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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF SAN FRANCISCO**

10 **CGC-24-618367**

11 AMOURAFINA BURTON, an individual and
12 on behalf of all others similarly situated;

13 Plaintiff,

14 vs.

15 KINETIC EVENTS, INC., a California
16 corporation; ATRIUM PAYROLL
17 SERVICES, LLC, a New York limited liability
company; and DOES 1 through 50,

18 Defendants.

Case No.:

**REPRESENTATIVE ACTION
COMPLAINT FOR VIOLATION OF THE
CALIFORNIA PRIVATE ATTORNEYS
GENERAL ACT (LABOR CODE §§ 2698,
et seq.)**

1 Plaintiff AMOURAFINA BURTON (“Plaintiff”), on behalf of herself as an aggrieved
2 employee, the State of California, and other aggrieved employees, hereby brings this Representative
3 Action Complaint (“Complaint”) against Defendants KINETIC EVENTS, INC., a California
4 corporation; ATRIUM PAYROLL SERVICES, LLC, a New York limited liability company; and
5 DOES 1 to 50 (collectively “Defendants”), and on information and belief alleges as follows:

6 **JURISDICTION AND VENUE**

7 1. Plaintiff brings this Complaint for recovery of civil penalties under the California
8 Private Attorneys General Act, California Labor Code §§ 2698, *et seq.* (“PAGA”), for Defendants’
9 violations of the Labor Code and Industrial Welfare Commission (“IWC”) Wage Order 4-2001
10 (“Wage Order 4”), including Labor Code §§ 201-204, 226, 226.7, 246, 432, 510, 512, 516, 558,
11 558.1, 1182.12, 1174, 1194, 1194.2, 1197, 1198, 1198.5, 2802. This Court has jurisdiction over
12 Defendants’ violations of the Labor Code because the amount in controversy exceeds \$25,000.

13 2. Venue is proper in this judicial district because Defendants maintain offices, have
14 agents, and/or transact business in the State of California, including San Francisco County, and
15 some of the acts and omissions complained of herein occurred in San Francisco County.
16 Furthermore, Plaintiff was employed by Defendants within San Francisco County.

17 **PARTIES**

18 3. Plaintiff is, and at all times relevant herein was, an individual over the age of
19 eighteen (18) and is a California resident. Within the statute of limitations periods applicable to
20 each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt employee.
21 Plaintiff was, and is, a victim of Defendants’ policies, practices, and/or customs complained of
22 herein and has been deprived of the rights guaranteed by Labor Code §§ 201-204, 226, 226.7, 246,
23 432, 510, 512, 516, 558, 558.1, 1182.12, 1174, 1194, 1194.2, 1197, 1198, 1198.5, 2802, and Wage
24 Order 4.

25 4. Plaintiff is informed and believes, and based thereon alleges, that during the
26 applicable statute of limitations for each cause of action pled herein and continuing to the present,
27 Defendants engaged in and continue to engage in business, and employed Plaintiff and other,
28 similarly-situated non-exempt employees within San Francisco County, and the State of California

1 and, therefore, were (and are) doing business in San Francisco County and the State of California.

2 5. Plaintiff does not know the true names or capacities, whether individual, partner, or
3 corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
4 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
5 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed and
6 believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
7 partners, or corporate, was responsible in some manner for the acts and omissions alleged herein,
8 and proximately caused Plaintiff and aggrieved employees to be subject to the unlawful
9 employment practices, wrongs, injuries, and damages complained of herein.

10 6. At all times herein mentioned, each of said Defendants participated in the doing of
11 the acts hereinafter alleged to have been done by the named Defendant; and furthermore,
12 Defendants, and each of them, were the agents, servants, and employees of each of the other
13 defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting
14 within the course and scope of said agency and employment.

15 7. Plaintiff is informed and believes, and based thereon alleges, that at all times
16 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
17 joint venturer of, or working in concert with each of the other co-Defendants and was acting within
18 the course and scope of such agency, employment, joint venture, or concerted activity. To the extent
19 said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining
20 Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

21 8. At all times herein mentioned, Defendants, and each of them, were members of, and
22 engaged in, a joint venture, partnership, and common enterprise, and acting within the course and
23 scope of, and in pursuance of, said joint venture, partnership, and common enterprise.

24 9. At all times herein mentioned, the acts and omissions of various Defendants, and
25 each of them, concurred and contributed to the various acts and omissions of each and all of the
26 other Defendants in proximately causing the injuries and damages as herein alleged.

27 **FACTUAL ALLEGATIONS**

28 10. Defendant Kinetic provides event staffing for trade shows, festivals, events,

1 conventions and brand activations in California and is headquartered in San Francisco, California.
2 Defendant Atrium is a staffing agency. Defendant Atrium employed Plaintiff and placed her to
3 work for Defendant Kinetic, and Defendant Kinetic employed Plaintiff, as an event staff at events
4 staffed by Defendant Kinetic from December 2022 to June 14, 2024 at various locations, including
5 in San Francisco and Palo Alto. The “aggrieved employees” that Plaintiff seeks civil penalties on
6 behalf of are all current and former hourly-paid or non-exempt employees, whether directly hired or
7 through a staffing agency, who worked for Defendant Kinetic within the State of California as an
8 event staff, brand ambassador, or similar position.

9 11. Labor Code §§ 1194, 1197, and 1197.1 provide the minimum wage to be paid to
10 employees, and the payment of a lesser wage than the minimum so fixed is unlawful. The
11 applicable Wage Order defines “hours worked” as “the time during which an employee is subject to
12 the control of an employer, and includes all the time the employee is suffered or permitted to work,
13 whether or not required to do so.” See §2 of all applicable Wage Orders. Therefore, employers are
14 required to pay employees for all time spent subject to the control of the employer and all time the
15 employee is suffered or permitted to work. During the relevant time period, Defendants required
16 Plaintiff and other aggrieved employees to perform work before clocking in, after clocking out,
17 and/or during off-the-clock meal breaks, including unlawful rounding, and failed to compensate
18 aggrieved employees for this time.

19 12. Labor Code §§ 510 and 1198 require employers to pay time-and-a-half or double
20 time overtime wages, and make it unlawful to work employees for hours longer than eight hours in
21 one day and/or over forty hours in one week without paying the premium overtime rates at one-and-
22 one-half times or double the regular rate of pay, including additional remuneration. During the
23 relevant time period, Plaintiff and other aggrieved employees worked in excess of 8 hours in a day
24 and 40 hours in a week but were not paid for all hours worked before clocking in, after clocking out,
25 and/or during off-the-clock meal breaks, including unlawful rounding.

26 13. Labor Code §§ 226.7, 512, 516, and the Wage Orders require employers to pay an
27 employee one additional hour of pay at the employee's regular rate of compensation for each meal
28 or rest period that is not provided. During the relevant time period, Defendants required Plaintiff

1 and other aggrieved employees to work during meal and rest periods and failed to compensate them
2 properly and at the regular rate of compensation for non-compliant meal and rest periods including,
3 inter alia, short, late, interrupted, and missed meal and rest periods, including unlawful rounding of
4 meal period punches.

5 14. Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the
6 wages earned and unpaid at the time of discharge are due and payable immediately, and if an
7 employee quits his or her employment, his or her wages shall become due and payable not later than
8 seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of
9 his or her intention to quit, in which case the employee is entitled to his or her wages at the time of
10 quitting. During the relevant time period, Defendants failed to pay Plaintiff and other aggrieved
11 employees all wages due to them within any time period specified by Labor Code §§ 201 and 202,
12 including earned and unpaid minimum, overtime, and premium wages as discussed above.

13 15. Labor Code § 204 requires that all wages earned by any person in any employment
14 between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due
15 upon termination of an employee, are due and payable between the 16th and the 26th day of the
16 month during which the labor was performed, and that all wages earned by any person in any
17 employment between the 16th and the last day, inclusive, of any calendar month, other than those
18 wages due upon termination of an employee, are due and payable between the 1st and the 10th day
19 of the following month. Labor Code § 204 also requires that all wages earned for labor in excess of
20 the normal work period shall be paid no later than the payday for the next regular payroll period.
21 During the relevant time period, Defendants failed to pay Plaintiff and other aggrieved employees
22 all wages due to them within any time period specified by Labor Code § 204, including earned and
23 unpaid minimum, overtime, and premium wages as discussed above.

24 16. Labor Code § 226 requires employers to make, keep and provide complete and
25 accurate itemized wage statements to their employees. During the relevant time period, Defendants
26 did not provide Plaintiff and other aggrieved employees with complete and accurate itemized wage
27 statements. The wage statements they received from Defendants were in violation of Labor Code §
28 226(a). The violations include, but are not limited to, the failure to include the total hours worked,

1 including time spent working off the clock and during meal and rest periods, failure to state the
2 correct gross and net wages earned for all time worked, and failure to state all applicable hourly
3 rates in effect during the pay period and the corresponding number of hours worked at each hourly
4 rate by the employee.

5 17. Labor Code § 1174 requires an employer to keep, at a central location in the state or
6 at the plants or establishments at which employees are employed, payroll records showing the hours
7 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
8 applicable piece rate paid to, employees employed at the respective plants or establishments. These
9 records shall be kept with rules established for this purpose by the commission, but in any case shall
10 be kept on file for not less than two years. During the relevant time period, Defendants failed to
11 keep accurate and complete payroll records showing the actual hours worked daily and the wages
12 earned by Plaintiff and other aggrieved employees, including earned and unpaid minimum,
13 overtime, and premium wages as discussed above.

14 18. Labor Code § 2802 requires an employer to reimburse its employee for all necessary
15 expenditures incurred by the employee in direct consequence of the discharge of his or her job
16 duties or in direct consequence of his or her obedience to the directions of the employer. During the
17 relevant time period, Plaintiff and other aggrieved employees incurred necessary business-related
18 expenses and costs that were not fully reimbursed by Defendants, including, but not limited to,
19 using their personal cellphones to clock in and out of their shifts and communicate with Defendants
20 regarding work, home internet and personal computer devices to communicate with Defendants
21 regarding work, and use their personal vehicles to travel to and from events.

22 19. On or about July 17, 2024, Plaintiff notified Defendants via certified mail, and
23 notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of
24 Defendants’ violations of the Labor Code and Plaintiff’s intent to bring a claim for civil penalties
25 under Labor Code § 2698, *et seq.* with respect to the violations of the Labor Code identified in the
26 preceding paragraph. Now that 33 days and 65 days have passed from Plaintiff notifying
27 Defendants and the LWDA of these violations, Defendants have not cured any curable violations,
28 and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has

1 exhausted administrative requirements for bringing a claim under the Private Attorneys General Act
2 with respect to these violations.

3 **FIRST CAUSE OF ACTION**

4 **PRIVATE ATTORNEYS GENERAL ACT**

5 **(Against All Defendants)**

6 20. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though
7 fully set forth herein.

8 21. Plaintiff, an “aggrieved employee” within the meaning of Labor Code §§ 2698, *et*
9 *seq.*, acting on behalf of herself and other aggrieved employees (collectively, “Aggrieved
10 Employees”), brings this representative action against Defendants to recover the civil penalties due
11 to Plaintiff and other Aggrieved Employees, and the State of California according to proof pursuant
12 to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial
13 violation for each failure to pay each employee and \$200 for each subsequent violation or willful or
14 intentional violation pursuant to Labor Code §§ 210 and/or 225.5 for each failure to pay each
15 employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and
16 \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3)
17 \$100 for each initial violation and \$250 for each subsequent violation pursuant to Labor Code §
18 1197.1 per employee per pay period; (4) \$250 for each initial violation and \$1,000 for each
19 subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (5) pursuant to
20 Labor Code § 256, a civil penalty in an amount not exceeding 30 days per former employee as
21 waiting time under the terms of Labor Code § 203; and/or (6) \$100 for each initial violation and
22 \$200 for each subsequent violation per employee per pay period for those violations of the Labor
23 Code for which no civil penalty is specifically provided, based on the following Labor Code
24 violations:

25 a. Failing to pay minimum wages for all hours worked to Aggrieved Employees in
26 violation of Labor Code § 558, 1182.12, 1194, 1194.2, 1197, and 1198;

27 b. Failing to pay Aggrieved Employees all earned overtime compensation in violation
28 of Labor Code §§ 204, 510, 558, 1194, and 1198;

1 c. Failing to provide all legally required meal periods, and failure to pay meal period
2 premium wages, to Aggrieved Employees at the regular rate of compensation in violation of Labor
3 Code §§ 226.7, 512, 558, and 1198;

4 d. Failing to authorize and permit all legally required rest periods, and failure to pay
5 rest period premium wages, to Aggrieved Employees at the regular rate of compensation in
6 violation of Labor Code §§ 226.7, 516, 558, and 1198;

7 e. Failing to furnish Aggrieved Employees with complete, accurate, itemized wage
8 statements in violation of Labor Code § 226;

9 f. Failing to timely pay all final wages and compensation earned by Aggrieved
10 Employees at the time of separation in violation of Labor Code §§ 201-202;

11 g. Failure to reimburse Aggrieved Employees for all necessary business expenses in
12 violation of Labor Code § 2802;

13 h. Failing to pay Aggrieved Employees all paid sick leave wages in violation of Labor
14 Code § 246;

15 i. Failing to pay Aggrieved Employees all earned wages at least twice during each
16 calendar month in violation of Labor Code § 204; and

17 j. Failing to maintain accurate records on behalf of Aggrieved Employees in violation
18 of Labor Code §§ 1174 and 1198.

19 22. Plaintiff has incurred attorneys' fees and costs, which Plaintiff is entitled to receive
20 under California Labor Code § 2699(g).

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf
23 this suit is brought against Defendants, as follows:

24 1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other Aggrieved
25 Employees, and the State of California according to proof pursuant to Labor Code §§ 558 and
26 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to
27 pay each employee and \$200 for each subsequent violation or willful or intentional violation
28 pursuant to Labor Code §§ 210 and/or 225.5 for each failure to pay each employee, plus 25% of the

1 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
2 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
3 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee
4 per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation
5 pursuant to Labor Code § 226.3 per employee per pay period; (5) pursuant to Labor Code § 256, a
6 civil penalty in an amount not exceeding 30 days per former employee as waiting time under the
7 terms of Labor Code § 203; and/or (6) \$100.00 for each initial violation and \$200 for each
8 subsequent violation per employee per pay period for those violations of the Labor Code for which
9 no civil penalty is specifically provided;

10 2. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
11 2699(g) and Code of Civil Procedure § 1021.5; and

12 3. For such other and further relief, the Court may deem just and proper.

14 DATED: September 24, 2024

JUSTICE FOR WORKERS, P.C.

16 By:



17 William C. Sung
18 Tiffany L. Luu
19 Attorneys for Plaintiff AMOURAFINA BURTON
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