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

JEROME DIVINITY, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

PACIFIC 2.1 ENTERTAINMENT GROUP,  
INC., a California Corporation; JAMES  
KAPENSTEIN, an individual, and DOE 1  
through and including DOE 10,

Defendants.

Case No. 20STCV32700  
*Assigned to Hon. Elihu M. Berle, Dept. 6*

**DECLARATION OF ALAN HARRIS IN  
SUPPORT OF PLAINTIFF'S MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

Date: February 22, 2023  
Time: 9:00 a.m.  
Dept.: 6  
Location: Spring Street Courthouse  
312 N. Spring St.  
Los Angeles, CA 90012

Complaint Filed: August 27, 2020

1 **ALAN HARRIS** declares under penalty of perjury as follows:

2 1. I am a member in good standing of the State Bar of California and am one of the  
3 attorneys for Plaintiffs Jerome Divinity, Paul Schwanke, Ryan Basaker, and Michael Graham  
4 (“Plaintiffs”) in the within action. I make this Declaration on behalf of Plaintiffs and in support of their  
5 Motion for Preliminary Approval of Class Action Settlement. If sworn as a witness, I could competently  
6 testify to every fact set forth herein from my own personal knowledge.

7 2. A true and correct copy of the Class Action and PAGA Settlement Agreement and Class  
8 Notice between Plaintiffs and Defendants Pacific 2.1 Entertainment Group, Inc., Minim Productions,  
9 Inc., and ABC Signature Studios, Inc. (“Settlement Agreement”), is filed as Exhibit 1 hereto. An  
10 English-only notice is sufficient as virtually all motion picture production employees are all required to  
11 have English proficiency to perform their jobs, and have such proficiency. Attached as Exhibit 2 is a  
12 redline comparing the June 2022 Model Settlement Agreement with the long-form Agreement executed  
13 by the Parties. The fully executed long-form settlement has been provided to the California Labor and  
14 Workforce Development Agency (the “LWDA”). A copy of the LWDA database showing the uploaded  
15 documents is attached as Exhibit 3.

16 3. Defendants Pacific 2.1 Entertainment Group, Inc. (“Pacific 2.1”), Minim Productions,  
17 Inc., (“Minim”) and ABC Signature Studios, Inc. (“ABC”) are companies that engage in motion picture  
18 productions of content such as television shows. Each company is an independently established  
19 company but are all indirect subsidiaries of The Walt Disney Company, a publicly traded company.

20 4. In order to assist in our preparation for mediation, I analyzed extensive data provided by  
21 Defendants, clients, and other sources. This permitted me to approximate the maximum amount of  
22 untimely paid wages, damages, penalties and civil penalties at issue in this case. Based on my review, I  
23 have concluded that the \$2,250,000 cash settlement is fair and reasonable, and in the best interest of the  
24 Class. It is my conclusion that the settlement is sufficient to provide Plaintiffs and Class Members an  
25 average gross recovery of \$104 and an estimated, average net recovery of some \$62, even if all  
26 requested fees and cost awards are granted, in full. The recoveries herein consist of payment for claimed  
27 statutory penalties (including liquidated damages), PAGA civil penalties, and premium wages claimed  
28 to be owing on account of the defense failure to provide compliant rest breaks and meal periods. The

1 projected net recovery is \$1,336,250 (= \$2,250,000 [gross recovery] - \$750,000 [attorneys' fees] -  
2 \$25,000 [attorney's costs] - \$20,000 [incentive payment of \$5,000 for each of the four Class  
3 Representatives] - \$30,000 [PAGA] - \$88,750 [Claims Administration]).

4 5. Based on case law and my experience, especially since Defendants acted in good faith in  
5 its efforts to address the issues that led to this lawsuit, it may be appropriate to substantially discount  
6 penalties and civil penalties. E.g., Rodriguez v. West Publishing Corp., 563 F. 3d 948, 955 (9th Cir.  
7 2009) (antitrust); In re Cmty. Bank of N. Virginia, 622 F.3d 275, 311–12 (3d Cir. 2010), as amended  
8 (Oct. 20, 2010) (illegal home equity lending scheme).

9 6. The balance of this Declaration substantially follows the February 2022, Los Angeles  
10 Superior Court, Complex Civil Department Checklist for Preliminary Approval of Class Action  
11 Settlements (the "Checklist").

## 12 **1. MOVING PAPERS**

### 13 **A. Introductory Information**

#### 14 **Summary of the litigation.**

15 Each Plaintiff filed an action against a defendant in the Superior Court of the State of  
16 California, County of Los Angeles. Plaintiff Divinity filed his action against Pacific 2.1 on  
17 August 27, 2020; Plaintiff Schwanke filed his case against Minim on October 22, 2020, Plaintiff  
18 Basaker filed his case against Minim on November 9, 2021, and Plaintiff Graham filed his case  
19 against ABC on January 3, 2022. On June 23, 2021, plaintiff Schwanke filed a notice of appeal  
20 in the Ninth Circuit of the dismissal of some of the claims in his proposed class action  
21 complaint that was then pending in the federal district court, which is designated as Case No.  
22 21-55669 (the "Appeal"). Plaintiffs alleged that Class Members and they experienced various  
23 payroll issues, including: (1) tardy payment of final wages; (2) failure to provide the  
24 information required by California Labor Code (the "Code") § 226(a); (3) failure to timely  
25 compensate all accrued minimum wages and overtime; and (4) failure to provide meal and rest  
26 breaks stemming from defense requirement that crew monitor and respond to their walkie  
27 talkies or cell phones throughout the workday. Plaintiffs Schwanke, Basaker and Graham also  
28 asserted claims for unfair business practices in violation of Business and Professions Code

1 section 17200, *et seq*, and Defendants’ failure to provide them with their employment records.  
2 Plaintiffs Divinity, Basaker and Graham also had claims for civil penalties under the California  
3 Labor Code Private Attorneys General Act of 2004 (“PAGA”). Filed concurrently with the  
4 Motion for Preliminary Approval is the proposed Consolidated Second Amended Complaint  
5 (the “Operative Complaint”), in which all of the settled cases will be consolidated with the first  
6 filed case, Divinity v. Pacific 2.1 Entertainment Group, Inc.

7 The Parties engaged in informal discovery as well as formal discovery, which included  
8 Defendants’ production of payroll data for Class Members and the alleged Aggrieved Employees  
9 under the PAGA claim during the relevant time periods (the “Class Period” and “PAGA Period,”  
10 respectively). As of April 9, 2022, some 17,307 employees had worked for about 214,271 Class  
11 Pay Periods, or about 12 Pay Periods per worker. The Parties have exchanged dozens of key  
12 documents, including wage theft notices, timecards, tax forms, paystubs, the employee  
13 handbook, emails, as well as detailed payroll data reflecting the number of employees with  
14 information regarding their position, the number of pay periods, final checks, days worked on  
15 average by employees, and applicable hourly rates. The Parties also engaged in motion practice.  
16 In Schwanke v. Minim Productions Inc., the Parties engaged in motion practice. Defendant  
17 Minim’s Motion for Judgment on the Pleadings was granted in part and the case was remanded  
18 back to state court. Several of Plaintiff Schwanke’s causes of action were stricken and Plaintiff  
19 appealed the decision to the Ninth Circuit.

20 The Parties thereafter sought resolution before a respected wage and hour class action  
21 mediator, Lynn Frank. On September 7, 2021, the Parties participated in an all-day mediation  
22 with Ms. Frank, which was not successful in resolving the matter. On or about June 20, 2022,  
23 the Parties subsequently settled the case, all with the continued assistance of Ms. Frank.

24 Plaintiffs and many class members were hired by Defendants as short-term, temporary  
25 workers on one or another of their productions. Upon completion of work, Plaintiffs were  
26 sometimes paid after the regularly scheduled payday. Section 203 of the Code (Continuing  
27 Wages) generally provides that, when wages are willfully unpaid by their statutory due date, the  
28 daily wages of the employee shall continue as a penalty from the due date thereof at the same

1 rate until paid up to a maximum of 30 days.

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

7 Plaintiffs and other members of the production crews were issued walkie-talkies to use  
8 during their day of work. Under Augustus v. ABM Sec. Servs. Inc., 2 Cal. 5th (2016), Plaintiffs  
9 contend that the production crew and they were denied proper meal periods and rest breaks. The  
10 defense contends that many members of the crew received a written policy stating they could  
11 turn off their walkie-talkies during breaks.

12 Plaintiffs contend that Defendants failed to provide its "legal name" on the wage  
13 statements as well as other detail required by Code Section 226(a). It issued some 113,271  
14 paystubs during the period at issue.

15 Plaintiffs allege further that Defendant failed to ever provide for cell phone  
16 reimbursement, yet uses cell phones for on-boarding, scheduling, and other matters.

17 As we know from the case law and legislative history, the Code is to be interpreted to  
18 protect employees. Industrial Welfare Com. v. Superior Court, 27 Cal.3d 690, 702 (1980)("past  
19 decisions ... teach that in light of the remedial nature of the legislative enactments authorizing the  
20 regulation of wages, hours and working conditions for the protection and benefit of employees,  
21 the statutory provisions are to be liberally construed with an eye to promoting such protection.");  
22 Ramirez v. Yosemite Water Co., 20 Cal.4th 785, 794 (1999)("In light of the remedial nature of  
23 the legislative enactments authorizing the regulation of wages, hours, and working conditions for  
24 the protection and benefit of employees, the statutory provisions are to be liberally construed  
25 with an eye to promoting such protection."); Morillion v. Royal Packing Co., 22 Cal.4th 575,  
26 592 (2000); Martinez v. Combs, 49 Cal. 4th 35, 68 (2010); Brinker Rest. Corp. v. Superior  
27 Court, 53 Cal. 4th 1004, 1026–27 (2012); McLean v. State of California, 1 Cal.5th 615, 622  
28 (2016). Sections 203 and 226(a) of California's wage and hour laws are "'an unobjectionable

1 exercise of the State’s police power.’ See American Trucking Associations, 545 U.S. at 434, 125  
2 S.Ct. 2419.” Yoder v. W. Express, Inc., 181 F. Supp. 3d 704, 723 (C.D. Cal. 2015).

3 It is “an employer’s duty under the FLSA to maintain accurate records of its employees’  
4 hours” and that duty “is non-delegable.” Kuebel v. Black & Decker Inc., 643 F.3d 352, 363 (2d  
5 Cir. 2011). Although Kuebel establishes that it is solely the employer’s duty to keep track of  
6 hours worked under the federal FLSA, and although Plaintiffs’ wage-and-hour claims are  
7 brought under the state law, the fact remains that Defendants, at all times, was subject to the  
8 FLSA and therefore was itself required to keep track of Plaintiffs’ hours worked. See Troester v.  
9 Starbucks Corp., 5 Cal. 5th 829, 839 (2018) (explaining that, although California’s wage-and-  
10 hour laws are “more protective than federal law” and that “California is free to offer [employees]  
11 greater protection,” the FLSA “provide[s] a level of employee protection that a state may not  
12 derogate”). Troester, 5 Cal. 5th at 846 (“Nor is it clear why, when it is difficult to keep track of  
13 time worked, the employee alone should bear the burden of that difficulty”), 848 (“An employer  
14 may be able to customize and adapt available time tracking tools or develop new ones when no  
15 off-the-shelf product meets its needs. And even when neither a restructuring of work nor a  
16 technological fix is practical, it may be possible to reasonably estimate work time . . . and to  
17 compensate employees for that time.”). Marlo v. United Parcel Serv., Inc., No. CV 03-04336  
18 DDP (RZx), 2009 WL 1258491, at \*3 (C.D. Cal. May 5, 2009) explains that, under California  
19 law, “employers must keep track of the hours . . . employees work.”

20 Before an employee starts to work for an employer, the employer is required to have the  
21 employee fill out the requisite new-hire paperwork. See, e.g., Ketchikan Drywall Servs., Inc. v.  
22 Immigration & Customs Enforcement, 725 F.3d 1103, 1113 (9th Cir. 2013) (stating that 8 U.S.C.  
23 § 1324a “clearly makes employers responsible for documenting employee work authorization”  
24 and that, “[w]here [a defendant] cho[oses] to hire employees who ha[ve] failed to fill out  
25 [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  
26 subsec. (a) (stating that a withholding-exemption certificate must be completed “[o]n or before  
27 the date on which an individual commences employment”); 22 Cal. Code Regs. § 4340-1(a)  
28 stating that a withholding-exemption certificate must be completed “[o]n or before the date on

1 which an individual commences employment”). If, for example, the employee fails to complete  
2 the necessary tax documents the employer must follow the guidance from the Internal Revenue  
3 Service and the California Employment Development Department by withholding taxes as if the  
4 employee is single with no withholding allowances. *See* Internal Revenue Serv., *Topic Number*  
5 *753 – Form W-4 – Employee’s Withholding Allowance Certificate* (last updated Mar. 1, 2018),  
6 <https://www.irs.gov/taxtopics/tc753>. There is an analogous cite from the California EDD (re  
7 defaulting to the single-no-allowances rule): Cal. Emp’t Dev. Dep’t, *Employer’s Obligations for*  
8 *Form W-4 or DE 4* (2016), [https://www.edd.ca.gov/pdf\\_pub\\_ctr/de71.pdf](https://www.edd.ca.gov/pdf_pub_ctr/de71.pdf)).

9 Plaintiffs and the class were discharged under Section 203 of the Code when their  
10 employment ceased at the end of the day. Tardy payment of final wages may result in penalties,  
11 even when the employee works for but a single day. *Smith v. Superior Court*, 39 Cal. 4th 77, 80  
12 (2006) (holding that hair model who worked for one day at a show was discharged at the end of  
13 the workday and entitled to penalties under section 203 when she was paid two months later).

#### 14 **B. Dunk/Kullar Analysis**

##### 15 **Summary of the case.**

16 In producing motion pictures, Defendants and other, similar entertainment industry  
17 companies follow strict, routine regimes regarding onboarding those who are temporary  
18 employees, retained to work on the production of a Motion Picture, be it a television program or  
19 feature film. The employment routinely terminates either at the end of a particular production,  
20 generally lasting between one or more days to several weeks. Routine procedures are followed to  
21 make payment of the workers’ final paychecks. From Plaintiffs’ perspective, these payments are  
22 often tardy, largely caused by the underfunding of the payroll accounting function. From the  
23 defense perspective, such late payments are either the “fault” of the worker or some other unique  
24 event, excusable as it is beyond the control of the busy employer, one who routinely hires many  
25 workers for short stints, being buried in payroll paperwork.

26 Additionally, Defendants argue that meal period claims and state law claims for late  
27 payment of final wages are preempted because most of the employees are covered by collective  
28 bargaining agreements with alternative pay arrangements. *See Rodriguez v. Gonsalves &*

1 Santucci, Inc., No. 21-CV-07874, 2022 WL 161892, at \*5 (N.D. Cal. Jan. 18, 2022) (“[W]hen a  
2 CBA has alternate pay arrangements to those in the Labor Code, wage payments arise under the  
3 CBA and not state law.”). Employees may be entitled to relief when being paid in tardy fashion,  
4 under Sections 203 and 1194.2 of the Code (liquidated damages for tardy payment of the  
5 minimum wage).

#### 6 Causes of Action

7 The first claim in the Operative Complaint is for late payment of final wages, a penalty  
8 claim.

9 The Second claim in the Operative Complaint is for improper wage statements, in  
10 violation of Code § 226(a). The Defendants issues wage statements which describe it as the  
11 “Controlling Employer” rather than as the Employer. The wage statements refer to the payroll  
12 company as the “Payroll Employer.” Sometimes the legal name of the employer is truncated.  
13 Whether these matters constitute the basis for penalties is an unresolved issue. See, Price v.  
14 Starbucks Corp., 192 Cal. App. 4th 1136, 1142 (2011)(“the injury requirement in section 226,  
15 subdivision (e), cannot be satisfied simply because one of the nine itemized requirements  
16 in section 226, subdivision (a) is missing from a wage statement.”); Noori v. Countrywide  
17 Payroll & HR Sols., Inc., 43 Cal. App. 5th 957, 965 (2019) (“Similarly, fictitious business names  
18 can satisfy the statute.”).

19 With respect to meal breaks and rest periods, there is a tension between Augustus and  
20 Brinker Rest. Corp. v. Superior Court, 53 Cal. 4th 1004, 1026–27 (2012). Plaintiffs claim the  
21 actual practices were to demand response to walkie-talkie inquiries from the beginning of the day  
22 to wrap at the very end. Again, many class members are union employees who are exempt from  
23 the Code’s meal break requirements, but not those for rest breaks. Code Section 512(d).

24 Minimum and Overtime Wages. Late payment of wages results in the possible  
25 imposition of minimum wage liquidated damages under state law. To the extent one is deprived  
26 of a meal break yet a thirty-minute deduction from wages is taken, overtime wages may be due  
27 to non-union workers.

28 Business Expenses. Cell phones are required in motion picture production, both to



complete the on-boarding process and to advise workers of when and where to appear for work. Many Motion Picture companies are transitioning to the payment of a stipend to reimburse workers for these costs.

PAGA Claim. With respect to PAGA claims under Code §§ 2698 et seq., the following is an analysis of how the potential PAGA civil penalties might be calculated. However, the amounts must be reduced for the reasons stated above, and because any penalties that may be recoverable 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 violation, estimated at approximately \$524,850 (=10,497 [Aggrieved Employees] \* \$50 [civil penalty]).

**Overtime** — The maximum potential civil penalty per employee for violation of Code section 510 and 1194 would be \$50 for the initial pay period in which a violation occurs under Code section 558(a). However, as explained above, it appears that most Class Members may not be entitled to overtime as they are governed by a CBA that Defendants contends satisfies the requirements of Code section 514. The maximum civil penalty would be about \$1,699,065 (=113,271 [PAGA Pay Periods] \* 30% [estimated percentage of nonunion workers pay periods] \* \$50 [civil penalty]).

**Wage Statement** - The maximum potential civil penalty claim for violation of Code section 226(a) would be \$100 per wage statement.<sup>1</sup> The estimated amount is some \$11,327,100 (=113,271 [PAGA Pay Periods] \* \$100 [civil penalty]).

**Timely Payment During Employment** - The maximum potential civil penalty claim for violation of Code sections 203 and 210 is \$100 for an initial violation and \$200 for a subsequent violation. The estimated amount is some \$21,604,500 (=10,497 [Aggrieved Employees] \* \$100 [civil penalty] + [113,271-10,497] subsequent violations (PAGA Pay Periods less Aggrieved Employees) \*200).

**Meal and Rest Break Claims** – The maximum civil penalty for missed rest breaks would be

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<sup>1</sup> 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 \$1,699,065 (=113,271 [PAGA Pay Periods] \* 30% [estimated percentage of nonunion workers  
2 pay periods] \* \$50 [civil penalty]).

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

4 The settlement of the PAGA claims was reasonable in this case since Defendants have  
5 changed some of its practices and cooperatively acted to resolve the matter at mediation. PAGA  
6 also expressly allows for a court to reduce penalties where an award is unjust, arbitrary and  
7 oppressive, or confiscatory. Given Defendants’ prompt and good faith efforts to address issues  
8 in this case, it is reasonable to conclude that any award for civil penalties would be reduced,  
9 particularly here, where the bulk of civil penalties are for violations which are not the most  
10 venal. The PAGA civil penalty allocation is appropriate and fair. Here, the Parties have  
11 allocated \$40,000 as the PAGA payment, a reasonable 1.7 percent of the Gross Settlement  
12 Amount. From the PAGA payment, 75% (\$30,000), will be transmitted to the LWDA and the  
13 balance of \$10,000 will be distributed to the employees. The settlement of the claims for civil  
14 penalties under PAGA is reasonable. See, e.g., Alcala v. Meyer Logistics, Inc., No. CV 17-7211  
15 PSG (AGRx), 2019 WL 4452961, at \*9 (C.D. Cal. Jun. 17, 2019) (approving PAGA settlement  
16 of 1.25 percent); Hopson v. Hanesbrands, Inc., No. CV 08-0844 EDL, 2008 WL 3385452, at \*1  
17 (S.D. Cal. Apr. 13, 2009) (approving a PAGA settlement of 0.3 percent); Nordstrom Comm’n  
18 Cases, 186 Cal. App. 4th 576, 589 (2010) (approving settlement of wage and hour class action  
19 claims and PAGA claims under which no money was allocated to the PAGA claims).

20 Only Plaintiffs have claims under Code §§226(b), 432 and 1198.5—individual requests  
21 for employment records. The maximum recovery is \$750 for claims under 226(b) and 1198.5.  
22 The Class Representatives are effectively waiving these individual claims.

23 **Summary of the investigation.**

24 The Harris & Ruble investigation of the Motion Picture industry – including Defendants  
25 and its leading competitors -- commenced in 2000, resulting in the filing, against The Walt  
26 Disney Company and others, on October 2, 2000, of Greenberg v. EP Management Services, LP,  
27 Case No. BC250072 (Los Angeles Superior Court) and on March 15, 2004 of Harrington v.  
28 Manpay LLC, Case No. BC 312171 (Los Angeles Superior Court). Many other such cases

1 involving motion picture production companies followed. The Greenberg, Harrington and other  
2 cases involving the motion picture industry have resulted in the production of many thousands of  
3 documents and dozens of witness interviews and depositions. The Greenberg and Harrington  
4 cases resulted in seven figure settlements, with many other class and individual settlements being  
5 settled as well.

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

13 Here, and in many other cases, each Plaintiff wrote to their respective employers,  
14 sending a draft I prepared, requesting records pertaining to his employment, including  
15 those to which they are entitled under Sections 226(b), 432 and 1198.5 of the Code.

16 Over the past many years H&R has reviewed responses to many such requests  
17 and deposed and/or defended dozens of depositions of entertainment industry witnesses  
18 in cases which are substantially identical to this one. H&R has reviewed over ten  
19 thousand documents produced by clients and Defendants, including over a dozen industry  
20 collective bargaining agreements. The relevant CBAs were reviewed in this case, along  
21 with an additional production from Defendants of hundreds of pages of documents.

22 **7. Settlement Negotiations.** The Parties sought resolution before a respected and  
23 experienced wage and hour class action mediator, Lynn Frank. The parties engaged in extensive  
24 settlement negotiations, engaging in a full day mediation on September 7, 2021. The parties also  
25 exchanged informal discovery, including extensive class data information eventually reaching a  
26 settlement after months of negotiations. In other words, only after significant analysis of the  
27 claims by Plaintiffs' counsel, and the assistance of an experienced mediator did the parties enter  
28 into the arms-length Settlement. I had numerous telephone conversations with Defense counsel.

1 With the Mediator’s assistance, as well as the work of Steven Saltiel of the Ninth Circuit  
2 Mediation Program, assigned in connection with the Schwanke appeal of part of the District  
3 Court decision in his case,<sup>2</sup> the Parties memorialized the proposed Settlement Agreement,  
4 modified from the Mediator’s proposal to largely track this Court’s June 2022 Model Agreement  
5 and Class Notice.

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

7 This case seeks resolution of work performed on many different projects for three different  
8 employers – albeit all owned by the same parent company, most with differing middle and  
9 departmental management, all or virtually all with differing crew. Obviously, if the matter is not  
10 settled there will be continuing, expensive, complex litigation for many years to come, doubtless  
11 accompanied by mandamus and appeal procedures, as well as the intervention of additional  
12 Plaintiffs and the possible participation of additional firms representing new claimants. At the  
13 end of the day, the matter will be manageable, but nevertheless time-consuming and rather risky.

14 **Risks of Achieving and Maintaining Class Action Status.** There are varying degrees  
15 of risk in maintaining class status. There is little risk in maintaining the class of those who were  
16 issued allegedly defective wage statements. The final late pay claim may be maintained with  
17 expert analysis of pay data to establish policies that result in systematic late payment of final  
18 wages, and depositions of Defendants’ employees regarding such policies. The balance of the  
19 proposed classes may be more problematic.

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

27  
28 <sup>2</sup> See, <https://www.ca9.uscourts.gov/mediation/> (last accessed Dec. 22, 2022). Schwanke appealed a  
portion of the decision in Schwanke v. Minim Prods., 2021 U.S. Dist. LEXIS 206297 (May 24, 2021).

	<b>Max. Potential Recovery</b>	<b>Maximum Realistic Recovery</b>
1. 203, 1194.2 --Timely Pay Penalty	>\$50,000,000	\$0 - \$3,000,000
2. 226(a)--Wage Statement Penalty	>\$10,000,000	\$500,000 - \$1,000,000 +
3. 226.7 Meal Breaks --	> \$5,000,000	\$300,000 - \$500,000 +
4. 226.7 Rest Breaks	> \$10,000,000	\$0-\$800,000 +
5. 510 Overtime	> \$1,000,000	>\$50,000 +
6. 1194, 1194.2 Minimum Wages Liquidated Damages	> \$1,000,000	>\$10 0,000 +
7. Business Expenses	>\$100,000	\$50,000-\$100,000
8. PAGA	>\$10,000,000	+/- \$500,000
<b>Total</b>	<b>+/- \$</b>	<b>+/- \$</b>
Settlement	\$2,250,000	\$2,250,000
Settlement as % of Total	+/-3 %	+/-38% %

The Gross Settlement Amount represents a reasonable recovery of the realistic potential liquidated damages, penalties and civil penalties were Plaintiffs to prevail. As noted above, such a scenario is unlikely under the circumstances.

Here the civil penalties alleged under PAGA are discounted to \$40,000, (seventy-five percent -- \$30,000 -- will be paid to the California Labor and Workforce Development Agency ("LWDA") and the remaining twenty-five percent -- \$10,000-- will be disbursed to the Class Members). A substantial reduction in PAGA penalties is warranted in this case, one in which Defendants acted in good faith in its efforts to address the issues that led to this lawsuit

1 participated in good faith in relatively early mediation, as well as one in which a great deal of  
2 possible civil penalties is for an alleged violation of section 226(a) of the Code which may not be  
3 found to be a violation, at all. The gross settlement amount will be used to pay: (a) attorney's  
4 fees of \$750,000 and counsel's costs (not to exceed \$25,000) as awarded by the court; (b) the  
5 PAGA payment (\$40,000, of which \$30,000 will be transmitted to the LWDA and \$10,000 will  
6 be distributed to the Aggrieved Employees); (c) the Settlement Administration fee (\$88,750) and  
7 (d) any incentive payments as awarded by the Court to Plaintiffs for their services in connection  
8 with bringing and maintaining this action (\$5,000 for each Plaintiff totaling \$20,000). The Net  
9 Settlement Amount is \$1,326,250 (= \$2,250,000 – \$750,000 – \$25,000 – \$40,000 – \$20,000 –  
10 \$88,750).

11 **PAGA - The PAGA allocation is fair.** The allocation to the PAGA payment should be  
12 approved. The Parties have allocated \$40,000 as the PAGA payment, a reasonable percent of the  
13 projected Gross Settlement Amount. From the PAGA payment, 75% (\$30,000), will be  
14 transmitted to the LWDA and 25% (\$10,000) will be distributed to the Class Members. The  
15 settlement of the claims for civil penalties under PAGA is reasonable. See, e.g., Alcala v. Meyer  
16 Logistics, Inc., No. CV 17-7211 PSG (AGRx), 2019 WL 4452961, at \*9 (C.D. Cal. Jun. 17,  
17 2019) (approving PAGA settlement of 1.25 percent); Hopson v. Hanesbrands, Inc., No. CV 08-  
18 0844 EDL, 2008 WL 3385452, at \*1 (S.D. Cal. Apr. 13, 2009) (approving a PAGA settlement of  
19 0.3 percent); Nordstrom Comm'n Cases, 186 Cal. App. 4th 576, 589 (2010) (approving  
20 settlement of wage and hour class action claims and PAGA claims under which no money was  
21 allocated to the PAGA claims). A copy of the Settlement Agreement and Operative Complaint  
22 have been uploaded onto the LWDA website. Exhibit 3.

### 23 C. Class Certification

24 **Numerosity.** In the proposed Operative Complaint, Plaintiffs Divinity, Schwanke,  
25 Basaker and Graham, on behalf of themselves and all persons employed by one or more of the  
26 Defendants in California in a non-exempt position who worked for Defendants during the Class  
27 Period (some 17,307 persons as of April 9, 2022).

28 **Ascertainability:** All proposed Class Members are identifiable from payroll data

maintained by both Defendants on the one hand and its entertainment industry specialist payroll company, on the other. Since the classes may run through preliminary approval, Defendants will identify the Class Members at that time and timely provide the required information to the Claims Administrator.

**Adequacy of Class Counsel:**

I have been and am licensed as an attorney, first in Illinois (1974) and later in California (1989). I am a *summa cum laude* graduate of the University of Illinois (A.B. 1970; J.D. 1974). After graduation from law school in January 1974, I was hired as a litigation associate at a plaintiffs' class action antitrust boutique in Chicago, Illinois: Freeman, Freeman & Salzman.<sup>3</sup> I became a partner in that firm in 1980, and I started my own practice in 1982. I speak before professional organizations on topics of interest to the Bar. I have represented plaintiffs in complex business litigation for over forty-two years. E.g., Illinois v. Ill. Brick Co., Inc., 431 U.S. 720 (1977); In re My Left Hook, LLC, 129 Fed. Appx. 352 (9th Cir. 2005); Gregory v. SCIE, LLC, 317 F.3d 1050 (9th Cir. 2003); In re Blue Coal Corp., 986 F.2d 687 (3d Cir. 1993); In re Blue Coal Corp., 206 B.R. 730 (M.D. Pa. 1997); U.S. v. Gleneagles Inv. Co., Inc., 584 F. Supp. 671, 689 (M.D. Pa. 1984), aff'd. in part and vacated in part, and remanded sub. nom., U.S. v. Tabor Ct. Realty Corp. 803 F.2d 1288 (3d Cir. 1986), cert. den. sub. nom., McClellan Realty Co. v. U.S. 483 U.S. 1005 (1987); In re Uranium Antitrust Litig., 503 F. Supp. 33 (N.D. Ill. 1981); In re Grand Jury, 469 F. Supp. 666 (M.D. Pa. 1980); In re Anthracite Coal Antitrust Litig., 82 F.R.D. 364 (M.D. Pa. 1979), In re Folding Carton Antitrust Litig., 83 F.R.D. 251 (N.D. Ill. 1978); In re Anthracite Coal Antitrust Litig., 78 F.R.D. 709 (M.D. Pa. 1978); In re Masterkey Antitrust Litig., 1977 U.S. Dist. LEXIS 12948 (D. Conn. 1977) (six week jury trial for plaintiffs); A. Cherney Disposal Co. v. Chicago & Suburban Refuse Disposal Corp., 68 F.R.D. 383 (N.D. Ill. 1975); In re Cement-Concrete Block, Chicago Area, Grand Jury

<sup>3</sup> Of my still-living partners in Freeman, Freeman & Salzman, a firm that dissolved in 2007, each became associated with a leading national law firm. Lee Freeman, Jr. became the Chair of the Antitrust Litigation Practice at Jenner & Block. Jerrold Salzman is of counsel at Skadden, Arps, Slate, Meagher & Flom. Tyrone Fahner is a partner at Mayer Brown, having served as its co-Chairman from 1998 to 2001 and its Chairman from 2001 to 2007, all after his service as Attorney General of the State of Illinois.

1 Proceedings, 381 F. Supp. 1108 (N.D. Ill. 1974); Parmet v. Lapin, 2004 Cal. App. Unpub.  
2 LEXIS 5217 (June 1, 2004); Stetson v. West Publ'g Corp., 2011 U.S. App. LEXIS 22549 (9th  
3 Cir. Nov. 7, 2011); Covillo v. Specialty's Café, 2012 WL 3537058 (N.D. Cal. Aug. 14, 2012). I  
4 have gone to class action trials on behalf of plaintiffs and, once, a class action bench trial for a  
5 defendant, Allstate Insurance Company. I have represented employees in numerous disputes  
6 concerning their receipt of pay in connection with their employment, both before the State of  
7 California Division of Labor Standards Enforcement and in state and federal courts in  
8 California. E.g., Jacobs v. CSAA Inter Ins. Bureau, 2009 U.S. Dist. LEXIS 37153 (N.D. Cal.  
9 May 1, 2009); Escobar v. Whiteside Constr. Corp., 2008 U.S. Dist. LEXIS 68439 (N.D. Cal.  
10 2008) (certification of collective action); Tremblay v. Chevron Stations, Inc., 2008 Westlaw  
11 2020514 (N.D. Cal. 2008) (certification of collective action); Perez v. Maid Brigade, Inc., 2007  
12 U.S. Dist. LEXIS 78412 (N.D. Cal. 2007) (denial of employer's effort to enforce arbitration  
13 clause in employment agreements); Hoffman v. Uncle P Prods., 2008 Cal. App. Unpub. LEXIS  
14 3609 (three-year statute of limitations applies to section 203 claims for continuing wages);  
15 Bithell v. E.P. Mgmt. Servs., LP, 2007 Westlaw 4216854 (Cal. Ct. App. 2007) (sustaining class  
16 settlement of entertainment-industry employees for section 203 and 226 claims against  
17 entertainment-industry "payroll companies" and studios); DuPont v. Avalon Hollywood Servs.,  
18 Inc., 2007 Westlaw 93386 (Cal. App. 2007); Gregory v. Superior Court, 2004 Westlaw 2786357  
19 (Cal. Ct. App. 2004) (employee of entertainment-industry "payroll company" not subject to  
20 arbitration of dispute under collective-bargaining agreement), and; Zabounian v. Hack Partners,  
21 LLC, Los Angeles Superior Court Case No. BC 343449 (bench trial resulting in \$600,000  
22 judgment on behalf of 89 class members in certified Code and FLSA action). The undersigned  
23 has also been appointed lead class counsel in many settled class actions. E.g., Kang v.  
24 Albertson's, Inc., C.D. Cal. Case No. 2:07-CV-00894-CAS-FFM (\$6,637,500 settlement of  
25 labor-law claims); Tremblay v. Chevron Stations, Inc., N.D. Cal. Case No. CV 07-6009 EDL  
26 (\$4,500,000 settlement of labor-law claims); Doty v. Costco Wholesale Corp., C.D. Cal. Case  
27 No. CV 05-3241 FMC (JWJx) (\$7,500,000 distributed to class members for FLSA and Code  
28 section 203 and 226 violations); Agatep v. Exxon Mobil Corp., C.D. Cal. Case No. CV 05-2342



1 GAF (\$1,500,000 settlement on behalf of service-station employees in California); Alfano v.  
2 Int'l Coffee & Tea, LLC, C.D. Cal. Case No. CV 04-8996 SVW (CWx) (FLSA Code section  
3 226, 510, and 1194 case); Jenne v. On Stage Audio Corp., C.D. Cal. Case No. CV 04-2045 CAS  
4 (PJWx) (FLSA and Code section 203 violations); Hansen v. Advanced Tech Security Servs.,  
5 Inc., Los Angeles Superior Court Case No BC 367175 (\$1,050,000 settlement of labor-law  
6 claims); Ross v. Human Resources, Inc., Los Angeles Superior Court Case No. BC 351506  
7 (Code section 203 case); Harrington v. Manpay, LLC, Los Angeles Superior Court Case No. BC  
8 312171 (\$1,000,000 distributed to class members in a section 510 and section 1194 case);  
9 Brckett v. Saatchi & Saatchi, Los Angeles Superior Court Case No. BC 298728 (over \$170,000  
10 distributed to class members in an FLSA and section 203 case); Readmond v. Straw Dogs, Inc.,  
11 Los Angeles Superior Court Case No. BC257394 (over \$100,000 distributed to class members in  
12 a section 203 case); Greenberg v. EP Mgmt. Servs., LP, Los Angeles Superior Court Case No.  
13 BC 237787 (\$5,348,000 settlement of claims under sections 203 and 226 of the Code); Angel  
14 Paws, Inc. v. Avalon Payroll Servs., Inc., Los Angeles Superior Court Case No. BC 188982  
15 (over \$450,000 distributed to class members in a section 203 case); Saunders v. Metro Image  
16 Group, San Diego Superior Court Case No. GIC 809753 (Code section 203 case); Stratford v.  
17 Citicorp West FSB, Monterey Superior Court Case No. M 81026 (\$950,000 settlement of labor-  
18 law claims); Deckard v. Banco Popular N. Am., related to Silva v. Banco Popular N. Am., C.D.  
19 Cal. Case No. CV 08-6709 JFW (RZx) (\$1,050,000 settlement of Code and FLSA claims);  
20 Wingate v. The Production Farm, LLC, C.D. Cal. No. CV 07-04294 (2009 settlement of FLSA  
21 and Code 203, 212, 226 and 1194 case); Dizon v. Ito, Inc., N.D. Cal. Case No. 3:10-CV-00239-  
22 JSW (\$2,451,000 settlement of Code and FLSA claims); Jacobs v. Institute of Reading Dev.,  
23 Inc., N.D. Cal. Case No. 10-CV-00574-JCS (\$275,000 settlement of Code and FLSA claims);  
24 Smith v. Lush Cosmetics, LLC, Los Angeles Superior Court Case No. BC 443014 (\$145,000  
25 settlement of labor-law claims); Randolph v. Safeway, Inc., Riverside County Superior Court  
26 Case No. INC 90412 (\$545,000 settlement of labor-law claims); Seielstad v. Aegis Senior  
27 Cmtys., LLC, Northern District of California Case No. 09-01797 MMC (\$1,000,000 settlement  
28 of labor claims); Rentoria v. Omnicare, Los Angeles Superior Court Case No. BC405988

1 (\$755,000 settlement of labor-law claims); and Peralta v. Macerich Management Company,  
2 Marin County Superior Court Case No. CIV 1004656 (\$2,200,000 settlement of Code claims).

3 I have researched and argued claims similar to those at issue in this case, i.e., violations  
4 of the Code and the FLSA, for some twenty-five years. E.g., Angel Paws, Inc. v. Avalon Payroll  
5 Servs., Inc., Los Angeles Superior Court Case No. BC 188982 (filed April 8, 1998); Greenberg  
6 v. EP Management Services, LP, Los Angeles Superior Court Case No. BC 237787 (filed  
7 October 2, 2000). Over three years ago, I began investigating the facts of the cases currently  
8 being settled, namely, whether there were violations of the Code with respect to Plaintiffs' work.

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

11 a. As discussed above, I, the undersigned am a graduate of the University of Illinois  
12 (AB 1970, JD 1974). I am a member of the bars of Illinois (1974) and California (1989). .

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

1 Triumphant Films, Inc., Los Angeles Superior Court Case No. BC 539767; Wong v.  
2 Weatherford, Alameda Superior Court Case No. RG 12626790; Perryment v. Sky Chefs,  
3 Northern District of California Case No. 3:16-cv-04015-JD; Aravelo v. XPO Logistics, Inc., Los  
4 Angeles Superior Court Case No. BC529813; Natale v. Topanga Productions, Inc., Los Angeles  
5 Superior Court Case No. BC599970; Price v. Autozone, Inc., United States District Court Case  
6 No. 2:15-CV-076622 (C.D. Cal.); Osorio v. AWGE LLC, United States District Court Case No.  
7 2:18-CV-01092 (C.D. Cal.). David Garrett has been approved as Plaintiffs' Counsel in  
8 numerous state and federal class action matters, e.g. Arrieta v. Superstation, Inc., Los Angeles  
9 Superior Court Case No. BC676302; Dye v. Radford Studios, Inc., Los Angeles Superior Court  
10 Case No. BC663326; Luviano v. Multi Cable, Inc., United States District Court Case No. 2:15-  
11 CV-05592 (C.D. Cal.); Roach v. Red Bull Distribution, Inc., Los Angeles Superior Court Case  
12 No. BC663866; Crawford v. Sears Hometown and Outlet Store, Inc., Riverside Superior Court  
13 Case No. RIC1510091; Kleronomos v. E&S Ring Corp., Los Angeles Superior Court Case No.  
14 BC625143; Dye v. Radford Studios, Inc., Los Angeles Superior Court Case No. BC663326;  
15 Wigersma v. Motion Theory, Inc., Los Angeles Superior Court Case No. BC531180.

16 c. Min Ji Gal is a *magna cum laude* graduate of the University of Southern  
17 California (B.A., 2013), and USC Gould School of Law (J.D., 2016). She became a member of  
18 the California bar in 2016. Her practice is primarily focused on individual and class action cases  
19 involving wage-and-hour violations under the Code and FLSA. Ms. Gal has worked with me in a  
20 number of labor-law disputes and class-action matters at Harris & Ruble. E.g., Schroeder v.  
21 Envoy Air, Inc., C.D. Cal. Case No. 16-cv-04911; Fernandez v. Craft Beer Guild Distributing of  
22 California LLC, Los Angeles Sup. Ct. Case No. 666562; Bowman v. Burnt Ends, LLC, C.D. Cal.  
23 Case No. 17-cv-05782; Wise v. Nature's Best, LLC, Los Angeles Sup. Ct. Case No. 649808;  
24 Buckner v. Universal Television, LLC, C.D. Cal. Case No. 17-cv-06489; Brashear v. Magnet  
25 Media, Inc., C.D. Cal. Case No. 17-cv-06026; and Clarke v. Flower Ave, LLC, Los Angeles Sup.  
26 Ct. Case No. BC666525.

27 d. Lin Zhan was an associate at Harris & Ruble. His practice was primarily focused  
28 on individual and class action cases involving wage-and-hour violations under the Code and the

FLSA, as well as general business litigation. Mr. Zhan earned both of his LL.M. and J.D. from the University of Southern California. While at USC, Mr. Zhan was a teaching assistant for Prof. Heilman's Introduction to the U.S. Legal System and Topics in American Law. Mr. Zhan graduated from Fujian Normal University with a degree in Law in 2013. During his third year at law school in Los Angeles, Mr. Zhan worked as a law clerk at Harris & Ruble. Prior to joining Harris & Ruble, Mr. Zhan passed the Chinese bar exam in 2013 and worked at a boutique law firm in China, where he handled a range of civil litigation and transactional matters including contract and real estate matters. Mr. Zhan also passed the National Level Three Psychologist exam in China in 2011.

**Adequacy of Class Representatives:** Plaintiffs have each submitted a Declaration herewith, evidencing that they have agreed to act as representatives 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 Operative Complaint, along with a copy of Plaintiffs' Notice Letters to the LWDA, attached hereto as Exhibit 4.

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.

There is no fee splitting agreement.

There is no injunctive relief.

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

**II. SETTLEMENT AGREEMENT**

**A. The Basics.**

1       **Class Definition.** The Settlement Agreement reflects separate definitions for Class Members  
2       and Aggrieved Employees.

3       **Class and Release Period.** “Class Period” means the period for identifying Class Members  
4       only, and not for defining the periods of the releases applicable to the Released Class Claims,  
5       which starts from (1) August 27, 2016 for any Class Member formerly or currently employed  
6       by Pacific 2.1, (2) October 22, 2016 any Class Member formerly or currently employed by  
7       Minim, and (3) January 3, 2018 for any Class Member formerly or currently employed by  
8       ABC Signature, and continuing through the earlier of the date of preliminary court approval  
9       of this Settlement (as defined below), or the date on which the number of Class Members  
10      exceeds 21,500. The Class Period for any Class Member employed by more than one of the  
11      Defendants shall commence based on the earliest of the preceding dates that applies to the  
12      Class Member.” Exhibit 1, ¶ 1.14. The Release Period commences from the beginning of the  
13      Class Period to the date of final approval. Id. ¶ 6.2.

14      **B. Release of Claims.**

15      The scope of the release matches the facts, claims, and allegations that were or could have  
16      been raised in the proposed, operative complaint. There are proper, limited separate releases for  
17      the Class and the PAGA claims, the latter tied to the facts alleged in the notices given to the  
18      LWDA.

19      The release for Aggrieved Employees is premised on the facts alleged in the Notices and  
20      the Plaintiffs’ proposed Notice to Class Members advised them that Aggrieved Employees will  
21      release PAGA claims even if Class Members request exclusion.

22      There is no 1542 waiver for Class Members.

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

24      There are no confidentiality provisions.

25      **C. Monetary Terms of Settlement**

26      **Settlement Amount.** The amount of the gross settlement is \$2,250,000 and Defendants are  
27      responsible for the employer’s share of payroll taxes. Id. ¶ 4.3.

28      **Deductions.** The deductions are limited solely to attorneys’ fees (\$750,000 counsels’ costs (not

to exceed \$25,000); four Class Representative Service Payments (\$5,000 each, totaling \$20,000); administrative costs (\$88,750); PAGA payment (\$40,000 of the Gross Settlement Amount, with 75% (\$30,000) allocated to the LWDA PAGA payment and 25% (\$10,000) to Individual PAGA payments.

**Subclasses.** There are no subclasses.

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

**Wages.** The Settlement Agreement provides that a portion of the class recovery will be deemed wages, as follows:

Twenty percent (20%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portion is subject to tax withholding and will be reported on an IRS Form W-2. The remaining eighty percent (80%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties, with 40% being allocated to penalties and 40% being allocated to interest (the "Non-Wage Portion").

Exhibit 1, ¶ 3.2.4.1

**Reversion.** There is none.

**Payment formula:** Each Class Member will get a pro rata share, about a net average of \$60 each. According to the Settlement Agreement, each Class Member will receive an Individual Class Payment" which is:

[T]he Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Wage Statements received by the Class Member during the applicable Class Period as compared to the total number of Wage Statements received by all Class Members, provided, however, that the distribution formula may be modified so that no participating Class Member receives a payment of less than \$10.00.

Exhibit 1, at ¶ 1.23.

The Parties have agreed to the appointment of CPT Group, Inc. as the Settlement Administrator to provide Notice and to administer the settlement. CPT is an established and reputable class action administrator. .

**Tax Allocation:** Twenty percent of the Class Members' payments are classified as wages and the remainder is classified as penalties and interest.

1       **There is no injunctive relief.**

2       **D. NOTICE ADMINISTRATION.**

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

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

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

7       Defendants will provide the Class list to CPT.

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

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

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

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

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

15      Notices which have been returned as undeliverable will be resent with the Class Member having  
16      an additional 14 calendar days beyond the Response Deadline in which to respond. Exhibit 1, ¶  
17      8.4.4.

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

21      Once CPT or another administrator is appointed to undertake the process, the undersigned will  
22      file a supplemental Declaration with the URL for the site.

23      No publication Notice is involved.

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

25      **E. Responses to Notice.**

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

4 The deadline to submit objections is 60 days after the Administrator mails Notice, extended by  
5 14 days for Class Members to whom Notice Packets are resent. Exhibit 1, ¶¶ 8.4.4, 8.4.5.

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

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

10 **F. Cy Pres Distribution.**

11 Checks remain valid for 180 days.

12 The Cy Pres recipient is Inclusion Matters by Shane's Inspiration (U.S. Tax I.D. No. 95-  
13 4760497), a nonprofit disabled children's advocacy and support organization. All of the  
14 foregoing is subject to the proviso that in the event the total amount of uncashed checks  
15 exceeds \$30,000, the amount that exceeds \$30,000 shall be equally divided and paid to those  
16 Class Members who cashed their initial checks, with any uncashed second checks being  
17 distributed to the approved Cy Pres Recipient. Exhibit 1, ¶ 4.4.3.

18 The cy pres distribution fills the purposes of the lawsuit or is otherwise appropriate because  
19 the recipient is a child advocacy program as authorized by Code of Civil Procedure § 384(b).  
20 Neither I nor any employee of Harris & Ruble have an interest or have had any involvement  
21 now or in the past with Shane's Inspiration.

22 8. The Parties have now agreed to avoid further litigation and to settle and resolve the  
23 existing and potential disputes, actions, lawsuits, charges and claims that the Settlement Class has  
24 articulated in the operative Complaint, all without any admission of liability or wrongdoing by either  
25 party. Plaintiffs and his counsel have concluded that the Settlement reflected herein is fair, reasonable,  
26 and in the best interests of the Settlement Class and respectfully request that the Settlement be approved  
27 by the Court.  
28



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

3           10.      As explained in the concurrently filed Memorandum of points and authorities, there is a  
4 risk that Plaintiffs' claims may fail, whether at trial or on appeal. The \$2,250,000 non-reversionary  
5 settlement will result in the payment to each class member a cash benefit in recognition of the claims  
6 alleged in this case. Moreover, some authority holds that statutory damages and civil penalties  
7 predicated on the same underlying alleged wrong cannot be "stacked" on top of one another.

8           11.      Before filing each Plaintiff's respective actions, I explained to each Plaintiff the duties  
9 and obligations of acting as a class representative. I also explained to them that, in addition to damages,  
10 the action would seek penalties and civil penalties. I have reviewed any potential conflicts and  
11 concluded that neither Plaintiffs nor Harris & Ruble have any disqualifying conflicts with either the  
12 class or the Defendants. Plaintiffs contend, as the putative class representatives, that their claims are  
13 similar to those of absent Class Members, all of whom worked as hourly employees during the Class  
14 Period, and all of whom were allegedly subject to untimely wages and wage statement violations. All  
15 Members of the Settlement Class have a common interest in holding Defendants responsible for any  
16 amounts that may be owed to them under the provisions of the Code. Plaintiffs have demonstrably  
17 committed to pursuing the claims of the Class Members, and their motivation in retaining counsel and  
18 pursuing this action has solely been to collect owed amounts for themselves and their fellow Class  
19 Members.

20           12.      Plaintiffs request an incentive payment in light of their willingness to come forward with  
21 this action on behalf of the Class, and in light of their efforts in advancing the litigation, this proposed  
22 payment is reasonable. Plaintiffs obtained the services of counsel, provided documents and ongoing  
23 updates with respect to Defendants' practices, and coordinated with counsel to put together documents  
24 and spent many hours discussing the case with counsel. In doing so, Plaintiffs have successfully brought  
25 and maintained claims that may have never been brought. Plaintiffs will also provide a broad general  
26 release including waiver of section 1542 of the California Civil Code.

27           13.      Both while negotiating and before executing the Settlement Agreement, I reviewed the  
28 terms in detail with Plaintiffs. Each Plaintiff indicated to me that he considers the Settlement Agreement

1 to represent a fair, reasonable and adequate resolution of this case. Plaintiffs share the desire to be paid in  
2 full, such that they are committed to pursuing the Class claims to seek recovery for themselves as well as  
3 other employees. I believe Plaintiffs are typical of the class members, insofar as they were employed as  
4 hourly nonexempt employees during the class period and were subject to the same kinds of payroll  
5 issues as others in the class.

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

8 15. A copy of the Settlement Agreement and Complaint have been uploaded onto the LWDA  
9 website. Exhibit 3.

10 I have read the foregoing, and the facts set forth therein are true and correct of my own personal  
11 knowledge. Executed December 22, 2022, in the County of Los Angeles, State of California, under  
12 penalty of perjury of the State of California.

13  
14 

15 Alan Harris  
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# Exhibit 1

## **CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND RELEASE (WITH PROPOSED NOTICE OF CLASS AND PAGA ACTION SETTLEMENT)**

This Class Action and PAGA Settlement Agreement and Release (“Agreement”) is made by and between plaintiffs Jerome Divinity, Paul Schwanke, Ryan Basaker, and Michael Graham (collectively, “Plaintiffs”) and defendants Pacific 2.1 Entertainment Group, Inc., Minim Productions, Inc., and ABC Signature Studios, Inc. (collectively, “Defendants”). The Agreement refers to Plaintiffs and Defendants collectively as the “Parties,” or individually as a “Party.”

### **1. DEFINITIONS**

As used in this Agreement, and capitalized terms shall have the following meanings:

- 1.1. “ABC Signature” means named defendant ABC Signature Studios, Inc.
- 1.2. “Action” means Plaintiffs’ consolidated complaint alleging wage and hour violations against Defendants, captioned: *Jerome Divinity, et al. v. Pacific 2.1 Entertainment Group, Inc., et al.*, No. 20STCV32700, initiated on August 27, 2020, which is pending in Superior Court of the State of California, County of Los Angeles.
- 1.3. “Administrator” means CPT Group, Inc. (“CPT”), the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.4. “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.
- 1.5. “Aggrieved Employee” means an individual who was employed by and worked for one or more of the Defendants in the State of California and classified as a non-exempt employee during the PAGA Period.
- 1.6. “Class” means all persons employed by one or more of the Defendants in California in a non-exempt position who worked for Defendants during the Class Period.
- 1.7. “Class Counsel” means Alan Harris, David Garrett, Min Ji Gal, and the law firm 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 Defendants’ possession, including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Pay Periods.

- 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). Some participating Class Members also are Aggrieved Employees.
- 1.11. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using reasonably available sources, methods and means including, the National Change of Address database, skip traces, and upon contact by a Class Member, direct communication 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 in the form, without material variation, attached hereto as Exhibit A and incorporated by reference into this Agreement.
- 1.13. “Class Pay Period” means any pay period during which a Class Member worked for any of the Defendants on at least one workday, during the Class Period and received a wage statement.
- 1.14. “Class Period” means the period for identifying Class Members only, and not for defining the periods of the releases applicable to the Released Class Claims, which starts from (1) August 27, 2016 for any Class Member formerly or currently employed by Pacific 2.1, (2) October 22, 2016 any Class Member formerly or currently employed by Minim, and (3) January 3, 2018 for any Class Member formerly or currently employed by ABC Signature, and continuing through the earlier of the date of preliminary court approval of this Settlement (as defined below), or the date on which the number of Class Members exceeds 21,500. The Class Period for any Class Member employed by more than one of the Defendants shall commence based on the earliest of the preceding dates that applies to the Class Member.
- 1.15. “Class Representative” and “Class Representatives” mean the named Plaintiffs, individually and collectively, in the operative consolidated complaint in the Action seeking Court approval to serve as a Class Representative (*i.e.*, Jerome Divinity, Paul Schwanke, Ryan Basaker, and Michael Graham).
- 1.16. “Class Representative Service Payment” means the payment to each Class Representative for initiating the Action and providing services in support of the Action.
- 1.17. “Court” means the Superior Court of California, County of Los Angeles, and the department of the Court in which the Action is pending.
- 1.18. “Defense Counsel” means Stephen L. Berry, Blake R. Bertagna, and the law firm Paul Hastings 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; or (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. “Gross Settlement Amount” means two million two-hundred and fifty thousand dollars (\$2,250,000), which is the total amount Defendants agree to pay under the Settlement, subject to Paragraph 10, below. The Gross Settlement Amount will be used to pay the Individual Class Payments, the Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, the Class Representative Service Payments, and the Administrator’s Expenses.
- 1.23. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Wage Statements received by the Class Member during the applicable Class Period as compared to the total number of Wage Statements received by all Class Members, provided, however, that the distribution formula may be modified so that no participating Class Member receives a payment of less than \$10.00.
- 1.24. “Individual PAGA Payment” means the Aggrieved Employee’s equal share of 25% of the PAGA Penalties.
- 1.25. “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.26. “LWDA” means the California Labor and Workforce Development Agency.
- 1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties, which shall be paid to the LWDA pursuant to California Labor Code section 2699, subd. (i).
- 1.28. “Minim” means named defendant Minim Productions, Inc.
- 1.29. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: the Individual PAGA Payments, the LWDA PAGA Payment, the Class Representative Service Payments, the

Class Counsel Fees Payment, the 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. “Pacific 2.1” means named defendant Pacific 2.1 Entertainment Group, Inc.
- 1.32. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for any of the Defendants on at least one workday during the PAGA Period and received a wage statement.
- 1.33. “PAGA Period” means the period for identifying Aggrieved Employees only, and not for defining the period of the releases applicable to the Released PAGA Claims, which the period starts from (1) August 27, 2019 for any Aggrieved Employees formerly or currently employed by Pacific 2.1, (2) October 22, 2019 for any Aggrieved Employees formerly or currently employed by Minim, and (3) January 3, 2021 for any Aggrieved Employees formerly or currently employed by ABC Signature and continuing through the earlier of the date of preliminary court approval of this Settlement (as defined below), or the date on which the number of Class Members across all three Class Periods exceeds 21,500. The PAGA Period for any Aggrieved Employee employed by one or more of the Defendants shall commence based on the earliest of the preceding dates that applies to the Aggrieved Employee.
- 1.34. “PAGA” means the Private Attorneys General Act, California Labor Code sections 2698, *et seq.*
- 1.35. “PAGA Notice” means (1) plaintiff Divinity’s October 1, 2020 letter to Pacific 2.1 and the LWDA, (2) plaintiff Schwanke’s September 22, 2020 letter to Minim and the LWDA, and (3) plaintiff Graham’s August 9, 2021 letter to ABC Signature and the LWDA, providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.36. “PAGA Penalties” means the total amount of forty thousand dollars (\$40,000) to be paid from the Gross Settlement Amount for PAGA civil penalties, allocated 25% to the Aggrieved Employees (\$10,000) and the 75% for the LWDA PAGA Payment (\$30,000) in settlement of all PAGA claims.
- 1.37. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.38. “Plaintiffs” mean Jerome Divinity, Paul Schwanke, Ryan Basaker, and Michael Graham, the named plaintiffs in the Action.

- 1.39. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.
- 1.40. “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval of the Settlement.
- 1.41. “Released Class Claims” means the claims being released for the period of time as described in Paragraph 6.2 below.
- 1.42. “Released PAGA Claims” means the claims being released for the period of time as described in Paragraph 6.3 below.
- 1.43. “Released Parties” means: Defendants and each of their former and present parents, subsidiaries, and affiliates, and their directors, officers, employees, shareholders, owners, and agents, and the current and former predecessors, successors, assigns, attorneys, and insurers of all such entities and individuals, but excluding Asgard Productions IV, LLC, Twentieth Century Fox Film Corporation, and ABC Signature, LLC.
- 1.44. “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. A Class Member may not request to be excluded from the Settlement of the PAGA Claims in the Action.
- 1.45. “Response Deadline” means 60 days after the Administrator mails the Court approved Class Notice to the Class Members and Aggrieved Employees. It shall be the last date on which a Class Member may: (a) fax, email, or mail Requests for Exclusion from the Settlement, object to the settlement or dispute the basis for the Individual Class Payment. The Request for Exclusion, Objection or dispute must be faxed, emailed or postmarked by the Response Deadline. 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.
- 1.46. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

## 2. RECITALS

- 2.1. On August 27, 2020, plaintiff Divinity filed a complaint alleging various wage and hour causes of action against Pacific 2.1. On October 22, 2020, plaintiff Schwanke filed, and November 9, 2021, plaintiff Basaker filed a complaint alleging various wage and hour causes of action against Minim. On January 3, 2022, plaintiff Graham filed a complaint alleging various wage and hour violations against ABC Signature. On June 23, 2021, plaintiff Schwanke filed a notice of appeal in the Ninth Circuit of the dismissal of some of the claims in his proposed class action complaint that was then pending in the federal district court, which is designated as Case No. 21-55669 (the “Appeal”). Pursuant to the



stipulation of the Parties as part of the Settlement, Class Counsel lodged a consolidated complaint covering the claims asserted by Plaintiffs in their separate complaints, which now is the operative complaint in the Action (the “Operative Complaint.”). 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 any of the causes of action alleged.

- 2.2. Plaintiffs contend that pursuant to Labor Code section 2699.3(a), Plaintiffs gave timely written notices to Defendants and the LWDA by sending the PAGA Notices.
- 2.3. On September 7, 2021, the Parties participated in an all-day mediation presided over by mediator Lynn Frank. Although the case did not settle at mediation, the Parties continued to engage in direct settlement discussions with input from the mediator, which led to this Agreement to settle the Action.
- 2.4. Prior to negotiating the Settlement, Plaintiffs obtained, through formal and informal discovery, documents and information, including class size and wage statement data. 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. It is specifically agreed that claims against Asgard Productions IV, LLC, Twentieth Century Fox Film Corporation, and ABC Signature, LLC will not be extinguished or affected by the Settlement.

### **3. MONETARY TERMS**

- 3.1. Gross Settlement Amount. Defendants promise to pay two million two-hundred and fifty thousand dollars (\$2,250,000), and no more as the Gross Settlement Amount (and to separately pay the employer payroll taxes owed on the wage portions of the Individual Class Payments). Defendants have 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 \$5,000 each (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representatives are entitled to receive as a Participating Class Member), subject to Court approval. Defendants will not oppose Plaintiffs' request for Class Representative Service Payments that do not exceed this amount. As part of the motion for the Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiffs will seek Court approval for the Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will add the remainder to the Net Settlement Amount. The Administrator will issue the Class Representatives an IRS Form 1099 [MISC] for their Class Representative Service Payments. Plaintiffs assume full responsibility and liability for any taxes owed on their Class Representative Service Payments.
- 3.2.2. To Class Counsel: A Class Counsel Fees Payment of 33 1/3% of the Gross Settlement Amount, i.e., \$750,000, and a Class Counsel Litigation Expenses Payment of not more than \$25,000, both subject to Court Approval. Defendants will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiffs and/or Class Counsel will file a motion for the 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 add 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 issue Class Counsel an IRS Form 1099 for the Class Counsel Fees Payment and Class Counsel Expenses Payment. Class Counsel assume full responsibility and liability for any taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment, and agree to hold Defendants harmless, and indemnify Defendants, from any dispute or controversy regarding any division or sharing of any of these Payments between or among Class Counsel and/or any other person or entity.
- 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$88,750, except for a showing of good cause and as approved by the Court. If the Court approves an Administration Expenses Payment that is less than the amount requested, the Administrator will add the remainder to the Net Settlement Amount.

- 3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Class Pay Periods for all Participating Class Members and (b) multiplying the result by each Participating Class Member's Class Pay Periods.
- 3.2.4.1 Tax Allocation of Individual Class Payments. Twenty percent (20%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portion is subject to tax withholding and will be reported on an IRS Form W-2. The remaining eighty percent (80%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties, with 40% being allocated to penalties and 40% being allocated to interest (the "Non-Wage Portion"). The Non-Wage Portion is not subject to tax withholdings and will be reported on an IRS Form 1099-MISC. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.
- 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 add the amount of their Individual Class Payments to the Net Settlement Amount for distribution to Participating Class Members based on their share of the Class Pay Periods.
- 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of forty-thousand dollars (\$40,000) to be paid from the Gross Settlement Amount, with 75% (\$30,000) allocated to the LWDA PAGA Payment and 25% (\$10,000) allocated to the Individual PAGA Payments.
- 3.2.5.1 The Administrator will calculate each Individual PAGA Payment by dividing the Aggrieved Employees' 25% share of the PAGA Penalties (*i.e.*, \$10,000) by the total number of Aggrieved Employees. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. Any Aggrieved Employee who opts out of the Class settlement will receive a PAGA distribution of at least \$1.00.
- 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-MISC Forms.

#### **4. SETTLEMENT FUNDING AND PAYMENT**

- 4.1. Class and Aggrieved Employee Pay Periods. Based on a review of its records as of April 9, 2022, Defendants estimate that Class Members worked a total of 214,149 Class Pay Periods, and that Aggrieved Employees worked a total of 113,271 PAGA Pay Periods.
- 4.2. Class Data. Not later than 30 days after the Court grants Preliminary Approval of the Settlement, Defendants will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Parties shall instruct the Administrator to 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 they discover 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. Defendants shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendants' share of payroll taxes, by transmitting the funds to the Administrator no later than 30 calendar days after the Effective Date.
- 4.4. Payments from the Gross Settlement Amount. Within 14 calendar days after Defendants fund the Gross Settlement Amount, the Administrator will mail checks or otherwise issue payments 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 (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 Class Members whose checks are returned undelivered without a USPS forwarding address. Within 10 calendar 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 if requested by the Class Member prior to the void date.
- 4.4.3. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to Inclusion Matters by Shane's Inspiration (U.S. Tax I.D. No. 95-4760497), a nonprofit disabled children's advocacy and support organization (see, [inclusionmatters.org](http://inclusionmatters.org)), or such other such children's advocacy and support organization which the Court might approve, consistent with Civil Procedure Code Section 384(b) (the "Cy Pres Recipient"). The Parties, Class Counsel and Defense Counsel (apart from that disclosed in Declarations filed with the Motion for Preliminary Approval) represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient. All of the foregoing is subject to the proviso that in the event the total amount of uncashed checks exceeds \$30,000, the amount that exceeds \$30,000 shall be equally divided and paid to those Class Members who cashed their initial checks, with any uncashed second checks being distributed to the approved Cy Pres Recipient.
- 4.4.4. 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. **[RESERVED – per revised LASC Model Settlement Agreement]**

6. **RELEASES OF CLAIMS**

Effective on the date when Defendants fully fund the entire Gross Settlement Amount and fund all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs, Class Members, and Class Counsel will release claims against all Released Parties as follows:

- 6.1. Plaintiffs' General Release of All Claims. Plaintiffs, and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns as to claims they could bring on behalf of any of the Plaintiffs, release and forever discharge the Released Parties from any and all known and unknown claims, transactions, or occurrences under any statute, common law or contract from the beginning of the Class Period to the date of final approval, 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 specifically, claims for (i) failure to pay wages, including unpaid minimum wages and overtime premium pay; (ii) failure to correctly calculate the regular rate for overtime pay and/or payments for non-complaint meal and/or rest periods; (iii) failure to provide meal and/or rest periods in accordance with applicable law, including payments for meal and/or rest periods; (iv) unreimbursed business expenses; (v) failure to timely pay wages, both during employment and upon termination of employment; and (vi) failure to provide accurate itemized wage statements, and (vii) all other civil and statutory penalties (other than PAGA penalties); and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released under 6.2, below, including those premised upon the same alleged above-described claims. ("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.

- 6.1.1. Plaintiffs' Waiver of Rights Under California 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 California 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.”**

- 6.2. 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 and ascertained in the course of the Action, including claims for (i) failure to pay wages, including unpaid minimum wages and overtime premium pay; (ii) failure to correctly calculate the regular rate for overtime pay and/or payments for non-complaint meal and/or rest periods; (iii) failure to provide meal and/or rest periods in accordance with applicable law, including payments for meal and/or rest periods; (iv) unreimbursed business expenses; (v) failure to timely pay wages, both during employment and upon termination of employment; (vi) failure to provide accurate itemized wage statements; and (vii) all civil and statutory penalties, including PAGA penalties, arising during the period from August 27, 2016 through seven days prior to final approval (“Class Release Period”). 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 Release Period.
- 6.3. Release by Non-Participating Class Members Who Are Aggrieved Employees: All Non-Participating Class Members who are Aggrieved Employees 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, the PAGA Notice, and ascertained in the course of the Action, including PAGA penalties for (i) failure to pay wages, including unpaid minimum wages and overtime premium pay; (ii) failure to correctly calculate the regular rate for overtime pay and/or payments for non-complaint meal and/or rest periods; (iii) failure to provide meal and/or rest periods in accordance with applicable law, including payments for meal and/or rest periods; (iv) unreimbursed business expenses; (v) failure to timely pay wages, both during employment and upon termination of employment; and (vi) failure to provide accurate itemized wage statements arising during the period from August 27, 2019 through seven days prior to final approval (“PAGA Release Period”).

## **7. MOTION FOR PRELIMINARY APPROVAL**

Plaintiffs shall prepare, provide to Defense Counsel for review and input, and file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with the Court’s current checklist for preliminary approvals.

- 7.1. Defendants' Declaration in Support of Preliminary Approval. Within 30 calendar days of the full execution of this Agreement, Defense Counsel will deliver to Class Counsel a signed declaration from Defendants and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator, or that there are no such conflicts. 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, and that the claims against Asgard Productions IV, LLC, Twentieth Century Fox Film Corporation, and ABC Signature, LLC are not impacted.
- 7.2. Plaintiffs' Responsibilities. Plaintiffs 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, subd. (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/or the proposed Cy Pres; and the nature and extent of any financial relationship with Plaintiffs, Class Counsel, or Defense Counsel; (v) a signed declaration from Plaintiffs confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, the Administrator, and/or the proposed Cy Pres; (v) 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 (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (vi) a redlined version of the Parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (vii) all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator and/or the Cy Pres Recipient. In their Declarations, Plaintiffs and Class Counsel Declaration 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.
- 7.3. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly 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.



- 7.4. 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.

## **8. SETTLEMENT ADMINISTRATION**

- 8.1. Selection of Administrator. The Parties have jointly selected CPT to serve as the Administrator and verified that, as a condition of appointment, CPT 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.
- 8.2. Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 8.3. 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.
- 8.4. Notice to Class Members.
- 8.4.1. No later than 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, Aggrieved Employees, and Class Pay Periods in the Class Data.
- 8.4.2. 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 United States Postal Service ("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, and the number of Class Pay Periods used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

- 8.4.3. 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.
  - 8.4.4. The deadlines for Class Members' written objections, Challenges to Class Pay Periods 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.
  - 8.4.5. 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, which ever are later.
- 8.5. Requests for Exclusion (Opt-Outs).
- 8.5.1. 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 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.
  - 8.5.2. 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.

8.5.3. 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 Paragraph 6.2, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

8.5.4. 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 6.3 of this Agreement and are eligible for an Individual PAGA Payment.

8.6. Challenges to Calculation of Class Pay Periods. 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 Pay Periods 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 Class Pay Periods 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 Class 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 Class Pay Periods to Defense Counsel and Class Counsel, as well as the Administrator's preliminary determination of the challenge. Defense Counsel and Class Counsel will meet and confer over the Administrator's preliminary determination of a challenge and if they do not agree, the dispute will be submitted to the Court whose decision will be final and binding.

8.7. Objections to Settlement.

8.7.1. 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.

- 8.7.2. 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 verbal 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).
- 8.7.3. Non-Participating Class Members have no right to object to any of the class action components of the Settlement.
- 8.8. 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.
  - 8.8.1. 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.
  - 8.8.2. 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).
  - 8.8.3. 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, challenges to Class Pay Periods received and/or resolved, 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.

8.8.4. Administrator’s Declaration. Not later than 14 days before the date by which Plaintiffs are 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.

8.8.5. 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.

9. **CLASS SIZE ESTIMATES.** Based on a review of its records as of April 9, 2022, Defendants estimate that there are 17,307 Class Members, 10,497 of whom also are Aggrieved Employees.
10. **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 its election to withdraw not later than 10 days

after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

- 11. 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, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final Approval”). Class Counsel shall provide drafts of these documents to Defense Counsel not later than 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.
- 11.1. 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 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
- 11.2. 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, including by making mutually acceptable changes to the Agreement in an effort 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.
- 11.3. 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.
- 11.4. 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 reflected 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.

- 11.5. 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, with 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.
12. **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 a proposed amended judgment.
13. **ADDITIONAL PROVISIONS**
- 13.1. Dismissal of Appeal by Plaintiff Schwanke. Within six business days after Defendants fully fund the entire Gross Settlement Amount and fund all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff Schwanke will request dismissal of the Appeal with prejudice.
- 13.2. 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 the right to contest certification of any class for any reasons and manageability of any representative aspect of the Action, and Defendants reserve all available defenses to the claims in the Action, and Plaintiffs reserve the right to move for class certification on any grounds available and to contest Defendants' defenses. The Settlement, this Agreement, and the 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).
- 13.3. 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, any with 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.

- 13.4. 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 12.3 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.
- 13.5. 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.
- 13.6. 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.
- 13.7. 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.
- 13.8. 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 and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.



- 13.9. 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.
- 13.10. 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.
- 13.11. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 13.12. 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.
- 13.13. 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.
- 13.14. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 13.15. Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §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 rule of court. 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 destructions, of Class Data.
- 13.16. 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.
- 13.17. 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.
- 13.18. 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, Esq.  
David Garrett, Esq.  
Min Ji Gal, Esq.  
HARRIS & RUBLE  
655 North Central Avenue 17th Floor  
Glendale California 91203

To Defendants:

Stephen L. Berry, Esq.  
Blake R. Bertagna, Esq.  
Paul Hastings LLP  
695 Town Center Drive, 17th Floor  
Costa Mesa, California 92626

13.19. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (*i.e.* by 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.

13.20. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation in the Action and the Appeal 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 CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

**PLAINTIFFS AND CLASS REPRESENTATIVES:**

Dated: 11/7/2022

By:    
 27240503B8554E...   
 JEROME DIVINITY

Dated: 11/8/2022

By:    
 F70B23284BCA446...   
 PAUL SCHWANKE

Dated: 11/8/2022

By:    
 DE98ABD923654E...   
 RYAN BASAKER

Dated: 11/7/2022

By:    
 AF56E933276146C...   
 MICHAEL GRAHAM

**CLASS COUNSEL:**

Dated: 11/9/2022

HARRIS & RUBLE

By:    
 23EF921546364A...   
 ALAN HARRIS

Dated:

**DEFENDANTS:**

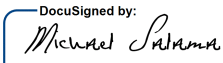
PACIFIC 2.1 ENTERTAINMENT GROUP, INC.

By:    
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Name: Daniel Grossman

Dated:

MINIM PRODUCTIONS, INC.

By:  DocuSigned by:  
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Name: Michael Salama

Dated:

ABC SIGNATURE STUDIOS, INC.

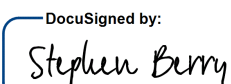
By:  DocuSigned by:  
3F212D73C72D48C...

Name: Fabricio Lopez

**DEFENSE COUNSEL:**

Dated:

PAUL HASTINGS LLP

By:  DocuSigned by:  
CAC5749D0E6B46B...

STEPHEN L. BERRY

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

*Jerome Divinity, et al. v. Pacific 2.1 Entertainment Group, Inc, et al.*  
(Los Angeles Superior Court Case No. 20STCV32700)

***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 defendants Pacific 2.1 Entertainment Group, Inc., Minim Productions, Inc., and ABC Signature Studios, Inc. (“Defendants”) for alleged wage and hour violations as well as claims for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). The Action consolidates four separate actions was initially filed by former employees of Defendants, Jerome Divinity, Paul Schwanke, Ryan Basaker, and Michael Graham (collectively, “Plaintiffs”).

The Action seeks payment for alleged wage and hour violations that occurred during the “Class Period,” which means the period for identifying Class Members only, and not for defining the periods of the releases applicable to the Released Class Claims, which starts from (1) August 27, 2016 for any Class Member formerly or currently employed by Pacific 2.1, (2) October 22, 2016 any Class Member formerly or currently employed by Minim, and (3) January 3, 2018 for any Class Member formerly or currently employed by ABC Signature, and continuing through the earlier of the date of preliminary court approval of this Settlement (as defined below), or the date on which the number of Class Members exceeds 21,500.

“Class” means all persons employed by one or more of the Defendants in California in a non-exempt position who worked for Defendants during the Class Period.

The Action also seeks penalties on behalf of Aggrieved Employees for alleged wage and hour violations that occurred during the “PAGA Period,” which means the period for identifying Aggrieved Employees only, and not for defining the period of the releases applicable to the Released PAGA Claims, which the period starts from (1) August 27, 2019 for any Aggrieved Employees formerly or currently employed by Pacific 2.1, (2) October 22, 2019 for any Aggrieved Employees formerly or currently employed by Minim, and (3) January 3, 2021 for any Aggrieved Employees formerly or currently employed by ABC Signature and continuing through the earlier of the date of preliminary court approval of this Settlement (as defined below), or the date on which the number of Class Members across all three Class Periods exceeds 21,500. The PAGA Period for any Aggrieved Employee employed by one or more of the Defendants shall commence based on the earliest of the preceding dates that applies to the Aggrieved Employee.

Plaintiffs and Defendants have reached a proposed settlement under which you may be entitled to receive money. The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendants to fund Individual Class Payments, and (2) a PAGA Settlement requiring

Defendants to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on Defendants’ records you worked a total of \_\_\_\_ class pay periods and PAGA pay periods with one or more of Defendants, 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 Defendants’ records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work 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 are a Class Member or an Aggrieved Employee as defined above, 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, you will receive 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**

<p><b>You Don't Have to Do Anything to Participate in the Settlement</b></p>	<p>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).</p>
<p><b>You Can Opt-out of the Class Settlement but not the PAGA Settlement</b></p> <p><b>The Opt-out Deadline is</b> _____</p>	<p>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.</p> <p>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 the PAGA claims listed in Section 10 of this Notice.</p>
<p><b>Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement</b></p> <p><b>Written Objections Must be Submitted by</b> _____</p>	<p>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 Plaintiffs if you think they are unreasonable. See Section 7 of this Notice.</p>
<p><b>You Can Participate in the _____ Final Approval Hearing</b></p>	<p>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.</p>
<p><b>You Can Challenge the Calculation of your Payment</b></p> <p><b>Written Challenges Must be Submitted by</b> _____</p>	<p>The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many Pay Periods you worked during the Class Period. The number of Class Pay Periods and/or PAGA Pay Periods you worked according to Defendants' records is stated above. If you disagree with either of this number, you must challenge it by _____.</p>

## **1. WHAT IS THE ACTION ABOUT?**

Plaintiffs are former employees who worked on Defendants' productions. The Action accuses Defendants of violating California labor laws by failing to pay overtime wages, minimum wages, wages due upon termination, and reimbursable expenses and failing to provide meal periods, rest breaks and accurate itemized wage statements. Based on the same claims, Plaintiffs have also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) ("PAGA"). Plaintiffs are represented by attorneys in the Action: 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 contend they 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 Lynn Frank, in an effort to resolve the Action by negotiating an end to the case by agreement (settlement of the case) rather than continuing the expensive and time-consuming process of litigation. The Parties subsequently settled the matter after the mediation. 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. Defendants Will Pay \$2,250,000 as the Gross Settlement Amount (Gross Settlement). Defendants have 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 attorney's fees and expenses, the Administrator's expenses, and a payment to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, Defendants 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 \$ 750,000 (33-1/3% of the Gross Settlement) to Class Counsel for attorneys' fees and up to \$25,000.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
- B. Up to \$5,000 each to Jerome Divinity, Paul Schwanke, Ryan Basaker, and Michael Graham as a Class Representative Award for filing their lawsuits, 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 Payment and any Individual PAGA Payment.
- C. Up to \$88,750 to the Administrator for services administering the Settlement.
- D. Up to \$40,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% 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"). Participating Class Members will receive their pro rata share of the Net Settlement Amount calculated according to the number of Class Pay Periods worked by the Class Member during the applicable Class Period as compared to the total number of Class Pay Periods worked by all Class Members, provided, however, that no participating Class Member receives a payment of less than \$10.00.

4. Taxes Owed on Payments to Class Members. Plaintiffs and Defendants are asking the Court to approve an allocation of 20% of each Participating Class Member's payment of his/her/their pro rata share of the Net Settlement Amount to settlement of wage claims (the "Wage Portion"), and 80% of each Participating Class Member's payment of his/her/their pro rata share of the Net Settlement Amount to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. Defendants will separately pay the employer payroll taxes owed on the Wage Portions. The Non-Wage Portions are not subject to tax withholdings. The Individual PAGA Payments also are for settlement of claims for penalties. The Administrator will report the Non-Wage Portions of the Individual Class Payments and the Individual PAGA Payments on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

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/or Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, the monies will no longer be available to you.

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 the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed), that you wish to opt-out. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her/their representative setting forth the Class Member's name, present address, telephone number, and a simple statement of a desire 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) will still receive an Individual PAGA Payment 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, CPT Group Inc. (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges over Class Pay Periods and PAGA Pay Periods, 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. Participating Class Members' Release. After the Judgment is final and Defendants have fully funded the Gross Settlement, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, or be part of another lawsuit against Defendants or their related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members, including those who also are Aggrieved Employees, will be bound by the following release:

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 all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action, including claims for (i) failure to pay wages, including unpaid minimum wages and overtime premium pay; (ii) failure to correctly calculate the regular rate for overtime pay and/or payments for non-complaint meal and/or rest periods; (iii) failure to provide meal and/or rest periods in accordance with applicable law, including payments for meal and/or rest periods; (iv) unreimbursed business expenses; (v) failure to timely pay wages, both during employment and upon termination of employment; (vi) failure to provide accurate itemized wage statements; and (vii) all civil and statutory penalties, including PAGA penalties, arising during the period from August 27, 2016 through seven days prior to final approval (“Class Release Period”). 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 Release Period.

10. PAGA Release by Non-Participating Class Members Who Are Aggrieved Employees. After the Court’s judgment is final, and Defendants have paid the Gross Settlement (and separately paid the employer-side payroll taxes), all Non-Participating Class Members who are Aggrieved Employees will be barred from asserting PAGA claims against Defendants, despite excluding themselves from the Settlement. This means that all Aggrieved Employees, who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Defendants or their related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees’ Releases for Non-Participating Class Members are as follows:

All Non-Participating Class Members who are Aggrieved Employees 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, the PAGA Notice, and ascertained in the course of the Action, including PAGA penalties for (i) failure to pay wages, including unpaid minimum wages and overtime premium pay; (ii) failure to correctly calculate the regular rate for overtime pay and/or payments for non-complaint meal and/or rest periods; (iii) failure to provide meal and/or rest periods in accordance with applicable law, including payments for meal and/or rest periods; (iv) unreimbursed business expenses; (v) failure to timely pay wages, both during employment and upon termination of employment; and (vi) failure to provide accurate itemized wage statements arising during the period from August 27, 2019 through seven days prior to final approval (“PAGA Release Period”).

#### **4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?**

1. Individual Class Payments. The Administrator will calculate Individual Class Payments as follows: All Participating Class Members will receive a minimum payment equal to \$10.00. The remaining Net Settlement Amount will be distributed pro rata according to the number of Class Pay Periods worked by the Class Member during the applicable Class Period as compared to the total number of Class Pay Periods worked by all Class Members.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments as follows: All Class Members who are Aggrieved Employees will receive their pro rata share of 25% of the PAGA Penalties payment.
3. Challenges to Number of Class Pay Periods and PAGA Pay Periods. You 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 Pay Periods and PAGA Pay Periods attributed to you. You may challenge the determination and/or calculation by communicating with the Administrator via email or mail. You cannot appeal or otherwise challenge the Administrator's decision.

#### **5. HOW WILL I GET PAID?**

1. Participating Class Members. The Administrator will send payments by U.S. mail to every Participating Class Member (*i.e.*, every Class Member who doesn't opt-out), including those who also qualify as Aggrieved Employees. The Non-Wage Portion of the Individual Class Payment and the Individual PAGA Payment will be combined and paid in a single check.
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(s) 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 to be excluded. Be sure to personally sign your request, identify the Action as *Jerome Divinity v. Pacific 2.1 Entertainment Group, Inc., a Delaware Corporation, et al.*, Los Angeles Superior Court Case No. 20STCV32700, 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 \_\_\_\_\_ days before the Final Approval Hearing on [date], 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, adequate and reasonable, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiffs are requesting as a Class Representative Service Award. 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 Award 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 \_\_\_\_\_.** 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 *Jerome Divinity v. Pacific 2.1 Entertainment Group, Inc., a Delaware Corporation, et al.*, Los Angeles Superior Court Case No. 20STCV32700 and include your name, current address, telephone number, and approximate dates of employment for Defendants 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 7 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. You can read the Agreement, the Judgment or any other Settlement documents by going to the Administrator's Website \_\_\_\_\_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>) and entering the Case Number for the Action, Case No. 20STCV32700. 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:

Name of Attorney: Alan Harris; David Garrett; Min Ji Gal

Email Address: [harrisa@harrisandruble.com](mailto:harrisa@harrisandruble.com); [dgarrett@HarrisandRuble.com](mailto:dgarrett@HarrisandRuble.com)  
[mgal@HarrisandRuble.com](mailto:mgal@HarrisandRuble.com)

Name of Firm: HARRIS & RUBLE

Mailing Address: 655 North Central Avenue, 17th Floor, Glendale, CA 91203

Telephone:

#### Settlement Administrator:

Name of Company: CPT Group Inc.

Email Address:

Mailing Address: 50 Corporate Park, Irvine, CA 92606

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.

## **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.

# Exhibit 2

**CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND  
RELEASE (WITH PROPOSED NOTICE OF CLASS AND PAGA  
ACTION SETTLEMENT)**

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This Class Action and PAGA Settlement Agreement and Release (“Agreement”) is made by and between plaintiffs Jerome Divinity, Paul Schwanke, Ryan Basaker, and Michael Graham (collectively, “Plaintiffs”) and defendants Pacific 2.1 Entertainment Group, Inc., Minim Productions, Inc., and ABC Signature Studios, Inc. (collectively, “Defendants”). The Agreement refers to Plaintiffs and Defendants collectively as the “Parties,” or individually as a “Party.”

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**1. DEFINITIONS**

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As used in this Agreement, and capitalized terms shall have the following meanings:

1.1. “ABC Signature” means named defendant ABC Signature Studios, Inc.

1.2. “Action” means Plaintiffs’ consolidated complaint alleging wage and hour violations against Defendants, captioned: Jerome Divinity, et al. v. Pacific 2.1 Entertainment Group, Inc., et al., No. 20STCV32700, initiated on August 27, 2020, which is pending in Superior Court of the State of California, County of Los Angeles.

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1.3. “Administrator” means CPT Group, Inc. (“CPT”), the neutral entity the Parties have agreed to appoint to administer the Settlement.

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1.4. “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.

1.5. “Aggrieved Employee” means an individual who was employed by and worked for one or more of the Defendants in the State of California and classified as a non-exempt employee during the PAGA Period.

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1.6. “Class” means all persons employed by one or more of the Defendants in California in a non-exempt position who worked for Defendants during the Class Period.

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1.7. “Class Counsel” means Alan Harris, David Garrett, Min Ji Gal, and the law firm of Harris & Ruble.

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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 Defendants’ possession, including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Pay Periods.

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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), Some participating Class Members also are Aggrieved Employees.

1.11. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using reasonably available sources, methods and means including, the National Change of Address database, skip traces, and upon contact by a Class Member, direct communication by the Administrator with Class Members.

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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 in the form, without material variation, attached hereto as Exhibit A and incorporated by reference into this Agreement.

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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.¶  
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.¶

1.13. “Class Pay Period” means any pay period during which a Class Member worked for any of the Defendants on at least one workday, during the Class Period and received a wage statement.

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¶  
“Class Period” means the period from \_\_ to \_\_.

1.14. “Class Period” means the period for identifying Class Members only, and not for defining the periods of the releases applicable to the Released Class Claims, which starts from (1) August 27, 2016 for any Class Member formerly or currently employed by Pacific 2.1, (2) October 22, 2016 any Class Member formerly or currently employed by Minim, and (3) January 3, 2018 for any Class Member formerly or currently employed by ABC Signature, and continuing through the earlier of the date of preliminary court approval of this Settlement (as defined below), or the date on which the number of Class Members exceeds 21,500. The Class Period for any Class Member employed by more than one of the Defendants shall commence based on the earliest of the preceding dates that applies to the Class Member.

1.15. “Class Representative” and “Class Representatives” mean the named Plaintiffs, individually and collectively, in the operative consolidated complaint in the Action seeking Court approval to serve as a Class Representative, (i.e., Jerome Divinity, Paul Schwanke, Ryan Basaker, and Michael Graham).

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1.16. “Class Representative Service Payment” means the payment to each Class Representative for initiating the Action and providing services in support of the Action.

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1.17. “Court” means the Superior Court of California, County of Los Angeles, and the department of the Court in which the Action is pending.

1.18. “Defense Counsel” means Stephen L. Berry, Blake R. Bertagna, and the law firm Paul Hastings LLP.

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“XYZ” means named Defendant \_\_.¶  
¶

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; or (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. “Gross Settlement Amount” means two million two-hundred and fifty thousand dollars (\$2,250,000), which is the total amount Defendants agree to pay under the Settlement, subject to Paragraph 10, below. The Gross Settlement Amount will be used to pay the Individual Class Payments, the Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, the Class Representative Service Payments, and the Administrator’s Expenses.

1.23. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Wage Statements received by the Class Member during the applicable Class Period as compared to the total number of Wage Statements received by all Class Members, provided, however, that the distribution formula may be modified so that no participating Class Member receives a payment of less than \$10.00.

1.24. “Individual PAGA Payment” means the Aggrieved Employee’s equal share of 25% of the PAGA Penalties.

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

1.26. “LWDA” means the California Labor and Workforce Development Agency.

1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties, which shall be paid to the LWDA pursuant to California Labor Code section 2699, subd. (i).

1.28. “Minim” means named defendant Minim Productions, Inc.

1.29. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: the Individual PAGA Payments, the LWDA PAGA Payment, the Class Representative Service Payments, the

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

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Class Counsel Fees Payment, the 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. “Pacific 2.1” means named defendant Pacific 2.1 Entertainment Group, Inc.

- 1.32. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for any of the Defendants on at least one workday during the PAGA Period and received a wage statement.

1.33. “PAGA Period” means the period for identifying Aggrieved Employees only, and not for defining the period of the releases applicable to the Released PAGA Claims, which the period starts from (1) August 27, 2019 for any Aggrieved Employees formerly or currently employed by Pacific 2.1, (2) October 22, 2019 for any Aggrieved Employees formerly or currently employed by Minim, and (3) January 3, 2021 for any Aggrieved Employees formerly or currently employed by ABC Signature and continuing through the earlier of the date of preliminary court approval of this Settlement (as defined below), or the date on which the number of Class Members across all three Class Periods exceeds 21,500. The PAGA Period for any Aggrieved Employee employed by one or more of the Defendants shall commence based on the earliest of the preceding dates that applies to the Aggrieved Employee.

- 1.34. “PAGA” means the Private Attorneys General Act, California Labor Code sections 2698, et seq.

- 1.35. “PAGA Notice” means (1) plaintiff Divinity’s October 1, 2020 letter to Pacific 2.1 and the LWDA, (2) plaintiff Schwanke’s September 22, 2020 letter to Minim and the LWDA, and (3) plaintiff Graham’s August 9, 2021 letter to ABC Signature and the LWDA, providing notice pursuant to Labor Code section 2699.3, subd.(a).

- 1.36. “PAGA Penalties” means the total amount of forty thousand dollars (\$40,000) to be paid from the Gross Settlement Amount for PAGA civil penalties, allocated 25% to the Aggrieved Employees, (\$10,000) and the 75% for the LWDA PAGA Payment (\$30,000) in settlement of all PAGA claims.

- 1.37. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

- 1.38. “Plaintiffs” mean Jerome Divinity, Paul Schwanke, Ryan Basaker, and Michael Graham, the named plaintiffs in the Action.

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“PAGA Period” means the period from \_\_ to \_\_.

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“Plaintiff” means \_\_

1.39. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.

1.40. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval of the Settlement.

1.41. "Released Class Claims" means the claims being released for the period of time as described in Paragraph 6.2 below.

1.42. "Released PAGA Claims" means the claims being released for the period of time as described in Paragraph 6.3 below.

1.43. "Released Parties" means: Defendants and each of their former and present parents, subsidiaries, and affiliates, and their directors, officers, employees, shareholders, owners, and agents, and the current and former predecessors, successors, assigns, attorneys, and insurers of all such entities and individuals, but excluding Asgard Productions IV, LLC, Twentieth Century Fox Film Corporation, and ABC Signature, LLC.

1.44. "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. A Class Member may not request to be excluded from the Settlement of the PAGA Claims in the Action.

1.45. "Response Deadline" means 60 days after the Administrator mails the Court approved Class Notice to the Class Members and Aggrieved Employees. It shall be the last date on which a Class Member may: (a) fax, email, or mail Requests for Exclusion from the Settlement, object to the settlement, or dispute the basis for the Individual Class Payment. The Request for Exclusion, Objection or dispute must be faxed, emailed or postmarked by the Response Deadline. 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.

1.46. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

## 2. RECITALS

2.1. On August 27, 2020, plaintiff Divinity filed a complaint alleging various wage and hour causes of action against Pacific 2.1. On October 22, 2020, plaintiff Schwanke filed, and November 9, 2021, plaintiff Basaker filed a complaint alleging various wage and hour causes of action against Minim. On January 3, 2022, plaintiff Graham filed a complaint alleging various wage and hour violations against ABC Signature. On June 23, 2021, plaintiff Schwanke filed a notice of appeal in the Ninth Circuit of the dismissal of some of the claims in his proposed class action complaint that was then pending in the federal district court, which is designated as Case No. 21-55669 (the "Appeal"). Pursuant to the

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"Workweek" means any week during which a Class Member worked for XYZ for at least one day, during the Class Period....

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stipulation of the Parties as part of the Settlement, Class Counsel lodged a consolidated complaint covering the claims asserted by Plaintiffs in their separate complaints, which now is the operative complaint in the Action (the "Operative Complaint"). 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 any of the causes of action alleged.

2.2. Plaintiffs contend that pursuant to Labor Code section 2699.3(a), Plaintiffs gave timely written notices to Defendants and the LWDA by sending the PAGA Notices.

2.3. On September 7, 2021, the Parties participated in an all-day mediation presided over by mediator Lynn Frank. Although the case did not settle at mediation, the Parties continued to engage in direct settlement discussions with input from the mediator, which led to this Agreement to settle the Action.

2.4. Prior to negotiating the Settlement, Plaintiffs obtained, through formal and informal discovery, documents and information, including class size and wage statement data. 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. It is specifically agreed that claims against Asgard Productions IV, LLC, Twentieth Century Fox Film Corporation, and ABC Signature, LLC will not be extinguished or affected by the Settlement.

### 3. MONETARY TERMS

3.1. Gross Settlement Amount. Defendants promise to pay two million two-hundred and fifty thousand dollars (\$2,250,000), and no more as the Gross Settlement Amount (and to separately pay the employer payroll taxes owed on the wage portions of the Individual Class Payments). Defendants have 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:

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3.2.1. To Plaintiffs: Class Representative Service Payments to the Class Representatives of \$5,000 each (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representatives are entitled to receive as a Participating Class Member), subject to Court approval. Defendants will not oppose Plaintiffs' request for Class Representative Service Payments that do not exceed this amount. As part of the motion for the Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiffs will seek Court approval for the Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will add the remainder to the Net Settlement Amount. The Administrator will issue the Class Representatives an IRS Form 1099 [MISC] for their Class Representative Service Payments. Plaintiffs assume full responsibility and liability for any taxes owed on their Class Representative Service Payments.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of 33 1/3% of the Gross Settlement Amount, i.e., \$750,000, and a Class Counsel Litigation Expenses Payment of not more than \$25,000, both subject to Court Approval. Defendants will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiffs and/or Class Counsel will file a motion for the 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 add 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 issue Class Counsel an IRS Form 1099 for the Class Counsel Fees Payment and Class Counsel Expenses Payment. Class Counsel assume full responsibility and liability for any taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment, and agree to hold Defendants harmless, and indemnify Defendants, from any dispute or controversy regarding any division or sharing of any of these Payments between or among Class Counsel and/or any other person or entity.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$88,750, except for a showing of good cause and as approved by the Court. If the Court approves an Administration Expenses Payment that is less than the amount requested, the Administrator will add the remainder to the Net Settlement Amount.

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3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Class Pay Periods for all Participating Class Members and (b) multiplying the result by each Participating Class Member's Class Pay Periods.

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3.2.4.1 Tax Allocation of Individual Class Payments. Twenty percent (20%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portion is subject to tax withholding and will be reported on an IRS Form W-2. The remaining eighty percent (80%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties, with 40% being allocated to penalties and 40% being allocated to interest (the "Non-Wage Portion"). The Non-Wage Portion is not subject to tax withholdings and will be reported on an IRS Form 1099-MISC. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

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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 add the amount of their Individual Class Payments to the Net Settlement Amount for distribution to Participating Class Members based on their share of the Class Pay Periods.

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3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of forty-thousand dollars (\$40,000) to be paid from the Gross Settlement Amount, with 75% (\$30,000) allocated to the LWDA PAGA Payment and 25% (\$10,000) allocated to the Individual PAGA Payments.

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3.2.5.1 The Administrator will calculate each Individual PAGA Payment by dividing the Aggrieved Employees' 25% share of the PAGA Penalties (i.e., \$10,000) by the total number of Aggrieved Employees. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. Any Aggrieved Employee who opts out of the Class settlement will receive a PAGA distribution of at least \$1.00.

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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-  
MISC Forms.

#### 4. SETTLEMENT FUNDING AND PAYMENT

- 4.1. Class and Aggrieved Employee Pay Periods. Based on a review of its records as of April 9, 2022, Defendants estimate that Class Members worked a total of 214,149 Class Pay Periods, and that Aggrieved Employees worked a total of 113,271 PAGA Pay Periods.
- 4.2. Class Data. Not later than 30 days after the Court grants Preliminary Approval of the Settlement, Defendants will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Parties shall instruct the Administrator to 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 they discover 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. Defendants shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendants' share of payroll taxes, by transmitting the funds to the Administrator no later than 30 calendar days after the Effective Date.
- 4.4. Payments from the Gross Settlement Amount. Within 14 calendar days after Defendants fund the Gross Settlement Amount, the Administrator will mail checks or otherwise issue payments 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 (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

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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 Class Members whose checks are returned undelivered without a USPS forwarding address. Within 10 calendar 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 if requested by the Class Member prior to the void date.

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- 4.4.3. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to Inclusion Matters by Shane's Inspiration (U.S. Tax I.D. No. 95-4760497), a nonprofit disabled children's advocacy and support organization (see, inclusionmatters.org), or such other such children's advocacy and support organization which the Court might approve, consistent with Civil Procedure Code Section 384(b) (the "Cy Pres Recipient"). The Parties, Class Counsel and Defense Counsel (apart from that disclosed in Declarations filed with the Motion for Preliminary Approval) represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient. All of the foregoing is subject to the proviso that in the event the total amount of uncashed checks exceeds \$30,000, the amount that exceeds \$30,000 shall be equally divided and paid to those Class Members who cashed their initial checks, with any uncashed second checks being distributed to the approved Cy Pres Recipient.

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Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).] [or to

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- 4.4.4. 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.

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6. RELEASES OF CLAIMS

Effective on the date when Defendants fully fund the entire Gross Settlement Amount and fund all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs, Class Members, and Class Counsel will release claims against all Released Parties as follows:

- 6.1. Plaintiffs' General Release of All Claims. Plaintiffs, and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns as to claims they could bring on behalf of any of the Plaintiffs, release and forever discharge the Released Parties from any and all known and unknown claims, transactions, or occurrences under any statute, common law or contract from the beginning of the Class Period, to the date of final approval, 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 specifically, claims for (i) failure to pay wages, including unpaid minimum wages and overtime premium pay; (ii) failure to correctly calculate the regular rate for overtime pay and/or payments for non-complaint meal and/or rest periods; (iii) failure to provide meal and/or rest periods in accordance with applicable law, including payments for meal and/or rest periods; (iv) unreimbursed business expenses; (v) failure to timely pay wages, both during employment and upon termination of employment; and (vi) failure to provide accurate itemized wage statements, and (vii) all other civil and statutory penalties (other than PAGA penalties); and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released under 6.2, below, including those premised upon the same alleged above-described claims. ("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.

- 6.1.1. Plaintiffs' Waiver of Rights Under California 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 California 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**

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her would have materially affected his or her settlement with the debtor or Released Party.”

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- 6.2. 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 and ascertained in the course of the Action, including claims for (i) failure to pay wages, including unpaid minimum wages and overtime premium pay; (ii) failure to correctly calculate the regular rate for overtime pay and/or payments for non-complaint meal and/or rest periods; (iii) failure to provide meal and/or rest periods in accordance with applicable law, including payments for meal and/or rest periods; (iv) unreimbursed business expenses; (v) failure to timely pay wages, both during employment and upon termination of employment; (vi) failure to provide accurate itemized wage statements; and (vii) all civil and statutory penalties, including PAGA penalties, arising during the period from August 27, 2016 through seven days prior to final approval (“Class Release Period”). 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 Release Period.

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- 6.3. Release by Non-Participating Class Members Who Are Aggrieved Employees: All Non-Participating Class Members who are Aggrieved Employees 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, the PAGA Notice, and ascertained in the course of the Action, including PAGA penalties for (i) failure to pay wages, including unpaid minimum wages and overtime premium pay; (ii) failure to correctly calculate the regular rate for overtime pay and/or payments for non-complaint meal and/or rest periods; (iii) failure to provide meal and/or rest periods in accordance with applicable law, including payments for meal and/or rest periods; (iv) unreimbursed business expenses; (v) failure to timely pay wages, both during employment and upon termination of employment; and (vi) failure to provide accurate itemized wage statements arising during the period from August 27, 2019 through seven days prior to final approval (“PAGA Release Period”).

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## 7. MOTION FOR PRELIMINARY APPROVAL

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Plaintiffs shall prepare, provide to Defense Counsel for review and input, and file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with the Court’s current checklist for preliminary approvals.

7.1. Defendants' Declaration in Support of Preliminary Approval. Within 30 calendar days of the full execution of this Agreement, Defense Counsel will deliver to Class Counsel a signed declaration from Defendants and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator, or that there are no such conflicts. 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, and that the claims against Asgard Productions IV, LLC, Twentieth Century Fox Film Corporation, and ABC Signature, LLC are not impacted.

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7.2. Plaintiffs' Responsibilities. Plaintiffs 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, subd. (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/or the proposed Cy Pres; and the nature and extent of any financial relationship with Plaintiffs, Class Counsel, or Defense Counsel; (v) a signed declaration from Plaintiffs confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, the Administrator, and/or the proposed Cy Pres; (v) 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 (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (vi) a redlined version of the Parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (vii) all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator and/or the Cy Pres Recipient. In their Declarations, Plaintiffs and Class Counsel Declaration 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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7.3. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly 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.

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- 7.4. 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.

## 8. SETTLEMENT ADMINISTRATION

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- 8.1. Selection of Administrator. The Parties have jointly selected CPT to serve as the Administrator and verified that, as a condition of appointment, CPT 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.
- 8.2. Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 8.3. 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.
- 8.4. Notice to Class Members.

- 8.4.1. No later than 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, Aggrieved Employees, and Class Pay Periods in the Class Data.

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- 8.4.2. 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 United States Postal Service ("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, and the number of Class Pay Periods used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

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8.4.3. 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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8.4.4. The deadlines for Class Members' written objections, Challenges to Class Pay Periods, 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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8.4.5. 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, which ever are later.

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8.5. Requests for Exclusion (Opt-Outs).

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receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.¶  
receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.¶  
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8.5.1. 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 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.

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8.5.2. 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.

8.5.3. 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 Paragraph 6.2, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

8.5.4. 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 6.3 of this Agreement and are eligible for an Individual PAGA Payment.

8.6. Challenges to Calculation of Class Pay Periods. 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 Pay Periods 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 Class Pay Periods 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 Class 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 Class Pay Periods to Defense Counsel and Class Counsel, as well as the Administrator's preliminary determination of the challenge. Defense Counsel and Class Counsel will meet and confer over the Administrator's preliminary determination of a challenge and if they do not agree, the dispute will be submitted to the Court whose decision will be final and binding.

8.7. Objections to Settlement.

8.7.1. Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including

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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.

8.7.2. 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 verbal 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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8.7.3. Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

8.8. 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.

8.8.1. 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.

8.8.2. 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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8.8.3. 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, challenges to Class Pay Periods received and/or resolved, 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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- 8.8.4. Administrator’s Declaration. Not later than 14 days before the date by which Plaintiffs are 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.

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Workweek and/or Pay Period Challenges. 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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- 8.8.5. 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.

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9. **CLASS SIZE ESTIMATES**. Based on a review of its records as of April 9, 2022, Defendants estimate that there are 17,307 Class Members, 10,497 of whom also are Aggrieved Employees.

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10. **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 its election to withdraw not later than 10 days

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after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

- 11. MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff~~s~~ 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, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final Approval”). Class Counsel shall provide drafts of these documents to Defense Counsel not later than 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.
- 11.1. 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 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
- 11.2. 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, including by making mutually acceptable changes to the Agreement in an effort 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.
- 11.3. 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.
- 11.4. 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 reflected 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.

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11.5. 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, with 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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12. **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 a proposed amended judgment.

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13. **ADDITIONAL PROVISIONS,**

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13.1. Dismissal of Appeal by Plaintiff Schwanke. Within six business days after Defendants fully fund the entire Gross Settlement Amount and fund all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff Schwanke will request dismissal of the Appeal with prejudice.

13.2. 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 the right to contest certification of any class for any reasons, and manageability of any representative aspect of the Action, and Defendants reserve all available defenses to the claims in the Action, and Plaintiffs reserve the right to move for class certification on any grounds available and to contest Defendants' defenses. The Settlement, this Agreement, and the 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).

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13.3. 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

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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, any with 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.

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**Deleted:** This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

- 13.4. 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 12.3 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.
- 13.5. 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.
- 13.6. 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.
- 13.7. 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.
- 13.8. 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 and 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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- 13.9. 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.
- 13.10. 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.
- 13.11. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 13.12. 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.
- 13.13. 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.
- 13.14. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 13.15. Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §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 rule of court. 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 destructions, of Class Data.
- 13.16. 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.
- 13.17. 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.
- 13.18. 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

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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, Esq.  
David Garrett, Esq.  
Min Ji Gal, Esq.  
HARRIS & RUBLE  
655 North Central Avenue 17th Floor  
Glendale California 91203

To Defendants:

Stephen L. Berry, Esq.  
Blake R. Bertagna, Esq.  
Paul Hastings LLP  
695 Town Center Drive, 17th Floor  
Costa Mesa, California 92626

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- 13.19. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (*i.e.* by 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.
- 13.20. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation in the Action and the Appeal 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 CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

**PLAINTIFFS AND CLASS REPRESENTATIVES:**

Dated: By: \_\_\_\_\_  
JEROME DIVINITY

Dated: By: \_\_\_\_\_  
PAUL SCHWANKE

Dated: By: \_\_\_\_\_  
RYAN BASAKER

Dated: By: \_\_\_\_\_  
MICHAEL GRAHAM

**CLASS COUNSEL:**

Dated: HARRIS & RUBLE  
By: \_\_\_\_\_  
ALAN HARRIS

**DEFENDANTS:**

Dated: PACIFIC 2.1 ENTERTAINMENT GROUP, INC.  
By: \_\_\_\_\_  
Name: \_\_\_\_\_

Dated: MINIM PRODUCTIONS, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Dated: ABC SIGNATURE STUDIOS, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

**DEFENSE COUNSEL:**

Dated: PAUL HASTINGS LLP

By: \_\_\_\_\_  
STEPHEN L. BERRY



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

*Jerome Divinity, et al. v. Pacific 2.1 Entertainment Group, Inc., et al.*  
(Los Angeles Superior Court Case No. 20STCV32700)

***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 defendants Pacific 2.1 Entertainment Group, Inc., Minim Productions, Inc., and ABC Signature Studios, Inc. ("Defendants") for alleged wage and hour violations, as well as claims for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) ("PAGA"). The Action consolidates four separate actions was initially filed by former employees of Defendants, Jerome Divinity, Paul Schwanke, Ryan Basaker, and Michael Graham (collectively, "Plaintiffs").

The Action seeks payment for alleged wage and hour violations that occurred during the "Class Period," which means the period for identifying Class Members only, and not for defining the periods of the releases applicable to the Released Class Claims, which starts from (1) August 27, 2016 for any Class Member formerly or currently employed by Pacific 2.1, (2) October 22, 2016 any Class Member formerly or currently employed by Minim, and (3) January 3, 2018 for any Class Member formerly or currently employed by ABC Signature, and continuing through the earlier of the date of preliminary court approval of this Settlement (as defined below), or the date on which the number of Class Members exceeds 21,500.

"Class" means all persons employed by one or more of the Defendants in California in a non-exempt position who worked for Defendants during the Class Period.

The Action also seeks penalties on behalf of Aggrieved Employees for alleged wage and hour violations that occurred during the "PAGA Period," which means the period for identifying Aggrieved Employees only, and not for defining the period of the releases applicable to the Released PAGA Claims, which the period starts from (1) August 27, 2019 for any Aggrieved Employees formerly or currently employed by Pacific 2.1, (2) October 22, 2019 for any Aggrieved Employees formerly or currently employed by Minim, and (3) January 3, 2021 for any Aggrieved Employees formerly or currently employed by ABC Signature and continuing through the earlier of the date of preliminary court approval of this Settlement (as defined below), or the date on which the number of Class Members across all three Class Periods exceeds 21,500. The PAGA Period for any Aggrieved Employee employed by one or more of the Defendants shall commence based on the earliest of the preceding dates that applies to the Aggrieved Employee.

Plaintiffs and Defendants have reached a proposed settlement under which you may be entitled to receive money. The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendants to fund Individual Class Payments, and (2) a PAGA Settlement requiring Defendants to fund Individual PAGA Payments and pay penalties to the California Labor and

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<object><object>¶  
\_\_ Counsel For Plaintiff \_\_ Counsel For XYZ¶  
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\_\_ ("Plaintiff") and seeks payment of (1) back wages [and other relief]

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Workforce Development Agency (“LWDA”).

Based on Defendants’ records you worked a total of \_\_\_\_\_ class pay periods and PAGA pay periods with one or more of Defendants, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$\_\_\_\_\_ (less withholding) and your Individual PAGA Payment is estimated to be \$\_\_\_\_\_.**

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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 Defendants’ records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.)

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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.

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The above estimates are based on XYZ’s records showing that **you worked \_\_ workweeks** during the Class Period and **you worked \_\_ workweeks** during the PAGA Period. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.¶

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If you are a Class Member or an Aggrieved Employee as defined above, 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.

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(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, you will receive an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

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

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## SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

<b>You Don't Have to Do Anything to Participate in the Settlement</b>	<p>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).</p>
<b>You Can Opt-out of the Class Settlement but not the PAGA Settlement</b>  <b>The Opt-out Deadline is</b> _____	<p>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.</p> <p>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 the PAGA claims listed in Section 10 of this Notice.</p>
<b>Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement</b>  <b>Written Objections Must be Submitted by</b> _____	<p>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 Plaintiffs if you think they are unreasonable. See Section 7 of this Notice.</p>
<b>You Can Participate in the _____ Final Approval Hearing</b>	<p>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.</p>
<b>You Can Challenge the Calculation of your Payment</b>  <b>Written Challenges Must be Submitted by</b> _____	<p>The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many Pay Periods you worked during the Class Period. The number of Class Pay Periods and/or PAGA Pay Periods you worked according to Defendants' records is stated above. If you disagree with either of this number, you must challenge it by _____.</p>

### 1. WHAT IS THE ACTION ABOUT?

Plaintiffs are former employees who worked on Defendants' productions. The Action accuses Defendants of violating California labor laws by failing to pay overtime wages, minimum wages, wages due upon termination, and reimbursable expenses, and failing to provide meal periods, rest breaks and accurate itemized wage statements. Based on the same claims, Plaintiffs have also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) ("PAGA"). Plaintiffs are represented by attorneys in the Action: 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 contend they 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 Lynn Frank, in an effort to resolve the Action by negotiating an end to the case by agreement (settlement of the case) rather than continuing the expensive and time-consuming process of litigation. The Parties subsequently settled the matter after the mediation. 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. Defendants Will Pay \$2,250,000 as the Gross Settlement Amount (Gross Settlement). Defendants have 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 attorney's fees and expenses, the Administrator's expenses, and a payment to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, Defendants 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:

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A. Up to \$ \$750,000 (33-1/3% of the Gross Settlement) to Class Counsel for attorneys' fees and up to \$25,000.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.

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B. Up to \$5,000 each to Jerome Divinity, Paul Schwanke, Ryan Basaker, and Michael Graham as a Class Representative Award for filing their lawsuits, 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 Payment and any Individual PAGA Payment.

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C. Up to \$88,750 to the Administrator for services administering the Settlement.

D. Up to \$40,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% 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"). Participating Class Members will receive their pro rata share of the Net Settlement Amount calculated according to the number of Class Pay Periods worked by the Class Member during the applicable Class Period as compared to the total number of Class Pay Periods worked by all Class Members, provided, however, that no participating Class Member receives a payment of less than \$10.00.

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Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.¶  
Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.¶  
¶

4. Taxes Owed on Payments to Class Members. Plaintiffs and Defendants are asking the Court to approve an allocation of 20% of each Participating Class Member's payment of his/her/their pro rata share of the Net Settlement Amount to settlement of wage claims (the "Wage Portion"), and 80% of each Participating Class Member's payment of his/her/their pro rata share of the Net Settlement Amount to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. Defendants will separately pay the employer payroll taxes owed on the Wage Portions. The Non-Wage Portions are not subject to tax withholdings. The Individual PAGA Payments also are for settlement of claims for penalties. The Administrator will report the Non-Wage Portions of the Individual Class Payments and the Individual PAGA Payments on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

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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.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and/or Individual PAGA Payments will show the date when the check

expires (the void date). If you don't cash it by the void date, the monies will no longer be available to you.

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 the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed), that you wish to opt-out. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her/their representative setting forth the Class Member's name, present address, telephone number, and a simple statement of a desire 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) will still receive an Individual PAGA Payment 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, CPT Group Inc. (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges over Class Pay Periods and PAGA Pay Periods, 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. Participating Class Members' Release. After the Judgment is final and Defendants have fully funded the Gross Settlement, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, or be part of another lawsuit against Defendants or their related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members, including those who also are Aggrieved Employees, will be bound by the following release:

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 all claims that were

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will be deposited with the California Controller's Unclaimed Property Fund in your name.¶  
will irrevocably lost

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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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alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action, including claims for (i) failure to pay wages, including unpaid minimum wages and overtime premium pay; (ii) failure to correctly calculate the regular rate for overtime pay and/or payments for non-complaint meal and/or rest periods; (iii) failure to provide meal and/or rest periods in accordance with applicable law, including payments for meal and/or rest periods; (iv) unreimbursed business expenses; (v) failure to timely pay wages, both during employment and upon termination of employment; (vi) failure to provide accurate itemized wage statements; and (vii) all civil and statutory penalties, including PAGA penalties, arising during the period from August 27, 2016 through seven days prior to final approval (“Class Release Period”). 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 Release Period.

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10. PAGA Release by Non-Participating Class Members Who Are Aggrieved Employees. After the Court’s judgment is final, and Defendants have paid the Gross Settlement (and separately paid the employer-side payroll taxes), all Non-Participating Class Members who are Aggrieved Employees will be barred from asserting PAGA claims against Defendants, despite excluding themselves from the Settlement. This means that all Aggrieved Employees, who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Defendants or their related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

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The Aggrieved Employees’ Releases for Non-Participating Class Members are as follows:

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All Non-Participating Class Members who are Aggrieved Employees 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, the PAGA Notice, and ascertained in the course of the Action, including PAGA penalties for (i) failure to pay wages, including unpaid minimum wages and overtime premium pay; (ii) failure to correctly calculate the regular rate for overtime pay and/or payments for non-complaint meal and/or rest periods; (iii) failure to provide meal and/or rest periods in accordance with applicable law, including payments for meal and/or rest periods; (iv) unreimbursed business expenses; (v) failure to timely pay wages, both during employment and upon termination of employment; and (vi) failure to provide accurate itemized wage statements arising during the period from August 27, 2019 through seven days prior to final approval (“PAGA Release Period”).

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#### 4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

(1) Individual Class Payments. The Administrator will calculate Individual Class Payments as follows: All Participating Class Members will receive a minimum payment equal to \$10.00. The remaining Net Settlement Amount will be distributed pro rata according to the number of Class Pay Periods worked by the Class Member during the applicable Class Period as compared to the total number of Class Pay Periods worked by all Class Members.

2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments as follows: All Class Members who are Aggrieved Employees will receive their pro rata share of 25% of the PAGA Penalties payment.

3. Challenges to Number of Class Pay Periods and PAGA Pay Periods. You 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 Pay Periods and PAGA Pay Periods attributed to you. You may challenge the determination and/or calculation by communicating with the Administrator via email or mail. You cannot appeal or otherwise challenge the Administrator's decision.

#### 5. HOW WILL I GET PAID?

(1) Participating Class Members. The Administrator will send payments by U.S. mail to every Participating Class Member (i.e., every Class Member who doesn't opt-out), including those who also qualify as Aggrieved Employees. The Non-Wage Portion of the Individual Class Payment and the Individual PAGA Payment will be combined and paid in a single check.

(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(s) 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 to be excluded. Be sure to personally sign your request, identify the Action as Jerome Divinity v. Pacific 2.1 Entertainment Group, Inc., a Delaware Corporation, et al., Los Angeles Superior Court Case No. 20STCV32700, 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

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**Deleted:** and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.

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Workweek/Pay Period

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deciding whether to object, you may wish to see what Plaintiffs and Defendants are asking the Court to approve. At least \_\_\_\_\_ days before the Final Approval Hearing on [date], 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, adequate and reasonable, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiffs are requesting as a Class Representative Service Award. 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 \_\_\_\_\_.

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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 Award 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 \_\_\_\_\_.** 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 *Jerome Divinity v. Pacific 2.1 Entertainment Group, Inc., a Delaware Corporation, et al.*, Los Angeles Superior Court Case No. 20STCV32700 and include your name, current address, telephone number, and approximate dates of employment for Defendants and sign the objection. Section 9 of this Notice has the Administrator's contact information.

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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.

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## 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 7 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.

## 9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendants and Plaintiffs have promised to do under the proposed Settlement. You can read the Agreement, the Judgment or any other

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Settlement documents by going to the Administrator's Website 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> and entering the Case Number for the Action, Case No. 20STCV32700. 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:

Name of Attorney: Alan Harris; David Garrett; Min Ji Gal

Email Address: [harrisa@harrisandruble.com](mailto:harrisa@harrisandruble.com); [dgarrett@HarrisandRuble.com](mailto:dgarrett@HarrisandRuble.com) [mgal@HarrisandRuble.com](mailto:mgal@HarrisandRuble.com)

Name of Firm: HARRIS & RUBLE

Mailing Address: 655 North Central Avenue, 17th Floor, Glendale, CA 91203

Telephone:

Settlement Administrator:

Name of Company: CPT Group Inc.

Email Address:

Mailing Address: 50 Corporate Park, Irvine, CA 92606

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.

**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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you will have no way to recover the money.¶

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<sup>i</sup> 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.¶

<sup>ii</sup> 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 v. Superior Court* (2014) 228 Cal.App.4th 81, 94–95, internal quotation marks omitted.)¶

<sup>iii</sup> See endnote ii above.¶

<sup>iv</sup> The Parties may need to tailor this language to pay periods or shifts depending on the facts of the case.¶

<sup>v</sup> The Parties are free to negotiate a payment plan structure, if appropriate, and payment deadlines may fall earlier as necessary thereto.¶

<sup>vi</sup> Note that this is not the only possible appropriate breakdown depending on the claims at issue in the case (e.g. a settlement that is solely a Labor Code Section 226(a) claim.)¶

<sup>vii</sup> Insert negotiated terms, if any, addressing the possibility that XYZ's estimates of class size, Workweeks or Pay Periods turn out to be understated such as an ADR clause imposing a duty to engage in good faith negotiations or mediation or an "escalator" clause memorializing XYZ's ...

# Exhibit 3

## PAGA NOTICE PUBLIC SEARCH - CASE DETAIL

### Case Information

**Case Number:** LWDA-CM-840806-21  
**Plaintiff for PAGA Case:** Scott Vostad, Patricia Stout, James Stout, Michael Peterson, Michael Graham, Jerome Divinity  
**Filer/Attorney for PAGA Case:** Min Ji Gal  
**Law Firm for PAGA Plaintiff:** Harris & Ruble  
**Employer:** ABC Signature Studios, Inc.  
**Date Case Received:**  
**Filer for Employer:**  
**Employer Filer Firm:**  
**Court Type:**  
**Court Name:** Los Angeles  
**PAGA Court Case Number:** 22STCV00192  
**Violation Type:**  
**Related BOFE Case:**

### Attachments

Attachment Name	Description	Date Submitted	Type
Court Complaint Submitted on 12/22/2022 06:55:08 PM by Min Ji Gal	2022-10-30 Consolidated Pac Minim ABC SS Complaint 2202.pdf	12/23/2022 2:55 AM	Court Complaint
Proposed Settlement Submitted on 12/22/2022 07:08:52 PM by Min Ji Gal	Harris Decl Ex 1 - Pac 2.1 Fully Executed Agreement.PDF	12/23/2022 3:08 AM	Proposed Settlement

## PAGA NOTICE PUBLIC SEARCH - CASE DETAIL

### Case Information

**Case Number:** LWDA-CM-818283-21  
**Plaintiff for PAGA Case:** Stuart Ablaza, M. R. Basaker  
**Filer/Attorney for PAGA Case:** Tom Brennan  
**Law Firm for PAGA Plaintiff:** Harris & Ruble  
**Employer:** Minim Productions, Inc.  
**Date Case Received:**  
**Filer for Employer:**  
**Employer Filer Firm:**  
**Court Type:** California Superior Courts  
**Court Name:** Los Angeles  
**PAGA Court Case Number:** 21STCV41363  
**Violation Type:**  
**Related BOFE Case:**

### Attachments

Attachment Name	Description	Date Submitted	Type
Court Complaint Submitted on 12/22/2022 06:54:24 PM by Min Ji Gal	2022-10-30 Consolidated Pac Minim ABC SS Complaint 2202.pdf	12/23/2022 2:54 AM	Court Complaint
Proposed Settlement Submitted on 12/22/2022 07:07:42 PM by Min Ji Gal	Harris Decl Ex 1 - Pac 2.1 Fully Executed Agreement.PDF	12/23/2022 3:07 AM	Proposed Settlement

## PAGA NOTICE PUBLIC SEARCH - CASE DETAIL

### Case Information

**Case Number:** LWDA-CM-807306-20  
**Plaintiff for PAGA Case:** P Schwanke  
**Filer/Attorney for PAGA Case:** Min Ji Gal  
**Law Firm for PAGA Plaintiff:** Harris and Ruble  
**Employer:** Minim Productions, Inc.  
**Date Case Received:**  
**Filer for Employer:**  
**Employer Filer Firm:**  
**Court Type:**  
**Court Name:** Los Angeles  
**PAGA Court Case Number:** 20STCV40597  
**Violation Type:**  
**Related BOFE Case:**

### Attachments

Attachment Name	Description	Date Submitted	Type
Court Complaint Submitted on 12/22/2022 06:53:23 PM by Min Ji Gal	2022-10-30 Consolidated Pac Minim ABC SS Complaint 2202.pdf	12/23/2022 2:53 AM	Court Complaint
Proposed Settlement Submitted on 12/22/2022 07:06:09 PM by Min Ji Gal	Harris Decl Ex 1 - Pac 2.1 Fully Executed Agreement.PDF	12/23/2022 3:06 AM	Proposed Settlement

## PAGA NOTICE PUBLIC SEARCH - CASE DETAIL

### Case Information

**Case Number:** LWDA-CM-808483-20  
**Plaintiff for PAGA Case:** Jerome Divinity  
**Filer/Attorney for PAGA Case:** Lin Zhan  
**Law Firm for PAGA Plaintiff:** Harris & Ruble  
**Employer:** Pacific 2.1 Entertainment Group, Inc.  
**Date Case Received:**  
**Filer for Employer:**  
**Employer Filer Firm:**  
**Court Type:** California Superior Courts  
**Court Name:** Los Angeles  
**PAGA Court Case Number:** 20STCV32700  
**Violation Type:**  
**Related BOFE Case:**

### Attachments

Attachment Name	Description	Date Submitted	Type
Court Complaint Submitted on 10/07/2020 03:45:27 PM by Lin	2020-8-27 Divinity v. Pac 2.1 Complaint (conformed).pdf	10/7/2020 10:45 PM	Court Complaint
Court Complaint Submitted on 12/16/2020 12:54:57 PM by Tom	2020-8-27 Divinity v. Pac 2.1 Complaint (conformed).pdf	12/16/2020 8:54 PM	Court Complaint
Court Complaint Submitted on 12/22/2022 06:51:30 PM by Min Ji Gal	2022-10-30 Consolidated Pac Minim ABC SS Complaint 2202.pdf	12/23/2022 2:51 AM	Court Complaint
Proposed Settlement Submitted on 12/22/2022 07:04:59 PM by Min Ji Gal	Harris Decl Ex 1 - Pac 2.1 Fully Executed Agreement.PDF	12/23/2022 3:05 AM	Proposed Settlement

# Exhibit 4



# HARRIS & RUBLE

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***SUBMITTED ONLINE***

September 22, 2020

California Labor & Workforce Development Agency

Re: *Schwanke v. Minim Productions, Inc. et al.* – PAGA Notice

To whom it may concern:

Pursuant to the applicable provisions of the California Labor Code Private Attorneys General Act, Paul Schwanke (“Plaintiff”) hereby alleges with respect to his employment with Minim Productions, Inc. and Does 1 to 10 (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”).

Defendant Minim Productions, Inc (“Minim”) is a California Corporation, which at all times relevant herein, conducted business within the County of Los Angeles of the State of California. Plaintiff is 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. Plaintiff 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. Plaintiff is 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 Plaintiff and other employees.

On or about January of 2019, Defendants hired cast and crew members on a motion picture production of a television series entitled “Legion aka Clubhouse” (the “Production”). Many other such productions were produced in California. Plaintiff and other crew members worked on the Production but were paid certain of their wages late. Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of a group of Aggrieved Employees defined as: Plaintiff and/or other persons who performed services as nonexempt workers on the Production or other such projects produced in California by Defendant Minim (“Aggrieved Employees”).

Plaintiff and other Aggrieved Employees worked many hours on the Production and other projects but were not timely paid for their work, or paid certain sums at all. Plaintiff contends that the Labor Code sections listed below and the Applicable Wage Order enables Plaintiff 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.

Plaintiff 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. 4<sup>th</sup> 969 (2009) and Huff v. Securitas Sec'y Servs. USA, Inc., 23 Cal. App. 5th 745, 756 (2018). Plaintiff 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. Plaintiff has not been provided with an opportunity to inspect or copy all payroll records within 21 days of request. Upon information and belief, other 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. Plaintiff has not been provided with an opportunity to inspect or copy all personnel records within 30 days of request. Upon information and belief, other 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 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 Plaintiff and all Aggrieved Employees all wages for a biweekly payroll period within 7 calendar days following the close of the payroll period in violation of Code §§ 204(d) and 210. Plaintiff and all 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.

**4. Failure to pay wages and/or final wages in violation of Code §§ 201.5 and 203.**

With respect to violations of Code § 201.5, 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, Plaintiff and Aggrieved Employees were not timely paid all wages due upon their separation from Defendants’ employ. For example, Plaintiff was not paid all accrued wages with is last paycheck. As such, Defendants failed to pay Plaintiff 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.

**5. 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 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.
- b. The wage statements failed to include, among other required information, the “net wages earned”
- c. 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 dates worked and do not show the start and end date for each pay period.
- d. 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” such as the “Overtime Premium” rate.

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.

**6. 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.

**7. 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, Plaintiff Schwanke worked over 6 or 12 hours in a day but was not provided with compliant meal breaks and was not otherwise compensated. Aggrieved Employees were not permitted to leave the set of the Production for meal periods.

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.

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.

**8. 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. Plaintiff was 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, Plaintiff 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.

**9. 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 Plaintiff and Aggrieved Employees the cost of using their personal cell phones for business related purposes. Defendants required that Plaintiff 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.

**10. 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, Plaintiff 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 did not record actual hours and failed to pay for all time worked.
2. Defendants failure to pay for all time spent driving/and or travelling from site to site.
3. Defendants' failure to calculate the correct overtime rate under Code § 515.
4. Aggrieved Employees routinely work "off the clock" to attend mandatory meetings beyond their scheduled call time.
5. Plaintiff 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.

**11. 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.

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 Plaintiff Schwanke may seek a civil-penalty recovery for the alleged violations under the Labor Code Private Attorneys General Act through his private counsel.

Very truly yours,

*/s/ Alan Harris*

Alan Harris

Cc: (Via Certified Mail) Minim Productions, Inc. c/o CSC Lawyers Incorporating Service, 2710 Gateway Oaks Drive, Ste. 150N, Sacramento, CA 95833.

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***SUBMITTED ONLINE***

October 1, 2020

California Labor & Workforce Development Agency

Re: *Jerome Divinity v. Pacific 2.1 Entertainment Group, Inc. et al.* – PAGA Notice

To whom it may concern:

Pursuant to the applicable provisions of the California Labor Code Private Attorneys General Act, Plaintiff Jerome Divinity hereby alleges with respect to his employment with Pacific 2.1 Entertainment Group, Inc. and James M Kapenstein (collectively, “Defendants”), that Defendants violated provisions of the California Labor Code. The facts and circumstances concerning the alleged violations are outlined in the enclosed Complaint.

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

Very truly yours,



Alan Harris  
Enclosures

Cc: (Via Certified Mail) Pacific 2.1 Entertainment Group, Inc., CSC - Lawyers Incorporating Service, 2710 Gateway Oaks Drive Ste 150N, Sacramento, CA 95833; James M Kapenstein, 357 N Formosa Ave, Los Angeles, CA 90036-2526.

# HARRIS & RUBLE

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***SUBMITTED ONLINE***

January 7, 2021

California Labor & Workforce Development Agency

Re: *Basaker v. Minim Productions, Inc. et al.* – PAGA Notice

To whom it may concern:

Pursuant to the applicable provisions of the California Labor Code Private Attorneys General Act (“PAGA”), Stuart Ablaza and M. R. Basaker (“Plaintiffs”) hereby allege with respect to their employment with Minim Productions, Inc.. and Does 1 to 10 (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”).

Defendant Minim Productions, Inc. (“Minim”) is a California Corporation, 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 fall of 2020, Defendants employed cast and crew members on a motion picture production (as defined under Labor Code § 201.5) of filmed entertainment entitled “Snowfall” a television series (the “Production”). Many other such motion picture productions were produced in California. 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 Defendant during the period from one year prior to the filing of the PAGA Notice until this case is resolved (“Aggrieved Employees”).

Plaintiffs and other Aggrieved Employees worked many hours on the Production and other projects but were not timely paid for their work, or paid certain sums at all. In fact, as of the filing hereof, Plaintiff Basaker has yet to be paid his wages for his work on the Production. In addition, Defendants, failed to provide them wage statements with the information required by Labor Code section 226(a), and did not properly compensate Plaintiffs and Aggrieved Employees for overtime, as the overtime rate was improperly calculated.

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. 4<sup>th</sup> 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. Plaintiffs 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 §§ 201.5 and 203.**

With respect to violations of Code § 201.5, 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. For example, Plaintiff Basaker is still unpaid for his work on the Production despite requesting payment. 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. 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.

**7. 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. Many Aggrieved Employees did not receive a wage statement all.
- b. 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”
- c. 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”

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.

**8. 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 Plaintiff Basaker and many 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.”

**9. 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 production set for meal periods.

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, were interrupted with work, took meal periods late, 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.

#### **10. 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.

#### **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, traffic management 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.

**11. 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 failure to pay for all time spent driving/and or travelling from site to site.
2. Defendants' failure to calculate the correct overtime rate under Code § 515.
3. 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.

**12. 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.

**13. 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.

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

Very truly yours,

/s/ Alan Harris

Alan Harris

Cc: (Via Certified Mail) Minim Productions, Inc. c/o Stephen Berry, Paul Hastings, LLP, 695 Town Center Drive, 17<sup>th</sup> Floor, Costa Mesa, CA 92626

# HARRIS & RUBLE

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***SUBMITTED ONLINE***

August 9, 2021

California Labor & Workforce Development Agency

Re: *Vostad v. ABC Signature Studios, Inc.. et al.* – PAGA Notice

To whom it may concern:

Pursuant to the applicable provisions of the California Labor Code Private Attorneys General Act (“PAGA”), Scott Vostad, Patricia Stout, James Stout, Michael Peterson, Michael Graham and Jerome Divinity (“Plaintiffs”) hereby allege with respect to their employment with ABC Signature Studios, Inc. and Does 1 to 10 (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”).

Defendant ABC Signature Studios, Inc. is a Delaware Corporation, 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 December 2019 to on or about January 2021, Defendants employed cast and crew members on a motion picture production (as defined under Labor Code § 201.5) of a television show entitled “Rebel” (the “Production”). Many other such productions were produced in California. 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 during the period from one year prior to the filing of the PAGA Notice until this case is resolved (“Aggrieved Employees”).

Plaintiffs and other Aggrieved Employees worked many hours on the Production and other projects but were not timely paid for their work, or paid certain sums at all. In addition, Defendants failed to provide them wage statements with the information required by Labor Code section 226(a), and did not properly compensate Plaintiffs and Aggrieved Employees for minimum wages and overtime.

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. 4<sup>th</sup> 969 (2009) and Huff v. Securitas Sec’y Servs. USA, Inc., 23 Cal. App. 5<sup>th</sup> 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. Plaintiffs 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 §§ 201.5 and 203.**

With respect to violations of Code § 201.5, 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, “all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item”
- b. 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”

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 compliant 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 production set for meal periods.

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 deducting 30 minutes from a shift that Plaintiffs and the Aggrieved Employees worked. This 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.

#### **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 traffic management/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.

#### **13. 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 did not record actual hours and failed to pay for all time worked.

2. 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.

**14. 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.

**15. 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.

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

Upon information and belief, pursuant to Code § 551 Defendants failed to provide 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.

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 Vostad, Stout, Stout, Peterson, Graham and Divinity may seek a civil-penalty recovery for the alleged violations under the Labor Code Private Attorneys General Act through private counsel.

Very truly yours,

*/s/ Alan Harris*

Alan Harris

Cc: (Via Certified Mail) ABC Signature Studios, Inc., c/o 2710 Gateway Oaks Drive, Ste. 150N, Sacramento, CA 95833

**PROOF OF SERVICE**

I am an attorney for Plaintiff 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 December 22, 2022, I served the within document(s):

**DECLARATION OF ALAN HARRIS IN SUPPORT OF PLAINTIFF'S 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:

Stephen L. Berry (SBN 101576)

Blake Bertagna (SBN 273069)

**PAUL HASTINGS LLP**

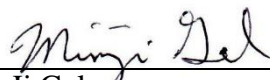
695 Town Center Dr. 17<sup>th</sup> Fl.

Costa Mesa, CA 92626

Tel: (714) 668-6200

Fax: (714) 668-6346

I declare under penalty of perjury that the above is true and correct. Executed on December 22, 2022, at Los Angeles, California.

  
Min Ji Gal