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15

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 FOR THE COUNTY OF SANTA CLARA

18 OBADIAH LEWIS, on behalf of himself and all
19 current and former aggrieved employees
20 pursuant to the Labor Code Private Attorneys'
21 General Act of 2004, Labor Code § 2698 *et*
22 *seq.*,

23 Plaintiff,

24 vs.

25 ECHELON SECURITY, INC., a California
26 corporation, OSVALDO ALMEIDA, an
27 individual, RAMSIN BITMANSOUR, an
28 individual, JAMES MACHADO, an individual,
STEVE BROWN, an individual, and DOES 5
through 10, inclusive.

Defendants.

Case No.: 16-CV-291899

STIPULATION AND PROPOSED ORDER
REGARDING SETTLEMENT

1 WHEREAS, Plaintiff Obadiah Lewis filed this wage and hour action on February 23,
2 2016;

3 Whereas Plaintiff Lewis filed a second action in the Santa Clara County Superior Court
4 entitled *Obadiah Lewis v. Echelon Security, et. al.*, Case No. 16-CV-292972 asserting individual
5 termination-related claims relating to his employment with Echelon Security;

6 WHEREAS, in his wage and hour Complaint, Mr. Lewis asserts claims on behalf of
7 himself and on behalf of a class of similarly situated individuals and he asserts claims arising
8 under the California Private Attorneys General Act, Labor Code sections 2698 *et seq.* ("PAGA");

9 WHEREAS, Mr. Lewis and his counsel have determined that his claims are not
10 appropriate for class-wide relief or resolution pursuant to PAGA, particularly because Defendant
11 Echelon Security is out of business and lacks the financial wherewithal to fund any classwide
12 settlement;

13 WHEREAS, Mr. Lewis and the Defendants have negotiated a confidential settlement of all
14 of the individual claims asserted by Mr. Lewis, with an agreement that all other claims – including
15 all class claims and all PAGA claims – will be dismissed without prejudice;

16 WHEREAS, the settlement between Mr. Lewis and Defendants does not contemplate the
17 waiver of any claims by anyone other than Mr. Lewis and does not provide for the waiver of class
18 claims and PAGA claims;

19 WHEREAS, a redacted version of the confidential settlement agreement between
20 Mr. Lewis and Defendants is attached hereto as Exhibit "A" and is concurrently being transmitted
21 to the California Labor & Workforce Development Agency, as required by PAGA;

22 WHEREAS, no absent class member will suffer prejudice as a result of this dismissal;
23 neither Plaintiff nor his counsel have communicated with any absent class members about the
24 Action and no notice of the Action has been given to any absent class member about the pendency
25 of the Lawsuit.

26 IT IS HEREBY STIPULATED by and between the parties hereto and through their
27 respective attorneys of record that:

28 1. Upon completion of the Parties' settlement agreement, Mr. Lewis shall dismiss this

- 1 action with prejudice without further approval by the Court;
- 2 2. That Mr. Lewis' dismissal of this action with prejudice shall have no effect on the
- 3 claims of putative class members, including claims arising under the PAGA.
- 4

5 Dated: September 13, 2017

GAINES & GAINES, APLC

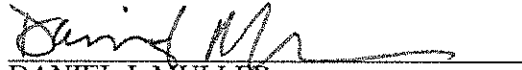
6
7 By:

DANIEL F. GAINES
Attorneys for Plaintiff

8
9
10 Dated: September 13, 2017

VENTURA ROSSI HERSEY & MULLER, LLP

11
12 By:


DANIEL J. MULLER
Attorneys for Defendant Echelon Security, Inc.

13
14 **ORDER OF THE COURT**

15 IT IS SO ORDERED that:

- 16 1. Upon completion of the Parties' settlement agreement, Mr. Lewis shall be authorized
- 17 to dismiss this action *with prejudice* without further approval by the Court;
- 18 2. That Mr. Lewis' dismissal of this action *with prejudice* shall have no effect on the
- 19 claims of putative class members, including claims arising under the PAGA.
- 20

21 Dated: September ____, 2017

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23 _____
JUDGE OF THE SUPERIOR COURT

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EXHIBIT A

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and General Release of all Claims ("Agreement") is made and entered into by and between OBADIAH LEWIS ("LEWIS") and OSVALDO ALMEIDA, RAMSIN BITMANSOUR, and JAMESMACHADO (hereinafter "DEFENDANTS").

Whereas LEWIS filed an action in the Santa Clara County Superior Court entitled *Obadiah Lewis v. Echelon Security, et. al.*, Case No. 16-CV-291899 asserting various claims relating to his employment against Echelon Security and the DEFENDANTS;

Whereas LEWIS filed a second action in the Santa Clara County Superior Court entitled *Obadiah Lewis v. Echelon Security, et. al.*, Case No. 16-CV-292972 asserting additional claims relating to his employment against Echelon Security;

Whereas, Case Nos. 16-CV-291899 and 16-CV-292972 are referred to herein as "the Lawsuits;"

Whereas DEFENDANTS deny that there are any factual or legal basis for the claims contained in the Lawsuits;

Whereas LEWIS and DEFENDANTS (hereinafter collectively referred to as the "Parties") desire to avoid the expense and uncertainty associated with continued litigation of the Lawsuits; and

Whereas, without admitting any wrongdoing, fault, or liability of any kind, the Parties have agreed to settle all disputes and to enter into this Agreement.

In consideration of the mutual promises and covenants contained herein, and in consideration of other good and valuable consideration, the adequacy of which is hereby acknowledged, the Parties, and each of them, covenant and agree as follows:

Section 1. Stipulation Regarding Settlement. The Parties shall execute the Stipulation and Order attached hereto as Exhibit A, which requests that the Court allow the dismissal of LEWIS' claims asserted in Case No. 16-CV-291899 pursuant to the terms of this Agreement. Concurrently with the submission of the Stipulation to the Court, LEWIS shall submit this Agreement to the Labor & Workforce Development Agency, as required by Labor Code § 2698 *et seq.*

Section 2. Payment. In consideration for the promises made in this Agreement, DEFENDANTS agree to pay the sum of [REDACTED] (the "Settlement Sum"). The settlement sum shall be paid as follows:

First Installment Payment. DEFENDANTS shall pay the first installment of the Settlement Sum within ten days of the Court authorizing the dismissal of Case No. 16-CV-291899 pursuant to this Agreement (Exhibit A). The first installment shall be paid as follows: A check made out to "Obadiah Lewis" in the amount of [REDACTED]. DEFENDANTS shall issue a

1099 in connection with this check. A second check in the amount of [REDACTED] shall be issued to "Gaines & Gaines, APLC." The second check shall be for attorneys' fees and DEFENDANTS shall issue a 1099 to Gaines & Gaines in connection with the check.

Second Installment Payment. DEFENDANTS shall pay the second installment of the Settlement Sum on or before the thirtieth day following payment of the first installment of the Settlement Sum. The second installment shall be paid as follows: A check made out to "Obadiah Lewis" in the amount of [REDACTED]. DEFENDANTS shall issue a 1099 in connection with this check. DEFENDANTS shall also issue a check in the amount of [REDACTED] to "Gaines & Gaines, APLC." The second check shall be for attorneys' fees and DEFENDANTS shall issue a 1099 to Gaines & Gaines in connection with the check.

LEWIS shall be solely responsible for the employee-related reporting and payment of any state, local and/or federal income tax, if any, on any of the amounts paid to him hereunder. Should it be determined by an authorized authority that the settlement sum, or any portion thereof, should be treated as taxable income, LEWIS agrees to assume all liability for taxes and any costs, fees, interest, assessments, penalties, damages or other losses due to such a determination. DEFENDANTS make no representations as to the taxability of the settlement sum or any portion thereof.

LEWIS agrees that, upon payment of the amounts set forth above, he has received all wages, bonus, severance, and benefits owed to him by DEFENDANTS. LEWIS further agrees that the consideration set forth above constitutes the entire consideration provided to him under this Agreement and that he shall not seek any further compensation or consideration from DEFENDANTS, or from any other person and/or entity for any other claimed damages, costs, or attorneys' fees in connection with the claims encompassed and released by this Agreement.

Section 3. Release of All Claims. Except as set forth in this Agreement, and subject to the Court's dismissal of the Lawsuits, LEWIS, on his own behalf and that of his heirs, executors, attorneys, administrators, successors, and assigns, fully releases and discharges Echelon Security, Inc., Osvaldo Almeida, Ramsin Bitmansour, James Machado, and Steve Brown, their predecessors, successors, subsidiaries and affiliates, their assigns, and their directors, officers, trustees, current and former employees, attorneys and agents, whether in their individual or official capacities (hereinafter collectively referred to as the "Released Parties"), from any and all liability, claims and demands, up to the date of this Agreement, including, but not limited to, claims relating to LEWIS' employment with Echelon Security, Inc., but not limited to, claims, demands or actions relating thereto, arising under Echelon's policies and procedures, whether formal or informal; the United States or State of California Constitutions; Title VII of the Civil Rights Act of 1964, as amended; the Civil Rights Act of 1991; the Americans With Disabilities Act; the Family and Medical Leave Act; the California Fair Employment and Housing Act; the California Family Rights Act; the California Labor Code and any other federal, state or local statute, ordinance or regulation. This Release does not extend to those rights which as a matter of law cannot be waived.

Section 4. Dismissal of Action with Prejudice. LEWIS agrees to take all actions necessary to dismiss the Action, with prejudice, as soon as possible after this Agreement becomes effective, including, but not limited to, executing the Stipulation attached as Exhibit A and, upon

full payment of the Settlement Sum, filing a Request For Dismissal *with prejudice* as to both Lawsuits. While the Lawsuits will be dismissed *with prejudice*, no portion of the Settlement Sum is being paid to waive or release any PAGA claims or any claims by any person other than LEWIS, including any class member. As such, those claims are being dismissed *without prejudice*.

Section 5. Promise Not to Prosecute. LEWIS agrees that he shall not, at any time hereafter, commence, maintain or prosecute any action, suit, proceeding, investigation, complaint, claim, grievance or charge with any court, administrative agency, arbitrator or any other body or person, whether Federal, State, contractual or otherwise, or aid or assist others in prosecuting such action, suit, proceeding, investigation, complaint, claim, grievance or charge on his behalf, except in response to governmental agency or court inquiries or as compelled by legal process, against any Released Party, based in whole or in part upon, or arising out of or in any way connected with, any of the claims released or any of the matters referred to in this Agreement. LEWIS further agrees to indemnify and hold the Released Parties harmless from and against any and all claims, demands, causes of action, damages or liability of any kind, including the cost of defense and reasonable attorneys' fees arising out of or in connection with, any action, suit, proceeding, investigation, complaint, claim, grievance or charge commenced, maintained, or prosecuted by him contrary to the terms of this Agreement.

Section 6. Unknown or Different Facts or Law. LEWIS acknowledges that he may discover facts or law different from, or in addition to, the facts or law he knows or believes to exist with respect to the claims released by this Agreement. LEWIS agrees, nonetheless, that this Agreement and the releases contained in it shall be and remain effective in all respects notwithstanding such different or additional facts or law.

Section 7. California Civil Code Section 1542 Waiver. LEWIS expressly acknowledges and agrees that the release contained in this Agreement includes a waiver of all rights under Section 1542 of the California Civil Code, which provides:

A general Release does not extend to claims which the creditor does not know or suspect to exist in his/her favor at the time of executing the release, which if known by him/her must have materially affected his/her settlement with the debtor.

LEWIS acknowledges that he has read all of this Agreement, including the above Civil Code section, and that he fully understands both the Agreement and the Civil Code section. LEWIS expressly waives any benefits and rights granted pursuant to Civil Code section 1542.

Section 8. No Admissions. This Agreement shall not be admissible in any proceeding as evidence of improper action by any party. DEFENDANTS deny that there is any basis for LEWIS' actual or threatened claims. No party admits any wrongdoing, fault, or liability of any kind.

Section 9. Attorneys' Fees and Costs. Each party to this Agreement shall bear his/her/its own attorneys' fees and costs. In the event of a breach of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs to enforce this Agreement.

Section 10. Waiver. No provision of this Agreement may be waived unless in writing and signed by all the parties to this Agreement. Waiver of any one provision shall not constitute waiver of any other provision.

Section 11. Applicable Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of California.

Section 12. Knowledge, Capacity And Authority. LEWIS represents and warrants that he had the opportunity to have counsel explain the contents of this Agreement to him. LEWIS represents that he understands the contents of this Agreement and that he has executed it knowingly and voluntarily and understands that after executing it he cannot proceed against any Released Party on account of the matters referred to herein. Each party to this Agreement represents and warrants that s/he/it has the authority and capacity to execute this Agreement.

Section 13. Confidentiality. LEWIS expressly agrees to maintain the terms and conditions of this Agreement, including without limitation the Settlement Sum, in the strictest confidence. LEWIS may disclose the terms and conditions of this Agreement, including the settlement sum, only to the following individuals:

- (a) LEWIS' spouse or domestic partner;
- (b) Legal counsel retained by LEWIS;
- (c) LEWIS' personal certified accountant, financial adviser or any other financial consultant;
- (d) As required or compelled by legal authority.

Section 14. Execution and Delivery. This Agreement may be executed and delivered in two or more counterparts, but such counterparts together shall constitute but one and the same instrument. For purposes of this section, a PDF copy of the executed Agreement may be "delivered" via email by one party to the other.

Section 15. Cooperation. The parties agree to do all things necessary and to execute all further documents necessary and appropriate to carry out and effectuate the terms and purposes of this Agreement.

Section 16. Interpretation; Construction. The headings set forth in this Agreement are for convenience only and shall not be used in interpreting this Agreement. This Agreement has been drafted by legal counsel representing DEFENDANTS, but LEWIS and his counsel have participated in the negotiation of its terms. LEWIS acknowledges he has had an opportunity to review and discuss each term of this Agreement with legal counsel and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

Section 17. Entire Agreement. This Agreement incorporates the entire understanding between the Parties and recites the whole consideration for the promises exchanged herein. It fully supersedes any and all prior agreements or understandings, written or oral, between the Parties

hereto pertaining to the subject matter hereof. The terms of this Agreement are contractual and not mere recitals. This Agreement may not be amended or modified in any respect whatsoever except by a writing duly executed by the Parties, and the Parties agree that they shall make no claim(s) at any time that this Agreement has been orally amended or modified.

PLEASE READ CAREFULLY.
**THIS AGREEMENT INCLUDES A RELEASE OF ALL CLAIMS
KNOWN AND UNKNOWN.**

Dated: 9/13/2017

DocuSigned by:



OBADIAH LEWIS

Dated: _____

OSVALDO ALMEIDA

Dated: _____

RAMSIN BITMANSOUR

Dated: _____

JAMES MACHADO

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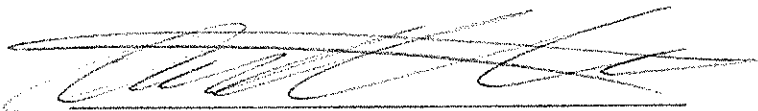
PLEASE READ CAREFULLY.

**THIS AGREEMENT INCLUDES A RELEASE OF ALL CLAIMS
KNOWN AND UNKNOWN.**

Dated: _____

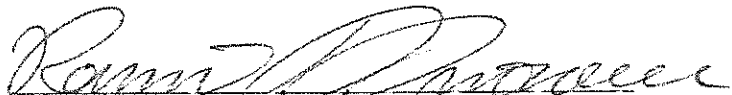
OBADIAH LEWIS

Dated: _____



OSVALDO ALMEIDA

Dated: _____



RAMSIN BITMANSOUR

Dated: 9/13/17



JAMES MACHADO

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PROOF OF SERVICE AND CERTIFICATION

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 27200 Agoura Road, Suite 101, Calabasas, CA 91301

____ (For messenger) my business address is:

On September 15, 2017, I served the foregoing document described as **STIPULATION AND PROPOSED ORDER REGARDING SETTLEMENT** on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

Daniel J. Muller, Esq.
Ventura Rossi Hersey & Muller, LLP
160 West Santa Clara Street
Suite 1575
San Jose, CA 95113

✓ (BY ☒ U.S. MAIL/ BY ☐ CERTIFIED MAIL, RETURN RECEIPT REQUESTED) The sealed envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with United States postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

____ (BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or other facility regularly maintained by the express service carrier or delivered the sealed envelope to an authorized carrier or driver authorized by the express carrier to receive documents.

____ (BY FACSIMILE TRANSMISSION) On March 31, 2016, at ____ a.m./p.m., at Calabasas, California, I served the above-referenced document on the above-stated addressee by facsimile transmission pursuant to Rule 2008 of the California Rules of Court. The telephone number of the sending facsimile machine was (818)703-8984 and the telephone number(s) of the receiving facsimile machine was (____) ____-____. A transmission report was properly issued by the sending facsimile machine, and the transmission was reported as complete and without error. Copies of the facsimile transmission cover sheet and the transmission report are attached to this proof of service.

____ (BY PERSONAL DELIVERY) By causing a true copy of the within document(s) to be personally hand-delivered to the office(s) of the addressee(s) set forth above, on the date set forth above.

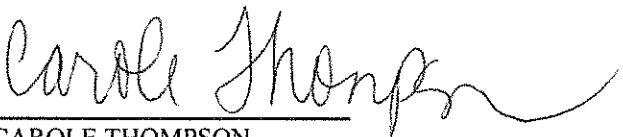
____ (BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

____ (BY ELECTRONIC SERVICE) The above-stated document was submitted for service by electronic transmission of File & ServeXpress on the counsel of record listed above.

I certify that the above document was printed on recycled paper.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 15, 2017, at Calabasas, California.



CAROLE THOMPSON