

FILED
Superior Court of California
County of Los Angeles

JUN 01 2023

David W. Slayton, Executive Officer/Clerk of Court
By: N. Navarro, Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

OMAR PENA, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

SHOWTIME PICTURES
DEVELOPMENT CO.; and DOE 1 through
and including DOE 10

Defendants.

Case No.: 21STCV44755

ms
[TENTATIVE] ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT ON CONDITIONS

Date: June 1, 2023
Time: 9:00 a.m.
Dept.: SSC-17

JAVIER SANCHEZ CORTES, as an
individual and on behalf of other similarly
situated employees,

Plaintiff,

v.

POSSIBLE PRODUCTIONS, INC., a
California corporation, SHOWTIME
NETWORKS, INC., a California
corporation, SHOWTIME PICTURES

1 DEVELOPMENT CO., a California
corporation, and DOES 1-50, inclusive,

2 Defendant
3

4 **I. BACKGROUND**
5

6 This is a wage and hour class action and law enforcement action under the
7 California Labor Code Private Attorneys General Act (“PAGA”). Plaintiffs Omar Pena,
8 Javier Sanchez Cortes, Mark Horton and Douglas Workman bring this action against
9 Defendants Possible Productions, Inc. (“Possible”), Showtime Networks, Inc.
10 (“Showtime Network”) and Showtime Pictures Development Co. (“Showtime
11 Pictures”). Showtime Networks Inc. is an American entertainment company that
12 oversees the company's premium cable television channels. Possible is a motion picture
13 production company.

14 On December 8, 2021, Plaintiff Pena filed this case seeking relief under the
15 California Labor Code (the “Code”) on account of unpaid wages, damages, continuing
16 wages, liquidated damages, penalties, restitution and attorneys’ fees and costs for the
17 following causes of action: (1) Cal. Lab. Code §§ 201.5 and 203, Continuing Wages;
18 (2) Cal. Lab. Code § 226(a), Failure to Provide Compliant Pay Stubs; (3) Cal Lab. Code
19 §§ 1194, 1197 and 1197.1, Failure to Pay Minimum Wages; (4) Cal. Lab. Code § 226.7,
20 Failure to Provide Rest Breaks; (5) Cal. Bus. & Prof. Code § 17200, Unfair
21 Competition; (6) Cal. Lab. Code § 226(b), Failure to Provide Employment Records; (7)
22 Cal. Lab. Code § 1198.5, Failure to Provide Employment Records; and (8) Cal. Lab.
23 Code §2698 et seq., PAGA.

24 Plaintiff Pena alleged that Defendants employed Plaintiff and others as crew
25 members for a Motion Picture entitled “The L Word: Generation Q” (the “Production”).

1 Plaintiff Pena contended that he and the other putative class members were not paid
2 timely final wages and provided proper breaks, among other wage and hour causes of
3 action. On April 7, 2022, Plaintiff Cortes filed his case against Defendants for work on
4 the Production, alleging virtually identical claims as Pena. Because Pena and Cortes
5 worked on Season 1 and/or Season 2 of the Production, Plaintiffs seek to add Workman
6 and Horton as additional named plaintiffs to represent the crew members who worked
7 on Season 3 of the Production. Both Workman and Horton worked as crew members
8 on Season 3 of the Production and allege that they paid late, among other allegations
9 virtually identical to those of Pena and Cortes. The cases were related by the Court on
10 July 7, 2022. The cases were consolidated on September 30, 2022.

11 Counsel represent that prior to mediation, Plaintiffs' Counsel retained an expert,
12 Joseph Pohlot ("Pohlot") of Berkeley Research Group ("BRG") to review payroll
13 records for all Class Members (not just a sample), and prepared a damages analysis.
14 Counsel represent to retaining another wage and hour expert Jon Katzman
15 ("Katzman"), to analyze the reasonableness of the Settlement. Katzman is a former
16 production executive at NBC, Warner Brothers and New Regency whose extensive
17 experience allowed him to assist in analysis of payroll procedures, defenses and
18 potential liability. Katzman not only provided financial analysis, but also a real-world
19 nuts-and-bolts examination of the physical productions vis-à-vis alleged labor
20 violations.

21 In addition to the payroll data provided, class counsel state that they conducted
22 interviews with class members, reviewed payroll documents for Plaintiffs obtained
23 through Labor Code section 226/1198.5 requests and other potential class members, as
24 well as collective bargaining agreement for the applicable unions. Plaintiff's counsel
25 reviewed personnel handbooks provided to crew members by Defendants which

1 detailed its procedures for complying with California labor laws. Plaintiffs also
2 searched publicly available Film Permits from FilmLA for Defendant, which Plaintiff's
3 counsel utilized to cross-check the class data. Through the film permits, Plaintiff's
4 counsel was able to ascertain shooting dates for the Production and number of crew
5 members for each production, which could be used to verify data supplied by
6 Defendant. Plaintiff's counsel did detailed research of public records on Defendant,
7 Releasees and its principals, including property reports, asset searches, business filings
8 with the California Secretary of State, Westlaw company profiles and even federal
9 records regarding the amount of Paycheck Protection Program ("PPP") loans received
10 by Defendant (if any) during the pandemic.

11 Counsel represent that the parties were able to meet and confer over several
12 months regarding the issues, after which they scheduled a mediation with experienced
13 wage and hour mediator Hon. Charles (Tim) McCoy (Ret.). According to Counsel,
14 while the parties did not resolve the case on the day of mediation, settlement
15 discussions continued for several weeks under the guidance of the mediator, ultimately
16 leading to a settlement. A fully executed copy of the Settlement Agreement is attached
17 to the Declaration of Alan Harris (Harris Decl.) as "Exhibit 1".

18 Now before the Court is Plaintiffs' motion for preliminary approval of the
19 settlement. For the reasons set forth below, the Court preliminarily grants approval for
20 the settlement on condition that the parties address the following :

- 21 1. If notice will be given in English only, explain why this is sufficient.
- 22 2. Provide information in connection with the final approval hearing regarding
23 how the fee splitting agreement will apportion fees between each firm. (*Mark*
24
25

1 *v. Spencer* (2008) 166 Cal.App.4th 219; Rules Prof. Conduct, rule 1.5.1; Cal.
2 Rules of Court, rule 3.769.)

3
4 **II. THE TERMS OF THE SETTLEMENT**

5 **A. SETTLEMENT CLASS AND RELATED DEFINITIONS**

6 "Class" means all below-the-line, non-exempt production crew employees who were
7 employed by one of the Defendants and worked on Seasons 1, 2, and 3 of the
8 production of *The L Word: Generation Q* between December 8, 2017 and the earlier of
9 April 10, 2023 or date of the entry of the Preliminary Approval Order (Settlement
10 Agreement, ¶1.5).

- 11 • "Class Member" or "Settlement Class Member" means a member of the Class, as
12 either a Participating Class Member or Non-Participating Class Member
13 (including a Non-Participating Class Member who qualifies as an Aggrieved
14 Employee) (¶1.9).
- 15 • "Class Period" means the period from December 8, 2017 to the earlier of April
16 10, 2023 or the date of the entry of the Preliminary Approval Order (¶1.12).

17
18 "Aggrieved Employee(s)" means all below-the-line, non-exempt production crew
19 employees who were employed by one of the Defendants and worked on Seasons 1, 2,
20 and/or 3 of the production of *The L Word: Generation Q* between December 8, 2017,
21 and the earlier of April 10, 2023 or the date of the entry of the Preliminary Approval
22 Order.

- 23 • "PAGA Period" means the period from December 8, 2020 to the earlier of April
24 10, 2023 or date of the entry of the Preliminary Approval Order (¶1.30).
- 25

- 1 • Based on a review of its records to date, Defendants estimate there are 2,295
2 Class Members who collectively worked a total of 23,119 Workweeks during the
3 Class Period, and 1,499 Aggrieved Employees who collectively worked a total
4 14,733 of Workweeks during the PAGA Period (¶4.1).

5
6
7 **B. THE MONETARY TERMS OF SETTLEMENT**

8 The essential monetary terms are as follows:

- 9 • The Gross Settlement Amount (“GSA”) is **\$450,000** (¶3.1). This includes
10 payment of a PAGA penalty of **\$22,500** to be paid 75% to the Labor and
11 Workforce Development Agency (“LWDA”) (\$16,875) and 25% to the
12 Aggrieved Employees (\$5,625) (¶3.2.4).
- 13 ○ Escalator Clause/Plaintiffs’ Right to Withdraw: Based on its records,
14 Defendants estimate that, as of the date of this Settlement Agreement,
15 there are 2,295 Class Members and 23,119 total Workweeks worked by
16 Class members during the Class Period. If the total number of
17 Workweeks conveyed to the Administrator during the Class Period are
18 more than 5% greater than the amounts stated, Defendants will have the
19 option of increasing the Gross Settlement Amount based on the updated
20 number of Workweeks. If Defendants elect not to do so, Plaintiff can
21 withdraw from the settlement, and the Parties will proceed to status quo
22 ante as to the class and PAGA claims (¶8).
- 23 • The Net Settlement Amount (“Net”) (**\$218,125**) is the GSA less:
- 24 ○ Up to **\$150,000** (33%) for attorney fees (¶3.2.2);
- 25

- 1 ▪ Fee Split: Harris & Ruble, Capstone Law APC, and Jackson APC have
2 entered into a Joint Prosecution Agreement (“JPA”). All Plaintiffs and
3 putative plaintiffs have consented in writing to the JPA pursuant to
4 California Rules of Professional Conduct Rule 1.5. Plaintiffs were
5 advised in writing and understand that the total fee charged will not be
6 increased solely by reason of the division of fees. (Harris Decl., ¶32.)
- 7 ○ Up to **\$25,000** for attorney costs (¶3.2.2);
 - 8 ○ Up to **\$20,000** for service awards to the proposed class representatives
9 \$5,000 to the 4 Named Plaintiffs) (¶3.2.1); and
 - 10 ○ Estimated **\$20,000** for settlement administration costs (¶3.2.3).
- 11 • Employer-side payroll taxes will be paid by the Defendant. (¶3.1).
 - 12 • Assuming the Court approves all maximum requested deductions, approximately
13 \$218,125 will be available for automatic distribution to participating class
14 members. Assuming full participation, the average settlement share will be
15 approximately \$95.04. ($\$218,125 \text{ Net} \div 2,295 \text{ class members} = \95.04). In
16 addition, each PAGA member will receive a portion of the PAGA penalty,
17 estimated to be \$3.75 per PAGA member. ($\$5,625.00 \text{ or } 25\% \text{ of } \$22,500 \text{ PAGA}$
18 penalty $\div 1,499 \text{ PAGA members} = \3.75).
 - 19 • There is no Claim Requirement (¶3.1).
 - 20 • The settlement is not reversionary (¶3.1).
 - 21 • Individual Settlement Share Calculation: Each Participating Class Member's
22 Individual Class Payment will be calculated by (a) dividing the Net Settlement
23 Amount by the total number of Workweeks worked by all Participating Class
24 Members during the Class Period, and (b) multiplying the result by each
25 Participating Class Member's Workweeks during the Class Period. (¶3.3.1).

- 1 • Tax Withholdings: 20% as wages and 80% as interest and penalties (§3.3.2).
- 2 • Funding of Settlement: Defendants shall fully fund the Gross Settlement
- 3 Amount, by transmitting the funds to the Administrator no later than 21 days
- 4 after the Effective Date. The time to make such payment may be extended by
- 5 mutual consent of the Parties (§4.3).
- 6 • Distribution: Defendants shall fully fund the Gross Settlement Amount, by
- 7 transmitting the funds to the Administrator no later than 21 days after the
- 8 Effective Date. The time to make such payment may be extended by mutual
- 9 consent of the Parties (§4.4).
- 10 • Uncashed Settlement Payment Checks: For any Class Member whose Individual
- 11 Class Payment check or Individual PAGA Payment check is uncashed and
- 12 cancelled after the void date, the Administrator shall transmit the funds
- 13 represented by such checks to the California Controller's Unclaimed Property
- 14 Fund in the name of the Class Member, thereby leaving no "unpaid residue"
- 15 subject to the requirements of California Code of Civil Procedure section 384,
- 16 subd. (b). (§4.4.4.)

17 **C. TERMS OF RELEASES**

- 18 • Class Release: All Participating Class Members, on behalf of themselves and
- 19 their respective former and present representatives, agents, attorneys, heirs,
- 20 administrators, successors, and assigns, release Released Parties from all claims
- 21 that were alleged, or reasonably could have been alleged in connection with their
- 22 employment on the production of the first, second, and/or third seasons of The L
- 23 Word: Generation Q, based on the facts stated in the Operative Complaint,
- 24 including, e.g., any failure to pay all wages due (including minimum wage and
- 25 overtime wages), failure to pay for all hours worked, failure to provide meal or

1 rest periods, failure to timely pay wages and final wages, failure to furnish
2 accurate wage statements (including claims derivative and/or related to these
3 claims), and failure to provide expense reimbursements. This Release shall
4 include all claims and theories arising under the California Labor Code, the Fair
5 Labor Standards Act, California wage orders, and applicable regulations,
6 including California Labor Code sections 201, 201.5, 202, 203, 204, 210, 226,
7 226.7, 510, 512, 515, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1,
8 1198, 1198.5, 2802, as well as claims under Business and Professions Code
9 section 17200, et seq., based on alleged violations of the above Labor Code
10 provisions, as alleged in the Action. Except as set forth in Paragraph 5.3 of this
11 Agreement, Participating Class Members do not release any other claims,
12 including claims for vested benefits, wrongful termination, violation of the Fair
13 Employment and Housing Act, unemployment insurance, disability, social
14 security, workers' compensation, or claims based on facts occurring outside the
15 Class Period (§5.2).

- 16 • PAGA Release: All Aggrieved Employees (regardless of whether they are
17 Participating Class Members) are deemed to release, on behalf of themselves and
18 their respective former and present representatives, agents, attorneys, heirs,
19 administrators, successors, and assigns, the Released Parties from all claims for
20 PAGA penalties that were alleged, or reasonably could have been alleged in
21 connection with their employment on the production of the first, second, and/or
22 third seasons of The L Word: Generation Q, based on the PAGA Period facts
23 stated in the Operative Complaint, any prior complaint in the Action, and/or the
24 PAGA Notices, including, e.g., any failure to pay all wages due (including
25 minimum wage and overtime wages), failure to pay for all hours worked, failure

1 to provide meal or rest periods, failure to timely pay wages and final wages,
2 failure to furnish accurate wage statements (including claims derivative and/or
3 related to these claims), and failure to provide expense reimbursements (§5.3).

- 4 • Released Parties: Defendants and each and all of its present and former partners,
5 parents (including Paramount Global), subsidiaries, affiliates, and related entities
6 and all of their officers, directors, employees, agents, servants, registered
7 representatives, attorneys, insurers, payroll companies, successors and assigns,
8 and any other persons acting by through, under, or in concert with any of them
9 (including any alleged joint employers) (§1.40).
- 10 • The named Plaintiff(s) will also provide a general release and a waiver of the
11 protections of Cal. Civ. Code §1542 (§5.1).
- 12 • The releases are effective on the date when Defendants fully fund the entire
13 Gross Settlement Amount and fund all employer payroll taxes owed on the
14 Wage Portion of Individual Class Payments (§5).

15 16 **D. SETTLEMENT ADMINISTRATION**

- 17 • The proposed Settlement Administrator is CPT Group, which has provided
18 evidence that no counsel are affiliated with it and that it has adequate procedures
19 in place to safeguard the data and funds to be entrusted to it. (Declaration of Julie
20 Green of CPT Group, Inc., §7).
- 21 • Settlement administration costs are estimated to be \$20,000 (§3.2.3).
- 22 • Notice: The manner of giving notice is described below.
- 23 • Response Deadline: "Response Deadline" means 60 days after the Administrator
24 mails Notice to Class Members and Aggrieved Employees, and shall be the last
25 date on which Class Members may: (a) fax, email, or mail Requests for Exclusion

1 from the Settlement, or (b) fax, email, or mail his or her Objection to the
2 Settlement. Class Members to whom Notice Packets are resent after having been
3 returned undeliverable to the Administrator shall have an additional 14 calendar
4 days beyond the Response Deadline has expired (§1.42). The same deadline
5 applies to challenges to the calculation of workweeks (§7.5.5).

6 ○ Defendants' Right to Withdraw. If the number of valid Requests for
7 Exclusion identified in the Exclusion List exceeds 50 Class Members,
8 Defendants may elect, but is not obligated, to withdraw from the
9 Settlement. The Parties agree that, if Defendants withdraw, the Settlement
10 shall be void ab initio, have no force or effect whatsoever, and neither Party
11 will have any further obligation to perform under this Agreement; provided,
12 however, Defendants will remain responsible for paying all Settlement
13 Administration Expenses incurred to that point. Defendants must notify
14 Class Counsel and the Court of its election to withdraw not later than 7
15 days after the Administrator sends the final Exclusion List to Defense
16 Counsel (§9).

- 17 • Notice of Final Judgment will be posted on the Settlement Administrator's website
18 (§7.7.1).

19
20 **III. SETTLEMENT STANDARDS AND PROCEDURE**

21 California Rules of Court, rule 3.769(a) provides: "A settlement or compromise
22 of an entire class action, or of a cause of action in a class action, or as to a party,
23 requires the approval of the court after hearing." "Any party to a settlement agreement
24 may serve and file a written notice of motion for preliminary approval of the settlement.
25 The settlement agreement and proposed notice to class members must be filed with the

1 motion, and the proposed order must be lodged with the motion.” See Cal. Rules of
2 Court, rule 3.769(c).

3 “In a class action lawsuit, the court undertakes the responsibility to assess
4 fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or
5 dismissal of a class action. The purpose of the requirement [of court review] is the
6 protection of those class members, including the named plaintiffs, whose rights may not
7 have been given due regard by the negotiating parties.” *Consumer Advocacy Group,*
8 *Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal
9 quotation marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
10 245, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018)
11 4 Cal. 5th 260 (“*Wershba*”), [Court needs to “scrutinize the proposed settlement
12 agreement to the extent necessary to reach a reasoned judgment that the agreement is
13 not the product of fraud or overreaching by, or collusion between, the negotiating
14 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
15 concerned.”] [internal quotation marks omitted].

16 “The burden is on the proponent of the settlement to show that it is fair and
17 reasonable. However, “a presumption of fairness exists where: (1) the settlement is
18 reached through arm's-length bargaining; (2) investigation and discovery are sufficient
19 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
20 litigation; and (4) the percentage of objectors is small.” *Wershba*, 91 Cal. App. 4th at
21 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802].

22 Notwithstanding an initial presumption of fairness, “the court should not give
23 rubber-stamp approval.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
24 116, 130 (“*Kullar*”). “[W]hen class certification is deferred to the settlement stage, a
25 more careful scrutiny of the fairness of the settlement is required.” *Carter v. City of*

1 *Los Angeles* (2014) 224 Cal.App.4th 808, 819. “To protect the interests of absent class
2 members, the court must independently and objectively analyze the evidence and
3 circumstances before it in order to determine whether the settlement is in the best
4 interests of those whose claims will be extinguished.” *Kullar*, 168 Cal. App. 4th at 130.
5 In that determination, the court should consider factors such as “the strength of
6 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation,
7 the risk of maintaining class action status through trial, the amount offered in
8 settlement, the extent of discovery completed and stage of the proceedings, the
9 experience and views of counsel, the presence of a governmental participant, and the
10 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of
11 factors is not exclusive and the court is free to engage in a balancing and weighing of
12 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at
13 245.

14 At the same time, “[a] settlement need not obtain 100 percent of the damages
15 sought in order to be fair and reasonable. Compromise is inherent and necessary in the
16 settlement process. Thus, even if ‘the relief afforded by the proposed settlement is
17 substantially narrower than it would be if the suits were to be successfully litigated,’
18 this is no bar to a class settlement because ‘the public interest may indeed be served by
19 a voluntary settlement in which each side gives ground in the interest of avoiding
20 litigation.’” *Id.* at 250.

21 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

22 **A. THERE IS A PRESUMPTION OF FAIRNESS**

23
24
25 The settlement is entitled to a presumption of fairness for the following reasons:

1
2 **1. The settlement was reached through arm's-length bargaining**

3 Counsel represent that the parties were able to meet and confer over several
4 months regarding the issues, after which they scheduled a mediation with experienced
5 wage and hour mediator Hon. Charles (Tim) McCoy (Ret.). (See Harris Decl., ¶8; *See*
6 *also* Harris Decl., Exhibit 8 for a true and correct copy of Judge McCoy's CV.)
7 According to Counsel, while the parties did not resolve the case on the day of
8 mediation, settlement discussions continued for several weeks under the guidance of the
9 mediator, ultimately leading to a settlement. (Harris Decl., ¶8.)

10
11 **2. The investigation and discovery were sufficient**

12 Counsel represent that prior to mediation, Plaintiffs' Counsel retained an expert,
13 Joseph Pohlot ("Pohlot") of Berkeley Research Group ("BRG") to review payroll
14 records for all Class Members (not just a sample), and prepared a damages analysis.
15 (Harris Decl., ¶9; *See also* Harris Decl., Exhibit 7 for a true and correct copy of
16 Pohlot's CV.) Counsel represent to retaining another wage and hour expert Jon
17 Katzman ("Katzman"), to analyze the reasonableness of the Settlement. Katzman is a
18 former production executive at NBC, Warner Brothers and New Regency whose
19 extensive experience allowed him to assist in analysis of payroll procedures, defenses
20 and potential liability. Katzman not only provided financial analysis, but also a real-
21 world nuts-and-bolts examination of the physical productions vis-à-vis alleged labor
22 violations. (Harris Decl., ¶9; *See also* Harris Decl., Exhibit 6 for a true and correct copy
23 of Mr. Katzman's CV.)

24 In addition to the payroll data provided, class counsel state that they conducted
25 interviews with class members, reviewed payroll documents for Plaintiffs obtained

1 through Labor Code § 226/1198.5 requests and other potential class members, as well
2 as collective bargaining agreement for the applicable unions. Plaintiff’s counsel
3 reviewed personnel handbooks provided to crew members by Defendants which
4 detailed its procedures for complying with California labor laws. Plaintiffs also
5 searched publicly available Film Permits from FilmLA for Defendant, which Plaintiff’s
6 counsel utilized to cross-check the class data. Through the film permits, Plaintiff’s
7 counsel was able to ascertain shooting dates for the Production and number of crew
8 members for each production, which could be used to verify data supplied by
9 Defendant. Plaintiff’s counsel did detailed research of public records on Defendant,
10 Releasees and its principals, including property reports, asset searches, business filings
11 with the California Secretary of State, Westlaw company profiles and even federal
12 records regarding the amount of Paycheck Protection Program (“PPP”) loans received
13 by Defendant (if any) during the pandemic. (Harris Decl., ¶10.) This is sufficient to
14 value the case for settlement purposes.

15 16 **3. Counsel is experienced in similar litigation**

17 Class Counsel represent that they are experienced in class action litigation,
18 including wage and hour class actions. (Harris Decl., ¶¶ 3-6; Declaration of Raul Perez,
19 ¶¶ 13-20; Declaration of Armond M. Jackson, ¶6.)

20 21 **4. Percentage of the class objecting**

22 This cannot be determined until the final fairness hearing. Weil & Brown et al.,
23 Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2019) ¶ 14:139.18 [“Should
24 the court receive objections to the proposed settlement, it will consider and either sustain
25 or overrule them at the fairness hearing.”].

1 **B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED**
2 **FAIR, ADEQUATE, AND REASONABLE**

3
4 Notwithstanding a presumption of fairness, the settlement must be evaluated in its
5 entirety. The evaluation of any settlement requires factoring unknowns. “As the court
6 does when it approves a settlement as in good faith under Code of Civil Procedure
7 section 877.6, the court must at least satisfy itself that the class settlement is within the
8 ‘ballpark’ of reasonableness. See *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985)
9 38 Cal.3d 488, 499–500. While the court is not to try the case, it is ‘called upon to
10 consider and weigh the nature of the claim, the possible defenses, the situation of the
11 parties, and *the exercise of business judgment* in determining whether the proposed
12 settlement is reasonable.’ (*City of Detroit v. Grinnell Corporation, supra*, 495 F.2d at p.
13 462, italics added.)” *Kullar*, 168 Cal.App.4th at 133 (emphasis in original).

14
15 **1. Amount Offered in Settlement**

16 The most important factor is the strength of the case for plaintiffs on the merits,
17 balanced against the amount offered in settlement.” (*Id.* at 130.)

18 Class Counsel estimated Defendant’s maximum exposure at \$3,775,689, based on
19 the following analysis:

20

Violation	Maximum Exposure
21 Wage Statements	\$1,358,550
22 Unpaid Overtime Wages	\$0.00
23 Meal Breaks	\$73,665
24 Rest Breaks	\$147,330
25 Continuing Wages	\$700,104

1	Employment Records	\$6,000
2	Requests	
3	Unfair Competition	\$2,740
4	Failure to Maintain Accurate	\$500
5	Records	
6	Failure to Reimburse	\$0.00
7	Expenses	
8	Fair Labor Standards Act	\$0.00
9	PAGA	\$1,486,800
10	TOTAL	\$3,775,689.00

11 (Harris Decl., ¶¶ 14-20.)

12 The primary claim is that the wage statements did not properly identify the name
13 and address of the legal entity that is the employer. Labor Code §226(a). There is a
14 defense if the error was unintentional. The majority (80%) of the class members are
15 unionized and covered by a collective bargaining agreement. It was believed that for this
16 reason the overtime and reimbursement claims had no value. The meal and rest break
17 claims were of some value to nonunionized employees but difficult to prove and certify.
18 Harris Dec. ¶¶ 14, 15. Class Counsel obtained a gross settlement valued at \$450,000.
19 This is approximately 11.92% of Defendant’s maximum exposure. Given the possible
20 outcomes this amount is within the ballpark of reasonableness.

21
22 **2. The Risks of Future Litigation**

23 The case is likely to be expensive and lengthy to try. Procedural hurdles (e.g.,
24 motion practice and appeals) are also likely to prolong the litigation as well as any
25 recovery by the class members. Even if a class is certified, there is always a risk of

1 decertification. *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226
2 [“Our Supreme Court has recognized that trial courts should retain some flexibility in
3 conducting class actions, which means, under suitable circumstances, entertaining
4 successive motions on certification if the court subsequently discovers that the propriety
5 of a class action is not appropriate.”].) Further, the settlement was negotiated and
6 endorsed by Class Counsel who, as indicated above, are experienced in class action
7 litigation. Based upon their investigation and analysis, the attorneys representing
8 Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and
9 adequate. (Harris Decl., ¶13.)

10 The Court also notes that Plaintiff brings a PAGA claim on behalf of the LWDA,
11 which was sent a copy of the Settlement Agreement on February 15, 2023 and has not yet
12 objected. (Harris Decl., Exhibit 3.) Any objection by it will be considered at the final
13 fairness hearing.

14 **3. The Releases Are Limited**

15
16 The Court has reviewed the Releases to be given by the absent class members and
17 the named plaintiffs. The releases, described above, are tailored to the pleadings and
18 release only those claims in the pleadings. There is no general release by the absent
19 class. The named plaintiff’s general releases are appropriate given that each was
20 represented by counsel in its negotiation.

21 **4. Conclusion**

22
23 Class Counsel estimated Defendant’s maximum exposure at \$3,775,689. Class
24 Counsel obtained a gross settlement valued at \$450,000. This is approximately 11.92%
25 of Defendant’s maximum exposure, which, given the uncertain outcomes, including the

1 potential that the class might not be certified, that liability is a contested issue, and that
2 the full amount of penalties would not necessarily be assessed even if the class is certified
3 and liability found, the settlement is within the “ballpark of reasonableness.”

4 5 **C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED**

6 A detailed analysis of the elements required for class certification is not required,
7 but it is advisable to review each element when a class is being conditionally certified.

8 *Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627. The party
9 advocating class treatment must demonstrate the existence of an ascertainable and
10 sufficiently numerous class, a well-defined community of interest, and substantial
11 benefits from certification that render proceeding as a class superior to the alternatives.”

12 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

13 **1. The Proposed Class is Numerous**

14 There are 2,295 putative Class Members. (Motion for Preliminary Approval
15 (“MPA”), 7:1-2.) Numerosity is established. *Franchise Tax Bd. Limited Liability*
16 *Corp. Tax Refund Cases* (2018) 25 Cal.App.5th 369, 393: stating that the
17 “requirement that there be many parties to a class action is liberally construed,” and
18 citing examples wherein classes of as little as 10, *Bowles v. Superior Court* (1955) 44
19 Cal.2d 574, and 28, *Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, were upheld).

20 **2. The Proposed Class Is Ascertainable**

21 “A class is ascertainable, as would support certification under statute
22 governing class actions generally, when it is defined in terms of objective
23 characteristics and common transactional facts that make the ultimate identification
24 of class members possible when that identification becomes necessary.” *Noel v. Thrifty*
25 *Payless, Inc.* (2019) 7 Cal.5th 955, 961 (*Noel*).

1 The class is defined above. Class Members are ascertainable through
2 Defendant's records. (MPA, 7:2-3.)

3 **3. There Is A Community of Interest**

4 "The community of interest requirement involves three factors: '(1) predominant
5 common questions of law or fact; (2) class representatives with claims or defenses typical
6 of the class; and (3) class representatives who can adequately represent the class.'" *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.
7

8 As to predominant questions of law or fact, Counsel contend that as to each and
9 every Class member, issues of fact and law are common across the Class, because the
10 Settlement Class Members are crew members who worked on the Production during the
11 Release Period and whose records show they were paid their final check after the
12 anticipated payday. The only significant "individual" or "non-common" issues,
13 according to Counsel, will be the specific dollar amount of recovery to which each Class
14 Member is entitled. (MPA, 7:5-15.)

15 As to typicality, Counsel contend that each Plaintiffs' claims are similar to those of
16 absent Class members, all of whom worked for Defendant on the Production during the
17 Release Period, and all of whom were subject to the same employment procedures. Each
18 Plaintiff and all Class Members allegedly received wage statements and payments in the
19 same manner. In fact, each Plaintiff and all Class Members received wages statements of
20 the same format. All members of the Settlement Class have a common interest in holding
21 Defendant responsible for amounts that may be owed to them under the provisions of the
22 Labor Code. (MPA, 7:23-8:1.)

23 Further, because Plaintiffs Pena and Cortes worked on Season 1 and/or Season 2
24 of the Production, Plaintiffs added Workman and Horton as additional named plaintiffs to
25 represent the crew members who worked on Season 3 of the Production. Both Workman

1 and Horton worked as crew members on Season 3 of the Production and allege that they
2 were paid late, among other allegations virtually identical to those of Pena and Cortes.
3 (Harris Decl., ¶3, fn. 3.)

4 As to adequacy, Plaintiffs represent that they are aware of the duties of serving as
5 class representative, do not have conflicts of interest with the class, and have participated
6 in the litigation. (MPA, 8:6-14; Declaration of Plaintiff Omar Pena, ¶¶ 4-12; Declaration
7 of Plaintiff Douglas Workman, ¶¶ 4-12; Declaration of Plaintiff Mark Horton, ¶¶ 4-12;
8 Declaration of Plaintiff Javier Cortes, ¶¶ 5-13.) As previously stated, Class Counsel have
9 experience in class action litigation.

10
11 **4. Substantial Benefits Exist**

12 Given the relatively small size of the individual claims, a class action is superior to
13 separate actions by the class members.

14
15 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS
16 OF DUE PROCESS**

17 The purpose of notice is to provide due process to absent class members. A practical
18 approach is required, in which the circumstances of the case determine what forms of
19 notice will adequately address due process concerns. *Noel*, 7 Cal.5th at 982. California
20 Rules of Court, rule 3.766 (e) provides that in determining the manner of the notice, the
21 court must consider: (1) the interests of the class; (2) the type of relief requested; (3) the
22 stake of the individual class members; (4) the cost of notifying class members; (5) the
23 resources of the parties; (6) the possible prejudice to class members who do not receive
24 notice; and (7) the res judicata effect on class members.

25 //

1 **1. Method of class notice**

2 Not later than 20 days after the Court grants Preliminary Approval of the
3 Settlement, Defendants will deliver the Class Data to the Administrator, in the form of a
4 Microsoft Excel spreadsheet (§4.1).

5 Using best efforts to perform as soon as possible, and in no event later than 20
6 days after receiving the Class Data, the Administrator will send to all Class Members
7 identified in the Class Data, via first-class United States Postal Service ("USPS") mail,
8 the Class Notice substantially in the form attached to this Agreement as Exhibit A. The
9 first page of the Class Notice shall prominently estimate the dollar amounts of any
10 Individual Class Payment and/or Individual PAGA Payment payable to the Class
11 Member and the number of Workweeks used to calculate these amounts. Before
12 mailing Class Notices, the Administrator shall update Class Member addresses using
13 the National Change of Address database (§7.4.2).

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

21 The deadlines for Class Members' written objections, Challenges to Workweeks,
22 and Requests for Exclusion will be extended an additional 14 days beyond the 60 days
23 otherwise provided in the Class Notice for all Class Members whose notice is re-
24 mailed. The Administrator will inform the Class Member of the extended deadline with
25 the re-mailed Class Notice (§7.4.4).

1 **2. Content of class notice.**

2 A copy of the proposed class notice is attached to the Settlement Agreement as
3 Exhibit 2. The notice includes information such as: a summary of the litigation; the
4 nature of the settlement; the terms of the settlement agreement; the maximum
5 deductions to be made from the gross settlement amount (i.e., attorney fees and costs,
6 the enhancement award, and claims administration costs); the procedures and deadlines
7 for participating in, opting out of, or objecting to, the settlement; the consequences of
8 participating in, opting out of, or objecting to, the settlement; and the date, time, and
9 place of the final approval hearing. See Cal Rules of Court, rule 3.766(d). It is to be
10 given in English (§1.11).

11 **3. Settlement Administration Costs**

12 Settlement administration costs are estimated at \$20,000, including the cost of
13 notice (§3.2.3). Prior to the time of the final fairness hearing, the settlement
14 administrator must submit a declaration attesting to the total costs incurred and
15 anticipated to be incurred to finalize the settlement for approval by the Court.

16
17 **E. ATTORNEY FEES AND COSTS**

18 California Rule of Court, rule 3.769(b) states: “Any agreement, express or
19 implied, that has been entered into with respect to the payment of attorney fees or the
20 submission of an application for the approval of attorney fees must be set forth in full in
21 any application for approval of the dismissal or settlement of an action that has been
22 certified as a class action.”

23 Ultimately, the award of attorney fees is made by the court at the fairness
24 hearing, using the lodestar method with a multiplier, if appropriate. *PLCM Group, Inc.*
25 *v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.*

1 (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122,
2 1132-1136. In common fund cases, the court may use the percentage method. If
3 sufficient information is provided a cross-check against the lodestar may be conducted.
4 *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503. Despite any
5 agreement by the parties to the contrary, “the court ha[s] an independent right and
6 responsibility to review the attorney fee provision of the settlement agreement and
7 award only so much as it determined reasonable.” *Garabedian v. Los Angeles Cellular*
8 *Telephone Company* (2004) 118 Cal.App.4th 123, 128.

9 The question of class counsel’s entitlement to \$150,000 (33%) in attorney fees
10 will be addressed at the final fairness hearing when class counsel brings a noticed
11 motion for attorney fees. If a lodestar analysis is requested class counsel must provide
12 the court with current market tested hourly rate information and billing information so
13 that it can properly apply the lodestar method and must indicate what multiplier (if
14 applicable) is being sought.

15 Fee Split: Harris & Ruble, Capstone Law APC, and Jackson APC have entered
16 into a Joint Prosecution Agreement (“JPA”). All Plaintiffs and putative
17 plaintiffs have consented in writing to the JPA pursuant to California Rules of
18 Professional Conduct Rule 1.5. Plaintiffs were advised in writing and
19 understand that the total fee charged will not be increased solely by reason of the
20 division of fees. (Harris Decl., ¶32.) The papers do not indicate how fees will be
21 apportioned. This should be addressed in the Motion for Final Approval. Class
22 counsel should also be prepared to justify the costs sought (capped at \$25,000)
23 by detailing how they were incurred.

24 //

25 //

1 **F. SERVICE AWARDS**

2 The Settlement Agreement provides for a service award of up to **\$20,000 total**
3 **or \$5,000** for each of the four the class representatives. Trial courts should not sanction
4 enhancement awards of thousands of dollars with “nothing more than *pro forma* claims
5 as to ‘countless’ hours expended, ‘potential stigma’ and ‘potential risk.’ Significantly
6 more specificity, in the form of quantification of time and effort expended on the
7 litigation, and in the form of reasoned explanation of financial or other risks incurred by
8 the named plaintiffs, is required in order for the trial court to conclude that an
9 enhancement was ‘necessary to induce [the named plaintiff] to participate in the suit . . .
10 .’” *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807,
11 italics and ellipsis in original.

12 The Court will decide the issue of the enhancement award at the time of final
13 approval.

14 **V. CONCLUSION AND ORDER**

15
16 Contingent upon the parties addressing the need for notice in a language other
17 than English and addressing the allocation of fees at the time of final approval, the
18 Court hereby:

- 19 (1) Grants preliminary approval of the settlement as fair, adequate, and
20 reasonable;
- 21 (2) Grants conditional class certification;
- 22 (3) Appoints Omar Pena, Javier Sanchez Cortes, Mark Horton and Douglas
23 Workman as Class Representative(s);
- 24 (4) Appoints (a) Armond M. Jackson, Andrea Fernandez-Jackson, and Anthony
25 S. Filer, Jr. of Jackson APC; (b) Raul Perez, Orlando Villalba, Helga Hakimi

1 and Roxanna Tabatabaeepour of Capstone Law APC; and (c) Alan Harris and
2 David Garrett of Harris & Ruble as Class Counsel;

3 (5) Appoints CPT Group, Inc. as Settlement Administrator;

4 (6) Approves the proposed notice plan; and

5 (7) Approves the proposed schedule of settlement proceedings as follows:

- 6 • Preliminary approval hearing: June 1, 2023.
- 7 • Deadline for Defendant to provide class list to settlement administrator: June 21,
8 2023 (within 20 calendar days from preliminary approval)
- 9 • Deadline for settlement administrator to mail notices: July 11, 2023 (within 40
10 calendar days from preliminary approval)
- 11 • Deadline for class members to opt out: September 9, 2023 (60 calendar days
12 from the initial mailing of the Notice Packets)
- 13 • Deadline for class members to object: September 9, 2023 (60 calendar days from
14 the initial mailing of the Notice Packets)
- 15 • Deadline for class counsel to file motion for final approval:
16 9/29, 2023 (16 court days prior to final fairness hearing)
- 17 • Final fairness hearing: 10/23, 2023, at 9:00 a.m.

18 Any failure to fully and timely comply with the contingencies may result in the
19 revocation of this Order in its entirety.

20
21 Dated: 6/1/23



22 MAREN E. NELSON

23 Judge of the Superior Court
24
25