

1 Alan Harris (SBN 146079)
2 David Garrett (SBN 160274)
3 Min Ji Gal (SBN 311963)
4 HARRIS & RUBLE
5 655 North Central Avenue 17th Floor
6 Glendale, California 91203
7 Telephone: 323.962.3777
8 Facsimile: 323.962.3004
9 aharris@harrisandruble.com
10 dgarrett@harrisandruble.com
11 mgal@harrisandruble.com

12 Attorneys for Plaintiffs
13 Divinity and Wilson

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

16 JEROME DIVINITY and GREGORY
17 WILSON, individually and on behalf of all
18 others similarly situated,

19 Plaintiffs,

20 v.

21 WB STUDIO ENTERPRISES INC., a Delaware
22 Corporation, et al.; JERRY BRUCKHEIMER
23 TELEVISION, INC., a California Corporation,

24 Defendants.

25 Case No. 20STCV37526
26 *Assigned to Hon. Elihu M. Berle, Dept. 6*

27 **PLAINTIFFS' NOTICE OF MOTION**
28 **AND MOTION FOR FINAL APPROVAL**
OF CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF

Date: June 21, 2023
Time: 10:00 a.m.
Dept: 6
Place: Spring Street Courthouse
312 N. Spring Street
Los Angeles, CA 90012

Second Amended Complaint
Filed: February 2, 2023

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on June 21, 2023 at 10:00 a.m., or as soon thereafter as the matter may
3 be heard in Department 6 of the Los Angeles Superior Court located at 312 N. Spring Street, Los
4 Angeles, CA 90012, Plaintiffs Jerome Divinity and Gregory Wilson will and hereby do move for entry
5 of an Order:

- 6 1. Confirming the certification of the Settlement Class for settlement purposes pursuant to Code of
7 Civil Procedure section 382;
- 8 2. Finally approving the Class Action and PAGA Settlement Agreement and Class Notice (the
9 “Settlement”) between Plaintiffs and Defendant WB Studio Enterprises, Inc.;
- 10 3. Confirming the appointment of Alan Harris, David Garrett, Min Ji Gal of Harris & Ruble as
11 Class Counsel; and Plaintiffs as Class Representative for the Settlement Class;
- 12 4. Finally approving Class Counsel’s application for Class Counsel Fees in the amount of 1/3 of the
13 Gross Settlement Amount (i.e. \$446,658.33) as authorized under the Settlement;
- 14 5. Finally approving Class Counsel’s application for litigation costs of \$14,945.16 as authorized
15 under the Settlement;
- 16 6. Finally approving payment of settlement administration costs to CPT Group, Inc. in the amount
17 of \$53,250 as authorized under the Settlement;
- 18 7. Finally approving an incentive award of \$10,000 to Plaintiffs Jerome Divinity and Gregory
19 Wilson (\$5,000, each), as authorized under the Settlement; and
- 20 8. Directing that the [Proposed] Order and [Proposed] Judgment be entered to give finality to the
21 Settlement.

22 This Motion is made on the following grounds: (1) the Settlement meets all the requirements for
23 class certification for settlement purposes under Code of Civil Procedure section 382; (2) Plaintiffs and
24 their counsel are adequate to represent the Settlement Class; (3) the terms of the Settlement are fair,
25 adequate and reasonable; and (4) the notice process performed by the Settlement Administrator
26 comports with all applicable due process requirements. In view of the foregoing, the [Proposed] Order
27 Granting Final Approval of Class Action Settlement and [Proposed] Judgment submitted with this
28 Motion should be entered.

1 Good cause exists for the granting of this Motion as the proposed Settlement is fair, adequate and
2 reasonable. Plaintiffs' Motion for Final Approval of this \$1,339,975.00, non-reversionary, common
3 fund class action settlement should be granted. The gross average estimated recovery for each class
4 member is \$155 and the net average estimated recovery per class member is \$91.04 (including the
5 PAGA payment to Aggrieved Employees). The recovery for the class members represents a reasonable
6 portion of the realistic defense exposure in this case. The deadline for Class Members to submit an
7 objection or to opt out is May 22, 2023, and has not yet passed. As of the filing of this Motion, there are
8 no objections and only one opt out. (April 21, 2023, Declaration of Laura Singh for CPT Group, Inc.
9 ("CPT Decl.") at ¶ 7.) Plaintiffs will file supplemental papers along with the Declaration of the
10 Settlement Administrator on June 9, 2023.

11 This Motion is based on this Notice, the attached Memorandum of Points and Authorities, the
12 Motion for Award of Attorney's Fees, Reimbursement of Costs, and Incentive Award, the Declaration
13 of Alan Harris, filed in support of preliminary approval and herewith, the Declarations of Jerome
14 Divinity and Gregory Wilson, the Declaration of CPT Group, Inc., as well as the complete files and
15 records of this case and any other evidence or oral argument which may be considered by the Court at
16 the time of the hearing.

17
18 Dated: April 21, 2023

Respectfully submitted,
HARRIS & RUBLE

19
20 By: Alan Harris
21 Alan Harris
22 Attorneys for Plaintiffs
23
24
25
26
27
28

TABLE OF CONTENTS

1

2

3

4 I. INTRODUCTION 1

5 II. PROCEDURAL HISTORY AND RELEVANT BACKGROUND..... 2

6 III. THE SETTLEMENT 3

7 IV. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT 7

8 A. The Proposed Settlement Is Entitled to a Presumption of Fairness 8

9 B. The Proposed Settlement Was Reached Through Arm’s Length
10 Bargaining..... 8

11 C. Plaintiffs Conducted Sufficient Investigation and Discovery to Allow the
12 Court and the Parties to Act Intelligently 8

13 D. Class Counsel Has Extensive Experience in Class Action Litigation 9

14 E. The Proposed Settlement Is Fair, Adequate, and Reasonable 9

15 F. Class Counsel’s Requested Fees and Costs Are Reasonable..... 10

16 G. The Requested Incentive Awards to Plaintiffs are Reasonable 10

17 H. The Class Notice Satisfied Due Process 11

18 V. THE CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES 11

19 A. The Settlement Class Are Ascertainable and Numerous 11

20 B. The Proposed Class Shares a Well-Defined Community of Interest..... 12

21 VI. CONCLUSION..... 14

22

23

24

25

26

27

28

Table of Authorities

Cases

<u>Armstrong v. Bd. of Sch. Directors of City of Milwaukee,</u> 616 F.2d 305 (7th Cir. 1980)	8
<u>Boeing Co. v. Van Germet,</u> 444 U.S. 472 (1980)	4-5
<u>Cartt v. Superior Court,</u> 50 Cal. App. 3d 960 (1975)	11
<u>Clark v. Am. Residential Servs, LLC,</u> 175 Cal. App. 4th 785 (2009)	9, 10
<u>Clothesrigger, Inc. V. GTE Corp.,</u> 191 Cal. App. 3d 605 (1987)	12
<u>Dunk v. Ford Motor Co.,</u> 48 Cal. App. 4th 1794 (1996)	12
<u>Eisen v. Carlisle & Jacquelin,</u> 417 U.S. 156 (1974)	11
<u>Fireside Bank v. Superior Court,</u> 40 Cal. 4th 1069 (2007)	11
<u>Ghazaryan v. Diva Limousine, Ltd.,</u> 169 Cal. App. 4th 1524 (2008)	12
<u>In re Cellphone Fee Termination Cases,</u> 186 Cal. App. 4th 1380 (2010)	9
<u>In re Microsoft I-V Cases,</u> 135 Cal. App. 4th 706 (2006)	8
<u>Kullar v. Foot Locker Retail, Inc.,</u> 168 Cal. App. 4th 116 (2008)	2, 9
<u>Linder v. Thrifty Oil Co.,</u> 23 Cal. 4th 429 (2000)	13
<u>McGhee v. Bank of America,</u> 60 Cal.App.3d 442 (1976)	13
<u>Munoz v. BCI Coca-Cola Bottling Company of Los Angeles,</u> 186 Cal. App. 4th 399 (2010)	10
<u>Richmond v. Dart Indus. Inc.,</u> 29 Cal. 3d 462-75 (1981)	11, 12
<u>Rose v. City of Hayward,</u> 126 Cal. App. 3d 926 (1981)	12
<u>Sav-On Drug Stores, Inc. v. Superior Court,</u> 34 Cal. 4th 319 (2004)	11
<u>Seastrom v. Neways, Inc.,</u> 149 Cal. App. 4th 1496 (2007)	13
<u>Sevidal v. Target Corp.,</u> 189 Cal. App. 4th 905 (2010)	12
<u>Staton v. Boeing Co.,</u> 327 F.3d 938 (9th Cir. 2003)	5, 6
<u>Wershba v. Apple Computer, Inc.,</u> 91 Cal. App. 4th 224 (2001)	11

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 Plaintiffs Jerome Divinity and Gregory Wilson (“Plaintiffs”) respectfully request that the Court
4 grant final approval of the Class Action and PAGA Settlement Agreement and Class Notice (the
5 “Settlement”) entered between Plaintiffs, on behalf of the absent class members Plaintiffs seek to
6 represent, and Defendant WB Studio Enterprises, Inc. (“Defendant”).¹ This Motion requests that the
7 Court grant final approval of the \$1,339,975 Settlement, finding that it is fair, adequate, and reasonable.

8 The deadline for Class Members to submit an objection or to opt out is May 22, 2023, and has
9 not yet passed. As of the filing of this Motion, there are no objections and but a single opt out. (April 21,
10 2023, Declaration of Laura Singh for CPT Group, Inc. (“CPT Decl.”)) at ¶ 8.) Plaintiffs will file
11 supplemental papers along with the Declaration of the Settlement Administrator on June 9, 2023 to
12 address the final participation rate and feedback.

13 When the Court granted preliminary approval, the Gross Settlement Amount was \$1,248,680
14 based on an estimated Class size of 8,056 persons. The final Class has 8,645 persons – an increase of
15 589. Accordingly, pursuant to the settlement agreement, the Gross Settlement Amount was increased by
16 \$155 per person, resulting in a final Gross Settlement Amount of \$1,339,680. (CPT Decl. ¶8.)
17 Assuming the Court awards the requested attorney’s fees and costs, and after payment of administrative
18 expenses, the requested incentive awards to Plaintiffs, and the PAGA payment to the LWDA, the Net
19 Settlement Amount is approximately \$777,661.11 resulting in a net average, estimated recovery of
20 \$91.04 (which includes the PAGA payment to Aggrieved Employees). (See CPT Decl. at ¶¶ 6-7.) The
21 proposed Settlement represents a reasonable recovery of the realistic defense exposure in this case. The
22 proposed Settlement for wages, penalties and civil penalties is fair, adequate, and reasonable. (April 21,
23 2023, Declaration of Alan Harris (“Harris Decl.”) ¶¶ 6-7, 14-18.)

24 No class member will have to make a claim in order to recover; instead class members will be
25 mailed their share of the settlement directly.

26 While Plaintiffs and Class Counsel remain confident in the merits of Plaintiffs’ case, a

27 _____
28 ¹ A true and correct copy of the fully executed Class Action and PAGA Settlement Agreement and Class
Notice, preliminarily approved by the Court, is attached as **Exhibit 1** to the April 21, 2023, Declaration
of Alan Harris (“Harris Decl.”) filed herewith.

1 substantial, legitimate controversy exists as to each cause of action. The October 31, 2023, Declaration
2 of Alan Harris filed in support of preliminary approval reflects counsel’s detailed analysis of the factors
3 described in Kullar v. Foot Locker Retail, Inc., 168 Cal. App. 4th 116 (2008). Given the uncertainty and
4 risks faced by the parties to this litigation, Plaintiffs have determined that the \$1,339,975 settlement is
5 fair and the Settlement should be approved.

6 It is respectfully requested that the \$1,339,975.00 Gross Settlement Amount be divided, as
7 follows: \$777,661.11 to Class Members; attorneys’ fees of \$446,658.33 and reimbursement of
8 counsel’s costs of \$14,945.16, Incentive Awards of \$5,000 for each Plaintiff, the PAGA payment of
9 \$28,095.30 to the LWDA (and \$9,365.10 to the Class Members), and the cost for settlement
10 administration by CPT Group, Inc. of \$53,250.

11 **II. PROCEDURAL HISTORY AND RELEVANT BACKGROUND**

12 On September 30, 2020, Divinity filed this case (the “Action”) in the Superior Court of the State
13 of California, County of Los Angeles. Divinity alleges that Class Members and he experienced various
14 payroll issues, including: (1) WB paid Plaintiff and the Class Members their final wages late; (2) WB
15 failed to provide the information required by Code § 226(a); (3) WB failed to reimburse Plaintiff and
16 Class Members for necessary business expenses incurred such as for the use of a personal cell phone and
17 for motion picture production equipment and supplies; and (4) WB failed to provide meal and rest
18 breaks because Plaintiff and others were required to monitor and respond to their walkie talkies or cell
19 phones throughout the work day. (Harris Decl. ¶ 11.)

20 Divinity sought recovery on behalf of himself and all other similarly situated persons employed by
21 WB for alleged failure to provide compliant wage statements, failure to provide meal and rest breaks,
22 failure to pay timely wages, failure to pay minimum wages, failure to pay overtime wages, failure to
23 reimburse expenses, and failure to provide employment records. Divinity also asserted claims for unfair
24 business practices in violation of Business and Professions Code section 17200, *et seq.* and civil penalties
25 under the Labor Code Private Attorneys General Act of 2004 (“PAGA”). On December 15, 2020,
26 Divinity filed a First Amended Complaint, including his PAGA allegations. (*Id.* ¶ 12.)

27 On December 13, 2021, Wilson filed a Complaint in the Central District of California, Case No.
28 2:21-cv-09632-SSS-KKx (“Wilson Complaint”). In the Wilson Complaint, Wilson sought recovery on

1 behalf of himself and all other similarly situated persons employed by WB for alleged failure to provide
2 compliant wage statements, failure to timely pay wages, failure to pay minimum and overtime wages,
3 and failure to provide proper meal and rest breaks. Wilson also asserted claims under the FLSA and for
4 unfair business practices in violation of Business and Professions Code section 17200, *et seq.* The
5 Second Amended Complaint consolidates the Divinity and Wilson cases for the purposes of settlement.
6 (Id. ¶ 13.)

7 The Parties engaged in informal discovery as well as formal discovery, which included WB’s
8 production of payroll data for Class Members and the alleged Aggrieved Employees under the PAGA
9 claim during the relevant time period (the “Class Period” and “PAGA Period,” respectively). The Parties
10 thereafter sought resolution before a respected and experienced wage and hour class action mediator,
11 Lisa Klerman. After the mediation concluded, with her further assistance, the Parties continued to
12 negotiate and they have been successful in reaching resolution, memorialized in the Settlement
13 Agreement, one largely tracking this Court’s June 2022 Model Agreement and Class Notice. (Id. ¶ 15.)

14 **III. THE SETTLEMENT**

15 There are eight thousand, six hundred and forty-five (8,645) individuals in the Class, consisting
16 of:

17 [A]ll below-the-line non-union production employees Defendant payrolled through Cast
18 & Crew or Entertainment Partners from April 5, 2016 through the date of Preliminary
19 Approval (February 23, 2023) and all below-the-line union production employees
20 Defendant payrolled through Cast & Crew or Entertainment Partners who received a final
21 check dated after the anticipated payday from April 5, 2017 through the date of
22 Preliminary Approval (February 23, 2023). Such persons are referred to as “Class
23 Members,” and such period is referred to hereafter as the “Class Period”.

24 (Harris Decl. Ex. 1 at pp. 2-3, ¶ 1.5.)

25 The Settlement Class will not include any person who timely opted out of the Settlement. On
26 March 21, 2023, Notice was mailed to 8,645 Class Members. (CPT Decl. ¶ 4.) As of the date of this
27 filing, there has been 1 opt-out and no objections. (Id. at ¶¶ 6-7.)

28 Under the Settlement, the “Net Settlement Amount” shall be the Gross Settlement Amount minus
attorneys’ fees of Class Counsel (\$446,658.33), costs incurred by Class Counsel (requested in the
amount of \$14,945.16), the PAGA payment to the State of California (\$28,095.30), an Incentive Award
to the Class Representatives (\$5,000 to each Plaintiff), and administration costs (\$53,250). (Harris Decl.

1 ¶ 11.) Assuming all requested amounts are approved by the Court, the Net Settlement Amount available
2 for distribution to participating Class Members is \$777,661.11. This amount is slightly larger than the
3 net settlement amount in the CPT Declaration as the Class Counsel cost figure was not updated there.
4 Although Class Counsel may claim up to \$20,000 in reimbursement of costs, the amount requested is
5 \$14,945.16

6 Class Representative Incentive Award. Under the terms of the Settlement, Class Counsel may
7 apply for an Incentive Award of up to Five Thousand Dollars (\$5,000) for each Plaintiff in recognition
8 of their efforts and risk in prosecuting this matter. (Harris Decl. Ex. 1, ¶ 3.2.1.) Plaintiffs have also
9 released all known and unknown claims against Defendants. (*Id.* at ¶ 5.1) Concurrently with the filing
10 of this Motion, Plaintiffs have also filed a Motion for Award of Attorney’s Fees and Reimbursement of
11 Costs in support of Plaintiffs’ request for the Incentive Awards.

12 Attorneys’ Fees and Costs. Pursuant to the terms of the Settlement, Class Counsel has applied
13 for an award of attorney’s fees in the amount of \$446,658.33, representing one-third of the Settlement
14 Amount, and reimbursement of actual, out-of-pocket costs in an amount of \$14,945.16. (*Id.* at ¶ 3.2.2.)
15 The concurrently filed Motion for Attorney’s Fees and Reimbursement of Costs sets forth the basis for
16 Plaintiffs’ requested award of fees and costs.

17 Claims Administration Costs and Expenses. The Settlement calls for the appointment of a
18 Settlement Administrator for purposes of, *inter alia*, notifying the Class of the Class Settlement,
19 overseeing the claims-administration process, calculating each Class Member’s Settlement Award, and
20 making all the payments under the Settlement. The Settlement provides that the Administration Costs
21 associated with this process, in an amount not to exceed \$53,250, be deducted from the Settlement
22 Amount. (*Id.* at ¶ 3.2.3.) The Court approved the appointment of CPT Group, Inc. to be the settlement
23 administrator. The costs associated with settlement administration are \$53,250. (CPT Decl., ¶ 11.) As
24 noted above, the expenses associated with claims administration will come from the Common Fund.
25 This is appropriate, as principles of equity permit fees and costs associated with a common-fund
26 settlement to come from the fund itself. *See, e.g., Boeing Co. v. Van Gemet*, 444 U.S. 472, 478 (1980)
27 (explaining that the common-fund doctrine “allows a court to assess attorney’s fees against the entire
28 fund, thus spreading fees proportionately among those benefited”). This principle extends to the fees and

1 costs of claims administration. See Staton v. Boeing Co., 327 F.3d 938, 975 (9th Cir. 2003) (stating that
2 “[t]he postsettlement cost of providing notice to the class can reasonably be considered a benefit to the
3 class”).

4 PAGA Payment. Thirty seven thousand, four hundred sixty dollars and forty cents (\$37,460.40)
5 of the Settlement Amount has been allocated towards the payment of PAGA penalties. Of this amount,
6 seventy-five percent (75%), or \$28,095.30, will be paid to the California Labor and Workforce
7 Development Agency (“LWDA”) and \$9,365.10 will be distributed to the Aggrieved Employees.
8 (Harris Decl., Ex. 1 at ¶ 3.2.7.)

9 Estimated Payments to Participating Class Members. The Net Settlement Amount, less required
10 tax withholdings and deductions from the wage portion of the settlement payments will be distributed to
11 the Participating Class Members. The average net settlement amount for each Participating Class
12 Member who is also an Aggrieved Employee is approximately \$91.04 ($=[\$777,661.11/8,645]+\1.74
13 [PAGA payment]). (CPT Decl. ¶¶ 9-10.)

14 The Net Settlement Amount of \$777,661.11 shall be distributed equally to Participating Class
15 Members on a pro rata basis. The employee portion of the LWDA penalties of \$9,365.10 will be
16 distributed equally to Aggrieved Employees on a pro rata basis. The payments to Class Members
17 represent a substantial recovery of the realistic exposure in this case. (October 31, 2022, Harris
18 Declaration in Support of Motion for Preliminary Apporval at 13:5-14:26.)

19 As the payments to the Class Members constitute wages, penalties and interest, the Settlement
20 Administrator shall issue Form W-2’s and 1099s to each participating Class Member for the year in
21 which payments are made. Each payment shall be allocated as follows for tax purposes:

- 22 i. 25% wages;
- 23 ii. 75% as penalties and interest.

24 (Harris Decl., Ex. 1 ¶ 3.2.5.) The PAGA payment will be reported on IRS 1099 forms. (Id. ¶ 3.2.9.) The
25 Defendant is paying the employer’s share of taxes, in addition to the payment of \$1,339,975.00. (Id. ¶
26 3.1).

1 The Release. Effective on the date when Defendant fully funds the entire Gross Settlement
2 Amount, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as
3 follows:

4 [A]ll Participating Class Members, on behalf of themselves and their respective former
5 and present representatives, agents, attorneys, heirs, administrators, successors, and
6 assigns, release Released Parties from any and all claims, debts, liabilities, demands,
7 obligations, penalties, premium pay, guarantees, costs, expenses, attorney's fees,
8 damages, actions or causes of action of whatever kind or nature, contingent or accrued,
9 that have been asserted or that could have been asserted in the Operative Complaint based
10 on the facts, claims and/or allegations therein, including under any legal theory that was
11 alleged or that could have been alleged for any failure to pay all wages due (including
12 minimum wage and overtime wages), failure to pay for all hours worked, failure to
13 provide meal or rest periods, failure to timely pay wages and final wages, failure to
14 furnish accurate wage statements including claims derivative and/or related to these
15 claims, failure to provide expense reimbursements, and failure to provide personnel and
16 payroll records. This Release shall include all claims and theories arising under the
17 California Labor Code, the Fair Labor Standards Act, California wage orders, and
18 applicable regulations, including Labor Code Sections 201, 201.5, 202, 203, 204, 210,
19 226, 226.7, 510, 512, 515, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198,
20 1198.5, 2802, as well as claims under Business and Professions Code section 17200 *et*
21 *seq.*, and/or Labor Code Section 2698 *et seq.* based on alleged violations of the above
22 Labor Code provisions, as alleged in the Operative Complaint. Except as set forth in
23 Section 5.3 of this Agreement, Participating Class Members do not release any other
24 claims, including claims for vested benefits, wrongful termination, violation of the Fair
25 Employment and Housing Act, unemployment insurance, disability, social security,
26 workers' compensation, or claims based on facts occurring outside the Class Period. The
27 release shall run through the date of Preliminary Approval. Moreover, only those who
28 cash their Individual Class Payment checks will be deemed to have released claims under
the Fair Labor Standards Act. The following language will be printed on the reverse of
each Individual Class Payment check, or words to this effect: "By endorsing or otherwise
negotiating this check, I acknowledge that I read, understood, and agree to the terms set
forth in the Notice of Class Action Settlement and I consent to join in the Fair Labor
Standards Act ("FLSA") portion of the Action, elect to participate in the settlement of the
FLSA claims, and agree to release all of my FLSA claims that are covered by the
Settlement.

(Harris Decl., Ex. 1 at 10, ¶ 5.2.) Released Parties are defined as:

Defendant and Jerry Bruckheimer Television, Inc., and each and all of their present and
former partners, parents, subsidiaries, affiliates, and related entities and all of
their officers, directors, employees, agents, servants, registered representatives, attorneys,
insurers, payroll companies, successors and assigns, and any other persons acting by
through, under or in concert with any of them (including any alleged joint employers.

(Id. at p. 4, ¶ 1.40.) Moreover, all the Aggrieved Employees are defined as:

[A]ll below-the-line non-union production employees Defendant payrolled through
Cast & Crew or Entertainment Partners from April 5, 2019 through the date of
Preliminary Approval and all below-the-line union production employees Defendant
payrolled through Cast & Crew or Entertainment Partners who received a final check
dated after the anticipated payday from April 5, 2019 through the date of Preliminary
Approval.

1 (Settlement, at p. 1, ¶ 1.4.) Aggrieved Employees shall be deemed conclusively to have made the
2 following release set forth in Paragraph in ¶ 5.3. of the Settlement, which shall have the force and
3 effect of res judicata as to each of them:

4 [A]ll Aggrieved Employees (regardless of whether they are Participating Class Members)
5 are deemed to release, on behalf of themselves and their respective former and present
6 representatives, agents, attorneys, heirs, administrators, successors, and assigns, the
7 Released Parties from all claims for PAGA penalties that were alleged, or reasonably
8 could have been alleged, based on the PAGA Period facts stated in the Operative
9 Complaint or PAGA Notices including under any legal theory that was alleged or that
10 could have been alleged for any failure to pay all wages due (including minimum wage
11 and overtime wages), failure to pay for all hours worked, failure to provide meal or rest
12 periods, failure to timely pay wages and final wages, failure to furnish accurate wage
13 statements including claims derivative and/or related to these claims, failure to provide
14 expense reimbursements, and failure to provide personnel and payroll records. This
15 Release shall include all claims and theories arising under the California Labor Code, the
16 Fair Labor Standards Act, California wage orders, and applicable regulations, including
17 Labor Code Sections 201, 201.5, 202, 203, 204, 210, 226, 226.7, 510, 512, 515, 558,
18 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2802, as well as claims
19 under Business and Professions Code section 17200 *et seq.*, and/or Labor Code Section
20 2698 *et seq.* based on alleged violations of the above Labor Code provisions, as alleged
21 in the Operative Complaint and/or PAGA Notices. The release shall run through the date
22 of Preliminary Approval.

23 (Settlement, at pp. 10-11, ¶ 5.3.)

24 Class Notice and Settlement Administration. Pursuant to the Preliminary Approval Order, Class
25 Notice was mailed to the Class Members on March 21, 2023. (CPT Decl. ¶ 4.) As of the date of
26 filing of this Motion, the Settlement Administrator has received no objections and only one request for
27 exclusion. (*Id.* at ¶¶ 6-7.) Plaintiffs will file supplemental papers along with the Declaration of the
28 Settlement Administrator on June 9, 2023 to address the final participation rate and feedback.

29 **IV. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT**

30 Determining whether an action meets the standards of class certification requires a review of
31 section 382 of the California Code of Civil Procedure, which section provides: “[W]hen the question is
32 one of a common or general interest, or many persons, or when the parties are numerous, and it is
33 impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.”
34 Cal. Civ. Proc. Code § 382. This process was completed in the Motion for Preliminary Approval, and
35 the conclusion that the proposed classes were worthy of certification has been confirmed in the interim.
36 Review of a proposed class action settlement is a two-step process. The first step is a final, pre-
37 notification hearing to determine whether the proposed settlement is “within the range of possible
38

1 approval.” Armstrong v. Bd. of Sch. Directors of City of Milwaukee, 616 F.2d 305, 314 (7th Cir. 1980),
2 overruled on other grounds by Felzen v. Andreas, 134 F.3d 873 (7th Cir. 1998). The Court granted
3 Preliminary Approval on February 23, 2023. As the proposed Settlement is within the range of possible
4 approval, the Court should grant final approval.

5 **A. The Proposed Settlement Is Entitled to a Presumption of Fairness**

6 A presumption of fairness exists where: (1) the settlement is reached through arm’s length
7 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
8 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.
9 In re Microsoft I-V Cases, 135 Cal. App. 4th 706, 723 (2006). As the proposed Settlement was reached
10 through arm’s-length negotiations, sufficient pre-mediation investigation and discovery allowed Class
11 Counsel to act intelligently, and Class Counsel is experienced in wage-and-hour class actions, the
12 proposed Settlement is entitled to a presumption of fairness.

13 **B. The Proposed Settlement Was Reached Through Arm’s Length Bargaining**

14 The Settlement was reached following extensive settlement negotiations, engaging, on August
15 20, 2021, in a full-day mediation with Lisa Klerman. (Harris Decl. ¶ 15.) The parties engaged in many
16 more months of negotiations that continued after the mediation. The Parties ultimately accepted the
17 mediator’s proposal. The settlement negotiations were at arm’s length and, although conducted in a
18 professional manner, were adversarial. (Id.) The Parties went into settlement discussions willing to
19 explore the potential for a settlement of the dispute, but each side was also prepared to litigate its
20 position through trial and appeal if a settlement had not been reached.

21 **C. Plaintiffs Conducted Sufficient Investigation and Discovery to Allow the Court
22 and the Parties to Act Intelligently**

23 Plaintiffs and their counsel diligently pursued an investigation of the Settlement Class Members’
24 claims against Defendants, any and all applicable defenses, and the applicable law. (Harris Decl. ¶ 14.)
25 The investigation included significant formal and informal discovery, eventually reaching a settlement.
26 (Id.) Class Counsel interviewed potential witnesses and putative class members and obtained detailed
27 information regarding Defendants’ practices. (Id.)
28

1 **D. Class Counsel Has Extensive Experience in Class Action Litigation**

2 The settlement negotiations were conducted by highly capable and experienced counsel. Class
3 Counsel are respected members of the bar with a strong record of vigorous and effective advocacy for
4 their clients, and they are experienced in handling complex wage and hour class action litigation. The
5 concurrently filed Declaration of Alan Harris details their extensive experience. (Harris Decl. ¶ 22–25.)
6 Although Plaintiffs and their counsel were prepared to litigate the claims in the Action, they support the
7 proposed Settlement as being in the best interests of the Class Members.

8 **E. The Proposed Settlement Is Fair, Adequate, and Reasonable**

9 The trial court has “broad discretion to determine “whether a settlement [is] fair and reasonable.”
10 In re Cellphone Fee Termination Cases, 186 Cal. App. 4th 1380, 1389 (2010). In considering whether a
11 settlement is reasonable, the trial court should consider relevant factors, which may include the strength
12 of Plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of
13 maintaining class action status through trial, the amount offered in settlement, the extent of discovery
14 completed and the stage of the proceedings, the experience and views of counsel, the presence of a
15 governmental participant, and the reaction of the class members to the proposed settlement. Kullar, 168
16 Cal. App. 4th at 126. In order to approve a class action settlement, the court must satisfy itself that the
17 class settlement is within the “ballpark” of reasonableness. Id. at 133. “The most important factor is the
18 strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.” Id. at
19 130. An informed evaluation of a proposed settlement also requires “an understanding of the amount in
20 controversy and the realistic range of outcomes of the litigation.” Clark v. Am. Residential Servs, LLC,
21 175 Cal. App. 4th 785, 801 (2009) (citing Kullar, 168 Cal. App. 4th at 120).

22 The proposed Settlement is fair, adequate, and reasonable to the Class Members. While
23 Plaintiffs and Class Counsel remain confident in the merits of Plaintiffs’ case, a legitimate controversy
24 exists as to each cause of action. (Harris Decl. ¶ 18.) Plaintiffs also recognize that proving the amount
25 of penalties and civil penalties due to each Class Member would be an expensive, time-consuming, and
26 extremely uncertain proposition. Furthermore, the risk that this Court (or a court on appeal) may deny
27 class certification is obviated by the Settlement. Moreover, continued litigation would very likely
28 reduce and substantially delay recovery by Class Members. In contrast, because of the proposed

1 Settlement, participating Class Members will receive timely relief and avoid the risk of an unfavorable
2 judgment. So far, the reaction of the Class Members was overwhelmingly positive. There have been no
3 objections, and only one request for exclusion out of 8,645 Class Members so far. (CPT Decl. ¶¶ 6-7.)
4 The gross average payment to each participating Class Member will be approximately \$155 and the net
5 average payment to each participating Class Member who is also an Aggrieved Employee will be
6 approximately \$91.04. (*Id.* ¶¶ 9-10.) The proposed Settlement represents a substantial recovery of the
7 realistic exposure in this case. In sum, when the risks of litigation, the uncertainties involved in
8 achieving class certification, the burdens of proof necessary to establish liability, and the probability of
9 appeal in the event of a favorable judgment are balanced against the merits of Plaintiffs' claims, it is
10 clear that the settlement amount of \$1,339,975.00 is within the "ballpark" of reasonableness and
11 approval is appropriate.

12 **F. Class Counsel's Requested Fees and Costs Are Reasonable**

13 As detailed in the concurrently filed Motion for Attorney's Fees, the Settlement provides for
14 attorney's fees to Class Counsel in an amount up to one-third (1/3) of the Settlement Amount,
15 \$446,658.33, as well as reasonable and actual litigation expenses, requested in the amount of
16 \$14,945.16. The proposed award is reasonable, as it are well-within the range of fees generally sought
17 and approved in common fund class action cases. The concurrently filed declaration of Alan Harris
18 provides a detailed explanation regarding the requested attorney fees and costs.

19 **G. The Requested Incentive Awards to Plaintiffs are Reasonable**

20 The Settlement provides for a \$5,000 Incentive Award to each Plaintiff, subject to Court
21 approval. (Harris Decl., Ex. 1 at ¶ 3.2.1.) In order to be eligible for such payment, Plaintiffs have also
22 signed a general release of all known and unknown claims. (*Id.* at ¶ 5.1.) Named plaintiffs in class
23 action lawsuits are eligible for reasonable incentive payments as compensation "for the expense or risk
24 they have incurred in conferring a benefit on other members of the class." Munoz v. BCI Coca-Cola
25 Bottling Company of Los Angeles, 186 Cal. App. 4th 399, 412 (2010). The requested award to
26 Plaintiffs is reasonable given: (1) the substantial time and effort Plaintiffs have expended on behalf of
27 Class Members; (2) the risks Plaintiffs face as a result of bringing this action; (3) the fact that Plaintiffs
28 put the interests of the class ahead of their own; and (4) the substantial benefit conferred upon to the

1 Class as result of Plaintiffs’ actions. Further, as explained above, Plaintiffs are also providing a general
2 release in exchange for the Incentive Award. The concurrently filed Declarations of Jerome Divinity,
3 Gregory Wilson and Alan Harris provides a detailed explanation regarding the requested Incentive
4 Award.

5 **H. The Class Notice Satisfied Due Process**

6 “The principal purpose of notice to the class is the protection of the integrity of the class action
7 process.” Cartt v. Superior Court, 50 Cal. App. 3d 960, 970 (1975). The notice ““must fairly apprise the
8 class members of the terms of the proposed compromise and of the options open to the dissenting class
9 members.”” Wershba v. Apple Computer, Inc., 91 Cal. App. 4th 224, 251 (2001). Additionally, the
10 notice given should have a reasonable chance of reaching a substantial percentage of the class members.
11 Cartt, 50 Cal. App. 3d at 974. Here, the Class Notice supplied appropriate notice to Class Members.
12 Direct mail notice to Class Members’ last known address is the best possible notice under the
13 circumstances. Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 173-176 (1974). Significantly, of the 8,645
14 total notices mailed to Class Members on March 21, 2023, so far, the Settlement Administrator
15 determined that 49 out of 8,645 notices were deemed undeliverable, meaning that the Notice was
16 received by more than 99% of the Class. (CPT Decl. ¶ 5.) The Class Notice approved by the Court
17 satisfies the requirements of California Rules of Court, Rules 3.766 and 3.769(f).

18 **V. THE CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES**

19 California Code of Civil Procedure § 382 provides that three basic requirements must be met in
20 order to sustain any class action: (1) there must be an ascertainable class; (2) there must be a well-
21 defined community of interest in the question of law or fact affecting the parties to be represented; and
22 (3) certification will provide substantial benefits to litigants and the courts, i.e., proceeding as a class is
23 superior to other methods. Fireside Bank v. Superior Court, 40 Cal. 4th 1069, 1089 (2007); see also
24 Sav-On Drug Stores, Inc. v. Superior Court, 34 Cal. 4th 319, 326 (2004). Any doubts as to the
25 appropriateness of class treatment must be resolved in favor of certification, subject to later
26 modification. Richmond v. Dart Indus. Inc., 29 Cal. 3d 462, 473–75 (1981).

27 **A. The Settlement Class Are Ascertainable and Numerous**

28 For a class to exist, the class description must be sufficiently definite so that it is

1 administratively feasible for the court to determine whether a particular individual is a member
2 of the proposed class by reference to objective criteria. The class definition is sufficiently
3 specific to enable potential class members, and the court, to readily determine the parameters of
4 the class. See Clothesrigger, Inc. V. GTE Corp., 191 Cal. App. 3d 605, 617 (1987). Based on
5 Defendant’s employment records, there are 8,645 Class Members in total, which is sufficient to satisfy
6 numerosity requirements. In California, no set number is required as a matter of law for the
7 maintenance of a class action. Rose v. City of Hayward, 126 Cal. App. 3d 926, 934 (1981) (finding that
8 class of 42 was sufficiently numerous). As it would be impracticable for the 8,645 Class Members to
9 individually bring their claims, the Class is sufficiently numerous. A class is ascertainable where it is
10 “defined in terms of ‘objective characteristics and common transactional facts.’” Ghazaryan v. Diva
11 Limousine, Ltd., 169 Cal. App. 4th 1524, 1531-32 (2008); Sevidal v. Target Corp., 189 Cal. App. 4th
12 905, 919 (2010). Here, the Settlement Class is defined based on objective criteria, as “all below-the-line
13 non-union production employees Defendant payrolled through Cast & Crew or Entertainment Partners
14 from April 5, 2016 through the date of Preliminary Approval and all below-the-line union production
15 employees Defendant payrolled through Cast & Crew or Entertainment Partners who received a final
16 check dated after the anticipated payday from April 5, 2017 through the date of Preliminary Approval.”
17 Preliminary approval was granted on February 23, 2023. See Ghazaryan, 169 Cal. App. 4th at 1531-32
18 (concluding proposed class was ascertainable where it “consist[ed] of all drivers employed by
19 [defendant] during a specific period of time”). Finally, class members are ascertainable where “they
20 may be readily identified without unreasonable expense or time by reference to official [or business]
21 records.” Sevidal, 189 Cal. App. 4th at 919. The identity of the class members in this case is readily
22 ascertainable from Defendant WB’s records. Accordingly, the ascertainability requirement is satisfied.

23 **B. The Proposed Class Shares a Well-Defined Community of Interest**

24 The community of interest requirement embodies three factors: (1) predominant questions of law
25 and fact; (2) class representatives with claims or defenses typical of the class; and (3) class
26 representatives who can adequately represent the class. Dunk v. Ford Motor Co., 48 Cal. App. 4th 1794,
27 1806 (1996); Richmond, 29 Cal. 3d at 473-75. In this case, Plaintiffs’ claims satisfy all three factors.

28 Plaintiffs’ claims present sufficient common issues of law and fact that predominate over

1 individual issues and warrant class certification for purposes of settlement. Evidence of non-compliant
2 wage statements, failure to reimburse necessary business expenses, failure to provide meal and rest
3 breaks because Class Members were required to monitor and respond to their walkie talkies or cell
4 phones throughout the work day, and late payment of final wages are all pay policy questions that are
5 uniform and can be proven by common, objective evidence. The evidence consists of payroll records,
6 time records and pay stubs given to Class Members. Although Defendant WB denies these allegations,
7 class treatment is appropriate for settlement purposes of these disputed claims.

8 To satisfy the typicality requirement, California law does not require that Plaintiffs have claims
9 identical to the other class members. Rather, the test of typicality for a class representative is whether
10 other members have the same or similar injury, whether the action is based on conduct which is not
11 unique to the named Plaintiff, and whether other class members have been injured by the same course of
12 conduct. Seastrom v. Neways, Inc., 149 Cal. App. 4th 1496, 1502 (2007). As Plaintiffs worked for
13 Defendant WB as below-the-line non-union production employees payrolled through Cast & Crew or
14 Entertainment Partners, Plaintiffs are representative of the Class.

15 Adequacy of representation depends on whether Plaintiffs' attorney is qualified to conduct
16 proposed litigation, and Plaintiffs' interests are not antagonistic to interest of the class. McGhee v.
17 Bank of America, 60 Cal.App.3d 442, 450 (1976). Here, Class Counsel includes well-regarded and
18 accomplished trial lawyers who are qualified and experienced in wage-and-hour class action litigation.
19 (See Harris Decl. ¶¶ 22–25.) Further, because Plaintiffs' claims are typical of other class members and
20 are not based on unique circumstances that might jeopardize the claims of the class, there is no
21 antagonism between the Plaintiffs' interests and those of the class. Therefore, the adequacy requirement
22 is satisfied. Finally, under the circumstances, proceeding as a class action for settlement purposes is a
23 superior means of resolving this dispute, as the Plaintiff, Class Members and the Court will derive
24 substantial benefits. Class certification for purposes of settlement would serve as the only means to
25 deter and redress the alleged Labor Code violations. See Linder v. Thrifty Oil Co., 23 Cal. 4th 429, 434
26 (2000) (relevant considerations include the probability that each class member will come forward
27 ultimately to prove his or her separate claim to a portion of the total recovery and whether the class
28 approach would actually serve to deter and redress the alleged wrongdoing).

1 **VI. CONCLUSION**

2 Based on the foregoing, Plaintiffs respectfully request the Court: (1) grant final approval of the
3 Settlement; (2) approve the Class Notice and method of notice as being satisfactory notice to the Class;
4 (3) certify the class for settlement purposes only; (4) approve Plaintiffs as the Class Representatives for
5 settlement purposes only; (5) approve Plaintiffs' counsel as Class Counsel for settlement purposes only;
6 (6) confirm the appointment of CPT Group, Inc. as the Settlement Administrator; (7) approve the
7 proposed Incentive Awards; and (8) approve the request for attorney's fees and reimbursement of costs.

8
9 Dated: April 21, 2023

Respectfully submitted,
HARRIS & RUBLE

10
11 By: Alan Harris
12 Alan Harris
13 Attorneys for Plaintiff
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

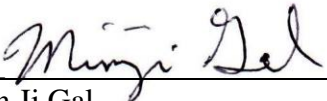
I am an attorney for Plaintiffs herein, over the age of eighteen years, and not a party to the within action. My business address is Harris & Ruble, 655 North Central Avenue, 17th Floor, Glendale, CA 91203. On April 21, 2023, I served the within document(s):

PLAINTIFFS’ NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Electronic Service: Based on a court order, I cause 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:

SETH E. PIERCE
sep@msk.com
STEPHEN A. ROSSI
sar@msk.com
MITCHELL SILBERBERG & KNUPP LLP
2040 Century Park East, 18th Floor
Los Angeles, CA 90067
Telephone: (310) 312-2000
Facsimile: (310) 312-3100

I declare under penalty of perjury that the above is true and correct. Executed on April 21, 2023, at Los Angeles, California.



Min Ji Gal