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8 *and the putative class*

FILED
Superior Court of California
County of Los Angeles

05/07/2024

David W. Slayton, Executive Officer / Clerk of Court

By: _____ R. Lozano Deputy

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF LOS ANGELES**

11 JEREMY HARTWELL, an individual; and on
12 behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 KINETIC CONTENT, LLC, a Delaware limited
liability company; NETFLIX, INC., a Delaware
16 Corporation; DELIRIUM TV, LLC, a Delaware
limited liability company; DOES 1-10, business
17 entities, forms unknown; DOES 11-20,
individuals; and DOES 21-30, inclusive,

18 Defendants.
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Case No.: 22STCV21223

**Plaintiff's First Amended Class Action
Complaint For:**

1. **Failure to Pay Overtime Wages (L.C. §§ 204, 510, and 1194 and Wage Order 12-2001, § 3);**
2. **Failure to Pay Minimum Wages (L.C. §§ 204, 1194, 1197, and 1197.1 and Wage Order 12-2001);**
3. **Liquidated Damages for Failure to Pay Minimum Wages (L.C. § 1194.2);**
4. **Failure to Provide Accurate and Itemized Wage Statements (L.C. §§ 226 and Wage Order 12-2001);**
5. **Failure to Provide Uninterrupted Meal Periods (L.C. §§ 226.7, 512, and Wage Order 12-2001, § 11);**
6. **Failure to Provide Uninterrupted Rest Periods (L.C. §§ 226.7 and Wage Order 12-2001, § 12);**
7. **Failure to Pay Wages Promptly Upon Termination (L.C. §§ 201, 202, and 203);**
8. **Unfair Business Practices (Bus. & Prof. Code §§ 17200, et seq.); and**
9. **Private Attorneys General Act (L.C. §§ 2698, et seq.)**

1 Plaintiff Jeremy Hartwell (“Plaintiff”), on behalf of himself and all others similarly situated,
2 hereby files this amended Complaint against Kinetic Content, LLC, a Delaware limited liability
3 company; Netflix, Inc., a Delaware Corporation; Delirium TV, LLC, a Delaware limited liability
4 company; and DOES 1-30 (collectively “Defendants”). Plaintiff is informed and believes, and based
5 thereon alleges, as follows:

6 **I. INTRODUCTION**

7 1. Plaintiff brings this class action on behalf of himself and “Class Members” and “Aggrieved
8 Employees” who consist of any persons who applied for and/or participated in all non-scripted content
9 produced in California on behalf of Netflix, Inc., and by Kinetic Content, LLC and/or any persons who
10 signed a similar agreement document with Delirium TV, LLC to work in California on any non-scripted
11 content productions from the date four years prior to the filing of this Complaint through the date of
12 trial in this action.

13 2. The “Class Period” is designated as the time from four years prior to the filing of the original
14 Complaint in this action through the trial of this action based upon the allegation that the violations of
15 the Labor Code described herein have been ongoing since at least four years prior to the date of filing
16 of the original Complaint and are continuing.

17 3. By way of example, the “Class Members” and “Aggrieved Employees” consist of all
18 participants who participated in the production of any of the following reality television productions in
19 the State of California: *Love is Blind* seasons 2, 3, 4 and 5 (“*LIB*”), and *Ultimatum* seasons 1A and 1B
20 (“*Ultimatum*”).

21 4. Defendants operate production and distribution businesses employing Class Members for
22 content on television and streaming services. Defendants employ these workers and are aware of and
23 ratified the employment conditions of these workers to perform various tasks, including acting and
24 participation in content production, filming their daily lives on and off set, participating in interviews,
25 and promoting television series through social media and public appearances.

26 5. Defendants willfully misclassified employees as independent contractors despite Defendants
27 exercising substantial and excessive control over the manner, means, and timing of the work performed
28 by Class Members and Aggrieved Employees. These individuals were in reality employees that were

1 entitled to protections under California law, including but not limited to the California Labor Code and
2 the applicable Wage Order. Defendants maintained a practice of willfully misclassifying employees to
3 deny these individuals such protections and avoid paying Class Members and Aggrieved Employees
4 proper minimum wage and overtime pay. Defendants maintained excessive control over virtually every
5 aspect of the lives of their shows' Cast, including exerting complete domination over their time,
6 schedule, and their ability to eat, drink, and sleep, and communicate with the outside world during the
7 period of employment; and restricted their ability to engage in a multitude of activities that Defendants
8 forbid both during the period of employment and thereafter. In doing so, Defendants created and
9 maintained unsafe and inhumane working conditions for the Cast of the shows.

10 6. Defendants unlawfully required Class Members and Aggrieved Employees to agree, in writing,
11 to terms and conditions which are expressly prohibited by California law in violation of Labor Code §
12 432.5. Defendants required all Cast Members and possible participants of production to agree, as a
13 condition of employment, to a purported contractual agreement containing several provisions which
14 Defendants knew or had reason to know were unlawful. Notably, the purported contract unlawfully
15 mandated that the Class Members and Aggrieved Employees pay *so-called liquidated damages of*
16 *\$50,000.00* (which was in effect an excessively large and retaliatory penalty) if they were casted and
17 left the shows during production or otherwise breached their purported contracts with Defendants as a
18 scare tactic to exert further control and maintain the Cast Members' compliance during production.
19 required Class Members and Aggrieved Employees to waive their rights to pursue virtually any
20 cognizable claim against Defendants before such claims and

21 7. Defendants failed and continue to fail to compensate Class Members and Aggrieved Employees
22 for all hours worked, including minimum wage and overtime hours, as a result of maintaining a practice
23 of requiring Class Members and Aggrieved Employees to work up to twenty (20) hour days, seven
24 days per week, while paying them a flat amount of \$1,000.00 per filming week. Resultantly, these
25 workers were effectively as little \$7.14 per hour which is less than half of the applicable minimum
26 wage rate of \$15.00 per hour, less than one-third of the minimum overtime rate of \$22.50 per hour, and
27 less than one-fourth of the minimum double-time rate of \$30.00 per hour pursuant to the applicable
28 Los Angeles City and County minimum wage ordinances. Defendants failed and continue to fail to

1 pay all formerly employed Class Members and Aggrieved Employees their compensation due at
2 termination, as required by Labor Code §§ 201-203, in part because Defendants failed and continue to
3 fail to pay wages for all hours worked by each Class Members and Aggrieved Employees, including
4 regular wages, minimum wages, and overtime wages.

5 8. Defendants failed and continue to fail to furnish accurate and itemized wage statements
6 showing, among other things, the total compensation due to Class Members and Aggrieved Employees
7 for each pay period, in part because Defendants maintained a practice of not providing wage statements.

8 9. Defendants failed and continue to fail to provide legally mandated off-duty meal periods and
9 rest periods because, among other reasons, Defendants maintained a policy and practice of failing to
10 provide meal and rest breaks to Class Members and Aggrieved Employees until well past their fifth
11 hour of work, and then even when purportedly provided of requiring Class Members and Aggrieved
12 Employees to work or remain on-call during meal periods and rest periods that were provided.
13 Defendants failed and continue to fail to pay all premiums for the meal and rest period violations.

14 10. By the predicate violations of law described above, Defendants also violated Business and
15 Professions Code §§ 17200, *et seq.*

16 11. Plaintiff, on behalf of himself and the Class Members and Aggrieved Employees, seeks unpaid
17 overtime compensation, unpaid minimum wages, waiting time penalties, statutory penalties, restitution,
18 declaratory and injunctive relief, attorneys’ fees and costs, prejudgment interest, and other appropriate
19 relief pursuant the Private Attorneys General Act (“PAGA”), Labor Code § 2698 *et seq* for violations
20 of Wage Order 12-2001, Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 226.8, 232, 432.5,
21 432.7, 432.8, 510, 512, 558, 1019.1, 1024.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 2698, 3700,
22 3708, 6400, 6402, Government Code § 12940, Civil Code § 1671, Business and Professions Code
23 §§17200, *et seq.*, and other relevant law of the State of California.

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1 12. Plaintiff alleges that these acts violate the California Labor Code (“Labor Code”) under the
2 Private Attorneys General Act (“PAGA”), Labor Code § 2698 *et seq.* In this action, Plaintiff, on behalf
3 of himself and all Aggrieved Employees, and as a Private Attorney General on behalf of the State of
4 California, seeks all civil penalties that may be pursued under the California Labor Code as a result of
5 the Defendants’ unlawful conduct, declaratory and injunctive relief, attorneys’ fees and costs,
6 prejudgment interest, and other relief and penalties pursuant to Labor Code § 2698 *et seq.*

7 **II. PARTIES, JURISDICTION, AND VENUE**

8 13. Plaintiff Jeremy Hartwell is an individual who was employed by Defendants in the County of
9 Los Angeles during the Class Period. Plaintiff and each Class Member were or are employed by
10 Defendants within the State of California and were subject to the unlawful policies and practices
11 described herein.

12 14. Plaintiff Jeremy Hartwell was employed with Defendants from April 24, 2021 through at least
13 May 1, 2021 as a contestant for the Netflix reality TV show, “*Love Is Blind,*” which Defendants cast
14 and produce for online streaming on Netflix. During this period, Mr. Hartwell was misclassified as an
15 independent contractor and was subjected to the violations detailed herein.

16 15. Plaintiff brings this action as a class action on behalf of himself and all others similarly situated,
17 pursuant to Code of Civil Procedure § 382.

18 16. Defendant Delirium TV, LLC is a Delaware limited liability company maintaining its principal
19 place of business in Los Angeles, California, which is located within the County of Los Angeles,
20 California and is in the business of casting participants for productions which are distributed by
21 companies including Netflix, Inc.

22 17. Defendant Kinetic Content is a Delaware limited liability company maintaining its principal
23 place of business in Los Angeles, California, which is located within the County of Los Angeles,
24 California and is in the business of creating and producing content, including a variety of non-scripted
25 productions, docuseries, and competition shows, for the global market. Kinetic Content is a partner of
26 Netflix, Inc. and many of its productions are distributed through Netflix’s streaming website.

27 18. Defendant Netflix, Inc. is a Delaware corporation maintaining its principal place of business in
28 Los Gatos, California, which is located within the County of Santa Clara, doing business in Los

1 Angeles, California and operates a subscription streaming service and production company. Netflix
2 partners with production-related companies, such as Kinetic Content and Delirium TV, to produce
3 various forms of content to be distributed through Netflix’s streaming service.

4 19. At all times herein mentioned, DOES 1 through 10 were headquartered or residing in the State
5 of California, and licensed to do business or actually doing business therein, including the County of
6 Los Angeles.

7 20. The true names and/or capacities, whether individual, corporate, associate, or otherwise, of
8 defendants named herein as DOES 1 through 30, inclusive, are unknown to Plaintiff at this time, who
9 therefore sue said defendants by such fictitious names. Each of the defendants designated herein by
10 fictitious name is in some manner responsible for the events and happenings herein referred to, and
11 caused damages proximately and foreseeably thereby to Plaintiff and the Class Members as hereinafter
12 alleged. Plaintiff asks leave of the Court to amend this Complaint when the true names and capacities
13 of the DOE defendants have been ascertained.

14 21. Each defendant acted in all respects pertinent to this action as the agent of the other defendants,
15 carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and the acts of each
16 defendant are legally attributable to the other defendants as each defendant has ratified, approved, and
17 authorized the acts of each of the remaining defendants with full knowledge of said acts.

18 22. Venue is proper in the Superior Court of California for the County of Los Angeles as this Court
19 has personal jurisdiction over Defendants pursuant to Code of Civil Procedure § 395. Plaintiff worked
20 in and violations occurred in Los Angeles County.

21 **III. FACTUAL ALLEGATIONS**

22 **a. Defendants’ Willful Misclassification of its Cast Members As Independent**
23 **Contractors**

24 23. Defendants willfully misclassified and upon information and belief continue to misclassify
25 Plaintiff, the Class Members, and Aggrieved Employees, including those holding positions as
26 “Contestant,” “Participant,” “Cast Member,” and similar job titles (herein referred to as the “Cast”), as
27 independent contractors through substantial exercise of control over the manner, means, and timing of
28 their work performed for Defendants’ non-scripted content productions, including but not limited to

1 the Netflix reality TV show, *“Love Is Blind.”* Defendants exercised substantial control over every
2 aspect of the Cast’s lives during production, including the Cast’s time, access to food and drinks,
3 sleeping arrangements, and contact with family and friends and other persons outside of production.
4 Defendants did not allow the Cast to move or act of their own free will while the production took place.

5 24. Once the Cast agreed to participate in Defendants’ production, Defendants exercised and
6 continued to exercise an egregious amount of control over the Cast from the moment of their arrival in
7 the production’s city (i.e., Los Angeles for California Cast Members) until the Cast left the production
8 altogether.

9 25. The Cast arrived to the city where production would take place via airplane. Upon the Cast’s
10 arrival, Defendants isolated the Cast and took away their ability to contact family, friends, and other
11 persons outside of production. This continued for the entire length of the Cast’s participation in the
12 production. Defendants also forced the Cast to give up all forms of identification, wallets, phones, cash,
13 and credit and debit cards to Defendants, thus eliminating the Cast’s ability to leave the hotel living
14 quarters or production set. In fact, Defendants did not allow the Cast to leave the premises of the hotel
15 or studio at all unless explicitly directed to do so by Defendants. To force, the Casts’ cooperation with
16 this instruction, Defendants also did not allow any of the Cast members to hold a key to their own hotel
17 rooms to prevent them from leaving their hotel rooms.

18 26. Defendants forbid the Cast members from driving themselves to and from the production
19 location. The Cast’s only way to leave the hotel or production set was via the shuttles provided by
20 Defendants, who exerted full control over the times and manner that the Cast was transported to and
21 from the hotel.

22 27. Defendants would strongly suggest that there would be negative repercussions if the Cast
23 refused to remain working on the production until the late hours of the night and then required them to
24 return the next day in the early morning. Defendants only allowed the Cast to rest at their hotel living
25 quarters for a few hours in between late nights on set and early morning call times.

26 28. At times, Defendants left members of the Cast alone for hours at a time with no access to a
27 phone, food, or any other type of contact with the outside world until they were required to return to
28 working on the production.

1 29. Defendants further controlled the Cast by restricting food and drink at all hours of the day.
2 Defendants regularly refused timely food and water to the Cast while on set severely restricting the
3 availability of hydration opportunities. Even at the hotel living quarters, food was restricted to the point
4 of severe hunger. Defendants, having knowledge of the fact that Cast member at times would be
5 starving, instructed the hotel staff to not provide food to any Cast member that asked them for food
6 because of hunger, in a clear effort to ensure that the Cast would continue to be deprived of food outside
7 of the presence of the production team. The only drinks that Defendants regularly provided to the Cast
8 were alcoholic beverages, soft drinks, energy drinks, and mixers. Hydrating drinks such as water were
9 strictly limited to the Cast during the day.

10 30. Defendants were encouraged to consume alcohol throughout the entire day and were plied with
11 an unlimited amount of alcohol without meaningful or regular access to appropriate food and water to
12 moderate their inevitable drunkenness. The combination of sleep deprivation, isolation, lack of food,
13 and an excess of alcohol all either required, enabled, or encouraged by Defendants contributed to
14 inhumane working conditions and altered mental state for the Cast. Upon information and belief,
15 Defendants did this—purposely withheld necessities such as food, sleep, and water from the Cast and
16 cut off their access to the outside world—in order to maintain a heightened degree of control and direct
17 the conduct of the Cast into making manipulated decisions for the benefit of the shows’ entertainment
18 value.

19 31. As a result of Defendants’ encouraging the Cast to perform work in a hazardous work
20 environment while in an altered mental state, Defendants failed to provide a safe and healthful place
21 of employment. The Cast worked on a production set which contained various hazards including large
22 and delicate equipment, trip hazards, electric hazards, and heavy unsecured equipment. Further, the
23 Cast was more prone to injury due to their excessive intake of alcohol, minimal intake of food, and
24 sleep deprivation. The Cast were forced to perform in various states of fatigue, hunger, and drunkenness
25 on top of working excessive hours, leading to an unsafe and unhealthful environment.

26 **b. Defendants Required the Cast to Enter into a Contract Littered with Illegal Terms**
27 **that California Law Expressly Prohibits in Order to Participate in Shows.**

28 32. Defendants further attempted to control the Cast by requiring the Cast to enter into a contract

1 which contained several illegal terms and unlawful provisions that California expressly prohibits in
2 order to participate in Defendants' productions.

3 33. Defendants forced the Cast and applicants to the show to agree to not apply or audition to appear
4 on any other media production while still only being considered, not yet hired, for Defendants'
5 production. Defendants also required access to and control of the Cast's social media accounts, even
6 after the production had finished filming and the participants had gone back home. Defendants coerced
7 the Cast to agree to their private lives being filmed at all hours of the day, including in their homes and
8 during private conversations. No aspect of the Casts' lives was not controlled substantially by
9 Defendants throughout the entire production.

10 34. Defendants required the Cast and applicants to sign a document which stated that all decisions
11 on matters relating to the production would be within Defendants' sole control, further exercising a
12 substantial amount of control over the Cast.

13 35. Defendants required, as a condition of employment, that the Cast refrain from disclosing the
14 amount of wages provided during production. Defendants compensated the Cast members a flat amount
15 of one thousand dollars (\$1,000) per week for up to eight thousand dollars (\$8,000) total for the entire
16 length of production. Defendants unlawfully compelled the Cast to not speak with each other regarding
17 the amount of wages they were provided (notably, wages that were far below the minimum wage),
18 during production.

19 36. Defendants unlawfully sought information concerning past felony convictions as a condition of
20 employment. Defendants required the Cast and applicants for employment to affirm whether they had
21 any past convictions before being hired for production, including convictions protected from inquiry
22 by employers.

23 37. Defendants required the Cast and other applicants for employment to unlawfully submit to a
24 medical examination, psychological examination, and background check as a condition for possible
25 employment.

26 38. Other unlawful provisions required for the agreement include authorizing Defendants to
27 conduct background checks including checks of consumer credit reports, unlawful restriction of the
28 opportunity to work in the United States by refusing to honor documents of work authorization,

1 requiring the Cast to assume any and all risks related to their conduct on set, an unlawful penalty clause
2 with an unreasonably large estimate of *so-called liquidated damages of \$50,000.00* (which was in
3 effect a penalty of 25 to 50 times what most Cast Members earned during production and over six times
4 the amount the Cast had the *potential* to earn during production) for the Cast’s breach of contract –
5 including leaving the shows production early, unlawful waiver of the Cast’s potential claims under the
6 California Fair Employment and Housing Act, including claims for sexual assault, sexual battery, rape
7 and other conduct that may consistent sexual harassment under the law, and release of the Cast’s rights
8 to pursue any and all legal claims they may have against Defendants.

9 **c. Defendants’ Failure to Properly Pay Class Members and Aggrieved Employees**
10 **and Provide Compliant Meal and Rest Breaks**

11 39. During the Class Period, Defendants failed and continue to fail to pay Plaintiff, the Class
12 Members, and Aggrieved Employees for all hours required for Class Members and Aggrieved
13 Employees for work during Defendants’ various productions of non-scripted content including but not
14 limited to the Netflix reality TV show, *“Love Is Blind,”* which Defendants cast and produce for online
15 streaming on Netflix. Defendants failed and continue to fail to compensate Plaintiff, Class Members,
16 and Aggrieved Employees for all hours worked, including minimum wage and overtime hours, as a
17 result of maintaining a practice of willfully misclassifying Class Members’ employment status as
18 independent contractors even though Defendants exercised substantial control over the manner, means,
19 and timing of the work performed by Class Members and Aggrieved Employees.

20 40. Defendants willfully misclassified Plaintiff, Aggrieved Employees, and Class Members in
21 order to pay them less than minimum wage for the true number of hours worked, and refusing to
22 compensate Plaintiff, Class Members, and Aggrieved Employees for all work performed.

23 41. Defendants also failed and continue to fail to pay Plaintiff, Class Members, and Aggrieved
24 Employees for all compensable hours spent traveling to, from, and between their hotel living quarters
25 and the production set every day while employed by Defendants.

26 42. Unpaid time also includes time spent working during the purported meal breaks that were
27 consistently on-duty and subject to interruption and delay at the Defendant’s election.

28 43. Plaintiff, Class Members, and Aggrieved Employees regularly worked up to 20-hour shifts,

1 well in excess of eight (8) or twelve (12) hours per day but Defendants, as a matter of policy or practice,
2 failed and fail to pay applicable overtime or double-time compensation for all hours actually worked
3 as required by Labor Code §§ 204, 510, 1194, 1194.2, and Industrial Welfare Commission Wage Order
4 (“Wage Order”) 12-2001, § 3.

5 44. During the Class Period, Defendants failed and continue to fail to compensate Plaintiff, Class
6 Members, and Aggrieved Employees at the legally required minimum wage rate for any and all work
7 performed for Defendants' production in violation of Labor Code §§ 1194 and 1197.

8 45. During the Class Period, Defendants failed and continue to fail to pay Plaintiff, Class Members,
9 and Aggrieved Employees their owed compensation due at termination in a timely fashion as required
10 by Labor Code §§ 201-203, in part because Defendants failed and continue to fail to pay wages for all
11 hours worked by Plaintiff, Class Members, and Aggrieved Employees who are no longer employed by
12 Defendants or because Defendants failed and continue to fail to pay all compensation due and owing
13 to Plaintiff, Class Members, and Aggrieved Employees upon separation, as required by Labor Code §§
14 201 and 202. Plaintiff further alleges that this failure to pay all compensation due was willful, due to
15 Defendants’ unlawful practices of willfully misclassifying Class Members’ employment status as
16 independent contractors even though Defendants exercised substantial control over the manner, means,
17 and timing of the work performed by Class Members and Aggrieved Employees.

18 46. As a result of Defendants’ failure to pay wages for all work performed as discussed above,
19 pursuant to Labor Code § 203, Plaintiff, Class Members, and Aggrieved Employees are entitled to
20 recover up to thirty (30) days of wages for Defendants’ willful failure to comply with the statutory
21 requirements of Labor Code §§ 201 and 202.

22 47. During the Class Period, Defendants knowingly and intentionally failed and continue to fail to
23 furnish Plaintiff, Class Members, and Aggrieved Employees with any wage statements accurately
24 showing, among other things, total hours worked, total wages owed, and applicable rates of pay, as
25 required by Labor Code § 226(a). No wage statements were provided to Class Members and Aggrieved
26 Employees to reflect their hours worked or total compensation due for all hours worked. As Plaintiff,
27 Class Members, and Aggrieved Employees were not paid all wages due for all minimum, overtime,
28 and double-time wages, as discussed above, Defendants failed to set forth wage statements containing

1 all gross wages earned, in violation of Labor Code § 226(a)(1), the total hours worked, in violation of
2 Labor Code § 226(a)(2), and net wages earned, in violation of Labor Code § 226(a)(5), and all
3 applicable hourly rates in effect during the pay period and the corresponding number of hours worked,
4 in violation of Labor Code § 226(a)(9).

5 48. During the Class Period, Defendants failed and continue to fail to maintain a policy or practice
6 that provides Plaintiff, Class Members, and Aggrieved Employees with off-duty meal periods as
7 required by California law. Plaintiff, Class Members, and Aggrieved Employees regularly worked in
8 excess of five (5) hours a day and at times in excess of ten (10) hours a day without being provided at
9 least half-hour meal periods in which they were relieved of all duties, as required by Labor Code §§
10 226.7, 512, and Wage Order 12-2001, § 11. Plaintiff, Class Members, and Aggrieved Employees were
11 required to work through or were interrupted during their off-duty meal breaks, and further were
12 regularly denied food both on the Defendants' production set and in their hotel living quarters.

13 49. Defendants failed and continue to fail to maintain a policy or practice that provides Plaintiff,
14 Class Members, and Aggrieved Employees with off-duty rest periods as required by California law.
15 Plaintiff, Class Members, and Aggrieved Employees regularly worked in excess of four hours or a
16 major fraction thereof during workdays without being provided at least a ten-minute rest period in
17 which they were not required to remain on-call or perform work during the period, as required by Labor
18 Code §§ 226.7, 512, and Wage Order 12-2001, § 12.

19 50. During the Class Period, Defendants maintained a policy and practice of requiring Plaintiff,
20 Class Members, and Aggrieved Employees to work on-duty meal and rest periods, including by
21 requiring Plaintiff, Class Members, and Aggrieved Employees to perform for the Defendants' television
22 production, to remain on-call, and/or to remain on the premises during meal and rest periods.

23 51. Defendants also failed and continue to fail to provide timely meal periods as required by law,
24 including on occasions where Class Members worked shifts with an excess of 10 hours between meals
25 Defendants also failed and continue to fail to provide a third or fourth rest periods where required by
26 law, including on occasions where Class Members worked in excess of 10 hours.

27 52. During the Class Period, Defendants did not maintain on-duty meal period agreements for Class
28 Members and Aggrieved Employees, and the nature of Class Members and Aggrieved Employees'

1 work does not meet the requirements permitting on-duty meal periods as follows:

- 2 a. The type of non-scripted, “reality television” performances by Class Members and
3 Aggrieved Employees is not such that off-duty meal periods are not feasible;
- 4 b. Other employees, such as the production’s crew, were able to take off-duty meal periods
5 while Class Members and Aggrieved Employees were regularly denied the same
6 opportunity;
- 7 c. The potential consequences to Defendants of providing off-duty meal periods are
8 negligible;
- 9 d. Defendants can reasonably anticipate and minimize any performance issues preventing
10 provision of off-duty meal periods by scheduling employees to perform in a schedule
11 that would allow Class Members and Aggrieved Employees to take off-duty meal
12 periods; and,
- 13 e. The production and performances by Class Members and Aggrieved Employees would
14 not be delayed, disrupted, or destroyed if Class Members and Aggrieved Employees
15 were provided off-duty meal periods.

16 53. During the Class Period, Defendants did not pay Plaintiff, Class Members, or Aggrieved
17 Employees all the premium compensation mandated by Labor Code § 226.7(b) for non-compliant
18 and/or missed meal and rest periods.

19 54. Defendants consistently failed and continue to fail to pay employees all wages earned and owed
20 specified in Labor Code §§ 204(d) and 210 twice each calendar month, including, but not limited to,
21 minimum wages, overtime wages, double-time wages, and premium pay for missed rest periods.
22 Accordingly, Defendants have violated and continue to violate California Labor Code §§ 204(d) and
23 210 by not timely paying all wages owed to Plaintiff, Class Members, or Aggrieved Employees.

24 55. Defendants failed and continue to fail to maintain adequate records showing the total hours
25 worked daily, as a result of maintaining a practice of willfully misclassifying employees as independent
26 contractors in order to pay Plaintiff, Class Members, or Aggrieved Employees less than the true number
27 of hours worked in violation of Labor Code § 1174.

28 56. Plaintiff alleges that these acts, which violate numerous provisions of the Labor Code and

1 Industrial Welfare Commission Wage Order 12-2001, constitute unlawful and unfair business practices
2 in violation of the Unfair Competition Law, Business and Professions Code §§ 17200, *et seq.*

3 57. During the Class Period, Defendants also violated the Private Attorneys General Action, Labor
4 Code §§ 2698, *et seq.*, by the predicate violations of law described above.

5 **IV. CLASS ACTION ALLEGATIONS**

6 58. Plaintiff brings this action on behalf of himself and all others similarly situated who were
7 engaged as purported participants in Defendants’ non-scripted content production, as a class action
8 pursuant to Code of Civil Procedure § 382 as to violations of the Labor Code, Business and Professions
9 Code §§ 17200, *et seq.*, and Wage Order 12-2001 for unpaid overtime wages, unpaid minimum wages,
10 meal and rest break penalties, waiting time penalties, statutory penalties, restitution, declaratory and
11 injunctive relief, attorneys’ fees and costs, prejudgment interest, and other appropriate relief. The
12 similarly situated employees are known to Defendants and are readily identifiable and locatable
13 through Defendants’ own records.

14 59. The Class Members and Aggrieved Employees that Plaintiff seeks to represent are composed
15 of and defined as follows:

16 60. Throughout discovery in this litigation, Plaintiff may find it appropriate and/or necessary to
17 amend the definition of the Class. In any event, Plaintiff will formally designate a class definition at
18 such time when Plaintiff seeks to certify the Class alleged herein.

19 61. **Ascertainable Class:** The proposed class is ascertainable in that their members all were
20 involved in, hired for, or performed for one of Defendants' non-scripted television productions. The
21 exact names of such members can be identified and located using information contained in Defendants'
22 personnel records and signed documents, including the purported agreement to participate in
23 Defendants' production which all participants of the production were required to sign, of which records
24 of signatures can be used to ascertain the exact number of Class Members.

25 62. **Numerosity:** The potential quantity of members of the Class as defined is so numerous that
26 joinder of all members would be unfeasible and impractical, due to the numerous non-scripted “reality
27 television” shows Defendants produce, of which each typically consist of several seasons, filmed
28 annually, and consisting of several new participants or potential participants each season. The

1 disposition of their claims through this class action will benefit both the parties and this Court. The
2 quantity of members of the Class is unknown to Plaintiff at this time; however, it is believed that the
3 number is more than 100 individuals. Defendants, collectively and individually, have produced several
4 television shows which film seasons regularly or annually and employ dozens of new “participants”
5 each season. The quantity and identify of such membership is readily ascertainable via inspection of
6 Defendants' documents and records.

7 63. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class
8 mentioned herein because all members of the Class participated in one of Defendants' non-scripted
9 productions and as such sustained injuries and damages arising out of Defendants' common course of
10 conduct in violation of law and the injuries and damages of all members of the Class were caused by
11 Defendants' wrongful conduct in violation of law, as alleged herein.

12 64. **Adequacy:** Plaintiff is an adequate representative of the Class herein, will fairly protect the
13 interests of the members of the Class, has no interests antagonistic to the members of the Class, and
14 will vigorously pursue this suit via attorneys who are competent, skilled, and experienced in litigating
15 matters of this type. Class Counsel is competent in litigating wage and hour class actions and is
16 experienced in California employment litigation.

17 65. **Superiority:** The nature of this action and the nature of laws available to Plaintiff makes the
18 class action format a particularly efficient and appropriate procedure to afford relief to Plaintiff for the
19 wrongs alleged herein, as follows:

- 20 a. This case involves large, corporate Defendants and a large number of individual Class
21 Members with many relatively small claims and common issues of law and fact;
- 22 b. If each individual member of each of the Class was required to file an individual lawsuit,
23 the large corporate Defendants would necessarily gain an unconscionable advantage
24 because Defendants would be able to exploit and overwhelm the limited resources of
25 each individual member of the Class with Defendants' vastly superior financial and
26 legal resources;
- 27 c. Requiring each individual member of the Class to pursue an individual remedy would
28 also discourage the assertion of lawful claims by the members of the Class who would

1 be disinclined to pursue an action against Defendants because of an appreciable and
2 justifiable fear of retaliation and permanent damage to their lives, careers, and well-
3 being;

4 d. Proof of a common business practice or factual pattern, which the members of the Class
5 experienced, is representative of the Class herein and will establish the right of each of
6 the members of the Class to recover on the causes of action alleged herein;

7 e. The prosecution of separate actions by the individual members of the Class, even if
8 possible, would create a substantial risk of inconsistent or varying verdicts or
9 adjudications with respect to the individual members of the Class against Defendants;
10 and would establish potentially incompatible standards of conduct for Defendants;
11 and/or legal determinations with respect to individual members of the Class which
12 would, as a practical matter, be dispositive of the interest of the other members of the
13 Class who are not parties to the adjudications or which would substantially impair or
14 impede the ability of the members of the Class to protect their interests;

15 f. The claims of the individual members of the Class are not sufficiently large to warrant
16 vigorous individual prosecution considering all of the concomitant costs and expenses
17 appurtenant thereto;

18 g. The cost to the court system of adjudication of such individualized litigation would be
19 substantial;

20 h. The expenses and burden of individual litigation would make it difficult or impossible
21 for individual members of the class to redress the wrongs done to them, while an
22 important public interest will be served by addressing the matter as a class action; and

23 i. Filing a claim with the California Labor Commission is an inferior alternative to
24 addressing this matter as a class action, given the lack of discovery in such proceedings,
25 the availability of fewer remedies, and the fact that the losing party has the right to a
26 trial *de novo* in the Superior Court.

27 66. **Existence and Predominance of Common Questions of Law and Fact:** There are common
28 questions of law and fact as to the members of the Class which predominate over questions affecting

1 only individual members of the Class including, without limitation:

- 2 a. Whether Class Members were willfully misclassified as independent contractors for
- 3 Defendant
- 4 b. Whether Defendants' failure to pay overtime wages to the Class Members violates Labor
- 5 Code §§ 204, 510, and 1194 and Wage Order 12-2001;
- 6 c. Whether Defendants' failure to pay minimum wages to the Class Members violates
- 7 Labor Code §§ 204, 1194, 1197, 1197.1, and Wage Order 12-2001;
- 8 d. Whether Defendants' failure to provide the Class Members with accurate and itemized
- 9 wage statements worked violate Labor Code § 226 and Wage Order 12-2001;
- 10 e. Whether Defendants' failure to provide the Class Members with all wages due upon
- 11 separation violates Labor Code §§ 201-203;
- 12 f. Whether Defendants' failure to provide the Class Members with off-duty meal and rest
- 13 periods violates Labor Code §§ 226.7, 512, and Wage Order 12-2001;
- 14 g. Whether Defendants required Class Members to agree to terms prohibited by law
- 15 violates Labor Code § 432.5;
- 16 h. Whether Defendants' conduct constitutes unfair competition within the meaning of
- 17 Business and Professions Code §§ 17200 *et seq.*;
- 18 i. Whether members of the Class are entitled to compensatory damages, and if so, the
- 19 means of measuring such damages;
- 20 j. Whether the members of the Class are entitled to injunctive relief;
- 21 k. Whether the members of the Class are entitled to restitution;
- 22 l. Whether Defendants are liable for pre-judgment interest; and
- 23 m. Whether Defendants are liable for attorneys' fees and costs.

24 67. Common questions of law and/or fact predominate over questions that affect only individual
25 Class Members. Plaintiff's claims are typical of those belonging to the members of the Class they seek
26 to represent, and Plaintiff can adequately represent the Class they seek to represent.

27 ///

28 ///

1 **V. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **FAILURE TO PAY OVERTIME WAGES**

4 **LABOR CODE §§ 204, 510, 1194, AND WAGE ORDER 12-2001**

5 **(Against all Defendants, on behalf of Plaintiff and the Class)**

6 68. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though fully set
7 forth herein.

8 69. Labor Code § 510 states that an employee must be paid overtime, equal to one and one-half (1
9 ½) times the employee’s regular rate of pay, for all hours worked in excess of eight (8) hours in one
10 workday and any work in excess of forty (40) hours in any one workweek and the first eight (8) hours
11 worked on the seventh day of work in any one workweek.

12 70. Labor Code § 510 also states that any work in excess of twelve (12) hours in one day shall be
13 compensated at the rate of no less than twice the regular rate of pay for an employee.

14 71. Wage Order 12-2001 § 3, which governs the profession of the Plaintiff herein, states that an
15 employee must be paid overtime, equal to one and one-half (1 ½) times the employee’s regular rate of
16 pay, for all hours worked in excess of eight (8) hours in one workday and any work in excess of forty
17 (40) hours in any one workweek. “Hours worked” is defined as: “the time during which an employee
18 is subject to the control of an employer, and includes all the time the employee is suffered and permitted
19 to work, whether or not required to do so.” (Wage Order 12-2001 § 2(K)).

20 72. Plaintiff, Class Members, and Aggrieved Employees are entitled to bring a civil action to
21 recover on claims involving failure to pay overtime pursuant to Labor Code § 1194.

22 73. Plaintiff, Class Members, and Aggrieved Employees worked more than forty (40) hours per
23 week and/or eight (8) hours per day, but were not paid overtime wages for such work.

24 74. Defendants have failed and refused to pay overtime compensation to Plaintiff, Class Members,
25 and Aggrieved Employees.

26 75. Pursuant to Labor Code § 1194, Plaintiff, Class Members, and Aggrieved Employees are
27 entitled to recover unpaid overtime compensation and interest thereon pursuant to Labor Code § 218.6,
28 plus attorneys’ fees and costs pursuant to Labor Code § 218.5, in an amount to be established according

1 to proof at trial.

2 76. Plaintiff, on behalf of himself and the Class Members and Aggrieved Employees, also request
3 relief as described below.

4 **SECOND CAUSE OF ACTION**

5 **FAILURE TO PAY MINIMUM WAGES**

6 **LABOR CODE §§ 204, 1194, 1197, 1197.1, AND WAGE ORDER 12-2001**

7 **(Against all Defendants, on behalf of Plaintiff and the Class)**

8 77. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though fully set
9 forth herein.

10 78. As a pattern and practice, Defendants failed and refused to pay Plaintiff, Class Members, and
11 Aggrieved Employees minimum wages owed to them pursuant to Wage Order 12-2001 § 4 by, *inter*
12 *alia*, requiring or permitting Plaintiff, Class Members, and Aggrieved Employees to perform off-the-
13 clock work for which Plaintiff, Class Members, and Aggrieved Employees were not compensated.

14 79. As a result of Defendants violations of Labor Code §§ 1194 and 1197 and Wage Order 12-2001
15 for failure to pay minimum wage, Plaintiff, Class Members and Aggrieved Employees are entitled to
16 recover unpaid minimum wage compensation and interest thereon pursuant to Labor Code § 218.6,
17 plus attorneys' fees and costs pursuant to Labor Code § 218.5, in an amount to be established according
18 to proof at trial.

19 80. Plaintiff, on behalf of himself and the Class Members and Aggrieved Employees, also request
20 relief as described below.

21 **THIRD CAUSE OF ACTION**

22 **LIQUIDATED DAMAGES FOR FAILURE TO PAY MINIMUM WAGES**

23 **LABOR CODE § 1194.2**

24 **(Against all Defendants, on behalf of Plaintiff and the Class)**

25 81. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though fully set
26 forth herein.

27 82. Pursuant to Labor Code § 1194.2, in any action under Section 1194 to recover wages as a result
28 of payment less than the minimum wage fixed by an order of the commission or by statute, an employee

1 shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and
2 interest thereon.

3 83. Plaintiff, Class Members, and Aggrieved Employees were not paid at least the minimum wage
4 for all hours worked, as required by the Labor Code, Wage Order 12-2001 § 4.

5 84. Plaintiff, Class Members, and Aggrieved Employees are entitled to recover liquidated damages
6 in an amount equal to the minimum wages unlawfully unpaid and interest thereon, plus attorneys' fees
7 and costs, in an amount to be established according to proof at trial.

8 85. Plaintiff, on behalf of himself and the Class Members and Aggrieved Employees, also request
9 relief as described below.

10 **FOURTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE ACCURATE AND ITEMIZED WAGE STATEMENTS**

12 **LABOR CODE §§ 226 AND WAGE ORDER 12-2001**

13 **(Against all Defendants, on behalf of Plaintiff and the Class)**

14 86. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though fully set
15 forth herein.

16 87. Labor Code § 226 requires an employer to furnish its employees with an accurate itemized
17 statement in writing showing, among other things, (1) gross wages earned, (2) total hours worked by
18 each respective individual, (3) all deductions, (4) net wages earned and/or (5) all applicable hourly
19 rates in effect during each respective pay period and the corresponding number of hours worked at each
20 hourly rate by each respective individual.

21 88. As a pattern and practice, in violation of Labor Code § 226(a), Defendants did not furnish
22 Plaintiff, Class Members, and Aggrieved Employees with accurate itemized statements in writing
23 showing the total hours worked by each individual, the applicable rates of pay for each hour worked,
24 or the total compensation owed to each individual.

25 89. As a pattern and practice, in violation of Labor Code § 226(a), Defendants did not maintain
26 accurate records pertaining to the total hours worked for such Defendants by Plaintiff, Class Members,
27 and Aggrieved Employees, including the total hours worked by each individual, the applicable rates of
28 pay for each hour worked, and the total compensation owed to each individual.

1 90. Defendants have knowingly and intentionally failed and continue to fail to comply with Labor
2 Code § 226(a).

3 91. Pursuant to Labor Code § 226(e), Plaintiff, Class Members, and Aggrieved Employees are
4 entitled to penalties as follows:

5 a. Fifty dollars (\$50.00) per employee for the initial pay period in which a violation occurs;
6 and

7 b. One hundred dollars (\$100.00) per employee for each violation in a subsequent pay
8 period, not to exceed \$4,000 per employee.

9 92. Pursuant to Labor Code § 226(h), Plaintiff, Class Members, and Aggrieved Employees are
10 entitled to an award of costs and reasonable attorneys' fees.

11 93. Plaintiff, on behalf of himself and the Class Members and Aggrieved Employees, also request
12 relief as described below.

13 **FIFTH CAUSE OF ACTION**

14 **FAILURE TO PROVIDE MEAL BREAKS IN VIOLATION OF WAGE ORDER 12-2001, §**
15 **11 AND LABOR CODE §§ 226.7, 512**

16 **(Against all Defendants, on behalf of Plaintiff and the Class)**

17 94. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though set forth
18 herein.

19 95. Pursuant to California Labor Code § 512, and Wage Order 12-2001, no employer shall employ
20 any person for a work period of more than five (5) hours without a meal period of not less than 30
21 minutes.

22 96. California Labor Code § 226.7 provides that an employer shall not require an employee to work
23 during a meal or rest period mandated pursuant to an applicable statute or order of the Industrial
24 Welfare Commission.

25 97. Wage Order 12-2001, § 11 and Labor Code § 226.7 both mandate that an employer shall pay
26 the employee one additional hour of pay at the employee's regular rate of compensation for each
27 workday that the meal period is not provided.

28 98. Defendants did not provide Plaintiff, Class Members, and Aggrieved Employees with required

1 meal period on a number of workdays. Furthermore, Defendants failed and continue to fail to
2 compensate Plaintiff, Class Members, and Aggrieved Employees one hour of pay for each workday
3 that a meal period was not provided.

4 99. As a result of Defendants' conduct, Plaintiff, Class Members, and Aggrieved Employees have
5 sustained economic damages, including but not limited to unpaid wages and lost interest, in an amount
6 to be established at trial, and Plaintiff, Class Members, and Aggrieved Employees are entitled to
7 recover economic and statutory damages and penalties and other appropriate relief from Defendants'
8 violations of the California Labor Code and IWC Wage Order 12-2001.

9 **SIXTH CAUSE OF ACTION**

10 **FAILURE TO PROVIDE REST BREAKS IN VIOLATION OF WAGE ORDER 12-2001,**
11 **AND LABOR CODE §§ 226.7**

12 **(Against all Defendants, on behalf of Plaintiff and the Class)**

13 100. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though set forth
14 herein.

15 101. California Labor Code § 226.7 prohibits an employer from requiring an employee to work
16 during any rest period mandated by an applicable Industrial Wage Order.

17 102. Pursuant to Wage Order 12-2001, every employer shall authorize and permit all employees to
18 take rest periods at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.

19 103. If an employer fails to provide an employee with a rest period as required, the employer must
20 pay the employee one hour of pay at the employee's regular rate of compensation for each workday
21 that a rest period is not provided as required.

22 104. Defendants failed and continue to fail to authorize or permit Plaintiff, Class Members, and
23 Aggrieved Employees to take a rest period on a number of workdays. Furthermore, Defendants failed
24 and continue to fail to compensate Plaintiff, Class Members, and Aggrieved Employees one hour of
25 pay for each workday that a rest period was not provided.

26 105. As a result of Defendants' conduct, Plaintiff, Class Members, and Aggrieved Employees have
27 sustained economic damages, including but not limited to unpaid wages and lost interest, in an amount
28 to be established at trial, and Plaintiff, Class Members, and Aggrieved Employees are entitled to

1 recovery economic and statutory damage and penalties and other appropriate relief from Defendants’
2 violations of the California Labor Code and IWC Wage Order 12-2001.

3 **SEVENTH CAUSE OF ACTION**

4 **FAILURE TO PAY WAGES PROMPTLY AFTER TERMINATION**

5 **LABOR CODE §§ 201, 202, AND 203**

6 **(Against all Defendants, on behalf of Plaintiff and the Class)**

7 106. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though fully set
8 forth herein.

9 107. Labor Code § 201 requires employers to pay all compensation due and owing to their employees
10 immediately upon discharge.

11 108. Labor Code § 202 requires employers to pay all compensation due and owing to an employee
12 who quits his or her employment no later than 72 hours after the time of quitting.

13 109. Labor Code § 203 provides that if an employer willfully fails to pay compensation promptly
14 upon discharge or resignation, as required by Sections 201 and 202, then the employer is liable for
15 “waiting time” penalties in the form of continued compensation at the employee’s regular rate of pay
16 for each day that wages remain unpaid, up to thirty days.

17 110. Defendants failed and continue to fail to pay Plaintiff, Class Members, and Aggrieved
18 Employees who are no longer employees of Defendants all wages due immediately upon termination
19 as required by Labor Code § 201, or within 72 hours as required by Labor Code § 202. To date,
20 Defendants have still not paid Plaintiff, Class Members, and Aggrieved Employees who are no longer
21 employees of Defendants.

22 111. Defendants willfully failed and continue to fail to pay Plaintiff, Class Members, and Aggrieved
23 Employees who are no longer employees of Defendants wages pursuant to the requirements of Labor
24 Code §§ 201 and 202, and therefore Plaintiff, Class Members, and Aggrieved Employees who are no
25 longer employees of Defendants are entitled to recover unpaid wages, waiting-time penalties under
26 Labor Code § 203, plus attorneys’ fees and costs, in an amount to be established according to proof at
27 trial.

28 112. Plaintiff, on behalf of himself and the Class Members and Aggrieved Employees, also request

1 relief as described below.

2 **EIGHTH CAUSE OF ACTION**

3 **UNFAIR BUSINESS PRACTICES**

4 **BUS. & PROF. CODE §§ 17200, ET SEQ.**

5 **(Against all Defendants, on behalf of the Class and on behalf of Plaintiff individually and as**
6 **members of the general public)**

7 113. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though fully set
8 forth herein.

9 114. Business and Professions Code § 17200 prohibits unfair competition in the form of any
10 unlawful, unfair, or fraudulent business act or practice.

11 115. Business and Professions Code § 17204 allows “any person who has suffered injury in fact and
12 has lost money or property” to prosecute a civil action for violation of the Unfair Competition Law.

13 116. Defendants have committed unlawful, unfair, and/or fraudulent business acts and practices as
14 defined by Business and Professions Code §§ 17200, *et seq.*, by willfully misclassifying employees as
15 independent contractors, failing to pay wages for all hours worked, including minimum and overtime
16 wages, failing to provide compliant meal and rest breaks or pay meal and rest break premiums owed,
17 and failing to pay wages due at the time of separation, and requiring such employees to entered into
18 purported contracts containing terms expressly prohibited by law under the guise that such persons are
19 independent contractors.

20 117. The above-described unlawful actions of Defendants constitute false, unfair, fraudulent, and/or
21 deceptive business practices, within the meaning of Business and Professions Code §§ 17200, *et seq.*

22 118. Plaintiff, Class Members, and Aggrieved Employees are entitled to equitable relief against such
23 unlawful practices in order to prevent future damage, for which there is no adequate remedy at law,
24 and to avoid a multiplicity of lawsuits. Plaintiff brings this cause of action individually, on behalf of
25 the Class Members and Aggrieved Employees, and as members of the general public as representatives
26 of all others subject to Defendants’ unlawful acts and practices.

27 119. As a result of their unlawful acts, Defendants have reaped and continue to reap unfair benefits
28 at the expense of Plaintiff, the Class Members, Aggrieved Employees, and the general public.

1 120. Defendants should made to disgorge these ill-gotten gains and restore to Plaintiff, Class
2 Members, and Aggrieved Employees all wrongfully withheld wages and other amounts owed, pursuant
3 to Business and Professions Code §§ 17200, *et seq.* Defendants are unjustly enriched as a result of
4 their failure to comply with the provisions of the Labor Code and IWC Wage Order 12-2001 as alleged
5 herein.

6 121. Plaintiff, Class Members, and Aggrieved Employees are severely prejudiced by Defendants'
7 unfair trade practices.

8 122. As a direct and proximate result of the unfair business practices of Defendants, Plaintiff, Class
9 Members, and Aggrieved Employees are entitled to equitable relief, including full restitution,
10 disgorgement, and/or specific performance of payment of all wages and other amounts owed that have
11 been unlawfully withheld from Plaintiff, Class Members, and Aggrieved Employees as a result of the
12 business acts and practices described herein.

13 **NINTH CAUSE OF ACTION**

14 **PRIVATE ATTORNEYS GENERAL ACT**

15 **Labor Code §§ 2698, *et. seq.***

16 **(Against All Defendants, on behalf of Plaintiff and Aggrieved Employees)**

17 123. Plaintiff re-alleges each and every paragraph of this Complaint as though fully set forth herein.

18 124. Plaintiff is an “aggrieved employee” under PAGA, as he was employed by Defendants during
19 the applicable statutory period and suffered one or more of the Labor Code violations herein. As such,
20 he seeks to recover, on behalf of himself and all other aggrieved employees of Defendants, the civil
21 penalties provided by PAGA, plus reasonable attorney’s fees and costs.

22 125. Plaintiff seeks to recover the PAGA civil penalties through a representative action permitted by
23 PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969.

24 126. Plaintiff seeks to pursue remedies pursuant to PAGA for the following violations:

- 25 a. Under California Labor Code §226.8(a) It is unlawful for any person or employer to
26 engage in any of the following activities: (1) Willful misclassification of an individual
27 as an independent contractor. Where willful misclassification is defined as “avoiding
28 employee status for an individual by voluntarily and knowingly misclassifying that

1 individual as an independent contractor.” Cal. Labor Code §226.8(i)(4). Defendants had
2 knowledge of the underlying facts making Plaintiff and Class Members employees and
3 specifically imposed a level of control over how Class Members performed their work
4 so as to have knowledge that they were employees. Defendants are sophisticated
5 corporations employing numerous people doing business in California and were aware
6 of the employment requirement of properly classifying workers as employees were they
7 suffer and permit individuals to work in their primary business and exert control over
8 the manner and method by which that work is performed. Defendants chose to
9 misclassify employee Class Members as independent contractors voluntarily to avoid
10 paying required employee wages and avoid assuming employer liabilities.

- 11 **b.** Labor Code §226.8 imposes a civil penalty in addition to any other penalty provided by
12 law for willful misclassification of an individual as an independent contractor, for which
13 the person or employer shall be subject to a civil penalty of not less than ten thousand
14 dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each
15 violation where such represents a pattern and practice of such violations.
- 16 **c.** Labor Code § 226.3 imposes a civil penalty in addition to any other penalty provided
17 by law of two hundred fifty dollars (\$250) per aggrieved employee for the first violation,
18 and one thousand dollars (\$1,000) per aggrieved employee for each subsequent
19 violation of Labor Code § 226(a). Defendants failed to provide Aggrieved Employees
20 including Plaintiff with any paystubs, much less ones that included accurate information
21 regarding the nine identified requirements under Labor Code § 226(a).
- 22 **d.** Pursuant to Labor Code § 203, for an employer who willfully fails to pay any wages of
23 an employee who is discharged or quits, that employee’s wages shall continue as a
24 penalty from the due date at the same rate until paid, but shall not continue for more
25 than thirty (30) days. Labor Code § 256 imposes a civil penalty in an amount not
26 exceeding thirty days’ pay as waiting time under the terms of Labor Code § 203.
27 Defendant failed to pay minimum wages and meal and rest break premiums and so failed
28 to pay Plaintiff and other Aggrieved Employees for all wages owed pursuant to Code

1 related to their respective separation of employment.

- 2 e. Under California Labor Code §§ 510 and 1194, Defendants are liable for failing to pay
3 the Aggrieved Employees overtime. Defendants failed to pay Plaintiff and Aggrieved
4 employees at 1.5 times their regular rate of pay for all hours worked over eight hours
5 worked per day.
- 6 f. Under California Labor Code §§ 226.7 and 512, Defendants are liable for failing to
7 either provide rest periods and meal periods or pay the Aggrieved Employees one hour
8 of pay for every missed rest period and meal period. Defendants required Plaintiff and
9 other Aggrieved Employees to be on-duty during their purported rest and meal periods
10 and their meal periods were scheduled long after such individuals had worked for over
11 five hours.
- 12 g. Under California Labor Code §§ 1194, 1197, and 1197.1, Defendants are liable for
13 failing to pay Aggrieved Employees minimum wage for all hours worked. Defendant's
14 paid Plaintiff and Aggrieved Employees a flat fee for performing work during and after
15 production but such amount was woefully inadequate to meet even minimum wage for
16 rates for the hours actually worked by Plaintiff and other Aggrieved Employees.
- 17 h. Labor Code §§ 432.7 and 432.8 imposes a civil penalty of two hundred dollars (\$200)
18 for Defendants' unlawful requirement that applicants for employment disclose
19 information concerning an arrest or detention that did not result in a conviction or
20 concerning a conviction that has been judicially dismissed. Under California Labor
21 Code § 232, Defendants are liable for unlawfully seeking information on prior
22 convictions from Aggrieved Employees as applicants for employment. In paragraph
23 1(c) of the purported agreement between Defendants and Aggrieved Employees,
24 Defendants unlawfully sought the disclosure of any former felonies or protective orders
25 entered against Aggrieved Employees. Defendants included a broad provision in the
26 document which required Aggrieved Employees confess to any and all convictions
27 against them, including those judicially dismissed by the Court, in violation of Labor
28 Code § 432.7. This includes any possible convictions related to marijuana, violating

1 Labor Code § 432.8 as well.

- 2 i. Labor Code § 1019.1 imposes a civil penalty that shall not exceed ten thousand dollars
3 (\$10,000) per violation against Defendants for refusing to honor work authorization
4 documents. Defendants unlawfully restricted the opportunity to work to legal United
5 States residents, and in doing so, refused to honor documents of work authorization for
6 non-citizens. In paragraph 1(b) of the purported agreement, Aggrieved Employees must
7 confirm that they are a legal United States resident, violation Labor Code § 1019.1 by
8 not allowing those authorized to work in the United States as non-citizens to be
9 employed by Defendants.
- 10 j. Labor Code § 3700 and 3708 imposes a civil penalty of up to double the amount of
11 premium, as determined by the court, that would otherwise have been due to secure the
12 payment of compensation at the time it was due, but not less than ten thousand dollars
13 (\$10,000). Defendants unlawfully require Aggrieved Employees to assume any and all
14 risks related to conduct which was typical for the type of production. In paragraphs 16
15 and 55(a) of the purported agreement, Defendants required Aggrieved Employees to
16 waive Defendants' liability for any risks associated with intimate conduct usual for
17 participants of the production, including pregnancy, sexually transmitted diseases, and
18 any other communicable diseases. As such conduct is typical and expected for the type
19 of production, Defendants were excluding the possibility of worker's compensation for
20 Aggrieved Employees in violation of Labor Code § 3700 and 3708.
- 21 k. Under California Labor Code § 1024.5, Defendants are liable for using consumer credit
22 reports for employment purposes for a position not listed in the section as an exception.
23 Defendants unlawfully required Aggrieved Employees to authorize Defendants to
24 conduct background checks including a check of their consumer credit report, violating
25 Labor Code § 1024.5. None of the exceptions in the statute apply to Aggrieved
26 Employees and thus a consumer credit report is unlawful in this situation.
- 27 l. Under California Labor Code § 980, Defendants are liable for requiring and requesting
28 employees allow access to their personal social media and divulge personal social media

1 to Defendants for employment. In paragraph 57(c) of the purported agreement,
2 Defendants required Aggrieved Employees to limit their personal social media accounts
3 to content only about the production and change the privacy settings on their accounts
4 in violation of Labor Code § 980.

5 **m.** Violations of California Labor Code § 432.5 that requires no employer shall require any
6 employee or applicant for employment to agree, in writing, to any term or condition
7 which is known by such employer to be prohibited by law. Defendants knowingly
8 required Plaintiff, and Aggrieved Employees to sign a purported contract containing
9 several unlawful provisions. Class Members and Aggrieved Employees were required
10 at the time of application and employment to purportedly agree to provisions outlawed
11 under the Labor Code as set for above in sections h. through l. above. In addition to the
12 unlawful provisions detailed above, Defendants’ purported agreement also required the
13 Class Members and Aggrieved Employees to purportedly agree to following unlawful
14 provisions:

15 i. In violation of Government Code § 12940, Defendants unlawfully required
16 medical examinations of applicants for employment and made inquiries about
17 applicants’ possible mental or physical disabilities as to Plaintiff and other
18 Aggrieved Employees. In paragraphs 1(g), 9, 12, and 20 of the purported
19 agreement, Defendants require Aggrieved Employees to unlawfully submit to a
20 medical examination, psychological examination, and background check in
21 violation of Government Code § 12940(e), where no job or production-related
22 functions exist which would warrant the type of invasive medical exams which
23 Defendants ask Aggrieved Employees to submit to;

24 ii. In violation of Civil Code § 1671, Defendants unlawfully required an agreement
25 to an unreasonable estimate of liquidated damages that did not realistically
26 reflect damages incurred as retaliation for employees’ breach of contract. In
27 paragraph 8 of the purported agreement, Defendants included a liquidated
28 damages clause which requires an excessive amount of damages be paid if the

1 Cast left production or otherwise breached their contracts with Defendants. The
2 estimate of damages did not account for how long Aggrieved Employees have
3 participated in the production. The estimate did not realistically reflect damages
4 incurred by Defendants if Aggrieved Employees were to leave the production,
5 especially because this production was one in which participants regularly
6 withdrew from competition. Defendants also attempted to penalize Aggrieved
7 Employees through excessive liquidated damages by including a one million
8 dollar (\$1,000,000) penalty for breaching the publicity agreement in paragraph
9 59 of the document, further violating Civil Code § 1671;

10 iii. In violation of Government Code § 12964.5(a)(1)(a)(i), Defendants unlawfully
11 required the Class Members and Aggrieved Employees to waive their rights and
12 remedies under the Fair Employment and Housing Act (“FEHA”). In paragraph
13 55(a) of the purported agreement, Aggrieved Employees are required to assume
14 the risk of activities in connection with the production, including contracting
15 sexually transmitted infections, hepatitis, HIV, pregnancy, serious personal
16 injury, and non-consensual physical contact. The same clause required
17 Aggrieved Employees to consent to such conduct and agree that such risks are
18 waived by their signing of the document. Defendants have lawfully compelled
19 Aggrieved Employees to waive any rights which fall under FEHA, in direct
20 violation of Government Code § 12964.5(a)(1)(a)(i); and

21 iv. In violation of *Santa Barbara v. Superior Court* (Cal. 2007) 41 Cal.4th 747, 751,
22 Defendants unlawfully required Class Members and Aggrieved Employees to
23 release Defendants of liability for Defendants’ future gross negligence. In
24 multiple paragraphs throughout the purported agreement, including paragraphs
25 19 (which purports to relieve Defendants of liability for defamation of any
26 Aggrieved Employee that may occur in the future), paragraph 55(a) (which
27 purports to relieve Defendants of liability for multiple risks of participating in
28 the production), and paragraph 64 (which purports to require Aggrieved

1 Employees to not bring any legal action or claim against Defendants based upon
2 released claims within the document), Defendants required Aggrieved
3 Employees to agree to release their rights to pursue any and all legal claims that
4 they may have against Defendants and releases Defendants from liability for all
5 such claims, violating *Santa Barbara v. Superior Court* (Cal. 2007) 41 Cal.4th
6 747, 751.

- 7 n. Under California Labor Code §§ 6400 and 6402, Defendants are liable for failing to
8 provide a safe and healthful place of employment. Defendants failed to provide a safe
9 and healthful working environment by inducing and encouraging Plaintiff and
10 Aggrieved Employees to work in a highly hazard work environment on set with
11 electrical, video, and construction equipment present while Defendants knew and
12 encouraged Aggrieved Employees to be in and lowered and altered state of awareness
13 brought on by increasing sleep deprivation, isolation, hunger, and ubiquitous alcohol as
14 the primarily available beverage.
- 15 o. Labor Code § 210 imposes civil penalties for failure to pay all wages earned twice each
16 calendar month in violation of Labor Code § 204 of one hundred dollars (\$100) for each
17 initial failure to pay each employee, and for each subsequent, or any willful or
18 intentional, failure to pay each employee, two hundred dollars (\$200) plus 25 percent
19 of the amount unlawfully withheld. Under California Labor Code § 204, Defendants are
20 liable for failing to pay Aggrieved Employees wages earned during the course of
21 employment in a timely manner. California Labor Code § 204 states that “All
22 wages...earned by any person in any employment are due and payable twice during
23 each calendar month, on days designated in advance by the employer as the regular
24 paydays.” During the Relevant Period, Defendants failed to compensate Aggrieved
25 Employees all wages earned twice during each calendar month.
- 26 p. During the relevant period, Defendants failed to properly compensate Aggrieved
27 Employees for hours worked in excess of eight in a day and forty in a week, as well as
28 for missed meal and rest periods. California Labor Code § 558 imposes a civil penalty

1 upon “[a]ny employer or other person acting on behalf of an employer who violates, or
2 causes to be violated, a section of this chapter or any provision regulating hours and
3 days of work in any order of the Industrial Welfare Commission
4 as follows: “(1) For any initial violation, fifty dollars (\$50) for each underpaid
5 employee for each pay period for which the employee was underpaid in addition to an
6 amount sufficient to recover underpaid wages. (2) For each subsequent violation, one
7 hundred dollars (\$100) for each underpaid employee for each pay period for which the
8 employee was underpaid in addition to an amount sufficient to recover underpaid wages.
9 (3) Wages recovered pursuant to this section shall be paid to the affected employee.”

10 127. During the Relevant Period, Defendants have failed to keep payroll records showing total hours
11 worked and wages paid to employees. Under California Labor Code § 1174(d), employers must keep
12 “payroll records showing the hours worked daily by and the wages paid to . . . employees [. . .].” To
13 the extent that this failure to keep accurate payroll records was willful, they are liable for civil penalties
14 under California Labor Code § 1174.5.

15 128. Labor Code § 2698 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per pay period,
16 per aggrieved employee for the initial violation of Labor Code §§ 204, 226.7, 510, 512, 1174, and 1194
17 two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

18 129. Under Civil Code § 1671, Defendants are liable for requiring an unreasonable estimate of
19 liquidated damages that do not realistically reflect damages incurred as retaliation for employees'
20 breach of contract. Defendants included a liquidated damages clause which requires an excessive
21 amount of damages be paid if the Cast left production or otherwise breached their contracts with
22 Defendants.

23 130. Plaintiff has fully complied with the procedural requirements specified in California Labor
24 Code § 2699.3 as to each of the alleged violations. On April 22, 2022, Plaintiff provided notice to the
25 California Labor & Workforce Development Agency (“LWDA”) of Plaintiff’s claims based on the
26 alleged Labor Code violations committed by Defendants, including the facts and theories supporting
27 these claims. The LWDA provided no notice to Plaintiff within 65 calendar days of the postmark date
28 of that notice regarding its intentions to investigate or not investigate Plaintiff’s claims. A true and

1 correct copy of this notice is attached hereto as “Exhibit A.” Accordingly, Plaintiff may therefore
2 commence this action to seek civil penalties pursuant to Labor Code § 2698.

3 131. Enforcement of statutory provisions to protect workers and to ensure proper and prompt
4 payment of wages is a fundamental public interest. Plaintiff’s successful enforcement of important
5 rights affecting the public interest will confer a significant benefit upon the general public. Private
6 enforcement of these rights is necessary, as no public agency has pursued enforcement.

7 132. Plaintiff is incurring a financial burden in pursuing this action, and it would be against the
8 interest of justice to require the payment of attorneys’ fees and costs from any recovery obtained,
9 pursuant to, inter alia, California Labor Code § 2699.

10 133. Plaintiff, on behalf of himself and the Aggrieved Employees, also requests relief as described
11 below.

12 **PRAYER FOR RELIEF**

13 **WHEREFORE**, Plaintiff pray as follows:

14 1. For certification of Plaintiff’ claims as a class action, pursuant to Code of Civ. Proc. § 382, on
15 behalf of the proposed class, and certification of each of the classes specified herein;

16 2. For class notice to all Class Members and Aggrieved Employees who worked for Defendants
17 in the State of California from four years prior to the filing of this Complaint through the date of trial
18 in this action;

19 3. That the Court declare that Defendants’ policy and/or practice of failing to pay wages to
20 Plaintiff, Class Members, and Aggrieved Employees for all hours worked violates Labor Code §§ 204,
21 510, 558, 1194, and 1197;

22 4. That the Court declare that Defendants’ policy and/or practice of failing to provide
23 uninterrupted meal periods violates Labor Code §§ 226.7, 512, and Wage Order 12-2001 by failing to
24 provide Plaintiff, Class Members, and Aggrieved Employees a meal period of at least one half hour in
25 which they were relieved of all duties for every five hours of work;

26 5. That the Court declare that Defendants’ policy and/or practice of failing to provide
27 uninterrupted rest periods violates Labor Code § 226.7, 512, 558 and Wage Order 12-2001 by failing
28 to provide Plaintiff, Class Members, and Aggrieved Employees a rest period of at least ten minutes for

1 every four hours of work or major fraction thereof;

2 6. That the Court declare that, as to the Class Members that are former employees of Defendants,
3 Defendants have violated Labor Code §§ 201-203 by willfully failing to pay compensation due at the
4 time of termination of employment or within 72 hours thereafter;

5 7. That the Court declare that Defendants' policy and/or practice of failing to furnish accurate and
6 itemized wage statements violates Labor Code § 226;

7 8. That the court declare that Plaintiff and Class Members were willfully misclassified as
8 independent contractors in violation of Labor Code §226.8 and awarded the associated penalties for
9 each violation as to each Class Member.

10 9. That the Court declare that Defendants' above-mentioned policies and/or practices violate Bus.
11 & Prof. Code §§ 17200, *et seq.* as to Plaintiff, Class Members, and Aggrieved Employees;

12 10. For an order preliminarily and permanently enjoining Defendants from engaging in the
13 practices alleged herein;

14 11. For an award of all wages owed by Defendants to Plaintiff, Class Members, and Aggrieved
15 Employees, including regular wages, minimum wages, liquidated damages on unpaid minimum wages,
16 and overtime wages;

17 12. For an award to Plaintiff, Class Members, and Aggrieved Employees of one (1) hour of
18 additional pay at the regular rate of compensation for each required meal period that was not provided,
19 pursuant to Labor Code § 226.7 and Wage Order 12-2001;

20 13. For an award to Plaintiff, Class Members, and Aggrieved Employees of one (1) hour of
21 additional pay at the regular rate of compensation for each workday that rest periods were not provided,
22 pursuant to Labor Code § 226.7 and Wage Order 12-2001;

23 14. For an award of penalties to Plaintiff, Class Members, and Aggrieved Employees for
24 Defendants' failure to provide accurate itemized wage statements, pursuant to Labor Code § 226;

25 15. For an award of waiting time penalties due to Plaintiff, Class Members, and Aggrieved
26 Employees that are former employees of Defendants pursuant to Labor Code § 203;

27 16. For an order that Defendants make restitution to Plaintiff, Class Members, and Aggrieved
28 Employees for Defendants' unlawful business practices, as described herein, pursuant to Business and

1 Professions Code §§ 17200, *et seq.*;

2 17. For an award of interest pursuant to Labor Code §§ 218.6, 510, or 1194, and any other
3 applicable law;

4 18. Civil penalties pursuant to Labor Code §§ 2698, *et. seq.* for violations of Labor Code sections
5 201, 202, 203, 204, 210, 226, 226.3, 226.7, 226.8, 232, 432.5, 432.7, 432.8, 510, 512, 558, 1019.1,
6 1024.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 2698, 3700, 3708, 6400, 6402, *et seq.*, Government
7 Code sections 12940, Civil Code section 1671, and IWC Wage Order No. 12-2001;

8 19. For an award of attorneys’ fees and costs pursuant to Code of Civ. Proc. § 1021.5, Labor Code
9 §§ 218.5, 226, 1194, Labor Code §§ 2698, *et. seq.* and any other applicable law; and

10 20. For such other and further relief as the Court deems just and proper.

11
12 Respectfully submitted,

13 Dated: May 6, 2024

PAYTON EMPLOYMENT LAW, PC

14
15 By: *C. Payton*
16 Chantal Payton, Esq.
17 Mackenzie “Mack” Mathews, Esq.
18 *Attorney for Plaintiff Jeremy Hartwell and the*
putative Class

19
20 **DEMAND FOR JURY TRIAL**

21 Plaintiff hereby demands trial by jury of this action.

22 Respectfully submitted,

23 Dated: May 6, 2024

PAYTON EMPLOYMENT LAW, PC

24
25 By: *C. Payton*
26 Chantal Payton, Esq.
27 Mackenzie “Mack” Mathews, Esq.
28 *Attorney for Plaintiff Jeremy Hartwell and the*
putative Class

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 3807 SIERRA HIGHWAY, SUITE 206, ACTON, CALIFORNIA 93510.

On the date set forth below, I served the document(s) described as:

PLAINTIFF’S FIRST AMENDED CLASS ACTION COMPLAINT

on the person(s) listed below:

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CONTENT, LLC and DELIRIUM
TV, LLC*

 X (BY ELECTRONIC SERVICE) Pursuant to the Court’s order authorizing electronic service, I caused the document(s) described above to be transmitted electronically via CaseAnywhere to the addressee(s) as set forth above.

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

Dated: May 7, 2024



Karen Zelaya