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PACIFIC 2.1 ENTERTAINMENT GROUP, INC.;
7 MINIM PRODUCTIONS, INC.; and ABC
SIGNATURE STUDIOS, INC.

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

11 JEROME DIVINITY, PAUL SCHWANKE,
12 RYAN BASAKER, MICHAEL GRAHAM,
individually and on behalf of all others
13 similarly situated,

14 Plaintiffs,

15 vs.

16 PACIFIC 2.1 ENTERTAINMENT GROUP,
INC., a California corporation; MINIM
17 PRODUCTIONS, INC., and ABC
SIGNATURE STUDIOS, INC.,

18 Defendants.
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Case No. 20STCV32700

[Consolidated with Case Nos. 20STCV40597;
21STCV41363; and 22STCV00192]

Hon. Elihu M. Berle
Dept. 6

**DEFENDANTS' ANSWER TO
PLAINTIFFS' UNVERIFIED
CONSOLIDATED SECOND AMENDED
COMPLAINT**

Date Action Filed: August 27, 2020
FAC Filed: December 21, 2020
Trial Date: None

1 TO PLAINTIFFS JEROME DIVINITY, PAUL SCHWANKE, RYAN BASAKER, AND
2 MICHAEL GRAHAM, AND THEIR ATTORNEYS OF RECORD:

3
4 Defendants Pacific 2.1 Entertainment Group, Inc., Minim Productions, Inc., and
5 ABC Signature Studios, Inc. (collectively, "Defendants"), for themselves alone and no other
6 defendants, hereby answer the unverified consolidated second amended complaint in this action
7 (the "Complaint") of plaintiffs Jerome Divinity, Paul Schwanke, Ryan Basaker, and Michael
8 Graham (collectively, "Plaintiffs"), as follows:

9
10 1. Pursuant to Section 431.30(d) of the California Civil Procedure Code,
11 Defendants deny, generally and specifically, each and every allegation in Plaintiffs' Complaint.

12
13 2. Defendants further deny, generally and specifically, that Plaintiffs, and the
14 class and group of alleged aggrieved employees they seek to represent, are entitled to the relief
15 requested, or that Plaintiffs, and the class and group of alleged aggrieved employees they seek to
16 represent, have been or will be damaged in any sum, or at all, by reason of any act or omission on
17 the part of Defendants, or any of their past or present agents, representatives, or employees.

18
19 Without admitting any facts alleged by Plaintiffs, Defendants also plead the
20 following separate and affirmative defenses to the Complaint:

21
22 **AFFIRMATIVE DEFENSES**

23
24 **FIRST SEPARATE AND AFFIRMATIVE DEFENSE**

25 1. Plaintiffs and the members of the class or group of alleged aggrieved
26 employees they seek to represent, the existence of which is expressly denied, waived the right, if
27
28

1 any, to pursue the Complaint, and each purported cause of action therein, by reason of their own
2 actions and course of conduct.

3
4 SECOND SEPARATE AND AFFIRMATIVE DEFENSE

5 2. Plaintiffs and the members of the class or group of alleged aggrieved
6 employees they seek to represent, the existence of which is expressly denied, are estopped from
7 pursuing the Complaint, and each purported cause of action therein, by reason of their own
8 actions and course of conduct.

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10 THIRD SEPARATE AND AFFIRMATIVE DEFENSE

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12 3. The Complaint, and each purported cause of action contained therein, is
13 barred, in whole or in part, by all applicable statutes of limitation, including but not limited to
14 California Civil Procedure Code sections 337, 338, 339 and 340(a); California Labor Code
15 sections 200, *et seq.*; California Business and Professions Code section 17208; and 29 U.S.C.
16 section 255(a).

17
18 FOURTH SEPARATE AND AFFIRMATIVE DEFENSE

19 4. Because the Complaint alleges a deprivation of rights provided under the
20 collective bargaining agreement (“CBA”) that applied to the employment of either Plaintiffs or
21 members of the class or group of alleged aggrieved employees they seek to represent, the
22 existence of which is expressly denied, and/or the adjudication of such claims involves the
23 interpretation or application of the CBA, the claims are preempted by section 301 of the Labor
24 Management Relations Act, 29 U.S.C. section 185(a).

1 FIFTH SEPARATE AND AFFIRMATIVE DEFENSE

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3 5. The Complaint and each purported cause of action contained therein is
4 preempted and barred in that Plaintiffs and/or members of the class or group of alleged aggrieved
5 employees they seek to represent, the existence of which is expressly denied, failed to exhaust the
6 exclusive grievance and arbitration procedure under the CBA that applies or applied to Plaintiffs
7 and/or members of the class or group of alleged aggrieved employees for the claims asserted by
8 them or on behalf of others.

9
10 SIXTH SEPARATE AND AFFIRMATIVE DEFENSE

11 6. The Complaint, and each purported cause of action contained therein, is not
12 proper for treatment as a class action or representative action because, among other reasons: (a)
13 Plaintiffs are inadequate representatives of the purported class, (b) Plaintiffs cannot establish
14 commonality of claims, (c) Plaintiffs cannot establish typicality of claims, (d) the individualized
15 nature of their claims make class treatment inappropriate, (e) any trial on a class or representative
16 action basis would be unmanageable, (f) the interests of certain members of the putative class are
17 in conflict with the interests of the other members of the putative class, and (g) Plaintiffs cannot
18 establish that class or representative treatment of the claims alleged in the Complaint is superior
19 to other methods of adjudicating the controversy.

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21 SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE

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23 7. Plaintiffs' requests for class certification and representative action
24 treatment should be denied because liability, if any, to each member of the proposed class and/or
25 group of alleged aggrieved employees may not be determined by a single fact finder or on a class-
26 wide or group-wide basis, and therefore allowing this action to proceed as a class action or
27 representative action would violate Defendants' rights to due process and trial by jury.
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1 EIGHTH SEPARATE AND AFFIRMATIVE DEFENSE

2 8. The first and twelfth causes of action for failure of Defendants to pay
3 timely wages owed during employment and upon termination is barred, in whole or in part,
4 because any failure by Defendants to pay any wages due by a certain time was based on a good-
5 faith belief and/or dispute that no additional wages were owed and no penalties are appropriate
6 under any Labor Code or other statutory or regulatory provision
7

8 NINTH SEPARATE AND AFFIRMATIVE DEFENSE

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10 9. The second cause of action for damages and/or penalties for the alleged
11 failure to provide accurate wage statements is barred on the grounds that there was no “knowing
12 and intentional failure” on Defendants’ part to provide proper itemized earnings statements.
13

14 TENTH SEPARATE AND AFFIRMATIVE DEFENSE

15 10. The second cause of action for damages and/or penalties for the alleged
16 failure to provide accurate wage statements is barred on the grounds that neither Plaintiffs nor
17 members of the class or group of alleged aggrieved employees they seek to represent, the
18 existence of which is expressly denied, suffered injury as a result of any alleged violation of
19 California Labor Code section 226.
20

21 ELEVENTH SEPARATE AND AFFIRMATIVE DEFENSE

22
23 11. The third cause of action of the Complaint for the alleged failure to
24 provide required meal periods is barred against Defendants because Plaintiffs and members of the
25 class and group of alleged aggrieved employees they seek to represent, the existence of which is
26 expressly denied, were provided the opportunity to take required meal periods in accordance with
27 applicable provisions of the Labor Code and wage order.
28

1 TWELFTH SEPARATE AND AFFIRMATIVE DEFENSE

2 12. The third cause of action for the alleged failure to provide required meal
3 periods is barred against Defendants because Plaintiffs and members of the class or group of
4 alleged aggrieved employees they seek to represent, the existence of which is expressly denied,
5 voluntarily waived or chose not to take any and all meal periods that they did not take or that did
6 not comply with applicable provisions of the Labor Code and wage order.
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8 THIRTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

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10 13. The fourth cause of action of the Complaint for the alleged failure to
11 authorize and permit required rest periods is barred against Defendants because Plaintiffs and
12 members of the class or group of alleged aggrieved employees they seek to represent, the
13 existence of which is expressly denied, were authorized and permitted to take required rest breaks
14 in accordance with applicable provisions of the Labor Code and wage order.
15

16 FOURTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

17 14. The fourth cause of action for the alleged failure to authorize and permit
18 required rest periods is barred against Defendants because Plaintiffs and members of the class or
19 group of alleged aggrieved employees they seek to represent, the existence of which is expressly
20 denied, chose not to take any and all rest periods that they did not take or that did not comply with
21 applicable provisions of the Labor Code and wage order.
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23 FIFTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

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25 15. The fifth and sixth causes of action for the alleged failure to pay wages,
26 including minimum and overtime wages, are barred, in whole or in part, because Plaintiffs and
27 members of the class or group of alleged aggrieved employees they seek to represent, the
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1 existence of which is expressly denied, were paid for all compensable working time in accordance
2 with applicable law.

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4 SIXTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

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6 16. The fifth and sixth causes of action for the alleged failure to pay wages,
7 including minimum and overtime wages, are barred, in whole or in part, because some or all of
8 the disputed working time for which Plaintiffs and members of the class or group of alleged
9 aggrieved employees they seek to represent, the existence of which is expressly denied, claim to
10 be owed wages is not compensable pursuant to the de minimis doctrine.

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12 SEVENTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

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14 17. The fifth and sixth causes of action for the alleged failure to pay wages,
15 including minimum and overtime wages, are barred, in whole or in part, because Defendants did
16 not suffer or permit the work to be done and did not have actual or constructive knowledge that
17 any unpaid work was performed.

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19 EIGHTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

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21 18. The seventh cause of action for failure to indemnify employees under
22 California Labor Code section 2802 is barred because Plaintiffs cannot show that any of the
23 expenditures and/or losses sought by them or members of the class of persons they seek to
24 represent, the existence of which is expressly denied, were necessary or incurred as a direct
25 consequence of the discharge of his or their duties.
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NINETEENTH SEPARATE AND AFFIRMATIVE DEFENSE

19. The seventh cause of action for failure to indemnify employees under California Labor Code section 2802 is barred because Defendants already paid or reimbursed any expenses incurred and which are reimbursable under that law.

TWENTIETH SEPARATE AND AFFIRMATIVE DEFENSE

20. To the extent there was a failure to provide requested documents pursuant to Labor Code sections 226(b) and/or 1198.5, no penalty should be imposed under the eighth and/or ninth causes of action because such failure was inadvertent, and was not knowing and intentional.

TWENTY-FIRST SEPARATE AND AFFIRMATIVE DEFENSE

21. The tenth cause of action for alleged unfair business practices is barred because (a) California law regarding the conduct in question is too vague to permit the imposition of penalty damages; and (b) restitution damages under California Business and Professions Code sections 17200, *et seq.* deny due process, impinge upon procedural and substantive due process rights, and violate the United States Constitution.

TWENTY-SECOND SEPARATE AND AFFIRMATIVE DEFENSE

22. The tenth cause of action for unfair business practices is barred because Plaintiffs can show neither (1) an injury to competition, the existence of which Defendants expressly deny, as distinguished from injury to themselves; nor (2) a deception upon the public.

1 TWENTY-THIRD SEPARATE AND AFFIRMATIVE DEFENSE

2 23. Plaintiffs' tenth cause of action for unfair business practices is barred
3 because Plaintiffs have adequate remedies at law for the alleged violations, and the requirements
4 for equitable relief have not been met.
5

6 TWENTY-FOURTH SEPARATE AND AFFIRMATIVE DEFENSE

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8 24. The tenth cause of action for alleged unfair competition is barred because
9 Plaintiffs are not seeking recovery of a quantifiable sum.
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11 TWENTY-FIFTH SEPARATE AND AFFIRMATIVE DEFENSE

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13 25. Plaintiffs' eleventh cause of action for penalties under the California
14 Private Attorneys' General Act ("PAGA") is barred because Plaintiffs are not aggrieved
15 employees.
16

17 TWENTY-SIXTH SEPARATE AND AFFIRMATIVE DEFENSE

18 26. Any award of civil penalties that otherwise could be made under PAGA
19 must not be made, or must be made in a lesser amount, pursuant to California Labor Code
20 section 2699(e)(2).
21

22 TWENTY-SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE

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24 27. If Plaintiffs or members of the class and group of alleged aggrieved
25 employees they seek to represent sustained any loss, injury, damage or detriment as alleged in the
26 Complaint, the loss, injury, damage, or detriment was caused or contributed to by their actions in
27 that they did not exercise ordinary care on their own behalf, and in the performance of their
28 employment at the times and places alleged in the Complaint, and their own actions and

1 omissions proximately caused and contributed to the loss, injury, damage or detriment alleged in
2 the Complaint, and their recovery from Defendants, if any, should be reduced in proportion to the
3 percentage of their negligence or in proportion to their fault.

4
5 WHEREFORE, Defendants pray for judgment as follows:

- 6
- 7 1. That class certification and representative action status be denied;
- 8
- 9 2. That Plaintiffs take nothing by reason of his Complaint, that the Complaint
10 be dismissed in its entirety with prejudice, and that judgment be entered for Defendants;
- 11
- 12 3. That Defendants be awarded its reasonable costs and attorneys' fees,
13 including pursuant to California Labor Code section 218.5; and
- 14
- 15 4. That Defendants be awarded such other and further relief as the Court
16 deems just and proper.
- 17

18 DATED: February 23, 2023

PAUL HASTINGS LLP

19 

20 By: _____

BLAKE R. BERTAGNA

21
22 Attorneys for Defendants
23 PACIFIC 2.1 ENTERTAINMENT GROUP,
24 INC.; MINIM PRODUCTIONS, INC.; and
25 ABC SIGNATURE STUDIOS, INC.
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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss:
CITY OF COSTA MESA AND COUNTY OF)
ORANGE)

I am employed in the City of Costa Mesa and County of Orange, State of California. I am over the age of 18, and not a party to the within action. My business address is 695 Town Center Drive, Seventeenth Floor, Costa Mesa, California 92626-1924.

On February 23, 2023, I served the foregoing document(s) described as:

**DEFENDANTS' ANSWER TO PLAINTIFFS' UNVERIFIED CONSOLIDATED
SECOND AMENDED COMPLAINT**

on the interested parties by placing a true and correct copy thereof in a sealed envelope(s) addressed as follows:

Alan Harris, Esq.
David Garrett, Esq.
Min Ji Gal, Esq.
HARRIS & RUBLE
655 North Central Avenue, 17th Floor
Glendale, CA 91203

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Attorneys for Plaintiffs *Jerome Divinity,*
Paul Schwanke, Ryan Basaker, Michael
Graham



VIA CASE ANYWHERE:

Based on a court order, I caused a true and correct copy of the document(s) listed above to be served through Case Anywhere to the parties at the email address(es) set forth above.



VIA U.S. MAIL:

I deposited such sealed envelope(s) with postage thereon fully prepaid, in the United States mail at Costa Mesa, California.

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

Executed on February 23, 2023, at Costa Mesa, California.

Winty Thoumaked

Winty Thoumaked