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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA

GEORGE TORRES, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

ARCH TELECOM INC., a California corporation;
and DOES 1 through 100,

Defendants

Case No. C20-01679

*[Assigned for all purposes to Hon. Edward
Weil, Dept. 39]*

**DECLARATION OF PAUL K. HAINES
IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: TBD

Time:

Dept.: 39

Action filed: August 26, 2020

Trial date: None set

1 I, PAUL K. HAINES, declare as follows:

2 1. I am a shareholder and principal of Haines Law Group, APC, and counsel for the
3 named Plaintiffs Ryan Molale, George Torres, and Tran Le (“Plaintiffs”) and the proposed
4 Settlement Class in the above-captioned matter. I am a member in good standing of the bar of
5 the State of California and am admitted to practice in this Court. I have personal knowledge of
6 the facts stated in this declaration and could testify competently to them if called upon to do so.

7 2. I am a 2006 graduate of Pepperdine University School of Law, where I graduated
8 cum laude. During law school, I worked as a law clerk for the appellate firm of Horvitz & Levy,
9 located in Encino, California. I also spent a semester in law school working as an extern for the
10 Honorable Edward Rafeedie, District Judge for the United States District Court for the Central
11 District of California.

12 3. Since graduating from law school, my practice has focused almost exclusively on
13 employment litigation. In September 2007, I began working as an associate attorney at the
14 international law firm of Littler Mendelson P.C., at its Los Angeles office, which according to its
15 website is the “largest U.S.-based law firm exclusively devoted to representing management in
16 every aspect of labor and employment law.” While at Littler Mendelson, I was primarily staffed
17 on wage and hour class actions venued in both state and federal courts, and I also worked on a
18 number of single and multi-plaintiff wage and hour matters as well.

19 4. During my employment at Littler Mendelson, I played a significant role in the
20 class actions that I was staffed on, as I was often the only associate staffed on such cases. In
21 particular, I received a wide-array of wage and hour class action experience performing the
22 following types of tasks: drafting demurrers, motions to strike and/or dismiss; removing actions
23 from state court to federal court; drafting and responding to written discovery; drafting and
24 opposing discovery related motions; arguing discovery related motions; drafting motions to
25 consolidate related matters; interviewing putative class members and obtaining declarations in
26 connection with class certification; drafting oppositions to motions for class certification; drafting
27 motions for decertification following class certification; conducting exposure analyses to assess
28 the strengths and weaknesses of asserted claims, the likelihood of prevailing at class certification

1 and potential damages resulting from such claims; drafting mediation briefs; serving as the
2 primary contact to in-house counsel; deposing named plaintiffs and putative class members;
3 deposing retained expert witnesses; and defending the depositions of corporate witnesses. In
4 short, I played an integral role in all aspects of litigation from the inception of a matter through
5 and beyond class certification. I also supervised the work of several junior attorneys who were
6 staffed on the same wage and hour class actions.

7 5. In June 2011, I voluntarily resigned from Littler Mendelson in order to accept an
8 associate attorney position with the international law firm of Morgan, Lewis & Bockius LLP, at
9 its Los Angeles office, where I began working in July 2011. During my employment at Morgan,
10 Lewis & Bockius LLP, I worked exclusively on the defense of wage and hour class and collective
11 actions. For the vast majority of these cases, I was the only associate staffed on the matter, and I
12 performed the same job duties as described in the immediately preceding paragraph. In addition
13 to working on wage and hour class actions, I also worked on a number of “hybrid” actions
14 asserting nationwide wage and hour claims under the Fair Labor Standards Act (“FLSA”), as well
15 as California-specific claims under Rule 23 of the Rules of Civil Procedure.

16 6. In July 2012, I transitioned into litigating wage and hour class actions from the
17 Plaintiff’s side, first as a Partner with the law firm of Boren, Osher & Luftman, LLP, and since
18 February 2016, as a Shareholder of the Haines Law Group, APC. Currently, over ninety percent
19 (90%) of my practice is dedicated exclusively to the prosecution of wage and hour class actions,
20 and I am currently responsible for prosecuting over fifty (50) wage and hour class actions filed in
21 both State and Federal courts throughout California. I have been appointed as Class Counsel in
22 over one hundred (100) wage and hour class action settlements in state and federal courts within
23 California. A few examples of the matters in which I have been appointed as Class Counsel, all
24 of which have been granted final approval, include the following: *Sanchez v. Res-Care, Inc.*, Case
25 No. BC526175, California Superior Court, County of Los Angeles, Hon. John Shepard Wiley,
26 Jr., presiding; *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-3170 JFW (Ex), United
27 States District Court, Central District of California, Hon. John F. Walter presiding; *Tesla Motors*
28 *Wage and Hour Litigation*, JCCP 4792, California Superior Court, Santa Clara County, Hon.

Peter H. Kirwan presiding; *Bower v. Cycle Gear, Inc.*, Case No. CV14-2712 HSG, United States District Court, Northern District of California, Hon. Haywood S. Gilliam, Jr. presiding; *Longstreth v. PAQ, Inc., dba Food 4 Less*, Case No. 15CV-0206, California Superior Court, County of San Luis Obispo, Hon. Charles S. Crandall presiding; *Nunez v. CompuCom Systems, Inc.*, Case No. BC618385, California Superior Court, County of Los Angeles, Hon. John Shepard Wiley, Jr. presiding; *Mansilla v. Haeco Americas Line Services, LLC, et al*, Case No. BC615310, Superior Court of California, County of Los Angeles, Hon. Elihu M. Berle presiding; *Leverage, et al v. Traeger Pellet Grills, LLC, et al*, Case No. 4:16-cv-00784-KAW, United States District Court, Northern District of California, Hon. Kandis A. Westmore presiding.

7. I have also moved to certify and have received an order certifying a class action and/or conditionally certifying a collective action, in the following cases:

- *Medeiros v. Vortex Financial Management Inc.*, Case No. 30-2013-00644741-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge Gail A. Andler, presiding (certifying a class of employees who were misclassified as independent contractors);
- *Javine v. San Luis Ambulance Service, Inc.*, Case No. CV13-07480 BRO (SSx), United States District Court, Central District of California, Honorable Judge Beverly Reid O'Connell, presiding (conditionally certifying an unpaid FLSA overtime wage class);
- *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-3170 JFW (Ex), United States District Court, Central District of California, Honorable Judge John F. Walter, presiding (certifying a rest period violation class and conditionally certifying an FLSA unpaid overtime wage class);
- *Bower v. Cycle Gear, Inc.*, Case No. CV14-2712 HSG, United States District Court, Northern District of California, Honorable Judge Haywood S. Gilliam, Jr., presiding (conditionally certifying an unpaid FLSA overtime wage class);
- *Vega v. Weatherford U.S., Limited Partnership*, Case No. CV14-1790-JLT, United States District Court, Eastern District of California, Honorable Jennifer L. Thurston, presiding (conditionally certifying an unpaid FLSA overtime wage class);

- 1 • *Galvan v. AMVAC Chemical Corporation*, Case No. 30-2014-00716103-CU-OE-CXC,
2 California Superior Court, County of Orange, Honorable Judge William Claster, presiding
3 (certifying unpaid overtime wage class and waiting time penalty class);
- 4 • *Camacho v. Residential Fire Systems, Inc.*, Case No. 30-2015-775372-CU-OE-CXC,
5 California Superior Court, County of Orange, Honorable Glenda Sanders, presiding
6 (certifying piece rate pay plan classes, expense reimbursement class, wage statement
7 class, and waiting time penalties class);
- 8 • *Ontiveros v. Safelite Fulfillment, Inc., et al*, Case No. CV 15-7118-DMG (RAOx), United
9 States District Court, Central District of California, Honorable Dolly M. Gee presiding
10 (certifying six classes of employees for rest period violations, wage statement violations,
11 meal period violations, and overtime and double-time violations);
- 12 • *Vazquez, et al v. Kraft Heinz Foods Company*, Case No. 16-cv-2749-WQH-BLM, United
13 States District Court, Southern District of California, Honorable William Q. Hayes
14 presiding (certifying six classes of employees for unpaid wages, meal period violations,
15 wage statement violations, and waiting time penalties);
- 16 • *Caudle, et al. v. Sprint/United Management Company, et al.* Case No. C 17-06874-WHA,
17 United States District Court, Northern District of California, Honorable William H. Alsup
18 presiding (certifying three classes of employees for unlawful wage deduction violations,
19 wage statement violations, and waiting time violations);
- 20 • *Staublein v. Wells Fargo Bank*, No. CIVDS1712267, San Bernardino County Superior
21 Court, Honorable David S. Cohn presiding (certifying wage statement class);
- 22 • *Perez v. Sunbelt Rentals, Inc.* Case No. 37-2018-00026405-CU-OE-CTL, California
23 Superior Court, County of San Diego, Honorable Eddie C. Sturgeon presiding (certifying
24 class of employees for wage statement violations);
- 25 • *Bowlin-Burdick, et al v. Life Care Centers of America, Inc.*, Case No. BC657139, Los
26 Angeles County Superior Court, Honorable Maren E. Nelson presiding (certifying four
27 classes for meal period violations, rest period violations, wage statement violations, and
28 waiting time penalties).

1 8. In 2015, 2016, and 2017, Thomson Reuters recognized me as a Top Young
2 Attorney in Southern California in the annual Rising Stars Edition of Super Lawyer. This is an
3 honor awarded to no more than two-and-a-half percent of attorneys under the age of forty in
4 Southern California each year. In 2018, 2019, 2020, and 2021, Thomson Reuters recognized me
5 as a “Super Lawyer” in the annual Super Lawyer magazine, an honor awarded to no more than
6 five percent of all attorneys in Southern California each year.

7 9. As counsel for Plaintiffs and the proposed Settlement Class, I have been intimately
8 involved in every aspect of this case from its inception through the present, and I believe that the
9 proposed Settlement is a favorable result for the Settlement Class.

10 10. The proposed Stipulation of Settlement (“Settlement”) is attached hereto as
11 **Exhibit 1**. The proposed Class Notice and Notice of Estimated Settlement Award are attached to
12 the Settlement as Exhibits A and B, respectively.

13 11. Arch is a national Sprint (now T-Mobile) authorized retailer. Plaintiffs and
14 Settlement Class members worked as non-exempt employees for Arch in California during the
15 proposed Class Period. As explained below, Plaintiffs allege that they and other Settlement Class
16 members were injured by Arch’s violations of the California Labor Code.

17 12. On October 18, 2018, pursuant to an arbitration agreement with Arch, Plaintiff
18 Molale, through my office, initiated this litigation by filing and serving a classwide Demand for
19 Arbitration (“Demand”), alleging that Arch: (i) failed to pay all overtime wages; (ii) failed to
20 provide all meal periods; (iii) failed to authorize and permit rest periods; (iv) failed to pay all
21 wages owed upon separation of employment; and (v) engaged in unlawful business practices
22 pursuant to California Business & Professions Code § 17200 et seq., based on the above alleged
23 violations. On February 8, 2019, after Arch did not respond to Plaintiff Molale’s Demand and did
24 not pay its arbitration fees, Plaintiff Molale, through my office, filed a class action lawsuit against
25 Arch in Contra Costa Superior Court, titled *Ryan J. Molale v. Arch Telecom Inc.*, Case No. C19-
26 00279 (“*Molale Action*”), alleging the same causes of action alleged in the Demand.

27 13. On October 19, 2018, Plaintiff Le, through counsel, submitted her notice under the
28 Private Attorneys General Act (“PAGA”), Labor Code § 2698 et seq., to Arch and the Labor &

1 Workforce Development Agency (“LWDA”). On January 3, 2019, after exhausting her pre-filing
2 requirements, Plaintiff Le filed a representative action lawsuit against Arch in Los Angeles
3 Superior Court, titled *Tran Le v. Arch Telecom Inc.*, Case No. 19STCV00027 (“*Le Action*”). On
4 February 7, 2019, Plaintiff Le submitted an amended PAGA notice adding additional allegations
5 of Arch’s Labor Code violations. The operative First Amended Complaint in the *Le Action* alleges
6 that Arch is liable for civil penalties pursuant to the PAGA for its, *inter alia*,: (i) failure to provide
7 all meal periods; (ii) failure to authorize and permit rest periods; (iii) failure to pay all overtime
8 wages; (iv) failure to pay all minimum wages; (v) failure to provide suitable seating; (vi) failure
9 to reimburse all necessary business expenses; (vii) failure to issue accurate and itemized wage
10 statements; and (viii) failure to timely pay all final wages owed upon separation of employment.

11 14. On August 26, 2020, Plaintiff Torres filed a class and representative action lawsuit
12 against Arch in Contra Costa Superior Court, titled *George Torres v. Arch Telecom Inc.*, Case
13 No. C20-01679 (“*Torres Action*”), alleging claims against Arch for: (i) failure to pay all minimum
14 wages owed; (ii) failure to issue accurate itemized wage statements; (iii) failure to reimburse all
15 necessary business expenses; (iv) engaging in unlawful business practices; and (v) civil penalties
16 under PAGA, for the aforementioned violations of the Labor Code. Plaintiff Torres had
17 previously sent a PAGA notice, through my office, to the LWDA on June 2, 2020.

18 15. After Plaintiff Molale and Plaintiff Le had initiated their Actions, Arch conducted
19 a “*Pick Up Stix*” campaign in which it offered individual settlement payments directly to putative
20 class members in exchange for a release of claims. Settlement payments were calculated based
21 on how long each employee had been employed by Arch prior to May 31, 2020. Arch offered
22 \$350 to employees who had been employed by Arch for over 48 months ; \$300 to employees who
23 had been employed by Arch between 24 months and 48 months; \$250 to employees who had
24 worked for Arch between 11 months and 24 months; \$200 to employees who had worked for
25 Arch between 6 months and 11 months; \$150 to employees who had worked for Arch between 3
26 months and 6 months; and \$100 to employees who worked for Arch between 0 months and 3
27 months. The release agreements expressly mentioned the *Molale* and *Le* Actions by referencing
28 their courts and case numbers and the claims alleged in the *Molale* and *Le* Actions.

1 16. Arch represents that a large portion of employees decided to sign the individual
2 settlement agreements and accept the offered compensation. In total, Arch paid \$40,950.00 to 179
3 Settlement Class members in exchange for releases. Arch also contends that Plaintiffs and other
4 putative class members signed arbitration agreements with Arch, which, Arch contends, further
5 limit Plaintiffs’ ability to maintain their claims on a classwide basis.

6 17. In preparation for mediation, the parties engaged in extensive informal discovery,
7 including Arch’s production of its relevant wage and hour policies; timekeeping records, payroll
8 records, contact information, and other records for a significant sampling of the putative class,
9 and other documents and information. Plaintiffs’ counsel, with the help of their retained expert,
10 conducted an analysis of this data and created a damages model based on that analysis. This
11 discovery allowed the parties to assess the merits of Plaintiffs’ claims, the potential value of those
12 claims, and Arch’s defenses.

13 18. On September 24, 2019, the parties attended a full-day mediation with Francis
14 “Tripper” Ortman, Esq., a well-respected wage and hour class action mediator. The parties
15 vigorously debated their opposing legal positions, the likelihood of certification of Plaintiffs’
16 claims, and the legal bases for the claims and defenses. The parties did not reach resolution at
17 mediation, but they continued their settlement discussions with Mr. Ortman’s assistance.

18 19. After mediation the parties engaged in significant formal discovery, including
19 Arch’s production of an additional sampling of employee timekeeping, payroll, and other records,
20 and hundreds of additional pages of relevant documents. In total, Arch produced more than 6,000
21 pages of documents in both formal and informal discovery. Plaintiffs also took the full-day
22 deposition of Arch’s Person Most Knowledgeable in July 2020. After engaging in this extensive
23 discovery and after further negotiations both directly and through the mediator, the parties
24 eventually reached a classwide settlement and memorialized their agreement in the Settlement
25 now before this Court.

26 20. The parties also discussed Arch’s financial condition and its ability to pay,
27 particularly in light of Arch’s representation that Sprint’s recent merger with T-Mobile as well as
28 the COVID-19 pandemic substantially and negatively affected its business. As a result, Plaintiffs

agreed to allow Arch to pay the Settlement on an 18-month installment plan, rather than in one lump sum. Under the payment plan, the Settlement will be fully funded in or before April 2022.

21. The monetary terms of the Settlement are summarized below:

• Gross Settlement Amount (“GSA”):	\$750,000.00
• Minus Court-approved attorneys’ fees (one-third	
• of the \$790,950 total compensation to the Class):	\$263,650.00
• Minus Court-approved verified costs (up to):	\$35,000.00
• Minus Court-approved Representative Payment:	\$15,000.00
• Minus Amount Set Aside as PAGA penalties:	\$50,000.00
• <u>Minus estimated settlement administration costs:</u>	<u>\$14,000.00</u>
Net Settlement Amount (“NSA”):	\$372,350.00
PLUS 25% “PAGA Amount” to Settlement Class:	\$12,500.00
Total Amount Paid to Settlement Class:	\$384,850.00

22. Arch represents there are approximately 1,085 Settlement Class members, including 179 employees who previously signed the *Pick Up Stix* release and comprise the Release Sub-Class and 906 employees who did not sign the release and comprise the Non-Release Sub-Class. When taking into account the \$40,950 already paid by Arch, Settlement Class members will have received average payments of \$392.44 as a direct result of this litigation.

23. Plaintiffs allege that Arch paid commissions, bonuses, spiffs, and other forms of non-discretionary incentive pay (collectively, “Incentive Pay”), which cannot be excluded from the “regular rate” as a matter of law, and that Arch failed to include these payments in the “regular rate,” resulting in underpaid overtime wages. Arch counters that bonuses provided to employees were discretionary and therefore excludable from the regular rate. Arch further asserts that Plaintiffs and other Sales Representatives earn more than half their wages in commissions, and they therefore fall within the inside sales exemption under Wage Order 7, subdivision 3(D), and Arch is not required to pay them any overtime, let alone overtime at their “regular rate” of pay. Moreover, Arch asserts that differences in the frequency, type, and amount of incentive pay received by different putative class members as well as the releases signed by 197 putative class members and the arbitration agreements signed by putative class members, would preclude class certification of this claim. Assuming that all of the categories of incentive pay identified in the payroll records should have been included in the “regular rate” of pay, Plaintiffs’ expert’s analysis of the data produced by Arch revealed that putative class members were underpaid by

1 approximately \$338,000 in unpaid overtime wages during the Class Period. But as explained
2 above, Plaintiffs' regular rate claim faced significant obstacles both on the merits and on class
3 certification, and therefore, Plaintiffs discounted the calculated exposure by 40% for a risk of
4 non-certification and an additional 60% to account for a risk of being unsuccessful on the merits
5 or failure to recover the full amount sought, to arrive at an estimated exposure of \$81,120.

6 24. Plaintiffs assert that Arch failed to pay all earned wages because employees
7 occasionally were required to attend meetings on their days off for which they were not
8 compensated. In response, Arch argues that it never required employees to attend meetings on
9 their days off but rather, if a meeting was held on an employee's day off, the employee's
10 attendance was only optional. Further, Arch argues that to the extent employees did attend
11 trainings on their days-off, employees were always told to clock-in and receive pay for their
12 attendance. Lastly, Arch argues that Plaintiffs' off-the-clock claim is not amenable to class
13 treatment, as individual inquiries would be required to determine whether an employee attended
14 a meeting on their day-off, the reasons why each employee failed to clock-in for the meeting,
15 whether each meeting was required or optional, and how long each meeting was. Based on
16 Plaintiffs' experience and interviews with putative class members, Plaintiffs estimate that
17 approximately once per month, employees were required to attend these meetings, and that the
18 meetings lasted for approximately 1 hour. Based on data provided by Arch, there were
19 approximately 8,406 work months during the Class Period. In addition, the average minimum
20 wage during the Class Period was approximately \$11.00 per hour. Thus, Plaintiffs calculated
21 Arch's potential maximum exposure on this claim as: $8,406 \times 1 \text{ hr} \times \$11.00/\text{hr} \times 2$ (liquidated
22 damages under Labor Code § 1194.2) = \$184,932. However, in light of Arch's defenses s
23 described above, Plaintiffs discounted this maximum amount by 50% for risk of non-certification
24 and by an additional 55% for risk of losing on the merits or failure to recover the full amount
25 sought, to arrive at an estimated realistic exposure of \$41,610.

26 25. Plaintiffs maintain that Arch failed to provide employees with full, uninterrupted
27 30-minute meal periods before the end of the fifth hour of work and failed to provide second meal
28 periods when employees worked in excess of 10.0 hours. Specifically, Plaintiffs assert that Arch

understaffs its stores and does not schedule meal periods, which, in practice, prevents Arch’s non-exempt employees from taking all timely and duty-free, 30-minute meal periods to which they are entitled. Instead, Arch required Plaintiffs and putative class members to execute on-duty meal period agreements which obligate employees to remain on duty during all meal periods. However, Plaintiffs assert that the nature of the work being performed by Defendants’ non-exempt employees do not necessitate an on-duty meal period, thereby rendering the on-duty meal period agreements invalid. In response, Arch argues that, not only is the nature of employees’ work such that on-duty meal period agreements are proper and valid, but also that Plaintiffs have misapplied the “nature of the work” analysis beyond its proper scope. Specifically, Defendants contend that the nature of the work analysis must be performed on a day-by-day basis to determine whether the nature of the work prevents a meal period from being taken, and that, in its business, the nature of the work does often prevent employees from taking off-duty meal periods. Arch further argues that, in practice, it has always provided employees with off-duty first and second meal periods and that any non-compliant meal periods were solely the result of employee choice (not Arch’s policy/practice), and that under *Brinker* it is only required to “provide” the opportunity to take meal periods, not “ensure” meal periods are taken, which Arch contends it has always done. Arch further maintains that employees voluntarily waived their second meal period when they worked shifts in excess of 10.0 hours (but less than 12.0 hours), as they are entitled to do under Labor Code § 512. Arch also points out that it has paid thousands of meal period premiums during the Class Period, which demonstrates that it takes its meal period obligations seriously and rectifies any non-compliant meal periods of which it becomes aware. Finally, Arch contends that Plaintiffs’ meal period claim is not suited for class certification as individual inquiries would be required to assess which employees received non-compliant meal periods or missed second meal periods, how many meal periods were non-compliant or missed, whether the nature of the work prevented off-duty meal periods on each individual shift, and/or the reasons why a particular individual recorded a non-compliant meal period or missed a meal period on a particular shift. Based on a review and extrapolation of the timekeeping data, and giving Arch credit for meal period premiums already paid, Plaintiffs estimate there were approximately 65,024 shifts over 5.0

hours with one or more potential meal period violations reflected in the time records. In addition, based on data produced by Arch, the average hourly rate of pay for Settlement Class members during the Class Period was approximately \$11.39. Thus, Plaintiffs estimated Arch's potential maximum liability on the meal period claim as: 65,024 *\$11.39= \$740,623. In light of Arch's numerous defenses described above, however, Plaintiffs discounted the maximum amount by 50% for risk of non-certification and an additional 55% for risk of being unsuccessful on the merits or failing to recover the full amount sought, to arrive at an estimated exposure of \$166,640.

26. Plaintiffs assert that Arch failed to authorize and permit a second rest periods on shifts in excess of 6.0 hours and a third rest period on shifts in excess of 10.0 hours. Based on data produced by Arch, Plaintiffs estimated there were approximately 138,600 shifts of over 6.0 hours worked by employees during the Class Period, for a potential maximum exposure of \$1,578,654. In response, Arch contends that, in practice, it has always "authorized and permitted" employees to take second rest periods on shifts over 6 hours and third rest periods on shifts over 10 hours, and that, as with meal periods, it is not required to "ensure" rest periods are taken. Arch further contends that employees would not be eligible for third rest periods on a vast majority of shifts as only a small fraction of shifts worked were more than 10.0 hours. Finally, Arch argues the rest period claim is not amenable to class treatment, as individual inquiries would be required to determine how many rest periods each employee failed to take, and the reasons why each employee failed to take a rest period on a particular shift. These certification issues are particularly present with respect to rest periods, Arch contends, since they are not recorded. In light of these defenses, Plaintiffs discounted the maximum amount by 65% for risk of non-certification and an additional 55% for risk of being unsuccessful on the merits, to arrive at an estimated exposure of \$248,638.

27. Plaintiffs allege that Arch required employees to use their personal cellular phones for company business without reimbursement. In calculating exposure for this claim, Plaintiffs assumed an average monthly cell phone bill of approximately \$50, and that employees' work-related use was approximately 30% of their monthly cell phone usage, or \$15 per month. Moreover, based on records produced by Arch, Plaintiffs estimated that Settlement Class

1 members worked approximately 8,406 work months during the Class Period. Thus, Plaintiffs
2 estimated Arch's maximum potential exposure on this claim as \$126,090 (\$15.00/mo. * 8,406
3 months). Arch argues that it reimburses all necessary business expenditures and contends
4 employees have access to a land line for those rare instances when they may need to make work-
5 related calls. Arch further argues that in light of the fact that company phones were provided, any
6 phone-related expense would not have been reasonable or necessary. Arch further maintains that
7 any alleged failure to reimburse business expenses were not experienced on a class-wide basis,
8 and that every reimbursement request would have to be reviewed on a case by case basis (as to
9 whether, among other things, the expense was "reasonable"), making this claim unsuitable for
10 certification. Based on these defenses, Plaintiffs discounted the maximum value of this claim by
11 40% for risk of non-certification, and an additional 60% for risk of losing on the merits or failure
12 to recover the full amount, to arrive at a realistic exposure of \$30,262 on this claim.

13 28. Plaintiffs allege that Settlement Class members whose employment ended on or
14 after October 18, 2015 are entitled to a derivative "waiting time" penalty under Labor Code §
15 203. That penalty is calculated as the employee's daily wages for each day the final wages are not
16 paid, up to a max of 30 days. Based on data provided by Arch, there were approximately 829
17 employees who separated their employment with Arch since October 8, 2015, and those
18 employees had an estimated average maximum waiting time penalty of \$2,733 (\$11.39 (avg.
19 hourly rate) * 8 * 30), for maximum exposure of \$2,265,657. But there was significant risk of
20 non-recovery on this claim given Arch's good-faith defenses (both as to class certification and
21 the merits) to Plaintiffs' underlying claims, as well as Arch's contention that waiting time
22 penalties are not available for meal or rest period claims under the relevant case law. Thus,
23 Plaintiffs discounted this maximum by 50% for risk of non-certification and by an additional 75%
24 for risk of being unsuccessful on the merits or failure to recover the full amount sought, to arrive
25 at an estimated exposure of \$283,207.

26 29. Plaintiffs further allege that Arch is liable for wage statement penalties for its
27 failure to pay all minimum and overtime wages owed and failure to pay meal and rest period
28 premiums. Based on data provided by Arch, Plaintiffs estimate there have been about 10,447 pay

1 periods worked by Settlement Class members since October 18, 2017 (one year prior to filing of
2 the *Molale* Action). Plaintiffs assumed they could obtain the “initial” wage statement penalty of
3 \$50 per violation, for a maximum of \$522,350 in wage statement penalties. However, given
4 Arch’s affirmative defenses to Plaintiffs’ underlying claims, its argument that any violations
5 could not be shown to be “knowing and intentional,” its argument that wage statement penalties
6 cannot be predicated on meal and rest period premiums, and its argument that Plaintiff Molale
7 did not allege a wage statement claim and therefore, any wage statement claim can only relate
8 back to one year prior to *Torres* (i.e., August 26, 2019), Plaintiffs discounted this maximum
9 exposure by 50% for risk of non-certification, and by an additional 70% for risk of being
10 unsuccessful on the merits or failure to recover the full amount, to arrive at an estimated \$78,353.

11 30. Finally, Plaintiffs allege Arch is liable for PAGA civil penalties as a result of these
12 alleged Labor Code violations, as well as Arch’s alleged failure to provide suitable seating to
13 Plaintiffs and other retail employees. Plaintiffs estimated a total maximum PAGA exposure of
14 \$1,044,700 (calculated from 10,447 “initial” violations at \$100 each under Labor Code § 2699(f)).
15 However, these penalties derived largely from the underlying violations discussed herein, each of
16 which Arch vigorously disputes, and to the extent these alleged penalties were based on a suitable
17 seating claim, Arch presented separate affirmative defenses, including that it has always provided
18 adequate seating for employees, in both work areas and break rooms, and that, in any event, the
19 claim is unmanageable as it would require a store-by-store, employee by employee, and
20 potentially shift-by-shift analysis as to whether each employee received proper seating. Moreover,
21 the PAGA grants courts discretion to reduce penalties (Lab. Code § 2699(e)(2)), and Arch argues
22 the Court would significantly reduce PAGA penalties in light of its many good-faith defenses.
23 Based on these risks, Plaintiffs discounted that maximal figure by 50% for a risk of losing on the
24 merits and by an additional 75% for the risk of this Court reducing penalties, to arrive at an
25 estimated total of \$130,588.

26 31. Using these estimated figures, Plaintiffs predicted the total realistic recovery for
27 the Settlement Class on their claims would be approximately \$1,060,418. The proposed
28 settlement of \$750,000 therefore represents approximately 71% of Plaintiffs’ reasonably

1 forecasted recovery.

2 32. At final approval, Plaintiffs' counsel will apply for an attorneys' fee award of
3 \$250,000.00, which amounts to one-third of the GSA, plus \$13,650.00 in "catalyst fees" based
4 on the \$40,950 gross amount already paid by Arch as part of its *Pick Up Stix* campaign, as well
5 as up to \$35,000 in verified costs. My office has incurred substantial attorneys' fees in, among
6 other things, conducting pre-filing investigation, analyzing Plaintiffs' claims, taking Arch's PMK
7 deposition, propounding numerous sets of discovery, meeting and conferring over Arch's
8 discovery responses, conducting legal research, reviewing documents produced by Arch,
9 analyzing employee timekeeping and payroll data, preparing for and attending mediation,
10 negotiating the Settlement, preparing this Motion, and otherwise prosecuting the Actions.

11 33. Plaintiffs will also request Representative Incentive Awards of \$5,000 each at final
12 approval. As will be fully briefed at final approval, Plaintiffs' requested incentive payments are
13 in recognition of the time and effort they expended on behalf of the Settlement Class, including
14 providing factual information and documents to my office, identifying potential witnesses,
15 attending meetings with my office to discuss the claims and theories at issue in the litigation, and
16 otherwise actively participating in the prosecution of this litigation.

17 34. Although the parties engaged in significant formal and informal discovery before
18 reaching settlement, the parties had not yet completed formal written and deposition discovery,
19 which would have required the expenditure of substantial time and resources by all parties.
20 Moreover, Plaintiffs still had to file for class certification, and faced the prospect of appeals in the
21 wake of a disputed class certification ruling for Plaintiffs and/or an adverse summary judgment
22 ruling. Even if the classes sought to be certified by Plaintiffs were in fact certified, the parties
23 would incur considerably more attorneys' fees and costs through a possible decertification
24 motion, trial, and possible appeal. This settlement avoids those risks and the accompanying
25 expense.

26 35. I have confirmed that no attorney at my firm, Haines Law Group, APC, has any
27 pecuniary interest or involvement in the governance of Legal Aid at Work, the designated *cy pres*
28 recipient in this case for any uncashed settlement funds.

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct. Executed on April 22, 2021, at El Segundo, California.

3 

4 _____
Paul K. Haines

EXHIBIT 1

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement”) is reached by and between Plaintiffs Ryan J. Molale (“Plaintiff Molale”), George Torres (“Plaintiff Torres”), and Tran Le (“Plaintiff Le”) (collectively “Plaintiffs”), individually and on behalf of all members of the Settlement Class (defined below), on one hand, and Defendant Arch Telecom Inc. (“Defendant” or “Arch”), on the other hand. Plaintiffs and Defendant are referred to herein collectively as the “Parties.” Plaintiffs and the Settlement Class (defined below) are represented by Paul K. Haines, Tuvia Korobkin, and Alexandra R. McIntosh of Haines Law Group, APC (“Class Counsel”). Defendant is represented by Navneet Chugh and Nishita Patel of Chugh, LLP.

On October 18, 2018, pursuant to an arbitration agreement with Arch, Plaintiff Molale filed and served a classwide Demand for Arbitration (“Demand”), alleging that Arch: (i) failed to pay all overtime wages; (ii) failed to provide all meal periods in accordance with California law; (iii) failed to authorize and permit rest periods in accordance with California law; (iv) failed to pay all wages owed upon separation of employment; and (v) engaged in unlawful business practices pursuant to California Business & Professions Code § 17200 *et seq.*, based on the above alleged violations. On February 8, 2019, after Arch did not respond to Plaintiff Molale’s Demand and did not pay its arbitration fees, Plaintiff Molale filed a class action lawsuit against Arch in Contra Costa Superior Court, in the matter titled *Ryan J. Molale v. Arch Telecom Inc.*, Case No. C19-00279 (“*Molale*”), alleging the same causes of action alleged in the Demand.

On January 3, 2019, Plaintiff Le filed a representative action lawsuit against Arch in Los Angeles Superior Court, in the matter titled *Tran Le v. Arch Telecom Inc.*, Case No. 19STCV00027 (“*Le*”). The operative First Amended Complaint in *Le* alleges that Arch is liable for civil penalties pursuant to the Private Attorneys General Act of 2004 (“PAGA”), California Labor Code § 2698, for its: (i) failed to provide all meal periods in accordance with California law; (ii) failed to authorize and permit rest periods in accordance with California law; (iii) failure to pay all overtime wages; (iv) failure to pay all minimum wages; (v) failure to provide suitable seating; (vi) failure to reimburse all necessary business expenses incurred; (vii) failure to issue accurate and itemized wage statements; (viii) failure to timely pay all wages owed including upon separation of employment; and (ix) unlawful withholding of wages owed.

On August 26, 2020, Plaintiff Torres filed a class action and representative action lawsuit against Arch in Contra Costa Superior Court, in the matter titled *George Torres v. Arch Telecom Inc.*, Case No. C20-01679 (“*Torres*”), alleging that Arch: (i) failed to pay all minimum wages owed; (ii) failed to issue accurate itemized wage statements; (iii) failed to reimburse all necessary business expenses incurred; (iv) engaged in unlawful business practices pursuant to California Business & Professions Code § 17200 *et seq.*; and (v) is liable for civil penalties under PAGA, for the aforementioned violations of the California Labor Code. *Molale*, *Le*, and *Torres* are collectively referred to herein as the “Actions.”

Given the uncertainty of litigation, Plaintiffs and Arch wish to settle both individually and on behalf of the Settlement Class. Accordingly, Plaintiffs and Arch agree as follows:

1. **Settlement Class.** For the purposes of this Settlement Agreement only, Plaintiffs and Arch stipulate to the certification of a “Settlement Class,” which shall consist of the Plaintiffs and the following two sub-classes:

Non-Release Sub-Class: All current and former non-exempt employees who worked for Arch in California at any time from October 18, 2014 until the date of preliminary approval of the Settlement Agreement (the “Class Period”), and who did not sign an individual settlement and release pursuant to Arch’s *Pick Up Stix* campaign. Arch represents there are 906 individuals in this Sub-Class.

Release Sub-Class: All current and former non-exempt employees who worked for Arch in California at any time during the Class Period and who did sign an individual settlement and release pursuant to Arch’s *Pick Up Stix* campaign. Arch represents there are 179 individuals in this Sub-Class.

The Parties agree that certification for purposes of settlement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

2. **Releases.**

A. Release by Settlement Class Members. Upon the “Effective Date” (defined below), and upon the Settlement being fully funded, Plaintiffs and every member of the Settlement Class (except those who opt out) shall release and discharge Arch, its past, current or future subsidiaries, parents, predecessors, affiliates, divisions, joint ventures, licensees, franchisees and any other legal entities, whether foreign, domestic, that are owned and controlled by Arch, as well as its past, current or future insurers, agents, employees, consultants, independent contractors, successors, assigns, officers, officials, directors, members, attorneys, executors, and shareholders, (collectively, the “Released Parties”) from all claims and/or causes of action under California law that arose during the Class Period and were pled in, or could have been pled based on the factual allegations set forth in, any of the Complaints filed in the Actions, including claims for (a) failure to pay all minimum wages owed, (b) failure to pay all overtime wages owed, (c) failures to provide meal periods, (d) failure to authorize and permit rest periods, (e) failure to indemnify all necessary business expenses incurred, (f) failure to provide accurate itemized wage statements, (g) failure to timely pay final wages, (h) failure to provide suitable seating, (i) unlawful withholding of the wages owed, (j) claims for PAGA civil penalties based on the foregoing Labor Code violations; and (k) all claims for unfair business practices that could have been premised on the legal theories described above (“Class Members’ Released Claims”). The release contemplated herein shall be effective with respect to all Settlement Class members (except those who opt out), regardless whether the Settlement Class members cash their Settlement Award checks.

- B. **Release by Plaintiffs.** In light of Plaintiffs' Representative Incentive Awards (discussed below), Plaintiffs, individually and on behalf of their heirs, estates, trustees, executors, administrators, representatives, agents, successors and assigns and anyone claiming through him, her or them, or acting or purporting to act on his, her or their behalf, have agreed to unconditionally, irrevocably and forever release, discharge, hold harmless and covenant not to sue each and all of the Released Parties from each and all of the Class Members' Released Claims described above, all claims, whether known or unknown, under federal law or state law, against the Released Parties, based on their employment with Arch or the Released Parties, to the extent permitted by law, through the date of the final approval of the Settlement Agreement ("Plaintiffs' Released Claims"). Plaintiffs, expressly acknowledge that they are familiar with Section 1542 of the California Civil Code and understand that this release includes unknown claims and that they are, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

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.

Specifically excluded from Plaintiffs' Released Claims are any claims for workers' compensation benefits or unemployment insurance benefits, or any other claims that cannot be released as a matter of law.

- C. **Effective Date.** The "Effective Date" shall be defined as follows. If no objections are filed (or any objections have been withdrawn), the "Effective Date" shall be the date that the Court grants final approval of the Settlement and enters Judgment. If any objections have been filed and have not been withdrawn (the filing of an objection being a prerequisite to the filing of an appeal), then the "Effective Date" will be either: (i) if no appeal is filed, ten (10) days after the last date on which any appeal might have been filed; or (ii) if an appeal is filed, ten (10) days after the final resolution of any appeal, presuming that the appeal upholds the Settlement.

3. **Gross Settlement Amount.** As consideration, Arch agrees to pay a "Gross Settlement Amount" of \$750,000.00 in full and complete settlement of the Actions, as follows:

- A. The Parties agree to engage Phoenix Settlement Administrators as the "Settlement Administrator" to administer this Settlement.

The Gross Settlement Amount shall be deposited into an escrow account to be established by the Settlement Administrator in eighteen (18) equal monthly installments of \$41,666.67 each. The first installment of \$41,666.67 shall be deposited no later than November 1, 2020, with each subsequent installment of \$41,666.67 to be deposited on the first of every month thereafter, until the Gross Settlement Amount is fully funded or April 1, 2022, whichever is sooner.

The first through eighteenth installments shall be deposited into the escrow account regardless of whether the Effective Date occurs. If the Settlement does not receive final approval and the Effective Date does not occur, any installments paid to date shall be returned to Arch.

B. This is a non-reversionary settlement. The Gross Settlement Amount includes:

- (1) All payments (including interest) to the Settlement Class;
- (2) All costs of the Settlement Administrator and settlement administration, which are estimated to be no more than \$14,000.00;
- (3) Up to \$5,000 each (\$15,000.00 total) for Plaintiffs' Representative Incentive Awards, in recognition of their contributions to the Actions, their service to the Settlement Class, and their general release of claims;
- (4) The Parties have agreed to set aside \$50,000.00 of the Gross Settlement Amount as PAGA civil penalties. Per Labor Code § 2699(i), 75% of such penalties, or \$37,500.00, will be payable to the Labor & Workforce Development Agency ("LWDA"), and the remaining 25%, or \$12,500.00, will be payable to certain Settlement Class members as the "PAGA Amount," as described below. Any Court order allocating a different amount to PAGA civil penalties shall not be grounds to revoke this settlement, and it will remain binding; and
- (5) Attorneys' fees of up to one-third of the Gross Settlement Amount (currently estimated to be \$250,000.00), plus \$13,650, which is one-third of the amount paid by Arch in its *Pick Up Stix* campaign, plus actual costs and expenses incurred by Class Counsel related to the Actions as supported by declaration, which are currently estimated to be no greater than \$35,000. In the event that the Court reduces or does not approve the requested Class Counsel attorneys' fees or costs, Class Counsel shall not have the right to revoke this settlement, and it will remain binding. (However, Class Counsel shall have the right to appeal an order that denies or awards less than the amount of attorneys' fees or costs requested.)

D. Arch's share of payroll taxes as an employer (*e.g.*, FICA, FUTA) on the portion of Settlement payments designated as "wages" shall be paid by Arch separately from, and in addition to, the Gross Settlement Amount. Arch shall deposit the employer's share of payroll taxes with the Settlement Administrator no later than the date it deposits the eighteenth installment of \$41,666.67 as described in Paragraph 3(A) above.

E. **Escalator Clause.** Arch represents that there are approximately 1,085 Settlement Class members. If, at the time of preliminary approval, the actual number of Settlement Class members has increased by 5% or more (*i.e.*, if there are 1,140 or more Settlement Class members), then Arch shall increase the Gross Settlement Amount on a proportional basis (*e.g.*, if there is a 7% increase in the number of Settlement Class members, the Gross Settlement Amount will increase by 7%).

Any increase to the Gross Settlement Amount pursuant to this paragraph shall be paid out proportionally in each installment enumerated in Paragraph 3(A) that occurs after preliminary approval (e.g., if, by operation of this Escalator Clause, the Gross Settlement Amount increases by \$50,000 and there are 10 installments remaining to be paid after preliminary approval, then each of the remaining installments shall increase by \$5,000.)

4. **Payments to the Settlement Class.** Settlement Class members are not required to submit a claim form to receive a payment (“Settlement Award”) from the Settlement. Settlement Awards will be determined and paid as follows:

- A. The Settlement Administrator shall first deduct from the Gross Settlement Amount the amounts approved by the Court for Class Counsel’s attorneys’ fees, Class Counsel’s costs and expenses, Plaintiffs’ Representative Incentive Awards, the amount set aside as PAGA civil penalties, and the Settlement Administrator’s administration costs. The remaining amount shall be known as the “Net Settlement Amount.”
- B. From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class member’s Settlement Award based on the following formula:
 - i. Payments to Non-Release Sub-Class members: A portion of the Net Settlement Amount will be distributed to all participating Non-Release Sub-Class members based on Arch’s formula as to what each member of the Non-Release Sub-Class would have received through the *Pick Up Stix* campaign. Specifically, each participating Non-Release Sub-Class member, will receive an amount based on the following formula:
 - If the employee was employed between 0 and 3 months prior to May 31, 2020, they will receive \$100.00;
 - If the employee was employed for over 3 months and up to 6 months prior to May 31, 2020, they will receive \$150.00;
 - If the employee was employed for over 6 months and up to 11 months prior to May 31, 2020, they will receive \$200.00
 - If the employee was employed for over 11 months and up to 24 months prior to May 31, 2020, they will receive \$250.00;
 - If the employee was employed for over 24 months and up to 48 months prior to May 31, 2020, they will receive \$300.00; and
 - If the employee was employed for over 48 months prior to May 31, 2020, they will receive \$350.00.
 - ii. Payments to all Settlement Class members: Once the above payments to Non-Release Sub-Class members are deducted from the Net Settlement Amount, the remaining amount shall be known as the “Settlement Remainder.” Each participating Settlement Class member will be entitled to a portion of the Settlement Remainder based on his or her pro rata share of workweeks employed by Arch as a non-exempt employee in California during the Class Period (“Workweeks”). Specifically, for each Settlement

Class member, the Settlement Administrator shall multiply the Settlement Remainder by a fraction, the numerator of which is the participating Settlement Class member's number of Workweeks, and the denominator of which is the total Workweeks worked by all participating Settlement Class members, to arrive at the participating Settlement Class member's portion of the Settlement Remainder.

- iii. PAGA Amount: As noted above, in addition to the Net Settlement Amount, \$12,500.00 of the Gross Settlement Amount has been designated as the "PAGA Amount." Each participating Settlement Class member who worked for Arch in California at any time from October 18, 2017 through the date of preliminary approval (the "PAGA Period"), shall receive a portion of the PAGA Amount proportionate to the number of pay periods worked by that participating Settlement Class member as a non-exempt employee for Arch in California during the PAGA Period. This amount will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the participating Settlement Class member's number of pay periods worked as a non-exempt employee for Arch in California during the PAGA Period, and the denominator of which is the total number of pay periods worked by all participating Settlement Class members as non-exempt employees for Arch in California during the PAGA Period. The PAGA Amount described herein shall be considered to be 100% penalties and will not be subject to reduction for any employees' share of taxes or withholding or Employer Taxes.

- C. Within twenty (20) days following the Court's granting final approval, the Settlement Administrator will calculate Settlement Award amounts for each Settlement Class member and provide the same to counsel for review and approval. Settlement Awards will be paid to Settlement Class members within thirty (30) days after (i) all eighteen installments have been paid; and (ii) the Effective Date has occurred.
- D. For purposes of calculating applicable taxes and withholdings for the Settlement Class members, each Settlement Award shall be allocated as follows: one-third (1/3) as wages, one-third (1/3) as penalties, and one-third (1/3) as interest. The Settlement Administrator will be responsible for issuing to Settlement Class members an IRS Form W-2 for amounts deemed "wages" and an IRS Form 1099 for the portions allocated as penalties and interest. As stated above, the Employer Taxes shall be paid and Arch is responsible for the employer's share of payroll taxes on the wages portion of the Settlement Awards, and these taxes will not be deducted from the Gross Settlement Amount. Notwithstanding the treatment of the payments to each Participating Settlement Class Member above, the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay, or compensation, Incentive Awards and PAGA Amount paid to the Participating Settlement Class Member, shall not be utilized to calculate any additional bonus, 401(k) plans, vacation plans, sick leave plans, retirement plan or any other benefit plan, unless required by such plans.

- E. Each member of the Settlement Class who receives a Settlement Award must cash any Settlement Award check within 180 days from the date the Settlement Administrator mails it. Any funds payable to Settlement Class members whose checks were not cashed within 180 days after mailing will escheat to *cy pres* recipient, Legal Aid at Work, which is a 501(c)(3) organization dedicated to providing legal services to the indigent.
- F. Neither Plaintiffs nor Arch shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

5. **Attorneys' Fees and Costs.** Arch will not object to Class Counsel's request for a total award of attorneys' fees of one-third of the Gross Settlement Amount, which is currently estimated to be \$250,000.00, plus \$13,650.00, which is one-third of the amount paid by Arch in connection with its *Pick Up Stix* campaign as a direct result of this litigation. Additionally, Arch will not object to Class Counsel's request for an award of actual costs and expenses as supported by declaration, in an amount not to exceed \$35,000.00, from the Gross Settlement Amount. These amounts will cover any and all work performed and any and all costs incurred in connection with the Actions, including all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. To the extent that the Court does not approve an award for Class Counsel's request for attorneys fees and reimbursement of litigation costs, the amount not approved will be a part of the Net Settlement Amount to be distributed to the Settlement Class Members. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when the Settlement Administrator pays the fee award allowed by the Court. Class Counsel's Court-approved costs will be paid by the Settlement Administrator after (i) the first installment has been paid and (ii) the Effective Date occurs. Class Counsel's Court-approved attorneys' fees shall be paid after (i) the Settlement is fully funded and (ii) the Effective Date occurs.

6. **Representative Incentive Award.** Arch will not object to a request for Representative Incentive Awards of up to \$5,000 to each named plaintiff, for a total of \$15,000, for their time and risks in prosecuting the Actions, their general release of claims, and their service to the Settlement Class. This award will be in addition to Plaintiffs' Settlement Awards as Settlement Class members and shall be reported on IRS Form 1099s issued by the Settlement Administrator. Even in the event that the Court reduces or does not approve the requested Incentive Awards, Plaintiffs shall not have the right to revoke this Settlement, and it will remain binding. The Settlement Administrator shall pay Plaintiffs their Representative Incentive Awards after (i) the Settlement is fully funded and (ii) the Effective Date occurs.

7. **Settlement Administrator.** Arch will not object the appointment of Phoenix Settlement Administrators as Settlement Administrator. Arch will not object to Plaintiffs seeking permission to pay up to \$14,000 to the Settlement Administrator for its services from the Gross Settlement Amount. The Settlement Administrator shall be responsible for sending notices and for calculating Settlement Awards and preparing all checks and mailings, calculating Arch's share of taxes payable on the wages, and other duties as described in this Settlement Agreement. The Settlement

Administrator shall be authorized to pay itself from the Gross Settlement Amount by Class Counsel only after full Settlement Awards have been mailed to all participating Settlement Class members. The Parties will have equal access to the Settlement Administrator, and the Settlement Administrator will provide regular reports to the Parties, but no less frequently than every four weeks, regarding the status of the mailing of the notices, the settlement administration process, distribution of Settlement Award checks, Request for Exclusion, etc.

8. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiffs shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement;
- B. Appointing Paul K. Haines, Tuvia Korobkin, and Alexandra R. McIntosh of Haines Law Group, APC as Class Counsel;
- C. Appointing Plaintiffs as Class Representatives for the Settlement Class;
- D. Approving Phoenix Settlement Administrators as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Notice Packet (which is comprised of the Class Notice and Notice of Estimated Settlement Award, attached hereto as Exhibits A and B, respectively), and directing the mailing of same; and
- G. Scheduling a Final Approval hearing.

9. **Notice to Settlement Class.** Following preliminary approval, the Settlement Class shall be notified as follows:

- A. Within 15 business days after entry of an order preliminarily approving this Agreement, Arch will provide the Settlement Administrator with the names, last known addresses, phone numbers, social security numbers, number of Workweeks worked during the Class Period, the number of pay periods worked during the PAGA Period, and whether the Settlement Class member signed an individual settlement agreement and release as part of the *Pick Up Stix* campaign, for each Settlement Class member (the “Class Data”). The Class Data shall be provided to the Settlement Administrator in an electronic format satisfactory to the Settlement Administrator.
- B. Within ten (10) business days from receipt of this information, the Settlement Administrator shall (i) run the names of all Settlement Class members through the National Change of Address (“NCOA”) database to determine any updated addresses for Settlement Class members; (ii) update the address of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Settlement Award for each Settlement Class member

and obtain approval from counsel of those calculations; (iv) format Notice Packets and obtain approval from counsel of the same; and (v) mail a Notice Packet to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.

- C. Requests for Exclusion. Any Settlement Class member who wishes to opt-out of the Settlement must complete and mail a Request for Exclusion (defined below) to the Settlement Administrator within sixty (60) calendar days of the date of the initial mailing of the Notice Packets (the “Response Deadline”). The Class Notice shall state that a Settlement Class member who wishes to exclude himself or herself from the Settlement must submit a “Request for Exclusion” by the Response Deadline. A Request for Exclusion is a letter or card prepared by the Settlement Class member which must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class member; (2) contain a statement that the Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion Form does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the Settlement, except a Request for Exclusion Form not containing a Settlement Class member’s telephone number and/or last four digits of the Social Security number will be deemed valid. The date of the postmark on the Request for Exclusion Form shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the Settlement or have any right to object, appeal or comment thereon. By signing this Settlement Agreement, Plaintiffs waive their right to opt out of the settlement and release of Plaintiffs’ Released Claims, and any such Request for Exclusion will be void and of no force and effect. Neither Plaintiffs, Class Counsel, Arch (including any of its employees or agents), nor Arch’s counsel will request, solicit, or encourage any Settlement Class member to request exclusion from the Settlement Agreement. The Settlement Administrator shall give Class Counsel and Arch’s counsel a final list of opt-out, within 10 days of the Response Deadline.
- D. Excessive Opt-Out Requests. If five percent (5%) or more Settlement Class Members timely opt out of the Settlement, Arch shall have the sole and absolute discretion to rescind/void the Settlement within ten (10) business days after receiving from the Settlement Administrator the final list of opt-outs. Arch agrees to meet and confer in good faith with Class Counsel before rescinding or voiding the Settlement. In the event that Arch elects to rescind/void the Settlement, it shall provide written notice of such rescission to Class Counsel. Such rescission shall have the same effect as a termination of this Agreement for failure to satisfy a condition of settlement, and the Settlement Agreement shall become null and void and have no further force or effect. If Arch rescinds/voids the Settlement pursuant to this paragraph, then Arch shall be solely responsible for paying the Settlement Administrator any administrative costs incurred.

- E. Objections. Members of the Settlement Class who do not request exclusion may object to this Settlement Agreement as explained in the Class Notice by filing a written objection with the Settlement Administrator (who shall serve all objections as received on Arch's counsel and Class Counsel, who shall then file all such objections with the Court). Arch's counsel and Class Counsel shall file any responses to objections no later than 5 days before the Final Approval hearing. To be valid, any objection must be in writing and: (1) contain the objecting Settlement Class member's full name and current address, as well as contact information for any attorney representing the objecting Settlement Class member for purposes of the objection; (2) include all objections and the factual and legal bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence; and (4) be postmarked no later than the Response Deadline. A Settlement Class member who wishes to object to the Settlement but who fails to comply with the written objection procedures set forth above and/or in the Class Notice shall be deemed not to have objected, shall be deemed to have waived all objections to the Settlement Agreement, and shall be foreclosed from making any objections, whether by appeal or otherwise, to the Settlement Agreement. Neither Plaintiffs, Class Counsel, Arch (including any of its employees or agents), nor Arch's counsel will request, solicit, or encourage any Settlement Class members to submit Objections or appeal from the Court's final approval order and judgment. Class Counsel shall not represent any Settlement Class members with respect to any such Objections.
- F. Notice of Estimated Settlement Award / Disputes. The Notice of Estimated Settlement Award mailed to each Settlement Class member shall disclose the amount of the Settlement Class member's estimated Settlement Award and (i) whether the Settlement Class member signed an individual settlement and release in connection with Arch's Pick Up Stix campaign, (ii) the Settlement Class member's number of Workweeks worked for Arch in California as a non-exempt employee during the Class Period; and (iii) the number of pay periods worked by the Settlement Class member in California as a non-exempt employee for Arch during the PAGA Period. Settlement Class members will have the opportunity, should they disagree with Arch's records regarding the information stated in the Notice of Estimated Settlement Award, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Settlement Awards under the terms of this Settlement Agreement. The Settlement Administrator's determination of the eligibility for and amount of any Settlement Award shall be binding upon the Settlement Class member and the Parties.
- G. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be immediately re-mailed to the forwarding

address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a “skip trace,” to obtain an updated mailing address within five (5) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class member immediately, and in any event within three (3) business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. It will be conclusively presumed that, if an envelope so mailed has not been returned within thirty (30) days of the mailing, the Settlement Class member received the Notice Packet (although the Settlement Administrator will continue to conduct a skip-trace on any Notice Packets that are returned as undeliverable with no forwarding address throughout the Notice period). Settlement Class members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) calendar days from the date of re-mailing, or until the Response Deadline, whichever is later, to submit a Request for Exclusion, Objection, or dispute. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline, if applicable. If a Settlement Class member’s Notice Packet is returned to the Settlement Administrator more than once as non-deliverable, then an additional Notice Packet need not be mailed. Nothing else shall be required of, or done by, the Parties, Class Counsel, or Arch’s Counsel to provide notice of the Settlement.

10. **Final Approval.** Following preliminary approval and the close of the period for filing requests for exclusion, objections, or disputes under this Settlement Agreement, Plaintiffs shall apply to the Court for entry of a Final Order and Judgment (pursuant to California Rule of Court 3.769), which shall among other things:

- A. Grant final approval of the Settlement Agreement and adjudge its terms to be fair, reasonable, and adequate;
- B. Approve Plaintiffs’ and Class Counsels’ application for attorneys’ fees and costs, Representative Incentive Award, PAGA payment to the LWDA, and settlement administration costs;
- C. Enter judgment pursuant to California Rule of Court 3.769
- D. Permanently bar and enjoin the Plaintiffs and all other members of the Settlement Class (except those who validly and timely opt out of the Settlement) from filing, commencing, prosecuting, intervening in, or participating (as a class member or otherwise) in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction based on Plaintiffs’ Released Claims (in case of Plaintiffs) and Class Members’ Released Claims (in case of the members of Settlement Class); and
- E. Declare that this Settlement Agreement and the Final Order and Judgment are binding on, and have *res judicata* and preclusive effect, in all pending and future

lawsuits or other proceedings that: (i) encompass the Plaintiffs' Released Claims and that are maintained by or on behalf of the Plaintiffs; and (ii) encompass the Class Members' Released Claims and that are maintained by or on behalf of the Settlement Class members (except those who validly and timely opt out of the Settlement), regardless of whether the Settlement Class member previously initiated or subsequently initiates individual litigation or other proceedings encompassed by the Class Members' Released Claims.

11. **Non-Admission of Liability.** Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this Settlement Agreement. Each of the Parties expressly acknowledge that he/she/it has entered into this Settlement Agreement to avoid the burden and expense of further litigation and expressly acknowledge that nothing herein is an admission of liability, culpability, negligence or wrongdoing by Arch or any of the Released Parties. Pursuant to California Evidence Code Section 1152, this Settlement Agreement and any all discussion leading to the Settlement Agreement, is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If the Effective Date does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code Section 1152 or any other equivalent or related law, regulation, statute or provision, be inadmissible as evidence in any proceeding. However, the Parties agree that this Settlement Agreement may be admitted in evidence or used in any proceeding to enforce any and all terms of this Settlement Agreement. The Parties also agree that the Released Parties shall have the right to file the Settlement Agreement, the final approval order and any other evidence relating to the Settlement in any action that may be brought against them in order to support a defense or counterclaim relating to any claims released, precluded or barred by this Settlement Agreement.

12. **Non-disclosure and Non-publication.** Plaintiffs and Class Counsel agree not to disclose or publicize the Settlement Agreement contemplated herein, the fact of the Settlement Agreement, its terms or contents, or the negotiations underlying the Settlement Agreement, Settlement Award, in any manner or form, directly or indirectly, to any person or entity, except to Settlement Class members and as shall be contractually required to effectuate the terms of the Settlement Agreement as set forth herein. However, for the limited purpose of allowing Class Counsel to prove adequacy as class counsel in other actions, Class Counsel may disclose the names of the Parties in this Action, the venue/case number of this Action, and a general description of the Action, to a court in a declaration by Class Counsel. Class Counsel may also include a general description of the settlement on their website, but may not include the names of the Parties or the case number, or any descriptive information of the business of Arch that would facilitate identification of Arch. Without limiting any preexisting confidentiality obligations, Plaintiffs agree that in connection with Plaintiff's work for Arch, Plaintiff has had access to non-public information and materials concerning the business affairs of Arch and its present or former partners, managing directors, shareholder, employees, agents, directors, officers, clients, or other third Parties or the personal affairs of such individuals (Confidential Information and Materials). Plaintiffs will hold all Confidential Information and Materials in strict confidence and will not give, disclose, copy, reproduce, sell, assign, license, market or transfer Confidential Information and Materials to any person, corporation or entity, nor allow anyone to do so on their behalf. Without prior written authorization from Arch, Plaintiff will not discuss any Confidential Information and Materials or any aspects of Plaintiff's employment with Arch or the end of said employment with any attorney

or representative of an attorney (other than Plaintiff's own attorneys), reporter, author, producer, or similar person or entity, or take any other action seeking to publicize or disclose any such information in any way likely to result in such information being made available to the general public in any form, including books, articles or writings of any kind, as well as film, videotape, audiotape or any other medium. Nothing in this section is intended to prevent a Plaintiff from disclosing information concerning his or her employment at Defendant that is of the sort that would customarily be contained on a resume. Nothing in this section limits or shall be construed to limit any preexisting confidentiality obligations.

13. **Continuing Jurisdiction.** Except as otherwise specifically provided for herein, the Court shall retain jurisdiction to construe, interpret and enforce this Settlement, to supervise all notices, the administration of the Settlement, and to hear and adjudicate any dispute arising from or related to the Settlement. The Parties agree that the Court has jurisdiction over the Settlement pursuant to California Code of Civil Procedure, Section 664.6.

14. **Enforcement Action.** In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement Agreement or to declare rights and/or obligations under this settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

15. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by counsel for all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

16. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Arch: Navneet S. Chugh, Chugh, LLP, 15925 Carmenita Road,
Cerritos, California 90703; navneet@chugh.com

if to Plaintiff: Paul K. Haines, Haines Law Group, APC, 2155 Campus Drive,
Suite 180, El Segundo, California 90245;
phaines@haineslawgroup.com

17. **Applicable Law.** All terms and conditions of this Settlement Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law or choice of law principles.

18. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof. Each Plaintiff acknowledges, agrees and understands that: (a) he or she had read and understands that terms of this Settlement Agreement; (b) he or she has

been advised in writing to consult with an attorney before executing this Settlement Agreement; (c) he or she has obtained and considered such legal counsel as he or she deems necessary; and (d) he or she has been given the opportunity to consider whether or not to enter into this Settlement Agreement.

19. **Parties' Authority and Signatures.** It is agreed that because the Class is so numerous, it is impossible or impractical to have each Settlement Class Member execute the Settlement Agreement, each Plaintiff shall execute the Settlement Agreement on behalf of himself/herself, the Settlement Class Members. The Notice shall advise the Settlement Class Members of the binding nature of the release, and as such have the same force and effect as if the Settlement Agreement were executed by each Settlement Class Member individually. The Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, successors and assigns.

20. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

20. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Settlement. This Settlement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE

ARCH TELECOM INC.

DATED: _____, 2020

By: _____
Its: _____

RYAN J. MOLALE

DATED: 12/29, 2020


ryan molale (Dec 29, 2020 18:27 PST)

GEORGE TORRES

DATED: _____, 2020

TRAN LE

DATED: _____, 2020

APPROVED AS TO FORM:

CHUGH, LLP

DATED: _____, 2020

BY: _____
NAVNEET CHUGH
ATTORNEY FOR DEFENDANT

HAINES LAW GROUP, APC

DATED: 01/05, 2021

BY: 
PAUL K. HAINES
ATTORNEY FOR PLAINTIFFS AND
SETTLEMENT CLASS

SIGNATURE PAGE

ARCH TELECOM INC.

DATED: _____, 2020

By: _____
Its: _____

RYAN J. MOLALE

DATED: _____, 2020

GEORGE TORRES



George Torres (Dec 30, 2020 02:42 MST)

DATED: 12/30 _____, 2020

TRAN LE

DATED: _____, 2020

APPROVED AS TO FORM:

CHUGH, LLP

DATED: _____, 2020

BY: _____
NAVNEET CHUGH
ATTORNEY FOR DEFENDANT

HAINES LAW GROUP, APC

DATED: _____, 2020

BY: _____
PAUL K. HAINES
ATTORNEY FOR PLAINTIFFS AND
SETTLEMENT CLASS

SIGNATURE PAGE

ARCH TELECOM INC.

DATED: _____, 2020

By: _____
Its: _____

RYAN J. MOLALE

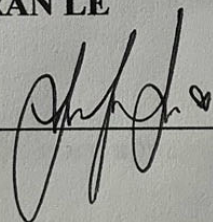
DATED: _____, 2020

GEORGE TORRES

DATED: _____, 2020

TRAN LE

DATED: December 31, 2020



APPROVED AS TO FORM:

CHUGH, LLP

DATED: _____, 2020

BY: _____
NAVNEET CHUGH
ATTORNEY FOR DEFENDANT

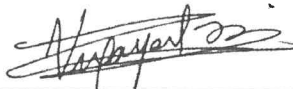
HAINES LAW GROUP, APC

DATED: _____, 2020

BY: _____
PAUL K. HAINES
ATTORNEY FOR PLAINTIFFS AND
SETTLEMENT CLASS

SIGNATURE PAGE

ARCH TELECOM INC.



DATED: December 18, 2020

By: Vijayant Ghai

Its: CEO

RYAN J. MOLALE

DATED: _____, 2020

GEORGE TORRES

DATED: _____, 2020

TRAN LE

DATED: _____, 2020

APPROVED AS TO FORM:

CHUGH, LLP



DATED: 01/05/2021, 2020

BY: _____

NAVNEET CHUGH
ATTORNEY FOR DEFENDANT

HAINES LAW GROUP, APC

DATED: _____, 2020

BY: _____

PAUL K. HAINES
ATTORNEY FOR PLAINTIFFS AND
SETTLEMENT CLASS

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF CONTRA COSTA

GEORGE TORRES, ET AL.,

Plaintiffs,

vs.

ARCH TELECOM, INC.,

Defendant.

Case No. C20-01679

**NOTICE OF PENDENCY OF CLASS
ACTION AND PROPOSED SETTLEMENT**

**PLEASE READ THIS NOTICE CAREFULLY
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT**

Why should you read this Notice?

The Contra Costa County Superior Court (“Court”) has granted preliminary approval of a proposed class and representative action settlement (the “Settlement”). The Settlement resolves three lawsuits entitled *George Torres v. Arch Telecom, Inc.*, Contra Costa County Superior Court Case No. C20-01679; *Ryan Molale v. Arch Telecom, Inc., et al.*, Contra Costa County Superior Court Case No. C19-00279; and *Tran Le v Arch Telecom, Inc.*, Los Angeles County Superior Court Case No. 19STCV00027 (collectively, the “Litigation”). Because your rights may be affected by the Settlement, it is important that you read this Notice carefully.

You may be entitled to money from the Settlement. Defendant Arch Telecom, Inc.’s (“Arch”) records show that you are part of one of the following two groups of Arch employees:

“Non-Release Sub-Class”: All current and former non-exempt employees who worked for Arch in California at any time from October 18, 2014 until <<PRELIM APPROVAL DATE>> (the “Class Period”), and who did not sign an individual settlement and release pursuant to Arch’s *Pick Up Stix* campaign; and

“Release Sub-Class”: All current and former non-exempt employees who worked for Arch in California at any time during the Class Period and who did sign an individual settlement and release pursuant to Arch’s *Pick Up Stix* campaign.

Collectively, the “Non-Release Sub-Class” and “Release Sub-Class” are referred to as the “Settlement Class.”

The purpose of this Notice is to provide you with a brief description of the Litigation, to inform you of the terms of the proposed Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment.

What is this case about?

In the Litigation, Plaintiffs George Torres, Ryan Molale, and Tran Le (“Plaintiffs”) collectively allege that Arch: (i) failed to pay all earned minimum wages under California law; (ii) failed to pay all earned overtime wages under California law; (iii) failed to provide all legally required meal periods under California law; (iv) failed to authorize and permit all legally required rest periods under California law; (v) failed to indemnify employees for all necessary business expenses; (vi) failed to furnish accurate, itemized wage statements under California law; (vii) failed to pay all final wages due at termination of employment under California law; (viii) failed to provide suitable seating; (ix) unlawfully withheld wages owed; and, as a result of the foregoing violations, committed unfair business practices under California law and is subject to civil penalties under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code § 2698 *et seq.*

Plaintiffs are known as the “Class Representatives,” and their attorneys, who also represent the interests of all Settlement Class members, are known as “Class Counsel.”

Arch denies that it has done anything wrong. Arch denies that it owes Settlement Class members any wages, restitution, penalties, or other damages. Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Arch, who expressly denies all liability.

The Court has not ruled on the merits of Plaintiffs’ claims. However, to avoid additional expense, inconvenience, and interference with its business operations, Arch has concluded that it is in its best interests and the interests of Settlement Class members to settle the Litigation on the terms summarized in this Notice. After Arch provided relevant information to Class Counsel, the Settlement was reached after mediation and arm’s-length negotiations between the parties.

The Class Representatives and Class Counsel also support the Settlement. Among the reasons for support are the defenses to liability potentially available to Arch, the risk of denial of class certification, the inherent risks of trial on the merits, and the delays and uncertainties associated with litigation.

If you are still employed by Arch, your decision about whether to participate in the Settlement will not affect your employment. California law and Arch’s company policies strictly prohibit unlawful retaliation. Arch will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Settlement Class member because of the Settlement Class member’s decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for Plaintiffs / the Settlement Class:	Attorneys for Arch:
HAINES LAW GROUP, APC Paul K. Haines phaines@haineslawgroup.com Tuvia Korobkin tkorobkin@haineslawgroup.com Alexandra R. McIntosh amcintosh@haineslawgroup.com 2155 Campus Drive, Suite 180 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 haineslawgroup.com	CHUGH LLP Nishita Patel Nishita.Patel@Chugh.com Varduhi Danielyan Varduhi.Danielyan@Chugh.com 15925 Carmenita Road Cerritos, CA 90703 Tel.: (562) 229-1220 Fax: (562) 229-1221 chugh.com

What are the terms of the Settlement?

On <<PRELIM APPROVAL DATE>>, the Court preliminarily certified, for settlement purposes only, a Settlement Class consisting of the “Non-Release Sub-Class” and the “Release Sub-Class.” Settlement Class members who do not opt out of the Settlement pursuant to the procedures set forth in this Notice **will be bound** by the Settlement and will release their claims against Arch as specifically described below.

Arch has agreed to pay \$750,000.00 (the “Gross Settlement Amount”) to fully resolve all claims in the Litigation, including claims by eligible Settlement Class members, attorneys’ fees, costs, Settlement administration costs, PAGA civil penalties, and the Class Representatives’ incentive awards.

The following deductions from the Gross Settlement Amount will be requested by the parties:

Settlement Administration Costs. The Court has approved Phoenix Settlement Administrators to act as the “Settlement Administrator,” who is sending this Notice to you and will perform many other duties

relating to the Settlement. The Court has approved setting aside up to \$14,000.00 from the Gross Settlement Amount to pay the Settlement Administration Costs.

Attorneys' Fees and Expenses. Class Counsel have been prosecuting the Litigation on behalf of the Settlement Class members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys' fees, which will be paid from the Gross Settlement Amount. Settlement Class members are not personally responsible for any of Class Counsel's attorneys' fees or expenses. As reasonable compensation for the work Class Counsel performed and will continue to perform in the Litigation, Class Counsel will ask for fees equal to one-third of the Gross Settlement (currently estimated to be \$250,000), plus \$13,650, which is one-third of the \$40,950 already paid by Arch in connection with the individual releases it obtained from Release Sub-Class members as part of the *Pick Up Stix* campaign, for a total of approximately \$263,650 in fees. Class Counsel will also ask for reimbursement of up to \$35,000.00 for reimbursement of verified costs Class Counsel incurred in connection with the Litigation.

Incentive Awards. Class Counsel will ask the Court to approve an incentive award of \$5,000 to each Class Representative (\$15,000.00 total). These awards are to compensate the Class Representatives for their service and extra work provided on behalf of the Settlement Class members, as well as their general release of claims that they have agreed to as part of the Settlement.

PAGA Civil Penalties. The parties have agreed to allocate \$50,000.00 of the Gross Settlement Amount as PAGA civil penalties. Pursuant to the PAGA, 75% of this amount, or \$37,500.00, will be paid to the California Labor & Workforce Development Agency ("LWDA"). The remaining \$12,500.00 has been designated as the "PAGA Amount" and will be paid to certain Settlement Class members as described below.

Calculation of Settlement Shares. After deducting the Court-approved amounts above, the balance of the Gross Settlement Amount will form the Net Settlement Amount ("NSA"). The NSA is currently estimated at \$372,350. The Settlement Administrator will calculate payments from the NSA to all participating Settlement Class members, as follows:

- (i) Payments to Non-Release Sub-Class members: First, approximately \$226,500 will be paid to members of the Non-Release Sub-Class. Each participating Non-Release Sub-Class member shall receive a payment based on the number of months, if any, they were employed with Arch prior to May 31, 2020. Specifically, if the employee was employed over 0 months and up to 3 months prior to May 31, 2020, they will receive \$100.00; if the employee was employed over 3 months and up to 6 months prior to May 31, 2020, they will receive \$150.00; if the employee was employed over 6 months and up to 11 months prior to May 31, 2020, they will receive \$200.00; if the employee was employed over 11 months and up to 24 months prior to May 31, 2020, they will receive \$250.00; if the employee was employed over 24 months and up to 48 months prior to May 31, 2020, they will receive \$300.00; and, if the employee was employed over 48 months prior to May 31, 2020, they will receive \$350.00. This represents the payment that Non-Release Sub-Class members would have received had they signed the release Arch offered to employees after the Litigation was initiated.
- (ii) Payments to all Settlement Class members: Once the above payments to Non-Release Sub-Class members are made, the remaining portion of the NSA will form the "Settlement Remainder," which will be distributed to all participating Settlement Class members. The Settlement Remainder will be allocated proportionally based on each participating Settlement Class member's total workweeks worked for Arch as a non-exempt employee in California during the Class Period.
- (iii) PAGA Payment: In addition to the NSA, \$12,500.00 of the Gross Settlement Amount has been designated as the "PAGA Amount" as described above, and will be allocated proportionally based on each participating Settlement Class member's total pay periods (if

any) worked for Arch as a non-exempt employee in California from October 18, 2017 through <<PRELIM APPROVAL DATE>> (the “PAGA Period”).

Payments to Settlement Class Members. If the Court grants final approval of the Settlement, Settlement Shares will be mailed to all Settlement Class members who did not submit a valid and timely Request for Exclusion (defined below).

Allocation and Taxes. For tax purposes, Settlement Shares shall be treated as follows: one-third to wages, for which IRS forms W-2 will be issued; and one-third as penalties and one-third as interest, for which IRS forms 1099 will be issued. Settlement Class members are responsible for the proper income tax treatment of the Settlement Shares. The Settlement Administrator, Arch and its counsel, and Plaintiffs and Class Counsel cannot provide tax advice. Accordingly, Settlement Class members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. If the Court approves the Settlement, and upon the Settlement being fully funded, the Class Representatives, and each Settlement Class member who has not submitted a timely and valid Request for Exclusion, will release Arch, its past, current or future subsidiaries, parents, predecessors, affiliates, divisions, joint ventures, licensees, franchisees and any other legal entities, whether foreign, domestic, that are owned and controlled by Arch, as well as its past, current or future insurers, agents, employees, consultants, independent contractors, successors, assigns, officers, officials, directors, members, attorneys, executors, and shareholders, (collectively, the “Released Parties”) from all claims and/or causes of action under California law that arose during the Class Period and were pled in, or could have been pled based on the factual allegations set forth in, any of the Complaints filed in the Actions, including claims for (a) failure to pay all minimum wages owed, (b) failure to pay all overtime wages owed, (c) failures to provide meal periods, (d) failure to authorize and permit rest periods, (e) failure to indemnify all necessary business expenses incurred, (f) failure to provide accurate itemized wage statements, (g) failure to timely pay final wages, (h) failure to provide suitable seating, (i) unlawful withholding of the wages owed, (j) claims for PAGA civil penalties based on the foregoing Labor Code violations; and (k) all claims for unfair business practices that could have been premised on the legal theories described above (“Class Members’ Released Claims”). The release contemplated herein shall be effective with respect to all Settlement Class members (except those who opt out), regardless whether the Settlement Class members cash their Settlement Award checks.

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, and adequate, and the Court’s entry of judgment.

Settlement Funding. The Settlement will be funded by Arch in 18 equal monthly installments of \$41,666.67, with the first installment due on November 1, 2020. Payments to Settlement Class members will be disbursed approximately 30 days after the Settlement has received final approval and is fully funded.

How do I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your share of the Settlement (“Settlement Award”) based on whether you previously signed a *Pick Up Stix* release with Arch, the number of workweeks you worked for Arch during the Class Period, and the number of pay periods you worked for Arch during the PAGA Period, as stated in the enclosed Notice of Estimated Settlement Award. You also will be bound by the Settlement, including the release of claims stated herein.

What other options do I have?

Disputing Information in Notice of Estimated Settlement Award. As stated above, your Settlement Award is based on whether you previously signed a *Pick Up Stix* release with Arch; if you did not sign a *Pick Up Stix* release, the length of your employment with Arch prior to May 31, 2020; the number of workweeks you worked for Arch during the Class Period; and your number of pay periods worked for Arch during the PAGA Period. The information contained in Arch’s records regarding each of these factors is listed on the accompanying Notice of Estimated Settlement Award. If you disagree with the information in your Notice of Estimated Settlement Award, you may submit a dispute, along with any supporting documentation, in

accordance with the procedures stated in the Notice of Estimated Settlement Award. Any disputes, along with supporting documentation, must be postmarked no later than <<RESPONSE DEADLINE>>. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class members. The Settlement Administrator's decision regarding any dispute will be final.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator a written "Request for Exclusion" letter or postcard postmarked no later than <<RESPONSE DEADLINE>>, with your full name, current address and telephone number, last four digits of your social security number, and your signature. The Request for Exclusion should state:

"I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE TORRES V. ARCH TELECOM, INC. LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE CLASS SETTLEMENT OF THIS LAWSUIT."

Send the Request for Exclusion directly to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>>. Any person who submits a valid and timely Request for Exclusion shall, upon receipt, no longer be a Settlement Class member, shall be barred from participating in any portion of the Settlement, and shall receive no benefits from the Settlement. **Do not submit both a Dispute and a Request for Exclusion.** If you do, the Request for Exclusion will be deemed invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

Objecting to the Settlement. If you do not submit a Request for Exclusion, you have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you must mail a written objection to the Settlement Administrator. Your written objection must include: your full name, current address, telephone number, and e-mail address; the name, address, telephone number, and e-mail address of any attorney representing you; the case name and number; each specific reason in support of your objection; and any legal or factual support for each objection, including any supporting papers, briefs, written evidence, declarations, and/or other evidence. Objections must be in writing and must be postmarked on or before <<RESPONSE DEADLINE>>.

If you choose to submit a written objection to the Settlement, you may also appear at the Final Approval Hearing scheduled for <<FINAL APPROVAL HEARING DATE/TIME>> in Department 39 of the Contra Costa County Superior Court, located at 725 Court Street, Martinez, California 94553. You have the right to appear either in person or through your own attorney at this hearing. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before <<RESPONSE DEADLINE>>. All objections or other correspondence must state the name and number of the case, which is *Torres v. Arch Telecom, Inc.*, Contra Costa County Superior Court Case No. C20-01679.

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class members who do not object.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on <<FINAL APPROVAL HEARING DATE/TIME>>, in Department 39 of the Contra Costa County Superior Court, located at 725 Court Street, Martinez, California 94553. The Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of expenses and the incentive awards to the Class Representatives. The Final Approval Hearing may be postponed without further notice to the

Settlement Class. **You are not required to attend the Final Approval Hearing, although any Settlement Class member is welcome to attend the hearing.**

How can I get additional information?

This Notice is only a summary of the Litigation and the Settlement. For more information, you may review the Court's files at the Court Records department of the Contra Costa Superior Court located at 1111 Ward Street, Martinez CA 94553, from 8:00 a.m. to 3:00 p.m. Monday through Friday, except court holidays. You can also review the court file online at the Court's website: <http://icms.cc-courts.org/tellme/>. You may also contact Class Counsel using the contact information listed above for more information.

**PLEASE DO NOT CALL OR WRITE THE COURT, ARCH, OR ARCH'S ATTORNEYS FOR
INFORMATION ABOUT THIS SETTLEMENT**

REMINDER AS TO TIME LIMITS

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is <<**RESPONSE DEADLINE**>>. These deadlines will be strictly enforced.

EXHIBIT B

NOTICE OF ESTIMATED SETTLEMENT AWARD

GEORGE TORRES V. ARCH TELECOM INC., CONTRA COSTA COUNTY CASE NO. C20-01679

Please complete, sign, and return this Form to <<ADMINISTRATOR CONTACT INFO>> **ONLY IF** (1) your personal contact information has changed, and/or (2) you wish to dispute any of the items listed in Section (III), below. It is your responsibility to keep a current address on file with the Settlement Administrator.

(I) Please type or print your name:

(First, Middle, Last)

(II) Please type or print the following identifying information if your contact information has changed:

Former Names (if any)

New Street Address

City

State

Zip Code

Phone number (if you wish to be contacted by phone)

(III) Information Used to Calculate Your Estimated Settlement Award:

According to Arch Telecom, Inc.'s ("Arch") records:

- (a) you <<DID/DID NOT>> sign a release with Arch pursuant to its *Pick Up Stix* campaign.
- (b) **If Non-Release member:** you worked _____ months for Arch prior to May 31, 2020;
- (c) you worked _____ workweeks as a non-exempt employee for Arch in California between October 18, 2014 and <<PRELIM APPROVAL DATE>>; and
- (d) you worked _____ pay periods as a non-exempt employee for Arch in California between October 18, 2017 and <<PRELIM APPROVAL DATE>>.

Based on the above, your Settlement Award is estimated at \$ _____.

(IV) If you disagree with any of the items in Section (III) above, please explain why in the space provided below and include copies of any supporting evidence or documentation with this Form:

If you dispute the above information from Arch's records, Arch's records will control unless you are able to provide documentation that establishes that Arch's records are mistaken. If there is a dispute about whether Arch's information or yours is accurate, and the dispute cannot be resolved informally, the dispute will be resolved by the Parties and the Settlement Administrator as described in the "Notice of Class Action Settlement" that accompanies this Form. The Settlement Administrator's determination will be final.

Date: _____

Signature: _____

ANY DISPUTES (INCLUDING SUPPORTING DOCUMENTS) MUST BE POSTMARKED NO LATER THAN <<RESPONSE DEADLINE>>.