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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF LOS ANGELES**

16 JONATHAN GIANNOULIS, et al.

17 Plaintiff

19 v.

21 DIRECTV, LLC,

22 Defendant

Case No. BC596668

CLASS ACTION

[Assigned for all purposes to The Honorable
Maren E. Nelson, Spring Street Dept. 17]

**MEMORANDUM OF LAW IN
SUPPORT OF PLAINTIFFS’
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT
AND FOR CERTIFICATION OF
SETTLEMENT CLASS**

Date: October 26, 2021
Time: 9:00 a.m.
Dept: Spring Street Dept. 17
Judge: Hon. Maren Nelson

Action Filed: October 1, 2015
Trial Date: N/A

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1 **INTRODUCTION**

2 The resolution of this action is the culmination of more than a decade of hard-fought,
3 vigorously contested litigation, spanning hundreds of cases across the country. After expending
4 tens of thousands of hours, including extensive discovery and motion practice, and conducting
5 three mediations with a well-respected wage and hour mediator, the parties, represented by
6 experienced counsel with a deep appreciation for the strengths and weaknesses of their claims
7 and the risks of continued litigation, reached an agreement to settle this class and PAGA action
8 for \$23,150,000. Plaintiffs now move for an order provisionally certifying a settlement class and
9 granting preliminary approval of the settlement. Plaintiffs’ Counsel respectfully submit that the
10 proposed settlement is patently fair and reasonable for myriad reason, not the least of which is
11 that most of the putative class members have arguably released their claims through DIRECTV’s
12 Individual Settlement Program, an initiative that began in August of 2020 while this case was in
13 active litigation. This settlement provides meaningful monetary compensation (through an
14 equitable pro rata allocation formula based on completed work orders in the class period) to all
15 class members, including those who already have received and cashed settlement checks.

16 **DISCUSSION OF CHECKLIST ITEMS**

17 Set forth below, in order, is Plaintiffs’ discussion of the items identified in the Court’s
18 “Checklist for Preliminary Approval of Class Action Settlement.”

19 **I. INTRODUCTORY INFORMATION**

20 **A. The Parties**

21 The *named Plaintiffs* are Jonathan Giannoulis and Deshon Allen, technicians who
22 installed DIRECTV in California. The *Defendant* is DIRECTV, LLC. (Hanson Decl. ¶ 5, 9.) The
23 *proposed class* is all current, former, or prospective workers who were assigned a Technician ID
24 number in the Siebel system, and who installed, serviced, and/or repaired DIRECTV systems in
25 the State of California but were not classified by DIRECTV or any Home Service Provider as W-
26 2 employees during the Covered Period—excluding individuals who (1) performed work through
27 White Communications, LLC, but only during the time they were performing such work; or (2)
28 had claims against DIRECTV pending in the United States District Court for the Central District

1 of California as of August 13, 2020. The “Covered Period” is the time between October 1, 2011,
2 to the date the Court preliminarily approves this Settlement. (*Id.* ¶ 50.)

3 **B. Overview of this Case and Related Litigation**

4 This case is the last of hundreds of cases Plaintiffs’ Counsel brought on behalf of
5 technicians against DIRECTV across the country claiming that DIRECTV misclassified the
6 technicians as “independent contractors,” and asserting various wage and hour violations. The
7 litigation began as nationwide FLSA collective actions in 2010. After the actions were decertified,
8 and DIRECTV successfully fought coordination before the Judicial Panel on Multidistrict
9 Litigation, Plaintiffs’ counsel filed the cases of hundreds of technicians in more than 40
10 jurisdictions throughout the country, including this action. (Hanson Decl. ¶ 4.)

11 1. The Filing of this Action

12 Plaintiff Giannoulis filed this action on October 1, 2015. He asserted ten wage and hour
13 causes of action on behalf of himself and a class of similarly situated technicians. After exhausting
14 the pre-suit requirements, Mr. Giannoulis amended the Complaint on October 20, 2015, to assert
15 a claim under the Private Attorney General Act too. (*See* 10/20/15 First Amended Complaint
16 (“FAC”).) Each of the claims are discussed more fully below. (*See* § II.D.) (Hanson Decl. ¶ 5.)

17 The case was automatically stayed under this Court’s Initial Status Conference Order and
18 remained stayed while the Court heard—and then denied—DIRECTV’s March 2016 motion to
19 compel arbitration. DIRECTV then filed, in May 2016, a motion to reconsider, which the Court
20 denied in July 2016. DIRECTV immediately filed a notice of appeal to the California Court of
21 Appeal, which stayed all proceedings in this Court. (Hanson Decl. ¶ 6.)

22 2. The Parties Heavily Litigated the Underlying Factual and Legal Issues

23 While this case was stayed, Plaintiffs’ counsel actively pursued the related litigation
24 including the production and review of millions of pages of documents, conducting and defending
25 more than 650 depositions, litigating dozens of contested discovery and dispositive motions, and
26 prosecuting a jury trial to verdict in Arizona. (Hanson Decl. ¶ 7.)

27 The evidence Plaintiffs’ counsel marshaled through these related actions directly
28 benefited this litigation and provided Plaintiffs deep knowledge of DIRECTV’s policies,

1 operations and personnel in California, critical testimony from DIRECTV’s key personnel
2 overseeing technicians in California, and a blueprint for litigating the exact claims asserted in this
3 case. (Hanson Decl. ¶ 8.)

4 3. The Parties Reach Global Resolution Except for the California Actions

5 While there were mixed results of wins and losses along the way, the Arizona jury trial
6 resulted in a complete defense verdict, highlighting for both sides the significant risk of continued
7 litigation. In November 2017, the parties conducted an in-person mediation with Michael
8 Dickstein, a well-respected mediator with extensive experience mediating wage and hour cases.
9 The parties continued negotiations for months thereafter until, in January 2018, the parties agreed
10 to settle all cases except for the litigation pending in California. Meanwhile, in July 2017, Plaintiff
11 Giannoulis amended the Complaint, adding named Plaintiff Deshon Allen, a technician not even
12 arguably subject to an arbitration agreement. DIRECTV subsequently abandoned its appeal of the
13 arbitration issue. (Hanson Decl. ¶ 9.)

14 4. The Parties Further Litigate the California Claims Before Settlement

15 While DIRECTV appealed a ruling in related litigation to the Ninth Circuit, this case was
16 stayed for approximately 18 months. In July 2019, this Court lifted the stay and the parties
17 recommenced discovery and negotiations concerning class certification. (Hanson Decl. ¶ 10.) The
18 parties had widely divergent positions on the scope of third-party discovery required for class
19 certification. At the August 12, 2020, Case Management Conference, this Court rejected
20 DIRECTV’s approach. The next day, on August 13, DIRECTV launched a *Pick-Up Stix* campaign
21 (which DIRECTV called the Individual Settlement Program), unilaterally issuing checks in the
22 amount of \$2,250 to approximately 1,400 putative class members in exchange for releases. (*See*
23 *e.g.* Ex. 3.) That campaign was successful: according to DIRECTV’s counsel, roughly 85% of the
24 recipients accepted an individual settlement. (Hanson Decl. ¶ 11.)

25 On August 21, 2020, Plaintiffs filed their motion for class certification. On August 26,
26 2020, the parties requested, and the Court granted on September 15, a continuance of all case
27 deadlines pending a mediation between the parties to be conducted on October 19, 2020, with
28 Michael Dickstein, the mediator who had successfully brokered the earlier global settlement of

1 the related litigation. For a number of reasons, including the parties’ divergent views regarding
2 the validity of the releases obtained through the Individual Settlement Program, that mediation
3 was unsuccessful. (Hanson Decl. ¶ 12.)

4 Immediately thereafter, on October 27, Plaintiffs filed for a protective order seeking,
5 among other things, to invalidate the releases DIRECTV obtained. On January 11, 2021, the Court
6 denied the motion. While the Court denied the motion without prejudice to future consideration
7 of the issue at an evidentiary hearing after class certification, based on the evidence Plaintiffs
8 had—and had already submitted—the Court found that “[t]here is no showing of coercion or that
9 the letters are otherwise improper.” (1/11/21 Order at 9:1-2.) (Hanson Decl. ¶ 13.)

10 Shortly thereafter, the parties agreed to another mediation to be held in May 2021, again
11 with Michael Dickstein. After a long day with a mediator well informed regarding the legal,
12 factual, and pragmatic complexities of this case, and with all parties represented by sophisticated
13 and experienced counsel well-versed in the evidence, causes of action, and risks of continued
14 litigation, the parties agreed to settle this case on a class-wide basis. (Hanson Decl. ¶ 14.)

15 **C. The Settlement**

16 The parties agreed to settle¹ this case for a total of **\$23,150,000**. (SA ¶ 19)² With this
17 Court’s approval, the “Total Settlement Amount” of \$23,150,000 is to be distributed as follows:

- 18 • **\$14,984,105** is to be distributed to the settlement class members as follows: (1) a \$250
19 based payment will be allocated to all Settlement Group Members; (2) Settlement Group
20 Members who did not cash the \$2,250 check as part of DIRECTV’s Individual Settlement
21 Program will be allocated \$2,250; (3) the remaining Net Settlement Amount will be
22 allocated among Settlement Group Members pro rata according to shares based on work
23 orders completed in the Covered Period: Settlement Group Members who did not cash a
24 check as part of the Individual Settlement Program will receive 2 shares per completed
25

26
27 ¹ The Settlement Agreement (“SA”) is attached as Ex. 1 to the Hanson Decl. Proof that the
Settlement Agreement was submitted to the LWDA is attached as Ex. 2 to the Hanson Decl.

28 ² This figure includes the \$3,150,000 that DIRECTV set aside as part of its Individual
Settlement Program.

1 work order; Settlement Group Members who cashed a check as part of the Individual
2 Settlement Program will receive 1 share per completed work order. (SA ¶ 23)

3 ○ With an estimated settlement class size of 2300 technicians, the average payout per
4 technician is approximately **\$6,515** (because the allocation formula is pro rata based
5 on work orders completed, technicians with a long tenure who completed many work
6 orders will receive amounts considerably higher than the average, in the range of
7 \$17,000 or more).

8 • **\$150,000** will be allocated to settle the PAGA claims, of which: 75% (\$112,500) will be
9 paid to the LWDA, and 25% (\$37,500) will be distributed to class members pro rata, based
10 on the number of work orders the technician performed during the PAGA statute of
11 limitations. (SA p.3 & ¶ 23)

12 • **\$10,000** will be allocated to named Plaintiffs Jonathan Giannoulis and Deshon Allen
13 (\$5,000 each) as service awards. This amount is less than the average payment to the
14 settlement class members and is to fairly compensate the class representatives for their
15 service to the class and the litigation over the last six years. (SA ¶ 21)

16 • **\$7,715,895** (33.33% of the Total Settlement Amount) will be paid to Class Counsel and
17 distributed according to the fee split approved by the named Plaintiffs and not opposed by
18 DIRECTV as follows: 65.52% to Stueve Siegel Hanson LLP; 10% to the Calabro Law
19 Office; and 24.48% to Lear Werts LLP. (SA ¶ 20)

20 • No more than **\$250,0000** will be allocated to Class Counsel for expenses. (SA ¶ 20)

21 • No more than **\$40,000** will be paid to the settlement administrator. (SA ¶ 22)

22 Settlement class members shall have 90 days to cash their checks. Any balance remaining will be
23 redistributed to the settlement class members. **No funds revert to DIRECTV.** (SA ¶ 19). The
24 class will release DIRECTV for the “known and unknown claims as alleged in, and that could
25 have been alleged based on the facts of, the operative complaint.” (SA ¶ 24).The parties have also
26 stipulated to the certification of a class under Code of Civil Procedure § 382 for purposes of this
27 settlement. (SA ¶ 49) (Hanson Decl. ¶¶ 83, 90, 123.)
28

1 **II. DUNK / KULLAR ANALYSIS**

2 **A. Summary of the Investigation and Discovery Conducted**

3 As noted above, the parties settled this case only after Plaintiffs’ counsel and Defendants
4 conducted more than a decade of highly adversarial litigation. The discovery Plaintiffs’ counsel
5 conducted prior to settling this case include:

- 6 • Reviewing 2.5 million documents, including: DIRECTV’s “Service Provider
7 Agreements”—the standard form agreements DIRECTV entered into with the Contracting
8 Companies to provide services to DIRECTV; DIRECTV’s extensive policies and
9 procedures governing the technicians’ work; over 1 million reports, including the
10 technicians’ work order history data, and extensive performance metrics DIRECTV
11 gathered and maintained concerning the technicians’ work; over 5.75 million pages of
12 internal emails among DIRECTV executives, managers, and supervisors concerning their
13 management and control of the technicians;
- 14 • Conducting and defending more than 650 depositions, including the depositions of:
15 DIRECTV’s SVP in charge of all technicians nationwide; DIRECTV’s executive in
16 charge of California technicians; DIRECTV’s executive in charge of technicians in
17 Northern California; a DIRECTV regional director in charge of technicians in Southern
18 California; a former DIRECTV regional director in charge of technicians in Northern
19 California; ten local DIRECTV employees who supervised the technician class members
20 in California; six representatives and other former employees of the Contracting
21 Companies in California; and approximately 400 individual technicians who performed
22 DIRECTV work in and outside of California;
- 23 • Litigating several contested discovery and dispositive motions, including the plaintiffs’
24 successful motion for partial summary judgment in a related case, and the appeal of that
25 judgment in the Ninth Circuit; and
- 26 • Prosecuting a jury trial to verdict in Arizona (Hanson Decl. ¶¶ 7, 9, 17–18.).
- 27 • Detailed analysis of data. DIRECTV produced work order data for 100% of the class.
28 Plaintiffs’ damage calculations are based on this robust data. (Hanson Decl. ¶ 20–21.)

1 **B. Summary of the Settlement Negotiations**

2 As noted above, the parties conducted three different mediation sessions over a period of
3 approximately 4 years. First, in November 2017, the parties conducted a mediation and
4 subsequently reached a global resolution of all related cases nationwide except for the litigation
5 in California. Second, in October 2020, on the heels of DIRECTV launching its Individual
6 Settlement Program, the parties attempted to reach settlement in good faith, but could not reach
7 agreement on the value of this case. Finally, in May 2021, after the Court ruled that “[t]here is no
8 showing of coercion or that [DIRECTV’s *Pick-up Stix* campaign] letters are otherwise improper,”
9 the parties agreed to settle this case on a class wide basis. (Hanson Decl. ¶ 15.)

10 **C. Summary of Class Counsels’ Experience**

11 Class Counsel has extensive experience prosecuting class actions, including wage and
12 hour class and collective actions specifically. (Hanson Decl. ¶¶ 22–29.) (Calabro Decl.) (Werts
13 Decl.)

14 **D. Summary of the Case, Including the Factual and Legal Bases for the Claims**

15 DIRECTV entered into standard form “Services Provider Agreement” contracts (the
16 “SPA”) with third-party entities (the “Contracting Companies”) in California and across the
17 country, to install and service DIRECTV equipment and service. These Contracting Companies
18 then directly engaged technicians like the technician class members to perform the work. (*See*
19 *Second Amended Complaint (“2AC”).*) Plaintiffs allege that the SPA granted DIRECTV
20 substantial control over the manner and means by which the technicians performed their work,
21 including the discretion to prevent individual technicians from performing DIRECTV work. (*Id.*)

22 **Employee Misclassification.** Plaintiffs believe that DIRECTV’s alleged contractual right
23 to effectively hire and fire the technicians and control the manner and means by which the
24 technicians performed their work, and the fact that the technicians performed work that was an
25 integral part of DIRECTV’s business, is a strong case that DIRECTV “employed” them as a
26 matter of California wage and hour law. *See* Labor Code § 2775; *Dynamex Operations W. v.*
27 *Superior Ct.*, 4 Cal. 5th 903 (2018); *Martinez v. Combs*, 49 Cal. 4th 35 (2010); *S. G. Borello &*
28 *Sons, Inc. v. Dep’t of Indus. Rels.*, 48 Cal. 3d 341 (1989).

1 **Failure to Pay for All Hours Worked.** The technicians were paid on a “piece-rate” basis:
2 their only compensation was a fixed dollar amount for installing certain pieces of DIRECTV
3 equipment. The technicians were not paid for “non-productive” time. Thus, assuming the
4 technicians were DIRECTV “employees,” Plaintiffs believe they had a valid argument that
5 DIRECTV failed to pay for all hours worked, as required by IWC Wage Order 4, Labor Code §§
6 204, 223, 226.2; *Gonzalez v. Downtown LA Motors, LP*, 215 Cal. App. 4th 36, (2013).

7 **Failure to Pay Overtime.** Because the technicians were paid only on a flat, “piece-rate”
8 basis, they were not paid overtime; a violation of IWC Wage Order 4-2001 and Labor Code §§
9 510, 1194, assuming the technicians were DIRECTV “employees.”

10 **Failure to Pay Minimum Wage.** Because the technicians were paid only on a flat, “piece-
11 rate” basis, Plaintiffs allege that some technicians were paid less than minimum wage in certain
12 instances, a violation of Wage Order 4-2001 and Labor Code §§ 1194, 1194.2, 1197, & 1197.1.

13 **Failure to Provide Meal Periods.** Plaintiffs allege that technicians regularly worked more
14 than 5 hours in a day, but DIRECTV had no policy of providing meal periods as Wage Order 4-
15 2001 and Labor Code §§ 226.7 and 512 require “employers” to provide “employees.”

16 **Failure to Provide Rest Periods.** Plaintiffs allege that technicians regularly worked more
17 than 3.5 hours in a day, but DIRECTV had no policy of providing paid rest periods as Wage Order
18 4-2001 and Labor Code § 226.7 require “employers” to provide “employees.”

19 **Unlawful Wage Deductions.** When technicians failed to meet DIRECTV’s performance
20 standards, Plaintiffs allege that DIRECTV “charged back” the Contracting Companies who could
21 then choose to deduct those amounts from the technicians’ pay. Assuming the technicians were
22 DIRECTV “employees,” Plaintiffs assert these were unlawful wage deductions in violation of
23 IWC Wage Order 4-2001 and Labor Code §§ 221 and 225.

24 **Failure to Furnish Wage Statements.** DIRECTV did not provide wage statements to the
25 technicians and, assuming the technicians were DIRECTV “employees,” Plaintiffs allege that this
26 constitutes a violation of IWC Wage Order 4-2001 and Labor Code §§ 226, 1174, and 1175.

27 **Failure to Reimburse Necessary Business Expenses.** The technicians incurred
28 substantial expenses performing installation work for DIRECTV such as buying cables, fittings,

1 and other equipment, as well as vehicle expenses, that neither DIRECTV nor anyone else
2 reimbursed, an alleged violation of Wage Order 4-2001 and Labor Code § 2802.

3 ***Failure to Pay Wages Dues on Discharge, Layoff, or Resignation.*** Because Plaintiffs
4 allege that DIRECTV did not pay the technicians the compensation due as noted above,
5 DIRECTV failed to pay technicians who were discharged, laid off, or resigned all compensation
6 they were due within the time period required by Labor Code §§ 201-204.

7 ***Unfair Business Practices.*** Plaintiffs allege that each of the violations alleged above also
8 constitutes an unfair business practice for which the technicians may seek restitution within a four
9 year statute of limitations. *See* Bus & Prof. Code § 17200, *et seq.*

10 ***PAGA.*** On or about September 9, 2015, Plaintiffs provided written notice to the LWDA
11 of the violations alleged above. Named Plaintiffs Giannoulis and Allen are technicians who
12 installed DIRECTV in California but were allegedly misclassified by DIRECTV. They are
13 therefore “aggrieved employees” under Labor Code § 2698, *et seq.* and can assert this PAGA
14 action on behalf of other “aggrieved employees” in California. Plaintiffs assert this PAGA action
15 for civil penalties for the violations noted above. In addition, they assert a claim for willful
16 misclassification under Labor Code § 226.8. (Hanson Decl. ¶¶ 37–48.)

17 **E. Summary of Risks, Expenses, Complexity, and Duration of Further**
18 **Litigation if the Settlement is Not Approved**

19 Should this settlement not be approved, the parties and the Court face the prospect of a
20 significant expansion of time and resources devoted to this case. While this case was filed on
21 October 1, 2015, due to the various stays in this case, the five-year rule does not expire until
22 March 29, 2024, at the earliest. (*See* 8/6/20 Jt. Status Report at 4.) (Hanson Decl. ¶ 35.)

23 Critically, DIRECTV has demonstrated for over a decade in related litigation a tenacious
24 drive to litigate almost every significant issue aggressively. For example, in the related litigation,
25 DIRECTV opposed coordination before the Judicial Panel on Multidistrict Litigation (which
26 arguably would have made the case more efficient for all parties), deposed hundreds of individual
27 technicians, filed scores of motions for summary judgment on the same issues, and even filed a
28 petition for certiorari in the United States Supreme Court when the Fourth Circuit Court of

1 Appeals rejected DIRECTV’s motion to dismiss a complaint. DIRECTV engaged more than ten
2 national law defense firms in these endeavors. (Hanson Decl. ¶ 30.)

3 Similarly, in this case specifically, DIRECTV filed a motion to compel arbitration at the
4 commencement of this case. When this Court denied the motion, DIRECTV moved for
5 reconsideration. When the Court denied that motion, DIRECTV immediately appealed to the
6 Court of Appeal where it languished for a year until Plaintiffs amended the Complaint to add
7 another plaintiff who had not signed an arbitration clause. This case was then stayed again while
8 DIRECTV appealed a ruling in a related case to the Ninth Circuit. Once the Ninth Circuit decided
9 that appeal, DIRECTV sought to engage in a year of extensive third-party discovery—including
10 approximately 60 third-party depositions—before Plaintiffs’ motion for class certification was to
11 even be filed. (*See e.g.* 8/6/20 Jt. Status Report at 11-14.) (Hanson Decl. ¶ 31.)

12 Even if Plaintiffs’ pending motion for class certification were granted, the pending motion
13 sought only issue-certification on the question of whether DIRECTV “employed” the class
14 members for the purposes of California wage and hour law. Thus, the parties either would have
15 needed to litigate the separate question of whether a damages class could also be certified and/or,
16 given the substantial fact-specific question of whether the releases DIRECTV procured as part of
17 its Individual Settlement Program were valid, potentially thousands of individual mini-trials on
18 whether (1) each class members was fraudulently induced and/or otherwise improperly induced
19 into accepting the releases; and (2) if so, the amount of each class member’s individual damages.
20 In addition, and entirely separate from the class claims, the Court would also be required to hold
21 a bench trial on Plaintiffs’ PAGA claims and the amount of penalties to be levied on DIRECTV
22 for those violations (if any). (Hanson Decl. ¶ 32.)

23 Furthermore, given the way this and related actions have already been litigated, there is
24 substantial risk that the parties would seek appellate review, by writ or otherwise, of every
25 interlocutory decision of consequence this Court made along the way. (Hanson Decl. ¶ 33.)

26 **F. Summary of the Risks of Maintaining Class Action Status**

27 While the Court has not yet ruled on Plaintiffs’ pending motion for issue-class
28 certification, Plaintiffs believe there was a reasonable probability the Court would grant class

1 certification. DIRECTV, however, has a different view and was preparing a vigorous opposition
2 to Plaintiffs’ motion for class certification. Among other arguments, DIRECTV would rely on
3 *Guzman v. DIRECTV, Inc.*, Case No. BC410983 (Ex. 5 to Hanson Decl.), There, Judge Mohr of
4 this Court denied a motion brought by a separate proposed class of “contractor technicians” for
5 issue certification on the question of whether DIRECTV employed technicians similarly situated
6 to the technicians at issue here. There is also substantial risk that the Court would not certify a
7 damages class. While DIRECTV kept substantial data concerning the work the class members
8 performed, neither side had documentary evidence of the precise hours the technicians worked,
9 the miles they drove, or the amounts they spent on unreimbursed business expenses. Nor would
10 it have been practicable to have hundreds of technicians testify as to the hours they worked and
11 unreimbursed amounts they spent performing work for DIRECTV. (Hanson Decl. ¶ 32, 70–75.)

12 **G. Information Sufficient for the Court to Evaluate the Reasonableness of the**
13 **Consideration the Class Members Are Receiving in Exchange for the**
14 **Releases Provided**

15 There are several reasons for determining that this settlement is fair and reasonable.

16 First, DIRECTV has represented that of all the putative class members that received
17 DIRECTV’s \$2,250 Individual Settlement Program offer to release the claims asserted in this
18 case, 85% of them accepted the offer—approximately 1,300 technicians. This is clear evidence
19 that even \$2,250 is sufficient consideration for the releases obtained. But with this settlement, the
20 average payout per technician is approximately \$6,500—nearly three times what an
21 overwhelming majority of the technicians have already accepted.³ And those class members who
22 did not accept the offer are receiving a larger share. (Hanson Decl. ¶¶ 11, 52.)

23 Second, the average payout of \$6,500 net of fees and expenses (a number that will exceed
24 \$17,000 for long-tenured technicians based on pro rata the allocation formula) is a significant
25 recovery for putative class members in a class action. And it is particularly true in this case
26 concerning the substantial risks imperiling *any* recovery for the class members even if this case
27 were ultimately certified (which is not guaranteed for the reasons noted above), and the case

28 ³ The release obtained as part of DIRECTV’s Individual Settlement Program, attached as Exhibit 3, is materially the same as the release at issue in this case except the Individual Settlement Program’s release did not purport to release the PAGA claims.

1 proceeded to trial. Notably, in all the cases nationwide concerning DIRECTV’s “contractor”
 2 technician model, the only one that went to trial resulted in a defense verdict: the jury determined
 3 that the technicians were independent contractors. (Hanson Decl. ¶ 102.)

4 Even if a California jury determined that the class members in this case were DIRECTV
 5 “employees,” the technicians’ damages were still subject to proof at trial. Neither side had
 6 documentary evidence of the precise hours the technicians worked, the miles they drove, or the
 7 amount they spent on unreimbursed business expenses, which means that specifying the
 8 technicians’ damages at trial—when it would have been impracticable to have hundreds of
 9 technicians testify as to their specific damages—could have been challenging for the jury. Given
 10 the unpredictability of how a jury would approach this question, the theoretical recovery at trial
 11 spanned a large range: from zero to many thousands of dollars per technician class members. As
 12 the chart below reflects, and as described in detail in Class Counsel George Hanson’s Declaration
 13 at ¶¶ 56–65, a significant portion of the potential range of recovery is at serious risk given the
 14 releases signed by the majority of class members through DIRECTV’s Individual Settlement
 15 Program.

Claim	Total Damages	Damages assuming DIRECTV releases are valid
Count 1: Failure to Pay All Hours Worked	\$ 8,896,356.00	\$ 2,090,643.66
Count 2: Failure to Pay Overtime Premium	\$ 13,751,040.00	\$ 3,231,494.40
Count 3: Failure to Pay Minimum Wage	\$ 8,896,356.00	\$ 2,090,643.66
Count 4: Failure to Provide Meal Periods	\$ 1,482,726.00	\$ 348,440.61
Count 5: Failure to Provide Rest Periods	\$ 14,827,260.00	\$ 3,484,406.10
Count 6: Unlawful Wage Deductions (Chargebacks)	\$ 4,923,775.00	\$ 1,157,087.13
Count 7: Failure to Furnish Wage Statements	Negligible value given prior rulings on willfulness	
Count 8: Failure to Reimburse Business Expenses	\$ 10,167,176.00	\$ 2,389,286.36
Count 9: Failure to Pay Wages Due at termination	Negligible value given prior rulings on willfulness	
Count 10: Unfair Business Practices (§ 17200)	Extends statute of limitation, subsumed in above calculations	
REASONABLE MAXIMUM AVAILABLE DAMAGES	\$ 62,944,689.00	\$ 14,792,001.92

27 Fourth, the amount allocated to the PAGA penalties, \$150,000, is reasonable. Valuing the
 28 potential range of PAGA penalties is difficult for the same reasons mentioned above regarding

1 the challenges of proving the class members’ claims generally, the overlapping nature of PAGA
2 penalties, and the fact that trial courts often exercise considerable discretion when determining
3 the amount of penalties to levy even after determining that the defendant did in fact violate the
4 law. While in theory DIRECTV’s reasonable potential PAGA exposure exceeded \$100 million,
5 as a practical matter Plaintiffs were likely to recover far less than that even had they prevailed at
6 trial. And, in light of the Court of Appeal’s recent ruling reaffirming that trial courts may consider
7 striking PAGA claims that cannot be rendered “manageable,” *Wesson v. Staples the Off.*
8 *Superstore, LLC*, No. B302988, 2021 WL 4099059 (Cal. Ct. App. Sept. 9, 2021), there was real
9 risk that Plaintiffs’ PAGA claims would be scaled down significantly, given the problems noted
10 above adjudicating class-wide damages. (Hanson Decl. ¶¶ 66-67.)

11 Considering the significant risk that no class-wide damages would be awarded at trial and,
12 even if Plaintiffs prevailed at trial, the inevitable years of appeals that would follow, this
13 settlement is a fair and reasonable recovery now and should be approved. (Hanson Decl. ¶ 68.)

14 **III. CLASS CERTIFICATION**

15 As part of the settlement, DIRECTV has stipulated to class treatment for the purposes of
16 this settlement, thus no hearing on class certification is necessary. *See* CRC Rule 3.764. And there
17 is more than sufficient basis for a settlement class here.

18 **A. Numerosity**

19 There are an estimated 2,300 class members. (Hanson Decl. ¶¶ 17, 76.)

20 **B. Ascertainability**

21 The class members are easily identified by the extensive data DIRECTV kept of the work
22 orders performed and the technicians who performed the work, including the unique Technician
23 ID numbers issued to each technician approved to work. The Settlement Administrator will use
24 this data to identify, locate, and mail notice to the class members within 21 days of preliminary
25 approval (SA ¶¶ 29-31) and send settlement checks to the individual class members within 40
26 days of final approval (SA ¶¶ 29, 38. For those instances in which there is insufficient data in
27 DIRECTV’s systems to identify and locate class members, the parties have agreed on a robust
28 procedure for notifying the class members, including by (1) settlement website; (2) social media

1 notice; and (3) on-line publication notice. (SA ¶ 31.) The parties have also agreed to a process by
2 which class members can “self-identify,” by submitting certain identifying information (such as
3 name, address, social security number, DIRECTV Technician ID number, cities in which work
4 was performed, and time frame in which work was performed) to the settlement administrator for
5 verification. (SA ¶¶ 31 & 33.) (Hanson Decl. ¶¶ 77–78.)

6 **C. Community of Interest**

7 “The community of interest requirement involves three factors: ‘(1) predominant common
8 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and
9 (3) class representatives who can adequately represent the class.’ *Noel*, 7 Cal. 5th at 968. Here,
10 the fact that the parties have stipulated to resolving the asserted claims on a class wide basis
11 satisfies the “predominant questions of law or fact” prong. Further, all class members performed
12 the same work under the same DIRECTV policies. The other two prongs are met too. (Hanson
13 Decl. ¶ 79.)

14 1. Plaintiffs Giannoulis and Allen Have Claims Typical of the Class

15 “Typicality does not require that the representative plaintiff’s claims and those of the class
16 members be identical or perfectly aligned. It is enough that both the named plaintiff’s claims and
17 class members’ claims arise from similar conduct and implicate the same legal theories so that
18 the plaintiff has a motive to litigate on behalf of all class members.” *Gonzales*, 40 Cal. App. 5th
19 at 1161–62. Here, both named Plaintiffs—Giannoulis and Allen—were technicians approved by
20 DIRECTV to perform the same DIRECTV work as the other class members, both performed
21 work for DIRECTV in California; and neither was classified by DIRECTV as a W-2 employee.
22 (Hanson Decl. ¶ 79.)

23 2. Plaintiffs Giannoulis and Allen Adequately Represent the Class

24 “Adequacy of representation depends on whether the plaintiff’s attorney is qualified to
25 conduct the proposed litigation and the plaintiff’s interests are not antagonistic to the interests of
26 the class.” *McGhee v. Bank of Am.*, 60 Cal. App. 3d 442, 450 (Ct. App. 1976). In this case, Class
27 Counsel is well qualified. (*See supra*, § II.C.) Moreover, both named Plaintiffs understand their
28 role as class representatives, their fiduciary obligations to the putative class members, and have

1 been diligently prosecuting this action. (*See e.g.* Giannoulis Decl. (Ex. 21 to Pls' 8/21/20 Mtn for
2 Class Cert.) Allen Decl. (*Id.*, Ex. 22).) Furthermore, Messrs. Giannoulis and Allen have no
3 interests that are antagonistic to the interests of the class. (Hanson Decl. ¶ 81.)

4 **IV. CLAIM REQUIREMENT**

5 This is not a claims made settlement. All class members who can be located will be sent
6 their allocated share of the net settlement funds. (SA ¶ 38.) The Settlement Agreement also
7 provides for a self-identification process whereby class members without known addresses may
8 provide identifying information to the settlement administrator through the settlement website
9 (*See* § III.B above.) If it is determined that the self-identifying individual is in fact an eligible
10 class member, they will be provided their allocated share of the net settlement funds.

11 **V. MISCELLANEOUS**

12 There are *no settlement terms for claims outside the scope of the operative complaint.*
13 *Notice will be given only in English* because the class members worked with members of
14 DIRECTV's team and the general public, which required fluency in English. There is no
15 indication that providing notice in only English is insufficient.

16 An overview of the timeline for notice and distribution to the settlement class members is
17 outlined in Appendix A. There are *no other affirmative obligations* to be undertaken by class
18 members or class counsel.

19 *Class Counsel will request 33.33% of the Total Settlement Amount* (\$7,715,895) as
20 attorney's fees, to be split among Class Counsel as follows: (1) 65.52% to Stueve Siegel Hanson
21 LLP; (2) 10% to Calabro Law Office; and (3) 24.48% to Lear Werts LLP. Attorneys from each
22 of these firms are counsel of record and have been actively involved in the litigation of this matter.
23 The named Plaintiffs have agreed to, and DIRECTV does not oppose, the overall amount of
24 attorney's fees, and the specific split of the fees amongst Class Counsel. In their application prior
25 to final approval, Class Counsel will fully justify their request for attorney's fees and
26 reimbursement of litigation expenses. (Hanson Decl. ¶ 86.)

27 There is *no agreement regarding injunctive relief.* (Hanson Decl. ¶¶ 87–104.)
28

APPENDIX A – TIMELINE FOR NOTICE AND DISTRIBUTION OF SETTLEMENT

Date	Event
Within 5 days of Preliminary Approval	DIRECTV to provide Settlement Administrator and Class Counsel the Settlement Group Member Data (SA ¶ 29)
Within 21 days of Preliminary Approval	Notice Period Commences <ul style="list-style-type: none"> - Settlement Administrator to mail Class Notice - Settlement Administrator to publish website with required information and forms for self-identification - Settlement Administrator to run Facebook ads - Settlement Administrator to publish summary notice in trade journal(s) (SA ¶ 31)
60 Days after Notice Period Commences	Notice Period Ends (SA ¶ 31) Last Day to Opt Out of the Settlement Class (SA ¶ 32)
10 Days after Notice Period Ends	Settlement Administrator to provide the Parties a complete list of all identified Settlement Class Members, objectors, and opt-outs (SA ¶ 34)
[TBD]	Date of Final Approval Hearing
Within 5 days of Final Approval	Settlement Administrator will provide DIRECTV with wire information and tax forms to fund the settlement (SA ¶ 29)
Within 21 days of Settlement Administrator providing wire instructions	DIRECTV to wire Total Settlement Amount to the Settlement Administrator (SA ¶ 29)
Within 14 days of DIRECTV Transferring the Total Settlement Amount to the Settlement Administrator	Settlement Administrator to distribute funds to: <ul style="list-style-type: none"> - Settlement Class Members with valid addresses - Service Payments to Named Plaintiffs - California Labor and Workforce Development Agency - Class Counsel - Settlement Administrator (SA ¶ 38)
120 Days after Final Approval	Self-Identification Period Ends (SA ¶ 33)
10 Days after Self-Identification Period ends	Settlement Administrator to provide the Parties with an updated list of all Settlement Class Members (SA ¶ 34)
180 Days after Final Approval	Settlement Administrator to distribute remaining funds (SA ¶ 38)