

HAINES LAW GROUP, APC

Paul K. Haines, Esq. (#248226)
Sean M. Blakely, Esq. (#264384)
222 N. Sepulveda Blvd., Suite 1550
El Segundo, California 90245
Tel: (424) 292-2350 / Fax: (424) 292-2355
Email: PHaines@haineslawgroup.com

LAW OFFICES OF KEVIN T. BARNES

Kevin T. Barnes, Esq. (#138477)
Gregg Lander, Esq. (#194018)
5670 Wilshire Boulevard, Suite 1460
Los Angeles, CA 90036-5664
Tel.: (323) 549-9100 / Fax: (323) 549-0101
Email: Barnes@kbarnes.com

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Aparajit Bhowmik (SBN 248066)
Jeffrey Herman (SBN 280058)
2255 Calle Clara
La Jolla, California 92037
Tel: (858) 551-1223 / Fax: (858) 551-1232
Website: www.bamlawca.com

Attorneys for Plaintiffs

SEYFARTH SHAW LLP

Simon L. Yang (SBN 260286)
syang@seyfarth.com
333 South Hope Street, Suite 3900
Los Angeles, California 90071
Tel: (213) 270-9600 / Fax: (213) 270-9601

Attorneys for Defendant

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

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

6 **6.3. Injunction from Pursuing Released Claims.** The Parties agree to request that the Court,
7 in its order granting preliminary approval of the Agreement, enjoin Class Members from initiating or
8 prosecuting any proceeding on any claim to be released under the Agreement, unless and until the Class
9 Member has opted out of the settlement. This settlement is conditioned upon the releases by Settlement
10 Class Members as described herein, and upon covenants by Settlement Class Members that they will not
11 participate in any actions, lawsuits, proceedings, complaints, or charges brought individually or by any
12 other agency, persons, or entity in any court or before any administrative body related to the released
13 claims, nor will Settlement Class Members contest or interfere with efforts by Defendant or a Released
14 Party to oppose any attempt to bring such released claims against Defendant or a Released Party.

15 **6.4. Non-Admission of Liability.** By entering into the Agreement, Defendant in no way
16 admits any violation of law or any liability whatsoever to Plaintiffs or Class Members, individually or
17 collectively, and expressly denies all such liability. Neither the Agreement nor the Memorandum of
18 Understanding or any other settlement document shall be offered in any case or proceeding as evidence
19 of any admission by Defendant of any liability on any claim for damages or relief. Likewise, by entering
20 into the Agreement, Defendant in no way admits to the suitability of this case for class action or
21 representative litigation, other than for purposes of settlement. Rather, Defendant enters into the
22 Agreement to avoid further protracted litigation and to resolve and settle all disputes with Plaintiffs and
23 Class Members. The Parties understand and agree that the Agreement and all exhibits thereto are
24 settlement documents and shall be inadmissible for any purpose in any proceeding, except an action or
25 proceeding to approve, interpret, or enforce the terms of the Agreement. The Parties agree that, to the
26 extent permitted by law, the Agreement may be pleaded as a full and complete defense to, and may be
27 used as the basis for an injunction against any action, suit, or other proceeding that may be instituted,
28 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.

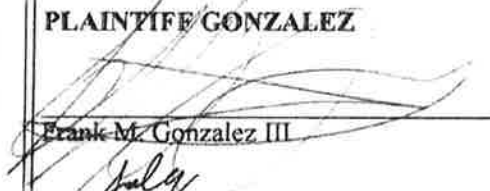
5 **8.8. No Undue Publicity.** The Parties shall not make public statements, to the media or
6 otherwise, concerning the settlement, or respond to media inquiries concerning the settlement. Nothing
7 in this provision applies to any publications approved by Defendant or ordered by the Court, including
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

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2 **PLAINTIFF CARTER**

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5 _____
6 Michelle Carter

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9 Dated: June __, 2018

10 **COUNSEL FOR CARTER AND CLASS**

11 

12 Kevin T. Barnes
13 Gregg Lander
14 LAW OFFICES OF KEVIN T. BARNES

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

16 **PLAINTIFF ESPINOZA**

17
18 _____
19 Darrell Espinoza

20 Dated: June __, 2018

21 **COUNSEL FOR ESPINOZA AND CLASS**

22 _____
23 Aparajit Bhowmik
24 BLUMENTHAL NORDREHAUG BHOWMIK
25 DE BLOUW LLP

26 Dated: June __, 2018

27 **DEFENDANT**

28
29 _____
30 By
31 Prime Communications of California, LLC

32 Dated: June __, 2018

33 **COUNSEL FOR DEFENDANT**

34 _____
35 Simon L. Yang
36 SEYFARTH SHAW LLP

37 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

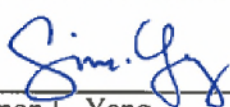
Dated: July __, 2018

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