

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

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

Reservation No. A-05516-001

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 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on July 19, 2024, at 9:00 a.m., or as soon thereafter as the matter
3 may be heard in Department 22 of the above-entitled Court, Plaintiff Albert Carr , individually and on
4 behalf of all other similarly situated individuals, will, and hereby does, move for entry of an Order for
5 the following:

- 6 1. Preliminarily certifying the proposed class herein for purposes of settlement;
- 7 2. Preliminarily appointing Plaintiff Albert Carr as class representative for purposes of
8 settlement;
- 9 3. Preliminarily appointing Shimoda & Rodriguez Law, PC, as Class Counsel for purposes of
10 settlement;
- 11 4. Preliminarily approving the proposed class action and Private Attorney's General Act
12 settlement, in the amount of \$650,000, which is incorporated herein by reference;
- 13 5. Preliminarily approving the appointment of ILYM Group, Inc., as the Settlement
14 Administrator and for payment to ILYM Group, Inc., for administering said class action
15 settlement in an amount not to exceed \$20,000;
- 16 6. Preliminarily approving the settlement of claims under the Private Attorneys General Act for
17 the total amount of \$32,500, 75% of which will be paid to the Labor and Workforce
18 Development Agency and 25% of which will be paid to PAGA Members;
- 19 7. Approving as to form and content the Notice of Settlement, which provides Class Members
20 information regarding the settlement, their ability to opt out of, or object to, the class action
21 settlement and which provides instruction on how to dispute an individual's settlement
22 allocation under the proposed settlement agreement;
- 23 8. Approving the proposed procedures to notify the class and determining that the proposed
24 notification procedures and process comply with Class Members' due process rights and
25 directing the Notice of Settlement to be sent by first class mail to Class Members;
- 26 9. Directing Defendants to report employment information, including social security numbers,
27 to the Settlement Administrator to administer the settlement proceeds;
- 28

1 10. Scheduling a fairness hearing on the question of whether the proposed settlement should be
2 finally approved as fair, reasonable, and adequate;

3 11. Directing that any amount from settlement checks that were not cashed by the check cashing
4 deadline be donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for Workers
5 Rights under the doctrine of *cy pres*;

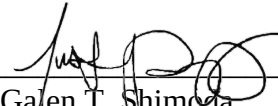
6 12. Preliminarily and conditionally approving and adopting the Proposed Order and its
7 implementation schedule, which is filed herewith and incorporated by reference.

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

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

23 Dated: June 26, 2024

Shimoda & Rodriguez Law, PC

24 By: 
25 Galen T. Shimoda
26 Justin P. Rodriguez
27 Renald Konini
28 Attorneys for Plaintiff

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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Damrell, Department 22*

CLASS ACTION

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

Reservation No. A-05516-001

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1 **I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT**

2 Plaintiff Albert Carr (“Plaintiff”) seeks preliminary approval of a wage and hour class action and
3 Private Attorneys General Act (“PAGA”) settlement in the gross amount of \$650,000. *See generally*
4 Exhibit A (Joint Stipulation Regarding Class Action and PAGA Settlement and Release [“Agreement”]).
5 Plaintiff is bringing this class action individually and on behalf of similarly situated employees who
6 worked for Defendants WaveDivision Holdings, LLC, OH WDH HOLDCO, LLC, and Astound
7 Broadband, LLC, (“Defendants”) (Plaintiff and Defendants sometimes collectively referred to as the
8 “Parties”). *See generally* Exhibit B (Plaintiff’s Operative Complaint). There are approximately 434
9 Class Members.

10 Plaintiff has alleged that Defendants violated California law by 1) requiring class members to
11 work off-the-clock due to understaffing; 2) failing to incorporate the value of non-discretionary
12 bonuses and on call incentive pay into class members’ regular rates of pay for the purpose of
13 calculating overtime premiums, meal period premiums, rest period premiums, and paid sick time; 3)
14 failing to provide all meal periods, including second meal periods; 4) failing to provide all rest periods,
15 including third rest periods; and 5) unlawfully deducting wages. *See generally* Exhibit B; *see also*
16 Declaration of Justin P. Rodriguez (“Decl. Rodriguez”), ¶¶ 2, 9. Plaintiff has also alleged Defendants
17 are liable for civil penalties under the PAGA based on these violations. *See generally* Exhibit B; *see*
18 *also* Decl. Rodriguez, ¶ 3; Exhibit C (Plaintiff’s Ltr. to the Labor and Workforce Development Agency
19 [“LWDA”] Regarding PAGA Claims). Defendants have denied all of Plaintiff’s allegations in their
20 entirety and any liability or wrongdoing of any kind. *See* Decl. Rodriguez, ¶ 5. Defendants have also
21 denied that this case is appropriate for class certification other than for purposes of settlement. *See id.*
22 However, subject to Court approval, the Parties have been able to compromise and settle all asserted
23 claims as a result of extensive investigations, document and data exchanges, and extended negotiations.
24 *See* Exhibit A. Plaintiff and Plaintiff’s counsel believe the proposed Agreement is fair, reasonable, and
25 adequate based on the investigations, discovery, employee data exchanges, negotiations, and a detailed
26 knowledge of the issues in this case. *See* Decl. Rodriguez, ¶¶ 6-7, 9-10; Declaration of Albert Carr
27 (“Decl. Carr”) ¶ 10.

1 It is well within the discretion of this Court to grant preliminary approval of the Agreement as it
2 satisfied all applicable criteria under California law. Accordingly, Plaintiff requests that the Court: (1)
3 certify the proposed settlement class on a preliminary and conditional basis; (2) grant preliminary and
4 conditional approval of the proposed Agreement (Exhibit A); (3) approve the form and content of the
5 Notice of Settlement (Exhibit F) and the method for providing notice to Class Members as set forth in
6 the Agreement; and (4) adopt the implementation schedule contained in the proposed order.

7 **II. PROCEDURAL AND LITIGATION HISTORY**

8 Plaintiff filed this class action complaint on approximately July 26, 2023, in Sacramento County
9 Superior Court. Plaintiff exhausted administrative remedies under the PAGA by providing notice of
10 the claims and violations to the LWDA. *See* Exhibit C; Cal. Lab. Code § 2699.3(a), (c); Decl.
11 Rodriguez, ¶ 3. Plaintiff filed a separate, single cause of action PAGA case in Sacramento County on
12 October 30, 2023, Case No. 23CV010770 (“PAGA Case”). During the litigation of these cases,
13 Plaintiff learned that Astound Broadband, LLC, was a successor entity to Defendants and, therefore,
14 Plaintiff filed a DOE amendment in this case, as well as the PAGA Case, identifying Astound
15 Broadband, LLC, as DOE 1. *See* Decl. Rodriguez, ¶ 3. Plaintiff has uploaded the filed DOE
16 amendments with the LWDA. After attending mediation and resolving the class and PAGA claims at
17 issue, the Parties agreed that Plaintiff would file an amended complaint in this case to consolidate all
18 claims into a single proceeding for a for a more efficient review and approval process. *See id.* A First
19 Amended Complaint that included all the claims and allegations from the PAGA case was filed in this
20 matter on approximately April 16, 2024. *See* Exhibit B. There is no date set for a motion for
21 certification or trial in this matter. *See* Decl. Rodriguez, ¶ 4.

22 **III. INVESTIGATION AND DISCOVERY CONDUCTED**

23 Plaintiff thoroughly investigated issues affecting certification, the merits of the class claims, and
24 potential damages for such claims. *See id.* at ¶¶ 3, 6-7, 9-10; Decl. Carr ¶¶ 3, 5-7. Plaintiff worked
25 during the time all of Defendants’ policies and practices at issue in the Complaint were in effect and
26 provided information regarding these policies and practices, enabling pre-filing investigations to take
27 place. *See* Decl. Carr, ¶ 2. The Parties engaged in informal discovery and exchange of documents,
28 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, ¶¶ 6-7, 9-10. 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 ¶¶ 6-10. 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 ¶ 8.

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 the earlier of (1) May 20, 2024; or (2) the Preliminary Approval Date; and (b) PAGA Members, which include all individuals who worked any hours for Defendants in California during any pay period as a non-exempt employee from July 25, 2022 through the earlier of either (1) May 20, 2024; or (2) the Preliminary Approval Date. See Exhibit A, ¶¶ 1.4, 1.25. There are approximately 434 Class Members and 268 PAGA Members. See *id.*

2. Defendants will pay the Maximum Settlement Amount of \$650,000, which is exclusive of the employer's share of payroll taxes. See *id.* at ¶¶ 1.19, 5.1. No portion of the Maximum Settlement Amount will revert to Defendants. See *id.* at ¶ 5.6. PAGA Members will still be paid their

1 share of the PAGA Penalty Amount regardless of whether they opt out of being Class Members. *See*
2 *id.* at ¶ 7.5.1.

3 3. Up to \$10,000 will be paid to Plaintiff as an Enhancement Payment. This amount will
4 be in addition to any amount Plaintiff may be entitled to under the terms of the Agreement. *See id.* at ¶
5 5.4.

6 4. Subject to Court approval, the Parties have selected ILYM Group, Inc., to act as the
7 Settlement Administrator, who has provided a maximum cost estimate of \$8,950. *See* Exhibit D, ¶¶ 9-
8 10 (ILYM Group, Inc., Bid); Exhibit A, ¶ 1.35; Decl. Rodriguez, ¶ 20.

9 5. The Parties agree that \$32,500 of the Maximum Settlement Amount shall be allocated to
10 resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Penalty Amount will be
11 paid to the LWDA and Twenty-Five percent (25%) will be paid to PAGA Members. *See* Exhibit A, ¶
12 5.5. Given the risk to proving the claims on the merits, the derivative nature of the penalties, the efforts
13 by Defendants to maintain compliant policies and take corrective action, the presence of what may
14 likely be deemed good faith disputes, and the Court's discretion to reduce any penalty award, Plaintiff
15 believes the \$32,500 PAGA Penalty Amount allocation represents a meaningful settlement aimed at
16 deterring non-compliance given the facts of this case. *See* Decl. Rodriguez, ¶ 9(i); *see also Nordstrom*
17 *Com. Cases*, 186 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to the resolution of PAGA
18 claims based on their being disputed and being part of a class settlement which was evaluated based on
19 the terms of the agreement overall); *Junkersfeld v. Med. Staffing Sols., Inc.*, 2022 WL 2318173, at *8
20 n.2 (E.D. Cal. 2022) (collecting cases with PAGA settlement values ranging from .037%-1%); *Jennings*
21 *v. Open Door Marketing, LLC*, 2018 WL 4773057, *9 (N.D. Cal. 2018) (approving settlement of
22 PAGA claims at 0.6% of total estimated value due to risk of no recovery); *Ruch v. AM Retail Grp.,*
23 *Inc.*, 2016 WL 5462451, *7 (N.D. Cal. 2016) (approving \$10,00 PAGA settlement allocation where
24 total PAGA penalty exposure was approximately \$5.2 million, or 0.2% of total estimated value); *Davis*
25 *v. Cox Commc'ns California, LLC*, 2017 U.S. Dist. LEXIS 63514, *1 (S.D. Cal. 2017) (preliminarily
26 approving \$4,000 PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int'l, LLC*, 2014 U.S.
27 Dist. LEXIS 8358, *5 (S.D. Cal. 2014) (approving \$2,500 PAGA allocation when attorneys' fees award
28 alone amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D.

1 Cal. 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson*
2 & Co., 2010 U.S. Dist. LEXIS 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in
3 \$1,000,000 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal.
4 2009) (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 U.S.
5 Dist. LEXIS 24880, *34-35 (E.D. Cal. 2017) (approving \$100,000 PAGA allocation in a \$3,950,000
6 settlement even though PAGA exposure was calculated at \$53,600,000, or 0.2% of total estimated
7 value); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *7 (E.D. Cal. 2012)
8 (approving \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*,
9 2012 WL 5941801, at *14 (E.D. Cal. 2012) (\$10,000 in PAGA Penalty Amount from \$2,500,000
10 settlement fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, at *1 (N.D. Cal. 2011)
11 (approving PAGA settlement payment of \$7,500 to the LWDA out of \$6.9 million common-fund
12 settlement).

13 6. The Parties agree that up to thirty five percent (35%) of the Maximum Settlement
14 Amount (\$227,500) will be paid for Plaintiff's attorneys' fees incurred in the litigation of this case.
15 Defendants will not oppose any application for attorneys' fees so long as it is within this threshold. *See*
16 *id.* at ¶ 5.2. Additionally, the Parties agree that Plaintiff will also be entitled to the actual litigation
17 costs as approved by the Court in an amount not to exceed \$20,000. *See id.* The proposed notice to be
18 sent to Class Members will state this information. *See* Exhibit F.

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

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

1 9. For any portion of the Net Settlement Amount or PAGA Penalty Amount allocated to
2 Participating Class Members and/or PAGA Members that is not claimed by them by cashing their
3 respective settlement checks within 180 calendar days of issuance, that remaining amount shall be
4 donated equally, *i.e.*, 50/50 to Capital Pro Bono, Inc., and the Center for Workers' Rights under the
5 doctrine of *cy pres*. See Exhibit A, at ¶ 5.6. Because the Agreement provides for all funds such that
6 there is no residue, the provisions of California Civil Procedure Code section 384 are inapplicable. See
7 *In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 718, 720 (2006). The designated beneficiaries clearly
8 promote the law consistent with the objectives and purposes underlying the lawsuit as they are non-
9 profits aimed at assisting employees with wage and hour claims who cannot afford legal representation,
10 including providing representation for employees in wage claims before the California Labor
11 Commissioner. See *id.* at 722-724; see also Decl. Rodriguez, ¶¶ 23-28.

12 **c. Allocation of Settlement Funds**

13 Payment to Participating Class Members and PAGA Members will not require the submission
14 of a claim form. A Net Settlement Amount will be determined by subtracting from the Maximum
15 Settlement Amount any awarded attorneys' fees and costs, Enhancement Payment to the Class
16 Representative, Settlement Administrator Costs, and the PAGA Penalty Amount. The amount to be
17 paid per Qualified Workweek to eligible Class Members will be calculated by the Settlement
18 Administrator by dividing the Net Settlement Amount by the total number of Qualified Workweeks for
19 all Participating Class Members who do not opt out of the Settlement. The amount to be paid per
20 workweek to PAGA Members will be calculated by the Settlement Administrator by dividing the
21 portion of the PAGA Penalty Amount of twenty-five percent (25%) payable to PAGA Members
22 pursuant to statute by the aggregate number of Qualified Workweeks for all PAGA Members during
23 the PAGA Period. Any funds allocated to Class Members under this formula who timely opt-out of the
24 Settlement will be redistributed to Participating Class Members on a pro rata basis. See Exhibit A, at ¶¶
25 1.20. 1.31, 5.8.
26
27
28

1 **V. THE PROPOSED PROCEDURES TO NOTIFY CLASS MEMBERS SATISFY DUE**
2 **PROCESS AS THEY PROVIDE THE BEST NOTICE PRACTICABLE UNDER THE**
3 **CIRCUMSTANCES**

4 It is not required that Class Members be given actual notice of a class settlement; instead, the
5 best practicable notice under the circumstances is all that is required. *See Silber v. Mabon*, 18 F.3d
6 1449, 1453 (9th Cir. 1994); *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1129 (9th Cir. 2017);
7 *Walsh v. CorePower Yoga LLC*, 2017 U.S. Dist. LEXIS 163991, at *12-14 (N.D. Cal. 2017); *Wright v.*
8 *Linkus Enters.*, 259 F.R.D. 468, 474-75 (E.D. Cal. 2009). In *Silber v. Mabon*, 18 F.3d 1449 (9th Cir.
9 1994), the Court rejected a class member's argument that he had not received due process because he
10 did not receive notice until after the opt out period, finding that, so long as the notice process utilized is
11 the best practicable under the circumstances, due process is satisfied even if there is no actual receipt of
12 the notice. *See Silber*, 18 F.3d at 1453-1454. A similar finding was made in *Briseno v. Conagra*
13 *Foods, Inc.*, 844 F.3d 1121 (9th Cir. 2017). With regard to any potential for undeliverable notice
14 mailings, the Court in *Rannis v. Recchia*, 380 F. App'x 646 (9th Cir. 2010) found that class members
15 who did not receive actual notice due to their mailings being deemed undeliverable were still properly
16 held to be part of the class settlement because they received the best notice practicable under the
17 circumstances. *See Rannis v. Recchia*, 380 F. App'x at 650-651. In *Noel v. Thrifty Payless, Inc.*, 7
18 Cal.5th 955, 980-984 (2019), the California Supreme Court noted that California has adopted a similar
19 approach regarding providing notice to class members.

20 Under the proposed notice procedures, Class Members will have sixty (60) days from the date
21 of mailing to review and respond to the Notice of Settlement, which will also be available online. *See*
22 Exhibit A, ¶¶ 1.22, 7.2. The Notice of Settlement contains all information necessary for a Class
23 Member to assess the litigation, the settlement, and whether they want to participate, object, or opt-out.
24 *See id.* at ¶¶ 7.2, 7.5.1-7.5.3; Exhibit F. National change of address database searches, skip-traces, and
25 surveying of current employees will be utilized as set out in the Agreement to provide the best practical
26 means of ensuring Class Members receive the notice mailing. *See Exhibit A*, ¶¶ 7.3-7.4. Any
27 individual whose initial mailing was deemed undeliverable will have additional time to respond. *See*
28 *id.* at ¶ 7.4. Additional time to respond will also be provided to cure any deficiencies in opt-outs,
 objections, or disputes. *See id.* ¶ 7.5.4. This notice method is regularly utilized in wage and hour class

actions and similar to the one approved in *Rannis*. Thus, the proposed procedures for notifying Class Members satisfy due process and should be approved in this case.

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

A class action may not be dismissed, compromised, or settled without Court approval and the decision to approve or reject a settlement is committed to the Court’s sound discretion. See Cal. Rules of Court, Rule 3.769; Fed. R. Civ. Proc., Rule 23(e)¹; *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 234-35 (2001); see also Cal. Lab. Code §§ 2699(l)(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 preliminary evaluation of a proposed class action settlement is to determine only whether it is within the range of possible approval such that notice to the class of its terms and conditions and the scheduling of a formal fairness hearing is warranted. 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 preliminary 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.*

¹The 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).

1 *Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 133 (2008). Factors to consider in determining whether
2 the settlement is fair, reasonable, and adequate include the strength of the Plaintiff’s case, the risk,
3 expense, complexity and likely duration of further litigation, the risk of maintaining class action status
4 through trial, the amount offered in settlement, the extent of discovery completed and the stage of the
5 proceedings, the experience and views of counsel, the presence of a governmental participant, and the
6 reaction of the class members to the proposed settlement. *See Dunk*, 48 Cal.App.4th at 1801. However,
7 this Court should begin its analysis with a presumption that the proposed settlement is fair. “A
8 presumption of fairness exists where: (1) the settlement is reached through arm’s length bargaining; (2)
9 investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel
10 is experienced in similar litigation; and (4) the percentage of objectors is small.” *Id.* at 1802.

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

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

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

19 The Parties were in possession of all necessary information during the negotiations. The Parties
20 engaged in substantial informal discovery, which included all necessary components for evaluating the
21 class claims and creating an accurate damages model. *See id.* at ¶¶ 6-7, 9-10. Plaintiff was in
22 possession of this information prior to calculating any damages in this case. *See id.* As a result,
23 Plaintiff was able to make a reasonable estimation of Defendants’ potential liability. *See id.* For these
24 reasons, the settlement now before the Court was reached at a stage where “the parties certainly have a
25 clear view of the strengths and weaknesses of their cases” sufficient to support the settlement. *See*
26 *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 617 (N.D. Cal. 1979).

1 **iii. Plaintiff's Counsel are Experienced in Similar Litigation**

2 Plaintiff's counsel have considerable experience in complex litigation such as class and PAGA
3 actions. *See* Decl. Rodriguez, ¶¶ 12-18. Thus, Plaintiff's counsel are qualified to evaluate the class
4 claims, the value of settlement versus moving forward with litigation, and viability of possible
5 affirmative defenses. Plaintiff's counsel believe that the Agreement is fair, reasonable, and adequate in
6 light of the risks associated with the claims, the uncertainties of complex litigation, and the secured
7 benefit to Class Members. *See id.* at ¶ 10.

8 **iv. The Settlement is Fair, Reasonable, and Adequate Based on the Strength of**
9 **Plaintiff's Case and the Risks and Costs of Further Litigation**

10 Plaintiff's claims and the ability to obtain and maintain certification all the way through trial
11 were heavily disputed by Defendants. *See* Decl. Rodriguez, ¶¶ 5, 9. Based on the records and facts of
12 this case, Plaintiff has secured a gross recovery of approximately 4% of the maximum value of the
13 claims in this matter and between 13% and 40% of the more realistic range of recovery (\$1,608,693,48
14 to \$5,031,393.14). *See* Decl. Rodriguez, ¶¶ 9-10. The net recovery represents approximately 2% of the
15 maximum value of the claims in this matter and between 7% and 21% of the more realistic range of
16 recovery. The average net award is approximately \$794.93. *See id.*

17 This settlement is a reasonable compromise of the class and PAGA claims, and is within the
18 percentile ranges of the total available damages that have been approved in other class settlements. *See*
19 *Wershba*, 91 Cal.App.4th at 246, 250; *Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139
20 (1990); *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 628 (9th Cir. 1982); *see also In re*
21 *Omnivision Technologies, Inc.*, 559 F.Supp.2d 1036, 1042 (2007) (noting that certainty of recovery in
22 settlement of 6% of maximum potential recovery after reduction for attorney's fees was higher than
23 median percentage for recoveries in shareholder class action settlements, averaging 2.2%-3% from
24 2000 through 2002); *Bravo v. Gale Triangle, Inc.*, 2017 U.S. Dist. LEXIS 77714 (C.D. Cal. 2017)
25 (approving a settlement where the net recovery to class members was approximately 7.5% of the
26 projected maximum recovery amount); *Avila v. Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS
27 130878 (E.D. Cal. 2017) (approving a settlement with a gross recovery of 11% of the projected
28 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 at *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").

v. 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 ¶¶ 6-7, 9-10. 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 other cases. See, *supra*, Section VI.a.iv; see also *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998) ("The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate

1 and should be disapproved”); *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 (2d Cir. 1974) (“In
2 fact there is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth
3 or even a thousandth part of a single percent of the potential recovery”).

4 **b. Provisional Certification of the Class is Appropriate**

5 Class certification is appropriate when (1) the class is ascertainable and (2) there is “a well-
6 defined community of interest in the questions of law and fact involved affecting the parties to be
7 represented.” *Dunk*, 48 Cal.App.4th at 1806. The “community of interest” element “embodies three
8 factors: (1) common questions of law or fact predominate; (2) class representatives with claims or
9 defenses typical of the class; and (3) class representatives who can adequately represent the class.” *Id.*
10 Here, the Parties agree that, for the purposes of settlement, these prerequisites are met. *See* Exhibit A.

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

12 The proposed settlement class is ascertainable because all putative Class Members can be
13 readily identified through employee personnel and payroll files. *See Noel*, 7 Cal.5th at 980; *Rose v.*
14 *City of Hayward*, 126 Cal.App.3d 926, 932 (1981); *Lee v. Dynamex, Inc.*, 166 Cal.App.4th 1325, 1334
15 (2008). The numerosity requirement is met because there are at least 434 individuals who fall within
16 the definition of Class Member, which makes joinder of all members impracticable. *See Gay v.*
17 *Walters’ & Dairy Lunchmen’s Union*, 489 F.Supp. 282 (N.D. Cal. 1980), *aff’d* 694 F.2d 531 (9th Cir.
18 1982); *Hebbard v. Calgrove*, 28 Cal.App.3d 1017, 1030 (1972) (noting no set minimum to meet the
19 numerosity prerequisite, but a class as few as twenty-eight (28) members is acceptable). Thus, these
20 requirements are satisfied.

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

22 The commonality requirement is met when there are questions of law or fact regarding the class
23 as a whole. *See Hanlon*, 150 F.3d at 1019. Commonality requires only that some common legal or
24 factual questions exist; Plaintiff need not show that all issues in the litigation are identical. *See*
25 *Richmond v. Dart Ind., Inc.*, 29 Cal.3d 462, 473 (1981); *City of San Jose v. Superior Court*, 12 Cal.3d
26 447, 460 (1974). Common questions of law or fact must also predominate over individual questions
27
28

1 and class-wide treatment of a dispute must be superior to individual litigation.² See *Richmond*, 29
2 Cal.3d at 469. Predominance requires a putative class be sufficiently cohesive to warrant adjudication
3 by representation. See *Hanlon*, 150 F.3d at 1022. The typicality requirement is met when claims of the
4 named representative are typical of those of the class, though “they need not be substantially identical.”
5 *Id.* at 1020; *Classen v. Weller*, 145 Cal. App. 3d 27, 46-47 (1983).

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

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

20 The adequacy of representation requirement is met if the named representative and counsel have
21 no interests adverse to those of the putative class members and are committed to vigorously prosecuting
22 the case on behalf of the class. See *Hanlon*, 150 F.3d at 1020; *McGhee v. Bank of America*, 60
23 Cal.App.3d 442, 450-51 (1976). Those standards are met here. Under the proposed Agreement,
24 Plaintiff and the putative Class Members will receive a pro rata share of the settlement based on the
25 number of workweeks they worked for Defendants. See Exhibit A. Finally, any settlement class
26
27

28 ²When 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 member who wishes to opt-out of the settlement may do so, and he or she may also dispute the number
2 of workweeks stated in the Notice of Settlement (Exhibit F).

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

11 **VII. ATTORNEYS FEES AND COSTS, ENHANCEMENT PAYMENT TO THE CLASS**
12 **REPRESENTATIVE, AND SETTLEMENT ADMINISTRATOR COSTS TO BE**
13 **REQUESTED IN CONNECTION WITH FINAL APPROVAL**

14 Plaintiff is not requesting any determination with respect to attorney's fees and costs,
15 Enhancement Payment, or Settlement Administrator Costs at this time. Rather, should the Court grant
16 preliminary approval, Plaintiff will make the request for these amounts as set out in the Agreement as
17 part of their final approval briefing. Specifically, Plaintiff will request the Court award attorney's fees
18 in the amount of \$227,500 (35% of the Maximum Settlement Amount), costs in an amount not to
19 exceed \$20,000, Settlement Administrator Costs in an amount not to exceed \$15,000, and an
20 Enhancement Payment for the Class Representative in the amount of \$10,000.

21 Plaintiff believes an award of attorney's fees under the common fund doctrine is appropriate in
22 this case as there is a sufficiently identifiable class of beneficiaries (*e.g.* the settlement class), the
23 benefits received can be accurately traced to the settlement Plaintiff and Class Counsel were able to
24 negotiate on behalf of Class Members, and the fee can be shifted with exactitude to those benefiting as
25 the fee request is a specific, lump-sum percentage of the fund. *See Laffitte v. Robert Half Internat.,*
26 *Inc.*, 1 Cal.5th 480, 506 (2016); *Paul, Johnson, Alston & Hunt v. Grawlty*, 886 F.2d 268, 271 (9th Cir.
27 1989); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-478 (1980) ("A lawyer who recovers a common
28 fund for the benefit of persons other than . . . her client is entitled to a reasonable attorney's fee from
the fund as a whole."). The amounts to be requested for attorney's fees and costs, an Enhancement

1 Payment, and Settlement Administrator Costs are with ranges that have been approved by Courts in
2 past wage and hour class action cases. *See, e.g., Martin v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS
3 61796, *22-23 (S.D. Cal. 2011) (collecting cases); *Birch v. Office Depot, Inc.*, USDC Southern District,
4 Case No. 06cv1690 DMS (WMC) (awarding 40% fee on a \$16 million wage and hour class action
5 settlement); *Rippee v. Boston Mkt. Corp.*, USDC Southern District, Case No. 05cv1359 BTM (JMA)
6 (awarding a 40% fee on a \$3.75 million wage and hour class action settlement); *West v. Circle K*
7 *Stores, Inc.*, 2006 U.S. Dist. LEXIS 76558, at *7-*8, *12, *27 (E.D. Cal. 2006) (awarding a \$15,000
8 representative enhancement where 10,000 class members were to receive a gross award of
9 approximately \$500 each from the \$5,000,000 settlement); *Dent v. ITC Serv. Croup*, 2013 U.S. Dist.
10 LEXIS 139359, at *9-*10, *15-*16 (D. Nev. Aug. 6, 2013) (awarding a \$15,000 representative
11 enhancement out of a \$150,000 settlement for approximately 530 class members); *Patel v. Nike Retail*
12 *Services, Inc.*, 2019 WL 2029061 at *2 (N.D. Cal. 2019) (\$5,261 for settlement administrator's fees
13 was not excessive where PAGA group consisted of 40 employees).

14 Plaintiff's final approval briefing will include information and analysis regarding the
15 appropriateness of the fee percentage sought, a lodestar cross check of the requested fee, a detailed
16 declaration from Plaintiff updating the amount of time they spent on the case as well as any risks and
17 burdens incurred as the Class Representative, an updated itemized costs spreadsheet, and a declaration
18 from the Settlement Administrator detailing the work performed and Settlement Administrator Costs
19 incurred. *See* Decl. Rodriguez ¶ 19. The Notice of Settlement will state the amounts to be requested to
20 provide Class Members the ability to comment thereon, providing evidence of whether the requested
21 amounts are reasonable. *See* Exhibit F at pg. 2, § II.A; *see also In re Heritage Bond Litig.*, 2005 U.S.
22 Dist. LEXIS 13555, 71 (C.D. Cal. 2005) ("the absence of objections or disapproval by class members
23 to class counsel's fee request further supports finding the fee request reasonable"). Any allocated
24 amounts not ultimately awarded by the Court will be distributed to Class Members pro rata. *See*
25 Exhibit A, ¶¶ 5.2-5.4, 5.8.

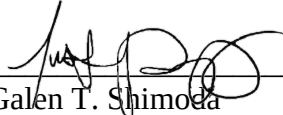
26 **VIII. CONCLUSION**

27 For all of the foregoing reasons, Plaintiff respectfully requests that this Court preliminarily and
28 conditionally certify the class for settlement purposes; grant preliminary and conditional approval of

1 the proposed settlement; approve the proposed notification procedures, including the Notice of
2 Settlement and proposed deadlines relating thereto; and schedule the final approval hearing. A copy of
3 Plaintiff's proposed order is being filed concurrently herewith.

4
5 **Shimoda & Rodriguez Law, PC**

6
7 Dated: June 26, 2024

By: 

Galen T. Shimoda

Justin P. Rodriguez

Renald Konini

Attorneys for Plaintiff

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

Reservation No. A-05516-001

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, 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 Preliminary Approval of Class Action and PAGA Settlement (“Motion”). A true and
6 correct copy of the Joint Stipulation Regarding Class Action and PAGA Settlement and Release
7 (“Agreement”) in this matter is filed with this Motion as Exhibit A.

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

22 3. Plaintiff is the only named representative in this matter. From our initial investigations
23 of Plaintiff’s claims and documents, we believed these claims had merit and could be maintained as a
24 class action. We filed this action on or about July 26, 2023. Plaintiff has also exhausted administrative
25 remedies through the Labor and Workforce Development Agency (“LWDA”). Plaintiff filed a notice
26 with the LWDA on July 25, 2023, setting forth the facts and theories of liability. A true and correct
27 copy of the notice filed with the LWDA is being filed with this Motion as Exhibit C. A copy of the
28 notice was also sent to Defendants via certified mail and the \$75.00 filing fee was remitted to the

1 LWDA at that time. There was no response by the LWDA regarding its intent to investigate the claims
2 alleged in Plaintiff's notice for more than 65 days. As such, Plaintiff became authorized to commence
3 a civil action under the PAGA. Plaintiff filed a separate complaint alleging a single cause of action
4 under the PAGA on October 30, 2023, in Sacramento County Superior Court, Case No. 23CV010770
5 ("PAGA Case"). A copy of the Complaint in the PAGA Case was uploaded to the LWDA on
6 November 2, 2023, after we received an endorsed copy back from Court. During the litigation,
7 Plaintiff became aware that Astound Broadband, LLC, was a successor entity to the originally named
8 defendants and that Class Members and PAGA Members were continuing their employment under this
9 successor entity. As such Plaintiff filed a DOE amendment on February 8, 2024, in this action and the
10 PAGA Case, identifying Astound Broadband, LLC, as DOE 1. A filed copy of the Doe Amendments
11 have been uploaded to the LWDA. After attending mediation and resolving the claims in this action
12 and the PAGA Case, the Parties agreed that Plaintiff would file an amended complaint in this action to
13 consolidate all claims and causes of action into one proceeding, the earlier filed class case, for a more
14 efficient review and approval process. The Court granted the Parties request to file an amended,
15 consolidated pleading in this case and a First Amended Complaint was filed on April 16, 2024. A true
16 and correct copy of the First Amended Complaint is filed with this Motion as Exhibit B. A copy of the
17 filed First Amended Complaint was also uploaded to the LWDA on April 18, 2024. On June 12, 2024,
18 Plaintiff filed a request and proposed order to dismiss the entire PAGA Case without prejudice.
19 Although the order is not yet signed, the Court, in a minute order regarding a case management
20 conference to be held on June 21, 2024 in the PAGA Case, noted that the hearing was vacated because
21 the PAGA Case has been dismissed. I expect that the signed order will be uploaded to the docket
22 within the next week or so.

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

24 5. Defendants are represented in this matter by Jackson Lewis P.C. From the beginning,
25 Defendants have contested the merits of this case, the suitability of the case for class action or
26 representative treatment, the manageability of the case at trial, and Plaintiff's ability to prove a
27 violation in each pay period for each employee among other defenses and contentions they made
28 challenging the propriety of this action. Defendants further contended, even assuming there was a

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

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

25 7. My office, including my partner, Galen T. Shimoda, my associate, Renald Konini, our
26 paralegal, and myself, along with Plaintiff's assistance, thoroughly investigated the merits of the claims
27 and potential damages for such claims. The parties engaged in informal discovery and exchange of
28 documents, including a representative sampling of employee data, such as timecards, paystubs, payroll

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

18 8. Throughout this litigation our office had numerous communications with Defendants'
19 Counsel discussing our respective positions. The parties engaged in mediation on March 18, 2024,
20 using an experienced mediator, Brandon McKelvey. It was only after approximately ten months of
21 extensive, arm's length negotiations that the parties were able to reach a settlement, which only occurred
22 after a full-day mediation. Although we filed the complaint in July 2023, we began investigating the
23 claims with Plaintiff in May 2023. The negotiations were at all times contentious and adversarial,
24 though still professional in nature.

25 9. The following represents the potential maximum recovery for each of Plaintiff's claims
26 based on my office's analysis of Defendants' relevant policies and the sample data produced by
27 Defendants in advance of mediation as well as the information obtained at mediation concerning the
28 claims. There were 434 total Class Members who worked approximately 55,713.71 weeks and

1 27,856.86 pay periods from July 25, 2019, through March 8, 2024. There were approximately 268
2 individuals who worked withing the one-year statute of limitations for the PAGA claim and
3 approximately 7,759 pay periods during this same time. Their average hourly rate was approximately
4 \$27.90 and their average overtime hourly rate was approximately \$41.85. Class Members worked an
5 average of approximately 4.8 days per week and 8.2 hours per day:

6 a) Minimum Wage Claims: This claim was based on the allegations that Defendants failed
7 to pay Class Members for all hours worked because employees' hours worked were
8 either not fully recorded or, to the extent they were initially recorded, were adjusted
9 downward by supervisors to avoid paying for additional hours worked. Based on the
10 expected testimony, as well as the data and documents produced for mediation, the
11 amount of off-the-clock work experienced by Class Members per week ranged from
12 approximately 12 minutes to just under 3 hours. There were also several instances
13 where no off-the-clock work was experienced in a given week. On average, amount of
14 off-the-clock work was approximately .77 hours per week. At a weighted average
15 minimum wage rate of approximately \$13.50 per hour, this equates to approximately
16 \$579,144.02 in liquidated damages $([.77 \text{ hours per week} \times 55,713.71 \text{ weeks}] \times \$13.50)$.
17 This existence of any off-the-clock work was heavily disputed by Defendants. First,
18 Defendants argued its policies prohibiting off-the-clock work, requiring supervisor pre-
19 approval for working overtime, requiring the accurate recording of hours worked by
20 employees, and the numerous instances of overtime actually paid undermine any
21 assertion of a systematic policy and practice to suffer and/or permit off-the-clock work.
22 In investigating the allegations of off-the-clock work, Plaintiff reviewed GPS records for
23 any gaps of time consistent with the assertion that GPS devices were being turned off to
24 avoid documenting hours worked. Plaintiff was unable to find any gaps in the GPS
25 activity that might otherwise be able to corroborate Plaintiff's off-the-clock allegations.
26 Furthermore, Defendants asserted that it regularly reviewed and remedied any reported
27 discrepancies by employees about their pay and hours worked. The payroll records did
28 demonstrate several instances where corrections and additional payments were made to

1 employees for hours worked and/or meal period premiums owed in previous pay
2 periods. While Plaintiff disputed that the payments made were sufficient to compensate
3 all the asserted unpaid time, there was a substantial risk that any unpaid wage
4 determinations would be greatly reduced and/or offset by the payroll correction
5 payments. Defendants' policies against off-the-clock work and its practices remedying
6 reported violations would create a substantial hurdle and risk for Plaintiff in certifying
7 this claim. *See Brinker Rest. Corp. v. Superior Ct.*, 53 Cal.4th 1004, 1051 (2012).
8 Given the factual and legal disputes, it is likely that a good faith dispute on any amounts
9 owed would be found, which eliminates a claim for liquidated damages. *See Cal. Lab.*
10 *Code § 1194.2(b)*. Taking these factors into account, it is more realistic that there would
11 not be any recovery for this claim.

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

22 Overtime Claims (RROP): Plaintiff's overtime claims were also based, in part, on
23 allegations that Defendants failed to incorporate the value of non-discretionary bonuses,
24 incentive pay, and on call pay into class members' regular rates of pay for the purpose of
25 calculating overtime premiums. The maximum damages for this claim are
26 approximately \$127,862.99. Approximately 30.6% of all 27,856.86 pay periods were
27 affected by the regular rate of pay issue. Based on the average number of overtime
28 hours in an affected pay period and the average amount of non-discretionary bonuses, on

1 call, and/or incentive pay attributable to those same periods, there was an average
2 underpayment of approximately \$15 per pay period. ($[27,856.86 \times 30.6\%] \times \$15 =$
3 $\$127,862.99$). There were several risks associated with this claim. Defendants asserted
4 that, in fact, recalculation of the regular rate of pay did regularly occur and, to the extent
5 there may have been any miscalculation, it was rare and of limited impact because the
6 type of payments at issue (on call payments) were infrequent. We disputed the
7 characterization that any violations were limited, but the payroll records did show
8 several payment types that were regularly incorporated into the regular rate of pay,
9 whether for overtime premiums or otherwise. Limiting the claim to just those instances
10 where on-call payments were made would reduce the number of affected pay periods to
11 15.1%. Taking these risk factors into account, I believe a more realistic recovery for this
12 theory of liability is \$63,095.79 (a reduction consistent with the 15.1% occurrence rate).

13 c) Meal Period Claims (failure to authorize): This claim is based, in part, on allegations
14 that Defendants failed to authorize and permit Class Members to take duty-free meal
15 periods due to excessive work demands resulting from understaffing. On average, Class
16 Members worked approximately 4.8 days per week. Over 55,713.71 weeks, this results
17 in approximately 267,425.80 shifts requiring a lawful meal period to be provided. Based
18 on the expected testimony, as well as the data and documents produced for mediation,
19 Plaintiff asserted that Class Members failed to receive lawful meal periods
20 approximately 50% of the time ($[267,425.80 \times .5] \times \$27.90 = \$3,730,590.02$). Thus, the
21 maximum damages for this claim are approximately \$3,730,590.02. However, this
22 number does not take into account the risks associated with the claim. For example,
23 Defendants produced several documents identifying meal and rest period policies and
24 practices that were facially compliant and that demonstrated the policies were
25 communicated to Class Members on a consistent basis. Certifying meal and rest period
26 claims despite facially valid policies is very risky and difficult to achieve. While
27 Plaintiff would seek to rely on the presumption that meal period violations occurred
28 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 267,425.80 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. Additionally, Defendants contended that the available GPS location data supported their assertion that Class Members were able to, and regularly did, take rest periods. Defendants also pointed to their history of making payroll corrections for any discrepancies brought to their attention by Class Members, which they contended undermined any claim of a systematic or pervasive payroll practice capable that would be able to be certified. Finally, because there is no legal obligation for an employer to keep records of rest periods taken, Plaintiff would not be able to rely on any presumptive

violations based on the time records, increasing the difficulty for certifying this claim. Taking these risks into account, I believe a more realist range of recovery for this claim would be \$0 to \$373,059 (representing a best-case scenario risk factor of 90%).

e) Meal and Rest Period RROP Claims: The other theory of liability supporting Plaintiff's meal and rest period claims was based on allegations that Defendants failed to incorporate the value of non-discretionary bonuses, incentive pay, and on call pay into class members' regular rates of pay for the purpose of calculating meal and rest period premiums. The maximum amount of damages for this claim is approximately \$43,038.85. Approximately 10.3% of all 27,856.86 pay periods were affected by the regular rate issue, *i.e.* they included a meal and/or rest period premium and an additional payment beyond an employee's basic hourly rate. Based on the average number of meal and/or rest period premiums paid in affected pay periods and the adjusted regular rate of pay in those periods after accounting for payments that Plaintiff contended should have been included in the regular rate of pay, the average amount of underpaid meal and rest period premiums owed was approximately \$15 per pay period ($[27,856.86 \times 10.3\%] \times \$15 = \$43,038.85$). Because the types of pay at issue were the same Plaintiff asserted should have been included in the regular rate of pay for overtime claims, this theory of liability was subject to the same risks that Plaintiff's overtime regular rate of pay liability theory was subject to, including, but not limited to, the fact that the rate of pay for meal periods was adjusted for several different pay types. Limiting this theory of liability to only account for instances where on-call payments were made, the percentage of pay periods affected would drop to approximately 6.1%. Taking these factors into account, I believe a more realistic recovery for his claim would be \$25,489.03 (a reduction consistent with the 6.1% occurrence rate).

f) Wage Statement Violations: There were approximately 7,759 pay periods at issue for this claim. At \$50 per pay period, this equated to a maximum of \$387,950 in potential penalties. Because this claim was derivative, the risks identified above would apply to this claim. To the extent that Plaintiff was unable to establish violations in a given pay

period, no derivative wage statement penalties could be assessed. Given the low violation rates and/or high risk associated with the non-derivative claims, it is very likely that Plaintiff would not be able to establish violations in 100% of the potential pay periods. Additionally, Defendants' arguments regarding good faith defenses could reduce the value of this claim to \$0. Notwithstanding that fact, we believe a more realistic assessment of the claim's likely value after accounting for reductions based on risk of loss is approximately \$58,580.45 (a reduction to 15.1% of affected pay periods consistent with the highest violation rate for Plaintiff's theories of liability with the highest likelihood of overcoming any good faith dispute defense).

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

1 leave was taken and paid. Plaintiff assumed an average underpayment of approximately
2 \$15 per affected pay period, which resulted in a maximum liability of \$18,385.53 for
3 this claim ($[27,856.86 \times 4.4\%] \times \$15 = \$18,385.53$). This number does not account for
4 the risks associated with this claim, which are similar to the regular rate of pay theories
5 of liability for overtime, meal periods, and rest periods. Limiting this theory of liability
6 to instances where on call payments were made, the amount of pay periods affected
7 would be approximately 1.6%, resulting. Taking these factors into account, I believe a
8 more realistic recovery for this claim is \$6,685.65 (a reduction consistent with the 1.6%
9 occurrence rate).

10 i) PAGA: The maximum exposure for this claim is \$4,015,079.30. This claim is
11 derivative of the violations outlined above and no prior judicial or administrative order
12 deeming Defendants' practices to be illegal was found, making only initial violation
13 valuations applicable for each type of violation. The calculations for each PAGA
14 violation are as follows:

- 15 i. *Minimum Wages*: 7,759 of total PAGA pay periods at issue ($7,759 \times \$100$ per
16 pay period – Labor Code § 1197.1) = \$775,900;
- 17 ii. *Overtime*: 7,759 of total PAGA pay periods at issue ($7,759 \times \$50$ per pay period
18 – Labor Code § 558) = \$387,950;
- 19 iii. *Meal Period Violations*: 7,759 of total PAGA pay periods at issue ($7,759 \times \$50$
20 per pay period – Labor Code § 558) = \$387,950;
- 21 iv. *Rest Period Violations*: 7,759 of total PAGA pay periods at issue ($7,759 \times \$100$
22 per pay period – Labor Code § 2699) = \$775,900;
- 23 v. *Wage Statement Violations*: 7,759 of total PAGA pay periods at issue ($7,759 \times$
24 $\$100$ per pay period – Labor Code § 2699) = \$775,900;
- 25 vi. *Failure to Pay Final Wages*: 107 former employees within PAGA period.
26 Plaintiff calculated the penalty owed for this violation the same as would be
27 owed for waiting time penalties per Labor Code § 256. At the average \$27.90
28

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 = \$34,139.60;

ix. *Reimbursement*: 3,686 pay periods x \$100 default civil penalty under the PAGA = \$368,600.00

x. *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 regular rate of pay issues, occur in substantially fewer than all pay periods (*e.g.* 15.1%-30.6% of pay periods for overtime claims, 6.1%-10.3% for meal and rest period claims, 15.1% for wage statement violations). Furthermore, the correct valuation for waiting time penalties under the PAGA was disputed as Defendants contended the default \$100 per violation would apply, not the calculation identified in Labor Code section 256,

1 which would reduce the applicable civil penalties from \$743,339.71 to \$10,700. Putting
2 aside merits and damages calculation issues, the statutorily authorized discretion to
3 reduce civil penalties causes substantial variance in the amounts that could be awarded
4 even assuming Plaintiff was able to prove all violations in all pay periods. *See Thurman*
5 *v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (30% reduction);
6 *Fleming v. Covidien, Inc.*, 2011 U.S. DIST. LEXIS 154590, *9 (C.D. Cal. 2011) (82%
7 reduction). Just considering the potential impact of any discretionary reduction by the
8 Court, the total exposure may be reduced to \$722,714.27 (82% reduction) to
9 \$2,810,555.51 (30%) based on the ranges found in applicable case law. *See id*
10 I believe there is a strong likelihood that the Court would use its discretion to
11 substantially reduce the applicable civil penalties because of the existence of facially
12 valid policies, communications with PAGA Members regarding the policies, efforts to
13 correct any payroll discrepancies on an ongoing and consistent basis, and the large
14 discrepancy between substantive wage loss and the potentially applicable civil penalties
15 available. Given the substantial risks associated with the claims and the potentially
16 applicable discretionary reductions, we believe the amount that might ultimately be
17 awarded under this claim would be significantly lower than the maximum exposure
18 calculation. Allocating \$32,500 to the PAGA claims in this case is appropriate,
19 especially in light of amounts that Courts have approved as reasonable valuations in
20 other cases. *See Nordstrom Com. Cases*, 186 Cal.App.4th 576, 589 (2010) (approving
21 \$0 allocation to the resolution of PAGA claims based on their being disputed and being
22 part of a class settlement which was evaluated based on the terms of the agreement
23 overall); *Junkersfeld v. Med. Staffing Sols., Inc.*, 2022 WL 2318173, at *8 n.2 (E.D. Cal.
24 2022) (collecting cases with PAGA settlement values ranging from .037%-1%);
25 *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
27 recovery); *Ruch v. AM Retail Grp., Inc.*, 2016 WL 5462451, *7 (N.D. Cal. 2016)
28 (approving \$10,00 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).

10. In summary, while Plaintiff's gross recovery of \$650,000 under the Agreement equals approximately 4% of the maximum value of the claims in this matter (\$15,636,782.18), the value of the recovery is between 13% and 40% of the more realistic range of recovery (\$1,608,693.48 to \$5,031.393.14). After deducting from the Maximum Settlement Amount the proposed allocations for attorneys' fees and costs, any Enhancement Payment to the Class Representative, Settlement Administrator Costs, and the PAGA Penalty Amount to the LWDA, the net recovery under the Agreement, \$345,000, represents approximately 2% of the maximum value of the claims in this matter. The net recovery also represents between 7% and 21% of the more realistic range of recovery. The average net award is approximately \$794.93 [345,000 / 434 Class Members]. I believe the Agreement

1 represents a reasonable compromise of claims based on the legal and factual disputes in this case. The
2 ability to secure a guaranteed settlement now and ensure Class Members receive some compensation,
3 rather than proceed to further litigation and potentially recover nothing, was a motivating factor in
4 reaching this Agreement.

5 11. In agreeing to represent Plaintiff and take on the case for all Class Members, our office
6 agreed to take this case on a contingency basis, meaning that we would take a percentage of any
7 settlement or judgment should we recover a monetary amount. We took a risk that we would not
8 recover any money in this matter if we were unsuccessful at trial. We also took on the risk that the case
9 may be subject to an unfavorable summary judgment ruling. However, we believe it is important to
10 make sure employees are able to find affordable representation in order to ensure that employers are
11 complying with all their legal obligations towards employees and paying employees all their hard-
12 earned wages.

13 12. I am a shareholder at Shimoda & Rodriguez Law, PC. My law firm is a boutique law
14 practice that focuses primarily on employment litigation, emphasizing wage and hour litigation. I
15 attended and graduated college from U.C. Davis, receiving a Bachelor of Arts in Philosophy and the
16 Departmental Citation for Academic Achievement in the Philosophy program. I was one of only two
17 recipients of this award out of the entire Philosophy Department. After U.C. Davis, I attended the
18 University of the Pacific, McGeorge School of Law, graduating in 2011 and receiving a Juris
19 Doctorate. I graduated in the top 20% of my class and was a member of the Traynor Honor Society at
20 McGeorge. Other academic achievements of mine include receiving a Witkin Award (top grade) in my
21 legal research and writing course, a Witkin Award in complex civil litigation, being a member of the
22 Dean's List from 2008 to 2011, being a Legislative Staff Writer for the *McGeorge Law Review* from
23 2009–2010, being an Associate Comment Editor for the *Pacific McGeorge Global Business &*
24 *Development Law Journal* from 2010–2011, and being selected as a Sacramento County Bar
25 Association Diversity Fellow in 2009. I was also a member of the Employment and Labor Law Society
26 and an officer for the Latino Law Students Association from 2009 to 2010.

27 13. I have been practicing law since 2011. From 2011 to 2016, I worked with the Shimoda
28 Law Corp. as an Associate. I became a Shareholder/Partner in the firm in 2017. Shimoda Law Corp.

1 became Shimoda & Rodriguez Law, PC, in 2022. Since 2017, I have received an AV Preeminent
2 rating from Martindale-Hubbell for my legal ability and ethical standards. From 2018 to 2023, I have
3 been recognized as a Super Lawyer (Rising Star). From 2024 to present, I have been recognized as a
4 Super Lawyer. I have been a panel speaker and presented a number of seminars covering issues in
5 wage and hour litigation in general and complex class and PAGA litigation in particular. These
6 engagements include the following: (1) *Epic Systems*, PAGA, and the Future of Employment
7 Arbitration in California (Sacramento County Bar Assoc., Sept. 2018); (2) Class Actions and PAGA
8 Claims (Assoc. of Defense Counsel of Northern California & Nevada, Jul. 2020); (3) Mediation: The
9 Experienced Trial Lawyers Perspective (Sacramento County Bar Assoc., Sept. 2020); (4) How to
10 Become a Pivotal Part of Any Wage and Hour Practice Group (Sacramento County Bar Assoc., Mar.
11 2021); (5) Emerging Trends and Issues Relating to Arbitration and PAGA Claims in a Post-Viking
12 *River Cruises* World (Sacramento County Bar Assoc., Nov. 2022). I was elected to the Sacramento
13 County Bar Association Labor and Employment Law Section's executive committee in 2019 and was
14 the Chair of the executive committee for 2022. I have also been a member of the Presiding Judge Civil
15 Law Advisory Committee for Sacramento County Superior Court since August 2020. My practice
16 focuses on complex civil litigation, including wage and hour class actions, PAGA claims, and Fair
17 Labor Standards Act ("FLSA") claims. I am actively involved in most all of the complex litigation
18 handled by our firm. Class and/or PAGA actions I have litigated or am currently litigating, including
19 the instant case, includes, but is not limited to, the following:

- 20 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 21 • *Adams-Angway v. Placer Title Company, et al.*, Case No. SCV0040845 (Placer Sup. Ct.);
- 22 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 23 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 24 • *Aslam v. American Custom Private Security, Inc.*, Case No. STK-CV-UOE-2018-0012080 (San
25 Joaquin Sup. Ct.);
- 26 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 27 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);

- 1 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac. Sup.
- 2 Ct.);
- 3 • *Barkhousen v. Bank of Stockton*, Case No. STK-CV-UOE-2019-17145 (San Joaquin Sup. Ct.);
- 4 • *Benak v. MDStat Urgent Care, Inc.*, Case No. 34-2015-00188181 (Sac. Sup. Ct.);
- 5 • *Bigornia v. Quest Diagnostics Clinical Laboratories, Inc., et al.*, Case No. 34-2019-00271174
- 6 (Sac. Sup. Ct.);
- 7 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup. Ct.);
- 8 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
- 9 Ct.);
- 10 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.
- 11 Sup. Ct.);
- 12 • *Castorena v. Flowmaster, Inc.*, Case No. CV18-2191 (Yolo Sup. Ct.);
- 13 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup. Ct.);
- 14 • *Carr, et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 15 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-00209613
- 16 (Sac. Sup. Ct.);
- 17 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 18 • *Cress, et al. v. Mitsubishi Chemical Carbon Fiber and Composites, Inc.*, Case No. 34-2017-
- 19 00222101 (Sac. Sup. Ct.);
- 20 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.);
- 21 • *Ferreyra v. Point Digital Finance, Inc., et al.*, Case No. 20CV373776 (Santa Clara Sup. Ct.);
- 22 • *Foye v. The Golden 1 Credit Union*, Case No. 34-2018-00235003 (Sac. Sup. Ct.);
- 23 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 24 • *Garcia v. Royal Plywood Company, LLC, et al.*, Case No. 34-2017-00221627 (Sac. Sup. Ct.);
- 25 • *Gomes v. Progressive Casualty Insurance Company*, Case No. 34-2018-00241979 (Sac. Sup.
- 26 Ct.);
- 27 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 28 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);

- 1 • *Gonzalez v. Northcentral Pizza, LLC, et al.*, Case No. 34-2019-00252018 (Sac. Sup. Ct.);
- 2 • *Gordon, et al. v. Hospice Source, LLC, et al.*, Case No. 34-2019-00250022 (Sac. Sup. Ct.);
- 3 • *Gotts v. John L. Sullivan Chevrolet, Inc.*, Case No. 34-2018-00231576 (Sac Sup. Ct.);
- 4 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- 5 • *Hellum v. A1 Protective Services, LLC, et al.*, Case No. 34-2018-00234449 (Sac. Sup. Ct.);
- 6 • *Hercules v. Maximus Services, LLC, et al.*, Case No. 34-2019-00268385 (Sac. Sup. Ct.);
- 7 • *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac. Sup. Ct.);
- 8 • *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- 9 • *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);
- 10 • *Insixiengmay v. Hyatt Corporation, et al.*, Case No. 2:18-cv-02993-TLN-DB (E.D. Cal.);
- 11 • *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- 12 • *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269 (Sac. Sup. Ct.);
- 13 • *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. Sup. Ct.);
- 14 • *Nguyen v. Cardinal Health Pharmacy Services, LLC, et al.*, Case No. 2:19-cv-01939-KJM-EFB
- 15 (E.D. Cal.);
- 16 • *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- 17 • *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- 18 • *Roberts v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 19 • *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201
- 20 (Sac Sup. Ct.);
- 21 • *Salas, et al. v. Joint Ventures, LLC, et al.*, Case No. 34-2018-00227493 (Sac. Sup. Ct.);
- 22 • *Salmon v. Ovarions Fanfare, L.P., et al.*, Case No. 34-2018-00244749 (Sac. Sup. Ct.) ;
- 23 • *Scarano v. J.R. Putman, Inc.*, Case No. 34-2018-00244753 (Sac. Sup. Ct.) ;
- 24 • *Smith v. Greyhound Lines, Inc.*, Case No. 34-2017-00219188 (Sac. Sup. Ct.);
- 25 • *Sullivan v. National Response Corporation*, Case No. 34-2018-00244757 (Sac. Sup. Ct.);
- 26 • *Talent v. Leslie's Poolmart, Inc.*, Case No. 34-2012-00128539 (Sac. Sup. Ct.);
- 27 • *Thornton v. McConnell Jones Lanier & Murphy LLP*, Case No. No. 34-2017-00211553 (Sac.
- 28 Sup. Ct.);

- *Watson v. Quarter At A Time, LLC*, Case No. 34-2017-00217570 (Sac. Sup. Ct.); and
- *Willis v. Premier Pools, Incorporated*, Case No. 34-2017-00211710 (Sac. Sup. Ct.).

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

15. My partner, Galen T. Shimoda, Esq., worked with me on this matter and was critical in assisting with all aspects of the litigation of this case. Mr. Shimoda and I are some of only a handful of plaintiff attorneys located in Sacramento who handle wage and hour class actions. Mr. Shimoda attended and graduated from the University of Utah in 2000 with a B.S. in Business Management and a B.A. in Asian Studies, with a minor in Japanese language. He then attended and graduated from the University of the Pacific, McGeorge School of Law and received his J.D. degree in 2003. He graduated from McGeorge in the top 5% of his class and was a member of the Order of the Coif and Traynor Honor Society. Since graduating from McGeorge, Mr. Shimoda has authored a number of employment law articles for journals and our firm regularly publishes articles on our firm's website. Mr. Shimoda has been a regular panel speaker for the CEB (Continuing Education of the Bar) Employment Review seminars from 2014 to the present. His speaking engagements include the following: 1) Lorman Military Leave Law Speaker; 2) Restaurant Association Speaker at Annual Seminar (Los Angeles); 3) Federal Bar Association, Sacramento Chapter: 2015 Amendments to the Federal Rules of Civil Procedure (Mar. 30, 2016); 4) CEB – Employment Law Practice: 2016 Year in Review (Jan. 20, 2017); 5) CEB – Employment Law Practice: 2015 Year in Review (Jan. 22, 2016); 6) CEB – Employment Law Practice: Year in Review (2014) (Jan. 9, 2015); 7) CEB - Employment Law Practice: Year in Review (2013) (Jan. 10, 2014); 8) Sacramento County Bar Association - Class Actions from the Trenches: Real World Experiences from the Plaintiff and Defense Bar (Feb. 21, 2012); 9) Sacramento Employer Advisory Council – Wage and Hour Workshop: Going Beyond the Exemption Discussion (Apr. 7, 2016); 10) Sacramento Employer Advisory Council - Wage & Hour Panel and AB 1825 Training: Updates on California's New Wage Laws and Manager Compliance Training (Apr. 25, 2017); 11) Sacramento County Bar Association, Labor and Employment Section – PAGA Representative Litigation: Emerging Trends and Issues (May 17, 2016); 12) Sacramento Business Journal Panel – Overtime Rules (Jun. 23, 2016); 13) Association of Defense Counsel of

1 Norther California & Nevada - Employment Law Update – Do the Math: Calculation Exposure and
2 Damages in Wage and Hour Cases (Aug. 12, 2016); 14) California Employment Lawyers Association -
3 PAGA Today and PAGA Tomorrow: Moderate-Advanced Issues In PAGA Litigation (Oct. 20, 2017);
4 15) California Employment Lawyers Association Advanced Wage and Hour Seminar – Better Know a
5 Venue Roundup (May 17, 2019). Mr. Shimoda has been AV rated by Martindale Hubbell since 2013,
6 was recognized as a Super Lawyer (Rising Star) from approximately 2009 to 2013 and was recognized
7 as a Super Lawyer from 2014 to present.

8 16. Mr. Shimoda has practiced law in California since being admitted to the State Bar in
9 2003, litigating wage and hour class actions and individual wage and hour litigation among other cases.
10 Mr. Shimoda began practicing class action law on the defense side at the firm of Orrick, Herrington &
11 Sutcliffe LLP. He then switched to plaintiff class action work in 2005. His class action experience is
12 in wage and hour law. Mr. Shimoda has litigated several class action cases in California State and
13 Federal Courts, including up to certification, settlement, preliminary and final approval, and
14 disbursement of monies, and has been found to be satisfy the adequacy requirements for class counsel.
15 Some of the class action and/or PAGA cases he is litigating and/or has litigated as lead or co-counsel
16 include the following:

- 17 • *Aanerud v. Neumann Ltd., et al.*, Case No. 34-2014-00169324 (Sac. Sup. Ct.);
- 18 • *Acosta v. Acosta Sales, LLC, et al.*, Case No. 2:11-CV-01796 (C.D. Cal.);
- 19 • *Atchley v. Blaggs Food Service, LLC*, 34-2017-0215930 (Sac. Sup. Ct.);
- 20 • *Adewumi v. GHS Interactive Security, LLC*, Case No. 34-2017-00210768 (Sac. Sup. Ct.);
- 21 • *Arnall v. North American Merchandising Service Inc.*, Case No. 06AS01439 (Sac. Sup. Ct.);
- 22 • *Arrington v. Capital Express Lines, Inc., et al.*, Case No. 34-2012-00134195 (Sac. Sup. Ct.);
- 23 • *Aslam v. Cypress Security, LLC*, Case No. 34-2017-00220143 (Sac. Sup. Ct.);
- 24 • *Aslam v. Surveillance, Security, Inc.*, Case No. 34-2017-00220142 (Sac. Sup. Ct.);
- 25 • *Azzolino v. Brake Masters of Sacramento, LLC, et al.*, Case No. 34-2017-00218293 (Sac. Sup.
26 Ct.);
- 27 • *Benak v. MDStat Urgent Care, Inc.*, No. 34-2015-00188181 (Sac. Sup. Ct.);
- 28 • *Blig v. Medical Management International, Inc.*, Case No. 34-2017-00213906 (Sac. Sup. Ct.);

- 1 • *Caguioa, et al. v. Fortune Senior Enterprises, et al.*, Case No. 34-2014-00171831 (Sac. Sup.
- 2 Ct.);
- 3 • *Camacho, et al. v. Z Street, Inc., d.b.a. Tower Café, et al.*, Case No. 34-2014-00163880 (Sac.
- 4 Sup. Ct.);
- 5 • *Carlos v. Abel Mendoza, Inc., et al.*, Case No. 34-2016-00195806 (Sac. Sup. Ct.);
- 6 • *Cannon v. Miller Event Management, Inc., et al.*, Case No. 34-2014-00168103 (Sac. Sup. Ct.);
- 7 • *Carr et al. v. CableCom, LLC*, Case No. 34-2017-00212739 (Sac. Sup. Ct.);
- 8 • *Chace v. Daisy Holdings, LLC, dba Pine Creek Care Center, et al.*, Case No. 34-2017-00209613
- 9 (Sac. Sup. Ct.);
- 10 • *Clamens-Hollenback v. Atterro, Inc.*, Case No. 17-CV-305535 (Santa Clara Sup. Ct.);
- 11 • *Colbert v. American Home Craft Inc.*, Case No. 05AS05012 (Sac. Sup. Ct.);
- 12 • *De Arcos v. Amware Pallet Services, LLC*, Case No. CV-17-629 (Yolo Sup. Ct.)
- 13 • *Diosdado v. Nor-Cal Venture Group, Inc., et al.*, Case No. STK-CV-UOE-2020-0008242 (San
- 14 Joaquin Sup. Ct.);
- 15 • *Dugue v. Sierra Forever Families, et al.*, Case No. 34-2017-00210770 (Sac. Sup. Ct.);
- 16 • *Fadhl v. Siemens Healthcare Diagnostics, Inc., et al.*, Case No. 34-2017-00209518 (Sac. Sup.
- 17 Ct.);
- 18 • *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No. 20CV01255 (Butte Sup. Ct.);
- 19 • *Garcia v. A-L Financial Corp.*, Case No. 34-2014-00171831 (Sac. Sup. Ct.);
- 20 • *Gerard v. Les Schwab Tires Center of California, Inc.*, Case No. 34-2007-30000003 (Sac. Sup.
- 21 Ct.);
- 22 • *Gomez v. Mayflower Farms Incorporated, et al.*, Case No. CV24157 (Colusa Sup. Ct.);
- 23 • *Gilliam v. Matrix Energy Services, Inc.* Case No. RG 11592345 (Alameda Sup. Court);
- 24 • *Hartwell v. Techforce Telecom, Inc.*, Case No. 39-2014-00307197 (San Joaquin Sup. Ct.);
- 25 • *Hernandez et al. v. MP Nexlevel, LLC et al*, Case No. 3 :16-cv-03015-JCS (N.D. Cal.);
- 26 • *Hernandez v. Snyir, Inc.*, Case No. 34-2017-00207641 (Sac Sup. Ct.);
- 27 • *Heinz v. Wright Tree Services*, Case No. 34-2012-00131949 (Sac. Sup. Ct.);
- 28 • *Hoover v. Mom365*, Case No. 2:17-cv-01328-TLN-CKD (E.D. Cal.);

- *James v. Language World Services, Inc., et al.*, Case No. 34-2020-00279929 (Sac. Sup. Ct.);
- *Josol v. Dial Medical Corp.*, Case No. 34-2008-00010040 (Sac. Sup. Ct.);
- *Koretsky v. Furniture USA, Inc.*, Case No. 34-2014-00172142 (Sac. Sup. Ct.);
- *Muhieddine v. KBA Docusys, Inc.*, Case No. 34-2014-00164720 (Sac. 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.);
- *Miller v. Leaders in Community Alternatives*, Case No. FCSO47249 (Solano Sup. Ct.);
- *Pickens v. Elica Health Centers*, Case No. 34-2016-00200382 (Sac. Sup. Ct.);
- *Prasad v. D. G. Smith Enterprises, Inc.*, Case No. 34-2017-00215046 (Sac. Sup. Ct.);
- *Ralston v. JMJ Incorporated, Inc. et al.*, Case No. 34-2017-00217047 (Sac. Sup. Ct.);
- *Rickwalt v. Direct Reconditioning, LLC, et al.*, Case No. 34-2015-00175642 (Sac. Sup. Ct.);
- *Robinson v. West of Chicago Restaurants, Inc., dba Chicago Fire*, Case No. 34-2010-00082201 (Sac Sup. Ct.);
- *Rogers v. Les Scwhab Tires Center of California, Inc.*, Case No. 34-2009-00066320 (Sac. Sup. 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.).

17. 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.

1 18. My associate, Renald Konini, Esq., also worked with me on this case. In May 2011, Mr.
2 Konini graduated from Seton Hall University School of Law. Prior to moving to California, he
3 practiced law in New Jersey. While working for my firm, Mr. Konini has worked on a variety of
4 individual and class action cases, including those involving wage and hour claims, Private Attorney
5 General Act claims, wrongful termination claims, discrimination claims, retaliation claims, and
6 harassment claims. Mr. Konini passed the July 2016 California Bar Examination and started practicing
7 as an associate at my firm from approximately April 2019 to February 2021 and rejoined my firm in
8 September 2022. Mr. Konini has worked on written discovery and depositions, calculating class-wide
9 damages, communicating with class representatives, drafting briefs and motions, and more. Mr. Konini
10 worked on other class and/or PAGA wage and hour actions that my firm has filed, namely *Bertelli v.*
11 *Air Products and Chemicals, Inc.*, Case No. 34-2018-00236898 (Sac. Sup. Ct.), *Carr v. Howroyd-*
12 *Wright Employment Agency, Inc.*, Case No. 34-2018-00228290 (Sac. Sup. Ct.), *Gomez v. Vander*
13 *Schaaf Dairy, et al.*, Case No. STK-CV-UOE-2020-0003954 (San Joaquin Sup. Ct.), *Haggins v. Kelly*
14 *Services, Inc.*, Case No. 34-2017-00220473 (Sac. Sup. Ct.), *Hussaini v. Integrated Resources, Inc.*, et
15 al, Case No. 34-2021-00297152 (Sac. Sup. Ct.), *Kee, et al. v. Dr. Jeffrey A. Saladin, Dental*
16 *Corporation (D/B/A Children's Choice Pediatric Dental Care), et al.*, Case No. 34-2020-00290072
17 (Sac. Sup. Ct.), *Lear v. Raxium, Inc.*, Case No. 21CV004358 (Alameda Sup. Ct.), *Serrano v. Cool*
18 *Time, LLC*, Case No. 34-2021-00312356 (Sac. Sup. Ct.), *Grebe v. Mary Ann's Baking Co., Inc.*, Case
19 No. 34-2020-00285254-CU-OE-GDS (Sac. Sup. Ct.), *Fujimoto v. Nabe-Ya, Inc., et al.*, Case No.
20 20CV01255 (Butte Sup. Ct.), *Massey v. V3 Electric, Inc., et al.*, Case No. 34-2019-00263666 (Sac.
21 Sup. Ct.), *Miller v. Caldwell Transportation Company, LLC, et al.*, Case No. 34-2018-00234954 (Sac.
22 Sup. Ct.), *Pek, et al v. Varris Management, Inc.*, Case No. STK-CV-UOE-2020-3954 (San Joaquin Sup.
23 Ct.), *Valencia v. Lowbrau Bier Garten, LLC, et al.*, Case No. 34-2019-00258038 (Sac Sup. Ct). Mr.
24 Konini's practice largely revolves around wage and hour matters, including PAGA claims.

25 19. In connection with any final approval hearing, I will be seeking attorneys' fees and
26 costs, an Enhancement Payment to the Class Representative, and Settlement Administrator Costs as set
27 forth in the Agreement. I will be requesting attorneys' fees and costs pursuant to the common fund
28 doctrine as I believe it to be applicable to the present case pursuant to *Serrano v. Priest*, 20 Cal.3d 25,

34-35 (1977), *Laffitte v. Robert Half Internat. Inc.*, 1 Cal.5th 480 (2016), and *Paul, Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268, 271 (9th Cir. 1989). The facts and case law supporting the requested amounts will be set forth in the final approval motion, including information for the Court to perform a lodestar cross check of the requested attorney's fees, the updated amount of time spent by Plaintiff on this case and any further risks and/or burdens incurred as a result of acting as Class Representative, an updated declaration in support of actual litigation costs and itemized cost spreadsheet, and declaration from the Settlement Administrator detailing the work performed and Settlement Administrator Costs incurred. My firm's expected costs through final approval are not expected to exceed \$20,000. Attached as Exhibit E is a true and correct copy of the costs incurred prior to the filing of this Motion and the expected costs incurred through the final approval and fairness hearing. Any difference in the awarded fees and costs, Enhancement Payment, and Settlement Administrator Costs and the amounts allocated for each under the Agreement will be added back to the Net Settlement Amount and distributed pro rata to Class Members.

20. I have used several class action administrator companies in the wage and hour class actions I have resolved in the past and believe ILYM Group, Inc., will provide the best service to administer the proposed class settlement. ILYM Group, Inc., has provided a quote for the estimated maximum cost of administering the class settlement of approximately \$8,450. A true and correct copy of a cost estimate provided by ILYM Group, Inc., is filed with this Motion as Exhibit D. This is only an estimate, and final pricing may vary depending on the issues, if any, that arise during the administration of the settlement. However, the difference between the actual, lesser costs and \$15,000, if any, will be paid to the Participating Class Members on a pro rata basis.

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

22. A true and correct copy of the proposed Notice of Settlement is being filed with this Motion as Exhibit F.

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

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

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

23 26. CFWR is also a qualified *cy pres* designee in class actions, under section 384, as it is a
24 501(c)(3) nonprofit in good standing with the State of California providing free civil legal services to the
25 indigent. Since its inception in 2014 and in partnership with Legal Aid at Work, the CFWR offers one-
26 on-one legal consultations for low-wage workers. The CFWR discusses employment issues with
27 workers and advises them as to the available legal remedies. In addition to individual counseling on
28

employment issues, the CFWR educates workers, unions, and community members about workplace laws and remedies through “Know-Your-Rights” trainings conducted by the CFWR staff and volunteers.

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

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

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

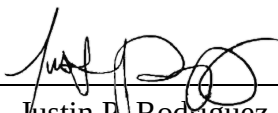
30. I have volunteered for both organizations numerous times over the past several years, either directly in the advice clinics or by presenting seminars on wage and hour laws for law students seeking to also volunteer at advice clinics. I have also volunteered by sitting on CPB’s advisory committee.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

31. Galen T. Shimoda has volunteered for both organizations on and off over the past several years through either presenting wage and hour seminars to law students who staff the free advice clinics or helping at the advice clinics themselves. However, Mr. Shimoda has not performed any volunteer

1 work with either organization since approximately March 2020. Mr. Shimoda has never received
2 payment or compensation of any kind in connection with any work he's done with either of the proposed
3 *cy pres* beneficiaries. Renald Konini has never done any work, volunteer or otherwise with Capital Pro
4 Bono, Inc. or the Center For Workers' Rights.

5 32. Neither my firm, myself, Mr. Konini, nor Mr. Shimoda have ever received any
6 compensation, direct or indirect, for designating CFWR or CPB as *cy pres* beneficiaries or in connection
7 with any of the volunteer work we have done with the organizations.

8
9 I declare under penalty of perjury under the laws of the State of California that the foregoing is
10 true and correct. Executed on June 26, 2024, in Sacramento, California.

11
12 
13 _____
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
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Reservation No. A-05516-001

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 Preliminary 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.

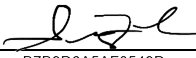
7 8. To date, I estimate that I have spent approximately 100-120 hours working on this case
8 for the benefit of all Class Members. I expect the amount of time I spend on this case will increase if
9 preliminary approval is granted because Class Members will likely reach out to me about the
10 Settlement and the process for receiving payment.

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

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

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

1 I declare under penalty of perjury under the laws of the State of California that the foregoing is
2 true and correct. Executed on June 25, 2024, in Dixon, California.

3
4 DocuSigned by:
5 
6 B7B9D6A5AF0549D
7 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)
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
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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
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Reservation No. A-05516-001

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

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Joint Stipulation Regarding Settlement of Class and PAGA Action and Release of Claims
B	Plaintiff's Operative Complaint
C	Plaintiff's Letter to the LWDA Regarding PAGA Claims
D	ILYM Group, Inc., Bid
E	Plaintiff's Itemized Costs
F	Proposed Notice of Settlement
G	Proof of Submission of Proposed Settlement Agreement to LWDA

Dated: June 26, 2024

Shimoda & Rodriguez Law, PC

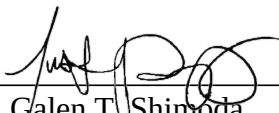
By: 
 Galen T. Shimoda
 Justin P. Rodriguez
 Renald Konini
 Attorneys for Plaintiff

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
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SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

ALBERT CARR, individually and on behalf of
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WAVEDIVISION HOLDINGS, LLC, a
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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)
JACKSON LEWIS P.C.
50 California Street, 9th Floor
San Francisco, CA 94111-4615
Telephone: (415) 394-9400
Facsimile: (415) 394-9401
E-mail: Shannon.Nakabayashi@jacksonlewis.com

Samuel J. Maselli (SBN 219503)
JACKSON LEWIS P.C.
400 Capitol Mall, Suite 1600
Sacramento, CA 95814
Telephone: (916)341-0404
Facsimile: (916) 341-0141
E-mail: 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.

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

11 **5. TERMS OF THE SETTLEMENT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 7. SETTLEMENT ADMINISTRATION

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

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

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

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

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

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

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

1 7.5 Responses to Notice of Settlement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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8. **PRELIMINARY SETTLEMENT ADMINISTRATION SCHEDULE**

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

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

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

9. **DUTIES OF THE PARTIES**

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

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

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

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

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

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

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

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

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

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

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

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

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

28 ///

1 **10. MISCELLANEOUS TERMS**

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

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

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

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

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

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

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

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

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

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

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

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

23 To Plaintiff and the Class:

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

1 To Defendants:

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

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

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

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

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

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

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

///

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

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

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

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

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

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

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

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

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

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

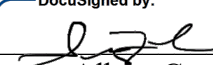
10.25 Unauthorized Publicity. Plaintiff and Class Counsel agree that the terms of this Settlement (including, but not limited to, the Maximum Settlement Amount), the negotiations leading to this Settlement, and all documents related to the Settlement, including the Agreement and any subsequent settlement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

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

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

Dated: May 21, 2024

PLAINTIFF

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

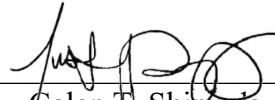
18 Attorneys for Defendants
19 WAVEDIVISION HOLDINGS, LLC,
20 OH WDH HOLDCO, LLC, and
21 ASTOUND BROADBAND, LLC
22
23
24
25
26
27
28

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
21
22
23
24
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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 9th Street, Sacramento, California 95814 on [REDACTED] at 9:00 a.m. to determine whether the Agreement should be finally approved as fair, reasonable and adequate. To join by Zoom: <https://saccourt-ca-gov.zoomgov.com/my/sscdept22>. To join by phone: (833) 568-8864 / ID 16184738886. The Court will also be asked to approve Class Counsel's request for attorneys' fees and costs, the Settlement Administrator Costs, and the Class Representative's Enhancement Payment. The hearing may be continued without further notice. It is not necessary for you to appear at this hearing.

VI. ADDITIONAL INFORMATION

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

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
Elk Grove, CA 95624
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.

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

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

24. Defendants failed to provide Plaintiff and similarly situated 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.

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

CAUSES OF ACTION

FIRST CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(As to all Defendants)

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

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

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

1 37. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 16, section
2 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30)
3 minutes for each work period of more than five (5) hours.

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

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

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

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

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

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

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

the place of employment or at a central location within the State of California.

50. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not accurately itemize all applicable hourly rates in effect during the pay period, all overtime, meal premiums, rest premiums, and paid sick time and corresponding rates of pay, and gross and net wages earned. Plaintiff and similarly situated employees suffered confusion over whether they received all wages owed and were prevented from effectively challenging information on their wage statements.

51. 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.

SIXTH CAUSE OF ACTION
WAITING TIME PENALTIES
(As to all Defendants)

52. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 51 as though fully set forth herein.

53. An employer must pay an employee who is terminated all unpaid wages immediately upon termination. *See* Cal. Lab. Code § 201.

54. An employer must pay an employee who resigns all unpaid wages within seventy-two (72) hours of their resignation. *See* Cal. Lab. Code § 202.

55. Plaintiff and similarly situated employees did not receive all wages, including overtime wages, meal and rest period premiums, or all sick leave pay owed at their termination or within the required time after their separation from employment.

56. An employer who willfully fails to pay an employee wages in accordance with California Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30) days. *See* Cal. Lab. Code § 203.

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;

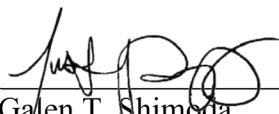
b. Injunctive and Declaratory relief;

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 11 Jackson Lewis P.C. 12 50 California Street, 9 th Floor 13 San Francisco, California 94111 14 Phone: (415) 796-5407 Email: shannon.nakabayashi@jacksonlewis.com Fatimah.Sikin@jacksonlewis.com	Samuel J. Maselli Jackson Lewis P.C. 400 Capitol Mall, Suite 1600 Sacramento, California 95814 Phone: (916) 341-0404 Email: samuel.maselli@jacksonlewis.com
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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.

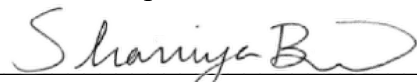
26 
27 Shaniya Baird
28

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 WageDivision 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.

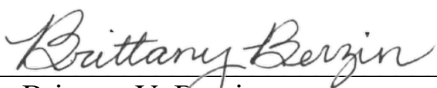
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If you have any questions or require any further information regarding the facts and theories to support these claims, do not hesitate to contact our office.

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

DECLARATION OF LISA MULLINS

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3 1. I am a resident of the United States of America and am over the age of 21. I am the
4 President for ILYM Group, Inc., (herein after referred to as “ILYM Group”), a professional class action
5 services provider. I am preparing this declaration at the request of Plaintiff’s Counsel. I have personal
6 knowledge of the facts herein, and, if called upon to testify, I could and would testify competently to such
7 facts.

8 2. ILYM Group has extensive experience in disseminating class action notices and
9 administering class action settlements, including direct mail services, telephone, and web-based support,
10 database management, opt-out processing, and settlement fund distribution services for class actions
11 ranging in size from 26 to 4.5 million Class Members. Attached hereto, as **Exhibit A**, is a true and correct
12 copy of ILYM Group’s current CV, reflecting our primary competencies as they relate to class action
13 administration. ILYM Group maintains the highest level of confidentiality. The class data and all forms
14 of communication received by ILYM Group, Inc. will be held in strict confidentiality and will not be
15 disclosed. ILYM Group, will set up a login for Defense Counsel to transmit the class data through our
16 encrypted secure portal. Attached hereto, as **Exhibit B** is ILYM Group’s Security Summary and Protocol.
17 ILYM Group is insured with E&O and Cyber Insurance policies. ILYM Group is insured with E&O
18 Insurance policies up to \$2,000,000 per incident and Cyber Insurance policies up to \$5,000,000 per
19 incident.

20 3. ILYM Group has never had any financial interests in nor affiliation with the parties or
21 counsel in the *Carr v. WaveDivision Holdings, LLC et al.* matter.

22 4. If appointed by the Court to disseminate the class notice in this case, ILYM Group’s duties
23 will include but not limited to: (a) conducting address traces to locate class member addresses as necessary;
24 (b) mailing the class notice to the class members; (c) handling inquiries from class members concerning
25 the class notice; and (d) performing other such duties as the parties and/or the Court may direct.

26 5. Upon appointment, ILYM Group will provide a mailing address and toll-free telephone
27 number to receive correspondence and inquiries from class members. After receiving the class data file
28 from Defendant, which should contain the class members’ names, last known addresses, and social security

1 numbers, ILYM Group will upload the data into our database and check for duplicates and other possible
2 discrepancies.

3 6. As part of the preparation for mailing the class notice, ILYM Group will process class
4 members' names and addresses against the National Change of Address ("NCOA") database, maintained
5 by the United States Postal Service ("USPS"), for the purpose of updating and confirming the mailing
6 addresses of the class members before mailing of the class notice and opt-in form. To the extent an updated
7 address is found in the NCOA database, ILYM Group will use the updated address for mailing the class
8 notice. If ILYM Group does not locate an updated address in the NCOA database, it will use the original
9 address provided by Defendant for mailing the class notice.

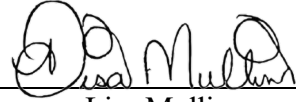
10 7. Should any class notices be returned to ILYM Group's office as undeliverable, ILYM
11 Group will attempt to locate an updated address using the NCOA database and/or other skip trace efforts
12 and will promptly re-mail the class notice.

13 8. Prior to sending out the notice in English & Spanish, ILYM Group will fill in the
14 specific date for the deadline so that all class members will be apprised of exactly when all applicable
15 forms will be due, depending on the deadlines set by the Court, i.e., 60-day Notice period to opt-out,
16 dispute or file an objection. At the expiration of the deadline, ILYM Group will inform all parties as
17 to the number and name of those individuals who filed a timely opt-out, dispute or objection.

18 9. ILYM Group's Disbursement Process will include but not limited to; (a) applying for the
19 case EIN; (b) establishing Qualified Settlement Fund ("QSF") Escrow Account), with administering tasks
20 including but not limited to overview and reconciliation of account; (c) calculating the individual
21 settlement amounts; (d) preparing, administering and distributing settlement award checks to the
22 Participating Class Members, including necessary tax forms (W2 and/or 1099); (e) calculating and
23 withholding all applicable state and federal taxes; and (f) performing other such duties as the Parties and/or
24 the Courts direct. The above services are included in ILYM Group's initial quote. Attached hereto, as
25 **Exhibit C**, is a true and correct copy of ILYM Group's capped quote for this matter.

26 10. ILYM Group's fees are charged: hourly, fixed & per person. No additional charges will be
27 incurred unless the class size increases, or additional services are requested. ILYM Group's fees associated
28 with the administration of this settlement are: **\$8,950.00**.

1 I declare, under penalty of perjury under the laws of the United States of America and the State
2 of California that the foregoing is true and correct. Executed this 22nd day of May 2024, at Tustin,
3 California.

4 

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6 Lisa Mullins
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EXHIBIT “A”

Overview of Our Firm:

ILYM Group, Inc is a class action administration, legal notification and direct media outlets firm. With over 14 years of experience, our primary commitments are to client satisfaction, cutting edge technology and data management security, seamless case management and delivery of case expectations. Because, of our adherence to these commitments, ILYM Group, Inc is a one of the fastest growing, Woman Owned Business (NAPW), in the industry and is becoming the go-to firm for class action administration and legal notification. ILYM Group, Inc works with the top defense and plaintiff firms across the United States.

AREAS OF EXPERTISE:

- Wage and Hour
- FLSA
- Insurance and Health Care
- Consumer
- Finance
- Employment and Labor
- Securities
- Antitrust
- TCPA

Malta vs. Wells Fargo Home Mortgage Inc.

- TCPA Case with a class size of 5,200,000.

Gerardo Mojica vs. Compass Group USA, Inc.

- Wage & Hour Case with a class size of 22,573

Jacqueline Jones vs. I.Q. Data International, Inc.

- TCPA Case with a class size of 93,993. Performed a reverse look-up to obtain Class Member information. We were able to obtain contact information for 93.82% of the Class that did not have a name or address.

Grinder, et al. v. Clark County Collection Service, LLC.

- TCPA Case with a class size of 15,659. Performed a reverse look-up to obtain Class Member information. We were able to obtain contact information for 97% of the Class that did not have a name or address.

Kimberly Roberts, et al. v. T.J. Maxx of CA, LLC, et al.

- Wage & Hour Case with a class size of 82,549.

Reza Barani vs. Wells Fargo Bank, N.A.

- TCPA Case with a class size of 82,874. Performed a reverse look-up to obtain Class Member information. We were able to obtain contact information for 87.84% of the Class that did not have a name or address.

Blaise Picchi et al., vs. World Financial Network Bank, et al.

- TCPA Case with a class size of 856,507. Performed a reverse look-up to obtain Class Member information. We were able to obtain contact information for 93.21% that did not have a valid address associated with the contact record.

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

ILYM Group, Inc. is operational 24/7 delivering true client and class member availability. Our call center is open 24/7/365 days a year, even holidays and is full digital, automated and multilingual. ILYM Group Inc.'s mail and media center is a state-of-the-art facility, fully digital and USPS integrated. We can accommodate cases of any size, from ten class members to multi-millions. ILYM Group, Inc. prides itself on its commitment to service, quality, value pricing and availability. We've committed ourselves to being the best Class Action Administration and Notification Company in our industry. Through our years of experience, ILYM Group, Inc. is dedicated to exceeding our client's expectations.

PRE-SETTLEMENT CONSULTATION

- **Administration Consultation:** Meeting to determine objectives and expectations by both parties. All reporting and responsibilities will be agreed upon as will the seamless process to access data. We will also discuss the opportunities to identify class members with the proposed print and web-based media for optimum reach. Additionally, all expectations and delivery of those results will be planned for and mapped accordingly.

MAILING AND NOTIFICATION

- **Fulfillment and Correspondence:** All provided settlement information will be published via United States Postal Service (USPS first class standards) to the proposed mailing class. Notifications will include a Claim ID and how to respond, or Opt-Out, based on the stipulations.
- **Reverse Lookup:** A confidential reverse phone or reverse cell lookup will provide; owner's name, location, address history, carrier, phone type (landline or cell phone) and more. Our reverse lookup is powered by an extensive database which includes hundreds of millions of cell phone, landline, residential and unlisted number. Our software collects data from multiple data sources and carriers across the US. Our average "hit ratio" ranges from 93% - 98%.
- **Creating Class Database:** All Data is verified and filtered to eliminate duplication against the United States Postal Service (USPS) National Change of Address (NCOA) database. ILYM Group, Inc. will also certify and validate with the Coding Accuracy Support System (CASS) and Track Your Class (TYC) for zone delivery.
- **Claim Forms:** ILYM Group, Inc. will email all claim forms, whenever possible, to have accurate reporting and tracking of all class requests. Emails will contain full text claim forms.
- **Translations:** When needed, ILYM Group, Inc. will translate notices to any language needed to reach Class members.
- **Remails:** Returned mail will be scanned, re-verified and re-mailed. All returned mail is data warehoused and reported to both parties' counsels in a weekly report.

MEDIA & INTERNET BANNER ADS

Notice Publication

- **Legal Notices:** ILYM Group, Inc. can provide a Media Proposal to maximize reach based on quantitative and qualitative methodologies.
- **Electronic Publication (Banner Ads):** ILYM Group, Inc. will utilize Internet Banner Noticing efforts and web technologies for maximum reach via the World Wide Web.

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

- **Electronic Mail Notices:** ILYM Group, Inc. can email an estimated number of class members a full text notice. We are compliant with all search engines and Internet Service Providers (ISP) so that our emails are always “White List” accepted with minimal returns.
- **Reach:** Every case has its own proposed reach and exposure percentage. We filter, verify and scrub the data to improve reach results.
- **Services Included:** Analysis, Documentation, Research and Methodologies, Execution and Reporting.

PROJECT MANAGEMENT

- **Case Notification, Maintenance and Management:** ILYM Group, Inc.’s Senior Project Managers will provide all Account Management, Pre-Consultation to Case Conclusion, Reporting and Claims Processing. Design, negotiation and implementation, upon approval, of all forms and notices, all distribution reporting and filings with the court.
- **Claims Processing:** All claims can be submitted by USPS, Internet, Fax, and Email or Online submission. Claims will be processed and recorded with matching ILYM database ID's. E-claims will have corresponding records of intake. All deficient claims will be notified via USPS and make provisions for class member to re-submit claims.
- **Call Center:** ILYM Group, Inc. will support class members with a toll-free number to get the most up-to-date case settlement information. Customer service representatives will be available 24/7/365 as will recorded messages.
All class members are given the options to best serve their needs and to receive case information.
- **Internet Support:** Class members can log on to a provided website and view, print or submit information and claim forms regarding the settlement. Frequently Asked Questions (FAQ’s) will be provided as well. Class members may download the claim form with mailing and fax instructions provided on the form.
- **Objection and Request for Exclusion:** All objections and request for exclusion, opt-out, will be data warehoused, dated and reported. Postmarks will serve for exclusion dating and will be forwarded to both counsels’ no more than 5 days post submission. Objection will be reviewed by ILYM Group, Inc. to determine the timeliness and basis of the objection. All information will be forwarded to both parties counsel, along with any representation information from the class member, within 5 days.

DATA ADMINISTRATION AND NETWORK SECURITY

- **Network Security:** All provided data is encrypted, stored and hosted in a Tier 4, SAS70 certified environment.
- **Database Administration:** To be developed with all electronically provided data. Class members will be assigned ILYM Group, Inc. internal tracking ID’s to ensure all collected member data coincides with all received claims.

DISTRIBUTION AND SETTLEMENT FUNDING

- ***Distribution and Management:*** Upon receipt of settlement funds, ILYM Group, Inc. will open a QSF Account for proceeds of the Gross Settlement Payment. The deposited funds will then be managed per the Settlement Agreement. All funds will be settled with class members and counsel along with all federal and state income tax reporting.
- ***Check Printing and Mailing:*** Claims processed, quantified and approved by clients, will be processed for distribution. All checks will be printed and mailed via USPS first class standards. ILYM Group, Inc. will reissue checks in accordance with the Settlement Agreement.
- ***Preparation, Filing and Reporting of Taxes:*** ILYM Group, Inc. will ensure taxes are filed in accordance to all federal, state and local employment tax returns. All taxes associated with the settlement will be paid on time to tax authorities. All filings and returns (e.g., 1099s, W-2s, etc.) will be done properly and timely with the appropriate authorities. All QSF steps and obligations with federal, state and/or local law will be followed.

CASE CONCLUSION

- ***Data Manager Final Report:*** All database and electronic documentation will be sent in reports weekly and at the conclusion of the Administration engagement. Call center activity, e-claims, mailed, and faxed claims will be included in all reporting.
- ***Project Manager Final Report:*** All case and class related information will be provided on a weekly basis and at the conclusion of the Administration engagement. Mailing and media final analysis, exclusions, objections, and all other claims processing outcomes, status reports and final court documentations will be included.
- ***Affidavits:*** ILYM Group, Inc. will provide all affidavits in support of analysis and media reach, final approvals and settlement. Expert Testimony and Media Methodologies will be determined.
- ***Document Retention:*** Unless otherwise directed, ILYM Group, Inc. will destroy all undeliverable notices on the effective date of the settlement or when the case is no longer subject to appeal. ILYM Group, Inc. will correspond for one year after the final distribution or until the case is no longer subject to appeal.

EXHIBIT “B”

ILYM Group, Inc. (ILYM) in conjunction with our security and Information Technology (IT) vendor(s), maintains the highest level of confidentiality of class member data. The class data and all forms of communication received by ILYM, will be held in strict confidentiality and will not be disclosed. Data provided to the administrator for purposes of notice, settlement, or award administration will be used solely for settlement implementation and for no other purpose. ILYM will set up a login for Defense Counsel to transmit the class data through our encrypted secure portal. ILYM processes adhere to the Settlement Administration Data Protection Checklist in the Northern District of California and are summarized in the tables below.

Technical Controls

Firewalls and intrusion detection/prevention systems	Yes
Endpoint Detection and Response (EDR) Systems	Yes
Complex Password Requirements	Yes
MultiFactor Authentication for Access to Systems and Data	Yes
Malware Protection and AntiVirus	Yes
Vulnerability Scanning/Pen Testing	Yes
Data Encryption	Yes
Key Management for access to encrypted Data	Yes
Access only provided on need-to-know basis	Yes
Security Operations Center (SOC)	Yes
Managed Detection and Response (MDR)	Yes
Security Information and Event Management (SIEM)	Yes
Software Defined Global Network (SGN) with next gen firewall	Yes

Administrative Policies

Personnel and support staff risk assessment and management, including pre-hire background checks and screening processes	Yes
Personnel and support staff required to enter into non-disclosure and confidentiality agreements	Yes
Access controls to systems and data, including guidance for granting, modifying, and reviewing access rights	
Information security and privacy policy training, including policy review, best practices, and data security	Yes
No remote access to systems for Employees	No
Exit interviews/confirmation that terminated/departed employees are immediately cut off from access	Yes
Robust audits of data privacy policies by third-party vendors	Yes
Accreditation in accordance with ISO 27001 and SOC2 (among the industry standards listed below)	Compliant
Disclosure of external certifications and any notice of expiration	Yes

Crisis and Risk Management

Incident response/disaster plan for immediate response to security incidents such as data breach.	Yes
Process and timing for notification to attorneys, claimants, and other stakeholders of a data breach and consideration of resources and/or remedies to provide thereto	Yes
Vendor management program that determines and defines requirements to manage risk associated with outsourcing	Core Vendors are limited and have been vetted. New program being implemented as part of SOC 2

Physical Access Controls

Physical Access Security Security Guards Access Cards to facilities with assignment of identification card subject to approval and review Logs of Access	Logs and “codes” No cards – just codes No security guards Logs are kept
Alarm Systems	Yes
CCTV recording Systems	Yes

Data Collection and Retention

Minimization of collection of personally identifiable information, e.g., social security numbers and banking information	Yes
Data collection only required to extent necessary for settlement administration	Yes
Various methods for ensuring data protection and security of Data classification (including implementation of appropriate safeguards to protect from theft, loss, and/or unauthorized disclosure, use, access, destruction) Compliance with applicable laws and regulations (see below) Secure data transfer	Yes

Data Destruction

Preservation of data only for so long as required for administration of the settlement and any relevant reporting required following the payments or distributions	Yes
Secure data destruction (e.g., 6 months – 1 year or when no longer required)	Yes
Physical media (e.g., paper, CDs) shredded or destroyed to point where they cannot be reconstructed	Yes
Destruction of all derivative copies and/or back-ups	Yes

Applicable Laws, Standards, and Other Regulation

Industry standards: National Institute of Standards and Technology (NIST), HIPAA, FISMA, System and Organization Controls (SOC1 and SOC2) or more advanced assessment, ISO 27001	Yes
Local, national, international privacy regulations (including CCPA)	Yes

Ethical Rules

Administrative policies and/or employee handbook incorporating commitment to ethical rules (e.g., company, court ethical rules) setting forth standards of ethical and legal behavior	Yes
Enforcement clauses, violation resulting in disciplinary action including and up to termination of employment	Yes

Customer Service Measures

Description of settlement website and posting thereto of relevant privacy policies or statements (including portal for reporting suspected loss of confidential data submitted with claim)	Yes
--	-----

Explanation of role of claims administrator and how to prevent phishing (e.g., clear indication that administrator will not request confidential information by e-mail and how to identify a valid e-mail sent from the administrator)	Yes
--	-----

EXHIBIT “C”

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: Carr v. WaveDivision, et al.

Monday, May 20, 2024

Requesting Attorneys Name:

Justin Rodriguez

E-Mail:

jrodriguez@shimodalaw.com

ILYM Contact:

Lisa Mullins

E-Mail:

Lisa@ilymgroup.com

Contact Number:

714.878.8836

Estimate For Administrative Solutions

KEY ASSUMPTIONS	
Total Number of Class Members	475
Estimated Percentage of Remails	15%
Certified Spanish Translation	Yes
ILYM Group Static Website	No
Case Duration (Years)	1

Summary Estimate: ILYM Group Fees & Expenses

Case Startup:	\$325.00
Project Management:	\$2,380.00
Notification & Mailing:	\$1,454.75
Distribution (Includes EIN, Bank Acct * /QSF Setup):	\$3,775.25
Case Conclusion:	\$1,015.00

Total Capped ILYM Fees & Expenses: \$8,950.00

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: Carr v. WaveDivision, et al.

Monday, May 20, 2024

Requesting Attorneys Name: Justin Rodriguez

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	1	\$150.00
Programming of Class Database	Hourly	\$175.00	1	\$175.00

*ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.

Subtotal \$325.00

PROJECT MANAGEMENT				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	3	\$360.00
Staff Hours for Processing Returned Mail	Hourly	\$70.00	2	\$140.00
Staff Hours for Processing Opt-Outs, Disputes & Objection(s)	Hourly	\$70.00	2	\$140.00
Report Processing	Hourly	\$70.00	2	\$140.00
Certified Spanish Translation	Flat Rate	\$1,250.00	1	\$1,250.00
NCOA	Flat Rate	\$150.00	1	\$150.00
Toll Free Customer Service Representative	Flat Fee	\$200.00	1	\$200.00
Weekly Reports	Flat Rate	\$750.00	1	Waived

Subtotal \$2,380.00

NOTIFICATION/MAILING				
Fulfillment of Notice, English & Spanish	Per Piece	\$1.50	475	\$712.50
USPS First Class Postage	Per Piece	\$0.88	475	\$418.00
Re-Mails (Forward/Skip trace Undeliverables)	Per Piece	\$2.00	71	\$142.50
Storage, Photocopies, Deliveries	Flat Fee	\$181.75	1	\$181.75

Subtotal \$1,454.75

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: Carr v. WaveDivision, et al.

Monday, May 20, 2024

Requesting Attorneys Name: Justin Rodriguez

Activity	Rate Type	Unit Cost	Volume	Amount
DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)				
Distribution Setup & Management	Hourly	\$150.00	3	\$450.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	3	\$375.00
Check, Stub & Release - Print & Mail (W2/1099)	Per Check	\$1.00	475	\$475.00
USPS First Class Postage	Per Piece	\$0.64	475	\$304.00
Re-Mails (Forward/Skip trace Undeliverables up to 10%)	Per Piece	\$1.50	48	\$71.25
Preparation of Taxes	Hourly	\$120.00	5	\$600.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

*Additional Bank fees may apply

Subtotal \$3,775.25

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	1	\$100.00
Project Manager Final Reporting	Hourly	\$120.00	2	\$240.00
Process Unclaimed Funds to Cy Pres	Flat Fee	\$550.00	1	\$550.00
Declaration	Hourly	\$125.00	1	\$125.00

Subtotal \$1,015.00

Total Capped ILYM Fees & Expenses: \$8,950.00

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

EXHIBIT E

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
Anticipated	Service Fee - Capitol Process: Preliminary Approval Motion	\$ 150.00
Anticipated	One Legal Fee - Motion for Preliminary Approval of Settlement	\$ 125.00
Anticipated	One Legal Fee - Motion for Final Approval of Settlement	\$ 125.00
Anticipated	One Legal Fee - Compliance Declarations	\$ 16.40

Total: \$ 12,722.78

EXHIBIT F

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 [earlier of May 20, 2024 or Preliminary Approval Date], 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 [earlier of May 20, 2024 or Preliminary Approval Date], 2024, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

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

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

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

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

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

I. BACKGROUND OF THE CASE

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

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

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

II. SUMMARY OF THE PROPOSED SETTLEMENT

A. Amount of the Proposed Settlement.

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

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

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

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

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

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

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

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

IV. RELEASE OF CLAIMS.

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

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

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

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

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER?

A. Participating in the Settlement as a Class Member.

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

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

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

[insert admin info]

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

C. Objection(s) to Settlement.

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

IV. EFFECT OF THE SETTLEMENT: RELEASED RIGHTS AND CLAIMS

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

V. FINAL SETTLEMENT APPROVAL HEARING

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

VI. ADDITIONAL INFORMATION

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

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 G

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
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Reservation No. A-05516-001

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 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

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

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

21 **I. PRELIMINARILY CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF**
22 **CLASS REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

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

25 All persons who worked any hours for Defendants in California during any
26 pay period as a non-exempt employee from July 25, 2019 through the earlier
of (1) May 20, 2024; or (2) the Preliminary Approval Date.

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

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

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

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

23 **II. PRELIMINARILY APPROVING CLASS ACTION AND PAGA SETTLEMENT**

24 The Court has reviewed the Agreement, which was submitted with Plaintiff's Motion as Exhibit
25 A. The Court finds, on a preliminary and conditional basis, that the Settlement is fair, reasonable, and
26 adequate and falls within the range of reasonableness of a settlement that could ultimately be given final
27 approval by this Court. The Court finds the Settlement was agreed upon only after extensive
28 investigation, litigation, and arms-length negotiations by counsel experienced in complex litigation, who

1 took reasonable steps and measures to weigh the potential value of the disputed claims against the risks
2 of continued litigation. The Court also acknowledges that Class Members may present any objections to
3 the Settlement at a fairness hearing approved by this Court or opt-out of being bound by the preliminarily
4 approved Agreement. The Court preliminarily approves the Agreement and all terms therein as if stated
5 here in full, including the \$650,000 Maximum Settlement Amount.

6 The Court approves of ILYM Group, Inc., acting as the Settlement Administrator in this case and
7 hereby appoints them to fulfill those duties as outlined in the Agreement.

8 The Court finds that an award of fees under the common fund doctrine may be appropriate in this
9 case because there is a sufficiently identifiable class of beneficiaries (*i.e.* Class Members), the benefits
10 that Plaintiff and Class Counsel were able to negotiate on behalf of Class Members can be accurately
11 traced as set forth in the Agreement, and the fee can be shifted with exactitude to those benefiting as the
12 fee request is a specific, lump-sum percentage of the Maximum Settlement Amount. *See Laffitte v.*
13 *Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016); *Paul, Johnson, Alston & Hunt v. Grauly*, 886 F.2d
14 268, 271 (9th Cir. 1989); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-478 (1980) (“A lawyer who
15 recovers a common fund for the benefit of persons other than . . . her client is entitled to a reasonable
16 attorney’s fee from the fund as a whole.”). The amounts allocated under the Agreement for attorney’s
17 fees and costs, for an Enhancement Payment to the Class Representative, and Settlement Administrator
18 Costs shall be included in the Notice of Settlement to enable Class Members to review and comment
19 thereon. The Court will consider the reaction of Class Members when evaluating the reasonableness of
20 the requested amounts at final approval. *See In re Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555,
21 71 (C.D. Cal. 2005) (“the absence of objections or disapproval by class members to class counsel’s fee
22 request further supports finding the fee request reasonable”). Plaintiff and Class Counsel are directed to
23 provide information in connection with the motion for final approval that will enable the Court to assess
24 the appropriateness of any requested fee percentage, to perform a lodestar cross check of the requested
25 fee percentage, and to quantify the amount of time spent by Plaintiff on this case and any further risks
26 and/or burdens incurred as a result of acting as Class Representative. Class Counsel is also directed to
27 provide an updated declaration and itemization regarding actual litigation costs incurred. The Settlement
28 Administrator shall also submit a declaration attesting to Settlement Administrator Costs incurred. The

1 Court will review these amounts and allocations in connection with the final approval hearing. To the
2 extent the Court ultimately awards less than the amounts allocated under the Agreement for attorney's
3 fees and costs, for an Enhancement Payment to the Class Representative, and/or Settlement Administrator
4 Costs, the difference between the amounts awarded and the amounts requested shall be added to the Net
5 Settlement Amount for distribution to Participating Class Members pro rata as set forth in the Agreement.

6 The Court approves of the \$32,500 PAGA Penalty Amount, which shall be paid from the
7 Maximum Settlement Amount, not in addition to the Maximum Settlement Amount, to resolve the
8 alleged PAGA claims. Seventy-Five percent (75%) of the PAGA Penalty Amount will be paid to the
9 Labor and Workforce Development Agency ("LWDA") and Twenty-Five percent (25%) will be paid to
10 PAGA Members on a pro rata basis as described in the Agreement. The Court also finds that the
11 Agreement provides a recovery that creates an effective, substantial deterrent to any potential future non-
12 compliance, furthering the purpose of the Labor Code and LWDA.

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

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

21 **III. APPROVAL OF THE DISTRIBUTION METHOD OF NOTICE TO THE CLASS,**
22 **INCLUDING THE NOTICE OF SETTLEMENT**

23 The Court finds that the proposed Notice of Settlement, attached to this Order as Exhibit 1 and
24 incorporated by reference, fairly and adequately advises Class Members of the terms of the Agreement,
25 the rights being waived, their right to opt out, the ability to dispute the number of workweeks worked
26 during the Class Period, their pro rata share of the Net Settlement Amount, how to participate in the
27 settlement, how to file documentation in opposition to the proposed settlement, and when to appear at
28 the fairness hearing to be conducted on the date set forth below. The Court further finds that the Notice

of Settlement and proposed distribution of such notice by first class mail to each identified Class Member at his or her most recent address based on a National Change of Address database search from the Class Members' last known address and a skip trace on any Class Members who have the Notice of Settlement returned as "undeliverable" or "not at this address" comports with all constitutional requirements, including those of due process.

The Court also finds that because there is a strong interest in providing Class Members the opportunity to participate in the settlement, along with the Parties' efforts to minimize any intrusion to privacy rights, the sharing of employment information, including social security numbers, is not a serious intrusion on their privacy rights. Hence, the Court orders Defendants to provide Class Member information to the Settlement Administrator as set forth in the Agreement any other information the Settlement Administrator needs to effectuate notice to Class Members and PAGA Members. The Class Member information will be provided to the Settlement Administrator only, and not to Plaintiff or Class Counsel, in order to process this settlement as contemplated within the Agreement and approved by this Order. The Settlement Administrator shall only use this information for the purposes identified in the Agreement and shall keep this information confidential consistent with the terms of the Agreement.

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 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

1 2 3	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
4 5 6 7 8	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
9 10 11	Last day for Defendants to fund settlement	Within 30 calendar days after the Effective Date
12 13 14 15 16	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
17 18 19	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
20 21 22	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
23 24	Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

V. FINAL APPROVAL AND HEARING

The Court hereby grants Plaintiff's Motion and sets final approval hearing on the proposed date of December 20, 2024, at 9:00 a.m., with briefs and supporting documentation to be submitted according

1 to the California Code of Civil Procedure, in this Department. Participating Class Members may object
2 as set forth in the Agreement as well as appear and present such objections at the fairness hearing in
3 person or by counsel.

4 If for any reason the Court does not grant final approval of the Agreement, all evidence and
5 proceedings held in connection therewith shall be without prejudice to the status quo and rights of the
6 parties to the litigation, including all challenges to personal jurisdiction and to class certification for any
7 purpose other than approving a settlement class. The parties will revert to their respective positions as if
8 no settlement had been reached at all.

9 **IT IS SO ORDERED.**

10
11 Date: _____

By: _____

Judge of the Superior Court