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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

A. SIMMS and J. COSTA, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

PRETTYBIRD, LLC, a Delaware Limited
Liability Company; PRETTYBIRD
ENTERTAINMENT HOLDINGS, INC., a
Delaware Corporation; KERSTIN EMHOFF,
an individual; PAUL HUNTER, an individual;
and DOE 1 through and including DOE 10,

Defendants.

Case No: 23STCV09031
Assigned to Hon. Stuart M. Rice, Dept. 1

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: January 3, 2025
Time: 10:30 a.m.
Dept.: 1
Location: Spring Street Courthouse
312 N. Spring St.
Los Angeles, CA 90012

Complaint Filed: April 24, 2023

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MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction and Summary of the Case.

This Court should grant preliminary approval of the Class Action and PAGA Settlement Agreement and Release (“Agreement”) entered between Plaintiffs Arthur Simms and John Costa (“Plaintiffs”) on behalf of the absent Class Members whom they seek to represent, on the one hand, and Defendants Prettybird, LLC (“PLLC”), Kerstin Emhoff (“Emhoff”), Prettybird Entertainment Holdings, Inc. (“PEH”), and Paul Hunter (“Hunter”), on the other hand. This Motion requests that the Court grant preliminary approval of a Gross Settlement Amount totaling \$1,078,000.00 for approximately 7,699 class members.¹ This Court should find that there is a *prima facie* showing that the nonreversionary Settlement Agreement is fair, adequate, and reasonable. The \$1,078,000.00 for a maximum of 7,699 workers represents a gross of some \$140.02 per person ($=\$1,078,000.00/7,699$). If all costs are approved, the Class will receive on average a net payment of approximately \$81.40, each. As uncashed checks will be redistributed to those who cashed their initial checks, Participating Class Members may look forward to receipt of some \$100.00. The proposed resolution is fair, reasonable, and in the best interest of the Class. AH Decl. ¶ 4. This Motion requests that the Court approve: the form and method of Notice; Harris & Ruble (“H&R”) as Class Counsel; Arthur Simms and John Costa as Class Representatives; and Simpluris, Inc. (“Simpluris”) as Administrator; and the proposed mechanism for receiving and dealing with notices and opt out issues. The Settlement warrants approval.

The Complaint was filed on April 24, 2023. Filed concurrently with this motion is the proposed First Amended Complaint (“FAC”) which adds claims for civil penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA”) and liquidated damages under the Fair Labor Standards Act (“FLSA”). Plaintiffs allege that Class Members experienced various payroll issues, including allegations that: (1) Defendants paid Plaintiffs and the Class Members their final wages late; (2) Defendants failed to provide the wage statement information required by California Labor Code (the “Code”) § 226(a); (3) Defendants failed to pay timely wages resulting in liquidated damages for unpaid minimum and overtime wages; (4) Defendants failed to reimburse Class Members for necessary business expenses,

¹ As of February 15, 2024, there were a total of approximately 7,699 Class Members. AH Decl. Ex. 1 ¶ 4.1.

1 such as the expenses incurred by Class Members in maintaining cell phones; and (5) Defendants failed
2 to provide compliant meal periods and rest breaks as, for example, Plaintiffs and others were required to
3 monitor and respond to their walkie talkies and/or cell phones throughout the work day. Plaintiffs also
4 asserted claims for unfair business practices in violation of Business and Professions Code section
5 17200, *et seq.*

6 The Parties engaged in extensive investigation and discovery, including discovery under the
7 mediation privilege, which included Defendants' production of comprehensive payroll data for Class
8 Members and the alleged Aggrieved Employees under the PAGA claim during the relevant time periods
9 (the "Class Period" and "PAGA Period," respectively). The Parties thereafter sought resolution before a
10 respected and experienced wage and hour class action mediator, Hon. Jeffrey K. Winikow (Ret.). The
11 Parties attended a full day mediation on April 29, 2024. With the assistance of the mediator, the Parties
12 were successful in reaching a resolution, memorialized in the Agreement, one largely tracking this Court's
13 2023 Model Agreement and Class Notice.

14 **II. Conditional Class Certification.**

15 Concerns about the rights of absent class members are satisfied by a careful fairness review of
16 the settlement by the trial court. Pre-certification settlements which have been subjected to such a
17 review are routinely approved at the appellate level in both federal and California's judicial systems.
18 Wershba v. Apple Computer, Inc., 91 Cal. App. 4th 240 (2001). The trial court is required to determine
19 that the class representatives can and will adequately represent the interests of absent class members.
20 However, this does not require that the representative's claims be identical to those of the absent
21 members. Here, the settlement class is limited to employees who work on different film productions,
22 but routinely under the same formal rules and industry-wide practices relating to meal periods and rest
23 breaks as well as the processing of payroll, inevitably late for many of the workers. The proposed Class
24 Representatives are typical of the others who were employed by the same Defendant insofar as they
25 were employed during the time that the payroll issues occurred and they claim similar treatment from
26 Defendants.

27 Wage-and-hour cases such as the above-captioned matter "routinely proceed as class actions."
28 Prince v. CLS Transp., Inc., 118 Cal. App. 4th 1320, 1328 (2004). Obviously, many such cases settle.

1 Here, there has not yet been certification of a class; that is, the Settlement was negotiated *prior* to the
2 filing of a motion for class certification. However, “[a] trial court unquestionably ha[s] the authority to
3 conditionally certify a class for settlement purposes.” Hernandez v. Vitamin Shoppe Indus. Inc., 174
4 Cal. App. 4th 1441, 1457 (2009). Some 7,699 individuals will fall into the class definition, below:

5 [A]ll non-exempt persons (union and non-union) paid wages on account of services
6 provided for Prettybird in the production of Motion Pictures as a below-the-line crew
member in California in California during the Class Period.

7 AH Decl. Ex. 1 at ¶ 1.6.² The formal mediation session took place on April 29, 2024. Id. Ex. 1 at ¶ 2.3.
8 In other words, only after significant analysis of the claims by Plaintiffs’ expert and all counsel, and the
9 assistance of experienced mediator, Hon. Jeffrey K. Winikow, did the Parties agree to the arms-length
10 Settlement. AH Decl. at 4:16-5:2, 8:7-14:23. That process and investigation strongly supports
11 preliminary approval of this Settlement. See Rodriguez v. W. Publ’g Corp., 563 F.3d 948, 965 (9th Cir.
12 2009 (“We put a good deal of stock in the product of an arms-length, non-collusive, negotiated
13 resolution, and have never prescribed a particular formula by which that outcome must be tested.”)
14 (citations omitted); In re Zynga Inc. Secs. Litig., 2015 WL 6471171, at *9 (N.D. Cal. Oct. 27, 2015)
15 (holding that the parties’ use of mediator and fact that significant discovery had been conducted
16 “support the conclusion that the Plaintiff was appropriately informed in negotiating a settlement”);
17 Harris v. Vector Mktg. Corp., No. C-08-5198 EMC, 2011 WL 1627973, at *8 (N.D. Cal. Apr. 29, 2011)
18 (noting that the parties’ use of a mediator “suggests that the parties reached the settlement in a
19 procedurally sound manner and that it was not the result of collusion or bad faith.”).

20 Plaintiffs join counsel in the belief that this Settlement is reasonable for absent Class Members.
21 Declaration of Arthur Simms (“Simms”) ¶ 6; and Declaration of John Costa (“Costa”) ¶ 6 ; AH Decl. ¶¶
22 4, 8-10. Determining whether an action meets the standards of class certification requires a review of
23 section 382 of the California Code of Civil Procedure, which section provides: “[W]hen the question is
24 one of a common or general interest, or many persons, or when the parties are numerous, and it is
25 impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.”
26 Cal. Civ. Proc. Code § 382. Here, the Settlement Class meets the criteria for certification for settlement

27 ² Exhibit 1 to the Harris Declaration is a copy of the Settlement Agreement. A redline between the
28 model settlement agreement and the executed agreement in this Action is Exhibit 2 to the Harris
Declaration.

1 purposes.

2 ***Numerosity and Ascertainability.*** The Settlement Class covers the period from April 24, 2019
3 through the date of preliminary approval. However, for the purposes of counting Class Members, to the
4 extent any new class members are hired after May 1, 2024, Defendants may, at their option, either: (1)
5 keep the Gross Settlement Amount fixed but limit class members covered by this Agreement to only
6 those who worked for Prettybird on at least one day before May 2, 2024; or (2) increase the Gross
7 Settlement Amount by \$140 for each additional new class member hired between May 2, 2024 and the
8 date preliminary approval is granted. AH Decl. Ex. 1 ¶ 8. Here, Defendant has elected to Option #1. AH
9 Decl. at 23:16-27. The Class Members are ascertainable, as each was compensated through established,
10 formal onboarding procedures and paid via Defendants' entertainment-industry, specialist payroll
11 company. AH Decl. at 15:18-20. The Class Members have been identified through Defendants'
12 employment records, meeting the requirement of ascertainability. Class certification is proper when the
13 parties are numerous and it is impractical to bring them all before the court. See Int'l Molders' & Allied
14 Workers' Local 164 v. Nelson, 102 F.R.D. 457, 461 (N.D. Cal. 1983) (explaining that a class size
15 exceeding forty would satisfy the numerosity requirement); Rose v. City of Hayward, 126 Cal. App. 3d
16 926, 934 (1981) (holding that forty-two members is sufficient for numerosity purposes). In this case,
17 there are 7,699 identifiable persons in the Class, and all of them are readily identifiable from the payroll
18 records, all as further detailed in the Harris Declaration at 15: 10-17.

19 ***Common Issues of Fact and Law Predominate.*** As to each and every Member of the Class, the
20 following issues are common across the Class:

- 21 1. Whether Defendants failed to timely pay all accrued final wages upon separation or
- 22 2. Whether Defendants failed to timely pay all accrued wages, resulting in liquidated
- 23 3. Whether Defendants failed to provide proper wage statements.
- 24 4. Whether Defendants failed to provide proper meal and rest breaks.
- 25 5. Whether Defendants failed to reimburse for necessary business expenses.
- 26 6. Whether the alleged violations of the Labor Code give rise to PAGA civil penalties.

27 All of these issues are common to the Class as a whole. The only significant "individual" or
28 "non-common" issues would be the specific dollar amount of recovery to which each Class Member is
entitled. However, it is Plaintiffs' position that this variation cannot defeat class certification, as the

individual assessment of damages is commonly required in all class-actions. Bell v. Farmers Ins. Exchange, 115 Cal. App. 4th 715, 743 (2004) (“[T]he necessity for an individual determination of damages does not weigh against class certification. The community of interest requirement recognizes that ultimately each class member will be required in some manner to establish his individual damages[;] . . . a class action is not inappropriate simply because each member of the class may at some point be required to make an individual showing as to his or her eligibility for recovery or as to the amount of his or her damages.”) (internal citations omitted).

Typicality. With respect to typicality, it is required only that the claims of the named or representative plaintiff be *similar* to those of the class. Richmond v. Dart Indus., Inc., 29 Cal. 3d 462, 474–75 (1981). In other words, the claims of class need not be identical to those of the named plaintiff. Classen v. Weller, 145 Cal. App. 3d 27, 46–47 (1983). Here, the putative class representatives have worked for Defendants and Plaintiffs’ claims are similar if not virtually identical to those they seek to represent, all of whom worked for PLLC in the production of Motion Pictures during the Class Period, and were allegedly subject to untimely wages, meal and rest break violations, improper reimbursement of expenses and wage statement violations. Plaintiffs have a common interest in holding Defendants responsible for any amounts that may be owed to them under the provisions of the Code. Simms Decl. ¶¶ 8-9 and Costa Decl. ¶¶ 8-9; AH Decl. ¶¶ 4, 8, 11.

The Named Plaintiffs and Plaintiffs’ Counsel Are Adequate. Finally, Plaintiffs are adequate class representatives. Plaintiffs have no conflict of interest with any Class Member, as Plaintiffs share the same desire to be made whole under the Code. Plaintiffs are demonstrably committed to pursuing the claims of the Class Members, and Plaintiffs’ motivation in retaining counsel and pursuing this action has solely been to collect owed amounts for themselves and their fellow Class Members. Simms Decl. ¶¶ 5, 7 and Costa Decl. ¶¶ 5, 7; AH Decl., ¶ 11. The qualifications of class counsel are set forth in the accompanying Harris Declaration. AH Decl. at 15:22-21:3. Those qualifications should assure the Court that the interests of the unnamed Class Members will be adequately and vigorously represented. Suffice it to say that H&R has recovered millions of dollars for employee class members in myriad entertainment industry and other wage-and-hour cases, including over a dozen cases against Defendants’ direct competitors in the production of television commercials. Under the circumstances, this Court can

be assured that H&R has adequately discharged its responsibilities as Class Counsel, and will continue to do so. H&R have no known conflicts. Id. ¶ 11.

III. Summary of the Proposed Settlement.

The Settlement will result in the creation of a \$1,078,000 Class Settlement Fund. Id. Ex. 1 at ¶ 3.1. This amount will be used to pay: (a) attorney's fees (33 1/3% or \$359,333) and costs (not more than \$25,000) as awarded by the court; (b) \$20,000 allocated as PAGA penalties to the LWDA (\$15,000) and the Class, including any opt-outs (\$5,000);³ (c) the Administration Costs (\$36,950); and (c) any Class Representative Service Payment as awarded by the Court to Plaintiffs for services in connection with bringing and maintaining the action (\$5,000 each, a total of \$10,000). Id. at 14:9, Ex. 1 at ¶¶ 3.2.1, 3.2.2, 3.2.3, 3.2.5. The remainder is the Net Settlement Amount of \$626,717. As most of the unpaid wages have been paid, the portion allocated as penalties and interest claims are 85% of the total. Id. Ex. 1, at ¶ 3.2.4.1. Ten percent is allocated to wages and 5% is allocated the reimbursement of business expenses. Id. Based on Plaintiffs' review of the data, it is only small amounts of wages which may not have been paid at all. Defendants contend that all wages were paid.

A. The Settlement Amount and the Payments to Settlement Class Members.

In sum, the maximum potential recovery for Class Members for damages and statutory penalties is detailed in the Harris Declaration. AH Decl. at 8:27-11:18, 12:12-14:23. The Settlement Agreement memorializes an outstanding recovery of some 20.3% of the realistically estimated recoverable sum, particularly in light of the fact that this case is largely a pure penalty and civil penalty matter. A significant reduction in possible PAGA penalties is warranted in this case, one in which Defendants acted in good faith in its efforts to address the issues that led to this lawsuit and participated in good

³ The allocation to the PAGA payment should be approved. Harris Decl. Ex. 1 ¶ 3.2.5. The Parties have allocated \$20,000 as the PAGA payment, 1.86 percent of the Gross Settlement Amount. From the PAGA payment, 75% (\$15,000), will be transmitted to the LWDA and 25% (\$5,000) will be distributed to the Class Members, including any opt-outs. The settlement of the claims for penalties under PAGA is reasonable. See, e.g., Alcala v. Meyer Logistics, Inc., No. CV 17-7211 PSG (AGRx), 2019 WL 4452961, at *9 (C.D. Cal. Jun. 17, 2019) (approving PAGA settlement of 1.25 percent); Hopson v. Hanesbrands, Inc., No. CV 08-0844 EDL, 2008 WL 3385452, at *1 (S.D. Cal. Apr. 13, 2009) (approving a PAGA settlement of 0.3 percent); Nordstrom Comm'n Cases, 186 Cal. App. 4th 576, 589 (2010) (approving settlement of wage and hour class action claims and PAGA claims under which no money was allocated to the PAGA claims). A copy of the Settlement Agreement has been uploaded onto the LWDA website. (Harris Decl. at ¶ 2.)

1 faith in early mediation.

2 The settlement was not predicated on Defendant's immediate financial situation, but rather the
3 fact that the corporate Defendant is a privately held company with finite resources. Were the defense
4 exposed to a large adverse judgment, in the neighborhood of several millions or more, a compelling
5 alternative would be the filing of a Chapter 11 proceeding, a result in which both penalties and civil
6 penalties might be entirely eliminated, and resolution for the Class Members delayed for years. This
7 likelihood was a core consideration in determining to accept the settlement, as recommended by our
8 Mediator. AH Decl. ¶ 5.

9 The Net Settlement Amount of approximately \$626,717 will be distributed to Class Members
10 who do not opt out. All Participating Class Members will receive an equal share of the Net Settlement
11 Amount. Harris Decl. Ex. 1 ¶ 1.24.

12 This method differs from the distribution method described in the Court's Model Settlement
13 Agreement, which provides for a distribution tied to the number of workweeks for each Class Member
14 during the Class Period. Plaintiffs respectfully request that the Court approve the parties' proposed
15 method of distribution of settlement funds to the Class.

16 Based on counsel's review of the data, a substantial majority of the employees worked for a
17 period of but one to ten days. See AH Decl. ¶ 4. Those who worked for more extended periods were
18 largely identified as exempt or if non-exempt, members of a union, each category of workers having
19 fewer overall claims for financial relief in this case than short-term, non-union "day players." Most
20 workers on television commercials and music videos are engaged for just 1 to 3 days for each project.
21 Those who work for longer periods are usually categorized as exempt department heads who may not be
22 entitled to meal breaks or any relief for tardy payment of final wages under Code Section 203.

23 Experience teaches that the day player is in a special category of worker whose start paperwork
24 and/or time card might be ignored or misplaced by understaffed accounting departments in this industry,
25 all with the result that one who worked but a single day may have a larger, thirty day claim for
26 continuing wages dwarfing the claim of an exempt member of a union whose claim might be limited to
27 one for a few days of liquidated damages under the minimum wage statute, Code section 1194.2, even
28 though they worked for many weeks before being terminated.

1 The law provides a clear requirement that the equitable distribution of class action financial
2 benefits should be addressed in connection with both preliminary approval and final approval of class
3 actions. “While the trial court should not give a rubber-stamp approval, the settlement hearing also
4 should not be turned into a trial or rehearsal for trial on the merits.” Mendocino Farms Wage & Hour
5 Cases, 2023 Cal. App. Unpub. LEXIS 7225, *17. A court need only “satisfy itself that the class
6 settlement is within the ‘ballpark’ of reasonableness.” Kullar v. Foot Locker Retail, Inc., 168 Cal. App.
7 4th 116, 129, 133 (2008) (“The court undoubtedly should give considerable weight to the competency
8 and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement
9 agreement represents an arm's-length transaction entered without self-dealing or other potential
10 misconduct”).

11 A presumption of fairness applies if settlement has been reached, as here, under the following
12 conditions:

- 13 •There has been arm’s-length bargaining;
- 14 •Investigation and discovery have been sufficient to allow counsel and the court to act
intelligently;
- 15 •Counsel is experienced in similar litigation; and
- 16 •The percentage of class members who object to the settlement is small.

17 Amaro v. Anaheim Arena Management, LLC, 69 Cal. App. 5th 521, 534 (2021) (“‘Due regard’ . . .
18 ‘should [also] be given to what is otherwise a private consensual agreement between the parties. The
19 [court’s] inquiry “must be limited to the extent necessary to reach a reasoned judgment that the
20 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties,
21 and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” [Citation.]
22 “Ultimately, the [trial] court’s determination is nothing more than ‘an amalgam of delicate balancing,
23 gross approximations and rough justice.’” (*7-Eleven Owners for Fair Franchising v. Southland Corp.*
24 (2000) 85 Cal.App.4th 1135, 1145.)”).

25 Finally, in several other recent cases involving producers of television commercials and similar
26 alleged Labor Code violations, other Courts have approved equal distribution formulas for Class
27 Members. Castaneda v. Upload, Inc., Los Angeles Sup. Ct. Case No. BC712863 (Final Approval of
28 equal distribution formula granted by Judge Buckley on January 12, 2021); O’Cain v. Tool of North
America, LLC, Los Angeles Sup. Ct. Case No. 20STCV37526 (Final Approval of equal distribution

formula granted by Judge Berle on Sept. 6, 2023); Tippin v. Biscuit Filmworks, LLC, Los Angeles Sup. Ct. Case No. 19STCV26633 (Final Approval of equal distribution formula granted by Judge Nelson on December 22, 2023); Halvorsen v. Arts and Sciences Department, LLC, Los Angeles Sup. Ct. Case No. 22STCV33257 (Preliminary Approval of equal distribution granted by Judge Cunningham on July 26, 2024); and Zucker v. Iconoclast Content, Inc., Los Angeles Sup. Ct. Case No. 22STCV39379 (Preliminary Approval of equal distribution granted by Judge Riff on September 20, 2024). No Class Member objections were filed in any of the foregoing cases.

B. The Appointment of Class Counsel and the Settlement Administrator.

The Parties have stipulated to the appointment of H&R as Class Counsel. The qualifications of Class Counsel are set forth in the accompanying Harris Declaration. AH Decl. at 15:22-21:3. Subject to Court approval, the Parties have also agreed to the appointment of Simpluris, Inc. (<https://www.simpluris.com/>)(last accessed November 11, 2024) as the Settlement Administrator to provide Notice and to administer the settlement. Id. Ex. 1 ¶ 7.1.

C. Attorney's Fees and Costs.

The Settlement provides that Class Counsel's fees and costs shall be paid from the settlement fund: up to 33 1/3%, if approved by the Court after consideration of Class Counsel's detailed application for attorney's fees and costs. AH Decl. Ex. 1 at ¶ 3.2.2. The Settlement Agreement provides for recovery of litigation costs of up to \$25,000. Id. The Class Notice provides that Class Members will have an opportunity to object. Class Counsel will file a motion seeking an award of fees and costs along with the final-approval papers after the Class notice process has been completed. Accordingly, compensation for Class Counsel will be left entirely to the determination of the Court.

D. Class Notice and Request for Exclusion.

"[A] trial court has virtually complete discretion as to the manner of giving notice to class members." Chavez v. Netflix, Inc., 162 Cal. App. 4th 43, 57 (2008) (internal citation omitted). Here, notice to Class Members will be by first-class mail. AH Decl. Ex 1 ¶ 4.4.1. The Settlement Administrator will update addresses with the National Change of Address database prior to mailing. Id. The proposed Notice will accurately and adequately describe the Settlement and will inform the Members of the Class of their right to object to any aspect of it, including the fees to be sought by Class

Counsel. With respect to Paragraph 1.13 of the Settlement, the defense has elected to keep the Gross Settlement Amount fixed and limit class members covered by the Agreement to only those who worked for Prettybird on at least one day before May 2, 2024. Accordingly, at p. 1 of the Notice, the administrator will provide the actual date of Preliminary Approval, advising class members of the actual dates. The draft Notice attached to the Settlement Agreement presently defines the Class Period as “April 24, 2019 to the date of preliminary approval.” The defense, the Administrator and Plaintiffs all understand that the Administrator will actually insert the date of Preliminary Approval, as if the draft Notice had read: “April 24, 2019 to [insert date of preliminary approval].” Similarly, with respect to the PAGA Period, the administrator will provide the actual date of Preliminary Approval, advising class members of the actual dates. The draft Notice attached to the Settlement Agreement presently defines the PAGA Period as “August 17, 2022 to the date of preliminary approval.” All understand that the Administrator will actually insert the date of Preliminary Approval, as if, with respect to the PAGA Period, the draft Notice had read: “August 17, 2022 to [insert date of preliminary approval].”

Each Member of the Class will have 60 days from the date of mailing to request exclusion. Plaintiffs contend that the proposed mailing is the best means of giving notice under the circumstances and will likely give actual notice to virtually all of the Class Members. An English-only notice is sufficient as the vast majority of Defendant’s production employees require English proficiency to perform their jobs. AH Decl. at ¶ 2, Ex. 1 ¶ 1.12.

E. The Proposed Plaintiffs’ Class Representative Service Payment.

The Settlement provides to Plaintiffs Simms and Costa an Individual Class Payment as a Class Member and an additional Class Representative Service Payment of up to \$5,000, on account of the services that Plaintiffs have rendered to the Settlement Class in bringing this litigation and on account of the time that they have devoted in support of the process. AH Decl., Ex. 1 ¶ 3.2.1. Incentive awards “are not uncommon and can serve an important function in promoting class action settlements.” Sheppard v. Consol. Edison Co. of N.Y., Inc., 2002 U.S. Dist. LEXIS 16314 at *16 (E.D.N.Y. filed Aug. 1, 2002). “Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation.” In re S. Ohio Corr. Facility, 175 F.R.D. 270, 272 (S.D. Ohio 1997), rev’d on other grounds, 191 F.3d 453 (6th

1 Cir. 1999). It is appropriate to provide a payment to class representatives for his or his services to the
2 class. Van Vracken v. Atlantic Richfield Co., 901 F. Supp. 294, 299 (N.D. Cal. 1995); Wang v. Chinese
3 Daily News, Inc., 231 F.R.D. 602, 614 (C.D. Cal. 2005) (“Proceeding by means of a class action avoids
4 subjecting each employee to the risks associated with challenging an employer”); Bogosian v. Gulf Oil
5 Corp., 621 F. Supp. 27, 32 (E.D. Pa. 1985); St. Marie v. Eastern R.R. Ass’n., 72 F.R.D. 443, 449
6 (S.D.N.Y. 1976) (“The risks entailed in suing one’s employer are such that the few hardy souls who
7 come forward should be permitted to speak for others when the vocal ones are otherwise fully
8 qualified”), rev’d on other grounds, St. Marie v. Eastern R.R. Ass’n., 650 F.2d 395 (2d Cir. 1981).

9 In light of Plaintiffs’ willingness to come forward with this action on behalf of the Class, and in
10 light of their efforts in advancing the litigation, this proposed payment is reasonable. Plaintiffs obtained
11 the services of counsel, conferred with counsel and assisted in gathering information and documents for
12 the prosecution of the lawsuit. Plaintiffs spent a considerable amount of time conferring with Counsel,
13 providing factual background and support, analyzing and providing data, and consulting Counsel before
14 and after the full-day mediation. Simms Decl. ¶¶ 3-10 and Costa Decl. ¶¶ 3-10. In doing so, they have
15 successfully prosecuted claims that might have never been brought. See Crab Addison, Inc. v. Superior
16 Court, 169 Cal. App. 4th 958, 971 (2008) (“Current employees suing their employers run a greater risk
17 of retaliation. . . . individual litigation may not be a viable option . . . [In addition], employees may be
18 unaware of the violation of their rights and their right to sue.”). Plaintiffs should be compensated
19 accordingly.

20 **F. Releases.**

21 The Settlement provides for a limited release for Class Members. The Settlement provides that
22 “[e]ffective on the date when Prettybird fully funds the entire Gross Settlement Amount and funds all
23 employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs, Class
24 Members, and Class Counsel will release claims against all Released Parties as follows:

25 All Participating Class Members, on behalf of themselves and their respective former and
26 present representatives, agents, attorneys, heirs, administrators, successors and assigns,
27 release Released Parties from (i) all claims that were alleged, or reasonably could have
28 been alleged, based on the Class Period facts stated in the Operative Complaint including,
e.g. (a) any and all claims involving an alleged failure to pay wages due upon termination
of employment; (b) any and all claims involving an alleged failure to provide compliant
wage statements; (c) any and all claims involving an alleged failure to provide meal

breaks; (d) any and all claims involving an alleged failure to provide rest breaks; (e) any and all claims involving an alleged failure to pay minimum wages; (f) any and all claims involving an alleged failure to pay overtime wages; and (g) failure to reimburse all necessary business expenses. The released claims include all claims based on the Class Period facts stated in the Operative Complaint arising under the California Labor Code (including sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, 202.5, 203, 204, 210, 218, 218.5, 218.6, 226(a) and (b), 226.3, 226.7, 245.5, 246, 432, 510, 512, 515, 558, 558.1, 1174, 1194, 1194.2, 1197.1, 1197.5, 1198, 1198.5, 2802, 2810.3, 2810.5); the Wage Orders of the California Industrial Welfare Commission; California Business and Professions Code section 17200 et seq. Participating Class Members who negotiate or otherwise deposit their Settlement Payment Check will be deemed to have opted into the Action for purposes of the Fair Labor Standards Act (“FLSA”) and as to those Class Members they expressly waive and release any FLSA claims arising during the Class Period and reasonably related to the claims and allegations in the Operative Complaint. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation or claims based on facts occurring outside the Class Period.

AH Decl. Ex. 1. at ¶ 5.2. The release for PAGA Aggrieved Employees is as follows:

All Aggrieved Employees (regardless of whether they are Participating Class Members or Non-Participating Class Members) are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, and the PAGA Notice and ascertained in the course of the Action including, e.g., all statutes referenced in the Operative Complaint and the PAGA Notice and corresponding provisions of the California Industrial Welfare Commission Wage Orders and the California Code of Regulations and Labor Code sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, 202.5, 203, 204, 210, 218, 218.5, 218.6, 226(a) and (b), 226.3, 226.7, 245.5, 246, 432, 510, 512, 515, 558, 558.1, 1174, 1194, 1194.2, 1197.1, 1197.5, 1198, 1198.5, 2802, 2810.3, 2810.5.

The foregoing follows the 2023 Model Form Settlement Agreements. AH Decl. Ex. 1. at ¶ 5.3.

G. *Uncashed Checks.*

California Code of Civil Procedure section 384 (“Section 384”) was revised effective June 27, 2018. It now states that it is “the policy of the State of California to ensure that the unpaid cash residue . . . in class action litigation are distributed . . . in a manner designed either to further the purposes of the underlying class action . . . or to promote justice for all Californians.” Cal. Code Civ. Proc. § 384(a). The parties believe that the Joint Stipulation satisfies the purpose of Section 384 and complies with its statutory language. The Settlement Agreement will provide that any checks paid to Participating Class Members or Aggrieved Employee shall remain valid and negotiable for one hundred eighty (180) calendar days from the date of their issuance.

1 If any checks remain uncashed after 180 calendar days from the mailing, the funds represented
2 by such checks shall be cancelled after the void date, and the Administrator shall transmit the funds
3 represented by such checks to be equally divided and paid to those Class Members who cashed their
4 initial checks, with any uncashed second checks being distributed to the Unclaimed Property Fund. AH
5 Decl. Ex. 1 ¶¶ 4.4.3, 4.4.4.

6 **IV. The Settlement Is Fair, Reasonable, and Adequate.**

7 The proposed Settlement is fair, reasonable, and adequate. According to the California Court of
8 Appeal: “The trial court must determine whether a class action settlement is fair and reasonable, and has
9 broad discretion to do so.” Clark v. Am. Residential Servs. LLC, 175 Cal. App. 4th 785, 799 (2009).
10 An informed evaluation of a proposed settlement also requires “an understanding of the amount in
11 controversy and the realistic range of outcomes of the litigation.” Clark, 175 Cal. App. 4th at 801 (citing
12 Kullar v. Foot Locker Retail, Inc., 168 Cal. App. 4th 116, 120 (2008)). A detailed analysis of the
13 potential recovery, comparing it with that offered in settlement, is found in the Harris Declaration at
14 pages 8 to 14.

15 Here, in Plaintiffs’ view, there is a strong case for awarding penalties on account of the untimely
16 payment of wages. Defendants, however, deny each of Plaintiffs’ allegations in the operative pleading
17 and admit no wrongdoing. For example, Defendants contend that no damages are owed for the
18 “untimely” payment of wages because the wages were not paid late, or not paid late with willful intent.

19 Defendants could likewise assert that Code section 203, as with all penalty statutes, is strongly
20 disfavored, must be narrowly construed, and that no waiting time penalties are owed since all wages
21 were paid and if any wages are owed, there was no willful failure to pay said wages. See Hale v.
22 Morgan, 22 Cal. 3d 388, 405 (1978). The same could be said with respect to Plaintiffs’ paystub claim
23 under section 226 of the Code. Here, in the context of a settlement, a substantial reduction in PAGA
24 penalties is warranted. Defendants participated in good faith in early mediation, and here a great deal of
25 the possible penalties accrue for an alleged violation of section 226(a) of the Code which, if the case
26 proceeded to trial, might not be found to be a violation at all.

27 With regard to the claim that the paystubs did not include all required information, such as the
28 start and end date of the pay period, Defendants will argue that providing the dates worked is sufficient

1 under the law.

2 With regard to the missed meal and rest break claims based on the requirement that employees
3 respond to calls or their walkie talkies, Defendants claim that they never directed employees to keep
4 devices on during breaks. Defendants will also argue that such claims require individualized inquiries
5 that make class certification impossible.

6 Furthermore, as a class action, this case presents a clear risk of lengthy and expensive litigation.
7 It would probably be another two years before this case went to trial so that, *inter alia*, the Parties could
8 properly complete class discovery, Plaintiffs could file a motion for certification, and the Parties could
9 file cross-motions for summary judgment. Based on case law—especially since Defendants did not
10 appear to act in egregious bad faith toward the Settlement Class—in a case of this nature it is appropriate
11 to substantially discount penalties and civil penalties. E.g., Rodriguez v. West Publishing Corp., 563 F.
12 3d 948, 955 (9th Cir. 2009) (antitrust); In re Cmty. Bank of N. Virginia, 622 F.3d 275, 311–12 (3d Cir.
13 2010), as amended (Oct. 20, 2010) (illegal home equity lending scheme).

14 The Parties have, in fact, conducted extensive investigation, formal and informal discovery.
15 Defendants provided Plaintiffs relevant information regarding the employment records of Plaintiffs and
16 the Class, including hundreds of pages of documents. The class payroll data were analyzed by
17 Plaintiffs’ Counsel and retained expert. AH Decl. at 12:22. Of course, the law makes clear that
18 exhaustive, protracted, and costly discovery need not be conducted in a class action before a settlement
19 can be reached. 7-Eleven Owners for Fair Franchising, 85 Cal. App. 4th 1135, 1150 (2000). “In the
20 context of class action settlements, ‘formal discovery is not a necessary ticket to the bargaining table’
21 where the parties have sufficient information to make an informed decision about settlement
22 ‘[N]otwithstanding the status of discovery, Plaintiff’s negotiators had access to a plethora of information
23 regarding the facts of their case.’” Linney v. Cellular Alaska P’ship, 151 F.3d 1234, 1239–40 (9th Cir.
24 1998) (citations omitted). Here, there was sufficient investigation conducted to permit counsel to
25 negotiate and agree to the Settlement.

26 With the proposed settlement, participating Class Members will look to receiving shares of a
27 gross fund totaling \$1,078,000.00, less the amount awarded to Class Counsel for fees and costs,
28 administration fees, PAGA Payment, and the Class Representative Service Payment to the named

1 Plaintiffs. Rodriguez v. West Publishing Corp., 563 F. 3d 948 (9th Cir. 2009), establishes that class
2 settlements of this nature should focus on the recovery of *actual losses* rather than recovery of *penalties*
3 (such as Plaintiffs' claims under sections 203 and 226 of the Code). Viewed in that light, and accessing
4 the general amount that shall be recovered by each Class Member, the Settlement is entirely reasonable.

5 The reaction of Class Members to the proposed Settlement cannot be known until preliminary
6 approval is granted, notice sent out, and responses to that notice received. That said, Class Counsel is of
7 the view that the Settlement is reasonable for all involved. Again, Class Counsel has substantial
8 experience in prosecuting class actions, including actions involving the application of state and federal
9 wage-and-hour laws. While acknowledging that some persons might feel that Defendants should pay
10 more and others might feel that Defendants are paying too much, the undersigned holds the opinion that
11 the proposed Settlement represents a reasonable balancing of the various strengths and weaknesses
12 borne by each of the Parties. Considering the inherent risks, hazards, and expenses of carrying the case
13 through trial, Counsel is of the opinion that the settlement is fair, reasonable, and adequate. Notice of the
14 Final Approval and Judgment will be provided along with the settlement checks.

15 **V. Conclusion.**

16 The settlement is fair, reasonable, and adequate. "Due regard should be given to what is
17 otherwise a private consensual agreement between the parties. The inquiry 'must be limited to the extent
18 necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching
19 by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair,
20 reasonable and adequate to all concerned.' [Citation.] 'Ultimately, the [trial] court's determination is
21 nothing more than "an amalgam of delicate balancing, gross approximations and rough justice."
22 [Citation.]'" Dunk v. Ford Motor Co., 48 Cal. App. 4th 1794, 1801 (1996). The Court should grant
23 preliminary approval.

24 Dated: November 12, 2024



Alan Harris
Attorney for Plaintiffs

1 **PROOF OF SERVICE**

2 I am an attorney for the plaintiffs herein, over the age of eighteen years, and not a party to the within
3 action. My business address is Harris & Ruble, 655 N. Central Ave., 17th Floor, Glendale CA, 91203.
4 On November 12, 2024, I served the within documents:

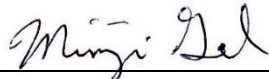
5 **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF**
6 **CLASS ACTION SETTLEMENT**

7 Electronic Service: I caused the above-entitled document(s) to be served through Case Anywhere
8 addressed to all parties appearing on the electronic service list for the above-entitled case and on the
9 interested parties in this case:

10 Ryan M. Andrews
11 Jeffrey A. Brand
12 Venable LLP
13 2049 Century Park East, Suite 2300
14 Los Angeles, CA 90067
15 Telephone: (310) 229 -9611
16 rmandrews@venable.com
17 kpklein@venable.com
18 jabrand@venable.com

19 Attorneys for Defendants

20 I declare under penalty of perjury that the above is true and correct. Executed on November 12, 2024,
21 at Los Angeles, California.

22 
23 _____
24 Min Ji Gal