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Attorneys for Plaintiff and the Putative Class,
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State of California

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA**

EDGAR DIAZ and JOE TRIGO, individually
and on behalf of all others similarly situated,

Plaintiffs,

vs.

TAK COMMUNICATIONS CA, INC.; TAK
COMMUNICATIONS, INC.; and DOES 1-25,
inclusive,

Defendants.

Case No: RG20064706

CLASS ACTION

*Assigned for All Purposes to Judge Winifred
Smith, Dept. 21*

**DECLARATION OF CAROLYN HUNT
COTTRELL IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND COLLECTIVE ACTION
SETTLEMENT, CERTIFICATION OF
SETTLEMENT CLASS, APPROVAL OF
NOTICE OF SETTLEMENT, AND
SETTING OF HEARING FOR FINAL
APPROVAL**

Date: December 11, 2020

Time: 10:00 a.m.

Reservation Number: R-2220979

Date Action Filed: June 12, 2020

1 I, Carolyn Hunt Cottrell, hereby declare as follows:

2 1. I am an attorney at law duly licensed to practice law in the State of California. I am
3 a member in good standing of the State Bar of California, I am admitted to the United States
4 District Courts for the Northern, Eastern, Central, and Southern Districts of California. I am
5 admitted to the Ninth Circuit Court of Appeals, and I am a member of the Bar of the United States
6 Supreme Court.

7 2. I am a partner at the law firm of Schneider Wallace Cottrell Konecky LLP
8 (“SWCK”). SWCK specializes in class, collective, and PAGA litigation in state and federal court.

9 3. I am co-lead counsel of record for Edgar Diaz and Joe Trigo on behalf of themselves
10 and all others similarly situated (“Plaintiffs”), in the above-captioned case. I submit this
11 declaration in support of Plaintiffs’ Motion for Preliminary Approval of Class and Collective
12 Action Settlement, Certification of Settlement Class, Approval of Notice of Settlement, and Setting
13 of Hearing for Final Approval. I am familiar with the file, the documents, and the history related to
14 these cases. The following statements are based on my personal knowledge and review of the files.
15 If called to do so, I could and would testify competently thereto.

16 4. A true and correct copy of the fully-executed Class Action Settlement Agreement
17 and Release (the “Settlement Agreement” or the “Settlement”) is attached hereto as **Exhibit 1**. The
18 Notice of Settlement (“Class Notice”) is attached to the Settlement as **Exhibit A**.

19 **QUALIFICATIONS, EXPERIENCE, AND EXPERTISE**

20 5. SWCK is regarded as one of the leading private plaintiff’s firms in wage and hour
21 class actions and employment class actions. In November 2012, the Recorder listed the firm as one
22 of the “top 10 go-to plaintiffs’ employment firms in Northern California.” The partners and
23 attorneys have litigated major wage and hour class actions, have won several prestigious awards,
24 and sit on important boards and committees in the legal community. SWCK was founded by Todd
25 Schneider in 1993, and I have been a member of the firm since 1995.

26 6. SWCK has acted or is acting as class counsel in numerous cases. A partial list of
27 cases which have been certified and/or settled as class actions includes: *Jones, et al. v. Defendants,*
28 *Inc., et al.* (lead Case No. 3:17-cv-02229-EMC) (Northern District of California, June 1, 2020)

(final approval of hybrid Fair Labor Standards Act and California, Washington, Illinois, Minnesota, Alaska, and Ohio class action settlement for failure to pay for all hours worked, failure to provide meal and rest breaks, unreimbursed business expenses, waiting time penalties, and failure to provide itemized wage statements); *El Pollo Loco Wage and Hour Cases* (Case No. JCCP 4957) (Orange County Superior Court, January 31, 2020) (final approval of a class action settlement for failure to pay for all hours worked, failure to provide meal and rest breaks, unreimbursed business expenses, waiting time penalties, and failure to provide itemized wage statements, under California law); *Soto, et al. v. O.C. Communications, Inc., et al.* (Case No. 3:17-cv-00251-VC) (Northern District of California, Oct. 23, 2019) (final approval of a hybrid Fair Labor Standards Act and California and Washington law Rule 23 action with joint employer allegations); *Manni v. Eugene N. Gordon, Inc. d/b/a La-Z-Boy Furniture Galleries* (Case No. 34-2017-00223592) (Sacramento Superior Court) (final approval of a class action settlement for failure to pay for all hours worked, failure to pay minimum and overtime wages, failure to provide meal and rest breaks, waiting time penalties, and failure to provide itemized wage statements, under California law); *Van Liew v. North Star Emergency Services, Inc., et al.* (Case No. RG17876878) (Alameda County Superior Court) (final approval of a class action settlement for failure to pay for all hours worked, failure to pay minimum and overtime wages, failure to provide meal and rest breaks, failure to reimburse for necessary business expenditures, waiting time penalties, and failure to provide itemized wage statements, under federal law); *Asalati v. Intel Corp.* (Case No. 16cv302615) (Santa Clara Superior Court) (final approval of a class and collective action settlement for failure to pay for all hours worked, failure to pay overtime, failure to provide meal and rest breaks, failure to reimburse for necessary business expenditures, failure to adhere to California record keeping requirements, waiting time penalties, and failure to provide itemized wage statements, under federal and California law); *Harmon, et al. v. Diamond Wireless, LLC*, (Case No. 34-2012-00118898) (Sacramento Superior Court) (final approval of a class action settlement for failure to pay wages free and clear, failure to pay overtime and minimum wages, failure to provide meal and rest breaks, failure to pay full wages when due, failure to adhere to California record keeping requirements, and failure to provide adequate seating, under California

1 law); *Aguilar v. Hall AG Enterprises, Inc., et al.*, (Case No. BCV-16-10994-DRL) (Kern County
2 Superior Court) (final approval of a class action settlement for failure to provide meal and rest
3 periods, failure to compensate for all hours worked, failure to pay minimum and overtime wages,
4 waiting time penalties, failure to provide itemized wage statements, and failure to pay
5 undiscounted wages, under California law); *Viceral and Krueger v. Mistras Group, Inc.*, (Case No.
6 3:15-cv-02198-EMC) (Chen, J.) (Northern District of California) (final approval of a class and
7 collective action settlement for failure to compensate for all hours worked, including overtime,
8 under federal and California law); *Jeter-Polk, et al. v. Casual Male Store, LLC, et al.*, (Case No.
9 5:14-CV-00891) (Central District of California) (final approval of a class action settlement for
10 failure to provide meal and rest periods, failure to compensate for all hours worked, failure to pay
11 overtime wages, unpaid wages and waiting time penalties, and failure to provide itemized wage
12 statements); *Meza, et al. v. S.S. Skikos, Inc., et al.*, (Case No. 15-cv-01889-TEH) (Northern District
13 of California) (final approval of class and collective action settlement for failure to compensate for
14 all hours worked, including overtime, under federal and California law, failure to provide meal and
15 rest breaks, failure to reimburse for necessary business uniforms, failure to pay full wages upon
16 termination to, and failure to provide accurate itemized wage statements); *Holmes, et al v. Xpress*
17 *Global Systems, Inc.*, (Case No. 34-2015-00180822) (Sacramento Superior Court) (final approval
18 of a class action settlement for failure to provide meal and rest breaks and failure to provide
19 accurate itemized wage statements); *Guilbaud, et al. v. Sprint Nextel Corp. et al.*, (Case No. 3:13-
20 cv-04357-VC) (Northern District of California) (final approval of a class and collective action
21 settlement for failure to compensate for all hours worked, including overtime, failure to provide
22 meal and rest breaks, failure to reimburse for necessary business uniforms, failure to pay full
23 wages upon termination to, and failure to provide accurate itemized wage statements); *Molina, et*
24 *al. v. Railworks Track Systems, Inc.*, (Case No. BCV-15-10135) (Kern County Superior Court)
25 (final approval of a class action settlement for failure to provide meal and rest breaks, unpaid
26 wages, unpaid overtime, off-the-clocker work, failure to pay full wages upon termination to, and
27 failure to provide accurate itemized wage statements); *Allen, et al. v. County of Monterey, et al.*,
28 (Case No. 5:13-cv-01659) (Northern District of California) (settlement between FLSA Plaintiffs

1 and Defendant to provide relief to affected employees); *Barrera v. Radix Cable Holdings, Inc., et*
2 *al.*, (Case No. CIV 1100505) (Marin County Superior Court) (final approval of class action
3 settlement for failure to provide meal and rest breaks to, off-the-clock work by, failure to provide
4 overtime compensation to, failure to reimburse business expenditures to, failure to pay full wages
5 upon termination to, and failure to provide accurate itemized wage statements to retention
6 specialists working for cable companies); *Glass Dimensions, Inc., et al. v. State Street Corp. et al.*,
7 (Case No. 1:10-cv-10588) (District of Massachusetts) (final approval of class action settlement for
8 claims of breach of fiduciary duty and self-dealing in violation of ERISA); *Friend, et al. v. The*
9 *Hertz Corporation*, (Case No. 3:07-052222) (Northern District of California) (settlement of claims
10 that rental car company misclassified non-exempt employees, failed to pay wages, failed to pay
11 premium pay, and failed to provide meal periods and rest periods); *Hollands v. Lincare, Inc., et al.*,
12 (Case No. CGC-07-465052) (San Francisco County Superior Court) (final approval of class action
13 settlement for overtime pay, off-the-clock work, unreimbursed expenses, and other wage and hour
14 claims on behalf of a class of center managers); *Jantz, et al. v. Colvin*, (Case No. 531-2006-
15 00276X) (In the Equal Employment Opportunity Commission Baltimore Field Office) (final
16 approval of class action settlement for the denial of promotions based on targeted disabilities);
17 *Shemaria v. County of Marin*, (Case No. CV 082718) (Marin County Superior Court) (final
18 approval of class action settlement on behalf of a class of individuals with mobility disabilities
19 denied access to various facilities owned, operated, and/or maintained by the County of Marin);
20 *Perez, et al. v. First American Title Ins. Co.*, (Case No. 2:08-cv-01184) (District of Arizona) (final
21 approval of class action settlement in action challenging unfair discrimination by title insurance
22 company); *Perez v. Rue21, Inc., et al.*, (Case No. CISCV167815) (Santa Cruz County Superior
23 Court) (final approval of class action settlement for failure to provide meal and rest breaks to, and
24 for off-the-clock work performed by, a class of retail employees); *Sosa, et al. v. Dreyer's Grand*
25 *Ice Cream, Inc., et al.*, (Case No. RG 08424366) (Alameda County Superior Court) (final approval
26 of class action settlement for failure to provide meal and rest breaks to, and for off-the-clock work
27 performed by, a class of ice cream manufacturing employees); *Villalpando v. Exel Direct Inc., et*
28 *al.* (Case Nos. 3:12-cv-04137 and 4:13-cv-03091) (Northern District of California) (certified class

1 action on behalf of delivery drivers allegedly misclassified as independent contractors); *Choul, et*
2 *al. v. Nebraska Beef, Ltd.* (Case Nos. 8:08-cv-90, 8:08-cv-99) (District of Nebraska) (final
3 approval of class action settlement for off-the-clock work by, and failure to provide overtime
4 compensation to, production-line employees of meat-packing plant); *Morales v. Farmland Foods,*
5 *Inc.* (Case No. 8:08-cv-504) (District of Nebraska) (FLSA certification for off-the-clock work by,
6 and failure to provide overtime compensation to, production-line employees of meat-packing
7 plant); *Barlow, et al. v. PRN Ambulance Inc.* (Case No. BC396728) (Los Angeles County Superior
8 Court) (final approval of class action settlement for failure to provide meal and rest breaks to and
9 for off-the-clock work by certified emergency medical technicians); *Espinosa, et al. v. National*
10 *Beef, et al.* (Case No. ECU0467) (Imperial Superior Court) (final approval of class action
11 settlement for off-the-clock work by, and failure to provide overtime compensation to, production-
12 line employees of meat-packing plant); *Wolfe, et al. v. California Check Cashing Stores, LLC, et*
13 *al.* (Case Nos. CGC-08-479518 and CGC-09-489635) (San Francisco Superior Court) (final
14 approval of class action settlement for failure to provide meal and rest breaks to, and for off-the-
15 clock work by, employees at check cashing stores); *Carlson v. eHarmony* (Case No. BC371958)
16 (Los Angeles County Superior Court) (final approval of class action settlement on behalf of gays
17 and lesbians who were denied use of eHarmony); *Salcido v. Cargill* (Case Nos. 1:07-CV-01347-
18 LJO-GSA,1:08-CV-00605-LJO-GSA) (Eastern District of California) (final approval of class
19 action settlement for off-the-clock work by production-line employees of meat-packing plant);
20 *Elkin v. Six Flags* (Case No. BC342633) (Los Angeles County Superior Court) (final approval of
21 class action settlement for missed meal and rest periods on behalf of hourly workers at Six Flags
22 amusement parks); *Jimenez v. Perot Systems Corp.* (Case No. RG07335321) (Alameda County
23 Superior Court) (final approval of class action settlement for misclassification of hospital clerical
24 workers); *Chau v. CVS RX Services, Inc.* (Case No. BC349224) (Los Angeles County Superior
25 Court) (final approval of class action settlement for failure to pay overtime to CVS pharmacists);
26 *Reed v. CALSTAR* (Case No. RG04155105) (Alameda County Superior Court) (certified class
27 action on behalf of flight nurses); *National Federation of the Blind v. Target* (Case No. C 06-
28 01802 MHP) (N.D. Cal.) (certified class action on behalf of all legally blind individuals in the

1 United States who have tried to access Target.com); *Bates v. United Parcel Service, Inc.* (2004 WL
2 2370633) (N.D. Cal.) (certified national class action on behalf of deaf employees of UPS); *Satchell*
3 *v. FedEx Express, Inc.* (Case No. 03-02659 SI) (N.D. Cal.) (certified regional class action alleging
4 widespread discrimination within FedEx); *Siddiqi v. Regents of the University of California* (Case
5 No. C-99-0790 SI) (N.D. Cal.) (certified class action in favor of deaf plaintiffs alleging disability
6 access violations at the University of California); *Lopez v. San Francisco Unified School District*
7 (Case No. C-99-03260 SI) (N.D. Cal.) (certified class action in favor of plaintiffs in class action
8 against school district for widespread disability access violations); *Campos v. San Francisco State*
9 *University* (Case No. C-97-02326 MCC) (N.D. Cal.) (certified class action in favor of disabled
10 plaintiffs for widespread disability access violations); *Singleton v. Regents of the University of*
11 *California* (Case No. 807233-1) (Alameda County Superior Court) (class settlement for women
12 alleging gender discrimination at Lawrence Livermore National Laboratory); *McMaster v. BCI*
13 *Coca-Cola Bottling Co.* (Case No. RG04173735) (Alameda County Superior Court) (final
14 approval of class action settlement for drive-time required of Coca-Cola account managers);
15 *Portugal v. Macy's West, Inc.* (Case No. BC324247) (Los Angeles County Superior Court)
16 (California statewide wage and hour "misclassification" class action resulting in a class-wide \$3.25
17 million settlement); *Taormina v. Siebel Systems, Inc.* (Case No. RG05219031) (Alameda County
18 Superior Court) (final approval of class action settlement for misclassification of Siebel's inside
19 sales employees); *Joseph v. The Limited, Inc.* (Case No. CGC-04-437118) (San Francisco County
20 Superior Court) (final approval of class action settlement for failure to provide meal and rest
21 periods to employees of The Limited stores); *Rios v. Siemens Corp.* (Case No. C05-04697 PJH)
22 (N.D. Cal.) (final approval of class action settlement for failure to pay accrued vacation pay upon
23 end of employment); *DeSoto v. Sears, Roebuck & Co.* (Case No. RG0309669) (Alameda County
24 Superior Court) and *Lenahan v. Sears, Roebuck & Co.* (Case No. 3-02-CV-000045 (SRC) (TJB))
25 (final approval of class action settlement for failure to pay Sears drivers for all hours worked);
26 among many others.

27 7. Nearly my entire legal career has been devoted to advocating for the rights of
28 individuals who have been subjected to illegal pay policies, discrimination, harassment and

1 retaliation and representing employees in wage and hour and discrimination class actions. I have
2 litigated hundreds of wage and hour, employment discrimination and civil-rights actions, and I
3 manage many of the firm's current cases in these areas.

4 8. I am a member of the State Bar of California, and have had memberships with Public
5 Justice, the National Employment Lawyers Association, the California Employment Lawyers
6 Association, and the Consumer Attorneys of California. I served on the Board of Directors for the
7 San Francisco Trial Lawyers Association and co-chaired its Women's Caucus. I was named one of
8 the "Top Women Litigators for 2010" by the Daily Journal. In 2012, I was nominated for Woman
9 Trial Lawyer of the Year by the Consumer Attorneys of California. I have been selected as a Super
10 Lawyer every year since 2014. I earned my Bachelor's degree from the University of California,
11 and I am a graduate of the University of the Pacific, McGeorge School of Law.

12 **CASE SUMMARY**

13 **Plaintiffs' Claims**

14 9. TAK Communications CA, Inc. and TAK Communications, Inc. ("TAK") are
15 contractors for cable and equipment installations on behalf of cable operators throughout the
16 United States. Plaintiffs allege that TAK employs Technicians to carry out installation services
17 and classifies them as non-exempt employees.

18 10. Plaintiffs and putative Class and Collective Members are current and former non-
19 exempt, hourly employees who worked as Technicians for TAK. Technicians perform these
20 services throughout the United States, including in California.

21 11. Plaintiffs allege that TAK Technicians work long hours, typically upwards of ten
22 hours per day, five to seven days per week, and experience wage and hour violations under the
23 FLSA and California labor law.

24 12. Class Counsel's investigation has revealed that TAK maintains uniform practices of
25 (1) refusing to compensate Class members for all hours worked, including work completed pre- and
26 post- shift off-the-clock; (2) forcing Class members to sign invalid, on-duty meal period agreements;
27 (3) requiring Class members to be on-duty during meal and rest periods, and consistently and
28 regularly interrupting meal and rest periods; (4) failing to maintain an effective system for dispatch

1 to administer meal breaks, resulting in missed, untimely, interrupted meal and rest periods, and
2 inaccuracies in TAK's time keeping records; and (5) refusing to reimburse Plaintiffs and Class
3 members for necessarily-incurred expenses for work-related expenses, including drills, drill bits, and
4 other tools necessary to complete their work.

5 13. Accordingly, Plaintiffs allege that TAK fails to pay Plaintiffs and the Class Members
6 for all hours worked in violation of California Labor Code ("Labor Code") §§ 200, 1194, and
7 1198. Labor Code § 1194 provides that employees may recover unpaid minimum wages and
8 overtime wages in a civil action, including interest, attorneys' fees, and costs. Labor Code § 200(a)
9 defines wages as "all amounts for labor performed by employees of every description, whether the
10 amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other
11 method of calculation." Labor Code § 1198 makes it unlawful for employers to employ employees
12 under conditions that violate the applicable Industrial Welfare Commission ("IWC") Wage Order.
13 IWC Wage Order 4-2001(2)(K) define hours worked as "the time during which an employee is
14 subject to the control of an employer, and includes all the time the employee is suffered or
15 permitted to work, whether or not required to do so."

16 14. Plaintiffs allege that TAK knowingly and willfully failed to pay Plaintiffs and the
17 Class Members appropriate overtime, including time and half and double time as required by
18 California Law, despite extremely long work hours. Labor Code § 510(a) and the applicable Wage
19 Orders provide that any work in excess of 8 hours in a workday, any work in excess of 40 hours in
20 a workweek, and the first eight hours worked on the seventh day of work in a workweek must be
21 compensated at a rate of no less than one and one-half times the regular rate of pay for an
22 employee. Any work in excess of 12 hours in a workday or any work in excess of eight hours on
23 any seventh day of a workweek must be compensated at no less than twice the regular rate of pay.
24 Labor Code § 1194 provides that employees may recover unpaid minimum wages and overtime
25 wages in a civil action, including interest, attorneys' fees, and costs.

26 15. Plaintiffs allege that TAK has knowingly and willfully failed to authorize and permit
27 Plaintiffs and the Class Members to take meal breaks as well as rest breaks in violation of Labor
28 Code §§ 203, 223, 226.7, 512, and 1198 and the applicable IWC Wage Orders. These laws require

1 employers to provide an employee a meal period of at least 30 minutes within the first 5 hours and
2 a second meal period of the same length after 10 hours, and also require employers to authorize
3 and permit employees to take ten minutes of net rest time per four hours or major fraction thereof
4 of work, and to pay employees their full wages during their rest periods.

5 16. Plaintiffs allege that TAK failed to provide Plaintiffs and Class Members with
6 accurate and timely itemized wage statements, as a result of the underlying violations described
7 above. Labor Code § 226 requires employers to accurately report the wages earned, hours worked,
8 deductions made, and other information in wage statements. Likewise, Plaintiffs allege that TAK
9 failed to pay all wages owed to Plaintiffs and Class Members when they were discharged or quit,
10 as a result of the underlying violations described. Labor Code §§ 201-203 require an employer to
11 pay all wages owed to an employee who has been discharged or who has quit. If the employer
12 fails to pay an employee all wages owed within the statutorily required time period, § 203 calls for
13 a penalty on the employer equal to one day's rate of pay for each day the employer fails to pay, for
14 a time period not to exceed 30 days.

15 17. Plaintiffs allege that TAK required Plaintiffs and Class Members to purchase tools
16 and supplies without reimbursement in violation of Labor Code § 2802. Labor Code § 2802(a)
17 provides that Defendant must indemnify his employees "for all necessary expenditures incurred by
18 the employee in direct consequence of this discharge of his or her duties"

19 18. Plaintiffs allege that TAK fails to maintain proper records for Plaintiffs and the Class
20 Members, including of all hours worked, in violation of Labor Code § 1174. Labor Code § 1174
21 requires employers to keep payroll records at a central location showing the hours worked daily
22 and wages paid to each employee, and to keep such records for not less than three years. The Wage
23 Orders also establishes this requirement.

24 19. Plaintiffs allege that TAK will be found in violation of California Business and
25 Professions Code § 17200 as a result of the violations alleged above. Plaintiffs also includes claims
26 for violation of the PAGA, Labor Code § 2699, which provides significant penalties for the above
27 violations. PAGA provides that civil penalties that can be assessed and collected by the Labor and
28 Workforce Development Agency ("LWDA") for Labor Code violations may, as an alternative, be

1 recovered through a civil action brought by an aggrieved employee on behalf of himself or herself
2 and other current or former employees. For all provisions of the Labor Code where a civil penalty
3 is not specifically provided, PAGA establishes a civil penalty of \$100 for each aggrieved employee
4 per pay period for an initial violation and \$200 for each aggrieved employee per pay period for
5 each subsequent violation. Any penalties recovered are split, with 75 percent going to the LWDA
6 and 25 percent going to the aggrieved employees.

7 20. TAK denies all of Plaintiffs' allegations.

8 **Procedural History**

9 21. Plaintiffs Edgar Diaz and Joe Trigo filed an initial action, Diaz, et al. v. TAK
10 Communications CA, Inc., et al. (hereinafter, "Diaz-Federal"), in California District Court, Eastern
11 District of California, Case No. 2:20-at-00481, against TAK on May 18, 2020, asserting claims as
12 a collective action under the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq. ("FLSA") and a
13 class action pursuant to California Labor laws.

14 22. On March 30, 2020, Plaintiff Diaz submitted a letter for penalties under the PAGA
15 to the LWDA. The LWDA did not issue a response, prompting Plaintiff Diaz to file a separate
16 action against TAK. On June 12, 2020 Plaintiff Diaz filed a separate action against TAK in this
17 Court, to assert claims for penalties under PAGA. TAK filed its Answer on July 27, 2020, denying
18 Plaintiff's allegations.

19 23. Following the filing of the state and federal actions, TAK informed Plaintiffs of the
20 existence of arbitration agreements purportedly executed by all named plaintiffs and opt-in
21 plaintiffs. The Parties subsequently agreed to attend mediation early on in these actions., and
22 subsequently entered into a Tolling and Dismissal Agreement ("Tolling Agreement") on June 26,
23 2020, whereby Plaintiffs agreed to dismiss their Class and Collective action without prejudice in
24 federal court by June 29, 2020, and TAK agreed that no statute of limitations on any claim would
25 run against Plaintiffs while the agreement is in effect (except those claims that were already barred
26 by any applicable statute of limitations).

27 24. The Tolling Agreement applies to: TAK, Plaintiffs Diaz and Trigo, all opt-in
28 plaintiffs who timely opted in to the federal lawsuit on or before June 26, 2020 (i.e., 47 opt-in

1 plaintiffs), and all individuals who demonstrate that they would have opted-in to the federal
2 lawsuit between June 26, 2020 and August 1, 2020 but for the dismissal of the federal lawsuit
3 pursuant to the Parties' agreement (i.e., 39 opt-in plaintiffs, for a total of 86 opt-in plaintiffs). A
4 total of 86 individuals have opted-in to the federal action or their opt-in forms have been provided
5 to Defendants following dismissal of the federal action. These terms, pursuant to the agreement,
6 terminated on September 1, 2020.

7 25. On June 29, 2020, Plaintiffs Edgar Diaz and Joe Trigo dismissed the action in the
8 Eastern District of California pursuant to the Parties' Tolling Agreement. The federal case was
9 closed on June 30, 2020.

10 **Discovery**

11 26. The Parties engaged in extensive informal discovery leading up to mediation.
12 Plaintiffs' counsel completed extensive outreach with Class and Collective Members, including
13 approximately 40 in-depth interviews, covering topics including dates and locations of work, hours
14 of work, pre-shift and post-shift off-the-clock work, meal and rest breaks, and reimbursement of
15 work-related expenses.

16 27. Through the outreach process, Plaintiffs obtained additional documents from
17 Technicians and garnered substantial factual background regarding the alleged violations outlined
18 in the state and federal complaints, which Plaintiffs' counsel utilized to build their case and to
19 assess TAK's potential exposure. Multiple Class and Collective Members that completed intakes
20 also provided additional documents to Plaintiff's counsel.

21 28. TAK additionally produced documents and information on an informal basis to
22 facilitate mediation. TAK produced hundreds of documents, including job descriptions, employee
23 handbooks detailing Defendant's company policies, schedules, billing rates and associated piece-
24 rates, training materials, time data analysis reports, and timekeeping and payroll records for 50%
25 of the proposed Class, as well as other information necessary for a damages analysis. TAK also
26 provided class-wide figures, including the total number of Technicians, average hourly rates, and
27 additional data points to enable Plaintiff's counsel to evaluate damages on a Class and Collective
28

1 basis. Plaintiffs' counsel completed an exhaustive review of such documents, and used the
2 information and data from them to prepare for mediation.

3 **Mediation and First Amended Complaint**

4 29. In preparation for the mediation, Plaintiffs performed a detailed damages analysis
5 with the assistance of Class Counsel's in-house data analyst, and the Parties met and conferred on
6 several occasions to make sure they were prepared to engage in good faith, arms' length settlement
7 negotiations.

8 30. On August 4, 2020, the Parties conducted a full day mediation session, which was
9 remotely held before well-respected and highly-skilled employment law mediator Frances
10 "Tripper" Ortman. The Parties reached a settlement in principle at the mediation and executed a
11 confidential memorandum of understanding of the substantive terms of the settlement that day.

12 31. The Settlement Agreement was fully executed on October 6, 2020.

13 32. Pursuant to the Parties' agreement, the Parties agreed that Plaintiffs would file a
14 stipulation for an order granting Plaintiffs leave to amend the operative complaint to add FLSA
15 claims and California state law claims for the alleged violations of federal and California labor
16 laws asserted in the Complaint filed in the *Diaz-Federal* action. On October 7, 2020, the Parties
17 filed a joint Stipulation to File First Amended Complaint. The Court granted the Parties'
18 Stipulation on October 20, 2020, and Plaintiff filed his First Amended Complaint on November 5,
19 2020.

20 **THE SETTLEMENT**

21 **Basic Terms and Value of the Settlement**

22 33. The Settlement provides for a non-reversionary Gross Settlement Amount of
23 \$1,200,000.00. TAK agrees to pay the employer's share of payroll taxes separately. This
24 Settlement covers approximately 685 Class and Collective Members.

25 34. With the Motion for Final Approval, which will be filed in advance of the Final
26 Approval hearing, Class Counsel will seek fees of no more than thirty-three and one-third (33 1/3)
27 percent of the Gross Settlement Amount, or \$399,999.99, and actual costs not to exceed
28 \$20,000.00. The Settlement also sets aside \$27,500.00 for the actual costs of settlement

administration; \$10,000.00 each to Plaintiffs Diaz and Trigo for their service to the Class, and \$35,000.00 for PAGA penalties.¹

35. TAK will fund the Gross Settlement Amount within ten (10) business days after the Effective Date. The payment will be used to pay 100% of the Settlement Awards to Participating Individuals, the Service Awards, the PAGA payment, and the Class Counsel Fees and Costs Payment.

36. If ten percent (10%) or more of the Settlement Class Members opt out of the Settlement, Defendant may, at its election, rescind the Settlement and all actions taken in furtherance of it will be null and void.

Class and Collective Definitions

37. An individual is eligible to share in the proposed Settlement if he or she belongs to any of the following:

- The “**California Class**” means all current or former hourly, non-exempt employees who worked as Technicians for Defendants in the state of California between May 22, 2019 and August 4, 2020.
- The “**Collective**” or “**Collective Members**” or “**Opt-in Plaintiffs**” means a certified collective action for settlement purposes only pursuant to 29 U.S.C. § 216(b), which includes all individuals who (1) have submitted Opt-In Consent Forms in the federal lawsuit Diaz, et al. v. TAK Communications CA, Inc., et al, California District Court, Eastern District of California, Case No. 2:20-at-00481, on or before June 26, 2020, or who demonstrate that they would have opted-in to the federal lawsuit between June 26, 2020 and August 1, 2020 but for the dismissal of the federal lawsuit, as of August 4, 2020, and (2) worked as technicians for Defendants between May 22, 2019, or three years prior to the Opt-In Date for Opt-In Plaintiffs, whichever is earliest, and August 4, 2020.

¹ The Parties agree to allocate \$35,000.00 of the Gross Settlement Amount to the settlement of the PAGA claims, which the Parties believe in good faith is a fair and reasonable apportionment. The Settlement Administrator shall pay 75%, or \$26,250.00, of this amount to the California Labor & Workforce Development Agency (“LWDA”), and 25%, or \$8,750.00, the “Net PAGA Amount,” shall remain as part of the Net Settlement Amount, pursuant to Labor Code § 2699(i).

38. There are 86 collective members, and approximately 679 California Class members. All but six of the Opt-In Plaintiffs performed work in California, and are therefore also California Class Members.

Settlement Awards for Eligible Participating Individuals

39. The estimated Net Settlement Amount available to Settlement Class and Collective Members totals \$697,500.01 and Net PAGA Amount of \$8,750.00 (for a total of \$706,250.01). The Net Settlement Amount is to be allocated among and paid to Participating Individuals (i.e., those Class Members who do not opt out of the Settlement, and the Opt-in Plaintiffs who have filed an opt in consent form) proportionally based on the number of shifts that they worked for TAK as a percentage of the total shifts worked by all Participating Individuals.

40. Participating Individuals are not required to submit an opt-in form or claim form in order to receive payment under the Settlement. However, only Opt-in Plaintiffs will be credited for work in other states, as the damages for work in those states are attributable to FLSA claims only.

41. The Net Settlement Amount provides an estimated average recovery of \$1,031.02 per Participating Individual, which includes the Class and Collective Members, assuming one hundred percent (100%) participation in the Settlement.

42. Participating Individuals will each receive a settlement award check without the need to submit a claim form. Class Members are not required to submit an Opt-In Form to receive payment under the Settlement for their work in California during the relevant time periods.

43. Specifically, each Class Member will be credited for the number of weeks that he or she worked for Defendants at any time (1) from May 22, 2019 to August 4, 2020 for California Class Members; and (2) if the Participating Individual is an Opt-In Plaintiff, in all states other than California, from May 22, 2019 or three years preceding the date that Plaintiff's counsel filed a Consent to Join form on behalf of the Opt-In Plaintiff to August 4, 2020, whichever is earliest. Participating Individuals who also worked for Defendants at any time from May 22, 2019 in California through November 4, 2020 will also receive an equal portion of the Net PAGA Amount.

44. Each workweek will be equal to one settlement share, but to reflect the increased value of state law claims and differing average rates of pay by state, workweek during which work

1 was performed in California will be weighted more heavily. Plaintiff performed an in-depth
2 analysis of Workweek weightings and the underlying state law provisions to develop the
3 weightings. Specifically, workweek during which work was performed in California will be equal
4 to three settlement shares and workweek during which an Opt-In Plaintiff performed work in any
5 state other than California will be equal to one settlement share. The total number of settlement
6 shares for all Participating Individuals will be added together and the resulting sum will be divided
7 into the Net Settlement Amount to reach a per share dollar figure. That figure will then be
8 multiplied by each Participating Individual's number of settlement shares to determine the
9 Participating Individual's Settlement Award.

10 45. Separately, Participating Individuals who are also Aggrieved Employees will also
11 receive a *pro rata* share of the Net PAGA Amount of \$8,750.00.

12 46. The Individual Settlement Payments will be allocated as follows: 33.33% to
13 settlement of wage claims, which will be subject to required tax withholdings, 33.33% for
14 penalties, 23.33% for interest, and 10% for expense reimbursements. The portion allocated to
15 wages shall be reported on an IRS Form W-2 and will be subject to reduction for all employee's
16 share of withholdings and taxes. The portion allocated to interest, statutory penalties, and expense
17 reimbursements shall be reported on an IRS Form 1099 and will not be subject to reduction for all
18 employee's share of withholdings and taxes. Any portion of each Settlement Award that is
19 provided from the Net PAGA Amount shall be allocated as penalties. TAK will pay the employer's
20 share of all required FICA and FUTA taxes on the wage portions of the Settlement Awards.

21 47. In calculating payments due under this Settlement, the Settlement Administrator will
22 use the Defendant's Class List, including the Class and Collective Member, his or her name; last-
23 known mailing address and telephone number; social security number; and total number of
24 workweeks each Settlement Class Member worked for TAK in California between May 22, 2019
25 and August 4, 2020 and the total number of workweeks each Settlement Collective Member
26 worked for TAK outside the State of California in the United States from May 22, 2019 or three
27 years prior to their Opt-In date for Opt-in Plaintiffs, whichever is earliest, through August 4, 2020.
28

48. The Settlement Administrator will inform Settlement Class Members of the number of workweeks that they worked and an estimate of what they will receive under the proposed Settlement. If a Settlement Class Member disagrees with the number of shifts worked based on TAK's data or other information provided by TAK, he/she must submit a written challenge to the number of shifts the Settlement Administrator provides, and present documentary evidence in support of the challenge. TAK's records will have a rebuttal presumption of correctness. The Settlement Administrator will then consult with the parties, and the Settlement Administrator's decision is binding.

49. Settlement Awards will be paid to Class Members by the Settlement Administrator within 30 days after the occurrence of the “Effective Date.” Settlement Award checks will remain valid for 180 days from the date of their issuance. The Settlement Administrator will send a reminder letter via U.S. mail and email to those Class Members with uncashed checks at 90 days remaining and will place a call at 60 days remaining. The disposition of any uncashed check funds remaining after the check-cashing deadline will depend on the total amount.

50. Any funds from uncashed checks will be redistributed either to the Class and Collective Members who cashed their checks if the total residual amount is equal to or greater than \$50,000, or revert to *cy pres* if the total residual amount is less than \$50,000.

51. The Parties propose Legal Aid at Work, which provides legal services assisting low-income, working families and promotes a better understanding of the conditions, policies, and institutions that affect the well-being of workers and their families and communities, as the *cy pres* recipient, subject to approval by the Court.

52. The Parties and their counsel do not have any financial, business, or personal relationships with the Legal Aid at Work, to the best of my knowledge.

Releases

53. The releases contemplated by the proposed Settlement are dependent upon whether the Participating Individual is an Opt-In Plaintiff and/or a California Class Member, and are tethered to the factual allegations. Opt-In Plaintiffs will release any and all claims under the FLSA based on or arising out of the same factual predicates of the Actions. Class Members will be

1 deemed to have released such claims based on California law, including claims that were or could
2 have been raised in the Actions and all claims that are based on or relate to the claims at issue in
3 the Actions. Additionally, upon final approval, Named Plaintiff and Collective Members will be
4 deemed to have released their claims under the FLSA. As to other Class Members, only those who
5 cash or deposit their Settlement Award check will release their FLSA claims. The release extends
6 from May 22, 2019 (or three years prior to the Opt-In Date for Opt-In Plaintiffs, whichever is
7 earliest) through November 4, 2020, and the Released Parties are Defendants and their related
8 persons and entities.

9 54. The Named Plaintiffs also agree to a general release.

10 **Settlement Administration**

11 55. It is the responsibility of the Settlement Administrator to timely and properly
12 withhold all applicable payroll and employment taxes, but not federal, state, and local income
13 taxes, from Individual Settlement Payments payable to Settlement Class Members. It is also the
14 responsibility of the Settlement Administrator to prepare and deliver the necessary tax
15 documentation. After those tasks are complete, the Settlement Administrator will assure that the
16 appropriate deposits of withholding taxes and informational and other tax return filing occur. Each
17 Settlement Class Member's share of all applicable payroll and employment taxes withheld and
18 deposited with the applicable governmental authorities in accordance with this Settlement shall be
19 a part of, and paid out of, the Individual Settlement Payment to each Settlement Class Member.
20 Each Settlement Class Member will be responsible for paying all applicable state, local, and
21 federal income taxes on all amounts the Settlement Class Member's receives pursuant to the
22 proposed Settlement.

23 56. The Parties selected Heffler, a national class action settlement administrator which
24 has specialized in the notice and administration of complex legal matters for more than 50 years, as
25 the Settlement Administrator. Heffler will satisfy due process requirements in notifying Class and
26 Collective Members of the settlement and distributing Settlement awards according to the
27 settlement If the Settlement is finally approved, Heffler will administer payments to the
28

1 Participating Individuals, including calculation of payroll taxes and preparation of tax reporting
2 documents.

3 57. TAK will provide a list of all Class and Collective Members, his or her name; last-
4 known mailing address and telephone number; social security number; and total workweeks
5 worked within the relevant time periods to Heffler within ten (10) business days after preliminary
6 approval.

7 58. The Settlement Administrator will then distribute the Notice of Settlement via mail
8 and email, calculate individual settlement payments, calculate all applicable payroll taxes,
9 withholdings and deductions, and prepare and issue all disbursements to Class and Collective
10 Members, the LWDA, the Class Representatives, Class counsel, and applicable state, and federal
11 tax authorities.

12 59. The Settlement Administrator will establish a settlement website that will allow
13 Class Members to view the Class Notice (in generic form), the Settlement Agreement, and all
14 papers filed by Class Counsel to obtain preliminary and final approval of the Settlement. The
15 Settlement Administrator will also establish a toll-free call center for telephone inquiries from
16 Class Members.

17 60. Prior to the initial mailing, Heffler will take reasonable efforts to identify current
18 addresses via public and proprietary systems, which may include the National Change of Address
19 System, as needed. Should any Notice be returned as undeliverable, but with a forwarding address
20 attached, Heffler will re-mail them to the updated address within three (3) business days following
21 receipt of the returned mail. Should any Notice Packets be returned as undeliverable without a
22 forwarding address, Heffler will make reasonable efforts to locate forwarding addresses, including
23 a skip trace, and if it obtains a more recent address, will resend the Notice.

24 61. The Notice Deadline is sixty (60) days after the Settlement Administrator first mails
25 the Notice to the Class Members.

26 62. Ten (10) business days after the Notice Deadline, Heffler will provide a report
27 showing: (i) the names of California Class Members and Opt-In Plaintiffs; (ii) the Settlement
28 Awards owed to each California Class Member and Opt-In Plaintiff; (iii) the final number of

1 California Class Members who have submitted objections or valid letters requesting exclusion
2 from the Settlement; and (iv) the number of undeliverable Notices of Settlement. Upon completion
3 of administration of the Settlement, the Settlement Administrator shall provide written certification
4 of such completion to counsel for all Parties and the Court. This written certification shall include
5 the total number of Participating Individuals (including the total number of California Class
6 Members who do not request exclusion and the total number of Opt-In Plaintiffs), the average
7 recovery per California Class Member who does not request exclusion, the average recovery per
8 Opt-In Plaintiff, the median recovery per California Class Member who does not request
9 exclusion, the median recovery per Opt-In Plaintiff, the largest and smallest amounts paid to
10 California Class Members who do not request exclusion, the largest and smallest amounts paid to
11 Opt-In Plaintiffs, and the number and value of checks not cashed.

12 63. Class Members who wish to exclude themselves from the Settlement must submit a
13 Request Not to Participate in Settlement by the Notice Deadline. Any Class Member who properly
14 requests exclusion will not be bound by the Settlement Agreement or have any right to object,
15 appeal, or comment on it. Class Members who do not submit a Request Not to Participate in
16 Settlement will be bound by the Settlement Agreement and any judgment entered in the Lawsuit if
17 the Settlement is approved by the Court.

18 64. In order to object to the Settlement, a Class member must file his or her objection
19 with the Settlement Administration no later than the Notice Deadline. Persons who do not make
20 timely written objections in the manner specified in the Settlement, unless excluded by the Court
21 upon a showing of good cause, shall be deemed to have waived any objections and oppositions to
22 the Settlement's fairness, reasonableness, and adequacy, and shall be foreclosed from making any
23 objection, whether by appeal or otherwise, to the Settlement.

24 65. Defendant agrees to make the payment to the Settlement Administrator within ten
25 (10) business days after the Court grants final approval of the Settlement without any material
26 change.

27 66. The "Effective Date" of the Settlement means (i) if there is an objection(s) to the
28 settlement that is not subsequently withdrawn, then the date upon the expiration of time for appeal

1 of the Court's Final Approval Order; or (ii) if there is a timely objection(s) and appeal by an
2 objector(s), then after such appeal(s) is dismissed or the Court's Final Approval Order is affirmed
3 on appeal; or (iii) if there are no timely objections to the settlement, or if any objections which were
4 filed are withdrawn before the date of final approval, then the first business day after the Court's
5 order granting Final Approval of the Settlement.

6 67. Upon completion of administration of the Settlement and within ten (10) business
7 days after the conclusion of the check cashing period, the Settlement Administrator will provide
8 written certification of such completion as well as regarding any funds that remain from the checks
9 that are returned as undeliverable or are not negotiated to Class Counsel and Defendant's Counsel.
10 Class Counsel will then submit a post-judgment report to the Court regarding any funds that
11 remain from such checks.

12 **PRELIMINARY APPROVAL OF THE SETTLEMENT AS TO THE CALIFORNIA**
13 **CLASS AND APPROVAL OF THE SETTLEMENT AS TO THE COLLECTIVE**

14 **Preliminary Approval of the Settlement Is Appropriate**

15 68. With this Motion, the Parties request that the Court take the first step in the
16 settlement approval process and grant preliminary approval of the proposed Settlement. A
17 preliminary review of the Settlement reveals the fairness of its terms.

18 69. The Gross Settlement Amount of \$1,200,000.00 is a negotiated amount that resulted
19 from substantial arms' length negotiations and significant investigation and analysis by Plaintiffs'
20 counsel. Plaintiffs' counsel based their damages analysis and settlement negotiations on informal
21 discovery, including the payroll and timekeeping data, and dozens of interviews with Class
22 Members.

23 70. The estimated amount available to Settlement Class and Collective Members
24 includes the Net Settlement Amount (\$697,500.01) and Net PAGA Amount (\$8,750.00) (for a total
25 of \$706,250.01), derived from a Gross Settlement Amount of \$1,200,000.00, will result in fair and
26 just relief to all Members of the Settlement Class.

1 71. This amount will be available to the approximately 679 Class Members and 6 Opt-In
2 Plaintiffs who worked outside of California, exclusive of attorneys' fees and costs, administrative
3 costs and other expenses, and the service awards.

4 72. This Net Settlement Amount alone provides an estimated average recovery of
5 \$1,031.02 per Participating Individual, assuming full participation of all Class and Collective
6 Members in the Settlement. Considering the difficulty and risks presented by continuing this
7 litigation, the result is not only within the reasonable standard, but Class Counsel believes it is
8 quite reasonable when considering the recovery covers less than one and a half years of work
9 (from May 22, 2019 to November 4, 2020) for each Participating Individual.

10 73. Through outreach and discovery analysis, Class Counsel estimated that, on average,
11 Technicians were not compensated for thirty minutes of overtime wages per shift for off-the-clock
12 work. Additionally, Technicians missed, on average two meal and rest periods per week. Class
13 members also were typically not compensated for approximately \$375 per Class member in
14 necessary business expenses, including drill bits, work pants, work boots, and drills. Applying
15 these inputs and further data points to TAK's compensation policies, Plaintiffs prepared a damages
16 analysis that provided the estimated recovery for each cause of action.

17 74. For purposes of estimating damages, Class Counsel ran a damages analysis with the
18 following assumptions based on its outreach and discovery analysis that Plaintiffs and the putative
19 Class fully prevail on all causes of action and can prove thirty minutes of unpaid overtime per
20 shift, and can prove two missed meal and rest periods per week for each Class Member for all
21 shifts worked (less the number of penalties that TAK's alleged that they paid to each Class
22 Member over the Class Period).²

23 75. Based on Class Counsel's investigation, as well as an analysis of the data and
24 documents provided by TAK, Class Counsel determined that TAK's exposure for TAK's total
25 exposure for the California Class and the Collective is approximately \$3.3 million.
26

27 ² Separately, Participating Individuals who are also Aggrieved Employees will also receive a *pro*
28 *rata* share of the Net PAGA Amount of \$8,750.00.

1 76. The Settlement therefore represents 36.4% of TAK's total potential exposure and
2 over 100% of Defendants' exposure for substantive violations alone (excluding waiting time
3 penalties, wage statement penalties, and PAGA penalties). A recovery of 36.4% of the total
4 exposure easily falls within the range of reasonableness.

5 77. The Settlement proposed herein is based on arm's-length negotiations that were
6 guided by Class Counsel's investigation and the evaluation of informal discovery. The negotiations
7 included extensive communications between Class Counsel and counsel for TAK and a mediation
8 conference supervised by an experienced and respected mediator. The proposed Settlement
9 provides substantial monetary recovery for the Settlement Class, and it satisfies all of the required
10 due process protections.

11 78. To facilitate settlement negotiations, Class Counsel investigated the applicable law
12 and the facts in this case and extensively analyzed the potential damages that might be recovered
13 following the exchange of documents and information with TAK. TAK provided informal
14 discovery including a 50% sampling of the timekeeping and payroll records of the Class, as well as
15 TAK's general policies, and other information necessary for a damages analysis. Class Counsel
16 was also able to perform outreach with approximately 40 Technicians to complete in-depth intakes.
17 Plaintiffs used this information to perform a careful and extensive analysis of the effects of TAK's
18 compensation policies and practices on Class Members' pay.

19 79. The damages analysis provided a benchmark for Plaintiffs and Class Counsel to
20 gauge settlement offers. Accordingly, the Settlement was agreed upon following an extensive
21 review of the facts and law in this case.

22 80. Absent this settlement, it is estimated that Class Counsel's fees and costs would far
23 exceed \$1,000,000.00 to pursue these claims on behalf of Class Members. Litigating the class
24 claims in this action would require substantial additional discovery including the depositions of
25 Technicians and experts, as well as the consideration, preparation, and presentation of voluminous
26 documentary evidence and the preparation and analysis of expert reports.

27 81. In contrast, the Settlement will yield a prompt, certain, and substantial recovery for
28 Participating Individuals. Such a result will benefit the parties and the court system. The proposed

1 \$1,200,000.00 Settlement achieves a just and beneficial result. In light of the challenges that
2 Plaintiffs would likely face, the proposed Settlement is extremely reasonable.

3 82. The reasonableness of the Settlement is further underscored by the fact that
4 Defendants have legal and factual grounds available to defend this action. Defendants take the
5 position that this case is not suitable for class treatment, that they fully complied with their
6 obligations under the Labor Code, and that Plaintiffs and the putative Class Members are not
7 entitled to damages, penalties, or other relief sought.

8 83. Plaintiffs would face other significant risks if the litigation were to proceed to trial,
9 including defeating arbitration agreements that purport to require them to proceed individually in
10 arbitration. If arbitration is not compelled, a Motion for Class Certification requiring investigation
11 and outreach efforts by Class Counsel to obtain supporting evidence would be vigorously
12 contested by Defendants. Plaintiffs would then need to establish class-wide liability, and prove up
13 various issues regarding damages and penalties. Such efforts would likely take many more months,
14 if not years, and would necessitate expert witness testimony and significant additional litigation.

15 84. Additionally, Plaintiffs' derivative claims regarding waiting time penalties, accurate
16 records, and wage statements rise and fall with Plaintiffs' other wage payment claims. For
17 example, Plaintiffs would recover nothing under Labor Code § 203 if they were unable to prove
18 the underlying claims or defeat a "good faith" dispute defense. (See Cal. Code Regs. Tit. 8, §
19 13520.) While Plaintiffs believe that they would prevail on these issues and others, Plaintiffs
20 recognize the risk that a fact finder may find for Defendants on one or more of these issues and
21 may find damages to be significantly less than what Plaintiffs claim.

22 85. Defendants, represented by experienced employment lawyers, raised the above
23 arguments, and more, in mediation and would have done so in continued litigation. Despite
24 Plaintiffs' confidence in their ability to prove their claims on a Class-wide basis, any one of the
25 above defenses, if decided in favor of Defendants, could have reduced or even eliminated any
26 potential damages award.

1 86. Based on Class Counsel’s knowledge and expertise in this area of law, I believe this
2 Settlement will provide a substantial benefit to the Class Members, well within the range of
3 reasonableness.

4 **Class Certification**

5 87. The benefits and efficiencies of this proposed Settlement, when compared to
6 continued litigation of this case on either a class basis or through multiple individual suits, justifies
7 certification of the proposed Settlement Class.

8 88. Plaintiffs have defined the Settlement Class according to objective criteria: the 679
9 current and former non-exempt employees of TAK who have worked in California as Technicians
10 at any time between May 22, 2019 and August 4, 2020.

11 89. The Settlement Class Members are easily identifiable and can be easily located.
12 Plaintiffs satisfy the numerosity element as well. According to TAK, the proposed Settlement
13 Class in this matter consists of approximately 679 individuals. With 679 Class Members, joinder
14 is impracticable and the numerosity requirement is satisfied.

15 90. Common questions of law and fact also predominate in this action, which favors
16 certification. Here, TAK’s class-wide policies and procedures raise common issues of law and fact
17 that are applicable to the claims of Plaintiffs and Class Members. TAK has uniform policies
18 applicable to all non-exempt hourly employees. Specifically, they are subject to uniform
19 timekeeping, payroll, compensation, meal and rest period, overtime, and business expense
20 reimbursement policies and practices. Common factual issues that apply to the Class Members,
21 such as Defendants’ alleged failures to pay for all hours worked, allegedly uniformly packed
22 schedules that prevented Class Members from receiving uninterrupted meal and rest breaks, Class
23 Members required usage of TAK’s proprietary timekeeping system, and TAK’s alleged
24 requirement that Class Members be on-duty during breaks would provide key evidence of unpaid
25 wages, denied meal and rest breaks, and unreimbursed business expenses. These standardized
26 policies and procedures are dictated by TAK and apply to all of the Class Members.

27 91. Plaintiffs Diaz and Trigo are members of the Class they seek to represent. The
28 Named Plaintiffs, like other Class Members, were subject to the policies and practices that form

1 the basis of the claims asserted in this case. Plaintiffs claim they were denied meal and rest breaks,
2 compensation for all hours worked, and reimbursement for necessarily incurred business expenses.
3 Like Plaintiffs, the Class Members were subjected to the same illegal policies and practices to
4 which Plaintiffs were subjected and the Class claims are based on the same legal theory as
5 Plaintiffs' individual claims. Accordingly, the Named Plaintiffs are members of the Settlement
6 Class they seek to represent, and their claims are "typical" of those asserted by other Settlement
7 Class Members.

8 92. The Plaintiffs will fairly and adequately represent and protect the interests of the
9 Class. There is no conflict between Plaintiffs and the proposed Class. Plaintiffs' claims are in line
10 with those of the Class, and Plaintiffs has prosecuted this case with the interests of the Class in
11 mind. Furthermore, Plaintiffs have selected counsel with extensive experience in class action and
12 employment litigation, including wage and hour class actions, and who do not have any conflict
13 with the Class.

14 93. Plaintiffs are adequate class representatives, and are represented by experienced and
15 respected litigators of representative wage and hour actions. Schneider Wallace Cottrell Konecky
16 LLP and Berger Montague P.C. are appropriate Class Counsel.

17 94. I feel strongly that the proposed Settlement achieves an excellent result for the Class
18 Members.

19 95. Defendants have agreed that for settlement purposes only, that the requisites for
20 establishing class action certification under Cal. Civ. Code Proc. § 382 are met.

21 **Collective Certification**

22 96. In the FLSA context, Plaintiffs allege that Technicians across the country are all
23 similarly situated because they are subject to a common practice or policy in violation of the
24 FLSA, which are supported by the overwhelming number of Technicians who have already opted-
25 in to this action.

26 97. Because TAK maintain various common policies and practices as to what work they
27 compensate and what work they do not compensate, and apply these policies and practices to the
28 Technicians, Plaintiffs contend that there are no individual defenses available to TAK.

1 98. During the course of the litigation, 86 Technicians have submitted opt-in consent
2 forms that have been filed as an exhibit to Plaintiffs' First Amended Complaint. Forty-seven (47)
3 Technicians filed opt-in consent forms to bring their FLSA claims on a collective basis in the *Diaz*
4 – *Federal* action. Thirty-nine (39) additional Technicians provided their opt-in consent forms and
5 demonstrated that they would have opted-in to the *Diaz – Federal* action between June 26, 2020
6 and August 1, 2020 but for the dismissal of the *Diaz – Federal* action pursuant to the Parties'
7 Tolling and Dismissal Agreement.

8 99. Notice pursuant to the FLSA has not been sent to any putative Collective member.

9 100. Only the claims of the 86 Technicians who have submitted opt-in consent forms are
10 subject to release under the Settlement. Claims for any putative Collective member who have not
11 submitted an opt-in consent form are not subject to release under the Settlement.

12 101. Defendants have agreed that for settlement purposes only, that the requisites for
13 establishing collective action certification under the FLSA pursuant to 29 U.S.C. § 216(b) are met.

14 **SERVICE AWARDS**

15 102. Payment to Plaintiff Diaz and Plaintiff Trigo in the amount of \$10,000.00 each is
16 reasonable in light of the efforts they made and the risks they took in filing and prosecuting this
17 action to obtain this \$1,200,000.00 Settlement.

18 103. As a result of Plaintiffs' efforts and their willingness to step forward, the
19 Participating Class Members will receive significant recoveries if the Settlement is approved. If
20 they did not serve as Plaintiffs and Class Representatives or assist in the prosecution of this case,
21 the matter would never have been brought. The Class Members would not be getting any recovery
22 and TAK's alleged conduct would have gone unchecked.

23 104. In agreeing to serve as Class and Collective representative, Plaintiff formally agreed
24 to accept the responsibilities of representing the interests of all Class Members. Plaintiffs have
25 committed their time to this case and assumed significant risk to obtain the result. Their service in
26 a wage and hour class action lawsuit may be discerned by potential employers and members of the
27 community, creating a very real risk of future repercussions, particularly with respect to their
28 future job opportunities.

105. Throughout this litigation, Plaintiffs worked with Class Counsel and assisted in the development of the case. They produced documents which Class Counsel relied upon in mediation, answered Class Counsel's questions in developing its position for mediation, and assisted with the facilitation of class outreach. Plaintiffs have taken part in the Settlement decision, agreed to a broader release, and remained apprised of the case at all times during litigation.

106. Defendants do not oppose the requested payments to the Plaintiff as a reasonable service award.

ATTORNEYS' FEES AND COSTS

107. In their fee motion to be submitted with the final approval papers, Class Counsel will request up to one third of the Gross Settlement Amount, or \$399,999.99, plus reimbursement of costs of up to \$20,000.00.

108. Here, as of November 17, 2020, Schneider Wallace has devoted approximately 231.25 hours to this case for a current total lodestar of \$156,855. In total, Class Counsel has expended approximately cumulative 700.55 hours for a current cumulative lodestar of \$377,312.55 as of November 17, 2020, not inclusive of all of the work that Class Counsel will continue to perform in bringing this settlement to a close. Plaintiffs' counsel will provide their lodestar information with their fee motion, which will demonstrate the reasonableness of Plaintiffs' Counsel's rates. On this basis, the requested attorneys' fees award is eminently reasonable.

109. In this case, given the excellent results achieved, the effort expended litigating the Action, including the difficulties attendant to litigating this case, such an upward adjustment is warranted. There was no guarantee of compensation or reimbursement. Rather, Class Counsel have undertaken all the risks of this litigation on a completely contingency fee basis. In the *Wal-Mart v. Dukes* era—a decision that does not eliminate employment class actions, but which nonetheless underscores the difficulties and uncertainties in prevailing—the risks inherent in litigating large, employment class actions are great. Even a favorable ruling on class certification faces a significant risk of reversal by an appellate court. The inherent risk of proving liability and damages on a Class-wide basis and TAK’s representation by skillful counsel confront Class Counsel with the prospect of recovering nothing or close to nothing for their commitment to and investment in

1 the case.

2 110. Nevertheless, Plaintiffs and Class Counsel have committed themselves to developing
3 and pressing Plaintiffs' legal claims to enforce the employees' rights and maximize the Class
4 recovery. During the litigation, counsel had to turn away other, less risky cases to remain
5 sufficiently resourced for this one. The challenges that Class Counsel had to confront and the risks
6 they had to fully absorb on behalf of the class here are precisely the reasons for multipliers in
7 contingency fee cases.³ As Class Members will receive a significant payment if the Settlement is
8 approved, Class Counsel seeks a reasonable fee award for their efforts and the risk they have
9 assumed.

10 111. Attorneys who litigate on a wholly or partially contingent basis expect to receive
11 significantly higher effective hourly rates in cases where compensation is contingent on success,
12 particularly in hard-fought cases where, like in the case at bar, the result is uncertain. This does not
13 result in any windfall or undue bonus. In the legal marketplace, a lawyer who assumes a significant
14 financial risk on behalf of a client rightfully expects that his or her compensation will be
15 significantly greater than if no risk was involved (*i.e.*, if the client paid the bill on a monthly basis),
16 and that the greater the risk, the greater the "enhancement." Adjusting court-awarded fees upward
17 in contingent fee cases to reflect the risk of recovering no compensation whatsoever for hundreds
18 of hours of labor simply makes those fee awards consistent with the legal marketplace, and in so
19 doing, helps to ensure that meritorious cases will be brought to enforce important public interest
20 policies and that clients who have meritorious claims will be better able to obtain qualified
21 counsel.

22 112. This commitment and the risks involved are precisely the reasons for multipliers in
23 contingency fee cases. As Class Members will receive a significant payment if the Settlement is
24 approved, Class Counsel seek a reasonable fee award for their efforts and the risk they have
25

26 ³ (Posner, *Economic Analysis of the Law*, 534, 567 (4th ed. 1992) ([“A contingent fee must be
27 higher than a fee for the same legal services paid as they are performed... because the risk of
28 default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than
that of conventional loans”].)

1 assumed.

2 113. For these reasons, Class Counsel respectfully submits that a one-third recovery for
3 fees is modest and appropriate. The lodestar amount will increase with preparation of the final
4 approval papers, preparation and attendance at remaining hearings, correspondence and
5 communications with Class Members, and settlement administration and oversight.

6 114. Class Counsel also requests reimbursement for their litigation costs. Reasonable
7 litigation expenses are ordinarily included in an award of attorneys' fees pursuant to California
8 wage and hour law. Schneider Wallace's litigation costs to date total \$9,881.85. Class Counsel's
9 cumulative litigation costs to date total \$14,926.25. All of the expenses were reasonable, were
10 necessary to the prosecution, and are customarily billed to fee-paying clients. Class Counsel also
11 requests reimbursement for these expenses.

12 115. Class Counsel's efforts resulted in an excellent settlement, and the requested fee
13 award is exceeded by Class Counsel's lodestar. The fee and costs award should be preliminarily
14 approved as fair and reasonable.

15 **THE NOTICE OF SETTLEMENT AND RELATED ADMINISTRATION**

16 116. The Notice of Settlement, attached as **Exhibit A** to the Settlement Agreement, and
17 manner of distribution negotiated and agreed upon by the Parties.

18 117. All Class Members will be identified and the Notice of Settlement will be mailed
19 directly to each Class and Collective Member, and emailed to those for whom Defendants have an
20 email address. The proposed Notice of Class Action is clear and straightforward, and provides
21 information on the case, the proposed Settlement, the rights of the Class Members to participate,
22 opt out, and object, the monetary awards that the Settlement will provide to Participating Class and
23 Collective Members, and the identity and contact information for Class Counsel.

24 118. In addition, the Parties will provide a settlement website that provides a generic form
25 of the Notice, the Settlement Agreement, and other case related documents and contact
26 information.

27 119. The proposed Notice of Class Action summarizes the proceedings necessary to
28 provide context for the Settlement and summarizes the terms and conditions of the Settlement,

1 including an explanation of how the Settlement amount will be allocated between the Named
2 Plaintiffs, Class Counsel, the Settlement Administrator, and Participating Class Members. The
3 proposed Notice of Class Action also describes the release of claims to which Participating Class
4 Members will be subject if they participate in the Settlement. Moreover, this summary is presented
5 in an informative, coherent and easy-to-understand manner, all in compliance with the Manual for
6 Complex Litigation’s recommendation that “the notice contain a clear, accurate description of the
7 terms of the settlement.”

8 120. The Notice clearly explains the procedures and deadlines for opting out of the
9 Settlement or submitting objections, the consequences of taking or foregoing the various options
10 available to Class Members, and the date, time and place of the Final Approval hearing. The
11 proposed Notice also sets forth the amount of attorneys’ fees and costs sought by Class Counsel
12 and explains that Participating Class Members have the opportunity to object to Class Counsel’s
13 requests for fees and costs. In addition, the Notice clearly states that the Settlement does not
14 constitute an admission of liability by Defendant. Finally, it makes clear that the final settlement
15 approval decision has yet to be made.

16 121. The proposed Notice fulfills the requirement of neutrality in class notices. It
17 summarizes the proceedings necessary to provide context for the Settlement Agreement and
18 summarizes the terms and conditions of the Settlement, including an explanation of how the
19 settlement amount will be allocated between the named Plaintiff, Class Counsel, the Settlement
20 Administrator, and the Class Members, in an informative, coherent and easy-to-understand
21 manner.

22 122. Based on the foregoing, the Notice of Class Action complies with the standards of
23 fairness, completeness, and neutrality required of a settlement class notice disseminated under
24 authority of the Court.

25 123. Reasonable steps will be taken to ensure that all Participating Class Members receive
26 the Notice of Class Action. Prior to the initial mailing, the Settlement Administrator will check the
27 addresses provided by Defendant through the National Change of Address System, as necessary. If
28 the Notice of Class Action is returned as undeliverable, the Settlement Administrator will perform

1 a skip trace and resend the notice.

2 **SUBMISSION TO THE LWDA**

3 124. Pursuant to this Court's Procedural Guidelines for Preliminary Approval of Class
4 Action Settlements, paragraph 4, a copy of Plaintiff Diaz's proof of submission to the Labor and
5 Workforce Development Agency ("LWDA") for penalties under the PAGA is attached hereto as
6 **Exhibit 2.**

7
8 I declare under penalty of perjury under the laws of the State of California that the
9 foregoing is true and correct and is based on my own personal knowledge.

10 Executed this 17th day of November, 2020, in San Rafael, California.

11
12 
13 _____
14 Carolyn Hunt Cottrell

Exhibit 1

Carolyn H. Cottrell (SBN 166977)
 Ori Edelstein (SBN 268145)
 Michelle S. Lim (SBN 315691)
 SCHNEIDER WALLACE
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Attorneys for Defendants
 TAK Communications CA, Inc.
 and TAK Communications, Inc.

**SUPERIOR COURT OF CALIFORNIA
 COUNTY OF ALAMEDA**

EDGAR DIAZ, on behalf of himself and all
 others similarly situated,

Plaintiff,

vs.

TAK COMMUNICATIONS CA, INC.; TAK
 COMMUNICATIONS, INC.; and DOES 1-50,
 inclusive,

Defendants.

Case No.: RG20064706

Related to: *Edgar Diaz and Joe Trigo v. TAK
 Communications CA, Inc.; and TAK
 Communications, Inc.*, Eastern District of
 California, Case No. 2:20-at-00481

**CLASS ACTION SETTLEMENT
 AGREEMENT AND RELEASE**

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

1. This Class Action Settlement Agreement and Release (the “Settlement Agreement,” “Settlement” or “Agreement”) is entered into between Plaintiff Edgar Diaz and Joe Trigo (“Named Plaintiffs”), individually and on behalf of all other similarly-situated persons, and Defendants TAK Communications CA, Inc. and TAK Communications, Inc. (“Defendants”), subject to the approval of the Court. Plaintiff and Defendants are collectively referred to as the “Parties.”

DEFINITIONS

2. The following terms used in this Settlement Agreement shall have the meanings ascribed to them below:

a. “Action” means the above-captioned action, *Diaz v. TAK Communications CA, Inc., et al.*, Superior Court of California, County of Alameda, Case Number RG20064706.

b. The “California Class” or “Members of the California Class” means all current and former hourly, non-exempt employees who worked as Technicians for Defendants in the state of California between May 22, 2019 and August 4, 2020.

c. “Class Counsel” means Schneider Wallace Cottrell Konecky LLP and Berger Montague PC.

d. “Class Counsel’s Costs” refers to the amount of reasonable litigation expenses Class Counsel incurred in connection with this Action, which shall not exceed \$20,000.00, including their pre-filing investigation, their filing of the Action and all related litigation activities, and all post-Settlement compliance procedures.

e. “Class List” means a list of Settlement Class Members that Defendants will compile from their records. The Class List shall include: each California Class Member’s and each Opt-In Plaintiff’s full name; last known address; last known email address; last known telephone number; Social Security number; the total number of workweeks that each Settlement Class Member worked in the state of California between May 22, 2019 and August 4, 2020; and the total number of workweeks that each Settlement Class Member worked outside the state of California between and including May 22, 2019, or three years prior to the Opt-In Date for Opt-In Plaintiffs, whichever is earliest, and August 4, 2020. The Class List will also include an indication of whether the Settlement Class Member is an Opt-In Plaintiff.

f. The “Collective” or “Collective Members” or “Opt-in Plaintiffs” means a certified collective action for settlement purposes only pursuant to 29 U.S.C. § 216(b), which includes all individuals who (1) have submitted Opt-In Consent Forms in the federal lawsuit *Diaz, et al. v. TAK Communications CA, Inc., et al.*, California District Court, Eastern District of California, Case No. 2:20-at-00481, on or before June 26, 2020, or who demonstrate that they would have opted-in to the federal lawsuit between June 26, 2020 and August 1, 2020 but for the dismissal of the federal lawsuit, as of August 4, 2020, and (2) worked as technicians for Defendants between May 22, 2019, or three years prior to the Opt-In Date for Opt-In Plaintiffs,

1 whichever is earliest, and August 4, 2020.

2 g. "Court" means the Superior Court of California, County of Alameda.

3 h. "Defendants" means TAK Communications CA, Inc. and TAK
4 Communications, Inc.

5 i. "Defendants' Counsel" means Medina McKelvey LLP.

6 j. "Effective Date" means (i) if there is an objection(s) to the settlement that
7 is not subsequently withdrawn, then the date upon the expiration of time for appeal of the Court's
8 Final Approval Order; or (ii) if there is a timely objection(s) and appeal by an objector(s), then
9 after such appeal(s) is dismissed or the Court's Final Approval Order is affirmed on appeal; or
10 (iii) if there are no timely objections to the settlement, or if any objections which were filed are
11 withdrawn before the date of final approval, then the first business day after the Court's order
12 granting Final Approval of the Settlement.

13 k. "Fee Award" means the award of attorneys' fees that the Court authorizes
14 to be paid to Class Counsel for the services they rendered to Named Plaintiff, Collective
15 Members, and the Settlement Class in the Action. Class Counsel will not seek more than thirty-
16 three and one-third percent of the Gross Settlement Amount as their Fee Award.

17 l. "Final" shall mean, with respect to a judgment or order, that the judgment
18 or order is final and appealable and either (a) no appeal, motion, or petition to review or intervene
19 has been taken with respect to the judgment or order as of the date on which all times to appeal,
20 move, or petition to review or intervene therefrom have expired, or (b) if an appeal, motion or
21 petition to intervene or other review proceeding of the judgment or order has been commenced,
22 such appeal, motion or petition to intervene or other review is finally concluded and no longer
23 is subject to review by any court, whether by appeal, petitions for rehearing or re-argument,
24 petitions for rehearing *en banc*, petitions for writ of certiorari or otherwise, and such appeal or
25 other review has been finally resolved in such manner that affirms the judgment or order in its
26 entirety. Notwithstanding the foregoing, any proceeding, order, or appeal pertaining solely to
27 the award of attorneys' fees, attorneys' costs, or any Service Award shall not by itself in any
28 way delay or preclude the judgment from becoming a final judgment or the Settlement from
becoming "Effective."

21 m. "Final Approval" or "Final Approval Order" means the Court's Final
22 Approval Order approving the Settlement and entering judgment.

23 n. "Final Approval Hearing" means the hearing to be held by the Court to
24 consider the Final Approval of the Settlement.

25 o. "Gross Settlement Amount" means the non-reversionary total amount that
26 Defendants shall pay in connection with this Settlement, including any interest earned on such
27 funds, in exchange for the release of the Settlement Class Members' Released Claims. The Gross
28 Settlement Amount is the gross sum of One Million Two Hundred Thousand Dollars
(\$1,200,000.00). The Gross Settlement Amount includes: (a) all Settlement Awards to

1 Settlement Class Members; (b) civil penalties under the Private Attorneys' General Act
2 ("PAGA"); (c) Class Representative Enhancement Payments; (d) Attorneys' Fees and Costs to
3 Class Counsel, and (e) Settlement Administration Costs to the Settlement Administrator. Except
4 for the Defendants' employers portion of payroll taxes on Settlement Awards to Eligible Class
5 Members ("Defendants' Payroll Taxes"), the Parties agree that Defendants will have no
6 obligation to pay any amount in connection with this Settlement Agreement apart from the Gross
7 Settlement Amount and Defendants' Payroll Taxes. There will be no reversion.

8 p. "Net PAGA Amount" means the Twenty-Five Percent (25%) of the
9 amount of civil penalties under the PAGA, or Eight Thousand Seven Hundred Fifty Dollars
10 (\$8,750.00).

11 q. "Net Settlement Amount" means the Gross Settlement Amount less: (i)
12 Service Awards; (ii) Fee Award; (iii) Class Counsels' Costs; (iv) Settlement Administrator
13 Costs; (v) the payment to Labor and Workforce Development Agency ("LWDA") for its share
14 of PAGA penalties; (vi) and the Net PAGA Amount. The Parties acknowledge that all of these
15 amounts are subject to the Court's approval.

16 r. "Notice Deadline" means the date sixty (60) days after the Settlement
17 Notice is initially mailed to the Settlement Class. California Class Members shall have until the
18 Notice Deadline to object to, or opt-out of the Settlement.

19 s. "Participating Individuals" means (a) any California Class Members who
20 do not submit a valid letter requesting to be excluded from the Settlement, consistent with the
21 terms set forth in this Settlement Agreement, and (b) all Opt-In Plaintiffs who cash or deposit
22 their Settlement Award checks. All Participating Individuals will be bound by all terms and
23 conditions of the Settlement Agreement, including the release of the Released Claims.

24 t. "Parties" means the parties to this Agreement: Named Plaintiff; TAK
25 Communications CA, Inc.; and TAK Communications, Inc.

26 u. "Preliminary Approval" or "Preliminary Approval Order" means the
27 Court's Preliminary Approval Order preliminarily approving the terms and conditions of this
28 Agreement.

v. "Qualified Settlement Fund" means a qualified settlement fund under
Section 468B of the Internal Revenue Code established by the Settlement Administrator for the
purpose of administering this Settlement.

w. "Releasees" or "Released Parties" means Defendants and their present and
former parent companies, subsidiaries, related or affiliated companies, and their shareholders,
officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any
individual or entity that could be liable for any of the Released Claims, and Defendants' Counsel.

x. "Service Award" means the payment to Named Plaintiffs Edgar Diaz and
Joe Trigo for their efforts in bringing and prosecuting this matter. The Service Award will not
exceed the following amounts: Ten Thousand Dollars (\$10,000.00) for Plaintiff Edgar Diaz and

1 Ten Thousand Dollars (\$10,000.00) for Plaintiff Joe Trigo.

2 y. "Settlement Administrator" means Heffler Claims Group, the third-party
3 class action settlement administrator that will handle the administration of this Settlement,
subject to approval by the Court.

4 z. "Settlement Administrator Costs" refer to the costs the Settlement
5 Administrator will incur to distribute the Settlement Notice and Settlement Awards, which are
6 estimated to be Twenty-Seven Thousand Five Hundred Dollars (\$27,500.00).

7 aa. "Settlement Award" means the payment that each Settlement Class
Member shall be entitled to receive pursuant to the terms of this Agreement.

8 bb. "Settlement Class Members" means all Members of the California Class,
9 all Collective Members, and the Named Plaintiffs.

10 cc. "Settlement Notice" means the Notice of Class Action Settlement to the
11 Settlement Class Members substantially in the form as Exhibit A attached hereto, or as approved
by the Court.

12 RECITALS

13 3. Plaintiffs Edgar Diaz and Joe Trigo filed an initial action against Defendants in the
14 Eastern District of California on May 18, 2020, asserting claims as a collective action under the
Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq. ("FLSA") and a class action pursuant to
15 California labor laws. *Diaz, et al. v. TAK Communications CA, Inc., et al.*, California District
Court, Eastern District of California, Case No. 2:20-at-00481.

16 4. Plaintiff Diaz filed a separate action against Defendants on June 12, 2020 in
17 Alameda Superior Court, to assert additional claims for penalties under California Private
Attorneys General Act ("PAGA") § 2699 arising from Defendant's violations of the Cal. Lab.
18 Code. *Diaz v. TAK Communications CA, Inc., et al.*, Superior Court of California, County of
Alameda, Case No. RG20064706. Defendants filed their Answer on July 27, 2020, denying
19 Plaintiff's allegations.

20 5. Through the federal and California state actions, Plaintiffs alleges that Defendants
21 violated the Fair Labor Standards Act, and the wage and hour laws of California by failing to pay
Technicians earned wages and failing to provide legally compliant meal and rest periods. On this
22 basis, plaintiffs brought claims against Defendants for unpaid minimum wages and overtime
23 wages, failure to provide meal and rest periods, inaccurate wage statements, failure to maintain
pay records, failure to pay final wages, unfair competition, and civil penalties under the PAGA.

24 6. Following the filing of these actions, Defendants informed Plaintiffs of the
25 existence of arbitration agreements purportedly executed by all named plaintiffs and opt-in
26 plaintiffs. The Parties agreed to attend mediation early on in these actions, and subsequently
entered into a Tolling and Dismissal Agreement on June 26, 2020, whereby Plaintiffs agreed to
27 dismiss his Class and Collective action without prejudice in federal court by June 29, 2020, and

1 TAK agreed that no statute of limitations on any claim would run against Plaintiffs while the
2 agreement is in effect (except those claims that are already barred by any applicable statute of
3 limitations). Pursuant to the Tolling and Dismissal Agreement, the agreement applies to: TAK,
4 all named Plaintiffs (i.e., Edgar Diaz and Joe Trigo), all opt-in plaintiffs who timely opted in to
5 the federal lawsuit on or before June 26, 2020 (i.e. 47 opt-in plaintiffs), and all individuals who
6 demonstrate that they would have opted-in to the federal lawsuit between June 26, 2020 and
7 August 1, 2020 but for the dismissal of the federal lawsuit pursuant to the Parties' agreement (i.e.,
8 40 opt-in plaintiffs, for a total of 87 opt-in plaintiffs). These terms, pursuant to the agreement,
9 terminate on September 1, 2020.

7 7. Pursuant to the Tolling and Dismissal Agreement, Plaintiffs dismissed the federal
8 action on June 29, 2020 and the case was closed on June 30, 2020. Dkt. Nos. 12-13. To date, a
9 total of 87 individuals have opted-in to the federal action or their opt-in forms have been provided
10 to Defendants following dismissal of the federal action.

10 8. On August 4, 2020, the Plaintiffs and Defendants conducted a full day mediation
11 session which was remotely held before well-respected employment mediator Tripper Ortman.
12 The Parties reached a settlement at the mediation and executed a confidential memorandum of
13 understanding of the substantive terms of the settlement that day. In September 2020, the Parties
14 agreed to settle this action under the terms provided in the instant Settlement Agreement.

13 9. Class Counsel has made a thorough and independent investigation of the facts and
14 law relating to the allegations in the Action. In agreeing to this Settlement Agreement, Named
15 Plaintiffs have considered: (a) the facts developed during pre-mediation, informal discovery and
16 the Parties' mediation process and the law applicable thereto; (b) the attendant risks of continued
17 litigation and the uncertainty of the outcome of the claims alleged against Defendants; and (c) the
18 desirability of consummating this Settlement according to the terms of this Settlement Agreement.
19 Named Plaintiffs have concluded that the terms of this Settlement are fair, reasonable and
20 adequate, and that it is in the best interests of Named Plaintiffs, the Opt-In Plaintiffs and the
21 Settlement Class (as defined above) to settle their claims against Defendants pursuant to the terms
22 set forth herein.

19 10. Defendants deny the allegations in the Action and deny any and all liability,
20 including any liability for alleged failure to pay overtime compensation, failure to pay any wages,
21 failure to provide meal and rest breaks, failure to provide accurate wage statements, failure to pay
22 any wages in a timely manner during employment or at the time of termination, or any other wage
23 and hour or similar violation. This Settlement Agreement shall not be construed as an admission
24 by Defendants or any of the Releasees (as defined above) of any fault, liability or wrongdoing,
25 which Defendants expressly deny. If this Settlement Agreement does not become final, this
26 Settlement Agreement, or the circumstances leading to this Settlement Agreement, may not be
27 used as an admission by Defendants or any wrongdoing or evidence of any wrongdoing by
28 Defendants.

25 11. The Parties recognize that notice to the Settlement Class of the material terms of
26 this Settlement, as well as Court approval of this Settlement, are required to effectuate the
27
28

1 Settlement, and that the Settlement will not become operative until the Court grants final approval
2 of it, Settlement becomes Final and the Settlement Effective Date occurs.

3 12. The Parties stipulate and agree that, for settlement purposes only, the requisites for
4 establishing collective action certification under the FLSA pursuant to 29 U.S.C. § 216(b), and
5 class certification pursuant to CAL. CIV. CODE PROC. § 382 are met. Should this Settlement not
6 become Final, such stipulation to certification shall become null and void and shall have no bearing
7 on, and shall not be admissible in connection with, the issue of whether or not collective or class
8 certification would be appropriate in a non-settlement context. Defendants deny that class and/or
9 collective action treatment is appropriate in the litigation context or for trial.

10 13. The Parties stipulate and agree that for settlement purposes only, Plaintiffs shall file
11 a stipulation in the instant Action, and Defendants shall not oppose, for an order granting leave to
12 amend the operative complaint to add FLSA claims and California state law claims for the
13 violations of federal and California labor laws asserted in the Complaint filed in the action *Diaz,*
14 *et al. v. TAK Communications CA, Inc., et al*, California District Court, Eastern District of
15 California, Case No. 2:20-at-00481, Dkt. No. 1, promptly after execution of this Settlement
16 Agreement. The Parties also stipulate and agree that Plaintiffs shall file, and Defendants shall not
17 oppose, the Opt-In Consent Forms in the instant Action, of the individuals who: (1) have submitted
18 Opt-In Consent Forms pursuant to the Parties' Tolling Agreement, including Plaintiffs, as of
19 August 4, 2020, and (2) worked as technicians for Defendants between the applicable limitations
20 period and August 4, 2020. The Parties stipulate and agree that for settlement purposes only,
21 Defendants consent to the filing of the Amended Complaint and to personal and subject matter
22 jurisdiction in Alameda County Superior Court.

23 14. In consideration of the foregoing and other good and valuable consideration, the
24 receipt and sufficiency of which is hereby acknowledged by each party to the other, IT IS
25 HEREBY AGREED, by and between the undersigned, subject to the final approval of the Court
26 and the other conditions set forth herein, that Named Plaintiffs' and the Participating Individuals'
27 claims as described herein against Defendants shall be settled, compromised and dismissed, on the
28 merits and with prejudice, and that the Named Plaintiffs' and Participating Individuals' Released
Claims shall be finally and fully compromised, settled and dismissed as to the Defendants and
Releasees, in the manner and upon the terms and conditions set forth below.

RELEASES

15 15. In exchange for the consideration set forth in this Settlement Agreement, Named
16 Plaintiffs and Participating Individuals agree to release all claims as set forth herein as applicable.

17 16. **Settlement Class Members' Released Claims.** Upon Final Approval of the
18 Settlement Agreement and payment of amounts set forth herein, and except as to such rights or
19 claims as may be created by this Settlement Agreement, Named Plaintiffs and all Participating
20 Individuals shall and hereby do release and discharge all Releasees, finally, forever and with
21 prejudice, from the claims from May 22, 2019, or three years prior to the Opt-In Date for Opt-In
22 Plaintiffs, whichever is earliest, to November 4, 2020 as follows:

- 1 a. Opt-In Plaintiffs: Opt-In Plaintiffs release all Releasees from the following rights
2 or claims: any and all claims under the Fair Labor Standards Act, 29 U.S.C. §§ 201,
3 *et seq.*, based on or arising out of the same factual predicates of the Actions.
- 4 b. California Class Members: The California Class Members release the Releasees
5 from the following rights or claims: any and all claims under California law, based
6 on or arising out of the same factual predicates of the Action, the Complaint, and/or
7 the allegations in the Complaint, including (a) all claims that were or could have
8 been raised in the Actions; and (b) all claims that are based on or relate to the
9 purported payment or nonpayment of compensation (including, but not limited to,
10 wages, minimum wage, straight time, overtime, bonuses, incentive compensation,
11 and/or premium pay), meal or rest period premiums or penalties, reimbursement of
12 business expenses, improper wage statements, improper recordkeeping, unfair
13 business practices, including related premiums, statutory penalties, civil penalties,
14 liquidated damages, interest, punitive damages, costs, attorneys' fees, injunctive
15 relief, declaratory relief, or accounting, whether such causes of action are in tort,
16 contract, or pursuant to a statutory remedy.
- 17 c. As to California Class Members who are not Opt-In Plaintiffs and who cash,
18 deposit, or otherwise negotiate their Settlement Award checks shall also release any
19 and all claims against the Releasees under the Fair Labor Standards Act, 29 U.S.C.
20 §§ 201, *et seq.*, arising from or related to their work for Defendants in the State of
21 California, based on these same factual predicates.
- 22 d. As to California Class Members who are not Opt-In Plaintiffs and who do not cash
23 or deposit their Settlement Award checks, shall not release any claims against the
24 Released Parties under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*

17 17. **Releases of PAGA Claims.** The release period for PAGA claims runs from May
18 22, 2019 to November 4, 2020.

19 18. **Release Language on Settlement Checks.** The Settlement Administrator shall
20 include the following release language on the back of each Settlement Award check, as appropriate
21 for (a) Named Plaintiffs and Collective Members and (b) other Settlement Class Members:

- 22 (a) For Named Plaintiffs and Collective Members: "This check is your settlement
23 payment in connection with the court-approved collective action Settlement
24 in *Diaz v. TAK Communications CA, Inc., et al.*, Superior Court of
25 California, County of Alameda, Case No. RG20064706. By you having
26 consented to join the Collective Action, and the court having approved a
27 Settlement, you have released TAK Communications CA, Inc. and TAK
28 Communications, Inc., and other Releasees of all Settlement Class
Members' Released Claims as defined in the Settlement Agreement,
including claims under the Fair Labor Standards Act."

(b) Other Settlement Class Members: “This check is your settlement payment in connection with the court-approved class action Settlement in *Diaz v. TAK Communications CA, Inc., et al.*, Superior Court of California, County of Alameda, Case No. RG20064706. By not opting out of the Settlement, you have released TAK Communications CA, Inc. and TAK Communications, Inc., and other Releasees of all Settlement Class Members’ Released Claims as defined in the Settlement Agreement, except for claims under the Fair Labor Standards Act (“FLSA”). By signing or cashing your check, you consent to join the Collective Action and affirm your release of FLSA claims against Releasees.”

19. **Named Plaintiffs’ Released Claims.** Named Plaintiffs’ Released Claims means any and all claims, obligations, demands, actions, rights, causes of action, and liabilities against the Releasees, of whatever kind and nature, character, and description, whether in law or equity, whether sounding in tort, contract, federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law or contract, whether known or unknown, and whether anticipated or unanticipated, including all unknown claims covered by California Civil Code section 1542 that could be or are asserted based upon any theory or facts whatsoever, arising at any time up to and including the date of the execution of this Settlement Agreement, for any type of relief, including, without limitation, claims for minimum, straight time, or overtime wages, premium pay, business expenses, other damages, penalties (including, but not limited to, waiting time penalties), liquidated damages, punitive damages, interest, attorneys’ fees, litigation and other costs, expenses, restitution, and equitable and declaratory relief. The Named Plaintiffs’ Released Claims include, but are not limited to, the Settlement Class Members’ Released Claims, as well as any other claims under any provision of federal, state, or local law, including the FLSA, the California Labor Code, and California Wage Orders. Upon Final Approval, Named Plaintiffs shall be deemed to have fully, finally, and forever released Releasees from all Named Plaintiffs’ Released Claims through the date of Preliminary Approval. Furthermore, upon Final Approval, Named Plaintiffs shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits they may otherwise have had relating to the Named Plaintiffs’ Released Claims pursuant to Section 1542 of the California Civil Code, 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.

CERTIFICATION, NOTICE, AND SETTLEMENT IMPLEMENTATION

20. The Parties agree to the following procedures for obtaining Preliminary Approval of the Settlement, certifying the Settlement Class, and notifying the Settlement Class of this Settlement:

- a. **First Amended Complaint.** The Parties shall stipulate and agree that for settlement purposes only, Defendants consent to the filing of the Amended

1 Complaint and to personal and subject matter jurisdiction in Alameda
2 County Superior Court. Named Plaintiffs shall file the stipulation and
3 proposed Amended Complaint before the filing of the Unopposed Motion
4 for Preliminary Approval of Settlement Agreement discussed in Paragraph
5 20.b.

6 b. **Request for Class Certification and Preliminary Approval Order.**

7 Named Plaintiffs shall file an Unopposed Motion for Preliminary Approval
8 of Settlement Agreement, requesting that the Court certify the Settlement
9 Class pursuant to 29 U.S.C. § 216(b) and CAL. CIV. CODE PROC. § 382 for
10 the sole purpose of settlement; preliminarily approve the Settlement
11 Agreement and its terms; approve the proposed form of the Settlement
12 Notice and find that the proposed method of disseminating the Settlement
13 Notice meets the requirements of due process and is the best notice
14 practicable under the circumstances; set a date for Named Plaintiffs' motion
15 for Final Approval of the Settlement, and approval of the requested Service
16 Awards, Fee Award, Class Counsel's Costs, and Settlement Administrator's
17 Costs; and set a date for the Final Approval Hearing.

18 c. **Notice.** The Settlement Administrator shall be responsible for preparing,
19 printing, mailing, and emailing the Settlement Notice to all Settlement Class
20 Members. The Settlement Administrator will also create a website for the
21 Settlement, which will allow Settlement Class Members to view the Class
22 Notice (in generic form), this Settlement Agreement, and all papers filed by
23 Class Counsel to obtain preliminary and final approval of the Settlement
24 Agreement. Additionally, the Settlement website will provide contact
25 information for Class Counsel and the Settlement Administrator. The
26 Settlement Administrator will provide Class Counsel and Defendants'
27 counsel with a preview of the proposed website. Class Counsel and
28 Defendants' counsel must approve the website before it goes live and also
must approve any modifications to the website. The Settlement
Administrator shall also create a toll-free telephone number to field
telephone inquiries from Settlement Class Members during the notice and
settlement administration periods. The Settlement Administrator will be
directed to take the website and call center down after the 180-day check
cashing period for Settlement Award Checks.

29 d. Within ten (10) business days after the Court's Preliminary Approval of the
30 Settlement, Defendants shall provide to the Settlement Administrator and
31 Class Counsel the Class List, an electronic database containing the names,
32 last known addresses, last known telephone numbers (if any), last known
33 email addresses (if any), social security numbers or tax ID numbers of each
34 Settlement Class Member, along with: (1) the total number of workweeks
35 that each Settlement Class Member worked for either TAK
36 Communications CA, Inc. and TAK Communications, Inc. in California
37 from May 22, 2019 to August 4, 2020; and (2) the total number of

workweeks that each Settlement Class Member worked for either TAK Communications CA, Inc. and TAK Communications, Inc. in the United States of America from May 22, 2019 or three years prior to the Opt-In Date for Opt-In Plaintiffs, whichever is earliest, through August 4, 2020. Class Counsel shall provide the Settlement Administrator with updated addresses or contact information for Opt-In Plaintiffs in their possession.

- e. In order to provide the best notice practicable, prior to mailing the Settlement Notice, the Settlement Administrator will take reasonable efforts to identify current addresses via public and proprietary systems.
- f. Within ten (10) business days after receiving the contact information for the Settlement Class Members, the Settlement Administrator shall mail and email (if email addresses are available) the agreed-upon and Court-approved Settlement Notice to Settlement Class Members. The Settlement Administrator shall provide notice to Class Counsel and Defendants' Counsel that the Settlement Notice has been mailed.
- g. Any Settlement Notice returned to the Settlement Administrator with a forwarding address shall be re-mailed within three (3) business days following receipt of the returned mail. If no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine a correct address using a skip-trace, or other search using the name, address and/or Social Security number of the Settlement Class Member involved, and shall re-mail the Notice of Settlement. For Opt-In Plaintiffs only, the Settlement Administrator shall also promptly work with Class Counsel to obtain forwarding addresses. Class Counsel shall use their best efforts to locate forwarding addresses for Opt-In Plaintiffs whose Notices of Settlement are returned as non-delivered. In no circumstance shall such re-mailing extend the Notice Deadline.
- h. Within ten (10) business days after the Notice Deadline, the Settlement Administrator shall provide Defendants' Counsel and Class Counsel, respectively, a report showing: (i) the names of California Class Members and Opt-In Plaintiffs; (ii) the Settlement Awards owed to each California Class Member and Opt-In Plaintiff; (iii) the final number of California Class Members who have submitted objections or valid letters requesting exclusion from the Settlement; and (iv) the number of undeliverable Notices of Settlement. Upon completion of administration of the Settlement, the Settlement Administrator shall provide written certification of such completion to counsel for all Parties and the Court. This written certification shall include the total number of Participating Individuals (including the total number of California Class Members who do not request exclusion and the total number of Opt-In Plaintiffs), the average recovery per California Class Member who does not request exclusion, the average recovery per Opt-In Plaintiff, the median recovery per California Class Member who

1 does not request exclusion, the median recovery per Opt-In Plaintiff, the
2 largest and smallest amounts paid to California Class Members who do not
3 request exclusion, the largest and smallest amounts paid to Opt-In Plaintiffs,
4 and the number and value of checks not cashed.

- 5 i. Defendants will not take any adverse action against any current or former
6 employee on the grounds that he/she is eligible to participate and/or does
7 participate in the Settlement. Defendants will not discourage participation
8 in this Settlement Agreement or encourage objections or opt-outs.
9 j. Within ten (10) business days after the conclusion of the 180-day check
cashing period below, the Settlement Administrator shall provide
Defendants' Counsel and Class Counsel, respectively, a report regarding the
total amount of any funds that remain from checks that are returned as
undeliverable or are not negotiated.

10 21. **Disputes Regarding Workweeks.** To the extent that any Settlement Class Member
11 disputes the number of workweeks that the Settlement Class Member worked, as shown in his or
12 her Settlement Notice, such Settlement Class Members may produce evidence to the Settlement
13 Administrator establishing the dates they contend to have worked for Defendants. The deadline
14 for Settlement Class Members to submit disputes pursuant to this paragraph is the Notice Deadline
15 (disputes must be postmarked by the Notice Deadline). Unless the Settlement Class Member
16 presents convincing evidence proving he or she worked more workweeks than shown by
17 Defendants' records, his/her Settlement Award will be determined based on Defendants' records.
18 The Settlement Administrator shall notify counsel for the Parties of any disputes it receives.
Defendants shall review its records and provide further information to the Settlement
Administrator, as necessary. The Settlement Administrator shall provide a recommendation to
counsel for the Parties. Counsel for the Parties shall then meet and confer in an effort to resolve
the dispute. If the dispute cannot be resolved by the Parties, it shall be presented to the Court for a
resolution. The Settlement Administrator will notify the disputing Settlement Class Member of the
decision.

19 22. **Objections.** The Settlement Notice shall provide that California Class Members
20 who wish to object to the Settlement must, on or before the Notice Deadline, file with the court a
21 written statement objecting to the Settlement. Such objection shall not be valid unless it includes
22 the information specified in the Settlement Notice. The statement must be signed personally by
23 the objector, and must include the objector's name, address, telephone number, email address (if
24 applicable), the factual and legal grounds for the objection, and whether the objector intends to
25 appear at the Final Approval Hearing. The Settlement Notice shall advise California Class
26 Members that objections shall only be considered if the California Class Member has not opted
27 out of the Settlement. No California Class Member shall be entitled to be heard at the Final
Approval Hearing (whether individually or through counsel), unless written notice of the
California Class Member's intention to appear at the Final Approval Hearing has been filed with
the Court and served upon Class Counsel and Defendants' Counsel on or before the Notice
Deadline and the California Class Member has not opted out of the Settlement. The postmark date
of mailing to Class Counsel and Defendants' Counsel shall be the exclusive means for determining

1 that an objection is timely mailed to counsel. If postmark dates differ, the later of the two postmark
2 dates will control. Absent good cause found by the court, persons who fail to make timely written
3 objections in the manner specified above shall be deemed to have waived any objections and
4 oppositions to the Settlement's fairness, reasonableness and adequacy, and shall be foreclosed
5 from making any objection (whether by appeal or otherwise) to the Settlement. However, the
6 requirement that the Settlement Class Member submit a written objection may be excused by the
7 Court upon a showing of good cause. None of the Parties, their counsel, nor any person on their
8 behalf, shall seek to solicit or otherwise encourage anyone to object to the settlement, or appeal
9 from any order of the Court that is consistent with the terms of this Settlement.

10 23. **Requests for Exclusion.** The Settlement Notice shall provide that Settlement Class
11 Members, other than Named Plaintiffs, who wish to exclude themselves from the Settlement ("opt
12 out") must mail to the Settlement Administrator a written statement indicating that they do not
13 wish to participate or be bound by the Settlement. The written request for exclusion must contain
14 the Settlement Class Member's full name, address, telephone number, email address (if
15 applicable), and last four digits of their social security number, and must be signed individually by
16 the Class Member. No opt-out request may be made on behalf of a group. Such written statement
17 must be postmarked by the Notice Deadline. None of the Parties, their counsel, nor any person on
18 their behalf, shall seek to solicit or otherwise encourage anyone to exclude themselves from the
19 settlement.

20 24. **Cure Period.** In the event any request for exclusion is timely submitted but does
21 not contain sufficient information to be valid, the Settlement Administrator shall provide the
22 Settlement Class Member, within seven (7) calendar days, a letter requesting the information that
23 was not provided and giving the Settlement Class Member fourteen (14) days from the mailing of
24 such cure letter to respond. Any invalid submission that is not timely cured will be considered a
25 nullity.

26 25. **Final Approval Hearing.** Class Counsel will be responsible for drafting the
27 Unopposed Motion for Final Approval of Settlement Agreement, and approval of the requested
28 Service Awards, Fee Award, Class Counsel's Costs, and Settlement Administrator's Costs to be
29 heard at the Final Approval Hearing. Class Counsel shall provide Defendants' Counsel a copy of
30 a draft Unopposed Motion for Final Approval of Settlement Agreement. Named Plaintiffs shall
31 request that the Court schedule the Final Approval Hearing no earlier than thirty (30) days after
32 the Notice Deadline to determine final approval of the settlement and to enter a Final Approval
33 Order:

- 34 a. certifying this Action and Settlement Class as an FLSA collective action
35 under 29 U.S.C. § 216(b) and as a class action CAL. CIV. CODE PROC. § 382
36 for purposes of settlement only;
- 37 b. finding dissemination of the Settlement Notice was accomplished as
38 directed and met the requirements of due process;
- 39 c. approving the Settlement as final and its terms as a fair, reasonable and
40 adequate;

- d. approving the payment of the Service Awards to Named Plaintiffs Edgar Diaz and to Joe Trigo;
- e. approving Class Counsel's application for an award of attorneys' fees and reimbursement of out-of-pocket litigation costs and expenses;
- f. directing that the Settlement funds be distributed in accordance with the terms of this Settlement Agreement;
- g. directing that the Action be dismissed finally, fully, forever and with prejudice and in full and final discharge of any and all Participating Individuals' Released Claims; and
- h. retaining continuing jurisdiction over this Action for purposes only of overseeing all settlement administration matters.

26. **Post Judgment Report.** At the conclusion of the 180-day check cashing period set forth below and following receipt of the Settlement Administrator's report showing the total funds that were actually paid to Participating Individuals, Plaintiff's Counsel shall submit a post-judgment report to the Court of regarding any funds that remain from checks that are returned as undeliverable or are not negotiated.

SETTLEMENT FUNDS AND AWARD CALCULATION

27. **Gross Settlement Amount.**

- a. **Funding of Settlement.** Within ten (10) business days of the Effective Date, Defendants shall pay the Gross Settlement Amount into the Settlement Administrator's Qualified Settlement Fund. Only the Settlement Administrator shall have access to the Qualified Settlement Fund. Defendants shall not have access to the Gross Settlement Amount, or to any earned interest, once those funds are deposited into the Qualified Settlement Fund. The Gross Settlement Amount is fully non-reversionary. All disbursements shall be made from the Qualified Settlement Fund.

28. **Payments.** Subject to the Court's Final Approval Order, the following amounts shall be paid by the Settlement Administrator from the Gross Settlement Amount:

- a. **Service Awards to Named Plaintiffs.** Subject to the Court's approval, Plaintiff Edgar Diaz shall receive Ten Thousand Dollars (\$10,000.00) and Plaintiff Joe Trigo shall receive Ten Thousand Dollars (\$10,000.00) for their efforts in bringing and prosecuting this matter. The Qualified Settlement Fund shall issue an IRS Form 1099 for these payments. These payments shall be made within (30) days after the Effective Date or as soon as reasonably practicable. If the Court approves Service Award in amounts less than what Named Plaintiffs requests, the reduction in the Service Award shall not be a basis for nullification of this Settlement. Nor shall a

1 reduction in the Service Award in any way delay or preclude the judgment
2 from becoming a final judgment or the Settlement from becoming Effective.

3 b. **Fee Awards and Costs.**

4 (i) Subject to the Court's approval, Class Counsel shall receive a Fee
5 Award in an amount up to thirty-three and one-third percent
6 (33.33%) of the Gross Settlement Amount, which will compensate
7 Class Counsel for all work performed in the Action as of the date of
8 this Settlement Agreement as well as all of the work remaining to
9 be performed, including but not limited to documenting the
10 Settlement, securing Court approval of the Settlement, making sure
11 that the Settlement is fairly administered and implemented, and
12 obtaining final dismissal of the Action. In addition, Class Counsel
13 shall, subject to Court approval, receive reimbursement of Class
14 Counsels' Costs not to exceed Twenty Thousand Dollars
15 (\$20,000.00), to be approved by the Court. These payments of
16 attorneys' fees and costs shall be made within thirty (30) days after
17 the Effective Date or as soon as reasonably practicable.

18 (ii) An IRS Form 1099 shall be provided to Class Counsel for the
19 payments made to Class Counsel. Class Counsel shall be solely and
20 legally responsible to pay any and all applicable taxes on the
21 payment made to them.

22 c. **Labor and Workforce Development Agency Payment.** Subject to Court
23 approval, the Parties agree that the amount of Thirty-Five Thousand Dollars
24 (\$35,000.00) from the Gross Settlement Amount will be paid in settlement
25 of all individual and representative claims brought in the Action by or on
26 behalf of Plaintiffs and California Class Members and aggrieved parties
27 under the Labor Code Private Attorneys General Act of 2004 (Cal. Lab.
28 Code §§ 2698, et seq., "PAGA"). Pursuant to PAGA, Seventy-Five Percent
(75%), or Twenty-Six Thousand Two Hundred Fifty Dollars (\$26,250.00),
of this sum will be paid to the Labor and Workforce Development Agency
("LWDA") and Twenty-Five Percent (25%), or Eight Thousand Seven
Hundred Fifty Dollars (\$8,750.00), will be allocated to the Net PAGA
Amount. The payment to the LWDA should be made within thirty (30)
days after the Effective Date or as soon as reasonably practicable.

d. **Settlement Administration Costs.** Settlement Administration costs shall
be paid from the Gross Settlement Amount. The Parties agree to cooperate
in the settlement administration process and to make all reasonable efforts
to control and minimize the costs incurred in the administration of the
Settlement.

- e. **Settlement Awards to Eligible Class Members.** Settlement Awards shall be made to Settlement Class Members as set forth below.

29. **No Claim Based Upon Distributions or Payments in Accordance with this Settlement Agreement.** No person shall have any claim against Defendants, Class Counsel, or Defendants' Counsel based on distributions or payments made in accordance with this Settlement Agreement.

CALCULATION AND DISTRIBUTION OF SETTLEMENT AWARDS

30. **Settlement Award Eligibility.** All Settlement Class Members shall be paid a Settlement Award from the Net Settlement Amount.

31. Any California Class Member who fails to submit a timely request to exclude themselves from the Settlement by following the procedure set forth in the Settlement Notice shall automatically be deemed a Settlement Class Member whose rights and claims with respect to the issues raised in the Action are determined by any order the Court enters granting final approval, and any judgment the Court ultimately enters in the Action. Any such Settlement Class Member's rights to pursue any Released Claims (as defined in this Settlement Agreement) will be extinguished.

32. **Settlement Award Calculations.** The Settlement Administrator shall be responsible for determining the amount of the Settlement Award to be paid to each Participating Individuals based on the below formulas:

- a. Participating Individuals shall receive a *pro rata* portion of the Net Settlement Amount as follows:
- i. When calculating the individual Settlement Awards to Settlement Class Members following Final Approval (for purposes of preparing Individual Settlement Payment checks), the Settlement Administrator will not include California Class Members who validly request exclusion from the Settlement but will assume that all Opt-In Plaintiffs cash their Settlement Award checks.
 - ii. For each week during which the Participating Individual worked for either TAK Communications CA, Inc. and TAK Communications, Inc. at any time from May 22, 2019 to August 4, 2020 for California Class Members, and from May 22, 2019 or three years prior to the Opt-In Date for Opt-In Plaintiffs, to August 4, 2020, he or she shall be eligible to receive a *pro rata* portion of the Net Settlement Amount based on the number of workweeks the Participating Individual worked. Each workweek will be equal to one (1) settlement share. To reflect the increased value of state law claims, workweeks during which work was performed in California will be equal to three (3) settlement shares.

1 iii. The total number of settlement shares for all Participating
2 Individuals will be added together and the resulting sum will be
3 divided into the Net Settlement Amount to reach a per share dollar
4 figure. That figure will then be multiplied by each Participating
5 Individual's number of settlement shares to determine the
6 Participating Individual's *pro rata* portion of the Net Settlement
7 Amount.

8 b. Participating Individuals who are also aggrieved employees under the
9 PAGA shall also receive an equal portion of the Net PAGA Amount as
10 follows:

11 i. For any Participating Individual who worked for either TAK
12 Communications CA, Inc. and TAK Communications, Inc. at any
13 time from May 22, 2019 to August 4, 2020 in California, he or she
14 shall be eligible to receive an equal portion of the Net PAGA
15 Amount. The total number of eligible Participating Individuals will
16 be divided into the Net PAGA Amount. The resulting Net PAGA
17 Amount per Participating Individual, if any, will be added to the
18 Participating Individual's share of the Net Settlement Amount, to
19 determine the Participating Individual's Settlement Award.

20 33. In addition to other information contained on the Settlement Notice, the Settlement
21 Notice shall state the estimated minimum payment the class member is expected to receive
22 assuming full participation of all Settlement Class Members.

23 34. All Settlement Award determinations shall be based on Defendants' timekeeping,
24 payroll, and/or other records. If the Parties determine, based upon further review of available data,
25 that a person previously identified as being a Settlement Class Member is not a Settlement Class
26 Member, or an individual who was not previously identified as a Settlement Class Member is in
27 fact a Settlement Class Member but was not so included, the Settlement Administrator shall
28 promptly make such addition or deletion as appropriate.

29 35. **Settlement Award Allocations.** Any portion of each Settlement Award that is
30 provided from the Net PAGA Amount shall be allocated as penalties. For the remainder of each
31 Settlement Award, one-third (33.33%) of each Settlement Award shall be allocated as wages, one-
32 third (33.33%) of each Settlement Award shall be allocated as penalties, twenty-three and one-
33 third percent (23.33%) of each Settlement Award shall be allocated as interest, and ten percent
34 (10%) of each Settlement Award shall be allocated as expense reimbursements. Settlement
35 Awards will be paid out to Participating Individuals subject to reduction for all employee's share
36 of withholdings and taxes associated with the wage-portion of the Settlement Awards, for which
37 Participating Individuals shall be issued an IRS Form W-2. Participating Individuals will also be
38 issued an IRS Form 1099 for the portions of the Settlement Awards that are allocated to penalties,
39 expense reimbursements, and interest. Defendants shall pay the employer's share of all required
40 FICA and FUTA taxes on the wage portions of the Settlement Awards. The Settlement
41 Administrator shall calculate the employer share of taxes and provide Defendants with the total

1 employer tax contributions within five (5) business days after the final Settlement Award
2 calculations are approved. Defendants shall deposit the calculated employer tax contributions into
3 the Qualified Settlement Fund within seven (7) business days after the Settlement Administrator
4 provides Defendants with the amount of the total employer tax contributions due. Amounts
5 withheld will be remitted by the Settlement Administrator from the Qualified Settlement Fund to
6 the appropriate governmental authorities. Defendants shall cooperate with the Settlement
Administrator to provide payroll tax information as necessary to accomplish the income and
employment tax withholding on the wage portion of each Settlement Award, and the Form 1099
reporting for the non-wage portion of each Settlement Award.

7 36. Class Counsel and Defendants' Counsel do not intend this Settlement Agreement
8 to constitute legal advice relating to the tax liability of any Settlement Class Member. To the extent
9 that this Settlement Agreement, or any of its attachments, is interpreted to contain or constitute
advice regarding any federal, state or local tax issue, such advice is not intended or written to be
used, and cannot be used, by any person for the purpose of avoiding any tax liability or penalties.

10 37. The Settlement Administrator shall provide Class Counsel and Defendants'
11 Counsel with a final report of all Settlement Awards, at least ten (10) business days before the
Settlement Awards to Participating Individuals are mailed.

12 38. The Settlement Administrator shall mail all Settlement Awards to Participating
13 Individuals within thirty (30) days after the Effective Date or as soon as reasonably practicable.
14 The Settlement Administrator shall then provide written certification of mailing to Class Counsel
and Defendants' Counsel.

15 39. All Settlement Award checks shall remain valid and negotiable for one hundred
16 eighty (180) days from the date of their issuance and may thereafter automatically be canceled if
17 not cashed within that time, at which time the right to recover any Settlement Award will be
18 deemed void and of no further force and effect. With ninety (90) days remaining, a reminder letter
19 will be sent via U.S. mail and email to those who have not yet cashed their settlement check, and
20 during the last sixty (60) days of the check cashing period, a call will be placed to those that have
21 still not cashed their check to remind them to do so. At the conclusion of the 180 day check cashing
deadline, Participating Individuals who have not cashed their Settlement Award checks shall
nevertheless be deemed to have finally and forever released the Named Plaintiff's Released Claims
or Participating Individuals' Released Claims, as applicable, except that the Participating
Individuals shall not release any FLSA claims against Defendants.

22 40. **Remaining Monies.** If at the conclusion of the 180-day check cashing period set
23 forth above, any funds remain from checks that are returned as undeliverable or are not negotiated,
those monies shall be distributed as follows, subject to the Court's approval:

- 24 a. If the total residual amount is less than \$50,000, then the amount will revert
25 to *cy pres*. The *cy pres* recipient shall be proposed by the parties and
26 approved by the Court. The Parties propose Legal Aid at Work which
27 provides legal services assisting low-income, working families and
promotes better understanding of the conditions, policies, and institutions

that affect the well-being of workers and their families and communities. The Settlement Administrator shall distribute any *cy pres* payment.

- b. If the total residual amount is \$50,000 or greater, a second distribution will occur to those Participating Individuals who cashed their Settlement Award check. The second distribution will occur on a *pro rata* basis as provided for in Paragraph 32. In the event of a redistribution of uncashed check funds to Settlement Class Members who cashed their Settlement Award, the additional settlement administration costs related to the redistribution will be deducted from the total amount of uncashed checks prior to the redistribution. If a check to a Settlement Class Member is returned to the Settlement Administrator as undeliverable during the second distribution, the Settlement Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace search and, if another address is identified, shall mail the check to the newly identified address. If none is found, then said check shall revert to the *cy pres* recipient. If there are uncashed check funds remaining from redistribution as described in this Paragraph, then the amount will revert to *cy pres*.
- c. Within twenty-one (21) days after the distribution of any remaining monies to Participating Individuals who cashed their Settlement Award check or to the *cy pres* recipient, Plaintiffs will file a Post-Distribution Accounting. The Post-Distribution Accounting will set forth the total settlement fund, the total number of Settlement Class Members, the total number of Settlement Class Members to whom notice was sent and not returned as undeliverable, the number and percentage of opt-outs, the number and percentage of objections, the average and median recovery per claimant, the largest and smallest amounts paid to class members, the method(s) of notice and the method(s) of payment to class members, the number and value of checks not cashed, the amounts distributed to the *cy pres* recipient (if applicable), the administrative costs, the attorneys' fees and costs, the attorneys' fees in terms of percentage of the settlement fund, and the multiplier, if any.

MISCELLANEOUS

41. **Class Action Fairness Act.** Defendants shall serve upon the appropriate State official of each State in which a class member resides and the appropriate Federal official, a notice of the proposed settlement not later than 10 days after a proposed settlement of a class action is filed in court, pursuant to the Class Action Fairness Act (CAFA), 28 U.S.C. § 1715.

42. **Submissions to the LWDA.** At the same time as they submit this Class Action Settlement Agreement to the Court for Preliminary Approval, Class Counsel shall submit a copy of this Agreement to the LWDA, as required by California Labor Code § 2699(l)(2). Within ten (10) days following the Effective Date, Class Counsel shall submit a copy of the Final Approval Order and Judgment entered by the Court to the LWDA, as required by California Labor Code § 2699(l)(3).

1 43. **No Admission of Liability.** Defendants expressly deny all of the allegations in the
2 Actions. Defendants expressly deny that they have violated the FLSA or the California Labor
3 Code, or any other provision of federal or state law with respect to any of their employees. This
4 Settlement Agreement and all related documents are not and shall not be construed as an admission
5 by Defendants or any of the Releasees of any fault or liability or wrongdoing. If this Settlement
6 Agreement does not become final, this Settlement Agreement, or the circumstances leading to this
7 Settlement Agreement, may not be used as an admission by Defendants or any wrongdoing or
8 evidence of any wrongdoing by Defendants.

9 44. **Defendants' Legal Fees.** Defendants' legal fees and expenses in this Action shall
10 be borne by Defendants.

11 45. **Nullification of the Settlement Agreement.** In the event: (a) the Court does not
12 preliminarily or finally approve the Settlement as provided herein; or (b) the Settlement does not
13 become Final for any other reason; or (c) the Effective Date does not occur, the Parties agree to
14 engage in follow up negotiations with the intent of resolving the Court's concerns that precluded
15 approval, and if feasible, to resubmit the settlement for approval within thirty (30) days. If the
16 Settlement is not approved as resubmitted or if the Parties are not able to reach another agreement,
17 then either Party may void this Agreement; at that point, the Parties agree that each shall return to
18 their respective positions on the day before this Agreement and that this Agreement shall not be
19 used in evidence or argument in any other aspect of their litigation.

20 46. **Defendants' Option to Void Settlement.** If more than ten percent (10%) of the
21 total number of Settlement Class Members submit timely and valid Requests for Exclusion / Opt-
22 Out Requests, then Defendants shall have the option to void the Settlement in their sole discretion.
23 To exercise this option, Defendants must jointly send written notification to Class Counsel within
24 fourteen (14) days of receiving a report from the Settlement Administrator informing Defendants'
25 Counsel that the total number of timely and valid Requests for Exclusion / Opt-Out Requests is
26 more than ten percent (10%). If Defendants choose to exercise this option, the effect will be
27 precisely the same as if Final Judgment did not occur, as discussed herein, and all Settlement
28 Administrator Costs incurred by the Settlement Administrator through that date will be paid by
29 Defendants.

30 47. **Inadmissibility of Settlement Agreement.** Except for purposes of settling this
31 Action, or enforcing its terms (including that claims were settled and released), resolving an
32 alleged breach, or for resolution of other tax or legal issues arising from a payment under this
33 Settlement Agreement, neither this Agreement, nor its terms, nor any document, statement,
34 proceeding or conduct related to this Agreement, nor any reports or accounts thereof, shall be
35 construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any
36 purpose adverse to the Parties, including, without limitation, evidence of a presumption,
37 concession, indication or admission by any of the Parties of any liability, fault, wrongdoing,
38 omission, concession or damage.

39 48. **Computation of Time.** For purposes of this Agreement, if the prescribed time
40 period in which to complete any required or permitted action expires on a Saturday, Sunday, or
41

1 legal holiday (as defined by CAL. CIV. CODE PROC. §§ 12, 12a), such time period shall be continued
2 to the following business day. The term “days” shall mean calendar days unless otherwise noted.

3 49. **Interim Stay of Proceedings.** The Parties agree to hold in abeyance all proceedings
4 in the Action, except such proceedings necessary to implement and complete the Settlement.
5 Further, without further order of the Court, the Parties hereto may agree in writing to reasonable
6 extensions of time to carry out any of the provisions of the Settlement.

7 50. **Amendment or Modification.** This Agreement may be amended or modified only
8 by a written instrument signed by counsel for all Parties or their successors in interest. This
9 Agreement may not be discharged except by performance in accordance with its terms or by a
10 writing signed by the Parties hereto.

11 51. **Entire Settlement Agreement.** This Agreement with exhibits constitutes the entire
12 Agreement among the Parties, and no oral or written representations, warranties or inducements
13 have been made to any Party concerning this Agreement other than the representations, warranties,
14 and covenants contained and memorialized in such documents. All prior or contemporaneous
15 negotiations, memoranda, agreements, understandings, and representations, whether written or
16 oral, are expressly superseded hereby and are of no further force and effect. Each of the Parties
17 acknowledges that they have not relied on any promise, representation or warranty, express or
18 implied, not contained in this Agreement. No rights hereunder may be waived except in writing.

19 52. **Authorization to Enter into Settlement Agreement.** The Parties warrant and
20 represent that they are authorized to enter into this Agreement and to take all appropriate action
21 required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms,
22 and to execute any other documents required to effectuate the terms of this Agreement. The Parties
23 and their counsel shall cooperate with each other and use their best efforts to effect the
24 implementation of the Agreement. In the event that the Parties are unable to reach resolution on
25 the form or content of any document needed to implement this Agreement, or on any supplemental
26 provisions or actions that may become necessary to effectuate the terms of this Agreement, the
27 Parties shall seek the assistance of the mediator, Tripper Ortman, to resolve such disagreement.

28 53. **Binding on Successors and Assigns.** This Agreement shall be binding upon, and
inure to the benefit of Named Plaintiffs, Defendants, Opt-In Plaintiffs, the Settlement Class
Members and their heirs, beneficiaries, executors, administrators, successors, transferees,
successors, assigns, or any corporation or any entity with which any party may merge, consolidate
or reorganize. The Parties hereto represent, covenant and warrant that they have not directly or
indirectly assigned, transferred, encumbered or purported to assign, transfer or encumber 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.

54. **Counterparts.** This Agreement may be executed in one or more counterparts,
including by facsimile or email. All executed counterparts and each of them shall be deemed to be
one and the same instrument. All executed copies of this Agreement, and photocopies thereof
(including facsimile and/or emailed copies of the signature pages), shall have the same force and
effect and shall be as legally binding and enforceable as the original.

55. **No Signature Required by Eligible Class Members.** Only the Named Plaintiffs will be required to execute this Settlement Agreement. The Settlement Notice will advise all Settlement Class Members of the binding nature of the release and such shall have the same force and effect as if this Settlement Agreement were executed by each Settlement Class Member.

56. **Cooperation and Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement; hence the drafting of this Agreement shall not be construed against any of the Parties. The Parties agree that the terms and conditions of this Agreement were negotiated at arm's length and in good faith by the Parties, and reflect a settlement that was reached voluntarily based upon adequate information and sufficient discovery and after consultation with experienced legal counsel.

57. **Governing Law.** All terms of this Settlement Agreement and the exhibits hereto shall be governed by and interpreted according to the laws of the State of California.

58. **Jurisdiction of the Court.** The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Settlement and all orders and judgments entered in connection therewith, and the Parties and their Counsel submit to the jurisdiction of the Court for this purpose.

IN WITNESS WHEREOF, the Parties and their Counsel have executed this Settlement Agreement as follows:

PLAINTIFF:

DocuSigned by:
Edgar Diaz
Edgar Diaz

Date: 10/05, 2020

DocuSigned by:
Joe Trigo
Joe Trigo

Date: 10/06/2020, 2020

APPROVED AS TO FORM BY CLASS COUNSEL:

Carolyn Hunt Cottrell

Date: October 06, 2020

Carolyn Hunt Cottrell
Ori Edelstein
Michelle S. Lim
SCHNEIDER WALLACE
COTTRELL KONECKY LLP
2000 Powell Street, Suite 1400
Emeryville, California 94608

DocuSigned by:



Sarah R. Schalm-Bergen

Stacy Savett

Shoshana Savett

Krysten Connon

BERGER MONTAGUE PC

1818 Market Street, Suite 3600

Philadelphia, Pennsylvania 19103

Date: October 6, 2020

DEFENDANT:

Date: _____, 2020

On behalf of TAK Communications CA, Inc.

DEFENDANT:

Date: _____, 2020

On behalf of TAK Communications, Inc.

APPROVED AS TO FORM BY DEFENDANTS' COUNSEL:

Date: _____, 2020

Brandon R. McKelvey

Timothy B. Nelson

Medina McKelvey LLP

983 Reserve Drive

Roseville, California 95678

Date: _____, 2020

Sarah R. Schalm-Bergen
Stacy Savett
Shoshana Savett
Krysten Connon
BERGER MONTAGUE PC
1818 Market Street, Suite 3600
Philadelphia, Pennsylvania 19103

DEFENDANT:

On behalf of TAK Communications CA, Inc.

Date: October 5, 2020

DEFENDANT:

On behalf of TAK Communications, Inc.

Date: October 5, 2020

APPROVED AS TO FORM BY DEFENDANTS' COUNSEL:

Brandon R. McKelvey
Timothy B. Nelson
Medina McKelvey LLP
983 Reserve Drive
Roseville, California 95678

Date: October 6, 2020

EXHIBIT A

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**Diaz v. TAK Communications CA, Inc., et al.,
Superior Court of California, County of Alameda, Case Number RG20064706**

**NOTICE OF SETTLEMENT
PLEASE READ THIS NOTICE CAREFULLY.**

You received this Notice of Settlement (“Notice”) either because you (1) previously completed an Opt-In Consent Form to join this case; or (2) you did not previously join this case but the records of TAK Communications CA, Inc. and TAK Communications, Inc. (collectively, “Defendants”) show you performed work for Defendants in the United States of America sometime between May 22, 2019 and August 4, 2020. Because you fit this definition, **you may be entitled to receive money from a Settlement¹ in this case, as described below.**

NOTE: If you performed work for Defendants in the State of California sometime between May 22, 2019 and August 4, 2020, unless you opt out of the Settlement, you will receive money for your California state law claims as a California class member, and you will release those California state law claims. If you cash or deposit your Settlement check, you will also release your federal Fair Labor Standards Act (“FLSA”) claims relating to your work performed for Defendants in any state other than the State of California.

1. Why Should You Read This Notice?

This Notice explains your right to share in the monetary proceeds of this Settlement, exclude yourself (“opt out”) of the Settlement, or object to the Settlement. If you object to the Settlement, you cannot opt out of the Settlement, and you will be bound by the terms of Settlement in the event the Court denies your objection.

The Superior Court of California, County of Alameda, has preliminarily approved the Settlement as fair and reasonable. The Court will hold a Final Approval Hearing on [REDACTED], 2020 at [REDACTED], before the Honorable [name] at the [address and time].

2. What Is This Case About?

This lawsuit alleges that individuals whom Defendants employed as non-exempt employees and who worked as technicians for Defendants between May 22, 2019, or three years prior to the Opt-In Date for Opt-In Plaintiffs, whichever is earliest, and August 4, 2020, were not provided meal and rest breaks, were not compensated for all hours worked, were not paid minimum, straight time, overtime, or double time wages, were not paid all wages due upon termination, were not provided timely and compliant itemized wage statements, and were not reimbursed for necessary business expenses. This lawsuit seeks recovery of unpaid wages, statutory damages, civil penalties under

¹ This notice summarizes the proposed Settlement. The capitalized terms in this Notice of Settlement have defined meanings that are set out in detail in the Settlement Agreement. To review a copy of the Settlement Agreement, please visit the Settlement website at [INSERT URL].

the California Labor Code Private Attorneys General Act (“PAGA”), restitution, interest, attorneys’ fees and costs. The claims in this lawsuit are brought under federal and California law.

Defendants contend that they have strong legal and factual defenses to these claims, but they recognize the risks, distractions, and costs associated with litigation. Defendants contend that the wage and hour policies and practices at issue, including those regarding payment for time worked, overtime pay, meal breaks, rest breaks, and expense reimbursement, are lawful and have been lawful throughout the relevant time period. Defendants also contend that Plaintiffs’ claims do not meet the requirements for class certification or collective treatment.

This Settlement is the result of good faith, arm’s length negotiations between Plaintiffs and Defendants, through their respective attorneys. Both sides agree that in light of the risks and expenses associated with continued litigation, this Settlement is fair and appropriate under the circumstances, and in the best interests of the Settlement Class Members. This Settlement is a compromise and is not an admission of liability on the part of Defendants.

The Court has not ruled on the merits of Plaintiffs’ claims or Defendants’ defenses.

The Settlement Administrator has created a Settlement website, which can be accessed at [INSERT URL]. The Settlement website allows interested persons to view the Settlement Agreement, all papers filed by Class Counsel to obtain Court approval of the Settlement Agreement, and this Notice of Settlement (in generic form). The Settlement website also provides contact information for Class Counsel and the Settlement Administrator.

3. What Are the Terms of the Settlement?

Defendants have agreed to pay One Million Two Hundred Thousand Dollars (\$1,200,000.00) to settle this lawsuit (“Gross Settlement Amount”). Deductions from this amount will be made for attorneys’ fees and costs for Class Counsel (up to \$399,999.99, plus attorneys’ costs not to exceed \$20,000.00; see Section 9 below), settlement administration costs (not to exceed \$), a service award in the amount not to exceed Ten Thousand Dollars (\$10,000.00) each to Named Plaintiff Edgar Diaz and Plaintiff Joe Trigo respectively for their service to the Settlement Class, and penalties of Twenty-Six Thousand Two Hundred Fifty Dollars (\$26,250.00) to the Labor and Workforce Development Agency. After deductions of these amounts, what remains of the Gross Settlement Amount (the total of the “Net Settlement Amount” and “Net PAGA Amount”) will be available to pay monetary Settlement Awards to (i) Named Plaintiffs; (ii) Opt-In Plaintiffs, and (iii) all Settlement Class Members who do not opt out of the Settlement Class (collectively, “Participating Individuals”).

The following persons will be eligible to receive a monetary award from the Net Settlement Amount: (1) Named Plaintiffs; (2) individuals who have submitted Opt-In Consent Forms in the federal lawsuit *Diaz, et al. v. TAK Communications CA, Inc., et al*, California District Court, Eastern District of California, Case No. 2:20-at-00481, on or before June 26, 2020 or who demonstrate that they would have opted-in to the federal lawsuit between June 26, 2020 and August 1, 2020 but for the dismissal of the federal lawsuit, as of August 4, 2020, and worked as technicians for Defendants between the May 22, 2019, or three years prior to the Opt-In Date for Opt-In Plaintiffs, whichever is earliest, and August 4, 2020; and (3) all individuals who worked

for TAK Communications CA, Inc. and TAK Communications, Inc. between May 22, 2019 and August 4, 2020 in the state of California.

Individuals who worked for TAK Communications CA, Inc. and TAK Communications, Inc. between May 22, 2019 and August 4, 2020 in the state of California will also be eligible to receive a monetary award from the Net PAGA Amount.

4. How Much Can I Expect to Receive?

All Participating Individuals will receive a *pro rata* share of the Net Settlement Amount based on the total number of eligible workweeks that the Participating Individual worked for TAK Communications CA, Inc. and/or TAK Communications, Inc. during the relevant period. Participating Individuals shall receive a *pro rata* portion of the Net Settlement Amount as follows:

1. For each week during which the Participating Individual worked for TAK Communications CA, Inc. and/or TAK Communications, Inc. at any time from May 22, 2019, or three years prior to the Opt-In Date for Opt-In Plaintiffs, whichever is earliest, through August 4, 2020, he or she shall be eligible to receive a *pro rata* portion of the Net Settlement Amount based on the number of workweeks the Participating Individual worked. Each workweek will be equal to one (1) settlement share. To reflect the increased value of California state law claims, workweeks during which work was performed in California will be equal to three (3) settlement shares.
2. The total number of settlement shares for all Participating Individuals will be added together and the resulting sum will be divided into the Net Settlement Amount to reach a per share dollar figure. That figure will then be multiplied by each Participating Individual's number of settlement shares to determine the Participating Individual's share of the Net Settlement Amount.

Participating Individuals who worked for TAK Communications CA, Inc. and TAK Communications, Inc. between May 22, 2019 and August 4, 2020 in the state of California shall also receive an equal share of the Net PAGA Amount (i.e., \$8,750.00). The total number of eligible Participating Individuals will be divided into the Net PAGA Amount. The resulting Net PAGA Amount per Participating Individual, if any, will be added to the Participating Individual's share of the Net Settlement Amount, to determine the Participating Individual's Settlement Award.

All Settlement Award determinations will be based on Defendants' timekeeping, payroll, and/or other records for Settlement Class members. According to records maintained by Defendants, your total estimated settlement payment will be at least \$[REDACTED]. This amount is an estimated amount, and your final settlement payment is expected to differ from this amount (i.e., it could be higher or lower) and will be calculated as set forth above. Based on Defendants' records, you are estimated to have worked [REDACTED] workweeks for TAK Communications CA, Inc. and/or TAK Communications, Inc. during the relevant period in the State of California and [REDACTED] workweeks

for TAK Communications CA, Inc. and/or TAK Communications, Inc. during the relevant period outside the State of California.

If you dispute the number of workweeks as shown on this Notice of Settlement, you may produce evidence to the Settlement Administrator establishing the dates you contend to have worked for TAK Communications CA, Inc. and/or TAK Communications, Inc. To do so, send a letter to the Settlement Administrator explaining the basis for your dispute and attach copies of the supporting evidence. Unless you present convincing evidence proving you worked more workweeks than shown by Defendants' records, your Settlement Award will be determined based on Defendants' records. Any disputes must be postmarked by [INSERT DATE] and should be mailed to [INSERT SETTLEMENT ADMINISTRATOR ADDRESS]. The Settlement Administrator will notify you of the decision on the dispute.

For tax reporting purposes, Settlement Awards to Participating Individuals will be allocated as follows: any portion of each Settlement Award that is provided from the Net PAGA Amount shall be allocated as penalties; for the remainder of each Settlement Award, one-third (33.33%) of each Settlement Award shall be allocated as wages, one-third (33.33%) of each Settlement Award shall be allocated as penalties, twenty-three and one-third percent (23.33%) of each Settlement Award shall be allocated as interest, and ten percent (10%) of each Settlement Award shall be allocated as expense reimbursements. None of the Parties or attorneys makes any representations concerning the tax consequences of this Settlement or your participation in it. Participating Individuals should consult with their own tax advisors concerning the tax consequences of the Settlement.

If you participate in the Settlement, you will have 180 days to cash the check that will be sent to you. If at the conclusion of the 180-day check void period, there are any uncashed checks, those monies will be paid to the Parties' agreed upon *cy pres* recipient, Legal Aid at Work, subject to the Court's approval in the Final Approval Order, if the total residual amount is less than \$50,000. If the total residual amount is \$50,000 or greater, a second distribution will occur to those Participating Individuals who cashed their check on a *pro rata* basis.

It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your monetary Settlement Award. If you fail to keep your address current, you may not receive your Settlement Award.

5. What Are The Releases?

Upon Final Approval of the Settlement Agreement and payment of amounts set forth under the Settlement, all Participating Individuals release claims as follows ("Released Claims") against TAK Communications CA, Inc. and TAK Communications, Inc., their present and former parent companies, subsidiaries, related or affiliated companies, and their shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity that could be liable for any of the Released Claims (collectively, the "Releasees"):

- **Opt-In Plaintiffs:** Participating Individuals release all Releasees from any and all claims from May 22, 2019, or three years prior to the Opt-In Date for Opt-In Plaintiffs, whichever is earliest, through November 4, 2020 under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*, based on or arising out of the same factual predicates of the Action.

- **California Class Members:** The California Class Members release the Releasees from any and all claims under California law, based on or arising out of the same factual predicates of the Action, the Complaint, and/or the allegations in the Complaint, from May 22, 2019 through November 4, 2020 including: (a) all claims that were or could have been raised in the Actions; and (b) all claims that are based on or relate to the purported payment or nonpayment of compensation (including, but not limited to, wages, minimum wage, straight time, overtime, bonuses, incentive compensation, and/or premium pay), meal or rest period premiums or penalties, reimbursement of business expenses, improper wage statements, improper recordkeeping, unfair business practices, including related premiums, statutory penalties, civil penalties, liquidated damages, interest, punitive damages, costs, attorneys' fees, injunctive relief, declaratory relief, or accounting, whether such causes of action are in tort, contract, or pursuant to a statutory remedy. As to California Class Members who are not Opt-In Plaintiffs and who cash, deposit, or otherwise negotiate their Settlement Award checks shall also release any and all claims against the Releasees under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*, arising from or related to their work for Defendants in California, based on these same factual predicates. Those California Class Members who are not Opt-In Plaintiffs and who do not cash or deposit their Settlement Award checks, shall not release any claims against the Released Parties under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*
- The release period for PAGA claims runs from May 22, 2019 through November 4, 2020.

NOTE: If you cash, deposit, or otherwise negotiate your Settlement Check, you will also release your Federal FLSA claims relating to your work in the State of California, as applicable.

6. What Are My Rights?

- **Do Nothing:** If you are a Settlement Class Member and do not timely and validly opt-out, you will automatically become a part of the Settlement Class and receive your prorated Settlement Award, and will be bound by the Settlement including its release provisions.
- **Opt-Out:** If you are a member of the Settlement Class and do not wish to be bound by the Settlement, you must submit a written exclusion from the Settlement ("opt-out"), postmarked by [INSERT DATE]. The written request for exclusion must contain your full name, address, telephone number, email address (if applicable), last four digits of your social security number, and must be signed individually by you. No opt-out request may be made on behalf of a group. The opt-out request must be sent by mail to the Settlement Administrator at [INSERT SETTLEMENT ADMINISTRATOR ADDRESS]. **Any person who requests exclusion (opts out) of the settlement will not be entitled to any Settlement Award and will not be bound by the Settlement Agreement or have any right to object, appeal or comment thereon.**
- **Object:** If you received this Notice and wish to object to the Settlement, you must submit a written statement objecting to the Settlement by [INSERT DATE]. The statement must state the factual and legal grounds for your objection to the settlement. The statement must state your full name, address, telephone number, and email address (if applicable), and

must be signed by you. The statement must be mailed to the Court at the following address: [insert address]. You must also mail a copy of your objection to Class Counsel and counsel for TAK Communications CA, Inc. and TAK Communications, Inc., at the addresses listed in Section 8 of this Notice by [INSERT DATE].

If you mail a written objection, you may also, if you wish, appear at the Final Approval Hearing to discuss your objection with the Court and the parties to the Lawsuit. Your written objection must state whether you will attend the Final Approval Hearing, and your written notice of your intention to appear at the Final Approval Hearing must be filed with the Court and served upon Class Counsel and Defendants' counsel on or before the Notice Deadline. To be heard at the Final Approval Hearing you must also not opt out of the Settlement. If you wish to object to the Settlement but fail to return your timely written objection in the manner specified above, you shall be deemed to have waived any objection and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. The postmark date of mailing to Class Counsel and Defendants' counsel shall be the exclusive means for determining that an objection is timely mailed to counsel. Objections shall only be considered if the Settlement Class Member has not opted out of the Settlement. The failure to submit a written objection as a prerequisite to appearing in court to object to the settlement may be excused upon a showing of good cause.

You may also withdraw your objection in writing by mailing a withdrawal statement to the Court and counsel for the Parties postmarked no later than [INSERT DATE – 10 business days before final approval hearing], orally at the Final Approval hearing, or as otherwise ordered by the Court.

7. Can Defendants Retaliate Against Me for Participating in this Lawsuit?
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No. Your decision as to whether or not to participate in this Lawsuit will in no way affect your work or employment with Defendants or future work or employment with Defendants. It is unlawful for Defendants to take any adverse action against you as a result of your participation in this Lawsuit. In fact, Defendants encourage you to participate in this Settlement.

8. Who Are the Attorneys Representing Plaintiffs and the Settlement Class?

Plaintiffs and the Settlement Class are represented by the following attorneys acting as Class Counsel:

Carolyn H. Cottrell
 Ori Edelstein
 Michelle S. Lim
**SCHNEIDER WALLACE
 COTTRELL KONECKY LLP**
 2000 Powell Street, Suite 1400
 Emeryville, CA 94608
 Telephone: (800) 689-0024
 Facsimile: (415) 421-7105
ccottrell@schneiderwallace.com
oedelstein@schneiderwallace.com
mlim@schneiderwallace.com

Sarah R. Schalman-Bergen
 Stacy Savett
 Shoshana Savett
 Krysten Connon
BERGER MONTAGUE PC
 1818 Market Street, Suite 3600
 Philadelphia, Pennsylvania 19103
 Telephone: (215) 875-3033
 Facsimile: (215) 875-4604
sschalman-bergen@bm.net
stasavett@bm.net
stsavett@bm.net
kconnon@bm.net

9. How Will the Attorneys for the Settlement Class Be Paid?

Class Counsel will be paid from the Gross Settlement Amount of \$1,200,000. You do not have to pay the attorneys who represent the Settlement Class. The Settlement Agreement provides that Class Counsel will receive attorneys' fees of up to one-third (1/3) of \$1,200,000.00 (i.e., \$399,999.99) plus their out-of-pocket costs, not to exceed \$20,000.00. Class Counsel will file a Motion for Attorneys' Fees and Costs with the Court. The amount of attorneys' fees and costs awarded will be determined by the Court at the Final Approval Hearing.

10. Where can I get more information?

If you have questions about this Notice, or the Settlement, or if you did not receive this Notice in the mail and you believe that you are or may be a member of the Settlement, you should contact the Class Counsel.

This Notice is only a summary. For the precise terms and conditions of the Settlement, please see the Settlement Agreement available at the Settlement website at **[INSERT URL]**, by contacting Class Counsel toll-free at (800) 689-0024, by accessing the Court docket in this case for a fee through the Court's electronic public records system at <https://publicrecords.alameda.courts.ca.gov/prs>, or by visiting the office of the Clerk of the Court for the **[INSERT ADDRESS]**, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT CONTACT THE COURT, THE CLERK OF THE COURT, THE JUDGE; TAK COMMUNICATIONS CA, INC.; OR TAK COMMUNICATIONS, INC. FOR INFORMATION ABOUT THE PROPOSED SETTLEMENT OR THIS LAWSUIT.

Exhibit 2



March 30, 2020

ELECTRONICALLY FILED

Attn: PAGA Administrator
Labor and Workforce Development Agency
1515 Clay Street, Suite 801
Oakland, California 94612
PAGAfilings@dir.ca.gov

Re: Private Attorneys General Act of 2004 Notice

Employee: Edgar Diaz

Employer: TAK Communications CA, Inc., TAK Communications, Inc.

To Whom It May Concern,

We represent Edgar Diaz (“Plaintiff”) who is a former employee of TAK Communications CA, Inc., and TAK Communications, Inc. (jointly “TAK”). Pursuant to California Labor Code § 2699.3, we hereby provide notice of our client’s intent to bring claims, on behalf of himself and all other current and former non-exempt hourly, piece rate, and commission employees of TAK (the “aggrieved employees”), under the Private Attorneys General Act (“PAGA”) California Labor Code § 2699(a) and (f).

Plaintiff and the aggrieved employees are current and former non-exempt employees of TAK in California. Plaintiff intends to file a complaint against TAK on behalf of himself and the alleged aggrieved employees who have been denied proper payment of all wages (including minimum wage, overtime, reimbursement, and improper deductions), and denied rest periods and meal periods. Plaintiff will pursue claims pursuant to California Labor Code §§ 226.7 and 512 (failure to provide meal and rest periods); § 204 (failure to compensate for all hours worked); § 510 (failure to pay overtime and double time wages); §§ 1182.12, and 1197 (failure to pay minimum wage); §§221 and 224 (improper deductions from wages); §§ 201-203 (waiting time penalties); § 226 (failure to provide timely and compliant itemized wage statements); § 226.2 (failure to properly compensate piece rate workers for rest and recovery periods and other nonproductive time, and/or to provide compliant itemized wage statements for rest and recovery periods and other nonproductive time); § 2802 (failure to reimburse for necessary business expenditures); and California Business and Professions Code §§ 17200, et seq. (engaging in unfair business practices).

Mr. Diaz intends to state causes of action pursuant to California Labor Code §§ 2699(a) and (f) for civil penalties for violating the various California Labor Code provisions enumerated above. Pursuant to Section 2699(a), Mr. Diaz will seek civil penalties pursuant to each provision of the Code that provides for a civil penalty to be assessed and collected by the Labor and



Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, including but not limited to those Labor Code provisions referenced above, as well as Sections 225.5, 226.3, and 256 of the California Labor Code. To the extent a provision of the Labor Code does not provide for a civil penalty, Mr. Diaz will seek civil penalties pursuant to California Labor Code Section 2699(f). TAK, at all relevant times, was an employer who violated the rights of Mr. Diaz and other aggrieved employees by violating various sections of the California Labor Code as outlined in this letter.

Plaintiff and the aggrieved employees' duties include, but are not limited to, installing cable, telephone, and internet service. They are paid hourly, and by piece rate. TAK requires Plaintiff and the aggrieved employees to work long hours, usually 10-15 hours per day and from 4 to 6 days per week, without proper compensation, breaks, and reimbursement. TAK also requires plaintiff and aggrieved employees to spend certain shifts "on call." During these "on call" shifts, plaintiff and aggrieved employees were required to be available to work ...

TAK rarely pays Plaintiff and the aggrieved employees for all hours worked, including overtime. Instead, TAK requires that Plaintiff and the aggrieved employees' significantly underreport their hours worked. Plaintiff and aggrieved employees perform work for TAK's benefit both before and after their shifts for which they are not compensated. TAK also fails to properly compensate Plaintiff and the aggrieved employees for their overtime hours by forcing Plaintiff and the aggrieved employees to underreport their non-productive time. By requiring Plaintiff and aggrieved employees to falsely report non-productive time as productive, TAK is able to calculate a lower regular rate of pay for Plaintiff and the aggrieved employees, that it then uses to determine a lower overtime rate of pay.

TAK also does not provide Plaintiff and the aggrieved employees with compliant meal and rest breaks. The grueling installation schedules imposed by TAK preclude Plaintiff and the aggrieved employees from taking timely and compliant meal and rest breaks.

TAK improperly withholds earned wages from Plaintiff and the aggrieved employees by deducting money to purportedly pay for health insurance for Plaintiff and the aggrieved employees, yet failing to provide the promised health insurance.

TAK requires Plaintiff and the aggrieved employees, to incur numerous work-related expenses, including but not limited to tools and supplies, but does not reimburse Technicians for these expenditures.

Plaintiff and the aggrieved employees experience a number of derivative issues from the wage and hour practices described herein, including but not limited receiving incorrect wage statements, and not receiving all pay owing to them at the end of their employment. The wage statements Plaintiff and the aggrieved employees receive are incorrect because they do not accurately reflect the actual hours worked. Additionally, at the time of their termination, compensation for off the clock work, overtime, and premium pay for missed breaks remains outstanding.



Plaintiff is represented by Schneider Wallace Cottrell Konecky LLP (“SWCK”), a law firm based in Emeryville, California, and Berger & Montague, P.C. (“B&M”), a law firm based in Philadelphia, Pennsylvania. SWCK and B&M have extensive experience in the successful litigation and resolution of employment and class actions nationwide. A description of the work, mission, and credentials of the firms can be found at www.schneiderwallace.com and www.bergermontague.com, respectively. Plaintiff and his counsel are committed to zealously pursuing redress on behalf of the State of California and all other similarly situated employees for the violations and civil penalties set forth above.

Sincerely,

SCHNEIDER WALLACE
COTTRELL KONECKY LLP

/s/ Carolyn H. Cottrell

CAROLYN H. COTTRELL
Attorney at Law

cc via certified mail:

TAK Communications CA, Inc.
c/o Larry Wray
4125 Northgate Blvd.,
Sacramento, CA 95834

TAK Communications, Inc.
c/o John C. Quaintance
PO Box 2208
Sioux Falls, SD 57101-2208

BERGER & MONTAGUE, P.C.
Sarah R. Schalman-Bergen
Stacy Savett
Shoshana Savett
1818 Market Street, Suite 3600
Philadelphia, Pennsylvania 19103

Thank you for submission of your PAGA Case.

noreply@salesforce.com <noreply@salesforce.com>

on behalf of

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>

Mon 3/30/2020 5:05 PM

To: Scott L. Gordon <sgordon@schneiderwallace.com>

3/30/2020

LWDA Case No. LWDA-CM-781013-20

Law Firm : Schneider Wallace Cottrell Konecky LLP

Plaintiff Name : Edgar Diaz

Employer: TAK Communications CA, Inc.

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of

Labor and Workforce Development Agency

Website: <https://protect-us.mimecast.com/s/bRrKC68MKWSow1wcpuwcf>



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Scott

Your Last Name *

Gordon

Firm Name (if any) *

Schneider Wallace Cottrel

(Enter "in pro per" if you are representing yourself)

Your Email Address *

sgordon@schneiderwallac

Your Street Name, Number and Suite/Apt *

2000 Powell Street, Suite

Your Mobile Phone Number

Your City *

Emeryville

Your Work Phone Number

4154217100

Your State *

California ▼

Your Zip/Postal Code *

94608

Plaintiff Information

Plaintiff/Aggrieved Employee
Name *

Edgar Diaz

Plaintiff/Aggrieved Employee
Occupation *

Cable Television Installation

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Please select... ▼

Employer Name *

TAK Communications CA, Inc.

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt

Employer City

Employer State

Please select... ▼

Employer Zip/Postal Code

Employer Industry

Please select... ▼

Add additional defendants

- ☒ Add any entity other than an individual
- ☐ Add an individual/sole proprietor employer

Additional Employer Information (Corporation/General Partnership)

Employer Entity Type

Please select... ▼

Employer Name *

TAK Communications, Inc.

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt

Employer City

Employer State

Please select... ▼

Employer Zip/Postal Code

Employer Industry

Please select... ▼

[Add Additional Employers](#)

Notice General Information

Estimated Number of Employees Impacted by Violations

Notice Violations – Check All that Apply *

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☒ Minimum Wage
- ☒ Overtime
- ☒ Not paid for all hours worked
- ☒ Not paid wages due on termination
- ☒ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☒ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☒ Kickbacks
- ☒ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☒ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☒ Other

Child Labor – Specify Ages**Provide Details of Other Violation *****Other(Maybe Multiple)**

- ☐ Other Violation

PAGA Claim Type – Check All that Apply *

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☒ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice. Filing fees should be paid by check, made out to LWDA, and sent by regular mail to:

Department of Industrial Relations
Accounting Unit
455 Golden Gate Ave, 10th Floor
San Francisco, CA 94102

The check should be accompanied by a cover letter with sufficient information to identify the notice, including the LWDA case number assigned upon submission of this form.

Parties requesting in forma pauperis status should complete a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form and submit it online with the notice below.

IFP

- ☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.
- ☒ I declare that I have or will pay the filing fees required by statute [Labor Code section 2699.3(a)(1)(B)] according to the instructions on the PAGA home page, unless I have claimed in forma pauperis by checking the box below.

Notice and Other Attachments

PAGA Claim Notice (must be a .pdf) *

Diaz v. TAK –...r 200330.pdf

Other Attachment – (if any) (must be a .pdf)

No file chosen

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

- ☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

Submit