

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

TAMRYN SPRUILL and JACOB
SUNDSTROM, individually and on behalf of all
those similarly situated,

Plaintiffs,

vs.

VOX MEDIATION, INC,

Defendants.

Civil Action No.: 1:19-cv-00160-RMC

Class Action Complaint

Jury Trial Demanded

SECOND AMENDED COMPLAINT

I. INTRODUCTION

1. Plaintiffs Tamryn Spruill and Jacob Sundstrom (together, “Plaintiffs”) bring this class and representative action against Defendant Vox Media, Inc., (“Defendant” or “Vox”) on behalf of themselves and all other former and current paid content contributors for Vox’s sports blogging network and flagship property SB Nation in California, who Vox classified as independent contractors. SB Nation operates over 300 team sites dedicated to publishing written articles, videos, and other content on professional and college sports. Each team site posts daily coverage on games, statistics, player trades, and culture. The more traffic the team sites attract, the more advertising revenue Vox generates. Vox pays Plaintiffs and similarly situated class members (“Content Contributors”) a small monthly stipend to create and edit the written, video, and audio content on these team sites. Content Contributors’ posts are the core of Vox’s business.

2. During the entire class period, Vox uniformly and consistently misclassified Content Contributors – including job titles such as Site Manager, Associate Editor, Managing Editor, Deputy Editor, and Contributor – as independent contractors in order to avoid its duties

and obligations owed to employees under California law and to gain an unfair competitive advantage over its competitors that properly classify its workers as employees. Vox controls and directs the performance of Content Contributors in writing and editing content for its blogs, both under contracts it enters with some Content Contributors (but not all) and in fact. Content Contributors create the written, video, and audio content that makes up SB Nation's team site network and generates advertising revenue. Their work is central to SB Nation's business. Content Contributors do not create and edit content for their own independent businesses, but create content solely for SB Nation team sites.

3. As a result, Plaintiffs allege that all current and former Content Contributors who worked in California: (1) are entitled to unpaid minimum wages (Cal. Labor Code §§ 1182.12, 1194, 1197, 1197.1; California Industrial Welfare Commission Wage Order 4, Cal. Code Regs. tit. 8 § 11040 ("Wage Order 4") § 4; and the California Minimum Wage Order); (2) are entitled to unpaid overtime wages (Cal. Labor Code §§ 510; Wage Order 4 § 2); (3) are owed meal and rest period premiums (Cal. Labor Code § 226.7, 512; Wage Order 4 §§ 11, 12); (4) are owed statutory damages for Vox's failure to provide itemized wage statements (Cal. Labor Code §§ 226, 226.3; Wage Order 4 § 7(B)); (5) are owed reimbursement of business expenses because Vox required Content Contributors to have computers, smart phones, and internet access for work-related tasks, as well as expenses related to watching the games Content Contributors were expected to write about (Cal. Labor Code § 2802); and (6) are entitled to restitution and injunctive relief under the Unfair Competition Law ("UCL") (Cal. Bus. & Prof. Code §§ 17200 *et seq.*).

4. Plaintiff Spruill also brings a representative action under the California Labor Code Private Attorneys General Act ("PAGA"), Cal. Lab. Code §§2698 *et seq.* for the above

Labor Code violations, as well as for Vox's failure to: (1) pay all wages due upon termination under Labor Code sections 201 and 202; (2) pay all wages owed twice each calendar month under Labor Code section 204; and (3) keep accurate payroll records of hours worked.

5. Because Defendant has willfully deprived Plaintiffs and similarly situated Content Creators of the rights and protections California law guarantees to employees, Defendant's classification of Content Creators as "independent contractors" is part of ongoing unfair/unlawful business practices by Defendant.

II. THE PARTIES

6. Plaintiff Tamryn Spruill is an adult individual who was paid by Defendant for her work as an Associate Editor for SB Nation's team site dedicated to the Oakland, California-based Golden State Warriors called "Golden State of Mind" between August 2017 and December 2017, but Vox classified her as an independent contractor. During that time, Plaintiff Spruill resided and worked in Santa Monica, California. Currently, she resides in Rock Hill, South Carolina.

7. Plaintiff Jacob Sundstrom is an adult individual who was paid by Defendant for his work as a Site Manager for SB Nation's team site dedicated to the San Jose Sharks, a professional hockey team, called "Fear the Fin." Plaintiff Sundstrom worked as a Site Manager between October 2015 and May 2017. While he was working for Defendant, Plaintiff lived in Fontana, California.

8. Defendant Vox Media, Inc. is a Delaware corporation registered to do business in California and is based in Washington, D.C. Vox operates and maintains media websites, including over 300 sports blogs under its flagship property SB Nation.

III. JURISDICTION AND VENUE

9. This court has subject matter jurisdiction over Plaintiffs' California state law class claims under 28 U.S.C. § 1332(d) because Plaintiffs are citizens of states different from Defendant's state of citizenship, and, upon information and belief, the matter in controversy exceeds \$5,000,000.

10. This Court has supplemental jurisdiction over the subject matter of Plaintiff's PAGA claim under 28 U.S.C. § 1367(a) because the PAGA claim is so related to the class claims as to form part of the same case or controversy.

11. This Court has jurisdiction over Defendant because Defendant has sufficient minimum contacts with the District of Columbia so as to render the exercise of jurisdiction over Defendant by this Court consistent with traditional notions of fair play and substantial justice.

12. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because Defendant is headquartered in this district.

13. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

IV. FACTUAL BACKGROUND

14. Defendant is a media corporation made up of several brands including SB Nation, Polygon, Eater, Racked, Curbed, ReCode, The Verge, and Vox. SB Nation, Vox's sports blogging network, owns, operates, and maintains over 300 team sites, each dedicated to a professional sports team, professional sports region, or college known for its amateur sports. There are team sites dedicated to numerous professional and amateur sports in California, including the Golden State Warriors ("Golden State of Mind"), Oakland Athletics ("Athletics Nation"), Oakland Raiders ("Silver and Black Pride"), San Francisco Giants ("McCovey

Chronicles”), San Francisco 49ers (“Niners Nation”), Los Angeles Lakers (“Silver Screen and Roll”), and the California Golden Bears (“California Golden Blogs”), among many others.

A. Defendant Uniformly Misclassifies Content Contributors as Independent Contractors.

15. To generate advertisement revenue from team sites, Defendant requires a steady stream of written, video, and audio content on its team sites from Content Contributors to attract. Defendant hires a Site Manager for each team site to manage, edit, and create content, who in turn is responsible for finding other contributors to create additional blog posts. Some of these contributors are given a monthly stipend, while other contributors are unpaid. Vox posts open contributor positions on its website, but does not always indicate whether or not the position is paid.¹

16. Defendant views its Content Contributors as independent contractors. Defendant requires some Content Contributors to sign a “Blogger Agreement,” which states that Content Contributor’s relationship with Defendant is as an independent contractor. Defendant does not withhold payroll taxes from its monthly payments to Content Contributors.

17. Though Defendant classifies Content Contributors as independent contractors, Defendant exercises substantial control over the manner and means by which Content Contributors accomplish their work.

18. Content Contributors are required to create and/or edit certain numbers of posts per week. The Blogger Agreements some Content Contributors were required to sign often

¹ See Careers, Vox Media, *available at*: <https://www.voxmedia.com/pages/careers-jobs> (last accessed September 18, 2018). The job description for “Site Manager” indicates that it is paid with a monthly stipend, while the job description for “Contributor” is silent about compensation.

memorialized Defendant's expectation for the number of blog posts per week the Content Contributor was expected to create and/or edit.

19. Defendant gives Content Contributors instructions about how to conform posts to increase site traffic from online search engines, known as "search engine optimization." Content Contributors are told how to craft headlines and tag posts to attract the most viewers to each post. They are also instructed on how long certain types of posts should be (such as pre-game previews, instant recaps, and in-depth game analysis), and what key information should be included in each type of post.

20. The blog posts created by Content Contributors are core to Defendant's business. The more Content Contributors post, the more traffic to each team site, and the more revenue Defendant can generate from advertisers. Defendant pressures Content Contributors to maintain a constant flow of posted content on these team sites to attract advertisers, but Content Contributors do not see the benefits of advertising revenue. Content Contributors take no part in negotiating advertisements on team sites; all the negotiations for advertisements are handled directly by Defendant. Content Contributors have no stake in Defendant's profits or losses.

21. While Content Contributors were not always under direct supervision by Defendant, neither were they independent journalists who sold their stories to the highest bidder—Content Contributors created and edited content for the purpose of posting it on Defendant's team sites.

22. Defendant does not hire Content Contributors for their unique set of skills. Defendant does not require, for example, a college degree or prior experience in journalism. Defendant's job posting for a contributor position on a professional basketball team site lists an applicant's minimum qualifications as including that the applicant is "a huge fan of basketball,"

has “strong opinions on [the] team” and takes “genuine pride in [their] writing.” Applicants must also “be able to write complete sentences.”

23. Defendant requires Content Contributors to have access to the internet on their personal computers and smart phones, but Content Contributors’ work does not require any special tools or equipment. Defendant provides content contributors with access to internal communication and editing software.

B. Defendant Pays Content Contributors a Small Monthly Stipend Insufficient to Meet the Legal Minimum Wage.

24. Defendant pays Content Contributors a flat monthly stipend. Defendant does not increase the stipend as Content Contributors work more hours, such as when their team make it to the playoffs.

25. Plaintiff Spruill, for example, worked an average of twenty to twenty-five hours a week during the NBA regular season, and was paid a stipend of only \$200 per month—an average of \$2.00 to \$2.50 per hour. Plaintiff Sundstrom worked an average of thirty hours per week. Plaintiff Sundstrom’s stipend over the course of his work for Fear the Fin ranged from \$100-\$300 per month, or around \$1.20 to \$2.50 per hour. Given the number of hours Content Contributors work for Defendant every month, this monthly stipend is frequently, if not always, under the minimum wage required by California law.

26. According to recent reporting from Deadspin, some Content Contributors have agreements to write a minimum of two posts per week for a \$25 per month stipend, which totals about \$3.13 per blog, or even less under an hourly rate.²

² See Laura Wagner, *SB Nation Is Paying Workers As Little As \$3 Per Blog Post*, Deadspin (July 31, 2018), <https://deadspin.com/sb-nation-is-paying-workers-as-little-as-3-per-blog-po-1827998745> (last accessed Sept. 28, 2018).

C. Defendant Does Not Pay Content Contributors Overtime Wages.

27. Content Contributors are sometimes assigned duties that require them to work over eight hours per day or forty hours per week.

28. Plaintiff Spruill, for example, was sometimes assigned to edit three or four stories and to write an additional story in one day. On days like these, Plaintiff Spruill worked more than eight hours in a day. Defendant did not pay Plaintiff Spruill overtime wages for those hours worked.

29. Plaintiff Sundstrom was expected to add four posts to Fear the Fin per day, even on days without games, and was responsible for writing or editing each post. On game days, Plaintiff Sundstrom frequently worked ten to twelve hour days. Defendant did not pay Plaintiff Sundstrom overtime wages for those hours worked.

30. Defendant does not pay any Content Contributor overtime wages for the time they work beyond eight hours per day or forty hours per week.

D. Defendant Does Not Provide Meal or Rest Periods for Content Contributors.

31. Content Contributors regularly work more than three and a half hours per day. Defendant does not authorize or permit Content Contributors to take ten-minute uninterrupted rest periods for every four hours or major fraction thereof worked.

32. Content Contributors frequently work over five hours per day without a meal period. Defendant does not provide a 30-minute off-duty meal period for Content Contributors within the first five hours of work per day, nor does it provide a second meal break for Content Contributors who work more than ten hours in a day.

33. Defendant has never paid Content Contributors with meal and rest break premiums for its failure to provide meal and rest breaks.

E. Defendant Does Not Provide Content Contributors with Accurate Itemized Wage Statements.

34. Defendant fails to provide Content Contributors with any wage statements, let alone wage statements that show the actual hours worked, all overtime wages, gross and net wages earned, all applicable hourly rates and corresponding number of hours worked at each rate, deductions, the inclusive dates of the period for which the employee is paid, the name of the employee or the employee's social security number, and the name of the employer.

F. Defendant Does Not Reimburse Content Contributors for Reasonable Business Expenses.

35. Defendant requires Content Contributors to use their own computers, smart phones, and internet access to create and edit content, as well as to communicate with editors, Site Managers, or SB Nation supervising employees. Defendant does not reimburse Content Contributors for their personal computers, smart phones, or internet access expenses.

36. Content Contributors are required to watch sports live or on television so that they may write or create video content about games or matches. Defendant does not reimburse Content Contributors for the costs of attending, watching, or traveling to these sporting events.

G. Other Common Factual Allegations Supporting Plaintiff Spruill's PAGA Claim

37. Defendant fails to pay all compensation due and owing to all former Content Contributors at the time their employment is terminated, including failure to pay all minimum wages, overtime wages, and missed meal and rest break premiums.

38. Defendant fails to pay Content Contributors all wages owed, including minimum wages, overtime wages, and wages for missed meal and rest periods, twice each calendar month. Vox pays Content Contributors a stipend only once per month.

39. Defendant fails to keep payroll records showing all hours worked, including regular hours, overtime hours, and meal periods taken. Defendant fails to keep time records showing when employees begin and end each work period and daily hours.

40. Defendant has engaged in a pattern or practice of willfully misclassifying Content Contributors as independent contractors instead of employees. Defendant is aware that Content Contributors are misclassified. Three of Defendant's current high-level employees were previously employed by AOL when AOL was involved in *Hallisey v. America Online, Inc.*, No. 99-civ-3785 (S.D.N.Y.), a lawsuit involving the misclassification of employees as independent contractors. The plaintiffs in *Hallisey* were responsible for creating and editing online content, moderating online community interaction, and assisting other content creators. In 2010, after a motion to dismiss and certification of the collective action, the parties in *Hallisey* settled for \$15 million. The three high-level employees are now employed by Defendant: Chief Executive Office James Bankoff, President Marty Moe, and General Counsel and Chief Legal Officer Lauren Fisher. Additionally, Defendant was sued in September 2017 in related case *Bradley v. Vox Media, Inc.*, No. 17-cv-01791 (RMC) (D.D.C.), involving Site Managers who were allegedly misclassified as independent contractors for violations of the federal Fair Labor Standards Act. On September 4, 2018, the district court denied Vox's motion to dismiss the portion of the *Bradley* plaintiffs' claims on the basis that Defendant's violations were not "willful."

V. CLASS ACTION ALLEGATIONS

41. Plaintiffs seek to proceed as a class action pursuant to Federal Rules of Civil Procedure Rule 23 on behalf of the following class of persons:

All Content Contributors who created and/or edited written, video, or audio content for an SB Nation team site in California at any time

on or after September 21, 2014, were classified as independent contractors, and were paid compensation directly from Vox.

42. The putative class is so numerous that joinder of all members is impracticable.

Although the precise number of such persons is unknown, and the facts on which the calculation of that number would be based are within the sole custody and/or control of Defendant, upon information and belief, Defendant has employed over two hundred Content Contributors in California during the Class Period.

43. Among the proposed class, common questions of law and fact exist as to all Class Members and predominate over any questions that affect only individual Class Members. Those common questions include, but are not limited to:

- a. Whether Defendant misclassified Class Members as independent contractors;
- b. Whether the same test for misclassification applies to both claims derived from the applicable wage order and statutory claims not derived from the applicable wage order;
- c. Whether Defendant paid Class Members at least the minimum wage;
- d. Whether Defendant paid Class Members an overtime premium for all overtime hours worked;
- e. Whether Defendant was required to issue Class Members wage statements with certain required information;
- f. Whether Defendant is required to reimburse Class Members for a portion of their home internet, personal computer, and personal smart phone expenses; and
- g. Whether Defendant's Labor Code and Wage Order violations serve as predicate violations of the UCL.

44. Plaintiffs' claims are typical of those belonging to members of the Class in that: (1) Plaintiffs are members of the Class; (2) Plaintiffs' claims arise from the same practice or course of conduct that forms the basis of the Class claims; (3) Plaintiffs' claims are based upon the same legal and remedial theories as those of the Class and involve similar factual circumstances; (4) there is no antagonism between the interests of Plaintiffs and absent Class Members; and (5) the injuries that Plaintiffs suffered are similar to the injuries that Class Members suffered.

45. Plaintiffs will fairly and adequately represent the Class. There is no conflict between Plaintiffs' claims and those of other Class Members. Plaintiffs have retained counsel who are skilled and experienced in class actions and who will vigorously prosecute this litigation.

46. The Class is readily ascertainable from Defendant's own records.

47. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all members is impracticable. Furthermore, the damages suffered by individual Class Members may be relatively small and the expense and burden make it impracticable for Class Members to individually seek redress.

48. Plaintiffs knows of no difficulty that might be encountered in the management of this litigation that would preclude its maintenance as a class action.

FIRST CAUSE OF ACTION
Minimum Wage Violation
[Cal. Labor Code §§ 1182.12, 1194, 1194.2, 1197,
Wage Order 4; Minimum Wage Order]

49. Plaintiffs, on behalf of themselves and all Class Members, re-allege and incorporate by reference the allegations contained in the paragraphs above as if fully set forth here.

50. California Labor Code §§ 1194, 1197, Wage Order 4 and the Minimum Wage Order entitle employees to an amount equal to or greater than the minimum wage for all hours worked.

51. Defendant paid Plaintiffs and Class Members a fixed monthly stipend independent of the number of hours they worked each month. Given the number of hours Plaintiffs and Class Members worked each month, Defendant's monthly stipend was insufficient to meet the legal minimum wage.

52. As a result of Defendant's failure to Plaintiffs and Class Members the legal minimum wage, Plaintiffs and Class Members are entitled to recover the unpaid balance of the full amount of the minimum wage for all hours worked, plus interest, liquidated damages, and attorney's fees and costs, as well as further relief as described below.

SECOND CAUSE OF ACTION
Failure to Pay Overtime Wages
[Cal. Labor Code §§ 510; Wage Order 4]

53. Plaintiffs, on behalf of themselves and all Class Members, re-allege and incorporate by reference the allegations contained in the paragraphs above as if fully set forth here.

54. California Labor Code § 510 and Wage Order 4 entitle employees to overtime premiums for hours worked in excess of eight (8) in a given day, forty (40) in a given workweek, or on the seventh day worked in a single workweek. All hours must be paid at the statutory or agreed rate and no part of this rate may be used as a credit against a minimum wage obligation.

55. While misclassified as independent contractors, Plaintiffs and Class Members worked in excess of eight hours per day and in excess of forty hours per week, and Defendant unlawfully failed to pay Plaintiffs and Class Members the proper overtime compensation.

56. As a result of these violations, Defendant is liable for unpaid overtime wages, interest, and attorneys' fees and costs, as well as further relief as described below.

THIRD CAUSE OF ACTION
Failure to Provide Meal Periods
[Cal. Labor Code §§ 226.7, 512, and 1194; Wage Order 4]

57. Plaintiffs, on behalf of themselves and all Class Members, re-allege and incorporate by reference the allegations contained in the paragraphs above as if fully set forth here.

58. California Labor Code § 512(a) states in pertinent part, “[A]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

59. Wage Order 4 states, in relevant part, “No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes.” If no meal period is provided, the Wage Orders require the employer to “pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.”

60. California Labor Code § 226.7 states, in relevant part, “An employer shall not require an employee to work during a meal ... period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission.” Section 226.7 requires an employer to pay one additional hour of pay at the employee’s regular rate if the meal or rest period is not provided.

61. Defendant has had no policy or practice of providing meal periods to Plaintiffs or Class Members, and Defendant failed to provide meal periods to Plaintiffs and Class Members or

an hour of premium pay for each missed meal period as required by California Labor Code §§ 226.7 and 512, and Wage Order 4.

62. As a result of Defendant's willful and unlawful failure to provide meal periods to Plaintiffs and Class Members and Defendant's failure to pay an hour of premium pay for each missed meal period, Plaintiffs and Class Members are entitled to recover one hour of pay at their regular rate of compensation for each workday that a meal period was not provided, plus interest, attorney's fees and costs, as well as further relief as described below.

FOURTH CAUSE OF ACTION
Failure to Provide Rest Periods
[Cal. Labor Code §§ 226.7 and 1194; Wage Order 4]

63. Plaintiffs, on behalf of themselves and all Class Members, re-allege and incorporate by reference the allegations contained in the paragraphs above as if fully set forth here.

64. California Labor Code § 226.7 states, in relevant part: "An employer shall not require an employee to work during a ... rest ... period," and if "an employer fails to provide an employee a rest period ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."

65. Wage Order 4 states, in pertinent part, "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. The Wage Orders require an employer to "pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided."

66. Defendant has had no policy or practice of providing rest periods to Plaintiffs and Class Members, and Defendant failed to provide rest periods to Plaintiffs and Class Members or an hour of premium pay at the regular rate for each day a rest period was not provided.

67. As a result of Defendant's willful and unlawful failure to provide rest periods to Plaintiffs and Class Members and Defendant's failure to pay an hour of premium pay at the regular rate for each day a rest period was not provided, Plaintiffs and Class Members are entitled to recover one hour of pay at their regular rate of compensation for each workday that a rest period was not provided, plus interest, attorney's fees, and costs, as well as further relief as described below

FIFTH CAUSE OF ACTION
Failure to Provide Accurate Itemized Wage Statements
[Cal. Labor Code §§ 226 and 226.3; Wage Order 4]

68. Plaintiff Spruill, on behalf of herself and all Class Members, re-alleges and incorporates by reference the allegations contained in the paragraphs above as if fully set forth here.

69. California Labor Code § 226 provides, in relevant part, that every employer must furnish each employee with an itemized wage statement at the time of each payment of wages showing the total numbers of hours worked each pay period, gross wages, net wages, all deductions, all applicable hourly rates of pay, the dates of the period for which the employee is paid, the name of the employee and the last four digits of their social security number or employee identification number, and the name and address of the legal entity that is the employer.

70. Wage Order 4 requires employers to provide, at the time of each payment of wages, "an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of

the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer.”

71. Defendant willfully failed to furnish Plaintiff Spruill and Class Members, upon each payment of compensation, itemized wage statements.

72. During all relevant times, Plaintiff Spruill and Class Members were injured by these failures because, among other things, they were confused about whether they were paid properly and/or they were misinformed about how many total hours they worked in each pay period.

73. California Labor Code § 226(e)(1) provides that an employee suffering injury as a result of a knowing and intentional failure by an employer to provide accurate itemized wage statements is entitled to recover the greater of all actual damages suffered or fifty dollars (\$50) for the initial violation and one hundred dollars (\$100) for each subsequent violation, up to four thousand dollars (\$4,000). Pursuant to California Labor Code § 226(h), Plaintiff Spruill and Class Members are entitled to injunctive relief to ensure Defendant's compliance with California Labor Code § 226.

74. Plaintiff Spruill and Class Members are entitled to an award of costs and reasonable attorneys' fees under California Labor Code § 226(h), as well as further relief as described below.

SIXTH CAUSE OF ACTION
Failure to Reimburse Business Expenses
[Cal. Labor Code § 2802]

75. Plaintiffs, on behalf of themselves and all Class Members, re-allege and incorporate by reference the allegations contained in the paragraphs above as if fully set forth here.

76. California Labor Code § 2802 requires employers to indemnify an employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of the employee's duties.

77. During all relevant times, Defendant failed to indemnify Plaintiffs and Class Members for their expenses related to using their personal computers, using their personal smart phones, and maintaining access to the internet. Defendant also failed to reimburse Plaintiffs and Class Members for the costs associated with viewing the games they were expected to write about. Plaintiffs and Class Members are entitled to indemnification of their expenses related to their home internet payments plus prejudgment interest pursuant to California Labor Code § 2802.

78. Plaintiffs and Class Members, request further relief as described below.

SEVENTH CAUSE OF ACTION
Unfair Competition Law Violations
[Cal. Bus. & Prof. Code §§ 17200 *et seq.*]

79. Plaintiffs, on behalf of themselves and all Class Members, re-allege and incorporate by reference the allegations contained in the paragraphs above as if fully set forth here.

80. California Business & Professions Code §§ 17200 *et seq.* prohibits unfair competition in the form of any unlawful, unfair, deceptive, or fraudulent business practices.

81. Plaintiffs bring this cause of action individually and representative of all others subject to Defendant's unlawful acts and practices.

82. In the four years prior to the filing of the original Complaint, Defendant has committed unlawful, unfair, deceptive, and/or fraudulent acts as defined by California Business & Professions Code § 17200. Defendant's unlawful, unfair, deceptive, and/or fraudulent business practices include, without limitation, failing to pay the minimum wage, failing to pay overtime wages, failing to provide mandated meal and rest periods, failing to furnish accurate itemized wage statements, and failing to indemnify Content Contributors for business expenses in violation of California law.

83. As a result of these unlawful, unfair, and/or fraudulent business practices, Defendant reaped unfair benefits and illegal profits at the expense of Plaintiffs and Class Members.

EIGHTH CAUSE OF ACTION
Violation of the Labor Code Private Attorney General Act of 2004 ("PAGA")
[Cal. Labor Code §§ 2698 *et seq.*]

84. Plaintiff Spruill, on behalf of herself and all other current or former Content Contributors in California, re-alleges and reincorporates by reference the allegations contained in the paragraphs above as if fully set forth here.

85. Plaintiff Spruill is an "aggrieved employee" under PAGA, as she was employed by Vox during the applicable statutory period and suffered one or more Labor Code violations. As such, Plaintiff Spruill seeks to recover, on behalf of herself and all current and former aggrieved employees of Vox, the civil penalties provided by PAGA, plus reasonable attorneys' fees and costs.

86. Plaintiff Spruill seeks to recover the PAGA civil penalties through a representative action as permitted by PAGA and the California Supreme Court in *Arias v.*

Superior Court, 46 Cal. 4th 969 (Cal. Ct. App. 2009). Class certification of the PAGA claims is not required, but Plaintiff Spruill may seek certification of the PAGA claims.

87. Plaintiff Spruill seeks to pursue remedies pursuant to PAGA for the following violations:

a. For Vox's willful failure to pay Content Contributors the applicable minimum wage, California Labor Code § 1197.1 imposes a civil penalty of one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid and two hundred fifty dollars (\$250) for each subsequent violation per each underpaid employee for each pay period for which the employee is underpaid. Vox is also liable under Labor Code § 558 for violating an order of the Industrial Welfare Commission. *See Wage Order 4(4)*.

California Labor Code § 558 provides:

(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

(1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(3) Wages recovered pursuant to this section shall be paid to the affected employee.

b. For Vox's willful failure to pay Content Contributors overtime, California Labor Code § 558 makes liable for civil penalties any employer who violates California Labor Code § 510 or any order of the Industrial Welfare Commission, including Wage Order 4(3).

c. For Vox's knowing and intentional failure to provide accurate wage statements, California Labor Code § 226.3 imposes a civil penalty, in addition to any other penalty provided by law, of two hundred fifty dollars (\$250) per aggrieved employee for the first violation of California Labor Code § 226(a), and one thousand dollars (\$1,000) per aggrieved employee for each subsequent violation. Vox is also liable for civil penalties under California Labor Code § 558 as described above for violating Wage Order 4(7).

d. For Vox's willful failure to provide Content Contributors with meal periods, Labor Code § 2699 imposes a civil penalty of one hundred dollars (\$100) per pay period, per aggrieved employee for the initial violation. For each subsequent violation, the penalty is two hundred dollars (\$200) for each aggrieved employee per pay period. California Labor Code § 226.7 requires an employer to pay one additional hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided, and for Vox's failure to pay the additional hour of pay, Labor Code §2699 imposes a civil penalty of one hundred dollars (\$100) per pay period, per aggrieved employee for the initial violation, and two hundred dollars (\$200) for each subsequent pay period for each aggrieved employee. Vox is also liable for civil penalties under California Labor Code § 558 as described above for violating the Labor Code chapter regulating hours and days of work and Wage Order 4(11).

e. For Vox's willful failure to provide Content Contributors with rest periods, Labor Code § 2699 imposes a civil penalty of one hundred dollars (\$100) per pay period, per aggrieved employee for the initial violation. For each subsequent violation, the penalty is two hundred dollars (\$200) for each aggrieved employee per pay period. California Labor Code § 226.7 requires an employer to pay one additional hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided, and for Vox's

failure to pay the additional hour of pay, Labor Code §2699 imposes a civil penalty of one hundred dollars (\$100) per pay period, per aggrieved employee for the initial violation and two hundred dollars (\$200) for each subsequent pay period for each aggrieved employee. Vox is also liable for civil penalties under California Labor Code § 558 as described above for violating the Labor Code chapter regulating hours and days of work and Wage Order 4(12).

f. For Vox's failure to indemnify Content Contributors for all necessary business expenditures, Labor Code § 2699 imposes a civil penalty of one hundred dollars (\$100) per pay period, per aggrieved employee for the initial violation. For each subsequent violation, the penalty is two hundred dollars (\$200) for each aggrieved employee per pay period.

g. For Vox's willful failure to pay all wages to an employee who is discharged or quits, California Labor Code § 256 imposes a civil penalty in an amount not exceeding thirty (30) days' pay.

h. For Vox's failure to pay all wages owed twice per month under California Labor Code § 204, including overtime wages and wages for missed meal and rest periods, Vox is liable for civil penalties under California Labor Code § 558 as described above for violating Wage Order 4. In addition to other penalties provided by the California Labor Code, California Labor Code § 210 permits Plaintiff to recover civil penalties in the amount of one hundred dollars (\$100) per employee per initial violation of the timely payment requirements of California Labor Code § 204 and two hundred dollars (\$200) per employee for each subsequent violation, plus twenty-five percent (25%) of the amount unlawfully withheld.

i. For Vox's willful failure to keep accurate records as required by California Labor Code § 1174(d), including records of Content Contributors' regular hours worked, overtime hours, weekend hours, holiday hours, and meal periods, Vox is subject to a civil penalty of five hundred dollars (\$500) under California Labor Code § 1174.5. Vox is also

liable for civil penalties under California Labor Code § 558 as described above for violating Wage Order 4(7).

j. For Vox's willful misclassification of Content Contributors as independent contractors, California Labor Code § 226.8(b) imposes a civil penalty between \$5,000 and \$15,000 per violation, in addition to any other penalties or fines permitted by law. For a pattern or practice of willful misclassification, California Labor Code § 226.8(c) imposes a fine between \$10,000 and \$25,000 for each violation, in addition to any other penalties or fines permitted by law.

88. A true and correct copy of the claim notice filed online with the California Labor and Workforce Development Agency ("LWDA"), LWDA Case Number LWDA-CM-620827-18, a copy of which was sent via certified mail to Defendants, is attached as Exhibit 1. As of today's date, the LWDA has provided no notice to Plaintiff Spruill regarding its intention to investigate or not investigate Plaintiff Spruill's claims.

89. Enforcement of statutory provisions to protect workers and to ensure proper and prompt payment of wages is a fundamental public interest. Plaintiff Spruill's successful enforcement of important rights affecting the public interest will confer a significant benefit upon the general public. Private enforcement of these rights is necessary, as no public agency has pursued enforcement. Plaintiff Spruill is incurring a financial burden in pursuing this action, and it would be against the interests of justice to require the payment of attorneys' fees and costs from any recovery obtained.

90. As a result of the violations alleged, Plaintiff Spruill, an aggrieved employee on behalf of himself and other aggrieved employees, seek all civil penalties available pursuant to

California Labor Code § 2699, including all civil penalties, attorneys' fees, expenses, and costs of suit.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request this Court to grant the following relief against Defendant as follows:

- A. Certify this action as a class action pursuant to Federal Rule of Civil Procedure 23 for Class Members, and appoint Plaintiffs as Class Representatives and their attorneys as Class Counsel;
- B. Direct class notice to all Class Members;
- C. Declare that Defendant misclassified all Class Members as independent contractors;
- D. Award minimum wages and liquidated damages to Plaintiffs and Class Members;
- E. Award overtime wages to Plaintiffs and Class Members;
- F. Award compensation for Defendant's failure to provide meal periods and rest periods;
- G. Award damages for Defendant's failure to provide accurate itemized wage statements;
- H. Award damages for Defendant's failure to reimburse necessary business expenses;
- I. Award civil penalties under California Labor Code § 2698 et seq. for violations of the California Labor Code;
- J. Award pre-judgment and post-judgment interest;
- K. Order Defendant to make restitution to Plaintiffs and other Class Members due to its unlawful and/or unfair business practices, including interest;

- L. Enjoin Defendant from violating California law;
- M. Award costs and expenses of this action;
- N. Award reasonable attorneys' fees; and
- O. Award such other relief as this Court deems just and proper.

JURY TRIAL DEMANDED

Plaintiffs demands a trial by jury on claims so triable.

Dated: June 13, 2019

Respectfully submitted,

JENNINGS SIGMOND, P.C.

/s/ James E. Goodley

James E. Goodley (Bar No. PA0069)

jgoodley@jslex.com

Marc L. Gelman (PA 78857)**

mgelman@jslex.com

Maureen W. Marra (PA 309865)**

mmarra@jslex.com

Ryan P. McCarthy (PA 323125)**

rmccarthy@jslex.com

JENNINGS SIGMOND, P.C.

1835 Market Street, Suite 2800

Philadelphia, PA 19103

(215) 351-0613

David Borgen (CA 099354)*

dborgen@gbdhlegal.com

Laura L. Ho (CA 173179)*

lho@gbdhlegal.com

Ginger Grimes (CA 307168)*

Ggrimes@gbdhlegal.com

GOLDSTEIN, BORGEN, DARDARIAN & HO

300 Lakeside Drive, Suite 1000

Oakland, CA 94612

Tel: (510) 763-9800

Fax: (510) 835-1417

**admitted pro hac vice*

***pro hac vice application to be filed*

Attorneys for Plaintiff and the Putative Class