

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

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

Plaintiff,

vs.

VOX MEDIA, INC, d/b/a SB Nation

Defendants.

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

First Amended Class Action Complaint

Jury Trial Demanded

AMENDED COMPLAINT

I. INTRODUCTION

1. Plaintiff Tamryn Spruill brings this class and representative action against Defendant Vox Media, Inc., d/b/a SB Nation, (“Defendant” or “Vox”) on behalf of herself 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 Plaintiff 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, Plaintiff alleges 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 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 Plaintiff 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 resided and worked in Santa Monica, California. Currently, she resides in Rock Hill, South Carolina.

7. Defendant Vox Media, Inc., d/b/a SB Nation, 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

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

9. 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.

10. 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.

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

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

IV. FACTUAL BACKGROUND

13. 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.

14. 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

15. 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.

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

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

18. 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.

19. 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

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.

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.

20. 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.

21. 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."

22. 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.

23. 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.

24. Plaintiff, 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. 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.

25. 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

C. Defendant Does Not Pay Content Contributors Overtime Wages.

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

27. Plaintiff, 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 worked more than eight hours in a day. Defendant did not pay Plaintiff overtime wages for those hours worked.

28. 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.

29. 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.

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).

30. 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.

31. 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.

32. 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.

33. 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.

34. 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's PAGA Claim

35. 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.

36. 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.

37. 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.

V. CLASS ACTION ALLEGATIONS

38. Plaintiff seeks 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.

39. 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.

40. 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.

41. Plaintiff's claims are typical of those belonging to members of the Class in that: (1) Plaintiff is a member of the Class; (2) Plaintiff's claims arise from the same practice or course of conduct that forms the basis of the Class claims; (3) Plaintiff's 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 Plaintiff and absent Class Members; and (5) the injuries that Plaintiff suffered are similar to the injuries that Class Members suffered.

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

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

44. 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.

45. Plaintiff 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]

46. Plaintiff, 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.

47. 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.

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

49. As a result of Defendant's failure to Plaintiff and Class Members the legal minimum wage, Plaintiff 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]

50. Plaintiff, 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.

51. 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.

52. While misclassified as independent contractors, Plaintiff 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 Plaintiff and Class Members the proper overtime compensation.

53. 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]

54. Plaintiff, 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.

55. 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.”

56. 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.”

57. 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.

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

59. As a result of Defendant’s willful and unlawful failure to provide meal periods to Plaintiff and Class Members and Defendant’s failure to pay an hour of premium pay for each missed meal period, Plaintiff 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]

60. Plaintiff, 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.

61. 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."

62. 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."

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

64. As a result of Defendant's willful and unlawful failure to provide rest periods to all 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, Plaintiff 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]

65. Plaintiff, 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.

66. 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.

67. 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.”

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

69. During all relevant times, 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.

70. 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 and Class Members are entitled to injunctive relief to ensure Defendant’s compliance with California Labor Code § 226.

71. Plaintiff 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]

72. Plaintiff, 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.

73. 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.

74. During all relevant times, Defendant failed to indemnify Plaintiff 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 Plaintiff and Class Members for the costs associated with viewing the games they were expected to write about. Plaintiff 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.

75. Plaintiff, on behalf of herself and similarly situated Class Members, request further relief as described below.

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

76. Plaintiff, 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.

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

78. Plaintiff brings this cause of action individually and representative of all others subject to Defendant's unlawful acts and practices.

79. 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.

80. As a result of these unlawful, unfair, and/or fraudulent business practices, Defendant reaped unfair benefits and illegal profits at the expense of Plaintiff 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.*]

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

82. Plaintiff 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 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.

83. Plaintiff 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 may seek certification of the PAGA claims.

84. Plaintiff 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).

85. 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 regarding its intention to investigate or not investigate Plaintiff’s claims.

86. Enforcement of statutory provisions to protect workers and to ensure proper and prompt payment of wages is a fundamental public interest. Plaintiff’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 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.

87. As a result of the violations alleged, Plaintiff, 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, Plaintiff respectfully requests 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 Plaintiff as Class Representative and her 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 Plaintiff and Class Members;
- E. Award overtime wages to Plaintiff 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 Plaintiff 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.

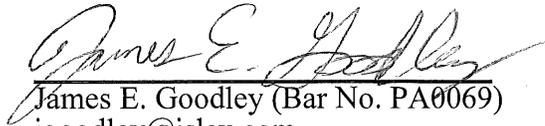
JURY TRIAL DEMANDED

Plaintiff demands a trial by jury on claims so triable.

Dated: March 1, 2019

Respectfully submitted,

JENNINGS SIGMOND, P.C.



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

CERTIFICATE OF SERVICE

I, James E. Goodley, attorney for Plaintiff Tamryn Spruill, attest that a true and correct copy of the First Amended Complaint was filed via ECF and served on the following persons via email on the date below:

Jason C. Schwartz
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306
jschwartz@gibsondunn.com
Attorney for Defendant

Date: March 1, 2019

/s/ James E. Goodley
James E. Goodley

EXHIBIT 1



Shareholders
Linda M. Dardarian
Laura L. Ho

**Goldstein, Borgen,
Dardarian & Ho**

Of Counsel
Barry Goldstein
David Borgen
Morris J. Baller

September 21, 2018

Private Attorneys General Act – Online Filing

Attn: PAGA Administrator

Re: Labor Code Private Attorney General Act Notice

To Whom It May Concern:

This firm, along with Jennings Sigmond, P.C., represent aggrieved employee Tamryn Spruill, individually and on behalf of all aggrieved employees defined as Content Contributors in California who created written, video, or audio content for an SB Nation team site, were paid compensation directly from Vox Media, Inc. (“Vox”), and were classified as independent contractors, except for Site Managers who opt-in to *Bradley v. Vox Media, Inc.*, No. 1:17-cv-01791 (D.D.C.). Ms. Spruill worked for Vox as a paid Content Contributor in California between August 2017 through December 2017.

Vox owns and operates a sports blogging network under its flagship property SB Nation. 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 Content Contributors a small monthly stipend to create and edit the written, video, and audio content on these team sites.

Vox has uniformly misclassified Content Contributors as independent contractors. However, under California law, Ms. Spruill and other Content Contributors are employees. Vox has violated and continues to violate several Labor Code provisions, which are described below. Therefore, Vox is liable for civil penalties under the Private Attorneys General Act of 2004 (“PAGA”), Cal. Labor Code § 2698 *et seq.*

On September 21, 2018, Ms. Spruill filed a class action complaint in the Superior Court of California, County of Alameda (*Spruill v. Vox Media, Inc.*, Case No. RG 18921742). A copy of the complaint is attached to this letter as Exhibit 1.

Content Contributors are Employees

Vox has uniformly misclassified its Content Contributors as independent contractors. Vox exercises significant control over the manner and means by which Content Contributors accomplish their work. Content Contributors are required to create and/or edit certain numbers of posts per week. Some Content Contributors sign “Blogger Agreements,” which memorialize

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

The blog posts created by Content Contributors are core to Vox's business. The more Content Contributors post, the more traffic to each team site, and the more revenue Vox can generate from advertisers. Vox 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 of the negotiations for advertisements are handled directly by Vox. Content Contributors have no stake in Vox's profits or losses.

While Content Contributors are not always under direct supervision by Vox, 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 Vox's team sites. Vox does not hire Content Contributors for their unique set of skills. Vox does not require, for example, a college degree or prior experience in journalism. Vox's job description 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."

Though Vox requires Content Contributors to have access to the internet on their personal computers and smart phones, Content Contributors' work does not require special tools or equipment. Vox provides Content Contributors with access to internal internet-based communication and editing software.

Unlawful Failure to Pay Minimum Wage

Vox has failed to compensate Ms. Spruill and other Content Contributors an amount equal to or greater than the minimum wage for all hours worked, as required by Labor Code §§ 1194, 1197, 1197.1, and Industrial Welfare Commission Wage Order 4-2001 ("Wage Order 4") § 4. 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.

Vox pays Content Contributors a flat monthly stipend. Vox does not increase the stipend as Content Contributors work more hours, such as when their team makes it to the playoffs. Ms. Spruill, for example, worked an average of twenty to twenty-five hours per 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. Given the number of hours Content Contributors work for Vox every month, this monthly stipend is frequently, if not always, under the minimum wage required by California law.

As a result of violation of Labor Code §§ 1194, 1197, 1197.1, and Wage Order 4(4) for failure to pay minimum wages, Vox is liable for civil penalties and unpaid wages pursuant to Labor Code §§ 558, 1197.1, and 2698 *et seq.*

Unlawful Failure to Pay All Overtime Wages

Vox has violated and continues to violate Wage Order 4(3) and Labor Code §§ 510, 558, and 1194 because it fails to compensate Content Contributors for all overtime wages. Vox requires Content Contributors to work over forty hours a week and/or eight hours a day. For example, Ms. Spruill was sometimes assigned to edit three or four stories and to write an additional story in one day. On days like these, Ms. Spruill worked more than eight hours in a day. Vox did not pay Ms. Spruill overtime wages for those hours worked at one and a half times Ms. Spruill's regular rate of pay.

As a result of its failure to pay all overtime wages, Vox has violated California Labor Code §§ 510 and Wage Order 4 and 7, and is liable for civil penalties and wages pursuant to California Labor Code §§ 558 and 2698 *et seq.*

Unlawful Failure to Furnish Compliant Wage Statements

Vox has violated and continues to violate Labor Code § 226 because it fails to furnish wage statements to Content Contributors that show: the name and address of the employer, the total and actual hours worked, the accurate gross and net wages earned, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, all deductions, the inclusive dates of the period for which the employee is paid, and the name of the employee and the last four digits of their social security number or an employee identification number.

Vox also violates Wage Order 4(7) because it fails to furnish itemized statements showing all 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.

Vox does not provide Content Contributors with any wage statements, let alone wage statements showing the required information. As a result of violations of California Labor Code § 226(a), Vox is liable for civil penalties pursuant to California Labor Code §§ 226.3 and 2698 *et seq.*

Unlawful Failure to Provide Meal and Rest Periods or to Provide Pay Premiums for Missed Rest and Meal Periods

Vox has violated and continues to violate Wage Order 4(11) & (12) and Labor Code §§ 226.7 and 512 because it has failed to provide meal and rest periods and to pay premium compensation due its employees for missed meal and rest periods.

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

Content Contributors frequently work more than five hours per day without a meal period. Vox does not provide a thirty-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.

As a result, Vox is liable for civil penalties and wages pursuant to California Labor Code §§ 558 and 2698 *et seq.*

Unlawful Failure to Reimburse

Vox has violated and continues to violate Labor Code § 2802, which requires Vox to indemnify Content Contributors for “all necessary expenditures” incurred as part of their duties.

Vox 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. Vox does not reimburse Content Contributors for the use of their personal computers, smart phones, or internet access. Content Contributors are also required to watch sports live or on television so that they may write or create video content about games or matches. Vox does not reimburse Content Contributors for the costs of attending, watching, or traveling to these sporting events.

As a result of violations of California Labor Code § 2802, Vox is liable for civil penalties pursuant to California Labor Code Labor Code §§ 2802, and 2698 *et seq.*

Unlawful Failure to Pay Wages Due Upon Termination

Vox has violated California Labor Code §§ 201 and 202 by willfully failing to pay all compensation due and owing to all former Content Contributors at the time their employment was terminated, including failure to pay minimum wages, overtime wages, and missed meal and rest break premiums.

Vox is now liable under § 203 and 256 of the Labor Code, former Content Contributors are now also entitled to recover up to thirty days of wages due to Vox’s “willful” failure to comply with the statutory requirements of sections 201 and 202. Additionally, because Vox violated California Labor Code §§ 201, 201 and 203 of the Labor Code, Vox is liable for civil penalties pursuant to California Labor Code §§ 203, 256, and 2698 *et seq.*

Unlawful Failure to Pay All Wages Owed Twice Each Calendar Month

Vox has violated California Labor Code § 204 because it failed to pay all wages owed, including minimum wages, overtime wages, and wages for missed meal and rest periods, twice each calendar month. Labor Code § 204(a) requires that employers pay “*all wages* [. . .] twice

during each calendar month on days designated in advance by the employer as the regular paydays” (emphasis added). Vox pays Content Contributors a stipend only once per month.

As a result of its violations of Labor Code § 204, Vox is liable for civil penalties pursuant to Labor Code §§ 204, 210, 1197.1, and 2698 *et seq.*

Unlawful Failure to Keep Accurate Payroll Records of Daily Hours Worked

Vox has violated Wage Order 4(7) and California Labor Code § 1174 because it failed to keep payroll records showing all hours worked, including regular hours worked, overtime hours worked, and meal periods taken. As a result of violations of the Wage Order and California Labor Code § 1174, Vox is liable for civil penalties pursuant to California Labor Code §§ 558, 1174.5 and 2698 *et seq.*

Pattern or Practice of Willful Misclassification of Content Contributors as Independent Contractors

Vox has violated Labor Code § 226.8 by willfully misclassifying Content Contributors as independent contractors instead of employees. As described above, Vox exercised significant control over Content Contributors. 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). 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 Vox’s business. Content Contributors do not create and edit content for their own independent businesses, but create content solely for SB Nation team sites.

Vox is aware that Content Contributors, and particularly Site Managers, are misclassified as independent contractors. On September 1, 2017, Jennings Sigmond, P.C. filed a complaint in federal district court in the District of Columbia on behalf of Site Managers who were misclassified as independent contractors for violations of the federal Fair Labor Standards Act, *Bradley v. Vox Media, Inc.*, No. 17-cv-01791 (RMC) (D.D.C.). On September 4, 2018, the district court denied Vox’s motion to dismiss the portion of the plaintiffs’ claims on the basis that Vox’s violations were not “willful.”

Additionally, three high-level Vox employees were previously employed by AOL when AOL was sued by plaintiffs alleging that they were similarly misclassified as independent contractors in *Hallissey v. America Online, Inc.*, No. 99-civ-3785 (S.D.N.Y.). The plaintiffs in *Hallissey* were also responsible for creating and editing online content, moderating online community interaction, and assisting other content creators. After a motion to dismiss and certification of the collective action, *Hallissey* settled in 2010 for \$15 million. These AOL employees, Chief Executive Officer James Bankoff, President Marty Moe, and General Counsel and Chief Legal Officer Lauren Fisher, were aware that Content Contributors were illegally classified as independent contractors.

-6-

September 21, 2018

As a result of its willful misclassification of Content Contributors as independent contractors, Vox is liable for civil penalties pursuant to Labor Code §§226.8 and 2698 *et seq.*

Conclusion

Vox has violated and continues to violate California wage and hour laws. Ms. Spruill requests the agency investigate the above allegations, or to notify her if the agency does not intend to investigate these violations so that she may include the violations discussed in this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Ginger L. Grimes". The signature is fluid and cursive, with a long horizontal stroke at the end.

Ginger L. Grimes

Attachment

Cc: Vox Media, Inc.
1201 Connecticut Ave., 11th Floor
Washington, DC 20036

CSC – Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150 N
Sacramento, CA 95833

EXHIBIT A

ENDORSED
FILED
ALAMEDA COUNTY
SEP 21 2018

CLERK OF THE SUPERIOR COURT:
By Lanetta Buffin, Deputy

1 David Borgen (SBN 099354)
dborgen@gbdhlegal.com
2 Laura L. Ho (SBN 173179)
lho@gbdhlegal.com
3 Ginger L. Grimes (SBN 307168)
ggrimes@gbdhlegal.com
4 GOLDSTEIN, BORGEN, DARDARIAN & HO
300 Lakeside Drive, Suite 1000
5 Oakland, CA 94612
Tel: (510) 763-9800
6 Fax: (510) 835-1417

7 Marc L. Gelman (PA Bar No. 78,857)*
mgelman@jslex.com
8 Maureen W. Marra (PA Bar No. 309,865)*
mmarra@jslex.com
9 James E. Goodley (PA Bar No. 315,331)*
jgoodley@jslex.com
10 Ryan P. McCarthy (PA Bar No. 323,125)*
rmccarthy@jslex.com
11 JENNINGS SIGMOND, P.C.
1835 Market Street, Suite 2800
12 Philadelphia, PA 19103
Tel: (215) 922-6700
13 Fax: (215) 922-3524

14 **pro hac vice applications to be filed*

15 Attorneys for Plaintiff and the Putative Class

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **COUNTY OF ALAMEDA** *HA*

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

19 Plaintiff,

20 vs.

21 VOX MEDIA, INC., a Delaware corporation (d.b.a.
22 SB NATION); and DOES 1 to 10 inclusive,

23 Defendants.

Case No.: - 18921742

CLASS ACTION

COMPLAINT

DEMAND FOR JURY TRIAL

- (1) Failure to Pay Minimum Wages under the Cal. Lab. Code and Wage Order 4;
- (2) Failure to Pay Overtime Wages under the Cal. Lab. Code and Wage Order 4;
- (3) Failure to Provide Meal Periods under the Cal. Lab. Code and Wage Order 4;
- (4) Failure to Provide Rest Periods under the Cal. Lab. Code and Wage Order 4;
- (5) Failure to Furnish Accurate Wage Statements under the Cal. Lab. Code and Wage Order 4;
- (6) Failure to Reimburse Business Expenses under the Cal. Lab. Code; and
- (7) California Unfair Competition Law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION

1. Plaintiff Tamryn Spruill brings this class action against Defendant Vox Media, Inc., (“Defendant” or “Vox”) on behalf of herself 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 Plaintiff 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, Plaintiff alleges 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

1 computers, smart phones, and internet access for work-related tasks, as well as expenses related to
2 watching the games Content Contributors were expected to write about (Cal. Labor Code § 2802); and
3 (6) are entitled to restitution and injunctive relief under the Unfair Competition Law (“UCL”) (Cal.
4 Bus. & Prof. Code §§ 17200 *et seq.*).

5 4. Because Defendant has willfully deprived Plaintiff and similarly situated Content
6 Creators of the rights and protections California law guarantees to employees, Defendant’s
7 classification of Content Creators as “independent contractors” is part of ongoing unfair/unlawful
8 business practices by Defendant.

9 **II. THE PARTIES**

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

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

18 7. The true names and capacities, whether individual, corporate, associates, or otherwise
19 of Defendants sued as DOES ONE through TEN, inclusive, are currently unknown to Plaintiff, who
20 therefore sues such Defendants by fictitious names under Code of Civil Procedure section 474.
21 Plaintiff is informed and believes that each DOE Defendant is legally responsible in some manner for
22 the unlawful acts alleged. Plaintiff will seek leave of court to amend this Complaint to reflect the
23 names and capacities of the Defendants designated as DOES when such identities become known.

24 **III. JURISDICTION AND VENUE**

25 8. This Court has jurisdiction over Plaintiff’s and Class Members’ claims under Labor
26 Code §§ 226, 226.3, 226.7, 512, 1182.12, 1194, 1197, 1197.1, 2802, Business & Professions Code §§
27 17200, *et seq.*, and Wage Order 4.
28

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

4 14. Content Contributors are required to create and/or edit certain numbers of posts per
5 week. The Blogger Agreements some Content Contributors were required to sign often memorialized
6 Defendant's expectation for the number of blog posts per week the Content Contributor was expected
7 to create and/or edit.

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

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

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

24 18. Defendant does not hire Content Contributors for their unique set of skills. Defendant
25 does not require, for example, a college degree or prior experience in journalism. Defendant's job
26 posting for a contributor position on a professional basketball team site lists an applicant's minimum
27 qualifications as including that the applicant is "a huge fan of basketball," has "strong opinions on
28

1 [the] team” and takes “genuine pride in [their] writing.” Applicants must also “be able to write
2 complete sentences.”

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

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

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

12 21. Plaintiff, for example, worked an average of twenty to twenty-five hours a week during
13 the NBA regular season, and was paid a stipend of only \$200 per month—an average of \$2.00 to \$2.50
14 per hour. Given the number of hours Content Contributors work for Defendant every month, this
15 monthly stipend is frequently, if not always, under the minimum wage required by California law.

16 22. According to recent reporting from Deadspin, some Content Contributors have
17 agreements to write a minimum of two posts per week for a \$25 per month stipend, which totals about
18 \$3.13 per blog, or even less under an hourly rate.²

19 **C. Defendant Does Not Pay Content Contributors Overtime Wages.**

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

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

25
26
27 ² See Laura Wagner, *SB Nation Is Paying Workers As Little As \$3 Per Blog Post*, Deadspin (July 31,
28 2018), <https://deadspin.com/sb-nation-is-paying-workers-as-little-as-3-per-blog-po-1827998745> (last
accessed Sept. 28, 2018).

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

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

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

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

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

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

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

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

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

25 31. Content Contributors are required to watch sports live or on television so that they may
26 write or create video content about games or matches. Defendant does not reimburse Content
27 Contributors for the costs of attending, watching, or traveling to these sporting events.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

V. CLASS ACTION ALLEGATIONS

32. Plaintiff seeks to proceed as a class action pursuant to California Code of Civil Procedure § 382 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 within the four years prior to the filing of the Complaint in this action, were classified as independent contractors, and were paid compensation directly from Vox, excluding Site Managers who opt-in to *Bradley v. Vox Media, Inc.*, No. 1:17-cv-01791 (D.D.C.).

33. 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 forty Content Contributors in California within the last four years.

34. Among the proposed class, there is a well-defined community of interest in the questions of law and/or fact involved. 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 was required to issue Class Members wage statements with certain required information;
- d. Whether Defendant is required to reimburse Class Members for a portion of their home internet, personal computer, and personal smart phone expenses; and
- e. Whether Defendant’s Labor Code and Wage Order violations serve as predicate violations of the UCL.

35. Common questions of law and/or fact predominate over questions that affect only individual Class Members. Plaintiff’s claims are typical of those belonging to members of the Class, and Plaintiff can adequately represent the Class.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FIRST CAUSE OF ACTION
Minimum Wage Violation
[Cal. Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1,
Wage Order 4; Minimum Wage Order]

36. Plaintiff, 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.

37. California Labor Code §§ 1194, 1197, 1197.1 and Wage Order 4 entitle employees to an amount equal to or greater than the minimum wage for all hours worked.

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

39. As a result of Defendant’s failure to Plaintiff and Class Members the legal minimum wage, Plaintiff 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]

40. Plaintiff, 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.

41. 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.

42. While misclassified as independent contractors, Plaintiff 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 Plaintiff and Class Members the proper overtime compensation.

43. 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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

44. Plaintiff, 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.

45. 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.”

46. 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.”

47. 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.

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

49. As a result of Defendant’s willful and unlawful failure to provide meal periods to Plaintiff and Class Members and Defendant’s failure to pay an hour of premium pay for each missed meal period, Plaintiff 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]

1
2
3 50. Plaintiff, on behalf of herself and all Class Members, re-alleges and incorporates by
4 reference the allegations contained in the paragraphs above as if fully set forth here.

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

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

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

19 54. As a result of Defendant’s willful and unlawful failure to provide rest periods to all
20 Class Members and Defendant’s failure to pay an hour of premium pay at the regular rate for each day
21 a rest period was not provided, Plaintiff and Class Members are entitled to recover one hour of pay at
22 their regular rate of compensation for each workday that a rest period was not provided, plus interest,
23 attorney’s fees, and costs, as well as further relief as described below
24
25
26
27
28

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

1
2
3 55. Plaintiff, on behalf of herself and all Class Members, re-alleges and incorporates by
4 reference the allegations contained in the paragraphs above as if fully set forth here.

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

11 57. Wage Order 4 requires employers to provide, at the time of each payment of wages, “an
12 itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for
13 which the employee is paid; (3) the name of the employee or the employee’s social security number;
14 and (4) the name of the employer.”

15 58. Defendant willfully failed to furnish Plaintiff and Class Members, upon each payment
16 of compensation, itemized wage statements.

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

20 60. California Labor Code § 226(e)(1) provides that an employee suffering injury as a result
21 of a knowing and intentional failure by an employer to provide accurate itemized wage statements is
22 entitled to recover the greater of all actual damages suffered or fifty dollars (\$50) for the initial
23 violation and one hundred dollars (\$100) for each subsequent violation, up to four thousand dollars
24 (\$4,000). Pursuant to California Labor Code § 226(h), Plaintiff and Class Members are entitled to
25 injunctive relief to ensure Defendant’s compliance with California Labor Code § 226.

26 61. Plaintiff and Class Members are entitled to an award of costs and reasonable attorneys’
27 fees under California Labor Code § 226(h), as well as further relief as described below.
28

1 mandated meal and rest periods, failing to furnish accurate itemized wage statements, and failing to
2 indemnify Content Contributors for business expenses in violation of California law.

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

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff respectfully requests this Court to grant the following relief against
7 Defendant as follows:

8 A. Certify this action as a class action pursuant to California Code of Civil Procedure §
9 382 for Class Members, and appoint Plaintiff as Class Representative and her attorneys as Class
10 Counsel;

11 B. Direct class notice to all Class Members;

12 C. Declare that Defendant misclassified all Class Members as independent contractors;

13 D. Award minimum wages and liquidated damages to Plaintiff and Class Members;

14 E. Award overtime wages to Plaintiff and Class Members;

15 F. Award compensation for Defendant's failure to provide meal periods and rest periods;

16 G. Award damages for Defendant's failure to provide accurate itemized wage statements;

17 H. Award damages for Defendant's failure to reimburse necessary business expenses;

18 I. Award pre-judgment and post-judgment interest;

19 J. Order Defendant to make restitution to Plaintiff and other Class Members due to its
20 unlawful and/or unfair business practices, including interest;

21 K. Enjoin Defendant from violating California law;

22 L. Award costs and expenses of this action;

23 M. Award reasonable attorneys' fees; and

24 N. Award such other relief as this Court deems just and proper.
25
26
27
28

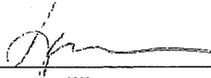
JURY TRIAL DEMANDED

Plaintiff demands a trial by jury on claims so triable.

Dated: September 21, 2018

Respectfully submitted,

GOLDSTEIN, BORGEN, DARDARIAN & HO

Laura L. Ho

Attorneys for Plaintiff and the Putative Class

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

0699 5626 0000 0720 9707

**U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only**

For delivery information, visit our website at www.usps.com®

OFFICIAL USE

Certified Mail Fee \$ 3.45

Extra Services & Fees (check box, add fee as appropriate)

Return Receipt (hardcopy) \$ 2.75

Return Receipt (electronic) \$ 2.75

Certified Mail Restricted Delivery \$ _____

Adult Signature Required \$ _____

Adult Signature Restricted Delivery \$ _____

Postage \$ 1.63

Total Postage and Fees \$ 7.83

Sent To VOX Media, Inc. (086)

Street and Apt. No., or PO Box No. 1201 Connecticut Ave., 11th Fl

City, State, Zip+4® Washington, DC 20036

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

Postmark
Here

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
VOX Media, Inc.
1201 Connecticut Ave.
11th Floor
Washington, DC
20036

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? Yes No
If YES, enter delivery address below:

3. Service Type

Certified Mail® Priority Mail Express™

Registered Return Receipt for Merchandise

Insured Mail Collect on Delivery

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number
(Transfer from service label)

7036 2710 0000 9295 6630

Domestic Return Receipt

PS Form 3811, July 2013

Quality Park Item #R2011
 Treated with an antimicrobial agent to protect the envelope
 from the growth of bacteria, mold, mildew, fungus and odors
 Licensed by Silverco

QUALITY PARK
 Item # R2011



**U.S. Postal Service™
 CERTIFIED MAIL® RECEIPT**
 Domestic Mail Only

For delivery information, visit our website at www.usps.com

OFFICIAL USE

Certified Mail Fee \$ B.45

Extra Services & Fees (check box, add fee as appropriate)

Return Receipt (hardcopy) \$ 2.75

Return Receipt (electronic) \$

Certified Mail Restricted Delivery \$

Adult Signature Required \$

Adult Signature Restricted Delivery \$

Postage \$ 1.63

Total Postage and Fees \$ 7.83

Sent to CSC Lawyers Incorp. Service

Street and Apt. No., or PO Box No. 2710 Gateway Oaks Dr. Ste 150N

City, State, ZIP+4® Sacramento CA 95833

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

2016 2710 0000 9295 6647

SENDER: COMPLETE THIS SECTION

1. Article Addressed to:

CSC - Lawyers
Incorporating Service
2710 Gateway Oaks Dr.
Suite 150N.
Sacramento, CA
95833

2. Article Number (Transfer from service label) 7016 2710 0000 9295 6647

PS Form 3811, July 2013 Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below:

3. Service Type Certified Mail® Priority Mail Express™
 Registered Return Receipt for Merchandise
 Insured Mail Collect on Delivery

4. Restricted Delivery? (Extra Fee) Yes No