

CLASS ACTION AND PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AND RELEASE AGREEMENT

This Class Action and Private Attorneys General Act Settlement and Release Agreement (“**Agreement**,” “**Settlement Agreement**” or “**Settlement**”) is entered into by plaintiffs Manuel Nieto and John Loera (collectively, “**Plaintiffs**”), on behalf of themselves, similarly situated non-exempt employees, the State of California Labor and Workforce Development Agency (“**LWDA**”), and those they seek to represent, on the one hand, and, on the other hand, Cellco Partnership d/b/a Verizon Wireless (“**Verizon**” or “**Defendant**”). For purposes of this Agreement, Plaintiffs and Verizon are collectively referred to as the “**Parties**” and individually referred to as “**Party**”.

By way of this Agreement, the Parties seek to settle the following three pending actions: *Manuel Nieto v. Cellco Partnership*, Santa Cruz Superior Court Case No. 21CV00136 (“**Nieto PAGA Action**”); *John Loera v. Cellco Partnership*, Santa Clara Superior Court Case No. 21CV386960 (“**Loera PAGA Action**”); and *John Loera v. Cellco Partnership*, Santa Clara Superior Court Case No. 21CV386962 (“**Loera Class Action**” or “**Loera/Nieto Class Action**”). The *Nieto PAGA Action*, *Loera PAGA Action*, and *Loera/Nieto Class Action* are collectively referred to as the “**Actions**.” The Parties expressly acknowledge that this Agreement is entered into solely for the purpose of compromising disputed legal and factual issues and that nothing in this Settlement Agreement is an admission of liability or wrongdoing by Defendant.

RECITALS

1. By way of this Agreement, the Parties anticipate that an amended complaint will be filed in the *Loera/Nieto Class Action* for the purpose of adding the PAGA claims that have been asserted in the *Nieto PAGA Action* and *Loera PAGA Action*; that the *Loera PAGA Action* will be consolidated with the *Loera/Nieto Class Action* (the consolidated proceeding is referred to as “**consolidated Loera/Nieto Class/PAGA Action**”); that the *Nieto PAGA Action* will be stayed pending preliminary and final settlement approval; that approval of this settlement will be filed in the consolidated *Loera/Nieto Class/PAGA Action*; that Nieto will be a class representative and PAGA representative in the *Loera/Nieto Class/PAGA Action*, and Loera will be a PAGA representative in the consolidated *Loera/Nieto Class/PAGA Action*; and that if the Settlement is approved, the Parties will stipulate to an entry of judgment and dismissal in the *Nieto PAGA Action* based on the judgment entered in the consolidated *Loera/Nieto Class/PAGA Action*.

The Nieto PAGA Action

2. On January 20, 2021, Plaintiff Manuel Nieto (“Nieto”) filed a representative PAGA complaint against Verizon in Santa Cruz County Superior Court, alleging claims for penalties under California’s Private Attorneys General Act (“**PAGA**”). Nieto’s complaint asserts PAGA claims based on alleged violations of California laws pertaining to overtime, minimum wages, meal periods, rest breaks, wage statements, reporting time pay, business expense reimbursements, recordkeeping, timely payment of wages during employment and at termination, and suitable seating requirements, California Labor Code §§ 201-203, 204, 223, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2699, 2800, 2802, and applicable IWC Wage Orders. Further, Nieto also asserted claims and allegations that compensation was not paid to him and all

other current and former nonexempt retail California employees of Verizon at the regular rate of pay, or that the regular rate of pay was not properly calculated for all compensation, by failing to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay. In the *Nieto* PAGA Action, Nieto seeks to represent all current and former California non-exempt hourly paid retail employees, as well as allegedly misclassified exempt employees employed by Verizon.

The Loera PAGA Action and the Loera/Nieto Class Action

3. Plaintiff John Loera filed a class action lawsuit against Verizon on September 22, 2021 in Santa Clara County Superior Court asserting class claims for alleged (1) unpaid overtime; (2) meal period violations; (3) rest period violations; (4) unpaid minimum wages; (5) failure to timely pay all wages at termination; (6) failure to timely pay wages during employment; (7) wage statement violations; (8) recordkeeping violations; (9) unreimbursed business expenses; and (10) unfair business practices. In his class complaint, Loera seeks to represent a class consisting of all current and former hourly paid or nonexempt employees who worked and resided within the state of California at any time during the 4-year period preceding the filing of the complaint to final judgment. Loera also seeks to represent two subclasses, defined as (A) All Class Members who were required to stay on Defendant's premises for rest breaks and (B) All Class Members who received overtime pay at a rate lower than their regular rate of pay because Defendant failed to include all nondiscretionary bonuses, shift differentials, or other incentive pay in the calculation of the regular rate of pay.

4. Plaintiff John Loera separately filed a PAGA lawsuit against Verizon on September 22, 2021, in Santa Clara County Superior Court asserting claims for civil penalties based on the same Labor Code provisions underlying the claims in his class action lawsuit, namely alleged violations of California Labor Code provisions governing overtime, meal period, rest breaks, minimum wage, timing of pay, wage statements, recordkeeping, reporting time pay, providing wage statements, and business expense reimbursements. In his PAGA action, Loera seeks to recover civil penalties on behalf of all current and former hourly paid or nonexempt employees who worked for Defendant in California, including but not limited to those employees who earned shift differentials/nondiscretionary bonuses/nondiscretionary performance-based pay which was not used to calculate the correct regular rate of pay for overtime purposes.

5. On October 7, 2022, Verizon filed a motion to strike class claims in the *Loera* Class Action. On or about January 27, 2023, Loera attempted to file a first amended complaint in the *Loera* Class Action without leave of court. On February 16, 2023, the Court struck the attempted first amended complaint, granted Verizon's motion to strike and granted Loera leave to file an amended complaint within 30 days of the date of the Court's order. On March 15, 2023, Loera filed a second amended class action complaint, which added plaintiff Manuel Nieto as a named plaintiff and putative class representative to the *Loera/Nieto* Class Action, and which asserted PAGA representative claims by Loera and Nieto.

The Parties' Successful Global Mediation Efforts

6. The Parties to the Actions attended a joint, private mediation with Michael Dickstein, Esq. of Dickstein Dispute Resolution, a well-respected and highly sought-after mediator with nearly

forty years of experience in wage and hour, class and representative action litigation. Joint mediation was conducted because of the overlap in the claims, parties, counsel, and court where the Actions are pending. The full-day mediation took place on October 10, 2022. The Parties did not reach a resolution of the claims during that mediation. However, the Parties continued mediated settlement discussions through the mediator. After months of arm's length, non-collusive negotiations with the mediator's assistance, the Parties reached a settlement of the Actions.

7. **Class Counsel's Investigation.** Counsel for Nieto, Loera, the Class Members, and those alleged aggrieved employees Nieto and Loera seek to represent—the Law Offices of Mark Yablonovich and Lawyers for Justice, PC (collectively, “**Class Counsel**”)—conducted a formal and informal investigation into the facts and allegations of the Actions, including an extensive review of documents and data obtained from Verizon and other sources. In particular, counsel in the *Nieto* PAGA Action propounded formal discovery, and Class Counsel made informal discovery requests in advance of mediation, and reviewed and analyzed documents produced in response to such requests, including Plaintiffs' personnel information and employment records, written policies relating to the claims asserted in the Actions, time records and payroll data and pay statements for a sample of the Class Members, and other data reflecting the pay and workweeks worked by Class Members during four years preceding the filing of the *Nieto* PAGA Action. Class Counsel also investigated the claims against Verizon in the Actions and analyzed all applicable defenses raised by Verizon.

8. **Class Counsel's Evaluation.** Class Counsel believe that the Settlement documented by this Agreement is fair, reasonable, and adequate, and in the best interest of the Class Members, State of California, and PAGA Group Members based on all known facts and circumstances, including the risk of significant delay, defenses asserted to the merits of these Actions, defenses asserted to class certification and the manageability of any PAGA representative action, as well as defenses to the overall issue of liability and damages, and potential appellate issues.

9. It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge any and all claims, rights, demands, charges, complaints, causes of action, obligations or liability of any and every kind that were or could be asserted in the Actions based upon the operative facts alleged or theories asserted in any of Plaintiffs' complaints, amended complaints or in the letters to the Labor and Workforce Development Agency. Additionally, the Parties intend the Settlement encompassing the Actions as described in this Agreement to be contingent upon: (1) the Court's preliminary and final approval of the terms of this Agreement, including entry of a final approval order and the Judgment described in Section X(B)(3); (2) execution by Nieto and Loera separately of a general release of all claims against Verizon and all Releasees (defined below in Section XV); (3) the Court granting the relief described in the stipulations attached to this Agreement (i.e., staying the *Nieto* PAGA Action pending preliminary and final settlement approval proceedings in the *Loera/Nieto* Class/PAGA Action (see Section II(A)); entering an order consolidating the *Loera/Nieto* Class Action and *Loera* PAGA Action and permitting the filing of a third amended consolidated complaint in the *Loera/Nieto* Class Action to add the PAGA claims on behalf of non-exempt employees asserted in the *Nieto* PAGA Action and *Loera* PAGA Action, and entering the additional orders described in this Agreement); and (4) dismissal of the *Nieto* PAGA action consistent with Section X, i.e., with prejudice as to Nieto and the PAGA claims asserted on behalf of non-exempt retail employees and without prejudice as to exempt retail employees.

10. **The Parties stipulate to the certification of this Settlement Class solely for purposes of this Agreement.** The Parties stipulate to certify the Class described herein for settlement purposes only. The Parties' stipulation to class certification is contingent upon the preliminary and final approval and certification of the Settlement Class only for purposes of this Agreement. Should this Agreement not become final or not be approved by the Court, for whatever reason, the fact that the Parties were willing to stipulate provisionally to class certification as part of the Agreement shall have no bearing on, and shall not be admissible in connection with, the issue of whether a class should be certified in a non-settlement context in the Actions. Verizon does not waive, and instead expressly reserves, its right to challenge the propriety of class certification or representative treatment for any purpose should the Court not approve this Agreement.

11. **The Parties' Agreement to Cooperate and Execute Necessary Documents.** The Parties agree to cooperate and to take all steps reasonably necessary and appropriate to effectuate the terms of this Agreement including to obtain a preliminary approval order and Final Approval Order of this Settlement, to obtain entry of judgment and/or dispose of the Actions and claims of Class Members and PAGA Group Members with prejudice, to have Nieto and Loera execute separate, general releases of all claims against Verizon, and to have Verizon timely provide the Class Data (defined below) and fund the Gross Settlement Amount.

NOW THEREFORE, in consideration of the recitals listed above and the promises, releases, and warranties set forth below, and with the Parties' intent to be legally bound and to acknowledge the sufficiency of the consideration and undertakings set forth herein, the Plaintiffs, individually and on behalf of the Class Members, the PAGA Group, and the State of California LWDA, on the one hand, and Verizon, on the other hand, agree that the Actions shall be and are finally and fully compromised and settled as to the Releasees, on the terms and conditions set forth herein, subject to Court approval:

AGREEMENT

I. DEFINITIONS

- A. Class Definition and Class Period: "**Class**," "**Settlement Class**", or "**Class Members**" means: All individuals who were employed by Verizon as a nonexempt retail employee and performed work in California at any time during the period beginning on March 27, 2017, and ending on the earlier of May 15, 2023 or the date on which this Agreement is fully executed ("**Class Period**").
- B. "Final Approval Order" refers to the order by the Court finally approving the Settlement following the Final Settlement Approval Hearing.
- C. PAGA Group and PAGA Period. "**PAGA Group**" or "**PAGA Group Member(s)**" means all individuals who were employed by Verizon as a nonexempt retail employee and performed work in California at any time during the period beginning on May 26, 2019 and ending on the earlier of May 15, 2023 or the date on which this Agreement is fully executed ("**PAGA Period**").
- D. "**Settlement Administrator**" refers to Phoenix Administration, the third-party administrator, who has been mutually selected by the Parties, subject to Court

approval, to perform the notice, settlement administration, and distribution of payment functions further described in this Agreement. The Settlement Administrator shall establish a Qualified Settlement Fund (QSF) pursuant to U.S. Treasury Regulation Section 468B-1 for purposes of administering the Settlement.

II. PROVISIONAL APPROVAL OF THIS AGREEMENT

A. Stay of the *Nieto* PAGA Action; Consolidation of *Loera/Nieto* Class Action and *Loera* PAGA Action; and Amendment to *Loera/Nieto* Class/PAGA Action.

Upon execution of this Agreement, the Parties shall take the following actions:

1. The Parties acknowledge that, pursuant to stipulation of the Parties, the Court in the *Nieto* PAGA Action issued an Order on May 22, 2023, staying all proceedings pending preliminary and final settlement approval proceedings in the related *Loera/Nieto* Class/PAGA Action.
2. Within five court days of executing this Agreement, the Parties will file the Joint Stipulation in the form attached as Exhibit A, to request that (i) the Court in the *Loera* PAGA Action and *Loera/Nieto* Class Action consolidate the *Loera* PAGA Action with the *Loera/Nieto* Class Action for all purposes; and (ii) the Court in the consolidated *Loera/Nieto* Class/PAGA Action permit Plaintiffs to file the Third Amended Consolidated Class and Representative Action Complaint or Damages and Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, et seq. and Demand for Jury Trial (Exhibit 1 to Exhibit A), which adds the claims and allegations asserted in the *Nieto* PAGA Action and *Loera* PAGA Action and the notices filed by Loera and Nieto with the LWDA and maintains Nieto as the Class Representative.
3. The Parties agree to use their best efforts to schedule a hearing at which to seek preliminary approval of the Settlement so that the hearing occurs within sixty (60) calendar days of the date upon which the Parties execute this Agreement. If it is not possible to schedule a hearing on preliminary approval of the Settlement within sixty (60) calendar days of the date of the Parties' Agreement, the Parties agree to schedule the hearing at the first mutually agreeable available date thereafter.
4. Within a reasonable time after the date on which the Joint Stipulation has been entered by the Court consistent with Exhibit A, and sufficient statutory notice based on the first mutually agreeable available hearing date for preliminary approval, Class Counsel shall jointly move the Court in the consolidated *Loera/Nieto* Class/PAGA Action to enter an order as to all of the following:
 - a) Preliminarily certifying, for settlement purposes only, a Class comprising the Class Members;

- b) Preliminarily appointing, for settlement purposes only, Lawyers *for* Justice, PC and the Law Offices of Mark Yablonovich as Class Counsel;
- c) Preliminarily appointing, for settlement purposes only, Nieto as class representative, and Nieto and Loera as PAGA representatives;
- d) Appointing and approving Phoenix Administration as the Settlement Administrator;
- e) Provisionally approving all terms of this Agreement and finding that such terms are sufficient to warrant sending notice of settlement to Class Members;
- f) Approving the form and content of the Notice of Proposed Settlement and Final Settlement Approval Hearing (the “Notice Packet”);
- g) Authorizing the mailing of the Notice Packet to the Class Members; and
- h) Scheduling a hearing, to occur within a reasonable period after the Response Deadline (defined below) has expired, in which the Court shall fully and finally approve this Agreement and the settlement herein, and enter Judgment (the “**Final Settlement Approval Hearing**”).

- B. **Motion for Preliminary Approval.** Verizon does not intend to oppose Plaintiffs’ Motion for Preliminary Approval provided such motion and supporting papers are consistent with the terms of this Agreement. Class Counsel shall provide Verizon’s counsel with a copy of the draft Motion for Preliminary Approval and supporting declaration(s) no later than five (5) business days before it is due to be filed and Verizon shall provide Plaintiffs suggested edits, if any, within three (3) business days of receipt. The Parties shall jointly prepare the proposed Preliminary Approval Order and proposed Notice Packet, and Class Counsel shall submit them in the form mutually agreed to by the Parties.
- C. **Notice of Settlement to Appropriate Government Officials.** Pursuant to California Labor Code section 2699(l)(2), Class Counsel shall notify the LWDA of the Settlement at the same time that Plaintiffs file the Motion for Preliminary Approval of the Settlement.
- D. **Implementation of the Settlement and Cooperation.** This Agreement is contingent upon entry of an order by the Court that contains each of the terms specified in Sections II(A)(2) and (A)(4) above, in addition to the other conditions specified in this Agreement. This Agreement shall become null and void in the event the Court for any reason refuses to enter the orders specified in Sections II(A)(2) and (A)(4) after all opportunities granted by the Court to the Parties for

amendment have been exhausted. In the event the Court for any reason refuses to enter such orders, the Parties agree to cooperate in good faith to resolve any issues addressed by the Court, and exhaust all possible solutions to obtain the Court's approval. The Parties' agreement to cooperate includes working together to find alternative procedural ways to present this Agreement for approval to the Court and obtain the other relief specified above (i.e., stay of the *Nieto* PAGA Action, consolidation of the *Loera* PAGA Action and *Loera/Nieto* Class Action, and amendment of the consolidated *Loera/Nieto* Class/PAGA Action) in the event the Court does not agree to the protocol established in Section II(A)(2), II(A)(4) and Exhibit A. If the Parties cannot agree on how to address issues raised by the Court to obtain approval of this Agreement or the relief specified in this Section II, then they will seek the assistance of the mediator for resolution.

III. ALLOCATION OF GROSS SETTLEMENT AMOUNT

- A. The following are material conditions to be satisfied before and as a condition to payment of the Gross Settlement Amount (defined below) is made:
1. Execution of this Agreement by all signatories.
 2. The Court has conducted a Final Settlement Approval Hearing and fully and finally approves all material terms of this Agreement.
 3. A Final Approval Order and Judgment including all of the provisions identified in Sections II(A)(4) and X(B)(3) is entered by the Court and becomes final under California law (including the right to appeal expiring).
 4. The *Nieto* PAGA action is dismissed with prejudice as to Nieto and the PAGA claims asserted on behalf of non-exempt retail employees and without prejudice as to exempt retail employees as described in Section X(B)(4).
 5. The time to file any appeal in the *Loera/Nieto* Class/PAGA Action and the *Nieto* PAGA Action has expired and no appeal has been filed on the Final Approval Order and Judgment or on the order of dismissal entered in the *Nieto* PAGA Action, or any appeals filed in either the *Loera/Nieto* Class/PAGA Action or the *Nieto* PAGA Action have been fully resolved by a final judgment, dismissal, or withdrawal of the appeal.
 6. Nieto and Loera have signed separate settlements and for separate consideration, generally releasing any and all claims against Verizon, including any claims that may arise out of or relate to their employment, for misclassification as exempt employees, and providing for a waiver of rights under California Civil Code section 1542.
- B. **Gross Settlement Amount.** “Gross Settlement Amount” means the maximum settlement amount of **Three Million Five Hundred Thousand Dollars (\$3,500,000.00)** (the “Gross Settlement Amount”) to be paid by Verizon on the

condition that all of the material conditions set forth above in Sections II(A)(4) and III(A) have occurred, in full satisfaction of all claims released under this Agreement, and includes all individual payments to Class Members, PAGA Group Members, enhancement awards to Loera and Nieto, payments to the LWDA, attorneys' fees and costs to Class Counsel, and payment of settlement administration costs to the Settlement Administrator. Verizon shall be separately responsible for employer-side payroll taxes (including, without limitation, FUTA, SUTA and the employer portion of FICA, Medicare and any applicable state or local employment taxes) which shall not be paid from the Gross Settlement Amount. The Parties agree that, subject to this paragraph and Section XIV(C), under no circumstances shall Verizon be obligated to pay any amount over the Gross Settlement Amount under the terms of this Agreement except as provided for in this Agreement.

- C. **PAGA Penalties.** The Parties will seek approval for a PAGA penalties payment from the Gross Settlement Amount in the total amount of \$280,000.00 (8% of the Gross Settlement Amount) ("**PAGA Payment**"), 75% of which (\$210,000.00) shall be allocated to the LWDA for civil penalties paid under this Agreement pursuant to the PAGA (the "**LWDA Payment**"), and 25% of which (\$70,000.00) shall be allocated to PAGA penalties to be distributed to the PAGA Group Members ("**PAGA Group Payment**"). Each PAGA Group Member's individual share of the \$70,000.00 total allocable to the PAGA Group Payment shall be calculated on a pro rata basis, based on the methodology set forth in Section VIII herein. The Court's reduction or increase of the PAGA Payment is not a material term of this Agreement. If the Court approves a lesser amount or a higher amount than that requested by Plaintiffs for the PAGA Payment, the Parties will not object to such determination, the other terms of this Agreement shall apply and the Net Settlement Amount (defined below) to be distributed to the Class Members will be adjusted accordingly. Because the Settlement is non-reversionary, Defendant maintains no reversionary right to any portion of the Settlement.

IV. SETTLEMENT ADMINISTRATOR

- A. **Appointment of Settlement Administrator.** The Parties request that the Court appoint Phoenix Administration as Settlement Administrator. The Settlement Administrator will be responsible for the administration of the settlement terms set forth herein, and all related matters, and will perform the following duties: (i) prepare the Notice Packet with the number of Individual Work Weeks for each Class Member based on data provided by Verizon; (ii) mail the Notice Packet to Class Members and perform address searches and re-mailings as necessary; (iii) track returned Notice Packets; (iv) notify the Parties of timely and untimely Objections and requests for exclusion received; (v) notify the Parties of any disputes by Class Members of the number of Individual Work Weeks and/or persons claiming to be Class Members and resolve any disputes resulting from same; (vi) calculate the amounts due to each Class Member; (vii) provide settlement payments, W-2 Forms, and 1099 Forms to Participating Class Members; (viii) undertake tax reporting to relevant taxing authorities; (ix) make all other required

settlement payments (e.g., to Plaintiffs, PAGA Group Members, and the LWDA) and tax remissions pursuant to the terms of this Agreement and as directed by the Court; (x) mail out reminder postcards to Class Members; and (xi) perform such other duties as are described in this Agreement and/or as are customarily performed by settlement administrators. Among its other duties as described in this Agreement, the Settlement Administrator shall provide counsel for the Parties with a weekly report showing the number of opt-outs and objections received as well as declarations as required by the approval process of this Settlement. The Parties agree to provide any reasonable information requested by the Settlement Administrator needed to effectively administer the settlement.

- B. **Cost of Settlement Administrator.** The cost of the Settlement Administrator, including those costs incurred in mailing the Notice Packet to the Class Members as required by this Agreement, will be paid from the Gross Settlement Amount and shall not exceed Thirty-Two Thousand Dollars (\$32,000.00) based on a written bid received from the Settlement Administrator obtained by the Parties. All disputes relating to the Settlement Administrator's performance of its duties, after good-faith efforts by the Parties to first resolve such disputes, will be referred to the Court, if necessary.

V. NOTICE OF SETTLEMENT TO CLASS MEMBERS AND PAGA GROUP MEMBERS

- A. **Class Data for Settlement Administrator.** Within **fourteen (14) calendar days** after entry of the Court's preliminary approval order that includes all of the provisions identified in Section II(A)(4), Verizon shall provide to the Settlement Administrator the following information for each Class Member and PAGA Group Member in a password protected Microsoft Excel format: full name, last known address, Social Security number, and the dates that each Class Member and PAGA Group Member was employed as a nonexempt retail employee in California ("**Class Data**") (in order to determine the total number of Individual Work Weeks (as defined in Section VIII(A)) attributed to each Class Member during the Class Period and PAGA Period, as applicable.).

1. Within **seven (7) calendar days** of receipt of the Class Data by the Settlement Administrator, the Settlement Administrator shall provide to Plaintiffs' counsel, without revealing any confidential information such as names, Social Security Numbers, contact information, or other personally identifiable information, the number of unique Class Members along with the corresponding number of Individual Work Weeks credited to each Class Member.

- B. For the avoidance of doubt, Individual Work Weeks shall not include any workweeks in which a Class Member or PAGA Group Member worked for AirTouch and was a participating settlement class member in the settlement in *Veramendi v. AirTouch Cellular dba Verizon Wireless*, JCCP Case No. 4693 (*Veramendi*). To the extent Class Members and PAGA Group Members

participated in or were included in the settlement in *Harchegani v. Cellco Partnership dba Verizon Wireless and AirTouch Cellular, Inc. dba Verizon Wireless*, Case No. 37-2017-00019977-CU-OE-CTL (*Harchegani*), their respective Individual Work Weeks will be valued as follows: to the extent their Individual Work Weeks overlapped with and were included in the *Harchegani* settlement, the value will be reduced to 80% of the unaffected Individual Work Weeks. Thus, for example, if a Class Member worked a total of four Individual Work Weeks in the Class Period, and two of that Class Member's workweeks were included in the *Harchegani* settlement, and assuming an Individual Work Week value of \$10, that Class Member would be entitled to \$36 (two workweeks at \$10 each + two workweeks at \$8 each [$\$10 \text{ per workweek} \times 80\%$].)

- C. **Confidentiality Of Class Member Contact Information And Data.** The contact information is being provided confidentially, and the Settlement Administrator shall treat the information as private and confidential and take all necessary precautions to maintain the confidentiality of contact information of the Class Members. This information is to be used only to carry out the Settlement Administrator's duties as specified in this Agreement. The Settlement Administrator shall return the Class Data to Verizon or confirm its destruction upon completion of the Settlement Administrator's duties.
- D. **Mailing Of Notice Packet.** The Settlement Administrator shall mail the Notice Packet to Class Members within **fourteen (14) calendar days** of receiving the Class Data from Verizon (unless either Party exercises the right to withdraw pursuant to Section XIV.C). The Settlement Administrator shall send the Notice Packet via First Class U.S. Mail, using the most current, known mailing address for each Class Member and PAGA Group Member based on information provided by Verizon. Upon receipt of this information from Verizon, the Settlement Administrator shall perform a search based on the National Change of Address Database maintained by the United States Postal Service to update and correct any known or identifiable address changes.
- E. **Re-mailing Of Returned Notices.** Any Notice Packet mailing returned to the Settlement Administrator as undeliverable within **thirty (30) calendar days** of initial mailing, shall be sent **within 3 business days** via First Class U.S. Mail to the forwarding address affixed thereto, if applicable. If no forwarding address is provided, the Settlement Administrator shall attempt to determine the correct address again using a robust skip trace database to update and correct any known or identifiable address changes. Following this procedure, the Settlement Administrator shall perform a re-mailing via First Class U.S. Mail **within 3 business days**. It shall be presumed that those Class Members whose re-mailed Notice Packets are not returned to the Settlement Administrator as undeliverable within **thirty (30) calendar days** after re-mailing, actually received the Notice Packet.
- F. **Content Of The Notice Of Class Action Settlement.** The Notice Packet shall be in a form mutually agreed to by the Parties and shall, among other things, inform

Class Members of their right to decline to participate in the class action portion of the settlement established by this Agreement, so long as the Class Member submits to the Settlement Administrator a valid request for exclusion on or before the Response Deadline (defined below), accurately describe the scope of the release, provide all deadlines and material terms of the Settlement, Class Counsel's contact information, a URL to a website maintained by the Settlement Administrator that has links to the notice and the most important publicly filed documents in the case; and for persons who wish to review the Court's docket in this case, the URL for the Court's electronic filing and service website at www.scefilings.org and www.scsccourt.org. The Class Notice shall also state that a Class Member's right to opt out applies only to the class action portion of the Settlement and that no opt out right applies to the settlement of PAGA claims in the Actions. It shall be presumed that each and every Class Member whose Notice Packet is not returned to the Settlement Administrator as undeliverable **within thirty (30) calendar days** after mailing or re-mailing (as described above in Section V(E)) actually received it.

- G. **Proof Of Mailing.** At least **sixteen (16) court days** prior to the Final Settlement Approval Hearing, the Settlement Administrator shall provide a finalized and executed declaration of due diligence and proof of mailing with regard to mailing of the Notice Packet to Class Counsel and Defendant's Counsel, which Class Counsel shall in turn provide to the Court. No later than **five (5) business days** before the final executed declaration is due to be filed by Class Counsel, the Settlement Administrator shall provide to Class Counsel and Defendant's Counsel a final draft of the declaration for review.
- H. Counsel for the Parties shall not attempt in any way to initiate contact or initiate communications with any Class Member other than through the Notice Packet, to discuss the Settlement, except as provided in this Agreement and to the extent any Class Member identified by the Settlement Administrator as to whom the Notice Packet is believed by the Settlement Administrator to have been undeliverable, in which case counsel for Verizon may make reasonable attempts to secure accurate contact information for such Class Member. Notwithstanding the foregoing: (i) the Parties may respond to questions by Class Members who contact Counsel as well as respond to questions by the Settlement Administrator about specific claims or questions of Class Members; and (ii) Verizon may communicate with its employees and the Class Members to discuss or describe the Settlement as set forth in this Agreement provided that such communications shall not interfere with or discourage participation in the Settlement.

VI. THE OPT-OUT PROCEDURE

- A. **Class Members' Consideration Period.** The Notice Packet shall state that Class Members who wish to exclude themselves from the class action portion of the Settlement must submit a request for exclusion (aka an "Opt Out" request). The deadline to submit a request for exclusion is **sixty (60) calendar days** from the original date that the Notice Packet was mailed (the "**Response Deadline**"). To be

considered timely, the completed request for exclusion must be sent by first class mail and be postmarked to the Settlement Administrator at the address listed in the Notice Packet on or before the Response Deadline. The date of the postmark on the return mailing envelope on the request for exclusion shall be the exclusive means used to determine whether a request for exclusion has been timely submitted. No later than **fourteen (14) calendar days** after the Response Deadline, the Settlement Administrator shall provide counsel for the Parties with a complete list of all members of the Class who have timely submitted requests for exclusion.

- B. **No right to opt out from PAGA settlement.** The Class Notice shall state that a Class Member's right to opt out applies only to the class action portion of the Settlement and that no opt out right applies to the settlement of PAGA claims.
- C. **Opt-Out Procedures.** All Class Members who do not timely return a completed request for exclusion ("**Participating Class Members**") shall be bound by the terms and conditions of this Agreement including the release of claims described herein, and shall also be bound by any Court orders related to this Agreement or the Actions. A Class Member who wishes to exclude themselves from the class action portion of the Settlement shall send a letter to the Settlement Administrator setting forth their full name, the last four digits of their Social Security number, a statement that they request exclusion from the class and do not wish to participate in the class action portion of the Settlement, and the case name and number for the *Loera/Nieto* Class/PAGA Action. The request for exclusion must be signed by the Class Member and postmarked by the Response Deadline and returned to the Settlement Administrator at the specified address.
- D. **Effect of Opt-Out.** Class Members who successfully submit a request for exclusion will not be entitled to a settlement payment for the class action portion of this Settlement, and will not be bound by the class action release of this Agreement. To the maximum extent permitted by law, any Class Member who opts out of the class action portion of the Settlement may not object to the class action portion of the Settlement. If a Class Member submits both a request for exclusion and an Objection, the Class Member's request for exclusion will be deemed to invalidate the Objection. Class Members who submit valid and timely requests to opt out of the class action portion of the Settlement shall not receive a payment for settlement of Class claims pursuant to the Settlement, nor shall such Class Members be bound by the terms of the Settlement of their individual claims against Verizon pursuant to this Settlement. However, Class Members who submit a valid opt out request will nevertheless be bound by the settlement and release of PAGA claims in the Settlement to the extent they are a member of the PAGA Group and will receive a payment for their individual share of the PAGA Group Payment in settlement of PAGA claims pursuant to the terms of this Agreement. Class Members who fail to submit a valid and timely request for exclusion on or before the Response Deadline shall be bound by all terms of the Settlement and any Final Approval Order and Judgment entered in the Actions if the Settlement is approved by the Court.

- E. The Settlement Administrator shall review each request for exclusion upon receipt for timeliness, completeness, and validity. If a returned opt out request is defective or incomplete, the Settlement Administrator will promptly notify the Class Member of the defect or deficiency and permit the Class Member **fourteen (14) calendar days** from the date of the mailing of the deficiency notice or the Response Deadline to cure the defect (the “**Cure Deadline**”), whichever is later. Notwithstanding the foregoing, any returned request for exclusion that is cured will not be considered effective unless: (i) the original returned request for exclusion was postmarked or delivered by the Response Deadline; and (ii) the cured returned request for exclusion was postmarked or delivered by the Cure Deadline. Class Members shall only be permitted one opportunity to cure a defective request for exclusion.
- F. Unless otherwise permitted by this Agreement, only the Settlement Administrator has the right to contact Class Members who submit a request for exclusion. The Settlement Administrator shall not interfere with any Class Member’s right to submit a request for exclusion and shall communicate with a Class Member solely for purposes of determining the validity, completeness, and any defect in a submitted request for exclusion. The Settlement Administrator shall not have the authority to extend the Response Deadline or Cure Deadline except as directed by the Court or otherwise agreed to by the Parties in writing. The Settlement Administrator shall provide weekly updates concerning the status to both Class Counsel and counsel for Defendant, which will not in any way hamper or impede the right of Class Members to submit requests for exclusion.
- G. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to opt out of the class action portion of the Settlement or to appeal from the Final Approval Order.

VII. OBJECTING TO THE SETTLEMENT

- A. **Objection Rights.** Class Members who wish to object to the class action portion of the settlement may do so in writing by directing such objection (“**Objection**”) to the Court and to the Settlement Administrator within the Response Deadline. All written objections must be submitted to the Court either by mailing the objection to: Clerk of the Court, Superior Court of California, County of Santa Clara, 191 N. 1st Street, San Jose, California 95113, or by filing in person at the same location; and a service copy must also be mailed to the Settlement Administrator via First-Class U.S. Mail. Class Members may also object by appearing at the Final Settlement Approval Hearing. The date of the postmark on the mailing envelope, or for filings submitted to the Court in person, the date stamp on the filed objection, shall be the exclusive means used to determine whether an Objection is timely submitted. The Settlement Administrator shall provide all such Objections to Class Counsel and Defendant’s counsel promptly upon receipt. The Court retains final authority with respect to the consideration and admissibility of any Class Member’s Objections. Plaintiffs and Defendant will be permitted to respond in writing to any written Objections by no later than **seven (7) calendar days** before the Final Settlement Approval Hearing unless the Objection is received at a later time.

Plaintiffs and Defendant will be permitted to respond to Objections orally at the Final Settlement Approval Hearing.

- B. **Objection Procedures.** Any written Objection should contain the full name, home address, and telephone number of the objecting Class Member, the last four digits of the Class Member's Social Security number, a clear statement explaining why the Class Member objects to the Settlement and the legal and factual bases for the objection(s), identification of the objecting Class Member's attorney (if any), a clear statement indicating whether or not the objecting Class Member and/or his, her or their legal representative intends to appear at the Final Settlement Approval Hearing, and the case name and number for the *Loera/Nieto* Class/PAGA Action. These instructions, as well as information regarding how to appear will be communicated in the Notice Packet.
- C. Though it is preferred that Class Members submit Objections by the Response Deadline, no objecting Class Member shall be denied the ability to object at the Final Settlement Approval Hearing (whether personally or through separate counsel).
- D. Class Members who object to the class action portion of the Settlement may still participate in the class action portion of the Settlement. A Class Member who objects to the class action portion of the Settlement, but does not submit a request for exclusion, will remain a Participating Class Member. Accordingly, if the Court approves the Settlement, such Class Members will be bound by the terms of the class action portion of the Settlement in the same way as the Class Members who did not object. Only those Class Members who opt-out will not be bound by the class action portion of this Agreement.
- E. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written Objections to the Settlement or to appeal from the Court's Final Approval Order and Judgment thereon.
- F. **Objecting Class Members Not Entitled to Attorneys' Fees.** The Parties expressly agree that objecting Class Members are not entitled to recover any attorneys' fees or costs from Class Counsel's fee award. This Agreement specifically bars recovery of attorney fees and costs for objectors even if the objection has added genuine value to the Settlement. Furthermore, nothing in this Agreement, express or implied, creates any obligation on the part of Defendant to pay any attorneys' fees or costs to an objector, even if such fees and costs are ordered to be paid by the Court.
- G. **Waiver of Objection Rights.** To the fullest extent permitted by law, Class Members who fail to submit Objections in the manner specified in the Notice Packet shall be deemed to have waived any Objections and shall be foreclosed from making any Objection, whether by appeal or otherwise, to this Agreement. To the maximum extent permitted by law, the Parties agree that only the Parties and/or Class Members who file a valid and timely Objection and obtain standing to appeal

through a motion to intervene and/or motion to set aside or vacate judgment, maintain the right to appeal.

- H. **Binding Effect of Settlement.** Although some Class Members might not receive the Notice Packet or timely submit a request for exclusion, as provided under this Agreement, due to inability to locate their current address following the procedures set forth in this Agreement, such individuals shall nonetheless be bound by all of the terms of this Agreement and the Final Approval Order and Judgment to the maximum extent permitted by law.

VIII. CALCULATION OF SETTLEMENT PAYMENTS TO CLASS MEMBERS AND PAGA GROUP

- A. Upon receipt of the list of Class Members, and prior to the mailing of the Notice Packet, the Settlement Administrator shall review the information submitted by Verizon to confirm the number of Qualifying Work Weeks of each Class Member during the Class Period (“**Individual Work Weeks**”) for purposes of performing the calculations of Individual Settlement Payments and Individual PAGA Payments (defined below). For purposes of this Agreement, a “**Qualifying Work Week**” shall be defined as a 7-day week, beginning on Sunday and ending on Saturday, during which a Class Member employed by Verizon received compensation for regular hours worked as a nonexempt employee for work actually performed in California during the Class Period. For the avoidance of doubt, Individual Work Weeks shall not include any time periods for which a Class Member or a PAGA Group Member worked as an employee of AirTouch and was a participating settlement class member in *Veramendi* and were covered by the release period of the *Veramendi* settlement, or workweeks for which a Class Member was on a paid or unpaid leave of absence.
- B. The Settlement Administrator shall thereafter provide to Defendant’s counsel and Class Counsel an anonymized list comprising each Class Member (to be listed by an identifying number and not by name or other personally identifiable information), the number of Individual Work Weeks for each Class Member and PAGA Group Member; and the gross minimum amount of the individual settlement payment to be made to each Class Member (“**Individual Settlement Payment**”) and Individual PAGA Payment, if applicable, upon final approval of the Settlement of the Actions as determined and calculated per the formula described below.
- C. The amount of the Individual Settlement Payment to each Class Member shall be calculated and apportioned from the Net Settlement Amount based on the number of Individual Work Weeks of each Class Member.
- D. This Settlement does not require Class Members to submit a claim form to participate in the Settlement.
- E. **Individual Settlement Payments From Net Settlement Amount.** This Settlement shall be a non-revisionary Settlement. Defendant maintains no

reversionary right to any portion of the Gross Settlement Amount. For purposes of this Agreement, “**Net Settlement Amount**” means the portion of the Gross Settlement Amount remaining after subtracting payments to Class Counsel for attorneys’ fees and costs, the Enhancement Payments to Nieto and Loera, payment to the Settlement Administrator, and the PAGA Payment. The employer’s share of payroll taxes shall be separately paid and shall not be deducted from the Gross Settlement Amount. The Net Settlement Amount will be distributed to Participating Class Members. Each Class Member who does not opt out (i.e., each Participating Class Member) shall be entitled to an Individual Settlement Payment consisting of their share of the Net Settlement Amount, in accordance with the formula set forth below.

F. **Individual Settlement Calculations and Payments.** Calculations of Individual Settlement Payments will be made as follows and shall be included in the notice to each Class Member and based on the assumption that no Class Member opts out:

1. The Settlement Administrator will calculate the total number of each Class Member’s Individual Work Weeks, and the total number of Individual Work Weeks for all Class Members (“**Class Work Weeks**”). To determine each Class Member’s Individual Settlement Payment, the Settlement Administrator will use the following formula:

$$\text{Individual Work Weeks} \div \text{Class Work Weeks} \times \text{Net Settlement Amount.}$$

2. The Individual Settlement Payments will be reduced by any required deductions for each Class Member as set forth herein, including required withholdings or deductions with respect to the wages portion of the Individual Settlement Payment.
3. As explained above in Section V(B), to the extent Class Members and PAGA Group Members participated in or were included in the settlement in *Harchegani v. Cellco Partnership dba Verizon Wireless and AirTouch Cellular, Inc. dba Verizon Wireless*, Case No. 37-2017-00019977-CU-OE-CTL (*Harchegani*), their respective Individual Work Weeks will be valued as follows: (1) to the extent their Individual Work Weeks overlapped with and were included in the *Harchegani* settlement, the value will be reduced to 80% of the unaffected Individual Work Weeks. Thus, for example, if a Class Member worked a total of four Individual Work Weeks in the Class Period, and two of that Class Member’s workweeks were included in the *Harchegani* settlement, and assuming an Individual Work Week value of \$10, that Class Member would be entitled to \$36 (two workweeks at \$10 each + two workweeks at \$8 each [$\$10 \text{ per workweek} \times 80\%$]).
4. The Settlement Administrator will distribute any portion of the Net Settlement Amount initially allocated toward Class Members who timely opt-out, to the Class Members who did not opt-out, on a pro rata basis.

G. **Calculation of PAGA Group Members' Individual Share of PAGA Group Payment.** Each PAGA Group Member's individual share of the PAGA Group Payment shall be calculated on a pro rata basis, based on the following formula:

1. The Settlement Administrator will calculate the total number of each PAGA Group Member's Individual Work Weeks during the PAGA Period ("**Individual PAGA Work Weeks**"), and the total number of Individual PAGA Work Weeks for all PAGA Group Members ("**PAGA Group Work Weeks**"). To determine each PAGA Group Member's Individual PAGA Payment, the Settlement Administrator will use the following formula:

$$\text{Individual PAGA Work Weeks} \div \text{PAGA Group Work Weeks} \times \text{PAGA Group Payment.}$$

2. The individual shares of the PAGA Group Payment constitute penalties from which no deductions or withholdings will be taken.

H. **Procedures for Class Members to Dispute Workweek Calculations:**

1. If a Class Member disagrees with the number of Individual Work Weeks or Individual PAGA Work Weeks listed in his/her/their Notice Packet, the Class Member must attach documentary evidence supporting the Class Member's alternative calculation of Individual Work Weeks and/or Individual PAGA Work Weeks and a written statement under penalty of perjury explaining the Class Member's calculation. Such documentary evidence and written explanation shall: (i) be submitted to the Settlement Administrator by no later than **ten (10) calendar days** from the date the Notice Packet is postmarked; and (ii) establish that Defendant's records concerning the amount of Individual Work Weeks and/or Individual PAGA Work Weeks are inaccurate. The Parties will endeavor to resolve all disputes within **seven (7) business days** from the date the dispute is received by the Settlement Administrator.
2. If a Class Member submits such documentary evidence and written statement, the Settlement Administrator shall review the evidence and written statement and issue a written recommendation to the Parties concerning the calculation of Individual Work Weeks and/or Individual PAGA Work Weeks.
3. If either of the Parties disagrees with the Settlement Administrator's recommendation, the Parties agree to submit the matter to the Court for final resolution. Any Class Member disputing the number of Individual Work Weeks and/or Individual PAGA Work Weeks will bear the burden of establishing by documentary evidence and other admissible evidence that Defendant's records are inaccurate or incomplete.

IX. TAX ALLOCATION

- A. The Individual Settlement Payments to Participating Class Members shall consist of the following: (i) 40% wages and (ii) 60% interest and penalties. The Individual PAGA Payments to PAGA Group Members shall constitute 100% penalties.
- B. Because 40% of the gross amount of the Individual Settlement Payments to Class Members constitutes compensation for past services rendered, it shall be considered wages. Accordingly, the Settlement Administrator shall: (i) withhold from the applicable portion of the Individual Settlement Payment the Class Member's share of all appropriate payroll taxes, including federal and state income taxes; (ii) issue to each Class Member and appropriate taxing authorities a Form W-2 statement or its equivalent with respect to the appropriate portion of the Individual Settlement Payment; (iii) issue a Form-1099 to each Class Member and appropriate taxing authorities with respect to the portions of the Individual Settlement Payment representing penalties and interest and, to the extent a Class Member is also a PAGA Group Member, the individual share of the PAGA Payment; and (iv) notify Defendant of its share of any payroll taxes attributable to the employer for the 40% of the gross amount allocated to wages, which amount will be paid separately from the Gross Settlement Amount.
- C. The Settlement Administrator shall be granted reasonable access to Class Member time and pay records to calculate the Individual Settlement Payment to each Class Member. Defendant's records shall be determinative with respect to the number of Individual Work Weeks for the Class Member and shall be presumptively valid subject to Section VIII(F).
- D. **Allocation of Individual Settlement Payment Not Material.** The Court's approval of the allocation of the Individual Settlement Payment for Form 1099 income and Form W-2 income is not a material term of this Agreement. If the Court does not approve or approves a different allocation of the Individual Settlement Payments, the Agreement shall remain intact and all other terms of this Agreement shall apply.
- E. Neither Verizon nor its counsel, nor Class Counsel makes any representation, and have made no representations as to the tax treatment or legal effect of the payments called for in this Settlement Agreement, and Plaintiffs and Class Members are not relying on any statement, representation, or calculation by Verizon, the Settlement Administrator, or Class Counsel in this regard. Plaintiffs, Settlement Class Members, and PAGA Group Members understand and agree that they will be solely responsible for the payment of any taxes and penalties assessed on the payments paid to them and as described in this Settlement Agreement. Plaintiffs, Settlement Class Members, and PAGA Group Members who receive any payment under this Agreement should consult with their tax advisors concerning the tax consequences of any payment that they receive under the Settlement.

X. FINAL SETTLEMENT APPROVAL HEARING

- A. This Agreement cannot become effective, and Defendant shall have no obligation to make any settlement payment contemplated by this Agreement, unless and until the Court conducts a Final Settlement Approval Hearing and the Court enters a Final Approval Order and Judgment, as described below, approving all of the material terms of this Agreement, and the separately pending *Nieto* PAGA Action is dismissed with prejudice as to Nieto and the non-exempt employees and without prejudice as to the exempt employees.
- B. Class Counsel shall be responsible for ensuring that at least the following documents are filed with the Court in advance of the Final Settlement Approval Hearing so that the Court will have a sufficient basis upon which to evaluate and approve the settlement:
1. A final report by the Settlement Administrator listing the following information: (i) a declaration by the Settlement Administrator confirming that the Notice Packets were timely mailed to Class Members as required by this Agreement; and (ii) the names (with no other identifying information) of all persons who submitted timely and complete requests for exclusion;
 2. A duly noticed motion for final approval of this Settlement, accompanying memorandum of points and authorities prepared by Class Counsel, and such other pleadings, evidence or other documents as may be necessary for the Court to determine that the Settlement documented by this Agreement is fair, adequate and reasonable; as well as a duly noticed motion for attorneys' fees, costs, and enhancement awards;
 3. A Proposed Final Approval Order and Judgment for the Court's signature, approving the material terms of the Settlement documented by this Agreement as being fair, adequate and reasonable. The Parties shall jointly prepare the Proposed Final Approval Order and Judgment to be submitted in the form mutually agreed to by the Parties.
 4. The Parties agree that within **five (5) business days** after the date the Final Approval Order and Judgment is entered by the Court in the *Loera/Nieto* Class/PAGA Action, the Parties shall file a joint stipulation for the dismissal of the *Nieto* PAGA Action with prejudice as to Nieto and the PAGA claims asserted on behalf of non-exempt retail employees and without prejudice as to exempt retail employees based on the judgment entered in the *Loera/Nieto* Class/PAGA Action. The Parties agree to take any other necessary steps to dismiss the *Nieto* PAGA Action with prejudice as to Nieto and the PAGA claims asserted on behalf of non-exempt retail employees and without prejudice as to exempt retail employees, with fees and costs to be borne separately by each party. Class Counsel shall not be

entitled to recover any additional fees or costs in the *Nieto* PAGA action, including any fees for undertaking the dismissal described in this paragraph.

5. The Parties will cooperate to finalize the motion for final settlement approval and supporting papers to be prepared by Class Counsel. Class Counsel shall provide Verizon's counsel with a copy of the draft Motion for Final Settlement Approval and supporting declaration(s) no later than **five (5) business days** before it is due to be filed and Verizon shall provide Plaintiffs suggested edits, if any, within **three (3) business days** of receipt.
 6. The Motion for Final Settlement Approval will be considered separate and apart from the Court's consideration of any applications for attorneys' fees and costs and/or enhancement payments, and the Court's ruling on any such separate applications will not terminate this Agreement or otherwise affect the Court's ruling on the Motion for Final Settlement Approval.
- C. Class Counsel shall also file with the Court a motion for an award of attorneys' fees in an amount that shall not exceed one-third of the Gross Settlement Amount (i.e., One Million One Hundred Sixty-Six Thousand Six Hundred Sixty-Six Dollars and Sixty-Six Cents (\$1,166,666.66) if the Gross Settlement Amount remains \$3,500,000.00) and a request for reimbursement of actual costs and expenses associated with Class Counsel's litigation and settlement of the Actions, not to exceed Fifty Thousand Dollars (\$50,000.00). Defendant will not oppose Class Counsel's request for reasonable attorneys' fees and costs so long as the amounts requested do not exceed the amounts stated above.
- D. If the Court reduces the attorneys' fees or costs to Class Counsel or to the Settlement Administrator, then this Agreement shall remain intact and the reduced money shall be distributed proportionally to Participating Class Members in pro rata amounts based on their Individual Work Weeks. The Parties agree that regardless of any action taken by the Court or any appellate court with respect to Class Counsel Fees and Costs, the validity of the underlying Settlement shall not be affected.
- E. Class Counsel shall also file with the Court a motion for a representative enhancement award of Ten Thousand Dollars (\$10,000.00) each to Nieto and Loera ("Enhancement Award(s)"), which Defendant agrees not to oppose. The reasonable amount of the Enhancement Awards will be subject to approval by the Court. Nieto and Loera agree that the Settlement Administrator will not withhold any taxes from the Enhancement Awards, will issue a Form 1099 or other appropriate tax form consistent with the classification of the Enhancement Awards, and will issue such additional forms as any state, federal, or local taxing authority shall subsequently require. Nieto and Loera each acknowledge and agree that Defendant and their counsel have made no representations regarding the proper tax treatment of the Enhancement Awards. Nieto and Loera each agree, covenant, and represent that they shall be solely responsible for paying any taxes and penalties payable on their Enhancement Awards and that they shall defend, indemnify, and

hold Defendant and the Releasees (defined below) harmless from any claims, demands, actions, causes of action, losses, costs, attorneys' fees, penalties, or expenses arising from any classification of their Enhancement Awards as taxable income. Class Counsel has the option of combining the motion for an award of attorneys' fees with the motion for the enhancement awards.

- F. If the Court reduces the amount of the Enhancement Awards, then the amount not approved by the Court shall be allocated to the Net Settlement Amount and distributed proportionally to Participating Class Members in pro rata amounts based on their Individual Work Weeks. If the Court does not approve or approves the Enhancement Awards in reduced amount(s), the Agreement shall remain intact and all other terms of this Agreement shall apply. The Parties agree that regardless of any action taken by the Court or any appellate court with respect to the Enhancement Award, the validity of the underlying Settlement shall not be affected.

XI. PAYMENT TO CLASS MEMBERS AND PAGA GROUP MEMBERS

- A. **“Effective Date”.** Defendant shall not be obligated to make any settlement payments contemplated by this Agreement, in any amounts, unless all of the following has occurred: (a) the Court has conducted the Final Settlement Approval Hearing and fully and finally approved all material terms of this Agreement; (b) the Court enters the Final Approval Order granting final approval of this Agreement, enters an appropriate Judgment (including an appropriate judgment or dismissal order in the *Nieto* PAGA Action), and the time period to appeal any such Judgments or orders have been exhausted without any appeals having been filed; (c) to the extent a timely appeal was filed, all such appeals have been voluntarily or involuntarily dismissed, or the appropriate appellate court or the appellate courts have entered a final judgment affirming the Final Approval Order and Judgment as well as the judgment or dismissal order in the *Nieto* PAGA Action without material modification and the final judgment of such appellate court or courts is no longer subject to any further appellate challenge or procedure. The **“Effective Date”** is the date on which all of the events described in this paragraph have occurred and all the conditions specified in Section III(A)(1)-(6) and Section X(A)-(F) have been satisfied.
- B. No later than **ten (10) calendar days** after the Effective Date, Defendant shall ensure a wire transfer to a bank account designated by the Settlement Administrator is effectuated for the Gross Settlement Amount pursuant to the allocation specified in Section III(A) plus Defendant's separate portion of the employer-side payroll taxes. Promptly following that wire transfer, but in no event more than **five (5) business days** following the date the Gross Settlement Amount has deposited into the bank account designated by the Settlement Administrator, the Settlement Administrator shall issue payments to Participating Class Members and PAGA Group Members pursuant to the terms of this Agreement from the above-mentioned designated bank account and issue all necessary and proper tax forms.

- C. The Settlement Administrator shall mail the Individual Settlement Payments and Individual PAGA Payments by First Class U.S. Mail to each Class Member and/or PAGA Group Member's last known address. Checks shall be valid for **one hundred and eighty (180) calendar days** from the date of mailing (the "Check Cashing Deadline"). **Ninety calendar (90) days** after the checks are mailed, the Settlement Administrator will mail reminder postcards to Class Members and PAGA Group Members whose checks remain uncashed. Class Members who do not cash, deposit, or otherwise negotiate their settlement checks within 180 calendar days after mailing by the Settlement Administrator shall be deemed to have waived irrevocably any right in or claim to a settlement payment but shall still be bound by the class action portion of the Settlement and the release of class claims provided therein. It shall be presumed that each Participating Class Member received his, her, or their Individual Settlement Payment and that each PAGA Group Member received his, her, or their Individual PAGA Payment, on the date the payment was deposited in the United States mail, unless the payment is returned to the Settlement Administrator within the Check Cashing Deadline. Any check returned by the post office with a forwarding address within **thirty (30) calendar days** of initial mailing, will be re-mailed within **five (5) calendar days** by the Settlement Administrator to that forwarding address via First Class U.S. Mail. If no forwarding address is provided, the Settlement Administrator shall attempt to determine the correct address using a robust skip trace database, and it shall then perform a re-mailing within **five (5) calendar days**. In accordance with California Code of Civil Procedure Section 384, any checks returned to the Settlement Administrator by the post office as undeliverable after the Settlement Administrator takes such steps, and all funds from checks that are not cashed, deposited, or otherwise negotiated, together with any interest or other amounts received but not disbursed, shall be distributed as follows:
1. The Settlement Administrator shall notify the Parties' counsel of the total amount that was actually paid to the Participating Class Members and PAGA Group Members and the amount of funds that are unclaimed.
 2. At a date set by the Court for a final accounting, in accordance with Code of Civil Procedure Section 384(b), the Parties shall advise the Court of the total amount that was actually paid to the Participating Class Members and PAGA Group Members under this Agreement and the amount of funds that are unclaimed by the Participating Class Members and PAGA Group Members.
 3. The amount of any Individual Settlement Payments and Individual PAGA Payments that remain undeliverable or uncashed 180 calendar days after the postmarked date of the initial mailing of the checks will be paid out to a mutually agreed-upon cy pres recipient(s) pursuant to Code of Civil Procedure section 384. The Parties agree to Legal Aid at Work (<https://legalaidatwork.org/>) as the cy pres recipient.

4. If an appeal has been filed, Defendant will have no obligation to issue any payments identified in this Agreement until such appeal is finally resolved.

XII. PAYMENT OF ATTORNEYS' FEES AND COSTS TO CLASS COUNSEL; SETTLEMENT ADMINISTRATION EXPENSES; ENHANCEMENT AWARDS

- A. No later than **five (5) calendar days** following the date the Gross Settlement Amount has deposited into the bank account designated by the Settlement Administrator, the Settlement Administrator shall transfer the amounts awarded ordered by the Court from the designated bank account:
 1. To Class Counsel, the amounts ordered by the Court for all attorneys' fees and costs incurred in prosecuting the Actions. More specifically, in terms of the attorneys' fees awarded by the Court, 60% shall be transferred to the Law Offices of Mark Yablonovich and 40% shall be transferred to Lawyers for Justice, PC. In terms of the attorneys' costs, Class Counsel shall be paid their share of the costs awarded by the Court.
 2. To the Settlement Administrator, the amounts ordered by the Court for all its expenses.
 3. To Nieto and Loera, the amount ordered by the Court for the Enhancement Awards.
 4. To the LWDA, the LWDA Payment.

XIII. PAYMENT OF SETTLEMENT AMOUNTS TO CLASS MEMBERS AS ORDERED BY THE COURT

- A. **Gross Settlement Amount.** The Parties agree that, except as set forth in Section XIV(C) and the employer share of payroll taxes, under no circumstances shall Defendant be obligated to pay any amount that exceeds **Three Million Five Hundred Thousand Dollars (\$3,500,000.00)**, subject to Section XIV(C).
- B. **No Impact On Contributions To Employee Benefit Plans.** None of the payments made pursuant to this Agreement shall be considered to alter the terms or to grant any rights to additional payments under any employee benefit plans. None of the payments made pursuant to this Agreement shall be considered for purposes of determining eligibility for, vesting or participation in, or contributions to any benefit plan, including, without limitation, all plans subject to the Employee Retirement and Income Security Act of 1974 ("**ERISA**"). Any distribution of payments to Plaintiffs, Class Members, or PAGA Group Members shall not be considered as a payment of wages or compensation under the terms of any applicable benefit plan and shall not affect participation in, eligibility for, vesting in, the amount of any past or future contribution to, or level of benefits under any applicable benefit plan. Any amounts paid will not impact or modify any previously credited hours of service or compensation taken into account under any bonus or incentive plan, benefit plan sponsored or contributed to by Defendant or

any jointly-trusted benefit plan, or for purposes of calculating the regular rate of pay. For purposes of this Agreement, “benefit plan” means each and every “employee benefit plan,” as defined in 29 U.S.C. § 1002(3), and, even if not thereby included, any 401(k) plan, bonus, pension, stock option, stock purchase, stock appreciation, welfare, profit sharing, retirement, disability, vacation, severance, hospitalization, insurance, incentive, deferred compensation, or any other similar benefit plan, practice, program, or policy.

XIV. INVALIDATION OF AGREEMENT FOR FAILURE TO SATISFY CONDITIONS

- A. If any of the material terms or conditions set forth in Sections I through XIII of this Agreement are not fully and completely satisfied, this Agreement shall terminate at the election of either Plaintiffs or Defendant and all terms of the Agreement shall be null and void. In the event the Court fails to enter final judgment in accordance with the material terms of this Agreement, or such final judgment is vacated or reversed, the Actions shall proceed as if no settlement had been attempted and revert back to their prior procedural posture. In such event, nothing in this Agreement shall be used, construed or admissible as evidence by or against any Party as a determination, admission, or concession of any issue of law or fact in the Actions, or in any other proceeding for any purpose; and the Parties do not waive, and instead expressly reserve, their respective rights to prosecute and defend the Actions as if this Agreement never existed.
- B. **Defendant’s Right to Withdraw.** If the number of persons who submit timely and complete requests for exclusion exceeds seven and one-half percent (7.5%) of the total number of Class Members, then, prior to the Final Settlement Approval Hearing, Defendant shall have the sole and absolute discretion to withdraw from this Agreement. If Defendant elects to so withdraw, the withdrawal shall have the same effect as a termination of this Agreement for failure to satisfy a condition of settlement. If Defendant elects to withdraw from this Agreement pursuant to this paragraph, Defendant shall be solely responsible for any costs of administration that have been incurred by the Settlement Administrator at the time Defendant elects to withdraw from this Agreement.
- C. **Right to Withdraw or Increase Gross Settlement Amount Based on Qualifying Workweeks of Class Members.** If the Class Data reflects that the total number of Individual Work Weeks worked by the Class Members exceeds 361,940 by more than five percent (5%), then either Party shall have the discretion to withdraw from this Agreement. If either Party elects to so withdraw, the withdrawal shall have the same effect as a termination of this Agreement for failure to satisfy a condition of settlement. The Party that elects to withdraw from this Agreement pursuant to this paragraph shall be responsible for any costs of administration that have been incurred by the Settlement Administrator at the time that party elects to withdraw from this Agreement. If the Parties jointly elect to withdraw from this Agreement pursuant to this paragraph, the Plaintiffs on the one hand and Defendant on the other shall be equally responsible (i.e., 50/50) for any costs of administration that have been incurred by the Settlement Administrator at the time the Parties jointly elect

to withdraw from this Agreement. Alternatively, if neither Party elects to withdraw from this Agreement, the Gross Settlement Amount shall be increased proportionately by the Individual Work Weeks worked by the Class Members above the five percent threshold. For example, if the number of Individual Work Weeks increases by six percent, the Gross Settlement will increase by one percent. The Settlement Administrator shall provide to Plaintiffs' Counsel the number of Individual Work Weeks in the Class Data within seven (7) days of receipt of the Class Data pursuant to Section V.A.1. The right to withdraw must be exercised prior to the mailing of the Notice Packet.

- D. If this Agreement is terminated for failure to satisfy any of the material terms or conditions, Defendant shall not be obligated to create or maintain any type of settlement fund and shall not be obligated to make any settlement payment to any Class Member, to Class Counsel, or to Nieto or Loera.

XV. RELEASES, REPRESENTATIONS AND WARRANTIES

A. Class Member Release

1. Release of Claims by Nieto, Loera and Class Members. In exchange for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, upon the Effective Date, all Class Members (including Nieto and Loera) whom the Settlement Administrator certifies have not timely submitted full and complete requests for exclusion (i.e., Participating Class Members), and their respective heirs, assigns, executors, administrators, and agents, past or present (collectively, the “**Class Member Affiliates**”), fully and without limitation waive, fully release, covenant not to sue, and forever discharge Cellco Partnership d/b/a Verizon Wireless, and its former and present parent companies, subsidiaries, and affiliated corporations and entities, and each of their respective former, present, and future officers, directors, members, managers, employees, consultants, vendors, insurers, attorneys, independent contractors, partners, investors, shareholders, joint ventures, third-party agents, successors, assigns, and legal representatives, and each of their heirs, assigns, executors, administrators, agents, employers, and successors, past and present (all of the foregoing are collectively the “**Releasees**”), both individually and collectively, from any and all claims, rights, demands, liabilities, and causes of action of any kind, whether known or unknown, arising from the alleged violation of any provision of common law, California law, and/or federal law which was or could be raised based on the same operative facts or theories asserted in any of Plaintiffs' complaints, amended complaints or in the letters to the Labor and Workforce Development Agency, including but not limited to claims for off-the-clock work, unpaid wages, unpaid overtime wages, failure to pay all wages earned every pay period, failure to pay all compensation at the regular rate of pay or the correct regular rate of pay, failure to provide meal periods or rest periods, unpaid premium wages for meal periods or rest periods, untimely

payment of wages, inaccurate wage statements, recordkeeping violations, failure to timely pay all wages owed upon termination, unfair competition, reimbursement of business expenses, unlawful deductions from wages, reporting time pay violations, failure to provide wage notices, violation of suitable seating requirements, claims under California Labor Code sections 201, 202, 203, 204, 223, 226, 226.3, 226.7, 510, 512, 551, 552, 558, 1174, 1182.12, 1194, 1197, 1197.1, 1198, 2800, 2802, 2804, 2810.5, California Code of Regulations, Title 8 Section 11000 et seq., the applicable Industrial Welfare Commission (IWC) Wage Orders, Business & Professions Code §§ 17200–17208, the Fair Labor Standards Act, or any related damages, penalties, restitution, disgorgement, interest or attorneys’ fees, that arose during the Class Period (the “**Class Member Release of Claims**”).

B. PAGA Release of Claims

1. Release of PAGA Claims. Class Members have no opt out rights as to the PAGA portion of the Settlement. Accordingly, upon the Effective Date, in consideration of the PAGA Payment, Plaintiffs, on behalf of themselves and the State of California Labor and Workforce Development Agency, and all PAGA Group Members (which specifically excludes individuals who were employed by Verizon as exempt retail employees), waive, fully release and forever discharge the Releasees from any and all claims under PAGA which were or could be raised based on the same operative facts or theories asserted in any of Plaintiffs’ complaints, amended complaints or in the letters to the Labor and Workforce Development Agency, and that arose during the PAGA Period, including claims for PAGA penalties under Labor Code sections 2698-2699.5 for violations of California Labor Code sections 201, 202, 203, 204, 223, 226, 226.3, 226.7, 510, 512, 551, 552, 558, 1174, 1182.12, 1194, 1197, 1197.1, 1198, 2800, 2802, 2804, 2810.5, including based on assertions of off-the-clock work, unpaid wages, unpaid overtime wages, failure to pay all wages earned every pay period, failure to pay all compensation at the regular rate of pay or the correct regular rate of pay, failure to provide meal breaks or rest periods, unpaid premium wages for meal periods or rest periods, untimely payment of wages, inaccurate wage statements, recordkeeping violations, failure to timely pay all wages owed upon termination, reporting time pay violations, failure to provide wage notices, reimbursement of business expenses, unlawful deductions from wages, and violation of suitable seating requirements. The “Released PAGA Claims” do not release any non-PAGA (i.e., statutory) right of action and/or wage and hour claim(s) held by individual aggrieved employees. The Released PAGA Claims do not include the claims of any persons classified as exempt.

C. Release by Nieto and Loera, Representations and Warranties

1. General Release by Nieto and Loera. In addition to the Class Member Release of Claims described in this Agreement, Nieto and Loera will each

execute an individual general release of claims, for separate consideration, including their separate and individual claims for misclassification as an exempt employee and any other wage and hour or non-wage and hour claims they may have against Verizon or any of the Releasees, in the form attached as Exhibit B.

2. Representations and Warranties. Nieto and Loera each hereby represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer, or encumber, to any person or entity, any portion of any liability, claim, demand, action, cause of action, or rights herein released and discharged. Nieto and Loera each further agree that they shall not in any way hereafter commence, join, aid, or assist others in pursuing any claim, charge or action against any of the Releasees for any acts or omissions released under this Agreement.

D. No Misrepresentation

The Parties understand that the facts with respect to which this Agreement is entered into may be materially different from those the Parties now believe to be true. The Parties accept and assume this risk, and agree that this Agreement, including specifically the releases contained herein, shall remain in full force and effect, and legally binding, notwithstanding the discovery or existence of any additional or different facts, or any claims with respect to those facts.

XVI. CONFIDENTIALITY

- A. The Parties and their counsel shall keep confidential all settlement communications regarding the negotiation and drafting of this Agreement and its terms, including all communications and information shared in connection with the mediation and settlement negotiations of the Actions (“**Confidential Settlement Information**”), except as required to obtain Court approval of the Settlement.
- B. The Parties agree that they will not make any public statements including any statement to the media regarding the settlement reflected in this Agreement prior to the filing of the motion for preliminary approval of this Agreement. The Parties and their counsel will not issue a press release or otherwise have contact with the media regarding the settlement at any time. Nothing in this paragraph shall restrict Plaintiffs or Class Counsel from making any disclosures necessary to seek Court approval to effectuate the terms of this Agreement, as required by a court of competent jurisdiction or for purposes of enforcement of this Agreement, or as otherwise required by law. Notwithstanding this confidentiality provision, Class Counsel may disclose the terms of this agreement and/or provide a copy of this agreement to any court in support of any motion for approval. In addition, Class Counsel may share information about the mediation and information and/or documents received in preparation for mediation to the Court in support of any motion for approval of the Settlement. Nothing in this paragraph will prohibit Class Counsel from undertaking required submission to the LWDA (including submission of orders, documents, and information about this Settlement to the

LWDA on its website) or from referring to the Settlement after the Effective Date in adequacy of counsel declarations or related court filings in other matters. Unless filed or lodged with the Court as part of seeking preliminary and final settlement approval, the Parties and their Counsel shall not publicize any Confidential Settlement Information on any website, marketing, other advertising material, or in any other manner. Plaintiffs and Class Counsel will not share any Confidential Settlement Information with any other individual or lawyer, nor communicate with any other counsel or any individual about any Confidential Settlement Information, nor utilize it in any way in marketing or advertising materials, including on any website.

- C. Plaintiffs and Class Counsel may disclose the terms of this Agreement to those persons to whom disclosure is necessary to obtain legal, financial, or tax preparation advice. To the extent Plaintiffs make disclosures to such persons, Plaintiffs must inform such persons of this confidentiality provision and take action to ensure that such persons agree to be bound by, and do not violate, the confidentiality provisions herein.

XVII. MISCELLANEOUS PROVISIONS

A. Acknowledgment that the Settlement is Fair and Reasonable

The Parties believe this Agreement is a fair, adequate, and reasonable settlement of the Actions, which was reached after non-collusive, arm's-length negotiations and mediation and in the context of adversarial litigation, considering all relevant factors, present and potential, including the risk of continued litigation. The Parties agree, covenant, and represent that this Agreement, together with Loera's and Nieto's separate individual general release agreements, shall constitute a compromise of, and full accord and satisfaction of disputed claims. The Parties further agree, covenant, and represent that this Agreement shall not be treated as an admission of liability by Defendant at any time, or as an admission by Defendant that class certification, or litigation on a representative basis is proper in the Actions.

B. Representation by Counsel

The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Agreement, and that this Agreement has been executed with the consent and advice of counsel. Further, Nieto and Loera each warrants and represents that they are fully authorized to enter into this Agreement and the terms and conditions thereof, that there are no liens on the Agreement, and that after entry by the Court of the orders specified in this Agreement, the Settlement Administrator may distribute funds to Participating Class Members, PAGA Group Members, Class Counsel, the LWDA, and Nieto and Loera as provided by this Agreement.

C. Deadlines Set by this Agreement and Extensions of Time

If any deadline set by this Agreement falls on a Saturday, Sunday, or Court holiday, the deadline shall be deemed to fall on the next day that is not a Saturday, Sunday, or Court holiday. Further, the Parties may, by mutual agreement, agree upon a reasonable extension of time for

deadlines and dates reflected in this Settlement Agreement, subject to Court approval when required.

D. Notice

All notices, requests, demands and other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be delivered personally, by first class mail, or email to the undersigned persons at their respective addresses as set forth below:

Counsel for Nieto, Loera, and the Class Members:

Arby Aiwarzian
Joanna Ghosh
Brian St. John
LAWYERS FOR JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Telephone: (818) 265-1020

Mark Yablonovich
Monica Balderrama
Tony Roberts
LAW OFFICES OF MARK YABLONOVICH
9595 Wilshire Blvd., Suite 900
Beverly Hills, California 90212
Telephone: (310) 286-0246
Mark@Yablonovichlaw.com
Monica@Yablonovichlaw.com
Tony@Yablonovichlaw.com

Counsel for Defendant:

Steven M. Zadravec
Lauren Dutkiewicz
JONES DAY
3161 Michelson Drive, Suite 800
Irvine, California 92612
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szadravec@jonesday.com
ldutkiewicz@jonesday.com

Brian Jorgensen
JONES DAY
2727 N. Harwood Street, Suite 500

Dallas, TX 75201-1515
Telephone +1.214.969.3741
bmjorgensen@jonesday.com

Settlement Administrator:

Phoenix Administration
1411 N. Batavia St., Suite 105
Orange, CA 92867
Phone number: 800-523-5773

E. Incorporation by Reference

The terms of this Agreement include the Recitals and the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein. The Exhibits to this Agreement are an integral part of the Parties' settlement.

F. Captions

The captions and section numbers in this Agreement are inserted for the reader's convenience, and in no way define, limit, construe, or describe the scope or intent of the provisions of this Agreement.

G. Mutual Preparation

This Agreement has been reviewed by the Parties and their counsel. The Parties have had a full opportunity to negotiate the terms and conditions of this Agreement. Accordingly, the Parties expressly waive the common-law and statutory rule of construction that ambiguities should be construed against the drafter of an agreement, and agree, covenant, and represent that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

H. Entire Agreement

This Agreement, the Settlement and General Release of Claims Agreement by John Loera, the Settlement and General Release of Claims Agreement by Manuel Nieto, and Exhibits A-B (including the Third Amended Consolidated Class and Representative Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, et seq. and Demand for Jury Trial attached as Exhibit 1 to Exhibit A), comprises the Parties' entire agreement. There are no other agreements, written or oral, express or implied, between the Parties with respect to the subject matter hereof except this Agreement, the Settlement and General Release of Claims Agreement by John Loera and the Settlement and General Release of Claims Agreement by Manuel Nieto. The Parties acknowledge that no representations, statements or promises made by any other party, or by their respective agents or attorneys, have been relied upon in entering into this Agreement. The Parties explicitly recognize California Civil Code Section 1625 and California Code of Civil Procedure Section 1856(a), which provide that a written

agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence, and agree that no such extrinsic oral or written representations or terms shall modify, vary, or contradict the terms of this Agreement.

I. Amendment or Modification

This Agreement may be modified or amended only if such modification or amendment is agreed to in writing and signed by a duly authorized representative of the Parties hereto, which writing shall expressly state the intent of the Parties to modify this Agreement.

J. Severability

The Parties to this Agreement agree, covenant, and represent that each and every provision of this Agreement shall be deemed to be contractual, and that they shall not be treated as mere recitals at any time or for any purpose. Therefore, the Parties further agree, covenant, and represent that each provision of this Agreement shall be considered severable, except for the release provisions of Section XV and monetary consideration provisions of Section III.B. of this Agreement. If a court of competent jurisdiction finds the release and monetary consideration provisions of this Agreement to be unenforceable or invalid, then this Agreement shall become null and void. If a court of competent jurisdiction finds any provision other than the release provisions of Section XV and monetary consideration provisions of Section III.B., or part thereof, to be invalid or unenforceable for any reason, that provision, or part thereof, shall remain in full force and effect to the extent allowed by law, and all of the remaining provisions of this Agreement shall remain in full force and effect.

K. Waiver

No waiver of any condition or covenant contained in this Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such Party of the same or any other condition, covenant, right or remedy.

L. Execution and Counterparts

This Agreement, and any other documents required or contemplated to be executed to consummate this Agreement, may be executed in one or more counterparts, each of which shall be deemed an original of this Agreement. All counterparts of any such document together shall constitute one and the same instrument. Any Party may sign and deliver this Agreement by signing on the designated signature block and transmitting that signature page via facsimile or as an attachment to an e-mail to counsel for the other Party. Any signature made and transmitted by facsimile or as an attachment to an e-mail for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the Party who transmits the signature page.

M. Binding on Successors and Assigns

This Agreement shall be binding upon, and shall inure to the benefit of the Parties, including Class Members, as well as their respective heirs, spouses, children, assigns, executors, administrators, successors, beneficiaries, subsidiaries, conservators, representatives, attorneys,

estates, divisions and affiliated corporations and partnerships, past and present, and trustees, directors, officers, shareholders, partners, agents and employees, past and present, of the Parties.

N. California Law Governs

All terms of this Agreement and Exhibits hereto will be governed by and interpreted according to the laws of the State of California.

O. Cooperation in Administration

The Parties agree to fully cooperate with one another to accomplish the terms of this Agreement, including but not limited to, execution of such documents and taking such other action as reasonably may be necessary to implement the terms of this Agreement. The Parties shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by order, suggestion, or recommendation of the Court, or otherwise, to effectuate this Agreement and the terms set forth herein. The Parties' efforts to continue to cooperate and make all best efforts to obtain approval of this Agreement shall only cease after the Parties have exhausted all opportunities to amend or modify this Agreement, including seeking the assistance of the mediator, and the filing of any motions to obtain approval of this Agreement.

P. All Terms Subject to Final Court Approval

All amounts and procedures described in this Agreement herein will be subject to final Court approval.

Q. Disputes

If the Parties have a dispute with regard to the language of this Agreement, they agree to first attempt to resolve the dispute informally through good-faith negotiations, but if those efforts are unsuccessful, the Court retains full jurisdiction to interpret, construe, and enforce the terms of this Agreement.

R. Judgment and Continued Jurisdiction

The Court shall retain jurisdiction pursuant to California Code of Civil Procedure Section 664.6 over the implementation of this Agreement as well as any and all matters arising out of, or related to, the implementation of this Agreement and Settlement including post-Judgment matters as may be appropriate under court rules or as set forth in this Agreement.

S. Interim Stay of Proceedings.

The Parties agree to refrain from further litigation, except such proceedings as necessary to seek and obtain preliminary and final settlement approval. If this Agreement is not finally approved, the Parties agree that they will revert to their positions in the lawsuit prior to the time they entered into this Agreement, and no agreements set forth in this Agreement or any documents generated or orders issued related to this Agreement will be admissible in any future proceeding, in the Actions or in any other action.

T. Circular 230 Disclaimer

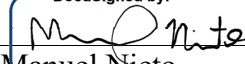
EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT: (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

THE UNDERSIGNED ACKNOWLEDGE THAT EACH HAS READ THE FOREGOING AGREEMENT AND ACCEPTS AND AGREES TO THE PROVISIONS CONTAINED THEREIN, AND HEREBY EXECUTES IT VOLUNTARILY WITH FULL KNOWLEDGE OF ITS CONSEQUENCES.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates indicated below.

PLAINTIFFS

Dated: 11/8/2023

DocuSigned by:

 Manuel Nieto
 E5682D9E-F5A2...

John Loera

DEFENDANTS

Dated: _____

Name:
 Title:
 On behalf of CELLCO PARTNERSHIP d/b/a
 VERIZON

T. Circular 230 Disclaimer

EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT: (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates indicated below.

PLAINTIFFS

Dated: _____

11/17/2023

Manuel Nieto
Electronically signed by Manuel Nieto on 2023-11-18 04:12:39 UTC - 174.194.194.167
Nintex AssureSign® 4a07cccb-25b8-4a81-ae63-b0b601508684

John Loera

DEFENDANTS

Dated: _____

Name:
Title:
On behalf of CELLCO PARTNERSHIP d/b/a
VERIZON

T. Circular 230 Disclaimer

EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT: (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates indicated below.

PLAINTIFFS

Dated: _____

Manuel Nieto

John Loera

DEFENDANTS

Dated: Nov 9, 2023

Daniel P. Murphy

Name: Daniel P. Murphy

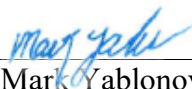
Title: Authorized Signatory

On behalf of CELLCO PARTNERSHIP d/b/a
VERIZON

Approved as to form and agrees to be bound by the confidentiality provisions in the Agreement:

LAW OFFICES OF MARK YABLONOVICH

Dated: November 8, 2023



Mark Yablonoich
Attorney for Plaintiff Manuel Nieto

LAWYERS *FOR* JUSTICE, PC

Dated: _____

Joanna Ghosh
Attorney for Plaintiff John Loera

JONES DAY

Dated: _____

Steven M. Zadravec
Attorney for Defendant

NAI-1536781406

Approved as to form and agrees to be bound by the confidentiality provisions in the Agreement:

LAW OFFICES OF MARK YABLONOVICH

Dated: _____

Mark Yablonovich
Attorney for Plaintiff Manuel Nieto

LAWYERS FOR JUSTICE, PC

Dated: November 20, 2023



Joanna Ghosh
Attorney for Plaintiff John Loera

JONES DAY

Dated: _____

Steven M. Zadravec
Attorney for Defendant

NAI-1536781406

Approved as to form and agrees to be bound by the confidentiality provisions in the Agreement:

LAW OFFICES OF MARK YABLONOVICH

Dated: _____

Mark Yablonovich
Attorney for Plaintiff Manuel Nieto

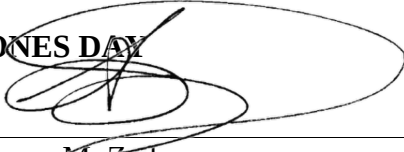
LAWYERS FOR JUSTICE, PC

Dated: _____

Joanna Ghosh
Attorney for Plaintiff John Loera

JONES DAY

Dated: November 10, 2023



Steven M. Zadravec
Attorney for Defendant

NAI-1536781406

EXHIBIT A

Loera, et al. v. Cellco Partnership dba Verizon Wireless, Case No. 21CV386962

Arby Aiwazian (SBN 269827)
Joanna Ghosh (SBN 272479)
Brian J. St John (SBN 304112)
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Telephone: (818) 265-1020
Facsimile: (818) 265-1021

Attorneys for Plaintiff John Loera

Additional counsel listed on following page

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

JOHN LOERA, individually; and MANUEL
NIETO, individually, and on behalf of other
members of the general public similarly
situated,

Plaintiffs,

vs.

CELLCO PARTNERSHIP D/B/A VERIZON
WIRELESS, an unknown business entity; and
DOES 1 through 100, inclusive,

Defendants.

JOHN LOERA, individually, and on behalf of
other aggrieved employees pursuant to
California Private Attorneys General Act,

Plaintiff,

vs.

CELLCO PARTNERSHIP D/B/A VERIZON
WIRELESS, an unknown business entity; and
DOES 1 through 100, inclusive,

Defendants.

Case No.: 21CV386962

CLASS ACTION

Honorable Sunil R. Kulkarni
Department 1

**JOINT STIPULATION TO CONSOLIDATE
ACTIONS AND LEAVE TO FILE THIRD
AMENDED COMPLAINT**

[[Proposed] Order concurrently submitted]

Complaint Filed: September 22, 2021
FAC Filed: January 30, 2023
SAC Filed: March 15, 2023
Jury Trial: Not Set

Case No.: 21CV386960

1 **LAW OFFICES OF MARK YABLONOVICH**

2 Mark Yablonovich (SBN 186670)
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4 Monica Balderrama (SBN 196424)
5 Monica@Yablonovichlaw.com
6 Tony Roberts (SBN 315595)
7 Tony@Yablonovichlaw.com
8 9595 Wilshire Boulevard, Suite 900
9 Beverly Hills, California 90212-2511
10 Telephone: (310) 286-0246 • Fax: (310) 407-5391

11 Attorneys for Plaintiff Manuel Nieto

12 **JONES DAY**

13 Steven M. Zadravec, Bar No. 185676
14 szadravec@jonesday.com
15 Lauren E. Dutkiewicz, Bar No. 329017
16 ldutkiewicz@jonesday.com
17 3161 Michelson Drive, Suite 800
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26 Facsimile: +1.844.345.3178

27 Brian M. Jorgensen (*admitted pro hac vice*)
28 bmjorgensen@jonesday.com
29 2727 N. Harwood Street, Suite 500
30 Dallas, TX 75201.1515
31 Telephone: +1.214.969.3741
32 Facsimile: +1.214.969.5100

33 Attorneys for Defendant Cellco Partnership

1 Subject to Court approval, Plaintiffs John Loera and Manuel Nieto (“Plaintiffs”) and
2 Defendant Cellco Partnership dba Verizon Wireless (“Defendant”) (collectively, the “Parties”)
3 agree and stipulate as follows:

4 1. On September 22, 2021, Plaintiff Loera filed a wage and hour class action
5 complaint against Defendant in Santa Clara County Superior Court entitled *John Loera v.*
6 *Cellco Partnership dba Verizon Wireless*, Case No. 21CV386962 (the “*Loera/Nieto Class*
7 *Action*”).

8 2. On September 22, 2021, Plaintiff Loera also filed a wage and hour Private
9 Attorneys General Act complaint against Defendant in Santa Clara County Superior Court
10 entitled *John Loera v. Cellco Partnership dba Verizon Wireless*, Case No. 21CV386960 (the
11 “*Loera PAGA Action*”).

12 3. An existing Private Attorneys General Act case had been filed on January 20,
13 2021, by Plaintiff Nieto, entitled *Manuel Nieto v. Cellco Partnership dba Verizon Wireless*, in
14 Santa Cruz County Superior Court, Case No. 21CV00136 (the “*Nieto PAGA Action*”).

15 4. On March 15, 2023, with the Court’s permission, Plaintiff Loera filed a second
16 amended class action complaint which added Plaintiff Manuel Nieto as a named plaintiff and
17 putative class representative to the *Loera Class Action* (also referred to as the *Loera/Nieto*
18 *Class Action*).

19 5. On October 10, 2022, the Parties to the *Loera Class Action*, *Loera PAGA*
20 *Action*, and the *Nieto PAGA Action* attended a full-day private mediation with Michael
21 Dickstein, Esq. of Dickstein Dispute Resolution. While the Parties did not reach a resolution
22 of the claims during that mediation, they continued mediated settlement discussions through
23 the mediator. After months of arm’s length, non-collusive negotiations with the mediator’s
24 assistance, the Parties reached a settlement of the three actions.

25 6. As part of the proposed class action settlement, the Parties have agreed, among
26 other things, to consolidate the two cases pending before this Court—the *Loera/Nieto Class*
27 *Action* and the *Loera PAGA Action*—to facilitate the administration of the proposed
28 settlement. To effectuate that consolidation, Plaintiffs will seek permission to file a Third

1 Amended Consolidated Class and Representative Action Complaint for Damages and
2 Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq.
3 and Demand for Jury Trial (the “TAC”), incorporating the claims and allegations currently in
4 the *Loera* PAGA Action and the *Nieto* PAGA Action into one complaint, before filing a
5 Motion for Preliminary Approval of Class Action Settlement.

6 7. Consolidation of the *Loera/Nieto* Class Action and the *Loera* PAGA Action and
7 claims is warranted given the global resolution to avoid repetitive motion practice, prevent
8 unnecessary costs and delays, avoid inconsistent adjudications, and serve judicial economy.

9 8. The TAC in this matter does not confer jurisdiction to any federal court, and
10 therefore this matter will not be removed to federal court.

11 9. Consolidating the cases and claims will not prejudice any of the Parties, but will
12 rather serve the interests of justice and preserve judicial resources.

13 10. The Parties enter into this Joint Stipulation for settlement purposes only.
14 Defendant shall maintain all of its affirmative defenses and this Stipulation shall not be
15 deemed a waiver of any affirmative defenses or of any other legal or factual position
16 maintained by Defendant in defense of the alleged claims in the actions, including any
17 argument that the cases should not be consolidated.

18 11. Defendant in no way agrees an amendment would be appropriate outside the
19 context of this Settlement and the Parties expressly agree that, should the Settlement not be
20 approved by the Court, Defendant reserves the right, without prejudice, to contest the TAC.

21 12. The Parties stipulate to Plaintiffs being granted leave to file, and the filing of, the
22 [Proposed] Third Amended Consolidated Class and Representative Action Complaint for
23 Damages and Enforcement Under the Private Attorneys General Act, California Labor Code §
24 2698, Et Seq. and Demand for Jury Trial attached hereto as Exhibit 1.

25 13. The TAC will be deemed filed and served as of the entry date of the Order
26 granting this Joint Stipulation.

27 14. Defendant’s time to file a responsive pleading to the TAC shall be stayed
28 pending settlement approval.

1 15. The Parties submit a proposed order authorizing the consolidation and the filing
2 of the TAC concurrently with submission of this Stipulation.

3 16. None of the Parties have previously requested similar relief from this Court.

4 **NOW THEREFORE:**

5 1. The *Loera/Nieto* Class Action (Case No. 21CV386960) and the *Loera* PAGA
6 Action (Case No. 21CV386960) shall be consolidated pursuant to Code of Civil Procedure
7 section 1048(a);

8 2. The *Loera/Nieto* Class Action (Case No. 21CV386960) shall be designated as
9 the lead case pursuant to Rule 3.350(b) of the California Rules of Court;

10 3. Plaintiffs shall be granted leave of court to file the [Proposed] Third Amended
11 Consolidated Class and Representative Action Complaint for Damages and Enforcement
12 Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. and Demand
13 for Jury Trial attached as Exhibit 1 to this Stipulation.

14 4. The Third Amended Consolidated Class and Representative Action Complaint
15 for Damages and Enforcement Under the Private Attorneys General Act, California Labor
16 Code § 2698, et seq. and Demand for Jury Trial will be deemed filed and served as of the date
17 of the Order granting this Stipulation.

18 5. Defendant's time to file a responsive pleading to the TAC shall be stayed
19 pending settlement approval. If the Parties' class action and PAGA representative action
20 settlement agreement is not approved, Defendant shall have 30 days from the date of the final
21 order refusing to approve of the Parties' agreement to respond to the TAC.

22 6. Nothing in this Order and the Parties' Stipulation shall operate as a waiver of
23 any rights that either Plaintiffs or Defendant may have in the actions, except that Defendant
24 agrees not to remove the actions to federal court.

25 7. The Parties respectfully request that the Court permit Plaintiffs to file the TAC
26 attached as Exhibit 1.

27
28 **IT IS SO STIPULATED.**

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Dated: November 28, 2023

LAWYERS *for* JUSTICE, PC

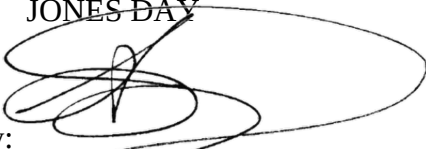
By: 
Joanna Ghosh
Brian J. St. John
Attorneys for Plaintiff John Loera

Dated:

LAW OFFICES OF MARK
YABLONOVICH

By: _____
Mark Yablonovich
Monica Balderrama
Tony Roberts
Attorneys for Plaintiff Manuel Nieto

Dated: November 10, 2023

JONES DAY

By: _____
Steven M. Zadravec
Cindi L. Ritchey
Brian Jorgensen
Attorneys for Defendant Cellco
Partnership

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Dated:

LAWYERS *for* JUSTICE, PC

By: _____

Joanna Ghosh
Brian J. St. John
Attorneys for Plaintiff John Loera

Dated: November 9, 2023

LAW OFFICES OF MARK
YABLONOVICH

By:  _____

Mark Yablónovich
Monica Balderrama
Tony Roberts
Attorneys for Plaintiff Manuel Nieto

Dated:

JONES DAY

By: _____

Steven M. Zadravec
Cindi L. Ritchey
Brian Jorgensen
Attorneys for Defendant Cellco
Partnership

EXHIBIT 1

Loera, et al. v. Cellco Partnership dba Verizon Wireless, Case No. 21CV386962

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Joanna Ghosh (SBN 272479)
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Attorneys for Plaintiff John Loera

[Additional Plaintiffs' Counsel on Next Page]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

JOHN LOERA, individually; and MANUEL
NIETO, individually, and on behalf of other
members of the general public similarly
situated and on behalf of other aggrieved
employees pursuant to the California Private
Attorneys General Act,

Plaintiffs,

vs.

CELLCO PARTNERSHIP D/B/A VERIZON
WIRELESS, an unknown business entity; and
DOES 1 through 100, inclusive,

Defendants.

Case No.: 21CV386962

**[PROPOSED] THIRD AMENDED
CONSOLIDATED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR DAMAGES AND
ENFORCEMENT UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE § 2698, ET
SEQ. AND DEMAND FOR JURY TRIAL**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 223, 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment);
- (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (8) Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll Records);
- (9) Violation of California Labor Code

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§§ 2800 and 2802 (Unreimbursed
Business Expenses);
(10) Violation of California Business &
Professions Code § 17200, et seq.;
and
(11) Violation of California Labor Code
§ 2698, et seq. (Private Attorneys
General Act of 2004)

1 **LAW OFFICES OF MARK YABLONOVICH**

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4 Monica Balderrama (SBN 196424)

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8 9595 Wilshire Boulevard, Suite 900

9 Beverly Hills, California 90212-2511

10 Telephone: (310) 286-0246 • Fax: (310) 407-5391

11 Attorneys for Plaintiff Manuel Nieto

COMES NOW, Plaintiff JOHN LOERA (“Plaintiff Loera”), individually and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act (“PAGA”); and Plaintiff MANUEL NIETO (“Plaintiff Nieto”) (collectively, “Plaintiffs”), individually, and on behalf of other members of the general public similarly situated, and on behalf of other aggrieved employees pursuant to PAGA, and allege as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to the California Code of Civil Procedure section 382. The monetary damages and restitution sought by Plaintiffs exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. The “amount in controversy” for the named Plaintiffs, including but not limited to claims for compensatory damages, restitution, penalties, wages, premium pay, and pro rata share of attorneys’ fees, is less than seventy-five thousand dollars (\$75,000).

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendant because, upon information and belief, Defendant is a citizen of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by California courts consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court because, upon information and belief, Defendant maintains offices, has agents, employs individuals, and/or transacts business in the State of California, County of Santa Clara.

PARTIES

5. Plaintiff JOHN LOERA is an individual residing in the State of California.
Plaintiff MANUEL NIETO is an individual residing in the State of California.

///

///

1 6. Defendant CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS, at all times
2 herein mentioned, was and is, upon information and belief, an employer whose employees are
3 engaged throughout the State of California, including the County of Santa Clara.

4 7. At all relevant times, Defendant CELLCO PARTNERSHIP D/B/A VERIZON
5 WIRELESS was the “employer” of Plaintiffs within the meaning of all applicable California
6 laws and statutes.

7 8. At all times herein relevant, Defendants CELLCO PARTNERSHIP D/B/A
8 VERIZON WIRELESS, and DOES 1 through 100, and each of them, were the agents, partners,
9 joint venturers, joint employers, representatives, servants, employees, successors-in-interest, co-
10 conspirators and/or assigns, each of the other, and at all times relevant hereto were acting within
11 the course and scope of their authority as such agents, partners, joint venturers, joint employers,
12 representatives, servants, employees, successors, co-conspirators and/or assigns, and all acts or
13 omissions alleged herein were duly committed with the ratification, knowledge, permission,
14 encouragement, authorization and/or consent of each defendant designated as a DOE herein.

15 9. The true names and capacities, whether corporate, associate, individual or
16 otherwise, of defendants DOES 1 through 100, inclusive, are unknown to Plaintiffs who sue said
17 defendants by such fictitious names. Plaintiffs are informed and believe, and based on that
18 information and belief allege, that each of the defendants designated as a DOE is legally
19 responsible for the events and happenings referred to in this Complaint, and unlawfully caused
20 the injuries and damages to Plaintiffs, the other class members, and the other aggrieved
21 employees as alleged in this Complaint. Plaintiffs will seek leave of court to amend this
22 Complaint to show the true names and capacities when the same have been ascertained.

23 10. Defendant CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS and DOES
24 1 through 100 will hereinafter collectively be referred to as “Defendants.”

25 11. Plaintiffs further allege that Defendants directly or indirectly controlled or
26 affected the working conditions, wages, working hours, and conditions of employment of
27 Plaintiffs, the other class members, and the other aggrieved employees so as to make each of said
28 Defendants employers liable under the statutory provisions set forth herein.

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13. Plaintiff Nieto brings this action on his own behalf and on behalf of all other members of the general public similarly situated, and, thus, seeks class certification under California Code of Civil Procedure section 382.

14. The proposed class and subclasses are defined as follows:

All current and former hourly-paid or non-exempt employees who worked for any of the Defendants within the State of California at any time during the period from four years preceding the filing of this Complaint (in addition to all days the period was stayed or tolled) to final judgment and who reside in California.

Subclass A. All class members who were required by Defendants to stay on Defendants' premises for rest breaks.

Subclass B. All class members who received overtime compensation at a rate lower than their respective regular rate of pay because Defendants failed to include all non-discretionary bonuses, shift differentials, or other incentive-based compensation in the calculation of the regular rate of pay for overtime pay purposes.

///

- 1 a. Numerosity: The class members are so numerous that joinder of all class
2 members is impracticable. The membership of the entire class is unknown
3 to Plaintiff Nieto at this time; however, the class is estimated to be greater
4 than fifty (50) individuals and the identity of such membership is readily
5 ascertainable by inspection of Defendants' employment records.
- 6 b. Typicality: Plaintiff Nieto's claims are typical of all other class members'
7 as demonstrated herein. Plaintiff Nieto will fairly and adequately protect
8 the interests of the other class members with whom he has a well-defined
9 community of interest.
- 10 c. Adequacy: Plaintiff Nieto will fairly and adequately protect the interests of
11 each class member, with whom he has a well-defined community of
12 interest and typicality of claims, as demonstrated herein. Plaintiff Nieto
13 has no interest that is antagonistic to the other class members. Plaintiff
14 Nieto's attorneys, the proposed class counsel, are versed in the rules
15 governing class action discovery, certification, and settlement. Plaintiff
16 Nieto has incurred, and during the pendency of this action will continue to
17 incur, costs and attorneys' fees, that have been, are, and will be necessarily
18 expended for the prosecution of this action for the substantial benefit of
19 each class member.
- 20 d. Superiority: A class action is superior to other available methods for the
21 fair and efficient adjudication of this litigation because individual joinder
22 of all class members is impractical.
- 23 e. Public Policy Considerations: Certification of this lawsuit as a class action
24 will advance public policy objectives. Employers of this great state
25 violate employment and labor laws every day. Current employees are
26 often afraid to assert their rights out of fear of direct or indirect retaliation.
27 However, class actions provide the class members who are not named in
28 the complaint anonymity that allows for the vindication of their rights.

1 17. There are common questions of law and fact as to the class members that
2 predominate over questions affecting only individual members. The following common
3 questions of law or fact, among others, exist as to the members of the class:

- 4 a. Whether Defendants' failure to pay wages, without abatement or
5 reduction, in accordance with the California Labor Code, was willful;
- 6 b. Whether Defendants had a corporate policy and practice of failing to pay
7 their hourly-paid or non-exempt employees within the State of California
8 for all hours worked and missed (short, late, interrupted, and/or missed
9 altogether) meal periods and rest breaks in violation of California law;
- 10 c. Whether Defendants required Plaintiffs and the other class members to
11 work over eight (8) hours per day, over forty (40) hours per week, and/or
12 over six (6) days and failed to pay the legally required overtime
13 compensation to Plaintiffs and the other class members;
- 14 d. Whether Defendants deprived Plaintiffs and the other class members of
15 meal and/or rest periods or required Plaintiffs and the other class members
16 to work during meal and/or rest periods without compensation;
- 17 e. Whether Defendants failed to use earned commissions, non-discretionary
18 bonuses, non-discretionary monetary and non-monetary incentives, non-
19 discretionary production and/or performance pay, and/or shift differentials
20 to calculate the regular rate of pay where Plaintiffs and the other class
21 members earned commissions, non-discretionary bonuses, non-
22 discretionary monetary and non-monetary incentives, non-discretionary
23 production and/or performance pay, and/or shift differentials and overtime
24 or other wages that were supposed to be based on the appropriate
25 calculation of the regular rate of pay;
- 26 f. Whether Defendants deprived Plaintiffs and the other class members of
27 fully compliant meal and/or rest periods or required Plaintiffs and the
28 other class members to work during meal and/or rest periods without

- 1 compensation;
- 2 g. Whether Defendants failed to pay minimum wages and all compensation
- 3 earned (e.g., by requiring forfeiture of compensation due for commissions
- 4 and bonuses earned) to Plaintiffs and the other class members for all hours
- 5 worked;
- 6 h. Whether Defendants failed to pay all wages due to Plaintiffs and the other
- 7 class members within the required time upon their discharge or
- 8 resignation;
- 9 i. Whether Defendants failed to timely pay all wages due to Plaintiffs and
- 10 the other class members during their employment;
- 11 j. Whether Defendants complied with wage reporting as required by the
- 12 California Labor Code, including, *inter alia*, section 226;
- 13 k. Whether Defendants failed to provide a day of rest to Plaintiffs and other
- 14 class members as required by California Labor Code sections 551 and
- 15 552;
- 16 l. Whether Defendants kept complete and accurate payroll records as
- 17 required by the California Labor Code, including, *inter alia*, section
- 18 1174(d);
- 19 m. Whether Defendants failed to reimburse Plaintiffs and the other class
- 20 members for necessary business-related expenses and costs;
- 21 n. Whether Defendants' conduct was willful or reckless;
- 22 o. Whether Defendants engaged in unfair business practices in violation of
- 23 California Business & Professions Code section 17200, et seq.;
- 24 p. The appropriate amount of damages, restitution, and/or monetary penalties
- 25 resulting from Defendants' violations of California law; and
- 26 q. Whether Plaintiffs and the other class members are entitled to
- 27 compensatory damages pursuant to the California Labor Code.

28 ///

PAGA ALLEGATIONS

18. At all times herein set forth, PAGA was applicable to Plaintiffs' employment by Defendants.

19. At all times herein set forth, PAGA provides that any provision of law under the California Labor Code that provides for a civil penalty, including unpaid wages and premium wages, to be assessed and collected by the LWDA for violations of the California Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

20. Pursuant to PAGA, a civil action under PAGA may be brought by an "aggrieved employee," who is any person that was employed by the alleged violator and against whom one or more of the alleged violations was committed.

21. Plaintiffs were employed by Defendants and the alleged violations were committed against them during their time of employment and they are, therefore, aggrieved employees. Plaintiffs and the other current and former hourly-paid or non-exempt employees are "aggrieved employees" as defined by California Labor Code section 2699(c) in that they are current or former employees of Defendants, and one or more of the alleged violations were committed against them.

22. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee, including Plaintiffs, may pursue a civil action arising under PAGA after the following requirements have been met:

- a. The aggrieved employee shall give written notice by certified mail (hereinafter "Employee's Notice") to the LWDA and the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.
- b. The LWDA shall provide notice (hereinafter "LWDA Notice") to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violations within sixty (60) calendar days

1 of the postmark date of the Employee's Notice. Upon receipt of the
2 LWDA Notice, or if the LWDA Notice is not provided within sixty-five
3 (65) calendar days of the postmark date of the Employee's Notice, the
4 aggrieved employee may commence a civil action pursuant to California
5 Labor Code section 2699 to recover civil penalties in addition to any other
6 penalties to which the employee may be entitled.

7 23. On November 16, 2020, Plaintiff Nieto provided written notice by online
8 submission to the LWDA and by certified mail to Defendant Cellco Partnership dba Verizon
9 Wireless of the specific provisions of the California Labor Code alleged to have been violated,
10 including facts and theories to support the alleged violations, in accordance with the applicable
11 filing fee of seventy-five dollars (\$75). Plaintiff Nieto did not receive an LWDA Notice within
12 sixty-five (65) days of the date of the submission of Plaintiff Nieto's notice.

13 24. On July 15, 2021, Plaintiff Loera provided written notice by online submission to
14 the LWDA and by certified mail to Defendant Cellco Partnership dba Verizon Wireless of the
15 specific provisions of the California Labor Code alleged to have been violated, including facts
16 and theories to support the alleged violations. Plaintiff Loera did not receive an LWDA Notice
17 within sixty-five (65) days of the date of the submission of Plaintiff Loera's notice.

18 25. Therefore, the administrative prerequisites under California Labor Code section
19 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies, for
20 violations of California Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512(a),
21 551, 552, 558, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2800, 2802, and 2810.5, as well as
22 all applicable Industrial Welfare Commission Wage Orders, including and not limited to, Wage
23 Order Nos. 4-2001 and 7-2001.

24 **GENERAL ALLEGATIONS**

25 26. At all relevant times set forth herein, Defendants employed Plaintiffs and other
26 persons as hourly-paid or non-exempt employees within and throughout the State of California,
27 including the County of Santa Clara. Plaintiffs spent the majority of their working time
28 performing the job duties of non-exempt hourly employees, and lacked discretion and

1 independent judgment in performing said duties.

2 27. Defendants, jointly and severally, employed Plaintiff Nieto as an hourly-paid,
3 non-exempt employee from approximately November of 2010 to March of 2020, including
4 during the proposed Class Period, in the State of California, counties of Santa Clara and Santa
5 Cruz.

6 28. Defendants, jointly and severally, employed Plaintiff Loera as an hourly-paid,
7 non-exempt employee then in a position classified as exempt but required him to perform job
8 duties in such ways that he was required to be paid as a non-exempt employee from
9 approximately November 2010 to approximately April 2019 in the State of California.

10 29. Defendants hired Plaintiffs and the other class members, classified them as
11 hourly-paid or non-exempt employees, and failed to compensate them for all hours worked and
12 missed, short, late, and/or interrupted meal periods and/or rest breaks.

13 30. Defendants had the authority to hire and terminate Plaintiffs and the other class
14 members, to set work rules and conditions governing Plaintiffs' and the other class members'
15 employment, and to supervise their daily employment activities.

16 31. Defendants exercised sufficient authority over the terms and conditions of
17 Plaintiffs' and the other class members' employment for them to be joint employers of Plaintiffs
18 and the other class members.

19 32. Defendants directly hired and paid wages and benefits to Plaintiffs and the other
20 class members.

21 33. Defendants continue to employ hourly-paid or non-exempt employees within the
22 State of California.

23 34. Plaintiffs and the other class members worked over eight (8) hours in a day, forty
24 (40) hours in a week, and/or seven (7) days in a workweek during their employment with
25 Defendants.

26 35. Plaintiffs are informed and believe, and based thereon allege, that Defendants
27 engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt
28 employees and within the State of California. This pattern and practice involved, *inter alia*,

1 failing to pay them for all regular and/or overtime wages earned and for missed meal periods and
2 rest breaks in violation of California law.

3 36. Plaintiffs are informed and believe, and based thereon allege, that Defendants
4 knew or should have known that Plaintiffs and the other class members were entitled to receive
5 certain wages for overtime compensation and that they were not receiving accurate overtime
6 compensation for all overtime hours worked.

7 37. Plaintiffs are informed and believe, and based thereon allege, that Defendants
8 failed to use earned commissions, non-discretionary bonuses, non-discretionary monetary and
9 non-monetary incentives, non-discretionary production and/or performance pay, and/or shift
10 differentials to calculate the regular rate of pay where Plaintiffs and the other class members
11 earned commissions, non-discretionary bonuses, non-discretionary monetary and non-monetary
12 incentives, non-discretionary production and/or performance pay, and/or shift differentials and
13 earned overtime or other wages that were supposed to be based on the appropriate calculation of
14 the regular rate of pay.

15 38. Plaintiffs are informed and believe, and based thereon allege, that Defendants
16 failed to provide Plaintiffs and the other class members all required rest and meal periods during
17 the relevant time period as required under the Industrial Welfare Commission Wage Orders and
18 thus they are entitled to any and all applicable penalties.

19 39. Plaintiffs are informed and believe, and based thereon allege, that Defendants
20 knew or should have known that Plaintiffs and the other class members were entitled to receive
21 all meal periods or payment of one additional hour of pay at Plaintiffs' and the other class
22 member's regular rate of pay when a meal period was missed, short, late, or interrupted, and they
23 did not receive all meal periods or payment of one additional hour of pay at Plaintiffs' and the
24 other class member's regular rate of pay when a meal period was missed, short, late, or
25 interrupted.

26 40. Plaintiffs are informed and believe, and based thereon allege, that Defendants
27 failed to relieve Plaintiffs and the other class members of all duties, failed to relinquish control
28 over Plaintiffs and the other class members' activities, failed to permit Plaintiffs and the other

1 class members a reasonable opportunity to take, and impeded or discouraged them from taking
2 thirty (30) minute uninterrupted meal breaks no later than the end of their fifth hour of work for
3 shifts lasting at least six (6) hours, and/or take second thirty (30) minute uninterrupted meal
4 breaks no later than their tenth hour of work for shifts lasting more than ten (10) hours.

5 41. Plaintiffs are informed and believe, and based thereon allege, that Defendants
6 knew or should have known that Plaintiffs and the other class members were entitled to receive
7 all rest periods or payment of one additional hour of pay at Plaintiffs' and the other class
8 member's regular rate of pay when a rest period was missed, short, late, or interrupted and they
9 did not receive all rest periods or payment of one additional hour of pay at Plaintiffs' and the
10 other class members' regular rate of pay when a rest period was missed short, late, or interrupted.

11 42. Plaintiffs are informed and believe, and based thereon allege, that Defendants
12 knew or should have known that Plaintiffs and the other class members were entitled to receive
13 at least minimum wages for compensation and that they were not receiving at least minimum
14 wages for all hours worked.

15 43. Plaintiffs are informed and believe, and based thereon allege, that Defendants
16 knew or should have known that Plaintiffs and the other class members were entitled to receive
17 all wages owed to them upon discharge or resignation, including overtime and minimum wages
18 and meal and rest period premiums, and reporting time pay, and they did not, in fact, receive all
19 such wages owed to them at the time of their discharge or resignation.

20 44. Plaintiffs are informed and believe, and based thereon allege, that Defendants
21 knew or should have known that Plaintiffs and the other class members were entitled to receive
22 all wages owed to them during their employment. Plaintiffs and the other class members did not
23 receive payment of all wages, including overtime and minimum wages and meal and rest period
24 premiums, and reporting time pay within any time permissible under California Labor Code
25 section 204.

26 45. Plaintiffs are informed and believe, and based thereon allege, that Defendants
27 failed to pay all compensation earned by Plaintiffs and other class members and by requiring
28 forfeiture of compensation due for commissions and bonuses earned to Plaintiffs and the other

1 class members as required, pursuant to California Labor Code sections 223, 1182.12, 1194,
2 1197, 1197.1, and 1198, and applicable IWC Wage Orders.

3 46. Plaintiffs are informed and believe, and based thereon allege, that Plaintiffs and
4 the other class members were not provided with a day of rest as required by California Labor
5 Code sections 551 and 552, because they were required to regularly worked in excess of thirty
6 (30) hours in a week and/or six (6) hours in any one (1) day thereof, during workweeks in which
7 they were required to work in excess of six (6) days, without accumulating or being provided the
8 opportunity to take at least one (1) day of rest, and when they accumulated days of rest, they
9 were not actually provided the opportunity to take the equivalent of one (1) day's rest in seven
10 (7) during each calendar month.

11 47. Plaintiffs are informed and believe, and based thereon allege, that Plaintiffs and
12 other aggrieved employees were routinely not permitted to sit and denied suitable seating within
13 the meaning of the California Labor Code and as required by California Labor Code section
14 1198 and applicable IWC Wage Order(s), even if they were not engaged in active duties, namely,
15 although Plaintiffs and other aggrieved employees were able to perform tasks such as cashiering
16 or assisting customers, Defendants refused to provide seats, and on some occasions, Defendants
17 failed to provide suitable seating for retail workers who could have performed their duties and
18 even encouraged seating to be removed from areas where customers would pay for items that
19 they purchased.

20 48. Plaintiffs are informed and believe, and based thereon allege, that Defendants
21 failed to pay Plaintiffs and other aggrieved employees half the usual or scheduled day's work in
22 an amount no less than two hours nor more than four hours at the employee's regular rate of pay
23 for workdays in which Plaintiffs and other aggrieved employees reported to work and were
24 furnished with less than half the usual or scheduled day's work.

25 49. Plaintiffs are informed and believe, and based thereon allege, that Defendants
26 knew or should have known that Plaintiffs and the other class members were entitled to receive
27 complete and accurate wage statements in accordance with California law, but, in fact, they did
28 not receive complete and accurate wage statements from Defendants. The deficiencies included,

1 *inter alia*, the failure to include the total number of hours worked by Plaintiffs and the other class
2 members, including work performed off-the-clock.

3 50. Plaintiffs are informed and believe, and based thereon allege, that Defendants
4 knew or should have known that Defendants had to keep complete and accurate payroll records
5 for Plaintiffs and the other class members in accordance with California law, but, in fact, did not
6 keep complete and accurate payroll records.

7 51. Plaintiffs are informed and believe, and based thereon allege, that Defendants
8 knew or should have known that Plaintiffs and the other class members were entitled to
9 reimbursement for necessary business-related expenses, including, but not limited to, the costs of
10 using personal vehicles and communication and computing devices for work purposes.

11 52. Plaintiffs are informed and believe, and based thereon allege, that Defendants
12 knew or should have known that they had a duty to compensate Plaintiffs and the other class
13 members pursuant to California law, and that Defendants had the financial ability to pay such
14 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented
15 to Plaintiffs and the other class members that they were properly denied wages, all in order to
16 increase Defendants' profits.

17 53. During the relevant time period, Defendants failed to properly compensate
18 Plaintiffs and the other class members pursuant to California law in order to increase
19 Defendants' profits.

20 54. California Labor Code section 218 states that nothing in Article 1 of the Labor
21 Code shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty due
22 to him [or her] under this article."

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1 **FIRST CAUSE OF ACTION**

2 **(Violation of California Labor Code §§ 510 and 1198)**

3 **(Against CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS**

4 **and DOES 1 through 100)**

5 55. Plaintiffs incorporate by reference the allegations contained in Paragraphs 1
6 through 54, and each and every part thereof with the same force and effect as though fully set
7 forth herein.

8 56. California Labor Code section 1198 and the applicable Industrial Welfare
9 Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without
10 compensating them at a rate of pay either time-and-one-half or two-times that person’s regular
11 rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

12 57. Specifically, the applicable IWC Wage Order provides that Defendants are and
13 were required to pay Plaintiffs and the other class members employed by Defendants, and
14 working more than eight (8) hours in a day, more than forty (40) hours in a workweek, and/or
15 more than six (6) consecutive days in a workweek, at the rate of time-and-one-half for all hours
16 worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek, or for
17 the first eight (8) hours worked on the seventh day of work in a workweek.

18 58. The applicable IWC Wage Order further provides that Defendants are and were
19 required to pay Plaintiffs and the other class members overtime compensation at a rate of two
20 times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

21 59. California Labor Code section 510 codifies the right to overtime compensation at
22 one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a
23 day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of
24 work, and to overtime compensation at twice the regular hourly rate for hours worked in excess
25 of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

26 60. During the relevant time period, Plaintiffs and the other class members worked in
27 excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week, and/or seven (7)
28 consecutive days in a workweek.

1 61. During the relevant time period, Defendants intentionally and willfully failed to
2 pay overtime wages owed to Plaintiffs and the other class members.

3 62. Defendants' failure to pay Plaintiffs and the other class members the unpaid
4 balance of overtime compensation, as required by California laws, violates the provisions of
5 California Labor Code sections 510 and 1198, and is therefore unlawful.

6 63. Pursuant to California Labor Code section 1194, Plaintiffs and the other class
7 members are entitled to recover unpaid overtime compensation, as well as interest, costs, and
8 attorneys' fees.

9 **SECOND CAUSE OF ACTION**

10 **(Violation of California Labor Code §§ 226.7 and 512(a))**

11 **(Against CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS**

12 **and DOES 1 through 100)**

13 64. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
14 through 63, and each and every part thereof with the same force and effect as though fully set
15 forth herein.

16 65. At all relevant times, the IWC Order and California Labor Code sections 226.7
17 and 512(a) were applicable to Plaintiffs' and the other class members' employment by
18 Defendants.

19 66. At all relevant times, California Labor Code section 226.7 provides that no
20 employer shall require an employee to work during any meal or rest period mandated by an
21 applicable order of the California IWC.

22 67. At all relevant times, the applicable IWC Wage Order and California Labor Code
23 section 512(a) provide that an employer may not require, cause or permit an employee to work
24 for a work period of more than five (5) hours per day without providing the employee with a
25 meal period of not less than thirty (30) minutes, except that if the total work period per day of the
26 employee is no more than six (6) hours, the meal period may be waived by mutual consent of
27 both the employer and employee.

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1 68. At all relevant times, the applicable IWC Wage Order and California Labor Code
2 section 512(a) further provide that an employer may not require, cause or permit an employee to
3 work for a work period of more than ten (10) hours per day without providing the employee with
4 a second uninterrupted meal period of not less than thirty (30) minutes, except that if the total
5 hours worked is no more than twelve (12) hours, the second meal period may be waived by
6 mutual consent of the employer and the employee only if the first meal period was not waived.

7 69. During the relevant time period, Plaintiffs and the other class members who were
8 scheduled to work for a period of time no longer than six (6) hours, and who did not waive their
9 legally-mandated meal periods by mutual consent, were required to work for periods longer than
10 five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes and/or
11 rest period.

12 70. During the relevant time period, Plaintiffs and the other class members who were
13 scheduled to work for a period of time in excess of six (6) hours were required to work for
14 periods longer than five (5) hours without an uninterrupted meal period of not less than thirty
15 (30) minutes and/or rest period.

16 71. During the relevant time period, Defendants intentionally and willfully required
17 Plaintiffs and the other class members to work during meal periods and failed to compensate
18 Plaintiffs and the other class members the full meal period premium for work performed during
19 meal periods.

20 72. During the relevant time period, Defendants failed to pay Plaintiffs and the other
21 class members the full meal period premium due pursuant to California Labor Code section
22 226.7.

23 73. Defendants' conduct violates applicable IWC Wage Order and California Labor
24 Code sections 226.7 and 512(a).

25 74. Pursuant to applicable IWC Wage Order and California Labor Code section
26 226.7(b), Plaintiffs and the other class members are entitled to recover from Defendants one
27 additional hour of pay at the employee's regular rate of compensation for each workday that the
28 meal or rest period is not provided.

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1 81. During the relevant time period, Defendants failed to pay Plaintiffs and the other
2 class members the full rest period premium due pursuant to California Labor Code section 226.7.

3 82. Defendants' conduct violates applicable IWC Wage Orders and California Labor
4 Code section 226.7.

5 83. Pursuant to the applicable IWC Wage Orders and California Labor Code section
6 226.7(c), Plaintiffs and the other class members are entitled to recover from Defendants one
7 additional hour of pay at the employees' regular hourly rate of compensation for each workday
8 that the rest period was not authorized and permitted.

9 **FOURTH CAUSE OF ACTION**

10 **(Violation of California Labor Code §§ 223, 1182.12, 1194, 1197, 1197.1, 1198)**

11 **(Against CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS**

12 **and DOES 1 through 100)**

13 84. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
14 through 83, and each and every part thereof with the same force and effect as though fully set
15 forth herein.

16 85. At all relevant times, California Labor Code sections 223, 1182.12, 1194, 1197,
17 1197.1, and 1198 provide that the minimum wage to be paid to employees, and the payment of a
18 lesser wage than the minimum so fixed is unlawful.

19 86. During the relevant time period, Defendants failed to pay minimum wages and all
20 compensation earned (e.g., by requiring forfeiture of compensation due for commissions and
21 bonuses earned) to Plaintiffs and the other class members as required, pursuant to California
22 Labor Code sections 223, 1182.12, 1194, 1197, 1197.1, and 1198. Defendants' failure to pay
23 wages also included, *inter alia*, Defendants' effective payment of zero dollars per hour for hours
24 Plaintiffs and the other class members worked off-the-clock performing work duties.

25 87. Defendants' failure to pay Plaintiffs and the other class members minimum wages
26 and all compensation due as required violates California Labor Code sections 223, 1182.12,
27 1194, 1197, 1197.1, and 1198. Pursuant to those sections Plaintiffs and the other class members
28 are entitled to recover the unpaid balance of their minimum wage compensation as well as

1 interest, costs, and attorney's fees, and liquidated damages in an amount equal to the wages
2 unlawfully unpaid and interest thereon.

3 88. Pursuant to California Labor Code section 1197.1, Plaintiffs and the other class
4 members are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each
5 employee minimum wages per pay period, and \$250.00 for each subsequent failure to pay each
6 employee minimum wages per pay period.

7 89. Pursuant to California Labor Code section 1194.2, Plaintiffs and the other class
8 members are entitled to recover liquidated damages in an amount equal to the wages unlawfully
9 unpaid and interest thereon.

10 **FIFTH CAUSE OF ACTION**

11 **(Violation of California Labor Code §§ 201 and 202)**

12 **(Against CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS**

13 **and DOES 1 through 100)**

14 90. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
15 through 89, and each and every part thereof with the same force and effect as though fully set
16 forth herein.

17 91. At all relevant times herein set forth, California Labor Code sections 201 and 202
18 provide that if an employer discharges an employee, the wages earned and unpaid at the time of
19 discharge are due and payable immediately, and if an employee quits his or her employment, his
20 or her wages shall become due and payable not later than seventy-two (72) hours thereafter,
21 unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in
22 which case the employee is entitled to his or her wages at the time of quitting.

23 92. During the relevant time period, Defendants intentionally and willfully failed to
24 pay Plaintiffs and the other class members who are no longer employed by Defendants their
25 wages, earned and unpaid, within seventy-two (72) hours of their leaving Defendants' employ.
26 Plaintiffs and other class members were not paid at the time of their discharge wages earned and
27 unpaid throughout their employment, including but not limited to, all wages due (including and
28 not limited to, wages for time worked off-the-clock to perform work duties and compensation

1 due as a result of Defendants requiring forfeiture of compensation due to Plaintiffs and other
2 class members for commissions and bonuses earned) and for meal and rest period premium
3 payments.

4 93. Defendants' failure to pay Plaintiffs and the other class members who are no
5 longer employed by Defendants their wages, earned and unpaid, within seventy-two (72) hours
6 of their leaving Defendants' employ, is in violation of California Labor Code sections 201 and
7 202.

8 94. California Labor Code section 203 provides that if an employer willfully fails to
9 pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall
10 continue as a penalty from the due date thereof at the same rate until paid or until an action is
11 commenced; but the wages shall not continue for more than thirty (30) days.

12 95. Plaintiffs and the other class members are entitled to recover from Defendants the
13 statutory penalty wages for each day they were not paid, up to a thirty (30) day maximum
14 pursuant to California Labor Code section 203.

15 **SIXTH CAUSE OF ACTION**

16 **(Violation of California Labor Code § 204)**

17 **(Against CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS**

18 **and DOES 1 through 100)**

19 96. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
20 through 95, and each and every part thereof with the same force and effect as though fully set
21 forth herein.

22 97. At all times herein set forth, California Labor Code section 204 provides that all
23 wages earned by any person in any employment between the 1st and 15th days, inclusive, of any
24 calendar month, other than those wages due upon termination of an employee, are due and
25 payable between the 16th and the 26th day of the month during which the labor was performed.

26 98. At all times herein set forth, California Labor Code section 204 provides that all
27 wages earned by any person in any employment between the 16th and the last day, inclusive, of
28 any calendar month, other than those wages due upon termination of an employee, are due and

1 payable between the 1st and the 10th day of the following month.

2 99. At all times herein set forth, California Labor Code section 204 provides that all
3 wages earned for labor in excess of the normal work period shall be paid no later than the payday
4 for the next regular payroll period.

5 100. During the relevant time period, Defendants intentionally and willfully failed to
6 pay Plaintiffs and the other class members all wages due to them, within any time period
7 permissible under California Labor Code section 204.

8 101. Plaintiffs and the other class members are entitled to recover all remedies
9 available for violations of California Labor Code section 204.

10 **SEVENTH CAUSE OF ACTION**

11 **(Violation of California Labor Code § 226(a))**

12 **(Against CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS**

13 **and DOES 1 through 100)**

14 102. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
15 through 101, and each and every part thereof with the same force and effect as though fully set
16 forth herein.

17 103. At all material times set forth herein, California Labor Code section 226(a)
18 provides that every employer shall furnish each of his or her employees an accurate itemized
19 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee,
20 (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on
21 a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the
22 employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
23 dates of the period for which the employee is paid, (7) the name of the employee and his or her
24 social security number, (8) the name and address of the legal entity that is the employer, and (9)
25 all applicable hourly rates in effect during the pay period and the corresponding number of hours
26 worked at each hourly rate by the employee. The deductions made from payments of wages
27 shall be recorded in ink or other indelible form, properly dated, showing the month, day, and
28 year, and a copy of the statement or a record of the deductions shall be kept on file by the

1 employer for at least three years at the place of employment or at a central location within the
2 State of California.

3 104. Defendants have intentionally and willfully failed to provide Plaintiffs and the
4 other class members with complete and accurate wage statements. The deficiencies include, but
5 are not limited to: the failure to include the total number of hours worked by Plaintiffs and the
6 other class members.

7 105. As a result of Defendants' violation of California Labor Code section 226(a),
8 Plaintiffs and the other class members have suffered injury and damage to their statutorily-
9 protected rights.

10 106. More specifically, Plaintiffs and the other class members have been injured by
11 Defendants' intentional and willful violation of California Labor Code section 226(a) because
12 they were denied both their legal right to receive, and their protected interest in receiving,
13 accurate and itemized wage statements pursuant to California Labor Code section 226(a).

14 107. Plaintiffs and the other class members are entitled to recover from Defendants the
15 greater of their actual damages caused by Defendants' failure to comply with California Labor
16 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

17 108. Plaintiffs and the other class members are also entitled to injunctive relief to
18 ensure compliance with this section, pursuant to California Labor Code section 226(h).

19 **EIGHTH CAUSE OF ACTION**

20 **(Violation of California Labor Code § 1174(d))**

21 **(Against CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS**

22 **and DOES 1 through 100)**

23 109. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
24 through 108, and each and every part thereof with the same force and effect as though fully set
25 forth herein.

26 110. Pursuant to California Labor Code section 1174(d), an employer shall keep, at a
27 central location in the state or at the plants or establishments at which employees are employed,
28 payroll records showing the hours worked daily by and the wages paid to, and the number of

1 piece-rate units earned by and any applicable piece rate paid to, employees employed at the
2 respective plants or establishments. These records shall be kept in accordance with rules
3 established for this purpose by the commission, but in any case shall be kept on file for not less
4 than two years.

5 111. Defendants have intentionally and willfully failed to keep accurate and complete
6 payroll records showing the hours worked daily and the wages paid, to Plaintiffs and the other
7 class members.

8 112. As a result of Defendants' violation of California Labor Code section 1174(d),
9 Plaintiffs and the other class members have suffered injury and damage to their statutorily-
10 protected rights.

11 113. More specifically, Plaintiffs and the other class members have been injured by
12 Defendants' intentional and willful violation of California Labor Code section 1174(d) because
13 they were denied both their legal right and protected interest, in having available, accurate and
14 complete payroll records pursuant to California Labor Code section 1174(d).

15 **NINTH CAUSE OF ACTION**

16 **(Violation of California Labor Code §§ 2800 and 2802)**

17 **(Against CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS**

18 **and DOES 1 through 100)**

19 114. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
20 through 113, and each and every part thereof with the same force and effect as though fully set
21 forth herein.

22 115. Pursuant to California Labor Code sections 2800 and 2802, an employer must
23 reimburse its employee for all necessary expenditures incurred by the employee in direct
24 consequence of the discharge of their job duties or in direct consequence of their obedience to
25 the directions of the employer.

26 116. Plaintiffs and the other class members incurred necessary business-related
27 expenses and costs that were not fully reimbursed by Defendants.

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1 117. Defendants have intentionally and willfully failed to reimburse Plaintiffs and the
2 other class members for all necessary business-related expenses and costs including, but not
3 limited to, costs of using personal vehicles and communication and computing devices work
4 purposes.

5 118. Plaintiffs and the other class members are entitled to recover from Defendants
6 their business-related expenses and costs incurred during the course and scope of their
7 employment, plus interest accrued from the date on which the employee incurred the necessary
8 expenditures at the same rate as judgments in civil actions in the State of California.

9 **TENTH CAUSE OF ACTION**

10 **_(Violation of California Business & Professions Code § 17200, et seq.)**

11 **(Against CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS**

12 **and DOES 1 through 100)**

13 119. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
14 through 118, and each and every part thereof with the same force and effect as though fully set
15 forth herein.

16 120. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
17 unlawful and harmful to Plaintiffs, other class members, to the general public, and Defendants'
18 competitors. Accordingly, Plaintiffs seek to enforce important rights affecting the public interest
19 within the meaning of Code of Civil Procedure section 1021.5.

20 121. Defendants' activities as alleged herein are violations of California law, and
21 constitute unlawful business acts and practices in violation of California Business & Professions
22 Code section 17200, et seq.

23 122. A violation of California Business & Professions Code section 17200, et seq. may
24 be predicated on the violation of any state or federal law. In this instant case, Defendants'
25 policies and practices of requiring employees, including Plaintiffs and the other class members,
26 to work overtime without paying them proper compensation violate California Labor Code
27 sections 510 and 1198. Additionally, Defendants' policies and practices of requiring employees,
28 including Plaintiffs and the other class members, to work through their meal and rest periods

1 without paying them proper compensation violate California Labor Code sections 226.7 and
2 512(a). Defendants' policies and practices of failing to pay minimum wages and all
3 compensation due (e.g., by requiring forfeiture of compensation due to Plaintiffs and other class
4 members for commissions and bonuses earned) violate California Labor Code sections 223,
5 1182.12, 1194, 1197, 1197.1, 1198. Moreover, Defendants' policies and practices of failing to
6 timely pay wages to Plaintiffs and the other class members violate California Labor Code
7 sections 201, 202, 203, and 204. Defendants' failure to provide compliant wage statements, a
8 day of rest, maintain requisite payroll records, and reimburse business expenses, also violated
9 California Labor Code sections 226(a), 551, 552, 1174(d), 1198, 2800 and 2802. Defendants
10 also failed to pay reporting time pay in violation of applicable Industrial Welfare Commission
11 Wage Orders, including and not limited to, Wage Order Nos. 4-2001 and 7-2001, and failed to
12 provide appropriate notices to employees in violation of Labor Code section 2810.5

13 123. As a result of the herein described violations of California law, Defendants
14 unlawfully gained an unfair advantage over other businesses.

15 124. Plaintiffs and the other class members have been personally injured by
16 Defendants' unlawful business acts and practices as alleged herein, including but not necessarily
17 limited to the loss of money and/or property.

18 125. Pursuant to California Business & Professions Code sections 17200, et seq.,
19 Plaintiffs and the other class members are entitled to restitution of the wages withheld and
20 retained by Defendants during a period that commences September 22, 2017; an award of
21 attorneys' fees pursuant to California Code of Civil procedure section 1021.5 and other
22 applicable laws; and an award of costs.

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1 **ELEVENTH CAUSE OF ACTION**

2 **(Violation of California Labor Code § 2698, et seq.)**

3 **(Against CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS**

4 **and DOES 1 through 100)**

5 126. Plaintiffs incorporate by reference the allegations contained in paragraphs 1
6 through 125, and each and every part thereof with the same force and effect as though fully set
7 forth herein.

8 127. PAGA expressly establishes that any provision of the California Labor Code
9 which provides for a civil penalty to be assessed and collected by the LWDA, or any of its
10 departments, divisions, commissions, boards, agencies or employees for a violation of the
11 California Labor Code, may be recovered through a civil action brought by an aggrieved
12 employee on behalf of himself or herself, and other current or former employees.

13 128. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
14 agencies, or employees has discretion to assess a civil penalty, a court in a civil action is
15 authorized to exercise the same discretion, subject to the same limitations and conditions, to
16 assess a civil penalty.

17 129. Plaintiffs and the other hourly-paid or non-exempt employees are “aggrieved
18 employees” as defined by California Labor Code section 2699(c) in that they are all current or
19 former employees of Defendants, and one or more of the alleged violations was committed
20 against them.

21 **Failure to Pay Overtime**

22 130. Defendants’ failure to pay overtime in violation of the Wage Orders and
23 California Labor Code sections 510 and 1198, as alleged above, constitutes unlawful and/or
24 unfair activity prohibited by California Labor Code sections 510 and 1198.

25 **Failing to Provide Meal Periods**

26 131. Defendants’ failure to provide legally required meal periods in violation of the
27 Wage Orders and California Labor Code sections 226.7 and 512(a), as alleged above, constitutes
28 unlawful and/or unfair activity prohibited by California Labor Code sections 226.7 and 512(a).

1 **Failure to Provide Rest Periods**

2 132. Defendants' failure to provide legally required rest periods in violation of the
3 Wage Orders and California Labor Code section 226.7, as alleged above, constitutes unlawful
4 and/or unfair activity prohibited by California Labor Code section 226.7.

5 **Failure to Pay Minimum Wages**

6 133. Defendants' failure to pay minimum wages and all compensation due (e.g., by
7 requiring forfeiture of compensation due to Plaintiffs and other class members for commissions
8 and bonuses earned) in violation of the Wage Orders and California Labor Code sections 223,
9 1182.12, 1194, 1197, 1197.1, and 1198, as alleged above, constitutes unlawful and/or unfair
10 activity prohibited by California Labor Code sections 223, 1182.12, 1194, 1197, 1197.1, and
11 1198.

12 **Failure to Timely Pay Wages Upon Termination**

13 134. Defendants' failure to timely pay wages upon termination in violation of
14 California Labor Code sections 201 and 202, as alleged above, constitutes unlawful and/or unfair
15 activity prohibited by California Labor Code sections 201 and 202.

16 **Failure to Timely Pay Wages During Employment**

17 135. Defendants' failure to timely pay wages during employment in violation of
18 California Labor Code section 204, as alleged above, constitutes unlawful and/or unfair activity
19 prohibited by California Labor Code section 204.

20 **Failure to Provide Compliant Wage Statements**

21 136. Defendants' failure to provide compliant wage statements in violation of
22 California Labor Code section 226(a), as alleged above, constitutes unlawful and/or unfair
23 activity prohibited by California Labor Code section 226(a).

24 **Failure to Provide a Day of Rest**

25 137. Defendants' failure to provide a day of rest as required by California Labor Code
26 sections 551 and 552, as alleged above, constitutes unlawful and/or unfair activity prohibited by
27 California Labor Code sections 551 and 552.

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1 **Failure to Keep Complete or Accurate Payroll Records**

2 138. Defendants' failure to keep complete or accurate payroll records in violation of
3 California Labor Code section 1174(d), as alleged above, constitutes unlawful and/or unfair
4 activity prohibited by California Labor Code section 1174(d).

5 **Failure to Provide Seating**

6 139. Defendants' failure to provide suitable seating as required by the applicable IWC
7 Wage Order(s), in violation of California Labor Code section 1198 and applicable IWC Wage
8 Order(s), as alleged above, constitutes unlawful and/or unfair activity prohibited by California
9 Labor Code section 1198 and applicable IWC Wage Order(s).

10 **Failure to Pay Reporting Time Pay**

11 140. Defendants' failure to pay reporting time pay as required by the applicable IWC
12 Wage Order(s), in violation of California Labor Code section 1198 and applicable IWC Wage
13 Order(s), constitutes unlawful and/or unfair activity prohibited by California Labor Code section
14 1198 and applicable IWC Wage Order(s).

15 **Failure to Provide Appropriate Notices**

16 140. Defendants' failure to provide employees with written wage notice in violation of
17 California Labor Code section 2810.5 and applicable IWC Wage Order(s), constitutes unlawful
18 and/or unfair activity prohibited by California Labor Code section 1198 and applicable IWC
19 Wage Order(s).

20 **Failure to Reimburse Necessary Business Expenses**

21 140. Defendants' failure to reimburse all necessary business-related expenses and costs
22 in violation of California Labor Code sections 2800 and 2802, as alleged above, constitutes
23 unlawful and/or unfair activity prohibited by California Labor Code sections 2800 and 2802.

24 141. Pursuant to California Labor Code section 2699, Plaintiffs, individually, and on
25 behalf of all aggrieved employees, request and are entitled to recover from Defendants and each
26 of them, business expenses, unpaid wages, and/or untimely wages according to proof, interest,
27 attorneys' fees and costs pursuant to California Labor Code section 218.5, as well as all penalties
28 against Defendants, and each of them, including but not limited to:

- 1 a. Penalties under California Labor Code section 2699 in the amount of a
2 hundred dollars (\$100) for each aggrieved employee per pay period for the
3 initial violation, and two hundred dollars (\$200) for each aggrieved
4 employee per pay period for each subsequent violation;
- 5 b. Penalties under California Code of Regulations Title 8 section 11010, *et*
6 *seq.* in the amount of fifty dollars (\$50) for each aggrieved employee per
7 pay period for the initial violation, and one hundred dollars (\$100) for
8 each aggrieved employee per pay period for each subsequent violation;
- 9 c. Penalties under California Labor Code section 210 in addition to, and
10 entirely independent and apart from, any other penalty provided in the
11 California Labor Code in the amount of a hundred dollars (\$100) for each
12 aggrieved employee per pay period for the initial violation, and two
13 hundred dollars (\$200) for each aggrieved employee per pay period for
14 each subsequent violation; and
- 15 d. Any and all additional penalties and sums as provided by the California
16 Labor Code and/or other statutes.

17 142. Pursuant to California Labor Code section 2699(i), civil penalties recovered by
18 aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor and
19 Workforce Development Agency for the enforcement of labor laws and education of employers
20 and employees about their rights and responsibilities and twenty-five percent (25%) to the
21 aggrieved employees.

22 143. Further, Plaintiffs are entitled to seek and recover reasonable attorneys' fees and
23 costs pursuant to California Labor Code sections 210, 218.5 and 2699 and any other applicable
24 statute.

25 **DEMAND FOR JURY TRIAL**

26 Plaintiffs, individually, and on behalf of other members of the general public similarly
27 situated, and on behalf of other aggrieved employees pursuant to the California Private Attorneys
28 General Act, request a trial by jury.

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Class Certification

1. That this action be certified as a class action;
2. That Plaintiff Nieto be appointed as representative of the Class;
3. That Lawyers for Justice, PC and the Law Offices of Mark Yablonovich be appointed as Class Counsel; and
4. That Defendants provide to Class Counsel immediately the names and most current/last known contact information (address, e-mail and telephone numbers) of all class members.

5. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiffs and the other class members;
6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;
7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;
8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194; and
9. For such other and further relief as the Court may deem just and proper.

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods (including second meal periods) to Plaintiffs and the other class

members;

11. That the Court make an award to Plaintiffs and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;

12. For all actual, consequential, and incidental losses and damages, according to proof;

13. For premium wages pursuant to California Labor Code section 226.7(c);

14. For pre-judgment interest on any unpaid wages from the date such amounts were due;

15. For reasonable attorneys' fees and costs of suit incurred herein; and

16. For such other and further relief as the Court may deem just and proper.

As to the Third Cause of Action

17. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiffs and the other class members;

18. That the Court make an award to Plaintiffs and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided;

19. For all actual, consequential, and incidental losses and damages, according to proof;

20. For premium wages pursuant to California Labor Code section 226.7(c);

21. For pre-judgment interest on any unpaid wages from the date such amounts were due; and

22. For such other and further relief as the Court may deem just and proper.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 223, 1182.12, 1194, 1197, 1197.1, 1198 by willfully failing to pay minimum wages and all compensation earned to Plaintiffs and the other class members;

1 24. For general unpaid wages and such general and special damages as may be
2 appropriate;

3 25. For statutory wage penalties pursuant to California Labor Code section 1197.1 for
4 Plaintiffs and the other class members in the amount as may be established according to proof at
5 trial;

6 26. For pre-judgment interest on any unpaid compensation from the date such
7 amounts were due;

8 27. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
9 California Labor Code section 1194(a);

10 28. For liquidated damages pursuant to California Labor Code section 1194.2; and

11 29. For such other and further relief as the Court may deem just and proper.

12 **As to the Fifth Cause of Action**

13 30. That the Court declare, adjudge and decree that Defendants violated California
14 Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the
15 time of termination of the employment of Plaintiffs and the other class members no longer
16 employed by Defendants;

17 31. For all actual, consequential, and incidental losses and damages, according to
18 proof;

19 32. For statutory wage penalties pursuant to California Labor Code section 203 for
20 Plaintiffs and the other class members who have left Defendants' employ;

21 33. For pre-judgment interest on any unpaid compensation from the date such
22 amounts were due; and

23 34. For such other and further relief as the Court may deem just and proper.

24 **As to the Sixth Cause of Action**

25 35. That the Court declare, adjudge and decree that Defendants violated California
26 Labor Code section 204 by willfully failing to pay all compensation owed at the time required by
27 California Labor Code section 204 to Plaintiffs and the other class members;

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1 36. For all actual, consequential, and incidental losses and damages, according to
2 proof;

3 37. For pre-judgment interest on any unpaid compensation from the date such
4 amounts were due; and

5 38. For such other and further relief as the Court may deem just and proper.

6 **As to the Seventh Cause of Action**

7 39. That the Court declare, adjudge and decree that Defendants violated the record
8 keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as
9 to Plaintiffs and the other class members, and willfully failed to provide accurate itemized wage
10 statements thereto;

11 40. For actual, consequential and incidental losses and damages, according to proof;

12 41. For statutory penalties pursuant to California Labor Code section 226(e);

13 42. For injunctive relief to ensure compliance with this section, pursuant to California
14 Labor Code section 226(h); and

15 43. For such other and further relief as the Court may deem just and proper.

16 **As to the Eighth Cause of Action**

17 44. That the Court declare, adjudge and decree that Defendants violated California
18 Labor Code section 1174(d) by willfully failing to keep accurate and complete payroll records
19 for Plaintiffs and the other class members as required by California Labor Code section 1174(d);

20 45. For actual, consequential and incidental losses and damages, according to proof;

21 46. For statutory penalties pursuant to California Labor Code section 1174.5; and

22 47. For such other and further relief as the Court may deem just and proper.

23 **As to the Ninth Cause of Action**

24 48. That the Court declare, adjudge and decree that Defendants violated California
25 Labor Code sections 2800 and 2802 by willfully failing to reimburse Plaintiffs and the other
26 class members for all necessary business-related expenses as required by California Labor Code
27 sections 2800 and 2802;

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- 1 49. For actual, consequential and incidental losses and damages, according to proof;
2 50. For the imposition of civil penalties and/or statutory penalties;
3 51. For reasonable attorneys' fees and costs of suit incurred herein; and
4 52. For such other and further relief as the Court may deem just and proper.

5 **As to the Tenth Cause of Action**

6 53. That the Court decree, adjudge and decree that Defendants violated California
7 Business and Professions Code sections 17200, et seq. by failing to provide Plaintiffs and the
8 other class members all compensation due to them in a timely fashion, failing to provide all meal
9 and rest periods to Plaintiffs and the other class members, failing to provide compliant wage
10 statements, failing to maintain requisite payroll records, failing to provide a day of rest, failing to
11 reimburse business expenses, and by violating California Labor Code sections 201, 202, 203,
12 204, 223, 226(a), 510, 512(a), 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2800,
13 2802, and 2810.5.

14 54. For restitution of unpaid wages to Plaintiffs and all the other class members and
15 all pre-judgment interest from the day such amounts were due and payable;

16 55. For the appointment of a receiver to receive, manage and distribute any and all
17 funds disgorged from Defendants and determined to have been wrongfully acquired by
18 Defendants as a result of violation of California Business and Professions Code sections 17200,
19 et seq.;

20 56. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
21 California Code of Civil Procedure section 1021.5;

22 57. For injunctive relief to ensure compliance with this section, pursuant to California
23 Business and Professions Code sections 17200, et seq.; and

24 58. For such other and further relief as the Court may deem just and proper.

25 **As to the Eleventh Cause of Action**

26 59. For civil penalties and wages pursuant to California Labor Code sections 2699(a),
27 (f) and (g) plus costs and attorneys' fees for violation of California Labor Code sections 201,
28 202, 203, 204, 223, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1,

1 1198, 2800, 2802 and 2810.5, as well as all applicable Industrial Welfare Commission Wage
2 Orders, including without limitation, IWC Wage Order Nos. 4-2001 and 7-2001 and violations of
3 any other statute, rule, and/or regulation, or similar causes of action, arising from or relating to
4 the conduct alleged; and

5 60. For such other and further relief as the Court may deem equitable and appropriate.

6 Dated: November 28, 2023

LAWYERS for JUSTICE, PC

7
8 By:  _____

9 Arby Aiwasian
10 Joanna Ghosh
11 Brian St. John
Attorneys for Plaintiff John Loera

12 Dated: November 8, 2023

**LAW OFFICES OF MARK
YABLONOVICH**

13
14 By:  _____

15 Mark Yablonovich
16 Monica Balderrama
17 Tony Roberts
Attorneys for Plaintiff Manuel Nieto