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FILED
Superior Court of California
County of Los Angeles
12/10/2024

David W. Slayton, Executive Officer / Clerk of Court
By: M. Arellanes Deputy

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

DANIEL MATTHEW FERGUSON,
individually and on behalf of all others similarly
situated and in his representative capacity,

Plaintiff,

v.

LIONS GATE TELEVISION, INC., a foreign
corporation; LIONS GATE
ENTERTAINMENT, INC., a foreign
corporation; STUDIO PRODUCTIONS, INC.,
a domestic corporation; and DOES 1 through
10, inclusive,

Defendants.

Case No.: 24STCV25629
[Hon. Laura A. Seigle, Dept. 17]

FIRST AMENDED COMPLAINT

- (1) Failure to Pay Overtime Wages (Cal. Lab. Code §§ 1194 and 1198);
- (2) Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7, 512);
- (3) Failure to Authorize and Permit Rest Periods (Cal. Lab. Code §§ 226.7);
- (4) Failure to Timely Pay Final Wages at Termination (Cal. Lab. Code §§ 201-203);
- (5) Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code § 226);
- (6) Failure to Indemnify Employees for Expenditures (Cal. Lab. Code § 2802);
- (7) Unfair Business Practices (Cal. Bus. & Prof. Code §§ 17200, et seq.); and
- (8) Penalties Pursuant to Private Attorneys General Act of 2004

Complaint Filed: October 2, 2024
Trial Date: None Set

1 Plaintiff Daniel Matthew Ferguson (“Plaintiff”), based upon facts that either have
2 evidentiary support or are likely to have evidentiary support after a reasonable opportunity for
3 further investigation and discovery, alleges as follows:

4 **INTRODUCTION**

5 1. Plaintiff brings this action against Defendants Lions Gate Television, Inc., Lions
6 Gate Entertainment, Inc., Studio Productions, Inc., and DOES 1 through 10 (hereinafter
7 collectively referred to as “Defendants”) for California Labor Code violations and unfair
8 business practices stemming from Defendants’ failure to pay for all hours worked (overtime
9 wages), failure to provide meal periods, failure to authorize and permit rest periods, failure to
10 timely pay final wages, failure to furnish accurate wage statements, and failure to indemnify
11 employees for expenditures.

12 2. Plaintiff brings the First through Seventh Causes of Action individually and as a
13 class action on behalf of himself and certain current and former employees of Defendants
14 (hereinafter collectively referred to as the “Class” or “Class Members,” and defined more fully
15 below). The Class consists of Plaintiff and all other persons who have been employed by any
16 Defendant in California as an hourly-paid or non-exempt employee during the statute of
17 limitations period applicable to the claims pleaded here.

18 3. Plaintiff, as proxy for the State of California, also brings this action pursuant to
19 the California Private Attorneys General Act, Labor Code sections 2698 et seq. (“PAGA”) to
20 recover civil penalties (65% payable to the Labor Workforce Development Agency and 35%
21 payable to aggrieved employees). Plaintiff seeks to represent all aggrieved employees who
22 suffered one or more violations of the applicable Labor Code.

23 4. Defendants own/owned and operate/operated an industry, business, and
24 establishment within the State of California, including Los Angeles County. As such and based
25 upon all the facts and circumstances incident to Defendants’ business in California, Defendants
26 are subject to the California Labor Code, Wage Orders issued by the Industrial Welfare
27 Commission (“IWC”), and the California Business & Professions Code.

28 5. Despite these requirements, throughout the statutory period, Defendants

maintained a systematic, company-wide policy and practice of:

- (a) Failing to pay employees for all hours worked, including all overtime wages in compliance with the California Labor Code and IWC Wage Orders;
- (b) Failing to provide employees with timely and duty-free meal periods in compliance with the California Labor Code and IWC Wage Orders, failing to maintain accurate records of all meal periods taken or missed, and failing to pay an additional hour's pay for each workday a meal period violation occurred;
- (c) Failing to authorize and permit employees to take timely and duty-free rest periods in compliance with the California Labor Code and IWC Wage Orders, and failing to pay an additional hour's pay for each workday a rest period violation occurred;
- (d) Willfully failing to pay employees all overtime, meal period premium, and rest period premium wages due within the time period specified by California law when employment terminates; and
- (e) Failing to provide employees with accurate, itemized wage statements containing all the information required by the California Labor Code and IWC Wage Orders.; and,
- (f) Failing to indemnify employees for expenditures incurred in direct discharge of duties of employment;

6. On information and belief, Defendants, and each of them were on actual and constructive notice of the improprieties alleged herein and intentionally refused to rectify their unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were willful and deliberate.

7. At all relevant times, Defendants were and are legally responsible for all of the unlawful conduct, policies, practices, acts and omissions as described in each and all of the foregoing paragraphs as the employer of Plaintiff and the Class. Further, Defendants are responsible for each of the unlawful acts or omissions complained of herein under the doctrine

of “respondeat superior.”

THE PARTIES

8. Plaintiff Daniel Matthew Ferguson is a resident of Los Angeles County, California who worked for Defendants in Los Angeles County, California as an hourly-paid, non-exempt employee on April 26, 2024.

9. Plaintiff reserves the right to seek leave to amend this complaint to add new Plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to La Sala v. American Savings and Loan Association (1971) 5 Cal.3d 864, 872, and other applicable law.

10. This Court has jurisdiction over Plaintiff’s claims for civil penalties pursuant to PAGA.

11. Plaintiff is informed and believes, and based upon that information and belief alleges, that Defendant Lions Gate Television, Inc. is, and at all times herein mentioned, was:

(a) A business entity qualified to do business and actually conducting business in numerous counties throughout the State of California, including in Los Angeles County; and,

(b) The former employer of Plaintiff and the current and/or former employer of the putative Class because Defendant Lions Gate Television, Inc. suffered and permitted Plaintiff and the Class to work, and/or controlled their wages, hours, or working conditions.

12. Plaintiff is informed and believes, and based upon that information and belief alleges, that Defendant Lions Gate Entertainment, Inc. is, and at all times herein mentioned, was:

(a) A business entity qualified to do business and actually conducting business in numerous counties throughout the State of California, including in Los Angeles County; and,

(b) The former employer of Plaintiff and the current and/or former employer of the putative Class because Defendant Lions Gate Entertainment, Inc. suffered and permitted Plaintiff and the Class to work, and/or controlled their wages, hours, or working conditions.

1 13. Plaintiff is informed and believes, and based upon that information and belief
2 alleges, that Defendant Studio Productions, Inc.is, and at all times herein mentioned, was:

3 (a) A business entity qualified to do business and actually conducting business
4 in numerous counties throughout the State of California, including in Los
5 Angeles County; and,

6 (b) The former employer of Plaintiff and the current and/or former employer of
7 the putative Class because Defendant Studio Productions, Inc. suffered and
8 permitted Plaintiff and the Class to work, and/or controlled their wages,
9 hours, or working conditions.

10 14. Plaintiff does not know the true names or capacities of the persons or entities sued
11 herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious names. Each
12 of the Doe Defendants was in some manner legally responsible for the damages suffered by
13 Plaintiff and the Class as alleged herein. Plaintiff will amend this complaint to set forth the true
14 names and capacities of these Defendants when they have been ascertained, together with
15 appropriate charging allegations, as may be necessary.

16 15. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and
17 each of them, were residents of, doing business in, availed themselves of the jurisdiction of,
18 and/or injured a significant number of the Plaintiff and the Class in the State of California.

19 16. Plaintiff is informed and believes and thereon alleges that at all relevant times
20 each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and
21 the other employees described in the class definitions below, and exercised control over their
22 wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges
23 that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer, officer,
24 director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest
25 and/or predecessor in interest of some or all of the other Defendants, and was engaged with some
26 or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to
27 some or all of the other Defendants so as to be liable for their conduct with respect to the matters
28 alleged below. Plaintiff is informed and believes and thereon alleges that each Defendant acted

pursuant to and within the scope of the relationships alleged above, that each Defendant knew or should have known about, and authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

17. Plaintiff worked for Defendants in Los Angeles County, California as an hourly-paid, non-exempt employee. During Plaintiff's employment for Defendants, Defendants paid Plaintiff an hourly wage and classified him as non-exempt from overtime.

18. Defendants failed to pay Plaintiff and other members of the Class one hour of pay for violations of the meal and rest period requirements.

19. Moreover, throughout Plaintiff's employment, Defendants failed to pay for all hours worked (including minimum, straight time, and overtime wages), failed to provide Plaintiff with legally compliant meal periods, failed to authorize and permit Plaintiff to take rest periods, failed to timely pay all final wages to Plaintiff when Defendants terminated his employment, and failed to furnish accurate wage statements to Plaintiff, and failed to indemnify Plaintiff for expenditures. As discussed below, Plaintiff's experience working for Defendants was typical and illustrative.

20. Throughout the statutory period, Defendants maintained a policy and practice of not paying Plaintiff and the Class for all hours worked, including overtime wages. Defendants required Plaintiff and the Class to work "off-the-clock", uncompensated, by, for example, requiring Plaintiff and the Class to continue working during unpaid meal periods and by requiring Plaintiff and the Class to work before clocking in and after clocking out for the workday. Some of this unpaid work should have been paid at the overtime rate. In failing to pay for all hours worked, Defendants also failed to maintain accurate records of the hours Plaintiff and the Class worked

21. Throughout the statutory period, Defendants wrongfully failed to provide Plaintiff and the Class with legally compliant meal periods. Defendants regularly, but not always, required Plaintiff and the Class to work in excess of five consecutive hours a day without providing a 30-minute, uninterrupted, and duty-free meal period for every six hours of work, or

1 without compensating Plaintiff and the Class for meal periods that were not provided by the end
2 of the fifth hour of work or tenth hour of work. Instead, Defendants continued to assert control
3 over Plaintiff and the Class by requiring, pressuring, or encouraging them to perform work tasks
4 which could not be completed without working in lieu of taking mandatory meal periods, or by
5 denying Plaintiff and the Class permission to take a meal period. Accordingly, Defendants'
6 policy and practice was not to provide meal periods to Plaintiff and the Class in compliance with
7 California law.

8 22. Throughout the statutory period, Defendants have wrongfully failed to authorize
9 and permit Plaintiff and the Class to take legally compliant rest periods. Defendants regularly
10 required Plaintiff and the Class to work in excess of four consecutive hours a day without
11 Defendants authorizing and permitting them to take a 10-minute, uninterrupted, duty-free rest
12 period for every four hours of work (or major fraction of four hours), or without compensating
13 Plaintiff and the Class for rest periods that were not authorized or permitted. Instead, Defendants
14 continued to assert control over Plaintiff and the Class by requiring, pressuring, or encouraging
15 them to perform work tasks which could not be completed without working in lieu of taking
16 mandatory rest periods, or by denying Plaintiff and the Class permission to take a rest period.
17 Accordingly, Defendants' policy and practice was to not authorize and permit Plaintiff and the
18 Class to take rest periods in compliance with California law.

19 23. Throughout the statutory period, Defendants willfully failed and refused to timely
20 pay Plaintiff and the Class all final wages due at their termination of employment. In addition,
21 Plaintiff's final paychecks did not include payment for all expenditures, minimum wages,
22 straight time wages, overtime wages, meal period premium wages, and rest period premium
23 wages owed to her by Defendants at the conclusion of his employment. On information and
24 belief, Defendants' failure to timely pay Plaintiff's final wages when his employment terminated
25 was not a single, isolated incident, but was instead consistent with Defendants' policy and
26 practice that applied to Plaintiff and the Class.

27 24. Throughout the statutory period, Defendants failed to furnish Plaintiff and the
28 Class with accurate, itemized wage statements showing all applicable hourly rates, all overtime

1 hourly rates, and all gross and net wages earned (including correct hours worked, correct wages
2 for meal periods that were not provided in accordance with California law, and correct wages for
3 rest periods that were not authorized and permitted to take in accordance with California law).

4 As a result of these violations of California Labor Code § 226(a), the Plaintiff and the Class
5 suffered injury because, among other things:

6 (a) the violations led them to believe that they were not entitled to be paid
7 minimum, straight time, overtime, meal period premium, and rest period premium
8 wages, even though they were entitled;

9 (b) the violations led them to believe that they had been paid the minimum,
10 straight time, overtime, meal period premium, and rest period premium wages,
11 even though they had not been;

12 (c) the violations led them to believe they were not entitled to be paid
13 minimum, straight time, overtime, meal period premium, and rest period premium
14 wages at the correct California rate even though they were entitled;

15 (d) the violations led them to believe they had been paid minimum, straight
16 time, overtime, meal period premium, and rest period premium wages at the
17 correct California rate even though they had not been;

18 (e) the violations hindered them from determining the amounts of minimum,
19 straight time, overtime, meal period premium, and rest period premium wages
20 owed to them;

21 (f) in connection with their employment before and during this action, and in
22 connection with prosecuting this action, the violations caused them to have to
23 perform mathematical computations to determine the amounts of wages owed to
24 them, computations they would not have to make if the wage statements contained
25 the required accurate information;

26 (g) by understating the wages truly due to them, the violations caused them to
27 lose entitlement and/or accrual of the full amount of Social Security, disability,
28 unemployment, and other governmental benefits;

(h) the wage statements inaccurately understated the wages, hours, and wage rates to which Plaintiff and the Class were entitled, and Plaintiff and the Class were paid less than the wages and wage rates to which they were entitled.

Thus, Plaintiff and the Class are owed the amounts provided for in California Labor Code § 226(e) and injunctive relief under California Labor Code § 226(h).

25. Throughout the statutory period, Defendants have wrongfully required Plaintiff and the Class to pay expenses that they incurred in direct discharge of their duties for Defendants. Plaintiff and the Class regularly paid out-of-pocket for necessary employment-related expenses, including, without limitation, cell phone expenses.

26. Plaintiff and the Class incurred substantial expenses as a direct result of performing their job duties for Defendants, but Defendants failed to indemnify Plaintiff and the Class for these employment-related expenses.

PAGA ALLEGATIONS

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

CLASS ACTION ALLEGATIONS

28. Plaintiff brings certain claims individually, as well as on behalf of each and all other persons similarly situated, and thus, seeks class certification under California Code of Civil Procedure § 382.

29. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

30. The proposed Class consists of and is defined as:

(a) **Overtime Class:** All current and former non-exempt employees of Defendants who were not covered by an applicable collective bargaining agreement at the time of employment and who were employed as background extras in California who worked in shifts of eight (8) or more hours during the four years preceding the filing of

1 Plaintiff's Complaint through the date Notice is mailed to the members of this Class.

2 (b) **Break Premium Class:** All current and former non-exempt employees of
3 Defendants who were not covered by an applicable collective bargaining agreement at
4 the time of employment and who were employed as background extras in California who
5 worked in shifts of four (4) or more hours during the four years preceding the filing of
6 Plaintiff's Complaint through the date Notice is mailed to the members of this Class.

7 (c) **Waiting Time Penalty Class:** Members of the Overtime Class and
8 members of the Break Premium Class whose employment by Defendants ended at any
9 time during the three years preceding the filing of Plaintiff's Complaint through the date
10 Notice is mailed to the members of this Class.

11 (d) **Wage Statement Class:** Members of the Overtime Class and members of
12 the Break Premium Class employed by Defendants at any time during the one-year period
13 preceding the filing of Plaintiff's Complaint through the date Notice is mailed to the
14 members of this Class.

15 31. At all material times, Plaintiff was a member of the Class.

16 32. Plaintiff undertook this concerted activity to improve the wages and working
17 conditions of all Class Members.

18 33. There is a well-defined community of interest in the litigation and the Class is
19 readily ascertainable:

20 (a) **Numerosity:** The members of the Class (and each subclass, if any) are so
21 numerous that joinder of all members would be unfeasible and impractical. The
22 membership of the entire Class is unknown to Plaintiff at this time; however, the Class is
23 estimated to be greater than one hundred (100) individuals and the identity of such
24 membership is readily ascertainable by inspection of Defendants' records.

25 (b) **Typicality:** Plaintiff is qualified to, and will, fairly and adequately protect the
26 interests of each Class Member with whom there is a shared, well-defined community of
27 interest, and Plaintiff's claims (or defenses, if any) are typical of all Class Members'
28 claims as demonstrated herein.

1 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the
2 interests of each Class Member with whom there is a shared, well-defined community of
3 interest and typicality of claims, as demonstrated herein. Plaintiff has no conflicts with
4 or interests antagonistic to any Class Member. Plaintiff's attorneys, the proposed class
5 counsel, are versed in the rules governing class action discovery, certification, and
6 settlement. Plaintiff has incurred, and throughout the duration of this action, will continue
7 to incur costs and attorneys' fees that have been, are, and will be necessarily expended
8 for the prosecution of this action for the substantial benefit of each class member.

9 (d) Superiority: A Class Action is superior to other available methods for the fair and
10 efficient adjudication of the controversy, including consideration of:

- 11 1) The interests of the members of the Class in individually controlling the
12 prosecution or defense of separate actions;
- 13 2) The extent and nature of any litigation concerning the controversy already
14 commenced by or against members of the Class;
- 15 3) The desirability or undesirability of concentrating the litigation of the
16 claims in the particular forum; and,
- 17 4) The difficulties likely to be encountered in the management of a class
18 action.

19 (e) Public Policy Considerations: The public policy of the State of California is to
20 resolve the California Labor Code claims of many employees through a class action.
21 Indeed, current employees are often afraid to assert their rights out of fear of direct or
22 indirect retaliation. Former employees are also fearful of bringing actions because they
23 believe their former employers might damage their future endeavors through negative
24 references and/or other means. Class actions provide the class members who are not
25 named in the complaint with a type of anonymity that allows for the vindication of their
26 rights at the same time as their privacy is protected.

27 34. There are common questions of law and fact as to the Class (and each subclass, if
28 any) that predominate over questions affecting only individual members, including without

1 limitation, whether, as alleged herein, Defendants have:

- 2 (a) Failed to pay Class Members for all hours worked, including overtime wages;
- 3 (b) Failed to provide meal periods and pay meal period premium wages to Class
- 4 Members;
- 5 (c) Failed to authorize and permit rest periods and pay rest period premium wages to
- 6 Class Members;
- 7 (d) Failed to provide Class Members with timely final wages;
- 8 (e) Failed to provide Class Members with accurate wage statements;
- 9 (f) Failed to indemnify Class Members for expenditures; and,
- 10 (g) Violated California Business & Professions Code §§ 17200 et. seq. as a result of
- 11 their illegal conduct as described above.

12 35. This Court should permit this action to be maintained as a class action pursuant
13 to California Code of Civil Procedure § 382 because:

- 14 (a) The questions of law and fact common to the Class predominate over any
- 15 question affecting only individual members;
- 16 (b) A class action is superior to any other available method for the fair and efficient
- 17 adjudication of the claims of the members of the Class;
- 18 (c) The members of the Class are so numerous that it is impractical to bring all
- 19 members of the class before the Court;
- 20 (d) Plaintiff, and the other members of the Class, will not be able to obtain effective
- 21 and economic legal redress unless the action is maintained as a class action;
- 22 (e) There is a community of interest in obtaining appropriate legal and equitable
- 23 relief for the statutory violations, and in obtaining adequate compensation for the
- 24 damages and injuries for which Defendants are responsible in an amount
- 25 sufficient to adequately compensate the members of the Class for the injuries
- 26 sustained;
- 27 (f) Without class certification, the prosecution of separate actions by individual
- 28 members of the class would create a risk of:

- 1) Inconsistent or varying adjudications with respect to individual

members of the Class which would establish incompatible standards of conduct for Defendants; and/or,

- 2) Adjudications with respect to the individual members which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudications, or would substantially impair or impede their ability to protect their interests, including but not limited to the potential for exhausting the funds available from those parties who are, or may be, responsible Defendants; and,

(g) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making final injunctive relief appropriate with respect to the class as a whole.

36. Plaintiff contemplates the eventual issuance of notice to the proposed members of the Class that would set forth the subject and nature of the instant action. The Defendants' own business records may be utilized for assistance in the preparation and issuance of the contemplated notices. To the extent that any further notices may be required, Plaintiff contemplates the use of additional techniques and forms commonly used in class actions, such as published notice, e-mail notice, website notice, first-class mail, or combinations thereof, or by other methods suitable to the Class and deemed necessary and/or appropriate by the Court.

FIRST CAUSE OF ACTION

(Against All Defendants for Failure to Pay Overtime Wages)

37. Plaintiff incorporates by reference and re-alleges as if fully stated herein the paragraphs alleged above.

38. California Labor Code § 510 provides that employees in California shall not be employed more than eight hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

39. California Labor Code §§ 1194 and 1198 provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, California

1 Labor Code § 1198 states that the employment of an employee for longer hours than those fixed
2 by the IWC is unlawful.

3 40. At all times relevant hereto, Plaintiff and the Class have worked more than eight
4 hours in a workday and/or more than forty (40) hours in a workweek, as employees of
5 Defendants.

6 41. At all times relevant hereto, Defendants failed to pay Plaintiff and the Class
7 overtime compensation for the hours they have worked in excess of the maximum hours
8 permissible by law as required by California Labor Code §§ 510 and 1198.

9 42. By virtue of Defendants' unlawful failure to pay additional premium rate
10 compensation to the Plaintiff and the Class for their overtime hours worked, Plaintiff and the
11 Class have suffered, and will continue to suffer, damages in amounts which are presently
12 unknown to them but which exceed the jurisdictional minimum of this Court and which will be
13 ascertained according to proof at trial.

14 43. By failing to keep adequate time records required by Labor Code § 1174(d),
15 Defendants have made it difficult to calculate the full extent of overtime compensation due to
16 Plaintiff and the Class.

17 44. Plaintiff and the Class also request recovery of overtime compensation according
18 to proof, interest, attorneys' fees and costs pursuant to California Labor Code § 1194(a), as well
19 as the assessment of any statutory penalties against Defendants, in a sum as provided by the
20 California Labor Code and/or other statutes.

21 45. California Labor Code § 204 requires employers to provide employees with all
22 wages due and payable twice a month. The Wage Orders also provide that every employer shall
23 pay to each employee, on the established payday for the period involved, overtime wages for all
24 overtime hours worked in the payroll period. Defendants failed to provide Plaintiff and the Class
25 with all compensation due, in violation of California Labor Code § 204.

26 **SECOND CAUSE OF ACTION**

27 **(Against All Defendants for Failure to Provide Meal Periods)**

28 46. Plaintiff incorporates by reference and re-alleges as if fully stated herein the

1 paragraphs alleged above.

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

5 48. Under California law, Defendants have an affirmative obligation to relieve the
6 Plaintiff and the Break Premium Class of all duty in order to take their first daily meal periods
7 no later than the start of Plaintiff's and the Class' sixth hour of work in a workday, and to take
8 their second meal periods no later than the start of the eleventh hour of work in the workday.
9 California Labor Code §512, and Section 11 of the applicable Wage Orders require that an
10 employer provide unpaid meal periods of at least thirty (30) minutes for each five-hour period
11 worked. It is a violation of California Labor Code § 226.7 for an employer to require any
12 employee to work during any meal period mandated under any Wage Order.

13 49. Despite these legal requirements, Defendants regularly failed to provide Plaintiff
14 and the Class with both meal periods as required by California law. By their failure to permit
15 and authorize Plaintiff and the Class to take all meal periods as alleged above (or due to the fact
16 that Defendants made it impossible or impracticable to take these uninterrupted meal periods),
17 Defendants willfully violated the provisions of California Labor Code § 226.7 and the applicable
18 Wage Orders.

19 50. Under California law, Plaintiff and the Class are entitled to be paid one hour of
20 additional wages for each workday he or she was not provided with all required meal period(s),
21 plus interest thereon.

22 **THIRD CAUSE OF ACTION**

23 **(Against All Defendants for Failure to Authorize and Permit Rest Periods)**

24 51. Plaintiff incorporates by reference and re-alleges as if fully stated herein the
25 paragraphs alleged above.

26 52. At all relevant times, Plaintiff and the other members of the Break Premium Class
27 were employees of Defendants covered by Labor Code Section 226.7 and the applicable Wage
28 Orders, including Wage Order 12.

1 53. Defendants are required by California law to authorize and permit breaks of ten
2 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e., more than
3 two hours). California Labor Code § 512, the applicable Wage Orders require that the employer
4 permit and authorize all employees to take paid rest periods of ten minutes each for each 4-hour
5 period worked. Thus, for example, if an employee's work time is six hours and ten minutes, the
6 employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is
7 itself a violation of California's rest break laws. It is a violation of California Labor Code §
8 226.7 for an employer to require any employee to work during any rest period mandated under
9 any Wage Order.

10 54. Despite these legal requirements, Defendants failed to authorize Plaintiff and the
11 Break Premium Class to take rest breaks, regardless of whether employees worked more than
12 four hours in a workday. By their failure to permit and authorize Plaintiff and the Break Premium
13 Class to take rest periods as alleged above (or due to the fact that Defendants made it impossible
14 or impracticable to take these uninterrupted rest periods), Defendants willfully violated the
15 provisions of California Labor Code §226.7 and the applicable Wage Orders.

16 55. Under California law, Plaintiff and the Break Premium Class are entitled to be
17 paid one hour of premium wages rate for each workday he or she was not provided with all
18 required rest break(s), plus interest thereon.

19 **FOURTH CAUSE OF ACTION**

20 **(Against All Defendants for Failure to Pay Wages of**
21 **Discharged Employees – Waiting Time Penalties)**

22 56. Plaintiff incorporates by reference and re-alleges as if fully stated herein the
23 paragraphs alleged above.

24 57. Plaintiff and the other members of the Waiting Time Penalty Class were
25 employees of Defendants covered by Labor Code Sections 201.5 whose employment with
26 Defendants ended during the relevant class period.

27 58. At all times herein set forth, California Labor Code §§ 201 and 202 provide that
28 if an employer discharges an employee, the wages earned and unpaid at the time of discharge are

1 due and payable immediately, and that if an employee voluntarily leaves his or her employment,
2 his or her wages shall become due and payable not later than seventy-two (72) hours thereafter,
3 unless the employee has given seventy-two (72) hours previous notice of his or her intention to
4 quit, in which case the employee is entitled to his or her wages at the time of quitting.

5 59. Within the applicable statute of limitations, the employment of many other
6 members of the Waiting Time Penalty Class ended, i.e., was terminated by quitting or discharge,
7 and the employment of others will be. However, during the relevant time period, Defendants
8 failed, and continue to fail to pay terminated Waiting Time Penalty Class Members, without
9 abatement, all wages required to be paid by California Labor Code §§ 201 and 202 either at the
10 time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

11 60. Defendants' failure to pay those Class members who are no longer employed by
12 Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72)
13 hours of their leaving Defendants' employ, is in violation of California Labor Code §§ 201 and
14 202.

15 61. California Labor Code § 203 provides that if an employer willfully fails to pay
16 wages owed, in accordance with §§ 201 and 202, then the wages of the employee shall continue
17 as a penalty wage from the due date, and at the same rate until paid or until an action is
18 commenced; but the wages shall not continue for more than thirty (30) days.

19 62. The Waiting Time Penalty Class is entitled to recover from Defendants their
20 additionally accruing wages for each day they were not paid, at their regular hourly rate of pay,
21 up to thirty (30) days maximum pursuant to California Labor Code § 203.

22 63. Pursuant to California Labor Code §§ 218.5, 218.6 and 1194, the Waiting Time
23 Penalty Class is also entitled to an award of reasonable attorneys' fees, interest, expenses, and
24 costs incurred in this action.

25 **FIFTH CAUSE OF ACTION**

26 **(Against All Defendants for Failure to Provide and**
27 **Maintain Accurate and Compliant Wage Records)**

28 64. Plaintiff incorporates by reference and re-alleges as if fully stated herein the

1 paragraphs alleged above.

2 65. At all material times set forth herein, California Labor Code § 226(a) provides
3 that every employer shall furnish each of his or her employees an accurate itemized wage
4 statement in writing showing nine pieces of information, including: (1) gross wages earned, (2)
5 total hours worked by the employee, (3) the number of piece-rate units earned and any applicable
6 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all
7 deductions made on written orders of the employee may be aggregated and shown as one item,
8 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
9 name of the employee and the last four digits of his or her social security number or an employee
10 identification number other than a social security number, (8) the name and address of the legal
11 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
12 the corresponding number of hours worked at each hourly rate by the employee.

13 66. Defendants have intentionally and willfully failed to provide employees with
14 complete and accurate wage statements. The deficiencies include, among other things, the failure
15 to correctly identify the gross wages earned by Plaintiff and the Wage Statement Class, the failure
16 to list the true “total hours worked by the employee,” and the failure to list the true net wages
17 earned.

18 67. As a result of Defendants’ violation of California Labor Code § 226(a), Plaintiff
19 and the Wage Statement Class have suffered injury and damage to their statutorily protected
20 rights.

21 68. Specifically, Plaintiff and the members of the Wage Statement Class have been
22 injured by Defendants’ intentional violation of California Labor Code § 226(a) because they
23 were denied both their legal right to receive, and their protected interest in receiving, accurate,
24 itemized wage statements under California Labor Code § 226(a).

25 69. Calculation of the true wage entitlement for Plaintiff and the Wage Statement
26 Class is difficult and time consuming. As a result of this unlawful burden, Plaintiff and the Wage
27 Statement Class were also injured as a result of having to bring this action to attempt to obtain
28 correct wage information following Defendants’ refusal to comply with many of the mandates

1 of California's Labor Code and related laws and regulations.

2 70. Plaintiff and the Wage Statement Class are entitled to recover from Defendants
3 the greater of their actual damages caused by Defendants' failure to comply with California
4 Labor Code § 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
5 employee.

6 71. Plaintiff and the Wage Statement Class are also entitled to injunctive relief, as
7 well as an award of attorney's fees and costs to ensure compliance with this section, pursuant to
8 California Labor Code § 226(h).

9 **SIXTH CAUSE OF ACTION**

10 **(Against All Defendants for Failure to Indemnify Employees for Expenditures)**

11 72. Plaintiff incorporates by reference and re-alleges as if fully stated herein the
12 paragraphs alleged above.

13 73. As set forth above, Plaintiff and the Class were required to incur substantial
14 necessary expenditures and losses in direct consequence of the discharge of their duties or of
15 their obedience to directions of Defendants.

16 74. Defendants violated California Labor Code § 2802, by failing to pay and
17 indemnify Plaintiff and the Class for necessary expenditures and losses incurred in direct
18 consequence of the discharge of their duties or of their obedience to directions of Defendants.

19 75. As a result, Plaintiff and the Class were damaged at least in the amounts of the
20 expenses they paid, or which were deducted by Defendants from their wages.

21 76. Plaintiff and the Class are entitled to reasonable attorney's fees, expenses, and
22 costs of suit pursuant to California Labor Code § 2802(c) and interest pursuant to California
23 Labor Code § 2802(b).

24 **SEVENTH CAUSE OF ACTION**

25 **(Against All Defendants for Violation of California**

26 **Business & Professions Code §§ 17200, et seq.)**

27 77. Plaintiff incorporates by reference and re-alleges as if fully stated herein the
28 paragraphs alleged above.

78. Defendants, and each of them, are “persons” as defined under California Business & Professions Code § 17201.

79. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful, and harmful to Plaintiff, other members of the Classes, and to the general public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

80. Defendants' activities, as alleged herein, are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code §§ 17200, et seq.

81. A violation of California Business & Professions Code §§ 17200, et seq. may be predicated on the violation of any state or federal law. All of the acts described herein as violations of, among other things, the California Labor Code, are unlawful and in violation of public policy; and in addition are immoral, unethical, oppressive, fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business practices in violation of California Business & Professions Code §§ 17200, et seq.

Failure to Pay Overtime Wages

82. Defendants' failure to pay overtime compensation and other benefits to Plaintiff and other members of the Overtime Class in violation of California Labor Code §§ 510, 1194, and 1198 constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, et seq.

Failure to Provide Meal Periods

83. Defendants' failure to provide meal periods to Plaintiff and other members of the Break Premium Class in accordance with California Labor Code §§ 226.7 and 512, and the IWC Wage Orders, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200, et seq.

Failure to Authorize and Permit Rest Periods

86. Defendants' failure to authorize and permit rest periods to Plaintiff and members of the Break Premium Class in accordance with California Labor Code § 226.7 and the IWC

Wage Orders, as alleged above, constitutes unlawful and/or unfair activity prohibited by Business and Professions Code §§ 17200, et seq.

Failure to Indemnify Business Expenses

87. Defendants' failure to reimburse expenses incurred in accordance with California Labor Code § 2802, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code §§ 17200 et seq.

88. By and through their unfair, unlawful and/or fraudulent business practices described herein, the Defendants, have obtained valuable property, money and services from Plaintiff, and all persons similarly situated, and has deprived Plaintiff, and all persons similarly situated, of valuable rights and benefits guaranteed by law, all to their detriment.

89. Plaintiff and the Class Members suffered monetary injury as a direct result of Defendants' wrongful conduct.

90. Plaintiff, individually, and on behalf of members of the putative Class, is entitled to, and does, seek such relief as may be necessary to disgorge money and/or property which the Defendants have wrongfully acquired, or of which Plaintiff and the Classes have been deprived, by means of the above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the Classes are not obligated to establish individual knowledge of the wrongful practices of Defendants in order to recover restitution.

91. Plaintiff, individually, and on behalf of members of the putative class, is further entitled to, and does, seek a declaration that the above-described business practices are unfair, unlawful and/or fraudulent, and injunctive relief restraining the Defendants, and each of them, from engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in the future.

92. Plaintiff, individually, and on behalf of members of the putative class, has no plain, speedy, and/or adequate remedy at law to redress the injuries which the Class Members suffered as a consequence of the Defendants' unfair, unlawful and/or fraudulent business practices. As a result of the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually, and on behalf of members of the putative Class, has suffered and

will continue to suffer irreparable harm unless the Defendants, and each of them, are restrained from continuing to engage in said unfair, unlawful and/or fraudulent business practices.

93. Plaintiff also alleges that if Defendants are not enjoined from the conduct set forth herein above, they will continue to avoid paying the appropriate taxes, insurance and other withholdings.

94. Pursuant to California Business & Professions Code §§ 17200, et seq., Plaintiff and putative Class Members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years and 178 days prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and Class Members; an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

EIGHTH CAUSE OF ACTION

Civil Penalties Under PAGA

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

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

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

97. 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.

98. 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.

99. Plaintiff has complied with the procedures for bringing suit specified in Labor

1 Code Section 2699.3. By a letter dated October 1, 2024, Plaintiff gave written notice to the Labor
2 and Workforce Development Agency (“LWDA”) via its online filing system and by certified
3 mail to Defendant of the specific provisions of the Labor Code alleged to have been violated,
4 including the facts and theories to support the alleged violations. To date, more than 65 days after
5 the postmark date of October 2, 2024, the LWDA has not advised Plaintiff that it intends to
6 investigate Plaintiff’s allegations.

7 100. Pursuant to Labor Code Sections 2699(a) and (f), Plaintiff and other Aggrieved
8 Employees are entitled to civil penalties for Defendants’ violations of the Labor Code and the
9 applicable Wage Orders of the Industrial Welfare Commission, including Wage Order 12-2001,
10 in the amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the
11 initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for
12 each subsequent violation. Pursuant to Labor Code Section 2699(i), 65% of the civil penalties
13 recovered shall be distributed to the LWDA, and 35% shall be distributed to the aggrieved
14 employees.

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

17 **PRAYER FOR RELIEF**

18 Plaintiff, individually, and on behalf of all others similarly situated only with respect to the class
19 claims, prays for relief and judgment against Defendants, jointly and severally, as follows:

20 **Class Certification**

- 21 1. That this action be certified as a class action with respect to the First, Second,
22 Third, Fourth, Fifth, and Causes of Action;
23 2. That Plaintiff be appointed as the representative of the Class; and,
24 3. That counsel for Plaintiff be appointed as Class Counsel.

25 **As to the First Cause of Action**

- 26 4. That the Court declare, adjudge, and decree that Defendants violated California
27 Labor Code §§ 510 and 1198 and applicable IWC Wage Orders by willfully
28 failing to pay all overtime wages due;

- 1 5. For unpaid wages at overtime wage rates as may be appropriate;
- 2 6. For pre-judgment interest on any unpaid overtime compensation commencing
- 3 from the date such amounts were due;
- 4 7. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
- 5 California Labor Code § 1194(a); and,
- 6 8. For such other and further relief as the Court may deem equitable and
- 7 appropriate.

8 As to the Second Cause of Action

- 9 9. That the Court declare, adjudge, and decree that Defendants violated California
- 10 Labor Code §§ 226.7 and 512, and the IWC Wage Orders;
- 11 10. For unpaid meal period premium wages as may be appropriate;
- 12 11. For pre-judgment interest on any unpaid compensation commencing from the
- 13 date such amounts were due;
- 14 12. For reasonable attorneys' fees under California Code of Civil Procedure §
- 15 1021.5, and for costs of suit incurred herein; and,
- 16 13. For such other and further relief as the Court may deem equitable and
- 17 appropriate.

18 As to the Third Cause of Action

- 19 14. That the Court declare, adjudge, and decree that Defendants violated California
- 20 Labor Code §§ 226.7 and 512, and the IWC Wage Orders;
- 21 15. For unpaid rest period premium wages as may be appropriate;
- 22 16. For pre-judgment interest on any unpaid compensation commencing from the
- 23 date such amounts were due;
- 24 17. For reasonable attorneys' fees under California Code of Civil Procedure §
- 25 1021.5, and for costs of suit incurred herein; and,
- 26 18. For such other and further relief as the Court may deem equitable and
- 27 appropriate.

28 As to the Fourth Cause of Action

- 1 19. That the Court declare, adjudge and decree that Defendants violated California
2 Labor Code §§ 201, 202, and 203 by willfully failing to pay all compensation
3 owed at the time of termination of the employment;
4 20. For statutory wage penalties pursuant to California Labor Code § 203 for former
5 employees who have left Defendants' employ;
6 21. For pre-judgment interest on any unpaid wages from the date such amounts were
7 due
8 22. For reasonable attorneys' fees and for costs of suit incurred herein; and,
9 23. For such other and further relief as the Court may deem equitable and appropriate.

10 As to the Fifth Cause of Action

- 11 24. That the Court declare, adjudge, and decree that Defendants violated the record
12 keeping provisions of California Labor Code § 226(a) and applicable IWC
13 Wage Orders, and willfully failed to provide accurate itemized wage statements
14 thereto;
15 25. For all actual damages, according to proof;
16 26. For statutory penalties pursuant to California Labor Code § 226(e);
17 27. For injunctive relief to ensure compliance with this section, pursuant to
18 California Labor Code § 226(h);
19 28. For reasonable attorneys' fees and for costs of suit incurred herein; and,
20 29. For such other and further relief as the Court may deem equitable and
21 appropriate.

22 As to the Sixth Cause of Action

- 23 30. That the Court declare, adjudge, and decree that Defendants violated California
24 Labor Code § 2802 by willfully failing to indemnify employees for
25 expenditures;
26 31. For unpaid wages or unreimbursed business expenses as may be appropriate;
27 32. For pre-judgment interest on any unpaid compensation commencing from the
28 date such amounts were due;

- 1 33. For reasonable attorneys' fees and for costs of suit incurred herein; and,
2 34. For such other and further relief as the Court may deem equitable and
3 appropriate.

4 As to the Seventh Cause of Action

5 35. That the Court declare, adjudge, and decree that Defendants violated California
6 Business & Professions Code §§ 17200, et seq. by failing to pay for all hours
7 worked (overtime wages), failing to provide meal periods, and failing to
8 authorize and permit rest periods, and failing to indemnify employees for
9 expenditures;

10 36. For restitution of unpaid wages to Plaintiff and all Class Members and
11 prejudgment interest from the day such amounts were due and payable;

12 37. For the appointment of a receiver to receive, manage and distribute any and all
13 funds disgorged from Defendants and determined to have been wrongfully
14 acquired by Defendants as a result of violations of California Business &
15 Professions Code §§ 17200 et seq.;

16 38. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
17 California Code of Civil Procedure § 1021.5;

18 39. For injunctive relief to ensure compliance with this section, pursuant to
19 California Business & Professions Code §§ 17200, et seq.; and,

20 40. For such other and further relief as the Court may deem equitable and
21 appropriate.

22 As to the Eighth Cause of Action

23
24 41. That the Court declare, adjudicate and decree that Defendants violated the
25 California Labor Code by failing to pay wages for all hours worked (including
26 minimum, straight tie, and overtime wages), failing to provide meal periods and
27 pay the correct amount of meal period premium wages, failing to authorized and
28 permit rest periods and pay the correct amount of rest period premium wages,

1 failing to pay all final wages to terminated employees, failing to furnish accurate
2 wage statements, and failing to reimburse employees for all necessary business
3 expenses.

4 42. For all actual, consequential, and incidental losses and damages according to
5 proof;

6 43. For all civil penalties pursuant to California Labor Code §§ 2699, et seq., and all
7 other applicable Labor Code provisions;

8 44. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
9 California Labor Code § 2699;

10 45. For such other and further relief as the Court may deem equitable and
11 appropriate.

12 As to all Causes of Action

13 46. For any additional relief that the Court deems just and proper.

14
15 DATED: December 10, 2024

KIM LEGAL, APC

16
17 By: /s/ Frank H. Kim
18 Frank H. Kim, Esq.
19 Attorneys for Plaintiff
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PROOF OF SERVICE
[CCP 1013(a)(3)]

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. My business address is: 3435 Wilshire Blvd., Suite 2700, Los Angeles, CA 90010.

On December 11, 2024, I served true copies of the following document(s) described as: **FIRST AMENDED COMPLAINT** on the interested parties in this action as follows:

Stephen A. Rossi, Esq.

Aharon Kaslow, Esq.

sar@msk.com

abk@msk.com

**MITCHELL SILBERBERG
& KNUPP, LLP**

2049 Century Park East, 18th Floor

Los Angeles, CA 90067

Telephone: (310) 312-3240

Attorneys for Defendants

[x] **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused the document to be sent to the persons at the e-mail address(es) listed on the service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 11, 2024, at Los Angeles, California.

/s/ Kimberly Bentley

KIMBERLY BENTLEY