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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

JOSUE GUTIERREZ, individually,
and on behalf of all others similarly
situated,

Plaintiff,

v.

ERICSSON INC., a corporation; and
DOES 1 through 10, inclusive,

Defendants.

CASE NO.: 5:23-cv-01665-GW-SHK

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

1 This Class Action and PAGA Settlement Agreement and Release (“Settlement
2 Agreement” or “Agreement”) is entered into by and between Plaintiff Josue Gutierrez,
3 on behalf of himself, all others similarly situated, all other aggrieved employees, the
4 general public, the State of California, and the Labor and Workforce Development
5 Agency (“LWDA”) (collectively, “Plaintiff”) and Defendant Ericsson Inc.
6 (“Defendant” or “Ericsson”), and is subject to the terms and conditions below, and to
7 the Court’s approval. The Parties expressly acknowledge that this Settlement
8 Agreement is entered into solely for the purpose of compromising significantly
9 disputed claims and that nothing in this Agreement is an admission of liability or
10 wrongdoing by Defendant. If for any reason the Settlement Agreement, including
11 settlement of both the Class and PAGA Claims is not approved in full, it will be of no
12 force or effect, and the Parties will be returned to their respective positions
13 immediately prior to and as if they had never executed this Settlement Agreement as
14 more fully set forth below.

15 **DEFINITIONS**

16 1. “Action” means the case of *Gutierrez v. Ericsson Inc.*, Case No. 5:23-
17 cv-01665-GW-SHK, pending in the United States District Court, Central District of
18 California.

19 2. “Class Member(s)” means all persons who worked for Defendant as a
20 non-exempt employee reporting to a California work location during the Class Period.

21 3. “Class Counsel” means Aubry Wand of the Wand Law Firm, P.C.

22 4. “Class Counsel Award” means attorneys’ fees, costs, and expenses
23 approved by the Court for Class Counsel’s litigation and resolution of the Action,
24 including, but not limited to, costs associated with pre-filing investigation, filing of
25 the Action, all related litigation activities, all work in connection with mediation and
26 Settlement, all post-Settlement compliance procedures, and related litigation expenses
27 incurred in connection with the Action.
28

1 5. “Class and PAGA Member Information” means a complete list of all
2 Class Members and PAGA Members that Defendant will diligently and in good faith
3 compile from their records and provide on a confidential basis to the Settlement
4 Administrator. The Class and PAGA member Information will be formatted in
5 Microsoft Office Excel and Defendant will use its best efforts to include each Class
6 Member’s and PAGA Member’s full name; social security number; last known
7 mailing address; whether the employee has already executed a severance or separation
8 agreement with a general release with Defendant; number of Compensable
9 Workweeks for each Class Member; and number of Compensable Pay Periods for
10 each PAGA Member.

11 6. “Settlement Class” or “Settlement Class Members” means all Class
12 Members who have not opted out of the Class by submitting a valid and timely
13 Request for Exclusion.

14 7. “Class Notice” means the notice, substantially in the form attached
15 hereto as **Exhibit 1**, which the Settlement Administrator will mail to each Class
16 Member, and which explains, *inter alia*, information regarding the nature of the
17 Action, the terms of this Settlement, the Settlement Class definition, each Class
18 Member’s Compensable Workweeks during the Class Period and such Class
19 Member’s estimated Individual Settlement payment, each PAGA Member’s
20 Compensable Pay Periods during the PAGA Period and such PAGA Member’s
21 Individual PAGA Payment, dates which comprise the Class Period and PAGA Period
22 and the instructions and deadlines for Class Members to object to the class action
23 portion of the Settlement, opt-out of the class action portion of the Settlement, or
24 dispute the number of Compensable Workweeks and/or Compensable Pay Periods
25 attributed to them. The Class Notice need only be provided in English because all
26 Class Members are fluent in English.

27 8. “Class Period” means June 22, 2019 to the Preliminary Approval Date.
28

1 9. “Class Representative Service Award” means the amount that the Court
2 authorizes to be paid to Plaintiff, in addition to Plaintiff’s Individual Settlement
3 Payment and Individual PAGA Payment, in recognition of, *inter alia*, his efforts and
4 risks in assisting with the prosecution of the Action and in return for executing a
5 general release with Defendant.

6 10. “Compensable Pay Period(s)” means the number of pay periods worked
7 by each PAGA Member individually and used as a value to calculate Individual
8 PAGA Payments. The number of Compensable Pay Periods for each PAGA Member
9 will be calculated by the Defendant. The number of Compensable Pay Periods for
10 each PAGA Member will be determined by counting any pay period within the PAGA
11 Period during which a PAGA Member reported hours actually worked during at least
12 six days, with a minimum of one Compensable Pay Period.

13 11. “Total Compensable Pay Periods” means the sum of the Compensable
14 Pay Periods for all PAGA Members determined by the process described in Paragraph
15 10 above.

16 12. “Compensable Workweek(s)” means the number of weeks worked by
17 each Class Member individually and used as a value to calculate Individual Settlement
18 Payments. The number of Compensable Workweeks for each Class Member will be
19 calculated by the Defendant. The number of Compensable Workweeks for each Class
20 Member will be determined by counting any week within the Class Period during
21 which a Class Member worked at least three days, with a minimum of one
22 Compensable Workweek.

23 13. “Total Compensable Workweeks” means the sum of the Compensable
24 Workweeks for all Class Members determined by the process described in Paragraph
25 12 above.

26 14. “Court” means the United States District of California, Central District
27 of California, the Honorable George H. Wu, presiding.
28

1 15. “Cy Pres Recipient” means the charitable organization that will receive
2 any settlement funds that are not negotiated by Settlement Class Members. The Parties
3 have selected Legal Aid at Work, a 501(c)(3) organization that is dedicated to
4 protecting the rights of low-income people throughout California, as the Cy Pres
5 Recipient. Among other things, Legal Aid at Work operates a Wage Protection
6 Program whereby it represents low-wage workers who are the victims of wage
7 violations, and thus, it has a sufficient nexus with this lawsuit. *Dennis v. Kellogg Co.*,
8 697 F. 3d 858, 867 (9th Cir. 2012). The Parties represent that they do not have an
9 interest in the governance or work of the Cy Pres Recipient. Should a conflict of
10 interest or other issue lead to the disqualification of Legal Aid at Work as a Cy Pres
11 Recipient, the Parties will meet and confer on a suitable replacement.

12 16. “Defendant” means Ericsson Inc.

13 17. “Defendant’s Counsel” means Victoria R. Carradero, Tatyana Shmygol,
14 and Sarah A. Gilbert, of Duane Morris LLP.

15 18. “Effective Date” means the date on which the Court’s Final Approval
16 Order and Judgment becomes final. The Court’s Final Approval Order and Judgment
17 “becomes final” upon the later of 15 days after: (a) if there is no Objection to the
18 Settlement, or if there is an Objection but it is withdrawn, and there is no possibility
19 of appeal then, the date that the Final Approval Order and Judgment is entered by the
20 Court; (b) if there is an Objection to the Settlement that is not withdrawn, but no
21 appeal is commenced thereafter, then, sixty-five (65) calendar days following the date
22 that the Final Approval Order and Judgment is entered by the Court; or (c) if there is
23 an Objection to the Settlement that is not withdrawn, and any appeal, writ, or other
24 appellate proceeding opposing the Settlement has been filed, then when any such
25 appeal, writ, or other appellate proceeding opposing the validity of the Settlement has
26 been resolved finally and conclusively with no right to pursue further remedies or
27 relief. The Settlement shall not become final if Plaintiff does not execute the General
28 Release of claims against the Released Parties.

1 19. “Employer’s Share of Payroll Taxes” means the dollar amount of
2 Defendant’s employer payroll tax obligation that will be owing on the employee wage
3 portion of each Individual Settlement Payment, including but not limited to,
4 customary withholdings for federal, state and local taxes, and any similar tax or
5 charge. Defendant shall be responsible for paying the Employer’s Share of Payroll
6 Taxes separately from, and in addition to, the Gross Settlement Amount.

7 20. “Final Approval Hearing” means the hearing that the Court will hold
8 after the Court has granted preliminary approval of the Class Settlement, approval of
9 the PAGA Settlement, notice has been provided to the Class and the response of the
10 Class to the Settlement has been determined. At the Final Approval Hearing, the Court
11 will address, *inter alia*, whether final approval of the Settlement is appropriate and
12 the amounts properly payable for: (a) Individual Settlement Payments to Class
13 Members; (b) the Class Counsel Award; (c) the Class Representative Service Award;
14 (d) payment to the LWDA and Individual PAGA Payments to PAGA Members; and
15 (e) the Settlement Administration Costs. Within thirty (30) calendar days following
16 the Preliminary Approval Date, Plaintiff shall file a motion for attorneys’ fees and
17 costs and Class Representative Service Award.

18 21. “Final Approval Order and Judgment” means the signed order of this
19 Court finally approving the terms of this Settlement and entering judgment in
20 accordance with the terms of this Agreement. The Parties shall meet and confer and
21 agree on the form and content of the Final Approval Order and Judgment.

22 22. “Gross Settlement Amount” means the settlement amount of One
23 Million Three Hundred Fifty Thousand Dollars (\$1,350,000.00) which is the total
24 amount to be paid by Defendant as provided by this Agreement, except for the
25 Employer’s Share of Payroll Taxes. This Gross Settlement Amount is an all-in amount
26 and will not revert to Defendant under any circumstances. With the sole exception of
27 the Employer’s Share of Payroll Taxes, the Gross Settlement Amount constitutes the
28 total maximum amount that Defendant shall pay to settle this Action.

1 23. “Individual Settlement Payment” means the amount payable from the
2 Net Settlement Amount to each Settlement Class Member, less employee portions of
3 state and federal withholding taxes, including FICA, FUTA and SDI contributions
4 and any other applicable payroll deductions required by law, only to the extent
5 applicable, due to the payment of the amount allocated to such Class Members.

6 24. “Individual PAGA Payment” means the amount payable to the PAGA
7 Members from the \$100,000.00 total amount allocated to PAGA penalties (i.e., 25%
8 or \$25,000.00).

9 25. “LWDA” means the California Labor and Workforce Development
10 Agency.

11 26. “Mediator” means David A. Rotman.

12 27. “Net Settlement Amount” means the Gross Settlement Amount, less the
13 following payments in the amounts approved by the Court: Class Counsel Award,
14 Class Representative Service Award, the LWDA PAGA Payment, Individual PAGA
15 Payments, and Settlement Administration Costs. If the Court approves less than the
16 amounts requested for the foregoing, such amounts will return to the Net Settlement
17 Amount to be paid to Settlement Class Members. Once the Net Settlement Amount is
18 fixed, it shall be divided into two categories: (a) 85% to Class Members who have not
19 previously executed a severance or separation agreement with a general release with
20 Defendant, and (b) 15% to those who have.

21 28. “Objection” means a valid and timely written communication submitted
22 by a Class Member to the Settlement Administrator that contains a clear statement by
23 the Class Member that the Class Member is objecting to any of the terms of the Class
24 Settlement. For the Objection to be valid and timely, it must comport with the
25 requirements set forth below in Paragraph 60, section (e).

26 29. “PAGA Member(s)” means all persons who worked for Defendant as a
27 non-exempt employee reporting to a California work location during the PAGA
28 Period.

1 30. “PAGA Period” means April 13, 2022 to the Preliminary Approval
2 Date.

3 31. “Parties” means Plaintiff and Defendant collectively, and “Party” means
4 either Plaintiff or Defendant individually.

5 32. “Payment Ratio” means the respective Compensable Workweeks for
6 each Settlement Class Member divided by the Total Compensable Workweeks for all
7 Settlement Class Members, depending on whether or not the Settlement Class
8 Member has previously executed a severance or separation agreement with a general
9 release with Defendant. For example, if a Settlement Class Member did not sign a
10 severance or separation agreement, that person’s Compensable Workweeks will be
11 divided by the Total Compensable Workweeks for all Settlement Class Members who
12 did not sign a severance or separation agreement. Likewise, if the Settlement Class
13 Member did sign a severance or separation agreement, that person’s Compensable
14 Workweeks will be divided by the Total Compensable Workweeks for all Settlement
15 Class Members who did sign a severance or separation agreement.

16 33. “PAGA Payment Ratio” means the respective Compensable Pay Periods
17 for each PAGA Member divided by the total Compensable Pay Periods for all PAGA
18 Members, depending on whether or not the PAGA Member has previously executed
19 a severance or separation agreement with a general release with Defendant. For
20 example, if a PAGA Member did not sign a severance or separation agreement, that
21 person’s Compensable Pay Periods will be divided by the Total Compensable Pay
22 Periods for all PAGA Members who did not sign a severance or separation
23 agreement. Likewise, if the PAGA Member did sign a severance or separation
24 agreement, that person’s Compensable Pay Periods will be divided by the Total
25 Compensable Pay Periods for all PAGA Members who did sign a severance or
26 separation agreement.

27 34. “Plaintiff” means Josue Gutierrez.
28

35. “Preliminary Approval Date” means the date that the Court enters the Preliminary Approval Order.

36. “Preliminary Approval Order” means the order, substantially in the form attached hereto as **Exhibit 2**, which grants preliminary approval of the Settlement.

37. “Request for Exclusion” means a letter or other written communication submitted by a Class Member to the Settlement Administrator that contains a clear statement by the Class Member that the Class Member is electing to be excluded from the Settlement. For the Request to be valid and timely, it must comport with the requirements set forth below in Paragraph 60, section (d).

38. “Released Parties” means Defendant and the Ericsson Group of Companies,¹ its and their past and present parents, divisions, subsidiaries, affiliates, corporations, shareholders, investors, officers, directors, employees, members, agents, insurers, attorneys, and representatives as well as its and their respective successors, assigns, predecessors, and all Ericsson benefit plans, plan fiduciaries, plan administrators, and plan service providers.

39. “Released Claims by Plaintiff” means: the full settlement and release with California Civil Code section 1542 waiver, as detailed in Plaintiff’s individual Settlement and General Release Agreement, agreed upon by the Parties and executed in consideration for this Settlement.

40. “Released Class Claims by Settlement Class Members” means: in exchange for the consideration provided under this Settlement, Plaintiff and all Settlement Class Members shall fully and finally release and discharge Released Parties, from any and all claims, rights, demands, liabilities, and causes of action alleged or which could have been alleged based on or arising out of the facts and theories in Plaintiff’s Labor Workforce Development Agency (“LWDA”) notice

¹ The “Ericsson Group of Companies” is defined as Telefonaktiebolaget LM Ericsson (“LME”) and any entity in which LME has an ownership interest of 50% or more or which, directly or indirectly, is operated or controlled by LME.

1 letter, amended and/or supplemental LWDA notice letter, the original complaint filed
2 in state court, the First Amended Complaint, and/or the Second Amended Complaint,
3 including any claims for alleged failure to pay minimum wages and overtime wages,
4 failure to provide meal periods, failure to provide rest periods, failure to provide
5 recovery periods, failure to pay unpaid wages (including minimum, regular, overtime,
6 and incentive wages, nondiscretionary bonuses, shift differential pay and/or other
7 forms of remuneration), failure to pay unpaid premium pay at the correct rate of pay,
8 unlawful deductions, unlawful withholding of wages, failure to reimburse for business
9 expenses and/or losses, failure to timely pay wages during employment, failure to
10 maintain requisite records, non-compliant timekeeping practices, payroll records, or
11 other recordkeeping or maintenance thereof, wage statement violations, failure to pay
12 all wages due upon separation of employment, failure to properly calculate the regular
13 rate of pay for purposes of calculating overtime, unfair competition, unfair, unlawful
14 and/or fraudulent business practices, failure to provide required notices at the time of
15 hire, any claim for liquidated or multiple damages, waiting time penalties, civil
16 penalties, statutory penalties, punitive damages, restitution, interest, attorneys' fees,
17 costs, expenses, declaratory relief, equitable relief, injunctive relief, and/or any and
18 all potential forms of recovery, whether arising under or pursuant to any city, county,
19 municipal, state and/or federal law, rule, regulation, ordinance, common law, and/or
20 any Wage Order, including, the Fair Labor Standards Act, the California Labor Code
21 Sections 200, 201, 202, 203, 204, 210, 218.5, 221, 226, 226.2, 226.7, 227.3, 233, 432,
22 500, 510, 511, 512, 513, 558, 1102.5, 1174, 1174.5, 1182, 1194, 1197, 1198, 1198.5,
23 2802, and 2810.5, the Private Attorneys' General Act (Labor Code§ 2698 et seq.),
24 and California Business and Professions Code Section 17200 et seq. This release shall
25 apply to any and all claims and potential claims that existed or accrued at any point
26 during the Class Period.

27 41. "Released PAGA Claims by PAGA Members" means: in exchange for
28 the consideration provided under this Settlement, Plaintiff, as the representative for

1 the State of California and on behalf of PAGA Members, all aggrieved employees,
2 the LWDA and the State of California, hereby do and shall be deemed to have fully,
3 finally, and forever released, settled, compromised, relinquished and discharged any
4 and all of the Released Parties of and from any and all PAGA claims, causes of action,
5 obligations, demands, disputes, rights, and/or liabilities for PAGA penalties against
6 the Released Parties during the PAGA Period that have been alleged or that could
7 reasonably have been alleged, arising in whole or in part, from the facts or allegations
8 contained in Plaintiff's LWDA notice letter, Plaintiff's amended and/or supplemental
9 LWDA notice letter, the original complaint filed in state court, the First Amended
10 Complaint, and/or the Second Amended Complaint, including any and all potential
11 claims and forms of recovery, including but not limited to, interest, premiums,
12 penalties (including but not limited to waiting time penalties), expenses, attorney's
13 fees, costs, other expenses, and any other forms of remuneration recoverable under
14 PAGA, predicated on any claims for off-the-clock- work, alleged unpaid wages
15 (including minimum, regular, overtime, and incentive wages, nondiscretionary
16 bonuses, shift differential pay and/or other forms of remuneration), improper
17 calculation of the regular rate of pay for purposes of calculating overtime, untimely
18 wage payments during employment, failure to pay all wages due upon separation of
19 employment, failure to provide meal periods, failure to authorize and permit rest
20 breaks, failure to provide recovery breaks, non-compliant wage statements, non-
21 compliant timekeeping practices, payroll records, or other recordkeeping or
22 maintenance thereof, failure to pay premiums for noncompliant meal periods,
23 recovery breaks, and/or rest breaks, failure to reimburse business expenses, unlawful
24 deductions, failure to pay unpaid premium pay at the correct rate of pay, failure to
25 provide notice of material terms of employment, and alleged violations of Labor Code
26 sections 200, 201, 202, 203, 204, 210, 218.5, 221, 226, 226.2, 226.7, 227.3, 233, 432,
27 500, 510, 511, 512, 513, 558, 1102.5, 1174, 1174.5, 1182, 1194, 1197, 1198, 1198.5,
28 2802, and 2810.5, and the Private Attorneys General Act, Section 2698, et seq. The

1 PAGA Members will not have the opportunity to opt out of, or object to, the PAGA
2 Settlement Amount, and release of the PAGA claims set forth in this Settlement
3 Agreement. The PAGA Members are bound by the release of the Released PAGA
4 claims regardless of whether they cash their PAGA Settlement Payment. Within 3
5 days of the full execution of this Agreement, Plaintiff shall provide the LWDA with
6 a supplemental or amended PAGA letter, attached hereto as **Exhibit 3**. Should the
7 Court not approve the Class or PAGA Settlement, Plaintiff will take all steps with the
8 LWDA to rescind the letter, and it shall be null and void and shall have no force and
9 effect in this Action or any other matter.

10 42. "Response Deadline" means 30 calendar days after the postmark date of
11 the Class Notice that the Settlement Administrator shall mail to Class Members, and
12 the last date on which Class Members may: (a) submit a Request for Exclusion; (b)
13 submit a written Objection to the Settlement; or (c) dispute the number of
14 Compensable Workweeks attributed to them. For Class Members who receive a re-
15 mailed Notice of Class Settlement, as described in Paragraph 60(b), they shall have
16 fourteen (14) days after the postmark date of the re-mailed Notice of Class Settlement
17 to: (a) submit a Request for Exclusion; (b) submit an Objection to the Settlement; or
18 (c) dispute the number of Compensable Workweeks attributed to them.

19 43. "Settlement" means the disposition of the Action pursuant to this
20 Agreement.

21 44. "Settlement Administration Costs" means the amount to be paid to the
22 Settlement Administrator from the Gross Settlement Amount for notice and
23 administration of this Settlement.

24 45. "Settlement Administrator" means Simpluris. The Settlement
25 Administrator shall be responsible for, *inter alia*: (a) printing and mailing the Class
26 Notice; (b) calculating the Individual Settlement Payments and Individual PAGA
27 Payments based on the Class and PAGA Information; (c) calculating the Employer's
28 Share of Payroll Taxes, which Defendant shall pay in addition to the Gross Settlement

1 Amount; (d) receiving and reporting the Requests for Exclusion and Objections
2 submitted by Class Members to the Parties; (e) providing declaration(s) as necessary
3 in support of preliminary and/or final approval of this Settlement; (f) processing and
4 mailing payments to Plaintiff, Class Counsel, the LWDA, and Settlement Class
5 Members and PAGA Members; (g) issuing any tax forms as appropriate, (h) providing
6 Defendant with the information requested in this Settlement Agreement in Paragraphs
7 60(e), 63(d) and 64, and (i) any other tasks as the Parties mutually agree or the Court
8 orders the Settlement Administrator to perform. The Settlement Administrator shall
9 keep the Parties timely apprised of the performance of all Settlement Administrator
10 responsibilities. The Parties represent that they have no financial interest or other
11 relationship with Simpluris that could create a conflict of interest. Should a conflict
12 of interest or other issue lead to the disqualification of the Settlement Administrator,
13 the Parties will meet and confer on a suitable replacement.

14 RECITALS

15 46. Procedural Background. On April 13, 2023, Plaintiff submitted a letter
16 to the LWDA stating his intention to pursue a PAGA representative action based on
17 various alleged wage and hour violations. On June 22, 2023, Plaintiff commenced this
18 Action by filing a class and PAGA representative action complaint in Riverside
19 Superior Court. On August 16, 2023, Defendant removed this action to the United
20 States District Court, Central District of California. On September 7, 2023, Plaintiff
21 filed a First Amended Complaint (ECF No. 16). On December 15, 2023, Plaintiff filed
22 a Second Amended Complaint (ECF No. 32), which is the operative complaint.

23 47. Investigation and Discovery. The Parties conducted significant
24 investigation of the facts and law during the prosecution of the Action and before this
25 Settlement was reached. Such discovery and investigation includes, *inter alia*, the
26 exchange of information and documents pertaining to Plaintiff and the Class, and
27 numerous meetings and informal conferences wherein the Parties exchanged
28 information, class data, PAGA data, and theories of the case. Plaintiff has also

1 investigated the law as applied to the facts of Plaintiff's claims and Defendant's
2 potential defenses thereto, as generally set forth in the pleadings on file in this action.

3 48. Mediation and Settlement. On June 27, 2024, the Parties engaged in
4 mediation with David Rotman, Esq. At the conclusion of the mediation, the Parties
5 were able to reach agreement regarding the material terms for a proposed individual,
6 class, and PAGA settlement that would fully resolve this matter, as memorialized
7 herein.

8 49. Benefits of Settlement to Class Members. Plaintiff and Class Counsel
9 recognize the expense and length of continued proceedings necessary to litigate
10 Plaintiff's claims through trial and any possible appeals. Plaintiff has also considered
11 the uncertainty and risk of the outcome of further litigation, and the difficulties and
12 delays inherent in such litigation. Plaintiff and Class Counsel are also aware of the
13 burdens of proof necessary to establish liability for the claims asserted in the Action,
14 both generally and in response to Defendant's defenses thereto, and the difficulties in
15 establishing damages for the Class. Based on the foregoing, Plaintiff and Class
16 Counsel have determined that the Settlement set forth in this Settlement Agreement
17 is fair, adequate, and reasonable, and is in the best interests of the Class.

18 **STIPULATION AND AGREEMENT**

19 50. NOW THEREFORE, in consideration of the mutual covenants,
20 promises, and agreements set forth herein, the Parties agree, subject to the Court's
21 approval, as follows:

22 51. It is agreed by and among Plaintiff and Defendant that this Settlement
23 shall bind the Plaintiff, Settlement Class Members, PAGA Members, the state of
24 California, the LWDA, and Defendant, subject to the terms and conditions hereof.

25 52. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of
26 this section, the "acknowledging party" and each Party to this Agreement other than
27 the acknowledging party, an "other party") acknowledges and agrees that (1) no
28 provision of this Agreement, and no written communication or disclosure between or

1 among the Parties or their attorneys and other advisers, is or was intended to be, nor
2 shall any such communication or disclosure constitute or be construed or be relied
3 upon as, tax advice within the meaning of United States Treasury Department Circular
4 230 (31 CFR Part 10, as amended); (2) the acknowledging party (a) has relied
5 exclusively upon his, her, or its own, independent legal and tax counsel for advice
6 (including tax advice) in connection with this Agreement, (b) has not entered into this
7 Agreement based upon the recommendation of any other party or any attorney or
8 advisor to any other party, and (c) is not entitled to rely upon any communication or
9 disclosure by any attorney or adviser to any other party to avoid any tax penalty that
10 may be imposed on the acknowledging party; and (3) no attorney or adviser to any
11 other party has imposed any limitation that protects the confidentiality of any such
12 attorney's or adviser's tax strategies (regardless of whether such limitation is legally
13 binding) upon disclosure by the acknowledging party of the tax treatment or tax
14 structure of any transaction, including any transaction contemplated by this
15 Agreement.

16 53. Class Certification. The Parties stipulate to class certification pursuant
17 to Fed. R. Civ. P. 23 for purposes of settlement only. It is not, and it should not be
18 construed as, any admission of fact or law in this matter or any other matter that class
19 certification is appropriate. If the Court does not grant either preliminary or final
20 approval of this Settlement, the Parties agree that this stipulation regarding class
21 certification will be revoked, and the Parties will return to a point in litigation
22 immediately prior to the execution of this Agreement and Defendant may assert all
23 potentially applicable defenses in connection with the Action (e.g., contest whether
24 the Action should be maintained as a class action, contest the merits of the claims
25 being asserted in the Action, etc.).

26 54. Approval of Settlement. Plaintiff will move the Court to grant
27 preliminary and final approval of the Class Action Settlement and approval of the
28 PAGA Settlement. The Parties agree to work diligently and cooperatively to have this

1 matter presented to the Court for preliminary and final approval as expeditiously as
2 possible. Class Counsel will be responsible for drafting all documents necessary to
3 obtain preliminary and final approval, including Counsel's motion for attorney's fees
4 and costs. Class Counsel will provide a draft of all documents to Defendant's counsel
5 at least seven (7) court days before it is due to be filed so that Defendant's Counsel
6 can review, comment and revise as appropriate. Class Counsel agrees to file the
7 motion for preliminary approval on or before September 12, 2024, in advance of the
8 preliminary approval hearing set by the Court on September 26, 2024 at 8:30 a.m.

9 55. LWDA Notice. Plaintiff acknowledges and agrees that he will provide
10 notice to the LWDA of this Settlement in accordance with California Labor Code §
11 2699(s)(1)(2).

12 56. Release of Claims by Plaintiff. Plaintiff releases the "Released Claims
13 by Plaintiff" as of the Effective Date.

14 57. Release of Class Claims by Settlement Class Members. Settlement Class
15 Members release the "Released Claims by Settlement Class Members" as of the
16 Effective Date.

17 58. Release of PAGA Claims by PAGA Members. PAGA Members release
18 the "Released PAGA Claims" as of the Effective Date.

19 59. Settlement Administration. Within thirty (30) calendar days of the
20 Preliminary Approval Date, Defendant shall provide the Settlement Administrator
21 with the Class and PAGA Member Information. The Class and PAGA Member
22 Information shall be held in the strictest confidence by the Settlement Administrator,
23 shall be used by the Settlement Administrator solely for the purpose of administering
24 this Settlement, and shall not be disclosed to Plaintiff, Class Counsel or anyone else
25 external to the Settlement Administrator.

26 60. Notice to the Class. Upon receipt of the Class and PAGA Member
27 Information, the Settlement Administrator will perform a search based on the National
28 Change of Address Database to update and correct any known or identifiable address

1 changes. Within fourteen (14) calendar days after receiving the Class and PAGA
2 Member Information, the Settlement Administrator shall mail copies of the Class
3 Notice to all Class Members via regular First-Class U.S. Mail. The Settlement
4 Administrator shall exercise its best judgment to determine the current mailing
5 address for each Class Member and PAGA Member. The address identified by the
6 Settlement Administrator as the current mailing address shall be presumed to be the
7 best mailing address for each Class Member and PAGA Member.

8 a. The Class Notice and Procedure Comports with Due Process. The
9 Parties agree that the direct notice procedures outlined in this Agreement provide the
10 best and most practical method of giving notice to the Class and fully comply with
11 due process and all applicable laws and rules.

12 b. Undeliverable Notices. Any Class Notice returned to the
13 Settlement Administrator as non-deliverable on or before the Response Deadline shall
14 be re-mailed to the forwarding address affixed thereto within two (2) calendar days.
15 If no forwarding address is provided, the Settlement Administrator shall promptly
16 attempt to determine a correct address by use of skip-tracing, or other search using
17 the name, address and/or Social Security number of the Class Member involved, and
18 shall then perform a re-mailing, if another mailing address is identified by the
19 Settlement Administrator. If the undeliverable notice is for a currently employed
20 Class Member, the Settlement Administrator shall contact Defendant, which will then
21 make all reasonable efforts to obtain the Class Member's current mailing address
22 within seven (7) calendar days, and provide it to the Settlement Administrator. Class
23 Members who receive a re-mailed Notice of Class Settlement shall have fourteen (14)
24 days after the postmark date of the re-mailed Notice of Class Settlement to: (a) submit
25 a Request for Exclusion; (b) submit an Objection to the Settlement; or (c) dispute the
26 number of Compensable Workweeks attributed to them.

27 c. Disputes Regarding Individual Settlement Payments. Class
28 Members will have the opportunity, should they disagree with Defendant's records

1 regarding the dates of employment stated in the Class Notice and/or the number of
2 Compensable Workweeks attributed to them, to provide documentation and/or an
3 explanation to show contrary information by the Response Deadline, to the Settlement
4 Administrator. The dispute form must: (a) contain the full name, email address and
5 mailing address of the Class Member, and the last four digits of the Class Member's
6 social security number; (b) contain the case name and number; (c) a clear statement
7 by the Class Member that the Class Member is disputing the number of Compensable
8 Workweeks and the basis for the dispute; (d) be signed by the Class Member; and (e)
9 be postmarked or faxed by the Response Deadline. The date of the postmark on the
10 return mailing envelope on the dispute form, or the date the fax is sent, shall be the
11 exclusive means used to determine whether it has been timely submitted. If there is a
12 dispute, the Settlement Administrator will consult with Defendant to determine
13 whether an adjustment is warranted. The Settlement Administrator shall then
14 determine the eligibility for, and the amounts of, any Individual Settlement Payments
15 under the terms of this Agreement. In the absence of circumstances indicating fraud,
16 manipulation or destruction, Defendant's records shall be given a rebuttable
17 presumption of accuracy.

18 d. Requests for Exclusion. Class Members who wish to exclude
19 themselves from the Settlement must mail to the Settlement Administrator a Request
20 for Exclusion by the Response Deadline. The Request for Exclusion must: (a) contain
21 the full name and mailing address of the Class Member, and the last four digits of the
22 Class Member's social security number; (b) contain the case name and number; (c)
23 state words in substantially the same form and effect as "I wish to be excluded from
24 the Settlement Class in the Gutierrez Action and understand that this means I will not
25 receive the payment available to me from the Class Settlement"; (d) be signed by the
26 Class Member; and (e) be postmarked or faxed by the Response Deadline. The date
27 of the postmark on the return mailing envelope on the Request for Exclusion, or the
28 date the fax is sent, shall be the exclusive means used to determine whether it has been

1 timely submitted. Any Class Member who requests to be excluded from the
2 Settlement Class shall not be entitled to any Individual Settlement Payment and shall
3 not have any right to object, appeal or comment thereon. Class Members who fail to
4 submit a valid and timely Request for Exclusion on or before the Response Deadline
5 shall be bound by all terms of the Settlement and any Final Approval Order and
6 Judgment entered in this Action. Class Members who are also PAGA Members who
7 wish to exclude themselves from the Class Settlement will nevertheless be bound by
8 the Court's Final Order and Judgment with respect to the PAGA claims and will
9 receive their pro-rate share of the Individual PAGA Payment.

10 e. Objections. Class Members who wish to object to the Settlement
11 may do so by (i) mailing or faxing to the Settlement Administrator a written Objection
12 by the Response Deadline, or (ii) filing an Objection directly with the Court. The
13 written Objection must: (a) contain the full name and address and the last four digits
14 of the Class Member's social security number; (b) contain the case name and number;
15 (c) the approximate dates of employment of the Class Member; (d) state whether the
16 Class Member intends to appear at the Final Approval Hearing; (e) be signed by the
17 Class Member; (f) state the basis for the Objection, including any legal briefs, papers
18 or memoranda in support of the Objection; and (g) be postmarked, faxed, or filed by
19 the Response Deadline. The date of the postmark on the return mailing envelope, the
20 date the fax is sent, or the file-stamped date, shall be the exclusive means used to
21 determine whether the written Objection has been timely submitted. Class Members
22 who do not submit a timely and valid Notice of Objection to the Class Settlement, or
23 who fail to otherwise comply with the procedures of this section, will be foreclosed
24 from objecting to the Settlement and seeking any adjudication or review of the
25 Settlement, by appeal or otherwise. Only Settlement Class Members may object to
26 the Settlement. If an objector intends to appear at the Final Approval Hearing, either
27 in person or through an attorney of the Class Member's choice and at the Class
28 Member's expense, the Class Member must also timely serve and file with the Class

1 Member's Notice of Objection a Notice of Intention to Appear, which shall state how
2 and through whom the Class Member shall appear, including, the full name, Bar
3 number and contact information of any counsel representing the Class Member for
4 purposes of the Notice of Objection and Notice of Intention to Appear. This Paragraph
5 shall be strictly applied and enforced. Failure to comply with its terms shall render an
6 objection ineffective and waived. Class Members who fail to object by submitting a
7 valid Notice of Objection will be deemed to have waived all objections to the
8 Settlement and will be foreclosed from making any objections, whether at the hearing,
9 by appeal or otherwise, to the Settlement Agreement. At no time will any of the Parties
10 or their counsel seek to solicit or otherwise encourage Class Members to submit
11 written objection to or otherwise challenge the Settlement Agreement or appeal from
12 any order approving the Settlement or judgment. Class Counsel will not represent any
13 Class Members with respect to any such objections to this Settlement. If a Class
14 Member timely submits both a Notice of Objection and a Request for Exclusion, the
15 Request for Exclusion will be given effect and considered valid, the Notice of
16 Objection shall be rejected, and the Class Member shall not participate in or be bound
17 by the Class Settlement. Class Counsel shall not represent any Class Members with
18 respect to any Objections. The Settlement Administrator will provide the Parties with
19 any written Objection within two (2) business days of its receipt of any Objection.
20 Plaintiff will file any written Objections submitted to the Settlement Administrator in
21 advance of the Final Approval Hearing.

22 61. CAFA Notice. Within ten (10) calendar days of the date Plaintiff files a
23 motion for preliminary approval, Defendant shall serve upon the appropriate state
24 official of each State in which a class member resides and the appropriate federal
25 official, a notice of the proposed settlement, consistent with the requirements of 28
26 U.S.C. § 1715(b).

27 62. Funding the Gross Settlement Amount. The Parties agree that the Gross
28 Settlement Amount qualifies as a settlement fund pursuant to the requirements of the

1 applicable provisions of the Internal Revenue Code (“Qualified Settlement Fund”).
2 Within thirty (30) calendar days of the Effective Date, Defendant shall fund a
3 Qualified Settlement Fund. Defendant will transfer the Gross Settlement Amount into
4 an account designated by the Settlement Administrator.

5 63. Allocation of Settlement. The funds from the Gross Settlement Amount
6 shall be distributed as follows:

7 a. Payments to Settlement Class Members. Individual Settlement
8 Payments will be paid from the Net Settlement Amount and will be calculated based
9 on the Settlement Class Member’s Compensable Workweeks, and whether or not the
10 Class Member previously executed a severance or separation agreement with a
11 general release with Defendant. 85% of the Net Settlement Amount shall be allocated
12 to Settlement Class Members who did not previously execute a severance or
13 separation agreement with a general release with Defendant. The Payment Ratio for
14 each Settlement Class Member who did not execute a severance or separation
15 agreement will be multiplied by 85% of the Net Settlement Amount to determine the
16 Class Member’s Individual Settlement Payment. 15% of the Net Settlement Amount
17 shall be allocated to Settlement Class Members who previously executed a severance
18 or separation agreement with a general release with Defendant. The Payment Ratio
19 for each Settlement Class Member who executed a severance or separation agreement
20 will be multiplied by 15% of the Net Settlement Amount to determine the Class
21 Member’s Individual Settlement Payment. Individual Settlement Payments are
22 classified as 33% wages and 67% interest and penalties. Individual Settlement
23 Payments shall be mailed by regular First-Class U.S. Mail to Settlement Class
24 Members’ last known mailing address.

25 b. Payments to PAGA Members. Individual PAGA Payments will be
26 paid from the \$25,000.00 allocated to Individual PAGA Payments, and will be
27 calculated based on the PAGA Member’s Compensable Pay Periods, and whether or
28 not the PAGA Member previously executed a severance or separation agreement with

1 a release with Defendant. 85% of the \$25,000 (i.e., \$21,250) shall be allocated to
2 PAGA Members who have not previously executed a severance or separation
3 agreement with a general release with Defendant, and the remaining 15% (i.e.,
4 \$3,750) will be allocated to those who have. The PAGA Payment Ratio for each
5 PAGA Member who did not execute a severance or separation agreement will be
6 multiplied by \$21,250 to determine the PAGA Member's Individual PAGA Payment.
7 The PAGA Payment Ratio for each PAGA Member who did execute a severance or
8 separation agreement will be multiplied by \$3,750 to determine the PAGA Member's
9 Individual PAGA Payment. PAGA Payments are classified as 100% penalties for
10 which a Form-1099 shall issue. PAGA Payments shall be mailed by regular First-
11 Class U.S. Mail to PAGA Members' last known mailing address.

12 c. Un-Cashed Settlement Checks to Settlement Class Members and
13 PAGA Members. Individual Settlement Payment and PAGA Payment checks shall
14 expire 90 calendar days from the postmark date of issuance. If the check is not cashed
15 or deposited within the 90-day deadline, the check will be voided, and the funds
16 associated with any such voided checks shall be distributed by the Settlement
17 Administrator to the Cy Pres Recipient.

18 d. Certification by Settlement Administrator. The Parties have the
19 right to monitor and review administration of the Settlement. The Settlement
20 Administrator will provide Defendant's Counsel and Class Counsel a weekly report
21 which certifies: (i) the number of Class Members who have submitted a timely and
22 valid Request for Exclusion; (ii) the number of Class Members who have submitted
23 a timely and valid Notice of Objection; and (iii) the number of any deficient Requests
24 for Exclusion or objections. Any disputes not resolved by the Settlement
25 Administrator concerning the administration of the Settlement will be resolved by the
26 Court, under the Federal Rules of Civil Procedure. Prior to any such involvement of
27 the Court, counsel for the Parties will confer in good faith to resolve the disputes, and
28 if those efforts prove unsuccessful, the Parties shall consult the Mediator, before

1 seeking relief in Court. Upon completion of administration of the Settlement, the
2 Settlement Administrator shall provide written certification of such completion to
3 counsel for the Parties, and which shall be filed with the Court as necessary. Within
4 fourteen (14) days after the close of the Response Deadline, the Settlement
5 Administrator will provide Defense Counsel with a report by name and last four digits
6 of Social Security Number listing the amount of all Individual Settlement Payments
7 to be made to the Class Members and PAGA Members, a list by name and last four
8 digits of the Social Security Number of all Class Members who timely submitted a
9 Request for Exclusion, a list by name and last four digits of the Social Security
10 Number of all Class Members who timely submitted a Notice of Objection, a list by
11 name and last four digits of the Social Security Number of all Class Members whose
12 Notice of Objection or Request for Exclusion was deficient, and a list by name and
13 last four digits of the Social Security Number of all Class Members whose Notices
14 were returned and/or undeliverable. Within that same time period, the Settlement
15 Administrator will provide to Class Counsel a report stating the total number of
16 Participating Class Members, the total number of Class Members who timely and
17 validly opted out and the total number of Class Members who timely and validly
18 objected.

19 e. Settlement Awards Do Not Trigger Additional Benefits. All
20 monies received by Settlement Class Members shall be deemed to be income to such
21 Settlement Class Members solely in the year in which such awards actually are
22 received by the Settlement Class Members. It is expressly understood and agreed that
23 the receipt of such Individual Settlement Payments will not entitle any Settlement
24 Class Member to additional compensation or benefits under any company
25 compensation or benefit plan or agreement in place during the period covered by the
26 Settlement, nor will it entitle any Settlement Class Member to any increased pension
27 and/or retirement, or other deferred compensation benefits. It is the intent of this
28 Settlement that any Individual Settlement Payments provided for in this Agreement

1 are the sole payments to be made by Defendant to the Settlement Class Members in
2 connection with this Settlement, and that the Settlement Class Members are not
3 entitled to any new or additional compensation or benefits as a result of having
4 received the Individual Settlement Payments (regardless of any contrary language or
5 agreement in any benefit or compensation plan document that might have been in
6 effect during the period covered by this Settlement).

7 f. Class Representative Service Award. In consideration of this
8 Agreement and Plaintiff's execution of the mutually agreed upon individual
9 Settlement and General Release Agreement, Defendant agrees not to oppose or object
10 to a Class Representative Service Award in the amount of up to \$7,500, subject to
11 Court approval. The Settlement Administrator shall issue an IRS Form 1099 – MISC
12 to Plaintiff in connection with the Class Representative Service Award payment.
13 Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on
14 their Class Representative Service Award and shall hold harmless Defendant and
15 Class Counsel from any claim or liability for taxes, penalties, or interest arising as a
16 result of the Class Representative Service Award payment. The Class Representative
17 Service Award shall be in addition to Plaintiff's Individual Settlement Payment and
18 Individual PAGA Payment. This Settlement is not contingent upon the Court
19 awarding Plaintiff a Class Representative Service Award in any amount. Neither
20 Plaintiff nor his counsel shall appeal the Court's order on the Service Award. Any
21 amount requested by Plaintiff for the Class Representative Service Award that is not
22 granted by the Court shall return to the Net Settlement Amount and be distributed to
23 Settlement Class Members.

24 g. Class Counsel Award. Defendant agrees not to oppose or object
25 to any application or motion by Class Counsel for attorneys' fees of up to 30% of the
26 Gross Settlement Amount, or \$405,000. Defendant further agrees not to oppose any
27 application or motion by Class Counsel for the reimbursement of any costs or
28 expenses associated with Class Counsel's prosecution of this matter from the Gross

1 Settlement Amount of up to \$25,000. Class Counsel shall be solely and legally
2 responsible to pay all applicable taxes on the payment made pursuant to this
3 paragraph. The Settlement Administrator shall issue an IRS Form 1099 – MISC to
4 Class Counsel for the payments made pursuant to this paragraph. This Settlement is
5 not contingent upon the Court’s approval of Class Counsel’s attorney’s fees and costs
6 or awarding Class Counsel any particular amount in attorneys’ fees request, and any
7 dispute between Class Counsel and the Court regarding any attorney’s fees and costs
8 award shall in no way impact or require Defendant to pay more than the Gross
9 Settlement Amount. Any amount requested by Class Counsel for the Class Counsel
10 Award that is not granted by the Court shall return to the Net Settlement Amount and
11 be distributed to Settlement Class Members.

12 h. Settlement Administration Costs. The Settlement Administrator
13 shall be paid for the costs of administration of the Settlement from the Gross
14 Settlement Amount. The costs of notice and administration for the disbursement of
15 the Gross Settlement Amount shall not exceed \$6,500. Any amount requested by
16 Class Counsel for the Settlement Administration Costs that is not granted by the Court
17 shall return to the Net Settlement Amount and be distributed to Settlement Class
18 Members. Neither Plaintiff nor the Settlement Administrator shall appeal the Court’s
19 order on the Settlement Administration Costs.

20 i. Payment under PAGA. \$100,000 from the Gross Settlement
21 Amount shall be allocated to penalties under the Private Attorneys General Act of
22 2004. Seventy-five percent (75%) of that amount, or \$75,000, shall be paid to the
23 LWDA and twenty-five percent (25%) of that amount, or \$25,000, shall be paid to
24 the PAGA Members. This payment is made pursuant to California Labor Code §
25 2699(i).

26 64. Distribution of Settlement Payments. Individual Settlement Payments to
27 Settlement Class Members, Individual PAGA Payments to PAGA Members, the
28 Class Representative Service Award, the Class Counsel Award, Settlement

1 Administration Costs, and payment to the LWDA, shall all be distributed by the
2 Settlement Administrator within fourteen (14) calendar days of receipt by the
3 Settlement Administrator of the Gross Settlement Amount from Defendant. No
4 person shall have any claim against Defendant, Defendant's Counsel, Released
5 Parties, Plaintiff, Settlement Class Members, PAGA Members, Class Counsel, or the
6 Settlement Administrator based on distributions and payments made in accordance
7 with this Agreement. Within fourteen (14) calendar days after the Court issues the
8 Final Approval Order and Judgment, the Settlement Administrator will send to
9 Defendant's Counsel a list by name and last four digits of the Social Security Number
10 of all Class Members and PAGA Members whose Settlement Payment checks remain
11 un-negotiated (deposited or cashed).

12 65. Number of Workweeks. Prior to the mediation, Defendant represented
13 that approximately 535 Class Members worked approximately 54,362 workweeks. If
14 there is an increase or decrease of 10% or more in these workweeks as of the date of
15 the execution of this Agreement, the Parties will meet and confer in good faith, and if
16 necessary, discuss with the Mediator. Defendant also represents that approximately
17 384 of the Class Members have previously executed a severance or separation
18 agreement with a general release with Defendant.

19 66. Defendant's Right to Rescind. Defendant will have, in its sole discretion,
20 the right to rescind, void and withdraw from the Settlement if Plaintiff fails to execute
21 his individual Settlement and General Release Agreement on the same date that he
22 executes this Agreement. Defendant will also have, in its sole discretion, the right to
23 rescind, void and withdraw from the Settlement at any time prior to Final Approval,
24 if Two Percent (2%) or more of Class Members opt out of the Class Settlement.
25 Defendant must exercise this right of rescission in writing to Class Counsel by
26 providing written notice to Class Counsel within ten (10) business days after the
27 Settlement Administrator furnishes the Parties with the number and percentage of
28 valid and timely Requests for Exclusion. The Settlement Administrator shall furnish

1 this information within fourteen (14) calendar days of the deadline to Request
2 Exclusion. If Defendant exercises this right, it shall be solely responsible for all fees
3 and costs charged by the Settlement Administrator through the rescission period. The
4 Parties and all counsel shall not encourage any Class or PAGA Member (or encourage
5 anyone else to encourage any Class or PAGA Member) to object, opt-out, request
6 exclusion from, or otherwise challenge the Settlement.

7 67. Final Settlement Approval. Upon expiration of the Response Deadline,
8 a Final Approval Hearing shall be conducted by the Court. If the Settlement is granted
9 Final Approval, the Court shall enter a Final Approval Order and Judgment granting
10 Final Settlement Approval.

11 68. Nullification of Settlement Agreement. In the event: (a) the Court
12 declines to approve the PAGA Settlement, conditionally certify the Class or to
13 preliminary approve the Settlement; (b) the Court does not finally approve the
14 Settlement; (c) the Court does not enter a Final Approval Order and Judgment as
15 provided herein; or (d) the Settlement does not become final for any other reason, this
16 Settlement Agreement shall be null and void and any order or judgment entered by
17 the Court in furtherance of this Settlement shall be treated as void from the beginning.
18 In such cases, the Parties and any funds to be awarded under this Settlement shall be
19 returned to their respective statuses as of the date and time immediately prior to the
20 execution of this Agreement and the Parties shall proceed in all respects as if this
21 Agreement had not been executed, except that any fees already incurred by the
22 Settlement Administrator shall be split equally between the Parties for payment. In
23 the event an appeal is filed from the Court's Final Approval Order and Judgment, or
24 any other appellate review is sought, administration of the Settlement shall be stayed
25 pending final resolution of the appeal or other appellate review, and any fees incurred
26 by the Settlement Administrator prior to it being notified of the filing of an appeal
27 from the Court's Final Approval Order and Judgment, or any other appellate review,
28

1 shall be paid to the Settlement Administrator by the party or person that filed the
2 appeal, within thirty (30) calendar days of said notification.

3 69. No Effect on Employee Benefits. Amounts paid to Plaintiff or other
4 Settlement Class Members pursuant to this Agreement shall be deemed not to be
5 pensionable earnings and shall not have any effect on the eligibility for, or calculation
6 of, any of the employee benefits (e.g., vacations, holiday pay, retirement plans, etc.)
7 of Plaintiff or Settlement Class Members.

8 70. No Admission by Defendant. This Agreement does not constitute an
9 admission on behalf of Defendant. Plaintiff and Defendant agree that this Agreement
10 is not evidence that the LWDA Notice or any complaint filed by Plaintiff has any
11 merit, nor does it constitute an admission of any wrongdoing by Defendant. Defendant
12 does not admit to individual, class or PAGA liability or to the suitability of this case
13 for class or representative litigation other than for purposes of this Settlement.

14 71. No Publicity. Defendant, Plaintiff and Class Counsel will not publicize
15 this litigation or this Settlement in any manner, including, but not limited to on the
16 firm's website or blogs. Plaintiff's counsel may reference public information in his
17 CV and in motions for attorneys' fees. Plaintiff and Class Counsel agree that they will
18 not issue any press releases, initiate any contact with the press, or respond to any press
19 inquiry. If contacted by the press or media, Plaintiff and Class Counsel may only state
20 that the case has been resolved. If Plaintiff and/or Class Counsel is asked by any
21 person or entity about the matter, they may only state that the case has been resolved
22 or may direct Class Members to the Settlement Administrator.

23 72. Confidentiality. The Settlement and Agreement shall be held in strictest
24 confidence by Plaintiff and Class Counsel and shall not be publicized or disclosed in
25 any manner whatsoever, including but not limited to any reference to its existence,
26 meaning, importance, value or comparative value, and shall remain confidential until
27 a stipulation for approval is filed with the Court. The Parties' Counsel may notify the
28 Court that a settlement has been reached in a joint notice of settlement. Plaintiff will

1 not counsel or assist any attorneys or their clients in the presentation or prosecution
2 of any disputes, differences, grievances, claims, charges, or complaints by any third
3 party against Defendant and/or any other Released Party, except in connection with
4 filing a charge, in response to a valid subpoena or court order to do so, or in connection
5 with an investigation or proceeding conducted by the Equal Opportunity Commission,
6 the National Labor Relations Board, or other comparable federal, state or local
7 agency. Plaintiff may disclose this Agreement, and/or General Release to his spouse,
8 attorney, accountant, tax preparer, and financial advisor, and he may also disclose this
9 Agreement insofar as such disclosure is required by law or in connection with filing
10 a charge or participating in any investigation or proceeding conducted by the Equal
11 Employment Opportunity Commission, or comparable federal, state or local agency.
12 Plaintiff and Class Counsel warrant and represent that they have kept and will keep
13 the mediation, documents and information exchanged for mediation, and all
14 settlement negotiations confidential and have not discussed any of them with any third
15 party, with the exception of documents and information provided to or discussed with
16 Plaintiff's retained damages expert for mediation.

17 73. No Solicitation. Defendant, Plaintiff, and Class Counsel separately
18 agree that they and their respective counsel and employees will not solicit any
19 Settlement Class Member to request exclusion from or object to the Settlement, or
20 appeal from the Final Order and Judgment.

21 74. Exhibits and Headings. The terms of this Settlement Agreement include
22 the terms set forth in any attached Exhibits, which are incorporated by this reference
23 as though fully set forth herein. Any Exhibits to this Agreement are an integral part
24 of the Settlement. The descriptive headings of any paragraphs or sections of this
25 Agreement are inserted for convenience of reference only and do not constitute a part
26 of this Agreement.

27 75. Interim Stay of Proceedings. The Parties agree to stay all proceedings in
28 the Action, except such proceedings necessary to implement and complete the

1 Settlement, holding the Action in abeyance pending the Final Approval Hearing to be
2 conducted by the Court.

3 76. Amendment or Modification. This Agreement may be amended or
4 modified only by a written instrument signed by the Parties and their counsel of
5 record.

6 77. Entire Agreement. This Settlement Agreement and any attached
7 Exhibits constitute the entire Agreement among these Parties, and no oral or written
8 representations, warranties, or inducements have been made to any Party concerning
9 this Agreement or its Exhibits other than the representations, warranties, and
10 covenants contained and memorialized in the Agreement and its Exhibits.

11 78. Authorization to Enter into Settlement Agreement. Counsel for all
12 Parties warrant and represent they are expressly authorized by the Parties whom they
13 represent to negotiate this Agreement and to take all appropriate actions required or
14 permitted to be taken by such Parties pursuant to this Agreement to effectuate its
15 terms, and to execute any other documents required to effectuate the terms of this
16 Agreement. The Parties and their counsel will cooperate with each other and use their
17 best efforts to effect the implementation of the Settlement. In the event the Parties are
18 unable to reach agreement on the form or content of any document needed to
19 implement the Settlement, or on any supplemental provisions that may become
20 necessary to effectuate the terms of this Settlement, the Parties will seek the assistance
21 of the Mediator to resolve such disagreement. The persons signing this Agreement on
22 behalf of Defendant represent and warrant that they are authorized to sign this
23 Agreement on behalf of Defendant. Plaintiff represents and warrants that he is
24 authorized to sign this Agreement and that he has not assigned any claim, or part of a
25 claim, covered by this Settlement to a third-party.

26 79. Binding on Successors and Assigns. This Agreement shall be binding
27 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as
28 previously defined.

1 80. Return of Company Property. Plaintiff warrants and represents that he
2 has returned to Ericsson any and all property of Ericsson and/or its customers,
3 including but not limited to any and all keys, badges, cards, tools, equipment,
4 documents (except his personnel records and wage statements), and any and all other
5 belongings or property. Plaintiff further warrants and represents that he has deleted
6 any and all Ericsson information (except his personnel records and wage statements)
7 and/or information of any Ericsson customer. Ericsson will not seek reimbursement
8 from Plaintiff for the condition of his work issued laptop or cell phone.

9 81. Deletion of Mediation Only Information. Mediation Only Information
10 shall be destroyed or returned to the producing Party within ten (10) business days of
11 the Effective Date, and the receiving Party shall certify in writing to the producing
12 Party that all such material (including that in a party's, counsel's, consultant's and/or
13 expert's possession) has been destroyed or, in the case of electronically stored
14 information, permanently deleted without the possibility of recovery.

15 82. Disputes. Any dispute between the Parties concerning this Agreement
16 shall be presented to the mediator, David Rotman, with expenses shared equally
17 between the Parties.

18 83. Memorandum of Understanding ("MOU"). The MOU shall be
19 superseded by this Agreement upon its execution.

20 84. California Law Governs. All terms of this Settlement Agreement and
21 the Exhibits hereto shall be governed by and interpreted according to the laws of the
22 State of California and Federal Rules of Civil Procedure.

23 85. Advice of Counsel. The Parties are represented by competent counsel,
24 and they have had an opportunity to consult with counsel of their own choosing. The
25 Parties agree that it reflects their good faith compromise of the claims raised in this
26 action, based upon their assessment of the mutual risks and costs of further litigation
27 and the assessments of their respective counsel.
28

1 86. Counterparts and Signatures. This Settlement Agreement may be
2 executed in one or more counterparts. All executed counterparts and each of them
3 shall be deemed to be one and the same instrument. The Parties agree that a facsimile,
4 PDF, or electronic signatures shall be deemed to be as valid and enforceable as
5 original ink signatures. The Parties further agree that they may use DocuSign, an
6 electronic signature technology, to expedite the execution of this Agreement, pursuant
7 to California Civil Code § 1633.7 and any federal analog.

8 87. This Settlement is Fair, Adequate and Reasonable. Plaintiff believes this
9 Settlement is a fair, adequate, and reasonable settlement of this Action and have
10 arrived at this Settlement after extensive arms-length negotiations, considering all
11 relevant factors, present and potential.

12 88. Jurisdiction of the Court. The Court shall retain jurisdiction to enforce
13 this Settlement Agreement.

14 89. Invalidity of Any Provision. Before declaring any provision of this
15 Settlement Agreement invalid, the Court shall first attempt to construe the provisions
16 as valid to the fullest extent possible consistent with applicable precedents so as to
17 define all provisions of this Agreement valid and enforceable.

18 90. Mutual Preparation. The Parties have had a full opportunity to negotiate
19 the terms and conditions of this Settlement Agreement. Accordingly, this Settlement
20 Agreement will not be construed more strictly against one party than another merely
21 by virtue of the fact that it may have been prepared by counsel for one of the Parties,
22 it being recognized that, because of the arms-length negotiations between the
23 Parties, all Parties have contributed to the preparation of this Settlement Agreement.

24 //

25 //

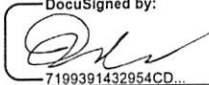
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1 Dated: 9/12/2024

DocuSigned by:
By: 
7199391432954CD...
Plaintiff Josue Gutierrez

2
3
4 Dated: _____

By: _____
Defendant Ericsson Inc.

5
6 Name: _____
Leigh Nager

7
8 Title: Head of MANA Affairs

9
10 APPROVED AS TO FORM:

11
12 THE WAND LAW FIRM, P.C.

13
14 Dated: 9/12/2024

By: 
Aubry Wand

15
16 *Counsel for Plaintiff and the Putative*
17 *Class*

18
19 DUANE MORRIS LLP

20
21 Dated: _____

By: _____
Victoria Carradero
Tatyana Shmygol
Sarah A. Gilbert

22
23
24
25 *Counsel for Defendant Ericsson Inc.*

1 Dated: _____

By: _____
Plaintiff Josue Gutierrez

2
3
4 Dated: 9/12/24

By: _____
Defendant Ericsson Inc.

5
6 Name:  _____
Leigh Nager

7
8 Title: Head of MANA ^{Legal} Affairs
9

10 **APPROVED AS TO FORM:**

11
12 **THE WAND LAW FIRM, P.C.**

13
14 Dated: _____

By: _____
Aubry Wand

15
16 *Counsel for Plaintiff and the Putative*
17 *Class*

18
19 **DUANE MORRIS LLP**

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21 Dated: _____

By: _____
Victoria Carradero
Tatyana Shmygol
Sarah A. Gilbert

22
23
24
25 *Counsel for Defendant Ericsson Inc.*
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27
28

1 Dated: _____

By: _____
Plaintiff Josue Gutierrez

4 Dated: _____

By: _____
Defendant Ericsson Inc.

6 Name: _____
Leigh Nager

8 Title: Head of MANA Affairs

10 **APPROVED AS TO FORM:**

12 **THE WAND LAW FIRM, P.C.**

14 Dated: _____

By: _____
Aubry Wand

*Counsel for Plaintiff and the Putative
Class*

20 **DUANE MORRIS LLP**

21 Dated: September 12, 2024

By:  _____
Victoria Carradero
Tatyana Shmygol
Sarah A. Gilbert

Counsel for Defendant Ericsson Inc.

EXHIBIT 1

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA
Gutierrez v. Ericsson Inc.
Case No. 5:23-cv-01665-GW-SHK

NOTICE OF CLASS ACTION AND PAGA SETTLEMENT

ATTN: «FirstName» «LastName»

«Address1» «Address2»

«City» «Abbrev» «Zip»

PLEASE READ THIS NOTICE CAREFULLY: IT INFORMS YOU ABOUT YOUR LEGAL RIGHTS.

A court authorized this Notice. This is not a solicitation by a lawyer. You are not being sued.

1. Why Have I Received This Notice?

This Notice of Class Action Settlement (“Notice”) was sent to you to inform you that the United States District Court for the Central District of California has preliminarily approved the terms of a class action settlement in a lawsuit filed against Ericsson Inc. (“Ericsson” or “Defendant”) by former employee Josue Gutierrez (“Plaintiff”) entitled, *Gutierrez v. Ericsson Inc.*, Case No. 5:23-cv-01665-GW-SHK (C.D. Cal.) (the “Action”).

On [REDACTED], the United States District Court for the Central District of California preliminarily approved the class action settlement reached by the Plaintiff and Ericsson (the “Parties”) and directed that you and the other Class Members receive this Notice. The Court also preliminarily appointed Plaintiff as the representative of the Class (“Class Representative”). The Court will hold a Final Approval Hearing concerning the proposed settlement on [REDACTED] at [REDACTED] a.m., in Courtroom 9D on the 9th Floor of the United States District Court for the Central District of California, the Hon. George Wu presiding, located at 350 W 1st Street, Los Angeles, California 90012.

The purpose of this Notice is to inform you of the proposed settlement and of your options. Each option has its consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are explained in detail below.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING	If you do nothing, you will be considered part of the Settlement Class and will receive a settlement payment.
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS	If you do not wish to participate in the Settlement Class, you may exclude yourself by submitting a written request to be excluded. However, if you do so, you will not receive any settlement payment as a member of the Settlement Class. If you are also a PAGA Member (see below), you may not exclude yourself from the PAGA Settlement. You will receive a settlement payment under PAGA regardless of whether you exclude yourself from the Class Settlement.
OBJECT	To object to the Class Settlement, you may write to the Settlement Administrator about why you don’t like the Class Settlement or file your objection with the Court. This option is available <u>only</u> if you do not exclude yourself from the Class Settlement. If you are also a PAGA Member (see below), you do not have the option to file an objection to the terms of the PAGA Settlement.

2. Who Is Affected By This Settlement?

There are two components to the settlement: (1) a Class Settlement, which resolves the Released Class Claims for Class Members, as set forth in more detail in Section 8 below; and (2) a PAGA Settlement, which is a settlement of claims for civil penalties under the California Private Attorneys General Act (“PAGA”), and which resolves the Released PAGA Claims for PAGA Members, as set forth in more detail in Section 8 below. You may be a member of both the Class and PAGA groups.

For purposes of settlement only, the Court has conditionally certified the following Class:

All persons who worked for Defendant as a non-exempt employee reporting to a California work location from June 22, 2019 to [Preliminary Approval Date] (the “Class Period”).

According to Ericsson’s records, you worked for Ericsson as a non-exempt employee reporting to a California work location during the Class Period and are therefore a Class Member.

The PAGA Settlement encompasses the following individuals:

All persons who worked for Defendant as a non-exempt employee reporting to a California work location from April 13, 2022 to [Preliminary Approval Date] (the “PAGA Period”).

Insert if applicable: According to Ericsson’s records, you worked for Ericsson as a non-exempt employee reporting to a California work location during the PAGA Period, and are therefore a PAGA Member as well.

3. What Is This Case About?

In the Action, Plaintiff Josue Gutierrez (“Plaintiff”) alleges on behalf of himself and the Class the following claims against Defendant: (1) failure to provide meal periods or compensation in lieu thereof; (2) failure to provide rest periods or compensation in lieu thereof; (3) failure to provide recovery periods or compensation in lieu thereof; (4) failure to pay overtime wages; (5) failure to pay minimum wages; (6) failure to timely pay wages during employment; (7) failure to pay all wages owed and due at termination of employment; (8) failure to maintain required records; (9) failure to provide accurate itemized wage statements; (10) failure to indemnify employees for business expenses; (11) violation of the California Unfair Competition Law; and (12) and violation of the California Private Attorneys’ General Act (“PAGA”).

Plaintiff’s Class claims are brought on behalf of all current and former non-exempt employees of Defendant who reported to a California work location between June 22, 2019, and [Preliminary Approval Date]. For purposes of this settlement only, Plaintiff and these other employees are deemed to comprise a “Class” and are “Class Members.” Class Members who do not exclude themselves from the settlement will be deemed “Settlement Class Members” and will be eligible to receive a payment under the settlement.

Plaintiff also seeks to recover civil penalties under the PAGA for the same wage and hour claims upon which he bases his Class Claims. Plaintiff brings these PAGA claims as a representative of the state of California, and on behalf of all current and former non-exempt employees who worked for Defendant and reported to a California work location between April 13, 2022 to [Preliminary Approval Date]. Plaintiff and these other employees are considered to be “PAGA Members.”

Ericsson denies all of the allegations made by Plaintiff in the Action and denies that it is liable or owes damages or other compensation or remedies to anyone with respect to the alleged facts or causes of action asserted in the Action. Ericsson also disputes that the Action could proceed on the merits as a class or representative action. Defendant notes that this Settlement was established specifically to avoid the cost of proceeding with litigation and does not constitute an admission of liability by Defendant.

The Court has not decided the Action in favor of Plaintiff or Ericsson, or made any determination on the merits of the Action. Instead, both sides agreed to resolve the Action with no decision or admission of who is right or wrong. By agreeing to resolve the Action, all parties avoid the risks and cost of a trial, and

the people affected will receive compensation quickly. Plaintiff and Class Counsel think the settlement is in the best interests of the Class.

This Settlement is a compromise reached after good faith, arm's-length negotiations between Plaintiff and Defendant, through their attorneys and with the assistance of a mediator. Plaintiff believes that in light of the risks and expenses associated with continued litigation, this Settlement is fair, adequate and reasonable, and is in the best interests of the Class.

4. Who Are The Attorneys In This Action?

Class Counsel

The Wand Law Firm, P.C.
Aubry Wand
100 Oceangate, Ste. 1200
Long Beach, CA 90802
Telephone: (310) 590-4503

Defendant's Counsel

Duane Morris LLP
Victoria R. Carradero
260 Homer Ave., Suite 202
Palo Alto, CA 94301
Telephone: (650) 600-5307

5. What Will I Receive Under The Settlement?

You will be eligible to receive a portion of the Net Settlement Amount as described below. Subject to final Court approval, Defendant will pay \$1,350,000.00 (the "Gross Settlement Amount") to fully and finally resolve all claims in the Action. The amount to be distributed to Class Members who do not exclude themselves from the settlement (the "Net Settlement Amount") will be the Gross Settlement Amount, minus the following amounts: (a) Settlement Administration Costs, which shall not exceed \$6,500; (b) a Class Representative Service Award payment to Plaintiff not to exceed \$7,500.00 for his effort in prosecuting this case; (c) Class Counsel's attorney's fees not to exceed 30% of the Gross Settlement Amount; (d) reimbursement of Class Counsel's actual litigation costs and expenses in an amount not to exceed \$25,000; (e) payment of \$100,000.00 to settle Class Members' PAGA claims (the "PAGA Settlement Amount") with 75% of the PAGA Settlement Amount (i.e., \$75,000.00) to be paid to the Labor and Workforce Development Agency for its share of the penalties under the PAGA ("LWDA Payment"), and the remaining 25% (i.e., \$25,000.00) to be paid to the PAGA Members.

Individual Settlement Payments

Individual Settlement Payments will be paid to each Class Member who does not submit a timely and valid Request for Exclusion from the Settlement Class ("Settlement Class Member"). Individual Settlement Payments will be based on the Class Member's Compensable Workweeks. "Compensable Workweeks" means any week within the Class Period during which a Class Member worked at least three days, with a minimum of one Compensable Workweek.

The Settlement Administrator will calculate the Payment Ratio for each Class Member. The "Payment Ratio" means the respective Compensable Workweeks for each Settlement Class Member divided by the total Compensable Workweeks for all Settlement Class Members, depending on whether or not the Settlement Class Member has previously executed a severance or separation agreement with a general release with Defendant. For example, if a Settlement Class Member did not sign a severance or separation agreement with Defendant, that person's Compensable Workweeks will be divided by the total Compensable Workweeks for all Settlement Class Members who did not sign a severance or separation agreement. Likewise, if the Settlement Class Member did sign a severance or separation agreement, that person's Compensable Workweeks will be divided by the total Compensable Workweeks for all Settlement Class Members who signed a severance or separation agreement with Defendant.

Once the Net Settlement Amount is fixed, 85% shall be allocated to Settlement Class Members who have not previously executed a severance or separation agreement with a general release with Defendant, and 15% shall be allocated to those who have. The Payment Ratio for each Settlement Class Member who did not execute a severance or separation agreement with Defendant will be multiplied by 85% of the Net

Settlement Amount to determine the Class Member's Individual Settlement Payment. The Payment Ratio for each Settlement Class Member who executed a severance or separation agreement with Defendant will be multiplied by 15% of the Net Settlement Amount to determine the Class Member's Individual Settlement Payment ("Individual Settlement Payments").

According to Defendant's records, you worked [REDACTED] Compensable Workweeks and you **did not / did** previously execute a severance or separation agreement with a general release with Defendant. Therefore, your Individual Settlement Payment as a Class Member is estimated to be \$[REDACTED].

If you wish to dispute the number of Compensable Workweeks credited to you, you must submit a written dispute to the Settlement Administrator by no later than **[Response Deadline]** either by mail or fax at the information stated in Section 11 below. You may wish to attach documentation and/or an explanation in support of your dispute.

Individual PAGA Payments

From the \$25,000 allocated to PAGA Members, 85% (or \$21,250.00) shall be allocated to those who have not previously executed a severance or separation agreement with a general release with Defendant, and 15% (\$3,750.00) shall be allocated to those who have. Individual PAGA Payments will be based on the employee's Compensable Pay Periods. "Compensable Pay Periods" means any pay period within the PAGA Period during which a PAGA member worked at least six days, with a minimum of one Compensable Pay Period.

The Settlement Administrator will calculate the PAGA Payment Ratio for each PAGA Member. The "PAGA Payment Ratio" means the respective Compensable Pay Periods for each PAGA Member divided by the total Compensable Pay Periods for all PAGA Members, depending on whether or not the PAGA Member has previously executed a severance or separation agreement with a general release with Defendant, similar to the calculation for Compensable Workweeks. Each PAGA Member's Payment Ratio will be multiplied by the two amounts stated above (i.e., \$21,250.00 or \$3,750.00), depending on whether the PAGA Member did or did not previously execute a release with Defendant, to determine his or her Individual PAGA Payment ("Individual PAGA Payment").

According to Defendant's records you worked [REDACTED] Compensable Pay Periods, and you **did not / did** previously execute a severance or separation agreement with a general release with Defendant. Therefore, your Individual PAGA Payment is estimated to be \$[REDACTED].

These payments are estimates, and your actual settlement payments may be higher or lower than estimated.

Each Individual Settlement Payment will be characterized as 67% Form 1099 income and 33% Form W-2 income, to reflect that 67% of the payment will account for penalties and interest and 33% will account for wages. In accordance with applicable tax laws, required tax withholdings and payroll deductions will be taken from each Individual Settlement Payment for the portion allocated to Form W-2 income and remitted to the appropriate taxing authorities. The Settlement Administrator shall issue any necessary IRS Form 1099 and Form W-2 statements to Settlement Class Members and PAGA Members for their respective Individual Settlement Payments as required. Individual PAGA Payments will be classified as 100% penalties, for which the Settlement Administrator shall issue an IRS Form 1099 for the entire amount as necessary.

Class Members shall be solely and legally responsible for paying all other applicable taxes on their respective Individual Settlement Payments and shall indemnify and hold Defendant harmless from any claim or liability for taxes, penalties, or interest arising from the payments.

None of the Parties or attorneys make any representations concerning the tax implications of this payment. Settlement Class Members and/or PAGA Members may wish to consult with their own tax advisors concerning the tax consequences of the Settlement.

6. When And How Will I Receive Payment?

If the Court grants final approval of the Settlement, and only after the Effective Date of the Settlement defined below, the Settlement Administrator will send you a settlement check. The settlement approval process takes time so please be patient.

You have 90 days to cash or deposit your settlement check. Any settlement payment checks mailed to you under the Settlement shall remain negotiable for 90 days. If you do not cash or deposit your settlement check within this time period, you will be unable to receive those funds, but you will remain bound by the terms of the Settlement. Any funds that are not timely cashed or deposited by Settlement Class Members will be paid to Legal Aid at Work, a 501(c)(3) organization that is dedicated to protecting the rights of low-income people and workers throughout California.

7. How Will The Lawyers Be Paid?

Class Counsel will be paid from the Gross Settlement Amount. Class Counsel will ask the Court to award attorneys' fees up to \$405,000.00 (30% of the Gross Settlement Amount) and reimbursement of actual litigation costs and expenses up to \$25,000. The actual amounts awarded shall be determined by the Court. In addition, Class Counsel will ask the Court to authorize a Class Representative Service Award payment of up to \$7,500.00 to be paid from the Gross Settlement Amount, for Plaintiff's efforts in representing the Class. Any of these amounts not awarded by the Court will be included in the Net Settlement Amount and will be distributed to Settlement Class Members.

8. What Claims Are Being Released By The Settlement?

Released Class Claims by Settlement Class Members:

As of the Effective Date, and in exchange for the consideration provided under this Settlement, Settlement Class Members shall fully and finally release and discharge Released Parties, from any and all claims, rights, demands, liabilities, and causes of action alleged or which could have been alleged based on or arising out of the facts and theories in Plaintiff's Labor Workforce Development Agency ("LWDA") notice letter, amended and/or supplemental LWDA notice letter, the original complaint filed in state court, the First Amended Complaint, and/or the Second Amended Complaint, including any claims for alleged failure to pay minimum wages and overtime wages, failure to provide meal periods, failure to provide rest periods, failure to provide recovery periods, failure to pay unpaid wages (including minimum, regular, overtime, incentive wages, nondiscretionary bonuses, shift differential pay and/or other forms of remuneration), failure to pay unpaid premium pay at the correct rate of pay, unlawful deductions, unlawful withholding of wages, failure to reimburse for business expenses and/or losses, failure to timely pay wages during employment, failure to maintain requisite records, non-compliant timekeeping practices, payroll records, or other recordkeeping or maintenance thereof, wage statement violations, failure to pay all wages due upon separation of employment, failure to properly calculate the regular rate of pay for purposes of calculating overtime, unfair competition, unfair, unlawful and/or fraudulent business practices, failure to provide required notices at the time of hire, any claim for liquidated or multiple damages, waiting time penalties, civil penalties, statutory penalties, punitive damages, restitution, interest, attorneys' fees, costs, expenses, declaratory relief, equitable relief, injunctive relief, and/or any and all potential forms of recovery, whether arising under or pursuant to any city, county, municipal, state and/or federal law, rule, regulation, ordinance, common law, and/or any Wage Order, including, the Fair Labor Standards Act, the California Labor Code Sections 200, 201, 202, 203, 204, 210, 218.5, 221, 226, 226.2, 226.7, 227.3, 233, 432, 500, 510, 511, 512, 513, 558, 1102.5, 1174, 1174.5, 1182, 1194, 1197, 1198, 1198.5, 2802, and 2810.5, the Private Attorneys' General Act (Labor Code § 2698 et seq.), and California Business and Professions Code Section 17200 et seq. This release shall apply to any and all claims and potential claims that existed or accrued at any point during the Class Period.

Released PAGA Claims by PAGA Members:

As of the Effective Date, and in exchange for the consideration provided under this Settlement, Plaintiff, as the representative for the State of California, PAGA Members, all aggrieved employees, the LWDA and the State of California, shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished and discharged any and all of the Released Parties of and from any and all PAGA claims, causes of action, obligations, demands, disputes, rights, and/or liabilities for PAGA

penalties against the Released Parties during the PAGA Period that have been alleged or that could reasonably have been alleged, arising in whole or in part, from the facts or allegations contained in Plaintiff's LWDA notice letter, Plaintiff's amended and/or supplemental LWDA notice letter, the original complaint filed in state court, the First Amended Complaint, and/or the Second Amended Complaint, including any and all potential claims and forms of recovery, including but not limited to, interest, premiums, penalties (including but not limited to waiting time penalties), expenses, attorney's fees, costs, other expenses, and any other forms of remuneration recoverable under PAGA, predicated on any claims for off-the-clock-work, alleged unpaid wages (including minimum, regular, overtime, incentive wages, nondiscretionary bonuses, shift differential pay and/or other forms of remuneration), improper calculation of the regular rate of pay for purposes of calculating overtime, untimely wage payments during employment, failure to pay all wages due upon separation of employment, failure to provide meal periods, failure to authorize and permit rest breaks, failure to provide recovery breaks, non-compliant wage statements, non-compliant timekeeping practices, payroll records, or other recordkeeping or maintenance thereof, failure to pay premiums for noncompliant meal periods, recovery breaks, and/or rest breaks, failure to reimburse business expenses, unlawful deductions, failure to pay unpaid premium pay at the correct rate of pay, failure to provide notice of material terms of employment, and alleged violations of Labor Code sections 200, 201, 202, 203, 204, 210, 218.5, 221, 226, 226.2, 226.7, 227.3, 233, 432, 500, 510, 511, 512, 513, 558, 1102.5, 1174, 1174.5, 1182, 1194, 1197, 1198, 1198.5, 2802, and 2810.5, and the Private Attorneys General Act, Section 2698, et seq.

"Released Parties" includes Defendant and the Ericsson Group of Companies (i.e., as Telefonaktiebolaget LM Ericsson ("LME") and any entity in which LME has an ownership interest of 50% or more or which, directly or indirectly, is operated or controlled by LME), its and their past and present parents, divisions, subsidiaries, affiliates, corporations, shareholders, investors, officers, directors, employees, members, agents, insurers, attorneys, and representatives as well as its and their respective successors, assigns, predecessors, and all Ericsson benefit plans, plan fiduciaries, plan administrators, and plan service providers.

The "Effective Date" is the date on which the Court's Final Approval Order and Judgment become final. The Court's Final Approval Order and Judgment "become final" upon the later of 15 days after: (a) if there is no Objection to the Settlement, or if there is an Objection but it is withdrawn, and there is no possibility of appeal then, the date that the Final Approval Order and Judgment is entered by the Court; (b) if there is an Objection to the Settlement that is not withdrawn, but no appeal is commenced thereafter, then, sixty-five (65) calendar days following the date that the Final Approval Order and Judgment is entered by the Court; or (c) if there is an Objection to the Settlement that is not withdrawn, and any appeal, writ, or other appellate proceeding opposing the Settlement has been filed, then when any such appeal, writ, or other appellate proceeding opposing the validity of the Settlement has been resolved finally and conclusively with no right to pursue further remedies or relief.

9. What Are My Options?

You have several options under this Settlement. You may: (A) remain in the Class and receive payment under the Settlement; or (B) exclude yourself from the Class Settlement. If you choose option (A), you may also object to the Settlement. If you choose option (B) you will still be bound by the PAGA Settlement.

OPTION A. Remain in the Class. If you do not request to be excluded from the Settlement Class, you will remain a member of the Settlement Class, and, if the Court grants final approval of the settlement, you will receive an Individual Settlement Payment. If the Court grants final approval of the Settlement, the Administrator will mail your check to the address on file for you. It is your responsibility to ensure that your mailing address is correct after you receive this Notice. You may contact the claims administrator to update your address. You will have 90 days from the date on the check to cash the check. If you do not cash the check, the money will be paid to Legal Aid at Work, a 501(c)(3) organization that is dedicated to protecting the rights of low-income people throughout California.

OPTION B. If You Do Not Want To Be Bound By The Class Settlement. If you do not want to be part of the Settlement, you must mail or fax a Request for Exclusion to the Settlement Administrator at the information stated in Section 11 below. Your Request for Exclusion must: (1) contain your full name

and mailing address, and the last four digits of your social security number; (2), contain the case name number; (3) state words in substantially the same form and effect as “I wish to be excluded from the Settlement Class in the Gutierrez Action and understand that this means I will not receive the payment available to me from the Class Settlement”; and (4) be signed by you. To be timely, your Request for Exclusion must be postmarked or faxed on or before [REDACTED]. If you do not submit a valid and timely Request for Exclusion, your Request for Exclusion will be rejected, and you will be deemed a member of the Settlement Class.

PAGA Members will not have the opportunity to exclude themselves from the PAGA Settlement, and release of the PAGA claims set forth above. The PAGA Members are bound by the terms of the Released PAGA claims regardless of whether they cash their PAGA Settlement Payment.

Objecting to the Settlement: If you do not submit a valid and timely Request for Exclusion and you believe the proposed Settlement is not fair, reasonable or adequate in any way, you may object to it. Settlement Class Members who wish to object to the Class Settlement may do so by (i) mailing or faxing to the Settlement Administrator a written objection at the information stated in Section 11 below or (ii) filing an objection directly with the Court. The written objection must: (a) contain the Class Member’s full name and mailing address and the last four digits of his or her social security number; (b) contain the case name and number; (c) the approximate dates of employment of the Class Member; (d) state whether the Class Member intends to appear at the Final Approval Hearing; (e) be signed by the Class Member; (f) state the basis for the objection, including any legal briefs, papers or memoranda in support of the objection; and (g) be postmarked, faxed, or filed by [REDACTED]. You can also hire an attorney at your own expense to represent you in your objection. Class Members who do not submit a timely and valid written objection to the Class Settlement, or who fail to otherwise comply with the specific and technical requirements of submitting an objection, will be foreclosed from objection to the Settlement and seeking any adjudication or review of the Settlement, by appeal or otherwise.

PAGA Members will not have the opportunity to object to the PAGA Settlement Amount, and release of the PAGA claims set forth above.

You cannot object to the Class Settlement if you request exclusion from the Class Settlement.

10. What Is The Next Step In The Approval Of The Settlement?

The Court will hold a Final Approval Hearing regarding the fairness, reasonableness and adequacy of the proposed Settlement and the plan of distribution of the payments described herein, on [REDACTED] in Courtroom 9D on the 9th Floor of the United States District Court, Central District of California, located at 350 West 1st Street, Los Angeles, CA 90012. The Court may change the date and time of the Final Approval Hearing without further notice to the Class Members. Class Members are advised to check the Court’s Public Access to Court Electronic Records (PACER) site to confirm that the date has not been changed.

If final approval is granted by the Court, the Court will enter judgment pursuant to the Settlement in Section 8, above. You are not required to attend the Final Approval Hearing in order to receive payment under the Settlement.

11. How Can I Get Additional Information?

This Notice summarizes the Action and the basic terms of the Settlement. For more complete information, the pleadings and other records in this litigation may be examined during regular court hours at the United States District Court, Central District of California, located at 350 West 1st Street, Los Angeles, CA 90012. You can also access the Court docket in this case, for a fee, through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.cacd.uscourts.gov>.

If you have any additional questions about the settlement, you may also contact the Settlement Administrator:

Gutierrez v. Ericsson, Inc., Class Action Settlement

c/o [Administrator Name and Address]

Toll-Free Telephone Number: 1 (800) _____

Fax Number: _____

PLEASE DO NOT TELEPHONE THE COURT OR CLERK'S OFFICE FOR INFORMATION ABOUT THIS SETTLEMENT. PLEASE DO NOT CONTACT ERICSSON INC. OR ITS REPRESENTATIVES FOR INFORMATION ABOUT THIS SETTLEMENT.

EXHIBIT 2

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

JOSUE GUTIERREZ, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

ERICSSON INC., a corporation; and DOES
1 through 10, inclusive,

Defendants.

Case No.: 5:23-cv-01665-GW-SHK

**[PROPOSED] ORDER ON
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT AND
APPROVAL OF PAGA SETTLEMENT**

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WHEREAS, Plaintiff, individually and on behalf of all others similarly situated, all aggrieved employees, the general public, the State of California, and the Labor and Workforce Development Agency (“LWDA”), has applied to this Court for an order approving the settlement of this Action in accordance with Settlement Agreement entered into between the Parties.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

2. This Court finds that it has jurisdiction over the subject matter of this Action and over all Parties to the Action.

1 and considered the Settlement Agreement and having heard the Parties, hereby
2 preliminarily approves the Settlement Agreement in its entirety, subject to Final Approval.

3 4. The Court preliminarily approves the Settlement Agreement, including all the
4 terms and conditions set forth therein and the Gross Settlement Amount and allocation of
5 payments. The Court finds on a preliminary basis that the settlement memorialized in the
6 Settlement Agreement is fair, reasonable, and adequate, and falls within the range of
7 approval, under Fed. R. Civ. P. 23(e). The monetary consideration provided under the
8 Settlement constitutes fair value given in exchange for the release of the Released Claims
9 against the Released Parties. The Court finds that the consideration to be paid to members
10 of the Settlement Class is reasonable, and in the best interests of the Settlement Class
11 Members, considering, *inter alia*, the value of their claims compared to (a) the disputed
12 factual and legal circumstances of the Action, (b) affirmative defenses asserted in the
13 Action, and (c) the potential risks and likelihood of success of pursuing litigation on the
14 merits. The complex legal and factual posture of this case and the fact that the Settlement
15 is the result of arm's-length negotiations between the Parties, with the assistance of an
16 experienced mediator, all support this finding. The Court further finds that sufficient
17 investigation and research have been conducted such that counsel for Plaintiff at this time
18 is able to reasonably evaluate the Parties' positions; (d) settlement at this time will avoid
19 additional costs by all Parties, as well as avoid the delay and risks that would be presented
20 by the further prosecution of the Action;

21 5. For the same reasons, the Court finds that the Parties' proposed resolution of
22 Plaintiff's PAGA claim is fair, reasonable, and adequate and approves the PAGA
23 Settlement.

24 6. The PAGA Members encompassed by the PAGA Settlement include the
25 following individuals:

26 All persons who worked for Defendant as a non-exempt employee reporting to a
27 California work location from April 13, 2022 through the date the Court grants
28 Preliminary Approval.

1 7. The Court finds on a preliminary basis for settlement purposes only, that the
2 Class meets the requirements for certification under Fed. R. Civ. P. 23(a) and (b)(3) in
3 that: (a) the Class is so numerous that joinder is impractical; (b) there are questions of law
4 and fact that are common to the Class, and which predominate over any individual issues;
5 (c) Plaintiff's claims are typical of the claims of the Class; (d) Plaintiff and his counsel
6 will fairly and adequately protect the interests of the Class; and (e) a class action is
7 superior to other available methods for the fair and efficient adjudication of the
8 controversy.

9 8. Accordingly, solely for purposes of effectuating this Settlement, this Court
10 hereby conditionally certifies the following Class:

11 All persons who worked for Defendant as a non-exempt employee reporting to a
12 California work location at anytime between June 22, 2019 through the date the
13 Court grants Preliminary Approval of this Settlement.

14 9. The Court preliminarily appoints and designates, for settlement purposes,
15 Plaintiff as Representative for the Class.

16 10. The Court preliminarily appoints and designates, for settlement purposes,
17 Aubry Wand of the Wand Law Firm, P.C., as Counsel for the Class ("Class Counsel").

18 11. The Court appoints Simpluris as the Settlement Administrator.

19 12. Should, for whatever reason, the Settlement not become final, the fact that
20 the Parties were willing to stipulate to certification of the Class as part of the Settlement
21 shall have no bearing on, nor be admissible in connection with, the issue of whether a
22 class should be certified in a non-settlement context.

23 13. The Court hereby preliminarily approves the definition and disposition of the
24 Gross Settlement Amount and Net Settlement Amount and all related matters provided for
25 in the Settlement, subject to modification at the Final Approval Hearing.

26 14. The Court hereby preliminarily approves the Gross Settlement Amount of
27 \$1,350,000.00, Class Counsel attorneys' fees of up to 30% of the Gross Settlement
28 Amount, Class Counsel litigation expenses not to exceed \$25,000.00, a Class

Representative Service Award of up to \$7,500.00 to Plaintiff, payment to the LWDA in the amount of \$75,000.00, and costs of the Settlement Administrator not to exceed \$6,500.00, subject to Final Approval.

15. The Parties are ordered to carry out the Settlement according to the following implementation schedule:

Event	Date
Last day for Defendant to provide the Settlement Administrator with the Class and PAGA Information	Monday, 10/28/2024 (32 days after Preliminary Approval Date)
Last Day for Plaintiff to file Motion for Attorneys' Fees and Costs and Class Representative Service Award	Monday, 10/28/2024 (32 days after Preliminary Approval Date)
Last day for Settlement Administrator to mail Class Notice	Tuesday, 11/12/2024 (15 days after receipt of the Class and PAGA Information)
Last day for Class Members to submit a dispute re. Workweeks, Request for Exclusion, or written Objection	Thursday, 12/12/2024 (30 days after Class Notice)
Last Day for Plaintiff to file Motion for Final Approval	Thursday, 1/9/25 (28 days after Response Deadline)
Hearing on Final Approval and Motion for Attorneys' Fees and Costs and Class Representative Service Award	Thursday, 1/23/25 at 8:30 a.m. (14 days after Filing of Final Approval Papers). The Parties may appear at the hearing through counsel via Zoom.

16. The Court approves the form and content of the Class Notice (attached as Exhibit 1 to the Settlement Agreement). The Parties and the Settlement Administrator are authorized to make non-material edits to the Notices, such as inserting dates, estimated payment amounts, etc.

17. The Court finds that the method of giving notice to the Class (i.e., direct notice via U.S Mail) constitutes the best means practicable of providing notice under the circumstances. The Court further finds that the Class Notice, the method of giving notice to the Class, and the provisions and procedures to object to the Class Settlement and/or request to be excluded from the Class Settlement meet the requirements of due process

1 under the United States Constitution, and other applicable law. All costs of mailing of the
2 Class Notice, whether foreseen or not, shall be paid from the Class Settlement Amount,
3 including the cost of searching for Class Members' addresses as provided in the
4 Settlement, and all other reasonable costs of the Settlement Administrator up to \$6,500.00
5 as provided in the Settlement.

6 18. Should the Settlement not be granted Final Approval for any reason, the
7 Parties shall be returned to their respective positions as of the date and time immediately
8 prior to the execution of this Agreement and the Parties shall proceed in all respects as if
9 this Agreement had not been executed.

10 19. At the Final Approval Hearing, the Court will consider, *inter alia*, whether
11 the Settlement should be finally approved as fair, reasonable and adequate, whether a final
12 approval order and final judgment should be entered, and whether the payments provided
13 for under the Settlement, including the Class Counsel Award, Class Representative
14 Service Award, Settlement Administration Costs, and payments to the LWDA, Class
15 Members and PAGA Members, should be finally approved and granted. The Parties'
16 counsel may appear at the hearing via Zoom.

17 20. Pending the Final Approval Hearing, all proceedings in this Action, other
18 than proceedings necessary to implement the Settlement and this Order, are stayed.

19
20 **IT IS SO ORDERED.**

21
22 DATED: _____

23 _____
24 Honorable George H. Wu
25 United States District Judge
26
27
28

EXHIBIT 3



100 Oceangate, Ste. 1200
Long Beach, CA 90802
310-590-4503
awand@wandlawfirm.com | www.wandlawfirm.com

September 12, 2024

Filed Online

Labor and Workforce Development Agency /
Department of Industrial Relations
Private Attorneys General Act (PAGA) - Filing
New PAGA Claim Notice

**Via Certified U.S. Mail – Return
Receipt Requested**

Ericsson Inc.,
6300 Legacy Dr.
Plano, TX 75024

Re: Supplemental Notice Pursuant to California Labor Code § 2699.3

To Whom It May Concern:

On April 13, 2023, my office provided written notice on behalf of Josue Gutierrez (“Mr. Gutierrez”), a non-exempt employee of Ericsson Inc., and any related entities (collectively, “Ericsson”), of alleged violations of California wage-and-hour laws, pursuant to California Labor Code § 2699.3. **My office hereby provides supplemental notice on behalf of Mr. Gutierrez, pursuant to Cal. Lab. Code § 2699.3, pursuant to a Settlement Agreement reached between the Parties, filed herewith, and submitted to the federal district court in the Central District of California for approval.** Should the Court not approve the Settlement, this Supplement will be null and void, of no force and effect, and shall be withdrawn by Mr. Gutierrez.

Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code § 2698, *et seq.*, this letter sets forth the specific provisions of the California Labor Code and Industrial Welfare Commission (“IWC”) Wage Order No. 4-2001 and any other applicable wage order,¹ which Mr. Gutierrez alleges that Ericsson has violated, including the facts and theories to support the alleged violations.

¹ Hereinafter, when reference is made to IWC Wage Order 4, it shall include reference to the applicable sections of any other wage orders that may be applicable, including Wage Order 16.

PRELIMINARY STATEMENT

Among other things, Mr. Gutierrez alleges that Ericsson is liable for the following as to himself and other aggrieved employees: failure to provide meal, rest, and recovery periods, in violation of Cal. Lab. Code §§ 226.7, 510, 512, 1194, 1197 and Wage Order No. 4-2001, §§ 11 and 12; failure to pay one additional hour of compensation at the employee's correct regular rate of pay for each workday that a meal, rest, or recovery period is not provided, in violation of Cal. Lab. Code § 226.7 and Wage Order No. 4-2001, §§ 11 and 12; failure to pay overtime wages, and failure to properly calculate overtime wages, in violation of Cal. Lab. Code §§ 510, 1194, 1198, and Wage Order No. 4-2001, § 3; failure to pay minimum wages due, in violation of Cal. Lab. Code §§ 1194, 1197, and Wage Order No. 4-2001, § 4; failure to timely pay all wages due, in violation of Cal. Lab. Code §§ 204, 210 and 558; willful failure to pay discharged or quitting employees all wages due, in violation of Cal. Lab. Code §§ 201-203 and 227.3; failure to provide accurate itemized wage statements, in violation of Cal. Lab. Code §§ 226, 1174, and 1174.5; unlawful deduction or withholding of wages, in violation of Cal. Lab. Code § 221; failure to maintain required records, in violation of Cal. Lab. Code §§ 1174, 1174.5, and Wage Order No. 4-2001, § 7; failure to indemnify employees for business expenditures and/or losses, in violation of Cal. Lab. Code § 2802; and failure to provide notice of required information at the time of hiring, in violation of Cal. Lab. Code § 2810.5.

FACTS AND THEORIES

Mr. Gutierrez, on behalf of himself and other aggrieved employees of Ericsson in the state of California during the one (1) year preceding the date of this notice letter, provides notice of the following facts and theories:

I. Meal Period Violations

Pursuant to Cal. Lab. Code § 226.7, 512 and IWC Wage Order No. 4-2001, § 11, no employer shall employ any non-exempt employee for a work period of more than five (5) hours without a meal period of not less than thirty (30) minutes and a second thirty (30) minute meal period if working more than ten (10) hours. Employers in California are required to pay one (1) hour of compensation for each missed or non-compliant meal period to their non-exempt employees. Additionally, if a non-exempt-employee is not relieved of all duty during a meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal period is permitted only when (1) the nature of the work prevents an employee from being relieved of all duty and (2) the parties have a written agreement agreeing to on duty meal periods.

Neither Mr. Gutierrez nor any other aggrieved employees agreed to work on duty meal periods, needed to work on duty meal periods, or were paid by Ericsson to work on duty meal periods. Moreover, Ericsson regularly did not allow non-exempt employees, including Mr.

Gutierrez, to take a full thirty-minute meal period, and meal periods were regularly short (less than thirty minutes), late (taken after 5 hours and/or ten hours), and interrupted (work was performed during the meal period). More specifically, Ericsson failed to implement adequate policies or procedures to provide meal periods to its non-exempt employees. Among other things, Ericsson overworked aggrieved employees such that they missed or otherwise unable to take compliant meal periods. Additionally, Ericsson did not adequately notify aggrieved employees of their rights to take meal periods or properly schedule meal periods.

Ericsson consistently denied Mr. Gutierrez and other aggrieved employees compliant meal periods by requiring them to complete so much work within their shifts that they would be forced to skip their meal periods, to take them after working longer than five (5) and/or ten (10) hours, to perform work during their meal periods, or return to work after taking less than a thirty (30) minute meal period.

Ericsson further violated Cal. Lab. Code § 226.7 and IWC Wage Order No. 4-2001 by willfully failing to compensate Mr. Gutierrez and other aggrieved employees who were not provided with a meal period in compliance with California law with one (1) additional hour of compensation at their regular rates of pay for each workday that a compliant meal period was not provided. Ericsson further violated Cal. Lab. Code § 226.7, 510, 1194, 1197, and IWC Wage Order No. 4-2001 by failing to compensate Mr. Gutierrez and other aggrieved employees for all hours worked during their meal periods.

II. Rest Period Violations

Ericsson failed to authorize and permit Mr. Gutierrez and other aggrieved employees to take rest periods as required under Cal. Lab. Code §§ 226.7 and 512, and IWC Wage Order No. 4-2001, § 12. Employers in California are required to provide a ten (10) minute rest period for every four hours worked or major action thereof. Further, employers are required to pay one (1) hour of compensation for each day in which a legally-compliant rest period is not provided.

As with meal periods, Ericsson's policies and practices caused Mr. Gutierrez and other aggrieved employees to miss or otherwise take non-compliant rest periods by, among other things, giving them unreasonable amounts of work that had to be completed within their shift such that rest periods simply could not be taken. This was the result of systematic understaffing and unrealistic work expectations and requirements. Further, as set forth above, Ericsson implemented skeletal staffing policies, which resulted in the inability of Mr. Gutierrez and other aggrieved employees to take compliant rest periods. In addition, Ericsson did not adequately notify aggrieved employees of their rights to take rest periods, systematically denied them the opportunity to take rest periods, and did not properly schedule rest periods.

Ericsson further violated Cal. Lab. Code § 226.7 and IWC Wage Order No. 4-2001, § 12 by failing to pay Mr. Gutierrez and other aggrieved employees one (1) additional hour of compensation at their regular rates of pay for each workday that a legally-compliant rest period was not provided.

III. Recovery Period Violations

Ericsson failed to provide recovery periods to Mr. Gutierrez and other aggrieved employees as required under Cal. Lab. Code § 226.7 and Cal. Code of Reg., Title 8, § 3395. Employers in California are required to provide recovery or “cooldown” periods to non-exempt employees like Mr. Gutierrez and his coworkers, who are working outdoors, in order to prevent heat illness. Further, employers in California are required to pay one (1) additional hour of compensation at the non-exempt employee’s regular rate of pay for each workday in which the recovery period is not provided.

Mr. Gutierrez and other aggrieved employees worked outdoors, frequently performed over the course of several hours in heat exceeding 85 degrees Fahrenheit. Despite these work conditions, Ericsson failed to implement any policy or practice of providing recovery periods to non-exempt employees. Mr. Gutierrez and other aggrieved employees had no knowledge they were entitled to take recovery periods and thus they never took them. Ericsson has similarly failed to make any efforts to comply with heat illness prevention regulations by providing proper places of shade for recovery periods or by supplying sufficient drinking water. In addition, Ericsson did not adequately notify aggrieved employees of their rights to take recovery periods, systematically denied them the opportunity to take recovery periods, and did not properly schedule recovery periods.

Ericsson further violated Cal. Lab. Code § 226.7 by failing to pay Mr. Gutierrez and other aggrieved employees one (1) additional hour of compensation at their regular rates of pay for each workday that a recovery period was not provided.

IV. Failure to Pay Overtime Wages

Pursuant to Cal. Lab. Code §§ 510, 1194 and IWC Wage Order No. 4-2001, § 3, employers in California are required to compensate non-exempt employees for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive work day, with double time for all hours worked in excess of eight (8) hours on the seventh day of any workweek, or after twelve (12) hours in any workday.

Mr. Gutierrez and other aggrieved employees are entitled to the protections of Cal. Lab. Code §§ 510, 1194 and IWC Wage Order No. 4-2001. Ericsson failed to compensate Mr. Gutierrez and other aggrieved employees for all overtime hours worked by failing to pay overtime at one and one-

half (1 ½) or double the regular rate of pay, by among other things, failing to properly calculate the regular rate of pay by including required forms of remuneration, including non-discretionary bonuses,² incentive wages, shift differential pay and/or other forms of remuneration, and “imputed income” for the purposes of calculating overtime pay owed and due; requiring, permitting or suffering Mr. Gutierrez and other aggrieved employees to work off-the-clock;³ requiring, suffering, or permitting Mr. Gutierrez and other aggrieved employees to work through meal, rest, and recovery periods but not compensating them for this time, and failing to include this time in all hours worked; maintaining inaccurate records of time worked; unlawfully rounding the time worked by Mr. Gutierrez and other aggrieved employees down and in favor of Ericsson; and other methods to be discovered.

In sum, Ericsson has refused to perform its obligations to compensate Mr. Gutierrez and other aggrieved employees for all overtime wages earned in violation of Cal. Lab. Code §§ 510, 1194, 1198, and IWC Wage Order No. 4-2001, § 3.

V. Failure to Pay Minimum Wages

Pursuant to Cal. Lab. Code §§ 1194, 1197, and IWC Wage Order No. 4-2001, § 4, payment to a non-exempt employee of less than the legally mandated minimum wage for all hours worked in a payroll period is unlawful.

Ericsson failed to pay aggrieved employees minimum wages for all hours worked by, *inter alia*, requiring, permitting or suffering aggrieved employees to work off-the-clock (including but not limited to systematically clocking them out but requiring them to continue working); requiring, suffering, or permitting aggrieved employees to work through meal, rest, and recovery periods, but not compensating them for this time, and failing to include this time in all hours worked; maintaining inaccurate records of time worked; and other methods to be discovered.

VI. Failure to Timely Pay All Wages Earned

Pursuant to Cal. Lab. Code § 204, employers in California must pay employees at least twice a month for all wages earned during the preceding pay period. Cal. Lab. Code § 204 provides that labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for

² These bonuses include tower crew bonuses, special recognition bonuses, and other non-discretionary bonuses. Ericsson also failed to include other forms of remuneration in the calculation of the regular rate of pay, including gift cards and other things of value like televisions, which were awarded to employees through a points-based employee incentive program called Star Achievers.

³ Off-the-clock work included, *inter alia*, having to be “on-call,” performing work during meal, rest, and recovery periods, taking work calls during the evenings outside of work shifts, and commuting to and from job sites.

between the 4th and the 26th day of the month during which the labor was performed, and labor performed between the 4th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. Employers using an alternate payday schedule must pay wages within seven calendar days of the end of the payroll period within which the wages were earned.

Ericsson failed to pay Mr. Gutierrez and aggrieved employees on their regularly scheduled payday for all labor performed during the preceding pay period by, among other things, failing to pay Mr. Gutierrez and other aggrieved employees for work they performed off-the-clock, failing to pay them proper minimum wages and overtime wages, inaccurately recording time in which Mr. Gutierrez and other aggrieved employees worked, requiring them to work through their meal, rest, and recovery periods without proper compensation and/or remuneration, unlawfully rounding the time worked by Mr. Gutierrez and other aggrieved employees down and in favor of Ericsson, and other methods to be discovered.

Ericsson knew that it was required to pay Mr. Gutierrez and other aggrieved employees these wages owed and due no later than the payday for the next regular payroll period following the payroll period in which the wages were earned, yet it willfully failed to do so.

VII. Failure to Pay All Wages Due Upon Discharge or Termination

Pursuant to Cal. Lab. Code § 201, 202, and 203, employers in California are required to pay all earned and unpaid wages to a non-employee who is discharged. Cal. Lab. Code § 201 mandates that if an employer discharges a non-exempt employee, that employee's wages accrued and unpaid at the time of discharge are due and payable immediately. Pursuant to Cal. Lab. Code § 202, an employer is required to pay all accrued wages due to a non-exempt employee no later than 72 hours after the employee quits his or her employment, unless the employee provides 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Cal. Lab. Code § 203 provides that if an employer willfully fails to pay, in accordance with Cal. Lab. Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the non-exempt employee at the same rate for up to thirty (30) work days. Because Ericsson has, *inter alia*, required Mr. Gutierrez and other aggrieved employees to work off-the-clock without compensation, and has required them to work through their meal, rest, and recovery periods without proper compensation and/or remuneration, and failed to pay them overtime wages, Ericsson has willfully failed and continues to fail to pay wages due to Mr. Gutierrez and other aggrieved employees in accordance with Cal. Lab. Code §§ 201 and 202.

VIII. Unlawful Deduction or Withholding of Wages

Under Cal. Lab. Code § 221, it is unlawful for any employer to collect or receive from an employee any part of wages except under limited circumstances, such as when required or empowered to do so by state or federal law. Here, Ericsson deducted wages from Mr. Gutierrez and aggrieved employees to fund its Star Achievers program without providing them proper notice, or obtaining their express consent for such such deductions, in violation of Cal. Lab. Code § 221.

IX. Failure to Maintain Required Records

Ericsson has failed to maintain records as required under Cal. Lab. Code §§ 226, 1174, and IWC Wage Order No. 4-2001, § 7, including but not limited to, the following records: total daily hours worked by each employee; applicable rates of pay; all deductions; meal periods; time records showing when each employee begins and ends each work period; and accurate itemized statements that reflect all compensation and remuneration owed and due to them. This includes allegations of non-compliant time-keeping practices, payroll records, or other recordkeeping or maintenance thereof.

X. Failure to Furnish Accurate Itemized Wage Statements

Ericsson fails to provide Mr. Gutierrez and other aggrieved employees with timely, accurate, and itemized wage statements in writing showing each employee's gross wages earned, total hours worked, all deductions made, net wages earned, the name and address of the legal entity or entities employing Mr. Gutierrez and other aggrieved employees, the inclusive dates of the period for which the employee is paid, and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate, in violation of Cal. Lab. Code § 226 and IWC Wage Order No. 4-2001, § 7. Ericsson has failed to provide Mr. Gutierrez and other aggrieved employees with proper meal, rest, and recovery periods but failed to include in their wage statements one (1) additional hour of compensation at their regular rates of pay for each missed or non-compliant meal, rest, or recovery period. *See Naranjo v. Spectrum Sec. Servs., Inc.* (2022) 13 Cal.5th 93, 972 ("failure to report premium pay for missed breaks can support monetary liability under section 226 for failure to supply an accurate itemized statement reflecting an employee's gross wages earned, net wages earned, and credited hours worked."). In addition, Ericsson does not properly pay Mr. Gutierrez and other aggrieved employees overtime wages owed and due to them, resulting in accurate wage statements. Ericsson also suffers and permits Mr. Gutierrez and other aggrieved employees to work off-the-clock without compensation, yet such compensation and/or remuneration is not listed on the wage statements, nor are all deductions from wages listed.

XI. Failure to Indemnify Employees for Necessary Employment Expenditures

California Labor Code § 2802(a) requires employers in California to indemnify non-exempt

employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer. Ericsson fails to indemnify Mr. Gutierrez and other aggrieved employees for all business expenses and/or losses incurred in direct consequence of the discharge of their duties while working under its direction in violation of Cal. Lab. Code § 2802 including but not limited to, the costs of cellular phone usage. For example, Mr. Gutierrez and other aggrieved employees would regularly use their personal cellular phones for work. In addition, they would at times drive their own personal vehicles for work (e.g., dropping off equipment at different sites) without being reimbursed for gas or mileage.

XII. Failure to Comply with California Labor Code § 2810.5

California Labor Code § 2810.5 requires California employers to provide non-exempt employees with notice of their rate(s) of pay, designated pay day, the employer's intent to claim allowances (meal or lodging allowances) as part of the minimum wage, and the basis of wage payment (whether paying by hour, shift, day, week, piece, etc.), including any applicable rates for overtime. The law requires that the notice contain the employer's "doing business as" names, and that it be provided at the time of hiring and within 7 days of a change if the change is not listed on the employee's pay stub for the following pay period. The notice must be provided in the language the employer normally uses to communicate employment-related information to the employee, through translated notices provided by the Department of Labor. Ericsson has violated California Labor Code § 2810.5 by simply not providing Mr. Gutierrez and other aggrieved employees with a form that contains the information required under this section of the California Labor Code at any during their employment.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please provide notice via certified mail to:

The Wand Law Firm, P.C.
100 Oceangate, Suite 1200
Long Beach, CA 90802
Telephone: (310) 590-4503
Email: awand@wandlawfirm.com

Sincerely,
THE WAND LAW FIRM, P.C.

Aubry Wand, Esq.