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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

RYAN KISTLER, individually, and on behalf
of other aggrieved employees pursuant to the
California Private Attorneys General Act;

Plaintiff,

vs.

CABLECOM, LLC, a Delaware limited
liability company; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: RG21112665

Honorable Stephen Kaus
Department 19

**[PROPOSED] ORDER AND JUDGMENT
GRANTING APPROVAL OF PRIVATE
ATTORNEYS GENERAL ACT (CAL. LABOR
CODE § 2698, ET SEQ.) SETTLEMENT
AGREEMENT AND AWARD OF
ATTORNEYS' FEES AND COSTS, GENERAL
RELEASE FEE, AND SETTLEMENT
ADMINISTRATION COSTS**

[Notice of Motion and Motion for Approval of
Private Attorneys General Act (Cal. Labor Code §
2698, *Et Seq.*) Settlement Agreement and Award of
Attorneys' Fees and Costs, General Release Fee, and
Settlement Administration Costs; Declaration of
Plaintiff's Counsel (Joanna Ghosh) filed concurrently
herewith]

Reservation: 799329230333
Date: March 18, 2024
Time: 3:00 p.m.
Department: 19

Complaint Filed: September 14, 2021
Trial Date: None Set

1 This matter has come before the Honorable Stephen Kaus in Department 19 of the Superior Court of
2 the State of California, for the County of Alameda, on March 18, 2024, at 3:00 p.m., on Plaintiff Ryan
3 Kistler's ("Plaintiff") Motion for Approval of Private Attorneys General Act (Cal. Labor Code § 2698, *Et*
4 *Seq.*) Settlement Agreement and Award of Attorneys' Fees and Costs, General Release Fee, and Settlement
5 Administration Costs ("Motion for Approval of Settlement"). Lawyers *for* Justice, PC appeared for Plaintiff
6 and Ogletree Deakins appeared for Defendant CableCom, LLC ("Defendant").

7 On or around July 28, 2023, Plaintiff and Defendant (collectively, the "Parties") executed the Private
8 Attorneys General Act Settlement Agreement and Release ("Settlement," "Settlement Agreement," or
9 "Agreement").

10 The Court has reviewed and considered (1) the Motion for Approval of Settlement, (2) the
11 Declaration of Plaintiff's Counsel Joanna Ghosh, and (3) the Settlement Agreement.

12 Having duly considered the Parties' papers and oral argument, and good cause appearing,

13 **IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:**

14 1. The Motion for Approval of Settlement is granted.
15 2. All terms used herein shall have the same meaning defined in the Settlement Agreement.
16 3. The Court finds that Plaintiff has satisfied the prerequisites under the California Private
17 Attorneys General Act (Cal. Labor Code § 2698, *et seq.*) ("PAGA"), including, and not limited to, providing
18 the California Labor and Workforce Development Agency ("LWDA") and Defendant with notice of the
19 specific provisions of the California Labor Code alleged to have been violated, including, and not limited
20 to, the facts and theories to support the alleged violations, in conformity with California Labor Code §
21 2699.3(a).

22 4. The Court also finds that the Settlement Agreement has been submitted to the LWDA in
23 conformity with California Labor Code § 2699(l)(2) and that the LWDA has not sought to intervene or
24 appear in the above-captioned action ("Action").

25 5. The Aggrieved Employees covered under the Settlement consist of the following individuals:

26 All current and former non-exempt employees employed by Defendant within the State of
27 California during the period from July 6, 2020 to December 16, 2022 ("Aggrieved Employees").

28 //

1 6. The Court finds that the Parties reached the Settlement as a result of arm's-length
2 negotiations.

3 7. Pursuant to California Labor Code § 2699(l)(2), the Court has reviewed the sum allocated
4 for payment of penalties under PAGA ("Net Settlement Amount"), and determines that it is fair, just,
5 reasonable, and adequate. The Court hereby approves the Net Settlement Amount. The Net Settlement
6 Amount shall be the Total Settlement Amount (\$1,650,000.00), subject to increase pursuant to Section III(b)
7 if Aggrieved Employees' workweeks exceed 73,812 for the period April 9, 2020 through September 30,
8 2022, less the approved Attorneys' Fees and Costs to Lawyers *for* Justice, PC ("Plaintiff's Counsel"),
9 General Release Fee to Plaintiff, and Settlement Administration Costs to Simpluris, Inc. (the "PAGA
10 Settlement Administrator"). Seventy-five percent (75%) of the Net Settlement Amount shall be distributed
11 to the LWDA ("LWDA Payment") and twenty-five percent (25%) of the Net Settlement Amount shall be
12 distributed to the Aggrieved Employees ("Employees' Portion") in accordance with this Order and Judgment
13 and the Settlement Agreement.

14 8. The Court has considered the Settlement, and the monetary allocations provided thereby, and
15 finds that they are fair, just, reasonable, and adequate. The Court hereby directs the PAGA Settlement
16 Administrator to administer the Settlement and to make the payments as provided for by, and consistent
17 with, this Order and Judgment and the Settlement Agreement.

18 9. The Court approves the payment of \$577,500.00 to Lawyers *for* Justice, PC for attorneys'
19 fees and reimbursement of litigation costs and expenses incurred in the Action. This amount shall be paid
20 from the Total Settlement Amount and shall be disbursed in accordance with this Order and Judgment and
21 the Settlement Agreement.

22 10. The Court approves payment in the amount of \$10,000.00 to Plaintiff Ryan Kistler for his
23 General Release Fee. This amount shall be paid from the Total Settlement Amount and shall be disbursed
24 in accordance with this Order and Judgment and the Settlement Agreement.

25 11. The Court approves payment up to the amount of \$10,000.00 to Simpluris, Inc. for the
26 Settlement Administration Costs. This amount shall be paid from the Total Settlement Amount and shall be
27 disbursed in accordance with this Order and Judgment and the Settlement Agreement.
28

12. The Parties are directed to perform in accordance with the terms set forth in this Order and Judgment and the Settlement Agreement.

13. The Court further finds that notice of the Settlement need not be provided to the Aggrieved Employees; however, the Court approves the Cover Letter, attached hereto as “**EXHIBIT 1**,” and the PAGA Settlement Administrator shall distribute the Cover Letter to the Aggrieved Employees at the same time that it distributes their share of the Employees’ Portion (“Individual Settlement Share”).

14. No later than ten (10) calendar days after the date of this Order and Judgment, Defendant will provide the PAGA Settlement Administrator with the Aggrieved Employee List, in accordance with this Order and Judgment and the Settlement Agreement.

15. Within fourteen (14) calendar days of the date of this Order and Judgment, Defendant shall deposit the Total Settlement Amount into a qualified settlement account established by the PAGA Settlement Administrator for administration of the Settlement.

16. No later than fourteen (14) calendar days after receipt of the Aggrieved Employees List and Total Settlement Amount, the Settlement Administrator shall distribute the Individual Settlement Share checks to Aggrieved Employees, LWDA Payment to the LWDA, General Release Fee to Plaintiff, Attorneys’ Fees and Costs to Plaintiff’s Counsel, and payment to itself for the Settlement Administration Costs, as provided for by this Order and Judgment and the Settlement Agreement,.

17. The Individual Settlement Share checks issued to Aggrieved Employees shall remain valid and negotiable for ninety (90) calendar days, and thereafter, shall be cancelled. Funds associated with such cancelled checks shall be transmitted by the PAGA Settlement Administrator to the California State Controller’s Office Unclaimed Property Division, in the name of the Aggrieved Employee(s) whose check is cancelled and in the amount of his or her respective Individual Settlement Share(s).

18. Aggrieved Employees shall not have the right to opt out of or object to the Settlement. Upon the entry of this Order and Judgment and full funding of the Total Settlement Amount, Plaintiff and the State of California with respect to Aggrieved Employees, will be deemed to have knowingly and voluntarily released and forever discharged the Released Parties from the Released Claims.

19. “Released Parties” means Defendant, including Defendant's past, present, and/or future, direct and/or indirect, officers, directors, members, managers, management-level employees, agents,

representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers.

20. “Released Claims” means all causes of action and factual or legal theories that were alleged in the operative complaint in the Action or reasonably could have been alleged based on the facts and theories alleged in the operative complaint in the Action, including all of the following claims for relief: for failure to pay all wages due (including minimum wages, straight time, overtime, double-time, incentive compensation and premium pay, miscalculation of pay), failure to provide compliant meal periods and failure to provide proper meal premiums, failure to provide compliant rest breaks and proper rest break premiums, failure to timely pay wages during employment, failure to timely pay wages upon termination, failure to provide complete and accurate wage statements, failure to maintain complete and accurate payroll records, failure to provide pay on a proper pay cycle, failure to reimburse necessary business-related expenses and costs, civil penalties under the Private Attorneys General Act (“PAGA”) arising out of the claims and theories described above, and any penalties or recoveries raised by the wage and hour laws and IWC Wage Orders pleaded in the Action, including but not limited to a recovery of attorneys’ fees, costs, and expenses.

21. “PAGA Release Period” means the period July 6, 2020, through May 9, 2023.

22. No individualized notice of this Order and Judgment is required to be provided to the Aggrieved Employees. This Order and Judgment shall be submitted to the LWDA through the online system established for the filing of notices and documents, in conformity with California Labor Code § 2699(l)(3).

Date: _____

Honorable Stephen Kaus
Judge of the Alameda Superior Court

EXHIBIT 1

<<Mailing Date>>

To: <<First Name>><<Last Name>>
<<Street Address>>
<<City>> <<State>> <<Zip>>

Re: Settlement Payment from *Ryan Kistler v. CableCom, LLC*, Alameda Superior Court Case No. RG21112665

Dear <<First Name>><<Last Name>>:

Please find enclosed a check in the amount of <<amount of payment>> ("Individual Settlement Share"). This check is your payment from the settlement in the lawsuit entitled *Ryan Kistler v. CableCom, LLC*, Alameda Superior Court Case No. RG21112665 ("Action").

The lawsuit was filed on September 14, 2021, by Ryan Kistler ("Plaintiff") against his former employer, on behalf of the State of California, with respect to himself and other alleged aggrieved employees, to seek recovery of civil penalties pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* ("PAGA"), for alleged violations of the California Labor Code and Industrial Welfare Commission Wage Orders, including, *inter alia*, for failure to properly pay minimum and overtime wages, failure to provide compliant meal and rest periods and associated premiums, failure to pay wages during employment and upon termination, failure to provide compliant wage statements, failure to maintain requisite payroll records, and failure to reimburse business expenses. Prior to filing the lawsuit, on July 9, 2021, Plaintiff Kistler submitted a letter to the California Labor and Workforce Development Agency ("LWDA"), pursuant to PAGA, to provide notice of his intent to seek civil penalties under PAGA for Defendant's alleged violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, and 2810.5, and Industrial Welfare Commission Wage Orders, including *inter alia*, Wage Orders 4-2001 and 16-2001, thereby initiating LWDA Case Number LWDA-CM-837424-21.

Defendant denies all of Plaintiff's allegations and denies any wrongdoing of any kind associated with Plaintiff's allegations.

A settlement was reached between Plaintiff and Defendant CableCom, LLC ("Defendant").

On <<Date>>, the settlement was approved by the Court, with a portion to be paid to the LWDA and a portion to be paid to all Aggrieved Employees, in exchange for a release of certain legal claims throughout the "PAGA Release Period." The term "Aggrieved Employees" means all current and former non-exempt employees employed by Defendant within the state of California during the period from July 6, 2020 to December 16, 2022. The term "PAGA Release Period" means the period extending from July 6, 2020 through May 9, 2023.

You are receiving a portion of the settlement (the enclosed Individual Settlement Share) because you have been identified as an Aggrieved Employee. Your Individual Settlement Share is based on the total number of workweeks that you performed worked for Defendant in California during the PAGA Release Period. The Individual Settlement Share is considered to be 100% penalties, which will be reported on an IRS Form 1099. You are responsible for paying any and all taxes that may be due as a result of any payment issued to you under the settlement and should consult a tax advisor regarding the tax consequences of such payment.

Under the settlement, as of <<date of entry of order by the Court approving the Settlement and full funding of Total Settlement Amount>>, the Released Parties were fully released and forever discharged from any and all Released Claims.

"Released Parties" means Defendant, including Defendant's past, present, and/or future, direct and/or indirect, officers, directors, members, managers, management-level employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers.

"Released Claims" means all claims for civil penalties arising out of or relating to causes of action and factual or legal theories that were alleged in the operative complaint in Plaintiff's lawsuit, or that reasonably could have been alleged based on the facts and theories alleged in Plaintiff's lawsuit, including all of the following claims for relief: (i) failure to pay all wages due (including minimum wages, straight time, overtime, double-time, incentive compensation and premium pay, miscalculation of pay); (ii) failure to provide compliant meal periods and failure to provide proper meal premiums; (iii) failure to provide compliant rest breaks and proper rest break premiums; (iv) failure to timely pay wages upon termination; (v) failure to timely pay wages during employment; (vi) failure to provide complete and accurate wage statements; (vii) failure to maintain complete and accurate payroll records; (viii) failure to provide pay on a proper pay cycle; (ix) failure to reimburse necessary business-related expenses and costs; (x) civil penalties under the Private Attorneys General Act ("PAGA") arising out of the claims and theories described above; (xi) any penalties or recoveries raised by the wage and hour laws and IWC Wage Orders pleaded in the Action, including but not limited to a recovery of attorneys' fees, costs and expenses.

The enclosed check is valid for 90 days from the original date of issuance and mailing, and if it is not cashed, deposited, or otherwise negotiated within the 90-day timeframe, it will be cancelled, and the funds associated with the cancelled check

COVER LETTER

will be transmitted to the State Controller's Office Unclaimed Property Division in your name and in the amount of your respective Individual Settlement Share.

Do not call or write the Court, Office of the Clerk of the Court, Defendant, or Defendant's counsel to ask questions about the settlement or to ask tax-related questions. If you have any such questions, you may contact **PAGA Settlement Administrator** at **[toll-free phone number]**.