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14 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
15 **COUNTY OF LOS ANGELES**

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

18 Plaintiffs,

19 v.

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

26 Defendants.

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

**DECLARATION OF ALAN HARRIS IN
SUPPORT OF PLAINTIFFS' 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

ALAN HARRIS declares under penalty of perjury as follows:

1. I am a member in good standing of the State Bar of California and am one of the attorneys for Plaintiffs Arthur Simms and John Costa (“Plaintiffs”) in the within action. I make this Declaration on behalf of Plaintiffs and in support of the Motion for Preliminary Approval of Class Action Settlement. If sworn as a witness, I could competently testify to every fact set forth herein from my own personal knowledge.

2. A true and correct copy of the Class Action and PAGA Settlement Agreement and Class Notice (“Settlement Agreement”) between Plaintiffs and Defendants Prettybird, LLC (“PLLC”), Kerstin Emhoff (“Emhoff”), Prettybird Entertainment Holdings, Inc. (“PEH”), and Paul Hunter (“Hunter”) is attached as **Exhibit 1** hereto. An English-only notice is sufficient as virtually all motion picture production employees are all required to have English proficiency to perform their jobs, and in this matter it appears they have such proficiency. Attached as **Exhibit 2** is a redline comparing the 2023 Model Settlement Agreement with the long-form Agreement. The long-form Settlement has been provided to the California Labor and Workforce Development Agency (the “LWDA”). A true and correct copy of the LWDA database showing the documents uploaded in this case is attached as **Exhibit 3**. Finally, a true and correct copy of the Notice Letter sent to the LWDA is attached as **Exhibit 4**.

3. Defendant Prettybird, LLC engages in the production of motion picture content, primarily television commercials and music videos.

4. In order to assist in our preparation for mediation, I analyzed extensive data provided by Defendants, clients, and other sources, including a vast amount of information concerning PLLC competitors and the motion picture production industry.¹ This permitted me to approximate the maximum amount of untimely paid wages, damages, penalties and civil penalties at issue in this case. Based on my review, I have concluded that the non-reversionary \$1,078,000 cash settlement is fair and reasonable, and in the best interest of the Class. This recovery is reasonable since most television

¹ E.g., Bithell v. E.P. Mgmt. Servs., 2007 Cal. App. Unpub. LEXIS 9706, *3 (“On October 2, 2000, plaintiff Greenberg filed this class action (the Greenberg claims). In the original complaint, plaintiff alleged that a purported defendant class of employers in the motion picture industry violated former Labor Code section 201.5 (which the Legislature amended on May 19, 1998) by failing to pay discharged employees’ wages due and owing within 24 hours after discharge.”)

1 commercials and music videos are produced during a shooting schedule of less than a week, with most
2 class members working for one to three days on any given film production. It is my conclusion that the
3 settlement is sufficient to provide Plaintiffs and Class Members an average gross recovery of \$140.02,
4 with an estimated, average net recovery of some \$81.40, even if all requested fees and cost awards are
5 granted, in full. In light of provision for redistribution of uncashed checks to those who cash their initial
6 payment, I project that all participating Class Members will receive a net recovery of over \$90 each. The
7 recoveries herein consist of payment for claimed statutory penalties (including liquidated damages),
8 PAGA civil penalties, and premium wages claimed to be owing on account of the defense failure to
9 provide compliant rest breaks and meal periods. The projected net recovery is \$626,717 (= \$1,078,000
10 [gross recovery] - \$359,333 [attorneys' fees] - \$25,000 [attorney's costs] - \$5,000.00 per Plaintiff,
11 totaling \$10,000.00 [Incentive Awards] - \$20,000 [PAGA] - \$36,950 [Settlement Administration]).

12 5. Based on case law and my experience, especially since Defendants acted promptly in
13 their efforts to address the issues that led to this lawsuit, it may be appropriate to substantially discount
14 penalties and civil penalties. E.g., Rodriguez v. West Publishing Corp., 563 F. 3d 948, 955 (9th Cir.
15 2009) (antitrust); In re Cmty. Bank of N. Virginia, 622 F.3d 275, 311–12 (3d Cir. 2010), as amended
16 (Oct. 20, 2010) (illegal home equity lending scheme). Again, this approach is appropriate in this case, as
17 the majority of Class Members worked for but a day or so, and the bulk of their theoretical recovery is
18 for penalties and civil penalties, rather than for actually earned, unpaid wages. The settlement was not
19 predicated on Defendants' immediate financial situation, but rather the fact that the corporate Defendant
20 is a privately held company with finite resources. Were the defense exposed to a large adverse judgment,
21 in the neighborhood of several millions or more, a compelling alternative would be for Defendant to file
22 a Chapter 11 proceeding, a result in which both penalties and civil penalties might be effectively
23 eliminated or any payments to Class Members delayed for many years. This likelihood was a core
24 consideration in determining to accept the settlement, as recommended by the Mediator.

25 6. The balance of this Declaration substantially follows the Los Angeles Superior Court,
26 Complex Civil Department Checklist for Preliminary Approval of Class Action Settlements (the
27 "Checklist").

28 1. MOVING PAPERS

1 **A. Introductory Information**

2 **Summary of the litigation.**

3 Plaintiffs Arthur Simms and John Costa filed their action on April 24, 2023. Plaintiffs
4 alleged that Class Members and they experienced various payroll issues, including: (1) tardy
5 payment of final wages; (2) failure to provide the information required by California Labor
6 Code (the “Code”) § 226(a); (3) failure to timely compensate all accrued minimum wages and
7 overtime; (4) failure to provide meal and rest breaks stemming from defense requirement that
8 crew monitor and respond to their walkie talkies or cell phones throughout the workday and (5)
9 failure to reimburse for necessary business expenses, especially cell phones. Plaintiffs also
10 asserted a claim for unfair business practices in violation of Business and Professions Code
11 section 17200, *et seq.*, and Defendants’ failure to provide them with their employment records.
12 Finally, in the Operative Complaint, the First Amended Complaint (“FAC”), submitted for
13 filing concurrently with the Motion for Preliminary Approval, Plaintiffs asserted claims for civil
14 penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA”) and the Fair
15 Labor Standards Act (“FLSA”).

16 The Parties engaged in extensive investigation and discovery, including discovery under
17 the mediation privilege, which included Defendants’ production of payroll data for Class
18 Members and the alleged Aggrieved Employees under the PAGA claim during the relevant time
19 periods (the “Class Period” and “PAGA Period,” respectively). The investigation and discovery
20 included the review of thousands of pages of documents, including CBA’s, production reports,
21 agreements, payroll schedules, production maps, shooting schedules, payroll invoices and data,
22 shoot plans, film permits, wage theft notices, time cards, tax forms, paystubs, the employee
23 handbook, emails, as well as detailed payroll data reflecting the number of employees with
24 information regarding their position, the number of pay periods, final checks, days worked on
25 average by employees, and applicable hourly rates. Plaintiffs analyzed the payroll and punch
26 data provided by Defendants under the mediation privilege.

27 The Parties thereafter sought resolution before a respected wage and hour class action
28 mediator, Hon. Jeffrey K. Winikow. On April 29, 2024, the Parties participated in an all-day

1 mediation, a process which resulted in a proposal for settlement of the case, based on the
2 Mediator's recommended settlement amount and structure.

3 Plaintiffs and many class members were hired by Defendants as short-term, temporary
4 workers on one or another of their motion picture productions. Upon completion of work,
5 Plaintiffs were paid after the regularly scheduled payday. Section 203 of the California Code
6 (Continuing Wages) generally provides that, when wages are willfully unpaid by their statutory
7 due date, the daily wages of the employee shall continue as a penalty from the due date thereof at
8 the same rate until paid up to a maximum of 30 days.

9 It is Plaintiffs' position that failure to pay all wages when due leads to the possible award
10 of liquidated damages equivalent to the minimum wages unpaid under Section 1194.2 of the
11 Code. As to liquidated damages, there is no "good faith" defense or "requirement" that Plaintiffs
12 prove the defense acted "intentionally" to trigger the requirement that the employer, after verdict,
13 pay liquidated damages, fees and costs to both its attorneys and those of a successful Plaintiffs.²

14 Plaintiffs and other members of the production crews were issued walkie-talkies to use
15 during their day of work. Under Augustus v. ABM Sec. Servs. Inc., 2 Cal. 5th (2016), Plaintiffs
16 contend that due to industry practice that crew respond to calls, from the beginning of the day
17 until wrap at the end of the day, the production crew and they were denied proper meal periods
18 and rest breaks. The defense contends that many members of the crew received a written policy
19 stating they could turn off their walkie-talkies during breaks.

20 Plaintiffs contend that Defendants failed to provide all applicable hourly rates in effect
21 during the pay period and the corresponding number of hours worked at each hourly rate by the
22 employee; the name and address of the legal entity that is the employer; the inclusive dates of the
23 weekly period for which the employee is paid, as well as other detail required by Code Section
24 226(a).

25
26 ² The statute does provide that "if the employer demonstrates to the satisfaction of the court or the Labor
27 Commissioner that the act or omission giving rise to the action was in good faith and that the employer
28 had reasonable grounds for believing that the act or omission was not a violation of any provision of the
Labor Code relating to minimum wage, or an order of the commission, the court or the Labor
Commissioner may, as a matter of discretion, refuse to award liquidated damages or award any amount
of liquidated damages not exceeding the amount specified in subdivision (a)." Code §1194.2(b).

1 Plaintiffs allege further that Defendants failed to ever provide for cell phone
2 reimbursement, yet Simms, Costa and other Class Members use cell phones to discharge their
3 various work related duties both before and during the shoot, receiving a flow of phone calls, text
4 messages and/or emails from onboarding documents, time cards, call sheets and other messages
5 from Production as well as fellow members of the crew.

6 As we know from the case law and legislative history, the Code is to be interpreted to
7 protect employees. Industrial Welfare Com. v. Superior Court, 27 Cal. 3d 690, 702 (1980) (“past
8 decisions . . . teach that in light of the remedial nature of the legislative enactments authorizing
9 the regulation of wages, hours and working conditions for the protection and benefit of
10 employees, the statutory provisions are to be liberally construed with an eye to promoting such
11 protection.”); Ramirez v. Yosemite Water Co., 20 Cal.4th 785, 794 (1999) (“In light of the
12 remedial nature of the legislative enactments authorizing the regulation of wages, hours, and
13 working conditions for the protection and benefit of employees, the statutory provisions are to be
14 liberally construed with an eye to promoting such protection.”); Morillion v. Royal Packing Co.,
15 22 Cal. 4th 575, 592 (2000); Martinez v. Combs, 49 Cal. 4th 35, 68 (2010); Brinker Rest. Corp.
16 v. Superior Court, 53 Cal. 4th 1004, 1026–27 (2012); McLean v. State of California, 1 Cal.5th
17 615, 622 (2016). Sections 203 and 226(a) of California’s wage and hour laws are “‘an
18 unobjectionable exercise of the State’s police power.’ See American Trucking Associations, 545
19 U.S. at 434, 125 S. Ct. 2419.” Yoder v. W. Express, Inc., 181 F. Supp. 3d 704, 723 (C.D. Cal.
20 2015).

21 It is “an employer’s duty under the FLSA to maintain accurate records of its employees’
22 hours” and that duty “is non-delegable.” Kuebel v. Black & Decker Inc., 643 F.3d 352, 363 (2d
23 Cir. 2011). Although Kuebel establishes that it is solely the employer’s duty to keep track of
24 hours worked under the federal FLSA, and although Plaintiffs’ wage-and-hour claims are
25 brought under the state law, the fact remains that Defendants, at all times, were subject to the
26 FLSA and therefore was itself required to keep track of Plaintiffs’ hours worked. See Troester v.
27 Starbucks Corp., 5 Cal. 5th 829, 839 (2018) (explaining that, although California’s wage-and-
28 hour laws are “more protective than federal law” and that “California is free to offer [employees]

greater protection,” the FLSA “provide[s] a level of employee protection that a state may not derogate”). Troester, 5 Cal. 5th at 846 (“Nor is it clear why, when it is difficult to keep track of time worked, the employee alone should bear the burden of that difficulty”), 848 (“An employer may be able to customize and adapt available time tracking tools or develop new ones when no off-the-shelf product meets its needs. And even when neither a restructuring of work nor a technological fix is practical, it may be possible to reasonably estimate work time . . . and to compensate employees for that time.”). Marlo v. United Parcel Serv., Inc., No. CV 03-04336 DDP (RZx), 2009 WL 1258491, at *3 (C.D. Cal. May 5, 2009) explains that, under California law, “employers must keep track of the hours . . . employees work.”

Before an employee starts to work for an employer, the employer is required to have the employee fill out the requisite new-hire paperwork. See, e.g., Ketchikan Drywall Servs., Inc. v. Immigration & Customs Enforcement, 725 F.3d 1103, 1113 (9th Cir. 2013) (stating that 8 U.S.C. § 1324a “clearly makes employers responsible for documenting employee work authorization” and that, “[w]here [a defendant] cho[oses] to hire employees who ha[ve] failed to fill out [s]ection 1 [of i-9 Forms] completely, it d[oes] so at its own peril”); 26 C.F.R. § 31-3402(f)(2)-1 subsec. (a) (stating that a withholding-exemption certificate must be completed “[o]n or before the date on which an individual commences employment”); 22 Cal. Code Regs. § 4340-1(a) stating that a withholding-exemption certificate must be completed “[o]n or before the date on which an individual commences employment”). If, for example, the employee fails to complete the necessary tax documents the employer must follow the guidance from the Internal Revenue Service and the California Employment Development Department by withholding taxes as if the employee is single with no withholding allowances. See Internal Revenue Serv., Topic Number 753 – Form W-4 – Employee’s Withholding Allowance Certificate (last updated Mar. 1, 2018), <https://www.irs.gov/taxtopics/tc753>. There is an analogous cite from the California EDD (re defaulting to the single-no-allowances rule): Cal. Emp’t Dev. Dep’t, *Employer’s Obligations for Form W-4 or DE 4* (2016), https://www.edd.ca.gov/pdf_pub_ctr/de71.pdf.

Plaintiffs and the class were discharged under Code section 203 when their employment ceased at the end of the day. Tardy payment of final wages may result in penalties, even when

1 the employee works for but a single day. Smith v. Superior Court, 39 Cal. 4th 77, 80 (2006)
2 (holding that hair model who worked for one day at a show was discharged at the end of the
3 workday and entitled to penalties under section 203 when she was paid two months later).

4 **B. Dunk/Kullar Analysis**

5 **Summary of the case.**

6 Causes of Action

7 The first claim in the Operative Complaint is for late payment of final wages, a penalty
8 claim. In producing motion pictures, Defendants and other, similar entertainment industry
9 companies follow strict, routine regimes regarding onboarding those who are temporary
10 employees, retained to work on the production of a Motion Picture, be it a television commercial,
11 a music video, a television program or feature film. The employment routinely terminates either
12 at the end of a particular production or episode, generally lasting between one to three or more
13 days to several weeks. Routine procedures are followed to make payment of the workers' final
14 paychecks. From Plaintiffs' perspective, these payments are often tardy, largely caused by the
15 underfunding of the payroll accounting function. From the defense perspective, such late
16 payments are either the "fault" of the worker or some other unique event, excusable as it is
17 beyond the control of the busy employer, one who routinely hires many workers for short stints,
18 being buried in payroll paperwork.

19 Minimum and Overtime Wages. Late payment of wages results in the possible
20 imposition of minimum wage liquidated damages under state law. To the extent one is deprived
21 of a meal break or provided one which is shortened by a few minutes, yet a thirty-minute
22 deduction from wages is taken, overtime wages may be due to workers.

23 Meal and Rest Breaks. With respect to meal breaks and rest periods, there is a tension
24 between Augustus and Brinker Rest. Corp. v. Superior Court, 53 Cal. 4th 1004, 1026–27 (2012).
25 Plaintiffs claim the actual practices were to demand response to cell phone and walkie-talkie
26 inquiries from the beginning of the day to wrap at the very end. Again, many class members are
27 union employees who may be exempt from the Code's meal break requirements, but no CBA
28 may revise, diminish, or eliminate California's requirements for routine, daily provision of duty-

1 free rest breaks. Code Section 512(d).

2 Additionally, Defendants argue that meal period claims and state law claims for late
3 payment of final wages are preempted because between are covered by collective bargaining
4 agreements with alternative pay arrangements. See Rodriguez v. Gonsalves & Santucci, Inc., No.
5 21-CV-07874, 2022 WL 161892, at *5 (N.D. Cal. Jan. 18, 2022) (“[W]hen a CBA has alternate
6 pay arrangements to those in the Labor Code, wage payments arise under the CBA and not state
7 law.”). Employees may be entitled to relief when being paid in tardy fashion, under Code
8 sections 203 and 1194.2 (liquidated damages for tardy payment of the minimum wage).

9 Reimbursement of Expenses. Plaintiffs allege that Defendants’ policies and practices
10 requiring employees to use their personal cell phones to complete their work, on set and
11 otherwise, results in a Code section 2802 obligation to reimburse the workers’ reasonable costs
12 of maintaining their personal cellphones for these purposes.

13 As of October of 2024, The Walt Disney Company, Warner Bros., NBCU, Netflix
14 and many other motion picture production companies – large and small, including direct
15 competitors of Prettybird -- are routinely compensating workers for their on-set cell
16 phone use—each paying \$3.00 to their crew per day. In California, “[i]f an employee is
17 required to make work-related calls on a personal cell phone, then he or she is incurring
18 an expense for purposes of section 2801.” Cochran v. Schwan's Home Serv., Inc., 228
19 Cal. App. 4th 1137, 1144 (2014). California has a strong public policy that favors
20 indemnifying employees against employers for such expenses. Nicholas Lab'ys, LLC v.
21 Chen, 199 Cal. App. 4th 1240, 1249 (2011).

22 Wage Statements. The last claim in the Operative Complaint is for improper wage
23 statements, in violation of Code § 226(a). The Defendants issues wage statements that do not
24 including the beginning and end dates of the pay period covered by the wage statement. See
25 Tippin v. Biscuit Filmworks, LLC, Los Angeles Superior Court Case No. 19STCV26633 (July
26 28, 2021, Order Overruling Demurrer and Denying Motion to Strike).

27 PAGA Claim. With respect to PAGA claims under Code §§ 2698 et seq., the following
28 is an analysis of how the potential PAGA civil penalties might be calculated. However, in our

analysis, the total civil penalties should be greatly reduced for the reasons stated above, and because any civil penalties that might be assessed would likely be reduced under Code § 2699(e)(2).

Minimum Wage - Here, maximum potential civil penalties are the product of the number of workers paid in tardy fashion x \$50 per weekly pay period, estimated at approximately \$214,950 (= some 4,299 [Approx. Aggrieved Employees] * \$50 [civil penalty]).

Overtime – The maximum potential civil penalty per employee for violation of Code sections 510 and 1194 would be \$50 for the initial pay period in which a violation occurs under Code section 558(a). The maximum civil penalty would be about approximately \$214,950 (= some 4,299 [Approx. Aggrieved Employees] * \$50 [civil penalty]).

Wage Statement - The maximum potential civil penalty claim for violation of Code section 226(a) would be \$100 per wage statement.³ The estimated amount is some \$644,850 (=4,229 [Approx. Aggrieved Employees] * 1.5 [approximate PAGA Pay Stubs] * \$100 [civil penalty]).

Timely Payment During Employment - The maximum potential civil penalty for violation of Code sections 203 and 210 is \$100 for an initial violation and \$200 for a subsequent violation. Here, the estimated amount, assuming each employee worked 1.5 pay periods during the PAGA Period, is some \$859,900 (=4,299 [Approx. Aggrieved Employees] * \$100 [civil penalty] + [2,150 (=4,299/2 subsequent violations) * \$200]).

Meal and Rest Break Claims – The maximum civil penalty for missed rest breaks would be \$322,425 (=6,449 [approx. PAGA Pay Periods] * \$50 [civil penalty]). In light of the applicable CBA's, and since PLLC did pay some meal period premium wages, the maximum civil penalty for missed meal breaks (assuming a 40% nonunion workforce) would be some \$128,970 (=6,449 [approx. PAGA Pay Periods] * \$50 [civil penalty] *.4).

Payroll Records – The maximum civil penalty under § 1174(d) is \$500.

The settlement of the PAGA claims was reasonable in this case since Defendants have changed some of its practices and cooperatively acted to resolve the matter at mediation. PAGA

³ Gunther v. Alaska Airlines, Inc., 72 Cal. App. 5th 334, 340 (2021) (heightened § 226.3 “penalties apply only where the employer fails to provide wage statements or fails to keep required records”).

1 also expressly allows for a court to reduce penalties where an award is unjust, arbitrary and
2 oppressive, or confiscatory. Given Defendants' prompt efforts to address issues in this case, it is
3 reasonable to conclude that any award for civil penalties would be reduced, particularly here,
4 where the bulk of civil penalties are for violations which are not the most venal. The PAGA
5 civil penalty allocation is appropriate and fair. Here, the Parties have allocated \$20,000 as the
6 PAGA payment, nearly 2 percent of the Gross Settlement Amount. From the PAGA payment,
7 75% (\$15,000), will be transmitted to the LWDA and the balance of \$5,000 will be distributed to
8 the employees. The settlement of the claims for civil penalties under PAGA is reasonable. See,
9 e.g., Alcala v. Meyer Logistics, Inc., No. CV 17-7211 PSG (AGRx), 2019 WL 4452961, at *9
10 (C.D. Cal. Jun. 17, 2019) (approving PAGA settlement of 1.25 percent); Hopson v. Hanesbrands,
11 Inc., No. CV 08-0844 EDL, 2008 WL 3385452, at *1 (S.D. Cal. Apr. 13, 2009) (approving a
12 PAGA settlement of 0.3 percent); Nordstrom Comm'n Cases, 186 Cal. App. 4th 576, 589 (2010)
13 (approving settlement of wage and hour class action claims and PAGA claims under which no
14 money was allocated to the PAGA claims).

15 Only Plaintiffs have a claim under Code §§226(b), 432 and 1198.5—individual requests
16 for employment records. The maximum recovery is \$750 for claims under 226(b) and 1198.5.
17 In light of his possible receipt of a Class Representative representation award, Plaintiffs are
18 effectively waiving these individual claims.

19 **Summary of the investigation.**

20 The Harris & Ruble investigation of the Motion Picture industry – including Defendants'
21 leading competitors – commenced in 1998, initially culminating in the filing on October 2, 2000,
22 of Greenberg v. EP Management Services, LP, Case No. BC250072 (Los Angeles Superior
23 Court) and on March 15, 2004, with the filing of Harrington v. Manpay LLC, Case No. BC
24 312171 (Los Angeles Superior Court). Many other such cases involving motion picture
25 production companies followed. The Greenberg, Harrington and other cases involved
26 production of many thousands of documents and dozens of witness interviews and depositions,
27 ending in the Greenberg and Harrington settlements, along with many other class and individual
28 settlements.

1 Since the Greenberg case was concluded, the time allowed for motion picture
2 production companies to make final payment of wages to workers was increased by
3 amendment to Code section 201.5, coupled with the passage of Code section 204,
4 permitting payment of final wages as slowly as twice per month. However, in response
5 to the California Supreme Court decision in Smith v. Superior Court, 39 Cal. 4th 77
6 (2006), another statute was enacted, Code section 201.3, which Plaintiffs contend
7 requires temporary service employees such as Plaintiffs to be paid weekly.

8 Plaintiffs wrote to their employers, sending a draft I prepared, requesting records
9 pertaining to his employment, including those to which he was entitled under sections
10 226(b), 432 and 1198.5 of the Code.

11 Over the past many years H&R has reviewed responses to many such requests
12 and deposed and/or defended dozens of depositions of entertainment industry witnesses
13 in Berman hearings and state and federal court cases which are substantially identical to
14 this one. H&R has reviewed thousands of documents produced by clients and
15 Defendants, including over twenty industry collective bargaining agreements. The
16 relevant CBAs were reviewed in this case, along with an additional production of
17 documents from Defendants.

18 **7. Settlement Negotiations.** The Parties sought resolution before a respected and
19 experienced wage and hour class action mediator, Hon. Jeffrey K. Winikow. The parties
20 engaged in extensive settlement negotiations, engaging in a full day mediation on April 29, 2024.
21 The parties also exchanged formal and informal discovery, including extensive class data
22 information that was reviewed by Class Counsel and Plaintiffs' expert, eventually reaching a
23 settlement after months of negotiations. In other words, only after significant analysis of the
24 claims by Plaintiffs' counsel, and the assistance of an experienced mediator did the parties enter
25 into the arms-length Settlement. I had numerous telephone conversations with Defense counsel.
26 With the Mediator's assistance, the Parties memorialized the proposed Settlement Agreement,
27 modified from the Mediator's proposal to largely track this Court's 2023 Model Agreement and
28 Class Notice.

A Summary of Risks, Expenses, Complexity, and Duration of Further Litigation.

This case seeks resolution of work performed on many different projects, all or virtually all with differing crew. Obviously, if the matter is not settled there will be continuing, expensive, complex litigation for many years to come, likely accompanied by mandamus and appeal procedures, as well as the intervention of additional Plaintiffs and the possible participation of additional firms representing new claimants. At the end of the day, the matter will be manageable, but nevertheless time-consuming and rather risky.

Risks of Achieving and Maintaining Class Action Status. There are varying degrees of risk in maintaining class status. The final late pay claim may be maintained with expert analysis of pay data to establish policies that result in systematic late payment of final wages, and depositions of Defendants' employees regarding such policies.

Consideration. Based on the anticipated, realistic projected recovery, accounting for defenses and weaknesses, the recovery is reasonable in light of the strengths and weaknesses of the claims and risks involved. The settlement may be approved by focus on the total claim for premium wages owing on account of the Defendants' cell phone and walkie-talkie policies, in light of Augustus, while discounting the penalties and civil penalties. The following table is constructed to accurately reflect both the maximum potential recovery of the amounts as pled and the maximum realistic recovery at trial:

	Max. Potential Recovery	Maximum Realistic Recovery
1. 203--Timely Pay Penalty	>\$50,000,000	\$0 - \$3,000,000
2. 226(a)--Wage Statement Penalty	>\$500,000	\$0 - \$500,000 +
3. 226.7 Meal Breaks --	> +/- \$5,000,000	>+/- \$300,000 - \$500,000 +
4. 226.7 Rest Breaks	> \$10,000,000	\$0-\$680,000 +
5. 510 Overtime	> \$1,000,000	>+/- \$50,000 +
6. 1194, 1194.2 Minimum Wages Liquidated	> \$1,000,000	>\$80,000 +

Damages		
7. PAGA	>\$2,386,545	>+/- \$500,000
Total	>+/- \$75,196,545	>+/- \$5,310,000
Settlement	\$1,078,000	\$1,078,000
Settlement as % of Total	+/- 0.1%	+/- 20.3%

The Gross Settlement Amount represents a reasonable recovery of the realistic potential liquidated damages, penalties and civil penalties were Plaintiffs to prevail.

Here the civil penalties alleged under PAGA are discounted to \$20,000 (seventy-five percent -- \$15,000-- will be paid to the California Labor and Workforce Development Agency ("LWDA") and the remaining twenty-five percent -- \$5,000-- will be disbursed to the Class Members, whether or not they opt out). A substantial reduction in PAGA penalties is warranted in this case, one in which Defendants acted promptly to address the issues that led to this lawsuit and participated in relatively early mediation. The gross settlement amount will be used to pay: (a) attorney's fees of \$359,333 ($=\$1,078,000 * 33 \frac{1}{3}\%$) and counsel's costs (not to exceed \$25,000) as awarded by the court; (b) the PAGA payment (\$20,000, of which \$15,000 will be transmitted to the LWDA and \$5,000 will be distributed to the Aggrieved Employees); (c) the Settlement Administration fee (\$36,950) and (d) any incentive payments as awarded by the Court to Plaintiffs for their services in connection with bringing and maintaining this action (\$5,000.00 each, totaling \$10,000). The Net Settlement Amount is \$626,717 ($=\$1,078,000$ [gross recovery] - \$359,333 [attorneys' fees] - \$25,000 [attorney's costs] - \$5,000 per Plaintiff, totaling \$10,000 [Incentive Award] - \$20,000 [PAGA] - \$36,950 [Claims Administration]).

PAGA - The PAGA allocation is fair. The allocation to the PAGA payment should be approved. The Parties have allocated \$20,000 as the PAGA payment, a reasonable percent of the projected 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. The settlement of the claims for civil penalties under PAGA is almost 2% of the total Settlement.

1 This is reasonable. See, e.g., Alcala v. Meyer Logistics, Inc., No. CV 17-7211 PSG (AGRx),
2 2019 WL 4452961, at *9 (C.D. Cal. Jun. 17, 2019) (approving PAGA settlement of 1.25
3 percent); Hopson v. Hanesbrands, Inc., No. CV 08-0844 EDL, 2008 WL 3385452, at *1 (S.D.
4 Cal. Apr. 13, 2009) (approving a PAGA settlement of 0.3 percent); Nordstrom Comm’n Cases,
5 186 Cal. App. 4th 576, 589 (2010) (approving settlement of wage and hour class action claims
6 and PAGA claims under which no money was allocated to the PAGA claims). A copy of the
7 Settlement Agreement and proposed Operative Complaint have been uploaded onto the LWDA
8 website.

9 C. Class Certification

10 **Numerosity.** There are some 7,699 in the Class: “all non-exempt persons (union and
11 non-union) paid wages on account of services provided for Prettybird in the production of
12 Motion Pictures as a below-the-line crew member in California in California during the Class
13 Period.” The total number in the Class will marginally increase to reflect some additional
14 persons who may have been hired for the first time during the period between February 15, 2024,
15 and May 2, 2024. In order to eliminate persons whose name has changed since their earlier date
16 of work, the defense has yet to complete its review. The actual number of persons in the class
17 will be provided shortly, in a Supplemental Declaration.

18 **Ascertainability:** All proposed Class Members are identifiable from payroll data
19 maintained by both Defendants on the one hand and its entertainment industry specialist payroll
20 company, on the other.

21 **Adequacy of Class Counsel:**

22 I have been licensed as an attorney, first in Illinois (1974) and later in California
23 (1989). My current practice is limited to California, and I am no longer an active member of the
24 Illinois bar. I am a *summa cum laude* graduate of the University of Illinois (A.B. 1970; J.D.
25 1974). After graduation from law school in January 1974, I was hired as a litigation associate at
26 a plaintiffs’ class action antitrust boutique in Chicago, Illinois: Freeman, Freeman &
27
28

1 Salzman.⁴ I became a partner in that firm in 1980, and I started my own practice in 1982. I
2 speak before professional organizations on topics of interest to the Bar. I have represented
3 plaintiffs in complex business litigation for over fifty years. E.g., Illinois v. Ill. Brick Co., Inc.,
4 431 U.S. 720 (1977); In re My Left Hook, LLC, 129 Fed. Appx. 352 (9th Cir. 2005); Gregory v.
5 SCIE, LLC, 317 F.3d 1050 (9th Cir. 2003); In re Blue Coal Corp., 986 F.2d 687 (3d Cir. 1993);
6 In re Blue Coal Corp., 206 B.R. 730 (M.D. Pa. 1997); U.S. v. Gleneagles Inv. Co., Inc., 584 F.
7 Supp. 671, 689 (M.D. Pa. 1984), aff'd. in part and vacated in part, and remanded sub. nom., U.S.
8 v. Tabor Ct. Realty Corp. 803 F.2d 1288 (3d Cir. 1986), cert. den. sub. nom., McClellan Realty
9 Co. v. U.S. 483 U.S. 1005 (1987); In re Uranium Antitrust Litig., 503 F. Supp. 33 (N.D. Ill.
10 1981); In re Grand Jury, 469 F. Supp. 666 (M.D. Pa. 1980); In re Anthracite Coal Antitrust
11 Litig., 82 F.R.D. 364 (M.D. Pa. 1979), In re Folding Carton Antitrust Litig., 83 F.R.D. 251 (N.D.
12 Ill. 1978); In re Anthracite Coal Antitrust Litig., 78 F.R.D. 709 (M.D. Pa. 1978); In re Masterkey
13 Antitrust Litig., 1977 U.S. Dist. LEXIS 12948 (D. Conn. 1977) (six week jury trial for
14 plaintiffs); A. Cherney Disposal Co. v. Chicago & Suburban Refuse Disposal Corp., 68 F.R.D.
15 383 (N.D. Ill. 1975); In re Cement-Concrete Block, Chicago Area, Grand Jury Proceedings, 381
16 F. Supp. 1108 (N.D. Ill. 1974); Parmet v. Lapin, 2004 Cal. App. Unpub. LEXIS 5217 (June 1,
17 2004); Stetson v. West Publ'g Corp., 2011 U.S. App. LEXIS 22549 (9th Cir. Nov. 7, 2011);
18 Covillo v. Specialty's Café, 2012 WL 3537058 (N.D. Cal. Aug. 14, 2012). I have gone to class
19 action trials on behalf of plaintiffs and, once, in class action bench trial for a defendant, Allstate
20 Insurance Company, I assisted in the representation of a defendant. I have represented
21 employees in numerous disputes concerning their receipt of pay in connection with their
22 employment, both before the State of California Division of Labor Standards Enforcement and in
23 state and federal courts in California. E.g., Jacobs v. CSAA Inter Ins. Bureau, 2009 U.S. Dist.
24 LEXIS 37153 (N.D. Cal. May 1, 2009); Escobar v. Whiteside Constr. Corp., 2008 U.S. Dist.

25
26 ⁴ Of my still-living partners in Freeman, Freeman & Salzman, a firm that dissolved in 2007, each
27 became associated with a leading national law firm. Lee Freeman, Jr. became the Chair of the Antitrust
28 Litigation Practice at Jenner & Block. Jerrold Salzman is of counsel at Skadden, Arps, Slate, Meagher
& Flom. Tyrone Fahner became a partner at Mayer Brown, having served as its co-Chairman from 1998
to 2001 and its Chairman from 2001 to 2007. Before joining Mayer Brown, Fahner served as the
Attorney General for the State of Illinois.

LEXIS 68439 (N.D. Cal. 2008) (certification of collective action); Tremblay v. Chevron Stations, Inc., 2008 Westlaw 2020514 (N.D. Cal. 2008) (certification of collective action); Perez v. Maid Brigade, Inc., 2007 U.S. Dist. LEXIS 78412 (N.D. Cal. 2007) (denial of employer's effort to enforce arbitration clause in employment agreements); Hoffman v. Uncle P Prods., 2008 Cal. App. Unpub. LEXIS 3609 (three-year statute of limitations applies to section 203 claims for continuing wages); Bithell v. E.P. Mgmt. Servs., LP, 2007 Westlaw 4216854 (Cal. Ct. App. 2007) (sustaining class settlement of entertainment-industry employees for section 203 and 226 claims against entertainment-industry "payroll companies" and studios); DuPont v. Avalon Hollywood Servs., Inc., 2007 Westlaw 93386 (Cal. App. 2007); Gregory v. Superior Court, 2004 Westlaw 2786357 (Cal. Ct. App. 2004) (employee of entertainment-industry "payroll company" not subject to arbitration of dispute under collective-bargaining agreement), and; Zabounian v. Hack Partners, LLC, Los Angeles Superior Court Case No. BC 343449 (bench trial resulting in \$600,000 judgment on behalf of 89 class members in certified Code and FLSA action). The undersigned has also been appointed lead class counsel in many settled class actions. E.g., Kang v. Albertson's, Inc., C.D. Cal. Case No. 2:07-CV-00894-CAS-FFM (\$6,637,500 settlement of labor-law claims); Tremblay v. Chevron Stations, Inc., N.D. Cal. Case No. CV 07-6009 EDL (\$4,500,000 settlement of labor-law claims); Doty v. Costco Wholesale Corp., C.D. Cal. Case No. CV 05-3241 FMC (JWJx) (\$7,500,000 distributed to class members for FLSA and Code section 203 and 226 violations); Agatep v. Exxon Mobil Corp., C.D. Cal. Case No. CV 05-2342 GAF (\$1,500,000 settlement on behalf of service-station employees in California); Alfano v. Int'l Coffee & Tea, LLC, C.D. Cal. Case No. CV 04-8996 SVW (CWx) (FLSA and Code section 226, 510, and 1194 case); Jenne v. On Stage Audio Corp., C.D. Cal. Case No. CV 04-2045 CAS (PJWx) (FLSA and Code section 203 violations); Hansen v. Advanced Tech Security Servs., Inc., Los Angeles Superior Court Case No BC 367175 (\$1,050,000 settlement of labor-law claims); Ross v. Human Resources, Inc., Los Angeles Superior Court Case No. BC 351506 (Code section 203 case); Harrington v. Manpay, LLC, Los Angeles Superior Court Case No. BC 312171 (\$1,000,000 distributed to class members in a section 510 and section 1194 case); Brackett v. Saatchi & Saatchi, Los Angeles Superior Court Case No. BC 298728 (over \$170,000

distributed to class members in an FLSA and section 203 case); Readmond v. Straw Dogs, Inc., Los Angeles Superior Court Case No. BC257394 (over \$100,000 distributed to class members in a section 203 case); Greenberg v. EP Mgmt. Servs., LP, Los Angeles Superior Court Case No. BC 237787 (\$5,348,000 settlement of claims under sections 203 and 226 of the Code); Angel Paws, Inc. v. Avalon Payroll Servs., Inc., Los Angeles Superior Court Case No. BC 188982 (over \$450,000 distributed to class members in a section 203 case); Saunders v. Metro Image Group, San Diego Superior Court Case No. GIC 809753 (Code section 203 case); Stratford v. Citicorp West FSB, Monterey Superior Court Case No. M 81026 (\$950,000 settlement of labor-law claims); Deckard v. Banco Popular N. Am., related to Silva v. Banco Popular N. Am., C.D. Cal. Case No. CV 08-6709 JFW (RZx) (\$1,050,000 settlement of Code and FLSA claims); Wingate v. The Production Farm, LLC, C.D. Cal. No. CV 07-04294 (2009 settlement of claims under the FLSA and Code §§203, 212, 226 and 1194); Dizon v. Ito, Inc., N.D. Cal. Case No. 3:10-CV-00239-JSW (\$2,451,000 settlement of Code and FLSA claims); Jacobs v. Institute of Reading Dev., Inc., N.D. Cal. Case No. 10-CV-00574-JCS (\$275,000 settlement of Code and FLSA claims); Smith v. Lush Cosmetics, LLC, Los Angeles Superior Court Case No. BC 443014 (\$145,000 settlement of Code claims); Randolph v. Safeway, Inc., Riverside County Superior Court Case No. INC 90412 (\$545,000 settlement of Code claims); Seielstad v. Aegis Senior Cmtys., LLC, Northern District of California Case No. 09-01797 MMC (\$1,000,000 settlement of FLSA and Code claims); Rentoria v. Omnicare, Los Angeles Superior Court Case No. BC405988 (\$755,000 settlement of Code claims); and Peralta v. Macerich Management Company, Marin County Superior Court Case No. CIV 1004656 (\$2,200,000 settlement of Code claims).

I have researched and argued claims similar to those at issue in this case, i.e., payment for unpaid minimum wage and overtime under the Code and the FLSA, for some twenty-five years. E.g., Angel Paws, Inc. v. Avalon Payroll Servs., Inc., Los Angeles Superior Court Case No. BC 188982 (filed April 8, 1998); Greenberg v. EP Management Services, LP, Los Angeles Superior Court Case No. BC 237787 (filed October 2, 2000). Prior to the filing of the Complaint on April 24, 2023, I began investigating the facts of this case, namely, whether there were violations of

1 the Code with respect to Plaintiffs' work for Prettybird, LLC, Kerstin Emhoff, Prettybird
2 Entertainment Holdings, Inc., and Paul Hunter.

3 During the course of this case, the following employees of Harris & Ruble made
4 substantial contributions:

5 a. As discussed above, I, the undersigned am a graduate of the University of Illinois
6 (AB 1970, JD 1974). I am a member of the bar of California (1989).

7 b. David Garrett is a senior associate at Harris & Ruble. Mr. Garrett is a cum laude
8 graduate of Southern Methodist University (B.A., Finance, 1990) and the UCLA School of Law
9 (J.D., 1992). He became a member of the California bar in 1992. Mr. Garrett has worked with
10 me on numerous class-action matters, e.g., Sherman v. CLP Resources, Inc., Central District of
11 California Case No. Case No. CV 12-8080 GW (PLAx) consolidated with Case No. CV 12-8080
12 GW (PLAx); Chookey v. Sears, Central District of California Case No. CV 12-2491-GW
13 (MRWx); Schwanke v. EPSG Management Services, Los Angeles Superior Court Case No.
14 BC365564; Irrgang v. BHC Films, Inc., Los Angeles Superior Court Case No. BC543984; Nall
15 v. Diamond Supply, Los Angeles Superior Court Case No. BC527457; Gonzalez v.
16 Thyssenkrupp, Los Angeles Superior Court Case No. BC568761; Alvarenga v. Insperity, Los
17 Angeles Superior Court Case No. BC529803; Cociu v. David Yurman Retail, LLC., Los Angeles
18 Superior Court Case No. BC604385; Turley v. Chipotle, San Francisco Superior Court Case No.
19 CGC-15-544936; Petrosian v. Turn Around Communications, Inc., Los Angeles Superior Court
20 Case No. 18STCV09026; Ramos v. Steele Water Cable, Inc., Los Angeles Superior Court Case
21 No. BC694818; Altamirano v. Chipotle, Alameda County Superior Court, Case
22 No. RG17851392. He has represented employees in numerous labor-law disputes while at
23 Harris & Ruble. E.g., Sandling v. Seraphim Films, Inc., Los Angeles Superior Court Case No.
24 BC 537787; Graham v. Triumphant Films, Inc., Los Angeles Superior Court Case No. BC
25 539767; Wong v. Weatherford, Alameda Superior Court Case No. RG 12626790; Perryment v.
26 Sky Chefs, Northern District of California Case No. 3:16-cv-04015-JD; Aravelo v. XPO
27 Logistics, Inc., Los Angeles Superior Court Case No. BC529813; Natale v. Topanga
28 Productions, Inc., Los Angeles Superior Court Case No. BC599970; Price v. Autozone, Inc.,

1 United States District Court Case No. 2:15-CV-076622 (C.D. Cal.); Osorio v. AWGE LLC,
2 United States District Court Case No. 2:18-CV-01092 (C.D. Cal.). David Garrett has been
3 approved as Plaintiffs' Counsel in numerous state and federal class action matters, e.g. Arrieta v.
4 Superstation, Inc., Los Angeles Superior Court Case No. BC676302; Dye v. Radford Studios,
5 Inc., Los Angeles Superior Court Case No. BC663326; Luviano v. Multi Cable, Inc., United
6 States District Court Case No. 2:15-CV-05592 (C.D. Cal.); Roach v. Red Bull Distribution, Inc.,
7 Los Angeles Superior Court Case No. BC663866; Crawford v. Sears Hometown and Outlet
8 Store, Inc., Riverside Superior Court Case No. RIC1510091; Kleronomos v. E&S Ring Corp.,
9 Los Angeles Superior Court Case No. BC625143; Dye v. Radford Studios, Inc., Los Angeles
10 Superior Court Case No. BC663326; Wigersma v. Motion Theory, Inc., Los Angeles Superior
11 Court Case No. BC531180.

12 c. Min Ji Gal is a *magna cum laude* graduate of the University of Southern
13 California (B.A., 2013), and USC Gould School of Law (J.D., 2016). She became a member of
14 the California bar in 2016. Her practice is primarily focused on individual and class action cases
15 involving wage-and-hour violations under the Code and Fair Labor Standards Act. Ms. Gal has
16 worked with me in a number of labor-law disputes and class-action matters at Harris & Ruble.
17 E.g., Sherman v. CLP Resources, Inc., Central District of California Case No. Case No. CV 12-
18 8080 GW (PLAx) *consolidated with* Case No. CV 12-8080 GW (PLAx); Tanika Turley v.
19 Chipotle Services, LLC, San Francisco Superior Court Case No. CGC-15-544936; Alvarenga v.
20 Andrew J. Lewin Medical Corp., Los Angeles Superior Court Case No. BC529803; Wise v.
21 Nature's Best, LLC, Los Angeles Sup. Ct. Case No. 649808; Dye v. Radford Studio Center, Inc.,
22 Los Angeles Sup. Ct. Case No. BC663326; Schroeder v. Envoy Air, Inc., C.D. Cal. Case No. 16-
23 cv-04911; Fernandez v. Craft Beer Guild Distributing of California LLC, Los Angeles Sup. Ct.
24 Case No. 666562; Bowman v. Burnt Ends, LLC, C.D. Cal. Case No. 17-cv-05782; Clarke v.
25 Flower Ave, LLC, Los Angeles Sup. Ct. Case No. BC666525; Buckner v. Universal Television,
26 LLC, C.D. Cal. Case No. 17-cv-06489; Tippin v. Biscuit Filmworks, LLC, Los Angeles Sup. Ct.
27 Case No. 19STCV26633; Castaneda v. Hungry Man. Inc., Los Angeles Sup. Ct. Case No.
28 19STCV26637; Flores v. The Coca- Coca Company, Los Angeles Sup. Ct. Case No.

20STCV07230; Divinity v. WB Studio Enterprises, Inc., Los Angeles Sup. Ct. Case No.
20STCV37526; O’Cain v. Tool of North America, LLC, Los Angeles Sup. Ct. Case No.
20STCV37526; Schwanke v. RSA Films, Inc., Los Angeles Sup. Ct. Case No. 21STCV43920.

Adequacy of Class Representatives: Plaintiffs have submitted Declarations herewith,
evidencing that they have agreed to act as a class representative and that they understand their
responsibilities.

D. Claim Requirement. There is no requirement to submit a claim to receive compensation.
The Notice and Administration processes are straightforward, and all will receive a financial
award, without the submission of any claim form, at all.

E. Miscellaneous.

All terms included in the Settlement Agreement are derived from the proposed Operative
Complaint, along with a copy of Plaintiffs’ Notice Letter to the LWDA.
Notice in English is Sufficient. Virtually all crew are fluent in English, as this is required in
order to effectively communicate with others in order to complete filming in an efficient manner.
No affirmative obligations are to be undertaken by any class member or 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

1 draft Notice had read: “August 17, 2022 to [insert date of preliminary approval].”

2 There is no fee splitting agreement.

3 There is no injunctive relief.

4 The class representative enhancement is reasonable, as each Plaintiffs have spent a great deal of
5 time in this case, communicating with Class Counsel regarding the matters raised by the
6 pleadings, and related entertainment industry matters.

7 **II. SETTLEMENT AGREEMENT**

8 **A. The Basics.**

9 **Class Definition.**

10 The Settlement Agreement reflects separate definitions for Class Members and Aggrieved
11 Employees. “Class” all non-exempt persons (union and non-union) paid wages on account of
12 services provided for Prettybird in the production of Motion Pictures as a below-the-line crew
13 member in California in California during the Class Period. Ex 1 ¶1.5. “Aggrieved Employee”
14 means “all non-exempt persons (union and non-union) employed as below-the-line crew
15 members who were paid wages on account of services provided for Prettybird in the production
16 of Motion Pictures⁵ in California during the PAGA Period.”

17 **Class and Release Period.**

18 “Class Period” means the period from April 24, 2019 through the date of preliminary
19 approval. However, for the purposes of counting Class Members, to the extent any new class
20 members are hired after May 1, 2024, Defendants may, at their option, either: (1) keep the Gross
21 Settlement Amount fixed but limit class members covered by this Agreement to only those who
22 worked for Prettybird on at least one day before May 2, 2024; or (2) increase the Gross
23 Settlement Amount by \$140 for each additional new class member hired between May 2, 2024
24 and the date preliminary approval is granted. Defendant has elected Option #1. See ¶ 8.

25 **B. Release of Claims.**

26 The scope of the release matches the facts, claims, and allegations that were or could have
27 been raised in the proposed, operative complaint. There are limited, separate releases for the
28

⁵ See Cal. Lab. Code § 201.5 defining Motion Pictures.

1 Class and the PAGA claims, the latter tied to the facts alleged in the notices given to the LWDA.

2 The release for Aggrieved Employees is premised on the facts alleged in the Notices and the
3 Plaintiffs' proposed Notice to Class Members advised them that Aggrieved Employees will
4 release PAGA claims even if Class Members request exclusion.

5 There is no section 1542 waiver for Class Members.

6 The releases are not effective before the settlement funds are paid. Id. ¶ 6.

7 There are no confidentiality provisions.

8 **C. Monetary Terms of Settlement**

9 **Settlement Amount.**

10 The amount of the gross settlement is \$1,078,000 and Defendants are responsible for the
11 employer's share of payroll taxes. Id. ¶ 4.3

12 **Deductions.**

13 The deductions are limited to: attorneys' fees, not to exceed a maximum of \$359,333 (some
14 33 1/3 per cent of the settlement); counsels' costs (not to exceed \$25,000); two Class
15 Representative Service Payments (a total not to exceed \$10,000); administrative costs (\$36,950);
16 the PAGA payment (\$20,000 of the Gross Settlement Amount, with 75% (\$15,000) allocated to
17 the LWDA payment and 25% (\$5,000) to Individual PAGA payments.

18 **Subclasses.**

19 There are no subclasses.

20 **Attorneys' Fees.**

21 These are to be calculated by as one third of the ultimate settlement amount. Data reflecting
22 counsels' daily activity will be provided to the court for lodestar "cross-check" purposes.

23 **Wages. Tax Treatment.**

24 The Settlement Agreement provides that a portion of the class recovery will be deemed
25 wages, as follows:

26 Ten percent (10%) of each Participating Class Member's Individual Class Payment will be
27 allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject
28 to tax withholding and will be reported on an IRS W-2 Form. Eighty-five percent (85%) of
each Participating Class Member's Individual Class Payment will be allocated to settlement
of claims for non-wage amounts [e.g., interest and penalties] (the "Non-Wage Portion"). The

Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Form 1099 (MISC). Five percent (5%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for reimbursement of expenses [e.g., cell phone expenses]. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment. The Expenses Reimbursement Portions are not subject to tax withholding and will be reported on an IRS W-2 Form.

Exhibit 1, ¶ 3.2.4.1

Reversion.

There is none.

Payment formula:

Each Class Member will get an equal share of the Net Settlement Amount, about a net average of \$81 each. According to the Settlement Agreement, each Class Member will receive an Individual Class Payment" which is:

[T]he Participating Class Member's share of the Net Settlement Amount calculated as an equal amount to each Class Member.

Exhibit 1, at ¶ 1.24. With the anticipated redistribution payments, those who cash their checks will most likely receive over \$90, each.

The Parties have agreed to the appointment of Simpluris, Inc. ("Simpluris") as the Settlement Administrator to provide Notice and to administer the settlement. Simpluris is an established and reputable class action administrator.⁶

There is no injunctive relief.

D. NOTICE ADMINISTRATION.

All required issues are addressed in the Settlement Agreement, and the Proposed Notice is attached to the Settlement Agreement as an Exhibit. See Exhibit 1 hereto.

Simpluris is the proposed settlement administrator, informed by a bid process.

Simpluris procedures have been vetted and a Declaration from Simpluris will be filed forthwith.

Defendants will provide the Class list to Simpluris.

Simpluris will update the list prior to the initial mailing by use of the National Change of Address Registry. Exhibit 1, ¶ 8.4.2.

⁶ <https://www.simpluris.com/> (last accessed October 7, 2024).

1 Simpluris will mail the Notice no later than 14 days after receiving the Class Data. Exhibit 1,
2 ¶ 8.4.2.

3 The Notice will comply with rule 3.766(d) of the California Rules of Court.

4 The Notice will reflect the Court's current social distancing procedures.

5 A neutral company, proposed to be Simpluris, Inc. (the "Administrator"), will send the
6 Notice, calculate and make payments, and process Class Members' Requests for Exclusion.

7 Notices which have been returned as undeliverable will be resent with the Class Member
8 having an additional 14 calendar days beyond the Response Deadline in which to respond.
9 Exhibit 1, ¶ 8.4.4.

10 The Notice advises Class Members to review the Administrator's Website to determine
11 whether there has been any change of the date or location for the final hearing, as well as any
12 changes to social distancing procedures.

13 No publication Notice is involved.

14 Final judgment Notice will be published on the Administrator's website. Exhibit 1, ¶ 8.8.1.

15 **E. Responses to Notice.**

16 The procedures for submitting written objections, request for exclusion, and disputes are all
17 detailed in the Settlement Agreement, Exhibit 1, ¶¶ 8.7 (Objections), 8.5 (opt outs); and 8.6
18 (disputes).

19 The deadline to submit objections is 60 days after the Administrator mails Notice, extended
20 by 14 days for Class Members to whom Notice Packets are resent. Exhibit 1, ¶¶ 8.4.4, 8.4.5.

21 The objection procedure is the same as the opt out procedure.

22 Class Members may articulate objections at the final approval hearing, at the discretion of
23 this Court. The undersigned has served as Class Counsel on occasion when such objections have
24 been articulated and feels it important that the Court hear such Class members.

25 **F. Uncashed Checks.**

26 Checks remain valid for 180 days.

27 Each Class Member will receive an equal, pro rata share of the Net Settlement Amount (the
28 "First Distribution") with the proceeds of uncashed checks redistributed, equally, to those who

1 cashed their checks (the “Second Distribution”). Exhibit 1, ¶ 3.2.4.

2 8. The Parties have now agreed to avoid further litigation and to settle and resolve the
3 existing and potential disputes, actions, lawsuits, charges and claims that the Settlement Class has
4 articulated in the operative Complaint, all without any admission of liability or wrongdoing by either
5 party. Plaintiffs and his counsel have concluded that the Settlement reflected herein is fair, reasonable,
6 and in the best interests of the Settlement Class and respectfully request that the Settlement be approved
7 by the Court.

8 9. In light of the estimated payments noted above, I have concluded that the Settlement
9 Agreement represents a fair, reasonable, and adequate resolution of this case.

10 10. As explained in the concurrently filed Memorandum of points and authorities, there is a
11 risk that Plaintiffs’ claims may fail, whether at trial or on appeal. The \$1,078,000 non-reversionary
12 settlement will result in the payment to each class member a cash benefit in recognition of the claims
13 alleged in this case. Moreover, some authority holds that statutory damages and civil penalties
14 predicated on the same underlying alleged wrong cannot be “stacked” on top of one another.

15 11. Before filing Plaintiffs’ action, I explained to Plaintiffs the duties and obligations of
16 acting as a class representative. I also explained to Plaintiffs that, in addition to damages, the action
17 would seek penalties and civil penalties. I have reviewed any potential conflicts and concluded that
18 neither Plaintiffs nor Harris & Ruble have any disqualifying conflicts with either the class or the
19 Defendants. Plaintiffs contend, as the putative class representatives, that their claims are similar to those
20 of absent Class Members, all of whom worked as hourly employees during the Class Period, and all of
21 whom were allegedly subject to untimely wages, routine denial of compliant meal periods and rest
22 breaks, and wage statement violations. All Members of the Settlement Class have a common interest in
23 holding Defendants responsible for any amounts that may be owed to them under the provisions of the
24 Code. Plaintiffs have demonstrably committed to pursuing the claims of the Class Members, and their
25 motivation in retaining counsel and pursuing this action has solely been to collect owed amounts for
26 themselves and their fellow Class Members.

27 12. Plaintiffs request an incentive payment in light of their willingness to come forward with
28 this action on behalf of the Class, and in light of their efforts in advancing the litigation, the proposed

1 payments are reasonable. Plaintiffs obtained the services of counsel, provided documents and ongoing
2 updates with respect to Defendants' practices, and coordinated with counsel to put together documents
3 and spent many hours discussing the case with counsel. In doing so, Plaintiffs have successfully brought
4 and maintained claims that may have never been brought. Plaintiffs will also provide a broad general
5 release including waiver of section 1542 of the California Civil Code. It is understood that the release
6 will extinguish their claims under Code §§226 and 1198.5.

7 13. Both while negotiating and before executing the Settlement Agreement, I reviewed the
8 terms in detail with Plaintiffs. Plaintiffs indicated to me that they consider the Settlement Agreement to
9 represent a fair, reasonable and adequate resolution of this case. Plaintiffs share the desire to be paid in
10 full, such that Plaintiffs are committed to pursuing the Class claims to seek recovery for Plaintiffs as well
11 as other employees. I believe Plaintiffs are typical of the Class Members, insofar as they provided
12 services in connection with Motion Picture productions during the Class Period, were not regular staff
13 employees and were subject to the same kinds of payroll and break issues as others in the class.

14 14. Notice of the Final Approval and Judgment will be provided along with the settlement
15 checks.

16 15. A copy of the Settlement Agreement has been uploaded onto the LWDA website. Exhibit
17 3.

18 I have read the foregoing, and the facts set forth therein are true and correct of my own personal
19 knowledge. Executed 12th day of November, 2024, in the County of Los Angeles, State of California,
20 under penalty of perjury of the State of California.

21 

22 Alan Harris
23
24
25
26
27
28

1 **INDEX TO EXHIBITS**

2 Exhibit 1: the long-form Agreement.

3 Exhibit 2: a redline comparing the 2023 Model Settlement Agreement with the long-form
4 Agreement.

5 Exhibit 3: a copy of the LWDA database showing the long-form settlement has been provided to
6 the California Labor and Workforce Development Agency.

7 Exhibit 4: a copy of the Notice Letter sent to the LWDA.

8 Exhibit 5: a copy of the First Amended Complaint showing the differences from the Complaint
9 in redline

Exhibit 1

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiffs Arthur Simms, Jr. and John D. Costa (“Plaintiffs”) and Defendants Prettybird, LLC (“Prettybird”), Prettybird Entertainment Holdings, Inc., Kerstin Emhoff, and Paul Hunter (collectively “Defendants”). The Agreement refers to Plaintiffs and Defendants collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1 “Action” means Plaintiffs’ lawsuit alleging wage and hour violations against Defendants captioned *A. Simms and J. Costa v. Prettybird, LLC et al.*, Los Angeles County Superior Court, Case No. 23STCV09031, initiated on April 24, 2023.
- 1.2 “Administrator” means the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3 “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4 “Aggrieved Employee” means all non-exempt persons (union and non-union) employed as below-the-line crew members who were paid wages on account of services provided for Prettybird in the production of Motion Pictures¹ in California during the PAGA Period.
- 1.5 “Amended Complaint” means and refers to the First Amended Complaint Plaintiffs will file in the Action to add a Cause of Action under California’s Private Attorneys General Act (“PAGA”) and the Fair Labor Standards Act (“FLSA”).
- 1.6 “Class” means all non-exempt persons (union and non-union) paid wages on account of services provided for Prettybird in the production of Motion Pictures as a below-the-line crew member in California in California during the Class Period.
- 1.7 “Class Counsel” means Alan Harris, Min Ji Gal, and David Garrett of Harris & Ruble.
- 1.8 “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.9 “Class Data” means Class Member identifying information in Prettybird’s

¹ See Cal. Lab. Code § 201.5 defining Motion Pictures.

possession including the Class Member's name, last-known mailing address, Social Security number, and dates of employment.

- 1.10 "Class Member" or "Settlement Class Member" means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non- Participating Class Member who qualifies as an Aggrieved Employee).
- 1.11 "Class Member Address Search" means the Administrator's investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- 1.12 "Class Notice" means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.13 "Class Period" means the period from April 24, 2019 through the date of preliminary approval. However, for the purposes of counting Class Members, to the extent any new class members are hired after May 1, 2024, Defendants may, at their option, either: (1) keep the Gross Settlement Amount fixed but limit class members covered by this Agreement to only those who worked for Prettybird on at least one day before May 2, 2024; or (2) increase the Gross Settlement Amount by \$140 for each additional new class member hired between May 2, 2024 and the date preliminary approval is granted. See ¶ 8.
- 1.14 "Class Representatives" means the named Plaintiffs in the operative complaint in the Action seeking Court approval to serve as Class Representatives.
- 1.15 "Class Representative Service Payments" means the payment to the Class Representatives for initiating the Action and providing services in support of the Action.
- 1.16 "Court" means the Superior Court of California, County of Los Angeles.
- 1.17 "Defendants" in this Action are Prettybird, LLC, Prettybird Entertainment Holdings, Inc., Kerstin Emhoff, and Paul Hunter.
- 1.18 "Defense Counsel" means Ryan Andrews and Jeffrey A. Brand of Venable LLP.
- 1.19 "Effective Date" means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the

Judgment and issues a remittitur.

- 1.20 “Final Approval” means the Court’s order granting final approval of the Settlement.
- 1.21 “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.22 “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.
- 1.23 “Gross Settlement Amount” means **One Million and Seventy-Eight Thousand Dollars and Zero Cents (\$1,078,000.00)** which is the total amount Prettybird agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payments and the Administrator’s Expenses. There shall be no reversion to Defendants. The employer’s share of payroll taxes will be paid separately by Prettybird.
- 1.24 “Individual Class Payment” means the Participating Class Member’s share of the Net Settlement Amount calculated as an equal amount to each Class Member.
- 1.25 “Individual PAGA Payment” means the Aggrieved Employee’s share of 25% of the PAGA Penalties calculated at an equal amount to each Aggrieved Employee.
- 1.26 “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.27 “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subdivision (i).
- 1.28 “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subdivision (i).
- 1.29 “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.30 “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.31 “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Prettybird for at least one day during the PAGA Period.

- 1.32 “PAGA Period” means the period from August 17, 2022 to the date of preliminary approval.
- 1.33 “PAGA” means the Private Attorneys General Act (Lab. Code, § 2698 et seq.).
- 1.34 “PAGA Notice” means Plaintiffs’ letter to Defendants and the LWDA dated on or about August 17, 2023 providing notice pursuant to Labor Code section 2699.3, subdivision (a).
- 1.35 “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$5,000) and the 75% to LWDA (\$15,000) in settlement of PAGA claims.
- 1.36 “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.37 “Plaintiffs” means Arthur Simms, Jr. and John D. Costa, the named plaintiffs in the Action.
- 1.38 “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.
- 1.39 “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.40 “Released Class Claims” means the claims being released as described in Paragraph 5.2 below.
- 1.41 “Released PAGA Claims” means the claims being released as described in Paragraph 5.3 below.
- 1.42 “Released Parties” means Defendants and Prettybird, LLC’s and Prettybird Entertainment Holdings, Inc.’s former and present directors, officers, shareholders, owners, members, managing agents, employees, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates, and all clients and ad agencies involved in Defendants’ productions during the Class Period.
- 1.43 “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.44 “Response Deadline” means sixty (60) days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email or mail Requests for Exclusion from the Settlement, or (b) fax, email or mail his, her, or their Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.

1.45 “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

1.46 “Workweek” means any week during which a Class Member worked for Prettybird for at least one day, during the Class Period.

2. RECITALS.

2.1 On April 24, 2023, Plaintiffs filed a class action lawsuit against the Defendants alleging the following causes of action: (1) failure to pay all wages during employment; (2) failure to provide accurate itemized wage statements; (3) failure to provide meal breaks; (4) failure to provide rest breaks; (5) failure to pay overtime wages; (6) failure to pay minimum wages; (7) failure to reimburse necessary business expenses; (8) failure to provide payroll records; (9) failure to provide personnel records; and (10) unfair business practices. Plaintiffs have or will have filed a First Amended Complaint (“Operative Complaint”) adding an eleventh cause of action for civil penalties under PAGA.

Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in the Operative Complaint and deny any and all liability for the causes of action alleged.

2.2 Pursuant to Labor Code section 2699.3, subdivision (a), Plaintiffs gave timely written notice to Prettybird and the LWDA by sending the PAGA Notice.

2.3 On April 29, 2024, the Parties participated in an all-day mediation presided over by The Honorable Jeffrey K. Winikow (Ret.), which led to this Agreement to settle the Action.

2.4 Prior to mediation and before the Parties finalized this settlement, Plaintiffs obtained, through informal discovery, payroll and time data for all Class Members through July 15, 2023. This information included information regarding the dates worked, time punch data, hourly rates, dates of payment of wages, information regarding meal breaks and when meal premiums were paid. Further data for the period of July 16, 2023 to February 16, 2024 was provided in mediation. The Defendants also provided relevant policies and applicable collective bargaining agreements. Plaintiffs employed the services of an expert to assist in analyzing the data provided by Defendants and Plaintiffs’ investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“Dunk/Kullar”).

2.5 The Court has not granted class certification.

2.6 The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

3.1 Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, Prettybird promises to pay **One Million and Seventy-Eight Thousand Dollars and Zero Cents (\$1,078,000.00)** and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Prettybird has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.

3.2 Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1 To Plaintiffs: Class Representative Service Payments to the Class Representatives of not more than **Five Thousand Dollars and Zero Cents (\$5,000.00)** each (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representatives are entitled to receive as Participating Class Members). As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiffs will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves Class Representative Service Payments less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payments using IRS Form 1099. Plaintiffs assume full responsibility and liability for employee taxes owed on the Class Representative Service Payments.

3.2.2 To Class Counsel: A Class Counsel Fees Payment of not more than thirty-three and one third percent (33 1/3%), which is currently estimated to be **Three Hundred and Fifty-Nine Thousand and Three Hundred and Thirty-Three Dollars and Zero Cents (\$359,333)**, and a Class Counsel Litigation Expenses Payment of not more than **Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00)**. Plaintiffs and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation

Expenses Payment and hold Defendants harmless, and indemnify Defendants, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3 To the Administrator: An Administrator Expenses Payment as approved by the Court.

3.2.4 To Each Participating Class Member: An Individual Class Payment calculated by providing each with an equal amount.

3.2.4.1 Tax Allocation of Individual Class Payments. Ten percent (10%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. Eighty-five percent (85%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for non-wage amounts [e.g., interest and penalties] (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Form 1099 (MISC). Five percent (5%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for reimbursement of expenses [e.g., cell phone expenses]. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment. The Expenses Reimbursement Portions are not subject to tax withholding and will be reported on an IRS W-2 Form.

3.2.4.2 Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of **Twenty Thousand Dollars (\$20,000)** to be paid from the Gross Settlement Amount, with 75% (\$15,000) allocated to the LWDA PAGA Payment and 25% (\$5,000) allocated to the Individual PAGA Payments.

3.2.5.1 The Administrator will calculate each Individual PAGA Payment by providing each Aggrieved Employee with an equal amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$5,000). Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2 If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1 Class Members and Aggrieved employees. Based on a review of its records through February 15, 2024, Defendants estimate there are 7,699 class members and 4,299 Aggrieved Employees.
- 4.2 Class Data. Not later than 30 days after the Court grants Preliminary Approval of the Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendants have a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendants must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
- 4.3 Funding of Gross Settlement Amount. Prettybird shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Prettybird's share of payroll taxes by transmitting the funds to the Administrator no later than 30 days after the Effective Date.
- 4.4 Payments from the Gross Settlement Amount. Within 14 days after Prettybird funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payments. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payments shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
- 4.4.1 The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2 The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without United States Postal Service (“USPS”) forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.4.3 Individual Class Payment checks or Individual PAGA Payment checks that are either uncashed or cancelled after the void date shall not revert to Defendants. The residual will be disbursed to Class Members who participate in the Settlement by cashing their first check. Once the void date passes, the Administrator shall inform the parties of the total amount of uncashed checks (the “Uncashed First Checks”). Because the Parties intend to provide as much relief as practicable to the Class Members, the Parties will facilitate a second distribution to the Class Members who cashed their checks during the first round (the “Second Distribution”). For the Second Distribution, the Class Members who cashed their checks during the first round shall be mailed a check in an equal share of the amount of the Uncashed First Checks after deductions for postage and handling by the Administrator.

4.4.4 For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the Second Distribution void date, the Administrator shall transmit the funds represented by such checks to the California Controller’s Unclaimed Property Fund in the name of the Class Member thereby leaving no “unpaid residue” subject to the requirements of Code of Civil Procedure section 384, subdivision (b).

4.4.5 The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS. Effective on the date when Prettybird fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs, Class Members, Aggrieved Employees, and Class Counsel will release claims against all Released Parties as follows:

5.1 Plaintiffs’ Release. Plaintiffs and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors and assigns generally, release and discharge Released Parties from all claims, transactions or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or

reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiffs' PAGA Notice, or ascertained during the Action and released under 5.2, below. ("Plaintiffs' Release.") Plaintiffs' Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiffs acknowledge that they may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now know or believe to be true but agree, nonetheless, that Plaintiffs' Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them.

5.1.1 Plaintiffs' Waiver of Rights Under Civil Code Section 1542. For purposes of Plaintiffs' Release, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the Civil Code, which reads:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

5.2 Release by Participating Class Members:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have 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.

- 5.3 Release by Aggrieved Employees: 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.

6. MOTION FOR PRELIMINARY APPROVAL. The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the Court's current checklist for Preliminary Approvals.

- 6.1 Defendants' Declaration in Support of Preliminary Approval. Within twenty-one days of the full execution of this Agreement, Defendants will prepare and deliver to Class Counsel signed Declarations from Defendants and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator. In their Declarations, Defense Counsel and Defendants shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.
- 6.2 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code section 2699, subdivision (f)(2); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiffs, Class Counsel or Defense Counsel; (v) signed declarations from Plaintiffs confirming their willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; (vi) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Lab. Code, § 2699.3, subd. (a))), the Operative

Complaint (Lab. Code, § 2699, subd. (l)(1)), this Agreement (Lab. Code, § 2699, subd. (l)(2)); (vii) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (viii) all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator. In their Declarations, Plaintiffs and Class Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.3 Responsibilities of Counsel. Class Counsel is responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

6.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

7.1 Selection of Administrator. The Parties have jointly selected Simpluris, Inc. to serve as the Administrator and verified that, as a condition of appointment, Simpluris, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports to state and federal tax authorities.

7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

7.4 Notice to Class Members.

7.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks and Pay Periods in

the Class Data.

7.4.2 Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class USPS mail, the Class Notice substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

7.4.3 Not later than 3 business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

7.4.4 The deadlines for Class Members' written objections and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

7.4.5 If the Administrator, Defendants or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.

7.5 Requests for Exclusion (Opt-Outs).

7.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her/their representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response

Deadline.

7.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

7.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 5.2 and 5.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

7.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 5.3 of this Agreement and are eligible for an Individual PAGA Payment.

7.6 Challenges to Calculation of Workweeks. Not Applicable.

7.7 Objections to Settlement.

7.7.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payments.

7.7.2 Participating Class Members may send written objections to the Administrator, by fax, email or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present oral objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 60 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

7.7.3 Non-Participating Class Members have no right to object to any of the

class action components of the Settlement.

- 7.8 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.
- 7.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payments, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.
- 7.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).
- 7.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.
- 7.8.4 Workweek and/or Pay Period Challenges. Not Applicable.
- 7.8.5 Administrator’s Declaration. Not later than 14 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total

number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

7.8.6 Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

8. **CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.** Based on its records, Prettybird estimates that there were 7,699 class members as of February 15, 2024. All class members who worked on Prettybird productions through May 1, 2024 are included in the class without triggering the escalator provision. To the extent any new class members are hired after May 1, 2024, Defendants may, at their option, either: (1) keep the Gross Settlement Amount fixed but limit class members covered by this Agreement to only those who worked for Prettybird on at least one day before May 2, 2024; or (2) increase the Gross Settlement Amount by \$140 for each additional new class member hired between May 2, 2024 and the date preliminary approval is granted.
9. **DEFENDANTS' RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 5% of the total of all Class Members, Defendants may, but are not obligated to, elect to withdraw from the Settlement. The Parties agree that, if Defendants withdraw, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendants will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendants must notify Class Counsel and the Court of their election to withdraw not later than seven (7) days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.
10. **MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared Final Approval Hearing, Plaintiffs will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subdivision (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiffs shall provide drafts of these documents to Defense Counsel not later than seven (7) days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

- 10.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
- 10.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.
- 10.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters and (iii) addressing such post-Judgment matters as are permitted by law.
- 10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment set forth in this Settlement, the Parties, their respective counsel and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.
- 10.5 Appellate Court Orders to Vacate, Reverse or Materially Modify Judgment. If the reviewing Court vacates, reverses or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur to be paid from the Gross Settlement Amount. An appellate decision to vacate, reverse or modify the Court's award of the Class Representative Service Payments or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

11. AMENDED JUDGMENT. If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

12. ADDITIONAL PROVISIONS.

12.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendants that any of the allegations in the Operative Complaint have merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiffs that Defendants' defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendants reserve their right to contest certification of any class for any reason, and Defendants reserve all available defenses to the claims in the Action, and Plaintiffs reserve their right to move for class certification on any grounds available and to contest Defendants' defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

12.2 Confidentiality Prior to Preliminary Approval. Plaintiffs, Class Counsel, Defendants and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency or other entity except: (1) to the Parties' attorneys, accountants or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiffs, Class Counsel, Defendants and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with any third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

12.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

- 12.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants or inducements made to or by any Party.
- 12.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiffs and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 12.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 12.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right released and discharged by the Party in this Settlement.
- 12.8 No Tax Advice. Neither Plaintiffs, Class Counsel, Defendants nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 12.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed or waived only by an express written instrument signed by all Parties or their representatives and approved by the Court.
- 12.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 12.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the State of California, without regard to conflict of law principles.
- 12.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 12.13 Confidentiality. To the extent permitted by law, all agreements made and orders entered during the Action and in this Agreement relating to the confidentiality of

information shall survive the execution of this Agreement.

- 12.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to Evidence Code section 1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendants in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute or California Rules of Court rule. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiffs shall destroy all paper and electronic versions of Class Data received from Defendants unless, prior to the Court's discharge of the Administrator's obligation, Defendants make a written request to Class Counsel for the return, rather than the destruction, of Class Data.
- 12.15 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 12.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 12.17 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiffs:

Alan Harris
David Garrett
Min Ji Gal
Harris & Ruble
655 North Central Avenue, 17th Fl.
Glendale, CA 91203
harrisa@harrisandruble.com
dgarrett@harrisandruble.com
mgal@harrisandruble.com
Tel: (323) 962-3777

To Defendants:

Ryan M. Andrews
Jeffrey A. Brand
Venable LLP
2049 Century Park E., Suite 2300
Los Angeles, CA 90067-2904

rmandrews@venable.com
jabrand@venable.com
Tel: (310) 229-0344

12.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

12.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to Code of Civil Procedure section 583.330 to extend the date to bring a case to trial under Code of Civil Procedure section 583.310 for the entire period of this settlement process.

Dated: 10/4/2024 _____

Individually and on behalf of the Class

DocuSigned by:

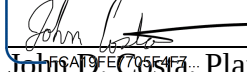


Arthur Simms, Jr., Plaintiff

Dated: 10/4/2024 _____

Individually and on behalf of the Class

DocuSigned by:



John D. Costa, Plaintiff

Dated: _____

KERSTIN EMHOFF, Defendant

Kerstin Emhoff, Defendant

Dated: _____

PAUL HUNTER, Defendant

Paul Hunter, Defendant

Dated: _____

Prettybird, LLC, Defendant

By: _____

Print: _____

Title: _____

rmandrews@venable.com
jabrand@venable.com
Tel: (310) 229-0344

12.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

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Individually and on behalf of the Class

Dated: _____

Arthur Simms, Jr., Plaintiff

Individually and on behalf of the Class

Dated: _____

John D. Costa, Plaintiff

KERSTIN EMHOFF, Defendant

Dated: 10/11/2024



Kerstin Emhoff, Defendant

PAUL HUNTER, Defendant

Dated: 10/10/2024



Paul Hunter, Defendant

Dated: 10/11/2024

Prettybird, LLC, Defendant

By:  _____

Print: Kerstin Emhoff

Title: Chief Executive Officer

Dated: 10/11/2024

Prettybird Entertainment Holdings, Inc.
Defendant

By: 

Print: Kerstin Emhoff

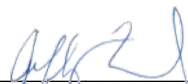
Title: Chief Executive Officer

APPROVED AS TO FORM:

Dated: 10-11-24

Defendants' Counsel:

Venable LLP

By: 
Jeffrey A. Brand

Dated: _____

Plaintiff's Counsel:

Harris & Ruble

By: _____
Alan Harris

Dated: _____

Prettybird Entertainment Holdings, Inc.
Defendant

By: _____

Print: _____

Title: _____

APPROVED AS TO FORM:

Dated: _____

Defendants' Counsel:

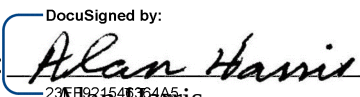
Venable LLP

By: _____
Jeffrey A. Brand

Dated: 10/4/2024

Plaintiff's Counsel:

Harris & Ruble

DocuSigned by:
By:  _____
2301992154036445
Alan Harris

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL

ARTHUR SIMMS, JR. ET AL. V. PRETTYBIRD, LLC ET AL., CASE NO. 23STCV09031

*The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement or solicitation by a lawyer. You are not being sued.*

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Prettybird, LLC (“Prettybird”), Prettybird Entertainment Holdings, Inc., Kerstin Emhoff, and Paul Hunter (collectively “Defendants”) for alleged wage and hour violations. The Action was filed by former Prettybird employees, Arthur Simms, Jr. and John D. Costa (“Plaintiffs”), who seek payment of (1) back wages, damages and penalties for a class consisting of all non-exempt persons (union and non-union) employed as below-the-line crew members who were paid wages on account of services provided for Prettybird in the production of Motion Pictures in California during the Class Period (April 24, 2019 to the date of preliminary approval); and (2) penalties under the California Private Attorneys General Act (“PAGA”) for all non-exempt persons (union and non-union) employed as below-the-line crew members who were paid wages on account of services provided for Prettybird in the production of Motion Pictures in California during the PAGA Period (August 17, 2022 to the date of preliminary approval) (“Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Prettybird to fund Individual Class Payments, and (2) a PAGA Settlement requiring Prettybird to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on Prettybird’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$_____ (less withholding) and your Individual PAGA Payment is estimated to be \$_____.** The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Prettybird’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.)

The above estimates are based on Prettybird’s records showing that you worked during the Class Period, and if applicable, you worked during the PAGA Period.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiffs and Plaintiffs’ attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendants to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendants.

If you worked for Prettybird during the Class Period and/or the PAGA Period, you have

two basic options under the Settlement:

- (1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Defendants.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Defendants, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

Defendants will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Defendants that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is _____	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendants must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by _____	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiffs who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiffs, but every dollar paid to Class Counsel and Plaintiffs reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or

	either or both Plaintiffs if you think either or both are unreasonable. See Section 7 of this Notice.
You Can Participate in the _____ Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on _____. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiffs are former employees of Prettybird. The Action, filed on April 24, 2023, alleges that the Defendants: (1) failed to pay all wages during employment; (2) failed to provide accurate itemized wage statements; (3) failed to provide meal breaks; (4) failed to provide rest breaks; (5) failed to pay overtime wages; (6) failed to pay minimum wages; (7) failed to reimburse necessary business expenses; (8) failed to provide payroll records; (9) failed to provide personnel records; and (10) engaged in unfair business practices. Plaintiffs amended their complaint ("Operative Complaint") to add a cause of action for civil penalties under California Private Attorneys General Act on _____. (Lab. Code, § 2698, et seq.) ("PAGA"). Plaintiffs are represented by Alan Harris, David Garrett, and Min Ji Gal of Harris & Ruble ("Class Counsel").

Defendants strongly deny violating any laws or failing to pay any wages and contends it complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendants or Plaintiffs are correct on the merits. In the meantime, Plaintiffs and Defendants hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an end to the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement ("Agreement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiffs and Defendants have negotiated a proposed Settlement that is subject to the Court's Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendants do not admit any violations or concede the merit of any claims.

Plaintiffs and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendants have agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Prettybird Will Pay \$1,078,000 as the Gross Settlement Amount (Gross Settlement).
Prettybird has agreed to deposit the Gross Settlement into an account controlled by the

Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payments, Class Counsel's attorneys' fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, Prettybird will fund the Gross Settlement not more than 30 days after the Judgment entered by the Court becomes final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.

2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiffs and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to \$359,333 [33 1/3 % of the Gross Settlement] to Class Counsel for attorneys' fees and up to \$25,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - B. Up to \$5,000 as a Class Representative Award to each of the Plaintiffs for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiffs will receive other than Plaintiffs' Individual Class Payments and any Individual PAGA Payments.
 - C. Up to \$ [REDACTED] to the Administrator for services administering the Settlement.
 - D. Up to \$20,000 for PAGA Penalties, allocated 75% (\$15,000) to the LWDA PAGA Payment and 25% (\$5,000) in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class Members pursuant to the Agreement.
4. Taxes Owed on Payments to Class Members. Plaintiffs and Defendants are asking the Court to approve an allocation of ten percent (10%) of each Individual Class Payment to taxable wages ("Wage Portion") and eighty-five percent (85%) to [e.g., interest and penalties] (the "Non-Wage Portion"). Five percent (5%) of each Participating Class Member's Individual Class Payment will be allocated to the settlement of claims for reimbursement of expenses [e.g., cell phone expenses]. The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Prettybird will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are not treated as wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiffs and Defendants have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the Parties will facilitate a second distribution to the Class Members who cashed their checks during the first round. For the second distribution, the Class Members shall be mailed a check in an equal share of the amount of the uncashed first checks after deductions for postage and handling by the Administrator. If your Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the second distribution void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in your name.

If the monies represented by your check is sent to the Controller's Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than 60 days after mailing of this notice, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her/their representative setting forth a Class Member's name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Defendants.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Defendants based on the PAGA Period facts alleged in the Action.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and Defendants have agreed that, in either case, the Settlement will be void: Defendants will not pay any money and Class Members will not release any claims against Defendants.
8. Administrator. The Court has appointed a neutral company, Simpluris, Inc. (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the

Settlement. The Administrator's contact information is contained in Section 9 of this Notice.

9. Releases. Effective on the date when Prettybird fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs, Class Members, Aggrieved Employees, and Class Counsel will release claims against all Released Parties as follows:

- A. Plaintiffs' Release: Plaintiffs and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors and assigns generally, release and discharge Released Parties from all claims, transactions or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiffs' PAGA Notice, or ascertained during the Action. ("Plaintiffs' Release.") Plaintiffs' Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiffs acknowledge that they may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now know or believe to be true but agree, nonetheless, that Plaintiffs' Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them.
- B. Plaintiffs' Waiver of Rights Under Civil Code Section 1542: For purposes of Plaintiffs' Release, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the Civil Code, which reads:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

- C. Release for Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have 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 the 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.

- D. Release by Aggrieved Employees: 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.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments as an equal amount to each Class Member by (a) dividing the Net Settlement Amount by the total number of Participating Class Members.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments as an equal amount to each Aggrieved Employee by (a) dividing \$5,000 by the total number of Aggrieved Employees.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn’t opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.

2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as _____, and include your identifying information (full name, address, telephone number, approximate dates of employment and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by _____, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiffs and Defendants are asking the Court to approve. At least 16 court days before the Final Approval Hearing, Class Counsel and/or Plaintiffs will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Awards stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiffs are requesting as Class Representative Service Awards. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website _____ (url) or the Court's website _____ (url).

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Awards may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiffs are too high or too low. **The deadline for sending written objections to the Administrator is seven (7) days prior to the Final Approval Hearing.** Be sure to tell the Administrator what you object to, why you object and any facts that support your objection. Make sure you identify the Action *Arthur Simms, Jr. et al. v. Prettybird, LLC et al.* and include your name, current address, telephone number and approximate dates of employment for Prettybird and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that

support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on _____ at (time) in Department 1 of the Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiffs and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via LACourtConnect (<https://www.lacourt.org/lacc/>). Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website _____ beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendants and Plaintiffs have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to (specify entity) website at (url) . You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<http://www.lacourt.org/casesummary/ui/index.aspx>) **[confirm]** and entering the Case Number for the Action, Case No. 23STCV09031. You can also make an appointment to personally review court documents in the Clerk's Office at the Stanley Mosk Courthouse by calling (213) 830-0800.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel:

Alan Harris
David Garrett
Min Ji Gal
Harris & Ruble
655 North Central Avenue, 17th Fl.
Glendale, CA 91203
harrisa@harrisandruble.com
dgarrett@harrisandruble.com
mgal@harrisandruble.com
Tel: (323) 962-3777

Settlement Administrator:

Name of Company:
Email Address:
Mailing Address:
Telephone:

Fax Number:

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your second check or it is already void you should consult the California Controller's Unclaimed Property Fund [<https://ucpi.sco.ca.gov/>] for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

Certificate Of Completion

Envelope Id: F4175C0AD1714C36B65BBD5216E6F605

Status: Completed

Subject: Complete with DocuSign: Simms v. Prettybird LLC - Class Action and PAGA Settlement Agreement an...

Source Envelope:

Document Pages: 32

Signatures: 4

Envelope Originator:

Certificate Pages: 5

Initials: 0

Jeffrey Brand

AutoNav: Enabled

750 E. Pratt St.

Enveloped Stamping: Disabled

Baltimore, MD 21202

Time Zone: (UTC-05:00) Eastern Time (US & Canada)

JABrand@Venable.com

IP Address: 192.94.203.251

Record Tracking

Status: Original

Holder: Jeffrey Brand

Location: DocuSign

10/10/2024 8:23:30 PM

JABrand@Venable.com

Signer Events**Signature****Timestamp**

Kerstin Emhoff

kerstin@prettybird.co

CEO

PRETTYBIRD

Security Level: Email, Account Authentication
(None)

Sent: 10/10/2024 8:30:40 PM

Viewed: 10/11/2024 10:20:44 AM

Signed: 10/11/2024 10:21:24 AM

Signature Adoption: Pre-selected Style
Using IP Address: 66.65.103.58**Electronic Record and Signature Disclosure:**

Accepted: 10/11/2024 10:20:44 AM

ID: fc01bdc7-a0e7-483e-9852-86fa3319c6a1

Paul Hunter

paul@prettybird.co

Security Level: Email, Account Authentication
(None)

Sent: 10/10/2024 8:30:41 PM

Viewed: 10/10/2024 8:31:28 PM

Signed: 10/10/2024 8:31:48 PM

Signature Adoption: Drawn on Device
Using IP Address: 166.196.103.96
Signed using mobile**Electronic Record and Signature Disclosure:**

Accepted: 8/16/2021 1:58:51 PM

ID: f8553692-00a1-4ac9-bc58-00557a3ef82a

In Person Signer Events**Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp****Carbon Copy Events****Status****Timestamp**

Alysia Anderson

alysia@prettybird.co

General Counsel

PRETTYBIRD LLC

Security Level: Email, Account Authentication
(None)**COPIED**

Sent: 10/10/2024 8:30:42 PM

Electronic Record and Signature Disclosure:

Accepted: 3/3/2023 5:48:36 PM

ID: 8e3a5346-509f-40ae-b642-df1ca2e9bf2f

Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	10/10/2024 8:30:42 PM
Certified Delivered	Security Checked	10/10/2024 8:31:28 PM
Signing Complete	Security Checked	10/10/2024 8:31:48 PM
Completed	Security Checked	10/11/2024 10:21:24 AM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, Venable LLP (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact Venable LLP:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: jfcarroll@venable.com

To advise Venable LLP of your new e-mail address

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at jfcarroll@venable.com and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

To request paper copies from Venable LLP

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to jfcarroll@venable.com and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with Venable LLP

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to jfcarroll@venable.com and in the body of such request you must state your e-mail, full name, US Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	•Allow per session cookies •Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

** These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

Acknowledging your access and consent to receive materials electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify Venable LLP as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by Venable LLP during the course of my relationship with you.

Exhibit 2

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiffs Arthur Simms, Jr. and John D. Costa (“Plaintiffs”) and Defendants Prettybird, LLC (“Prettybird”), Prettybird Entertainment Holdings, Inc., Kerstin Emhoff, and Paul Hunter (collectively “Defendants”). The Agreement refers to Plaintiffs and Defendants collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1 “Action” means Plaintiffs’ lawsuit alleging wage and hour violations against Defendants captioned A. Simms and J. Costa v. Prettybird, LLC et al., Los Angeles County Superior Court, Case No. 23STCV09031, initiated on April 24, 2023.
- 1.2 “Administrator” means the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3 “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4 “Aggrieved Employee” means all non-exempt persons (union and non-union) employed as below-the-line crew members who were paid wages on account of services provided for Prettybird in the production of Motion Pictures¹ in California during the PAGA Period.
- 1.5 “Amended Complaint” means and refers to the First Amended Complaint Plaintiffs will file in the Action to add a Cause of Action under California’s Private Attorneys General Act (“PAGA”) and the Fair Labor Standards Act (“FLSA”).
- 1.6 “Class” means all non-exempt persons (union and non-union) paid wages on account of services provided for Prettybird in the production of Motion Pictures as a below-the-line crew member in California in California during the Class Period.
- 1.7 “Class Counsel” means Alan Harris, Min Ji Gal, and David Garrett of Harris & Ruble.
- 1.8 “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.9 “Class Data” means Class Member identifying information in Prettybird’s

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¹ See Cal. Lab. Code § 201.5 defining Motion Pictures.

possession including the Class Member's name, last-known mailing address, Social Security number, and dates of employment.

1.10 "Class Member" or "Settlement Class Member" means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non- Participating Class Member who qualifies as an Aggrieved Employee).

1.11 "Class Member Address Search" means the Administrator's investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

1.12 "Class Notice" means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

1.13 "Class Period" means the period from April 24, 2019 through the date of preliminary approval. However, for the purposes of counting Class Members, to the extent any new class members are hired after May 1, 2024, Defendants may, at their option, either: (1) keep the Gross Settlement Amount fixed but limit class members covered by this Agreement to only those who worked for Prettybird on at least one day before May 2, 2024; or (2) increase the Gross Settlement Amount by \$140 for each additional new class member hired between May 2, 2024 and the date preliminary approval is granted. See ¶ 8.

1.14 "Class Representatives" means the named Plaintiffs in the operative complaint in the Action seeking Court approval to serve as Class Representatives.

1.15 "Class Representative Service Payments" means the payment to the Class Representatives for initiating the Action and providing services in support of the Action.

1.16 "Court" means the Superior Court of California, County of Los Angeles.

1.17 "Defendants" in this Action are Prettybird, LLC, Prettybird Entertainment Holdings, Inc., Kerstin Emhoff, and Paul Hunter.

1.18 "Defense Counsel" means Ryan Andrews and Jeffrey A. Brand of Venable LLP.

1.19 "Effective Date" means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the

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Judgment and issues a remittitur.

1.20 “Final Approval” means the Court’s order granting final approval of the Settlement.

1.21 “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.

1.22 “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.

1.23 “Gross Settlement Amount” means One Million and Seventy-Eight Thousand Dollars and Zero Cents (\$1,078,000.00) which is the total amount Prettybird agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payments and the Administrator’s Expenses. There shall be no reversion to Defendants. The employer’s share of payroll taxes will be paid separately by Prettybird.

1.24 “Individual Class Payment” means the Participating Class Member’s share of the Net Settlement Amount calculated as an equal amount to each Class Member.

1.25 “Individual PAGA Payment” means the Aggrieved Employee’s share of 25% of the PAGA Penalties calculated at an equal amount to each Aggrieved Employee.

1.26 “Judgment” means the judgment entered by the Court based upon the Final Approval.

1.27 “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subdivision (i).

1.28 “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subdivision (i).

1.29 “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.

1.30 “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.

1.31 “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Prettybird for at least one day during the PAGA Period.

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- 1.32 “PAGA Period” means the period from August 17, 2022 to the date of preliminary approval.
- 1.33 “PAGA” means the Private Attorneys General Act (Lab. Code, § 2698 et seq.).
- 1.34 “PAGA Notice” means Plaintiffs’ letter to Defendants and the LWDA dated on or about August 17, 2023 providing notice pursuant to Labor Code section 2699.3, subdivision (a).
- 1.35 “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$5,000) and the 75% to LWDA (\$15,000) in settlement of PAGA claims.
- 1.36 “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.37 “Plaintiffs” means Arthur Simms, Jr. and John D. Costa, the named plaintiffs in the Action.
- 1.38 “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.
- 1.39 “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.40 “Released Class Claims” means the claims being released as described in Paragraph 5.2 below.
- 1.41 “Released PAGA Claims” means the claims being released as described in Paragraph 5.3 below.
- 1.42 “Released Parties” means Defendants and Prettybird, LLC’s and Prettybird Entertainment Holdings, Inc.’s former and present directors, officers, shareholders, owners, members, managing agents, employees, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates, and all clients and ad agencies involved in Defendants’ productions during the Class Period.
- 1.43 “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.44 “Response Deadline” means sixty (60) days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email or mail Requests for Exclusion from the Settlement, or (b) fax, email or mail his, her, or their Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.

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1.45 “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

1.46 “Workweek” means any week during which a Class Member worked for Prettybird for at least one day, during the Class Period.

2. RECITALS.

2.1 On April 24, 2023, Plaintiffs filed a class action lawsuit against the Defendants alleging the following causes of action: (1) failure to pay all wages during employment; (2) failure to provide accurate itemized wage statements; (3) failure to provide meal breaks; (4) failure to provide rest breaks; (5) failure to pay overtime wages; (6) failure to pay minimum wages; (7) failure to reimburse necessary business expenses; (8) failure to provide payroll records; (9) failure to provide personnel records; and (10) unfair business practices. Plaintiffs have or will have filed a First Amended Complaint (“Operative Complaint”) adding an eleventh cause of action for civil penalties under PAGA.

Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in in the Operative Complaint and deny any and all liability for the causes of action alleged.

2.2 Pursuant to Labor Code section 2699.3, subdivision (a), Plaintiffs gave timely written notice to Prettybird and the LWDA by sending the PAGA Notice.

2.3 On April 29, 2024, the Parties participated in an all-day mediation presided over by The Honorable Jeffrey K. Winikow (Ret.), which led to this Agreement to settle the Action.

2.4 Prior to mediation and before the Parties finalized this settlement, Plaintiffs obtained, through informal discovery, payroll and time data for all Class Members through July 15, 2023. This information included information regarding the dates worked, time punch data, hourly rates, dates of payment of wages, information regarding meal breaks and when meal premiums were paid. Further data for the period of July 16, 2023 to February 16, 2024 was provided in mediation. The Defendants also provided relevant policies and applicable collective bargaining agreements. Plaintiffs employed the services of an expert to assist in analyzing the data provided by Defendants and Plaintiffs’ investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

2.5 The Court has not granted class certification.

2.6 The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

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3. MONETARY TERMS.

3.1 Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, Prettybird promises to pay One Million and Seventy-Eight Thousand Dollars and Zero Cents (\$1,078,000.00) and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Prettybird has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.

3.2 Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1 To Plaintiffs: Class Representative Service Payments to the Class Representatives of not more than Five Thousand Dollars and Zero Cents (\$5,000.00) each (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representatives are entitled to receive as Participating Class Members). As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiffs will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves Class Representative Service Payments less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payments using IRS Form 1099. Plaintiffs assume full responsibility and liability for employee taxes owed on the Class Representative Service Payments.

3.2.2 To Class Counsel: A Class Counsel Fees Payment of not more than thirty-three and one third percent (33 1/3%), which is currently estimated to be Three Hundred and Fifty-Nine Thousand and Three Hundred and Thirty-Three Dollars and Zero Cents (\$359,333), and a Class Counsel Litigation Expenses Payment of not more than Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00). Plaintiffs and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation

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Expenses Payment and ~~hold Defendants~~ harmless, and ~~indemnify Defendants~~, from any dispute or controversy regarding any division or sharing of any of these Payments.

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3.2.3 ~~To the Administrator; An Administrator Expenses Payment as approved by the Court.~~

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3.2.4 ~~To Each Participating Class Member; An Individual Class Payment calculated by providing each with an equal amount.~~

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3.2.4.1 ~~Tax Allocation of Individual Class Payments. Ten percent (10%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. Eighty-five percent (85%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for non-wage amounts [e.g., interest and penalties] (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Form 1099 (MISC). Five percent (5%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for reimbursement of expenses [e.g., cell phone expenses]. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment. The Expenses Reimbursement Portions are not subject to tax withholding and will be reported on an IRS W-2 Form.~~

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3.2.4.2 ~~Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.~~

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3.2.5 ~~To the LWDA and Aggrieved Employees; PAGA Penalties in the amount of Twenty Thousand Dollars (\$20,000) to be paid from the Gross Settlement Amount, with 75% (\$15,000) allocated to the LWDA PAGA Payment and 25% (\$5,000) allocated to the Individual PAGA Payments.~~

3.2.5.1 ~~The Administrator will calculate each Individual PAGA Payment by providing each Aggrieved Employee with an equal amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$5,000). Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.~~

3.2.5.2 ~~If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.~~

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1 Class Members and Aggrieved employees. Based on a review of its records through February 15, 2024, Defendants estimate there are 7,699 class members and 4,299 Aggrieved Employees.
- 4.2 Class Data. Not later than 30 days after the Court grants Preliminary Approval of the Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendants have a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendants must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
- 4.3 Funding of Gross Settlement Amount. Prettybird shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Prettybird's share of payroll taxes by transmitting the funds to the Administrator no later than 30 days after the Effective Date.
- 4.4 Payments from the Gross Settlement Amount. Within 14 days after Prettybird funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payments. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payments shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
- 4.4.1 The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

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4.4.2 The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without United States Postal Service ("USPS") forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

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4.4.3 Individual Class Payment checks or Individual PAGA Payment checks that are either uncashed or cancelled after the void date shall not revert to Defendants. The residual will be disbursed to Class Members who participate in the Settlement by cashing their first check. Once the void date passes, the Administrator shall inform the parties of the total amount of uncashed checks (the "Uncashed First Checks"). Because the Parties intend to provide as much relief as practicable to the Class Members, the Parties will facilitate a second distribution to the Class Members who cashed their checks during the first round (the "Second Distribution"). For the Second Distribution, the Class Members who cashed their checks during the first round shall be mailed a check in an equal share of the amount of the Uncashed First Checks after deductions for postage and handling by the Administrator.

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4.4.5 The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. **RELEASES OF CLAIMS.** Effective on the date when Prettybird fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs, Class Members, Aggrieved Employees, and Class Counsel will release claims against all Released Parties as follows:

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5.1 Plaintiffs' Release. Plaintiffs and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors and assigns generally, release and discharge Released Parties from all claims, transactions or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or

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reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiffs' PAGA Notice, or ascertained during the Action and released under 5.2, below, ("Plaintiffs' Release.") Plaintiffs' Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiffs acknowledge that they may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now know or believe to be true but agree, nonetheless, that Plaintiffs' Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them.

5.1.1 Plaintiffs' Waiver of Rights Under Civil Code Section 1542. For purposes of Plaintiffs' Release, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the Civil Code, which reads:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

5.2 Release by Participating Class Members:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have 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,

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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.

5.3 Release by Aggrieved Employees: 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.

6. MOTION FOR PRELIMINARY APPROVAL. The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the Court's current checklist for Preliminary Approvals.

6.1 Defendants' Declaration in Support of Preliminary Approval. Within twenty-one days of the full execution of this Agreement, Defendants will prepare and deliver to Class Counsel signed Declarations from Defendants and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator. In their Declarations, Defense Counsel and Defendants shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.2 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code section 2699, subdivision (f)(2); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiff's, Class Counsel or Defense Counsel; (v) signed declarations from Plaintiff's confirming their willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; (vi) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Lab. Code, § 2699.3, subd. (a))), the Operative

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Complaint (Lab. Code, § 2699, subd. (l)(1)), this Agreement (Lab. Code, § 2699, subd. (l)(2)); (vii) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (viii) all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator. In their Declarations, Plaintiffs and Class Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

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6.3 Responsibilities of Counsel. Class Counsel is responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

6.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

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7.1 Selection of Administrator. The Parties have jointly selected Simpluris, Inc. to serve as the Administrator and verified that, as a condition of appointment, Simpluris, Inc., agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

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7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports to state and federal tax authorities.

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7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

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7.4 Notice to Class Members.

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7.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in

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the Class Data.

7.4.2 Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class USPS mail, the Class Notice substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

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7.4.3 Not later than 3 business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

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7.4.4 The deadlines for Class Members' written objections and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

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7.4.5 If the Administrator, Defendants or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.

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7.5 Requests for Exclusion (Opt-Outs).

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7.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her/their representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response

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7.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

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7.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 5.2 and 5.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

7.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 5.3 of this Agreement and are eligible for an Individual PAGA Payment.

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Deleted: <#> Challenges to Calculation of Workweeks. Each Class Member shall have [60] days after the Administrator mails the Class Notice (plus an additional [14] days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

7.6 Challenges to Calculation of Workweeks. Not Applicable.

7.7 Objections to Settlement.

7.7.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payments.

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7.7.2 Participating Class Members may send written objections to the Administrator, by fax, email or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present oral objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 60 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

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7.7.3 Non-Participating Class Members have no right to object to any of the

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class action components of the Settlement.

- 7.8 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

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- 7.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payments, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

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- 7.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

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- 7.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of; Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, and checks mailed for Individual Class Payments and Individual PAGA Payments ("Weekly Report"). The Weekly Reports must include provide the Administrator's assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

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Deleted: The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator's decision shall be final and not appealable or otherwise susceptible to challenge

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- 7.8.4 Workweek and/or Pay Period Challenges. Not Applicable.

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- 7.8.5 Administrator's Declaration. Not later than 14 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total

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number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

7.8.6 **Final Report by Settlement Administrator.** Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

8. **CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.** Based on its records, Prettybird estimates that there were 7,699 class members as of February 15, 2024. All class members who worked on Prettybird productions through May 1, 2024 are included in the class without triggering the escalator provision. To the extent any new class members are hired after May 1, 2024, Defendants may, at their option, either: (1) keep the Gross Settlement Amount fixed but limit class members covered by this Agreement to only those who worked for Prettybird on at least one day before May 2, 2024; or (2) increase the Gross Settlement Amount by \$140 for each additional new class member hired between May 2, 2024 and the date preliminary approval is granted.

9. **DEFENDANTS' RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 5% of the total of all Class Members, Defendants may, but are not obligated to, elect to withdraw from the Settlement. The Parties agree that, if Defendants withdraw, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendants will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendants must notify Class Counsel and the Court of their election to withdraw not later than seven (7) days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

10. **MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared Final Approval Hearing, Plaintiffs will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subdivision (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiffs shall provide drafts of these documents to Defense Counsel not later than seven (7) days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

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10.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

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10.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

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10.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters and (iii) addressing such post-Judgment matters as are permitted by law.

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10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment set forth in this Settlement, the Parties, their respective counsel and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

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10.5 Appellate Court Orders to Vacate, Reverse or Materially Modify Judgment. If the reviewing Court vacates, reverses or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur to be paid from the Gross Settlement Amount. An appellate decision to vacate, reverse or modify the Court's award of the Class Representative Service Payments or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

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11. **AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

12. ADDITIONAL PROVISIONS.

12.1 **No Admission of Liability, Class Certification or Representative Manageability for Other Purposes.** This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendants that any of the allegations in the Operative Complaint have merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiffs that Defendants' defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendants reserve their right to contest certification of any class for any reason, and Defendants reserve all available defenses to the claims in the Action, and Plaintiffs reserve their right to move for class certification on any grounds available and to contest Defendants' defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

12.2 **Confidentiality Prior to Preliminary Approval.** Plaintiffs, Class Counsel, Defendants and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency or other entity except: (1) to the Parties' attorneys, accountants or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiffs, Class Counsel, Defendants and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with any third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

12.3 **No Solicitation.** The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

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12.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants or inducements made to or by any Party.

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12.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiffs and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

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12.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

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12.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right released and discharged by the Party in this Settlement.

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12.8 No Tax Advice. Neither Plaintiffs, Class Counsel, Defendants nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

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12.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed or waived only by an express written instrument signed by all Parties or their representatives and approved by the Court.

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12.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

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12.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the State of California, without regard to conflict of law principles.

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12.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

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12.13 Confidentiality. To the extent permitted by law, all agreements made and orders entered during the Action and in this Agreement relating to the confidentiality of

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information shall survive the execution of this Agreement.

- 12.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to Evidence Code section 1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendants in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute or California Rules of Court rule. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiffs shall destroy all paper and electronic versions of Class Data received from Defendants unless, prior to the Court's discharge of the Administrator's obligation, Defendants make a written request to Class Counsel for the return, rather than the destruction, of Class Data.

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- 12.15 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

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- 12.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

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- 12.17 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

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To Plaintiffs:

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Alan Harris
David Garrett
Min Ji Gal
Harris & Ruble
655 North Central Avenue, 17th Fl.
Glendale, CA 91203
harrisa@harrisandruble.com
dgarrett@harrisandruble.com
mgal@harrisandruble.com
Tel: (323) 962-3777

To Defendants:

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Ryan M. Andrews
Jeffrey A. Brand
Venable LLP
2049 Century Park E., Suite 2300
Los Angeles, CA 90067-2904

rmandrews@venable.com

jabrand@venable.com

Tel: (310) 229-0344

12.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., DocuSign), or email, which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

12.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to Code of Civil Procedure section 583.330 to extend the date to bring a case to trial under Code of Civil Procedure section 583.310 for the entire period of this settlement process.

Individually and on behalf of the Class

Dated:

Arthur Simms, Jr., Plaintiff v.

Individually and on behalf of the Class

Dated:

John D. Costa, Plaintiff

KERSTIN EMHOFF, Defendant

Dated:

Kerstin Emhoff, Defendant

PAUL HUNTER, Defendant

Dated:

Paul Hunter, Defendant

Dated:

Dated: _____ Prettybird, LLC, Defendant

By: _____

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Dated: _____ **Prettybird Entertainment Holdings, Inc.**
Defendant

By: _____

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Title:

APPROVED AS TO FORM:

Dated: _____

Defendants' Counsel:

Venable LLP

By: _____
Ryan M. Andrews

Dated: _____

Plaintiff's Counsel:

Harris & Ruble

By: _____
Alan Harris

**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND
HEARING DATE FOR FINAL COURT APPROVAL**

ARTHUR SIMMS, JR. ET AL. V. PRETTYBIRD, LLC ET AL., CASE NO. 23STCV09031

*The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement or solicitation by a lawyer. You are not being sued.*

You may be eligible to receive money from an employee class action lawsuit ("Action") against Prettybird, LLC ("Prettybird"), Prettybird Entertainment Holdings, Inc., Kerstin Emhoff, and Paul Hunter (collectively "Defendants") for alleged wage and hour violations. The Action was filed by former Prettybird employees, Arthur Simms, Jr. and John D. Costa ("Plaintiffs"), who seek payment of (1) back wages, damages and penalties for a class consisting of all non-exempt persons (union and non-union) employed as below-the-line crew members who were paid wages on account of services provided for Prettybird in the production of Motion Pictures in California during the Class Period (April 24, 2019 to the date of preliminary approval); and (2) penalties under the California Private Attorneys General Act ("PAGA") for all non-exempt persons (union and non-union) employed as below-the-line crew members who were paid wages on account of services provided for Prettybird in the production of Motion Pictures in California during the PAGA Period (August 17, 2022 to the date of preliminary approval) ("Aggrieved Employees").

The proposed Settlement has two main parts: (1) a Class Settlement requiring Prettybird to fund Individual Class Payments, and (2) a PAGA Settlement requiring Prettybird to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency ("LWDA").

Based on Prettybird's records, and the Parties' current assumptions, **your Individual Class Payment is estimated to be \$ _____ (less withholding) and your Individual PAGA Payment is estimated to be \$ _____**. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Prettybird's records you are not eligible for an Individual PAGA Payment under the Settlement because you didn't work during the PAGA Period.)

The above estimates are based on Prettybird's records showing that you worked during the Class Period, and **if applicable**, you worked during the PAGA Period.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiffs and Plaintiffs' attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires Defendants to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendants.

If you worked for Prettybird during the Class Period and/or the PAGA Period, you have

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two basic options under the Settlement:

(1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against **Defendants**.

(2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against **Defendants**, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

Defendants will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Defendants that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement.
The Opt-out Deadline is _____	See Section 6 of this Notice.
	You cannot opt-out of the PAGA portion of the proposed Settlement. Defendants must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiffs who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiffs, but every dollar paid to Class Counsel and Plaintiffs reduces the overall amount paid to Participating Class Members.
Written Objections Must be Submitted by _____	You can object to the amounts requested by Class Counsel or

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Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payments, Class Counsel's attorneys' fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, Prettybird will fund the Gross Settlement not more than 30 days after the Judgment entered by the Court becomes final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.

2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiffs and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:

- A. Up to \$359,333 [33 1/3 % of the Gross Settlement] to Class Counsel for attorneys' fees and up to \$25,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
- B. Up to \$5,000 as a Class Representative Award to each of the Plaintiffs for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiffs will receive other than Plaintiffs' Individual Class Payments and any Individual PAGA Payments.
- C. Up to \$ to the Administrator for services administering the Settlement.
- D. Up to \$20,000 for PAGA Penalties, allocated 75% (\$15,000) to the LWDA PAGA Payment and 25% (\$5,000) in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class Members pursuant to the Agreement.
4. Taxes Owed on Payments to Class Members. Plaintiffs and Defendants are asking the Court to approve an allocation of ten percent (10%) of each Individual Class Payment to taxable wages ("Wage Portion") and eighty-five percent (85%) to [e.g., interest and penalties] (the "Non-Wage Portion"). Five percent (5%) of each Participating Class Member's Individual Class Payment will be allocated to the settlement of claims for reimbursement of expenses [e.g., cell phone expenses]. The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Prettybird will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are not treated as wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

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Although Plaintiffs and Defendants have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

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5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the Parties will facilitate a second distribution to the Class Members who cashed their checks during the first round. For the second distribution, the Class Members shall be mailed a check in an equal share of the amount of the uncashed first checks after deductions for postage and handling by the Administrator. If your Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the second distribution void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in your name.

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If the monies represented by your check is sent to the Controller's Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

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6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than 60 days after mailing of this notice, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her/their representative setting forth a Class Member's name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Defendants.

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You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Defendants based on the PAGA Period facts alleged in the Action.

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7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and Defendants have agreed that, in either case, the Settlement will be void; Defendants will not pay any money and Class Members will not release any claims against Defendants.

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8. Administrator. The Court has appointed a neutral company, Simpluris, Inc., (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the

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Settlement. The Administrator's contact information is contained in Section 9 of this Notice.

9. Releases. Effective on the date when Prettybird fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs, Class Members, Aggrieved Employees, and Class Counsel will release claims against all Released Parties as follows:

A. Plaintiffs' Release: Plaintiffs and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors and assigns generally, release and discharge Released Parties from all claims, transactions or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiffs' PAGA Notice, or ascertained during the Action. ("Plaintiffs' Release.") Plaintiffs' Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiffs acknowledge that they may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now know or believe to be true but agree, nonetheless, that Plaintiffs' Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them.

B. Plaintiffs' Waiver of Rights Under Civil Code Section 1542: For purposes of Plaintiffs' Release, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the Civil Code, which reads:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

C. Release for Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have 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

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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 the 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.

D. Release by Aggrieved Employees: 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.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

- Individual Class Payments.** The Administrator will calculate Individual Class Payments as an equal amount to each Class Member by (a) dividing the Net Settlement Amount by the total number of Participating Class Members.
- Individual PAGA Payments.** The Administrator will calculate Individual PAGA Payments as an equal amount to each Aggrieved Employee by (a) dividing \$5,000 by the total number of Aggrieved Employees.

5. HOW WILL I GET PAID?

- Participating Class Members.** The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.

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2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as _____ and include your identifying information (full name, address, telephone number, approximate dates of employment and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by _____, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiffs and Defendants are asking the Court to approve. At least 16 court days before the Final Approval Hearing, Class Counsel and/or Plaintiffs will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Awards stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiffs are requesting as Class Representative Service Awards. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website _____ (url) or the Court's website _____ (url).

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Awards may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiffs are too high or too low. **The deadline for sending written objections to the Administrator is seven (7) days prior to the Final Approval Hearing.** Be sure to tell the Administrator what you object to, why you object and any facts that support your objection. Make sure you identify the Action Arthur Simms, Jr. et al. v. Prettybird, LLC et al. and include your name, current address, telephone number and approximate dates of employment for Prettybird and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that

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support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

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8. CAN I ATTEND THE FINAL APPROVAL HEARING?

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You can, but don't have to, attend the Final Approval Hearing on _____ at _____ (time) in Department 1 of the Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiffs, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via LACourtConnect (<https://www.lacourt.org/lacc/>). Check the Court's website for the most current information.

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It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website _____ beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

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9. HOW CAN I GET MORE INFORMATION?

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The Agreement sets forth everything Defendants and Plaintiffs have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to _____ (specify entity) website at _____ (url). You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<http://www.lacourt.org/casesummary/ui/index.aspx>) [confirm] and entering the Case Number for the Action, Case No. 23STCV09031. You can also make an appointment to personally review court documents in the Clerk's Office at the Stanley Mosk Courthouse by calling (213) 830-0800.

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DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

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Class Counsel:

[Alan Harris](#)
[David Garrett](#)
[Min Ji Gal](#)
[Harris & Ruble](#)
[655 North Central Avenue, 17th Fl.](#)
[Glendale, CA 91203](#)
harris@harrisandruble.com
dgarrett@harrisandruble.com
mgal@harrisandruble.com
[Tel: \(323\) 962-3777](tel:(323)962-3777)

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Name of Company:
Email Address:
Mailing Address:
Telephone:

Fax Number:

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your second check or it is already void you should consult the California Controller's Unclaimed Property Fund [<https://ucpi.sco.ca.gov/>] for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

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Deleted: ⁱ This Model Class Action and PAGA Settlement Agreement has been approved by the Court, the Complex litigation judges, and a 2022 Ad Hoc Wage and Hour Committee co-chaired by Judge David Cunningham and Judge Amy Hogue and comprised of 16 attorneys who regularly represent plaintiffs and defendants in wage and hour case. It is written for settlements of single plaintiff wage and hour actions asserting class claims and PAGA claims against a single employer (XYZ). The parties will need to revise this form if there are multiple plaintiffs or multiple defendants. For settlements of wage and hour class actions that do not include PAGA claims, please use the Model Class Action Settlement Agreement and Class Notice. THE COURT ASKS ALL COUNSEL USING THIS MODEL AGREEMENT TO ATTACH A REDLINED VERSION TO THEIR MOTIONS FOR APPROVAL SO THAT THE COURT CAN EASILY SEE EXACTLY HOW THE PARTIES HAVE MODIFIED THIS MODEL AGREEMENT.¶

ⁱⁱ Whether the "date of preliminary approval" yields a fair and adequate payment to Class Members may depend on whether the Class Members, in exchange for their releases of claims, receive consideration for time worked between the date when parties reached a settlement and the date of preliminary approval. The Parties' *Kullar* analysis must give the Court sufficient information to allow the Court to determine whether the Gross Settlement Amount "represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation." (*Luckey*

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ⁱⁱⁱ See endnote ii above.¶

^{iv} The Parties may need to tailor this language to pay periods or shifts depending on the facts of the case.¶

^v The Parties are free to negotiate a payment plan structure, if appropriate, and payment deadlines may fall earlier as

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Exhibit 3

PAGA NOTICE PUBLIC SEARCH - CASE DETAIL

Case Information

Case Number: LWDA-CM-976029-23
Plaintiff for PAGA Case: Arthur L. Simms, John D. Costa
Filer/Attorney for PAGA Case: Alan Harris
Law Firm for PAGA Plaintiff: Harris & Ruble
Employer: Prettybird LLC
Date Case Received:
Filer for Employer:
Employer Filer Firm:
Court Type:
Court Name: Los Angeles
PAGA Court Case Number:
Violation Type:
Related BOFE Case:

Attachments

Attachment Name	Description	Date Submitted	Type
Additional Document Submitted with PAGA Notice on 08/17/2023 07:42:38 PM	2023-4-24 Prettybird_Complaint [filed].pdf	8/18/2023 2:43 AM	PAGA Notice
PAGA Notice Submitted on 08/17/2023 07:42:38 PM by Alan Harris	2023-8-17 Prettybird-PAGA.pdf	8/18/2023 2:43 AM	PAGA Notice
Proposed Settlement Submitted on 11/12/2024 03:40:20 PM by Min Ji Gal	Ex 1 2024-10-11 Settlement Agreement (Fully Executed)(64799932.1).pdf	11/12/2024 11:40 PM	Proposed Settlement

Exhibit 4

HARRIS & RUBLE

ATTORNEYS AND COUNSELORS AT LAW

SOUTHERN CALIFORNIA OFFICE:

655 NORTH CENTRAL AVE 17th FL
GLENDALE CA 91203
TELEPHONE: 323.962.3777
FAX: 323.962.3004
www.harrisandruble.com

ALAN HARRIS
MARCELLA RUBLE*

PRIYA MOHAN
DAVID GARRETT
MIN JI GAL

*RETIRED

NORTHERN CALIFORNIA OFFICE:

116 E. BLITHEDALE AVE SUITE 2
MILL VALLEY, CA 94941
TELEPHONE: 323.962.3777
FAX: 323.962.3004

SUBMITTED ONLINE

August 17, 2023

California Labor & Workforce Development Agency

Re: *Costa v. Prettybird, LLC. (case no. 23STCV09031)* – PAGA Notice

To whom it may concern:

Pursuant to the applicable provisions of the California Labor Code Private Attorneys General Act (“PAGA”), A. Simms and J. Costa (“Plaintiffs”) hereby allege with respect to their employment with Prettybird, LLC (“Prettybird”); Prettybird Entertainment Holdings, Inc. (PEH); Kerstin Emhoff; and Paul Hunter (collectively “Defendants”), that Defendants violated provisions of the California Labor Code (hereinafter the “Code”) and applicable Industrial Welfare Commission Wage Order 12 (“Applicable Wage Order”). Attached as Exhibit 1 is a copy of the pending Complaint in Simms and Costa v. Prettybird, LLC, Prettybird Entertainment Holdings, Inc., Emhoff and Hunter, Los Angeles Superior Court, Case No. 23STCV09031 (filed April 24, 2023)(the “Action”).

Defendants Prettybird, LLC (Prettybird), a Delaware limited liability company, and Prettybird Entertainment Holdings, Inc. (PEH), a Delaware corporation, which at all times relevant herein, conducted business within the County of Los Angeles of the State of California. Defendant Kerstin Emhoff is the co-founder and CEO and/or responsible person for Prettybird and PEH, which at all times relevant herein, conducted business within the County of Los Angeles of the State of California. Defendant Paul Hunter is the co-founder and CEO and/or responsible person for PEH, which at all times relevant herein, conducted business within the County of Los Angeles of the State of California.

Plaintiffs are currently ignorant of the true names and capacities, whether individual, corporate, associate, or otherwise, of the defendants named herein under fictitious names and therefore gives notice of the existence of such other defendants by such fictitious names. Plaintiffs will seek leave to amend this PAGA Notice to allege the true names and capacities of

said fictitiously named defendants when their true names and capacities have been ascertained. Plaintiffs are informed, believes and thereon alleges that each of the fictitiously named defendants is legally responsible in some manner for the events and occurrences alleged herein, and for the damages suffered by Plaintiffs and other employees.

On or about July 30, 2020 to on or about August 7, 2020, Defendants employed cast and crew members, including Plaintiff Simms, on a motion picture production (as defined under Labor Code § 201.5) of filmed entertainment entitled “Keep It Tight #1659”; on or about November 20, 2020 to on or about December 2, 2020, Defendants employed cast and crew members, including Plaintiff Simms, on a motion picture production (as defined under Labor Code § 201.5) of filmed entertainment entitled “Nissan #1672”; on or about February 2020 until on or about March 5, 2020, Defendants employed cast and crew members, including Plaintiff Simms, on a motion picture production (as defined under Labor Code § 201.5) of filmed entertainment entitled “VWD4 #1687”; on or about August 21, 2020, Defendants employed cast and crew members, including Plaintiff Simms, on a motion picture production (as defined under Labor Code § 201.5) of filmed entertainment entitled “Nissan #1810”; on or about August 22, 2022 to on or about September 2, 2022, Defendants employed cast and crew members, including Plaintiff Simms, on a motion picture production (as defined under Labor Code § 201.5) of filmed entertainment entitled “NBA #1807”; and on or about October 26, 2022, Defendants employed cast and crew members, including Plaintiff Simms, on a motion picture production (as defined under Labor Code § 201.5) of filmed entertainment entitled “Disney 100th”.

On or about January 8, 2022 to on or about January 14, 2022, Defendants employed cast and crew members, including Plaintiff Costa, on a motion picture production (as defined under Labor Code § 201.5) of filmed entertainment entitled “FYE Nissan #1755”; and on or about September 17, 2022, Defendants employed cast and crew members, including Plaintiff Costa, on a motion picture production (as defined under Labor Code § 201.5) of filmed entertainment entitled “Airborne #1815”.

By way of amendment to the Action, Plaintiff Costa seeks leave to assert a PAGA claim against the present Defendants (Prettybird, LLC, Prettybird Entertainment Holdings, Inc., Emhoff and Hunter). The Costa PAGA claims include the matters alleged in the Action, as well as the following:

1. In connection with his services on the “FYE Nissan #1755” commercial, shot in or about January 8, 2022, in the attached wage statement issued to Mr. Costa (“Costa”), he was advised that the “Pay Frequency” was “W[EEKLY]”. Thereafter, the wage statements issued to Costa on or about August 31, 2022 (“Nissan EV #1810”), September 22, 2022 (“UUGH #6185”), and September 28, 2022 (“AIRBORNE #1815”), each failed to provide any information concerning “the inclusive dates of the period for which the employee is paid,” de hors the requirements of Section 226(a)(6) of the California Labor Code the (“Code”).
2. Further, with respect to the Recent Costa Wage Statements (those with respect to the August of 2022 “Nissan EV #1810” commercial, the September of 2022 “UUGH #6185” commercial, and the September of 2022 “AIRBORNE #1815 commercial), the Wage Statements fail to advise regarding the “name and address of the legal entity that is the employer,” instead providing information concerning the “Payroll Employer” and the “Controlling Employer,” de hors the requirements of Section 226(a)(8) of the Code.

3. Further, with respect to the Recent Costa Wage Statements (those with respect to the August of 2022 “Nissan EV #1810” commercial, the September of 2022 “UUGH #6185” commercial, and the September of 2022 “AIRBORNE #1815 commercial), the items fail to advise or provide compensation regarding all the “gross wages earned . . . the total hours worked . . . [or the] net wages earned,” ignoring the accrued and unpaid premium hour of wages owing on account of the employers’ failure to provide proper rest breaks, dehors the requirements of Section 226(a)(1), (2) and (5) of the Code.
4. Further, with respect to the Costa Wage Statement with respect to the September of 2022 “AIRBORNE #1815 commercial, the item fails to advise or provide compensation regarding all of the “gross wages earned . . . the total hours worked . . . [or the] net wages earned,” ignoring the accrued and unpaid premium hour of wages owing on account of the employers’ failure to provide proper meal breaks, dehors the requirements of Section 226(a)(1), (2) and (5) of the Code.
5. Further, with respect to the Recent Costa Wage Statements (those with respect to the August of 2022 “Nissan EV #1810” commercial, the September of 2022 “UUGH #6185” commercial, and the September of 2022 “AIRBORNE #1815 commercial), the items fail to pay timely the final weekly wages earned. The wages owing with respect to the August of 2022 “Nissan EV #1810” commercial were due to Costa on or before Friday, August 26, 2022, but the paycheck was not prepared until on or after Wednesday, August 31, 2022, and the item failed to compensate for premium wages owing on account of employers’ failure to provide compliant rest breaks. The wages owing with respect to the September of 2022 “UUGH #6185” commercial were due to Costa on or before Friday, September 23, 2022, but the paycheck failed to compensate for premium wages owing on account of employers’ failure to provide compliant rest breaks. The wages owing with respect to the September of 2022 “AIRBORNE #1815 commercial were due to Costa on or before Friday, September 23, 2022, but the paycheck was not prepared until on or after Wednesday, September 28, 2022, and the item failed to compensate for premium wages owing on account of employers’ failure to provide either compliant meal periods or rest breaks.

By way of amendment to the Action, Plaintiff Simms seeks leave to assert a PAGA claim against the present Defendants (Prettybird, LLC, Prettybird Entertainment Holdings, Inc., Emhoff and Hunter). The Simms PAGA claims include the matters alleged in the Action, as well as the following:

1. With respect to the wage statements issued to Simms on or about August 31, 2022 (“Nissan EV #1810”), September 7, 2022 (“NBA #1807”), November 7, 2022 (“Disney 100th #1818”), and December 30, 2022 (“M&MS #1829), the Wage Statements fail to advise regarding the “name and address of the legal entity that is the employer,” instead providing information concerning the “Payroll Employer” and the “Controlling Employer,” dehors the requirements of Section 226(a)(8) of the Code.
2. Further, with respect to the 2022 Simms Wage Statements (those issued to him by Defendants in 2022), the Wage Statements fail to advise regarding the “gross wages earned . . . the total hours worked . . . [or the] net wages earned,” ignoring the accrued and unpaid premium hour of wages owing on account of the employers’ failure to provide proper rest breaks, dehors the requirements of Section 226(a)(1), (2) and (5) of the Code.

3. Further, with respect to the 2022 Simms Wage Statements, the Wage Statements fail to pay the wages earned with respect to the accrued and unpaid premium hour of wages owing on account of the employers' failure to provide proper rest breaks, de hors the requirements as outlined in Brinker.
4. Further, with respect to the 2022 Simms Wage Statements, certain of the Wage Statements fail to reflect timely payment of the final weekly wages earned. The wages owing with respect to the August of 2022 "NBA #1807" commercial were due to Simms on or before Friday, September 2, 2022, but the paycheck was not prepared until on or after Wednesday, September 7, 2022, and the Defendants failed to so compensate or indicate that compensation was owing for accrued premium wages owing on account of employers' failure to provide compliant rest breaks. The wages owing with respect to the October of 2022 "Disney 100th #1818" commercial were due to Simms on or before Friday, November 3, 2022, but the paycheck was not prepared until on or after Monday, November 7, 2022, and the Defendants failed to compensate the employee for premium wages owing on account of employers' failure to provide compliant rest breaks or even indicate accrual of such wages. The wages owing with respect to the August of 2022 "NISSAN EV #1810" commercial were due to Simms on or before Friday, September 2, 2022, but the Defendants failed to compensate the employee for premium wages owing on account of employers' failure to provide compliant rest breaks or even indicate accrual of such wages. The wages owing with respect to the December of 2022 "M&MS #1829" commercial were due to Simms on or before Friday, December 30, 2022, but the Defendants failed to compensate the employee for premium wages owing on account of employers' failure to provide compliant rest breaks or even indicate accrual of such wages.

Many other such productions were produced in California. Plaintiffs and crew members of such productions were wrongfully misclassified as independent contractors and were paid late (or not at all). Plaintiffs wish to bring a representative action on behalf of themselves and the State of California as well as on behalf of a group of Aggrieved Employees defined as: Plaintiffs and/or other persons who performed services as nonexempt workers on the Production or other such projects produced in California by Defendants Prettybird and/or PEH during the period from one year prior to the filing of the PAGA Notice until this case is resolved ("Aggrieved Employees").

California law provides that:

[i]f an employee of a temporary services employer is assigned to work for a client, that employee's wages are due and payable no less frequently than weekly, regardless of when the assignment ends, and wages for work performed during any calendar week shall be due and payable not later than the regular payday of the following calendar week. A temporary services employer shall be deemed to have timely paid wages upon completion of an assignment if wages are paid in compliance with this subdivision.

(Cal. Lab. Code § 201.3(b)(1)(A)).

Defendant Prettybird is a temporary service employer within the meaning of Labor Code § 201.3, and Defendant does not fall within any of the exceptions for the payment of wages to its employees.

On a regular and consistent basis, for all aggrieved employees employed by Defendant. Defendant has failed to comply with Labor Code section 201.3. Plaintiffs and the other aggrieved employees are/were paid more frequently than weekly.

Labor Code § 2810.3 requires a client employer to share with a labor contractor all civil legal responsibility and civil liability for all workers supplied by that labor contractor for, among other things, the payment of wages and failure to secure valid workers' compensation coverage. A "labor contractor" is defined as an "individual or entity that supplies, either with or without a contract, a client employer with workers to perform labor within the client employer's usual course of business." A "client employer" is defined as "a business entity, regardless of its form, that obtains or is provided workers to perform labor within its usual course of business from a labor contractor."

Plaintiffs and other Aggrieved Employees worked many hours on the above-mentioned productions and other projects but were not timely paid for their work, or paid certain sums at all.

Plaintiffs contend that the Labor Code sections listed below and the Applicable Wage Order enables Plaintiffs to recover civil penalties under PAGA, as well as attorneys' fees and costs from Defendants through a civil action on behalf of all Aggrieved Employees.

Plaintiffs will seek to recover the PAGA penalties through a representative action permitted by PAGA and the California Supreme Court in Arias v. Superior Court, 46 Cal. 4th 969 (2009) and Huff v. Securitas Sec'y Servs. USA, Inc., 23 Cal. App. 5th 745, 756 (2018). Plaintiffs will seek civil penalties pursuant to PAGA for violations of the following Labor Code provisions:

1. Failure to provide payroll records in violation of Code § 226(b).

Employers must afford current and former employees the right to inspect or copy the records pertaining to that current or former employee, upon reasonable request to the employer. Aggrieved Employees have requested but have not been provided with an opportunity to inspect or copy all payroll records within 21 days of request. Upon information and belief, many Aggrieved Employees have requested their payroll records but have not been given access to them pursuant to section 226(b). Code § 2699(f)(2) imposes a civil penalty of \$100 per pay period per Aggrieved Employee for initial violations, and \$200 per pay period per Aggrieved Employee for subsequent violations for all Code provisions for which a civil penalty is not specifically provided.

2. Failure to personnel records in violation of Code § 1198.5.

Employers must afford current and former employees the right to inspect or copy the personnel records pertaining to that current or former employee, upon reasonable request to the employer. Aggrieved Employees have requested have not been provided with an opportunity to inspect or copy all personnel records within 30 days of request. Upon information and belief, many Aggrieved Employees have requested their personnel records but have not been given access to them pursuant to section 1198.5. Code § 2699(f)(2) imposes a civil penalty of \$100 per

pay period per Aggrieved Employee for initial violations, and \$200 per pay period per Aggrieved Employee for subsequent violations for all Code provisions for which a civil penalty is not specifically provided.

3. Failure to provide records in violation of Code § 432.

Employers are required to give a copy of any instrument relating to the obtaining or holding of employment, if signed by an employee, upon request. Aggrieved Employees have requested such documents but have not received them. Upon information and belief, other Aggrieved Employees have requested their signed documents but have not been provided a copy. Code § 2699(f)(2) imposes a civil penalty of \$100 per pay period per Aggrieved Employee for initial violations, and \$200 per pay period per Aggrieved Employee for subsequent violations for all Code provisions for which a civil penalty is not specifically provided.

4. Failure to timely pay wages during employment in violation of Code §§ 204 and 210.

Aggrieved Employees were not compensated during their employment by the times prescribed by section 204 due to the failure to allocate sufficient resources to the payroll function. The failure of Defendants to make timely payments within the time provided for has been and is “willful” within the meaning of such word as used in Section 210 of the Code.

Defendants failed to pay Plaintiffs and Aggrieved Employees all wages for a weekly payroll period within 7 calendar days following the close of the payroll period in violation of Code §§ 204(d) and 210. Plaintiffs and Aggrieved Employees were paid after the 7th day following the close of the payroll period in violation of these statutes.

Accordingly, each Aggrieved Employee who was not timely paid his or her timely wages during their employment is entitled to civil penalties. Code section 210 provides for a penalty of \$100 for each initial violation and \$200 for each subsequent, or willful or intentional violation plus 25 percent of the amount unlawfully withheld.

5. Failure to pay wages and/or final wages in violation of Code §§ 201.3, 201.5 and 203.

With respect to violations of Code § 203, the failure of Defendants to make final payments within the time provided for has been and is “willful” within the meaning of such word as used in Section 203 of the Code. Code section 203 provides that if “an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

Here, Plaintiffs and Aggrieved Employees were not timely paid all wages due upon their separation from Defendants’ employ. As such, Defendants failed to pay Plaintiffs and Aggrieved Employees all wages due at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Code § 203.

Accordingly, each Aggrieved Employee who was not timely paid his or her final wages is entitled to civil penalties. Code § 2699(f)(2) imposes a civil penalty of \$100 per pay period per Aggrieved Employee for initial violations, and \$200 per pay period per Aggrieved Employee for subsequent violations for all Code provisions for which a civil penalty is not specifically provided.

6. Wages by check on which payment refused under Code § 203.1.

Certain of the Aggrieved Employees were intentionally paid their wages with checks that subsequently were refused payment due to insufficient funds. Code § 203.1 provides that:

If an employer pays an employee in the regular course of employment or in accordance with Section 201, 201.3, 201.5, 201.7, or 202 any wages or fringe benefits, or both, by check, draft or voucher, which check, draft or voucher is subsequently refused payment because the employer or maker has no account with the bank, institution, or person on which the instrument is drawn, or has insufficient funds in the account upon which the instrument is drawn at the time of its presentation, so long as the same is presented within 30 days of receipt by the employee of the check, draft or voucher, those wages or fringe benefits, or both, shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced [up to 30 days].

Here, Aggrieved Employees were not paid immediately after a dishonored check was presented to Defendants and waited up to, or more than 30 days, to be paid after informing Defendants.

7. Unlawful Deductions under Code § 221.

Under Code §§ 221, 222 and 223, it is “unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee” and it is “unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.” Section 222 states that with respect to wages agreements via a collective bargaining agreement, an employer may not wilfully, unlawfully or with “intent to defraud an employee, a competitor, or any other person, [] withhold from said employee any part of the wage agreed upon.”

Here, Defendants made improper deductions for which Aggrieved Employees did not expressly authorize in writing. Plaintiffs and Aggrieved Employees were paid less than the wages they were owed because they had to cover extra costs and expenses that were not reimbursed or otherwise were deducted from pay.

Section 225.5 provides for a civil penalty of \$100 for each failure to pay each employee in an initial violation and \$200 for each failure to pay each employee in a subsequent violation, plus 25 percent of the amount unlawfully withheld.

8. Failure to provide itemized wage statements in violation of Code § 226(a).

Aggrieved Employees have not been provided a wage statement as required by Code section 226(a). The foregoing was the intentional misconduct of Defendants that was intended to mislead and injure Aggrieved Employees insofar as they were subjected to confusion and deprived of information to which they were legally entitled.

- a. The wage statements failed to include, among other required information, the “gross wages earned” as it only shows the gross wages eventually paid.
- b. The wages statements failed to include, among other required information, the “total hours worked by the employee” as it only shows the total hours eventually paid.
- c. The wage statements failed to include, among other required information, “all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item”
- d. The wage statements failed to include, among other required information, the “net wages earned”
- e. The wage statements failed to include, among other required information, the “inclusive dates of the period for which the employee is paid” as it appears to only show the date/dates worked and do not show the start and end date for each pay period.
- f. The wage statements failed to include, among other required information, “the name of the employee and only the last four digits of his or her social security number or an

employee identification number other than a social security number” as the statement shows:

- no identifying number at all
- all nine digits of the social security number
- g. The wage statements failed to include, among other required information, the “name and address of the legal entity that is the employer” as it
 - does not reflect the full legal name of the employer
 - misstates that the employer is only a “Client”
- h. The wage statements failed to include, among other required information, “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee”
- i. The wage statements failed to include, among other required information, the “the rate of pay and the total hours worked for each temporary services assignment”

Section 226(e) provides that any employee who suffers injury as a result of a knowing and intentional failure by the employer to comply with its obligation to provide wage statements containing all of the information referenced above is entitled to recover. Section 226.3 provides for a civil penalty of \$250 per employee per violation in an initial violation and \$1,000 per employee for each violation in a subsequent violation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.

9. Failure to provide sick leave information under Code §§ 245.5 and 246.

Code sections 245.5 and 246(i) provide that “[a]n employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee’s itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee’s payment of wages.” Here, Defendants have systematically and intentionally failed to set forth the amount of sick leave available, or paid time off leave an employer provides in lieu of sick leave, on the itemized wage statements described in Section 226. Defendants did not issue wage statements to Plaintiffs and all Aggrieved Employees.

Code § 248.5(e) provides “equitable relief on behalf of the aggrieved as may be appropriate to remedy the violation, including reinstatement, backpay, the payment of sick days unlawfully withheld, . . . any person or entity enforcing this article on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled only to equitable, injunctive, or restitutionary relief, and reasonable attorney’s fees and costs.”

10. Failure to furnish information under Code § 2810.5.

Aggrieved Employees were entitled to certain information in writing at the time of hiring including, among other items, the following:

- a) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable.
- b) The regular payday designated by the employer in accordance with the requirements of this code.
- c) The name of the employer, including any “doing business as” names used by the employer.
- d) The physical address of the employer’s main office or principal place of business, and a mailing address, if different.
- e) The telephone number of the employer.

- f) The name, address, and telephone number of the employer's workers' compensation insurance carrier.
- g) That an employee: may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

All Aggrieved Employees were not provided with all of the required information under Section 2810.5. Code section 2699(f)(2) imposes a civil penalty of \$100 per pay period per Aggrieved Employee for initial violations, and \$200 per pay period per Aggrieved Employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

11. Failure to provide proper meal periods under Code § 226.7 and Wage Order § 11.

Aggrieved Employees were not provided with timely meal periods in violation of Code section 226.7 and Applicable Wage Order section 11. For example, Plaintiffs worked over 6 or 12 hours in a day but were not provided with compliant meal break(s) and were not otherwise compensated. Aggrieved Employees were not permitted to leave the set of the Production for meal periods, and were required to keep their walkie talkies and/or cell phones on so that they could be reached at all times. They were required to respond regardless of whether they were on a meal or rest break.

Code §§ 226.7, 512 and Section 12 of the Applicable Wage Order require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Section 12 requires that "No employer shall employ any person for a work period of more than six (6) hours without a meal period of not less than thirty (30) minutes, nor more than one (1) hour. Subsequent meal period for all employees shall be called not later than six (6) hours after the termination of the preceding meal period." Defendants failed to maintain a policy informing all Aggrieved Employees of these rights.

Here, Defendants failed to apprise all Aggrieved Employees of their rights associated with meal periods and failed to provide timely meal periods. Defendants have had a consistent policy of: (1) requiring all Aggrieved Employees to take late meal breaks that occurred after the first 6 hours of each shift; (2) required Aggrieved Employees to work shifts over 12 hours without providing a second meal period of 30 minutes in length; and (3) failed to pay such employees 1 hour of pay at the employees regular rate of compensation for each workday in which a proper meal break was not provided.

Additionally, Defendants maintained a policy of automatically deducting 30 minutes from each shift that Plaintiffs and the Aggrieved Employees worked. This "auto-deduct" policy was unlawful and did not account for whether the employees took their meal periods, took meal periods late, were interrupted with work, and/or took meal periods of less than 30 minutes.

Code section 2699(f)(2) imposes a civil penalty of \$100 per pay period per Aggrieved Employee for initial violations, and \$200 per pay period per Aggrieved Employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

12. Failure to provide proper rest periods under Code § 226.7 and Wage Order § 12.

All Aggrieved Employees were not provided with timely rest periods in violation of Code section 226.7 and Applicable Wage Order section 12. Aggrieved Employees were not permitted to leave the set of the Production for any purported rest periods. They were required to be available via radio or cell phone at all times. Plaintiffs and Aggrieved Employees were neither informed of nor otherwise provided with compliant rest breaks. Defendants failed to provide all Aggrieved Employees with rest breaks of not less than 10 minutes per 4-hour work period, or major fraction thereof. On a regular and consistent basis, Defendants failed to provide all Aggrieved Employees with a third rest period despite regularly requiring Aggrieved Employees

to work over 10 hours. As such, Defendants failed to provide all Aggrieved Employees with compliant rest periods. Further, Plaintiffs and the Aggrieved Employees were not compensated with 1 hour of wages for each missed rest period as required by Code § 226.7.

Code section 2699(f)(2) imposes a civil penalty of \$100 per pay period per Aggrieved Employee for initial violations, and \$200 per pay period per Aggrieved Employee for subsequent violations for all Code provisions for which a civil penalty is not specifically provided.

13. Improper classification of employees as independent contractors in violation of Code § 226.8.

Aggrieved Employees were willfully misclassified as independent contractors even though they were employees. Production crew members are employees who are granted specific protections under the Labor Code, as defined in Code § 201.5. Defendants' failure to properly classify as employees all Aggrieved Employees was done on a regular and consistent basis. Code section 226.8 requires "a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law." If the employer is found to have engaged in a "pattern or practice" of misclassifying employees, it is subject to a "civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law." Cal. Lab. Code § 226.8(c).

14. Failure to reimburse necessary business expenses under Code § 2802.

Aggrieved Employees were not reimbursed for necessary business expenses. Section 2802 requires that an employer indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

Defendants have failed to reimburse Plaintiffs and Aggrieved Employees the cost of using their personal cell phones for business related purposes. Defendants required that Plaintiffs and the Aggrieved Employees be available by cell phone and answer/use their cell phones while working and this was necessary to perform their job duties. These cell phones were not provided by Defendants, and Defendants failed to reimburse Aggrieved Employees for the costs associated with using these personal cell phones. They were also not reimbursed for the provision and use of personal protective equipment and motion picture production equipment and supplies necessary to perform their job duties.

Code section 2699(f)(2) imposes a civil penalty of \$100 per pay period per Aggrieved Employee for initial violations, and \$200 per pay period per Aggrieved Employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

15. Failure to pay minimum and overtime wages in violation of Code §§ 510, 515, 558, 1194, and 1198.

Both late payment and non-payment of minimum wages violate the state statute requiring the payment of a minimum hourly wage. The Labor Code requires an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the regular rate of pay for any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek.

Here, Plaintiffs and other Aggrieved Employees were not paid at the proper corresponding rate for all hours worked, including overtime as a result of the following:

1. Defendants' misclassification of these individuals as independent contractors.
2. Defendants did not record actual hours and failed to pay for all time worked.
3. Defendants' failure to pay for all time spent driving/and or travelling from site to site.

4. Defendants' failure to calculate the correct overtime rate under Code § 515.
5. Aggrieved Employees routinely work "off the clock" to attend mandatory meetings beyond their scheduled call time.
6. Plaintiffs and the Aggrieved Employees are routinely paid until an arbitrary time in the day and not until they have ceased working.

Code § 558 imposes a civil penalty in addition to any other penalty provided by law of \$50 for initial violations for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages, and \$100 for subsequent violations for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

16. Failure to keep complete and accurate payroll records.

Defendants failed to keep complete and accurate payroll records relating to Aggrieved Employees in accordance with Code section 1174(d). Willful failure to maintain accurate and complete records required by section 1174(d) is subject to a civil penalty of \$500. Cal. Lab. Code § 1174.5.

17. Failure to furnish reporting time pay in violation of Applicable Wage Order § 5.

Defendants failed to compensate for reporting time pay. Upon information and belief, Aggrieved Employees reported to work but were not put to work or not furnished at least half of the usual or scheduled hours. If an employee is required to report to work but is not put to work or is furnished less than half of the employee's usual or scheduled day's work, such Aggrieved Employees are entitled to be paid for half the usual or scheduled day's work. Code section 2699(f)(2) imposes a civil penalty of \$100 per pay period per Aggrieved Employee for initial violations, and \$200 per pay period per Aggrieved Employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

18. Failure to provide rest day in violation of Code § 551.

Pursuant to Code § 551 Defendants failed to provide Plaintiffs and the Aggrieved Employees with one day of rest in seven consecutive days worked. Code § 551 states: "Every person employed in any occupation of labor is entitled to one day's rest therefrom in seven." Defendants failed to provide this day of rest. In order to meet deadlines, Plaintiffs and Aggrieved Employees were required to work 7 days per week without a day of rest.

19. Failure to provide seating in violation of Wage Order § 14.

Code § 1199 prohibits an employer from causing any employee to work under conditions of labor prohibited by an order of the Industrial Welfare Commission (IWC) or from violating, refusing, or neglecting to comply with any order of the commission's orders regarding wages, hours, and working conditions. Additionally, Labor Code § 1198 states that the standard conditions of labor fixed by the commission shall be the standard conditions of labor for employees and forbids the employment of any employee under conditions of labor prohibited by the commission's wage orders. Section 14 of the applicable IWC Wage Order requires employers to provide employees with suitable seats when the nature of work reasonably permits the use of seats. Here, Defendants did not provide suitable seats for employees performing work as _____ even though the nature of work reasonably permitted the use of seats.

Code section 2699(f)(2) imposes a civil penalty of \$100 per pay period per Aggrieved Employee for initial violations, and \$200 per pay period per Aggrieved Employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

20. Violation of WARN Act, Cal. Lab. Code §§ 1400 et seq.

The California Worker Adjustment and Retraining Notification Act (“WARN Act”), Cal. Labor Code § 1400 et seq., requires employers at a “covered establishment,” that employs 75 or more employees, give 60 days’ notice before a mass layoff (of 50 or more employees), a relocation, or a cessation of doing business. Employers must give notice not only to employees, but also to the relevant California government agency, the Employment Development Department. See Cal. Labor Code § 1401(a). Employers are excused from providing notice of a mass layoff only if there is a “physical calamity” (such as an earthquake) or “act of war.” § 1401(b). Pursuant to Code § 1402(a)-(c), if an employer fails to give notice of a mass layoff, relocation, or cessation of business, its employees are entitled to recover up to 60 days of back-pay and the value of the cost of any benefits the employee would have been entitled had his or her employment not been lost, or one-half the number of days that the employee was employed by the employer, whichever is smaller.

Defendant Prettybird is an employer that operates a “covered establishment” under the California WARN Act, Cal. Lab. Code § 1400 et seq., because Defendant employs 75 or more employees. Plaintiffs and all Aggrieved Employees have been employed by Defendant for at least 6 months of the 12 months preceding the date of termination. Defendant engaged in a “mass layoff” because they terminated 50 or more employees, including Plaintiffs, within a 30-day period. Defendant did not provide advance notice to Plaintiffs and all Aggrieved Employees that they would be terminated on April 23, 2019, as required by the WARN Act. As such, Defendant willfully violated the California WARN Act by failing to provide Plaintiffs and the Aggrieved Employees the required notice. Further, Defendant failed to compensate Plaintiffs and all Aggrieved Employees all back-pay wages and benefits due for sixty (60) days following the termination of their employment with Defendant in violation of Code § 1400 et seq.

21. Personal Liability of Individual Defendants under Code § 558.

Defendants Kerstin Emhoff and Paul Hunter were each an employer and/or “other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission.” Emhoff was an owner and member of Defendants Prettybird and/or PEH and Hunter was a member of Prettybird and/or PEH, and each had control over the payment of wages. Under Code § 558, Defendants Emhoff and Hunter are responsible for the civil penalties for violation of minimum wages, overtime wages, meal and rest breaks, and reporting time pay.

Aggrieved Employees are entitled to recover as follows:

- (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
- (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
- (3) Wages recovered pursuant to this section shall be paid to the affected employee.

Cal. Lab. Code § 558(a).

22. Personal Liability of Individual Defendants under Code § 1197.1

Defendants Kerstin Emhoff and Paul Hunter were each an employer and/or “other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the Commission.” Defendant Emhoff was an owner and member of Defendants Prettybird and/or PEH who had control over the payment of wages and intentionally

caused Aggrieved Employees to be paid less than was required by the Labor Code and the Applicable Wage Order. Defendant Hunter was an owner and member of Defendants Prettybird and/or PEH, who had control over the payment of wages and intentionally caused Aggrieved Employees to be paid less than was required by the Labor Code and the Applicable Wage Order. Defendants are responsible for minimum wage restitution, liquidated damages and Code § 203 penalties. Aggrieved Employees are entitled to recover as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.

Cal. Lab. Code § 1197.1(a).

Emergency Rule 9 as promulgated by the Judicial Council of California and amended May 29, 2020, provides: “Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 1, 2020.” The Advisory Committee Comment notes that: “Emergency rule 9 is intended to apply broadly to toll any statute of limitations on the filing of a pleading in court asserting a civil cause of action. The term “civil causes of action” includes special proceedings. (See Code Civ. Proc., §§ 312, 363 [“action,” as used in title 2 of the code (Of the Time of Commencing Civil Actions), is construed “as including a special proceeding of a civil nature”). . . . The rule also applies to statutes of limitations on filing of causes of action in court found in codes other than the Code of Civil Procedure.”

Please advise whether you will proceed with an investigation of this matter or whether Plaintiffs Simms and Costa may seek a civil-penalty recovery for the alleged violations under the Labor Code Private Attorneys General Act through private counsel.

Very truly yours,


Alan Harris

Cc: (Via Certified Mail) PRETTYBIRD LLC, c/o Jason Ouaknine, Registered Agent, 9905 Jefferson Blvd., Culver City CA 90232; PRETTYBIRD ENTERTAINMENT HOLDINGS, INC., c/o Jason Ouaknine, Registered Agent, 9905 Jefferson Blvd., Culver City CA 90232; PAUL HUNTER, 9905 Jefferson Blvd., Culver City CA 90232; KERSTIN EMHOFF, 9905 Jefferson Blvd., Culver City CA 90232

Exhibit 5

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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE 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 the Hon. Stuart M. Rice, Dept. 1

FIRST AMENDED COMPLAINT

1. Cal. Lab. Code §§ 201.3 and 203
Continuing Wages
2. Cal. Lab. Code § 226(a), Failure to Provide
Compliant Wage Statements
3. Cal. Lab. Code §§ 226.7, 512 and Wage
Order 12, Failure to Provide Meal Breaks
4. Cal. Lab. Code § 226.7 and Wage Order,
Failure to Provide Rest Breaks
5. Cal. Lab. Code § 510, 515, and 1194
Failure to Provide Pay Proper Overtime
6. Cal. Lab. Code §§ 1194 and 1198 Failure
to Provide Pay Proper Minimum Wages
7. Cal. Lab. Code § 2802, Failure to
Reimburse Business Expenses
8. Cal. Lab. Code § 226(b), Payroll Records
9. Cal. Lab. Code § 1198.5, Personnel Records
10. Cal. Bus & Prof. Code §§ 17200 *et seq.* –
Restitution
11. Cal. Lab. Code §§ 2698 *et seq.*, PAGA,
12. Fair Labor Standards Act, 29 U.S.C. §.201
et seq.

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CLASS ACTION

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JURY TRIAL DEMANDED

1 Plaintiffs Arthur Simms (“Simms”) and John Costa (“Costa”), by and through their undersigned
2 attorneys, allege as follows:

3 **JURISDICTION AND VENUE**

4 1. This is a law enforcement action under the California Labor Code Private Attorneys
5 General Act (“PAGA”), seeking unpaid wages, damages, civil penalties, statutory penalties and
6 attorneys’ fees and costs. Plaintiffs have provided statutory notice to the California Labor and
7 Workforce Development Agency (“LWDA”) of the claims set forth in this Complaint and to
8 Defendants.

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9 2. Venue as to Defendants is proper in this judicial district, pursuant to California Code of
10 Civil Procedure sections 395(a) and 395.5. Defendants maintain an office, transact business, have an
11 agent, or are found in the County of Los Angeles and are within the jurisdiction of this Court for
12 purposes of service of process. The violations of the PAGA alleged herein had a direct effect on and
13 were committed within the State of California, impacting Plaintiffs and the Aggrieved Employees.

Deleted: Upon expiration of the statutory period, Plaintiffs will amend the Complaint to assert a claim for relief under PAGA on behalf of all those similarly situated.

14 3. Emergency Rule 9 as promulgated by the Judicial Council of California on insert date,
15 provides: “Notwithstanding any other law, the statutes of limitations and repose for civil causes of
16 action that exceed 180 days are tolled from April 6, 2020, until October 1, 2020.” The Advisory
17 Committee Comment notes that: “Emergency rule 9 is intended to apply broadly to toll any statute of
18 limitations on the filing of a pleading in court asserting a civil cause of action. The term “civil causes of
19 action” includes special proceedings. (See Code Civ. Proc., §§ 312, 363 [“action,” as used in title 2 of
20 the code (Of the Time of Commencing Civil Actions), is construed “as including a special proceeding of
21 a civil nature”). . . . The rule also applies to statutes of limitations on filing of causes of action in court
22 found in codes other than the Code of Civil Procedure.”

23 **THE PARTIES**

24 4. Plaintiff Simms is an individual, who, during the time periods relevant to this Complaint,
25 was and is a resident of the County of Los Angeles, State of California.

26 5. Plaintiff Costa is an individual, who, during the time periods relevant to this Complaint,
27 was and is a resident of the County of Los Angeles, State of California

28 6. Defendant PRETTYBIRD, LLC (“PLLC”) is a Delaware Limited Liability Company,

1 which at all times relevant herein, conducted business within the County of Los Angeles, State of
2 California and producing dozens of motion pictures during the time periods relevant to this Complaint.
3 PLLC describes itself as “a flourishing media content production company working with thousands of
4 freelance craftspeople in the innovative advertising and music space, among others.” Prettybird LLC v.
5 New C.A.P.S., LLC, No 22STCV35303 (Los Angeles Superior Court, Nov. 4, 2022) (hereafter, “CAPS
6 Case”), ¶ 1. Further:

7 Prettybird is a privately owned media production company with offices in Los Angeles
8 and London. The company specializes in production of creative and innovative
9 advertising campaigns, branded entertainment, music content, film/television, and
experiential attractions. Prettybird has enjoyed growing success and established itself as
an industry leader on the cutting edge of branded advertising content, among other things.

10 CAPS Case, ¶ 13.

11 7. Defendant PRETTYBIRD ENTERTAINMENT HOLDINGS, INC., (“PEH”) is a
12 Delaware Corporation, which at all times relevant herein, conducted business within the County of Los
13 Angeles, State of California. In both May of 2019 and May of 2021, PLLC advised the California
14 Secretary of State that its “Manager(s) or Member(s)” included PEH. In April of 2023, PLLC advised
15 the California Secretary of State that its “Manager(s) or Member(s)” included Kerstin Emhoff, Allison
16 Brown, and Paul Hunter.

17 8. Defendant Kerstin Emhoff (“Emhoff”) is the co-founder and CEO of PLLC and PEH.
18 According to PLLC:

19 When Prettybird co-founder Kerstin Emhoff left her previous job running a large
20 company to start her own in Prettybird, CAPS founder Eric Capagrasso lobbied her
21 intensely to sign on with him and CAPS as Prettybird’s payroll partner. Among other
22 things, CAPS led Prettybird to believe that Prettybird’s finances and payroll would be
23 safe and secure in CAPS’ hands; indeed, CAPS expressly promised above industry
24 standard financial security services and technology, and Prettybird, relying on CAPS’
25 portrayal of security, reliability, and competence, decided to go with CAPS as its payroll
provider over the competition. By placing its trust in a seemingly professional outfit
operating in the high stakes payroll processing industry, Prettybird felt assured that CAPS
– through its suite of payroll, insurance, and tax admin products and services – would
secure and protect Prettybird’s financial data and that all aspects of payroll
responsibilities, from union plans to government regulations, would be expertly
performed.

26 CAPS Case, ¶ 2.

27 9. PLLC further alleged:

28 As it turns out, for over a half a decade – on CAPS’ watch and by directly utilizing

egregious security deficiencies in the CAPS platform and versions of the CAPS+ payroll software – a rogue Prettybird employee (hired from CAPS after being Prettybird’s payroll supervisor within CAPS) managed to siphon nearly \$2 million from Prettybird. The woman – no doubt herself also a culpable party – would systematically, within the CAPS service platform, enter fake timecards, submit patently suspicious tax forms, manually upload false payroll files, and delete and manipulate scores of payroll data, among other things. And she did so day in and day out for years—all without raising a single administrative alert at CAPS (at least that Prettybird is aware of).

When the fraud was finally uncovered (by Prettybird, not CAPS) in 2021 and Prettybird approached CAPS for answers, CAPS stonewalled and disregarded Prettybird’s requests for information. Even when faced with subpoena process, CAPS was unable to (and/or for unknown reasons unwilling to) come up with any meaningful backup or documentation – be it software specs, policies and procedures, anti-fraud protocols, or data security measures – in response to Prettybird’s pleas to understand just how this could have happened for so long without raising any red flags within CAPS. To date, CAPS has refused to answer to or account for what has proximately resulted from the company’s professional negligence in allowing and facilitating this unfettered financial data breach against Prettybird.

CAPS Case, ¶¶ 3-4. Despite the defense claims that the defendant in the CAPS Case was incompetent, PLLC inexplicably continued to use the services of that payroll provider, with the seemingly inevitable result that Defendants continued to violate the laws alleged herein, even so late as with respect to a January 2022 commercial known as FYE NISSAN #1755, a July 2022 commercial known as AMAZON TNF #1800, an August 2022 commercial known as NISSAN EV #1810, a September 2022 commercial known as AIRBORNE #1815, a September 2022 commercial known as UUGH #6185, as well as a February of 2023 commercial known as MIKE’S LEMONADE #1845.

10. Defendant Paul Hunter (“Hunter”) is the co-founder and CFO of PEH.

11. Emhoff and Hunter are herein referred to as the “Individual Defendants”. The Individual Defendants and PEH managed PLLC.

12. Defendants Doe One through and including Doe Ten are sued herein under the provisions of section 474 of the California Code of Civil Procedure. Plaintiffs are unaware of the true names, identities or capacities, whether corporate, individual or otherwise, of said fictitiously named defendants, but leave of Court will be prayed to amend this pleading to insert the same herein when finally ascertained. Plaintiffs are informed, believe and thereupon alleges that each of the fictitiously named Defendants is an entity, which during the relevant time period maintained a place of business in the County of Los Angeles of the State of California. Defendants PLLC, PEH and the Individual Defendants and Does One through and including Doe Ten are hereinafter collectively referred to as Defendants.

1 Defendants are “temporary services employers” as defined by California Labor Code (the “Code”) §
2 201.3 and required to pay freelance motion picture production workers such as Plaintiffs no less
3 frequently than weekly.

4 13. Defendants are “temporary services employers” as defined by Code § 201.3 and required
5 to pay temporary services workers such as Plaintiffs and crew no less frequently than weekly. Section
6 201.3 provides, in part:

7 (a) For purposes of this section, the following definitions apply:

8 (1) “Temporary services employer” means an employing unit that contracts with clients
9 or customers to supply workers to perform services for the clients or customers and that
10 performs all of the following functions:

11 (A) Negotiates with clients and customers for matters such as the time and place where
12 the services are to be provided, the type of work, the working conditions, and the quality
13 and price of the services.

14 (B) Determines assignments or reassignments of workers, even if workers retain the right
15 to refuse specific assignments.

16 (C) Retains the authority to assign or reassign a worker to another client or customer
17 when the worker is determined unacceptable by a specific client or customer.

18 (D) Assigns or reassigns workers to perform services for clients or customers.

19 (E) Sets the rate of pay of workers, whether or not through negotiation.

20 (F) Pays workers from its own account or accounts.

21 (G) Retains the right to hire and terminate workers.

22 . . .

23 (4) “Client” and “customer” mean the person with whom a temporary services employer
24 has a contractual relationship to provide the services of one or more individuals
25 employed by the temporary services employer.

26 (b)(1)(A) Except as provided in paragraphs (2) to (5), inclusive, if an employee of a
27 temporary services employer is assigned to work for a client, that employee’s wages are
28 due and payable no less frequently than weekly, regardless of when the assignment ends,
and wages for work performed during any calendar week shall be due and payable not
later than the regular payday of the following calendar week. A temporary services
employer shall be deemed to have timely paid wages upon completion of an assignment
if wages are paid in compliance with this subdivision.

. . .

(c) A temporary services employer who violates this section is subject to the civil
penalties provided for in Section 203 and to any other penalties available at law.

(d) This section shall not be interpreted to limit any rights or remedies otherwise
available under state or federal law.

Code § 201.3.

14. As a “temporary services employer,” PLLC is an employing unit which contracts with
clients to supply workers to perform services to its clients. PLLC performs all of the following
functions: (A) Negotiates with clients and customers for matters such as the time and place where the
services are to be provided, the type of work, the working conditions, and the quality and price of the
services; (B) Determines assignments or reassignments of workers, even if workers retain the right to

1 refuse specific assignments; (C) Retains the authority to assign or reassign a worker to another client or
2 customer when the worker is determined unacceptable by a specific client or customer; (D) Assigns or
3 reassigns workers to perform services for clients or customers; (E) Sets the rate of pay of workers,
4 whether or not through negotiation; (F) Pays workers from its own account or accounts; and (G) Retains
5 the right to hire and terminate workers.

6 15. Plaintiffs are informed and believe and thereon allege that all Defendants, including the
7 fictitious Doe Defendants, were at all relevant times acting as actual agents, conspirators, ostensible
8 agents, alter egos, partners and/or joint venturers and/or employees of all other Defendants, and that all
9 acts alleged herein occurred within the course and scope of said agency, employment, partnership, and
10 joint venture, conspiracy or enterprise, and with the express and/or implied permission, knowledge,
11 consent authorization and ratification of their co-defendants; however, each of these allegations are
12 deemed “alternative” theories whenever not doing so would result in a contradiction with other
13 allegations.

14 **GENERAL ALLEGATIONS**

15 16. To work as a crew member on a motion picture with a Job Name of “Keep It Tight
16 #1659”, Defendants employed Plaintiff Simms for some ten hours on or about July 30, 2020, but Simms
17 was not paid for all hours worked and was paid late. Indeed, his paycheck was not even prepared until
18 on or after August 14, 2020. In or around July 30, 2020, Plaintiff Simms was laid off without a return
19 date for any further work. Although Plaintiff Simms should have been paid in full for his accrued
20 overtime wages and meal and rest break wages no later than on August 7, 2020, the very check stub
21 ultimately issued to Simms stating that his “Pay Frequency” was “W[eekly]”, he was not then paid the
22 full amount of wages owing to him.¹ A payment made to him by check dated August 14, 2020, did not

23
24 ¹ The Defendants’ practice of routinely advising its employees that the “Pay Frequency” was
25 “W[eekly]” continued unabated from at least as early as 2018 to some point in 2022, when the
26 information regarding “Pay Frequency” was altogether deleted from the wage statements issued to crew
27 members. Thereafter, at some later stage in 2022, it appears that the Defendants began to routinely
28 advise workers that the applicable “Pay Period” conformed to the long established industry standard of a
weekly pay period, from Sunday to Saturday. Significantly, in response to the February 2023 document
production requests of both Simms and Costa, sent to the Defendants prior to the filing of this
Complaint, Defendants supplied copies of wage statements which had been altered to delete reference to
Defendants’ longstanding practice of providing wage statements which revealed that the applicable “Pay
Frequency” was “[W]eekly”.

1 fully compensate Plaintiff for all outstanding wages. Naranjo v. Spectrum Security Services, Inc., 13
2 Cal.5th 93 (2022). The wage statement failed to advise Plaintiff of the beginning or end date of the pay
3 period or the legal name and address of the employer, instead stating that the “Payroll Employer” was
4 New Caps, LLC. Prettybird, LLC was referenced on the wage statement as the “Controlling Employer”.
5 The wage statement failed to provide any information regarding accrued and unpaid wages for
6 Defendants’ failure to provide duty free meal periods or rest breaks. Simms was not provided his meal
7 period in connection with his rendition of some ten hours of services in connection with a motion
8 picture referred to as “Keep It Tight #1659”.

9 17. To work as a crew member on a motion picture with a Job Name of “Nissan #1672”,
10 Defendants employed Plaintiff Simms for some 10.5 hours as a crew member on or about November 20,
11 2020, but Simms was not paid for all hours worked and was paid late. Indeed, his paycheck was not
12 even prepared until on or after December 2, 2020. In or around November 20, 2020, Plaintiff Simms
13 was laid off without a return date for any further work. Although Plaintiff Simms should have been paid
14 in full for his accrued overtime wages and meal and rest break wages no later than on November 30,
15 2020, the very check stub ultimately issued to Simms stating that his “Pay Frequency” was “W[EEKLY]”,
16 he was not then paid the full amount of wages owing to him. A payment made to him by check dated
17 December 2, 2020, did not fully compensate Plaintiff for all outstanding wages. The wage statement
18 failed to advise Plaintiff of the beginning or end date of the pay period or the legal name and address of
19 the employer, instead stating that the “Payroll Employer” was New Caps, LLC. Prettybird, LLC was
20 referenced on the wage statement as the “Controlling Employer”. The wage statement failed to provide
21 any information regarding accrued and unpaid wages for Defendants’ failure to provide duty free meal
22 periods or rest breaks. Simms was not provided his meal period in connection with his rendition of
23 some 10.5 hours of services in connection with a Nissan motion picture.

24 18. To work as a crew member on a motion picture with a Job Name of “VW D 4 #1687”,
25 Defendants employed Plaintiff Simms in February of 2021. Although Plaintiff Simms should have been
26 paid in full for his accrued meal and rest break wages no later than on March 5, 2021, the very check
27 stub ultimately issued to Simms stating that his “Pay Frequency” was “W[EEKLY]”, he was not then paid
28 the full amount of premium wages owing to him. A payment made to him by check dated March 4,

2021, did not fully compensate Plaintiff for all outstanding wages. The wage statement failed to advise Plaintiff of the beginning or end date of the pay period or the legal name and address of the employer, instead stating that the “Payroll Employer” was New Caps, LLC. Prettybird, LLC was referenced on the wage statement as the “Controlling Employer”. The wage statement failed to provide any information regarding accrued and unpaid wages for Defendants’ failure to provide duty free meal periods or rest breaks. Simms was not provided his meal periods or rest breaks in connection with his rendition of some 12.5 hours of services in connection with the VW motion picture on February 21, 2021; some 12 hours of services in connection with the VW motion picture on February 22, 2021; and some 16.5 hours of services in connection with the VW motion picture on February 23, 2021. In addition, with respect to the VW commercial, by another tardy wage statement issued to Simms, dated March 23, 2021, for a purported six-day “Pay Period” from February 18 to 23, 2021, Defendants inexplicably paid an additional four hours of wages to Plaintiff for February 18, 2021, deducting over half of the gross wages for alleged federal income tax, FICA, Medicare, California “SD” payments for state disability insurance, and California State Tax.

19. To work as a crew member on motion pictures filmed on August 21, 2022 for Nissan (#1810), the Defendants employed Simms but failed to provide him with rest breaks or premium wages on account of this deficiency, again the wage statement failing to advise Plaintiff of the legal name and address of the employer, instead stating that the “Payroll Employer” was New Caps, LLC. Prettybird, LLC was referenced on the wage statement as the “Controlling Employer”.

20. To work as a crew member on a motion picture with a Job Name of “NBA #1807”, Defendants employed Plaintiff Simms on August 22-23, 2022, but Simms was not paid for all hours worked and was paid late. Indeed, his paycheck was not even prepared until on or after September 7, 2022. In or around August 23, 2022, Plaintiff Simms was laid off without a return date for any further work. Although Plaintiff Simms should have been paid in full for his accrued wages and rest break wages no later than on September 2, 2022, he was not then paid the full amount of wages owing to him. A payment made to him by check dated September 7, 2022, did not fully compensate Plaintiff for all outstanding wages. The wage statement failed to advise Plaintiff of the legal name and address of the employer, instead stating that the “Payroll Employer” was New Caps, LLC. Prettybird, LLC was

1 referenced on the wage statement as the “Controlling Employer”. The wage statement failed to provide
2 any information regarding accrued and unpaid wages for Defendants’ failure to provide duty free rest
3 breaks. Simms was not provided his rest breaks in connection with his rendition of some 8 hours of
4 services in connection with the NBA motion picture on August 22, 2022 or some 9 hours of services
5 in connection with the NBA motion picture on August 23, 2022.

6 21. To work as a crew member on a motion picture with a Job Name of “Disney 100th
7 #1818”, Defendants employed Plaintiff Simms on October 26, 2022, but Simms was not paid for all
8 hours worked and was paid late. Indeed, his paycheck was not even prepared until on or after November
9 7, 2022. In or around October 26, 2022, Plaintiff Simms was laid off without a return date for any
10 further work. Although Plaintiff Simms should have been paid in full for his accrued wages and rest
11 break wages no later than on September 2, 2022, he was not then paid the full amount of wages owing to
12 him. A payment made to him by check dated November 7, 2022, did not fully compensate Plaintiff for
13 all outstanding wages. The wage statement failed to advise Plaintiff of the legal name and address of the
14 employer, instead stating that the “Payroll Employer” was New Caps, LLC. Prettybird, LLC was
15 referenced on the wage statement as the “Controlling Employer”. The wage statement failed to provide
16 any information regarding accrued and unpaid wages for Defendants’ failure to provide duty free rest
17 breaks. Simms was not provided his rest breaks in connection with his rendition of some 12 hours of
18 services in connection with the Disney motion picture.

19 22. To work as a crew member on a motion picture with a Job Name of FYE Nissan #1755,
20 Defendants employed Plaintiff Costa in or around January 8, 2022, on which day Plaintiff Costa was
21 laid off without a return date for any further work. Although Plaintiff Costa should have been paid in
22 full for his accrued wages and rest break wages no later than on January 14, 2022, he was not paid the
23 full amount of wages owing to him. A payment made to him by check dated January 20, 2022, did not
24 fully compensate Plaintiff for all outstanding wages. The wage statement failed to advise Plaintiff of the
25 legal name and address of the employer, instead stating that the “Payroll Employer” was New Caps,
26 LLC. Prettybird, LLC was referenced on the wage statement as the “Controlling Employer”. The wage
27 statement failed to provide any information regarding accrued and unpaid wages for Defendants’ failure
28 to provide duty free rest breaks. Costa was not provided his rest breaks or a meal period in connection

1 with his rendition of some 14 hours of services in connection with the “FYE Nissan” motion picture.

2 23. To work as a crew member on a motion picture with a Job Name of Airborne #1815,
3 Defendants employed Plaintiff Costa in or around September 17, 2022, on which day Plaintiff Costa was
4 laid off without a return date for any further work. Although Plaintiff Costa should have been paid in
5 full for his accrued overtime wages and meal and rest break wages no later than on September 23, 2022,
6 he was not paid the full amount of wages owing to him. A payment made to him by check dated
7 September 28, 2022, did not fully compensate Plaintiff for all outstanding wages. The wage statement
8 failed to advise Plaintiff of the beginning or end date of the pay period or the legal name and address of
9 the employer, instead stating that the “Payroll Employer” was New Caps, LLC. Prettybird, LLC was
10 referenced on the wage statement as the “Controlling Employer”. The wage statement failed to provide
11 any information regarding accrued and unpaid wages for Defendants’ failure to provide duty free rest
12 breaks or a meal period. Costa was not provided his rest breaks or a meal period in connection with
13 his rendition of some 14.5 hours of services in connection with the “Airborne” motion picture.

14 24. As referenced herein, Defendants employed Class Members as well as Plaintiffs Simms
15 and Costa multiple times, consistently failing to pay accrued wages in timely fashion, frequently not
16 paying at all. Neither Plaintiffs nor other crewmembers have been reimbursed for their necessary
17 business expenses such as for a cellphones, devices required for the Plaintiffs and crew to know when,
18 where and to whom they are to appear for work as well as, more recently, to perform other necessary
19 tasks such as reporting their hours worked, each day. Neither Plaintiffs nor other crewmembers have
20 been issued wage statements with all of the information required by Code § 226(a), such as the accrual
21 of additional wages on account of Defendants routine failure to provide duty free rest breaks.

22 1. Plaintiffs and Class Members were required to keep their walkie talkie radios or cell
23 phones with them at all times, including during meal and rest breaks. Some breaks were simply not
24 provided at all or delayed due to improper use of “grace” calls. These policies precluded Defendants from
25 providing Plaintiffs and others the ability to enjoy legally compliant meal and rest breaks as required by
26 California law. Augustus v. ABM Sec. Servs. Inc., 2 Cal. 5th 257, 260 (2016).

27 2. Plaintiffs and/or Class Members have as of the date of filing of this Complaint not been
28 fully compensated for work performed for the Defendants on the motion pictures they produced in

1 California, including television commercials for Dietz & Watson (#1627) in February of 2020; Toyota
2 (#1657) in July and August of 2020; Reebok (#1662) in August of 2020; Beats (#1668) in September of
3 2020; Nissan (#1672) in November of 2020; VW (#1687) in February of 2021; Chase (#1704) in April
4 of 2021; May of 2021 (Amazon #1706); (IBM (#1717) in June of 2021; Nissan (#1755) in January of
5 2022; Geico (#1769) in March of 2022; Amazon TNF (#1800) in July of 2022; Nissan (#1810) in
6 August of 2022; Airborne (#1815) in September of 2022; or Nissan (#1840) in February of 2023,
7 among many others.

8 3. The Defendants were joint employers and/or client employers of Plaintiffs and Class
9 Members. Upon information and belief, the relevant advertisers and/or their advertising agency
10 representatives were on the sets for the filming of the Motion Pictures and worked alongside Plaintiffs and
11 Class Members, directing their work, providing feedback and making final decisions—or certainly had
12 the right to do so. Upon information and belief, they gave specific instructions on the manner in which
13 work was to be completed and reviewed and approved such work. They had creative and operational
14 authority and reviewed and approved various aspects of the Motion Pictures including Commercials
15 referenced herein, including selecting locations (where the shoot would take place), casting (who would
16 be chosen to be in the video), wardrobe (what the cast would wear) and the “look” -- the specific details
17 in the way Plaintiffs and other crewmembers did their jobs.

18 4. At all relevant times mentioned herein, Wage Order 4 and/or 12 of the California
19 Industrial Welfare Commission applied to Plaintiffs and Class Members. In part, the Wage Orders
20 reflect employer obligations regarding hours and days of work, reporting time pay, records, meal periods
21 and rest periods (obligations which the employer, here, failed to fulfill, both with respect to Plaintiffs
22 and Class Members). Wage Order 12 provides, in relevant part:

23 **3. Hours and Days of Work.**

24 (A) Daily Overtime - General Provisions

25 (1) The following overtime provisions are applicable to employees 18 years of age or
26 over and to employees 16 or 17 years of age who are not required by law to attend
27 school and are not otherwise prohibited by law from engaging in the subject work. Such
28 employees shall not be employed more than eight (8) hours in any workday or more than
40 hours in any workweek unless the employee receives one and one-half (1.5) times
such employee's regular rate of pay for all hours worked over 40 hours in the workweek.
Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in

any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime as follows:

(a) Employees may be employed up to a maximum of sixteen (16) hours including meal periods in any one day from the time they are required and do report until dismissed, provided the employee is compensated for such overtime at not less than:

(1) For daily employees and weekly employees, excluding weekly employees guaranteed more than forty (40) hours a workweek and "on call" employees, one and one-half (1.5) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any one workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

(2) Double the employee's regular rate of pay for all hours worked in excess of twelve (12) hours in any workday, and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

(3) Overtime payments shall not be compounded and all payments made by the employer for daily overtime on the basis herein above specified shall be applied toward any sum for weekly overtime.

(4) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary. The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

...

7. Records.

(A) Every employer shall keep accurate information with respect to each employee including the following:

(1) Full name, home address, occupation and social security number.

(2) Birth date, if under 18 years, and designation as a minor.

(3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

(4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

(5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

(6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

(B) Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

(C) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within

the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.

...
11. Meal Periods.

(A) No employer shall employ any person for a work period of more than six (6) hours without a meal period of not less than thirty (30) minutes, nor more than one (1) hour. Subsequent meal period for all employees shall be called not later than six (6) hours after the termination of the preceding meal period.

(B) Unless the employee is relieved of all duty during a thirty (30) minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

(C) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided.

(D) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

12. Rest Periods.

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3.5) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

Cal. Code of Regs., tit. 8, § 11120 ("Wage Order 12"). Wage Order 4 provides for more frequent meal periods.

5. At all times relevant herein, section 201.5 of the California Labor Code (the "Code") provided in part:

(a) For purposes of this section, the following definitions apply:

(1) "An employee engaged in the production or broadcasting of motion pictures" means an employee to whom both of the following apply:

(A) The employee's job duties relate to or support the production or broadcasting of motion pictures or the facilities or equipment used in the production or broadcasting of motion pictures.

(B) The employee is hired for a period of limited duration to render services relating to or supporting a particular motion picture production or broadcasting project, or is hired on the basis of one or more daily or weekly calls.

(2) "Daily or weekly call" means an employment that, by its terms, will expire at the conclusion of one day or one week, unless renewed.

(3) "Next regular payday" means the day designated by the employer, pursuant to Section 204, for payment of wages earned during the payroll period in which the termination occurs.

(4) "Production or broadcasting of motion pictures" means the development, creation, presentation, or broadcasting of theatrical or televised motion pictures, television programs, commercial advertisements, music videos, or any other moving images, including, but not limited to, productions made for entertainment, commercial, religious, or educational purposes, whether these productions are presented by means of film, tape, live broadcast, cable, satellite transmission, Web cast, or any other technology that is now in use or may be adopted in the future.

(b) An employee engaged in the production or broadcasting of motion pictures whose employment terminates is entitled to receive payment of the wages earned and unpaid at the time of the termination by the next regular payday.

(c) The payment of wages to employees covered by this section may be mailed to the employee or made available to the employee at a location specified by the employer in the county where the employee was hired or performed labor. The payment shall be deemed to have been made on the date that the employee's wages are mailed to the employee or made available to the employee at the location specified by the employer, whichever is earlier.

(d) For purposes of this section, an employment terminates when the employment relationship ends, whether by discharge, lay off, resignation, completion of employment for a specified term, or otherwise.

(e) Nothing in this section prohibits the parties to a valid collective bargaining agreement from establishing alternative provisions for final payment of wages to employees covered by this section if those provisions do not exceed the time limitation established in Section 204.

Code § 201.5.

6. Defendants employed individuals such as Plaintiffs and Class Members to work on the production on motion pictures, yet Defendants failed to timely or fully pay them, all in violation, inter alia, of Code sections 201.3, 201.5 and/or 204.

7. At all relevant times mentioned herein, section 203 of the Code provided:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202 and 202.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until action therefore is commence; but the wages shall not continue for more than 30 days.

Code § 203. By failing to pay Plaintiffs and Class Members all wages when due at termination, Plaintiffs and Class Members are entitled to continuing wages pursuant to section 203 of the California Labor Code.

1 8. At all times relevant herein, section 204 of the California Labor Code provided in part:

2 All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned
3 by any person in any employment are due and payable twice during each calendar month,
4 on days designated in advance by the employer as the regular paydays. Labor performed
5 between the 1st and 15th days, inclusive, of any calendar month shall be paid for between
6 the 16th and the 26th day of the month during which the labor was performed, and labor
performed between the 16th and the last day, inclusive, of any calendar month, shall be
paid for between the 1st and 10th day of the following month.

7 Cal. Lab. Code § 204.

8 9. At all times relevant herein, section 204b of the California Labor Code provided in part:

9 Section 204 shall be inapplicable to employees paid on a weekly basis on a regular day
10 designated by the employer in advance of the rendition of services as the regular payday.

11 Labor performed by a weekly-paid employee during any calendar week and prior to or on
12 the regular payday shall be paid for not later than the regular payday of the employer for
such weekly-paid employee falling during the following calendar week.

13 Labor performed by a weekly-paid employee during any calendar week and subsequent
14 to the regular payday shall be paid for not later than seven days after the regular payday
of the employer for such weekly-paid employee falling during the following calendar
week.

15 Cal. Lab. Code § 204b.

16 10. In no event should Plaintiffs or Class Members have been paid later than the time
17 periods established by sections 201.3, 201.5 and/or 204 of the California Labor Code, but certain
18 payments to Plaintiffs were made after they were due, all leading to penalties and civil penalties under
19 sections 203 and 204 or 204b of the California Labor Code.

20 11. At all times relevant herein, section 210 of the California Labor Code provided:

21 In addition to, and entirely independent and apart from, any other penalty provided in this
22 article, every person who fails to pay the wages of each employee as provided in Sections
23 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as
24 follows: (a) For any initial violation, one hundred dollars (\$100) for each failure to pay
each employee; (b) For each subsequent violation, or any willful or intentional violation,
25 two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the
amount unlawfully withheld.

26 Cal. Lab. Code § 210. Further, the Defendants' policy has been to devote insufficient resources to the
27 payroll accounting function, with the inevitable result that employees are routinely paid in tardy fashion,
28 in violation of sections 201.3, 201.5, 203 and/or 204 of the Code, and otherwise in violation of the Code.

1 12. Labor Code sections 226.7, 512 and Section 12 of Wage Order 12 require an employer to
2 pay an additional hour of compensation for each meal period the employer fails to provide. Section 12
3 requires that “No employer shall employ any person for a work period of more than six (6) hours
4 without a meal period of not less than thirty (30) minutes, nor more than one (1) hour. Subsequent meal
5 period for all employees shall be called not later than six (6) hours after the termination of the preceding
6 meal period.” Defendants failed to maintain a policy informing all Class Members of these rights.

7 13. Defendants implemented a timekeeping system that does not permit employees to track
8 and record their actual hours worked insofar as all are required to report meal breaks of exactly thirty
9 minutes. This policy and practice has the routine and recurrent impact of artificially insulating the
10 employer from incurring additional expense on account of tardy, missed, interrupted and/or short meal
11 periods and depriving compensation for all hours worked. Further, the workers are logged on the clock
12 only at artificially created “call times” which do not reflect when the work day commenced.

13 14. Here, Defendants failed to apprise all Class Members of their rights associated with meal
14 periods and failed to provide timely meal periods. Defendants have had a consistent policy of: (1)
15 requiring all Class Members to take late meal breaks that occurred after the first 6 hours of each shift;
16 (2) requiring Class Members to work shifts over 12 hours without providing a second meal period of 30
17 minutes in length; and (3) failing to pay such employees 1 hour of pay at the employees’ regular rate of
18 compensation for each workday in which a proper meal break was not provided. At all relevant times
19 mentioned herein, section 226.7 of the California Labor Code provided:

20 (a) As used in this section, “recovery period” means a cooldown period afforded an
21 employee to prevent heat illness.

22 (b) An employer shall not require an employee to work during a meal or rest or recovery
23 period mandated pursuant to an applicable statute, or applicable regulation, standard, or
24 order of the Industrial Welfare Commission, the Occupational Safety and Health
25 Standards Board, or the Division of Occupational Safety and Health.

26 (c) If an employer fails to provide an employee a meal or rest or recovery period in
27 accordance with a state law, including, but not limited to, an applicable statute or
28 applicable regulation, standard, or order of the Industrial Welfare Commission, the
Occupational Safety and Health Standards Board, or the Division of Occupational Safety
and Health, the employer shall pay the employee one additional hour of pay at the
employee's regular rate of compensation for each workday that the meal or rest or
recovery period is not provided.

Cal. Lab. Code § 226.7.

1 15. At all relevant times mentioned herein, section 226 of the Code provided:

2 (a) Every employer shall, semimonthly or at the time of each payment of wages, furnish
3 each of his or her employees, either as a detachable part of the check, draft, or voucher
4 paying the employee's wages, or separately when wages are paid by personal check or
5 cash, an itemized statement in writing showing (1) gross wages earned, (2) total hours
6 worked by the employee, except for any employee whose compensation is solely based
7 on a salary and who is exempt from payment of overtime under subdivision (a) of Section
8 515 or any applicable order of the Industrial Welfare Commission, (3) the number of
9 piece rate units earned and any applicable piece rate if the employee is paid on a piece-
10 rate basis, (4) all deductions, provided, that all deductions made on written orders of the
11 employee may be aggregated and shown as one item, (5) net wages earned, (6) the
12 inclusive dates of the period for which the employee is paid, (7) the name of the
13 employee and his or her social security number, except that by January 1, 2008, only the
14 last four digits of his or her social security number or an employee identification number
15 other than a social security number may be shown on the itemized statement, (8) the
16 name and address of the legal entity that is the employer, and (9) all applicable hourly
17 rates in effect during the pay period and the corresponding number of hours worked at
18 each hourly rate by the employee. The deductions made from payments of wages shall
19 be recorded in ink or other indelible form, properly dated, showing the month, day, and
20 year, and a copy of the statement or a record of the deductions shall be kept on file by the
21 employer for at least three years at the place of employment or at a central location within
22 the State of California.

23
24 (e) An employee suffering injury as a result of a knowing and intentional failure by an
25 employer to comply with subdivision (a) is entitled to recover the greater of all actual
26 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
27 one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
28 not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an
award of costs and reasonable attorney's fees.

29
30 (g) An employee may also bring an action for injunctive relief to ensure compliance with
31 this section, and is entitled to an award of costs and reasonable attorney's fees.

32 Code § 226. Defendants employed Plaintiffs and 226 Class Members, but, in all cases, Defendants
33 failed to provide them with the data required by section 226(a) of the Code.² As an example, the wage
34 statement issued to Plaintiffs prior to July 2022 did not reflect the beginning and end date of the pay
35 period, instead only reflecting that the "Pay Frequency" was "W[EEKLY]". In or shortly before July of
36 2022, PLLC even dropped this information from its wage statements.

37 All of the foregoing was intentional misconduct of Defendants that injured Plaintiffs and Class
38 Members insofar as they were subjected to confusion and deprived of information to which they were
39 legally entitled.

40 ² Naranjo v. Spectrum Security Services, Inc., 13 Cal. 5th 93, 108, 121 (2022) ("the law generally
41 does not permit an employer to deprive an employee of a meal or rest break . . . an employer's obligation
42 under Labor Code section 226 to report wages earned includes an obligation to report premium pay for
43 missed breaks.")

1 16. At all relevant times mentioned herein, section 510(a) of the California Labor Code
2 provided:

3 Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one
4 workday and any work in excess of 40 hours in any one workweek and the first eight
5 hours worked on the seventh day of work in any one workweek shall be compensated at
6 the rate of at least one and one-half times the regular rate of pay for an employee. Any
7 work in excess of 12 hours in one day shall be compensated at the rate of no less than
8 twice the regular rate of pay for an employee. In addition, any work in excess of eight
9 hours on any seventh day of a workweek shall be compensated at the rate of no less than
10 twice the regular rate of pay of an employee. Nothing in this section requires an employer
11 to combine more than one rate of overtime compensation in order to calculate the amount
12 to be paid to an employee for any hour of overtime work.

13 Cal. Lab. Code § 510.

14 17. Class Members were not timely paid proper wages to which they were entitled.

15 Defendants are subject to the civil penalties for which provision is made in Code § 558 by failing to pay
16 each Class Member their wages.

17 18. At all relevant times mentioned herein, section 1194 of the Code provided:

18 Notwithstanding any agreement to work for a lesser wage, any employee receiving less
19 than the legal minimum wage or the legal overtime compensation applicable to the
20 employee is entitled to recover in a civil action the unpaid balance of the full amount of
21 this minimum wage or overtime compensation, including interest thereon, reasonable
22 attorney's fees, and costs of suit.

23 Code § 1194.

24 19. At all relevant times mentioned herein, section 2802 of the California Labor Code

25 provided in part:

26 (a) An employer shall indemnify his or her employee for all necessary
27 expenditures or losses incurred by the employee in direct consequence of the discharge of
28 his or duties . . .

(b) All awards made by a court . . . for reimbursement of necessary expenditures
under this section shall carry interest at the same rate as judgments in civil actions.
Interest shall accrue from the date on which the employee incurred the necessary
expenditure or loss.

(c) For purposes of this section, the term "necessary expenditures or losses" shall
include all reasonable costs, including, but not limited to, attorney's fees incurred by the
employee enforcing rights granted by this section.

Cal. Lab. Code § 2802. Defendants failed to reimburse Plaintiffs and Class Members for necessary
business expenses incurred in the performance of their duties, such as for the use of a personal cell
phone and for motion picture production equipment and supplies.

20. At all relevant times mentioned herein, section 558 of the California Labor Code provided:

Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee.

Cal. Lab. Code § 558. Defendants are the employers or other persons acting on behalf of an employer who violated, or caused to be violated the relevant sections of the California Labor Code referenced herein.

21. At all relevant times mentioned herein, section 558.1 of the California Labor Code provided:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
(b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.
(c) Nothing in this section shall be construed to limit the definition of employer under existing law.

Cal. Lab. Code § 558.1. Upon information and belief, Defendants were joint employers or other persons acting on behalf of an employer who violated, or caused to be violated the relevant sections of the Code referenced herein. Defendants directly and/or indirectly controlled the Class Members' wages, working conditions and hours and were responsible for the policies or lack of policies that caused the Code violations.

CLASS-ACTION ALLEGATIONS

37. Plaintiffs Simms and Costa bring this action on behalf of themselves and all others similarly situated as a class action pursuant to section 382 of the Code of Civil Procedure. Plaintiffs seek to represent a Class composed of and defined as follows:

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1 All non-exempt persons (union and non-union) paid wages on account of services
2 provided for Prettybird in the production of Motion Pictures as a below-the-line crew
3 member in California in California during the Class Period.

4 38. The Class Period commences on April 24, 2019. This action has been brought and may
5 be properly maintained as a class action under the provisions of section 382 of the Code of Civil
6 Procedure because there is a well-defined community of interest in the litigation and the proposed Class
7 is easily ascertainable.

8 39. Defendants, as to Plaintiffs and Code Class Members, failed to pay all accrued overtime
9 for all hours worked pursuant to sections 510, and 1194 of the Code. Accordingly, each Plaintiff and
10 Class Member is entitled to payment of his or her unpaid overtime and interest as well as reimbursement
11 of their attorneys' fees and reasonable costs.

12 40. Defendants, as to Plaintiffs and 226 Class Members, also failed to accurately provide the
13 data required by section 226(a) of the Code and, accordingly, Defendants' failure to provide such data
14 entitles Plaintiffs and each 226 Class Member to either actual damages or statutory liquidated damages,
15 whichever is greater.

16 41. Defendants, as to Plaintiffs and Code Class Members, failed to timely compensate the
17 workers as required by sections 201.3, 201.5, 203 and/or 204 of the Code and, accordingly, Defendants'
18 failure to make timely payment entitles Plaintiffs and each Class Member to statutory damages.

19 42. Defendants, as to Plaintiffs and 17200 Class Members, failed to provide meal and rest
20 breaks as required by sections 226.7, 512 of the Code and Wage Order 12, and, accordingly,
21 Defendants' failure to provide meal and rest breaks entitles Plaintiffs and 17200 Class Members to
22 either actual damages or statutory damages, whichever is greater.

23 A. Numerosity

24 43. The potential members of each Class as defined are so numerous that joinder of all the
25 members of the Class is impracticable. While the precise number of Class Members has not been
26 determined at this time, Plaintiffs are informed and believe that Defendants employed during the
27 relevant time periods at least 1,000 workers in the State of California. The number of Class Members is
28 great, but not so great as to make the class unmanageable. It therefore is impractical to join each Class

Deleted: For the period three years and 180 days prior to the filing of this Complaint to date, all

Deleted: Defendant PLLC in the production of Motion Pictures³ as a below-the-line crew member (such persons are referred to hereafter as Code Class Members, and such period is referred to hereafter as the Class Period)[¶] Further, Plaintiffs Simms and Costa seek to represent a "17200 Class" composed of and defined as follows:[¶] All persons paid wages on account of services provided for Defendant PLLC

Deleted: period beginning no earlier than four years and 180 days prior to the filing hereof to the date of a decision on a Motion for Class Certification (such persons are referred to as "Class Members," and such period is referred to hereafter as the "Class Period").

Deleted: Further, Plaintiff Costa seeks to represent a "226 Class" composed of and defined as follows:[¶] For the period one year prior to the filing of this Complaint to date, all persons paid wages on account of services provided for Defendant PLLC in the production of Motion Pictures as a below-the-line crew member in California until the date of a decision on a Motion for Class Certification (such persons are referred to hereafter as 226 Class Members, and such period is referred to hereafter as the 226 Class Period).[¶]

1 Member as a named plaintiff. Accordingly, utilization of a class action is the most economically
2 feasible means of determining the merits of this litigation.

3 44. Despite the size of the proposed Class, the Class Members are readily ascertainable
4 through an examination of the records that Defendants are required by law to keep. Likewise, the dollar
5 amount owed to each Class Member is readily ascertainable by an examination of those same records.

6 **B. Commonality**

7 45. There are questions of law and fact common to the Class that predominate over any
8 questions affecting only individual Class Members. These common questions of law and fact include,
9 without limitation:

- 10 a. Whether Defendants failed to pay all wages in a timely fashion upon the discharge of
11 their workers, all in violation of sections 201.3, 201.5, 204b and 203 of the Code.
- 12 b. Whether Defendants' failure to provide accurate itemized wage statements to their
13 workers violates section 226.
- 14 c. Whether Defendants failed to provide meal breaks to their workers.
- 15 d. Whether Defendants failed to provide rest breaks to their workers.
- 16 e. Whether Defendants failed to pay proper minimum wages to their workers under Code
17 sections 1194 and 1194.2.
- 18 f. Whether Defendants failed to pay proper overtime wages to their workers under Code
19 sections 510, and 1194.
- 20 g. Whether Defendants failed to reimburse necessary business expenses to Code Class
21 Members under Code sections 2802.
- 22 h. Whether Class Members are entitled to restitution due to Defendants' unfair or unlawful
23 business practices under Cal. Bus & Prof. Code sections 17200 *et seq.*

24 **C. Typicality**

25 46. There is a well-defined community of interest in the questions of law and fact common to
26 the Class Members.

27 47. The claims of the named Plaintiffs are typical of the claims of the Class, which claims all
28 arise from the same general operative facts, namely, Defendants did not compensate its employees as

1 required by the Code and applicable Wage Order. Plaintiffs and all members of the Class sustained
2 injuries and damages arising out of and caused by the Defendants' common course of conduct in
3 violation of laws, regulations that have the force and effect of law, and statutes as alleged herein.
4 Plaintiffs have no conflict of interest with the other Class Members and are able to represent the Class
5 Members' interests fairly and adequately.

6 **D. Adequacy of Representation**

7 48. Plaintiffs will fairly and adequately represent and protect the interests of the members of
8 the Class. Counsel who represent Plaintiffs are competent and experienced in litigation large
9 employment class actions. Neither Plaintiffs nor Plaintiffs' counsel have any conflict with the Class.

10 **E. Superiority of Class Action**

11 49. A class action is superior to other available means for the fair and efficient adjudication
12 of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and
13 fact common to the Class predominate over any questions affecting only individual members of the
14 Class. Each member of the Class has been damaged and is entitled to recovery by reason of Defendants'
15 illegal policy and/or practice of failing to pay hourly wages, failing to pay overtime wages, failing to
16 provide Class Members rest and meal periods without legal compensation. Class action treatment will
17 allow those similarly situated persons to litigate their claims in the manner that is most efficient and
18 economical for the parties and the judicial system. Plaintiffs are unaware of any difficulties that are
19 likely to be construed in the management of this action that would preclude its maintenance as a class
20 action.⁴ The disposition of all claims of the members of the Class in a class action, rather than in
21 individual actions, benefits the parties and the Court. The interest of the Class Members in controlling
22 the prosecution of separate claims against Defendants is small when compared with the efficiency of a
23 class action.

24 **FIRST CAUSE OF ACTION**

25 (Continuing Wages, California Labor Code § 201.3, 201.5, 203
On Behalf of Plaintiffs and the Code Class Against All Defendants)

26 ⁴ Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680, 687-688 (1946) ("the employer
27 . . . has the duty . . . to keep proper records of wages, hours and other conditions and practices of
28 employment . . . the court may . . . award damages to the employee, even though the result be only
approximate")

1 50. Plaintiffs reallege and incorporate herein by reference the allegations contained in this
2 Complaint as though fully set forth herein.

3 51. Defendants' failure to compensate Plaintiffs and Code Class Members within the time for
4 which provision is made by section 201.5 of the California Labor Code, despite their knowledge of their
5 obligation to do so, was and is "willful" as the word is used in section 203.

6 52. Pursuant to section 203 of the California Labor code, Plaintiffs and Code Class Members
7 are entitled to continuing wages from Defendants in an amount according to proof. Plaintiffs and Code
8 Class Members are also entitled to recover costs and reasonable attorneys' fees under section 218.5 of
9 the California Labor Code.

10 **SECOND CAUSE OF ACTION**

11 (Failure to Provide Compliant Pay Stubs, Cal. Lab. Code § 226(a)
12 On Behalf of Plaintiff Costa and the 226 Class Against Defendants)

13 53. Plaintiffs incorporate by reference each and every allegation set forth in this Complaint as
14 though fully set forth herein.

15 54. Defendants failed to provide Plaintiffs and 226 Class Members with wage statements
16 conforming to the requirements of section 226(a) of the Code.

17 55. The foregoing was intentional misconduct of Defendants that injured Plaintiffs and 226
18 Class Members insofar as they were deprived of information to which they were legally entitled,
19 including but not limited to all applicable hourly rates in effect during the pay period and the
20 corresponding number of hours worked at each hourly rate by the employee.

21 56. The failure of Defendants to provide compliant wage statements violates section 226(a)
22 of the Code. The failure caused them injury by depriving them of information to which they are legally
23 entitled. Accordingly, Plaintiffs and 226 Class Members are entitled to damages in an amount according
24 to proof and costs and reasonable attorney's fees in accordance with the provisions of Code section
25 226(e), all in a sum according to proof. Plaintiffs are entitled to an amount according to proof including
26 interest thereon, reasonable attorneys' fees and cost of suit.
27
28

1
2 **THIRD CAUSE OF ACTION**

3 (Failure to Provide Meal Breaks, Cal. Lab. Code §§ 226.7 and 512 and Wage Order
4 On Behalf of Plaintiffs and the 17200 Class Against Defendants)

5 57. Plaintiffs incorporate by reference each and every allegation set forth in this Complaint as
6 though fully set forth herein.

7 58. At all times herein relevant, sections 226.7 and 512 of the California Labor Code and
8 IWC Wage Order 12 provided that employee must receive meal periods of not less than thirty minutes if
9 an employee works for a period of more than six hours and a second thirty minute meal period after no
10 less than six hours after the termination of the preceding meal period. By its failure to provide minimum
11 statutory meal periods to Plaintiffs and Class Members, Defendants willfully violated the provisions of
12 Labor Code sections 226.7 and 512, and IWC Wage Order 12.

13 59. Defendants failed to apprise Plaintiffs and 17200 Class Members of their rights
14 associated with meal periods and failed to provide timely meal periods. Defendants have had a
15 consistent policy of: (1) requiring all workers to take late meal breaks that occurred after the first 6 hours
16 of each shift; (2) required Aggrieved Employees to work shifts over 12 hours without providing a
17 second meal period of 30 minutes in length; and (3) failed to pay such employees 1 hour of pay at the
18 employee's regular rate of compensation for each workday in which a proper meal break was not
19 provided. Plaintiffs and Class Members were not permitted to leave the set of the motion pictures for
20 meal periods or rest breaks.

21 60. Because Defendants failed to properly provide the proper meal periods, they are
22 liable to Plaintiffs and class members for one hour of additional pay at the regular rate of compensation
23 for each workday that the proper meal periods were not provided. For example, Costa was not
24 provided his meal period in connection with his rendition of some 14.5 hours of services in
25 connection with an Airborne motion picture on September 17, 2000. Simms was not provided his
26 meal period in connection with his rendition of some ten hours of services in connection with a
27 motion picture referred to as "Keep It Tight #1659" on July 30, 2020. Simms was not provided his
28 meal period in connection with his rendition of some 10.5 hours of services in connection with a
Nissan motion picture on November 20, 2020. Simms was not provided his meal period in

1 connection with his rendition of some 12.5 hours of services in connection with a VW motion
2 picture on February 21, 2021; some 12 hours of services in connection with a VW motion picture on
3 February 22, 2021; and some 16.5 hours of services in connection with a VW motion picture on
4 February 23, 2021. In connection with their pre-filing requests for employee records, referenced in
5 greater detail, below, Defendants failed to produce the timecards for either Costa or Simms, thereby
6 obfuscating these violations.

7 61. As a result of the unlawful acts of Defendants, Plaintiffs and 17200 Class Members have
8 been deprived of premium wages, and/or other compensation in amounts to be determined at trial, and are
9 entitled to recovery of such amounts, plus interest thereon, and costs.

10
11 **FOURTH CAUSE OF ACTION**

12 (Failure to Provide Rest Breaks, Cal. Lab. Code § 226.7 and IWC Wage Order)
13 On Behalf of Plaintiffs and the 17200 Class Against Defendants)

14 62. Plaintiffs incorporate by reference each and every allegation set forth in this Complaint as
15 though fully set forth herein.

16 63. At all times herein relevant, sections 226.7 of the California Labor Code and IWC Wage
17 Order 12 provided that employees must receive rest periods of at the rate of ten (10) minutes net rest
18 time per four (4) hours or major fraction thereof.

19 64. By its failure to provide required breaks to Plaintiffs and 17200 Class Members,
20 Defendants willfully violated the provisions of Labor Code sections 226.7 and IWC Wage Order 12.

21 65. Plaintiffs and 17200 Class Members were not permitted to leave the sets of the motion
22 pictures for any purported rest periods. They were required to be available via radio or cell phone at all
23 times.

24 66. Because Defendants failed to properly provide the proper rest breaks, it is liable to
25 Plaintiffs and 17200 Class Members for one hour of additional pay at the regular rate of compensation for
26 each workday that the proper rest breaks were not provided, pursuant to Labor Code section 226.7 and
27 IWC Wage Order 12.
28

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1 67. As a result of the unlawful acts of Defendants, Plaintiffs and 17200 Class Members have
2 been deprived of premium wages, and/or other compensation in amounts to be determined at trial, and are
3 entitled to recovery of such amounts, plus interest thereon, fees, and costs.

4 **FIFTH CAUSE OF ACTION**

5 (Damages for Unpaid Overtime Compensation,
6 California Labor Code §§ 510, 515, 558.1 and 1194
7 On Behalf of Plaintiffs and the 17200 Class Against All Defendants)

8 68. Plaintiffs reallege and incorporate herein by reference the allegations contained in this
9 Complaint as though fully set forth herein.

10 69. During Plaintiffs' employment by Defendants, Plaintiffs, as well as 17200 Class
11 Members, worked many hours, including overtime, without proper compensation for work performed, as
12 required by law. Rather than paying Plaintiffs and others for actual time worked, the Defendants
13 routinely enforce a rounding regime under which crew are paid for each quarter hour worked, all with
14 the inevitable result that the workers are deprived of earned wages.

15 70. Plaintiffs and Class Members are entitled to recover such unpaid overtime under section
16 1194 of the California Labor Code in an amount according to proof. Plaintiffs and 17200 Class
17 Members are also entitled to recover costs and reasonable attorneys' fees under section 1194 of the
18 California Labor Code.

19 **SIXTH CAUSE OF ACTION**

20 (Damages for Unpaid Minimum Wages,
21 California Labor Code §§ 1194, 1194.2 and 1198
22 On Behalf of Plaintiffs and the Code Class Against All Defendants)

23 71. Plaintiffs reallege and incorporate herein by reference the allegations contained in this
24 Complaint as though fully set forth herein.

25 72. Plaintiffs and the Code Class Members worked many hours for Defendants, without
26 compensation for work performed, as required by law. Both late payment and non-payment of minimum
27 wages violate the state statute requiring the payment of a minimum hourly wage.

28 73. Plaintiffs and Code Class Members are entitled to recover liquidated damages under
section 1194.2 of the California Labor Code in an amount according to proof. Plaintiffs and Code Class

1 Members are also entitled to recover costs and reasonable attorneys' fees under section 1194 of the
2 California Labor Code.

3 **SEVENTH CAUSE OF ACTION**

4 (Failure to Reimburse Necessary Expenses, Cal. Lab. Code §2802
5 On Behalf of Plaintiffs and the Code Class Against All Defendants)

6 74. Plaintiffs reallege and incorporate herein by reference the allegations contained in this
7 Complaint as though fully set forth herein.

8 75. In discharge of their duties, Defendants required Plaintiff~~s~~ and Code Class Members to
9 make purchases and/or rent equipment for their work on the set of a motion picture production. Plaintiff~~s~~
10 and Class Members were required to use their personal cellphones but were not always reimbursed for
11 such use.

12 76. Pursuant to section 2802 of the Labor Code, Plaintiff~~s~~ and Code Class Members are
13 entitled to reimbursement of their out-of-pocket expenses from Defendants and damages in addition to
14 interest thereon, attorney's fees and costs.

15 **EIGHTH CAUSE OF ACTION**

16 (Failure to Provide Employment Records Upon Request Cal. Lab. Code § 226(b)
17 On Behalf of Plaintiffs Simms and Costa Against All Defendants)

18 77. Plaintiffs reallege and incorporate herein by reference the allegations contained in this
19 Complaint as though fully set forth herein.

20 78. Pursuant to Labor Code section 226(b), an employer shall afford current and former
21 employees the right to inspect or copy the records pertaining to that current or former employee, upon
22 reasonable request to the employer.

23 79. Plaintiffs have requested that Defendants permit inspection or copying of Plaintiffs'
24 employment records pursuant to Labor Code section 226(b). Defendants failed to provide Plaintiff's
25 employment records within 21 days of the requests. With respect to records requests under sections
26 226(b), 432, and 1198.5 of the Code, Simms made his records requests on or about February 9, 2023,
27 and Divinity made his requests on or about February 13, 2023. For example, in violation of sections
28 226(b), 432, and 1198.5 of the Code, neither Simms nor Costa were provided copies of the timecards
which were prepared in connection with their employment by the Defendants. Further, significantly, in

1 response to the document production requests of both Simms and Costa, Defendants supplied copies of
2 wage statements which had been altered to delete reference to Defendants' longstanding practice of
3 providing wage statements which revealed that the applicable "Pay Frequency" was "[W]eekly". See
4 Note 1, supra.

5 80. Pursuant to Labor Code Section 226(b) and (f), Plaintiffs are entitled, and hereby seek to
6 recover from Defendants a seven-hundred-fifty dollar (\$750) penalty, per Plaintiff, reasonable attorney's
7 fees, and the costs of bringing this cause of action.

8 **NINTH CAUSE OF ACTION**

9 (Failure to Provide Employment Records Upon Request Cal. Lab. Code § 1198.5
10 On Behalf of Plaintiffs Simms and Costa Against All Defendants)

11 81. Plaintiffs reallege and incorporate herein by reference the allegations contained in this
12 Complaint as though fully set forth herein.

13 82. Pursuant to Labor Code section 1198.5, an employer shall make the contents of an
14 employee's personnel records available for inspection.

15 83. Plaintiffs requested that Defendants permit inspection or copying of the personnel records
16 pursuant to Labor Code section 1198.5. Defendants have failed to provide Plaintiffs with an opportunity
17 to inspect or copy the employment records within 30 days of the request.

18 84. Pursuant to Labor Code Section 1198.5(k), Plaintiffs are entitled, and hereby seeks to
19 recover from Defendants a seven-hundred-fifty dollar (\$750) penalty, per Plaintiff, reasonable attorney's
20 fees, and the costs of bringing this cause of action.

21 **TENTH CAUSE OF ACTION**

22 (Unfair Business Practices Business and Professions Code section 17200 *et seq.*
23 On Behalf of Plaintiffs and the 17200 Class Against Defendants)

24 85. Plaintiffs reallege and incorporate herein by reference the allegations contained in this
25 Complaint as though fully set forth herein.

26 86. Business and Professions Code section 17200 *et seq.* prohibits acts of unfair competition,
27 including any "unlawful, unfair, or fraudulent business act or practice." Cal. Bus. & Prof. Code § 17200
28 *et seq.* Plaintiffs allege that Defendants engaged in unfair business practices in California by the above-
described failure to timely pay all wages due including overtime wages.

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1 87. Defendants' violation of California wage and hour laws as herein articulated constitutes a
2 business practice because Defendants' aforementioned acts and omissions were done repeatedly over a
3 significant period of time, and in a systematic manner, to the detriment of Plaintiff.

4 88. As a result of Defendants' unfair and unlawful business practices, Defendants have
5 reaped unfair and illegal profits during the relevant time period herein at the expense of Plaintiffs and
6 the 17200 Class Members and members of the public. Defendants should be made to disgorge its ill-
7 gotten gains and to restore them to Plaintiffs and the 17200 Class Members.

8 89. The actions of Defendants entitle Plaintiffs to seek the remedies available under section
9 17200 *et seq.* Plaintiffs seek full *restitution* of said amounts from Defendants, as necessary and
10 according to proof, to restore any and all amounts—including interest—withheld, acquired, or converted
11 by Defendants by means of the unfair practices complained of herein. Plaintiffs, on behalf of
12 themselves, as well as on behalf of the general public, further seeks attorney's fees and costs pursuant to
13 sections 218.5 of the Labor Code and 1021.5 of the Code of Civil Procedure. In addition, Plaintiffs seek
14 the appointment of a receiver as necessary.

15 **ELEVENTH CAUSE OF ACTION**

16 (Code § 2698 et seq. Civil Penalties

17 (On Behalf of Plaintiffs, the California Labor & Workforce Development Agency and Aggrieved
18 Employees Against All Defendants)

19 90. Plaintiffs reallege and incorporate herein by reference the allegations contained in this
20 Complaint as though fully set forth herein.

21 91. Pursuant to section 2699.3(a)(1) of the Labor Code, on August 17, 2023, Plaintiffs
22 submitted Plaintiff's PAGA Claim Notice online to the California Labor and Workforce Development
23 Agency ("LWDA") and notified the LWDA of the specific provisions of the Labor Code alleged to have
24 been violated by Defendants, including the theories set forth in the Complaint. Also on that day,
25 Plaintiffs gave written notice by certified mail to Defendants.

26 92. At all relevant times, Code section 2699.3(a)(2)(A) provided:

27 The agency shall notify the employer and the aggrieved employee or representative by
28 certified mail that it does not intend to investigate the alleged violation within 60 calendar
days of the postmark date of the notice received pursuant to Paragraph (1). Upon receipt
of that notice or if no notice is provided within 65 calendar days of the postmark date of
the notice given pursuant to Paragraph (1), the aggrieved employee may commence a

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1 civil action pursuant to Section 2699.

2 Code § 2699.3(a)(2)(A). After sixty-five (65) calendar days from the postmark date of the notice sent by
3 Plaintiff, Plaintiffs may “commence a civil action pursuant to Section 2699.” Code § 2699.3(a)(2)(A).
4 Once more than sixty-five calendar days have passed since Plaintiffs gave written notice of the PAGA
5 violations to the LWDA and Defendants, Plaintiffs will seek to amend the Complaint to add a PAGA
6 cause of action.

7 93. Plaintiffs seek to recover the PAGA civil penalties through a representative action
8 permitted by PAGA and the California Supreme Court in Arias v. Superior Court, 46 Cal. 4th 969
9 (2009). Therefore, class certification of the PAGA claims is not required.

10 94. Plaintiffs seek to bring a representative action on behalf of himself and the State of
11 California as well as on behalf of a group of Aggrieved Employees defined as: Plaintiffs and/or other
12 persons who performed services for Defendant Prettybird as a motion picture production crew member
13 in California (“Aggrieved Employees”) during the period from one year prior to the filing of the PAGA
14 Notice until this case is resolved.

15 95. Plaintiffs will seek civil penalties pursuant to PAGA for violations of the following Code
16 provisions:

17 **1. Failure to provide payroll records in violation of Code § 226(b).**

18 Employers must afford current and former employees the right to inspect or copy the records
19 pertaining to that current or former employee, upon reasonable request to the employer. Aggrieved
20 Employees have requested but have not been provided with an opportunity to inspect or copy all payroll
21 records within 21 days of request. Upon information and belief, many Aggrieved Employees have
22 requested their payroll records but have not been given access to them pursuant to section 226(b). Code
23 § 2699(f)(2) imposes a civil penalty of \$100 per pay period per Aggrieved Employee for initial
24 violations, and \$200 per pay period per Aggrieved Employee for subsequent violations for all Code
25 provisions for which a civil penalty is not specifically provided.

26 **2. Failure to personnel records in violation of Code § 1198.5.**

27 Employers must afford current and former employees the right to inspect or copy the personnel
28 records pertaining to that current or former employee, upon reasonable request to the employer.
29 Aggrieved Employees have requested but have not been provided with an opportunity to inspect or copy all
30 personnel records within 30 days of request. Upon information and belief, many Aggrieved Employees
31 have requested their personnel records but have not been given access to them pursuant to section
32 1198.5. Code § 2699(f)(2) imposes a civil penalty of \$100 per pay period per Aggrieved Employee for
33 initial violations, and \$200 per pay period per Aggrieved Employee for subsequent violations for all
34 Code provisions for which a civil penalty is not specifically provided.

35 **3. Failure to provide records in violation of Code § 432.**

36 Employers are required to give a copy of any instrument relating to the obtaining or holding of

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1 employment, if signed by an employee, upon request. Aggrieved Employees have requested such
2 documents but have not received them. Upon information and belief, other Aggrieved Employees have
3 requested their signed documents but have not been provided a copy. Code § 2699(f)(2) imposes a civil
4 penalty of \$100 per pay period per Aggrieved Employee for initial violations, and \$200 per pay period
5 per Aggrieved Employee for subsequent violations for all Code provisions for which a civil penalty is
6 not specifically provided.

7 **4. Failure to timely pay wages during employment in violation of Code §§ 204 and 210.**

8 Aggrieved Employees were not compensated during their employment by the times prescribed
9 by section 204 due to the failure to allocate sufficient resources to the payroll function. The failure of
10 Defendants to make timely payments within the time provided for has been and is “willful” within the
11 meaning of such word as used in Section 210 of the Code.

12 Defendants failed to pay Plaintiffs and Aggrieved Employees all wages for a weekly payroll
13 period within 7 calendar days following the close of the payroll period in violation of Code §§ 204(d)
14 and 210. Plaintiffs and Aggrieved Employees were paid after the 7th day following the close of the
15 payroll period in violation of these statutes.

16 Accordingly, each Aggrieved Employee who was not timely paid his or her timely wages during
17 their employment is entitled to civil penalties. Code section 210 provides for a penalty of \$100 for each
18 initial violation and \$200 for each subsequent, or willful or intentional violation plus 25 percent of the
19 amount unlawfully withheld.

20 **5. Failure to pay wages and/or final wages in violation of Code §§ 201.3, 201.5 and 203.**

21 With respect to violations of Code § 203, the failure of Defendants to make final payments
22 within the time provided for has been and is “willful” within the meaning of such word as used in
23 Section 203 of the Code. Code section 203 provides that if “an employer willfully fails to pay...any
24 wages of an employee who is discharged or who quits, the wages of the employee shall continue as a
25 penalty from the due date thereof at the same rate until paid or until an action therefor is commenced;
26 but the wages shall not continue for more than 30 days.”

27 Here, Plaintiffs and Aggrieved Employees were not timely paid all wages due upon their
28 separation from Defendants’ employ. As such, Defendants failed to pay Plaintiffs and Aggrieved
29 Employees all wages due at the time of termination or within seventy-two (72) hours of their
30 resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Code § 203.

31 Accordingly, each Aggrieved Employee who was not timely paid his or her final wages is
32 entitled to civil penalties. Code § 2699(f)(2) imposes a civil penalty of \$100 per pay period per
33 Aggrieved Employee for initial violations, and \$200 per pay period per Aggrieved Employee for
34 subsequent violations for all Code provisions for which a civil penalty is not specifically provided.

35 **6. Wages by check on which payment refused under Code § 203.1.**

36 Certain of the Aggrieved Employees were intentionally paid their wages with checks that
37 subsequently were refused payment due to insufficient funds. Code § 203.1 provides that:

38 If an employer pays an employee in the regular course of employment or in accordance
39 with Section 201, 201.3, 201.5, 201.7, or 202 any wages or fringe benefits, or both, by
40 check, draft or voucher, which check, draft or voucher is subsequently refused payment
41 because the employer or maker has no account with the bank, institution, or person on
42 which the instrument is drawn, or has insufficient funds in the account upon which the
43 instrument is drawn at the time of its presentation, so long as the same is presented within
44 30 days of receipt by the employee of the check, draft or voucher, those wages or fringe
45 benefits, or both, shall continue as a penalty from the due date thereof at the same rate
46 until paid or until an action therefor is commenced [up to 30 days].

47 Here, Aggrieved Employees were not paid immediately after a dishonored check was presented
48 to Defendants and waited up to, or more than 30 days, to be paid after informing Defendants.

1 **7. Unlawful Deductions under Code § 221.**

2 Under Code §§ 221, 222 and 223, it is “unlawful for any employer to collect or receive from an
3 employee any part of wages theretofore paid by said employer to said employee” and it is “unlawful to
4 secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.”
5 Section 222 states that with respect to wages agreements via a collective bargaining agreement, an
6 employer may not wilfully, unlawfully or with “intent to defraud an employee, a competitor, or any
7 other person, [] withhold from said employee any part of the wage agreed upon.”

8 Here, Defendants made improper deductions for which Aggrieved Employees did not expressly
9 authorize in writing. Plaintiffs and Aggrieved Employees were paid less than the wages they were owed
10 because they had to cover extra costs and expenses that were not reimbursed or otherwise were deducted
11 from pay.

12 Section 225.5 provides for a civil penalty of \$100 for each failure to pay each employee in an
13 initial violation and \$200 for each failure to pay each employee in a subsequent violation, plus 25
14 percent of the amount unlawfully withheld.

15 **8. Failure to provide itemized wage statements in violation of Code § 226(a).**

16 Aggrieved Employees have not been provided a wage statement as required by Code section
17 226(a). The foregoing was the intentional misconduct of Defendants that was intended to mislead and
18 injure Aggrieved Employees insofar as they were subjected to confusion and deprived of information to
19 which they were legally entitled.

- 20 a. The wage statements failed to include, among other required information, the “gross wages
21 earned” as it only shows the gross wages eventually paid.
22 b. The wages statements failed to include, among other required information, the “total hours
23 worked by the employee” as it only shows the total hours eventually paid.
24 c. The wage statements failed to include, among other required information, “all deductions,
25 provided that all deductions made on written orders of the employee may be aggregated and
26 shown as one item”
27 d. The wage statements failed to include, among other required information, the “net wages earned”
28 e. The wage statements failed to include, among other required information, the “inclusive dates of
the period for which the employee is paid” as it appears to only show the date/dates worked and
do not show the start and end date for each pay period.
f. The wage statements failed to include, among other required information, “the name of the
employee and only the last four digits of his or her social security number or an employee
identification number other than a social security number” as the statement shows:
• no identifying number at all
• all nine digits of the social security number
g. The wage statements failed to include, among other required information, the “name and address
of the legal entity that is the employer” as it
• does not reflect the full legal name of the employer
• misstates that the employer is only a “Client”
h. The wage statements failed to include, among other required information, “all applicable hourly
rates in effect during the pay period and the corresponding number of hours worked at each
hourly rate by the employee”
i. The wage statements failed to include, among other required information, the “the rate of pay
and the total hours worked for each temporary services assignment”

29 Section 226(e) provides that any employee who suffers injury as a result of a knowing and
30 intentional failure by the employer to comply with its obligation to provide wage statements containing
31 all of the information referenced above is entitled to recover. Section 226.3 provides for a civil penalty
32 of \$250 per employee per violation in an initial violation and \$1,000 per employee for each violation in
33 a subsequent violation, for which the employer fails to provide the employee a wage deduction

statement or fails to keep the records required in subdivision (a) of Section 226.

9. Failure to provide sick leave information under Code §§ 245.5 and 246.

Code sections 245.5 and 246(i) provide that “[a]n employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee’s itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee’s payment of wages.” Here, Defendants have systematically and intentionally failed to set forth the amount of sick leave available, or paid time off leave an employer provides in lieu of sick leave, on the itemized wage statements described in Section 226. Defendants did not issue wage statements to Plaintiffs and all Aggrieved Employees.

Code § 248.5(e) provides “equitable relief on behalf of the aggrieved as may be appropriate to remedy the violation, including reinstatement, backpay, the payment of sick days unlawfully withheld, . . . any person or entity enforcing this article on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled only to equitable, injunctive, or restitutionary relief, and reasonable attorney’s fees and costs.”

10. Failure to furnish information under Code § 2810.5.

Aggrieved Employees were entitled to certain information in writing at the time of hiring including, among other items, the following:

- a) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable.
- b) The regular payday designated by the employer in accordance with the requirements of this code.
- c) The name of the employer, including any “doing business as” names used by the employer.
- d) The physical address of the employer’s main office or principal place of business, and a mailing address, if different.
- e) The telephone number of the employer.
- f) The name, address, and telephone number of the employer’s workers’ compensation insurance carrier.
- g) That an employee: may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

All Aggrieved Employees were not provided with all of the required information under Section 2810.5. Code section 2699(f)(2) imposes a civil penalty of \$100 per pay period per Aggrieved Employee for initial violations, and \$200 per pay period per Aggrieved Employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

11. Failure to provide proper meal periods under Code § 226.7 and Wage Order § 11.

Aggrieved Employees were not provided with timely meal periods in violation of Code section 226.7 and Applicable Wage Order section 11. For example, Plaintiffs worked over 6 or 12 hours in a day but were not provided with compliant meal break(s) and were not otherwise compensated. Aggrieved Employees were not permitted to leave the set of the Production for meal periods, and were required to keep their walkie talkies and/or cell phones on so that they could be reached at all times. They were required to respond regardless of whether they were on a meal or rest break.

Code §§ 226.7, 512 and Section 12 of the Applicable Wage Order require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Section 12 requires that “No employer shall employ any person for a work period of more than six (6) hours without a meal period of not less than thirty (30) minutes, nor more than one (1) hour. Subsequent meal period for all employees shall be called not later than six (6) hours after the termination of the preceding meal period.” Defendants failed to maintain a policy informing all Aggrieved Employees of these rights.

Here, Defendants failed to apprise all Aggrieved Employees of their rights associated with meal

1 periods and failed to provide timely meal periods. Defendants have had a consistent policy of: (1)
2 requiring all Aggrieved Employees to take late meal breaks that occurred after the first 6 hours of each
3 shift; (2) required Aggrieved Employees to work shifts over 12 hours without providing a second meal
4 period of 30 minutes in length; and (3) failed to pay such employees 1 hour of pay at the employees
5 regular rate of compensation for each workday in which a proper meal break was not provided.

6 Additionally, Defendants maintained a policy of automatically deducting 30 minutes from each
7 shift that Plaintiffs and the Aggrieved Employees worked. This "auto-deduct" policy was unlawful and
8 did not account for whether the employees took their meal periods, took meal periods late, were
9 interrupted with work, and/or took meal periods of less than 30 minutes.

10 Code section 2699(f)(2) imposes a civil penalty of \$100 per pay period per Aggrieved Employee
11 for initial violations, and \$200 per pay period per Aggrieved Employee for subsequent violations for all
12 Labor Code provisions for which a civil penalty is not specifically provided.

13 **12. Failure to provide proper rest periods under Code § 226.7 and Wage Order § 12.**

14 All Aggrieved Employees were not provided with timely rest periods in violation of Code
15 section 226.7 and Applicable Wage Order section 12. Aggrieved Employees were not permitted to leave
16 the set of the Production for any purported rest periods. They were required to be available via radio or
17 cell phone at all times. Plaintiffs and Aggrieved Employees were neither informed of nor otherwise
18 provided with compliant rest breaks. Defendants failed to provide all Aggrieved Employees with rest
19 breaks of not less than 10 minutes per 4-hour work period, or major fraction thereof. On a regular and
20 consistent basis, Defendants failed to provide all Aggrieved Employees with a third rest period despite
21 regularly requiring Aggrieved Employees to work over 10 hours. As such, Defendants failed to provide
22 all Aggrieved Employees with compliant rest periods. Further, Plaintiffs and the Aggrieved Employees
23 were not compensated with 1 hour of wages for each missed rest period as required by Code § 226.7.

24 Code section 2699(f)(2) imposes a civil penalty of \$100 per pay period per Aggrieved Employee
25 for initial violations, and \$200 per pay period per Aggrieved Employee for subsequent violations for all
26 Code provisions for which a civil penalty is not specifically provided.

27 **13. Improper classification of employees as independent contractors in violation of Code §**
28 **226.8.**

1 Aggrieved Employees were willfully misclassified as independent contractors even though they
2 were employees. Production crew members are employees who are granted specific protections under
3 the Labor Code, as defined in Code § 201.5. Defendants' failure to properly classify as employees all
4 Aggrieved Employees was done on a regular and consistent basis. Code section 226.8 requires "a civil
5 penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars
6 (\$15,000) for each violation, in addition to any other penalties or fines permitted by law." If the
7 employer is found to have engaged in a "pattern or practice" of misclassifying employees, it is subject to
8 a "civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand
9 dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law." Cal.
10 Lab. Code § 226.8(c).

11 **14. Failure to reimburse necessary business expenses under Code § 2802.**

12 Aggrieved Employees were not reimbursed for necessary business expenses. Section 2802
13 requires that an employer indemnify his or her employee for all necessary expenditures or losses
14 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her
15 obedience to the directions of the employer, even though unlawful, unless the employee, at the time of
16 obeying the directions, believed them to be unlawful.

17 Defendants have failed to reimburse Plaintiffs and Aggrieved Employees the cost of using their
18 personal cell phones for business related purposes. Defendants required that Plaintiffs and the Aggrieved
19 Employees be available by cell phone and answer/use their cell phones while working and this was
20 necessary to perform their job duties. These cell phones were not provided by Defendants, and
21 Defendants failed to reimburse Aggrieved Employees for the costs associated with using these personal
22 cell phones. They were also not reimbursed for the provision and use of personal protective equipment
23 and motion picture production equipment and supplies necessary to perform their job duties.

24 Code section 2699(f)(2) imposes a civil penalty of \$100 per pay period per Aggrieved Employee

1 for initial violations, and \$200 per pay period per Aggrieved Employee for subsequent violations for all
2 Labor Code provisions for which a civil penalty is not specifically provided.

3 **15. Failure to pay minimum and overtime wages in violation of Code §§ 510, 515, 558, 1194,**
4 **and 1198.**

5 Both late payment and non-payment of minimum wages violate the state statute requiring the
6 payment of a minimum hourly wage. The Labor Code requires an employer to compensate its
7 employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half
8 times the regular rate of pay for any work in excess of eight hours in one workday and any work in
9 excess of 40 hours in any one workweek.

10 Here, Plaintiffs and other Aggrieved Employees were not paid at the proper corresponding rate
11 for all hours worked, including overtime as a result of the following:

- 12 1. Defendants' misclassification of these individuals as independent contractors.
- 13 2. Defendants did not record actual hours and failed to pay for all time worked.
- 14 3. Defendants' failure to pay for all time spent driving/and or travelling from site to site.
- 15 4. Defendants' failure to calculate the correct overtime rate under Code § 515.
- 16 5. Aggrieved Employees routinely work "off the clock" to attend mandatory meetings beyond their
17 scheduled call time.
- 18 6. Plaintiffs and the Aggrieved Employees are routinely paid until an arbitrary time in the day and
19 not until they have ceased working.

20 Code § 558 imposes a civil penalty in addition to any other penalty provided by law of \$50 for
21 initial violations for each underpaid employee for each pay period for which the employee was
22 underpaid in addition to an amount sufficient to recover unpaid wages, and \$100 for subsequent
23 violations for each underpaid employee for each pay period for which the employee was underpaid in
24 addition to an amount sufficient to recover underpaid wages.

25 **16. Failure to keep complete and accurate payroll records.**

26 Defendants failed to keep complete and accurate payroll records relating to Aggrieved
27 Employees in accordance with Code section 1174(d). Willful failure to maintain accurate and complete
28 records required by section 1174(d) is subject to a civil penalty of \$500. Cal. Lab. Code § 1174.5.

17. Failure to furnish reporting time pay in violation of Applicable Wage Order § 5.

Defendants failed to compensate for reporting time pay. Upon information and belief,
Aggrieved Employees reported to work but were not put to work or not furnished at least half of the
usual or scheduled hours. If an employee is required to report to work but is not put to work or is
furnished less than half of the employee's usual or scheduled day's work, such Aggrieved Employees
are entitled to be paid for half the usual or scheduled day's work. Code section 2699(f)(2) imposes a
civil penalty of \$100 per pay period per Aggrieved Employee for initial violations, and \$200 per pay
period per Aggrieved Employee for subsequent violations for all Labor Code provisions for which a
civil penalty is not specifically provided.

18. Failure to provide rest day in violation of Code § 551.

Pursuant to Code § 551 Defendants failed to provide Plaintiffs and the Aggrieved Employees
with one day of rest in seven consecutive days worked. Code § 551 states: "Every person employed in
any occupation of labor is entitled to one day's rest therefrom in seven." Defendants failed to provide
this day of rest. In order to meet deadlines, Plaintiffs and Aggrieved Employees were required to work 7
days per week without a day of rest.

19. Failure to provide seating in violation of Wage Order § 14.

Code § 1199 prohibits an employer from causing any employee to work under conditions of
labor prohibited by an order of the Industrial Welfare Commission (IWC) or from violating, refusing, or
neglecting to comply with any order of the commission's orders regarding wages, hours, and working
conditions. Additionally, Labor Code § 1198 states that the standard conditions of labor fixed by the
commission shall be the standard conditions of labor for employees and forbids the employment of any

1 employee under conditions of labor prohibited by the commission's wage orders. Section 14 of the
2 applicable IWC Wage Order requires employers to provide employees with suitable seats when the
3 nature of work reasonably permits the use of seats. Here, Defendants did not provide suitable seats for
4 employees performing work even though the nature of work reasonably permitted the use of seats.

5 Code section 2699(f)(2) imposes a civil penalty of \$100 per pay period per Aggrieved Employee
6 for initial violations, and \$200 per pay period per Aggrieved Employee for subsequent violations for all
7 Labor Code provisions for which a civil penalty is not specifically provided.

8 **20. Violation of WARN Act, Cal. Lab. Code §§ 1400 et seq.**

9 The California Worker Adjustment and Retraining Notification Act ("WARN Act"), Cal. Labor
10 Code § 1400 et seq., requires employers at a "covered establishment," that employs 75 or more
11 employees, give 60 days' notice before a mass layoff (of 50 or more employees), a relocation, or a
12 cessation of doing business. Employers must give notice not only to employees, but also to the relevant
13 California government agency, the Employment Development Department. See Cal. Labor Code §
14 1401(a). Employers are excused from providing notice of a mass layoff only if there is a "physical
15 calamity" (such as an earthquake) or "act of war." § 1401(b). Pursuant to Code § 1402(a)-(c), if an
16 employer fails to give notice of a mass layoff, relocation, or cessation of business, its employees are
17 entitled to recover up to 60 days of back-pay and the value of the cost of any benefits the employee
18 would have been entitled had his or her employment not been lost, or one-half the number of days that
19 the employee was employed by the employer, whichever is smaller.

20 Defendant Prettybird is an employer that operates a "covered establishment" under the California
21 WARN Act, Cal. Lab. Code § 1400 et seq., because Defendant employs 75 or more employees.
22 Plaintiffs and all Aggrieved Employees have been employed by Defendant for at least 6 months of the
23 12 months preceding the date of termination. Defendant engaged in a "mass layoff" because they
24 terminated 50 or more employees, including Plaintiffs, within a 30-day period. Defendant did not
25 provide advance notice to Plaintiffs and all Aggrieved Employees that they would be terminated on
26 April 23, 2019, as required by the WARN Act. As such, Defendant willfully violated the California
27 WARN Act by failing to provide Plaintiffs and the Aggrieved Employees the required notice. Further,
28 Defendant failed to compensate Plaintiffs and all Aggrieved Employees all back-pay wages and benefits
due for sixty (60) days following the termination of their employment with Defendant in violation of
Code § 1400 et seq.

21 **21. Personal Liability of Individual Defendants under Code § 558.**

22 Defendants Kerstin Emhoff and Paul Hunter were each an employer and/or "other person acting
23 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
24 provision regulating hours and days of work in any order of the Industrial Welfare Commission."
25 Emhoff was an owner and member of Defendants Prettybird and/or PEH and Hunter was a member of
26 Prettybird and/or PEH, and each had control over the payment of wages. Under Code § 558, Defendants
27 Emhoff and Hunter are responsible for the civil penalties for violation of minimum wages, overtime
28 wages, meal and rest breaks, and reporting time pay.

Aggrieved Employees are entitled to recover as follows:

(1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay
period for which the employee was underpaid in addition to an amount sufficient to
recover underpaid wages.

(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
employee for each pay period for which the employee was underpaid in addition to an
amount sufficient to recover underpaid wages.

(3) Wages recovered pursuant to this section shall be paid to the affected employee.

Cal. Lab. Code § 558(a).

22 **22. Personal Liability of Individual Defendants under Code § 1197.1**

23 Defendants Kerstin Emhoff and Paul Hunter were each an employer and/or "other person acting
24 either individually or as an officer, agent, or employee of another person, who pays or causes to be paid
25 to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order
26 of the Industrial Welfare Commission."

1 of the Commission.” Defendant Emhoff was an owner and member of Defendants Prettybird and/or
2 PEH who had control over the payment of wages and intentionally caused Aggrieved Employees to be
3 paid less than was required by the Labor Code and the Applicable Wage Order. Defendant Hunter was
4 an owner and member of Defendants Prettybird and/or PEH, who had control over the payment of
5 wages and intentionally caused Aggrieved Employees to be paid less than was required by the Labor
6 Code and the Applicable Wage Order. Defendants are responsible for minimum wage restitution,
7 liquidated damages and Code § 203 penalties. Aggrieved Employees are entitled to recover as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100)
for each underpaid employee for each pay period for which the employee is underpaid.
This amount shall be in addition to an amount sufficient to recover underpaid wages,
liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed
pursuant to Section 203.

(2) For each subsequent violation for the same specific offense, two hundred fifty dollars
(\$250) for each underpaid employee for each pay period for which the employee is
underpaid regardless of whether the initial violation is intentionally committed. This
amount shall be in addition to an amount sufficient to recover underpaid wages,
liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed
pursuant to Section 203.

(3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section
203, recovered pursuant to this section shall be paid to the affected employee.

Cal. Lab. Code § 1197.1(a).

TWELFTH CAUSE OF ACTION

(Fair Labor Standards Act On Behalf of Plaintiffs and Collective
Action Members Against All Defendants)

96. Plaintiffs reallege and incorporate herein by reference the allegations contained in this
Complaint as though fully set forth herein.

97. Plaintiffs are informed and believe, and on that basis allege, that Defendants are
employers engaged in an enterprise in interstate commerce pursuant to the Fair Labor Standards Act
("FLSA"), 29 U.S.C. § 201 *et seq.*

98. Plaintiffs were not timely paid their wages. Plaintiffs and Collective Action Members
worked many hours each day during their employment as herein alleged.

99. Under the FLSA, Plaintiffs and Collective Action Members are entitled to recover from
Defendants their liquidated damages for hours worked, as well as costs and attorney's fees.

100. Defendants failed to compensate Plaintiffs and Collective Action Members as required
by the FLSA.

101. Defendants' violations were willful and intentional.

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102. Plaintiffs and Collective Action Members are entitled to damages for unpaid wages and/or the associated liquidated damages in an amount to be proven at trial.

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103. Plaintiffs bring this claim on a collective-action basis pursuant to the FLSA. The FLSA permits an employee to bring an action for unpaid wages on “behalf of himself . . . and other employees similarly situated,” so long as all similarly situated employees “give[] [their] consent in writing to become . . . a party.” 29 U.S.C. § 216(b). On information and belief, none were timely paid all wages as required by section 203 of the California Labor Code.

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WHEREFORE, Plaintiffs pray judgment as follows:

1. That the Court certify a Class Action.
2. That, under the First Cause of Action, it be adjudged that the failure of Defendants to make payment of Plaintiffs’ and Code Class Members’ wages was in violation of section 201.3, 201.5, and/or 204b of the California Labor Code, and was “willful” as that word is used in section 203 of the California Labor Code, and that the Court enter judgment against Defendants in favor of Plaintiffs and Code Class Members. That judgment be entered in favor of Plaintiffs, and Code Class Members in an amount prescribed by section 203 of the California Labor Code, and costs and reasonable attorneys’ fees in accordance with the provisions of California Labor Code section 218.5.
3. That, under the Second Cause of Action, this Court enter judgment in favor of Plaintiffs, not including interest thereon, reasonable attorneys’ fees and cost of suit, and enter judgment in favor of the 226 Class Members against Defendants in the amount of damages, interest, and costs, according to proof, and costs and reasonable attorneys’ fees in accordance with the provisions of Labor Code section 226(e).
4. That, under the Third Cause of Action, this Court enter judgment in favor of Plaintiffs and the 17200 Class Members and award them their damages, penalties, and costs of suit, all according to proof, pursuant to section 218.5 and other relevant sections of the Labor Code.
5. That, under the Fourth Cause of Action, this Court enter judgment in favor of Plaintiffs and the 17200 Class Members and award them their damages, penalties, and costs of suit, all according to proof, pursuant to section 218.5 and other relevant sections of the Labor Code.

1 6. That, under the Fifth Cause of Action, this Court enter judgment in favor of Plaintiffs and
2 Class Members in the amount of unpaid overtime wages according to proof, including interest thereon,
3 reasonable attorneys' fees and cost of suit, and enter judgment against Defendants in the amount of
4 damages according to proof, interest thereon, reasonable attorneys' fees and cost of suit.

5 7. That, under the Sixth Cause of Action, this Court enter judgment in favor of Plaintiffs
6 and Code Class Members and award them their damages, penalties, liquidated damages, reasonable
7 attorney's fees and costs of suit, all according to proof for Plaintiffs, pursuant to section 218.5, 1194,
8 1194.2 and other relevant sections of the Labor Code.

9 8. That, with respect to the Seventh Cause of Action, this Court enter judgment in favor of
10 Plaintiffs and Code Class Members against all Defendants in an amount according to proof, interest
11 thereon, costs and reasonable attorney's fees in accordance California Labor Code section 2802(c).

12 9. That, with respect to the Eighth Cause of Action, this Court enter judgment in favor of
13 Plaintiffs against Defendants of \$750 each, reasonable attorney's fees, and the costs of bringing this
14 cause of action under Labor Code Section 226(b) and (f).

15 10. That, with respect to the Ninth Cause of Action, this Court enter judgment in favor of
16 Plaintiffs against Defendants of \$750 each, reasonable attorney's fees, and the costs of bringing this
17 cause of action pursuant to Labor Code Section 1198.5(k).

18 11. That, under the Tenth Cause of Action, it be adjudged that Defendants' violations of the
19 applicable Wage Order and above cited sections of the California Labor Code, violated section 17200 *et*
20 *seq.* of the California Business and Professions Code. Accordingly, Plaintiffs request that the Court
21 order Defendants to pay restitution with interest to Plaintiffs and the 17200 Class Members. Finally,
22 Plaintiffs request that the Court award Plaintiffs' reasonable attorneys' fees and costs, pursuant to
23 section 218.5 of the Labor Code and section 1021.5 of the California Code of Civil Procedure.

24 12. That, with respect to the Eleventh Cause of Action this Court award Plaintiff, the State of
25 California, and other former and current Aggrieved Employees their civil penalties, attorney's fees, and
26 costs of suit, all according to proof, pursuant to the cited sections of the Labor Code and the applicable
27 Wage Orders as heretofore articulated,

28 13. That, with respect to the Twelfth Cause of Action this Court enter judgment in favor of

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1 Plaintiffs and Collective Action Members against Defendants in an amount according to proof for unpaid
2 wages, liquidated damages, interest thereon, costs and reasonable attorney's fees.

3 14. For such further relief as the Court may order, including attorney's fees, costs, and
4 interest pursuant to Labor Code sections 218.5 and 218.6, and Code of Civil Procedure section 1021.5,
5 in an amount according to proof.

6 DATED: November 6, 2024

HARRIS & RUBLE

7 *Alan Harris*
8 Alan Harris
9 Attorney for Plaintiffs

Deleted: April 22, 2023

PROOF OF SERVICE

I am an attorney for Plaintiffs herein, over the age of eighteen years, and not a party to the within action. My business address is Harris & Ruble, 655 North Central Avenue, Glendale, California 91203. On November 12, 2024, I served the within document(s):

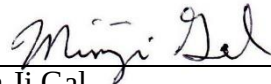
DECLARATION OF ALAN HARRIS IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

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

Ryan M. Andrews
Jeffrey A. Brand
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Attorneys for Defendants

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



Min Ji Gal