action pursuant to the provisions of California Code of Civil Procedure § 382 and other applicable law.

1 33. **Numerosity:** Code of Civil Procedure § 382: members of the Classes are so
2 numerous that their individual joinder is impracticable. Plaintiff estimates that there are no less
3 than 50 persons in each of the classes. The precise number of Class members and their addresses
4 are unknown to Plaintiff. However, Plaintiff is informed and believes that the number can be
5 obtained from Defendants' records. Class members may be notified of the pendency of this
6 action by mail, electronic mail, the Internet, or published notice.

7 34. **Existence of Predominance of Common Questions of Fact and Law:** Code of
8 Civil Procedure § 382: Common questions of law and fact exist as to all members of the Class.
9 These questions predominate over any questions effecting only individual members of the class.
10 These common factual and legal questions include:

- 11 (a) Whether Defendants' failure to factor non-discretionary remuneration,
12 such as shift differentials and other forms of compensation paid to class
13 members, into the payment of overtime wages violated Labor Code § 510
14 and the applicable IWC Wage Orders;
- 15 (b) Whether Defendants' failure to factor non-discretionary remuneration,
16 such as shift differentials and other forms of compensation paid to class
17 members, into the payment of premium wages for break violations
18 violated Labor Code § 226.7(c) and the applicable IWC Wage Orders;
- 19 (c) Whether Defendants failed to provide class members who ceased
20 employment with Defendants all wages owed at the time of the cessation
21 of the employee-employer relationship;
- 22 (d) Whether Defendants committed unlawful business practices or acts within
23 the meaning of Business & Professions Code Sects. 17200 et seq.;
- 24 (e) Whether, as a consequence of Defendants' unlawful conduct, the
25 members of the Classes are entitled to restitution, and/or equitable relief;
- 26 (f) Whether Defendants' affirmative defenses, if any, raise any common
27 issues of law or fact as to Plaintiff and the class members as a whole.

28 35. **Typicality:** Plaintiff's claims are typical of the claims of the members of each

1 Class because Plaintiff, as an hourly paid employee, was exposed to the same unlawful business
2 practices as the members of the classes. Plaintiff sustained the same types of injuries and losses
3 that the class members sustained. Plaintiff is subject to the same affirmative defenses as the
4 members of the class.

5 36. **Adequacy:** Plaintiff will adequately and fairly protect the interests of the
6 members of the Classes. Plaintiff has no interest adverse to the interests of absent Class
7 members. Plaintiff is represented by legal counsel who has substantial class action experience
8 in civil litigation and employment law.

9 37. **Superiority:** A class action is superior to other available means for fair and
10 efficient adjudication of the claims of the Classes and would be beneficial for the parties and the
11 court. Class action treatment will allow a large number of similarly situated persons to prosecute
12 their common claims in a single forum, simultaneously, efficiently, and without the unnecessary
13 duplication of effort and expense that numerous individual actions would require. The monetary
14 amounts due to many individual Class members are likely to be relatively small, and the burden
15 and expense of individual litigation would make it difficult or impossible for individual members
16 of the Class to seek and obtain relief. A class action will serve an important public interest by
17 permitting such individuals to effectively pursue recovery of the sums owed to them. Further,
18 class litigation prevents the potential for inconsistent or contradictory judgments raised by
19 individual litigation.

20 **PAGA ALLEGATIONS**

21 38. Plaintiffs bring this action pursuant to the Private Attorneys General Act of 2004
22 (“PAGA”), California Labor Code § 2698 *et seq.* on a representative basis. All current and
23 former non-exempt employees who suffered one or more violations below are the aggrieved
24 employees.

25 **FIRST CAUSE OF ACTION**

26 **FAILURE TO PAY ALL PREMIUMS FOR MEAL AND REST PERIOD VIOLATIONS**

27 **(By Plaintiff and the Meal and Break Premium Class against Defendants)**

28 39. Plaintiff re-alleges and incorporates by reference the foregoing allegations as

1 though set forth herein.

2 40. At all relevant times, Plaintiff and the other members of the Meal and Break
3 Premium Class were employees of Defendants covered by Labor Code Section 226.7 and the
4 applicable Wage Orders, including Wage Order 12.

5 41. Pursuant to Labor Code Section 226.7 and Wage Order 12, Plaintiff and the other
6 members of the Meal and Break Premium Class were entitled to rest periods of at least 10 minutes
7 for each four-hour period of work, or major fraction thereof, and one hour of additional pay (i.e.,
8 premium) for every day a required rest period was not provided.

9 42. Pursuant to Labor Code Sections 226.7 and 512, and Wage Order 12, Plaintiff
10 and the other members of the Meal and Break Premium Class were entitled to a meal period of
11 at least 30 minutes for each workday they worked more than 5 hours in any workday, and one
12 additional hour of pay (i.e., premium) for every day that a timely meal period was not provided.

13 43. When Defendants failed to allow Plaintiff and other members of the Meal and
14 Break Premium Class to take their meal and/or rest periods in accordance with Labor Code
15 Section 226.7 and Wage Order 12, Defendants maintained a policy or practice of paying break
16 premiums at amounts that only included “base hourly wages” and did not factor in Incentive Pay
17 earned for an hour’s work owed to members of the Meal and Break Premium Class as required
18 by Labor Code Section 226.7 and Wage Order 12.

19 44. During the period in which Defendants did not provide Plaintiff and members of
20 the Meal and Break Premium Class all compliant rest and/or meal periods, Defendants failed to
21 provide Plaintiff and other members of the Meal and Break Premium Class the additional hour
22 of pay required by Labor Code Section 226.7 and Wage Order 12.

23 45. As a result of Defendants’ unlawful conduct, Plaintiff and other members of the
24 Meal and Break Premium Class have suffered damages in an amount, subject to proof, to the
25 extent they were not paid all premiums owed for meal and rest period violations.

26 46. Pursuant to Labor Code Section 218, Plaintiff and other members of the Meal and
27 Break Premium Class are entitled to recover the full amount of their unpaid additional pay for
28 meal and rest period violations. Pursuant to Labor Code Section 218.5, Plaintiff and other

1 members of the Meal and Break Premium Class are entitled to recover their reasonable attorney's
2 fees and costs of suit. Pursuant to Labor Code Section 218.6 or Civil Code Section 3287(a),
3 Plaintiff and other members of the Meal and Break Premium Class are entitled to recover
4 prejudgment interest on the additional pay owed for meal and rest period violations.

5 **SECOND CAUSE OF ACTION**

6 **FAILURE TO PAY ALL OVERTIME WAGES**

7 **(Cal. Labor Code §§ 510, 1194)**

8 **(By Plaintiff and the Overtime Class against Defendants)**

9 47. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs,
10 as though they are set forth in full.

11 48. Pursuant to Labor Code Sections 510, 1194 and Subsection 3(D) of Wage Order
12 12-2001, require an employer to pay an employee one and one-half (1½) times such employee's
13 regular rate of pay for work in excess of eight hours in a day. See Wage Order
14 12(3)(d)(specifically providing for "One and one-half (1½) times the extra player's rate of pay
15 for the ninth (9th) and tenth (10th) work hours of employment and not less than double the extra
16 player's rate of pay for all hours worked thereafter").

17 49. Plaintiff is informed and believes, and based thereon, alleges that Defendants
18 regularly and systematically, as a policy and practice, miscalculated the overtime and double
19 time rates of pay by failing to properly include the various forms of Incentive Pay paid to Plaintiff
20 and members of the Overtime Class, such as the \$5 "SMOKE WORK" payment paid to Plaintiff
21 and others on December 6, 2023, which are not statutory exclusions when calculating an
22 employee's regular rate of pay. Rather, Plaintiff and members of the Overtime Class were only
23 paid one and one-half times their base rate, which was not equal to the regular rate, as Defendants
24 failed to include the various forms of Incentive Pay earned during corresponding periods that
25 were required to be included in the regular rate, but were not.

26 50. Defendants' policy and practice of requiring overtime work but not paying at the
27 proper overtime and double time rates for said work violates Labor Code Section 510 and the
28 applicable California Wage Orders.

1 51. As a result of the unlawful acts of Defendants, Plaintiff and the members of the
2 Overtime Class he seeks to represent have been deprived of overtime wages in amounts to be
3 determined at trial, and are entitled to recovery of such amounts, plus interest thereon, attorneys'
4 fees, and costs.

5 **THIRD CAUSE OF ACTION**

6 **FAILURE TO PAY ALL WAGES DUE AND OWING ON SEPARATION OF**
7 **EMPLOYMENT**

8 **(Cal. Labor Code §§ 201.5, 203)**

9 **(By Plaintiff and the Waiting Time Penalty Class against Defendants)**

10 52. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs,
11 as though they are set forth in full.

12 53. Plaintiff and the other members of the Waiting Time Penalty Class were
13 employees of Defendants covered by Labor Code Sections 201.5 whose employment with
14 Defendants ended during the relevant class period.

15 54. Labor Code Section 201.5 provides "An employee engaged in the production or
16 broadcasting of motion pictures whose employment terminates is entitled to receive payment of
17 the wages earned and unpaid at the time of the termination by the next regular payday."

18 55. As alleged above, Defendants failed to pay Plaintiff and other members of the
19 Waiting Time Penalty Class all wages earned and unpaid prior to termination, including all
20 overtime and premium wages due at the time of the cessation of the employee-employer
21 relationship in accordance with Labor Code Section 201.5. Plaintiff is informed and believes
22 and thereon alleges that at all relevant times within the applicable limitations period, Defendants
23 maintained and continue to maintain a policy or practice of not paying terminated employees all
24 their final wages, including all overtime wages and premium wages, earned before termination
25 due under Labor Code Section 201.5.

26 56. Defendants' failure to pay Plaintiff and members of the Waiting Time Penalty
27 Class all wages earned prior to termination in accordance with Labor Code Section 201.5 was
28 willful. Defendants had the ability to pay all wages earned by employees prior to termination in

1 accordance with Labor Code Section 201.5, but intentionally adopted policies or practices
2 incompatible with the requirements of Labor Code Section 201.5.

3 57. Pursuant to Labor Code Section 201.5, Plaintiff and other members of the Waiting
4 Time Penalty Class are entitled to all wages earned prior to termination that Defendants failed to
5 pay them.

6 58. Pursuant to Labor Code Section 203, Plaintiff and other members of the Waiting
7 Time Penalty Class are entitled to continuation of their wages, from the day their earned and
8 unpaid wages were due upon termination until paid, up to a maximum of 30 days.

9 59. As a result of Defendants' conduct, Plaintiff and other members of the Waiting
10 Time Penalty Class have suffered damages in an amount, subject to proof, to the extent they were
11 not paid for all wages earned prior to termination.

12 60. As a result of Defendants' conduct, Plaintiff and members of the Waiting Time
13 Penalty Class have suffered damages in an amount, subject to proof, to the extent they were not
14 paid all continuation wages owed under Labor Code Section 203.

15 61. Pursuant to Labor Code Sections 218 and 218.5, Plaintiff and other members of
16 the Waiting Time Penalty Class are entitled to recover the full amount of their unpaid wages,
17 continuation wages under Labor Code Section 203, reasonable attorney's fees and costs of suit.
18 Pursuant to Labor Code Section 218.6 or Civil Code Section 3287(a), Plaintiff and other
19 members of the Waiting Time Penalty Class are entitled to recover prejudgment interest on the
20 amount of their unpaid wages and unpaid continuation wages.

21 **FOURTH CAUSE OF ACTION**

22 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

23 **(Labor Code § 226)**

24 **(By Plaintiff and the Wage Statement Class against Defendants)**

25 62. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs,
26 as though they are set forth in full.

27 63. Labor Code § 226(a) sets forth reporting requirements for employers when they
28 pay wages, including in relevant part: "Every employer shall ... at the time of each payment of

1 wages, furnish each of his or her employees ... an itemized statement in writing showing (1)
2 gross wages earned, (2) total hours worked by the employee, ... (5) net wages earned,” Labor
3 Code § 226(e)(1) provides: “An employee suffering injury as a result of a knowing and
4 intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater
5 of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs
6 and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not
7 exceeding an aggregate penalty of four thousand dollars (\$4,000) per employee, and is entitled
8 to an award of costs and reasonable attorneys’ fees.”

9 64. Labor Code § 226(e)(2)(B)(iii) provides: “An employee is deemed to suffer injury
10 for purposes of this subdivision if the employer fails to provide accurate and complete
11 information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and
12 the employee cannot promptly and easily determine from the wage statement alone one or more
13 of the following: (i) The amount of the gross wages or net wages paid to the employee during
14 the pay period or any of the other information required to be provided on the itemized wage
15 statement pursuant to items (2) to (4), inclusive, (6) and (9) of subdivision (a) ... (iii) The name
16 and address of the employer....”

17 65. Throughout the period applicable to this cause of action, Defendants knowingly
18 and intentionally failed to furnish, and continue to knowingly and intentionally fail to furnish, to
19 Plaintiff and other members of the Wage Statement Class, itemized statements accurately
20 showing the required information, including but not limited to all wages earned and correct
21 applicable hourly rates of pay.

22 66. Plaintiff and the other members of the Wage Statement Class suffered injury by
23 these failures because, among other things, they could not determine from the wage statement
24 alone their total wages and correct hourly rates.

25 67. Plaintiff and the other Wage Statement Class members are entitled to the amounts
26 provided for in Labor Code § 226(e), plus costs of suit.

27 68. Pursuant to Civil Code § 3287(a), Plaintiff and the other members of the Wage
28 Statement Class are entitled to recover prejudgment interest on the amount of their § 226(e)

remedies. Pursuant to Code of Civil Procedure Section 1021.5, the substantial benefit doctrine, and/or the common fund doctrine, Plaintiff and other members of the Class are entitled to recover their attorney's fees.

FIFTH CAUSE OF ACTION
FOR RESTITUTION OF UNDERPAYMENT OF OVERTIME AND PREMIUM
WAGES PURSUANT TO BUSINESS & PROFESSIONS CODE
SECTIONS 17200 ET SEQ.
(UNFAIR COMPETITION)
(By Plaintiff and the Classes against Defendants)

69. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs, as though they are set forth in full.

70. Beginning at an exact date unknown to Plaintiff, Defendants engaged in unfair competition as defined in California Business and Professions Code section 17200.

71. Section 17200 provides a private cause of action for any "unlawful, unfair or fraudulent business practice and unfair, deceptive, untrue or misleading advertising."

72. At all times relevant to this action, Plaintiff and other members of the Classes were employees of Defendants entitled to the benefits of Labor Code sections 201-203, 226.7, 510 and 1194.

73. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and other members of the Overtime Class their overtime wages at the rate of pay required by law. Accordingly, Plaintiff and other members of the Overtime Class did not receive the full amount of overtime and double time that they were entitled to receive by law.

74. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff and other members of the Meal and Break Premium Class their meal and rest break premium wages at the rate of pay required by law. Accordingly, Plaintiff and other members of the Meal and Break Premium Class did not receive the full amount of premium wages that they were entitled to receive by law.

75. During the relevant time period, Defendants intentionally and willfully failed to

1 pay Plaintiff and other members of the Waiting Time Penalty Class the full amount of their
2 overtime wages and/or premium wages upon the separation of employment by Defendants and,
3 thereafter, failed to pay waiting time penalties pursuant to Labor Code section 203 to the
4 members of the Waiting Time Penalty Class. Accordingly, Plaintiff and members of the Waiting
5 Time Penalty Class did not receive all of the wages they were entitled to receive by law.

6 76. The unlawful conduct of Defendants alleged herein constitutes unfair competition
7 within the meaning of Business and Professions Code section 17200. Due to its unlawful and
8 unfair business practices in violation of the Labor Code, Defendants have gained a competitive
9 advantage over other comparable companies doing business in the State of California that comply
10 with their obligations under the Labor Code.

11 77. As a result of Defendants' unfair competition as alleged herein, Plaintiff and other
12 members of the Classes have suffered injury in fact and lost money or property. Plaintiff and
13 members of the Classes have been deprived of their rights to all overtime and double time wages
14 owed to them, additional premium wages for meal and rest period violations; and/or timely
15 payment of all earned wages due upon termination of employment.

16 78. Pursuant to Business and Professions Code section 17203, Plaintiff and other
17 members of the Classes are entitled to restitution of the amount of overtime pay by which
18 Defendants underpaid them, the amount of the premium wages by which Defendants underpaid
19 them, and to their reasonable attorneys' fees and costs under Code of Civil Procedure section
20 1021.5.

21 **SIXTH CAUSE OF ACTION**

22 **Civil Penalties Under PAGA**

23 **(By Plaintiff, Aggrieved Employees and the State of California against Defendants)**

24 79. Plaintiff realleges and incorporates by reference all of the foregoing paragraphs,
25 as though they are set forth in full.

26 80. At all times relevant to this action, Plaintiff and other Aggrieved Employees were
27 "aggrieved employees" within the meaning of Labor Code Section 2699.

28 81. Defendants' conduct as described herein, arising from Defendants', failure to pay

rest and meal break premiums at the correct regular rate of compensation, failure to provide accurate wage statements, and failure to timely pay all wages upon cessation of employment constitute violations of Labor Code Sections 201-204, 210, 223, 225.5, 226, 226.3, 246, 226.7, 248.5, 510, 512, , 558, 1197, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198 and the applicable Wage Orders, including, Subsections 3, 11 and 12 of Wage Order 12-2001.

82. Labor Code Sections 2699(a) and (g) authorize an aggrieved employee, on behalf of himself and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3.

83. Plaintiff has complied with the procedures for bringing suit specified in Labor Code Section 2699.3. By letter dated March 14, 2024, Plaintiff gave written notice to the Labor and Workforce Development Agency (“LWDA”) via its online filing system and by certified mail to Defendant of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. To date, more than 65 days after the postmark date of March 14, 2024, the LWDA has not advised Plaintiff that it intends to investigate Plaintiff’s allegations.

84. Pursuant to Labor Code Sections 2699(a) and (f), Plaintiff and other Aggrieved Employees are entitled to civil penalties for Defendants’ violations of the Labor Code and the applicable Wage Orders of the Industrial Welfare Commission, including Wage Order 12-2001, in the amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation. Pursuant to Labor Code Section 2699(i), 75% of the civil penalties recovered shall be distributed to the LWDA, and 25% shall be distributed to the aggrieved employees.

85. Pursuant to Labor Code Section 2699(g), Plaintiff is entitled to an award of reasonable attorney’s fees and costs in connection with his claims for civil penalties

PRAYER FOR RELIEF

WHEREFORE, Plaintiff on behalf of himself and all others similarly situated, prays for relief and judgment against Defendants as follows:

CLASS CERTIFICATION:

1. An order that the action be certified as a class action;
2. An order that Plaintiff be certified as the representative of the Classes;
3. An order that counsel for Plaintiff be confirmed as Class counsel;

ON THE FIRST CAUSE OF ACTION:

1. Damages for underpaid premiums for meal and rest period violations;
2. Prejudgment interest;

ON THE SECOND CAUSE OF ACTION:

1. Damages for underpaid overtime wages;
2. Prejudgment interest;

ON THE THIRD CAUSE OF ACTION:

1. Damages for unpaid wages earned prior to termination of employment;
2. Damages for unpaid continuation wages owed for failing to pay all earned wages timely upon termination of employment;
3. Prejudgment interest;

ON THE FOURTH CAUSE OF ACTION:

1. Damages for inaccurate wage statements for each pay period;
2. Prejudgment interest;

ON THE FIFTH CAUSE OF ACTION:

1. Restitution of all underpayment of overtime wages by Defendants to Plaintiff and members of the Overtime Class;
2. Restitution of all underpayment of premium wages by Defendants to Plaintiff and members of the Meal and Break Premium Class;
3. Prejudgment interest;

ON THE SIXTH CAUSE OF ACTION:

1. That the Court declare, adjudicate and decree that Defendants violated the California Labor Code by failing to pay wages for all hours worked (including minimum, straight tie, and overtime wages), failing to provide meal periods and

1 pay the correct amount of meal period premium wages, failing to authorized and
2 permit rest periods and pay the correct amount of rest period premium wages,
3 failing to pay all final wages to terminated employees, failing to furnish accurate
4 wage statements, and failing to reimburse employees for all necessary business
5 expenses.

- 6 2. For all actual, consequential, and incidental losses and damages according to
7 proof;
- 8 3. For all civil penalties pursuant to California Labor Code §§ 2699, et seq., and all
9 other applicable Labor Code provisions;
- 10 4. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
11 California Labor Code § 2699;
- 12 5. For such other and further relief as the Court may deem equitable and
13 appropriate.

14 **ON ALL CAUSES OF ACTION:**

- 15 1. Judgment in favor of Plaintiff and the putative Classes and against Defendants;
- 16 2. Reasonable attorney's fees;
- 17 3. Costs of suit; and
- 18 4. Such other relief as the Court deems just and proper.

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20 DATED: May 17, 2024

KIM LEGAL, APC

21
22 By: /s/ Frank H. Kim
23 Frank H. Kim, Esq.
24 Attorneys for Plaintiff

25 **DEMAND FOR JURY TRIAL**

26 Plaintiff demands a trial by jury for herself and the Class on all claims so triable.
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28

1 DATED: May 17, 2024

KIM LEGAL, APC

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3 By: /s/ Frank H. Kim
4 Frank H. Kim, Esq.
5 Attorneys for Plaintiff
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