IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

KELSEY BRENNAN; KYLE COLEMAN; CARYN FRANKENFIELD; FRANK GALLINE; JOHN A. JOHNSTON; DAWN SNYDER; FREDERICK WAFF; CORY GERYAK; SARA RINEY; Individually and on Behalf of Similarly Situated Individuals, **Plaintiffs,** **v.** **SUMMER WWK LLC, HL WOODS, also known as HOWARD WOODS, and CHERELLE GEORGE,** **Defendants.**	**CIVIL ACTION FILE** **NO. 1:21-CV-0423-MHC**

ORDER

This collective action lawsuit comes before the Court on Defendant Cherelle George's Motion for Summary Judgment as to Plaintiffs' Claims Against George ("Def. George's Mot.") [Doc. 120] and Motion for Summary Judgment as to Liability on her Crossclaims Against Defendant HL Woods ("George's Crosscl. Mot.") [Doc. 121], Plaintiffs' Motion for Summary Judgment Against Summer WWK LLC, HL Woods, and Cherelle George ("Pls.' Mot.") [Doc. 122], and

Defendant HL Woods's Motion for Summary Judgment as to All Plaintiffs ("Woods's Mot.") [Doc. 123].

I. BACKGROUND[1]

A. Factual Background

1. HL Woods

Woods is a former loan officer and branch manager for various financial institutions in Michigan who owns several limited liability companies ("LLCs") related to film production, consulting, and "fix[ing] and flip[ping] properties."

[1] At the outset, the Court notes that, as this case is before it on the parties' cross-motions for summary judgment, the Court views the evidence presented by the parties in the light most favorable to the non-movant and has drawn all justifiable inferences in favor of the non-movant with respect to each motion. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986); Sunbeam TV Corp. v. Nielsen Media Rsch., Inc., 711 F.3d 1264, 1270 (11th Cir. 2013). The Court has excluded assertions of facts that are immaterial or presented as arguments or legal conclusions or any fact not supported by citation to evidence (including page or paragraph number). L.R. 56.1B(1), NDGa. The Court also accepts as admitted those facts contained in Plaintiffs' Statement of Undisputed Material Facts ("Pls.' SUMF") [Doc. 122-2], George's Statement of Undisputed Material Facts in Support of Her Motion for Summary Judgment as to Plaintiff's Claims ("Def. George's SUMF") [Doc. 120-2], George's Statement of Undisputed Material Facts in Support of Her Motion for Summary Judgment as to Her Crossclaims ("George's Crosscl. SUMF") [Doc. 121-2], and Woods's Statement of Undisputed Material Facts ("Woods's SUMF") [Doc. 123-1], which have not been controverted. See LR 56.1B(2), NDGa.; Pls.' Resp. to George's SUMF [Doc. 137-1]; Pls.' Resp. to Woods's SUMF [Doc. 138-1]; George's Resp. to Pls.' SUMF [Doc. 141-1]; Woods's Am. Resp. to Pls.' SUMF [Doc. 148]; Woods's Am. Resp. to George's SUMF [Doc. 149].

Dep. Tr. of Howard Woods (Mar. 30, 2023) ("Woods Dep.") [Doc. 130-3] at 30, 55-58. Woods began his foray into film production when he formed an LLC called "3rd Base Film Group" ("3rd Base") in the State of California in 2017. Woods's Am. Resp. to Pls.' SUMF ¶¶ 15-17; Woods Dep. at 84-85.

2. Cherelle George

George testified that she has worked in the entertainment industry for over twenty years, and that she has worked as a unit production manager ("UPM") or line producer on around eight or ten projects. George's Resp. to Pls.' SUMF ¶ 21; Dep. Tr. of Cherelle George, Vol. I (Feb. 22, 2023) ("George Dep. I") [Doc. 130-1] at 29-30. George testified that the UPM and line producer is responsible for preparing budgets, laying out logistics for the producer, and "moving everything forward on a timely manner." George's Resp. to Pls.' SUMF ¶ 22; George Dep. I at 31. The line producer also works with the producer during the development stage to "figure out the start dates based off of" the guidance provided by the producer. George Dep. I at 31-32.

3. The Beginning Stages of Production

Woods connected on LinkedIn with Gloria Morrison and Rocky Yost, co-writers of the script for "Summer When We Were Kings" (the "Film"), which is a fictional family story about baseball. Woods's Am. Resp. to Pls.' SUMF

¶¶ 24-25, 110; Woods's Am. Resp. to George's SUMF ¶ 2; Woods Dep. at 207-208. On or around July 15, 2020, Woods, on behalf of 3rd Base, entered into a purchase agreement with Yost for the Film. Woods's Am. Resp. to Pls.' SUMF ¶¶ 26; Woods Dep. at 210-11. Woods then organized Summer WWK LLC ("Summer WWK") in the State of California on August 4, 2020, "to be the production company" for the Film. Woods's Am. Resp. to Pls.' SUMF ¶ 31. Woods testified that he was the sole manager and member of Summer WWK and 3rd Base. Woods Dep. at 115, 299.

Pursuant to the purchase agreement between 3rd Base and Yost, Woods was to pay Yost $7,500 "immediately upon execution of the agreement, and $67,500 on the first day of principal photography (i.e., filming)." Woods's Am. Resp. to Pls.' SUMF ¶ 28. The agreement also provided that the remaining payment was due no later than December 1, 2020. Script Purchase Agreement [Doc. 124-1 at 4-12] at 1. Woods did not pay Yost the initial $7,500 until August 27, 2020, when Enika Whitmon, who Woods testified was a "friend" and "associate" who "works for [him] sometimes," sent the funds via a wire transfer. Woods's Am. Resp. to Pls.' SUMF ¶¶ 29-30; Woods Dep. at 212, 214-15.[2]

[2] The record is unclear as to where these funds originated. See Woods Dep. at 236-37.

Woods contacted George about working on the Film via a LinkedIn message on March 8, 2020, and represented to George that the Film had a $10 million budget. Woods Dep. at 276-77; Dep. Tr. of Cherelle George, Vol. II (Mar. 29, 2023) ("George Dep. II") [Doc. 130-2] at 84-85; LinkedIn Messages Between Woods and George [Doc. 133-2 at 36-37] at 2. George testified that Woods told her over the phone that "the writer was already locked in and his contract was done." George Dep. II at 87. Woods hired George as the UPM/line producer for the Film pursuant to an oral agreement,[3] and George began work on the Film in March 2020. Woods Dep. at 302-03; George Dep. I at 42-43. As part of her duties, George created a "detailed proposed budget" for Woods's approval, which included the salaries of George and the expected salaries of crew members to be hired. Woods's Am. Resp. to George's SUMF ¶¶ 9-10; Pls.' Resp. to George's SUMF ¶ 9. On March 15, 2020, Woods responded to an email sent by George to Morrison and Woods asking about the budget, instructing George to "talk about fees with me and only me!!" Woods's Am. Resp. to Pls.' SUMF ¶ 115.

[3] George testified that she was hired at an annual salary of $135,000. Though no formal contract was signed, her salary was contained in the budget for the Film, which Woods approved, and was noted in an email George sent to Woods for drafting the contract. See Email from George to Woods (June 9, 2020) [Doc. 121-4 at 41]; Budget (Sept. 21, 2020) [Doc. 125-1 at 15-110] at 18.

George also created a project outline and calendar for the Film's production schedule. Woods's Am. Resp. to George's SUMF ¶ 11.[4] George testified that she was directed to hire the crew and schedule the production to comport with Woods's wishes to shoot the Film before the "leaves started falling from the trees," even though there was no funding for the Film at that point. George Dep. I at 68. Woods also testified as follows:

> Q: Now there's a specific timeline in which you wanted to shoot this film; correct?
>
> A: Yes. Yeah, we did kind of nail it down. Yes, sir.
>
> Q: Okay. And you wanted to shoot it before the leaves changed; is that correct?
>
> A: Yes, because we had to stay within the timeframe when I had the option.
>
> Q: Okay. And then . . . when was that timeframe?
>
> A: Well, the option expired in December of 2020.

[4] The parties dispute the scope of Woods's authority in approving these decisions made by George. See, e.g., Woods Dep. at 232-33 ("[G]eorge was in charge of everything . . . I trusted her. She was very -- very knowledgeable."); George Dep. at 213 (testifying that Woods explained "the conversation chain and who makes the final say" about "[c]reative fees, fees, in regards to writers and directors, [and] above-the-line costs," which was Woods); id. at 213-14 (explaining that below-the-line costs for the production crew were "based off of union contracts for rates for crew members").

Woods Dep. at 292-93.

George located a production office in Atlanta to be used by the crew members. Woods's Am. Resp. to Pls.' SUMF ¶ 54. To secure the lease, the property owner required proof of funds "at least to cover . . . a month or two." Id. ¶ 55; George Dep. at 94-95. George testified that she informed Woods of the need for the proof of funds, and that Woods sent her a screenshot of a bank statement from CIBC Private Wealth Management showing a brokerage account under the name "Carolyn Maulten" with a balance of $3,156,450.34 in Canadian currency (CAD). George Dep. I at 95-96; CIBC Private Wealth Management Statement [Doc. 125-1 at 112]; George's Resp. to Pls.' SUMF ¶¶ 56-57. Woods denies this fact, based on a citation to his own testimony that he does not recall who Carolyn Maulten is, nor does he recall sending a screenshot of the brokerage account to anyone. Woods's Am. Resp. to Pls.' SUMF ¶¶ 56-57; Woods Dep. at 220. Even so, the parties agree that a lease agreement was signed for the production office in September 2020. Woods's Am. Resp. to Pls.' SUMF ¶ 59.

George began hiring "department heads," who were to be "responsible for leading the specific department - such as camera, costume and set decoration - on the film project." Id. ¶ 60; George's Resp. to Pls.' SUMF ¶ 60. George introduced Woods to several Plaintiffs, with whom George had worked on previous projects,

and recommended them for hire. George Dep. at 153; Dep. Tr. of Christopher Jack DeBenedetto (Apr. 19, 2022) ("DeBenedetto Dep.") [Doc. 127] at 13-14. Although George conducted all interviews, with Woods participating in "some," Woods had "final authority on all hiring decisions." Woods's Am. Resp. to Pls.' SUMF ¶¶ 62-63; George's Resp. to Pls.' SUMF ¶¶ 62-63; DeBenedetto Dep. at 15. Once hired, the department heads "filled in" the remainder of their creative departments. DeBenedetto Dep. at 44. Thus, Woods's involvement with hiring the crew became limited to seeing the crew list given to Woods every other period, showing a growing list of employees for the Film. George Dep. at 74-75; see also Email from George to Woods (Aug. 11, 2020) [Doc. 120-3 at 80] (asking Woods's permission to start the process of hiring crew members and asking if there were any changes to the schedule).[5]

4. The Plaintiffs

Between late August and early October, 2020, a number of individuals who are now Plaintiffs or Opt-In Plaintiffs worked on the Film. Plaintiffs' roles, rates of pay, and dates worked are as follows:

[5] The record shows that Woods was also included in emails sent by crew members with information about locations for shooting as early as August 27, 2020. See Emails from John A. Johnston, Department Head of Scouting Department, to Woods, George, and Crew [Doc. 120-3 at 43-44].

NAMED PLAINTIFFS[6]		
Plaintiff	**Rate of Pay**	**Dates Worked**
Kelsey Brennan, Graphic Designer	$45 per hour; $150 weekly kit rental, $50 weekly meal allowance	Sept. 21-26, 2020
Kyle Coleman, Art Department Leadman	$34 per hour; $400 weekly kit rental, $125 weekly car rental	Sept. 21-25, 2020
Caryn Frankenfield, Costume Supervisor	$2,800 per week; $100 weekly kit rental, $54 daily per diem	Sept. 14-25, 28, 2020
Frank Galline, Set Decorator	$3,400 per week; $250 weekly kit rental	Sept. 16-25, 2020
Cory Geryak, Director of Photography	$6,500 per week; $500 weekly kit rental, $60 daily per diem	Sept. 14 - Oct. 3, 2020
John Johnston, Location Manager	$4,000 per week; $150 weekly kit allowance, $250 weekly car allowance	Aug. 25 - Oct. 2, 2020
Sara Riney, Set Decoration Buyer	$35 per hour; $50 weekly kit rental	Sept. 21-25, 2020
Dawn Snyder, Art Director	$3,500 per week; $100 weekly kit rental, $50 weekly meal allowance	Sept. 14-25, 2020
Frederick Waff, Production Designer	$6,300 per week; $100 weekly kit rental, $385 weekly per diem	Sept. 7-26, 2020

[6] Decl. of Kelsey Brennan (June 28, 2023) ("Brennan Decl.") [Doc. 128-2 at 1-3] ¶¶ 2-5; Decl. of Kyle Coleman (June 28, 2023) ("Coleman Decl.") [Doc. 128-3 at 1-2] ¶¶ 2-5; Decl. of Caryn Frankenfield (June 28, 2023) ("Frankenfield Decl.") [Doc. 128-6 at 1-2] ¶¶ 2-5; Decl. of Frank Galline (July 27, 2023) ("Galline Decl.") [Doc. 128-7 at 1-3] ¶¶ 2-5; Decl. of Cory Geryak (June 27, 2023) ("Geryak Decl.") [Doc. 128-8 at 1-2] ¶¶ 2-5; Decl. of John Johnston (June 27, 2023) ("Johnston Decl.") [Doc. 128-9 at 1-3] ¶¶ 2-5; Decl. of Sara Riney (June 27, 2023) ("Riney Decl.") [Doc. 131-2 at 1-3] ¶¶ 2-5; Decl. of Dawn Snyder (June 27, 2023) ("Snyder Decl.") [Doc. 131-4 at 1-3] ¶¶ 2-5; Decl. of Fredrick "Freddy" Waff (June 28, 2023) ("Waff Decl.") [Doc. 131-7 at 1-3] ¶¶ 2-5.

OPT-IN PLAINTIFFS[7]		
Plaintiff	**Rate of Pay**	**Dates Worked**
Christine Bonnem, Location Scout	$500 per day; $300 weekly car/meal allowance	Aug. 31 - Sept. 4, Sept. 8-10, 14-18, 2020
Christopher DeBenedetto, First Assistant Director	$7,825 per week; $50 weekly kit rental, $420 weekly per diem	Sept. 14 - Oct. 2, 2020
Kathleen Denson, Set Decoration Buyer	$38 per hour	Sept. 21-25, 2020
David Mendez, Health & Safety Manager	$400 per day	Sept. 14-18, 21-25, 2020
Stephanie Postich, Assistant Prop Master	$34 per hour	Sept. 21-25, 2020
Walter Smith, Location Scout	$1,750 per week; $150 weekly car allowance	Aug. 24 - Sept. 25, 2020
Mark Spaziano, Set Dresser	$31.65 per hour	Sept. 21-25, 2020
Bryan Staerkel, Prop Master	$38 per hour; $500 weekly kit rental	Sept. 21-25, 2020
Joelle Zapotosky, Art Dept. Coordinator	$1,900 per week; $50 weekly kit allowance, $50 weekly meal allowance	Sept. 14-25, 2020

[7] Decl. of Christine Bonnem (June 28, 2023) ("Bonnem Decl.") [Doc. 128-1 at 1-3] ¶¶ 2-5; Decl. of Chris DeBenedetto (June 27, 2023) ("DeBenedetto Decl.") [Doc. 128-4 at 1-3] ¶¶ 2-5; Decl. of Kathleen Denson (June 28, 2023) ("Denson Decl.") [Doc. 128-5] ¶¶ 2-5; Decl. of David Mendez (June 27, 2023) ("Mendez Decl.") [Doc. 128-10 at 1-3] ¶¶ 2-5; Decl. of Stephanie Postich (June 29, 2023) ("Postich Decl.") [Doc. 131-1 at 1-3] ¶¶ 2-5; Decl. of Walter Smith (June 27, 2023) ("Smith Decl.") [Doc 131-3 at 1-3] ¶¶ 2-5; Decl. of Mark Spaziano (June 26, 2023) ("Spaziano Decl.") [Doc. 131-5 at 1-2] ¶¶ 2-5; Decl. of Bryan Staerkel (June 28, 2023) ("Staerkel Decl.") [Doc. 131-6 at 1-3] ¶¶ 2-5; Decl. of Joelle Zapotosky (June 27, 2023) ("Zapotosky Decl.") [Doc. 131-8 at 1-3] ¶¶ 2-5.

Cory Geryak was the only Plaintiff who memorialized his employment agreement in a writing, signed by Woods. Geryak Decl. ¶ 6; Geryak Employment Agreement [Doc. 128-8 at 4]. The remaining Plaintiffs began work pursuant to oral agreements with the understanding that "long-forms" or deal memos would be prepared by the production attorney. Woods's Am. Resp. to Pls.' SUMF ¶ 70; DeBenedetto Dep. at 25; Woods Dep. at 326. George testified that, typically, the production attorney or legal team "sends a production packet or, like, deal memos to use for crew." George Dep. I at 131-32. LinkedIn messages exchanged between one production attorney, Paul S. Levine, and George reveal that George requested long forms and deal memos for the crew members, but that Levine refused to begin work until he was paid. See LinkedIn Messages Between George and Levine [Doc. 133-2 at 40-78]. George also testified that she had a few interactions with Dinah Perez, another attorney for the Film, George Dep. I at 130, but the record shows that George never received the long forms from her, either. See Email From George to Mike Akins, Business Manager, International Alliance of Theatrical Stage Employees ("IATSE") (Oct. 19, 2020) [Doc. 133-2 at 13] ("Unfortunately, HL was dealing with legal on getting long forms done and the crew deal memo template sent over to me. This never happened.").

5. The Money Troubles

a. The "Business" Bank Account

Woods opened a business bank account with Chase Bank for Summer WWK with the help of Sue McGraw, who was the key accountant for the Film.[8] Woods Dep. at 238; George Dep. I at 52. This bank account was "to serve as the sole account from which payroll payments were to be made for crew members." Woods's Am. Resp. to Pls.' SUMF ¶ 105; Woods Dep. at 238. It was also the bank account into which the funds for the Film were to be deposited once secured. George Dep. I at 60. Woods received a debit card when he opened the account, and he testified that he made several deposits into the account, although he could not remember the purposes of the deposits. Woods Dep. at 239, 241-42; Woods's Am. Resp. to Pls.' SUMF ¶ 106. George and McGraw were listed as authorized

[8] George testified that McGraw was also responsible for collecting employee paperwork, including "[i]f anybody is due any funds, any fuel, any tow tickets." George Dep. at 234. George testified that she (George) also kept "most of the receipts." Id. at 235. McGraw also appears to have fielded the crew members' issues regarding payroll, as well as vendors' issues with nonpayment of invoices. See, e.g., Email from McGraw to Crew (Sept. 24, 2020) [Doc. 120-3 at 6] (explaining that there would be no paycheck and that "[w]e are waiting on our funds to drop"); Email from Frankenfield to George et al. (Oct. 14, 2020) [Doc. 120-4 at 14] (explaining to vendor that "the financier for this film has failed to provide the funding," and that "at this point, I think that it will need to be handled by Sue McGraw, and Cherelle George").

users on the account until Woods removed them in May 2021. Woods Dep. at 240-41. George testified that, although she had access to the account, she "didn't monitor it because that's not really [her] job." George Dep. I at 62. Although the Chase account was the sole bank account for Summer WWK, Woods testified that the only purchases made from the account were personal purchases made by Woods and his son, from October 2020 to the date of his deposition. Woods Dep. at 241-42; George Dep. I at 62-63 (noting that McGraw reported only "personal things running through that account, but no major funds," including purchases for storage and groceries); Woods's Am. Resp. to Pls.' SUMF ¶¶ 182-84; see also Chase Business Bank Account Statements [Doc. 124-1 at 98-227].

b. The Bond and the Investment

It is undisputed that Woods was the only person involved with raising or securing funds for the Film. Woods Dep. at 314; George Dep. I at 46 (testifying that Woods never identified the funding source to George). Woods testified that his only relationship with potential investors was with ACR Equities, and that he intended to receive full funding for the Film from them. Woods Dep. at 78; Woods's Am. Resp. to Pls.' SUMF ¶ 124. Woods informed George that the investor needed a completion bond and asked her to obtain a "letter from a bond company stating that they were going to bond" the Film. George Dep. I at 79.

> The purpose of a completion bond is to protect a film's investors. The bonding company monitors the spending on the project to ensure the project stays on budget. A film's investors transfer money to the bonding company to be held in escrow, and the bonding company releases the funds to the production in increments. If the project goes over budget, the bonding company is responsible for covering the overage. Before a completion bond is issued, the bonding company requires a payment of a contingency fee of approximately 10 percent of a film's overall budget to cover[] potential overages as well as a non-refundable fee of a few percentage points of the total budget.

Woods's Am. Resp. to Pls.' SUMF ¶ 119. In July 2020, George contacted Steve Mangel, with UniFi Completion Guarantors ("UniFi"), to begin the process of securing a bond. Emails between Mangel and George [Doc. 125-1 at 25-27]; George Dep. I at 78-79. George testified that she, Woods, and Mangel discussed opening the account where the funds from an investor would be placed. George Dep. I at 80. George further testified that Mangel was ready to move forward with providing the bond, but that Woods did not pay the contingency fee to UniFi, and the bond was never obtained for the Film. George Dep. II at 59-60. Woods's Am. Resp. to Pls.' SUMF ¶ 123.

Meanwhile, Woods was having trouble securing a "letter of distribution" (i.e., a commitment to distribute the Film) and, as a result, on September 4, 2020, George and Woods made the decision to hire two writers to rewrite the script. Woods Dep. at 181, 298; George Dep. I at 176-77. Woods, on behalf of Summer WWK, entered into a written contract with the writers, in which he agreed to pay

the writers $40,000 total for rewriting the script but, as of the date of his deposition, Woods had not paid the writers. Woods Dep. at 111, 181-82; see also Writing Team Deal Memo [Doc. 133-1 at 2]. The script was rewritten, but "nobody liked it"—no distributor would provide a letter of distribution. Woods Dep. at 111.

Woods also obtained an Escrow Agreement from ACR Equities [Doc. 124-1 at 84-94], which was never signed or formally entered into by Woods, wherein ACR Equities was to lend $15,500,000 to 3rd Base to fund the Film. Woods's Am. Resp. to Pls.' SUMF ¶ 126-27; Woods Dep. at 192. Under the Escrow Agreement, 3rd Base was required to deliver $253,000 to Alexander Alfano, attorney for ACR Equities, to be held in escrow (the "Escrow Funds"). Woods testified that, by September 29, 2020, he did not have the Escrow Funds "yet," but that "it was a phone call away for me to get the funds if I would have been able to pay the funds back, and I knew that I had an exit strategy in doing so in good conscience." Woods Dep. at 359. In other words, because no distributor would commit to distributing the Film (the exit strategy), Woods did not procure the

Escrow Funds, and the loan with ACR Equities was never closed. Woods's Am. Resp. to Pls.' SUMF ¶ 129-30, 132; Woods Dep. at 204.[9]

c. Purported Communications Concerning Funding

While Woods was attempting to secure funding for the Film, circumstances arose that required payment—invoices, crew members' travel, lodging, and per diems. McGraw "knew a lot of vendors" because of her experience in the entertainment industry; thus, vendors would "release things" on credit because they trusted her. George Dep. I at 170. Woods, aware that funding had not been secured, approved the hiring of the crew members and their start dates. Woods's Am. Resp. to Pls.' SUMF ¶¶ 108-10. George and McGraw primarily responded to or fielded Plaintiffs' and vendors' requests for information regarding payment. See, e.g., Emails Between George and Galline (Oct. 1-2, 2020) [Doc. 133-2 at 19-20] ("HL just informed me that the funds will drop for payment next week."); Email from George to Woods (Aug. 21, 2020) [Doc. 120-3 at 45] (forwarding

[9] Woods testified that he believed the funds from ACR Equities were forthcoming because "they had those funds set aside for me, is what I'm told." Woods Dep. at 193. Woods also testified that the owner of ACR Equities told him, "[']We're going to do your project. We're going to do your project. We're going to do your project.['] So why wouldn't I believe that he's going to do my project? He's a lender. He says they're going to do my project. He sends me a contract. I believed it." Id. 191-93.

invoice from Ballistic Digital and asking HL to send a payment via Zelle when the Chase bank account was opened).

Woods and George dispute whether Woods ever communicated to George that production had to be halted for the lack of funding. Woods testified that Levine told George to halt production on September 11, 2020, after Woods and Levine discussed the financial issues. Woods Dep. at 260-61, 308-09. Woods also testified that he never told George personally to stop the production. Id. at 261. George, however, testified that Levine and George were having ongoing conversations via LinkedIn about the lack of funding (because Levine had not and never received his attorney's fees for work to be done on the Film), and Levine told George on September 11, 2020, that production could not continue without worker's compensation insurance in place. George Dep. at 77. George testified that this delayed production "for a little bit," but that "we were able to move forward" because "we decided to use the insurance on the car rental facility." Id.; see also LinkedIn Messages Between Levine and George at 46-47; Email from George to Morrison, Geryak, Waff, DeBenedetto, Woods, and DiFranco (Sept. 11, 2020) [Doc. 120-3 at 64] ("HL has informed me that our attorney Paul Levine has advised not to have any one travel a long distance from CA until our insurance kicks in."). Further, George and Levine exchanged ongoing messages after

September 11, discussing the contract for rewriting the script and funding issues. See LinkedIn Messages Between Levine and George at 48-78. It is also undisputed that, after the date that George was purportedly told to stop production, Woods himself continued production-related activities, such as booking a hotel room for Johnston, hiring a publicist to publish a press release, and signing Geryak's Employment Agreement. Woods Dep. at 144, 216-17, 257; Woods's Am. Resp. to Pls.' SUMF ¶ 70.

The parties also dispute the extent of Woods's knowledge and involvement of the crew relocating to Atlanta to work on the film. Woods testified that he "did not hire [Plaintiffs] to go down to Georgia." Woods Dep. at 263. Woods testified that his signature on Rent-A-Car and Hertz credit card authorizations were forged, and that he never authorized any charges related to rental cars or housing. Woods Dep. at 266-69. However, George testified that Woods was aware of the fact that crew members were starting to travel to Georgia for film production, and that "there was no misunderstanding on when this individual or these crew were supposed to start and travel to Georgia." George Dep. I at 136. George also testified that Woods paid for non-party Matt DiFranco (the production coordinator)'s flight from Louisiana to Atlanta. George Dep. I at 59. Further, George testified that Woods reserved a room at the Residence Inn for Johnston

"until his apartment [was] ready" and forwarded the booking information to George. Id. at 200; Forwarded Email from Woods to George [Doc. 133-1 at 4-5]. Finally, George testified that Woods was given a crew list "every other period," showing the growing list of crew members. George Dep. I at 75; see also Email from George to Woods (May 15, 2020) [Doc. 124-1 at 228-241) (containing production calendar for Woods's approval).[10]

Woods testified that he "didn't necessarily respond consistently to a lot of e-mails" from George because he preferred to "talk for clarity" and because George would explain production procedures over the phone. Woods Dep. at 322.

6. The End of Production

On September 25, 2020, George sent the following email to the entire crew:

> Hi Everyone,
>
> I wanted to email everyone to let you know that the funding drop did not happen today. We are halting the project until we receive the funds to pay everyone on Tuesday. I cannot have anyone continue to work until upcoming funds are deposited into the account. I will notify the union and your agents of the situation. Once the next round of funds drop for us to continue in 2 weeks, I can reach out to all to see if you

[10] Woods also testified, contrary to his testimony that he never authorized charges related to rental cars or housing, that he "sent some funds or something down there" to book the Residence Inn hotel room for Johnston. Woods Dep. at 257. When asked if he charged the cost of the hotel room to his credit card, he responded, "I probably did. He was already there for a while, yeah." Id.

> wish to continue with the project. We appreciate everyone's hardwork [sic] so far and wish this unfortunate situation did not occur. . . .
>
> For those that need to travel long distance if you could hold until departing on Wed so I can provide you with travel funds.

Woods's Am. Resp. to Pls.' SUMF ¶ 169. After this email was transmitted, Woods asked Johnston, Geryak, and DeBenedetto to stay and continue working "despite the lack of funding." George's Resp. to Pls.' SUMF ¶ 170; DeBenedetto Dep. at 57 ("HL called me and asked me to stay personally. He was like, 'Please, I need you to stay.' You know, 'The project will be lost without you,' kind of a thing, which is true"); Woods Dep. at 233-34 ("I said, Chris, we are trying to do everything we can to -- to do the project"); id. at 235 (as to Johnston, stating that he "could have" asked him to stay).

According to George, Woods was set to travel to Atlanta from Michigan, where Woods had remained during the Film's production, in late September or early October, and George booked a rental car for Woods to use as transportation. George Dep. I at 144; see also Woods Dep. at 358.[11] George testified that Woods

[11] Woods's deposition transcript refers to an email dated September 29, 2020, from DiFranco to Woods, in which DiFranco states, "Hey, HL. That's great news that you're heading down," and discussing renting a car for his plan to travel on Thursday. However, the Court is unable to find this email in the record. Nevertheless, the Court notes that these plans to travel to Atlanta conflict with Woods's position that George unilaterally made the decision to halt production on

"did a last-minute cancellation" because "his dog had to go to the vet or his dog got sick." George Dep. I at 144. She testified that Woods said, "'Oh, well, I'll have to probably come another week later because I have to take my dog to the vet,' I believe it was." Id. George testified that she did not believe Woods. Id. Woods, on the other hand, testified that he "didn't have an exact date when I was going. But of course, I was going." Woods Dep. at 358. Woods further testified, "I know that I wasn't going down there until the funds were in the account." Id. Woods also testified that he did not approve the expense for the rental car, and that when the car showed up in his driveway, he gave it back. Id. at 351-52.

> Q: So a -- a car showed up in your driveway, and you had no idea why it was there or who sent it; right?
>
> A: No, I knew why -- why it was there. It was there for -- for -- for the film. It's just that it was there prematurely. I wasn't going down there that week to start. And then secondly, we should not have been doing anything at that point.
>
> Q: Okay. Did you give any other reason as to why you couldn't go down to Atlanta at that time?
>
> A: Yeah, we didn't have any money.
>
> Q: That -- that's the reason that you gave Ms. George?

September 25, 2020. See, e.g., Woods Dep. at 232 ("When [George] shut it all down, then it was shut down. . . . She was in charge of that. She shut it down.").

> A: As far as I can recall. I don't know exactly why I told her I wasn't going down there that -- at that particular time, but it had something to do -- I know we weren't funded, so there was no need for us to start a film if we weren't funded on, sir.

Id. at 352.

After production was halted, Woods continued to tell the crew, either personally or through George, that he would be getting funding and paying the crew. See, e.g., Woods's Am. Resp. to Pls.' SUMF ¶ 171 (undisputed that Woods sent George a text message on September 29, 2020, stating, "I'm doing 650k I'm taking 50…," which George interpreted as meaning Woods would "deposit $650,000 into the Film's Chase Bank account and then withdraw $50,000 of it for himself"); id. ¶ 173 (responding to an email sent by Johnston on October 1, 2020: "nobody is going to not pay what is due"); id. ¶ 174 (undisputed that George emailed multiple crew members on October 2, 2020, stating, "HL just informed me that the funds will drop for payment next week"); id. ¶ 176 (undisputed that Woods emailed Morrison stating, "[E]ither way I'm going to take care of you period."). Further, Mike Akins, the business manager of IATSE, reached out to secure payment for the crew once he was apprised of the situation. Id. ¶ 177. George informed Akins that "[Woods] called me and said he had everything resolved and will be able to pay all that is due payment very soon." Id.

The rights to the script "expired in December 2020." Woods's Am. Resp. to Pls.' SUMF ¶ 179; George's Resp. to Pls.' SUMF ¶ 179. No payments have been made to Plaintiffs or to George for work performed on the Film. Woods's Am. Resp. to Pls.' SUMF ¶ 163.

B. Procedural History

1. Claims, Crossclaims, and Conditional Certification

Kelsey Brennan, Kyle Coleman, Caryn Frankenfield, Frank Galline, John A. Johnston, Dawn Snyder, Fredrick Waff, Cory Geryak, and Sara Riney (collectively, the "Named Plaintiffs") brought this action pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 et seq., alleging that Defendants Woods, George, and Summer WWK failed to pay them any wages for work performed on the Film and seeking unpaid wages, liquidated damages, and attorneys' fees. Collective Action Complaint ("Compl.") [Doc. 1] ¶¶ 48-59. Plaintiffs assert their FLSA claim (Count I) as an "opt-in" collective action on behalf of "similarly situated production crew members" under 29 U.S.C. § 216(b). Id. ¶ 44. Plaintiffs also bring state law claims for unjust enrichment (Count II) and breach of contract (Count III). Id. ¶¶ 60-69. George answered the Complaint and raised crossclaims against Woods and Summer WWK for breach of contract

(Count I), fraud (Count II), quantum meruit (Count III), and attorney's fees and costs (Count IV). Crosscl. [Doc. 17].

On July 19, 2021, this Court conditionally certified the action under 29 U.S.C. § 216(b) on behalf of "[a]ll persons who performed services on the motion picture 'Summer When We Were Kings' as film production crew members since January 1, 2020." July 19, 2021, Order [Doc. 33]. As relevant here, the Court addressed the approved class as the "FLSA Class" and approved Plaintiffs' proposed form of notice, which stated in pertinent part:

> If you performed any services as a film production crew member on the motion picture "Summer When We Were Kings" any time since January 1, 2020, please read this Notice. You may have the right to recover wages for work you performed by joining a collective action lawsuit. . . .
>
> The Plaintiffs in the lawsuit allege that Defendants failed to pay film production crew members proper wages in violation of the federal Fair Labor Standards Act ("FLSA"), 29 U.S.C. 201, *et seq.* and Georgia law.

July 19, 2021, Order at 1-2; Official Court-Ordered Notice of Collective Action Lawsuit ("Opt-In Notice") [Doc. 33 at 5-8]; see also Consent to Join Collective Action Lawsuit ("Opt-In Consent Form") [Doc. 33 at 9-10] ("Pursuant to 29 U.S.C. § 216(b), I consent to become a party plaintiff in the above-captioned Fair Labor Standards Act case . . . ."). Nine Plaintiffs have opted into the FLSA claims: Mark Spaziano [Doc. 23-1], Joelle Zapotosky [Doc. 23-2]; David Mendez [Doc.

36-1], Christine Bonnem [Doc. 39-1], Kathleen Denson [Doc. 41-1], Walter Smith [Doc. 42-1]; Chris DeBenedetto [Doc. 43-1], Stephanie Postich [Doc. 43-2], and Bryan Staerkel [Doc. 43-3] (collectively, the "Opt-In Plaintiffs"). Gloria Morrison also opted in [Doc. 44-1] but withdrew her consent on July 5, 2022 [Doc. 71-1].

2. The Motions for Summary Judgment and Summer WWK's Default

George seeks summary judgment as to Plaintiffs' claims against her and as to liability on her crossclaims against Woods. Plaintiffs seek summary judgment as to all Defendants on all claims. And Woods seeks summary judgment as to all Plaintiffs' claims against him.

On November 27, 2023, the Court noted Summer WWK's failure to appear in this case despite proper service and allowed Summer WWK one final opportunity to appear in the case, respond to Plaintiffs' motion for summary judgment, and show good cause for its failure to respond to the Complaint and the motions for summary judgment. Nov. 27, 2023, Order [Doc. 150] at 2-3. Summer WWK failed to comply, and the Clerk entered default as to Summer WWK on December 27, 2023. Consistent with this Court's November 27, 2023, Order and the authority cited therein, the Court now converts Plaintiffs' motion for summary judgment to one for default judgment against Defendant Summer WWK. Accordingly, now before the Court is Plaintiffs' request for default judgment

against Summer WWK, along with the parties' cross-motions for summary judgment.

II. LEGAL STANDARD

A. Summary Judgment

Summary judgment is appropriate when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). A party seeking summary judgment has the burden of informing the district court of the basis for its motion and identifying those portions of the record which it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions," and cannot be made by the district court in considering whether to grant summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986); see also Graham v. State Farm Mut. Ins. Co., 193 F.3d 1274, 1282 (11th Cir. 1999).

If a movant meets its burden, the party opposing summary judgment must present evidence demonstrating a genuine issue of material fact or that the movant is not entitled to judgment as a matter of law. Celotex, 477 U.S. at 324. In determining whether a genuine issue of material fact exists, the evidence is viewed

in the light most favorable to the party opposing summary judgment, "and all justifiable inferences are to be drawn" in favor of that opposing party. Anderson, 477 U.S. at 255; see also Herzog v. Castle Rock Entm't, 193 F.3d 1241, 1246 (11th Cir. 1999). A fact is "material" only if it can affect the outcome of the lawsuit under the governing legal principles. Anderson, 477 U.S. at 248. A factual dispute is "genuine" if the evidence would permit a reasonable jury to return a verdict for the nonmoving party. Id. "If the record presents factual issues, the court must not decide them; it must deny the motion and proceed to trial." Herzog, 193 F.3d at 1246. But "[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party," summary judgment for the moving party is proper. Matsushita, 475 U.S. at 587.

"The standard of review for cross-motions for summary judgment does not differ from the standard applied when only one party files a motion, but simply requires a determination of whether [any] of the parties deserves judgment as a matter of law on the facts that are not disputed." Klim v. DS Servs., Inc., 225 F. Supp. 3d 1373, 1376 (N.D. Ga. 2015) (citing Am. Bankers Ins. Grp. v. United States, 408 F.3d 1328, 1331 (11th Cir. 2005)). As such, "[t]he Court must consider each motion on its own merits, resolving all reasonable inferences against the party whose motion is under consideration." Id. Further, although "[c]ross-motions for

summary judgment will not, in themselves, warrant the court in granting summary judgment . . . [they] may be probative of the non-existence of a factual dispute when . . . they demonstrate a basic agreement concerning what legal theories and material facts are dispositive." United States v. Oakley, 744 F.2d 1553, 1555-56 (11th Cir. 1984) (quoting Bricklayers Int'l Union, Loc. 15 v. Stuart Plastering Co., 512 F.2d 1017, 1023 (5th Cir. 1975)).

B. Default Judgment

If a defendant fails to plead or otherwise defend a lawsuit within the time required by Federal Rule of Civil Procedure 12(a)(1)(A), upon motion, the clerk must enter default against the defendant pursuant to Rule 55(a). A default constitutes admission of all well-pleaded factual allegations contained in the complaint, but it is not considered an admission of facts that are not well-pleaded or conclusions of law. Cotton v. Mass. Mut. Life Ins. Co., 402 F.3d 1267, 1278 (11th Cir. 2005). "A motion for the Court's entry of judgment by default is not granted as a matter of right, and in fact is judicially disfavored. That is why [Rule] 55(b)(2) vests the Court with judicial discretion in determining whether the judgment should be entered." Patray v. Nw. Publ'g, Inc., 931 F. Supp. 865, 868 (S.D. Ga. 1996) (internal footnote and citation omitted); FED. R. CIV. P. 55(b); see

also Hamm v. DeKalb Cty., 774 F.2d 1567, 1576 (11th Cir. 1985) ("The entry of a default judgment is committed to the discretion of the district court.").

A default judgment may be entered by the court only if the well-pleaded factual allegations of the complaint, which are deemed admitted by reason of default, provide a sufficient legal basis for such entry. Nishimatsu Constr. Co. v. Hous. Nat'l Bank, 515 F.2d 1200, 1206 (5th Cir. 1975) ("The defendant is not held to admit facts that are not well-pleaded or to admit conclusions of law. In short, despite occasional statements to the contrary, a default is not treated as an absolute confession by the defendant of his liability and of the plaintiff's right to recover.").[12] "The court must therefore examine the sufficiency of plaintiff's allegations to determine whether plaintiff is entitled to an entry of judgment by default." Fidelity & Deposit Co. of Md. v. Williams, 699 F. Supp. 897, 899 (N.D. Ga. 1988). The Supreme Court has explained that the pleading standard of Rule 8 of the Federal Rules of Civil Procedure

> does not require detailed factual allegations, but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do. Nor does a complaint

[12] In Bonner v. City of Prichard, 661 F.2d 1206, 1207 (11th Cir. 1981), the Eleventh Circuit as binding precedent all decisions of the former Fifth Circuit issued before Fifth Circuit decisions handed down on or before October 1, 1981.

> suffice if it tenders naked assertions devoid of further factual enhancement.

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citations and quotations omitted). "This analysis is equally applicable to a motion for default judgment." Edenfield v. Crib 4 Life, Inc., No. 6:13-CV-319-Orl-36KRS, 2014 WL 1345389, at *2 (M.D. Fla. Apr. 4, 2014) (adopting Report and Recommendation) (citing De Lotta v. Dezenzo's Italian Rest., Inc., No. 6:08-CV-2033-Orl-22KRS, 2009 WL 4349806, at *5 (M.D. Fla. Nov. 24, 2009)).

IV. PLAINTIFFS' FLSA CLAIMS

The FLSA requires "[e]very employer" to "pay each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages" at a rate not less than $7.25 an hour. 29 U.S.C. § 206(a)(1)(C). Further, where a covered employer employs his employees "for a workweek longer than forty hours," the employer must compensate the employee for hours worked in excess of forty hours "at a rate not less than one and one-half times the regular rate at which he is employed." 29 U.S.C. § 207(a)(1).

In their motion for summary judgment, Plaintiffs argue: (1) the FLSA applies under both the individual and enterprise coverage theories; (2) Woods and

George are subject to individual liability because they both qualified as "employers" as defined by the FLSA; and (3) Plaintiffs are entitled to liquidated damages against all Defendants because Defendants acted in bad faith. Pls.' Mem. of Law in Supp. of Mot. for Summ J. ("Pls.' MSJ Br.") [Doc. 122-1] at 1-19.[13] George, in her motion for summary judgment as to Plaintiffs' claims, argues: (1) the FLSA does not apply because there is no enterprise coverage; and (2) George is not subject to individual liability because she was not a "joint employer." George's Br. in Supp. of Mot. for Summ. J. as to Pls.' Claims Against George ("Def. George's MSJ Br.") [Doc. 120-1] at 10-15. Finally, Woods contends that he cannot be held personally liable for Plaintiffs' FLSA claims because he was not an "employer" as defined by the FLSA. Woods's Br. in Supp. of Mot. for Summ. J. ("Woods's MSJ Br.") [Doc. 123-2] at 5-9. Each argument will be addressed in turn.

A. Whether Plaintiffs Demonstrate Individual Coverage Under the FLSA

The Eleventh Circuit has held:

> To establish a claim for unpaid overtime and minimum wages under the FLSA, a plaintiff employee must prove one of two types of coverage,

[13] The Court notes the discrepancy between Plaintiffs' pagination of their Brief and the CM/ECF pagination. The Court will refer to the page numbers as indicated by Plaintiffs in their brief, as opposed to the CM/ECF paginations.

> either: (1) "individual coverage," in which the employee was "engaged in commerce or in the production of goods for commerce," or (2) "enterprise coverage," in which the employee was "employed in an enterprise engaged in commerce or in the production of goods for commerce."

Martinez v. Palace, 414 F. App'x 243, 244-45 (11th Cir. 2011) (quoting 29 U.S.C. §§ 206(a), 207(a)(1)). "Commerce" is defined by the FLSA as "trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof." 29 U.S.C. § 203(b). "While either individual coverage or enterprise coverage can trigger the Act's applicability," Polycarpe v. E&S Landscaping Serv., Inc., 616 F.3d 1217, 1220 (11th Cir. 2010) (emphasis added), Plaintiffs contend in their motion for summary judgment that the FLSA applies to this case under both theories. Pls.' MSJ Br. 1-7.

In their responses, neither Woods nor George responds to Plaintiffs' argument that they are covered by the FLSA as "employees." See generally Woods's Resp. in Opp'n to Pls.' Mot. for Summ. J. ("Woods's Opp'n to Pls.' MSJ") [Doc. 139]; George's Resp. Br. in Opp'n to Pls.' Mot. for Summ. J. ("George's Opp'n to Pls.' MSJ") [Doc. 141]. George, in her motion for summary judgment as to Plaintiffs' claims against her, argues only that Plaintiffs' FLSA claims fail because they cannot establish enterprise coverage, Def. George's MSJ Br. at 10-11, and Woods wholly fails to address the issue of whether Plaintiffs are

covered employees in his motion for summary judgment. See generally Woods's MSJ Br. Defendants' failure to respond to Plaintiffs' individual coverage argument indicates that this argument is unopposed. See Kramer v. Gwinnett Cnty., 306 F. Supp. 2d 1219, 1221 (N.D. Ga. 2004) ("[A] party's failure to respond to any portion or claim in a motion indicates such portion, claim or defense is unopposed."). The Court will nevertheless review the individual coverage aargument on its merits.

For individual coverage to apply under FLSA, Plaintiffs must demonstrate that they were "(1) engaged in commerce or (2) engaged in the production of goods for commerce." Thorne v. All Restoration Servs., Inc., 448 F.3d 1264, 1266 (11th Cir. 2006) (citing 29 U.S.C. § 207(a)(1)). In the Eleventh Circuit, an employee who "regularly uses the instrumentalities of interstate commerce in his work, e.g., regular and recurrent use of interstate telephone, telegraph, mails, or travel is one who directly participates in the actual movement of persons or things in interstate commerce." St. Elien v. All Cnty. Env't Servs. Inc., 991 F.3d 1197, 1200 (11th Cir. 2021) (alterations accepted).

The Court is satisfied that Plaintiffs have carried their burden of demonstrating individual coverage under the FLSA. Plaintiffs argue, *inter alia*, that they qualify as employees engaged in the production of goods for commerce

because all Plaintiffs "performed work for the purpose of producing a film that was intended for interstate distribution." Pls.' MSJ Br. at 2 (citing Chao v. Casting, Acting & Sec. Talent, Inc., 79 F. App'x 327, 329 (9th Cir. 2003)). An interpretive bulletin promulgated by the United States Department of Labor ("DOL")[14] defines "goods" to include motion pictures, art works, and manuscripts for publication. 29 C.F.R. § 779.107. Further, the FLSA's definition of "produced" includes the following:

> [F]or the purposes of this chapter an employee shall be deemed to have engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any closely related process or occupation directly essential to the production thereof, in any State.

29 U.S.C. § 203(j). The DOL also provides that "[g]oods are produced for commerce when the producer intends, hopes, expects, or has reason to believe that

[14] The DOL has promulgated interpretive bulletins in the Code of Federal Regulations, which the Eleventh Circuit has held is entitled to Skidmore deference. Rodriguez v. Farm Stores Grocery, Inc., 518 F.3d 1259, 1268 n.5 (11th Cir. 2008) (citing Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944) ("We consider that the rulings, interpretations and opinions of the Administrator under this Act, while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance. . . .")). Because "neither party has offered any reason why we should not defer to the DOL's interpretative bulletin," the Court will look to them for guidance. Id.

the goods or any unsegregated part of them will move . . . in interstate or foreign commerce." 29 C.F.R. § 779.108.

Here, viewing the evidence in a light most favorable to Defendants, Plaintiffs each worked on producing a "good" (the Film). See, e.g., Woods's Am. Resp. to Pls.' SUMF ¶¶ 139-156 (listing work done by each Plaintiff). Further, the undisputed evidence shows that Woods "intend[ed], hope[d], expect[ed], or ha[d] reason to believe" that the film would be distributed nationwide and internationally. 29 C.F.R. § 779.108; Woods Am. Resp. to Pls.' SUMF ¶ 131 (confirming that Woods wanted the Film to be distributed through a streaming service or theater"); id. ¶ 166 (admitting that a press release published on behalf of Woods stated that the film had "scheduled release dates pending worldwide theater distribution"). Accordingly, Plaintiffs have satisfied the "engaged in the production of goods for commerce" prong of individual coverage. Further, it is undisputed that Plaintiffs "regularly used email and the internet to perform their job duties while working on" the Film. Woods's Am. Resp. to Pls.' SUMF ¶ 157. Thus, the "engaged in commerce" prong of individual coverage is likewise satisfied.[15]

[15] Because the FLSA may be invoked by a plaintiff who establishes either individual or enterprise coverage, the Court need not address George's argument that enterprise coverage does not apply here.

Having concluded that Plaintiffs are covered employees under the FLSA, the Court turns next to the issue of whether Woods and George are individually liable as "employers" under the FLSA.

B. Whether Woods and George Were "Employers" Under the FLSA

A defendant "cannot be held individually liable for violating . . . the FLSA unless he is an 'employer' within the meaning of the Act." Alvarez Perez v. Sanford-Orlando Kennel Club, Inc., 515 F.3d 1150, 1160 (11th Cir. 2008) (citing 29 U.S.C. § 207(a)(1)). The FLSA defines "employer" to include "any person acting directly or indirectly in the interest of an employer in relation to an employee . . . ." 29 U.S.C. § 203(d). "Whether an individual falls within this definition 'does not depend on technical or isolated factors but rather on the circumstances of the whole activity.'" Alvarez Perez, 515 F.3d at 1160 (internal quotation omitted) (quoting Hodgson v. Griffin & Brand of McAllen, Inc., 571 F.2d 236, 237 (5th Cir. 1973)). Further, "[t]he overwhelming weight of authority is that a corporate officer with operational control of a corporation's covered enterprise is an employer along with the corporation, jointly and severally liable under the FLSA for unpaid wages." Patel v. Wargo, 803 F.2d 632, 637-38 (11th Cir. 1986) (quoting Donovan v. Agnew, 712 F.2d 1609, 1511 (1st Cir. 1983)). But "in order to qualify as an employer for this purpose, an officer must either be

involved in the day-to-day operation or have some direct responsibility for the supervision of the employee." Alvarez Perez, 515 F.3d at 1160 (quoting Patel, 803 F.2d at 637-38).

1. Woods's Individual Liability

Woods contends that he cannot be held personally liable under the FLSA because there is no evidence that he "either (1) exercised substantial control related to [Summer] WWK's FLSA obligation or (2) was directly responsible for supervising any of the Plaintiffs' day-to-day activities." Woods's MSJ Br. at 7. Woods argues that either George or Summer WWK are the parties that fall within the FLSA's definition of "employer." Id. Plaintiffs contend that Woods is individually liable because "he was the sole 'corporate officer with operational control' of Summer WWK LLC," and because he "(1) acted on behalf of Summer WWK LLC and (2) asserted control over conditions of Plaintiffs' employment." Pls.' MSJ Br. at 9 (first quoting Patel 803 F.2d at 637-38; then citing Josendis v. Wall to Wall Residence Repairs, Inc., 662 F.3d 1292, 1298 (11th Cir. 2011)).

In looking at the "economic reality" of the parties' relationship to determine employment status, the Eleventh Circuit considers "whether the alleged employer (1) had the power to hire and fire the employee, (2) supervised and controlled the employee's work schedule or condition of employment, (3) determined the rate

and method of payment, and (4) maintained employment records." Rodriguez v. Jones Boat Yard, Inc., 435 F. App'x 885, 888 (11th Cir. 2011) (alterations accepted) (quoting Villareal v. Woodham, 113 F.3d 202, 205 (11th Cir. 1997)).[16]

The first factor—the power to hire and fire employees—is satisfied based on Woods's own admissions. See Woods's Am. Resp. to Pls.' SUMF ¶¶ 32-33 (admitting that Woods had the authority to both hire and fire individuals to work for Summer WWK); Woods's Resps. & Objs. to George's First Req. for Admis. ("Woods's Resp. to George's RFAs") [Doc. 124-1 at 242-47] ¶¶ 2-3 (admitting he had authority to hire and fire individuals).[17]

The second factor—supervision or control over the employees' work schedules or conditions of employment—is satisfied because it is undisputed that

[16] Woods contends that the "economic reality" test does not apply here because courts only use it "to determine whether a plaintiff is an employee or an independent contractor, not to determine if a defendant is an employer." Woods's Opp'n to Pls.' MSJ at 7 (citing Freeman v. Key Largo Volunteer Fire & Rescue Dep't, Inc., 494 F. App'x 940, 942 (11th Cir. 2012)). The Court disagrees. Courts in the Eleventh Circuit regularly use this test to determine whether a defendant is an "employer" for purposes of the FLSA. See, e.g., Jones Boat Yard, 435 F. App'x at 888-89; Russell v. Promove, LLC, No. 1:06-CV-00659-RWS, 2007 WL 2274770, at *3 (N.D. Ga. Aug. 7, 2007); Lovett v. SJAC Fulton IND I, LLC, No. 1:14-cv-983-WSD, 2016 WL 4425363, at *10 (N.D. Ga. Aug. 22, 2016).

[17] "A matter admitted under [Federal Rule of Civil Procedure 36] is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended." FED. R. CIV. P. 36(b).

Woods had control over Plaintiffs' work schedules. Woods's Am. Resp. to Pls.' SUMF ¶ 34; Woods's Am. Resp. to George's RFAs ¶ 4 (admitting he could set the schedule for any employee); Woods Dep. at 292 (noting that Woods wanted to shoot the film "before the leaves changed").

The third factor—whether Woods determined the rate and method of payment—weighs in favor of Plaintiffs because, although rates of pay were largely set by the unions, and George was the party who negotiated the pay rates with Plaintiffs, Woods ultimately approved the budget setting forth the pay rates of the crew. Woods's Am. Resp. to Pls.' SUMF ¶¶ 46-47, 51; Woods's Resp. to George's RFAs ¶ 7 (admitting to controlling the finances); Woods Dep. at 364-65 (confirming that he had "sole discretion over the finances of the company").

The only evidence Plaintiffs cite regarding the fourth factor—maintaining employment records—is that Woods "previously had access to a cloud-based Dropbox folder maintained by Defendant George that contained employment records." Pls.' MSJ Br. at 13 (citing Woods Dep. at 246-47). Plaintiffs have not cited any authority that supports the proposition that this evidence satisfies the fourth prong, and the Court is not convinced that merely having access to a

Dropbox folder containing the records equates to maintenance of the records.[18] Even though the fourth factor weighs against finding that Woods was an employer, the "totality of the circumstances" surrounding the parties' working relationship counsels a finding that Woods was an employer for FLSA purposes. See Alvarez Perez, 515 F.3d at 1160 (quoting Hodgson, 471 F.2d at 237).

Additionally, the undisputed fact that Woods is the sole member and manager of both Summer WWK and 3rd Base weighs in favor of finding individual liability. "Courts in the Eleventh Circuit have regarded such sole ownership as significant in imposing personal liability under the FLSA. De Leon-Granados v. Eller & Sons Trees, Inc., 581 F. Supp. 2d 1295, 1304 (N.D. Ga. 2008) (citing Norton v. Groupware Int'l, Inc., No. 6:05-cv-1649-Orl-31DAB, 2007 WL 42955, at *3 (M.D. Fla. Jan. 4, 2007) ("It is undisputed that Dean is the sole shareholder and President of Groupware. Given his position, it seems clear that Dean qualifies as Norton's employer.")).

Woods also concedes that he essentially used the Summer WWK Chase Business Bank Account as a personal account for him and his son, starting at least

[18] Plaintiffs cite only to the FLSA's provision regarding an employer's recordkeeping responsibilities but provide no support for their argument that "sloppy record keeping cannot shield him from liability." Pls.' MSJ Br. at 13 n.6 (citing 29 U.S.C. § 211(c)).

in October 2020, which coincided with the time that Woods still was promising that funding would "drop" and that he would pay his crew. See Woods's Am. Resp. to Pls.' SUMF ¶¶ 182-185. "Courts have readily found corporate officers and owners liable under the FLSA where, as here, the lines between personal and business finances are blurred." De Leon-Granados, 581 F. Supp. 2d at 1304 (citing Reich v. Circle C Investments, 998 F.2d 324, 329 (5th Cir. 1993); and Donovan v. Grim Hotel, 747 F.2d 966, 972 (5th Cir. 1984)).

The case cited by Woods, Alvarez Perez, is distinguishable. See Woods's MSJ Br. at 9; Woods's Opp'n to Pls.' MSJ at 12. There, the Court found that the "managing agent" of a dog-racing facility was not an "employer" under the FLSA where he had suffered a heart attack years before the cause of action arose, he had not been involved in any employee matters since his heart attack, and his son had the ultimate authority over employees. Alvarez Perez, 515 F.3d at 1161. There is no such evidence in the record that Woods was indisposed or that he had stepped aside and allowed George, or anyone else, to take over operations.

Woods's attempt to wholly shift the responsibility onto George is disingenuous at best. See, e.g., Woods's Opp'n to Pls.' MSJ at 8 n.4 ("Unlike Woods, George does meet the requirements under the economic reality test . . . for individual liability."). The mere fact that Woods was not present in Atlanta

throughout the subject time period does not create a genuine dispute of material fact regarding whether he was responsible for Plaintiffs' activities, especially where, as here, it is undisputed that Woods communicated daily with George, told George that finances should be talked about only with him, and was the only one involved in raising the funds that would have allowed Woods to satisfy his or Summer WWK's FLSA obligations.

Although Woods disputes several facts with respect to his hands-on involvement and control over the daily operations, "those disputes are rendered immaterial by the facts that [Woods has] admitted." De Leon-Granados, 581 F. Supp. 2d at 1307; see also Torres v. Rock & River Food Inc., 244 F. Supp. 3d 1320, 1332 (S.D. Fla. 2016) (granting summary judgment for the plaintiffs on the issue of whether Iwasaki, one of the two restaurant owners, was an "employer" where Iwasaki's main responsibility was cooking while his partner managed the finances, but Iwasaki admitted that he "help[ed] manage the restaurant, sometimes interviewed employees, helped set the schedules for kitchen staff, and paid some of the restaurant bills"). "A factual dispute is genuine only if the evidence is such that a reasonable jury could return a verdict for the non-moving party," and the Court concludes that, viewing the facts in a light most favorable to the non-movants, no reasonable jury could conclude that Woods was not Plaintiffs'

employer under the FLSA. United States v. Four Parcels of Real Prop., 941 F.2d 1428, 1437 (11th Cir. 1991) (en banc) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)).

Accordingly, Woods's motion for summary judgment as to Plaintiffs' FLSA claims is **DENIED**, and Plaintiffs' motion for summary judgment as to their FLSA claims against Woods is **GRANTED**.

2. George's Individual Liability

Plaintiffs contend that George is individually liable as a "supervisor" on the Film because she personally had or exercised "control over significant aspects of the company's day-to-day functions." Pls.' MSJ Br. at 13-14 (quoting Lamonica v Safe Hurricane Shutters, Inc., 711 F.3d 1299, 1314 (11th Cir. 2013)). Specifically, Plaintiffs contend that each of the Rodriguez factors outlined above demonstrates that, despite the fact that George was not an officer, she qualifies as an employer as defined by the FLSA. Id. at 14-17. Plaintiffs also contend that, because George "knew there were no funds in the Film's operating account to pay Plaintiffs when they were hired and when they performed work on the film," such knowledge should impute "employer" status on George. Id. at 16-17. George argues that she is not a joint employer under the FLSA because she "had no control over the alleged FLSA violations and [was] not responsible for Plaintiffs' unpaid wages."

Def. George's MSJ Br. at 12. Further, George contends that, because she was "just as much a victim of the alleged violations" and "did all she could to avoid the alleged violations," she cannot be held liable as an employer. Id. at 15.

"There can be several simultaneous employers of any individual worker." Hurst v. Youngelson, 354 F. Supp. 3d 1362, 1380 (N.D. Ga. 2019) (citing Falk v. Brennan, 414 U.S. 190, 195 (1973)). "[I]f an individual with managerial responsibilities is found to be an employer under the FLSA, that individual can be found joint and severally liable for violations of that Act." Id. (quoting Stout v. Smolar, No. 1:05-cv-1202-JOF, 2007 WL 2765519, at *5 (N.D. Ga. Sept. 18, 2007)); see also Layton v. DHL Exp. (USA), Inc., 686 F.3d 1172, 1175 (11th Cir. 2012) ("An employee may have more than one employer, and whether the employment by the employers is to be considered joint employment or separate and distinct employment for purposes of the [FLSA] depends upon all the facts in the particular case.") (citation and quotation omitted).

It is undisputed that George did not have the final authority to hire and fire employees. Pls.' Resp. to George's SUMF ¶ 20 (admitting that "[e]ach department head was personally picked by Woods," and "George extended offers only *after* Woods[] selected the hires"); George's Resp. to Pls.' SUMF ¶ 63. It is further undisputed that George did not have the final authority on the Film's production

schedule; indeed, it was Woods who wanted to have the Film shot "before the leaves changed," and any delays or changes to the schedule were made because of lack of funding or issues with insurance coverage, which were Woods's responsibilities. Pls.' Resp. to George's SUMF ¶ 32 (admitting that "George did not bring anyone out [to Georgia] for the project, without Woods' prior approval"); George's Resp. to Pls.' SUMF ¶ 52 (admitting that George created production schedules that were approved by Woods). Accordingly, the first two factors—whether George had the power to hire and fire employees, and whether George supervised and controlled the employees' work schedules or conditions of employment—weigh against a finding that George was an employer.

Additionally, while George created the budget based on the amount that Woods approved, it was Woods, not George, who had the final authority on the budget. George's Resp. to Pls.' SUMF ¶¶ 50-51. Woods, with the help of the key accountant, set up the Chase Bank Account for the purposes of receiving investment funds and paying Plaintiffs' wages. George's Resp. to Pls.' SUMF ¶¶ 104-05; George Dep. I at 60. Although the parties appear to dispute the extent to which George negotiated Plaintiffs' pay rates, it is undisputed that George was working within the budget already approved by Woods, and that any deviation from the budget had to be approved by Woods. Pls.'s Resp. to George's SUMF

¶ 11; George's Resp. to Pls.' SUMF ¶¶ 46, 50-51. Additionally, it is undisputed that George did not have access to the funding sources for the project, the sources from which Plaintiffs would have been paid their wages. Pls.' Resp. to George's SUMF ¶ 12.

The fourth factor—whether George maintained employment records—is the only factor that could possibly weigh in favor of finding that George was an employer. George testified that she kept some records, but she also testified that the accountant had the responsibility of keeping and going through the timecards. George Dep. II at 78-79.

Plaintiffs argue that the fact that George was a signatory on the Chase Bank Account shows that George "exercised significant day-to-day management over the Film." Pls.' Resp. in Opp'n to George's Mot. for Summ. J. ("Pls.' Opp'n to George's MSJ") [Doc. 137] at 7. Even in conjunction with the other facts to which Plaintiffs cite for support, including (1) that George personally interviewed and recommended department heads for hire, and (2) that George used her independent judgment to draft the production calendar, id., these facts are not sufficient to show that George was an employer. In fact, the cases cited by Plaintiffs in support of their arguments all involve an individual defendant who performed these acts but were also officers, shareholders, or otherwise owned the defendant company. See

Lamonica, 711 F.3d at 1313 (each individual defendant owned 22.5% of the defendant company); Reich v. Harmelech, No. 93C3458, 1996 WL 308272, at *2, *4 (N.D. Ill. June 5, 1996) (one individual defendant was the "controlling shareholder, director, and officer" of one defendant company (SAM) and the president of the other defendant company (King), and the second individual defendant was an officer and director of SAM and the vice president of King); Olivas v. A Little Havana Check Cash, Inc., 324 F. App'x 839, 845 (11th Cir. 2009) (co-owner, corporate officer, and shareholder of the business).[19] Further, the defendants in those cases exercised considerable control over hiring, firing, pay, and conditions of work, with no facts suggesting that they needed approval for these decisions. See, e.g., Harmelech, 1996 WL 308272, at *4 (vice president, knowing that employees' payroll checks were being returned for non-sufficient

[19] Plaintiffs also cite Alvarado v. GC Dealer Servs., Inc., 511 F. Supp. 321, (E.D.N.Y. 2021). The court in Alvarado found that Beckerman, who was a not an officer or shareholder of the company, was individually liable for FLSA violations as an "employer." Alvarado, 511 F. Supp. 3d at 353-54. However, the facts surrounding that determination are clearly distinguishable. Beckerman hired and fired the employees and set the pay rates and work schedules. Id. at 328. And notably, the chief executive officer "gave Beckerman the cash to pay the employees, but Beckerman determined how much cash was to be given each employee." Id. Here, George did not make the final decisions on hiring the employees, and she did not set the pay rate for the employees, notwithstanding the fact that she negotiated within the bounds of the budget approved by Woods.

funds, wrote and deposited checks to pay the CEO from "accounts at other banks," and paid for other expenses on behalf of the company); Lamonica, 711 F.3d at 1314 (shareholders distributed work orders to employees, directed the employees regarding the work to be done each day, made promises to pay employees, and even paid employees using personal funds).

In short, there is no genuine dispute of material fact as to whether George had the authority of an employer in the Film's production.[20] That she was delegated the task of being involved in the day-to-day functions of the production does not equate to a conclusion that she had control over the day-to-day functions. The undisputed evidence shows that George was not free to make these decisions without first obtaining Woods's approval, and that she did not have any control over when, how, or whether Plaintiffs would receive compensation. "[I]f these actions rendered [George] an FLSA employer, 'then every supervisor in every

[20] The parties dispute whether George's email halting production on September 25, 2020, was an exercise of her "firing authority" because she used her independent judgment, or a decision to place the production on hiatus until funding came through. The court finds this dispute to be immaterial. It is undisputed that Woods and several of the crew members continued to work after this email was sent. See, e.g., Woods's Am. Resp. to Pls.'s SUMF ¶¶ 139, 146, 149; Woods's Dep. at 358-59 (discussing email from DiFranco on September 29, 2020, regarding Woods's plans to travel to Atlanta). It is further undisputed that Woods personally asked Geryak, Johnson, and DeBenedetto to stay despite the lack of funding, demonstrating his authority to keep employees on regardless of George's email.

company would be individually liable for FLSA damages as an employer.'" Jensen v. Defenders Sec. Co., 1:17-CV-03693-TWT-AJB, 2018 WL 3910851, at *6 (N.D. Ga. July 25, 2018) (quoting Pineda-Marin v. Classing Painting Inc., No. CV-08-798-HU, 2010 WL 1257616, at *11 (D. Or. Mar. 25, 2010)) (collecting cases where courts have declined to extend individual liability under the FLSA to employees who were also supervisors); Keene v. Rinaldi, 127 F. Supp. 2d 770, 777 n.3 (M.D.N.C. 2000) ("[N]either the FLSA nor the FMLA were intended to impose liability on mere supervisory employees as opposed to owners, officers, etc.").

Considering the factors outlined above and viewing the evidence in a light most favorable to the non-movants, the Court finds that no reasonable juror could conclude that George was an employer under the FLSA. Accordingly, Plaintiffs' motion for summary judgment as to George's individual liability under the FLSA is **DENIED**, and George's motion for summary judgment as to Plaintiff's FLSA claims is **GRANTED**.

C. Whether Plaintiffs Are Entitled to Liquidated Damages[21]

Plaintiffs seek summary judgment on the issue of liquidated damages against all Defendants, contending that neither Woods nor George can demonstrate that

[21] Because the Court has determined that George was not an employer for purposes of imposing individual liability under the FLSA, Plaintiffs' claim for liquidated

they acted in good faith. Pls.'s MSJ Br. at 17-18. Specifically, Plaintiffs argue that Woods "acted in bad faith during the entire production of the Film" by making repeated promises of payment and funding when he had no experience in the film industry, never secured funding for the Film, and regularly used the Film's bank account for personal expenses. Id.

Under the FLSA, "[a]ny employer who violates the provisions of section 206 or section 207 of this title shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages." 29 U.S.C. § 216(b). However, the Portal to Portal Act, 29 U.S.C. §§ 251-62, amended the FLSA and provided a "safe harbor for an employer who can establish that it acted in good faith and under the reasonable belief that it was in compliance with the FLSA." Farm Stores, 518 F.3d at 1272. To successfully invoke the safe harbor provision and avoid liquidated damages, the employer "carries a substantial burden to prove that it had 'an honest intention to ascertain what the FLSA requires and to act in accordance with it.'" De Leon-Granados, 581 F. Supp. 2d at 1316 (quoting Dybach v. State of Fla. Dep't of Corrections, 942

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damages against George similarly fails. Accordingly, Plaintiffs' Motion for summary judgment against George on the issue of liquidated damages is **DENIED**.

F.2 1562, 1566 (11th Cir. 1991)) (alterations accepted). In addition to this subjective prong, the employer must also prove that "its belief that its policy complied with the FLSA was objectively reasonable." Id. In the absence of "plain and substantial evidence" that satisfies both the subjective good faith and objectively reasonable prongs, the court must award liquidate damages. Id.; see also Lore v. Chase Manhattan Mortg. Corp., No. 1:04-CV-00204-LTW, 2008 WL 11320016, at *11 (N.D. Ga. Nov. 14, 2008) ("Good faith 'requires that an employer first take active steps to ascertain the dictates of the law and then move to comply with them.'") (alterations accepted) (quoting Reich v. S. New England Telecomm. Corp., 121 F.3d 38, 71 (2d Cir. 1997)).

Woods contends that liquidated damages are not appropriate because he "acted in good faith and genuinely believed that funding was forthcoming," and because he "reasonably relied on George regarding operational aspects of the production." Woods's Opp'n to Pls.' MSJ at 12. Woods also contends that no evidence in the record supports a finding that he "knew funding would not arrive." Id. Woods, however, fails to point to any evidence in the record indicating that he, in good faith, made any effort to ascertain what the FLSA requires and to act in accordance with it, aside from two citations to his own and George's deposition

testimony that are not relevant here. Id. (citing Woods Dep. at 323 and George Dep. II at 134).

The Court finds that Woods's conclusory arguments that he acted in good faith do not satisfy the requirements of the safe harbor provision. Woods's attempts to evade liquidated damages by arguing that he "was new to the film production process" similarly are unpersuasive. The question of whether Woods was a well-versed producer is irrelevant to the analysis of whether he believed he was operating in good faith under the FLSA. Though he was responsible for obtaining funding for the Film, Woods failed to meet his obligations but continued to make representations to Plaintiffs and George that funding was forthcoming. See, e.g., DeBenedetto Dep. at 55 ("So there were times when I called him on the phone or he called me and we discussed where the money was or what's going on. And he never got into specifics with me. He just kept reassuring, saying, 'We had a couple of pieces of paper we didn't file here,' or 'Don't worry. I'll be in town in a couple days and we can go through this.'"); Woods's Am. Resp. to Pls.' SUMF ¶¶ 173-78 (outlining various communications from Woods assuring payment). Because Woods points to no evidence that he took affirmative steps to understand his responsibility under the FLSA and then "took reasonable steps to comply with them," the Court concludes that Woods has failed to carry his burden of

demonstrating good faith to successfully invoke the safe harbor provision. Accordingly, Plaintiffs' motion for summary judgment against Woods as to the issue of liquidated damages is **GRANTED**, and Woods's motion for summary judgment as to Plaintiffs' claim for liquidated damages is **DENIED**.

V. STATE LAW CLAIMS

A. Whether the Opt-In Plaintiffs Are Limited to Recovery Under the FLSA

Woods argues that "Opt-In Plaintiffs cannot assert any claims outside of claims alleged as part of the Collective Action claims under the FLSA." Woods's MSJ Br. at 9 n.3 (citing Calderone v. Scott, 838 F.3d 1101, 1107 (11th Cir. 2016) and Boudreaux v. Schlumberger Tech. Corp., No. 6:14-CV-02267, 2022 WL 992671 (W.D. La. Mar. 30, 2022)). In response, Plaintiffs argue that, because the opt-in notice approved by this Court was "worded broadly to include the state law claims as well as the FLSA claim," the Opt-In Plaintiffs in this case consented to join the action as a whole. Pls.' Resp. in Opp'n to Woods's Mot. for Summ. J. ("Pls.' Opp'n to Woods's MSJ") [Doc. 138] (citing Prickett v. DeKalb Cnty., 349 F.3d 1294, 1297 (11th Cir. 2003)).

The FLSA provides: "No employee shall be a party plaintiff to any [FLSA] action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought." 29 U.S.C. § 216(b).

"Said another way, an FLSA collective action is 'opt-in.'" Calderone, 838 F.3d at 1104. To receive conditional class certification under Section 216(b), the plaintiff need only demonstrate that the putative members of the class are "similarly situated." Id. The plaintiffs' "burden of showing a reasonable basis for [their] claim that there are other similarly situated employees" has been described by the Eleventh Circuit as "not particularly stringent," "fairly lenient," "flexible," and "not heavy." Morgan v. Fam. Dollar Stores, Inc., 551 F.3d 1233, 1260-61 (11th Cir. 2008) (internal quotations and citations omitted).

Although "Section 216(b) of the FLSA and Rule 23(b)(3) [of the Federal Rules of Civil Procedure] are animated by similar concerns about the efficient resolution of common claims," the showing a plaintiff is required to make for certifying a Rule 23 class action is "more demanding." Calderone, 838 F.3d at 1104. Instead of opting into the action as required by Section 216(b), "all qualifying class members become members unless they opt out of the action" in a Rule 23(b)(3) class action. Id. "This 'opt-out' requirement is what makes a Rule 23(b)(3) class action a 'fundamentally different creature' than a § 216(b) collective action, which depends for its 'existence . . . on the active participation of class members." Id. (quoting Cameron-Grant v. Maxim Healthcare Servs., Inc., 347 F.3d 1240, 1249 (11th Cir. 2003) (per curiam)).

In Boudreaux, the court held that the plaintiffs who opted into the case under a conditional certification order could not assert the state law claims asserted by the named plaintiffs in the complaint. 2022 WL 992671, at *3. Like Plaintiffs here, the plaintiffs in Boudreaux argued that the opt-in plaintiffs "opted into the case for all purposes and [could] assert any claim raised" in the complaint, including the state law claims, but the Court rejected this argument, finding that it was inconsistent with the statutory text of Section 216(b), the notice provided to the opt-in plaintiffs, and the consent forms filed by the plaintiffs. Id., at *2. The court also noted that "[c]ourts addressing hybrid cases have generally treated FLSA and non-FLSA claims differently by conditionally certifying a collective action under Section 216(b) for the plaintiffs' FLSA claims and certifying (or requiring certification) of a class under Rule 23 for the non-FLSA state claims." Id. at *2 n.3 (collecting cases).

This Court agrees with the analysis in Boudreaux. Here, Plaintiffs moved for certification based solely on Section 216(b), which only covers violations of the FLSA. See generally Mem. of Law in Supp. of Mot. for Conditional Certification [Doc. 24-1]. Indeed, Plaintiffs took pains to distinguish the certification requirements under Section 216(b) from those of Rule 23. Id. at 6. The Court granted conditional certification of the "FLSA Class" pursuant to Section 216(b).

July 19, 2021, Order at 1-2. Although the approved form of notice contained one reference to violation of "Georgia law," the Court finds that this single, vague reference to Georgia law was insufficient to allow the Opt-In Plaintiffs to knowingly consent "to have those claims addressed in the present action." Boudreaux, 2022 WL 992671, at *2. Finally, the approved Opt-In Consent Form [Doc. 33 at 9-10] specifically states: "Pursuant to 29 U.S.C. § 216(b), I consent to become a party plaintiff in the above-captioned Fair Labor Standards Act case."

The Court also finds the case cited by Plaintiffs to be distinguishable. Pls.' Opp'n to Woods's MSJ at 7-8 (citing Prickett, 349 F.3d 1294). In Prickett, the Court held that the plaintiffs who had opted into the case under Section 216(b) were parties to a new FLSA claim that was added to the complaint after the opt-in plaintiffs' consent was given, even though they did not file new consent forms. Prickett, 349 F.3d at 1297-98. This was so because "the language of the consent forms that the opt-in plaintiffs signed . . . indicates that they consented to have the named plaintiffs adjudicate all of their claims for overtime compensation under FLSA, not merely the claims then specified in the complaint." Id. at 1297. Here, however, the additional claims Plaintiffs contend are pursuable by the Opt-In Plaintiffs are state law claims not arising under the FLSA. Plaintiffs' Complaint specifically states that "Plaintiffs bring the FLSA claim as an 'opt-in' collective

action on behalf of similarly situated production crew members pursuant to 29 U.S.C. § 216(b)." Compl. ¶ 44 (emphasis added). Plaintiffs make no class allegations as to the breach of contract or unjust enrichment claims and have not moved this Court for class certification under Rule 23(b) on those claims.

The Court notes that "[u]nder Rule 23(c)(1) 'the trial court has an independent obligation to decide whether an action was properly brought as a class action, even where, as here, neither party moves for a ruling on class certification." Martinez-Mendoza v. Champion Int'l Corp., 340 F.3d 1200, 1216 n.37 (11th Cir. 2003) (alterations accepted) (quoting McGowan v. Faulkner Concrete Pipe Co., 659 F.2d 554, 559 (5th Cir. 1981)). However, Plaintiffs did not bring this action as a class action, but instead as a collective action under 29 U.S.C. § 216(b). Nothing in the Complaint or in Plaintiffs' filings suggest that Plaintiffs intended to bring a class action lawsuit; thus, deciding the propriety of a class action is not required here. See id. (specifically noting that the complaint was brought as a class action).

Accordingly, the Court concludes that the Opt-In Plaintiffs may not pursue the state law breach of contract and unjust enrichment claims, and that they are limited to recovering for damages arising out of the FLSA claims. Woods's Motion for Summary Judgment is **GRANTED** as to the breach of contract and unjust enrichment claims of the Opt-In Plaintiffs—Walter Smith, Christine

Bonnem, Christopher DeBenedetto, David Mendez, Joelle Zapotosky, Bryan Staerkel, Mark Spaziano, Kathleen Denson, and Stephanie Postich.

B. George's and Plaintiffs' Breach of Contract Claims

Count I of George's Crossclaim and Count III of Plaintiffs' Complaint seek damages for breach of contract. Crosscl. ¶¶ 4-10; Compl. ¶¶ 65-69. George and Plaintiffs contend that they entered into oral contracts and, in the case of Geryak, a written contract, to perform work in furtherance of producing the Film and did perform the work as agreed but did not receive compensation as promised. George's Br. in Supp. of Her Mot. for Summ. J. as to Liability on Crossclaims Against Woods ("George's Crosscl. Br.") [Doc. 121-1] at 6-7; Pls.' MSJ Br. at 23-24. George and Plaintiffs also request that this Court pierce the corporate veil to find Woods individually liable for breach of contract. George's Crosscl. Br. at 7-8; Pls.' Reply Br. in Supp. of Mot. for Summ. J. ("Pls.' Reply") [Doc. 147] at 8-9.

"The elements for a breach of contract claim in Georgia are the (1) breach and the (2) resultant damages (3) to the party who has the right to complain about the contract being broken." Coleman v. H2S Holdings, LLC, 230 F. Supp. 3d 1313, 1319 (N.D. Ga. 2017) (quoting Niloy & Rohan, LLC v. Sechler, 335 Ga. App. 507, 510 n.4 (2016)); see also O.C.G.A. § 13-6-1 ("Damages are given as

compensation for the injury sustained as a result of the breach of a contract."). However, "for conduct to amount to a breach there must first be a contract, which the Georgia Code defines as 'an agreement between two or more parties for the doing or not doing of some specified thing.'" Coleman, 230 F. Supp. 3d at 1319 (quoting O.C.G.A. § 13-1-1). The basic elements of contract formation are "parties able to contract, a consideration moving to the contract, the assent of the parties to the terms of the contract, and a subject matter upon which the contract can operate." O.C.G.A. § 13-3-1. A contract need not be in writing unless required by the Statute of Frauds. See O.C.G.A. § 13-5-30. Instead, "[a] contract is complete and enforceable when there is a meeting of the minds as to all essential terms." Omnibus Trading, Inc. v. Gold Creek Foods, LLC, 591 F. Supp. 3d 1334, 1346 (N.D. Ga 2021) (quoting Meunier Carlin & Curfman, 324 F. Supp. 3d 1269, 1279 (N.D. Ga. 2018)).

In cases where claims for wages are brought pursuant to the FLSA in addition to a breach of an employment contract claim, a plaintiff "may not recover twice for one injury." Lagasan v. Al-Ghasel, 92 F. Supp. 3d 445, 458-59 (E.D. Va. 2015) (citing Gen. Tel. Co. of the Nw. Inc. v. Equal Emp. Opportunity Comm'n, 446 U.S. 318, 222 (1980)); Pena v. Magaya Corp., No. 15-20499-CIV, 2015 WL 3791732, at *2 (S.D. Fla. June 17, 2015) (holding that a defendant's payment,

made pursuant to an offer of judgment for delinquent minimum wages, fully compensated plaintiff and made moot a breach of contract claim for the same amount). If a plaintiff is entitled to damages for both unpaid wages under the FLSA and breach of an employment contract, the damages for breach of contract are limited to compensation contractually owed in addition to the FLSA wages. Lagasan, 92 F. Supp. 3d at 458-59; see also Arreguin v. Sanchez, 398 F. Supp. 3d 1314, 1328-29 (S.D. Ga. 2019) (calculating damages for breach of contract by subtracting the FLSA minimum wage rate from the contractually owed rate and multiplying the difference by the regular number of hours worked); Strowder v. Dean's Wire for Hire, LLC, No. 1:20-CV-1054-MHC, 2020 WL 13587977, at *4 (N.D. Ga. Nov. 2, 2020) (same).

1. Woods's Liability to George

George seeks summary judgment against Woods for her breach of contract crossclaim, contending that she performed work pursuant to an oral agreement, which was reduced to writing in the budget approved by Woods, but was not paid for her work. George's Crosscl. Br. at 6-7. George also argues that application of the doctrine of piercing the corporate veil is appropriate here. Id. at 7-8. In response, Woods argues that summary judgment is not appropriate because there exists a genuine issue of material fact "regarding whether the budget evidenced a

contract, and whether that contract was with Summer WWK, LLC, 3rd Base Film Group, LLC, or Woods individually." Woods's Resp. in Opp'n to George's Mot. for Summ. J. ("Woods's Opp'n to George's MSJ") [Doc. 140] at 7.[22] Further, Woods contends that piercing the corporate veil is not appropriate here because George has failed to show that Woods commingled funds, records, or control, or otherwise abused the corporate form. Id. at 8-10.

As an initial matter, Woods does not dispute George's assertion that an agreement for employment existed. To the extent that Woods argues that the lack of any writing clearly evidencing the existence of an agreement precludes the Court from finding that a contract existed, the Court declines to adopt this argument insofar as Woods has already admitted to the existence of a contract, and because Woods has failed to demonstrate that the type of contract alleged here falls under the Statute of Frauds. See Woods's Resp. to George's RFAs ¶ 20 (admitting

[22] In his response to George's SUMF, Woods denies most facts relating to his involvement in any employment contract on the grounds that it was not Woods who took the actions but either 3rd Base or Summer WWK. See Woods's Am. Resp. to George's SUMF ¶¶ 4-8. However, Woods only cites to four lines from his own deposition to support his contention. Id. (citing Woods Dep. at 218 ("If I -- if I was going to do anything, it would have been through the production company."). Further, because Woods does not support his denial of these facts with "specific citations to evidence," the Court deems George's facts admitted (unless otherwise noted herein). See LR 56.1(B)(2)(a)(2), NDGa.

that, "under the agreement between Summer WWK, LLC and George, Summer WWK, LLC was to compensate George at $10,062.85 per week in return for her services"); Woods's Am. Resp. to George's SUMF ¶ 10 (admitting that "George's salary was outlined in the budget Woods approved); id. ¶ 5 (admitting that Woods or one of his LLC's "employed George to be the line producer for the project at an annual salary of $135,000"). It is undisputed that, in her capacity as line producer and UPM for the Film, George undertook the agreed-upon actions, including reading the script, drafting the budget and schedule, ensuring the production stayed within the budget and schedule, and recommending department heads for hire. Woods's Am. Resp. to Pls.' SUMF ¶¶ 43-45; Woods's Am. Resp. to George's SUMF ¶¶ 9-11; Woods Dep. at 302-03.

> [C]ourts are rightly loathe to find . . . that no contract existed between the employer and employee. See Thrower[v. Peach Cnty. Bd. of Educ., No. 5:08-cv-176-MTT], 2010 WL 4536997, at *8-9 [(M.D. Ga. Nov. 2, 2010)] (denying summary judgment to employer on employees' breach-of-contract claim, even though the plaintiffs' theory was unsound, because "[c]learly, if the Plaintiffs worked, they are entitled to be paid for their work at the agreed upon rate"); Brown v. Venture Express, Inc., No. 3:13-cv-20-TCB (N.D. Ga. Mar. 30, 2015) (order denying motion for summary judgment [92] at 17-20) (denying summary judgment on breach-of-contract claim where the only element at issue was the existence of a contract between the parties).

Anthony v. Concrete Supply Co., Inc., 241 F. Supp. 3d 1342, 1348 (N.D. Ga. 2017). Because the undisputed facts evidence an employment relationship

between Woods (or 3rd Base or Summer WWK) and George, and because, under Georgia Law, "the employment relationship is contractual in nature," the Court finds that a contract existed. Id.

Further, the undisputed facts show that George performed under the employment agreement from approximately March 2020 to October 2020, but she was never paid any wages for the work she performed on the Film. Woods's Am. Resp. to George's SUMF ¶¶ 7, 9-12. Neither party disputes that the employment agreement was breached, i.e., that George performed the work pursuant to an employment agreement but was not paid. Id. ¶ 12 (admitting that "George was never compensated any wages for her work on the Film"). Accordingly, because the undisputed facts demonstrate that an employment agreement existed, and that Woods, Summer WWK, or 3rd Base did not perform as required under the agreement, the Court finds that the contract was breached. Spindel v. Nat'l Homes Corp., 110 Ga. App. 12, 15 (1964) (holding that an employee who actually performs services under an agreement that is terminable at will "may recover of the employer the compensation due him for the services rendered").

The remaining issue on George's breach of contract claim is whether Woods is individually liable to George for the breach. George contends that the LLC veil should be pierced, and that she should be allowed to collect damages for breach of

contract from Woods individually. George's Crosscl. Br. at 7-8. Specifically, George argues that she is without proper remedy, Woods used "the corporate structure to avoid contractual obligations he knew he could not meet," and he disregarded the corporate formalities. Id. Woods, in response, argues that he did not commingle his records, properties, or control with his LLC, and he cannot be held individually liable on an alter ego theory of liability. Woods's Opp'n to George's MSJ at 9-10. However, the Court finds it unnecessary to determine whether the LLC veil should be pierced for either 3rd Base or Summer WWK because the undisputed facts show that Woods was not lawfully operating under the protective veil of any LLC or corporate entity at the time he entered into the employment agreement with George.

Although neither party addresses this issue, Georgia law provides that the "laws of the jurisdiction under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its managers, members, and other owners[]. . . ." O.C.G.A. § 14-11-701. The parties do not dispute that both 3rd Base and Summer WWK were formed under the laws of California. Woods's Am. Resp. to Pls.' SUMF ¶¶ 17-31.

Under California law, every LLC transacting business in the State of California must file a Statement of Information within ninety days of filing its

original articles of organization and biennially thereafter. CAL. CORP. CODE § 17702.09(a). Where an LLC fails to file such a statement, "the Secretary of State shall notify the limited liability company that its powers, rights, and privileges will be suspended after sixty days if it fails to file a statement pursuant to Section 17702.09." CAL. CORP. CODE § 17713.10(b). If the LLC still fails to file the statement within the sixty days, the Secretary of State notifies the Franchise Tax Board of the suspension and "provide[s] a notice of the suspension to the limited liability company and thereupon, except for the purpose of amending the articles of organization to set forth a new name, the powers, rights, and privileges of the limited liability company are suspended." Id. § 17713.10(c).

The California Secretary of State's records (the "SOS records") confirm that Summer WWK was not formed until August 4, 2020.[23] As to 3rd Base, the SOS records indicate that 3rd Base filed its articles of organization on January 17, 2017, but failed to file its Statement of Information by September 15, 2017, and, as a result, has been suspended since December 3, 2018.

[23] Courts may take judicial notice of public records maintained by a secretary of state. Auto-Owners Ins. Co. v. G&D Constr. Grp., Inc., 588 Supp. 3d 1328, 1331 n.3 (N.D. Ga. 2022); see also Cal. Sec. of State Bus. Search, https://bizfileonline.sos.ca.gov/search/business (last visited February 5, 2024).

It is undisputed that Woods hired George in March 2020, when 3rd Base was suspended, and accordingly, its power to enter into contracts was suspended throughout the course of the Film's production. See, e.g., Palm Valley Homeowners Ass'n, Inc. v. Design MTC, 102 Cal. Rptr. 2d 350, 355 (Cal. Ct. App. 2000) (stating that a suspended corporation "may transact no business of any kind"); see also Scott v. Gino Morena Enter. L.L.C., No. SACV 14-02046 JVS (DFMx), 2015 WL 847160, at *2 (C.D. Cal. Feb. 23, 2015) (noting that the discussion in Palm Valley regarding suspension of a corporation for failure to file a required statement was analogous and applicable to the suspension of an LLC for failure to file a statement of information). Thus, the Court finds that Woods was not operating on behalf of any LLC that had the "powers, rights, [or] privileges" to conduct business before the formation of Summer WWK on August 4, 2020.

Woods's arguments in opposition to George's motion for summary judgment are either irrelevant or unpersuasive. For example, Woods states that "the record reflects that any expectation that Woods would be responsible for amounts owed to George was objectively unreasonable," because George told Woods to get an LLC, and because George "acknowledged that Summer WWK, LLC, not Woods, would be funding the Film." Woods's Opp'n to George's MSJ at 6-7. But Woods cites to no authority to support this argument, nor does he

explain why such an "objectively unreasonable" expectation is relevant to the Court's analysis.

Because the undisputed facts demonstrate that the employment agreement was entered into when Woods was not operating under the protective shield of an LLC, and Woods breached the agreement when he failed to pay George for the work performed, the Court concludes that Woods is individually liable to George on her breach of contract crossclaim, and George's motion for summary judgment as to liability against Woods on this claim is **GRANTED**.[24]

2. Woods's Liability to Plaintiffs

In their motion for summary judgment, Plaintiffs contend that, as to all Plaintiffs except Geryak, Defendants had an oral contract wherein "Plaintiffs agreed to perform specific work on the Film and Defendants agreed to pay them a specific amount." Pls.' MSJ Br. at 24. Because Defendants failed to perform their

[24] Quantum meruit is an equitable concept that is only available where no express contract governing the parties' claims exists. Davidson v. Maraj, 609 F. App'x 994, 997-98 (11th Cir. 2015) (citing Watson v. Sierra Contracting Corp., 226 Ga. App. 21, 28 (1997)) (other citations omitted); see also Newbery Corp. v. Fireman's Fund Ins. Co., 96 F.3d 1392, 1405 (9th Cir. 1996) (stating the general rule that "a party to an enforceable contract may not seek recovery for a contract breach by resort to extra-contractual theories such as quantum meruit"). Because the Court has found that a contract for employment existed between George and Woods, George's Motion for Summary Judgment as to her crossclaim against Woods for Quantum Meruit (Count III) is **DENIED**.

obligations (to pay Plaintiffs) under the oral agreement, Defendants are liable for breach of contract. Id. at 24. As to Geryak, Plaintiffs argue that Woods had a written contract, which was breached by Woods's nonpayment of Geryak's wages and reimbursements. Plaintiffs also contend that the LLC veil should be pierced to hold Woods individually liable for the breached contracts. Pls.' Reply at 8-9.

In response, Woods does not dispute that Plaintiffs had a contract for employment. See generally Woods's Opp'n to Pls.'s MSJ; see also Woods's Am. Resp. to Pls.' SUMF ¶¶ 63-102. Instead, Woods again asserts that he did not enter any contracts individually, but instead, on behalf of either 3rd Base or Summer WWK. Id. at 16-17. Because the Court finds that piercing the veil is warranted here, it is unnecessary to determine in what capacity Woods entered the contracts.

As noted above, California law governs the "organization and internal affairs and the liability" of [Summer WWK's] managers, members, and other owners." O.C.G.A. § 14-11-701. Although neither party's brief addresses California law as it relates to the alter ego doctrine or piercing the corporate veil, the Court finds from an independent review of California law that the requirements are substantially similar such that the parties' arguments may be considered under California law. Compare Dearth v. Collins, 441 F.3d 931, 934 (11th Cir. 2006) (listing the three requirements for piercing the veil: [1] that the stockholders'

disregard of the corporate entity made it a mere instrumentality for the transaction of their own affairs; [2] that there is such unity of interest and ownership that the separate personalities of the corporation and the owners no longer exist; and [3] to adhere to the doctrine of corporate entity would promote injustice or protect fraud"), with Blizzard Energy, Inc. v. Schaefers, 286 Cal. Rptr. 3d 658, 671 (Cal. App. 2021) ((1) "there must be such a unity of interest and ownership between the corporation or LLC and its equitable owner that the separate personalities of the corporation or LLC and the shareholder or member do not in reality exist"; (2) an "inequitable result" would follow "if the acts in question are treated as those of the corporation or LLC alone.").

When alter ego liability is imposed, "the corporate entity may be disregarded (the corporate veil 'pierced') and the shareholders held personally liable for corporate debts because of the manner in which they have dealt with the corporation." King v. Emerald Energy, LLC, No. CV-F-09-2128 LJO SMS, 2010 WL 3943644, at *3 (E.D. Cal. Oct. 4, 2010). The conditions under which the corporate form can be disregarded "vary according to the circumstances in each case," and California courts look to a variety of factors in making this determination "under the particular circumstances of each case." Associated

Vendors, Inc. v. Oakland Meat Co., 26 Cal. Rptr. 806, 813 (Cal. App. 1962). Such factors include:

> [c]ommingling of funds and other assets, failure to segregate funds of the separate entities, and the unauthorized diversion of corporate funds or assets to other than corporate uses[;] . . . the treatment by an individual of the assets of the corporation as his own[;] . . . the holding out by an individual that he is personally liable for the debts of the corporation[;] . . . the failure to maintain minutes or adequate corporate records, and the confusion of the records of the separate entities[;] . . . sole ownership of all of the stock in a corporation by one individual or the members of a family[;] . . . the failure to adequately capitalize a corporation; the total absence of corporate assets, and undercapitalization[;] . . . [and] the use of a corporation as a mere shell, instrumentality or conduit for a single venture or the business of an individual or another corporation.

Id. at 813-14 (citations omitted) (listing more factors and citing cases); see also Blizzard Energy, 286 Cal. Rptr. 3d at 849 (also listing as factors "the disregard of legal formalities and the failure to maintain arm's length relationships among related entities").

The undisputed evidence shows that Woods is the sole member and manager of Summer WWK. Woods used the Chase Bank Account, which was opened solely for the purpose of receiving investment funds and making payroll, as his personal bank account. Woods's Am. Resp. to Pls.' SUMF ¶¶ 182-85. It is also undisputed that Woods made personal purchases beginning in October 2020, during a time when Woods was still making representations to crew members that

funding would come through and that the employees would be paid in October 2020. Id. ¶¶ 173-77, 182. Accordingly, Woods commingled funds and other assets when he deposited his own funds (individual assets) into the Chase Bank Account during a time when he was promising that investment funds (LLC's asset) would still be coming.

It is undisputed that the Film never received funding ("failure to adequately capitalize" and "the total absence of corporate assets"). Id. ¶ 132. Any funds paid into the account or paid on behalf of the production company were provided by Woods himself. Id. ¶¶ 29-30. Woods personally paid for Johnston's hotel room, DiFranco's flight to Georgia, and Morrison's travel expenses, while Whitmon sent DeBenedetto a payment via CashApp for $550 to reimburse him for fuel. Id. ¶¶ 136-37, 175; Woods Dep. at 342. Further, it is undisputed that Woods entered into the purchase agreement for the script, purportedly on behalf of 3rd Base, on July 15, 2020, at a time when 3rd Base was suspended and inactive. Id. ¶ 26. Such evidence shows that Woods "disregard[ed the] legal formalities" and "fail[ed] to maintain arm's length relationships among related entities."

It is also undisputed that, on August 27, 2020, a person by the name of Enika R. Whitmon, for whom there is no record evidence of any connection to the Film or either LLC, wired the $7,500 partial purchase price of the script for the Film to

Yost. Id. ¶¶ 28-30. These funds did not come from the Chase Bank Account, or any bank account associated with either 3rd Base or Summer WWK. Because the lessor of the production office space in Atlanta required proof of funds before entering any lease agreement, Woods provided George with a bank statement from CIBC Private Wealth Management with an account holder listed as Carolyn Maulten[25] ("confusion of the records of the separate entities"). These undisputed facts satisfy the "unity of interest and ownership" requirement of the alter ego test.

As to the second prong—resulting injustice—an inequitable result will follow if Woods's breach of the contract is treated as that of Summer WWK's alone. First, it is undisputed that Plaintiffs, during the height of the COVID-19 pandemic, took this job with the expectation that they would receive compensation, and indeed performed the work as agreed upon for varying amounts of time. Woods's Am. Resp. to Pls.' SUMF ¶¶ 139, 142-47, 151, 154. Woods himself acknowledges and admits that Plaintiffs are owed money for work done, id. ¶¶ 189-97, and he admits to making statements to the crew members that they will

[25] Woods denies this fact, which is supported by an actual copy of the bank statement in the record entitled "pof.pdf," see CIBC Private Wealth Management Statement [Doc. 125-1 at 122-23], with a citation to his own deposition wherein he testifies, "I don't know who [Carolyn Maulten] is," and that he does not recall the document.

receive payment. Id. ¶¶ 173, 176. To hold only Summer WWK liable while shielding its only member and manager from liability in the face of the undisputed evidence outlined above would be unjust. "The essence of the alter ego doctrine is that justice be done. What the formula comes down to, once shorn of verbiage about control, instrumentality, agency, and corporate entity, is that liability is imposed to reach an equitable result." Mesler v. Bragg Mgmt. Co., 702 P.2d 601, 607 (1985) (internal quotations omitted); see also King, 2010 WL 3943644, at *3-4 (imposing alter ego liability where the undisputed evidence demonstrated that the sole member and owner of the defendant LLC failed to observe the necessary corporate formalities and failed to adequately capitalize the LLC).

The Court finds that the employment contracts between Plaintiffs and Summer WWK were breached, and that Woods, as the sole member, owner, and manager of Summer WWK, is individually liable as Summer WWK's alter ego to Plaintiffs for the breaches. Accordingly, Woods's motion for summary judgment as to Plaintiffs' breach of contract claims is **DENIED**, and Plaintiffs' motion for summary judgment as to Woods's liability is **GRANTED**.[26]

[26] Because the Court concludes that a valid contract exists that governs Plaintiffs' claims for their unpaid wages, Plaintiffs' may not recover for unjust enrichment. Davidson, 609 F. App'x at 997 (noting that neither unjust enrichment nor quantum meruit are available "when an express contract exists governing all the claimed rights and responsibilities of the parties") (citations omitted). Accordingly,

3. George's Liability to Plaintiffs

As to George's liability, Plaintiffs contend that the evidence proffered by Plaintiffs show that "Plaintiffs agreed to perform specific work on the Film and Defendants agreed to pay them a specific amount." Pls.' MSJ Br. at 24. However, Plaintiffs point to no case law to support their argument that George, as an employee of the LLC, with no ownership interest in the LLC, must be held liable to Plaintiffs for breach of a contract that was negotiated on behalf of and with Summer WWK and/or Woods. As discussed above, George undertook the actions Plaintiffs cite (drafting the budget and production calendar/schedule, negotiating pay rates) pursuant to her responsibilities as the line producer/UPM. See O.C.G.A. § 140-11-303(a) (providing that an employee is not liable for contract obligations of the LLC solely by reason of being an employee of the LLC).

Plaintiffs cannot recover from George for breach of contract because Plaintiffs have failed to offer any evidence that any party intended for George to be a party to the contract, or that George individually made any promise to pay Plaintiffs for the work they performed on the Film. See Green v. Flanagan, 317

George's and Woods's motions for summary judgment as to Plaintiffs' unjust enrichment claims are **GRANTED**, and Plaintiffs' motion for summary judgment as to their unjust enrichment claims is **DENIED**.

Ga. App. 152, 156 (2012) (concluding that the plaintiff's supervisor was not a party to the plaintiffs' employment agreement and could not be personally liable for the contractual obligations of the company). Accordingly, Plaintiffs' motion for summary judgment as to their breach of contract claim against George is **DENIED**, and George's motion for summary judgment as to Plaintiffs' breach of contract claim against her is **GRANTED**.

C. Fraud

In Count II of her Crossclaim, George seeks recovery for fraud against Woods and Summer WWK. Crosscl. at 16. However, George only seeks summary judgment as to liability on her crossclaims against Woods. See generally George's Crosscl. Br. George contends that she is entitled to summary judgment on her fraud claim because there exists no genuine issue of material fact that "each fraud element is met." George's Crosscl. Br. at 10. In response, Woods argues that summary judgment is not appropriate because George has failed to show that (1) Woods knowingly made a false statement with an intent to deceive, or that (2) George's reliance was justifiable. Woods's Opp'n to George's MSJ at 13-16.

Under Georgia law, "the tort of fraud consists of five elements: '(1) false representation by the defendant; (2) scienter; (3) intent to induce the plaintiff to act or refrain from acting; (4) justifiable reliance by the plaintiff; and (5) damage to

the plaintiff.'" Next Century Commc'n Corp. v. Ellis, 318 F.3d 1023, 1027 (11th Cir. 2003) (quoting Ades v. Werther, 256 Ga. App. 8, (2002)). As the Georgia Court of Appeals has explained, "it is axiomatic that a false representation made by a defendant, to be actionable, must relate to an existing fact or a past event." Fuller v. Perry, 223 Ga. App. 129, 131 (1996). "Fraud cannot consist of mere broken promises, unfilled predictions or erroneous conjecture as to future events." Id. (quoting Riddle v. Driebe, 153 Ga. App. 276, 281 (1980)); see also Williams v. Southland Corp., 143 Ga. App. 111, 113 (1977) ("[T]he mere breach of a contract does not amount to a fraud."). However, "[a]n exception to the general rule exists where a promise as to future events is made with a present intent not to perform or where the promisor knows that the future event will not take place." Buckley v. Turner Heritage Homes, 248 Ga. App. 793, 795 (2001).

The legal term scienter has the following definition, that the false statement was knowingly made with a false design or was made in a severely reckless manner." Keogler v. Krasnoff, 268 Ga. App. 250, 252 (2004). Fraudulent intent at the time of contracting can be inferred based on subsequent conduct of the defendant that is unusual, suspicious, or inconsistent with what would be expected from a contracting party who had been acting in good faith. Impact Media Enterprises, LLC v. Fanfare Media Works, Inc., No. 1:05-CV-2152-GET, 2007

WL 9701278, at *4 (N.D. Ga. Mar. 16, 2007) (citing BTC COM Ltd. v. Vacon, 278 Ga. App. 256, 261 (2006) (holding fraud may be shown by slight or circumstantial evidence")). However,

> [p]roof of fraud is seldom if ever susceptible of direct proof, thus recourse to circumstantial evidence usually is required. Moreover, it is peculiarly the province of the jury to pass on these circumstances showing fraud. Except in plain and indisputable cases, scienter in actions based on fraud is an issue of fact for jury determination.

Brown v. Mann, 237 Ga. App. 247, 249 (1999) (quoting Lloyd v. Kramer, 233 Ga. App. 372, 373 (1998)).

George argues that it is undisputed that Woods (1) "made false statements to George that he had proper funding" and "never told her he did not," (2) knowing at the time he made these statements that he did not have funding, (3) these statements were made "because he wanted to induce George . . . to continue working on the Film," (4) George justifiably relied on Woods's representations because she saw Woods taking steps to continue production, and (5) George incurred damages by working for Woods for seven months without pay. George's Crosscl. Br. at 10. In response, Woods contends that his statements to George that he would be able to obtain funding "in the future cannot form the basis of George's claim for fraud," and that the record does not show that Woods ever falsely told George that funding had been secured. Woods's Opp'n to George's MSJ at 14.

Woods also contends that George's reliance was not justifiable because George "knew this was Woods's first movie and she had not previously worked with Woods." Id. at 15.

The Court finds that summary judgment in favor of George is not warranted because, viewing the evidence in the light most favorable to Woods, there exists a genuine dispute of material fact as to several elements of George's fraud claim. Although it is undisputed that Woods made promises to George that funding would be secured in the future, the evidence relating to whether Woods ever made a representation or statement to George that funding had, in fact, been secured (i.e., a misrepresentation about an existing fact) is disputed.[27]

The record reflects that, in order to obtain funding, Woods needed to obtain a completion bond, which in turn required Woods to pay a contingency fee to the bonding company. Although UniFi had provided a letter of intent to bond, the bond was never obtained because Woods did not pay the contingency fee. Pursuant to the Escrow Agreement, another requirement for obtaining funding was

[27] The Court notes that Woods authorized a press release to be published on September 15, 2020, which stated that Woods "has successfully corralled eleven million dollars in financing" the Film and a second, unrelated project. Press Release [Doc. 124-1 at 2-3]. But George does not contend that she relied on this press release in any way.

depositing $253,000 to an escrow account. Woods testified that the deposit amount was "a phone call away for me," but he did not deposit any funds because he did not obtain a letter of distribution. Woods Dep. at 359; Woods's Am. Resp. to Pls.' SUMF ¶ 132.

However, the record also reflects that Woods relied on distributors, who represented to him that they would issue a letter of distribution for the Film, and that Woods thought that he would be able to obtain one. Woods Dep. at 355. Woods also hired writers to re-write the script based on promises that a letter of distribution would be forthcoming, but such promise was "reneged." Id. at 111, 368. Accordingly, there exists a genuine dispute of material fact as to whether Woods's promises to secure funding and pay George were made with the present intent not to perform or with knowledge that the funding would not come through.

Because the record contains conflicting testimony and evidence as to Woods's knowledge and intent, and because credibility of the witnesses and weighing of the evidence are functions of the jury, the determination of these factual disputes at the summary judgment stage would be inappropriate. Anderson, 477 U.S. at 255. George's Motion for Summary Judgment as to Liability on her fraud crossclaim against Woods is **DENIED**.

VI. PLAINTIFFS' DAMAGES

Plaintiffs ask the Court to award damages against Defendants. Pls.' MSJ Br. at 25. In a footnote of their opening brief, Plaintiffs state, "[i]n their Reply brief, Plaintiffs will submit an itemized accounting of unpaid minimum wages, overtime wages, gap wages, and unreimbursed expenses based on evidence contained in Plaintiffs' declarations, timecards, and invoices submitted herewith." Id. n.16. George, in her response, objects to Plaintiffs' inclusion of such an itemization in their reply brief, arguing that "Plaintiffs improperly and tactically ignore the rules to gain an advantage and avoid Defendants' response." George's Opp'n to Pls.' MSJ at 24-25 (citing L.R. 7.1(D), NDGa.). Woods does not address Plaintiffs' proposition in his response. See generally Woods's Opp'n to Pls.' MSJ. In reply, Plaintiffs provide a chart containing a calculation of Plaintiffs' alleged damages ("Damages Chart") [Doc. 147-1] and argue that the Damages Chart "contains no new evidence or arguments, and instead is a summary of the evidence set forth in the Declarations submitted with Plaintiffs' Motion for Summary Judgment and is submitted to aid the Court in the event of a ruling in Plaintiffs' favor." Pls.' Reply at 15.

Plaintiffs' inclusion of the Damages Chart as an Exhibit to their Reply Brief is impermissible, notwithstanding that Woods did not object and that the Court

grants George's motion for summary judgment as to all Plaintiffs' claims against her, rendering her objection irrelevant. The Eleventh Circuit has repeatedly emphasized that arguments raised for the first time in a reply brief are not properly before a reviewing court. See United States v. Whitesell, 314 F.3d 1251, 1256 (11th Cir. 2002) (explaining it need not address issue raised for first time in reply brief); United States v. Dicter, 198 F.3d 1284, 1289 (11th Cir. 1999) (holding issue raised for first time in reply brief is waived); United States v. Martinez, 83 F.3d 371, 377 n.6 (11th Cir. 1996) (declining to consider arguments raised for first time in reply brief); United States v. Coy, 19 F.3d 629, 632 n.7 (11th Cir. 1994) (per curiam) (same).

Plaintiffs contend that the Damages Chart is a "summary of the evidence set forth in the Declarations." Pls. Reply at 15. However, the amounts calculated and claimed in the Damages Chart are inconsistent with the amounts presented in Plaintiffs' declarations and in Plaintiffs' Statement of Undisputed Material Facts. Compare, e.g., Damages Chart at 8 (calculating total damages owed to Geryak to be $36,317.23), with Woods's Am. Resp. to Pls.' SUMF ¶ 196 (admitting that Geryak is owed $25,047.23 in damages), and Geryak Decl. ¶ 8 (stating that Geryak is owed $25,047.23 in damages). Plaintiffs' inclusion of the damages chart with

their Reply Brief prevented Woods from being able to respond to the methods and results of the calculations.

Moreover, some Plaintiffs' rates of pay were set on a weekly or daily basis,[28] and no party has offered any evidence regarding the number of hours such weekly or daily pay was intended to compensate. See Lamonica, 711 F.3d at 1311 ("[W]here the employee is paid solely on a weekly salary basis, the number of hours the employee's pay is intended to compensate—not necessarily the number of hours he actually works—is the divisor.") (quoting Farm Stores Grocery, 518 F.3d at 1269). The FLSA provides for overtime compensation "at a rate not less than one and one-half times the regular rate at which [an employee] is employed." 29 U.S.C. § 207. "Thus, determining the 'regular rate' at which Plaintiffs were employed is essential." Allemani v. Pratt (Corrugated Logistics) LLC, No. 1:12-CV-00100-RWS, 2014 WL 2574536, at *15 (N.D. Ga. June 6, 2014).

> Generally, an employee's regular rate of pay is a factual matter. Urnikis-Negro v. Am. Family Prop. Servs., 616 F.3d 665, 680 (7th Cir.2010) (citing Walling v. Youngerman–Reynolds Hardwood Co., 325 U.S. 419, 424–25, 65 S.Ct. 1242, 89 L.Ed. 1705 (1945)). Because it is unclear from the record whether Plaintiffs' salary was intended to

[28]Bonnem Decl. ¶ 5 ($500.00 per day); DeBenedetto Decl. ¶ 5 ($7,825.00 per week); Frankenfield Decl. ¶ 5 ($2,800.00 per week); Galline Decl. ¶ 5 ($3,400.00 per week); Geryak Decl. ¶ 5 ($6,500.00 per week); Johnston Decl. ¶ 5 ($4,000.00 per week); Mendez Decl. ¶ 5 ($400.00 per day); Smith Decl. ¶ 5 ($1,750 per week); Snyder Decl. ¶ 5 ($3,500.00 per week); Waff Decl. ¶ 5 ($6,300 per week); Zapotosky Decl. ¶ 5 ($1,900.00 per week).

> compensate them for forty hours per week, fifty hours per week, or all hours worked in a week, the Court cannot make a final determination on this issue as a matter of law. However, the Court can determine the method of calculation to be used depending upon the decision of the fact finder as to the intent of the parties.

Id.; Martin v. S. Premier Contractors, Inc., No. 2:11-CV-00197-RWS, 2013 WL 822635, at *10 (N.D. Ga. Mar. 6, 2013) ("Given the lack of evidence in the record regarding the number of hours Plaintiff's salary was intended to compensate, the Court cannot rule as a matter of law that the overtime compensation, if any, owed Plaintiff should be calculated on a half-time basis.").

No party has presented the Court with any evidence regarding the intent of the parties as to the hours to be compensated by the weekly or daily salaries listed above. Although Plaintiffs cite to one case in which the Eleventh Circuit applied a calculation contained in 29 C.F.R. § 778.109, Kohlheim v. Glynn Cnty, 915 F.2d 1473, 1480 (11th Cir. 1990), Woods has not been given an opportunity to respond to Plaintiffs' use of this method. See Lamonica, 711 F.3d at 1311 ("The DOL's interpretive rule 'sets forth one way in which an employer may lawfully compensate a nonexempt employee for fluctuating work hours; it is not a remedial measure that specifies how damages are to be calculated when a court finds that an employer has breached its statutory obligations.'") (quoting Urnikis-Negro, 616 F.3d at 666). Because a fact issue remains on the issue of damages, and because

the final calculation of damages was presented for the first time in Plaintiffs' Reply Brief, the Court **DENIES WITHOUT PREJUDICE** Plaintiffs' request for an award of damages.

VII. DEFAULT JUDGMENT AS TO SUMMER WWK

After reviewing the Collective Action Complaint, bolstered and supplemented by the evidence contained in the record, and for all the foregoing reasons, the Court finds that default judgment in favor of Plaintiffs against Summer WWK is appropriate. Because the amount of damages Summer WWK and Woods owe to Plaintiffs must yet be determined at trial, the Court will defer entry of default judgment pending the outcome of the trial. FED. R. CIV. P. 55(b)(2); S.E.C. v. Smyth, 420 F.3d 1225, 1231-32 (11th Cir. 2005) ("[I]f an evidentiary hearing or other proceedings are necessary in order to determine what the judgment should provide, such as the amount of damages that the defaulting defendant must pay, those proceedings must be conducted before the judgment is entered.") (quoting Lowe v. McGraw-Hill Cos., 361 F.3d 335, 339-40 (7th Cir. 2004)).

VIII. CONCLUSION

For the foregoing reasons, it is hereby **ORDERED** as follows:

(1) Defendant Cherelle George's Motion for Summary Judgment as to Plaintiffs' Claims Against George [Doc. 120] is **GRANTED**.

(2) George's Motion for Summary Judgment as to Liability on her Crossclaims Against Defendant Woods [Doc. 121] is **GRANTED IN PART AND DENIED IN PART**. The Motion is **GRANTED** as to George's Breach of Contract Claim (Count I) but is **DENIED** as to George's Fraud (Count II) and Quantum Meruit (Count III) Claims.

(3) Defendant HL Woods's Motion for Summary Judgment [Doc. 123] as to All Plaintiffs is **GRANTED IN PART AND DENIED IN PART**. The Motion is **GRANTED** as to all Plaintiffs' Unjust Enrichment Claims (Count II) and Opt-In Plaintiffs' Breach of Contract Claims (Count III) but is **DENIED** as to Plaintiffs' FLSA Claims (Count I) and Named Plaintiffs' Breach of Contract Claims (Count III).

(4) Plaintiffs' Motion for Summary Judgment against Woods and George [Doc. 122] is **GRANTED IN PART AND DENIED IN PART.** The Motion is **GRANTED** as to liability on all Plaintiffs' FLSA Claims (Count I) against Woods and as to the Named Plaintiffs' Breach of Contract Claims (Count III) against HL Woods. The Motion is **DENIED** as to all Plaintiffs' claims against George, all Plaintiffs' Unjust Enrichment Claims (Count II) against Woods, Opt-In Plaintiffs' Breach of Contract Claims (Count III) against Woods, and

the issue of damages.

As to Plaintiffs' Motion for Summary Judgment against Summer WWK, which the Court has converted to a Motion for Default Judgment against Summer WWK [Doc. 122], the Court will defer entry of default judgment until the amount of damages has been determined at trial.

The only remaining issues in this case are as follows: (1) George's Crossclaims against Summer WWK;[29] (2) George's Crossclaims against Woods for Fraud (Count II) and Attorneys' Fees and Costs (Count VI); (3) Damages owed to George by Woods and Summer WWK; and (4) Damages owed to all Plaintiffs by Woods and Summer WWK.

It is further **ORDERED** that the parties shall file their proposed consolidated pretrial order no later than thirty (30) days from the date of this Order. See LR 16.4, NDGa.; Standing Order [Doc. 8] § II.N.

IT IS SO ORDERED this 5th day of February, 2024.

Mark H. Cohen

MARK H. COHEN
United States District Judge

[29] George only sought summary judgment as to liability on her crossclaims against Woods, not on her crossclaims against Summer WWK. Accordingly, the issue of Summer WWK's liability to George will be determined at trial.