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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]

**SUPPLEMENTAL 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: April 25, 2022
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 On October 1, 2021, Plaintiffs filed a motion for preliminary approval (“MPA”) of the
3 agreement the parties negotiated to settle this putative class and PAGA action. On October 19,
4 2021—in advance of the October 26, 2021, hearing on the motion—this Court issued a checklist
5 with some additional guidance and sought clarification regarding the settlement. At the October
6 26, 2021, hearing, the Court discussed the status of the case and the checklist with the parties and
7 continued the hearing on the motion to April 24, 2022.

8 Since the October 2021 Hearing, the parties have endeavored to incorporate the Court’s
9 guidance and address the Court’s questions. Thus, in addition to the papers Plaintiffs submitted
10 to the Court in October 2021, Plaintiffs now submit a revised Settlement Agreement (Supp. Decl.
11 of George A. Hanson (“Hanson Decl.”), Ex. A), a redlined version that identifies changes to the
12 original Settlement Agreement (Hanson Decl., Ex. B), this Supplemental Memorandum
13 responding to the Court’s October 2021 checklist, and additional supporting evidence as outlined
14 below.

15 **DISCUSSION OF CHECKLIST ITEMS**

16 Set forth below, in order, is Plaintiffs’ discussion of the items identified in the Court’s
17 October 2021 Checklist.

18 **I. ADMISSIBLE EVIDENCE TO SUPPORT A FINDING THAT THE NAMED**
19 **PLAINTIFFS AND THE PROPOSED CLASS SHARE A COMMUNITY OF**
20 **INTEREST**

21 This is a wage and hour action on behalf of a putative class of technicians who performed
22 DIRECTV work orders but who were classified as “independent contractors” instead of
23 employees, and who Plaintiffs assert were not paid as California law requires “employers” to pay
24 “employees.” The named Plaintiffs, Jonathan Giannoulis and Deshon Allen, assert claims on
25 behalf of all technicians who performed DIRECTV work orders in California since October 1,
26 2011, and were not classified as W-2 employees.¹ They assert various wage and hour claims

27 ¹ As noted in the Settlement Agreement and the MPA, excluded from the class are technicians
28 who (1) performed work through White Communications, LLC, but only during the time they
were performing such work; or (2) had claims against DIRECTV pending in the United States
District Court for the Central District of California as of August 13, 2020.

1 arising out of the misclassification. (*See* MPA at 7-9.) In addition, Plaintiffs Giannoulis and
2 Deshon Allen assert PAGA claims on behalf of similarly situated “aggrieved employees,”
3 asserting claims for willful misclassification and to recover civil penalties for the alleged Labor
4 Code violations. (*Id.*)

5 Plaintiffs have submitted sworn declarations from Jonathan Giannoulis and Deshon Allen
6 concurrently herewith testifying that they share a community of interest with the class members,
7 namely: that they performed DIRECTV work orders during the class period while not classified
8 as a W2 employee; that they were paid only a piece-rate for certain work orders performed and
9 therefore suffered the same Labor Code violations as the class; and that they understand the
10 obligations of being adequate class representatives, what they have done to advance this case for
11 the benefit of the class members, and their understanding of the substantial burden they have
12 undertaken over the last several years to further the interests of the class.

13 **II. CLASS DEFINITION**

14 The parties have revised the Settlement Agreement to define separately the “PAGA
15 Settlement Group Members” and the “PAGA Covered Period” from the broader class of
16 “Settlement Group Members” and the “Covered Period.”

17 Plaintiffs anticipate that, of the approximately 2,300 total class members, there are
18 approximately 1,300 PAGA Settlement Group Members. (Declaration of Todd C. Werts (“Werts
19 Decl.”) ¶¶ 9-11.) DIRECTV has data for each of the estimated 2,300 class members that
20 encapsulates one hundred percent (100%) of the work orders at issue. (Werts Decl. ¶ 12.) Each
21 of these records “identify” the class member recorded as having performed the work order by his
22 or her TechID number. (Werts Decl. ¶ 13). Records from the same DIRECTV database pair the
23 Tech ID number, with a class member’s, name, and address, as well as almost always cell phone
24 number and email address. (Werts Decl. ¶ 14.) All the data is readily sorted and attributable to
25 each Settlement Group Member by TechID. The Settlement Agreement allows for the theoretical
26 possibility that an unknown individual completed a given DIRECTV work order and provides an
27 opportunity for such a person or persons to come forward, provide evidence they should fairly be
28 a class member, and participate in the settlement. (Hanson Decl. ¶ 9). Based on the evidence

1 gathered throughout Class Counsel’s long experience in litigating DIRECTV wage and hour
2 cases, the number of people expected to self-identify that are not within the Siebel data is expected
3 to be negligible, if not zero. (Hanson Decl. ¶ 10).

4 DIRECTV’s Individual Settlement Program confirms that DIRECTV has provided direct
5 mail contact information for roughly 1,400 class members (i.e., 61% of the class). In addition,
6 Class Counsel estimates it has email addresses for approximately 70% of class members. (Hanson
7 Decl. ¶¶ 17-23.) Thus, while contact information is available for the significant majority of the
8 class, as a practical matter there may be class members who do not receive information about the
9 settlement through direct mail or email. Accordingly, the Settlement Agreement provides for
10 robust notice and self-identification procedures. (Settlement Agreement at ¶¶ 38–41.)

11 **III. PAGA PAYMENT FORMULA**

12 The Settlement Agreement has been revised to clarify that only PAGA Settlement Group
13 Members (and not all class members) will share in the PAGA Settlement Amount. Each PAGA
14 Settlement Group Member will be assigned one share for each work order he or she performed
15 during the PAGA Covered Period, and the portion of the PAGA Settlement Amount that is to be
16 distributed to the aggrieved employees will be allocated equally, pro rata, to each share. (SA at
17 ¶ 29.b.)

18 **IV. SCOPE OF THE CLASS RELEASE**

19 *Amaro* noted that a “court may release not only those claims alleged in the complaint and
20 before the court, but also claims which ‘could have been alleged by reason of or in connection
21 with any matter or fact set forth or referred to in’ the complaint,” *Amaro v. Anaheim Arena Mgmt.,*
22 *LLC*, 69 Cal. App. 5th 521, 537 (2021), and advised that a “release covering ‘potential claims
23 reasonably arising out of ... the same set of operative facts’ pled in the complaint is sufficiently
24 tailored,” *id.* at 538. Accordingly, the class release in the Settlement Agreement here is limited to
25 “claims as alleged in, and that could have been alleged based on the facts of, the operative
26 complaint.” (SA ¶ 30.) The language the Court’s checklist references, including the “whether
27 known or unknown,” “any and all applicable statutes,” “any provision of the California Labor
28 Code,” and “any provision of the applicable California Industrial Welfare Commission,” are all

1 limited by the language in the Settlement Agreement cabining the release to the claims that could
2 have been alleged based on the facts of the operative complaint. Plaintiffs believe that this is
3 appropriate under *Amaro*.

4 But the Court’s reading suggests that this language is not as clear as it could be, so the
5 parties have revised the agreement to insert the following qualifier into each provision of the
6 release paragraph, making clear that all releases are limited to those claims “that could have been
7 alleged based on the facts set forth in the operative Complaint.” (SA ¶ 30.) In addition, the parties
8 have made clear that the scope of the released PAGA claims is limited to those claims asserted in
9 the PAGA Notice Letters, which are now attached as Exhibits 2 and 3 to the revised Settlement
10 Agreement. The parties have also included the following language reiterating the scope of the
11 released claims:

- 12 • “For the avoidance of doubt, the scope of the Settlement Group Member Release
13 extends to but is limited to those claims that were or could have been alleged based
14 on the facts set forth in the operative Complaint.” (SA ¶ 30); *and*
- 15 • “For the avoidance of doubt, the scope of California’s PAGA Release is limited to
16 those claims disclosed in these PAGA Notice Letters.” (SA ¶ 31)

17 **V. RELEASE EFFECTIVE DATE**

18 The Settlement Agreement has been revised to clarify that the release is effective only
19 after *both* (1) the Court approves the Settlement Agreement *and* (2) the Settlement Administrator
20 receives the “Remaining Settlement Funding Amount” from Defendant. (SA ¶ 6)

21 “Remaining Settlement Funding Amount” is a newly defined term in this version of the
22 Settlement Agreement and clarifies that of the \$23,150,000 that comprises the “Total
23 Settlement Amount,” DIRECTV has already paid approximately \$3,150,000 to certain
24 technicians as part of its Individual Settlement Program. (SA ¶ 22.) Thus, DIRECTV need only
25 transfer approximately \$20 million to the Settlement Administrator upon final approval of the
26 Settlement Agreement to fully fund the Total Settlement Amount.

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1 **VI. DISTRIBUTION OF SETTLEMENT**

2 The language of the paragraph referenced by the Court’s checklist has been cleaned up to
3 remove reference to the “Service Payments” to be paid to Settlement Group Members other than
4 the two named Plaintiffs. (SA ¶ 46).

5 **VII. ATTORNEY’S FEES AND PRIOR SETTLEMENT CREDIT**

6 Plaintiffs will brief their request for attorney’s fees in their motion for attorney’s fees to
7 be submitted contemporaneously with their Motion for Final Approval of the Settlement after the
8 Notice Period. By way of preview, Plaintiffs do intend to seek a portion of their fee under a
9 catalyst theory for the \$3,150,000 paid by DIRECTV to certain technicians as part of its
10 Individual Settlement Program. That issue will be fully briefed.

11 **VIII. HANDLING OF UNCLAIMED FUNDS**

12 **A. Economic Feasibility of Redistribution**

13 This provision (SA ¶29.d) is designed to address the potential situation in which it costs
14 more to print and mail settlement checks to the respective class members than there are funds left
15 to distribute. After consulting with the Settlement Administrator, Class Counsel submits that that
16 anything below \$2.00 (Two Dollars) to any one Plaintiff would be economically unfeasible to
17 redistribute. (Hanson Decl. ¶ 11).

18 **B. Cy Pres Distribution**

19 All counsel and parties have prepared declarations, which are being submitted
20 concurrently with this supplemental memorandum, attesting that they have no interest or
21 involvement in the governance or work of the proposed cy pres recipient, Legal Aid at Work.
22 (See attached declarations). The cy pres distribution here is expected to be minimal. (Hanson
23 Decl. ¶ 13). Any funds remaining after the first round of checks are mailed will be distributed out
24 to the set of those Settlement Group Members that either cashed their original check or self-
25 identified prior to the close of the self-identification deadline described. (SA ¶ 46). The only funds
26 expected to be available for the cy pres distribution are those arising from any disbursements
27 economically unfeasible to mail out, as described above, or that arise from any checks that remain
28 uncashed following the second distribution. (Hanson Decl. ¶ 15). Class Counsel ultimately

1 expects the cy pres distribution to be less than a thousand dollars (\$1,000.00). (Hanson Decl.
2 ¶ 16).

3 **IX. NOTICE AND NOTICE ADMINISTRATION**

4 **A. Percentage of Class Members Expected to Receive the Initial Notice Directly**

5 Based on the state of data DIRECTV has provided to Plaintiffs, DIRECTV's prior
6 experience administering the Individual Settlement Program for the purposes of this matter, and
7 both the Settlement Administrator's and Class Counsel's prior experience, Plaintiffs estimate that
8 they have reliable mailing addresses for at least 61% of the class members, and that 61% is
9 expected to receive a paper notice directly from the Settlement Administrator in the first round of
10 notices the Settlement Administrator sends. (Hanson Decl. ¶ 20). Importantly, DIRECTV's
11 individual settlement program revealed that these 61% of people accounted for over 85% of the
12 value of the possible claims in this case. (Hanson Decl. ¶ 21).

13 **B. Notice by Email**

14 DIRECTV's SIEBEL data system contained email addresses for most Tech ID numbers
15 and, through both DIRECTV's and Plaintiffs' investigations, they have discovered additional
16 email addresses. (Hanson Decl. ¶ 22). All told, Plaintiffs estimate they have email addresses for
17 approximately 70% of the class members, and the Settlement Administrator will provide notice
18 by email through these addresses. (Hanson Decl. ¶ 23; Paul Decl. ¶ 6). The Settlement Agreement
19 has been updated to reflect this. (SA ¶ 38.a.)

20 **C. Mock-Ups of the Social Media and Summary Notice**

21 Plaintiffs have attached a mock-up of the Social Media Notice as Exhibit 5 to the
22 Settlement Agreement, and mock-up of the Summary Publication Notice is attached as Exhibit 6
23 to the Settlement Agreement.

24 **D. Mock-Up of the Notice Envelopes**

25 A mock-up of the front of the envelope to be used for mailing class notices is attached as
26 Exhibit 4 to the Settlement Agreement.

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1 **E. Trade Journals in Which the Settlement Administrator Intends to Publish**
2 **Summary Notice**

3 The Settlement Administrator intends to publish the Summary Notice in the following
4 trade journals:

- 5 • Fierce Video (<https://www.fiercevideo.com/>)
- 6 • DBS Talk (<https://www.dbstalk.com/>)
- 7 • AVS Forum (<https://www.avforum.com/>)

8 These trade journals were recommended by technicians Class Counsel has interviewed in
9 connection with Class Counsel’s investigation and prosecution of this and related matters.
10 (Hanson Decl. ¶ 24). These online resources are frequently reviewed by satellite technicians like
11 the class members here to stay current on technology, business developments, and work
12 opportunities. (Hanson Decl. ¶ 25).

13 In addition, Class Counsel has sought and considered quotes for publications in certain
14 mass media publications in California, such as the Los Angeles Times, San Francisco Chronicle,
15 Sacramento Bee and others, but publishing notices in these publications is significantly more
16 expensive and, given their broad reach, are unlikely to be an efficient use of settlement funds to
17 reach class members effectively—particularly because, based on interviews with representative
18 technicians, such publications are not read widely by the class members. (Hanson Decl. ¶ 26).
19 Additionally, class members performed DIRECTV work orders in every county in California.
20 Class Counsel does not believe it is economically feasible to run a notice of this settlement in a
21 newspaper of general circulation of each county. This is particularly true given the other elements
22 of the robust notice program outlined in the Settlement Agreement. (Hanson Decl. ¶ 27).

23 By contrast, social media sites such as Facebook have mass appeal but can be more
24 narrowly tailored to technicians who are likely to be class members and are likely to be a much
25 more efficient and effective use of settlement funds. (SA ¶ 38.c; Hanson Decl. ¶ 28).

26 In sum, Class Counsel anticipates the notice program will reach 70–80% of the class
27 members whose share of the Total Settlement Fund are believed to account to for between 80–
28 90% of the available funds. (Hanson Decl. ¶ 29). Such a notice program is reasonable and should

1 be approved. *See* Federal Judicial Center, *Judge’s Class Action Notice and Claims Process*
2 *Checklist and Plain Language Guide 2010* (“The lynchpin in an objective determination of the
3 adequacy of a proposed notice effort is whether all the notice efforts together will reach a high
4 percentage of the class. It is reasonable to reach between 70–95%.”) *cited in Edwards v. National*
5 *Milk Producers Fed.*, 2017 WL 3623734, *4, n.45 (N.D. Cal. June 26, 2017).

6 **F. Revised Language Concerning “Submitting a Claim”**

7 The language the Court’s checklist quotes from Section 6.a of the proposed notice
8 provides that “If you do not receive a check within _____ days, you may go to the Settlement
9 Website and submit a claim.” This language was designed to simply afford class members a
10 means of inquiring about their settlement check if they have not received one within a
11 contemplated period of time and was not meant to suggest that class members were required to
12 submit a claim. The Court’s point regarding possible confusion, however, is well taken.
13 Accordingly, this language has been revised and provides: “If you want to participate in this
14 settlement no further action on your part is required. A check will be mailed to you if the Court
15 issues an order granting Final Approval to this settlement. You may go to the Settlement Website
16 to check the status of the settlement or call the Settlement Administrator to inquire about your
17 situation.” (Hanson Decl., Ex. C, Amended Proposed Notice ¶ 6(a)).

18 **G. The Confidentiality Order Will Not Interfere with Plaintiffs’ Counsel’s**
19 **Duty to the Class**

20 The language in the Settlement Agreement has been revised to expressly authorize
21 Plaintiffs’ Counsel and the Settlement Administrator to use the information in the database to
22 administer the settlement and contact class members in connection with administering the
23 settlement. (SA ¶ 37.)

24 **H. Individualized Information to the Class Members**

25 Plaintiffs have provided a mock-up of the Settlement Information Sheet to be provided to
26 each class member with the notice of settlement, and Plaintiffs have revised the proposed notice
27 to direct the recipient to the Settlement Information Sheet. (*See* Amended Proposed Notice p. 5;
28 SA Ex. 1.)

1 **I. Deadline for the Submission of Disputes**

2 The Settlement Agreement and Settlement Information Sheet have been revised to provide
3 that the deadline for the submission of disputes is 30 days before the Final Approval Hearing, or
4 30 days after receiving the Settlement Information Sheet, whichever is later. (SA ¶ 43.) However,
5 both the Settlement Agreement and the Notice have been amended to provide that no disputes
6 will be entertained if received after close of the self-identification period as described in
7 paragraph 41 of the Settlement Agreement. (Hanson Decl., Ex. C, Amended Proposed Notice ¶ 7;
8 SA ¶ 43). This deadline is 120 days after the Court issues an order finally approving the
9 settlement. *Id.* This provides a reasonable, but hard cut-off in the event a class members' Notice
10 and Settlement Information Sheet is delivered months after the Notice Period due to something
11 unexpected with the postal service.

12 **J. Extended Deadline for Those Who Receive Re-Mailed Notices**

13 The Settlement Agreement and Notice have been revised to provide that individuals who
14 want to opt out or object to the settlement can do so in writing during (1) the Notice Period, or
15 (2) 30 days after first receiving notice (such as those who receive a re-mailed notice), so long as
16 the written objection / opt-out is received 30 days before the Final Approval Hearing. The
17 Settlement Agreement and Notice still provide that anyone can participate in the Final Approval
18 Hearing.

19 As provided above (§ IX.I), each class member will have a minimum of 30 days from
20 when he first receives his or her Settlement Information Sheet (whether as part of the initial
21 mailing or a subsequent mailing) to submit a dispute to the Settlement Administrator.

22 **K. The Release Disclosed to Class Members in the Notice**

23 The draft notice has been revised to disclose, verbatim, the release language in the
24 Settlement Agreement. *Compare* SA ¶¶ 30–31 *with* Notice at pp. 4–5.

25 **L. Information on Check Cashing Deadline**

26 The Notice has been revised to advise class members of the check cashing deadline and
27 that, if the deadline expires, funds will be re-distributed to other class members and/or Legal Aid
28 at Work. (Amended Notice at ¶ 6(a).)

1 **M. Notice of Audio or Video Appearance Option at the Final Approval Hearing**

2 The notice has been revised to advise of the Class Member’s option to appear in person,
3 by video, or telephone, and directs the Class Member to the Court’s website for the most up to
4 date information on doing so. (Amended Notice at ¶ 5.)

5 **N. Notice of Final Judgment**

6 The Settlement Agreement has been revised to provide expressly that the Settlement
7 Administrator shall post the Notice of Final Judgment on the Settlement Website no later than 15
8 days after it is entered. (SA ¶ 40.)

9 **X. DECLARATION FROM SETTLEMENT ADMINISTRATOR**

10 A declaration from Jonathan Paul, on behalf of the Settlement Administrator, is submitted
11 concurrently herewith and attests to ILYM’s qualifications and experience and affirms that it has
12 sufficient safeguards in place to protect the data and funds entrusted to it as well as adequate
13 insurance for the theft of money or data and has no relationship to any counsel.

14 **XI. DATE FOR FURTHER HEARING**

15 The Court has set the next hearing on this matter for April 25, 2022, at 9:00 a.m.

16 **XII. SERVICE ON THE LWDA**

17 On April 1, 2022, Plaintiffs’ Counsel has served the LWDA with all additional materials
18 submitted concurrently herewith. (Hanson Decl. Ex. G.)

19
20 Respectfully submitted,
21 Dated: April 1, 2022 CALABRO | LAW OFFICE
22
23 By: /s/ J. Toji Calabro
24 J. Toji Calabro
25 Attorney for Plaintiff
26
27
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 ¶ 37)
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 ¶ 38)
60 Days after Notice Period Commences	Notice Period Ends (SA ¶ 38) Last Day to Opt Out of the Settlement Class except for those Settlement Group Members who did not receive their Class Notice Packet more than 30 days in advance of this date (SA ¶ 39.b)
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 ¶ 42)
[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 ¶ 36)
Within 21 days of Settlement Administrator providing wire instructions	DIRECTV to wire Remaining Settlement Funding Amount to the Settlement Administrator (SA ¶ 36)
Within 14 days of DIRECTV Transferring the Remaining Settlement Funding 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 ¶ 45)
120 Days after Final Approval	Self-Identification Period Ends (SA ¶ 41)

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Date	Event
90 Days after Checks Mailed (~130 Days after Final Approval)	Uncashed checks become void (SA ¶ 29.d.)
35 Days after Self-Identification Period ends (~155 Days after Final Approval)	Settlement Administrator to provide the Parties with an updated list of all Settlement Class Members (SA ¶ 42)
180 Days after Final Approval	Settlement Administrator to distribute remaining funds (SA ¶ 46)