

1 Alan Harris (SBN 146079)
2 Priya Mohan (SBN 228984)
3 David Garrett (SBN 160274)
4 Min Ji Gal (SBN 311963)
5 **HARRIS & RUBLE**
6 655 North Central Avenue 17th Floor
7 Glendale, CA 91203
8 Tel: 323.962.3777
9 Fax: 323.962.3004
10 harrisa@harrisandruble.com
11 pmohan@harrisandruble.com
12 mgal@harrisandruble.com

13 *Attorneys for Plaintiff*
14 BRIAN PERRY

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16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **COUNTY OF LOS ANGELES**
18

19 BRIAN PERRY, individually and on
20 behalf of all others similarly situated,

21 Plaintiff,

22 v.

23 PICROW, INC., a California
24 Corporation; PICROW UNLIMITED,
25 LLC, a California Limited Liability
26 Company; ELECTRA LANG, an
27 individual; PETER A. LANG, an
28 individual; HORMEL FOODS
CORPORATION and Does 1 to 100,
inclusive,

Defendants.

Case No. 20STCV39699

Assigned to the Hon. Kenneth R.
Freeman, Dept: 14

**PLAINTIFF'S SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS-ACTION
SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES
IN SUPPORT THEREOF**

Date: September 30, 2021

Time: 11 a.m.

Place: Dept. 14

Spring Street Courthouse
312 N. Spring Street
Los Angeles, CA 90012

Complaint Filed: Oct. 14, 2020

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction.

This Supplemental Memorandum will address the issues raised in the Preliminary Approval Checklist issued by the Court on June 7, 2021 (the “Checklist”).

A. Notice

The parties believe that an English-only notice is sufficient due to the fact that all fifty-four (54) Class Members are known by Defendant to speak and read English fluently. The Class Members are experienced union crew members in the motion picture industry in Los Angeles, where it is necessary to be fluent in English in order to work in commercial productions. Plaintiff’s counsel works frequently with members of the various trade unions involved such as IATSE and Teamsters Local 399, and interactions with the union members support the notion that all of the Class Members are able to read and understand English. Harris Decl., ¶3 Plaintiff has also reiterated that every crew members that he interacted with on the shoot spoke English. *Id.* Therefore, the parties do not think that the expense of producing the notice package in other languages would be justified because the Class Members will all be able to read the English-only notice.¹ If necessary, Defendant will supply a further declaration regarding this issue.

B. First Amended Complaint (“FAC”)

The parties will file the FAC as a stand-alone document.²

C. Class Definition & Class Period

The proposed Class Definition is:

All persons who are or were employed by Defendants on a December 2019 Hormel commercial shoot identified as Hormel 0000019050 as an employee in the State of California at any time between December 1, 2019 to January 7, 2020.

The parties have included a separate definition for the Aggrieved Employees:

¹ Plaintiff’s counsel’s office employs fluent, multilingual Spanish, Chinese and Korean speakers who are able to translate if inquiries are made. Plaintiff’s Counsel’s contact information is in the Notice.

² The parties have made additional changes to the FAC in order comply with the Checklist and have attached the redlined version of the FAC to the Harris Declaration as Exhibit 7.

1 For settlement purposes only, pursuant to California *Code of Civil*
2 *Procedure* § 2699, *et seq.*, the Parties agree that the term “Aggrieved
3 Employees” is defined as: all persons who are or were employed by
4 Defendants on a December 2019 Hormel commercial shoot identified as
Hormel 0000019050 as an employee in the State of California at any time
between December 1, 2019 to January 7, 2020.

5 Amended Settlement, ¶I(C), Harris Decl., ¶3, Ex. 2. The membership of the Class and
6 Aggrieved Employees are necessary because the membership in both groups is identical.
7 The proposed settlement applies to work on one Hormel commercial (the “Production”)
8 with two days of principal photography during December, 2019. The fifty-four (54)
9 Class Members are the only Aggrieved Employees, because the Aggrieved Employees
10 only worked during the time period of December 1, 2019 and January 7, 2020 (the “Class
11 Period”). No Aggrieved Worker who worked outside the Class Period is included in the
12 Class Definition or Settlement.³

13 **D. Release of Claims**

14 The parties have executed an Amended Settlement with a release which only
15 covers claims alleged in the complaint or which could have been alleged based upon the
16 facts in the complaint. The parties believe that the scope of the amended release is
17 defined with precision and clarity, and only releases claims presented directly in the
18 complaint and/or facts alleged in the complaint. Likewise, the parties believe that the
19 PAGA release is narrowly-tailored and limited to claims for penalties under PAGA as
20 disclosed in the LWDA letter and alleged in the Complaint.⁴ The parties do not believe
21 that the filing of an amended PAGA letter is necessary, but will prepare and file an
22 amended PAGA letter if the Court deems it necessary.

23 **E. Release Effective Date**

24 The intent of the parties was that the actual date certain of the release would be the
25 “Date of the Final Approval”, but of course, the release would not be effective unless and

26
27 ³ The parties have stipulated to amend the complaint in order to clarify the definitions and facilitate
the approval process.

28 ⁴ Plaintiff has provided a copy of the PAGA Notice, which is attached to the FAC and also to the
Declaration of Alan Harris (“Harris Decl.”) as Exhibit 4.

1 until payment was made to the Class Members.⁵ The parties have amended the
2 Settlement to address this issue and clarify their intent.

3 Paragraph VII(A) originally read:

4 “Upon the Date of Final Approval, for the Settlement Period, Named
5 Plaintiff and all members of the Settlement Class, except those that make a
6 valid and timely request to be excluded from the Settlement Class and
7 Resolution, waive, release, discharge, and promise never to assert in any
forum any and all wage-related claims...”

8 The above language has been amended to read:

9 “Upon the Date of Final Approval, **once settlement checks are mailed to**
10 **the Class Members by the Claims Administrator**, for the Settlement
11 Period, Named Plaintiff and all members of the Settlement Class, except
those that make a valid and timely request to be excluded from the
Settlement Class and Resolution, waive, release, **and** discharge...”

12 Amended Settlement, ¶VII(A), Harris Decl., ¶3, Ex. 2 (changes in bold). The
13 parties have amended the Class Notice in order to reflect this change. Harris Decl.,
14 ¶3, Ex. 3.

15 **F. Release of PAGA Claims**

16 The parties have amended the Settlement and Class Notice to reflect that all
17 released claims included all PAGA claims that could have premised on the facts alleged
18 in the Complaint (and PAGA letter) and that class members and aggrieved employees
19 will release PAGA claims even if Class Members request exclusion from the class,
20 pursuant to Robinson v. Southern Counties Oil, 53 Cal. App. 5th 476 (2020). See
21 Amended Settlement, ¶VII(A), Harris Decl., ¶3; Class Notice, Harris Decl., ¶3, Ex. 3.

22 Settlement Class Members who opt out will still release PAGA claims and will
23 receive a pro rata check from the PAGA portion of the Settlement. This release has been
24 clearly set out within the Amended Settlement and Class Notice. Amended Settlement,

25 ⁵ If no payment was made, then there would be no consideration for the release. Cal. Civ. Code
26 §1605-1615. This is common settlement contract construction. Typically, settlements will state that a
27 release is effective “as of” a certain date, and payment is required within a certain number of days
28 following the effective date. Harris Decl., ¶3. Further, the Date of Final Approval is a date that may be
judicially noticeable if there were a future dispute, while the date of mailing could be subject to dispute.

¶VII(A), Harris Decl., ¶3; Class Notice, Harris Decl., ¶3, Ex. 3.

The proposed Settlement has been amended to clearly define the payment formula for the Aggrieved Employees, as follows:

The Net PAGA Settlement (\$2,500) shall be paid to the Aggrieved Employees (the “PAGA Allocation”) as follows: The PAGA Allocation will be based upon on each Aggrieved Employee’s Eligible Workweeks during the PAGA Period divided by total number of Aggrieved Employee Eligible Workweeks during the PAGA Period, times \$2,500 (the Net PAGA Settlement after Payment of penalties to the LWDA).

Amended Settlement, ¶XI(A), Harris Decl., ¶3

G. Payment Formula and Manner of Distribution

The determination of benefits is straightforward: each of the fifty-four (54) Class Members will receive a pro rata share of the Net Settlement Amount based upon their Eligible Work Weeks. Because the Class Period is short (just over 5 weeks⁶) and the number of Class Members is small (54), the calculations will not be complicated. At most, there will 270 total workweeks (54 [class members] * 5 [work weeks]), and the average revised payout will be \$2,160.⁷ This represents a positive result for each Class Member considering that there were only two days of principal photography on the Production. Using an estimated average daily rate of \$400, this net average payment represents over 5 days’ pay for each Class Member—again an excellent result for a commercial which only had two days of principal photography.⁸

The payments to the Settlement Class Members shall be mailed “within thirty (30) calendar days following the Date of Final Approval.” Amended Settlement, ¶XI(C),

⁶ December 1, 2019 through January 7, 2020 (the “Class Period”).

⁷ The Parties estimate the Net Settlement Amount will be approximately \$116,667. (= \$220,000 [Gross Settlement] - \$73,333 [attorney fees] - \$12,500 [costs] - \$2,500 [incentive payment] - \$5,000 [costs of claims admin] - \$10,000 [Gross PAGA Payment]. The Entire Net Settlement Amount will be paid to the Participating Class Members. With 54 Class members, the average net payment to each Class Member will be \$2,160 (= \$116,667 [Net Distributable Amount]/54 [Class members]. The Class Members will also receive their share of the net PAGA Payment.

⁸ Of course, Class Members worked on other days in pre-production and post-production during the approximate five-week Class Period. However, it appears that many Class Members only worked during the week of principal photography. Even if a Class Member worked during the entire 37-day Class Period, the average net payment of \$2,160 represents a positive result, equal to over five days’ worth of average pay.

Harris Decl., ¶3; Class Notice, Harris Decl., ¶3, Ex. 3.

As stated above, the parties have included a separate payment formula for PAGA penalties, pursuant to Robinson.⁹ Amended Settlement, ¶XI(A), Harris Decl., ¶3; Class Notice, Harris Decl., ¶3, Ex. 3. Based upon the new gross PAGA amount of \$10,000 (and net PAGA amount of \$2,500), each Aggrieved Employee will receive a net PAGA payment of \$46.¹⁰ Each Aggrieved Employee will receive a PAGA check regardless of whether they opt out.

H. Opt Outs and PAGA Penalties

Each Aggrieved Employee will receive a PAGA check regardless of whether they opt out, pursuant to Robinson. This change is reflected within the Amended Settlement and Class Notice. Amended Settlement, ¶VII(A), Harris Decl., ¶3; Class Notice, Harris Decl., ¶3, Ex. 3.

I. Social Distancing Procedures

The parties have added the following social distancing language to the Notice:

Any class member who wishes to come to court in person should consult <https://www.lacourt.org/> for social distancing requirements.

Class Notice, Harris Decl., ¶3, Ex. 3, ¶23.

J. Notice of Final Judgment

The parties have added the following language to the Amended Settlement Agreement (¶XIX(K) regarding Notice of Entry of Final Judgment:

Notice of Entry of Judgment Following Final Approval of Class Settlement shall state that “[o]n [date of entry of Judgment], 202_, the Court entered Judgment in this Class Action Settlement. The Judgment shall be attached to the Notice of Entry of Judgment. The Notice of Entry of the Court’s Judgment shall be effectuated by: (a) serving it on the Settlement Class

⁹ The parties have increased the gross PAGA payment to \$10,000, which is approximately 52% of the total potential PAGA penalties. See March 3, 2021, Harris Decl., ¶11 (Total potential PAGA penalties are \$19,100).

¹⁰ If the gross PAGA penalty is \$10,000, then the net PAGA penalty payable to PAGA is \$7,500 (75%) and the net PAGA penalty payable to the Aggrieved Employees is \$2,500. Labor Code §2699(i). Therefore, each Aggrieved Employee will receive a check for \$46 (= \$2,500 [net penalty] / 54 [Aggrieved Employees]).

1 *through service upon Defendant's counsel by Class Counsel, and (b) posting*
2 *it on the Claims Administrator's website. Cal. Rules of Court, rule*
3 *3.771(b)).*

4 **K. Opt Out Procedures**

5 Pursuant to Robinson, Class Members may not opt out of the PAGA portion of the
6 Settlement. This change is reflected within the Amended Settlement and Class Notice.
7 Amended Settlement, ¶VII(A), Harris Decl., ¶3; Class Notice, Harris Decl., ¶3, Ex. 3.

8 **L. Right to Terminate**

9 In class counsel's experience, anywhere between two percent (2%) and five
10 percent (5%) of the Class Members may opt out before termination provisions kick in.
11 Here, there are only fifty-four (54) class members, so two (2) class members is equal to
12 roughly four percent (3.7% to be exact), a typical percentage. Even if the opt outs
13 exclude the given number, that does not mean that the deal will automatically terminate.
14 Instead, the Defendant has the option to terminate. Further, too many opt out could
15 indicate that the settlement is not being received in a positive way by the Class, and
16 Plaintiff may want the deal to be terminated in order to re-negotiate or proceed with the
17 case. See Microsoft IV Cases, 135 Cal. App. 4th 706, 723 (2006). "[T]he absence of a
18 large number of objections to a proposed class action settlement raises a strong
19 presumption that the terms are favorable to the class members." Nat'l Rural Telecomms.
20 Coop., 221 F.R.D. at 529; see also Barbosa v. Cargill Meat Sols. Corp., 297 F.R.D. 431,
21 448 (E.D. Cal. 2013) ("Where a settlement agreement enjoys overwhelming support from
22 the class, this lends weight to a finding that the settlement agreement is fair, adequate,
23 and reasonable.").

24 Here, Plaintiff is confident that the Settlement is a reasonable result, which will be
25 well-received by the Class, with an average gross payment of \$4,074 each (which is ten
26 times the daily average pay), and an average net payment of \$2,160, which is an
27 extremely positive result considering the physical production only lasted two days.

28 **M. Modified Settlement Agreement**

The parties are submitting a redlined and clean version of the Amended Settlement

1 Agreement and Class Notice as exhibits to the Declaration of Alan Harris submitted
2 herewith.

3 **II. Conclusion.**

4 It is respectfully submitted that the \$220,000 settlement with Defendant is fair,
5 reasonable, and adequate. The Court should (1) conditionally certify the Settlement
6 Class, (2) approve the form and method of Notice, (3) approve Alan Harris and David
7 Garrett of Harris & Ruble as Class Counsel, (4) approve Plaintiff as Class Representative,
8 (5) approve Phoenix as the proposed Settlement Administrator, and (6) approve the
9 proposed mechanism for receiving notices of election to opt out of the settlement. This
10 Court should grant preliminary approval.

11 Dated: August 30, 2021

HARRIS & RUBLE



Alan Harris

David Garrett

Attorneys for Plaintiff

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FOR PRELIMINARY APPROVAL OF CLASS-ACTION SETTLEMENT;
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bsorsher@fisherphillips.com
rking@fisherphillips.com
dwang@fisherphillips.com

/s/ David Garrett
David Garrett