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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**

*Assigned for All Purposes to Hon. Lauri A. Damrell  
Department 22*

**CLASS ACTION**

**PLAINTIFF'S NOTICE OF MOTION AND  
MOTION FOR FINAL APPROVAL OF CLASS  
ACTION AND PAGA SETTLEMENT**

Date: January 3, 2025

Time: 9:00 a.m.

Dept.: 22

Judge: Hon. Lauri A. Damrell

Filed: July 26, 2023

FAC Filed: April 16, 2024

Trial Date: None Set

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on January 3, 2025, at 9:00 a.m., or as soon thereafter as the  
3 matter may be heard in Department 22 of the above-entitled Court, Plaintiff Albert Carr, individually  
4 and on behalf of all other similarly situated individuals, will, and hereby does, move for entry of an  
5 Order for the following:

- 6 1. Certifying the proposed class herein for purposes of settlement;
- 7 2. Appointing Plaintiff Albert Carr as class representative for purposes of settlement;
- 8 3. Appointing Shimoda & Rodriguez Law, PC, as Class Counsel for purposes of settlement;
- 9 4. Approving the proposed class action and Private Attorney's General Act settlement, in the  
10 amount of \$650,000, which is incorporated herein by reference;
- 11 5. Approving the application for payment to Class Counsel of attorneys' fees in the amount of  
12 \$227,500;
- 13 6. Approving the application for payment to Class Counsel of reasonable costs in the amount of  
14 \$12,865.05;
- 15 7. Approving the Class Representative Enhancement Payment of \$10,000 to Plaintiff Albert  
16 Carr;
- 17 8. Approving the appointment of ILYM Group, Inc., as the Settlement Administrator and for  
18 payment to ILYM Group, Inc., for administering said class action settlement in the amount of  
19 \$8,450.00;
- 20 9. Approving the settlement of claims under the Private Attorneys General Act for the total  
21 amount of \$32,500, 75% of which will be paid to the Labor and Workforce Development  
22 Agency and 25% of which will be paid to PAGA Members;
- 23 10. Determining that the class notification procedure and process complied with Class Members'  
24 due process rights;
- 25 11. Directing that any residue from settlement checks that were not cashed by the check cashing  
26 deadline be donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for Workers  
27 Rights under the doctrine of *cy pres*;
- 28

1 12. Approving and adopting the Proposed Order and its implementation schedule, which is filed  
2 herewith and incorporated by reference.

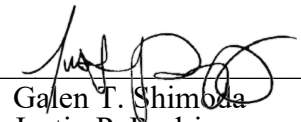
3 This Motion is being made pursuant to Code of Civil Procedure section 382, Labor Code section  
4 2699(l), and California Rules of Court 3.769 and 3.764, on the grounds that the preliminarily approved  
5 class action and Private Attorneys General Act settlement is fair, reasonable, and adequate as to all Class  
6 Members and should be approved by the Court. This motion will be based on the notice of motion,  
7 memorandum of points and authorities, the Declaration of Justin P. Rodriguez, the Declaration of Albert  
8 Carr, the Declaration of Cassandra Polites, exhibits, the record and files of this case, and any further oral  
9 or documentary evidence introduced at the hearing of this motion.

10 **Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of this matter**  
11 **by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the**  
12 **department may be downloaded off the court's website. If the party does not have online access,**  
13 **they may call the dedicated phone number for the department as referenced in the local telephone**  
14 **directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and**  
15 **receive the tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the**  
16 **court day before the hearing, no hearing will be held.**

17 Dated: December 9, 2024

Shimoda & Rodriguez Law, PC

18 By: \_\_\_\_\_

  
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Justin P. Rodriguez  
Renald Konini  
Attorneys for Plaintiff

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**Case No. 23CV005516**

*Assigned for All Purposes to Hon. Lauri A. Damrell  
Department 22*

**CLASS ACTION**

**MEMORANDUM OF POINTS & AUTHORITIES  
IN SUPPORT OF PLAINTIFF'S MOTION FOR  
FINAL APPROVAL OF CLASS ACTION AND  
PAGA SETTLEMENT**

Date: January 3, 2025  
Time: 9:00 a.m.  
Dept.: 22  
Judge: Hon. Lauri A. Damrell

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Trial Date: None Set

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## I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT

Plaintiff Albert Carr (“Plaintiff”) seeks final approval of a non-reversionary wage and hour class action and Private Attorneys General Act (“PAGA”) settlement in the gross amount of \$650,000. *See generally* Exhibit A (Joint Stipulation Regarding Class Action and PAGA Settlement and Release [“Agreement”]). Plaintiff is bringing this class action individually and on behalf of similarly situated employees who worked for Defendants WaveDivision Holdings, LLC, OH WDH HOLDCO, LLC, and Astound Broadband, LLC, (“Defendants”) (Plaintiff and Defendants sometimes collectively referred to as the “Parties”). *See generally* Exhibit B (Plaintiff’s Operative Complaint). There are 435 Class Members.

Plaintiff has alleged that Defendants violated California law by 1) requiring class members to work off-the-clock due to understaffing; 2) failing to incorporate the value of non-discretionary bonuses and on call incentive pay into class members’ regular rates of pay for the purpose of calculating overtime premiums, meal period premiums, rest period premiums, and paid sick time; 3) failing to provide all meal periods, including second meal periods; 4) failing to provide all rest periods, including third rest periods; and 5) unlawfully deducting wages. *See generally* Exhibit B; *see also* Declaration of Justin P. Rodriguez (“Decl. Rodriguez”), ¶¶ 3, 10. Plaintiff has also alleged Defendants are liable for civil penalties under the PAGA based on these violations. *See generally* Exhibit B; *see also* Decl. Rodriguez, ¶ 4; Exhibit C (Plaintiff’s Ltr. to the Labor and Workforce Development Agency [“LWDA”] Regarding PAGA Claims). Defendants have denied all of Plaintiff’s allegations in their entirety and any liability or wrongdoing of any kind. *See* Decl. Rodriguez, ¶ 6. Defendants have also denied that this case is appropriate for class certification other than for purposes of settlement. *See id.* However, subject to Court approval, the Parties have been able to compromise and settle all asserted claims as a result of extensive investigations, document and data exchanges, and extended negotiations. *See* Exhibit A. Plaintiff and Plaintiff’s counsel believe the proposed Agreement is fair, reasonable, and adequate based on the investigations, discovery, employee data exchanges, negotiations, and a detailed knowledge of the issues in this case. *See* Decl. Rodriguez, ¶¶ 7-8, 10-11; Declaration of Albert Carr (“Decl. Carr”) ¶ 10.

1 The reaction of Class Members to the preliminarily approved Agreement has been  
2 overwhelmingly positive and gives substantial support to the Agreement and all terms and allocations  
3 therein being fair, reasonable, and adequate. Zero Class Members opted out of the settlement and there  
4 have been zero objections to the Agreement. *See* Declaration of Cassandra Polites (“Decl. Polites”), ¶¶  
5 11-12. It is well within the discretion of this Court to grant final approval of the Agreement as it  
6 satisfies all applicable criteria for final settlement approval under California law. Accordingly, Plaintiff  
7 requests that the Court: (1) certify the settlement class; (2) grant final approval of the Agreement; (3)  
8 find that the procedures used to notify Class Members complied with due process; (4) grant Plaintiff’s  
9 request for attorney’s fees and costs, the Enhancement payment to the Class Representative, and  
10 Settlement Administrator Costs; and (5) approve and adopt the proposed order granting final approval,  
11 which is filed concurrently herewith.

## 12 II. PROCEDURAL AND LITIGATION HISTORY

13 Plaintiff filed this class action complaint on approximately July 26, 2023, in Sacramento County  
14 Superior Court. Plaintiff exhausted administrative remedies under the PAGA by providing notice of  
15 the claims and violations to the LWDA. *See* Exhibit C; Cal. Lab. Code § 2699.3(a), (c)<sup>1</sup>; Decl.  
16 Rodriguez, ¶ 4. Plaintiff filed a separate, single cause of action PAGA case in Sacramento County on  
17 October 30, 2023, Case No. 23CV010770 (“PAGA Case”). During the litigation of these cases,  
18 Plaintiff learned that Astound Broadband, LLC, was a successor entity to Defendants and, therefore,  
19 Plaintiff filed a DOE amendment in this case, as well as the PAGA Case, identifying Astound  
20 Broadband, LLC, as DOE 1. *See* Decl. Rodriguez, ¶ 4. Plaintiff has uploaded the filed DOE  
21 amendments with the LWDA. After attending mediation and resolving the class and PAGA claims at  
22 issue, the Parties agreed that Plaintiff would file an amended complaint in this case to consolidate all  
23 claims into a single proceeding for a for a more efficient review and approval process. *See id.* A First  
24 Amended Complaint that included all the claims and allegations from the PAGA case was filed in this  
25 matter on approximately April 16, 2024. *See* Exhibit B. There is no date set for a motion for  
26 certification or trial in this matter. *See* Decl. Rodriguez, ¶ 5.

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27  
28 <sup>1</sup> Although the PAGA was recently amended, the amendments specifically state they are applicable to cases filed after June 19, 2024. *See* Cal. Lab. Code § 2699(v)(1). Because the PAGA notice in this case predates this, all further references to the PAGA will be based on the statutory numbering applicable prior to the July 1, 2024, amendment.

### III. INVESTIGATION AND DISCOVERY CONDUCTED

Plaintiff thoroughly investigated issues affecting certification, the merits of the class claims, and potential damages for such claims. *See id.* at ¶¶ 3, 7-8, 10-11; Decl. Carr ¶¶ 3, 5-7. Plaintiff worked during the time all of Defendants' policies and practices at issue in the Complaint were in effect and provided information regarding these policies and practices, enabling pre-filing investigations to take place. *See* Decl. Carr, ¶ 2. The Parties engaged in informal discovery and exchange of documents, including a representative sampling of employee data, such as timecards, paystubs, payroll data, and relevant policies for the entirety of the statute of limitations applicable to the asserted claims. The discovery covered all aspects of the asserted claims, including certification issues, merits issues, damages, the scope and configuration of Class Members, the content and implementation of the wage and hour policies at issue, issues relating to manageability concerns at trial, among other relevant areas. *See* Decl. Rodriguez, ¶¶ 7-8, 10-11. The information allowed Plaintiff to determine the extent and frequency of any violations in accordance with Plaintiff's contentions and create an accurate damages model to assess the reasonableness of any settlement. *See id.*

### IV. NEGOTIATION AND PROPOSED SETTLEMENT

#### a. Plaintiff and Defendants Engaged in Extensive Arm's Length Negotiations

The final settlement occurred only after extended, arm's length negotiations. Over the course of approximately ten months, Plaintiff has been investigating the claims and discussing with Defendants' counsel the merits of the claims and issues present in this case. *See id.* at ¶¶ 7-11. The Parties exchanged substantial amounts of information and legal analysis in connection with these discussions. *See id.* It was only after these extended discussions, which included a full day mediation with Brandon McKelvey, Esq., and a mediator's proposal, that the Parties were able resolve all claims and enter into the Agreement. *See id.* at ¶ 9.

#### b. The Terms of the Agreement

1. The following groups of individuals are covered by the Agreement: (a) Class Members, which include all persons who worked any hours for Defendants in California during any pay period as a non-exempt employee from July 25, 2019 through May 20, 2024; and (b) PAGA Members, which include all individuals who worked any hours for Defendants in California during any pay period as a

1 non-exempt employee from July 25, 2022 through May 20, 2024. *See* Exhibit A, ¶¶ 1.4, 1.25. There  
2 are approximately 435 Class Members and 273 PAGA Members. *See* Decl. Polites, ¶¶ 15, 17.

3 2. Defendants will pay the Maximum Settlement Amount of \$650,000, which is exclusive  
4 of the employer's share of payroll taxes. *See* Exhibit A, ¶¶ 1.19, 5.1. No portion of the Maximum  
5 Settlement Amount will revert to Defendants. *See id.* at ¶ 5.6. PAGA Members will still be paid their  
6 share of the PAGA Penalty Amount regardless of whether they opt out of being Class Members. *See*  
7 *id.* at ¶ 7.5.1.

8 3. Up to \$10,000 will be paid to Plaintiff as an Enhancement Payment. This amount will  
9 be in addition to any amount Plaintiff may be entitled to under the terms of the Agreement. *See id.* at ¶  
10 5.4.

11 4. At preliminary approval, the Court approved appointing ILYM Group, Inc., to act as the  
12 Settlement Administrator, whose final costs are \$8,450. *See* Decl. Polites, ¶ 18.

13 5. The Parties agree that \$32,500 of the Maximum Settlement Amount shall be allocated to  
14 resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Penalty Amount will be  
15 paid to the LWDA and Twenty-Five percent (25%) will be paid to PAGA Members. *See* Exhibit A, ¶  
16 5.5. Given the risk to proving the claims on the merits, the derivative nature of the penalties, the efforts  
17 by Defendants to maintain compliant policies and take corrective action, the presence of what may  
18 likely be deemed good faith disputes, and the Court's discretion to reduce any penalty award, Plaintiff  
19 believes the \$32,500 PAGA Penalty Amount allocation represents a meaningful settlement aimed at  
20 deterring non-compliance given the facts of this case. *See* Decl. Rodriguez, ¶ 10(i); *see also*  
21 *Nordstrom Com. Cases*, 186 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to the resolution of  
22 PAGA claims based on their being disputed and being part of a class settlement which was evaluated  
23 based on the terms of the agreement overall); *Junkersfeld v. Med. Staffing Sols., Inc.*, 2022 WL  
24 2318173, at \*8 n.2 (E.D. Cal. 2022) (collecting cases with PAGA settlement values ranging from  
25 .037%-1%); *Jennings v. Open Door Marketing, LLC*, 2018 WL 4773057, \*9 (N.D. Cal. 2018)  
26 (approving settlement of PAGA claims at 0.6% of total estimated value due to risk of no recovery);  
27 *Ruch v. AM Retail Grp., Inc.*, 2016 WL 5462451, \*7 (N.D. Cal. 2016) (approving \$10,000 PAGA  
28 settlement allocation where total PAGA penalty exposure was approximately \$5.2 million, or 0.2% of

total estimated value); *Davis v. Cox Commc'ns California, LLC*, 2017 U.S. Dist. LEXIS 63514, \*1 (S.D. Cal. 2017) (preliminarily approving \$4,000 PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int'l, LLC*, 2014 U.S. Dist. LEXIS 8358, \*5 (S.D. Cal. 2014) (approving \$2,500 PAGA allocation when attorneys' fees award alone amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, \*6 (S.D. Cal. 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, 2010 U.S. Dist. LEXIS 53416, \*2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, \*9 (N.D. Cal. 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 U.S. Dist. LEXIS 24880, \*34-35 (E.D. Cal. 2017) (approving \$100,000 PAGA allocation in a \$3,950,000 settlement even though PAGA exposure was calculated at \$53,600,000, or 0.2% of total estimated value); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, \*7 (E.D. Cal. 2012) (approving \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*, 2012 WL 5941801, \*14 (E.D. Cal. 2012) (\$10,000 in PAGA Penalty Amount from \$2,500,000 settlement fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, \*1 (N.D. Cal. 2011) (approving PAGA settlement payment of \$7,500 to the LWDA out of \$6.9 million common-fund settlement).

6. The Parties agree that up to thirty five percent (35%) of the Maximum Settlement Amount (\$227,500) will be paid for Plaintiff's attorneys' fees incurred in the litigation of this case. Defendants will not oppose any application for attorneys' fees so long as it is within this threshold. *See id.* at ¶ 5.2. Additionally, the Parties agree that Plaintiff will also be entitled to the actual litigation costs as approved by the Court in the amount of \$12,865.05. *See id.* Exhibit D (Plaintiff's Counsel's Itemized Costs). The difference between the actual costs and the originally allocated \$20,000 will be redistributed to Class Members on a pro rata basis. *See* Exhibit A, ¶ 5.2.

7. Any allocated amounts under the Agreement for Settlement Administrator Costs, an Enhancement Payment, and attorney's fees and costs that are not ultimately awarded by the Court will remain part of the Net Settlement Amount and be paid out to Participating Class Members on a pro rata basis as set forth in the Agreement. *See* Exhibit A, ¶¶ 5.1-5.5, 5.8. These amounts will be paid out

1 from the Maximum Settlement Amount, not in addition to the Maximum Settlement Amount. *See*  
2 Exhibit A, ¶¶ 5.1-5.5.

3 8. One-third (1/3) of each Class Member's Individual Settlement Award shall be  
4 characterized as W2 Income and two-thirds (2/3) shall be characterized as 1099 income. *See id.* at ¶¶  
5 5.9.1-5.9.2. The entire Individual PAGA Share payment to each PAGA Member shall be characterized  
6 as 1099 income. *See id.* at ¶ 5.9.3.

7 9. Class Members who fail to timely opt-out of this settlement will waive all Released  
8 Class Claims as set forth in the Agreement. *See* Exhibit A, ¶¶ 1.28, 1.32, 1.34, 6.1. PAGA Members  
9 will waive all Released PAGA Claims as set forth in the Agreement regardless of whether they opt out  
10 of being a Class Member. *See id.* at ¶¶ 1.25, 1.33-1.34, 6.2, 7.5.1.

11 10. For any portion of the Net Settlement Amount or PAGA Penalty Amount allocated to  
12 Participating Class Members and/or PAGA Members that is not claimed by them by cashing their  
13 respective settlement checks within 180 calendar days of issuance, that remaining amount shall be  
14 donated equally, *i.e.*, 50/50 to Capital Pro Bono, Inc., and the Center for Workers' Rights under the  
15 doctrine of *cy pres*. *See* Exhibit A, ¶ 5.6. Because the Agreement provides for all funds such that there  
16 is no residue, the provisions of California Civil Procedure Code section 384 are inapplicable. *See In re*  
17 *Microsoft I-V Cases*, 135 Cal.App.4th 706, 718, 720 (2006). The designated beneficiaries clearly  
18 promote the law consistent with the objectives and purposes underlying the lawsuit as they are non-  
19 profits aimed at assisting employees with wage and hour claims who cannot afford legal representation,  
20 including providing representation for employees in wage claims before the California Labor  
21 Commissioner. *See id.* at 722-724; *see also* Decl. Rodriguez, ¶¶ 29-39.

22 **c. Allocation of Settlement Funds**

23 Payment to Participating Class Members and PAGA Members will not require the submission  
24 of a claim form. A Net Settlement Amount will be determined by subtracting from the Maximum  
25 Settlement Amount any awarded attorneys' fees and costs, Enhancement Payment to the Class  
26 Representative, Settlement Administrator Costs, and the PAGA Penalty Amount. The amount to be  
27 paid per Qualified Workweek to eligible Class Members will be calculated by the Settlement  
28 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. 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. *See* Exhibit A, at ¶¶ 1.20, 1.31, 5.8.

## **V. PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND THE SUBSEQUENT CLASS ACTION ADMINISTRATION**

Plaintiff's motion for preliminary approval of the class action settlement was approved by the Court on July 19, 2024. To comply with Class Members' due process rights, the parties enlisted an exhaustive method to ensure the best practical means possible was used to provide notice to the class. The parties provided the Settlement Administrator with the names, last known address, and social security numbers for the class. The Settlement Administrator then updated this information by doing an address trace for each Class Member. *See* Decl. Polites, ¶¶ 5-6. If the Notice of Settlement mailings were returned as undeliverable, further investigation was performed and they were re-mailed using updated information. *See id.* at ¶ 8. Of the 435 mailings to Class Members, only 9 were undeliverable after use of these methods. *See id.* at ¶¶ 7-10. The Notice of Settlement included information regarding the requested attorneys' fees and costs, Enhancement Payment, the PAGA Penalty Amount, Settlement Administrator Costs, and tax allocations. *See* Exh. A to Decl. Polites. The average distribution to Participating Class Members is approximately \$824.56 and the highest distribution is approximately \$1,556.89. *See* Decl. Polites, ¶ 16. No objections to the preliminarily approved settlement have been made and no Class Members opted out. *See id.* at ¶¶ 11-12.

It is not required that Class Members be given actual notice of a class settlement; instead, the best practicable notice under the circumstances is all that is required. *See Silber v. Mabon*, 18 F.3d 1449, 1453 (9th Cir. 1994); *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1129 (9th Cir. 2017); *Walsh v. CorePower Yoga LLC*, 2017 U.S. Dist. LEXIS 163991, \*12-14 (N.D. Cal. 2017); *Wright v. Linkus Enters.*, 259 F.R.D. 468, 474-75 (E.D. Cal. 2009). In *Silber v. Mabon*, 18 F.3d 1449 (9th Cir.

1 1994), the Court rejected a class member's argument that he had not received due process because he  
2 did not receive notice until after the opt out period, finding that, so long as the notice process utilized is  
3 the best practicable under the circumstances, due process is satisfied even if there is no actual receipt of  
4 the notice. *See Silber*, 18 F.3d at 1453-1454. A similar finding was made in *Briseno v. Conagra*  
5 *Foods, Inc.*, 844 F.3d 1121 (9th Cir. 2017). With regard to any undeliverable notice in this case, the  
6 Court in *Rannis v. Recchia*, 380 F.App'x 646 (9th Cir. 2010) found that class members who did not  
7 receive actual notice due to their mailings being deemed undeliverable were still properly held to be  
8 part of the class settlement because they received the best notice practicable under the circumstances.  
9 *See Rannis v. Recchia*, 380 F.App'x at 650-651. In *Noel v. Thrifty Payless, Inc.*, 7 Cal.5th 955, 980-  
10 984 (2019), the California Supreme Court noted that California has adopted a similar approach  
11 regarding providing notice to class members.

12 The notice method in *Rannis* is similar to that used in the present case. For example, the notice  
13 contains all information necessary for a Class Member to assess the litigation, the settlement, and  
14 whether they wanted to participate, object, or opt-out. *See* Exh. A to Decl. Polites. The Settlement  
15 Administrator utilized a national change of address database, forwarding notices, and skip tracing to  
16 ensure that all reasonable means were exhausted in attempting to provide Class Members notice of this  
17 settlement. *See* Decl. Polites, ¶¶ 5-10. Additionally, Class Members were directed to the Court's  
18 public access web portal to be able to review the entire motion for preliminary approval, the Notice of  
19 Settlement, and all other filings in this matter online, free of charge. *See* Exh. A to Decl. Polites, pg. 5.  
20 The content of the notice and the manner in which it was provided to Class Members was the best  
21 practicable notice to satisfy due process.

22 **VI. THE AGREEMENT WARRANTS FINAL APPROVAL AS IT IS FAIR, REASONABLE,**  
23 **AND ADEQUATE AS TO ALL CLASS MEMBERS BASED ON THE FACTS OF THIS**  
24 **CASE**

25 A class action may not be dismissed, compromised, or settled without Court approval and the  
26 decision to approve or reject a settlement is committed to the Court's sound discretion. *See* Cal. Rules  
27 of Court, Rule 3.769; Fed. R. Civ. Proc., Rule 23(e)<sup>2</sup>; *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th

28 <sup>2</sup>The California Supreme Court has authorized California's trial courts to rely on these federal resources to decide class certification issues. *See Green v. Obledo*, 29 Cal.3d 126, 145-46 (1981).

224, 234-35 (2001); *see also* Cal. Lab. Code §§ 2699(1)(2). However, “[d]ue regard should be given to what is otherwise a private consensual agreement between the parties. The inquiry ‘must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.’” *See Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996); *see also Cellphone Termination Fee Cases*, 180 Cal.App.4th 1110, 1118 (2009); *In re Microsoft I-V Cases*, 135 Cal.App.4th at 723; *Nordstrom Com. Cases*, 186 Cal.App.4th at 581. The law favors settlement of lawsuits, particularly class actions and other complex cases where substantial resources can be conserved by avoiding the time, expense, and rigors of formal litigation. *See Cellphone Termination Fee Cases*, 180 Cal.App.4th at 1117-1118; *In re Microsoft I-V Cases*, 135 Cal.App.4th at 723 n.14; *Nordstrom Com. Cases*, 186 Cal.App.4th at 581; *see also Neary v. Regents of Univ. of Cal.*, 3 Cal.4th 273, 277-81 (1992).

**a. The Terms of The Settlement Are Fair and Within the Range of Reasonableness**

The purpose of the Court’s final evaluation of a proposed class action settlement is to determine only whether it is within the range of reasonableness. *See Wershba*, 91 Cal.App.4th at 234-235. If the Court finds a proposed settlement falls within “the range of reasonableness,” it should grant final approval of the class action settlement. *See, e.g., North County Contr. ’s Assn., Inc. v. Touchstone Ins. Svcs.*, 27 Cal.App.4th 1085, 1089-90 (1994); *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 133 (2008). Factors to consider in determining whether the settlement is fair, reasonable, and adequate include the strength of the Plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement. *See Dunk*, 48 Cal.App.4th at 1801. However, this Court should begin its analysis with a presumption that the proposed settlement is fair. “A presumption of fairness exists where: (1) the settlement is reached through arm’s length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Id.* at 1802; *see also In re Heritage Bond Litig.*, 2005 WL

1 1594403, \*10 (C.D. Cal. 2005) (“It is established that the absence of a large number of objectors to a  
2 proposed class action settlement raises a strong presumption that the terms of a proposed class  
3 settlement action are favorable to the class members”).

4 **i. The Agreement is a Result of Extensive, Non-Collusive Arm’s Length**  
5 **Negotiations Between the Parties**

6 Settlement of this case was reached only after substantial litigation and extensive arm’s length  
7 negotiations lasting nearly ten months, which included a full day mediation and resolution through a  
8 mediator’s proposal. *See* Decl. Rodriguez, ¶ 8. At all times, the negotiations were adversarial, although  
9 still professional in nature. *See id.*

10 **ii. The Extent of Investigation and Discovery Completed Provided Ample**  
11 **Information to Enter Into an Informed and Reasonable Settlement**

12 The Parties were in possession of all necessary information during the negotiations. The Parties  
13 engaged in substantial informal discovery, which included all necessary components for evaluating the  
14 class claims and creating an accurate damages model. *See id.* at ¶¶ 7-8, 10-11. Plaintiff was in  
15 possession of this information prior to calculating any damages in this case. *See id.* As a result,  
16 Plaintiff was able to make a reasonable estimation of Defendants’ potential liability. *See id.* For these  
17 reasons, the settlement now before the Court was reached at a stage where “the parties certainly have a  
18 clear view of the strengths and weaknesses of their cases” sufficient to support the settlement. *See*  
19 *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 617 (N.D. Cal. 1979).

20 **iii. Plaintiff’s Counsel are Experienced in Similar Litigation**

21 Plaintiff’s counsel have considerable experience in complex litigation such as class and PAGA  
22 actions. *See* Decl. Rodriguez, ¶¶ 13-21. Thus, Plaintiff’s counsel are qualified to evaluate the class  
23 claims, the value of settlement versus moving forward with litigation, and viability of possible  
24 affirmative defenses. Plaintiff’s counsel believe that the Agreement is fair, reasonable, and adequate in  
25 light of the risks associated with the claims, the uncertainties of complex litigation, and the secured  
26 benefit to Class Members. *See id.* at ¶ 11.

1                   **iv. No Class Members Objected or Opted Out**

2                   The reaction by Class Members to the Agreement and all the terms and allocations stated therein  
3 is overwhelmingly positive. Zero Class Members have objected to any aspect of the Agreement and  
4 zero have opted out. *See* Decl. Polites, ¶¶ 11-12. This provides strong evidence that the settlement is  
5 fair, reasonable, and adequate. *See In re Heritage Bond Litig.*, 2005 WL 1594403, \*10 (“It is established  
6 that the absence of a large number of objectors to a proposed class action settlement raises a strong  
7 presumption that the terms of a proposed class settlement action are favorable to the class members”);  
8 *Nat’l Rural Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) (“The  
9 unanimous, positive reaction to the Proposed Settlement is compelling evidence that the Proposed  
10 Settlement is fair, just, reasonable, and adequate”).

11                   **v. The Settlement is Fair, Reasonable, and Adequate Based on the Strength of**  
12                   **Plaintiff’s Case and the Risks and Costs of Further Litigation**

13                   Plaintiff’s claims and the ability to obtain and maintain certification all the way through trial  
14 were heavily disputed by Defendants. *See* Decl. Rodriguez, ¶¶ 6, 10. Based on the records and facts of  
15 this case, Plaintiff has secured a gross recovery of approximately 4.2% of the maximum value of the  
16 claims in this matter and between 12.9% and 41.9% of the more realistic range of recovery  
17 (\$1,550,105.91 to \$5,031,365.42). *See* Decl. Rodriguez, ¶¶ 10-11. The net recovery represents  
18 approximately 2.3% of the maximum value of the claims in this matter and between 7.1% and 23.1% of  
19 the more realistic range of recovery. The average net award is approximately \$824.56 with a maximum  
20 distribution of \$1,556.89. *See* Decl. Polites, ¶ 16.

21                   This settlement is a reasonable compromise of the class and PAGA claims, and is within the  
22 percentile ranges of the total available damages that have been approved in other class settlements. *See*  
23 *Wershba*, 91 Cal.App.4th at 246, 250; *Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139  
24 (1990); *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 628 (9th Cir. 1982); *see also In re*  
25 *Omnivision Technologies, Inc.*, 559 F.Supp.2d 1036, 1042 (2007) (noting that certainty of recovery in  
26 settlement of 6% of maximum potential recovery after reduction for attorney’s fees was higher than  
27 median percentage for recoveries in shareholder class action settlements, averaging 2.2%-3% from  
28 2000 through 2002); *Bravo v. Gale Triangle, Inc.*, 2017 U.S. Dist. LEXIS 77714 (C.D. Cal. 2017)

(approving a settlement where the net recovery to class members was approximately 7.5% of the projected maximum recovery amount); *Avila v. Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS 130878 (E.D. Cal. 2017) (approving a settlement with a gross recovery of 11% of the projected maximum damages available and a net recovery of approximately 6.7% of the projected maximum recovery); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245 (N.D. Cal. 2015) (approving a settlement where the gross recovery was approximately 8.5% of the projected maximum recovery); *Schiller v. David's Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776, \*48 (E.D. Cal. 2012) ("Class Members will receive an average of approximately \$198.70, with the highest payment to a Class Member being \$695.78 . . . Overall, the Court finds that the results achieved are good, which is highlighted by the fact that there was no objection to the settlement amount or the attorneys' fees requested."); *Gardner v. GC Servs., LP*, 2012 U.S. Dist. LEXIS 47043, 18 (S.D. Cal. 2012) ("the results achieved in this case were very favorable. Class members are provided with immediate monetary relief, with an average award of around several hundred dollars and a minimum award of \$50").

**vi. The Proposed Settlement is a Reasonable Compromise of Claims**

In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116 (2008), the Court required additional information be presented in class action settlements "to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation . . . ." *Id.* at 129. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal.App.4th 399 (2010), clarified that *Kullar* does not require an illusory prediction of the outer reaches of exposure without taking into account the actual risks of litigation such as dispositive motions and trial. *Kullar* also does not require an explicit statement of the maximum amount to be recovered if a plaintiff prevailed on all the claims, provided there is a record that allows "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." *Id.* at 409.

Plaintiff has thoroughly set forth the realistic range of outcomes in this litigation as well as the data points relied upon in reaching these ranges. *See* Decl. Rodriguez ¶¶ 7-8, 10-11. The record demonstrates that the compromises made by Plaintiff were reasonable and have resulted in a settlement with a recovery percentage well within the range of what has been found to be sufficient in several

1 other cases. *See, supra*, Section VI.a.v; *see also Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242  
2 (9th Cir. 1998) (“The fact that a proposed settlement may only amount to a fraction of the potential  
3 recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should  
4 be disapproved”); *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 (2d Cir. 1974) (“In fact there is  
5 no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a  
6 thousandth part of a single percent of the potential recovery”).

7 **b. Certification of the Class is Appropriate**

8 Class certification is appropriate when (1) the class is ascertainable and (2) there is “a well-  
9 defined community of interest in the questions of law and fact involved affecting the parties to be  
10 represented.” *Dunk*, 48 Cal.App.4th at 1806. The “community of interest” element “embodies three  
11 factors: (1) common questions of law or fact predominate; (2) class representatives with claims or  
12 defenses typical of the class; and (3) class representatives who can adequately represent the class.” *Id.*  
13 Here, the Court conditionally certified the settlement class at preliminary approval, and nothing has  
14 happened in the interim that would warrant changing that decision. *See Garcia v. City of King City*,  
15 2017 WL 363257, \*4 (N.D. Cal. 2017); *Messineo v. Ocwen Loan Servicing, LLC*, 2017 WL 733219, \*4  
16 (N.D. Cal. 2017). Here, the Parties agree that, for the purposes of settlement, these prerequisites are  
17 met. *See* Exhibit A.

18 **i. The Proposed Settlement Class is Ascertainable and Sufficiently Numerous**

19 The proposed settlement class is ascertainable because all putative Class Members can be  
20 readily identified through employee personnel and payroll files. *See Noel*, 7 Cal.5th at 980; *Rose v.*  
21 *City of Hayward*, 126 Cal.App.3d 926, 932 (1981); *Lee v. Dynamex, Inc.*, 166 Cal.App.4th 1325, 1334  
22 (2008). The numerosity requirement is met because there are 435 individuals who fall within the  
23 definition of Class Member, which makes joinder of all members impracticable. *See Gay v. Waiters' &*  
24 *Dairy Lunchmen's Union*, 489 F.Supp. 282 (N.D. Cal. 1980), *aff'd* 694 F.2d 531 (9th Cir. 1982);  
25 *Hebbard v. Calgrove*, 28 Cal.App.3d 1017, 1030 (1972) (noting no set minimum to meet the  
26 numerosity prerequisite, but a class as few as twenty-eight (28) members is acceptable). Thus, these  
27 requirements are satisfied.

1                   **ii. The Commonality, Predominance, and Typicality Requirements are Met**

2                   The commonality requirement is met when there are questions of law or fact regarding the class  
3 as a whole. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). Commonality requires  
4 only that some common legal or factual questions exist; Plaintiff need not show that all issues in the  
5 litigation are identical. *See Richmond v. Dart Ind., Inc.*, 29 Cal.3d 462, 473 (1981); *City of San Jose v.*  
6 *Superior Court*, 12 Cal.3d 447, 460 (1974). Common questions of law or fact must also predominate  
7 over individual questions and class-wide treatment of a dispute must be superior to individual  
8 litigation.<sup>3</sup> *See Richmond*, 29 Cal.3d at 469. Predominance requires a putative class be sufficiently  
9 cohesive to warrant adjudication by representation. *See Hanlon*, 150 F.3d at 1022. The typicality  
10 requirement is met when claims of the named representative are typical of those of the class, though  
11 “they need not be substantially identical.” *Id.* at 1020; *Classen v. Weller*, 145 Cal. App. 3d 27, 46-47  
12 (1983).

13                  The common questions of law and fact in this case stem from Plaintiff’s contention that  
14 Defendants violated California law by 1) requiring class members to work off-the-clock due to  
15 understaffing; 2) failing to incorporate the value of non-discretionary bonuses and on call incentive pay  
16 into class members’ regular rates of pay for the purpose of calculating overtime premiums, meal period  
17 premiums, rest period premiums, and paid sick time; 3) failing to provide all meal periods, including  
18 second meal periods; 4) failing to provide all rest periods, including third rest periods; and 5)  
19 unlawfully deducting wages. *See Exhibit B.* The waiting time penalties, unfair competition, and  
20 PAGA claims are derivative of these violations. *See id.* Plaintiff and the Class Members seek the same  
21 remedies under state law. Under these specific circumstances, the commonality and predominance  
22 requirements are satisfied. Regarding the typicality requirement, Plaintiff contends he suffered from  
23 the same unlawful policies, treatment, and circumstances as Class Members did, will request the same  
24 remedies, and will rely on the same methods of proof to establish liability and damages. *See id.* Thus,  
25 the typicality requirement is also satisfied for settlement purposes.

26  
27  
28                  <sup>3</sup>When assessing predominance and superiority, a court may consider that the class will be certified for settlement purposes only and that manageability of trial is therefore irrelevant. *See Amchem Products v. Windsor*, 521 U.S. 591 (1997).

1                   **iii. The Adequacy Requirement is Met**

2                   The adequacy of representation requirement is met if the named representative and counsel have  
3 no interests adverse to those of the putative class members and are committed to vigorously prosecuting  
4 the case on behalf of the class. *See Hanlon*, 150 F.3d at 1020; *McGhee v. Bank of America*, 60  
5 Cal.App.3d 442, 450-51 (1976). Those standards are met here. Under the proposed Agreement,  
6 Plaintiff and the putative Class Members will receive a pro rata share of the settlement based on the  
7 number of workweeks they worked for Defendants. *See* Exhibit A. Finally, any settlement class  
8 member who wished to opt-out of the settlement was able to do so, and he or she was also able to  
9 dispute the number of workweeks stated in the Notice of Settlement.

10                  There is no conflict of interest between Plaintiff and Class Members. Plaintiff and Plaintiff's  
11 counsel have pursued the claims made in the operative Complaint vigorously on behalf of the class.  
12 Plaintiff's counsel, with Plaintiff's assistance, thoroughly investigated the claims made in this case by  
13 speaking with Plaintiff and reviewing substantial amounts of documents. Plaintiff's counsel thereafter  
14 engaged Defendants' counsel in settlement discussions over the course of approximately ten months.  
15 Moreover, Plaintiff's counsel has experience defending and bringing wage and hour claims. Because  
16 Plaintiff's counsel has vigorously pursued Plaintiff's and the Class Members' claims, the adequacy  
17 requirement is met. *See generally* Decl. Rodriguez.

18                   **VII. THE AMOUNTS REQUESTED FOR ATTORNEY'S FEES AND COSTS, AN**  
19                   **ENHANCEMENT PAYMENT TO THE CLASS REPRESENTATIVE, AND**  
20                   **SETTLEMENT ADMINISTRATOR COSTS ARE REASONABLE AND SHOULD BE**  
21                   **APPROVED**

22                  The Notice of Settlement sent to Class Members specifically identified the allocations for  
23 attorney's fees and costs, the Enhancement Payment, and Settlement Administrator Costs. *See* Exh. A  
24 to Decl. Polites. The reaction of Class Members to these requested amounts provides useful evidence of  
25 whether they are reasonable. *See In re Heritage Bond Litig.*, 2005 WL 1594403, \*21 ("The absence of  
26 objections or disapproval by class members to Class Counsel's fee request further supports finding the  
27 fee request reasonable"). As noted above, there were no objections raised to the Agreement or any term  
28 or allocation therein whatsoever. *See* Decl. Polites, ¶ 12. In addition to Class Members' reactions

1 supporting the requested amount, the facts and applicable case law also support awarding these amounts  
2 in full.

3 An award of attorney's fees should include compensation for all hours reasonable spent. *See*  
4 *Ketchum v. Moses*, 24 Cal.4th 1122, 1133 (2001); *see also Hensley v. Eckerhart*, 461 U.S. 424, 431  
5 (1983) (finding hours are reasonable spent if they are the kind normally billed to a fee-paying client).  
6 California has not adopted any "benchmark" percentage utilized by several federal courts. *See Emmons*  
7 *v. Quest Diagnostics Clinical Lab's, Inc.*, 2017 WL 749018, \*7 (E.D. Cal. 2017) ("Notably, while the  
8 California Supreme Court recognized the Ninth Circuit's 25 percent benchmark for percentage awards  
9 in common fund cases, it did not adopt such a benchmark for California cases"). Instead, "[t]he  
10 benchmark in determining attorney's fees is reasonableness." *Karton v. Ari Design & Const., Inc.*, 61  
11 Cal.App.5th 734, 744 (2021).

12 **a. A Fee of Thirty-Five Percent of the Common Fund Is Reasonable Because It Is Within**  
13 **the Ranges Historically Approved by Courts in Class Settlements and a Lodestar Cross**  
14 **Check Validates the Proposed Fee**

15 An award of attorney's fees under the common fund doctrine is appropriate in this case as there  
16 is a sufficiently identifiable class of beneficiaries (*e.g.* the settlement class), the benefits received can be  
17 accurately traced to the settlement Plaintiff and Class Counsel were able to negotiate on behalf of Class  
18 Members, and the fee can be shifted with exactitude to those benefiting as the fee request is a specific,  
19 lump-sum percentage of the fund. *See Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016);  
20 *Paul, Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268, 271 (9th Cir. 1989); *Boeing Co. v. Van Gemert*,  
21 444 U.S. 472, 477-478 (1980) ("A Lawyer who recovers a common fund for the benefit of persons other  
22 than . . . her client is entitled to a reasonable attorney's fee from the fund as a whole."). The requested  
23 fee, 35% of the common fund is within ranges awarded in other cases. *See Martin v. Ameripride Servs.*,  
24 2011 U.S. Dist. LEXIS 61796, \*22-23 (S.D. Cal. 2011) (collecting cases); *Birch v. Office Depot, Inc.*,  
25 USDC Southern District, Case No. 06cv1690 DMS (WMC) (awarding 40% fee on a \$16 million wage  
26 and hour class action settlement); *Rippee v. Boston Mkt. Corp.*, USDC Southern District, Case No.  
27 05cv1359 BTM (JMA) (awarding a 40% fee on a \$3.75 million wage and hour class action settlement).

28 To the extent there may be some Courts that have granted fees at a percentage less than 35%,  
that does not justify an arbitrary cap on Class Counsel's fees in this case. First, in many instances, the

1 treatises or cases discussing these percentages are relying on federal decisions guided by a “benchmark”  
2 percentage of 25% that has not been adopted by the California Supreme Court. *See Emmons*, 2017 WL  
3 749018, \*7. This artificially lowers the average percentage of fees awarded. Second, many of the same  
4 decisions and treatises refer to cases that have a substantial gross settlement fund to begin with, which  
5 will generally correspond to a lower percentage of fees being deemed reasonable. *See Vizcaino v.*  
6 *Microsoft Corp.*, 290 F.3d 1043, 1052 (9th Cir. 2002) (compiling an appendix of class settlements with  
7 gross settlement funds of \$53 million to \$193 million and a range of 2.8% to 40% in awarded attorney’s  
8 fees, averaging approximately 22%). Rather than acting as a cap on any fee, the percentages applied in  
9 cases are a tool to cross check the reasonableness of the fee just as the lodestar method is a tool to cross  
10 check the reasonableness of the requested percentage. *See Karton*, 61 Cal.App.5th at 744; *Vizcaino*, 290  
11 F.3d at 1048 (“courts cannot rationally apply any particular percentage – whether 13.6 percent, 25  
12 percent or any other number – in abstract, without reference to all the circumstances of the case”).

13 To the extent the Court wishes to exercise its discretion to conduct a lodestar cross check, the  
14 cross check only validates the fee request. *See Laffitte*, 1 Cal.5th at 503-506. Again, an award of  
15 attorney’s fees should include compensation for all hours reasonably spent. *See Ketchum*, 24 Cal.4th at  
16 1133; *See also Hensley*, 461 U.S. at 431 (finding hours are reasonably spent if they are the kind  
17 normally billed to a fee-paying client). After monitoring the disbursement of all funds and reporting to  
18 the Court at any compliance hearing(s), Class Counsel will have spent approximately 397.2 hours  
19 performing tasks that would normally be billed to any fee-paying client in complex litigation. *See Decl.*  
20 *Rodriguez*, ¶ 23; Exhibit F; *Syers Props. III, Inc. v. Rankin*, 226 Cal.App.4th 691, 699 (2014) (“Because  
21 time records are not required under California Law . . . , there is no required level of detail that counsel  
22 must achieve.”) (internal quotations omitted). At the prevailing market rates for Class Counsel’s level  
23 of experience and this type of complex litigation, this equates to a lodestar of approximately \$235,570.  
24 *See Decl. Rodriguez*, ¶¶ 23-25; *Children’s Hosp. and Med. Ctr. V. Bonta*, 97 Cal.App.4th 740, 746  
25 (2002) (noting rates were reasonable where they were “within the range of reasonable rates charged by  
26 and judicially awarded comparable attorneys for comparable work.”).

27 A fee award of 35% of the common fund would not require any multiplier of Class Counsel’s  
28 lodestar in this case. *See Decl. Rodriguez*, ¶¶ 23-25. This is significant in demonstrating that the fee

request is reasonable as both California Appellate Courts and the State Supreme Court have otherwise approved multipliers ranging from 2x to 4x of the lodestar in prior cases. *See Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th at 487 (finding the trial court did not abuse its discretion in approving a fee award and noting that the award resulted in a multiplier of 2.03x to 2.13x); *Wershba*, 91 Cal.App.4th at 255 (“Multipliers can range from 2 to 4 or even higher”). Multipliers are awarded in contingent fee litigation to compensate counsel for the risk of non-payment:

It is an established practice in the private legal market to reward attorneys for taking the risk of non-payment by paying them a premium over their normal hourly rates for winning contingency cases. *See Richard Posner, Economic Analysis of Law* § 21.9, at 534-35 (3d ed. 1986). Contingent fees that may far exceed the market value of the services if rendered on a non-contingent basis are accepted in the legal profession as a legitimate way of assuring competent representation for Plaintiff who could not afford to pay on an hourly basis regardless whether they win or lose.

*Chem. Bank v. City of Seattle (In re Walsh Pub. Power Supply Sys. Sec. Litig.)*, 19F.3d 1291, 1299 (9th Cir. 1994). Moreover, “in the common fund context, attorneys whose compensation depends on their winning the case, must make up in compensation in the cases they win for the lack of compensation in the cases they lose.” *Id.* at 1300-01; *see also Ketchum*, 24 Cal.4th at 1138 (“The adjustment to the lodestar figure, *e.g.*, to provide a fee enhancement reflecting the risk that the attorney will not receive payment if the suit does not succeed, constitutes earned compensation; unlike a windfall, it is neither unexpected nor fortuitous”). However, in this case, Plaintiff is not be requesting any multiplier of the lodestar as the lodestar itself exceeds the 35% fee request. *See Decl. Rodriguez*, ¶¶ 22-25; *See Ketchum*, 24 Cal.4th at 1133; *see also Hensley*, 461 U.S. at 431 (finding hours are reasonable spent if they are the kind normally billed to a fee-paying client).

**b. Class Counsel’s Expenses and Costs Were Necessarily Incurred to Achieve the Benefit Obtained**

The appropriate analysis in determining whether particular costs are compensable is whether they are of the type typically billed by attorneys to paying clients in the marketplace. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (“Harris may recover as part of the award of attorney’s fees those out-of pocket expenses that ‘would normally be charged to a fee paying client’”); *Abrams v. Lightolier, Inc.*, 50 F.3d 1204, 1225 (3d Cir. 1995); *Bratcher v. Bray-Doyle Indep. Sch. Dist. No. 42*, 8

1 F.3d 722, 725-26 (10th Cir. 1993). The categories of expenses for which Class Counsel seek  
2 reimbursement here are categories normally charged to hourly clients and, therefore, should be  
3 reimbursed out of the common fund. *See* Decl. Rodriguez, ¶ 26; Exhibit D.

4  
5 **c. Class Counsel's Request for an Enhancement Payment to the Class Representative Is  
Justified In Light of The Results Achieved for the Class**

6 A service payment to a named plaintiff is intended to recognize their time and effort on behalf  
7 of the class. Indeed, courts routinely approve incentive awards to compensate named plaintiffs for the  
8 services they provide and the risks they incurred during the course of the class action litigation. *See*  
9 *Ingram v. The Coca Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001). In *Ingram*, the Court approved  
10 incentive awards of \$300,000.00 to each named Plaintiff in recognition of the services they provided to  
11 the class by responding to discovery, participating in the mediation process, and taking the risk of  
12 stepping forward on behalf of the class. *See id.* at 694; *see also Van Vranken v. Atlantic Richfield Co.*,  
13 901 F.Supp. 294 (N.D. Cal. 1995) (approving a \$50,000.00 participation award); *Cellphone*  
14 *Termination Fee Cases*, 186 Cal.App.4th at 1393 (approving \$10,000 awards to each of the four (4)  
15 named plaintiffs).

16 To date, Plaintiff has spent approximately 140-165 hours providing substantial support in  
17 helping to secure payment to Class Members. *See* Decl. Carr, ¶¶ 5-8. Plaintiff provided and explained  
18 a substantial number of documents critical to helping establish important facts central to this case and  
19 participated in substantial amount of informal discovery. *See id.* Payment of \$10,000.00 to Plaintiff is  
20 appropriate given the risk, assistance, time required, and burden experienced in bringing and resolving  
21 this case, especially since the amount was identified in the Notice of Settlement and no objections to it  
22 have been received. *See Cellphone Termination Fee Cases*, 186 Cal.App.4th at 1393 (approving  
23 \$10,000 awards to each of the four (4) named plaintiffs); *West v. Circle K Stores, Inc.*, 2006 WL  
24 8458679, \*2-3, \*7-\*8 (E.D. Cal. 2006) (awarding \$15,000 to each of the named representatives who  
25 spent 100 hours and 80 hours, respectively, prosecuting the case on behalf of class members); *Dent v.*  
26 *ITC Serv. Grp., Inc.*, 2013 WL 5437331, \*4, \*7, \*9 (D. Nev. 2013) (awarding a \$15,000 representative  
27 enhancement out of a \$150,000 settlement for approximately 530 class members).

Since being preliminarily approved as the Settlement Administrator, ILYM Group, Inc., has carried out its duties as set forth in the Court's order and the Agreement. *See generally* See Decl. Polites. Under the Agreement, a maximum of \$15,000 was set aside for potential Settlement Administrator Costs. ILYM Group, Inc.'s final costs are \$8,450.00, well under the potential maximum Class Members were given notice of. Plaintiff requests that the Court approve payment to the Settlement Administrator in the amount of \$8,450.00 to compensate it for the costs of administration as part of the final order approving the Settlement.

For all of the foregoing reasons, Plaintiff respectfully requests that this Court certify the class for settlement purposes; grant final approval of the proposed settlement, including the Enhancement Payment, the payment to the LWDA under PAGA, payment of Settlement Administrator Costs, and Class Counsel's application for reasonable attorneys' fees and costs; find that the Notice of Settlement, and administration process satisfied Class Members' due process rights; and approve the proposed order submitted concurrently herewith.

Dated: December 9, 2024

By:

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Justin P. Rodriguez  
Renald Konini  
Attorneys for Plaintiff

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Attorneys for Plaintiff 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**

*Assigned for All Purposes to Hon. Lauri A. Damrell  
Department 22*

**CLASS ACTION**

**DECLARATION OF JUSTIN P. RODRIGUEZ IN  
SUPPORT OF PLAINTIFF'S MOTION FOR  
FINAL APPROVAL OF CLASS ACTION AND  
PAGA SETTLEMENT**

Date: January 3, 2025

Time: 9:00 a.m.

Dept.: 22

Judge: Hon. Lauri A. Damrell

Filed: July 26, 2023

FAC Filed: April 16, 2024

Trial Date: None Set

1 I, Justin P. Rodriguez, declare:

2 1. I am an attorney at law duly admitted to practice before all the courts of the State of  
3 California and an attorney of record for Plaintiff Albert Carr (“Plaintiff”) herein. I am making this  
4 declaration on behalf of the named Plaintiff, the putative class members, and in support of Plaintiff’s  
5 Motion for Final Approval of Class Action and PAGA Settlement (“Motion”). A true and correct copy  
6 of the Joint Stipulation Regarding Class Action and PAGA Settlement and Release (“Agreement”) in  
7 this matter is filed with this Motion as Exhibit A.

8 2. Pursuant to Rule 2.99.05 of the Local Rules for the Superior Court of California, County  
9 of Sacramento, I have reviewed the Court’s class action and PAGA settlement checklist and believe I  
10 have prepared the moving papers in compliance with the checklist as well as the California Rules of  
11 Court.

12 3. This case is a wage and hour class action based on Plaintiff’s contention that Defendants  
13 WaveDivision Holdings, LLC, OH WDH HOLDCO, LLC, and Astound Broadband, LLC,  
14 (“Defendants”) failed to pay minimum wages, failed to pay overtime wages, failed to provide meal  
15 periods or pay meal period premiums in lieu thereof, failed to provide rest periods or pay rest period  
16 premiums in lieu thereof, failed to provide accurate wage statements, failed to timely pay final wages  
17 unlawfully deducted, and/or failed to pay, contract wages, and engaged in unfair competition. Plaintiff  
18 also alleged liability for civil penalties under the Private Attorneys General Act (“PAGA”). These  
19 claims were based on allegations that Defendants violated California law by 1) requiring class members  
20 to work off-the-clock due to understaffing; 2) failing to incorporate the value of non-discretionary  
21 bonuses and on call incentive pay into class members’ regular rates of pay for the purpose of  
22 calculating overtime premiums, meal period premiums, rest period premiums, and paid sick time; 3)  
23 failing to provide all meal periods, including second meal periods; 4) failing to provide all rest periods,  
24 including third rest periods; and 5) unlawfully deducting wages. The PAGA, waiting time penalty,  
25 wage statement violation, and unfair competition claims also derive from these violations.

26 4. Plaintiff is the only named representative in this matter. From our initial investigations  
27 of Plaintiff’s claims and documents, we believed these claims had merit and could be maintained as a  
28 class action. We filed this action on or about July 26, 2023. Plaintiff has also exhausted administrative

remedies through the Labor and Workforce Development Agency (“LWDA”). Plaintiff filed a notice with the LWDA on July 25, 2023, setting forth the facts and theories of liability. A true and correct copy of the notice filed with the LWDA is being filed with this Motion as Exhibit C. A copy of the notice was also sent to Defendants via certified mail and the \$75.00 filing fee was remitted to the LWDA at that time. There was no response by the LWDA regarding its intent to investigate the claims alleged in Plaintiff’s notice for more than 65 days. As such, Plaintiff became authorized to commence a civil action under the PAGA. Plaintiff filed a separate complaint alleging a single cause of action under the PAGA on October 30, 2023, in Sacramento County Superior Court, Case No. 23CV010770 (“PAGA Case”). A copy of the Complaint in the PAGA Case was uploaded to the LWDA on November 2, 2023, after we received an endorsed copy back from Court. During the litigation, Plaintiff became aware that Astound Broadband, LLC, was a successor entity to the originally named defendants and that Class Members and PAGA Members were continuing their employment under this successor entity. As such Plaintiff filed a DOE amendment on February 8, 2024, in this action and the PAGA Case, identifying Astound Broadband, LLC, as DOE 1. A filed copy of the Doe Amendments has been uploaded to the LWDA. After attending mediation and resolving the claims in this action and the PAGA Case, the Parties agreed that Plaintiff would file an amended complaint in this action to consolidate all claims and causes of action into one proceeding, the earlier filed class case, for a more efficient review and approval process. The Court granted the Parties request to file an amended, consolidated pleading in this case and a First Amended Complaint was filed on April 16, 2024. A true and correct copy of the First Amended Complaint is filed with this Motion as Exhibit B. A copy of the filed First Amended Complaint was also uploaded to the LWDA on April 18, 2024. On June 12, 2024, Plaintiff filed a request and proposed order to dismiss the entire PAGA Case without prejudice. On June 26, 2024, the Court dismissed the entire PAGA Case without prejudice.

5. Currently, there is no date set for a motion to certify the class and there is no trial date.

6. Defendants are represented in this matter by Shannon B. Nakabayashi and Samuel J. Maselli of Jackson Lewis P.C. From the beginning, Defendants have contested the merits of this case, the suitability of the case for class action or representative treatment, the manageability of the case at trial, and Plaintiff’s ability to prove a violation in each pay period for each employee among other

1 defenses and contentions they made challenging the propriety of this action. Defendants further  
2 contended, even assuming there was a finding supporting the imposition of PAGA penalties, that the  
3 Court would likely exercise its discretion to substantially reduce any such penalties owed based on  
4 evidence of good faith attempts to comply with California Labor Code obligations by Defendants.  
5 Notwithstanding its agreement to settle this matter, Defendants believe the practices Plaintiff is  
6 contending are unlawful either do not exist or, to the extent they do exist, fully comply with all state  
7 and federal employment laws with respect to Plaintiff, Class Members, and PAGA Members. Also,  
8 Defendants have contended that this matter is not appropriate for class certification outside of this  
9 proposed class settlement.

10         7. Based on the expected testimony from Plaintiff and Class Members, a review of  
11 Defendants' policies and procedures and other documents relating to the alleged claims, information on  
12 the number of Class Members, applicable workweeks and pay periods within the statute of limitations  
13 for Class Members and PAGA Members, and a representative sample of Class Members' time and  
14 payroll data, the scope of the potential damages to Plaintiff and Class Members in light of the claims  
15 alleged, the uncertainty in the law with regard to certification, and the negotiations that have taken place,  
16 I am convinced that the proposed settlement is in the best interest of the class. The length and risks of  
17 trial and other normal perils of litigation that impact the value of the claims were also considered and  
18 weighed in reaching the Agreement. In addition, I carefully considered the prospect of potential class  
19 certification issues as well as the uncertainty of class certification, the difficulties of complex litigation,  
20 and the lengthy process of establishing specific damages and various possible delays and appeals in  
21 agreeing to the proposed settlement. I further considered the fact that penalties under the PAGA could  
22 be substantially cut at the discretion of the Court even if Plaintiff was successful on proving those claims  
23 and there was risk that a Court could find no willfulness in the failure to pay wages at separation, which  
24 would eliminate the value of the waiting time penalty claim entirely. Overall, I believe it is more  
25 beneficial to secure a guaranteed benefit to the class now rather than to proceed with litigation and  
26 potentially obtain zero funds to the class due to legal or factual issues in the case.

27         8. My office, including my partner, Galen T. Shimoda, my former associate, Brittany V.  
28 Berzin, my associate, Renald Konini, our paralegal, and myself, along with Plaintiff's assistance,

1 thoroughly investigated the merits of the claims and potential damages for such claims. The parties  
2 engaged in informal discovery and exchange of documents, including a representative sampling of  
3 employee data, covering timecards, paystubs, payroll data and relevant handbooks, bulletins, and  
4 memoranda containing Defendants' policies for the entirety of the statute of limitations applicable to the  
5 alleged claims. We also reviewed GPS records, which were relevant to the off-the-clock and unlawful  
6 deduction claims. The discovery covered all aspects of the asserted claims, including certification  
7 issues, merits issues, damages, the scope and configuration of Class Members, the content and  
8 implementation of the wage and hour policies at issue, issues relating to manageability concerns at trial,  
9 among other relevant areas. There were more than 237,000 rows of pay data that included approximately  
10 40 unique pay codes for individuals working across 12 different locations that had to be analyzed as part  
11 of the claim evaluation. From this production we were able to determine information critical to a  
12 reliable damages analysis such as the average hourly rate, shifts eligible for meal and rest periods and  
13 the number of potential shifts that may correspond to liability under our theories of liability, the average  
14 days worked per week, average number of workweeks and pay periods that had potential violations  
15 based on the asserted claims, the frequency with which violations occurred in a given week and/or pay  
16 period, and the number of former employees. This information allowed my office to assess both liability  
17 and damages and create an accurate damages model. Plaintiff assisted in all aspects of this litigation  
18 including providing factual information relating to Plaintiff's and Class Members' employment  
19 conditions, providing witnesses for interviews and declarations, providing a substantial number of  
20 documents, and answering questions regarding Defendants' factual contentions in this matter. This was  
21 important because it directly related to our ability to maintain this case as a class action and our ability  
22 to obtain a favorable settlement for the class.

23         9. Throughout this litigation our office had numerous communications with Defendants'  
24 Counsel discussing our respective positions. The parties engaged in mediation on March 18, 2024,  
25 using an experienced mediator, Brandon McKelvey. It was only after approximately ten months of  
26 extensive, arm's length negotiations that the parties were able to reach a settlement, which only occurred  
27 after a full-day mediation. Although we filed the complaint in July 2023, we began investigating the  
28

claims with Plaintiff in May 2023. The negotiations were at all times contentious and adversarial, though still professional in nature.

10. The following represents the potential maximum recovery for each of Plaintiff's claims based on my office's analysis of Defendants' relevant policies and the sample data produced by Defendants in advance of mediation as well as the information obtained at mediation concerning the claims. There were 434 total Class Members who worked approximately 55,713.71 weeks and 27,856.86 pay periods from July 25, 2019, through March 8, 2024. There were approximately 268 individuals who worked withing the one-year statute of limitations for the PAGA claim and approximately 7,759 pay periods during this same time. Their average hourly rate was approximately \$27.90, and their average overtime hourly rate was approximately \$41.85. Class Members worked an average of approximately 4.8 days per week and 8.2 hours per day:

- a) Minimum Wage Claims: This claim was based on the allegations that Defendants failed to pay Class Members for all hours worked because employees' hours worked were either not fully recorded or, to the extent they were initially recorded, were adjusted downward by supervisors to avoid paying for additional hours worked. Based on the expected testimony, as well as the data and documents produced for mediation, the amount of off-the-clock work experienced by Class Members per week ranged from approximately 12 minutes to just under 3 hours. There were also several instances where no off-the-clock work was experienced in a given week. On average, amount of off-the-clock work was approximately .77 hours per week. At a weighted average minimum wage rate of approximately \$13.50 per hour, this equates to approximately \$579,144.02 in liquidated damages  $([.77 \text{ hours per week} \times 55,713.71 \text{ weeks}] \times \$13.50)$ . This existence of any off-the-clock work was heavily disputed by Defendants. First, Defendants argued its policies prohibiting off-the-clock work, requiring supervisor pre-approval for working overtime, requiring the accurate recording of hours worked by employees, and the numerous instances of overtime actually paid undermine any assertion of a systematic policy and practice to suffer and/or permit off-the-clock work. In investigating the allegations of off-the-clock work, Plaintiff reviewed GPS records for

1 any gaps of time consistent with the assertion that GPS devices were being turned off to  
2 avoid documenting hours worked. Plaintiff was unable to find any gaps in the GPS  
3 activity that might otherwise be able to corroborate Plaintiff's off-the-clock allegations.  
4 Furthermore, Defendants asserted that it regularly reviewed and remedied any reported  
5 discrepancies by employees about their pay and hours worked. The payroll records did  
6 demonstrate several instances where corrections and additional payments were made to  
7 employees for hours worked and/or meal period premiums owed in previous pay  
8 periods. While Plaintiff disputed that the payments made were sufficient to compensate  
9 all the asserted unpaid time, there was a substantial risk that any unpaid wage  
10 determinations would be greatly reduced and/or offset by the payroll correction  
11 payments. Defendants' policies against off-the-clock work and its practices remedying  
12 reported violations would create a substantial hurdle and risk for Plaintiff in certifying  
13 this claim. *See Brinker Rest. Corp. v. Superior Ct.*, 53 Cal.4th 1004, 1051 (2012).  
14 Given the factual and legal disputes, it is likely that a good faith dispute on any amounts  
15 owed would be found, which eliminates a claim for liquidated damages. *See Cal. Lab.*  
16 *Code § 1194.2(b)*. Taking these factors into account, it is more realistic that there would  
17 not be any recovery for this claim.

- 18 b) Overtime Claims (Off-The-Clock): Plaintiff's overtime claims were based, in part, on  
19 the same off-the-clock allegations that were the basis of the minimum wage claims. At  
20 the average overtime rate of pay (\$41.85) and the average unpaid hours worked (.77  
21 hours per week) over the course of 55,713.71 weeks, the maximum damages for the off-  
22 the-clock theory of liability are \$1,795,346.45. However, because this theory of liability  
23 is based on the same facts as the minimum wage claim, it is subject to the same risks  
24 regarding certification, establishing liability, and reductions to any amounts owed as a  
25 result of payroll corrections. Taking these risk factors into account, I believe a more  
26 realistic range of recovery for this theory of liability is between \$359,069.29 to  
27 \$718,138.58 (60% to 80% reduction based on risk).  
28

1 Overtime Claims (RROP): Plaintiff's overtime claims were also based, in part, on  
2 allegations that Defendants failed to incorporate the value of non-discretionary bonuses,  
3 incentive pay, and on call pay into class members' regular rates of pay for the purpose of  
4 calculating overtime premiums. The maximum damages for this claim are  
5 approximately \$127,862.99. Approximately 30.6% of all 27,856.86 pay periods were  
6 affected by the regular rate of pay issue. Based on the average number of overtime  
7 hours in an affected pay period and the average amount of non-discretionary bonuses, on  
8 call, and/or incentive pay attributable to those same periods, there was an average  
9 underpayment of approximately \$15 per pay period. ( $[27,856.86 \times 30.6\%] \times \$15 =$   
10  $\$127,862.99$ ). There were several risks associated with this claim. Defendants asserted  
11 that, in fact, recalculation of the regular rate of pay did regularly occur and, to the extent  
12 there may have been any miscalculation, it was rare and of limited impact because the  
13 type of payments at issue (on call payments) were infrequent. We disputed the  
14 characterization that any violations were limited, but the payroll records did show  
15 several payment types that were regularly incorporated into the regular rate of pay,  
16 whether for overtime premiums or otherwise. Limiting the claim to just those instances  
17 where on-call payments were made would reduce the number of affected pay periods to  
18 15.1%. Taking these risk factors into account, I believe a more realistic recovery for this  
19 theory of liability is \$63,095.79 (a reduction consistent with the 15.1% occurrence rate).

20 c) Meal Period Claims (failure to authorize): This claim is based, in part, on allegations  
21 that Defendants failed to authorize and permit Class Members to take duty-free meal  
22 periods due to excessive work demands resulting from understaffing. On average, Class  
23 Members worked approximately 4.8 days per week. Over 55,713.71 weeks, this results  
24 in approximately 267,425.81 shifts requiring a lawful meal period to be provided. Based  
25 on the expected testimony, as well as the data and documents produced for mediation,  
26 Plaintiff asserted that Class Members failed to receive lawful meal periods  
27 approximately 50% of the time ( $[267,425.80 \times .5] \times \$27.90 = \$3,730,590.02$ ). Thus, the  
28 maximum damages for this claim are approximately \$3,730,590.02. However, this

number does not take into account the risks associated with the claim. For example, Defendants produced several documents identifying meal and rest period policies and practices that were facially compliant and that demonstrated the policies were communicated to Class Members on a consistent basis. Certifying meal and rest period claims despite facially valid policies is very risky and difficult to achieve. While Plaintiff would seek to rely on the presumption that meal period violations occurred based on time records as established in *Donohue v. AMN Servs., LLC*, 11 Cal.5th 58, 76 (2021), the amount of meal period premiums actually paid were generally consistent with the number of presumptive violations present in the time records. Furthermore, Defendants contended that the location data from GPS records showed that Class Members were regularly able to, and did, take their meal periods. Thus, Plaintiff's failure to authorize theory of liability for meal period violations is subject to substantial risks regarding certification, merits, and damages. Taking these risk factors into account, I believe a more realistic range of recovery for this theory of liability is approximately \$373,059 to \$746,118 (80%-90% reduction based on risk).

- d) Rest Period Claims (failure to authorize): This claim is based, in part, on allegations that Defendants failed to authorize and permit Class Members to take duty-free rest periods due to excessive work demands resulting from understaffing. On average, Class Members worked approximately 4.8 days per week. Over 55,713.71 weeks, this results in approximately 267,425.81 shifts requiring a lawful rest period to be provided. Based on the expected testimony, as well as the data and documents produced for mediation, the maximum damages for this claim are approximately \$3,730,590.02. Plaintiff asserted that Class Members failed to receive lawful rest periods approximately 50% of the time ( $[267,425.80 \times .5] \times \$27.90 = \$3,730,590.02$ ). However, this does not consider the risks associated with the claims. Because the factual bases supporting this claim are the same as those for the meal period claim, it is subject to the same risks. As noted above, there were substantial policy documents and communications with Class Members regarding Defendants' facially valid meal and rest period policies.

1 Additionally, Defendants contended that the available GPS location data supported their  
2 assertion that Class Members were able to, and regularly did, take rest periods.  
3 Defendants also pointed to their history of making payroll corrections for any  
4 discrepancies brought to their attention by Class Members, which they contended  
5 undermined any claim of a systematic or pervasive payroll practice capable that would  
6 be able to be certified. Finally, because there is no legal obligation for an employer to  
7 keep records of rest periods taken, Plaintiff would not be able to rely on any presumptive  
8 violations based on the time records, increasing the difficulty for certifying this claim.  
9 Taking these risks into account, I believe a more realist range of recovery for this claim  
10 would be \$0 to \$373,059 (representing a best-case scenario risk factor of 90%).

11 e) Meal and Rest Period RROP Claims: The other theory of liability supporting Plaintiff's  
12 meal and rest period claims was based on allegations that Defendants failed to  
13 incorporate the value of non-discretionary bonuses, incentive pay, and on call pay into  
14 class members' regular rates of pay for the purpose of calculating meal and rest period  
15 premiums. The maximum amount of damages for this claim is approximately  
16 \$43,038.85. Approximately 10.3% of all 27,856.86 pay periods were affected by the  
17 regular rate issue, *i.e.* they included a meal and/or rest period premium and an additional  
18 payment beyond an employee's basic hourly rate. Based on the average number of meal  
19 and/or rest period premiums paid in affected pay periods and the adjusted regular rate of  
20 pay in those periods after accounting for payments that Plaintiff contended should have  
21 been included in the regular rate of pay, the average amount of underpaid meal and rest  
22 period premiums owed was approximately \$15 per pay period ( $[27,856.86 \times 10.3\%] \times$   
23  $\$15 = \$43,038.85$ ). Because the types of pay at issue were the same Plaintiff asserted  
24 should have been included in the regular rate of pay for overtime claims, this theory of  
25 liability was subject to the same risks that Plaintiff's overtime regular rate of pay  
26 liability theory was subject to, including, but not limited to, the fact that the rate of pay  
27 for meal periods was adjusted for several different pay types. Limiting this theory of  
28 liability to only account for instances where on-call payments were made, the percentage

1 of pay periods affected would drop to approximately 6.1%. Taking these factors into  
2 account, I believe a more realistic recovery for his claim would be \$25,489.03 (a  
3 reduction consistent with the 6.1% occurrence rate).

4 f) Wage Statement Violations: There were approximately 7,759 pay periods at issue for  
5 this claim. At \$50 per pay period, this equated to a maximum of \$387,950 in potential  
6 penalties. Because this claim was derivative, the risks identified above would apply to  
7 this claim. To the extent that Plaintiff was unable to establish violations in a given pay  
8 period, no derivative wage statement penalties could be assessed. Given the low  
9 violation rates and/or high risk associated with the non-derivative claims, it is very likely  
10 that Plaintiff would not be able to establish violations in 100% of the potential pay  
11 periods. Additionally, Defendants' arguments regarding good faith defenses could  
12 reduce the value of this claim to \$0. Notwithstanding that fact, we believe a more  
13 realistic assessment of the claim's likely value after accounting for reductions based on  
14 risk of loss is approximately \$58,580.45 (a reduction to 15.1% of affected pay periods  
15 consistent with the highest violation rate for Plaintiff's theories of liability with the  
16 highest likelihood of overcoming any good faith dispute defense).

17 g) Waiting Time Penalties: The maximum recovery for this claim is \$1,208,795. There  
18 were approximately 174 formerly employed Class Members within the three-year statute  
19 of limitations for this claim. At the average \$27.90 hourly rate and an average 8.2 hour  
20 day, this equated to a daily rate of approximately \$231.57 and \$6,947.10 owed per  
21 formerly employed Class Member over the full 30 day period. Similar to the other non-  
22 derivative claims, all risk associated with those claims would apply here, discounting the  
23 value of the claim. There is substantial risk that Defendants' policies and records would  
24 provide it with a good faith affirmative defense, which would eliminate the value of this  
25 claim entirely. *See Diaz v. Grill Concepts Servs., Inc.*, 23 Cal.App.5th 859, 868 (2018).  
26 Although all Class Members generally received some form of onuses, incentive  
27 payments, and/or on call payments during their employment, approximately only 19% of  
28 Class Members received on-call pay specifically. Limiting the potential waiting time

penalty recovery to Plaintiff's theory of liability with the best likelihood of overcoming a good faith dispute defense (*i.e.* those who received on call payments), the potential maximum recovery would be reduced to \$229,671.13. Taking these risks into account, I believe a more realistic range of recovery for this claim is \$0 to \$229,671.13.

h) Sick Leave Claims: Approximately 4.4% of pay periods were affected by the underpaid sick time wages theory of liability based on the regular rate of pay, *i.e.* bonus, incentive, and/or on call payments were paid and/or earned over the same work week in which sick leave was taken and paid. Plaintiff assumed an average underpayment of approximately \$15 per affected pay period, which resulted in a maximum liability of \$18,385.53 for this claim ( $[27,856.86 \times 4.4\%] \times \$15 = \$18,385.53$ ). This number does not account for the risks associated with this claim, which are similar to the regular rate of pay theories of liability for overtime, meal periods, and rest periods. Limiting this theory of liability to instances where on call payments were made, the amount of pay periods affected would be approximately 1.6%, resulting. Taking these factors into account, I believe a more realistic recovery for this claim is \$6,685.65 (a reduction consistent with the 1.6% occurrence rate).

i) PAGA: The maximum exposure for this claim is \$4,015,039.70. This claim is derivative of the violations outlined above and no prior judicial or administrative order deeming Defendants' practices to be illegal was found, making only initial violation valuations applicable for each type of violation. The calculations for each PAGA violation are as follows:

- i. *Minimum Wages*: 7,759 of total PAGA pay periods at issue ( $7,759 \times \$100$  per pay period – Labor Code § 1197.1) = \$775,900;
- ii. *Overtime*: 7,759 of total PAGA pay periods at issue ( $7,759 \times \$50$  per pay period – Labor Code § 558) = \$387,950;
- iii. *Meal Period Violations*: 7,759 of total PAGA pay periods at issue ( $7,759 \times \$50$  per pay period – Labor Code § 558) = \$387,950;

- iv. *Rest Period Violations*: 7,759 of total PAGA pay periods at issue (7,759 x \$100 per pay period – Labor Code § 2699) = \$775,900;
- v. *Wage Statement Violations*: 7,759 of total PAGA pay periods at issue (7,759 x \$100 per pay period – Labor Code § 2699) = \$775,900;
- vi. *Failure to Pay Final Wages*: 107 former employees within PAGA period. Plaintiff calculated the penalty owed for this violation the same as would be owed for waiting time penalties per Labor Code § 256. At the average \$27.90 hourly rate and 8.2-hour day, this would equate to \$6,947.10 owed per PAGA Member or \$743,339.70 in total;
- vii. *Failure to Keep Adequate Records*: 268 PAGA Members (\$500 per employee – Labor Code § 1174) = \$134,000;
- viii. *Sick Time*: 341 of total PAGA pay periods at issue (7,759 x 4.4% violation rate under regular rate of pay theory of liability) x \$100 default civil penalty under the PAGA = \$34,100;
- ix. *Unlawful Deductions and Failure to Pay Contract Wages*: Because the facts supporting these claims are the same as the off-the-clock allegations and these claims have been separately valued above, both for substantive wage loss and under the PAGA for civil penalties, they are not being valued again separately. Plaintiff also investigated the extent to which Defendants may have engaged in self-help and deducted from Plaintiff and Class Member's final wages. However, Plaintiff did not find any evidence of this occurring with respect to Class Members.

With the exception of civil penalties based on Plaintiff's sick leave claims, the amounts calculated for the PAGA civil penalties assume Plaintiff will prove a violation in every pay period for every PAGA Member. However, as detailed above when discussing the risks of each claim, this is highly unlikely. Several of Plaintiff's claims will be substantially affected by a good faith dispute defense (*e.g.* minimum wage claims and waiting time penalty claims) and the stronger theories of liability, *i.e.* those involving the

1 regular rate of pay issues, occur in substantially fewer than all pay periods (*e.g.* 15.1%-  
2 30.6% of pay periods for overtime claims, 6.1%-10.3% for meal and rest period claims,  
3 15.1% for wage statement violations). Furthermore, the correct valuation for waiting  
4 time penalties under the PAGA was disputed as Defendants contended the default \$100  
5 per violation would apply, not the calculation identified in Labor Code section 256,  
6 which would reduce the applicable civil penalties from \$743,339.70 to \$10,700. Putting  
7 aside merits and damages calculation issues, the statutorily authorized discretion to  
8 reduce civil penalties causes substantial variance in the amounts that could be awarded  
9 even assuming Plaintiff was able to prove all violations in all pay periods. *See Thurman*  
10 *v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30% reduction);  
11 *Fleming v. Covidien, Inc.*, 2011 U.S. DIST. LEXIS 154590, \*9 (C.D. Cal. 2011) (82%  
12 reduction). Just considering the potential impact of any discretionary reduction by the  
13 Court, the total exposure may be reduced to \$722,707.15 (82% reduction) to  
14 \$2,810,527.79 (30% reduction) based on the ranges found in applicable case law. *See id*  
15 I believe there is a strong likelihood that the Court would use its discretion to  
16 substantially reduce the applicable civil penalties because of the existence of facially  
17 valid policies, communications with PAGA Members regarding the policies, efforts to  
18 correct any payroll discrepancies on an ongoing and consistent basis, and the large  
19 discrepancy between substantive wage loss and the potentially applicable civil penalties  
20 available. Given the substantial risks associated with the claims and the potentially  
21 applicable discretionary reductions, we believe the amount that might ultimately be  
22 awarded under this claim would be significantly lower than the maximum exposure  
23 calculation. Allocating \$32,500 to the PAGA claims in this case is appropriate,  
24 especially in light of amounts that Courts have approved as reasonable valuations in  
25 other cases. *See Nordstrom Com. Cases*, 186 Cal.App.4th 576, 589 (2010) (approving  
26 \$0 allocation to the resolution of PAGA claims based on their being disputed and being  
27 part of a class settlement which was evaluated based on the terms of the agreement  
28 overall); *Junkersfeld v. Med. Staffing Sols., Inc.*, 2022 WL 2318173, at \*8 n.2 (E.D. Cal.

2022) (collecting cases with PAGA settlement values ranging from .037%-1%); *Jennings v. Open Door Marketing, LLC*, 2018 WL 4773057, \*9 (N.D. Cal. 2018) (approving settlement of PAGA claims at 0.6% of total estimated value due to risk of no recovery); *Ruch v. AM Retail Grp., Inc.*, 2016 WL 5462451, \*7 (N.D. Cal. 2016) (approving \$10,000 PAGA settlement allocation where total PAGA penalty exposure was approximately \$5.2 million, or 0.2% of total estimated value); *Davis v. Cox Commc'ns California, LLC*, 2017 U.S. Dist. LEXIS 63514, \*1 (S.D. Cal. 2017) (preliminarily approving \$4,000 PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int'l, LLC*, 2014 U.S. Dist. LEXIS 8358, \*5 (S.D. Cal. 2014) (approving \$2,500 PAGA allocation when attorneys' fees award alone amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, \*6 (S.D. Cal. 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, 2010 U.S. Dist. LEXIS 53416, \*2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, \*9 (N.D. Cal. 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 U.S. Dist. LEXIS 24880, \*34-35 (E.D. Cal. 2017) (approving \$100,000 PAGA allocation in a \$3,950,000 settlement even though PAGA exposure was calculated at \$53,600,000, or 0.2% of total estimated value); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at \*7 (E.D. Cal. 2012) (approving \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*, 2012 WL 5941801, at \*14 (E.D. Cal. 2012) (\$10,000 in PAGA Penalty Amount from \$2,500,000 settlement fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, at \*1 (N.D. Cal. 2011) (approving PAGA settlement payment of \$7,500 to the LWDA out of \$6.9 million common-fund settlement).

11. In summary, while Plaintiff's gross recovery of \$650,000 under the Agreement equals approximately 4.2% of the maximum value of the claims in this matter (\$15,636,742.58), the value of the recovery is between 12.9% and 41.9% of the more realistic range of recovery (\$1,550,105.91 to \$5,031,365.42). After deducting from the Maximum Settlement Amount the proposed allocations for

1 attorneys' fees and costs, any Enhancement Payment to the Class Representative, Settlement  
2 Administrator Costs, and the PAGA Penalty Amount, the net recovery under the Agreement,  
3 \$358,684.95, represents approximately 2.3% of the maximum value of the claims in this matter and  
4 equates to approximately \$6.44 per workweek. The net recovery also represents between 7.1% and  
5 23.1% of the more realistic range of recovery. The average net award is approximately \$824.56  
6 (\$358,684.95/435 Class Members). I believe the Agreement represents a reasonable compromise of  
7 claims based on the legal and factual disputes in this case. The ability to secure a guaranteed settlement  
8 now and ensure Class Members receive some compensation, rather than proceed to further litigation  
9 and potentially recover nothing, was a motivating factor in reaching this Agreement.

10 12. In agreeing to take on this case, our office agreed to take this case on a contingency  
11 basis, meaning that we would take a percentage of any settlement or judgment should we recover a  
12 monetary amount. We took a risk that we would not recover any money in this matter if we were  
13 unsuccessful at trial. We also took on the risk that the case may be subject to an unfavorable summary  
14 judgment ruling. However, we believe it is important to make sure employees are able to find  
15 affordable representation in order to ensure that employers are complying with all their legal  
16 obligations towards employees and paying employees all their hard-earned wages. We rely on  
17 attorneys' fee awards in order to continue working to ensure California wage and hour protections are  
18 enforced. Recovery of our full lodestar plus an appropriate multiplier is necessary to compensate for  
19 the risk undertaken. Otherwise, we could not continue to represent employees who are denied wages,  
20 but whose cases may be time-consuming and difficult to prove. There have been many class cases we  
21 have litigated where ultimately, we get zero for our time because we are unable to meet certification  
22 requirements or the company becomes financially insolvent. Additionally, there are numerous  
23 occasions, where the fee recovered actually results in a negative multiplier of our lodestar as the  
24 amount of work required to obtain a good result for the class is usually more than the 35% common  
25 fund request we make to compensate our time.

26 13. I am a shareholder at Shimoda & Rodriguez Law, PC. My law firm is a boutique law  
27 practice that focuses primarily on employment litigation, emphasizing wage and hour litigation. I  
28 attended and graduated college from U.C. Davis, receiving a Bachelor of Arts in Philosophy and the

1 Departmental Citation for Academic Achievement in the Philosophy program. I was one of only two  
2 recipients of this award out of the entire Philosophy Department. After U.C. Davis, I attended the  
3 University of the Pacific, McGeorge School of Law, graduating in 2011 and receiving a Juris  
4 Doctorate. I graduated in the top 20% of my class and was a member of the Traynor Honor Society at  
5 McGeorge. Other academic achievements of mine include receiving a Witkin Award (top grade) in my  
6 legal research and writing course, a Witkin Award in complex civil litigation, being a member of the  
7 Dean's List from 2008 to 2011, being a Legislative Staff Writer for the *McGeorge Law Review* from  
8 2009–2010, being an Associate Comment Editor for the *Pacific McGeorge Global Business &*  
9 *Development Law Journal* from 2010–2011, and being selected as a Sacramento County Bar  
10 Association Diversity Fellow in 2009. I was also a member of the Employment and Labor Law Society  
11 and an officer for the Latino Law Students Association from 2009 to 2010.

12 14. I have been practicing law since 2011. From 2011 to 2016, I worked with the Shimoda  
13 Law Corp. as an Associate. I became a Shareholder/Partner in the firm in 2017. Shimoda Law Corp.  
14 became Shimoda & Rodriguez Law, PC, in 2022. Since 2017, I have received an AV Preeminent  
15 rating from Martindale-Hubbell for my legal ability and ethical standards. From 2018 to 2023, I have  
16 been recognized as a Super Lawyer (Rising Star). From 2024 to present, I have been recognized as a  
17 Super Lawyer. I have been a panel speaker and presented a number of seminars covering issues in  
18 wage and hour litigation in general and complex class and PAGA litigation in particular. These  
19 engagements include the following: (1) *Epic Systems*, PAGA, and the Future of Employment  
20 Arbitration in California (Sacramento County Bar Assoc., Sept. 2018); (2) Class Actions and PAGA  
21 Claims (Assoc. of Defense Counsel of Northern California & Nevada, Jul. 2020); (3) Mediation: The  
22 Experienced Trial Lawyers Perspective (Sacramento County Bar Assoc., Sept. 2020); (4) How to  
23 Become a Pivotal Part of Any Wage and Hour Practice Group (Sacramento County Bar Assoc., Mar.  
24 2021); (5) Emerging Trends and Issues Relating to Arbitration and PAGA Claims in a Post-*Viking*  
25 *River Cruises* World (Sacramento County Bar Assoc., Nov. 2022). I was elected to the Sacramento  
26 County Bar Association Labor and Employment Law Section's executive committee in 2019 and was  
27 the Chair of the executive committee for 2022. I have also been a member of the Presiding Judge Civil  
28 Law Advisory Committee for Sacramento County Superior Court since August 2020. My practice

1 focuses on complex civil litigation, including wage and hour class actions, PAGA claims, and Fair  
2 Labor Standards Act (“FLSA”) claims. I am actively involved in most all of the complex litigation  
3 handled by our firm. Class and/or PAGA actions I have litigated or am currently litigating, including  
4 the instant case, includes, but is not limited to, the following:

- 5 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 6 • *Adams-Angway v. Placer Title Company, et al.*, Case No. SCV0040845 (Placer Sup. Ct.);
- 7 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 8 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 9 • *Aslam v. American Custom Private Security, Inc.*, Case No. STK-CV-UOE-2018-0012080 (San  
10 Joaquin Sup. Ct.);
- 11 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 12 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 13 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac. Sup.  
14 Ct.);
- 15 • *Barkhousen v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup. Ct.);
- 16 • *Benak v. MDStat Urgent Care, Inc.*, Case No. 34-2015-00188181 (Sac. Sup. Ct.);
- 17 • *Bigornia v. Quest Diagnostics Clinical Laboratories, Inc., et al.*, Case No. 34-2019-00271174  
18 (Sac. Sup. Ct.);
- 19 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup. Ct.);
- 20 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.  
21 Ct.);
- 22 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.  
23 Sup. Ct.);
- 24 • *Castorena v. Flowmaster, Inc.*, Case No. CV18-2191 (Yolo Sup. Ct.);
- 25 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup. Ct.);
- 26 • *Carr, et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 27 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-00209613  
28 (Sac. Sup. Ct.);

- 1 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 2 • *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-2017-
- 3 00222101 (Sac. Sup. Ct.);
- 4 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- 5 • *Ferreira v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- 6 • *Foye v. The Golden 1 Credit Union*, Case No. 34-2018-00235003 (Sac. Sup. Ct.);
- 7 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 8 • *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup. Ct.);
- 9 • *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (Sac. Sup.
- 10 Ct.);
- 11 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 12 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- 13 • *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac. Sup. Ct.);
- 14 • *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- 15 • *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac Sup. Ct.);
- 16 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- 17 • *Hellum v. AI Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup. Ct.);
- 18 • *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac. Sup. Ct.);
- 19 • *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- 20 • *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- 21 • *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- 22 • *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal.);
- 23 • *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- 24 • *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- 25 • *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- 26 • *Nguyen v. Cardinal Health Pharmacy Services, LLC, et al.*, Case No. 2:19-cv-01939-KJM-EFB
- 27 (E.D. Cal.);
- 28 • *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);

- 1 • *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- 2 • *Roberts v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 3 • *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201
- 4 (Sac Sup. Ct.);
- 5 • *Salas, et al. v. Joint Ventures, LLC, et al.*, Case No. 34-2018-00227493 (Sac. Sup. Ct.);
- 6 • *Salmon v. Ovarions Fanfare, L.P., et al.*, Case No. 34-2018-00244749 (Sac. Sup. Ct.) ;
- 7 • *Scarano v. J.R. Putman, Inc.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.) ;
- 8 • *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- 9 • *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- 10 • *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- 11 • *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac.
- 12 Sup. Ct.);
- 13 • *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.); and
- 14 • *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

15 15. The preceding list does not include those cases where, for various reasons, the case was  
16 filed as a class action and/or PAGA action, but did not maintain that status through the end of the case.

17 16. My partner, Galen T. Shimoda, Esq., worked with me on this matter and was critical in  
18 assisting with all aspects of the litigation of this case. Mr. Shimoda and I are some of only a handful of  
19 plaintiff attorneys located in Sacramento who handle wage and hour class actions. Mr. Shimoda  
20 attended and graduated from the University of Utah in 2000 with a B.S. in Business Management and a  
21 B.A. in Asian Studies, with a minor in Japanese language. He then attended and graduated from the  
22 University of the Pacific, McGeorge School of Law and received his J.D. degree in 2003. He  
23 graduated from McGeorge in the top 5% of his class and was a member of the Order of the Coif and  
24 Traynor Honor Society. Since graduating from McGeorge, Mr. Shimoda has authored a number of  
25 employment law articles for journals and our firm regularly publishes articles on our firm's website.  
26 Mr. Shimoda has been a regular panel speaker for the CEB (Continuing Education of the Bar)  
27 Employment Review seminars from 2014 to the present. His speaking engagements include the  
28 following: 1) Lorman Military Leave Law Speaker; 2) Restaurant Association Speaker at Annual

1 Seminar (Los Angeles); 3) Federal Bar Association, Sacramento Chapter: 2015 Amendments to the  
2 Federal Rules of Civil Procedure (Mar. 30, 2016); 4) CEB – Employment Law Practice: 2016 Year in  
3 Review (Jan. 20, 2017); 5) CEB – Employment Law Practice: 2015 Year in Review (Jan. 22, 2016); 6)  
4 CEB – Employment Law Practice: Year in Review (2014) (Jan. 9, 2015); 7) CEB - Employment Law  
5 Practice: Year in Review (2013) (Jan. 10, 2014); 8) Sacramento County Bar Association - Class  
6 Actions from the Trenches: Real World Experiences from the Plaintiff and Defense Bar (Feb. 21,  
7 2012); 9) Sacramento Employer Advisory Council – Wage and Hour Workshop: Going Beyond the  
8 Exemption Discussion (Apr. 7, 2016); 10) Sacramento Employer Advisory Council - Wage & Hour  
9 Panel and AB 1825 Training: Updates on California’s New Wage Laws and Manager Compliance  
10 Training (Apr. 25, 2017); 11) Sacramento County Bar Association, Labor and Employment Section –  
11 PAGA Representative Litigation: Emerging Trends and Issues (May 17, 2016); 12) Sacramento  
12 Business Journal Panel – Overtime Rules (Jun. 23, 2016); 13) Association of Defense Counsel of  
13 Norther California & Nevada - Employment Law Update – Do the Math: Calculation Exposure and  
14 Damages in Wage and Hour Cases (Aug. 12, 2016); 14) California Employment Lawyers Association -  
15 PAGA Today and PAGA Tomorrow: Moderate-Advanced Issues In PAGA Litigation (Oct. 20, 2017);  
16 15) California Employment Lawyers Association Advanced Wage and Hour Seminar – Better Know a  
17 Venue Roundup (May 17, 2019). Mr. Shimoda has been AV rated by Martindale Hubbell since 2013,  
18 was recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and was recognized  
19 as a Super Lawyer from 2014 to present.

20 17. Mr. Shimoda has practiced law in California since being admitted to the State Bar in  
21 2003, litigating wage and hour class actions and individual wage and hour litigation among other cases.  
22 Mr. Shimoda began practicing class action law on the defense side at the firm of Orrick, Herrington &  
23 Sutcliffe LLP. He then switched to plaintiff class action work in 2005. His class action experience is  
24 in wage and hour law. Mr. Shimoda has litigated several class action cases in California State and  
25 Federal Courts, including up to certification, settlement, preliminary and final approval, and  
26 disbursement of monies, and has been found to be satisfy the adequacy requirements for class counsel.  
27 Some of the class action and/or PAGA cases he is litigating and/or has litigated as lead or co-counsel  
28 include the following:

- 1 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 2 • *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- 3 • *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- 4 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 5 • *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- 6 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 7 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 8 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 9 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac. Sup.
- 10 Ct.);
- 11 • *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);
- 12 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup. Ct.);
- 13 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
- 14 Ct.);
- 15 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.
- 16 Sup. Ct.);
- 17 • *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
- 18 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup. Ct.);
- 19 • *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 20 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-00209613
- 21 (Sac. Sup. Ct.);
- 22 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 23 • *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
- 24 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.)
- 25 • *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242 (San
- 26 Joaquin Sup. Ct.);
- 27 • *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
- 28 • *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac. Sup.

1 Ct.);

- 2 • *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- 3 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 4 • *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-30000003 (Sac. Sup.
- 5 Ct.);
- 6 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 7 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- 8 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- 9 • *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
- 10 • *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
- 11 • *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- 12 • *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- 13 • *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);
- 14 • *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- 15 • *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);
- 16 • *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- 17 • *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.);
- 18 • *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup.
- 19 Ct.);
- 20 • *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);
- 21 • *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (Sac. Sup. Ct.);
- 22 • *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- 23 • *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- 24 • *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);
- 25 • *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201
- 26 (Sac Sup. Ct.);
- 27 • *Rogers v. Les Scwhab Tires Center of California, Inc.*, Case No. 34-2009-00066320 (Sac. Sup.
- 28 Ct.);

- *Schechter et al. v. Isys Solutions, Inc.*, Case No. RG10550517 (Alameda Sup. Ct.);
- *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac. Sup. Ct.);
- *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct.);
- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.);
- *Williams v. Civic Development Group*, Case No. 06AS00267 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

18. The preceding list of cases does not include those where, for a variety of reasons, the case was initially filed as a class and/or PAGA action, but did not maintain that status through the end of the case.

19. My associate, Renald Konini, Esq., also worked with me on this case. In May 2011, Mr. Konini graduated from Seton Hall University School of Law. Prior to moving to California, he practiced law in New Jersey. While working for my firm, Mr. Konini has worked on a variety of individual and class action cases, including those involving wage and hour claims, Private Attorney General Act claims, wrongful termination claims, discrimination claims, retaliation claims, and harassment claims. Mr. Konini passed the July 2016 California Bar Examination and started practicing as an associate at my firm from approximately April 2019 to February 2021 and rejoined my firm in September 2022. Mr. Konini has worked on written discovery and depositions, calculating class-wide damages, communicating with class representatives, drafting briefs and motions, and more. Mr. Konini worked on other class and/or PAGA wage and hour actions that my firm has filed, namely *Bertelli v. Air Products and Chemicals, Inc.*, Case No. 34-2018-00236898 (Sac. Sup. Ct.), *Carr v. Howroyd-Wright Employment Agency, Inc.*, Case No. 34-2018-00228290 (Sac. Sup. Ct.), *Gomez v. Vander Schaaf Dairy, et al.*, Case No. STK-CV-UOE-2020-0003954 (San Joaquin Sup. Ct.), *Haggins v. Kelly Services, Inc.*, Case No. 34-2017-00220473 (Sac. Sup. Ct.), *Hussaini v. Integrated Resources, Inc.*, et al, Case No. 34-2021-00297152 (Sac. Sup. Ct.), *Kee, et al. v. Dr. Jeffrey A. Saladin, Dental Corporation (D/B/A Children's Choice Pediatric Dental Care), et al.*, Case No. 34-2020-00290072

(Sac. Sup. Ct.), *Lear v. Raxium, Inc.*, Case No. 21CV004358 (Alameda Sup. Ct.), *Serrano v. Cool Time, LLC*, Case No. 34-2021-00312356 (Sac. Sup. Ct.), *Grebe v. Mary Ann's Baking Co., Inc.*, Case No. 34-2020-00285254-CU-OE-GDS (Sac. Sup. Ct.), *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.), *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac. Sup. Ct.), *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac. Sup. Ct.), *Pek, et al v. Varris Management, Inc.*, Case No. STK-CV-UOE-2020-3954 (San Joaquin Sup. Ct.), *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct). Mr. Konini's practice largely revolves around wage and hour matters, including PAGA claims.

20. My former associate, Brittany V. Berzin, attended and graduated college from U.C. Davis, receiving a Bachelor of Arts in Psychology. Ms. Berzin received her J.D. from the University of the Pacific McGeorge School of Law. Ms. Berzin joined Shimoda & Rodriguez Law, PC, as a law clerk in February 2015 where she gained civil litigation experience working on individual, class action and PAGA employment cases throughout law school. Ms. Berzin also participated in an employment law clinic in 2015 and 2016 that helps low-income workers by providing free legal consultations, advising employees of their legal remedies on a variety of matters (*e.g.*, wage and hour, discrimination, harassment, California leave laws, unemployment, workers' compensation, retaliation, and wrongful termination, etc.) under the supervision of an attorney, preparing wage claims, and providing representation in wage claims before the California Labor Commissioner. From 2016-2017, Ms. Berzin completed an externship at the Federal Public Defenders Office as a Certified Law Student where Ms. Berzin obtained discovery, completed legal research, drafted motions, negotiated plea deals, represented clients in a variety of hearings (*e.g.*, arraignments, motion hearings, sentencing hearings, etc.), and defended a client against five misdemeanor charges in a jury trial in the United States District Court for The Eastern District of California. Ms. Berzin was also a member of the nationally recognized McGeorge Mock Trial Team and went on to coach a high school Mock Trial team in 2018 after graduating from law school. In May 2017, Ms. Berzin graduated from the University of the Pacific, McGeorge School of Law with Great Distinction and was inducted into the Order of the Coif, graduating in the top 10% of her class. Ms. Berzin received the Witkin Award for Academic Excellence in Legal Research and Writing, Civil Procedure, Bankruptcy, and Criminal

1 Procedure. From 2020 to 2024, Ms. Berzin was recognized as a Super Lawyer (Rising Star). Ms.  
2 Berzin was a member of the executive committee of the Sacramento County Bar Association Labor &  
3 Employment Section since January 2020, serving as Co-Chair of the committee in 2021. Ms. Berzin  
4 has over seven years of experience working on civil litigation and employment law matters. Most of  
5 that experience has been specific to analyzing and litigating wage and hour claims. As an associate,  
6 Ms. Berzin worked on a variety of individual, class action, and PAGA cases involving wage and hour  
7 claims, such as failure to pay overtime, failure to pay minimum wages, failure to provide meal and rest  
8 periods, failure to pay reimbursement expenses, unlawful deductions, failure to keep accurate time  
9 records, failure to provide paid sick leave, failure to pay all wages upon separation, unfair competition,  
10 breach of contract, independent contractor misclassification, and salaried misclassifications. Some of  
11 the class action and/or PAGA cases that Ms. Berzin litigated while with our firm include the following:

- 12 • *Arosemena v. Ranchhodrai, Inc., et al.*, Case No. STK-CV-UOE-2019-15963 (San Joaquin Sup.  
13 Ct.);
- 14 • *Arroyo v. Epic Home Solar*, Case No. 34-2021-00310634 (Sac. Sup. Ct.);
- 15 • *Balli v. Brown Box Investments, Inc., et al.*, Case No. 34-2018-00232656 (Sac. Sup. Ct.);
- 16 • *Barkhousen, et al. v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup.  
17 Ct.);
- 18 • *Barrios v. American Property Management, Inc.*, Case No. 1:18-cv-00352-AWI-SKO (E.D.  
19 Cal.);
- 20 • *Callahan v. Creative Alternatives, Inc., et al.*, Case No. 2027518 (Stanislaus Sup. Ct.);
- 21 • *Collazo v. T.O.P. Marketing Group, Inc.*, Case No. 34-2022-00314092 (Sac. Sup. Ct.);
- 22 • *Cristobal v. BAT Residential Services, Inc.*, Case No. FCS056331 (Solano Sup. Ct.);
- 23 • *Coronado v. MGD, Inc.*, Case No. STK-CV-UOE-2021-893 (San Joaquin Sup. Ct.);
- 24 • *Estrada v. MAD Security Services, Inc.*, Case No. 34-2021-00300627 (Sac. Sup. Ct.);
- 25 • *Ferreira v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- 26 • *Finance of America Wage And Hour Cases*, Case No. JCCP 5081 (Orange County Sup. Ct.);
- 27 • *Gomez, et al. v. Kleary Masonry, Inc.*, Case No. 34-2020-00278067 (Sac. Sup. Ct.);
- 28 • *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac. Sup. Ct.);

- *Gordon, et al. v. Hospice Source, LLC*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- *Green v. Warden Security Associates, Inc.*, Case No. 22CV396140 (Santa Clara Sup. Ct.);
- *Hampton v. Unlimited Security Specialists, Inc.*, Case No. CV2021-2130 (Yolo Sup. Ct.);
- *Hercules, et al. v. Maximus Services, LLC*, Case No. 34-2019-00268385 (Sac. Sup. Ct.);
- *Insixiengmay v. Hyatt Corporation*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal);
- *Kurtz v. Perimeter Security Group, LLC, et al.*, Case No. CU19-083650 (Nevada Sup. Ct.);
- *Leong-Call v. MRB Foods, Inc.*, Case No. 34-2020-00287486 (Sac. Sup. Ct.);
- *Magat v. Medical Care Professionals, Inc., et al.*, Case No. SCV0042579 (Placer Sup. Ct.);
- *Mayorga v. Brown Strauss, Inc.*, Case No. STK-CV-UOE-2020-0010906 (San Joaquin Sup. Ct.);
- *McGhee v. Salute Incorporated*, Case No. 34-2022-00315317 (Sac. Sup. Ct.);
- *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- *Meals v. Grass Valley Extended Care, Inc., et al.*, Case No. CU19-083606 (Nevada Sup. Ct.);
- *Munoz v. Wilmor And Sons Plumbing And Construction*, Case No. 34-2021-00306609 (Sac. Sup. Ct.);
- *Ruiz v. CTE Cal, Inc.*, Case No. 34-2020-00289168 (Sac. Sup. Ct.);
- *Saavedra, et al. v. SMF Global, Inc.*, Case No. 34-2018-00243363 (Sac. Sup. Ct.);
- *Scarano v. J.R. Putman, Inc., et al.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.);
- *Scoggins, et al. v. Energy Star Construction, Inc.*, Case No. 34-2018-00243048 (Sac. Sup. Ct.);
- *Strawn v. Bridgestone Retail Operations, LLC*, Case No. 34-2018-00242049 (Sac. Sup. Ct.);
- *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- *Tracy v. Von Housen's Sacramento, Inc.*, Case No. 34-2020-00282778 (Sac. Sup. Ct.);
- *Uribe v. Ecoguard Pest Management, Inc.*, Case No. 34-2021-00300650 (Sac. Sup. Ct.);
- *Vasquez v. Chriswell Home Improvements, Inc.*, Case No. 34-2021-00305938 (Sac. Sup. Ct.);
- *Villarruel, et al. v. General Produce Company, et al.*, Case No. 34-2021-00311463 (Sac. Sup. Ct.);
- *Walker v. Yan Kalika Dental Corporation*, Case No. 34-2021-00305106 (Sac. Sup. Ct.); and
- *Webb v. Professional Healthcare At Home, LLC*, Case No. FCS055317 (Solano Sup. Ct.).

1           21.     The preceding list of cases does not include those where, for a variety of reasons, the  
2 case was initially filed as a class and/or PAGA action, but did not maintain that status through the end  
3 of the case.

4           22.     My office is requesting attorneys' fees under the common fund doctrine pursuant to  
5 *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016), *Paul, Johnson, Alston & Hunt v.*  
6 *Grauly*, 886 F.2d 268, 271 (9th Cir. 1989), and *Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-478  
7 (1980). Plaintiff has been able to secure an identifiable benefit on behalf of Class Members and equity  
8 counsels that the cost of the representation should be born equally amongst all Class Members  
9 receiving these benefits. The settlement recovery provides a good result and is the product of  
10 substantial time and effort in analyzing the facts and law applicable to this case. There was substantial  
11 risk in agreeing to take this case on a contingency basis and as a class action with the possibility that  
12 our firm would not receive any compensation our time and efforts due to issues regarding the merits  
13 and/or certification and have carried that risk over the course of the case. In my experience, the  
14 attorney's fee request of thirty-five percent (35%) of the common fund is within ranges typically  
15 approved in wage and hour class action litigation. This includes awards in Sacramento County  
16 Superior Court. For example, in November 2022, the Sacramento County Superior Court approved a  
17 fee request of 35% and the same hourly rates for Mr. Shimoda, Ms. Berzin, and myself in connection  
18 with a motion for final approval of a wage and hour class action settlement in *Strawn v. Bridgestone*  
19 *Retail Operations, LLC*, Case No. 34-2018-00242049 (Sac. Sup. Ct.).

20           23.     I believe a lodestar cross check supports finding a 35% fee award is appropriate in this  
21 case. The total lodestar is approximately \$235,570 based on approximately 397.2 hours, which  
22 includes an estimated 10 hours of time for myself preparing for and attending the final approval  
23 hearing, ensuring compliance, and the disbursement of funds consistent with a final approval order. I  
24 have reviewed our firm's billing records with Mr. Shimoda and Mr. Konini and have created a  
25 summary chart showing the task categories and hours worked by each billing attorney in each category.  
26 Ms. Berzin was no longer with our firm at the time this Motion was filed, so I was not able to review  
27 the billing records with her. However, I independently reviewed her billing entries. A true and correct  
28 copy of the summary chart is being filed with this Motion as Exhibit F. In reviewing the entries, I

believe the hours reported are accurate. To the extent we believe it appropriate to do so in any given assignment, we attempt to assign tasks to the billing attorney with the lower rate in order to reduce costs that otherwise might inhibit the likelihood a case will resolve. Our firm uses billing software, which tracks the entries by day and time. Our billing software also records time in 1/10 of an hour increments. Our billing software also enables the use of a start/stop timer that can be used to more accurately record how long a particular task takes. A summary of the entries in Exhibit F by timekeeper is as follows:

| <u><b>Timekeeper</b></u> | <u><b>Hours</b></u> | <u><b>Rate</b></u> | <u><b>Lodestar</b></u> |
|--------------------------|---------------------|--------------------|------------------------|
| Galen T. Shimoda         | 84.8                | \$725              | \$61,480               |
| Justin P. Rodriguez      | 206.6               | \$625              | \$129,125              |
| Brittany V. Berzin       | 72.2                | \$425              | \$30,685               |
| Renald Konini            | 33.6                | \$425              | \$14,280               |
| <b>Total:</b>            | <b>397.2</b>        | <b>--</b>          | <b>\$235,570</b>       |

24. I believe the requested rates are within the prevailing market rates for Sacramento County and elsewhere. Ms. Berzin, Mr. Konini, myself, and Mr. Shimoda have approximately 5 years, 8 years, 13 years, and 20 years of experience, respectively, litigating complex wage and hour class and PAGA actions. Again, Sacramento County Superior Court has approved these rates for myself and Mr. Shimoda in November 2022. *See Strawn v. Bridgestone Retail Operations, LLC*, Case No. 34-2018-00242049 (Sac. Sup. Ct.). Mr. Konini was approved at these rates in connection with a wage and hour class action in Sacramento County Superior Court in January 2023. *See Kee, et al. v. Dr. Jeffrey A. Saladin, Dental Corporation (D/B/A Children's Choice Pediatric Dental Care), et al.*, Case No. 34-2020-00290072. Awarding fees at the hourly rate in effect at the time of the fee request is an appropriate and judicially approved method. *See Missouri v. Jenkins by Agyei*, 491 U.S. 274, 283 (1989).

25. Comparing our lodestar to the fees requested, an award of \$227,500 would not require any multiplier of our lodestar. While multipliers are regularly awarded in class action fee awards, the fact that one is not necessary here shows the requested fees are reasonable. *See Laffitte*, 1 Cal.5th at

1 487 (finding the trial court did not abuse its discretion in approving a fee award and noting that the  
2 award resulted in a multiplier of 2.03 to 2.13); *Wershba v. Apple Comput., Inc.*, 91 Cal.App.4th 224,  
3 255 (2001) (“Multipliers can range from 2 to 4 or even higher”). For the foregoing reasons, I believe  
4 the request of \$227,500 (35%) for attorneys’ fees is justified given the results obtained on behalf of the  
5 class.

6 26. Although the Agreement set out a maximum of \$20,000.00 for potential attorney’s costs,  
7 the total costs incurred or that will be incurred through a compliance hearing by Class Counsel is  
8 \$12,865.05. A true and correct copy of my firm’s itemized costs incurred prior to the filing of this  
9 Motion and the expected costs incurred through the final approval and compliance hearings is attached  
10 to this declaration as Exhibit D. These costs were all incurred to advance the interests of Class  
11 Members in this litigation and are of the kind that we would normally bill to fee paying clients. The  
12 difference in the actual costs and the maximum amount allocated under the Agreement will be added to  
13 the Net Settlement Amount and disbursed to Class Members.

14 27. I have used several class action administrator companies in the wage and hour class  
15 actions I have resolved in the past and believe ILYM Group, Inc., will provide the best service to  
16 administer the proposed class settlement. ILYM Group, Inc., has provided services in the administration  
17 industry for a long time and utilizes case managers with considerable experience in the field. ILYM  
18 Group, Inc. has procedures in place to protect the security of class data as well as insurance. Under the  
19 settlement the difference between the originally allocated \$15,000 and the actual administration costs of  
20 \$8,450 will be paid to the Class Members on a pro rata basis.

21 28. A copy of the Agreement and the entire Motion was submitted to the LWDA for review  
22 at the same time the Motion was submitted to the Court pursuant to California Labor Code section  
23 2699(1)(2). A true and correct copy of documents demonstrating the settlement documents were  
24 provided to the LWDA and that the LWDA has confirmed receipt are being filed with this Motion as  
25 Exhibit E.

26 29. The designated *cy pres* beneficiaries in this case are Capital Pro Bono, Inc. (“CPB”) and  
27 The Center For Workers Rights (“CFWR”). Only those funds that remain from uncashed settlement  
28 checks will be sent to the *cy pres* beneficiaries pursuant to section 5.6 of the Agreement.

1           30.     CPB is a 501(c)(3) nonprofit in good standing with the State of California that was  
2 established in 1981 and incorporated in 1986 to provide free civil legal services to the indigent,  
3 primarily through the use of volunteer attorneys. The formal service area includes Sacramento, Yolo,  
4 San Joaquin, El Dorado and Placer counties, however it also regularly provides assistance, whether in  
5 person or by phone, to individuals residing outside those counties, including Solano, Nevada, Merced,  
6 Sutter, Yuba, and Stanislaus counties. CPB changed its name in 2020 from Voluntary Legal Services  
7 Program of Northern California (“VLSP”) to Capital Pro Bono, Inc. CPB has been the recipient of *cy*  
8 *pres* funds from several jurisdictions in the State of California, including from Sacramento County  
9 Superior Court.

10           31.     If CPB is approved as a *cy pres* beneficiary, any funds received will be dedicated to the  
11 Employment Law Clinic and Advice Line project, which assists the indigent with legal matters related to  
12 their current or former employment. This assistance regularly includes, but is not limited to, free legal  
13 advice regarding claims for unpaid wages, failure to provide meal and rest periods, failure to pay  
14 reimbursement, and waiting time penalty claims. CPB provides legal advice, assistance with legal  
15 forms, and direct representation in administrative hearings, including administrative hearings in front of  
16 the California Labor Commissioner for unpaid wages. CPB has a staff attorney and clinic coordinator  
17 who provide assistance, along with experienced employment law attorney volunteers. These services  
18 have been a focus of the Employment Law Clinic and Advice Line project since its inception with VLSP  
19 and continuing through today under CPB.

20           32.     CFWR is also a qualified *cy pres* designee in class actions, under section 384, as it is a  
21 501(c)(3) nonprofit in good standing with the State of California providing free civil legal services to the  
22 indigent. Since its inception in 2014 and in partnership with Legal Aid at Work, the CFWR offers one-  
23 on-one legal consultations for low-wage workers. The CFWR discusses employment issues with  
24 workers and advises them as to the available legal remedies. In addition to individual counseling on  
25 employment issues, the CFWR educates workers, unions, and community members about workplace  
26 laws and remedies through “Know-Your-Rights” trainings conducted by the CFWR staff and volunteers.

27           33.     The CFWR provides limited representation for low-wage workers in wage claims before  
28 the California Labor Commissioner. The CFWR has provided services to low-wage workers in a variety

1 of industries across the entire state of California. CFWR primarily focuses on the enforcement of basic  
2 workplace protections, including claims for unpaid wages, minimum wage violations, failure to pay  
3 overtime, failure to pay reimbursement, waiting time penalties, and meal and rest period violations. The  
4 CFWR helps workers navigate the wage claim process before the California Labor Commissioner  
5 through advice given at its legal consultation clinics and/or, in some cases, through representing workers  
6 in these claims. If the CFWR is approved as a *cy pres* beneficiary, the funds received will be dedicated  
7 towards assisting low-wage workers with wage claims and enforcing the California Labor Code with  
8 respect to those wage claims.

9 34. I believe the services provided by CPB and the CFWR promote the law consistent with  
10 the objective of wage and hour class actions in general and in this case specifically.

11 35. I have spoken with every other attorney at my firm to determine whether they have any  
12 relationship with either of the proposed *cy pres* beneficiaries.

13 36. I have volunteered for both organizations numerous times over the past several years,  
14 either directly in the advice clinics or by presenting seminars on wage and hour laws for law students  
15 seeking to also volunteer at advice clinics. I have also volunteered by sitting on CPB's advisory  
16 committee. These organizations are non-profits that assist low-income workers throughout California,  
17 giving free legal advice regarding employment law issues and representing employees with wage claims  
18 before the California Labor Commissioner. I have witnessed firsthand the quality service and attention  
19 these entities provide to individuals in need of employment law advice and representation at the  
20 California Labor Commissioner. CPB and CFWR do not provide, and have not provided, any referrals  
21 to Shimoda & Rodriguez Law, PC.

22 37. Galen T. Shimoda has volunteered for both organizations on and off over the past several  
23 years through either presenting wage and hour seminars to law students who staff the free advice clinics  
24 or helping at the advice clinics themselves. However, Mr. Shimoda has not performed any volunteer  
25 work with either organization since approximately March 2020. Mr. Shimoda has never received  
26 payment or compensation of any kind in connection with any work he's done with either of the proposed  
27 *cy pres* beneficiaries.

38. Brittany V. Berzin, my former associate, had never done any work, volunteer or otherwise, with CPB. During law school, Ms. Berzin was a student volunteer for the CFWR for two summers. Since graduating law school and while working with our firm, she has volunteered for the CFWR approximately one to two times per year, assisting in the advice clinic. Ms. Berzin had also volunteered to be on the Board of Directors and was the Chair at the time she left our firm, which was an unpaid position. As Chair, Ms. Berzin was one of seven Board Members, who were all from different law firms and/or local public and private organizations. No compensation or benefits, monetary or otherwise, was provided to any Board Member or organization a Board Member is associated with. The Executive Director of the CFWR supervises, directs, and controls the day-to-day operations of the CFWR, not Ms. Berzin or the Board of Directors. As Chair, Ms. Berzin's additional duties included scheduling meetings, drafting meeting agendas and presiding over meetings. Furthermore, CFWR has not, and does not, provide any referrals to Shimoda & Rodriguez Law, PC.

39. Renald Konini has never done any work, volunteer or otherwise with Capital Pro Bono, Inc. or the Center For Workers' Rights. Neither my firm, myself, Mr. Konini, Ms. Berzin, nor Mr. Shimoda have ever received any compensation, direct or indirect, for designating CFWR or CPB as *cy pres* beneficiaries or in connection with any of the volunteer work we have done with the organizations.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on December 9, 2024, in Sacramento, California.

Justin P. Rodriguez

Galen T. Shimoda (Cal. State Bar No. 226752)  
Justin P. Rodriguez (Cal. State Bar No. 278275)  
Renald Konini (Cal. State Bar No. 312080)  
**Shimoda & Rodriguez Law, PC**  
9401 East Stockton Boulevard, Suite 120  
Elk Grove, CA 95624  
Telephone: (916) 525-0716  
Facsimile: (916) 760-3733

Attorneys for Plaintiff 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**

*Assigned for All Purposes to Hon. Lauri A. Damrell  
Department 22*

**CLASS ACTION**

**DECLARATION OF ALBERT CARR IN  
SUPPORT OF PLAINTIFF'S MOTION FOR  
FINAL APPROVAL OF CLASS ACTION AND  
PAGA SETTLEMENT**

Date: July 19, 2024

Time: 9:00 a.m.

Dept.: 22

Judge: Hon. Lauri A. Damrell

Filed: July 26, 2023

FAC Filed: April 16, 2024

Trial Date: None Set

1 I, Albert Carr, declare:

2 1. I am a competent adult, I have personal knowledge of the facts set forth in this  
3 declaration, and I am making this declaration on behalf of myself, as a named plaintiff, and in support  
4 of Plaintiff's Motion for Final Approval of Class Action and PAGA Settlement.

5 2. I worked for Defendants WaveDivision Holdings, LLC, OH WDH HOLDCO, LLC, and  
6 Astound Broadband, LLC ("Defendants"), in California from approximately January 2021 to May  
7 2023, as a non-exempt employee. I was subject to all of Defendants' policies and practices that have  
8 been alleged as unlawful in the Complaint and the notice sent to the Labor and Workforce  
9 Development Agency, including the following: failure to pay minimum wages, failure to pay overtime,  
10 failure to provide meal and rest periods or pay premiums in lieu thereof, failure to provide accurate  
11 wage statements, failure to timely pay final wages, unlawful deductions and the failure to pay contract  
12 wages, failure to maintain accurate records, and the failure to pay all sick leave wages owed.

13 3. I have actively participated in the litigation of this case for the benefit of all Class  
14 Members. Prior to obtaining an attorney, I spent a substantial amount of time compiling text messages,  
15 personal emails, and other documents to help substantiate the claims. I researched online to see what  
16 the laws were for these claims to help guide me in putting the right documents together, so I could have  
17 an informed discussion with the attorneys about the claims and have a better idea of what to expect in  
18 litigation. After securing Shimoda & Rodriguez Law, PC, I continued to be actively involved in the  
19 case to help ensure a positive outcome.

20 4. My attorneys explained to me the risks and benefits of bringing a class action and a  
21 claim under the Private Attorneys General Act ("PAGA"). I understood that pursuing the case as a  
22 class and PAGA action meant that it would take substantially longer than pursuing my claims  
23 individually, whether in Court or with the California Labor Commissioner, and that I risked getting  
24 nothing in the end. However, I believed it was more important to make sure that Defendants followed  
25 the law for everyone. I understood that I took on the risk, both professionally and financially, in  
26 pursuing the case as a class and PAGA action rather than pursuing my claims individually, including the  
27 risk of having to pay Defendants' costs if we were unsuccessful in bringing our claims. Additionally,  
28 the type of fiber optics and cable construction work I performed is a small, tightly knit field within the

1 industry. In bringing the case I risked alienating myself in this industry and any future employment  
2 opportunities within it.

3         5.         During the course of this litigation, I have given detailed accounts of all the facts related  
4 to my employment. I provided my attorneys with extensive documentation that I believe supported the  
5 claims brought against Defendants. I met with and assisted my attorneys in understanding these  
6 documents and providing context for Defendants' payroll process as it applied to me and how I  
7 believed it applied to Defendants' other employees. I worked at multiple jobsites with varying crew  
8 compositions, so I was able to identify and discuss the similarities in the working conditions at issue in  
9 this lawsuit across these different crew compositions. I also received all the different types of pay we  
10 alleged should have been included in the regular rate, so I was able to discuss the circumstances in  
11 which pay would be earned, which directly addressed the regular rate of pay claims raised. I believe  
12 my experiences working for Defendants and the knowledge I obtained about their wage and hour  
13 practices helped ensure I could discuss the finer details of the facts supporting the claims and the  
14 similarities of the wage and hour policies and practices among all Class Members.

15         6.         The work I performed for this case included an extensive review of documents and  
16 payroll practices to show and explain to my attorneys what was happening and why I thought it was  
17 unlawful. For example, I reviewed a substantial amount of emails and text messages, pay records and  
18 policies with my attorneys to help establish when and how the claims arose. This was in an effort to  
19 give concrete examples of what I believed were violations of the California Labor Code. I also  
20 reviewed GPS records and bank records in comparison with paystubs and records of hours to help  
21 substantiate the off-the-clock claims and unlawful deduction claims. I also spent a substantial amount  
22 of time identifying and/or speaking to approximately twenty-one potential witnesses who could speak  
23 to my attorneys to give their own insights and provide declarations. As mediation approached, even  
24 more time was spent speaking with my attorneys about the information and documents exchanged for  
25 mediation, how that affected the claims, and discussing additional facts to address new issues that arose  
26 as a result of those productions. I believe this was very important as it helped give concrete examples  
27 of what we were alleging violated the California Labor Code.

1           7.       I participated in the negotiations and settlement discussions in this case, including  
2 participating in mediation by phone, speaking with my attorneys to answer questions, provide any  
3 additional information needed to assist the negotiations, and discussing the potential terms of the  
4 Agreement to evaluate its adequacy. Throughout the course of this litigation, I have asked questions  
5 when I needed clarification about various aspects of this case to make sure there were continually steps  
6 taken to advance the interests of Class Members.

7           8.       To date, I estimate that I have spent approximately 140-165 hours working on this case  
8 for the benefit of all Class Members. Since preliminary approval of the Settlement, I have spoken to  
9 approximately twenty (20) Class Members who reached out to me to ask questions about the settlement  
10 and how to participate. Several of them also thanked me for bringing the case and were appreciative of  
11 my efforts.

12          9.       I have not received any benefits as a result of filing this lawsuit. The burdens that I have  
13 experienced in bringing this lawsuit include assuming the risk of having to pay Defendants' costs if the  
14 Court or jury rules against us on the claims. My understanding is that this is a substantial risk because  
15 the costs associated with litigation, in general, are very high and this cost is multiplied many times over  
16 in complex litigation like class actions. I have spent a substantial amount of time in this case, securing  
17 a monetary benefit for many individuals who have not had to do anything whatsoever to have the  
18 opportunity to receive it. Rather than spend this time with friends and family, I have spent this time for  
19 the benefit of Class Members. As part of the settlement, I am the only individual providing a general  
20 release of all my individual claims and waiving the protections of California Civil Code section 1542  
21 for unknown claims. No other Class Member is subject to such a broad release.

22          10.      I have reviewed the final Joint Stipulation Regarding Settlement of Class and PAGA  
23 Action and Release of Claims, discussed the terms with my attorney, and asked my attorney any  
24 questions I had. I believe the terms of the settlement and allocations are fair and reasonable given the  
25 facts of the case.

26          11.      I understand that any Enhancement Payment I may receive is for my participation as a  
27 Class Representative and it is not contingent on my support or approval of the Agreement.  
28

1           12. I have no interest in the designated *cy pres* beneficiaries, Capital Pro Bono, Inc., and the  
2 Center for Workers Rights, whether financial, in their governance, or otherwise.

3           I declare under penalty of perjury under the laws of the State of California that the foregoing is  
4 true and correct. Executed on December 9, 2024, in Dixon, California.

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Albert B. Carr (Dec 9, 2024 12:18 PST)

8 Albert Carr  
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Galen T. Shimoda (Cal. State Bar No. 226752)  
Justin P. Rodriguez (Cal. State Bar No. 278275)  
Renald Konini (Cal. State Bar No. 312080)  
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Telephone: (916) 525-0716  
Facsimile: (916) 760-3733

Attorneys for Plaintiff 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**

*Assigned for All Purposes to Hon. Lauri A. Damrell  
Department 22*

**CLASS ACTION**

**DECLARATION OF CASSANDRA POLITES  
OF ILYM GROUP, INC., IN SUPPORT OF  
PLAINTIFF'S MOTION FOR FINAL  
APPROVAL OF CLASS ACTION AND PAGA  
SETTLEMENT**

Date: January 3, 2025

Time: 9:00 a.m.

Dept.: 22

Judge: Hon. Lauri A. Damrell

Filed: July 26, 2023

FAC Filed: April 16, 2024

Trial Date: None Set

1 I, Cassandra Polites, declare as follows:

2 1. I am a resident of the United States of America and am over the age of 18. I am a Case  
3 Manager for ILYM Group, Inc., (herein after referred to as “ILYM Group”), the professional settlement  
4 services provider who has been retained by the Parties’ Counsel and subsequently appointed by the Court  
5 to serve as the Settlement Administrator for the above captioned, *Carr v. Wavedivision Holdings, LLC,*  
6 *et al* matter. I am authorized to make this declaration on behalf of ILYM Group and myself. I have  
7 personal knowledge of the facts herein, and, if called upon to testify, I could and would testify  
8 competently to such facts.

9 2. ILYM Group has extensive experience in administering Class Action Settlements,  
10 including direct mail services, database management, claims processing and settlement fund distribution  
11 services for Class Actions ranging in size from 26 to 4.5 million Settlement Class Members.

12 3. ILYM Group was engaged by the Parties’ Counsel and subsequently approved and  
13 appointed by the Court to provide notification services and settlement administration, pursuant to the  
14 terms of the Settlement, in the above referenced Action. Duties performed to-date and to be performed  
15 after Final Approval of the Settlement is granted, include: (a) printing and mailing the *Notice of Proposed*  
16 *Settlement of Class and PAGA Action and Hearing Date for Final Court Approval of Settlement*, (referred  
17 to as “Notice of Settlement”); (b) receiving and processing requests for exclusion and objections to the  
18 Settlement; (c) resolving Class Members’ disputes over the number of workweeks Defendant has record  
19 of them working during the Class Period, which was pre-printed on their individualized Notice of  
20 Settlement; (d) establishing a QSF account and calculating individual settlement award amounts; (e)  
21 processing and mailing settlement award checks; (f) handling tax withholdings as required by the  
22 Settlement and the law; (g) preparing, issuing and filing tax returns and other applicable tax forms; (h)  
23 handling the distribution of any unclaimed funds pursuant to the terms of the Settlement; and (i)  
24 performing other tasks as the Parties mutually agree to and/or the Court orders ILYM Group to perform.

25 4. On July 23, 2024, ILYM Group received the Court approved text for the Notice of  
26 Settlement from Class Counsel. ILYM Group prepared a draft of the formatted Notice of Settlement,  
27 which was approved by the Parties’ Counsel prior to mailing.  
28

1           5.       On August 14, 2024, ILYM Group received the class data file from Counsel for  
2 Defendant, which contained the name, social security number, last known mailing address, and the  
3 number of workweeks for each Class Member and Aggrieved Employee (“Class List”). The data file was  
4 uploaded to our database and checked for duplicates and other possible discrepancies. The Class List  
5 contained unique records for 435 individuals who worked a total of 58,057 work weeks.

6           6.       As part of the preparation for mailing, all 435 names and addresses contained in the Class  
7 List were then processed against the National Change of Address (“NCOA”) database, maintained by the  
8 United States Postal Service (“USPS”), for purposes of updating and confirming the mailing addresses  
9 of the Class Members before mailing of the Notice of Settlement. The NCOA contains requested change  
10 of addresses filed with the USPS. To the extent that an updated address was found in the NCOA database,  
11 the updated address was used for the mailing of the Notice of Settlement. To the extent that no updated  
12 address was found in the NCOA database, the original address provided by Counsel for Defendants was  
13 used for the mailing of the Class Notice Packet.

14           7.       On September 2, 2024, the Notice of Settlement was mailed, via U.S First Class Mail, to  
15 all 435 individuals contained in the Class List. Attached hereto, as **Exhibit A**, is a true and correct copy  
16 of the mailed Notice of Settlement.

17           8.       As of the date of this declaration, 25 Notice of Settlement mailings have been returned to  
18 our office of which none were returned with a forwarding address. ILYM Group performed a  
19 computerized skip trace on the 25 returned mailings that did not have a forwarding address in an effort  
20 to obtain an updated address for the purpose of re-mailing the Notice of Settlement. As a result of this  
21 skip trace, 16 updated addresses were obtained and the Notice of Settlement was promptly re-mailed to  
22 those Class Members, via U.S. First Class Mail.

23           9.       As of the date of this declaration, a total of 16 Notice of Settlement mailings have been  
24 re-mailed as a result of ILYM Group’s skip tracing efforts.

25           10.      As of the date of this declaration, a total of 9 Notice of Settlement mailings have been  
26 deemed undeliverable as no updated addresses were found notwithstanding the skip tracing.

27           11.      As of the date of this declaration, ILYM Group has not received any request to opt out of  
28 the Settlement. The deadline to opt out from the Settlement was November 1, 2024.

12. As of the date of this declaration, ILYM Group has not received any objections to the Settlement. The deadline to submit a written objection to the Settlement was November 1, 2024.

13. As of the date of this declaration, ILYM Group has not received any disputes from a Class Member. The deadline to submit a work week dispute was November 1, 2024.

14. The Net Settlement Amount available to Participating Class Members is estimated to be \$358,684.95 and was calculated by subtracting the requested attorneys' fees (\$227,500.00), the amount requested for litigation costs and expenses (\$12,865.05), the requested Enhancement Payment (\$10,000.00) for the Class Representative, Settlement Administrator Costs (\$8,450.00), and the PAGA Penalty Amount (\$32,500.00) from the Gross Settlement Amount (\$650,000.00).

15. As of this date, there are 435 Class Members who did not submit any request to opt out and are, therefore, deemed to be Participating Class Members. The Individual Settlement Award is allocated on a pro rata basis using Participating Class Members' weeks worked.

16. The *highest* Individual Settlement Award to a Participating Class Member is currently estimated to be approximately \$1,556.89 and the *average* Individual Settlement Award is currently estimated to be approximately \$824.56. These amounts are subject to employee-side tax and withholdings.

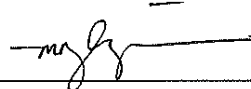
17. Pursuant to the Agreement, 25% of the PAGA Penalties Amount (\$8,125.00) will be allocated to Aggrieved Employees regardless of whether he or she opted out of the class portion of the Settlement ("Individual PAGA Share"); Aggrieved Employees cannot opt out of the PAGA portion of the Settlement. The Individual PAGA Share is allocated on a pro rata basis using PAGA Members' Qualified Workweeks within the PAGA Period. There are 273 Aggrieved Employees who worked 17,733 pay periods during the PAGA period.

18. ILYM Group's total fees and costs for services in connection with the administration of this Settlement, which includes fees and costs incurred to-date, as well as anticipated fees and costs for completion of the settlement administration, are \$8,450.00. ILYM Group's work in connection with this matter will continue with the calculation of the settlement award payments, issuance and mailing of the settlement award checks, the necessary tax filing and reporting on such payments, and any other tasks that the Parties mutually agree to and/or the Court orders ILYM Group to perform.

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3 I declare under penalty of perjury under the laws of the State of California and the United States  
4 that the foregoing is true and correct to the best of my knowledge and that this Declaration was executed  
5 this 5<sup>th</sup> day of December 2024, at Tustin, California.

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8 CASSANDRA POLITES  
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# **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 MAY 20, 2024 (“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 NOVEMBER 1, 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 July 19, 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 May 20, 2024 (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 May 20, 2024 (“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 125 weeks during the applicable Class Period (as defined below), which means your total share of the settlement proceeds is estimated to be **\$742.80**. 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 May 20, 2024 (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 May 20, 2024. 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 May 20, 2024. 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, May 20, 2024. Defendants’ records indicate that you worked **31** weeks during the applicable PAGA Period, which means your share of the PAGA Penalty Amount is estimated to be **14.20**. 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 November 1, 2024. 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 November 1, 2024. 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 November 1, 2024. The request to opt out must be mailed by First Class U.S. Mail, or the equivalent, to:

ILYM Group, Inc.  
P.O. Box 2031  
Tustin, CA 92781  
Telephone: (888) 250-6810  
Fax: (888) 845-6185  
Email: [claims@ilymgroup.com](mailto:claims@ilymgroup.com)

If you submit a request to opt-out which is not postmarked by November 1, 2024, 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 November 1, 2024. 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 9<sup>th</sup> Street, Sacramento, California 95814 on January 3, 2025, 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:

##### **Attorneys for Plaintiff**

Galen T. Shimoda  
Justin P. Rodriguez  
Renald Konini  
Shimoda & Rodriguez Law, PC  
9401 East Stockton Blvd., Suite 120  
Elk Grove, CA 95624  
Telephone: (916) 525-0716

##### **Attorney for Defendants**

|                                 |                              |
|---------------------------------|------------------------------|
| Shannon B. Nakabayashi          | Samuel J. Maselli            |
| Jackson Lewis P.C.              | Jackson Lewis P.C.           |
| 50 California Street, 9th Floor | 400 Capitol Mall, Suite 1600 |
| San Francisco, CA 94111-4615    | Sacramento, CA 95814         |
| Telephone: (415) 394-9400       | Telephone: (916) 341-0404    |

**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 (888) 250-6810.**

**BY ORDER OF THE COURT**

Galen T. Shimoda (Cal. State Bar No. 226752)  
Justin P. Rodriguez (Cal. State Bar No. 278275)  
Renald Konini (Cal. State Bar No. 312080)  
**Shimoda & Rodriguez Law, PC**  
9401 East Stockton Boulevard, Suite 120  
Elk Grove, CA 95624  
Telephone: (916) 525-0716  
Facsimile: (916) 760-3733

Attorneys for Plaintiff 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**

*Assigned for All Purposes to Hon. Lauri A. Damrell  
Department 22*

**CLASS ACTION**

**EXHIBIT LIST AND EXHIBITS IN SUPPORT  
OF PLAINTIFF'S MOTION FOR FINAL  
APPROVAL OF CLASS ACTION AND PAGA  
SETTLEMENT**

Date: January 3, 2025

Time: 9:00 a.m.

Dept.: 22

Judge: Hon. Lauri A. Damrell

Filed: July 26, 2023

FAC Filed: April 16, 2024

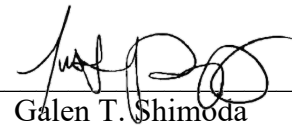
Trial Date: None Set

| <b><u>EXHIBIT</u></b> | <b><u>DESCRIPTION</u></b>                                                             |
|-----------------------|---------------------------------------------------------------------------------------|
| <b>A</b>              | Joint Stipulation Regarding Settlement of Class and PAGA Action and Release of Claims |
| <b>B</b>              | Plaintiff's Operative Complaint                                                       |
| <b>C</b>              | Plaintiff's Letter to the LWDA Regarding PAGA Claims                                  |
| <b>D</b>              | Plaintiff's Itemized Costs                                                            |
| <b>E</b>              | Proof of Submission of Proposed Settlement Agreement to LWDA                          |
| <b>F</b>              | Summary of Plaintiff's Counsel's Hours                                                |

Dated: December 9, 2024

**Shimoda & Rodriguez Law, PC**

By: \_\_\_\_\_



Galen T. Shimoda

Justin P. Rodriguez

Renald Konini

Attorneys for Plaintiff

# **EXHIBIT A**

Galen T. Shimoda (Cal. State Bar No. 226752)  
Justin P. Rodriguez (Cal. State Bar No. 278275)  
Renald Konini (Cal. State Bar No. 312080)  
**Shimoda & Rodriguez Law, PC**  
9401 East Stockton Blvd., Suite 120  
Elk Grove, CA 95624  
Telephone: (916) 525-0716  
Facsimile: (916) 760-3733

Attorneys for Plaintiff  
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  
FAC Filed: April 16, 2024  
Trial Date: None Set

Shannon B. Nakabayashi (SBN 215469)  
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50 California Street, 9th Floor  
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Telephone: (916)341-0404  
Facsimile: (916) 341-0141  
E-mail: [Samuel.Maselli@jacksonlewis.com](mailto:Samuel.Maselli@jacksonlewis.com)

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.

28   ///

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

1 PAGA Members, asserted or could reasonably have asserted based on the facts alleged in Plaintiff's notice  
2 letter to the LWDA, including but not limited to all claims arising under California Labor Code sections  
3 201, 202, 203, 221, 223, 225, 226, 226.3, 226.7, 246, 246.5, 248.5, 256, 510, 512, 558, 558.1, 1174, 1194,  
4 1197.1, and 2698 *et seq.*, the California Industrial Welfare Commission Wage Orders, and California Code  
5 of Regulations, Title 8, section 11040 *et seq.* based on the facts alleged in the LWDA letter and through  
6 and for the PAGA Period. PAGA Members cannot opt out of this waiver of claims.

7 1.34 "Released Parties" as referenced herein and as released in the Settlement shall collectively  
8 mean: (i) Defendants; (ii) each of Defendants' respective past, present and future parents, subsidiaries,  
9 partners, affiliates, brands and any corporation, limited liability company, or partnership; (iii) the past,  
10 present and future board members, directors, officers, agents, employees, attorneys, insurers, members,  
11 partners, managers, contractors, agents, consultants, representatives, administrators, fiduciaries, benefit  
12 plans, transferees, predecessors, successors, and assigns of any of the foregoing; and (iv) any individual  
13 or entity which could be jointly liable with any of the foregoing.

14 1.35 "Settlement Administrator" means and refers to ILYM Group, Inc., the third-party entity  
15 that will administer the Agreement as outlined in Sections 4 and 7 herein, or any other third-party  
16 administrator agreed to by the Parties and approved by the Court for the purposes of administering this  
17 Agreement. The Parties each represent that they do not have any financial interest in the Settlement  
18 Administrator.

19 1.36 "Settlement Administrator Costs" means the fees and expenses reasonably incurred by the  
20 Settlement Administrator as a result of the procedures and processes expressly required by this Agreement,  
21 and shall include all costs of administering the Agreement, including, but not limited to, all tax document  
22 preparation, custodial fees, and accounting fees incurred by the Settlement Administrator; all costs and  
23 fees associated with preparing, issuing and mailing any and all notices and other correspondence to Class  
24 Members and/or PAGA Members; all costs and fees associated with communicating with Class Members  
25 and/or PAGA Members, Class Counsel, and Defendants' Counsel; all costs and fees associated with  
26 computing, processing, reviewing, and paying the Individual Settlement Awards, and resolving disputes;  
27 all costs and fees associated with calculating tax withholdings and payroll taxes, if any, making related  
28 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.

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

3 2.8 Defendants deny any liability or wrongdoing of any kind whatsoever associated with the  
4 claims alleged in the Complaint, and further denies that, for any purpose other than settling this Action,  
5 this Action is appropriate for class or representative treatment. Defendants contend, among other things,  
6 that it has complied with all applicable state, federal and local laws affecting Plaintiff and the Settlement  
7 Class.

8 2.9 The Parties agree to cooperate and take all steps necessary and appropriate to consummate  
9 this Settlement and for entry of judgment in accordance with this Joint Stipulation of Settlement.

10 **3. THE CONDITIONAL NATURE OF THIS JOINT STIPULATION OF SETTLEMENT**

11 3.1 This Agreement and all associated exhibits or attachments are made for the sole purpose  
12 of settling the Action. This Agreement and the settlement it evidences are made in compromise of disputed  
13 claims. Because the Action was pled as a class action, this Agreement must receive preliminary and final  
14 approval by the Court. Accordingly, the Parties enter into this Agreement and associated settlement on a  
15 conditional basis. If the Effective Date does not occur, or if the Court's approval of the settlement is  
16 reversed or materially modified on appellate review, this Agreement shall be deemed null and void; it  
17 shall be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever;  
18 and the negotiation, terms and entry of the Agreement shall remain subject to the provisions of California  
19 Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of  
20 evidence that may be applicable.

21 3.2 Defendants have denied all claims as to liability, damages, liquidated damages, penalties,  
22 interest, fees, restitution, injunctive relief and all other forms of relief asserted in the Action. Defendants  
23 have agreed to resolve the Action via this Agreement, but to the extent this Agreement is deemed void or  
24 the Effective Date does not occur, Defendants do not waive, but rather expressly reserve, all rights to  
25 challenge all such claims and allegations in the Action upon all procedural and factual grounds, including,  
26 without limitation, the ability to challenge class or collective treatment on any grounds, as well as to assert  
27 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.

28 ///

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

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

13       5.9   Tax Allocation. The Parties recognize that the Individual Settlement Awards and  
14 Individual PAGA Shares to be paid to Participating Class Members and/or PAGA Members reflect a  
15 settlement of a dispute over claimed penalties and wages. The Settlement Administrator shall calculate  
16 the employer's share of payroll taxes on the amounts paid to Participating Class Members as wages as  
17 well as calculating all required withholdings and deductions from said wage payments. The  
18 characterization of Individual Settlement Awards to Participating Class Members and PAGA Members  
19 are as follows:

20               5.9.1   One-third (1/3) of each Participating Class Members' share of the Net Settlement  
21 Amount shall be allocated for payment of disputed wages and shall be subject to required employer taxes.  
22 Participating Class Members shall receive an IRS Form W-2 for reporting of this portion of their  
23 Individual Settlement Award.

24               5.9.2   Two-thirds (2/3) of each Participating Class Members' share of the Net Settlement  
25 Amount shall be allocated for disputed statutory penalties and interest, and no amount shall be deducted  
26 for any taxes. This portion of the Individual Settlement Award consists of other income, not wages, for  
27 which the Participating Class Members shall receive IRS Forms 1099-MISC and 1099-INT and this  
28 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.

28 ///

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

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

7.4 Returned and/or Re-Mailed Notice of Settlements. In the event that a Notice of Settlement is returned to the Settlement Administrator as undeliverable on or before the conclusion of the Notice Period, the Notice of Settlement shall be sent to the forwarding address affixed thereto within three (3) business days of receipt. If no forwarding address is provided, then the Settlement Administrator shall promptly attempt to determine a correct address using a skip-trace, computer or other search using the name, address and/or Social Security number of the individual involved, and shall then perform a single re-mailing within three (3) business days of receipt to any more recent address found as a result of the search. Following each search that does not result in a corrected address, for those Class Members who appear to be current employees of Defendants at the time of the Preliminary Approval Date, the Settlement Administrator shall contact Defendants' Counsel for assistance and Defendants shall cooperate in good faith with the Settlement Administrator's reasonable efforts to obtain valid mailing addresses for Class Members to the extent they are active employees of Defendants. In the event the Notice of Settlement is forwarded to a new address and/or re-mailed to a Class Member, the deadline for the Class Member to submit any request to opt-out, a dispute, or an objection shall be the end of the Notice Period or 10 days from the date of the re-mailing/forwarding to a new address, whichever is later. In the event the procedures in this Section are followed and the Class Member does not timely and properly request to opt-out, the Class Member shall be bound by all terms of the Agreement, including the releases of claims contained 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<br>2<br>3<br>4<br>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<br>7<br>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<br>10<br>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<br>13<br>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).

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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.

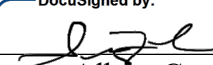
10.25 Unauthorized Publicity. Plaintiff and Class Counsel agree that the terms of this Settlement (including, but not limited to, the Maximum Settlement Amount), the negotiations leading to this Settlement, and all documents related to the Settlement, including the Agreement and any subsequent settlement 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**

DocuSigned by:  
By:   
B7B9361D-0C14-4040-8000-000000000000  
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

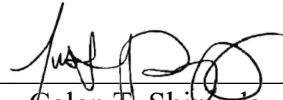
18 Attorneys for Defendants  
19 WAVEDIVISION HOLDINGS, LLC,  
20 OH WDH HOLDCO, LLC, and  
21 ASTOUND BROADBAND, LLC  
22  
23  
24  
25  
26  
27  
28

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  
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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 9<sup>th</sup> 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:

#### **Attorneys for Plaintiff**

Galen T. Shimoda  
Justin P. Rodriguez  
Renald Konini  
Shimoda & Rodriguez Law, PC  
9401 East Stockton Blvd., Suite 120  
Elk Grove, CA 95624  
Telephone: (916) 525-0716

#### **Attorney for Defendants**

|                                 |                              |
|---------------------------------|------------------------------|
| Shannon B. Nakabayashi          | Samuel J. Maselli            |
| Jackson Lewis P.C.              | Jackson Lewis P.C.           |
| 50 California Street, 9th Floor | 400 Capitol Mall, Suite 1600 |
| San Francisco, CA 94111-4615    | Sacramento, CA 95814         |
| Telephone: (415) 394-9400       | Telephone: (916) 341-0404    |

**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**

# **EXHIBIT B**

Galen T. Shimoda (Cal. State Bar No. 226752)  
Justin P. Rodriguez (Cal. State Bar No. 278275)  
Renald Konini (Cal. State Bar No. 312080)  
**Shimoda & Rodriguez Law, PC**  
9401 East Stockton Boulevard, Suite 120  
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Telephone: (916) 525-0716  
Facsimile: (916) 760-3733

Attorneys for Plaintiff ALBERT CARR

**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  
Corporation; and DOES 2 to 100, inclusive,

Defendants.

**Case No. 23CV005516**

**CLASS ACTION**

**FIRST AMENDED COMPLAINT FOR  
DAMAGES:**

- 1. Failure to Pay Minimum Wages**
- 2. Failure to Pay Overtime Wages**
- 3. Meal Period Violations**
- 4. Rest Period Violations**
- 5. Wage Statement Violations**
- 6. Waiting Time Penalties**
- 7. Unfair Competition**
- 8. Private Attorneys General Act**

**DEMAND FOR JURY TRIAL**

1  
2 Plaintiff ALBERT CARR (“Plaintiff”), on behalf of himself and all other similarly situated  
3 employees, hereby files this First Amended Complaint against Defendants WAVEDIVISION  
4 HOLDINGS, LLC, a Delaware Limited Liability Company; OH WDH HOLDCO, LLC, a Delaware  
5 Limited Liability Company; ASTOUND BROADBAND, LLC, a Washington Corporation, and  
6 DOES 1 to 100, inclusive (hereinafter all collectively referred to as “Defendants”). On information  
7 and belief, Plaintiff allege the following:

### 8 **INTRODUCTION**

9 1. This is a class action and Private Attorneys General Act (“PAGA”) lawsuit brought by  
10 Plaintiff for failure to pay minimum and overtime wages, meal and rest period violations, wage  
11 statement violations, waiting time penalties, and unfair competition.

### 12 **JURISDICTION AND VENUE**

13 2. The Sacramento County Superior Court has jurisdiction in this matter pursuant to  
14 California Code of Civil Procedure section 410.10 to determine alleged violations of the California  
15 Labor Code, California Business and Professions Code, and Wage Order No. 16.

16 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a), 395.2, and 395.5, in that  
17 Defendant are foreign entities and have not designated any county in California as being where they  
18 maintain their principal offices. In addition, some of the wrongful acts and violations of law asserted  
19 herein occurred within Sacramento County, and Defendants’ obligation to pay wages arose in  
20 Sacramento County pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414  
21 (1984).

22 4. Plaintiff sought permission pursuant to Labor Code section 2699 *et seq.* to pursue the  
23 claims set forth in this Complaint against Defendants as a Private Attorney General on behalf of himself  
24 and other similarly situated employees. Pursuant to Labor Code section 2699.3, Plaintiff gave written  
25 notice via online submission to the Labor and Workforce Development Agency (“LWDA”) on  
26 approximately July 25, 2023. Plaintiff provided facts and legal bases for his claims within the notice to  
27 the LWDA on all violations asserted under the Private Attorneys General Act cause of action. Plaintiff  
28 submitted the \$75.00 filing fee. The July 25, 2023, notice was also sent via certified mail to Defendants

1 on the same day. Plaintiff is informed and believes, that to date, the LWDA has not provided any  
2 response to Plaintiff's notice correspondence. Accordingly, Plaintiff is informed and believes that he  
3 has exhausted all administrative remedies pursuant to the Private Attorneys General Act and may bring  
4 this action on behalf of himself and all Aggrieved Employees. *See* Cal. Labor Code § 2699.3(a)(2)(A),  
5 (c)(3); *Caliber Bodyworks, Inc. v. Sup. Ct.*, 134 Cal.App.4th 365, 383 n.18, 385 n.19 (2005). Aggrieved  
6 Employees includes all individuals who have, or continue to, work for WaveDivision Holdings, LLC in  
7 California as non-exempt employees from July 25, 2022, to the present.

### 8 **PARTIES**

9 5. ALBERT CARR is an individual over the age of eighteen (18) and is a resident of the  
10 State of California.

11 6. On information and belief, Plaintiff alleges, WAVEDIVISION HOLDINGS, LLC, is  
12 now and/or at all times mentioned in this Complaint was a Delaware Limited Liability Company and  
13 the owner and operator of an industry, business and/or facility doing business in the State of  
14 California.

15 7. On information and belief, Plaintiff alleges, ASTOUND BROADBAND, LLC, is now  
16 and/or at all times mentioned in this Complaint was a Washington Corporation and the owner and  
17 operator of an industry, business and/or facility doing business in the State of California.

18 8. On information and belief, Plaintiff alleges, OH WDH HOLDCO, LLC, is now and/or  
19 at all times mentioned in this Complaint was a Delaware Limited Liability Company and the owner  
20 and operator of an industry, business and/or facility doing business in the State of California.

21 9. Defendants DOES 2 through 100 are affiliates, subsidiaries and related entities and the  
22 alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and  
23 are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true  
24 names and capacities of these DOE Defendants when they are ascertained.

25 10. At all times mentioned herein, each Defendant was the agent or employee of each of the  
26 other Defendants and was acting within the course and scope of such agency or employment. The  
27 Defendants are jointly and severally liable to Plaintiff.

11. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint employment, joint venture, partnership and common enterprise, and were acting within the course and scope of, and in pursuance of said joint employment, joint venture, partnership and common enterprise.

12. Defendants, and each of them, now and/or at all times mentioned in this Complaint approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

13. Defendants proximately caused Plaintiff to be subjected to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

### **CLASS ALLEGATIONS**

14. Plaintiff brings the First through Seventh Causes of Action on behalf of himself and all others similarly situated as a class action pursuant to California Code of Civil Procedure section 382. The class which Plaintiff seeks to represent is composed of, and defined, as follows:

All individuals who have, or continue to, work for WAVEDIVISION HOLDINGS, LLC in California as hourly, non-exempt employees from July 26, 2019, to the present.

15. This action has been brought and may be properly maintained as a class action, pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-defined community of interests in the litigation and the proposed class is easily ascertainable.

(a) Numerosity: The putative class is so numerous that the individual joinder of all members is impracticable under the circumstances of this case. While the exact number of class members is unknown to Plaintiff at this time, Plaintiff is informed and believes that Defendants have employed as many as fifty (50) individuals falling within the above stated class definition throughout the State of California during the applicable statute of limitations, who were subjected to the policies and practices outlined in this Complaint. As such, joinder of all members of the putative class is not practicable.

(b) Common Questions Predominate: Common questions of law and fact exist as to all members of the putative class and predominate over questions that affect only individual members of the class. These common questions of law and fact include, without limitation, the following:

- (1) Whether Defendants paid the putative class for all hours worked;
  - (2) Whether Defendants failed to pay the putative class the correct regular rates of pay for the purpose of paying overtime, meal premiums, rest premiums, and paid sick time;
  - (3) Whether Defendants failed to accurately track hours worked for the putative class;
  - (4) Whether Defendants authorized and permitted all meal periods;
  - (5) Whether Defendants authorized and permitted all rest periods;
  - (6) Whether as a result of Defendants' policies and practices Plaintiff's and putative class members received all wages, due and owing, at the time of their termination or separation; and
  - (7) Whether Defendants provided Plaintiff's and putative class members with wage statements that complied with Labor Code section 226.
- (c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative class. The putative class also sustained damages arising out of Defendants' common course of conduct in violation of the law as complained of herein. Plaintiff and all members of the putative class were non-exempt employees who were paid incentives and nondiscretionary bonuses in addition to hourly wages, but were not paid the correct regular rates of pay for the purpose of overtime wages, meal and rest premiums and paid sick time. Additionally, Defendants issued Plaintiff and all members of the putative class wage statements that did not comply with Labor Code section 226. As a result, Plaintiff and each member of the putative class will have suffered the same type of harm and seek the same type of recovery based on the same legal theories.
- (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the putative class. For all relevant times, Plaintiff resided in California and worked for Defendants in California. Moreover, Plaintiff is an adequate representative of the putative class as Plaintiff has no interests that are adverse to those of putative class members. Additionally, Plaintiff has retained counsel who has substantial experience in complex civil litigation and wage and hour matters.

1 (e) Superiority: A class action is superior to other available means for the fair and efficient  
2 adjudication of the controversy since individual joinder of all members of the putative  
3 class is impracticable. Class action treatment will permit a larger number of similarly  
4 situated persons to prosecute their common claims in a single forum simultaneously,  
5 efficiently, and without the unnecessary duplication of effort and expense that numerous  
6 individual actions would engender. Further, as damages suffered by each individual  
7 member of the class may be relatively small, the expenses and burden of the individual  
8 litigation would make it difficult or impossible for individual members of the class to  
9 redress the wrongs done to them, and an important public interest will be served by  
10 addressing the matter as a class action. The cost to the court system of adjudication of  
11 such individualized litigation would be substantial. Individualized litigation would also  
12 present the potential for inconsistent or contradictory judgments.

13 16. Plaintiff is unaware of any difficulties that are likely to be encountered in the  
14 management of this action that would preclude its maintenance as a class action.

### 15 **GENERAL ALLEGATIONS**

16 17. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 16 as though fully  
17 set forth herein.

18 18. Plaintiff and similarly situated employees worked for Defendants within the claim period  
19 as non-exempt employees. Plaintiff and similarly situated employees regularly worked over eight (8)  
20 hours in a day and/or forty (40) hours in a week.

21 19. Defendants were understaffed and required Plaintiff and similarly situated employees to  
22 perform work off-the-clock to avoid paying them overtime wages. Defendants were aware that Plaintiff  
23 and similarly situated employees were working additional hours that were not being paid. For example,  
24 Plaintiff's supervisor turned off the GPS on Plaintiff's truck in order to avoid tracking the additional  
25 hours Plaintiff worked. Plaintiff estimates he and similarly situated employees worked several hours of  
26 time off-the-clock each week. As a result, Defendants owe Plaintiff and similarly situated employees  
27 minimum and overtime wages.  
28

1           20. Defendants paid Plaintiff and similarly situated employees an hourly rate in addition to  
2 incentive pay such as pay for being on call, etc., and nondiscretionary bonuses. However, Defendants  
3 failed to incorporate the value of these additional payments into Plaintiff's and similarly situated  
4 employees' regular rates of pay for the purpose of paying overtime wages, meal period premiums, rest  
5 period premiums, and paid sick time. For example, during Defendants' 2/12/23 to 2/17/23 pay period,  
6 Plaintiff's paystub reflects that Defendants paid Plaintiff \$350 for being on call, four meal period  
7 premiums, and 20.16 hours of overtime. Defendants paid Plaintiff's overtime wages at exactly 1.5x his  
8 base hourly rate and Plaintiff's meal premiums at exactly his base hourly rate, which does not include  
9 any adjustment for the value of the payments he earned for working on call. This practice of Defendants  
10 not to incorporate the value of incentive pay and nondiscretionary bonuses into the regular rates of pay  
11 resulted in unpaid overtime, unpaid meal period premiums, unpaid rest period premiums, and unpaid  
12 sick leave for Plaintiff and similarly situated employees.

13           21. Defendants did not authorize and permit Plaintiff and similarly situated employees to take  
14 all meal and rest periods owed to them. Defendants employed Plaintiff and similarly situated employees  
15 for work for periods of more than five hours without providing them an off-duty meal period of at least  
16 30 minutes. Defendants did not have a policy or practice to provide Plaintiff and similarly situated  
17 employees with second meal periods when they worked shifts longer than ten (10) hours. Defendants  
18 employed Plaintiff and similarly situated employees for periods of more than 3.5 hours without  
19 providing them 10-minute rest periods. Defendants did not have a policy or practice to provide Plaintiff  
20 and similarly situated employees with a second rest period or third rest period when they worked shifts  
21 longer than ten (10) hours. Defendants regularly were understaffed and had a large amount of work for  
22 Plaintiff and similarly situated employees to complete which prevented them from being able to take all  
23 meal and rest periods they were entitled to. For example, Defendants received hundreds of calls from  
24 customers about service interruptions that were time sensitive. Plaintiff estimates that about 98% of his  
25 meal and rest periods were late or he was unable to take them. Plaintiff believes similarly situated  
26 employees missed a similar percentage of meal and rest periods due to their workload and the  
27 understaffing. Defendants did not pay Plaintiff and similarly situated employees all missed meal and  
28 rest period premiums they were owed.

1           22.     In addition, Defendants failed to keep accurate time records for Plaintiff and similarly  
2 situated employees Defendants would modify Plaintiff's and similarly situated employees' time records  
3 to avoid paying all meal premiums owed.

4           23.     Defendants unlawfully deducted wages from Plaintiff and similarly situated employees.  
5 For example, on or about June 6, 2023, Defendants deducted \$1,302.27 from wages they previously paid  
6 to Plaintiff.

7           24.     Defendants failed to provide Plaintiff and similarly situated employees with accurate  
8 wage statements. The wage statements Defendants provided did not accurately itemize employees'  
9 gross and net wages, meal period premiums, rest period premiums, paid sick time, and all applicable  
10 hourly rates in effect during the pay period, total hours worked, and the corresponding number of hours  
11 worked at each hourly rate.

12           25.     At the time of Plaintiff's and similarly situated employees' termination or separation,  
13 Plaintiff and Aggrieved Employees had overtime, sick time, and meal and rest period premiums owing  
14 to them. To date, Defendants have not paid Plaintiff and similarly situated employees these wages they  
15 are owed.

16                                   **CAUSES OF ACTION**

17                                   **FIRST CAUSE OF ACTION**  
18                                   **FAILURE TO PAY MINIMUM WAGES**  
19                                   **(As to all Defendants)**

20           26.     Plaintiff incorporates by reference and re-alleges paragraphs 1 through 25 as though fully  
21 set forth herein.

22           27.     For the period preceding the filing of this Complaint, Defendants were required to  
23 compensate Plaintiff and similarly situated employees with at least California's applicable minimum for  
24 every hour worked. *See* MW-Order 2019; IWC Wage Order, No. 16, section 4(A); Cal. Lab. Code §  
25 1194.

26           28.     Plaintiff and similarly situated employees were not exempt to the State's Minimum Wage  
27 Order. Defendants aware of their obligation to pay the minimum wage for each hour worked but failed  
28 to do so.

29. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

**SECOND CAUSE OF ACTION**  
**FAILURE TO PAY OVERTIME WAGES**  
**(As to all Defendants)**

30. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 29 as though fully set forth herein.

31. During the period Plaintiff was employed by Defendants, Defendants were required to compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours per day. *See, e.g.*, IWC Wage Order No. 16, section (3)(A); Cal. Lab. Code §§ 510, 1194.

32. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day and/or forty (40) hours per week on several occasions while employed by Defendants. However, Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours worked at their regular rate of pay.

33. Plaintiff and similarly situated employees were not exempt from overtime protections employees under the California Wage Orders and Labor Code.

34. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

**THIRD CAUSE OF ACTION**  
**MEAL PERIOD VIOLATIONS**  
**(As to all Defendants)**

35. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 34 as though fully set forth herein.

36. An employer must provide an employee a meal period in accordance with the applicable Wage Order, and California Labor Code sections 226.7 and 512.

37. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 16, section 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30) minutes for each work period of more than five (5) hours.

38. California Labor Code section 512 and Wage Order No. 16 section 11(B) further provide that employers may not employ employees for a work period for more than ten (10) hours per day without providing the employee with a second meal period of at least thirty (30) minutes. However, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. Employees are entitled to one (1) hour of pay at their regular rate of compensation for each meal period not provided.

39. Defendants employed Plaintiff and similarly situated employees for periods of more than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal period of at least thirty (30) minutes when Plaintiff and similarly situated employees worked more than ten (10) hours in a day. Defendants also failed to allow Plaintiff and similarly situated employees to take their first meal period before the completion of their fifth hour of work and failed to allow Plaintiff and similarly situated employees to take their second meal period before the completion of their tenth hour of work. Plaintiff and similarly situated employees did not waive their rights to all meal periods throughout their employment.

40. Defendants further failed to pay Plaintiff and similarly situated employees the applicable meal period premiums for any such missed meal breaks.

41. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

**FOURTH CAUSE OF ACTION**  
**REST PERIOD VIOLATIONS**  
**(As to all Defendants)**

42. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 41 as though fully set forth herein.

43. An employer must provide an employee a rest period in accordance with the applicable Wage Order and California Labor Code section 226.7.





57. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees' their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiff and similarly situated employees were paid incentives and nondiscretionary bonuses that should have been included in their regular rates of pay. Such conduct shows Defendants had knowledge of earned, but unpaid wages at the time of separation, yet Defendants still refused to pay the remaining wages owed.

58. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by thirty (30) days for Defendants' failure to pay all wages due.

**SEVENTH CAUSE OF ACTION**  
**UNFAIR COMPETITION**  
**(As to all Defendants)**

59. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 58 as though fully set forth herein.

60. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. *See* California Business and Professions (“B&P”) Code § 17200.

61. Plaintiff and similarly situated employees were not paid all wages owed, including minimum and overtime wages, meal and rest period premiums, and paid sick leave during their employment or any time thereafter. Defendants also resorted to unlawfully deducted money from Plaintiff's bank account, effectively causing unpaid and/or underpaid hours worked. Moreover, through Defendants conduct Plaintiff and similarly situated employees were denied statutory protections regarding meal and rest periods.

62. Plaintiff further alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law (“UCL”) (Business and Professions Code 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

63. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to

1 restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code  
2 sections 17203, 17208, violations of California Labor Code sections 226.7, 510, and 512 all in an  
3 amount as yet unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

4 **EIGHTH CAUSE OF ACTION**  
5 **PRIVATE ATTORNEYS GENERAL ACT**  
6 **(As to all Defendants)**

6 64. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 63 as though fully  
7 set forth herein.

8 65. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the  
9 following provisions of the Labor Code in their dealings with him and other similarly situated current  
10 and former employees:

- 11 • Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 16, § 4 (Failure to Pay  
12 Minimum Wages)
- 13 • Violation of Labor Code §§ 510, 1194; IWC Wage Order 16, § 3 (Failure to Pay  
14 Overtime Wages)
- 15 • Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage  
16 Statements)
- 17 • Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- 18 • Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of  
19 Work in Any Industrial Welfare Commission Order)
- 20 • Violation of Labor Code §§ 226.7, 512; IWC Wage Order 16, §§ 11(A) and 11(B)  
21 (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- 22 • Violation of Labor Code § 226.7; IWC Wage Order 16, § 12(A) (Failure to Provide  
23 Rest Periods or Pay Premiums in Lieu Thereof)
- 24 • Violation of Labor Code §§ 221, 223, 225 (Failure to Pay Contract Wages and  
25 Unlawful Deductions)
- 26 • Violation of Labor Code § 226.3, 1174 (Failure to Maintain Accurate Records)
- 27 • Violation of Labor Code § 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

**DAMAGES**

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
  - a. Wages in an amount to be proven at trial;
  - b. Interest for the wages due pursuant to California Labor Code section 1194;
  - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
  - d. Liquidated damages pursuant to California Labor Code section 1194.2;
3. As to the Second Cause of Action:
  - a. Wages in an amount to be proven at trial;
  - b. Interest for the wages due pursuant to California Labor Code section 1194;
  - c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
4. As to the Third Cause of Action:
  - a. Wages in an amount to be proven at trial;
  - b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
5. As to the Fourth Cause of Action:
  - a. Wages in an amount to be proven at trial;
  - b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
6. As to the Fifth Cause of Action:
  - a. Penalties as provided for in Labor Code section 226, including the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which the violation occurred and one hundred dollars (\$100.00) per employee for each violation in the subsequent pay periods, but not to exceed four thousand dollars (\$4,000.00);

b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 226(e);

7. As to the Eighth Cause of Action:

a. For civil penalties as provided for in the Labor Code for each enumerated violation in an amount to be proven at trial;

b. For those Labor Code sections, the violation of which there is no civil penalty provided, the default penalty provided in Labor Code section 2699(f): for any initial violation, one hundred dollars (\$100) for each aggrieved employee per pay period; For any subsequent violation, two hundred dollars (\$200) for each aggrieved employee per pay period;

c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699; and

d. For any other remedies as allowed by law and/or deemed appropriate by the Court.

8. For such other and further relief as this Court may deem just and proper, including, but not limited to:

a. Wages as proved at trial;

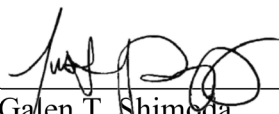
b. Injunctive and Declaratory relief;

c. Attorney's fees and costs as provided for by law; and

d. Interest.

Dated: April 9, 2024

**Shimoda & Rodriguez Law, PC**

By:   
Galen T. Shimoda  
Justin P. Rodriguez  
Renald Konini  
Attorneys for Plaintiff

1 Carr v. WaveDivision Holdings, LLC  
2 Sacramento County Superior Court of California 23CV005516

3 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**  
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Shaniya Baird, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to  
7 the within above-entitled action.

8 On April 16, 2024, I served the following documents on the party below:

9 • **FIRST AMENDED COMPLAINT FOR DAMAGES**

|                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                        |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 10 Shannon B. Nakabayashi<br>11 <b>Jackson Lewis P.C.</b><br>12 50 California Street, 9 <sup>th</sup> Floor<br>13 San Francisco, California 94111<br>14 Phone: (415) 796-5407<br>Email: <a href="mailto:shannon.nakabayashi@jacksonlewis.com">shannon.nakabayashi@jacksonlewis.com</a><br><a href="mailto:Fatimah.Sikin@jacksonlewis.com">Fatimah.Sikin@jacksonlewis.com</a> | Samuel J. Maselli<br><b>Jackson Lewis P.C.</b><br>400 Capitol Mall, Suite 1600<br>Sacramento, California 95814<br>Phone: (916) 341-0404<br>Email: <a href="mailto:samuel.maselli@jacksonlewis.com">samuel.maselli@jacksonlewis.com</a> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

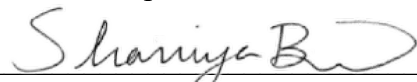
15 [ ] [By First Class Mail] I am familiar with my employer's practice for the collection  
16 and processing of correspondence for mailing with the United States Postal  
17 Service and that each day's mail is deposited with the United States Postal  
18 Service that same day in the ordinary course of business. On the date set forth  
19 above, I served the aforementioned document(s) on the parties in said action by  
placing a true copy thereof enclosed in a sealed envelope with postage thereon  
fully prepaid, for collection and mailing on this date, following ordinary business  
practices, at Salt Lake City, Utah, addressed as set forth above.

20 [ ] [By Personal Service] By personally delivering a true copy thereof to the office  
of the addressee above.

21 [XXX] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown  
22 above. No error was reported by the e-mail service that I used.

23 [ ] [By Overnight Courier] By causing a true copy and/or original thereof to be  
personally delivered via the following overnight courier service:\_\_\_\_\_.

24 I declare under penalty of perjury under the laws of the State of California that the foregoing  
25 is true and correct, and that this declaration was executed on April 16, 2024, at Salt Lake City, Utah.

26   
27 Shaniya Baird  
28

# **EXHIBIT C**



Shimoda & Rodriguez Law, PC  
9401 East Stockton Blvd.  
Suite #120  
Elk Grove, CA 95624  
Ph. (916) 525-0716  
Fax (916) 760-3733  
www.shimodalaw.com

July 25, 2023

**For Online Filing:**

Labor and Workforce Development Agency  
Attn. PAGA Administrator  
1515 Clay Street, Ste. 801  
Oakland, CA 94612

**Re: *Carr v. WaveDivision Holdings, LLC***

Dear Labor Commissioner,

As counsel for Albert Carr (“Plaintiff”), I am writing to provide you and the following “employers” notice pursuant to California Labor Code section 2699.3:

WaveDivision Holdings, LLC  
650 College Road East, Suite 3100  
Princeton, NJ 08450

OH WDH Holdco, LLC  
650 College Road East, Suite 3100  
Princeton, NJ 08450

James Holanda  
650 College Road East, Suite 3100  
Princeton, NJ 08450

We are setting forth the “facts and theories” to support each of the counts found within this complaint. Please notify us of your intent to investigate any or all of the claims alleged herein against WaveDivision Holdings, LLC, OH WDH Holdco, LLC, and James Holanda (“Defendants”). Should you decide not to investigate, we request that you allow us to bring the following action on behalf of Plaintiff and all Aggrieved Employees, pursuant to Labor Code section 2699(a). Specifically, Aggrieved Employees shall include, but is not limited to the following: all individuals who have, or continue to, work for WaveDivision Holdings, LLC, in California as non-exempt employees from one (1) year prior to the date of this letter to the present. Plaintiff is clearly entitled to bring a Private Attorneys General Act (“PAGA”) claim for civil penalties on behalf of these individuals pursuant to *Huff v. Securitas Security Services USA, Inc.*, 23 Cal.App.5th 745, 757 (2018) (finding a plaintiff has PAGA standing if affected by one of the alleged violations; the plaintiff need not have personally experienced all the violations pursued in PAGA action).



## A. FACTS

Plaintiff and Aggrieved Employees worked for Defendants within the claim period as non-exempt employees. Plaintiff and Aggrieved Employees regularly worked over eight (8) hours in a day and/or forty (40) hours in a week.

Defendants were understaffed and required Plaintiff and Aggrieved Employees to perform work off-the-clock to avoid paying them overtime wages. Defendants were aware that Plaintiff and Aggrieved Employees were working additional hours that were not being paid. For example, Plaintiff's supervisor turned off the GPS on Plaintiff's truck in order to avoid tracking the additional hours Plaintiff worked. Plaintiff estimates he and Aggrieved Employees worked several hours of time off-the-clock each week. As a result, Defendants owe Plaintiff and Aggrieved Employees minimum and overtime wages.

Defendants paid Plaintiff and Aggrieved Employees an hourly rate in addition to incentive pay such as pay for being on call, etc., and nondiscretionary bonuses. However, Defendants failed to incorporate the value of these additional payments into Plaintiff's and Aggrieved Employees' regular rates of pay for the purpose of paying overtime wages, meal period premiums, rest period premiums, and paid sick time. For example, during Defendants' 2/12/23 to 2/17/23 pay period, Plaintiff's paystub reflects that Defendants paid Plaintiff \$350 for being on call, four meal period premiums, and 20.16 hours of overtime. Defendants paid Plaintiff's overtime wages at exactly 1.5x his base hourly rate and Plaintiff's meal premiums at exactly his base hourly rate, which does not include any adjustment for the value of the payments he earned for working on call. This practice of Defendants not to incorporate the value of incentive pay and nondiscretionary bonuses into the regular rates of pay resulted in unpaid overtime, unpaid meal period premiums, unpaid rest period premiums, and unpaid sick leave for Plaintiff and Aggrieved Employees.

Defendants did not authorize and permit Plaintiff and Aggrieved Employees to take all meal and rest periods owed to them. Defendants employed Plaintiff and Aggrieved Employees for work for periods of more than five hours without providing them an off-duty meal period of at least 30 minutes. Defendants did not have a policy or practice to provide Plaintiff and Aggrieved Employees with second meal periods when they worked shifts longer than ten (10) hours. Defendants employed Plaintiff and Aggrieved Employees for periods of more than 3.5 hours without providing them 10-minute rest periods. Defendants did not have a policy or practice to provide Plaintiff and Aggrieved Employees with a second rest period or third rest period when they worked shifts longer than ten (10) hours. Defendants regularly were understaffed and had a large amount of work for Plaintiff and Aggrieved Employees to complete which prevented them from being able to take all meal and rest periods they were entitled to. For example, Defendants received hundreds of calls from customers about service interruptions that were time sensitive. Plaintiff estimates that about 98% of his meal and rest periods were late or he was unable to take them. Plaintiff believes Aggrieved Employees missed a similar



percentage of meal and rest periods due to their workload and the understaffing. Defendants did not pay Plaintiff and Aggrieved Employees all missed meal and rest period premiums they were owed.

In addition, Defendants failed to keep accurate time records for Plaintiff and Aggrieved Employees. Defendants would modify Plaintiff's and Aggrieved Employees' time records to avoid paying all meal premiums owed.

Defendants unlawfully deducted wages from Plaintiff and Aggrieved Employees. For example, on or about June 6, 2023, Defendants deducted \$1,302.27 from wages they previously paid to Plaintiff.

Defendants failed to provide Plaintiff and Aggrieved Employees with accurate wage statements. The wage statements Defendants provided did not accurately itemize employees' gross and net wages, meal period premiums, rest period premiums, paid sick time, and all applicable hourly rates in effect during the pay period, total hours worked, and the corresponding number of hours worked at each hourly rate.

At the time of Plaintiff's and Aggrieved Employees' termination or separation, Plaintiff and Aggrieved Employees had overtime, sick time, and meal and rest period premiums owing to them. As of the date of this letter, Defendants have not paid Plaintiff and Aggrieved Employees these wages they are owed.

## **B. ALLEGATIONS AND CHARGES**

### **Count One – Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 16, § 4 (Failure to Pay Minimum Wages)**

During the period Plaintiff and Aggrieved Employees were employed by Defendants they were entitled to be paid at least the State's minimum wage rate for each hour that they worked. *See, e.g.*, IWC Wage Order MW-2019; IWC Wage Order No. 16, § (4); Cal. Lab. Code §§ 1194, 1197.1. For the reasons stated above, Defendants did not pay Plaintiff and Aggrieved Employees for all hours worked. Thus, Plaintiff and Aggrieved Employees were not paid at least the applicable state minimum wage for those hours worked. This is against the law.

### **Count Two – Violation of Labor Code §§ 510, 1194; IWC Wage Order 16, § 3 (Failure to Pay Overtime Wages)**

Labor Code sections 510 and 1194 require employers to pay employees 1 ½ times their regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Employers must also pay employees 1 ½ times their regular rate of pay for the first eight (8) hours worked on the seventh day of work in any



one workweek. Finally, employers must pay employees 2 times their regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh day of work in any one workweek. As stated above, Plaintiff and Aggrieved Employees worked over eight (8) hours per day and forty (40) hours per week and were not paid all overtime wages owed. Plaintiff and all Aggrieved Employees are entitled to recover all unpaid overtime wages. Failure to pay such wages is against the law.

**Count Three - Violation of Labor Code §§ 226.7, 512 and Wage Order No. 16, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)**

Labor Code section 226.7 and Wage Order No. 16, section 11(A) require employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked, which is to be taken before the completion of the fifth hour. Labor Code section 512 and Wage Order No. 16, section 11(B) further provide that employers may not employ employees for a work period of more than ten (10) hours per day without providing the employee with a second meal period of thirty (30) minutes; however, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant meal periods pursuant to California law. Defendant also failed to pay any meal period premiums for their failure to provide meal periods. This was in violation of the law.

**Count Four – Violation of Labor Code § 226.7 and Wage Order No. 16, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)**

Labor Code section 226.7 and Wage Order No. 16, section 12(A) require employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or major fraction thereof worked. For the reasons stated above, Plaintiff and Aggrieved Employees were not authorized and permitted to take legally compliant rest periods pursuant to California law. Defendant also failed to pay any rest period premiums for their failure to provide rest periods. This was in violation of the law.

**Count Five – Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)**

Labor Code section 226 requires employers to furnish to employees with “an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee



identification number other than a social security number, (8) the name and address of the legal entity that is the employer . . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee . . . .” For the reasons stated above, Defendant failed to comply with these requirements with respect to Plaintiff and Aggrieved Employees. This is in violation of the law.

**Count Six – Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)**

Labor Code sections 201-203 require that all wages, including overtime wages, meal premiums, rest premiums, and paid sick time, be paid to employees upon separation and/or termination of employment. Here, for the reasons stated above, Plaintiff and Aggrieved Employees did not receive all final wages due and owing to them at the time of termination or seventy-two (72) hours thereafter as required by Labor Code sections 201-203. This is in violation of the law.

**Count Seven – Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)**

Labor Code section 558 states that it is unlawful for any employer, or other person acting on behalf of an employer, to violate or cause to be violated any of sections 500 to 558.1 of the Labor Code or any order of the Industrial Welfare Commission. Similarly, Labor Code section 558.1 states that it is unlawful for any employer or other person acting on behalf on an employer to violate, or cause to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, as well as Sections 203, 226, 226.7, 1193.6, 1194, or 2802 of the Labor Code. As described above, Defendant, by and through Defendant agents, violated Plaintiff and Aggrieved Employees’ rights provided for under Labor Code sections 558 and 558.1 as well as the incorporated Wage Orders and incorporated statutes therein. James Holanda was an officer, director, shareholder, and/or managing agent of WaveDivision Holdings, LLC responsible for the violations stated herein as he was in a position of authority with the power and responsibility to monitor, institute, and/or modify the unlawful practices, but chose to ratify them instead. Similarly, OH WDH Holdco, LLC, was a managing member of WaveDivision Holdings, LLC, responsible for the violations stated herein as its was in a position of authority with the power and responsibility to monitor, institute, and/or modify the unlawful practices, but chose to ratify them instead. This is against the law.

**Count Eight – Violation of Labor Code §§ 221, 223, 225 (Failure to Pay Contract Wages and Unlawful Deductions)**

Labor Code section 221 states that “[it] shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” Labor Code section 223 prohibits employers from paying an employee less than a contractually obligated amount. As stated above, Defendants deducted wages owed to Plaintiff



and Aggrieved Employees, failing to pay them their contracted pay for all hours worked. This was against the law.

**Count Nine – Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)**

Labor Code section 226.3 provides that any employer who fails to maintain records required by Labor Code section 226(a) or provide records required by 226(a) shall be subject shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation. Labor Code section 1174(d) provides that employers must keep and maintain accurate payroll records showing the hours worked daily by, and the wages paid to, employees. Defendant failed to maintain the accurate records required by law and, instead, maintained incomplete, inaccurate records regarding Plaintiff and Aggrieved Employees' wage records and hours worked. This was against the law.

**Count Ten – Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)**

Labor Code sections 246, *et seq.*, mandate that employers must provide California employees, who work thirty (30) or more days within a year for the employer, paid sick leave of at least one (1) hour for every thirty (30) hours worked that begins to accrue at the commencement of employment. An employer may use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than twenty-four (24) hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period. An employer may limit the use of sick leave to either twenty-four (24) hours or the equivalent of three (3) days, whichever is greater, during a year period. However, employers using an accrual method rather than a lump sum method must allow employees to accrue up to forty-eight (48) hours or the equivalent of six (6) days at any given time. Employers must authorize employees to take paid sick leave under the conditions set forth in the Healthy Workplaces, Healthy Families Act of 2014 ("HWHFA") for the diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member. Any sick leave taken must be paid at the employee's regular rate of pay. For the reasons stated above, Defendant failed to provide Plaintiff and Aggrieved Employees with sick leave meeting the requirements set forth in HWHFA. Plaintiff will be seeking equitable, injunctive, and restitutionary relief to remedy these violations.

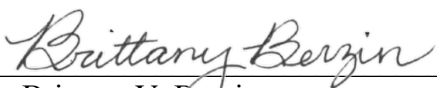
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If you have any questions or require any further information regarding the facts and theories to support these claims, do not hesitate to contact our office.

Very truly yours,

**Shimoda & Rodriguez Law, PC**

By:   
Brittany V. Berzin

BVB:sb

cc: Client via e-mail

1 Carr v. WaveDivision Holdings, LLC

2 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**  
3 **and California Rules of Court, Rule 1.21 and Rule 2.150**

4 I, Shaniya Baird, declare that:

5 I am a citizen of the United States and am over the age of eighteen years and not a party to  
6 the within above-entitled action.

7 On July 25, 2023, I served the following documents on the party below:

- 8 • Private Attorney General Act Letter

9

|                                                                                           |                                                                                |
|-------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------|
| 10 WaveDivision Holdings, LLC<br>650 College Road East, Suite 3100<br>Princeton, NJ 08450 | OH WDH Holdco, LLC<br>650 College Road East, Suite 3100<br>Princeton, NJ 08450 |
| 11 James Holanda<br>650 College Road East, Suite 3100<br>Princeton, NJ 08450              |                                                                                |

12  
13  
14

15 [XXX] [By Certified Mail] I am familiar with my employer's practice for the collection  
16 and processing of correspondence for mailing with the United States Postal  
17 Service and that each day's mail is deposited with the United States Postal  
18 Service that same day in the ordinary course of business. On the date set forth  
19 above, I served the aforementioned document(s) on the parties in said action by  
placing a true copy thereof enclosed in a sealed envelope with postage thereon  
fully prepaid, for collection and mailing on this date, following ordinary business  
practices, at Salt Lake City, Utah, addressed as set forth above.

20 [ ] [By Personal Service] By personally delivering a true copy thereof to the office  
of the addressee above.

21 [ ] [By Overnight Courier] By causing a true copy and/or original thereof to be  
22 personally delivered via the following overnight courier service:\_\_\_\_\_.

23 I declare under penalty of perjury under the laws of the State of California that the foregoing  
24 is true and correct, and that this declaration was executed on July 25, 2023, at Salt Lake City, Utah.

25   
26 Shaniya Baird  
27  
28

# **EXHIBIT D**

| Date        | Description                                                                                         | Amount     |
|-------------|-----------------------------------------------------------------------------------------------------|------------|
| 7/25/2023   | Payment to L WDA - PAGA Filing Fee                                                                  | \$75.00    |
| 7/27/2023   | Administration Fee - Phone, Fax, Scan, Copying, Westlaw Legal Research Fee                          | \$500.00   |
| 8/2/2023    | Affordable Legal Service Fee - WaveDivision Holdings inv 193981-01                                  | \$75.00    |
| 8/8/2023    | One Legal Service Fee - \$1435 complex fee, \$435 complaint fee, \$144.25 filing fee order 20867080 | \$1,579.25 |
| 8/18/2023   | One Legal Service Fee - Proof of service order 20951764                                             | \$83.39    |
| 9/21/2023   | Postage - Shannon Nakabayashi Jackson Lewis                                                         | \$6.77     |
| 9/21/2023   | Postage - Samuel Maseli -Jackson Lewis                                                              | \$6.77     |
| 11/2/2023   | One Legal Service Fee - \$1000 complex fee, \$435 complaint fee, \$125.72 filing fee order 21525908 | \$1,560.72 |
| 1/3/2023    | Mediation - fee to Mckelvey Resolution                                                              | \$6,750.00 |
| 2/13/2024   | One Legal Service Fee - Amendment to Complaint 22198884                                             | \$16.88    |
| 2/13/2024   | One Legal Service Fee - Amendment to Complaint 22198893                                             | \$16.88    |
| 3/20/2024   | One Legal Service Fee - Proof of service 22486997                                                   | \$13.85    |
| 3/20/2024   | One Legal Service Fee - notice 22481114                                                             | \$16.88    |
| 3/20/2024   | One Legal Service Fee - proof of service 22487057                                                   | \$16.88    |
| 3/26/2024   | Mediation - additional fee post mediation                                                           | \$1,500.00 |
| 4/9/2024    | One Legal Service Fee - Stipulation and Order 22639418                                              | \$37.47    |
| 4/10/2024   | One Legal Service Fee -Case Management Statement 22637782                                           | \$16.88    |
| 4/16/2024   | One Legal Service Fee -Amended Complaint 22688086                                                   | \$16.88    |
| 5/31/2024   | One Legal Service Fee - Case Management Statement 23025230                                          | \$16.88    |
| 6/14/24     | One Legal Service Fee - Request for Dismissal 23110282                                              | \$16.88    |
| 6/26/24     | One Legal Service Fee - Motion for Preliminary Approval                                             | \$78.65    |
| 6/27/24     | One Legal Service Fee - Proof of Personal Service 23217283                                          | \$16.88    |
| 7/15/24     | One Legal Service Fee - Supplemental declaration order 23313678                                     | \$16.88    |
| 8/9/24      | Service Fee - Capitol Process: Preliminary Approval Motion                                          | \$122.50   |
| Anticipated | One Legal Fee - Motion for Final Approval of Settlement                                             | \$125.00   |
| Anticipated | Service Fee - Capitol Process: Final Approval Motion                                                | \$125.00   |
| Anticipated | One Legal Service Fee - Proof of Personal Service                                                   | \$20.00    |
| Anticipated | Notice of Entry of Judgment                                                                         | \$20.00    |
| Anticipated | One Legal Service Fee - Compliance Declarations                                                     | \$16.88    |

**TOTAL: \$12,865.05**

# **EXHIBIT E**

# **EXHIBIT F**

| <b><u>TASK CATEGORY</u></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |  |  |  | <b><u>GTS</u></b> | <b><u>JPR</u></b> | <b><u>BVB</u></b> | <b><u>RK</u></b> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|--|-------------------|-------------------|-------------------|------------------|
| <b><u>Pre-filing investigation, Pleadings, Admin Exhaustion, and Related Law &amp; Motion.</u></b> Includes time spent during initial client meetings and review of claims and documents; Pre-filing investigation/research; Review of payroll records and prior filings against Defendants; Drafting pleadings, notices, administrative filings; Reviewing and responding to pleadings; Research regarding removal and remand issues for class and PA/GA claims filed separately; Meet and confer regarding potential for removal, remand, and/or consolidation; Communications with opposing counsel regarding same, internal communications regarding same, and communications with client regarding same.                                                                                                                                                                                                                                                                                   |  |  |  |  | 32.7              | 21.3              | 28.9              | 7.4              |
| <b><u>Case Review, Management, Strategy Meetings, Dispositive Motions.</u></b> Includes time spent discussing general plan of action updates and strategies in weekly meetings; Research and analysis regarding claim elements and issues affecting representative litigation; Preparing for case management conferences and related meet/confer, drafting of statements, and attendance for hearings; Reviewing minute orders and general correspondence from state and federal Court regarding case management and assignments; Research regarding certification; Research regarding successor liability and relation back doctrine through Doe amendments for Astound; Research regarding corporate status and joint employer issues for Astound; Research regarding trial plan and related issues on state and federal court; Communications with opposing counsel regarding same, internal communications regarding same, communications with client regarding same.                       |  |  |  |  | 20.2              | 32.5              | 14.3              | 0.6              |
| <b><u>Discovery (Pre-Mediation/Non-Mediation Related), Related Law &amp; Motion, and Hearings.</u></b> Includes time spent preparing discovery requests; Research regarding discovery issues and anticipated objections; Document review and analysis; Seek out witnesses for interviews and obtaining declarations; Review public records requests regarding prior labor commissioner filings and prior wage and hour lawsuits; Review SEC & Government filings related to corporate acquisitions and organizational structure for Astound and successor liability issues; Communications with opposing counsel regarding same, internal communications regarding same, communications with client regarding same.                                                                                                                                                                                                                                                                             |  |  |  |  | 2.3               | 9.8               | 7.1               | -                |
| <b><u>Discovery / Investigation for Mediation.</u></b> Includes time spent preparing informal discovery specifically geared towards mediation; reviewing informal mediation productions, including data, analyses, documents, and public records; Analyzing sample; Perform damages analysis and calculations; Communications with opposing counsel regarding same, internal communications regarding same, communications with client regarding same.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |  |  |  | 5.9               | 43.7              | 17.8              | -                |
| <b><u>Mediation / Settlement Conference / Direct Negotiations.</u></b> Includes time spent drafting/revising mediation brief and accompanying exhibits; Drafting pocket briefs; Review documents productions for potential exhibits; Preparing for and attending mediation; Legal research relating to issues on day of mediation; Preparing working draft of MOU; Communications with opposing counsel regarding same, internal communications regarding same, communications with client regarding same.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  |  |  |  | 8.5               | 28.2              | 4.1               | 2.8              |
| <b><u>Drafting Settlement Agreements.</u></b> Includes time spent preparing long form agreement and exhibits, revisions relating thereto; Research regarding approval procedures and logistics; Research regarding disputed terms; Solicit and review settlement administrator bids; Communications with opposing counsel regarding same, internal communications regarding same, communications with client regarding same.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |  |  |  | 3.6               | 17.9              | -                 | 9.7              |
| <b><u>Settlement Approval and Administration.</u></b> Includes time spent drafting motion for preliminary approval and supporting declarations and order; Class data and settlement calculation review; Speaking with Settlement Administrator regarding calculations, distributions, and final approval logistics; Review reports from Settlement Administrator; Respond to class member calls and inquiries regarding the settlement and research relating thereto; Draft Motion for final approval and supporting declarations, review and finalize exhibits relating thereto; Legal research regarding approval issues and consolidating into a single action for approval purposes; Communications with opposing counsel regarding same, internal communications regarding same, communications with client regarding same. Includes estimated 10 hours for J. Rodriguez supervising final distributions and compliance with Court final approval order and attending compliance hearings. |  |  |  |  | 11.6              | 53.2              | -                 | 13.2             |
| <b>TOTAL:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |  |  |  | 84.8              | 206.6             | 72.2              | 33.6             |

Galen T. Shimoda (Cal. State Bar No. 226752)  
Justin P. Rodriguez (Cal. State Bar No. 278275)  
Renald Konini (Cal. State Bar No. 312080)  
**Shimoda & Rodriguez Law, PC**  
9401 East Stockton Boulevard, Suite 120  
Elk Grove, CA 95624  
Telephone: (916) 525-0716  
Facsimile: (916) 760-3733

Attorneys for Plaintiff 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**

*Assigned for All Purposes to Hon. Lauri A. Damrell  
Department 22*

**CLASS ACTION**

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

Date: January 3, 2025  
Time: 9:00 a.m.  
Dept.: 22  
Judge: Hon. Lauri A. Damrell

Filed: July 26, 2023  
FAC Filed: April 16, 2024  
Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Final Approval of Class Action and PAGA Settlement (“Motion”) in the above  
3 referenced case came before this Court, on January 3, 2025, at 9:00 a.m., in Department 22 before the  
4 Honorable Lauri A. Damrell, presiding. Plaintiff Albert Carr (“Plaintiff”) filed this putative class action  
5 on July 26, 2023. The operative Complaint alleges that Defendants WaveDivision Holdings, LLC, OH  
6 WDH HOLDCO, LLC, and Astound Broadband, LLC (“Defendants”), violated California law by failing  
7 to pay minimum wages, failing to pay overtime, failing to provide meal and rest periods or pay premiums  
8 in lieu thereof, failing to provide accurate wage statements, failing to timely pay final wages, making  
9 unlawful deductions and failing to pay contract wages, failing to maintain accurate records, and failing  
10 to pay all sick leave wages due. Plaintiff has also alleged Defendants are liable for civil penalties under  
11 the Private Attorneys General Act (“PAGA”) based on these violations. Plaintiff sought attorney’s fees  
12 and costs as part of the Action. Defendants denied all of Plaintiff’s claims and denied that this case was  
13 appropriate for class treatment. No class has been certified. The class settlement was preliminarily  
14 approved by this Court on July 19, 2024.

15 The parties have agreed to settle the class and PAGA claims. Defendants will provide monetary  
16 consideration in exchange for a release of claims consistent with the terms of the proposed settlement as  
17 set forth in the Joint Stipulation Regarding Settlement of Class and PAGA Action and Release of Claims  
18 (“Agreement” or “Settlement”). Any capitalized terms herein shall have the same meaning as set forth  
19 in the Agreement. The Court, having received and considered Plaintiff’s Motion for Final Approval of  
20 Class Action and PAGA Settlement, the declarations in support, the Agreement, the proposed Notice of  
21 Settlement, and other evidence, HEREBY ORDERS AND MAKES DETERMINATIONS AS  
22 FOLLOWS:

23 **I. CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF CLASS**  
24 **REPRESENTATIVE; APPOINTMENT OF CLASS COUNSEL**

25 The Court finds that certification of the following class for settlement purposes only is appropriate  
26 under the California Code of Civil Procedure and related case law:

27 All persons who worked any hours for Defendants in California during any  
28 pay period as a non-exempt employee from July 25, 2019, through May 20,  
2024.

1           The Court recognizes that this definition is for Class Member identification purposes only and is  
2 not intended to capture the claims at issue or limit or alter the claims released under the Agreement.

3           For settlement purposes only, the Court finds that Class Members meet the ascertainability and  
4 numerosity requirements since the parties can identify with a matter of certainty, based on payroll  
5 records, individuals who fall within the definition and the number of Class Members would make joinder  
6 impractical. The commonality and predominance requirements are met for settlement purposes since  
7 there are questions of law and fact common to Class Members. The common questions of law or fact in  
8 this case all stem from Plaintiff's contentions that Defendants caused the violations outlined above by 1)  
9 requiring class members to work off-the-clock, 2) failing to incorporate the value of non-discretionary  
10 bonuses and on call incentive pay into class members' regular rates of pay for the purpose of calculating  
11 overtime premiums, meal period premiums, rest period premiums, and paid sick time, 3) failing to  
12 provide all meal periods, including second meal periods, 4) failing to provide all rest periods, including  
13 third rest periods; and 5) unlawfully deducting wages. The PAGA, waiting time penalty, wage statement  
14 violation, and unfair competition claims also derive from these violations. Additionally, Class Members  
15 seek the same remedies under state law. The typicality requirement for settlement purposes is also  
16 satisfied since the claims of the Class Representative are based on the same facts and legal theories as  
17 those applicable to the class members.

18           The Court also finds that certifying the settlement class is required to avoid each Class Member  
19 from litigating similar claims individually. This Settlement will achieve economies of scale for Class  
20 Members with relatively small individual claims and conserve the resources of the judicial system.

21           The Court finds that Plaintiff Albert Carr and Plaintiff's counsel, Galen T. Shimoda,  
22 Justin P. Rodriguez, Renald Konini of Shimoda & Rodriguez Law, PC, to be adequate representatives of  
23 the Settlement Class. The Court appoints them as Class Representative and Class Counsel, respectively.

## 24       **II. APPROVING CLASS ACTION AND PAGA SETTLEMENT**

25           The Court has again reviewed the preliminarily approved Agreement, which was submitted with  
26 Plaintiff's Motion as Exhibit A. The Court finds that final approval is warranted as the Settlement falls  
27 within the range of reasonableness, and is fair, reasonable, and adequate for the class. The Court also  
28 finds the Settlement was agreed upon only after extensive investigation, litigation, and arms-length

1 negotiations by counsel experienced in complex litigation, who took reasonable steps and measures to  
2 weigh the potential value of the disputed claims against the risks of continued litigation. Class Members  
3 were able to object to the Agreement and its terms through the administration process and at a fairness  
4 or opt-out of being bound by the preliminarily approved Agreement.

5 No objections were made by Class Members and no Class Members opted out of the settlement.  
6 Because the Court finds the Parties' settlement to have been agreed upon only after an extensive  
7 investigation and arms-length negotiations, and in an attempt to avoid further delays and costs, the Court  
8 gives final approval to the Agreement and all terms there in as if stated here in full, including the \$650,000  
9 Maximum Settlement Amount.

10 The Court approves the PAGA Penalty Amount of Thirty-Two Thousand Five Hundred Dollars  
11 (\$32,500.00), which shall be paid from the Maximum Settlement Amount, not in addition to the  
12 Maximum Settlement Amount, to resolve the alleged PAGA claims. Seventy-Five percent (75%) of the  
13 PAGA Penalty Amount will be paid to the Labor and Workforce Development Agency ("LWDA") and  
14 Twenty-Five percent (25%) will be paid to PAGA Members on a pro rata basis as described in the  
15 Agreement. The Court also finds that based on the facts of this case and the disputed issues, the  
16 Agreement provides a recovery that creates an effective, substantial deterrent to any potential future  
17 non-compliance, furthering the purpose of the Labor Code and LWDA.

18 The Court approves of the identified *cy pres* beneficiaries and distribution plan wherein any  
19 checks issued to Participating Class Members and/or PAGA Members that are not cashed by the  
20 deadline to do so shall be donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for  
21 Workers' Rights. *See In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 718 (2006). No portion of the  
22 Maximum Settlement Amount will revert to Defendant for any reason.

23 The releases and waivers for Class Members who did not opt out of being bound by the  
24 Agreement (*i.e.* Participating Class Members), PAGA Members, and the Class Representative are also  
25 approved by the Court as set forth in the Agreement.

26 Class Counsel sought an award of attorneys' fees of \$227,500.00, attorney's costs of \$12,865.05,  
27 an Enhancement Payment to the Class Representative in the amount of \$10,000, and for Settlement  
28 Administrator Costs in the amount of \$8,450. Defendants do not oppose these requests. The Notice of

1 Settlement sent to Class Members included information regarding these amounts and that they would be  
2 requested in connection with final approval of the Agreement. Class Members have been given the  
3 opportunity to object to these amounts and no objections have been submitted in any respect whatsoever.  
4 The Court has reviewed the evidence submitted by Class Counsel regarding their hourly rates and the  
5 amount of time expended in the litigation for the benefit of Class Members. The Court finds that the  
6 requested rates and hours expended are reasonable. The Court has also reviewed the updated itemized  
7 costs submitted by Class Counsel, the information provided by the Class Representative regarding the  
8 efforts and burdens undertaken for the benefit of the class, and the cost information provided by the  
9 Settlement Administrator. The Court finds that these amounts are fair and reasonable, and awarded as  
10 requested, which will be deducted from the Maximum Settlement Amount. This finding is further  
11 supported by the lack of objection by Class Members to these amounts. The difference between the  
12 actual attorney's costs and Settlement Administrator Costs awarded and the originally allocated  
13 attorney's costs of \$20,000 and Settlement Administrator Costs of \$15,000 will be added to the Net  
14 Settlement Amount pursuant to the terms of the Agreement.

### 15 **III. APPROVING THE NOTICE PROCEDURES AND NOTICE OF SETTLEMENT** 16 **SATISFYING DUE PROCESS**

17 The Court finds that the Notice of Settlement, attached to the Declaration of Cassandra Polites as  
18 Exhibit A, fairly and adequately advised Class Members of the terms of the Agreement, the rights being  
19 waived, their right to opt out, the ability to dispute the number of workweeks worked during the Class  
20 Period, their pro rata share of the Net Settlement Amount, how to participate in the settlement, how to  
21 file documentation in opposition to the proposed settlement, and when to appear at the fairness hearing.  
22 The Court further finds that the Notice of Settlement and distribution of such notice by first class mail to  
23 each identified Class Member at his or her most recent address based on a National Change of Address  
24 database search from the Class Members' last known address and a skip trace on any Class Members  
25 who have the Notice of Settlement returned as "undeliverable" or "not at this address" comported with  
26 all constitutional requirements, including those of due process.

#### IV. IMPLEMENTATION SCHEDULE

Accordingly, with good cause shown, the Court hereby approves and orders that the following implementation schedule be adhered to:

|                                                                                                                                                                                                                                                                                                                              |                                                                                            |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|
| Last day for Settlement Administrator to calculate the final Net Settlement Amount, the final Individual Settlement Awards to Participating Class Members and/or Individual PAGA Shares to 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                                           |
| Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payment, 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                         |
| 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 |
| 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                            |
| Last day for Settlement Administrator to provide Parties with compliance declaration                                                                                                                                                                                                                                         | Within 21 calendar days after settlement check cashing deadline                            |

IT IS FURTHER ORDERED that this final approval order is effective as a judgment with each party to bear its own fees and costs outside of what has been ordered herein. This matter is subject to

1 the Court's continuing jurisdiction to monitor and enforce the terms of this order and the approved  
2 Agreement.

3 The Court Sets a further compliance hearing for September 19, 2025, at 10:30 a.m. At least 15  
4 calendar days prior to the hearing, Class Counsel shall file a declaration from the Settlement  
5 Administrator regarding the status of the distribution of the settlement funds. If the Court is satisfied  
6 that the settlement funds have been fully distributed, no appearance will be required.

7 **IT IS SO ORDERED.**

8  
9 Date: \_\_\_\_\_

By: \_\_\_\_\_

Judge of the Superior Court