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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]*

**DECLARATION OF BRIAN J. MANKIN
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing

Date: April 19, 2023

Time: 10:00 a.m.

Dept.: S26

1 I, Brian J. Mankin, state and declare:

2 1. I am an attorney licensed to practice before all of the courts of the State of
3 California. I manage the employment department within my firm where I am also a Partner. I
4 represent Plaintiff in this action and I am thoroughly familiar with and have personal knowledge
5 of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for
6 Preliminary Approval of this Class Action Settlement. If called as a witness, I could and would
7 competently testify thereto.

8 **COUNSEL'S EXPERIENCE**

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

13 3. I have handled well over 500 employee vs. employer litigation matters during my
14 21 years in practice. Over the last 15 years, my practice has almost entirely consisted of
15 representing employees, the majority of which has included class action and representative
16 action wage and hour matters. In total, I have handled well over 250 class action and
17 representative action wage/hour cases, and have been appointed by the court as class counsel and
18 have received final court approval and judgment in close to half of those actions to date, and
19 anticipate receiving final approval in many more of those in the future.

20 4. As part of these settlements and judgments, I have recovered in excess of \$250
21 million in damages for my clients and the class members (who often work as nurses, ambulance
22 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
23 countless other trades). As of the end of last year, my team and I held the record for the largest
24 known PAGA-only case in California's history as of that time - a \$12.5 million-dollar court
25 approved settlement, which followed extensive litigation, summary adjudication and writs to the
26 CA Supreme Court against a Fortune 50 company (*Garcia v. Macy's*, San Bernardino Superior
27 Court).

28 ///

1 5. I have tried two class and PAGA cases against Fortune 100 companies. In 2018, I
2 was lead counsel in a PAGA case that my firm tried to the bench in the Orange County Superior
3 Court and received a \$425,000 judgment. In 2019, I was co-counsel in a class action case
4 against Walmart that was tried to the jury in District Court for the Central District, wherein the
5 jury awarded Plaintiffs over \$6 million. Following the successful outcome in trial, both cases
6 were appealed.

7 6. Over the last four or five consecutive years, I have been selected by my peers as a
8 “Super Lawyer” in Employment Litigation, a distinction that only 5% of lawyers receive.

9 **BRIEF SUMMARY OF THE SETTLEMENT**

10 7. Following a contested but productive mediation, Plaintiff and Defendant
11 (collectively, the “Parties”) entered into a Class Action and PAGA Settlement Agreement and
12 Release of Claims resolving the wage and hour claims of the putative class (the “Settlement
13 Agreement” or “S.A.”), which is attached hereto as **Exhibit 1**. The Settlement Agreement
14 seeks to release and discharge Defendants from the claims brought against them in exchange
15 for Defendant’s agreement to pay \$250,000 on a non-reversionary, non-claims made basis
16 (each Class Member will receive his/her share of the Net Settlement Amount without having to
17 submit a claim form or take any action, except for those who opt-out). Plaintiff seeks to
18 represent a class of all current and former non-exempt employees employed by Defendant
19 Diversity Wireless Partners, LLC in California at any time during the Class Period of
20 December 17, 2017, through December 31, 2022. Under the terms of the Settlement
21 Agreement, Defendants will not oppose Class Counsel’s application for a reasonable award of
22 attorneys’ fees not to exceed one-third of the Settlement Amount, Class Counsel’s litigation
23 expenses not to exceed \$20,000, settlement administrator costs of \$11,000, PAGA Penalties of
24 \$10,000 of which \$7,500 will be paid to the LWDA and the remaining \$2,500 will be paid to
25 the Aggrieved Employees, and a service award not to exceed \$10,000 to Plaintiff. After
26 subtracting these deductions from the Settlement Amount, approximately \$115,666.67 will be
27 available to pay individual settlement amounts to approximately 300 Class Members who do
28 not opt-out of the settlement, as follows:

<i>Gross Settlement Amount</i>	\$ 250,000.00
Attorneys' Fees (1/3)	\$ 83,333.33
Litigation Costs (not to exceed)	\$ 20,000.00
Administrator Costs	\$ 11,000.00
PAGA Penalties	\$ 10,000.00
Class Representative Service Award	\$ 10,000.00
<i>Net Settlement Amount</i>	\$ 115,666.67

8. Assuming 300 Class Members, the average payment to each Class Member will be approximately \$385.55 (\$115,668.67 / 300). However, the actual payment will be calculated on a pro-rata basis according to the number of Weeks Worked by each Class Member during the Class Period, with each Work Week having a value of approximately \$16.52 (\$115,666.67 / 7,000 estimated Work Weeks).

9. Each Class Member will receive the Class Notice, explaining the nature of the case, and the process for participating, objecting and opting-out, and advising of his/her estimated settlement payment and the number of Weeks Worked he/she is credited with working during the Class Period. A true and correct copy of the Class Notice is attached hereto as **Exhibit 2**.

PROCEDURAL BACKGROUND

10. My office has performed considerable work and diligently investigated and prosecuted this case to a successful conclusion. Our work has resulted in the creation of a significant settlement fund for the benefit of the Class. We efficiently communicated and exchanged information informally with Defense counsel which enabled the parties to successfully settle the case. Because of the risks involved in litigating the case and the contested legal and factual issues, Plaintiff's Counsel (i.e., my office) believes this settlement to be fair, reasonable, and adequate.

11. After being retained by Plaintiff, we submitted a December 17, 2021, letter to the California Labor Workforce Development Agency (the "LWDA") for civil penalties under the Private Attorney General Act of 2004 (the "PAGA"), a true and correct copy of which is attached as **Exhibit 3**, and simultaneously sent a letter to Defendant requesting the production of Plaintiff's personnel and timekeeping records to further evaluate the wage and hour claims. The

1 LWDA ultimately declined to assert jurisdiction over the PAGA, thereby giving Plaintiff the
2 right to bring PAGA claims.

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

11 13. Defendant retained counsel and immediately began to defend the case. Then,
12 after early discussions among counsel, the Parties agreed to attend private mediation.

13 14. In preparation for the mediation, the Parties informally exchanged documents and
14 information that allowed both sides to calculate the potential damages and evaluate potential risk,
15 including policies and procedures pertaining to each claim alleged, and statistics relating to the
16 number of current and former employees, number of shifts, pay periods worked and other things.
17 Defendant also provided its written policies and practices and a robust sampling of payroll and
18 timekeeping records for Class Members. This information enabled both parties to take a deep
19 dive into the claims. Additionally, during this process, Plaintiff and his counsel analyzed,
20 researched, and investigated the potential issues, including matters related to the calculation of
21 damages, trial, and appellate issues and risks.

22 15. On September 9, 2022, Plaintiff and Diversity participated in mediation before
23 Hon. James Di Cesare (Ret.), a well-respected mediator that recently retired from the Orange
24 County complex bench. The matter did not resolve at mediation and the Parties moved forward
25 with discovery, and Plaintiffs also filed Doe amendments adding the owners of Diversity
26 Wireless (Jon Garcia and Victor Chapron, Sr.) as defendants in this action. Despite the
27 unsuccessful mediation, the Parties continued negotiating and, after extensive back-and-forth
28 discussions, settlement was reached on November 11, 2022. The Parties memorialized the terms

1 of the settlement in a long-form Settlement Agreement and, pursuant to the terms of the
2 settlement, the Parties now seek preliminary approval of the Settlement.

3 **THE WAGE AND HOUR CLAIMS, CLASS COUNSEL’S INVESTIGATION, AND**
4 **EVALUATION OF THE SETTLEMENT**

5 16. The putative Class in this case consists of approximately 300 similarly situated
6 nonexempt employees employed by Defendant Diversity Wireless Partners, LLC in California at
7 any time during the Class Period. Plaintiff alleged numerous wage and hour violations on behalf
8 of the Class Members. However, Defendant vigorously contested and denied each of Plaintiff’s
9 material allegations on the merits and as to the propriety of a class action or PAGA
10 representative action, as discussed herein.

11 17. In preparation for mediation, Peter Carlson, a senior associate within my firm, and
12 I formulated a damages model and risk analysis based upon detailed data obtained through
13 informal discovery and information exchanges. The summary of the claims below is based on
14 calculations and analysis of the claims and risks that we potentially faced, giving significant
15 credit to the defenses that Defendants raised or would likely raise in further proceedings.
16 Following the informal exchange and other information provided by Defendants, we estimated
17 the following data points through the date of mediation: (1) 247 class members, (2) 166 class
18 members that separated from employment during the 3-year lookback for Labor Code § 203, (3)
19 6,366 workweeks, (4) 27,986 shifts worked, and (4) approximately 2,980 biweekly wage
20 statements during the PAGA Period. From these metrics, and when factoring in claim
21 certification probabilities and liability probabilities, we formulated detailed damages models to
22 value the claims in preparation for mediation and to reach a realistic and reasonable resolution.

23 18. Here, there were four categories of claims alleged by Plaintiff: (1) unpaid wage
24 claims under various theories, (2) meal and rest break violations, (3) failure to reimburse
25 business expenses, and (4) derivative claims for waiting time and wage statement penalties due
26 to the other alleged violations.

27 19. As to the unpaid wage claims, we alleged two theories of liability. First, we
28 alleged that Diversity failed to pay all overtime due to the failure to include commissions and

1 bonuses in the regular rate and overtime calculations. Second, we alleged that Diversity had a
2 policy of paying vested but unused vacation to departing employees at the base hourly rate of
3 pay, rather than the “final rate” required by Labor Code § 227.3. In total, we estimated the
4 maximum value of these unpaid wages to be \$80,260. However, Diversity vehemently opposed
5 these unpaid wage claims on the merits and as to the propriety of class certification. Due to the
6 defenses and arguments raised, 23 assigned a 20% risk for each respective unpaid wage claim at
7 the class certification stage and an additional 20% risk on the merits. In sum, we calculated the
8 risk-adjusted value of the unpaid wage claims as \$51,366.

9 20. Plaintiff also alleged meal and rest break claims against Defendant. Given the
10 total number of shifts at issue (an estimate of 27,986), and when incorporating violation rates
11 from expert review of the timekeeping records and other evidence, Plaintiff’s counsel estimated a
12 25% violation rate for meal breaks and a 50% violation rate for rest breaks, leading to 6,997
13 alleged meal violations and 13,993 alleged rest break violations. This established a maximum
14 potential value for these claims of \$390,834 (20,990 violations multiplied by the average hourly
15 rate of \$18.62 as the applicable premium rate under § 226.7).

16 21. However, Diversity raised numerous arguments in response to this claim,
17 including that it maintained fully compliant written policies and specifically authorized the Class
18 Members to take meal and rest breaks, meaning that no one had a reason or cause to miss a break
19 or take a short/late break. Therefore, Diversity asserted that a fact-finder would have to
20 determine for each Class Member whether a break was missed and why, and why a break was
21 noncompliant or nonexistent, because if it was by the employee’s choice, no liability attaches to
22 Defendant. These defenses are factored into Plaintiff’s analysis in two ways. First, these issues
23 raise questions regarding whether the meal and rest break claims could be certified, and Plaintiffs
24 placed a 20% risk at the class certification stage for meal periods and a 40% risk for rest breaks.
25 Second, these defenses also go toward the merits given the evidentiary question of proving the
26 number of meal and rest violations. As such, Plaintiff placed a 20% risk on the merits for meal
27 breaks, and an additional 40% risk on the merits for rest breaks, setting the risk-adjusted value
28 for the combined meal and rest break claims at \$177,173.

1 22. Plaintiff also alleged that Diversity required Class Members to use their personal
2 cellular phone for business purposes, with no reimbursement. Plaintiff calculated the maximum
3 value of this claim as \$127,320 (\$20 per workweek x 6,366 workweeks). But Defendants
4 strongly opposed this claim and denied that any Class Member was required to use a cellular
5 phone for business purposes. Thus, Defendants contended that even if a Class Member did use
6 their own phone, it was not “necessary” and cannot trigger liability under Labor Code § 2802.
7 Based on the defenses to this claim, Plaintiff’s counsel assigned a 30% risk at class certification
8 and another 30% on the merits, leading to a risk-adjusted value of \$62,386.

9 23. Finally, Plaintiff alleged claims for waiting time penalties and wage statement
10 violations. But these claims were entirely derivative of the claims above, meaning that they only
11 had merit if the claims for unpaid wages or meal/rest breaks were successful. The maximum
12 values for these claims were as follows: (1) \$741,820 for waiting time penalties [166 former
13 employees x \$18.62 per hour x 8 hours per day x 30 days], and (2) \$288,000 for wage statement
14 violations [2,980 wage statements at the \$50/\$100 formula under § 226(e)].

15 24. Diversity raised a variety of defenses to these derivative claims that impacted the
16 valuation. Namely, as to the wage statement violations, that the wage statements did not violate
17 Labor Code § 226 and, even if there was a “technical” violation, that Plaintiff would be unable to
18 prove the required “knowing and intentional” and “injury” elements. Based on these facts and
19 defenses, Plaintiff placed a nominal 20% risk at class certification (mirroring the claims on
20 which the wage statement claim was based) and estimated another 30% risk the merits, leading
21 to a risk-adjusted value of \$161,280 for the wage statement claims.

22 25. Then, as to the waiting time penalty claim, Plaintiffs’ valuation had to account for
23 the fact that this claim was derivative of the unpaid wage and meal/rest break claims (*e.g.*, the
24 unpaid wage premiums) and, if those claims failed at certification or on the merits, there would
25 be no waiting time penalties owed, so the same risks for those claims applied to this claim.
26 Furthermore, even if the unpaid wage and/or meal/rest claims succeeded at certification and on
27 the merits, Plaintiff would have to prove that the violations (if any existed) were “willful” under
28 the meaning of Labor Code § 203. And, here, Defendants argued that there could not be a

finding of a “willful” violation since they had compliant written policies and any deviations therefrom were inadvertent and unintentional. As a result of this analysis, Plaintiff’s counsel applied a 30% risk at class certification and a 40% risk on the merits, leading to a risk-adjusted value of \$311,564.

26. In sum, when factoring in the defenses and risks of ongoing litigation, Plaintiff estimates the risk-adjusted class recovery as follows:

•	Unpaid Wage Claims	\$	51,366
•	Meal and Rest Break Claims	\$	177,173
•	Failure to Reimburse Expenses	\$	62,368
•	Wage Statement Claims	\$	161,280
•	Waiting Time Penalty Claims	\$	<u>311,564</u>
•	Total Risk Adjusted Penalties and Damages	\$	763,751

THE SETTLEMENT IS FAIR, JUST, AND REASONABLE

27. The settlement was the product of extensive arm’s length negotiations, facilitated by an experienced mediator. Though cordial and professional, the settlement negotiations were adversarial and non-collusive in nature. The settlement reached is the product of substantial effort by the parties and their counsel. Although we believed that there was a possibility of certifying the claims, we recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or on the damages awarded, and/or on an appeal that can take several more years to litigate.

28. The settlement will result in a fair payment to each class member based on the number of Weeks Worked during the Class Period, with a gross value per workweek (at the time of mediation) of \$39.27 and a net value per workweek extrapolated through the Class Period of 16.52. As set forth hereinabove, Plaintiff and his counsel have diligently investigated the claims and defenses on behalf of the Class Members and worked to achieve a resolution of the claims to maximize the recovery by avoiding further expenditure of attorneys’ fees and costs. After evaluating the significant risks attendant with further litigation described above and weighing them against the benefits of a known compromise and settlement as set forth in the Settlement

1 Agreement, settlement on the terms agreed to is believed to be in the best interest of Plaintiff and
2 the Class, and is a fair and reasonable resolution of the claims alleged.

3 29. Plaintiff's counsel brought to bear a great deal of experience in negotiating the
4 settlement of this case. As detailed herein, Plaintiff's counsel engaged in the necessary discovery
5 and investigation, making it possible to exercise informed judgment throughout the settlement
6 process, including significant document review (*e.g.*, documents pertaining to Defendant's
7 policies and procedures, personnel documents, among others), and conducted an extensive
8 analysis of the detailed class-wide data provided by Defendant.

9 30. Based on my experience in other cases, including wage and hour matters, I
10 believe I am qualified to evaluate the class claims and viability of defenses in this class action.
11 In this case, the recovery for each class member is reasonable, fair, and adequate, and a
12 settlement at this time is in the best interests of the class. The settlement provides each class
13 member with compensation for the alleged violations when viewed in relation to the costs and
14 risks inherent in obtaining class certification and proceeding to trial.

15 31. Plaintiff's counsel, as well as Defendants' counsel, fully endorse the terms and
16 conditions of the settlement as set forth in the abovementioned Settlement Agreement.

17 32. Of course, the settlement amount represents a compromise figure, taking into
18 account the various risks surrounding class certification and the merits of Defendants' asserted
19 defenses. Nevertheless, the settlement provides for fair and adequate payments to the class
20 members, with no reversion to Defendants.

21 **PLAINTIFF'S REQUESTED ENHANCEMENT PAYMENT**

22 33. Plaintiff seeks an enhancement payment of \$10,000 for her service to the class,
23 which I believe is fair and warranted. Ms. Elwell came forward in an effort to effectuate a policy
24 and practice change that benefitted all other Class Members, and to recover unpaid wages. She
25 assumed significant risk in bringing this litigation—namely, had she lost, she would have been
26 ordered to pay Defendants' costs.

27 34. Plaintiff provided invaluable assistance to my office and the Class in this case,
28 including providing factual background for the Class Complaint; reviewing the litigation

documents; providing information and documents about Diversity's policies and practices; participating in phone calls to discuss litigation and settlement strategy; and reviewing the settlement documents. Plaintiff agreed to participate in this case with no guarantee of personal benefit. At final approval, Plaintiff will submit a comprehensive declaration setting forth all of the reasons why she believes that the service award should be approved.

ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF THE
REQUESTED FEES AND COSTS

35. As set forth above, I have handled over 250 class and representative actions, have been appointed as class counsel and have successfully resolved over half of those cases, and many others remain pending and will successfully resolve in the future.

36. 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, my firm and my co-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.

37. It is my experience that attorney fee awards of one-third of a common fund settlement is the standard in California. In this case, Plaintiff's counsel agreed to seek one-third of the Settlement Amount for attorneys' fees. Defendants do not oppose this fee request. The fee is further warranted because it is within the range of reasonableness typically awarded in class actions. The litigation costs are reasonably capped at \$20,000 and will be based on the actual amount of costs incurred at the time of final approval.

SETTLEMENT ADMINISTRATOR

38. The parties request that the Court appoint Phoenix Settlement Administrators to serve as the Settlement Administrator. Phoenix is experienced in administering class action settlements, and has provided a proposal to administer this settlement for a total of \$11,000, which is attached hereto as **Exhibit 4**.

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EXHIBITS AND CONCLUSION

40. A true and correct copy of the Settlement Agreement is attached as **Exhibit 1.**

41. A true and correct copy of the proposed Class Notice is attached as **Exhibit 2.**

42. True and correct copies of Plaintiff's notices to the LWDA are attached as **Exhibit 3.**

43. Phoenix's proposal to administer the Settlement is attached hereto as **Exhibit 4.**

44. The LWDA's confirmation of receipt of this Motion and all supporting documents is attached hereto as **Exhibit 5.**

45. For the foregoing reasons, it is respectfully requested that the Court grant preliminary approval of the settlement as being fair, reasonable, and in the best interests of the class, as well as preliminarily approve the requested attorneys' fees, costs, and enhancement payment to the Class Representative.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on March 21, 2023, at Riverside, California.

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

EXHIBIT “1”

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
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KRISTY ELWELL, individually, on a
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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.

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

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

B. General Terms

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

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

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

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

44. The Class Representative believes she can proceed with her representative and 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

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

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

21 (j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS
22 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY"
23 AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
24 PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO
25 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR
26 DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND
27 OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
28 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 “2”

NOTICE OF SETTLEMENT OF CLASS AND REPRESENTATIVE ACTION

Kristy Elwell v. Diversity Wireless Partners LLC, et al.

Superior Court of the State of California, County of San Bernardino, Case No. CIVSB2134554

To: All current and former nonexempt employees who were employed by the Diversity Wireless Partners LLC (“Diversity”) in California at any time between December 17, 2017, and December 31, 2022 (the “Class”):

THIS NOTICE is of a proposed settlement of the above-referenced class action and representative action lawsuit (the “Lawsuit”), and an announcement of a court hearing that you may choose to attend. Your rights may be affected by the legal proceedings in this Lawsuit. The Court will conduct a hearing on [REDACTED], 2023, to address whether the proposed settlement should be approved (the “Final Approval Hearing”). You may be entitled to receive a payment under the terms of this class action settlement contained in the Settlement Agreement.

[IDENTIFYING INFORMATION]

You have been identified as a Class Member and possible Aggrieved Employee in the above Lawsuit. Under the terms of the proposed settlement, you are estimated to receive approximately \$[INSERT AMOUNT] as your share of the Settlement should the Court grant the settlement in full. Please note that this is only an estimate. Your actual share may be more or less than this estimate. Your estimate is based on the number of eligible weeks that you worked for Diversity in California between December 17, 2017 and December 31, 2022 (the “Class Period”). Your options and eligibility requirements for receiving payments are described below.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	If you want to receive your full settlement payment, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if the Settlement receives Final Approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the released class and PAGA claims described in Section IV under the provisions titled “Release of Class Claims” and “Release of PAGA Claims.”
EXCLUDE YOURSELF	If you do not wish to participate in the settlement of the Class Claims, you may “opt-out” of the settlement of the Class Claims. If you choose to opt-out, you must submit a Request for Exclusion by [REDACTED], 2023 (see Section V(B) for more details on how to opt-out). If you opt-out of the settlement of the Class Claims, you will no longer be a Class Member, and you will (1) neither receive any settlement payment for the Class Claims nor release any Class Claims as set forth in Section IV, and (2) be barred from filing an objection to the settlement. You still will receive a payment as part of the civil penalties paid pursuant to the California Private Attorneys General Act of 2004 (“PAGA”) and will release your claims for such civil penalties.
OBJECT	If you decide to object to the settlement with respect to the Class Claims because you find it unfair or unreasonable, you must submit an objection by [REDACTED], 2023 (see Section V(C) for more details on how to object).
DISPUTE YOUR NUMBER OF WORKWEEKS CREDITED	If you believe that the number of weeks that you are credited with working during the Class Period is incorrect, you may submit a written dispute to the Settlement Administrator (see Section IV for more details on how to dispute your credited Weeks Worked). Defendant’s records will be presumed correct, but you may provide evidence to the Settlement Administrator showing that your workweek calculation is inaccurate.

I. Why should I read this Notice?

The Court has granted preliminary approval of a proposed settlement (the “Settlement”) in *Elwell v. Diversity Wireless Partners LLC, et al.* San Bernardino County Superior Court Case No. CIVSB2134554 (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

Diversity’s records show that you were employed as a nonexempt employee (meaning you were paid hourly or eligible for overtime pay) in California at some point between December 17, 2017, and December 31, 2022 (“Class Period”). The Court ordered this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT: If you were employed by Diversity as a nonexempt employee in California at any time during the Class Period, you are automatically included in the Settlement and do not need to take any further action to receive a payment.

The purpose of this Notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the proposed Settlement, and to discuss your rights and options in connection with the Lawsuit and the Settlement.

II. What is this lawsuit about?

On December 17, 2022, Plaintiff and Class Representative Kristy Elwell, through her attorneys (“Class Counsel”), filed a class action complaint against Diversity and later filed an amended complaint for alleged wage and hour violations on behalf of all current and former nonexempt employees employed by Diversity in California at any time since December 17, 2017. The Lawsuit alleges that Diversity violated various Labor Code sections by failing to pay all required minimum and overtime wages, failing to provide meal periods and rest breaks, failing to pay vested vacation, failing to reimburse business expenses, failing to timely pay final wages, and failing to provide accurate and complete wage statements during the Class Period. The Lawsuit also sought equitable relief under the Unfair Competition Law. All these claims are called the “Class Claims.” The Lawsuit also sought, on behalf of the California Labor Workforce Development Agency (“LWDA”), civil penalties pursuant to PAGA as a representative action. The civil penalty claims are called “PAGA Claims” and the relevant period for PAGA claims is December 17, 2020, through December 31, 2022 (“PAGA Period”).

Diversity has denied, and continues to deny, the factual and legal allegations in the Lawsuit and believes that it has valid defenses to Plaintiff’s claims. By agreeing to settle, Diversity is not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action and/or a representative action. Diversity has agreed to settle the case as part of a compromise with Plaintiff and the Class Members.

The Court has not ruled on the merits of Plaintiff’s claims. And, by approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case if it went to trial. However, to avoid additional expense, inconvenience, and risks of continued litigation, Diversity and Plaintiff have concluded that it is in their respective best interests and the interests of the Settlement Class to settle the Lawsuit on the terms summarized in this Notice. After providing extensive information to Class Counsel, the Settlement was reached following an arm’s length mediation with a respected and experienced mediator. In these negotiations, both sides recognized the substantial risk of the Court deciding against them at trial and determined that the Proposed Settlement was a good option to resolve the disputed claims.

The Class Representative and Class Counsel support this Settlement. Among the reasons for their support are the defenses to liability potentially available to Diversity, the risk of denial of class certification or representative status, the inherent risk of trial on the merits, and the delays and uncertainties associated with litigation.

If you are still employed by Diversity, this Settlement will not affect your employment. California law strictly prohibits unlawful retaliation. Further, Diversity will not take any adverse action against or otherwise target, retaliate, or discriminate against any Class Member because of the Class Member’s participation or decision not to participate in this Settlement. If a Class Member does not participate as to the Class Claims, his/her share of the settlement of the Class Claims will be paid to those who do participate.

III. Who are the attorneys representing The Parties?

Attorneys for Plaintiff and Class Members:	Attorneys for Diversity:
Brian Mankin <i>brian@LMLfirm.com</i> Peter Carlson <i>peter@LMLfirm.com</i> Lauby Mankin Lauby LLP 4590 Allstate Drive Riverside, CA 92501 Tel: (951) 320-1444	Jesse Caryl <i>jcaryl@bcklegal.com</i> Bent Caryl & Kroll LLP 6300 Wilshire Boulevard, Suite 1415 Los Angeles, CA 90048 Tel: (323) 315-0510

IV. What are the terms of the Settlement?

On [PA DATE], the Court certified a class, for settlement purposes only, of all current and former nonexempt employees employed by Diversity in California at any time from December 17, 2017, through December 31, 2022 (the “Settlement Class” or “Class Members”) and approved a representative class comprised of all current and former nonexempt employees employed by Diversity in California at any time from December 17, 2020, through December 31, 2022 (“Aggrieved Employees”). Individuals who do not opt out of the Settlement Class, pursuant to the procedures set forth in this Notice, will become “Participating Class Members” and will be mailed Settlement checks, and in exchange will be bound by the Settlement and release of certain wage and penalty claims against Defendants.

Without admitting any wrongdoing, Diversity has agreed to pay \$250,000 (the “Gross Settlement Amount”) to fully resolve all claims in the Lawsuit. The Parties agreed to the following payments from the Gross Settlement Amount:

Settlement Administration Costs. The Court has approved XX to act as the “Settlement Administrator,” who is sending this Notice to you and will perform many other duties relating to the Settlement. Under the Settlement, a maximum of \$XX will be paid from the Gross Settlement Amount to pay the Settlement Administration Costs.

Settlement Administrator
Name
Address
Telephone

Penalties to the California Labor Workforce and Development Agency. The Labor Code Private Attorneys General Act (“PAGA”) authorizes employees to file lawsuits to attempt to recover civil penalties on behalf of other Aggrieved Employees and the State of California for alleged Labor Code violations. Under the Settlement, \$10,000 of the Gross Settlement Amount will be allocated to Plaintiff’s PAGA Claims. Of this amount, \$7,500 will be paid to the California Labor Workforce and Development Agency (“LWDA”) in satisfaction of the claims for civil penalties under PAGA, and the remaining \$2,500 will be divided between all Aggrieved Employees based on the number of weeks worked during the PAGA Period. Aggrieved Employees includes “all current and former nonexempt employees employed by Diversity in California at any time during the PAGA Period.” You do not have the right to opt-out or exclude yourself from receiving the civil penalties paid to pursuant to PAGA. Review the information below to determine if you are an Aggrieved Employee and eligible to receive a share of the \$2,500 allocation:

Do you Qualify as an Aggrieved Employee?	Weeks Worked as an Aggrieved Employee	Your Share of PAGA Penalties
YES/NO	INSERT	\$INSERT

Service Payment to Class Representative. Class Counsel will ask the Court to award the Class Representative a Service Payment in the amount of \$10,000 to compensate her for service and extra work provided on behalf of the Class Members and in exchange for a general release of claims. The Class Representative also will receive his individual share of the Settlement as a Class Member.

Attorneys’ Fees and Costs. Class Counsel have been prosecuting the Lawsuit on behalf of the Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Gross Settlement Amount. Class Members are not personally responsible for any of Class Counsel’s attorneys’ fees or costs. Class Counsel will ask for fees of one-third (\$83,333.33) of the common fund Gross Settlement Amount as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through finalization of the Settlement. Class Counsel also will ask for reimbursement of up to \$20,000 for the costs Class Counsel incurred in connection with the Lawsuit.

Calculation of Individual Settlement Payments to Class Members. After deducting the amounts above from the Gross Settlement Amount, the balance will form the Net Settlement Amount for distribution to Participating Class Members (who are Class Members who do not opt-out). The Net Settlement Amount will total approximately \$. Individual Settlement Payments to Class Members will be calculated and apportioned from the Net Settlement Amount based on the number of calendar weeks during which a Settlement Class Member was employed by Diversity in California and worked at least one shift (the “Weeks Worked”). Specific calculations of Individual Settlement Payments will be made as follows: the Settlement Administrator will divide the total Weeks Worked by all Settlement Class Members into the Net

Settlement Amount to determine a per “Workweek Value.” The Workweek Value will be multiplied by the number Weeks Worked by each Settlement Class Member during the Class Period to determine the “Individual Settlement Payment,” prior to legal deductions/withholdings, for each Settlement Class Member. If any Settlement Class Member opts-out of the Settlement, his/her Individual Settlement Payment will be distributed to all Participating Class Members (i.e., those who do not opt-out). Review the information below to determine your share as a Class Member:

Workweeks Worked as a Class Member During the Class Period	Your Share of the Net Settlement Amount
INSERT	INSERT

Disputes to Workweeks Credited. For each Settlement Class Member, the Weeks Worked during the Class Period will be calculated from Diversity’s records. If you disagree with the numbers reported above, you may submit evidence to the Settlement Administrator on or before [REDACTED], 2023, with documentation to establish the number of Weeks Worked you claim to have actually worked for Diversity in California between December 17, 2017, and December 31, 2022. **DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED; DO NOT SEND ORIGINALS.** The Parties and Administrator will evaluate the evidence submitted by the Settlement Class member and discuss in good faith how many Weeks Worked should be credited to each Settlement Class member.

Payments to Class Members. After the Court grants Final Approval of the Settlement and after Judgment is entered, settlement checks will be mailed to all Participating Class Members who did not timely request to be excluded. For those Aggrieved Employees who requested to be excluded from the settlement of the Class Claims, their settlement checks will be for their share of PAGA civil penalties only for release of the PAGA Claims, and they will not include any payment for settlement of the Class Claims. The settlement will be distributed and paid under an installment payment plan, under which Diversity will fund the required money in three installments. Thus, the Individual Settlement Payments will be paid in three payments as well. Participating Class Members and Aggrieved Employees will have 180 days to cash each settlement check. If a check is not cashed within the 180-day period, the check will be voided, and a stop-payment will be issued. If either of the first two installments are not cashed within 180 days, the Settlement Administrator will hold the funds in trust, pending a request by the recipient to have the payments reissued. However, once 180 days has passed after the final check is mailed the Participating Class Members and Aggrieved Employees, the Settlement Administrator shall issue all unclaimed funds (from all installments) to the California State Controller’s Office in the name of the Participating Class Member or Aggrieved Employee, so that the Participating Class Member or Aggrieved Employee can attempt to collect the funds at a later date.

Allocation and Taxes. Twenty percent (20%) of the Individual Settlement Payment distributed to each Participating Class Member will be considered and reported as wages (Form W-2 reporting). The remaining eighty percent (80%) will be considered and reported as interest and penalties (Form 1099 reporting). The Settlement Administrator shall take all usual and customary deductions from the Individual Settlement Payments that are distributed as wages, including, but not limited to, state and federal tax withholding, disability premiums, and unemployment insurance premiums. There will be no deduction taken from the interest and penalty distribution; however, the payments will be reported on IRS Form 1099 as income. Payments for PAGA Claims shall be paid one hundred percent (100%) as civil penalties for which no taxes shall be withheld and for which payment will be reported on IRS Form 1099. Participating Class Members and Aggrieved Employees are responsible for the proper income tax treatment of the Individual Settlement Payments and their payments for PAGA Claims. The Settlement Administrator, Defendants and their counsel, and Class Counsel cannot provide tax advice and make no representations as to the tax treatment or legal effect of the Individual Settlement Payments or payments for PAGA Claims. Participating Class Members and Aggrieved Employees will be solely responsible for the payment of any taxes and penalties assessed on their Individual Settlement Payments or payments for PAGA Claims. Accordingly, Participating Class Members and Aggrieved Employees should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release of Class Claims. Upon the final approval of the Settlement by the Court and Defendants’ funding of the Gross Settlement Amount, Plaintiff and all Class Members who do not submit a valid opt-out/request for exclusion will fully release and discharge Defendants and their past and present officers, directors, members, partners, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective parent corporations, subsidiaries, divisions, affiliates, attorneys, predecessors, successors and assigns (the “Released Parties”) from all claims stated in the Complaint and those based solely upon the facts in the Complaint, including: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to pay vested vacation, (f) failure to reimburse business expenses, (g) failure to timely pay wages upon separation of employment, (h) failure to provide accurate itemized wage statements, (i) unfair and unlawful competition, and (j) all other

claims that reasonably could have arisen out of the allegations made and based on the facts alleged in the Complaint. These released claims and damages are hereinafter referred to as “Released Class Claims.” The time period governing these Released Class Claims shall be at any time from December 17, 2017, through December 31, 2022 (“Class Period”).

Release of PAGA Claims. Also upon the Court’s final approval of the Settlement and Defendants’ funding of the Gross Settlement Amount, Plaintiff—in his individual capacity and on behalf of the State of California and the LWDA—and all Aggrieved Employees shall completely release and discharge the Released Parties of PAGA claims that Plaintiff alleged against the Released Parties, on behalf of the Aggrieved Employees and the State of California, based on the facts stated in the Complaint and in the relevant LWDA notice letter, including all PAGA claims seeking civil penalties premised upon: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to pay vested vacation, (f) reimburse business expenses, (g) failure to timely pay wages each period, (h) failure to timely pay wages upon separation of employment, (i) failure to provide accurate itemized wage statements, and (j) all other claims for civil penalties recoverable under PAGA based on the facts or claims alleged in the Complaint. These released claims and damages are hereinafter referred to as “Released PAGA Claims.” The time period governing the PAGA Released Claims shall be any time from December 17, 2020, to December 31, 2022 (“PAGA Period”).

Waiver of Labor Code Sections 206.5(e) and 2804. Participating Class Members will be deemed to have acknowledged and agreed that their claims for wages and/or penalties and/or unreimbursed expenses in the Lawsuit are disputed, and that the Individual Settlement Payments constitute payment of all sums allegedly due to them. Participating Class Members will be deemed to have acknowledged and agreed that California Labor Code Sections 206.5 and 2804 are not applicable to the Individual Settlement Payments. Section 206.5 of the Labor Code provides in pertinent part as follows:

“No employer shall require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of such wages has been made.”

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class, and the entry of Judgment.

V. What options do I have?

- A. Do Nothing and Participate in the Settlement.** Under the Settlement, you will automatically receive a Settlement Payment unless you exclude yourself from the settlement by following the exclusion procedure set forth below. If you disagree with the number of Work Weeks credited, as described in this Notice, you may dispute the allocation of the Settlement without excluding yourself or objecting, as described below.
- B. Exclude Yourself from the Class Claims in the Settlement.** If you do not wish to take part in the release of the Class Claims in the Settlement, you may exclude yourself by sending to the Settlement Administrator a “Request for Exclusion from the Class Claims in the Class Action Settlement” letter/card postmarked no later than [REDACTED], 2023 with your full name, address, telephone number, last four digits of your social security number or your date of birth, and signature. The Request for Exclusion should state:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE DIVERSITY WIRELESS LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT.”

Send the Request for Exclusion directly to the Settlement Administrator, [ADDRESS], postmarked no later than [REDACTED], 2023. Any person who files a timely Request for Exclusion from the Class Action Settlement, upon receipt: (1) will not have any rights under this Settlement with respect to the Class Claims, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive any money for the Class Claims under this Settlement; and (3) will not be bound by this Settlement, or the Judgment, with respect to the Class Claims. You still will be bound by this Settlement with respect to the release of the PAGA Claims.

- C. Object to Settlement.** You also have the right to object to the terms of the Settlement with respect to the Class Claims if you believe they are unfair or unreasonable. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Class Claims portion of the Settlement, you must submit a written objection stating your full name, your address, your telephone number, the last four digits of your social security number or your date of birth, your dates of employment with Diversity, the case name and

number, the name and address of your attorney(s) if you are represented, your signature, and each specific reason in support of your objection. You must also include any documentation or evidence in support of the objection, if any. Objections must be in writing and mailed to the Settlement Administrator, [ADDRESS], by no later than [REDACTED], 2023. Objections that do not include all required information, or that are not submitted timely, may not be considered by the Court. You need not object to the Settlement if you only dispute the number of Weeks Worked. To dispute the number of Weeks Worked, please refer to the directions provided under the provision entitled "Calculation of Individual Settlement Payments to Class Members" in Section IV of this Notice.

If you choose to object to the Class Claims portion of the Settlement, you may also appear at the Final Approval Hearing scheduled for [REDACTED], 2023, at 10:00 a.m. in Department S26 of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415. You have the right to appear either in person or through your own attorney at this hearing. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before [REDACTED], 2023. All objections or other correspondence must state the name and number of the case. If you wish to appear at the Final Approval hearing, please contact Class Counsel or the Settlement Administrator in advance of the scheduled hearing to ensure that the hearing has not been continued by the Court.

If you object to the Settlement, you will remain a Class Member, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Participating Class Members who do not object. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment.

- D. Dispute Work Weeks Credited.** As discussed in Section IV, you may dispute the number of Weeks Worked if you believe the number credited is inaccurate.

VI. What is the effect of the settlement?

Released Rights and Claims. The Settlement is intended to settle all claims against the Released Parties that were asserted or could have been asserted in the Lawsuit regarding the alleged violations of wage and hour laws. If you were employed by Diversity in California at any time during the Class Period and do not elect to exclude yourself from the Settlement Class, you will be deemed to have entered into this Release and to have released the class claims in this Lawsuit, described above in Section IV under the provision titled "Release of Class Claims." All Aggrieved Employees will be deemed to have entered into a release of the PAGA Claims, described above in Section IV under the provision titled "Release of PAGA Claims." If the Settlement is not approved by the Court or does not become final for some other reason, the Lawsuit may continue, and the releases will not take effect.

VII. What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement, the Class Counsel's request for attorneys' fees and reimbursement of documented litigation costs, and the Service Payment to the Class Representative on [REDACTED], 2023 at 10:00 a.m. in Department S26 of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415.

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

VIII. How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Class Action Settlement Agreement at the Office of the Clerk, San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415, during regular court hours. You may also contact the Settlement Administrator using the contact information listed above under Section IV for more information.

IX. Reminder as to time limits

Class Members do not have to take any further action to participate in the Settlement. The deadline for submitting a Request for Exclusion from the Class Claims is [REDACTED], 2023. The deadline for mailing an objection to the Settlement Administrator is [REDACTED], 2023.

These deadlines will be strictly enforced. To be considered timely, any Requests for Exclusion and objections to the Settlement must be postmarked by the above-stated deadlines. Any Requests for Exclusion and objections to the Settlement that are not postmarked on or before these deadlines will be deemed untimely and disregarded.

**PLEASE DO NOT CALL OR WRITE THE COURT
FOR INFORMATION ABOUT THIS SETTLEMENT**

EXHIBIT “3”



December 17, 2021

Submitted Via Online Filing to the LWDA

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Sent Via U.S. Mail and Certified Mail

Diversity Wireless Partners LLC
12672 Limonite Ave., Suite 3E-854
Eastvale, CA 92880

Jon Garcia
7383 Crown Parkway
Orange, CA 92867

Re: PAGA Civil Penalty Claim
Kristy Elwell v. Diversity Wireless Partners LLC, et al.

To the Labor and Workforce Development Agency, Diversity Wireless Partners LLC, and Jon Garcia:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee Kristy Elwell (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against her former employer(s), Diversity Wireless Partners LLC and/or any affiliated entities, as well as its owners Jon Garcia and others (the “Owners”) (collectively, the “Company”), for violations of Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802 among possibly other sections inadvertently omitted, and/or sections of the applicable IWC Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately July through October 2021. Claimant alleges that, at all relevant times, she and all other non-exempt employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations that Claimant was subjected during his employment.

For instance, at all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately record and compensate for all hours worked. Additionally, at all relevant times, Claimant was compensated on an hourly basis and was also entitled to and did receive additional nondiscretionary compensation (such as bonuses and/or commissions). However, on the occasions when Claimant worked in excess of 8 and/or 12 hours per day and/or 40 hours per week and received additional earned compensation during the workweek, the Company failed to properly include these amounts in the calculations for Claimant’s regular rate of pay. Therefore, the Company failed to pay proper overtime wages for the hours worked in excess of 8 and/or 12 per day and/or 40 per week.

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company's policies and practices, as well as the hectic and demanding workload, Claimant was subjected to meal period violations when she was: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the Company (such as while driving), (3) forced to take a shortened meal period, (4) forced to take a meal period after the 5th hour of work, and (5) not provided mandated second or third meal periods.

The Company also failed to provide Claimant with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. The Company did not schedule Claimant's rest breaks and Claimant was often not authorized and/or permitted to take mandated rest breaks due to the lack of adequate staffing and coverage and being overwhelmed by the hectic workload. Furthermore, on occasions when Claimant worked in excess of 10 hours in a shift, the Company failed to authorize and/or permit a third mandated rest break.

Additionally, on the occasions when Claimant and the Aggrieved Employees were denied compliant meal periods and/or rest breaks, the Company failed to pay the "premium" under Labor Code § 226.7. And, on the occasions when the Company did pay a premium for such violations, it only paid at the employee's base rate rather than at the employee's "regular rate," as mandated by California law. See *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858 (the California Supreme Court unanimously held that meal and rest period premiums must be calculated in the same fashion as overtime pay and, therefore, must factor in all forms of nondiscretionary compensation).

Moreover, at all relevant times, the Company required Claimant and the Aggrieved Employees to incur necessary business-related expenses and costs without reimbursement. For example, Claimant was required to incur substantial expenses without reimbursement during employment, including: (1) gas and mileage expenses during time spent driving between the Company's locations while on the clock and under the Company's direction and control, and (2) acquiring and maintaining a smart phone and related monthly data plan to communicate with the Company via phone, text message, and e-mail.

The Company also failed to comply with the mandates of Labor Code §§ 204 and 210 regarding the timing of the payment of wages to its employees each period, including minimum and overtime wages, as well as meal and rest period premiums. Also, the Company failed to comply with the mandates of Labor Code §§ 201–203 regarding timing of payment of final wages and failed to pay all wages due and owing upon separation of employment including minimum wages, overtime, and vacation wages. Finally, during employment with the Company, Claimant received inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

Claimant alleges that she worked under the joint direction and control of Diversity Wireless and the Owners and is informed and believes that each of them acted in all respects pertinent to this action as the agent of the others, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each are legally attributable to the others. On information and belief, a unity of interest and ownership between each exists such that Diversity Wireless and the Owners acted as a single employer of Claimant and the Aggrieved Employees. Furthermore, on information and belief, Diversity Wireless and the Owners are an integrated enterprise and should be treated as a single employer because Diversity Wireless and the Owners share an interrelation of operations, with common human resources and personnel policies and shared common offices and facilities. Upon information and belief, Diversity Wireless and the Owners share common management, a centralized control of labor operations, and common ownership or financial control.



Furthermore, Claimant alleges that the Owners are now and at all relevant times were the owners of Diversity Wireless and were Claimant's and the Aggrieved Employees' actual employer or, in the alternative, were individuals employed by the Company as managerial and/or supervisory employees and/or agents. In addition, Claimant alleges that at all relevant times the Owners had the authority, in the interest of Diversity Wireless to exercise independent judgment to hire, transfer, promote, discharge, assign, discipline, or take other similar actions against Claimant and the Aggrieved Employees, and were in Claimant's chain of command at the time of and direct participants in the wrongful conduct which constitutes the basis of Claimant's complaint herein. Claimant also alleges that Diversity Wireless and the Owners are the agents, servants, employees, partners, affiliates, and/or representatives of each other, and were, at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of each other. Furthermore, in conducting themselves in the manner described herein, Diversity Wireless and the Owners were acting in active concert with one another such that the acts of each were fully attributable to the other in all material respects.

Claimant also alleges Diversity Wireless and the Owners were merely the alter-ego of the others in that there existed a unity of interest and ownership such that any separateness between them ceased to exist and each exercised undue dominance, control, influence, and management over the others. Claimant further alleges that, at all relevant times, Diversity Wireless has been inadequately capitalized to conduct business, has failed to follow appropriate corporate formalities, and has simply been a shell and instrumentality through which the Owners have conducted their personal affairs. Adherence to the fiction of the separate existence of Diversity Wireless would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice. Accordingly, the corporate veil should be pierced, and any liability attached to Diversity Wireless should be imposed jointly and severally against the Owners.

Finally, in an additional separate, but not necessarily mutually exclusive, alternative theory of liability, the Owners are liable for PAGA civil penalties under Labor Code § 558 as "other person(s)" who caused the violations regarding minimum wage among other claims. See *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 ("if there is evidence and a finding that a party other than the employer 'violates, or causes to be violated' the overtime laws (§ 558(a)) or 'pays or causes to be paid to any employee' less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer"); *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S. Dist. LEXIS 40851 (same)

As a result of these violations, and others described below, Claimant alleges that he and other Aggrieved Employees were denied specific rights to which they are/were entitled under California law and the rules promulgated by the IWC Wage Orders, including the following:

**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 210, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

As discussed above, the Company failed to pay all required minimum, regular, and overtime wages to Claimant and the Aggrieved Employees due to the Company's failure to accurately record and compensate for all hours worked and the failure to pay overtime and/or properly calculate the regular rate of pay for Claimant and other Aggrieved Employees. This resulted in earned, but unpaid, wages due and owing to Claimant and the Aggrieved Employees. Therefore, Claimants and the Aggrieved Employees performed work for the Company without receiving proper payment of the requisite minimum, overtime, and/or doubletime wages.



Accordingly, Labor Code §§ 210, 558, 1194.2, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.

**PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS,
REST BREAKS, AND WAGE PREMIUMS**

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

Section 12 of applicable IWC Wage Order states in pertinent part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

Here, Claimant and other Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company’s policies described above. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee’s regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums and did not do so at the proper rate. Labor Code § 558 imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802; IWC Wage Order § 9(b))

Labor Code § 2802(a) states “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.” IWC Wage Order § 9(b) states “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.” Here, the Company required Claimant and the Aggrieved Employees to incur expenses in direct consequence of the discharge of their duties without reimbursement. Accordingly, Labor Code § 2699 imposes a penalty upon the Company for each such violation of Labor Code § 2802.

**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 210, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must



be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

Here, the Company frequently paid wages beyond the timing requirements specified in Labor Code § 204 and, thus, violated the statute. Additionally, as a result of the Company’s failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimant and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 203, 210, 256, and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a “waiting time penalty.” (Labor Code § 203.) Labor Code § 2699 also imposes a penalty.

**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**

(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee’s name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all times pertinent hereto, the Company failed to provide accurate itemized wage statements to Claimants and all Aggrieved Employees due to violations including: failure to accurately state total hours worked (the wage statements failed to accurately reflect total compensable hours due to the failure to accurately record all hours worked); failure to accurately state gross wages earned; failure to accurately state



all deductions; failure to accurately state net wages earned; failure to state the applicable hourly rates; and failure to accurately state the corresponding number of hours worked at each hourly rate (including the failure to state the accurate overtime rate of pay); and the failure to accurately state the amount and rate of pay for meal and rest period violations. Accordingly, Labor Code §§ 226.3 and 2699 also impose a civil penalty and/or assessment for these violations.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199

(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company's violations described herein, the Company is subject to the civil penalties in accordance with Labor Code § 2699.

ATTORNEYS' FEES, INTEREST, AND PENALTIES

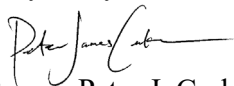
(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys' fees, and costs of suit. Additionally, Claimants seek the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimants is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees. Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimants' notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

Based on the foregoing, the Company may be liable for civil penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to his employment and/or other employees of the Company, he reserves the right to add new claims by supplementing this notice letter. Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

Very Truly Yours,



By: Peter J. Carlson, Esq.

E-mail: peter@lmfirm.com

IMI

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January 3, 2022

Submitted Via Online Filing to the LWDA

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Sent Via U.S. Mail and Certified Mail

Diversity Wireless Partners LLC
12672 Limonite Ave., Suite 3E-854
Eastvale, CA 92880

Jon Garcia
7383 Crown Parkway
Orange, CA 92867

Re: PAGA Civil Penalty Claim
Kristy Elwell v. Diversity Wireless Partners LLC, et al.
LWDA Case No. LWDA-CM-858123-21

To the Labor and Workforce Development Agency, Diversity Wireless Partners LLC, and Jon Garcia:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee Kristy Elwell (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against her former employer(s), Diversity Wireless Partners LLC and/or any affiliated entities, as well as its owners Jon Garcia and others (the “Owners”) (collectively, the “Company”), for violations of Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 227.3, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802 among possibly other sections inadvertently omitted, and/or sections of the applicable IWC Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately July through October 2021. Claimant alleges that, at all relevant times, she and all other non-exempt employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations that Claimant was subjected during his employment.

For instance, at all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately record and compensate for all hours worked. Additionally, at all relevant times, Claimant was compensated on an hourly basis and was also entitled to and did receive additional nondiscretionary compensation (such as bonuses and/or commissions). However, on the occasions when Claimant worked in excess of 8 and/or 12 hours per day and/or 40 hours per week and received additional earned compensation during the workweek, the Company failed to properly include these amounts in the calculations for Claimant’s regular rate of pay. Therefore, the Company failed to pay proper overtime wages for the hours worked in excess of 8 and/or 12 per day and/or 40 per week.

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company's policies and practices, as well as the hectic and demanding workload, Claimant was subjected to meal period violations when she was: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the Company (such as while driving), (3) forced to take a shortened meal period, (4) forced to take a meal period after the 5th hour of work, and (5) not provided mandated second or third meal periods.

The Company also failed to provide Claimant with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. The Company did not schedule Claimant's rest breaks and Claimant was often not authorized and/or permitted to take mandated rest breaks due to the lack of adequate staffing and coverage and being overwhelmed by the hectic workload. Furthermore, on occasions when Claimant worked in excess of 10 hours in a shift, the Company failed to authorize and/or permit a third mandated rest break.

Additionally, on the occasions when Claimant and the Aggrieved Employees were denied compliant meal periods and/or rest breaks, the Company failed to pay the "premium" under Labor Code § 226.7. And, on the occasions when the Company did pay a premium for such violations, it only paid at the employee's base rate rather than at the employee's "regular rate," as mandated by California law. See *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858 (the California Supreme Court unanimously held that meal and rest period premiums must be calculated in the same fashion as overtime pay and, therefore, must factor in all forms of nondiscretionary compensation).

Also, the Company utilized a policy and practice through which Claimant and the Aggrieved Employees accrued vacation and/or PTO hours (collectively, "vacation hours"). However, on the occasions when the Aggrieved Employees had accrued but unused vacation hours upon separation of employment, the Company failed to pay the departing employees all vacation hours and, further, failed to pay for these earned wages at the "final rate" as required by Labor Code § 227.3. As a result, Claimant and the Company did not receive compensation for all accrued but unused vacation hours – in violation of Labor Code § 227.3.

Moreover, at all relevant times, the Company required Claimant and the Aggrieved Employees to incur necessary business-related expenses and costs without reimbursement. For example, Claimant was required to incur substantial expenses without reimbursement during employment, including: (1) gas and mileage expenses during time spent driving between the Company's locations while on the clock and under the Company's direction and control, and (2) acquiring and maintaining a smart phone and related monthly data plan to communicate with the Company via phone, text message, and e-mail.

The Company also failed to comply with the mandates of Labor Code §§ 204 and 210 regarding the timing of the payment of wages to its employees each period, including minimum and overtime wages, as well as meal and rest period premiums. Also, the Company failed to comply with the mandates of Labor Code §§ 201–203 regarding timing of payment of final wages and failed to pay all wages due and owing upon separation of employment including minimum wages, overtime, and vacation wages. Finally, during employment with the Company, Claimant received inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

Claimant alleges that she worked under the joint direction and control of Diversity Wireless and the Owners and is informed and believes that each of them acted in all respects pertinent to this action as the agent of the others, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the



acts of each are legally attributable to the others. On information and belief, a unity of interest and ownership between each exists such that Diversity Wireless and the Owners acted as a single employer of Claimant and the Aggrieved Employees. Furthermore, on information and belief, Diversity Wireless and the Owners are an integrated enterprise and should be treated as a single employer because Diversity Wireless and the Owners share an interrelation of operations, with common human resources and personnel policies and shared common offices and facilities. Upon information and belief, Diversity Wireless and the Owners share common management, a centralized control of labor operations, and common ownership or financial control.

Furthermore, Claimant alleges that the Owners are now and at all relevant times were the owners of Diversity Wireless and were Claimant's and the Aggrieved Employees' actual employer or, in the alternative, were individuals employed by the Company as managerial and/or supervisory employees and/or agents. In addition, Claimant alleges that at all relevant times the Owners had the authority, in the interest of Diversity Wireless to exercise independent judgment to hire, transfer, promote, discharge, assign, discipline, or take other similar actions against Claimant and the Aggrieved Employees, and were in Claimant's chain of command at the time of and direct participants in the wrongful conduct which constitutes the basis of Claimant's complaint herein. Claimant also alleges that Diversity Wireless and the Owners are the agents, servants, employees, partners, affiliates, and/or representatives of each other, and were, at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of each other. Furthermore, in conducting themselves in the manner described herein, Diversity Wireless and the Owners were acting in active concert with on another such that the acts of each were fully attributable to the other in all material respects.

Claimant also alleges Diversity Wireless and the Owners were merely the alter-ego of the others in that there existed a unity of interest and ownership such that any separateness between them ceased to exist and each exercised undue dominance, control, influence, and management over the others. Claimant further alleges that, at all relevant times, Diversity Wireless has been inadequately capitalized to conduct business, has failed to follow appropriate corporate formalities, and has simply been a shell and instrumentality through which the Owners have conducted their personal affairs. Adherence to the fiction of the separate existence of Diversity Wireless would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice. Accordingly, the corporate veil should be pierced, and any liability attached to Diversity Wireless should be imposed jointly and severally against the Owners.

Finally, in an additional separate, but not necessarily mutually exclusive, alternative theory of liability, the Owners are liable for PAGA civil penalties under Labor Code § 558 as "other person(s)" who caused the violations regarding minimum wage among other claims. See *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 ("if there is evidence and a finding that a party other than the employer 'violates, or causes to be violated' the overtime laws (§ 558(a)) or 'pays or causes to be paid to any employee' less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer"); *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S.Dist.LEXIS 40851 (same)

As a result of these violations, and others described below, Claimant alleges that he and other Aggrieved Employees were denied specific rights to which they are/were entitled under California law and the rules promulgated by the IWC Wage Orders, including the following:

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**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 210, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

As discussed above, the Company failed to pay all required minimum, regular, and overtime wages to Claimant and the Aggrieved Employees due to the Company's failure to accurately record and compensate for all hours worked and the failure to pay overtime and/or properly calculate the regular rate of pay for Claimant and other Aggrieved Employees. This resulted in earned, but unpaid, wages due and owing to Claimant and the Aggrieved Employees. Therefore, Claimants and the Aggrieved Employees performed work for the Company without receiving proper payment of the requisite minimum, overtime, and/or doubletime wages.

Accordingly, Labor Code §§ 210, 558, 1194.2, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.

**PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS,
REST BREAKS, AND WAGE PREMIUMS**

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that "[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ..." Labor Code § 512(a) states in pertinent part: "[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes."

Section 12 of applicable IWC Wage Order states in pertinent part: "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof."

Here, Claimant and other Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company's policies described above. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee's regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums and did not do so at the proper rate. Labor Code § 558 imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

FAILURE TO PAY VESTED VACATION UPON SEPARATION OF EMPLOYMENT

(Labor Code § 227.3)

Pursuant to Labor Code § 227.3, an employer that has implemented a paid vacation, paid time off, or compensated time off policy must, upon an employee's separation from employment, pay to the employee all



vested but unused vacation and/or paid time off at her final rate of pay. However, as alleged herein, the Company failed to pay departing Aggrieved Employees all vested vacation, required them to forfeit accrued and unused time, and, moreover, only paid vested vacation upon separation at the base rate of pay, leading to a violation on these occasions. As a result of these violations, penalties may be assessed pursuant to Labor Code § 2699.

PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802; IWC Wage Order § 9(b))

Labor Code § 2802(a) states “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.” IWC Wage Order § 9(b) states “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.” Here, the Company required Claimant and the Aggrieved Employees to incur expenses in direct consequence of the discharge of their duties without reimbursement. Accordingly, Labor Code § 2699 imposes a penalty upon the Company for each such violation of Labor Code § 2802.

PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW

(Labor Code §§ 204, 204.1, 208, 210, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

Here, the Company frequently paid wages beyond the timing requirements specified in Labor Code § 204 and, thus, violated the statute. Additionally, as a result of the Company’s failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimant and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 203, 210, 256, and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the



due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a “waiting time penalty.” (Labor Code § 203.) Labor Code § 2699 also imposes a penalty.

**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**

(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee’s name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all times pertinent hereto, the Company failed to provide accurate itemized wage statements to Claimants and all Aggrieved Employees due to violations including: failure to accurately state total hours worked (the wage statements failed to accurately reflect total compensable hours due to the failure to accurately record all hours worked); failure to accurately state gross wages earned; failure to accurately state all deductions; failure to accurately state net wages earned; failure to state the applicable hourly rates; and failure to accurately state the corresponding number of hours worked at each hourly rate (including the failure to state the accurate overtime rate of pay); and the failure to accurately state the amount and rate of pay for meal and rest period violations. Accordingly, Labor Code §§ 226.3 and 2699 also impose a civil penalty and/or assessment for these violations.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199

(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company’s violations described herein, the Company is subject to the civil penalties in accordance with Labor Code § 2699.

ATTORNEYS’ FEES, INTEREST, AND PENALTIES

(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys’ fees, and costs of suit. Additionally, Claimants seek the assessment of penalties, including civil



penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimants is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees. Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimants' notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

Based on the foregoing, the Company may be liable for civil penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to his employment and/or other employees of the Company, he reserves the right to add new claims by supplementing this notice letter. Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

Very Truly Yours,



By: Peter J. Carlson, Esq.

E-mail: peter@lmfirm.com





September 9, 2022

Submitted Via Online Filing to the LWDA

California LWDA
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San Francisco, CA 94102

Sent Via U.S. Mail and Certified Mail

Diversity Wireless Partners LLC
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Eastvale, CA 92880

Jon Garcia
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Orange, CA 92867

Victor Chapron
9111 S. La Cienega Blvd., Suite 100
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Re: PAGA Civil Penalty Claim
Kristy Elwell v. Diversity Wireless Partners LLC, et al.
LWDA Case No. LWDA-CM-858123-21

To the Labor and Workforce Development Agency, Diversity Wireless Partners LLC, Jon Garcia, and Victor Chapron:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as the second amended notification of the PAGA civil penalty claim of aggrieved employee Kristy Elwell (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against her former employer(s), Diversity Wireless Partners LLC and/or any affiliated entities, as well as its owners Jon Garcia, Victor Chapron and others (the “Owners”) (collectively, the “Company”), for violations of Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802 among possibly other sections inadvertently omitted, and/or sections of the applicable IWC Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately July through October 2021. Claimant alleges that, at all relevant times, she and all other non-exempt employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations that Claimant was subjected during his employment.

For instance, at all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately record and compensate for all hours worked. Additionally, at all relevant times, Claimant was compensated on an hourly basis and was also was entitled to and did receive additional nondiscretionary compensation (such as bonuses and/or

commissions). However, on the occasions when Claimant worked in excess of 8 and/or 12 hours per day and/or 40 hours per week and received additional earned compensation during the workweek, the Company failed to properly include these amounts in the calculations for Claimant's regular rate of pay. Therefore, the Company failed to pay proper overtime wages for the hours worked in excess of 8 and/or 12 per day and/or 40 per week.

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company's policies and practices, as well as the hectic and demanding workload, Claimant was subjected to meal period violations when she was: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the Company (such as while driving), (3) forced to take a shortened meal period, (4) forced to take a meal period after the 5th hour of work, and (5) not provided mandated second or third meal periods.

The Company also failed to provide Claimant with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. The Company did not schedule Claimant's rest breaks and Claimant was often not authorized and/or permitted to take mandated rest breaks due to the lack of adequate staffing and coverage and being overwhelmed by the hectic workload. Furthermore, on occasions when Claimant worked in excess of 10 hours in a shift, the Company failed to authorize and/or permit a third mandated rest break.

Additionally, on the occasions when Claimant and the Aggrieved Employees were denied compliant meal periods and/or rest breaks, the Company failed to pay the "premium" under Labor Code § 226.7. And, on the occasions when the Company did pay a premium for such violations, it only paid at the employee's base rate rather than at the employee's "regular rate," as mandated by California law. See *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858 (the California Supreme Court unanimously held that meal and rest period premiums must be calculated in the same fashion as overtime pay and, therefore, must factor in all forms of nondiscretionary compensation).

Also, the Company utilized a policy and practice through which Claimant and the Aggrieved Employees accrued vacation and/or PTO hours (collectively, "vacation hours"). However, on the occasions when the Aggrieved Employees had accrued but unused vacation hours upon separation of employment, the Company failed to pay the departing employees all vacation hours and, further, failed to pay for these earned wages at the "final rate" as required by Labor Code § 227.3. As a result, Claimant and the Company did not receive compensation for all accrued but unused vacation hours – in violation of Labor Code § 227.3.

Moreover, at all relevant times, the Company required Claimant and the Aggrieved Employees to incur necessary business-related expenses and costs without reimbursement. For example, Claimant was required to incur substantial expenses without reimbursement during employment, including: (1) gas and mileage expenses during time spent driving between the Company's locations while on the clock and under the Company's direction and control, and (2) acquiring and maintaining a smart phone and related monthly data plan to communicate with the Company via phone, text message, and e-mail.

The Company also failed to comply with the mandates of Labor Code §§ 204 and 210 regarding the timing of the payment of wages to its employees each period, including minimum and overtime wages, as well as meal and rest period premiums. Also, the Company failed to comply with the mandates of Labor Code §§ 201–203 regarding timing of payment of final wages and failed to pay all wages due and owing upon separation of employment including minimum wages, overtime, and vacation wages, and the Company

further failed to pay the Aggrieved Employees for mandated sick time at a rate “calculated in the same manner as the regular rate of pay.”

Finally, during employment with the Company, Claimant received inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

Claimant alleges that she worked under the joint direction and control of Diversity Wireless and the Owners and is informed and believes that each of them acted in all respects pertinent to this action as the agent of the others, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each are legally attributable to the others. On information and belief, a unity of interest and ownership between each exists such that Diversity Wireless and the Owners acted as a single employer of Claimant and the Aggrieved Employees. Furthermore, on information and belief, Diversity Wireless and the Owners are an integrated enterprise and should be treated as a single employer because Diversity Wireless and the Owners share an interrelation of operations, with common human resources and personnel policies and shared common offices and facilities. Upon information and belief, Diversity Wireless and the Owners share common management, a centralized control of labor operations, and common ownership or financial control.

Furthermore, Claimant alleges that the Owners are now and at all relevant times were the owners of Diversity Wireless and were Claimant’s and the Aggrieved Employees’ actual employer or, in the alternative, were individuals employed by the Company as managerial and/or supervisory employees and/or agents. In addition, Claimant alleges that at all relevant times the Owners had the authority, in the interest of Diversity Wireless to exercise independent judgment to hire, transfer, promote, discharge, assign, discipline, or take other similar actions against Claimant and the Aggrieved Employees, and were in Claimant’s chain of command at the time of and direct participants in the wrongful conduct which constitutes the basis of Claimant’s complaint herein. Claimant also alleges that Diversity Wireless and the Owners are the agents, servants, employees, partners, affiliates, and/or representatives of each other, and were, at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of each other. Furthermore, in conducting themselves in the manner described herein, Diversity Wireless and the Owners were acting in active concert with on another such that the acts of each were fully attributable to the other in all material respects.

Claimant also alleges Diversity Wireless and the Owners were merely the alter-ego of the others in that there existed a unity of interest and ownership such that any separateness between them ceased to exist and each exercised undue dominance, control, influence, and management over the others. Claimant further alleges that, at all relevant times, Diversity Wireless has been inadequately capitalized to conduct business, has failed to follow appropriate corporate formalities, and has simply been a shell and instrumentality through which the Owners have conducted their personal affairs. Adherence to the fiction of the separate existence of Diversity Wireless would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice. Accordingly, the corporate veil should be pierced, and any liability attached to Diversity Wireless should be imposed jointly and severally against the Owners.

Finally, in an additional separate, but not necessarily mutually exclusive, alternative theory of liability, the Owners are liable for PAGA civil penalties under Labor Code § 558 as “other person(s)” who caused the violations regarding minimum wage among other claims. See *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 (“if there is evidence and a finding that a party other than the employer ‘violates, or causes to be violated’ the overtime laws (§ 558(a)) or ‘pays or causes to be paid to any employee’ less than



minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer”); *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S.Dist.LEXIS 40851 (same)

As a result of these violations, and others described below, Claimant alleges that he and other Aggrieved Employees were denied specific rights to which they are/were entitled under California law and the rules promulgated by the IWC Wage Orders, including the following:

**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 210, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

As discussed above, the Company failed to pay all required minimum, regular, and overtime wages to Claimant and the Aggrieved Employees due to the Company’s failure to accurately record and compensate for all hours worked and the failure to pay overtime and/or properly calculate the regular rate of pay for Claimant and other Aggrieved Employees. This resulted in earned, but unpaid, wages due and owing to Claimant and the Aggrieved Employees. Therefore, Claimants and the Aggrieved Employees performed work for the Company without receiving proper payment of the requisite minimum, overtime, and/or doubletime wages.

Accordingly, Labor Code §§ 210, 558, 1194.2, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.

**PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS,
REST BREAKS, AND WAGE PREMIUMS**

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

Section 12 of applicable IWC Wage Order states in pertinent part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

Here, Claimant and other Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company’s policies described above. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee’s regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums and did not do so at the proper rate. Labor Code § 558



imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

FAILURE TO PAY VESTED VACATION UPON SEPARATION OF EMPLOYMENT

(Labor Code § 227.3)

Pursuant to Labor Code § 227.3, an employer that has implemented a paid vacation, paid time off, or compensated time off policy must, upon an employee's separation from employment, pay to the employee all vested but unused vacation and/or paid time off at her final rate of pay. However, as alleged herein, the Company failed to pay departing Aggrieved Employees all vested vacation, required them to forfeit accrued and unused time, and, moreover, only paid vested vacation upon separation at the base rate of pay, leading to a violation on these occasions. As a result of these violations, penalties may be assessed pursuant to Labor Code § 2699.

PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802; IWC Wage Order § 9(b))

Labor Code § 2802(a) states "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties." IWC Wage Order § 9(b) states "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer." Here, the Company required Claimant and the Aggrieved Employees to incur expenses in direct consequence of the discharge of their duties without reimbursement. Accordingly, Labor Code § 2699 imposes a penalty upon the Company for each such violation of Labor Code § 2802.

FAILURE TO PAY SICK TIME AT PROPER RATE OF PAY

(Labor Code § 246)

Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees must be "calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek." Additionally, Labor Code § 246(l)(2) states that the paid sick time must be "calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

Here, Claimant and the Aggrieved Employees were compensated on an hourly basis plus additional compensation in the form of nondiscretionary bonuses, commissions, and other forms of payment. However, on the occasions that the Aggrieved Employees took sick time and received paid sick leave, the Company only paid sick time at the base rate of pay (not factoring in the additional compensation as required by Labor Code §§ 246(l)(1-2)). As such, penalties may be assessed pursuant to Labor Code § 2699.

**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 210, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must



be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

Here, the Company frequently paid wages beyond the timing requirements specified in Labor Code § 204 and, thus, violated the statute. Additionally, as a result of the Company’s failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimant and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 203, 210, 256, and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a “waiting time penalty.” (Labor Code § 203.) Labor Code § 2699 also imposes a penalty.

**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**

(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee’s name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all times pertinent hereto, the Company failed to provide accurate itemized wage statements to Claimants and all Aggrieved Employees due to violations including: failure to accurately state total hours worked (the wage statements failed to accurately reflect total compensable hours due to the failure to accurately record all hours worked); failure to accurately state gross wages earned; failure to accurately state



all deductions; failure to accurately state net wages earned; failure to state the applicable hourly rates; and failure to accurately state the corresponding number of hours worked at each hourly rate (including the failure to state the accurate overtime rate of pay); and the failure to accurately state the amount and rate of pay for meal and rest period violations. Accordingly, Labor Code §§ 226.3 and 2699 also impose a civil penalty and/or assessment for these violations.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199

(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company's violations described herein, the Company is subject to the civil penalties in accordance with Labor Code § 2699.

ATTORNEYS' FEES, INTEREST, AND PENALTIES

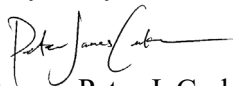
(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys' fees, and costs of suit. Additionally, Claimants seek the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimants is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees. Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimants' notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

Based on the foregoing, the Company may be liable for civil penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to his employment and/or other employees of the Company, he reserves the right to add new claims by supplementing this notice letter. Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

Very Truly Yours,



By: Peter J. Carlson, Esq.

E-mail: peter@lmfirm.com

IMI

5198 Arlington Avenue, PMB 513, Riverside, CA 92504
Toll Free 888.959.8508

EXHIBIT “4”



November 23, 2022

CASE ASSUMPTIONS

Class Members	300
Opt Out Rate	1%
Opt Outs Received	3
Total Class Claimants	297
Subtotal Admin Only	\$11,487.58

Flat Fee Total \$11,000.00

For 300 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

3 Installments, 3 Disbursements & 2 Tax Years

Case: Elwell v. Diversity Wireless, Opt-Out Administration

Phoenix Contact: Michael E. Moore
Contact Number: 949.331.0131
Email: mike@phoenixclassaction.com

Requesting Attorney: Brian J. Mankin
Firm: Lauby, Mankin & Lauby, LLP
Contact Number: (951) 320-1444
Email: brian@lmlfirm.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly. Estimate is based on **300** Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item	Estimate
Programming Manager	\$100.00	2		\$200.00
Programming Database & Setup	\$100.00	2		\$200.00
Toll Free Setup*	\$150.00	1		\$150.00
Call Center & Long Distance	\$2.00	55		\$110.00
NCOA (USPS)	\$75.00	1		\$75.00
Total				\$735.00

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Reminder Postcard

Project Action	Rate	Hours/Units	Line Item	Estimate
Notice Packet Formatting	\$100.00	2		\$200.00
Data Merge & Duplication Scrub	\$0.10	300		\$30.00
Notice Packet & Opt-Out Form	\$1.35	300		\$405.00
Estimated Postage (up to 2 oz.)*	\$0.61	300		\$183.00
Check Cashing Reminder Postcard Postage Included	\$0.60	62		\$37.42
Total				\$855.42

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	5		\$275.00
Skip Tracing Undeliverables	\$0.85	75		\$63.75
Remail Notice Packets	\$0.75	72		\$54.00
Estimated Postage	\$0.61	72		\$43.92
Programming Undeliverables	\$50.00	1		\$50.00
			Total	\$486.67

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Claims Database	\$150.00	2		\$300.00
Non Opt-Out Processing	\$200.00	1		\$200.00
Case Associate	\$55.00	5		\$275.00
Opt-Outs/Deficiency/Dispute Letters	\$10.00	9		\$90.00
Case Manager	\$85.00	3		\$255.00
			Total	\$1,120.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	3		\$405.00
Disbursement Review	\$135.00	3		\$405.00
Programming Manager	\$95.00	2		\$190.00
QSF Bank Account & EIN	\$135.00	1		\$135.00
Check Run Setup & Printing	\$135.00	10		\$1,350.00
Mail Class Checks * (x 3)	\$1.00	297		\$891.00
Estimated Postage (x 3)	\$0.61	297		\$543.51
			Total	\$3,919.51

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Supervisor	\$115.00	3		\$345.00
Remail Checks & Tax Forms (Postage Included)	\$1.70	59		\$100.98
Case Associate	\$55.00	6		\$330.00
Reconcile Uncashed Checks	\$85.00	7		\$595.00
Conclusion Reports	\$115.00	3		\$345.00
Case Manager Conclusion	\$85.00	6		\$510.00
Final Reporting & Declarations	\$115.00	3		\$345.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting Included)	\$750.00	2		\$1,500.00
Check to Cy-Pres	\$150.00	1		Included
Uncashed Checks to the State of California Controllers Office	\$300.00	1		\$300.00
Estimated <u>49</u> Total Class Members				
Total				\$4,370.98

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$11,487.58



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT “5”