

PAGA SETTLEMENT AND RELEASE AGREEMENT

This PAGA Settlement and Release Agreement (hereinafter "Settlement" or "Agreement") is made and entered into by and between Plaintiff ALEXCIA ANDERSON (hereinafter "Plaintiff") on behalf of herself and as authorized proxy and agent for the State of California and the Labor and Workforce Development Agency pursuant to Labor Code section 2698 *et seq.*, the Private Attorneys General Act ("PAGA") on the one hand, and Defendant ABC PHONES OF NORTH CAROLINA, INC. ("Defendant" or "ABC Phones"), on the other hand. Plaintiff and Defendant are collectively referred to herein as "the Parties."

1. THE CONDITIONAL NATURE OF THIS AGREEMENT

1.1 This Agreement and all associated exhibit(s) or attachment(s) are made for the purpose of settling the Covered Claims, as described herein, in the Action. This Agreement and the settlement it evidences are made in compromise of disputed claims. The Parties enter into this Agreement and associated settlement on a conditional basis. If the Court does not enter the Approval Order and Final Judgment and/or the Effective Date does not occur, this Agreement shall be deemed null and void *ab initio*, it shall be of no force or effect whatsoever, it shall not be referred to or utilized for any purpose whatsoever, and the negotiation of the Agreement shall remain subject to the provisions of California Evidence Code section 1152 and any other analogous rules of evidence that are applicable.

1.2 Defendant denies all the allegations asserted in the Complaint, and any amendments thereto, and also denies any claims for relief, including claims for penalties, attorneys' fees, and costs of suit. Defendant has agreed to resolve Plaintiff's sole cause of action for violation of the PAGA [Labor Code §§ 2698 *et seq.*] via this Agreement, but to the extent this Agreement is not approved or the Effective Date does not occur, Defendant does not waive, but rather expressly reserves, all rights to challenge Plaintiff's Complaint(s) upon all procedural and factual grounds, as well as asserting any and all other potential defenses or privileges. Plaintiff and PAGA Counsel agree that Defendant retains and reserves these rights, and agree not to argue or present any

argument, and hereby waive any argument that, based on this Agreement, Defendant cannot assert any and all potential defenses and privileges if this Action were to proceed.

2. NATURE OF ACTION

2.1 For purposes of this Settlement, the Aggrieved Employees or PAGA Members are defined as: Plaintiff and all current and former employees of ABC Phones of North Carolina, Inc. who worked within California for at least one pay period for one or more pay periods from March 18, 2019 through the date of court approval of the settlement (the "PAGA Period").

2.2 Through informal discovery, Defendants provided Plaintiffs and PAGA Counsel with information about the number of potentially Aggrieved Employees, estimated between 2,200 and 2,300 Aggrieved Employees and the total number of pay periods, estimated at approximately 37,000 as of the mediation date.

2.3 ABC Phones was Plaintiff's employer, and this Agreement settles Covered Claims for alleged Labor Code violations for employees of Defendant, as well as all those entities and parties included in the definition of Released Parties.

3. DEFINITIONS

3.1 "Action" or "Lawsuit" means the civil action pending in Contra Costa County Superior Court titled, *ALEXCIA ANDERSON, an individual, on behalf of the State of California, as a private attorney general, PLAINTIFF v. ABC PHONES OF NORTH CAROLINA, INC., a North Carolina Corporation; and DOES 1 to 50, inclusive, DEFENDANTS*, Contra Costa County Superior Court, Case No. MSC20-00957.

3.2 "Aggrieved Employee," "Aggrieved Employees," "PAGA Member" or "PAGA Members" mean Plaintiff and all current and former employees of ABC Phones of North Carolina, Inc. who worked within California for at least one pay period for one or more pay periods from March 18, 2019 through the date of approval of the Settlement.

3.3 "Aggrieved Employee Share" means each Aggrieved Employee's share of the 25% of PAGA penalties allocated to the Aggrieved Employees in accordance with Labor Code section 2699(i).

3.4 “Approval Date” means the date that the Court enters the Approval Order.

3.5 “Approval Motion” means the Motion for Approval of Representative PAGA Settlement that Plaintiff will submit to the Court identifying the key terms of this Agreement and requesting that the Court approve the Settlement.

3.6 “Approval Order” means an Order from the Court approving this PAGA Settlement and Release Agreement.

3.7 “Complaint” means the complaint filed in the Action by Plaintiff on May 27, 2020 (Contra Costa County Superior Court Case No. MSC20-00957).

3.8 “Court” means the Contra Costa County Superior Court.

3.9 “Counsel for Defendant” and “Defense Counsel” means Robert L. Shipley, APLC.

3.10 “Covered Claims” shall mean any and all claims that are pled in Plaintiff’s February 11, 2020 PAGA Letter, Plaintiff’s Complaint filed on May 27, 2020, Plaintiff’s November 11, 2020 Amended PAGA Letter, and Plaintiff’s February 18, 2020 Second Amended PAGA Letter (the “Action”), or which could have been pursued in the Action under the PAGA based on the factual allegations in the Action, or which could have been pled under the PAGA based on the factual allegations in the Action, that arose during the PAGA Period, including but not limited to: failure to provide or authorize and permit lawful meal and rest breaks, failure to pay or properly calculate meal and rest break premiums, failure to pay or properly calculate overtime pay, inaccurate wage statements, waiting time penalties, failure to pay wages twice each month, claims for off the clock time and failure to pay minimum wages, and/or failure to reimburse for necessary business expenses.

3.11 “Defendant” means ABC Phones of North Carolina, Inc.

3.12 “Effective Date” means the date the Court enters final judgment as to the complaint and causes of action in the Action in connection with an order granting and entering approval of PAGA settlement pursuant to this Agreement (“Final Judgment”) and shall be the later of the day after (a) the expiration of the time for any notice of intention of a post-judgment motion or appeal to be filed following Final Judgment or (b) if a post-judgment motion or appeal

has been filed, the date the Final Judgment is no longer appealable and constitutes a "final judgment" for purposes of res judicata and collateral estoppel.

3.13 "Eligible Pay Periods" means the total number of pay periods that each Aggrieved Employee received a wage statement during the PAGA Period.

3.14 "Maximum Settlement Amount" or "MSA" means SEVEN HUNDRED NINETY THOUSAND DOLLARS AND 00/100 CENTS (\$790,000.00) that Defendant is obligated to pay under the terms of the proposed settlement. The MSA is non-reversionary, such that the entire amount will be disbursed and none will revert to Defendant. The MSA includes the PAGA Payment (as defined below), PAGA Counsel's attorney's fees (not to exceed 33 and 1/3 percent of the Maximum Settlement Amount, however, PAGA Counsel will only request attorneys' fees in the amount of 25 percent of the Maximum Settlement Amount) and costs (not to exceed \$20,000) and Settlement Administration Costs. In no circumstance will Defendant be required to pay more than \$790,000.00 as part of or in connection with this Agreement.

3.15 "PAGA" means the California Labor Code Private Attorneys General Act of 2004, codified at Cal. Lab. Code § 2698 *et seq.*

3.16 "PAGA Counsel" means David S. Winston of the Winston Law Group, P.C. and Craig Ackermann and Avi Kreitenberg of Ackermann & Tilajef, P.C.

3.17 "PAGA Payment" means the portion of the Maximum Settlement Amount (after excluding PAGA Counsel's attorney's fees and costs, and Settlement Administration Costs) that represents the amount payable in this settlement for PAGA penalties, 75% of which will be paid to the Labor and Workforce Development Agency ("LWDA") and 25% of which will be paid to the PAGA Members. All PAGA Members will receive a monetary payment from the PAGA Payment.

3.18 "PAGA Period" means the period from March 18, 2019 through the date of Court approval of the Settlement.

3.19 "PAGA Representative" or "Plaintiff" means Plaintiff Alexcia Anderson.

3.20 "Qualified Settlement Fund" or "QSF" means a qualified settlement fund

established by the Settlement Administrator for the purpose of administering the settlement.

3.21 "Released Parties" means any entity named as a defendant in the Action, and their parents, subsidiaries, affiliates, owners, predecessors, successors, and associated organizations, past and present, and each of their respective trustees, directors, officers, agents, joint employers, attorneys, managing agents, employees, contractors, insurers, representatives, assigns, all persons acting by, through, under, or in concert with any of them, and/or all persons acting on behalf of them.

3.22 "Settlement" and "Agreement" means this PAGA Settlement and Release Agreement.

3.23 "Settlement Administrator" means ILYM Group, Inc.

3.24 "Settlement Administration Costs" means the amount to be paid to the Settlement Administrator for the cost of administering this settlement, which are currently estimated to be approximately \$15,000.00. The Settlement Administration Costs shall include: all costs of administering the Settlement, including, but not limited to, administering the Qualified Settlement Fund; all tax document preparation, custodial fees, and accounting fees incurred by the Settlement Administrator; all costs and fees associated with preparing, issuing and mailing any and all communications to PAGA Members; all costs and fees associated with issuing the individual payments to PAGA Members and the payments to the State of California LWDA; and all costs and fees associated with issuing IRS Form 1099s (to the extent any are required by applicable law), relating to payments made under the settlement; all costs and fees associated with preparing any tax returns and any other filings required by any governmental taxing authority or agency; all costs and fees associated with preparing any other notices, reports, or filings to be prepared in the course of administering the settlement, and any other costs and fees incurred and/or charged by the Settlement Administrator in connection with the execution of its duties under this Agreement.

4. **REPRESENTATIONS**

4.1 Plaintiff alleged on behalf of the State of California, among other things, that she and the other Aggrieved Employees were not paid for all hours worked, were not paid overtime

wages in the correct amount, did not receive lawful rest periods and were underpaid rest period premiums, did not receive lawful meal periods and were underpaid meal period premiums, did not receive accurate itemized wage statements, did not receive all wages timely, did not receive all wages owed at the conclusion of their employment, did not receive reimbursement for business expenses incurred and therefore, are owed penalties for the above. Plaintiff alleges that this underlying conduct gives rise to a claim pursuant to the PAGA.

4.2 The Parties exchanged meaningful information through informal discovery for the mediation including policies and practices, information about the number of Aggrieved Employees, and the number of pay periods at issue during the PAGA Period. Defendant denies all of the allegations made by Plaintiff.

4.3 Defendant denies all liability or wrongdoing of any kind associated with the claims alleged in the Lawsuit and denies any liability or intentional wrongdoing. Defendant contends, among other things, that they have complied at all times with the California Labor Code, the related California Wage Orders, and all other state and federal wage laws, and further contends that the Lawsuit is without merit and that Plaintiff cannot pursue claims, if any, against Defendant. Defendant has denied and continues to deny each and every material factual allegation and alleged claim asserted against it in the Lawsuit. Defendant further contends that the imposition of any penalties would be unjust, arbitrary, oppressive, and confiscatory. Nevertheless, Defendant is willing to resolve this matter in accordance with the terms set forth herein.

4.4 The Parties recognize that the issues presented in the Lawsuit are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will cause inconvenience, distraction, disruption, delay, and expense disproportionate to the potential benefits of litigation. The Parties have taken into account the risk and uncertainty of the outcome inherent in any litigation.

4.5 Plaintiff and PAGA Counsel contend that they have diligently pursued an investigation of the State of California's claims under PAGA against Defendant.

4.6 Based on their own independent investigations and evaluations, Plaintiff and PAGA Counsel are of the opinion that the settlement for the consideration and on the terms set forth in this Agreement is fair, reasonable, and adequate and is in the best interests of the Plaintiff, the Aggrieved Employees, and the State of California in light of all known facts and circumstances and the risks inherent in litigation, including the potential appellate issues. Further, PAGA Counsel believes that the settlement amount entered into is in the best interests of the Aggrieved Employees and the State of California and that the settlement is fair, reasonable, and adequate, given the inherent risk of litigation.

4.7 The purpose of this Settlement is to settle and compromise the Lawsuit and all Covered Claims that Plaintiff, the State of California, and the Aggrieved Employees have under PAGA against Defendant and the Released Parties. Neither the existence of this Settlement nor anything contained in this Settlement shall be construed or deemed as an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or the Released Parties. Nothing herein shall constitute an admission by Defendant or the Released Parties that the Lawsuit was properly brought as a representative action other than for settlement purposes. Settlement of the Lawsuit, the negotiation and execution of this Settlement, and all acts performed or documents executed pursuant to or in furtherance of this Settlement or the settlement of the Lawsuit: (a) are not, shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Defendant or the Released Parties or of the truth of any of the factual allegations in the operative Complaint in the Lawsuit; (b) are not, shall not be deemed to be, and may not be used as, an admission or evidence of any fault or omissions on the part of Defendant or the Released Parties in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal; (c) are not, shall not be deemed to be, and may not be used as, an admission or evidence of the appropriateness of these or similar claims for representative treatment, or administration other than for purposes of administering this Settlement; and (d) shall not constitute or be deemed a waiver of Defendant's or the Released Parties' right to compel arbitration of any dispute with an Aggrieved Employee.

4.8 This Settlement shall be binding on Plaintiff, the Aggrieved Employees she represents (as defined herein), and on the Defendant and the Released Parties, subject to the terms and conditions hereof and the approval of the Court.

4.9 In order to comply with the requirements of Labor Code Section 2699(I), Plaintiff shall submit an Approval Motion identifying the key terms of this Agreement and requesting that the Court approve the Settlement. The Settlement is contingent upon the approval by the Court. If the Court denies the Approval Motion due to concerns that the Parties cannot address through non-material modifications of this Agreement, (i) this Settlement shall be considered null and void; (ii) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect; and (iii) all Parties to this Agreement shall stand in the same position, without prejudice, as if this Settlement had been neither entered into nor filed with the Court. Invalidation of any material portion of this Settlement, except for the amount of attorneys' fees and costs, shall invalidate this Settlement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect. The Parties agree to abide by all of the terms of the Settlement in good faith and to support the Settlement fully and to use their best efforts to defend this Settlement from any legal challenge, whether by appeal or collateral attack. The Parties shall make all possible good faith efforts to resolve any issues raised by the Court during the approval process.

4.10 In the event that the Court does not grant the Approval Motion after three attempts to address any issues raised by the Court to the satisfaction of all Parties (unless all of the Parties agree in writing to proceed with additional attempts), the Parties will be restored to their positions prior to the execution of this Agreement and the Agreement shall be null and void.

5. TERMS OF SETTLEMENT

The Parties to the Action agree as follows:

5.1 **Agreement to Settle Lawsuit and the Covered Claims.** In consideration of the mutual covenants, promises and representations set forth in this Settlement, Plaintiff, on behalf of the State of California as Private Attorney Generals as well as the Aggrieved Employees and

Defendant agree to settle and compromise the Lawsuit and the Covered Claims, subject to the terms and conditions set forth in this Settlement.

5.2 **Maximum Settlement Amount ("MSA").** As consideration for the settlement described herein and the release contained in this Settlement, Defendant agrees to pay the MSA of SEVEN HUNDRED NINETY THOUSAND U.S. DOLLARS AND 00/100 CENTS (\$790,000.00) to resolve this Action. The MSA will be allocated as follows:

- (a) PAGA attorney fees of up to one-third of the MSA (\$263,333.33), of which PAGA Counsel will only request one-fourth of the MSA (\$197,500.00, to be divided 1/2 to Winston Law Group, P.C., 1/2 and to Ackermann & Tilajef, P.C.);
- (b) PAGA Counsel's request for costs in the amount of up to \$20,000.00;
- (c) Settlement Administration Costs of \$15,000.00 to be paid to the Settlement Administrator (administration costs shall not exceed the amount estimated by the bid submitted by the Settlement Administrator to administrate the Settlement); and
- (d) the remainder of the MSA after deducting the items (a), (b), and (c) herein shall be designated as the PAGA Payment, which is estimated to be \$491,666.67 and will be allocated between the LWDA and the Aggrieved Employees pursuant to Labor Code section 2699(i) with 75% paid to the LWDA (\$368,750.00) and 25% paid to the Aggrieved Employees on a pro-rata basis (\$122,906.67).

5.3 **Allocation and Calculation of the PAGA Payment.** The anticipated total PAGA Payment will be approximately \$491,666.67. Seventy-five percent (75%) of the PAGA Payment will be paid to the LWDA as required by Labor Code section 2699(i). The remaining twenty-five percent (25%) of the PAGA Payment will be distributed to Aggrieved Employees based on the number of Eligible Pay Periods each PAGA Member worked during the PAGA Period as a percentage of the total number of Eligible Pay Periods worked by all PAGA Members during the

PAGA Period. Because the Aggrieved Employee Share payments are payments in compromise and settlement of a claim for alleged penalties, all Aggrieved Employee Share payments will be treated as nonwage income with no tax withholdings and will be reported, if required, on an IRS Form 1099. Each Aggrieved Employee Share payment of the PAGA Payment represents their share of the twenty-five percent (25%) in PAGA penalties distributable to the Aggrieved Employees.

5.4 **PAGA Counsel's Fees and Costs.** As part of the Approval Motion, PAGA Counsel will request Court approval of one-third of the MSA in attorneys' fees, which is \$263,333.33, however, PAGA Counsel will only request approval of one-fourth of the MSA in attorney fees, which is \$197,500.00 to be divided 1/2 to Winston Law Group, P.C. and 1/2 to Ackermann & Tilajef, P.C. In addition, PAGA Counsel will request cost reimbursement in an amount up to \$20,000.00 for costs incurred by PAGA Counsel. Should PAGA Counsel request a lesser amount for attorneys' fees and costs and/or the Court approve a lesser amount, the difference shall be allocated to the PAGA Payment and distributed accordingly. Any attorneys' fees and costs awarded to PAGA Counsel, hereinafter referred to as "PAGA Counsel Fees & Costs," shall fully compensate and reimburse PAGA Counsel for any and all of the work already performed in connection with the Lawsuit and all work remaining to be performed in fully and finally resolving the Lawsuit, including but not limited to securing Court approval of the settlement, appearing at any hearings, making sure that the settlement is fairly and properly administered, defending the settlement in any appeal or other post-approval matter, all other work that PAGA Counsel has performed or will perform, and all costs that PAGA Counsel has incurred or will incur.

5.5 **Tax Treatment of Settlement Amounts.** With regard to settlement payments to Aggrieved Employees, IRS Form 1099s will be issued, if required. Nothing in this Settlement is intended to constitute legal advice regarding federal, state, and/or local tax obligations. Plaintiff acknowledges that she has obtained no tax advice from Defendant and that neither Defendant nor its attorneys have made any representation concerning the tax consequences, if any, of the MSA.

in this Agreement or any payment to be made pursuant to this Agreement. Plaintiff also acknowledges she has had an opportunity to consult with independent tax counsel. To the extent that this Settlement or any of its attachments is interpreted to contain or constitute advice regarding any state or federal tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code. Defendant is not responsible for any Aggrieved Employees' tax obligations regarding the allocation of the settlement payments. Payment of PAGA Counsel Fees & Costs will be reflected in a Form 1099 to PAGA Counsel who shall assume full responsibility and liability for the payment of taxes due on such payments.

5.6 Aggrieved Employees' Aggrieved Employee Shares pursuant to this Agreement are not intended by the Parties to be compensation for purposes of determining eligibility for or benefit calculations of any health and welfare benefit plan, retirement benefit plan, vacation benefit plan, unemployment compensation, including, without limitation, all plans, subject to the Employee Retirement Income Security Act ("ERISA"). The Parties agree that the Aggrieved Employee Shares are not intended to represent any modification of any employee's previously-credited hours of service or other eligibility criteria under any employee pension benefit plan, employee welfare benefit plan, or other program or policy.

5.7 **Release.**

5.7.1 **Release By All PAGA Members.** Upon approval of the Settlement, and except as to the right to enforce the terms and conditions of the Settlement, Plaintiff, on behalf of herself and the State of California, and all PAGA Members, hereby fully releases the Released Parties from any and all Covered Claims during the PAGA Period.

5.7.2 **Covenant Not to Participate in Proceedings.** The Settlement is conditioned upon this release by all PAGA Members of any claim or right under Labor Code section 2698 *et seq.* as to the release set forth above, and upon covenants by all PAGA Members that they will not participate in any proceeding seeking penalties as to the released claims set forth above. The Parties stipulate that beyond the Maximum Settlement

Amount, Defendant shall not owe any further monies to the Plaintiff, PAGA Counsel, PAGA Members, the State of California, or LWDA based upon any allegations made in Plaintiffs' LWDA letters or their complaints.

5.8 **Approval of the Settlement.** As explained in Paragraph 4.9, in order to comply with the requirements of Labor Code Section 2699(f), Plaintiff shall file an Approval Motion identifying the key terms of this Settlement requesting that the Court approve the Settlement.

5.9 **Administering the Settlement and Payment Plan.**

5.9.1 Within fifteen (15) calendar days after the Effective Date, Defendants will provide an Aggrieved Employee list ("Aggrieved Employee List") to the Settlement Administrator containing: (1) the name; (2) last known address; (3) the number of Eligible Pay Periods worked by an Aggrieved Employee during the PAGA Period; and, (4) social security number of each Aggrieved Employee.

5.9.2 Defendant shall pay to the Settlement Administrator the MSA within fifteen (15) calendar days after the Effective Date.

5.9.3 The Settlement Administrator shall distribute each Aggrieved Employee Share to the Aggrieved Employees and the attorneys' fees and costs approved by the Court within thirty (30) calendar days of receipt of the MSA from Defendant (which, as set forth in Paragraph 5.9.2, will occur within fifteen (15) calendar days after the Effective Date).

5.9.4 The payment checks for each Aggrieved Employee Share shall be sent to each Aggrieved Employee by U.S. First Class mail to the Aggrieved Employee's address with directions to the Postmaster to forward the payment checks and return all undeliverable payment checks to the Settlement Administrator. A notice explaining this Settlement (substantially in the form attached hereto as Exhibit A) will be included in the mailing of each Aggrieved Employees' check and submitted to the Court for its review and approval ("Notice"). Prior to mailing the Notice and payment check, the Settlement Administrator shall check the addresses provided by Defendant in the Aggrieved Employee List using the National Change of Address database and shall update any

addresses accordingly. Should any of the Notices and payment checks be returned as undeliverable, the Settlement Administrator will conduct a search for a more current address (via a skip trace or other reasonable method) and re-mail the Notice and payment check to the more current address, if any. It will be conclusively presumed that an Aggrieved Employee's Aggrieved Employee Share check was received if the payment check has not been returned within thirty (30) days of the original mailing of the payment check. The date of the initial mailing of the payment check shall be conclusively determined according to the records of the Settlement Administrator.

5.9.5 The Settlement Administrator shall ensure that seventy-five percent (75%) of the PAGA Payment is paid to the LWDA within thirty (30) calendar days of receipt of the MSA from Defendant.

5.9.6 Within fifteen (15) calendar days after Settlement Administrator has distributed each Aggrieved Employee Share to the Aggrieved Employees and the attorneys' fees and costs approved by the Court, the Settlement Administrator shall provide an accounting under oath to the Parties of the amounts paid from the Settlement.

5.9.7 Settlement checks shall remain valid and negotiable for one hundred eighty (180) calendar days from the date of their issuance. If there are uncashed checks following this period, the Settlement Administer will ensure that uncashed funds shall be sent to the State of California Unclaimed Wage or Property Fund.

5.9.8 Since this is not a settlement of a class action but a PAGA settlement on behalf of the State of California, no person can (a) object to the settlement after the Court's Approval Order is made, or (b) opt out from being covered by release of claims at any time before or after the Approval Order is made.

5.10 **Duties of the Parties Prior to Approval.** Promptly upon execution of this Settlement, Plaintiff shall file an Approval Motion. The Parties shall apply to the Court for the entry of an Approval Order and Final Judgment approving this Settlement as required by Labor Code section 2699(l). The Approval Motion will request Court approval of the following:

- a. Approving the terms of this PAGA Settlement and Release Agreement;
- b. Approving the amount of PAGA Counsel Fees & Costs;
- c. Appointing ILYM Group, Inc. as the Settlement Administrator and approving the amount of Settlement Administration Costs;
- d. Approving the Notice; and
- e. Entering Final Judgment.

In conjunction with the Approval Motion, the Parties will submit a proposed Approval Order granting the Approval Motion, which will include a Final Judgment consistent with the terms of this Agreement. The proposed Approval Order and Final Judgment will include a dismissal of Plaintiff's representative PAGA claims with prejudice, and a request pursuant to California Code of Civil Procedure section 664.6 that the Court retain continuing jurisdiction over this Action and over all Parties, to the fullest extent necessary to enforce and effectuate the terms and intent of this Agreement.

5.11 **Parties' Authorization.** The signatories hereto hereby represent that they are fully authorized to enter into this Settlement and bind the Parties hereto to the terms and conditions hereof.

5.12 **Mutual Full Cooperation.** The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement, including, but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement. The Parties to this Settlement shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement and the terms set forth herein. As soon as practicable after execution of this Settlement, PAGA Counsel shall, with the assistance and cooperation of Defendant and its counsel, take all necessary steps to secure the approval of this Settlement from the Court. The Parties agree to work cooperatively to comply with the notice requirements to the LWDA pursuant to Labor Code sections 2699(l)(2) and 2699(l)(3).

5.13 **Confidentiality.** Other than submissions to the Court and information necessary to secure Court approval of this Settlement, the Parties agree to keep confidential all matters related to this Settlement, including the terms of the Settlement and the facts and circumstances leading up to it. The Parties may, however, discuss the terms of this Settlement with their spouses, fiancées, attorneys, financial advisors, tax advisors, and accountants, or upon a valid court order, at which time the individual receiving information about the terms of this Settlement shall be informed that the terms of this Settlement are confidential, and the individual may not reveal or disclose to any third party the terms of the Settlement. Neither Plaintiff nor PAGA Counsel, directly or indirectly, shall issue a press release or hold a press conference, publish information about the Settlement on any website, or otherwise publicize the Settlement. Plaintiff and PAGA Counsel agree not to respond to any press inquiries concerning the Settlement except to refer reporters to the papers filed with the Court. Nothing in this Agreement shall prohibit PAGA Counsel from disclosing this Settlement in declarations concerning their qualifications to serve as Class and/or PAGA Counsel. Nothing in this Agreement shall prohibit Defendant or Defendant's Counsel from disclosing this Settlement in discussions, declarations, or other supporting papers in other cases to defend against claims that, in whole or in part, encompass the claims raised in Plaintiff's Complaint and/or this Agreement.

5.14 **No Prior Assignments.** The Parties hereto represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, or purported to assign, or transfer to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement, and shall not be construed to confer any right or to avail any remedy to any other person.

5.15 **No Admission.** Nothing contained herein nor is the consummation of this Settlement to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or any of the Released Parties. Each of the Parties hereto

has entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expense. Defendant and the Released Parties deny that they have engaged in any unlawful activity, that they failed to comply with the law in any material respect, or that they have any liability to anyone under the claims asserted in the Lawsuit. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or shall be construed as an admission of liability or wrongdoing by Defendants or any of the Released Parties.

5.16 **Non-Evidentiary Use.** Whether or not the Effective Date occurs, neither this Agreement nor any of its terms nor the Settlement itself shall be: (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendant or any other of the Released Parties, including but not limited to, evidence of a presumption, concession, indication, or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or (b) disclosed, referred to, or offered in evidence against any of the Released Parties in any further proceeding in the Lawsuit, or any other civil, criminal, or administrative action or proceeding except for the purposes of effectuating the Settlement pursuant to this Agreement or for Defendant or any of the Released Parties to establish that an Aggrieved Employee has resolved any of his/her claims released through this Agreement.

5.17 **Nullification.** If (a) the Court should for any reason fail to approve this Settlement in the form agreed to by the Parties (except for the amount of attorneys' fees and costs), or (b) the Court's approval of this Settlement is reversed, modified, or declared or rendered void, then (i) this Agreement shall be considered null and void; (ii) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect; and (iii) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court. Invalidation of any material portion of this Agreement, except for the amount of attorneys' fees and costs, shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

5.18 **Attorneys' Fees, Costs, and Expenses.** None of the Parties shall be construed as the prevailing party in this matter. Except as specifically set forth herein, each party shall bear their/ his own attorneys' fees, costs, and expenses, taxable or otherwise, incurred by him/ them arising out of the Lawsuit, and shall not seek reimbursement thereof from any other party to this Agreement.

5.19 **Construction.** The Parties hereto agree that the terms and conditions of this Settlement are the result of lengthy, intensive, arms-length negotiations between the Parties and that this Agreement constitutes the entire agreement between Plaintiff (on behalf of herself and the State of California and the Aggrieved Employees) and Defendant regarding actual or potential claims asserted by Plaintiff against the Released Parties. Excluding any arbitration or confidentiality agreement executed by Plaintiff with Defendant, both of which will remain in full force and effect, this Agreement supersedes all prior agreements, written or oral, between or among the Parties regarding those claims or potential claims and the resolution of those claims. Consequently, no other agreement, statement, or promise made by one Party to another as to any matter addressed in this Agreement shall be binding or valid.

5.20 **Captions and Interpretations.** Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision hereof. Each term of this Settlement is contractual and not merely a recital.

5.21 **Modifications.** This Settlement may not be amended, changed, altered, or modified, except in writing and signed by the Parties (or their successors-in-interest) hereto. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

5.22 **Objection Procedure.** Per the Court's Order, the Parties will serve the Settlement and PAGA Approval Motion papers on all other Counsel in related PAGA actions that are pending as of the date of execution of this Agreement. Counsel in the related PAGA actions will have sixty (60) days from the date of service of the Settlement to file any objections

to the Settlement. The Parties here will have fourteen (14) days to file opposition to any objections. Counsel in the related PAGA actions will then have seven (7) days to file their reply.

5.23 **Catalyst Effect.** Plaintiff may represent to the Court in the motion for PAGA approval that this litigation catalyzed, Defendant's decision to modify its wage statements.

6. **MISCELLANEOUS**

6.1 Neither Plaintiff nor any of her counsel they have engaged in connection with the Lawsuit shall cause to be publicized, directly or indirectly, any discussion resulting in, or the existence of, the terms of this Agreement in any type of mass media or on any of their respective websites. Breach of this provision shall entitle Defendant, in the exercise of their sole discretion, to nullify the Agreement and the Settlement at any time before the Effective Date.

6.2 This Settlement contains the entire agreement between the Parties relating to the Settlement of the Covered Claims and Plaintiff's released claims, and all prior or contemporaneous agreements (except any arbitration agreement or confidentiality agreement), understandings, representations, and statements, whether oral or written and whether by a party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing. The Parties have made such investigation of the facts and the law pertaining to the matters described herein and to this Agreement as they deem necessary, and have not relied, and do not rely, on any statement, promise, or representation of fact or law, made by any of the other parties, or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or with regard to the advisability of making and executing this Agreement, or with respect to any such matters that would alter or change the terms of this Agreement. No representations, warranties, or inducements have been made to any party concerning this Agreement other than those expressly set forth or referred to herein.

6.3 This Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

6.4 This Settlement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement, which shall be binding upon and effective as to all Parties. The counterparts may be transmitted electronically (PDF) or by facsimile.

6.5 This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California, irrespective of the State of California's choice of law principles.

6.6 The Parties have cooperated in the negotiation and preparation of this Agreement. This Agreement shall not be construed against any Party on the basis that the Party, or the Party's counsel, was the drafter or participated in the drafting of this Agreement.

6.7 The Contra Costa County Superior Court shall retain jurisdiction to enforce this Agreement pursuant to California Code of Civil Procedure section 664.6 and California Rule of Court 3.769(h). The Court shall retain continuing jurisdiction over this Lawsuit and over all Parties to the fullest extent to enforce and effectuate the terms and intent of this Agreement.

6.8 This Agreement shall not be subject to collateral attack by any Aggrieved Employees. Such prohibited collateral attack shall include, but not be limited to, claims that the Aggrieved Employees failed, for any reason, to timely receive his or her Aggrieved Employee Share.

6.9 This Agreement may be signed electronically by any Party using electronic signature software (e.g. DocuSign, etc.). Any electronic signature shall be enforceable to the same extent as a handwritten signature.

THE PARTIES HAVE READ THE FOREGOING AGREEMENT. THEY HAVE CONSULTED WITH LEGAL COUNSEL REGARDING THE FOREGOING AGREEMENT AND KNOW THE CONTENTS THEREOF AND SIGN THE SAME AS

THEIR FREE, KNOWING, AND VOLUNTARY ACT AND DEED, BEING FULLY
AWARE OF ITS CONSEQUENCES AND ITS FINAL AND BINDING EFFECT.

DATED: 5/13/2021 | 10:21 AM PDT

DocuSigned by:



ALEXCIA ANDERSON
as PAGA Representative

DATED: 5/14/2021



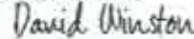
CLYDE PRESSLER
Chief Financial Officer
ABC PHONES of NORTH CAROLINA, INC.

APPROVED AS TO FORM AND CONTENT:

DATED: 5/13/2021 | 1:35 PM PDT

WINSTON LAW GROUP, P.C.

DocuSigned by:



By:

DAVID S. WINSTON
Attorney for Plaintiff and the Aggrieved
Employees

DATED: 5/13/2021 | 12:42 PM PDT

ACKERMANN & TILAJEF, P.C.

DocuSigned by:



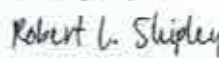
By:

CRAIG J. ACKERMANN
Attorney for Plaintiff and the Aggrieved
Employees

DATED: 5/13/2021

ROBERT L. SHIPLEY, APLC

DocuSigned by:



By:

ROBERT L. SHIPLEY
Attorney for Defendant