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ALBERT CARR, individually and on behalf
of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

ALBERT CARR, individually and on behalf of
all other similarly situated employees,

Plaintiff,

vs.

WAVEDIVISION HOLDINGS, LLC, a
Delaware Limited Liability Company; OH
WDH HOLDCO, LLC, a Delaware Limited
Liability Company; ASTOUND
BROADBAND, LLC, A Washington Limited
Liability Company; and DOES 2 to 100,
inclusive,

Defendants.

Case No. 23CV005516

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

Filed: July 26, 2023
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Trial Date: None Set

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Attorneys for Defendants
WAVEDIVISION HOLDINGS, LLC,
OH WDH HOLDCO, LLC, and
ASTOUND BROADBAND, LLC

1 This Joint Stipulation Regarding Settlement of Class and PAGA Action and Release of Claims
2 (“Joint Stipulation of Settlement”) is made and entered into between Plaintiff Albert Carr (“Plaintiff”),
3 on behalf of himself, the Labor and Workforce Development Agency, Class Members, and PAGA
4 Members, and Defendants WaveDivision Holdings, LLC, OH WDH HOLDCO, LLC, and Astound
5 Broadband, LLC (collectively, “Defendants”). This Joint Stipulation of Settlement is subject to the terms
6 and conditions set forth below and upon approval of the Court. This Joint Stipulation of Settlement shall
7 be binding on Plaintiff and those persons he seeks to represent and on Defendants, their respective past,
8 present and future direct and indirect subsidiaries and affiliates of any of the foregoing; the past, present,
9 and future, shareholders, directors, officers, agents, employees, clients, attorneys, insurers, predecessors,
10 successors, and assigns of any of the foregoing, and any individual or entity which could be jointly liable
11 with any of the foregoing.

12 THE PARTIES HEREBY STIPULATE AND AGREE as follows:

13 **1. DEFINITIONS**

14 The following terms, when used in this Joint Stipulation of Settlement, have the following
15 meanings:

16 1.1 “Action” means and includes the above-referenced lawsuit entitled, *Carr v. WaveDivision*
17 *Holdings, LLC, et al.*, Sacramento County Superior Court, Case No. 23CV005516, initiated on July 26,
18 2023, and the separately filed PAGA enforcement action entitled, *Carr v. Wave Division Holdings, LLC,*
19 *et al.*, Sacramento County Superior Court, Case No. 23CV010770, filed on October 30, 2023.

20 1.2 “Agreement” or “Settlement” or “Settlement Agreement” means this Joint Stipulation
21 Regarding Class Action and PAGA Settlement and Release.

22 1.3 “Class Counsel” means Galen T. Shimoda, Esq., Justin P. Rodriguez, Esq., and Renald
23 Konini, Esq. of Shimoda & Rodriguez Law, PC.

24 1.4 “Class Member(s)” or “Settlement Class” means all persons who worked any hours for
25 Defendants in California during any pay period as a non-exempt employee from July 25, 2019 through
26 the earlier of (1) May 20, 2024; or (2) the Preliminary Approval Date. The estimated number of Class
27 Members is 434 individuals. The Settlement Class will not include any person who previously settled or
28 released any of the claims covered and released by this Settlement, or any person who previously was paid

1 or received awards through a civil or administrative proceeding involving the claims covered and released
2 by this Settlement.

3 1.5 “Class Period” means July 25, 2019 through the earlier of (1) May 20, 2024; or (2) the
4 Preliminary Approval Date.

5 1.6 “Class Representative” means Plaintiff Albert Carr.

6 1.7 “Class Representative’s Released Claims” means all claims arising from, could have been
7 asserted, or related in any way to the Class Representative’s employment with Defendants, under federal,
8 state, or local laws, and/or ordinances, or tort or contract theories, whether known or unknown, and
9 whether anticipated or unanticipated, including without limitation statutory, constitutional, contractual or
10 common law claims for lost wages, unpaid wages, emotional distress, punitive damages, special damages,
11 damages, unpaid costs, penalties, liquidated damages, interest, attorneys’ fees, litigation costs, restitution,
12 equitable relief or other similar relief or claims. The Class Representative’s Released Claims exclude
13 claims for workers’ compensation, unemployment insurance benefits, or other claims that cannot be
14 released as a matter of law. This release includes a waiver of the protections found in California Civil
15 Code section 1542.

16 1.8 “Complaint” means the operative First Amended Complaint on file in the Action with the
17 Court.

18 1.9 “Court” means the Sacramento County Superior Court.

19 1.10 “Defendants” collectively mean and refer to WaveDivision Holdings, LLC, OH WDH
20 HOLDCO, LLC, and Astound Broadband, LLC.

21 1.11 “Defendants’ Counsel” means Shannon B. Nakabayashi, Esq. and Samuel J. Maselli, Esq.
22 of Jackson Lewis P.C.

23 1.12 “Enhancement Payment” means the amount approved by the Court to be paid to the Class
24 Representative in recognition of the time and effort expended on behalf of Class Members for the benefit
25 of Class Members, which is in addition to any Individual Settlement Award and Individual PAGA Share
26 paid to the Class Representative as a Participating Class Member. By agreeing to this Stipulation,
27 Defendant is agreeing only that it is up to the Court to determine if the amount of such Enhancement
28 Payment is appropriate.

1 1.13 “Effective Date” means the Final Approval Date unless there is a timely objection lodged
2 that has not later been withdrawn, in which case the Effective Date will be either (a) the 60th calendar day
3 after a signed order approving this settlement has been filed provided no appellate proceeding having been
4 filed; or (b) the seventh (7th) calendar day after any appellate proceeding opposing the settlement has been
5 finally dismissed with no material change to the terms of this settlement and there is no right to pursue
6 further remedies or relief, whichever is later.

7 1.14 “Final Approval Date” means the date a signed Order of this Court granting final approval
8 of this Agreement is filed with the Court.

9 1.15 “Individual PAGA Share” means each PAGA Member’s calculated individual share of the
10 25% PAGA Penalty Amount as further described and defined in Sections 1.25, 1.26, 1.31, 5.5, and 5.8.

11 1.16 “Individual Settlement Award” means each Class Member’s calculated individual share of
12 the Net Settlement Amount as further described and defined in Sections 1.19, 1.20, 1.31, and 5.8.

13 1.17 “LWDA” means the California Labor and Workforce Development Agency.

14 1.18 “LWDA Payment” means the seventy-five percent (75%) portion (i.e., \$24,375.00) of the
15 PAGA Penalty Amount payable to the LWDA.

16 1.19 “Maximum Settlement Amount” means is the sum of Six Hundred and Fifty Thousand
17 Dollars and Zero Cents (\$650,000.00). Under no condition will Defendants’ aggregate liability exceed
18 the Maximum Settlement Amount, with the exception that Defendants shall pay the employer’s share of
19 the payroll taxes associated with the wage portion of the Individual Settlement Awards in addition to and
20 on top of the Maximum Settlement Amount. At no time shall Defendants have the obligation to segregate
21 the funds comprising the Maximum Settlement Amount, and Defendants shall retain exclusive authority
22 over, and the responsibility for, those funds. The Parties agree the entire Maximum Settlement Amount
23 will be paid out, without reversion to Defendants.

24 1.20 “Net Settlement Amount” is the portion of the Maximum Settlement Amount available for
25 distribution to Class Members, as described in this Agreement, after deduction of Class Counsel’s
26 attorneys’ fees and litigation costs, Settlement Administrator Costs, the PAGA Penalty Amount, and
27 Enhancement Payment to the Class Representative.

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1 1.21 “Notice of Settlement” means the document substantially in the form attached hereto as

2 **Exhibit A.**

3 1.22 “Notice Period” means sixty (60) calendar days from the initial mailing of the Notice of
4 Settlement to Class Members and PAGA Members.

5 1.23 “PAGA” means the Private Attorneys General Act of 2004, California Labor Code sections
6 2698 *et seq.*

7 1.24 “PAGA Period” means July 25, 2022 through the earlier of either (1) May 20, 2024; or (2)
8 the Preliminary Approval Date.

9 1.25 “PAGA Member(s)” means all individuals who worked any hours for Defendants in
10 California during any pay period as a non-exempt employee from July 25, 2022 through the earlier of
11 either (1) May 20, 2024; or (2) the Preliminary Approval Date. The estimated number of PAGA Members
12 is 268. PAGA Members will be paid their PAGA Share and release the Released PAGA Claims regardless
13 of whether they submit a timely and valid request to opt from the class portion of the Settlement. PAGA
14 Members are not eligible to exclude themselves from or to opt out of the Released PAGA Claims.

15 1.26 “PAGA Penalty Amount” means the amount allocated from the Maximum Settlement
16 Amount (\$32,500.00) towards resolving claims under the Private Attorneys General Act of 2004,
17 California Labor Code sections 2698 *et seq.*

18 1.27 “Parties” mean Plaintiff and Defendants.

19 1.28 “Participating Class Member(s)” means any and all Class Members who have not made
20 any timely and valid request to opt-out of the Agreement.

21 1.29 “Preliminary Approval Date” means the date a signed order granting preliminary approval
22 of this Agreement is filed with the Court.

23 1.30 “QSF” means a Qualified Settlement Fund set up by the Settlement Administrator for the
24 benefit of the Participating Class Members and/or PAGA Members and from which the payments under
25 this Agreement shall be made. Any amounts Defendants have agreed to pay under this Agreement shall
26 remain the property of Defendants until the payments required under the Agreement are made.

27 1.31 “Qualifying Workweeks” are weeks worked by Class Members and/or PAGA Members
28 during the Class Period and/or PAGA Period, respectively, in California. Defendants will calculate the

1 number of workweeks worked in California for each Class Member and PAGA Member during the Class
2 Period and PAGA Period, respectively, based on timekeeping/clocking data and other relevant
3 information. Defendants' workweek data will be presumed to be correct, unless a particular Class Member
4 and/or PAGA Member proves otherwise to the Settlement Administrator by credible written evidence.
5 Defendants will provide sufficient information, including timekeeping/clocking data and other relevant
6 information, to the Settlement Administrator who will calculate and determine the amount to be paid to
7 each Class Member based on such Class Member data and information. All workweek disputes will be
8 resolved and decided by the Settlement Administrator, and the Settlement Administrator's decision on all
9 workweek disputes will be final and non-appealable, subject to Court approval. The amount to be paid per
10 workweek to eligible Class Members will be calculated by the Settlement Administrator by dividing the
11 Net Settlement Amount by the total number of workweeks for all Class Members who do not validly opt-
12 out of the Settlement as any person who validly opts-out by return of a sufficient request to opt-out of the
13 Settlement is not a Class Member. The amount to be paid per workweek to PAGA Members will be
14 calculated by the Settlement Administrator by dividing the portion of the PAGA Penalty Amount twenty-
15 five percent (25%) payable to PAGA Members pursuant to statute by the aggregate number of weeks
16 worked by PAGA Members during the PAGA Period.

17 1.32 "Released Class Claims" means all claims under state, federal and local law that were, or
18 could have been, asserted based on the facts and allegations made in the Action, and any amendments
19 thereto, as to the Class Members, including without limitation, California Labor Code sections 201, 202,
20 203, 226, 226.7, 510, 512, 1194, and 1194.2, California Industrial Commission Wage Orders, California
21 Code of Regulations, Title 8, section 11040 *et seq.*, Business and Professions Code sections 17200 *et seq.*,
22 and California Code of Civil Procedure section 1021.5 through and for the Class Period. Expressly
23 excluded from the release are claims for retaliation, discrimination, unemployment insurance, disability,
24 workers compensation, and claims outside the Released Class Claims. This release also covers and
25 includes all Class Members who do not opt-out.

26 1.33 "Released PAGA Claims" means all claims arising during the PAGA Period seeking civil
27 penalties under PAGA, that Plaintiff, as proxy for the State of California and/or the LWDA, to the
28 maximum extent permitted by law, and as a private attorney general acting on behalf of himself and the

PAGA Members, asserted or could reasonably have asserted based on the facts alleged in Plaintiff's notice letter to the LWDA, including but not limited to all claims arising under California Labor Code sections 201, 202, 203, 221, 223, 225, 226, 226.3, 226.7, 246, 246.5, 248.5, 256, 510, 512, 558, 558.1, 1174, 1194, 1197.1, and 2698 *et seq.*, the California Industrial Welfare Commission Wage Orders, and California Code of Regulations, Title 8, section 11040 *et seq.* based on the facts alleged in the LWDA letter and through and for the PAGA Period. PAGA Members cannot opt out of this waiver of claims.

1.34 "Released Parties" as referenced herein and as released in the Settlement shall collectively mean: (i) Defendants; (ii) each of Defendants' respective past, present and future parents, subsidiaries, partners, affiliates, brands and any corporation, limited liability company, or partnership; (iii) the past, present and future board members, directors, officers, agents, employees, attorneys, insurers, members, partners, managers, contractors, agents, consultants, representatives, administrators, fiduciaries, benefit plans, transferees, predecessors, successors, and assigns of any of the foregoing; and (iv) any individual or entity which could be jointly liable with any of the foregoing.

1.35 "Settlement Administrator" means and refers to ILYM Group, Inc., the third-party entity that will administer the Agreement as outlined in Sections 4 and 7 herein, or any other third-party administrator agreed to by the Parties and approved by the Court for the purposes of administering this Agreement. The Parties each represent that they do not have any financial interest in the Settlement Administrator.

1.36 "Settlement Administrator Costs" means the fees and expenses reasonably incurred by the Settlement Administrator as a result of the procedures and processes expressly required by this Agreement, and shall include all costs of administering the Agreement, including, but not limited to, all tax document preparation, custodial fees, and accounting fees incurred by the Settlement Administrator; all costs and fees associated with preparing, issuing and mailing any and all notices and other correspondence to Class Members and/or PAGA Members; all costs and fees associated with communicating with Class Members and/or PAGA Members, Class Counsel, and Defendants' Counsel; all costs and fees associated with computing, processing, reviewing, and paying the Individual Settlement Awards, and resolving disputes; all costs and fees associated with calculating tax withholdings and payroll taxes, if any, making related payment to federal and state tax authorities, if any, and issuing tax forms relating to payments made under

the Agreement; all costs and fees associated with preparing any tax returns and any other filings required by any governmental taxing authority or agency; all costs and fees associated with preparing any other notices, reports, or filings to be prepared in the course of administering Individual Settlement Awards; and any other costs and fees incurred and/or charged by the Settlement Administrator in connection with the execution of its duties under this Agreement.

2. DESCRIPTION OF THE LITIGATION

2.1 On or around July 25, 2023, Plaintiff sent notice to the LWDA to exhaust administrative remedies under PAGA for (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof; (4) Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof, (5) Failure to Provide Accurate Wage Statements; (6) Failure to Pay Final Wages; (7) Violation of Labor Code §§ 558 and 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order); (8) Failure to Pay Contract Wages and Unlawful Deduction; (9) Failure to Maintain Accurate Records; and (10) Failure to Provide Paid Sick Leave. The LWDA did not respond to the notice within the statutorily required time frame and, as such, Plaintiff became authorized to act as a Private Attorney General on all alleged PAGA claims.

2.2 On or around July 26, 2023, Plaintiff filed a Class Action Complaint in Sacramento County Superior Court on behalf of himself and Class Members alleging claims for (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof; (4) Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof; (5) Failure to Provide Accurate Wage Statements, (6) Failure to Pay Final Wages; and (7) Unfair Competition. On October 30, 2023, Plaintiff filed a separate complaint asserting a single cause of action under the PAGA in Sacramento County Superior Court on behalf of himself and PAGA Members based on the violations alleged in the July 25, 2023 notice to the LWDA.

2.3 Through informal discovery, Defendants and Defendants' Counsel provided Class Counsel with copies of all applicable versions of its policies and procedures, employee handbooks, information and metrics relating to Class Members, including but not limited to Class Members' workweeks, dates of employment, total number of Class Members, their rates of pay, and pay periods as

1 well as timecard data and payroll reports for a randomly selected twenty percent (20%) sample of Class
2 Members.

3 2.4 On March 18, 2024, after receipt of the informal discovery and data, the Parties participated
4 in a lengthy mediation with private mediator Brandon McKelvey, Esq. At the conclusion of the mediation,
5 the Parties were able to come to a resolution. At all times, the Parties' settlement negotiations have been
6 non-collusive, adversarial, and at arm's length.

7 2.5 Discussions between Plaintiff and Class Counsel, between counsel for the Parties,
8 document productions, extensive legal analysis, the provision of information by Defendants to Plaintiff
9 and the detailed analysis of the records, have permitted each side to assess the relative merits of the claims
10 and the defenses to those claims.

11 2.6 In the Action, Plaintiff contends that Defendants violated California law by 1) requiring
12 class members to work off-the-clock due to understaffing; 2) failing to incorporate the value of non-
13 discretionary bonuses and on call incentive pay into class members' regular rates of pay for the purpose
14 of calculating overtime premiums, meal period premiums, rest period premiums, and paid sick time; 3)
15 failing to provide all meal periods, including second meal periods; 4) failing to provide all rest periods,
16 including third rest periods; and 5) unlawfully deducting wages. Defendants have denied each of
17 Plaintiff's claims, and Defendants have denied that this Action is appropriate for class certification for
18 anything other than settlement purposes. The agreed upon Maximum Settlement Amount was reached
19 after evaluating the Parties' theories of potential exposure for the underlying claims and the class data
20 supporting these claims. The Parties, with the assistance of the mediator, also assessed appropriate
21 discounts to the potential liability based on Defendants' factual and legal contentions and defenses.

22 2.7 The Parties agree that the above-described investigation and evaluation, as well as
23 discovery and the information exchanged to date, are more than sufficient to assess the merits of the
24 respective Parties' positions and to compromise the issues on a fair and equitable basis. Plaintiff, Class
25 Counsel, Defendants, and Defendants' Counsel have concluded that it is desirable that the Actions be
26 settled in a manner and upon such terms and conditions set forth herein in order to avoid further expense,
27 inconvenience and distraction of further legal proceedings, and the risk of an adverse outcome each of the
28 Parties potentially face in the Action. Therefore, the Parties desire to resolve the claims in the Action.

Plaintiff, Class Counsel, Defendants, and Defendants' Counsel are of the opinion that the Agreement is fair, reasonable, and adequate in light of all known facts and circumstances.

2.8 Defendants deny any liability or wrongdoing of any kind whatsoever associated with the claims alleged in the Complaint, and further denies that, for any purpose other than settling this Action, this Action is appropriate for class or representative treatment. Defendants contend, among other things, that it has complied with all applicable state, federal and local laws affecting Plaintiff and the Settlement Class.

2.9 The Parties agree to cooperate and take all steps necessary and appropriate to consummate this Settlement and for entry of judgment in accordance with this Joint Stipulation of Settlement.

3. THE CONDITIONAL NATURE OF THIS JOINT STIPULATION OF SETTLEMENT

3.1 This Agreement and all associated exhibits or attachments are made for the sole purpose of settling the Action. This Agreement and the settlement it evidences are made in compromise of disputed claims. Because the Action was pled as a class action, this Agreement must receive preliminary and final approval by the Court. Accordingly, the Parties enter into this Agreement and associated settlement on a conditional basis. If the Effective Date does not occur, or if the Court's approval of the settlement is reversed or materially modified on appellate review, this Agreement shall be deemed null and void; it shall be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and the negotiation, terms and entry of the Agreement shall remain subject to the provisions of California Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of evidence that may be applicable.

3.2 Defendants have denied all claims as to liability, damages, liquidated damages, penalties, interest, fees, restitution, injunctive relief and all other forms of relief asserted in the Action. Defendants have agreed to resolve the Action via this Agreement, but to the extent this Agreement is deemed void or the Effective Date does not occur, Defendants do not waive, but rather expressly reserve, all rights to challenge all such claims and allegations in the Action upon all procedural and factual grounds, including, without limitation, the ability to challenge class or collective treatment on any grounds, as well as to assert any and all other potential defenses or privileges.

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1 **4. SCOPE OF THE CLASS**

2 4.1 The scope of the class of individuals encompassed under the Agreement and subject to all
3 obligations and duties required under the Agreement, shall include all Class Members as defined in Section
4 1.4 and all PAGA Members as defined in Section 1.25. However, it shall not include any Class Members
5 who submit valid and timely requests to opt-out of the Agreement and settlement, as set forth in Section
6 7.5.1.

7 4.2 Only Participating Class Members and PAGA Members are entitled to recover under this
8 Agreement.

9 4.3 Any person who believes that he or she is a Class Member or PAGA Member and wishes
10 to participate in the Agreement, but did not receive a Notice of Settlement because his or her name did
11 not appear on the class list provided to the Settlement Administrator prior to mailing, may submit a data
12 request to the Settlement Administrator. The data request must contain all of the following information:
13 (a) the full name and, if applicable, Social Security Number of the individual making the request; (b) the
14 name used by such employee as of the time his or her employment with Defendants ended; (c) the
15 individual's dates of employment with Defendants; and (d) a return address to which a response may be
16 sent. Every data request must be postmarked on or before the conclusion of the Notice Period or otherwise
17 submitted to the Settlement Administrator such that it is received before the conclusion of the Notice
18 Period. Upon receipt of any data requests, the Settlement Administrator shall promptly (in no event more
19 than two business days) transmit the data requests to Defendants' Counsel and request that Defendants
20 review their records.

21 4.4 If Defendants agree that the person listed in a data request is a Class Member and/or PAGA
22 Member, the Settlement Administrator shall promptly mail a Notice of Settlement to the person who
23 submitted the data request, at the address designated for that purpose in the data request. All provisions
24 of this Agreement relating to the Notice of Settlement shall apply to Notice of Settlements sent in response
25 to data requests, and any person who submits a data request and is sent a Notice of Settlement in response
26 shall be treated by the Settlement Administrator as a Class Member and/or PAGA Member for all other
27 purposes.

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1 4.5 If Defendants do not agree that the person listed in a data request is a Class Member and/or
2 PAGA Member, Defendants' Counsel and Class Counsel shall attempt to resolve any such dispute in good
3 faith within seven (7) calendar days of Class Counsel being advised in writing of the data request dispute.
4 Defendants' records shall control unless the individual submitting the data request provides persuasive
5 evidence to doubt the accuracy of those records. Each data request dispute that Defendants' Counsel and
6 Class Counsel cannot timely resolve shall be resolved by the Settlement Administrator. The Settlement
7 Administrator must accept and weigh all the evidence provided in a good faith attempt to resolve the
8 dispute. The Settlement Administrator must resolve any dispute submitted to it within seven (7) calendar
9 days after Defendants' Counsel and Class Counsel submit the dispute to the Settlement Administrator.
10 The decision by the Settlement Administrator shall be final as between the parties, subject to Court review.

11 **5. TERMS OF THE SETTLEMENT**

12 NOW THEREFORE, in consideration of the mutual covenants, promises and agreements set forth
13 herein, the Parties agree, subject to the Court's approval, as follows:

14 5.1 Maximum Settlement Amount. In consideration and exchange for the releases described
15 in Section 6, Defendants shall pay the Maximum Settlement Amount in the sum of Six Hundred Fifty
16 Thousand Dollars and Zero Cents (\$650,000.00). Funding of the Maximum Settlement Amount shall
17 occur within 30 calendar days after the Effective Date to be held in trust in a QSF by the Settlement
18 Administrator. The Maximum Settlement Amount includes payments to Participating Class Members,
19 PAGA Members, all attorneys' fees, costs and litigation expenses related to the Action incurred to date,
20 as well as all such fees and costs incurred in documenting the Agreement, administering the Agreement
21 (including Settlement Administrator Costs), and obtaining final approval of the Agreement, the
22 Enhancement Payment to the Class Representative, and the PAGA Penalty Amount. Any monies
23 necessary to satisfy Defendants' tax obligations (*e.g.* employer FICA, FUTA and SDI contributions on
24 wage payments) on any monies distributed to Participating Class Members will be paid in addition to the
25 Maximum Settlement Amount.

26 5.2 Attorneys' Fees and Costs. Class Counsel will apply to the Court for attorney's fees of
27 thirty-five percent (35%) of the Maximum Settlement Amount, which shall be paid from the Maximum
28 Settlement Amount. Defendants have agreed to not oppose Class Counsel's application for attorneys'

1 fees so long as it does not exceed this thirty-five percent (35%) maximum threshold. Class Counsel will
2 also be entitled to reimbursement for advanced litigation expenses not to exceed Twenty Thousand Dollars
3 and Zero Cents (\$20,000.00), which shall be paid from the Maximum Settlement Amount. Defendants
4 have agreed to not oppose Class Counsel's request for reimbursement for advanced litigation expenses so
5 long as they do not exceed the Twenty Thousand Dollars and Zero Cents (\$20,000.00) maximum
6 threshold. The Settlement Administrator will issue Class Counsel an IRS Form 1099 for the attorneys'
7 fees and costs paid under this Agreement. In the event that the Court awards less than the requested
8 attorneys' fees and/or costs, the portion of the requested amounts not awarded to Class Counsel shall be
9 added to the Net Settlement Amount to be distributed to Participating Class Members on a *pro rata* basis.

10 5.3 Settlement Administrator. The Settlement Administrator will be ILYM Group, Inc. as
11 mutually agreed upon by the Parties. The Settlement Administrator Costs shall be paid exclusively from
12 the Maximum Settlement Amount and shall not exceed Fifteen Thousand Dollars and Zero Cents
13 (\$15,000.00). The difference between any actual costs and the allocated Fifteen Thousand Dollars and
14 Zero Cents (\$15,000.00) shall be added to the Net Settlement Amount to be distributed to Participating
15 Class Members on a *pro rata* basis.

16 5.4 Enhancement Payment. Class Counsel, on behalf of Plaintiff, shall apply to the Court for
17 an Enhancement Payment to the Class Representative in an amount not to exceed Ten Thousand Dollars
18 and Zero Cents (\$10,000.00) to compensate for the risks, time, and expense of his involvement in the
19 Action and securing the benefits of this Agreement for Class Members. Defendants have agreed that the
20 amount of this penalty shall be determined by the Court. Defendants do not oppose Plaintiff submitting
21 his request for Enhancement Payment to the Court for approval. Defendants reserve the right to address
22 the amount of the enhancement payment should the Court deem it necessary or appropriate. The
23 Enhancement Payment is in addition to the Individual Settlement Award and Individual PAGA Share
24 Plaintiff would otherwise be due under the Agreement as a Participating Class Member and PAGA
25 Member, respectively. The Enhancement Payment will be designated as a non-wage payment and reported
26 on an IRS Form 1099-MISC. In the event that the Court awards less than the Enhancement Payment
27 amount requested, then any portion of the requested amount not awarded to the Class Representative shall
28

1 be added to the Net Settlement Amount to be distributed to Participating Class Members on a pro rata
2 basis.

3 5.5 PAGA Penalty Amount. Thirty-Two Thousand Five Hundred Dollars and Zero Cents
4 (\$32,500.00) of the Maximum Settlement Amount shall be allocated to resolving claims under the PAGA.
5 Seventy-five percent (75%) of the PAGA Penalty Amount will be paid to the LWDA and twenty-five
6 percent (25%) will be paid to PAGA Members on a pro rata basis as described below in Section 5.8. Any
7 amount not approved by the Court for the allocated PAGA Penalty Amount shall be added to the Net
8 Settlement Amount to be distributed to Participating Class Members on a pro rata basis.

9 5.6 Treatment of Residue and Cy Pres. For any portion of the Net Settlement Amount or
10 PAGA Penalty Amount allocated to Participating Class Members and/or PAGA Members that were not
11 claimed by cashing their respective settlement checks before the deadline to do so, that remaining amount
12 shall be donated equally (*i.e.* 50-50%) to Capital Pro Bono, Inc., and the Center for Workers' Rights under
13 the doctrine of *cy pres*. No portion of the Maximum Settlement Amount will revert to Defendants for any
14 reason.

15 5.7 No Additional Benefits Contributions. All Individual Settlement Awards and Individual
16 PAGA Shares paid to Participating Class Members and PAGA Members shall be deemed to be income
17 solely in the year in which such amounts were actually received. It is expressly understood and agreed
18 that the receipt of such amounts will not entitle any Participating Class Member or PAGA Member to any
19 new or additional compensation or benefits under any company bonus or other compensation or benefit
20 plan or agreement in place during the period covered by the Agreement, nor will it entitle any Participating
21 Class Member PAGA Member to any increased retirement, 401(k) and/or 403(b) benefits or matching
22 benefits, or deferred compensation benefits. It is the intent of this Agreement that the Individual
23 Settlement Awards and Individual PAGA Shares provided for in this Agreement are the sole payments to
24 be made by Defendants to the Participating Class Members and PAGA Members in connection with this
25 Agreement (notwithstanding any contrary language or agreement in any benefit or compensation plan
26 document that might have been in effect during the period covered by this Agreement).

27 5.8 Pro Rata Distribution Formula. Payment to Participating Class Members and PAGA
28 Members of their Individual Settlement Award and/or Individual PAGA Share will be based on the

number of Qualified Workweeks for each individual and will not require the submission of a claim form. A Net Settlement Amount will be determined by subtracting from the Maximum Settlement Amount any amounts for approved attorneys' fees and costs, any Enhancement Payment to the Class Representative, the Settlement Administrator Costs, and the PAGA Penalty Amount. The amount to be paid per Qualified Workweek to eligible Class Members will be calculated by the Settlement Administrator by dividing the Net Settlement Amount by the total number of Qualified Workweeks for all Participating Class Members who do not opt out of the Settlement; any person who opts out of the Settlement is not a Class Member. The amount to be paid per workweek to PAGA Members will be calculated by the Settlement Administrator by dividing the portion of the PAGA Penalty Amount of twenty-five percent (25%) payable to PAGA Members pursuant to statute by the aggregate number of Qualified Workweeks for all PAGA Members during the PAGA Period. Any funds allocated to Class Members under this formula who timely opt-out of the Settlement will be redistributed to Participating Class Members on a pro rata basis.

5.9 Tax Allocation. The Parties recognize that the Individual Settlement Awards and Individual PAGA Shares to be paid to Participating Class Members and/or PAGA Members reflect a settlement of a dispute over claimed penalties and wages. The Settlement Administrator shall calculate the employer's share of payroll taxes on the amounts paid to Participating Class Members as wages as well as calculating all required withholdings and deductions from said wage payments. The characterization of Individual Settlement Awards to Participating Class Members and PAGA Members are as follows:

5.9.1 One-third (1/3) of each Participating Class Members' share of the Net Settlement Amount shall be allocated for payment of disputed wages and shall be subject to required employer taxes. Participating Class Members shall receive an IRS Form W-2 for reporting of this portion of their Individual Settlement Award.

5.9.2 Two-thirds (2/3) of each Participating Class Members' share of the Net Settlement Amount shall be allocated for disputed statutory penalties and interest, and no amount shall be deducted for any taxes. This portion of the Individual Settlement Award consists of other income, not wages, for which the Participating Class Members shall receive IRS Forms 1099-MISC and 1099-INT and this payment shall be divided equally among the 1099-MISC and 1099-INT designations.

1 5.9.3 The entirety (i.e., 100%) of each PAGA Member's share of the twenty-five percent
2 (25%) portion of the PAGA Penalty Amount shall be allocated for payment of disputed civil penalties,
3 and no amount shall be deducted for any taxes. This payment consists of other income, not wages, for
4 which the PAGA Members shall receive an IRS Form 1099-MISC.

5 5.10 Tax Reporting and Payment Relating to Individual Settlement Awards. Participating Class
6 Members and PAGA Members shall be solely responsible for the reporting and payment of their share of
7 any federal, state and/or municipal income or other taxes on payments made pursuant to this Agreement,
8 and shall hold the Parties, Class Counsel, and Defendants' Counsel free and harmless from any claims
9 resulting from treatment of such payments as non-taxable, including the treatment of such payments as
10 not subject to withholding or deduction for payroll and employment taxes. No party has made any
11 representation to any of the other Parties as to the taxability of any payments pursuant to this Agreement,
12 including the payments to Participating Class Members, the payments to PAGA Members, the payments
13 to Class Counsel, the payments to the Class Representative, the payroll tax liability of Defendants, or the
14 allocation of the Net Settlement Amount or PAGA Penalty Amount to wage and non-wage income as
15 provided in this Section, or otherwise as to tax implications of any provision of this Agreement.

16 5.11 No Additional Contribution by Defendants. Defendants' monetary obligation under this
17 Agreement is limited to the Maximum Settlement Amount and any employer side payroll taxes owed on
18 amounts characterized as wages under this Agreement. All other costs and expenses arising out of or in
19 connection with the performance of this Agreement shall be paid from the Maximum Settlement Amount,
20 unless expressly provided otherwise herein. However, in the event this agreement is deemed null and
21 void as described in Section 3 because the Court, in its independent determination, finds that the
22 Agreement does not meet the standards for settlement approval, then Defendants and Plaintiff shall be
23 equally responsible for the costs of the Settlement Administrator incurred between the date the Agreement
24 was executed and the date of such event.

25 5.12 Certification For Settlement Purposes. The Parties agree that, for purposes of settlement
26 only, certification of the class as defined in Section 1.4 and 4.1 is appropriate and the requisites for
27 establishing class certification have been met and are met.

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1 5.13 Adequacy of Class Counsel and Class Representative. The Parties agree that, for purposes
2 of settlement only, Class Counsel and Plaintiff are adequate representatives for Class Members and PAGA
3 Members.

4 **6. RELEASE OF CLASS AND PAGA CLAIMS**

5 6.1 Release of Class Claims by Participating Class Members. Upon the Effective Date, the
6 Participating Class Members fully release and discharge the Released Parties from all claims alleged in
7 the Action and that reasonably could have been alleged in the Action based on the factual allegations
8 contained in the operative complaint in the Action and any amendments thereto, as to the Class Members,
9 including without limitation, 201, 202, 203, 226, 226.7, 510, 512, 1194, and 1194.2, California Industrial
10 Commission Wage Orders, California Code of Regulations, Title. 8, section 11040 *et seq.*, Business and
11 Professions Code sections 17200 *et seq.*, and California Code of Civil Procedure section 1021.5 through
12 and for the Class Period. Expressly excluded from the release are claims for retaliation, discrimination,
13 unemployment insurance, disability, workers compensation, and claims outside the Released Class
14 Claims. This release also covers and includes all Class Members who do not opt-out.

15 6.2 Release of PAGA Claims. Upon the Effective Date, the claims to be released by the PAGA
16 Members include all claims arising during the PAGA Period seeking civil penalties under PAGA that
17 Plaintiff as proxy for the State of California and/or the LWDA, to the maximum extent permitted by law,
18 and as a private attorney general acting on behalf of himself and the PAGA Members, asserted or could
19 reasonably have asserted based on the facts alleged in the LWDA letter, including but not limited to all
20 such claims arising under the California Labor Code sections 201, 202, 203, 221, 223, 225, 226, 226.3,
21 226.7, 246, 246.5, 248.5, 256, 510, 512, 558, 558.1, 1174, 1194, 1197.1, and 2698 *et seq.*, California
22 Industrial Commission Wage Orders, Cal. Code Regs., Title. 8, section 11040 *et seq.* based on the facts
23 alleged in the LWDA letter. In addition, on the Effective Date, all PAGA Members and their successors
24 in interest will be permanently enjoined and forever barred from prosecuting any of the Released PAGA
25 Claims against any of the Released Parties. The Settlement shall release and bar all Released PAGA
26 Claims by or on behalf of Plaintiff and all PAGA Members through and for the PAGA Period, regardless
27 of whether Plaintiff and/or a PAGA Member negotiates (cashes) their/his/her settlement checks sent
28 pursuant to this Settlement. PAGA Members cannot and do not have the right to opt out of being a PAGA

1 Member and/or the Released PAGA Claims against the Released Parties. As such, an individual opting
2 out of the Settlement Class has no impact as to his/her standing and/or inclusion as a PAGA Member
3 assuming they/he/she qualifies as a PAGA Member.

4 6.3 Release of Plaintiff's Claims. In addition to the Released Class Claims and Released PAGA
5 Claims set forth above, Plaintiff Albert Carr, as an individual only, agrees to release any and all claims,
6 whether known or unknown, under all federal, state and local statutes, and federal and state common law
7 (including, but not limited to, those for contract, tort, and equity), including, without limitation, the
8 California Unfair Competition Act (California Business and Professions Code section 17200 *et seq.*) and
9 the California Labor Code, including section 132a claims against the Released Parties. Plaintiff Albert
10 Carr acknowledges the language of Section 1542 of the California Civil Code, which provides:

11 A general release does not extend to claims that the creditor or releasing
12 party does not know or suspect to exist in his or her favor at the time of
13 executing the release and that, if known by him or her, would have
materially affected his or her settlement with the debtor or released party.

14 Plaintiff Albert Carr expressly waives the protection of Section 1542. Plaintiff understands and
15 agrees that claims or facts in addition to or different from those which are now known or believed by them
16 to exist may hereafter be discovered. It is Plaintiff Albert Carr's intention to settle fully and release all of
17 the claims he now has against the Released Parties, whether known or unknown, suspected or unsuspected.
18 In addition, on the Effective Date, Plaintiff and any successors in interest will be permanently enjoined
19 and forever barred from prosecuting any of the Released Class Claims, Released PAGA Claims, and Class
20 Representative's Released Claims against any of the Released Parties

21 7. SETTLEMENT ADMINISTRATION

22 7.1 Duties of Settlement Administrator. The Settlement Administrator shall be responsible
23 for: 1) receiving Class Member and PAGA Member contact information and confirming addresses are
24 valid; 2) calculating estimated Individual Settlement Awards and any and all taxes associated with the
25 Individual Settlement Awards, including employer taxes; 3) taking appropriate steps to trace and locate
26 any individual Class Members and PAGA Member whose address or contact information as provided to
27 the Settlement Administrator is inaccurate or outdated and mailing the Notice of Settlement to Class
28 Members; 4) providing notification to the appropriate state and federal officials of this Agreement as

1 required under the law; 5) receiving, independently reviewing, and resolving any challenges (in
2 consultation with Class Counsel and Defendants' Counsel) from Class Members or PAGA Members,
3 including any associated documentation, regarding their Qualified Workweek calculations; 6) receiving
4 and serving on Class Counsel, Defendants' Counsel, and the Court, copies of any written objections,
5 and/or any opt-out statements provided that Settlement Administrator agrees that Class and PAGA
6 Member contact information shall not at any time be disclosed to Class Counsel; 7) establishing a toll-
7 free telephone line and responding to inquiries and requests for information or assistance from Class
8 Members and/or PAGA Members; 8) maintaining a QSF; 9) determining and paying the final amounts
9 due to be paid under the Agreement after resolution of all challenges, disputes, opt-outs, awarded
10 attorneys' fees and costs, Settlement Administrator Costs, PAGA Penalty Amount, taxes, any
11 Enhancement Payments, and for funds that cannot be distributed due to the inability to locate Class
12 Members or PAGA Members; 10) determining the validity of any disputes or late opt-outs by previously
13 unidentified Class Members or PAGA Members; 11) paying any residual funds from uncashed checks;
14 12) reporting to Class Counsel and Defendants' Counsel regarding the statistics of the administration,
15 including (a) the number of initial Notice of Settlements mailed; (b) the number of forwarded Notice of
16 Settlements; (c) the number of re-mailed Notice of Settlements; (d) the number of total undeliverable
17 Notice of Settlements; (e) the number of address traces performed for undeliverable Notice of Settlements;
18 (f) the number of Notice of Settlements undeliverable from traced addresses; (g) the number of total
19 objections received; (h) the number of opt-out requests received; (i) the number of disputes received; (j)
20 the number of disputes resolved; 13) providing a declaration to the Court regarding the final statistics of
21 the administration and compliance with all payment obligations under the Agreement (provided that the
22 contact information of any opt-outs, Class Members or PAGA Members shall not be disclosed unless
23 otherwise ordered by the Court); 14) completing all necessary tax reporting on the QSF and payment of
24 the Individual Settlement Awards to Participating Class Members and PAGA Members; and 15) carrying
25 out other related tasks as necessary to effectuate the terms of this Agreement and any Order of the Court.
26 All disputes relating to the Settlement Administrator's ability and need to perform its duties shall be
27 referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions
28

1 of this Agreement, until all payments and obligations contemplated by the Agreement have been fully
2 executed.

3 7.2 Notice to Class Members and PAGA Members. The Notice of Settlement will provide
4 Class Members and PAGA Members with a summary of the terms and conditions of the Agreement, how
5 to participate in the settlement, how to object to the Agreement, how to dispute the individual's Qualifying
6 Workweeks, and how to opt-out from the Agreement. The Notice of Settlement will also inform Class
7 Members and PAGA Members of the Maximum Settlement Amount, Net Settlement Amount, proposed
8 attorneys' fees and costs allocations, any proposed Enhancement Payments, proposed Settlement
9 Administrator Cost allocations, proposed PAGA Penalty Amount allocations, the scope of the class, the
10 nature and extent of the released claims, dates set for a fairness hearing and hearing on Class Counsels'
11 motion for attorneys' fees and costs. The Notice of Settlement shall include information regarding Class
12 Member's and PAGA Member's estimated Individual Settlement Award. The Notice of Settlement will
13 provide information on how to access electronic copies online of the Notice of Settlement, any motions
14 for approval of the Agreement, any motions for approval of attorneys' fees and costs, and any other
15 documents as the Court directs.

16 7.3 Class Member Data and Mailing. Defendants will provide the Settlement Administrator
17 with the Class Members' names, last-known addresses, last-known telephone numbers, Social Security
18 numbers ("Class Member Information"), and workweek data from the Class Period within thirty (30)
19 calendar days after the Preliminary Approval Date, and any other information the Settlement
20 Administrator needs to effectuate notice to Class Members and PAGA Members as outlined herein or
21 ordered by the Court. The Settlement Administrator shall review the data to determine the number of
22 Qualifying Workweeks for each Class Member and PAGA Member. No later than forty-five (45) calendar
23 days after the Preliminary Approval Date, the Settlement Administrator will perform a national change of
24 address ("NCOA") search, update the addresses per the results of the NCOA search, and then mail the
25 Notice of Settlement, substantially in the form attached as **Exhibit A**, to each Class Member and PAGA
26 Member by first-class mail, postage prepaid. The Settlement Administrator shall maintain all information
27 received from Defendants confidential to itself, and Defendants' Counsel. Class Members' contact
28 information and Social Security numbers will be used only by the Settlement Administrator for the sole

1 purpose of effectuating the Settlement and will not be provided to Class Counsel at any time or in any
2 form. The Settlement Administrator shall take reasonable steps to protect the confidential and private
3 information of the Class Members. To the extent Class Counsel possesses or comes to possess the Class
4 Members' contact information and/or Social Security numbers, Class Counsel shall return all such
5 information (including copies, data, or information derived therefrom) within seven (7) calendar days
6 from the Effective Date, shall not retain copies of such information, and shall not maintain or use such
7 information for any purpose. However, Class Counsel shall be able to review the breakdown of Qualified
8 Workweeks, estimated Individual Settlement Awards, and estimated Individual PAGA Shares for Class
9 Members and PAGA Members prior to mailing for quality assurance provided the personal identifying
10 information is redacted and/or omitted.

11 7.4 Returned and/or Re-Mailed Notice of Settlements. In the event that a Notice of Settlement
12 is returned to the Settlement Administrator as undeliverable on or before the conclusion of the Notice
13 Period, the Notice of Settlement shall be sent to the forwarding address affixed thereto within three (3)
14 business days of receipt. If no forwarding address is provided, then the Settlement Administrator shall
15 promptly attempt to determine a correct address using a skip-trace, computer or other search using the
16 name, address and/or Social Security number of the individual involved, and shall then perform a single
17 re-mailing within three (3) business days of receipt to any more recent address found as a result of the
18 search. Following each search that does not result in a corrected address, for those Class Members who
19 appear to be current employees of Defendants at the time of the Preliminary Approval Date, the Settlement
20 Administrator shall contact Defendants' Counsel for assistance and Defendants shall cooperate in good
21 faith with the Settlement Administrator's reasonable efforts to obtain valid mailing addresses for Class
22 Members to the extent they are active employees of Defendants. In the event the Notice of Settlement is
23 forwarded to a new address and/or re-mailed to a Class Member, the deadline for the Class Member to
24 submit any request to opt-out, a dispute, or an objection shall be the end of the Notice Period or 10 days
25 from the date of the re-mailing/forwarding to a new address, whichever is later. In the event the procedures
26 in this Section are followed and the Class Member does not timely and properly request to opt-out, the
27 Class Member shall be bound by all terms of the Agreement, including the releases of claims contained
28 in Section 6 herein.

1 7.5 Responses to Notice of Settlement.

2 7.5.1 *Opt-Outs.* The Notice of Settlement shall provide that Class Members who wish to
3 exclude themselves from the Agreement must submit a request to opt-out as provided in this Section. The
4 request to opt-out must (a) state the Class Member's full name and date of birth; (b) a statement that he or
5 she does not want to be a Class Member, does not want to participate in the settlement, and/or wants to be
6 excluded from the settlement; (c) identify the case name and number (*i.e. Carr v. WaveDivision Holdings,*
7 *LLC*, Case No. 23CV005516); (d) be signed; and (e) be post-marked no later than the conclusion of the
8 Notice Period or the re-mailing timeline stated in Section 7.4. The Class Member must personally sign
9 the request to opt-out. No request to opt-out may be made on behalf of a group of Class Members. The
10 date of the postmark on the return-mailing envelope shall be the exclusive means used to determine
11 whether a request to opt-out has been timely submitted. Any Class Member who requests to opt-out of
12 the Agreement will not be entitled to any portion of the Net Settlement Amount nor will they have any
13 right to object, appeal or comment thereon. The name of any Class Member who submits a valid and
14 timely opt out request will be specifically identified in any proposed order granting final approval. Class
15 Members who fail to submit a valid and timely request to opt-out shall be bound by all terms of the
16 Agreement and any order or final judgment thereon. Regardless of whether an PAGA Member opts out
17 of being a Class Member, they will still receive their share of the PAGA Penalty Amount as PAGA
18 Members cannot opt out of this Agreement as it relates to the PAGA Penalty Amount or Released PAGA
19 Claims.

20 7.5.2 *Objection Procedures.* Any Class Member who does not opt-out, but who wishes
21 to object to this Agreement or otherwise to be heard concerning this Agreement, may submit a written
22 objection to the Settlement Administrator, who will promptly provide copies of the objection to Class
23 Counsel and Defendants' Counsel. The Notice of Settlement shall make clear that the Court can only
24 approve or deny the Agreement, not change the terms of the Agreement. The written objection should (a)
25 state the Class Member's full name and date of birth; (b) provide evidence that the individual is, in fact, a
26 Class Member; (c) state the reasons for the objection(s), including any supporting documentation; (d)
27 identify the case name and number (*i.e., Carr v. WaveDivision Holdings, LLC*, Case No. 23CV005516);
28 (e) be signed; and (f) be post-marked no later than the conclusion of the Notice Period or the re-mailing

1 timeline stated in Section 7.4. Additionally, or in the alternative to sending a written objection to the
2 Settlement Administrator, any Class Member may appear at the final approval hearing to state their
3 objection.

4 7.5.3 *Dispute Procedures.* Any Class Member who disputes the number of Qualifying
5 Workweeks on the Notice of Settlement shall contact the Settlement Administrator. The dispute must (a)
6 identify the nature of the dispute; (b) provide any information or documentation supporting the dispute;
7 (c) be signed; and (d) be post-marked no later than the conclusion of the Notice Period or the re-mailing
8 timeline stated in Section 7.4. The Settlement Administrator shall promptly (in no event more than two
9 business days) forward all such disputes to Defendants' Counsel and request that Defendants review the
10 dispute. Defendants' records shall presumptively control unless the Class Member can produce
11 documentation evidencing other periods of employment worked. If Defendants agree with submitted
12 information, the Class Member shall be credited or subtracted Qualifying Workweeks in accordance with
13 their submitted dispute and that final number of Qualified Workweeks shall govern the calculation of that
14 Class Member's Individual Settlement Award and/or Individual PAGA Share. In all other cases,
15 workweek disputes will be resolved and decided by the Settlement Administrator, and the Settlement
16 Administrator's decision on all workweek disputes will be final and non-appealable, subject to Court
17 approval.

18 7.5.4 *Deficient Opt-Outs, Objections, or Disputes.* In the event that a deficient opt-out,
19 objection, or dispute is received on or before the conclusion of the Notice Period, the Settlement
20 Administrator shall mail a letter to the Class Member within five (5) calendar days informing them of the
21 deficiency. If a deficiency letter is mailed to a Class Member, the deadline for the Class Member to cure
22 the deficiency shall be the end of the Notice Period or 10 calendar days from the date of the deficiency
23 letter, whichever is later. The Settlement Administrator shall have no authority to determine whether an
24 opt-out, objection or dispute is timely or valid and may not make representations regarding such validity
25 or timeliness to Class Members. Rather, such issues, if not resolved by stipulation of the Parties, must be
26 presented to the Court.

27 7.6 Due Process Acknowledgement. Compliance with the procedures set forth in Sections 7.1
28 to 7.5.4 shall constitute due and sufficient notice to Class Members of the Action and the Agreement and

1 shall satisfy Class Members' due process rights. Nothing else shall be required of the Parties, Class
2 Counsel or Defendants' Counsel to provide notice of the proposed Agreement.

3 7.7 Settlement Administrator Declaration Regarding Notice Period. Within fourteen (14)
4 calendar days after the conclusion of the Notice Period, the Settlement Administrator shall provide Class
5 Counsel and Defendants' Counsel with a signed declaration under penalty of perjury providing a complete
6 and detailed report regarding the statistics and responses of settlement administration to date and all the
7 Settlement Administrators' obligations under Sections 5.8 to 5.9.3 and 7.1 to 7.5.4. Such declaration may
8 not contain Class Members' contact information unless otherwise ordered by the Court.

9 7.8 Settlement Administrator Payments to Participating Class Members, Class Counsel and
10 Plaintiff. Within seven (7) calendar days after the Effective Date and the Court's determination of the
11 amount of attorneys' fees and costs payable to Class Counsel, the Enhancement Payment payable to
12 Plaintiff, the PAGA Penalty Amount, and Settlement Administrator Costs, the Settlement Administrator
13 shall calculate the final Net Settlement Amount, the final Individual Settlement Awards for Participating
14 Class Members, Individual PAGA Shares for PAGA Members, any applicable taxes thereon, and report
15 the results of these calculations Class Counsel and Defendants' Counsel. Defendants shall wire the
16 Maximum Settlement Amount and applicable taxes necessary to fund the Settlement as described in
17 Section 5.1 to the Settlement Administrator within thirty (30) calendar days after the Effective Date to be
18 to be held in trust in a QSF. Within seven (7) calendar days after Defendants fund the settlement, the
19 Settlement Administrator shall deliver payment of Class Counsels' attorney's fees and costs, the
20 Enhancement Payment payable to Plaintiff, the LWDA Payment, Settlement Administrator Costs, and
21 payment to Participating Class Members and/or PAGA Members as required under this Agreement and
22 approved by Court.

23 7.8.1 The Settlement Administrator shall wire the Court-approved attorneys' fees and
24 costs to Class Counsel unless another method is requested by Class Counsel. Class Counsel shall provide
25 the Settlement Administrator with the pertinent taxpayer identification number and payment instructions
26 after the Final Approval Date.

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1 7.8.2 The Settlement Administrator shall send a check by mail for the Court-approved
2 Enhancement Payment to the Class Representative, care of Class Counsel unless another method is
3 requested by Class Counsel.

4 7.8.3 Only Participating Class Members will receive their Individual Settlement Award.

5 7.8.4 The Settlement Administrator shall remit and report the applicable portions of the
6 payroll tax payment to the appropriate taxing authorities on a timely basis pursuant to its duties under this
7 Agreement. Defendants agree to reasonably cooperate with the Settlement Administrator to the extent
8 necessary to determine the amount of the payroll tax payment required.

9 7.9 Settlement Check Expiration and Uncashed Checks. The Settlement Administrator shall
10 issue Individual Settlement Awards to Participating Class Members and Individual PAGA Shares to
11 PAGA Members in the form of a single check, which shall become null and void if not deposited within
12 one hundred eighty (180) calendar days of issuance. Uncashed checks will not be re-issued after the
13 expiration date, except for good cause and as mutually agreed upon by the Parties in writing. After one
14 hundred eighty (180) calendar days of issuance, the checks shall be voided and funds from all uncashed
15 checks shall be transmitted in accordance with Section 5.6. The Settlement Administrator shall deliver
16 these funds within fourteen (14) calendar days after the check cashing deadline. If a Class Member or
17 PAGA Member fails to cash his or her Settlement award check within one hundred eighty (180) calendar days
18 after the date it is mailed to him or her, such Class Member or PAGA Member shall remain bound by the
19 Settlement.

20 7.10 Settlement Administrator Declaration Regarding Compliance and Settlement
21 Administration. Within twenty-one (21) calendar days after the last day for Participating Class Members
22 and PAGA Members to cash their settlement checks, the Settlement Administrator shall provide Class
23 Counsel and Defendants' Counsel with a signed declaration under penalty of perjury providing a complete
24 and detailed report regarding the settlement administration documenting that all payments under the
25 Agreement have been made, that the Court's final approval order has been complied with, and that all the
26 obligations of the Settlement Administrator have been completed.

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8. **PRELIMINARY SETTLEMENT ADMINISTRATION SCHEDULE**

8.1 The schedule may be modified depending on whether and when the Court grants necessary approvals, orders notice to Class Members and PAGA Members, and sets further hearings. The schedule may also be modified to correct clerical errors and to reflect the provisions in the Agreement as described above. In the event of such modification, the Parties shall cooperate to complete the settlement procedures as expeditiously as reasonably practicable. The preliminary schedule for notice, approval, and payment procedures carrying out the Agreement is as follows:

Last day for Defendants to provide Settlement Administrator with Class Member and PAGA Member information	Within 30 calendar days after the Preliminary Approval Date
Last day for Settlement Administrator to complete NCOA search, update Class Member and PAGA Member mailing information, and mail Notice of Settlement	Within 45 calendar days after the Preliminary Approval Date
Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	60 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
Last day for Settlement Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 14 calendar days after end of the Notice Period
Last day for Settlement Administrator to calculate the final Net Settlement Amount, the final Individual Settlement Awards for Participating Class Members and/or PAGA Members, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendants' Counsel	Within 7 calendar days after the Effective Date
Last day for Defendants to fund settlement	Within 30 calendar days after the Effective Date

1 2 3 4 5	Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Penalty Amount, Settlement Administrator Costs, payment to Participating Class Members, and payment to PAGA Members	Within 7 calendar days after Defendants have funded the settlement
6 7 8	Last day for Participating Class Members and PAGA Members to cash settlement checks	180 calendar days after issuance of checks to Participating Class Members and PAGA Members
9 10 11	Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
12 13 14	Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

9. **DUTIES OF THE PARTIES**

9.1 **Preliminary Approval.** The Parties will cooperate in obtaining, through an unopposed motion to be filed as soon as reasonably practicable, an order from the Court preliminarily approving this Agreement at the earliest possible date concurrently with the Court's certification of the Action as a class action for settlement purposes. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to the approval and implementation of this Agreement and shall otherwise use their respective best efforts to obtain certification for settlement purposes, approval of, and implementation of this Agreement. The Parties will submit this Agreement to the Court for preliminary approval of its terms and for approval of the steps to be taken to obtain its final approval. Within four (4) days of signing this Agreement Class Counsel shall provide a draft of the Preliminary Approval Motion to Defendants' Counsel. Defendants' Counsel will promptly provide comments and/or proposed revisions after receipt of the draft Preliminary Approval Motion from Class

Counsel. With regard to the final approval documents, a similar four-day maximum review and response time shall be observed by the Parties. The Parties will request that the Court's preliminary approval of this Agreement be embodied in an Order Granting Preliminary Approval of Class Action and PAGA Settlement. The Notice of Settlement and preliminary approval order are to be mutually agreed upon by the Parties and presented for approval to the Court.

9.1.1 Plaintiff's motion shall seek an order: 1) Preliminarily approving the Agreement; 2) Approving as to form and content the proposed Notice of Settlement; 3) Directing the mailing of the

9.1.2 Notice of Settlement by first class mail to Class Members and PAGA Members; 4) Preliminarily appointing Plaintiff and Class Counsel as representatives of Class Members; 5) Preliminarily approving

settlement administration services to be provided by the Settlement Administrator; 6) Preliminarily approving the proposed Enhancement Payment to Plaintiff; 7) Preliminarily approving the application for payment of reasonable attorneys' fees and reimbursement of litigation-related expenses to Class Counsel; and 8) Scheduling a fairness hearing on the question of whether the proposed Agreement should be finally approved as fair, reasonable and adequate as to the Class Members.

9.1.3 Defendants shall not oppose Plaintiff's motion for approval of the proposed Agreement.

9.1.4 The Parties shall cooperate with each other and the Settlement Administrator during the process of giving Class Members notice and opportunity to object to the Agreement, as necessary and appropriate to assure effective communication to individual Class Members of information about their rights and obligations under this Agreement.

9.2 Final Approval and Fairness Hearing. On a date approved by the Court and set forth in the Notice of Settlement, the Court shall hold the Final Approval and Fairness Hearing where objections, if any, may be heard. Class Counsel shall provide the Court as part of the motion for final approval of the Agreement, a declaration by the Settlement Administrator of due diligence and proof of mailing of the Notice of Settlement required to be mailed to Class Members by this Agreement, and of the delivery results of the Settlement Administrator's mailings including tracing and re-mailing efforts. The

1 Settlement Administrator declaration shall identify, by name, any Class Member who submitted a timely
2 and valid request to opt out during the Notice Period.

3 9.2.1 The Proposed Order Granting Final Approval of Class Action and PAGA
4 Settlement and Final Judgment is to be mutually agreed upon by the Parties and presented for approval to
5 the Court. The Proposed Order Granting Final Approval of Class Action and PAGA Settlement and Final
6 Judgment shall include findings and orders: 1) Approving the Agreement, adjudging the terms thereof to
7 be fair, reasonable and adequate, and directing that its terms and provisions be carried out; 2) Approving
8 the payment of an Enhancement Payment to the Class Representative; 3) Approving Class Counsel's
9 application for an award of attorneys' fees and reimbursement of out-of-pocket litigation expenses; 4)
10 Approving the Settlement Administrator Costs; and 5) Providing that the Court will retain jurisdiction to
11 oversee administration and enforcement of the terms of the Agreement and the Court's orders.

12 9.2.2 Following entry of the Court's order granting final approval of the Agreement, the
13 Parties will each act to ensure the fulfillment of all its provisions, including but not limited to the
14 following: 1) Should an appeal be taken from the final approval of the Agreement or motion to set aside
15 the judgement be filed, all parties will support the final approval order on appeal or otherwise; 2) Class
16 Counsel will assist the Settlement Administrator as needed or requested in the process of identifying and
17 locating Participating Class Members and PAGA Members entitled to payments under the Agreement and
18 assuring delivery of such payments; 3) Class Counsel and Defendants' Counsel will cooperate with each
19 other and assist the Settlement Administrator as needed or requested in completing the distribution of any
20 residual amounts, as specified above, to the *cy pres* beneficiaries; 4) Class Counsel, in conjunction with
21 the Settlement Administrator, will certify to the Court completion of all payments required to be made by
22 this Agreement.

23 9.3 Final Judgment. If the Court approves this Agreement at the final approval and fairness
24 hearing, the Parties will request that the Court enter an Order Granting Final Approval of Class Action
25 and PAGA Settlement and Final Judgment.

26 9.4 Notice to LWDA. Plaintiff will provide notice to the Labor and Workforce Development
27 Agency ("LWDA") of this settlement in accordance with Labor Code section 2699(1)(2).

28 ///

1 **10. MISCELLANEOUS TERMS**

2 10.1 Defendant's Right to Withdraw Based on Opt-Outs. If, prior to the Final Approval Date,
3 more than five percent (5%) of the Class Members have submitted proper and timely requests to opt-out
4 in accordance with the provisions of the Agreement, Defendants may rescind the Agreement and all
5 actions taken in its furtherance will be thereby null and void. Defendants must exercise this right of
6 rescission, in writing, to Class Counsel, within seven (7) calendar days after the Settlement Administrator
7 notifies the Parties of the total number of opt-outs. If the option to rescind is exercised, then any Settlement
8 Administrator Costs shall be paid by Defendants.

9 10.2 Escalator Clause. To facilitate negotiations of this Settlement, Defendants represented
10 that the Class Members consist of 434 unique persons who will have worked 55,714 workweeks from
11 July 25, 2019 to March 8, 2024. The Parties further agree that if the final workweeks from July 25,
12 2019 to March 8, 2024, which formed the basis of the Settlement, increases by more than ten (10)
13 percent above 55,714 workweeks (e.g., to greater than 61,285 workweeks), Defendants, at their sole
14 discretion, shall either: (1) increase the Maximum Settlement amount by the proportional amount for
15 the percentage of workweeks above ten (10) percent (*i.e.*, by the percentage of workweeks above 61,285
16 workweeks); or (2) end the Class Period at the point in time where workweeks equal 61,285 workweeks.
17 To the extent the Class Period is ended on a particular date under (2), the end of the PAGA Claim Period
18 shall be similarly shortened to have the same ending date.

19 10.3 Circular 230 Disclaimer: EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF
20 THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT
21 OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND
22 AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN
23 COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR
24 ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
25 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON
26 AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT
27 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS
28 RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX

1 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
2 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
3 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY
4 OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR
5 DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY
6 TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
7 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT
8 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX
9 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON
10 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
11 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED
12 BY THIS AGREEMENT.

13 10.4 No Prior Assignments. The Parties represent, covenant, and warrant that they have not
14 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
15 any person or entity any portion of any liability, claim, demand, action, cause of action or right released
16 and discharged in this Agreement.

17 10.5 Waiver of Appeal and Ability to Opt-Out. To the extent permitted by applicable law, by
18 signing this Agreement Defendants are waiving any rights to appeal from the Court's approval of the
19 settlement unless the Court materially modifies the settlement. Furthermore, by signing this Agreement
20 Plaintiff is waiving any right or ability to opt-out of this Agreement during the Notice Period or otherwise.

21 10.6 Exhibits Incorporated by Reference. The terms of this Agreement include the terms set
22 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth in this
23 Agreement. Any Exhibits to this Agreement are an integral part of the Settlement.

24 10.7 Judgment and Retention of Jurisdiction to Enforce. Upon the Effective Date, judgment
25 will be entered according to this Agreement. The Parties stipulate and agree that the Sacramento County
26 Superior Court shall have continuing jurisdiction to enforce the terms of the Agreement pursuant to Civil
27 Procedure Code section 664.6 and that the prevailing party any action necessary to enforce the terms of
28

1 the Agreement after default by the other party may recover reasonable attorney's fees and costs related
2 thereto.

3 10.8 Mutual Cooperation. The Parties agree to cooperate fully with one another to accomplish
4 and implement the terms of this Agreement. Such cooperation shall include, but not be limited to,
5 execution of such other documents and the taking of such other action as may reasonably be necessary to
6 fulfill the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including
7 all efforts contemplated by this Agreement and any other efforts that may become necessary by Court
8 order, or otherwise, to effectuate this Agreement and the terms set forth herein.

9 10.9 No Admission of Liability. Neither the acceptance nor the performance by Defendants of
10 the terms of this Agreement, nor any of the related negotiations or proceedings, is or shall be claimed to
11 be, construed as, or deemed to be, an admission by Defendants of the truth of any of the allegations in the
12 operative Complaint, the representative character of the Action, the validity of any of the claims that were
13 or could have been asserted by Plaintiff and/or Class Members in the Action, or of any liability of
14 Defendants in the Action. Nothing in this Agreement shall be construed to be or deemed an admission by
15 Defendants of any liability, culpability, negligence, or wrongdoing toward Plaintiff, the Class Members,
16 or any other person, and Defendants specifically disclaim any liability, culpability, negligence, or
17 wrongdoing toward Plaintiff, the Class Members, or any other person. Each of the Parties has entered
18 into this Stipulation with the intention to avoid further disputes and litigation.

19 10.10 Notices. Unless otherwise specifically provided herein, all notices, demands, or other
20 communications given hereunder shall be in writing and shall be deemed to have been duly given as of
21 the third business day after mailing by United States certified mail, return receipt requested, addressed as
22 follows:

23 To Plaintiff and the Class:

24 Galen T. Shimoda, Esq.
25 Justin P. Rodriguez, Esq.
26 Renald Konini, Esq.
27 Shimoda & Rodriguez Law, PC
28 9401 East Stockton Blvd., Suite 120
Elk Grove, CA 95624

1 To Defendants:

2 Shannon B. Nakabayashi, Esq.
3 Jackson Lewis P.C.
4 50 California Street, 9th Floor
5 San Francisco, CA 94111-4615

6 Samuel J. Maselli, Esq.
7 Jackson Lewis P.C.
8 400 Capitol Mall, Suite 1600
9 Sacramento, CA 95814

10 10.11 Mutual Drafting of Agreement. The Parties hereto agree that the terms and conditions of
11 this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that
12 this Agreement shall not be construed in favor of or against any party by reason of the extent to which any
13 party or its counsel participated in the drafting of this Agreement.

14 10.12 Attorneys' Fees and Costs Limitations. Neither Class Counsel nor any other attorneys
15 acting for, or purporting to act for, the Class, Class Members, or Plaintiff, may recover or seek to recover
16 any amounts for fees, costs, or disbursements from the Releasees or the Maximum Settlement Amount
17 except as expressly provided in this Agreement.

18 10.13 No Oral Modification. This Agreement may be amended or modified only by a written
19 instrument signed by counsel for all Parties or their successors-in-interest. This Agreement may not be
20 discharged except by performance in accordance with its terms.

21 10.14 Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and
22 represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement
23 and to take all appropriate action required or permitted to be taken by such Parties pursuant to this
24 Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of
25 this Agreement.

26 10.15 Class Member Signatories. Because the Action has not yet been certified, and the Class
27 Members are so numerous, the Parties agree that it is impossible or impractical to have each Class Member
28 sign this Agreement. It is agreed that, for purposes of seeking approval of the Agreement, this Agreement
may be executed on behalf of all Class Members by the Class Representative.

///

1 10.16 Counterparts. This Agreement shall become effective upon its execution by all of the
2 undersigned. Plaintiff, Class Counsel, Defendants and Defendants' Counsel may execute this Agreement
3 in counterparts, and execution of counterparts shall have the same force and effect as if each had signed
4 the same instrument. Facsimile, electronic, and/or scanned copies of signatures shall have the same force
5 and effect of originals.

6 10.17 Choice of Law. The Agreement and any exhibits hereto shall be considered to have been
7 negotiated, executed, and delivered, and to have been wholly performed, in the State of California, and
8 the rights and obligations of the Parties to the Agreement shall be construed and enforced in accordance
9 with, and governed by, the substantive laws of the State of California without giving effect to that State's
10 choice of law principles.

11 10.18 Headings and Captions. Section titles or captions contained in the Agreement are inserted
12 as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of
13 this Agreement, or any provision thereof.

14 10.19 No Retaliation or Discouragement. The Parties agree they will take no action that could
15 be construed as retaliation against any Class Members for participating or seeking to participate in this
16 class action settlement. The Parties will not discourage any class member from participating or seeking
17 to participate in this class action settlement. This is a material term of the Agreement and non-breaching
18 Parties will seek court intervention if this provision is breached.

19 10.20 Integrated Agreement. This Agreement sets forth the entire understanding between the
20 Parties and supersedes any and all prior agreements, oral or written, pertaining to the subject matter hereof.
21 Each party acknowledges that there is no representation, inducement, promise or agreement which has
22 been made, orally or otherwise, by the other party, concerning the terms or conditions of this Agreement,
23 which is not expressly embodied in this Agreement. In entering into this Agreement, the Parties represent
24 that the terms of this Agreement are fully understood and voluntarily accepted by the Parties.

25 10.21 Binding on Successors and Assigns. This Agreement shall be fully binding upon, and inure
26 to the benefit of, the successors or assigns of the Parties to this Agreement, as previously defined.

27 10.22 Severability of Invalidity of Any Provision. Before declaring any provision of this
28 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent

possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

10.23 Stay Pending Approval Proceedings. To effectuate the terms of the Settlement, the Parties agree all formal discovery shall be stayed pending Court approval of the Settlement. The Parties acknowledge that Defendants has already produced a randomly selected 20 percent sample of timekeeping/clocking data and payroll data to provide a reasonable basis for this Settlement.

10.24 Dismissal of PAGA Only Action. Plaintiff shall promptly seek the dismissal of the PAGA only lawsuit, Case No. 23CV010770, without prejudice, once the consolidated, amended complaint is filed in this lawsuit, Case No. 23CV005516, adding a PAGA claim.

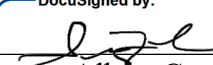
10.25 Unauthorized Publicity. Plaintiff and Class Counsel agree that the terms of this Settlement (including, but not limited to, the Maximum Settlement Amount), the negotiations leading to this Settlement, and all documents related to the Settlement, including the Agreement and any subsequent settlement contracts, shall not be discussed with, publicized, or promoted to the public, except for public filings as necessary to obtain preliminary and final court approval of the Settlement, and if necessary to enforce the terms of this Agreement. Notwithstanding the foregoing, Plaintiff and Class Counsel may tell the public in general only the claims “have been resolved by the parties.”

10.26 Waiver of Compliance. No waiver of any condition or covenant contained in this Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

IN WITNESS WHEREOF, this Agreement is executed by the Parties and their duly authorized attorneys, as of the day and year herein set forth.

Dated: May 21, 2024

PLAINTIFF

By: 
B7B9361D-0C14-40D0-8000-000000000000
Albert Carr

1 Dated: May 28, 2024

WAVEDIVISION HOLDINGS, LLC

2
3 By: Jeffrey B. Kramp

4
5 Printed Name: Jeffrey B. Kramp

6
7 Title: EVP, Secretary & General Counsel

8
9 Dated: May 28, 2024

OH WDH HOLDCO, LLC

10
11 By: Jeffrey B. Kramp

12
13 Printed Name: Jeffrey B. Kramp

14
15 Title: EVP, Secretary & General Counsel

16
17 Dated: May 28, 2024

ASTOUND BROADBAND, LLC

18
19 By: Jeffrey B. Kramp

20
21 Printed Name: Jeffrey B. Kramp

22
23 Title: EVP, Secretary & General Counsel

1 **APPROVED AS TO FORM:**

2
3 Dated: May ___, 2024

SHIMODA & RODRIGUEZ LAW, PC

4
5 By: _____

6 Galen T. Shimoda
7 Justin P. Rodriguez
8 Renald Konini

9 Attorneys for Plaintiff
10 ALBERT CARR, individually and on behalf
11 of similarly situated employees

12
13 Dated: May 28, 2024

JACKSON LEWIS P.C.

14 /s/ *Samuel J. Maselli*
15 By: _____

16 Shannon B. Nakabayashi
17 Samuel J. Maselli

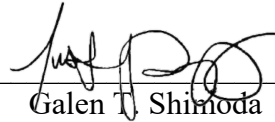
18 Attorneys for Defendants
19 WAVEDIVISION HOLDINGS, LLC,
20 OH WDH HOLDCO, LLC, and
21 ASTOUND BROADBAND, LLC
22
23
24
25
26
27
28

1 **APPROVED AS TO FORM:**

2
3 Dated: May 21, 2024

SHIMODA & RODRIGUEZ LAW, PC

4
5
6 By: _____



Galen T. Shimoda
Justin P. Rodriguez
Renald Konini

7
8 Attorneys for Plaintiff
9 ALBERT CARR, individually and on behalf
10 of similarly situated employees

11 Dated: May ___, 2024

JACKSON LEWIS P.C.

12
13 By: _____

Shannon B. Nakabayashi
Samuel J. Maselli

14
15 Attorneys for Defendants
16 WAVEDIVISION HOLDINGS, LLC,
17 OH WDH HOLDCO, LLC, and
18 ASTOUND BROADBAND, LLC
19
20
21
22
23
24
25
26
27
28

Exhibit A

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF SACRAMENTO

ALBERT CARR, individually and on behalf of all
other similarly situated employees,

Plaintiff,

vs.

WAVEDIVISION HOLDINGS, LLC, a Delaware
Limited Liability Company; OH WDH HOLDCO,
LLC, a Delaware Limited Liability Company;
ASTOUND BROADBAND, LLC, A Washington
Limited Liability Company; and DOES 2 to 100,
inclusive,

Defendants.

Case No. 23CV005516

**NOTICE OF PROPOSED SETTLEMENT OF
CLASS AND PAGA ACTION AND HEARING
DATE FOR FINAL COURT APPROVAL OF
SETTLEMENT**

ATTENTION: ALL PERSONS WHO WORKED ANY HOURS FOR DEFENDANTS IN CALIFORNIA DURING ANY PAY PERIOD AS A NON-EXEMPT EMPLOYEE DURING THE PERIOD BEGINNING JULY 25, 2019 TO [earlier of May 20, 2024 or Preliminary Approval Date] (“CLASS MEMBERS”).

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF CLASS ACTION AND PAGA LITIGATION AND POTENTIAL DISBURSEMENT OF SETTLEMENT FUNDS TO YOU. IF YOU ARE A CLASS MEMBER, IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR RIGHT TO PARTICIPATE IN OR OPT-OUT OF THE SETTLEMENT ACCORDING TO THE PROCEDURES DESCRIBED BELOW.

IF YOU WISH TO RECEIVE YOUR PORTION OF THE SETTLEMENT, YOU DO NOT NEED TO DO ANYTHING. IF YOU DO NOT WISH TO RECEIVE PAYMENT UNDER THE SETTLEMENT OR PARTICIPATE IN THE SETTLEMENT YOU MUST REQUEST TO BE EXCLUDED FROM THE SETTLEMENT CLASS ON OR BEFORE [redacted], 2024.

Pursuant to the Order Granting Preliminary Approval of Class Action Settlement of the Superior Court of the State of California for Sacramento County entered on [redacted], 2024, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

A class action settlement has been reached between the Parties in the above-captioned lawsuit pending in the Superior Court of the State of California for the County of Sacramento on behalf of all individuals employed by Defendants WaveDivision Holdings, LLC, OH WDH HOLDCO, LLC, and Astound Broadband, LLC (collectively, “Defendants”) as non-exempt employees in California between July 25, 2019 through [earlier of May 20, 2024 or Preliminary Approval Date] (the “Settlement Class” or “Class Members”). The Settlement Class does not include persons who submit valid requests to opt out of the Settlement (as explained below), or who previously settled, released or received awards for claims covered by the Settlement. This settlement also covers all employees who were employed by and worked hours for Defendants as non-exempt employees in California between July 25, 2022 through [earlier of May 20, 2024 or Preliminary Approval Date] (“PAGA Members”). “Released Parties” in the Action include (i) Defendants WaveDivision Holdings, LLC, OH WDH HOLDCO, LLC, and Astound Broadband, LLC (collectively, “Defendants”) (ii) each of Defendants’ respective past, present and future parents, subsidiaries, partners, affiliates, brands and any corporation, limited liability company, or partnership; (iii) the past, present and future board members, directors, officers, agents, employees, attorneys, insurers, members, partners, managers, contractors, agents, consultants, representatives, administrators, fiduciaries, benefit plans, transferees, predecessors, successors, and assigns of (any of the foregoing; (iv) any individual or entity which could be jointly liable with any of the foregoing.

You are receiving this notice pursuant to an Order from the Sacramento County Superior Court (“Court”) granting Plaintiff’s motion for preliminary approval of a Joint Stipulation Regarding Settlement of Class and PAGA Action and Release of Claims (“Agreement” or “Settlement” or “Settlement Agreement”) as fair, reasonable, and adequate. The Settlement was entered into between Plaintiff Albert Carr (“Plaintiff” or “Class Representative”) and Defendants, on behalf of Class Members as defined above. The terms of the Settlement are outlined herein. You are also receiving this notice because Defendants’ records indicate you fall within the

definition of “Class Member.” Defendants’ records also indicate that you worked [REDACTED] weeks during the applicable Class Period (as defined below), which means your total share of the settlement proceeds is estimated to be [REDACTED]. Your actual share of the settlement proceeds will vary depending on the total number of Class Members that choose to participate and the resolution of any workweek disputes as described in this notice.

This notice is intended to provide information regarding how you can either participate in the Settlement or be excluded (i.e., “opt-out”) from the Settlement. If you are a member of the Class, you will automatically receive an Individual Settlement Award payment if you do not opt-out or exclude yourself from the Agreement. After final approval by the Court, the payments will be mailed to you at the same address as this Class Notice. If your address has changed, please notify the Settlement Administrator as explained below.

The terms of the Agreement and a description of the case are identified in this notice. Pursuant to the Court’s order, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I. BACKGROUND OF THE CASE

On July 26, 2023, Plaintiff initiated this lawsuit by filing a Complaint against Defendants in the Sacramento County Superior Court, Case No. 23CV005516, on behalf of himself and Class Members. On October 30, 2023, Plaintiff filed a separate lawsuit alleging a single cause of action under the PAGA against Defendants for the same Labor Code violations in Sacramento County Superior Court, Case No. 23CV010770, on behalf of himself and aggrieved employees. On April 16, 2024, Plaintiff filed an amended complaint consolidating the allegations and claims from both cases into the earlier filed lawsuit, Case No. 23CV005516. The term “Action” means the putative class and PAGA actions pending in Sacramento County Superior Court, Case No. 23CV005516. The Class Period is July 25, 2019 to [earlier of May 20, 2024 or Preliminary Approval Date] (the “Class Period”).

In the Action, Plaintiff sought to obtain unpaid wages, interest, statutory penalties, civil penalties, fees, and costs on behalf of himself, Class Members, and PAGA Members. Plaintiff alleged that Defendants violated California law by 1) Failure to Pay Minimum Wages, (2) Failure to Pay Overtime Wages, (3) Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof, (4) Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof, (5) Failure to Provide Accurate Wage Statements, (6) Failure to Pay Final Wages, (7) Violation of Labor Code §§ 558, 558.1, (8) Failure to Pay Contract Wages and Unlawful Deduction, (9) Failure to Maintain Accurate Records, (10) Failure to Provide Paid Sick Leave, and (11) Unfair Competition. Defendants have denied all of Plaintiff’s allegations. The Action has been actively litigated. There have been on-going investigations, and there has been an exchange of extensive documentation and information. Furthermore, the Parties have participated in a lengthy mediation facilitated by a neutral third party. Based upon the negotiations, and all known facts and circumstances, including the various risks and uncertainties related to legal actions, the Parties reached a class-wide settlement. By settling the Action, the Parties will avoid the risks associated with a lengthy litigation process. Despite agreeing to and supporting the Agreement, Defendants continue to deny all allegations and claims. Defendants have entered into this Settlement to fully, finally, and forever resolve this Action, based on the terms set forth in the Agreement, in order to avoid the burden and expense associated with ongoing litigation.

The Agreement applies to any and all Class Members, which are defined as all persons who worked any hours for Defendants in California during any pay period as a non-exempt employee from July 25, 2019, to [earlier of May 20, 2024 or Preliminary Approval Date]. The Agreement also applies to PAGA Members, which are defined as all individuals who worked any hours for Defendants in California during any pay period as a non-exempt employee from July 25, 2022 to [earlier of May 20, 2024 or Preliminary Approval Date]. If you are a Class Member, you have the opportunity to participate in the Settlement, or to exclude yourself (“opt out”) from the Settlement. This notice is to advise Class Members of how they can either participate in the Settlement or be excluded from the Settlement. As set forth below, PAGA Members cannot opt out of this Agreement as it relates to the PAGA Penalty Amount or Released PAGA Claims regardless of whether they opt out of being a Class Member. PAGA Members will receive their share of the PAGA Penalty Amount regardless of whether they opt-out of being a Class Member.

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. Amount of the Proposed Settlement.

Under the terms of the Agreement, Defendants have agreed to pay a total sum of Six Hundred and Fifty Thousand Dollars and Zero Cents (\$650,000.00) (“Maximum Settlement Amount”). Deducted from this Maximum Settlement Amount will be sums approved by the Court for attorneys’ fees not to exceed thirty-five percent (35%) of the Maximum Settlement Amount, attorneys’ costs not to

exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00), Settlement Administrator Costs estimated not to exceed Fifteen Thousand Dollars and Zero Cents (\$15,000.00), Class Representative's Enhancement Payment of Ten Thousand Dollars and Zero Cents (\$10,000.00), and Thirty-Two Thousand Five Hundred Dollars and Zero Cents (\$32,500.00) for alleged PAGA penalties (the "PAGA Penalty Amount"), which will result in a "Net Settlement Amount" for distribution to all Class Members. Any employer side taxes attributable to payments allocated as wages will be paid by Defendants in addition to the Maximum Settlement Amount. As explained further below, the amount of each Class Member's share of the Net Settlement Amount will depend on the number of weeks worked by participating Class Members during the Class Period. Of the Thirty-Two Thousand Five Hundred Dollars and Zero Cents (\$32,500.00) allocated to resolving the PAGA claims, seventy-five percent (75%) of the PAGA Penalty Amount will be paid to the State of California Labor and Workforce Development Agency and twenty-five percent (25%) of the PAGA Penalty Amount will be divided among PAGA Members.

The number of weeks you worked during the Class Period and your estimated total share of the Net Settlement Amount and PAGA Penalty Amount ("Individual Settlement Award" and "Individual PAGA Share," respectively) is stated on the first page of this notice. The actual amount received may be more or less than the amount stated depending on the actual number of weeks worked by Participating Class Members (*i.e.*, those who do not opt out of the Settlement), the resolution of any disputes regarding workweeks, and on the distributions finally approved and allocated by the Court. However, whether Class Members opt out will have no effect on PAGA Members' allocations for the PAGA claim.

B. Individual Settlement Awards and Allocation Between Class Members and PAGA Members.

Defendants will pay Individual Settlement Awards and Individual PAGA Shares through the Settlement Administrator, as described below, to each Participating Class Member and to PAGA Members. All payments will be subject to appropriate taxation. The Parties have agreed, based on the allegations in the Action that the amount payable to eligible Class Members from the Net Settlement Amount will be allocated and paid as two-thirds (2/3) for disputed interest, statutory penalties, and other non-wage damages for which an IRS Forms 1099-MISC and 1099-INT will issue and one-third (1/3) for disputed wages for which IRS Forms W-2 will issue. The PAGA Penalty Amount to PAGA Members will be paid exclusively (*i.e.*, 100%) for civil penalties.

Payment to Participating Class Members and PAGA Members will not require the submission of a claim form. The total Payment to Participating Class Members and PAGA Members will be determined based on the total number of total workweeks for each individual worked within the Class and PAGA periods, respectively. A Net Settlement Amount will be determined by subtracting from the Maximum Settlement Amount any amounts for approved attorneys' fees and costs, any Enhancement Payment to the Class Representative, the Settlement Administrator Costs, and the PAGA Penalty Amount. The amount to be paid per workweek to eligible Class Members will be calculated by the Settlement Administrator by dividing the Net Settlement Amount by the total number of workweeks for all Class Members who do not opt out of the Settlement. The amount to be paid per workweek to PAGA Members will be calculated by the Settlement Administrator by dividing the portion of the PAGA Penalty Amount (*i.e.*, 25%) payable to PAGA Members pursuant to statute by the aggregate number of Qualified Workweeks for all PAGA Members during the PAGA Period. The PAGA Period is defined as July 25, 2022 to [the earlier of May 20, 2024 or Preliminary Approval Date]. Defendants' records indicate that you worked [redacted] weeks during the applicable PAGA Period, which means your share of the PAGA Penalty Amount is estimated to be [redacted]. This amount is included in your estimated amount stated on the first page of this notice, not in addition to it. You will still receive your share of the PAGA Penalty Amount even if you opt out of being a Class Member. Receipt of the Individual Settlement Awards and/or Individual PAGA Shares will not entitle any Class Member or PAGA Member to additional compensation or benefits under any compensation, retirement or benefit plan or agreement in place during the period covered by the Settlement.

III. CALCULATIONS TO BE BASED ON DEFENDANTS' RECORDS AND RESOLUTION OF WORKWEEK DISPUTES

For each Class Member, the amount payable will be calculated by the Settlement Administrator from Defendants' records. Defendants' records will be presumed correct unless evidence to the contrary is provided to the Settlement Administrator. Defendants' records and any additional evidence will be reviewed by the Settlement Administrator in the event of a dispute about the number of workweeks worked by an individual Class Member. If a Class Member disputes the accuracy of Defendants' records, all supporting documents evidencing additional workweeks must be submitted by the Class Member. The dispute must (a) identify the nature of the dispute; (b) provide any information or documentation supporting the dispute; (c) be signed; and (d) be post-marked no later than [redacted]. The dispute will be resolved by the Settlement Administrator based on the records and evidence provided.

IV. RELEASE OF CLAIMS.

The Joint Stipulation of Settlement between Plaintiff and Defendants contains a release which releases Defendants and the Released Parties from all claims under state, federal and local law that were, or could have been, asserted based on the facts and allegations made in the Action, and any amendments thereto, as to the Class Members, including without limitation, California Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 1194, and 1194.2, California Industrial Commission Wage Orders, California Code of Regulations, Title 8, section 11040 et seq., Business and Professions Code sections 17200 et seq., and California Code of Civil Procedure section 1021.5 through and for the Class Period. Expressly excluded from the release are claims for retaliation, discrimination, unemployment insurance, disability, workers compensation, and claims outside the Released Class Claims. This release also covers and includes all Class Members who do not opt-out.

The claims to be released by the PAGA Members include all claims arising during the PAGA Period seeking civil penalties under PAGA, that Plaintiff, as proxy for the State of California and/or the LWDA, to the maximum extent permitted by law, and as a private attorney general acting on behalf of himself and the PAGA Members, asserted or could reasonably have asserted based on the facts alleged in Plaintiff's notice letter to the LWDA, including but not limited to all claims arising under California Labor Code sections 201, 202, 203, 221, 223, 225, 226, 226.3, 226.7, 246, 246.5, 248.5, 256, 510, 512, 558, 558.1, 1174, 1194, 1197.1, and 2698 et seq., the California Industrial Welfare Commission Wage Orders, and California Code of Regulations, Title 8, section 11040 et seq. based on the facts alleged in the LWDA letter and through and for the PAGA Period. PAGA Members cannot opt out of this waiver of claims. In addition, on the Effective Date, all PAGA Members and their successors in interest will be permanently enjoined and forever barred from prosecuting any of the Released PAGA Claims against any of the Released Parties. The Settlement shall release and bar all Released PAGA Claims by or on behalf of Plaintiff and all PAGA Members through and for the PAGA Period, regardless of whether Plaintiff and/or a PAGA Member negotiates (cashes) their/his/her settlement checks sent pursuant to this Settlement. PAGA Members cannot and do not have the right to opt out of being a PAGA Member and/or the Released PAGA Claims against the Released Parties. As such, an individual opting out of the Settlement Class has no impact as to his/her standing and/or inclusion as a PAGA Member assuming they/he/she qualifies as a PAGA Member

In addition to the Released Class Claims and Released PAGA Claims set forth above, Plaintiff Albert Carr, as an individual only, agrees to release any and all claims, whether known or unknown, under all federal, state and local statutes, and federal and state common law (including, but not limited to, those for contract, tort, and equity), including without limitation the California Unfair Competition Act (California Business and Professions Code section 17200 *et seq.*) and the California Labor Code.

Class Members and/or PAGA Members can talk to one of the lawyers appointed as Class Counsel (listed below) for free or talk to their own lawyer if they have questions about the released claims and what they mean.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER?

A. Participating in the Settlement as a Class Member.

If you wish to be a Participating Class Member and believe your workweek information is accurate, **you do not need to take any further action.** Payment will be automatically made to you consistent with the terms of the Agreement and Court Order. If you wish to dispute the workweek calculation, you may follow the procedures outlined in Section II.C above. California law protects Class Members from retaliation based on their decision to participate in the Settlement.

B. Excluding Yourself from the Settlement as a Class Member.

The Court will exclude you from being a Class Member if you request this by [REDACTED]. If you do not wish to be bound by the Settlement as a Class Member, you may request to be excluded (*i.e.*, "opt-out") by submitting a timely and valid written request to the Settlement Administrator. The request to opt-out must (a) state your full name and date of birth; (b) a statement that you do not want to be a Class Member, do not want to participate in the Settlement, and/or wants to be excluded from this Settlement; (c) identify the case name and number (*i.e.* Carr v. WaveDivision Holdings, LLC, 23CV005516); (d) be signed; and (e) be post-marked no later than [REDACTED]. The request to opt out must be mailed by First Class U.S. Mail, or the equivalent, to:

[insert admin info]

If you submit a request to opt-out which is not postmarked by [REDACTED], your request to opt out will be rejected, and you will be bound by the release and all other terms of the Agreement. Do not use a postage meter as that may not result in a postmark appearing on the envelope containing your request to opt out. Any Class Member who submits a complete and timely request to opt out shall, upon receipt by the Settlement Administrator, no longer be a Class Member and not receive their share of the Net Settlement Amount. PAGA Members cannot opt out of this Agreement and will receive their share of the PAGA Penalty Amount regardless of whether they opt out of being a Class Member.

C. Objection(s) to Settlement.

If you do not opt out of the Settlement, you can object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. You can ask the Court to deny approval by submitting an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. You may submit a written objection, which should (a) state your full name and date of birth; (b) provide evidence that you are, in fact, a Class Member; (c) state the reasons for the objection(s), including supporting documentation; (d) identify the case name and number (*i.e. Carr v. WaveDivision Holdings, LLC*, 23CV005516); (e) be signed; and (f) be post-marked no later than [REDACTED]. Written objections must be sent to the Settlement Administrator at the address identified in Section III.B. Moreover, or in the alternative to sending a written objection to the Settlement Administrator, you may appear at the final approval hearing to state your objection. Any Class Member who does not request exclusion may, if the Class Member so desires, enter an appearance through an attorney. If you appear through your own attorney, you are responsible for paying that attorney.

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

If the Court grants final approval of the Settlement, the Court will make and enter judgment consistent therewith. A notice of entry of judgment will be filed with the Court and available online at the Court's public web portal: <https://prod-portal-sacramento-ca.journaltech.com/public-portal/>. The judgment, whether favorable or not, will bind all Class Members who do not request exclusion. After final approval, each and every Class Member who does not opt out of the Settlement and PAGA Member, will release Defendants and the Released Parties from the Released Class Claims and the Released PAGA Claims described above. In other words, if you were employed as a Class Member by Defendants in California during the Class Period, and you do not exclude yourself from the Settlement, you will be deemed to have entered into these releases and to have released the above-described claims. In addition, you will be barred from ever suing Defendants and the Released Parties with respect to the claims covered by this Settlement. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

V. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a hearing in Department 22, 720 9th Street, Sacramento, California 95814 on [REDACTED] at 9:00 a.m. to determine whether the Agreement should be finally approved as fair, reasonable and adequate. To join by Zoom: <https://saccourt-ca-gov.zoomgov.com/my/sscdept22>. To join by phone: (833) 568-8864 / ID 16184738886. The Court will also be asked to approve Class Counsel's request for attorneys' fees and costs, the Settlement Administrator Costs, and the Class Representative's Enhancement Payment. The hearing may be continued without further notice. It is not necessary for you to appear at this hearing.

VI. ADDITIONAL INFORMATION

You may access the Complaint, Class Counsel's motion for preliminary approval, the Agreement, and any other documents required by the Court at <https://prod-portal-sacramento-ca.journaltech.com/public-portal/>. You can also contact Class Counsel or Defendants' Counsel as follows:

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PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS. IF YOU HAVE ANY QUESTIONS, PLEASE CALL [insert telephone number].

BY ORDER OF THE COURT