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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

FRANK M. GONZALEZ III, MICHELLE
CARTER, and DARRELL ESPINOZA, as
individuals and on behalf of all others similarly
situated,

Plaintiffs,

vs.

PRIME COMMUNICATIONS OF
CALIFORNIA, LLC, a California limited
liability company; and DOES 1 through 100,

Defendants.

Case No. BC702262

*[Assigned for all purposes to the Hon.
Kenneth R. Freeman]*

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

Date: October 18, 2018
Time: 2:00 p.m.
Dept.: SSC-14

Complaint Filed: April 27, 2018
Trial Date: None Set

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

2 1. I am a shareholder and principal of the law firm of Haines Law Group, APC, and
3 counsel for the named Plaintiffs Frank M. Gonzalez III, Michelle Carter, and Darrell Espinoza
4 (“Plaintiffs”) and the proposed Settlement Class in the above-captioned matter. I am a member
5 in good standing of the bar of the State of California and am admitted to practice in this Court. I
6 have personal knowledge of the facts stated in this declaration and could testify competently to
7 them if called upon to do so.

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

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

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

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

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

18 6. In July 2012, I transitioned into litigating wage and hour class actions from the
19 Plaintiff’s side, first as a Partner with the law firm of Boren, Osher & Luftman, LLP, and since
20 February 2016, as a Shareholder of the Haines Law Group, APC. Currently, over ninety percent
21 (90%) of my practice is dedicated exclusively to the prosecution of wage and hour class actions,
22 and I am currently responsible for prosecuting over thirty (30) wage and hour class actions filed
23 in both State and Federal courts throughout California. To date, I have been appointed as Class
24 Counsel in the following matters, all of which have been granted final approval: *Hilberger v.*
25 *Eisenhower Medical Center*, Case No. INC1204915, California Superior Court, County of
26 Riverside, Honorable Judge John G. Evans, presiding, (in which I was approved for an hourly
27 rate of \$500 for work performed in 2012 and 2013); *Lopez v. Cornucopia Tools and Plastics,*
28 *Inc.*, Case No. CV138049, California Superior Court, County of San Luis Obispo, Honorable

1 Judge Martin J. Tangeman, presiding, (in which I was approved for an hourly rate of \$425 for
2 work performed in 2013 and 2014); *Tacker v. Compass Health, Inc.*, Case No. CV13-02261 BRO
3 (JCG), United States District Court, Central District of California, Honorable Judge Beverly Reid
4 O'Connell, presiding, (in which I was approved for an hourly rate of \$500 for work performed
5 in 2013 and 2014); *Noell v. American Professional Ambulance Corporation, Inc.*, Case No.
6 BC499345, California Superior Court, County of Los Angeles, Honorable Judge Kenneth R.
7 Freeman, presiding, (in which I was approved for an hourly rate of \$500 for work performed in
8 2013 and 2014); *Bautista v. Harvest Management Sub LLC*, Case No. CV12-10004 FMO (CWx),
9 United States District Court, Central District of California, Honorable Judge Fernando M.
10 Olguin, presiding (in which I was approved for an hourly rate of \$500 for work performed in
11 2012, 2013 and 2014); *Davila v. OCB Restaurant Co.*, Case No. CV13-5403 PA (JCG), United
12 States District Court, Central District of California, Honorable Judge Percy Anderson, presiding
13 (in which I was approved for an hourly rate of \$500 for work performed in 2013 and 2014); *Abad*
14 *v. Waste Connections, Inc.*, Case No. CV12-06708 DDP (PJWx), United States District Court,
15 Central District of California, Honorable Judge Dean D. Pregerson, presiding (in which I was
16 approved for an hourly rate of \$500 for work performed in 2013 and 2014); *Plantillas v. Snap-*
17 *On Incorporated*, Case No. CV13-05153 DDP (VBKx), United States District Court, Central
18 District of California, Honorable Judge Dean D. Pregerson, presiding (in which I was approved
19 for an hourly rate of \$500 for work performed in 2013 and 2014); *Theodore v. Keyes European,*
20 *LLC*, Case No. BC521395, California Superior Court, County of Los Angeles, Honorable Judge
21 Elihu Berle, presiding (in which I was approved for an hourly rate of \$500 for work performed
22 in 2013 and 2014); *Morales v. Sunset Tower Hotel LLC*, Case No. BC511924, California
23 Superior Court, County of Los Angeles, Honorable Judge John Shepard Wiley Jr., presiding (in
24 which I was approved for an hourly rate of \$500 for work performed in 2013 and 2014); *Gonzalez*
25 *v. Universal Alloy Corp.*, Case No. SACV13-00807 JVS (MRWx), United States District Court,
26 Central District of California, Honorable Judge James V. Selna, presiding (in which I was
27 approved for an hourly rate of \$500 for work performed in 2013 and 2014); *Morawski v. Milt*
28 *Guggia Enterprises, Inc.*, Case No. CV13-2349 ABC (RZx), United States District Court, Central

1 District of California, Honorable Judge Andre Birotte, Jr., presiding (in which I was approved
2 for an hourly rate of \$500 for work performed in 2013 and 2014); *Thorp v. Alcal Industries, Inc.,*
3 *et al.*, Case No. CV13-02289 YGR, United States District Court, Northern District of California,
4 Honorable Judge Yvonne Gonzalez Rogers, presiding (in which I was approved for an hourly
5 rate of \$500 for work performed in 2013 and 2014); *Myles v. College Hospital*, Case No.
6 BC487206, California Superior Court, County of Los Angeles, Honorable Judge John Shepard
7 Wiley, Jr., presiding (in which I was approved for an hourly rate of \$500 for work performed in
8 2013, 2014 and 2015); *Sarinana v. DS Waters of America, Inc.*, Case No. C13-0905 EMC, United
9 States District Court, Northern District of California, Honorable Edward M. Chen, presiding (in
10 which I was approved for an hourly rate of \$550 for work performed in 2014 and 2015); *Julio v.*
11 *Anthony, Inc.*, Case No. CV14-03172 AB (SHx), United States District Court, Central District of
12 California, Honorable Judge Andre Birotte Jr., presiding (in which I was approved for an hourly
13 rate of \$550 for work performed in 2014 and 2015); *Litt v. Western Stone & Metal Corp.*, Case
14 No. 3:14-cv-02804-PJH, United States District Court, Northern District of California, Honorable
15 Judge Phyllis J. Hamilton, presiding (in which I was approved for an hourly rate of \$550 for work
16 performed in 2014 and 2015); *Rubalcava v. United Towing and Transport Burbank, et al.*, Case
17 No. BC518468, California Superior Court, County of Los Angeles, Honorable Judge Kenneth
18 Freeman, presiding (in which I was approved for an hourly rate of \$550 for work performed in
19 2013, 2014 and 2015); *Sanchez v. Res-Care, Inc.*, Case No. BC526175, California Superior
20 Court, County of Los Angeles, Honorable John S. Wiley, presiding (in which I was approved for
21 an hourly rate of \$550for work performed in 2013, 2014 and 2015); *Prado v. Warehouse Demo*
22 *Services, Inc.*, Case No. CV14-3170 JFW (Ex), United States District Court, Central District of
23 California, Honorable Judge John F. Walter, presiding (in which I was approved for an hourly
24 rate of \$550 for work performed in 2014 and 2015); *Rivera Regalado v. Jaguar Farm Labor*
25 *Contracting*, Case No. CV 130569, California Superior Court, County of San Luis Obispo,
26 Honorable Martin J. Tangeman, presiding (in which I was approved for an hourly rate of \$550
27 for work performed in 2014 and 2015); *Rodas v. Gateways Hospital and Mental Health Center*,
28 Case No. BC503179, California Superior Court, County of Los Angeles, Honorable Judge Amy

1 D. Hogue, presiding (in which I was approved for an hourly rate of \$550 for work performed in
2 2014 and 2015); *Escobar v. Century West, LLC*, Case No BC564873, California Superior Court,
3 County of Los Angeles, Honorable Judge Jane L. Johnson, presiding (in which I was approved
4 for an hourly rate of \$550 for work performed in 2014 and 2015 and 2016); *Shaw v. Conant Auto*
5 *Retail, San Diego*, Case No. 37-2014-00044052-CU-OE-CTL, California Superior Court,
6 County of San Diego, Honorable Judge Joan M. Lewis, presiding (approving an hourly rate of
7 \$575 for work performed in 2014, 2015, and 2016); *Tirado v. Ricon Corp.*, Case No. BC537042,
8 California Superior Court, County of Los Angeles, Honorable John S. Wiley, presiding
9 (approving an hourly rate of \$575 for work performed in 2014, 2015, and 2016); and *Horta v.*
10 *Searles Valley Minerals, Inc.*, Case No. CIVDS 1507615, California Superior Court, County of
11 San Bernardino, Honorable Donald Alvarez presiding (approving an hourly rate of \$575 for work
12 performed in 2015 and 2016); *Cristobal v. Koos Manufacturing, Inc.*, Case No. BC591484,
13 California Superior Court, County of Los Angeles, Hon. William F. Highberger presiding
14 (approving an hourly rate of \$575 for work performed in 2015 and 2016); *Rodriguez v. Spartan,*
15 *Inc.*, Case No. BCV-15-100007-DRL, California Superior Court, County of Kern, Honorable
16 David R. Lampe presiding (approving hourly rate of \$575 for work performed in 2015, 2016,
17 and 2017); *Kostyuk, et al. v. Golden State Overnight Delivery Service, Inc.*, Case No.
18 RG14727191, California Superior Court, Alameda County, Honorable Winifred Y. Smith
19 presiding (approving an hourly rate of \$575 for work performed in 2015, 2016, and 2017); *Nunez*
20 *v. CompuCom Systems, Inc.*, Case No. BC618385, California Superior Court, County of Los
21 Angeles, Honorable Judge John Shepard Wiley, Jr., presiding (approved at an hourly rate of \$600
22 for work performed in 2016 and 2017); *Mansilla v. Haeco Americas Line Services, LLC, et al*,
23 Case No. BC615310, Superior Court of California, County of Los Angeles, Honorable Judge
24 Elihu M. Berle presiding (approved at an hourly rate of \$600 for work performed in 2016 and
25 2017); *Morales v. Caremeridian, LLC, et al.*, Case No. BC593191, California Superior Court,
26 County of Los Angeles, Judge William F. Highberger presiding (granting final approval of
27 settlement on behalf of direct support professionals involving claims for unpaid wages, meal and
28 rest period violations, wage statement violations, and other claims).

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

- 3 • *Medeiros v. Vortex Financial Management Inc.*, Case No. 30-2013-00644741-CU-OE-
4 CXC, California Superior Court, County of Orange, Honorable Judge Gail A. Andler,
5 presiding (certifying a class of employees who were misclassified as independent
6 contractors);
- 7 • *Javine v. San Luis Ambulance Service, Inc.*, Case No. CV13-07480 BRO (SSx), United
8 States District Court, Central District of California, Honorable Judge Beverly Reid
9 O'Connell, presiding (conditionally certifying an unpaid FLSA overtime wage class);
- 10 • *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-3170 JFW (Ex), United States
11 District Court, Central District of California, Honorable Judge John F. Walter, presiding
12 (certifying a rest period violation class and conditionally certifying an FLSA unpaid
13 overtime wage class);
- 14 • *Bower v. Cycle Gear, Inc.*, Case No. CV14-2712 HSG, United States District Court,
15 Northern District of California, Honorable Judge Haywood S. Gilliam, Jr., presiding
16 (conditionally certifying an unpaid FLSA overtime wage class);
- 17 • *Vega v. Weatherford U.S., Limited Partnership*, Case No. CV14-1790-JLT, United States
18 District Court, Eastern District of California, Honorable Jennifer L. Thurston, presiding
19 (conditionally certifying an unpaid FLSA overtime wage class);
- 20 • *Galvan v. AMVAC Chemical Corporation*, Case No. 30-2014-00716103-CU-OE-CXC,
21 California Superior Court, County of Orange, Honorable Judge William Claster,
22 presiding (certifying unpaid overtime wage class and waiting time penalty class); and
- 23 • *Ontiveros v. Safelite Fulfillment, Inc., et al*, Case No. CV 15-7118-DMG (RAOx), United
24 States District Court, Central District of California, Honorable Dolly M. Gee presiding
25 (certifying six classes of employees for rest period violations, wage statement violations,
26 meal period violations, and overtime and double-time violations).

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1 8. As counsel for Plaintiffs and the proposed Settlement Class, I have been
2 intimately involved in every aspect of this case from its inception through the present, and I
3 believe that the proposed Settlement is an excellent result for the Settlement Class.

4 9. Defendant is the largest privately held AT&T authorized retailer in the United
5 States selling products to individuals and business, with approximately 55 retail locations in
6 California alone. Plaintiffs worked for Defendant as non-exempt employees at Defendant's
7 California retail locations during the Class Period, and were subject to Defendant's wage and
8 hour policies that are at issue in this action. On December 10, 2015, Plaintiff Gonzalez filed a
9 class action complaint in Los Angeles County Superior Court, alleging claims for unpaid
10 overtime wages, wage statement violations, waiting time penalties, and unfair competition
11 ("*Gonzalez Action*"). On January 20, 2016, Plaintiff Gonzalez filed a First Amended Class and
12 Representative Action Complaint which added a cause of action for civil penalties under the
13 PAGA. Because Plaintiff Gonzalez previously entered into a binding arbitration agreement with
14 Defendant, on September 19, 2016, Plaintiff Gonzalez voluntarily dismissed his individual and
15 class claims without prejudice. On February 24, 2016, Plaintiff Carter filed a representative
16 action complaint in Kern County Superior Court, alleging a single cause of action for civil
17 penalties under the PAGA ("*Carter Action*"). On January 4, 2017, the *Carter Action* was
18 transferred to Los Angeles County Superior Court. On September 23, 2016, Plaintiff Espinoza
19 filed a class action complaint in San Mateo County Superior Court, alleging claims for unfair
20 competition, unpaid overtime wages, wage statement violations, failure to reimburse necessary
21 business expenses, and waiting time penalties ("*Espinoza Action*"). On January 5, 2017, Plaintiff
22 Espinoza filed a First Amended Class and Representative Action Complaint which added a cause
23 of action for civil penalties under the PAGA. On February 22, 2017, the court granted
24 Defendant's Motion to Compel Arbitration and ordered Plaintiff Espinoza's class claims
25 dismissed, his individual claims compelled to arbitration, and his PAGA cause of action stayed
26 pending arbitration. On February 24, 2017, Plaintiff Espinoza filed a demand for arbitration of
27 his individual claims with the American Arbitration Association ("*Espinoza Arbitration*").
28 Because the *Gonzalez Action*, *Carter Action*, and *Espinoza Action*, all alleged claims against

Defendant, alleged several overlapping claims, and alleged overlapping liability periods and groups of aggrieved employees, the Parties agreed to mediate all cases in an effort to resolve all lawsuits on a classwide basis.

10. In connection with mediation, Defendant produced time records and payroll data for a sampling of the putative class, as well as its relevant wage and hour policies and other relevant documents and information. My Office hired a labor economist with a Ph.D. in economics to conduct a comprehensive analysis and extrapolation of the payroll data and timekeeping records produced by Defendant to calculate Defendant's potential exposure for each of Plaintiffs' claims. This discovery allowed the Parties to assess the merits and value of Plaintiffs' claims and Defendant's defenses thereto.

11. On November 30, 2016, the Parties participated in a mediation with the Hon. Carl J. West (Ret.), a well-respected wage and hour mediator. The Parties were not able to reach a settlement at the November 30, 2016 mediation, and agreed to attend a second day of mediation. On August 1, 2017, the Parties participated in their second full-day mediation, with Jeffrey A. Ross, Esq., another well-respected wage and hour class action mediator. During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiffs' claims, and the legal basis for the claims and defenses. The Parties did not reach a settlement at the conclusion of mediation. During the weeks that followed mediation, the Parties continued settlement discussions with Mr. Ross and ultimately reached a classwide settlement of all claims. Pursuant to the Settlement Agreement, Plaintiffs dismissed the *Gonzalez* Action, *Carter* Action, and *Espinoza* Action, and filed a consolidated class and representative action in this Court. During the months that followed, the Parties finalized the terms of the Settlement and executed the long-form Settlement Agreement now before the Court. The proposed Class Notice, and Request for Exclusion Form are attached as **Exhibits 1 and 2**, respectively, to the Settlement Agreement.

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

Gross Settlement Amount ("GSA"):	\$645,000.00
Minus Court-approved attorneys' fees (1/3 of GSA):	\$215,000.00
Minus Court-approved, verified costs (up to):	\$40,000.00

1	Minus Court-approved Class Representative incentive payments: (\$5,000 each)	\$15,000.00
	Minus Settlement Administrator costs:	\$16,000.00
2	Minus PAGA payment to the LWDA:	\$22,500.00
3	Net Settlement Amount (“NSA”):	\$336,500.00

4 13. Defense counsel represents that there are approximately 1,049 members of the
5 Settlement Class. Thus, the average Settlement Payment for each Settlement Class member is
6 projected to be approximately \$320.78.

7 14. Plaintiffs allege that from at least December 2011 through January 2015,
8 Defendant had a facially invalid rest period policy that failed to authorize or permit a 10-minute
9 rest period for every four hours worked, or major fraction thereof. Plaintiffs allege that
10 Defendant’s policy was unlawful because it was completely silent as to how many rest periods
11 are authorized, or when rest periods are authorized, and the rest period policy did not authorize
12 a second rest period on shifts of 6.0 hours to 10.0 hours, or a third rest period for shifts in excess
13 of 10.0 hours. Plaintiffs allege that Defendant revised its rest period policies in January 2015,
14 however, Plaintiffs allege that Defendant’s rest period practices remained unlawful because
15 Defendant intentionally understaff its stores so that Plaintiffs and other Class Members could not
16 take all legally authorized rest periods. In addition, Plaintiffs allege it was commonplace for Class
17 Members to become engaged with customers, rendering it impossible to take a rest period for
18 every 4-hour period worked, especially in light of Defendant’s requirement that Class Members
19 “up-sell” various AT&T products, which further extended the face-to-face time with potential
20 customers for up to several hours. Accordingly, Plaintiffs assumed that each shift in excess of
21 3.5 hours triggered a rest period violation. Therefore, Plaintiffs calculated a maximum potential
22 exposure for this claim at \$4,669,757 (391,102 shifts x \$11.94 average premium). However,
23 Defendant contends that it maintained legally-compliant rest period policies and practices
24 throughout the Class Period and authorized and permitted all rest periods to Class Members.
25 Defendant further contends that any failure of Class Members to take rest periods is the result of
26 their own choice. Defendant further argues that Plaintiffs’ rest period claim is inherently unsuited
27 for class treatment as there are no records of whether or not rest periods were taken, therefore
28 requiring an individualized inquiry into why each Class Member failed to take rest periods on

1 each shift, which would devolve into an unmanageable series of mini-trials. In light of these
2 defenses, Plaintiffs discounted the maximum amount for this claim by 85% for a risk of non-
3 certification, and an additional 65% for a risk of being unsuccessful on the merits, to arrive at an
4 estimated exposure of \$245,162.

5 15. Plaintiffs allege that Class Members were not reimbursed for mileage related
6 expenses. Specifically, Plaintiffs allege that Class Members with the title of Assistant Store
7 Manager, Retail Store Manager, and Flagship Store Manager were required to use their personal
8 vehicles to travel between stores for products, attend manager meetings and make bank deposits.
9 However, Plaintiffs allege that Defendant did not reimburse Plaintiffs or the other Class Members
10 for their mileage related expense. Plaintiffs estimate that Assistant Store Managers, Retail Store
11 Managers, and Flagship Store Managers drove 30 miles per week for the approximately 13,348
12 workweeks worked by Assistant Store Managers, Retail Store Managers, and Flagship Store
13 Managers during the Class Period, and therefore calculates Defendant's maximum exposure for
14 this claim at approximately \$224,246 (400,440 miles unreimbursed x \$0.56 average IRS
15 reimbursement rate per mile of business travel during the Class Period). However, significant
16 risks attended to Plaintiffs' unreimbursed expenses claim both on the merits and with respect to
17 class certification, including Defendant's argument that it did not require Assistant Store
18 Managers, Retail Store Managers, and Flagship Store Managers to use their personal vehicles for
19 work purposes, that it was not required to reimburse mileage at the IRS rate, and that this claim
20 would require a series of unmanageable mini-trials to determine which Assistant Store Managers,
21 Retail Store Managers, and Flagship Store Managers, if any, actually incurred unreimbursed
22 mileage expenses and, if so, by how much. Therefore, Plaintiffs discounted this claim by 75%
23 for a risk of non-certification, and an additional 35% for risk of being unsuccessful on the merits,
24 to arrive at a total estimated exposure of \$36,439.

25 16. Plaintiffs allege that during the Class Period Defendant issued facially deficient
26 wage statements which failed to list the rate of pay at which non-discretionary pay identified as
27 either "Comm OT," "Incentive" pay, and "Store Manager B" pay was paid in violation of Labor
28 Code § 226(a)(9). Additionally, Plaintiffs allege that due to Defendant's miscalculation of Class

Members' regular rate of pay, its wage statements failed to list the correct overtime rate of pay. Plaintiffs also allege that Defendant has derivative liability for wage statement penalties as a result of its failure to pay all required wages, reimburse necessary business expenditures, and for its failure to pay all meal and rest period premium wages. Plaintiffs' data analysis reflected that there were approximately 20,506 total wage statements issued during the relevant time period and approximately 544 unique employees during the applicable time period. Plaintiffs calculate Defendant's maximum exposure for wage statement violations at \$2,023,400 (544 initial violations x \$50 for initial penalty = \$27,200) + (19,962 subsequent violations x \$100 subsequent violation penalty = \$1,996,200). Defendant argues any alleged wage statement violations were not "knowing and intentional," and Plaintiffs cannot show they or other employees "suffer[ed] injury" due to the alleged wage statement violations, as required by Labor Code § 226(e) for the imposition of penalties. Defendant further argues that meal and rest period claims cannot support a claim for wage statement penalties. Due to these arguments, Plaintiffs discounted the calculated exposure by 70% for a risk of non-certification and an additional 55% for a risk of being unsuccessful on the merits, to arrive at an estimated total of \$273,159.

17. Plaintiffs allege that Defendant required Class Members with the job title of Retail Store Manager and Flagship Store Manager to perform off-the-clock work, including requiring these Class Members to attend various telephonic conference meetings before the start of their shifts, but Defendant did not allow these Class Members to clock in and record the time spent on telephonic conference meetings as time worked, and as a result, failed to pay for all hours worked. Based on Plaintiffs' investigation, Plaintiffs estimate that Flagship Store Managers worked approximately one hour of off-the-clock work per workweek, and that there were approximately 1,735 workweeks worked by Flagship Store Managers at an average hourly rate of \$17.00 during the Class Period, for a total underpayment of \$29,490. In addition, Plaintiffs estimate that Retail Store Managers also worked approximately one hour of off-the-clock work per workweek, and that there were approximately 6,638 workweeks worked by Retail Store Managers at an average hourly rate of \$15.00 during the Class Period, for a total underpayment of \$99,570. Therefore, Plaintiffs estimated Defendant's maximum exposure for off-the-clock work is approximately

1 \$129,060. Defendant counters that it does not require any off-the-clock work, that its policy
2 disavows such off-the-clock work, and that there was no reason for Class Members to perform
3 any work off-the-clock, as they are expected to clock-in before starting work and to clock-out
4 only when they have stopped working. Defendant also contends this claim is not amenable to
5 class treatment as off-the-clock work is not recorded, and therefore this claim would require
6 individual inquiries to determine which Class Members worked off-the-clock, how often that
7 happened, why it happened, and whether Defendant was aware of the alleged off-the-clock work
8 on each specific shift. Accordingly, Plaintiffs discounted the maximum estimated exposure by
9 75% for a risk of non-certification, and an additional 60% to account for a risk of being
10 unsuccessful on the merits or failure to recover the full amount sought, to arrive at an estimated
11 exposure of \$12,906.

12 18. Plaintiffs allege that Defendant failed to provide Class Members with legally-
13 compliant second meal periods on shifts in excess of 10.0 hours. Specifically, Plaintiffs allege
14 that from December 2011 through January 2015, Defendant's meal period policy was deficient
15 in that it did not provide for second meal periods for shifts in excess of 10.0 hours. Plaintiffs also
16 allege that even after Defendant changed its meal period policy in approximately January 2015,
17 Defendant still did not provide second meal periods on shifts in excess of 10.0 hours. Plaintiffs'
18 analysis of the timekeeping data showed that during the Class Period there were approximately
19 6,655 shifts worked in excess of 10.0 hours, for which a compliant second meal period was not
20 provided. Plaintiffs calculate Defendant's maximum exposure for second meal period violations
21 at \$79,460 (6,655 shifts with non-compliant second meal periods x \$11.94 premium). Defendant
22 contends that it maintained legally compliant written meal period policies throughout the Class
23 Period, notwithstanding Plaintiffs' alleged deficiency in its written meal period policies, and that
24 under *Brinker* it is only required to "provide" the opportunity to take meal periods, not "ensure"
25 meal periods are taken. Defendant further argued that Class Members voluntarily waived their
26 second meal period on shifts in excess of 10.0 hours but less than 12.0 hours. If the Court accepted
27 Defendant's wavier argument for shifts less than 12.0 hours in duration, then there were only 176
28 shifts at issue, as this is the total number of shifts worked over 12.0 hours with a missed second

1 meal period. This would reduce Defendant's maximum exposure to approximately \$2,101 (176
2 shifts with non-compliant second meal periods x \$11.94 premium). Defendant further argues that
3 Plaintiffs' meal period claim is inherently unsuited for class treatment as it requires an
4 individualized inquiry into whether any Class Member failed to take a second meal period, and if
5 so, why the Class Member failed to do so. Therefore, Plaintiffs discounted the calculated
6 exposure by 70% for a risk of non-certification and an additional 60% for a risk of being
7 unsuccessful on the merits, or having exposure reduced due to Defendant's waiver arguments, to
8 arrive at an estimated total of \$9,535.

9 19. Plaintiffs allege that they and other Class Members worked in excess of eight hours
10 per workday and/or forty hours per workweek, but were not compensated at one and one-half
11 times their regular rate of pay for such hours, as a result of Defendant's alleged failure to include
12 non-discretionary pay including "Comm OT," "Incentive" pay, and "Store Manager B" pay when
13 calculating a Class Members' regular rate. Consequently, Plaintiffs allege that they and other
14 Class Members were underpaid for their overtime hours worked, in violation of California law.
15 Plaintiffs' analysis of the payroll records revealed that Defendant's underpayment in overtime
16 wages owing as a result of the failure to include "CommOT" pay, "Incentive" pay, "Store
17 Manager B" pay when calculating the regular rate of pay to be approximately \$5,475 in unpaid
18 overtime wages. Defendant contends that this claim is not suitable for class certification because
19 some Class Members received different forms of Incentive Pay, creating substantive differences
20 among Class Members with respect to the Incentive Pay received. Defendant also argued that
21 even if "Comm OT," "Incentive" pay, and "Store Manager B" were required to be included in the
22 regular rate of pay, the total amount of underpayment was less than \$5,500 to the entire class, and
23 that the failure to pay was not willful, knowing, or intentional, and therefore, could not serve as a
24 basis for waiting time or wage statement penalties. In light of Defendant's defenses, Plaintiffs
25 discounted the maximum exposure by 70% for a risk of non-certification, and an additional 30%
26 for a risk of being unsuccessful on the merits, to arrive at an estimated exposure of \$1,149.

27 20. As a result of the unpaid minimum wages, and meal and rest period premium
28 wages described above, Plaintiffs allege that Defendant failed to comply with their final pay

obligations set out in Labor Code Sections 201-203. Defendant's records reflect approximately 798 former Class Members who separated from their employment with Defendant within the three-year statute of limitations period applicable to Labor Code § 203. Based on an hourly rate of \$11.94, Plaintiffs estimated the average waiting time penalty per former employee to be \$2,865 (\$11.94 x 8 hours per day x 30 days). Therefore, Plaintiffs estimated Defendant's maximum exposure for waiting time penalties to be \$2,286,270 (798 former employees x \$2,865). To the extent that Plaintiffs' waiting time penalty claim was derivative of their unpaid wage claims, Defendant argues that not all former employees (if any) did, in fact, experience under payment of wages (and therefore Plaintiffs' exposure was overstated), and that the maximum penalties under Labor Code § 203 would be unconstitutional given the minimal underpayment alleged by the Settlement Class. Defendant also contends that because it possessed good-faith defenses to the underlying claims, thus any failure to pay wages was not "willful" as a matter of law, precluding recovery of waiting time penalties. Defendant further maintains that waiting time penalties are not recoverable at all for meal and rest period violations. To account for Defendant's defenses, Plaintiffs discounted the maximum exposure by 80% for a risk of non-certification, and an additional 80% for a risk of losing on the merits, and/or not receiving the maximum penalties sought, to arrive at an estimated exposure of \$91,450.

21. Plaintiffs argue that Defendant is liable for civil penalties based on the underlying violations. Plaintiffs estimated maximum total PAGA exposure at \$2,050,600 for the relevant time period (20,506 violations x \$100 initial penalty). However, these penalties derive from the underlying wage and hour violations discussed above, which Defendant vigorously disputes. Defendant also maintains that, given its good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties as "confiscatory" if it were to find Defendant liable for any of Plaintiffs' claims. Therefore, Plaintiffs discounted the maximum figure by 75% for a risk of losing on the merits, and an additional 75% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of \$128,162.

22. Defendant asserts that nearly all Class Members (including Plaintiffs) signed valid and enforceable arbitration agreements with class action waivers. Indeed, Defendant already

1 successfully obtained the dismissal of the class claims and compelled the individual claims to
2 arbitration in the *Espinoza* Action. Furthermore, Plaintiff Gonzalez dismissed the class claims
3 and his individual claims without prejudice in the *Gonzalez* Action as a result of the arbitration
4 agreement he entered into with Defendant. Setting aside any arguments as to the merits of
5 Plaintiffs' claims, Defendant contends it would compel Plaintiffs' claims to individual arbitration,
6 thereby precluding *any* recovery on a class basis.

7 23. Using these estimated figures for each of the claims described above, Plaintiffs
8 predicted that the potential recovery for the Settlement Class would be approximately \$797,962.
9 The proposed settlement of \$645,000 therefore represents approximately 80.8% of the reasonably
10 forecasted recovery for the Settlement Class.

11 24. My Office will also apply for an attorneys' fees award of one-third of the GSA,
12 which is currently estimated to be \$215,000, and up to \$40,000 in verified costs reimbursement.
13 Plaintiffs submit the requested fee is fair compensation for undertaking complex, risky,
14 expensive, and time-consuming litigation on a purely contingent fee basis. My office has incurred
15 substantial attorney fees conducting pre-filing investigation, analyzing Plaintiffs' claims,
16 conducting legal research, drafting discovery requests, reviewing Defendant's documents and
17 policies, analyzing Class Members' timekeeping data and payroll records, working with a
18 retained expert to create a comprehensive damages model, preparing for and attending two
19 mediation sessions, negotiating the long-form Settlement Agreement, preparing this Motion, and
20 otherwise litigating the case. I also anticipate my office incurring future attorney time in attending
21 the hearing on this Motion, overseeing the Notice process, fielding questions from Settlement
22 Class members, preparing the final approval papers and attending the Final Approval hearing.

23 25. Plaintiffs will separately apply for incentive payments at the time of seeking final
24 approval of the proposed class action settlement in the amount of \$5,000 each (for a total of
25 \$15,000) for their services to the Settlement Class. I believe this is reasonable given Plaintiffs'
26 efforts in this case and the risks he undertook on behalf of the Settlement Class, providing
27 substantial factual information and documents to Class Counsel, discussing case strategy and
28 Defendant's wage and hour practices and policies with Class Counsel, attending multiple in-

1 person and telephonic meetings with Class Counsel to discuss the claims and theories at issue in
2 the litigation, and actively participating in the prosecution of their claims, as well as the
3 significant risks Plaintiffs undertook by agreeing to serve as the named Plaintiffs in this case, and
4 the fact that Plaintiffs have agreed to a general release of all claims subject to a waiver of Civil
5 Code § 1542.

6 26. Although the parties engaged in significant informal discovery in advance of
7 mediation, the parties still had significant discovery to complete in formal litigation had the matter
8 not settled. This would have required expenditure of substantial time and resources by both parties
9 that would have very likely spanned several years. Furthermore, Defendant maintains that
10 Plaintiffs and Class Members signed valid and binding arbitration agreements during their
11 employment with Defendant, precluding them from proceeding on a classwide basis. As stated
12 above, in the *Espinoza* Action, Defendant already successfully moved to dismiss class claims and
13 compel Plaintiff Espinoza's individual claims to arbitration. Similarly, as a result of Plaintiff
14 *Gonzalez* entering into an arbitration agreement with Defendant, he dismissed his individual
15 claims and class claims without prejudice in the *Gonzalez* Action. Even if Plaintiffs were to
16 overcome the arbitration agreements and certify the classes, Plaintiffs still had to file for class
17 certification, and faced the prospect of appeals in the wake of a disputed class certification ruling
18 for Plaintiffs and/or adverse summary judgment ruling. Furthermore, if the classes sought to be
19 certified by Plaintiffs were in fact certified, the Parties would incur considerably more attorney
20 fees and costs through a possible decertification motion, trial, and possible appeal. Settlement
21 avoids those risks and the accompanying expense.

22 I declare under penalty of perjury under the laws of the State of California and the United
23 States that the foregoing is true and correct. Executed on August 30, 2018, at El Segundo,
24 California.

25
26
27
28



Paul K. Haines

EXHIBIT A

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL CIVIL WEST

FRANK M. GONZALEZ III, MICHELLE
CARTER, and DARRELL ESPINOZA, as
individuals and on behalf of all others similarly
situated,

Plaintiffs,

v.

PRIME COMMUNICATIONS OF
CALIFORNIA, LLC, a California limited liability
company; and DOES 1 through 100,

Defendants.

Case No. BC702262

[Honorable Kenneth R. Freeman, Department 14]

**JOINT STIPULATION OF CLASS ACTION
SETTLEMENT AND RELEASE OF
CLAIMS**

Date Action Filed:

April 27, 2018

JOINT STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE OF CLAIMS

This Joint Stipulation of Class Action Settlement and Release of Claims is entered into by and between Plaintiffs Frank M. Gonzalez III, Michelle Carter, and Darrell Espinoza, and their counsel, on the one hand, and Defendant, Prime Communications of California, LLC, on the other hand.

1. DEFINITIONS

As used in the Agreement, the following terms shall have the following meanings:

1.1. Action. “Action” means the civil lawsuit originally entitled *Frank M. Gonzalez III, Michelle Carter, and Darrell Espinoza v. Prime Communications of California, LLC*, filed on or about April 27, 2018, in the Superior Court of the State of California, County of Los Angeles, and designated as Case No. BC702262.

1.2. Agreement. “Agreement” means this Joint Stipulation of Class Action Settlement and Release of Claims, which includes the Definitions, Recitals, and all Exhibits attached hereto.

1.3. Attorneys’ Fees and Costs Award. “Attorneys’ Fees and Costs Award” means any attorneys’ fees and costs payment, subject to Court approval, from the Gross Settlement Amount for Class Counsel’s attorneys’ fees and costs associated with their efforts throughout the Lawsuit (excluding only third-party Settlement Administration Costs, which are separately identified and defined below).

1.1. Class Counsel. “Class Counsel” means Paul K. Haines and Sean M. Blakely of Haines Law Group, APC, Kevin T. Barnes and Gregg Lander of Law Offices of Kevin T. Barnes, and Aparajit Bhowmik and Jeffrey Herman of Blumenthal Nordrehaug Bhowmik De Blouw LLP.

1.2. Class Member. “Class Member” means any person who is or was employed by Defendant in the State of California as a non-exempt employee during the Class Period.

1.3. Class Notice. “Class Notice” means the Notice of Class Action Settlement, substantially in the form attached as Exhibit A.

1.4. Class Period. “Class Period” means December 10, 2011, through April 1, 2018.

1.5. Class Representative Incentive Payment. “Class Representative Incentive Payment” means any payment, subject to Court approval, to Plaintiffs from the Gross Settlement Amount in recognition of their efforts and work in prosecuting the Lawsuit on behalf of others.

1.6. Court. “Court” means the Superior Court of California, County of Los Angeles, the

Honorable Kenneth R. Freeman presiding.

1.7. Defendant. “Defendant” means Prime Communications of California, LLC.

1.8. Defendant’s Counsel. “Defendant’s Counsel” means Seyfarth Shaw LLP. For purposes of providing any notices required under the Agreement, Defendant’s Counsel shall refer to Simon L. Yang, Seyfarth Shaw LLP, 333 South Hope Street, Suite 3900, Los Angeles, California 90071.

1.9. Effective Date. “Effective Date” means the date applicable based on the following: (a) if no objections to the settlement are made (and an objection is a prerequisite to the filing of an appeal), the date the Court enters an Order granting final approval of class action settlement or entering judgment; or (b) in the event that there are any objections to the settlement, the later of: (i) the last date on which any appeal might be filed, or (ii) the successful resolution of any appeal(s)—including expiration of any time to seek reconsideration or further review.

1.10. Individual Settlement Payment. “Individual Settlement Payment” means each Settlement Class Member’s potential payment from the Net Settlement Amount.

1.11. Gross Settlement Amount. “Gross Settlement Amount” means the maximum potential settlement amount—inclusive of any Attorneys’ Fees and Costs Award, Class Representative Incentive Payments, LWDA Payment, Settlement Administration Costs, Individual Settlement Payments (including any employee shares of payroll taxes), or any other Court-required payments—that Defendant may be required to pay in connection with an order granting final approval of class action settlement (with the sole exception of any employer shares of payroll taxes to be paid, which shall be paid by Defendant to the Settlement Administrator separate and apart from the Gross Settlement Amount).

1.12. Lawsuit. “Lawsuit” means the Action and Prior Actions.

1.13. LWDA Payment. “LWDA Payment” means any payment, subject to Court approval, to the State of California Labor and Workforce Development Agency, for 75% of the amount allocated to Labor Code Private Attorney General Act of 2004 (“PAGA”) penalties.

1.14. Net Settlement Amount. “Net Settlement Amount” means the portion of the Gross Settlement Amount available for allocation to Settlement Class Members for employee shares of payroll taxes and Individual Settlement Payments, after deductions for any Court-approved Attorneys’ Fees and

Costs Award, Class Representative Incentive Payments, LWDA Payment, Settlement Administration Costs, or any other Court-required payments.

1.15. Parties. “Parties” means Plaintiffs and Defendant.

1.16. Plaintiffs. “Plaintiffs” means Frank M. Gonzalez III, Michelle Carter, and Darrell Espinoza.

1.17. Prior Actions. “Prior Actions” means the Prior *Carter* Action, Prior *Gonzalez* Action, and Prior *Espinoza* Action. “Prior *Carter* Action” means the civil lawsuit originally entitled *Michelle Carter v. Prime Communications of California, LLC*, filed on or about February 24, 2016, in the Superior Court of the State of California, County of Kern, and designated as Case No. BCV16100392, and transferred to the Superior Court of the State of California, County of Los Angeles, and designated as Case No. BC651539. “Prior *Gonzalez* Action” means the civil lawsuit originally entitled *Frank M. Gonzalez III v. Prime Communications of California, LLC*, filed on or about December 10, 2015, in the Superior Court of the State of California, County of Los Angeles, and designated as Case No. BC603828. “Prior *Espinoza* Action” means both the civil lawsuit originally entitled *Darrell Espinoza v. Prime Communications of California, LLC*, filed on or about September 23, 2016, in the Superior Court of the State of California, County of San Mateo, and designated as Case No. 16CIV01563, and the arbitration commenced on or about February 24, 2017, with the American Arbitration Association and designated as Case No. 01-17-0001-1493. The last operative complaints for the Prior Actions are attached collectively hereto as Exhibit B.

1.18. Released Party. “Released Party” means any of Defendant or its current or former subsidiaries, affiliates, and joint ventures, and all of their shareholders, officers, directors, employees, agents, servants, registered representatives, attorneys, insurers, successors and assigns, and any other persons acting by through, under or in concert with any of them (including their respective pension, profit sharing, savings, health, and other employee benefit plans of any nature, the successors of such plans, and those plans’ respective trustees and administrators, agents, employees, and fiduciaries).

1.19. Settlement Administrator. “Settlement Administrator” means the independent third-party settlement administrator mutually agreed on by the Parties, subject to Court approval, to administer the settlement.

1 **1.20. Settlement Administration Costs.** “Settlement Administration Costs” means any
2 payment, subject to Court approval, payable from the Gross Settlement Amount to the Settlement
3 Administrator for administering the settlement, including, but not limited to, printing, distributing, or
4 tracking Class Notices, processing any required tax payments or reportings, providing any required tax
5 forms, distributing the Individual Settlement Payments, Class Representative Incentive Payments,
6 Attorneys’ Fees and Costs Award, LWDA Payment, or any other Court-required payments, and
7 providing reports and declarations, as jointly requested by Class Counsel and Defendant’s Counsel.

8 **1.21. Settlement Class Member.** “Settlement Class Member” means any and all Class
9 Members who do not exclude themselves from the settlement by complying with the procedures set
10 forth in the Class Notice to opt out of the settlement.

11 **2. RECITALS**

12 **2.1. Prior Actions.** On or about December 10, 2015, Plaintiff Gonzalez filed the original
13 complaint initiating the Prior *Gonzalez* Action as a putative class action on behalf of current and former
14 non-exempt employees in California since December 10, 2011. On or about January 20, 2016, Plaintiff
15 Gonzalez filed a first amended complaint to additionally pursue PAGA causes of action for penalties
16 due to the alleged Labor Code violations. On or about February 24, 2016, Plaintiff Carter filed the
17 original complaint initiating the Prior *Carter* Action, which alleged PAGA causes of action only. On or
18 about September 19, 2016, Plaintiff Gonzalez’s individual and class action causes of action in the Prior
19 *Gonzalez* Action were dismissed. On or about September 23, 2016, Plaintiff Espinoza filed the original
20 complaint initiating the Prior *Espinoza* Action as a putative class action on behalf of current and former
21 non-exempt retail store employees in California since September 23, 2012. On or about January 5, 2017,
22 Plaintiff Espinoza filed a first amended complaint to additionally pursue PAGA causes of action for
23 penalties due to the alleged Labor Code violations. On or about February 9, 2017, Plaintiff Espinoza’s
24 class action causes of action were stricken and dismissed, his individual causes of action were ordered to
25 arbitration, and his PAGA causes of action were stayed pending the arbitration.

26 **2.2. Plaintiffs’ Allegations and Claims.** Based on various factual theories, including but not
27 limited to allegations that Defendant failed to consider all forms of “Incentive Pay” when calculating the
28 regular rate of pay for overtime purposes, the Prior Actions pursued various class and PAGA causes of

1 action for (i) failure to pay overtime, (ii) failure to provide accurate itemized wage statements, (iii)
2 failure to timely pay wages upon termination, (iv) failure to provide meal periods, (v) failure to
3 authorize and permit rest breaks, (vi) pay all wages, (vii) failure to pay for reporting time, (viii) failure
4 to pay split-shift premiums, (ix) failure to provide written contracts for commission pay, (x) failure to
5 reimburse work expenses, (xi) failure to provide paid sick leave or pay, and (xi) unfair competition.

6 **2.3. Defendant's Denials.** Defendant has consistently denied and continues to deny (i) all of
7 the allegations made by Plaintiffs in the Lawsuit, (ii) that it violated any applicable laws, (iii) that it
8 would be liable or owes damages, penalties, or any other type of remedies to anyone with respect to the
9 alleged facts or claims asserted in the Lawsuit, and (iv) that class certification or representative
10 treatment of the Lawsuit or any alleged claims would be proper.

11 **2.4. Class Counsel's Investigation.** Throughout more than two years of litigation, Class
12 Counsel have utilized formal discovery procedures requiring motion practice, and, pursuant to judicial
13 direction, requested and exchanged significant informal discovery. In addition to other documents and
14 data, Defendant provided extensive discovery, and Class Counsel considered, for example, (i) personnel
15 and payroll files; (ii) employee handbooks, policies, pay plans, and compensation agreements; (iii)
16 redacted lists of allegedly aggrieved employees; (iv) random samples of approximately 25% of time
17 clock data from a two-year period; (v) corresponding payroll data; (vi) corresponding retail transaction
18 data; (vii) exemplar wage statements; and (viii) data as to the number of current and former non-exempt
19 employees, their hourly rates, and weeks worked. In addition to the exchange of information and
20 documentation pursuant to formal and informal discovery methods, Class Counsel also continued
21 diligently investigating the claims against Defendant. Class Counsel continued to meet and confer with
22 Defendant to discuss both Plaintiffs' claims as well as Defendant's defenses. In addition to the numerous
23 conferences between Class Counsel and Defendant's Counsel, Class Counsel also analyzed any
24 defenses, case law, and authorities raised by Defendant.

25 **2.5. Mediation Efforts.** On or about November 30, 2016, the Honorable Carl J. West (Ret.)
26 attempted to assist with a mediated resolution. The mediation was unsuccessful. A second mediation,
27 however, was agreed to and scheduled. On or about August 1, 2017, Jeffrey A. Ross, an experienced
28 mediator knowledgeable of both the wage and hour laws and claims at issue in the Lawsuit, again

attempted to assist with mediating a resolution. Despite the participants' good-faith efforts, the mediation concluded without any agreement to resolve the disputes and a mediator's proposal that also failed to result in any agreement to resolve the disputes. The Parties, however, continued discussing the claims and defenses with the mediator, and a third mediation was scheduled for January 17, 2018.

2.6. Settlement. During December 2017 and January 2018, the Parties continued exploring the possibility of a settlement. Prior to the third mediation, the Parties agreed to a settlement, which was negotiated in light of all known facts and circumstances—including the difficulty of proving Plaintiffs' claims, potential defenses asserted by Defendant, the uncertainty associated with litigation, the risks of significant delay, and numerous potential appellate issues—and was reached after multiple mediations and extensive arm's-length negotiations.

2.7. Class Counsel's Evaluation. Based on Class Counsel's ongoing investigation and evaluation for more than two years, Class Counsel is of the opinion that the terms set forth in the Agreement are fair, reasonable, adequate, and in the best interests of the putative class. Any stipulation or statement by Plaintiffs contained herein is made for settlement purposes only.

2.8. No Admission of Liability. Although Defendant has consistently denied and continues to deny all of the allegations made by Plaintiffs in the Lawsuit, Defendant—without admitting or conceding any liability or wrongdoing whatsoever and without admitting or conceding that class certification or representative treatment would be appropriate for any purpose other than settlement purposes alone—has agreed to settle the Lawsuit on the terms and conditions set forth in the Agreement for the sole purpose of avoiding the burden, expense, and uncertainty of continuing the Lawsuit. Any stipulation or statement by Defendant contained herein is made for settlement purposes only.

2.9. Intention of Parties and Initiation of Action. To facilitate settlement, on or about April 27, 2018, Plaintiffs and Class Counsel filed the original complaint initiating the Action as a putative class action on behalf of current and former non-exempt employees in California from December 10, 2011, through April 1, 2018. Plaintiffs and Class Counsel agreed to stay and dismiss any other pending matters on behalf of Class Members. It is the desire of the Parties to fully, finally, and forever settle, compromise, or discharge any and all claims, rights, demands, charges, complaints, causes of action, obligations or liability of any and every kind that were or could have been asserted in the Lawsuit or that

1 arise out of the alleged facts, circumstances, and occurrences underlying the allegations in the Lawsuit.

2 **2.10. Certification of Settlement Class.** The Agreement is contingent upon the approval and
3 certification by the Court of a class for settlement purposes only. Defendant does not waive, and instead
4 expressly reserves, any and all rights to challenge the propriety of class certification or representative
5 treatment for any other purpose should the Court not approve the Agreement or grant final approval of
6 class action settlement.

7 **2.11. Agreement to Cooperate.** The Parties, Class Counsel, and Defendant's Counsel agree to
8 cooperate and take all steps necessary and appropriate to effectuate all aspects of the Agreement, to
9 obtain preliminary and final approval of class action settlement, and to dismiss the Lawsuit and claims
10 of Class Members with prejudice upon final approval.

11 **3. NOTICE TO CLASS MEMBERS**

12 **3.1. Settlement Administrator.** Plaintiffs and Class Counsel shall request that the Court
13 appoint CPT Group, Inc. as Settlement Administrator for purposes of sending notice of the settlement to
14 Class Members. The Parties agree that Settlement Administration Costs should not exceed \$16,000, and
15 CPT Group, Inc. has agreed to cap the Settlement Administration Costs to \$16,000. All disputes relating
16 to the Settlement Administrator's performance of its duties, after good-faith efforts by the Parties to first
17 resolve such disputes, will be referred to the Court, if necessary, which will have continuing jurisdiction
18 over the Agreement until all payments and obligations contemplated by the order granting final approval
19 of class action settlement have been fully completed to both Class Counsel and Defendant's Counsel's
20 satisfaction.

21 **3.2. Class Notice of Settlement.** The Settlement Administrator shall send Class Notice to
22 Class Members to provide notice of settlement within 40 days of the entry of an order granting
23 preliminary approval of class action settlement, pursuant to the procedures below. This shall be the sole
24 means of notice to Class Members.

25 **3.3. Class Data for Settlement Administrator.** Within 20 days of the entry of an order
26 granting preliminary approval of class action settlement, Defendant shall provide to the Settlement
27 Administrator each Class Member's most current, known mailing address, as well as data sufficient for
28 the Settlement Administrator to determine each Class Member's number of workweeks during the

1 applicable Class Period. The Class Data shall be provided to the Settlement Administrator in an
2 electronic format satisfactory to the Settlement Administrator.

3 **3.4. Confidentiality of Class Data.** Within 10 days of the entry of an order granting
4 preliminary approval of class action settlement, the Settlement Administrator shall execute a
5 confidentiality agreement. The Settlement Administrator shall keep data provided by Defendant strictly
6 confidential, shall not share it with Class Counsel or any other individual, shall use it only for the
7 purposes described herein, and shall return it to Defendant or confirm its destruction upon completion of
8 the Settlement Administrator's duties in administering the settlement.

9 **3.5. Mailing of Notice.** The Settlement Administrator shall (i) run Class Member names
10 through the National Change of Address ("NCOA") database to determine and update any Class
11 Member addresses; (ii) calculate the estimated Individual Settlement Payment for each Class Member;
12 and (iii) send Class Notice to each Class Member via First Class U.S. Mail to his or her updated or last
13 known address. Any Class Notice returned to the Settlement Administrator as undeliverable shall be sent
14 promptly via First Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is
15 provided, the Settlement Administrator shall promptly attempt to determine the correct address using a
16 skip-trace search and shall then promptly send a re-mailing.

17 **3.6. Proof of Mailing.** The Settlement Administrator shall retain proof of mailing. At least 7
18 days prior to the deadline to file the motion for final approval for class action settlement, the Settlement
19 Administrator shall provide Class Counsel and Defendant's Counsel—and Class Counsel shall provide
20 the Court—a declaration by the Settlement Administrator of due diligence and proof of mailing with
21 regard to mailing of Class Notice.

22 **4. CLASS MEMBERS' RESPONSE OPTIONS**

23 **4.1. Consideration Period.** Class Members shall be provided 45 days after the postmark date
24 of the initial mailing of Class Notice to exercise any rights to opt out of or to object to the settlement.
25 Except as specifically provided herein, no Class Member responses of any kind that are postmarked
26 more than 45 days after the initial mailing of Class Notice shall be considered. The Parties shall do
27 nothing to encourage or solicit Class Members to opt out or object to the settlement.

28 **4.2. Opt-Out Rights and Procedures.** Class Members shall be given the opportunity to opt

1 out of the settlement. Class Members must comply with the procedures set forth in the Class Notice to
2 opt out of the settlement. Class Members may opt out of the settlement by mailing to the Settlement
3 Administrator the Request for Exclusion form (attached to the Class Notice), which expresses their
4 desire to be excluded from the Settlement Class. Any Request for Exclusion must include a Class
5 Member's name (and former names, if any), current address, current telephone number, and last four
6 digits of his or her social security number. Any Request for Exclusion that is not submitted on a timely
7 basis shall be deemed null, void, and ineffective. The Settlement Administrator will attempt to obtain
8 any missing required information for any incomplete Request for Exclusion, and any Request for
9 Exclusion missing required information that the Settlement Administrator cannot timely obtain from the
10 Class Member shall be deemed null, void, and ineffective.

11 **4.3. Opt-Out Effect.** Class Members who opt out of the settlement pursuant to the terms of
12 the Agreement shall not be permitted to object to the settlement or appeal, shall not receive any
13 Individual Settlement Payments, and shall not be bound by the release provisions in the Agreement or
14 order granting final approval of class action settlement. Each Class Member who does not opt out of the
15 settlement shall remain qualified to receive an Individual Settlement Payment and shall be subject to
16 being bound by the release provisions in the Agreement or order granting final approval of settlement.

17 **4.4. Objection Rights and Procedures.** Because a class would be certified by the Court for
18 settlement purposes, Settlement Class Members shall be given the opportunity to object to the terms of
19 the settlement. Class Members who fail to make objections in the manner specified in the Class Notice
20 shall be deemed to have waived any objections and shall be foreclosed from making any objection,
21 whether by appeal or otherwise, to the settlement. To object, a Class Member must send to the
22 Settlement Administrator a written objection as set forth in the Class Notice. The written objection must
23 set forth the basis of the objection to the settlement and include any supporting papers and arguments.
24 The Settlement Administrator must provide a copy of any objection received to Class Counsel and
25 Defendant's Counsel upon receipt. Either of the Parties may file a response to any written objection no
26 later than five court days before the final approval hearing. If a Class Member submits both a Request
27 for Exclusion and an objection, the Class Member's objection shall be valid and shall be deemed to
28 invalidate the Request for Exclusion.

1 **4.5. Objection Effect.** Class Members who submit an objection shall remain subject to be
2 bound by the release provisions in the Agreement or the applicable release provisions in any order
3 granting final approval of class action settlement. Class Members who submit an objection pursuant to
4 the procedures set forth in the Class Notice may appear at the hearing on a motion for final approval for
5 class action settlement, either in person or through counsel, but must state their intention to do so at the
6 time they submit their written objection. Class Members may withdraw their objections at any time.

7 **4.6. Class Member Disputes.** Each Class Notice mailed to a Class Member shall disclose the
8 Class Members' number of workweeks reflected in Defendant's records. If a Class Member believes the
9 disclosed number of workweeks is inaccurate, the Class Member may provide the Settlement
10 Administrator the number of workweeks the Class Member believes accurate and submit supporting
11 documentation. Any such dispute, including any supporting documentation, must be mailed to the
12 Settlement Administrator within 45 days of the postmark date of the initial mailing of Class Notice. The
13 Settlement Administrator will determine whether submitted documentation supports any adjustments
14 and, if so, consult with the Parties and make any adjustments approved by the Parties.

15 **4.7. Proof of Class Members' Responses.** By 60 days after the initial mailing of Class
16 Notice, the Settlement Administrator will prepare and submit a declaration attesting to (by number of
17 relevant individuals), its mailing of Class Notice, its inability to deliver Class Notice due to invalid
18 addresses, and its receipt of valid Requests for Exclusion, disputes, or objections. Prior to the hearing on
19 the motion for final approval of the settlement, the Settlement Administrator shall prepare any
20 supplemental declarations regarding the administration of the settlement, as necessary or as jointly
21 requested by the Parties or by the Court. Class Counsel shall file any valid objections with the Court.

22 **4.8. Defendant's Right to Withdraw.** Defendant shall have the right, at its sole option, to
23 withdraw from the Agreement, if more than 20 Class Members opt out of the preliminarily approved
24 class action settlement. If Defendant exercises the right to withdraw from the Agreement, then
25 Defendant shall pay the Settlement Administrator's expenses up to the date the Agreement is nullified.

26 **5. SETTLEMENT PROCEEDS**

27 **5.1. Gross Settlement Amount.** Defendant agrees to pay a maximum, non-reversionary
28 potential settlement amount of \$645,000, which would be inclusive of any Attorneys' Fees and Costs

Award, Class Representative Incentive Payments, LWDA Payment, Settlement Administration Costs, Individual Settlement Payments (including any employee shares of payroll taxes), or any other Court-required payments that Defendant may be required to pay in connection with an order granting final approval of class action settlement (with the sole exception of any employer shares of payroll taxes to be paid). Within 10 days of the Effective Date, Defendant shall deposit the Gross Settlement Amount to the Settlement Administrator, which shall be held in an interest bearing escrow account.

5.2. Timing of Payments. Within 15 days of the Effective Date, the Settlement Administrator will distribute any payments pursuant to the order granting final approval of class action settlement.

5.3. Attorneys' Fees and Costs. Class Counsel intends to request—and Defendant agrees not to oppose—that the Court approve an Attorneys' Fees and Costs Award in the amount of (a) up to one-third of the Gross Settlement Amount (or \$215,000) in attorneys' fees, and (b) reimbursement of costs verified by declaration. Except as provided in the Agreement, Defendant shall have no liability for any attorneys' fees or costs in connection with the Lawsuit. Plaintiffs, Class Counsel, and Settlement Class Members waive any additional claim for attorneys' fees and costs incurred.

5.3.1. Award Not Material. The Court's approval of an Attorneys' Fees and Costs Award is not a material term of the Agreement. If the Court does not approve for an Attorneys' Fees and Costs Award (or approves only a lesser amount than requested by Class Counsel), the other terms of the Agreement shall apply. The Court's refusal to approve the Attorneys' Fees and Costs Award requested by Class Counsel does not give Plaintiffs or Class Counsel any basis to abrogate the Agreement. Any amount of an Attorneys' Fees and Costs Award requested by Class Counsel but unapproved by the Court shall be allocated to the Net Settlement Amount.

5.3.2. Payment Terms. The Settlement Administrator shall issue an Internal Revenue Service ("IRS") Form 1099 to Class Counsel for any Attorneys' Fees and Costs Award payment. Prior to distribution, Class Counsel shall transmit instructions to the Settlement Administrator as to how the Attorneys' Fees and Costs Award shall be paid. Class Counsel agrees that Class Counsel is responsible for allocating this payment among themselves or any other counsel for Class Members settling claims through the final approval of class action settlement. Class Counsel shall be solely and legally responsible for paying all applicable taxes on any Attorneys' Fees and Costs Award payments and shall

1 indemnify and hold harmless Defendant from any claim or liability for taxes, penalties, or interest
2 arising as a result of the payment.

3 **5.4. Class Representative Incentive Payment.** Class Counsel intends to request—and
4 Defendant agrees not to oppose—that the Court approve a Class Representative Incentive Payment of up
5 to \$5,000 for Plaintiff Gonzalez, up to \$5,000 for Plaintiff Carter, and up to \$5,000 for Plaintiff
6 Espinoza. Any Class Representative Incentive Payment is supplemental to Plaintiffs' Individual
7 Settlement Payments.

8 **5.4.1. Award Not Material.** The Court's approval of Class Representative Incentive
9 Payments is not a material term of the Agreement. If the Court does not approve the Class
10 Representative Incentive Payment (or approves only a lesser amount than requested by Class Counsel),
11 the other terms of the Agreement shall apply. The Court's refusal to approve the Class Representative
12 Incentive Payment requested by Class Counsel does not give Plaintiffs or Class Counsel any basis to
13 abrogate the Agreement. Any amount of Class Representative Incentive Payment requested by Class
14 Counsel but unapproved by the Court shall be allocated to the Net Settlement Amount.

15 **5.4.2. Payment Terms.** The Settlement Administrator shall issue an IRS Form 1099 to
16 Plaintiffs for any Class Representative Incentive Payments. Plaintiffs shall be solely and legally
17 responsible for paying all applicable taxes on any Class Representative Incentive Payment and shall
18 indemnify and hold harmless Defendant from any claim or liability for taxes, penalties, or interest
19 arising as a result of the payment.

20 **5.5. Settlement Administration Costs.** Class Counsel intends to request—and Defendant
21 agrees not to oppose—that the Court approve Settlement Administration Costs of up to \$16,000. Any
22 amount of Settlement Administration Costs requested but unapproved by the Court shall be allocated to
23 the Net Settlement Amount. Upon completion of administration of the settlement, the Settlement
24 Administrator shall provide written certification of such completion to Class Counsel and Defendant's
25 Counsel. The Parties agree to cooperate in the settlement administration process and to make all
26 reasonable efforts to control and minimize Settlement Administration Costs. Except as otherwise
27 provided herein, if the Court does not grant final approval of class action settlement, Class Counsel and
28 Defendant shall each pay one-half of any costs incurred by the Settlement Administrator.

1 **5.6. LWDA Payment.** Class Counsel intends to request that the Court approve allocation of
2 \$30,000 of the Gross Settlement Amount to PAGA penalties and approve an LWDA Payment of 75%
3 (or \$22,500). The amount of any Court-approved allocation to PAGA penalties is not a material term of
4 the Agreement, and if the Court approves a different amount than requested by Class Counsel, the other
5 terms of the Agreement shall apply.

6 **5.7. Individual Settlement Payments.** Subject to any employee shares of payroll taxes, the
7 Net Settlement Amount shall be distributed in separate checks to Settlement Class Members, without the
8 need to submit a specific claim form. The Net Settlement Amount shall be allocated among Settlement
9 Class Members based the number of weeks (rounding up partial weeks) of active employment by
10 Settlement Class Members as non-exempt employees in the State of California during the Class Period,
11 as reflected in Defendant's records. Each Settlement Class Member's pro rata share shall be calculated
12 by multiplying the Net Settlement Amount by a fraction, the numerator of which is a Settlement Class
13 Member's number of relevant weeks and the denominator of which is the total number of all Settlement
14 Class Members' relevant weeks. Such allocations shall be distributed to Settlement Class Members,
15 subject to deductions for any employee-side payroll tax payments, as Individual Settlement Payments.

16 **5.7.1. Payment Terms.** Each Settlement Class Member's Individual Settlement
17 Payment shall be characterized as 85% 1099 income and 15% W-2 income. In accordance with
18 applicable tax laws, the required employee share of tax withholdings will be taken from each Settlement
19 Class Member's pro rata share of the Net Settlement Amount for the portion allocated to W-2 income
20 and remitted to the appropriate taxing authorities. The Settlement Administrator shall issue any
21 necessary IRS Form 1099 or W-2 to Settlement Class Members for their respective Individual
22 Settlement Payments.

23 **5.7.2. Undeliverable or Uncashed Checks.** All uncashed or undeliverable settlement
24 checks will expire after 180 days. The sum value of all expired checks will be tallied by the Settlement
25 Administrator. As to all settlement checks expired after 180 days, the Parties shall request the Court
26 approve that the Settlement Administrator direct 50% of the sum value of expired checks to the
27 Department of Industrial Relations Unclaimed Wages Fund and 50% of the sum value of expired checks
28 to a child advocacy program pursuant to Code of Civil Procedure section 384(b), specifically Alex's

1 Lemonade Stand Foundation. If the Court does not approve such distribution, the Parties shall request
2 that the Settlement Administrator direct 100% of the sum value of expired checks to the Department of
3 Industrial Relations Unclaimed Wages Fund, or as otherwise ordered by the Court pursuant to Code of
4 Civil Procedure section 384.

5 **5.8. No ERISA Impact.** None of the payments made pursuant to the settlement shall be
6 considered for purposes of determining eligibility for, vesting or participation in, or contributions to any
7 benefit plan, including, without limitation, all plans subject to the Employee Retirement and Income
8 Security Act of 1974 (“ERISA”). Any distribution of payments to Plaintiffs or Settlement Class
9 Members shall not be considered as a payment of wages or compensation under the terms of any
10 applicable benefit plan and shall not affect participation in, eligibility for, vesting in, the amount of any
11 past or future contribution to, or level of benefits under any applicable benefit plan. Any amounts paid
12 will not impact or modify any previously credited hours of service or compensation taken into account
13 under any benefit plan sponsored or contributed to by Defendants or any jointly-trusted benefit plan.
14 For purposes of this Agreement, “benefit plan” means each and every “employee benefit plan” as
15 defined in 29 U.S.C. § 1002(3), and, even if not thereby included, any bonus, pension, stock option,
16 stock purchase, stock appreciation, welfare, profit sharing, retirement, disability, vacation, severance,
17 hospitalization, insurance, incentive, deferred compensation, or any other similar benefit plan, practice,
18 program, or policy.

19 **5.9. No Tax Advice or Liability.** Except as described in Section 5.7.1, all other payments
20 shall be characterized as 1099 payments. The Parties have had an opportunity to consult with
21 independent tax counsel. The Parties are not giving any tax advice in connection with the settlement or
22 any payments to be made pursuant to the Agreement. The Parties do not intend anything contained in the
23 Agreement to constitute legal advice regarding the taxability of any amount paid hereunder, nor shall
24 anything in the Agreement be relied upon as such. Each Settlement Class Member shall agree to be
25 solely and legally responsible for paying all other applicable taxes on their respective Individual
26 Settlement Payments and shall indemnify and hold harmless the Parties from any claim or liability for
27 taxes, penalties, or interest arising as a result of the payments.
28

1 **6. RELEASES**

2 **6.1. Releases by Settlement Class Members.** By operation of the entry of the final judgment
3 and final approval, and except as to such rights or claims as may be created by the Agreement, all
4 Settlement Class Members hereby fully release each Released Party from any and all claims, debts,
5 liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorney's fees, damages, action
6 or causes of action of whatever kind or nature, contingent or accrued, that occurred during the Class
7 Period that were brought or that reasonably could have been brought based on the facts alleged in the
8 Lawsuit and that were, or could have been, asserted in any version of the complaint filed in the Lawsuit,
9 or are based on or arise out of the facts alleged in any version of the complaint filed in the Lawsuit,
10 including those for failures to provide meal periods, failures to authorize and permit rest breaks, failures
11 to pay all wages, failures to pay overtime, failures to pay reporting time pay, failures to pay split-shift
12 wages, failures with respect to commission pay, failures to reimburse business expenses, failures with
13 respect to paid sick leave, failures to provide accurate itemized wage statements, failures to timely pay
14 wages at termination, and unfair business practices, as well as those for PAGA remedies arising from or
15 related to any of the underlying claims that were or could have been brought in the Lawsuit. The release
16 expressly excludes claims for unemployment insurance, disability benefits, workers' compensation
17 benefits, claims that cannot be released as a matter of law, and claims outside of the Class Period.

18 **6.2. Additional Releases by Plaintiffs.** In addition to the above release applicable to
19 Plaintiffs as a Settlement Class Member, and in light of their Class Representative Incentive Payments,
20 Plaintiffs also generally release all claims, known or unknown, in favor of each Released Party,
21 including a waiver of California Civil Code section 1542. Plaintiffs expressly waive all rights provided
22 by Civil Code section 1542, or other similar statutes, that Plaintiffs may have against each Released
23 Party. Civil Code section 1542 states:

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

27 Plaintiffs acknowledge that they have read the entirety of the Agreement, including the above language
28 from the Civil Code, and that they fully understand both the Agreement and the Civil Code section. By
executing the Agreement, Plaintiffs expressly waive any benefits and rights granted pursuant to Civil

Code section 1542 or any statute, rule, or principle of common law or equity, in any jurisdiction, that is similar, comparable, or equivalent, in whole or in part, to Civil Code section 1542. Plaintiffs acknowledge and agree that this knowing and voluntary waiver is an essential and material term of the Agreement, which would not have been entered into without such a waiver. Plaintiffs also agree that they shall not seek or accept employment with Defendant or any entity affiliated with Defendant.

6.3. Injunction from Pursuing Released Claims. The Parties agree to request that the Court, in its order granting preliminary approval of the Agreement, enjoin Class Members from initiating or prosecuting any proceeding on any claim to be released under the Agreement, unless and until the Class Member has opted out of the settlement. This settlement is conditioned upon the releases by Settlement Class Members as described herein, and upon covenants by Settlement Class Members that they will not participate in any actions, lawsuits, proceedings, complaints, or charges brought individually or by any other agency, persons, or entity in any court or before any administrative body related to the released claims, nor will Settlement Class Members contest or interfere with efforts by Defendant or a Released Party to oppose any attempt to bring such released claims against Defendant or a Released Party.

6.4. Non-Admission of Liability. By entering into the Agreement, Defendant in no way admits any violation of law or any liability whatsoever to Plaintiffs or Class Members, individually or collectively, and expressly denies all such liability. Neither the Agreement nor the Memorandum of Understanding or any other settlement document shall be offered in any case or proceeding as evidence of any admission by Defendant of any liability on any claim for damages or relief. Likewise, by entering into the Agreement, Defendant in no way admits to the suitability of this case for class action or representative litigation, other than for purposes of settlement. Rather, Defendant enters into the Agreement to avoid further protracted litigation and to resolve and settle all disputes with Plaintiffs and Class Members. The Parties understand and agree that the Agreement and all exhibits thereto are settlement documents and shall be inadmissible for any purpose in any proceeding, except an action or proceeding to approve, interpret, or enforce the terms of the Agreement. The Parties agree that, to the extent permitted by law, the Agreement may be pleaded 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 may be instituted, prosecuted or attempted in breach of the Agreement, subject to a Class Member's right to opt out of the

1 settlement.

2 **7. COURT APPROVAL**

3 **7.1. Preliminary Approval.** Class Counsel shall submit to the Court a motion for an order
4 granting preliminary approval of class action settlement within a reasonable time of filing the Action.
5 The motion shall request the entry of an order granting preliminary approval, which will, among other
6 things: (i) preliminarily approve the proposed settlement according to the terms in the Agreement; (ii)
7 set a date for a final approval and fairness hearing; and (iii) provide for Class Notice to be sent to Class
8 Members as specified herein. The motion shall be unopposed by Defendant, unless the motion for
9 preliminary approval seeks relief not specified by the Agreement. In such event, Defendant reserves its
10 rights to address any assertions that are not contained in the Agreement.

11 **7.2. Final Approval.** Not later than 16 court days before the date set by the Court for a final
12 approval and fairness hearing, or such other time as the Court may require, Class Counsel shall submit
13 to the Court a motion for final approval of class action settlement. Class Counsel shall request the entry
14 of an order granting final approval, which shall include findings and orders: (i) approving the settlement,
15 (ii) adjudging the terms to be fair, reasonable, and adequate, (iii) reciting the release terms, (iv) directing
16 that the settlement's terms and provisions be carried out; and (v) retaining jurisdiction to oversee
17 administration and enforcement of the terms of the Agreement and the Court's orders.

18 **7.2.1. Entry of Judgment.** At the final approval and fairness hearing, the Parties shall
19 request that the Court, among other things: (i) enter final judgment in accordance with the Agreement
20 and without further fees or costs to any party except as expressly set forth in the Agreement; (ii) approve
21 the Agreement as fair, reasonable, adequate, and binding on all Class Members who did not opt out of
22 the settlement; (iii) enter an order as to Class Counsel's request for an Attorneys' Fees and Costs Award;
23 (iv) enter an order as to the request for Class Representative Incentive Payments; and (v) enter an order
24 permanently enjoining all Class Members who did not opt out of the settlement from pursuing or
25 seeking to reopen claims that have been released by the Agreement.

26 **7.2.2. Effect of Failure to Obtain Approval or Final Judgment.** In the event the
27 Court effects a material change or fails to enter final judgment in accordance with the Agreement, or
28 such final judgment is reversed, then this entire Agreement will be void and unenforceable, subject to

the Parties' agreement to the contrary, and the costs of administration shall be split equally between the Parties. The Action shall proceed as if no settlement has been attempted, unless the Parties jointly agree to seek reconsideration or appellate review of the ruling or seek Court approval of a renegotiated settlement. Defendant retains the right to contest whether any aspect of the Lawsuit should be maintained as a class or representative action or to contest the merits of the claims being asserted by Plaintiffs in the Lawsuit.

7.3. Waiver of Appeal Rights. By accepting this settlement and authorizing the dismissal of the Action with prejudice, Plaintiffs and Class Counsel hereby waive any and all rights they may have to appeal any judgment, ruling, or order in the Lawsuit, including, without limitation, any order granting final approval of the settlement.

8. MISCELLANEOUS

8.1. Interim Stay of Proceedings. Plaintiffs and Class Counsel agree to refrain from further proceedings, except such proceedings necessary to implement the terms of the Agreement and obtain an order granting final approval of class action settlement. If the settlement is not finally approved, the Parties agree that they will revert to their positions in the Lawsuit prior to the time the settlement was reached, and no agreements set forth in the Agreement, Memorandum of Understanding, or any documents generated or orders issued related to the settlement will be admissible in any future proceeding in this or any other action. If the settlement is not finally approved, Defendant reserves their rights to make all arguments that class certification or representative treatment would not be appropriate.

8.2. Qualified Stipulation to Class Certification for Settlement Purposes Only. The Parties stipulate to provisional class certification under Code of Civil Procedure section 382 for purposes of settlement only. Absent final approval of the Agreement, the Parties will not stipulate to class certification or representative treatment, and no party will be estopped as a result of the Agreement or any motion for settlement approval. Defendant in that event reserves all rights to oppose class certification or representative treatment, and the Parties will revert to their positions they had before the Agreement.

8.3. Parties' Authority. The signatories hereto represent that they are fully authorized to enter into the Agreement and are fully authorized to bind the Parties to all terms stated herein. It is

1 agreed that Class Members are so numerous that it is impossible or impractical to have each Settlement
2 Class Member execute the Agreement. It is agreed that the Agreement may be executed on behalf of
3 Settlement Class Members by Plaintiffs and Class Counsel, and shall have the same force and effect as if
4 executed by each Settlement Class Member.

5 **8.4. Entire Agreement.** The Agreement, which includes the Definitions, Recitals, and all
6 Exhibits attached hereto, constitute the entire agreement between the Parties with regard to the subject
7 matter contained herein, and all prior and contemporaneous negotiations and understandings between
8 the Parties shall be deemed merged into the Agreement.

9 **8.4.1. Materiality of Terms.** The Parties have arrived at the Agreement as a result of
10 arm's-length negotiations. Except as otherwise stated herein, all terms and conditions of the Agreement
11 in the exact form set forth in the Agreement are material to the Agreement and have been relied upon by
12 the Parties in entering into the Agreement.

13 **8.4.2. Signatures.** Any party may sign and deliver the Agreement by signing on the
14 designated signature block and transmitting that signature page via facsimile or as an attachment to an e-
15 mail to counsel for the other party. Any signature made and transmitted by facsimile or as an attachment
16 to an e-mail for the purpose of executing the Agreement shall be deemed an original signature for
17 purposes of the Agreement and shall be binding. The Agreement may be executed in counterparts, and
18 when all signatories have signed and delivered at least one such counterpart, each counterpart shall be
19 deemed an original, and when taken together with other signed counterparts, shall constitute one signed
20 Agreement, which shall be binding upon and effective as to all Parties.

21 **8.4.3. Waivers, Modifications, Etc. to Be in Writing.** No waiver, modification or
22 amendment of the terms of the Agreement, whether purportedly made before or after the Court's
23 approval of the Agreement, shall be valid or binding unless in writing, signed by or on behalf of all
24 Parties and then only to the extent set forth in such written waiver, modification or amendment, subject
25 to any required Court approval. Any failure by any Party to insist upon the strict performance by the
26 other Party of any of the provisions of the Agreement shall not be deemed a waiver of future
27 performance of the same provisions or of any of the other provisions of the Agreement, and such Party,
28 notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of

any and all of the provisions of the Agreement. The time periods and dates provided in the Agreement with respect to giving of notices and hearings are subject to Court approval and modification by the Court or by written stipulation of Class Counsel and Defendant's Counsel.

8.4.4. Binding Effect. The Agreement shall be binding upon the Parties and, with respect to Plaintiffs and Class Members, their spouses, children, representatives, heirs, administrators, executors, beneficiaries, conservators, attorneys, and assigns.

8.5. Construction. The determination of the terms and conditions of the Agreement has been by mutual agreement of the Parties. Each party participated jointly in the drafting of the Agreement, and the terms and conditions of the Agreement are not intended to be, and shall not be, construed against any party by virtue of draftsmanship. The captions or headings of the sections and paragraphs of the Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of the Agreement.

8.5.1. Exhibits Incorporated by Reference. The terms of the Agreement include the terms set forth in any attached Exhibit, which are incorporated by this reference as though fully set forth herein. Any Exhibit to the Agreement is an integral part of the settlement.

8.5.2. Invalidity of Any Provision. Before declaring any provision of the Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible so as to render all provisions of the Agreement valid and enforceable.

8.6. Further Acts and Cooperation Between the Parties. The Parties shall cooperate fully with each other and shall use their best efforts to obtain the Court's approval of the Agreement and all of its terms. Each of the Parties, upon the request of another, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of the Agreement. All papers to be filed with the Court by Defendant or Class Counsel in connection with the Agreement shall be submitted to the other Party prior to filing.

8.7. No Prior Assignments or Undisclosed Liens. Plaintiffs and Class Counsel represent and warrant that they have not assigned, transferred, conveyed, or otherwise disposed of, or purported to assign, transfer, convey, or otherwise dispose of any Released Claims or the Attorneys' Fees and Costs Award to be paid pursuant to the Agreement. Plaintiffs and Class Counsel further represent and warrant

1 that there are not any liens or claims against any of the amounts to be paid by Defendant pursuant to the
2 Agreement. Plaintiffs and Class Counsel agree to defend, indemnify, and hold Defendant harmless from
3 any liability, losses, claims, damages, costs, or expenses, including reasonable attorneys' fees, resulting
4 from a breach of these representations or from any lien or assignment.

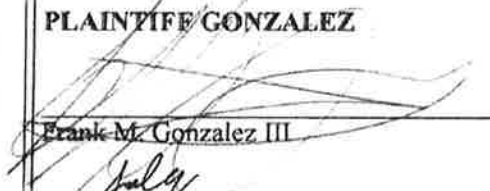
5 **8.8. No Undue Publicity.** The Parties shall not make public statements, to the media or
6 otherwise, concerning the settlement, or respond to media inquiries concerning the settlement. Nothing
7 in this provision applies to any publications approved by Defendant or ordered by the Court, including
8 such publications by the Settlement Administrator on its website. This provision also shall not prevent
9 Class Counsel from communicating directly with Settlement Class Members regarding the settlement,
10 provided that such communication is limited to Settlement Class Members. Notwithstanding the
11 foregoing, Class Counsel shall be permitted to reference this case in declarations submitted to courts in
12 support of their competency as class counsel.

13 **8.9. Continuing Jurisdiction.** The Court shall retain jurisdiction over the implementation of
14 the Agreement as well as any and all matters arising out of, or related to, the implementation of the
15 Agreement and of the settlement contemplated thereby. The Court shall not have jurisdiction to modify
16 the material terms of the Agreement absent mutual agreement by the Parties.

17 **8.10. Disputes.** If the Parties have a dispute with regard to the language of the Agreement, they
18 agree to engage mediator Jeffrey A. Ross to mediate any such dispute. The Parties will split the costs of
19 the mediator, and all parties will bear their own fees and costs.

20 **8.11. Governing Law.** All terms of the Agreement shall be governed by and interpreted
21 according to the laws of the State of California.

22 **PLAINTIFF GONZALEZ**

23 
24 _____
25 Frank M. Gonzalez III

26 Dated: June 6, 2018

COUNSEL FOR GONZALEZ AND CLASS

27 
28 _____
Paul K. Haines
HAINES LAW GROUP, APC,

Dated: July 6, 2018

PLAINTIFF CARTER

COUNSEL FOR CARTER AND CLASS

Michelle Carter

Kevin T. Barnes
Gregg Lander
LAW OFFICES OF KEVIN T. BARNES

Dated: June __, 2018

Dated: June __, 2018

PLAINTIFF ESPINOZA

COUNSEL FOR ESPINOZA AND CLASS


Darrell Espinoza (Jul 3, 2018)
Darrell Espinoza


Aparajit Bhowmik Kyle Nordrehaug
BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

Dated: June __, 2018

Dated: June __, 2018

DEFENDANT

COUNSEL FOR DEFENDANT

By
Prime Communications of California, LLC

Simon L. Yang
SEYFARTH SHAW LLP

Dated: June __, 2018

Dated: June __, 2018

1
2 **PLAINTIFF CARTER**

3 

4
5 Michelle Carter

6 7/3/2018 1:47:17 PM PDT

7 Dated: June __, 2018

COUNSEL FOR CARTER AND CLASS



Kevin T. Barnes

Gregg Lander

LAW OFFICES OF KEVIN T. BARNES

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Dated: ^{July}~~June~~ 5, 2018

PLAINTIFF ESPINOZA

Darrell Espinoza

Dated: June __, 2018

COUNSEL FOR ESPINOZA AND CLASS

Aparajit Bhowmik

BLUMENTHAL NORDREHAUG BHOWMIK

DE BLOUW LLP

Dated: June __, 2018

DEFENDANT

By
Prime Communications of California, LLC

Dated: June __, 2018

COUNSEL FOR DEFENDANT

Simon L. Yang

SEYFARTH SHAW LLP

Dated: June __, 2018

PLAINTIFF CARTER

COUNSEL FOR CARTER AND CLASS

Michelle Carter

Kevin T. Barnes
Gregg Lander
LAW OFFICES OF KEVIN T. BARNES

Dated: July __, 2018

Dated: July __, 2018

PLAINTIFF ESPINOZA

COUNSEL FOR ESPINOZA AND CLASS

Darrell Espinoza

Aparajit Bhowmik
BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

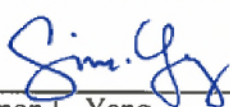
Dated: July __, 2018

Dated: July __, 2018

DEFENDANT

COUNSEL FOR DEFENDANT


By Akbar Mohamed
Prime Communications of California, LLC


Simon L. Yang
SEYFARTH SHAW LLP

Dated: July 12, 2018

Dated: July 12, 2018

EXHIBIT 1

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

FRANK M. GONZALEZ III, MICHELLE CARTER,
and DARRELL ESPINOZA, as individuals and on
behalf of all others similarly situated,

Plaintiffs,

vs.

PRIME COMMUNICATIONS OF CALIFORNIA
LLC, a California Limited Liability Company, and
DOES 1 through 100,

Defendants.

Case No. BC702262

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

To: Any person who is or was employed by Defendant Prime Communications of California, LLC as a non-exempt employee in the State of California at any time between December 10, 2011 through April 1, 2018.

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

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing and Receive a Payment	To receive a cash payment from the Settlement, you do not have to do anything. Your estimated Individual Settlement Payment is: \$<<[REDACTED]>>. See the explanation below. After approval by the Court, the payment will be mailed to you at the same address as this notice. In exchange for the settlement payment, you will release claims against the Defendant as detailed below.
Exclude Yourself	To exclude yourself, you must send a letter to the Settlement Administrator as provided below. If you request exclusion, you will receive no money from the Settlement. Instructions are set forth below.
Object	Write to the Court about why you do not like the settlement. Directions are provided below.

Why should you read this Notice?

The Court has granted preliminary approval of a proposed settlement (the "Settlement") in the matter of *Frank M. Gonzalez III, et al. v. Prime Communications of California, LLC, et al.*, Los Angeles Superior Court Case No. BC702262 (the "Lawsuit"). Because your rights may be affected by the Settlement, it is important that you read this Notice carefully.

You may be entitled to money from this Settlement. Prime Communications of California, LLC's ("Prime Communications") records show that you were employed at Prime Communications as a non-exempt employee in California between December 10, 2011 and April 1, 2018 (the "Class Period"). The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

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

What are the terms of the Settlement?

On <<PRELIM APPROVAL DATE>>, the Court preliminarily certified a class, for settlement purposes only, of any person who is or was employed by Prime Communications in the State of California as a non-exempt employee from December 10, 2011 through April 1, 2018. Class Members who do not opt out of the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against Prime Communications as described below.

Prime Communications has agreed to pay \$645,000 (the “Gross Settlement Amount”) to fully resolve all claims in the Lawsuit, including payments to Class Members, Class Counsel’s attorneys’ fees and expenses, Settlement administration costs, payment to the Labor & Workforce Development Agency, and the Class Representatives’ incentive payments.

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

Attorneys’ Fees and Expenses. Class Counsel have been prosecuting the Lawsuit on behalf of 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 expenses. Class Counsel will ask for up to one-third of the Gross Settlement Amount, which is currently estimated at \$215,000, as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$35,000 in verified costs incurred in connection with the Lawsuit.

Settlement Administration Costs. The Court has approved CPT Group, Inc. to act as the “Settlement Administrator,” who is sending this Notice to you and will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$13,000 from the Gross Settlement Amount to pay the settlement administration costs.

Class Representative Incentive Payments. Class Counsel will ask the Court to award the Class Representatives incentive payments in the amount of \$5,000 each (\$15,000 total) to compensate them for their service and extra work provided on behalf of the Class Members.

PAGA Payment to State of California. The parties have agreed to allocate \$30,000 towards the Settlement of the PAGA claims in the Lawsuit. \$22,500 will be paid to the State of California Labor and Workforce Development Agency, representing its 75% share of the civil penalties. The remaining \$7,500 will be allocated to Class Members as described below.

Calculation of Individual Class Members’ Settlement Payments. After deducting the Court-approved amounts above, the balance of the Gross Settlement Amount will form the Net Settlement Amount, which will be distributed to all Class Members who do not submit a valid and timely Request for Exclusion form (described below). The Net Settlement Amount is estimated at approximately \$344,500, and will be allocated to all participating Class Members based on each participating Class Member’s number of weeks (rounding up partial weeks) of active employment as a non-exempt employee in California during the Class Period.

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

Allocation and Taxes. For tax purposes, each Settlement Payment shall be treated as follows: 15% as “wages,” for which an IRS Form W-2 will be issued; and 85% as penalties and interest, for which an IRS Form 1099 will be issued.

Class Members are responsible for the proper income tax treatment of the Individual Settlement Payments. The Settlement Administrator, Prime Communications and its counsel, and Class Counsel cannot provide tax advice. Accordingly, Class Members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. If the Court approves the Settlement, the Settlement Class, and each Settlement Class Member who has not submitted a timely and valid Request for Exclusion, will fully release and discharge Prime Communications of California, LLC, its current or former subsidiaries, affiliates, and joint ventures, and all of their shareholders, officers, directors, employees, agents, servants, registered representatives, attorneys, insurers, successors and assigns, and any other persons acting by through, under or in concert with any of them (including their respective pension, profit sharing, savings, health, and other employee benefit plans of any nature, the successors of such plans, and those plans' respective trustees and administrators, agents, employees, and fiduciaries) (collectively the "Released Party") from any and all claims, debts, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorney's fees, damages, action or causes of action of whatever kind or nature, contingent or accrued, during the Class Period that were brought or that reasonably could have been brought based on the facts alleged or are based on or arise out of the facts alleged in the Lawsuit for failure to provide meal periods, failure to authorize and permit rest periods, failure to pay all wages, failures to pay overtime, failures to pay reporting time pay, failures to pay split-shift wages, failures with respect to commission pay, failures to reimburse business expenses, failures with respect to paid sick leave, failures to provide accurate itemized wage statements, failures to timely pay wages at termination, and unfair business practices, as well as those for PAGA remedies arising from or related to any of the underlying claims that were or could have been brought in the Lawsuit. The release expressly excludes claims for unemployment insurance, disability benefits, workers' compensation benefits, and claims that cannot be released as a matter of law. The period of the Release shall extend to the limits of the Class Period (i.e. December 10, 2011 through April 1, 2018).

Conditions of Settlement. The 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 a Judgment.

How can I claim money from the Settlement?

Do Nothing. If you do nothing and the Court grants final approval, you will be entitled to your share of the Settlement based on the proportionate number of workweeks you worked as a non-exempt employee during the Class Period, as stated in this Notice. You also will be bound by the Settlement, including the release of claims stated above.

What is this case about?

Plaintiffs Frank M. Gonzalez III, Michelle Carter, and Darrell Espinoza ("Plaintiffs") brought Lawsuits against Prime Communications on a class action and representative basis on behalf of all current and former non-exempt employees who worked for Prime Communications in California from December 10, 2011 through April 1, 2018. Plaintiffs are known as "Class Representatives," and their attorneys, who also represent the interests of all Class Members, are known as "Class Counsel."

The Lawsuit alleges that Prime Communications failed to pay Class Members for all earned minimum and overtime wages, failed to pay all required reporting time pay, failed to reimburse necessary business expenditures, failed to provide all legally-required meal and rest periods, failed to provide complete, accurate and/or properly formatted wage statements, failed to pay all wages owing upon separation of employment, and as a result of the foregoing alleged violations, engaged in unlawful business practices and is liable for civil penalties under the Labor Code Private Attorneys General Act ("PAGA").

The Court has not ruled on the merits of Plaintiffs' claims. Prime Communications denies the claims and asserts that it has complied with all of its legal obligations under applicable laws, including all obligations arising from the California Labor Code. Prime Communications also denies that it owes Class Members any wages, restitution, penalties, damages, or other amounts.

Prime Communications has agreed to the Settlement solely to avoid further protracted litigation and to resolve and settle any pending dispute. After Prime Communications provided relevant information to Class Counsel, the Settlement was reached after mediation and arm's length negotiations between the parties.

The Class Representatives and Class Counsel support the Settlement and have concluded that it is in its best interests and the interests of Class Members to settle the Lawsuit on the terms summarized in this Notice. Among the reasons for support are the defenses to liability potentially available to Prime Communications, the risk of denial of class certification, the inherent risk of trial on the merits, and the delays and uncertainties associated with ongoing litigation. Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Prime Communications, by whom all liability is expressly denied.

If you are still employed by Prime Communications, your decision about whether to participate in the Settlement will not affect your employment. California law and Prime Communications' policy strictly prohibit unlawful retaliation. Prime Communications will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Class Member because of his/her decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for Plaintiffs / the Settlement Class:

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What other options do I have?

Dispute Information in this Notice of Settlement. Your Individual Settlement Payment is based on the proportionate number of workweeks worked during the Class Period. The information contained in Prime Communications' records regarding workweeks, along with your estimated Individual Settlement Payment, is listed below. If you disagree with the information listed below, you may submit a dispute, along with any supporting documentation, to **<<ADMINISTRATOR CONTACT INFO>>**. Any disputes, along with supporting documentation, must be postmarked no later than **<<RESPONSE DEADLINE>>**. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Settlement Administrator will determine whether any adjustments are warranted, and if so, will consult with the Parties and make any adjustments approved by the Parties.

According to Prime Communications' records:

- (a) You worked for Prime Communications in California from [REDACTED] to [REDACTED];
- (b) You worked [REDACTED] workweeks for Prime Communications from December 10, 2011 to April 1, 2018, as a non-exempt hourly employee.

Based on the above, your Individual Settlement Payment is estimated at \$ [REDACTED].

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator an executed Request for Exclusion Form postmarked no later than <<RESPONSE DEADLINE>>, with your name, address, telephone number, last four digits of your social security number, your signature, and the date.

Send the Request for Exclusion Form directly to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>>. Any person who submits a timely Request for Exclusion Form shall, upon receipt by the Administrator, no longer be a Class Member, shall be barred from participating in any portion of the Settlement, and shall receive no benefits from the Settlement.

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you must mail a written objection to the Settlement Administrator. Your written objection must include your name, address, as well as contact information for any attorney representing you regarding your objection, the case name and number, each specific reason in support of your objection, and any legal or factual support for each objection together with any evidence in support of your objection. Objections must be in writing and must be postmarked on or before <<RESPONSE DEADLINE>>.

You may also appear to object at the Final Approval Hearing scheduled for <<FINAL APPROVAL HEARING DATE/TIME>> in Department 14 of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, California 90012. You have the right to appear either in person or through your own attorney at this hearing. All objections or other correspondence must state the name and number of the case, which is *Frank M. Gonzalez III, et al. v. Prime Communications of California, LLC, et al.*, Los Angeles Superior Court Case No. BC702262.

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

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on <<FINAL APPROVAL HEARING DATE/TIME>>, in Department 14 of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, California 90012. The Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses and the incentive payments to the Class Representatives. The Final Approval Hearing may be postponed without further notice to Class Members. **You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend the hearing.**

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 Settlement Agreement at the Office of the Clerk of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, California 90012, during regular court hours. For further information, you may also contact the Settlement Administrator (listed above).

PLEASE DO NOT CALL OR WRITE THE COURT OR PRIME COMMUNICATIONS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS

REMINDER AS TO TIME LIMITS

The deadline for submitting a Request for Exclusion, Dispute or Objection is <<RESPONSE DEADLINE>>. These deadlines will be strictly enforced.

BY ORDER OF THE COURT ENTERED ON <<PRELIM APPROVAL DATE>>.

EXHIBIT 2

REQUEST FOR EXCLUSION FORM

Frank Gonzalez III, et al. v. Prime Communications of California, LLC
Los Angeles County Superior Court
Case No. BC702262

IF YOU DO NOT WISH TO BE PART OF THE CLASS ACTION SETTLEMENT, YOU MAY COMPLETE, SIGN AND MAIL THIS FORM, POSTMARKED ON OR BEFORE [INSERT DATE], ADDRESSED AS FOLLOWS:

CPT GROUP, INC. <i>Gonzalez et al. v. Prime Communications of California, LLC</i> CLASS ACTION ADMINISTRATOR ADDRESS ADDRESS PHONE FAX

DO NOT SUBMIT THIS FORM IF YOU WISH TO RECEIVE A PAYMENT UNDER THE SETTLEMENT.

By signing, filling out, and returning this form, I confirm that I **do not** want to be included in the Settlement of the lawsuit entitled *Frank Gonzalez III, et al. v. Prime Communications of California, LLC*, Los Angeles County Superior Court, Case No. BC702262.

I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *GONZALEZ ET AL. V. PRIME COMMUNICATIONS OF CALIFORNIA, LLC* 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.

Name

Telephone Number

Address

Date

Signature

Last Four Digits of Social Security Number: ____ ____ ____ ____