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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By B. Ramirez , Deputy Clerk

Attorneys for Plaintiff
VICTOR SANCHEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

VICTOR SANCHEZ, on behalf of himself and
all others similarly situated;

Plaintiffs,

vs.

EVERYTHING CREATIVE, INC., a California
corporation; and DOES 1 through 100, inclusive;

Defendants.

Case No. 24CU021981C

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

- 1. MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 204, 558, 1182.12,
1194, 1194.2, 1197, 1198);**
- 2. FAILURE TO PAY OVERTIME
WAGES (LABOR CODE §§ 204, 510,
558, 1194, 1198);**
- 3. MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 1198);**
- 4. REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 1198);**
- 5. WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226, *et seq.*);**
- 6. WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- 7. FAILURE TO REIMBURSE
BUSINESS EXPENSES (LABOR
CODE §§ 2802, 2804);**
- 8. UNFAIR COMPETITION (BUS. &
PROF. CODE § 17200, *et seq.*); and**
- 9. CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Victor Sanchez (“Plaintiff”), on behalf of himself and all others similarly situated,
2 hereby brings this Class and Representative Action Complaint against Everything Creative, Inc.
3 and Does 1 through 100, inclusive (collectively, “Defendants”), and on information and belief
4 alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, brings this class
7 action for recovery of unpaid wages and penalties under California Business and Professions
8 Code section 17200, *et seq.*; Labor Code §§ 201-204, 226, 226.7, 510, 512, 516, 558, 1182.12,
9 1194, 1194.2, 1197, 1198, 2802, 2804, 2698 *et seq.*; and Industrial Welfare Commission Wage
10 Order No. 9 (“Wage Order 9”), in addition to seeking declaratory relief and restitution. This class
11 action is brought pursuant to Code of Civil Procedure § 382. This Court has jurisdiction over
12 Defendants’ Labor Code violations as the amount in controversy exceeds this Court’s
13 jurisdictional minimum.

14 **VENUE**

15 2. Venue is proper in this judicial district pursuant to California Code of Civil
16 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
17 occurred in San Diego County. Defendants own, maintain offices, transact business, have an agent
18 or agents within San Diego County, and/or otherwise are found within San Diego County, and
19 Defendants are within the jurisdiction of this Court for purposes of service of process.

20 **PARTIES**

21 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was, and currently is, a California resident. During the four years immediately preceding
23 the filing of this action and within the statute of limitations periods applicable to each cause of
24 action pled herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff
25 was, and is, a victim of Defendants’ policies and/or practices complained of herein, lost money
26 and/or property, and has been deprived of the rights guaranteed by California Labor Code §§ 201-
27 204, 226, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804, 2698 *et seq.*;
28 California Business & Professions Code § 17200, *et seq.* (Unfair Competition), and Wage Order

9, which sets employment standards for the transportation industry, which includes businesses that deliver, warehouse, and move goods or commodities.

4. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of this lawsuit and continuing to the present, Defendants did (and do) business as a home staging service, and that they employed Plaintiff and other similarly situated non-exempt employees within San Diego County and the State of California.

5. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed and believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the Classes (as defined in Paragraph 19) to be subject to the unlawful employment practices, wrongs, injuries, and damages complained of herein.

6. Plaintiff is informed and believes, and based thereon alleges, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and all Class members.

7. At all times herein mentioned, each of said Defendants participated in the acts herein alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each of the acts or omissions alleged herein.

8. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all Class Members (as defined in Paragraph 19).

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10. During the relevant time period, Defendants failed to provide timely meal periods to Plaintiff and other non-exempt employees. Specifically, Plaintiff and other employees typically started their workday between 7:00 a.m. and 8:00 a.m., and they were expected to work until at least 2:00 p.m. or 3:00 p.m. (i.e., 6-8 hours after they started working, well after the fifth hour of work) before being allowed to take a meal break, if they were able to take one at all. Sometimes, Plaintiff and other non-exempt employees would not be provided with any meal break prior to clocking out at the end of the workday, which was typically 8 hours or more. Likewise, on occasions when Plaintiff worked over 10 hours, he was not provided with a second meal period. As a result, Plaintiff and other non-exempt employees were virtually *never* provided with timely meal breaks, and in fact often provided with no meal breaks at all.

12. Despite failing to provide legally compliant meal periods, when Plaintiff and other non-exempt employees didn't clock out for a meal period, Defendants would frequently add a 30-minute unpaid meal period to their time records after-the-fact (i.e., auto-deduct). In fact, Plaintiff was told by his manager to not clock-out for lunch because his supervisor would "manually input it." These practices would result in Plaintiff and other non-exempt employees not being paid for those 30 minutes that they were actually working, by unlawfully deducting this time from their

1 wages. This resulted in unpaid wages, including unpaid minimum wages and unpaid overtime
2 wages.

3 13. Defendants have also failed to authorize and permit compliant rest periods to
4 Plaintiff and other non-exempt employees. As with meal periods, Defendants failed to provide
5 timely rest periods to Plaintiff and other non-exempt employees. Typically, Plaintiff would take
6 only one rest break per day during his workday (which, as noted, was generally 8 hours or more),
7 generally after 2:00 p.m. or later. Despite failing to authorize and permit legally compliant rest
8 periods to Plaintiff and other non-exempt employees, Defendants have failed to pay the rest period
9 premiums required by Labor Code § 226.7. Upon information and belief, during at least a portion
10 of the putative class period, Defendants have maintained no payroll code or other mechanism for
11 paying rest period premiums when Defendants failed to authorize and permit a legally compliant
12 rest period.

13 14. Defendants have also required Plaintiff and other employees to incur business
14 expenses without reimbursement. For example, Plaintiff and other employees were required to
15 use their personal cell phones for work purposes, including but not limited to downloading and
16 using applications such as Gusto Wallet, Slack, and Google Calendar. Plaintiff and other non-
17 exempt employees used the Gusto Wallet application to clock in and out for work. Plaintiff and
18 other non-exempt employees used Slack to take pictures of furniture or accessory pieces, request
19 tags or cleaning for pieces, and generally communicate with other employees. Plaintiff and other
20 non-exempt employees also used Google Calendar to show the jobs they needed to assist on, the
21 dates and times for jobs, gate codes, and property access instructions.

22 15. Despite requiring Plaintiff and other employees to use their personal property for
23 work-related purposes, Defendants have failed to reimburse them for any portion of their personal
24 expenses, including any portion of their monthly cell phone bill. As a result of the foregoing,
25 Plaintiff and other employees are entitled to reimbursement pursuant to Labor Code § 2802 and
26 *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137 (holding employer must
27 reimburse employees for "reasonable percentage" of their cell phone bills if they are required to
28 use their cell phones for work, even if employees did not incur specific out-of-pocket expense).

1 16. As a result of Defendants' failure to pay all wages due, their failure to account for
2 and compensate for all hours worked by its employees, and/or their failure to pay meal and rest
3 period premium wages, Defendants have failed to pay all wages to Plaintiff and other formerly
4 employed non-exempt employees at the separation of their employment.

5 17. As a further result of Defendants' unlawful practices described above, Defendants
6 have maintained inaccurate time and payroll records, and have issued inaccurate wage statements
7 to Plaintiff and other non-exempt employees.

8 18. On information and belief, Defendants have engaged in the above unlawful
9 practices throughout the putative class period and continuing to the present.

10 **CLASS ACTION ALLEGATIONS**

11 19. **Class Definitions:** Plaintiff brings this action on behalf of himself and the
12 following Classes pursuant to California Code of Civil Procedure § 382:

13 a. The Minimum Wage Class consists of all of the Defendants' current and former
14 non-exempt employees in California who were subject to Defendants' timekeeping and
15 payroll practices, at any time from four years prior to the filing of this action to the present.

16 b. The Overtime Class consists of all of the Defendants' current and former non-
17 exempt employees in California who worked more than 8.0 hours in a workday and/or over
18 40.0 hours in a workweek and were subject to Defendants' timekeeping and payroll
19 practices, at any time from four years prior to the filing of this action through the present.

20 c. The Meal Period Class consists of all of the Defendants' current and former non-
21 exempt employees in California who worked at least one shift in excess of 5.0 hours, and/or
22 at least one shift in excess of 10.0 hours, at any time from four years prior to the filing of
23 this action through the present.

24 d. The Rest Period Class consists of all of the Defendants' current and former non-
25 exempt employees in California who worked at least one shift of 3.5 hours or more, at any
26 time from four years prior to the filing of this action through the present.

27 e. The Wage Statement Class consists of all members of the Minimum Wage Class,
28 Overtime Class, Meal Period Class, and/or Rest Period Class who received a wage

statement from Defendants at any time from one year prior to the filing of this action through the present.

f. The Waiting Time Class consists of all members of the Minimum Wage Class, Overtime Class, Meal Period Class, and/or Rest Period Class, who are no longer employed by Defendants and whose employment with Defendants ended at any time from three years prior to the filing of this action through the present.

g. The Expense Reimbursement Class consists of all of Defendants' employees who were required to use their personal property for work-related purposes, including but not limited to personal cellular phones, at any time from four years prior to the filing of this action through the present.

20. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and impracticable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the Classes number greater than fifty (50) individuals in each Class. The identity of such membership is readily ascertainable via Defendants' employment records.

21. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation to:

- i. Whether Defendants paid members of the Minimum Wage Class at least the applicable minimum wage for all hours worked;
- ii. Whether Defendants' timekeeping and payroll practices violate the applicable Labor Code provisions including, but not limited to, §§ 510 and 1194 by requiring overtime work and not paying the Overtime Class for said work according to California's overtime laws;
- iii. Whether Defendants provided legally compliant meal periods to members of the Meal Period Class;

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- 1 iv. Whether Defendants authorized and permitted legally compliant rest
2 periods to members of the Rest Period Class;
- 3 v. Whether Defendants furnished legally compliant wage statements to
4 members of the Wage Statement Class pursuant to Labor Code § 226;
- 5 vi. Whether Defendants paid all wages due to members of the Waiting Time
6 Class at the time of separation of employment; and
- 7 vii. Whether Defendants properly reimbursed expenses incurred by members
8 of the Expense Reimbursement Class.

9 22. **Predominance of Common Questions:** Common questions of law and fact
10 predominate over questions that affect only individual members of the Classes. The common
11 questions of law set forth above are numerous and substantial and stem from Defendants' policies
12 and/or practices applicable to each individual class member, such as Defendants' timekeeping,
13 overtime, wage statement, meal period, rest period, expense reimbursement, and final wage
14 policies/practices. As such, the common questions predominate over individual questions
15 concerning each individual class member's showing as to his or her eligibility for recovery or as
16 to the amount of his or her damages.

17 23. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because
18 Plaintiff was employed by Defendants as a non-exempt employee in California during the
19 statute(s) of limitation applicable to each cause of action pled in the Complaint in this action. As
20 alleged herein, Plaintiff, like the members of the Classes, was not paid all earned minimum wages
21 and overtime wages; was subject to Defendants' uniform meal and rest period policies/practices;
22 was furnished with inaccurate wage statements; was deprived of all final wages upon his
23 separation of employment from Defendants; and was not reimbursed for all expenses he incurred
24 in carrying out his job duties for Defendants.

25 24. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary
26 steps to represent fairly and adequately the interests of the members of the Classes. Moreover,
27 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of
28 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted numerous wage-and-hour class

1 actions in state and federal courts in the past and are committed to vigorously prosecuting this
2 action on behalf of the members of the Classes.

3 25. **Superiority:** The California Labor Code is broadly remedial in nature and serves
4 an important public interest in establishing minimum working conditions and standards in
5 California. These laws and labor standards protect the average working employee from
6 exploitation by employers who have the responsibility to follow the laws and who may seek to
7 take advantage of superior economic and bargaining power in setting onerous terms and
8 conditions of employment. The nature of this action and the format of laws available to Plaintiff
9 and members of the Classes make the class action format a particularly efficient and appropriate
10 procedure to redress the violations alleged herein. If each employee were required to file an
11 individual lawsuit, Defendants would necessarily gain an unfair advantage, as they would be able
12 to exploit and overwhelm the limited resources of each individual plaintiff with their vastly
13 superior financial and legal resources. Moreover, requiring each member of the Classes to pursue
14 an individual remedy would discourage the assertion of lawful claims by employees who would
15 be disinclined to file an action against their former and/or current employer for real and justifiable
16 fear of retaliation and permanent damages to their careers at subsequent employment. Further, the
17 prosecution of separate actions by individual class members would create a substantial risk of
18 inconsistent or varying verdicts or adjudications with respect to the individual class members
19 against Defendants herein; and which would establish potentially incompatible standards of
20 conduct for Defendants. Further, the claims of the individual members of the Classes are not
21 sufficiently large to warrant vigorous individual prosecution considering all of the concomitant
22 costs and expenses attending thereto. As such, the Classes identified in Paragraph 19 are
23 maintainable under California Code of Civil Procedure § 382.

24 **FIRST CAUSE OF ACTION**

25 **MINIMUM WAGE VIOLATIONS**

26 **(AGAINST ALL DEFENDANTS)**

27 26. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

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1 27. Wage Order 9 and Labor Code §§ 1197 and 1182.12 establish employees' right to
2 be paid minimum wages for all hours worked in amounts set by state law. Labor Code §§ 1194(a)
3 and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as
4 required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees,
5 costs of suit, liquidated damages in an amount equal to the unpaid wages, and interest.

6 28. At all relevant times, Defendants failed to conform their pay practices to the
7 requirements of the law by failing to pay Plaintiff and the Minimum Wage Class for all hours
8 actually worked including, but not limited to, all hours they were subject to Defendants' control
9 and/or suffered or permitted to work under the Labor Code and Wage Order 9.

10 29. California Labor Code § 1198 makes unlawful the employment of an employee
11 under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide
12 that an employer who has failed to pay its employees the legal minimum wage is liable to pay
13 those employees the balance of the unpaid wages as well as liquidated damages in an amount
14 equal to the wages due and interest thereon.

15 30. As a direct and proximate result of Defendants' unlawful conduct as alleged
16 herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but
17 not limited to, unpaid wages and lost interest in an amount to be established at trial, and they are
18 entitled to recover economic and statutory damages and penalties and other appropriate relief as
19 a result of Defendants' violations of the California Labor Code and applicable Wage Orders.

20 31. Defendants' practice and uniform administration of corporate policy regarding
21 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff
22 and the Minimum Wage Class in a civil action for the unpaid amount of minimum wages,
23 liquidated damages, interest, statutory penalties, and attorneys' fees and costs of suit, per Labor
24 Code §§ 204, 218.6, 558, 1194, 1194.2, 1197, 1198, and Code of Civil Procedure § 1021.5.

25 **SECOND CAUSE OF ACTION**

26 **FAILURE TO PAY OVERTIME WAGES**

27 **(AGAINST ALL DEFENDANTS)**

28 32. Plaintiff re-alleges and incorporates by reference all prior paragraphs.

1 33. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
2 and 1198, which provide that non-exempt employees are entitled to overtime wages for all
3 overtime hours worked, and which provide a private right of action for the failure to pay all
4 overtime compensation for overtime work performed.

5 34. At all times relevant herein, Defendants were required to properly compensate
6 Plaintiff and members of the Overtime Class for all overtime hours worked pursuant to California
7 Labor Code § 1194 and Wage Order 9. Wage Order 9, § 4 requires an employer to pay an
8 employee “one and one-half (1½) times the employee’s regular rate of pay” for work in excess of
9 8 hours per workday and/or in excess of 40 hours in any workweek, and for the first 8 hours on
10 the seventh consecutive workday in a workweek. Wage Order 9, § 4 also requires an employer to
11 pay an employee double the employee’s regular rate of pay for work in excess of 12 hours in a
12 workday and/or in excess of 8 hours on the seventh consecutive day of work in the workweek.
13 As alleged herein, Defendants caused Plaintiff and Overtime Class members to work overtime
14 and double-time hours but did not compensate them at one and one-half times (or two times) their
15 regular rate of pay for such hours.

16 35. The foregoing policies and practices are unlawful and create entitlement to
17 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid overtime wages,
18 interest thereon, statutory penalties, and attorneys’ fees and costs of suit according to California
19 Labor Code §§ 204, 218.6, 510, 558, 1194, and 1198, and Code of Civil Procedure § 1021.5.

20 **THIRD CAUSE OF ACTION**

21 **MEAL PERIOD VIOLATIONS**

22 **(AGAINST ALL DEFENDANTS)**

23 36. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

24 37. Plaintiff is informed and believes, and based thereon alleges, that Defendants
25 failed in their affirmative obligation to provide all their non-exempt employees, including
26 Plaintiff and members of the Meal Period Class, with all required meal periods in accordance with
27 the mandates of the California Labor Code and Wage Order 9, for the reasons set forth in this
28 Complaint.

1 38. As a result, Defendants owe premium compensation for meal period violations,
2 including interest thereon, statutory penalties, and costs of suit, pursuant to Wage Order 9, Labor
3 Code §§ 226.7 and 512, Civil Code § 3287, and Art. XV, § 1 of the California Constitution.

4 **FOURTH CAUSE OF ACTION**

5 **REST PERIOD VIOLATIONS**

6 **(AGAINST ALL DEFENDANTS)**

7 39. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

8 40. Labor Code §§ 226.7 and 516, and Wage Order 9 establish the right of employees
9 to be authorized and permitted a rest period of at least ten (10) minutes for each four (4) hour
10 period worked, or major fraction thereof.

11 41. As alleged herein, Defendants have failed to authorize and permit Plaintiff and
12 Rest Period Class members to take their legally entitled rest periods. Defendants have also failed
13 to compensate Plaintiff and Rest Period Class members with a rest period premium for each
14 workday they were not authorized and permitted all rest periods to which they were entitled.

15 42. The foregoing violations create an entitlement to recovery by Plaintiff and Rest
16 Period Class members in a civil action for the unpaid amount of rest period premiums owing,
17 including interest thereon, statutory penalties, civil penalties, and costs of suit according to Labor
18 Code §§ 226.7, 516, 558; Code of Civil Procedure § 1021.5; Civil Code § 3287; and Art. XV, §
19 1 of the California Constitution.

20 **FIFTH CAUSE OF ACTION**

21 **WAGE STATEMENT VIOLATIONS**

22 **(AGAINST ALL DEFENDANTS)**

23 43. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

24 44. Plaintiff is informed and believes, and based thereon alleges, that Defendants
25 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
26 and the Wage Statement Class with accurate and complete itemized wage statements that
27 included, among other requirements, all hours worked, all hours worked at each rate of pay, and
28 all wages earned, in violation of Labor Code § 226.

1 45. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class
2 with complete and accurate itemized wage statements resulted in injury, as said failures led to,
3 among other things, the non-payment of all their wages and meal and rest period premium wages,
4 and deprived them of the information necessary to identify and reconcile the discrepancies in
5 Defendants' reported data.

6 46. Defendants' failures create an entitlement to recovery by Plaintiff and members of
7 the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
8 Code § 226, including statutory penalties, civil penalties, and reasonable attorneys' fees and costs
9 of suit, pursuant to Labor Code §§ 226 and 226.3.

10 **SIXTH CAUSE OF ACTION**

11 **WAITING TIME PENALTIES**

12 **(AGAINST ALL DEFENDANTS)**

13 47. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

14 48. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
15 an employer to pay all wages immediately at the time of separation of employment in the event
16 the employer discharges the employee, or the employee provides at least 72 hours of notice of
17 their intent to quit. In the event the employee provides less than 72 hours of notice of their intent
18 to quit, said employee's wages become due and payable not later than 72 hours upon said
19 employee's last date of employment.

20 49. Plaintiff is informed and believes, and based thereon alleges, that Defendants
21 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them
22 at their separation from employment, including (but not limited to) unpaid minimum wages and
23 overtime wages and unpaid meal and rest period premium wages.

24 50. Further, Plaintiff is informed and believes, and based thereon alleges, that as a
25 matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members
26 of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant
27 to the requirements of Labor Code §§ 201-203.

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51. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting Time Class their earned wages upon separation from employment results in a continued payment of daily wages up to thirty days from the time the wages were due. Plaintiff and members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus reasonable attorneys' fees and costs of suit.

SEVENTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

(AGAINST ALL DEFENDANTS)

52. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

53. At all relevant times, Defendants were subject to Labor Code § 2802, which states that "an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer."

54. At all relevant times, Defendants were subject to Labor Code § 2804, which states, "any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State."

55. Due to Defendants' unlawful policy and practice of requiring employees to use their personal property, including but not limited to personal cell phones, for work purposes and their failure to reimburse Plaintiff and members of the Expense Reimbursement Class, Defendants have violated Labor Code § 2802.

56. As a proximate result of Defendants' policies and/or practices in violation of Labor Code §§ 2802 and 2804, Plaintiff and members of the Expense Reimbursement Class have suffered damages in sums, which will be shown according to proof.

57. Plaintiff and members of the Expense Reimbursement Class are entitled to attorneys' fees and costs of suit pursuant to Labor Code § 2802(c) for bringing this action.

58. Pursuant to Labor Code § 2802(b), any action brought for the reimbursement of necessary expenditures carries interest at the same rate as judgments in civil actions. Thus, Plaintiff and members of the Expense Reimbursement Class are entitled to interest, which shall accrue from the date on which they incurred the initial necessary expenditure.

EIGHTH CAUSE OF ACTION

UNFAIR COMPETITION

(AGAINST ALL DEFENDANTS)

59. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

60. Defendants have engaged, and continue to engage, in unfair and/or unlawful business practices in violation of Business & Professions Code § 17200, *et seq.*, by failing to pay Plaintiff and the Classes all minimum wages and overtime wages due, failing to provide meal periods or pay meal period premium wages, failure to authorize and permit rest periods or pay rest period premium wages, failing to furnish accurate and complete itemized wage statements, failing to reimburse business expenses, and failing to pay all earned wages at separation of employment.

61. Defendants' utilization of these unfair and/or unlawful business practices has deprived Plaintiff and members of the Classes of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

62. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff, for himself and on behalf of the members of the Classes, seeks full restitution of monies as necessary and according to proof, to restore all monies withheld, acquired, and/or converted by Defendants pursuant to Business & Professions Code §§ 17203 and 17208.

63. The acts complained of herein occurred within the four years immediately preceding the filing of this action.

64. Plaintiff was compelled to retain the services of counsel to file this court action to protect their interests and those of the Classes, to obtain restitution and injunctive relief on behalf

1 of Defendants' current non-exempt employees, and to enforce important rights affecting the
2 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
3 which he is entitled to recover under Code of Civil Procedure § 1021.5.

4 **NINTH CAUSE OF ACTION**

5 **PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

6 **(AGAINST ALL DEFENDANTS)**

7 65. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

8 66. Defendants have committed several Labor Code violations against Plaintiff and
9 other aggrieved employees. Plaintiff is an "aggrieved employee" within the meaning of Labor
10 Code § 2698 *et seq.* Plaintiff, acting on behalf of herself and other aggrieved employees, brings
11 this representative action against Defendants to recover the civil penalties due to Plaintiff, other
12 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
13 558 and 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
14 each failure to pay each employee and \$200.00 for each subsequent violation or willful or
15 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus
16 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for
17 each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3)
18 \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor
19 Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation of Labor Code
20 § 226 and \$1,000.00 for each subsequent violation, pursuant to Labor Code § 226.3, per
21 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each
22 subsequent violation per employee per pay period for those violations of the Labor Code for
23 which no civil penalty is specifically provided, based on the following Labor Code violations:

24 a. Failing to pay all overtime and/or double-time compensation owed to
25 Plaintiff and other aggrieved employees, in violation of Labor Code §§ 204,
26 510, 558, 1194, and 1198;

27 b. Failing to provide legally compliant meal periods to Plaintiff and other
28 aggrieved employees, in violation of Labor Code §§ 226.7, 512, 558, and 1198;

- c. Failing to pay Plaintiff and other aggrieved employees at least the minimum wage for all hours worked, in violation of Labor Code §§ 204, 558, 1182.12, 1194, 1194.2, 1197, and 1198;
- d. Failing to authorize and permit legally compliant rest periods to Plaintiff and other aggrieved employees, in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- e. Failing to reimburse or indemnify Plaintiff and other aggrieved employees for expenses incurred while carrying out their duties for Defendants, in violation of Labor Code §§ 2802 and 2804;
- f. Failing to timely pay all final wages owed to Plaintiff and other aggrieved former employees at the separation of employment, in violation of Labor Code §§ 201-203;
- g. Failing to furnish accurate itemized wage statements to Plaintiff and other aggrieved employees, in violation of Labor Code § 226;
- h. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees, in violation of Labor Code §§ 1174 and 1198.

67. On or about November 12, 2024, Plaintiff notified Defendant Everything Creative, Inc., via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the Labor Code and Plaintiff’s intent to bring a claim for civil penalties under Labor Code § 2698 *et seq.* (“PAGA”) with respect to the violations of the Labor Code identified in paragraph 66 (a)-(h) above. Now that sixty-five days have passed from Plaintiff’s notifying Defendants and the LWDA of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the PAGA with respect to these violations. As noted in Plaintiff’s notice letter, the “aggrieved employees” Plaintiff seeks to represent in his PAGA action are all current and former non-exempt employees of Defendants who have worked for Defendants in California at any time from one year immediately preceding the date of Plaintiff’s PAGA notice letter through the date that judgment is entered in Plaintiff’s PAGA action or any alternative date agreed upon by the parties and/or approved by the Court.

68. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which he is entitled to recover under California Labor Code § 2699(k).

PRAYER FOR RELIEF

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

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing counsel for Plaintiff as counsel for the Classes;
4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, 1197, and 1198;
5. Upon the Second Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 204, 226.7, 512, 558, and 1198;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 226.7, 516, 558, and 1198;
8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code § 226, *et seq.*;
9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to Labor Code §§ 201-203;
10. Upon the Seventh Cause of Action, for compensatory, consequential, general, and special damages according to proof pursuant to Labor Code §§ 2802 and 2804;
11. Upon the Eighth Cause of Action, for restitution to Plaintiff and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Bus. & Prof Code § 17200, *et seq.*;

1 12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other aggrieved
2 employees, and the State of California according to proof pursuant to Labor Code § 2699,
3 including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each
4 employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant
5 to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully
6 withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to
7 Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00
8 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4)
9 \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent
10 violation, pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
11 each initial violation and \$200.00 for each subsequent violation per employee per pay period for
12 those violations of the Labor Code for which no civil penalty is specifically provided, pursuant to
13 Labor Code § 2699(f);

14 13. Prejudgment interest on all due and unpaid wages and other damages pursuant to
15 Cal. Labor Code §§ 218.6, 1194(a), and 2802(b); Civil Code § 3287; and Art. XV, § 1 of the
16 California Constitution;

17 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
18 226(e), 1194 *et seq.*, 2802(c), 2699(k), Code of Civil Procedure § 1021.5, and all other applicable
19 statutes; and

20 15. For such other and further relief the Court may deem just and proper.

21 Date: January 17, 2025

MARQUEE LAW GROUP, APC

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24 Tuvia Korobkin
25 Attorneys for Plaintiff

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1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

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4 Date: January 17, 2025

MARQUEE LAW GROUP, APC

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7 Tuvia Korobkin
8 Attorneys for Plaintiff
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On January 17, 2025, I served the foregoing document(s) described as:

on all interested parties in this action by transmitting a true copy of the document(s) described above, addressed as follows:

- () **BY MAIL** as follows: I am “readily familiar” with the firm’s practice of collection and processing of correspondence for mailing with the United States Postal Service. I know that the correspondence was deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelope was sealed and, with postage thereon fully prepaid, placed for collection and mailing on this date in the United States mail at Beverly Hills, California.
- () **BY PERSONAL SERVICE:** I caused to be delivered such envelope by hand to the above addressee(s).
- () **BY OVERNIGHT COURIER:** I am “readily familiar” with the firm’s practice of collecting and processing overnight deliveries, which includes depositing such packages in a receptacle used exclusively for overnight deliveries. The packages were deposited before the regular pickup time and marked accordingly for delivery the next business day.
- (X) **BY ELECTRONIC TRANSMISSION:** Participants in this case were served electronically to the address of the recipient(s) as set forth below. I am readily familiar with the Code of Civil Procedure and California Rules of Court for electronic service and this document/these documents were duly served electronically in accordance with said rules and regulations on the date stated above, and the transmission was reported as complete and without error.


Claudia Perez

SERVICE LIST:

Dunn DeSantis Walt & Kendrick LLP c/o Kevin Desantis, Esq. c/o Waleed Zahid, Esq. 750 B Street, Suite 2620 San Diego, CA 92101 E: wzahid@ddwklaw.com, kdesantis@ddwklaw.com, lcase@ddwklaw.com, cbarguiarena@ddwklaw.com	<i>Attorneys for Defendant Everything Creative, Inc., a California corporation</i>
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