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on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

EDUARDO RIVERA, on behalf of himself and all others similarly situated Plaintiff, vs. ALLCOM ELECTRIC, INC. a California Corporation, and DOES 1 through 50, inclusive. Defendant.	Case No. 30-2020-01123366-CU-OE-CXC ASSIGNED FOR ALL PURPOSES TO: JUDGE: Hon. Peter Wilson DEPT: CX102 **DECLARATION OF JAMES R. HAWKINS IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

DECLARATION OF JAMES R. HAWKINS

I, JAMES R. HAWKINS, declare as follows:

1. I am an individual over the age of 18. I am a partner at the Law Firm of James Hawkins APLC. I am one of the attorneys of record for Plaintiff Eduardo Rivera (hereinafter referred to as "Plaintiff"). I have personal knowledge of the facts set forth below and if called to testify I could and would do so competently.

2. On January 13, 2020, Plaintiff Eduardo Rivera initiated this action in the Superior Court for the County of Orange, on behalf of himself and all others similarly situated, styled *Eduardo Rivera v. Allcom Electric, Inc.* Orange County Superior Court Case No. 30-2020-01123366. The Complaint asserts causes of action for; (1) failure to pay lawful wages including overtime wages; (2) failure to provide lawful meal periods or compensation in lieu thereof; (3) failure to provide lawful rest periods or compensation in lieu thereof; (4) failure to pay timely wages; (5) failure to indemnify employee expenses (6) knowing and intentional failure to comply with itemized employee wage statement provisions; and (7) violations of the unfair competition law (Bus. & Prof. Code § 17200 *et seq*.) (the "Action").

3. On January 14, 2020, Eduardo Rivera provided notice to the Labor and Workforce Development Agency ("LWDA") of his intent to pursue Defendant for all civil penalties arising from Defendant's alleged failure to, inter alia, pay all wages earned including failure to provide proper rest periods and meal breaks, failure to reimburse employee expenses, failure to provide accurate wage statements to Plaintiff and other similarly situated aggrieved employees.

4. On April 17, 2020, Rivera filed a First Amended Complaint, which included one additional cause of action for violations of the Labor Code Private Attorney General Act.

5. Throughout this litigation, Defendant (hereinafter "Defendant" or "Allcom") has denied Plaintiff's allegations and raised defenses to the claims, individually and on a representative basis. Defendant maintains that its employment policies and practices meet the requirements of the Labor Code and applicable Wage Orders.

6. To date, no motion for class certification has been filed, no class has been

certified and the court has not made any findings that Allcom engaged in any wrongdoing or in violation of any state law, rule or regulation, with respect to the issues presented in the litigation.

7. Through informal discovery, Plaintiff and Allcom have exchanged documents and information related to the claims asserted. Defendant has produced timecard records and wage reports and also provided Plaintiff with class data and samples of time records, wage statements, information regarding the number of non-exempt employees during the relevant time period.

8. After conducting informal discovery, exchanging relevant information and engaging in numerous discussions regarding the claims alleged, on July 14, 2021, the parties participated in a private mediation with Hon. Steven Vartabedian (Ret.). During the course of the mediation, the parties exchanged further information and documentation concerning Plaintiff's claims and Allcom's defenses thereto, and aggressively advocated for their respective positions.

9. At the conclusion of the mediation, the parties reached a settlement of this Action for a maximum settlement amount of $449,417.73. Following the mediation, the parties exchanged various drafts of the Memorandum of Understanding ("MOU"). The MOU was executed by the Parties on or about September 15, 2021. Thereafter, the parties exchanged multiple drafts of the proposed settlement release agreement and class notice documents and engaged in communications regarding the settlement terms.

10. The final terms and provisions of the settlement agreement were approved and executed by all the parties on or about March 2, 2022. (A true and correct copy of the Joint Stipulation of Class and PAGA Settlement and Release of Claims ("Settlement Agreement") is attached hereto as Exhibit 1.)

11. Based on his own respective independent investigations and evaluations and after taking into account the sharply disputed factual and legal issues involved in this matter, the risks attending further prosecution in light of certification issues faced due to the *Brinker Rest. Corp. v. Super. Ct.*, (2012) 53 Cal. 4th 1004 ("*Brinker*") decision, the discovery and investigation conducted to date, Plaintiff and his counsel are of the opinion that settlement for the

consideration and on the terms set forth in the Settlement Agreement is fair, reasonable and adequate and is in the best interests of the named Plaintiffs and Class Members.

12. I have a great deal of experience in wage and hour class action litigation. I have obtained certification of several classes, I have been approved as class counsel in many other wage/hour class actions, and I am currently litigating numerous others. Although not an all inclusive list, over the years I have prosecuted the following class action matters as lead and/or co-lead counsel, all of which implicated similar law and facts to those associated with this action:

a. *Aguilar v. 7-Eleven, Inc*., et. al., Orange County Superior Court- Case No.: 30-2009-00268714-CU-OE-CXC. Certified Wage and Hour Class action seeking premium wages for meal period and rest periods and resultant penalties. Class Notice pending.

b. *Carey, et. al. v. Arthur J. Gallagher*, et. al., USDC, SOUTHERN DISTRICT- Case No.: 09-cv-0168. Wage and Hour Class action seeking past wages of overtime for mis-classification of insurance claims adjusters employed by Gallagher Bassett, a third party administrator (TPA) in the State of California. Certification granted. Plaintiffs' counsel co-lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

c. *Dao v. 3M Company*, et al. USDC, CENTRAL DISTRICT, Case No. CV-08-04554. Wage and Hour Class Action case seeking past wages for "off the clock", overtime and meal and rest break violations for production workers in the State of California. Plaintiff's Counsel appointed as Lead Counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

d. *Ortiz v. Kmart*, USDC, CENTRAL DISTRICT, Case No. SACV 06-638 ODW. Wage and Hour Class Action case seeking past wages for meal and rest period violations for retail employees in the State of California. Plaintiff's counsel appointed co-lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

e. *Morgan v. Aramark Campus,* LLC, USDC, CENTRAL DISTRICT, Case No. SACV08-00412. Wage and Hour Class Action case seeking past wages for meal and rest period violations for retail employees in the State of California. Plaintiff's Counsel appointed as Lead Counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

f. *West v Iron Mountain Information Management, Inc, et. al.*; Los Angeles County Superior Court, Case No. BC393709. Wage and Hour Class Action seeking past wages for overtime, meal and rest break violations for driver employees in the State of California. Settlement for "binding arbitration." Arbitration Award for Plaintiff Class. Arbitration Award confirmed. Plaintiff's counsel, lead trial counsel and class counsel.

g. *Gonzalez v. Superior Industries Inter, Inc., et al*., Los Angeles County Superior Court, Case No. BC 357912. Wage and Hour Class Action seeking past wages for overtime, meal and rest breaks violations for production employees in the State of California. Plaintiff's counsel appointed as lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

h. *Acosta v. Fleetwood Travel Trailers of California, Inc*., et al., Riverside County Superior Court, Case No. RIC 440630. Wage and Hour Class Action seeking past wages for overtime, meal and rest break violations for production employees in the State of California. Plaintiff's counsel appointed as co-lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

i. *Walker v. Sharkeez, et al.*, Orange County Superior Court, Case No. 05CC00293. Wage and Hour Class Action seeking past wages for unlawful deductions, meal and rest break violations for restaurant employees in the State of California. Plaintiff's counsel appointed as lead counsel. Case settled, Final Approval granted and funds fully distributed.

j. *Padron v. Universal Protection Service, et al,* Orange County Superior Court, Case No. 05CC00013. Wage and Hour Class Action seeking past wages for overtime, meal and rest break violations for security officers in the State of California. Plaintiff's counsel appointed as co-lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

k. *Martinez v. Securitas Security Services USA*, et al., Santa Clara Superior Court, Case No. 105-CV047499, et al. J.C.C.P. No. 4460. Wage and Hour Class Action seeking past wages for meal and rest break violations for security officers employed by defendant in the State

of California. Plaintiff's counsel and co-counsel. Case settled, Final Approval granted and funds fully distributed.

l. *Velasquez-Lopez v. Hotel Cleaning Services, Inc*. et al., Riverside Superior Court, Case No. RIC 420909. Wage and Hour Class Action seeking past wages for overtime, meal and rest break violations for housekeepers employed by defendant in the State of California. Plaintiff's counsel appointed as lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

m. *Ruiz, et al. v. Unisourse Worldwide, Inc., et al*., USDC, CENTRAL DISTRICT, Case No. CV09-05848. Wage and Hour Class Action seeking past wages for meal and rest period violations for non-exempt employees employed by defendant in the state of California. Case settled. Awaiting Preliminary Approval hearing. Plaintiff has petitioned the Court for Lead Counsel.

n. *Herrador v. Culligan International Company, et al*., USDC, CENTRAL DISTRICT, Case No. SACV 08-680. Wage and Hour Class Action seeking past wages for field and branch employees of defendant in the State of California. Plaintiff's counsel appointed as lead counsel. Case settled and awaiting Final Approval.

o. *Defries v. Domain Restaurants, et al.*, Orange County Superior Court, Case No. 05CC00128. Wage and Hour Class Action seeking past wages for restaurant employees of defendant in the State of California. Plaintiff's counsel appointed as lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

p. *Denton v. BLB Enterprises, Inc., et al*., Orange County Superior Court, Case No. 07CC01292. Wage and Hour Class Action seeking unpaid overtime, meal and rest break violations for security guards employed by defendant in the State of California. Plaintiff's counsel appointed as lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

q. *Rios v. Sandberg Furniture Manufacturing Co*., Inc, et al., Los Angeles Superior Court, Case No. BC411477. Wage and Hour Class Action seeking unpaid meal and rest break violations for production employees employed by defendant in the State of California. Plaintiff

counsel appointed as lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

r. *McMurray v. Dave and Busters, Inc*., et al., Orange County Superior Court, Case No. 06CC00099. Wage and Hour Class Action seeking past wages for meal and rest break violations for restaurant employees employed by defendant in the State of California. Plaintiff's counsel appointed as co-lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

s. *Osuna v. DFG Restaurants, Inc.,* et al., Los Angeles Superior Court, Case No. BC 330145. Wage and Hour Class Action seeking past wages of overtime for mis-classification of managers employed by Defendant, DBA Carl's Jrs. in the State of California. Plaintiff's counsel appointed as co-lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

t. *Burns v. Gymboree Operations, Inc*., et al., San Francisco Superior Court, Case No. CGC-07-461612. Wage and Hour Class Action seeking past wages for meal and rest break violations for retail employees employed by defendant in the State of California. Plaintiff's counsel appointed lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

u. *Willems v. Diedrich Coffee, Inc.,* et al., Orange County Superior Court, Case No. 07CC00015. Wage and Hour Class Action seeking past wages of overtime for mis-classification of managers employed by Defendant in the State of California. Plaintiff's counsel appointed lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

v. *Davila, et al. v. Beckman Coulter, Inc*., et al., Orange County Superior Court, Case No. 07CC01347. Wage and Hour Class Action seeking past wages for overtime, meal and rest break violations for production workers employed by defendant in the State of California. Plaintiff's counsel appointed lead counsel. Cased settled; final approval granted; no objections and funds fully distributed.

w. *Perez v. Naked Juice Company of Glendora, Inc*., Los Angeles Superior Court, Case No. BC387088. Wage and Hour Class Action seeking past wages for overtime, meal and

rest period violations for production employees employed by defendant in the State of California. Plaintiff counsel appointed as lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

13. Ms. Fernandez, my co-counsel on this matter, has been a member of the Florida Bar since January 1996 and member of the California Bar since August 2002. Ms. Fernandez has specialized in employment related litigation including complex wage and hour civil litigation since 2003. Ms. Fernandez has been, and currently is, co-counsel in over 40 wage and hour class action litigations for our firm and has produced excellent results for this firm's clients in the wage and hour class actions.

14. Even without the presumption of fairness and reasonableness, the Settlement clearly is within the range of reasonableness. The predominant claims in this action arise from alleged violations of California law with respect to meal and rest breaks. Specifically, Plaintiff alleges that due to the work load requirements, he and Class Members were frequently not provided a minimum, uninterrupted 30 minutes meal break before the end of the fifth hour of their work shift. Plaintiff also alleges that he and Class Members were not provided a second 30 minute meal period when he worked shifts in excess of 10 hours.

15. Similarly, with respect to the rest break claim, Plaintiff alleges that due to the work load requirements, he and Class Members were unable to take a minimum ten minute rest break for every four hours or major fraction thereof worked during their shifts.

16. Allcom denies Plaintiff's allegations and maintains that Class Members were provided with the opportunity to take all meal and rest periods to which they were entitled. Allcom also maintained that Plaintiffs' claims were improper for class treatment.

17. Based on documents and information produced by Defendant in discovery, in preparation for mediation and during settlement negotiations, Plaintiff's' counsel estimated a maximum potential liability of $ 1,633,1676 for the class claims, assuming Plaintiff and the Class were able to obtain an order certifying the class and were also able to prove their claims.

18. At the time of mediation the class consisted of 157 Class Members comprised of 103 former and 54 current employees. The estimated number of workweeks and work shiftsat

issue for the class period are14,796 and 66,582 respectively and the average hourly rate of pay is approximately $30.00.

a. Meal Period Claim

The meal period violation claim is based primarily on Allcom's alleged failure to provide an uninterrupted 30-minute meal break by the end of the fifth hour, and were not compensated one hour of pay at their regular rate of compensation for each workday that a meal period was not lawfully provided. Based on Plaintiff's review of the documents and information provided in anticipation of mediation, including a random sample of time records, the estimated maximum potential liability for the meal break claim, based on a 100% violation rate was calculated at $1,997,460 which assumes a meal break violation during every work shift. However, taking into consideration the nature of the claim, Defendant's defenses and certification issues faced due to Brinker, for purposes of settlement, the meal break claim was valued between an estimated maximum of $798,984 and $399,492.

b. Rest Period Claim

The rest period violation claim is primarily based on allegations that, due to the work load requirements, Plaintiff and Class Members were not provided compliant 10 minute rest period during their work shifts. Allcom disputes Plaintiff's' rest break claim and contends that class members were allowed to take ten minute rest periods and regularly took such breaks. The estimated maximum potential liability for the rest break claim was calculated at $1,997,460 which assumes that a rest break violation occurred during every shift. Taking into consideration the nature of the claim, Defendant's defenses and certification issues faced due to Brinker, for purposes of settlement, the rest break claim was valued between an estimated maximum of $399,492 and $0.

c. Lab. Code § 226 Claim (failure to provide accurate itemized wage statements)

Under Lab. Code § 226(e), an employee suffering "injury as a result of a knowing and intentional failure by an employer" to provide accurate wage statements is entitled to $50 for the initial violation and $100 for each subsequent violation up to $4,000. Allcom denies that it provided inaccurate wage statements. Further, Allcom argues that, if any wage statements were

in fact inaccurate, they did not "knowingly and intentionally" fail to provide accurate statements and that Plaintiff and the class did not suffer any "injury" from such inaccurate wage statements. For purposes of settlement negotiations, said claim was valued between and estimated maximum of $320,000 and $0.

d. Failure to Pay Lawful Wages Claims

Plaintiff's' claim for failure to pay wages owed is based on allegations that he and Class Members were occasionally required to work off the clock to complete certain tasks for which they did not receive compensation. Allcom disputes this claim and asserts that its policies prohibit employees from working off the clock. This claim would be difficult to certify given the predominance of the individualized inquiry as to the whether and to what extent, each class member performed work off the clock. As such, it was valued at $0 for purposes of settlement.

e. Failure to Indemnify Employee Expenses § 2802 Claim

The business expense reimbursement claim is based on allegations that Plaintiff and class members were required to provide their own tools for the performance of their job duties and were not reimbursed by Defendant. Defendant also failed to reimburse Plaintiff and Class Members for using their personal mobile phones which was required in performance of their job duties (i.e. clocking in and out at the beginning and end of shifts). Defendant denies that Plaintiff and Class Members were required to use their personal phones. Plaintiff calculated a maximum potential liability at $160,000 assuming $30 monthly phone reimbursement. However, this claim would be difficult to certify given the predominance of the individualized inquiry as to the whether and to what extent each class member used their personal tools and phones in the performance of their job duties. As such, for purposes of settlement, this claim was valued at $0.

f. Lab. Code § 203 Claim (failure to timely pay wages)

With respect to Lab. Code §203 claim, there were an estimated 80 former class members to whom this claim applied and an estimated maximum potential liability of $576,000. However, faced with the willful intent requirement of the enabling statute along with

Defendant's position that Lab. Code §203 does not apply to rest and meal break claims, for settlement purposes this claim was valued between $115,200 and $0.

g. Bus. & Prof. Code § 17200 Claim

The only remedies available under the unfair competition law ("UCL") Business and Professions Code Section 17200 et seq. are restitution and injunction, as opposed to damages *Clark v. Superior Court*, (2010) 50 Cal. 4th 605, 610.The UCL provides that "[t]he court may make such orders or judgments ... as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition." (Bus. & Prof. Code, § 17203.) Restitution under the UCL includes "earned wages." *Cortez v. Purolator Air Filtration Prods. Co*., (2000) 23 Cal. 4th 163, 177-78.

Restitution under the UCL is not available for all violations of the Labor Code. See *Pineda v. Bank of Am., N.A.*, (2010) 50 Cal. 4th 1389, 1401-02. In *Pineda*, the California Supreme Court held Labor Code § 203 is "not designed to compensate employees for work performed [but] it is intended to encourage employers to pay final wages on time, and to punish employers who fail to do so." *Id*. Like Labor Code section 203, section 226 for wage statement violations is also intended to "punish" the employer and is not an action brought to recover wages. *See*. *Gomez v. Jacobo Farm Labor Contractor, Inc.*, (2019) 334 FRD. 234, 267-268.

Here, Plaintiff's UCL claim is solely premised on the failure to pay lawful wages and premium wages claims discussed above. Class Counsel assigned a zero dollar value to the UCL claim because it does not provide any additional value in this Action other than to increase the statute of limitations to four years for the underlying claims. Those claims are valued and analyzed above based on the four year statute of limitations provided by the UCL. However, the UCL claim in and of itself does not provide any additional damages. Therefore, there is no additional or separate monetary value that this statute provides based on the facts of this Action.

h. Lab. Code § 2699 (PAGA Claim)

Plaintiff's claims under PAGA are primarily predicated on or derivative of the rest and meal break claims. The estimate maximum PAGA penalty was calculated as $510,000. This figure attributes a $100 penalty to each of the estimated 5,100 pay periods in scope during the

PAGA period. The figure also assumes that there is a 100% violation rate during the PAGA period, such that every single pay period in question involved at least one Labor Code violation, despite disputes regarding Defendant's liability. However, PAGA claims under the facts and circumstance of this case may result in no award or at best a very minimal award by the trial court. See specifically §2699(e)(2) which states in its pertinent part:

"… a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."

For instance, in *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties from $2,800,000 to $500,000, a reduction of 82.2%, because the court found maximum penalties "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no civil penalties, even when Labor Code violations are established. See *Makabi v. Gedalia*, 2016 Cal. App. Unpub. 1489, *5-7 (2nd Dist. Ct. of App. Mar. 6, 2016) (no PAGA penalties were awarded by the Los Angeles County Superior Court) (unpublished decision); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial).

In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the defendant."). Here, Plaintiff would need to prove that each PAGA Aggrieved Employee suffered all violations for each pay period the employee worked. As discussed herein, the nature of the PAGA based claims (i.e. rest break, meal period, wage statement, failure to pay all wages owed and to timely pay wages) and Defendant's asserted defenses thereto present a risk that some or all of the PAGA penalties sought may not be awarded. Given the nature of these claims, as analyzed above, Class Counsel believes it to be likely that if there would be any award it would be a minimal amount. Therefore, the amount of $25,000 (which has been reserved for the PAGA claim) is both fair and reasonable.

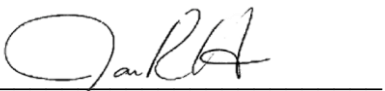
19. Through his counsel, Plaintiff took into consideration the significant risks that class certification could be denied on the central claim, or that a merits decision on the central claim would not favor the Class. Plaintiffs have considered the expense and length of continued proceedings necessary to continue the Action against Allcom, Inc. through trial and any possible appeals. Plaintiffs are also aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, Allcom's defenses thereto, and the difficulties in establishing Plaintiff's damages.

20. The proposed Settlement requires Defendant to pay each Class Member who does not opt out a portion of the Net Settlement Amount as specifically set forth in the Settlement Agreement. The amount to be paid to the Class is undoubtedly fair, adequate and reasonable especially in light of the significant risk to Plaintiffs and Class Members in continuing with the litigation and not prevailing on class certification or at trial.

21. The Settlement Agreement provides for an award to be paid to the Class Representative. The primary purpose is to provide Plaintiff Eduardo Rivera an enhancement payment, taking into consideration the risks, time, effort and expenses incurred by him in coming forward to provide invaluable information and negotiate and litigate this matter on behalf of all Class Members. Plaintiff has actively participated in this litigation by providing significant supporting documents and information and assisting counsel in developing information necessary to litigate and settle this case which has resulted in a favorable settlement for the putative Class Members.

22. Attached to the Settlement Agreement as Exhibit A is a true and correct copy of the Notice of Proposed Class Action Settlement. ("Class Notice")

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 2nd day of March, 2022 at Irvine, California.



James R. Hawkins, Esq.

EXHIBIT A

JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

Eduardo Rivera v Allcom Electric, Inc.
Case No. 30-2020-01123366
Orange County Superior Court

Subject to the Court's approval, the Parties have entered into this Agreement pursuant to the terms and conditions in this Joint Stipulation of Class Action and PAGA Settlement Agreement ("Agreement" or "Settlement Agreement") between the Plaintiff Eduardo Rivera, individually and on behalf of the Settlement Class, and Defendant Allcom Electric, Inc. ("Defendant").

I. DEFINITIONS

1. "Action" means the action entitled *Eduardo Rivera v. Allcom Electric, Inc.* Orange County Superior Court Case No. 30-2020-01123366.

2. "Class" is defined as: All persons who are or were employed by Defendant as non-exempt, hourly-paid employees in California from January 13, 2016, through preliminary approval.

3. "Class Counsel" means James Hawkins APLC.

4. "Class Counsel Award" means an award of attorneys' fees and reimbursement of litigation expenses and costs to Class Counsel and paid from the Gross Settlement Amount.

5. "Class Data" means information regarding Class Members that Defendant provides to the Settlement Administrator from its records. It shall be formatted as a Microsoft Excel spreadsheet and shall include each Class Member's full name, last known address, last known telephone number, and Social Security number; as well as information sufficient to allow the Settlement Administrator to calculate the number of Workweeks for all Class Members during the Class Period.

6. "Class Members" means members of the Class.

7. "Class Period" means the time period from January 13, 2016 until the Preliminary Approval Date.

8. "Class Representative" or "Plaintiff" means Eduardo Rivera.

9. "Class Representative Service Award" or "Service Award" means the amount that the Court authorizes to be paid to the Class Representative from the Gross Settlement Amount, which is in addition to his Individual Settlement Payment.

10. "Complaint" means the First Amended Complaint filed on April 17, 2020.

11. "Court" means Orange County Superior Court.

12. "Defendant" means Allcom Electric, Inc.

13. "Defense Counsel" or "Counsel for Defendant" means Finch, Thornton & Baird, LLP.

14. "Effective Date" is the later of the following: (a) if no objections to the settlement are filed, then the date the Court enters judgment granting Final Approval; (b) if an objection to the settlement is filed, then the date when the time expires to file an appeal of the Court's Final Approval Order; or (c) if an objection is filed, as well as a timely Notice of Appeal of the Court's Final Approval Order, then the date the appeal is finally resolved, with the final approval unaffected.

15. "Final Approval Order" means the Court's order granting final approval of the Settlement.

16. "Settlement Class" is defined as all Class Members who do not request to be excluded from the Settlement Agreement.

17. "Individual Settlement Payment" means the amount payable from the Net Settlement Amount to each Settlement Class Member.

18. "Gross Settlement Amount" means the maximum sum to be paid by Defendant pursuant to this Settlement, which is Four Hundred Forty Nine Thousand Four Hundred and Seventeen Dollars and Seventy-Three Cents ($449,417.73)) based on $400,000 new money to be paid by Defendant plus $49,417.73 already paid in settlement to 61 present employees and one former employee. The Gross Settlement Amount shall include all payments contemplated by this Settlement Agreement, including all Individual Settlement Payments to Settlement Class Members, the Service Award to Plaintiff, the Class Counsel Award to Class Counsel, the PAGA Penalties, and the Settlement Administration Costs to the Settlement Administrator. The Gross Settlement Amount shall not include Defendant's share of taxes on the wages portion of Individual Settlement Payments, which will be paid by Defendant separately and in addition to the Gross Settlement Amount.

19. "Net Settlement Amount" means the Gross Settlement Amount minus the Service Award, the Class Counsel Award, the LWDA Payment, and the Settlement Administration Costs.

20. "Notice" means the Notice of Class Action and PAGA Settlement in a form substantially similar to the form attached as **Exhibit A**.

21. "PAGA" means the Private Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq*.

22. "PAGA Letter" means Plaintiff's April 14, 2020 letter to the Labor & Workforce Development Agency.

23. "PAGA Penalties" is the amount of $25,000, which shall be deducted from the Gross Settlement Amount. The PAGA Penalties shall be allocated as follows: twenty-five percent (25%) to the Net Settlement Amount for distribution to Settlement Class Members on a *pro rata* basis, and seventy-five percent (75%) to the LWDA pursuant to Cal. Lab. Code § 2699(i).

24. "Parties" mean the Plaintiff and Defendant collectively, and "Party" shall mean either Plaintiff or Defendant, individually.

25. "Payment Ratio" means the respective Workweeks for each Settlement Class Member divided by the total Workweeks for all Settlement Class Members.

26. "Preliminary Approval Date" means the date the Court enters the Preliminary Approval Order.

27. "Preliminary Approval Order" means the Order granting preliminary approval of the Settlement.

28. "Qualified Settlement Fund" means the fund set up by the Settlement Administrator into which the Gross Settlement Amount shall be deposited and disbursements from it shall be made.

29. "Released Claims" means any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, or causes of action contingent or accrued for, that are pleaded, or that could have been pleaded, based on the facts and claims alleged in the Action, including any claims for: (1) failure to pay lawful wages; (2) failure to provide meals periods; (3) failure to provide rest periods; (4) failure to timely pay all wages due at termination; (5) failure to provide accurate wage statements; (6) failure to reimburse business expenses (8) unfair competition; and (9) civil penalties, Labor Code § 2699, predicated on any of the violations of the California Labor Code and applicable IWC Wage Order alleged in the Complaint and/or the PAGA Letter, including compensatory damages; economic and/or special damages; premium wages; premium pay; penalties; attorneys' fees; interest; and litigation costs) premised on the facts, claims, or legal theories described herein or in the Action; any other claims or penalties under the wage and hour laws pleaded in the Action and the PAGA Letter under California and federal law, including the California Labor Code and the applicable Wage Orders as to the facts and theories alleged in the Action and the PAGA Letter (collectively, the "Released Claims.") The period of the Release shall extend to the limits of the Class Period. The res judicata effect of the Judgment will be the same as that of the Release.

30. "Released Parties" means Defendant, and its owners, sureties, bonding companies, insurers, attorneys, agents, and related entities.

31. "Request for Exclusion" refers to a formal request to be excluded from the Settlement as described herein.

32. "Response Deadline" means forty-five (45) days after the Settlement Administrator initially mails the Notice to Class Members, and the last date on which Class Members may submit Requests for Exclusion, objections to the Settlement, and/or Disputes.

33. "Settlement" means the settlement and resolution of the Action in accordance with this Agreement.

34. "Settlement Administrator" means [Simpluris, Inc., as approved by the Court.

35. "Settlement Administration Costs" means the amount to be paid to the Settlement Administrator from the Gross Settlement Amount for administration of this Settlement.

36. "Settlement Class Member" or "Settlement Class" means Class Members who do not submit a timely and valid Request for Exclusion and will be bound by the terms of the Agreement, including the Released Claims, and any final judgment entered in the Action.

37. "Workweek" means a consecutive seven (7) day period starting on and including Monday through and including Sunday during which time the Class Data reflects that a given Settlement Class Member worked any amount of time, and does not include weeks when a Settlement Class Member was on PTO, leaves of absence, jury duty, or the like for the entire 7-day period. Each Class Member will credited with at least one (1) Workweek.

II. RECITALS

38. Class Certification. The Parties stipulate and agree to certification of the Settlement Class for the purposes of this Settlement Agreement only and to agree that the Plaintiff shall be appointed as Class Representative, and that James Hawkins APLC shall be appointed Class Counsel. Should the Settlement Agreement not obtain Court approval and become final and effective, class certification shall immediately be set aside and any order to certify the Settlement Class for settlement purposes shall be vacated. The Parties' stipulation to class certification as part of the Settlement Agreement shall not be considered in connection with the issue of whether a class should be certified in this Action, and shall not be admissible in any such proceeding other than in the context of this Settlement Agreement.

39. Procedural History. On January 13, 2020, Plaintiff filed a Class Action Complaint in the Superior Court of the State of California for the County of Orange. On April 17, 2020, Plaintiff filed a First Amended Class Action Complaint. On July 14, 2021, the Parties participated in a mediation with Hon Steven Vertabedian (Ret.), an experienced wage and hour class action mediator, and with the aid of the mediator's evaluation, the Parties agreed to settle the Action, in accordance with a Memorandum of Understanding, signed on or about September 15 2021, agreed to by the Parties ("MOU").

40. Benefits of Settlement Agreement to Settlement Class Members. Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to litigate this Action through trial and potential appeals. Plaintiff has also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such proceedings. Plaintiff and Class Counsel are also aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, both generally and in response to Defendant's defenses, and the difficulties in establishing damages for Class Members. Thus, Plaintiff and Class Counsel have determined that the terms set forth in this Settlement Agreement are fair, adequate and reasonable, and in the best interests of the Settlement Class Members.

41. Defendant's Reasons for Settlement Agreement. Defendant has concluded that further defense of this Action would be protracted and expensive for all Parties. Substantial amounts of Defendant's time and resources have been, and unless this Settlement Agreement is completed, will continue to be devoted to the defense of the Action. Defendant has also taken into account the risks of further litigation in reaching their decision to enter into this Settlement Agreement. Defendant contends that they are not liable for any of Plaintiff's claims, but have agreed to settle along the terms set forth in this Settlement Agreement to fully resolve the Action.

42. Class Members' Claims. The Class Representative claims that his allegations have merit in regards to the Class Members. Defendant claims that the Released Claims have no merit. This Settlement Agreement is a compromise and settlement of disputed claims. Nothing in this Settlement Agreement or its exhibits, and no action taken to carry out this Settlement Agreement may be construed or used as an admission by or against the Class Members or Class Counsel as to the merits of the claims asserted.

III. TERMS OF SETTLEMENT AGREEMENT

43. Settlement Agreement Consideration by Defendant. Defendant shall pay the Gross Settlement Amount and nothing more than the Gross Settlement Amount, in the total amount of $449,417.73.

44. Release By Settlement Class Members. Upon the Effective Date, Plaintiff and all Class Members who do not submit a timely and valid Request for Exclusion (i.e., Settlement Class

Members) will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Claims.

45. General Release of Claims By the Named Plaintiff. As of the Effective Date, in exchange for the consideration in this Settlement Agreement, Plaintiff, hereby waives, releases, acquits and forever discharges the Released Parties from any and all Released Claims as well as any and all claims, actions, charges, complaints, grievances and causes of action, of whatever nature, whether known or unknown, which exist or may exist on Plaintiff's behalf as of the date he signs this Settlement Agreement, including any and all tort claims, contract claims, claims for unpaid wages, wrongful termination claims, retaliation claims, statutory claims, personal injury claims, emotional distress claims, invasion of privacy claims, defamation claims, fraud claims, quantum meruit claims, and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance, including, but not limited to, claims for violation of the Fair Labor Standards Act, the California Labor Code, the Wage Orders of California's Industrial Welfare Commission, other state wage and hour laws, the Americans with Disabilities Act, the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, the California Family Rights Act, the Family Medical Leave Act, California's Whistleblower Protection Act, California Business & Professions Code Section 17200 *et seq*. Plaintiff expressly waives and relinquishes any and all claims, rights or benefits they may have under California Civil Code § 1542, which provides as follows: **"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."** Plaintiff may later discover claims or facts in addition to, or different from, those which he knows or believes to exist, but he expressly agrees to fully, finally and forever settle and release any and all claims against the Released Parties, known or unknown, suspected or unsuspected, which exist or may exist at the time he signs this Settlement Agreement, including, but not limited to, any and all claims relating to or arising from Plaintiff's employment with Defendant. However, any Worker's Compensation claims are excluded from this Release.

46. Conditions Precedent: This Settlement Agreement will become final and effective only upon the occurrence of all of the following events: (a) the Court enters an order and judgment granting preliminary approval of the Settlement Agreement; (b) the Court enters an order granting final approval of the Settlement Agreement and a Final Judgment; and (c) the Effective Date occurs.

47. Nullification of Settlement Agreement. In the event that this Settlement Agreement is not finally approved by the Court, fails to become effective, or is reversed, withdrawn or modified by the Court, or in any way prevents or prohibits Defendant from obtaining a complete resolution of the claims as described herein, then (a) this Settlement Agreement shall be void and inadmissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural; (b) the conditional class certification for settlement purposes shall be void and not admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural; and (c) none of the Parties to this Settlement Agreement will be deemed to have waived any claims, objections, defenses or arguments in the Action, including with respect to the issue of class certification.

48. Tax Liability. The Parties make no representations as to the tax treatment or legal effect of the payments in this Agreement. Settlement Class Members understand and agree that they will be responsible for the payment of any taxes assessed on the Individual Settlement Payments that they receive.

49. No Tax Advice. Neither Class Counsel nor Defendant's Counsel intend anything contained in this Settlement Agreement to constitute 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.

50. Preliminary Approval Motion. As soon as possible Class Counsel shall file with the Court a motion for preliminary approval of the Settlement and supporting papers, which shall include this Settlement Agreement. Class Counsel shall provide a courtesy draft of these papers to Defense Counsel before filing the documents.

51. Settlement Administrator. By accepting the role as Settlement Administrator, the Settlement Administrator is bound to all of the terms, conditions and obligations described in this Settlement Agreement. Among these obligations, the Settlement Administrator shall have sole and exclusive responsibility for: (a) calculating the Workweeks, Payment Ratio, and the Individual Settlement Payment for each Settlement Class Member; (b) processing and mailing payments to the Class Representative, Class Counsel, the LWDA, and the Settlement Class Members; (c) printing and mailing the Notices to the Class Members as directed by the Court; (d) receiving and reporting objections, Requests for Exclusion, and disputes about the number of Workweeks applicable to individual settlement Class Members; (e) deducting all legally required taxes from the Individual Settlement Payments and distributing tax forms; (f) processing and mailing any tax payments to the appropriate state and federal taxing authorities; (g) providing declaration(s) as necessary in support of preliminary and/or final approval of this Settlement Agreement; and (h) other tasks that the Parties mutually agree on, or the Court orders the Settlement Administrator to perform. The Settlement Administrator shall keep the Parties timely apprised of the performance of its duties. Defendant and their Counsel shall have no responsibility for validating or ensuring the accuracy of the Settlement Administrator's work. Plaintiff, Class Counsel, Defendant and Defendant's Counsel shall not bear any responsibility for errors or omissions in the calculation or distribution of the Individual Settlement Payments or any other distribution of monies contemplated by this Settlement Agreement.

52. Notice Procedure.

a. Class Data. The Class Data shall be confidential. The Settlement Administrator shall not provide the Class Data to Class Counsel or Plaintiff or any third party, or use the Class Data for any purpose other than to administer this Settlement Agreement. Defendant shall provide the Settlement Administrator with the Class Data within fourteen (14) calendar days after the Preliminary Approval Date. Within fourteen (14) calendar days of receiving the Class Data, the Settlement Administrator shall prepare and mail the Notices to the Settlement Class Members

b. Notices.

i. The Notice that is mailed out to Class Members shall be in a form substantially similar to the form attached as **Exhibit A**. The Notice shall inform Class Members to notify the Settlement Administrator of their current mailing address and the address where their Individual Settlement Payment should be mailed following the Effective Date, if the addresses are different from the address that the Notice is initially mailed. The Notice shall include the release to be given by each Settlement Class Member in exchange for the Individual Settlement Payment.

ii. The Notice shall also provide each Settlement Class Member's number of Workweeks and each Settlement Class Member's estimated Individual Settlement Payment calculated by the Settlement Administrator.

c. Notice By First Class U.S. Mail. After receiving the Class Data from Defendant as provided herein, the Settlement Administrator shall mail copies of the Notice to all Class Members via First Class U.S. Mail. The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Class Member.

d. Undeliverable Notices. Any Notices returned to the Settlement Administrator as undeliverable on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine a correct address by lawful use of standard search techniques (e.g., skip trace search), and shall then perform a re-mailing if another mailing address is identified by the Settlement Administrator. If any Notices sent to Settlement Class Members currently employed by Defendant are returned to the Settlement Administrator as undeliverable and no forwarding address is provided, the Settlement Administrator shall notify Defendant. Defendant will request that the currently employed Settlement Class Member provide an updated address to the Defendant to forward to the Settlement Administrator. Class Members who received a re-mailed Notice shall have their Response Deadline extended fifteen calendar (15) days from the original Response Deadline.

e. Disputes Regarding Individual Settlement Payments. Settlement Class Members will have the opportunity, should they disagree with the estimated number of Workweeks stated on their Notice, to provide documentation and/or an explanation to show contrary employment dates. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Payment under the terms of this Settlement Agreement, and that determination shall be binding upon the Settlement Class Memberand the Parties.

f. Disputes Regarding Administration of Settlement Agreement. Any disputes not resolved by the Settlement Administrator concerning the administration of the Settlement Agreement will be resolved by the Court under the laws of the State of California. Prior to any such involvement of the Court, counsel for the Parties will confer in good faith to resolve the disputes without the necessity of involving the Court.

g. Requests for Exclusion.

i. The Notice shall include an explanation that Class Members who wish to exclude themselves from the Settlement Agreement must submit a written Request for Exclusion to the Settlement Administrator by the Response Deadline. The written Request for Exclusion must: (1) state the case name and number of the Action (*Rivera v. Allcom Electric, Inc.* Orange County Superior Court Case No. 30-2020-01123366); (2) clearly state that the Class Member requests to be excluded from the Settlement; (3) contain the name, address, and the last four digits of the Social Security number and/or Employee ID number of the person

requesting exclusion; (4) be signed by the Class Member; and (5) be mailed to the Settlement Administrator, postmarked by the Response Deadline at the address specified in the Notice

ii. The Request for Exclusion will not be valid if it is not timely submitted, or if it is not signed by the Class Member, or if it does not contain the name and address of the Class Member. The date of the postmark on the return mailing envelope for the Request for Exclusion shall be the exclusive means used to determine whether the Request for Exclusion was timely submitted. Class Members who fail to submit a valid and timely written Request for Exclusion on or before the Response Deadline shall be Settlement Class Members who are bound by all terms of the Settlement Agreement, and any final judgment entered in this Action.

iii. Any Class Member who requests to be excluded from the Settlement Agreement will not be entitled to any recovery under the Settlement Agreement and will not be bound by its terms or have any right to object, appeal or comment on it. Nothing in this Settlement Agreement can be construed as a waiver of any defense that Defendant or the Released Parties have or could assert against anyone who timely serves a Request for Exclusion.

iv. No later than five (5) court days after the Response Deadline, the Settlement Administrator shall provide counsel for the Parties with a final list of the Class Members who have timely submitted written Requests for Exclusion.

v. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit Requests for Exclusion.

h. Objections.

i. The Notice shall state that Settlement Class Members who wish to object to the Settlement Agreement may mail to the Settlement Administrator a written statement of objection ("Notice of Objection") by the Response Deadline. The postmark date of the mailing shall be deemed the exclusive means for determining that a Notice of Objection was served timely.

ii. Settlement Class Members have a right to appear at the Final Approval Hearing to have their objections heard by the Court. A Notice of Objection should: (1) be signed by the Settlement Class Member; (2) state the case name and number of the Action, the name and address of the Settlement Class Member, and the last four digits of the Settlement Class Member's Social Security number and/or Employee ID number; (3) contain the basis and/or grounds for the objection; and (4) state whether the Settlement Class Member intends to appear at the Final Approval Hearing.

iii. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Settlement Class Members to object to the Settlement Agreement or appeal from the Final Approval Order and Final Judgment.

iv. Class Members who submit a written Request for Exclusion are not entitled to object to the Settlement Agreement.

v. The Settlement Administrator shall send all objections to Class Counsel and Defense Counsel. Class Counsel will be responsible for filing the Notices of Objection with the Court in advance of the Final Approval Hearing. Plaintiff and/or Defendant may file oppositions to Notices of Objection..

vi. Defendant, Plaintiff and Class Counsel shall not be responsible for the fees, costs, or expenses incurred by Settlement Class Members arising from or related to any objection to the Settlement Agreement.

53. Funding and Allocation of the Gross Settlement Amount. Upon satisfaction of the preconditions described in this Settlement Agreement, and pursuant to the timeline and instructions below, Defendant will deposit the Gross Settlement Amount into a Qualified Settlement Fund to be established by the Settlement Administrator.

a. Funding Due Date. No later than twenty (20) days after the Effective Date, Defendant shall provide the Gross Settlement Amount to the Settlement Administrator to fund the Settlement Agreement.

b. Individual Settlement Payments. Individual Settlement Payments shall be paid from the Net Settlement Amount and shall be paid pursuant to the following formula:

i. Calculation of Individual Settlement Payments. Using the Class Data, the Settlement Administrator will calculate the total Workweeks for all Settlement Class Members. The respective Workweeks for each Settlement Class Member will be divided by the total Workweeks for all Settlement Class Members, resulting in the Payment Ratio for each individual Settlement Class Member. Each Settlement Class Member's Payment Ratio will then be multiplied by the Net Settlement Amount to calculate each Settlement Class Member's estimated Individual Settlement Payment. The Individual Settlement Payment will be provided only to the individual Settlement Class Member. Each Individual Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.) on the wages portion of the Individual Settlement Payment. The Individual Settlement Payment checks will include an endorsement confirming that by cashing the check, each Settlement Class Member is releasing the Released Claims.

ii. Tax Allocation. The Settlement Administrator will be responsible for issuing to Settlement Class Members an IRS Form W-2 for any amounts deemed "wages" and an IRS Form 1099 for the portions allocated to non-wage amounts, including penalties and interest. For tax purposes, each Individual Settlement Payment shall be allocated as follows: a) one third to penalties/other payments and one third to interest for which an IRS Form 1099 will be issued; b) one third as wages subject to IRS Form W-2 reporting and applicable taxes/withholdings

iii. Mailing. Individual Settlement Payments shall be mailed by First Class U.S. Mail to each Settlement Class Member no later than fourteen (14)

calendar days after Defendant provides funds to the Settlement Administrator for disbursement under this Settlement Agreement.

iv. Uncashed Checks. Any checks issued to Settlement Class Members shall remain valid and negotiable for one hundred and eighty (180) calendar days after the date they are issued. In the event that an Individual Settlement Payment check has not been cashed within one hundred and eighty (180) calendar days, then such funds, plus any accrued interest, will be tendered according to California Civil Procedure Code § 384. The Settlement Administrator shall prepare a report regarding the extent of unclaimed funds, and the report shall be presented to the Court by Class Counsel.

c. Class Representative Service Award ("Service Award"). Defendant agrees not to oppose or object to a Class Representative Service Award in an amount not to exceed $6,000 in exchange for Class Representative's general release of claims, including the Released Claims, and for his time, effort and risk in bringing and prosecuting this matter. The Service Award shall be in addition to the Class Representative's Individual Settlement Payment as a Settlement Class.

i. The Settlement Administrator shall pay the Service Award to Class Representative from the Gross Settlement Amount within fourteen (14) calendar days after Defendant funds the Gross Settlement Amount. Any portion of the requested Service Award that is not awarded to the Class Representative shall become part of the Net Settlement Amount.

ii. The Settlement Administrator shall issue an IRS Form 1099 - MISC to the Class Representative for the Service Award. The Class Representative shall be solely and legally responsible to pay any and all applicable taxes on the Service Award and shall hold harmless Defendant and the Released Parties from any claim or liability for taxes, penalties, or interest arising as a result of the Service Award.

iii. If the Court reduces or does not approve the requested Service Award, Plaintiff shall not have the right to revoke the Settlement Agreement, which shall remain binding.

d. Class Counsel Award.

i. Plaintiff shall seek and Defendant will not oppose an application for an award of attorneys' fees not to exceed $150,000 (33.33% of the Gross Settlement Amount), and reimbursement of actual costs and expenses as supported by declaration not to exceed $20,000. The Court-approved amount for the Class Counsel Award will be issued out of the Gross Settlement Amount.

ii. Class Counsel, Plaintiff and the Settlement Class Members will not apply to the Court for any additional payment of attorneys' fees and costs, or for an increase in the Gross Settlement Amount. The Parties agree that, over and above the Court-approved Class Counsel Award, each of the Parties shall bear their own fees and costs, including, but not limited to, those related to the investigation, filing, or prosecution of the Action; the negotiation, execution, or implementation of this Settlement

Agreement; and/or the process of obtaining, administering, or challenging a Preliminary Approval Order and/or Final Approval Order.

iii. Any portion of the requested Class Counsel Award that is not awarded to Class Counsel shall be part of the Net Settlement Amount and shall be distributed to Settlement Class Members as provided in this Settlement Agreement.

iv. The Settlement Administrator shall pay the Class Counsel Award to Class Counsel from the Gross Settlement Amount within fourteen (14) calendar days after the Gross Settlement Amount is funded.

v. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the Class Counsel Award. The Settlement Administrator shall issue an IRS Form 1099 - MISC to Class Counsel for the payment.

vi. In the event that the Court reduces or does not approve the requested Class Counsel Award, Plaintiff and Class Counsel shall not have the right to modify or revoke the Settlement Agreement, although Plaintiff shall retain the right to appeal any reduction to the Class Counsel Award.

e. PAGA Penalties. The amount of $25,000 shall be allocated from the Gross Settlement Amount for the release of claims for civil penalties under the Private Attorneys General Act of 2004. The Settlement Administrator shall pay seventy-five percent (75%) of the PAGA Penalties, or $18,750, to the California Labor and Workforce Development Agency (the "LWDA Payment") within fourteen (14) calendar days after Defendant provide funds to the Settlement Administrator for disbursement under this Settlement Agreement. Twenty-five (25%) of the PAGA Penalties, or $6,250, will remain part of the Net Settlement Amount and distributed to Settlement Class Members as described in this Settlement Agreement. Plaintiff will take all actions required by California Labor Code section 2699(l).

f. Settlement Administrator Costs. The Settlement Administrator shall be paid for the costs of administration of the Settlement Agreement from the Gross Settlement Amount. Based upon estimates received, the Settlement Administrator Costs shall not exceed $7,600]. The Settlement Administrator shall be paid the Settlement Administrator Costs within fourteen (14) calendar days after Defendant provides funds to the Settlement Administrator for disbursement under this Settlement Agreement.

54. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, the execution of necessary documents and to take such other action as may be reasonably necessary to implement the terms of this Settlement Agreement. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of Defendant and Defense Counsel, take all necessary steps to secure the Court's Preliminary and Final Approval of this Settlement Agreement. The Parties also agree to cooperate in the Settlement Administration process. The Parties each represent they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

55. Preliminary Approval Hearing. As soon as possible Plaintiff shall obtain a hearing before the Court to request the preliminary approval of the Settlement Agreement, and the setting of a date for a Final Approval Hearing. The Preliminary Approval Order shall provide for the Notice to be sent to all Class Members as specified herein. In conjunction with the Preliminary Approval Hearing, Plaintiff shall submit this Settlement Agreement and the proposed Notice. Plaintiff shall provide drafts of all papers filed in support of preliminary approval to Defense Counsel at least five (5) court days before filing the documents.

56. Final Approval Motion. After the expiration of the Response Deadline, Plaintiff shall file with the Court a motion for final approval of the Settlement, requesting final approval of the Settlement Agreement and a determination of the amounts payable for the Service Award, the Class Counsel Award, the PAGA Payment, and the Settlement Administration Costs. Plaintiff shall provide drafts of these papers to Defense Counsel before filing the documents.

a. Declaration by Settlement Administrator. The Settlement Administrator shall submit a declaration in support of Plaintiff's motion for final approval of this Settlement Agreement detailing the number of Notices mailed and re-mailed to Class Members, the number of undeliverable Notices, the number of Requests for Exclusion received, the number of Notices of Objections received, the number of disputes received about the Workweek counts, the amount of the average Individual Settlement Payment, the Settlement Administration Costs, and any other information as the Parties mutually agree on, or that the Court orders the Settlement Administrator to provide.

b. Final Approval Order and Judgment. The Parties shall present a proposed Final Approval Order to the Court for its approval, and Judgment thereon consistent with the terms and conditions of this Settlement Agreement.

57. Review of Motions for Preliminary and Final Approval. Class Counsel will provide an opportunity for Defense Counsel to review the Motions for Preliminary and Final Approval prior to filing with the Court. The Parties and their counsel will cooperate and use their best efforts to effect the Court's approval of the Motions for Preliminary and Final Approval of the Settlement Agreement, and entry of Judgment.

58. Nullification of Settlement Agreement. In the event that the Court does not grant final approval, or the Court does not enter a final judgment as provided herein, or the Settlement Agreement does not become final for any other reason, this Settlement Agreement and the MOU shall be null and void and any order or judgment entered by the Court in furtherance of this Settlement Agreement shall be treated as void from the beginning. In such a case, the entire Gross Settlement Amount shall be returned to Defendant; the Parties shall proceed in all respects as if this Settlement Agreement had not been executed, except that any costs already incurred by the Settlement Administrator shall be paid by equal apportionment among the Parties; and this Agreement and its terms, and the communications, negotiations, and settlement discussions related to the Action, shall be inadmissible and treated as confidential to the fullest extent allowed by law. In the event an appeal is filed from the Court's final judgment, or any other appellate review is sought, administration of the Settlement Agreement shall be stayed pending final resolution of the appeal or other appellate review, but any fees incurred by the Settlement Administrator prior to being notified of the filing of an appeal from the Court's Final Judgment, or any other appellate review, shall be paid to the Settlement Administrator within thirty (30) days of said notification.

59. Defendant's Option To Terminate Settlement. If the number of Class Members who submitted timely and valid written requests for exclusion from the Settlement is at least ten percent (10%) of all Class Members, Defendant shall have, in its sole discretion, the option to terminate this

Settlement and its stipulation to class certification before the Final Approval Hearing. If Defendant exercise the option to terminate this Settlement, Defendant shall: (a) provide written notice by certified mail to Class Counsel prior to the Final Approval Hearing and no later than seven (7) calendar days after receiving notice from the Settlement Administrator of the number of Class Members who have submitted timely and valid requests for exclusion; (b) pay all Settlement Administration Costs incurred up to the date or as a result of the termination; and (c) the Parties shall proceed in all respects as if this Agreement had not been executed.

60. No Effect on Employee Benefits. Amounts paid to the Plaintiff or other Settlement Class Members pursuant to this Settlement Agreement shall not be deemed pensionable earnings or have any effect on the eligibility for, or calculation of, any employee benefits (e.g., vacations, holiday pay, retirement plans, etc.) of the Plaintiff or Settlement Class Members.

61. Exhibits and Headings. The terms of this Settlement Agreement include the terms set forth in the attached Exhibit. The descriptive headings of any paragraphs or sections of this Settlement Agreement are inserted for ease of reference only and do not constitute a part of this Settlement Agreement.

62. Amendment or Modification. With Court approval, this Settlement Agreement may be amended or modified only by a written instrument that is signed by counsel for all Parties or their successors-in-interest, and signed by the Parties or their successors-in-interest.

63. Entire Settlement Agreement. This Settlement Agreement and its exhibit constitute the entire Settlement Agreement among the Parties, and no oral or written representations, warranties or inducements have been made to any Party concerning this Settlement Agreement or its exhibit other than the representations, warranties and covenants contained and memorialized in the Settlement Agreement and its exhibit.

64. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate actions needed by this Settlement Agreement to effectuate its terms. The person signing this Settlement Agreement on behalf of Defendant represents and warrants that he or she is authorized to sign this Settlement Agreement on behalf of Defendant. Plaintiff represents that he is authorized to sign this Settlement Agreement and that he has not assigned, transferred, or encumbered any claim, or part of a claim, demand, cause of action or any rights herein released and discharged or covered by this Settlement Agreement to any third-party.

65. Binding on Successors and Assigns. The provisions of this Settlement Agreement shall run in perpetuity. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties.

66. California Law Governs. All terms of this Settlement Agreement and its exhibits, and any disputes arising hereunder shall be governed by and interpreted according to the laws of the State of California.

67. Counterparts. This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Settlement Agreement shall exchange among themselves copies or originals of the signed counterparts.

68. This Settlement Agreement Is Fair, Adequate and Reasonable. The Parties believe that this Settlement Agreement is a fair, adequate and reasonable Settlement Agreement of this Action and have arrived at this Settlement Agreement after extensive arm's-length negotiations, taking

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into account all relevant factors, present and potential. The Parties further agree that this Settlement Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or their counsel participated in the drafting of this Settlement Agreement.

69. Jurisdiction of the Court. The Parties agree that, pursuant to California Code of Civil Procedure Section 664.6, the Court shall retain jurisdiction with respect to the interpretation, implementation and enforcement of the terms of this Settlement Agreement and all orders and judgments entered in connection to it, and the Parties and their counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the Settlement Agreement and all orders and judgments entered in connection to it.

70. Publicity. Plaintiff and Class Counsel agree not to disclose or publicize the Settlement, including the fact of the Settlement, its terms or contents, and the negotiations underlying the Settlement, in any manner or form, directly or indirectly, to any person or entity, except as may be strictly required to effectuate the terms of the Settlement. For the avoidance of doubt, this section includes Plaintiff and Class Counsel's agreement not to issue press releases, communicate with, or respond to any media or publication entities, publish information in manner or form, whether printed or electronic, on any medium or otherwise communicate, whether by print, video, recording or any other medium, with any person or entity concerning the Settlement, including the fact of the Settlement, its terms or contents and the negotiations underlying the Settlement, except as shall be contractually required to effectuate the terms of the Settlement. However, Class Counsel may disclose the name of the Parties in this action, the venue/case number, and settlement details available in the public record, for the limited purpose of allowing Class Counsel to prove adequacy as class counsel in other actions.

71. Waiver of Certain Appeals. Except as provided herein, the Parties agree to waive all appeals from the Court's final approval of the Settlement Agreement, unless the Court modifies the Settlement Agreement.

72. Denial of Liability. The Parties expressly recognize that the making of this Settlement Agreement does not in any way constitute an admission or concession of wrongdoing on the part of Defendant. The Settlement and any related statements, discussions, communications, or materials cannot be admissible in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this Agreement may be used in any proceeding in the Court that has as its purpose the interpretation, implementation, or enforcement of the Settlement or any orders or judgments of the Court entered into in connection therewith.

73. Notice of Settlement Agreement to LWDA. Plaintiff shall provide notice of this Settlement Agreement to the Labor Workforce Development Agency ("LWDA") as required by Labor Code Section 2699(l)(2).

IN WITNESS WHEREOF, this Joint Stipulation of Class Action and PAGA Settlement Agreement and Release of Claims is voluntarily executed by the Parties and their attorneys as of the dates noted.

IT IS SO AGREED:

Dated: 3/2/2022

DocuSigned by:
3BAE14B5449148C...

Eduardo Rivera, Plaintiff

Dated: 1/17/22

Allcom Electric, Inc.
By: Mike Neil, President

APPROVED AS TO FORM ONLY:

Dated: March 2, 2022

James R. Hawkins
Isandra Fernandez
James Hawkins APLC
Attorneys for Plaintiff and Proposed Class Counsel

Dated: 1/17/22

Chad T. Wishchuk
Finch, Thornton & Baird, LLP
Attorneys for Defendant