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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

KRISTY ELWELL, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

DIVERSITY WIRELESS PARTNERS LLC,
a California Limited Liability Company; and
DOES 1 through 20, inclusive;

Defendants.

Case No.: CIVSB2134554
*[Assigned to Hon. Judge David Cohn, Dept
S26, for all purposes]*

**DECLARATION OF BRIAN J. MANKIN,
ESQ., IN SUPPORT OF MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing
Date: August 16, 2023
Time: 9:00 a.m.
Dept: S26

Complaint filed: December 17, 2021

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. I manage the employment law department and am a partner with the law firm of Lauby Mankin Lauby LLP, which has offices in Orange County and Riverside County. I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for Final Approval of this Class Action Settlement. If called as a witness, I could and would competently testify thereto.

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1 **COUNSEL’S EXPERIENCE**

2 2. I have been a member, in good standing, of the State Bar of California since 2001.
3 I am admitted to practice in the United States District Courts for the Central and Southern
4 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
5 courts in California.

6 3. I have handled well over 500 employee vs. employer litigation matters during my
7 22 years in practice. Over the last 15 years, my practice has almost entirely consisted of
8 representing employees, the majority of which has included class action and representative
9 action wage and hour matters. In total, I have handled well over 250 class action and
10 representative action wage/hour cases, and have been appointed by the court as class counsel and
11 have received final court approval and judgment in over half of those actions to date, and
12 anticipate receiving final approval in many more of those in the future.

13 4. As part of these settlements and judgments, I have recovered in excess of \$250
14 million in damages for my clients and the class members (who often work as nurses, ambulance
15 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
16 countless other trades). My team and I once held the record for the largest known PAGA-only
17 case in California’s history, which followed extensive litigation, summary adjudication and writs
18 to the CA Supreme Court against a Fortune 50 company (Garcia v. Macy’s, San Bernardino
19 Superior Court).

20 5. I have tried two major class and PAGA cases against Fortune 100 companies. In
21 2018, I was lead counsel in a PAGA case that my firm tried in the Orange County Superior Court
22 and received a \$4210,000 judgment. In 2019, I was co-counsel in a class action case against
23 Walmart in District Court, wherein the jury awarded Plaintiffs and the class over \$6 million.
24 Both cases were appealed.

25 6. I was named by the LA Times as one “Southern California Leading Lawyers” in
26 the May 2023 issue of Consumer Attorney’s of Southern California (a recognition given to 17
27 employment/labor law attorneys in 2023). Additionally, over the last five consecutive years, I
28 have been selected by my peers as a “Super Lawyer” in Employment Litigation, a distinction that

only 5% of lawyers receive.

ADEQUACY OF THE SETTLEMENT

7. The Class, as conditionally certified by this Court, consists of 155 current and former non-exempt employees employed by Defendant in California at any time during the Class Period of October 4, 2017, through March 9, 2023 (the “Class Members”).

8. As set forth in the Declaration of the Settlement Administrator, the Net Settlement Amount is approximately \$125,913.75, after the deductions set forth in the chart below:

<i>Gross Settlement Amount</i>	\$ 250,000.00
Attorneys’ Fees (1/3)	\$ 83,333.33
Litigation Costs	\$ 9,752.92
Administrator Costs	\$ 11,000.00
PAGA Penalties	\$ 10,000.00
Class Representative Service Award	\$ 10,000.00
<i>Net Settlement Amount</i>	\$ 125,913.75

9. The process of mailing the Class Notice was very successful, as 99.7% of the Notices were deemed deliverable by the Settlement Administrator.

10. The response from the Class Members was overwhelmingly positive, as no Class Members objected or opted-out of the Settlement.

11. As discussed at length in Plaintiff’s motion for preliminary approval, as well as in the Motion for Final Approval, this Settlement is reasonable in light of Defendant’s financial condition and the necessary payment plan.

12. Sufficient information existed to allow Class Counsel to intelligently value this case. Given the parties’ arms’ length bargaining facilitated by a reputable and experienced wage and hour mediator, the exchange of informal discovery, the experience of Class Counsel, the fact that 100% of the Class elected to participate and no objections were submitted, the presumption of fairness is justified.

13. I believe that the Settlement is fair, reasonable and adequate, and in the best interests of the Class, given the litigation risks and delay inherent in further litigation and possible appeals. As set forth in Plaintiff’s motion for preliminary approval and the declarations

submitted in support thereof, Defendants contested Plaintiff's claims, and Plaintiff faced real challenges moving forward and obtaining a recovery in this matter. Nonetheless, the Parties concluded that further litigation would be protracted and expensive, and that it is desirable that the action be fully and finally settled in the manner and upon the terms and conditions set forth in the Settlement Agreement in order to limit further expense, inconvenience and distraction, to dispose of burdensome and protracted litigation, and to permit the operation of Defendants' business without further expensive litigation and the distraction and diversion of its personnel with respect to matters at issue. All parties took into account the uncertainty of risks inherent in any litigation, especially in complex cases such as this case. The Parties determined that it is desirable and beneficial to both the Class and Defendants that this case be settled. Risks on both sides were considered in reaching the Settlement Agreement. The recoveries contemplated by the Settlement represent a good result for the Class, fairly proportioned to the likely risk-adjusted recovery in litigation.

ADEQUACY OF COUNSEL AND
REASONABLENESS OF REQUESTED FEE AND COST AWARDS

14. As set forth above, I have handled well over 250 class and representative actions, have been appointed as class counsel and have successfully resolved approximately half of those actions, and many others remain pending and will successfully resolve in the future while recovering in excess of \$250 million dollars for my clients and Class Members. This is substantially better than average accordingly to Mayer Brown LLP's study entitled, An Empirical Analysis of Class Actions, cited in *Laguna v. Coverall North America, Inc.* (9th Cir. 2014) 753 F.3d 918, which found that only one-third of class actions are successful, compared to two-thirds that are defeated and result in no payment to the class members.¹

15. When this case was taken on a contingency fee basis, with my firm agreeing to assume responsibility for all litigation costs, the ultimate result was far from certain. In the course of this litigation, Class Counsel paid all costs including filing fees, court costs, research fees, and mediation costs. There was never a guarantee that we would recoup those expenditures.

¹ www.mayerbrown.com/files/uploads/Documents/PDFs/2013/December/DoClassActionsBenefitClassMembers.pdf

1 16. It has been my experience that the benchmark for attorney fee awards in
2 California state cases is one-third of a common settlement fund, which the CA Supreme Court
3 upheld in the *Robert Half* case. Here, in accordance with the Settlement Agreement, Class
4 Counsel is seeking a fee of \$83,333.33, which is one-third of the Settlement Amount.

5 17. There are several additional factors why I believe that the Court should award
6 one-third of the common fund as reasonable attorneys' fees. First, Class Counsel's efforts
7 resulted in a common fund settlement amount of \$250,000. This is a good result in light of the
8 disputed nature of the claims alleged and Defendant's financial condition. This result was
9 achieved by the work and success of my office, who negotiated the settlement after necessary
10 preparation, investigation, mediation, and work thereafter.

11 18. Second, Plaintiff faced significant risks going forward with the litigation. As
12 discussed in the motion for preliminary approval, Defendants raised various defenses and there
13 was a risk that Defendants may cease operations. Accordingly, Plaintiff faced risky issues going
14 forward with this litigation.

15 19. Third, Class Counsel are experienced class action litigators. This experience and
16 expertise, combined with the high quality of work performed in this case, resulted in the
17 settlement achieved in this case.

18 20. Fourth, Class Counsel have been representing Plaintiff in this matter strictly on a
19 contingency fee basis. To that end, we have incurred the risk of non-recovery after investing a
20 substantial amount of time, money, and resources, and have done so since the inception of this
21 case without any payment or compensation. If Plaintiff had lost this case, we would have
22 recovered nothing, and would have lost our out-of-pocket costs. This is not an easy burden for
23 my office, which is a small firm.

24 21. Fifth, the request for attorney's fees in the amount of one-third of the common
25 fund falls well within the norms accepted by state and federal courts in California in comparable
26 wage and hour actions actually handled by my office. Moreover, the award of a one-third fee
27 recovery under the common fund doctrine was recently approved by the California Supreme
28 Court in *Laffitte v. Robert Half*.

1 22. For all of the above reasons, a common fund fee award here in the amount of one-
2 third of the common fund created by Plaintiff and Class Counsel is fair and reasonable.

3 23. At my office, this case was primarily handled by Peter Carlson, a senior associate
4 within our office, while I performed the role of the supervising attorney. As set forth in his
5 declaration, Mr. Carlson works exclusively with me on employment law matters and has been in
6 practice for 8 years. He bills at the hourly rate of \$575/hour. I have been in practice for 22
7 years, with most of those years handling complex litigation and for over the last 15 years, my
8 practice has almost entirely consisted of handling class action wage and hour matters. My billing
9 rate is \$775/hour. I believe these rates are consistent with Plaintiff and Defense attorneys who
10 handle complex class action litigation, if not somewhat lower.

11 24. The hourly rates above are comparable to those of other attorneys with equal or
12 similar experience, if not somewhat lower (i.e., the Laffey Matrix at www.laffeymatrix.com
13 indicates that the benchmark rate for an 8–10-year attorney to be \$676/hour and a 11-19 year
14 attorney at \$764/hour, and a 20+ year attorney at \$919/hour). Moreover, the Wolters Kluwer
15 Real Rate Report (“Real Rate Report”), provides directly applicable information in this regard.
16 The Real Rate Report is based on an enormous and statistically significant compilation of data.
17 For instance, in 2017, the report was based on 25.8 million billing entries and 23.9 million hours
18 billed by over 112,100 individual timekeepers from 4,620 law firms, totaling \$9.02 billion in fees
19 billed. The Real Rate Report then compiles and analyzes this data to provide the hourly rates for
20 partners and associates in major metropolitan areas. In 2018, for the southern California area,
21 which is based on billing entries for 999 partners and 1,361 associates, the Real Rate Report
22 states that: (a) the median rate for partners in Los Angeles is \$695 and the upper quartile is \$995
23 per hour, and (b) the median rate for associates in Los Angeles is \$550 and the upper quartile is
24 \$721 (2018 Kluwer Real Rate Report, page 21). And, perhaps most importantly, the information
25 provided in the Real Rate Report is not based on self-reported numbers, surveys, sampling, or
26 reviews or other publications – instead, the Real Rate Report is based on the actual hours and
27 fees billed by law firms.

25. The table below includes a summary of the hours worked, plus an estimated 40 hours that I will bill in finalizing and filing the motion, preparing for and attending the approval hearing, and working with the administrator and defense counsel over a two years period covering the payment plan. The total lodestar for my firm is approximately \$110,475 through the conclusion of this matter, as shown in the chart below:

Attorney/Timekeeper	Rate	Hours	Fee
Brian J. Mankin <i>Trial Counsel / Partner</i> (22 Years)	\$775	55²	\$42,625
Peter Carlson <i>Senior Associate</i> (8 Years)	\$575	118	\$67,850
Grand Total for All Attorneys			\$110,475

26. The fee is warranted because of the results achieved for the Class Members, both in terms of the immediate cash settlement, as well as the fact that the Class Members resoundingly supported the Settlement. Defendants do not oppose this fee request.

27. In the course of prosecuting this action, Class counsel have incurred expenses that were incidental and necessary to the effective representation of the Class. These expenses included but were not limited to: court filings, copying and management of documents, on-line Lexis research, messenger services, postage, fax transmission expenses, transportation, mediator fees including travel to mediation, and other incidental expenses directly related to this action. The Settlement Agreement provided up to \$20,000 in costs. Through final approval, my office incurred \$9,752.92 in litigation costs (see Exhibit "B" attached hereto). The saving will be placed in the Net Settlement Amount for payment to the Class Members. Defendant does not oppose this request for costs.

² Includes an estimated 10 hours of additional work preparing for and attending the hearing, as well as 25 hours in anticipated work to be performed after the final approval, particularly in light of the payment plan, as it will require considerable more work with counsel, administrator, and Class Members.

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29. The Motion and declarations, including the Settlement Agreement, have concurrently been submitted to the LWDA. (See Exhibit “C”).

EXHIBITS AND CONCLUSION

31. Attached hereto as Exhibit “B” is a true and correct copy of an itemized statement of my firm’s litigation costs.

33. For the foregoing reasons, it is respectfully requested that the Court grant final approval of the settlement as being fair, reasonable, and in the best interest of the class, and approve the requested attorneys' fees, costs, and service award.

By: Brian J. Mankin
Brian J. Mankin, Esq.

EXHIBIT “A”

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Attorneys for Defendants Diversity Wireless Partners LLC, Jon Garcia, and Victor Chapron, Sr.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

KRISTY ELWELL, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

DIVERSITY WIRELESS PARTNERS LLC,
a California Limited Liability Company; and
DOES 1 through 20, inclusive;

Defendants.

Case No.: CIVSB2134554
*[Assigned to Hon. Judge David Cohn, Dept.
S26 for all purposes]*

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

Complaint filed: December 17, 2021

1 This Class Action and PAGA Settlement Agreement and Release of Claims is entered
2 into by and between Plaintiff Kristy Elwell, individually and on behalf of all others similarly
3 situated, and Defendants Diversity Wireless Partners, LLC, Jon Garcia, and Victor Chapron and
4 is approved by their respective counsel of record, subject to the terms and conditions hereof and
5 the Court's approval.

6 **A. Definitions**

7 As used herein, for the purposes of this Settlement Agreement only, the following terms
8 shall be defined as set forth below:

9 1. "Action" or "Lawsuit" means and refers to the case entitled *Kristy Elwell v.*
10 *Diversity Wireless Partners, LLC, et al.*, Superior Court of California, County of San
11 Bernardino, Case No. CIVSB2134554.

12 2. "Agreement" or "Settlement Agreement" shall mean this Class Action and PAGA
13 Settlement Agreement and Release of Claims.

14 3. "Aggrieved Employees" means all current and former nonexempt employees
15 employed by Defendant Diversity Wireless Partners, LLC in California at any time during the
16 PAGA Period.

17 4. "Class Counsel" refers to Brian Mankin and Peter Carlson of Lauby Mankin
18 Lauby LLP.

19 5. "Class Data" means a complete list that Defendants will diligently and in good
20 faith compile from its records and provide to the Settlement Administrator on one or more
21 spreadsheets and shall include the Settlement Class Members' full names; last known addresses;
22 last known telephone numbers (if available); Social Security Numbers; the total Weeks Worked
23 during the PAGA Period for each Aggrieved Employee; and the total Weeks Worked during the
24 Class Period for each Settlement Class Member.

25 6. "Class Period" is deemed to be any time during the period of December 17, 2017,
26 through December 31, 2022.

27 7. "Class Representative" or "Plaintiff" means and refers to Kristy Elwell.

28 8. "Complaint" refers to the operative First Amended complaint in the Action,

alleging Class Claims and representative PAGA Claims, and this definition incorporates the Doe amendments filed by Plaintiff on or around September 9, 2022, adding Defendants Jon Garcia and Victor Chapron, Sr., to the Action.

9. “Court” (or “Judge”) means the Superior Court of California, County of San Bernardino.

10. “Defendants” refers collectively to Diversity Wireless Partners, LLC, Jon Garcia, and Victor Chapron, Sr.

11. “Defendants’ Counsel” or “Defense Counsel” means and refers to Bent Caryl & Kroll LLP.

12. “Effective Date” means the latest of the following dates: (i) if no Class Member objects, timely and properly intervenes, or files a motion to vacate the judgment approving the Settlement Agreement under California Code of Civil Procedure § 663, then the date of the Notice of Entry of Order regarding Final Approval of the Settlement; (ii) if a Class Member objects, timely and properly intervenes, or files a motion to vacate the judgment approving the Settlement Agreement, then sixty-one (61) calendar days following the date the Court enters an order granting Final Approval, assuming no appeal is filed; or (iii) if a timely appeal is filed, the date of final resolution of that appeal (including any requests for rehearing and/or petitions for *certiorari*), resulting in final judicial approval of the Settlement.

13. “Final Approval” refers to the order of the Court granting final approval of this Settlement Agreement and entering a judgment approving this Agreement on substantially the terms provided herein or as the same may be modified by subsequent agreement of the Parties.

14. “Final Settlement Class” means, collectively, all Participating Class Members who have not opted out of the Settlement Class by submitting timely, valid Requests for Exclusion.

15. “Gross Settlement Amount” shall have the meaning ascribed to it in Paragraph 49(a) below.

16. “Individual Settlement Payment(s)” shall have the meaning ascribed to it in Paragraph 49(c) below.

1 17. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 49(b)
2 below.

3 18. “Notice” means the notice of class action and PAGA settlement that will be sent
4 to the Settlement Class Members and Aggrieved Employees.

5 19. “Notice Response Deadline” is thirty (30) calendar days from the date the Notice
6 is mailed to the Settlement Class Members and Aggrieved Employees.

7 20. “Objecting Settlement Class Member” means a Settlement Class Member, other
8 than Plaintiff, who submits a valid and timely objection to the terms of this Agreement with
9 respect to the Released Class Claims, pursuant to Paragraph 72(c) below.

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

12 22. “PAGA Penalties” means the total amount of civil penalties that the Parties have
13 agreed will be paid from the Gross Settlement Amount to settle the PAGA Claims, allocated
14 75% to the California Labor and Workforce Development Agency (“LWDA”) in accordance
15 with PAGA, and 25% for the individual PAGA payments to Aggrieved Employees, as set forth
16 further below in Paragraph 49(h).

17 23. “PAGA Period” is deemed to be any time during the period of December 17,
18 2020, through December 31, 2022.

19 24. “PAGA Released Claims” or “PAGA Claims” by the Aggrieved Employees upon
20 Final Approval of the Settlement and Defendants funding of the Gross Settlement Amount
21 means the PAGA claims that Plaintiff alleged against the Released Parties, on behalf of the
22 Aggrieved Employees and the State of California, based on the facts stated in the Complaint and
23 in the relevant LWDA notice letter, including all PAGA claims seeking civil penalties premised
24 upon: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide
25 meal periods, (d) failure to provide rest breaks, (e) failure to pay vested vacation, (f) failure to
26 reimburse business expenses, (g) failure to timely pay wages each period, (h) failure to timely
27 pay wages upon separation of employment, (i) failure to provide accurate itemized wage
28 statements, and (j) all other claims for civil penalties recoverable under PAGA based on the facts

1 or claims alleged in the Complaint.

2 25. “Participating Class Member” means any and all Settlement Class Members who
3 are deemed to participate, who will receive an Individual Settlement Payment, and who do not
4 opt-out by submitting a timely, valid Request for Exclusion.

5 26. “Parties” or “Settling Parties” mean Plaintiff and Defendants, collectively.

6 27. “Preliminary Approval Date” means the date the Court preliminarily approves the
7 Settlement Agreement, and the exhibits thereto, and enters the Preliminary Approval Order.

8 28. “Preliminary Approval Order” means the judicial Order to be entered by the
9 Court, upon the application or motion of the Plaintiff, preliminarily approving this Settlement
10 and providing for the issuance of the Notice to the Settlement Class and Aggrieved Employees,
11 an opportunity for Settlement Class Members to opt-out of the Settlement, an opportunity to
12 submit timely objections to the Settlement, and setting a hearing on the fairness of the terms of
13 Settlement, including approval of attorneys’ fees and costs.

14 29. “QSF” means the Qualified Settlement Fund set up by the Settlement
15 Administrator for the benefit of the Final Settlement Class and Aggrieved Employees, and from
16 which the settlement payments shall be made, and which is intended to be a fund that qualifies
17 under Internal Revenue Code Sec. 468.

18 30. “Released Class Claims” or “Class Claims” by the Participating Class Members
19 upon Final Approval of the Settlement and Defendants funding of the Gross Settlement Amount
20 will include all claims stated in the Complaint and those based solely upon the facts in the
21 Complaint, including: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c)
22 failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to pay vested
23 vacation, (f) failure to reimburse business expenses, (g) failure to timely pay wages upon
24 separation of employment, (h) failure to provide accurate itemized wage statements, (i) unfair
25 and unlawful competition, and (j) all other claims that reasonably could have arisen out of the
26 allegations made and based on the facts alleged in the Complaint.

27 31. “Released Parties” means Defendants and their past and present officers,
28 directors, members, partners, managers, employees, agents, principals, heirs, representatives,

1 accountants, auditors, consultants, insurers and reinsurers, and their respective parent
2 corporations, subsidiaries, divisions, affiliates, attorneys, predecessors, successors and assigns.

3 32. “Release” shall mean (1) the release and discharge of the Released Class Claims
4 by Plaintiff and all Participating Class Members, and (2) the release and discharge of the PAGA
5 Released Claims by Plaintiff, the State of California, and all of the Aggrieved Employees. The
6 *res judicata* effect of the Judgment will be the same as that of the Release of the Released Class
7 Claims and PAGA Released Claims.

8 33. “Request for Exclusion” means and refers to a valid and timely request for
9 exclusion from the Settlement of the Released Class Claims, which may be submitted by any
10 Settlement Class Member, other than Plaintiff, pursuant to Paragraph 72(a) below.

11 34. “Service Payment” or “Service Award” means, as set forth further in Paragraph
12 49(e) below, the amount approved by the Court to be paid from the Gross Settlement Amount to
13 the Class Representative, Kristy Elwell, in addition to her Individual Settlement Payment as a
14 Participating Class Member and Aggrieved Employee.

15 35. “Settlement Administrator” means and refers to Phoenix Settlement
16 Administrators, the third-party class action settlement administrator agreed to by the Parties, that
17 will provide the Notice to the Settlement Class and Aggrieved Employees and distribute the
18 settlement amounts as described in this Agreement.

19 36. “Settlement Administration Costs” means the costs payable from the Gross
20 Settlement Amount to the Settlement Administrator for administering this Settlement, including,
21 but not limited to, printing, distributing, and tracking documents for this Settlement, tax
22 reporting, and deposit of the employee and employer share of payroll taxes, unclaimed property
23 due diligence, reporting and remittance obligations, distributing the Gross Settlement Amount,
24 and providing necessary reports and declarations, as requested by the Parties.

25 37. “Settlement Class” consists of all current and former nonexempt employees
26 employed by Defendant Diversity Wireless Partners, LLC in California at any time during the
27 Class Period. Defendants represent that there were approximately 250 eligible Class Members as
28 of the date of mediation on September 9, 2022.

1 38. “Settlement Class Member” or “Class Member(s)” refers to individual members
2 of the Settlement Class.

3 39. “Work Week(s)” or “Weeks Worked” means all calendar weeks in which the
4 Settlement Class Member or Aggrieved Employee was employed by Defendant Diversity
5 Wireless Partners, LLC in California as a nonexempt employee and worked at least one shift
6 during the week. For purposes of calculating Weeks Worked, there will no fractional calculations
7 (*i.e.*, a situation where an individual worked only one shift during a week does not equal 1/7th of
8 a Work Week, it counts as one Work Week).

9 **B. General Terms**

10 40. Plaintiff filed a class action and representative PAGA action complaint with the
11 Court on December 17, 2021. Then, on January 31, 2022, Plaintiff filed the operative First
12 Amended Complaint against Defendant Diversity Wireless Partners, LLC, and Does 1 through
13 20, alleging class and representative PAGA claims, including: (1) failure to pay minimum wages,
14 (2) failure to pay overtime, (3) failure to provide meal periods, (4) failure to provide rest breaks,
15 (5) failure to pay vested vacation, (6) failure to reimburse for business expenses, (7) failure to
16 timely pay final wages, (8) failure to provide accurate itemized wage statements, (9) unfair and
17 unlawful competition pursuant to California Business and Professions Code §§ 17200 *et seq.*,
18 and (10)-(18) related claims under PAGA.

19 41. Pursuant to California Labor Code § 2699.3(a), Plaintiff gave timely written
20 notice to Defendants and the LWDA by sending her LWDA notice letter on December 17, 2022.
21 Plaintiff later submitted amended LWDA notice letters on January 3, 2022, and September 9,
22 2022.

23 42. On September 9, 2022, Plaintiff filed Doe amendments, adding Defendants Jon
24 Garcia and Victor Chapron, Sr., as Defendants in this Action.

25 43. Defendants deny Plaintiff’s claims and allegations and contend that the Action is
26 not suitable for class certification or manageable as a class or representative action.

27 44. The Class Representative believes she can proceed with her representative and
28 class claims, that the Action is meritorious, and that class certification is appropriate.

1 45. The Parties have conducted a thorough investigation into the facts of the Action.
2 This includes conducting an extensive exchange of informal discovery, including Defendants'
3 written policies and practices and confirmation regarding the uniform payroll and timekeeping
4 practices for Settlement Class Members. Class Counsel is both knowledgeable about and has
5 done extensive research with respect to the applicable law and potential defenses to the claims of
6 the Settlement Class. Class Counsel has diligently pursued an investigation of the Class
7 Members' claims against Defendant. Based on the foregoing data and on their own independent
8 investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendants
9 for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable,
10 and adequate and is in the best interest of the Class Members in light of all known facts and
11 circumstances, including the risk of significant delay and uncertainty associated with litigation,
12 various defenses asserted by Defendant, and numerous potential appellate issues.

13 46. On September 9, 2022, Plaintiff and Defendants participated in mediation before
14 Hon. James Di Cesare (Ret.), a well-respected mediator that recently retired from the Orange
15 County complex bench. The Action did not resolve at mediation and the Parties moved forward
16 with discovery. However, the Parties also continued negotiating and, after extensive back-and-
17 forth discussions, reached this Settlement on November 11, 2022.

18 47. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
19 to be performed or judgments to be entered pursuant to the terms of the Settlement and
20 Agreement, shall be construed as an admission by Defendants of any wrongdoing or violation of
21 any statute or law or liability on the claims or allegations in the Action.

22 48. Stipulation to Class Certification and Representative Treatment. For settlement
23 purposes only, Defendants will stipulate that the Participating Class Members may be
24 conditionally certified as a settlement class and that the Aggrieved Employees are appropriate for
25 representative treatment for purposes of settlement. This stipulation to certification and
26 representative treatment is in no way an admission that class action certification and/or
27 representative treatment is proper and shall not be admissible in this or in any other action except
28 for the sole purpose of enforcing this Agreement. Nor should Defendants' stipulation to

conditional class certification and representative treatment be deemed as a waiver to any additional defenses against class or representative action treatment. Should, for whatever reason, the Court fail to issue Final Approval, the Parties' stipulation to class certification and representative treatment as part of the Settlement shall become null and void *ab initio* and shall have no bearing on, and shall not be admissible in connection with, the issue of whether or not certification and/or representative treatment would be appropriate in a non-settlement context. Defendants expressly reserve their rights and declare that they would continue to oppose class certification, representative treatment, and the substantive merits of the case should the Court decline to issue Final Approval. Plaintiff expressly reserves her rights and declares that she will continue to pursue class certification, representative treatment, and a trial should the Court decline to issue Final Approval.

C. Terms of Settlement

49. The financial terms of the Settlement are as follows:

(a) Gross Settlement Amount: The Parties agree to settle this Action for Two Hundred Fifty Thousand Dollars (\$250,000) ("the Gross Settlement Amount"), which shall be jointly and severally owed and paid by Defendants. The Gross Settlement Amount is the maximum amount that will be paid, and includes Individual Settlement Payments, Attorneys' Fees and Costs Award, the Service Payment to the Class Representative, all Settlement Administration Costs, PAGA Penalties, and interest. Defendants shall separately pay the employer's share of applicable payroll tax obligations due on the wage portions of the Individual Settlement Payments, which shall be reported through the Settlement Administrator.

(b) Net Settlement Amount: The "Net Settlement Amount" is defined as the Gross Settlement Amount less the court-approved Attorneys' Fees and Costs Award, the court-approved Service Payment to the Class Representative, the court-approved Settlement Administration Costs, and PAGA Penalties. If the Court reduces the Attorneys' Fees and Costs Award, Service Payment to the Class Representative, or Settlement Administration Costs, or either increases or decreases the amount allocated to the PAGA Penalties, the Net Settlement Amount shall be increased or decreased accordingly.

1
2 (c) Individual Settlement Payments: Individual Settlement Payments for the
3 Settlement Class will be calculated and apportioned from the Net Settlement Amount based on
4 the number of Weeks Worked by a Settlement Class Member during the Class Period. Each
5 specific Individual Settlement Payment will be calculated by: (a) dividing the Net Settlement
6 Amount by the total number of Weeks Worked by all Participating Class Members during the
7 Class Period, and (b) multiplying the result by each Participating Class Members' Weeks
8 Worked. The entire Net Settlement Amount will be disbursed to all Participating Class Members.
9 If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall
10 proportionally increase the Individual Settlement Payment for each Participating Class Member
11 according to the number of Weeks Worked, so that the amount actually distributed to
12 Participating Class Members equals 100% of the Net Settlement Amount.

13 (d) Allocation of Individual Settlement Payments: The Individual Settlement
14 Payments will be allocated based on the allegations in the Action as follows: Twenty percent
15 (20%) will be allocated as wages subject to withholding of all applicable local, state and federal
16 taxes; and the remaining eighty percent (80%) will be allocated between interest and penalties
17 (pursuant to, *e.g.*, California Labor Code sections 203, 210, 226, 2699) from which no taxes will
18 be withheld. The Settlement Administrator will issue to each Participating Class Member an
19 Internal Revenue Service Form W-2 and comparable state forms with respect to the wage
20 allocation and a Form 1099 with respect to the penalties and interest allocations.

21 (e) Service Payment to Class Representative: The amount, if any, awarded to
22 the Class Representative as a Service Payment will be set by the Court in its discretion, not to
23 exceed \$10,000, in exchange for the services Plaintiff performed on behalf of the Class
24 (including taking steps to support the Settlement) and for entering into the general and expansive
25 release discussed hereinafter. Defendants agrees not to oppose this request if Plaintiff does not
26 request exclusion from the Settlement Class and does not take any action, directly or indirectly,
27 to undercut this Settlement. The Service Payment to Plaintiff will be paid out of the Gross
28 Settlement Amount. The Class Representative will be issued IRS Form 1099 in connection with

1 this payment. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes
2 on this payment. The Parties agree that any amount awarded as the Service Payment to Plaintiff
3 less than the requested amount shall not be a basis for Class Counsel to void this Settlement
4 Agreement or to appeal this aspect of the Court's ruling. Should the Court approve a lesser
5 amount for the Service Payment, the difference shall be added to the Net Settlement Amount to
6 be distributed to the Participating Class Members.

7 (f) Attorneys' Fees and Costs Award: Defendants agree to not oppose a
8 request by Class Counsel to the Court for an award of attorneys' fees of not more than one-third
9 of the Gross Settlement Amount (\$83,333.33), plus reasonable litigation costs not to exceed
10 \$20,000 ("Attorneys' Fees and Cost Award"), subject to Court approval. The Attorneys' Fees
11 and Cost Award shall be paid from the Gross Settlement Amount, and except for this award,
12 Defendants shall have no further obligation to pay any attorneys' fees, costs, or expenses to
13 Class Counsel. Should the Court approve a lesser amount than what is sought by Class Counsel,
14 the difference shall be added to the Net Settlement Amount to be distributed to the Participating
15 Class Members. The Parties agree that any amount awarded as attorneys' fees and costs to Class
16 Counsel less than the requested amount shall not be a basis for Class Counsel to rescind or
17 otherwise void this Settlement Agreement. The Settlement Administrator shall issue to Class
18 Counsel an IRS Form 1099 reflecting the amount of attorneys' fees and costs awarded by the
19 Court.

20 (g) Settlement Administration Costs: The fees and other charges of the
21 Settlement Administrator will be paid from the Gross Settlement Amount, not to exceed
22 \$11,000.00 unless approved by all Parties and the Court.

23 (h) PAGA Penalties: The Parties agree that \$10,000 is allocated to PAGA
24 Penalties and is to be paid from the Gross Settlement Amount, subject to the Court's approval.
25 Of this amount, \$7,500 (75%) shall be paid to the LWDA in satisfaction of civil penalties under
26 the Private Attorney General Act of 2004 ("PAGA") and \$2,500 (25%) will be paid to the
27 Aggrieved Employees based upon the number of Weeks Worked by each Aggrieved Employee
28 during the PAGA Period, which will be treated entirely as civil penalties and reported as required

on an IRS Form 1099. Class Counsel shall give proper notice to the LWDA of the Settlement.

(i) Tax Liability: Class Counsel, Defendants, and Defendants' counsel make no representations as to the tax treatment or legal effect of Settlement Amounts called for hereunder, and Plaintiff, Settlement Class Members, and Aggrieved Employees are not relying on any statement or representation by Class Counsel, Defendants, or Defendants' counsel in this regard. Plaintiff, Participating Class Members, and Aggrieved Employees understand and agree that they will be solely responsible for the payment of any taxes and penalties assessed on their respective Settlement Amounts described herein. The amount of federal income tax withholding will be based upon a flat withholding rate for supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also be made pursuant to applicable state and/or local withholding codes or regulations. Forms W-2 and/or Forms 1099 will be distributed at the times and in the manner required by the Internal Revenue Code of 1986 (the "Code") and consistent with this Agreement. If the Code, the regulations promulgated thereunder, or other applicable tax law, are changed after the date of this Agreement, the processes set forth in this Section may be modified in a manner to bring Defendants into compliance with any such changes. Plaintiff, Participating Class Members, and Aggrieved Employees understand and agree that they will be solely responsible for the payment of any taxes and penalties assessed on their respective payments described herein and will hold Defendants harmless from and against any claims resulting from treatment of such payments as non-taxable damages.

(j) 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 SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE

1 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
2 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
3 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
4 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
5 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
6 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
7 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
8 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
9 ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
10 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
11 ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
12 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR
13 ADVISOR'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
14 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
15 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
16 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

17 50. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
18 Participating Class Members under this Agreement, as well as any other payments made
19 pursuant to this Agreement, shall not be utilized to calculate any additional benefits under any
20 benefit plans to which any Participating Class Members may be eligible, including, but not
21 limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase or other types of
22 equity plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it
23 is the Parties' intention that this Settlement will not affect any rights, contributions, or amounts
24 to which any Participating Class Members may be entitled under any benefit plans. The Parties
25 agree that the amounts paid pursuant to this Settlement are not for days or hours worked, and
26 shall not be included toward any regular rate of pay calculation, or any benefit vesting or accrual
27 purpose.
28

51. "Non-Reversionary" Settlement. This is a "non-reversionary" settlement. Under

no circumstances will any portion of the Gross Settlement Amount revert to Defendants. Participating Class Members will not have to make a claim in order to receive an Individual Settlement Payment, and Aggrieved Employees will not have to make a claim in order to receive their share of PAGA Penalties. Distributions, in the form of Individual Settlement Payments, will be made directly to each Participating Class Member and Aggrieved Employee. The Settlement Administrator shall be responsible for accurately and timely reporting and remittance obligations with respect to unclaimed funds as a result of a Participating Class Member or Aggrieved Employee not cashing an Individual Settlement Payment by the check cashing deadline, as set forth herein.

52. Class Counsel and Plaintiff believe that the Settlement is fair and reasonable, and adequate, and will so represent same to the Court.

D. Release by Plaintiff, Participating Class Members, and Aggrieved Employees

53. Upon entry of the Final Approval Order and Defendants' funding of the entire Gross Settlement Amount, and except as to such rights or claims as may be created by this Settlement Agreement, the Participating Class Members will forever completely release and discharge the Released Parties from the Released Class Claims for the Class Period. It is the intent of the Parties that the Final Approval Order and judgment entered by the Court shall have full equitable and collateral estoppel and *res judicata* effect and be final and binding upon Participating Class Members regarding the Released Class Claims.

54. Each Participating Class Member will be deemed to have made the foregoing Release as if by manually signing it.

55. Upon entry of the Final Approval Order and Defendants' funding of the entire Gross Settlement Amount, Plaintiff, standing in the shoes of the Labor Commissioner/LWDA, and on behalf of the State of California and all Aggrieved Employees, will forever completely release and discharge the Released Parties from the PAGA Released Claims for the PAGA Period. It is the intent of the Parties that the Final Approval Order and judgment entered by the Court shall have full equitable and collateral estoppel and *res judicata* effect and be final and binding upon Aggrieved Employees regarding the PAGA Released Claims.

1
2 56. Each Aggrieved Employee and the LWDA will be deemed to have made the
3 foregoing Release as if by manually signing it.

4 57. Plaintiff and Defendants intend that the Settlement described in this Agreement
5 will release and preclude any further claim, whether by lawsuit, administrative claim or action,
6 arbitration, demand, or other action of any kind, by each and all of the Participating Class
7 Members to obtain a recovery based on, arising out of, and/or related to any and all of the
8 Released Class Claims. The Class Members shall be so notified in the Notice. This paragraph
9 only applies to Participating Class Members and, thus, does not apply to any Class Member who
10 timely and validly submits a Request for Exclusion.

11 58. Plaintiff and Defendants also intend that the Settlement described in this
12 Agreement will release and preclude any further PAGA claim, whether by lawsuit,
13 administrative claim or action, arbitration, demand, or other PAGA action of any kind, by each
14 and all of the Aggrieved Employees to obtain a recovery based on, arising out of, and/or related
15 to any and all of the PAGA Released Claims. The Aggrieved Employees shall be so notified in
16 the Notice and Class Counsel shall provide appropriate notice to the LWDA of this Agreement
17 prior to the filing of the Motion for Preliminary Approval. This paragraph is not intended to
18 preclude any Aggrieved Employee other than Plaintiff from bringing any claim other than a
19 PAGA claim.

20 59. Class Representative, on behalf of herself and the Participating Class Members,
21 acknowledges and agrees that the claims, including claims for unpaid wages, unreimbursed
22 expenses, and untimely payment of wages are disputed, and that the payments set forth herein
23 constitute payment of all sums allegedly due to them. Class Representative, on behalf of herself
24 and the Participating Class Members, acknowledges and agrees that California Labor Code §§
25 206.5 and 2804 are not applicable to the Parties hereto. Section 206.5 provides in pertinent part
26 as follows:

27 An employer shall not require the execution of any release of any claim or
28 right on account of wages due, or to become due, or made as an advance on

wages to be earned, unless payment of those wages has been made.

E. Release by Class Representative

60. As a material inducement to Defendants to enter into this Settlement Agreement and in consideration of the Service Award, and in addition to the Class Representative's release of the Released Class Claims and PAGA Released Claims, Class Representative does hereby, for herself and for her respective spouses, domestic partners, marital community, children, estates, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, personal representatives, and assigns forever and completely release and discharge and covenants not to sue the Released Parties with respect to any and all claims, demands, liens, agreements, contracts, covenants, actions, suits, causes of action, wages, obligations, debts, liquidated damages, penalties, interest, costs, expenses, attorneys' fees, damages, judgments, orders and liabilities of whatever kind or nature in law, equity or otherwise, whether now known or unknown, suspected or unsuspected, concealed or hidden, which Plaintiff now owns or holds or has at any time heretofore owned or held as against said Released Parties, or any of them. Such released claims include specifically, but not exclusively and without limiting the generality of the foregoing, any and all claims, demands, agreements, obligations and causes of action, known or unknown, suspected or unsuspected, concealed or hidden, including but not limited to all claims arising out of, based upon, or relating to Class Representative's employment with Defendants or the remuneration for or termination of such employment, as alleged in the operative Complaint, arising out of or in any way connected with any transactions, occurrences, acts or omissions set forth, or facts alleged, in any and all charges, complaints, claims or pleadings filed by Class Representative against any Released Party prior to the date hereof with any city, county, state or federal agency, commission, office or tribunal whatsoever; or arising out of or in any way connected with any transactions, occurrences, acts or omissions occurring prior to the date hereof, including specifically without limiting the generality of the foregoing any claim under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act (29 U.S.C. Section 621 *et seq.*), the Americans with Disabilities Act, the Employee Retirement Income Security Act, the National Labor Relations

1 Act, the Fair Labor Standards Act, the Family and Medical Leave Act, the California
2 Constitution, the California Labor Code, the California Civil Code, the California Government
3 Code, the California Business & Professions Code, the California Family Rights Act, the
4 California Fair Employment and Housing Act, the California Industrial Welfare Commission
5 Wage Orders, or any other federal, state, or local statute or regulation (collectively, the “Class
6 Representative’s Claims”).

7 61. Class Representative agrees that there is a risk that any injury that she may have
8 suffered by reason of the Released Parties’ relationship with her might not now be known, and
9 there is a further risk that said injuries, whether known or unknown at the date of this Settlement
10 Agreement, might possibly become progressively worse, and that as a result thereof further
11 damages may be sustained. Nevertheless, Class Representative agrees to forever and fully
12 release and discharge the Released Parties, and understands that by the execution of this
13 Settlement Agreement no further claims for any such injuries that existed at the time of the
14 execution of this Settlement Agreement may ever be asserted by Class Representative with
15 respect to claims arising in the time period from the beginning of time to the execution of this
16 Settlement Agreement.

17 62. Class Representative expressly waives and relinquishes all rights and benefits
18 afforded by Section 1542 of the Civil Code of the State of California and does so understanding
19 and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil
20 Code of the State of California states:

21 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
22 THAT THE CREDITOR OR RELEASING PARTY DOES NOT
23 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
24 THE TIME OF EXECUTING THE RELEASE AND THAT, IF
25 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
OR RELEASED PARTY.

26 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
27 full and complete release and discharge of all parties, Class Representative and Class Counsel
28 expressly acknowledge that this Settlement Agreement is intended to include in its effect,

1 without limitation, all claims that Class Representative knew of, as well as all claims that she
2 does not know or suspect to exist in her favor against the Released Parties, or any of them, for
3 the time period from the beginning of time to the execution of this Settlement Agreement, and
4 that this Settlement Agreement contemplates the extinguishment of any such Class
5 Representative's claims. Notwithstanding the above, the general release by Class Representative
6 shall not extend to claims for workers' compensation benefits, claims for unemployment
7 benefits, or other claims that may not be released by law.

8 63. Class Representative represents and warrants that she has not filed and will not
9 file any other lawsuit, administrative claim or action, arbitration, demand, or other action of any
10 kind against Defendants or the Released Parties. Class Representative represents and warrants
11 that the only pending claims against Defendants or the Released Parties are included in this
12 Action.

13 **F. Interim Stay of Proceedings**

14 64. Pending completion of all of the prerequisites necessary to effectuate this
15 Settlement, the Parties agree, subject to Court's approval, to a stay of all proceedings in the
16 Action except such as are necessary to effectuate the Settlement.

17 **G. Notice Process**

18 65. Appointment of Settlement Administrator. The Parties have agreed to the
19 appointment of the Settlement Administrator to perform the duties of a settlement administrator,
20 including mailing the Notice, using standard devices to obtain forwarding addresses,
21 independently reviewing and verifying documentation associated with any claims or opt-out
22 requests, resolving any disputes regarding the calculation or application of the formula for
23 determining the Individual Settlement Payments, drafting and mailing the settlement checks to
24 Participating Class Members, and Aggrieved Employees, issuing W-2 and 1099 Tax Forms,
25 performing unclaimed funds due diligence, reporting and performing remittance obligations, and
26 performing such other tasks as set forth herein or as the Parties mutually agree or that the Court
27 orders.

28 66. Disputes Regarding Settlement Administration. Any and all disputes relating to

1 administration of the Settlement by the Settlement Administrator (except for disputes regarding
2 Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction
3 over the terms and conditions of this Settlement Agreement, until Plaintiff and Defendants notify
4 the Court that all payments and obligations contemplated by this Settlement Agreement have
5 been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will
6 confer in good faith to resolve the dispute without the necessity of Court intervention. The
7 Settlement Administrator shall also be responsible for issuing to Plaintiff, Participating Class
8 Members, Aggrieved Employees, and Class Counsel any W-2, 1099, or other Tax Forms as may
9 be required by law for all amounts paid pursuant to this Agreement. The Settlement
10 Administrator shall also be responsible for setting up all necessary tax accounts and forwarding
11 all payroll taxes and penalties to the appropriate government authorities.

12 67. Class Data. Within fourteen (14) calendar days after entry of the Preliminary
13 Approval Order, Defendants shall provide the Class Data to the Settlement Administrator. The
14 Settlement Administrator will run a check of the Class Members' addresses against those on file
15 with the U.S. Postal Service's National Change of Address Database. The Class Data provided
16 to the Settlement Administrator will remain confidential, shall be used solely to administer the
17 Settlement, and it will not be used or disclosed to anyone (including Class Counsel), except as
18 required by applicable tax authorities, pursuant to Defendants' express written consent, or by
19 order of the Court. Although Class Counsel will not be provided with the list of Class Data,
20 nothing herein shall prevent Class Counsel from communicating with Class Members regarding
21 the Action and Settlement.

22 68. Notice. The Notice, as approved by the Court, shall be sent by the Settlement
23 Administrator to the Settlement Class Members, by first class mail, in English, within ten (10)
24 calendar days following the Settlement Administrator's receipt of the Class Data. The
25 Settlement Administrator shall use standard devices, including a skip trace, to obtain forwarding
26 addresses of Settlement Class Members if any envelopes are returned.

27 69. Returned Notices of Settlement. The Settlement Administrator will take steps to
28 ensure that the Notice is received by all Settlement Class Members, including utilization of the

1 National Change of Address Database maintained by the United States Postal Service to review
2 the accuracy of and, if possible, update a mailing address. Notices of Settlement will be re-
3 mailed to any Settlement Class Member for whom an updated address is located within ten (10)
4 calendar days following both the Settlement Administrator learning of the failed mailing and its
5 receipt of the updated address. The re-mailed Notice shall be identical to the original Notice,
6 except that it shall notify the Settlement Class Member that the exclusion (opt-out) request or
7 objection must be returned by the later of the Notice Response Deadline or fifteen (15) calendar
8 days after the remailing of the Notice.

9 70. Disputes Regarding Information on Notices of Settlement. Class Members are
10 deemed to participate in the Settlement, unless they timely opt-out, and Aggrieved Employees
11 may not opt-out of the PAGA Released Claims. The Notice will inform Class Members of
12 his/her estimated Individual Settlement Payment and the number of Weeks Worked during the
13 Class Period and during the PAGA Period. Class Members may dispute their Weeks Worked if
14 they feel they should be credited with more Weeks Worked than Defendants' records show by
15 timely submitting evidence to the Settlement Administrator. Defendants' records will be
16 presumed determinative absent reliable evidence to rebut Defendants' records, but the Settlement
17 Administrator will evaluate the evidence submitted by the Class Member and provide the
18 evidence submitted to Class Counsel and Defense Counsel who agree to meet and confer in good
19 faith about the evidence to determine the Class Member's actual number of Weeks Worked and
20 estimated Individual Settlement Payment. If Class Counsel and Defense Counsel are unable to
21 agree, they agree to submit the dispute to the Settlement Administrator to render a final decision.
22 Class Members will have until the Notice Response Deadline to dispute Weeks Worked, object
23 or opt-out, unless extended by the Court. In the event that the Settlement Administrator
24 increases the number of Weeks Worked for any Settlement Class Member, then the Settlement
25 Administrator will recalculate the Participating Class Members' Individual Settlement Payments;
26 accordingly, in no event will Defendants be required to increase the Gross Settlement Amount.

27 71. Declaration of Due Diligence. The Settlement Administrator shall provide
28 counsel for the Parties, at least twenty-five (25) calendar days prior to the Final Approval

1 Hearing, a declaration of due diligence and proof of mailing with regard to the mailing of the
2 Notices of Settlement.

3 72. Settlement Class Members' Rights. Each Settlement Class Member will be fully
4 advised of the Settlement, the ability to object to the provisions in the Settlement related to the
5 Released Class Claims, and the ability to opt-out or request exclusion from the Settlement with
6 respect to the Released Class Claims. The Notice will inform the Settlement Class Members of
7 the Court-established deadlines for filing objections or requesting exclusion from the Settlement
8 with respect to the Released Class Claims in accordance with the following guidelines:

9 (a) Requests for Exclusion from Participating in the Settlement Class. Any
10 Settlement Class Member, other than Plaintiff, may request to be excluded from the Settlement
11 Class by submitting a "Request for Exclusion" to the Settlement Administrator, postmarked on
12 or before the Notice Response Deadline. The Request for Exclusion should state:

13 "I WISH TO BE EXCLUDED FROM THE SETTLEMENT
14 CLASS IN THE DIVERSITY WIRELESS LAWSUIT. I
15 UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM
16 THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY
17 MONEY FROM THE SETTLEMENT OF THIS LAWSUIT."

18 To be valid, any Request for Exclusion must include the full name, address, telephone
19 number, last four digits of the social security number or date of birth, and signature of the
20 Settlement Class Member requesting exclusion. The Request for Exclusion must be returned by
21 mail to the Settlement Administrator at the specified address set forth in the Notice. Any such
22 Request must be made in accordance with the terms set forth in the Notice. A Request for
23 Exclusion will be timely only if postmarked by the Notice Response Deadline, unless the Parties
24 otherwise agree in writing. Any Settlement Class Member who timely requests exclusion in
25 compliance with these requirements: (i) will not have any rights under this Agreement with
26 respect to the Released Class Claims, including the right to object, appeal, or comment on the
27 Settlement; (ii) will not be entitled to receive any payments under this Agreement for the
28 Released Class Claims; and (iii) will not be bound by this Agreement, or the Judgment, with

1 respect to the Released Class Claims. Any Aggrieved Employee who requests timely exclusion
2 will still be subject to the PAGA Released Claims to the fullest extent permitted by law and shall
3 be sent his or her share of PAGA Penalties.

4 (b) Binding Effect on Participating Class Members. Except for those
5 Settlement Class Members who exclude themselves in compliance with the procedures set forth
6 above, all Settlement Class Members will: (i) be deemed to be Participating Class Members for
7 all purposes under this Agreement; (ii) will be bound by the terms and conditions of this
8 Agreement, the Judgment, and the releases set forth herein; and (iii) except as otherwise
9 provided herein, will be deemed to have waived all objections and oppositions to the fairness,
10 reasonableness, and adequacy of the Settlement.

11 (c) Objections to Settlement of the Released Class Claims. Any Settlement
12 Class Member, other than Plaintiff, may object to the terms of this Agreement, except as to the
13 PAGA Released Claims. To object, a Settlement Class Member shall inform the Settlement
14 Administrator, in writing, of his or her objection which must be postmarked by the Notice
15 Response Deadline at the address set forth in the Notice. Such objection shall include the
16 objecting Settlement Class Member's full name, address, telephone number, last four digits of
17 the social security number or date of birth, signature, and dates of employment with Defendant,
18 in addition to the case name and number, the basis for the objection, including any legal support
19 and each specific reason in support of the objection, as well as any documentation or evidence in
20 support thereof, and, if the Objecting Settlement Class Member is represented by counsel, the
21 name and address of his or her counsel. The Settlement Administrator shall provide objections,
22 if any, to Class Counsel and Defense Counsel within three (3) calendar days of receipt, and the
23 Settlement Administrator shall attach the same to its declaration of due diligence and file with
24 the Court prior to the Final Approval Hearing. Any Participating Class Member who files an
25 objection remains eligible to receive monetary compensation from the Settlement. Plaintiff and
26 Defendants shall not be responsible for any fees, costs, or expenses incurred by any Class
27 Member and/or his or her counsel related to any objections to the Settlement. Submitting an
28 objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is

1 preserved by becoming a party of record by timely and properly intervening or filing a motion to
2 vacate the judgment under California Code of Civil Procedure Section 663. Settlement Class
3 Members and Aggrieved Employees may not object to or opt-out of the Settlement with respect
4 to the PAGA Released Claims.

5 (d) Failure to Object. Any Settlement Class Member who desires to object to
6 the Released Class Claims in the Settlement but fails to timely submit a written objection or in
7 person objection at the Final Approval Hearing waives any right to object and will be foreclosed
8 from making any objection to this Settlement. Any Settlement Class Member who does not
9 timely and properly become a party of record by intervening or filing a motion to vacate the
10 judgment waives any and all rights to appeal from the Judgment, including all rights to any post-
11 judgment proceeding and appellate proceeding, such as a motion to vacate judgment, motion for
12 new trial, a motion under California Code of Civil Procedure Section 473, and extraordinary
13 writs.

14 (e) Responses to Objections. Counsel for the Parties may file a response to
15 any objections submitted by objecting Settlement Class Members at least five (5) court days
16 before the date of the Final Approval Hearing.

17 (f) Settlement Class Members will have until the Notice Response Deadline
18 to object or submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The
19 Settlement Administrator shall disclose jointly to Class Counsel and Defendants' counsel what
20 objections or Requests for Exclusion were timely submitted on a weekly basis, and upon the
21 request of Class Counsel or Defense Counsel.

22 (g) Defective Submissions. If a Settlement Class Member's Request for
23 Exclusion or objection is defective as to the requirements listed herein, that Settlement Class
24 Member will be given an opportunity to cure the defect(s). The Settlement Administrator will
25 mail the Settlement Class Member a cure letter within three (3) business days of receiving the
26 defective submission to advise the Settlement Class Member that his or her submission is
27 defective and that the defect must be cured to render the Request for Exclusion or objection
28 valid. The Settlement Class Member will have the later of (i) the Notice Response Deadline or

(ii) fifteen (15) calendar days from the date of the cure letter to postmark or fax a revised Request for Exclusion or objection. If the revised Request for Exclusion or objection is not postmarked or received by fax within that period, it will be deemed untimely and disregarded.

73. Funding of the Settlement Amount. Defendants, jointly and severally, shall fund the Gross Settlement Amount based on the payment plan discussed below by wiring the full amount of each installment payment (plus any employer payroll tax obligations owed on each installment) to the Settlement Administrator on or before each payment due date.

a. By the later of August 1, 2023, or 10 days after the Effective Date, Defendants shall fund \$80,000, which shall be distributed in a manner that compensates Plaintiff, the Participating Class Members, the Aggrieved Employees, the LWDA, Class Counsel [for fees and costs], and the Settlement Administrator for 32% of the Court-awarded amounts [\$80,000 is 32% of the Gross Settlement Amount]).

b. By the later of February 1, 2024, or 10 days after the Effective Date, Defendants shall fund \$80,000, which shall be distributed in a manner that compensates Plaintiff, the Participating Class Members, the Aggrieved Employees, the LWDA, Class Counsel [for fees and costs], and the Settlement Administrator for 32% of the Court-awarded amounts [\$80,000 is 32% of the Gross Settlement Amount]).

c. By the later of August 1, 2024, or 10 days after the Effective Date, Defendants shall fund \$90,000, representing the remaining balance of the Gross Settlement Amount, and which will be distributed in a manner that compensates Plaintiff, the Participating Class Members, the Aggrieved Employees, the LWDA, Class Counsel [for fees and costs], and the Settlement Administrator for all remaining Court-awarded amounts.

74. Acceleration Clause. In the event that Defendants fail to make any payments outlined above within 5 calendar days of the respective due date, Class Counsel shall send a notice of default to Defense Counsel. Defendants will then have seven (7) calendar days after issuance of the notice of default to cure and bring all payments up to the current required amount. If Defendants fail to timely cure the late payment, all remaining balances shall immediately become due and payable.

1 75. Distribution of Funds. No later than ten (10) calendar days after the receipt of
2 each payment, the Settlement Administrator will issue the Individual Settlement Payments to the
3 Participating Class Members, the payment to Class Counsel for the Attorneys' Fees and Costs
4 Award, any Service Payment to the Class Representative, the payment to the LWDA for PAGA
5 Penalties, the payments to Aggrieved Employees for PAGA Penalties, and will pay itself the
6 Settlement Administration Costs according to the percentages and/or amounts set forth herein.

7 76. Deadline for Cashing Settlement Checks. Participating Class Members and
8 Aggrieved Employees shall have 180 calendar days after mailing by the Settlement
9 Administrator to cash each settlement check. If a check is not cashed within the 180-day period,
10 the check will be voided, and a stop-payment will be issued. If either of the first two
11 installments are not cashed within 180 days, the Settlement Administrator will hold the funds in
12 trust, pending a request by the recipient to have the payments reissued. However, once 180 days
13 has passed after the final check is mailed the Participating Class Members and Aggrieved
14 Employees, the Settlement Administrator shall issue all unclaimed funds (from all installments)
15 to the California State Controller's Office in the name of the Participating Class Member or
16 Aggrieved Employee. The release will be binding upon all Participating Class Members and
17 Aggrieved Employees who do not cash their checks within the 180-day period. In the event that
18 any settlement check is returned to the Settlement Administrator within 180 days of mailing, the
19 Settlement Administrator will, within five (5) business days of receipt of the returned settlement
20 check, perform a skip trace to locate the individual, and notify Defense Counsel and Class
21 Counsel of the results. If a new address is located by these means, the Administrator will have
22 ten (10) business days to re-issue the check. Neither Defendants, Defense Counsel, Class
23 Counsel, Plaintiff, nor the Settlement Administrator will have any liability for lost or stolen
24 settlement checks, forged signatures on settlement checks, or unauthorized negotiation of
25 settlement checks. Without limiting the foregoing, in the event a Participating Class Member or
26 Aggrieved Employee notifies the Settlement Administrator that he or she believes that a
27 settlement check has been lost or stolen, the Settlement Administrator shall immediately stop
28 payment on such check. If the check in question has not been negotiated prior to the stop

1 payment order, the Settlement Administrator will issue a replacement check.

2 77. No person shall have any claim against Defendants or the Released Parties,
3 Defendants' Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on
4 mailings, distributions, payments or reports made in accordance with or pursuant to this
5 Agreement. This provision does not, however, prevent a Party from seeking enforcement of this
6 Agreement.

7 78. Without prejudice to any other remedies, the Settlement Administrator shall agree
8 to be responsible for any breach of its obligations (whether committed by the Settlement
9 Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless
10 from and against all liabilities, claims, causes of action, costs and expenses (including legal fees
11 and expenses) arising out of any breach committed by the Settlement Administrator or its agents.

12 **H. Duties of the Parties Prior to the Court's Approval**

13 79. Promptly after execution of this Settlement Agreement, Plaintiff will move the
14 Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order
15 accomplishing the following:

16 (a) Scheduling the Final Approval Hearing on the issue of whether this
17 Settlement should be finally approved as fair, reasonable and adequate as to the Class Members
18 and Aggrieved Employees and a hearing on fees, costs and the Service Payment;

19 (b) Approving as to form and content of the proposed Notice;

20 (c) Directing the mailing of the Notice by first class mail to the Settlement
21 Class Members and Aggrieved Employees;

22 (d) Preliminarily approving this Settlement; and

23 (e) Preliminarily certifying the class solely for purposes of this Settlement.

24 80. Reallocation of Settlement Proceeds. In the event the Court fails, on its first
25 hearing, to approve this Agreement because the amount of the PAGA Penalties is not adequate,
26 then the Parties shall cooperate in good faith to reallocate the total settlement proceeds, within
27 this Agreement, in order to try to achieve Final Approval of the Agreement upon any subsequent
28 Court hearings.

1 **I. Duties of the Parties Following Court's Final Approval**

2 81. In connection with the Final Approval Hearing provided for in this Settlement
3 Agreement, Class Counsel shall submit a proposed Final Approval Order:

4 a. Approving the Settlement, adjudging the terms thereof to be fair,
5 reasonable and adequate, and directing consummation of its terms and provisions;

6 b. Approving Class Counsel's application for an award of attorneys' fees and
7 reimbursement of litigation costs and expenses, the Service Payment to the Class Representative,
8 and the payment to the Settlement Administrator for costs of administering the settlement; and

9 c. Entering judgment approving settlement, thereby permanently barring all
10 Participating Class Members from prosecuting any Released Class Claims against any of the
11 Released Parties and permanently barring all Aggrieved Employees and the LWDA from
12 prosecuting any PAGA Released Claims against any of the Released Parties.

13 82. Final Judgment. The Settlement Administrator shall give the Participating Class
14 Members and Aggrieved Employees notice of the entry of Final Judgment on a postcard or letter
15 that will be included with the Individual Settlement Payments.

16 **J. Voiding the Agreement**

17 83. All Parties, signatories, and their counsel shall not encourage opt-outs or
18 objections to this Agreement. The Parties specifically agree not to solicit opt-outs, directly or
19 indirectly, through any means.

20 84. If the Settlement is voided or fails for any reason, Plaintiff and Defendants will
21 have no further obligations under the Settlement, including any obligation by Defendants to pay
22 the Gross Settlement Amount, or any amounts that otherwise would have been owed under this
23 Settlement.

24 85. If the Settlement is voided or fails for any reason, any costs incurred by the
25 Settlement Administrator shall be borne equally by Defendants and Plaintiff, unless otherwise
26 specified in this Agreement.

27 **K. Other Terms**

28 86. Anti-Clawback Provision. If, for any reason, the Gross Settlement Amount is not

distributed in full or if the Participating Class Members, Aggrieved Employees, LWDA, and/or Class Counsel are not allowed to receive and retain the full amount of consideration under this Agreement (e.g., if any amounts are subject to a clawback in a bankruptcy proceeding), then the Parties agree that: (1) the Agreement shall become null and void, (2) any Release provided by this Agreement shall become null and void, (3) Plaintiff's Action shall be reinstated in full, and (4) Plaintiff may seek the full value of the claims alleged in the Action (as opposed to pursuing only the compromise amount embodied in this Agreement), as if this Agreement was never entered into.

87. Nondischargeability. In the event that any Defendant files bankruptcy and any amounts of this Agreement are subject to clawback by Court order, then Plaintiff, acting on behalf of the State of California for the PAGA claims, expressly preserves the right to assert that the PAGA claims are nondischargeable under 11 U.S.C. § 523(a). See *Medina v. Poel* (E.D. Cal. 2015) 523 B.R. 820 (PAGA claims not dischargeable in bankruptcy under 11 U.S.C. § 523(a)). The Parties further agree that this Agreement does not create a new obligation and, instead is a compromised settlement of the Action, including the PAGA claims therein.

88. Waiver. The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

89. Full and Complete Defense. This Agreement may be pleaded by any Released Party as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceeding that has been or may be instituted, prosecuted or attempted, asserting any Released Class Claim or PAGA Released Claim.

90. Parties' Authority. The signatories hereto represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof. The signatories hereto further represent that the Parties to this Agreement are represented by competent counsel, and they have had an opportunity to consult with counsel prior to authorizing its execution.

91. No Publicity. The Parties will not publicize the Settlement or disclose it to third parties, except as required or necessary to effectuate its terms and comply with law, including the

1 payment of taxes. Specifically, Plaintiff and Plaintiff's counsel shall not publicize the settlement
2 on their websites, in advertising/marketing materials or on social media. The Parties and their
3 counsel agree that they will not issue any press releases or initiate any contact with the media
4 about the fact, amount, or terms of the settlement. If counsel for any party receives an inquiry
5 about the settlement from the media, counsel may respond only after the motion for preliminary
6 approval of the settlement has been filed and only by confirming the accurate terms of the
7 settlement. Nothing in this provision shall prevent Defendants from making any required
8 disclosure.

9 92. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
10 accomplish the terms of this Settlement Agreement, including but not limited to, execution of
11 such documents and to take such other action as may reasonably be necessary to implement the
12 terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their
13 best efforts, including all efforts contemplated by this Settlement Agreement and any other
14 efforts that may become necessary by order of the Court, or otherwise, to effectuate this
15 Settlement Agreement and the terms set forth herein. As soon as practicable after execution of
16 this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of
17 Defendants and Defendants' Counsel, take all necessary steps to secure the Court's preliminary
18 and final approval of the settlement, and the final entry of judgment. Class Counsel shall provide
19 Defendants' Counsel with copies of the Preliminary Approval Motion and Final Approval
20 Motion for review at least five (5) court days prior to the filing deadline.

21 93. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
22 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
23 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
24 cause of action or rights released and discharged by this Settlement Agreement.

25 94. No Admission. Defendants deny any and all liability to Plaintiff, any Settlement
26 Class Member, and/or any Aggrieved Employee in this Action, as to any and all causes of action
27 that were asserted or that might have been asserted in this Action. Nonetheless, Defendants wish
28 to settle and compromise the matters at issue in the Complaint to avoid further substantial

1 expense and the inconvenience and distraction of protracted and burdensome litigation.
2 Defendants also have taken into account the uncertainty and risks inherent in litigation, and
3 without conceding any infirmity in the defenses that they have asserted or could assert against
4 Plaintiff, has determined that it is desirable and beneficial that Plaintiff's claims be settled in the
5 manner and upon the terms and conditions set forth in this Agreement.

6 95. Inadmissibility of Agreement. Whether or not the Court issues the Final
7 Approval Order, nothing contained herein, nor the consummation of this Settlement Agreement,
8 is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on
9 the part of Defendants or any of the other Released Parties. Each of the Parties hereto has
10 entered into this Settlement Agreement with the intention of avoiding further disputes and
11 litigation with the attendant inconvenience and expenses. This Settlement Agreement is a
12 settlement document, and it, along with all related documents such as the notices, and motions
13 for preliminary and final approval, shall, pursuant to California Evidence Code section 1152
14 and/or Federal Rule of Evidence 408, be inadmissible in evidence in any proceeding, except an
15 action or proceeding to approve the settlement, and/or interpret or enforce this Settlement
16 Agreement. The stipulation for class certification as part of this Settlement Agreement is for
17 settlement purposes only and if, for any reason the settlement is not approved, the stipulation will
18 have no force or effect.

19 96. Notices. Unless otherwise specifically provided herein, all notices, demands, or
20 other communications pursuant to this Agreement shall be in writing and shall be deemed to
21 have been duly given as of the third business day after mailing by United States registered or
22 certified mail, return receipt requested, addressed:

23 To the Settlement Class Members and Aggrieved Employees:

24 Brian Mankin
25 *brian@LMLfirm.com*
26 Lauby Mankin Lauby LLP
27 5198 Arlington Avenue, PMB 513
28 Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

To Defendants:

Jesse Caryl
jcaryl@bcklegal.com
Bent Caryl & Kroll LLP
6300 Wilshire Boulevard, Suite 1415
Los Angeles, CA 90048
Tel: (323) 315-0510 | Fax: (323) 774-6021

97. Construction. The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his or its counsel participated in the drafting of this Settlement Agreement. Plaintiff and Defendants expressly waive the common-law and statutory rule of construction that ambiguities should be construed against the drafter of an agreement and further 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.

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

99. Modification. This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by all of the Parties hereto.

100. Court Retains Jurisdiction. The Parties agree that upon the entry of judgment of dismissal pursuant to the terms of this Agreement, that, pursuant to California Code of Civil Procedure Section 664.6, the Court shall retain exclusive and continuing equity jurisdiction of this Action over all Parties to interpret, enforce, and effectuate the terms, conditions, intents, and obligations of this Agreement.

101. Enforceability. Pursuant to California Evidence Code §§ 1123(a) and (b), the Parties intend that this Agreement shall be enforceable, binding, and admissible in a court of law.

1 102. Choice of Law. This Settlement Agreement shall be governed by and construed,
2 enforced and administered in accordance with the laws of the State of California.

3 103. Integration Clause. This Settlement Agreement contains the entire agreement
4 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
5 or contemporaneous agreements, understandings, representations, and statements, whether oral
6 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
7 hereunder may be waived except in writing.

8 104. Binding On Assigns. This Settlement Agreement shall be binding upon and inure
9 to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
10 successors, and assigns.

11 105. Signatures of All Class Members and Aggrieved Employees Unnecessary to be
12 Binding. It is agreed that, because the members of the Settlement Class and Aggrieved
13 Employees are numerous, it is impossible or impractical to have each Class Member and
14 Aggrieved Employee execute this Settlement Agreement. The Notice will advise all Settlement
15 Class Members and Aggrieved Employees of the binding nature of the releases provided herein
16 and such shall have the same force and effect as if this Settlement Agreement were executed by
17 each Settlement Class Member and Aggrieved Employee.

18 106. Invalidity of Any Provision. Before declaring any provision of this Settlement
19 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest
20 extent possible consistent with applicable precedents so as to define all provisions of this
21 Settlement Agreement valid and enforceable.

22 107. Counterparts. This Settlement Agreement may be executed in counterparts, and
23 when each Party has signed and delivered at least one such counterpart, each counterpart shall be
24 deemed an original, and, when taken together with other signed counterparts, shall constitute one
25 fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties.
26 Electronic signatures shall have the same force and effect as an original.

27 ///

28 ///

January 3, 2023

Dated: ~~December~~ ____, 2022

PLAINTIFF AND CLASS REPRESENTATIVE:



Kristy Elwell (Jan 3, 2023 09:29 PST)

Kristy Elwell

January 3, 2023

Dated: ~~December~~ ____, 2022

CLASS COUNSEL:

LAUBY MANKIN LAUBY LLP



Brian J. Mankin

Attorneys for Plaintiff

Dated: December ____, 2022

DEFENDANT:

DIVERSITY WIRELESS PARTNERS, LLC

By: _____

Title: _____

Dated: December ____, 2022

DEFENDANT JON GARCIA:

Jon Garcia

Dated: December ____, 2022

DEFENDANT VICTOR CHAPRON, SR.:

Victor Chapron, Sr.

Dated: December ____, 2022

DEFENDANTS' COUNSEL:

BENT CARYL & KROLL LLP

Jesse Caryl
Attorneys for Defendants Diversity Wireless Partners,
LLC, Jon Garcia, and Victor Chapron, Sr.

END OF DOCUMENT

1 Dated: December ___, 2022

PLAINTIFF AND CLASS REPRESENTATIVE:

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Kristy Elwell

Dated: December ___, 2022

CLASS COUNSEL:
LAUBY MANKIN LAUBY LLP

Brian J. Mankin
Attorneys for Plaintiff

Dated: December 22, 2022

DEFENDANT:
DIVERSITY WIRELESS PARTNERS, LLC

Victor Chapron

By: Victor Chapron, Sr.

Title: Owner

Dated: December 31, 2022

DEFENDANT JON GARCIA:


Jon Garcia (Dec 31, 2022 10:18 PST)

Jon Garcia

Dated: December 22, 2022

DEFENDANT VICTOR CHAPRON, SR.:

Victor Chapron

Victor Chapron, Sr.

Dated: December 22, 2022

DEFENDANTS' COUNSEL:
BENT CARYL & KROLL LLP

Jesse M. Caryl

Jesse Caryl
Attorneys for Defendants Diversity Wireless Partners,
LLC, Jon Garcia, and Victor Chapron, Sr.

END OF DOCUMENT

EXHIBIT “B”

All Expenses

Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
 Group By Staff Member Group
 Client - Project = 14000-00476 Elwell v Diversity
 Wireless (Active Only)
 Activity Code = All
 Expense Code = All
 View = Original
 Approval Status = All
 Selected Expenses = All
 From Earliest To Latest

Entered Status Approval BillableType Expense Staff Member Price Mark Up % Qty Amount

Kristy Elwell
14000-00476 Elwell v Diversity Wireless

12-20-2021	Approved	Non-Billable	E112 Court fees	Aguilera, Monica A	75.00	0.00	1.00	75.00
LWDA Case Number: LWDACM85812321 to submit PAGA letter								
12-28-2021	Approved	Non-Billable	E101 Copying	Aguilera, Monica A	0.06	0.00	76.00	4.56
76 copies @ .06 each for initial letters to employer								
01-04-2022	Approved	Non-Billable	E108 Postage	Aguilera, Monica A	16.92	0.00	1.00	16.92
Postage for the month of December 2021								
02-01-2022	Approved	Non-Billable	E112 Court fees	Aguilera, Monica A	1,476.80	0.00	1.00	1,476.80
San Bernardino Superior Court Receipt #SC-2022-06054 and #SC-2022-06056 to fax file complaint								
02-01-2022	Approved	Non-Billable	E101 Copying	Aguilera, Monica A	0.06	0.00	124.00	7.44
124 copies @ \$0.06 for Amended LWDA letter to employer								
02-07-2022	Approved	Non-Billable	E108 Postage	Aguilera, Monica A	16.52	0.00	1.00	16.52
Postage for Jan 2022								
02-08-2022	Approved	Non-Billable	E112 Court fees	Aguilera, Monica A	42.00	0.00	1.00	42.00
San Bernardino Superior Court Receipt #SC-2022-07194 to fax file FAC								
02-17-2022	Approved	Non-Billable	Attorney Service	Grossi, Tracie L.	133.70	0.00	1.00	133.70
Bosco Inv 6634798								
Serve: Diversity Wireless Partners LLC, a California Limited Liability Company Amended Summons; (Original) Summons; First Amended Complaint; (Original) Complaint; Amended Civil Case Cover Sheet; (Original) Civil Case Cover Sheet; Certificate of Assignment; ADR Court; San Bernardino County Superior Court - Central District								
04-27-2022	Approved	Non-Billable	Attorney Service	Grossi, Tracie L.	94.00	0.00	1.00	94.00
Courtcall ID#11504715 for 4-26-22 courtcall								
07-15-2022	Approved	Non-Billable	E125 Mediation fees	Charito, Tracie	3,825.00	0.00	1.00	3,825.00
Judicate West Inv #569609 for 9/9/22 mediation w Judge DiCesare								

All Expenses

Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
Group By Staff Member Group
Client - Project = 14000-00476 Elwell v Diversity
Wireless (Active Only)
Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
<u>Kristy Elwell</u> <u>14000-00476 Elwell v Diversity Wireless</u>									
08-01-2022	Approved	Non-Billable	E101 Copying	Chiarto, Tracie	0.06	0.00	8.00	0.48	
8 copies @ .06 for Nitc of Change of Address									
09-11-2022	Approved	Non-Billable	E119 Experts	Chiarto, Tracie	2,500.00	0.00	1.00	2,500.00	
Berger Consulting Inv #6793									
09-22-2022	Approved	Non-Billable	E119 Experts	Chiarto, Tracie	760.00	0.00	1.00	760.00	
Torrey Partners Inv #22370									
11-23-2022	Approved	Non-Billable	E112 Court fees	Chiarto, Tracie	7.00	0.00	1.00	7.00	
San Bernardino Superior Court - fax file (2) Notice and Acknowledgments - rejected									
12-21-2022	Approved	Non-Billable	Attorney Service	Chiarto, Tracie	9.95	0.00	1.00	9.95	
Receipt for TurboCourt - file Notice of Settlement									
01-10-2023	Approved	Non-Billable	Attorney Service	Chiarto, Tracie	19.90	0.00	1.00	19.90	
Turbo Court - file (2) Amendments to Complaint and (2) Notice and Acknowledgment of Receipts									
01-16-2023	Approved	Non-Billable	Attorney Service	Chiarto, Tracie	72.00	0.00	1.00	72.00	
Courtcall ID #11644768 for 1/13/23 CMC									
03-23-2023	Approved	Non-Billable	Attorney Service	Chiarto, Tracie	202.15	0.00	1.00	202.15	
Bosco Inv #8579154 File and conform. -Motion -Declaration x3 -Proposed Order *advance fee* Court: San Bernardino County Superior Court - Central District Completed on: 3/21/2023									
04-20-2023	Approved	Non-Billable	Attorney Service	Chiarto, Tracie	72.00	0.00	1.00	72.00	
Courtcall ID #11686416 for 4/19/23 MPA									
04-21-2023	Approved	Non-Billable	E112 Court fees	Chiarto, Tracie	3.50	0.00	1.00	3.50	
Fees for San Bernardino Superior Court for copy of signed order on PA									
07-25-2023	Approved	Non-Billable	Attorney Service	Chiarto, Tracie	300.00	0.00	1.00	300.00	
Estimated costs to file Motion for Final Approval and supporting documents via Bosco.									

All Expenses
Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
Group By Staff Member Group
Client - Project = 14000-00476 Elwell v Diversity
Wireless (Active Only)
Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
<u>Kristy Elwell</u>									
<u>14000-00476 Elwell v Diversity Wireless</u>									
08-16-2023	Approved		Non-Billable	Attorney Service	Chiarto, Tracie	114.00	0.00	1.00	114.00
Courtcall for 8/16/23 MFA									
Project Total									9,752.92
Client Total									9,752.92
Grand Total									9,752.92

EXHIBIT “C”